

No. 18-11479

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**CHAD EVERET BRACKEEN; JENNIFER KAY BRACKEEN; STATE OF TEXAS;
ALTAGRACIA SOCORRO HERNANDEZ; STATE OF INDIANA; JASON
CLIFFORD; FRANK NICHOLAS LIBRETTI; STATE OF LOUISIANA;
HEATHER LYNN LIBRETTI; DANIELLE CLIFFORD,
*Plaintiffs-Appellees,***

v.

**RYAN ZINKE, in his official capacity as Secretary of the United
States Department of the Interior; TARA SWEENEY, in her official
capacity as Acting Assistant Secretary of Indian Affairs; BUREAU
OF INDIAN AFFAIRS; UNITED STATES DEPARTMENT OF INTERIOR;
UNITED STATES OF AMERICA; ALEX AZAR, In his official capacity as
Secretary of the United States Department of Health and
Human Services; UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
*Defendants-Appellants***

**CHEROKEE NATION; ONEIDA NATION; QUINULT INDIAN NATION;
MORONGO BAND OF MISSION INDIANS,
*Intervenor Defendants-Appellants.***

**Appeal from the United States District Court for the
Northern District of Texas, Case No. 4:17-CV-00868-O**

**RESPONSE TO FEDERAL APPELLANTS' MOTION FOR A
FOUR-DAY EXTENSION OF THE DEADLINE TO FILE THEIR
OPENING BRIEF**

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Counsel for Appellants

CERTIFICATE OF INTERESTED PERSONS

Brackeen, et al. v. Cherokee Nation, et al., No. 18-11479.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Cherokee Nation (Intervenor-Defendant)
2. Oneida Nation (Intervenor-Defendant)
3. Quinault Indian Nation (Intervenor-Defendant)
4. Morongo Band of Mission Indians (Intervenor-Defendant)
5. Chad Everet and Jennifer Kay Brackeen (Plaintiffs)
6. Frank Nicholas and Heather Lynn Libretti (Plaintiffs)
7. Altagracia Socorro Hernandez (Plaintiff)
8. Jason and Danielle Clifford (Plaintiffs)
9. State of Texas (Plaintiff)
10. State of Louisiana (Plaintiff)
11. State of Indiana (Plaintiff)
12. United States of America (Defendant)

13. Bureau of Indian Affairs and its Director, Bryan Rice (Defendants)
14. John Tahsuda III, Bureau of Indian Affairs Principal Assistant Secretary for Indian Affairs (Defendant)
15. United States Department of the Interior and its Secretary, Ryan Zinke (Defendants)
16. United States Department of Health and Human Services and its Secretary, Alex Azar (Defendants)
17. Adam H. Charnes, Kilpatrick Townsend & Stockton LLP, counsel for Intervenor-Defendants
18. Christin J. Jones, Kilpatrick Townsend & Stockton LLP, counsel for Intervenor-Defendants
19. Keith M. Harper, Kilpatrick Townsend & Stockton LLP, counsel for Intervenor-Defendants
20. Venus McGhee Prince, Kilpatrick Townsend & Stockton LLP, counsel for Intervenor-Defendants
21. Thurston H. Webb, Kilpatrick Townsend & Stockton LLP, counsel for Intervenor-Defendants
22. Kathryn E. Fort, Michigan State University College of Law, counsel for Intervenor-Defendants
23. David J. Hacker, Office of the Attorney General, counsel for State Plaintiffs
24. Jeff Landry, Attorney General of Louisiana
25. Curtis Hill, Attorney General of Indiana
26. Ken Paxton, Attorney General of Texas
27. Jeffrey C. Mateer, First Assistant Attorney General of Texas

28. Brantley D. Starr, Deputy First Assistant Attorney General of Texas
29. James E. Davis, Deputy Attorney General of Texas for Civil Litigation
30. Matthew D. McGill, Gibson, Dunn & Crutcher LLP, counsel for Individual Plaintiffs
31. Lochlan F. Shelfer, Gibson, Dunn & Crutcher LLP, counsel for Individual Plaintiffs
32. David W. Casazza, Gibson, Dunn & Crutcher LLP, counsel for Individual Plaintiffs
33. Mark Fiddler, Fiddler Law Office, P.A., counsel for Libretti Plaintiffs and Clifford Plaintiffs
34. JoAnn Kintz, U.S. Department of Justice, counsel for Federal Defendants
35. Steven Miskinis, U.S. Department of Justice, counsel for Federal Defendants
36. Christine Ennis, U.S. Department of Justice, counsel for Federal Defendants
37. Ragu-Jara “Juge” Gregg, U.S. Department of Justice, counsel for Federal Defendants
38. Amber Blaha, U.S. Department of Justice, counsel for Federal Defendants
39. John Turner, U.S. Department of Justice, counsel for Federal Defendants
40. Jeffrey H. Wood, Acting Assistant Attorney General, counsel for Federal Defendants
41. Samuel C. Alexander, Section Chief, Indian Resources Section, counsel for Federal Defendants

42. Sam Ennis, United States Department of the Interior,
Solicitor's Office, of-counsel for Federal Defendants
43. Hon. Reed O'Connor, United States District Judge, Northern
District of Texas

s/ Adam H. Charnes

Attorney for Appellants

Appellants Cherokee Nation, Oneida Nation, Quinault Indian Nation, and Morongo Band of Mission Indians (the “Tribes”) respond to the motion filed by the Federal Appellants for a four-day extension of time to file their brief. In their motion, the Federal Appellants seek a four-day extension of their opening brief, but not a corresponding extension of the deadline for the Tribes’ brief or the amicus briefs due on the same day. The Tribes do not oppose extending the time for the Federal Defendants to file their brief. But the Federal Appellants’ motion provides the Appellees with an unfair advantage—additional days between the filing of the Tribes’ brief and amicus briefs and Appellees’ brief—and subjects the Tribes to less time to file their reply brief. The Court therefore should order a unified briefing schedule and allow all Appellants, and their amici, until January 18, 2019, to file their briefs.

The parties negotiated and agreed to the current briefing schedule. All parties agreed that the Individual Appellees and State Appellees would have 21 days to respond to the briefs filed by the Tribes, the Federal Appellants, and their supporting amici. The parties also agreed that the Tribes and the Federal Appellants would then have

15 days to reply to the briefs filed by the Individual Appellees and State Appellees, as well as their supporting amici. While a very compressed schedule, the parties agreed this was a fair compromise.

The Federal Appellants' motion upends the careful compromise agreed to among the parties. It does this in two ways. First, it provides Appellees with an additional four days to respond to the briefs filed by the Tribes and their amici, giving them 25 days to draft their response to a large portion of the filings in this appeal. Second, the Tribes must file their reply brief in one day less, 14 days instead of 15 days. While differences of a few days may not seem substantial, the existing briefing schedule is already extremely tight, considering that this appeal involves the application of three separate constitutional doctrines to a complex 40-year-old law. Moreover, the Tribes will be responding not only to the Appellees' two briefs, but also any supporting amicus briefs. While the Tribes are sympathetic to the Federal Appellants' need for more time, they do not believe that the Appellees should be advantaged and the Tribes disadvantaged as a result.

The Court should therefore issue a briefing schedule with the same deadlines to file briefs for all Appellants and their supporting

amici—January 18, 2019. The Tribes do not oppose the other dates proposed in the Federal Appellants’ motion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this response contains 436 words, excluding the parts of the response exempted by Fed. R. App. P. 32(f).

2. This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Century Schoolbook 14-point font using MS Word 2016.

DATED: January 10, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2019, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Fifth Circuit using the CM/ECF system, which will provide notification of such filing to all counsel of record.

DATED: January 10, 2019.

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