

No. 18-11479

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UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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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; and DANIELLE CLIFFORD,  
*Plaintiffs-Appellees,*

v.

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

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

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Appeal from the United States District Court for the Northern District of Texas  
No. 4:17-cv-00868-O (Hon. Reed O'Connor)

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

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## **INTRODUCTION**

The Federal Defendants-Appellants United States of America, et al. (collectively, the “United States”) respectfully move this Court for a four-day extension of the deadline to file their opening brief, setting a new deadline of January 18, 2019. The United States also moves for a corresponding extension of most other briefing deadlines in this case, as set out below in the Conclusion.

The United States has notified the other parties to this appeal of this motion. The State Appellees consent to this request so long as the deadline for the opening brief of Defendant-Intervenor-Appellants and the deadline for amicus curiae briefs supporting Appellants or neither side (both of which are currently due on the same day as the opening brief of the United States) are *not* extended, and they may file a response to that effect. The Individual Appellees take essentially the same position as the State Appellees. Intervenor-Defendants-Appellants oppose the United States’ request unless they and their amici curiae are provided with the same extension of time, and they will file a response to that effect.

The United States respectfully requests that the Court act on this motion by tomorrow, Friday, January 11.

## **DISCUSSION**

The opening brief of the United States is currently due Monday, January 14, 2019. ECF No. 00514756224 (Dec. 11, 2018). Authorization to appeal an adverse

decision, as well as the scope of an appeal, are matters entrusted by law to the Solicitor General of the United States. 28 U.S.C. §§ 509, 510; 28 C.F.R. § 0.20. Since December 21, 2018, a lapse in appropriations has impacted the Department of Justice, including the Office of the Solicitor General. Both before and after the lapse in appropriations commenced, Department of Justice attorneys have engaged in best efforts to comply with the January 14 deadline. However, complications related to the ongoing lapse in appropriations, as well as the press of other Supreme Court and appellate matters for which the Solicitor General is responsible, requires that the United States seek a modest extension of the current deadline to file its opening brief in this appeal, which addresses the district court's invalidation of a 40-year-old federal statute on multiple constitutional grounds.

Accordingly, the United States respectfully requests a four-day extension of the current deadline for filing its opening brief, from Monday, January 14 to Friday, January 18. The United States also requests a corresponding extension of most other briefing deadlines in the scheduling order, as set forth in the Conclusion below.

The requested schedule will preserve the agreed-upon three weeks for filing answering briefs and two weeks for filing reply briefs, which periods are necessary for the parties to provide the Court with full and adequate briefing of this complex and important matter. Under that schedule, moreover, briefing will be completed during the same calendar week as under the current schedule, to allow this Court to

retain the tentatively scheduled March oral argument date, if the Court so wishes. Thus, granting the requested extension will allow the United States the time necessary to complete its opening brief in this important case without significant delay and without prejudice to Individual Appellees, who desire to retain the current tentatively scheduled oral argument date.

### CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant extensions of the briefing deadlines, as follows:

- January 14: Opening brief of Intervenor-Defendants-Appellants and amicus curiae briefs supporting Appellants or supporting neither side (unchanged);
- January 18: Opening brief of the United States;
- February 8: Answering briefs of Appellees and amicus curiae briefs supporting Appellees; and
- February 22: Appellants' reply briefs.

Dated: January 10, 2018.

Respectfully submitted,

s/ Eric Grant

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on January 10, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Eric Grant  
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