

***United States Court of Appeals***  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

February 12, 2019

Mr. Benjamin Battles  
Office of the Attorney General  
for the State of Vermont  
109 State Street  
Montpelier, VT 05609-0000

Ms. Kathleen Boergers  
Office of the Attorney General  
for the State of California  
1515 Clay Street  
20th Street  
Oakland, CA 94612

Ms. Bridget DiBattista  
Illinois Attorney General's Office  
Civil Appeals Division  
100 W. Randolph Street  
12th Floor  
Chicago, IL 60601

Mr. Nimrod Elias  
Office of the Attorney General  
for the State of California  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102-7004

Mr. Matthew Robert McGuire  
Office of the Attorney General  
Solicitor General Division  
202 N. 9th Street  
Richmond, VA 23219

Ms. Neli N. Palma  
Office of the Attorney General  
for the State of California  
P.O. Box 944255  
Sacramento, CA 94244-0000

Mr. Brett Shumate  
Wiley Rein, L.L.P.  
1776 K Street, N.W.  
Washington, DC 20006

Mr. Samuel Siegel  
1300 I Street  
Suite 11000  
Sacramento, CA 95814

Mr. Jeffrey T. Sprung  
State of Washington, Attorney General's Office  
Complex Litigation Division  
800 5th Avenue  
Suite 2000  
Seattle, WA 98104

Mr. Martin Vincent Totaro  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 7513  
Washington, DC 20530

Ms. Caroline Van Zile  
Office of the Attorney General  
for the District of Columbia  
441 4th Street, N.W.  
Suite 630 S.  
Washington, DC 20001-0000

Mr. Stephen B. Vogel  
Office of Massachusetts Attorney General  
1 Ashburton Place  
18th Floor  
Boston, MA 02108

Ms. Jessica Willey  
Delaware Department of Justice  
820 N. French Street  
6th Floor  
Wilmington, DE 19801

No. 19-10011 State of Texas, et al v. USA, et al  
USDC No. 4:18-CV-167

Dear Mr. Battles, Ms. Boergers, Ms. DiBattista, Mr. Elias, Mr. McGuire, Ms. Palma, Mr. Shumate, Mr. Siegel, Mr. Sprung, Mr. Totaro, Ms. Van Zile, Mr. Vogel and Ms. Willey,

We have docketed the appeal as shown above, and ask you to use the case number for future inquiries. You can obtain a copy of our briefing checklist on the Fifth Circuit's website "<http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/brchecklist>".

Briefing Notice: The record is complete for purposes of the appeal, see FED. R. APP. P. 12. Appellant's brief and record excerpts are due within 40 days of the date shown above, see FED. R. APP. P. & 5<sup>TH</sup> CIR. R. 28, 30, and 31. See also 5<sup>TH</sup> CIR. R. 30.1.2 and 5<sup>TH</sup> CIR. R. 31.1 to determine if you have to file electronic copies of the brief and record excerpts. [If required, electronic copies MUST be in Portable Document Format (PDF).]

Record Excerpts: 5<sup>TH</sup> CIR. R. 30.1.7(c) provides that the electronic PDF version of the record excerpts should contain pages representing the "tabs" identified in the index of the document. However, we remind attorneys that the actual paper copies of record excerpts filed with the court must contain actual physical tabs that extend beyond the edge of the document, to facilitate easy identification and review of tabbed documents.

Brief Covers: THE CASE CAPTION(S) ON BRIEF COVERS MUST BE EXACTLY THE SAME AS THE CASE CAPTION(S) ON THE ENCLOSED TITLE CAPTION SHEET(S). YOU WILL HAVE TO CORRECT ANY MODIFICATIONS YOU MAKE TO THE CAPTION(S) BEFORE WE SUBMIT YOUR BRIEF TO THE COURT.

Policy on Extensions: The court grants extensions sparingly and under the criteria of 5<sup>TH</sup> CIR. R. 31.4. If you request an extension, you must contact opposing counsel and tell us if the extension is opposed or not. 5<sup>TH</sup> CIR. R. 31.4 and the Internal Operating Procedures following rules 27 and 31 state that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

Reply Brief: We do not send cases to the court until all briefs are filed, except in criminal appeals. Reply briefs must be filed within the 21 day period of FED. R. APP. P. 31(a)(1). See 5<sup>TH</sup> CIR. R. 31.1 to determine if you have to file electronic copies of the brief, and the format.

Dismissal of Appeals: The clerk may dismiss appeals without notice if you do not file a brief on time, or otherwise fail to comply with the rules.

Appearance Form: If you have not electronically filed a "Form for Appearance of Counsel," you must do so within 14 days of this date. You must name each party you represent, See FED. R. APP. P. and 5<sup>TH</sup> CIR. R. 12. The form is available from the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

**ATTENTION ATTORNEYS:** Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at [www.ca5.uscourts.gov/attorneys/attorney-forms/eroa\\_downloads](http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads).

Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

The clerk's office offers brief templates that may assist counsel in the preparation of the brief. To access the brief templates counsel must log in to CM/ECF and from the Utilities menu, select 'Brief Template'.

### **Guidance Regarding Citations in Pleadings.**

5<sup>TH</sup> CIR. R. 28.2.2 grants the Clerk the authority to create a standard format for citation to the electronic record on appeal. You must use the proper citation format when citing to the electronic record on appeal.

- A. In single record cases, use the short citation form, "ROA" followed by a period, followed by the page number. For example, "ROA.123."
- B. For multiple record cases, cite "ROA" followed by a period, followed by the Fifth Circuit appellate case number of the record referenced, followed by a period, followed by the page of the record. For example, "ROA.13-12345.123."

Pro se litigants may request the record from the district court to prepare their brief. Those proceeding in forma pauperis may receive the record without payment of shipping costs. If you wish to receive exhibits, you must specifically request them.

**Once you obtain the record, you should check it within 14 days of receipt for any missing or incomplete items. If you need to request a supplemental record or order transcripts, do so promptly. The court will not grant extensions of time to file your brief because you did not timely check the record.**

**Reminder as to Sealing Documents on Appeal:** Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Cindy Broadhead  
Cindy Broadhead, Deputy Clerk  
504-310-7707

Enclosure(s)

cc w/encl:

Mr. Andrew Bray Davis  
Mr. Matthew Hamilton Frederick  
Mr. David J. Hacker  
Mr. Kyle Douglas Hawkins  
Mr. Darren Lee McCarty  
Mr. Eric Olson  
Mr. Donald B. Verrilli Jr.  
Mr. Eric A. White

Case No. 19-10011

STATE OF TEXAS; STATE OF WISCONSIN; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; PAUL LEPAGE, Governor of Maine; STATE OF MISSISSIPPI, by and through Governor Phil Bryant; STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF NORTH DAKOTA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF ARKANSAS; NEILL HURLEY; JOHN NANTZ,

Plaintiffs - Appellees

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; ALEX AZAR, II, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF INTERNAL REVENUE; CHARLES P. RETTIG, in his Official Capacity as Commissioner of Internal Revenue,

Defendants - Appellants

STATE OF CALIFORNIA; STATE OF CONNECTICUT; DISTRICT OF COLUMBIA; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF KENTUCKY; STATE OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF VIRGINIA; STATE OF WASHINGTON; STATE OF MINNESOTA,

Intervenor Defendants - Appellants