

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 5, 2024

Lyle W. Cayce
Clerk

No. 18-11479

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,

versus

DEB HAALAND, *Secretary, United States Department of the Interior*; DARRYL LACOUNTE, *Acting Assistant Secretary for Indian Affairs*; BUREAU OF INDIAN AFFAIRS; UNITED STATES DEPARTMENT OF THE INTERIOR; UNITED STATES OF AMERICA; XAVIER BECERRA, *Secretary, United States Department of Health and Human Services*; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants—Appellants,

CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS,

Intervenor Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CV-868

No. 18-11479

ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES

Before ELROD, *Chief Judge*, and JONES, SMITH, WIENER, STEWART, DENNIS, RICHMAN, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, WILLETT, DUNCAN, ENGELHARDT, OLDHAM, WILSON, DOUGLAS, and RAMIREZ, *Circuit Judges*.*

PER CURIAM:

This case is before us on remand from the Supreme Court, which affirmed our judgment in part, reversed in part, and vacated and remanded in part. *Haaland v. Brackeen*, 599 U.S. 255, 296 (2023). The Court held that: (1) the Indian Child Welfare Act (ICWA) is within Congress’s Article I authority; (2) the challenged ICWA requirements did not violate the anticommandeering doctrine; and (3) the plaintiffs did not have standing to raise their equal-protection and nondelegation challenges. *Id.* at 280, 285–87, 291–92, 296. The Supreme Court did not disturb our court’s *en banc* holding that 25 C.F.R. § 23.132(b), the part of ICWA’s implementing regulations that interpreted the statutory “good cause” standard to require proof by clear and convincing evidence, violated the Administrative Procedure Act (APA). *See id.* at 271 n.1; *Brackeen v. Haaland*, 994 F.3d 249, 269 (5th Cir. 2021) (*en banc*).

Accordingly, consistent with the Supreme Court’s opinion, we REMAND this case to the district court and direct it to dismiss for lack of jurisdiction Plaintiffs’ equal-protection and nondelegation claims, grant judgment for the federal government as to all other claims, excepting only Plaintiffs’ APA challenge to the evidentiary standard at 25 C.F.R.

* JUDGE HO was recused and did not participate.

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§ 23.132(b), and enter final judgment. The Clerk is directed to issue the mandate forthwith.