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Brackeen v. Haaland—Fifth Circuit issues fractured en banc opinion in ICWA challenge

The Fifth Circuit, sitting en banc, issued a 325-page set of opinions in litigation brought by seven individuals and three States (Texas, Louisiana and Indiana) challenging various provisions of the Indian Child Welfare Act and the “Final Rule” promulgated in 2016 by the Bureau of Indian Affairs to implement the Act. The principal opinions were issued by Judges Dennis and Duncan. Separate concurrences and dissents were filed by Chief Judge Owen and Judges Wiener, Haynes, Higginson (joined by Costa, J.), and Costa (joined in part by Owen, C.J., and Wiener, Higginson, Dennis and Southwick, JJ.). Sixteen judges participated on the en banc court. Majorities of the en banc court rejected many of the plaintiffs’ challenges, upheld other challenges, and left in place various components of the district court’s judgment on the basis of an equally divided en banc court. *Brackeen v. Haaland*, No. 18-11479, 2021 WL 1263721 (5th Cir. Apr. 6, 2021). The lower court opinion appears as *Brackeen v. Zinke*, 338 F. Supp. 3d 514 (N.D. Tex. 2018).

Links to the slip opinions, an ABA Journal Weekly Newsletter article concerning the decision, and a more detailed summary of the decision are below.

Decision: <https://www.ca5.uscourts.gov/opinions/pub/18/18-11479-CV2.pdf>

ABA Journal Weekly Newsletter: <https://www.abajournal.com/news/article/in-325-page-opinion-5th-circuit-splits-on-federal-provision-giving-tribes-preference-in-native-american-adoptions?>

Decision Summary: <https://docs.google.com/document/d/1Rc1nAF0kM0d-7jM59c0hvRgMLwnr83mC/edit>