

# Fifth Circuit Hears Oral Argument on ICWA Case

Category: Policy Blog

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Last week, the U.S. Court of Appeals for the Fifth Circuit heard oral argument on the constitutionality of the Indian Child Welfare Act (ICWA). As previously reported, the court agreed to rehear the case, *Brackeen v. Bernhardt*, en banc. Of the sixteen judges hearing the case, six asked the majority of the questions. Attorneys from the Department of Justice, Navajo Nation, and an attorney representing Cherokee Nation, Morongo Band of Mission Indians, Oneida Nation, and Quinault Indian Nation argued in defense of ICWA. The states challenging ICWA were represented by the Texas Solicitor General. An attorney representing individual plaintiffs also presented argument challenging ICWA. As a reminder, the case centers around whether ICWA is unconstitutional on several bases — including whether it violates the Equal Protection Clause as a race-based statute. A three-judge panel had previously held ICWA constitutional before the entire Fifth Circuit agreed to rehear the case en banc.

An audio recording of the oral argument is available [here](#).

NCUIH will continue to monitor the case and provide updates as they become available. Previously, in December 2019, [NCUIH joined nearly 400 Tribes and Indian organizations in an amicus curiae brief filed in support of the Indian Child Welfare Act \(ICWA\)](#).