



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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February 26, 2019

Lyle W. Cayce
Clerk of the Court
U.S. Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 South Maestri Place
New Orleans, Louisiana 70130

Re: No. 18-11479, *Brackeen, et al., v. Bernhardt, et al.*
Response to Federal Defendants' Letter Regarding Division of Appellants' Time
for Oral Argument.

Dear Mr. Cayce,

Appellant-Intervenor the Navajo Nation ("Nation") submits this letter in response to the February 25, 2019 letter from Mr. Eric Grant requesting that the Federal Defendants be given 22 minutes of the allotted 30 minutes of oral argument time. The Nation opposes this request and agrees with other Tribal Appellants that the time should be divided evenly – 15 minutes for Mr. Grant and 15 minutes for Mr. Charnes – for the reasons set forth in Mr. Charnes' letter sent earlier today.

The Nation sought intervention because of the importance of the issues in this matter to the Nation and its children, and this Court granted said intervention. After considerable deliberation and in consultation with counsel for other Tribal Appellants, the Nation agreed not to seek an oral argument time allocation. The principle reasons we so agreed were to foster judicial economy by avoiding three allocations of time on the appellant side, and because Mr. Charnes will present the Nation's arguments as well as those of the other Tribal Intervenors.

Importantly, as stated in Mr. Charnes' letter, the Tribal Appellants have unique arguments relevant to the substantive legal issues in the case separate and apart from the Federal Defendants. These include the Nation's arguments related to its two treaties, and the unique obligations the United States assumed in those treaties that are reflected in the Indian Child Welfare Act. Therefore, Tribal Appellants' role in oral argument is not simply to "share their experience as governmental entities affected by the statute[.]"

Memo to: Lyle W. Cayce, Clerk of the Court – US Court of Appeals for the Fifth Circuit

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The Nation notes that Federal Defendants based their original motion to seek 30 minutes instead of the initial 20 minutes because of “the number of parties with distinct perspectives on these issues.” (App. Dkt. 00514823393). However, they now request the vast majority of time the Court granted, giving short shrift to the “distinct perspectives” they raised when seeking the extension.

For these reasons, the Court should provide 15 minutes to the Federal Defendants and 15 minutes to the Tribal Appellants at oral argument.

Sincerely,

/s/ Paul Spruhan

Paul Spruhan

Assistant Attorney General

Navajo Nation Department of Justice