

No. 18-40116

**In the United States Court of Appeals
For the Fifth Circuit**

STATE OF TEXAS,

Plaintiff – Appellee,

v.

ALABAMA-COUSHATTA TRIBE OF TEXAS,

Defendant – Appellant

On Appeal from the United States District Court for the Eastern District of
Texas, Lufkin Division, No. 9:01-cv-299

**UNOPPOSED MOTION OF NATIONAL CONGRESS OF AMERICAN
INDIANS AND USET SOVEREIGNTY PROTECTION FUND FOR
LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFF-
APPELLANT’S PETITION FOR REHEARING *EN BANC***

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UNOPPOSED MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF ALABAMA-COUSHATTA TRIBE OF TEXAS’S PETITION FOR REHEARING *EN BANC*

In accordance with Fed. R. App. P. 29(b) and 5th Cir. R. 29.1, the National Congress of American Indians and USET Sovereignty Protection Fund (“*Amici*”) respectfully request leave to file an *Amici Curiae* brief in support of the Alabama-Coushatta Tribe of Texas’s Petition for Rehearing *En Banc*. All parties have consented to the participation of *Amici* in this case.¹

Amicus National Congress of American Indians (“NCAI”), established in 1944, is the oldest and largest national membership organization comprised of Alaska Native and American Indian tribal governments and individuals to address their unique interests. As part of its efforts, NCAI works closely with state governments and private organizations to develop productive models of state-tribal cooperation, including the interpretation of Indian statutes.

Amicus USET Sovereignty Protection Fund (“USET SPF”) is a non-profit organization representing 27 federally recognized tribal nations in 13 states stretching from Texas to Maine. USET SPF works at the regional and national level to educate federal, state, and local governments about the unique historic and political status of its member tribal nations.

NCAI and USET SPF are uniquely suited to serve as *Amici*. NCAI frequently

¹ The undersigned counsel, by his signature below, certifies that he conferred with counsel for both parties, who represented that their clients consented *Amici*’s participation in this case.

participates in the courts of the United States, and has particular expertise in the interpretation of Indian statutes. USET SPF has expertise in the interpretation of statutes acknowledging Indian Tribes—by land claims settlement, tribal restoration, or otherwise—due to its members’ locations in the South and Eastern United States. *Amici* share a substantial interest in preserving the unique government-to-government relationship between the United States and Indian Tribes, and in ensuring that statutes enacted for the benefit of Indian Tribes and Indians are fully implemented.

This case warrants *en banc* review. It raises an issue of extraordinary importance—namely, that the panels below interpreted a Federal statute, the Indian Gaming Regulatory Act (“IGRA”), in a manner contrary to that statute’s text and Congress’s intent. *En banc* review is necessary to ensure that IGRA is implemented in the Fifth Circuit consistent with its plain language and with Congress’s intent. In addition, the panel decisions conflict with precedents from the Supreme Court and other Circuit Courts concerning the scope of IGRA; they also conflict with precedent from the Supreme Court, this Court, and other Circuit Courts by engaging in statutory construction without employing the Indian canon of construction. *En banc* review is necessary to ensure uniformity with those decisions.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request leave to file their *Amici Curiae* brief in support of the Alabama-Coushatta Tribe of Texas's Petition for Rehearing *En Banc*.

Respectfully submitted by

/s/ Daniel Lewerenz

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April 18, 2019

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 469 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as determined by the word counting feature of Microsoft Word 2016.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally-spaced typeface, including serifs, using Microsoft Word 2016, in Times New Roman 14-point font, except for the footnotes, which are in proportionally-spaced typeface, including serifs, in Times New Roman 12-point font.

By: _____ /s/
Daniel Lewerenz

April 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on April 18, 2019, I electronically transmitted the above and foregoing document to the Clerk of the Court using the ECF System for filing.

Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to all participants in this case, who are all registered CM/ECF users.

By: _____/s/_____
Daniel Lewerenz

April 18, 2019

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I hereby certify that pursuant to ECF Filing Standard A(6) (Apr. 11, 2017):

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April 18, 2019