

# United States Court of Appeals for the Fifth Circuit

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No. 19-60921

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BIG TIME VAPES, INCORPORATED;  
UNITED STATES VAPING ASSOCIATION, INCORPORATED,

*Plaintiffs—Appellants,*

*versus*

FOOD & DRUG ADMINISTRATION; STEPHEN M. HAHN,  
COMMISSIONER OF FOOD AND DRUGS; ALEX M. AZAR, II,  
SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, IN HIS OFFICIAL CAPACITY,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 1:19-CV-531

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## ON PETITION FOR REHEARING EN BANC

(Opinion June 25, 2020, 963 F.3d 436)

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. No judge in regular active service having requested that the court be polled on rehearing en banc (FEDERAL RULE OF APPELLATE PROCEDURE 35 and 5TH CIRCUIT RULE 35), the petition for rehearing en banc is DENIED.

ENTERED FOR THE COURT

/s/ Jerry E. Smith  
*United States Circuit Judge*



***United States Court of Appeals***  
**FIFTH CIRCUIT**  
**OFFICE OF THE CLERK**

**LYLE W. CAYCE  
CLERK**

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600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

August 25, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-60921 Big Time Vapes, Incorporated, et al v. FDA, et al  
USDC No. 1:19-CV-531

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Mary Stewart

By: Mary C. Stewart, Deputy Clerk  
504-310-7694

Mr. Jerad Wayne Najvar  
Ms. Lindsey E. Powell  
Mr. Austin M.B. Whatley