

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 2, 2025

Lyle W. Cayce
Clerk

No. 23-50696

JAVIER AMBLER, SR., *individually, on behalf of* ALL WRONGFUL DEATH BENEFICIARIES OF JAVIER AMBLER, II, *on behalf of* THE ESTATE OF JAVIER AMBLER, II, *and as next friends of J.R.A., a minor child*; MARITZA AMBLER, *individually, on behalf of* ALL WRONGFUL DEATH BENEFICIARIES OF JAVIER AMBLER, II, *on behalf of* THE ESTATE OF JAVIER AMBLER, II, *and as next friends of J.R.A., a minor child*; MICHELLE BEITIA, *as next friend J.A.A., a minor child*; JAVIER AMBLER, II, ESTATE OF JAVIER AMBLER, II,

Plaintiffs—Appellees,

versus

MICHAEL NISSEN,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-1068

ON PETITION FOR REHEARING EN BANC

Before SMITH, WIENER, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is

DENIED. The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (FED. R. APP. P. 35 and 5TH CIR. R. 35).

In the en banc poll, eight judges voted in favor of rehearing, Judges Jones, Smith, Richman, Ho, Duncan, Engelhardt, Oldham, and Wilson, and nine judges voted against rehearing, Chief Judge Elrod, and Judges Stewart, Southwick, Haynes, Graves, Higginson, Willett, Douglas, and Ramirez.