No. 24-574

IN THE

Supreme Court of the United States

NIKOLAI BELOV,

Petitioner,

v.

EAST BAY SANCTUARY COVENANT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case is a continuation of the federal government's illegal practice of exerting pressure on the U.S. judiciary, which is an independent branch of powers (I think this court felt the same pressure for itself when happened offensive against its justices under the pretext of judicial ethics reform).

I filed the same motion to intervene in this case as the states, citing the same articles of law and court precedents (they are the same for everyone), but with my own reasons and arguments, which are completely different from the arguments of the states.

Ninth Circuit denied my motion like previously the states' motion. But if the court considered the states' motion for almost three months, obliging the parties to submit their responses to this motion and giving the opportunity to another 17 republican states to file their amicus brief in support of this motion, then the court considered my motion at cosmic speed in 2 business days without analyzing it in any way in detail my arguments from the motion, but only by writing on 1 piece of paper a couple of words, while the text of the refusal to the states consists of more than 10 pages, where the court examines in detail all the arguments of the states and all the counterarguments of the parties.

June 26, 2024 states filed their petition for a writ of certiorari to this court, which was placed on the docket June 28, 2024 as No. 23-1353 Kansas, et al. v. Alejandro N. Mayorkas, Secretary of Homeland Security, et al.

Paragraph 4 of the Supreme Court Rule 12 states: "When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices". That's why I filing my petition for a writ of certiorari in docket for 23-1353 Kansas, et al. v. Alejandro N. Mayorkas, Secretary of Homeland Security, et al.

The question presented is:

Did the Ninth Circuit err when it consider and denied my motion to intervene with sufficient interests in 2 business days without receiving before that responses from the parties to my motion and without having compared my arguments from the motion with parties' arguments from the responses in its order.

PARTIES TO THE PROCEEDING

Petitioner is the Nikolai Belov.

Respondents (plaintiffs-appellees below) are East Bay Sanctuary Covenant, Central American Resource Center, Tahirih Justice Center, National Center for Lesbian Rights, Immigrant Defenders Law Center, and American Gateways. Respondents (defendants-appellants below) are Joseph R. Biden, President of the United States; Merrick B. Garland, Attorney General; United States Department of Justice; David Neal; Executive Office for Immigration Review; Alejandro N. Mayorkas; U.S. Department of Homeland Security; Ur M. Jaddou; United States Citizenship and Immigration Services; and Troy A. Miller; United States Customs and Border Protection.

STATEMENT OF RELATED PROCEEDINGS

East Bay Sanctuary Covenant, et al. v. Biden, et al., No. 18-cv-06810-JST (N.D. Cal.) (order granting the plaintiffs' motion for summary judgment, issued July 25, 2023).

East Bay Sanctuary Covenant, et al. v. Biden, et al., No. 23-16032 (9th Cir.) (order granting motion to place appeal in abeyance, issued February 21, 2024).

East Bay Sanctuary Covenant, et al. v. Biden, et al., No. 23-16032 (9th Cir.) (order denying motion to intervene, issued June 24, 2024).

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PETITION FOR WRIT OF CERTIORARI

Nikolai Belov respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The Ninth Circuit's opinion is reproduced at App. 1a-2a.

JURISDICTION

The Ninth Circuit issued its opinion on June 24, 2024. App. 1a-2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This case is a lawsuit brought by human rights activists against the federal government to dispute the Rule "Circumvention of Lawful Pathways", the main rule for all U.S. immigration policy.

Human rights activists won in the district court and July 25, 2023 the district court overturned this rule. The federal government filed an appeal and the Ninth Circuit has been considering it for over a year now and is violating its own order dated August 3, 2023 to expedite this appeal.

Oral arguments took place only on November 7, 2023, but even after them the decision was not made by the court, because the federal government is putting pressure on the court to drag out this trial as much as possible, because whatever the court's decision, it will in any case

bring down the rating of the current president (now vice president) before the elections.

On January 29, 2024, I wrote about this entire situation to the Ninth Circuit and the court responded to me with the clear implication that a decision would not be made until November 5, 2024. On February 1, 2024, I forwarded this response to human rights activists as one of the parties in this case, and a couple of days later (February 3 and February 4 were weekends)—on February 5, 2024, the parties filed a joint motion with the court to suspend this proceeding in connection with "discussions" (which may not actually exist) to change the disputed rule (as I understand, the court, through me, made it clear to the parties that it could no longer delay making a decision and that it, the court, did not like this whole situation at all).

Therefore, the federal government colluded with human rights activists under the pretext of "discussions" in order to further delay this trial, and neither party really cares about the fate of millions of asylum seekers, including my fate as one of this millions of asylum seekers.

February 21, 2024 the court granted the parties' motion for "discussions" and thereby saved itself from further accusations of delaying the decision.

After this, May 7, 2024, five republican states, pursuing their political interests, filed a motion with the court to intervene in this court case in order to prevent these "discussions" and, by becoming a party to this case, insist on a court decision to collapse the rating of the current president (now vice president). As expected, May 22, 2024 the court denied the states' motion (June 26,

2024 states filed their petition for a writ of certiorari to this court, which was placed on the docket June 28, 2024 as No. 23-1353).

On June 20, 2024, I filed the same motion to intervene as the states, citing the same articles of law and court precedents (they are the same for everyone), but with my own reasons and arguments, which are completely different from the arguments of the states.

On June 21, 2024, the parties filed their second joint report on the progress of the "discussions" to the court, fully confirming my arguments with this report (because in their second joint report like in their first joint report parties do not indicate in any way what exactly happened on these "discussions", what concretely proposals to change the contested rule were made by the human rights activists, how the federal government responded to these proposals, etc.).

And already on June 24, 2024, the court denied my motion like previously the states' motion.

But if the court considered the states' motion for almost three months, obliging the parties to submit their responses to this motion and giving the opportunity to another 17 republican states to file their amicus brief in support of this motion, then the court considered my motion at cosmic speed in 2 business days without analyzing it in any way in detail my arguments from the motion, but only by writing on 1 piece of paper a couple of words "Belov did not fulfill this and Belov did not fulfill that and therefore we denied," while the text of the refusal to the states consists of more than 10 pages, where the

court examines in detail all the arguments of the states and all the counterarguments of the parties.

How the Ninth Circuit could consider and denied my motion to intervene with sufficient interests in 2 business days without receiving before that responses from the parties to my motion and without having compared my arguments from the motion with parties' arguments from the responses in its order?

Parties—not the court—are responsible for making their own arguments. If the parties do not care about an argument, enough to spend time litigating that argument, then the court should not be expected to shoulder the responsibility for them. If a party fails to respond to an opponent's arguments, the court itself should not answer them for this party.

"Our system of justice is adversarial, and our judges are busy people. If they are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff's research and try to discover whether there might be something to say against the defendants' reasoning." Alioto v. Town of Lisbon, 651 F.3d 715, 721 (7th Cir. 2011) (quoting Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039, 1041 (7th Cir. 1999)).

But in this case, the parties did not give the court anything at all to deny my motion to intervene, and the court itself tried to say something against my' reasoning for the parties. Vice versa, in this case I presented to the court a colorable arguments in my motion to intervene, and the parties fails to respond to that motion, so the court should have assume that the parties concedes my motion should be granted.

I consider this attitude of the court towards my motion as a clear violation of the law (in particular, violation a guarantee that I have a fair trial from The Fifth Amendment of the U.S. Constitution) and further evidence that the federal government is putting pressure on the court (I think this court felt the same pressure for itself when happened offensive against its justices under the pretext of judicial ethics reform) and the parties are dragging out this trial.

July 18, 2024 and July 19, 2024 I sent the letters to the U.S. Senate Committee on the Judiciary and to the U.S. House Committee on the Judiciary about this whole situation that has developed around this case in the Ninth Circuit, but I didn't receive any answers.

At the same time, unlike the states, I do not pursue any political goals in this court case (I am the only one in this court case who does not pursue any political goals), I do not want to destroy the "discussions", I want to take part in them and propose to add all international airports in the United States to the CBP One app as ports of entry for all asylum seekers so that they fly directly to the United States rather than to Mexico and not become victims of cartels.

I also want to draw attention, within the framework of this court case, to the problems for antiwar Russians with access to asylum in Europe and the United States.

I was hoping to put all of these arguments into the Ninth Circuit's opinion and get some responses from the parties to what I was proposing. But the court and the parties, perfectly understanding this goal of mine, did

not do this (maybe they simply have nothing to answer or object to this, because I wrote the truth).

This petition followed.

June 26, 2024 states filed their petition for a writ of certiorari to this court, which was placed on the docket June 28, 2024 as No. 23-1353 Kansas, et al. v. Alejandro N. Mayorkas, Secretary of Homeland Security, et al.

Paragraph 4 of the Supreme Court Rule 12 states: "When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices."

That's why I filing my petition for a writ of certiorari in docket for 23-1353 Kansas, et al. v. Alejandro N. Mayorkas, Secretary of Homeland Security, et al.

REASONS FOR GRANTING THE PETITION

If the decision below stands, the federal government will continue to putting pressure on the court and the parties will continue to dragging out this trial under the pretext of "discussions" and hide it from the public.

It will also mean that in the USA, as in Russia, there is no democracy, separation of powers, independent judiciary, freedom of speech, etc., because I have already tried all the options and this court remains my last hope.

In particular, in my comment to the Rule "Circumvention of Lawful Pathways" (comment ID

USCIS-2022-0016-51963), posted June 12, 2023 on the official government website www.regulations.gov, I indicated that the only way out of crisis on the southwestern land border will be to remove all covid and other restrictions that apply to asylum seeker air passengers and add all international airports within the United States to the CBP One app as ports of entry.

The above measures will allow all asylum seekers from around the world to travel directly to the United States by air through the CBP One app, without having to travel through Central America, where they may become victims of people smugglers and traffickers, or die in the desert or on the high seas like in the time of Christopher Columbus. But we are now living not in the 15th, but in the 21st century!

In the 21st century, international passenger air transportation is the most modern, safe and government-controlled mode of transportation. This type of transportation completely excludes smuggling and human trafficking. The Blue Lightning Initiative (BLI) has trained more than 350 000 international airport employees in the United States to identify potential smugglers and traffickers.

The port of entry (POE) is the place where you can legally enter the country. International airports are usually ports of entry, as are road and rail crossings at land borders, as well as major seaports.

The disputed Rule provides that an asylum seeker can schedule an appointment to cross at a port of entry with the CPB One smartphone app. Id. §208.33(a)(2).

But according to the official website of the U.S. Customs and Border Protection, using the CBP One app, pre-planning the arrival of asylum seekers is only possible at few land ports of entry below the southwestern border. It is not possible to pre-schedule the arrival of asylum seekers at any other ports of entry, including international airports within the United States, using the CBP One app.

At the same time, May 29, 2024 U.S. Customs and Border Protection (CBP) announced that the Global Entry Mobile Application will be available to Trusted Traveler Programs members flying into all 77 U.S. international airports by the end of fiscal year 2024.

The Global Entry Mobile Application allows eligible Trusted Travel Members to submit their travel document and photo through a free, secure app on their smartphone or other mobile device. The use of Global Entry Mobile Application streamlines the traveler's entry process into the United States.

In the Global Entry Mobile Application the same algorithms are used as in the CBP One app, so if is a technical possibility for Trusted Travel Members to use the Global Entry Mobile Application to fly into all 77 U.S. international airports, so is a technical possibility for all asylum seekers to use the CBP One app to fly into all 77 U.S. international airports (otherwise it will be discrimination against all asylum seekers).

The above measures to ensure that thousands of asylum seekers from around the world do not fly into Mexico and become victims of cartels and human traffickers, wandering the desert with their smartphones,

searching for a geolocation to sign up through CBP One app at one of the eight land ports of entry on the southwest border, but could, while in their home countries, sign up through CBP One app to arrive at all 77 U.S. international airports on commercial air flights by entering in CBP One app information about the round-trip air tickets they have booked, including return air tickets to their home countries if they are refused asylum upon arrival (so that asylum seekers themselves, not american taxpayers, pay for their possible deportation and this fully takes into account the interests not only of all american taxpayers, but also all of asylum seekers, which will no longer be forced to pay extortion-level prices for smugglers).

This approach will not only significantly reduce the number of asylum seekers from around the world at the southwest border, but will also significantly increase the chances of asylum seekers from Latin American countries, who lack access to air travel and must travel overland to the U.S. border, to receive expedited access enrollment through CBP One app at ports of entry on the southwest border (and not wait 8 or 9 months like now) because the total daily number of people attempting to enroll there will be reduced by others enrolling at U.S. international airports.

In addition, there are now more frequent cases when the authorities of some states (usually republican), who do not want to see asylum seekers, send them by bus or domestic air flights to other states (usually democratic). As a result, these asylum seekers, who have already endured a lot of hardships on their way to the United States, are subjected to even more stress and humiliation. The above measures will allow such asylum seekers to arrive

immediately in those states whose authorities approve the addition of international airports in their states to the CBP One app for hosting asylum seekers who have flown directly to the United States from other countries.

Simultaneously, the above measures fully take into account the interests of each state individually, because it is the authorities of each individual state that will decide for themselves whether to add international airports in their state to the CBP One app.

So, if the above measures (add all international airports within the United States to the CBP One app as ports of entry) fully take into account the interests of all asylum seekers, all american taxpayers, all states, etc., why the federal government is so resistant to these measures and forces all asylum seekers to fly to Mexico in order to get to the USA?

The answer to this question is very simple: because all asylum seekers who fly to Mexico are automatically subject to the "safe third country" rule in the disputed Rule (IV. Third Countries) and must first apply for asylum in Mexico, and only if denied, then in the USA (if they prove in court that Mexico is an unsafe country, although this is a well-known fact). Thus, the federal government deliberately creates an additional barrier to all asylum seekers in the USA.

For the same reasons, the federal government does not want to implement the new parole program for anti-war Russians, so that these anti-war Russians would create problems for Putin while remaining in Russia, and the federal government is not interested in what Putin will

do to these Russians (will put in prison, will torture, will kill) for this (the same motives guide the leadership of the European Union when it creates obstacles to the access of anti-war Russians to receive asylum in Europe).

That's why DHS, DOJ and ACLU as the parties in this case never responded to my above mentioned comment and never responded to my letters (on February 8, 2024, on April 3, 2024 and on April 4, 2024) proposing my changes (add all international airports within the United States to the CBP One app as ports of entry) to the disputed Rule.

The Supreme Court has pointed to Federal Rule of Civil Procedure 24 as a "helpful analog[y]" for appellate courts because it reflects the "policies underlying intervention" in the district courts. See Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Scofield, 382 U.S. 205, 216 & n.10 (1965).

I acted quickly to bring my motion to intervene as soon as I understood that DHS, DOJ and ACLU will never answer me. See Kalbers v. U.S. Dep't of Just., 22 F.4th 816, 823 (9th Cir. 2021).

In this case Defendants repeatedly held that Plaintiffs have no standing to challenge the Rule because the Rule governs the right to asylum for certain noncitizens and the plaintiff entities lack any "judicially cognizable interest" in how the executive branch enforces immigration laws against third parties.

In turn, as a foreign national seeking asylum in the United States but unwilling to be kidnapped and killed by human traffickers in Mexico, I have "judicially cognizable

interest" in the outcome of this case, but I have not been asked to participate in any settlement discussions, like and others millions of asylum seekers.

No information about the progress of this case has been published in the press or covered in media news for quite a long time (approximately since the fall of last year). Even the official websites of the Plaintiffs themselves contain long-outdated information about this case. In addition, the official website of the Ninth Circuit states that "As of March 1, 2024, we are no longer providing a "cases of interest" page on this site." Previously, information about this case was published on this "cases of interest" page, but now it is no longer available. Thus, the public, including myself, lacks the ability to monitor this case and respond to changes in this case in a timely manner.

That's why this court should find my motion to intervene to be timely. See United States v. Alisal Water Corp., 370 F.3d 915, 921 (9th Cir. 2004).

I did not intervene earlier because I believed that my interests would be well represented in this litigation; for a time, they were. Plaintiffs vigorously disputed the Rule below. They won in the district court. But after that Plaintiffs colluded with Defendants under the pretext of "discussions" in order to further delay this trial to safe the rating of the current president (now vice president) before the elections. That's why now my interests are inadequately represented by the Plaintiffs in this case.

In the disputed Rule (IV. Belief that the rule will increase smuggling or human trafficking) indicated that

DHS recently created alternative means for asylum seekers to travel to the United States by air through CHNV parole procedures to allow asylum seekers to travel directly to the United States without having to travel through Central America, where they may become victims of smugglers and human traffickers. However, these CHNV parole procedures are only available for asylum seekers from a few countries in the Western Hemisphere (Cuba, Haiti, Nicaragua, and Venezuela).

But migration to the United States from Eastern Hemisphere countries increased dramatically during the Title 42 period. According to statistics from the official website of the U.S. Customs and Border Protection for the first six months of fiscal year 2023 compared to the same period in fiscal year 2021, the number of meetings with asylum seekers from Turkey increased by 10 599 percent (from 85 to 9 094); from Russia by 7 729 percent (389 against 30 455); from China by 7 122 percent (from 92 to 6 644); and from India by 3 365 percent (from 502 to 17 392).

September 28, 2023, in a Supporting Statement for Paperwork Reduction Act Submission "Welcome Corps Application 1405-0256" (8. Document publication) in response to my proposal for a new parole program for anti-war Russian citizens, given their problems accessing refugee protection outside of Russia, in particular Europe, the U.S. Department of State notes that "we are unable to implement USRAP in Russia at this time due to host country government requirements and security concerns," and further notes that "the INA provides the Secretary of Homeland Security with parole authority, which he can use it at its own discretion," therefore, the implementation of

the new parole program for anti-war Russians falls under the authority of the Secretary of Homeland Security.

January 12, 2024, I sent my letters about the new parole program for anti-war Russians to the President of the United States and to the Secretary of Homeland Security by mail (I don't know for sure what complex bureaucratic path my letters went through after they were received by the addressees, but as I understand it, my letters ultimately ended up in USCIS).

After that I almost six months carried on meaningless correspondence with USCIS Contact Center the following content: "We referred your letters to the USCIS Contact Center. The case number for your letters is case #31478278. We understand your concerns and will give you accurate information and guidance. The Special Cases Unit has forwarded your letters to the appropriate office for review.", but never received a final answer from this "appropriate office" about the possibility (or impossibility) to implement the new parole program for anti-war Russians, who physically located in Russia and seeking asylum in the USA.

And this is not surprising, because in its latest official documents (for example—a Rule "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" on 01/31/2024 See 89 Fed. Reg. 6194), DHS has already openly stated that new parole programs are introduced solely on the basis of political interests and therefore the likelihood of their application to the majority of asylum seekers is zero.

Moreover, February 21, 2024, the Secretary of State announced a visa restriction policy that targets owners, executives, and senior officials of companies providing transportation by land, sea, or charter air designed to the U.S. southwest border, and thus deprived many asylum seekers of the ability to use even the few land ports of entry on the southwest border that are available through CPB One app.

The above visa restrictions have been introduced under the pretext of fight against transportation operations (first of all—against charter air flights) that smugglers prey on vulnerable asylum seekers from around the world, who pay extortion-level prices to get to Mexico and then to the United States.

If the federal government adds all international airports within the United States to the CBP One app as ports of entry, it will take control all of the above charter air flights and fully eliminate this exploitative practice in relation to all asylum seekers.

And moreover, August 9, 2024 DHS announced has temporarily paused (under the pretext of a review of the supporter application process) the issuance of Advance Travel Authorizations (ATA) for new CHNV beneficiaries (now DHS has resumed this processing).

In this case Defendants repeatedly held that the federal government "has taken significant steps to expand" lawful pathways, including increasing certain country-specific opportunities for asylum seekers to obtain advance travel authorization into the United States by air. But, except CHNV, is no such expansion of these "lawful pathways" for all other asylum seekers.

Thus, maintaining the disputed Rule in its current form, without making the necessary changes to it in terms of add all international airports within the United States to the CBP One app as ports of entry, will lead to the fact that the interests of millions of asylum seekers, including my interests as one of this millions of asylum seekers, will be impaired.

Thus, the standard for intervention as of right is permissive and should be "construe[d] . . . broadly in favor of proposed intervenors." See Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011). Under this lenient standard, my motion to intervene is timely, my significantly protectable interests may be impaired by a disposition of this case, and my interests are inadequately represented by the Plaintiffs. Therefore this Court should grant my petition for a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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