

No. 18-1059

IN THE
Supreme Court of the United States

BRIDGET ANNE KELLY,

Petitioner,

v.

UNITED STATES OF AMERICA *et al.*,

Respondents.

**On Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit**

**MOTION OF RESPONDENT IN SUPPORT OF PETITIONER
WILLIAM E. BARONI, JR. FOR DIVIDED ARGUMENT**

Pursuant to Supreme Court Rule 28.4, Respondent in Support of Petitioner William E. Baroni, Jr. (“Baroni”) moves for oral argument to be divided such that counsel for Petitioner Bridget Anne Kelly (“Kelly”) would receive 20 minutes of argument time and counsel for Baroni would receive 10 minutes. Among other reasons, a division of time would be appropriate because (i) Baroni, not Kelly, is the public official whose authority to order a traffic study and/or realign the lanes onto the George Washington Bridge is the central issue on which the government asserts both defendants’ criminal liability rises and falls; (ii) Baroni and Kelly emphasize different arguments in the case; and (iii) Baroni is a respondent in name only, having participated essentially as a petitioner at every stage in this Court while filing as a respondent solely to avoid the multi-month delay that filing his own petition would unnecessarily have occasioned. Accordingly, hearing argument from Baroni’s own

counsel is appropriate and will materially assist the Court. Granting this motion would not necessitate expanding the total time this Court has allocated for oral argument. Petitioner takes no position on this request, and the government has no objection to the request.

First, the government’s brief makes it apparent that the question of Baroni’s own authority is likely to be central to the disposition of the case. The government posits that a dispositive issue here is whether “Baroni lacked authority to realign the lanes” leading into the George Washington Bridge. See, *e.g.*, Gov’t Br. 33. Kelly’s criminal liability, in the government’s view, is thus derivative of Baroni’s. That is, according to the government, if Baroni had authority, and thus committed no crime, neither did Kelly. In fairness, Baroni ought to be heard on the issue of his own authority as Deputy Executive Director of the Port Authority, and more importantly, the Court will benefit from engaging directly with Baroni’s counsel on this important point. In short, in a case in which Baroni’s liberty is at stake and the government has made his authority an important issue, his own counsel should be given time to argue.

Second, while their positions complement and reinforce one another, Baroni and Kelly emphasize different arguments in the case. Kelly identifies the Third Circuit’s “core error” as misunderstanding that a “state’s ‘sovereign power to regulate’ is not property.” Kelly Br. 3 (citing *Cleveland v. United States*, 531 U.S. 12, 23 (2000)); see also *id.* at 37-43. Baroni, by contrast, identifies the Third Circuit’s core error as affirming convictions that “run headlong into the reasoning of *Skilling* and *McNally*.”

Baroni Br. 4; see also *id.* at 21-32 (arguing, among other things, that “[a]ffirming Baroni and Kelly’s convictions would effectively strike *McNally* and *Skilling* from the pages of the United States Reports”). In recent terms, the Court has granted divided argument where the parties emphasized different arguments. See, *e.g.*, *Rucho v. Common Cause*, 139 S. Ct. 1316 (2019) (mem.); *McDonald v. City of Chicago*, 559 U.S. 902 (2010) (mem.). It will benefit the Court if both lines of argument are fully aired. Divided argument will ensure that that happens.

Third, although formally a respondent, Baroni is otherwise indistinguishable from a petitioner and has participated as such at every stage in this Court. As described in his brief, Baroni Br. 17-19, when the Third Circuit affirmed a portion of his conviction and ordered resentencing, Baroni sought expedited issuance of the mandate and expedited resentencing so that he could begin serving his sentence while he decided whether to seek further review in this Court. Following resentencing, Baroni was still within his time to file a petition for a writ of certiorari, and expected to do so. By that point, however, Kelly had already filed a petition, and Baroni’s separate petition would have been virtually certain to delay the briefing and resolution of that petition, pushing resolution of the two petitions from June to October—with Baroni remaining in prison the entire time. Moreover, Baroni could not by that point adopt Kelly’s briefing schedule by joining her petition because Rule 12.4 of the Rules of the Supreme Court states that a party may not join another party’s petition after that petition has already been filed. Accordingly, to avoid delaying the Court’s decision on Kelly’s pending petition, Baroni determined not to

file a petition and, instead, to seek review of the Third Circuit’s decision as a respondent, as expressly provided by Rule 12.6 of this Court’s Rules. He filed a brief—essentially indistinguishable from the petition he otherwise would have filed—in support of Kelly’s petition. Following the grant of certiorari in this case, Baroni obtained bail on July 2, 2019, far sooner than would have been possible had he elected to file a separate petition. See Order Setting Conditions of Release, *United States v. Baroni*, No. 2:15-cr-00193-SDW-1 (D.N.J. July 2, 2019), ECF No. 399.

Baroni has made full use of his status as a party to this case who is entitled to any relief that the Court orders. See Sup. Ct. R. 12.6; see also *Black v. United States*, 561 U.S. 465, 468 n.1 (2010) (defendant who did not himself file a petition was still “a respondent in support of petitioners who qualifies for relief under this Court’s Rule 12.6”). Baroni has filed a brief in support of Petitioner and will file a reply brief in further support. As a party to this case, active participant throughout the proceedings, and the functional equivalent of a petitioner, Baroni has a strong claim to argument time. See, e.g., *Am. Legion v. Am Humanist Ass’n*, 139 S. Ct. 951 (2019) (mem.) (granting divided argument to co-petitioners). This is especially true in a criminal case, where Baroni’s individual liberty is at stake.

In sum, divided argument will materially assist the Court in its resolution of this case. Indeed, in such circumstances, this Court has routinely granted divided argument motions to hear from counsel for a respondent in support of a petitioner, in addition to counsel for petitioner. See, e.g., *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, 140 S. Ct. 35 (2019) (mem.); *Lucia v. SEC*, 138 S. Ct. 1543 (2018) (mem.);

Ohio v. Am. Express Co., 138 S. Ct. 974 (2018) (mem.); *McDonald*, 559 U.S. 902.

Baroni respectfully submits that the Court should do so here.

Respectfully submitted,

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