

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-592

STATE OF ARIZONA, ET AL., PETITIONERS

v.

ALEJANDRO N. MAYORKAS, SECRETARY OF
HOMELAND SECURITY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

MOTION OF THE FEDERAL RESPONDENTS DIVIDED ARGUMENT
AND FOR ENLARGEMENT OF TIME FOR ORAL ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of Alejandro N. Mayorkas, Secretary of Homeland Security, and the other federal respondents, respectfully moves for divided argument and for an enlargement of time for oral argument in this case. The government suggests that the oral argument be enlarged to 70 minutes, with the following division of argument time: 35 minutes for petitioners, 20 minutes for federal respondents, and 15 minutes for private respondents. Petitioners and private respondents consent to this motion.

The question presented in this case is whether petitioners may intervene on appeal to challenge the district court's order

granting private respondents' motion for summary judgment and vacating emergency public-health orders issued by the Centers for Disease Control (CDC). Federal respondents appealed the district court's judgment but did not seek a stay pending appeal because CDC had already attempted to terminate the orders after finding that they are no longer necessary to protect the public health. Federal respondents and private respondents have filed briefs urging affirmance of the court of appeals' denial of intervention.

Dividing the argument time for respondents would be of material assistance to this Court because federal and private respondents have different interests in this litigation. Federal respondents have defended CDC's authority to issue the challenged orders and agree with petitioners that the district court erred in vacating them. But federal respondents have a substantial interest in enforcing appropriate limits on the circumstances where third parties like petitioners can intervene in government litigation to countermand the government's own judgments about how best to defend its policies. Private respondents, in contrast, brought this action challenging CDC's orders and have argued in this Court that the district court's judgment was correct. See Private Resp. Br. 41-42.

Enlarging the argument time likewise is warranted because the case involves several different issues relevant to intervention, including the timeliness of petitioners' attempt to intervene, see Pet. Br. 17-37; Gov't Br. 19-35; Private Resp. Br. 13-42; whether

petitioners have a cognizable interest in the litigation, see Pet. Br. 43-46; Gov't Br. 35-43; Private Resp. Br. 47-48; and whether petitioners have Article III standing, see Pet. Br. 37-42; Gov't Br. 43-47; Private Resp. Br. 43-47.

This Court often divides argument when the federal government agrees with a non-federal party on the proper disposition of a case, but has distinct interests in the litigation. See, e.g., Arizona v. City & County of San Francisco, 142 S. Ct. 1926 (2022) (No. 20-1775); Patel v. Garland, 142 S. Ct. 458 (2021) (No. 20-979); Alaska Native Village Corp. Ass'n v. Confederated Tribes of the Chehalis Reservation, 141 S. Ct. 2481 (2021) (No. 20-544); United States v. Arthrex, 141 S. Ct. 1041 (2021) (No. 19-1434); FCC v. Prometheus Radio Project, 141 S. Ct. 974 (2021) (No. 19-1231). The Court often enlarges argument in those circumstances as well. See, e.g., Haaland v. Brackeen, Nos. 21-376, et al. (argued Nov. 9, 2022); FBI v. Fazaga, 142 S. Ct. 332 (2021) (No. 20-828). The same course is appropriate here.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

FEBRUARY 2023