IN THE SUPREME COURT OF THE UNITED STATES

No. 25-1311

APPLE INC., PETITIONER

v.

EPIC GAMES, INC.

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

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting neither party. Petitioner and respondent have consented to this motion and each has agreed to cede five minutes of argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 25 minutes for petitioner, 10 minutes for the United States, and 25 minutes for respondent.

This case presents a question concerning the standard for imposing civil contempt based on a violation of an injunction. Following a bench trial, petitioner was found liable under state competition law for imposing "anti-steering" restrictions on software application (app) developers that prevented them from directing users to make purchases outside of the app (i.e., not on petitioner's platform), which would deprive petitioner of the commission (generally 30%) that it charges on in-app purchases. The district court permanently enjoined petitioner "from prohibiting developers from * * * including in their apps and their metadata buttons, external links, or other calls to action that direct customers to [external] purchasing mechanisms." Pet. App. 166a.

In response, petitioner lifted the anti-steering restrictions but, among other things, imposed a commission (generally 27%) on off-app purchases and allowed only "plain buttons" (i.e., links without a visible border or background) to direct users to such off-app purchases. The district court held petitioner in civil contempt for violating the injunction, and the Ninth Circuit largely affirmed that holding, principally on the ground that petitioner had violated the "spirit of the injunction," whether or not its conduct violated the injunction's express terms.

The United States has filed a brief as amicus curiae in support of neither party. The brief argues that under Taggart v. Lorenzen, 587 U.S. 554 (2019), civil contempt for violating an

injunction is improper if there is a "fair ground of doubt" whether the defendant's conduct violates the injunction's express terms, reasonably construed in context. See id. at 557. The brief further argues that the Ninth Circuit's "spirit of the injunction" standard contravenes Taggart because it is untethered to the injunction's express text, does not provide sufficient notice, and improperly relies on subjective states of mind. Finally, the brief urges that instead of merely announcing the correct standard and remanding, the Court should provide useful guidance to lower courts by applying the "fair ground of doubt" standard to some of the conduct at issue in this case. Specifically, this Court should reverse the contempt finding as to the 27% commission because the injunction's text does not refer to commissions, and the 27% commission raises legal issues distinct from those underlying the district court's holding that the anti-steering provisions are unlawful. But this Court should affirm the contempt finding as to the "plain button" restriction because the injunction's text required petitioner to allow both "buttons" and "links," and so it was objectively unreasonable for petitioner to permit only a "plain button," which the lower courts correctly found to be indistinguishable from a link.

The United States has a substantial interest in the resolution of the question presented. The United States and its agencies and personnel are often subject to injunctions as defendants in civil

actions. The federal government also routinely obtains injunctions as the plaintiff in enforcement actions. Resolution of the question presented will thus affect both defensive and offensive interests of the government.

The United States previously presented oral argument as amicus curiae in Taggart itself, where the government pressed the "fair ground of doubt" standard that the Court ultimately adopted. See 587 U.S. at 562. Participation in the oral argument here could be particularly helpful given that the United States' position is different from, and occupies a middle ground between, the parties' respective positions. The participation of the United States in the oral argument thus is likely to be of material assistance to the Court.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

NOVEMBER 2026