IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1775

STATE OF ARIZONA, ET AL., PETITIONERS

v.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL.

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

MOTION OF THE FEDERAL RESPONDENTS FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States Department of Homeland Security (DHS) and the other federal respondents, respectfully moves for divided argument in this case. The federal respondents have filed a brief supporting affirmance, and suggest the following division of argument time: 30 minutes for petitioners, 20 minutes for the federal respondents, and 10 minutes for the state and municipal respondents. All of the other parties -- petitioners and the state and municipal respondents -- have consented to this motion.

The question presented in this case is whether the court of appeals erred or abused its discretion in denying petitioners' motion to intervene in an appeal of preliminary injunctions entered in litigation brought against the federal respondents by the state and municipal respondents. Although all respondents have filed briefs urging affirmance of the court of appeals' denial of intervention, respondents have different interests in this litigation and disagree in certain significant respects over the legal standards that this Court should apply in reviewing that denial.

The federal respondents contend, for example, that petitioners' asserted interest in the downstream economic effects of a decision about the validity of DHS's 2019 public-charge rule is not the sort of direct, "legally protectible" interest that could entitle petitioners to intervene in the case as of right. Tiffany Fine Arts, Inc. v. United States, 469 U.S. 310, 315 (1985); see Gov't Br. 13-29. And the federal respondents have explained that applying principles of permissive intervention to allow state Attorneys General to take over the defense of federal regulations whenever they disagree with the federal government's choice not to pursue further review would be inconsistent with the "policy choice by Congress" and the Executive Branch to "concentrate[]" decisions about whether to appeal judgments against the federal government "in a single official" -- namely, the Solicitor General. Federal Election Comm'n v. NRA Political Victory Fund, 513 U.S. 88, 96 (1994); see Gov't Br. 37-41.

The state respondents, in contrast, suggest that economic interests of the sort asserted by petitioners could support mandatory intervention in at least some cases. See State Resp. Br. 24. Indeed, the state respondents explain that although they ultimately agree that intervention was not warranted here, they "broadly agree with petitioners" -- not the federal respondents -- "on the legal standards that governed petitioners' intervention request." Id. at 14.

This Court often grants divided argument when the federal government agrees with a non-federal party on the proper disposition of a case, but has distinct interests or advances different legal arguments. See, e.g., Patel v. Garland, 142 S. Ct. 458 (2021); FBI v. Fazaga, 142 S. Ct. 332 (2021); Alaska Native Vill. Corp. Ass'n v. Confederated Tribes of the Chehalis Reservation, 141 S. Ct. 2481 (2021); United States v. Arthrex, 141 S. Ct. 1041 (2021); FCC v. Prometheus Radio Project, 141 S. Ct. 974 (2021). The same course is appropriate here: in light of respondents' differing interests in this litigation and the significant disagreements among respondents about certain aspects of the standards that this Court should apply in resolving the question presented, the federal respondents believe that divided argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

JANUARY 2022