

Intervention
in the Federal Courts of Appeals

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INTERVENTION IN THE FEDERAL COURTS OF APPEALS

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The Federal Rules of Appellate Procedure do not currently specify standards for intervention on appeal. The rules' advisory committee asked the Federal Judicial Center to study case files and report on the circumstances in which intervention is sought. Intervention is frequently granted in agency cases. It is seldom sought in civil cases, where it is granted about half of the time. It is very rarely sought or granted in criminal cases.

Intervention is mentioned in four Rules of Appellate Procedure, including two requiring green covers for intervention briefs—Rules 28.1(d) and 32(a)(2)—and one concerning disclosure of corporate ownership—Rule 26.1(a). Rule 15(d) states that intervention in agency cases is by motion.

As the Supreme Court recently said, “Resolution of a motion for permissive intervention is committed to the discretion of the court before which intervention is sought.” *Cameron v. EMW Women’s Surgical Ctr.*, 595 U.S. 267, 278–79 (2022).¹ Longer ago, the Court said that although “[t]he Federal Rules of Civil Procedure . . . apply only in the federal district courts[, the] policies underlying [the civil rules on] intervention may be applicable in appellate courts.” *Int’l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965).

Intervention is common in agency cases, because agency cases are typically petitions to review agency decisions brought against the agencies—the winning party before the agency needs to intervene in the court of appeals to be in the case. Intervention is uncommon in court appeals. Although the Rules of Civil Procedure provide for intervention in district-court civil cases, the Rules of Criminal Procedure have no such provision for district-court criminal cases.

We studied examples of intervention sought and either granted or denied: early intervention, shortly after the cases were filed, and late intervention, typically after argument or initial judgment. For each case, or set of related cases, we prepared a summary describing what happened in the case and whether intervention was granted. In some cases, the intervention question became moot. Intervention questions not yet resolved in cases stayed or in abeyance are classified as moot, at least for the time being.

1. Deciding that a state’s new attorney general should have been granted intervention, the Supreme Court opined, “Respect for state sovereignty must . . . take into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court.” 595 U.S. at 277.

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EARLY INTERVENTION

We examined a two-year filing cohort of cases—cases filed from October 1, 2021, to September 30, 2023—and examined docket entries for intervention motions during the first year of each case.² Among the cases we did not include in this study were those in which intervention had already occurred in the district court, appeals from district-court intervention rulings, and motions by pro se litigants to intervene in their own cases.

Eighty-one case summaries cover the civil appeals with intervention motions. Intervention was granted in thirty-five sets of cases (43%). Three case summaries cover all criminal cases with intervention motions. Intervention was granted in one case (33%). In addition, we prepared five case summaries of randomly selected agency cases in each circuit with intervention motions or notices, with the exception of the First Circuit, where four case summaries cover all such agency cases within our filing cohort. Intervention was granted in fifty-four sets of cases out of sixty-four (84%).

Whether Intervention Was Granted: Early Intervention Motions

Court	Civil Cases			Criminal Cases			Agency Cases		
	Yes	No	Moot	Yes	No	Moot	Yes	No	Moot
D.C.		3	1				3		2
1st	1	1					3	1	
2d	6	2	2				4		1
3d	2	3	2				4	1	
4th		1					5		
5th	1	4	1	1			3	1	1
6th	7	3	2		1	1	5		
7th	3	3					5 ³		
8th		2					5		
9th	12	4	3				5		
10th	1	2					4	1	
11th	2	5					3	1	1
Fed.		2					5		
Total	35	35	11	1	1	1	54	5	5

2. Our filing cohort was selected so that we would study a substantial number of recent cases, most of which would have been resolved. In our filing cohort, 50% of the civil appeals were decided within one year of filing, and 71% of those filed before July 13, 2023, were decided within two years; all four criminal cases in our filing cohort were decided within one year of filing; 25% of the agency appeals in our filing cohort were resolved within one year of filing, and 74% of those filed before July 13, 2023, were decided within two years.

3. This includes one set of cases where intervention was granted in the District of Columbia Circuit before the cases were transferred to the Seventh Circuit.

Civil Cases

Intervention on appeal in civil cases is granted about as often as it is denied.

Other Government Officer. A sometimes challenging intervention question in civil cases is the propriety of intervention on appeal when a government official charged with defending a law is succeeded by a government official with a different litigation preference. In March 2022, the Supreme Court held in *Cameron v. EMW Women's Surgical Ctr.* that a new attorney general was entitled to intervene in an appeal to petition for rehearing en banc. 595 U.S. 267 (2022).⁴

Other Political Body. Four case summaries describe cases in which intervention was sought because one political body argued that its interests were not adequately represented by another political body in the case.⁵ Intervention was granted in one of them.

Constitutionality. Nine case summaries describe governmental intervention activity because of a question of constitutionality.⁶ Intervention was granted in eight of them, including in one agency case.

Sealing. Several case summaries, especially covering Ninth Circuit cases, describe efforts to intervene either to seal part of the court record (seven grants)⁷ or to unseal part of the court record (one grant and two denials).⁸

Bankruptcy. Eight case summaries describe cases arising from bankruptcy proceedings; four describe grants of intervention, including one among agency cases.⁹ Another three case summaries describe intervention granted in other cases

4. On July 21, 2022, after the Supreme Court's intervention ruling in the case, the court of appeals granted intervention to the attorney general, granted panel rehearing, and vacated its earlier decision in light of the Supreme Court's June 24 decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215. Order, No. 19-5516, D.E. 87, 2022 WL 2866607. Also in light of the *Dobbs* decision, the district court dismissed the lawsuit on August 17. Order, No. 3:18-cv-224 (W.D. Ky.), D.E. 158, 2022 WL 19560712.

5. District of Columbia Circuit: *Huisha-Huisha v. Mayorkas*, page 12 (denied). Ninth Circuit: *Mayes v. Biden*, page 43 (granted); *East Bay Sanctuary Covenant v. Biden*, page 46 (denied, also a case in which the prospective intervenor cared about the case but had no legal interest in it); *Mi Familia Vota v. Hobbs*, page 47 (moot).

6. Second Circuit: *Giambalvo v. New York*, page 18 (granted); *East Fork Funding v. U.S. Bank*, page 18 (granted). Third Circuit: *Conner v. Fox Rehabilitation Services*, page 22 (granted). Fifth Circuit: *Campaign Legal Center v. Scott*, page 28 (denied). Sixth Circuit: *Lindenbaum v. Realgy*, page 32 (granted); *Brokerarte Capital Partners v. Detroit Institute of Arts*, page 33 (granted). Seventh Circuit: *Bevis v. City of Naperville*, page 38 (granted). Eleventh Circuit: *Andrews v. Autoliv Japan*, page 52 (granted). Federal Circuit: *Solas OLED v. Vidal*, page 57 (granted, agency case).

7. Ninth Circuit: *National Abortion Federation v. Center for Medical Progress*, page 43 (granted); *Sidibe v. Sutter Health*, page 44 (granted); *Innovative Health v. Biosense Webster*, page 44 (granted); *Littleton v. Musk*, page 44 (granted); *Boston Retirement System v. Uber Technologies*, page 45 (granted); *Carr v. Google*, page 45 (granted); *Comet Technologies USA v. XP Power*, page 45 (granted).

8. Sixth Circuit: *Grae v. Corrections Corporation of America*, page 34 (denied). Ninth Circuit: *Doe v. Roe*, page 44 (granted). Tenth Circuit: *Luo v. Wang*, page 50 (denied).

9. First Circuit: *GoldenTree Asset Management v. Financial Oversight and Management Board for Puerto Rico*, page 15 (granted). Third Circuit: *In re Boy Scouts of America*, page 22 (granted); *In re Truong*, page 23 (denied); *In re Atiyeh*, page 23 (moot). Fifth Circuit: *Gulfport Energy v. FERC*, page 30 (granted, agency case); *Chesapeake Energy Marketing v. FERC*, page 31 (moot, agency case).

involving creditors.¹⁰ And three more case summaries describe cases with receivers; two describe grants of intervention.¹¹

Pro Se. Several case summaries describe intervention efforts, typically pro se, by persons who may care about the case but who do not have a legal interest in it; sixteen describe denials of intervention; intervention was moot in the other three.¹²

Other. The above categories account for fifty-four of the civil sets of cases (67%)¹³ and for three of the agency cases (5%). Of the twenty-seven sets of civil cases not accounted for by those categories, intervention was granted in the eleven sets summarized as follows:

Cooper v. Upstairs, Downstairs of New York, 2d Cir. 21-cv-1032 and 21-cv-1066

Civil appeals filed by defendants on April 26, 2021, and by the plaintiff on April 28, 2021, challenged a Southern District of New York decision (1) denying a retrial on compensatory damages after a jury awarded the plaintiff only punitive damages, (2) granting the plaintiff attorney fees and costs, and (3) denying the defendants attorney fees but granting the defendants costs. On March 30, the plaintiff's attorneys moved to intervene in the defendants' appeal, stating that they would be subject to an award of costs to defendants and the plaintiff had not retained counsel in the defendants' appeal. The attorneys did represent the plaintiff in the plaintiff's appeal. A three-judge panel granted intervention on May 18. The intervening attorneys filed a brief on August 17. The court of appeals affirmed the district court's decisions on May 1, 2024.

Jules v. Andre Balazas Properties, 2d Cir. 23-cv-1253 and 23-cv-1283

A plaintiff's civil appeal filed on September 15, 2023, and the plaintiff's attorney's appeal filed on the following day challenged a Southern District of New York decision confirming an arbitration award. The arbitration respondent, who was not named in the plaintiff's complaint, moved on July 10, 2024, to intervene in the appeals. A three-judge panel granted intervention on November 15. On April 25, 2025, the court affirmed the confirmation.

Ninth Circuit: *In re Silver*, page 45 (granted); PG&E v. Canyon Capital Advisors, page 46 (denied).

10. Second Circuit: *In re Approximately \$3.5 Billion of Assets*, page 17 (granted); Various Parties v. Republic of Argentina, page 18 (granted). Fifth Circuit: *Caballero v. Rosneft Trading*, page 28 (granted).

11. Fifth Circuit: *SEC v. Barton*, page 29 (denied). Seventh Circuit: *Schneider v. Schneider*, page 38 (granted). Tenth Circuit: *America West Bank Members v. Utah*, page 49 (granted).

12. First Circuit: *Estados Unidos Mexicanos v. Smith & Wesson Brands*, page 16 (denied). Second Circuit: *Upsolve v. James*, page 19 (denied); *Carroll v. Trump*, page 19 (denied); *Lamothe v. Moran*, page 20 (moot). Third Circuit: *Lora v. Baylor*, page 22 (denied); *Anand v. Independence Blue Cross*, page 23 (denied). Fifth Circuit: *Missouri v. Biden*, page 29 (moot). Sixth Circuit: *In re Veolia North America*, page 34 (denied); *Bell v. Washington*, page 35 (moot). Seventh Circuit: *Starkey v. Roman Catholic Archdioceses of Indianapolis*, page 39 (denied). Eighth Circuit: *Frazier v. Smith*, page 41 (denied). Ninth Circuit: *Brown v. Maricopa County Attorney's Office*, page 46 (denied); *East Bay Sanctuary Covenant v. Biden*, page 46 (denied, also a political-body case). Eleventh Circuit: *Peele v. Department of Justice*, page 53 (denied); *Locke v. Canady*, page 53 (denied); *Georgia v. Meadows*, page 54 (denied). Federal Circuit: *Frazier v. United States*, page 56 (denied).

13. Headings for civil cases include case category.

Jackson v. General Electric, 6th Cir. 21-cv-3226

A March 10, 2021, civil appeal by the plaintiff's attorneys challenged the Southern District of Ohio's denial of the defendant's motion to enforce a settlement agreement in an employment-discrimination case. The case had been conditionally dismissed with prejudice, and although the plaintiff herself apparently refused to sign the settlement agreement, the deadline for reopening the case had expired. The plaintiff moved to intervene in the appeal on December 17, and the clerk of court granted intervention on January 10, 2022. The plaintiff was the appellee in a related appeal by the defendant employer (21-3237). On July 5, the court of appeals affirmed denial of the enforcement motion.

Newell v. Foley, 6th Cir. 22-pr-3912

A pro se October 28, 2022, civil appeal challenged the Northern District of Ohio's dismissal of a prisoner petition. The prisoner's complaint was dismissed before service on the defendant, so Ohio moved to intervene in the appeal as an interested party on November 14. The clerk granted intervention four days later. The court affirmed dismissal of the complaint on June 8, 2023.

Tennessee v. Department of Education, 6th Cir. 22-cv-5807

A September 13, 2022, civil appeal challenged a July 15 Eastern District of Tennessee preliminary injunction against federal education policies in conflict with state laws regarding sexual orientation and gender identity. On September 14, the district court granted intervention to an association of Christian schools and to three minor female athletes claiming unfairness if they were required to compete against transgender girls. On September 21, the association and one of the female athletes moved to intervene in the appeal as well. The clerk granted intervention on October 6. The association and the athlete filed their appellee brief on January 24, 2023. Over a dissent, the court of appeals affirmed the preliminary injunction on June 14, 2024. 104 F.4th 577.

Various Parties, 6th Cir. 23-cv-5447, 23-c-5451, 23-cv-5453, 23-cv-5454, and 23-cv-5455

On May 15 and 16, 2023, two civil defendants appealed the plaintiffs' court-approved voluntary dismissals of five Western District of Kentucky civil actions as settled by the defendants' insurer. Settling defendants moved to consolidate the appeals on June 16. On June 20, the insurer moved to intervene in the five cases. The clerk consolidated the cases on July 17, and a three-judge panel granted the insurer intervention on September 29. The insurer filed its brief on November 3. A merits panel affirmed the district court's dismissals on February 29, 2024.

Friends of George's v. Mulroy, 6th Cir. 23-cv-5611

A June 30, 2023, civil appeal challenged the Western District of Tennessee's holding unconstitutional a Tennessee statute criminalizing adult cabaret entertainment that could be viewed by a minor. A drag performer and an organization promoting LGBTQ+ interests moved to intervene on September 8. A three-judge motion panel granted permissive intervention on September 15. The intervenors filed a brief on

October 23. On July 18, 2024, the court determined that the plaintiffs in the case did not have standing to pursue it. 108 F.4th 431. On September 5, the panel denied the intervenors' August 21 motion to respond to a petition for rehearing en banc. The court denied rehearing on September 20.

Driftless Area Land Conservancy v. Huebsch, 7th Cir. 20-cv-3325 and 20-cv-3365

In an interlocutory civil appeal by original defendants, the court of appeals granted intervention to intervenors in the district court and denied the intervenors their own interlocutory appeal.

Conservation organizations' December 11, 2019, complaint filed in the Western District of Wisconsin challenged a public service commission's granting a permit for an electricity transmission line. Developers who were granted the permit moved to intervene as defendants. Finding that the original defendants would adequately oppose the complaint, the district judge denied intervention, but the court of appeals decided that the developers were entitled to intervene. 969 F.3d 742 (2020). The district court denied dismissal motions on November 20, 2020. Original defendants and intervenors filed interlocutory appeals. Noting that the intervenors did not have the same rights of interlocutory appeal as the state defendants, a motion judge for the court of appeals issued an order to show cause why their appeal should not be dismissed for lack of jurisdiction. In addition to arguing that the court of appeals had jurisdiction over their interlocutory appeal, the developers moved to intervene in the original defendants' appeal. On January 6, 2021, the clerk issued an order for the court dismissing the developers' appeal and allowing the developers to intervene in the original defendants' appeal. The appellants and the intervenors filed briefs on January 15, and they filed reply briefs on February 1. On October 21, the same panel that ordered the district court to grant intervention ruled that the district-court case should be stayed pending state litigation. 16 F.4th 508.

Caballero v. United States, 9th Cir. 20-cv-17356

A December 2, 2020, civil appeal challenged the Eastern District of California's dismissal of an in rem action involving tribal territory. When the district court dismissed the action, an intervention motion by a group involved in the property dispute was pending, and the district court denied intervention as moot. The group moved to intervene in the appeal on April 1, 2021. A two-judge motion panel granted intervention on May 14. An intervenor brief was filed on July 12. The court of appeals affirmed dismissal of the action on October 22.

Shahrokhi v. Harter, 9th Cir. 23-cv-16012

A pro se July 19, 2023, civil appeal challenged the District of Nevada's dismissal of a suit challenging state-court custody proceedings. Nevada and its attorney general moved to intervene on August 18 to provide a defense for a defendant state-court judge who had died. On August 28 and 30, they moved to oppose pending motions by the appellant. On September 11, Nevada asked the court to expedite consideration of its intervention motion so that it would not waste time preparing a brief that would be rejected because of a denial of its motion. On September 14,

Nevada filed a response to the appellant's motion to strike Nevada's earlier responses. On September 21, Nevada filed another motion to respond to an appellant motion. A two-judge motion panel granted intervention on October 2. Nevada filed its intervenor brief on January 12, 2024. The case remains pending.

Peden v. Stephens, 11th Cir. 21-pricivil-10723

A March 4, 2021, civil appeal challenged the Northern District of Georgia's granting summary judgment to defendants. The trial court had quashed the deposition of a journalist who reported on the underlying story, and the journalist moved to intervene in the appeal on October 1 to defend the district court's decision. On October 26, a motion judge granted intervention. The journalist filed a brief that day. On August 29, 2022, the court concluded that it lacked jurisdiction over the case because the district judge improperly certified final judgment while some claims remained unresolved. 50 F.4th 972.

Criminal Case

Intervention was granted in one criminal appeal:

United States v. deBerardinis, 5th Cir. 21-ncrim-30282

A May 26, 2021, appeal by criminal defense attorneys and their law firm challenged the Western District of Louisiana's denial of a motion to withdraw as counsel following the court's disqualifying one of the attorneys for being a potential witness in the case. Co-counsel with the law firm moved on July 14 to intervene to represent his and the defendant's interests. A motion judge granted intervention on the following day. The appellants voluntarily dismissed their case on August 2.

Agency Cases

A typical agency case is a petition for review by a party in an adversary proceeding before an agency. The agency is the respondent. For other parties to be included in the review by the court of appeals, they have to intervene. They are not automatically included as parties as they would be if the case were an appeal from a district court. Some petitions for review challenge agency rules rather than agency decisions in adversary proceedings. Entities that participated actively in the rulemaking process often seek to intervene in the review by the court of appeals. Their status as parties below is not necessarily as clear as it would be in a petition to review an adversary decision.

Intervention was denied in five of the agency cases in our samples:

Responsible Offshore Development Alliance v. Haaland, 1st Cir. 21-ag-1660

A September 13, 2021, petition challenged the Bureau of Ocean Energy Management's approval of a wind-energy project. The operator of the project moved to intervene on September 24. On November 1, a motion judge granted a joint motion to stay proceedings and denied the intervention motion without prejudice to refile after a lifting of the stay. The court dismissed the case as settled on November 16, 2023.

Port Hamilton Refining and Transportation v. EPA, 3d Cir. 23-ag-1094

A refinery's January 13, 2023, petition challenged the Environmental Protection Agency's decision requiring the refinery to undergo a permit process before undertaking a construction project. A previous owner of the refinery operating an adjacent petroleum-storage business moved to intervene on February 10. A group of environmental organizations moved to intervene on February 13. The clerk of court denied intervention on March 29, "but the movants are invited to participate as amici curiae." On July 25, the court vacated the agency's decision. 75 F.4th 166, *amended*, 87 F.4th 188 (2023). A motion for attorney fees is pending.

Various States v. EPA, 5th Cir. 23-ag-60069

Texas's February 14, 2023, petition challenged the Environmental Protection Agency's disapproving a Texas air-quality implementation plan. Environmental organizations moved to intervene on March 27. Mississippi and Louisiana joined the case as petitioners on March 16 and 20, respectively. On March 27, the organizations moved to file a response motion in opposition to a stay motion, but the court rejected the motion, stating that the organizations' intervention motion had been denied, although the denial was not issued by the court's motion judge until April 19. A June 5 motion for reconsideration was denied by a three-judge panel on June 9. On March 25, 2025, the court denied the petitions by Texas and Louisiana and granted the petition by Mississippi. 132 F.4th 808.

Various Petitioners v. EPA, 10th Cir. Nos. 23-agpet-9509, 23-agpet-9512, 23-agpet-9514, 23-agpet-9520, 23-agpet-9521, 23-agpet-9529, 23-agpet-9531, 23-agpet-9533, 23-agpet-9534, and 23-agpet-9537

Ten petitions to review the Environmental Protection Agency's decision disapproving twenty-one states' plans to prevent ozone contamination of neighboring states were filed from February 13 to April 14, 2023.

On March 15, two environmental organizations moved to intervene in the first case, arguing also that venue properly belonged in the District of Columbia Circuit. In response to agency motions to transfer the cases to the court of appeals for the District of Columbia Circuit or dismiss them for improper venue, a three-judge panel decided on April 27 to leave that as a merits-panel question. In a case-management order issued on the following day, the clerk of court issued an order respecting intervention. The pending intervention motion noted "that in the D.C. Circuit, a motion to intervene filed in one case is deemed a motion to intervene in all cases before that court involving the same agency action or order. This circuit does not have a similar rule." The clerk ordered the prospective interveners to seek intervention in any other case in which they desired to intervene within five days. On May 18, a two-judge motion panel denied the organizations' intervention in the seven cases in which they sought intervention (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). "As appropriate, Movants may file an amicus brief or motion in accordance with Federal Rule of Appellate Procedure 29." The prospective intervenors appeared as amici.

In January 2024, the cases with Wyoming petitioners were voluntarily dismissed (nos. 23-9529, 23-9531, and 23-9537). On February 16, a three-judge

panel transferred cases with Oklahoma and Utah petitioners to the District of Columbia Circuit (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). 93 F.4th 1262. On June 18, 2025, the Supreme Court determined that the cases belonged in a regional circuit. 605 U.S. ___, 145 S. Ct. 1720.

Hunt Refining Company v. EPA, 11th Cir. 22-agen-11617

A refinery's May 12, 2022, petition challenged the Environmental Protection Agency's denying thirty-six small refineries Renewable Fuel Standard exemptions. On February 17, 2023, renewable fuels producers moved to intervene in support of the agency. On April 28, a motion judge denied intervention. On January 11, 2024, the court ruled that the case should have been brought in the District of Columbia Circuit. 90 F.4th 1107.

EARLY-INTERVENTION CASE SUMMARIES

Our case summaries are organized by court. Before the case summaries, we present relevant information about intervention on appeal from local rules and circuit law, if any. The case summaries are presented in the following order: civil cases; criminal cases, if any; and agency cases. Within each type of case, if any, we present examples, if any, of intervention granted, intervention denied, and intervention moot.

District of Columbia Circuit

A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.

D.C. Cir. R. 15.

"A court of appeals may allow intervention at the appellate stage where none was sought in the district court only in an exceptional case for imperative reasons." *Amalgamated Transit Union Int'l v. Donovan*, 771 F.2d 1551, 1552 (D.C. Cir. 1985) (internal quotation marks omitted). Intervention in a civil appeal requires satisfaction of Civil Rule 24(a)(2)'s requirements for intervention of right. *In re Brewer*, 863 F.3d 861, 872 (D.C. Cir. 2017).

Generally in agency cases, "[i]ntervenors may only argue issues that have been raised by the principal parties; they simply lack standing to expand the scope of the case to matters not addressed by the petitioners in their request for review." *Nat'l Ass'n of Regul. Util. Comm'rs v. ICC*, 41 F.3d 721, 729 (D.C. Cir. 1994). The court will depart from that rule only in extraordinary cases. *Lamprecht v. FCC*, 958 F.2d 382, 389 (D.C. Cir. 1992).

There were 2,895 cases in our filing cohort. Four case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Four case summaries cover all civil cases with intervention motions, filed from zero

to 110 days after case filings. Intervention was denied in three sets of cases and never fully at issue in the other.

Intervention Denied

United States v. Assets Held at Credit Suisse (Guernsey), 20-cv-5356

(intervention category: other)

A November 30, 2020, civil appeal challenged the district court's striking a claim in a forfeiture action. Two daughters of the appellant filed a motion to intervene in the appeal on January 15, 2021. On April 9, a three-judge motion panel referred the intervention question to the merits panel, permitting the daughters to lodge a joint brief as movant-intervenors. The daughters lodged their initial brief on June 8 and lodged a reply brief on August 23. On August 16, 2022, the court denied intervention:

Here, the daughters seek to raise precisely the same arguments as their father. Moreover, the daughters have revealed by their conduct that they find his representation adequate. In their cross-motion below, they adopted his arguments wholesale. And in this appeal, they declined our invitation to appear at oral argument. We therefore deny the daughters' motion to intervene.

45 F.4th 426, 432. The court of appeals also affirmed the district court's decision.

Huisha-Huisha v. Mayorkas, 21-cv-5200 and 22-cv-5325

(intervention category: other political body)

In a class action brought by asylum-seeking families, a September 17, 2021, civil appeal challenged a preliminary injunction against the government's Covid-related immigration policies. On October 11, Texas moved to intervene in support of the federal government. A three-judge motion panel ordered responses to the intervention motion, and both sides opposed the motion as untimely. According to the government, "Although this litigation began nine months ago, and this appeal has been pending for weeks, the State of Texas has moved to intervene a mere ten days before the opening brief is due under this Court's expedited schedule." On October 26, the motion panel denied intervention but permitted Texas to participate as an amicus curiae. On March 4, 2022, the court of appeals endorsed a preliminary injunction narrower than the one the plaintiffs wanted, allowing the government to expel unauthorized immigrants so long as the government did not expel them to places where they would be persecuted or tortured. 27 F.4th 718.

A December 9, 2022, civil appeal challenged a later partial summary-judgment injunction in favor of the asylum-seeking families. On the day that the appeal was filed, nineteen states filed a motion to intervene. Noting that their motion to intervene in the district court was pending, the states argued that their intervention motion either should be pending in the court of appeals by operation of law or entertained anew by the court of appeals. On December 12, the states filed a motion to stay the injunction pending appeal. In a four-page opinion, a three-judge panel denied the intervention motion as untimely: "[A]lthough this litigation has been pending for almost two years, the States never sought to intervene in the district court until almost a week *after* the district court granted plaintiffs' partial summary

judgment motion.” On December 19, the states applied to the Supreme Court for a stay of the district court’s injunction, which the states characterized as rulemaking by collective acquiescence. The Court granted a stay on December 27 pending the Court’s reviewing the following: “Whether the State applicants may intervene to challenge the District Court’s summary judgment order.” 598 U.S. ___, 143 S. Ct. 478. On May 12, 2023, the solicitor general informed the Court that the public-health emergency underlying the immigration policies at issue had expired. Six days later, the Court vacated the court of appeals’ denial of intervention, ordering the motion dismissed as moot. 598 U.S. ___, 143 S. Ct. 1312. The court of appeals did as instructed on September 7, also granting the government’s motion to vacate the injunction as moot.

Estate of Levin v. Wells Fargo Bank, 23-cvpri-7080 and 23-cvpri-7082
(intervention category: other)

Two civil appeals filed on June 23 and 29, 2023, challenged a decision to quash writs of attachment intended to recover for the plaintiffs Iranian funds seized to compensate victims of terrorism. On June 27, the seller of a ship to an alleged front company for Iran moved to intervene, claiming “a far greater interest in this case than any of the parties.” The government opposed intervention, arguing that even if the seller had an interest in the funds, the proper forum for intervention would have been the forfeiture action and not the appeal. A three-judge panel denied intervention on September 28. The appeals were heard on September 20, 2024.

Intervention Question Moot

Stone v. U.S. Embassy Tokyo, 20-cvus-5360, 21-cvus-5015, and 21-cvus-5055
(intervention category: other)

A December 4, 2020, pro se civil appeal challenged dismissal of a complaint alleging unlawful refusal to issue citizenship and immigration documents. A January 15, 2021, appeal challenged denial of reconsideration, and the court consolidated the appeals on January 25. A third appeal filed on March 9 challenged minute orders in the district court, and the court of appeals consolidated that case with the others that day. On April 9, the appellee U.S. embassy opposed a March 24 pro se motion to intervene: “The Movant fails to allege that he has, does, or will suffer any injury as a result of the Department of State’s decisions to deny a passport application and a certificate of birth abroad application for two minors who appear to be unrelated to him.” The court of appeals summarily affirmed dismissal of the district-court case on May 17, denying the intervention motion as moot.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from nineteen to thirty-one days after case filings; they were granted in three sets of cases and not fully at issue in two sets.

Intervention Granted

Duke Energy Progress v. FERC, 21-rev-1272, 22-rev-1072, 22-rev-1284, and 22-rev-1327

A power company's December 27, 2021, petition challenged the Federal Energy Regulatory Commission's rejecting an operator agreement. Another power company, which was a party to a contract at issue in the case, moved to intervene in support of the commission on January 26, 2022. The clerk of court issued an order holding the case in abeyance on February 11. The petitioner filed a second petition challenging a commission order on rehearing on May 4, and the two cases were consolidated on May 6. The clerk issued an order granting intervention on May 24. The petitioner filed a third petition challenging additional commission orders on November 3, and the intervening power company filed a motion to intervene on December 2. The petitioner's fourth petition filed on December 20 challenged an additional commission order. The clerk issued an order on December 30 consolidating the four cases and holding them in abeyance. The cases were returned to the active docket on February 15, 2023. On July 9, 2024, the court denied the petitions for review. 106 F.4th 1145.

Various Petitioners v. EPA, 22-rev-1271, 22-rev-1302, and 22-rev-1303

An October 24, 2022, petition challenged an Environmental Protection Agency decision on emission standards for industrial boilers. An environmental organization moved to intervene in support of the agency on November 22. On December 2, the petitioner opposed intervention, arguing that the agency adequately represented the organization's interests. During the following week, the court consolidated the petition with two other December petitions, one of which included the environmental organization as a petitioner. The petitioners in the second case, along with a couple of other organizations, moved to intervene in the third case on January 4, 2023. A three-judge panel granted the first intervention motion on January 24. The clerk of court granted the second intervention motion on February 16. The intervenors filed their briefs on October 10 and December 14. On September 3, 2024, the court granted the industry petitioners' petitions and denied the environmental petitioners' petitions. 113 F.4th 984.

Various Petitioners v. EPA, 23-rev-1143, 23-rev-1144, 23-rev-1145, 23-rev-1146, 23-rev-1147, and 23-rev-1148

Six petitions filed on June 5, 2023, challenged the Environmental Protection Agency's granting California a waiver of federal preemption respecting vehicle emission regulations. The cases were consolidated on June 6. Three collections of states, cities, and organizations moved to intervene in support of the agency on June 28 and 29. The clerk of court issued an order granting intervention on July 24. On December 21, a two-judge motion panel agreed to hold the cases in abeyance pending decisions in other cases.

Intervention Question Moot

Everygy Kansas Central v. FERC, 23-rev-1027

A February 2, 2023, petition challenged the Federal Energy Regulatory Commission's decision granting one energy company refunds from another energy company. The energy company that was granted the refunds moved to intervene on February 24. The case was dismissed as settled on March 23.

Various Petitioners v. FERC, 23-rev-1167, 23-rev-1168, 23-rev-1169, and 23-rev-1170

Four June 30, 2023, petitions challenged the Federal Energy Regulatory Commission's accepting in part and rejecting in part a compliance filing respecting a tariff. The court consolidated the petitions on July 3. A Maine power company moved to intervene in the petitions on July 19, expecting to support the petitioners. The power company that initiated the administrative proceeding, the petitioner in one of the cases, moved to intervene in the other three cases on July 31. The court granted motions by the commission to hold the cases in abeyance pending further commission action. A December 5 petition was consolidated with the others on December 6. The cases were dismissed as settled on March 5, 2025.

First Circuit

It may be appropriate to permit intervention on appeal on findings that the intervening party "has a substantial stake in the outcome and that its interests are not fairly represented by any other party." *Alstom Caribe, Inc. v. Geo. P. Reintjes Co.*, 484 F.3d 106, 110 (1st Cir. 2007).

There were 3,230 cases in our filing cohort. Two case summaries cover the civil appeals with intervention activity, and four case summaries cover the agency appeals with intervention activity.

Civil Cases

Two case summaries cover all civil cases with intervention motions, filed from six to 119 days after case filings. Intervention was granted in one case and denied in the other.

Intervention Granted

GoldenTree Asset Management v. Financial Oversight and Management Board for Puerto Rico, 23-civil-1737

(intervention category: bankruptcy, creditor, receiver)

A September 7, 2023, interlocutory civil appeal challenged a District of Puerto Rico procedural order in Puerto Rico's bankruptcy proceedings. A committee of unsecured creditors moved on September 13 to participate in briefing and oral argument, a motion docketed as a motion to intervene. A three-judge motion panel granted participation on September 22. A trustee bank moved on Tuesday, September 26, to participate in the appeal as an interested party, a motion docketed as a motion to intervene. On the following day, a motion judge granted the bank

permission to file a brief within three days. The bank filed a brief on Monday, October 2. The unsecured creditors filed a brief on October 10. The court of appeals affirmed the district court's judgment on January 22, 2024. 91 F.4th 501.

Intervention Denied

Estados Unidos Mexicanos v. Smith & Wesson Brands, 22-civil-1823
(intervention category: pro se)

Mexico's December 5, 2022, civil appeal challenged the District of Massachusetts's dismissal of Mexico's suit against gun manufacturers. A pro se motion to intervene was filed on April 3, 2023, by a person stating that he was disbarred as an attorney in Florida and would like to pursue a First Amendment right to practice law. A motion judge denied the intervention motion on April 24. On January 22, 2024, the court reversed the district court's dismissal. 91 F.4th 511. The Supreme Court reversed the decision of the court of appeals on June 5, 2025, agreeing that the complaint did not plausibly plead that the defendants participated in the unlawful sale or marketing of firearms. 605 U.S. ___, 145 S. Ct. 1556 (2025).

Agency Cases

Four case summaries cover all agency cases with intervention motions, filed from eleven to thirty days after case filings. Intervention was granted in three cases and denied in another.

Intervention Granted

City of Quincy v. Massachusetts Department of Environmental Protection, 21-ag-1131

A February 17, 2021, petition challenged a state agency's air permit for a natural-gas compressor station. The company that was granted the permit moved to intervene on March 2. A motion judge granted intervention on March 9. The court denied the petition on December 17. 21 F.4th 8.

City of Quincy v. FERC, 22-ag-1201

A March 21, 2022, petition challenged the Federal Energy Regulatory Commission's order authorizing operation of a compressor station. An association of natural-gas pipelines moved to intervene on April 19. The pipeline owner of the compressor station moved to intervene on April 20. The clerk of court issued orders granting intervention to the association on April 20 and to the pipeline on May 3. On June 30, the court transferred the case to the District of Columbia Circuit.

Housatonic River Initiative v. EPA, 22-ag-1398

A May 19, 2022, petition challenged the Environmental Protection Agency's permit decision respecting river-cleanup obligations. The company obligated to do the cleanup filed an intervention motion on June 16. A regional intergovernmental organization filed an intervention motion on June 17, stating that it was a party to a settlement agreement respecting the river cleanup that the petitioners were trying to undo. The clerk of court issued an order granting the intervention motions on

June 22. The court denied the petition on July 25, 2023. 75 F.4th 248.

Intervention Denied

Responsible Offshore Development Alliance v. Haaland, 21-ag-1660

A September 13, 2021, petition challenged the Bureau of Ocean Energy Management's approval of a wind-energy project. The operator of the project moved to intervene on September 24. On November 1, a motion judge granted a joint motion to stay proceedings and denied the intervention motion without prejudice to refile after a lifting of the stay. The court dismissed the case as settled on November 16, 2023.

Second Circuit

"Generally, [in agency cases,] intervenors may only argue issues that have been raised by the principal parties; they simply lack standing to expand the scope of the case to matters not addressed by petitioners in their request for review." N.Y. State Dep't of Env't Conservation v. FERC, 884 F.3d 450, 456 (2d Cir. 2018) (quotation marks omitted).

There were 8,625 cases in our filing cohort. Ten case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Ten case summaries cover all civil cases with intervention motions, filed from seven to 338 days after case filings. Intervention was granted in six sets of cases, denied in two cases, and never fully at issue in two sets.

Intervention Granted

Cooper v. Upstairs, Downstairs of New York, 21-cv-1032 and 21-cv-1066 (intervention category: other)

Civil appeals filed by defendants on April 26, 2021, and by the plaintiff on April 28, 2021, challenged a Southern District of New York decision (1) denying a retrial on compensatory damages after a jury awarded the plaintiff only punitive damages, (2) granting the plaintiff attorney fees and costs, and (3) denying the defendants attorney fees but granting the defendants costs. On March 30, the plaintiff's attorneys moved to intervene in the defendants' appeal, stating that they would be subject to an award of costs to defendants and the plaintiff had not retained counsel in the defendants' appeal. The attorneys did represent the plaintiff in the plaintiff's appeal. A three-judge panel granted intervention on May 18. The intervening attorneys filed a brief on August 17. The court of appeals affirmed the district court's decisions on May 1, 2024.

In re Approximately \$3.5 Billion of Assets, 22-cv-965 and 22-cv-975 (intervention category: bankruptcy, creditor, receiver)

Two civil appeals filed on April 28, 2022, challenged a Southern District of New

York decision dismissing a class-action complaint as duplicative of the plaintiffs' existing case against the Taliban for damages related to the September 11, 2001, attacks. Existing judgment creditors moved to intervene in the appeals on August 5. A motion judge granted intervention on August 10. On October 4, a motion judge agreed to hold the appeals in abeyance pending the district court's resolution of related matters.

Various Parties v. Republic of Argentina, 22-cv-2198, 22-cv-2231, 22-cv-2274, 22-cv-2282, 22-cv-2295, 22-cv-2296, 22-cv-2301, 22-cv-2312, 22-cv-2313, 22-cv-2316, 22-cv-2325, 22-cv-2328, 22-cv-2330, 22-cv-2331, and 22-cv-2332
(intervention category: bankruptcy, creditor, receiver)

In fifteen civil appeals filed on September 21, 2022, Argentina challenged Southern District of New York attachment orders imposed on Argentina's assets used to secure defaulted bonds. One of Argentina's creditors moved on October 13 to intervene in the appeals to challenge Argentina's motion to seal substantial portions of the record, which the creditor argued would deprive the creditor of information in public proceedings relevant to its recovery of alleged obligations. On October 20, a motion judge referred the sealing and intervention motions to a three-judge motion panel. The three-judge panel granted intervention on January 4, 2023, and provisionally granted the sealing motion. The court affirmed the attachment orders on August 21. 113 F.4th 220, *cert. denied*, 604 U.S. ___, 145 S. Ct. 1141 (2025).

Giambalvo v. New York, 23-cv-208
(intervention category: constitutionality)

A February 16, 2023, civil appeal challenged an Eastern District of New York decision denying a preliminary injunction that had been sought to make pistol permitting more convenient. On April 12, New York's attorney general moved to intervene to defend the constitutionality of state law. The attorney general filed a brief on May 25. On June 8, the clerk of court referred the intervention motion to the merits panel. The court granted intervention on July 28. The case was heard on September 27. On October 2, the court decided to hold the case in abeyance pending a decision in another case.

East Fork Funding v. U.S. Bank, 23-cv-659
(intervention category: constitutionality)

An April 21, 2023, civil appeal challenged the Eastern District of New York's award of summary judgment to a plaintiff seeking discharge of a mortgage. On October 17, New York's attorney general moved to intervene in defense of New York's Foreclosure Abuse Prevention Act. She filed a merits brief on October 31. On the following day, a motion judge granted intervention. On October 1, 2024, the court certified a question of state law to New York's court of appeals regarding the act's retroactivity. The case otherwise remains pending.

Jules v. Andre Balazas Properties, 23-cv-1253 and 23-cv-1283
(intervention category: other)

A plaintiff's civil appeal filed on September 15, 2023, and the plaintiff's attorney's

appeal filed on the following day challenged a Southern District of New York decision confirming an arbitration award. The arbitration respondent, who was not named in the plaintiff's complaint, moved on July 10, 2024, to intervene in the appeals. A three-judge panel granted intervention on November 15. On April 25, 2025, the court affirmed the confirmation.

Intervention Denied

Upsolve v. James, 22-cv-1345

(intervention category: pro se)

On June 22, 2022, New York's attorney general appealed from the Southern District of New York's preliminary injunction allowing nonlawyers to provide free assistance to low-income clients facing debt defaults. According to the attorney general's opposition to a July 29, 2022, intervention motion, the pro se movant was a disbarred attorney who was denied intervention in the district court's case. A motion judge denied intervention, and later a three-judge panel denied reconsideration. The court subsequently denied a motion for the merits panel to revisit the intervention denial and then later denied the movant's several additional intervention motions. Also in the case, a debtor filed a pro se motion to intervene in support of the plaintiffs, which a motion judge denied. The appeal was heard on May 29, 2024.

Carroll v. Trump, 23-cv-793

(intervention category: pro se)

A May 11, 2023, civil appeal challenged a Southern District of New York judgment in favor of Jean Carroll against Donald Trump. A pro se motion to intervene filed on May 18 alleged concrete proof that the district court's jury interrogatory sheet "made absolutely no sense and was totally wrong and unconstitutional as a matter of law and fact." On June 6, a motion judge denied intervention. The court affirmed the district court's judgment on December 30, 2024.

Intervention Question Moot

Various Parties v. City of New York, 21-cv-2089, 21-cv-2091, and 21-cv-2237

(intervention category: other)

Two civil appeals filed on August 27, 2021, and one filed on September 16, 2021, challenged a Southern District of New York decision sealing parts of the court records in three related cases challenging stop-and-frisk practices by the New York City Police Department. On November 8, a motion judge consolidated the three appeals. Ten days later, a monitor appointed by the district court to oversee a remedial process moved to intervene in the appeals: "The Monitor is not and has never been a party in these Actions, but has participated in motion practice where appropriate to advance the Remedial Process." The court accepted stipulated dismissals of the appeals on January 7, 2022. In light of the stipulated dismissals, a three-judge panel denied intervention as moot on January 6.

Lamothe v. Moran, 21-cv-2295

(intervention category: pro se)

A pro se September 21, 2021, civil appeal challenged a District of Connecticut decision dismissing a pro se shareholder derivative action without prejudice to the pro se party's pursuing the case with an attorney. On March 29, 2022, another pro se party moved to intervene in the appeal as an additional plaintiff. On July 13, the court issued a summary affirmance and denied the intervention motion as moot. A defective motion to reconsider the intervention order was stricken for failure to cure a violation of the court's filing requirements.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from twenty-five to thirty-two days after case filings; they were granted in four sets of cases and never fully at issue in another case.

Intervention Granted

Various Petitioners v. U.S. Department of Energy, 20-ag-4256 and 20-ag-4285

Two December 29, 2020, petitions challenged a new rule regarding dishwasher run times: one petition by a collection of advocacy organizations and another petition by a collection of states and cities. On January 28, 2021, a pair of organizations promoting limited government, one of which had initiated the creation of the new rule, filed a motion to intervene. A motion judge consolidated the cases on February 10, agreeing to hold them in abeyance pending further review by the new administration. On May 6, 2024, a three-judge panel granted intervention, denying the intervenors' motion to dismiss the petitions as moot. The cases remain pending.

Various Petitioners v. National Highway Traffic Safety Administration, 21-ag-139, 21-ag-339, and 21-ag-593

A January 25, 2021, petition by two environmental organizations and a February 16, 2021, petition by fifteen states each challenged the partial reversal of a 2016 inflation adjustment to the civil penalty for violations of Corporate Average Fuel Economy standards. In the first case, an automaker moved to intervene on February 19, and an alliance of automakers moved to intervene on February 24. The automaker filed its own petition on February 29 in the Ninth Circuit, and that case was transferred to the Second Circuit on March 16. On April 6, a three-judge panel consolidated the three cases and granted the alliance's intervention motion. The panel denied the automaker's intervention motion as moot, because the automaker had become a petitioner in a consolidated case. On June 17, 2022, the court granted the petitioners' voluntary dismissals of their cases.

Riverkeeper v. FAA, 21-ag-2243

A September 20, 2021, petition challenged the environmental impact of a light-rail project serving LaGuardia Airport. The Port Authority of New York and New Jersey moved on October 21 to intervene in defense of the Federal Aviation

Administration's decision. A motion judge granted intervention five days later. On September 29, 2023, the court accepted a settlement of the case.

Cascades Containerboard Packaging—Niagara v. NLRB, 21-ag-2521 and 21-ag-2635

An employer's October 7, 2021, petition challenged a finding by the National Labor Relations Board of unfair labor practices. The Justice Department moved to intervene on November 8, because a complication in the case involved possibly improper presidential personnel actions. On November 23, a motion judge granted intervention in the employer's petition and the board's October 18 enforcement application. Another motion judge agreed on May 2, 2022, to hold the cases in abeyance pending settlement negotiations. The court granted a stipulated dismissal on September 20.

Intervention Question Moot

New York v. Department of Energy, 21-ag-602

A March 16, 2021, petition challenged new regulations of furnaces and water heaters. On March 24, a motion judge agreed to hold the case in abeyance pending further review by the new administration. One of the entities that sought the new regulatory rule moved to intervene in the case on April 12. Other entities that sought the regulatory change moved to intervene one and two days later. The case remains in abeyance pending resolution of a case in the District of Columbia Circuit.

Third Circuit

"[O]rdinarily a single judge will not entertain and grant or deny . . . a motion for leave to intervene." 3d Cir. R. 27.0.

In civil appeals from district-court cases with an intervenor who was not the party to bring the appeal, the court issues an order such as the following that the intervenor clarify whether it wishes to participate in the appeal:

During the district-court proceedings, ____ participated as an intervenor. ____ is directed to advise this Court within fourteen (14) days of the date of this order if it will participate in the appeal and, if so, what party it will support. If the District wishes to participate in the appeal and file a separate brief, the brief will be due on the same day as the party it is supporting. ____ and the party it is supporting are encouraged to consult with one another regarding the contents of their briefs as the Court disfavors repetitive briefs. ____ may join in or adopt portions by reference *See* Fed. R. App. P. 28(i). Failure to respond to this order will be deemed a notice of non-participation and ____ will not be permitted to file a brief.

There were 7,477 cases in our filing cohort. Seven case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Seven case summaries cover all civil cases with intervention motions, filed from five

to 363 days after case filings. Intervention was granted in two sets of cases, denied in three sets, and never fully at issue in two cases.

Intervention Granted

In re Boy Scouts of America, 23-cv-1664, 23-cv-1665, 23-cv-1666, 23-cv-1667, 23-cv-1668, 23-cv-1669, 23-cv-1670, 23-cv-1671, 23-cv-1672, 23-cv-1673, 23-cv-1674, 23-cv-1675, 23-cv-1676, 23-cv-1677, 23-cv-1678, and 23-cv-1780
(intervention category: bankruptcy, creditor, receiver)

Sixteen civil appeals filed on April 10, 11, and 12 and May 1, 2023, challenged a district judge's decision that affirmed a District of Delaware bankruptcy confirmation order resolving sexual-abuse claims against the Boy Scouts of America. The settlement trust, which was not a party in the bankruptcy-court or district-court proceedings, moved on October 17 for permission to file responses to stay motions pending before the court of appeals. On the following day, the clerk of court referred the participation motion to the panel deciding the stay motions. A two-judge motion panel granted the participation motion and denied the stay motions on November 2. The trust filed a declaration and a supplemental declaration on December 1, 2023. On May 13, 2025, the court of appeals decided that a few insurers' appeals had merit for impermissible release of their claims. 137 F.4th 126.

Conner v. Fox Rehabilitation Services, 23-cv-1684
(intervention category: constitutionality)

An April 13, 2023, appeal by a civil defendant challenged an Eastern District of Pennsylvania bench-trial decision in favor of the plaintiff in a case concerning illegal junk faxes. On March 28, 2024, the clerk of court certified to the U.S. attorney general that the constitutionality of a federal statute had been questioned in the briefing, inviting the government to intervene in the appeal within fourteen days. The government's attorney filed a notice of appearance on April 10. The government filed a brief opposing the appeal on May 13. On January 24, 2025, the court of appeals affirmed the district court's decision.

Intervention Denied

Lora v. Baylor, 20-cv-3297
(intervention category: pro se)

A November 12, 2020, pro se civil appeal challenged the Middle District of Pennsylvania's dismissal of eight plaintiffs' pro se action challenging pretrial detention. A January 14, 2021, handwritten letter requested joinder as a plaintiff; the letter was signed by one plaintiff and six others. On the following day, the clerk of court issued an order: "To the extent the non-parties wish to move to intervene in this appeal, they must file separate motions to intervene personally signed by each individual." On March 17, a motion judge denied a dozen pro se motions to intervene. A three-judge panel denied additional pro se intervention motions on May 14. On July 19, the three-judge merits panel denied additional intervention motions in its opinion remanding the case to the district court for reevaluation.

In re Truong, 21-cv-1171 and 21-cv-1172

(intervention category: bankruptcy, creditor, receiver)

Two civil appeals filed on February 2, 2021, challenged a District of New Jersey decision in a bankruptcy appeal. A pro se motion to intervene by an alleged creditor was filed on March 16. The court affirmed the district court's decision on August 5, denying the intervention motion in a footnote.

Anand v. Independence Blue Cross, 21-cv-2679

(intervention category: pro se)

A September 9, 2021, pro se civil appeal challenged the Eastern District of Pennsylvania's dismissal with prejudice of the appellant's pro se amended complaint for failure to comply with Federal Rule of Civil Procedure 8's requirement of short and plain statements of the claims. Another person filed a pro se motion to intervene in the appeal on December 8. Her motion to intervene in the district-court case had been denied as incomprehensible. On January 11, 2022, the clerk of court referred the intervention motion to a motion panel. A motion judge denied intervention in the court of appeals on January 14. On March 2, a three-judge panel denied a February 9 motion to reconsider. Granting the appellant some relief, the court of appeals ruled on June 29 that the "complaints provided fair notice of at least some of his claims and thus were not subject to dismissal in their entirety for failure to comply with Rule 8."

Intervention Question Moot

Doe v. Upper Saint Clair School District, 22-cv-1141

(intervention category: other)

A January 23, 2022, interlocutory civil appeal challenged the Western District of Pennsylvania's denial of a temporary restraining order in a pseudonymous class action that challenged a school district's decision to make wearing face masks optional. A collection of parents who opposed the complaint filed a motion to intervene in the district court three days after the appeal was filed. Two days after that, they filed a motion to intervene in the appeal. On February 25, the court of appeals instructed the parties to advise the court whether the case had become moot "[g]iven that Plaintiffs seek mandatory masking for as long as the [Covid-19] risk level is classified as 'substantial' or 'high,' and Allegheny County is now classified in the 'low' category." On March 1, the court of appeals dismissed its case as moot and ordered the district court to dismiss as moot its case without prejudice. Pending motions before the court of appeals were dismissed as moot as well.

In re Atiyeh, 22-cv-1848

(intervention category: bankruptcy, creditor, receiver)

A May 3, 2022, pro se civil appeal challenged the Eastern District of Pennsylvania's affirming the dismissal of a bankruptcy case with prejudice and barring bankruptcy filing for three years without leave of court. On May 25, a school district filed a motion to intervene in the appeal to challenge a motion to reinstate the automatic stay so that a sheriff's sale for delinquent school property taxes could proceed. On

the following day, a three-judge panel denied the motion to reinstate the stay and therefore denied the intervention motion as moot. On November 30, the court of appeals affirmed the district court's decision.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from eight to thirty-two days after case filings; they were granted in four sets of cases and denied in one case.

Intervention Granted

Jacobs Project Management v. Department of the Interior, 22-ag-1147

An employer's January 24, 2022, petition challenged an inspector-general report by the Department of the Interior concerning employment termination allegedly related to reporting mismanagement and waste on Ellis Island. Beginning on February 1, the employee made several pro se court filings. On February 28, the employer wrote to the court asking the court not to regard the employee as a party in the case. On March 2, the respondent department informed the court that it would have no objection to the employee's participation in the case, noting that it was clear that he was a real party in interest. On April 8, the clerk referred to a motion panel the questions of whether the employee should remain in the case as a respondent or be included in the case as an intervenor. A two-judge panel decided on May 2 that the employee could intervene as a respondent. On April 3, 2023, the court denied the petition. 64 F.4th 123.

Trenton Threatened Skies v. FAA, 22-ag-1965

A May 19, 2022, petition challenged the Federal Aviation Administration's approval of an improvement project for Trenton Mercer Airport. Mercer County, the airport's owner, moved to intervene on June 17. The clerk of court granted the motion on July 13. The court denied the petition on January 4, 2024. 90 F.4th 122.

PG Publishing v. NLRB, 22-ag-2774 and 22-nlr-2868

An employer's September 21, 2022, petition challenged the National Labor Relations Board's finding that two employees' layoffs were unlawful. The board filed an enforcement action on October 5. The employees' union moved to intervene in the employer's petition case on October 19. The clerk of court granted the motion on October 25. The court remanded the case to the board for further findings on September 26, 2023. 83 F.4th 200.

Two Petitioners v. EPA, 22-ag-3026 and 22-ag-3039

Two power companies filed petitions on October 27 and 28, 2022, challenging an Environmental Protection Agency rule on emissions from coal-fired electricity plants in Pennsylvania. The court consolidated the cases on November 1. On November 21, Pennsylvania's Department of Environmental Protection moved to intervene as a petitioner in the two cases. An environmental organization moved to intervene in support of the agency on November 23, and a power company moved

to intervene in support of the agency on November 28. The clerk of court granted the more recent intervention motions on December 7. On the following day, a motion judge granted intervention to Pennsylvania. On May 2, 2024, the court denied the petitions. 100 F.4th 434.

Intervention Denied

Port Hamilton Refining and Transportation v. EPA, 23-ag-1094

A refinery's January 13, 2023, petition challenged the Environmental Protection Agency's decision requiring the refinery to undergo a permit process before undertaking a construction project. A previous owner of the refinery operating an adjacent petroleum-storage business moved to intervene on February 10. A group of environmental organizations moved to intervene on February 13. The clerk of court denied intervention on March 29, "but the movants are invited to participate as amici curiae." On July 25, the court vacated the agency's decision. 75 F.4th 166, *amended*, 87 F.4th 188 (2023). A motion for attorney fees is pending.

Fourth Circuit

"[A]n appellate tribunal is generally not the proper place for a litigant to commence its participation in a case" *United States v. Under Seal*, 853 F.3d 706, 721 (4th Cir. 2017). "Although the Federal Rules of Civil Procedure contain detailed provisions governing intervention in civil cases in federal district court, those rules do not apply in this Court." *Ass'n for Educ. Fairness v. Montgomery County*, 88 F.4th 495, 498 (4th Cir. 2023) (citations omitted). Resolution of motions to a motion to intervene on appeal is committed to the appellate court's discretion. *Id.*

There were 12,236 cases in our filing cohort. One case summary covers the single civil appeal with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Case

One case summary covers the one civil case with an intervention motion, filed forty-one days after the case was filed. Intervention was denied.

Intervention Denied

Association for Education Fairness v. Montgomery County Board of Education, 23-cv.pri-1068

(intervention category: other)

A January 20, 2023, civil appeal challenged the District of Maryland's dismissal of a suit claiming racial discrimination in public schools and denials of intervention motions by civil-rights organizations as moot. On March 2, the organizations moved to intervene in the appeal. On December 8, a three-judge panel denied intervention without prejudice in a published opinion. 88 F.4th 495.

We take all involved to agree on two points. First, those seeking to force their way into lawsuits between others generally must do so while the case is pending before a trial court rather than waiting to do so on appeal. Second, because a district

court's decision denying intervention is reviewed only for an abuse of discretion, appellate courts must police against attempts to evade that deferential standard by declining to seek review of an adverse district court decision and then filing a fresh motion to intervene on appeal.

88 F.4th at 499 (citations omitted). The court concluded that the would-be intervenors' arguments would be adequately presented by the appellee school board, and the would-be intervenors could present their arguments as amici curiae, which they did. The case remains pending.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from one to thirty days after case filings; they were granted in all five sets of cases.

Intervention Granted

Appalachian Voices v. Department of the Interior, 20-rvw-2159

An October 27, 2020, petition by several environmental organizations challenged a government decision regarding a natural-gas pipeline. The pipeline moved to intervene on the following day. On the third day, the clerk of court issued an order for the court granting intervention. On February 3, 2022, the court agreed that the agency failed to adequately consider the pipeline's environmental context while analyzing impacts to two species of endangered fish. 25 F.4th 259. A motion for attorney fees is pending.

Various Petitioners v. EPA, 20-rvw-2187 and 20-rvw-2244

A November 2, 2020, petition challenged an environmental regulation covering steam electric power. On November 19, the Judicial Panel on Multidistrict Litigation selected the Fourth Circuit at random for the consolidation of two petitions, including a petition filed in the District of Columbia Circuit. Operators of steam power moved to intervene in support of the rule on December 2. Also on December 2, an organization whose members belonged to the regulated industry moved to intervene. The clerk of court issued an order on December 3 granting both intervention motions. The cases are held in abeyance pending related litigation in the Eighth Circuit.

Sinai Hospital of Baltimore v. NLRB, 21-rvw-1642 and 21-enf-1683

An employer's June 2, 2021, petition challenged a decision by the National Labor Relations Board. The board filed an application for enforcement on June 16. The court consolidated the cases that day. Stating that the board's decision held that the employer failed to bargain collectively with a union, the union moved to intervene in the cases on July 2. On July 13, the clerk of court issued an order granting intervention. On May 10, 2022, the court granted enforcement of the bargaining order. 33 F.4th 715.

Bardon v. NLRB, 22-rvw-1340 and 22-enf-1421

A March 30, 2022, petition challenged the National Labor Relations Board's

decision that the petitioner discouraged union activities. A union's motion to intervene was filed on April 13 and granted on the following day. The board filed an enforcement action on April 20, and the court consolidated the two cases that day. On January 8, 2024, the court ruled in favor of the board.

Various Petitioners v. FCC, 22-rvw-2220 and 23-rvw-1096

An electric utility's November 28, 2022, petition challenged a decision made by the Federal Communications Commission in a dispute over rates that the electric utility charged a telecommunication company for using the electric utility's poles. The telecommunication company moved to intervene on December 28. On the following day, the clerk of court issued an order granting intervention. On January 30, 2023, the court consolidated the case with a petition by the telecommunication company transferred from the District of Columbia Circuit. The electric utility had moved to intervene in the District of Columbia Circuit on January 23, and the Fourth Circuit's clerk issued an order on January 30 granting intervention. The cases were dismissed as settled on January 8, 2024.

Fifth Circuit

Fifth Circuit Rule 27.2.2 includes motions to intervene among those that can be decided by a single judge. "A party to a [Federal Energy Regulatory Commission] proceeding may intervene in a review of the proceeding in this court by filing a notice of intervention." 5th Cir. R. 15.3.3(a).

"[I]ntervention on appeal is reserved for exceptional cases" *Richardson v. Flores*, 979 F.3d 1102, 1103 (5th Cir. 2020). "A court of appeals may, but only in an exceptional case for imperative reasons, permit intervention where none was sought in the district court." *McKenna v. Pan Am. Petroleum Corp.*, 303 F.2d 778, 779 (5th Cir. 1962).

For agency cases, the Federal Rules of Appellate Procedure provide "no standard for resolving intervention questions, but the Court has identified two considerations: first, the statutory design of the act and second, the policies underlying intervention in the trial courts pursuant to Fed. R. Civ. P. 24." *Texas v. U.S. Dep't of Energy*, 754 F.2d 550, 551 (5th Cir. 1985) (decision by a motion judge).

There were 17,280 cases in our filing cohort. Five case summaries cover the civil appeals with intervention activity, and one case summary covers the criminal case with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Five case summaries cover all civil cases with intervention motions, filed from two to forty-eight days after case filings.¹⁴ Intervention was granted in one case, denied in three sets of cases, and never fully at issue in one case.

14. Intervention was sought in a sixth case within a year of filing, but after the court issued its judgment: *NetChoice v. Paxton*, 21-pcf-51178, page 68.

Intervention Granted

Caballero v. Rosneft Trading, 23-pcf-20115

(intervention category: bankruptcy, creditor, receiver)

A plaintiff garnisher's March 24, 2023, civil appeal challenged the Southern District of Texas's vacating state-court writs of garnishment. The garnishee removed the underlying action on January 15, 2021. On January 6, 2023, the district court granted a third-party respondent judgment on the pleadings. The plaintiff had received from the state court an ex parte decision that the third party was an instrumentality of Fuerzas Armadas Revolucionarias de Columbia, known as FARC, against which the plaintiff had obtained a default antiterrorism judgment of more than \$46 million in the Southern District of Florida. The Southern District of Texas judge found the ex parte decision to be a violation of due process. On April 24, 2023, the garnishee, a third-party petitioner in the district court, moved to intervene in the appeal, stating that the circuit clerk advised the garnishee's attorney that the garnishee was not a party to the appeal. A motion judge granted intervention two days later. The plaintiff voluntarily dismissed the appeal on July 6, stating that it was succeeding in obtaining assets at issue elsewhere.

Intervention Denied

In re Civelli, 20-op-20659

(intervention category: other)

A December 21, 2020, petition for a writ of mandamus challenged a Southern District of Texas discovery order as violating the plaintiffs' attorney-client privilege and work-product protection. District-court defendants moved to intervene in the writ action on December 23. In an order entered at the direction of the court five days later, the appellate clerk of court denied intervention but permitted participation as amici curiae. The clerk issued a one-sentence order denying the writ on March 22, 2021.

Campaign Legal Center v. Scott, 22-cr-50692

(intervention category: constitutionality)

Texas's August 8, 2022, civil appeal by its secretary of state challenged a Western District of Texas injunction requiring him to provide the plaintiffs with voter-registration records as required by the National Voter Registration Act. The court granted the secretary an administrative stay on August 12 and set the case for hearing on August 30. On August 24, the government filed a notice of intervention to defend the constitutionality of the act. On the following day, the clerk of court entered an order at the direction of the court denying intervention "because the United States expressly declined to intervene in the district court, but the Court GRANTS the filing of the United States's brief as amicus curiae." On August 29, the government sought reconsideration, arguing that the district judge could rule before the government decided whether to intervene because the district judge did not rule the act unconstitutional. On September 29, the court reversed the district court's injunction and held that the plaintiffs lacked standing to seek that relief, also ruling that the government's intervention was unnecessary. 49 F.4th 931.

SEC v. Barton, 22-usc-11132, 22-usc-11226, 22-usc-11242, and 23-usc-10515

(intervention category: bankruptcy, creditor, receiver)

A November 18, 2022, civil appeal challenged the Northern District of Texas's appointment of a receiver. A December 22 appeal challenged the receiver's sale of property. The receiver moved to intervene in the two appeals on January 5 and 20, 2023. A motion judge denied intervention in the first case on January 6 but permitted the receiver to participate as an amicus curiae. The judge denied intervention in the second case on January 25 but permitted the receiver to file a dismissal motion as an amicus curiae. On June 28, the court remanded the first case to the district court for reconsideration, conditionally vacating the receivership in ninety days should the district court not again appoint a receiver. 72 F.4th 640. On August 31, the court denied rehearing and issued a substitute opinion with the same holding. 79 F.4th 573. The court dismissed the second appeal as moot on September 1.

A third appeal filed on December 28, 2022, and a fourth appeal filed on May 18, 2023, challenged receiver activity. The receiver moved to intervene in the third case on February 13. On the following day, the motion judge denied intervention but permitted the receiver to file a dismissal action as an amicus curiae. On May 22, the receiver moved in the fourth case to intervene and for dismissal of the appeal as beyond the court's jurisdiction. A three-judge panel denied intervention on May 25 "without prejudice to Movant's right to properly file an amicus brief if he so chooses." The court granted dismissal in the fourth case on July 17 and denied reconsideration on October 12. The court dismissed the third appeal on March 13, 2024, as moot in light of "the shifting landscape of the underlying litigation."

Intervention Question Moot

Missouri v. Biden, 23-usc-30445

(intervention category: pro se)

The government's July 6, 2023, civil appeal challenged a Western District of Louisiana injunction against government communication with social-media companies intended to suppress speech. A pro se August 7 submission included a heading "Motion to Intervene" after citations to the appeal and several other high-profile cases. The court docketed the submission, "No action will be taken at this time on the Motion to Intervene . . . because the motion to intervene is insufficient." On October 3, the court of appeals modified the injunction. 83 F.4th 350. On June 26, 2024, the Supreme Court ruled that the plaintiffs in the case did not have standing to pursue the injunction. 603 U.S. ___, 144 S. Ct. 1972. So on August 26, the court of appeals vacated the injunction. 114 F.4th 406.

Criminal Case

One case summary covers the one criminal case with intervention activity. Intervention was granted in the case.

Intervention Granted

United States v. deBerardinis, 21-ncrim-30282

A May 26, 2021, appeal by criminal defense attorneys and their law firm challenged the Western District of Louisiana’s denial of a motion to withdraw as counsel following the court’s disqualification of one of the attorneys for being a potential witness in the case. Co-counsel with the law firm moved on July 14 to intervene to represent his and the defendant’s interests. A motion judge granted intervention on the following day. The appellants voluntarily dismissed their case on August 2.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from thirteen to 290 days after case filings; they were granted in three sets of cases, denied in one case, and never fully at issue in another case.

Intervention Granted

Gulfport Energy v. FERC, 21-ag-60016, 21-ag-60017, 21-ag-60020, and 21-ag-60201

Two January 11, 2021, petitions challenged Federal Energy Regulatory Commission orders granting declaratory requests—should the petitioner file for bankruptcy protection—by natural-gas companies, three in one case and one in the other. The three natural-gas companies filed a notice of intervention in the first case on January 28. On March 12, the petitioner filed two related petitions concerning commission orders granted to an additional pipeline company and to the three companies at issue in the first petition. The pipeline company at issue in the third case filed a notice of intervention on March 25. On April 5, the court granted the petitioner’s motion to consolidate the four cases. The three intervenors in the first case submitted a notice of intervention in the fourth case, but the court rejected the notice for filing, instructing the companies to file it in the first case, a case in which the companies already had noticed intervention. On October 14, the petitioner voluntarily dismissed the first and fourth cases, the ones against the set of three companies. On July 19, 2022, the court vacated the commission orders still at issue: bankruptcy debtors “may ‘reject’ regulated energy contracts even if the Federal Energy Regulatory Commission (‘FERC’) would not like them to.” 41 F.4th 667, 671.

United Natural Foods v. NLRB, 21-ag-60532

A July 2, 2021, petition challenged a National Labor Relations Board order. On July 30, two unions sought intervention in support of the board as the charged parties before the board. A motion judge granted intervention on August 6. On April 24, 2023, the court denied the petition. 66 F.4th 536. On July 2, 2024, the Supreme Court vacated the ruling and remanded the case for reconsideration in light of its decision that day in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244, holding that courts need not, and under the Administrative Procedure Act

may not, defer to an agency's interpretation of the law simply because a statute is ambiguous. On May 28, 2025, the court of appeals again denied the petition. 138 F.4th 937.

Various Refinery Companies v. EPA, 22-ag-60266, 22-ag-60425, 22-ag-60433, and 22-ag-60434

Petitions filed on May 3 and August 2, 2022, plus another two filed on August 4, challenged the Environmental Protection Agency's denial of the petitioners small-refinery hardship relief. Organizations involved in renewable fuels moved to intervene on February 17, 2023, in support of the agency's decision. Concluding that intervention complied with the court's liberal application of Federal Rule of Civil Procedure 24(a)(2), a motion judge granted intervention on March 16. The court of appeals vacated the agency's rulings on November 22. 86 F.4th 1121. On June 18, 2025, the Supreme Court determined that the case belonged in the District of Columbia Circuit. 605 U.S. ___, 145 S. Ct. 1735.

Intervention Denied

Various States v. EPA, 23-ag-60069

Texas's February 14, 2023, petition challenged the Environmental Protection Agency's disapproving a Texas air-quality implementation plan. Environmental organizations moved to intervene on March 27. Mississippi and Louisiana joined the case as petitioners on March 16 and 20, respectively. On March 27, the organizations moved to file a response motion in opposition to a stay motion, but the court rejected the motion, stating that the organizations' intervention motion had been denied, although the denial was not issued by the court's motion judge until April 19. A June 5 motion for reconsideration was denied by a three-judge panel on June 9. On March 25, 2025, the court denied the petitions by Texas and Louisiana and granted the petition by Mississippi. 132 F.4th 808.

Intervention Question Moot

Chesapeake Energy Marketing v. FERC, 20-ag-60970

(intervention category: bankruptcy, creditor, receiver)

An October 22, 2020, petition challenged the Federal Energy Regulatory Commission's declaratory order, issued to a natural-gas company, retaining the commission's joint jurisdiction with the bankruptcy court over contracts with the petitioner should the petitioner receive bankruptcy protection. The party that obtained the declaratory order filed a notice of intervention in the appellate case on November 11. The petitioner voluntarily dismissed the case on March 10, 2021.

Sixth Circuit

In the Sixth Circuit, the clerk of court may decide procedural motions. 6th Cir. R. 45(a)(1).

In an agency appeal, where the agency is the respondent, parties to the agency proceeding may move to intervene. *Am. Nuclear Resources v. U.S. Dep't of Labor*, 134 F.3d 1292, 1294 n.2 (6th Cir. 1998).

There were 11,112 cases in our filing cohort. Eleven case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Eleven case summaries cover all civil cases with intervention motions, filed from eight to 282 days after case filings.¹⁵ Intervention was granted in seven sets of cases, denied in three sets, and never fully at issue in one case.

Intervention Granted

Lindenbaum v. Realgy, 20-cv-4252

(intervention category: constitutionality)

A November 30, 2020, civil appeal challenged the Northern District of Ohio's dismissal of a class action against unwanted robocalls. Because the constitutionality of a federal statute was at issue, the government moved on December 15 for sixty days to decide whether to seek intervention, a motion that a case manager granted on the following day. The government moved to intervene on February 11, 2021, and filed a brief on February 16. The case manager granted intervention on February 19. On September 9, the court reversed the district court's dismissal. 13 F.4th 524.

Jackson v. General Electric, 21-cv-3226

(intervention category: other)

A March 10, 2021, civil appeal by the plaintiff's attorneys challenged the Southern District of Ohio's denial of the defendant's motion to enforce a settlement agreement in an employment-discrimination case. The case had been conditionally dismissed with prejudice, and although the plaintiff herself apparently refused to sign the settlement agreement, the deadline for reopening the case had expired. The plaintiff moved to intervene in the appeal on December 17, and the clerk of court granted intervention on January 10, 2022. The plaintiff was the appellee in a related appeal by the defendant employer (21-3237). On July 5, the court of appeals affirmed denial of the enforcement motion.

Newell v. Foley, 22-pr-3912

(intervention category: other)

A pro se October 28, 2022, civil appeal challenged the Northern District of Ohio's dismissal of a prisoner petition. The prisoner's complaint was dismissed before service on the defendant, so Ohio moved to intervene in the appeal as an interested party on November 14. The clerk granted intervention four days later. The court affirmed dismissal of the complaint on June 8, 2023.

¹⁵ Intervention was sought in a twelfth case within a year of filing but after the case was heard: *Hall v. Meisner, 21-cv-1700*, page 62.

Tennessee v. Department of Education, 22-cv-5807

(intervention category: other)

A September 13, 2022, civil appeal challenged a July 15 Eastern District of Tennessee preliminary injunction against federal education policies in conflict with state laws regarding sexual orientation and gender identity. On September 14, the district court granted intervention to an association of Christian schools and to three minor female athletes claiming unfairness if they were required to compete against transgender girls. On September 21, the association and one of the female athletes moved to intervene in the appeal as well. The clerk granted intervention on October 6. The association and the athlete filed their appellee brief on January 24, 2023. Over a dissent, the court of appeals affirmed the preliminary injunction on June 14, 2024. 104 F.4th 577.

Brokerarte Capital Partners v. Detroit Institute of Arts, 23-cv-1062

(intervention category: constitutionality)

A January 24, 2023, civil appeal challenged an Eastern District of Michigan decision denying relief to an alleged owner of a Van Gogh painting on temporary display at the defendant's museum. Issuing an injunction on appeal on February 6, a three-judge panel of the court of appeals observed that the government would be entitled to intervene in support of federal law protecting public exhibition of art. The government sought intervention on March 7 and filed an appellee brief that day. The clerk granted intervention on March 28. The three-judge panel granted a voluntary dismissal of the appeal on April 10 following a confidential agreement between the plaintiff and the party who lent the painting to the museum.

Various Parties, 23-cv-5447, 23-cv-5451, 23-cv-5453, 23-cv-5454, and 23-cv-5455

(intervention category: other)

On May 15 and 16, 2023, two civil defendants appealed the plaintiffs' court-approved voluntary dismissals of five Western District of Kentucky civil actions as settled by the defendants' insurer. Settling defendants moved to consolidate the appeals on June 16. On June 20, the insurer moved to intervene in the five cases. The clerk consolidated the cases on July 17, and a three-judge panel granted the insurer intervention on September 29. The insurer filed its brief on November 3. A merits panel affirmed the district court's dismissals on February 29, 2024.

Friends of George's v. Mulroy, 23-cv-5611

(intervention category: other)

A June 30, 2023, civil appeal challenged the Western District of Tennessee's holding unconstitutional a Tennessee statute criminalizing adult cabaret entertainment that could be viewed by a minor. A drag performer and an organization promoting LGBTQ+ interests moved to intervene on September 8. A three-judge motion panel granted permissive intervention on September 15. The intervenors filed a brief on October 23. On July 18, 2024, the court determined that the plaintiffs in the case did not have standing to pursue it. 108 F.4th 431. On September 5, the panel denied the intervenors' August 21 motion to respond to a petition for rehearing en banc. The court denied rehearing on September 20.

Intervention Denied

Donaldson v. Lyon, 20-cv-2006

(intervention category: other)

A pro se October 15, 2020, civil appeal challenged the Eastern District of Michigan's abstention in litigation in parallel with state litigation over medical reimbursement. The plaintiff attempted to add a second plaintiff in an amended complaint, but the second plaintiff did not sign it. The district court ruled that the original pro se plaintiff could not represent another plaintiff. The second plaintiff's daughter moved to substitute herself for her mother, who had died after the amended complaint was attempted, and the court ruled that the daughter could not substitute for someone who never became a party to the case. The daughter filed a pro se appeal (20-2055), and she filed a pro se motion to intervene on March 4, 2021, in the original plaintiff's appeal. On December 1, a three-judge panel issued a three-page opinion denying intervention; because the daughter was never a party in the district-court case, she did not have an interest in the abstention appeal. The panel denied reconsideration on January 21, 2022. On February 9, 2024, a merits panel dismissed the appeal for lack of jurisdiction; abstention had become moot because the state-court proceedings had concluded.

In re Veolia North America, 21-perm-103 and 21-cv-1530

(intervention category: pro se)

A March 26, 2021, petition challenged class certification in Eastern District of Michigan litigation over the Flint water crisis. On August 31, a Flint resident moved pro se to intervene in the appeal. Over a dissent on January 24, 2022, the court denied permission for the interlocutory appeal. The three-judge panel resolving the petition also denied intervention.

On May 26, 2021, the Flint resident appealed from the district court's dismissal of his pro se complaint. On August 28, he filed a motion that another person be permitted to intervene. The court affirmed dismissal of the complaint on March 29, 2022, and denied the intervention motion.

Grae v. Corrections Corporation of America, 22-cv-5312

(intervention category: sealing)

A plaintiff in a Middle District of Tennessee wrongful-death action against a private prison sought intervention in a closed class action against the prison to unseal filings in the earlier case. The district court denied intervention, although the defendant agreed to the unsealing of some filings. On August 17, 2022, the day that the plaintiff moved to voluntarily dismiss her April 15 appeal as settled, another person with the same lawyer moved to intervene and pursue the appeal instead. On January 13, 2023, the court denied intervention and dismissed the appeal. 57 F.4th 567. The proposed intervenor lacked standing to step in as appellant, because he had no personal need for the sealed documents.

Intervention Question Moot

Bell v. Washington, 22-pr-2132

(intervention category: pro se)

A pro se December 20, 2022, civil appeal challenged the Eastern District of Michigan’s dismissal of an action against prison officials. Three prisoners filed motions to intervene in the appeal on August 4, 2023, and two of them filed amended motions on September 11. The court affirmed dismissal of the complaint on September 29. The decision denied the pro se appellant “equitable relief for leave to purchase a laptop and accessories and to efile pleadings.” His motion for equitable relief failed

because he did not show that he would likely prevail on the merits on appeal. Consequently, the related motions for leave to file amici briefs and to intervene are moot. In any event, the motions to intervene fail to identify “a claim or defense that shares with the main action a common question of law or fact.”

2023 WL 6438597.

Criminal Cases

Two case summaries cover all criminal cases with intervention motions, filed from seventeen to twenty-six days after case filings. Intervention was denied in one set of cases and never fully at issue in another case.

Intervention Denied

United States v. Petlechkov, 22-cr-6043 and 22-cr-6044

Two December 2, 2022, pro se appeals challenged a Western District of Tennessee forfeiture decision against a criminal defendant. A December 28 pro se motion sought intervention in the appeals by a third party claiming an interest in forfeited property. Acknowledging a government representation that the appellant may have been the one actually behind the intervention motion, the clerk of court denied intervention on January 31, 2023, as forbidden by statute as an avenue for a third party to challenge forfeiture, citing U.S.C. § 853(k). The court of appeals gave the appellant partial relief on June 28. 72 F.4th 699.

Intervention Question Moot

United States v. Adelakun, 22-cr-1220

A March 18, 2022, pro se criminal appeal challenged the Eastern District of Michigan’s denial of a third party’s pro se miscellaneous action to consolidate and vacate a criminal complaint and search warrant against the appellant and a forfeiture action against the third party. On April 4, the appellant filed a motion to consolidate three of his appeals and for the third party to intervene. On July 21, the court of appeals determined that the appeal was not taken from an appealable order.

Agency Cases

The following five case summaries include agency appeals selected at random.

Intervention motions were filed from one to eighty-five days after case filings; they were granted in all five sets of cases.

Intervention Granted

NLRB v. McLaren Macomb, 23-nlr-1335 and 23-nlr-1403

The National Labor Relations Board's April 12, 2023, application sought enforcement of a decision that severance agreements were unlawful. The employer filed a petition challenging the board's decision on May 3. A union filed motions to intervene in the two cases on May 8, and the clerk granted intervention on May 15. The court affirmed the board's ruling on September 19, 2024.

Various Petitioners v. Department of Labor, 20-ag-4342, 21-ag-3017, and 21-ag-3282

An employer's December 31, 2020, petition challenged a Department of Labor decision in a whistleblower action. The estate of the original complainant moved to intervene on March 26, 2021. The estate also moved for consolidation of the case with its January 5, 2021, petition challenging the denial of punitive damages. On February 4, the employer moved to intervene in the second case. The employer filed another petition on March 24 challenging an award of attorney fees, and the estate moved to intervene on March 26. On March 29, the estate moved to consolidate the three cases. On April 13, the clerk granted consolidation and intervention. The court denied all three petitions on May 24, 2023. 68 F.4th 1030.

Various Petitioners v. FERC, 21-ag-4072, 22-ag-3351, 23-ag-3196, 23-ag-3324, 23-ag-3366, and 23-ag-3417

On November 16, 2021, four Ohio power companies filed a petition challenging the Federal Energy Regulatory Commission's ruling that denied a basis-point adjustment to a return on equity as incentive for participation in a regional transmission organization. Ohio's Federal Energy Advocate moved to intervene on December 2, and Ohio's Consumers' Counsel moved to intervene on December 15. The transmission organization also moved to intervene on December 15. The power companies filed a second petition on April 18, 2022, challenging the commission's denial of a rehearing. On May 4, the clerk of court granted the power companies' May 2 motion to consolidate the two petitions. On July 12, 2023, the clerk consolidated the cases with four additional petitions: two by one of the power companies filed on March 8 and April 26, 2023, and two by the consumers' counsel filed on April 17 and May 9. The clerk granted intervention to the following intervenors on August 9: Ohio's energy advocate in all six cases, Ohio's consumers' counsel in the four cases in which it was not the petitioner, some power companies in cases in which they were not the petitioner, the transmission organization in the second case, a group of investor-owned transmission owners in the last four cases, and an Ohio nonprofit generation-and-transmission cooperative in the last four cases. On January 17, 2025, the court held that power companies that voluntarily join a regional transmission organization can receive an incentive benefit that companies required by state law to do so may not, but the agency did not apply the

rule evenly among the power companies in the case. 126 F.4th 1107, *cert. pending*, U.S. Nos. 24-1304, 24-1318.

NLRB v. Starbucks, 23-nlr-1767

An August 24, 2023, National Labor Relations Board application sought enforcement of a wrongful-termination order. The employee's union moved to intervene on September 21, and the clerk granted intervention on October 5. The case was heard on October 31, 2024.

Quickway Transportation v. NLRB, 23-nlr-1780 and 23-nlr-1820

An August 28, 2023, petition challenged the National Labor Relations Board's decision finding wrongful cessation at an operational location and termination of employment there without union bargaining. A board application filed on September 7 sought enforcement of the order. The union sought intervention on September 27. The clerk granted intervention on October 4. The court ruled in favor of the board's order on September 11, 2024. 117 F.4th 789, *cert. denied*, 604 U.S. ___, 145 S. Ct. 1427 (2025).

Seventh Circuit

Although the Federal Rules of Appellate Procedure do not provide for intervention other than in cases involving review of certain administrative rulings, intervention is permitted in other cases as a matter of federal common law, with [Civil] Rule 24 supplying the standard for determining whether to permit intervention in a particular case.

Univ. of Notre Dame v. Sebelius, 743 F.3d 547, 558 (7th Cir. 2014), *rev'd on other grounds*, 575 U.S. 901 (2015).

And because Appellate Rule 15(d)'s provision for intervention in agency appeals does not provide standards for intervention, "appellate courts have turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24." *Sierra Club v. E.P.A.*, 358 F.3d 516, 517–18 (7th Cir. 2004). In an agency appeal, "[i]ntervention by the original victor places the private adversaries on equal terms." *Id.* at 518.¹⁶

There were 7,457 cases in our filing cohort. Five case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Five case summaries cover all civil cases with intervention motions, filed from zero to 282 days after case filings.¹⁷ Intervention was granted in three sets of cases and denied in three cases.

16. In agency appeals, interested parties can move to intervene. *Saban v. U.S. Dep't of Labor*, 509 F.3d 376, 379 (7th Cir. 2007) (dicta).

17. Intervention was sought in a sixth case within a year of filing but after the court issued its judgment: *Cook County v. Wolf*, 20-cv-3150, page 69.

Intervention Granted

Driftless Area Land Conservancy v. Huebsch, 20-cv-3325 and 20-cv-3365

(intervention category: other)

In defendants' interlocutory civil appeal, the court of appeals granted intervention to intervenors in the district court and denied the intervenors their own interlocutory appeal.

Conservation organizations' December 11, 2019, complaint filed in the Western District of Wisconsin challenged a public service commission's grant of a permit for an electricity transmission line. Developers who were granted the permit moved to intervene as defendants. Finding that the original defendants would adequately oppose the complaint, the district judge denied intervention, but the court of appeals decided that the developers were entitled to intervene. 969 F.3d 742 (2020). The district court denied dismissal motions on November 20, 2020. The original defendants and intervenors filed interlocutory appeals on December 1 and 4, respectively. Noting that the intervenors did not have the same rights of interlocutory appeal as the state defendants, a motion judge for the court of appeals issued an order to show cause why their appeal should not be dismissed for lack of jurisdiction. In addition to arguing that the court of appeals had jurisdiction over their interlocutory appeal, the developers moved to intervene in the original defendants' appeal on December 21. On January 6, 2021, the clerk issued an order for the court that dismissed the developers' appeal and allowed the developers to intervene in the original defendants' appeal. The appellants and the intervenors filed briefs on January 15, and they filed reply briefs on February 1. On October 21, the same panel that ordered the district court to grant intervention ruled that the district-court case should be stayed pending state litigation. 16 F.4th 508.

Bevis v. City of Naperville, 23-cv-1353

(intervention category: constitutionality)

A February 23, 2023, civil appeal challenged a Northern District of Illinois decision that denied a temporary restraining order and a preliminary injunction against a municipality's enforcement of a statute and an ordinance banning the sale of assault weapons. The district judge denied injunctive relief before the deadline for Illinois to intervene in defense of its statute. On March 2, a motion judge granted Illinois's February 23 appellate intervention motion. Illinois opposed a motion for an injunction pending appeal, later filed an appellee brief, and participated in oral argument. On November 3, the court concluded that civilian possession of assault weapons is not protected by the Second Amendment. 85 F.4th 1175, *cert. denied*, 603 U.S. ___, 144 S. Ct. 2491 (2024).

Schneider v. Schneider, 23-cv-1806

(intervention category: bankruptcy, creditor, receiver)

An April 27, 2023, civil appeal challenged a Western District of Wisconsin summary judgment granted in a family dispute over the operation of an automobile dealership. Following notification that the appellant dealership was in receivership, a motion judge invited the receiver to seek intervention, a July 21 motion that

another motion judge granted on August 2. Both the intervenor and the appellees moved for dismissal of the case. On October 3, a three-judge panel dismissed the dealership as a party: “only the receiver has authority to litigate in the company’s name.” The case was heard on December 6, 2024.

Intervention Denied

Starkey v. Roman Catholic Archdiocese of Indianapolis, 20-cv-3265

(intervention category: pro se)

A Catholic school’s November 20, 2020, appeal challenged a Southern District of Indiana decision declining to dismiss a lawsuit that alleged employment discrimination against a lesbian educator. On February 2, 2021, a motion judge denied a January 21 motion to intervene by a similar plaintiff in a separate action against the same defendants. “This denial is without prejudice to a motion for leave to file a brief as amicus curiae that meets this court’s standards for such a brief.” On July 21, the court dismissed the appeal as premature.

Pavlock v. Holcomb, 21-cv-1599

(intervention category: other)

An April 6, 2021, civil appeal by owners of beachfront property on Lake Michigan challenged the Northern District of Indiana’s rejection of a taking claim. 532 F. Supp. 3d 685 (2021). An Indiana statute codified a state supreme-court ruling that Indiana had exclusive title to the lake shore up to the ordinary high-water mark despite the plaintiffs’ apparent deed extending ownership to the water’s edge. A magistrate judge denied a conservation organization’s motion to intervene in the district court, 337 F.R.D. 173 (2020), and the district judge dismissed the action before ruling on a motion to review the magistrate judge’s decision. On June 9, 2021, a motion judge denied an April 29 intervention motion in the court of appeals “without prejudice to a motion for leave to file a brief as amicus curiae that meets this court’s standards for such a brief.” On May 25, 2022, the court affirmed the case’s dismissal, modifying the dismissal to be without prejudice. 35 F.4th 581, *cert. denied*, 598 U.S. ___, 143 S. Ct. 374 (2022).

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from seven to twenty-seven days after case filings;¹⁸ they were granted in all five sets of cases.

18. Excluded from this interval analysis are intervention motions filed in other circuits before the cases were transferred.

Intervention Granted

Various Petitioners v. FERC, 20-ag-3027, 20-ag-3028, 20-ag-3029, 20-ag-3030, 20-ag-3031, 20-ag-3032, 20-ag-3033, 20-ag-3034, 20-ag-3035, 20-ag-3036, 20-ag-3037, 20-ag-3038, 20-ag-3039, 20-ag-3040, 20-ag-3041, 20-ag-3042, 20-ag-3043, 20-ag-3044, 20-ag-3045, and 20-ag-3046

On October 20, 2020, the court docketed twenty consolidated petitions by thirty-one petitioners, including two that were petitioners in two cases, seeking review of the Federal Energy Regulatory Commission's market-mitigation order. The cases were transferred from the District of Columbia Circuit by order dated October 14. The petitions were filed in the District of Columbia Circuit from February 28 through August 17. The District of Columbia Circuit's court of appeals had granted intervention to nine parties, including two that later filed their own cases.

On January 10, 2023, the Third Circuit's court of appeals determined that the market-mitigation rule was lawful. 88 F.4th 250. The commission informed the Seventh Circuit's court of appeals that the Third Circuit decision mooted the Seventh Circuit cases. The Seventh Circuit cases were dismissed.

Wisconsin Central v. Surface Transportation Board, 20-ag-3507

A December 23, 2020, petition challenged an order issued by the Surface Transportation Board respecting where the petitioner could receive traffic in interchange from another railroad. On January 12, 2021, the other railroad, a party to the proceeding before the board, moved to intervene. A motion judge granted intervention on the next day. On January 19, a third railroad, which would be affected if the court granted the petitioner relief, sought intervention in support of the board's decision. Another motion judge granted intervention two days later. But on March 17, the court granted the third railroad's March 16 motion to withdraw intervention. On December 8, the court vacated the board's order as based on a misinterpretation of a statute. 20 F.4th 292.

Brousil v. Department of Labor, 21-ag-1532

A March 26, 2021, petition challenged an employment-discrimination decision by the Department of Labor's Administrative Review Board. The railroad employer that was the respondent in the agency action moved to intervene on April 6. A motion judge granted intervention on April 9. The court denied the petition on August 9, 2022. 43 F.4th 808.

Bessemer & Lake Erie Railroad v. STB, 21-ag-1726

A railroad's April 23, 2021, petition challenged a condition in the Surface Transportation Board's approval of a line sale transaction between the petitioner and another railroad. The other railroad moved on April 30 to intervene in support of the petition. A motion judge granted intervention on May 3. The case was dismissed as settled on June 7, 2022.

Various Petitioners v. NLRB, 22-ag-2674 and 23-ag-1014

A union's September 21, 2022, petition challenged the National Labor Relations Board's decision in favor of an employer who was charged with firing an employee

for union activity. The employer moved to intervene on September 28. The employer had filed a petition in the District of Columbia Circuit on September 23, and the case was transferred to the Seventh Circuit on January 4, 2023. The Seventh Circuit's court of appeals consolidated the two cases on January 9. The transfer included a pending motion by the union to intervene in the employer's petition. A Seventh Circuit motion judge granted intervention on January 9. The court denied the petitions and granted the board's November 13, 2023, enforcement application on July 23, 2024. 109 F.4th 905.

Eighth Circuit

There were 9,081 cases in our filing cohort. One civil appeal had intervention activity. In addition to a summary of that case, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

One case summary covers the one civil case with an intervention motion, filed seventy-three days after the case was filed.¹⁹ Intervention was denied.

Intervention Denied

Frazier v. Smith, 22-pr-1323

(intervention category: pro se)

A prisoner's pro se February 15, 2022, civil appeal challenged the District of Nebraska's grant of summary judgment to defendants in an action that challenged the prisoner's arrest and home search. A pro se motion to intervene was filed on April 29. On May 10, the clerk of court referred the intervention motion to the merits panel. On July 29, the court of appeals affirmed dismissal of the case and denied the intervention motion.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from six to thirty days after case filings; they were granted in all five sets of cases.

Intervention Granted

Oglala Sioux Tribe v. EPA, 21-ag-1167

A January 22, 2021, petition challenged the Environmental Protection Agency's approval of an aquifer program revision. A power company moved to intervene in support of the agency on February 18. The petitioner opposed intervention. A motion judge granted intervention and agreed to hold the case in abeyance on March 9. The case remains pending.

19. Intervention was sought in a second case within a year of filing but after the court issued its judgment: *Cheatum v. Ramey v. Wolf*, 20-pr-3623, page 70.

Phox v. Secretary, Department of Labor, 22-ag-2364

A pro se June 27, 2022, petition challenged a Department of Labor Administrative Review Board decision in favor of the petitioner's employer. The employer moved to intervene on July 27. The clerk of court granted intervention on August 9. The court denied the petition on February 10, 2023.

NLRB v. Enright Seeding, 22-ag-2848 and 22-ag-2996

The National Labor Relations Board's August 30, 2022, application sought enforcement of its order requiring an employer to provide a union with information for collective bargaining. The employer filed a review petition on September 21. The union filed motions to intervene in the two cases on September 27. The clerk of court granted intervention on October 7. On July 25, 2024, the court concluded that the board's order regarding the employer-union relationship was not supported by substantial evidence. 109 F.4th 1012.

Associated Electric Cooperative v. FERC, 22-ag-3593

A December 14, 2022, petition challenged the Federal Energy Regulatory Commission's declaratory decision respecting sales of emergency energy during winter storm Uri. The power company that sought the declaratory decision moved to intervene in the appeal on December 22. That day, the clerk of court informed the parties that they had eight days to object to the motion or it would be granted. The clerk granted intervention on January 3, 2023. On August 5, 2024, the court denied the petition. 111 F.4th 914.

Missouri v. EPA, 23-ag-1719

Missouri's April 13, 2023, petition challenged the Environmental Protection Agency's disapproval of Missouri's interstate air-pollution plan. A Missouri power company moved to intervene on May 5 in opposition to the agency's decision. On May 8, the clerk of court informed the parties that they had eight days to object to the motion or it would be granted. The case was heard on October 22, 2024, and now is in abeyance.

Ninth Circuit

"The Court may delegate to the Clerk or designated deputy clerks, staff attorneys, appellate commissioners or circuit mediators authority to decide motions filed with the Court." 9th Cir. R. 27-7.

"Intervention on appeal is governed by Rule 24 of the Federal Rules of Civil Procedure. Intervention at the appellate stage is, of course, unusual and should ordinarily be allowed only for imperative reasons." *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997) (citations and quotation marks omitted). "This Court disfavors putative intervenors who merely seek to attack or thwart a remedy." *East Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1001 (9th Cir. 2024) (quotation marks omitted). And the court "typically will not consider issues raised exclusively by an intervenor." *Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 974 (9th Cir. 2023).

There were 18,227 cases in our filing cohort. Nineteen case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency appeals.

Civil Cases

Nineteen case summaries cover all civil cases with intervention motions, filed from zero to 354 days after case filings. Intervention was granted in twelve sets of cases, denied in five sets of cases, and never fully at issue in three cases.

Intervention Granted

Caballero v. United States, 20-cv-17356

(intervention category: other)

A December 2, 2020, civil appeal challenged the Eastern District of California's dismissal of an in rem action involving tribal territory. When the district court dismissed the action, an intervention motion by a group involved in the property dispute was pending, and the district court denied intervention as moot. The group moved to intervene in the appeal on April 1, 2021. A two-judge motion panel granted intervention on May 14. An intervenor brief was filed on July 12. The court of appeals affirmed dismissal of the action on October 22.

National Abortion Federation v. Center for Medical Progress, 21-cv-15953

(intervention category: sealing)

A June 3, 2021, civil appeal challenged a Northern District of California decision that enjoined the defendants from sharing information learned at a meeting of the plaintiff organization. Two motions filed on February 2, 2022, sought intervention to maintain some information under seal. On February 28, the appellate commissioner granted intervention and agreed to sealing requests. The court affirmed the injunction on August 19. The Supreme Court declined to review the decision. 601 U.S. ___, 144 S. Ct. 86 (2023).

Mayes v. Biden, 22-cv-15518

(intervention category: other political body)

The federal government's April 11, 2022, civil appeal challenged a District of Arizona injunction awarded to Arizona against a vaccination requirement for federal contractors. Stating that Arizona's attorney general "now affirmatively advocates a substantial narrowing of the injunctive relief that her predecessor had obtained for the State in the district court," Arizona's legislature, its presiding officers, and Arizona's chamber of commerce moved to intervene in the appeal on February 20, 2023. On February 28, a three-judge panel granted intervention to the legislature and the chamber but denied it to the presiding officers. On April 19, the panel reversed the injunction. 67 F.4th 921. On December 28, after the government rescinded the contractor mandate, the court vacated its April 19 decision. 89 F.4th 1186.

Sidibe v. Sutter Health, 22-cv-15634

(intervention category: sealing)

An April 28, 2022, civil appeal challenged summary judgment and a jury verdict in favor of the defendant in a Northern District of California action alleging improper healthcare market activity. In October and January, several medical insurers filed five motions to intervene to oppose the unsealing of some district-court filings. In December through March, they filed motions under seal to maintain documents under seal. On March 29, 2023, a two-judge motion panel granted intervention and agreed to maintain some documents under seal. On June 4, 2024, by a vote of two to one, the court reversed judgment in favor of the defendant and remanded the case for a new trial. 103 F.4th 675.

Doe v. Roe, 22-cv-15757

(intervention category: sealing)

A May 18, 2022, civil appeal challenged the Northern District of California's preventing a pseudonymous defendant from publicly identifying a pseudonymous plaintiff in a case that the plaintiff dismissed voluntarily. On September 15, a law professor moved to intervene to challenge the partial sealing of a brief. A two-judge motion panel granted the intervention motion. On June 16, 2023, the court dismissed the appeal as moot in light of the plaintiff's identity becoming public.

Innovative Health v. Biosense Webster, 22-cv-55413

(intervention category: sealing)

An April 22, 2022, civil appeal challenged the Central District of California's summary judgment. A business that provided the parties with discovery moved to intervene in the appeal on November 29 to seek sealing of its confidential discovery in the appellate record. A two-judge motion panel granted the intervention motion on January 26, 2023. By a two-to-one vote, the court reversed the summary judgment on January 5, 2024.

Littleton v. Musk, 23-cv-16010

(intervention category: sealing)

A July 18, 2023, civil appeal challenged a Northern District of California judgment after trial. On February 16, 2024, a company moved to intervene in the appeal to move for the sealing of four trial exhibits. On May 1, the appellate commissioner granted the company's intervention and sealing motions. The company's brief supporting its sealing motion was filed that day. The court of appeals affirmed the district court's judgment on November 6.

Shahrokhi v. Harter, 23-cv-16012

(intervention category: other)

A pro se July 19, 2023, civil appeal challenged the District of Nevada's dismissal of a suit challenging state-court custody proceedings. Nevada and its attorney general moved to intervene on August 18 to provide a defense for a defendant state-court judge who had died. On August 28 and 30, they moved to oppose pending motions by the appellant. On September 11, Nevada asked the court to expedite

consideration of its intervention motion so that it would not waste time preparing a brief that would be rejected because of a denial of its motion. On September 14, Nevada filed a response to the appellant's motion to strike Nevada's earlier responses. On September 21, Nevada filed another motion to respond to an appellant motion. A two-judge motion panel granted intervention on October 2. Nevada filed its intervenor brief on January 12, 2024. The case remains pending.

Boston Retirement System v. Uber Technologies, 22-23f-80076

(intervention category: sealing)

An August 9, 2022, petition challenged the Northern District of California's certifying a plaintiff class in a securities action. An investment company that produced documents in the district-court case pursuant to subpoena moved to intervene on August 31 to seek the sealing of its evidence. On September 2, a deputy clerk granted the investment company permission to file its sealing motion. A two-judge motion panel granted intervention on February 24, 2023. The panel also ordered the sealing of some filings and the denial of the petition for permission to appeal class certification.

Carr v. Google, 23-cv-15285

(intervention category: sealing)

A March 1, 2023, civil appeal challenged the Northern District of California's certification of a class action. On June 29, a business moved to intervene to file a motion to seal evidence produced as part of discovery. On August 2, it filed a motion to file one volume of the excerpts of record under seal. The clerk of court granted both motions on August 2. The appeal remains pending.

Comet Technologies USA v. XP Power, 23-cv-15601 and 23-cv-15709

(intervention category: sealing)

An April 25, 2023, civil appeal and a May 10 cross-appeal challenged a Northern District of California jury-verdict judgment for plaintiffs in a trade-secret action. A former employer of an employee who left to work for a plaintiff filed an intervention motion on September 19 to protect under seal its confidential information at issue in the litigation. With its intervention motion, the former employer filed a motion to maintain documents under seal. On October 24, a two-judge motion panel granted intervention. The appeals will be heard on September 19, 2025, following a January 28 district-court award of prejudgment interest.

In re Silver, 23-bkp-60004

(intervention category: bankruptcy, creditor, receiver)

A bankruptcy debtor's pro se appeal filed on January 13, 2023, sought protection of his home from foreclosure. The bank holding the mortgage moved to intervene on January 2, 2024. With its motion, the bank filed a brief opposing the debtor's motion for an injunction pending appeal. On February 3, the bank's attorneys filed a brief opposing the debtor's motion for sanctions. On February 28, the court held that the bankruptcy court did not abuse its discretion by denying the debtor's motion to convert his case from Chapter 7 to Chapter 13. The opinion also granted

the bank's intervention motion.

Intervention Denied

PG&E v. Canyon Capital Advisors, 21-bkd-15025

(intervention category: bankruptcy, creditor, receiver)

A January 5, 2021, civil appeal challenged the Northern District of California's dismissal of an unsecured creditor's bankruptcy appeal. A collection of trade creditors moved to intervene on March 17. On the same day, an additional creditor moved to intervene separately. On April 16, a two-judge motion panel denied intervention. The court of appeals affirmed dismissal of the bankruptcy appeal on December 16.

Brown v. Maricopa County Attorney's Office, 23-pr-15141

(intervention category: pro se)

A February 1, 2023, civil appeal challenged the District of Arizona's closing a removed civil action by several prisoners and separating the case into individual cases for each prisoner. From April 27 to May 8, three prisoners not included in the original complaint moved to intervene as plaintiffs in the appeal. On May 30, a two-judge motion panel denied intervention. The case remains pending.

East Bay Sanctuary Covenant v. Biden, 23-cv-16032

(intervention categories: other political body, pro se)

The government's July 26, 2023, civil appeal challenged the Northern District of California's summary judgment in favor of plaintiff organizations that represent and assist asylum seekers. On February 21, 2024, the court placed the appeal in abeyance pending settlement discussions. 93 F.4th 1130. Five states moved to intervene on March 7, asserting that they could not rely on the President to enforce immigration laws. In a twenty-eight-page opinion, by a vote of two to one, the court denied intervention on May 22, 2024, reasoning that "states have no legally protectible interest in compelling enforcement of federal immigration policies." 102 F.4th 996, 1002, *cert. denied*, 604 U.S. ___, 145 S. Ct. 415 (2024). On June 20, a person with a Russian address filed a pro se motion to intervene. The court denied intervention four days later. On April 10, 2025, the court remanded the case to the district court for reconsideration of organizational standing in light of the Supreme Court's June 13, 2024, decision in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). 134 F.4th 545.

Various Parties v. Lawson, 22-cv-56220 and 23-cv-55069

(intervention category: other)

A December 30, 2022, civil appeal challenged the Central District of California's denial of a preliminary injunction against a California statute intended to proscribe physicians' misinformation about Covid-19 vaccines. A January 24, 2023, civil appeal challenged a Southern District of California decision to stay a preliminary-injunction motion pending a decision in the first appeal. A deputy clerk consolidated the two appeals on January 25. On February 15, two organizations who had obtained a preliminary injunction from the Eastern District of California

moved to intervene in the two appeals from the other districts. A two-judge motion panel denied the intervention motion on February 28. On February 29, 2024, the court of appeals held that California's repealing the statute at issue mooted the cases. 94 F.4th 864.

Intervention Question Moot

Mi Familia Vota v. Hobbs, 20-cv-16932

(intervention category: other political body)

The Republican Party's October 6, 2020, civil appeal challenged a District of Arizona preliminary injunction that required Arizona's secretary of state to extend a voter-registration deadline because of the Covid-19 pandemic. The district court had permitted the party to intervene in the action by proponents of voter rights. On the day that the appeal was filed, the attorney general filed a motion to intervene in the appeal on behalf of Arizona. Also on the day that the appeal was filed, the appellants filed a motion to stay the injunction. The court's October 7 scheduling order stated, "For purposes of this scheduling order only, we assume without deciding that we will grant the State's pending motion to intervene." Arizona filed briefs supporting a stay. On October 9, the panel set the case for hearing on the stay and intervention motions for October 12. The court's October 13, 2020, decision to stay the injunction stated that it was not then necessary to resolve the intervention motion "in the present posture of the appeal." 977 F.3d 948, 952. The court accepted a voluntary dismissal of the case on February 2, 2021.

Caballero v. Williams, 21-cv-15879

(intervention category: other)

A May 18, 2021, civil appeal challenged the Eastern District of California's denial of a temporary restraining order. On the day after the temporary restraining order was denied, a university claiming an interest in real property at issue moved to intervene in the district court. It moved to intervene in the appeal on June 21. On July 28, the court of appeals ruled that it did not have jurisdiction to review denial of a temporary restraining order and dismissed the intervention motion as moot. The plaintiff voluntarily dismissed the district-court case, and the district judge denied the pending intervention motion as moot.

Moriarty v. American General Life Insurance Company, 21-cv-55220

(intervention category: other)

On March 10, 2021, the court of appeals granted a life-insurance company permission to pursue an interlocutory appeal deciding whether a California statute applied retroactively to life-insurance policies. On March 19, the insurance company moved to coordinate the appeal with other cases presenting the same issue. A plaintiff in one of the other cases moved to intervene on March 26, filing a brief opposing coordination. On September 23, the court accepted a voluntary dismissal of the case.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from six to thirty-six days after case filings; they were granted in all five sets of cases.

Intervention Granted

Various Petitioners v. FERC, 20-ag-72958 and 20-ag-72973

Petitions filed on October 2 and 5, 2020, challenged the Federal Energy Regulatory Commission's decision regarding hydroelectric projects in California. The circuit mediator consolidated the cases on October 15. An irrigation district that owned the projects moved to intervene on October 28. A deputy clerk granted intervention on November 6. On August 4, 2022, the court overruled certain commission findings and remanded the cases for further proceedings. 43 F.4th 920, *cert. denied*, 598 U.S. ___, 143 S. Ct. 2459 (2023).

Various Petitioners v. Bonneville Power Administration, 20-ag-73761, 20-ag-73762, and 20-ag-73775

Petitions by environmental organizations and an Indian tribe filed on December 23, 2020, and a petition filed by another Indian tribe on December 24 challenged a Bonneville Power Administration decision respecting the Columbia River. A deputy clerk consolidated the cases on January 13, 2021. An interstate agency that was established to protect wildlife affected by hydroelectric projects on the Columbia River moved to intervene on January 20. A deputy clerk granted intervention one week later. The second two cases were dismissed as settled on October 11, 2023, and the first was dismissed as settled on February 23, 2024.

Kava Holdings v. NLRB, 21-ag-70225, 21-ag-70638, and 21-ag-71334

A February 3, 2021, petition challenged the National Labor Relations Board's decision that a hotel improperly changed terms of employment and refused to bargain with a union. The union moved to intervene on March 4. The board filed an enforcement action on March 17, and the circuit mediator consolidated the cases on March 19. A deputy clerk granted the intervention motion on March 26. On November 12, a deputy clerk consolidated the cases with a second enforcement action filed by the agency on October 18. On October 18, 2023, the court held that substantial evidence supported the agency's decision. 85 F.4th 479, *cert. denied*, 604 U.S. ___, 145 S. Ct. 139 (2024).

Various Parties v. NLRB, 21-ag-70388 and 21-ag-70700

A union's February 22, 2021, petition challenged a National Labor Relations Board decision that partially favored a hotel. The board filed an enforcement action on March 24. The union moved to intervene in the enforcement action on March 30. A deputy clerk consolidated the cases and granted intervention on April 26. On July 29, 2022, the court ruled against the union and in favor of the board.

Thorstenson v. Department of Labor, 22-ag-70020

An employee's February 4, 2022, petition challenged a finding by the Department of Labor's Administrative Review Board that the employee would have been fired even if he had not engaged in protected activity. On February 11, the employer moved to intervene. A deputy clerk granted intervention on February 17. On March 15, 2023, the court granted the petition and remanded the case for computation of damages.

Tenth Circuit

By local rule, "[a] party to an agency proceeding may intervene in a review of that proceeding by filing a notice of intervention in the court." 10th Cir. R. 15.4(A).

The court grants motions to intervene on appeal based on the intervention-of-right requirements of Federal Rule of Civil Procedure 24(a). Pub. Serv. Co. of N.M. v. Barboan, 857 F.3d 1101 (10th Cir. 2017). In an agency appeal, an intervenor "may join issue only on matters brought before the court by the . . . petitioner." Arapahoe Cnty. Pub. Airport Auth. V. FAA, 242 F.3d 1213, 1217 n.4 (10th Cir. 2001).

The criteria for intervention on appeal are the same as the criteria for intervention as a matter of right in the district court. Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co., 407 F.3d 1091, 1102–03 (10th Cir. 2005). "When intervention was not sought below, however, intervention on appeal will be permitted only in an exceptional case for imperative reasons." *Id.* at 1103 (quotation marks and citation omitted).

There were 4,886 cases in our filing cohort. Five case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency petition and enforcement actions.

Civil Cases

Three case summaries cover all civil cases with intervention motions, filed from thirty to forty-two days after case filings.²⁰ Intervention was granted in one case and denied in two sets of cases.

Intervention Granted

America West Bank Members v. Utah, 23-cv-4091

(intervention category: bankruptcy, creditor, receiver)

A July 6, 2023, civil appeal challenged the District of Utah's summary judgment for defendants in an action against state regulators on a finding that the plaintiff bank's claims had been assumed by the FDIC as receiver for the bank. In a series of orders, the district court granted the FDIC limited intervention to (1) oppose a motion to amend the complaint, (2) move for disqualification of a plaintiff's lawyer for contacting an FDIC employee without FDIC counsel present, and (3) oppose a motion to compel discovery. On August 14, the FDIC sought to intervene in the appeal to protect its interests and because the district court relied on a theory of the

20. Excluded from this interval analysis is a case in which an intervenor brief was filed without permission.

case different from the one briefed. On August 29, a two-judge motion panel provisionally granted the FDIC intervention subject to reconsideration by the merits panel. The FDIC filed an appellee brief as intervenor on December 27. The court affirmed summary judgment on August 14, 2024, noting in a footnote that the FDIC had intervened. The Supreme Court denied certiorari. 605 U.S. ___, ___ S. Ct. ___, 2025 WL 1678999.

Intervention Denied

Luo v. Wang, 22-cv-1200

(intervention category: sealing)

A pro se June 29, 2022, civil appeal challenged a District of Colorado decision denying the appellant permission to participate as a plaintiff by pseudonym in a defamation action. A law professor was granted intervention in the district court for the purpose of challenging the partial sealing of the court record. He filed an appellee brief in the court of appeals as an intervenor. The merits panel granted the appellant's motion to strike the intervention brief—because the appeal did not concern the issue on which the professor was granted intervention—and denied the law professor intervention on appeal. He did not “identify any imperative reason for his intervention in this appeal on the issue of whether Ms. Doe may proceed under a pseudonym.” On July 3, 2023, the court affirmed the district court's requirement that the plaintiff proceed under her real name. 71 F.4th 1289.

Various Appellants v. Biden, 23-cv-4106 and 23-cv-4107

(intervention category: other)

Civil appeals filed on August 15 and 16, 2023, challenged the District of Utah's dismissal of two actions against the expansion of two national monuments. A collection of organizations moved to intervene in the two appeals on September 15. A second group of organizations moved to intervene three days later. Eight days after that, a third group of organizations moved to intervene. On October 11, a two-judge motion panel denied intervention but suggested that the groups consider filing amici curiae briefs. The appeals were heard on September 26, 2024.

Agency Cases

The following five case summaries include agency petition and enforcement actions selected at random. Intervention motions were filed from seven to sixty-eight days after case filings; they were granted in four sets of cases and denied in one set of cases.

Intervention Granted

NLRB v. BS&B Safety Systems, 21-agenf-9536 and 21-agpet-9544

The National Labor Relations Board's April 13, 2021, petition sought enforcement of its order proscribing penalties for union activities. The employer filed a petition challenging the agency order on May 4. On May 11, the union moved to intervene as the charging party before the board. The clerk of court granted the unopposed motion on May 12. The parties stipulated dismissals of the cases on January 27,

2022.

Alpine Securities v. SEC, 22-agpet-9579

A November 30, 2022, petition challenged the Securities and Exchange Commission's decision regarding a backtesting charge. On December 12, the National Securities Clearing Corporation moved to intervene as the entity that had assessed the charge. On the following day, the clerk of court granted intervention. The parties stipulated dismissal of the case on April 17, 2023.

Kunz v. FAA, 22-agpet-9583

A December 13, 2022, petition challenged the Federal Aviation Administration's decision respecting a city's not acquiring an interest in the petitioner's real property for expansion of a general-aviation airport. The city filed a notice of intervention on January 12, 2023, but in the end decided not to file a brief. On May 20, 2025, the court of appeals affirmed the agency's decision.

Coreslab Structures (Tulsa) v. NLRB, 23-agpet-9502 and 23-agenf-9505

A January 18, 2023, petition challenged the National Labor Relations Board's decision proscribing penalties for union activities. The board filed an enforcement action five days later. The union filed a notice of intervention in both cases on February 2. The court of appeals granted the employer some relief on February 28, 2024. 94 F.4th 969. The court clarified its decision on April 24. 100 F.4th 1123. The court issued a modification of the board order on June 18.

Intervention Denied

Various Petitioners v. EPA, 23-agpet-9509, 23-agpet-9512, 23-agpet-9514, 23-agpet-9520, 23-agpet-9521, 23-agpet-9529, 23-agpet-9531, 23-agpet-9533, 23-agpet-9534, and 23-agpet-9537

Ten petitions to review the Environmental Protection Agency's decision disapproving twenty-one states' plans to prevent ozone contamination of neighboring states were filed from February 13 to April 14, 2023.

On March 15, two environmental organizations moved to intervene in the first case, arguing also that venue properly belonged in the District of Columbia Circuit. In response to agency motions to transfer the cases to the court of appeals for the District of Columbia Circuit or dismiss them for improper venue, a three-judge panel decided on April 27 to leave that as a merits-panel question. In a case-management order issued on the following day, the clerk of court issued an order respecting intervention. The pending intervention motion noted "that in the D.C. Circuit, a motion to intervene filed in one case is deemed a motion to intervene in all cases before that court involving the same agency action or order. This circuit does not have a similar rule." The clerk ordered the prospective interveners to seek intervention in any other case in which they desired to intervene within five days. On May 18, a two-judge motion panel denied the organizations' intervention in the seven cases in which they sought intervention on May 3 (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). "As appropriate, Movants may file

an amicus brief or motion in accordance with Federal Rule of Appellate Procedure 29.” The prospective intervenors appeared as amici.

In January 2024, the cases with Wyoming petitioners were voluntarily dismissed (nos. 23-9529, 23-9531, and 23-9537). On February 16, a three-judge panel transferred cases with Oklahoma and Utah petitioners to the District of Columbia Circuit (nos. 23-9509, 23-9512, 23-9514, 23-9520, 23-9521, 23-9533, and 23-9534). 93 F.4th 1262. On June 18, 2025, the Supreme Court determined that the cases belonged in a regional circuit. 605 U.S. ___, 145 S. Ct. 1720.

Eleventh Circuit

“A court of appeals may, but only in an exceptional case for imperative reasons, permit intervention where none was sought in the district court.” *McKenna v. Pan Am. Petroleum Corp.*, 303 F.2d 778, 779 (5th Cir. 1962).

“[C]ourts have broad authority to limit the ability of intervening parties to expand the scope of a proceeding beyond the issues litigated by the original parties.” *Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1269 (11th Cir. 2001). “Except for extraordinary cases, an intervenor is precluded from raising issues not raised by the principal parties.” *Ga. Power Co. v. Teleport Commc’ns Atlanta, Inc.*, 346 F.3d 1047, 1049 (11th Cir. 2003).

There were 13,357 cases in our filing cohort. Seven case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency petitions.

Civil Cases

Seven case summaries cover all civil cases with intervention motions, filed from seven to 211 days after case filings. Intervention was granted in two cases and denied in five sets of cases.

Intervention Granted

Peden v. Stephens, 21-pricivil-10723
(intervention category: other)

A March 4, 2021, civil appeal challenged the Northern District of Georgia’s granting summary judgment to defendants. The trial court had quashed the deposition of a journalist who reported on the underlying story, and the journalist moved to intervene in the appeal on October 1 to defend the district court’s decision. On October 26, a motion judge granted intervention. The journalist filed a brief that day. On August 29, 2022, the court concluded that it lacked jurisdiction over the case because the district judge improperly certified final judgment while some claims remained unresolved. 50 F.4th 972.

Andrews v. Autoliv Japan, 22-pricivil-13713
(intervention category: constitutionality)

A November 1, 2022, civil appeal challenged the Northern District of Georgia’s bench-trial product-liability award. On February 6, 2023, Georgia moved to intervene as a plaintiff-appellee to protect its statutory seventy-five percent share of

the punitive-damages award. On February 27, a motion judge granted intervention. Georgia filed its brief on May 18. On August 7, Georgia filed a notice that it consented to the parties' August 3 joint motion to dismiss the appeal, a motion the court granted on August 8.

Intervention Denied

Fernandez v. Seaboard Marine, 22-pricivil-12966

(intervention category: other)

A September 6, 2022, civil appeal challenged the Southern District of Florida's dismissal of an action for trafficking in property confiscated by the Cuban government. A March 28, 2023, motion to intervene challenged a pending settlement which would include vacating the district court's summary judgment. An intervention motion was filed in the district court on March 27. On April 27, a motion judge denied intervention in the court of appeals. Two days before that, the district court granted intervention. The district court denied the motion to vacate summary judgment on June 13. On April 14, 2025, the court partially reversed the dismissal, determining that the plaintiffs had provided sufficient evidence to support a finding of trafficking in property confiscated from one of the plaintiffs' companies. 135 F.4th 939.

Peele v. Department of Justice, 22-usc-13173

(intervention category: pro se)

A September 21, 2022, pro se civil appeal challenged the Southern District of Florida's dismissal of a removed civil complaint as impermissible shotgun pleading. A person with the same residential address as the plaintiff filed a pro se motion to submit a brief in intervention on October 19. The plaintiff endorsed the motion that day. On November 28, a motion judge denied the motion. The court of appeals summarily affirmed the district court's dismissal on January 31, 2024.

Locke v. Canady, 22-pricivil-13971, and *Warren v. DeSantis*, 23-pricivil-10459

(intervention category: pro se)

A November 28, 2022, civil appeal challenged the Northern District of Florida's dismissal of a suit that challenged the Florida Supreme Court's suspension of an attorney's license. Another attorney, apparently disbarred and denied intervention in the district court, moved to intervene in the court of appeals on January 6, 2023, to challenge Florida's licensing scheme. On February 15, a motion judge denied intervention. The attorney's subsequent motions to intervene were unsuccessful. The court of appeals affirmed the district court's dismissal on January 5, 2024.

A February 14, 2023, civil appeal challenged a Northern District of Florida bench-trial decision in the governor's favor in a case arising from his suspending an elected state attorney on the basis of false allegations. A criminal defendant in state court claiming similarly unlawful silencing by the governor moved to intervene on February 21. He had been denied intervention in the district court. On March 19, the apparently disbarred attorney in the other case, claiming a somewhat similar situation as the plaintiff's in the district court, moved to intervene as well. On March 20, the clerk of court entered orders denying the two intervention

motions. On April 5, the clerk issued an order denying reconsideration of the second intervention denial. On January 10, 2025, the court concluded that the case had become moot when the plaintiff's term of office expired.

Hispanic Federation v. Florida Secretary of State, 23-pricivil-12313

(intervention category: other)

Florida's July 12, 2023, civil appeal challenged a Northern District of Florida preliminary injunction against new laws that curtailed voter-registration efforts. On August 25, the League of Women Voters moved to intervene. Its motion for a preliminary injunction in a different case challenging the same laws was denied as moot; it was not otherwise a party before the court of appeals. On October 12, a motion judge denied intervention. On August 27, 2024, the court granted a voluntary dismissal of the appeal as moot; by that time, a permanent injunction had been issued and was on appeal.

Georgia v. Meadows, 23-pricivil-12958

(intervention category: pro se)

A state-court criminal defendant's September 8, 2023, civil appeal challenged the Northern District of Georgia's declining jurisdiction over the prosecution of a former White House chief of staff. Noting that a document titled "Amicus – Friend of the Court Brief – Motion to Intervene" was filed pro se on September 15 by someone with a history of frivolous filings in high-profile cases, the clerk of court entered an order by direction on September 29 denying the filer participation in the case. On December 18, the court of appeals affirmed the district court's decision. 88 F.4th 1331, *cert. denied*, 604 U.S. ___, 145 S. Ct. 545 (2024).

Agency Cases

The following five case summaries include agency petition and enforcement actions selected at random. Intervention motions were filed from thirteen to 281 days after case filings; they were granted in three sets of cases, denied in one case, and never fully at issue in another case.

Intervention Granted

Lhoist North American of Alabama v. NLRB, 21-agen-11791

An employer's May 26, 2021, petition challenged the National Labor Relations Board's injunction against the employer's interference with union activities. The union moved to intervene on June 21. A motion judge granted intervention on August 3. The court affirmed the board's decision on July 21, 2023.

Alabama v. EPA, 22-agen-12685

Alabama's August 17, 2022, petition challenged the Environmental Protection Agency's ruling that Alabama failed to submit a complete infrastructure-state-implementation-plan revision to satisfy interstate transport requirements of the Clean Air Act. Power companies moved to intervene on September 14, stating that it deemed the agency ruling an unlawful regulation of its emissions. On October 3,

the agency opposed intervention. On October 14, Alabama and the agency moved jointly to hold the case in abeyance pending further agency review. On October 17, the power companies filed a proposed response to the abeyance motion, arguing for more limited abeyance than requested by the parties. On November 2, a motion judge granted intervention to the power companies, and granted sixty days' abeyance, more limited than the parties requested but less limited than the power companies requested. Alabama and the agency moved for another sixty days' abeyance on December 30; the power companies argued on January 1, 2023, for forty-five days' abeyance. The motion judge granted forty-five days' abeyance on January 30. Following another forty-five days' abeyance, the court granted a voluntary dismissal of the case on May 19.

NLRB v. ArrMaz Products, 23-agen-10291

The National Labor Relations Board's January 31, 2023, application sought enforcement of an order requiring an employer to bargain with a union. The union filed a motion to intervene on February 13. A motion judge granted intervention on March 28. On December 16, 2024, the court granted the board enforcement of its order. 123 F.4th 1295.

Intervention Denied

Hunt Refining Company v. EPA, 22-agen-11617

A refinery's May 12, 2022, petition challenged the Environmental Protection Agency's denial of Renewable Fuel Standard exemptions to thirty-six small refineries. On February 17, 2023, renewable fuels producers moved to intervene in support of the agency. On April 28, a motion judge denied intervention. On January 11, 2024, the court ruled that the case should have been brought in the District of Columbia Circuit. 90 F.4th 1107.

Intervention Question Moot

Delta Air Lines v. Department of Labor Administrative Review Board, 22-agen-11539

An employer's May 6, 2022, petition challenged a decision by the Department of Labor's Administrative Review Board in favor of an employee's whistleblower complaint. The employee moved to intervene on May 20. On August 29, the court concluded that it did not have jurisdiction over the case because the board's decision included a remand for consideration of damages. The intervention motion was denied as moot.

Federal Circuit

There were 4,363 cases in our filing cohort. Two case summaries cover the civil appeals with intervention activity. In addition, we prepared five case summaries of randomly selected agency petitions.

Civil Cases

Two case summaries cover all civil cases with intervention motions, filed eighteen and sixty-nine days after case filings. Intervention was denied in both cases.

Intervention Denied

SAGAM Securite Senegal v. United States, 21-cvUS-2279

(intervention category: other)

The government's September 2, 2021, civil appeal challenged a Court of Federal Claims injunction. On September 20, a joint venture moved to intervene "because the remedy ordered by the trial court in the bid protest below disqualified [the venture] from the subject procurement." The trial court's judgment stated, among other things, that the Department of State was directed to disqualify the venture as the beneficiary of improperly disclosed information taken from the plaintiff's proposal. The venture had moved to intervene in the trial-court case on September 10. The trial court denied intervention on October 7. On November 3, a motion judge for the court of appeals also denied intervention, "particularly given that it did not participate below and its belated motion to intervene after entry of judgment was denied by the trial court as untimely." The judge invited the venture to seek participation as an amicus curiae. The court affirmed the Court of Federal Claims judgment on October 12, 2023.

Frazier v. United States, 22-cvUS-1407

(intervention category: pro se)

A January 25, 2022, pro se civil appeal challenged a Court of Federal Claims dismissal for lack of jurisdiction. On April 28, 2022, the clerk of court issued an order denying a pro se motion to intervene filed on April 4, "particularly given that she was not a party in the underlying case and did not seek to intervene below." The court accepted her brief submitted with her motion as an amicus curiae brief. On April 7, 2023, the court of appeals affirmed the trial court's dismissal.

Agency Cases

The following five case summaries include agency appeals selected at random. Intervention motions were filed from fourteen to fifty-two days after case filings; they were granted in all five cases.

Intervention Granted

Philips North America v. ITC, 21-ag-2064

A June 17, 2021, petition challenged an International Trade Commission decision that certain patents did not violate the Tariff Act. Companies whose products were at issue moved to intervene on July 1. The clerk of court issued an order granting intervention on July 2. On July 12, the clerk issued an order granting a July 7 intervention motion by other companies whose products were at issue. The court issued a summary affirmance on August 5, 2022.

Solas OLED v. Vidal, 22-bcaag-1309

A patent applicant's December 28, 2021, agency appeal challenged an adverse decision by the Patent Trial and Appeal Board. Because the appeal challenged the constitutionality of the board judges' appointments, the clerk of court issued an order on January 20, 2022, inviting the government to intervene. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office filed a notice of intervention on February 18. The court dismissed the case as settled on July 18.

Regents of the University of California v. ITC, 22-ag-1521

A March 11, 2022, petition challenged an International Trade Commission decision finding that importation of filament light-emitting diodes did not violate the Tariff Act. Prevailing parties before the commission moved to intervene on March 29 and 30. On April 5, the clerk of court issued an order granting intervention. On May 16, 2023, the court affirmed the commission's decision.

Koss Corporation v. Vidal, 22-bcaag-2091

A patent applicant's August 2, 2022, agency appeal challenged an adverse decision by the Patent Trial and Appeal Board. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office filed a notice of intervention on September 19. On July 31, 2024, the court dismissed the appeal as moot in light of a decision in another case.

Young v. MSPB, 23-ag-1309

A pro se December 30, 2022, petition challenged a decision by the Merit Systems Protection Board. The postal service was named as the respondent, but on January 18, 2023, it moved for a recaptioning of the case with the board as respondent and the postal service as an intervenor. On February 13, the clerk of court issued an order granting intervention. The court transferred the case to the Southern District of New York on December 13.

LATE INTERVENTION

If intervention is permitted to accommodate a change in executive administration, that can happen late in a case as well as early in a case. Intervention has also been permitted to accommodate constitutionality or sealing issues that arise late in a case. An issue perhaps especially likely to arise late in a case is the matter of attorney fees that might result in the attorneys' interests departing from the interests of their clients.

To examine intervention activity late in a case, such as for the purpose of seeking review of an appellate decision by rehearing en banc or by the Supreme Court, we examined a four-year termination cohort of cases: those decided from 2020 through 2023.

With three exceptions, cases with intervention activity in our filing cohort included one of the following phrases:

- motion . . . to intervene
- motion . . . for leave to intervene
- motion . . . to proceed as intervenor
- motion . . . to permit intervention

So we examined cases with docket entries containing the phrases “to intervene,” “to proceed as intervenor,” or “to permit intervention” that were dated at least one year after each case’s filing. Also included here are cases in our filing cohort with intervention motions filed within a case’s first year but after argument or judgment. We excluded most late motions to intervene that were late because of lengthy mediation or stay periods at the beginning of the case. Because late intervention is rare in agency cases, we were able to examine all of them rather than only a sample.

Intervention was granted by the courts of appeals in nine sets of civil cases and in two agency cases. The Supreme Court ordered intervention granted in an additional civil case.²¹

Whether Intervention Was Granted: Late Intervention Motions

Phase of Case	Civil Cases			Criminal Cases			Agency Cases		
	Yes	No	Moot	Yes	No	Moot	Yes	No	Moot
Pre-Argument	1	2		1					
Post-Argument	3				1				
Post-Judgment	6 ²²	13	2		2		2		
Total	10	15	2	1	3		2		

Other Government Officer, Constitutionality, Sealing. Late intervention was granted in three cases permitting a different government officer to represent a

21. *Cameron v. EMW Women’s Surgical Ctr.*, 595 U.S. 267 (2022).

22. This includes one case in which the court of appeals denied intervention but the Supreme Court ordered intervention to be granted.

state's interests,²³ one case concerning constitutionality,²⁴ and two sets of cases where the question of sealing records arose (including one agency case).²⁵

Attorney Fees. Late intervention was granted to attorneys in two cases because a question of attorney fees made the attorneys' interests different from the interests of their clients.²⁶

Other. Late intervention was granted in three other civil cases²⁷ and in one agency case.²⁸

Criminal Case. Late intervention was granted in one criminal case to a codefendant so that he could move for issues common to the two appeals to be decided at the same time.²⁹

Denied or Moot. Intervention was denied or moot in seventeen civil cases and three criminal cases.

Late Intervention Motions

Described here are four cases with intervention motions filed late in each case but before argument.

Intervention was granted in one civil case and one criminal case and denied in two civil cases. Intervention was granted in the civil case to permit a request to unseal part of the record.³⁰ Intervention was granted in the criminal case to a codefendant who sought a delay of appellate proceedings until his case was ready for appeal.³¹

Courts of appeals denied a pro se motion to intervene³² and an intervention motion citing relevant intervening events.³³

23. Supreme Court: *EMW Women's Surgical Center v. Friedlander*, page 65. Sixth Circuit: *EMW Women's Surgical Center v. Friedlander*, page 61. Ninth Circuit: *Democratic National Committee v. Hobbs*, page 64.

24. Sixth Circuit: *Hall v. Meisner*, page 62.

25. Third Circuit: *Doe v. SEC*, page 65 (agency case). Fourth Circuit: *De Simone v. Various Appellants*, page 60.

26. Sixth Circuit: *NPF Franchising v. SY Dawgs*, page 64. Ninth Circuit: *De Borja v. Razon*, page 65.

27. Seventh Circuit: *Walton v. First Merchants Bank*, page 64 (a similar target of vexatious pro se litigation). Ninth Circuit: *Apache Stronghold v. United States*, page 62 (a mining company in a challenge to the government's provision to the company of land that included an Apache ceremonial ground). Eleventh Circuit: *Pitch v. United States*, page 65 (a second historian seeking the unsealing of grand-jury records after the original plaintiff died).

28. Ninth Circuit: *National Family Farm Coalition v. EPA*, page 66 (herbicide manufacturers who stated they did not know that the court's decision would apply to manufacturers other than the one at issue in the case).

29. Third Circuit: *United States v. Pawlowski*, page 60.

30. *De Simone v. Various Appellants*, page 60.

31. *United States v. Pawlowski*, page 60.

32. Eleventh Circuit: *Wells v. Warden*, page 61.

33. Ninth Circuit: *Devas Multimedia Private v. Antrix Corporation*, page 60.

Intervention Granted in Civil Cases

De Simone v. Various Appellants, 4th Cir. 19-cv.pri-1731, 19-cv.pri-1761, and 19-cv.pri-1762

Civil appeals filed on July 12 and 22, 2019, challenged District of Maryland judgments in an intellectual-property action concerning a probiotic formulation. On October 22, 2020, one week before scheduled oral arguments, a law professor moved to intervene to challenge the sealing of “volume five of the joint appendix, which includes portions of the parties’ briefing below, the joint statement of undisputed facts, a joint pretrial order, and the trial transcript.” On October 28, the clerk of court issued an order granting intervention and unsealing volume five of the joint appendix. On February 17, 2021, the court of appeals modified the relief granted by the district court to the plaintiffs, holding that an injunction against false advertising was overbroad.

Intervention Granted in a Criminal Case

United States v. Pawlowski, 3d Cir. 18-cr-3390

A November 1, 2018, criminal appeal challenged an Eastern District of Pennsylvania conviction and sentence imposed on an Allentown mayor who was accused of steering city contracts in exchange for campaign contributions. On September 24, 2019, the court of appeals set the case for submission on November 12. On November 8, a codefendant moved to intervene “to request deferral of this Court’s disposition of limited certain legal issues that [he] intends to raise in his appeal to this Court.” The case was submitted on November 12. The codefendant filed an amended intervention motion on November 14. On the following day, the merits panel agreed to stay the case pending consolidation with the codefendant’s appeal before the same merits panel. The codefendant filed his appeal on December 5. The panel affirmed the mayor’s conviction and sentence on March 4, 2022. 27 F.4th 897. The panel affirmed the codefendant’s conviction on the same day. 27 F.4th 913, *cert. denied*, 598 U.S. ___, 143 S. Ct. 427 (2022).

Intervention Denied in Civil Cases

Devas Multimedia Private v. Antrix Corporation, 9th Cir. 20-cv-36024, 22-cv-35085, and 22-cv-35103

A November 25, 2020, civil appeal challenged the Western District of Washington’s arbitration-judgment confirmation of over one billion dollars against an Indian corporation. On January 3, 2022, the district court granted a motion by district-court intervenors to register the judgment in one other district but not nationwide. A January 31, 2022, appeal and a February 4, 2022, cross-appeal followed. On March 26, 2023, the court of appeals set its three cases for hearing on June 7. On May 5, three companies moved to intervene, stating that they were parent companies of district-court intervenors and they sought intervention as a result of recent foreign business and judicial events related to the litigation. On August 1, the court of appeals determined that the district court did not have personal jurisdiction over the defendant corporation, and the court denied intervention by

the parent companies. Finding that the district court did have personal jurisdiction over the defendant corporation, the Supreme Court reversed the decision of the court of appeals on June 5, 2025. 605 U.S. ___, 145 S. Ct. 1572 (2025).

Wells v. Warden, 11th Cir. 21-stp-10550

A February 18, 2021, civil appeal challenged the Southern District of Georgia’s dismissing a prisoner’s pro se action for failure to pay the filing fee as required by the Prison Litigation Reform Act following the filing of three meritless suits. The court of appeals affirmed the dismissal on December 2, but the court agreed on April 15, 2022, to rehear the case en banc. 30 F.4th 1333. On October 14, four days before scheduled oral argument, a pro se motion to intervene was filed by “a Hospital Workers’ Representative with serious blue-collar street cred [and] an Atlanta Mayoral Candidate 2025.” The clerk of court issued an order denying intervention three days later. On February 1, 2023, the court ruled en banc that the plaintiff’s previous adverse summary judgment was not the type of “strike” contemplated by the Prison Litigation Reform Act. 58 F.4th 1347.

Post-Argument Intervention Motions

Described here are four cases with intervention motions filed after argument but before judgment. Intervention was granted in three civil cases, and a pro se motion to intervene was denied in one criminal case.

Intervention was granted to a newly elected attorney general,³⁴ an attorney general making arguments ancillary to constitutionality,³⁵ and a foreign company that was a party to a government contract at issue in the case.³⁶

Intervention Granted in Civil Cases

EMW Women’s Surgical Center v. Friedlander, 6th Cir. 18-cv-6161

A November 5, 2018, civil appeal challenged a Western District of Kentucky permanent injunction against Kentucky’s requirement for “abortion facilities to maintain transfer agreements with local hospitals and transport agreements with ambulance services to ensure provision of emergency care to patients experiencing complications following abortion procedures.” The appeal was heard on August 8, 2019. On July 24, 2020, Kentucky’s attorney general moved to intervene:

Since the argument, the Commonwealth of Kentucky has elected a new Governor and a new Attorney General. The previous Governor’s lawyers represented the Commonwealth in briefing and arguing this case. The current Governor—who was the Attorney General when this case was briefed and argued—and his appointees have made it clear in a separate case that they will not defend the constitutionality of laws regulating abortion clinics. To ensure that the law at issue continues to receive a robust defense, the current Attorney General hereby moves to intervene so that he can be positioned to continue defending the law on behalf

34. Sixth Circuit: *EMW Women’s Surgical Center v. Friedlander*, page 61.

35. Sixth Circuit: *Hall v. Meisner*, page 62.

36. Ninth Circuit: *Apache Stronghold v. United States*, page 62.

of the Commonwealth in the event there are further appellate proceedings after the Court issues its decision.

On August 4, the merits panel denied expedited briefing on the intervention motion. Two days later, it granted intervention. On October 16, the court of appeals concluded that “the district court erred in concluding that Kentucky would be left without an abortion facility.” 978 F.3d 418, 423.

Hall v. Meisner, 6th Cir. 21-cv-1700

A November 5, 2021, civil appeal challenging the Eastern District of Michigan’s dismissal of an action against real-estate foreclosures for nonpayment of property taxes, 565 F. Supp. 3d 928 (2021), was heard on July 20, 2022. On September 8, Michigan’s attorney general moved to intervene, asserting that the constitutionality of state law had been drawn into question. On September 16, following briefing on the motion, the merits panel granted intervention only insofar as the attorney general presented arguments ancillary to constitutionality, “namely that we should either abstain from deciding [the case and a related appeal] or certify questions of state law to the Michigan Supreme Court.” On the lateness of the intervention motion, the panel noted that the attorney general “has not shown, or tried to show, that she neither knew about this suit nor had reason to know about it.” “Nor does the Attorney General now seek to make any arguments as to the statute’s constitutionality” On October 13, the panel overruled the district court’s dismissal, finding it improper for the county to seize a home worth nearly \$300,000 because of a \$22,262 tax debt and refuse to refund any of the difference. 51 F.4th 185. The defendants sought en banc rehearing on November 10, and Michigan’s attorney general filed a motion on November 18 to intervene should en banc review be granted. No judge requested an en banc vote, and en banc review was denied on January 4, 2023. The Supreme Court declined to review the case on June 20. 599 U.S. ___, 143 S. Ct. 2639.

Apache Stronghold v. United States, 9th Cir. 21-cv-15295

A February 19, 2021, civil appeal challenged the District of Arizona’s denial of a preliminary injunction against an exchange between the government and a foreign mining company of land that included an Apache ceremonial ground. 519 F. Supp. 3d 591. By a vote of two to one, the court of appeals affirmed the injunction denial on June 24, 2022. 38 F.4th 742. An en banc panel reheard the case on March 21, 2023. On June 16, the mining company moved to intervene “for the limited purpose of enabling it to participate in any proceedings in the Supreme Court of the United States that may follow this Court’s en banc decision,” stating that it did not wish to delay the appellate en banc panel’s decision. The en banc panel granted intervention on June 30 and affirmed the district court’s denial of a preliminary injunction on March 1, 2024. 101 F.4th 1036, *cert. denied*, 605 U.S. ___, 145 S. Ct. 1480 (2025).

Intervention Denied in a Criminal Case

United States v. Wasylyshyn, 2d Cir. 18-cr-1344

A May 3, 2018, criminal appeal challenged a Northern District of New York conviction for creating a loud or unusual noise or nuisance in a federal courthouse.

The case was heard on May 20, 2019. Three days later, a pro se motion to intervene was filed by someone who read about the case and claimed “extremely pertinent information” based on his experiences with security officials in another district. On November 3, 2020, the court of appeals affirmed the conviction. 979 F.3d 165. The merits panel also denied the intervention motion.

Post-Judgment Intervention Motions

Described here are twenty-five cases with intervention motions filed after judgment. Intervention was granted in six civil cases and two agency cases. It was denied in thirteen civil cases and two criminal cases and moot in two civil cases.

Intervention was granted in two civil cases and one agency case because another party demonstrated sufficient interest in the litigation: a similar target of vexatious pro se litigation,³⁷ a second historian seeking the unsealing of grand-jury records after the original plaintiff died,³⁸ and herbicide manufacturers who stated they did not know that the court’s decision in an agency case would apply to manufacturers other than the one at issue in the case.³⁹

Intervention was granted to two state attorneys general who said that the state officers defending each lawsuit had declined to seek post-judgment relief.⁴⁰

Courts of appeals granted intervention in two civil cases in which plaintiffs’ attorneys were on the hook for sanctions: a plaintiff’s attorneys in a defense costs-and-fees appeal who no longer represented the plaintiff⁴¹ and plaintiffs’ attorneys wishing to respond to a fees-on-appeal motion.⁴²

Intervention was also granted to journalists in a whistleblower agency case who sought the unsealing of the court’s opinion.⁴³

Five unsuccessful motions were filed by political entities.⁴⁴ Four other unsuccessful motions sought intervention to cure mootness⁴⁵ or lack of standing.⁴⁶ Two pro se intervention motions were unsuccessful.⁴⁷ Post-judgment intervention

37. Seventh Circuit: *Walton v. First Merchants Bank*, page 64.

38. Eleventh Circuit: *Pitch v. United States*, page 65.

39. Ninth Circuit: *National Family Farm Coalition v. EPA*, page 66.

40. Sixth Circuit: *EMW Women’s Surgical Center v. Friedlander*, page 65 (intervention ordered by the Supreme Court). Ninth Circuit: *Democratic National Committee v. Hobbs*, page 64.

41. Sixth Circuit: *NPF Franchising v. SY Dawgs*, page 64.

42. Ninth Circuit: *De Borja v. Razon*, page 65.

43. Third Circuit: *Doe v. SEC*, page 65.

44. Fourth Circuit: *Casa de Maryland v. Biden*, page 67 (motion by states after a change in the presidential administration). Sixth Circuit: *Gary B. v. Snyder*, page 71 (motion by a state legislature in case other state defendants declined to seek post-judgment relief declared moot after the court granted en banc rehearing). Seventh Circuit: *Frank v. Evers*, page 68 (motion by a state legislature in case another state defendant declined to seek post-judgment relief); *Cook County v. Wolf*, page 69 (motion by states after a change in the presidential administration). Ninth Circuit: *Various State and Local Governments v. Federal Immigration Agencies*, page 70 (motion by states in the waning days of a presidential administration).

45. Fourth Circuit: *Hirschfield v. ATF*, page 67; *Suarez v. Camden Property Trust*, page 71 (intervention moot). Ninth Circuit: *New York Hotel Trades Council v. Impax Laboratories*, page 69.

46. Tenth Circuit: *Kerr v. Polis*, page 70.

47. Fifth Circuit: *NetChoice v. Paxton*, page 68. Eighth Circuit: *Cheatum v. Ramey*, page 70.

was unsuccessful in two criminal cases: one denied by sealed order⁴⁸ and one filed by an attorney challenging ineffective assistance of counsel.⁴⁹ In four other civil cases, motions to add parties by intervention were unsuccessful.⁵⁰

Intervention Granted in Civil Cases

NPF Franchising v. SY Dawgs, 6th Cir. 21-cv-3516

A June 7, 2021, civil appeal challenged a Northern District of Ohio grant of costs and attorney fees to defendants in a voluntarily dismissed contract suit concerning women's professional softball. On June 15, 2022, the court of appeals affirmed the discovery sanction against the plaintiff's attorneys but vacated the award against their law firm. 37 F.4th 369. On July 19, the defendants moved for an award of costs and fees on appeal. The plaintiff's attorneys moved to intervene on August 1, stating that their representation of the plaintiff ended after the appellate court's decision, and the court's electronic filing system would only allow them to respond to the costs-and-fees motion as attorneys for the plaintiff, which they no longer were. With their intervention motion, the attorneys filed an opposition to the costs-and-fees motion. On August 5, the merits panel granted intervention. It denied the costs-and-fees motion on August 15.

Walton v. First Merchants Bank, 7th Cir. 22-cv-1240

A February 15, 2022, civil appeal challenged the Southern District of Indiana's declaration that a pro se action against a bank was "frivolous, baseless, and failed to state a claim upon which relief can be granted." On September 1, 2022, observing a history of frivolous litigation by the plaintiff, the court of appeals dismissed the appeal as frivolous and limited further filings by her. On July 12, 2024, another bank moved to intervene for the purpose of seeking a recall of the mandate and expansion of the limitation on the plaintiff's filings. The merits panel granted the second bank's motions.

Democratic National Committee v. Hobbs, 9th Cir. 18-cv-15845

A May 10, 2018, civil appeal challenged the District of Arizona's bench-trial judgment in favor of Arizona in an action to allow provisional ballots that were cast in the wrong precinct to be counted. 329 F. Supp. 3d 824. The court of appeals affirmed the district court's decision on September 18 by a vote of two to one. 904 F.3d 686. En banc, with four judges dissenting, the court held on January 27, 2020, that racial discrimination was a motivating factor in Arizona's policy and therefore a violation of the Voting Rights Act. 948 F.3d 989. On March 3, Arizona's attorney general moved to intervene on behalf of the state, stating that the secretary of state

48. Second Circuit: *United States v. McIntosh*, page 71.

49. District of Columbia Circuit: *United States v. Scurry*, page 71.

50. District of Columbia Circuit: *Al-Hela v. Biden*, page 66 (motion by an additional Guantanamo Bay detainee); *Humane Society of the United States v. Department of Agriculture*, page 67 (motion by a horse association in an action alleging insufficient regulation). Fifth Circuit: *Janvey v. GMAG*, page 68 (motion by a bank's chair in an action alleging fraud by the bank). Seventh Circuit: *EEOC v. Walmart Stores East*, page 69 (motion by the employee at issue in an action brought by the Equal Employment Opportunity Commission).

had decided not to continue a defense of Arizona law. With one judge dissenting, the en banc panel granted intervention on April 9. By a vote of six to three, the Supreme Court held on July 1, 2021, that the district court's finding that Arizona did not have a discriminatory purpose was not clearly erroneous. 594 U.S. 647. So the court of appeals affirmed the district court's decision on August 30. 9 F.4th 1218.

De Borja v. Razon, 9th Cir. 19-cv-35905

An October 30, 2019, civil appeal challenged the District of Oregon's dismissal of a case that it determined should have been brought in the Philippines. The court of appeals affirmed the dismissal on November 3, 2020. Two weeks later, the defendants moved for attorney fees on appeal. The plaintiffs' attorneys moved to intervene on December 9, stating that the motion subjected them personally to a potential sanction: "Although motion is framed as against Plaintiffs, the motion is based upon alleged mis-analysis of the law of subject matter jurisdiction by Plaintiffs' counsel. For that reason, [the plaintiffs' attorneys] would like to be heard on these issues." The merits panel granted intervention on December 11 and denied fees on January 20, 2021.

Pitch v. United States, 11th Cir. 17-usc-15016

The government's November 13, 2017, appeal challenged the Middle District of Georgia's grant of a historian's petition to unseal 1946 grand jury records concerning "what has been described as the last mass lynching in the United States." The court of appeals affirmed the district court's order on February 11, 2019, 915 F.3d 704, but on June 4, 2019, the full court ordered en banc rehearing, 925 F.3d 1224. The historian died on June 29. On August 15, the court granted a motion by the historian's widow to substitute herself as plaintiff and appellee. Another historian moved to intervene in the appeal on August 19, stating that she was the only historian remaining to have published scholarship in the lynching. A two-judge motion panel granted intervention on September 5. The court ruled en banc on March 27, 2020, that district courts do not have inherent power to release grand jury materials for reasons other than those stated in Federal Rule of Criminal Procedure 6(e). 953 F.3d 1226, *cert. denied*, 592 U.S. ___, 141 S. Ct. 624 (2020).

Intervention Ordered by the Supreme Court in a Civil Case

EMW Women's Surgical Center v. Friedlander, 6th Cir. 19-cv-5516

A May 15, 2019, civil appeal challenged the Western District of Kentucky's permanent injunction against a Kentucky statute regulating second-trimester abortion procedures. 373 F. Supp. 3d 807. On June 2, 2020, the court of appeals affirmed the injunction by a vote of two to one. 960 F.3d 785. Kentucky's new attorney general moved to intervene on June 11, stating,

Until recently, [the] Acting Secretary for the Cabinet for Health and Family Services, has defended [the statute] in this litigation. Now, [he] has reversed course. He has informed the Attorney General that he will not seek rehearing en banc or file a petition for a writ of certiorari from the Court's panel decision.

Five days later, the attorney general tendered a petition for rehearing en banc. On June 24, the merits panel denied intervention by a vote of two to one. The majority and dissenting opinions comprised nineteen pages. On March 3, 2022, the Supreme Court concluded that intervention should have been granted: “Respect for state sovereignty must . . . take into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court.” 595 U.S. 267, 277. On July 21, the court of appeals granted intervention and remanded the case for reconsideration in light of the Supreme Court’s June 24 decision in *Dobbs v. Jackson Women’s Health Organization* finding no constitutional right to abortion.

Intervention Granted in Agency Cases

Doe v. SEC, 3d Cir. 22-ag-1652

An April 8, 2022, petition challenged the Securities and Exchange Commission’s denial of a whistleblower award to a pseudonymous petitioner. The court of appeals denied the petition on March 23, 2023, in a sealed opinion, finding that the petitioner had not followed requisite whistleblower procedures. On April 27, journalists filed a motion to intervene and seek the unsealing of the court’s opinion. On May 19, the merits panel granted intervention and unsealed the opinion, which the court designated not precedential.

National Family Farm Coalition v. EPA, 9th Cir. 19-ag-70115

A January 11, 2019, petition by several organizations challenged the Environmental Protection Agency’s “extending the conditional registration for the new uses of the herbicide dicamba for use on genetically engineered cotton and soybean that have been engineered to resist dicamba in thirty-four states.” On May 15, a deputy clerk granted the manufacturer’s January 24 motion to intervene. On June 3, 2020, the court vacated the agency’s decision. 960 F.3d 1120. Two other herbicide manufacturers filed motions to intervene on June 12, stating that they did not know that the court’s decision would apply to herbicides manufactured by companies other than the manufacturer named in the petition. Three days later, the merits panel ordered briefing on the intervention motions. The panel granted intervention four days after that. On June 20, the three manufacturers moved for rehearing en banc. Rehearing was denied on August 17. On March 17, 2022, the merits panel ruled that the award of attorney fees should be based on where the attorneys practiced—Portland—and not on customary rates in San Francisco, where the case was heard. 29 F.4th 509.

Intervention Denied in Civil Cases

Al-Hela v. Biden, D.C. Cir. 19-cvus-5079

A March 29, 2019, civil appeal challenged denial of a writ of habeas corpus by the District of Columbia’s district court to a Guantánamo Bay detainee. The court of appeals affirmed denial of the writ on August 28, 2020. 972 F.3d 120. Another detainee moved to intervene on October 23 to seek rehearing en banc of a decision he said conflicted with an earlier decision in his own litigation concerning whether

the due-process clause applies to Guantánamo Bay detainees. A two-judge motion panel denied intervention on November 20. En banc, the court denied reconsideration of the intervention motion and granted en banc rehearing on April 23, 2021. A 312-page motion to intervene and participate in oral argument was filed on June 17, with 303 pages of attachments. Supplements with 1,114, 2,088, 483, 144, and 872 pages were filed over the next two weeks. On July 6, the en banc court denied intervention and enjoined further filings by the movant in the case. With four out of nine participating judges opining that Guantánamo Bay detainees are not entitled to due process, the court ruled on April 4, 2023, that the detainee had received due process. A public opinion following a classification review was issued on April 12. 66 F.4th 217.

Humane Society of the United States v. Department of Agriculture, D.C. Cir. 20-cv-us-5291

A September 24, 2020, civil appeal challenged the District of the District of Columbia's dismissal of an action that alleged insufficient regulation of horse soring, a practice intended to improve a horse's gait but that allegedly caused inhumane pain. On July 22, 2022, by a vote of two to one, the court of appeals reversed dismissal for insufficient notice and comment before an agency repealed a rule. 41 F.4th 564. A horse association moved to intervene on August 5 in opposition to the court's decision, stating, "The Department of Justice has told the Association that no decision has been made yet on whether the Federal Defendants will seek further review." Following briefing on the motion, the merits panel denied intervention on December 5 by a vote of two to one. 54 F.4th 733. In the same opinion, the panel denied rehearing of the case.

Casa de Maryland v. Biden, 4th Cir. 19-cv.us-2222

A November 4, 2019, civil appeal challenged a District of Maryland preliminary injunction that postponed the effective date of a new immigration rule. The rule made likelihood to become a public charge grounds for denying admission to the United States. By a two-to-one vote, the court of appeals reversed the injunction on August 5, 2020, finding that the new rule is a permissible interpretation of the governing statute. 971 F.3d 220. En banc rehearing was granted on December 3. 981 F.3d 311. On March 11, 2021, early in the next president's administration, the court dismissed the case as settled. That same day, fourteen states moved to intervene. The clerk of court issued an order denying intervention on March 18.

Hirschfield v. ATF, 4th Cir. 19-cv.us-2250

A November 7, 2019, civil appeal challenged the Western District of Virginia's dismissal of an action challenging a federal proscription against selling handguns to persons under twenty-one. 417 F. Supp.3d 747. By a two-to-one vote, the court of appeals reversed the dismissal in July 2021. 5 F.4th 407. A nineteen-year-old and a gun dealer moved to intervene in the district court on July 24 and in the court of appeals on July 27, observing that one of the original plaintiffs was over twenty-one and the other nearly was. On September 22, the court of appeals concluded that the case was moot and denied intervention. 14 F.4th 322, *cert. denied*, 596 U.S. ___, 142

S. Ct. 1447 (2022). The intervention motion was filed in the district court on the day before the second plaintiff turned twenty-one, but the district court did not have jurisdiction over the case then. By the time the intervention motion was filed in the court of appeals, the case was moot.

Janvey v. GMAG, 5th Cir. 17-pcf-11526

On May 24, 2019, in a challenge to the Northern District of Texas's civil judgment in favor of a defendant investor, the court of appeals granted panel rehearing and certified a question of state law to the Supreme Court of Texas in a case alleging fraudulent transfer to avert losses in a bank's Ponzi scheme. 925 F.3d 229. The bank's chair filed a pro se motion to intervene on August 15, challenging federal-court jurisdiction over the case. A motion judge denied intervention on August 27. The merits panel denied reconsideration on September 10. The court declined to take action on several additional motions filed by the chair. On October 8, 2020, the court granted judgment in favor of the plaintiff:

This case requires us to determine whether the Texas Uniform Fraudulent Transfer Act's—or TUFTA's—good faith affirmative defense allows Defendants-Appellees to retain fraudulent transfers received while on inquiry notice of a Ponzi scheme. We initially held it does not. We then vacated that decision so that the Supreme Court of Texas could clarify whether good faith requires a transferee on inquiry notice to conduct an investigation into the fraud, or, alternatively, show that such an investigation would have been futile. Having received an answer to our question, we once again hold that the Defendants-Appellees' good faith defense must fail. We therefore REVERSE the district court's judgment and RENDER judgment in favor of Plaintiff-Appellant.

977 F.3d 422, 425, *cert. denied*, 595 U.S. ___, 142 S. Ct. 708 (2021).

NetChoice v. Paxton, 5th Cir. 21-pcf-51178

A December 7, 2021, civil appeal by Texas's attorney general challenged a Western District of Texas preliminary injunction against a Texas law that constrained social media's controls over content. The merits panel stayed the injunction on May 11, 2022. On May 31, the Supreme Court vacated the stay. 596 U.S. ___, 142 S. Ct. 1715. The court of appeals resolved its case on September 16 by vacating the injunction, reasoning that censorship by social-media platforms is not speech. 49 F.4th 439. On November 29, the merits panel denied a pro se motion to intervene filed on November 2. On July 1, 2024, the Supreme Court vacated the appellate decision and remanded the case for reanalysis. 603 U.S. ___, 144 S. Ct. 2383. On November 7, the court of appeals remanded the case to the district court for possible development of a factual record justifying an injunction.

Frank v. Evers, 7th Cir. 16-cv-3003 and 16-cv-3052, and One Wisconsin Institute v. Thomsen, 7th Cir. 16-cv-3083 and 16-cv-3091

A July 22, 2016, civil appeal and a July 28, 2016, cross-appeal challenged the Eastern District of Wisconsin's preliminary injunction that required Wisconsin to allow voters who cannot obtain an identification document with reasonable effort to receive a ballot by executing an affidavit. An August 2, 2016, civil appeal and an August 3, 2016, cross-appeal challenged the Western District of Wisconsin's

permanent injunction that also required an effective safety net for prospective voters who cannot obtain identification documents with reasonable effort. On June 29, 2020, the court of appeals reversed the Eastern District's affidavit injunction and reversed the Western District's injunction in part, remanding the cases for assignment to a single judge to "eliminate the sort of inconsistent treatment that has unfortunately occurred in the photo-ID parts of the multiple suits." 963 F.3d 665, 681.

Wisconsin's legislature moved to intervene on July 3 in the remanded actions and in future appeals, stating that "the current Wisconsin Department of Justice administration has recently confirmed that it refuses to defend the state's election laws." On July 6, the merits panel denied intervention: "Because the Wisconsin Legislature does not seek any relief in this court, the subject is more appropriately considered by the district courts on remand."

EEOC v. Walmart Stores East, 7th Cir. 20-cv-1419

A March 16, 2020, civil appeal challenged the Western District of Wisconsin's summary judgment in favor of an employer in an action the Equal Employment Opportunity Commission brought on behalf of an employee who sought relief from an obligation to work on Saturdays. The court of appeals affirmed the judgment on March 31, 2021. 992 F.3d 656. The court denied rehearing on June 1. Two days later, the employee moved to intervene so that he could seek Supreme Court review. On the next day, a motion judge denied the intervention motion as untimely: the employee "had opportunity to intervene before the case was argued to the panel many months ago." The Supreme Court denied the employee's motion to intervene to seek a writ of certiorari on October 12. But the Supreme Court did grant the employee's certiorari petition to review the denial of intervention by the court of appeals, and it remanded the case for reconsideration on March 21, 2022, in light of *Cameron v. EMW Women's Surgical Center*, 595 U.S. 267 (2022), which held that the Sixth Circuit's court of appeals should have granted intervention to a new attorney general to petition for rehearing en banc. 595 U.S. ___, 142 S. Ct. 1357. On remand, the employer and the employee agreed to a settlement.

Cook County v. Wolf, 7th Cir. 20-cv-3150

On November 3, 2020, the federal government appealed from a Northern District of Illinois decision that vacated a new rule by the Department of Homeland Security prohibiting immigration by anyone with any chance of ever relying on public assistance. 498 F. Supp. 3d 999 (2020). Following the inauguration of a different President, the government voluntarily dismissed the appeal on March 9, 2021. Two days later, fourteen states moved to intervene in defense of the rule. Four days after that, the clerk issued a decision on behalf of the court denying intervention.

New York Hotel Trades Council v. Impax Laboratories, 9th Cir. 19-cv-16744

A September 5, 2019, civil appeal challenged the Northern District of California's dismissal of a securities action. The court partially reversed the dismissal on January 11, 2021. An investor had filed a class action on behalf of purchasers of a company's stock, but later a pension fund was named lead plaintiff. On February 8, a second

pension plan moved to intervene as a substitute lead plaintiff, stating that the first pension fund's claims could be mooted by aspects of the appellate court's decision. On March 21, the court of appeals declined to rehear its merits decision and denied the intervention motion "without prejudice to seek leave to intervene on remand."

Various State and Local Governments v. Federal Immigration Agencies, 9th Cir. 19-cv-17213, 19-cv-17214, and 19-cv-35914

Two October 31, 2019, civil appeals challenged a Northern District of California preliminary injunction issued in three related cases proscribing a substantial expansion of "public charge" as a reason for immigration exclusion. 408 F. Supp. 3d 1057 (2019). Another October 31 appeal challenged a similar preliminary injunction issued by the Eastern District of Washington. 408 F. Supp. 3d 1191 (2019). On December 2, 2020, the court of appeals partially affirmed the injunctions. 981 F.3d 742. The government filed a petition for certiorari on January 21, 2021 (U.S. 20-962). Eleven states moved to intervene in the appellate cases on March 10 so that they could seek Supreme Court review of the decision. Another state moved to join the intervention on the following day. A thirteenth state moved to join the intervention on March 29. By a vote of two to one, the merits panel denied intervention on April 8. 992 F.3d 742. On October 29, the Supreme Court agreed to review the denial of intervention. 595 U.S. ___, 142 S. Ct. 417. But the court dismissed the writ of certiorari as improvidently granted on June 15, 2022. 596 U.S. 763.

Kerr v. Polis, 10th Cir. 17-cv-1192

A June 5, 2017, civil appeal was resolved by a Tenth Circuit decision on July 22, 2019, that reversed the District of Colorado's dismissal of a suit for lack of standing. 930 F.3d 1190. The dismissed suit, filed by Colorado officeholders and subdivisions, challenged Colorado's Taxpayer Bill of Rights. On October 14, 2020, the court agreed to rehear the case en banc. 977 F.3d 1010. On January 26, 2021, the Colorado General Assembly moved to intervene as a plaintiff to mitigate standing concerns. The en banc court denied intervention on February 1: "Should the General Assembly wish to participate as amicus curiae, it may seek to do so in accordance with the applicable rules." On December 13, the court affirmed dismissal of the complaint, holding that the plaintiffs failed to state a valid claim. 20 F.4th 686.

Cheatum v. Ramey, 8th Cir. 20-pr-3623

(intervention category: pro se)

A pro se December 17, 2020, civil appeal challenged the Western District of Missouri's dismissal without prejudice of a pro se habeas action for failure to make prompt filings. On February 26, 2021, the court denied the appellant a certificate of appealability. On March 8, the clerk of court granted the appellant an extension until March 22 to file a petition for rehearing. Alleging insufficient access to a law library, the appellant moved on March 22 for another extension. Four days later, another person filed a pro se motion to intervene on behalf of the appellant, stating that the appellant was insufficiently learned. The appellant filed a rehearing motion on March 29. A motion judge granted the extension on March 30, and a motion

judge denied intervention on March 31. On April 19, a motion judge denied rehearing.

Intervention Denied in Criminal Cases

United States v. McIntosh, 2d Cir. 14-cr-1908

On January 31, 2022, the court of appeals remanded a Hobbs Act conviction for resentencing. A sealed motion to intervene in the case was filed on February 3, and a sealed order filed four days later denied intervention. On April 14, the merits panel denied reconsideration and granted withdrawal of the intervention motion. On further review, the Supreme Court ultimately held that a forfeiture sentence does not necessarily require a presentence order of forfeiture. 601 U.S. 330 (2024).

United States v. Scurry, D.C. Cir. 18-2255-3067

A September 20, 2018, criminal appeal challenged the denial of habeas corpus relief by the District of Columbia's district court to a defendant convicted on a guilty plea before evidence against codefendants was suppressed. 318 F. Supp. 3d 365 (D.D.C. 2018). On February 19, 2021, the court of appeals determined that the habeas claim lacked merit, but because of a conflict of interest between the defendant and his attorney—the most promising ground for relief was ineffective assistance of counsel when the defendant pleaded guilty—the court remanded the case for appointment of conflict-free counsel. 987 F.3d 1144. The attorney moved to intervene in the appeal on March 31 to protect her interests. The merits panel denied intervention on April 5 and issued an amended opinion. 992 F.3d 1060. The attorney filed another motion to intervene on April 13, which the merits panel denied on April 28.

Intervention Question Moot in Civil Cases

Suarez v. Camden Property Trust, 4th Cir. 19-cv.pri-1367

An April 9, 2019, civil appeal challenged the Eastern District of North Carolina's summary judgment awarded to defendants in an action seeking relief from fees charged for late rent. The district court denied a motion for class certification as moot. The court of appeals granted the plaintiff some relief on June 19, 2020. On July 27, the court granted the parties' request to stay the mandate pending mediation. On September 10, two renters moved to intervene as substitute class representatives, stating that the defendants were negotiating an individual settlement with the plaintiff. Without resolving the intervention motion, the clerk issued the mandate on September 29. The district court approved a class settlement on July 30, 2021.

Gary B. v. Snyder, 6th Cir. 18-cv-1855 and 18-cv-1871

Civil appeals filed on July 30 and August 1, 2018, challenged the Eastern District of Michigan's dismissal of a suit alleging inadequate public education. On April 23, 2020, the court of appeals partially reversed the judgment, recognizing a basic minimum education as a fundamental right. 957 F.3d 616. On May 7, Michigan's senate and house of representatives moved to intervene to seek rehearing en banc,

stating that it was unsure whether other state defendants would do so. With their motion, they tendered a petition for en banc rehearing. On May 19, the court sua sponte ordered en banc rehearing. En banc, the court ordered the case dismissed as settled on June 10, denying other pending motions as moot.