



# Supreme Court to Decide if States May Defend Federal Rules the United States Won't Defend

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In [Arizona v. San Francisco City and County of California](#) the Supreme Court will decide whether states with interests should be permitted to intervene to defend a rule when the United States ceases to defend the rule.

One of the grounds for inadmissibility into the United States per the Immigration and Nationality Act (INA) is if a person is likely to become a “public charge.” This term isn’t defined in the INA. Using the notice and comment rulemaking process, in 2019 the Trump administration defined “public charge” more broadly than guidance from the Clinton administration. San Francisco and many others sued the Trump administration over the definition in federal courts throughout the United States.

In February of 2021 the Supreme Court agreed to hear a case from the Second Circuit to decide whether the definition was unlawful. Shortly thereafter, the Biden administration decided not to defend the rule. It sought and received dismissal of all the challenges to the rule, including the challenge in the Supreme Court. In this case the Ninth Circuit had affirmed district court preliminary injunctions concluding the 2019 public charge rule was likely contrary to law.

In January of 2021 the United States asked the Supreme Court to review the Ninth Circuit decision. On March 9, 2021, before the Court acted on the petition,



the United States and San Francisco jointly asked the Supreme Court to dismiss the Ninth Circuit petition, which it did.

The next day Arizona and 12 other states, which had not participated in the case previously, asked if they could intervene in the Ninth Circuit case so that they could petition the Supreme Court to review the Ninth Circuit decision. The Ninth Circuit denied Arizona's motion to intervene without issuing an opinion. A dissenting judge would have granted it. Applying the Federal Rules of Civil Procedure governing intervening, Judge Van Dyke concluded Arizona met all the requirements which include timeliness, having a "significant protectable interest" related to the litigation that may be impaired or impeded depending how the litigation is resolved, and whether existing parties will adequately represent the applicant's interests.

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