

Nos. 23-35440, 23-35450

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STATE OF IDAHO,

Defendant-Appellant,

v.

MIKE MOYLE, Speaker of the Idaho House of Representatives; CHUCK  
WINDER, President Pro Tempore of the Idaho Senate; THE SIXTY-SEVENTH  
IDAHO LEGISLATURE, Proposed Intervenor-Defendants,

Movants-Appellants.

On Appeal from the United States District Court  
for the District of Idaho

**UNITED STATES'S MOTION FOR LEAVE TO FILE REPLY IN  
SUPPORT OF EMERGENCY MOTION FOR RECONSIDERATION EN  
BANC OF PUBLISHED ORDER GRANTING STAY PENDING APPEAL**

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Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27-1, the United States moves for leave to file a reply in support of its emergency motion for *en banc* reconsideration. *See* Dkt. 53. Although it is uncertain whether leave is required for such a reply, out of an abundance of caution, the United States respectfully files this motion. A copy of the reply, which totals 2,097 words, is attached.

1. On August 24, 2022, the district court issued the preliminary injunction at issue in these consolidated appeals. On September 28, 2023, a motions panel of this Court issued a published order staying the preliminary injunction pending appeal. *See* Dkt. 49.<sup>1</sup> On September 30, the plaintiff-appellee United States moved for emergency *en banc* review, requesting full relief by October 10 and an immediate administrative stay of the panel's order in the interim. *See* Dkt. 53. The *en banc* coordinator directed appellants to file a response not to exceed 4,200 words by 10:00 a.m. PT on October 4, 2023. *See* Dkt. 54. Both the Idaho Legislature (a permissive intervenor and the stay-movant) and the State of Idaho (the named defendant, which did not seek a stay) filed responses. *See* Dkts. 60, 61.

2. There is good cause to grant the United States leave to file the attached reply. The State of Idaho, which neither moved for a stay nor participated in the stay-motion briefing, has filed an opposition containing new legal arguments not presented

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<sup>1</sup> The Court has since issued a "corrected" version of the stay order. *See* Dkt. 59. A compare of the two versions shows that the corrected order reflects only formatting changes and no substantive alterations.

to the motions panel. The Idaho Legislature's opposition similarly presents theories not adopted in the published stay order. A reply is warranted to provide the United States an opportunity to respond in writing to appellants' arguments.

3. The United States contacted counsel for appellants by email at 9:09 a.m. PT on October 5, 2023, indicating the federal government's intent to file this motion. Counsel for the State of Idaho responded that the State does not consent to a reply. As of this filing, counsel for the Idaho Legislature has not responded.

### **CONCLUSION**

The United States respectfully requests leave to file the attached reply in support of the federal government's emergency motion for *en banc* review.

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### STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, appellee states that it knows of one case related to the above-captioned consolidated appeals: Case No. 23-35153. That appeal arises from the district court's partial grant of intervention issued during the proceedings below.

*s/ Nicholas S. Crown*  
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Nicholas S. Crown

## CERTIFICATE OF COMPLIANCE

This motion complies with Ninth Circuit Rule 27-1 because it contains 393 words. It was prepared in a proportionally spaced typeface using Word for Microsoft 365 in Garamond 14-point font.

*s/ Nicholas S. Crown*  
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Nicholas S. Crown

**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2023, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

*s/ Nicholas S. Crown*  
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Nicholas S. Crown