In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2561

COOK COUNTY, ILLINOIS, *et al.*,

Plaintiffs-Appellees,

v.

STATE OF TEXAS, *et al.*,

Intervenors-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 19-cv-06334 — **Gary Feinerman**, *Judge*.

ARGUED APRIL 13, 2022 — DECIDED JUNE 27, 2022

Before ROVNER, WOOD, and ST. EVE, *Circuit Judges*.

WOOD, *Circuit Judge*. In August 2019, the Department of Homeland Security (DHS) introduced the "Inadmissibility on Public Charge Grounds Rule" (the 2019 Rule). The new rule expanded the meaning of "public charge" to disqualify a broader set of noncitizens from benefits than earlier policies had done; it immediately generated extensive litigation across the country. In September 2019, Plaintiffs-Appellees Cook County, Illinois, and the Illinois Coalition for Immigrant

Refugee Rights (ICIRR) brought an action against the Department of Homeland Security and its U.S. Citizenship and Immigration Service. In November 2020, the district court vacated the 2019 Rule under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, and in March 2021, the federal government dismissed appeals defending the 2019 Rule in courts around the country. In May 2021, the States now before us sought to intervene in the proceedings in the Northern District of Illinois, hoping to defend the 2019 Rule; they also moved for relief from judgment under Rule 60(b). The district court denied these motions, finding each untimely.

We conclude that the district court did not abuse its discretion in that respect. That is enough to resolve the remainder of the issues that are properly before us. If the States wish to challenge the repeal of the 2019 Rule under the APA, we can confirm that nothing we say here will prevent them from trying to do so in a fresh legal proceeding.

I

A

The Immigration and Nationality Act (INA) permits the federal government to deny admission or adjustment of status to a noncitizen "likely at any time to become a public charge." 8 U.S.C. § 1182(a)(4)(A). For decades, "public charge" was understood to refer to noncitizens "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (May 26, 1999). DHS departed from this understanding

in August 2019, when it introduced the 2019 Rule. See 84 Fed. Reg. 41,292 (Aug. 14, 2019). That rule categorized as a "public charge" "an alien who receives one or more designated public benefits for more than 12 months in the aggregate within any 36-month period," thereby sweeping in noncitizens who received even minimal benefits for the requisite duration. *Id.* at 41,295. It also expanded the definition of "public benefit" to encompass non-cash benefits such as SNAP (commonly known as "food stamps"), most forms of Medicaid, and various forms of housing assistance. *Id.*

Challenges to the 2019 Rule quickly followed in district courts across the country. In the case before us, Plaintiffs Cook County and ICIRR brought suit in September 2019, alleging that the 2019 Rule's expanded definition of "public charge" was inconsistent with the INA and arbitrary and capricious in violation of the APA. ICIRR also asserted that the 2019 Rule violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. In October 2019, the district court granted both plaintiffs' motion for a preliminary injunction and enjoined the 2019 Rule's application within the State of Illinois. After DHS appealed, we denied the government's motion to stay the preliminary injunction pending appeal; the Supreme Court later granted that temporary relief. See *Wolf v. Cook County*, 140 S. Ct. 681 (2020) (mem.). Not long after, we affirmed the district court's preliminary injunction against the 2019 Rule's operation in Illinois on the basis that the 2019 Rule likely violated the APA. See *Cook County v. Wolf*, 962 F.3d 208, 221, 234 (7th Cir. 2020) ("*Cook County I*"), *cert. dismissed sub nom. Mayorkas v. Cook County*, 141 S. Ct. 1292 (2021). The Supreme Court's stay of the preliminary injunction remained in effect.

Back in the district court, the case continued. That court granted Cook County's motion for summary judgment on the APA claims in November 2020, entering a partial final judgment vacating the 2019 Rule on those claims pursuant to Federal Rules of Civil Procedure 54(b). This time, the district court explicitly indicated that its vacatur order was to operate nationwide. DHS soon appealed that judgment, but we stayed action on the appeal in light of the fact that DHS's petition for a writ of certiorari seeking review of our prior affirmance of the preliminary injunction was still pending before the Supreme Court. Because the district court's November 2020 order did not dispose of ICIRR's equal-protection theory, discovery related to that issue began.

On January 22, 2021, the district court ordered the federal government to file a status report addressing whether it planned to continue defending the 2019 Rule in light of the November 2020 election and the resulting change in administration. On February 2, President Biden issued an Executive Order directing DHS to "consider and evaluate the current effects of [the 2019 Rule] and the implications of [its] continued implementation." See Exec. Order No. 14,012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 86 Fed. Reg. 8,277, 8,278 (Feb. 2, 2021). The Order further stated that "it is essential to ensure … that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them." *Id.* at 8,277. That same day, the government notified the district court of the Executive Order.

On February 19, 2021, ICIRR and DHS provided the district court with a joint status report agreeing to a two-week stay to provide the government with additional time to assess how it wished to proceed. In the report, DHS explained that a time-limited stay would "spare the parties and the Court from the burdens associated with briefing and resolving the merits of the equal protection claim" that "may ultimately prove unnecessary." ICIRR and DHS filed another joint status report on March 5, in which ICIRR objected to a further stay of the proceedings because the 2019 Rule remained in effect and continued to generate uncertainty for immigrant communities.

On March 9, DHS announced that the government was no longer going to defend the 2019 Rule, because it had determined that continued defense was not in the public interest nor an efficient use of government resources. It took actions around the country consistent with that decision, including a motion to dismiss the case of *DHS v. New York*, which the Supreme Court had agreed to hear. See No. 20-449 (U.S. Feb. 22, 2021). The Court obliged, in an order entered that same day, dismissing the petition pursuant to Supreme Court Rule 46.1. See 141 S. Ct. 1292 (2021). The government also moved to dismiss several appeals around the country, including its appeal of the district court's Rule 54(b) judgment, which was the basis for the district court's nationwide order of vacatur. Like the Supreme Court, we granted the motion on March 9 and immediately issued the mandate, as required under Seventh Circuit Local Rule 41. Our mandate had the effect of leaving the district court's order in place, but unreviewed (as though no appeal had ever been taken). On March 11, 2021, DHS and ICIRR filed a final joint stipulation with the district court. ICIRR explained that

it was voluntarily dismissing its equal-protection claim with prejudice on the theory that the November 2020 order, which was no longer subject to any stays, effectively wiped out the 2019 Rule.

On March 15, DHS promulgated a final rule, effective immediately, that removed the 2019 Rule from the Code of Federal Regulations, assertedly in compliance with the district court's nationwide vacatur. See *Inadmissibility on Public Charge Grounds; Implementation of Vacatur*, 86 Fed. Reg. 14,221, 14,227–29 (Mar. 15, 2021). DHS did not precede this action with formal notice and comment, instead choosing to invoke the APA's "good cause" exception. See 5 U.S.C. § 553(b)(B) (excusing notice and comment when "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

On March 11, two days after our mandate issued and the same day that ICIRR voluntarily dismissed its equal-protection claim, Texas and thirteen other States[1] sought for the first time to obtain party status in this case, moribund though it was. They began with a motion in this court asking that we grant them intervenor status so that they could defend the 2019 Rule. They also moved to recall the mandate we had issued on March 9. We denied the motion to intervene on March 15. See Order, *Cook County v. Wolf*, No. 20-3150 (7th Cir. 2021). The Supreme Court later denied the States' application seeking a stay of the district court's vacatur order or, in the alternative, summary reversal of this court's denial of their motions. *Texas v. Cook County*, 141 S. Ct. 2562, 2562 (Apr. 26,

[1] The other States are Alabama, Arizona, Arkansas, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, and West Virginia.

2021) (mem.). That killed the States' case for the time being, even though the Court did say that its ruling was "without prejudice to the States raising this and other arguments before the District Court, whether in a motion for intervention or otherwise." But without intervention, they did not have party status, and without that status, they could not pursue either recall of the mandate or relief under Rule 60(b).

B

This brings us to the latest chapter. On May 12, the States appeared before the district court for the first time. Following the Supreme Court's hint, they moved to intervene under Federal Rule of Civil Procedure 24(a) (of right) and 24(b) (permissive). In addition, assuming their success in intervening, they asked the district court to set aside its judgment pursuant to Rule 60(b)(6). The district court was satisfied that the States had Article III standing to proceed in this way, but it denied both the motions to intervene and the requested substantive relief.

With respect to the motions to intervene, the district court found that the States had waited too long to act. They had been aware that the 2019 Rule was on shaky ground for months. Two days after President Biden's inauguration the district court solicited comment on the 2019 Rule from the new administration; by March 9 the DHS had abandoned the Cook County case; and by March 15 it had repealed the 2019 Rule. The district court also found that intervention would prejudice the original parties. It noted that the States had alternative routes available under the Administrative Procedure Act to object either to the process by which the 2019 Rule was rescinded or to the policy that action reflected. To the extent the new administration was contemplating a

replacement rule, the States had every opportunity to participate in that effort. Finally, the district court found that no unusual circumstances justified relief. As for Rule 60(b)(6), the court found that such relief first requires that intervention be granted. It wrapped up by indicating that even if the States should have been permitted to intervene, it nonetheless would have denied the Rule 60(b)(6) motion because it was untimely and no extraordinary circumstances were present.

We conclude our procedural tale with two important later-breaking developments. First, having erased the 2019 Rule from the books, DHS is now pursuing a replacement "public charge" policy through formal notice-and-comment rulemaking. See *Public Charge Ground of Inadmissibility*, 87 Fed. Reg. 10,570, 10,571 (Feb. 24, 2022).

Second, until recently there was a case much like ours pending before the Supreme Court. See *Arizona v. City and County of San Francisco*, No. 20-1775. There, a coalition of States moved to intervene in the Ninth Circuit after the federal government dismissed its petition for a writ of certiorari seeking review of the Ninth Circuit's affirmance of multiple preliminary injunctions of the 2019 Rule. Those injunctions had been issued by district courts in the Northern District of California and the Eastern District of Washington. After the Ninth Circuit had refused to allow the States to intervene either of right or permissively, the Supreme Court granted review and held oral argument on February 23, 2022. On June 15, 2022, however, the Court dismissed the writ of certiorari as improvidently granted. See No. 20-1775, 2022 WL 2135493 (U.S. June 15, 2022). In a concurring opinion joined by three of the Justices, the Chief Justice noted that the Arizona case was plagued by a number of confounding issues:

- Did the government's actions comport with the principles of administrative law?
- Do States from areas that may not be covered by the district court's order have standing to sue?
- Have challenges to the Trump administration's rule become moot?
- If they are moot, is vacatur pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), required or possible?
- What is the scope of injunctive relief under the APA, and is a nationwide injunction permissible here?
- How do the APA's procedural requirements apply in this unusual setting?

2022 WL 2135493 at *1. We take the point: there is a cornucopia of issues that may be relevant. Only some of them must be resolved in order to dispose of the present appeal, however, as we now explain.

II

A

Before turning to the central issue on appeal—the right of the States to intervene—we comment briefly on why we do not regard the entire case as moot. It may seem that the States are beating a dead horse, but that isn't entirely true. In fact, they are seeking an opportunity to breathe life back into this case, and ultimately to resuscitate the 2019 Rule. In their view, if they can get in the door, they might succeed either in recalling the mandate and hence undoing the district court's work that way, or in persuading a court to grant Rule 60 relief.

The question will remain whether the repeal of the 2019 Rule and the launch of notice and comment on the replacement rule, will doom their case on the merits should they get that far. But that is not the same thing as mootness.

We begin with the district court's denials of the States' motions to intervene; we review these for abuse of discretion.[2] *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019). As we noted, the States pursued both intervention of right and permissive intervention. There are meaningful differences between the two forms, but for present purposes they do not matter. The common thread is the timeliness of the motion to intervene. See *NAACP v. New York*, 413 U.S. 345, 365 (1973) ("Whether intervention be claimed of right or as permissive, it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be timely."). In evaluating timeliness, we look to four considerations: (1) the length of time the intervenor knew or should have known of

[2] The centrality of timeliness in our case, plus the fact that the parties seeking intervention are not part of the same polity as the original parties, both distinguish our case from *Berger v. North Carolina State Conf. of the NAACP*, No. 21-248, 2022 WL 2251306 (U.S. June 23, 2022). The *Berger* Court confirmed that "[e]veryone before us agrees that the legislative leaders' motion to intervene was timely." *Id.* at *6. It also stressed that its decision rested on the prerogative of States to structure themselves "as they wish," subject only to "wide constitutional bounds." *Id.* at *3. The case before us is all about timeliness and has nothing to do with internal State organization, and so falls outside the scope of *Berger*. We do note, however, that *Berger* reserved the question whether the standard of review in the case before it was *de novo* or abuse-of-discretion. See *id.* at *11 n.*. It had no need to choose there, because it found an error of law, which is automatically an abuse of discretion. Here, the assessment of timeliness is a fact-bound question, which remains in our view subject to ordinary abuse-of-discretion review.

his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; and (4) any other unusual circumstances. See *City of Chicago*, 912 F.3d at 984 (applying these factors to a 24(a) analysis); *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 945 (7th Cir. 2000) (applying these factors to a 24(b) analysis). We agree with the district court that each of these considerations counsels against intervention.

With respect to the passage of time, a would-be intervenor is required to "move promptly to intervene as soon as it knows or has reason to know that its interests might be adversely affected by the outcome of the litigation." *Heartwood, Inc. v. U.S. Forest Serv.*, 316 F.3d 694, 701 (7th Cir. 2003); see also *City of Chicago*, 912 F.3d at 985 (noting that we "measure from when the applicant has reason to know its interests *might* be adversely affected, not from when it knows for certain that they will be"). Though then-candidate Biden indicated over the course of his 2020 presidential campaign that his administration would seek to repeal the 2019 Rule, we need not address the status of "campaign speech." We may assume for present purposes that the States were justified in relying on DHS's continued defense of the 2019 Rule at least through the November 2020 election, and perhaps even into the new year after President Biden took office. What matters is that by the end of February 2021 the States were, without doubt, aware of the possibility that the federal government was going to abandon its defense of the 2019 Rule and seek to promulgate a new one.

After the February 2, 2021, Executive Order directed DHS to review the 2019 Rule within 60 days, the federal government submitted a status report to the district court

explaining that the government continued to assess its "next steps." Then in the joint status report filed on February 19, the federal government sought a "time-limited stay" to "spare the parties and the Court from the burdens associated with briefing and resolving the merits of the equal protection claim," which "further developments" could "moot." In that same report, ICIRR hedged its bets by asking the district court to allow discovery on the equal-protection claim to continue. But contrary to the States' suggestions, a reasonable onlooker would not have inferred from ICIRR's attempts to keep pressure on the federal government that the government was committed to the 2019 Rule. As anyone who has ever sat at a negotiation table would recognize, ICIRR had an interest in continuing to press its case until abandonment was official. By the end of February 2021, there was no doubt that the federal government was at least *seriously considering* dismissal of its appeal. That is enough to render the States' May 12 motions untimely.

The problems for the States with respect to the first timeliness consideration do not end here. Recall that the original plaintiffs' APA claims were before us in an interlocutory posture when DHS dismissed its appeal and our mandate issued on March 9. *Cook County I*, 962 F.3d at 217 (appeal concerned only with APA issues). Litigation related to ICIRR's equal-protection claim continued to proceed at the district court along a separate track for another few days—ICIRR did not dismiss the constitutional claim until March 11. Moreover, as we have noted, on March 11 the States moved to intervene only in the court of appeals—*not* in the district court. They waited another two months, until May 12, to bring their motions to intervene to the district court. The only justification the States offer is that they assumed that the

March 11 motions to intervene in the APA *appeal* somehow "stopped the clock" with respect to the proceedings before the district court. But the March 11 intervention motions and May 12 intervention motions are not the same thing. The issues were different, and the standards for district court intervention under Rule 24 and appellate intervention are different. *Cf. Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1010 (2022) (treating appellate intervention, which is referenced only in "passing" in Rule 15(d) of the Federal Rules of Appellate Procedure, as distinct from intervention in the district courts, even though the rule for district court intervention can provide "guidance" for developing a rule governing appellate intervention); *Arizona* Transcript at 46 (Alito, J.) (observing that appellate intervention and Rule 24 intervention may be subject to different legal standards). And even if we were to give the States the benefit of the doubt and use the March 11 date as the point of reference, by that time the district court reasonably could have concluded that it was too late to create an entirely new lawsuit through the intervention of fourteen States.

The other three timeliness considerations also support the denial of the States' motions to intervene. We begin with prejudice. Because this was the tail end of a lawsuit that had begun in September of 2019, the States' proposed intervention would have exposed the original parties to an entirely new set of issues—a conclusion drawn by the district court which the States offer no reason to question. DHS may well have taken a different approach to its repeal of the 2019 Rule and its design of a replacement had the States intervened sooner. Recall that as late as 2020, when we issued *Cook County I*, the district court's injunction was limited to Illinois. Had the

States intervened earlier and challenged the nationwide vacatur, the result may have been to trim it back again to an order relating only to Illinois. Who knows? Without any additional parties, DHS rationally chose to accept the vacatur for reasons it deemed sufficient. In addition, if the States were to intervene now, ICIRR would in all likelihood move to revive its equal-protection claim and reinitiate a burdensome discovery process against the federal government. This is more than enough to demonstrate the risk of prejudice to the original parties if this late intervention were to be approved.

Next, we turn things around and ask whether the States would be prejudiced by the denial of their motions to intervene. The States insist that their stake in the 2019 Rule stems from their interests in fiscal responsibility and social-welfare budgeting, and that intervention is the only realistic means available to them to vindicate those interests. We do not doubt that these States, like their sister States, have an important interest in fiscal responsibility and all that goes with it. But it hardly follows that intervention is the only way to achieve that interest. For present purposes, we put to one side the empirical question whether the 2019 Rule would in fact save the States substantial amounts of money.[3] It is plain

[3] The answer to this question is far from self-evident. In its brief before this court, DHS represents that the 2019 Rule has had "an exceedingly modest impact" during the approximately one-year period in which it has been in effect. DHS reports that it "issued only 3 denials and two Notices of Intent to Deny based solely on the basis of the INA § 212(a)(4) public charge ground of inadmissibility evaluated under the Rule's totality of the circumstances framework." Dkt. No. 269-1, ¶ 8. To put this in perspective, DHS notes that this amounted to five people out of the 47,555 applications for adjustment of status to which the 2019 Rule was applied. Br. for Defendants-Appellees at 12.

that the States had (and still have) other, arguably better, legal routes available to them to influence the evolving "public charge" policy. As a number of Justices observed during the oral arguments in the *Arizona* case, the States could have brought a separate case under the APA to challenge the process by which DHS repealed the 2019 Rule. As previously noted, DHS did not use notice and comment when on March 15, 2021, it removed the 2019 Rule from the Code of Federal Regulations. And now that a new round of notice-and-comment rulemaking is underway, the States also are free to participate in the process of developing a new "public charge" rule. (As we noted, DHS issued its Notice of Proposed Rulemaking on February 24, 2022, and set April 25, 2022, as the submission deadline for written comments; the record before us does not reveal whether the States participated.) In sum, the district court did not abuse its discretion by finding that the States had failed to show prejudice from the denial of their intervention effort.

The fourth and final question with respect to timeliness is whether any other unusual or extraordinary circumstances justify the States' delay. For the reasons outlined with respect to the first three considerations, we find nothing on this record indicating as much. The propriety of nationwide injunctions has been debated for years. See, *e.g.*, *City of Chicago v. Barr*, 961 F.3d 882, 912–13 (7th Cir. 2020) (discussing the "serious concerns" with injunctive relief that extends beyond the parties before the court and citing relevant literature); Attorney General William P. Barr Delivers Remarks to the American Law Institute on Nationwide Injunctions, May 21, 2019, at https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-american-law-institute-nationwide. It is equally commonplace for a new

administration to take different policy positions from its predecessor, and in the course of doing so to withdraw an appeal or rule. In the present case, the new administration wasted no time in signaling that it might take advantage of that prerogative. Even if there were unusual aspects about this litigation—particularly the way in which the decision not to appeal the nationwide vacatur interacted with the decision to withdraw the 2019 rule—this litigation is not the place in which to raise those concerns. We add that this is not the first time we have rejected the notion that the government's dismissal of its appeals was "extraordinary." We did so when we denied the States' March 11 motions. See Order Denying Motions, *Cook County v. Wolf*, No. 20-3150 (7th Cir. Mar. 15, 2021), ECF No. 26. Nothing since that time has changed our assessment, especially given the deferential standard of review that governs this Rule 24 matter.

Put simply, the writing had long been on the wall that the federal government was likely to abandon its defense of the 2019 Rule. We therefore find that the district court did not abuse its discretion in finding that the May 2021 motions to intervene were untimely.

We conclude our analysis by noting that Rule 24(a) and Rule 24(b) contain additional requirements that the States must meet. Most notably, a timely motion for intervention of right under Rule 24(a) must involve either "an unconditional right to intervene by a federal statute" or, as the States claim here, an interest "relating to the property or transaction that is the subject of the action." See *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 315 (1985) (referring to the latter as a "legally protectible" interest). Drawing on the Supreme Court's precedents, Cook County and ICIRR argued in the

district court and now before us that the States' purported financial interest in this litigation does not, without more, qualify as a "legally protectible" status. Because the untimeliness of the States' motions is dispositive, we need not pursue this point any further.

B

We next turn to the States' motion under Rule 60(b), which provides relief from a final judgment or order in a narrow set of circumstances. In reviewing the district court's denial of the motion, we apply "an extremely deferential abuse of discretion standard" that is met "only when no reasonable person could agree with the decision to deny relief." *Eskridge v. Cook County*, 577 F.3d 806, 808–09 (7th Cir. 2009).

A number of hurdles stand in the States' way of overcoming such a standard. Rule 60(b) motions must be made within a reasonable time, see FED. R. CIV. P. 60(c)(1), and so many of the considerations informing our analysis of the untimeliness of the motions to intervene apply with equal force here. But we need not reach these aspects of Rule 60(b), as the States face a threshold problem: relief under Rule 60(b) is available only to "a party or its legal representatives." FED. R. CIV. P. 60(b).

The limitation to parties or legal representatives appears in the text of Rule 60(b). Indeed, we have noted that "[i]t is well-settled that, with an exception not relevant here, one who was not a party lacks standing to make a 60(b) motion." *Nat'l Acceptance Co. of Am. v. Frigidmeats, Inc.*, 627 F.2d 764, 766 (7th Cir. 1980). That exception, for which we cited the respected Wright and Miller treatise, refers only to those in privity with the original parties to the case. See Wright & Miller, 11 FED.

PRAC. & PROC. CIV. § 2865 (3d ed. 2012) (noting that the Rule allows "one who is in privity with a party to move under the rule" but that "[w]ith this exception, one who was not a party lacks standing to make the motion"). This makes sense: if Rule 60(b) rights were extended beyond parties and their privies to anyone who disliked the outcome of a case, finality would be exceedingly hard to achieve.

With intervention denied, the States remain nonparties for this case, and they are not in privity with the federal government, Cook County, or ICIRR. They are therefore not entitled to pursue Rule 60(b) relief.

III

We AFFIRM the district court's orders rejecting the States' motions to intervene and their request for post-judgment relief.