

No. 23-1270

IN THE SUPREME COURT OF THE UNITED STATES

PIERRE YASSUE NASHUN RILEY,
Petitioner,

v.

MERRICK B. GARLAND, U.S. ATTORNEY GENERAL,
Respondent.

MOTION OF FORMER U.S. ATTORNEYS GENERAL FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS *AMICI CURIAE* AND FOR
DIVIDED ARGUMENT

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Pursuant to Rules 28.3, 28.4, and 28.7 of this Court, *amici curiae* former U.S. Attorneys General William P. Barr, Michael B. Mukasey, and Jefferson B. Sessions III respectfully request leave to participate in oral argument as *amici curiae* because Petitioner and Respondent agree on both questions presented, and the Court would benefit from hearing from adversarial argument in support of the judgment below.

Amici's counsel is deeply familiar with the questions presented, has already defended the judgment below even when no other party would do so, has presented adversarial appellate argument on these issues after the government declined to do so at the Second Circuit, and represents former U.S. Attorneys General with intimate knowledge of the immigration system and laws.

Amici filed a brief at the petition stage in this case opposing certiorari on all questions presented. *See Br. Amici Curiae of Former U.S. Attorneys General in Opp. to Pets.* (July 5, 2024) (hereinafter, "*Amici Br.*"). *Amici* filed that brief because they recognized that Respondent would almost certainly decline to defend the judgment below, as the government had formally adopted Petitioner's position at the Fourth Circuit and in other lower courts, too. *Amici Br.* 1–2, 19–20. *Amici*'s brief defended the merits of the judgment below on both questions presented. *Id.* at 8–10, 13–16.

As expected, Respondent’s brief to this Court agreed with Petitioner’s position on both questions presented and acceded to a grant. *See* Br. for Resp. 6–7 (Sept. 13, 2024) (agreeing “Petitioner is correct” on both questions presented).

In his reply brief, Petitioner himself suggested “the Court can appoint an *amicus* to defend the Fourth Circuit’s decision, as it has regularly done in such situations” where the government declined to defend the judgment below. Reply to Resp. Br. 2, 13 (Oct. 1, 2024).

Amici have now also filed a merits-stage *amicus* brief launching a full-throated defense of the judgment below on the merits. *Amici* remain the only ones doing so.

Another appellate Court has already appointed *Amici*’s counsel to present adversarial oral argument on these exact issues. In Spring 2024, the undersigned was appointed in the Second Circuit to defend its precedent on the questions presented—which the Fourth Circuit later adopted and which are directly at issue here—and was given oral argument time because the government similarly refused to present adversarial argument and had called for the Second Circuit to go *en banc* to rule *against* the government on these issues. *See Castejon-Paz v. Garland*, No. 22-6024 (2d Cir.); *Cerrato-Barahona v. Garland*, No. 22-6349 (2d Cir.).

A previous version of this motion—seeking appointment to argue in defense of the judgment below—was filed on November 4, 2024, and no party opposed it. The Clerk’s office subsequently informed undersigned that the proper mechanism for that relief would be to file a merits-stage *amicus* brief and then ask for leave to participate in oral argument.

CONCLUSION

For the foregoing reasons, the Court should grant leave for *Amici* to participate in oral argument.

December 3, 2024

Respectfully submitted,

/s/ R. Trent McCotter

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