

No. 23-1270

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IN THE SUPREME COURT OF THE UNITED STATES

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PIERRE YASSUE NASHUN RILEY,  
*Petitioner,*

v.

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

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MOTION FOR APPOINTMENT AS *AMICUS* TO DEFEND THE  
JUDGMENT BELOW AND TO PARTICIPATE IN ORAL ARGUMENT

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R. Trent McCotter  
*Counsel of Record*  
BOYDEN GRAY PLLC  
800 Connecticut Ave. NW  
Suite 900  
Washington, DC 20006  
202-706-5488  
tmccotter@boydengray.com

*Counsel for Amici Curiae*  
*Former U.S. Attorneys General*

Pursuant to Rules 28.3, 28.4, and 28.7 of this Court, undersigned counsel for *amici curiae* former U.S. Attorneys General William P. Barr, Michael B. Mukasey, and Jefferson B. Sessions III respectfully requests appointment to defend the judgment below and to participate in oral argument.

Undersigned counsel is deeply familiar with the questions presented, has demonstrated an interest in defending the judgment below even when no other party will do so, has already 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. *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).

*Amici* are thus the only parties defending the judgment below. 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). The Court should do so again here and appoint the undersigned.

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.).

## CONCLUSION

For the foregoing reasons, the Court should appoint undersigned counsel to defend the judgment below and to participate in oral argument.

November 4, 2024

Respectfully submitted,

/s/ R. Trent McCotter

R. Trent McCotter

*Counsel of Record*

BOYDEN GRAY PLLC

800 Connecticut Ave. NW

Suite 900

Washington, DC 20006

202-706-5488

tmccotter@boydengray.com

*Counsel for Amici Curiae Former U.S.  
Attorneys General*