IN THE SUPREME COURT OF THE UNITED STATES

No. 23-1270

PIERRE YASSUE NASHUN RILEY, PETITIONER

v.

PAMELA BONDI, ATTORNEY GENERAL

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION OF RESPONDENT FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Acting Solicitor General, on behalf of respondent, respectfully moves for divided argument in this case. Respondent has filed a brief in support of petitioner and requests the following division of argument time: 15 minutes for petitioner, 15 minutes for respondent, and 30 minutes for the Court-appointed amicus curiae who is supporting the judgment below. Counsel for petitioner has agreed to that allocation.

This case concerns 8 U.S.C. 1252(b)(1), a provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., that governs the timing of judicial review in the courts of appeals. Section 1252(b)(1) states that a "petition for review" of an order of removal "must be filed not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1).

In this case, the Department of Homeland Security (DHS) found petitioner removable under certain abbreviated procedures for noncitizens who have been convicted of an aggravated felony. Petitioner then expressed a fear of being tortured if he were removed to his native country of Jamaica and applied for protection under the Convention Against Torture (CAT). An immigration judge (IJ) granted petitioner's application, but the Board of Immigration Appeals (BIA) vacated the IJ's order. Four days after the BIA's decision, petitioner filed a petition for review in the court of appeals. The court dismissed the petition for lack of jurisdiction. Even though the petition had been filed within 30 days of the BIA's decision, the court found it untimely under Section 1252(b)(1) because it had not been filed within 30 days of DHS's earlier administrative decision finding petitioner removable.

Petitioner filed a petition for a writ of certiorari. The government agreed with petitioner on the merits of his questions presented and contended that the petition should be granted, and the decision below should be vacated and remanded for further proceedings in light of Harrow v. Department of Defense, 601 U.S. 480 (2024). This Court then granted the petition limited to the questions presented in the government's brief. The first of those questions is whether the 30-day deadline in Section 1252(b)(1) is a jurisdictional rule, or instead a claim-processing rule. The second question is whether a noncitizen satisfies Section

1252(b)(1)'s deadline by filing a petition for review challenging a BIA order denying withholding of removal or CAT protection within 30 days of the issuance of that order.

Respondent agrees with petitioner on the answer to both questions presented. First, Section 1252(b)(1) is not jurisdictional because it simply sets a deadline for filing a petition for review of a removal order in a court of appeals, without referencing the court's jurisdiction. Second, a petition for review is timely under Section 1252(b)(1) if the noncitizen filed it within 30 days of a BIA order denying withholding of removal or CAT protection.

Respondent is a party to immigration proceedings and thus has a strong interest in the correct interpretation of the INA's judicial-review provisions. Petitioner and respondent also bring distinct perspectives to the case. Whereas petitioner has a direct, personal stake in obtaining judicial review of the BIA's order in this case, respondent has a broader institutional interest in ensuring that Section 1252(b)(1) -- which governs the timing of judicial review of all final removal orders -- is properly construed. The Court has already recognized the importance of respondent's perspective in this case by granting the petition for a writ of certiorari limited to the questions presented in respondent's brief. Division of argument will therefore materially assist the Court in its consideration of this case.

The government has presented argument in prior immigration cases in which the Court appointed an amicus to defend the judgment below. See, e.g., Patel v. Garland, 596 U.S. 328 (2022). The government respectfully submits that the same course is warranted here.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

FEBRUARY 2025