UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JULIANA MILENA OJEDA MONTOYA, Petitioner, v. KEVIN JOYCE, *Sheriff, Cumberland County Sheriff's Office*, et al. Respondents.	No. 2:25-cv-00558-SDN

OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Federal Respondents, by and through undersigned counsel, respond in opposition to Petitioner's Motion for Attorney's Fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). *See* Dkt. #22, Apr. 9, 2026 (the "Motion" or "Mot.").

Introduction

Petitioner is not entitled to the relief sought by the Motion. The underlying matter involved Petitioner's successful habeas corpus petition challenging her immigration detention. Despite Petitioner's success, jurisdiction to grant a fee award would only exist if Congress had waived sovereign immunity for EAJA relief stemming from such habeas actions. The standard for finding such a waiver is exacting: "a waiver of sovereign immunity must be '*unequivocally expressed*' in statutory text." *FAA v. Cooper*, 566 U.S. 284, 290 (2012) (quoting *Lane v. Peña*, 518 U.S. 187, 192 (1996) (emphasis added) (citation omitted)).

The EAJA, however, only waives immunity for "civil action[s]." 28 U.S.C. § 2412(d)(1)(A). By contrast, habeas matters represent a hybrid criminal/civil

proceeding. Given that hybrid nature, and the resulting ambiguity as to whether habeas proceedings are "civil action[s]," the EAJA's text does not unequivocally waive sovereign immunity. Although Courts of Appeals are split on this issue, both the Fourth and Fifth Circuits have squarely held as much for similar habeas cases. This Court should accordingly find that because the EAJA's text does not unequivocally waive sovereign immunity for habeas petitions challenging immigration detention, no EAJA award is available in this case.

Moreover, even if immunity did not bar a fee award here, the ultimate position of U.S. Immigration and Customs Enforcement ("ICE") was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). ICE was bound to take the position that Petitioner needed to be detained pending the outcome of her removal proceedings, with the agency following the precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). Following the closely related matter of *Saysana v. Gillen*, 614 F.3d 1 (1st Cir. 2010), the Government's position was substantially justified because it arose in the context of an issue that was emerging, novel, and—at the time—unaddressed by any Court of Appeals.

Argument

The United States' sovereign immunity bars an award of attorney's fees under the EAJA for this and other habeas cases challenging immigration detention. ICE's litigation position was also "substantially justified" pursuant to 28 U.S.C. § 2412(d)(1)(A).

A. Waivers of sovereign immunity must be unmistakably clear, and any ambiguities as to their scope are strictly construed in favor of immunity.

Sovereign immunity generally bars all awards of monetary relief against the United States, its agencies, and its employees sued in their official capacities. *See FDIC*

v. Meyer, 510 U.S. 471, 475 (1994). Only Congress can waive the United States' sovereign immunity. *Lane v. Peña*, 518 U.S. 187, 192 (1996).

To respect Congress's prerogative whether or not to waive sovereign immunity, the Supreme Court has imposed a stringent standard for finding waivers. It has stated "on many occasions that a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *FAA v. Cooper*, 566 U.S. 284, 290 (2012) (quoting *Lane*, 518 U.S. at 192). According to this "clear statement" rule, "a waiver of sovereign immunity must be 'unmistakably clear in the language of the statute.'" *Dep't of Agric. v. Kirtz*, 601 U.S. 42, 49 (2024) (quoting *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 76 (2000)). Whether Congress has waived immunity "trains on statutory text rather than legislative history." *Id.*; *see also Cooper*, 566 U.S. at 290.

Even where Congress has enacted a waiver of immunity, the scope of that waiver "must be construed strictly in favor of the sovereign and not enlarged beyond what the language requires." *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685 (1983) (citation modified). Based on this principle, "[a]ny ambiguities in the statutory language are to be construed in favor of immunity." *Cooper*, 566 U.S. at 290. In the sovereign immunity context, "[a]mbiguity exists if there is a plausible interpretation of the statute that would not allow money damages against the Government." *Id.* at 290-91. This rule applies both to whether Congress has waived immunity, as well as to the scope of that waiver. *See id.* at 291. While the Court may employ "traditional interpretive tools" to determine whether the existence or scope of a waiver is ambiguous, where those tools point to ambiguity, the court must "take the interpretation most favorable to the Government." *Id.*

B. The EAJA's limited waiver of immunity is ambiguous as to whether habeas petitions challenging immigration detention are within its scope.

The EAJA includes a waiver of sovereign immunity for some—but not all—claims for attorney's fees against the United States. Specifically, the statute provides:

> [A] court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action (other than cases sounding in tort) . . . brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). This language thus waives immunity for a limited set of claims, in that it applies only to "any civil action (other than cases sounding in tort)." This amounts to a "partial" waiver of sovereign immunity that "must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991). For the EAJA to waive sovereign immunity, the phrase "civil action" would have to unambiguously and unmistakably encompass habeas petitions challenging immigration detention. The term "civil action," however, is ambiguous as to whether it encompasses Petitioner's habeas proceeding here. This ambiguity precludes the EAJA's waiver of sovereign immunity from applying. Approached accordingly, the Government is immune from an award of attorney's fees.

a. *Habeas petitions are unique proceedings that are not categorically civil*

The Supreme Court has recognized that, even though habeas petitions are often categorized as civil for general purposes, "the label is gross and inexact." *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969). Habeas proceedings are instead "unique." *Id.* at 294. Habeas proceedings have historically been understood to serve a special role: providing a remedy for "illegal confinement." *Id.* at 291 (quoting 3 William Blackstone,

Commentaries *131 (William Draper Lewis ed., 1902)). As a result, the problems presented in habeas proceedings "are materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure." *Harris*, 394 U.S. at 300 n.7. The Supreme Court has found it "difficult to believe" that Congress would have intended rules promulgated for civil cases to be applied wholesale to habeas petitions "because their specific provisions are ill-suited to the special problems and character of such proceedings." *Id.* at 296.

Following that line of cases, the Supreme Court has declined to construe the statutory phrase "civil action" as invariably encompassing habeas proceedings. For example, in *Schlanger v. Seamans*, the Court considered the scope of 28 U.S.C. § 1391(e), which "provided for nationwide service of process in a 'civil action in which each defendant is an officer or employee of the United States.'" 401 U.S. 487, 490 n.4 (1971) (quoting 28 U.S.C. § 1391(e)). The Supreme Court noted that "[t]hough habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." *Id.* The Court later recognized that Schlanger rejected an "overbroad interpretation" of "the phrase 'civil action,'" one which would have encompassed habeas proceedings. *Stafford v. Briggs*, 444 U.S. 527, 542-43 (1980).

Congress enacted the EAJA roughly 11 years after *Harris* and nine years after *Schlanger*. In passing the statute, Congress adopted statutory language that used the same phrasing the Supreme Court had indicated should not be given a "sweeping definition." *See Stafford*, 444 U.S. at 543; *see also* Pub. L. 96-481 § 204(a), 94 Stat. 2321, 2328 (1980). Given that courts "normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent," *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010), Congress presumptively intended to adopt *Schlanger*'s construction of

"civil action" as seemingly excluding habeas petitions. *See Ankenbrandt v. Richards*, 504 U.S. 689, 700-01 (1992) (holding when Congress added the phrase "all civil actions" to the diversity jurisdiction statute, it intended to maintain the domestic relations exception to diversity jurisdiction from Supreme Court case law). After all, "[w]hen a statutory term is obviously transplanted from another legal source, it brings the old soil with it." *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019).

Indeed, litigation of section 2241 applications like Petitioner's here differs from ordinary civil actions. Habeas petitions are filed in the court where the petitioner is confined rather than following civil personal jurisdiction and venue rules. 28 U.S.C. § 2241(a), (b). A petitioner must name "the person who has custody" as the respondent. 28 U.S.C. § 2242; *see Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The statute does not permit the petitioner to serve the petition like a civil complaint; rather, the court determines, in the first instance, whether to "award the writ," summarily deny it because the applicant or person detained "is not entitled thereto," or order "the respondent to show cause why the writ should not be granted." 28 U.S.C. § 2243. The petitioner is not entitled to discovery, and factual development lies within the court's discretion. See *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997).[1]

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[1] In its jurisprudence addressing which Federal Rules of Civil Procedure apply—and which do not—to habeas proceedings, the Supreme Court has occasionally referred to such proceedings as civil. *See, e.g.*, *Banister v. Davis*, 590 U.S. 504, 507 (2020) (holding that Rule 59(e) motions to reconsider the denial of 28 U.S.C. § 2254 habeas petitions do not constitute second or successive petitions for the purposes of § 2244(b)); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978) (concluding that untimely motions under Rule 52(b) or 59 do not toll the time to appeal a ruling on a habeas petition under Rule 4(a)). But none of those cases addressed the question here—whether the statutory phrase "civil action" in EAJA unambiguously encompasses habeas petitions. Even in those decisions, the Supreme Court recognized the fundamentally unique and hybrid nature of habeas petitions, which accordingly requires rule-by-rule determinations as to which civil rules apply. *See Browder*, 434 U.S. at 271 (recognizing "some aspects of the Federal Rules of Civil Procedure may be inappropriate for habeas proceedings"); *Banister*, 590 U.S. at 528 (Alito, J., dissenting) ("Let's count some of the ways in

b. *The statutory term "civil action" is ambiguous*

Against this backdrop, Courts of Appeals are split. The Fourth Circuit, for example, has previously recognized that the EAJA's waiver of sovereign immunity to awards of fees does not extend to habeas corpus proceedings. *O'Brien v. Moore*, 395 F.3d 499, 508 (4th Cir. 2005) ("[T]he EAJA's waiver of sovereign immunity to awards of fees does not extend to habeas corpus proceedings."). So, too, has the Fifth Circuit. *See Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 553 (2024). More recently, the Tenth Circuit came out the other way, *see Daley v. Ceja*, 158 F.4th 1152, at 1160-64 (10th Cir. 2025) (interpreting the EAJA to allow fees in immigration habeas actions) *reh'g en banc denied*, No. 24-1191 (10th Cir. Apr. 3, 2026), as did the Third Circuit, *see Michelin v. Warden Moshannon Valley Corr. Cent.*, No. 24-2990, 2026 WL 263483 (3d Cir. Feb. 2, 2026). The Second Circuit likewise has held that the EAJA term "civil actions" includes immigration habeas petitions. *Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d Cir. 2005).[2]

Thus, courts have both recognized and struggled with the unique nature of habeas proceedings, sometimes declining to apply the "civil action" label when interpreting the EAJA's statutory text. *See also Santana v. United States*, 98 F.3d 752,

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which habeas proceedings deviate from the Civil Rules."). Indeed, the Federal Rules of Civil Procedure themselves recognize that habeas is different—Rule 81 provides that the rules apply in habeas proceedings only "to the extent that the practice in those proceedings . . . has previously conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(4) and (a)(4)(B). This further highlights the ambiguity regarding whether habeas proceedings can be clearly and unmistakably classified as "civil actions" for purposes of the EAJA.

[2] In *In re Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985), the Ninth Circuit held that a habeas action filed by an individual who challenged his exclusion from the United States qualified as a civil action under the EAJA. Subsequent courts have recognized, however, that "the Ninth Circuit has not addressed the applicability of the EAJA in the context of habeas actions challenging immigration detention." *Morales Jimenez v. Bostock*, No. 25-cv-00570, 2026 WL 1893763, at *2 (D. Or. July 1, 2026).

754-55 (3d Cir. 1996) (habeas proceedings are "hybrid [in] nature" and "are often determined to be outside the reach of the phrase 'civil action'"). Under these circumstances, the term "civil action" is ambiguous because "there is a plausible interpretation" of the term "that would not authorize money damages against the Government." *Cooper*, 566 U.S. at 290-91.

c. Because the term "civil action" is ambiguous as to habeas petitions challenging immigration detention, EAJA waivers must be construed in favor of immunity

For purposes of the EAJA, there is no meaningful difference between a habeas petition challenging criminal confinement and one challenging immigration detention like that at issue here. Neither type of petition is unambiguously and unmistakably a "civil action," thus, attorney's fees should not be available for either. While the underlying basis of the confinement at issue in habeas petitions challenging immigration detention is not criminal, that does not change the unique hybrid nature of the habeas remedy itself. Both the Fourth and Fifth Circuits have addressed this problem.

In *Obando-Seguro*, the Fourth Circuit rejected the proposition that the nature of the underlying detention makes a meaningful difference, explaining that "the reason for the challenged detention does not change the essence or function of the habeas application to seek release." 999 F.3d at 194; *see also id.* ("There are not 'criminal habeas writs' and 'non-criminal habeas writs': there are just writs of habeas corpus."). And ultimately the unique nature of all habeas petitions requires interpreting the EAJA narrowly in favor of immunity. "Courts sometimes call habeas corpus proceedings 'civil actions.' Yet they are actually unique, hybrid proceedings." *Id.* at 197. As a result, "that uniqueness makes it ambiguous whether habeas proceedings fall under 'any civil action'

with the [EAJA]." *Id.* Nor does that ambiguity "disappear when one looks to the type of detention a habeas applicant seeks release from. So taking that ambiguity alongside [the] obligation to construe the waiver of sovereign immunity narrowly, [courts must] find that [an] application for a writ of habeas corpus does not fall within the [EAJA's] reach." *Id.*

The Fifth Circuit reasoned similarly, agreeing with the Fourth Circuit. *See Barco*, 65 F.4th at 785. That court explained that "[s]ince 'a habeas corpus proceeding is neither a wholly criminal nor a wholly civil action, but rather a hybrid action that is unique, a category unto itself,' it is not purely a civil action, and the EAJA does not authorize attorney's fees for successful 28 U.S.C. § 2241 motions." *Id.* (quoting *O'Brien*, 395 F.3d at 505, 508).

ICE submits that this Court should apply the Fourth and Fifth Circuit approach and hold that, applying the clear statement rule of *Cooper*, habeas petitions challenging immigration detention are not unambiguously and unmistakably "civil actions" for purposes of the EAJA. *See Obando-Segura*, 999 F.3d at 194 ("[T]he reason for the challenged detention does not change the essence or function of the habeas application used to seek release."); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[T]he traditional function of the writ is to secure release from illegal custody."); *see also Fay v. Noia*, 372 U.S. 391, 423-24 (1963) (explaining habeas actions are not another stage of the proceedings that led to detention, but are independent "from what has gone before"), *overruled on other grounds, Wainwright v. Sykes*, 433 U.S. 72 (1977). All habeas petitions, no matter the nature of the underlying confinement, are unique proceedings that are not wholly civil given that detention—a decidedly non-civil concept—is ultimately at issue. Because of their unique nature, habeas petitions challenging

immigration detention are not unambiguously or unmistakably "civil actions" within the meaning of EAJA. Because of this ambiguity, the EAJA's text cannot satisfy the Supreme Court's stringent test that "a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *Cooper*, 566 U.S. at 290. Sovereign immunity therefore bars an EAJA award here.[3]

C. ICE's position was substantially justified.

As detailed above, sovereign immunity bars a fee award here. Even if that were not the case, however, no recovery would be available because ICE's position was "substantially justified."[4] 28 U.S.C. § 2412(d)(1)(A). Indeed, in an immigration detention habeas case closely resembling this one, *Saysana v. Gillen*, 614 F.3d 1 (1st Cir. 2010), the First Circuit declined to award EAJA fees to a prevailing petitioner.[5] *Saysana* involved a district court's grant of an immigration detainee's petition for a writ of habeas corpus, based on the district court's finding that the Board of Immigration Appeals' interpretation of 8 U.S.C. § 1226(c)—there, the basis for the underlying mandatory detention—was erroneous. 614 F.3d at 3. As is the case here, after the district court

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[3] As noted in the Federal Respondents' Motion to Stay Briefing, Dkt. #27, last month the U.S. Supreme Court granted certiorari in *Montoya Palacios v. Liggins*, a case from the Fourth Circuit. The question presented in *Montoya Palacios* is the question at issue here: whether, under the EAJA, "any civil action" encompasses an action seeking a writ of habeas corpus to challenge civil immigration detention. A decision in *Montoya Palacios* will therefore settle the circuit split described above.

[4] The Federal Respondents initially argued that Petitioner was subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), and, alternatively, pursuant to the Laken Riley Act, following Petitioner's violent attack on a co-worker. *See* Dkt. #14 at 2-4. Subsequently, the Government conceded "that the underlying injuries caused by Petitioner's assault on her co-worker—[though] obviously serious in a general sense—do not fall within the Laken Riley Act's particular definition of 'serious bodily injury.'" Dkt. 15 at 2 (footnote omitted). Accordingly, the Federal Respondents maintain that their position was "substantially justified" only as to the remaining basis for detention—section 1225(b)(2).

[5] *Saysana* did not involve consideration of the clear statement rule, sovereign immunity, or the definitional issue of "civil actions" for purposes of the EAJA.

granted the writ, it ordered that an individualized bond hearing be held. *Id.* The Government appealed. *Id.*

Against this backdrop, the First Circuit directly addressed "whether the Government's position . . . was 'substantially justified.'" *Id.* at 5. Citing prior precedent, the First Circuit highlighted that "the position of a government agency can be substantially justified even if a court ultimately determines the agency's reading of the law was not correct," and moreover, that "[w]hen the issue is a novel one on which there is little precedent, courts have been reluctant to find the government's position was not substantially justified." *Id.* (citations and quotations omitted). "[J]ust because the Government's position . . . does not, in the end, win the day, does not mean that the Government's position is not substantially justified." *Id.* at 6. In *Saysana*, as with Petitioner's claims here, "neither the Government nor [petitioner] had a wealth of authority on which to base their arguments." *Id.* The First Circuit observed that where "a case presents a novel issue and one on which there is little precedent, courts have found that an award of EAJA fees is not warranted," especially where the issue presented "was one of first impression among the courts of appeals." *Id.*

ICE's ultimate position in this case was similarly substantially justified. On September 5, 2025, the Board of Immigration Appeals[6] issued its precedential decision

[6] The Board of Immigration Appeals is the appellate body within the immigration enforcement system. *See* 8 C.F.R. § 1003.1(d)(1). Members of the Board of Immigration Appeals possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The Board of Immigration Appeals is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including Immigration Judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The Board of Immigration Appeals not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [Board of Immigration Appeals] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R.

in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). The Board of Immigration Appeals determined as follows:

> Aliens, like the respondent, who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission." *See* INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A) (2018) (defining "admission"). Likewise, being arrested pursuant to a warrant and placed into removal proceedings does not constitute an admission. Therefore, just as Immigration Judges have no authority to redetermine the custody of arriving aliens who present themselves at a port of entry, they likewise have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than 2 years.
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> Holding otherwise would require reading the INA to conclude that Congress intended that aliens unlawfully entering the United States without inspection, particularly those who successfully evaded apprehension for more than 2 years, be rewarded with the opportunity for a bond hearing before an Immigration Judge, whereas aliens who present themselves to officers at a port of entry are ineligible for a bond hearing.

Id. at 228. It accordingly ruled that aliens, like Petitioner here, are "subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)."

Petitioner's underlying habeas application was filed just two months following *Yajure Hurtado*. In its return (Dkt. #8, Nov. 9, 2025), ICE acknowledged the recent caselaw from this Court uniformly sustaining challenges to the Board of Immigration Appeals' interpretation of § 1225. *See, e.g.*, *Choglo Chafla v. Scott*, 804 F. Supp. 3d 247 (D. Me. 2025). That said, "through [its] precedent decision[]" in *Yajure Hurtado*, the Board of Immigration Appeals had provided to ICE "clear and uniform guidance" that Petitioner was subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See*

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§ 1003.1(d)(7).

8 C.F.R. § 1003.1(d)(1).[7]

The issue of mandatory versus discretionary detention has not yet been addressed by the First Circuit. However, as of the date of filing, two circuit courts have found that aliens in positions similar to Petitioner—that is, aliens who are present in the United States without having been admitted—are "seeking admission" under section 1225(b)(2)(A), and are therefore eligible for mandatory detention pursuant to section 1225. *See Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). These cases vindicate both the BIA's decision in *Hurtado* and the Federal Respondents' position taken in this case.

Subsequently, in the last several months, other circuit courts have reached conclusions contrary to those of the Fifth and Eighth Circuits. *See Santillan Quiroz v. Mullin*, No. 26-6019, 2026 WL 1876709 (10th Cir. Jun. 30, 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026); *Castañon-Nava v. U.S. Dep't. of Homeland Security*, 175 F.4th 828 (7th Cir. 2026); *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026).

However, although there presently is a deep circuit split on the issue that is at the core of this case, at the time the Federal Respondents made their argument regarding

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[7] While the Federal Respondents acknowledge that such challenges have been uniformly sustained in this district, no court in this district has purported to "vacate"—either explicitly or effectively—the BIA's decision in *Hurtado* on a prospective basis. "Because *Yajure Hurtado* is binding BIA precedent, all DHS employees are bound to follow its identical command that aliens like [Petitioner] are subject to mandatory detention." *Benitez Reyes v. Johnson*, No. 1:26-CV-026-H, 2026 WL 274492, at *4 (N.D. Tex. Jan. 22, 2026); *see* 8 C.F.R. § 1003.1(g)(1) ("Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

mandatory detention under 1225, there was no appellate guidance whatsoever. Accordingly, this case involved a "novel issue and one on which there is little precedent," and likewise implicated (at the time) a question "of first impression among the courts of appeals." *Saysana*, 614 F.3d at 6. Accordingly, a determination of substantial justification is warranted.

D. This Court should decline to follow contrary decisions in this District.

The Federal Respondents acknowledge that in two cases factually similar to this one, the Court has granted motions for attorney fees and expenses under the EAJA. *See Perez Pina v. Stamper*, No. 25-cv-00509, Dkt. #34 (D. Me. May 20, 2026); *Bernardo-Rodrigues v. Hyde*, No. 2:25-cv-00553-LEW, 2026 WL 370863 (D. Me. Feb. 10, 2026). In *Perez Pina*, the Court rejected the decisions of the Fourth and Fifth Circuits in *Obando-Segura* and *Barco*, respectively, stating that "neither decision accounts for the breadth of the word 'any[]' [civil action,] which would encompass even 'hybrid' proceedings so long as they are civil in some manner." Slip op. at 6. The Court also found that *Obando-Segura* and *Barco* "did not acknowledge the distinction between habeas proceedings arising from a criminal conviction and those arising from civil immigration detention." *Id.*

The Federal Respondents respectfully submit that these decisions were mistaken and that the reasoning in *Obando-Segura* and *Barco* is most faithful to the EAJA's text and relevant Supreme Court precedent. The fact that habeas petitions are on the Court's civil docket cannot be dispositive, given their hybrid nature. And as noted *supra*, both *Obando-Segura* and *Barco* did in fact acknowledge the distinction between a "criminal" habeas proceeding and a "civil" proceeding; they ultimately concluded, however, that this distinction was of little significance given the unique hybrid nature of all habeas

actions.

Additionally, the Court in *Perez Pina* and *Bernardo-Rodrigues* did not find that the Government's position was substantially justified. *See id.* at 6-11. Again, the Federal Respondents respectfully submit that these decisions were mistaken on this point, as "substantial justification requires only a position that a reasonable person could find correct," *id.* at 10 (citing *Michel v. Mayorkas*, 68 F.4th 74, 78 (1st Cir. 2023)), and multiple appellate courts—indeed, the first appellate courts to decide the issue—"have adopted Respondents' position that section 1225 mandates detention of noncitizens like Petitioner," *id.*

The Court in both *Perez Pina* and *Bernardo-Rodrigues* relied significantly on *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021) in finding that the First Circuit's prior caselaw made pellucid that the position the Federal Respondents were advocating was contrary to controlling law. However, as argued in prior submissions, the issue of mandatory detention of aliens under section 1225 versus discretionary detention of aliens under section 1226 was not at issue in *Hernandez-Lara*. Indeed, as Chief Judge Walker acknowledged in a footnote in *Bernardo-Rodrigues*, 2026 WL 370863, at *3 n.4, the petitioner in *Hernandez-Lara* was detained pursuant to section 1226(a), and all parties in the litigation agreed that section 1226(a) was the operative provision. *See Hernandez-Lara*, 10 F.4th at 26. The issues the First Circuit confronted in *Hernandez-Lara* were (1) whether, at a bond hearing for an alien detained pursuant to section 1226, the Due Process Clause required that "the government, not [the alien], must bear the burden of proving danger or flight risk"; and (2) if so, whether the government had to prove danger or flight risk using a preponderance standard or by clear and convincing evidence. *Id.* at 23. Section 1225 is nowhere mentioned in either the majority opinion in

Hernandez-Lara or the dissent.

While *Hernandez-Lara* answered the question of what process was due to aliens who were detained pursuant to section 1226 during bond hearings conducted pursuant to that provision, the First Circuit's opinion provided *no guidance or direction whatsoever* with respect to the issue that was litigated in this matter or the other similar matters in this and many other districts: whether individuals like Petitioner are subject to mandatory detention under section 1225 or discretionary detention under section 1226.[8] The Federal Respondents had no binding (or even analogous) precedent from the First Circuit—or non-binding precedent from sister circuits—to look to in resolving this question. Instead, the Federal Respondents were bound to follow the decision of the BIA in *Hurtado*, a position that was subsequently adopted by two circuit courts.

Furthermore, and as discussed *supra*, for the purposes of the present analysis, the question is not whether a First Circuit case—particularly one that does not even address the substantive dispute at issue in the present matter—could have been construed in such a way as to render the Government's position in the present matter erroneous. Rather, the pertinent question is whether the position of the Federal

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[8] Indeed, there are numerous statements in *Hernandez-Lara* that support a narrow reading of that opinion—one cabining it to cases involving those detained pursuant to section 1226(a). *See* 10 F.4th at 34 ("Moreover, though *our decision cabins the discretion granted by section 1226(a)* through the constitutional restraints applicable to all government action . . . , within those limits the government maintains discretion in each case to grant or deny bond.") (cleaned up), 39 ("We therefore conclude that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen *under section 1226(a).*"), 41 (discussing government's burden to prove flight risk "in a section 1226(a) bond hearing"), 43 ("But nothing in our opinion today prevents the political branches from detaining noncitizens where necessary . . . ."), 43-44 ("We stress as well that nothing in our decision restricts the political branches from implementing more nuanced rules for the adjudication of request for release under section 1226."), 45 ("We are far from alone in applying procedural due process protections to well-defined categories of noncitizens (e.g., section 1226(a) detainees) . . . .") (all emphases added).

Respondents was "substantially justified." Again, the First Circuit has held that "the position of a government agency can be substantially justified even if a court ultimately determines the agency's reading of the law was not correct," and noted also that "[w]hen the issue is a novel one on which there is little precedent, courts have been reluctant to find the government's position was not substantially justified." *Saysana*, 614 F.3d at 5 (citations and quotations omitted). There can be no question that the particular issue of mandatory versus discretionary detention litigated here is a "novel one on which there is little precedent" in this Circuit. Accordingly, it would be inconsistent with this Circuit's reading of "substantially justified" in 28 U.S.C. § 2412(d)(1)(A) to conclude that the Federal Respondents' position was not substantially justified.[9]

Conclusion

WHEREFORE, Federal Respondents request that the Motion be denied in all respects.

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[9] District courts in other districts have declined to award EAJA fees in similar cases, finding that although the Respondents' position was (in the court's view) erroneous, Respondents' interpretation of section 1225 was nevertheless "substantially justified." *See Reyes Martinez v. Leonard Oddo*, Civil Action No. 3:26-cv-1266, 2026 WL 1980883, at *3 (W.D. Penn. Jul. 9, 2026); *Valdez Lopez v. Raycraft*, Case No. 1:26-cv-68, 2026 WL 1800904, at *1-2 (S.D. Ohio Jun. 23, 2026) ("Despite the fact the Court strongly rejected Respondents' legal position, the Court must hold that Respondents were substantially justified for purposes of the EAJA when they argued that this Petitioner could be detained without a bond hearing."); *Herrera v. Olson*, Case No. 25-CV-1994, 2026 WL 1602258, at *2 (E.D. Wis. Jun. 4, 2026) ("Though the vast majority of courts considering the issue have rejected this statutory interpretation, it cannot be said to be unreasonable. This is especially so given the novelty of the issue and the circuit split it has created" (internal citation omitted).); *Alfredo A. v. Easterwood*, Case No. 26-CV-1016 (PJS/DLM), 2026 WL 1336492, at *1 (D. Minn. May 13, 2026) ("Although this Court (and the vast majority of courts that had addressed the issue) disagreed with the government's position, that position unquestionably had a reasonable basis in law and fact. The division among courts, by itself, is strong evidence that the government's position was substantially justified" (footnote omitted).); *Lopez v. Trump*, 816 F. Supp. 3d 492, 495 (D. Vt. 2026) ("In the court's view, the Government's position is incorrect for the reasons explained in the ruling on the habeas petition. But other courts have differed, and there is no authoritative appellate guidance on the issue. . . . Under these circumstances, the Government's position cannot be described as unjustified" (internal citations omitted).).

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Portland, Maine

Respectfully submitted,

ANDREW B. BENSON
United States Attorney

/s/ James D. Concannon
James D. Concannon
Assistant U.S. Attorney
100 Middle Street, 6th Floor
Portland, ME 04101
(207) 780-3257
James.Concannon@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2026, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

ANDREW B. BENSON
United States Attorney

/s/ James D. Concannon
James D. Concannon
Assistant U.S. Attorney
100 Middle Street, 6th Floor
Portland, ME 04101
(207) 780-3257
James.Concannon@usdoj.gov