UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-20376-cv-WILLIAMS

JUAN CARLOS TREJO-BAUTISTA,

Petitioner,

v.

PRESIDENT OF THE UNITED STATES, *et al.*,

Respondent(s).

_____/

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S VERIFIED MOTION FOR ATTORNEY'S FEES

Respondents, through the undersigned Assistant United States Attorney, respectfully submit their Response in opposition to the Petitioner's Motion for Equal Access to Justice Act ("EAJA") Fees [ECF No. 16] ("Motion").[1] Respondents do not dispute the issues of prevailing party status or timeliness, but oppose on the basis that the Court lacks jurisdiction to impose fees under the EAJA, *see, e.g. O'Brien v. Moore*, 395 F.3d 499, 508 (4th Cir. 2005), and that Respondents' position was substantially justified. Accordingly, Respondents respectfully request that the Court reject Petitioner's EAJA petition in full.

ARGUMENT

I. This Court Lacks Jurisdiction to Grant Fees Because There Has Been No Express Waiver of Sovereign Immunity.

"The United States, as sovereign, is immune from suit save as it consents to be sued." *United States v. Sherwood*, 312 U.S. 584, 586 (1941). "Absent a waiver, sovereign immunity

[1] Costs and expenses are different, *see* 28 U.S.C. § 2412(a)(1), (d), and are paid separately out of two separate funds; therefore, the Order must explicitly indicate whether the award is for costs and/or expenses to ensure that the amounts for both are properly handled and reimbursed.

shields the Federal Government and its agencies from suit." *JBP Acquisitions, LP v. U.S. ex rel. F.D.I.C.*, 224 F.3d 1260, 1263 (11th Cir.2000) (citation omitted). Any waiver of sovereign immunity must be "unequivocally expressed," and an expressed waiver will be strictly construed in favor of the sovereign. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33–34 (1992) (citation omitted). Sovereign immunity, when applicable, is "a complete bar to lawsuits" against the United States. *State of Fla., Dep't of Business Regulation v. U.S. Dep't of Interior.*, 768 F.2d 1248, 1251 (11th Cir.1985).

As determined by two Courts of Appeals, the United States has not waived sovereign immunity for claims of attorney fees in habeas cases under the EAJA. The Fourth Circuit ruled that it "cannot reasonably conclude that the authorization for an award of attorneys fees in 'civil actions,' as provided by the EAJA, includes an unequivocal expression of congressional intent to authorize an award of attorneys fees to a prevailing party against the United States in a habeas proceeding." *O'Brien v. Moore*, 395 F.3d 499, 508 (4th Cir. 2005). The Fifth Circuit recently agreed in *Barco v. Witte*, noting the "hybrid nature of habeas corpus petitions" prevents recovery of attorney fees. 65 F.4th 782, 785 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 553 (2024). *See also id.* at n.1 (noting conflicting opinions); *Michelin v. Warden Moshannon Valley Correctional Center*, 169 F. 4th 418 (3d Cir. 2026).[2]

While the undersigned is not aware of an Eleventh Circuit case directly addressing whether a petition for habeas relief is a "civil action" for purposes of the EAJA, prior precedent strongly

---

[2] The question appears open in the Eleventh Circuit. *Da Silva Martins v. Warden, Folkston ICE Processing Facility*, Case No. 25-CV-152, 2025 WL 3722042, at *1 n.1 (S.D. Ga. Dec. 23, 2025) ("The Court has not identified any Eleventh Circuit Court of Appeals' decision considering the application of the EAJA in the habeas context but notes there is a Circuit split regarding the applicability.").

suggests the answer would be no. In *Anderson v. Singletary* the Eleventh Circuit considered whether a habeas corpus case is a "civil action" for purposes of the Prison Litigation Reform Act of 1995 (PLRA) and concluded that it was not. 111 F.3d 801 (11th Cir. 1997). In so doing the Court stated that when attempting to discern whether "civil action" would include a habeas proceeding, the definition of "civil" is "somewhat illusive, as habeas corpus actions are not purely and thus not plainly) 'civil actions.'" The Court indicated that "habeas cases are, in effect, hybrid actions whose nature is not adequately captured by the phrase 'civil action...'" *Id.* (quoting *Santana v. United States*, 98 F.3d 752, 754 (3d Cir. 1996). The court also cited several cases, including Supreme Court precedent that have characterized that applying a "civil" label to habeas proceedings is "gross and inexact", and it would be more appropriate to treat habeas proceedings as *sui generis*. *Id.* (citing *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969); *Martin v. United States*, 96 F.3d 853, 855 ("(H)abeas corpus is more accurately regarded as being sui generis...")).

These arguments, relied upon by the Eleventh Circuit in its *Anderson* case, are the same arguments relied upon by the Fourth Circuit in determining that attorney's fees should not be awarded pursuant to the EAJA in a habeas proceeding. *See O'Brien*, 395 F.3d 499, 503-06. In fact, the *O'Brien* court specifically referenced its prior precedent concerning the PLRA to reach this conclusion. *Id.* at 506. ("In *Smith*, 111 F.3d 1126, we concluded that the term 'civil action' as used in the Prison Litigation Reform Act ("PLRA") does not include habeas proceedings.").

Excluding a habeas proceeding as one that is not a "civil action" is even more appropriate here than in the context of the PLRA, as the Court is required to interpret the language in the context of waiving sovereign immunity, and so must construe the EAJA strictly in favor of the government, and find an unequivocal waiver, where precedent has described identical language to

be elusive, gross, and inexact. *See Nordic Village, Inc.*, 503 U.S. at 33–34 (citation omitted). Because there has been no unambiguous wavier of sovereign immunity for claims of attorney fees under the EAJA in habeas proceedings, sovereign immunity prohibits such an award.

II. Petitioner Is Not Entitled to EAJA Fees Because Respondents' Position Was Substantially Justified.

Assuming *arguendo* that the EAJA acts to waive sovereign immunity, it only provides for an award of attorney fees and expenses to a party who prevails in litigation against the United States if, among other conditions, this Court finds that the position of the United States was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A); *see Comm'r, INS v. Jean*, 496 U.S. 154, 155 (1990). "The EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable and thus amounts to a partial waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991).

In *Pierce v. Underwood*, 487 U.S. 552 (1988), the Supreme Court explained that the government's position is substantially justified if it is "justified to a degree that could satisfy a reasonable person" that is, "if it has a reasonable basis in law and fact." *Id.* at 565-66 & n.2; *accord United States v. Jones*, 125 F.3d 1418, 1425 (11th Cir. 1997). The Supreme Court specifically rejected the position that substantial justification requires more than reasonableness. *Pierce*, 487 U.S. at 567-68. A position can be justified even if it is not correct. *Id.* at 566 n.2. In *Pierce*, the Supreme Court found this standard was no different from the "reasonable basis both in law and fact" formulation the Court adopted in *Ashburn v. United States*, 740 F.2d 843, 850 (11th Cir. 1984). *Pierce*, 487 U.S. at 565-66. "Conceivably, the Government could take a position that is not substantially justified, yet win; even more likely, it could take a position that is substantially justified, yet lose." *Pierce*, 487 U.S. at 569.

Because Respondents' position was substantially justified, the Court should deny Plaintiff's EAJA motion.

As noted by the Court, the primary issue in this case is whether § 1225 or § 1226 governs the petitioner's detention. Order [ECF No. 13] at 7. The Court also noted, as did the government in its Response to the Order to Show Cause, that this issue has been the subject of considerable litigation with varied results both within the Southern District of Florida, among the Circuit Courts, and throughout the nation. *See* Order [ECF No. 13] at 9-12; Response [ECF No. 10] at 3-4, n. 2. The government's position in this case, specifically, that § 1225 governs the petitioner's detention as he is an applicant for admission, has been found to be correct in several decisions in this district, and by the Eighth and Fifth Circuits. *See Avila v. Bondi*, --- F.4th ---, 2026 WL 819258 (8th Cir. Mar. 25, 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. Feb. 6, 2026); *Morales v. Noem*, --- F. Supp. 3d, No. 25-cv-62598, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026) (Singhal, J.) (denying substantially similar habeas petition, finding petitioner—who had been present in the United States for over 20 years—to still be an "applicant for admission" under the unambiguous language of Section 1225(b)(2)); *Vargas v. Miami Federal*, --- F. Supp. 3d ---, Case No. 25-cv-25966, 2026 WL 911291 at *3-*4 (S.D. Fla. April 2, 2026) (Ruiz, J.) (collecting cases, and noting that "Courts in this District are equally divided on the question.") This question is presently before the Eleventh Circuit in at least two pending appeals in which oral argument has already occurred. *See Alvarez v. Warden*, No. 25-14065 (11th Cir.); *Perez v. Parra*, No. 25-14075 (11th Cir.).

Under these circumstances, where the state of the law is highly divided and in flux concerning the application of § 1226 and § 1225, it is "apparent that the position" of the government "is substantially justified." *Giron Bautista v. Noem*, Case No. 2:26-cv-75-JES-DNF, 2026 WL 709778 at *2 (M.D. Fla. Mar. 13, 2026) (finding that while it disagrees with the

government's contention that § 1225 mandates detention, an award of fees under the EAJA was not justified given the unsettled nature of the issue); *Garcia-Lopez v. Castro*, Case No. CIV 25-1144 JB/SCY, 2026 WL 524082 at *36 (D.N.M. Feb. 25, 2026) ("(T)he Court concludes that the United States' position that the United States may property detain Garcia-Lopez under § 1225 is substantially justified such that an award of EAJA fees is not appropriate."). While authority to the contrary exists, most of the cases awarding EAJA fees in this context preceded the decisions in favor of the government in the Fifth and Eighth Circuits. *See e.g. Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 505-06 (S.D.N.Y. Nov. 26, 2025); *Yao v. Almodovar*, 813 F. Supp. 3d 461, 478 (S.D.N.Y. Dec. 17, 2025).

For all these reasons, Respondents respectfully request that the Motion be denied.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: _____
Brett R. Geiger
Court No.: A5502622
Assistant United States Attorney
Brett.Geiger@usdoj.gov
99 N.E. 4th Street, 3rd Floor
Miami, FL 33132-2111
Tel No.: 305.961.9190