UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-01429 (JRT/JFD)

Riky A. M. L.,

Petitioner,

v.

Markwayne Mullin, Secretary of Homeland Security, *et al.*,

Respondents.

FEDERAL RESPONDENTS' REQUEST FOR EXTENTION AND RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEYS' FEES

Federal Respondents oppose the Petitioner's request for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. EAJA fees are not available in immigration habeas proceedings, as such do not amount to "civil actions".

Alternatively, Federal Respondents' legal position was that "applicants for admission" such as Petitioner, are subject to mandatory detention. The Eighth Circuit Court of Appeals confirmed the correctness of this position in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. Mar. 25, 2026). The legal position of the Federal Respondents was therefore substantially justified, and Petitioner's request must be denied.

ARGUMENT

I. EAJA does not waive sovereign immunity for habeas cases challenging immigration detention.

EAJA does not waive sovereign immunity for habeas cases challenging immigration detention. Petitioner's motion for attorneys' fees must therefore be denied.

A. Only Congress can waive sovereign immunity for the federal government, which must be unambiguously clear, and any ambiguity regarding the scope of the waiver is therefore strictly construed in favor of sovereign immunity.

Sovereign immunity generally bars all awards of monetary relief against the United States, its agencies, and its employees sued in their official capacities. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). The United States may choose to permit such awards by waiving its sovereign immunity, but only Congress can waive the United States' sovereign immunity. *FAA v. Cooper*, 566 U.S. 284, 290-91 (2012); *Lane v. Peña*, 518 U.S. 187, 192 (1996). To respect Congress's prerogative to waive sovereign immunity (or not), the Supreme Court has imposed a stringent standard for finding waivers, stating "on many occasions that a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *Cooper*, 566 U.S. at 290 (quoting *Lane*, 518 U.S. at 192). A "waiver of sovereign immunity must be 'unmistakably clear in the language of the statute." *Dep't of Ag. v. Kirtz*, 601 U.S. 42, 49 (2024).

Whether Congress has waived immunity "trains on statutory text rather than legislative history." *Kirtz*, 601 U.S. at 49.; *see also Cooper*, 566 U.S. at 290 ("Legislative history cannot supply a waiver that is not clearly evident from the language of the statute."). Thus, because the dispositive question on whether Congress waived sovereign immunity depends on the precise words used, "a court charged with asking whether Congress has spoken clearly has its answer long before it might have reason to consult the Congressional Record." *Kirtz*, 601 U.S. at 49. And even where Congress 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) (cleaned up). 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 waived immunity as well as to the *scope* of that waiver. *See id.* at 291 ("For the same reason that we refuse to enforce a waiver that is not unambiguously expressed in the statute, we also construe any ambiguities in the scope of a waiver in favor of the sovereign."). 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. EAJA's limited waiver of immunity is ambiguous as to whether habeas petitions challenging immigration detention are within its scope.

EAJA provides that, under certain circumstances, a litigant who prevails against the United States may be awarded attorneys' fees and other expenses. 28 U.S.C. § 2412(d)(1)(A). In relevant part, the EAJA states:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, 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). Because EAJA is a *partial* waiver of sovereign immunity, applying only to those civil actions that do not sound in tort, "[a]ny such waiver must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991) (holding that a different provision of EAJA that applies to some administrative proceedings did not also encompass immigration deportation proceedings).

Whether EAJA's waiver of sovereign immunity encompasses habeas petitions challenging immigration detention therefore turns on whether such actions unambiguously amount to a "civil action." Because the term "civil action" is ambiguous, EAJA's waiver of sovereign immunity therefore necessarily precludes EAJA from applying here.

i. Habeas petitions are not categorically civil actions.

The Supreme Court has recognized that, while 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. The issues in habeas proceedings "are materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure." *Id.* at 300, n.7. The Court found it "difficult to believe" that Congress would have intended rules promulgated for civil cases to apply wholesale to habeas petitions "because their specific provisions are ill-suited to the special problems and character of such proceedings." *Id.* at 296.

The Supreme Court has repeatedly refused 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) (1964 ed., Supp. V.)). The 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'" that would have encompassed habeas proceedings. *Stafford v. Briggs*, 444 U.S. 527, 542-43 (1980).

In passing EAJA, Congress adopted statutory language that used the same phrase—"civil action"— the Supreme Court had already held did *not* encompass habeas petitions. 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 that term as 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); *see also Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019) ("When a statutory term is obviously transplanted from another legal source, it brings the old soil with it.").

Indeed, litigation in section 2241 petitions differ starkly from civil actions. Habeas petitions are filed where the petitioner is confined rather than following civil personal jurisdiction and venue rules. 28 U.S.C. § 2241(a), (b). The petitioner must name "the person who has custody" as respondent. 28 U.S.C. § 2242 The statute does not permit service of the petition like a civil complaint; rather, the court first determines 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. *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997).

To be sure, in cases in which Federal Rules of Civil Procedure apply—and 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 immigration habeas petitions. And 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 which habeas proceedings deviate from the Civil Rules."); *see also* Fed. R. Civ. P. 81(a)(4) and (a)(4)(B) (providing 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."). Supreme Court jurisprudence and the Federal Rules of Civil Procedure themselves illustrate how habeas proceedings cannot clearly and unambiguously be classified as "civil actions."

ii. Because the phrase "civil action" is ambiguous as to immigration habeas petitions, EAJA waiver must be construed in favor of immunity.

Against this backdrop, the ambiguity of the term "civil action" in EAJA is, simply, unambiguous. The term "civil action" can be reasonably read in at least two ways. *First*, narrowly to include only those cases that are wholly or purely civil in nature, such as civil rights or employment cases, and all the other garden-variety civil actions typically brought in federal court by or against the United States. This reading must exclude habeas petitions because they are not purely civil, but rather unique, hybrid actions.

Second, broadly, to encompass any type of case with *any* civil element, such as being governed by at least some of the Federal Rules of Civil Procedure or having a civil case number. This reading would include all habeas petitions, including those challenging immigration detention. And EAJA's inclusion of "any" and "(other than cases sounding in tort)" does not rescue this ambiguity. These modifiers indicate that, whatever "civil action" means, every case that fits that definition, other than tort cases, falls within the statute. That does not answer whether "civil action" encompasses unique, hybrid habeas petitions, as "any" cannot expand the meaning of "civil action"; it simply instructs that, to the extent a case is a civil action, the statute encompasses it. *See Newmark v. Principi*, 283 F.3d 172, 176 (3d Cir. 2002) (interpreting § 2412(d)'s "civil action" phrase to mean "any *type* of civil action" (emphasis added)); *cf. Nelson v. United States*, 40 F.4th 1105, 1115-16 (10th Cir. 2022) (the qualifier "any" in the phrase "any statute" in § 2412(b) of EAJA does not change the meaning of the word "statute," but does encompass both federal and state statutes).

While the "adjective 'any' is indeed a broad term . . . it cannot expand the reach of the noun it modifies." *San Francisco v. EPA*, No. 23-753, 604 U.S. 334, 348 (2025).

To illustrate the ambiguity of "civil actions", a circuit split currently exists on whether EAJA's waiver of immunity applies in immigration habeas case. The Fourth and Fifth Circuit Courts of Appeal both concluded that EAJA fees cannot be awarded in immigration habeas proceedings. *See, e.g., Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023) (no EAJA in habeas), *cert. denied,* No. 23-251, 2024 WL 71940 (U.S. Jan. 8, 2024) (Mem.); *Obando-Segura v. Garland*, 999 F.3d 190, 191, 197 (4th Cir. 2021)). Whereas the Second, Third, and Tenth Circuit Courts of Appeal ruled that EAJA fees can be awarded in immigration habeas proceedings. *See Vacchio v. Ashcroft*, 404 F.3d 663 (2d Cir. 2005); *Michelin v. Warden of Moshannon Valley Corr. Ctr.*, 169 F.4th 418 (3d Cir. 2026); *Daley v. Ceja,* 158 F.4th 1152 (10th Cir. 2025). The Eighth Circuit considered EAJA fees in the immigration habeas proceedings but has not reached the question of its applicability. *See Bah v. Cangemi,* 548 F.3d 680 (8th Cir. 2008) (affirming denial of EAJA fee award in immigration habeas case).

The circuit split supports Federal Respondents position here, as it illustrates the multiple interpretations of "civil actions." The phrase "civil actions" is therefore ambiguous because "there is a plausible interpretation" of the phrase "that would not authorize money damages against the Government." *Cooper*, 566 U.S. at 290-91. Because of this ambiguity, EAJA's text cannot satisfy the Supreme Court's stringent test that "a waiver of sovereign immunity must be '*unequivocally expressed*' in statutory text." *Id.* at 290. Sovereign immunity thus bars an award of attorney's fees under EAJA.

II. Alternatively, Federal Respondents' legal position was substantially justified, as shown by the Eighth Circuit opinion in *Avila*.

Alternatively, the Cout should deny the petitioner for EAJA fees because Federal Respondents' legal position was substantially justified. EAJA prohibits an award where the government can demonstrate its legal position was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). "Substantially justified" does not mean "'justified to a high degree,' but rather 'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). "A substantially justified position need not be correct so long as a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." *Bah*, 548 F.3d at 683-84. When evaluating an EAJA request, the Court must interpret and apply the law strictly and not attempt to "do equity." *Levernier Constr., Inc. v. United States*, 947 F.2d 497, 502-03 (Fed. Cir. 1991); *see also RAMCOR Servs. Grp., Inc. v. United States*, 185 F.3d 1286, 1290 (Fed. Cir. 2009) ("EAJA is not a mandatory fee-shifting device.").

Here, Petitioner's legal position case was that, as an applicant for admission who had been residing in the country prior to being apprehended and placed in removal proceedings, and, without citing any legal support, therefore was not subject to mandatory detention § 1225(b)(2). (ECF #1, at ¶ 66). Federal Respondents' disagreed, arguing that Petitioner was subject to mandatory detention as an "applicant for admission" under paragraph (a)(1) who had not shown a clear and beyond-a-doubt entitlement to be admitted. (ECF #5). The District Court agreed with Petitioner and ordered release based solely on 1225(b)(2) not applying to Petitioner. (ECF #7).

The Eighth Circuit Court of Appeals agreed with Federal Respondents' position in *Avila*. In this case of first impression, the petitioner was apprehended in Minneapolis after a traffic stop, when he admitted to entering the country illegally and lacked documents for admission. *Avila*, 170 F.4th at 1132. DHS arrested petitioner, initiated removal proceedings, and held him without bond. *Id.* Though Petitioner sought a bond determination from an immigration judge, the request was denied. *Id.* The Court found that petitioner was an alien described in § 1225(b)(2)(A), and therefore subject to mandatory detention. *Id.* at 1138.

Federal Respondents' position is and has been that the Petitioner is in the same legal situation as Avila. Petitioner is an applicant for admission present in the country without a clear and beyond-a-doubt entitlement to be admitted. Petitioner's arrest and detention without bond were therefore mandated by § 1225(b)(2)(A). While Federal Respondents' position failed with this court in this case, DHS was substantially justified in promoting the statutory construction that is now governing precedent. Case law from this District supports the conclusion that where the Court ordered release based on what it viewed as Federal Respondents' flawed interpretation of § 1225(b)(2), as here, attorney fees under EAJA are not appropriate. *See, e.g., Maria F. v. Bondi*, 26-cv-486 (ECT/DTS) (D. Minn. March 30, 2026) (denying attorney fees where release granted based on § 1225(b)(2) because since release "the Eighth Circuit has held that Respondents' position was correct" (*citing Avila*, 107 F.4th 1128)); *Kadidiatou D. v. Easterwood*, 26-cv-01218 (PJS/DLM) (D. Minn. Apr. 10, 2026) (denying attorneys' fees petition and stating: "At the time that this Court granted Kadidiatou's habeas petition, courts across the country—and judges within

this District—were divided on the question of whether § 1225(b)(2) applied to aliens such as Kadidiatou. 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 . . . And any remaining doubt was dispelled by the Eighth Circuit's subsequent decision in *Avila v. Bondi* adopting the government's position.").

Petitioner argues that Federal Respondents were not substantially justified in law because Federal Respondents did not address the U-Visa deferred action argument and that a significant time was spent on returning property. Regarding deferred action, Federal Respondents argue that while they did not address this argument, relief was not granted based on such. Regarding that most of the time was spent on non-compliance – Federal Respondents were nonetheless substantially justified in fact. This was not a case where the Court had to impose a contempt for noncompliance – rather the parties worked together with the Court to offer Petitioner extraordinary relief that wholly cut out the FTCA. Given that Federal Respondents did not have any record of Petitioner possessing the missing property, here, a nail gun, it nonetheless took Petitioner at his word and fully compensated him for the same. Such negotiated resolution – which Federal Respondents fulfilled, despite the continued partial shutdown of the responsible agency, ICE, does not amount to unreasonable position or actions.

Federal Respondents' position clearly has a reasonable basis in law and fact, as it is now the binding interpretation in the Eighth Circuit, and therefore was substantially justified. The Petitioner's request for attorneys' fees under the EAJA must be denied.

III. Alternatively, the Court should reduce the amount of the requested fees.

Although the EAJA authorizes an award of attorney fees, the fee must be "reasonable." *See* 28 U.S.C. § 2412(d)(2)(A). The United States, through the Federal Respondents, is no normal litigant. "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*, 502 U.S. at 137 (citations omitted). The Supreme Court has clarified that the applicant bears the burden of documenting and supporting the reasonableness of all time expenditures for which he or she seeks compensation, and the Court has a duty to make an independent evaluation of the reasonableness of the attorney's bill. *Hensley v. Eckerhart*, 461 U.S. 424, 432–34 (1983). Similarly, the party seeking reimbursement from the government has an obligation to make a "good faith effort to exclude from a fee request that are excessive, redundant, or otherwise unnecessary." *Id.* In evaluating the reasonableness of an EAJA fee request,

> the court should consider not merely whether the attorney's work was valuable to the client, but whether the issues were novel or complex, whether the record is voluminous or the facts are unusually complex, whether the attorney's specialized skill or knowledge was required, and what the usual number of hours for similar cases are in the area.

Handke v. Astrue, 2008 WL 2095545 at *1 (N.D. Iowa May 16, 2008) (quotation omitted) (quoting, *inter alia*, *Johnson v. Barnhart*, 2004 WL 213183 (W.D. Mo. Jan. 14, 2004) (citing *Stockton v. Shalala*, 36 F.3d 49, 50 (8th Cir. 1994))).

Here, Petitioner's Counsel seeks reimbursement for 16 hours of time preparing the habeas case. The Petitioner's Counsel's allocation of time is not always sensible. The legal

issues in this matter were already well-worn by the time of this habeas petition. The facts and law in this case were not novel or complex, and the work required to draft a template habeas petition was done before the Petitioner filed for relief. Further, much of the time billed was post-release, to secure compensation for approximately $500 nail gun which ICE did not have record of existing.

As such, Federal Respondents provide the following examples of unreasonable billing:

- 2/13: 1.0 hours for drafting and sending a retainer letter and file maintenance;
- 2/15-2/16: 2.25 hours for conference with client on release order;
- 2/18: .50 hours calendaring a deadline for release;
- 2/20: 2.0 hours drafting and filing a status update;
- 3/03: 1.0 hours analyzing court order setting contempt hearing;
- 3/10-3/11: 7.75 hours to fill out an FTCA claim (which here, included 2 pages, with no supporting documentation, and approximately 5 sentences of information filled out);
- 3/16-3/18: 3.25 hours spent on emailing DOJ (which did not include substantive information);
- 4/14-4/17: 2.25 *additional hours* to fill out FTCA form (again, which here include a front-back form with minimal information from Petitioner and no supporting documentation);
- 5/15: 3.0 hours on internal office emails on billing (WIP)
- 5/5: 5.0 hours on drafting a declaration for EAJA and internal emails on billing (WIP)

While not apparent, it appears much of the above time includes redundant billing for the same work, as well excessive administrative time. *See Hensley*, 461 U.S. at 432–34 ("Similarly, the party seeking reimbursement from the government has an obligation to make a "good faith effort to exclude from a fee request that are excessive, redundant, or otherwise unnecessary."). As much of the time was spent in this case on post-habeas relief, which included a court-supervised settlement process, which Federal Respondents

fulfilled, much of the time was not necessary or related to securing the underlying habeas relief. In the alternative, should the Court grant Petitioner's request, it should reduce the fees by at $10,000.

CONCLUSION

The Court should deny the Petitioner's request for attorneys' fees. Alternatively, if the Court grants attorney's fees, it should subtract at least $10,000.00.

Dated: June 1, 2026

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