UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Riky Alexis Morales Lopez, Petitioner, v. Todd Blanche, *et al.*, Respondents.	Case No.0:26-cv-01429-JRT-JFD

REPLY IN PETITIONER'S APPLICATION FOR FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

Petitioner responds to Respondents' arguments against Petitioner's motion to recover attorneys' fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. The EAJA unambiguously provides a waiver of sovereign immunity for petitions for habeas corpus in immigration proceedings. The Supreme Court has categorized habeas proceedings as fundamentally civil in nature for decades, the text and legislative history of the EAJA compel such a reading, and the Eighth Circuit has explicitly determined that the EAJA's jurisdiction includes habeas petitions.

Respondents' legal position was not substantially justified just because they would have been successful on one of several grounds for relief. Respondents argue that their position was that Petitioner was subject to mandatory detention as an "applicant for admission" under 28 U.S.C. § 1225(b)(2), the Eighth Circuit affirmed their argument in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. Mar. 25, 2026), and, as such, they were substantially justified in their arguments. But Respondents failed to meaningfully address

the issues raised by Petitioners and ignored the Court's order requiring substantially more than a copy and paste brief. Moreover, this Court granted Petitioner's habeas petition in part due to Respondents' failure to produce a warrant, a point that the Eighth Circuit did not consider in *Avila*.

Finally, Respondents now boldly claim that their failure to follow the Court's orders was "substantially justified in fact." That untenable position is not only facially wrong but was recently contradicted by this Court's ruling admonishing Respondents. ECF No. 42 at 6. As a result, the many hours spent by Petitioner's counsel remedying Respondents non-compliance were reasonable and that time, at a minimum, should be awarded.

ARGUMENT

I. The EAJA unambiguously waives sovereign immunity for habeas cases challenging civil detention.

Contrary to Respondents' assertions, habeas petitions for release from civil detention are unambiguously "civil actions" for the purposes of 28 U.S.C. § 2412(d)(1)(A). Such a reading is mandated by past U.S. Supreme Court and Eighth Circuit precedent, the ordinary plain meaning of the statutory text, and relevant legislative history.

A. U.S. Supreme Court precedent and the text and legislative history of the EAJA show that the Act unambiguously provides for recovery of attorneys' fees for habeas petitions.

The EAJA provides, in relevant part:

> 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) (emphasis added). Respondents claim that the U.S. Supreme Court has, in the past, described habeas petitions as having a "fundamentally unique and hybrid nature" that is neither civil nor criminal, as evidenced by the fact that not all of the Federal Rules of Civil Procedure apply to habeas proceedings. ECF No. 41 at 6. On this basis, Respondents conclude that it is ambiguous as to whether the phrase "any civil action" in § 2412(d)(1)(A) includes habeas petitions and, therefore, that this language must be strictly construed in favor of sovereign immunity. ECF No. 41 at 4.

Respondent's reading, however, ignores the fact that the Supreme Court has, time and again, described habeas petitions as civil in nature, even where the petition was attached to a criminal proceeding (which is not the case here). *See Farnsworth v. Montana*, 129 U.S. 104, 113 (1889); *Riddle v. Dyche*, 262 U.S. 333, 335-36; *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Banister v. Davis*, 590 U.S. 504, 507 (2020). This interpretation is well established: in 1889, the Court noted that it had previously held the "writ of *habeas corpus* … to be a civil, and not a criminal proceeding, even when instituted to arrest a criminal prosecution." *Farnsworth*, 129 U.S. at 113. Likewise, the Court in 1923 noted that "the writ of habeas corpus is not a proceeding in the original criminal prosecution, but an independent civil suit." *Riddle*, 262 U.S. at 335-36. And more recently, the Court recognized that "our decisions have consistently recognized that

habeas corpus proceedings are civil in nature." *Hilton*, 481 U.S. at 776. *See also Banister*, 590 U.S. at 507 ("Habeas proceedings, for those new to the area, are civil in nature.").

Respondents acknowledge the significant body of Supreme Court rulings categorizing habeas petitions as civil in nature—as they must. ECF No. 41 at 4. Nevertheless, Respondents argue that habeas petitions are not "categorically civil actions," pointing to a small subset of cases noting that certain Federal Rules of Civil Procedure do not apply to all aspects of habeas proceedings. ECF No. 41 at 4. *See, e.g., Harris v. Nelson*, 394 U.S. 286, 293-94 (1969) (noting that habeas proceedings are "materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure."); *Banister*, 590 U.S. at 528 (Alito, J., dissenting) ("Let's count some of the ways in which habeas proceedings deviate from the Federal Rules."). Yet it is hardly remarkable that each Federal Rule will not necessarily apply to all civil actions; as the Tenth Circuit noted in *Daley v. Ceja*, addressing this very argument, a number of specialized civil actions are subject to unique procedures outside of the generic Federal Rules, such as admiralty claims. 158 F.4th 1152, 1161 (2025). That habeas proceedings differ procedurally from the Federal Rules in certain ways does not affect their civil nature, that is, the fact that they are "geared to redressing private wrongs." *Daley*, 158 F.4th at 1161.

Respondents also highlight the Court's statement in *Schlanger v. Seamans* that although "habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." 401 U.S. 487, 490 n.4 (1971). Yet the Court in *Schlanger* was considering whether habeas corpus constituted a "civil action" under an

entirely different statute, 28 U.S.C. § 1391(e), and its decision was grounded in the unique legislative history of this statute. *Id.* ("The legislative history [of 401 U.S. 487] is barren of any indication that Congress granted habeas corpus jurisdiction."); *Stafford v. Briggs*, 444 U.S. 527, 543 (1980) ("The clear purport of our statement in *Schlanger* is that Congress did not intend the phrase 'civil action' to be given the sweeping definition argued for it in that case, and that the Court was required to turn to the legislative history to determine which "civil actions" § 1391(e) governed.").

The text and legislative history of 28 U.S.C. § 2412(d)(1)(A), meanwhile, give *every* indication that Congress intended this statute to include habeas proceedings. Congress' decision to draft 28 U.S.C. § 2412(d)(1)(A) to apply to "*any* civil action" (emphasis added) is strong evidence that it intended this language to extend to habeas petitions notwithstanding their procedural differences. *See U.S. v. Gonzalez*, 520 U.S. 1, 5 (1997) (declining to interpret the statutory language "any other term of imprisonment" to be limited to federal sentences, given that, "read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'") (*quoting* Webster's Third New International Dictionary 97 (1976)).

This reading is explicitly confirmed by pertinent legislative history. At a Senate hearing on the pending EAJA, a government representative specifically mentioned "prisoner petitions" as one of the areas of civil litigation in which attorneys could recover fees under the then-pending EAJA. *Equal Access to Justice Act of 1979, S. 265: Hearings Before the Subcomm. on Improvements in Jud. Machinery of the S. Comm. on the Judiciary*, 96th Cong. 50, 51 (1979). And lastly, a reading of "any civil action" that

includes habeas petitions is consistent with the U.S. Supreme Court's understanding that the "clearly stated objective of the EAJA is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter the unreasonable exercise of Government authority." *Ardestani v. I.N.S.*, 502 U.S. 129, 138 (1991). Habeas petitions land squarely within this Congressional objective.

Far from the ambiguous construction Respondents labor to give "any civil action" as employed in 28 U.S.C. § 2412(d)(1)(A), centuries of Supreme Court habeas precedent and the text and legislative history of the statute itself demonstrate that this language unambiguously includes habeas petitions.

B. The Eighth Circuit has held that the EAJA's jurisdiction unambiguously includes habeas petitions.

Even if this Court were to give any credence to Respondents' assertion that "the term 'civil action' [as employed in 28 U.S.C. § 2412(d)(1)(A)] can be reasonably read in at least two ways," the Eighth Circuit has already resolved this alleged ambiguity for this Court. ECF No. 41 at 7. In *Bah v. Cangemi*, the Eighth Circuit, while affirming the denial of an EAJA award on other grounds, unambiguously determined habeas petitions to be "civil actions" within the scope of the EAJA. 548 F.3d 680, 685 (2008). As the Eighth Circuit wrote,

> In resolving Bah's EAJA motion, the district court did not evaluate whether the government's rejection of his [temporary protective status] application had been substantially justified. This was appropriate because the district court lacked jurisdiction to review the government's discretionary action. The government's denial of Bah's [temporary protective status] application was not 'the action ... by the agency upon which the civil action is based.' ...

The civil action in which Bah had prevailed was his petition for a writ of habeas corpus.

Id. (*quoting* 28 U.S.C. § 2412(d)(2)(D)) (emphasis added). The Eighth Circuit has thus construed 'any civil action' in 28 U.S.C. § 2412(d)(1)(A) to include habeas petitions, and that construction is binding on the District of Minnesota. Judicial construction of statutory text by a binding authority is an "authoritative statement" of the meaning of the text both before and after the decision giving rise to that construction. *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312 (1994). The fact that the Eighth Circuit interpreted "civil action" in a different provision in 28 U.S.C. § 2412 is immaterial, as the language in § 2412(d)(2) clearly relates back to § 2412(d)(1), prefacing each definitional subsection with "for the purposes of [§2412(d)]."

Given the Eighth Circuit's clear guidance on this point, the circuit split on whether EAJA's waiver of immunity extends to habeas petitions is not, as Respondents assert, strong evidence of statutory ambiguity. ECF No. 41 at 8. As Respondents note, the Fourth and Fifth Circuit Courts of Appeals have both held that attorneys cannot recover fees for habeas petitions under the EAJA, whereas the Second, Third, and Tenth Circuits have held the reverse. *See Obando-Segura v. Garland*, 999 F.3d 190 (4th Cir. 2021); *Barco v. Witte,* 65 F.4th 782 (5th Cir. 2023); *contra Vacchio v. Ashcroft,* 404 F.3d 663 (2d Cir. 2005); *Daley*, 158 F.4th (10th Cir.); *Michelin v. Warden of Moshannon Valley Corr. Ctr.*, 169 F.4th 418 (3d Cir. 2026). But the mere existence of a circuit split on the proper construction of statutory language should not be taken as dispositive evidence of statutory ambiguity. The Supreme Court, for instance, has previously disregarded a

circuit split when determining a Congressional waiver of sovereign immunity to be unambiguous. *Millbrook v. U.S.*, 569 U.S. 50, 55-56 (2013) ("A number of lower courts have nevertheless read into the text additional limitations designed to narrow the scope of the law enforcement proviso...None of these interpretations finds any support in the text of the statute."). And the statutory interpretations of other Circuit Courts should be given little to no probative weight where, as here, the governing Circuit has given this language a clear and unambiguous construction.

The Eighth Circuit has clearly stated that the phrase "any civil action" as used in 28 U.S.C. § 2412 unambiguously includes habeas petitions. *Bah*, 548 F.3d at 685. Where Congress has unequivocally waived sovereign immunity, a court must ensure that it does not narrow the waiver beyond that which Congress intended. *Kubrick*, 444 U.S. at 117-18. Sovereign immunity thus cannot bar Petitioner's recovery of attorneys' fees from Respondents.

II. Respondents' position was not substantially justified.

Respondents are not substantially justified because they were ultimately successful on one of several grounds for relief. While successful on the *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) issue, Respondents failed to meaningfully address all issues raised by Petitioner, including Petitioner's U-1 crime victim "deferred action" status, and Respondents' lack of a warrant. Despite a clear order from the Court to meaningfully address all issues raised by Petitioner, Respondents instead only mustered a copy-and-paste "abbreviated response" deferring to its prior arguments raised in *Buenrostro-*

Mendez v. Bondi, No. 25-20496F, 4th (5th Cir. Feb. 6, 2026), and the then-pending *Avila* 170 F.4th. ECF No. 5 at 1.

The District Court did not, as Respondents suggest, "order … release based solely on 1225(b)(2) not applying to Petitioner." ECF No. 41 at 9. Rather, in its order granting Petitioner's release, this Court noted not only that "Respondents erroneously assert that a detainee is being held pursuant to § 1225(b)(2)," but *also* that "Respondents have not produced a warrant, as is required to effectuate an arrest pursuant to § 1226(a), the appropriate remedy [for which] is release from custody." ECF No. 7 at 2. The legal question of whether an arrest under § 1226(a) requires a warrant was not addressed at all by the 8th Circuit in *Avila*. *See* 170 F.4th at 1141, n.3 (noting that a case referred to in the decision, *Castañon-Nava v. U.S. Dep't of Homeland Security*, 161 F.4th 1048 (7th Cir. 2025), "dealt with an order enjoining DHS from making warrantless arrests of aliens, which is not the issue here."). Indeed, courts in this District post-*Avila* have granted substantive habeas relief for warrantless arrest. *Martha C.G.P. v. Blanche*, 26-cv-02308, ECF No. 10 (D. Minn. May 13, 2026).

This Court also noted Petitioner's U-1 Visa deferred status in the order granting habeas relief. ECF No. 7 at 2. Had the Eighth Circuit ruled in *Avila* prior to the Court's decision in this case, or had Respondents moved to reconsider, the next step would be to consider Petitioner's deferred action status and other grounds for relief. On the deferred action status, Respondents fail because they failed to respond *at all*, thereby waiving the issue. *Juan M. v. Bondi*, No. 26-CV-266 (ECT/JFD), 2026 WL 129059, at *2 (D. Minn. Jan. 17, 2026) ("Respondents did not respond to Juan's arguments about deferred

action... meaning Respondents waived any challenge to these arguments."). Second, because immigrants with deferred action status cannot be deported, they cannot be detained. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("Approval of deferred action status means that . . . no action will thereafter be taken to proceed against an apparently deportable alien") (internal quotation omitted); *Walter A. v. Berg,* No. 25-CV-4720 (SRN/LIB), 2025 WL 3707593 (D. Minn. Dec. 22, 2025) (granting habeas petition based on deferred action status).

Finally, Respondents downplay their repeated failures to follow this Court's orders to return Petitioner's property as "substantially justified in fact." ECF No. 41 at 11. Respondents disclaim having violated any Court orders, claiming the Court did not have to "to impose a contempt for non-compliance." *Id.* Respondents attempt to recharacterize the noncompliance as some sort of joint effort "to offer Petitioner extraordinary relief that wholly cut out the FTCA." *Id.*

Contrary to Respondents' no-harm-no-foul retelling, this Court concluded to the contrary:

> The Court remains troubled that its intervention was necessary to compel compliance with its orders, and to ensure the safety, liberty, and well-being of persons who were subject to unlawful arrest and detention. The Court regrets the hardship imposed on Petitioners by the United States Government.

ECF No. 42. at 6. The undersigned shares that concern, but counsel for the United States government apparently does not. The seizure of Petitioner's property and violation was not only substantially *unjustified*; it represented an "ongoing failure to comply with the Court's orders." *Id* at 4.

III. Petitioner's request for fees is reasonable.

Respondents argue that Petitioner's request for fees is unreasonable and provide a list of "examples of unreasonable billing" by Petitioner. ECF No. 41 at 12-13. This list repeatedly mischaracterizes or omits the work put into this case by Petitioner's Counsel. To clarify this matter for the Court, Petitioner compares Respondents' examples of "unreasonable billing" with the billable items that Petitioner actually submitted to this Court in its motion for attorneys' fees:

Respondents' Mischaracterization	Petitioner's Actual Billable Entry (32)	Discrepancy
"2/13: 1.0 hours for drafting and sending a retainer letter and file maintenance"	2/13: 1.0 hour for "draft[ing] and send[ing] retainer letter to client's relative; e-mails with J. Rissman re same; file maintenance; finaliz[ing] and fil[ing] habeas petition; e-mails with J. Rissman re same"	Respondent omitted finalization and filing of habeas petition.
"2/15-2/16: 2.25 hours for conference with client on release order"	2/17: 1.5 hours for "conference[ing] with client re: case update; analyz[ing] order granting petition; emails with client and co-counsel re: same"	Respondent omitted analysis of order granting petition and client conferences on release order actually happened on 2/17-18.
	2/18: 1.75 hours for "e-mails and conference with client re: release order, Danielle re: same"	
"2/18: .50 hours calendaring a deadline for release"	2/19: .5 hours for "calendar[ing] deadline; emails with J. Rissman re same and status report filing"	Omitted status report filing and emails with Counsel regarding calendaring deadline.
"2/20: 2.0 hours drafting and filing a status update"	2/20: 1.0 hour for "prepar[ing] status update; conference[ing] with client re: same and unreturned property; emailing] respondents' re: unreturned property" (Joshua J. Rissman)	Omitted J. Rissman conference with client and additional emailing.
	2/20: 1.0 hour for "finaliz[ing] and fil[ing] status report; emails with J. Rissman re same; e-mails with J. Rissman re federal	

	respondents' status report" (Chelsea M. Noble)	
"3/03: 1.0 hours analyzing court order setting contempt hearing"	3/03: 1.0 hour for "analyz[ing] order from court setting hearing; research[ing] Judge Bryan hearing on contempt; e-mails with co-counsel re: same"	Omitted Counsel's legal research regarding contempt and additional emailing.
"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)"	3/10: 2.5 hours for "retriev[ing] documents for clieng; text[ing] and conference[ing] with client re: same; prepar[ing] FTCA claim form	Respondent calculated hours incorrectly—Petitioner's Counsel actually billed 6.0 hours during this period—and omitted client conference, filing, document preparation for client.
	3/11: 3.5 hours for "prepar[ing] and fil[ing] FTCA claim"	
"3/16-3/18: 3.25 hours spent on emailing DOJ (which did not include substantive information)"	3/16: 0.75 hours for "e-mails with J. Cruz-Rodriguez, C. Smith re: work permit return" (Joshua J. Rissman)	3.25 hours also includes emails with client, staff, internal emails, conferences related to return of Petitioner's work permit.
	3/16: 0.5 hours for "emails w. the DOJ re client's EAD card; text communication w J. Rissman re same" (Cathy K. Smith)	
	3/17: 0.5 hours for "e-mails with staff, J. Cruz Rodriguez re: work permit pickup" (Joshua J. Rissman)	
	3/17: 1.25 hours for "emails w. C. Rodriguez and J. Rissman re client's property pick up; conferences w. N. Benkovich re same" (Cathy K. Smith)	
	3/18: 0.25 hours for "e-mails with Natasha Benkovich re: receipt of work permit" (Joshua J. Rissman)	
"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)"	4/14: 0.75 hours for "e-mails with T. Grill, C. Noble re: FTCA payment account; e-mail with client re: update on FTCA payment; e-mail from D. Hackworthy re: updated form" (Joshua J. Rissman)	Filling out FTCA form only accounted for 0.75 hours of billable entries, remainder of 2.25 hours was spent initially analyzing FTCA form, internal emails re: same, emailing client.
	4/15: 0.25 hours for "analyz[ing] FTCA form; email[ing] C. Noble re:	

	completing form" (Joshua J. Rissman)	
	4/17: 0.5 hours for "analyz[ing] and edit[ing] FTCA claim form; e-mails with C. Noble, D. Hackworthy re: same" (Joshua J. Rissman)	
	4/17: 0.75 hours for "fill[ing] out and finaliz[ing] FTCA claim form for client; conference[ing] with T. Grill re same; e-mail[ing] client for approval and signature; e-mails with J. Rissman re: same" (Chelsea M. Noble)	
"5/15: 3.0 hours on internal office emails on billing (WIP)"	5/15: 1.50 hours for "phone call with L. Hamilton re: motion for fees; reviewing and editing same; e-mails with J. Rissman, L. Hamilton re: same" (Shashi K. Gowda)	Respondent omitted revision of Petitioner's application for fees and related phone call.
	5/15: 0.25 hours for "e-mails with J. Rissman and L. Hamilton re: fee petition" (Sarah A. Moen)	
	5/15: 1.25 hours for "analyz[ing] and edit[ing] application for fees (Joshua J. Rissman)	
"5/5: 5.0 hours on drafting a declaration for EAJA and internal emails on billing (WIP)"	5/15: 5.0 hours for "draft[ing] and edit[ing] EAJA declaration; e-mails with J. Rissman re: same; e-mails with S. Moen re WIP and same; research[ing] case documents for same; draft[ing] and edit[ing] EAJA fee motion; call with S. Gowda re: edits to same; e-mails with G. Gowda and J. Rissman re: same"	Respondent omitted related case research, e-mails, and phone calls.

Moreover, Respondents downplay the wild goose chase required to obtain Petitioner's promised financial compensation. After Petitioner won[?], Respondents then required an onerous multi-step process that required Petitioner to register on SAM.gov as an entity and register for and receive a "Unique Entity Identifier" and "Commercial and

Government Entity Code," each of which was a multi-step process. Decl. of Joshua J. Rissman in Supp. of Reply in Pet'rs Appl. for Fees Pursuant to the Equal Access to Justice Act at 4. While the undersigned attempted to follow these onerous and impossible steps (Petitioner is not an entity), Respondents then scrapped the FTCA process in favor of yet a third and different form. Rissman Decl. at 4; *see* ECF No. 41 at 11 (Respondents "wholly cut out the FTCA."). After that run-around, Respondents claim Petitioner's time filing out the forms was excessive, claiming it was just a "front- back form" and taking issue with "*additional hours*" to fill out the new form after Respondents' FTCA process was scrapped, necessitating the new form. ECF No. 41 at 13. Petitioner's counsel spent no more time than was necessary to jump through all of Respondents' onerous and contradictory hoops. Rissman Decl. at 3. All time Petitioner's counsel worked as a result of Respondents' failure to follow Court orders was reasonable and should be awarded.

Respondents further take issue with the "administrative" nature of the time spent dealing with Respondents' non-compliance with the Court's Order. ECF No. 41 at 13. But paralegal time, as well as law clerk time, is compensable under the EAJA. *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 581 (2008); *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996).

IV. The Court Should Award the Time Spent on the Reply Brief.

Petitioner was compelled to write a Reply to address 1) Respondents' novel (and incorrect) argument that the EAJA does not allow attorneys' fees in a habeas action; 2) Respondents' position that they were substantially justified in failing to address all but one of Petitioner's grounds for release as well as failing to follow this Court's orders; and

3) their mischaracterization of Petitioner's fee petition. Attorneys' fees under the EAJA are available for preparing the fee petition and related briefing. *Kelly v. Bowen*, 862 F.2d 1333, 1336 (8th Cir. 1988) ("On remand the district court should include in the EAJA award reasonable attorneys' fees for the time spent by counsel preparing the EAJA fee application and those reasonable and necessary expenses incurred by counsel in connection with the court proceedings."). Petitioner's counsel spent 37.25 hours researching, drafting and preparing the reply brief and declaration. Rissman Decl. at 4. Accordingly, the Court should award Petitioner $9,959.16 in fees related to the Reply, totaling $27,743.60.

Dated: June 23, 2026

Respectfully submitted,

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