25-1223

FILED
APR 20 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

KEVIN ISAAC MONTOYA PALACIOS,

Petitioner,

v.

JEREMY R. BACON, Field Office Director, Baltimore Field Office, United States Immigration and Customs Enforcement; TODD LYONS, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, Acting Attorney General,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

WILLIAM M. JAY
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036

TEDEISHA C. ROWE
AMERICAN LEGAL
IMMIGRATION CENTER, LLC
2601 University Blvd.
Suite 300
Silver Spring, MD 20902

WILLIAM E. EVANS
Counsel of Record
JESSE LEMPEL
CHRISTINE BLANCHETTE
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
wevans@goodwinlaw.com
(617) 570-1000

April 20, 2026

Counsel for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTION PRESENTED

The Equal Access to Justice Act (EAJA) provides that, "in any civil action (other than cases sounding in tort)" by or against the federal government, a court shall award to a prevailing party its fees and costs, unless the court finds certain exceptions present. 28 U.S.C. § 2412(d)(1)(A).

The question presented is whether, under EAJA, "any civil action" encompasses an action seeking a writ of habeas corpus to challenge civil immigration detention.

PARTIES TO THE PROCEEDING

Petitioner is Kevin Isaac Montoya Palacios.

Respondents are the following federal officials in their official capacities: Jeremy R. Bacon, Field Office Director, Baltimore Field Office, United States Immigration and Customs Enforcement; Todd Lyons, Acting Director, United States Immigration and Customs Enforcement; Markwayne Mullin, Secretary of Homeland Security; and Todd Blanche, Acting Attorney General.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit:

Montoya Palacios v. Bacon et al., No. 26-6251 (Mar. 24, 2026).

U.S. District Court for the District of Maryland:

Montoya Palacios v. Baker et al., No. 25-cv-04045 (Feb. 19, 2026).

TABLE OF CONTENTS

Introduction 1

Opinions Below 4

Jurisdiction 4

Statutory Provisions Involved 4

Statement 5

I. Legal background. 5

A. EAJA. 5

B. Habeas actions challenging immigration detention have long been considered civil actions. 6

II. Mr. Montoya Palacios is granted withholding of removal but is nonetheless detained by ICE. 7

III. The district court grants habeas relief and blocks the government's unlawful effort to remove Mr. Montoya Palacios to El Salvador despite the order withholding removal. 9

IV. The district court denies Mr. Montoya Palacios's application for attorney's fees based on circuit precedent. 11

V. The Fourth Circuit affirms this case's ineligibility for attorney's fees under circuit precedent. 12

Reasons for Granting the Writ 13

I. There is a "deeply rooted circuit split" on this issue, as the government has acknowledged. 15

A. Three circuits hold that habeas challenges to immigration detention are "civil action[s]" under EAJA.....15

B. The Fourth and Fifth Circuits expressly disagree with the other circuits.....18

II. The question presented arises almost daily and is exceptionally important.....20

III. This case is an ideal vehicle to decide the question presented.....25

IV. The Fourth and Fifth Circuits are wrong.....26

Conclusion.....33

Appendix A: Fourth Circuit's Decision (Mar. 24, 2026).....1a

Appendix B: District Court's Order Denying EAJA Application (Feb. 19, 2026).....2a

Appendix C: District Court's Order on Habeas Relief and Attorney's Fees (Jan. 22, 2026).....4a

Appendix D: District Court's Memorandum and Opinion (Jan. 22, 2026).....6a

Appendix E: District Court's Order Granting Emergency Relief (Feb. 6, 2026).....17a

Appendix F: Table of Relevant District Court Decisions—Dec. 2025 to Mar. 2026.....19a

TABLE OF AUTHORITIES

Page(s):

Cases:

Acosta Espana v. Ortega,
2026 WL 594362 (W.D. Tex. Mar. 2, 2026) 21

Allen v. Duckworth,
6 F.3d 458 (7th Cir. 1993) 29

Allen v. McCurry,
449 U.S. 90 (1980) 29

Ardestani v. INS,
502 U.S. 129 (1991) 5

Bah v. Cangemi,
548 F.3d 680 (8th Cir. 2008) 17

Banister v. Davis,
590 U.S. 504 (2020) 6

Banoub v. Crawford,
2025 WL 3723458 (E.D. Va. Dec. 23, 2025) 21

Barco v. Witte,
65 F.4th 782 (5th Cir. 2023) 19, 30

Bernardo-Rodriguez v. Hyde,
2026 WL 370863 (D. Me. Feb. 10, 2026) 21

United States ex rel. Bilokumsky v. Tod,
263 U.S. 149 (1923) 7, 27

Bokwe v. Bondi,
2026 WL 752260 (W.D. Tex. Mar. 13,
2026) 21

Boudin v. Thomas,
732 F.2d 1107 (2d Cir. 1984) 17

Boumediene v. Bush,
553 U.S. 723 (2008) 23

Braden v. 30th Jud. Cir. Ct. of Ky.,
410 U.S. 484 (1973) 28

Browder v. Dir., Dep't of Corr. of Ill.,
434 U.S. 257 (1978) 26

Brown v. Davenport,
596 U.S. 118 (2022) 23

Camara v. Lowe,
2026 WL 701774 (M.D. Pa. Mar. 12,
2026) 21

Carlson v. Landon,
342 U.S. 524 (1952) 7

Ex parte Collett,
337 U.S. 55 (1949) 28, 32

Corregidor v. Bondi,
2026 WL 636745 (D.N.M. Mar. 6,
2026) 21

Cross v. Burke,
146 U.S. 82 (1892) 26

Daley v. Ceja,
158 F.4th 1152 (10th Cir. 2025) 16-17, 27

Demore v. Kim,
538 U.S. 510 (2003) 7

Diaz-Cruz v. Dedos,
2025 WL 3628517 (D.N.M. Dec. 12,
2025) 21

FAA v. Cooper,
566 U.S. 284 (2012) 30

Fong Yue Ting v. United States,
149 U.S. 698 (1893) 7, 27

Gomez Alvarado v. Vergara,
2026 WL 594366 (W.D. Tex. Mar. 2,
2026) 21

Hamdi v. Rumsfeld,
542 U.S. 507 (2004) 23

Harris v. Nelson,
394 U.S. 286 (1969) 30-32

Harrison v. PPG Indus., Inc.,
446 U.S. 578 (1980) 28

Heck v. Humphrey,
512 U.S. 477 (1994) 30

In re Hill,
775 F.2d 1037 (9th Cir. 1985) 18

Hillman v. Maretta,
569 U.S. 483 (2013) 29

Imran v. Harper,
2026 WL 93131 (5th Cir. Jan. 13,
2026) (per curiam) 19

INS v. Lopez-Mendoza,
468 U.S. 1032 (1984) 7

Jobe v. Acuna,
2026 WL 775928 (W.D. La. Mar. 3,
2026) *report and recommendation adopted*, 2026 WL 772631 (W.D. La.
Mar. 18, 2026) 21

Jones v. Hendrix,
599 U.S. 465 (2023) 6

Krajekian v. Cantu,
2026 WL 598226 (D. Ariz. Jan. 2,
2026), *report and recommendation adopted*, 2026 WL 596300 (D. Ariz.
Mar. 3, 2026) 21

Kurtz v. Moffitt,
115 U.S. 487 (1885) 6

Malik v. Dosanj,
2026 WL 638483 (D. Haw. Mar. 6,
2026) 21

McCarthy v. Harper,
449 U.S. 1309 (1981) 26

Mekhtievi v. Thompson,
2026 WL 752627 (W.D. Tex. Mar. 16, 2026) 21

Michelin v. Warden Moshannon Valley Corr. Ctr.,
169 F.4th 160 (3d Cir. 2026) (sur petition for rehearing) 1, 2, 16, 25

Michelin v. Warden Moshannon Valley Corr. Ctr.,
169 F.4th 418 (3d Cir. 2026) 15-16, 27-28, 31

Morales Mendez v. Field Off. Dir., U.S. ICE,
2026 WL 734347 (N.D.N.Y. Mar. 16, 2026) 21

Munaf v. Geren,
553 U.S. 674 (2008) 6, 23

Nadarajah v. Holder,
569 F.3d 906 (9th Cir. 2009) 17

Ndou v. Noem,
2026 WL 686564 (D.N.M. Mar. 11, 2026) 21

Nuraetov v. Bondi,
2026 WL 872253 (W.D. La. Mar. 30, 2026) 21

Obando-Segura v. Garland,
999 F.3d 190 (4th Cir. 2021) ... 11-13, 18-19, 30-31

Patel v. Garland,
596 U.S. 328 (2022) 28

Richlin Sec. Serv. Co. v. Chertoff,
553 U.S. 571 (2008) 33

Rivera Espinosa v. Francis,
2025 WL 3513983 (S.D.N.Y. Dec. 8,
2025) 21

Rumsfeld v. Padilla,
542 U.S. 426 (2004) 24, 32

Salazar v. Noem,
2026 WL 594606 (D. Neb. Mar. 3,
2026) 21

Saysana v. Gillen,
614 F.3d 1 (1st Cir. 2010) 17

Scarborough v. Principi,
541 U.S. 401 (2004) 5, 25

Schlanger v. Seamans,
401 U.S. 487 (1971) 31-32

Sekhar v. United States,
570 U.S. 729 (2013) 26

Singh v. Castro,
2026 WL 608756 (D.N.M. Mar. 4,
2026) 21

Singh v. Noem,
2026 WL 657036 (W.D. Wash. Mar.
9, 2026) 21

Stafford v. Briggs,
444 U.S. 527 (1980) 26

Sullivan v. Finkelstein,
496 U.S. 617 (1990) 5, 22

Suri v. Trump,
2025 WL 1806692 (4th Cir. July 1,
2025) 24

Ex parte Tom Tong,
108 U.S. 556 (1883) 6

Trump v. J.G.G.,
604 U.S. 670 (2025) 24

United States v. Burke,
504 U.S. 229 (1992) 29

United States v. Gonzales,
520 U.S. 1 (1997) 28

United States v. Johnson,
529 U.S. 53 (2000) 29

Utiashvili v. Rose,
2026 WL 637642 (M.D. Pa. Mar. 6,
2026) 21

Vacchio v. Ashcroft,
404 F.3d 663 (2d Cir. 2005) 17-18, 27

Valasco Hurtado v. Bondi,
2026 WL 752441 (D. Minn. Mar. 17,
2026) 21

Vasquez v. Noem,
2025 WL 3771402 (D. Utah Dec. 31,
2025) 21

Wong Wing v. United States,
163 U.S. 228 (1896) 7, 27

Ysleta del Sur Pueblo v. Texas,
596 U.S. 685 (2022) 28

Zadvydas v. Davis,
533 U.S. 678 (2001) 6-7, 9-10, 27

Zamudio Sanchez v. Noem,
2026 WL 596133 (W.D. Tex. Mar. 2,
2026) 21

Statutes:

8 U.S.C. § 1182(a)(7)(A)(i)(I) 8

28 U.S.C. § 1254(1) 4

28 U.S.C. § 1391(e) (1964) 31, 32

28 U.S.C. § 1404 28

28 U.S.C. § 2241 ..... 6, 9

28 U.S.C. § 2241(a) 32

28 U.S.C. § 2412(d)(1)(A) 3-5, 26, 27, 29, 32

28 U.S.C. § 2412(d)(1)(B) 12

28 U.S.C. § 2412(d)(2)(C) 4

Act of March 3, 1875, 18 Stat. 470 6

Pub. L. No. 87-748, 76 Stat. 744 (1962) 32

Pub. L. No. 96-481, 94 Stat. 2325 (1980) 5, 23

Other Authorities:

Ingrid V. Eagly, Steven Shafer & Renee Moulton, *Access to Counsel in Immigration Court, Revisited*, 111 Iowa L. Rev. 1 (2025) 23

Laila L. Hlass & Mary Yanik, *Studying the Hazy Line Between Procedure and Substance in Immigrant Detention Litigation*, 58 Harv. C.R.-C.L. L. Rev. 203 (2023) 23

ProPublica, *Tracking Habeas Cases*, https://perma.cc/5JL5-KBTR 22

U.S. Courts, *U.S. District Courts — Judicial Business 2025*, https://perma.cc/TPZ4-L7EC 22

Webster's Third New International Dictionary (1976) 28

Kevin Isaac Montoya Palacios respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit.

INTRODUCTION

This case presents an acknowledged circuit split over an important question of federal law that district courts confront almost every day: Whether a habeas challenge to immigration detention is a "civil action" within the meaning of the Equal Access to Justice Act (EAJA), rendering a prevailing petitioner eligible for an award of attorney's fees. Three circuits (the Second, Third, and Tenth) have answered yes, two others (the Fourth and Fifth) no. Nearly all of these courts have explicitly recognized the circuit conflict. The Court should grant certiorari and resolve the conflict now.

Both the government and the courts of appeals have recently recognized that the split is intractable and significant. Just a few weeks ago, the government told the Tenth Circuit a "deeply rooted circuit split" had developed on this question, one "of exceptional importance" given the "thousands of immigration habeas cases currently flooding the district courts." Gov't Pet. for Rehearing En Banc at 16-20, *Daley v. Ceja*, No. 24-1191 (10th Cir. Mar. 3, 2026). And the day before, several judges dissenting from the Third Circuit's denial of rehearing en banc wrote much the same. *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 160, 187 (3d Cir. 2026) (Mascott, J., dissenting sur denial of rehearing en banc) (noting the "deep circuit split" on this issue); *see id.* at 162 (Bove, J., dissenting sur denial of rehearing en banc) ("[T]he question is one of exceptional importance and required [the Third Circuit] to choose sides in a deep Circuit split.").

Given the 3-2 nature of the split, no single circuit can fully resolve the conflict by changing its precedent. And four of them have denied en banc review on this issue. The question presented thus "ultimately require[s] a nationwide solution," *id.*, which only this Court can provide.

A uniform answer is urgently needed. Thousands of immigration detainees file habeas petitions each year seeking release from detention. Many prevail. Yet because of the circuit conflict and the rule that a habeas petition proceeds against the custodian, their eligibility for attorney's fees turns on the vagaries of where they are confined. Those detained in Denver, Philadelphia, and New York are eligible for a fee award. But detainees in San Antonio, Baltimore, and New Orleans are not. That discrepancy is not only unfair; it is also an incentive to jurisdictional gamesmanship by the government, which has shown itself all too willing to move detained immigrants into (for example) the Fifth Circuit for tactical advantage.

Most fundamentally, the lack of uniformity frustrates Congress's effort to ensure *equal* access to counsel for meritorious civil litigation against the federal government. And access to counsel is especially needed in habeas actions; what hangs in the balance is personal liberty and the right to meaningfully challenge its deprivation. EAJA awards fees only when the government's position was not substantially justified. As a result, the circuit conflict impacts people who were unlawfully deprived of their liberty—but whom the Fourth and Fifth Circuits deem ineligible for reimbursement irrespective of how unjustified the government's position was.

The question presented arises with extraordinary frequency. In the past few months alone, district courts have issued over 120 decisions landing on one side of the split or the other. *See* Pet. App. 19a-28a (table of 124 such decisions since December 2025). No wonder the government has agreed that this is "a question of exceptional importance" in light of the "thousands of immigration habeas cases currently flooding the district courts." Gov't Pet. for Rehearing En Banc at 16, 20, *Daley*, *supra*.

This case is an ideal vehicle to answer the question. The district court's denial of Mr. Montoya Palacios's fee application rested solely on the purely legal question whether his habeas action is a "civil action" under EAJA. And that was the only issue raised on appeal. Moreover, Mr. Montoya Palacios is clearly the prevailing party, having secured habeas relief that the government has declined to appeal. If he had been detained in Brooklyn rather than Baltimore, he would be eligible for fees under EAJA. It is only the Fourth Circuit's precedent that blocks his path.

And that precedent is wrong. This Court has held for over a century that habeas actions are civil actions. At a minimum, habeas petitions challenging *immigration* detention plainly are civil actions, because immigration detention itself has long been recognized as a form of civil proceeding. And the statutory text could not be clearer that, other than the specifically enumerated exception for tort suits, EAJA reaches "*any* civil action." 28 U.S.C. § 2412(d)(1)(A) (emphasis added). Those words mean exactly what they say: civil actions of whatever kind. Because a habeas action seeking release from civil immigration detention

is clearly a civil action, it unambiguously falls within the statute's sweep.

The Court should grant certiorari and reverse.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a) is not reported. The decisions of the district court (Pet. App. 2a-18a) are also not reported; the district court's decision granting habeas relief and denying the fee request is available at 2026 WL 171690.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2412(d)(1)(A) provides:

> 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)(2)(C) provides:

> "United States" includes any agency and any official of the United States acting in his or her

official capacity.

STATEMENT

I. Legal background.

A. EAJA.

In 1980, Congress recognized that individuals "may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights." Pub. L. No. 96-481, § 202(a), 94 Stat. 2325 (1980). In enacting EAJA, Congress sought "to counterbalance the financial disincentives to vindicating rights against the Government through litigation." *Sullivan v. Finkelstein*, 496 U.S. 617, 630 (1990).

EAJA provides, in relevant part, that, "[e]xcept as otherwise specifically provided by statute," a prevailing party "*in any civil action* (other than cases sounding in tort) ... brought by or against the United States in any court having jurisdiction of that action" shall presumptively be awarded attorney's fees and costs. 28 U.S.C. § 2412(d)(1)(A) (emphasis added). Not every eligible litigant will recover fees, however; no fees are awarded if "the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." *Id.*

By making the federal government liable for attorney's fees, Congress partially waived the government's sovereign immunity. *See Scarborough v. Principi*, 541 U.S. 401, 419-420 (2004) (quoting *Ardestani v. INS*, 502 U.S. 129, 137 (1991)).

B. Habeas actions challenging immigration detention have long been considered civil actions.

"Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). The "general habeas corpus statute" is 28 U.S.C. § 2241. *Jones v. Hendrix*, 599 U.S. 465, 469 (2023). In the context of immigration detention, this Court has held, "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

"Habeas proceedings ... are civil in nature." *Banister v. Davis*, 590 U.S. 504, 507 (2020). This Court has so held for at least 140 years. In *Ex parte Tom Tong*, 108 U.S. 556 (1883), for example, the Court held that a statute referring to "any civil suit or proceeding" encompassed habeas actions seeking release from confinement due to criminal prosecution. *Id.* at 559. "The writ of *habeas corpus* is the remedy which the law gives for the enforcement of the civil right of personal liberty," the Court explained, and "[s]uch a proceeding on [the petitioner's] part is ... a civil proceeding, notwithstanding his object is, by means of it, to get released from custody under a criminal prosecution." *Id.* at 559-560. Two years later, the Court held that "[a] writ of *habeas corpus*, sued out by one arrested for crime, is a civil suit or proceeding," and therefore falls within "any suit of a civil nature" under the 1875 removal statute, 18 Stat. 470 (the predecessor to 28 U.S.C. § 1441). *Kurtz v. Moffitt*, 115 U.S. 487, 494 (1885).

Immigration detention proceedings, too, have long been recognized as civil in nature. Since the nineteenth century, this Court has categorized immigration detention as an "aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). And for at least as long, the Court has also recognized that "[d]eportation proceedings are civil in their nature." *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 154 (1923) (citing *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893)); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (explaining that "[a] deportation proceeding is a purely civil action"). Immigration detention is therefore a form of "civil detention." *Zadvydas*, 533 U.S. at 690; *see also Carlson v. Landon*, 342 U.S. 524, 547 (1952) (reviewing noncitizen's habeas challenge to immigration detention in context of "civil proceeding for deportation").

II. Mr. Montoya Palacios is granted withholding of removal but is nonetheless detained by ICE.

Mr. Montoya Palacios fled his home country of El Salvador to the United States due to threats from dangerous gangs. *See* Pet. App. 7a. In particular, a gang leader dubbed "The Joker" threatened to kill him for refusing to provide intelligence, and he and his family were assaulted by gang members disguised as police. ECF No. 4 at 4, *Montoya Palacios v. Baker*, No. 25-cv-04045 (D. Md. Dec. 11, 2025).[1] When local police ignored Mr. Montoya Palacios's attempt to report the

[1] All ECF references in this petition refer to the district court's docket, No. 25-cv-04045 (D. Md.).

threats, he fled the country with his family. *Id.*; *see* Pet. App. 7a.

In April 2016, he was apprehended by U.S. Border Patrol agents at or near Hebronville, Texas and was issued a Notice to Appear, charging him with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Pet. App. 7a. Nearly three months later he was released on bond in the amount of $1,500. *Id.* In September 2023, an Immigration Judge found him removable but, at the same time, granted his request for withholding of removal under the Convention Against Torture because of the danger posed by the gangs in El Salvador. *See id.*; ECF No. 15-1 at 1.

Mr. Montoya Palacios has no criminal history or pending criminal charges in any country. Upon being released on bond in 2016, he was placed under supervision, and he has complied with the supervision requirements for years. *See* Pet. App. 7a.

Nonetheless, when Mr. Montoya Palacios reported for a routine check-in with U.S. Immigration and Customs Enforcement (ICE) at its Baltimore field office on December 8, 2025, he was detained. Pet. App. 8a. Federal agents served him with a Notice of Revocation of Release, which revoked his supervision, and a Notice of Removal to Mexico. *Id.* The government did not allege that Mr. Montoya Palacios posed any threat to public safety or a flight risk—nor has it ever so alleged. Rather, his Notice of Revocation of Release stated that ICE had determined that "there are changed circumstances in [his] case" because his "case is under current review by the Government of Mexico for third country removal." ECF No. 15-3 at 1.

III. The district court grants habeas relief and blocks the government's unlawful effort to remove Mr. Montoya Palacios to El Salvador despite the order withholding removal.

1. On December 10, 2025, while detained by ICE in Maryland, Mr. Montoya Palacios filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the District of Maryland, ECF No. 1, which he amended the following day, ECF No. 4.[2] Among other arguments, Mr. Montoya Palacios asserted that his continued detention was unlawful under this Court's decision in *Zadvydas*, given the immigration agency's grant of withholding of removal and the lack of any "realistic removal plan." Pet. App. 10a-12a; *see Zadvydas*, 533 U.S. at 699 (holding that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute"). Respondents opposed the petition and moved to dismiss. *See generally* ECF No. 15.

On January 22, 2026, the district court granted Mr. Montoya Palacios's habeas petition and denied Respondents' motion to dismiss as moot. *See* Pet. App. 15a-16a. The court explained that, under *Zadvydas*, "a noncitizen's detention pending removal is presumptively reasonable only for six months (inclusive of the removal period), after which, if the noncitizen 'provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Id.* at 11a

---

[2] The government has acknowledged that Mr. Montoya Palacios "initiated this habeas action ... while he was held by ICE in Baltimore, Maryland." ECF No. 15 at 2.

(quoting *Zadvydas*, 533 U.S. at 701). The district court found that Mr. Montoya Palacios's "six-month period expired in March 2024," since his order of removal became final in September 2023. *Id.* at 11a-13a. The court concluded that, "based on the record before [it], removal does not appear likely to occur in the reasonably foreseeable future" and Mr. Montoya Palacios's "continued detention" is therefore unlawful. *Id.* at 14a.

Accordingly, the district court granted Mr. Montoya Palacios's habeas petition and ordered that "Respondents shall RELEASE Petitioner to the Baltimore Immigration and Customs Enforcement ('ICE') Facility ... on or before 5:00 P.M. on Thursday, January 29, 2026, under the same terms as his previous Order of Supervision." Pet. App. 4a.

2. Despite that order, Respondents did not release Mr. Montoya Palacios. Instead, after transferring him to Kentucky, they took him "from Kentucky to Ohio, and later to Louisiana, where he was subsequently placed on a plane for removal to El Salvador in violation of [the district court's] January 22, 2026 Order." Pet. App. 17a. He was only removed from the aircraft through the chance intervention of an ICE agent while already on board, which prevented his deportation to El Salvador—the very country from which he has been granted withholding of removal under the Convention Against Torture. *Id.* He was ultimately transferred back to Baltimore, but even then ICE agents refused to release him unless counsel was physically present, though the district court had imposed no such condition. *Id.* at 17a-18a.

The government's actions compelled Mr. Montoya Palacios to seek further emergency relief, which the

district court granted on February 6, 2026. Pet. App. 17a-18a The court ordered Respondents to "immediately RELEASE Montoya Palacios under the same Order of Supervision that was in effect prior to his detention" and enjoined Respondents from removing him or transferring him outside of the District of Maryland. *Id.* at 18a.

IV. The district court denies Mr. Montoya Palacios's application for attorney's fees based on circuit precedent.

Mr. Montoya Palacios's habeas petition also requested "reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act." ECF No. 4 at 6. The district court denied this request, explaining that in *Obando-Segura v. Garland*, 999 F.3d 190 (4th Cir. 2021), "the Fourth Circuit held that attorneys' fees relating to a habeas petition are not available under the EAJA because such a petition is not a 'civil action' for purposes of the EAJA." Pet. App. 15a (citing *Obando-Segura*, 999 F.3d at 191, 197); Pet. App. 5a.

The fee applicant in *Obando-Segura* had "prevailed on an application for a writ of habeas corpus seeking release from federal immigration detention." 999 F.3d at 191. A divided panel of the Fourth Circuit held that "habeas proceedings seeking release from civil detention are not 'civil actions'" within the meaning of EAJA, and therefore EAJA "does not provide a basis for [such a habeas petitioner] to recover attorney's fees." *Id.* at 191, 197. The Fourth Circuit acknowledged that "[c]ourts sometimes call habeas corpus proceedings 'civil actions,'" but it reasoned that "they are actually unique, hybrid proceedings." *Id.* at 197. And "that uniqueness makes it ambiguous

whether habeas proceedings fall under 'any civil action' with the Equal Access to Justice Act." *Id.* Given that "ambiguity" and courts' "obligation to construe the waiver of sovereign immunity narrowly," the Fourth Circuit held that an "application for a writ of habeas corpus does not fall within [EAJA's] reach." *Id.*

To preserve the issue for eventual review in this Court, Mr. Montoya Palacios filed a motion for attorney's fees and costs in compliance with the requirements of 28 U.S.C. § 2412(d)(1)(B). ECF No. 29. The district court denied that motion for the same reason as before: The Fourth Circuit's decision in *Obando-Segura* foreclosed Mr. Montoya Palacios's argument that his habeas action is a "civil action" under EAJA. Pet. App. 2a.

Mr. Montoya Palacios then timely noticed his appeal from the denial of his request for attorney's fees and costs under EAJA. *See* ECF No. 31. The government did not cross-appeal from the grant of Mr. Montoya Palacios's habeas petition, and the time to do so has now expired.

V. The Fourth Circuit affirms this case's ineligibility for attorney's fees under circuit precedent.

In the court below, Mr. Montoya Palacios "concede[d] that *Obando-Segura* forecloses his argument for attorney's fees and dictates affirmance by" the Fourth Circuit, and explained that he "intend[ed] to file a petition for certiorari asking the Supreme Court to decide whether the EAJA permits an award of attorney's fees and costs to prevailing parties in habeas actions challenging immigration detention." Dkt. No.

7 at 1-2, No. 26-6251 (4th Cir. Mar. 4, 2026). The government agreed that "the sole issue on appeal is foreclosed by ... *Obando-Segura v. Garland*, 999 F.3d 190 (4th Cir. 2021)." Dkt. No. 9 at 2, No. 26-6251 (4th Cir. Mar. 16, 2026).

Because the parties agreed that the sole issue on appeal was foreclosed by circuit precedent, the Fourth Circuit summarily affirmed the denial of Mr. Montoya Palacios's fee application. Pet. App. 1a.

REASONS FOR GRANTING THE WRIT

At least five circuits have split, 3-2, as to whether a habeas action challenging immigration detention is a "civil action" under EAJA. Four of those circuits have expressly acknowledged the conflict, as have the government and numerous dissenting judges on both sides of the split—including five judges who dissented from the Third Circuit's recent denial of the government's petition for rehearing en banc on this issue. Because courts on both sides of the split have declined to take this question en banc, the circuit conflict will not resolve on its own. This Court must intervene.

The question presented is exceptionally important because it arises all the time. More than 34,000 habeas petitions have been filed by immigration detainees since January 2025 alone. For those petitioners who prevail (as they do regularly) over government positions that are not substantially justified, courts must confront the question of attorney's fees under EAJA—which happens almost every day. In just the past few months, district courts have issued over 120 decisions falling on either side of the circuit conflict. Particularly "in light of the recent wave of immigra-

tion habeas cases flooding the district courts," the government has explained, the "question of EAJA fee availability in habeas actions is an issue of exceptional importance." Gov't Pet. for Rehearing En Banc at 2, 20-21, *Daley*, *supra*.

The upshot is that immigration detainees held in New Jersey, New Mexico, and New York, for example, may be eligible for fee awards if their habeas petitions are winners. That potential award incentivizes detainees and their counsel to pursue meritorious challenges to their detention, which was Congress's design in EAJA. But immigration detainees held in Texas, Virginia, and Maryland (like Mr. Montoya Palacios) are barred from an award of fees even if their habeas action succeeds. That disparity frustrates Congress's plan to ensure equal access to counsel for *everyone* with winning claims or defenses against the federal government in civil cases.

This case is an ideal vehicle to resolve the circuit conflict because no other issue was addressed by the courts below. The district court denied Mr. Montoya Palacios's fee application for the *sole* reason that Fourth Circuit precedent foreclosed his argument that his habeas action is a "civil action" under EAJA. And the Fourth Circuit summarily affirmed for the same reason. Nor is there any doubt that Mr. Palacios is the prevailing party, since he was granted habeas relief from which the government did not appeal. This case thus cleanly raises the question whether a habeas action challenging immigration detention is a "civil action" under EAJA.

The answer to that question is yes. That much is apparent from over a century of this Court's precedent and the statute's plain language. The Court has held

that habeas actions are civil actions for over 140 years, and has also long recognized that immigration detention proceedings are civil in nature. And EAJA's text refers to "*any* civil action," which unambiguously sweeps in the full range of civil actions—including special kinds like habeas actions. Moreover, the statute carves out one express exception—tort suits—which drives home that no further exceptions to the category of "all civil actions" are intended.

Accordingly, the Court should grant certiorari and reverse the judgment below.

I. There is a "deeply rooted circuit split" on this issue, as the government has acknowledged.

The government recently told the Tenth Circuit that there is a "deeply rooted circuit split" regarding the question presented here. Gov't Pet. for Rehearing En Banc at 19-20, *Daley*, *supra*. On that much, the government is correct. The question presented "has divided" the courts of appeals 3-to-2. *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 431-432 (3d Cir. 2026) (collecting and analyzing several other circuits' decisions). And courts on both sides of the split have denied rehearing en banc; the Third Circuit just did so over the dissents of five judges. This Court should resolve the entrenched circuit conflict.

A. Three circuits hold that habeas challenges to immigration detention are "civil action[s]" under EAJA.

At least three courts of appeals—the Third, Tenth, and Second Circuits—have squarely held that habeas actions challenging civil detention fall within EAJA's reference to "any civil action."

1. In *Michelin*, the Third Circuit confronted two noncitizens who "prevailed in habeas actions under 28 U.S.C. § 2241 challenging their immigration detentions," and then obtained attorney's fees under EAJA. 169 F.4th at 422-423. After surveying the precedents of five other circuits on both sides of the conflict, the Third Circuit held that "the EAJA unambiguously applies to habeas challenges to immigration detention under 28 U.S.C. § 2241." *Id.* at 432. The *Michelin* court limited its holding to habeas actions "for release from immigration detention," in contrast to "habeas petitions for release from criminal detention." *Id.* at 426. The former, at least, are unambiguously civil actions within the meaning of EAJA. *Id.*

The full Third Circuit then denied the government's petition for rehearing en banc, with five judges dissenting from that denial. *See Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 160, 161 (2026). The two dissenting opinions noted the "deep Circuit split" over the question presented. *Id.* at 162 (Bove, J., dissenting sur denial of rehearing en banc); *id.* at 187 (Mascott, J., dissenting sur denial of rehearing en banc) (discussing "[t]he deep circuit split over the question whether a habeas challenge to immigrant detention is a 'civil action' meriting government attorney's fees under 28 U.S.C. § 2412(d)(1)(A)").

2. The Tenth Circuit addressed the same issue and reached the same conclusion, holding that "under the EAJA, habeas actions challenging immigration detention are unambiguously 'civil actions'" and so "[t]he EAJA authorizes the award of attorneys' fees to petitioners who prevail against the Government in such actions." *Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025). The Tenth Circuit likewise acknowledged

the contrary decisions of other circuits and explicitly "disagree[d] with" those decisions. *Id.* at 1165. And, like the Third Circuit, it distinguished "criminal habeas" from "immigration habeas." *Id.* at 1162. "Because both habeas and the underlying immigration proceedings are civil," the Tenth Circuit reasoned, "habeas actions challenging immigration detention are purely civil." *Id.*

The Tenth Circuit subsequently denied the government's petition for rehearing en banc. *See Daley v. Ceja*, Dkt. No. 109, No. 24-1191 (Apr. 3, 2026).

3. The Second Circuit has likewise held that "a habeas proceeding challenging immigration detentions constitutes a 'civil action' under the EAJA." *Vacchio v. Ashcroft*, 404 F.3d 663, 672 (2d Cir. 2005). In so holding, the Second Circuit distinguished its prior precedent "that the EAJA term 'civil actions' does not apply to habeas petitions" as "limited to *criminal* habeas petitions." *Id.* at 668 (discussing *Boudin v. Thomas*, 732 F.2d 1107 (2d Cir. 1984)).

4. Several other circuits have considered fee awards under EAJA for habeas petitioners who successfully challenged their immigration detention. *See Bah v. Cangemi*, 548 F.3d 680, 682, 685 (8th Cir. 2008) (explaining that "[t]he civil action in which [the immigration detainee] had prevailed was his petition for a writ of habeas corpus" wherein he "successfully petitioned under 28 U.S.C. § 2241 for release from his detention," but affirming denial of fee award on other grounds); *Nadarajah v. Holder*, 569 F.3d 906, 909-910 (9th Cir. 2009) (granting fee award to immigration detainee who prevailed on habeas petition); *Saysana v. Gillen*, 614 F.3d 1, 2 (1st Cir. 2010) (fee applicant prevailed in habeas challenge to immigration detention,

but court denied fees on other grounds). In these decisions, however, the question whether the habeas action is a "civil action" under EAJA does not appear to have been contested.[3]

B. The Fourth and Fifth Circuits expressly disagree with the other circuits.

1. As discussed, *see* pp. 11-12, *supra*, the Fourth Circuit in *Obando-Segura* held (over Judge Keenan's dissent) that "habeas proceedings seeking release from civil detention are not 'civil actions'" within the meaning of EAJA. 999 F.3d at 197. It reasoned that "a waiver of sovereign immunity requires an unequivocal statutory expression of congressional intent." *Id.* at 193. But habeas actions "are actually unique, hybrid proceedings," the Fourth Circuit concluded, which "makes it ambiguous whether habeas proceedings fall under 'any civil action' with the Equal Access to Justice Act." *Id.* at 197. The Fourth Circuit recognized that "[t]he Second Circuit has come to a different conclusion," *id.* at 195 (citing *Vacchio*, 404 F.3d at 667-672), but it disagreed with that decision.

Judge Keenan dissented. She reasoned that "the textual exception for tort actions, the expansive statutory phrase '*any* civil action,' and the decades-long precedent defining habeas actions as civil in nature[]

---

[3] While not addressing the specific context of immigration *detention*, the Ninth Circuit has held that a noncitizen's habeas action challenging his exclusion from the country "falls within the term 'any civil action' of the EAJA." *In re Hill*, 775 F.2d 1037, 1040-1041 (9th Cir. 1985). However, *Hill*'s reach is uncertain because it relies in part on "the substance of the remedy sought" in that "particular proceeding"—*i.e.*, "a challenge to a regulatory policy that had a sweeping effect on homosexual aliens seeking to enter the United States." *Id.*

mandate the conclusion that the EAJA unambiguously includes habeas challenges to civil immigration detention." *Id.* at 198. Despite Judge Keenan's dissent and the acknowledged circuit split, the Fourth Circuit denied rehearing en banc. *See Obando Segura v. Garland*, Dkt. No. 72, No. 19-7736 (Aug. 23, 2021).

2. The Fifth Circuit followed suit in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023). There, two noncitizens successfully challenged their immigration detention on the ground that there was no likelihood of removal in the foreseeable future, *id.* at 783-784—the same claim successfully raised by Mr. Montoya Palacios here. Each of them then sought attorney's fees under EAJA, which the district court denied. *Id.* at 784.

In the consolidated appeals, the Fifth Circuit framed the issue as "whether a statutory waiver of sovereign immunity for awards of attorney's fees in 'civil actions' unambiguously covers habeas corpus proceedings." *Barco,* 65 F.4th at 785. Relying on its precedent discussing "the hybrid nature of habeas corpus petitions," the Fifth Circuit held that a habeas action "is not purely a civil action, and the EAJA does not authorize attorney's fees for successful 28 U.S.C. § 2241 motions." *Id.* The Fifth Circuit expressly "reject[ed] the reasoning of the Second Circuit in *Vacchio*." *Id.* at 785 n.1. It subsequently denied rehearing en banc in the consolidated cases. *See Barco v. Witte*, Dkt. No. 112, No. 21-30637 (5th Cir. July 10, 2023); *Castro Balza v. Garland*, Dkt. No. 101, No. 21-30748 (5th Cir. July 10, 2023). The Fifth Circuit has continued to adhere to this precedent. *See Imran v. Harper*, 2026 WL 93131, at *2 (5th Cir. Jan. 13, 2026) (per curiam) (rejecting habeas petitioner's request for attorney's fees under EAJA because of *Barco*).

* * *

In sum, the government has correctly observed that there is "a deeply rooted circuit split" over the question presented. Gov't Pet. for Rehearing En Banc at 19-20, *Daley*, *supra*. The issues have been thoroughly ventilated in multiple published opinions on both sides of the conflict, including several thoughtful and comprehensive dissents in the Third and Fourth Circuits. And even though this conflict was already present when the Fourth and Fifth Circuits issued their precedential decisions—indeed, those decisions explicitly disagreed with the Second Circuit—both of those courts denied rehearing en banc. So have the Third Circuit (over the dissent of five judges) and the Tenth Circuit.

Rehearing at the appellate level is not going to resolve this deeply entrenched circuit conflict. This Court's intervention is needed.

II. The question presented arises almost daily and is exceptionally important.

1. In seeking en banc review of this issue, the government recently told the Tenth Circuit that "resolving the question of EAJA fee availability in habeas actions is an issue of exceptional importance, particularly given how recurrent the issues presented are" in light of the "thousands of immigration habeas cases currently flooding the district courts." Gov't Pet. for Rehearing En Banc at 2, 16, *Daley*, *supra*. Mr. Montoya Palacios agrees.

This issue arises almost daily. In just the past few months, there have been well over a hundred district court decisions either (1) granting fees under EAJA to habeas petitioners who successfully challenged their

immigration detention,[4] (2) denying fees to such habeas petitioners because of Fourth or Fifth Circuit precedent,[5] or (3) inviting an immigration detainee who was granted habeas relief to file a fee application following Second, Third, or Tenth Circuit precedent.[6] A list of 124 such decisions between December 2025 and March 2026 is compiled at Pet. App. 19a-28a.

This fee litigation is unsurprising given the large number of habeas petitions filed by immigration detainees. Since January 2025, immigration detainees

---

[4] *E.g.*, *Valasco Hurtado v. Bondi*, 2026 WL 752441 (D. Minn. Mar. 17, 2026); *Morales Mendez v. Field Off. Dir., U.S. ICE*, 2026 WL 734347 (N.D.N.Y. Mar. 16, 2026); *Salazar v. Noem*, 2026 WL 594606 (D. Neb. Mar. 3, 2026); *Bernardo-Rodriguez v. Hyde*, 2026 WL 370863 (D. Me. Feb. 10, 2026); *Krajekian v. Cantu*, 2026 WL 598226 (D. Ariz. Jan. 2, 2026), *report and recommendation adopted*, 2026 WL 596300 (D. Ariz. Mar. 3, 2026); *Vasquez v. Noem*, 2025 WL 3771402 (D. Utah Dec. 31, 2025); *Diaz-Cruz v. Dedos*, 2025 WL 3628517 (D.N.M. Dec. 12, 2025); *Rivera Espinosa v. Francis*, 2025 WL 3513983 (S.D.N.Y. Dec. 8, 2025).

[5] *E.g.*, *Nuraetov v. Bondi*, 2026 WL 872253 (W.D. La. Mar. 30, 2026); *Mekhtievi v. Thompson*, 2026 WL 752627 (W.D. Tex. Mar. 16, 2026); *Bokwe v. Bondi*, 2026 WL 752260 (W.D. Tex. Mar. 13, 2026); *Jobe v. Acuna*, 2026 WL 775928 (W.D. La. Mar. 3, 2026), *report and recommendation adopted*, 2026 WL 772631 (W.D. La. Mar. 18, 2026); *Acosta Espana v. Ortega*, 2026 WL 594362 (W.D. Tex. Mar. 2, 2026); *Gomez Alvarado v. Vergara*, 2026 WL 594366 (W.D. Tex. Mar. 2, 2026); *Zamudio Sanchez v. Noem*, 2026 WL 596133 (W.D. Tex. Mar. 2, 2026); *Banoub v. Crawford*, 2025 WL 3723458 (E.D. Va. Dec. 23, 2025).

[6] *E.g.*, *Camara v. Lowe*, 2026 WL 701774 (M.D. Pa. Mar. 12, 2026); *Ndou v. Noem*, 2026 WL 686564 (D.N.M. Mar. 11, 2026); *Singh v. Noem*, 2026 WL 657036 (W.D. Wash. Mar. 9, 2026); *Corregidor v. Bondi*, 2026 WL 636745 (D.N.M. Mar. 6, 2026); *Malik v. Dosanj*, 2026 WL 638483 (D. Haw. Mar. 6, 2026); *Utiashvili v. Rose*, 2026 WL 637642 (M.D. Pa. Mar. 6, 2026); *Singh v. Castro*, 2026 WL 608756 (D.N.M. Mar. 4, 2026).

have filed over 34,000 habeas petitions. *See* ProPublica, *Tracking Habeas Cases*, https://perma.cc/5JL5-KBTR (counting 34,543 such petitions as of April 6, 2026). Likewise, the government told the Tenth Circuit that there are "thousands of immigration habeas cases currently flooding the district courts" and that "in the past approximately 13 months, immigration habeas petitioners filed more immigration habeas petitions than in the past 12 years combined." Gov't Pet. for Rehearing En Banc at 16, *Daley*, *supra*.[7] Not every habeas petitioner prevails, of course; and sometimes the government's position is substantially justified, ultimately precluding any fee award under EAJA. Nonetheless, the threshold question whether immigration habeas cases qualify for EAJA fees is continually before the lower courts.

2. The question presented is also exceptionally important to habeas petitioners and the government alike.

EAJA was enacted to ensure *equal* access to counsel by "counterbalance[ing] the financial disincentives to vindicating rights against the Government through litigation." *Finkelstein*, 496 U.S. at 630. Yet that access is denied to thousands of immigration detainees in the Fourth and Fifth Circuits. In those circuits, the problem Congress sought to prevent—that individuals "may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindi-

---

[7] Even before this latest spike, 2,305 "writs of habeas corpus by alien detainees" were filed in the twelve-month period ending September 30, 2025. *See* U.S. Courts, *U.S. District Courts — Judicial Business 2025*, https://perma.cc/TPZ4-L7EC.

cation of their rights," 94 Stat. 2325—remains the reality. Indeed, "immigrant habeas petitioners often maneuver without counsel." Laila L. Hlass & Mary Yanik, *Studying the Hazy Line Between Procedure and Substance in Immigrant Detention Litigation*, 58 Harv. C.R.-C.L. L. Rev. 203, 209 (2023). The circuit conflict thus defeats Congress's objective of enabling equal access to counsel and undermines the uniformity of federal law.

And it does so at enormous cost. "Habeas is at its core a remedy for unlawful executive detention." *Munaf*, 553 U.S. at 693. And "[w]here a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008). With a person's liberty at stake, counsel is indispensable. Counseled detainees in immigration proceedings achieve much better outcomes than those proceeding *pro se*—succeeding almost four times as often. Ingrid V. Eagly, Steven Shafer & Renee Moulton, *Access to Counsel in Immigration Court, Revisited*, 111 Iowa L. Rev. 1, 44 (2025). And there are, no doubt, thousands of detainees who lack the wherewithal to file a habeas petition without counsel's assistance. Those individuals may be subject to unlawful executive detention—where the government's position is not even substantially justified—while deprived of "the instrument by which due process could be insisted upon." *Brown v. Davenport*, 596 U.S. 118, 128 (2022) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 555 (2004) (Scalia, J., dissenting)).

The circuit conflict also opens the door to potential gamesmanship. "[T]he general rule ... for core habeas petitions challenging present physical confinement" is

that "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Because of the circuit conflict, the government can avoid any risk of fees—and thereby frustrate the detainee's access to counsel in the first place—by preemptively transferring him to a detention center in the Fourth or Fifth Circuit before any habeas petition is filed.[8] This concern is not academic. *See, e.g.*, *Suri v. Trump*, 2025 WL 1806692, at *5 (4th Cir. July 1, 2025) ("The government does not contest the district court's finding that it" flew the immigration detainee to Louisiana "to shop for a forum it perceived as more favorable and to make it difficult for [his] attorney to file a habeas petition on his behalf."); *cf. Trump v. J.G.G.*, 604 U.S. 670, 688 (2025) (Sotomayor, J., dissenting) (expressing concern that "the Government can transfer detainees to particular locations in an attempt to secure a more hospitable judicial forum"). The lack of uniformity is thus not only inherently unfair to those detainees already in the Fourth and Fifth Circuits, but actually invites the government to route more detainees into those circuits.

From the government's perspective, the question presented is "of exceptional importance" because "[a]llowing EAJA fees in habeas proceedings ... will likely lead to major operational and financial burdens

---

[8] Importantly, "when the Government moves a habeas petitioner *after* she properly files a petition naming her immediate custodian" in the district of confinement, "the District Court retains jurisdiction." *Padilla*, 542 U.S. at 441 (emphasis added). Thus, there is no doubt that the district court had jurisdiction over Mr. Montoya Palacios's habeas petition: The parties agreed below that he "initiated this habeas action ... while he was held by ICE in Baltimore, Maryland." ECF No. 15 at 2 (Answer to Petition for Writ of Habeas Corpus).

on the Government and its agencies." Gov't Pet. for Rehearing En Banc at 20, *Daley*, *supra*. Reading EAJA to permit fees for successful immigration habeas petitions "is particularly concerning," according to the government, "in light of the recent wave of immigration habeas cases flooding the district courts." *Id.* at 21; *see also Michelin*, 169 F.4th at 180 (Bove, J., dissenting sur denial of rehearing en banc) (noting this issue "has significant implications for taxpayer dollars"). To be clear, the government's concerns of "major operational and financial burdens" are overblown, given that it is liable for EAJA fees only when its position is substantially unjustified. Even so, the government understandably prefers not to have to show why its losing position was substantially justified—which is a "burden ... [that] must be shouldered by the Government." *Scarborough*, 541 U.S. at 414-415.

All agree that the question presented is exceptionally important and frequently recurring. This Court's review is urgently needed.

III. This case is an ideal vehicle to decide the question presented.

This case is an ideal vehicle. The sole basis for the district court's denial of Mr. Montoya Palacios's fee application was that, under Fourth Circuit precedent, a habeas action challenging immigration detention is not a "civil action" under EAJA. Pet. App. 2a. The district court did not reach any other issue. That was the only issue on appeal, too, and the Fourth Circuit summarily affirmed for the same reason the district court did. *Id.* at 1a. Accordingly, this purely legal question is squarely and cleanly presented here.

Moreover, there is no doubt that Mr. Montoya Palacios is a prevailing party under EAJA. He obtained relief—twice, because the government failed to comply with the first order to release him—and the government has not appealed. Mr. Montoya Palacios also timely filed his EAJA application in compliance with the statutory requirements. The only thing standing in the way of his showing a threshold eligibility for fees under the statute, therefore, is the Fourth Circuit's erroneous precedent.

IV. The Fourth and Fifth Circuits are wrong.

This Court should also grant review because the Fourth and Fifth Circuits' precedents are erroneous. The reference to "any civil action" in § 2412(d)(1)(A) unambiguously includes habeas petitions challenging immigration detention.

1. EAJA does not define "civil action." Yet this Court has recognized the basic "principle of interpretation that, absent other indication, 'Congress intends to incorporate the well-settled meaning of the common-law terms it uses.'" *Sekhar v. United States*, 570 U.S. 729, 732 (2013) (citation omitted).

When EAJA was enacted in 1980, it was "well settled that habeas corpus is a civil proceeding." *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978). In fact, that proposition was already "well settled" almost a century earlier. *Cross v. Burke*, 146 U.S. 82, 88 (1892). And in February 1980, just a few months before EAJA was enacted (in October), this Court reiterated that "habeas corpus is 'a civil action.'" *Stafford v. Briggs*, 444 U.S. 527, 543 (1980); *cf. McCarthy v. Harper*, 449 U.S. 1309, 1310 (1981)

(Rehnquist, J., in chambers) ("Federal habeas corpus is a civil action....").

Congress in 1980 would have understood immigration detention proceedings to be civil as well. *See* pp. 6-7, *supra*. For roughly a century before then, this Court had categorized immigration detention "as part of the means necessary to give effect to" the deportation process, *Wong Wing*, 163 U.S. at 235, and in turn had recognized that "[d]eportation proceedings are civil in their nature," *Bilokumsky*, 263 U.S. at 154 (citing *Fong Yue Ting*, 149 U.S. at 730). So there is no real doubt that "immigration detention is civil." *Daley*, 158 F.4th at 1162 (citing *Zadvydas*, 533 U.S. at 690). It is unambiguous, therefore, that a habeas petition challenging immigration detention is a "civil action" under EAJA.

That is so even if one assumes that "*criminal* habeas petitions" are not unambiguously civil. *Vacchio*, 404 F.3d at 672. Such actions in effect involve "a collateral civil action (habeas) that has its roots in a criminal action." *Id.* But "[t]his is not the case in the context of an immigration habeas petition, which is both a civil action in its own right, and which has roots in a civil action." *Id.* Thus, an immigration habeas action is unambiguously civil even if other species of habeas actions are not. *Id.*; *accord Daley*, 158 F.4th at 1162; *Michelin*, 169 F.4th at 426.

2. Two textual features cement this conclusion.

a. The statute refers to "*any* civil action." 28 U.S.C. § 2412(d)(1)(A) (emphasis added). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately *of whatever kind*.'"

United States v. Gonzales, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976) (emphasis added)); *see also Patel v. Garland*, 596 U.S. 328, 338 (2022) (same). Just a few months before EAJA's enactment, the Court applied this plain meaning of the word "any" with respect to the words "any other final action" in the Clean Air Act, explaining that the statute "include[s] not simply 'other final action,' but rather '*any* other final action,'" which "must be construed to mean exactly what it says, namely, *any other* final action." *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 589 (1980). Here, too, the phrase "*any* civil action" means exactly what it says: a civil action of whatever kind, which necessarily encompasses habeas actions challenging immigration detention.

By 1980, moreover, this Court had explained in connection with the venue statute, 28 U.S.C. § 1404, that "[t]he reach of 'any civil action' is unmistakable" where "[t]he phrase is used without qualification, without hint that some should be excluded." *Ex parte Collett*, 337 U.S. 55, 58 (1949) (footnote omitted). And the Court explicitly stated that habeas actions fall within "any civil action" as used in that statute. *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 499, n.15 (1973); *see Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 700 (2022) ("This Court generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents."). In fact, "[e]very time Congress has used 'any civil action' or a cognate, the phrase encompasses habeas proceedings, save where Congress expressly excluded them." *Michelin*, 169 F.4th at 430-431 (collecting examples). "The Government has not produced a single counterexample." *Id.* at 431. Accordingly, both the plain language and

the accrued meaning of "any civil action" confirm that, as used in EAJA, it includes habeas actions challenging civil immigration detention.

At the very least, the expansive reference to "*any* civil action" sweeps in any species of habeas action that is unambiguously civil in nature, even if *other kinds* of habeas actions may be less clearly civil. Thus, even if it were ambiguous whether habeas challenges to *criminal* confinement are civil actions, there is no such ambiguity when the habeas action challenges a form of *civil* confinement, such as immigration detention. *See* pp. 6-7, 16-17, 27, *supra*.

b. Reinforcing that "any civil action" in EAJA is meant to include the full universe of civil actions, the statute parenthetically specifies one exception: "any civil action (*other than cases sounding in tort*)." 28 U.S.C. § 2412(d)(1)(A) (emphasis added). "When Congress provides exceptions in a statute," the Court has explained, the "proper inference ... is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth." *United States v. Johnson*, 529 U.S. 53, 58 (2000); *see also Hillman v. Maretta*, 569 U.S. 483, 496 (2013) (similar).

In EAJA, Congress explicitly enumerated tort suits as *the* exception to the category of "any civil action." Habeas actions, of course, do not sound in tort. *Compare, e.g.*, *Allen v. McCurry*, 449 U.S. 90, 104 (1980) (explaining that "the purpose of [the federal writ of habeas corpus] is not to redress civil injury, but to release the applicant from unlawful physical confinement"); *Allen v. Duckworth*, 6 F.3d 458, 460 (7th Cir. 1993) (Posner, J.) ("Habeas corpus is not a compensatory remedy."), *with United States v. Burke*, 504 U.S. 229, 234-235 (1992) ("A 'tort' has been defined

broadly as a 'civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages,'" and "[r]emedial principles thus figure prominently in the definition and conceptualization of torts." (quotation omitted)).[9] It follows that Congress did not intend any other, unenumerated exceptions.

3. The contrary conclusion of the Fourth and Fifth Circuits is wrong.

Those two courts have reasoned that, since habeas corpus actions have been called a "unique" form of civil action, *Harris v. Nelson*, 394 U.S. 286, 293-294 (1969), "a habeas proceeding seeking release from civil detention is not *unambiguously* a 'civil action,'" *Obando-Segura*, 999 F.3d at 192-193, 195 (emphasis added); *Barco*, 65 F.4th at 785 (similar). Having detected some ambiguity based on the "unique" status of habeas, the Fourth and Fifth Circuits then applied the sovereign immunity canon to "construe any ambiguities in the scope of a waiver in favor of the sovereign." *FAA v. Cooper*, 566 U.S. 284, 291 (2012); *see Obando-Segura*, 999 F.3d at 197; *Barco*, 65 F.4th at 785.

The flaw in this reasoning is that there is no ambiguity. *Harris*, on which the Fourth Circuit relied, recognized that "[i]t is, of course, true that habeas corpus proceedings are characterized as 'civil.'" 394 U.S. at 293. *Harris* concerned whether the interrogatory procedures set forth in Federal Rule of Civil Procedure 33 are available in habeas proceedings. That issue

---

[9] *See also Heck v. Humphrey*, 512 U.S. 477, 486 (1994) (applying "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments").

turned on Rule 81(a)(2), which provided at the time that, as a general matter, "the Rules were not applicable in habeas corpus" proceedings unless specified conditions were met. *Id.* at 292-293. *Harris* concluded that "Rule 81(a)(2) must be read to exclude the application of Rule 33 in habeas corpus proceedings," because both "the language and the scanty contemporary exegesis of Rule 81(a)(2) which is available" indicated that "the draftsmen of the rule did not contemplate that the discovery provisions of the rules would be applicable to habeas corpus proceedings." *Id.* at 293, 295-296. That holding does not suggest that habeas proceedings are not civil actions. In fact, *Harris* says that habeas actions *are* "civil" actions. *Id.* at 293.

That *Harris* went on to state "the label is gross and inexact" because a habeas "proceeding is unique" makes no difference. 394 U.S. at 293-294. In EAJA, Congress specified "*any* civil action" to "give[] 'civil action' its *complete* scope, including civil proceedings with unusual features." *Michelin*, 169 F.4th at 429. "Any civil action" means any civil action—unique and ordinary alike.

The Fourth Circuit also relied on the supposed "teaching" of *Schlanger v. Seamans*, 401 U.S. 487 (1971), "that habeas proceedings seeking release from civil detention are not 'civil actions.'" *Obando-Segura*, 999 F.3d at 197. That is not *Schlanger*'s teaching. *Schlanger* held that a habeas court lacks jurisdiction when the "petitioner is within the territorial jurisdiction of the District Court" but "the custodian ... is not." 401 U.S. at 490-491. The Court recognized that, under 28 U.S.C. § 1391(e) (1964), a "'civil action in which each defendant is an officer or employee of the United

States" could be brought wherever the plaintiff resides, Pub. L. No. 87-748, § 2, 76 Stat. 744 (1962). The Court reasoned, however, that "the legislative history of that section is barren of any indication that Congress extended habeas corpus jurisdiction." 401 U.S. at 490 n.4. "Though habeas corpus is technically 'civil,'" the Court added, "it is not automatically subject to all the rules governing ordinary civil actions." *Id.* (citing *Harris*, 394 U.S. 286). And by statute, district courts can grant the writ only "within their respective jurisdictions." 28 U.S.C. § 2241(a); *see Padilla*, 542 U.S. at 442-444.

Thus, *Schlanger* itself recognized that a habeas action is at least "technically 'civil,'" but relied on § 1391(e)'s "legislative history" and the longstanding geographic limitations on exercising habeas jurisdiction to exclude habeas actions from that statute's reference to "a civil action." 401 U.S. at 490-491 & n.4. That holding provides no support to the Fourth Circuit's construction of EAJA, which refers instead to "*any* civil action," 28 U.S.C. § 2412(d)(1)(A) (emphasis added). "The reach of 'any civil action' is unmistakable" where "[t]he phrase is used without qualification, without hint that some should be excluded." *Collett*, 337 U.S. at 58 (footnote omitted). Therefore, EAJA plainly embraces the full scope of civil actions (minus tort suits), habeas actions included. A "technically 'civil'" action, as *Schlanger* dubbed habeas, 401 U.S. at 490 n.4, still falls within "any civil action."

Because the text of EAJA is unambiguous, the sovereign immunity canon has no application. As the Court has made clear in the EAJA context, "[t]he sovereign immunity canon is just that—a canon of con-

struction" that does not "displace[] the other traditional tools of statutory construction." *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 589 (2008). Here, because "there is no ambiguity left ... to construe," the Court has "no need ... to resort to the sovereign immunity canon." *Id.* at 590.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

WILLIAM M. JAY
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036

TEDEISHA C. ROWE
AMERICAN LEGAL
IMMIGRATION CENTER, LLC
2601 University Blvd.
Suite 300
Silver Spring, MD 20902

WILLIAM E. EVANS
Counsel of Record
JESSE LEMPEL
CHRISTINE BLANCHETTE
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
wevans@goodwinlaw.com
(617) 570-1000

April 20, 2026

Counsel for Petitioner