No. _____

In the Supreme Court of the United States

MEGAN MARIE TETER,

Petitioner,

v.

UNITED STATES TRUSTEE,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Equal Access to Justice Act ("the EAJA"), a remedial statute which abrogates the United States' sovereign immunity, broadly and unambiguously provides for attorney's fees to the 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" when the government's actions are not substantially justified. 28 U.S.C. § 2412(a)(1), and (d)(1)(A) (emphasis added).

The Question Presented Is:

Whether a contested matter initiated by the United States in a bankruptcy case is a "civil action" within the ambit of the Equal Access to Justice Act, given that Congress expressed that term to apply broadly with the use of the modifier "any" when it described civil actions in the Act?

PARTIES TO THE PROCEEDINGS

Petitioner and Debtor-Appellant Below

- Megan Marie Teter

Respondent and Appellee Below

- United States Trustee

The District Court originally styled the appeal from the Bankruptcy Court as "*Teter v. Baumgart*". It later corrected the title to *Teter v. Unites States Tr.* (*In re Teter*). The Sixth Circuit Court of Appeals carried through the incorrect title *Teter v Baumgart*. The respondent is the United States Trustee.

LIST OF PROCEEDINGS

United State Court of Appeals for the Sixth Circuit
No. 22-3778
Teter v. Baumgart (In re Teter)
Date of Final Opinion: January 3, 2024

United States District Court N.D. Ohio
No. 1:21-cv-00334
Teter v. United States Tr. (In re Teter)
Date of Final Judgment: August 15, 2022

United States Bankruptcy Court N.D. Ohio
No. 1:19-bk-11224
In re Teter
Date of Final Order: January 25, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Megan Teter, by and through undersigned counsel in this appeal, respectfully petitions this Court for a writ of certiorari to reverse and remand the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 90 F.4th 493 (6th Cir. 2024), and it reproduced at App.1a. The Northern District of Ohio's opinion is found at 2022 U.S. Dist. LEXIS 145817 (N.D. Ohio Aug. 15, 2022), and is reproduced at App.19a. The Northern District Bankruptcy Court's opinion is found at 2021 Bankr. LEXIS 165 (Bankr. N.D. Ohio Jan. 25, 2021), and is reproduced at App.61a.

JURISDICTION

The Sixth Circuit's judgment was entered on January 3, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This matter centers on the interpretation of the term "any civil action" contained in the Equal Access to Justice Act, 28 U.S.C. § 2412.

> (a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in *any* court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.
>
> * * *
>
> (d)(1)(A) 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 (emphasis added).

STATEMENT OF THE CASE

A. Summary of the Law

The Equal Access to Justice Act was enacted in Public Law 96-481-Oct. 21, 1980. The broad remedial Purpose is best stated in the *Congressional Findings and Purpose:*

> "Sec. 202(a) The Congress finds that certain individuals, partnerships, corporations and labor and other organizations 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 in civil actions and in administrative proceedings.
>
> Sec. 202(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.
>
> Sec. 202(c) It is the purpose of this title—
>
> (1) To diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an

award of attorney fees, expert witness fees, and other costs against the United States; and

(2) To insure the applicability in actions by or against the United States of the common law and statutory exceptions to the "American rule" respecting the award of attorney fees."

Id. See also Bkt.Doc.81-3 p. 5 (Copy of Public Law 96-481-Oct. 21, 1980). Thus, Congress in the enacting language expressed the broad remedial purpose of this waiver of sovereign immunity.

The expansive applicability of the statute is best expressed in the language of the section itself. In enacting 28 U.S.C. § 2412(d)(1)(A), Congress created a new substantive right to fees against the United States. (This Differs from 28 U.S.C. § 2412(b) which did not create a substantive right but had made the United States liable as would be any other party to the fees under any other common law or statutory theory.) Thus, in addition to expressing a broad remedial purpose, the statute in its plain terms expresses broad applicability with the language "any civil action (other than cases sounding in tort)" and "any court having jurisdiction of that action." *Id.*

This Court has noted that the Equal Access to Justice Act is a model of clarity that the Court requires to deviate from the American Rule. *Botts v. Asarco LLC.,* 576 U.S. 121, 126-127 (2015).

B. Background of the Case

The sole basis for the Bankruptcy Court's denial of fees under the Equal Access to Justice Act was that

court's determination that a contested matter in the bankruptcy court is not a 'civil action' within the ambit of the Equal Access to Justice Act. (App.69a). The Bankruptcy Court did not rule on the question whether Ms. Teter was the prevailing party, and did not rule on the question whether the conduct of the U.S. Trustee was substantially justified. That decision was affirmed on that basis, and other grounds, by the District Court. And Court of Appeals for the Sixth Circuit affirmed.

Whether the contested matter initiated by the filing of the Motion to Dismiss was a "civil action" was the sole basis for the Sixth Circuit decision. The two sections that follow are provided to introduce the Petitioner and describe the conduct that gave rise to the motion for fees and costs. (Bkt.Doc.50) (Ms. Teter's Motion for Fees and Costs April 23, 2020). They provide background to provide context.

1. Facts Regarding Petitioner

Ms. Teter, a young professional woman employed by Sherwin Williams Company in Cleveland, Ohio suffers from childhood diabetes. In college, she focused her educational goals on a course of study that would assure steady employment and good health insurance. (Bkt.Doc.29-1 pp 3-4) (Ms. Teters Responses to Interrogatories, Oct. 14, 2019). She incurred non-dischargeable student loan debt that was more than 50% of her total debt. (Bkt.Doc.1 pp.19-30, and 48, 49) (Voluntary Petition, Schedule E/F, Form 122-A1, March 7, 2019). As such, she disclosed at Question 16a of her petition that her debts were not primarily consumer debts. (Bkt.Doc.1 p. 6) (Voluntary Petition March 7, 2019); (Bkt.Doc.18, p. 6) (Amended Voluntary

Petition June 5, 2019). All of her student loan debt went to the college for tuition except for a small portion for mandatory first-year student housing. (Bkt.Doc.29-4, pp.1-3) (Declaration of Megan Teter, April 23, 2020).

In spite of her focus on steady employment and reliable health insurance, Ms. Teter could not keep up with her medical costs. Overt medical debt amounted to $9,179.06. (Bkt.Doc.1 pp.19-30) (Voluntary Petition Schedules E/F). Other medical debt was less overt, for example the $1,740.00 "title loan" she obtained from Eagle Loan to purchase medical supplies. (Bkt.Doc.18, p.16) (Amended Voluntary Petition, Schedule D). Ms. Teter filed for debt relief under Chapter 7 of the Bankruptcy Code on March 7, 2019. (Bkt.Doc.1) (Voluntary Petition).

Ms. Teter was diligent in meeting her obligations in the case. On April 17, 2019 Ms. Teter responded fully to the April 10, 2019 request for documents. (Bkt.Doc.19-2; 19-3) (E-mail communication between U.S. Trustee and counsel for Ms. Teter). On April 29, 2019, she responded to an inquiry sent that day. (Bkt.Doc.19-5) (E-mail communication). Thus, when the U.S. Trustee filed his Motion to Dismiss on May 28, 2019, he had all the information he had requested. His motion does not say otherwise. (Bkt.Doc.15) (U.S. Trustee Motion to Dismiss, May 28, 2019).

Ms. Teter's case was a "no asset" case. *See* Entire Record below. What little she had was exempt. Her housing was a rental. Her car was nine years old. (Bkt.Doc.1, pp. 10-17) (Voluntary Petition, Schedule A/B and C March 7, 2019).

2. Procedural Facts

a. Proceedings in trial court

The U.S. Trustee filed his Statement of Presumed Abuse on April 26, 2019. (Bkt.Doc.12) (Statement of Presumed Abuse April 26, 2019). To declare that a presumption of abuse arises requires consideration of the precise formula set forth in 11 U.S.C. § 707(b)(2)(A)-(D). *Id*.

Prior to filing his Motion to Dismiss, (Bkt.Doc. 15) (Motion to Dismiss, May 28, 2019) the U.S. Trustee had all the information that he had requested, and all information necessary to make an informed analysis and declined to do so. (Bkt.Doc.19-2, 19-3, 19-5) (Requests for and delivery of information, April 10, 2019, April 17, 2019, April 19, 2019). Further, when confronted throughout the discovery process with the need to legitimately analyze the facts under the relevant statute, the U.S. Trustee steadfastly refused to do so. (Bkt.Doc.50-10 p. 7) (U.S. Trustee Responses to Discovery Requests to Produce April 23, 2020). Only when confronted with a Motion for Summary Judgment that pointedly required Sec. 707(B)(2) analysis did the U.S. Trustee acknowledge his error by withdrawing his motion to dismiss, thus removing the only obstacle to the issuance of the discharge. (Bkt.Doc.48) (Second Motion for Summary Judgment March 2, 2020); (Bkt.Doc.49) (U.S. Trustee Withdrawal of Motion to Dismiss March 24, 2020).

If the U.S. Trustee had performed the income analysis, the first step of the means test, as would be expected of any competent bankruptcy practitioner, the Motion to Dismiss of May 28, 2019 would not have been filed. The U.S. Trustee's first effort at the test,

again the foundation for analysis under Sec. 707(b)(2), was not prepared or presented until more than 7 months after he filed the motion. On January 16, 2020 the U.S. Trustee presented for the first time means test calculations, admitting that this first effort was only "rough calculations." (Bkt.Doc.50-11 pp. 1-3) (E-mail exchange wherein U.S. Trustee responded to latest request by Ms. Teter's that he analyze the information provided and prepare a means test.) The U.S. Trustee admitted, as late as February 11, 2020, that he was just becoming aware that the Means Test would be in issue for trial on his 707(b)(2) motion: "Also, because it appears the means test is likely to be an issue if we are successful on the student loan matter. (sic) We are providing you notice that we are adding John Weaver to our witness list to provide testimony regarding the debtors means test calculation." (Bkt.Doc.48-18, p. 1) (E-Mail exchange Feb. 11, 2020).

That the "rough calculations" of January 16, 2020, in retroactive support of the seven-month-old Motion to Dismiss, were indeed rough, is established by prompt withdrawal of the motion to dismiss at the deadline to respond to the Motion for Summary Judgment. The basis stated for withdrawing the motion was "The United States Trustee has become aware of certain facts and circumstances which render the Motion unwarranted at that time." (Bkt.Doc. 49) (Withdrawal Motion to Dismiss, March 24, 2020)

In the eight-month period between the date of the motion and the date of the withdrawal, the parties engaged in multiple rounds of discovery. *See e.g.* (Bkt.Doc.29-1) (Ms. Teter's Responses to Interrogatories August 31, 2019); (Bkt.Doc.50-8, 50-9, 50-10) (U.S. Trustee Responses to Discovery October 4, 2019) and

(Bkt.Doc.28) (U.S. Trustee Supplemental Requests for Discovery August 15, 2019). The court issued scheduling orders, setting dates for hearings, and deadlines for witness lists, exhibit lists, delivery of exhibits, stipulations, briefing and exchange of expert reports. (Bkt.Doc.26, pp. 1-3) (Scheduling Order June 21, 2019); (Bkt.Doc.31) (Marginal Order October 29, 2019) and (Bkt.Doc.45) (Scheduling Order Jan. 15, 2020). Ms. Teter filed two motions for summary judgment. (Bkt.Doc.29 and 48) (Motions for Summary Judgment Oct. 4, 2019 and March 2, 2020). The U.S. Trustee issued and filed a notice of deposition. (Bkt. Doc.47) (Notice of Deposition Feb. 11, 2020) Transcripts were obtained. (Bkt.Doc.69, 77, 81-1 and 99) (Audio and paper transcripts of hearings). The U.S. Trustee issued subpoenas to Ms. Teter's alma mater (for school transcripts and financial records) and a subpoena on her residential landlord to appear and testify regarding payment of rent. (Bkt.Doc.48-18, pp. 1) (E-mail referencing subpoena attachments, Feb. 11, 2020)

Confident that the matter would be quickly resolved if the U.S. Trustee would analyze Ms. Teter's paystubs to prepare a means test, the discovery inquiries upon him were directed to that end. *See. e.g*. (Bkt.Doc.50-10 p. 7) (U.S. Trustee Responses to Requests to Produce Oct. 4, 2019). In Requests to Produce 1, 2, and 3, Ms. Teter requests copies of means tests (Form B 122-A) prepared prior to filing the motion. To her inquiry the U.S. Trustee responded only with objections that the means test sought is protected by "attorney-client privilege, deliberative process privilege, attorney work product doctrine and/or any other applicable privilege, doctrine or immunity and discovery of

information developed in anticipation of litigation or in the course of litigation." *Id.*

It should be borne in mind that on this matter the U.S. Trustee, as the moving party, had the burden of proof. *In re Aiello,* 428 B.R. 296, 299 (Bankr. E.D.N.Y. 2010). The U.S. Trustee withheld the information because he had no information to give; he had not in fact analyzed the case prior to objecting to Ms. Teter's discharge. The U.S. Trustee just refused to engage on the subject of his motion.

Rather than do the preliminary work, which would have obviated the need for any motion, the U.S. Trustee proceeded headlong with intrusive and time-consuming demands that appear designed to exhaust and overbear Ms. Teter's resources, and to cause distress in her family relations, all the while refusing, until months after the Motion was filed, to do even rudimentary means test calculations. While demanding and receiving 446 pages of documents from Ms. Teter, the U.S. Trustee made no analytical use of those documents. Thus Ms. Teter, to defend her discharge, was required to incur fees and costs beyond any amount that could reasonably have been anticipated. It is not surprising that "It is this Court's experience that debtors facing Sec. 707(b) motions will often opt to convert their cases to chapter 13." (App.106a, 107a). Of course people usually convert to Chapter 13 rather than face the overbearing conduct that Ms. Teter faced. But that should not be necessary in order to avoid unfounded litigation with the U.S. Trustee, particularly where, as here, the Petitioner has a negative budget and ongoing medical expenses for a chronic and expensive illness. This is especially true given that ability to succeed in

a Chapter 13 case has no bearing on the outcome of a challenge under 11 U.S.C. § 707(b)(2). (App.107a).

In the civil action initiated by the U.S. Trustee to deny Ms. Teter's discharge, the Bankruptcy Rules, Fed. R. Bankr. P. 9002 and 9014, as well as the Bankruptcy Court, all treated the contested matter as a civil action in all respects with discovery, motions, status conferences and a trial date. It was a contested matter until suddenly it was not when it was time to assess costs and fees under the Equal Access to Justice Act.

b. Proceedings on Appeal to District Court

The Bankruptcy Court entered its final judgment on January 25, 2021. (Bkr.Doc.83). Appeal from an order under 28 U.S.C. § 158(a) is taken by filing a notice of appeal withing 14 days as required by Fed. R. Bankr. P. 8002. Ms. Teter filed her Notice of Appeal on February 6, 2021, along with her Statement of Election to District Court. (Bkr.Dkt.86). The District Court affirmed and went further to hold that the Motion to Dismiss was not brought by or against the United States. (App.42a) The District Court also held that Ms. Teter was not the prevailing party.(App.54a).

c. Proceedings before the Sixth Circuit

The Sixth Circuit Court of Appeals had Jurisdiction based on a timely appeal filed on September 9, 2022 from the final decision of the United States District Court for the Northern District of Ohio at Cleveland, dated August 15, 2022, which affirmed the final order of the bankruptcy court, acting as an appellate body. Fed. R. Bankr. P. 8005. Appeal was

taken as a matter of right under Fed. R. App. P. 3(a)(1) and 28 U.S.C. § 1291. Jurisdiction was under 28 U.S.C. § 1294. That Court's decision was based on a determination that the U.S. Trustees' Motion to dismiss was not a civil action. App.10a.

REASONS FOR GRANTING THE PETITION

I. TO RESOLVE A CIRCUIT SPLIT

In holding that the contested bankruptcy matter in this case did not constitute a civil action, the Sixth Circuit's opinion broadened a long-standing circuit split between the Tenth and Eleventh Circuits and created a circuit split among the Sixth, Fifth, Tenth and possibly the Ninth Circuits.

A. Split with at Least Two Tenth Circuit Court of Appeals Decisions

The decision of the Sixth Circuit conflicts with the Tenth Circuit Court of Appeals in *O'Connor v. United States Department of Energy*, 942 F.2d 771 (10th Cir. 1991). This case applied the Equal Access to Justice Act to a Bankruptcy Court motion to convert a Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code. The bankruptcy court awarded fees, the district court reversed, and the debtor appealed. *Id.* 772. The question in *O'Connor* was not whether the contested matter was a "civil action" within the ambit of the Equal Access to Justice Act, but whether a Bankruptcy Court is a "court." *Id.* Emphasizing the need to rely on the plain language of the statute, and emphasizing the purpose to "place the private litigant

and the United States on equal footing as regards the award of costs to the prevailing party in litigation involving the government" the *O'Connor* court held "The provision in question clearly permits "a court" to award attorney fees and costs against the United States in "any civil action . . . in any court having jurisdiction of that action," under certain conditions not in dispute in the case before us." *Id.* at 773. The court reasoned that "The broad language employed by Congress, in its ordinary usage, would include the bankruptcy court." *Id.* at 773. The court also emphasized that:

> "Our conclusion is consistent with the undisputed purpose of the EAJA to encourage individuals and small businesses to challenge adverse government action notwithstanding the high cost of civil litigation. Unlike the many specialized statutes enacted to authorize the award of attorney fees, the EAJA applies generally to a wide range of cases. The breadth of the EAJA is evidenced by its second prong codified at 5 U.S.C. § 504. This section grants administrative agencies the authority to award fees and costs arising from an adversary agency adjudication. Granting bankruptcy courts jurisdiction under the plain language of § 2412(d)(1)(A) is therefore congruous with the statutory scheme and furthers the statutory purpose by placing the initial determination of whether fees are warranted with the forum most familiar with the merits of the action."

O'Connor at 774.

In its ruling, the *O'Connor* court specifically rejected the reasoning of the 11th Circuit in *In re Brickell Inv. Corp.,* 922 F.2d 696 (11th Cir. 1991), which it stated had a restricted interpretation based not on the statute itself but on historical earlier enactments of 28 U.S.C. § 2412. *Id.* pp. 772, 773.

While *O'Connor* did not specifically analyze the reference to "any civil action" other than making it part of its holding that the Equal Access to Justice Act applies in Bankruptcy Court cases, the reasoning regarding the breadth and plain language of "any court" an "any civil action" applies equally.

Furthermore, in interpreting a different statute, the Tenth Circuit in *In re Fairchild*, 969 F.2d 866 (10th Cir. 1992) did specifically hold that a contested matter in a bankruptcy court is an "action" within the ambit of Fed. R. Civ. P. 41. In that case, the court pointed out that an objection to a proof of claim, like the U.S. Trustee's motion to dismiss in this case, initiates a contested matter. *Id.* p. 868. It pointed out that "Bankruptcy Rule 9014 governs contested matters." *Id.* 868. The issue before the *Fairchild* court was whether such contested matter was an 'action" within the ambit of Fed. R. Civ. P. 41(a)(2). The court in *Fairchild*, like Ms. Teter in her bankruptcy case, referred to Federal Rules of Bankruptcy Procedure 9002(1) which defines an "action" and a "civil action," as used in the Federal Rules of Civil Procedure to include a contested matter. *Id.* 868. The precise text of the short Rule 9002(1) is: "(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter." *Id.* Finding the contested matter in that case to be an

"action" within the ambit of Fed. R. Civ. P. 41(a)(2) the court held that statute applied to the contested matter in that case.

B. Split with the Fifth Circuit Court of Appeals

The decision of the Sixth Circuit conflicts also with the Fifth Circuit *in In re Esmond*, 752 F.2d 1106 (5th Cir. 1985). That case arose in the bankruptcy court on an objection filed by the Small Business Administration to the debtor's discharge. As noted by the court in *O'Connor*, the Fifth Circuit never questioned the jurisdiction of the bankruptcy courts over EAJA applications. *See O'Connor,* 942 F.2d at 774*; See Esmond,* 752 F.2d. Entire Case.

C. Split with the Ninth Circuit

The decision of the Sixth Circuit also conflicts with the Ninth Circuit Court of Appeals, which has stated in dictum that the EAJA is applicable to contested bankruptcy matters. *In re Sisk,* 973 F.3d 945, 947 (9th Cir. 2020) (*amended). Sisk* was an odd case involving two appeals where the United States took no active role. The debtors appealed that bankruptcy court's denial of confirmation of their Chapter 13 Plans. (No one had objected to confirmation. The bankruptcy court had denied confirmation in spite of the absence of objection.) Ultimately successful after appeal, the debtors sought fees under the Equal Access to Justice Act. Their fees were denied because, in the absence of an any role played by the United States, the structure of the proceeding did not come within the elements of EAJA coverage. *Sisk* did not involve an action "brought by or against the United

States." The obvious implication of that court's analysis is that a different result would obtain in a contested matter brought by or against the United States.

This Court should grant certiorari to resolve that split.

II. TO GIVE GUIDANCE TO COURTS BELOW

There is a clear need for guidance on how to interpret the Equal Access to Justice Act and to give it the proper application in contested matters in bankruptcy courts. The Eleventh Circuit is constrained by that court's cramped definition of "any court" holding that "any court" as used in the EAJA means only Article III courts. *In re Davis*, 899 F.2d 1136 (11th Cir.), *Cert Denied*, ___ U.S. ___, 111 S.Ct. 510, 112 L.Ed.2d 522 (1990); *In re Brickell Inv. Corp.* 922 F.2d 696 (11th Cir. 1991). And the Sixth Circuit, parses "any civil action" to <u>not</u> mean a contested matter in a bankruptcy case. Some circuits seem willing to go to any lengths to avoid application of a waiver that Congress took such care to express, in contrast to the willingness of the Tenth and Fifth Circuits to accept the plain meaning of "any case" and "any court." Ms. Teter requests that this Court bring an end to the crabbed cramping of this clear waiver to hold that the Equal Access to Justice Act applies to Contested Matters in Bankruptcy Cases.

In this case, the effort to constrain the statute resulted in such a constrained interpretation of "civil action" that it is at odds with basic common sense exercised by not only the Fifth, Tenth and Ninth Circuits, but also by bankruptcy courts in interpretation of multiple other federal statutes applicable to civil actions. *See e.g. In re Council of Unit Owners of the*

100 Harborview Drive Condo., 552 B.R. 84 (Bankr. D. Md. 2016) (provision in by-laws to permit the filing of a 'civil action' includes authority to file bankruptcy petition); *In re Lewis*, 257 B.R. 431, 435 (Bankr. D. Md. 2001) ("a bankruptcy case is a civil proceeding conducted under the supervision of the district court and it includes as bankruptcy proceedings any events that occur in the bankruptcy case"); *In re Perry*, No. 02-13366, 2002 WL 31160132 (Bankr. W.D. Tenn. Sept. 26, 2002) (holding a bankruptcy case is a civil action within the meaning of 28 U.S.C. § 1404(a)). Multiple additional cases applying different statutes authorizing decisions based on a determination that proceedings in bankruptcy are civil actions may be found at App.128a-131a.

This is not to suggest that all of the foregoing situations would be subject to the Equal Access to Justice Act, which has other requirements specifically, for example, that the action be brought "by or against the United States." The examples simply emphasize that "civil action" has such a broad common-sense meaning. To say that a contested matter in a bankruptcy court is not a civil action would throw all that jurisprudence into disarray. The statute should be interpreted in accordance with its purpose and terms, giving reasonable construction to those terms. In applying its provisions to "any civil action" and "any Court," Congress expressed that the Equal Access to Justice Act is to have broad application.

III. THE QUESTION IN THIS CASE IS PURELY LEGAL

The question in this case is a purely legal one based on the plain and unambiguous interpretation of the Equal Access to Justice Act.

When Congress expresses itself "in reasonably plain terms," the statutory language "'must ordinarily be regarded as conclusive.'" *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982) (*citing Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980)); *see also Ratzlaf v. United States,* 510 U.S. 135, 147, 114 S.Ct. 655, 662, 126 L.Ed.2d 615 (1994) ("we do not resort to legislative history to cloud a statutory text that is clear").

Thus, the starting point to any statutory interpretation task is to look to the words Congress used. If the words are plain and unambiguous, this is also the ending point.

In this case, the Equal Access to Justice Act states that a court shall award costs and fees to 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. 28 U.S.C. § 2412(d)(1) (emphasis added). Other sections of the EAJA have similar language. In fact, the EAJA uses the term "any" forty times.

The Courts below were so focused on how to define "civil action," which for bankruptcy purposes has already been defined by Fed. R. Bankr. P. 9002(1), that they seemed have overlooked the modifier "any" that precedes the term.

As noted above, when Congress uses the modifier "any," before any subject, it is a clear indication that Congress meant to give that term broad effect. This purpose is also forcefully and emphatically stated in the statement of purpose in the enacting language.

What is more, in the plain text of the EAJA, Congress placed only one limit on the term "any civil action:" "other than those cases sounding in tort." To limit the term any further not only is contrary to the plain language, it inserts limits to the EAJA Congress did not expressly include. In other words, had Congress intended to limit the term "any civil action (other than cases sounding in tort)" to exclude contested bankruptcy matters, it would have added that limit to the text like it already limited tort matters.

In interpreting another waiver of sovereign immunity, where the Postal Service asserted that the waiver under § 401(1) did not apply because process had been issued by an administrative agency rather than a court, this Court stated that "This crabbed construction of the statute overlooks our admonition that waiver of sovereign immunity is accomplished not by 'a ritualistic formula'; rather intent to waive immunity and the scope of such waiver can only be ascertained by reference to underlying congressional policy." *Franchise Tax Board of California v. U.S.P.S.*, 467 U.S. 512, 521 (1983) (*citing Keifer & Keifer v. Reconstruction Finance Corp.,* 306 U.S. 301, 389 (1939)).

As with all statutory interpretation, "When the terms of a statute are unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances." *Rubin v. United States*, 449 U.S. 424, 430 (1981). 28 U.S.C. § 2412 could not be more unambiguous with its sweeping use of the modifier "any" prior to "civil action," and its use of "any" again before "court having jurisdiction."

This Court has held time and time again that when Congress uses the term "any" to modify a subject, the subject has broad and expansive meaning. *U.S. v.*

Gonzales, 520 U.S. 1, 5, 117 S.Ct. 1032, 127 L.Ed.2d 132 (1997). *See also, Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 220-21 (2008) (holding Congress' use of the term "any" is deliberate and is to be applied broadly in the absence of any limiting language).

In a similar vein, this Court has interpreted the EAJA broadly. For example, in *Scarborough v. Pincipi,* 541 U.S. 401 (2004), in reversing the Federal Circuit on the issue of amending a petition for fees after the 30-day filing period has run to cure, this Court declined to follow the Court of Appeals' notion that the EAJA must be construed strictly in favor of the government because it is a waiver of sovereign immunity.

Likewise, in broadly construing the term "legal fees," this Court held that a prevailing party under the EAJA may recover paralegal fees at the prevailing market rate or at their cost to the party's attorney. *Richlin Security Service Co. v. Chertoff*, 533 U.S. 571 (2008).

In *Sullivan v. Hudson*, 490 U.S. 877 (1989), this Court held that fees under 28 U.S.C. § 2412(d) could be awarded in Social Security Administration proceedings held on remand from a district court as these subsequent proceedings were "part and parcel" of the earlier civil action. *Id.* at 887, 888.

In *Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782 (1989), this Court held that a party need not prevail on all its claims, or even on the "central issue" in the case, but only on "any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing the suit."

In this case, the EAJA is "unmistakably clear" in its waiver of sovereign immunity in "any civil action." *See*, *e.g.*, *Dept. of Ag. Rural Dev. Rural Housing Srvc. v. Kirtz*, Slip Op. No. 22-846, p. 5, 601 U.S. ___, (2024), citing *FAA v. Cooper,* 566 U.S. 284, 291 (2012).

IV. To Effectuate Congressional Purpose in Enacting the EAJA

The Equal Access to Justice Act is a grand name for a clearly articulated grand purpose. It is in keeping with the design of the Constitution. The Constitution, through careful balancing of power, is structured to protect the citizens of this country from what can be the overwhelming power of the government. The Equal Access to Justice Act is another step in creating that "more perfect union." U.S. Const. pmbl. It places ordinary individuals on a somewhat equal footing with the government, in the event that the government takes substantially unjustified action in litigation in which the individual prevails. The purpose of the Equal Access to Justice Act is to effectively level the playing field in legal disputes between private citizens and the Federal government. *See Sullivan v. Finkelstein*, 496 U.S. 617, 630 (1990) ("The purpose of the EAJA was to counterbalance the financial disincentives to vindicating rights against the Government through litigation. . . . ").

Debtors in bankruptcy already find themselves in a precarious financial situation. That is certainly the case with Ms. Teter with a lifelong expensive and chronic illness, and only minimal assets. When the U.S. Trustee enters the bankruptcy case as an arm of the United States Government, there is a clear power and resource disparity. The U.S. Trustee has an army of attorneys with what appears to be an endless budget.

A debtor, on the other hand, has a budget that often barely covers household expenses, and minimal assets. In many cases the fees paid to the attorney prior to filing are generally a flat fee. Although in Ms. Teter's case the fee agreement called for an hourly fee (Bkt. Doc.1, p. 55) (Disclosure of Compensation), she could not have reasonably anticipated the overbearing conduct of the United States Trustee with nearly a year of unnecessary litigation.

In 2019, the year Ms. Teter filed her petition, the U.S. Trustee took action on 26,000 bankruptcy cases. The U.S. Trustee sought to dismiss cases under Section 707(b) in 1,248 cases, which includes motions, complaints, and objections (*USTP 2019 Annual Report*, p. 7, found at: http://justice.gov/d9/pages/attachments/2020/09/15/ar_2019.pdf, last visited March 26, 2024). This is not to suggest that the work of the United States Trustee is not valuable. Only that its awesome power over a debtor's discharge should be substantially justified. Potential liability under EAJA for conduct which is not substantially justified is the mechanism chosen by Congress to accomplish that purpose. In all those cases where the U.S. Trustee sought dismissal, debtors and their attorneys were forced to defend their cases on limited resources and budgets. As pointed out by Judge Harris in the Bankruptcy Case, they probably mostly "defended" by caving into a Chapter 13, whether or not their circumstances were suited to success in a Chapter 13 case. (App.106a, 107a).

This is not a case like *Ardestani v. INS*, 502 U.S. 129 (1991), where, though granting fees would meet Congressional purpose, the language of the statute just did not fit. *Id.* 519. This is not a case like *In re Sisk,* 973 F.3d 945 (9th Cir. 2020) where the entire

proceeding was out of balance with the language of the statute. In *Sisk,* the United States did not bring the action and Sisk did not bring the action against the United States.

Unlike *Ardestani* and *Sisk*, the purpose and language of the statute are in complete congruity with the facts of this case and the nature of the action. Of all the cases and of all the courts, bankruptcy cases and courts have the greatest need to incentivize vindicating rights of private citizens against the Government when the actions are not substantially justified.

Since its inception, the Equal Access to Justice Act has struggled to come alive in bankruptcy courts. *See e.g.* Matthew J. Fischer, *The Equal Access to Justice Act—Are the Bankruptcy Courts Less Equal than Others?, 92* MICH. L. REV. 2248 (1994). The split between the Tenth and Eleventh Circuits (over whether a bankruptcy court is a court) is over thirty years old. Now has erupted a new and very wide split, (that a civil action is not a civil action) among the Fifth, Sixth, Tenth Circuits, and possibly the Ninth Circuit. It is time to put the question to rest and to hold that the Equal Access to Justice Act is applicable to the conduct of the United States Trustee in contested matters in the Bankruptcy Courts. This is the Court's opportunity to give the long struggling Equal Access to Justice Act the breadth Congress enacted to fulfill its purpose; and to make available that intended equal justice to those seeking bankruptcy court protection.

CONCLUSION

Based on the foregoing and to ensure proper interpretation and application of the Equal Access to Justice Act, this Court should grant certiorari.

Respectfully submitted,

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