No. 25-1223

In the Supreme Court of the United States

KEVIN ISAAC MONTOYA PALACIOS, PETITIONER

v.

VERNON LIGGINS, ACTING FIELD OFFICE DIRECTOR, BALTIMORE FIELD OFFICE, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether the Equal Access to Justice Act's limited waiver of the United States' sovereign immunity in "any civil action (other than cases sounding in tort)," 28 U.S.C. 2412(d)(1)(A), unambiguously and unequivocally encompasses petitions for writs of habeas corpus challenging immigration detention.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a) is available at 2026 WL 1154321. The orders of the district court (Pet. App. 2a-3a, 4a-5a, 17a-18a) are unreported. The memorandum opinion of the district court (Pet. App. 6a-16a) is available at 2026 WL 171690.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 2026. The petition for a writ of certiorari was filed on April 20, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

* Acting Director Liggins is substituted for his predecessor in office pursuant to Rule 35.3 of the Rules of this Court.

STATEMENT

1. The Equal Access to Justice Act (EAJA), Pub. L. No. 96-481, Tit. II, 94 Stat. 2325, "renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity," *Ardestani* v. *INS*, 502 U.S. 129, 137 (1991). As relevant here, EAJA provides that "a court shall award to a prevailing party * * * fees and other expenses * * * in any civil action (other than cases sounding in tort) * * * brought by or against the United States * * * unless the court finds that the position of the United States was substantially justified." 28 U.S.C. 2412(d)(1)(A). "A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows," among other things, "that the party is a prevailing party and is eligible to receive an award under [Section 2412(d)]." 28 U.S.C. 2412(d)(1)(B).

2. Petitioner is a native and citizen of El Salvador who entered the United States illegally. See Pet. App. 7a. In April 2016, the Department of Homeland Security (DHS) apprehended petitioner at or near Hebronville, Texas. *Ibid.* DHS charged that petitioner was inadmissible and placed him in removal proceedings. *Ibid.* In July 2016, DHS released him from custody under an order of supervision. *Ibid.*

In 2023, an immigration judge (IJ) found petitioner removable as charged and ordered his removal from the United States. D. Ct. Doc. 15-1, at 1-2 (Dec. 30, 2025); see 8 U.S.C. 1182(a)(7)(A)(i)(I). The IJ determined, however, that petitioner was entitled to withholding of removal to El Salvador under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85. See D. Ct. Doc. 15-1, at 2.

On December 8, 2025, DHS revoked petitioner's order of supervision and took him into custody under 8 U.S.C. 1231(a)(6), which authorizes the detention of certain aliens who have been ordered removed. See D. Ct. Doc. 15-3, at 1 (Dec. 30, 2025); Pet. App. 9a-10a. DHS detained petitioner to facilitate his "expeditious[]" removal to a third country—namely, Mexico. D. Ct. Doc. 15-3, at 1; see D. Ct. Doc. 15-2 (Dec. 30, 2025).

3. On December 10, 2025, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in federal district court, challenging the lawfulness of his detention. D. Ct. Doc. 1, at 4-5. Petitioner sought an order granting his immediate release and an award of attorney's fees under EAJA. See D. Ct. Doc. 4, at 6 (Dec. 11, 2025). The government opposed any relief. D. Ct. Doc. 15 (Dec. 30, 2025).

On January 22, 2026, the district court granted the petition in relevant part. Pet. App. 4a-16a. In the court's view, petitioner's "continued detention" was unlawful under *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), because his removal did "not appear likely to occur in the reasonably foreseeable future." Pet. App. 14a. The court ordered the government to release petitioner by January 29, 2026, under the same terms as his previous order of supervision. *Id.* at 4a.

The district court concluded, however, that it was bound by circuit precedent to deny petitioner's request for attorney's fees. Pet. App. 15a. The district court explained that in *Obando-Segura* v. *Garland*, 999 F.3d 190 (4th Cir. 2021), the court of appeals had "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 (citation omitted).

On February 6, 2026, petitioner filed an emergency motion to enforce the district court's January 22 order, asserting that he "remain[ed] unlawfully detained" despite the court's "prior grant of habeas relief." D. Ct. Doc. 25, at 2. The court ordered petitioner's immediate release and prohibited the government from removing him from the country pending further order of the court. Pet. App. 17a-18a. DHS released petitioner from custody that same day. See D. Ct. Doc. 27 (Feb. 6, 2026); D. Ct. Doc. 28 (Feb. 7, 2026).

4. On February 16, 2026, petitioner filed an application for attorney's fees under EAJA. D. Ct. Doc. 29. Petitioner explained that although the district court had previously denied his request for attorney's fees, he was filing the application "in compliance with the requirements of [Section] 2412(d)(1)(B) to preserve the issue for appellate review." *Id.* at 4. The court denied the application, explaining that "nothing substantively ha[d] changed since [its] last ruling." Pet. App. 2a.

5. Petitioner appealed the denial of his EAJA application and filed an unopposed motion for summary affirmance, acknowledging that "*Obando-Segura* foreclose[d] his argument for attorney's fees." C.A. Doc. 7, at 2 (Mar. 4, 2026). The court of appeals summarily affirmed. Pet. App. 1a.

DISCUSSION

Petitioner contends (Pet. 26) that "[t]he reference to 'any civil action' in [28 U.S.C.] 2412(d)(1)(A) unambiguously includes habeas petitions challenging immigration detention." That contention lacks merit. But the courts of appeals are divided on the issue, and this case would be a suitable vehicle for resolving the disagreement on an important and recurring legal question. The petition for a writ of certiorari should therefore be granted.

1. The court of appeals correctly affirmed the denial of petitioner's EAJA application. Pet. App. 1a. "EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity." *Ardestani* v. *INS*, 502 U.S. 129, 137 (1991). "Any such waiver must be strictly construed in favor of the United States." *Ibid.*; see *FAA* v. *Cooper*, 566 U.S. 284, 291 (2012) ("For the same reason that [this Court] refuse[s] to enforce a waiver that is not unambiguously expressed in the statute, [this Court] also construe[s] any ambiguities in the scope of a waiver in favor of the sovereign.").

The EAJA provision at issue here authorizes an award of attorney's fees and other expenses "to a prevailing party * * * in any civil action (other than cases sounding in tort) * * * brought by or against the United States * * * unless the court finds that the position of the United States was substantially justified." 28 U.S.C. 2412(d)(1)(A). Petitioner was the prevailing party in a habeas proceeding challenging his immigration detention. Pet. App. 4a-16a. But EAJA does not authorize an award of attorney's fees and other expenses to petitioner because the phrase "civil action" in Section 2412(d)(1)(A) does not unambiguously encompass a petition for a writ of habeas corpus challenging immigration detention. *Obando-Segura* v. *Garland*, 999 F.3d 190, 192-197 (4th Cir. 2021).

Although cases are often characterized as either "criminal" or "civil," habeas proceedings do not "fit neatly" within either category. *Obando-Segura*, 999 F.3d at 192. Rather, as this Court has recognized, habeas proceedings are "unique." *Harris* v. *Nelson*, 394 U.S. 286, 294 (1969). Since at least Blackstone's day, they have been understood to serve a special role: providing a remedy for "illegal confinement." *Id.* at 291 (quoting 3 William Blackstone, *Commentaries* *131 (William Draper Lewis ed., 1902)). As a result, "[t]he problems presented by [habeas] proceedings are materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure." *Id.* at 301 n.7. And it is often "difficult to believe" that Congress would have "applied the [normal civil] rules without modification to habeas corpus proceedings," given "the special problems and character of such proceedings." *Id.* at 296 (discussing discovery rules).

Accordingly, this Court has previously declined to construe the phrase "civil action" as encompassing habeas proceedings. In *Schlanger* v. *Seamans*, 401 U.S. 487 (1971), the Court considered the scope of 28 U.S.C. 1391(e) (Supp. V 1969), which "provided for nationwide service of process in a 'civil action in which each defendant is an officer or employee of the United States.'" *Schlanger*, 401 U.S. at 490 n.4 (citation omitted). The Court noted that "[t]hough habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." *Ibid.* The Court therefore rejected an "overbroad interpretation" of "the phrase 'civil action'" that would have encompassed habeas proceedings. *Stafford* v. *Briggs*, 444 U.S. 527, 542-543 (1980) (discussing *Schlanger*, *supra*).

There is no sound basis for a different result here. Congress enacted EAJA nine years after the Court's decision in *Schlanger* and used the same phrase—"civil action"—that the Court had interpreted not to cover habeas proceedings. § 204(a), 94 Stat. 2328; see *Merck & Co.*

v. *Reynolds*, 559 U.S. 633, 648 (2010) (explaining that this Court "normally assume[s] that, when Congress enacts statutes, it is aware of relevant judicial precedent"). And unlike in *Schlanger*, which did not involve a waiver of sovereign immunity, the question here is not merely whether the phrase "civil action" encompasses habeas proceedings, 28 U.S.C. 2412(d)(1)(A), but rather whether it does so "unequivocally," *Cooper*, 566 U.S. at 290 (citation omitted). In light of this Court's precedent and the "unique" nature of habeas proceedings, *Harris*, 394 U.S. at 294, the court of appeals correctly determined that the answer is no.

2. Although the court of appeals' decision in this case is correct, the decision below implicates a circuit conflict that warrants this Court's review.

As the Fourth Circuit did in this case, the Fifth Circuit has recognized that the phrase "civil action" in Section 2412(d)(1)(A) does not unambiguously encompass habeas petitions challenging immigration detention. See *Barco* v. *Witte*, 65 F.4th 782, 784-785 (2023), cert. denied, 144 S. Ct. 553 (2024). The Fourth and Fifth Circuits have therefore held that EAJA does not waive the United States' sovereign immunity in cases involving such petitions. See *Obando-Segura*, 999 F.3d at 197; *Barco*, 65 F.4th at 785.

In contrast, the Second, Third, and Tenth Circuits have held that EAJA does waive the United States' sovereign immunity in such cases because the phrase "civil action" in Section 2412(d)(1)(A) unambiguously encompasses habeas petitions challenging immigration detention. See *Vacchio* v. *Ashcroft*, 404 F.3d 663, 672 (2d Cir. 2005); *Michelin* v. *Warden*, 169 F.4th 418, 432 (3d Cir. 2026), reh'g en banc denied, 169 F.4th 160 (3d Cir. 2026); *Daley* v. *Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025), reh'g en banc denied, No. 24-1191 (10th Cir. Apr. 3, 2026). The Third and Tenth Circuits recently denied the government's petitions for rehearing en banc in *Michelin* and *Daley*, so there is little chance that the circuit conflict will resolve correctly on its own. And as petitioner observes (Pet. 22), the "question whether immigration habeas cases qualify for EAJA fees is continually before the lower courts." The circuit conflict thus warrants this Court's intervention.

3. This case is a suitable vehicle for resolving the question presented. Petitioner preserved the issue in both the district court and the court of appeals. See D. Ct. Doc. 29, at 4; C.A. Doc. 7, at 1-2. And resolution of the question presented was the sole basis for the lower courts' determination that petitioner is not entitled to attorney's fees under EAJA. See Pet. App. 1a-3a. Accordingly, this case cleanly presents the question whether EAJA authorizes attorney's fees in habeas proceedings challenging immigration detention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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