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.,

Respondents.

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

OPENING BRIEF FOR PETITIONER

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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: Vernon Liggins, Acting Field Office Director, Baltimore Field Office, United States Immigration and Customs Enforcement; David J. Venturella, Acting Director, United States Immigration and Customs Enforcement; Markwayne Mullin, Secretary of Homeland Security; and Todd Blanche, 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).

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INTRODUCTION

The Equal Access to Justice Act (EAJA) provides that attorney's fees may be awarded to a prevailing party in "any civil action (other than cases sounding in tort)" against the federal government. 28 U.S.C. § 2412(d)(1)(A). The question in this case is whether the statute's sweeping reference to "any civil action" covers a habeas action challenging immigration detention. It does.

Centuries of unbroken legal tradition say as much. "Civil action" has been a well-understood term of art since before the Founding. It means any type of court action other than a criminal proceeding, with the paradigm being suits to vindicate private rights. Following the great common-law commentators, every source of American legal authority—this Court's cases, statutes, the Civil Rules, legal dictionaries—has employed and interpreted the term "civil action" in that sense. And for nearly as long, a habeas action has been understood to fit that description: As the classic action to secure "the civil right of personal liberty," *Ex parte Tom Tong*, 108 U.S. 556, 559-560 (1883), it is "a civil remedy, given in a civil action," *Farnsworth v. Montana*, 129 U.S. 104, 113 (1889). Congress has itself repeatedly reflected this shared traditional understanding of habeas as civil—indeed, other statutes in Title 28 (the Judicial Code) expressly treat habeas actions as "civil actions." §§ 1657(a), 1914(a).

That unbroken tradition alone resolves this case, but there is more. The question presented concerns just one kind of habeas action: those challenging immigration detention. And this Court consistently has recognized that immigration detention *itself* is civil.

An immigration habeas action is therefore doubly civil: a civil action seeking review of civil detention. Thus, EAJA's coverage is especially clear for the class of habeas actions at issue here.

The absence of ambiguity is reinforced by other features of EAJA's text. The statute sweeps in "*any* civil action." Here as elsewhere, any means any: civil actions of whatever sort, from the garden-variety to the one-of-a-kind. And Congress specified just one carveout from this catchall language, for "cases sounding in tort." No one contends that habeas actions sound in tort, and courts cannot write an additional exception into the statute. The only plausible reading of "any civil action" is one that includes immigration habeas actions.

The Fourth Circuit, along with the Fifth, nonetheless reached a different conclusion. Eschewing any sustained engagement with EAJA's text or the centuries of accrued meaning informing it, these courts "wave[d] the ambiguity flag," *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019), and reflexively invoked the sovereign-immunity canon. Not on the basis that there is any plausible argument habeas actions are *criminal* in nature—these courts concede that habeas actions are at least "*technically*" civil. But because habeas actions have some bespoke procedures and are sometimes called "unique," these courts concluded that even EAJA's cover-the-waterfront reference to "any civil action" is not enough. Apparently, the only way Congress could unambiguously have included immigration habeas actions within the "civil action" category was to call them out by name.

That is no way to read a statute. As "this Court's precedents [have] repeatedly emphasize[d]," "Congress does not need to use 'magic words' to [waive] sovereign immunity" or to define its scope. *Exxon Mobil Corp. v. Corporacion Cimex, S. A. (Cuba)*, 146 S. Ct. 1909, 1924 (2026). All that is necessary is that the ordinary interpretive methods show that a "waiver of sovereign immunity [is] 'clearly discernable' from the 'sum total' of [the statute's] work." *Id.* (citation omitted). That is why hasty application of the sovereign-immunity canon to narrow a broad and express waiver is no better than failing to apply the canon in the face of genuinely ambiguous language. Either way, the judiciary wrongly makes a choice our constitutional structure leaves to the legislature. And here Congress chose clearly—EAJA's waiver extends to "any civil action (other than cases sounding in tort)." That means successful immigration habeas petitioners may seek their fees.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a) is not reported; it is available at 2026 WL 1154321. 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 initial fee request 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 timely filed on April 20, 2026, and granted on June 29, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION 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.

STATEMENT

I. Legal framework.

A. The Equal Access to Justice Act.

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, 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 for fee-shifting in two kinds of proceedings: (1) "an adversary adjudication" before an agency, 94 Stat. 2325-2327, codified as amended at 5 U.S.C. § 504, and (2) "civil action[s]" in court, 94 Stat.

2327-2329, codified as amended at 28 U.S.C. § 2412. This case concerns the "civil action" category—specifically, § 2412(d). "Congress initially adopted § 2412(d) for a trial period of three years" but, "in 1985, Congress substantially reenacted the measure, this time without a sunset provision." *Scarborough v. Principi*, 541 U.S. 401, 407 (2004) (citing Pub. L. No. 99-80, § 6(b)(2), 99 Stat. 183, 186).

As relevant here, § 2412(d) provides that 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. § 2412(d)(1)(A). 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.*

The substantial-justification criterion thus "dispel[s] any assumption that the Government must pay fees each time it loses" and "serves to ward off irresponsible litigation" by prevailing parties, "*i.e.*, unreasonable or capricious fee-shifting demands." *Scarborough*, 541 U.S. at 415. And the special-circumstances prong is an additional "built-in check" that operates as a "safety valve" to disallow fees based on "equitable considerations." *Id.* at 422-423 (quoting H.R. Rep. No. 96-1418, at 11 (1980)).

Even where fees *are* awarded to a prevailing party, EAJA imposes significant limitations: fees and costs must be "reasonable," § 2412(d)(2)(A); attorney fees are capped at $125 per hour unless "an increase in the cost of living or a special factor[] ... justifies a higher fee," *id.*; an expert's costs cannot exceed the rate of the government's highest-rate expert, *id.*; and courts may reduce the award if the prevailing party "engaged in conduct which unduly and unreasonably protracted" the litigation, § 2412(d)(1)(C). In fiscal year 2025, seventeen federal agencies paid 15,406 EAJA fee awards—the vast majority paid by the Social Security Administration and the Department of Veterans Affairs—with the average award being $8,347.[1]

By making the federal government liable for attorney's fees, EAJA effects a waiver of the government's sovereign immunity. *See Scarborough*, 541 U.S. at 419-420.

B. Habeas corpus challenges to immigration detention.

"Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). In the immigration context, habeas petitions have historically served as "the basic method for obtaining review of continued custody" for noncitizens with final deportation orders. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (emphasis deleted).

Habeas actions are procedurally streamlined. Discovery is not available "as a matter of ordinary course," *Bracy v. Gramley*, 520 U.S. 899, 904 (1997), and Congress has designed habeas procedures to "provide[] for a swift, flexible, and summary determination of [a habeas] claim," *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973); *see* 28 U.S.C. § 2243. Despite

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[1] *See* Administrative Conference of the United States, Equal Access to Justice Awards: Report to Congress Fiscal Year 2025, at 3-6 (Mar. 26, 2026), https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20to%20Congress%20FY2025.pdf.

these pared-down procedures, the cost of retaining habeas counsel remains prohibitively expensive for many detainees.

II. Despite being granted relief and complying with supervised release for years, Mr. Montoya Palacios is detained by ICE.

In 2016, 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 ("Habeas Pet.") at 4, No. 25-cv-04045 (D. Md. Dec. 11, 2025).[2] When local police ignored Mr. Montoya Palacios's attempt to report the threats, he fled the country with his family. *Id.*; *see* Pet. App. 7a.

In April 2016, Mr. Montoya Palacios was apprehended by U.S. Border Patrol agents in 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. *Id.* In September 2023, an Immigration Judge found him removable but, at the same time, granted his request for withholding of removal to El Salvador under the Convention Against Torture. *See id.*; ECF No. 15-1 at 1.

Mr. Montoya Palacios has no criminal history or pending criminal charges in any country. Since being

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[2] All ECF references in this brief refer to the district court's docket below.

released on bond in 2016, he has complied with the conditions of his supervised release. *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 supervised release, 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 review by the Government of Mexico for third country removal." ECF No. 15-3 at 1.

III. The district court grants habeas relief, the government does not comply, and the court is forced to issue a second order to release Mr. Montoya Palacios.

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, *see* Habeas Pet.; ECF No. 15 (Respondents' Answer to Habeas Pet.) at 2 (acknowledging that the habeas action was filed while Mr. Montoya Palacios "was held by ICE in Baltimore").

Among other arguments, Mr. Montoya Palacios asserted his continued detention was unlawful under this Court's decision in *Zadvydas*, given the agency's grant of withholding of removal and the lack of any "realistic removal plan." Pet. App. 10a-12a (citation omitted); *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 answered the petition and moved to dismiss.

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 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" was therefore unlawful under *Zadvydas*. *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. He was released that same day. ECF No. 28. The government did not appeal the district court's issuance of the writ, and the time to do so has expired.

IV. The district court denies Mr. Montoya Palacios's application for attorney's fees and the Fourth Circuit affirms.

Mr. Montoya Palacios's habeas petition also requested "reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act." Habeas Pet. 6. The district court denied this request, explaining that "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 v. Garland*, 999 F.3d 190, 191, 197 (4th Cir. 2021)); Pet. App. 5a.

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 § 2412(d)(1)(B), seeking a total of $8,971 in attorney's fees and costs. ECF No. 29 at 6. The district court promptly denied that motion for the same reason as before: Fourth Circuit precedent holds that habeas actions are not "civil action[s]" under EAJA. Pet. App. 2a (citation omitted).

Mr. Montoya Palacios then timely noticed an appeal from the denial of his request for attorney's fees and costs under EAJA. *See* ECF No. 32. Applying circuit precedent, the Fourth Circuit summarily affirmed the denial of Mr. Montoya Palacios's fee application. Pet. App. 1a.

SUMMARY OF ARGUMENT

I. EAJA's reference to "any civil action" unambiguously encompasses a habeas action challenging immigration detention.

By the time EAJA was first enacted in 1980 the meaning of "civil action" had been settled for over 200 years: any court action other than a criminal case, and paradigmatically one to vindicate a private right. All the relevant authorities—from English commentators like Blackstone, to this Court's cases, to American statutes and the Civil Rules, to legal dictionaries—share this understanding. When Congress in 1980 used the term "civil action," this old soil came with it.

Equally settled was the principle that habeas petitions are civil actions. Other statutes in Title 28 reflected that basic fact: § 1914 treated habeas actions as "civil action[s]," as did § 1657(a). Indeed, long before 1980, this Court applied to habeas actions a provision of the Judiciary Act of 1789 directed to "all civil actions." *Hilborn v. United States*, 163 U.S. 342, 344-346 (1896). That statutory history accords with an unbroken legal tradition classifying habeas actions as civil. That is how Blackstone described the Great

Writ, and this Court's cases likewise consistently explained that habeas corpus is "a civil remedy, given in a civil action." *Farnsworth v. Montana*, 129 U.S. 104, 113 (1889).

That conclusion is especially clear for the habeas actions at issue in the question presented: those challenging immigration detention. This Court long 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 just as long, this Court has maintained 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)). So immigration habeas actions are civil actions seeking review of civil detention.

Two other textual features of EAJA reinforce that immigration habeas actions are included in the reference to "civil action[s]." The statute covers "*any* civil action." § 2412(d)(1)(A) (emphasis added). That "expansive" language means civil actions "of whatever kind." *Patel v. Garland*, 596 U.S. 328, 338 (2022) (citation omitted). And the statute specifies just one exception, for "cases sounding in tort." § 2412(d)(1)(A). The "proper inference" from that sole carveout is that there are no others. *United States v. Johnson*, 529 U.S. 53, 58 (2000). Since no one denies immigration habeas actions are at least technically civil, and no one contends that they are tort suits, they are unambiguously included within "any civil action."

II. The Fourth and Fifth Circuits were wrong to conclude otherwise.

The Fourth Circuit thought that this Court's decisions in *Harris v. Nelson*, 394 U.S. 286 (1969), and *Schlanger v. Seamans*, 401 U.S. 487 (1971), cast doubt on the civil character of habeas. They do not. Both cases expressly state that habeas actions *are* civil actions. They merely hold that, under the plain terms of provisions not at issue here, the bespoke procedures for habeas actions displace the default procedures for garden-variety civil cases.

The Fifth Circuit (following the Fourth) has reasoned that "habeas corpus petitions are not *purely* civil in nature, and therefore [they] do not unequivocally fall under the text of the EAJA." *Barco v. Witte*, 65 F.4th 782, 783 (5th Cir. 2023) (emphasis added); *see also Obando-Segura*, 999 F.3d at 193-195 (similar). That conclusion does not follow. EAJA reaches "*any* civil action," so civil actions pure and impure are included. Imposing a purity test also makes scant sense—again, tradition has only two buckets for court actions, criminal and civil, and no one thinks habeas actions are criminal cases. In any event, there is no possible impurity in *immigration* habeas actions, given they challenge civil detention tied to an underlying civil proceeding.

These decisions share a common flaw: They reflexively resort to the sovereign-immunity canon rather than engage the statute with all the tools of construction. And by rushing to deem EAJA's sweeping reference to "any civil action" ambiguous with respect to habeas actions, these courts would effectively require Congress to name habeas actions expressly to ensure they are clearly included. That is flatly contrary to this Court's cases, which instruct that the sovereign-immunity canon does not impose a magic-words requirement and does not kick in unless, *after* a close reading, the statutory text proves genuinely ambiguous and subject to competing plausible interpretations. EAJA's text is not, so the canon has no work to do.

ARGUMENT

I. EAJA's reference to "any civil action" unambiguously includes a habeas action seeking review of immigration detention.

Because EAJA waives the federal government's sovereign immunity, the test is whether the statute's text makes "unmistakably clear" that a successful immigration habeas petition qualifies for attorney's fees against the government. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 387 (2023) (citation omitted). This standard "is not a magic-words requirement," and "Congress need not state its intent in any particular way." *Id.* at 388 (citation omitted). Instead, the "question is simply whether, upon applying traditional tools of statutory interpretation," *id.*, the answer is "'clearly discernable' from the 'sum total' of [Congress's] work," *Exxon Mobil Corp. v. Corporacion Cimex, S. A. (Cuba)*, 146 S. Ct. 1909, 1924 (2026) (citation omitted). It is.

A. "Civil action" has a settled, centuries-old meaning.

1. A "statute's meaning is fixed at the time of enactment." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (quotation omitted). The term "civil action" in EAJA therefore means what it did when EAJA was enacted in 1980, and when § 2412(d) was reenacted in 1985.

EAJA itself does not define the term "civil action." But it is a "settled 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) (quoting *Neder v. United States*, 527 U.S. 1, 23 (1999)). Put differently, "[w]hen Congress transplants a common-law term, the 'old soil' comes with it." *United States v. Hansen*, 599 U.S. 762, 778 (2023) (quoting *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019)).

This principle recognizes that Congress often "speak[s] in legal shorthand—drawing upon established legal terms that have been tested within already functioning legal regimes." John F. Manning, Textualism and the Equity of the Statute, 101 Colum. L. Rev. 1, 112 (2001) (emphasis deleted). So "the lawyer's lexicon" is especially apt for "decoding legal commands." *Id.*; *see Biden v. Nebraska*, 600 U.S. 477, 511-512 (2023) (Barrett, J., concurring) (describing such "[b]ackground legal conventions" as "part of the statute's context"); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 73-76 (2012) (classifying this rule as a "semantic canon").

To construe such legal terms of art, this Court looks to legal dictionaries, *see, e.g.*, *Lackey v. Stinnie*, 604 U.S. 192, 199-200 (2025); case law in England and the United States, *see, e.g.*, *Sekhar*, 570 U.S. at 733; authorities on the common law, *see, e.g.*, *Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 402 (2003); preexisting statutes, *see, e.g.*, *Hansen*, 599 U.S. at 775-777; and this Court's own precedents, *see, e.g.*, *Air Wisc. Airlines Corp. v. Hoeper*, 571 U.S. 237, 246-248 (2014). Applying these traditional tools shows that the meaning of "civil action" was fixed well before 1980.

2. "Now, there is no distinction better known," proclaimed Lord Mansfield in 1775, "than the distinction between civil and criminal law; or between criminal prosecutions *and civil actions*." *Atcheson v. Everitt*, 1 Cowper 382, 391, 98 Eng. Rep. 1142, 1147 (K.B.) (emphasis added). "Mr. Justice Blackstone," he added, "and all modern and ancient writers upon the subject distinguish between them." *Id.*

Sure enough, Blackstone carefully spelled out this distinction. He described "two sorts or species" of wrongs recognized at common law: "private wrongs"—labeled "civil injuries"—which "are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals"; and "public wrongs," given "the harsher appellation of crimes and misdemeanors," which are "a breach and violation of public rights and duties, which affect the whole community, considered as a community." 3 William Blackstone, Commentaries on the Laws of England 2 (1768). An aggrieved individual may seek "redress of private injuries," Blackstone explained, through "application to the[] courts of justice; that is, by *civil suit* *or action*." *Id.* at 2-3 (emphasis added). The remedy for public wrongs, in contrast, lay in criminal prosecution brought by the crown, "because the king … is supposed by the law to be the person injured by every infraction of the public right belonging to that community, and is therefore in all cases the proper prosecutor for every public offence." 4 William Blackstone, Commentaries on the Laws of England 2 (1768); *cf. id.* at 332 (contrasting the looser pleading rules "in civil actions" with those "in criminal prosecutions").

At common law, then, a civil action was a suit in court to remedy a private wrong—the deprivation of an individual's private or civil right, including by those acting under color of law—as distinguished from the sovereign's criminal prosecution of an offense against the public.

3. Our Republic carried forward and codified this common-law understanding. In the Judiciary Act of 1789, 1 Stat. 73, the term "civil action" appears five times, along with other similar formulations. *Id.* at 79, 83, 84, 92. The phrase is used in contrast with criminal prosecutions. Section 35 of the Judiciary Act, for example, sets forth the two-pronged "duty" of each district's U.S. Attorney "to prosecute in such district all delinquents for *crimes and offences*, cognizable under the authority of the United States, and all *civil actions* in which the United States shall be concerned." *Id.* at 92 (emphasis added).

Just a few years later, Chief Justice Ellsworth gave the same gloss to the term "civil actions" in Section 22 of the Judiciary Act: "[T]he term *civil actions* would, from its natural import, embrace every species of suit, which is not of a *criminal* kind" and is "employed in contradistinction to criminal prosecutions."

Wiscart v. Dauchy, 3 U.S. (3 Dall.) 321, 328 (1796) (opinion of Ellsworth, C.J.). The Court later endorsed and paraphrased this description of "civil actions" as simply "cases not criminal." *United States v. Goodwin*, 11 U.S. (7 Cranch) 108, 111 (1812); *see also Livingston v. Story*, 34 U.S. (9 Pet.) 632, 656-657 (1835) (term "*civil actions* … may very fairly be construed, as used in contradistinction to criminal causes").

4. This settled understanding persisted in 1934, when Congress passed the Rules Enabling Act. That statute authorized this Court to promulgate rules governing "the forms of process, writs, pleadings, and motions, and the practice and procedure *in civil actions* at law," and allowed the Court to "unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of *civil action* and procedure for both." Act of June 19, 1934, ch. 651, 48 Stat. 1064 (emphasis added).

This Court accepted Congress's invitation in 1938 by promulgating the Federal Rules of Civil Procedure, which abolished the distinction between law and equity and established "one form of action to be known as 'civil action'"—embracing "all suits of a civil nature." Fed. R. Civ. P. 1, 2 (1938). By then, this Court already interpreted the phrase "suits of a civil nature" (as used in the then-operative diversity-jurisdiction statute) to mean "[suits] which do not involve criminal prosecution or punishment." *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 270-271 (1935). A "civil action" under the Federal Rules has the same meaning.

That is underscored by Congress's decision in 1948 to conform the Judicial Code to the "new terminology" of the Civil Rules by "insert[ing] the expression 'civil action' throughout the provisions governing district-court jurisdiction." *Finley v. United States*, 490 U.S. 545, 554-555 (1989). The diversity-jurisdiction statute, for example, was amended to read "all civil actions" in lieu of "all suits of a civil nature." Act of June 25, 1948, 62 Stat. 869, 930 (codified at 28 U.S.C. § 1332). But this terminological revision was not substantive. *See Ankenbrandt v. Richards*, 504 U.S. 689, 700 (1992). It follows that the term "civil actions" means the same thing as "suits of a civil nature," *i.e.*, suits "which do not involve criminal prosecution or punishment." *M.E. White*, 296 U.S. at 270-271.

The situation remained the same in 1980, when Congress enacted EAJA. The operative version of the Civil Rules continued to identify "suits of a civil nature" with the term "civil action." Fed. R. Civ. P. 1, 2 (1980). And just as the Judiciary Act of 1789 did, *see* p. 17, *supra*, numerous provisions of Title 28 operative in 1980 (and today) continued to contrast "civil action[s]" with "criminal prosecution[s]." *See, e.g.*, 28 U.S.C. §§ 1442, 1443, 1446 (1976); 62 Stat. 938-939.

5. Legal dictionaries consistently supply a similar definition.

Consider the first edition of Black's Law Dictionary. It defined "Civil Action" this way: "At common law. As distinguished from a *criminal* action, it is one which seeks the establishment, recovery, or redress of private and civil rights." *Civil Action*, Black's Law Dictionary 206-207 (1st ed. 1891). The fifth edition, published just one year before EAJA's enactment, said much the same. "Civil action" was still defined as an "[a]ction brought to enforce, redress, or protect private rights. In general, *all types of actions other than criminal proceedings*." *Civil Action*, Black's Law Dictionary 222 (5th ed. 1979) (emphasis added). Other legal dictionaries from the decades leading up to the passage of EAJA were in accord. *See Civil Action*, Radin Law Dictionary 55 (2d ed. 1970) ("A legal proceeding brought to enforce a civil right or obtain redress for its violation."); *Civil Action*, Ballentine's Law Dictionary 202 (3d ed. 1969) ("comprehending every conceivable cause of action, whether legal or equitable, except such as are criminal").

By 1980, then, the old soil of a "civil action" was as firm and venerable as any. For centuries, it had meant a suit that is not a criminal prosecution or proceeding, with the classic example being a suit to vindicate a private right. "So when Congress" used the phrase "any civil action" in EAJA, the "traditional" definition "associated with" that term of art "was part of the [statutory] package." *Hansen*, 599 U.S. at 778-779.

B. Habeas actions have always been understood to be civil actions.

Embedded within the historical understanding of "civil action" are petitions for a writ of habeas corpus.

1. To begin with the most recent history, before both EAJA's initial enactment in 1980 and the reenactment of § 2412(d) in 1985, Congress specified in other statutes that habeas actions are "civil actions."

Turn first to 28 U.S.C. § 1914(a). The operative version of that provision in 1980, as amended in 1978, required a filing fee of $60 to institute "any civil action, suit or proceeding" in federal district court, "except that on application for a writ of habeas corpus the filing fee shall be $5." 28 U.S.C. § 1914(a) (Supp. IV 1980). The plain import of the provision is that a habeas petition is a civil action—otherwise, Congress would not have described habeas actions as an "except[ion]."

Next, consider 28 U.S.C. § 1657, which Congress enacted in 1984. Pub. L. No. 98–620, § 401(a), 98 Stat. 3356. Relevant here, that statute provides: "[E]ach court of the United States shall determine the order in which *civil actions* are heard and determined, except that the court shall expedite the consideration of any action brought under *chapter 153*," along with other specified actions. 28 U.S.C. § 1657(a) (emphasis added). Since Chapter 153 is entitled "Habeas Corpus" and codifies habeas proceedings, *see* § 2241, this provision again expressly categorizes habeas actions as "civil actions."

A year after passing § 1657, Congress reenacted § 2412(d) of EAJA and its sweeping reference to "any civil action." *See* p. 5, *supra*. This contemporaneous evidence that Congress—both the one that initially passed EAJA and the one that reenacted § 2412(d)—would have understood the term "civil action" to include habeas actions should be dispositive of EAJA's original meaning.

2. The direct line Congress drew between habeas actions and civil actions was nothing new. As long as the concept of a civil action has been in our law, it has included habeas actions.

Among the injuries redressable at law that Blackstone surveyed was "the violation of the right of personal liberty," "effected by the injury of false imprisonment." 3 Blackstone, *supra*, at 127. Blackstone explained that the law had "given a *private* reparation to the party" suffering a violation of the right of personal liberty, *id.* (emphasis added)—in other words, a civil action, *id.*; *see* pp. 16-17, *supra*. And the vehicle "for removing the injury of unjust and illegal confinement" was the writ of habeas corpus, which Blackstone called "the most celebrated writ in the English law" because it was "the great and efficacious writ in all manner of illegal confinement." *Id.* at 127, 129, 131, 137.[3] Blackstone thus categorizes habeas corpus actions as a civil action securing the private right of personal liberty.

3. In keeping with that tradition, this Court has held for at least 140 years that habeas corpus actions are civil.

Begin with *Ex parte Tom Tong*, 108 U.S. 556 (1883). There, the Court held that a statute referring to "any civil suit or proceeding" encompassed habeas actions seeking release from confinement—even confinement due to criminal prosecution. *Id.* at 559. The Court reasoned that the petitioner's habeas action was "a civil proceeding, notwithstanding [the petitioner's] object is, by means of it, to get released from custody under a criminal prosecution." *Id.* at 559-560. "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 "[p]roceedings to enforce civil rights are civil proceedings." *Id.* at 559. Accordingly, "the writ of habeas corpus … is not a proceeding in that prosecution" but rather "is a new suit brought by [the petitioner] to enforce a civil right." *Id.* at 559-560.

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[3] "[T]he phrase 'habeas corpus' used alone refers to the common-law writ of habeas corpus *ad subjiciendum*, known as the 'Great Writ.'" *Stone v. Powell*, 428 U.S. 465, 474-475 n.6 (1976) (citing *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 95 (1807)).

Two years later, this Court similarly held that "[a] writ of *habeas corpus*, sued out by one arrested for crime, is a civil suit or proceeding." *Kurtz v. Moffitt*, 115 U.S. 487, 494 (1885). And the Court likened the "writ of *habeas corpus*" to the "writ of prohibition," classifying both as "a civil remedy, *given in a civil action*." *Farnsworth*, 129 U.S. at 113 (second emphasis added). Already by 1892, it was "well settled that a proceeding in habeas corpus is a civil, and not a criminal, proceeding." *Cross v. Burke*, 146 U.S. 82, 88 (1892).

Since then, in an unbroken chain of decisions, this Court has repeated the refrain that habeas actions are civil in nature, not criminal. *See, e.g.*, *Fisher v. Baker*, 203 U.S. 174, 181 (1906) (a "proceeding … in habeas corpus … is a civil, and not a criminal, proceeding"); *Riddle v. Dyche*, 262 U.S. 333, 335-336 (1923) ("The writ of habeas corpus is not a proceeding in the original criminal prosecution, but an independent civil suit …."); *United States v. Morgan*, 346 U.S. 502, 505 n.4 (1954) ("habeas corpus … relief is sought in a separate case and record" from the underlying criminal proceeding, and is therefore "the beginning of a separate civil proceeding"); *Fay v. Noia*, 372 U.S. 391, 423-424 (1963) (discussing "the traditional characterization of the writ of habeas corpus as an original ... civil remedy for the enforcement of the right to personal liberty, rather than ... a stage of the state criminal proceedings" (footnote omitted)); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978) ("It is well settled that habeas corpus is a civil proceeding."); *Stafford v. Briggs*, 444 U.S. 527, 543 (1980) ("habeas corpus is 'a civil action'"); *McCarthy v. Harper*, 449 U.S. 1309, 1310 (1981) (Rehnquist, J., in chambers) ("Federal habeas corpus is a civil action …."); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) ("Our decisions have consistently recognized that habeas corpus proceedings are civil in nature."); *Mayle v. Felix*, 545 U.S. 644, 654 n.4 (2005) ("Habeas corpus proceedings are characterized as civil in nature."); *Ryan v. Gonzales*, 568 U.S. 57, 72-73 (2013) (a habeas action is "a civil action"); *Banister v. Davis*, 590 U.S. 504, 507 (2020) ("Habeas proceedings, for those new to the area, are civil in nature."). Not a single case from this Court holds to the contrary.

4. By 1980, the Court had also held in various contexts that the specific phrase "civil action" encompasses habeas petitions.

Perhaps most relevant here, the Court came to that conclusion just a few years before EAJA's passage. Commenting on the change-of-venue statute, which provides that "a district court may transfer any civil action to any other district" in certain circumstances, 28 U.S.C. § 1404(a), this Court reasoned that the statute "of course" applies to habeas actions, *Braden v. 30th Jud. Ct. of Ky.*, 410 U.S. 484, 499, n.15 (1973); *see also Boumediene v. Bush*, 553 U.S. 723, 796 (2008) (explaining that "the Government can move for change of venue [under § 1404(a)] to the court that will hear these" habeas petitions).

Even before *Braden*, this Court had come to the same conclusion with respect to several other similar provisions. Recall that the Judiciary Act of 1789 charged U.S. Attorneys with the duty of representing the government in "all civil actions in which the United States shall be concerned." § 35, 1 Stat. 92; *see* p. 17, *supra*. In *Hilborn v. United States*, decided in 1896, this Court applied that provision to habeas actions brought by noncitizens challenging their immigration detention. 163 U.S. at 344-346.

Another example is *Reid v. Covert*, 351 U.S. 487 (1956), *rehearing granted on other grounds*, 354 U.S. 1 (1957). There, the Court held that a habeas action fell within the jurisdictional grant of 28 U.S.C. § 1252 (1952), which at the time provided a direct appeal to this Court in "any civil action" holding an Act of Congress unconstitutional. *Reid*, 351 U.S. at 489-490. Notably, the government itself argued that the statute applied because "the District Court held unconstitutional an act of Congress *in a civil proceeding for a writ of habeas corpus*." Br. for Appellant 13, *Reid v. Covert*, O.T. 1955, No. 701 (U.S., filed Apr. 6, 1956) (emphasis added).

In a similar vein, this Court also held that the deadline to file a notice of appeal in habeas actions is governed by 28 U.S.C. § 2107 and Federal Rule of Appellate Procedure 4(a), which apply to "civil" cases. *See Browder*, 434 U.S. at 264-265 & n.9. The respondent in *Browder* "maintained throughout that the Federal Rules of Civil Procedure are wholly inapplicable on habeas." *Id.* at 269. This Court rejected that "mistaken assumption": "It is well settled that habeas corpus is a civil proceeding." *Id.*; *accord Houston v. Lack*, 487 U.S. 266, 272 (1988) (noting *Browder* holds that "a petition for habeas corpus is a civil action," so "the timing of the appeal" is "subject to the statutory deadline set out in 28 U.S.C. § 2107"); *id.* at 277 (Scalia, J., dissenting) (noting that § 2107 sets the "deadline for the filing of notices of appeal in *civil actions such as this habeas proceeding*" (emphasis added)).

5. The Civil Rules further confirm that habeas actions are civil.

The version of the Civil Rules operative in 1980 provided that they "govern the procedure … in *all* *suits of a civil nature* … with the exceptions stated in Rule 81." Fed. R. Civ. P. 1 (1980) (emphasis added). Rule 81, in turn, then provided that "[t]hese rules *are applicable to proceedings for … habeas corpus* … to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(2) (1980) (emphasis added). Thus, "habeas corpus is a civil action according to Federal Rule 81(a)(2)," 15 Wright & Miller's Federal Practice and Procedure § 3843 (4th ed.), and this Court has repeatedly held that various Civil Rules govern habeas actions, *see, e.g.*, *Browder*, 434 U.S. at 269-271 (applying Rule 81 and holding that "Rules 52(b) and 59 [are] applicable in habeas corpus proceedings"); *Banister*, 590 U.S. at 511 ("The Federal Rules of Civil Procedure generally govern habeas proceedings."). Indeed, since the Civil Rules recognize only "one form of action to be known as 'civil action,'" Fed. R. Civ. P. 2 (1980), the only logical conclusion is that habeas actions are civil actions, albeit ones with some bespoke procedures.

This conclusion is reinforced by the Rules Enabling Act itself, which authorized this Court to promulgate the Civil Rules *exclusively* "in civil actions." 48 Stat. 1064; 28 U.S.C. § 2072 (1976) (same). Accordingly, those Rules could never govern habeas proceedings *at all* unless habeas actions are "civil actions." Yet the Civil Rules *do* generally govern habeas proceedings, as Rule 81 plainly stated and this Court had already held prior to EAJA's enactment. *See Browder*, 434 U.S. at 269-271. The inescapable conclusion is that habeas actions are "civil actions."

The Judiciary's uniform implementation of Rule 79 further hammers the point home. That Rule requires that "each civil action" be assigned a number on the "civil docket." Fed. R. Civ. P. 79(a) (1980). By EAJA's enactment, habeas petitions were docketed on the "civil docket" because, as Chief Justice Burger observed, "[h]abeas corpus petitions are *civil*, not *criminal* proceedings." Warren E. Burger, The Condition of the Judiciary: Year-end Report 5 & n.* (Jan. 3, 1976), *reprinted in* State of the Federal Judiciary: Annual Reports of the Chief Justice of the Supreme Court of the United States (S. Dowling & W. Sleeman eds., 2026); *see also, e.g.*, *Dukes v. Warden, Conn. State Prison*, 406 U.S. 250, 251 (1972) (noting "Civil Action" number of federal habeas proceeding). By 1980, then, the Judiciary's basic docketing practices confirmed that habeas actions were "civil action[s]" under the Civil Rules.

C. Immigration detention itself is purely civil, so a habeas action challenging immigration detention is a civil action twice over.

Throughout this tradition, habeas actions have been understood as categorically civil. Even when review is sought of criminal confinement, this Court has made clear the *habeas action* is civil. *Tom Tong*, 108 U.S. at 559-560 (habeas action is "a civil proceeding, notwithstanding [the petitioner's] object is, by means of it, to get released from custody under a criminal prosecution"); *accord In re Frederich*, 149 U.S. 70, 75 (1893) (habeas petition seeking review of criminal imprisonment is still "a civil process"). This centuries-old understanding of habeas actions as civil across the board is enough to decide this case.

But the analysis becomes even easier when one focuses on the particular kind of habeas action at issue in the question presented: one seeking review of immigration detention. Such an action is civil twice over: "both a civil action in its own right," as a habeas petition, "and [one] which has roots in [another] civil action"—immigration detention. *Vacchio v. Ashcroft*, 404 F.3d 663, 672 (2d Cir. 2005).

"Deportation, however severe its consequences, has been consistently classified as a civil rather than a criminal procedure." *Harisiades v. Shaughnessy*, 342 U.S. 580, 594 & n.22 (1952) (collecting cases); *see also Arizona v. United States*, 567 U.S. 387, 396 (2012) ("Removal is a civil, not criminal, matter."). Because "[a] deportation proceeding is *a purely civil* action," this Court has explained, "various protections that apply in the context of a criminal trial do not apply in a deportation hearing." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038-1039 (1984) (emphasis added).

Immigration *detention*, in turn, is an "aspect of the deportation process." *Demore*, 538 U.S. at 523. This Court has so held since the late nineteenth century. *Wong Wing*, 163 U.S. at 235 (explaining that detention to effect deportation "is not imprisonment in a legal sense"). Since then, this Court's precedents have consistently held that immigration "[d]etention is necessarily a part of th[e] deportation procedure," which itself is a "civil proceeding." *Carlson v. Landon*, 342 U.S. 524, 537-538, 547 (1952). Immigration detention is therefore a form of "civil detention." *Zadvydas*, 533 U.S. at 690.

Immigration habeas actions are thus civil actions squared: a civil action layered on top of a civil proceeding. There simply is no ambiguity when applying the phrase "any civil action" to a doubly civil action.

D. EAJA's broad reference to "*any* civil action" and its specific exclusion of tort cases reinforce that immigration habeas actions fall within the statute's sweep.

Immediately surrounding statutory text drives home the conclusion that immigration habeas actions plainly count as a "civil action" under EAJA. *See, e.g.*, *FCC v. AT&T Inc.*, 562 U.S. 397, 405 (2011) ("[W]hen interpreting a statute[,] we construe language in light of the terms surrounding it." (citation and ellipses omitted)).

1. EAJA does not refer only to "civil actions" or "a civil action." By its terms, it reaches out to embrace "*any* civil action." § 2412(d)(1)(A) (emphasis added). Any means any: The statute covers civil actions of whatever sort, ordinary and unusual alike.

a. "Read naturally," this Court has often explained, "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) (emphasis added) (quoting Webster's Third New International Dictionary 97 (1976)); *Patel*, 596 U.S. at 338 (same); *Brogan v. United States*, 522 U.S. 398, 400 (1998) (same).[4] Quoting a similar definition, the Court has said that "[w]hen used (as here) with a 'singular noun in affirmative contexts,' the word 'any' ordinarily 'refers to a member of a particular group or class without

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[4] *See also, e.g.*, *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 588-589 (1980) (There was "no uncertainty in the meaning of the phrase[] 'any other final action'" in the Clean Air Act because it "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.").

distinction or limitation' and in this way 'implies *every* member of the class or group.'" *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 362-363 (2018) (brackets omitted) (quoting Oxford English Dictionary (3d ed., Mar. 2016), www.oed.com/view/Entry/8973); *id.* at 359-360 (statutory term "'any' means 'every'").

Thus, this Court has continually held that Congress's use of the word "any" "broaden[s] to the maximum" a statute's reach, putting to rest any possible ambiguity about the scope of coverage. *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 635 (2012).[5] The Court has come to the same conclusion when interpreting the phrase "any civil action" specifically—including when sovereign immunity is in play. In *United States v. Williams*, 514 U.S. 527 (1995), this Court construed 28 U.S.C. § 1346(a)(1), which authorizes a refund suit in "*[a]ny civil action* against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected … or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws." *Id.* at 532 (emphasis al-

[5] *See, e.g.*, *Patel*, 596 U.S. at 347 ("plain meaning" of "any judgment" was "clear," so Court had "no reason to resort to the presumption of reviewability"); *SAS Inst.*, 584 U.S. at 362-363, 369-370 ("the plain text" of "any patent claim challenged by the petitioner" means "every claim the petitioner has challenged," so "the words on the page are clear," precluding any possibility of "ambiguity" under *Chevron*); *Dep't of Housing and Urban Dev. v. Rucker*, 535 U.S. 125, 127, 131, 134 (2002) ("any drug-related activity" means "'of whatever kind,'" and "not just drug-related activity that the tenant knew, or should have known, about," so that the "the canon of constitutional avoidance" had no application).

tered). The Court held that this "broad language" rendered the statute's sweeping coverage unambiguous: The respondents' "plea to recover a tax 'erroneously ... collected' f[ell] squarely within this language." *Id.*

Prior to EAJA's enactment, moreover, this Court had already read "any civil action" just as expansively. In *Ex parte Collett*, the Court addressed the change-of-venue statute, which provided (as it still does) that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer *any civil action* to any other district or division where it might have been brought." 337 U.S. 55, 57 (1949) (emphasis added) (quoting 28 U.S.C. § 1404(a)). The question was whether that statute allowed such a transfer in actions under the Federal Employers' Liability Act, in which the forum non conveniens doctrine had previously been held inapplicable. *Id.* at 56-57.

The Court answered that question based on the "'unambiguous, direct, clear'" language of the statute: "The reach of 'any civil action' is unmistakable," the Court explained, when "the phrase is used without qualification, without hint that some should be excluded." *Collett,* 337 U.S. at 58. "From the statutory text alone," the Court concluded, "it is impossible to read the section as excising this case from 'any civil action.'" *Id.* [6]

In using the same words in EAJA, Congress was presumptively aware of how expansively this Court read them in *Collett*. *See Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 700 (2022) ("This Court generally

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[6] The Court reinforced this holding in a companion case applying *Collett*'s reasoning to antitrust suits. *United States v. Nat'l City Lines, Inc.*, 337 U.S. 78, 79-81 (1949).

assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents."). Congress was presumptively aware, too, that this Court had concluded that habeas actions fall within "any civil action" as used in § 1404(a). *Braden*, 410 U.S. at 499 n.15. And Congress was likewise presumptively aware that elsewhere in Title 28 habeas actions expressly fall within the broad term "any civil action." *See* 28 U.S.C. § 1914(a) (Supp. IV 1980); p. 20, *supra*.

Even without these traditional presumptions, the comprehensive "reach of 'any civil action'" in EAJA is "unmistakable." *Collett*, 337 U.S. at 58. In EAJA as in other statutory contexts, "any" means what is says: "*any* civil action" unambiguously refers to *every* civil action, of *whatever* kind. That necessarily encompasses habeas actions, which have consistently been typed civil. "From the statutory text alone, it is impossible to read [EAJA] as excising this case from 'any civil action.'" *Id.*

b. The sweep of EAJA's reference to "any civil action" is particularly striking given that, in various other contexts in Title 28, Congress did not append the modifier "any" to "civil action." The version of the Rules Enabling Act operative in 1980, for example, referred just to "civil actions" sans the sweeping modifier "any." 28 U.S.C. § 2072 (1976) ("in civil actions"); *see also id.* § 1652 (1976) (providing that state law, where applicable, governs "in civil actions in the courts of the United States" unless federal law provides otherwise).

Congress's use of the expansive modifier "any" thus stands out as especially broad. "Had Congress intended instead to limit [EAJA] to" the mine run of civil actions or to particular categories, "it could easily have used [different] language—as it did elsewhere" in Title 28. *Patel*, 596 U.S. at 338, 341-342 (rejecting argument for limiting statutory phrase "any judgment" to one "*kind* of judgment," "discretionary" ones). In particular, Congress could have expressly *excluded* habeas actions from "any civil action," as it had done before, *see* 28 U.S.C. § 1914(a) (Supp. IV 1980), and would do again for comparable statutory language after EAJA's enactment.[7] Indeed, counsel for Mr. Montoya Palacios is unaware of a single statutory reference to "any civil action" that excludes habeas actions when it is unaccompanied by such an express carveout. But despite this established practice of specifying when it intends habeas actions to be excluded from a provision applying to "any civil action," Congress declined to write such a carveout for EAJA.

2. Instead, Congress chose to craft a different carveout: "any civil action (*other than cases sounding in tort*)." § 2412(d)(1)(A) (emphasis added).

"When Congress provides exceptions in a statute," this 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." *Johnson*, 529 U.S. at 58; *see also Hillman v. Maretta*, 569 U.S. 483, 496 (2013) (similar). And this inference is supercharged when, as here, an exception is paired with the comprehensive modifier "any." *See, e.g.*, *United States v. Smith*, 499 U.S. 160, 165-167, 173

[7] *See* Pub. L. No. 104-134 § 3626(g)(2), 110 Stat. 1321-71 (1996) (providing, for the Prison Litigation Reform Act, that "the term 'civil action with respect to prison conditions' means any civil proceeding arising under Federal law with respect to the conditions of confinement …, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison").

(1991) (where statute precluded "*any other* civil action" for a tort committed by "*any* employee of the Government," and provided two specific exemptions, there was no basis to "infer[] a third exception," especially because the statute's "plain language makes no distinction between" various kinds of employees (emphasis added)).

Consider an example. A biology teacher assigns her students to take a photo of "a bird." How about a penguin? "Though they are birds, penguins have flippers instead of wings," so "[t]hey cannot fly and on land they waddle, walking upright—though when snow conditions are right, they will slide on their bellies." World Wildlife Fund, Penguins, https://perma.cc/WS9K-43MH?type=image; *accord* Richard Atwater & Florence Atwater, Mr. Popper's Penguins 11 (1938) (Penguins "are the funniest birds in the world"). A student *might* be unsure. Not if the assignment changes to permit a picture of "*any* bird (*other than* a pigeon)." Then the student can be confident that photographing a bird of whatever sort—whether funny as a penguin or normal as a sparrow—is fair game, as long as it is not a pigeon.

So too here. The specific exception for torts underscores that "*any* civil action" includes everything else in that category. No one—not even the government—has ever disputed that a habeas action is at least "technically 'civil,'" Br. for Respondents 6 (citation omitted), and does not sound in tort. That common understanding resolves this case.

II. The contrary reasoning of the Fourth and Fifth Circuits lacks merit.

Two courts of appeals—the Fourth Circuit (the court below), as well as the Fifth—have nonetheless concluded that a habeas proceeding to challenge civil immigration detention does not fall within the broad category of "any civil action." Spending little time with the statute's text, these courts rushed to deem EAJA ambiguous on the question presented, then reflexively invoked the sovereign-immunity canon. That approach misreads this Court's cases, misunderstands the history of habeas, and misuses the canon. This Court should "decline to read ambiguity into the statute where none exists." *Lac du Flambeau*, 599 U.S. at 399.

A. *Harris* and *Schlanger* merely reinforce that habeas actions are civil actions.

The Fourth Circuit placed great weight on two of this Court's decisions: *Harris*, 394 U.S. 286, and *Schlanger*, 401 U.S. 487. *See Obando-Segura*, 999 F.3d at 193-194. The government likewise has invoked *Harris* and *Schlanger* as the main authority for its argument that EAJA's reference to "any civil action" "does not unambiguously encompass a petition for a writ of habeas corpus challenging immigration detention." Br. for Respondents 5-6. Neither decision supports that position.

1. *Harris* addressed "the question whether state prisoners who have commenced habeas corpus proceedings in a federal district court may, in proper circumstances, utilize the instrument of interrogatories for discovery purposes." 394 U.S. at 288. That ques-

tion in turn depended on whether the Civil Rule governing interrogatories, Rule 33, applied to habeas actions.

In answering that question, this Court started with an accepted truth: "*[O]f course*, … habeas corpus proceedings are characterized as 'civil.'" *Harris*, 394 U.S. at 293 (emphasis added). Yet "the label is gross and inexact," the Court added, because "the proceeding is unique." *Id.* at 293-294. That observation made sense in the context of the question before the Court—habeas actions are obviously civil actions, but ones with unique *procedural* features that distinguish them from other civil actions, particularly "with respect to pretrial proceedings for the development of evidence." *Id.* at 294.

Harris looked to Rule 81, which then provided "that the Rules were not applicable in habeas corpus 'except to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity.'" 394 U.S. at 292-293. The Court held that "the intended scope of the Federal Rules of Civil Procedure and the history of habeas corpus procedure, make it clear that Rule 81(a)(2) must be read to exclude the application of Rule 33 in habeas corpus proceedings." *Id.* at 293.

Harris thus ultimately "recognized that there are some circumstances where a *civil rule of procedure* should not govern habeas proceedings," "[i]n light of the differences between general civil litigation and habeas corpus proceedings." *Hilton*, 481 U.S. at 776 n.5 (emphasis added). It hardly follows that habeas actions are not civil actions—*Harris* itself expressly says "*of course*" the opposite is true, 394 U.S. at 293 (emphasis added), which is consistent with precedent from this Court going back to the nineteenth century, *see* pp. 22-23, *supra*.

Indeed, since its reasoning rested on "the 'conformity' provision of Rule 81(a)(2)," 394 U.S. at 293-296, reading *Harris* to hold that a habeas action is not a civil action would be illogical. After all, "habeas corpus *is* a civil action according to Federal Rule 81(a)(2)," 15 Wright & Miller's Federal Practice and Procedure § 3843 (4th ed.) (emphasis added), and this Court repeatedly has held that Rule 81(a)(2) does make various Civil Rules applicable to habeas actions, *see, e.g.*, *Banister*, 590 U.S. at 511-517 (Rule 59(e)); *Banks v. Dretke*, 540 U.S. 668, 704-705 (2004) (Rule 15(b)); *Woodford v. Garceau*, 538 U.S. 202, 208 (2003) (Rule 3). Given the Rules contemplate just "one form of action," a '"civil action,"' Fed. R. Civ. P. 2, habeas actions *must* be civil to be governed by the Civil Rules at all. And as discussed above (p. 26, *supra*), the Rules Enabling Act confined the application of the Civil Rules *as a whole* (including Rule 81) to "civil actions." 48 Stat. 1064. So *Harris*'s logic necessarily presupposes that habeas actions are "civil actions."

2. So does the logic of *Schlanger*. That case concerned the habeas statute's authorization for courts to grant the writ only "within their respective jurisdictions." 28 U.S.C. § 2241(a). Under that provision—added to the habeas statute in 1867— "the traditional rule has always been that the Great Writ is 'issuable only in the district of confinement.'" *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004) (citation omitted). Accordingly, with respect to "core habeas challenges to present physical custody," this Court has long held

that "the traditional district of confinement rule" requires "the presence of … [the] custodian within the territorial confines of the district court." *Id.* at 444-445 (first citing *Ahrens v. Clark*, 335 U.S. 188, 190-192 (1948), and then citing *Braden*, 410 U.S. at 495). Following that traditional rule, *Schlanger* holds that a habeas court lacks jurisdiction when the "petitioner is within the territorial jurisdiction of the District Court" but "the custodian … is not," because "the absence of his custodian is fatal to the [habeas court's] jurisdiction." 401 U.S. at 490-491.

In the course of reaching that unremarkable holding, *Schlanger* devoted a footnote to discussing a 1962 amendment to the general venue statute, 28 U.S.C. § 1391, which created a new subsection (e) providing in relevant part that:

> A civil action in which each defendant is an officer or employee of the United States … may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.

Pub. L. No. 87-748, § 2, 76 Stat. 744 (1962) (codified at 28 U.S.C. § 1391(e) (1964)). In addressing this amendment to the general venue statute, *Schlanger* repeated *Harris*'s observation that "[t]hough habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." 401 U.S. at 490 n.4. With that concession to habeas's undisputably civil character, the Court dismissed

§ 1391(e)'s relevance to habeas actions because "the legislative history of that section is barren of any indication that Congress extended habeas corpus jurisdiction." *Id*. The legislative history instead suggested § 1391(e) "was enacted to broaden the venue of civil actions which could previously have been brought only in the District of Columbia." *Id.*

So again, *Schlanger* never suggests that a habeas action is not a civil action. Instead, the opposite is once more the case: *Schlanger* "recogniz[ed] that habeas corpus *is* 'a civil action.'" *Stafford*, 444 U.S. at 543 (emphasis added). The Court simply "turn[ed] to the legislative history to determine *which* 'civil actions' § 1391(e) governed." *Id.* (emphasis added).

That detour into legislative history "is a relic from a 'bygone era of statutory construction.'" *Food Mktg. Inst. v. Argus Leader Media,* 588 U.S. 427, 437 (2019) (citation omitted). And "that is not how this Court's contemporary sovereign-immunity doctrine works." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 58 (2024). So while there is no need to "question[] that [*Schlanger*] is entitled to *stare decisis* effect with respect to the" specific question "it addressed," "the Court has since repeatedly disavowed the decision's methodological approach and cautioned against its use when considering claims of sovereign immunity." *Id.* at 58-59 (distinguishing *Employees of Department of Public Health and Welfare v. Department of Public Health and Welfare*, 411 U.S. 279 (1973), for this reason).

Regardless, *Schlanger*'s bottom-line conclusion is easily reconciled both with textualism and with the traditional understanding of habeas actions as civil actions. Section 1391(e) provides: "A civil action [against the government] … may, *except as otherwise provided by law*, be brought in any judicial district .…" 28 U.S.C. § 1391(e) (1964) (emphasis added). And the habeas statute *does* otherwise provide, as *Schlanger* itself notes. *See* 401 U.S. at 489-491. It limits district courts to granting habeas relief "within their respective jurisdictions," 28 U.S.C. § 2241(a), which requires the "custodian [to be] within the territorial confines of the district court," *Padilla*, 542 U.S. at 444. A habeas action therefore *is* "[a] civil action" under § 1391(e)'s plain terms—just one exempted from the statute's coverage "as otherwise provided by law."

Given that habeas is plainly encompassed by "*[a]* civil action" under § 1391(e), it follows all the more strongly that habeas falls within EAJA's more capacious reference to "*any* civil action." And even if one were to read *Schlanger* as holding that "*[a]* civil action" does *not* encompass a habeas action, the same conclusion does not follow for the phrase "*any* civil action"—particularly given that *Schlanger* says that "habeas corpus is technically 'civil.'" 401 U.S. at 490 n.4. "[A]ny civil action" includes every sort of civil action—those "technically 'civil'" as much as any other.

3. Both *Harris* and *Schlanger* therefore explain that habeas actions are civil actions with some custom-made procedures. So a provision (like § 1391(e)) that sets a default procedure for civil actions "except as otherwise provided by law" may not govern habeas actions, where a habeas-specific procedure already exists; and the same is true for a provision (like Rule 81) that says the default civil procedures govern *only if* consistent with traditional habeas practices. It

simply does not follow from such provisions that habeas actions are not civil actions—the *opposite* conclusion is the only logical one.

B. Reading "any civil action" to mean "any [purely] civil action" is flawed on multiple levels.

The Fifth Circuit (echoing the Fourth) has reasoned that "habeas corpus petitions are not *purely* civil in nature, and therefore [they] do not unequivocally fall under the text of the EAJA." *Barco*, 65 F.4th at 783 (emphasis added); *see id.* at 785 & n.1 (same); *see also Obando-Segura*, 999 F.3d at 193-195 (employing similar reasoning). The government likewise has argued that "any civil action" in EAJA "can be read narrowly to include only those cases that are *wholly or purely* civil in nature," which "would exclude habeas petitions because they are not *purely* civil, but rather are unique, hybrid actions." Opening Br. 25, *Abioye v. Warden, Moshannon Valley Processing Ctr.*, No. 24-3198 (3d Cir. filed Mar. 10, 2025) (emphasis added); *see also* Br. for Respondents 7 (similar). This assertion is doubly wrong.

1. Most fundamentally, reading "any civil action" to encompass only "purely" civil actions cannot be squared with EAJA's language.

"[T]he text of [EAJA] stops th[is] argument in its tracks because [it] applies to '*any* [civil action],'" not just a particular "*kind* of" civil action, *Patel*, 596 U.S. at 341—*i.e.*, a "pure" civil action (whatever that means). Inserting the word "purely" into the text "more closely resembles 'inventing a statute rather than interpreting one.'" *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252 (2010) (brackets and citation omitted); *see also Gonzales*, 520 U.S. at 5 (statutory "phrase 'any other term of imprisonment' means what it says" and is not "limited to some subset of prison sentences" (quotation marks and citation omitted)); *Brogan*, 522 U.S. at 408 (statutory phrase "any false statement" "admits of no exception," and "[c]ourts may not create their own limitations on legislation"). Congress's decision not to add such a qualification to the statute fatally "undercuts the Government's efforts to read it in." *Patel*, 596 U.S. at 342.

This Court has recently dealt with a similar attempt to impose an atextual purity test on a sweeping abrogation of sovereign immunity. In *Lac du Flambeau*, the Court considered 11 U.S.C. § 106(a), a bankruptcy provision that abrogates sovereign immunity for "governmental unit[s]," which under the Code

> means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or *other foreign or domestic government*.

599 U.S. at 387 (emphasis added) (quoting 11 U.S.C. § 101(27)). The question was whether this language unambiguously encompassed federally recognized tribes. The answer was yes: "[T]he Bankruptcy Code unequivocally abrogates the sovereign immunity of *any and every* government that possesses the power to assert such immunity," and "[f]ederally recognized tribes undeniably fit that description." *Lac du Flambeau*, 599 U.S. at 388 (emphasis added).

To resist that straightforward conclusion, the petitioners argued the definition's application to tribes was ambiguous because, in their view, tribes occupied "a hybrid position between foreign and domestic" governments. *Lac du Flambeau*, 599 U.S. at 395-396. The Court nevertheless concluded that tribes fell within the scope of the statute given that "Congress categorically abrogated the sovereign immunity of *any* governmental unit," *id.* at 390, and "[n]one of the carefully calibrated exceptions" in the Code "turn on whether a government is *purely* foreign or domestic," *id.* at 397 (emphasis added). The Court thus discerned no textual basis for "draw[ing] … a line in the sand" between "pure[]" and "hybrid" entities. *Id.* at 396-397.

The habeas-as-hybrid theory suffers from the same infirmity. Congress chose to waive immunity for "any civil action (other than cases sounding in tort)." § 2412(d)(1)(A). That language "exudes comprehensiveness," subject to a "carefully calibrated exception[]." *Lac du Flambeau*, 599 U.S. at 388, 397. And there already are additional carveouts built into the statute—fees may be denied on a case-by-case basis when a "court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." § 2412(d)(1)(A); *see* pp. 5-6, *supra*. There is no basis to engraft a new exception for "impure" or "hybrid" or "unique" civil actions onto this carefully reticulated scheme. Because EAJA does not "draw such a line in the sand," the Fifth Circuit had no license to do so. *Lac du Flambeau*, 599 U.S. at 397.

2. The habeas-as-hybrid argument also cannot be squared with the accrued meaning of the term "civil

action." For centuries, every relevant Anglo-American authority has provided the same simple definition for civil actions: "cases not criminal." *Goodwin*, 11 U.S. (7 Cranch) at 111; pp. 16-18, *supra*. Under this traditional understanding, any action not criminal is civil. So vague equivocations about the "hybrid" nature of habeas go nowhere; habeas is either civil or it is criminal. And no one—not the government and not any court below—has ever suggested that habeas is a criminal action.

The hybrid theory is yet weaker here, where *immigration* habeas actions are at issue. As explained, this Court has long recognized that immigration detention *itself* is civil, as are the removal proceedings it facilitates. *See* pp. 27-28, *supra*. So even accepting the false premise that habeas actions, which have always been understood as categorically civil, could somehow become ambiguously civil when challenging *criminal* detention, there is no comparable problem in the context of challenges to *civil* detention, like immigration detention. If an immigration habeas action is a hybrid, one wonders (as the Third Circuit did), "[a] hybrid of what and what?" *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 426 (3d Cir. 2026). "A hybrid of a civil action and a civil action is a civil action." *Id.*

C. The Fourth and Fifth Circuits' reflexive invocation of the sovereign-immunity canon is doctrinally unsound and distorts the statute Congress wrote.

The most fundamental flaw of the Fourth and Fifth Circuits' approach is that they "wave the ambiguity flag" without seriously engaging the text. *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019). That interpretive surrender at the first flicker of doubt is unfaithful to this Court's cases and does violence to EAJA's language and structure.

1. a. "[A]s the Government [has] acknowledge[d]" to this Court before, the sovereign-immunity canon "come[s] into play only '[t]o the extent that the [statute at issue] is ambiguous.'" *Sebelius v. Cloer*, 569 U.S. 369, 381 (2013) (second-to-last alteration in original) (citation omitted). And because "th[is] 'rule[] of thumb' give[s] way when the words of a statute are unambiguous," the antecedent question is always whether Congress has spoken plainly in the text. *Id.* (citation omitted).

Before resorting to the canon, then, a court must first grapple with "the statutory text in light of traditional interpretive tools." *FAA v. Cooper*, 566 U.S. 284, 291 (2012). That means, among other things: starting with the "language of the statute itself," *Ardestani v. INS*, 502 U.S. 129, 135 (1991) (alteration in original) (citation omitted); *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 217 (2012); considering dictionary definitions, *Patchak*, 567 U.S. at 217-218; *Ardestani*, 502 U.S. at 135; considering whether a statute incorporates a term of art, *Cooper*, 566 U.S. at 292; and employing the basic textualist principle that a term must be read in its full statutory context and not in isolation, *U.S. Dep't of Energy v. Ohio*, 503 U.S. 607, 622 (1992). This Court has consistently applied all these interpretive methods *before* resorting to the sovereign-immunity canon.

The Fourth and Fifth Circuits did none of this. Instead, they rushed to deem EAJA ambiguous, from a superficial misreading of this Court's cases, and from seizing on stray language in lower-court opinions suggesting that habeas petitions are not "purely" civil actions. That is not how statutory interpretation is supposed to work.

b. This Court strictly polices such failures to exhaust the tools of construction before deeming the text ambiguous—with EAJA as with any other statute. In *Richlin Security Service Co. v. Chertoff*, this Court considered whether EAJA "allows a prevailing party in a case brought by or against the Government to recover fees for paralegal services at the market rate for such services or only at their cost to the party's attorney." 553 U.S. 571, 573 (2008). The Federal Circuit held that fees were limited to the latter—not primarily from the text, but "instead" from "EAJA's legislative history" and "considerations of public policy." *Id.* at 575.

This Court reversed. A "straightforward reading of the statute l[ed] to the conclusion that [a prevailing party is] entitled to recover fees for the paralegal services it purchased at the market rate for such services." *Richlin*, 553 U.S. at 577. And "[t]o the extent that some ambiguity subsists in the statutory text," the Court "need[ed] not look far to resolve it," because precedent had construed materially similar statutory grants of "attorney's fee[s]" to include paralegal fees at market rates. *Id.* at 580 (citation omitted).

"Confronted with the flaws in its interpretation of the statute, the Government" argued that "any right to recover paralegal fees under EAJA must be read narrowly in light of the statutory canon requiring strict construction of waivers of sovereign immunity." *Richlin*, 553 U.S. at 589. This Court "disagree[d]," explaining: "The sovereign immunity canon is just that—a canon of construction. It is a tool for interpreting the law, and we have never held that it displaces the other traditional tools of statutory construction." *Id.* And because "traditional tools of statutory construction and considerations of *stare decisis* compel[led] the conclusion that paralegal fees are recoverable" under the statute at market rates, "[t]here [wa]s no need for [the Court] to resort to the sovereign immunity canon because there [wa]s no ambiguity left for [the Court] to construe." *Id.* at 590.

That is the situation here. In this case, too, "traditional tools of statutory construction" and "*stare decisis* compel the conclusion," *Richlin*, 553 U.S. at 590, that an immigration habeas action falls within EAJA's sweeping reference to "any civil action." As a result, the canon's work—and this Court's—is at an end.

2. Precipitous application of the sovereign-immunity canon also turns the canon into precisely what it is not: a magic-words requirement.

Recall the reasoning of the government and the Fourth and Fifth Circuits. Even on their view, habeas is at least "technically 'civil.'" Br. for Respondents 6 (citation omitted). But because habeas has tailor-made procedures and sometimes is called "unique," they have concluded that even EAJA's catchall reference to "any civil action" is not enough to unambiguously cover habeas actions. Consider what this reasoning implies: If "any civil action" is not enough, then what *could* Congress have done to make clear habeas actions are included in the category of civil actions? The only possible answer is to name "actions seeking a writ of habeas corpus" in the statute.

That cannot be correct. "It is true that Congress could have of course addressed the question of" EAJA's coverage of immigration habeas cases "in different and arguably even more obvious terms." *Exxon Mobil*, 146 S. Ct. at 1924 (brackets, citation, and quotation marks omitted). "But this Court's precedents repeatedly emphasize that Congress does not need to use 'magic words' to abrogate sovereign immunity." *Id.* (collecting authority). "Congress must simply make a waiver of sovereign immunity 'clearly discernable' from the 'sum total' of its work." *Id.* (quoting *Kirtz*, 601 U.S. at 55). EAJA "did that here," *id.*, by using categorical language: "any civil action." The proper course was to follow the plain meaning of this "broadly worded catchall phrase," rather than unnaturally insist that Congress "reference [habeas actions] specifically." *Lac du Flambeau*, 599 U.S. at 393.

3. Stepping back, a trigger-happy way with the sovereign-immunity canon undermines rather than advances the canon's purpose.

The canon is rooted in a separation-of-powers concern, which counsels that courts should "not take it upon [them]selves to extend the waiver beyond that which Congress intended " *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 7 (1993) (quoting *Smith v. United States*, 507 U.S. 197, 206 (1993)). But if that much is self-evidently correct, so is the corollary: "Neither, however, should [courts] assume the authority to narrow the waiver that Congress intended.'" *Id.* (capitalization altered) (quoting *Smith*, 507 U.S. at 206). Under either approach, courts arrogate to themselves power the Constitution gives to Congress.

Taking a crabbed view of an indisputably broad waiver like EAJA's also has little to recommend it in the way of logic:

> It is one thing to regard government liability as exceptional enough to require clarity of creation as a matter of presumed legislative intent. It is quite something else to presume that a legislature that has clearly made the determination that government liability is in the interests of justice wants to accompany that determination with nit-picking technicalities that would not accompany other causes of action.

Scalia & Garner, *supra*, at 285. So basic common sense supports taking Congress at its word—and fairness, too: "The exemption of the sovereign from suit involves hardship enough where consent has been withheld. We are not to add to its rigor by refinement of construction where consent has been announced." *United States v. Aetna Cas. & Sur. Co.*, 338 U.S. 366, 383 (1949) (quoting *Anderson v. Hayes Constr. Co.*, 153 N.E. 28, 29-30 (N.Y. 1926) (Cardozo, J.)); *see also Williams*, 514 U.S. at 541 (Scalia, J., concurring) (same).

4. Faithfully "applying" EAJA's text "as written" also has the benefit of being "*consistent* with the [statute's] goal[s]." *Kirtz*, 601 U.S. at 60.

As this Court has recognized, those goals are perfectly clear: "to counterbalance the financial disincentives to vindicating rights against the Government," the world's most powerful litigant, "through litigation." *Sullivan*, 496 U.S. at 630. Those interests are at their apex in immigration habeas cases. Indeed, it would be passing strange to read a waiver for fees in "any civil action" to encompass a benefits dispute, say, but not the fundamental "instrument by which due process could be insisted upon," where personal liberty itself is a stake. *Brown v. Davenport*, 596 U.S. 118, 128 (2022) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 555 (2004) (Scalia, J., dissenting)). Honoring the text Congress wrote avoids such anomalies.

* * *

The sovereign-immunity canon is a means of last resort, to be used only when the ordinary tools of construction come up short. Here they do not. "Congress's judgment commands [this Court's] respect and the law it has adopted speaks clearly," *Kirtz*, 601 U.S. at 64: Aside from tort cases, a prevailing party in "any civil action" may seek his fees, § 2412(d)(1)(A). That language plainly includes immigration habeas actions. "Because" they failed to "faithfully follow[] this legislative direction" and resorted instead to an extratextual, judge-made doctrine, the Fourth and Fifth Circuits went astray. *Kirtz*, 601 U.S. at 64.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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