

No. 25-1223

IN THE
Supreme Court of the United States

KEVIN ISAAC MONTTOYA PALACIOS,
Petitioner,

v.

VERNON LIGGINS, et al.,
Respondents.

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

**BRIEF OF LEGAL SERVICES PROVIDERS
AS AMICI CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE

Amici are nonprofit and nongovernmental organizations whose missions include providing legal services to individuals in civil immigration detention and advocating for a more just immigration system.¹ Some amici provide direct legal services on a nonprofit basis to noncitizens navigating the legal system, including habeas proceedings in federal court, or devote substantial resources to advising *pro se* litigants in such proceedings. Other amici are nonprofit membership organizations whose members include practitioners offering direct legal services to noncitizens on a for-profit basis, including habeas proceedings in federal court.

Drawing from and informed by their own practical litigation experience and that of their members, the amici organizations share an interest in ensuring that individuals in civil immigration detention have appropriate access to legal counsel and a fair opportunity to challenge the lawfulness of their confinement.

A list of amici follows, in alphabetical order:

- American Gateways
- American Immigration Lawyers Association
- Americans for Immigrant Justice
- Amica Center for Immigrant Rights
- Legal Aid Justice Center
- National Immigrant Justice Center

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Amici agree with petitioner that the plain text of the Equal Access to Justice Act (EAJA) resolves this case. Amici file this separate brief to shed light on the practical realities of habeas litigation for noncitizens in civil detention, and the real-world consequences of the Court's decision in this matter. To the extent the Court takes "a wider look" at EAJA in resolving this case, *Niz-Chavez v. Garland*, 593 U.S. 155, 165 (2021), this brief aims to establish that petitioner's interpretation of the statute is the most faithful to EAJA's goals and express purpose, and the most conducive to a just and well-functioning system in which unlawfully detained noncitizens have meaningful and appropriate judicial recourse.

1. In the last few decades—and the past few years, in particular—the federal government has increasingly detained noncitizens during removal proceedings, often in dangerous and dehumanizing conditions. In some instances, these detentions are unlawful. As a result, the rise in detention rates has been accompanied by a rise in the need for habeas relief from unlawful detention. Aside from habeas petitions, detained individuals have little legal recourse and few paths to challenge whether their detention is lawful. And because immigration processes are notoriously slow, many noncitizens remain civilly detained for months or even years. These civil detentions, when unjustified, present "serious constitutional problem[s]," as the right to be free from unlawful detention "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

2. Individuals in immigration detention, unlike criminal defendants, often lack access to counsel. When unrepresented, even if their detention is unlawful, they

face an uphill battle to secure their liberty and obtain release. Even for the small number of nonprofit organizations and private practitioners that work with detained noncitizens, the lack of dedicated funding for habeas work involving immigration detention means that attorneys often have little or no capacity to litigate habeas cases. In turn, without legal counsel, even individuals whose detention is unlawful face formidable obstacles to securing their liberty via habeas.

3. By helping to facilitate access to counsel for detained noncitizens, awards of EAJA fees in successful habeas actions involving immigration detention help to close this representation gap, consistent with EAJA's purpose of removing financial barriers for individuals challenging unjustified government actions and thereby limiting arbitrary, unlawful, and abusive government behavior. These fees, even in the aggregate, are a minor line item for the Department of Homeland Security, an agency to which Congress annually allocates tens or even hundreds of billions of dollars. But the fees are enormously significant, at the individual level, for detainees hoping to incentivize practitioners to assist them with a habeas petition. EAJA fees for successful habeas challenges to immigration detention thus fulfill EAJA's "purpose" to "diminish the deterrent effect" of litigation expenses for individuals challenging unlawful or unreasonable government actions. Pub. L. No. 96-481, § 202(c), 94 Stat. 2321, 2325 (1980). Noncitizens in immigration detention are exactly the kind of under-resourced litigants whose challenges to government action EAJA was expressly meant to facilitate.

The Court should reverse the Fourth Circuit's judgment.

ARGUMENT

As petitioner argues, EAJA’s reference to “any civil action,” 28 U.S.C. § 2412(d)(1)(A), encompasses a habeas action challenging immigration detention: a “doubly civil” proceeding, as a *civil* action seeking review of *civil* detention. Pet. Br. 2. As petitioner explains, the Fourth Circuit went astray by looking beyond this unambiguous statutory text and relying instead on an overbroad and inappropriate application of the sovereign-immunity canon. *See* Pet. Br. 2-3, 44-50. The Court need go no further than rejecting that atextual reading in favor of petitioner’s straightforward plain-text interpretation of EAJA’s “ordinary meaning.” *Niz-Chavez*, 593 U.S. at 171; *see also, e.g., Rudisill v. McDonough*, 601 U.S. 294, 314 (2024) (“[T]he statute is clear, so we resolve this case based on statutory text alone.”).

Amici write separately to demonstrate that petitioner’s plain-meaning interpretation is further confirmed by a “wider look” at EAJA’s statutory structure and history. *Niz-Chavez*, 593 U.S. at 165. EAJA expressly states the interests EAJA fees are meant to serve: “diminish[ing] the deterrent effect” of litigation expenses for individuals challenging unlawful or unreasonable government actions. Pub. L. No. 96-481, § 202(c), 94 Stat. 2321, 2325 (1980). Noncitizens in immigration detention fall comfortably into the category of under-resourced litigants whose challenges to unlawful government action EAJA was expressly meant to facilitate. Amici present the practical considerations that serve as “contextual clue[s],” *Niz-Chavez*, 593 U.S. at 163, confirming that EAJA’s fee-shifting provision is best interpreted as permitting fee awards for successful habeas petitions seeking relief from unjustified immigration detention.

I. THERE IS A HIGH AND RISING NEED FOR HABEAS REVIEW OF CIVIL IMMIGRATION DETENTION

The factual context for this case is that a growing number of noncitizens face lengthy civil detention in dangerous and dehumanizing conditions of confinement. And in at least some instances, such detention is unlawful. Because the deprivation of liberty in immigration detention is so severe, it is vital that detained individuals have access to the courts—in practice, not merely in theory—so that they may hold the government to account if their rights are being violated.

Immigration detention has grown dramatically in the past several decades, a time period spanning multiple presidential administrations of both parties. Between 1994 and 2024, the average daily number of individuals in federal immigration detention *quintupled*.² In 2024 alone, U.S. Immigration and Customs Enforcement (“ICE”) detained over 275,000 people over the course of the year.³ In 2025, the number of people held in ICE detention on any given day increased by over 75 percent, and the number of facilities used by ICE for immigration detention increased by over 90 percent.⁴ And between January 2025 and May 2026, approximately 400,000

² Compare Kerwin & Lin, *Immigration Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?*, 6 Migration Pol’y Inst. (Sept. 2009) (6,785 people detained daily in 1994), <https://perma.cc/7D7M-KZU4>, with ICE, *ICE Annual Report Fiscal Year 2024*, at 25 (2024) (“*ICE 2024 Annual Report*”) (37,721 people detained daily in 2024), <https://perma.cc/8Y67-5SQP>.

³ See *ICE 2024 Annual Report*, *supra* note 2, at 23.

⁴ See Reichlin-Melnick, *New Report Details ICE’s Expanding and Increasingly Unaccountable Detention System*, Am. Immigr. Council (Jan. 23, 2026), <https://perma.cc/SA9U-7AB7>.

individuals were arrested in the United States and booked into ICE detention.⁵

This “surge in immigration arrests” and detentions has arisen, in part, from a growing focus on individuals who are “accused of violating civil immigration laws” but have “not been charged with or convicted of a crime”; in July 2026, for example, fewer than 4 percent of noncitizens arrested by ICE had a past violent criminal conviction, a far lower proportion than in prior years.⁶ Further increases in detention rates are likely in light of the \$45 billion that Congress allocated to ICE detention in 2025, which equips ICE to operate more than 135,000 detention beds in the coming years.⁷

Because immigration detention is not considered to be criminal detention, the protections afforded by the Constitution to criminal proceedings—including, for example, the right to an attorney and the prohibitions on *ex post facto* laws and cruel and unusual punishment—do not apply. See Torrey, *Rethinking Immigration’s Mandatory Detention Regime: Politics, Profit, and the Meaning of “Custody”*, 48 U. Mich. J.L. Reform 879, 880-

⁵ See Watson, *The Administration Has Detained 400,000 Immigrants: What Do We Know About Their Children?*, Brookings (May 18, 2026), <https://perma.cc/88DD-ZAJL>.

⁶ Sun & McCann, *ICE Arrests Soar as People With No Criminal Record Are Increasingly Targeted*, N.Y. Times (Aug. 27, 2026) (“46,436 out of 65,765—or 70.6% held in ICE detention have no criminal conviction according to data current as of July 11, 2026.”), <https://www.nytimes.com/interactive/2026/08/27/us/ice-immigrant-arrests-trump-deportation-dhs.html>; see also *Immigration Detention Quick Facts*, Transactional Recs. Access Clearinghouse Immigr., <https://perma.cc/62N9-LNHL>.

⁷ See Reichlin-Melnick, *supra* note 4 (discussing relevant provisions of the “One Big Beautiful Bill Act”).

881 (2015). And yet immigration detention restricts personal freedoms in ways similar to incarceration as part of a criminal sentence. Indeed, many detained noncitizens are housed in the very same facilities and units as those serving prison time for a criminal conviction. *See id.* at 881. And detained noncitizens—regardless of whether they have a criminal record—frequently wear jumpsuits, are placed in shackles, have limited freedom of movement, and face discipline for disobeying orders.⁸

Notably, noncitizens detained at facilities devoted exclusively to civil immigration detention—many of which are former jails and prisons that were shut down due to abusive conditions⁹—may face *even more*

⁸ *See, e.g.*, Robert F. Kennedy Hum. Rts. et al., *Inside the Black Hole: Systemic Human Rights Abuses Against Immigrants Detained & Disappeared in Louisiana* 16 (Aug. 2024) (“*Inside the Black Hole*”), <https://perma.cc/2PQ8-MV29>; Temple Univ. Beasley Sch. L., Sheller Ctr. for Soc. Just., *In the Shadow of the Valley: The Unnecessary Confinement and Dehumanizing Conditions of People in Immigration Detention at Moshannon Valley Processing Center* 1 (2024), <https://perma.cc/YXB4-ARPS>. Earlier this month, the Office of Inspector General of the U.S. Department of Homeland Security reported that some noncitizens had been caged in small metal enclosures with only about 18 square feet of floor space. *See* Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-26-22, Unannounced Inspection of ICE’s Florida Soft-Sided Facility (“Alligator Alcatraz”) in Ochopee, Florida* 11 (Sept. 11, 2026), <https://perma.cc/X9FA-YCPT>.

⁹ In Louisiana, which is second only to Texas in the number of detained noncitizens it houses, abusive conditions in former jails and prisons returned when the facilities were reopened as civil immigration detention centers. *See Inside the Black Hole*, *supra* note 8, at 11-12 (beginning in 2017, the federal government began offering “lucrative contracts to Louisiana localities to convert their empty criminal facilities into immigration jails”); *id.* at 17-18 (describing the continuation of abusive conditions that “led to [the] closures” of Louisiana “jails repurposed to incarcerate immigrants,” including

inhumane conditions, including unsanitary conditions, prolonged solitary confinement, and inadequate medical care.¹⁰ And for dozens of detainees, their detention has

beating, sexual abuse, inadequate medical care, tear-gassing, and pepper-spraying).

¹⁰ See, e.g., Hum. Rts. Watch & ACLU, “*You’re Only Getting Out Deported or Dead*”: *Abusive US Immigration Detention at Fort Bliss* 1-2 (July 2026) (“In interview after interview, detained people told Human Rights Watch that they were beaten by guards, denied necessary medical care, and prevented from contacting family members or lawyers. ... Many detainees told us facility guards denied them outdoor recreation for weeks at a time, in extreme cases leaving them without sunlight or any outdoor recreation for over a month. Detained people described overcrowded housing areas, bathrooms covered in feces and urine, and living quarters flooded with dirty water and dust. They told us they developed infections and other health complications because the facility failed to clean living spaces, did not have adequate ventilation, and did not provide basic hygiene supplies, including soap and hand sanitizer.”), <https://perma.cc/G8DX-V73L>; Amnesty Int’l, *USA: Further Information: “Alligator Alcatraz” Finally Shut Down* (June 29, 2026), (reporting on “nearly a year of horrors” at the Everglades Detention Facility in Florida, sometimes known as “Alligator Alcatraz,” where detainees were held in “inhumane and unsanitary conditions including overflowing toilets with fecal matter seeping into where people are sleeping, limited access to showers, exposure to insects without protective measures, lights on 24 hours a day, poor quality food and water, and lack of privacy—including cameras above the toilets”), <https://www.amnesty.org/en/documents/amr51/1243/2026/en>; Physicians for Hum. Rts., “*Endless Nightmare*”: *Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention* 5 (Feb. 2024) (“ICE oversaw more than 14,000 placements in solitary confinement between 2018 and 2023. ... The average duration of solitary confinement is approximately one month, and some immigrants spend over two years in solitary confinement.”), <https://perma.cc/2H2K-QCN4>; Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-22-75, Violations of ICE Detention Standards at Torrance County Detention Facility* 4 (Sept. 28, 2022) (inspection of ICE detention facility in New Mexico revealed “egregious conditions” and numerous “violations of ICE detention

ended in death. ICE has reported over 80 deaths of detainees in its custody from 2021 to the present, including over 50 deaths since the start of 2025.¹¹

The effects of these conditions are exacerbated by the fact that civil immigration detention can last for months or even years. Civil immigration confinement “is not limited, but potentially permanent.” *Zadvydas*, 533 U.S. at 691; *see also Black v. Decker*, 103 F.4th 133, 140 (2d Cir. 2024) (stating that one habeas petitioner-appellant, a lawful permanent resident, spent 21 months in immigration detention without a bond hearing), *cert. granted sub nom. Genalo v. Black*, 2026 WL 1718025 (U.S. June 15, 2026), *and cert. dismissed*, 2026 WL 2752021 (U.S. Sept. 11, 2026); *Jennings v. Rodriguez*, 583 U.S. 281, 343 (2018) (Breyer, J., dissenting) (“[T]housands of people here are held [in immigration detention] for considerably longer than six months.”).

All these recent developments—detention at unprecedented rates, in substandard or even squalid conditions—combine to produce a higher-than-ever need for habeas relief where detention is contrary to statute or the Constitution. Like any governmental deprivation of a person’s liberty, civil immigration detention strikes at

standards that compromised the health, safety, and rights of detainees”), <https://perma.cc/89XY-FXNG>.

¹¹ *See ICE, Detainee Death Reporting*, <https://perma.cc/4T78-AVAK> (last visited Sept. 22, 2026); Hum. Rts. Watch & Physicians for Hum. Rts., *Dying in Detention: Rising Deaths in an Expanding US Immigration Detention System* 1 (June 2026), <https://perma.cc/MA8L-K5WR>. “This number does not include detained people who ICE released immediately prior to their deaths, which ICE has admitted reduces the number of reported deaths, and allows the agency to avoid accountability requirements.” ACLU et al., *Deadly Failures: Preventable Death in U.S. Immigration Detention* 6 (June 2024), <https://perma.cc/BF7Q-SW2A>.

the “heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. And yet detained noncitizens face a heightened risk of unjustified government action, given that their confinement can last for years and may not be subject to full review by even an immigration judge, let alone an Article III judge.¹²

II. DETAINED NONCITIZENS NEED, BUT OFTEN LACK, COUNSEL TO VINDICATE THEIR RIGHT TO RELEASE FROM UNJUSTIFIED DETENTION

A. Access To Legal Representation Is In Short Supply

Being detained sharply limits a noncitizen’s ability to defend against removal from the United States—that is, the ability as a practical matter to marshal evidence sufficient to meet a noncitizen’s high burden of proof in removal proceedings. Indeed, being detained without legal representation renders that task nearly impossible. The government, of course, is represented by counsel at all times in federal-court or immigration-court proceedings. But detained noncitizens, unlike criminal defendants, have no right to government-appointed counsel. *Cf.* 8 U.S.C. § 1362 (permitting counsel to represent a person in removal proceedings “at no expense to the Government”).

As a result, very few detained noncitizens can access counsel in their underlying immigration case, let alone in habeas proceedings challenging their detention. While

¹² While removal orders are subject to review by the federal courts of appeals, decisions denying bond are subject to only “limited review ... by immigration judges, employees of the Executive Office for Immigration Review within the DOJ.” Das, *Immigration Detention: Information Gaps and Institutional Barriers to Reform*, 80 U. Chi. L. Rev. 137, 147 n.48 (2013).

the government does not collect data on detained noncitizens' access to counsel,¹³ data collected by the Transactional Records Access Clearinghouse at Syracuse University shows that fewer than 30 percent of detainees in immigration court proceedings had legal representation during fiscal year 2024.¹⁴ Another study found that, between 2013 and 2024, just 31 percent of detainees had legal representation in removal cases.¹⁵

Obtaining legal representation is particularly cost-prohibitive for detained noncitizens who cannot earn a living wage.¹⁶ “Justice should not depend upon the income level of immigrants,” Katzmann, *The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 Geo. J.L. Ethics 3, 5 (2008), and yet these cost concerns affect all detained noncitizens, regardless of the merits of their underlying immigration cases or whether their ongoing detention is unlawful.

The difficulties of obtaining legal representation are exacerbated for the tens of thousands of noncitizens detained in geographically isolated locations.¹⁷ Some

¹³ See ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress 2* (Feb. 14, 2022), <https://perma.cc/5QBY-QD4A>.

¹⁴ *New Proceedings Filed in Immigration Court*, Transactional Recs. Access Clearinghouse Immigr. (field selections: Fiscal Year NTA Dated: 2024; Custody: Detained; Represented: Not Represented), <https://tracreports.org/phptools/immigration/ntanew> (last visited Sept. 22, 2026).

¹⁵ See Eagly et al., *Access to Counsel in Immigration Court, Revisited*, 111 Iowa L. Rev. 1, 28 (2025).

¹⁶ See Eagly & Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 Univ. Pa. L. Rev. 1, 34-36 (2015).

¹⁷ See ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* 10-11 (2022), <https://perma.cc/CDW2-JWW5>.

detention centers “have only one immigration attorney within a 100-mile radius for every 200 people detained,”¹⁸ while others are located over “100 miles from the nearest urban center,” factors that make attorney visits “prohibitively difficult and expensive.”¹⁹ Nor can technology bridge this gap, as “[d]etainees’ access to phone calls and visits is generally limited, which hampers their ability to contact and meet with prospective lawyers.” *Hernandez Lara v. Barr*, 962 F.3d 45, 55 (1st Cir. 2020).

Furthermore, the availability of counsel varies greatly by location, for reasons that are almost entirely arbitrary and beyond detainees’ control. A study comparing representation rates of detainees in the twenty jurisdictions with the highest number of detained cases between 2007 and 2012 found that “the proportion of immigrants represented fluctuated by as much as twenty-two percentage points.”²⁰ Even detained noncitizens in facilities near their families or communities, or who manage to obtain legal counsel, may be transferred to facilities far away, often with no advance notice.²¹

¹⁸ *Id.* at 11.

¹⁹ *Inside the Black Hole*, *supra* note 8, at 21-22.

²⁰ Eagly & Shafer, 164 Univ. Pa. L. Rev. at 38 (22 percent of detainees in El Paso, Texas had legal representation while only 0.2 percent of detainees in Tucson, Arizona had legal representation); *see also* Katzmann, *Study Group on Immigrant Representation: The First Decade*, 87 Fordham L. Rev. 485, 495 (2018) (reviewing statistics from 2011 that noncitizens transferred “to far-off detention centers” faced significant obstacles obtaining representation and 79 percent of individuals detained outside of New York were not represented).

²¹ *See* Balgamwalla, *ICE Transfers and the Detention Archipelago*, 31 J.L. & Pol’y 1, 17 (2022) (explaining that “[t]ransfers are

B. Access To Counsel Is Crucial To Successful Noncitizen Challenges To Unjustified Detention

Without counsel, detained noncitizens are at a significant disadvantage in navigating a byzantine patchwork of administrative, statutory, and constitutional legal regimes governing challenges to the lawfulness of their detention.

“Immigration law,” this Court has observed, “can be complex, and it is a legal specialty of its own.” *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010). Indeed, the “maze” created by the “notoriously complicated” statutory and regulatory regime is perhaps “second only to the Internal Revenue Code in complexity,” *Lezama-Garcia v. Holder*, 666 F.3d 518, 538 (9th Cir. 2011)—making it particularly “difficult to navigate without the aid of counsel,” *Daley v. Ceja*, 158 F.4th 1152, 1163 (10th Cir. 2025), *petition for cert. filed sub nom. Baltazar v. Daley*, No. 26-146 (U.S. July 30, 2026); *accord United States v. Chaves-Leiva*, 782 F. App’x 142, 146 n.3 (3d Cir. 2019) (“Immigration laws and procedures are complex and can be highly confusing to those acting pro se.”). Yet legal resources for detained noncitizens representing themselves are scarce and often inaccessible to them; even when detention centers have a law library, they typically do not contain materials in languages other than English, and translation and interpretation resources are scarce as well.²² And for detained noncitizens who are

abrupt and often disorienting experiences,” including because detainees need not be notified of a transfer until “immediately before it occurs”).

²² See *Inside the Black Hole*, *supra* note 8, at 34-35 (highlighting language-related denial of access to law libraries in Louisiana detention centers); see also Kathryn O. Greenberg Immigr. Just.

illiterate or disabled, legal materials may be entirely inaccessible without assistance.

The data makes plain the effect of legal representation in immigration proceedings. Not only are noncitizens with representation six times as likely to prevail in their immigration cases,²³ but they are also twice as likely to be granted a custody hearing and four times more likely to obtain a release at such a hearing than those without representation.²⁴ And as in removal proceedings, the data shows the importance of an attorney in habeas proceedings challenging immigration detention. One study found that, between 2010 and 2020, Louisiana detainees *with* legal representation were more than twice as likely to be released from detention after filing a habeas petition.²⁵ Similarly, a three-year survey of immigration detention habeas petitions in

Clinic, *Held Incommunicado: The Failed Promise of Language Access in Immigration Detention* 18 (2024) (describing translation deficiencies leading to unnecessary medical procedures and devastating medical outcomes), <https://perma.cc/Z7D5-CG3Z>.

²³ See Steering Comm., N.Y. Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 Cardozo L. Rev. 357, 364 (2011).

²⁴ See Eagly & Shafer, 164 Univ. Pa. L. Rev. at 70-71 (observing that 44 percent of represented detainees obtained a custody hearing, as compared with 18 percent of those without representation, and that 44 percent of represented detainees were released, as compared with 11 percent of those without representation).

²⁵ See Hlass & Yanik, *No End in Sight: Prolonged and Punitive Immigration Detention in Louisiana*, Tulane Univ. L. Sch. Immigr. Rts. Clinic 5, 29, 31 (May 2021) (noting that 85 percent of these petitions were filed *pro se*, and that just 9 percent of these unrepresented detainees were released from detention—whereas more than 25 percent of detainees with legal representation obtained release), <https://perma.cc/H7YN-WDUH>.

Massachusetts found that represented detainees were six times more likely to receive a favorable ruling on a habeas petition.²⁶

In short, the positive effects of legal counsel on securing release from unlawful detention are clear and obvious. But such counsel is in short supply, and the need for it is higher than ever (and trending upward). As the final section of this brief explains, EAJA’s fee-shifting provision, properly interpreted, helps address the latter problem.

III. AWARDING EAJA FEES FOR SUCCESSFUL HABEAS CHALLENGES TO IMMIGRATION DETENTION FURTHERS EAJA’S EXPRESS PURPOSE

When Congress enacted EAJA in 1980, it found that “certain 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 in civil actions and in administrative proceedings.” Pub. L. No. 96-481, § 202(a), 94 Stat. at 2325. And it declared that “the purpose of” EAJA is “to diminish the deterrent effect” of these expenses. *Id.* § 202(c), 94 Stat. at 2325. This purpose clause “is a permissible indicator” of EAJA’s meaning, *Bittner v. United States*, 598 U.S. 85, 98 n.6 (2023) (quoting Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 217 (2012)), including the meaning of the EAJA fee-shifting provision at issue here. Accordingly, to the extent the Court looks beyond the fee-shifting provision

²⁶ American Immigr. Lawyers Ass’n Amicus Br. 13, *Maldonado-Velasquez v. Moniz*, No. 17-1918 (1st Cir. Nov. 28, 2017) (noting that 76 percent of these petitions were filed *pro se*, and that just 4 percent of these unrepresented detainees received favorable habeas decisions—whereas 27 percent of represented detained noncitizens received favorable decisions).

itself in deciding this case, the Court should account for the fact that awarding EAJA fees to habeas petitioners who successfully challenge their civil immigration detention furthers EAJA's stated purpose.

A ruling in petitioner's favor would fulfill Congress's aim of ensuring that individuals "will not be deterred from seeking review of, or defending against, unjustified governmental action because of the expense involved" in vindicating their rights. *Scarborough v. Principi*, 541 U.S. 401, 407 (2004) (quoting H.R. Rep. No. 99-120, at 4 (1985)). Exceptionally weighty interests are at stake, given the harsh nature and ever-growing scope of immigration detention. Such detention, if unlawful, is a grave harm to the detainee's liberty interests and may constitute "unreasonable governmental action" if the government cannot identify substantial justification for its position. 94 Stat. at 2325. At the same time, noncitizens in immigration detention are among the least well-resourced litigants in our justice system—both because of financial constraints and because of the very limited capacity to litigate habeas petitions for detained noncitizens. Accordingly, these under-resourced litigants are among the most likely to be deterred from meritorious claims against the government "because of the expense involved." *Id.*

EAJA fees offer a much-needed pathway for detainees to access habeas representation from nonprofit legal services providers. Immigration attorneys at nonprofit organizations are regularly overloaded, with a recent survey reporting that 30 percent have more work than they can handle, most of whom also described

themselves as chronically (not temporarily) overloaded.²⁷ And because many nonprofit and pro bono legal services providers lack dedicated funding streams to engage in habeas litigation on behalf of detained noncitizens, the vast majority of them cannot pursue a meaningful amount of such habeas litigation at all. Some of these organizations and pro bono attorneys can pursue habeas litigation on behalf of detained clients without dedicated funding. But the lack of predictable financial resources (in the absence of EAJA fees) impedes these advocates from truly meeting the demands of the moment. Amici's experience is that, in jurisdictions where EAJA fees have heretofore been available (*e.g.*, within the Third and Ninth Circuits), this resource has provided significant impetus for nonprofit legal services providers to litigate habeas cases on behalf of detained clients and to assist a much larger roster of clients subject to unlawful immigration detention.

EAJA fees also pave the way for detainees to access legal representation from private immigration attorneys, by incentivizing these attorneys to take on habeas work in federal court for noncitizen clients. Most private immigration lawyers are solo practitioners or members of small (2-5 attorney) law practices.²⁸ In amici's experience, the possibility of an EAJA recovery, when combined with a client's fee payments, makes habeas practice far more economically viable for many of these private attorneys. In many areas of the country, there are a limited number of nonprofit legal services providers, and some nonprofits have limited experience with

²⁷ See *AILA Practice Pulse 2025: Insights for Busy Immigration Lawyers and Their Firms* 59-60, Am. Immigr. Lawyers Ass'n (on file with counsel for amici curiae).

²⁸ See *id.* at 14.

habeas actions involving immigration detention or lack the capacity to accept more than a handful of such cases per year. (Like nonprofit practitioners, private immigration attorneys are overloaded, with 27 percent reporting in a recent survey that they have more work than they can handle, and most of these respondents describing themselves as chronically overloaded.²⁹) Nationwide availability of EAJA fee awards would shift the incentive structure, enabling private practitioners to take on more of the vital work of representing detained noncitizens in habeas proceedings.

Amici note that the possibility of fees would not incentivize the filing of nonmeritorious habeas petitions, since by definition EAJA fees are available only if the litigant “prevail[s]” in the litigation *and* if the government’s position was not “substantially justified.” 28 U.S.C. § 2412(d)(1)(A); *see* Pet. Br. 4-6. Further, if government counsel encounter detentions that they believe are likely to be found unlawful, this provides some incentive toward settlement.³⁰ And if a habeas petitioner is voluntarily released by the government, they would not have prevailed in the litigation and would not be eligible to seek EAJA fees. *Cf. Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health & Human Resources*, 532 U.S. 598, 602-605 (2001) (defining “prevailing party” as “one who has been awarded some relief by the court”). Without the prospect of EAJA fees, the

²⁹ *See id.* at 21-22.

³⁰ This is especially true when a noncitizen is detained in a facility where the government has contracted for a bed minimum (regardless of the number of individuals actually detained there). When the government is paying a set amount to a facility operator, regardless of the number of beds used, the prospect of saving on attorney’s fees becomes an even more important negotiating point.

government has less incentive to undertake early review of filed cases to ensure that detained noncitizens are being lawfully held; by contrast, prompt resolution of such cases reduces burdens on federal courts.

On the other side of the ledger, the impact of EAJA fees from a federal budgetary perspective is relatively modest, even viewed in the aggregate. For fiscal year 2025, the Department of Homeland Security reported paying a grand total of roughly \$11 million in EAJA fees.³¹ And EAJA awards to noncitizens who successfully challenge their detention are typically on the order of four or five figures.³² These numbers pale in comparison to the annual budget of the Department of Homeland Security (“DHS”), to which Congress allocated over \$191 billion in mandatory budget authority in 2025, including \$74.85 billion for ICE (and \$45 billion for ICE “detention capacity,” specifically).³³

³¹ See Office of the Chairman, *Equal Access to Justice Act Awards: Report to Congress, Fiscal Year 2025* at 4, Admin. Conf. of the U.S. (Mar. 26, 2026), <https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20to%20Congress%20FY2025.pdf>.

³² See, e.g., *Abioye v. Oddo*, 2024 WL 4304738, at *7 (W.D. Pa. Sept. 26, 2024) (awarding \$18,224.58 in EAJA fees to counsel for successful habeas petitioner); *Michelin v. Oddo*, 2024 WL 3937228, at *9 (W.D. Pa. Aug. 26, 2024) (awarding \$15,841.60), *aff’d sub nom. Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418 (3d Cir. 2026). In mid-2026, one news service identified 97 immigration-related habeas proceedings in which the government was ordered to pay EAJA fees, for a total of more than \$1.13 million (*i.e.*, an average of approximately \$11,650). See Uebelacker, *Attorney’s Fees—A Hidden Cost of Trump’s Mass Immigration Detention Agenda*, Courthouse News Serv. (Aug. 6, 2026), <https://perma.cc/KRW5-H3U3>.

³³ Congressional Rsch. Serv., *Department of Homeland Security Appropriations: FY2026 State of Play* 5-6 (June 24, 2026),

EAJA fee awards, in short, are a drop in DHS's budgetary bucket. They are extremely significant, however, in facilitating access to counsel for unlawfully detained noncitizens, many of whom desperately need qualified counsel with the practical ability to devote their time and resources to habeas proceedings challenging unreasonable government action.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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