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

Brief of Habeas, Immigration Law, and Federal Litigation Scholars as *Amici Curiae* in Support of Petitioner

Matt Gregory
Counsel of Record
Gibson, Dunn & Crutcher LLP
1700 M Street, N.W.
Washington, DC 20036
(202) 955-8500
mgregory@gibsondunn.com

Apratim Vidyarthi
Stephanie Chen
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166

Alexander M. Fischer
Gibson, Dunn & Crutcher LLP
811 Main Street Suite 3000
Houston, TX 77002

Counsel for Amici Curiae

Table of Contents

Table of Authorities

Page(s)

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

Interest of *Amici Curiae*

Amici curiae are fifty-five legal scholars who research, write, and teach about habeas corpus, federal litigation, immigration law, and/or civil rights. They have substantial expertise in the history of the habeas writ, immigration proceedings, attorneys' fees, and related matters, and have written extensively on these subjects. *Amici* have a professional and scholarly interest in the proper disposition of those issues and submit this brief to assist the Court in resolving this case based on a complete and accurate understanding of the historical record.[1]

Tania N. Valdez is the Albert J. Ruffo Assistant Professor of Law at the Santa Clara University School of Law. Professor Valdez's research and teaching focus on immigration law, including litigation of immigration-related issues in federal courts. Her scholarship has been published by the Notre Dame Law Review, the Washington University Law Review, and the Boston College Law Review, among others.

Additional signatories are listed in an appendix to this brief.[2]

---

[1] This brief was not authored in any part by counsel for any party, and no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] *Amici* join this brief in their individual capacities. University affiliation is listed for identification purposes only.

Introduction and Summary of Argument

Longstanding practice establishes that habeas corpus proceedings are civil actions. Moreover, the habeas proceeding also serves the distinct purpose of vindicating private and civil rights—namely, the freedom from unlawful detention. Thus, although the writ's contours have changed over time, this Court has "consistently recognized that habeas corpus proceedings are civil in nature." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Against that backdrop, Congress enacted the Equal Access to Justice Act ("EAJA" or "the Act") and provided that a prevailing party in "any civil action" brought against the United States may recover attorneys' fees. 28 U.S.C. § 2412(d)(1)(A).

The question in this case is whether a habeas action brought to challenge immigration detention qualifies as a "civil action" within the meaning of the EAJA. This brief explains why the answer is "yes" in light of the historical (and modern) understanding of habeas proceedings and challenges to immigration detention as civil in nature, in addition to the statutory text, history, and purpose of the EAJA.

Historical practice, both before and after the Founding era, makes clear that habeas proceedings are and have always been civil actions. Beginning in medieval England, habeas corpus was procedural and part of ordinary civil pleas. When habeas was imported from across the Atlantic and then enshrined in the Constitution, habeas remained a civil action; courts had jurisdiction over habeas, which applied to all forms of illegal confinement, for both criminal and non-criminal reasons. Habeas actions are limited, addressing only the legality of restricting a person's liberty—not the underlying question of the person's substantive guilt or innocence in a criminal proceeding. Accordingly, this Court has explicitly noted for nearly 150 years that habeas proceedings are "civil in nature." *Banister v. Davis*, 590 U.S. 504, 507 (2020) (citing *Fisher v. Baker*, 203 U.S. 174, 181 (1906)); *Ex parte Tom Tong*, 108 U.S. 556 (1883); *see also* Randy Hertz & James S. Liebman, 1 Federal Habeas Corpus Practice and Procedure § 2.2 & n.3 (2025) (citing cases). Congress has recognized the same principle.

For good reason, therefore, most federal courts of appeals have recognized that habeas proceedings are civil actions, not "hybrid" actions. The Second, Third, and Tenth Circuits have correctly recognized that, as habeas proceedings challenging immigration detention are civil in nature, they can serve as the basis for recovery under the EAJA. *See Vacchio v. Ashcroft*, 404 F.3d 663, 668 (2d Cir. 2005); *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 432 (3d Cir. 2026), *reh'g & reh'g en banc denied*, 169 F.4th 160 (3d Cir. 2026); *Daley v. Ceja*, 158 F.4th 1152, 1166 (10th Cir. 2025); *see also In re Hill*, 775 F.2d 1037, 1041 (9th Cir. 1985) (similar). Only the Fourth and Fifth Circuits advance the notion of "hybrid" proceedings, which reflects an understanding of habeas that is unsupported by the historical record or the settled understanding of habeas proceedings as civil actions. *See Gomez Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023); *Obando-Segura v. Garland*, 999 F.3d 190, 193 (4th Cir. 2021). That understanding makes even less sense where, as here, the underlying detention is itself civil in nature because it arises out of civil proceedings.

Moreover, the historical context around the EAJA's enactment shows that the EAJA's exception to sovereign immunity for attorneys' fees applies in any civil action. The Act's enactment was part of a broader trend in which Congress lowered the shield of sovereign immunity to permit awards of attorneys' fees to those who prevail in litigation against the government. The Act's plain and broad text—making attorneys' fees available to a plaintiff who prevails in "any civil action" against the federal government—reflects that trend.

The Fourth Circuit's decision should be reversed.

Argument

I. Historical practice makes clear that habeas proceedings are civil actions.

For all of U.S. history, habeas proceedings have been available to detainees to challenge their detention by the government to protect a fundamental right: freedom from unlawful deprivation of liberty. This Court and at least three Circuits have correctly understood habeas proceedings—particularly those challenging non-criminal forms of detention—as civil in nature. *See, e.g.*, *Banister*, 590 U.S. at 507 (habeas proceedings are "civil in nature"). The habeas writ and associated litigation are, and have always been understood as, distinct from the underlying proceeding that gave rise to the habeas suit.

A. The modern habeas writ originated from civil proceedings.

Legal-history scholars agree that in medieval England, habeas corpus "was 'merely procedural' and an interlocutory mandate ordered during civil proceedings" to "have the body." Neil Douglas McFeeley, *The Historical Development of Habeas Corpus*, 30 Sw. L.J. 585, 586 (1976) (quoting 9 W. Holdsworth, *A History of English Law* 111 (3d ed. 1944)). As early as the twelfth century, the writ was part of the "*mesne* process in ordinary civil pleas." Maxwell Cohen, *Habeas Corpus Cum Causa—The Emergence of the Modern Writ*, 18 Canadian Bar Rev. 10, 10 (1940). In these early stages, courts used the writ to compel someone to appear before a tribunal, commonly for those in government custody.

Beginning in the "[m]id-fourteenth century," habeas corpus was issued "upon petition of a defendant who has been imprisoned while awaiting trial in private actions," rather than by the court *sua sponte*. Brian Farrell, *From Westminster to the World: The Right to Habeas Corpus in International Constitutional Law*, 17 Mich. St. J. Int'l L. 551, 553 (2008). Practically speaking, this allowed courts to "inquire into the cause and legitimacy of imprisonment ordered by a lower court," as "centralized courts [sought] to divest older local courts of jurisdiction." *Id.* As the writ of habeas gained popularity, courts sometimes used it to further these judicial power struggles (grabbing jurisdiction from other courts, for, among other reasons, the revenue). *Id.* at 553–54.

After that, the writ evolved further into a more broad-based "vehicle to test the legality of imprisonment." Farrell, *supra* p. 5, at 554. During the sixteenth and seventeenth centuries, "Parliament attempted to strengthen habeas corpus and limit the crown's power to imprison." *Id.* at 555. "The Habeas Corpus Act of 1640 provided that any person imprisoned by authority of the crown could be granted a writ of habeas corpus upon petition to the courts." *Id.* Following the English Civil War, Parliament enacted the Habeas Corpus Act of 1679, which permanently enshrined habeas corpus as an essential tenet of British constitutional law. *Id.* at 556.

Habeas was then imported to colonial America. Even before the American Revolution, the writ was available to British subjects in the colonies. Marc D. Falkoff, *Back to Basics: Habeas Corpus Procedures and Long-Term Executive Detention*, 86 Denv. U. L. Rev. 961, 978 (2009). During the Revolutionary War, the colonists developed a particular appreciation for the writ of habeas corpus when they witnessed the suspension of the writ in England and the resulting long-term detention of Americans there. Amanda L. Tyler, *Habeas Corpus and the American Revolution*, 103 Cal. L. Rev. 635, 647 (2015).

By the time the Framers drafted the Constitution, the importance of the writ was widely accepted and the subject of little debate, and access to the writ was enshrined into Article I. Falkoff, *supra* p. 6, at 981; *see* U.S. Const. art. I, § 9, cl. 2. In the Judiciary Act of 1789, Ch. 20, § 14, 1 Stat. 73, 81–82, the First Congress then ensured that the federal courts had jurisdiction over habeas actions, and the writ has been a fundamental component of our judicial system ever since.

Habeas corpus enables petitioners to enforce a private and *civil* right to freedom from wrongful detention by "challeng[ing] Executive and private detention in civil cases," in addition to detentions arising from criminal cases. *INS v. St. Cyr*, 533 U.S. 289, 301–02 (2001); *see id*. (collecting cases in which the writ "was used to command the discharge of seamen who had a statutory exemption from impressment into the British Navy, to emancipate slaves, and to obtain the freedom of apprentices and asylum inmates") (footnotes omitted); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 121 (2020) (similar); *Wales v. Whitney*, 114 U.S. 564, 571 (1885) (similar).[3] Cases from before the Founding embraced the same intent of enforcing a private and civil right to physical liberty. *See* Eric M. Freedman, Making Habeas Work: A Legal History 12–17 (2018) (describing pre-Founding cases where petitioners sought civil relief challenging detentions in civil, military, and criminal cases). The same is true for state cases in the early days of the United States. *Id*. at 30–39.

As Blackstone noted, writs of habeas corpus operate "in all manner of illegal confinement." 3 William Blackstone, Commentaries *131. And well before the Founding, the writ of habeas corpus was traditionally available to people confined for non-criminal reasons. Paul D. Halliday, *Habeas Corpus from England to*

---

[3] *See also Daley*, 158 F.4th at 1158 ("In sum, English common law defined 'civil actions' as actions that seek redress for an individual's private injury, or vindication of an individual's private right.").

Empire 32–33 (2012) (detailing seventeenth- and eighteenth-century use of writ in cases addressing "prisoners of war," "family custody disputes," "naval impressment," and other "detentions that contained no element of wrong in them"); *see also* Jonathan L. Hafetz, *The Untold Story of Noncriminal Habeas Corpus and the 1996 Immigration Acts*, 107 Yale L.J. 2509, 2522–23 (1998).

The practice of using the writ to challenge noncriminal detentions continued after the United States secured independence. In 1824, for example, when a father brought a habeas corpus petition seeking to release his minor daughter from the custody of the child's grandfather, Justice Story considered the case on the merits—effectively recognizing habeas as a cause of action to challenge forms of custody entirely unrelated to a criminal proceeding. *United States v. Green*, 26 F. Cas. 30, 31 (C.C.D.R.I. 1824) (No. 15,256); *see generally* Donald E. Wilkes, Jr., *From Oglethorpe to the Overthrow of the Confederacy: Habeas Corpus in Georgia, 1733-1865*, 45 Ga. L. Rev. 1015, 1036 n.78 (2011) (collecting authorities on use of habeas in child-custody disputes). And in 1833, Judge Barbour, citing Matthew Bacon's treatise, wrote that "[w]henever a person is restrained of his liberty, by being confined in a common jail, or by a private person, whether it be for a criminal or civil cause," the writ of habeas corpus was available to inquire into the cause of confinement. *Ex parte Randolph*, 20 F. Cas. 242, 253 (C.C.D. Va. 1833) (No. 11,558) (citing 3 Matthew Bacon, *A New Abridgement of the Law* 421 (5th ed. 1798)). As the first Justice Harlan explained, the Constitution guarantees "that no man—whether he is a citizen of this country or not . . . shall be detained in the custody of any authority in this country" unlawfully. John Marshall Harlan, Lecture 14: January 29, 1898, *in* Bryan L. Frye, Josh Blackman & Michael McCloskey, *Justice John Marshall Harlan: Lectures on Constitutional Law, 1897–98*, 81 Geo. Wash. L. Rev. Arguendo 163, 167 (2013). Habeas was intended to protect that guarantee by granting "the power . . . to have that matter investigated" and, as such, to protect the guarantee against arbitrary restrictions on liberty. *Id*.

This history shows that habeas proceedings are protective of a private and civil right and have long extended to many forms of control or detention with no connection to criminal proceedings.

B. This Court has repeatedly affirmed that habeas proceedings are civil actions.

A habeas petition also historically distinguished the justification for restricting a person's liberty from the question of the person's substantive guilt or innocence. Charles Alan Wright, *Habeas Corpus: Its History and Its Future*, 81 Mich. L. Rev. 802, 806 (1983); Freedman, *supra*, at 80–81. As this Court recognized beginning in at least 1883, the "writ of habeas corpus is not a proceeding in the original criminal prosecution, but an independent civil suit." *Riddle v. Dyche*, 262 U.S. 333, 336 (1923); *see also Tom Tong*, 108 U.S. at 559–60 (recognizing a detainee's request for a writ of habeas corpus as "a new suit brought by him to enforce a civil right").

Congress has recognized the same principle: collateral-relief "proceedings have traditionally been regarded as technically civil in nature rather than criminal," regardless of the nature of the underlying action. H.R. Rep. No. 91-1546 (1970), *reprinted in* 1970

U.S.C.C.A.N. 3982, 3987. This split between post-detention procedure and a prosecution explains why habeas petitions are themselves civil actions, regardless of whether the underlying dispute giving rise to the detention was criminal or civil.[4] Congress's explicit provision that habeas petitions "may be amended . . . as provided in the rules of procedure applicable to *civil* actions" further indicates habeas's civil nature. 28 U.S.C. § 2242 (emphasis added); *see also Mayle v. Felix*, 545 U.S. 644, 649 (2005).

Against this backdrop, this Court has repeatedly described habeas proceedings as civil actions, explicitly stating that such proceedings are "civil in nature." *Banister*, 590 U.S. at 507 (citing *Fisher*, 203 U.S. at 181). Nearly 150 years ago in *Tom Tong*—a habeas proceeding challenging a municipal criminal proceeding—this Court explained that "[p]roceedings to enforce civil rights are civil proceedings, and proceedings for the punishment of crimes are criminal proceedings." 108 U.S. at 559. Although "[t]he prosecution against [Tong was] a criminal prosecution," "the writ of *habeas corpus* which he [had] obtained [was] not a proceeding in that prosecution" but instead "a new suit brought by him to enforce a civil right." *Id.*

[4] Other practices confirm this understanding. For example, the government's own self-reported statistics count prisoner habeas petitions as civil actions. Katherine A. Macfarlane, *Shadow Judges: Staff Attorney Adjudication of Prisoner Claims*, 95 Or. L. Rev. 97, 101–02 & n.11 (2016). Habeas actions "are processed as civil cases and assigned a civil docket number," Katherine A. Macfarlane, *Adversarial No More: How* Sua Sponte *Assertion of Affirmative Defenses to Habeas Wreaks Havoc on the Rules of Civil Procedure*, 91 Or. L. Rev. 177, 183 (2012), and allow for civil discovery, Katherine A. Macfarlane, *Prisoner Procedure*, in A Guide to Civil Procedure 6, 59 (Brooke Coleman et al. eds., 2022).

at 559–60. This new suit was "one instituted by himself for his liberty, not by the government to punish him for his crime." *Id.* at 560. "Such a proceeding on his part [was] . . . a civil proceeding, notwithstanding his object [was], by means of it, to get released from custody under a criminal prosecution." *Id.*

The Court likewise recognized that habeas proceedings challenging an underlying criminal detention were civil proceedings for the purpose of removing a case from state to federal court. *Kurtz v. Moffitt*, 115 U.S. 487, 497–98 (1885). A few years later, the Court explained that a writ of prohibition was "a civil remedy, given in a civil action," just like "a writ of *habeas corpus*," which the Court had "held to be a civil, and not a criminal, proceeding, even when instituted to arrest a criminal prosecution." *Farnsworth v. Montana*, 129 U.S. 104, 113 (1889) (citing *Tom Tong*, 108 U.S. 556). 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) (collecting cases).

To be sure, habeas proceedings have some unique features. *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9th Cir. 1991). In certain instances, for example, specific procedural rules may be inapplicable. Even so, "[t]he Federal Rules of *Civil* Procedure generally govern habeas proceedings." *Banister*, 590 U.S. at 511 (emphasis added) (citing Fed. R. Civ. P. 81(a)(4)); *see also Schlanger v. Seamans*, 401 U.S. 487, 490 n.4 (1971); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978) (Federal Rules of Civil Procedure apply, with limitations, to habeas proceedings). Nor is this unique to habeas: other causes of action may have unique procedural features without changing the fact that they are civil in nature. *See, e.g.*, 31 U.S.C. § 3730(b) (setting out distinct rights of intervention and claim control in civil actions under False Claims Act); 28 U.S.C. § 1608 (setting out service requirements in civil actions against foreign states).

This settled understanding has persisted to the modern day—before and after the enactment of the EAJA in 1980. *See, e.g.*, *Banister*, 590 U.S. at 507 (explaining that habeas proceedings are "civil in nature" (citing *Fisher*, 203 U.S. at 181)). In *Smith v. Bennett*, this Court reaffirmed that habeas actions are "civil action[s] brought by a prisoner to obtain his personal liberty, a civil right." 365 U.S. 708, 711 (1961). In *Hilton v. Braunskill*, the Court explained that its "decisions have consistently recognized that habeas corpus proceedings are civil in nature." 481 U.S. 770, 776 (1987) (citing *Browder*, 434 U.S. at 269).

C. Consistent with this Court's precedent, most federal courts of appeals have correctly recognized that habeas actions are civil actions under the EAJA.

Most federal appellate courts that have considered habeas in the context of the EAJA have applied this same settled understanding of habeas proceedings as civil actions. As explained above, the civil status of a habeas action arises from "the right it seeks to vindicate, not the remedy. Habeas actions are civil because they protect the civil right to personal liberty." *Michelin*, 169 F.4th at 426; *Daley*, 158 F.4th at 1159 (habeas is "the remedy which the law gives for the enforcement of the civil right of personal liberty" (quoting *Tom Tong*, 108 U.S. at 559)). The civil status of habeas is so rarely disputed that several circuit courts considering the question presented here—whether attorneys' fees are available under the EAJA in habeas actions relating to immigration detention—simply assumed it. *See, e.g.*, *Bah v. Cangemi*, 548 F.3d 680, 685 (8th Cir. 2008) ("The civil action in which Bah had prevailed was his petition for a writ of habeas corpus[.]"); *Saysana v. Gillen*, 614 F.3d 1, 5–7 (1st Cir. 2010).

The Third Circuit's decision in *Michelin* is instructive. The court looked to the "text and context" of the EAJA, "read against the backdrop of our legal history." 169 F.4th at 432. The "cardinal canon" of statutory interpretation, the court explained, is "the 'presumption that a legislature says in a statute what it means and means in a statute what it says there.'" 169 F.4th at 423–24 (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). And here, the commonly understood "plain meaning" of "civil action" when "Congress enacted [the EAJA] in 1980" clearly included habeas actions. *Id.* at 425. Thus, the phrase "any civil action" in the EAJA includes habeas.[5] *Id.* And common-law history, the court explained, confirms as much: "the writ of habeas corpus has deep roots in th[e] rich soil" of the common law. *Id*. at 426.

---

[5] In *Michelin*, the court cited *Black's Law Dictionary* 222 (5th ed. 1979) (defining civil actions as "[a]ction[s] brought to enforce, redress, or protect private rights" or as "all types of actions other than criminal proceedings"), *Radin Law Dictionary* 55 (2d ed. 1970) (defining a civil action as a "legal proceeding brought to enforce a civil right or obtain redress for its violation"), and *Ballentine's Law Dictionary* 202 (3d ed. 1969) (the phrase "comprehend[s] every conceivable cause of action, whether legal or equitable, except such as are criminal in the usual sense"). 169 F.4th at 425.

The Second Circuit's decision in *Vacchio* is similarly helpful. There, the court looked to the EAJA's "language, its history and its purpose" to "determine whether the limitation to 'civil actions' excludes from the statute's ambit habeas proceedings challenging immigration detentions." *Vacchio*, 404 F.3d at 667–68. That broad definition included habeas actions, particularly when brought to challenge non-criminal detention. *Id.* at 668. The Second Circuit noted that Congress's expansive definition of "civil action" was limited only by a phrase "specifically exempting 'cases sounding in tort.'" *Id.* at 669 (quoting *Hashim v. INS*, 936 F.2d 711, 714 n.3 (2d Cir. 1991)). The Second Circuit looked next to Congress's intent, reasoning that through the EAJA, Congress looked to balance the scales between private litigants and the federal government. *Id.* at 669–71. Allowing attorneys' fees for successful habeas petitions protective of the most fundamental civil right of personal, physical liberty was consistent with Congress's goal. *Id.* at 671. Thus, the Second Circuit held that the EAJA applies to habeas petitions challenging unlawful civil immigration detention because they are civil actions. *Id.* at 672.

II. This Court has repeatedly held that immigration proceedings are civil in nature, which further confirms that habeas proceedings arising out of immigration detention are civil actions, not "hybrid" actions.

The government's position, mirroring the Fourth and Fifth Circuits' positions, that some habeas proceedings are "hybrid" criminal-civil cases is unfounded in the historical record. And even if *any* habeas proceedings are properly described as "hybrids," habeas proceedings arising out of immigration detention would still be civil actions because immigration proceedings are themselves civil cases.

The notion of "hybrid" proceedings, advanced by the Fourth and Fifth Circuits to reject EAJA applications in immigration habeas cases, is unsupported in the historical record. *See Obando-Segura*, 999 F.3d at 193–94; *Barco*, 65 F.4th at 785. But this approach is contrary to the historical record and federal law. Neither court examined how the "essence or function of the habeas application" is the vindication of private and civil rights. *Obando-Segura*, 999 F.3d at 194; *see Barco*, 65 F.4th at 785.

Even if there were a new category of "hybrid" actions that could apply to some habeas proceedings, that category would be inapplicable here because the underlying proceedings are themselves indisputably civil. In *Vacchio*, the Second Circuit explained that it had previously "excepted from [the EAJA] *criminal* habeas petitions—in essence, denying relief to those who bring a collateral civil action (habeas) that has its roots in a criminal action." *Vacchio*, 404 F.3d at 672. Even assuming that reasoning holds up for cases arising from criminal proceedings, it would not extend to "the context of an immigration habeas petition, which is both a civil action in its own right, and which has its roots in a civil action." *Id.* Neither the Fourth or Fifth Circuits analyzed the historical record or case law responsive to the issue of EAJA fees where the underlying case is civil in nature. In fact, the courts that have called certain habeas proceedings "hybrid" have done so where *criminal* detainees use habeas proceedings to challenge the basis of their underlying *criminal* detention. *See, e.g.*, *O'Brien v. Moore*, 395

F.3d 499, 505 (4th Cir. 2005) (Bureau of Prisons inmate sought EAJA fees; court described habeas action as "hybrid"); *United States v. Cole*, 101 F.3d 1076, 1077 (5th Cir. 1996) (inmate challenged sentence under 28 U.S.C. § 2255; court described habeas as "hybrid"); *Santana v. United States*, 98 F.3d 752, 754–55 (3d Cir. 1996) (same). That reasoning is inapplicable here, where Petitioner is not a criminal defendant but rather a *civil* plaintiff challenging his *civil* immigration detention. "In that context, every element is civil." *Michelin*, 169 F.4th at 426.

As this Court has repeatedly recognized, removal proceedings and immigration detention "are civil, not criminal, and we assume that they are nonpunitive in purpose and effect." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (explaining that protections in criminal proceedings do not apply in immigration court because "[a] deportation proceeding is a purely civil action to determine eligibility to remain in this country") (citing 8 U.S.C. §§ 1302, 1306, 1325). Accordingly, habeas challenges to immigration detention in civil proceedings are civil two times over and should not be classified in a new "hybrid" category even if such a category existed for detention arising from criminal proceedings. The Court should hold at minimum that habeas proceedings emanating from underlying civil proceedings (like the immigration proceedings at issue here) are civil actions and therefore can serve as the basis for recovery of attorneys' fees under the EAJA.

III. History also confirms that the EAJA's exception to sovereign immunity for attorneys' fees applies in any civil action.

The EAJA's enactment was part of a broader pattern in which Congress, over the last seventy years, has leaned into "lower[ing] the shield" of sovereign immunity to allow awards of attorneys' fees to those who succeed in litigation against the government. Gregory C. Sisk, *Litigation with the Federal Government* 499 (2d ed. 2023); *see id.* at 500 (by waiving sovereign immunity, the EAJA "puts the Government on equal footing with private defendants for fee-shifting").

Congress took its first steps toward opening up the government to awards of attorneys' fees in 1948, when it amended Title 28 to provide that the United States could be liable for fees and costs when expressly provided for by an Act of Congress. Act of June 25, 1948, ch. 646, 62 Stat. 869, 973. Congress reaffirmed the waiver in 1966 when it amended 28 U.S.C. § 2412(a) to adopt the predecessor statute to the EAJA. In that predecessor statute, Congress used substantially similar language as in the EAJA, applying the waiver to prevailing parties in "any civil action." *In re Grand Jury Subpoena Duces Tecum Dated Jan. 2, 1985 (Simels)*, 775 F.2d 499, 501 (2d Cir. 1985). And after this Court rejected a judicial expansion of fee shifting in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975), Congress responded by clarifying its intent and passing distinct and targeted statutes that provided fee-shifting schemes for civil rights suits, including the Civil Rights Attorney's Fees Awards Act of 1976, Pub. L. No. 94-559, § 2, 90 Stat. 2641 (codified as amended at 42 U.S.C. § 1988(b)).

Congress passed and the President signed the EAJA shortly after *Alyeska* and the Civil Rights Attorney's Fees Awards Act, in response to concerns that "persons 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." *Sullivan v. Hudson*, 490 U.S. 877, 883 (1989) (internal quotation marks omitted). The EAJA seeks to rectify this inequality by providing an award of reasonable attorneys' fees "to the prevailing party in *any* civil action brought by or against the United States" or a federal agency or official, unless the position taken by the United States is "substantially justified" or "special circumstances make an award unjust." 28 U.S.C. § 2412(a)(1), (d)(1)(A) (emphasis added).

The EAJA, therefore, waives the government's sovereign immunity and provides a significant exception to the default "American Rule" pursuant to which each party pays its own costs, win or lose. The EAJA allows the recovery of attorney's fees expansively—"in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action." 28 U.S.C. § 2412(d)(1)(A). Moreover, the EAJA already contains its own limitation—excluding "cases sounding in tort"—so there is no basis to add further limitations not enacted by Congress and the President. *Id.; see also Vacchio*, 404 F.3d at 669 (quoting *Hashim*, 936 F.2d at 714 n.3).

The statute initially slated the EAJA's fee-shifting provision to expire after three years. Equal Access to Justice Act, Pub. L. No. 96-481, §§ 204(c), 94 Stat. 2321, 2329–30 (1980). But, consistent with the larger trend of opening the federal government to the recovery of attorney's fees, Congress and the President reenacted the measure in 1985—this time, without a sunset provision. Act of Aug. 5, 1985, Pub. L. No. 99-80, § 6, 99 Stat. 183, 186 (1985). In doing so, they sought to ensure that private individuals, corporations, and organizations "will not be deterred from seeking review of, or defending against, unjustified governmental action because of the expense involved." H.R. Rep. No. 99-120, at 4 (1985).

In light of this background and the statute's plain and expansive language, there is no basis to give the EAJA a restrictive reading that carves out an atextual exception for habeas proceedings.

Conclusion

This Court should reverse the Fourth Circuit's decision below.

Respectfully submitted,

Apratim Vidyarthi
Stephanie Chen
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166

Alexander M. Fischer
Gibson, Dunn & Crutcher LLP
811 Main Street Suite 3000
Houston, TX 77002

MATT GREGORY
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, DC 20036
(202) 955-8500
mgregory@gibsondunn.com

Counsel for Amicus Curiae

September 23, 2026

APPENDIX

Appendix

Table of Contents

List of *Amici Curiae*[*]

Alina Das, Professor of Law, New York University School of Law

Anna Benvenue, Associate Clinical Professor of Law, Santa Clara University School of Law

Anne Schaufele, Assistant Professor of Law and Co-Director, Immigration and Human Rights Clinic, University of the District of Columbia David A. Clarke School of Law

Aziz Huq, Frank and Bernice J. Greenberg Professor of Law, University of Chicago Law School

Britton Schwartz, Adjunct Professor of Law, Santa Clara University School of Law

Carrie Rosenbaum, Lecturer, University of California, Davis School of Law

Cori Alonso-Yoder, Assistant Professor and Director of the Immigration Clinic, University of Maryland Francis King Carey School of Law

Daniel Caudillo, Director, Immigration Law Clinic, Texas Tech School of Law

Danielle C. Jefferis, Schmid Professor for Excellence in Teaching and Associate Professor of Law, University of Nebraska College of Law

David Thronson, Professor of Law, Michigan State University College of Law

Denise Gilman, Clinical Professor/Co-Director, University of Texas School of Law Immigration Clinic

---

[*] Institutional affiliation listed for identification purposes only.

Elissa Steglich, Clinical Professor, University of Texas School of Law

Elizabeth Jordan, Assistant Professor and Director, Immigration Law and Policy Clinic, University of Denver Sturm College of Law

Elora Mukherjee, Jerome L. Greene Clinical Professor of Law and Director, Immigrants' Rights Clinic, Columbia Law School

Emily Heger, Immigrant Rights Clinic Director, Texas A&M University School of Law

Eric M. Freedman, Siggi B. Wilzig Distinguished Professor of Constitutional Rights Emeritus, Hofstra University Maurice A. Deane School of Law

Erica Schommer, Clinical Professor of Law, St. Mary's University

Estelle McKee, Clinical Professor of Law, Cornell Law School

Faiza Sayed, Associate Professor of Law, Brooklyn Law School

Gabriel Chin, Edward L. Barrett Jr. Distinguished Professor of Law, University of California, Davis School of Law

Helen Hershkoff, Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties, New York University Law School

James S. Liebman, James L. Dohr Professor of Law, Columbia Law School

Jaya Ramji-Nogales, Professor of Law, Temple Law School

Jennifer Koh, Professor of Law and Co-Director, Nootbaar Institute on Law, Religion, and Ethics, Pepperdine Caruso School of Law

Jon Romberg, Associate Professor of Law, Seton Hall Law School

Jonathan Hafetz, Professor of Law, Seton Hall Law School

Jonathan Weinberg, Distinguished Professor, Wayne State University Law School

Katharine Tinto, Clinical Professor of Law, University of California, Irvine School of Law

Katherine Melloy Goettel, Associate Clinical Law Professor, University of Iowa

Lenni Benson, Professor of Law, New York Law School

Leti Volpp, Robert D. and Leslie Kay Raven Professor of Law in Access to Justice, University of California, Berkeley School of Law

Luke Hall, Visiting Associate Clinical Professor, University of Iowa College of Law

Lynn Marcus, Clinical Law Professor; Director, Immigration Law Clinic, University of Arizona James E. Rogers College of Law

M. Isabel Medina, Victor H. Schiro Distinguished Professor of Law, Loyola University New Orleans College of Law

Mackenzie Heinrichs, Associate Professor of Law, University of Utah, S.J. Quinney College of Law

Marie Celentino, Assistant Professor and Immigration Clinic Director, University of Detroit Mercy

Marie Mark, Assistant Professor of Law, City University of New York School of Law

Marc Falkoff, Dean and Professor of Law, Capital University Law School

Maureen Sweeney, Law School Professor, University of Maryland Carey School of Law

Megan Crane, Clinical Professor, Santa Clara University School of Law

Michael Kaufman, Dean and Professor of Law, Santa Clara University School of Law

Michael Wishnie, William O. Douglas Clinical Professor of Law, Yale Law School

Michelle Oberman, Katharine and George Alexander Professor of Law, Santa Clara University School of Law

Nadia Anguiano, Associate Clinical Professor of Law, University of Minnesota Law School

Nicholas Emanuel, Assistant Clinical Professor of Law, Santa Clara University School of Law

Nicole B. Godfrey, Assistant Professor of Law, University of Denver Sturm College of Law

Niels Frenzen, Sidney M. and Audrey M. Irmas Endowed Clinical Professor of Law, USC Gould School of Law

Ragini Shah, Clinical Professor of Law, Suffolk University Law School

Randy A. Hertz, Fiorello LaGuardia Professor of Law, New York University of Law School

Richard Boswell, Professor of Law, University of California College of Law, San Francisco

Sarah Rogerson, Distinguished Professor of Law, Albany Law School

Shoba Sivaprasad Wadhia, Samuel Weiss Faculty Scholar and Clinical Professor of Law, Penn State Dickinson Law

Talia Peleg, Professor of Law, City University of New York School of Law

Tania Valdez, Albert J. Ruffo Assistant Professor of Law, Santa Clara University School of Law

Thiadora Pina, Clinical Professor of Law, Santa Clara University School of Law