No. 25-1223

In the Supreme Court of the United States

KEVIN ISAAC MONTOYA PALACIOS, PETITIONER

v.

ROBERT GUADIAN, ACTING FIELD OFFICE DIRECTOR, BALTIMORE FIELD OFFICE, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.

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

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDING

Petitioner (petitioner-appellant below) is Kevin Isaac Montoya Palacios.

Respondents (respondents-appellees below) are Robert Guadian, in his official capacity as Acting Field Office Director, Baltimore Field Office, United States Immigration and Customs Enforcement; David J. Venturella, in his official capacity as Senior Official Performing the Duties of Director, United States Immigration and Customs Enforcement; Markwayne Mullin, in his official capacity as Secretary of Homeland Security; and Todd Blanche, in his official capacity as United States Attorney General.*

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* Acting Director Guadian, Senior Official Performing the Duties of Director Venturella, Secretary Mullin, and Attorney General Blanche are automatically substituted for their predecessors. See Sup. Ct. R. 35.3.

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OPINIONS BELOW

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

JURISDICTION

The judgment of the court of appeals was entered on March 24, 2026. The petition for a writ of certiorari was filed on April 20, 2026, and granted on June 29, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

Pertinent statutory provisions and rules are reproduced in an appendix to this brief. App., *infra*, 1a-14a.

INTRODUCTION

Absent an unequivocal waiver, sovereign immunity shields the United States from claims for attorney's fees. In the Equal Access to Justice Act (EAJA), 5 U.S.C. 504 and 28 U.S.C. 2412, Congress enacted a partial waiver of that sovereign immunity. EAJA requires the United States, under specified circumstances, to pay the attorney's fees of a prevailing party in a "civil action." 28 U.S.C. 2412(d)(1)(A).

This case concerns the meaning of the term "civil action" in that waiver. Petitioner contends that the term encompasses habeas proceedings challenging immigration detention; the government contends that it does not. The question, however, is not merely which interpretation is better. Because EAJA is a waiver of sovereign immunity, its scope must be "clearly discernable from the statutory text in light of traditional interpretive tools." *FAA* v. *Cooper*, 566 U.S. 284, 291 (2012). "If it is not," the Court "take[s] the interpretation most favorable to the Government." *Ibid.* The question, then, is whether petitioner's interpretation is "not only better, but also clear." *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 208 (2022).

It is neither. The term "civil action" has different meanings in different contexts. In some statutes, the term includes habeas proceedings; in other statutes and rules, it does not include them. The precise meaning of the term thus depends on the context in which it appears. And the relevant context here does not unequivocally establish that "civil action," as used in EAJA, encompasses habeas proceedings. In fact, the relevant context points in the other direction. Petitioner focuses on the uncontroversial propositions that a habeas proceeding is "civil in nature" and is not a criminal prosecution.

He does not, however, acknowledge a long practice—originating in the nineteenth century but manifested in the Federal Rules of Civil Procedure when they were first adopted in 1938 and still today—of distinguishing between "civil actions" and civil "proceedings," and of treating habeas as belonging to the latter category. At a minimum, EAJA does not unequivocally depart from that practice. The sovereign-immunity canon therefore requires adopting the government's interpretation and holding that EAJA does not allow attorney's fees for habeas proceedings challenging immigration detention.

STATEMENT

A. The Equal Access To Justice Act

"Except to the extent it has waived its immunity, the [United States] is immune from claims for attorney's fees." *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 685 (1983). In 1980, Congress passed and President Carter signed EAJA, Pub. L. No. 96-481, Tit. II, 94 Stat. 2325, which "renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity," *Ardestani* v. *INS*, 502 U.S. 129, 137 (1991).

Congress enacted EAJA against the backdrop of a "rapid growth in Government regulations" that had increased "the influence of the bureaucracy" over individuals and businesses, S. Rep. No. 253, 96th Cong., 1st Sess. 5 (1979) (1979 Senate Report), and thereby raised concerns that "unreasonable governmental action[s]" were going unchallenged because of "the expense involved in" challenging them, EAJA § 202(a), 94 Stat. 2325. For any particular individual or small business, the "cost of contesting a Government order" often "exceed[ed] the amount at stake." 1979 Senate Report 5. Many therefore found it "more practical to endure an

injustice than to contest it." *Ibid.* "Small business owners, if confronted with a regulatory dispute with the Government, routinely pa[id] fines and/or sign[ed] consent orders, however unjustified or unreasonable." H.R. Rep. No. 1005, 96th Cong., 2d Sess. Pt. 1, at 7 (1980) (1980 House Report).

Under the so-called American Rule, parties typically pay their own attorney's fees, whether they win or lose. See *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240, 247 (1975). In a deliberate departure from that rule, EAJA requires the United States to pay the attorney's fees and other expenses of a prevailing party in specified circumstances. One provision generally requires the United States to pay the fees and other expenses of a prevailing party "in any civil action (other than cases sounding in tort)" "brought by or against the United States." 28 U.S.C. 2412(d)(1)(A). Another generally requires the United States to pay the fees and other expenses of a prevailing party in "an adversary adjudication" before an agency. 5 U.S.C. 504(a)(1). Under both provisions, a prevailing party is not entitled to a fee award if the government's position was "substantially justified" or if "special circumstances make an award unjust." 28 U.S.C. 2412(d)(1)(A); 5 U.S.C. 504(a)(1). EAJA therefore reflects Congress's judgment that regulated parties should "not have to choose between acquiescing to an unreasonable Government order [and] prevailing [in litigation against the government] to [their] financial detriment." 1979 Senate Report 7.

Congress initially adopted EAJA "for a trial period of three years," with a sunset provision that would take effect on October 1, 1984. *Scarborough* v. *Principi*, 541 U.S. 401, 407 (2004); see EAJA §§ 203(c), 204(c), 94 Stat. 2327, 2329. The trial period would give Congress the

opportunity to review "the cost and impact of the legislation" before deciding whether to make it permanent. 1979 Senate Report 8. As the "three-year experiment" neared its end, Congress determined that the legislation was worth reenacting. H.R. Rep. No. 992, 98th Cong., 2d Sess. 4 (1984) (1984 House Report); see *id.* at 6; S. Rep. No. 586, 98th Cong., 2d Sess. 6-7 (1984) (1984 Senate Report). Although President Reagan withheld his approval of an initial attempt to make EAJA permanent, see *Memorandum of Disapproval of H.R. 5479*, 20 Weekly Comp. of Pres. Doc. 1814 (Nov. 8, 1984), Congress later passed and the President signed a permanent version of EAJA in 1985, see Act of Aug. 5, 1985 (1985 Act), Pub. L. No. 99-80, 99 Stat. 183.

In reenacting EAJA, Congress made various changes pertinent to 28 U.S.C. 2412(d)(1)(A), the provision concerning the payment of attorney's fees in "civil action[s]." Among other things, Congress inserted the words "including proceedings for judicial review of agency action" after the phrase "any civil action (other than cases sounding in tort)." *Ibid.*; see 1985 Act § 2(a)(2), 99 Stat. 184. Congress also added a definitional provision specifying that "'civil action brought by or against the United States' includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978." 1985 Act § 2(c)(2)(B), 99 Stat. 185; see 28 U.S.C. 2412(d)(2)(E). Congress later replaced "the Contract Disputes Act of 1978" with "chapter 71 of title 41." Act of Jan. 4, 2011, Pub. L. No. 111-350, § 5(g)(9)(A), 124 Stat. 3848.

In its current form, Section 2412(d)(1)(A) states as follows:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. 2412(d)(1)(A).

B. Factual And Procedural Background

1. Petitioner is a native and citizen of El Salvador who entered the United States illegally. See Pet. App. 7a. In April 2016, the Department of Homeland Security (DHS) apprehended petitioner at or near Hebronville, Texas, and placed him in removal proceedings. *Ibid.*; see 8 U.S.C. 1182(a)(7)(A)(i)(I) (making inadmissible an immigrant who is not in possession of valid entry documents). The following July, DHS released him from custody under an order of supervision. Pet. App. 7a.

In September 2023, an immigration judge (IJ) ordered petitioner's removal from the United States. D. Ct. Doc. 15-1, at 1-2 (Dec. 30, 2025). The IJ determined, however, that petitioner was entitled to withholding of removal to El Salvador under the regulations implementing the United States' obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85. See D. Ct. Doc. 15-1, at 2.

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

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

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

The district court concluded, however, that it was bound by circuit precedent to deny petitioner's request for attorney's fees. Pet. App. 15a. It explained that the court of appeals in *Obando-Segura* v. *Garland*, 999 F.3d 190 (4th Cir. 2021), had "held that attorneys' fees relating to a habeas petition are not available under the EAJA because such a petition is not a 'civil action' for purposes of the EAJA." Pet. App. 15a (citation omitted).

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

3. On February 16, 2026, petitioner filed an application under EAJA for $8946 in attorney's fees and $25 in other expenses. D. Ct. Doc. 29, at 4. Petitioner explained that although the district court had previously denied his request for a fee award, he was filing the application "in compliance with the requirements of 28 U.S.C. § 2412(d)(1)(B) to preserve the issue for appellate review." *Ibid.* The court denied the application, explaining that "nothing substantively ha[d] changed since [its] last ruling." Pet. App. 2a.

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

SUMMARY OF ARGUMENT

EAJA's waiver of the United States' sovereign immunity in "any civil action (other than cases sounding in tort)," 28 U.S.C. 2412(d)(1)(A), does not unequivocally encompass petitions for writs of habeas corpus challenging immigration detention.

I. The sovereign-immunity canon governs interpretation of EAJA's waiver of the United States' immunity.

That canon, which is grounded in the Constitution's separation of powers, holds that "a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *FAA* v. *Cooper*, 566 U.S. 284, 290 (2012) (citations omitted). This Court's precedents establish that the canon applies in determining not just a waiver's *existence*, but also its "*scope*." *Id.* at 291. They further establish that the canon is a "clear statement" rule, not a mere tiebreaker. *Department of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 48 (2024). For an interpretation to satisfy the rule, it "must be not only better, but also clear." *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 208 (2022).

This Court's decision in *FAA* v. *Cooper* illustrates those principles at work. In that case, the Court applied the sovereign-immunity canon to the question whether the term "'actual damages'" in the Privacy Act of 1974 includes "damages for mental or emotional distress." *Cooper*, 566 U.S. at 287. The Court noted that in some statutes, the term had been construed to include such damages, while in others, it had been construed not to include them. The Court explained that "[b]ecause the term 'actual damages' has this chameleon-like quality," it could not "rely on any all-purpose definition but [had to] consider the particular context in which the term appears." *Id.* at 294. The Court then determined that the context of the Privacy Act did not clearly support interpreting "actual damages" to encompass damages for mental or emotional distress. Because it was "plausible" to read the statute, as the government had, not to authorize such damages, the sovereign-immunity canon required adopting the government's interpretation. *Id.* at 299.

II. In this case, the question is whether the term "civil action" in EAJA encompasses habeas proceedings.

Like the term "actual damages" in *FAA* v. *Cooper*, the term "civil action" has a chameleon-like quality: It has different meanings in different contexts. In some contexts, it includes habeas proceedings; in other contexts, it does not. For example, the Court has construed the term in 28 U.S.C. 1391(e)(1) not to include habeas proceedings. See *Schlanger* v. *Seamans*, 401 U.S. 487, 490 n.4 (1971). Courts have likewise construed "civil action" in other statutes, such as 28 U.S.C. 1915 and 2401(a), not to include habeas. More generally, statutes and rules governing civil procedure have long distinguished "civil actions" from other "suits" or "proceedings" of a civil nature, and have placed habeas in the latter category. The influential Field Code of 1848, for instance, distinguished "civil actions" from "special proceedings" and considered habeas a type of special proceeding. The Federal Rules of Civil Procedure similarly distinguish between "civil actions" and other kinds of "proceedings," including habeas; that is why Rule 1 refers to "civil actions *and proceedings*." Fed. R. Civ. P. 1 (emphasis added).

Because "civil action" has different meanings in different contexts, the Court "cannot rely on any all-purpose definition" in construing the term. *Cooper*, 566 U.S. at 294. Instead, the Court "must consider the particular context in which the term appears." *Ibid.* Here, the relevant context indicates that the term does not include habeas proceedings. When Congress amended EAJA in 1985, Congress specified the inclusion of certain other kinds of proceedings that do not satisfy the Civil Rules' description of a "civil action," but Congress did not specify the inclusion of habeas proceedings. Its decision not to do so suggests that it did not intend to include such proceedings—especially given that, during EAJA's initial three-year trial period, the Second Circuit had held

in a high-profile case that habeas proceedings were not "civil actions" under EAJA. Moreover, Congress enacted EAJA to encourage individuals and businesses to challenge unreasonable governmental actions where they might otherwise lack the incentive to do so. That purpose does not extend to the habeas context, where detainees already have strong incentives to challenge the legality of their detention.

Thus, the context here does not indicate—let alone unequivocally—that "civil action" encompasses habeas proceedings. Because it is at least plausible to read EAJA, as the government does, not to include such proceedings, the sovereign-immunity canon requires adopting that interpretation.

III. Rather than focus on the precise context in which "civil action" appears in this case, petitioner primarily contends (Br. 1) that the term has the same meaning in every context and should be construed to refer to any non-criminal court proceeding. But that attempt to rely on an all-purpose definition cannot be squared with the many statutes and rules in which the term "civil action" does not encompass every non-criminal court proceeding. At most, the sources on which petitioner relies "stand for the unremarkable point" that the term "*can* include" habeas proceedings. *Cooper*, 566 U.S. at 300. But they do not establish "with the requisite clarity" that the term, as used in EAJA, does so. *Ibid.*

Petitioner also argues (Br. 44), as a fallback theory, that even if "civil action" does not include all habeas proceedings, it includes at least the subset of habeas proceedings that challenge immigration detention, because immigration detention is "*civil* detention." But that alternative all-purpose definition suffers from all the flaws of his primary one. In addition, the distinction that it

draws between habeas challenges to criminal detention and habeas challenges to civil detention is an illusory one, which appears nowhere in the statute. Like his primary theory, his backup theory cannot satisfy the sovereign-immunity canon's clear-statement rule.

ARGUMENT

EAJA requires the United States, under specified circumstances, to pay the attorney's fees of a prevailing party in a "civil action." 28 U.S.C. 2412(d)(1)(A). The question in this case is whether EAJA requires the payment of such fees in habeas proceedings that challenge immigration detention. It does not. Because EAJA is a waiver of sovereign immunity, its scope must be unequivocally expressed, but the term "civil action," as used in this statute, does not unequivocally encompass habeas proceedings. Accordingly, the court of appeals correctly affirmed the denial of petitioner's EAJA application.

I. EAJA CANNOT BE READ TO WAIVE THE UNITED STATES' IMMUNITY IN THIS CASE UNLESS THE TERM "CIVIL ACTION" UNEQUIVOCALLY ENCOMPASSES HABEAS PROCEEDINGS

A. Because "EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable," the statute "amounts to a partial waiver of sovereign immunity." *Ardestani* v. *INS*, 502 U.S. 129, 137 (1991). Its interpretation is therefore subject to the sovereign-immunity canon—the canon that "a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *FAA* v. *Cooper*, 566 U.S. 284, 290 (2012) (citations omitted).

The sovereign-immunity canon is grounded in the Constitution's separation of powers. "[T]he power to waive the federal government's immunity is Congress's

prerogative, not [the courts']." *Department of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 48 (2024). Likewise, the power of the purse belongs to Congress, not the Judiciary. See *OPM* v. *Richmond*, 496 U.S. 414, 424-434 (1990). By requiring that a waiver of sovereign immunity be unequivocally expressed, the canon ensures that "monetary exactions from the United States" are made only when Congress has specifically and intentionally authorized them. *United States* v. *Idaho*, 508 U.S. 1, 8 (1993); see *Sossamon* v. *Texas*, 563 U.S. 277, 290 (2011) (explaining, in the parallel context of state sovereign immunity, that "[t]he requirement of a clear statement in the text of [a] statute ensures that Congress has specifically considered * * * sovereign immunity and has intentionally legislated on the matter"). The canon thus ensures that courts never "impute" to Congress a waiver that it has not itself authorized. *Library of Congress* v. *Shaw*, 478 U.S. 310, 320 (1986).

This Court's precedents establish two important principles concerning the canon's application. First, the canon applies in determining not just a waiver's *existence*, but also its "*scope*." *Cooper*, 566 U.S. at 291; see *Ardestani*, 502 U.S. at 137 (applying the sovereign-immunity canon in construing the scope of EAJA's waiver). That makes sense, because "existence" and "scope" boil down to the same thing: whether Congress has made the conscious decision to waive the United States' immunity for a particular claim. The canon's application to matters of scope ensures that "Congress does not, by broad or general language," waive the United States' immunity "inadvertently or without due deliberation." *Sossamon*, 563 U.S. at 291 (quoting *Spector* v. *Norwegian Cruise Line Ltd.*, 545 U.S. 119, 139 (2005) (plurality opinion)).

Second, the canon is a "clear statement" rule, not a mere tiebreaker. *Kirtz*, 601 U.S. at 48. The Court may conclude that a case falls within a waiver's scope only if the statute "unmistakabl[y]" requires that reading. *Cooper*, 566 U.S. at 291. Congress need not "use magic words," but "the scope of Congress' waiver [must] be clearly discernable from the statutory text in light of traditional interpretive tools." *Ibid.* Such a "'clear statement' requirement means that the better interpretation of a statute will not necessarily prevail." *Biden* v. *Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring). As the Court has explained in a similar context, "better is not enough"; for an interpretation to satisfy a clear-statement rule, it "must be not only better, but also clear." *Boechler* v. *Commissioner*, 596 U.S. 199, 206, 208 (2022). As long as "there is a plausible interpretation of the statute that would not authorize" monetary exactions, that interpretation must be adopted. *Cooper*, 566 U.S. at 290-291; see *Biden*, 600 U.S. at 509 (Barrett, J., concurring) ("[T]o achieve an end protected by a strong-form canon, Congress must close all plausible off ramps.").

B. This Court's decision in *FAA* v. *Cooper* illustrates both of those principles at work. That case involved the civil-remedies provision of the Privacy Act of 1974, which makes the United States liable for "actual damages" in suits brought to enforce that Act. 5 U.S.C. 552a(g)(4)(A). The question was whether "'actual damages'" includes "damages for mental or emotional distress." *Cooper*, 566 U.S. at 287.

The Court determined that the sovereign-immunity canon applied to that question. *Cooper*, 566 U.S. at 290-291. The Court recognized that by "expressly authoriz[ing] recovery from the Government for 'actual damages,'" Congress had waived the United States' immunity

for such a recovery. *Id.* at 291. But the Court explained that the sovereign-immunity canon still applied to questions concerning "the *scope* of that waiver." *Ibid.*

The Court then observed that "the precise meaning" of the term "actual damages" "'changes with the specific statute in which it is found.'" *Cooper*, 566 U.S. at 292 (citation omitted); see *id.* at 300 (explaining that the term "takes on different meanings in different contexts"). The Court noted that in some statutes, such as the Fair Housing Act and the Fair Credit Reporting Act, the term had been construed to include such damages. *Id.* at 292-293. But in other statutes, such as the Federal Tort Claims Act and the Securities Exchange Act, the term had been construed "more narrowly to authorize damages for only pecuniary harm." *Id.* at 293. The Court determined that "[b]ecause the term 'actual damages' has this chameleon-like quality," it could not "rely on any all-purpose definition but [had to] consider the particular context in which the term appears." *Id.* at 294.

The Court concluded that the context of the Privacy Act did not clearly support interpreting "actual damages" to encompass damages for mental or emotional distress. See *Cooper*, 566 U.S. at 294-299. The Court recognized that the plaintiff's reading of the statute was not "inconceivable." *Id.* at 299. But the Court explained that "because the Privacy Act waives the Federal Government's sovereign immunity," the question was "whether it [wa]s plausible to read the statute, as the Government [did], to authorize only damages for economic loss." *Ibid.* Because Congress had not spoken "unequivocally," the government's reading was at least plausible, which meant that the sovereign-immunity canon compelled its adoption. *Ibid.*

II. THE TERM "CIVIL ACTION," AS USED IN EAJA, DOES NOT UNEQUIVOCALLY ENCOMPASS HABEAS PROCEEDINGS

FAA v. *Cooper* marks the path for the Court's analysis here. Like "actual damages" in that case, "civil action" has a "chameleon-like quality": The "precise meaning of the term 'changes with the specific statute in which it is found.'" *Cooper*, 566 U.S. at 292, 294 (citation omitted). In some statutes, the term "civil action" includes habeas proceedings; in other statutes and rules, it does not. Petitioner therefore cannot rely on "any all-purpose definition," *id.* at 294, to establish that "civil action," as used in EAJA, includes habeas proceedings. Instead, the meaning of the term depends on "the particular context in which the term appears." *Ibid.* Here, nothing in the context of EAJA indicates—let alone unmistakably—that "civil action" includes habeas proceedings. Because the term in EAJA can be plausibly read as *not* including such proceedings, the sovereign-immunity canon requires the adoption of that reading.

A. Whether The Term "Civil Action" Includes Habeas Proceedings Depends On Context

The term "civil action" appears in hundreds of federal statutes and rules. It does not have the same meaning across the entire *corpus juris*. Rather, like many commonly used legal terms, its precise meaning depends on the particular context in which it appears. Without that context, it is impossible to tell whether the term, as used in a particular statute or rule, includes habeas proceedings. The words "civil action," by themselves, do not answer that question.

1. "Civil action" has different meanings in different contexts

Many commonly used legal terms have different meanings in different contexts. *FAA* v. *Cooper* involved one example: Sometimes "actual damages" includes non-pecuniary harm; sometimes it does not. 566 U.S. at 292-293. Other examples abound. "A 'cause of action' may mean one thing for one purpose and something different for another." *United States* v. *Memphis Cotton Oil Co.*, 288 U.S. 62, 67-68 (1933). Similarly, the word "'claim'" "can carry a variety of meanings." *Keene Corp.* v. *United States*, 508 U.S. 200, 210 (1993). The term "questions of law" may or may not include "mixed question[s] of law and fact." *Guerrero-Lasprilla* v. *Barr*, 589 U.S. 221, 228 (2020); see *Hallowell* v. *United States*, 209 U.S. 101, 107 (1908). And the Court has often observed that "[j]urisdiction" is "a word of many, too many, meanings." *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 90 (1998) (citation omitted).

Though it may be tempting to assume that such terms have a consistent meaning throughout the U.S. Code, the Court has taken a contextual approach to their interpretation. See *Utility Air Regulatory Grp.* v. *EPA*, 573 U.S. 302, 320 (2014) (explaining that "the presumption of consistent usage 'readily yields' to context") (citation omitted); Antonin Scalia & Bryan A. Garner, *Reading Law* 172 (2012) (observing that "the presumption of consistent usage can hardly be said to apply across the whole *corpus juris*").

The Court has likewise taken a contextual approach to interpreting "civil action." In *Stafford* v. *Briggs*, 444 U.S. 527 (1980), the Court considered the meaning of those words in 28 U.S.C. 1391(e). In rejecting the respondents' interpretation, the Court explained that the

words could not be "'taken by themselves, and literally construed,'" but rather had to be viewed "'in connection with'" the context in which they appeared. *Stafford*, 444 U.S. at 535 (citation omitted). The Court noted that it had similarly considered context in another case—*Schlanger* v. *Seamans*, 401 U.S. 487, 490 n.4 (1971)—"to determine which 'civil actions' § 1391(e) governed." *Stafford*, 444 U.S. at 543.

Lower courts have also interpreted "civil action" contextually. While recognizing that "'[c]ivil action' is a term used in many statutes," they have resisted giving it a one-size-fits-all meaning. *Green* v. *Nottingham*, 90 F.3d 415, 417 (10th Cir. 1996). Instead, they have recognized that "its meaning depends on its context within the applicable legislation." *Ibid.* As Judge Friendly put it: "The application of each statute or rule using the words 'civil action' must be decided on the basis of its language, its history and its purpose." *In re Grand Jury Subpoena Duces Tecum Dated January 2, 1985 (Simels)*, 775 F.2d 499, 503 (2d Cir. 1985); see *Rieser* v. *District of Columbia*, 580 F.2d 647, 655 (D.C. Cir. 1978) (en banc) (similar).

2. Context determines whether the term "civil action" includes habeas proceedings

Despite petitioner's view (Br. 1) that "civil action" is a "term of art" with a meaning that was settled "before the Founding," there is no single, across-the-board answer to whether the term "civil action" includes habeas proceedings. Rather, as with other questions concerning the term's meaning, the answer depends on the particular context in which the term appears.

a. In some contexts, the term "civil action" includes habeas proceedings. For example, the Court has construed 28 U.S.C. 1404(a)—which authorizes the transfer of "any civil action" to another district where it might

have been brought—to authorize the transfer of habeas proceedings. See *Boumediene* v. *Bush*, 553 U.S. 723, 796 (2008); *Braden* v. *30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 499 n.15 (1973). The term also encompasses habeas proceedings in 28 U.S.C. 1657(a), which provides that "each 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"—the chapter on habeas corpus.

b. In other statutes, however, the term "civil action" does not include habeas proceedings. For instance, 28 U.S.C. 1391(e) specifies the districts in which "[a] civil action in which a defendant is an officer or employee of the United States" "may * * * be brought." 28 U.S.C. 1391(e)(1). In *Schlanger*, the petitioner argued that the term "civil action," as used in Section 1391(e), included habeas proceedings. Pet. Br. at 17-18, *Schlanger*, *supra* (No. 70-5481). After considering the statute's context, the Court held that "Congress did not intend the phrase 'civil action' to be given th[at] sweeping definition." *Stafford*, 444 U.S. at 543 (discussing *Schlanger*). "Though habeas corpus is technically 'civil,'" the Court explained, "it is not automatically subject to all the rules governing ordinary civil actions." *Schlanger*, 401 U.S. at 490 n.4.

The term "civil action," as used in 28 U.S.C. 1915, likewise does not encompass habeas proceedings. Enacted as part of the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66, Section 1915(b) requires a prisoner who brings a "civil action" in forma pauperis to "pay the full amount of a filing fee." 28 U.S.C. 1915(b)(1). Section 1915(g) prohibits a prisoner from bringing a "civil action" if the prisoner has, "on 3 or more prior occasions," brought an

"action" that was dismissed as frivolous. 28 U.S.C. 1915(g). After considering the PLRA's context, courts of appeals have uniformly held that "habeas proceedings are not civil actions" under Section 1915. *Garrett* v. *Murphy*, 17 F.4th 419, 431 (3d Cir. 2021); see *Walker* v. *O'Brien*, 216 F.3d 626, 628-629 (7th Cir.) (describing circuit consensus), cert. denied, 531 U.S. 1029 (2000).

Courts have reached the same conclusion about the application of "civil action" in 28 U.S.C. 2401(a). That statute provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." *Ibid.*; see *Mason* v. *Judges of U.S. Court of Appeals for the D.C. Circuit*, 952 F.2d 423, 425 (D.C. Cir. 1991) (holding that "a civil action against a federal official based on that person's official actions is a 'civil action commenced against the United States' under § 2401(a)"), cert. denied, 506 U.S. 829 (1992). Although that provision refers to "every civil action," 28 U.S.C. 2401(a), "habeas corpus" proceedings "have always been regarded as outside the scope of the statute of limitations," *Walters* v. *Secretary of Def.*, 725 F.2d 107, 113 (D.C. Cir. 1983); see *Spannaus* v. *U.S. Department of Justice*, 824 F.2d 52, 55 (D.C. Cir. 1987); *Cooper* v. *Marsh*, 807 F.2d 988, 991 (Fed. Cir. 1986). As a result, "[t]here is no statute of limitations" for Section 2241 habeas petitions like the one petitioner filed here. *Wooten* v. *Cauley*, 677 F.3d 303, 306 (6th Cir. 2012).

Still other examples exist. Under 28 U.S.C. 1441(a), a defendant may remove to federal court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." Yet no one would think that Section 1441 authorizes the removal of state habeas petitions presenting federal ques-

tions. Similarly, in the context of multidistrict litigation, Congress has authorized the transfer of "civil actions involving one or more common questions of fact" to "any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. 1407(a). Yet no one would think that Section 1407(a) authorizes the transfer of habeas petitions involving common questions. See *Rumsfeld* v. *Padilla*, 542 U.S. 426, 445 (2004) (applying "the traditional district of confinement rule for core habeas petitions challenging present physical custody").

c. More generally, statutes and rules governing civil procedure have long distinguished "civil actions" from other "suits" or "proceedings" of a civil nature, and they have placed habeas in the latter category.

For example, the influential Field Code, enacted by New York in 1848, distinguished "civil action[s]" from "[s]pecial proceedings" and considered habeas a type of special proceeding. 1848 N.Y. Laws 497, ch. 379, §§ 1, 4, 6; see *First Report of the Commissioners on Practice and Pleadings: Code of Procedure* 2 (1848) (*Field Code Report*). That distinction reflected historical practice. "In the early stage of development of the common law procedure, each form of action was a separate proceeding with its own rules." Gerald Abraham, *A Unitary Approach to Special Proceedings: The New York Proposals*, 9 Buff. L. Rev. 471, 473 (1960). "[M]ost of th[o]se forms" were governed by a "common" body of procedure, which gave "the parties, and not the court," the "primary responsibility for carrying the litigation forward" in "carefully defined formal steps." *Ibid.* But because that procedure was "hardly conducive" to "speed or flexibility of adjudication," certain proceedings for "'extraordinary remedies'" emerged as avenues for "more summary judicial action." *Id.* at 473-474. Those proceedings—which

included "the great prerogative writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto" —gave "the court greater control of the litigation at an earlier stage," thus allowing applications for "extraordinary relief" to "be disposed of far more expeditiously." *Id.* at 474.

The Field Code consolidated all of the ordinary forms of action into "one form of action," which it "denominated a civil action," 1848 N.Y. Laws 510, ch. 379, § 62, but it also preserved the historical distinction between those "[a]ctions," on the one hand, and proceedings for extraordinary remedies, on the other, which it called "[s]pecial proceedings," *id.* at 497, § 1; see *id.* at 497, § 4. The Code also kept "*habeas corpus*" on the special-proceedings side of the line, alongside arbitrations and bankruptcy, among other things. *Field Code Report* 2. The Field Code thus did not consider habeas proceedings to be "civil action[s]." 1848 N.Y. Laws 497, ch. 379, § 6. Rather, it considered them to be "special proceedings," governed by separate rules. *Field Code Report* 2.

The Field Code became the template for the civil rules in dozens of other States. See Geoffrey C. Hazard, Jr., et al., *Pleading and Procedure: State and Federal* 28 (9th ed. 2005). It also "is the principal antecedent" of the Federal Rules of Civil Procedure, *ibid.*, which took effect in 1938 after this Court adopted them and had them submitted to Congress, see Letter of Transmittal, 308 U.S. 647 (Jan. 3, 1938); Letter of Submittal, 308 U.S. 649 (Dec. 20, 1937).

The original version of the Civil Rules carried forward the Field Code's distinction between "civil actions" and habeas proceedings. Rule 1 stated that the rules governed the procedure "in all suits of a civil nature * * * , with the exceptions stated in Rule 81." Fed. R.

Civ. P. 1 (1938). Rule 81, in turn, specified "limitations in the application of the[] rules to enumerated special proceedings," Fed. R. Civ. P. 1 advisory committee's note (1937 adoption)—expressly including "habeas corpus," "admiralty," and "bankruptcy," Fed. R. Civ. P. 81(a)(1) and (2) (1938). The Civil Rules thus considered habeas proceedings to be "civil" in "nature." Fed. R. Civ. P. 1 (1938). But—like the Field Code on which they were modeled—they considered habeas proceedings to be "special proceedings" rather than "civil actions."

Later amendments to the Civil Rules have only reinforced that distinction between civil actions and other proceedings covered by the rules. In 1968, Rule 81 was amended to specify that the 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) (1968). As amended, Rule 81 therefore distinguishes "the practice in [habeas] proceedings" from "the practice in civil actions"—providing further evidence that the rules do not consider habeas proceedings to be "civil actions." Similarly, Rule 1 was amended in 2007: The phrase "civil actions and proceedings" was substituted for "suits of a civil nature," so that Rule 1 now specifies that the rules govern the procedure "in all civil actions and proceedings * * * , except as stated in Rule 81." Fed. R. Civ. P. 1 (2007); see Fed. R. Civ. P. 1 advisory committee's note (2007 amendment). That reference to "civil actions *and proceedings*" confirms that while habeas and other proceedings addressed in Rule 81 are civil in nature, they are not "civil actions." Indeed, the words "and proceedings" would be unnecessary if all suits of a civil nature were already understood to be "civil actions."

Precisely because the Civil Rules do not treat habeas proceedings like all other suits of a civil nature, habeas proceedings have retained their "unique" and "special" character. *Harris* v. *Nelson*, 394 U.S. 286, 294, 296 (1969). Thus, a "civil action" under the rules starts with a "complaint" and "summons," Fed. R. Civ. P. 3, 4, and proceeds to "a motion to dismiss, to an answer, to discovery, and ultimately to trial," *O'Brien* v. *Moore*, 395 F.3d 499, 506 (4th Cir. 2005). Habeas proceedings, in contrast, start with a petition or application for a writ of habeas corpus, 28 U.S.C. 2242, 2254, and proceed with no motion to dismiss, no discovery as a matter of right, and no trial. See *Browder* v. *Director, Dep't of Corr.*, 434 U.S. 257, 269 n.14 (1978) (holding that a Civil Rule 12(b)(6) motion is not "an appropriate motion in a habeas corpus proceeding"); *Harris*, 394 U.S. at 295 (holding that the Civil Rules' "broad discovery provisions" do not apply "as a matter of right" in habeas proceedings); *Banister* v. *Davis*, 590 U.S. 504, 528 (2020) (Alito, J., dissenting) (summarizing "the ways in which habeas proceedings deviate from the Civil Rules"); see generally Rules Governing Section 2254 Cases in the United States District Courts. Those differences reflect the special character of habeas proceedings, whose purpose is to provide for a "swift, flexible, and summary determination" of a challenge to unlawful detention, without the "discovery rules and other procedural formalities" that cause "original plenary civil action[s]" to "take a significant amount of time." *Preiser* v. *Rodriguez*, 411 U.S. 475, 495-496 (1973).

d. In short, the words "civil action" have a chameleon-like quality—sometimes encompassing habeas proceedings, sometimes not. See *Cooper*, 566 U.S. at 294. Their precise meaning thus depends on the context in which they appear, and the words themselves do not unequiv-

ocally establish that Congress intended EAJA to apply to habeas proceedings.

3. Context also determines whether the term "civil action" includes other suits or proceedings of a civil nature

Just as context determines whether the term "civil action" includes habeas proceedings, so too context determines whether the term includes other suits or proceedings of a civil nature. When a statute uses the term "civil action," it can often be assumed that the term encompasses actions that fit the Civil Rules' use of the term—namely, actions initiated by a complaint and summons, which proceed to discovery and then trial. See p. 24, *supra*. But whether and to what extent the term also includes other suits or proceedings of a civil nature will depend on the context of the particular statute. See *Green*, 90 F.3d at 417 ("It is at the margins that one encounters difficulty in determining whether a particular proceeding is a 'civil action.'").

There are many other kinds of civil suits or proceedings, besides habeas, that do not fit the Civil Rules' description of a "civil action." They include, for example, proceedings for judicial review of agency action, which are often commenced by filing "a petition for review with the clerk of a court of appeals," Fed. R. App. P. 15(a)(1), but sometimes begin in district court, see Fed. R. Civ. 81(a)(6) (enumerating several examples); bankruptcy appeals to district courts or Bankruptcy Appellate Panels, which are commenced by filing "a notice of appeal with the bankruptcy clerk," Fed. R. Bankr. P. 8003(a)(1); see Fed. R. Civ. P. 81(a)(2); and prize proceedings in admiralty, which are commenced by filing "a libel against the prize property," 10 U.S.C. 8859(a)(1); see Fed. R. Civ. P. 81(a)(1).

Whether a statute's use of the term "civil action" encompasses those and other suits or proceedings of a civil nature cannot be determined in the abstract. Rather, as with habeas, the precise meaning of the term can be determined only in context. See, *e.g.*, *United States ex rel. Yelverton* v. *Federal Ins. Co.*, 831 F.3d 585, 588 (D.C. Cir. 2016) (finding it "insufficiently clear that bringing a bankruptcy appeal to the district court constitutes 'filing a new civil action' in the district court within the meaning of [a] pre-filing injunction"); *In re Teter*, 90 F.4th 493, 498-501 (6th Cir.) (holding that a motion to dismiss a bankruptcy case was not a "civil action" under EAJA), cert. denied, 144 S. Ct. 2527 (2024).

B. The Context Here Does Not Unequivocally Establish That "Civil Action" Encompasses Habeas Proceedings

Because "civil action" has different meanings in different contexts, petitioner must show that the context here unequivocally establishes that Congress meant to include habeas proceedings. He cannot do so. In fact, the surrounding text, history, and purpose all point in the other direction.

1. The surrounding text does not clearly establish an intent to include habeas proceedings

When originally enacted, EAJA opened the door to fee shifting in "any civil action." 28 U.S.C. 2412(d)(1)(A) (1982). It can be assumed that the term encompassed those actions that fit the Civil Rules' use of the term. See p. 25, *supra*. When Congress reenacted EAJA in 1985, it amended the statute to specify that, in this context, "civil action" also "includ[es]" two other kinds of suits or proceedings of a civil nature: (1) "proceedings for judicial review of agency action," 28 U.S.C. 2412(d)(1)(A); and (2) "an appeal by a party, other than

the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to" the provisions of the Contract Disputes Act of 1978, now codified as amended in Chapter 71 of Title 41 of the U.S. Code, 28 U.S.C. 2412(d)(2)(E).

Those amendments indicate that if Congress had meant for "civil action" to include habeas proceedings, it would have said so. After all, Congress was presumably aware of the many kinds of other civil suits or proceedings that do not fit the Civil Rules' use of the term. See, *e.g.*, Fed. R. Civ. P. 81(a)(1)-(6) (identifying various other civil proceedings, including habeas corpus, to which the Civil Rules apply to certain extents). Yet, in reenacting EAJA, Congress selected only two kinds of proceedings to "include" within the scope of the provision at issue here. That choice suggests that Congress did not intend for "civil action" to include other established categories of civil suits or proceedings, such as habeas. See *Esteras* v. *United States*, 606 U.S. 185, 195 (2025) (invoking the "*expressio unius*" canon, which holds that "expressing one item of an associated group or series excludes another left unmentioned") (brackets and citation omitted). Indeed, Congress has expressly specified the inclusion of habeas proceedings in other statutory contexts, but it did not do so here. See p. 19, *supra* (discussing 28 U.S.C. 1657(a)). It is therefore at least plausible to infer that "civil action," as used in EAJA, does not include habeas, just as it does not when it is used in 28 U.S.C. 1391(e) and various other statutes.

Nothing in EAJA's text renders that inference implausible. Petitioner focuses on the word "any," arguing (Br. 32) that "'*any* civil action' unambiguously refers to *every* civil action, of *whatever* kind." But the word

"any" "cannot expand the reach of the noun it modifies." *San Francisco* v. *EPA*, 604 U.S. 334, 348 (2025). Petitioner's focus on "any" thus skips over the antecedent question whether "civil action" encompasses habeas proceedings in the first place—which is the entire dispute here.

If the term "civil action," as used in a particular statute, does not include habeas proceedings in the first place, the word "any" (or "every") cannot change that meaning. For example, the term "civil action," as used in Section 2401(a), does not include habeas proceedings in the first place; the statute's reference to "*every* civil action" does not expand its reach to include habeas proceedings. 28 U.S.C. 2401(a) (emphasis added); see p. 20, *supra*. Similarly, habeas proceedings are not "civil actions" for purposes of various statutes that refer to "a civil action." See pp. 19-21, *supra*. Replacing "a" with "any" would not somehow expand the scope of those statutes to include habeas proceedings.

This Court's decision in *Ex parte Collett*, 337 U.S. 55 (1949), on which petitioner relies (Br. 31), does not suggest otherwise. The Court in that case rejected an argument that actions under the Federal Employers' Liability Act had been "excis[ed]" from the term "'any civil action'" in Section 1404(a). *Collett*, 337 U.S. at 58. But the argument here is not that habeas proceedings have been *excised* from the term "civil action" in EAJA; rather, the argument is that they do not fall within that term *in the first place*.

For the same reason, petitioner's reliance (Br. 33-34) on Section 2412(d)(1)(A)'s exception for "cases sounding in tort" is misplaced. Congress's specification of that exception—*i.e.*, "any civil action (other than cases sounding in tort)," 28 U.S.C. 2412(d)(1)(A)—implies the

absence of any other *exceptions*. But it does not resolve whether habeas proceedings fall within the term "civil action" *in the first place*. Similarly, excepting "apples" from a reference to "fruit"—*i.e.*, "any fruit (other than apples)"—does not resolve whether a tomato should be considered a "fruit" in the first place. Cf. *Nix* v. *Hedden*, 149 U.S. 304, 307 (1893) (holding that though tomatoes are "[b]otanically" "fruit," they should be considered "vegetables" under the Tariff Act of 1883). And, in petitioner's example, excepting "pigeon[s]" from a reference to "bird[s]"—*i.e.*, "any bird (other than a pigeon)"—does not resolve whether a penguin should be considered a "bird" in the first place. Br. 34 (emphases omitted). Nothing in EAJA's text forecloses reading "civil action" not to include habeas proceedings here.

2. EAJA's history does not clearly establish that "civil action" encompasses habeas proceedings

EAJA's statutory history also cuts against petitioner. Congress initially adopted EAJA "for a trial period of three years." *Scarborough* v. *Principi*, 541 U.S. 401, 407 (2004); see p. 4, *supra*. Nearly six months before the trial period ended, the Second Circuit confronted the question "whether habeas petitions are 'civil actions' under section 2412." *Boudin* v. *Thomas*, 732 F.2d 1107, 1112 (1984). After considering the context of that provision at some length, *id.* at 1112-1114, the court determined that "Congress either meant to exclude habeas petitions from the scope of section 2412 or overlooked the question." *Id.* at 1114. The court explained, however, that "because a waiver of the sovereign immunity of the United States must be unequivocal and explicit," the only issue was "whether Congress [had] clearly manifested its affirmative intention to include habeas petitions within section 2412." *Id.* at 1114-1115. The

court concluded that Congress had not done so, so EAJA "should not be construed to authorize attorney's fees in habeas proceedings." *Id.* at 1115.

Typically, this Court would not presume that Congress knew about and endorsed the decision of a single circuit when reenacting a statute that the decision had construed. See *Jama* v. *ICE*, 543 U.S. 335, 349-352 (2005). But the entire point of EAJA's three-year trial period was to allow Congress to review "the cost and impact of the legislation" before deciding whether to reenact it. 1979 Senate Report 8. And the decision in question involved the high-profile case of Weather Underground member Kathie Boudin, who successfully challenged the conditions of her confinement after being indicted on multiple counts of murder and robbery in connection with the armed robbery of a Brink's truck. *Boudin*, 732 F.2d at 1109-1110. Thus, in this particular context, there is more reason than usual to think that Congress knew about the Second Circuit's conclusion that a habeas challenge was not a "civil action" under Section 2412 and then decided not to amend EAJA's text to avoid that conclusion, even as it made other amendments in the course of the 1985 reenactment. Moreover, under the sovereign-immunity canon, the question is not whether the Second Circuit's decision reflects the better interpretation of EAJA; the question is only whether it reflects a "plausible" one. *Cooper*, 566 U.S. at 290. The absence of any effort to abrogate the decision suggests that its interpretation is, and was at the time considered to be, at least plausible.

Petitioner has not pointed to anything in EAJA's history to suggest otherwise. Of course, "no amount of legislative history can 'supply a waiver that is not clearly evident from the language of the statute.'" *Kirtz*, 601

U.S. at 49 (quoting *Cooper*, 566 U.S. at 290). But even if legislative history could supply a waiver, it would not support petitioner's interpretation here. None of the House or Senate Reports relevant to EAJA's original enactment or reenactment mentions habeas proceedings, let alone states unequivocally that they would be a "civil action" under EAJA. See generally, *e.g.*, 1979 Senate Report; 1980 House Report; 1984 Senate Report; 1984 House Report; H.R. Rep. No. 120, 99th Cong., 1st Sess. Pt. 1 (1985) (1985 House Report). The 1985 House Report cites *Boudin* in the course of disagreeing with that decision and several other courts of appeals—but only about a different question, involving the phrase "position of the United States," which Congress expressly addressed by adding a new definition in the 1985 reenactment of EAJA. See 1985 House Report 12 n.21; 28 U.S.C. 2412(d)(2)(D).

3. EAJA's purposes do not clearly support the conclusion that "civil action" encompasses habeas proceedings in this context

Petitioner's interpretation is also unsupported by EAJA's purposes. Congress enacted EAJA to address the fact that "unreasonable governmental action[s]" were going unchallenged because individuals and businesses lacked the incentive to challenge them. EAJA § 202(a), 94 Stat. 2325. The problem, as Congress saw it, was that the costs of pursuing such challenges often exceeded the benefits of prevailing. See *ibid.* (finding that "the expense involved" "deterred" individuals and businesses from pursuing challenges); 1979 Senate Report 5 (explaining that "[w]hen the cost of contesting a Government order * * * exceeds the amount at stake, a party has no realistic choice and no effective remedy"). Individuals and businesses conducting a simple cost-benefit

analysis therefore found it "more practical to endure an injustice than to contest it." 1979 Senate Report 5.

Supporters of the legislation invoked the example of a small business faced with an agency order requiring it to pay a fine. See 1980 House Report 7-8. The order might be unjustified, and the likelihood of ultimately prevailing in a challenge might be high. See *id.* at 8. But the fine itself might be modest—and far less than the cost of hiring lawyers. See *id.* at 7-8. Finding it "cheaper and easier to pay [the] fine," a small business would have no incentive "to fight." *Statement on Signing H.R. 5612 Into Law*, 16 Weekly Comp. of Pres. Doc. 2381, 2381 (Oct. 21, 1980). Supporters of EAJA hoped that by requiring the government to pay the fees of a prevailing party in certain circumstances, the legislation would make it more worthwhile for small businesses to pursue challenges—and thus "provide[] small businesses with 'equal access to justice.'" *Ibid.*

That purpose does not extend to the habeas context, where detainees already have strong incentives to challenge the legality of their detention. See *O'Brien*, 395 F.3d at 507 (observing that "habeas litigation" is "pursued freely by petitioners without the need for the EAJA's incentives"). Their own liberty is at stake, so the benefits of a successful challenge are high. See *Boudin*, 732 F.2d at 1113. At the same time, the costs of pursuing a challenge are relatively low because of the special character of habeas proceedings. They are designed to provide a "swift, flexible, and summary determination of [a] claim," without the "procedural formalities" that can prolong an ordinary action. *Preiser*, 411 U.S. at 495-496. This case illustrates how expeditious habeas proceedings can be: The district court granted the habeas petition only one month after petitioner filed it.

See p. 7, *supra*. The habeas context thus presents a dramatically different balance of costs and benefits than that of a small business considering whether to challenge a regulation.

To be sure, detainees who are indigent may be unable to afford counsel to file a habeas petition. But Congress addressed that problem in the Criminal Justice Act (CJA), 18 U.S.C. 3006A. As amended in 1970, see Act of Oct. 14, 1970, Pub. L. No. 91-447, § 1(b), 84 Stat. 919, the CJA authorizes the provision of representation to financially eligible persons who are "seeking relief under section 2241, 2254, or 2255 of title 28." 18 U.S.C. 3006A(a)(2)(B); see, *e.g.*, *McDonald* v. *Feeley*, 535 F. Supp. 3d 128, 140-141 (W.D.N.Y. 2021) (appointing counsel under the CJA to represent an immigration detainee in habeas proceedings).

Congress enacted EAJA to address a different problem—one of incentives, not indigency. See *Boudin*, 732 F.2d at 1113. Individuals with a net worth of up to $2 million may be eligible for fees under EAJA, demonstrating that the statute's concern is not indigency. 28 U.S.C. 2412(d)(2)(B). Because detainees have strong incentives to challenge their own detention, construing "civil action" to encompass habeas proceedings would not serve EAJA's purposes.

Petitioner finds it "strange" that a "waiver for fees" would encompass a dispute over government-funded "benefits," but not one in which "personal liberty itself is a[t] stake." Br. 50. But the difference in stakes is exactly why construing the waiver to cover habeas proceedings would be inconsistent with EAJA's purposes. In a dispute over Social Security or veterans benefits, "the expense involved in" contesting an agency's denial of benefits may well exceed the amount at stake, thereby

"deterr[ing]" an individual from seeking review of the agency's action. EAJA § 202(a), 94 Stat. 2325. But when personal liberty is at stake and the expeditious remedy of habeas is available, the cost-benefit analysis flips, making EAJA's additional incentives unnecessary. Petitioner may wish to substitute his own policy preferences for Congress's, but such policy arguments have no place in statutory interpretation, much less in applying the sovereign-immunity canon. See *Library of Congress*, 478 U.S. at 321 (rejecting reliance on mere policy arguments).

III. THE COURT SHOULD REJECT BOTH OF PETITIONER'S ONE-SIZE-FITS-ALL INTERPRETATIONS OF "CIVIL ACTION"

Rather than focus on the precise context in which "civil action" appears in EAJA, petitioner devotes most of his brief to arguing that "civil action" means the same thing in *every* context. Petitioner offers two one-size-fits-all readings of the term: (A) that it means "any court action other than a criminal case," Br. 11; and (B) that even if it does not include all habeas proceedings, it at least includes habeas proceedings challenging immigration detention, Br. 12. The Court should reject those theories and hold that "civil action," as used in the particular context here, does not unequivocally encompass habeas proceedings.

A. The Court Should Reject Petitioner's Non-Criminal-Case Interpretation

Petitioner's primary theory (Br. 1, 11) is that "civil action" refers to any non-criminal court proceeding. That interpretation cannot be squared with the many decisions, statutes, and rules discussed above. Nor can petitioner's own authorities justify it.

1. Petitioner's interpretation is erroneous

a. Petitioner contends (Br. 15) that his interpretation reflects the "settled, centuries-old meaning" of the term "civil action." If that were true, courts would be applying that interpretation to each of the hundreds of federal statutes and rules in which the term appears. But that is not how courts, including this Court, have approached the task of interpreting "civil action." Instead, courts have considered the particular context in which the term is used, resisting the notion that what it means in one context is necessarily what it means in every other. See pp. 17-18, *supra*. Petitioner would have this Court abandon that approach and declare that "civil action," wherever it appears, means any court proceeding "other than a criminal proceeding." Br. 1. Just as the Court declined to give "actual damages" an "all-purpose definition" in *FAA* v. *Cooper*, 566 U.S. at 294, it should decline any all-purpose definition for "civil action."

b. Moreover, petitioner's interpretation cannot be reconciled with the meaning of "civil action" in the Field Code and the Civil Rules. Petitioner's interpretation assumes (Br. 11) the existence of only two categories of court proceedings—civil actions and criminal actions—and places habeas proceedings in the former category. But that is not how the Field Code divided up the world. See pp. 21-22, *supra*. The Field Code divided "[r]emedies in the courts of justice" into two categories—"[a]ctions" and "[s]pecial proceedings"—and then further divided "[a]ctions" into two subcategories—"[c]ivil" actions and "[c]riminal" actions. 1848 N.Y. Laws 497, ch. 379, §§ 1, 4. While it is true that, within the category of "[a]ctions," a "civil action" was "[e]very" action that was not a "criminal action," habeas proceedings were not "[a]ctions" at all; they were "[s]pecial proceedings." *Id.* at 497, §§ 1,

4-6; see *Field Code Report* 2. Petitioner overlooks the category of "special proceedings" altogether. He thus errs in asserting (Br. 20) that habeas proceedings "have always been understood to be civil actions."

Petitioner's account of the Civil Rules repeats the same error. He contends that the original 1938 version of the rules used "civil action" and "suits of a civil nature" interchangeably. Br. 18 (citation omitted). But that is not true. The rules used "suits of a civil nature" as an umbrella term, Fed. R. Civ. P. 1 (1938), to refer to *both* civil actions *and* "special proceedings," Fed. R. Civ. P. 1 advisory committee's note (1937 adoption). And like the Field Code, the Civil Rules placed habeas in the category of special proceedings to which the rules' applicability was tailored and separately addressed. Fed. R. Civ. P. 81(a)(2) (1938). In 2007, a new umbrella term —"civil actions and proceedings," Fed. R. Civ. P. 1 (2007) —was substituted for "suits of a civil nature." But the new umbrella term simply reinforces the distinction between "civil actions" and "civil * * * proceedings," the latter of which include habeas. *Ibid.* In asserting (Br. 20) that habeas proceedings "have always been understood to be civil actions," petitioner again overlooks the category of other "proceedings," which are civil in nature but not "civil actions."

The fact that habeas proceedings fall into that separate category also undermines petitioner's various other contentions concerning the Civil Rules. Petitioner contends, for example, that to the extent the rules apply to habeas proceedings at all, it is because "habeas corpus is a civil action." Br. 26 (citation omitted). That is incorrect. Rule 1 now states that "[t]hese rules govern the procedure in all civil actions *and proceedings* in the United States district courts, except as stated in Rule 81." Fed.

R. Civ. P. 1 (emphasis added). Thus, to the extent the rules apply to habeas proceedings, it is because they are civil "proceedings." *Ibid.* Indeed, that is how Rule 81 still refers to habeas—as a category of "proceedings," Fed. R. Civ. P. 81(a)(4), rather than a civil action.

Petitioner also contends that if, as Rule 2 states, there is "one form of action" known as a "civil action," then habeas must be a "civil action." Br. 26, 37 (citation omitted); see Fed. R. Civ. P. 2. That contention fails for the same reason: because it erroneously assumes that the rules consider habeas a "form of action." But, like the Field Code on which the Civil Rules were modeled in relevant part, the rules consider habeas a category of "proceedings," not a civil action. Fed. R. Civ. P. 81(a)(4). Thus, the Field Code likewise declared that "there shall be * * * but one form of action, * * * which shall be denominated a civil action," 1848 N.Y. Laws 510, ch. 379, § 62, while also recognizing the existence of a distinct category of "[s]pecial proceedings," of which habeas was one, *id.* at 497, § 1; see *Field Code Report* 2.

Contrary to petitioner's suggestion (Br. 18, 37), the Rules Enabling Act of 1934, ch. 651, 48 Stat. 1064 (codified at 28 U.S.C. 723b, 723c (1934)), does not support his interpretation of the rules. The authority to promulgate the rules came not only from 28 U.S.C. 723b (1934), which authorized this Court to prescribe "the practice and procedure in civil actions at law," but also from 28 U.S.C. 730 (1934), which authorized the Court to "regulate the whole practice, to be used, in suits in equity or admiralty." See Fed. R. Civ. P. 1 advisory committee's note (1937 adoption). In combination, those statutes authorized the promulgation of rules governing "all suits of a civil nature whether cognizable as cases at law or in equity," including habeas proceedings. Fed. R. Civ. P. 1

(1938); see also 28 U.S.C. 723c (1934). And within the broader category of "suits of a civil nature," the rules considered habeas proceedings to be "special proceedings" rather than "civil actions." See pp. 22-23, *supra*.

c. Petitioner's interpretation is also inconsistent with the meaning of "civil action" in various other federal statutes. If petitioner were correct (Br. 20) that habeas proceedings "have always been understood to be civil actions," every statutory reference to a "civil action" in the U.S. Code would encompass habeas proceedings. But as explained above, there are many statutory references to a "civil action" that do not. See pp. 19-21, *supra*.

Petitioner addresses one of those statutory references, which appears in 28 U.S.C. 1391(e), the provision at issue in *Schlanger*. Petitioner suggests (Br. 38-39) that this Court's decision in *Schlanger* should not be read as having construed the term "civil action" at all. But in finding Section 1391(e) inapplicable to the habeas proceedings in that case, the Court explained that "[t]hough habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." *Schlanger*, 401 U.S. at 490 n.4. That explanation makes clear that the decision should be read as holding that habeas corpus is not a "civil action[]" within the context of Section 1391(e). *Ibid.* And the Court itself later described *Schlanger* as holding that "Congress did not intend the phrase 'civil action' to be given the sweeping definition argued for it in that case." *Stafford*, 444 U.S. at 543. Although *Stafford* also described *Schlanger* as "recognizing that habeas corpus is 'a civil action,'" *ibid.*, that was just a paraphrase of *Schlanger*'s recognition that "habeas corpus is technically 'civil,'" 401 U.S. at 490 n.4—in other words, that it is civil in nature.

Petitioner's other attempts to discount *Schlanger*'s actual holding are also unavailing. Petitioner criticizes (Br. 39) *Schlanger*'s reliance on legislative history. But while legislative history may not be considered relevant context today, it was considered relevant context at the time. And *Schlanger*'s consideration of that history simply reflects the principle—still valid today—that the meaning of the term "civil action" depends on the particular context in which it appears. Petitioner's one-size-fits-all approach cannot be reconciled with that principle.

Petitioner also asserts (Br. 39-40) that the Court in *Schlanger* could have taken a different route to finding Section 1391(e) inapplicable. But that is beside the point. The Court reached the conclusion it did by interpreting "civil action," and petitioner's definition of the term cannot be reconciled with that interpretation.

d. Petitioner's interpretation also cannot be squared with the many federal statutes that reference "civil action" alongside other civil proceedings in court. For example, 28 U.S.C. 1400(a) refers to "[c]ivil actions, suits, or proceedings arising under any Act of Congress relating to" certain "copyrights." Similarly, 22 U.S.C. 2702(b) refers to the United States' defense of "any civil action or proceeding brought in any court" against certain defendants. Many other statutes contain similar references. See, *e.g.*, 28 U.S.C. 547(2) ("civil actions, suits or proceedings"); 28 U.S.C. 1345 (same); 28 U.S.C. 1253, 2101(b) ("civil action, suit or proceeding"); 12 U.S.C. 1441b(h)(4) (similar); 25 U.S.C. 233 ("civil actions and proceedings"); 5 U.S.C. 8477(e)(4) ("civil action or proceeding"); 10 U.S.C. 1054(b), 6324(c), 10508(b)(3)(C) (same); 15 U.S.C. 7903(5)(A) (same); 18 U.S.C. 1965(a) (same); 28 U.S.C. 754, 1337(a) (same); 42 U.S.C. 5055(f)(2) (same); 50 U.S.C. 3932(b)(1) (same); 51 U.S.C. 20137(b)-(d) (same).

If petitioner were correct in concluding (Br. 1) that the term "civil action" encompasses every non-criminal court proceeding, there would be no need to refer to civil "suits" or "proceedings" in court alongside that term; all such references would be superfluous. Moreover, petitioner's position (Br. 14) is not just that the term "civil action" encompasses every non-criminal court proceeding, but that it does so "unambiguously." That makes it even harder for petitioner to explain, on his account, why Congress would ever mention civil "suits" or "proceedings" in court alongside "civil actions." Yet such references appear throughout the U.S. Code, strongly indicating that the term "civil action" does not always encompass every non-criminal court proceeding.

Petitioner's own examples include statutes where Congress referred to civil actions as well as civil suits or proceedings. He cites (Br. 25) the 1952 version of 28 U.S.C. 1252, which authorized a direct appeal to this Court from a judgment "holding an Act of Congress unconstitutional in any civil action, *suit, or proceeding* to which the United States" was a party. *Ibid.* (emphasis added). Petitioner contends that in Section 1252, "the specific phrase 'civil action'" encompasse[d] habeas petitions." Br. 24; see Br. 25. But the better reading of that provision was that a habeas petition fell within its reference to a "suit[] or proceeding." See Pet. Br. 25 (noting the government's argument to that effect in *Reid* v. *Covert*, 351 U.S. 487 (1956)). In fact, the reviser's note to the statute's 1948 codification indicates that the "[w]ords 'civil action' were inserted before 'suit or proceeding'" to track the Civil Rules' understanding of a "civil action," 28 U.S.C. 1252 reviser's note (1952)—which, as explained above, did not (and does not) encompass habeas proceedings.

Petitioner also cites (Br. 20) the 1980 version of 28 U.S.C. 1914(a), which stated: "The clerk of each district court shall require the parties instituting any civil action, *suit or proceeding* * * * to pay a filing fee of $60, 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) (emphasis added). Petitioner contends (Br. 20) that Section 1914(a) shows that "a habeas petition is a civil action." But again, the better reading is that a habeas petition is a "civil * * * suit or proceeding."

The same is true of 28 U.S.C. 2107, on which petitioner relies (Br. 25). Section 2107 requires that an appeal from the judgment in an "action, *suit, or proceeding*" of "a civil nature" be filed within a certain time. 28 U.S.C. 2107(b) (emphasis added); see 28 U.S.C. 2107(a). Section 2107 does apply to habeas proceedings—not because they are civil actions, but because they are "suit[s] or proceeding[s]" of a "civil nature." 28 U.S.C. 2107(b).

e. Finally, petitioner's interpretation cannot be reconciled with the text of EAJA itself. If petitioner were correct in contending (Br. 1) that the term "civil action" refers unmistakably to any non-criminal court proceeding, there would have been no need for Congress to have amended EAJA in 1985 to specify that "civil action" includes "proceedings for judicial review of agency action," 28 U.S.C. 2412(d)(1)(A), or appeals in contract disputes, 28 U.S.C. 2412(d)(2)(E). After all, if petitioner were correct, the term "civil action" would have already encompassed both of those kinds of proceedings—and done so unequivocally. The fact that Congress saw a need for the amendments is itself reason to doubt petitioner's interpretation.

2. Petitioner's own authorities cannot justify his interpretation

Petitioner's remaining authorities fall into three categories, none sufficient to establish, let alone unmistakably, that the term "civil action" encompasses any noncriminal court proceeding.

First, petitioner cites (Br. 16-17, 22-24, 27) several sources that attest to the civil nature of habeas proceedings. It is true that Blackstone viewed unlawful detention as a "civil" injury, 3 William Blackstone, *Commentaries on the Laws of England* 2 (1768); that various decisions of this Court have described habeas proceedings as "civil," *e.g.*, *Banister*, 590 U.S. at 507; *Cross* v. *Burke*, 146 U.S. 82, 88 (1892); *Kurtz* v. *Moffitt*, 115 U.S. 487, 494 (1885); *Ex parte Tom Tong*, 108 U.S. 556, 560 (1883); see Pet. Br. 23-24 (citing other decisions); and that habeas proceedings are docketed as "civil" cases, see Pet. Br. 27. But all of that shows only that "[h]abeas proceedings * * * are civil in nature," *Banister*, 590 U.S. at 507—which no one disputes. None of it sheds light on Congress's use in EAJA of the particular term "civil action" rather than a broader reference, such as "civil suit or proceeding," as in *Ex parte Tom Tung*, 108 U.S. at 559 (discussing Rev. Stat. § 650 (2d ed. 1878)), or in *Kurtz*, 115 U.S. at 494 ("A writ of *habeas corpus* * * * is a civil suit or proceeding.").

Second, petitioner cites (Br. 16, 17-18, 19-20, 23) several sources that distinguish a "civil action" from a criminal prosecution. See, *e.g.*, *Farnsworth* v. *Montana*, 129 U.S. 104, 113 (1889); *Wiscart* v. *Dauchy*, 3 U.S. (3 Dall.) 321, 328 (1796) (opinion of Ellsworth, C.J.); *Atcheson* v. *Everitt*, 98 Eng. Rep. 1142, 1147 (K.B. 1775). But the Field Code likewise distinguished "civil action[s]" from criminal prosecutions, in language similar to petitioner's

sources. Compare, *e.g.*, 1848 N.Y. Laws 497, 510, ch. 379, §§ 5-6, 62 (describing a "civil action" as an action "for the enforcement or protection of private rights and the redress or prevention of private wrongs," and as "[e]very" "action" "other" than a "criminal action"), with *Black's Law Dictionary* 222 (5th ed. 1979) (defining "[c]ivil action" as an "[a]ction brought to enforce, redress, or protect private rights" and as, "[i]n general, all types of actions other than criminal proceedings"). Yet, the authors of the Field Code still understood habeas corpus to be a type of special proceeding that was distinct from "civil actions." See pp. 21-22, *supra*. None of petitioner's sources sheds light on whether EAJA reflects a similar understanding. Even the analogy passingly drawn to habeas in *Farnsworth*—which petitioner repeatedly quotes (Br. 1, 12, 23)—did not address a statute that referred to a civil action and merely reasoned from the premise that this Court had held that habeas is "a civil and not a criminal proceeding." *Farnsworth*, 129 U.S. at 113 (citing *Ex parte Tom Tung*).

Third, petitioner cites (Br. 21, 24) several statutes that use the term "civil action" to refer to habeas proceedings. See 28 U.S.C. 1404(a), 1657; *Hilborn* v. *United States*, 163 U.S. 342, 344-346 (1896) (construing the Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 92). But those statutes "stand for the unremarkable point" that the term "*can* include" habeas proceedings. *Cooper*, 566 U.S. at 300. As explained, the term "takes on different meanings in different contexts." *Ibid.* Moreover, none of the statutes that petitioner cites implicates the sovereign-immunity canon. For that reason as well, they cannot help him show that EAJA speaks "with the requisite clarity" here. *Ibid.*

B. The Court Should Reject Petitioner's Immigration-Habeas Interpretation

Petitioner's fallback theory (Br. 44) is that even if "civil action" does not include all habeas proceedings, it includes at least the subset of habeas proceedings that challenge immigration detention, because immigration detention is "*civil* detention." As an initial matter, that theory suffers from all the flaws of petitioner's primary theory. It, too, posits a one-size-fits-all definition of "civil action" that would apply across the entire body of federal law. Yet, in many statutes and rules, "civil action" does not refer to habeas proceedings at all, regardless of whether the nature of the underlying detention is criminal or civil. See pp. 19-24, *supra*. Thus, the words themselves do not unmistakably establish that "civil action," as used in EAJA, includes habeas proceedings challenging immigration detention. And nothing in the relevant context does either. See pp. 26-34, *supra*.

But the fallback theory has a substantial additional problem: Any distinction between habeas proceedings challenging criminal detention and habeas proceedings challenging civil detention is nowhere to be found in the statutory text of EAJA. Nor does petitioner locate such a distinction in any other federal statutes. Instead, he merely asserts (Br. 28) that immigration detention arises from the existence of removal proceedings that are themselves civil in nature. But the nature of the underlying proceedings does not dictate how to characterize any resulting habeas proceedings, for that would conflict with the uncontestable recognition in *Farnsworth* that a writ of habeas corpus is "a civil and not a criminal proceeding, even when instituted to arrest a criminal prosecution." 129 U.S. at 113.

In any event, petitioner's fallback distinction between habeas proceedings that challenge immigration as opposed to criminal detention cannot satisfy the sovereign-immunity canon. If the requisite clear statement does not exist for petitioner's frontline argument that "civil action" includes all habeas proceedings, it also does not exist for finding that the term includes only the unmentioned subset challenging immigration detention. If Congress had intended that the scope of EAJA's waiver of immunity from attorney's fees would track the underlying nature of the detention challenged in habeas, Congress would have made that novel distinction explicit.

C. Petitioner Errs In Attempting To Diminish The Role Of The Sovereign-Immunity Canon

Petitioner contends (Br. 45) that the sovereign-immunity canon applies only when a statute is ambiguous. But as explained, the canon is a clear-statement rule, not a mere tiebreaker. See p. 14, *supra*. Accordingly, "[a]mbiguity" for purposes of the canon exists as long as "there is a plausible interpretation of the statute that would not authorize" monetary exactions from the government. *Cooper*, 566 U.S. at 290-291. Petitioner must therefore "close all plausible off ramps" to prevail. *Biden*, 600 U.S. at 509 (Barrett, J., concurring). And that requires showing that his interpretation is "not only better, but also clear." *Boechler*, 596 U.S. at 208.

Contrary to petitioner's suggestion (Br. 46-50), this is a paradigmatic case for application of the canon. The canon is meant to ensure that "Congress does not, by broad or general language," waive the United States' immunity "inadvertently or without due deliberation." *Sossamon*, 563 U.S. at 291 (quoting *Spector*, 545 U.S. at 139 (plurality opinion)). Here, there are no indications

that Congress specifically intended to include habeas proceedings within EAJA's reach. Rather, the relevant context suggests that Congress intended to exclude such proceedings—or perhaps simply overlooked the matter. Either way, it cannot be said that Congress made a conscious decision to waive the United States' immunity in this case. No such waiver is "clearly discernable from the statutory text in light of traditional interpretive tools." *Cooper*, 566 U.S. at 291.

None of this is to say that Congress must use "magic words" if it wishes to waive the government's immunity in habeas proceedings. *Cooper*, 566 U.S. at 291. It could make that result clear in a variety of ways. Of course, it could refer specifically to habeas, as it has done elsewhere. See, *e.g.*, 28 U.S.C. 1657(a). But it need not call out habeas by name. It could also, for instance, refer to "any civil action, suit, or proceeding," as it has done in other statutes. See pp. 39-41, *supra*. It could refer to "all suits of a civil nature," as the original 1938 version of the Civil Rules did. See p. 22, *supra*. Or it could refer to "special proceedings," as the Field Code did. See pp. 21-22, *supra*.

But Congress did not choose any of those paths here. Instead, it used the term "civil action," which does not unmistakably include habeas proceedings in the context of EAJA. The sovereign-immunity canon therefore requires finding no waiver of immunity in this case.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 28 U.S.C. 2412 provides:

Costs and fees

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

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under

the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this

subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) "party" means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or coopera-

tive association or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5;

(C) "United States" includes any agency and any official of the United States acting in his or her official capacity;

(D) "position of the United States" means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) "civil action brought by or against the United States" includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to chapter 71 of title 41;

(F) "court" includes the United States Court of Federal Claims and the United States Court of Appeals for Veterans Claims;

(G) "final judgment" means a judgment that is final and not appealable, and includes an order of settlement;

(H) "prevailing party", in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

(I) "demand" means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, or an adversary adjudication subject to chapter 71 of title 41, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(5)(A) Not later than March 31 of the first fiscal year beginning after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and every fiscal year thereafter, the Chairman of the Administrative Conference of the United States shall submit to Congress and make publicly available online a report on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection.

(B) Each report under subparagraph (A) shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other

relevant information that may aid Congress in evaluating the scope and impact of such awards.

(C)(i) Each report under subparagraph (A) shall account for all payments of fees and other expenses awarded under this subsection that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is sealed or otherwise subject to a nondisclosure provision.

(ii) The disclosure of fees and other expenses required under clause (i) shall not affect any other information that is subject to a nondisclosure provision in a settlement agreement.

(D) The Chairman of the Administrative Conference of the United States shall include and clearly identify in each annual report under subparagraph (A), for each case in which an award of fees and other expenses is included in the report—

(i) any amounts paid under section 1304 of title 31 for a judgment in the case;

(ii) the amount of the award of fees and other expenses; and

(iii) the statute under which the plaintiff filed suit.

(6) As soon as practicable, and in any event not later than the date on which the first report under paragraph (5)(A) is required to be submitted, the Chairman of the Administrative Conference of the United States shall create and maintain online a searchable database containing, with respect to each award of fees and other expenses under this subsection made on or after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, the following information:

(A) The case name and number, hyperlinked to the case, if available.

(B) The name of the agency involved in the case.

(C) The name of each party to whom the award was made as such party is identified in the order or other court document making the award.

(D) A description of the claims in the case.

(E) The amount of the award.

(F) The basis for the finding that the position of the agency concerned was not substantially justified.

(7) The online searchable database described in paragraph (6) may not reveal any information the disclosure of which is prohibited by law or a court order.

(8) The head of each agency (including the Attorney General of the United States) shall provide to the Chairman of the Administrative Conference of the United States in a timely manner all information requested by the Chairman to comply with the requirements of paragraphs (5), (6), and (7).

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of this section of costs enumerated in section 1920 of this title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or

in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

2. 1848 N.Y. Laws 497, ch. 379, §§ 1-6 provide:

GENERAL DEFINITIONS AND DIVISIONS.

* * * * *

§ 1. Remedies in the courts of justice are divided into,

1. Actions, and

2. Special proceedings.

§ 2. An action is a regular judicial proceeding, in which a party prosecutes another party, for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence.

§ 3. Every other remedy is a special proceeding.

§ 4. Actions are of two kinds:

1. Civil, and

2. Criminal.

§ 5. A criminal action is prosecuted by the state, as a party, against a person charged with a public offence, for the punishment thereof.

§ 6. Every other is a civil action.

* * * * *

3. 1848 N.Y. Laws 510, ch. 379, § 62 provides:

TITLE I.

OF THE FORM OF CIVIL ACTIONS.

* * * * *

§ 62. The distinction between actions at law and suits in equity, and the forms of all such actions and suits heretofore existing, are abolished; and, there shall be in this state, hereafter, but one form of action, for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be denominated a civil action.

4. Fed. R. Civ. P. 1 (1938) provides:

I.—SCOPE OF RULES—ONE FORM OF ACTION

RULE 1.—SCOPE OF RULES

These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Notes of Advisory Committee on Rules

1. Rule 81 states certain limitations in the application of these rules to enumerated special proceedings.

2. The expression "district courts of the United States" appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure does not include the district courts held in the territories and insular possessions. See *Mookini et al.*

v. *United States*, 303 U.S. 201, 58 S. Ct. 543, 82 L. Ed. 748 (1938).

3. These rules are drawn under the authority of the Act of June 19, 1934, U. S. C., Title 28, § 723b (Rules in actions at law; Supreme Court authorized to make), and § 723c (Union of equity and action at law rules; power of Supreme Court) and also other grants of rule making power to the Court. See Clark and Moore, *A New Federal Civil Procedure—I. The Background,* 44 Yale L. J. 387, 391 (1935). Under § 723b after the rules have taken effect all laws in conflict therewith are of no further force or effect. In accordance with § 723c the Court has united the general rules prescribed for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both. See Rule 2 (One Form of Action). For the former practice in equity and at law see U. S. C., Title 28, §§ 723 and 730 (conferring power on the Supreme Court to make rules of practice in equity) and the Equity Rules promulgated thereunder; U. S. C., Title 28, § 724 (Conformity act); Equity Rule 22 (Action at Law Erroneously Begun as Suit in Equity—Transfer); Equity Rule 23 (Matters Ordinarily Determinable at Law When Arising in Suit in Equity to be Disposed of Therein); U. S. C., Title 28, §§ 397 (Amendments to pleadings when case brought to wrong side of court), and 398 (Equitable defenses and equitable relief in actions at law).

4. With the second sentence compare U. S. C., Title 28, §§ 777 (Defects of form; amendments), 767 (Amendment of process); Equity Rule 19 (Amendments Generally).

5. Fed. R. Civ. P. 81(a) (1938) provides in pertinent part:

XI.—GENERAL PROVISIONS

RULE 81.—APPLICABILITY IN GENERAL

(a) To What Proceedings Applicable. (1) These rules do not apply to proceedings in admiralty. They do not apply to proceedings in bankruptcy or proceedings in copyright under the Act of March 4, 1909, c. 320, § 25 (35 Stat. 1081), as amended, U. S. C., Title 17, § 25, except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. They do not apply to probate, adoption, or lunacy proceedings in the District Court of the United States for the District of Columbia except to appeals therein.

(2) In the following proceedings appeals are governed by these rules, but they are not applicable otherwise than on appeal 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: admission to citizenship, habeas corpus, quo warranto, and forfeiture of property for violation of a statute of the United States.

* * * * *

6. Fed. R. Civ. P. 1 provides:

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

7. Fed. R. Civ. P. 81(a) provides:

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions

(a) APPLICABILITY TO PARTICULAR PROCEEDINGS.

(1) *Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§ 7651-7681.

(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. § 1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal

statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings*. These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§ 292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. § 522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. § 715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§ 159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§ 918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. § 159, for reviewing an arbitration award in a railway-labor dispute.

* * * * *