No. 25-1223

In the Supreme Court of the United States

KEVIN ISAAC MONTOYA PALACIOS,
Petitioner,
v.
VERNON LIGGINS, ACTING FIELD OFFICE DIRECTOR, BALTIMORE FIELD OFFICE, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, *ET AL.*,
Respondents.

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

BRIEF OF IOWA AND 20 OTHER STATES AS AMICI CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

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

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INTEREST OF AMICI CURIAE

Amici are the State of Iowa and 20 other States. The States have three primary reasons to care how this Court answers the question presented.

First, the States are sovereigns, and the clear-statement rule that protects the federal fisc protects theirs too. This Court applies the same demanding test to claims that Congress has waived federal immunity and to claims that Congress has abrogated state immunity. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (describing federal sovereign immunity as the closest analogy to state sovereign immunity). The States often invoke that rule. And they win with it when plaintiffs try to read broad phrases like "all civil actions" and "any claim" as consent to suit. *See Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 786 (1991); *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 541–46 (2002).

Petitioner asks the Court to hold that a general term, plus the word "any," plus one express exception, satisfies the clear-statement rule even when this Court and seven courts of appeals have read the same term in the same Title to exclude the proceeding at issue. That method will not stay confined to 28 U.S.C. § 2412. Plaintiffs suing the States would carry it into every statute that says "any."

Second, the States and their political subdivisions sit on the front lines of immigration detention and the habeas litigation it generates. For example, Iowa county jails house federal immigration detainees under contracts with the federal government. Polk, Woodbury, and Muscatine

Counties have each been named in habeas suits brought by those detainees. Clark Kauffman, *Polk County Faces More Lawsuits Initiated by ICE Detainees*, Iowa Capital Dispatch (Jan. 10, 2026), https://perma.cc/6SK4-NQZJ.

In January 2026, 68 of the 993 inmates in the Polk County Jail were held for DHS or ICE. *Id.* The Iowa State Patrol has operated a 287(g) task force with ICE since March 2025. Nationally, nearly 47,000 habeas petitions were filed between January 2025 and May 2026, and the first 13 months alone outpaced the three prior administrations combined. Amy Cutler * Cody Lillich, *Historic Surge in Habeas Petitions Filed by Detained Immigrants in Arizona*, AZFamily (May 25, 2026), https://perma.cc/8AUL-CKNP. Next door to Iowa, the District of Minnesota received more than 1,200 immigration habeas petitions in the first half of 2026, up from 12 two years earlier. Suzanne Monyak, *Immigration Detention Cases Weigh on Courts, Months After Spike*, Bloomberg Law (June 17, 2026), https://perma.cc/PF6F-BA83.

Attaching a presumptive fee award to each successful petition will make that docket bigger. And because the immediate custodian is the proper respondent, many of those petitions name a county sheriff or jail administrator who must answer them. *See*, *e.g.*, *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004).

Third, the States litigate the great bulk of federal habeas cases. They defend state convictions under 28 U.S.C. § 2254 every day, and they have a direct stake in how this Court describes the writ. Petitioner's central premise is that habeas is a "civil action" for every federal statute that uses the phrase,

unless Congress wrote an express carveout. Pet.Br. 32–33. That premise unsettles decades of precedent holding that habeas is a distinct proceeding that borrows civil procedure only where it fits. *See Harris v. Nelson*, 394 U.S. 286, 293–94 (1969); *Santana v. United States*, 98 F.3d 752, 754–56 (3d Cir. 1996).

The Court should reject Petitioner's invitation to rewrite the clear-statement rule and affirm.

SUMMARY OF ARGUMENT

For more than forty years, federal courts have read the Equal Access to Justice Act to stop short of habeas corpus. The Second Circuit held in 1984 that a habeas petition is not a "civil action" under 28 U.S.C. § 2412(d)(1)(A). *Boudin v. Thomas*, 732 F.2d 1107, 1111–15 (2d Cir. 1984). The Tenth Circuit agreed in 1987. *Ewing v. Rodgers*, 826 F.2d 967, 969 (10th Cir. 1987). So did the Fourth Circuit in 2005, *O'Brien v. Moore*, 395 F.3d 499, 507–08 (4th Cir. 2005), and again for immigration habeas in 2021, *Obando-Segura v. Garland*, 999 F.3d 190, 194–95 & n.3 (4th Cir. 2021). The Fifth Circuit followed in 2023. *Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023). Congress reenacted § 2412(d) in 1985, a year after *Boudin*, and amended it again in 1992. It never changed its text to bring in habeas.

Then immigration habeas filings exploded. And two courts of appeals announced that "any civil action" had covered immigration habeas unambiguously all along. *Daley v. Ceja*, 158 F.4th 1152, 1165 (10th Cir. 2025); *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 431–33 (3d Cir. 2026). Petitioner now asks this Court to write that rule into the U.S. Code for every district in the country.

The Court should decline. A waiver of sovereign immunity must be "unequivocally expressed in statutory text." *Lane v. Peña*, 518 U.S. 187, 192 (1996). If "there is a plausible interpretation of the statute" that preserves immunity, the waiver fails. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 388 (2023) (quotation omitted). The reading that excludes habeas is more than plausible. It is the reading this Court gave "civil action" in a neighboring part of Title 28, and the reading seven courts of appeals gave the phrase in the Prison Litigation Reform Act. Seventeen circuit judges have adopted it for EAJA itself. *Michelin v. Warden Moshannon Valley Correctional Ctr.*, 169 F.4th 160, 165 (3d Cir. 2026) (Bove, J., dissenting sur denial of rehearing en banc) ("Bove Dissent").

First, EAJA's text does not unambiguously reach habeas. "Civil action" is a term of art in Title 28. Congress gave it a fixed meaning in the Rules Enabling Act, the Civil Rules defined it, and the 1948 recodification carried it into dozens of jurisdictional and procedural parts of law. Habeas is not that kind of action. It begins with an "application," proceeds on a "return," and borrows the Civil Rules only to the extent its own statutes and rules permit. This Court has said the "civil" label fits habeas only in a "gross and inexact" way. *Harris*, 394 U.S. at 293–94. Basically, civil as a catch-all label for not-criminal.

Second, statutory context confirms the point. Congress built a dedicated mechanism for funding counsel in habeas cases, the Criminal Justice Act. And Congress has long said that noncitizens in removal proceedings may have counsel only "at no expense to the Government." 8 U.S.C. § 1362. Reading a general

fee statute to override both choices, without a word about habeas or immigration, gets the clear-statement rule backwards.

Third, Petitioner's interpretation risks unsettling the clear-statement rules that protect the States. This Court has refused to read "all civil actions" and "any claim" to reach nonconsenting States, "even though nothing in the statute expressly excludes such claims." *Raygor*, 534 U.S. at 541. Petitioner's theory, that "any" plus a single exception equals a clear statement, cannot be squared with those cases.

Fourth, Petitioner's remaining arguments do not supply the missing clarity. The word "any" cannot expand the noun it modifies. The tort exception tells the reader what Congress excluded from the class of civil actions, not what belongs in the class. The "old soil" of "civil action" is the Civil Rules, not Blackstone's account of a summary writ. And a habeas challenge to civil detention is no more a Title 28 "civil action" than the removal proceeding that this Court has already held EAJA does not cover. *Ardestani v. INS*, 502 U.S. 129, 138–39 (1991).

The judgment of the court of appeals should be affirmed.

ARGUMENT

I. EAJA Does Not Unambiguously Waive Sovereign Immunity for Habeas Petitions.

A. The waiver must be unmistakable, and any plausible narrower reading controls.

"Except to the extent it has waived its immunity, the Government is immune from claims for attorney's fees." *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685 (1983). EAJA is such a waiver, and a partial one. *Ardestani*, 502 U.S. at 137. So it "must be strictly construed in favor of the United States." *Id.*

The rule governs scope as well as existence. A waiver "will be strictly construed, in terms of its scope, in favor of the sovereign." *Lane*, 518 U.S. at 192. The question is not whether Petitioner's reading is the better one. It is whether the Government's reading is "plausible." *FAA v. Cooper*, 566 U.S. 284, 290–91 (2012); *United States v. Nordic Village, Inc.*, 503 U.S. 30, 34–37 (1992). If it is, "Congress has not unambiguously expressed the requisite intent." *Lac du Flambeau*, 599 U.S. at 388.

This Court has applied that rule to EAJA before, and against sympathetic litigants. In *Ardestani*, the Court acknowledged that "the broad purposes of the EAJA would be served" by extending fees to deportation proceedings. 502 U.S. at 138. It refused anyway, because "the plain language of the statute, coupled with the strict construction of waivers of sovereign immunity," did not allow it. *Id.* The same discipline decides this case.

B. "Civil action" is a Title 28 term of art, and habeas is not one.

1. In 1980, Congress did not pull "civil action" from the ether. It had given the phrase a fixed meaning in 1934, when the Rules Enabling Act authorized this Court to "secure one form of civil action and procedure" for law and equity. Act of June 19, 1934, ch. 651, § 2, 48 Stat. 1064. The Civil Rules then defined the term: "There shall be one form of action to be known as 'civil action.'" Fed. R. Civ. P. 2 (1938). That action "is commenced by filing a complaint with the court." Fed. R. Civ. P. 3.

In 1948, Congress recodified Title 28 and inserted "civil action" into 31 sections. The Reviser's Notes tied each insertion to "Rule 2 of the Federal Rules of Civil Procedure." H.R. Rep. No. 80-308, at A105 (1947); *see* Bove Dissent, 169 F.4th at 175–76 & n.4 (collecting such insertions). This Court has recognized the same lineage. *See Ex parte Collett*, 337 U.S. 55, 58 n.6 (1949). So when Congress placed "any civil action" in Title 28 in 1980, the soil it carried was the soil of the Civil Rules.

EAJA's own text speaks that dialect. It asks whether a party's net worth exceeded $2 million "at the time the civil action was filed." 28 U.S.C. § 2412(d)(2)(B). It awards fees "in addition to any costs awarded pursuant to subsection (a)," which in turn awards the costs enumerated in 28 U.S.C. § 1920. *Id.* § 2412(a)(1), (d)(1)(A). Those are the mechanics of ordinary civil litigation.

2. Habeas does not run on those mechanics. A habeas proceeding begins with an "[a]pplication," not a complaint. 28 U.S.C. §§ 2241(a), 2242. The court

issues the writ or an order to show cause, and the custodian files a "return certifying the true cause of the detention." *Id.* § 2243. Discovery is not available as of right. *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Even the filing fee differs: $350 for a civil action, $5 for a habeas application. 28 U.S.C. § 1914(a).

The Civil Rules reinforce that line. Rule 81 explains that the Rules apply in habeas only "to the extent that the practice in those proceedings" is not specified by statute or the habeas rules "and" "has previously conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(4). A rule that measures habeas against "the practice in civil actions" treats habeas as different. The version in force in 1980 said the same. Fed. R. Civ. P. 81(a)(2) (1980). And the Habeas Rules, which Congress approved in 1976, permit district courts to apply the Civil Rules only where they are "not inconsistent" with the statutes and the Habeas Rules. Rules Governing § 2254 Cases, Rule 12; *see id.* Rule 1(b); Pub. L. No. 94-426, 90 Stat. 1334 (1976).

This Court read those rules exactly that way in the decade before EAJA. *Harris* acknowledged that habeas is "characterized as 'civil,'" but called the label "gross and inexact" because "the proceeding is unique." 394 U.S. at 293–94. Two years later, *Schlanger v. Seamans* explained that "civil action" in the federal-officer venue statute does not reach habeas. 401 U.S. 487, 490 n.4 (1971). The Court explained that habeas, "[t]hough . . . technically 'civil,' . . . is not automatically subject to all the rules governing ordinary civil actions." *Id.* And in 1980, the year EAJA passed, the Court read *Schlanger* to mean that Congress did not intend "civil action" to carry a

"sweeping definition." *Stafford v. Briggs*, 444 U.S. 527, 543 (1980).

That is the public meaning Congress legislated against. Habeas was "civil" in the binary sense that it was not a criminal prosecution. But it was not a Title 28 "civil action" in the sense the Rules Enabling Act, the Civil Rules, and the 1948 Code had fixed. At a minimum, that is a plausible reading.

C. Courts have read "civil action" to exclude habeas for decades, including in EAJA itself.

The narrower reading is not a litigating position invented for this case. It is how the federal courts have long read the phrase.

Take the Prison Litigation Reform Act. It requires a prisoner "seeking to bring a civil action or appeal a judgment in a civil action or proceeding" in forma pauperis to pay the full filing fee in installments. 28 U.S.C. § 1915(a)(2), (b)(1). That text sits in Title 28, uses "civil action," and adds "or proceeding" for good measure. Yet seven courts of appeals have held it does not reach habeas. *Reyes v. Keane*, 90 F.3d 676, 678 (2d Cir. 1996); *Santana*, 98 F.3d at 754–56; *Martin v. United States*, 96 F.3d 853, 855 (7th Cir. 1996); *Naddi v. Hill*, 106 F.3d 275, 277 (9th Cir. 1997); *Jennings v. Natrona Cnty. Det. Ctr. Med. Facility*, 175 F.3d 775, 780 (10th Cir. 1999); *Anderson v. Singletary*, 111 F.3d 801, 805 (11th Cir. 1997); *Blair-Bey v. Quick*, 151 F.3d 1036, 1040 (D.C. Cir. 1998). The Third Circuit explained why: habeas cases "are, in effect, hybrid actions whose nature is not adequately captured by the phrase 'civil action.'" *Santana*, 98 F.3d at 754.

EAJA tells the same story. *Boudin* held in 1984 that "civil action" in § 2412(d) does not include habeas. 732 F.2d at 1111–15. *Ewing*, *Sloan v. Pugh*, 351 F.3d 1319, 1322–23 (10th Cir. 2003), *O'Brien*, *Obando-Segura*, and *Barco* followed. By one count, seventeen circuit judges have read EAJA that way. Bove Dissent, 169 F.4th at 165.

Disagreement among courts does not by itself make a statute ambiguous. But when the immunity-preserving reading of "civil action" is the one this Court adopted in *Schlanger*, the one seven circuits adopted for § 1915, and the one four circuits adopted for EAJA, that reading is at least plausible. That is all the Government needs. *Lac du Flambeau*, 599 U.S. at 388.

II. STATUTORY CONTEXT CONFIRMS THAT CONGRESS FUNDED HABEAS COUNSEL ELSEWHERE AND DECLINED TO FUND IMMIGRATION COUNSEL AT ALL.

Text is read in context, and here the statutory context provides strong evidence as to how to best read the text.

A. Congress already built a funding mechanism for habeas counsel.

Ten years before EAJA, Congress authorized federal courts to appoint and pay counsel for financially eligible habeas petitioners whenever "the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). That authority covers petitions under 28 U.S.C. §§ 2241, 2254, and 2255 alike. And the Habeas Rules, approved by Congress in 1976,

require appointment when an evidentiary hearing is warranted. Rules Governing § 2254 Cases, Rule 8(c).

So when Congress enacted EAJA, habeas petitioners already had a dedicated, court-supervised path to funded counsel. That is "a marked difference from general civil practice," where no such right exists. *Ewing*, 826 F.2d at 971. It also explains why Congress had no reason to think EAJA's fee-shifting incentive was needed to open the habeas courthouse doors. In 1980, state and federal prisoners filed roughly 8,444 habeas petitions. Bove Dissent, 169 F.4th at 177. Noncitizens filed 318 between 1976 and 1980. *Id.* Nothing in that landscape suggested a deterrence problem that only a new, presumptive fee award could solve.

Petitioner's reading could lay a second fee regime, free of the Criminal Justice Act's judicial gatekeeping, on top of the specific one Congress wrote, without mentioning habeas. Courts do not ordinarily read a general provision to displace a specific scheme Congress built for the same subject. *Cf. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). And they should never do so to find a waiver of sovereign immunity by implication.

B. Congress has said that immigration counsel comes "at no expense to the Government."

The Immigration and Nationality Act gives noncitizens in removal proceedings "the privilege of being represented (at no expense to the Government)" by counsel of their choosing. 8 U.S.C. § 1362; *see id.* § 1229a(b)(4)(A). That text was on the books in 1980.

Bove Dissent, 169 F.4th at 178 (citing 8 U.S.C. §§ 1252(b)(2), 1362 (1976)).

Petitioner's reading produces a strange result. The noncitizen who litigates removal before an immigration judge gets no fees, by express statutory command. The same noncitizen who files a collateral habeas petition challenging detention *pending* that removal gets presumptive fees, by implication from a general phrase. Congress does not hide that kind of elephant in a mousehole like "any." *Cf. Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

The point is stronger still given what immigration detention litigation looks like now. Detention is "a constitutionally permissible part of" the removal process. *Demore v. Kim*, 538 U.S. 510, 531 (2003). A fee award in a detention case funds the effort to resist removal through a side door that Congress closed at the front.

C. Congress revisited EAJA twice and left habeas alone.

Congress reenacted § 2412(d) in 1985, after the original statute sunset. Pub. L. No. 99-80, 99 Stat. 183 (1985). That reenactment came a year after *Boudin* held habeas outside EAJA. Congress responded to other judicial and regulatory developments in detail. It added "proceedings for judicial review of agency action" to § 2412(d)(1)(A); it addressed contract appeals, condemnation actions, and Social Security cases. *Id.* §§ 1–3, 99 Stat. at 183–86; *see* Bove Dissent, 169 F.4th at 179. It said nothing about habeas. Congress amended EAJA again in 1992, after *Ewing* and the Ninth Circuit's contrary decision in *In re Hill*, 775 F.2d 1037 (9th Cir. 1985), had split the circuits.

Again, nothing. *See* Bove Dissent, 169 F.4th at 179–80.

The States do not ask the Court to read congressional silence as law. But this Court has relied on Congress's repeated expansions of EAJA, and its failure to add deportation proceedings, as context confirming EAJA's limits. *Ardestani*, 502 U.S. at 138. The 1985 amendment is more telling still. When Congress wanted EAJA to reach proceedings that are not ordinary Civil Rules actions, such as petitions for review filed directly in the courts of appeals, it said so expressly. Congress never added habeas to that list.

III. PETITIONER'S METHOD UNSETTLES THE CLEAR-STATEMENT RULES THAT PROTECT THE STATES.

A. This Court has already rejected the "any plus one exception" theory when States' immunity was at stake.

The clear-statement rule for federal immunity and the clear-statement rule for state immunity sprout from the same root. Both protect a sovereign's treasury from liability it never accepted. *See Coll. Sav. Bank*, 527 U.S. at 682; *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985). And this Court applies both with vigor.

Consider what the Court has held about broad words. In *Atascadero*, a statute authorizing suit against "any recipient of Federal assistance" did not clearly reach the States, though States plainly received federal assistance. 473 U.S. at 245–46. In *Blatchford*, a jurisdictional grant over "all civil actions" brought by tribes did not reach suits against

nonconsenting States. 501 U.S. at 787–88. In *Raygor*, a tolling provision for "any claim" asserted under supplemental jurisdiction did not reach claims against nonconsenting States, though the statute contained no express exclusion. 534 U.S. at 541–46. And in *Sossamon v. Texas*, "appropriate relief against a government" did not clearly include money damages. 563 U.S. 277, 285–88 (2011).

The Court later summarized the lesson. Where "a broad reading" of "any" would "implicate sovereignty concerns," the Court reads the word narrowly. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 220 n.4 (2008) (discussing *Raygor*).

Petitioner's argument is the argument *Raygor* and *Blatchford* rejected. EAJA says "any civil action." It has one express exception. Therefore, Petitioner says, everything "technically" civil is in. Pet.Br. 29–34. But "all civil actions" in *Blatchford* was every bit as sweeping, and the absence of an express exclusion in *Raygor* did not matter. The Court asked whether Congress had clearly spoken to the sovereign's liability in the case at hand. It had not.

If Petitioner prevails, that interpretative method will not stay in § 2412. Litigants suing the States will cite this case for the proposition that "any" plus a lone exception is a clear statement. They may try to press it under the Spending Clause, where conditions on federal funds must be stated "unambiguously." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). They may try to press it under every abrogation statute that uses a capacious modifier. Even if those efforts are doomed to fail, the States have an obvious interest in keeping the rule where this Court has always put it.

B. The rule exists for cases like this one, where the fiscal stakes are large and Congress has not decided them.

The clear-statement rule assigns a decision to Congress: whether to spend public money on a class of litigation. *See Lane*, 518 U.S. at 192. That decision carries real stakes here.

The fee awards themselves are not small. The magistrate judges in *Michelin* awarded $15,841.60 and $18,224.58. Pet.App. 6a, 50a, *Warden, Moshannon Valley Corr. Ctr. v. Michelin*, No. 26-145 (U.S. filed July 30, 2026). Petitioner here sought $8,971. Pet.Br. 10. The average EAJA award across all agencies in fiscal year 2025 was $8,347. Pet.Br. 6 & n.1. At that average, every thousand successful petitions would cost the Treasury more than $8.3 million. And the denominator is enormous. Federal courts saw 41,887 immigration suits in the twelve months ending March 2026, most of them challenging federal action. *Surge in Immigration Lawsuits Hits Record High in 2026*, TRAC (May 11, 2026), .

The incentive effects arrived quickly. Within weeks of the Third Circuit's decision, district judges in that circuit were encouraging detainees to consider filing for fees. *Michelin*, 169 F.4th at 187 (Mascott, J., dissenting from denial of rehearing en banc) (citing *Cova v. Rose*, No. 3:26-CV-101, 2026 WL 376921, at *2 (W.D. Pa. Feb. 11, 2026), and *Aguirre-Guevara v. Oddo*, No. 3:26-CV-70, 2026 WL 376846, at *1 (W.D. Pa. Feb. 11, 2026)). Fee awards also attach to the Government's litigation positions in fact-bound due-process balancing cases, where the line between a loss and an unjustified position is thin.

Congress may decide that the public should fund immigration detainees' habeas counsel. It may decide how much, under what caps, and through which mechanism. But that is a choice for "elected officials, not judges." *Doe 1 v. United States*, 37 F.4th 84, 88 (3d Cir. 2022). Until Congress makes it in clear text, the till stays closed.

IV. PETITIONER'S ARGUMENTS DO NOT SUPPLY THE MISSING CLEAR STATEMENT.

A. "Any" cannot expand the noun it modifies.

Petitioner's lead textual argument is that "any means any." Pet.Br. 29–32. True enough. But "any" tells the reader how many members of a class are covered. It does not define the class. The word "is indeed a broad term," but "it cannot expand the reach of the noun it modifies." *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 348 (2025). The question here is the noun. Is a habeas application a "civil action" in Title 28's sense? "Any" cannot answer that.

Petitioner's authorities confirm the point. None involved a dispute over whether a proceeding belonged to the class at all, and almost none involved sovereign immunity. *Patel v. Garland*, 596 U.S. 328 (2022), concerned which judgments "any judgment" reaches; no one doubted the decisions at issue were judgments.

United States v. Williams, 514 U.S. 527 (1995), concerned who may bring a tax-refund suit; no one doubted a refund suit is a civil action.

And *Collett* read "any civil action" in § 1404(a) in a case with no sovereign-immunity question, while

acknowledging that the phrase came from the Civil Rules. 337 U.S. at 58 & n.6.

Where sovereign immunity *was* at stake, this Court read "all civil actions" and "any claim" narrowly. *Blatchford*, 501 U.S. at 786; *Raygor*, 534 U.S. at 541–46; *Ali*, 552 U.S. at 220 n.4.

Petitioner also says no other statute uses "any civil action" to exclude habeas without an express carveout. Pet.Br. 33. The Third Circuit said the same. *Michelin*, 169 F.4th 418, 422 (3d Cir. 2026).

Not so.

Section 1915 uses "a civil action or . . . a civil action or proceeding," contains no habeas carveout, and seven circuits read it to exclude habeas anyway. *See* Part I.C, *supra*. Section 1391(e) uses "[a] civil action," contains no habeas carveout, and this Court read it to exclude habeas in *Schlanger*. 401 U.S. at 490 n.4. Petitioner tries to explain *Schlanger* away as a relic of legislative-history reasoning. Pet.Br. 39. But the question under the clear-statement rule is not whether *Schlanger* would be written the same way today. It is whether a reader in 1980 could plausibly understand "civil action" in Title 28 to exclude habeas. *Schlanger* and *Stafford*, decided in the decade before EAJA, show that a reader could.

B. The tort exception says what Congress removed from the class, not what is in it.

Petitioner next invokes the canon that an express exception implies no others. Pet.Br. 33–34. The canon has force when the question is whether some member of a class is exempt. It has less when the question is whether something belongs to the class to

begin with. Tort suits are paradigm civil actions, and the Federal Tort Claims Act already supplies their remedial scheme; Congress carved them out of a class they indisputably belong to. That choice says nothing about proceedings that sit outside the paradigm.

Petitioner's penguin illustrates the problem. Pet.Br. 34. Everyone agrees a penguin is a bird. An assignment to photograph "any bird (other than a pigeon)" therefore covers it. But whether habeas is a "civil action" in Title 28's sense is disputed. An exception for pigeons does not tell the student whether a bat is a bird.

And *Raygor* forecloses the inference in the sovereign-immunity context. There, the absence of any express exclusion did not carry the day, because the statute did not clearly reach the sovereign in the first place. 534 U.S. at 541–46.

C. The "old soil" of "civil action" is the Civil Rules, not Blackstone.

Petitioner devotes a dozen pages to the common law. Pet.Br. 15–27. But the "old soil" principle applies only when a term's meaning was "well-settled before the transplantation." *Kemp v. United States*, 596 U.S. 528, 539 (2022); *accord Kousisis v. United States*, 605 U.S. 114, 129 (2025). And the soil comes from the source the term was actually taken from. The term Congress used in 1980 had been placed in Title 28 by the Rules Enabling Act, Rule 2, and the 1948 recodification. *See* Part I.B, *supra*. That is the relevant soil.

The common law does not help Petitioner anyway. Blackstone described the writ of habeas corpus as a means of "removing" an unlawful

confinement. 3 William Blackstone, *Commentaries on the Laws of England* 128–37 (1768). The "civil action" for the injury came separately, afterward, as an action of trespass or false imprisonment for damages. *Id.*; *see* Bove Dissent, 169 F.4th at 172–73. And at common law, habeas lacked basic features of a civil action: its denials were not res judicata, *McCleskey v. Zant*, 499 U.S. 467, 479 (1991), and its judgments were not appealable, *Sanders v. United States*, 373 U.S. 1, 8 (1963).

Petitioner's long string of cases calling habeas "civil" proves less than it claims. Most say habeas is a civil *proceeding*, or civil *in nature*, using civil as a catchall, opposed to criminal. *See, e.g.*, *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

The States agree that habeas is not a criminal case. The question is whether it is a Title 28 "civil action." On that question, *Harris*, *Schlanger*, and *Stafford* are the cases that speak directly, and they cut the other way.

D. A habeas challenge to civil detention is not a "civil action" twice over.

Petitioner argues that immigration habeas is "civil twice over" because immigration detention is civil. Pet.Br. 27–28. That gets him nowhere.

To start, the writ is the same writ regardless of the custody it tests. "There are not 'criminal habeas writs' and 'non-criminal habeas writs': there are just writs for habeas corpus" *Obando-Segura*, 999 F.3d at 194. The procedures, the Habeas Rules, and Rule 81 do not change because the custodian works for ICE rather than a state prison. There may be reasons

habeas does not apply in some immigration proceedings—for example, when Congress has stripped courts of jurisdiction—but that is not the point Petitioner makes.

More, the underlying immigration proceeding is itself civil, and this Court has held that EAJA does not cover it. *Ardestani*, 502 U.S. at 138–39. Civil character was not enough there. It is not enough here. A specialized collateral proceeding challenging detention in a specialized administrative proceeding does not become an ordinary Title 28 civil action by adding the two together.

E. Kirtz *and* Lac du Flambeau *involved statutes that named the sovereign category.*

Petitioner leans on this Court's recent decisions finding clear waivers and abrogations to try to extend to this novel context. Pet.Br. 39, 42–43, 48. Those cases show what a clear statement looks like. In *Kirtz*, the Fair Credit Reporting Act defined "person" to include "any . . . government or governmental subdivision or agency." 15 U.S.C. § 1681a(b); *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 51–52 (2024). In *Lac du Flambeau*, the Bankruptcy Code defined "governmental unit" through an exhaustive list ending with "other foreign or domestic government." 11 U.S.C. § 101(27); 599 U.S. at 387–88. In each case, the text named the category whose immunity was at issue.

EAJA never mentions habeas. The States do not ask for "magic words." *See Exxon Mobil Corp. v. Corporación CIMEX, S.A. (Cuba)*, 146 S. Ct. 1909, 1924 (2026); *see Kirtz*, 601 U.S. at 48. They ask only

for a term that, as Congress used it in 1980, clearly carried habeas with it. "Civil action" did not.

F. Hard facts do not change the statute.

This case arrives with hard facts. Petitioner reports that, after the district court ordered his release, he was moved across several States and placed on a plane bound for El Salvador. Pet.Br. 9. But the question presented asks about every immigration habeas petition in every district, and the answer must come from the text Congress enacted. If Congress concludes that detainees who prevail on habeas should recover fees from the Treasury, it can say so in a sentence. It has not.

CONCLUSION

The Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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APPENDIX

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