

02-1657 SCARBOROUGH v. PRINCIPI

Ruling below: CA Fed, 319 F.3d 1346

QUESTION PRESENTED

In December 2001, in an earlier appeal in this case, the United States Court of Appeals for the Federal Circuit held that an attorney's fee application under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), is jurisdictionally barred if the fee applicant does not allege, within the statute's 30-day limitations period, that the position of the United States lacked substantial justification, even when the application itself is timely filed and the applicant promptly amends the application to supply the allegation. The Federal Circuit acknowledged that its holding directly conflicted with decisions of other circuits. On June 17, 2002, this Court granted a petition for a writ of certiorari, vacated the Federal Circuit's decision, and remanded in light of *Edelman v. Lynchburg College*, 122 S. Ct. 1145 (2002). In a nearly verbatim reprise of its earlier ruling, the Federal Circuit again held the fee application jurisdictionally barred. That court again acknowledged the circuit split and then found *Edelman* inapposite. The question presented is the same as that presented in the earlier petition to this Court:

Whether, or in what circumstances, an applicant for attorney's fees under the Equal Access to Justice Act is barred from obtaining a fee award by the Act's 30-day statute of limitations solely because the applicant's timely-filed fee application did not initially allege that the position of the government in the underlying litigation lacked substantial justification.

CERT. GRANTED: 9/30/03