District Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROLMA TURENNE, Petitioner, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:26-cv-00275-RSM FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEYS' FEES AND COSTS

Federal Respondents oppose Petitioners' motion for an award in the amount of $ 4,470.82 in attorneys' fees and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. No. 19.

I. LEGAL STANDARD

A party may recover fees and costs under the EAJA only if (1) the party prevailed in the action; (2) the government's position was not "substantially justified;" (3) no special circumstances would make an award unjust; (4) the requested fees and costs are reasonable; and (5) the party filed a timely and supported application. *See* 28 U.S.C. § 2412(d); *United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009).

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Although the EAJA creates a presumption in favor of awarding fees to prevailing parties, fee shifting is not mandatory. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). "Attorney's fees are not available if the position of the United States is 'substantially justified.'" *Id.* The government can show that its position was "substantially justified" by proving that it was "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 566 (1992). The government bears the burden of demonstrating substantial justification by showing it had "a reasonable basis both in law and fact." *Flores*, 49 F.3d at 569-70 (quoting *Pierce*, 487 U.S. at 565). "[T]he government need not establish that it was correct or 'justified to a high degree' … but only that its position is one that a 'reasonable person could think [is] correct.'" *Ibrahim v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*) (quoting *Pierce*, 487 U.S. at 566 n.2).

Federal Respondents do not dispute that Petitioner is a prevailing party in this case.

II. ARGUMENTS

A. EAJA's Limited Waiver of Sovereign Immunity Does Not Authorize Attorneys' Fees in Habeas Proceedings Challenging Immigration Detention.

Sovereign immunity generally bars awards of monetary relief against the United States, its agencies, and its employees sued in their official capacities. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Only Congress, however, can waive the United States' sovereign immunity. *Lane v. Peña*, 518 U.S. 187, 192 (1996).

To respect Congress's prerogative to waive sovereign immunity (or not), the Supreme Court has imposed a stringent standard for finding waiver, stating "on many occasions that a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *FAA v. Cooper*, 566 U.S. 284, 290 (2012) (quoting *Lane*, 518 U.S. at 192). This amounts to a "clear statement" rule: "a waiver of sovereign immunity must be 'unmistakably clear in the language of

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the statute.'" *Dep't of Agric. v. Kirtz*, 601 U.S. 42, 49 (2024) (quoting *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 76 (2000)). This rule applies both to (1) whether Congress has waived immunity and (2) the scope of that waiver. *Cooper*, 566 U.S. at 291 ("For the same reason that we refuse to enforce a waiver that is not unambiguously expressed in the statute, we also construe any ambiguities in the scope of a waiver in favor of the sovereign."). While the court may employ "traditional interpretive tools" to determine whether the existence or scope of a waiver is ambiguous, where those tools point to ambiguity, the court must "take the interpretation most favorable to the Government." *Id.*

The EAJA includes a limited waiver of sovereign immunity for claims for attorney's fees against the United States. 28 U.S.C. § 2412(d)(1)(A). This language waives immunity for a limited set of claims, in that it applies only to "any civil action (other than cases sounding in tort)." This amounts to a "partial" waiver of sovereign immunity that "must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991) (holding that a different provision of the EAJA that applies to some administrative proceedings could not be extended to encompass deportation proceedings).

The upshot is that for the EAJA to waive sovereign immunity here, the statutory phrase "civil action" must unambiguously and unmistakably encompass habeas petitions challenging immigration detention. It does not. Instead, the term "civil action" is ambiguous as to whether it encompasses such habeas petitions. And that ambiguity precludes the EAJA's waiver of sovereign immunity from applying here. Considering this ambiguity, this court should construe the waiver in favor of the United States and hold that the Government is immune from an award of attorneys' fees.

While habeas petitions are often categorized as civil for general purposes, "the label is gross and inexact." *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969). Habeas proceedings are instead

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deemed to be "unique." *Id.* at 294. As such, the Supreme Court has repeatedly refused to construe the statutory phrase "civil action" as invariably encompassing habeas proceedings. Instead, the Court has noted that "[t]hough habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." *Schlanger v. Seamans*, 401 U.S. 487, 490 n.4 (1971) (quoting 28 U.S.C. § 1391(e) (1964 ed., Supp. V.)). The Court later recognized that *Schlanger* rejected an "overbroad interpretation" of "the phrase 'civil action'" that would have encompassed habeas proceedings. *Stafford v. Briggs*, 444 U.S. 527, 542-43 (1980).

Congress enacted the EAJA twenty-one years after *Harris* and nine years after *Schlanger*. In passing the EAJA, Congress adopted statutory language that used the same phrase— "civil action"—the Court had already held did not encompass habeas petitions. *See* Pub. L. 96-481 § 204(a), 94 Stat. 2321, 2328 (1980). Given that courts "normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent," *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010), Congress presumptively intended to adopt *Schlanger's* construction of that term as excluding habeas petitions. *See Ankenbrandt v. Richards*, 504 U.S. 689, 700-01 (1992) (holding when Congress added the phrase "all civil actions" to the diversity jurisdiction statute, it intended to maintain the domestic relations exception to diversity jurisdiction from Supreme Court case law). After all, "[w]hen a statutory term is obviously transplanted from another legal source, it brings the old soil with it." *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019).

For purposes of the EAJA, there is no meaningful difference between the habeas petition challenging criminal confinement and the habeas petition challenging immigration detention here. Neither type of petition is unambiguously and unmistakably a "civil action," and attorney's fees are thus not available for either.

While the underlying basis of the confinement at issue in habeas petitions challenging immigration detention is not criminal, that does not change the unique hybrid nature of the habeas

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remedy itself. Both the Fourth and Fifth Circuits have held as much. *See Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023) (explaining that "[s]ince 'a habeas corpus proceeding is neither a wholly criminal nor a wholly civil action, but rather a hybrid action that is unique, a category unto itself,' it is not purely a civil action, and the EAJA does not authorize attorney's fees for successful 28 U.S.C. § 2241 motions." (citation omitted)); *see also Obando-Seguro v. Garland*, 999 F.3d 190, 194 (4th Cir. 2021) (finding that "the reason for the challenged detention does not change the essence or function of the habeas application to seek release."). Ultimately, the unique nature of habeas petitions requires interpreting EAJA narrowly in favor of immunity. "Courts sometimes call habeas corpus proceedings 'civil actions.' Yet they are actually unique, hybrid proceedings." *Obando-Seguro*, 999 F.3d at 197.

The Ninth Circuit has not directly addressed the issue. To the extent Petitioner might rely on *Petition of Hill*, 775 F.2d 1037 (9th Cir. 1985) as authority that attorney fees under the EAJA are available in every habeas proceeding, that decision does not extend so far and should be limited to its facts. In awarding fees under the EAJA, the Ninth Circuit looked "to the substance of the remedy sought … [to determine] whether a proceeding falls within the term 'any civil action' of the EAJA." *Id.* at 1040-41. The Ninth Circuit held fees under the EAJA were available because "Hill's claim was not merely a vindication of his own personal rights, but a challenge to a regulatory policy that had a sweeping effect on homosexual aliens seeking to enter the United States." *Id.* at 1041. It was this challenge to a widely applicable government policy that justified permitting attorney fees under the EAJA. *Id.* Through this habeas action, Petitioner does not make such a sweeping challenge to a government policy; rather, he sought his release after being detained, which distinguishes this case from *Hill*. Dkt. 1. As relevant to his motion however, Petitioner cannot rely on *Hill* to stand for a general proposition that the EAJA is available in every habeas proceeding.

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That *Hill* should be limited to its facts is further supported by the Ninth Circuit's reliance on the Second Circuit's decision in *Boudin v. Thomas*, 732 F.2d 1107 (2d Cir. 1984). In *Boudin*, the Second Circuit held that the plaintiff could seek fees under the EAJA not because she filed a habeas action, but because the district court had granted an injunction on the ground that she had a First Amendment right to contact visits with her child. *Id.* at 1115 ("to the extent that *Boudin's* action was a petition for habeas corpus, the district court could not award her attorney's fees because the action did not fall within the provisions of the EAJA"). While the Second Circuit limited *Boudin* twenty-one years later and held that the EAJA applied to immigration habeas actions, *see Vacchio*, 404 F.3d at 672, it still follows that nothing in *Hill* or its reliance on *Boudin* demonstrates that the Ninth Circuit has decided that the EAJA applies generally to immigration habeas actions.

All told then, this court should consider the standard set forth in the Supreme Court's precedent that a waiver of sovereign immunity must be "unmistakably clear in the language of the statute." *Cooper*, 566 U.S. at 290. This court should adopt the reasoning of the Fourth and Fifth Circuits, holding that the clear statement rule precludes interpreting habeas petitions challenging immigration detention as unambiguously "civil actions" under the EAJA. Accordingly, Petitioner's Motion should be denied because the Government is immune from such an award. In the alternative, this Court should stay the enforcement of any fee award to allow the Supreme Court to determine whether EAJA encompasses habeas litigation for immigration detention in *Montoya Palacios v. Liggins*, No. 25-1223.[1]

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[1] On June 29, 2026, the Supreme Court granted certiorari to hear the issue of whether the term "any civil action" in EAJA encompasses an action seeking a writ of habeas corpus to challenge civil immigration detention. *Palacios v. Bacon*, No. 26-6251, 2026 WL 1154321, at *1 (4th Cir. Mar. 24, 2026), cert. granted sub nom. *Montoya Palacios v. Liggins*, No. 25-1223, 2026 WL 1855057 (June 29, 2026).

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III. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's Motion for Attorney's Fees and Costs in its entirety.

In the alternative, if the Court determines that the Equal Access to Justice Act authorizes an award of fees in this case, Federal Respondents request that enforcement of any such order be stayed pending the Supreme Court's decision in *Montoya Palacios v. Liggins*, No. 25-1223.

DATED this 27th day of August, 2026.

Respectfully submitted,

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I certify that this memorandum contains 1,867 words, in compliance with the Local Civil Rules.