No. 24-____

In the Supreme Court of the United States

ROBERT HOLMAN,

Petitioner,

v.

BROOKE ROLLINS, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Robert Holman obtained a preliminary injunction against a racially discriminatory debt-relief program of the United States Department of Agriculture (USDA). After the program was repealed, Holman entered into a stipulated agreement to dismiss his action, based on representations that he could seek attorney's fees under the Equal Access to Justice Act (EAJA). EAJA allows prevailing parties in actions against the federal government to recover attorney's fees, so long as the government's position was "not substantially justified." App. 98a. In determining the government's justification, however, lower courts are divided over how much weight to place on an agency's unreasonable pre-litigation conduct (the policy being challenged in the case). Some circuits place "substantial" or "dispositive" weight on such conduct. That was not so here. Below, the Sixth Circuit did not emphasize the USDA's discriminatory policies at all. Instead, the panel deemed the government's position substantially justified, relying primarily on the government's professionalism in court and its success dismissing two ancillary claims.

The questions presented in this petition are:

1) May the federal government rely on its litigation conduct to establish that its position is "substantially justified" under EAJA, when its pre-litigation conduct was objectively unreasonable?

2) Did the Sixth Circuit err in holding that the government's position was substantially justified, given the strict scrutiny standard applicable to race discrimination?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner Robert Holman was the plaintiff-appellant in the lower court proceedings in the Sixth Circuit and the U.S. District Court for the Western District of Tennessee. Holman is an individual, and there is thus no parent or publicly held company owning 10% or more of a corporation's stock in the matter.

Respondents Brooke Rollins and William "Bill" Beam are named in their official capacities as Secretary of the United States Department of Agriculture, and as Administrator of the Farm Service Agency, respectively (collectively, USDA). Below, the case was styled as against Thomas Vilsack and Zach Ducheneaux, who previously served in those roles, respectively.

LIST OF ALL PROCEEDINGS

The following proceedings are directly related to this case under Rule 14.1(b)(iii):

U.S. Court of Appeals for the Sixth Circuit, No. 23-5493, denial of en banc rehearing, entered on February 3, 2025.

U.S. Court of Appeals for the Sixth Circuit, No. 23-5493, panel affirmance of District Court, entered on September 23, 2024.

U.S. District Court for the Western District of Tennessee Eastern Division, No. 21-cv-01085-STA-JAY, order denying attorney's fees, entered on April 4, 2023.

U.S. District Court for the Western District of Tennessee Eastern Division, No. 21-cv-01085-STA-JAY, order dismissing case, entered on September 15, 2022.

U.S. District Court for the Western District of Tennessee Eastern Division, No. 21-cv-01085-STA-JAY, order entering preliminary injunction, entered on July 8, 2021.

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PETITION FOR CERTIORARI

This case presents the Court with an opportunity to resolve a significant circuit split regarding the application of EAJA's fee-shifting provision. EAJA permits a fee award in successful lawsuits against the federal government where the government's position related to the lawsuit was not "substantially justified." This ensures that courts impose fee awards under EAJA only when the federal government acts unreasonably.

To reach a determination under EAJA, courts must first evaluate the government's "position" related to the lawsuit. This Court has held that the government's "position" under EAJA includes a government agency's actions leading up to litigation, as well as the government's subsequent litigation positions in court. *Comm'r, I.N.S. v. Jean*, 496 U.S. 154 (1990). But circuit courts are split over *how* they weigh this conduct. Most circuits say that when an agency engages in unreasonable pre-litigation conduct—such as establishing an unlawful or unconstitutional policy—an award of attorney's fees is appropriate to hold the government accountable, regardless of its position on the merits during the litigation. By contrast, the Sixth Circuit allows the government to cure an agency's unreasonable pre-litigation conduct by taking an otherwise *reasonable* position on the merits in court.

Petitioner Robert Holman was caught on the wrong side of this split of authority. Holman is a Caucasian farmer who was excluded from agricultural debt relief under the American Rescue Plan Act (ARPA) solely because of his race. Through ARPA, the USDA issued a Notice of Funding Availability

(NOFA), whereby it categorically excluded white or Caucasian farmers from government debt relief under the act.

Holman sued. At no point did the government provide *any evidence* of specific discrimination against many of the racial groups that the NOFA benefited, or that the USDA or Congress considered race-neutral alternatives before enacting the law—both requirements under strict scrutiny. For that reason, the District Court granted Holman's request for a preliminary injunction and enjoined the USDA from continuing its blatantly discriminatory loan forgiveness program. Over a year later, Congress repealed the unconstitutional and enjoined program. Holman then voluntarily dismissed his case through a stipulated agreement that preserved his right to pursue attorney's fees under EAJA.

Following the stipulated agreement, Holman moved for attorney's fees under EAJA. The District Court denied Holman's request for fees, ruling that he did not qualify as a prevailing party. Holman appealed to the Sixth Circuit. In a 2-1 decision, the Sixth Circuit panel affirmed the denial, but on different grounds—it ruled that even if Holman were a prevailing party, the government's position related to its enjoined racially discriminatory loan forgiveness program was "substantially justified." In so holding, the panel improperly prioritized the government's litigation position and nearly ignored the government's plainly unconstitutional pre-litigation conduct. Holman sought an en banc hearing, which was denied, although five judges would have granted it.

In affording heightened attention to the

government lawyers' position *during* litigation, the Sixth Circuit panel's approach departed from at least five other circuits. When assessing EAJA fee claims, those five circuits place substantial, or even dispositive, weight on the government's unreasonable pre-litigation position. In other words, the government can't cure its unreasonable actions, which are being challenged in court, with reasonable conduct during the case. This approach better serves EAJA's purposes and legislative intent. More importantly, it better serves the Constitution.

When it comes to equal treatment, there should be no division among courts: it is unreasonable for the government to discriminate on the basis of race. That is why race classifications are subject to strict scrutiny, not rational basis review. Yet in holding that the government's position was substantially justified, the Sixth Circuit has paved the way for racial discrimination in all sorts of government programs. No matter how egregious a discriminatory policy put forth by an agency may be, under the Sixth Circuit's reasoning, the government need only play nicely in court to avoid any real accountability for violating equal protection.

The panel's departure from five other circuits not only created a circuit split but also prejudiced Holman. The NOFA openly discriminated against loan recipients like Holman based on their race, making Holman ineligible for relief under ARPA solely because he is Caucasian. This discriminatory rule forced Holman to vindicate his rights through federal litigation—precisely the type of agency misconduct that Congress intended for EAJA to deter. Had the Sixth Circuit properly considered the USDA's promulgation of overtly race-based debt relief, it

would not have concluded that the government's position was substantially justified.

This case is exceptionally important. EAJA plays a vital role in ensuring that victims of government discrimination can vindicate their rights in court. The statute exists to discourage rash, unconstitutional conduct by federal agencies, and to ensure that aggrieved parties are not deterred from challenging such conduct by the prospect of bearing their own litigation costs. The Sixth Circuit's generous application of the "substantial justification" exception to the government threatens these purposes and deepens an already entrenched circuit split.

Finally, this Court's recent decision in *Lackey v. Stinnie*, 145 S. Ct. 659 (2025), does not resolve this case. After the Sixth Circuit's denial of en banc review, this Court issued its decision in *Lackey*, interpreting the phrase "prevailing party" under 42 U.S.C. § 1988. There, this Court held that obtaining merely a preliminary injunction is insufficient to confer "prevailing party" status under Section 1988. However, EAJA is different. EAJA's drafting history clearly demonstrates that Congress intentionally adopted an "expansive view" of the term "prevailing party." That view explicitly contemplates fee awards in cases where the government ceases its unlawful conduct before final judgment.

Holman respectfully requests review from this Court on these crucial questions of law.

OPINIONS BELOW

The District Court's Order Granting Petitioners' Motion for Preliminary Injunction. App. 62a–96a.

The District Court's Order reflecting the denial of Petitioners' Motion for Attorney's Fees and Costs. App. 47a–57a.

The Sixth Circuit's affirmance of the District Court is reported at 117 F.4th 906 (6th Cir. 2024) and reprinted at App. 15a–45a, 46a.

The Sixth Circuit's opinion reflecting the denial of the Petition for rehearing en banc is reported at 127 F.4th 660 (6th Cir. 2025) and reprinted at App. 1a–17.

JURISDICTION

The Sixth Circuit Court's denial of en banc review of its decision affirming the District Court's denial of attorney's fees under 28 U.S.C. § 2412(d)(1)(A) was entered on February 3, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Equal Access to Justice Act is at 28 USCA § 2412.

The definition of "socially disadvantaged farmer or rancher" is at 7 U.S.C. § 2279(a)(5).

The definition of "socially disadvantaged group" is at 7 U.S.C. § 2279(a)(6).

The fee-shifting provision of the Civil Rights Act of 1866 is at 42 U.S.C. § 1988(b).

The fee-shifting provision of the Americans with Disabilities Act is at 42 U.S.C. § 12205.

The fee-shifting provision of the Fair Housing Act is at 42 U.S.C. § 3613(c)(2).

The Farm Loan Assistance Program is at American Rescue Plan Act, Pub. L. No. 117–2, § 1005(a)(2), 135 Stat. 4 (2021).

The repeal of the Farm Loan Assistance Program is at Inflation Reduction Act, Pub. L. No. 117–169, § 22008, 136 Stat. 1818 (2022).

The Notice of Funding Availability is at 86 Fed. Reg. 28,329, 28,330 (May 26, 2021).

The purposes set forth in the Equal Access to Justice Act are at Pub. L. No. 96–481, 94 Stat 2321 (1980).

STATEMENT OF THE CASE

I. Factual background

On March 11, 2021, then President Biden signed the American Rescue Plan Act (ARPA) into law. App. 107a–108a. ARPA contained Section 1005, which provided 120% debt relief to certain farmers and ranchers who had Farm Services Agency (FSA) loans. Section 1005 directed the Secretary of Agriculture to "pay off" the outstanding farm loans of each "socially disadvantaged farmer or rancher . . . in an amount up to 120 percent of the outstanding indebtedness . . . as of January 1, 2021." App. 107a.

Under ARPA, a "socially disadvantaged farmer or rancher" was defined to mean "a farmer or rancher who is a member of a socially disadvantaged group." App. 108a (incorporating the definition in 7 U.S.C. § 2279(a)(5)). As defined statutorily, the term did not expressly include a race classification. A "socially

disadvantaged group" is defined by federal law to mean "a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities." App. 110a.

Congress did not further define these terms in ARPA. Instead, Congress assigned that responsibility to the Secretary of Agriculture. Section 1005 directs the Secretary to distribute loans consistent with the terms and overall purposes of ARPA. App. 107a. As such, the task of inserting a race-based exclusion into the definition fell to the Secretary.

The Secretary did just that. On May 26, 2021, the FSA, which is housed within the USDA, issued a Notice of Funds Availability (NOFA) in the Federal Register. S*ee* App. 108a. It was here that the agency expressly conditioned ARPA's debt relief on race, and it was here that it developed its pre-litigation position on the classifications' constitutionality. The NOFA described how the agency planned to distribute the farm subsidies under ARPA. Under the NOFA, members of socially disadvantaged groups were defined to include: "American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics or Latinos." App. 115a. The FSA then identified eligible recipients whose demographic designations in FSA systems qualifie[d] them as socially disadvantaged *based on race or* ethnicity and automatically enrolled those persons for debt relief. *See* App. 116a–117a. Notably, the USDA did not present any evidence that it had, in the past, discriminated against each of the racial groups that it

gave debt relief to under the NOFA.

Congress intended Section 1005 to remedy "the lingering effects of the unfortunate but well-documented history of racial discrimination" by the USDA. App. 65a–66a. So, Congress restricted Section 1005 relief to American farmers that it defined as "socially disadvantaged." App. 65a. Much like the NOFA, Congress did not mention its remedial purpose or further elaborate on its findings of past discrimination in Section 1005. *See generally*, App. 107a–108a. Nor did Congress cite to reports assessing *current* USDA discrimination in Section 1005. *Id.*

Petitioner Robert Holman comes from a long line of West Tennessee farmers. He and his father work on their family farm. Holman has two loans with the FSA. App. 71a. Both loans had outstanding balances on January 1, 2021. Holman's demographic information on file with the FSA is that he is "white." *Id.* He is on file as not "Hispanic/Latino." *Id.* Unfortunately for Holman, the agency excluded "white" and/or "Caucasian" farmers from its definition of "socially disadvantaged" groups. That meant Holman did not qualify for debt relief under ARPA.

II. Procedural history

On June 2, 2021, Holman sued Thomas J. Vilsack, who was then Secretary of Agriculture, and Zach Ducheneaux, the Administrator of the FSA, over his exclusion from ARPA. App. 62a–63a. The District Court had jurisdiction over Holman's claims under 28 U.S.C. §§ 1331 and 1343. On June 6, 2021, Holman moved for a preliminary injunction, alleging that Section 1005 violated his constitutional right to equal protection, as guaranteed to him under the Due Process Clause of the Fifth Amendment. App. 64a.

The government opposed Holman's Motion for a Preliminary Injunction and opted to defend the NOFA's use of race classifications. But the government had little to offer. In defense of the law, the government relied on congressional action reports dating back to 1982. App. 68a. These reports predominantly documented long-past USDA discrimination against African American farmers. *See id*. According to the government, Congress considered these decades-old reports when drafting ARPA and Section 1005. App. 65a. The government cited other evidence of USDA's discrimination that was purportedly relied on by Congress. App. 66a–67a. But that evidence was mostly related to how past USDA programs had disparately impacted non-Caucasians by benefiting Caucasian farms and ranchers; it did not even try to demonstrate specific instances of intentional discrimination by USDA. *See id*.

On July 8, 2021, the District Court granted Holman's motion and enjoined disbursement of Section 1005 funds. App. 65a; *see also* App. 93a. In doing so, the District Court found that the government presented no evidence to support certain key elements of its defense. App. 80a. The court also found the remainder of the government's evidence unconvincing and contrary to binding precedent. App. 85a–86a.

A. The District Court denied Holman EAJA fees.

Holman's injunction lasted for over a year. On August 16, 2022, then President Biden signed another statute, entitled the Inflation Reduction Act (IRA) into law. *See* App. 107a–108a. Section 22008 of IRA repealed "Section 1005 of the American Rescue Plan

Act of 2021." *Id.*

On September 14, 2022, the parties entered a joint stipulation of dismissal, with the parties agreeing that Holman reserved the right to seek costs and attorney's fees under EAJA. App. 59a. The next day, the District Court entered judgment dismissing the case without prejudice, on the basis of the parties' joint filing. App. 58a. In its dismissal order, the District Court mentioned the parties' agreement that Holman would be able to seek attorney's fees under EAJA. App. 59a. After the voluntary dismissal, Holman requested attorney's fees and costs, contending that he was the prevailing party because the merits-based preliminary injunction was never dissolved until Congress repealed the challenged provision. App. 49a.

However, on April 4, 2023, the District Court determined that Holman was not a prevailing party. App. 47a, 57a. It ruled instead that Holman received "nothing lasting," and no "irrevocable benefit." App. 57a. Holman appealed the District Court's decision to the Sixth Circuit Court of Appeals.

B. The Sixth Circuit upheld the District Court's decision and denied en banc review, over Judge Thapar's dissent.

In a two-to-one published decision, the Sixth Circuit affirmed the denial of fees. But it did not affirm based on the District Court's rationale. Instead, the panel relied on an alternative ground. The majority concluded that defendants were "substantially justified" in their defense of Section 1005, App. 31a, thereby sidestepping the "thorny"

prevailing-party issue. App. 22a–23a. The majority, in reaching that holding, relied upon the governmental reports that documented allegations of discrimination against *some* of the groups that received preferential treatment under Section 1005. App. 27a–28a.

Judge Larsen dissented. App. 33a. She reasoned that "[a]bsent at least some specific evidence of intentional discrimination against *each* racial group, the government cannot show a compelling remedial interest in benefitting that group." App. 38a (emphasis added). Because the evidence underlying Section 1005 established, at most, only discrimination against black and African American farmers, and not the other preferred races, the dissent concluded a reasonable jurist could not find that defendants' position under EAJA was substantially justified. App. 37a.

In response to the panel's decision, Holman moved for en banc rehearing by the Sixth Circuit. On February 3, 2025, the Sixth Circuit denied Holman's request. App. 3a. However, Judge Thapar, along with four other judges, dissented, noting that they would have granted review to reverse the panel's decision. *Id.*

In dissent, Judge Thapar reasoned that the panel committed an "egregious error" by watering down the substantial justification standard. *Id.* He explained that the government had failed to justify its race-based exclusions with sufficient evidence of specific episodes of past discrimination, offering no proof of discrimination against Native Hawaiians and Pacific Islanders, while relying on outdated reports and inadequate statistical disparities for Asians. App. 8a. Judge Thapar further emphasized that correctly

interpreting fee-shifting standards is exceptionally important, because attorney's fees awards are a crucial part of encouraging robust challenges to government discrimination. App. 12a.

Holman now petitions this Court for review.

III. Legal background

In 1980, Congress enacted the Equal Access to Justice Act. Congress intended EAJA to "diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees." App. 124a–125a. To effectuate this purpose, courts may award fees under EAJA "to a prevailing party other than the United States" in any civil action against the United States, "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." App. 98a.

This petition concerns EAJA's substantial-justification exception. This Court has held that the government is substantially justified, and therefore escapes fees, only when its "position" is "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). That standard demands objective reasonableness—that is, the government's position must have "a reasonable basis in [both] law and fact." *Id.* at 566 n.2. The government ordinarily bears the burden of demonstrating that its position was substantially justified. *See Griffith v. Comm'r of Soc. Sec.*, 987 F.3d 556, 563 (6th Cir. 2021) (*citing DeLong v. Comm'r of Soc. Sec.*, 748 F.3d 723, 726 (6th Cir. 2014)).

Moreover, presenting a non-frivolous defense is

never enough to rise to the level of substantial justification. "To be 'substantially justified' means … more than merely undeserving of sanctions for frivolousness; that is assuredly not the standard for Government litigation of which a reasonable person would approve." *Underwood*, 487 U.S. at 566.

The government's "position" must be viewed as a whole, and includes the underlying agency conduct that led to the lawsuit. *Jean*, 496 U.S. at 159 n.7. That conduct is an important part of the government's whole position. *See id.* So, too, are the merits of the government's litigation position in court. *Underwood*, 487 U.S. at 569. When assessing the government's litigation position, the merits of that position matter most, but other "objective indicia" are relevant and can inform the court's judgment. *Id.* at 568. This Court has yet to address whether EAJA's substantial justification exception gives greater weight to the government's pre-litigation conduct or its position during litigation.

* * *

This case presents both a split of authority and error of law implicating one of the country's most fundamental rights—equal protection under the law. If these errors involving EAJA remain uncorrected, cost-sensitive litigants will be effectively barred from challenging plainly unlawful and unconstitutional racial discrimination in the Sixth Circuit. The prohibitive financial risk will chill constitutional claims and embolden agency misconduct, including intentionally excluding Americans from government programs based solely on their skin color.

REASONS FOR GRANTING THE PETITION

I. This Court can clarify whether the federal government's objectively unreasonable pre-litigation conduct is dispositive in favor of fees.

Around 1984, Congress identified a problem with how courts were interpreting the substantial justification standard. Until then, some circuits allowed the government to escape paying fee awards by holding that the government presented a reasonable defense in court of its unlawful conduct, even when that conduct (considered alone) was objectively unreasonable. These courts focused exclusively on the reasonableness of the government's litigation position, while ignoring the agency's pre-litigation conduct that prompted the lawsuit in the first place. *See e.g.*, *Spencer v. N.L.R.B.*, 712 F.2d 539, 556 (D.C. Cir. 1983) ("[I]t seems more sensible and consistent with the purposes of the EAJA to interpret the phrase as the stance taken by the United States in litigation than to interpret it as the governmental behavior that precipitated the suit."); *Russell v. Nat'l Mediation Bd.*, 764 F.2d 341, 352 (5th Cir.), opinion withdrawn, 775 F.2d 1284 (5th Cir. 1985) ("We find the *Spencer* court's analysis very instructive in this case, and we hereby join the majority of courts in adopting the litigation position theory."). If these courts found that the government's position defending the law or rule was reasonable, they exempted the government from paying fees altogether.

But that approach sparked change. In response to cases like *Spencer*, Congress set out to amend EAJA

to make it clear that courts are to consider the government's unreasonable pre-litigation conduct when assessing fees under EAJA. Congress wanted to clarify that courts should "provide for attorney fees when an unjustifiable agency action forces litigation, and the agency then tries to avoid such liability by [taking reasonable positions] during litigation." App. 141a. So in 1985, Congress amended EAJA, requiring courts to consider "the *action* or failure to act by the agency *upon which the civil action is based*." App. 99a (emphasis added).

In *I.N.S. v. Jean*, this Court recognized the new standard and the congressional intent behind the enactment. 496 U.S. at 159 n.7 (explaining that agency conduct constitutes an important part of the government's whole position, citing with approval H.R. Rep. No. 98–992, at 9, 13 (1984)). However, this Court has yet to decide *how* lower courts should weigh the different kinds of government conduct that together form the government's whole "position" under EAJA. That question "has proved to be an issue of considerable conceptual and practical difficulty." *Roanoke River Basin Ass'n v. Hudson*, 991 F.2d 132, 138 (4th Cir. 1993) (citation omitted). As a result, some courts are still protecting the government from liability for attorney's fees by placing insufficient weight on an agency's unreasonable decisions leading up to the lawsuit.

In turn, a significant circuit split has formed regarding how courts weigh the government's pre-litigation conduct, versus the merits of its subsequent litigation position in court. Five circuits place "substantial weight" (beyond mere consideration) on the government's unreasonable pre-litigation conduct, especially when the agency's unlawful decisions

triggered the lawsuit. *See Smith v. Bowen*, 867 F.2d 731, 734 (2d Cir. 1989); *Taylor v. Heckler*, 835 F.2d 1037, 1040 (3d Cir. 1988); *United States v. 515 Granby*, LLC, 736 F.3d 309, 316 (4th Cir. 2013); *United States v. Marolf*, 277 F.3d 1156, 1159 (9th Cir. 2002); *Johns v. Astrue*, 455 F. App'x 846, 848 (10th Cir. 2011). Of those circuits, two say that pre-litigation conduct is *dispositive* in favor of attorney's fees. *See Bowen*, 867 F.2d at 734 (at the Second Circuit); *Taylor*, 835 F.2d at 1040 (at the Third Circuit).

The remaining circuits either weigh the government's pre-litigation conduct and its subsequent litigation position equally or have yet to set a definitive standard. *See e.g.*, *Gatimi v. Holder*, 606 F.3d 344, 347–48 (7th Cir. 2010) (holding that an Administrative Law Judge's unreasonable decision below does not automatically entitle a complainant to fees under EAJA); *Sabo v. United States*, 127 Fed. Cl. 606, 626 n.18 (2016), aff'd, 717 F. App'x 986 (Fed. Cir. 2017) (stating that the Federal Circuit has not addressed whether an unjustified agency action should automatically require attorney's fees under EAJA).

Prior to the panel's decision below, the Sixth Circuit had not established a definitive standard for evaluating EAJA fee claims. *See CIC Servs., LLC v. Internal Revenue Serv.*, No. 3:17-CV-110, 2023 WL 5821768, at *3 (E.D. Tenn. Sept. 8, 2023), dismissed on other grounds by, No. 23-5886, 2024 WL 4533804 (6th Cir. Apr. 17, 2024). However, the Circuit generally weighed the government's pre-litigation conduct and its subsequent litigation position equally. *See e.g.*, *id.* at *4. (recognizing that, even though "in *Amezola-Garcia v. Lynch*, 835 F.3d 553 (6th Cir.

2016), the Government's pre-litigation position was not substantially justified, its behavior thereafter rendered its position in the case, viewed holistically, substantially justified.") (cleaned up). After the panel's decision below, the Sixth Circuit has established a new, third way of evaluating EAJA fee claims. It now *prioritizes* the government's litigation position over other fee considerations. App. 23a.

The circuits that place "substantial" or "dispositive" weight on the government's pre-litigation conduct employ the correct standard, and better serve the purposes and text of EAJA. By contrast, the Sixth Circuit's new rule—putting primary emphasis on the government's litigation position—risks discouraging would-be plaintiffs from challenging unreasonable government actions, given that such plaintiffs will always assume that the government's lawyers will put their best foot forward in court. These dueling standards result in unequal justice and require this Court's attention.

A. The Sixth Circuit is the first court to place special emphasis on the government's litigation position in rejecting an EAJA award.

Even before the opinion below, the Sixth Circuit did not place special weight on an agency's unreasonable pre-litigation conduct. *See e.g.*, *CIC Servs., LLC*, 2023 WL 5821768, at *3 ("Sixth Circuit precedent has yet to draw out the relative weight courts should give the Government's pre- and post-litigation behavior" when assessing whether the government's position was substantially justified); *see also Amezola-Garcia v. Lynch*, 835 F.3d 553, 555 (6th Cir. 2016) (holding that despite the unreasonableness

of the government's pre-litigation decisions, its reasonable defense of those decisions in court rendered the government's position as a whole substantially justified.).

But now, *Holman* marks a departure even from that baseline. The panel gave the USDA's unreasonable promulgation of race classifications (the NOFA) *less* weight than the government's defense of the law in court. App. 23a. According to the panel below, "[w]hat '*matter[s] most*' to the substantial justification analysis is 'the actual merits of the Government's litigating position.'" *Id*. (emphasis added). That standard is a stark deviation from other circuits, and will significantly deter plaintiffs from bringing actions against the federal government going forward.

B. Five other circuits would likely have viewed the agency conduct here as either significant or determinative in favor of fees under EAJA.

Besides the Sixth, other circuits approach EAJA's "substantial justification" prong with more emphasis on the government's unreasonable pre-litigation conduct. These circuits would likely have concluded that USDA's discrimination precluded a finding that the government's position was justified.

Two circuits (the Second and Third) say that the government's objectively unreasonable pre-litigation conduct is dispositive in favor of EAJA fees. *See Bowen*, 867 F.2d at 734 ("[I]f the underlying Government position is not substantially justified, a court must award fees … even if the Government's litigation position is itself reasonable when considered

alone."); *Healy v. Leavitt*, 485 F.3d 63 (2d Cir. 2007) (reaffirming *Bowen*); *Heckler*, 835 F.2d at 1040 ("If either government position does not bear scrutiny, the prevailing private party should be awarded attorneys' fees.") (cleaned up); *Morgan v. Perry*, 142 F.3d 670 (3d Cir. 1998) (reaffirming *Taylor*).

In *Bowen*, the Second Circuit considered whether the government was "substantially justified" in denying a social security claimant disability benefits. 867 F.2d at 734. The Second Circuit panel held that the government's denial was *reasonable* but emphasized that if the agency's decision (standing alone) was not substantially justified, the affected party would have automatically been entitled to attorney's fees. *Id.* The panel further explained that, if it were to adopt a more lenient rule, it "would certainly discourage an aggrieved party from seeking [the] full 'vindication of his rights' under EAJA." *Id.* (cleaned up).

In *Healy v. Leavitt*, 485 F.3d, the Second Circuit revisited its earlier *Bowen* decision, this time examining the government's justification for reducing certain Medicare benefits. Unlike in *Bowen*, the panel held that the government's termination of benefits was objectively unreasonable and awarded fees. In so holding, the *Healy* panel reaffirmed its dispositive treatment of the government's unreasonable pre-litigation conduct. "As we explained in *Bowen*, if the Government's pre-litigation position could not render the entire Government position 'not substantially justified,' then 'a person who considers challenging an agency decision would face the prospect of not receiving compensation for his advocacy in potentially protracted litigation in federal court.'" *Id.* at 68. (cleaned up) (citation omitted). "[S]uch a result would

'discourage an aggrieved party from seeking full vindication of his rights' under EAJA." *Id*.

The Third Circuit reached a similar conclusion in *Taylor v. Heckler*. In that case, the Third Circuit considered whether the government's denial of disability benefits was substantially justified under EAJA. 835 F.2d. at 1043. The panel held that the government's position denying the benefits was not justified, relying wholly on the agency's objectively unreasonable pre-litigation conduct. *Id*. at 1042–43. And the Third Circuit made clear that if either the government's pre- or post-litigation position does not bear scrutiny, "the prevailing private party should be awarded attorney's fees and other reasonable fees and expenses" under EAJA. *Id*. at 1040 (cleaned up).

In *Morgan v. Perry*, the Third Circuit reaffirmed and clarified this standard, explaining that "unless the government's pre-litigation *and* litigation positions have a reasonable basis in both law and fact, the government's position is not substantially justified." 142 F.3d at 684 (emphasis added).

Not all circuits on this side of the split place dispositive weight on the government's unreasonable pre-litigation conduct. Three circuits place only special emphasis on the government's unreasonable pre-litigation posture. *See 515 Granby*, 736 F.3d at 317 (at the Fourth Circuit); *Marolf*, 277 F.3d at 1159 (at the Ninth Circuit); *Astrue*, 455 F. App'x at 848 (at the Tenth Circuit) *(citing Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007)). However, that emphasis is often determinative in favor of awarding fees.

Consider the Ninth Circuit's decision in *United States v. Marolf*, 277 F.3d. In *Marolf*, the Ninth

Circuit considered whether the government's failure to notify Mr. Marolf about its forfeiture of his seized property was objectively reasonable under EAJA. The panel held that the government had acted unreasonably. *Id.* at 1162.

Indeed, the panel determined that the government's failure to properly notify Mr. Marolf about the forfeiture was so fundamentally unreasonable that its subsequent *reasonable* defense of that decision in court could not redeem the government's overall conduct. *Id*. at 1163–64. While not setting forth a dispositive rule, the Ninth Circuit "properly focus[ed] on the governmental misconduct giving rise to the litigation," placing heightened scrutiny on the government's decisions at that time. *Id*. at 1163 n.5. "A reasonable litigation position does not establish substantial justification in the face of a clearly unjustified underlying action." *Id*. at 1164.

The Fourth Circuit reached a similar conclusion in *United States v. 515 Granby,* 736 F.3d, at 314–15. In that case, the Fourth Circuit considered whether the government's unreasonable evaluation of Granby's property in a condemnation proceeding rendered its entire position unreasonable under EAJA. Taking guidance from the Ninth Circuit in *Marolf*, the panel acknowledged that the government's whole position may still be reasonable, despite acting unreasonably prior to litigation. *Id*. at 315–16. However, citing EAJA's purposes and the 99th Congress's emphasis on the government's pre-litigation posture, the panel concluded that the district court should have placed special "emphasis" on the government's unreasonable conduct before the litigation began. *Id*. at 316. "If the government's pre-litigation position is unreasonable and its litigation position reasonable," the panel

maintained, "the government must then prove that the unreasonable position did not 'force' the litigation or substantially alter the course of the litigation." *Id.* at 317.

Had the Sixth Circuit used any of these approaches, it would have awarded Holman fees because the USDA's unreasonable and discriminatory conduct was clearly the driver of Holman's lawsuit. Instead, the Sixth Circuit's approach below demoted an agency's unreasonable pre-litigation decisions to a secondary consideration, holding that instead it "matters most" how the government presented itself, and the case, in court. The panel's ruling deepens an already fractured split of authority regarding this indispensable civil rights statute, and lower courts would benefit from this Court offering clarity on this question. This case presents a good vehicle for this Court to give that guidance.

II. Under any standard, the Sixth Circuit erred because the government did not come close to satisfying strict scrutiny.

Even crediting the government's lawyering skills and professionalism in court, the Sixth Circuit erred by finding that the government's position was "substantially justified" under EAJA. The reality is that no amount of lipstick could have saved Section 1005. The USDA's failure to justify its use of race-based exclusions should have been dispositive in favor of fees. In letting the government off the hook for the agency's plainly inadequate justification of the NOFA, the Sixth Circuit set precedent that will allow discriminators to avoid paying EAJA fees. The panel's decision also lessens the likelihood that victims of government discrimination will sue to enjoin similar

conduct in the future.

Under EAJA, the government's position cannot be "substantially justified" if it "flouted" controlling case law. App. 6a (Thapar, J., dissenting) (*citing Griffith*, 987 F.3d at 564. The NOFA expressly discriminated against citizens based on their race. Because of this, "precedent made clear that the debt relief program had to surmount the high bar of strict scrutiny." App. 7a (Thapar, J., dissenting) (*citing Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995)). To overcome that bar, the USDA was required to show that favoring one race over another was necessary to achieve a compelling state interest. *Adarand*, 515 U.S. at 235. And even then, the USDA was required to narrowly tailor its remedy to advance that interest. *Id*. The agency did neither here.

According to the government below, the NOFA stated a compelling state interest in remedying past USDA discrimination. It is true that the government can have a compelling interest in remedying past racial discrimination and halting its continuing effects. *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) (*citing City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493–94 (1989) (plurality opinion)). But in using race classifications to remedy past race discrimination, controlling case law makes clear that the government must present evidence of the *specific* past discrimination it seeks to remedy. A vague reference to a "theme" of governmental discrimination is not enough, *Vitolo*, 999 F.3d at 362; the government cannot justify the use of race-based preferences to remedy society wide inequities. *Students for Fair Admissions, Inc. v. Harvard*, 600 U.S. 181, 226 (2023) ("An effort to alleviate the effects of societal discrimination is not a compelling interest.") (cleaned

up). To satisfy strict scrutiny, "the government must identify 'prior discrimination by the governmental unit involved' or 'passive participa[tion] in a system of racial exclusion.'" *Vitolo*, 999 F.3d at 362 (*citing J.A. Croson Co.*, 488 U.S. at 492 (plurality opinion) (cleaned up)).

The government never got close to stating a compelling interest. First, the NOFA failed to identify specific episodes of past discrimination by the agency. It contained no statement describing the discrimination that it purported to remedy. *See generally* App. 108a–124a. In fact, the government never argued the NOFA or Section 1005 contained those statements.

Attempting to remedy this fundamental deficiency during litigation, the government put forward evidence purportedly relied on by Congress and the agency in promulgating Section 1005 and the NOFA. But the government's post-hoc justifications failed on two levels. First, the government's evidence—mostly comprised of dated "disparate impact" reports from historical programs that were fully race-neutral—did not show that the USDA had intentionally discriminated against these farmers. These reports tended to show only the existence of society-wide disparities. In fact, the government *conceded* that the USDA was not currently discriminating against any of the non-Caucasian farmers to whom it granted debt relief. App. 78a ("At the hearing, Defendants conceded that Congress … did not rely on specific present-day discrimination occurring at the USDA."). Importantly, the District Court found that the government "presented no evidence of current intentional discrimination by [the USDA]," and that the government had "*acknowledged* this lack of evidence"

during litigation. App. 80a (emphasis added). Second, the government did not demonstrate that the USDA or Congress had considered these reports before implementing its discriminatory program. *See* App. 70a.

The USDA also failed to "present evidence of [past] discrimination [specific to] the many groups to whom it grant[ed] preferences." *Vitolo*, 999 F.3d at 361. A law that seeks to remedy past government discrimination, in addition to identifying specific instances of that discrimination, must also identify "past intentional discrimination against the . . . groups to whom it grants preferences." *Id*. This means that the government cannot cite discrimination against African Americans as a reason for giving debt relief to Native Hawaiians. But the government did just that here, and the record is replete with examples of this kind of lazy racial mismatching. *See e.g.*, App. 10a–11a (Thapar, J., dissenting) (USDA's definition of "Asian" was overbroad, and used alleged discrimination against Black and Japanese Americans to justify the NOFA's preference of Chinese, Korean, and Indian Americans—categorized as "Asian" under the law).

For numerous racial groups granted debt relief under the NOFA, the government provided virtually *no evidence* of either past discrimination or specific discriminatory policies. *See* App. 8a (Thapar, J., dissenting). Rather than offering group-specific evidence as required by precedent, the government relied exclusively on generalized assertions of racial harm—assertions that were themselves wholly inadequate under strict scrutiny. *Id*.

For instance, to justify the law's preferential

treatment of Asian applicants, the government relied on two reports from 1997 and 2011 noting that Asian farmers had complained about unfair treatment by the USDA. *Id*. The government also relied on statistics indicating that Asian farmers defaulted on their loans more frequently than other farmers. *Id*. Precedent made clear that such evidence could not support the government's race classifications. *See Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 735 (6th Cir. 2000) (noting that seventeen-year-old evidence of discrimination can't support a compelling-interest finding); *Vitolo*, 999 F.3d at 361–62 (finding that statistical disparities in loan delinquency could not themselves establish a compelling interest in remedying past discrimination). No matter, the government relied on that evidence anyway. App. 8a–9a.

The government's evidence—both before promulgation and during litigation—fell demonstrably short of meeting the demanding standard of strict scrutiny. Agency officials had every reason to know that their evidence failed to establish a compelling interest, yet they implemented the discriminatory program anyway and later prolonged this litigation by advancing legally inadequate justifications for the program's blatant discrimination in court.

The government's evidence that the NOFA was sufficiently narrowly tailored was no better. Narrow tailoring requires the government to show a "serious, good faith consideration of workable race-neutral alternatives." *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013). In turn, a court must not uphold a race-based law unless it is "satisfied that no workable race-neutral alternative" would have

achieved the compelling interest. *Id.*

Here, to meet the narrow tailoring requirement, the government had to show that Congress or the USDA considered race-neutral alternatives before resorting to the race-based debt relief in Section 1005 and the NOFA. App. 82a–83a. But the government could not do so. Indeed, the government presented *no evidence* that Congress or the USDA considered race-neutral alternatives before enacting Section 1005 and the NOFA. App. 82a. And it couldn't, because such evidence *did not exist*. *See* App. 85a. Instead, the government argued, to no avail, that the NOFA was narrowly tailored because Congress had, for decades prior, considered and enacted race-neutral laws to remedy USDA discrimination. App. 82a. Without any evidence that Congress or the USDA actually considered race-neutral alternatives, the government's arguments were doomed from the start.

The arguments offered by the government failed to establish either a compelling interest or narrow tailoring for the NOFA's race classifications. Despite this fundamental deficiency, the Sixth Circuit held that the government's position related to the law was substantially justified. That decision was wrong. No matter what standard the panel employed, the government's utter failure to satisfy strict scrutiny should have been dispositive in favor of EAJA fees.

Broadly illustrating this point, Judge Thapar, writing for four other judges in his dissent from the denial of en banc review, correctly characterized the government's position as a "baseless defense of the government's discrimination." App. 12a (Thapar, J., dissenting). He emphasized that "[l]itigating positions that defy precedent are not substantially justified,"

and warned that "saying otherwise does violence to the substantial justification standard—it's permissive, not toothless." *Id.* (emphasis added). Before that, in her panel dissent, Judge Larsen similarly concluded that the government "presented arguments 'flatly at odds with the controlling case law'" and therefore "was not substantially justified." App. 38a (Larsen, J., dissenting). These dissents correctly recognized what the panel majority failed to grasp; when a government agency implements facially discriminatory policies with complete disregard to strict scrutiny standards, such conduct cannot be deemed "substantially justified" under EAJA, regardless of the government's subsequent litigation successes on other ancillary issues:

> When the government distributes benefits, the Constitution demands that it treat us as individuals, not members of interchangeable racial groups. And precedent made that crystal clear when the government litigated this case. Therefore, its litigating position was inexcusable, not substantially justified.

App. 12a.

To restore EAJA's intended function and protect the rights of future litigants challenging unconstitutional government discrimination in the Sixth Circuit, this Court should grant certiorari and reverse the panel's decision.

III. This case is of "exceptional importance."

Below, Judge Thapar wrote that "this case presents 'questions of exceptional importance.'" App. 12a (Thapar, J., dissenting). Holman agrees. "Financial penalties for unsuccessful attempts at racial discrimination should make agencies less eager to discriminate in the first place." *Id.*

In equal protection cases, EAJA is indispensable. "[I]t's exceptionally important that [courts] correctly interpret fee-shifting standards that, when properly applied, disincentivize discrimination." *Id.* Indeed, Congress intended EAJA to disincentivize rash, unconstitutional conduct by the government. App. 124a–125a. Without the strong disincentives EAJA provides, discriminators will be emboldened; "if an agency knows that its failed gambits can be recast in court as 'substantially justified,' it will be more apt to try its hand at playing racial favorites; the costs would be low." App. 12a–13a (Thapar, J., dissenting). "Shaping federal agencies' incentive structures when they consider whether to racially discriminate is exceptionally important." *Id.*

The Circuit's decision flies in the face of our nation's understanding that race classifications are "odious to a free people." *Loving v. Virginia*, 388 U.S. 1, 11 (1967). EAJA plays an important role in discouraging government discrimination. Allowing the government to evade fees by putting a good face on invidious discrimination "does violence to the substantial justification standard." App. 12a (Thapar, J., dissenting).

An overbroad "substantial justification" exception also disincentivizes victims of government discrimination from vindicating their rights.

"Similarly, watering down the substantial justification standard will discourage challenges like Holman's to unlawful congressional or agency action, even when plaintiffs know they have a strong case on the merits." App. 13a. (Thapar, J., dissenting). EAJA exists to encourage, not stifle, lawsuits like Holman's. The court's decision below reads EAJA as doing the opposite. That is particularly true where the likely result of a legal challenge is that a race-based benefit program will be invalidated across the board, not extended to include the plaintiff.

The Sixth Circuit's decision sets a dangerous precedent. The panel's decision fundamentally undermines EAJA's purpose by creating a roadmap for government agencies to evade fee liability for unconstitutional discrimination. By prioritizing the government's litigation position over its indefensible pre-litigation conduct, the panel established a troubling precedent: agencies may implement plainly discriminatory policies so long as they mount a minimally non-frivolous defense in court. This approach effectively rewards the government for *embracing* unconstitutional actions in court, directly contravening EAJA's goal of deterring unjustified government conduct.

Despite the significance of EAJA, this Court has heard only one notable case concerning its "substantial justification" exception in the past three decades. *See Jean*, 496 U.S. This case presents this Court with a good vehicle to address this indispensable civil rights statute.

IV. This Court's decision in *Lackey v. Stinnie* does not resolve this case.

To recover fees under EAJA, Holman is required to

show that he prevailed against the government, and to refute claims that the government's position was substantially justified. App. 97a. The Sixth Circuit did not address whether Holman was a "prevailing party" under EAJA. App. 22a. After the Sixth Circuit's denial of en banc review, this Court issued its decision in *Lackey v. Stinnie,* 145 S. Ct. 659 (2025), where it interpreted the phrase "prevailing party" under 42 U.S.C. § 1988, rejecting the idea that obtaining a preliminary injunction satisfies the statute's fee-shifting provision. But *Lackey* does not preclude Holman from establishing his "prevailing party" status on remand to the Sixth Circuit.

Notably, in *Lackey*, this Court determined the meaning of prevailing party under Section 1988. This Court interpreted that phrase narrowly, holding that, to prevail under the statute, a party must receive a dispositive, final judgment from the court hearing their case. *Id*. at 667. Parties that received only a preliminary injunction against the government cannot be said to have "prevailed" under Section 1988. *Id*. at 667–68.

In reaching this conclusion, this Court referenced then contemporary legal dictionaries to determine the statutory definition of prevailing party. "When Congress borrows [legal] term[s] of art," the majority maintained, "'it presumably knows and adopts the cluster of ideas that were attached to each borrowed word.'" *Id.* at 666–67. At the time that Section 1988 was enacted, the term "prevailing party" required a final, dispositive court order. *Id*. at 668. However, this presumption, like many others, is merely a rebuttable inference. Congress may deviate from a legal term of art's technical meaning, but in doing so, Congress must make that deviation clear. *See Lamie v. U.S. Tr.*,

540 U.S. 526, 534 (2004). When Congress deviates, courts follow. And in EAJA, Congress deviated.

The term "prevailing party" as used in EAJA, differs from the legal term-of-art used in section 1988 and other fee-shifting statutes.

Congress enacted EAJA in 1980, with the express purpose to "diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees." App. 124a. To effectuate this purpose, the 96th Congress deliberately defined the term "prevailing party" broadly, in large part to incentivize suits against government officials who might strategically moot their case to avoid paying fees.[1]

The 96th Congress defined "prevailing party" as follows:

> [T]he phrase 'prevailing party' should not be limited to a victor only after entry of a final judgment following a full trial on the merits. A party may be deemed

[1] When amending EAJA in 1985, the 98th Congress clarified its understanding of EAJA's prevailing party standard:

> As it stands under the [rejected] alternative interpretation, the government has no such incentive; it can remain intransigent throughout the administrative process and hope that the individual is unwilling to undertake the expense of challenging its action in court. ***If the government loses its gamble and finds itself in court nonetheless, it can then simply give up at no cost whatsoever. Yet this is precisely the kind of bullying that Congress hoped to deter by enacting EAJA***.

App. 157a–158a (emphasis added).

> prevailing if he obtains a favorable settlement of his case, *Foster v. Boorstin*, 561 F.2d 340 (D.C. Cir. 1977); if the plaintiff has sought a voluntary dismissal of a groundless complaint, *Corcoran v. Columbia Broad. Sys., Inc.*, 121 F.2d 575, (9th Cir. 1941); or even if he does not ultimately prevail on all issues, *Bradley v. Sch. Bd. of the City of Richmond*, 416 U.S. 696 (1974).

App. 133a–134a (cleaned up). This definition remained unchanged throughout EAJA's drafting process, all the way through its enactment in 1980, and even five years later through EAJA's reenactment in 1985. *See* App. 151a–152a, 131a, 138a, 143a n.3, 146a n.5 (all defining "prevailing party" the same).

Congress clearly intended the term "prevailing party" to be read consistent with its consensus understanding of that term throughout EAJA's drafting process. That understanding distinguishes EAJA from Section 1988. *See Underwood,* 487 U.S. at 566 (legislative history can inform the definitions of the terms used within).

Notably, the 96th Congress included a "favorable settlement" standard in its definition of prevailing party, citing to *Foster v. Boorstin*, 561 F.2d 340 (D.C. Cir. 1977). In *Foster*, the court of appeals considered whether a plaintiff suing for alleged rights violations was a "prevailing party," where the government ceased its discriminatory conduct before the district court entered a final order. The court held that the plaintiff was a prevailing party because, by the government's cessation of the offending conduct, the case was settled in his favor. *See id.* at 342–43. In so

holding, the court of appeals explained that "[i]f the government could avoid liability for fees merely by conceding the [case] before final judgment, the impact of the fee provision would be greatly reduced. *Id*. at 343. If the court did not adopt this rule, "the government would remain free to assert boilerplate defenses, and private parties who served the public interest by enforcing the Act's mandates would be deprived of compensation." *Id*.

By referencing *Foster*, the 96th Congress made clear that EAJA's definition of "prevailing party" includes instances where the government ceases its violative conduct in response to a non-final court order. Under these facts, the case would be "settled" in favor of the private party, upon which a court would determine whether the government's position related to the suit was unreasonable.[2] Certainly, a preliminary injunction against the government qualifies under this standard.

The 99th Congress's addition of new terms in the 1985 amendment to EAJA strengthens this understanding of "prevailing party." While EAJA does

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[2] EAJA fees are awarded only when the government's actions were unreasonable. App. 98a. Other fee-shifting statutes are not so cabined. *See* App. 106a–107a, 125a (containing the fee-shifting provisions outlined in 42 U.S.C. §§§ 1988; 3613(c)(2); and 12205). These statutes' lack of a textual "substantial justification" requirement explains this Court's concern in *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Hum. Res.*, that "a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit" would be allowed to recover attorney's fees, solely because the government reversed course. 532 U.S. 598, 606, (2001). EAJA's cabining helps explain why Congress adopted an expansive understanding of "prevailing party."

not define "prevailing party" generally, it does define the term in the context of eminent domain: "'prevailing party', in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement)." App. 101a–102a.

The 99th Congress included this language in direct response to lower court confusion about EAJA's applicability in condemnation proceedings. App. 144a; *see also* App. 141a–142a. Congress designed the amendment to clarify that EAJA extends to eminent domain proceedings, but under an alternative "prevailing party" standard. App. 144a–145a; *see also* App. 141a–142a. The 99th Congress differentiated the eminent domain standard in hopes of encouraging cooperation and settlement between the government and private litigants, prior to the issuance of a final judgment. App. 145a; *see also* App. 142a–143a. For that reason, the 99th Congress distinguished "prevailing party" in eminent domain by requiring a "final judgment" and excluding the "favorable settlement" standard applicable in the broader EAJA context.

To make sure there was no confusion about this differentiation, Congress explicitly stated in various reports that "nothing in the definition of 'prevailing party' for purposes of condemnation proceedings is meant to limit the definition of 'prevailing party' under other circumstances." App. 143a, 146a. "The act, as originally enacted, has an expansive view of the term 'prevailing party,'" citing to H.R. Rep. No. 96-1418 (1980). App. 143a n.3, 146a n.5. This language was consistent throughout the amendment's drafting history. *See* App. 143a, 146a.

By contrast, Section 1988's definition of "prevailing party" did not include a reference to *Foster*, or otherwise state that a party could prevail by "favorable settlement" of their case. *See* App. 126a–128a; compare App. 146a–147a. Nor was Section 1988's definition of "prevailing party" consistent throughout its drafting history. The House and Senate proposed different, conflicting definitions of "prevailing party" that were never reconciled outside of the final statute. *See Buckhannon*, 532 U.S. at 607. For that reason, this Court was correct in *Lackey* to resort to contemporary dictionaries for the meaning of prevailing party under Section 1988.

But resorting to legal dictionaries to define "prevailing party" under EAJA is unnecessary. When Congress consistently defines a term in the same way multiple times—in this case, for over roughly seven years and between four Congresses—courts may accept that definition instead of seeking meaning elsewhere. *See Underwood*, 487 U.S. at 566 (in discussing EAJA, "if this language is to be controlling upon us, it must be either (1) an authoritative interpretation of what the 1980 statute meant, or (2) an authoritative expression of what the 1985 Congress intended [when amending the statute].") After all, Congress expects courts to honor the express and clear meanings of the terms it has defined.

Upon granting of this petition, it is appropriate for this Court to leave the question of what pre-*Lackey* "prevailing party" case law is applicable under EAJA to the Sixth Circuit.

CONCLUSION

For the foregoing reasons, the Court should grant

certiorari.

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