No.

In the Supreme Court of the United States

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

CATHERINE G. RATLIFF

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an "award of fees and other expenses" under the Equal Access to Justice Act, 28 U.S.C. 2412(d), is payable to the "prevailing party" rather than to the prevailing party's attorney, and therefore is subject to an offset for a pre-existing debt owed by the prevailing party to the United States.

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The Solicitor General, on behalf of the Commissioner of Social Security, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-9a) is reported at 540 F.3d 800. The order of the district court (App., *infra*, 10a-16a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 2008. A petition for rehearing was denied on December 5, 2008 (App., *infra*, 17a). On February 23, 2009, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including

April 6, 2009. On March 26, 2009, Justice Alito further extended the time to May 4, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress enacted the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412, to enable "certain prevailing parties to recover an award of attorney fees, expert witness fees and other expenses against the United States" in appropriate cases. H.R. Rep. No. 1418, 96th Cong., 2d Sess. 6 (1980). EAJA authorizes the court in a civil action to "award to a prevailing party other than the United States fees and other expenses * * * incurred by that party" if the position of the United States is not substantially justified and no special circumstances would make an award unjust. 28 U.S.C. 2412(d)(1)(A).

Before a court may "award [fees and other expenses] to a prevailing party," 28 U.S.C. 2412(d)(1)(A), the "party seeking [such] an award" must submit an application that, *inter alia*, "shows that the party is a prevailing party and is eligible to receive an award under [EAJA]." 28 U.S.C. 2412(d)(1)(B). The applicant for a fee award must therefore demonstrate that it falls within EAJA's definition of "party"—*i.e.*, that it is an individual or small business whose net worth when the action was filed did not exceed $2 million or $7 million, respectively, or a non-profit organization meeting specific criteria. 28 U.S.C. 2412(d)(2)(B). The applicant must also document "the amount sought" by providing in its application "an itemized statement from any attorney or expert witness representing or appearing on behalf of the party." 28 U.S.C. 2412(d)(1)(B).

In civil actions for review of final decisions rendered by the Social Security Administration, Congress has separately authorized awards of reasonable attorney fees in 42 U.S.C. 406(b). When a successful Social Security claimant "who was represented before the court by an attorney" obtains a favorable judgment, "the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." 42 U.S.C. 406(b)(1)(A). If an attorney fee is awarded under that provision, the Commissioner of Social Security (Commissioner) may certify the amount of such fee "for payment to such attorney out of * * * the amount of" the past-due benefits owed to the claimant. *Ibid.* In cases in which awards are made under both EAJA and Section 406(b), "the claimant's attorney must 'refun[d] to the claimant the amount of the smaller fee.'" *Gisbrecht* v. *Barnhart*, 535 U.S. 789, 796 (2002) (quoting Act of Aug. 5, 1985, Pub. L. No. 99-80, § 3, 99 Stat. 186) (brackets in original).

b. The Department of the Treasury, through the Financial Management Service (FMS), operates a centralized delinquent debt collection program known as the Treasury Offset Program. When a federal agency requests that Treasury pay a government obligation, the offset program compares the payee's name and taxpayer identifying number to the names and taxpayer identifying numbers on delinquent debts that federal and state agencies have certified to Treasury as valid, delinquent, and legally enforceable. If the payee is matched to such a debt, the government's payment may be reduced to satisfy the debt pursuant to pertinent authority. See generally, *e.g.*, 5 U.S.C. 5514 (reductions from federal

salary); 26 U.S.C. 6331 (levy for federal tax debts), 6402(c)-(e) (reductions from tax refunds); 31 U.S.C. 3716 (administrative offset for non-tax debts), 3720A (reductions from tax refunds); 26 C.F.R. 301.6331-1 (tax levy); 31 C.F.R. 285.1-285.8 (offset regulations).[1] In January 2005, FMS extended its offset program to so-called "miscellaneous" payments, which include government payments for EAJA awards.

2. Respondent is an attorney who represented two Social Security claimants, Ruby Willow Kills Ree and Michael Randall, in separate civil actions challenging the denial of Social Security benefits. App., *infra*, 18a; C.A. App. 18, 21. Kills Ree and Randall both prevailed in their actions and obtained awards of fees and other expenses under EAJA. *Id.* at 27-28 (Randall); App., *infra*, 23a (Kills Ree).

As is pertinent here, the district court granted Kills Ree's unopposed motion for EAJA fees and ordered the Commissioner to "pay [Kills Ree's] claim for EAJA fees in the amount of $2,112.60 in attorney fees" and $126.75 in "other expense[s]." App., *infra*, 23a. The court directed that "[j]udgment shall be entered in favor of the Plaintiff [Kills Ree] and against the [Commissioner] accordingly." *Ibid.*

The Commissioner subsequently transmitted a request to FMS that Treasury pay the EAJA award to Kills Ree, and FMS matched Kills Ree to a delinquent

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[1] The United States also may exercise a common-law right to reduce its payment by offset for a debt owed to it by a payee. See *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 239 (1947) ("The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'") (citation omitted); 31 U.S.C. 3716(d); cf. *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 18 (1995) (discussing offset).

non-tax federal debt that she owed to the government. See App., *infra*, 21a-22a. On January 31, 2006, FMS mailed Kills Ree a notice explaining that her creditor agency had previously mailed to her a separate notice explaining the amount and type of debt that she owed, her rights associated with that debt, and the agency's intent to collect the debt by intercepting future federal payments to her. *Ibid.*; see 31 U.S.C. 3716(a)(1); 31 C.F.R. 285.5(d)(6)(ii). The notice further explained that Kills Ree's $2239.35 EAJA award had been offset in its entirety to satisfy that pre-existing federal debt. App., *infra*, 22a.

3. a. On September 11, 2006, respondent initiated the present action under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, challenging the offset as contrary to law. App., *infra*, 19a. Respondent's complaint alleged that respondent "was awarded attorney fees under [EAJA]" as counsel for Kills Ree, and that the Commissioner had unlawfully seized that award "to satisfy debts allegedly owed by [Kills Ree] to the government." *Id.* at 18a-19a.[2]

The district court granted the government's motion to dismiss. App., *infra.*, 10a-16a. The court held that, under the plain terms of the statute, EAJA awards are payable to the "prevailing party" rather than to that

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[2] Respondent also challenged a $866.02 reduction taken from the $6160.37 EAJA award obtained by respondent's other client, Michael Randall. App., *infra*, 19a; see C.A. App. 27-28 (EAJA award); *id.* at 30 (notice of reduction). In the course of preparing this petition for a writ of certiorari, the government has identified an independent barrier to the use of the offset mechanism with respect to Randall's EAJA award. The government has determined that it will refund the money associated with that reduction and does not seek further review of that portion of this case.

party's attorney. *Id.* at 12a-13a. The court concluded that respondent "must seek the fees from her clients" directly and lacked standing to bring the present suit because she had not sustained an injury in fact from governmental action. *Id.* at 13a.

b. The court of appeals reversed. App., *infra*, 1a-9a. The court held that "EAJA fee awards become the property of the prevailing party's attorney when assessed and may not be used to offset the claimant's debt." *Id.* at 4a. The court acknowledged that its holding conflicted with decisions of other courts of appeals, including *Manning* v. *Astrue*, 510 F.3d 1246 (10th Cir. 2007), cert. denied, 129 S. Ct. 486 (2008), and *Reeves* v. *Astrue*, 526 F.3d 732 (11th Cir.), cert. denied, 129 S. Ct. 724 (2008). App., *infra*, 2a-3a. The court also stated that, if it were not constrained by circuit precedent, it might "well agree with [its] sister circuits and be persuaded by a literal interpretation" of EAJA's text awarding fees to the "prevailing party." *Id.* at 3a. The court determined, however, that "controlling Eighth Circuit precedent" compelled the conclusion that "attorneys' fees awarded under the EAJA are awarded to the prevailing parties' attorneys, rather than to the parties themselves." *Id.* at 1a-2a; see *id.* at 3a-4a (discussing precedent). The court therefore ruled that respondent had "standing to bring an independent action to collect the fees," and, on the merits, that the government had violated the Fourth Amendment by unreasonably seizing respondent's EAJA fee awards to satisfy the debts of her clients. *Id.* at 4a.

Judge Gruender concurred in the court's judgment. App., *infra*, 4a-9a. He explained, however, that his concurrence was based solely on circuit precedent, and that the court's holding was "inconsistent with language in

two Supreme Court opinions, the EAJA's plain language, and the holdings of most other circuit courts." *Id.* at 5a; see *id.* at 5a-6a (discussing *Evans* v. *Jeff D.*, 475 U.S. 717, 731-732 (1986), and *Venegas* v. *Mitchell*, 495 U.S. 82, 87-89 (1990)); *id.* at 9a (explaining that "the majority of other circuit courts to consider the issue * * * hold that awards of attorney's fees belong to the client as the prevailing party, not to the attorney").

The court of appeals subsequently denied rehearing en banc, with five of the court's 11 active judges voting in favor of en banc review. App., *infra*, 17a.

REASONS FOR GRANTING THE PETITION

The decision of the court of appeals is incorrect and squarely conflicts with decisions of the Tenth and Eleventh Circuits. Those courts have held that because EAJA awards are payable to the prevailing party rather than to that party's attorney, such awards are subject to offset to collect pre-existing debts owed by the prevailing party. EAJA's text makes clear that attorney fees and other expenses may be awarded "to a prevailing party," and it specifically distinguishes between that party and an attorney who represents her. The decision below is also in substantial tension with the decisions of this Court, which have explained that Congress, by authorizing awards of attorney fees to prevailing parties under 42 U.S.C. 1988, bestowed fee-award eligibility on those parties (rather than their lawyers), who may waive, settle, or negotiate away a potential award in order to obtain other benefits from opposing litigants.

The question presented has arisen frequently since 2005, when changes in the Treasury Offset Program first allowed the government to identify EAJA award payments as subject to reduction for offsetting debts.

As a result of the division in the lower courts, the federal government currently is exposed to recurrent collateral litigation to determine the appropriate payee of an EAJA award and the permissibility of an offset for a pre-existing debt. A uniform national rule is necessary for the proper implementation of the Treasury Offset Program in this context. This Court's review is thus warranted.

1. The decision of the court of appeals is incorrect.

a. EAJA provides that, in circumstances in which an award is appropriate and "[e]xcept as otherwise specifically provided by statute, a court shall award *to* a *prevailing party* * * * fees and other expenses * * * *incurred by that party*." 28 U.S.C. 2412(d)(1)(A) (emphases added). This Court recently explained that the same language in EAJA's provision governing administrative proceedings emphasizes party status and "leaves no doubt" that Congress intended that EAJA awards be determined from "the perspective of the litigant" rather than from that of her attorney. *Richlin Sec. Serv. Co.* v. *Chertoff*, 128 S. Ct. 2007, 2013 (2008). The Tenth and Eleventh Circuits have likewise held that the equivalent language in Section 2412(d) "unambiguously directs the award of attorney's fees to the party who incurred those fees and not to the party's attorney." *Reeves* v. *Astrue*, 526 F.3d 732, 735 (11th Cir.), cert. denied, 129 S. Ct. 724 (2008); accord *Manning* v. *Astrue*, 510 F.3d 1246, 1249-1250 (10th Cir. 2007) (EAJA's "language clearly provides that the prevailing party, who incurred the attorney's fees, and not that party's attorney, is eligible for an award of attorney's fees."), cert. denied, 129 S. Ct. 486 (2008).

EAJA's other provisions confirm that a litigant, rather than her attorney, is the proper recipient of a fee

award. For instance, Congress expressly conditioned a federal court's authority to direct the payment of an EAJA award on the prevailing party's net worth—not that of her attorney. See 28 U.S.C. 2412(d)(2)(B) (defining "party"); *Reeves*, 526 F.3d at 736; *Manning*, 510 F.3d at 1251. Indeed, EAJA specifically states that a fee application must show that "the party" (rather than the party's attorney) both is a "prevailing party" and "is eligible to receive an award under [EAJA]." 28 U.S.C. 2412(d)(1)(B). The Eighth Circuit's conclusion that "attorneys' fees awarded under the EAJA are awarded to the prevailing parties' attorneys, rather than to the parties themselves," App., *infra*, 1a-2a, cannot be reconciled with those provisions.

Moreover, Congress expressly distinguished between the "prevailing party" who is "eligible to receive" a fee award and the attorney who represents that party. EAJA directs that the party seeking fees must submit an application establishing "the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party" that, *inter alia*, details the attorney's hourly rate and time expended on the case. 28 U.S.C. 2412(d)(1)(B). That distinction between the "party" and her "attorney" was not inadvertent. Rather, EAJA treats attorneys in the same manner as it treats expert witnesses and other professional specialists who may be necessary for a party to litigate a case. See *Reeves*, 526 F.3d at 736 (citing *Panola Land Buying Ass'n* v. *Clark*, 844 F.2d 1506, 1511 (11th Cir. 1988) (*Panola*)); *Manning*, 510 F.3d at 1251.

The statute thus makes clear that a prevailing party may recover "fees and other expenses," which include "the reasonable expenses of expert witnesses, the rea-

sonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees." 28 U.S.C. 2412(d)(2)(A). Nothing in EAJA suggests that Congress intended that "all [such] persons performing services for the prevailing party in the litigation" might separately "assert their claims for compensation" against the government. *Panola*, 844 F.2d at 1511. Rather, those professionals—including attorneys—must obtain their compensation from the party who utilized their services. *Ibid.*; see *Oguachuba* v. *INS*, 706 F.2d 93, 97-98 (2d Cir. 1983).

Had Congress intended for EAJA awards to be payable directly to the attorneys who provide the relevant services, it presumably would have used language similar to that in 42 U.S.C. 406(b), which Congress enacted before EAJA and which authorizes the Commissioner to make direct "payment *to [the prevailing party's] attorney* out of * * * the amount of [the] past-due benefits" awarded to that party by a court. 42 U.S.C. 406(b)(1)(A) (emphasis added). Congress did not do so, and its decision reflects sound policy. In many EAJA contexts, a party may pay some or all of her attorney's bills during the course of litigation; an attorney may owe her client an unrelated debt; or the party and her attorney may dispute the appropriate amount of professional fees owed under their fee agreement. By making EAJA awards payable to the prevailing party, Congress avoided the need to provide for resolution of such issues under EAJA. Rather, disputes between EAJA award recipients and their attorneys concerning their obligations to each other are resolved under applicable non-EAJA law.

b. That conclusion is reinforced by this Court's attorney fee decisions under 42 U.S.C. 1988. The Court has explained that Section 1988, by authorizing courts to "allow the prevailing party * * * a reasonable attorney's fee as part of the costs," 42 U.S.C. 1988(b), makes "the party, rather than the lawyer," eligible for fee awards. *Venegas* v. *Mitchell*, 495 U.S. 82, 87 (1990); accord *Evans* v. *Jeff D.*, 475 U.S. 717, 730-732 (1986) (Section 1988 does not "bestow[] fee awards upon attorneys."). The Court therefore has "rejected the argument that the entitlement to a § 1988 award belongs to the attorney rather than the plaintiff," *Venegas*, 495 U.S. at 89 (citing *Jeff D.*, 475 U.S. at 731-732), holding instead that a plaintiff may use a potential fee award as a "bargaining chip" that she may waive, settle, or negotiate away to obtain other benefits for herself. *Jeff D.*, 475 U.S. at 731 & n.20; see *Venegas*, 495 U.S. at 88. That conclusion is in significant tension with the court of appeals' holding that EAJA awards are payable directly to the attorney. App., *infra*, 5a-6a, 9a (Gruender, J., concurring) (concluding that "today's holding is in conflict with the repeated statements of the Supreme Court" in *Jeff D.* and *Venegas*, which "undermine[]" the conclusion that "EAJA attorney's fees are awarded to a prevailing party's attorney").

The Court's reasoning in *Venegas* and *Jeff D.* is significant in the EAJA context because this Court normally construes "prevailing party" fee-shifting provisions similarly, see *Buckhannon Bd. & Care Home, Inc.* v. *West Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 n.4 (2001); *City of Burlington* v. *Dague*, 505 U.S. 557, 562 (1992); *Independent Fed'n of Flight Attendants* v. *Zipes*, 491 U.S. 754, 758 n.2 (1989); *Hensley* v. *Eckerhart*, 461 U.S. 424, 433 n.7 (1983), and has done so

with respect to EAJA and Section 1988. See *Richlin*, 128 S. Ct. at 2014-2015 (construing EAJA to have the same meaning as similar text in Section 1988). It would be anomalous to do otherwise here, particularly given the additional textual indications in EAJA (see pp. 8-10, *supra*) that Congress intended EAJA fees and expenses to be paid to the prevailing party.

c. Because the EAJA award in this case was payable to Kills Ree rather than to her attorney, that award, like most federal payments, was subject to an administrative offset to collect the pre-existing debt that Kills Ree owed to the United States. As the Tenth Circuit has explained, "[a]ll federal payments, including 'fees,' are subject to administrative offset," except for payments that are specifically listed as exceptions to that general rule. *Manning*, 510 F.3d at 1255 (citing 31 C.F.R. 285.5(e)(1) and (2)); see 31 U.S.C. 3701(b) and (d); 31 U.S.C. 3716(c)(1), (3)(A)-(B) and (6); 31 C.F.R. 285.5(d)(1), (2), (6), (e)(1) and (2). Neither EAJA nor the statutory and regulatory provisions governing the administrative-offset process exempt from the offset mechanism the EAJA award at issue here. See *Manning*, 510 F.3d at 1255; App., *infra*, 8a-9a (Gruender, J., concurring).

d. The court of appeals made no attempt to reconcile its decision with EAJA's language. In fact, the court appeared to recognize that a "literal interpretation of the EAJA" supported the government's position in this case. App., *infra*, 3a. The court declined to adopt that interpretation only because it viewed itself as bound by Eighth Circuit precedent. *Ibid.*

Both cases cited by the court—*Curtis* v. *City of Des Moines*, 995 F.2d 125 (8th Cir. 1993), and *United States* v. *McPeck*, 910 F.2d 509 (8th Cir. 1990)—involved fee-

shifting provisions other than EAJA, and those decisions provide no textual analysis that might extend by analogy to the present case. Cf. App., *infra*, 3a-4a; *id.* at 5a & n.1 (Gruender, J., concurring). The decision in *Curtis* contains two paragraphs of analysis to support its conclusion that Section 1988 fees belong to the attorney because the purpose of the statute is to "encourage attorneys to prosecute constitutional violations." 995 F.2d at 128-129. That atextual analysis is problematic even in the Section 1988 context, where the Court indicated in *Venegas* and *Jeff D.* that fee awards belong to the prevailing party rather than her attorney. See pp. 10-11, *supra*. Indeed, the Court in *Jeff D.* confronted an argument similar to that adopted in *Curtis* and rejected the view that permitting "clients to bargain away fee awards" would significantly undermine Section 1988's purpose by deterring lawyers from representing civil rights plaintiffs. *Jeff D.*, 475 U.S. at 741 n.34.[3] The analysis in *McPeck* provides even less support for the court of appeals' ruling here. The court in *McPeck* addressed a fee award imposed as a sanction in bankruptcy proceedings; concluded that "EAJA [is] inapplicable to th[e] case"; and adopted the government's position that, "[w]hen a statute awards attorneys' fees to a party, the award belongs to the party, not to the attorney representing the party." 910 F.2d at 513.

2. The Eighth Circuit's ruling in this case squarely conflicts with decisions of the Tenth and Eleventh Circuits. App., *infra*, 2a-3a. As noted, the courts in *Reeves* and *Manning* held that EAJA fees are payable to the prevailing party rather than to her attorney. See

[3] Although *Curtis* cites *Jeff D.* and *Venegas*, it does not explain how its holding is consistent with the reasoning in those decisions. See 995 F.2d at 128-129.

Reeves, 526 F.3d at 734-738; *Manning*, 510 F.3d at 1249-1255. Those courts further held that because an EAJA award is payable to the prevailing party, it is subject to an offset to collect a pre-existing debt owed by that party to the United States or another eligible creditor. See *Reeves*, 526 F.3d at 738; *Manning*, 510 F.3d at 1255-1256.[4]

The court of appeals' disallowance of the offset in this case is consistent with the decision of the Fifth Circuit in *Marré* v. *United States*, 117 F.3d 297 (1997). The court in *Marré* held that, although a fee award under 26 U.S.C. 7430 is made to a "prevailing party," that statutory directive "is not controlling" because "the real part[ies] in interest vis-a-vis attorneys' fees awarded under the statute are the attorneys themselves," such that "the prevailing party is only nominally the person who receives the award." 117 F.3d at 304. Concluding that "the fee once awarded becomes in effect an asset of the attorney," the court held that the government could not offset a federal debt owed by the prevailing party from fees awarded under Section 7430. *Id.* at 304-305 & n.11 (citation omitted).

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[4] The Federal Circuit, while not addressing the question whether an award of attorney fees may be offset to collect a pre-existing debt owed by the prevailing party, likewise has held that fee awards under EAJA and comparable statutes are payable to the prevailing party rather than to her attorney. See *FDL Techs., Inc.* v. *United States*, 967 F.2d 1578, 1580 (Fed. Cir. 1992); App., *infra*, 3a. The Ninth Circuit also recently followed *Reeves* in denying a request that EAJA "fees be directly awarded to counsel." *Lozano* v. *Astrue*, No. 06-15935, 2008 WL 5875572, at *1 (9th Cir. July 18, 2008) (unpublished panel order; citing *Reeves*); see *Lozano* v. *Astrue*, No. 06-15935, 2008 WL 5875573, at *1 (9th Cir. Sept. 4, 2008) (EAJA award by appellate commissioner). That unpublished decision does not constitute binding precedent and need not be followed by future panels. See 9th Cir. R. 36-3(a).

Although *Marré* (unlike the decision below) involved a different fee-shifting statute and therefore does not squarely conflict with *Manning* and *Reeves*, Section 7430 was largely modeled on EAJA and expressly incorporates EAJA's definitions of "party" and "prevailing party." See 26 U.S.C. 7430(a); see also 26 U.S.C. 7430(c)(4) (defining the term "prevailing party" by referencing 28 U.S.C. 2412(d)(1)(B) and (2)(B)). In its administration of the Treasury Offset Program, the government therefore has treated *Marré* as precluding (within the Fifth Circuit) use of the offset mechanism to offset debts owed by the prevailing party against EAJA awards. The Eighth Circuit itself appears to have interpreted *Marré* as resolving the question presented here, describing *Marré* as ruling that "the government cannot offset attorneys' fees in an EAJA case because 'the prevailing party is only nominally the person who receives the award.'" See App., *infra*, 4a (quoting *Marré*, 117 F.3d at 304). In any event, the Eighth Circuit's decision in this case, in part based on the Fifth Circuit's ruling in *Marré*, creates a clear circuit split that warrants resolution by this Court.[5]

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[5] The government previously acknowledged in its briefs in opposition to the petitions for writs of certiorari in *Manning* and *Reeves* that the Eighth Circuit's decision in *Ratliff* had created a conflict with the Tenth and Eleventh Circuits' decisions. The government explained, however, that review was premature at that time because, if the Eighth Circuit granted rehearing en banc in *Ratliff*, the division of authority might be eliminated. The Court denied certiorari in *Manning* on November 3, 2008. 129 S. Ct. 486 (No. 07-1468). The court of appeals denied rehearing en banc in this case on Friday, December 5, 2008 (App., *infra*, 17a), and the government advised this Court of that denial by letter filed the same day. The Court denied certiorari in *Reeves* on Monday, December 8, 2008. 129 S. Ct. 724 (No. 08-5605).

3. The question presented in this case is significant and recurring. The government is frequently ordered to pay EAJA awards in civil actions and, since the Treasury Offset Program was extended to EAJA awards in 2005, litigants commonly seek to have payment of such awards made directly to counsel. In addition to producing a circuit split, see pp. 13-15, *supra*, the issue is the subject of several pending appeals[6] and has spawned multiple internal conflicts within district courts.[7] As a result, even after EAJA fee applications have been adjudicated, the United States is exposed to recurring satellite litigation to identify the proper payee for the fee award and to determine whether an offset may be taken to collect a pre-existing debt owed by the prevailing party. Review by this Court is warranted to resolve the circuit conflict and to alleviate the practical burdens associated with those disputes.

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[6] See, *e.g.*, *Stephens* v. *Astrue*, 539 F. Supp. 2d 802, 805 (D. Md. 2008), appeal pending, No. 08-1527 (4th Cir.) (argued Mar. 26, 2009); *Bryant* v. *Astrue*, No. 07-CV-209, 2008 WL 4186892, at *1-*2 (E.D. Ky. Sept. 10, 2008), appeal pending, No. 08-6375 (6th Cir.); *Thompson* v. *Astrue*, No. 06-CV-237A, 2009 WL 537512, at *2-7 (W.D.N.Y. Mar. 3, 2009), notice of appeal filed (Apr. 21, 2009); *Abeytia* v. *Astrue*, No. 06-CV-2185 (D. Ariz. Mar. 23, 2009), notice of appeal filed (Apr. 21, 2009).

[7] See, *e.g.*, *Thompson*, 2009 WL 537512, at *2 (noting intra-district conflict in W.D.N.Y.); compare, *e.g.*, *Walker* v. *Astrue*, No. 04-CV-891, 2008 WL 4693354, at *7 (N.D.N.Y. Oct. 23, 2008) (EAJA awards are paid to prevailing party); *Riggins* v. *Commissioner of Soc. Sec.*, No. 07-CV-2116, 2008 WL 4822225, at *2 (D.N.J. Nov. 3, 2008) (same), with *Spencer* v. *Commissioner of Soc. Sec.*, No. 03-CV-733, 2009 WL 1011629, at *1-*4 (N.D.N.Y. Apr. 15, 2009) (EAJA awards are paid to attorney for prevailing party); and *Williams* v. *Commissioner of Soc. Sec.*, 549 F. Supp. 2d 613, 615-621 (D.N.J. 2008) (same).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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