LEAVE TO FILE GRANTED
7/23/2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHRISTINA CLEMENT and
HH EMPRESS QUEEN CHRISTINA LOCS IS OUR ARTIFACT OF FAITH

Plaintiff,

v.

Attorney General Merrick Garland;
Chief Justice John Roberts Jr.,
Secretary General of the United Nations;
Registrar-Peace Palace Carnegie Pleinz et al in their official capacity

Defendant,

Civil No: 1:24-cv-00479-RC

7/19/2024

Dear Judge Mr. Contreras,

I am writing to you in my capacity as a pro se litigant and as a presidential candidate advocating for civil rights, specifically concerning the Afro community and other marginalized group; an advocate for right is right in the election proceedings; as a mother and a women considered African American however my bloodline is Arawak Indian also known as Maroons. I am currently involved in the case numbered 1:24-cv-00479-RC and wish to address the court regarding the provisions of the Equal Access to Justice Act (EAJA), which I believe are pertinent to our case with focus on the Bill of Cost due 7/17/2024.

Request for Consideration under the Equal Access to Justice Act

The Equal Access to Justice Act (EAJA) was enacted to ensure that individuals and small entities can challenge government actions without being deterred by the high costs of legal representation. The EAJA aims to make justice accessible by providing for the reimbursement of reasonable attorney fees and litigation costs for those who prevail in cases against the government. In light of this, I am seeking the court's assistance to ensure that the protections provided by the EAJA are applied in our case.

1. **Financial Assistance and Access to Justice**: Given the nature of my campaign and the financial constraints inherent in pro se representation, I respectfully request that the court consider awarding attorney fees and bill of costs under the EAJA. The reimbursement of these costs would significantly reduce the financial burden associated with challenging government actions and ensure fair access to justice due April 2024 and bill of cost 07/17/2024 set by the court.

2. **Expedited Review**: In the interest of addressing urgent civil rights concerns, I request that the court expedite the review of our case. The issues at hand are critical to the civil rights of vulnerable communities, and timely resolution is essential for justice. An expedited process would also align with the spirit of the EAJA, which aims to facilitate timely and effective legal remedies that were due back in April 2024 and bill of cost on 07/17/2024 set by the court.

3. **Clarification of Legal Standards**: If there are specific procedural or legal standards under the EAJA that apply to this case, I would appreciate any guidance or clarification the court can provide to ensure that all relevant legal protections are considered. Understanding these standards will help ensure that our request for attorney fees and bill of costs is handled appropriately and in accordance with the Act.

Conclusion

As a candidate dedicated to advancing civil rights and as a pro se litigant, I am committed to ensuring that justice is served not only for the individuals involved but also in a manner that upholds the principles enshrined in the Equal Access to Justice Act. I am grateful for the court's attention to these matters and look forward to your guidance and support in this important case.

Respectfully submitted,

Thank you for your attention to this matter. Should the Court require any further information or documentation, please do not hesitate to contact me.

Rev. Dr. Christina Clement, Presidential Candidate of the US 2024
8 The Green, Suite A

Dover, DE 19901

678-780-5557

Rule 5 (c) Signing. A filing made through a person's electronic –filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

CERTIFICATE OF SERVICE

- I hereby certify that on July 19, 2024, I electronically emailed the foregoing with the Clerk of the Court using the email address dcd_intake@dcd.uscourts.gov, which clerk will send notice to all parties
_"CHRISTINA CLEMENT, PM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Plaintiff,

v.

Attorney General Merrick Garland;
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Defendant,

Civil No: 1:24-cv-00479-RC

Response to "Objection to Bill of Costs due 7/17/2024

Bill of Costs Clarification

Reasonableness and Necessity of Costs:

- The costs and administrative actions detailed in the Bill of Costs are deemed reasonable and essential for this litigation. A default judgment; summary judgment and Injunctive relief in favor of the plaintiff is to be granted, allowing all relief sought as itemized in the Bill of Costs.

The presented evidence includes undisputed facts, numerous victim statements, and relevant legal foundations such as relevant US codes, statues, Fed Rules, treaties, customary international law, general principles recognized globally, and judicial precedents.

Disbursements for the monetary award are due from the Judgment Fund, established under 31 U.S.C. § 1304, for the meritorious claim in case 1:24 cv 000479 RC, et al., with allocated funds referencing from HR 40, Chicago Mayor's Executive Order 2024-1, and other state orders pertinent to the evidence and research presented in this case related to the Trans-Atlantic Slave Trade and the damaging after effects of the illegal kidnapping which proves the market value of amounts listed in (a)-(f).

The legal framework is supported by statutes including but not limited to,28 USC 1505 (Treaties), Title VII addressing discrimination during federal campaigns, 28 USC 1491(2) governing Court of Federal Claims jurisdiction, and 28 USC 2677 covering miscellaneous provisions.et al presented in this case.

Compensatory/Punitive Relief

The costs included in Pro se litigant fee (a)-(g) of the Bill of Costs, 42 USC 1988 (c):

are announced allocated for the research specific to this case. HR 40, Chicago's Executive Order 2024-1, and allocations from California and Washington DC have all earmarked funds for researching and addressing events related to the transatlantic slave trade. These orders, along with others, demonstrate the market value for such research as presented in case 1:24 cv 00479-rc. Reviewing these orders facilitates adherence to Rule 56(e)(d)(1) and 28 USC 1920(1-6) for expedient Pro se fee coverage under 31 U.S.C. § 1304, alongside various HR bills, state and mayoral orders, and international entities as documented in Volume 2 (court-recorded large book received). These funds have already been allocated for the information presented to the court. I consent to sharing this five-year research effort to support task forces, saving time, energy, and future litigation efforts. This includes itemized costs such as filing complaints, certified or tracked mailings to courts and government agencies, PACER fees for retrieving stamped filings online, research into laws, statutes, documentaries, books, victim testimonies, historical research, time spent on emails, phone calls to courts and government offices, interviews, meetings, travel to and from FedEx and USPS, law library usage, and other related expenses.

Punitive Damages

(f) Each additional state:

This provision was included due to uncertainty regarding the court's decision on granting the prayer for relief. In the event that another state allocates funds for the same research while awaiting the granting for plaintiff relief, the clerk may include the allocated amount from other states in the final total. The state chart at the end of the Bill of Costs serves as a reference or checklist of all states who may eventually participate in funding my research. The determination of the final total may be based on the new executive order or by applying the formula used in the previous stage, matching the newly allocated funds from other states with the size and amount previously offered. For instance, HR 40 and Chicago each offered $12 million, and any state offering a comparable amount could also contribute.

• **Section titled: Federal Rules of Civil Procedure**:

This section outlines entitlement for relief as requested by Rule 8.

• **Section titled: Relief Sought**

Case 1:24 cv 00479 RC presents three grievances: Contest of Oath; Contest of Election; and Class Action for restitution for kidnapping during the transatlantic Slave trade. 28 USC 2412 (c)

Injunctive, Equitable Relief;

• **Number 1: Contest of Oath, relief sought**:

This section details all administrative actions to remedy this grievance. The documents submitted justify and present claims for relief as itemized here. In summary, it seeks for State of Loc Nation to submit majority law to be incorporated into federal law using powers from "SOLN The Act" and "SOLN The Charter" as per the cited documents of this case. (28 USC 1505 Treaty)

Injunctive and Equitable Relief:

• **Number 2: Contest of Election, relief sought:**

This section lists all administrative actions intended to address this grievance. (28 USC 1491(2))

Restitution; Injunctive and Equitable Relief

• **Number 3: Class Action, relief sought**:

This section outlines all administrative actions aimed at remedying this grievance.

Restitution:

(g) "Make right all Wrongs."

Submitted in the case for the restitution of 500 years of grievance is cited. Also included is an itemization of all parties' equal share to pay, totaling to Sum noted in part (g) "Make right all Wrongs."

Calculation: Case 1:24 cv 00479 RC Document 28 Filed 06/26/2024 Page 3 of 13

Allocated sanctions: Case 1:24 cv 00479-RC Document 29 Filed 06/23/2024 Page 3 of 8

Injunctive; Equitable and General Relief:

• **Number 4: Special Damages - Relief Sought**:

This section lists all administrative actions necessary to remedy the wrongs.

Restitution

- **Due Upon Receipt**

This is the total restitution calculated from (a)-(g)

This is the total injunctive, punitive, general, special, equitable, compensatory reliefs.

Proper Documentation and additional summary

- Attached are the various governmental correspondence to prove my usage of dollar amounts for the research are publicly announced market rates for the level of research, evidence and defense of this grievance.

Case 1:24 cv 00479-RC Document 28-1 Filed 6/26/2024 Page 1-4 of 26

Rule 56 (a)(c)(d)(1); Rule 65.1

- Additional rule entitling to relief

Thank you for your attention to this matter. Should the Court require any further information or documentation, please do not hesitate to contact me.

Respectfully submitted,

Thank you for your attention to this matter.

"Rev. Dr. Christina Clement, Presidential Candidate of the US 2024
8 The Green, Suite A

Dover, DE 19901

678-780-5557

Rule 5 (c) Signing. A filing made through a person's electronic –filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

CERTIFICATE OF SERVICE

I hereby certify that on July 4, 2024, I electronically emailed the foregoing with the Clerk of the Court using the email address dcd_cmecf@dcd.uscourts.gov and dcd_intake@dcd.uscourts.gov, which clerk will send notice to all parties. Including Proposal presented to

press@cityofchicago.org Response to Executive Order 2024-1 Black Reparations Task Force and Agenda, et al

- Proposal presented also to customerservice@fultoncountyga.gov response to Fulton Reparations Task Force
- Proposal presented in response to California Assembly Bill 3121 California Reparations Task Force reparationstaskforce@doj.ca.gov
- Proposal presented in response to Detroit Reparations Task Force legislativepolicy@detroitmi.gov
- Proposal presented in response to Boston Reparations Task Force reparations@boston.gov
- Proposal presented in response to Philadelphia Reparations Task Force kelsey.hubbell@phila.gov
- Proposal presented in Response to H.R. 40-117th Congress (2021-2022)

"CHRISTINA CLEMENT

Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated June 2, 2023

Attorney's Fees and the Equal Access to Justice Act: Legal Framework

In 1980, Congress enacted the Equal Access to Justice Act (the EAJA, or the Act) and significantly expanded the federal government's liability to pay the attorney's fees of parties that prevail against the government in litigation or administrative proceedings. This In Focus explains the state of the law before the EAJA was enacted, outlines the government's liability for attorney's fees under the EAJA, and briefly discusses relevant congressional considerations concerning the EAJA.

Immunity and the American Rule

Absent express action by Congress, the U.S. government is not liable for opponents' attorney's fees for two reasons. First, the default rule in the United States, known as the "American rule," provides that each party pays its own litigation costs, regardless of the outcome of a case. (The alternative regime, known as the "English rule," provides that the losing party pays the prevailing party's attorney's fees.) Second, the government enjoys sovereign immunity, meaning that it may not be sued—and therefore may not be required by a court to pay another party's attorney's fees—unless it expressly waives its immunity. Accordingly, unless Congress expressly provides otherwise, the American rule applies to suits in which the United States is a party, and each party pays its own fees. Indeed, although the American rule is subject to certain court-created exceptions in litigation between private parties, courts have generally declined to apply those exceptions to the federal government.

Congress has waived the federal government's sovereign immunity in several contexts. Congress recognized that, even where it has permitted suits against the federal government, without access to fee awards against the United States, litigation costs may deter would-be plaintiffs from bringing suit. Before enacting the EAJA, Congress tried to address that concern piecemeal, enacting numerous fee-shifting statutes that allowed awards of fees against the United States only in specific types of cases, such as cases arising under Title VII of the Civil Rights Act or the Freedom of Information Act. With the EAJA, Congress went further by more generally allowing fee-shifting in cases involving the United States.

The Equal Access to Justice Act

Congress enacted the EAJA temporarily in 1980 before reauthorizing the statute permanently in 1985. Motivated in part by a desire to deter government overreach and wrongdoing, the Act significantly departed from the default American rule by permitting awards of attorney's fees against the federal government in several types of judicial and administrative proceedings. The statute includes three key provisions. First, 28 U.S.C. § 2412(b) provides that "in any civil action brought by or against the United States" or any U.S. agency or official, the government "shall be liable" for attorney's fees "to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award." Section 2412(b) thus expands any existing statutory and court-created exceptions to the American rule to apply to the federal government as they would to a private party.

Second, 28 U.S.C. § 2412(d) requires a court to award attorney's fees and costs to a party prevailing against the United States in a civil action, "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." The Supreme Court has interpreted the substantial justification standard to require the government to prove that its litigating position was reasonable in both fact and law. Third, 5 U.S.C. § 504 authorizes awards of attorney's fees in proceedings before an administrative agency on the same terms as Section 2412(d).

The EAJA provides that fee awards shall be paid by the defendant agency. In practice, however, the Department of Justice often advances funds and then receives gradual reimbursements from the agency.

Scope of Application

The EAJA's fee award provisions apply "except as otherwise specifically provided by statute." Put another way, the EAJA does not supersede other, more specific federal laws that allow or restrict fee awards.

The Act's judicial fee award provisions apply only to civil actions, meaning they do not authorize awards of attorney's fees in criminal proceedings. (A separate statutory provision, classified as a note to 18 U.S.C. § 3006A, allows prevailing criminal defendants not represented by a public defender to recover attorney's fees and litigation costs "where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust.") Section 2412(d) of the Act further excludes cases sounding in tort. Section 2412(d) applies to suits in "any court," which includes the federal district and appellate courts, the U.S. Court of Federal Claims, and the U.S. Court of Appeals for Veterans Claims. It is unclear whether bankruptcy courts can directly award fees under the Act, but they may recommend that the district court do so.

The provision related to administrative proceedings applies to "adversary adjudication," including agency proceedings under the Administrative Procedure Act and certain other

statutes. Petitions for judicial review of agency action are included among the civil actions subject to Section 2412(d).

Eligibility

The EAJA permits recovery of fees by both organizations and individuals, but Sections 504 and 2412(d) limit the parties that may receive a fee award. First, those provisions only allow for one-way fee shifting: "a prevailing party other than the United States" may receive attorney's fees, while the federal government may not. Second, only an individual with a net worth of $2 million or less, or the owner of a business or other organization worth $7 million or less and with no more than 500 employees may recover an award of attorney's fees under Sections 504 and 2412(d). Nonprofits exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are not subject to the net worth cap.

What Is a Prevailing Party?

One of the most often litigated questions under the EAJA is when a litigant may be considered a "prevailing party" entitled to attorney's fees. In *Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782 (1989), the Supreme Court held that a party need not prevail on all of its claims, or even on the "central issue" in the case, but only on "any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing the suit." A party also need not prevail after a full trial on the merits. A favorable settlement may support a finding that a party prevailed, if embodied in a judicially enforceable consent decree. However, absent an enforceable agreement, a party is not deemed to have prevailed just because a proceeding caused the government to alter its behavior.

Prevailing party status is a threshold issue determining the potential availability of *any* attorney's fees under the EAJA. The prevailing party need not recover substantial monetary damages in order to meet the threshold (though, as discussed below, the amount of recovery may influence what constitutes a reasonable fee award). In *Farrar v. Hobby*, 506 U.S. 103 (1992), the Supreme Court held that a litigant who received a nominal damages award of one dollar had prevailed because such an award "materially alters the legal relationship between the parties."

Limitations on Fees

The EAJA caps the rate for recoverable attorney's fees at $125 per hour (lower than the prevailing rates in some legal markets), subject to exceptions due to cost of living increases or the presence of "a special factor, such as the limited availability of qualified attorneys for the proceedings involved." In *Pierce v. Underwood*, 487 U.S. 552 (1988), the Supreme Court interpreted the "special factor" language narrowly. The Court held that it was improper to increase fees based on general conditions in the legal market. It explained that a departure from the base rate was warranted only when a case required "attorneys having some distinctive knowledge or specialized skill needful for the litigation in question," such as an expertise in patent law, foreign law, or foreign language.

The Act also provides that an award of fees must be "reasonable." In *Farrar*, the Court explained that the degree of the plaintiff's success relative to the other goals of the lawsuit is critical to determining the size of a reasonable fee, holding that a plaintiff who prevails in part may nonetheless receive no fees at all.

Considerations for Congress

Commentators have raised concerns related to the EAJA's cost to the government and whether fee awards are benefiting appropriate recipients. Proposed measures to curb costs include removing the "special factor" exception to the fee cap, which some argue has been applied too permissively by lower courts. By contrast, the Equal Access to Justice Reform Act, first introduced in 2003, would have attempted to "remove existing barriers and inefficiencies in EAJA," including by broadening the definition of "prevailing party," raising the net worth caps, and eliminating the government's substantial justification defense.

Other commentators allege that EAJA fee awards have spurred abusive litigation by nonprofit organizations with in-house lawyers. They assert that nonprofits may seek purportedly reasonable fees that exceed their actual labor costs and use the resulting awards to bring numerous claims based on alleged procedural violations that cause the organizations no tangible injury. Proposed amendments to the EAJA including the Government Litigation Savings Act of 2011 would have sought to address that concern by requiring any party seeking a fee award to have "a direct and personal monetary interest" in the adjudication or civil action, "including because of personal injury, property damage, or unpaid agency disbursement."

As originally enacted, the EAJA required annual reports to Congress on the number, nature, and amount of awards of fees under the statute. However, Congress repealed the reporting requirement in 1995, meaning that for many years there was limited data on EAJA fee awards. The John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9), enacted on March 12, 2019, included an "Open Book on Equal Access to Justice" section that reinstated and updated the reporting requirements. The new provisions require the Administrative Conference of the United States (ACUS) to make annual reports to Congress and to maintain a searchable online database containing information about each fee award under the EAJA, including the amount, the recipient, and the basis for the finding that the government's position was not substantially justified. ACUS has released reports on EAJA awards each year since FY2019. Among other things, the reports indicate that a large majority of fee awards come in cases involving the Social Security Administration or the Department of Veterans Affairs. Policymakers and commentators may consult the ACUS reports as one tool to evaluate the EAJA's costs and effectiveness.

Joanna R. Lampe, Legislative Attorney

IF11246

Disclaimer

Payment of Attorney Fee Awards Against the United States Under 28 U.S.C. § 2412 (b)

The United States is liable under 28 U.S.C. § 2412(b) for a court award of attorney fees in civil cases "to the same extent any party would be liable under the common law or under the terms of any statute." Attorney fees awarded by a court under § 2412(b) are to be paid from the judgment fund, and not from agency appropriations, unless an award is based on a finding of bad faith.

Although the terms of § 207 of the Equal Access to Justice Act, Title II of Pub. L. No. 96–481, 94 Stat. 2325 (1980), prohibit the payment of awards from the judgment fund without a specific congressional appropriation for that purpose, the legislative history of § 207 reveals that Congress only intended § 207 to apply to awards under 5 U.S.C. § 504 and 28 U.S.C. § 2412(d), and not to apply to attorney fee awards under § 2412(b). Thus, § 207 does not bar the Comptroller General from certifying awards of attorney fees under 28 U.S.C. § 2412(b).

December 15, 1983

MEMORANDUM OPINION FOR THE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY

This responds to your request for our opinion concerning the effect of § 207 of the Equal Access to Justice Act, Title II of Pub. L. 96–481, 94 Stat. 2325 (1980) (the Act), on the payment of attorney fee awards against the United States made under authority of 28 U.S.C. § 2412(b). Specifically, you wish to know whether § 207 bars payment of such awards from the judgment fund, and, if so, whether such awards may be paid from an agency's general appropriation.[1] The General Accounting Office has refused to certify such awards for payment from the judgment fund, apparently on grounds that § 207 bars payment of any awards authorized by the Act from this source. For reasons discussed below, we believe that awards made under authority of 28 U.S.C. § 2412(b) are not subject to § 207, and that § 207 therefore does not preclude their being certified for payment from the judgment fund. Furthermore, we

[1] Sections 2414 and 2517 of Title 28 set forth procedures for payment of final judgments or compromise settlements against the United States from the general fund of the Treasury, under authority of the permanent, indefinite appropriation established by 31 U.S.C. § 1304. The term "judgment fund" is generally used as a shorthand rendition of that process. Under 31 U.S.C. § 1304, the Comptroller General must "certify" all final court judgments and compromise settlements before they may be paid from the judgment fund. Because all final judgments must be paid from the judgment fund unless they are "otherwise provided for," the Comptroller General has no discretion to refuse to certify a final judgment which is properly payable from the judgment fund and whose payment is not governed by another statute. *See General Accounting Office, Principles of Federal Appropriations Law* 12–13 (1981).

believe that the judgment fund is the only available source of payment of awards made under authority of § 2412(b), except those based on a finding of bad faith.

Section 2412(b), enacted by § 204(a) of the Act, makes the United States liable for a court award of attorney fees in civil cases "to the same extent that any other party would be liable under the common law or under the terms of any statute."[2] Fees awarded by a court under authority of § 2412(b) are to be paid in accordance with the provisions of § 2412(c)(2):

> Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

With the text of § 2412(c)(2) before us, we turn first to your question whether general agency appropriations are available to pay an award made under authority of 28 U.S.C. § 2412(b). Unless an award is based on a finding of bad faith, we think they are not.

By its terms, § 2412(c)(2) specifies that an award made under § 2412(b) "shall" be paid from agency funds in cases where an award is based on a finding of bad faith; in all other cases, awards "shall" be paid from the judgment fund. There is no indication in the legislative history of the Act of an intention to depart from the plain directive of the statutory text by making agency appropriations available for payment of awards in cases other than those involving bad faith. It is an elementary principle of appropriations law that an agency may expend its general appropriations in a particular manner only if it has statutory authority to do so. Section 2412(c)(2) does not authorize the use of an agency's general appropriation to pay any but bad faith awards, and we know of no other authority which would permit such a disposition of an agency's general appropriation. *Compare* 5 U.S.C. § 504(d)(1)(A) (fee awards "may be paid by any agency over which the party prevails from any funds made available to the agency"). Moreover, under 31 U.S.C. § 1304, all final judgments must be paid from the judgment fund, unless "otherwise provided for." *See Principles of Federal Appropriations Law, supra* note 1, at 12–13 ("[I]f a judgment is properly payable from the permanent appropriation, then payment

[2] Section 2412(b) provides in full as follows:

> Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency and any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

of that judgment from agency funds violates 31 U.S.C. § 1301 (restricting appropriations to the objects for which made) and is an improper payment.").

Accordingly, we conclude that an agency's general appropriation is not available to pay awards made under authority of § 2412(b), except where such an award is based on a finding of bad faith. Thus, in the absence of some specific statutory directive to the contrary, § 2412(b) awards can be paid only from the judgment fund.[3]

Before turning to an examination of the text of § 207 of the Act, we make several observations regarding other provisions of the Act which we believe are relevant to an understanding of the effect of § 207. In addition to the authority contained in § 2412(b), the Act also authorizes an award of attorney fees in certain administrative and judicial actions, where the position of the United States cannot be shown to be "substantially justified." These authorities, enacted on a temporary and experimental basis, are codified at 5 U.S.C. § 504 and 28 U.S.C. § 2412(d).[4] Awards made under authority of these provisions are to be funded in the following manner:

> Fees and other expenses . . . may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2412 [and section 2517] of title 28, United States Code.

See 5 U.S.C. § 504(d)(1); 28 U.S.C. § 2412(d)(4)(A). In contrast to awards made under the permanent authority of § 2412(b), all awards made under the experimental authorities in § 504 and § 2412(d) are to be paid in the first instance from agency budgets. Only in very limited circumstances may awards made under authority of § 504 and § 2412(d) be paid from the judgment fund.[5]

[3] One such contrary statutory directive appears in 39 U.S.C. § 409(e), which provides that judgments arising out of activities of the United States Postal Service shall be paid by the Postal Service from its own funds. Judgments under this provision are payable directly by the Postal Service and do not require the Comptroller General's certification. Other examples of statutes providing alternative sources of funding for judgments are cited in *Principles of Federal Appropriations Law*, *supra* note 1, at 12–13.

[4] Section 504(a)(1) of Title 5 provides for an award of fees in agency adjudications in the following terms:

> An agency that conducts an adversary adjudication shall award to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust.

Section 2412(d)(1)(A) of Title 28 provides for fee awards in certain judicial proceedings involving the United States in similar terms:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort) brought by or against the United States in any court have jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

Under §§ 203(a)(2) and 204(c) of the Act, both of these authorities are repealed effective October 1, 1984.

[5] In brief, awards under 5 U.S.C. § 504 and 28 U.S.C. § 2412(d) may be paid from the judgment fund only when their payment from agency funds would be a very heavy financial blow to the agency.

We must now determine what effect, if any, § 207 has upon the payment of awards made under authority of § 2412(b) from the judgment fund. Section 207 provides that

> The payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act is effective only to the extent and in such amounts as are provided in advance in appropriations acts.

See 5 U.S.C. § 504 note. The effect of § 207, where it applies, is to prohibit the payment of awards from the judgment fund unless and until Congress makes a specific appropriation for that purpose. If § 207 applies to fee awards made under § 2412(b), then those awards may not be certified by the Comptroller General for payment from the judgment fund. Because of our conclusion that § 2412(b) awards not based on bad faith may not be paid from an agency's appropriated funds, the result would be that such awards could not be paid at all without a specific new appropriation. However, for reasons discussed below, we do not believe that Congress intended § 207 to apply to awards made under § 2412(b).

The terms of § 207 are ambiguous. On the one hand, they mirror the wording in 5 U.S.C. § 504(d)(1) and 28 U.S.C. § 2412(d)(4)(A), which govern the funding of awards made under 5 U.S.C. § 504 and 28 U.S.C. § 2412(d), both of which provide for payment of awards "in the same manner as the payment of final judgments." By its terms, therefore, § 207 could be construed to apply only to awards made under authority of § 504 and § 2412(d). On the other hand, § 207 could also be more broadly interpreted to govern all awards newly authorized by the Act to be paid from the judgment fund, including awards made under authority of § 2412(b).

Because the language of § 207 admits of more than one reasonable construction, we turn to the legislative history to ascertain whether Congress intended § 207 to apply to all awards made under the new authorities contained in the Act, or only to awards made under § 504 and § 2412(d).

Section 207 was added to the Act on the House floor in response to a point of order to the Conference Report. The point of order, made by Representative Danielson, was

> that the conferees have agreed to a provision in the Senate amendment which constitutes an appropriation on a legislative bill, in violation of clause 2 of rule XX of the rules of the House of Representatives. The conferees have included, as an amendment to the bill, a title II, which provides for the award of attorneys' fees and other expenses to the prevailing party other than the United States, in certain actions or administrative proceedings in which the judgment or adjudication has been adverse to the United States, unless the court or adjudicative

> officer of the agency finds that the position of the United States was substantially justified or that special circumstances make the award unjust.

126 Cong. Rec. 28638 (1980). Clause 2 of House Rule XX provides that conferees may not agree to Senate amendments which provide for an appropriation in any bill other than a general appropriation bill "unless specific authority to agree to such amendment is first given by the House by a separate vote on every such amendment." Because the Act had never been considered by the full House as an independent piece of legislation, reaching the House floor for the first time as Title II of the conference bill to amend the Small Business Act, H.R. 5612, Representative Danielson's point of order under House Rule XX could have applied to all of the fee-shifting authorities contained in the Act, including that under § 2412(b). However, it appears that the only specific fee-shifting authorities contained in the Act about which Representative Danielson was concerned, and to which he directed his point of order, were those which authorized fee awards in civil cases in which "the court or adjudicative officer of the agency [does not find] that the position of the United States was substantially justified." This reference clearly contemplates the authorities codified at 5 U.S.C. § 504 and 28 U.S.C. § 2412(d), but does not encompass that codified at 28 U.S.C. § 2412(b). In a word, even if the point of order could have been directed at all of the new fee-shifting authorities under the Act, it appears in fact to have been directed only at those contained in § 504 and § 2412(d).

As sustained by the Speaker *pro tempore,* the point of order was narrowly focused on certain provisions of Title II:

> The provisions in title II [in] question authorize appropriations to pay court costs and fees levied against the United States, but also provide that if payment is not made out of such authorized and appropriated funds, payment will be made *in the same manner as the payment of final judgments* under sections 2414 and 2517 of title 28, United States Code.

126 Cong. Rec. 28638 (1980) (emphasis added). The funding provisions to which the Speaker pro tempore was necessarily referring were § 504(d)(1) and § 2412(d)(4)(A), which provide for payment of awards "in the same manner as the payment of final judgments."

After the Speaker *pro tempore* had sustained Representative Danielson's point of order, Representative Smith offered an amended version of the bill to cure the defect. That amended version was identical to the conference version except that it contained a new section, § 207. Representative Smith explained that the proposed new section "modifies those provisions which had been ruled to be an appropriation on an authorization bill." The terminology chosen for § 207 is consistent with this narrow purpose to block payment of awards made under § 504 and § 2412(b) from the judgment fund.

The limited construction of § 207 that is suggested by its legislative history better effectuates the purpose of the several fee-shifting authorities enacted by the Act than does a broad construction of that section, and leads to a far more sensible result. One of the primary purposes of the fee-shifting authorities in § 504 and § 2412(d) was to ensure greater agency accountability. And, in early versions of the legislation, agency budgets had been made the sole source of payment for awards made under § 504 and § 2412(d).[6] This somewhat unconventional approach reflected the hope and expectation of some legislators that the experimental fee-shifting provisions in § 504 and § 2412(d) would provide a mechanism for holding agencies accountable for their activities. *See, e.g.*, 126 Cong. Rec. 28106 (1980) (remarks of Sen. Thurmond) ("affecting the 'pocketbook' of the agency is the most direct way to assure more responsible bureaucratic behavior"). When the bill finally reached the House floor, however, the conferees had agreed to make the judgment fund, as well as agency budgets, available to pay fees awarded under § 504 and § 2412(d). It is very likely that some Members of the House would have been concerned over the possibility that shifting the onus of paying these particular fee awards away from agency budgets to the judgment fund would cancel out whatever prophylactic effect the prospect of incurring adverse fee awards might otherwise have on "bureaucratic behavior." Section 207 can thus be best understood as intended to reinstate the requirement in previous versions of the legislation that awards under the experimental provisions of the bill should be paid from an agency's budget rather than the alternative source of the judgment fund.

There is no analogous reason why the House Members sponsoring § 207 should have wished to impair the conventional and uncontroversial funding mechanism for awards under § 2412(b). Indeed, applying § 207 to awards under § 2412(b) serves only to frustrate Congress' goals in enacting the latter provision. The purpose of § 2412(b) was to hold the United States "to the same standards in litigating as other parties," and to "plac[e] the Federal Government and civil litigants on a completely equal footing." *See* H.R. Rep. No. 1418, 96th Cong., 2d Sess. 9 (1980) (Report of the House Committee on the Judiciary); S. Rep. No. 253, 96th Cong. 2d Sess. 4 (1980). If § 207 applied to awards made under § 2412(b), such awards could not be paid *at all* under existing law, except in cases involving agency bad faith.[7] It would hardly be consistent with

[6] The funding provisions of the version of the bill passed by the Senate, identical to those reported out by the House Committee on Small Business, would have placed fiscal responsibility for paying awards made under § 504 and § 2412(d) exclusively on individual agencies. *See* Senate Report at 18; H.R. Rep. No. 1005, 96th Cong., 2d Sess. (Part 1) 11 (1980) (House Committee on Small Business). The funding provisions agreed to in conference, which gave prevailing parties access to the judgment fund, derived from the version of the bill reported out by the House Committee on the Judiciary. *See* H.R. Rep. No. 1005 (Part 1), 96th Cong., 2d Sess. 12 (1980).

[7] In the absence of a specific appropriation to pay an award made under § 2412(b), it would remain an obligation of the United States until satisfied by legislative action to authorize its payment. Such an obligation could remain unsatisfied forever if Congress never acted to authorize its payment, but history suggests that such obligations usually are paid, and uncertainty as to the source of funding for such awards in no way restricts the authority of judges to make them.

the purpose of creating new liability simultaneously to cut off the only means of enforcing it short of new appropriations legislation.

In sum, we conclude that awards made under authority of § 2412(b) are payable from the judgment fund and not from agency appropriations. Moreover, § 207 of the Act applies only to fee awards authorized by 5 U.S.C. § 504 and 28 U.S.C. § 2412(d), and not to awards authorized by 28 U.S.C. § 2412(b). That section therefore does not prevent the payment of such awards from the judgment fund, and we know of no reason why they should not be certified by the Comptroller General in accordance with the procedure called for in 28 U.S.C. §§ 2414 and 2517.

LARRY L. SIMMS
Deputy Assistant Attorney General
Office of Legal Counsel