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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SCARBOROUGH *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 02–1657. Argued February 23, 2004—Decided May 3, 2004

The Equal Access to Justice Act (EAJA) authorizes the payment of attorney's fees to a prevailing party in an action against the United States absent a showing by the Government that its position in the underlying litigation "was substantially justified." 28 U. S. C. §2412(d)(1)(A). Section 2412(d)(1)(B) sets a deadline of 30 days after final judgment for the filing of a fee application and directs that the application include: (1) a showing that the applicant is a "prevailing party"; (2) a showing that the applicant is "eligible to receive an award"; and (3) a statement of "the amount sought, including an itemized statement from any attorney . . . stating the actual time expended and the rate" charged. Section 2412(d)(1)(B)'s second sentence further requires the applicant to "allege that the position of the United States was not substantially justified."

Petitioner Scarborough prevailed before the Court of Appeals for Veterans Claims (CAVC) in an action for disability benefits against respondent Secretary of Veterans Affairs. Scarborough's counsel filed a timely application for attorney's fees and costs pursuant to §2412(d), showing that Scarborough was the prevailing party in the underlying litigation and was eligible to receive an award. Counsel also stated the total amount sought, and itemized hours and rates of work. But counsel failed initially to allege, in addition, that "the position of the United States was not substantially justified." §2412(d)(1)(B). The Secretary moved to dismiss the application on the ground that the CAVC lacked subject-matter jurisdiction to award fees because Scarborough's counsel had failed to make the required no-substantial-justification allegation. Scarborough's counsel immediately filed an amended application adding that allegation. In

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the interim between the initial filing and the amendment, however, the 30-day fee application filing period had expired. For that sole reason, the CAVC dismissed Scarborough's fee application.

In affirming, the Federal Circuit initially held that EAJA plainly and unambiguously requires a party seeking fees under §2412(d) to submit an application, including all enumerated allegations, within the 30-day time limit. This Court granted certiorari, vacated the judgment, and remanded the case in light of *Edelman* v. *Lynchburg College,* 535 U. S. 106. In *Edelman*, the Court had upheld an Equal Employment Opportunity Commission (EEOC) regulation allowing amendment of an employment discrimination charge, timely filed under Title VII of the Civil Rights Act of 1964, to add, after the filing deadline, the required, but initially absent, verification. Title VII, the Court explained, permitted "relation back" of a verification missing from an original filing. *Id.*, at 115–118. On remand, the Federal Circuit adhered to its earlier decision, distinguishing *Edelman* on the ground that, in Title VII's remedial scheme, laypersons often initiate the process, whereas EAJA is directed to attorneys. The appeals court also observed that the timely filing and verification requirements at issue in *Edelman* appear in separate statutory provisions, while EAJA's 30-day filing deadline and the contents required for a fee application are detailed in the same statutory provision. The Federal Circuit also distinguished the holding in *Becker* v. *Montgomery,* 532 U. S. 757, that a *pro se* litigant's failure to hand sign a timely filed notice of appeal is a nonjurisdictional, and therefore curable, defect. This Court had noted in *Becker*, the Federal Circuit pointed out, that the timing and signature requirements there at issue were found in separate rules.

Held: A timely fee application, pursuant to §2412(d), may be amended after the 30-day filing period has run to cure an initial failure to allege that the Government's position in the underlying litigation lacked substantial justification. Thus, Scarborough's fee application, as amended, qualifies for consideration and determination on the merits. Pp. 9–20.

(a) Whether Scarborough is time barred by §2412(d)(1)(B) from gaining the fee award authorized by §2412(d)(1)(A) does not concern the federal courts' "subject-matter jurisdiction." Rather, it concerns a mode of relief (costs including legal fees) ancillary to the judgment of a court that has plenary "jurisdiction of [the civil] action" in which the fee application is made. See §§2412(b) and (d)(1)(A); 38 U. S. C. §7252(a). More particularly, the current dispute presents a question of time. The issue is not whether, but when, §§2412(d)(1)(A) and (B) require a fee applicant to "allege that the position of the United States was not substantially justified." Clarity would be facilitated if

courts and litigants used the label "jurisdictional" not for such claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority. *Kontrick* v. *Ryan*, 540 U. S.___ , ___ (slip op., at 10). Section 2412(d)(1)(B) does not describe what classes of cases the CAVC is competent to adjudicate, but relates only to postjudgment proceedings auxiliary to cases already within that court's adjudicatory authority. Pp. 9–11.

(b) Unlike the §2412(d)(1)(B) prescriptions on what the applicant must *show* (his "prevailing party" status, "eligib[ility] to receive an award," and "the amount sought, including an itemized statement"), the required "not substantially justified" allegation imposes no proof burden on the fee applicant, but is simply an allegation or pleading requirement. So understood, the applicant's pleading burden is akin to *Becker*'s signature requirement and *Edelman*'s verification requirement. Like those requirements, EAJA's ten-word "not substantially justified" allegation is a "think twice" prescription that "stem[s] the urge to litigate irresponsibly," *Edelman*, 535 U. S., at 116; at the same time, the allegation functions to shift the burden to the Government to prove that its position in the underlying litigation "was substantially justified," §2412(d)(1)(A). The allegation does not serve an essential notice-giving function; the Government is aware, from the moment a fee application is filed, that to defeat the application on the merits, it will have to prove its position "was substantially justified." A failure to make the allegation, therefore, should not be fatal where no genuine doubt exists about who is applying for fees, from what judgment, and to which court. *Becker*, 532 U. S., at 767. Moreover, because Scarborough's lawyer's statutory contingent fee would be reduced dollar for dollar by an EAJA award, see 38 U. S. C. §5904(d)(1); Fee Agreements, note following 28 U. S. C. §2412, allowing the curative amendment benefits the complainant directly, and is not fairly described as simply a boon for his counsel.

The Court rejects the Government's assertion that the relation-back regime, as now codified in Federal Rule of Civil Procedure 15(c), is out of place in this context because that Rule governs "pleadings," a term that does not encompass fee applications. In *Becker* and *Edelman,* the Court approved application of the relation-back doctrine to a notice of appeal and an EEOC discrimination charge, neither of which is a "pleading" under the Federal Rules. Moreover, "relation back" was not an invention of the federal rulemakers. This Court applied the doctrine well before the Federal Rules became effective, see, *e.g., New York Central & Hudson River R. Co.* v. *Kinney,* 260 U. S. 340, 346. Thus, the relation-back doctrine properly guides the Court's determination here: The amended application "arose out

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of the conduct, transaction, or occurrence set forth or attempted to be set forth" in the initial application. Fed. Rule Civ. Proc. 15(c)(2). Pp. 11–16.

(c) The Court rejects the Government's argument that §2412's waiver of sovereign immunity from liability for fees is conditioned on the fee applicant's meticulous compliance with each and every §2412(d)(1)(B) requirement within 30 days of final judgment, including the allegation that that the United States' position "was not substantially justified." *Irwin* v. *Department of Veterans Affairs,* 498 U. S. 89, 95, and *Franconia Associates* v. *United States,* 536 U. S. 129, 145—in which the Court recognized that limitation principles generally apply to the Government in the same way they apply to private parties—are enlightening on this issue. The Government asserts unpersuasively that *Irwin* and *Franconia* do not bear on this case because §2412(d) authorizes fee awards against it under rules that have no analogue in private litigation. Because many statutes that create claims for relief against the United States or its agencies apply only to Government defendants, *Irwin*'s reasoning would be diminished were it instructive only in situations with a readily identifiable private-litigation equivalent. In any event, §2412(d) is analogous to federal "prevailing party" fee-shifting statutes that are applicable to suits between private litigants. Finally, the Court's conclusion will not expose the Government to any unfair imposition. The Government has never argued that it will be prejudiced if Scarborough's "not substantially justified" allegation is permitted to relate back to his timely filed fee application. Moreover, a showing of prejudice should preclude operation of the relation-back doctrine in the first place. EAJA itself also has a built-in check: Section 2412(d)(1)(A) disallows fees where "special circumstances make an award unjust." Pp. 17–20.

319 F. 3d 1346, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.