No. 17-1704

In the Supreme Court of the United States

HOPE KERR, FOR HANK W. KERR, DECEASED,
PETITIONER

v.

NANCY A. BERRYHILL,
ACTING COMMISSIONER OF SOCIAL SECURITY

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Anti-Assignment Act, 31 U.S.C. 3727, can apply to a prevailing litigant's assignment to her attorney of the litigant's claim to a fee award under the Equal Access to Justice Act, 28 U.S.C. 2412(d).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-25) is reported at 874 F.3d 926. The opinion of the district court (Pet. App. 29-36) is not published in the *Federal Supplement* but is available at 2016 WL 1733480. The second opinion of the district court (Pet. App. 26-28) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 1, 2017. A petition for rehearing was denied on February 5, 2018 (Pet. App. 39). On April 20, 2018, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including June 21, 2018, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The petition for a writ of certiorari arises from petitioner's request that the government pay directly to petitioner's attorney an award of fees and other expenses that the district court had awarded to petitioner under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412(d). That request was based on petitioner's written assignment of her EAJA award to the attorney (Pet. App. 40-41), which petitioner signed shortly after she had filed her motion seeking EAJA fees. Compare *id.* at 41 (assignment signed Mar. 23, 2016), with D. Ct. Doc. 22 (Mar. 15, 2016) (EAJA motion). After the government confirmed that petitioner did not owe debts to the government that might have warranted an offset from the EAJA award, the government paid the award to petitioner's counsel as requested. See Pet. App. 4, 27, 30. Petitioner's contention that her attorney is entitled to a direct payment of the EAJA award (which counsel has now received) implicates EAJA and the Anti-Assignment Act, 31 U.S.C. 3727.

a. As relevant here, EAJA states that "a court shall award to a prevailing party" reasonable fees and other expenses in certain civil actions brought by or against the United States in which the government's position is not substantially justified and there are no special circumstances that would make an award unjust. 28 U.S.C. 2412(d)(1)(A); see 28 U.S.C. 2412(d)(2)(A). The Court has construed that authorization to award fees and expenses "to a prevailing party," 28 U.S.C. 2412(d)(1)(A), as directing that an EAJA "award is payable to the litigant," not "to his attorney." *Astrue* v. *Ratliff*, 560 U.S. 586, 589 (2010); see *id.* at 591-592. For

that reason, an EAJA award can be "subject to a Government offset to satisfy a pre-existing debt that the litigant owes to the United States." *Id.* at 589. When such a debt exists, the government may collect it under the Treasury Offset Program by means of an "administrative offset" against the government's payment of an EAJA award to the prevailing litigant. *Id.* at 589-590 & n.1; see 31 U.S.C. 3716(a); 31 C.F.R. 285.1-285.8; see also 31 U.S.C. 3325(a)(3).

b. The Anti-Assignment Act generally prohibits the voluntary assignment of claims against the United States. See 31 U.S.C. 3727; see also Act of Feb. 26, 1853, ch. 81, § 1, 10 Stat. 170 (original enactment). More specifically, the Act prohibits the "assignment" of a claim—*i.e.*, the "transfer or assignment of any part of a claim against the United States Government" or "the authorization to receive payment for any part of the claim," 31 U.S.C. 3727(a)—unless certain statutory criteria are satisfied. 31 U.S.C. 3727(b). Section 3727(b) provides that such "[a]n assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued." *Ibid.* The Act imposes other requirements as well. *Ibid.* (requiring, among other things, two attesting witnesses).

The Anti-Assignment Act generally "enable[s] the Government to deal only with the original claimant," which, among other things, allows the government to avoid the "investigation of alleged assignments" and prevents the "multiple payment of claims." *United States* v. *Shannon*, 342 U.S. 288, 291-292 (1952) (citation omitted). Because the Act was "intended solely for the protection of the Government and its officers during the adjustment of claims," its "protection may be invoked

or waived, as [the government], in [its] judgment, deem[s] proper." *McGowan* v. *Parish*, 237 U.S. 285, 294 (1915) (construing prior version codified at Rev. Stat. § 3477 (1874)).

2. a. Petitioner is the widow of a social-security claimant who applied to the Social Security Administration (SSA) for disability benefits. Pet. App. 3. After her husband's death, petitioner was substituted as a party in the administrative proceedings so that she might receive any underpayment of benefits due to him for months prior to his death. SSA denied the application for benefits based on its determination that petitioner's husband had not been disabled before his death. *Ibid.*

In April 2015, petitioner sought judicial review of the agency's determination in district court, where attorney Gregory Marks represented her. Pet. App. 2, 30. The parties agreed to adjudication by a magistrate judge, and they subsequently stipulated to the entry of a judgment reversing the agency's determination and remanding for further SSA proceedings. *Id.* at 3. On December 18, 2015, the magistrate judge entered judgment remanding the matter to the agency. D. Ct. Doc. 21.

On March 15, 2016, petitioner moved under 28 U.S.C. 2412(d) for an award of $3206 in attorney's fees. EAJA Motion. 1; see Pet. App. 3-4. Petitioner's motion represented that "[petitioner] w[ould] soon file an assignment executed by [petitioner] assigning any attorney fees payable under EAJA to her counsel." EAJA Motion 2. The motion further stated that, "after the [government] confirms any amounts that might be owed to the government by [petitioner], [petitioner] requests that the attorney fees payable under EAJA be made payable to [petitioner's] counsel Greg Marks." *Ibid.*

Eight days later, petitioner signed an affidavit purporting to assign her EAJA award to her attorney. Pet. App. 40-41.

In its response to petitioner's EAJA motion, the government stated that it did not object to petitioner's request for $3206 in EAJA fees. D. Ct. Doc. 24, at 1 (Apr. 6, 2016). The government stated, however, that under this Court's decision in *Ratliff*, *supra*, "any fees paid [under EAJA] belong to [petitioner] and not to her attorney, and therefore may be offset to satisfy pre-existing debt the litigant owes the United States." *Ibid.* The government accordingly stated that, after entry of an EAJA award, "if counsel for the parties can verify that [petitioner] owes no pre-existing debt subject to offset, the [government] agrees to direct that the award be made payable to [petitioner's] attorney" in light of petitioner's assignment of that award. *Ibid.*

b. The magistrate judge granted petitioner's unopposed request for $3206 in EAJA fees. Pet. App. 31; see *id.* at 29-36. The judge further determined that the fee award should be made payable to petitioner. *Id.* at 31-36. The judge explained that "EAJA fees are payable to litigants and are thus subject to offset where a litigant has outstanding federal debts." *Id.* at 32 (quoting *Ratliff*, 560 U.S. at 594).

The magistrate judge concluded sua sponte that petitioner's assignment of her EAJA award to her attorney "appears to be void" under the Anti-Assignment Act. Pet. App. 34; see *id.* at 33. The judge observed, however, that nothing "appears * * * [to] prevent[] the [government] from waiving application of the Anti-Assignment Act and making the award payable to [petitioner's counsel] should the [government] verify that [petitioner] owes no pre-existing debt to the United

States Government." *Id.* at 34-35. The judge accordingly ordered that the EAJA award be made "payable to [petitioner]" but "le[ft] it to the [government's] discretion to make the award payable to [petitioner's] attorney, Mr. Marks, *if* it is determined that [petitioner] owes no pre-existing debt to the United States Government." *Id.* at 36.

c. Petitioner then filed a motion under Federal Rule of Civil Procedure 59(e), requesting that the magistrate judge amend the fee judgment "to establish Greg Marks as the proper payee of [petitioner's] EAJA fee award." D. Ct. Doc. 26, at 1 (May 27, 2016). The government argued that petitioner's motion was moot. D. Ct. Doc. 27, at 1-2 (June 16, 2016). The government explained that, because it had confirmed the absence of any "pre-existing debt" that would be "subject to offset under the Treasury Offset Program," SSA had "followed [its] usual practice by exercising [its] discretion to accept the assignment of the right to collect EAJA fees * * * to [petitioner's] counsel" and had directed that "the EAJA award [be made] payable to counsel." *Id.* at 1; see Pet. App. 5-6.

The magistrate judge denied Rule 59(e) relief. Pet. App. 26-28. The judge concluded that petitioner's motion was "moot" because petitioner had "asked for [her EAJA] award to be made payable to counsel" and the government had "made the award payable to counsel." *Id.* at 27.

3. The court of appeals affirmed. Pet. App. 1-25.

The court of appeals determined that petitioner's Rule 59(e) motion was not moot. Pet. App. 7-13. The court recognized that petitioner had "sought payment of her EAJA fee award directly to her lawyer"; that the government had "paid the requested EAJA fee award

directly to [that] lawyer"; and that the government's "action of paying the EAJA fee award directly to [petitioner's] lawyer would have, in the normal course, mooted this case." *Id.* at 11. The court stated, however, that the case was not moot because "the [government's] actions are capable of repetition yet evading review." *Id.* at 11-12. That exception to mootness applied here, the court concluded, because (1) the government's act of "interpreting the [Anti-Assignment Act] as applying in the EAJA fee context yet agreeing to waive the [Act] subject to administrative offset" was "too short in duration to be fully litigated before its ceases," *id.* at 12; and (2) a "reasonable expectation" exists that "these same parties will be subjected to this same action in the future," because "'[petitioner's] case is still ongoing and [her] counsel * * * has received EAJA awards in many cases,'" *id.* at 13 (citation omitted).[*]

On the merits, the court of appeals affirmed the district court's judgment that EAJA fees are "payable to the prevailing party, not the prevailing party's lawyer,"

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[*] The government's court of appeals brief had explained that, on February 10, 2017, an SSA administrative law judge (ALJ) on remand had rendered a fully favorable decision on petitioner's claim, and that the ALJ's decision would become the agency's final decision 60 days thereafter unless petitioner sought further agency review or the SSA Appeals Council reviewed the matter on its own motion. Gov't C.A. Br. 5 & nn.2-3; cf. *id.* at 15, 19 (arguing that the fully favorable remand decision showed that "no 'reasonable expectation'" existed that petitioner would seek judicial review or obtain additional EAJA fees). The court of appeals did not address the relevance of those events to the mootness analysis. SSA has informed this Office that the ALJ's decision became final in April 2017, and that SSA records reflect that SSA paid petitioner her benefits in May 2017. Those events occurred before the court of appeals rendered its November 2017 decision in this case. See Pet. App. 1.

Pet. App. 15. See *id.* at 15-25. The court of appeals first noted this Court's determination in *Ratliff* that "attorney fees ordered under EAJA are to be paid to the prevailing party." *Id.* at 19; see *id.* at 17-19. The court also noted the *Ratliff* Court's discussion of the assignment of EAJA fee awards, which had reflected the Court's "aware[ness] of the prevalence of attorney fee assignments." *Id.* at 19 (citing *Ratliff*, 560 U.S. at 597). While recognizing that the Court in *Ratliff* had not discussed the Anti-Assignment Act, the court of appeals viewed *Ratliff* as "impliedly affirm[ing] the district court's decision to void the EAJA fee award assignment" in this case. *Ibid.* That outcome, the court explained, was supported by the analysis of another court of appeals. *Id.* at 23-24.

Relying in part on *Hobbs* v. *McLean*, 117 U.S. 567 (1886), petitioner argued that the Anti-Assignment Act cannot "reach client-to-counsel assignments of judicial EAJA fee awards in Social Security cases." Pet. App. 20 (quoting Pet. C.A. Br. 38); see *id.* at 20-21. Petitioner contended that requests for EAJA fees do not constitute "claims" because, in petitioner's view, such requests "must be presented to a judge and not an officer of the United States" or "the U.S. Court of Federal Claims." *Id.* at 20. In rejecting that argument, the court of appeals described *Hobbs* as recognizing that "an assignment between two private parties may be enforceable as to the parties and at the same time not enforceable against the United States." *Id.* at 20-21. The court also stated that "claims for attorney fees under EAJA are 'claims against the United States' because '[a]n award of statutory attorney's fees is, at base, a right to demand money from the United States.'" *Id.* at 21 (citation omitted; brackets in original).

ARGUMENT

Petitioner contends (Pet. 25, 32-35) that, under *Hobbs* v. *McLean*, 117 U.S. 567 (1886), an EAJA award is not a "claim," the assignment of which could be regulated by the Anti-Assignment Act. Petitioner argues (Pet. 21-30) that the court of appeals erroneously deviated from *Hobbs*'s authoritative construction of the Anti-Assignment Act. Petitioner also contends (Pet. 30-32) that the courts of appeals are divided as to the proper understanding of *Hobbs*.

Petitioner's arguments lack merit and do not warrant further review. First, this Court lacks Article III jurisdiction over petitioner's claim that her attorney is entitled to direct payment of her EAJA award. That claim is moot, because the government has already paid the EAJA award to counsel as requested, and no exception to mootness applies here. Second, even if petitioner's claim were live, the court of appeals correctly held that the Anti-Assignment Act applies in this EAJA context. That holding does not conflict with any decision of this Court or another court of appeals.

1. Petitioner contends that her attorney has a right to a direct payment of her EAJA award from the government because she has assigned that award to her attorney. Because the government has already paid petitioner's EAJA award directly to her counsel as she requested, see Pet. App. 11, petitioner's payment claim is moot.

This Court has recognized "an exception to the mootness doctrine for a controversy that is 'capable of repetition, yet evading review.'" *Kingdomware Techs., Inc.* v. *United States*, 136 S. Ct. 1969, 1976 (2016) (citation omitted). That exception "applies 'only in exceptional

situations,' where (1) 'the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration,' and (2) 'there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.'" *Ibid.* (quoting *Spencer* v. *Kemna*, 523 U.S. 1, 17 (1998)) (brackets in original)). The court of appeals found that mootness exception to be applicable here because (1) the government's act of "interpreting the [Anti-Assignment Act] as applying in the EAJA fee context yet agreeing to waive the [Act] subject to administrative offset" was "too short * * * to be fully litigated before it ceases"; and (2) both petitioner and her counsel may reasonably be expected to be subjected again to that action because "'[petitioner's] case is still ongoing and [her] counsel—a Social Security lawyer for over 20 years—has received EAJA awards in many cases.'" Pet. App. 12-13 (citation omitted). That analysis is unpersuasive.

a. The challenged action in this case—the government's failure to pay an EAJA fee directly to a Social Security claimant's attorney—is not by its nature too short to be fully litigated. *Astrue* v. *Ratliff*, 560 U.S. 586 (2010), illustrates that such a payment dispute can be litigated to its conclusion. In *Ratliff*, a social-security claimant's attorney filed a civil action under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.*, arguing that the EAJA award in his client's disability case was owed "directly" to him, rather than being owed to the prevailing claimant, and that the award therefore was not subject to an administrative offset for the claimant's debt to the United States. 560 U.S. at 592; see *id.* at 589-590; see also Gov't Br. at 8, *Ratliff*, *supra* (No. 08-1322). That payment dis-

pute was not short-lived because the government determined that the prevailing party owed a pre-existing debt to the United States and therefore refused to pay the attorney as requested (prompting the attorney's separate APA action). The fact that petitioner bases her argument on the Anti-Assignment Act, rather than on an interpretation of EAJA as in *Ratliff*, is immaterial. In both contexts, the relevant government action is the refusal to pay an EAJA award to counsel.

As *Ratliff* demonstrates, an SSA refusal to pay an EAJA award to counsel is not, by its nature, so transitory as to evade judicial review. If (as in *Ratliff*) SSA determines that the claimant owes a debt to the United States that is subject to administrative offset, a dispute about the legality of refusing to pay counsel can be litigated to its conclusion. To be sure, in this case the government's refusal to pay the funds to petitioner's counsel was short-lived, since the government chose to honor petitioner's assignment once it had verified that petitioner owed no such debt. A challenge to SSA's general practice of *temporarily* withholding EAJA awards until the absence of an offsetting debt can be verified might "evade review," since that verification process typically will be completed before a challenge to the withholding can be fully litigated.

Petitioner has not argued, however, that the government should have paid her attorney more quickly. In the district court, petitioner "request[ed] that the attorney fees payable under EAJA be made payable to [her] counsel" only "after the [government] confirms any amounts that might be owed to the government by the [petitioner]." EAJA Motion 2. The government did precisely that. On April 29, 2016, the magistrate judge awarded petitioner $3206 in EAJA fees. Pet. App. 29,

36. By June 16, 2016, SSA had confirmed that petitioner owed no offsetting debt and had directed—consistent with its "usual practice"—that "the EAJA award [be made] payable to counsel." D. Ct. Doc. 27, at 1.

b. Even if petitioner had raised the sort of legal challenge that might evade review, no reasonable expectation exists that the same issue will again arise in a case involving petitioner herself. The court of appeals relied on the fact that petitioner's case had been remanded to SSA for further proceedings. Pet. App. 13. That remand, however, provides no basis for inferring that petitioner will in the future receive *another* EAJA award that the government will decline to pay directly to her attorney.

As the government informed the court of appeals, on remand an ALJ rendered a decision on petitioner's benefits claim that was fully favorable to petitioner. See p. 7 n.*, *supra*. That decision became the agency's final decision, and SSA paid petitioner her benefits in May 2017. *Ibid*. The legal issue presented here could arise again in a case involving petitioner only if petitioner was awarded EAJA fees in some *future* dispute and attempted to assign the award to her attorney, and the government refused to honor that assignment. Because petitioner cannot establish a reasonable expectation that this sequence of events will occur, her current challenge is moot.

2. In any event, the court of appeals correctly determined on the merits that the government is not compelled—but has discretion—to honor the assignment of petitioner's EAJA award to her attorney. Pet. App. 17-19. Petitioner does not dispute that EAJA's text directs that an EAJA "award is payable to the litigant," not "to his attorney." *Ratliff*, 560 U.S. at 589; see

id. at 591-592. Petitioner instead argues (Pet. 25, 32-35) that the Anti-Assignment Act does not prohibit her from assigning her EAJA award to her attorney because (petitioner argues) an EAJA award is not a "claim" within the meaning of the Anti-Assignment Act as construed by this Court in *Hobbs*. Petitioner is incorrect.

The Anti-Assignment Act applies to the transfer or assignment of any part of a "claim against the United States Government" or the authorization to receive payment for any part of the "claim." 31 U.S.C. 3727(a). In *Hobbs*, this Court explained that "a claim against the United States" is "a right to demand money from the United States." 117 U.S. at 575. That broad understanding of Section 3727's coverage encompasses a litigant's assignment of a statutory award to her attorney.

Thus, in *Nutt* v. *Knut*, 200 U.S. 12 (1906), the Court held that a contract that authorized an attorney to "prosecute" a client's claim "against the Government of the United States * * * before any of the courts of the United States," and that conveyed to the attorney as compensation one-third of "the amount which may be allowed on said claim," *id.* at 13, was "null and void" under the Anti-Assignment Act because the contract had "[i]n effect or by its operation transferred or assigned to the attorney in advance of the allowance of the claim such an interest as would secure the payment of the fee stipulated to be paid." *Id.* at 20; see *id.* at 18 n.1, 19-20 (interpreting Rev. Stat. § 3477 (1874)). In *Calhoun* v. *Massie*, 253 U.S. 170 (1920), the Court similarly held that a contractual provision purporting to give an attorney "a lien on any warrant which may be issued in payment" of the client's statutory claim against the government, *id.* at 172-173, "was void under [the Anti-

Assignment Act]." *Id.* at 175 (citing *Nutt*, 200 U.S. at 20).

Petitioner focuses (Pet. 25, 32) on the *Hobbs* Court's statement that the Anti-Assignment Act, then codified at Rev. Stat. § 3477, "only refers to claims against the United States which can be presented by the claimant to some department or officer of the United States for payment, or may be prosecuted in the Court of Claims," *Hobbs*, 117 U.S. at 575. Petitioner construes (Pet. 32-33) that passage to state that the Act applies only to "demands for money" that are presented "to the Executive or prosecut[ed] in Claims Court." Petitioner misunderstands the *Hobbs* Court's description of the avenues then available for asserting claims against the government.

When *Hobbs* was decided in 1886, the Court of Claims adjudicated monetary claims against the government. See *United States* v. *Mitchell*, 463 U.S. 206, 212 (1983) (explaining that "no general statute gave the consent of the United States to suit on claims for money damages" until 1855, when Congress created the Court of Claims). *Hobbs* involved a breach-of-contract claim, and such claims have long been brought under the Tucker Act, 28 U.S.C. 1491(a)(1), in the Court of Claims and now its successor, the Court of Federal Claims. By recognizing that such claims against the government would (in 1886) be brought in the Court of Claims, the Court in *Hobbs* did not suggest that the Anti-Assignment Act's generally worded text would always be limited to claims brought in that court (which no longer exists).

Since 1886, Congress has enacted other limited waivers of sovereign immunity (such as EAJA) that authorize specific types of monetary claims against the government to be adjudicated in different fora. Such a

claim is subject to the Anti-Assignment Act because it too is a "claim against the United States" within the meaning of the Act, *i.e.*, "a right to demand money from the United States," *Hobbs*, 117 U.S. at 575. Indeed, this Court has described the Act as "cover[ing] *all* claims against the United States *in every tribunal in which they may be asserted*." *National Bank of Commerce* v. *Downie*, 218 U.S. 345, 352 (1910) (citation omitted); see *id.* at 349-350, 356-357 (holding that assignment by bankrupt firm of its claims against the United States to creditor banks was invalid under the Anti-Assignment Act in district-court bankruptcy proceedings).

3. Contrary to petitioner's contention (Pet. 30-32), the decision below does not conflict with any decision of another court of appeals.

The court in *United States* v. *Ferguson*, 78 F. 103 (2d Cir. 1897), held that the Anti-Assignment Act did not invalidate a client's assignment to his attorney of the client's right to recover money *before* that claim became a claim against the United States. *Id.* at 104-105. The client in *Ferguson* had assigned to his attorney his right to recover $50.60 unlawfully retained by a postal inspector, *id.* at 104, who had acted beyond his authority in keeping the client's money and was "individually liable" for that sum, *id.* at 105. At the time of the assignment, "[n]o claim [had yet] accrued against the government," because the government had yet to "ratif[y] the acts of [its] officers by receiving and retaining the money." *Ibid.* The *Ferguson* court therefore concluded that the Anti-Assignment Act's prohibition against the assignment of "'claims against the United States'" did not apply, because "when [the right to] the money in the hands of the inspector was transferred by [the client] to the [attorney], there was no claim against the United

States" that would be governed by the Act. *Ibid.* (citation omitted). That holding does not apply here because petitioner's EAJA claim has always been a claim against the United States. In addition, petitioner's EAJA claim had accrued, and petitioner had filed her motion for an EAJA award, *before* she assigned that claim to her attorney. See pp. 4-5, *supra*.

In *Dulaney* v. *Scudder*, 94 F. 6 (5th Cir. 1899), the court of appeals similarly concluded that an agreement authorizing a company to receive money that would later "become due on Dulaney's contract with the government," *id.* at 7, was not "null and void, as between the parties to it," under the Anti-Assignment Act. *Id.* at 10. The court noted that Delaney "had no claim against the government" at the time of the agreement, which the court concluded "was not the transfer of a claim within the meaning of [the Act]." *Ibid.* *Dulaney* does not address the circumstances here, where petitioner possessed her EAJA claim against the government before she assigned it to her counsel.

The other decisions on which petitioner relies (Pet. 30-31) are likewise inapposite. In *United Bonding Ins. Co.* v. *Catalytic Constr. Co.*, 533 F.2d 469 (9th Cir. 1976), the court held that "a claim against [a] cost-plus government contractor * * * is not a claim against the United States within the meaning of the [Anti-Assignment] Act," and that the Act has "'no application to transactions between private individuals.'" *Id.* at 472-474 (citation omitted). In *Rosecrans* v. *William S. Lozier, Inc.*, 142 F.2d 118 (8th Cir. 1944), the court held that the Anti-Assignment Act "has no application to transactions between private individuals" in litigation between private parties that could not result in a "judgment * * * against the government." *Id.* at 124. And in *Manning*

v. *Ellicott*, 9 App. D.C. 71 (D.C. Cir. 1896), the court held that the Anti-Assignment Act did not apply in a breach-of-contract suit between private parties, *id.* at 79, where the underlying contract required Ellicott to enter a separate contract for Manning to provide a stone pedestal if the government awarded Ellicott a contract to build a statue and pedestal. *Id.* at 72-73. The court explained that the relevant agreement was merely an "independent contract" between private parties that did "not profess to transfer or assign any portion of an existing claim * * * against the United States." *Id.* at 79. Those decisions have no meaningful bearing on the Anti-Assignment Act's application to the circumstances presented here.

4. Finally, petitioner overstates the practical consequences that reversal of the court of appeals' judgment would entail. Petitioner appears to assume (Pet. 12) that, if the Anti-Assignment Act does not bar a social-security claimant from assigning her EAJA award to her attorney, then judicial "enforcement" of such an assignment would "preclud[e] offsets based on litigant debts" by "requir[ing] the government (the obligor) to pay counsel (the assignee)" directly. Petitioner suggests (*ibid.*) that a federal court's "inherent equity jurisdiction" would warrant that result. That argument reflects a misunderstanding of the principles that govern assignment of claims.

Even if the Anti-Assignment Act did not exist, a litigant could not avoid the government's offset authority by assigning her claim to her attorney. It has long been "the settled rule in chancery" that an "assignee stands precisely in the situation of the original party." *Scott* v. *Shreeve*, 25 U.S. (12 Wheat.) 605, 608 (1827). Because

the rights that an assignee (like petitioner's counsel) acquires are "subject to all existing equities," the assignee can obtain no "greater right or interest" than the assignor herself possessed. *Ibid.* Thus, if an EAJA award is subject to administrative offset so long as it is payable to the prevailing party, the party cannot avoid that result by assigning the claim to her attorney.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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