SUPREME COURT OF THE UNITED STATES

No. 92–311

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.*
RICHARD H. SCHAEFER

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

[June 24, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

This case concerns the proper timing of an application for attorney's fees under the Equal Access to Justice Act (EAJA) in a Social Security case. Under 42 U. S. C. §405(g), a claimant has the right to seek judicial review of a final decision of the Secretary of Health and Human Services denying Social Security benefits. One possible outcome of such a suit is that the district court, pursuant to sentence four of §405(g), will enter "a judgment . . . reversing the decision of the Secretary . . . [and] remanding the cause for a rehearing." The issue here is whether the 30-day period for filing an application for EAJA fees begins immediately upon expiration of the time for appeal of such a "sentence-four remand order," or sometime after the administrative proceedings on remand are complete.

In 1986, respondent Richard Schaefer filed an application for disability benefits under Title II of the Social Security Act, 49 Stat. 622, as amended, 42 U. S. C. §401 *et seq.* (1988 ed. and Supp. III). He was denied benefits at the administrative level, and sought judicial review by filing suit against the Secretary as authorized by §405(g). Schaefer and the Secretary filed cross-motions for summary judgment. On April 4, 1989, the District Court held that the

Secretary had committed three errors in ruling on Schaefer's case and entered an order stating that "the Secretary's decision denying disability insurance benefits to [Schaefer] is reversed, that the parties' cross-motions for summary judgment are denied, and that the case is remanded to the Secretary for further consideration in light of this Order." App. to Pet. for Cert. 27a.

In accordance with this order, Schaefer's application for benefits was reconsidered at the administrative level, and was granted. On July 18, 1990, Schaefer returned to the District Court and filed an application for attorney's fees pursuant to EAJA. In response, the Secretary noted that Schaefer was required to file any application for EAJA fees "within thirty days of final judgment in the action," 28 U. S. C. §2412(d)(1)(B), and argued that the relevant "final judgment" in the case was the administrative decision on remand, which had become final on April 2, 1990. The District Court stayed action on Schaefer's EAJA application pending this Court's imminent ruling in *Melkonyan* v. *Sullivan*, 501 U. S. ___ (1991).

Melkonyan was announced shortly thereafter, holding that a final administrative decision could not constitute a "final judgment" for purposes of §2412(d)(1)(B). *Id.*, at ___ (slip op., at 6). In light of *Melkonyan*, the Secretary changed positions to argue that EAJA's 30–day clock began running when the District Court's April 4, 1989 order (not the administrative ruling on remand) became final, which would have occurred at the end of the 60 days for appeal provided under Federal Rule of Appellate Procedure 4(a). Thus, the Secretary concluded, Schaefer's time to file his EAJA application expired on July 3, 1989, over a year before the application was filed. The District Court, however, found Schaefer's EAJA application timely under the controlling circuit precedent of *Welter* v. *Sullivan*, 941 F. 2d 674 (CA8 1991), which held that a sentence-four remand order is not a final judgment where "the district court retain[s] jurisdiction . . . and plan[s] to enter dispositive sentence four judgmen[t]" after the administrative proceedings on remand are complete. *Id.*, at 675. The District Court went on to rule that Schaefer was entitled to $1,372.50 in attorney's fees.

The Secretary fared no better on appeal. The

Eighth Circuit declined the Secretary's suggestion for en banc reconsideration of *Welter*, and affirmed the District Court in an unpublished *per curiam* opinion. The Secretary filed a petition for certiorari, urging us to reverse the Court of Appeals summarily. We granted certiorari, 506 U. S. ___ (1992), and set the case for oral argument.

The first sentence of 28 U. S. C. §2412(d)(1)(B) provides:

> "A party seeking an award of fees and other expenses shall, *within thirty days of final judgment in the action*, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." (Emphasis added.)

In *Melkonyan* v. *Sullivan*, we held that the term "final judgment" in the highlighted phrase above "refers to judgments entered *by a court of law*, and does not encompass decisions rendered by an administrative agency." See 501 U. S., at ___ (slip op., at 6). Thus, the only order in this case that could have resulted in the starting of EAJA's 30-day clock was the District Court's April 4, 1989 order, which reversed the Secretary's decision denying disability benefits and remanded the case to the Secretary for further proceedings.

In cases reviewing final agency decisions on Social Security benefits, the exclusive methods by which district courts may remand to the Secretary are set forth in sentence four and sentence six of §405(g),

which are set forth in the margin.[1] See *Melkonyan*, *supra*, at ___–___ (slip op., at 9–10). Schaefer correctly concedes that the District Court's remand order in this case was entered pursuant to sentence four.[2] He argues, however, that a district court proceeding under that provision need not enter a judgment at the time of remand, but may postpone it and retain jurisdiction pending completion of the

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[1]Sentences four and six of §405(g) provide:
"[4] The [district] court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. . . . [6] The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based."

[2]Sentence-six remands may be ordered in only two situations: where the Secretary requests a remand before answering the complaint, or where new, material evidence is adduced that was for good cause not presented before the agency. See §405(g) (sentence six); *Melkonyan* v. *Sullivan*, 501 U. S. ___, ___, and n. 2 (1991) (slip op., at 9–10, and n. 2); cf. *Sullivan* v. *Finkelstein*, 496 U. S. 617, 626 (1990). The District Court's April 4, 1989 remand order clearly

administrative proceedings. That argument, however, is inconsistent with the plain language of sentence four, which authorizes a district court to enter a judgment "with or without" a remand order, not a remand order "with or without" a judgment. See *Sullivan* v. *Finkelstein*, 496 U. S. 617, 629 (1990). Immediate entry of judgment (as opposed to entry of judgment after postremand agency proceedings have been completed and their results filed with the court) is in fact the principal feature that distinguishes a sentence-four remand from a sentence-six remand. See *Melkonyan*, 501 U. S., at ___–___ (slip op., at 11–12).

Nor is it possible to argue that the judgment authorized by sentence four, if it includes a remand, does not become a "final judgment"—as required by §2412(d)—upon expiration of the time for appeal. If that were true, there would never be any final judgment in cases reversed and remanded for further agency proceedings (including those which suffer that fate after the Secretary has filed the results of a sentence-six remand). Sentence eight of §405(g) states that "[t]he judgment of the court"—which must be a reference to a sentence-four judgment, since that is the *only* judgment authorized by §405(g)—"shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions." Thus, when the time for seeking appellate review has run, the sentence-four judgment fits squarely within the term "final judgment" as used in §2412(d), which is defined to mean "a judgment that is final and not appealable." 28 U. S. C. §2412(d)(2)(G). We described the law with complete accuracy in *Melkonyan*, when we said:

> "In sentence four cases, the filing period begins after the final judgment (`affirming, modifying, or reversing') is entered by the court and the appeal

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does not fit within either situation.

> period has run, so that the judgment is no longer appealable. . . . In sentence six cases, the filing period does not begin until after the postremand proceedings are completed, the Secretary returns to court, the court enters a final judgment, and the appeal period runs." 501 U. S., at ___ (slip op., at 12).

Schaefer raises two arguments that merit further discussion. The first is based on our decision in *Sullivan* v. *Hudson*, 490 U. S. 877, 892 (1989), which held that fees incurred during administrative proceedings held pursuant to a district court's remand order could be recovered under EAJA. In order "to effectuate *Hudson*," Schaefer contends, a district court entering a sentence-four remand order may properly hold its judgment in abeyance (and thereby delay the start of EAJA's 30-day clock) until postremand administrative proceedings are complete; otherwise, as far as fees incurred during the yet-to-be-held administrative proceedings are concerned, the claimant would be unable to comply with the requirement of §2412(d)(1)(B) that the fee application include "the amount sought" and "an itemized statement . . . [of] the actual time expended" by attorneys and experts. In response, the Secretary argues that *Hudson* applies only to cases remanded pursuant to sentence six of §405(g), where there is no final judgment and the clock does not begin to run. The difficulty with that, Schaefer contends, is that *Hudson itself* clearly involved a sentence-four remand.

On the last point, Schaefer is right. Given the facts recited by the Court in *Hudson*, the remand order there could have been authorized only under sentence four. See 490 U. S., at 880–881; cf. n. 2, *supra*. However, the facts in *Hudson* also show that the District Court had not terminated the case, but had retained jurisdiction during the remand. And that was a central element in our decision, as the

penultimate sentence of the opinion shows:

> "We conclude that where a court orders a remand to the Secretary in a benefits litigation *and retains continuing jurisdiction over the case pending a decision from the Secretary which will determine the claimant's entitlement to benefits*, the proceedings on remand are an integral part of the `civil action' for judicial review, and thus attorney's fees for representation on remand are available subject to the other limitations in the EAJA." 490 U. S., at 892 (emphasis added).

We have since made clear, in *Finkelstein*, that that retention of jurisdiction, that failure to terminate the case, was error: Under §405(g), "each final decision of the Secretary [is] reviewable by a *separate* piece of litigation," and a sentence-four remand order "*terminate[s]* the civil action" seeking judicial review of the Secretary's final decision. 496 U. S., at 624–625 (emphases added). What we adjudicated in *Hudson*, in other words, was a hybrid: a sentence-four remand that the District Court had improperly (but without objection) treated like a sentence-six remand.[3] We specifically noted in *Melkonyan* that

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[3]The Secretary not only failed to object to the District Court's retention of jurisdiction, but affirmatively endorsed the practice as a means of accommodating the lower court cases holding that a §405(g) plaintiff does not become a prevailing party until Social Security benefits are actually awarded. Reply Brief for Petitioner in *Sullivan* v. *Hudson*, O. T. 1988, No. 616, pp. 12–13. Those precedents were highly favorable to the Government, of course, because they relieved the Secretary of liability for EAJA fees in all cases where Social Security benefits were ultimately denied. But they were also at war with the view—expressed later in the Secretary's *Hudson* reply brief—that a sentence-four remand order is a "final judgment" in the civil action. *Id.*, at 16. Essentially,

Hudson was limited to a "narrow class of qualifying administrative proceedings" where "the district court retains jurisdiction of the civil action" pending the completion of the administrative proceedings. 501 U. S., at ___ (slip op., at 7). We therefore do not consider the holding of *Hudson* binding as to sentence-four remands that are ordered (as they should be) without retention of jurisdiction, or that are ordered with retention of jurisdiction that is challenged.[4]

Schaefer's second argument is that a sentence-four remand order cannot be considered a "final judgment" for purposes of §2412(d)(1)(B) because that provision requires the party seeking fees to submit an application "show[ing] that [he] is a

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the Secretary in *Hudson* wanted it both ways: He wanted us to regard retention of jurisdiction as proper for purposes of determining prevailing-party status, but as improper for purposes of awarding fees on remand.

[4]JUSTICE STEVENS says that our holding "overrul[es]" *Sullivan* v. *Hudson*, 490 U. S. 877 (1989). *Post*, at 2, 9. We do not think that is an accurate characterization. *Hudson* remains good law as applied to remands ordered pursuant to sentence six. And since the distinction between sentence-four and sentence-six remands was neither properly presented nor considered in *Hudson*, see *supra*, at 7 and n. 3, and *infra*, at 8–9, limiting *Hudson* to sentence-six cases does not "overrule" the decision even in part. See *Brecht* v. *Abrahamson*, 507 U. S. ___, ___ (1993) (slip op., at 10). We agree with JUSTICE STEVENS that until today there has been some contradiction in our case law on this subject. In resolving it, however, we have not simply chosen *Melkonyan*'s dicta over *Hudson*, but have grounded our decision in the text and structure of the relevant statutes, particularly §405.

prevailing party." That showing, Schaefer contends, cannot be made until the proceedings on remand are complete, since a Social Security claimant does not "prevail" until he is awarded Social Security benefits. The premise of this argument is wrong. No holding of this Court has ever denied prevailing-party status (under §2412(d)(1)(B)) to a plaintiff who won a remand order pursuant to sentence four of §405(g). Dicta in *Hudson* stated that "a Social Security claimant would not, as a general matter, be a prevailing party within the meaning of the EAJA merely because a court had remanded the action to the agency for further proceedings." 490 U. S., at 887. But that statement (like the holding of the case) simply failed to recognize the distinction between a sentence-four remand, which terminates the litigation with victory for the plaintiff, and a sentence-six remand, which does not. The sharp distinction between the two types of remand had not been made in the lower-court opinions in *Hudson*, see *Hudson* v. *Secretary of Health and Human Services*, 839 F. 2d 1453 (CA11 1988); App. to Pet. for Cert. in *Sullivan* v. *Hudson*, O. T. 1988, No. 616, pp. 17a–20a (setting forth unpublished District Court opinion), was not included in the question presented for decision,[5] and was mentioned for the first time in the closing pages of the Secretary's reply brief, see Reply Brief for Petitioner in *Sullivan* v. *Hudson*, O. T. 1988, No. 616, pp. 14–17. It is only decisions after *Hudson*—specifically *Finkelstein* and *Melkonyan*—which establish that the sentence-four, sentence-six

[5]As formulated in the Secretary's petition, the question on which the Court granted certiorari in *Hudson* was: "Whether Social Security administrative proceedings conducted after a remand from the courts are `adversary adjudications' for which attorney fees are available under the [EAJA]." Pet. for Cert. in *Sullivan* v. *Hudson*, O. T. 1988, No. 616, p. I.

distinction is crucial to the structure of judicial review established under §405(g). See *Finkelstein,* 496 U. S., at 626; *Melkonyan*, 501 U. S., at ___–___ (slip op., at 7–8).

Hudson's dicta that remand does not generally confer prevailing-party status relied on three cases, none of which supports that proposition as applied to sentence-four remands. *Hanrahan* v. *Hampton*, 446 U. S. 754, 758–759 (1980), rejected an assertion of prevailing-party status, not by virtue of having secured a remand, but by virtue of having obtained a favorable procedural ruling (the reversal on appeal of a directed verdict) during the course of the judicial proceedings. *Hewitt* v. *Helms*, 482 U. S. 755 (1987), held that a plaintiff does not become a prevailing party merely by obtaining "a favorable judicial statement of law in the course of litigation that results in *judgment against the plaintiff*," *id.*, at 763 (emphasis added). (A sentence-four remand, of course, is a judgment *for* the plaintiff.) And the third case cited in *Hudson*, *Texas Teachers Assn.* v. *Garland Independent School Dist.*, 489 U. S. 782 (1989), affirmatively supports the proposition that a party who wins a sentence-four remand order is a prevailing party. *Garland* held that status to have been obtained "[i]f the plaintiff has succeeded on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing suit." *Id.*, at 791–792 (citation and internal quotation marks omitted). Obtaining a sentence-four judgment reversing the Secretary's denial of benefits certainly meets this description. See also *Farrar* v. *Hobby*, 506 U. S. ___ (1992).

Finally, Schaefer argues that, even if the District Court *should have* entered judgment in connection with its April 4, 1989 order remanding the case to the Secretary, the fact remains that it did not. And since no judgment was entered, he contends, the 30-day

time period for filing an application for EAJA fees cannot have run. We agree.

An EAJA application may be filed until 30 days after a judgment becomes "not appealable"—*i.e.*, 30 days after the time for appeal has ended. See §§2412(d)(1)(B), (d)(2)(G); see also *Melkonyan*, 501 U. S., at ___ (slip op., at 12). Rule 4(a) of the Federal Rules of Appellate Procedure establishes that, in a civil case to which a federal officer is a party, the time for appeal does not end until 60 days after "entry of judgment," and that a judgment is considered entered for purposes of the rule only if it has been "entered in compliance with Rul[e] 58 . . . of the Federal Rules of Civil Procedure." Fed. R. App. Proc. 4(a)(1), (7). Rule 58, in turn, requires a district court to set forth every judgment "on a separate document" and provides that "[a] judgment is effective only when so set forth." See *United States* v. *Indrelunas*, 411 U. S. 216, 220 (1973) *(per curiam)*.

Since the District Court's April 4 remand order was a final judgment, see *ante*, at 7, a "separate document" of judgment should have been entered. It is clear from the record that this was not done. The Secretary does not dispute that, but argues that a formal "separate document" of judgment is not needed for an order of a district court to *become* appealable. That is quite true, see 28 U. S. C. §1291; *Bankers Trust Co.* v. *Mallis*, 435 U. S. 381 (1978) *(per curiam); Finkelstein*, *supra*, at 628, n. 7, but also quite irrelevant. EAJA's 30-day time limit runs from the *end* of the period for appeal, not the *beginning*. Absent a formal judgment, the District Court's April 4 order remained "appealable" at the time that Schaefer filed his application for EAJA fees, and thus the application was timely under §2412(d)(1).[6]

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[6]We disagree with JUSTICE STEVENS' assertion that "the respondent has prevailed precisely *because* the District Court in this case did enter a remand order

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For the foregoing reasons, the judgment of the Court of Appeals is

Affirmed.

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without entering a judgment." *Post*, at 3, n. 2 (emphasis in original). By entering a sentence-four remand order, the District Court did enter a *judgment*; it just failed to comply with the formalities of Rule 58 in doing so. That was error but, as detailed in the text, the relevant rules and statutes impose the burden of that error on the party seeking to assert an untimeliness defense, here the Secretary. Thus, contrary to JUSTICE STEVENS' suggestion, see *post*, at 2–3, n. 2, our ruling in favor of respondent is not at all inconsistent with the proposition that sentence four and sentence six provide the exclusive methods by which district courts may remand a §405 case to the Secretary.