**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

E.M.M.,

*Petitioner*,

v.

Judith ALMODOVAR, Acting Director, New York City Field Office, U.S. Immigration and Customs Enforcement; Paul ARTETA, Director of the Orange County Correctional Facility; Teresa L. RILEY, Acting Chief Immigration Judge, Executive Office of Immigration Review; Daren K. MARGOLIN, Director, Executive Office of Immigration Review; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

*Respondents*.

Case No. 1:25-cv-9592-DEH

**PETITIONER'S MEMORANDUM OF LAW IN REPLY TO RESPONDENTS' OPPOSITION AND IN FURTHER SUPPORT OF PETITIONER'S MOTION FOR AWARD OF ATTORNEY'S FEES AND RELATED COSTS**

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## PRELIMINARY STATEMENT

Under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, Petitioner, E.M.M., is entitled to fees in this litigation challenging his unlawful detention. Respondents cannot dispute that E.M.M. has prevailed and achieved favorable results in this action. Rather, Respondents dispute whether Respondents' position was substantially justified, whether special circumstances exist, and whether E.M.M.'s requested attorney fees are reasonable. Respondents have failed to meet their burden of showing that their position was substantially justified or that special circumstances exist to make the award unjust. And despite the Respondents' contrary assertions, E.M.M.'s requested fees are reasonable, accurately reflecting the complexity of the issues litigated in this action. Accordingly, E.M.M. submits the remainder of the hours spent on the instant motion for compensation as well as proposed modifications discussed *infra* and respectfully requests that the Court grant his request for fees and costs in the amount of $12,808.14.

## ARGUMENT

### I. The Respondents' Position Prior To and During Litigation, Involving Shifting Justifications, Was Not Substantially Justified.

Respondents have not met their burden to show that their position—either prior to or during litigation—was substantially justified. *Scarborough v. Principi*, 541 U.S. 401, 414 (2004) (placing the burden on the government); *Healey v. Leavitt*, 485 F.3d 63, 67 (2d Cir. 2007) (addressing the government's prelitigation conduct and litigation position as two independent inquiries).

Respondents' application of an automatic stay to an immigration judge's order of release on bond, which prompted E.M.M.'s habeas filing, was not substantially justified, and Respondents' contrary arguments are unavailing. First, Respondents' argument regarding

mootness of E.M.M.'s automatic stay claims[1] disregards binding precedent that asks the Court to independently consider the government's prelitigation conduct when assessing a substantially justified position. *Healey*, 485 F.3d at 67; *see also Comm'r, Immigration & Naturalization Serv. v. Jean*, 496 U.S. 154, 159 (1990); *Ibrahim v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1168 (9th Cir. 2019) (en banc); *Dantran, Inc. v. U.S. Dep't of Labor*, 246 F.3d 36, 41 (1st Cir. 2001). Second, though Respondents argue that the Court's decision did not turn on automatic stay-related claims, Respondents acknowledge, as they must, that the Court referred to its decision in *J.M.P.*, which addressed the constitutionality of the automatic stay, in its initial order. *See* Resp't Mem. of Law in Opp. to Pet'r Mot. for Attorney's Fees ("Resp't Opp."), ECF No. 25, at 10; Order, ECF No. 17 (citing *J.M.P. v. Arteta*, 807 F. Supp. 3d 265 (S.D.N.Y. 2025)). Moreover, Respondents overlook that the Court ordered a remedy specifically related to the automatic stay, enjoining Respondents from invoking the automatic stay against E.M.M. again in the future. *See* Opinion and Order, ECF No. 19, at 25. Third, Respondents' unpersuasive defense of the automatic stay rests on broad platitudes regarding agency discretion, largely ignoring the constitutional protections cabining agency action when it restricts a person's liberty. *See* Resp't Opp. at 11; *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). And this Court, joining dozens of other courts across the country, has found the automatic stay procedure violates constitutional due process. *See* Amend. Pet., ECF

[1] E.M.M. contests Respondents' arguments as to mootness because Respondents' argument ignores that E.M.M.'s prolonged detention claim involved assessment of the legality and application of the automatic stay procedure, which contributed to his prolonged detention of more than six months. *See* Amend. Pet., ECF No. 9, at ¶ 83.

No. 9, at ¶ 52 n.3 (collecting cases); *see also J.M.P.*, 807 F. Supp. 3d at 288 n. 21 (collecting dozens of cases). Though Respondents claim that "reasonable minds can differ" as to the constitutionality of the application of the automatic stay, Respondents fail to cite even a single decision in their favor. *See* Resp't Opp. at 10-12; *see generally Guzman Cardenas v. Almodovar*, No. 25-CV-9169 (JMF), 2025 WL 3215573, at *3 (S.D.N.Y. Nov. 18, 2025) (faulting the government for failing to "acknowledge that their position has been rejected by the overwhelming majority of district judges to consider the issue"). On this basis alone, E.M.M. demonstrates that Respondents' position was not substantially justified.

Additionally, Respondents' argument to justify its position about the applicable statute of detention ignores their about-face shift in E.M.M.'s case on this issue. Here, Respondents issued E.M.M. arresting documents and an order of release on bond under 8 U.S.C. § 1226(a) before abruptly changing their position and seeking to justify E.M.M.'s detention under 8 U.S.C. § 1225(b). Courts within this Circuit have expressed concern at the government's shifting rationales for detaining individuals like E.M.M. *See* Opinion and Order, ECF No. 19, at 22-23; *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *5 (E.D.N.Y. Dec. 8, 2025) ("[T]he fact that the government took precisely the opposite position is a relevant factor for the Court's consideration."); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *5 (S.D.N.Y. Oct. 28, 2025) ("[The petitioner's] detention has been improperly prolonged by a constantly moving set of goalposts. That ends now."); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 296 (E.D.N.Y. 2025) (finding "[t]he inconsistencies in Respondent's position … notable"). And more broadly, Respondents' assertion that 8 U.S.C. § 1225(b) applies to individuals like E.M.M., who have long resided in the United States, marks an abrupt change to decades-long agency interpretation and practice. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 n.6. (BIA 2025)

("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for [noncitizens] who entered the United States without inspection."); *see also Matute v. Jamison*, No. 2:25-CV-07093, 2026 WL 461557, at *2 (E.D. Pa. Feb. 18, 2026) (finding the government's "familiar trap of th[e] Section 1225/1226 distinction" as "emblematic of what happens when our Constitutional traditions and statutory interpretation come second to gamesmanship"). These shifting justifications during the litigation of E.M.M.'s particular habeas case and more broadly are not substantially justifiable.

Even aside from the abrupt shift in justifications, Respondents' position prescribing mandatory detention of E.M.M. under 8 U.S.C. § 1225(b) was not substantially justified. First, Respondents' reliance on decisions in "two U.S. Courts of Appeals … and a minority of district courts," Resp't Opp. at 8, ignores that "[t]he issue for EAJA purposes is not what the law is when the EAJA application is made, but rather whether the government was substantially justified in believing the law not to have foreclosed its position during the underlying litigation." *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999). At the time the parties litigated the petition, the Seventh Circuit had issued a favorable decision on the issue, and the Fifth and Eighth Circuits had not published decisions on the issue. *Compare Castanon-Nava v. U.S. Dep't of Homeland Security*, 161 F.4th 1048, 1060-61 (7th Cir. 2025), *with Herrera Avila v. Bondi*, No. 25-2348, 2026 WL 819258 (8th Cir. Mar. 25, 2026), *and Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). Even still, none of these circuit court cases bind this Court. *See, e.g.*, *L.R.C. v. Maldonado*, No. 25-CV-6825 (AMD), 2026 WL 946787 (E.D.N.Y. April 7, 2026) (finding the government's position not substantially justifiable despite the Fifth's Circuit's *Buenrostro Mendez* decision and granting EAJA fees); *Sharifzoda v. Orange Cty. Jail*, No. 26-CV-02486 (KMK), 2026 WL 851378, at *1 n.2 (S.D.N.Y. Mar. 27, 2026) ("These out-of-circuit

cases, which of course, are not controlling, are against the overwhelming weight of authority in this Circuit, as Respondents conceded at the hearing.") (internal citation, quotation marks, and alteration omitted). By Respondents' own count, there were no district court decisions in the Second Circuit that supported the government's position at the time the Court granted E.M.M.'s habeas petition on November 26, 2025.[2] Resp't Opp. at 7-8 (listing cases with decision dates).

Second, Respondents inappropriately seek to justify their position by relying on the BIA's decision in *Matter of Yajure Hurtado*, Resp't Opp. at 7, which post-*Loper Bright*, cannot be afforded deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *see also Romero v. Francis*, No. 25-CV-8112 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025) (rejecting the holding in *Yajure Hurtado* and concluding that courts rather than the agency is tasked with authoritatively interpreting the statute post-*Loper Bright*); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 489 (E.D.N.Y. 2025) (same); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 311 (E.D.N.Y. 2025) (same).

Lastly, Respondents did not cite a single case within this Circuit finding their position substantially justified on this issue in the EAJA context, Resp't Opp. at 9-10, even though several courts in this Circuit have found for the petitioner. *See* Pet'r Mem. of Law in Support of Mot. for Attorney's Fees ("Pet'r MOL"), ECF No. 22, at 8 (collecting cases); *see also L.R.C.*, 2026 WL 946787, at *2 (E.D.N.Y. Apr. 7, 2026); *see generally Bravo Perez v. Bondi*, No. 9:26-CV-205

[2] Even if looking at the date of the judgment in E.M.M.'s case on December 17, 2025, there were only three district court decisions in the Second Circuit favorable to Respondents' position by Respondents' count. *See Chen v. Almodovar*, No. 1:25-CV-8350-MKV, 2025 WL 3484855, at *4 (S.D.N.Y. Dec. 4, 2025); *Liang v. Almodovar*, No. 25 Civ. 9322 (MKV), 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Candido v. Bondi*, No. 25 Civ. 867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025). And the Court's Opinion and Order, ECF No. 19, at 15-24, in the instant case details why *Chen* is unpersuasive for numerous reasons.

(ECC), 2026 WL 936166, at *4 (N.D.N.Y. Apr. 7, 2026) (granting EAJA fees in habeas proceeding involving the misapplication of the statute of detention); *Hassan v. Bondi*, No. 9:26-CV-00319 (BKS), 2026 WL 891602, at *6 (N.D.N.Y. Apr. 1, 2026) (same); *Morales Mendez v. Field Office Dir.,* No. 9:26-CV-337 (ECC), 2026 WL 734347, at *4 (N.D.N.Y. Mar. 16, 2026) (same). In sum, Respondents have not satisfied their burden of proof that their position before or during litigation is substantially justified.

## II. Respondents Misapply the Special Circumstances Factor.

Respondents misapply EAJA's "special circumstances" factor, which would make a fee award unjust, and such an argument is unsupported by the facts in this case. As an initial matter, Respondents do not assert any particular special circumstances in E.M.M.'s case and merely reference their earlier arguments regarding the justifiability of their position. *See* Resp't Opp. at 12-13. As such, the Court should reject Respondents' cursory argument as this is a separate factor under the EAJA and Respondents have failed to meet their burden in demonstrating special circumstances exist in this case. *See* 28 U.S.C. § 2412(d)(1)(A).

Moreover, the "special circumstances" factor is often associated with bad faith or obstructive conduct, which is not applicable to E.M.M.'s case. *See Vincent v. Comm'r of Soc. Sec.*, 651 F.3d 299, 304 (2d Cir. 2011) (the "special circumstances" exception may apply "when [a prevailing party's] own misconduct created the circumstances that led to the litigation, and when that party's contributions to the litigation's success were marginal, duplicative and unnecessary"); *see also, e.g., McKay v. Barnhart*, 327 F. Supp. 2d 263, 268 (S.D.N.Y. 2004) ("[M]any courts have found that special circumstances under the EAJA exist in cases where the plaintiff unreasonably rejects the Government's offer to remand the case and a remand is the court's ultimate remedy."); *Bryant v. Apfel*, 37 F. Supp. 2d 210, 213 (E.D.N.Y. 1999) (finding that special

circumstances existed where plaintiff's counsel failed to develop the record after receiving "critical medical records from the period of [the] plaintiff's claimed disability"). This case presents no such improper behavior, and as such the "special circumstances" factor does not apply.

## III. E.M.M.'s Request for Attorneys' Fees and Costs, Including Hours Spent on This Reply, Is Reasonable.

E.M.M.'s request for fees is based on a reasonable number of hours, careful review, and the sound exercise of billing judgment.[3] On reply, E.M.M. requests an additional 4.4 hours spent on this reply to Respondents' opposition and excludes 1.3 hours as discussed *infra*, bringing the total attorneys' fees to $12,562.56 for 48 hours.[4] *See, e.g., Black v. Nunwood, Inc.*, No. 13-CV-07207 (GHW), 2015 WL 1958917, at *7 (S.D.N.Y. Apr. 30, 2015) (internal quotation marks omitted) ("It is well established that time reasonably spent by plaintiff's attorneys in establishing their fee is compensable."). Respondents admit that E.M.M.'s requested fees are "not grossly excessive." Resp't Opp. at 13. And Respondents' objections to E.M.M.'s requested reasonable attorneys' fees and request for a 20% fee reduction are without merit. Resp't Opp. at 15-16.

First, Respondents fail to acknowledge that E.M.M.'s fee request is modest given that he could have requested a much higher award based on "prevailing market rates." *See* Pet'r MOL at 10-11. Moreover, E.M.M. has excluded all hours spent by a supervising attorney involved in litigation in these proceedings, which again reflects a conservative request avoiding any duplicative entries. *See* Notice of Appearance of Sayoni Maitra, ECF No. 11; Maust Suppl. Decl.; *cf. L.R.C.*, 2026 WL 946787, at *4 (involving four attorneys on a habeas action).

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[3] Respondents do not contest E.M.M.'s requested costs, which totaled $245.58. *See* Resp't Opp. at 13-16; Pet'r MOL, at 10.

[4] The same EAJA hourly rate of $261.72 as calculated in Pet. MOL, at 12, and uncontested by the Respondents was applied to the additional hours spent on this reply.

Second, Respondents' assertion of excessive billing in characterizing E.M.M.'s habeas as presenting "indistinguishable facts from hundreds—if not thousands—brought across the country," Resp't Opp. at 14, ignores the particularities of E.M.M.'s case, which involved Respondents' shifting rationales before and after the filing of the petition and therefore required E.M.M. to address multiple unlawful actions by Respondents against him. And E.M.M. "did not have access to filings in similar cases, which are sealed, and the law on the principal legal issue[s] in [E.M.M.'s] case is developing quickly." *L.R.C.,* 2026 WL 946787, at *3. Further, Respondents mischaracterize the time needed for amending the petition as excessive, ignoring the fact that E.M.M.'s amended petition required significant substantive additions to the claims that went beyond merely adding length. *See* Amend. Pet., ECF No. 9. Given the abrupt changes in Respondents' position and rapidly evolving case law in this area, E.M.M.'s habeas proceeding cannot be characterized as a "routine case." Resp't Opp. at 14. Moreover, Respondents misunderstand the "strategy email" entry, Resp't Opp. at 15, which involved an internal email to E.M.M.'s immigration attorney litigating E.M.M.'s custody and removal proceedings before the agency. *See Catanzano v. Doar*, 378 F. Supp. 2d 309, 323 (W.D.N.Y. 2005) (recognizing the need for multiple attorneys to plan strategy). And Respondents similarly mischaracterize emails to opposing counsel as excessive and ministerial, Resp't Opp. at 15, where multiple of these emails involved conferring with co-counsel for E.M.M. as to their content and involved multiple substantive requests to Respondents to consider a negotiated settlement that would prevent the need for further litigation.

Regarding Respondents' concerns pertaining to "clerical tasks," undersigned counsel concedes inadvertently including three specific erroneous entries[5] in its billing, totaling 78 minutes. Maust Decl., ECF No. 22-2, page 5. E.M.M. requests the Court to discount this amount from the requested fees, and now omits them from the final tabulation.[6] *See* Maust Suppl. Decl.; *see generally Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("The district court may attempt to identify specific hours that should be eliminated....").

Lastly, in this case, Respondents' proposed 20% reduction in fees would be wholly inequitable. *See Hensley*, 461 U.S. at 437 (discussing the court's discretion in applying an equitable judgment as to fees). Such reduction would be the same as reducing the total hours by 9.6 hours, which is disproportionate to the specific entries about which the Respondents express concern especially after excluding the three above-named entries.[7] Respondents' concerns, even if facially accepted, cannot justify a 20% reduction. As such, E.M.M. requests that the Court not apply any deduction to the requested hours as modified in this Reply, given the conservative calculations and modest total sum.

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[5] These entries are labeled as "sending and preparing FedEx packages of documents for service by mail," "printing mailing labels and binding documents for service by mail," and "printing copies of filings for service by mail."

[6] Respondents present no authority for excluding time entries for submitting filings on ECF, which must be completed by counsel to further the litigation. Resp't Opp. at 14. And any contention against what they consider a single instance of "block-billing," Resp't Opp. at 14 n.2, is unwarranted as block-billing of this specific sort "has been held to comply with Second Circuit standards and client expectations." *Gentle Wave Shipping S.A. v. Transfield Shipping Inc.*, No. 09 Civ. 7909 (RWS), 2010 WL 571975, at *2 (S.D.N.Y. Feb. 16, 2010).

[7] Respondents characterize entries as excessive to include: three emails billed for 18, 12, and 18 minutes and a 36-minute entry for "preparing filing for submission." *See* Resp't Opp. at 14-15.

## CONCLUSION

For all the reasons stated above, E.M.M. requests the Court award reasonably incurred costs and attorneys' fees (as modified in this Reply), including time spent litigating the instant motion, totaling $12,808.14.

Dated: April 14, 2026
New York, New York

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 2,846 words.

*/s/ Natalie Maust*
Natalie Maust

*Counsel for Petitioner*