**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF WISCONSIN**

| | |
|---|---|
| NELSON HERNANDEZ HERRERA,<br><br>Petitioner,<br><br>v.<br><br>SAM OLSON, *et al.*,<br><br>Respondents. | Case No. 25-CV-1994 |

**MOTION FOR ATTORNEY'S FEES AND EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

The petitioner, Mr. Hernandez Herrera, by and through undersigned counsel, hereby moves the Court to enter an order granting his attorney's fees and expenses pursuant to 28 U.S.C. § 2412 (2006) & 5 U.S.C. § 504 (2006), the Equal Access to Justice Act ("EAJA").

A successful litigant like Mr. Hernandez Herrera may move the Court to order payment of his attorney's fees and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (2006), if (1) he was the prevailing party; (2) the Government's position was not substantially justified; (3) no special circumstances existed that would make an award unjust; and (4) he files a timely and complete application for fees. 28 U.S.C. § 2412(d)(1)(A)-(B). Mr. Hernandez Herrera meets all four of these requirements.

The motion is supported by Mr. Hernandez Herrera's affidavit (**Ex. A**), Attorney Theodore Chadwick's declaration (**Ex. B**), and a printout of the time expended in this case on the system used at the firm, CampLegal (**Ex. C**).

## PROCEDURAL HISTORY

On December 18, 2025, Mr. Hernandez Herrera filed a petition for habeas corpus after his unlawful detention and denial of a bond hearing by Respondents. Respondents filed a reply brief on December 30, 2025, and Mr. Hernandez Herrera filed a reply to Respondent's brief the next day, December 31, 2025.

This Court agreed with Mr. Hernandez Herrera's petition that he was being unlawfully detained on January 28, 2026, and ordered Respondents to hold a bond hearing for him by February 6, 2026. Respondents waited until that last day to finally hold a bond hearing, at which time he was granted a bond by the immigration judge.

Mr. Hernandez Herrera's family attempted to pay the bond that same day, but Immigration and Customs Enforcement would not process the payment and finally release him until February 10, 2026. He remained on the immigration court's detained docket until February 18, 2026, when the immigration court finally moved his case to the non-detained docket. Respondents and Mr. Hernandez Herrera filed the Court-requested joint status report on February 23, 2026.

## ARGUMENT

### I. This Motion is Timely.

Mr. Hernandez Herrera's motion for attorney's fees and expenses is timely. The EAJA requires fee applications to be filed within thirty days of a "final judgment" in the action. 28 U.S.C. § 2412(d)(1)(B). A final judgment is a judgment that is "final and not appealable." 28 U.S.C. § 2412(d)(2)(G). The thirty-day clock "begins to run after the time to appeal that 'final judgment' has expired." *Melkonyan v. Sullivan*, 501 U.S. 89, 96, 111 S. Ct. 2157 (1991).

The Court granted Mr. Hernandez Herrera's habeas petition on January 28, 2026, and

waited 28 days for Respondents to be able to file a notice of appeal. They did not do that, and so the judgment became final and not appealable on February 25, 2026. This motion has been brought within 30 days of that date. The motion is therefore timely.

## II. Mr. Hernandez Herrera is Eligible to Request Payment of Fees Under the EAJA.

Mr. Hernandez Herrera's net worth does not exceed $2,000,000, and he is thus eligible to receive an award of fees and costs. (**Ex. A**, Petitioner's Affidavit). As a rule, a party is not eligible to receive an EAJA award if his net worth exceeded $2,000,000 at the time the civil action was filed. 28 U.S.C. § 2412(d)(2)(B). His net worth does not exceed $2,000,000, and he is thus eligible to apply under the EAJA for an award of fees and expenses.

## III. Mr. Hernandez Herrera is the Prevailing Party.

This Court has already determined that Mr. Hernandez Herrera is the prevailing party in its order granting the habeas petition. ECF #11.

## IV. The Attorney General's Position Was Not Substantially Justified.

The Government's position was not substantially justified in this case. The term "position of the United States" with respect to EAJA includes both the underlying decision by the BIA as well as the litigation position in this Court. *Gatimi v. Holder*, 606 F.3d 344, 347-48 (7th Cir. 2010). It is the Government's burden to prove its position was substantially justified. *Tchemkou v. Mukasey*, 517 F.3d 506, 509 (7th Cir. 2008).

Respondents had a 25-year history of interpreting 8 U.S.C. §§1225 and 1226 to mean that individuals such as Mr. Hernandez Herrera were entitled to a bond hearing. Hundreds of District Courts had ruled against Respondents when Mr. Hernandez Herrera brought his habeas corpus petition. *See* Nate Raymond, Kristina Cooke & Brad Heath, "Courts Have Ruled 4,400 Times

That ICE Jailed People Illegally. It Hasn't Stopped", Reuters (Feb. 14, 2026), https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/ (Last visited March 21, 2026). The 7th Circuit Court of Appeals also recently ruled against Respondents' recent position in *Castañon-Nava v. United States Dep't of Homeland Sec.*, 161 F.4th 1048, 1050–1063 (7th Cir. 2025).

Despite this long history and all the rulings against them, including in this District Court's Circuit Court of Appeals, Respondents continued to contest Mr. Hernandez Herrera's petition for habeas corpus and did not release him until this court issued its order and judgment on January 28, 2026.

Mr. Hernandez Herrera attempted to avoid this litigation by first filing a request for a bond hearing with the immigration court on December 11, 2025, only to have the immigration court reject his request claiming a lack of jurisdiction due to Respondents' new interpretation of 8 U.S.C. §1225. In total, Mr. Hernandez Herrera was detained from September 23, 2025 through February 10, 2026 without providing him an opportunity for bond, or even an individual hearing to determine relief from removal. So for a full 138 days, he remained separated from his family and community without the opportunity to proceed with his immigration case or apply for bond. It was only after hiring undersigned counsel, filing the petition for habeas corpus, and getting relief from this Court that he was released. Attorney fees are warranted.

## V. Calculation of Fees

Under EAJA, "attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). When an applicant requests fees beyond the $125 statutory cap, the applicant

may either base that hourly fee on the cost of living **or** a special factor. *Sprinkle v. Colvin*, 777 F.3d 421, 426 (7th Cir. 2015).

When calculating an EAJA award, the Court excludes "hours that were not 'reasonably expended,'" *Hensley v. Eckerhart,* 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983), and may reduce the amount of the award accordingly. *See* 28 U.S.C. § 2412(d)(1)(C).

All attorney fees were reasonably expended in this matter. There were a total of 11.8 attorney hours plus the $5 filing fee that are broken down on the enclosed invoices and time breakdown (**Ex. C**). In good faith, Mr. Hernandez Herrera does not include any legal fees charged by other attorneys in undersigned counsel's law firm, nor any hours when we worked both on Mr. Hernandez Herrera's detention case and his underlying removal case.

For the sake of clarity, we break down the fees based on statutory minimum, the inflation-only adjustment based on the statutory minimum, and then on the maximum request due to undersigned counsel's training and experience.

**a. Minimum Request**

The minimum request is based on the statutory rate of $125. A total number of 11.8 hours times $125 equals $1,475. When adding the expense of $5 for the filing fees, the total minimum request for attorney fees and expenses is $1,480.00.

**b. Inflation-Only Adjusted Request**

The medium request is based on an inflation-only adjustment since the last statutory adjustment to the EAJA statute in March 1996. The Court clarified in assessing a cost-of-living adjustment, the Consumer Price Index ("CPI") is utilized. *Sprinkle*, 777 F.3d at 427-428. Exhibit D is an inflation-based CPI calculator published by the U.S. Bureau of Labor Statistics showing the inflation-based adjustment from March 1996 until February 2026 when the last work claimed

by counsel is being submitted. (**Ex. D**). For February 2026, the rate is $262.35. Basing that adjusted rate on the 11.8 hours expended, the total amount under a medium request is $3,095.73 plus the $5 filing fee for $3,100.73.

**c. Maximum Request**

Mr. Hernandez Herrera's maximum request is based on the actual hourly rates in the fee agreement, which is $400 for the attorney. This Court noted that while "immigration lawyers are not ipso facto entitled to fees above the statutory ceiling", it found that immigration expertise "such as knowledge of foreign cultures or of particular, esoteric nooks and crannies of immigration law" warrant a special factor rate increase. *Muhur*, 382 F.3d at 656. The Court also found that in 2004, "[t]he top rate sought here, $225 an hour . . .is modest by current standards of attorney compensation." *Id.* Over 20 years later, a rate of $400 is likewise modest under current standards of attorney compensation. (*See* **Ex. E** for declarations of other immigration attorneys in Milwaukee without Spanish fluency who charge $400/hr and $575/hr; **Ex. F** for marketplace study showing over 34% of immigration attorneys with over 11 years' experience charge between $401-$500, and that the 2024 mean rate for attorneys with over 11 years' experience was $358.)

Undersigned counsel was hired precisely because he is fluent in Spanish, saving Mr. Hernandez Herrera hours of extra billing time and costs of translators. Further, there are not a substantial amount of immigration lawyers in Wisconsin who are willing to litigate cases before the Federal District Courts and even less federal litigators willing to take on immigration cases before the immigration court. Undersigned counsel has been practicing immigration law and litigating before the Federal District Courts for over 15 years, including several cases before this Court. He has been accepted as an expert in immigration law to testify in federal court, presented

over 10 hours of CLEs on immigration law, appeared over 200 times in immigration court on behalf of immigration clients, and is fluent in Spanish.

The maximum request is reasonable under the circumstances. Mr. Hernandez Herrera is asking for a total of $4,725 in fees and expenses, which includes the 11.8 hours, and the $5 in expenses.

### VI. Assignment of Award

If the Court awards attorney fees and expenses, a check should be made directly to Fernandez Chadwick & Crouse to deposit in the attorney's trust account. However, Mr. Hernandez Herrera requests that the check be mailed directly to the address of counsel.

## CONCLUSION

Mr. Hernandez Herrera respectfully requests that the Court award him attorney fees and expenses in this case. The minimum amount requested is based on the statutory rate of $125, and thus is $1,480.

However, Mr. Hernandez Herrera requests that the Court award fees either based on cost-of-living adjustment or a special factor. For cost-of-living adjustment, the requested amount of fees and expenses is $3,100.73. Under the special factor request, the total amount requested is $4,725.

DATED this 21st of March, 2026

Respectfully submitted,
Theodore Chadwick
*Attorney for Petitioner*