UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

Denis Yabrenco Espinoza Hernandez Petitioner, vs. CODY YOUNGH et al., Respondents.	CASE NO.: 7:25-cv-00201-WLS-AGH

PETITIONER'S MOTION FOR COSTS, FEES, AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Petitioner moves, under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), for attorneys' fees incurred in his petition for writ of habeas corpus challenging his unlawful civil immigration detention by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) at the Irwin Detention Facility in Georgia. This Court granted Petitioner's petition for a writ of habeas corpus on January 9, 2026 and entered Judgment in Petitioner's favor on January 12, 2026. *See* ECF Nos. 10 and 11.

Petitioner seeks an award of attorneys' fees and expenses under EAJA. **Petitioner is an eligible party.** Under 28 U.S.C. § 2412(d)(2)(B), an individual is an eligible party if his or her net worth did not exceed $2,000,000 at the time the civil action was filed. Petitioner meets this requirement because he is a private individual whose net worth has never exceeded $2 million. Exhibit 1 (Petitioner's Declaration).

As detailed in the accompanying memorandum, **an award is mandatory because Petitioner is the prevailing party in a civil action**, and federal courts considering the question—including the Second, Third, Ninth, and Tenth Circuits—have held that habeas petitions challenging civil immigration detention are "civil actions (other than cases sounding in tort)" within the meaning of 28 U.S.C. § 2412(d)(1)(A).

Next, **the government's position was not substantially justified**. It has been rejected by this Court and a near-unanimity of federal courts nationwide and no special circumstances make an award unjust. Further, special factors, including counsel's specialized expertise in immigration law and federal court habeas litigation and the limited availability of such counsel in Georgia, justify an enhanced fee award. Absent a showing by the government that its position was "substantially justified or that special circumstances make an award unjust," the award of fees and expenses to the "prevailing party" is mandatory. *See* 28 U.S.C. § 2412(d)(1)(A) (using the language "shall award").

Petitioner's request is timely filed. Under 28 U.S.C. § 2412(d)(1)(B), an EAJA application must be filed "within thirty days of final judgment in the action," and "final judgment" is defined as "a judgment that is final and not appealable." 28 U.S.C. § 2412(d)(2)(G). This Court granted Petitioner's habeas petition and entered judgment on January 12, 2026. ECF Nos. 10, 11. Respondents therefore had sixty (60) days from January 12, 2026, to file any appeal. *See* Fed. R. App. P. 4(a)(1)(B)); *Myers v. Sullivan*, 916 F.2d 659, 666 (11th Cir. 1990). Because no appeal was filed, the judgment became "final and not appealable" when that 60-day period expired, and this EAJA application—filed on April 11, 2026—is timely under § 2412(d)(1)(B), as it was submitted within thirty (30) days after the judgment became final.

Contemporaneously with this motion, Petitioner submits an itemized statement from his counsel showing the actual time expended and the rates at which fees and costs are claimed, together with supporting declarations and documentation.

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner assumes the Court's familiarity with the facts of the case but reiterates the procedural history briefly for purpose of demonstrating the work Petitioner's counsel conducted in the case. Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF No. 1) on December 21, 2025, challenging the legality of his detention on the ground that Respondents failed to provide a bond hearing or an opportunity for release pending removal proceedings. Petitioner filed an Amended Petition on December 22, 2025 (ECF No. 3). Respondents filed a response in opposition on January 5, 2026, asserting that Petitioner's detention was mandatory pursuant to 8 U.S.C. § 1225(b)(1) or § 1225(b)(2) (ECF No. 6). On January 12, 2026, the Court granted the Petition, concluding that Petitioner was detained under 8 U.S.C. § 1226(a) and was not subject to mandatory detention under § 1225 (ECF No. 10). The Court ordered Respondents to provide Petitioner with a bond hearing to determine whether he should be released on bond pursuant to § 1226(a)(2) and the applicable regulations.

Following the Court's Order, Petitioner filed a Motion on February 16, 2026, seeking enforcement of that Order (ECF No. 10). The Court directed the parties to submit supplemental briefing on March 3, 2026. Respondents timely filed a supplemental brief on March 12, 2026 (ECF No. 14), and Petitioner filed a supplemental brief on March 17, 2026, along with a Motion for Leave to Exceed Page Limit (ECF Nos. 15, 16). Petitioner sought leave to exceed the Court's ten-page limitation by two pages. For good cause shown, the Court granted that motion (ECF No. 15). The Motion is now fully briefed and ripe for adjudication.

ARGUMENT

I. The Court Should Award Attorney Fees and Costs to Petitioner under EAJA.

The EAJA statute at 28 U.S.C. § 2412(d)(1)(A) dictates that, unless otherwise specifically provided for by statute, a "court shall award to a prevailing party other than the United States fees and other expenses … incurred by that party in any civil action … brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust."[1] *Abdelgalel v. Holder*, 398 F. App'x 472, 476 (11th Cir. 2010); *Morillo–Cedron v. District*

[1] 28 U.S.C. § 2412(d)(1)(A) states: Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

Director, U.S. Citizenship & Immigration Servs., 452 F.3d 1254, 1258 (11th Cir. 2006); *Pichon v. Bisignano*, No. 1:24-CV-2855-AT, 2025 WL 3909470, at *1 (N.D. Ga. Nov. 24, 2025).

EAJA's fee-shifting provision applies to "any civil action (other than cases sounding in tort) … brought by or against the United States in any court having jurisdiction of that action." 28 U.S.C. § 2412(d)(1)(A). Numerous courts have held that habeas petitions challenging civil immigration detention fall within this "any civil action" language and therefore fall within EAJA's waiver of sovereign immunity, distinguishing criminal habeas proceedings. *See, e.g., Michelin v. Warden Moshannon Valley Corr. Ctr.*, No. 24-2990, 2026 WL 263483, at *1 (3d Cir. Feb. 2, 2026); *Daley v. Ceja*, 158 F.4th 1152, 1162–63 (10th Cir. 2025); *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985). This case, which challenges Petitioner's civil immigration detention under 28 U.S.C. § 2241 and is therefore a "civil action" within the meaning of § 2412(d)(1)(A).

II. Petitioner is the Prevailing Party. The Court Granted his Habeas Petition and Ordered the Government to Provide Him with a Bond Hearing.

To obtain an award of attorneys' fees and expenses under EAJA, Petitioner must demonstrate that he was the "prevailing party." 28 U.S.C. § 2412(d)(1)(A). According to the Supreme Court, "a 'prevailing party' is one who has been awarded some relief by a court" and who has obtained a "court-ordered change in the legal relationship" between the parties. *Buckhannon Bd. & Care Home Inc., v. West Virginia Dep't of Health and Human Res.*, 532 U.S. 598, 603-605 (2001) ("enforceable judgments on the merits [ ] create 'the material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees."); *Rhoten v. Bowen*, 854 F.2d 667, 669 (4th Cir. 1988) (Litigants are considered "prevailing parties" under the EAJA "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."); *see also Morillo-Cedron v. U.S. Citizenship and Immigration,* 452 F.3d 1254, 1257 (11th Cir. 2006); *Abdelgalel v. Holder*, 398 F. App'x 472, 476 (11th Cir. 2010); *Am. Disability Ass'n, Inc. v. Chmielarz*, 289 F.3d 1315, 1319 (11th Cir. 2002). Applying that standard here, the Court's order granting the habeas petition and directing Respondents to provide Petitioner a § 1226(a) bond hearing, followed by the separate judgment entered in Petitioner's favor, constitutes the kind of court-ordered, merits-based relief that "materially alters" the legal relationship between the parties and confers prevailing-party status under *Buckhannon*, *Morillo-Cedron*, and *Abdelgalel*.

Petitioner bears the burden of proving that he is the prevailing party and eligible to receive an award. 28 U.S.C. § 2412(d)(1)(B); *Scarborough v. Principi*, 541 U.S. 401, 414 (2004). The burden then shifts to the government to demonstrate that its position was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A)); *Duncan v. Bisignano*, No. CV424-191, 2025 WL 2233981, at *1 (S.D. Ga. Aug. 6, 2025); *Stratton v. Bowen*, 827 F.2d 1447, 1450 (11th Cir. 1987) ("The government bears the burden of showing that its position was substantially justified").

Petitioner is a prevailing party because he has achieved a "material alteration of the legal relationship of the parties" and that alteration was "judicially sanctioned." *Buckhannon Bd. & Care Home, Inc.*, 532 U.S. at 604–05; *see Walker v. City of Mesquite, Tex.*, 313 F.3d 246, 249 (5th Cir. 2002). In this case, over the government's opposition, the Court agreed with Petitioner's position that he was not subject to mandatory detention under 8 U.S.C. § 1225. ECF No. 10. The Court found that Petitioner is currently detained under 8 U.S.C. § 1226(a). *Id.* The Court cited the rationales in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-CV-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). *Id.* Accordingly, the Court found ordered "Respondents shall provide Petitioner with a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations. See 8 C.F.R. §§ 236.1 & 1236.1.2" *Id.*

Thus, this Court's January 9, 2026 Order conferred prevailing party status on Petitioner because it granted Petitioner's habeas petition and required Respondents to provide a bond hearing under 8 U.S.C. § 1226(a)(2). And the Court's entry of judgment in Petitioner's favor on January 12, 2026, is an enforceable judgment on the merits that materially altered the parties' legal relationship and satisfies the prevailing party test under *Buckhannon.*[2] *See e.g., W.M.V.C. v. Barr*, 926 F.3d 202, 208 n.2 (5th Cir. 2019) ("Because petitioners sought a remand to the BIA, our decision to grant such relief . . . entitles petitioners to prevailing party status."); *Watkins v. Mobile Housing Board*, 632 F.2d 565, 567 (5th Cir. Unit B 1980) (The prevailing party test is "whether he or she has received substantially the relief requested or has been successful on the central issue"); *Robinson v. Kimbrough*, 652 F.2d 458, 465 (5th Cir. 1981) (Plaintiffs prevailed where their "lawsuit was a catalyst motivating defendants to provide the primary relief sought in a manner desired by litigation."); *Jean v. Nelson*, 863 F.2d 759, 765 (11th Cir. 1988), aff'd sub nom. *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 110 S. Ct. 2316 (1990) (plaintiffs prevailed where he district court ruled that INS had violated the APA by failing to engage in formal rulemaking before revising its policy of paroling applicants for asylum); *Townson v. Garland*, No. CV 1:22-00251-KD-N, 2024 WL 3363850, at *1 (S.D. Ala. July 10, 2024) (finding plaintiff was the prevailing

[2] Unlike in *Morillo Cedron*, where USCIS voluntarily acted on the plaintiffs' applications before any order issued and the case was then dismissed as moot, here the change in the parties' legal relationship flowed directly from this Court's order and judgment over the government's opposition, placing Petitioner squarely within the prevailing party category recognized in *Morillo Cedron* and *Abdelgalel*.

party where district court set aside the ATF's denial of his federal firearms license as not authorized and remanded the matter for further proceedings consistent with the ruling).

III. The Government's Position Was Not Substantially Justified.

The government's position in this case was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Congress placed a heavy burden of proof on the government to demonstrate that its position was substantially justified. H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. 10, 13-14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government."). To meet this burden, the government must show that its position had a reasonable basis both in law and in fact. *Pierce v. Underwood et al.*, 487 U.S. 552, 566 n.2 (1988); *Dantran v. U.S. Dept. of Labor*, 246 F.3d 36, 41 (1st Cir. 2001) ("To satisfy its burden, the government must justify not only its pre-litigation conduct but also its position throughout litigation.").

Under EAJA, Congress expressly defined the "position of the United States" to include, "in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based." 28 U.S.C. § 2412(d)(2)(D). Courts therefore evaluate, in a single inquiry, both the agency's **underlying conduct** and the government's litigation stance when deciding whether the government's "position" was substantially justified. *Commissioner, INS v. Jean*, 496 U.S. at 159–62; *see also United States v. Jones*, 125 F.3d 1418, 1427–28 (11th Cir. 1997) (holding that the United States cannot avoid EAJA liability unless all of its positions were substantially justified). *Nkenglefac v. Garland*, 64 F.4th 251, 253 (5th Cir. 2023)[3] (finding the government's position not substantially justified where the underlying BIA and IJ decisions contravened circuit precedent). Thus, "unreasonable agency

[3] Quoting *W.M.V.C.*, 926 F.3d at 209-10 (quoting *Baker v. Bowen*, 839 F.2d 1075, 1080 (5th Cir. 1988); *Herron v. Bowen*, 788 F.2d 1127, 1130 (5th Cir. 1986).

action at any level entitles the litigant to EAJA fees," regardless of whether the government's litigation arguments were themselves reasonable. *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007) (Because Congress intended for EAJA to be a deterrent for unreasonable agency conduct, regardless of whether the government's conduct in the federal court proceedings is substantially justified, "unreasonable agency action at any level entitles the litigant to EAJA fees.").

Further, under EAJA, it is not enough for the government to point to one arguably reasonable phase of the litigation; because "position of the United States" includes both agency action and litigation conduct, and because the statute requires that the government's position be "substantially justified" in the singular, the United States cannot avoid fees unless all of its positions were reasonably based in law and fact. 28 U.S.C. § 2412(d)(1)(A), (d)(2)(D); *Jean*, 496 U.S. at 159–62 (EAJA looks to the "position of the United States" as a whole—encompassing both the underlying agency action and the government's litigation stance—and, as the Supreme Court has explained, favors treating a case "as an inclusive whole, rather than as atomized line-items."); *Jones*, 125 F.3d at 1427–28.

In this case, both DHS's pre-litigation conduct and Respondents' litigation position were unreasonable. After this Court's decisions in cases such as *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), which rejected Respondents' reading of 8 U.S.C. § 1225(b)(2) and held that noncitizens in materially indistinguishable circumstances are detained under 8 U.S.C. § 1226(a) and entitled to an individualized bond hearing, DHS nonetheless continued to implement its new policy. Respondents' decision to persist in that interpretation in this litigation without any material factual distinction or intervening authority, reflects that the government's overall "position" in this matter was not substantially justified. In case after case—including dozens of subsequent habeas petitions in this District presenting the same facts and the same legal issue—Respondents insist on classifying noncitizens as subject to mandatory detention under § 1225(b)(2), refuse to provide § 1226(a) bond hearings, and urge this Court to disregard its own prior rulings. This pattern of serial noncompliance with this Court's habeas orders, and continued detention in the face of repeated, on-point decisions, is the antithesis of a "substantially justified" position under EAJA and mirrors the unjustified persistence condemned in cases like *Hudson v. Secretary of HHS*, 839 F.2d 1453, 1456 n.3 (11th Cir. 1988), aff'd, 490 U.S. 877 (1989).

The government's position here does not meet the test for substantial justification and would not have satisfied a reasonable person. On the agency side, DHS continued to detain Petitioner under 8 U.S.C. § 1225(b)(2) pursuant to its new policy even after this Court had already rejected that interpretation in earlier cases and held that individuals in Petitioner's posture are detained under 8 U.S.C. § 1226(a) and entitled to bond hearings. On the litigation side, Respondents then advanced the same statutory theory in this case, without any material factual distinction or intervening authority, effectively asking this Court to disregard its own prior decisions and the rapidly growing body of decisions nationwide rejecting DHS's position. Indeed, the Court stated it "finds that Petitioner is currently detained under 8 U,S,C. § 1226(a) and therefore not subject to mandatory detention required by 8U.S.C. § 1225(b)(2)" ECF No. 10 That observation underscores that Respondents' litigation stance was not a good-faith attempt to navigate unsettled law, but rather a continued insistence on a statutory interpretation this Court had already found unlawful in dozens of prior decisions. Additionally, as the Court highlighted to previous decisions in this district, *J.A.M. v. Streeval*, and *P.R.S. v. Streeval*, that clearly found the government's new statutory interpretation is incorrect and unlawful. *See id.; see also Barco*

Mercado v. Francis, --- F. Supp. 3d ---, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (rejecting Respondents' position and noting that "the overwhelming, lopsided majority [of district courts] have held that the law still means what it always has meant.") (footnotes omitted).

The Eleventh Circuit's EAJA jurisprudence confirms that a position is not "substantially justified" when the government persists in a legal theory after controlling or near-controlling authority has rejected it. In *Bruland v. Howerton*, 742 F. Supp. 629 (S.D. Fla. 1990), the court held that the government's position was not substantially justified both in the district court, on appeal, and after remand. The court emphasized that while isolated district-court decisions might not by themselves render a position unreasonable, the agency's refusal to conform its conduct once the Eleventh Circuit had effectively endorsed that view "strongly impact[ed]" the reasonableness analysis and defeated any claim of substantial justification.

Here, Respondents' insistence on relitigating the same statutory argument in case after case—despite this Court's repeated, factually indistinguishable rulings in *J.A.M.*, *P.R.S.*, and numerous subsequent habeas decisions—mirrors the unjustified persistence condemned in *Bruland* and underscores that their position lacked a reasonable basis in law or fact. *See also Hudson*, 839 F.2d at 1456 n. 3 (for government's position to have been substantially justified, *all* of its positions must have been reasonable). This conclusion is consistent with other detention-related EAJA decisions. In *Kholyavskiy v. Schlecht*, 479 F. Supp. 2d 897, 901–03 (E.D. Wis. 2007), the court held that ICE's continued post-*Zadvydas* detention of a noncitizen, despite the absence of any reasonable prospect of removal, was not substantially justified and awarded EAJA fees in an immigration habeas action. In *Garcia v. Barr*, 484 F. Supp. 3d 750, 762–65 (N.D. Cal. 2020), the court similarly found the government's position not substantially justified where ICE had violated a prior preliminary-injunction order and then defended that conduct in subsequent detention habeas litigation, and it awarded EAJA fees. As in those cases, DHS's repeated insistence here on an interpretation of §§ 1225 and 1226 that this Court and an overwhelming majority of other courts have rejected demonstrates that the government's "position," considered as an inclusive whole, lacked a reasonable basis in law and fact.

As another district court recently held, "this sweeping new policy, which the Department of Homeland Security (DHS), in conjunction with the Department of Justice (DOJ), [] contravene[es] [] decades of agency practice and robust due process protections hitherto afforded to such residents under 8 U.S.C. § 1226(a). *Cabrera-Cortes v. Knight*, No. 2:25-CV-01976, 2025 WL 3240971, at *1 (D. Nev. Nov. 20, 2025); *see Vashishth Tyagi v. Luis Soto et al.*, No. 26-CV-00962, 2026 WL 478184, at *1 (D.N.J. Feb. 20, 2026) ("[F]ederal courts have in near unanimity similarly rejected respondents' position in approximately 300 cases to date, a number which climbs with every passing day.") citing *e.g., Demirel v. Fed. Det. Ctr. Phila.*, No. 25–cv–05488, 2025 WL 3218243, at *4 (E.D. Pa. Nov. 18, 2025) (noting "the law is clear" and that "of the 288 district court decisions to address the issue, 282 have determined that § 1226(a) applies or likely applies in situations similar to those presented here. Those decisions are plainly correct.").

Clearly, the government's position was not reasonable or substantially justified.[4] Notably, several district courts have specifically stated as much and awarded similarly situated petitioners costs and fees under EAJA. For example, a district court in the Southern District of New York in a similar civil habeas action challenging the government's position on § 1225, found the petitioner was the prevailing party, concluded that government's position was not substantially justified, and awarded EAJA. *See Barco Mercado v. Francis*, 2025 WL 3295903, at *13 ("Respondents' position

[4] Petitioner acknowledges that after this Court ruled on his petition, the Fifth and Eighth Circuit Courts of Appeals have weighed in on this issue and agreed with the government's position. However, those decisions are not binding on this Court, which falls under the Eleventh Circuit, and the government did not have the benefit of those decisions when they continued to assert their already-rejected legal posture before this Court in the instant case.

does not and has never had a reasonable basis in statutory text, structure, or history. Their position has been rejected with near unanimity in the overwhelming majority of cases across the country. Mr. Barco is entitled to reasonable fees and costs.); *see Yao v. Almodovar*, No. 25 CIV. 9982 (PAE), 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) (finding that 1) habeas petitions challenging immigration detention are civil actions within the meaning of the EAJA, 2) Yao was the prevailing party, 3) "ICE's position, rejected this year in some 97% of the cases in which it was litigated, was not substantially justified" and 4) Yao was thus entitled to reasonable fees and costs); *Rivera Esperanza v. Francis*, No. 25-CV-8727, 2025 WL 3513983, at *9 (S.D.N.Y. Dec. 8, 2025) (finding petitioner was the prevailing party and the government's position was not substantially justified on the same issue); *Gregorio Sandoval Ortiz v. Arnott, et. al.*, No. 6:26-CV-3159-MDH, 2026 WL 787589, at *6 (W.D. Mo. Mar. 20, 2026) (finding "the position of the United States is not substantially justified. The manner in which the provisions have historically been interpreted, legislative intent, statutory construction, and the plain text of the statutes all support that the United States is not substantially justified in its novel interpretation of § 1225.").

IV. No Special Circumstances That Would Make an Award Unjust.

Absent a showing that its position was substantially justified, the government can only avoid paying a prevailing party's attorneys' fees and expenses if it can show that special circumstances would make such an award unjust. 28 U.S.C. §2412(d)(1)(A). This provision "should be narrowly construed so as not to interfere with the congressional purpose" in passing statutes such as EAJA. *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985). Furthermore, "Defendants bear the burden of proving the existence of special circumstances." *Id.* There are no special circumstances in this case, however, that would make it unjust to award Petitioner attorneys' fees and costs incurred in this litigation. In fact, it would be unjust if Petitioner were not awarded attorneys' fees and costs necessarily incurred in order to protect and maintain his family unit, given that the litigation was a direct result of Respondents' unlawful detention, depriving him of his right to liberty and causing family separation and hardship.

V. Fees and Other Expenses to be Awarded to Petitioner.

EAJA provides for the recovery of fees and other expenses, as well as costs. 28 U.S.C. §§ 2412(a), (d)(1)(A). The amount to be awarded for work performed (*e.g.* attorneys' fees) is based upon "prevailing market rates for the kind and quality of the services furnished, except . . . 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).

A reasonable attorney's fees award under 42 U.S.C. § 1988 is "properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate" to get a lodestar amount. *Blum v. Stenson*, 465 U.S. 886, 888 (1984). Under EAJA, the lodestar is ordinarily constrained by the $125 statutory cap, as adjusted for cost of living, unless "special factors" such as the limited availability of qualified counsel justify a higher rate. 28 U.S.C. § 2412(d)(2)(A); *Am. C.L. Union of Georgia v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999) ("This 'lodestar' may then be adjusted for the results obtained.") (citation omitted).[5] Petitioner accordingly requests (1) fees at least at a cost-of-living-adjusted EAJA rate, and (2) an enhanced rate above that baseline based on the limited availability of counsel with the distinctive expertise needed for this case, as outlined below and in the supporting declarations.

---

[5] Although these cases arise under 42 U.S.C. § 1988, courts in this Circuit apply the same lodestar framework in EAJA cases, looking to prevailing market rates for the kind and quality of the services furnished. *See Jean v. Nelson*, 863 F.2d 759, 773 (11th Cir. 1988).

Courts look to the community for similar services by lawyers of reasonably comparable skills, experience, and reputation. *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). "This inquiry will typically focus on affidavits or testimony of similarly situated practitioners" qualified to comment on the prevailing market rates. *Id.* "Satisfactory evidence of the reasonableness of the rate necessarily includes an affidavit of the attorney performing the work and information of rates actually billed and paid in similar lawsuits." *Hutchison v. Pkwy 750 Kennesaw, LLC*, No. 1:23-CV-02805-SCJ, 2025 WL 2889181, at *4 (N.D. Ga. Mar. 20, 2025) quoting *Ceres Env't Servs., Inc. v. Colonel McCrary Trucking, LLC*, 476 F. App'x 198, 202 (11th Cir. 2012); *Transcendent Mktg. & Dev., LLC v. C & C Prop. Invs., LLC*, No. 4:23-CV-318, 2025 WL 834768, at *2 (S.D. Ga. Mar. 17, 2025) (The rate an attorney ordinarily charges "is powerful, and perhaps the best, evidence of his market rate.") quoting *Dillard v. City of Greensboro*, 213 F.3d 1347, 1354 (11th Cir. 2000); *see also St. Claire v. Trauner, Cohen & Thomas, L.L.P.*, No. CIV.A. 107CV2082-ODE, 2008 WL 151542, at *1 (N.D. Ga. Jan. 11, 2008) ("Evidence of rates actually billed and paid in similar lawsuits, direct evidence of charges by lawyers under similar circumstances, or opinion evidence are examples of sufficient proof."). "In establishing a reasonable hourly rate, the district court may [also] rely on its own expertise ...." *Maner v. Linkan LLC*, 602 F. App'x 489, 493 (11th Cir. 2015); *see Moore v. Astrue*, No. 5:10-CV-300 (HL), 2012 WL 2343667, at *2 (M.D. Ga. June 20, 2012) ("courts [ ] regularly allow for upward adjustments when the market rate exceeds the statutory cap").

A. <u>The prevailing market rate is above the $125/hour statutory rate.</u>

This action was filed in the Middle District of Georgia. Because there is a very limited number of attorneys in Georgia with both deep immigration experience and substantial federal habeas experience who are willing and able to take urgent civil immigration detention cases at or near EAJA rates, Petitioner retained Atlanta-based counsel with that specialized expertise. The relevant market for purposes of determining a reasonable hourly rate is therefore the Atlanta legal market within Georgia. Enclosed as Exhibits Exhibits 2–6 are the declarations of Attorneys Karen Weinstock, Marshall L. Cohen, Jessie Calmes, Eszter Bardi, and Rachel Effron Sharma, which together demonstrate that the prevailing market rate for complex federal immigration habeas litigation by highly experienced counsel in the Atlanta legal market is between [redacted] and [redacted] per hour and that there is a scarcity or limited availability of similarly qualified immigration habeas attorneys in Georgia.

Attorney Karen Weinstock attests that she has been licensed since 1999, has approximately 24 years of exclusive immigration law experience, devotes 100% of her practice to immigration and federal immigration litigation, and normally charges [redacted] per hour for high-level corporate immigration work, but that at least [redacted] per hour is warranted for specialized, urgent federal court immigration litigation such as this case. Ex. 2. Attorney Marshall L. Cohen has 35 years of immigration practice, including detention, removal defense, and related federal litigation, charges [redacted] per hour for ordinary immigration work and [redacted] per hour for comparable complex federal habeas litigation, and opines that a [redacted] hourly rate for Ms. Weinstock's specialized habeas work is reasonable and consistent with prevailing market rates for complex federal civil detention and constitutional cases. Ex. 3. Attorney Jessie Calmes has 10 years of immigration experience, charges [redacted] per hour for normal immigration matters and [redacted] per hour for similar complex habeas litigation, and likewise states that an hourly rate of [redacted] for Ms. Weinstock is reasonable given her 24 years of immigration practice and rare depth of federal habeas expertise. Ex. 4. Attorney Eszter Bardi has 11 years of immigration experience, charges [redacted] per hour for standard immigration work and [redacted] per hour for comparable federal habeas cases, and similarly attests that a [redacted] hourly rate for Ms. Weinstock is reasonable and consistent with the rates commanded by attorneys handling complex immigration detention and constitutional litigation in Georgia. Ex. 5. Attorney Rachel Effron Sharma has 22 years of immigration practice experience, charges [redacted] per hour for ordinary immigration matters and [redacted] per hour for complex federal immigration-related habeas litigation, and attests that, based on her knowledge of the Georgia market and her own substantially lower rate, a [redacted] hourly rate for Ms. Weinstock's specialized habeas work is reasonable and consistent with prevailing market rates for attorneys handling complex federal litigation of this kind. (Ex. 6, Declaration of Rachel Effron Sharma.)

According to these attorneys, whose experience well qualifies them to comment on the prevailing market rates in the Atlanta area where they all practice immigration law, the prevailing market rate for an immigration attorney of over twenty (20) years' experience, such as Karen Weinstock, to perform complex civil detention and constitutional litigation is between [redacted] and [redacted] per hour, with Ms. Sharma confirming that her own [redacted] rate for complex habeas work supports a [redacted] rate for counsel with Ms. Weinstock's greater experience and landmark federal litigation record. Petitioner emphasizes that while many attorneys may file such cases, there is a verified scarcity of counsel possessing the specific, high-level expertise required to litigate these matters effectively and expeditiously. As such, counsel's rates reflect her expertise and experience. Lead counsel was responsible for the core legal strategy, primary brief drafting, and oral argument, justifying the highest requested rate, while other attorneys who assisted with research and discrete drafting tasks are billed at rates commensurate with their respective experience and contributions. Therefore, with the prevailing market rate being significantly higher than the statutory amount of [redacted] per hour for the "kind and quality of service provided," the Court should award attorneys' fees billed at an hourly rate of [redacted] per hour for Ms. Weinstock's work in this case. Petitioner acknowledges that this rate is at the high end of the Atlanta market but submits that it is consistent with the evidentiary record and with EAJA's allowance of enhanced rates where the limited availability of qualified attorneys justifies a higher fee. *See* Petitioner's Memorandum in Support of this Motion.

In this district, judges have found prevailing market rates substantially higher than the statutory rate. *See e.g. Haddock v. Jasper County, Ga.*, 5:18-cv-292-MTT, Docs. 13-1, 14 (M.D. Ga. June 3, 2019) (approving FLSA settlement listing partner rates at $425 in 2019); *Patel v. Om Janie, LLC*, No. 7:22-CV-118, 2024 WL 150073, at *3 (M.D. Ga. Jan. 12, 2024) (finding "$390 hourly rate reasonable for Atlanta-based attorney with "experience, time practicing, and expertise"); *see also Zediker v. OrthoGeorgia*, 857 F. App'x 600, 609–10 (11th Cir. 2021) (determining reasonable hourly rate for attorneys' fees and costs under 31 U.S.C. § 3730(d)(1)) and upholding an hourly rate of $750 as reasonable in Georgia's middle district due to lead counsel's "many years of practice, his contributions to the field, and the acumen he brings....").

Judges in the Northern and Southern Districts of Georgia have found similar prevailing market rates in this district; much higher than the statutory rate. *See e.g., Ratchford v. Regions Financial Corp. et al.*, 4:18-cv-103-HLM, Docs. 27, 32 (N.D. Ga. Mar. 8, 2019) (approving FLSA settlement and motion for attorneys' fees for founding partner (Roy Barnes) at **$750 per hour**, junior partner at $350, and paralegal at $150); *Hutchison v. Pkwy 750 Kennesaw, LLC*, No. 1:23-CV-02805-SCJ, 2025 WL 2889181 *4-5 (N.D. Ga. Mar. 20, 2025) (concluding that **$435** was a reasonable hourly rate for attorney based on the prevailing Atlanta market for Fair Labor Standards Act litigation); *S. Poverty L. Ctr. v. United States Dep't of Homeland Sec.*, No. 1:16-CV-2871-CAP, 2020 WL 13544121, at *4 (N.D. Ga. Mar. 10, 2020) (awarding hourly rate of **$525 per hour** for attorneys with 21 and 24 years of experience in 2020); *Spurlock v. Complete Cash Holdings,* *LLC*, 540 F. Supp. 3d 1201, 1210 (N.D. Ga. 2021) (awarding hourly rate of **$425** for partners); *Jackson v. P & K Rest. Enter., LLC*, No. 1:15-CV-753-MHC, 2018 WL 2271241, at *1 (N.D. Ga. Jan. 25, 2018), aff'd sub nom. *P & K Rest. Enter., LLC v. Jackson*, 758 F. App'x 844 (11th Cir. 2019) (awarding an hourly rate of **$400** for attorneys for work done between 2015 and 2018); *Georgia State Conference of the NAACP v. Kemp for Georgia*, No. 1:17-CV-1397-TCB, 2018 WL 2271244, at *1 (N.D. Ga. Apr. 11, 2018) (awarding a range of $225.00 to **$487.50** for legal work done in an election case during 2017-18.); *Alghadeer Bakery & Mkt., Inc. v. TimePayment Corp.*, No. 1:17-CV-1857-SCJ, 2018 WL 4846015, at *1 (N.D. Ga. May 16, 2018) (awarding a rate of **$425**/hour in 2017); *Transcendent Mktg. & Dev., LLC*, 2025 WL 834768, at *3 ("A review of the rates deemed reasonable in the Southern District of Georgia—particularly the Savannah market—reveals that a **$350** hourly rate is [. . .] within the range, of the prevailing market.").

By way of comparison in other markets, courts have also recognized enhanced EAJA rates in complex immigration-detention litigation. In *Nadarajah v. Holder*, 569 F.3d 906, 916–17 (9th Cir. 2009), the Ninth Circuit approved an enhanced EAJA rate of $500 for work performed between 2004 and 2006, finding that those rates were consistent with prevailing market rates for similar services by lawyers of comparable skill and experience. This confirms that, even under EAJA's cap, specialized immigration-habeas work by highly experienced counsel can warrant significantly higher hourly rates than the statutory baseline.[6] These decisions support a finding that

[6] Courts in higher-cost markets have likewise approved hourly rates in the $800–$900 range for experienced partners handling complex federal litigation, and an enhanced EAJA rate of $650 in a recent immigration-detention case. *See e.g.*, *Knudsen v. Hightower Holdings, LLC*, No. 24-cv-0395-KKE, 2024 WL 3430994, at *3 (W.D. Wash. July 16, 2024); *Koomwaiyou v. Blinken*, 724 F. Supp. 3d 1222, 1236 (W.D. Wash. 2024); *Rahman v. Bondi*, No. 2:24-CV-02132-JHC-TLF, 2026 WL 323046, at *1 (W.D. Wash. Feb. 6, 2026); *Garcia v. Wamsley*, No. 2:25-CV-01980-TMC, 2026 WL 776151, at *8 (W.D. Wash. Mar. 19, 2026) (awarding $900/hour for very experienced lawyers, and between $650 and $550 per hour for other attorneys). Petitioner recognizes that these decisions arise from higher-cost West Coast markets and offers them only to show that a $1,000 hourly rate for top-tier complex federal litigation is consistent with rates approved nationally; the primary benchmark remains prevailing rates in the Atlanta and Middle District of Georgia markets.

prevailing market rates for complex federal litigation by experienced counsel in Georgia far exceed EAJA's $125 cap. Against that backdrop, and in light of Ms. Weinstock's more than 24 years of specialized immigration and federal litigation experience, a requested rate of [redacted] per hour for this time-sensitive habeas matter is consistent with, and supported by, prevailing market rates.

B. <u>Hours Expended</u>

Included at Exhibit 7 is a record of the hours expended by each attorney that were reasonably and necessarily incurred in this litigation. Exhibit 6 itemizes the work performed, including drafting the habeas petition, analyzing Respondents' opposition and preparing this EAJA fee application. For Attorney Karen Weinstock, a fee of [redacted] per hour is requested, based on the special factors in the accompanying Memorandum of Law in Support, the declaration of Petitioner's attorney at Exhibit 2, the record of hours spent by each attorney on Petitioner's case at Exhibit 6, and the declaration from Petitioner confirming the representation agreement at Exhibit 1. **In sum, Petitioner requests an award in the amount of $103,495.**

Related, attorney fees are available under EAJA for hours spent on the fee application. *Comm'r, I.N.S. v. Jean*, 496 U.S. at 163-166. The Supreme Court held in *Jean* that once the court determines the government's overall "position" was not substantially justified, EAJA "favors treating a case as an inclusive whole," so a fee award presumptively encompasses reasonable time spent litigating the fee application as part of the same civil action. All hours spent on this case are set out in the attached time records, and include hours spent preparing this Motion and accompanying Memorandum of Law. If additional hours are necessary in this case, they will be submitted at the conclusion of the litigation.

VI. CONCLUSION

For the foregoing reasons, and based on the record and authorities cited above, Petitioner respectfully requests that the Court grant this Motion and award attorneys' fees and costs under 28 U.S.C. § 2412 in the total amount of $103,495. As explained in Section V.A of this Motion and in Petitioner's accompanying Memorandum of Law, the requested hourly rates of [redacted] for Attorney Karen Weinstock and [redacted] for Attorney Lauren Fascett are supported by prevailing market rates and by the special-factor showing under 28 U.S.C. § 2412(d)(2)(A). These enhanced rates are warranted by counsel's specialized expertise in immigration and federal habeas litigation and the limited availability of similarly qualified counsel in this District.[7]

Respondents' position was not substantially justified and there are no special circumstances that would make the requested award unjust, for the reasons set forth above. The requested [redacted] hourly rate for Attorney Karen Weinstock is appropriate under 28 U.S.C. § 2412(d)(2)(A) because it reflects prevailing market rates for an attorney with her experience and specialized knowledge and is justified by the special factors present in this case, including her immigration-law and federal habeas expertise, the complexity of the statutory analysis, and the limited availability of similarly qualified counsel in this District.

Respectfully submitted this 11th day of April, 2026.

[7] As a final alternative, if the Court declines to award those market-based or special factor rates and declines to adjust the hourly rate based on the Court's assessment of the prevailing market rate, Petitioner requests that the Court award fees at a minimum at a cost-of-living-adjusted EAJA rate consistent with the CPI-based calculation set forth in the accompanying memorandum of $260.16 per hour, for a total fee award of $30,048.48.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

CERTIFICATE OF SERVICE

I certify that on April 11, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com