IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROGER TORRES MARTINEZ,	:	
	:	
Petitioner	:	
	:	
v.	:	**Civ No: 26-0003**
	:	**(Judge Murphy)**
J.L. JAMISON, ET AL.,	:	
	:	
Respondents.		

RESPONDENTS' OPPOSITION TO PETITIONER'S EAJA FEE MOTION

Attorneys' fees are not available to petitioner under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), because the government's position is "substantially justified" under EAJA. Although district courts in this district and around the country have largely disagreed with the government's position, the Fifth and Eighth Circuit Courts of Appeals, in recent precedential opinions, adopted the government's interpretation of the core statutory question in this case—whether an applicant for admission present in the United States is subject to mandatory detention under 8 U.S.C. § 1225(B)(2)(A). A number of district courts elsewhere have similarly agreed with the government's position. Thus, although the government has advanced a minority interpretation of 8 U.S.C. § 1225(B)(2)(A), the position is nonetheless "substantially justified."

In light of these authorities, and in concurrence with Judge Stickman's opinion in *Martinez-Briceno v. Warden of Moshannon Valley Processing Center*, No. 3:26-cv-232, 2026 WL 872494, at *1-2 (W.D. Pa. Mar. 30, 2026), Judge Hodge of this district found the government's position to be "substantially justified" in two recent decisions. *See Vicente v. Jamison*, No. 26-2045, 2026 WL 947822, at *9, n. 1 (E.D. Pa. Apr. 7, 2026);

Order, *Meireles De Oliveira v. Jamison*, No. 2:26-cv-1246, ECF No. 15 (E.D. Pa. Apr. 7, 2026). And last week, two additional judges from our district denied EAJA petitions on the same basis. See *Jacinto Salas v. Jamison*, No. 26-0382, 2026 WL 1382583 (E.D. Pa. May 15, 2026) (Kenney, J.); and Severino-Acosta, No. 25-7403 (E.D. Pa. May 19, 2026) (Diamond, J.).

In cases where EAJA fees are appropriate, fee awards are capped at $125 per hour. 28 U.S.C. 2412(d). As a general rule, the government does not object to an enhancement of the hourly rate based on increases in the cost of living.[1] However, in the event that this Court awards EAJA fees in this case, for the reasons specified herein, the fees Petitioner is seeking are excessive.

Respondents therefore respectfully ask that this Court determine that attorneys' fees under EAJA are not available. Alternatively, if this Court determines that EAJA fees are appropriate in this case, Respondents respectfully request that the Court limit its award of fees.

I. Relevant Factual and Procedural History

Petitioner Roger Torres Martinez, a citizen of Nicaragua, entered the United States on December 2, 2022. Motion for Attorneys' Fees (Doc. No. 8) at Statement of Facts. Immigration officials issued Torres Martinez a Notice to Appear, charging him as removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* He was then arrested on December 30, 2025, by ICE agents while attending a routine check-in in Philadelphia. *Id.* The next day, he filed a habeas petition pursuant to 28 U.S.C. §

[1] The Ninth Circuit Court of Appeals publishes a guide on its website providing inflation-adjusted EAJA rates for recent years. https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/. The most recent rate published, for work performed in 2025 is $258.46.

2241. *Id.*

On January 12, 2026, the Court granted the Petition for Writ of Habeas Corpus and ordered petitioner released. *Id.* Petitioner filed this motion for attorney fees under EAJA (Docket No. 8) and the government now responds.

II. Legal Standard

EAJA is a limited waiver of the United States' sovereign immunity, and therefore "must be strictly construed in favor of the United States." *Ardestani v. I.N.S.*, 502 U.S. 129, 137 (1991). Under EAJA, a court may award fees and expenses to a prevailing party against the United States, unless "the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). "Thus, eligibility for a fee award in any civil action requires: (1) that the claimant be a 'prevailing party'; (2) that the Government's position was not 'substantially justified'; (3) that no 'special circumstances make an award unjust'; and, (4) pursuant to 28 U.S.C. § 2412(d)(1)(B), that any fee application be submitted to the court within 30 days of final judgment in the action and be supported by an itemized statement." *Comm'r, I.N.S., et al., v. Jean*, 496 U.S. 154, 158 (1990). EAJA only authorizes the payment of "reasonable" attorneys' fees and expenses. 28 U.S.C. § 2412(d)(2)(A).

Here, the government challenges petitioner's eligibility for fees under EAJA on the ground that the government's position is "substantially justified." As the Third Circuit recently explained in an immigration detention case, the government's position is substantially justified if its conduct was "justified to a degree that could satisfy a reasonable person." *Johnson v. Gonzales*, 416 F.3d 205, 210 (3d Cir. 2005).

The Court explained the standard as follows:

> The Government bears the burden of proving its position was justified. *Hanover Potato Prods., Inc. v. Shalala*, 989 F.2d 123, 128 (3d Cir. 1993). "To satisfy this burden and defeat a prevailing party's application for fees, the government must . . . demonstrat[e] '(1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory it propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced.'" *Cruz*, 630 F.3d at 324 (quoting *Morgan v. Perry*, 142 F.3d 670, 684 (3d Cir. 1998)).

Michelin v. Warden Moshannon Valley Corr. Ctr., No's. 24-2990/24-3198, 2026 U.S. App. LEXIS 3264, at *28-29 (3d Cir. Feb. 2, 2026). Significantly, the Court noted: "We do not assume the position of the Government was not substantially justified simply because it lost." *Id. citing William v. Astrue*, 600 F.3d 299, 302 (3d Cir. 2009).

III. Argument

A. Respondents' position was substantially justified.

i. The government's underlying conduct was substantially justified because a binding decision of the BIA foreclosed a bond hearing.

As an initial matter, the petitioner's detention without bond hearing was "substantially justified." Indeed, a recent precedential decision of the Board of Immigration Appeals ("BIA") *Matter of Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025) precluded the agency from offering the petitioner a bond hearing. *Hurtado* held that an immigration judge has no jurisdiction to conduct a bond hearing for an alien present in the United States but never admitted, because 8 U.S.C. § 1225 requires mandatory detention for the duration of removal proceedings. *Id.*

The *Hurtado* decision is binding on all immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) ("[D]ecisions of the [BIA] and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the

administration of the immigration laws of the United States."). In other words, the *Hurtado* decision leaves the agency no choice but to deny a bond hearing (if one is sought) under the circumstances alleged by this petitioner.

Accordingly, the court should determine that the underlying conduct of detaining the petitioner without bond was "substantially justified" because the agency "did no more than follow binding administrative decisions." *Gjergj G. v. Edwards*, No. 19-5059, 2019 U.S. Dist. LEXIS 120345, *4 (D.N.J. Jul. 17, 2019) (noting the agency likely could not have acted otherwise where the immigration courts had effectively ruled that neither the BIA nor the immigration judges had authority to hold a bond hearing in the context at issue).

ii. The government's litigation position was "substantially justified," as evidenced by other federal courts that have adopted it.

Because respondents' position was substantially justified, Petitioner is not entitled to attorneys' fees. The core statutory question at the heart of this dispute relates to the correct interpretation of § 1225(b)(2)(A):

> In the cases of an alien who is an **applicant for admission**, if the examining immigration officer determines that an **alien seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Petitioner here is indisputably an "applicant for admission," *see* 8 U.S.C. § 1225(a)(1). This Court concluded: "For the reasons stated in Demirel, **Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)**, and is instead subject to detention, if at all, pursuant to the discretionary provisions of 8 U.S.C. § 1226(a)." Order at ¶ 1 (citing Memorandum Opinion at 1–10, *Demirel v. Fed. Det. Ctr.*

Philadelphia, No. 25-cv-5488 (E.D. Pa. Nov. 18, 2025) (emphasis in original).

By contrast, the government contends that "applicants for admission" are necessarily "seeking admission" until they have been admitted or until their removal proceedings are complete. We recognize that the government's position has been rejected by the vast majority of district courts to have considered it. And the Second, Sixth, and Eleventh Circuits have now rejected the government's argument. *See Cunha v. Freden*, No. 25-3141-pr, 2026 WL 1146044 (2d Cir. Apr. 28, 2026)*; Fidencio Alvarez v. Warden, Fed. Det. Ctr. Miami, et al.*, No. 25-14065 (11th Cir. May 6, 2026) (concluding that the text and statutory structure of the INA, in addition to the congressional purpose in passing the IIRIRA, "yield the conclusion that no-bond detention generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here."); *Lopez-Campos v. Raycraft, et al.*, No. 25-1965 (6th Cir. May 11, 2026) (finding that mandatory detention without a bond hearing violated both the INA and Due Process).[2]

However, it is notable that two circuit courts - the Fifth and Eighth Circuit Courts of Appeals - recently agreed with the government in precedential decisions. *See Buenrostro-Mendez v. Bondi,* 166 F.4th 494, 502 (5th Cir. 2026) *("*The everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission.*"); Avila v. Bondi,* 170 F.4th 1128, 1134

[2] A three-judge panel of the Seventh Circuit also recently considered, but ultimately split, on the government's position that noncitizens unlawfully living in the country's interior are subject to mandatory detention under § 1225(b)(2). *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, at *51 (7th Cir. May 5, 2026) (Pryor, J, concurring) (affirming the district court's order directing release of detained noncitizen class members, based upon the prior administration's interpretation of § 1225(b)(2) as of the time the government executed the underlying consent decree).

(8th Cir. 2026) (concluding that "the structure of § 1225(b)(2)(A) does not indicate that 'seeking admission' is a separate requirement for detention under the statute").[3]

Further, although the vast majority of district courts around the country have disagreed, a number of district courts have ruled in the government's favor, holding that Section 1225(b) permits the mandatory detention of aliens who had not been previously admitted when subsequently found within the country. *See Vargas Lopez v. Trump*, No. 25-cv-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-cv-2325, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025); *see also C.B. v. Oddo*, No. 25-cv-263, 2025 WL 2977870, at *2 (W.D. Pa. Oct. 22, 2025) (holding petitioner could be held without bond pursuant to § 1225(b), but awarding habeas relief due to the petitioner's prolonged detention); *Chen v. Almodovar, et al.*, No. 25-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026); *Singh v. Noem, et al.*, No. 25-157, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026); *Gomez Hernandez v. Lyons, et al.*, No. 25-216, 2026 WL 31775 (N.D. Tx. Jan. 6, 2026); *Montoya v. Holt, et al.*, No. 25-1231, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Altamirano Ramos v. Lyons, et al.*, ---F. Supp. 3d ---, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem, et al.*, No. 25-168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Azizzadeh v. Rhoney*, No. 25-CV-1288 (JLS), 2026 WL 44324, at *1 (W.D.N.Y. Jan. 6, 2026); *Chen v. Almodovar*, No. 1:250cv-8350-MKV, 2025 WL 3484855, at *4-8 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, 25-CV-00867-

[3] The government is pursuing appeals in the Third Circuit related to both the statutory and constitutional due-process claims. The matters on appeal are *Lopes De Andrade v. Director Philadelphia Field Office Immigration and Customs Enforcement, et al.*, No. 26-1454 (3d Cir.), and *Buele Morocho v. Warden Philadelphia FDC, et al.*, No. 26-1150 (3d Cir.), which are now consolidated for all purposes. The Third Circuit granted the Government's motion to expedite the consolidated appeals, and the panel heard argument on the cases on May 11, 2026.

JLS, 2025 WL 3484832, at *3 (W.D.N.Y. Dec. 4, 2025); *Valencia v. Chestnut*, --- F. Supp. 3d. ----, 2025 WL 3205133, *2-4 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, *1, *3-6 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3199872, *4-9 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, *1-5 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, *4-7 (W.D. La. Nov. 4, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, *5, *8-9 (E.D. Wis. Oct. 30, 2025).

That multiple federal courts—including two circuit courts—and the BIA, an administrative appellate body, have agreed with the government's position, suggests "objective indicia" of substantial justification. *Gjergj G. v. Edwards*, No. 19-5059, 2019 U.S. Dist. LEXIS 120345, *4 (D.N.J. Jul. 17, 2019) (citing *Pierce v. Underwood*, 487 U.S. 552, 568-69 (1988) and *Bryan v. Comm'r of Soc. Sec.*, 478 F. App'x 747, 750 (3d Cir. 2012)). As two federal courts have agreed with the government's position, and the government's position flows from the BIA's precedential decision interpreting a statute it is deeply familiar with – the government's litigation position was both reasonable and substantially justified. *See id.* at *5-7 ("Although this Court and at least one other in this district have rejected this same contention, that is not sufficient to render the Government's position unjustified, and this Court finds that the decisions in cases [ruling in the Government's favor] provide indicia that a reasonable person could find the Government's position justified in substance given the state of the law, including administrative decisions and applicable regulations, and the facts of this matter.") and citing *Threadgill v. Armstrong World Indus., Inc.*, 928 F.2d 1366, 1371, 1371 n. 7 (3d Cir. 1991) ("it is clear that there is no such thing as 'the law of the district,'" district court

judges are free to disagree with prior district court decisions of other judges even where presented with essentially identical facts).

In fact, multiple district court judges in this district have recently found the government's position to be "substantially justified." *See Vicente v. Jamison*, No. 26-2045, 2026 WL 947822, at *9, n. 1 (E.D. Pa. Apr. 7, 2026); *Meireles De Oliveira v. Jamison*, No. 2:26-cv-1246, ECF No. 15 (E.D. Pa. Apr. 7, 2026); *Jacinto Salas v. Jamison*, No. 26-0382, 2026 WL 1382583 (E.D. Pa. May 15, 2026) (Kenney, J.); and Severino-Acosta, No. 25-7403 (E.D. Pa. May 19, 2026) (Diamond, J.).

Thus, this Court should not rule that a "reasonable person" could not be satisfied by the statutory interpretation advanced by the government here and concurred with by the Fifth and Eighth Circuit Courts of Appeals and various district courts across the country. *See Michelin*, 2026 U.S. App. LEXIS 3264, at *28-29.

B. The EAJA fees sought are excessive.

i. A party may only recover EAJA fees for incurred costs.

If this Court determines that EAJA fees are appropriate, it may only award such fees which the party actually incurred. A prevailing party is entitled to fees and other expenses "incurred by that party in any civil action." 28 U.S.C. § 2412(d)(1)(A). The language of the statute makes clear that the party who paid attorneys' fees "(not [his] attorney) is the recipient of the fees award." *Astrue v. Ratliff*, 560 U.S. 586, 594 (2010). Petitioner's motion does not specify which of the requested fees the client incurred by paying his attorney to litigate the habeas petition. The motion also does not claim

counsel represented Petitioner in a pro bono capacity.[4] Without a clear understanding of which fees Petitioner actually incurred or whether he received pro bono representation, this Court cannot award EAJA fees.

ii. Petitioner requests fees in excess of the statutory cap.

If this Court determines that EAJA fees are appropriate, those fees should not exceed the statutory cap. When a court determines that EAJA fees are appropriate, "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 proceeds involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii)[5]. Petitioner's counsel argues he is entitled to rates in excess of the statutory cap due to his 18 years of experience as an immigration lawyer and his foreign language fluency. Doc. 8, Ex. D (Campos Dec.) at ¶¶ 4, 9-10. But counsel does not claim that the availability of qualified attorneys to handle these proceedings is limited.

The Third Circuit Court of Appeals has held that even in a case where an experienced immigration attorney handled a case involving issues beyond straight forward application of established standards, awarding EAJA fees beyond the statutory cap was not justified. *Patel v. AG of the United States*, 426 Fed. Appx. 116, 119 (3d Cir. 2011). The *Patel* Court found the attorney seeking to pierce the statutory EAJA rate did not present evidence of a limited number of qualified attorneys who would take on the

[4] "Plaintiffs who are represented without charge are not generally precluded from an award of attorneys' fees under the EAJA." *Watford v. Heckler*, 765 F.2d 1562, 1567 n. 6 (11th Cir. 1985).

[5] As a general rule, the government does not object to an enhancement of the hourly rate based on increases in the cost of living.

case at the statutory rate. And the Court further noted there was no shortage of qualified immigration attorneys in Pennsylvania. *Id*. *See also Johnson v*. *Gonzales*, 416 F.3d 205, 213 (3d. Cir. 2005) (same).

Here, the government does not dispute counsel's years of experience or immigration law expertise. However, he has not adequately demonstrated a shortage of other qualified immigration attorneys. In fact, a great many immigration attorneys (with a wide range of foreign language skills) have filed habeas petitions on behalf of clients in this district within the last six months, demonstrating the wealth of experienced attorneys within the immigration bar. Therefore, should this Court deem an award of EAJA fees to be appropriate in this case, the government respectfully requests that it not pierce the statutory rate.

iii. The *Laffey* Matrix, used for Washington, D.C. area attorneys, is not applicable, because Petitioner's counsel is a local attorney.

If this Court grants Petitioner's motion for EAJA fees and allows him to exceed the statutory cap, it should use the Community Legal Services (CLS) rates as opposed to the *Laffey* Matrix to determine the appropriate rate of compensation to the Petitioner. Petitioner's counsel is a local practitioner with an office in Bethlehem, PA. He is not a Washington D.C. area lawyer. The *Laffey* Matrix provides hourly rates based on years of litigation experience in the Washington D.C. area. *Laffey v*. *Northwest Airlines, Inc.*, 572 F. Supp. 354, 371 (D.D.C. 1983). It should not apply in this case.

The Third Circuit Court of Appeals has approved of the use of the *Laffey* Matrix where the attorneys litigating a case in the District of New Jersey came from the Washington, D.C., area and the party using the D.C. attorneys was able to show local

New Jersey attorneys with the relevant expertise were not in a position to handle the complex environmental litigation at issue. *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 707-710 (3d Cir. 2005) (explaining the history of the *Laffey* Matrix used to calculate Washington D.C. area attorney fees and allowing the use of the *Laffey* Matrix for D.C. area attorneys litigating a DNJ case where the fee requesting party showed unavailability of qualified NJ attorneys). The Court explained, "under normal circumstances, a prevailing party's attorneys should be compensated based on market rates in the vicinage of the litigation. However, if a prevailing party can show that it required the particular expertise of counsel from another vicinage, or that local counsel were unwilling to take on the litigation, then it will be entitled to compensation based on prevailing rates in the community in which its attorneys practice." *Id.* at 699.

Judges in the Eastern District of Pennsylvania have declined to use the *Laffey* Matrix based on its inapplicability to rates in this District, and instead, have found Philadelphia CLS rates to be more applicable. *See e.g. Customs Fraud Investigations, LLC v. Victaulic Co.*, 2019 WL 4280494 at *27-30 (E.D. Pa. Sept. 9, 2019) (declining to use the Laffey Matrix to determine reasonableness of fees in this District, and instead using the CLS rates); *Zavodnick v. Gordon & Weisberg, P.C.*, 2012 WL 2036493 at *12-15 (E.D. Pa. June 6, 2012) (Agreeing that the *Laffey* Matrix is not probative of rates in this market).

Petitioner argues the Fitzpatrick Matrix could be applied as an alternative to the *Laffey* Matrix. The Fitzpatrick Matrix was introduced in 2021 for complex litigation occurring in Washington, D.C. *Sierra Club v. United States EPA*, 2025 U.S. Dist. LEXIS 143080, *8 (D.D.C. Jul. 25, 2025). A New Jersey District court recognized in 2024 that the Fitzpatrick matrix is not helpful in determining the prevailing rate for attorneys' fees

in the Philadelphia/New Jersey legal market. *Rastelli Partners, LLC v. Baker*, 2024 U.S. Dist. LEXIS 38965, *22 (D.N.J. Mar. 5, 2024).

Petitioner's counsel is a local attorney who routinely handles immigration cases in this District. As such, if the Court declines to use the statutory rate, the CLS rate and not the *Laffey* or Fitzpatrick Matrix is the appropriate rate to determine his fees.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court determine that attorneys' fees under EAJA are not available in this matter.

Dated: May 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this date, I filed the foregoing Response in Opposition to Petition for EAJA fees via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: May 26, 2026

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