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

AUGUSTO JACINTO SALAS,	:	
	:	
Petitioner	:	
	:	
v.	:	**Civ No: 26-382 (Judge Kenney)**
	:	
J.L. JAMISON, ET AL.,	:	
	:	
Respondents.		

RESPONDENTS' BRIEF REGARDING PETITIONER'S CLAIM FOR ATTORNEYS' FEES

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), another judge in this district has 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).

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 Augusto Jacinto Salas, a citizen of Peru, entered the United States on September 6, 2022. Amended Motion for Attorneys Fees (Doc. No. 13) at ¶ 2. He was detained and then paroled on September 8, 2022. *Id.* Petitioner was detained on January 16, 2026. *Id.* at ¶ 5. He filed a petition for a writ of habeas corpus on January 21, 2026. *Id.* at ¶ 6. On January 27, 2026, the court ordered respondents to provide petitioner with a bond hearing. *Id.* at ¶ 7. On April 27, 2026, petitioner filed an amended motion for attorney fees under EAJA. *Id.*

II. Legal Standard

EAJA is a limited waiver of the United States' sovereign immunity, and therefore

[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.

"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 on the ground that the government's position is "substantially justified." The Third Circuit recently explained the "substantially justified" standard under EAJA in an immigration detention case:

> Under the EAJA, the Government's position was substantially justified only 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) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). 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)). "[I]n immigration cases, the Government must meet the substantially justified test twice": once for its underlying conduct and once for its decisions in the ensuing litigation about that conduct. *Johnson*, 416

> F.3d at 210. We do not assume the position of the Government was not substantially justified simply because it lost. *William v. Astrue*, 600 F.3d 299, 302 (3d Cir. 2009).

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).

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) (pointing out that 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.

Petitioner is not entitled to attorneys' fees because respondents' position was substantially justified. 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, like petitioners in similar cases, is indisputably an "applicant for admission," *see* 8 U.S.C. § 1225(a)(1). This Court, in relying on prior decisions in this district, concluded that "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 (Doc. No. 13-1 Ex. A) at ¶ 1 (citing Memorandum Opinion at 1–10, *Demirel v. Fed. Det. Ctr. Philadelphia*, No. 25-cv-5488 (E.D. Pa. Nov. 18, 2025); Memorandum Opinion at 1–14, *Anirudh v. McShane*, No. 25-cv-6458 (E.D. Pa. Dec. 9, 2025); Memorandum Opinion at 1–5, *Porras v. O'Neill*, No. 25-cv-6801 (E.D. Pa. Dec. 22, 2025)).

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. And while the government's position has been rejected by the vast majority of district courts to have considered it, 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 (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*").* *However, the Second and Eleventh Circuits have 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 county, and not to aliens who are simply present here.").

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-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—as well as the BIA, an administrative appellate body, have agreed with the government's position is an "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)). Given that there is no binding Third Circuit or Supreme Court precedent on the

question presented, other federal courts have agreed with the government's position, and that the government's position flows from a precedential decision of an appellate administrative body interpreting a statute it is deeply familiar with, it cannot be said that the government's litigation position was unreasonable or not 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, a Court in this district has 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).

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 for Attorney Fees Under the Equal Access to Justice Act does not specify which of the requested fees the Petitioner incurred by paying his attorney to litigate his Habeas petition. The Motion also does not claim that Petitioner's counsel represented him in a pro bono capacity.[2] Without a clear understanding of which fees Petitioner actually incurred or whether he received pro bono representation, this Court cannot award EAJA fees to the Petitioner.

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)[3]. Petitioner's counsel argues that 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. 13-1 Amended Motion for EAJA fees, Ex. D (Campos Dec.) at ¶¶ 4, 9-10. Petitioner's counsel does not offer any evidentiary support

[2] "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).

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

that there was limited availability of qualified attorneys for the proceedings in question.

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). Specifically, the *Patel* Court noted that the attorney seeking to pierce the statutory EAJA rate did not offer any support that there were only a limited number of qualified attorneys available who would take on the case at the statutory rate, and further notes that there is no shortage of qualified immigration attorneys in Pennsylvania. *Id. See also Johnson v. Gonzales*, 416 F.3d 205, 213 (3d. Cir. 2005) (Denying EAJA fees in excess of the statutorily prescribed rate due, in part, to the petitioner's counsel offering no evidentiary support that there were a limited number of qualified attorneys available who would take the case at the statutory rate).

Here, the government does not dispute counsel's years of experience or expertise in the area of immigration law. However, he has not adequately demonstrated a shortage of other qualified immigration attorneys. In fact, a great many immigration attorneys 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 that the Fitzpatrick Matrix could be applied as an alternative to the *Laffey* Matrix. The Fitzpatrick Matrix was introduced in Washington, D.C., complex federal litigation in 2021. *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 being a local attorney who routinely handles immigration cases in this District, 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 11, 2026

Respectfully submitted,

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