UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RENATO MERLO PUERTO,

Petitioner,

- against -

BILL LEEPER, IN HIS OFFICIAL CAPACITY AS SHERIFF, NASSAU COUNTY CORRECTIONAL CENTER; JUDITH ALMODOVAR, IN HER OFFICIAL CAPACITY AS ACTING NEW YORK FIELD OFFICE DIRECTOR, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; TODD M. LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF IMMIGRATION & CUSTOMS ENFORCEMENT; AND PAMELA BONDI, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE,

Respondents.

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Civil Action
No. 26-cv-405

(Morrison, J.)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S MOTION FOR EAJA FEES

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PRELIMINARY STATEMENT

Petitioner Renato Merlo Puerto seeks an award of attorneys' fees in the amount of $2,106.52 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF No. 12 (the "Fee Motion"). Because Respondents' legal position was substantially justified—as reflected by the growing number of courts that have agreed with Respondents, including the Fifth Circuit Court of Appeals, the Eighth Circuit of Appeals, and multiple district courts in this Circuit and elsewhere—the motion should be denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner, an alien present in the United States without having been lawfully admitted and who was then in ICE custody, filed a Petition for Writ of Habeas Corpus on January 22, 2026, seeking release. ECF No. 1 (the "Petition"). By the time the Petition was filed, the central legal issue in this case – the interpretation of 8 U.S.C. Section 1225 – had already been extensively litigated, in this district and elsewhere.

In lieu of submitting a full memorandum of law opposing the Petition, and in the interest of conserving both Court and party resources, Respondents submitted a letter on January 27, 2026 acknowledging that the Court's prior decision on the relevant statutory interpretation issues in *Hyppolite v. Noem*, 808 F. Supp. 3d 474 (E.D.N.Y. 2025) (Morrison, J.), would control the result in this case. ECF 6. Petitioner, in turn, filed a reply letter, of about a page-and-a-half, in lieu of a full reply brief. Petitioner acknowledged that the Court's *Hyppolite* decision should control the result in this case. *Id.* at 1.

On January 27, 2026 at approximately 6:35 p.m., the Court ordered Petitioner released.

On February 15, 2026, Petitioner filed the Fee Motion. It requests $2,106.52 in fees for 7.5 hours of work. ECF No. 12 at 1.

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. INS*, 502 U.S. 129, 137 (1991). Under EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded . . . 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). "[T]he test of whether the Government position is substantially justified is essentially one of reasonableness in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 563-64 (1988) (quoting H.R. Conf. Rep. No. 96-1434, p. 22 (1980)). Substantial justification does not mean "justified to a high degree," but rather is satisfied if there is a "genuine dispute" or "if reasonable people could differ as to [the appropriateness of the contested action]." *Id.*

ARGUMENT

I. PETITIONER IS NOT ENTITLED TO FEES BECAUSE RESPONDENTS' POSITION WAS SUBSTANTIALLY JUSTIFIED

Petitioner's Fee Motion should be denied because Respondents' position was substantially justified, as reflected by the growing number of courts that have agreed with Respondents, including the Fifth Circuit Court of Appeals, the Eighth Circuit Court of Appeals, as well as multiple district courts in this Circuit and elsewhere.

A party is only entitled to fees and expenses if "the position of the United States" was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). While Respondents have the burden to show that their position was substantially justified, there is no "presumption that the Government position was not substantially justified simply because it lost the case[.]" *Scarborough v. Principi*, 541 U.S. 401, 414 (2004) (quotation omitted); *see also Cooper v. U.S. R.R. Ret. Bd.*, 24 F.3d 1414, 1416 (D.C. Cir. 1994) (explaining that the reasonableness inquiry "may not be collapsed into our

antecedent evaluation of the merits, for EAJA sets forth a 'distinct legal standard'") (quoting *FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986)).

As the Supreme Court has explained, "substantially justified" does not mean " 'justified to a high degree,' but rather 'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce*, 487 U.S. at 565. In other words, "[t]he issue for EAJA purposes is not what the law is when the EAJA application is made, but rather whether the government was substantially justified in believing the law not to have foreclosed its position during the underlying litigation." *CFTC v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999) (per curiam); *see also Vacchio v. Ashcroft*, 404 F.3d 663, 677 (2d Cir. 2005) (United States' position was substantially justified even where the government presented a "viable, but far from compelling, legal theory"). Importantly, "[w]hen the issue is a novel one with little to no precedent, courts have been hesitant to find the government's position not substantially justified." *Michel v. Mayorkas*, 68 F.4th 74, 78 (1st Cir. 2023).

Here, based on the text and structure of the statute, legislative history, and relevant Supreme Court precedent, Respondents argued that Section 1225(b)(2)(A) mandates detention of those, like Petitioner, who are "applicants for admission," including individuals present in the country without admission. *See generally* ECF No. 11.

Numerous federal courts have agreed with this argument, including the Fifth Circuit Court of Appeals and the Eighth Circuit Court of Appeals, in the only two court of appeals merits decision on this issue. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, No. 25-3248, --- F. 4th --- (8th Cir. Feb. 19, 2026). And over the past four and one-half months, several district court judges in this Circuit have agreed with Respondents' position. *Saamishvili v. Flanagan,* No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.);

Portilla Hernandez v. Noem, No. 25 Civ. 10393, 2026 WL 836735 (S.D.N.Y. Mar. 26, 2026) (Halpern, J.)*; Changgeng Chen v. Almodovar,* No. 25 Civ. 9995, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Deras Arana v. Arteta*, No. 26 Civ. 240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Qiwei Weng v. Genalo,* No. 25 Civ. 9595, 2026 WL 184627 (S.D.N.Y. Jan. 23, 2026) (Rearden, J.); *Yinxiao Chen v. Almodovar*, No. 25 Civ. 9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Wenxin Liang v. Almodovar*, No. 25 Civ. 9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *Azizzadeh v. Rhoney*, No. 25-CV-1288, 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) (Sinatra, J.); *Xiaoquan Chen v. Almodovar*, No. 25 Civ. 8350, ---F. Supp.3d ---, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Candido v. Bondi*, 25-CV-00867-JLS, 2025 WL 3484832, at *3 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.).[1] These judges reasoned, consistent with Respondents' argument, that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens

[1] Many district court decisions from other circuits have also agreed with Respondents' position. *See, e.g.*, *Sosa Viveros v. Warden*, No. 2:26-cv-192, 2026 WL 969708 (S.D. Ind. Apr. 9, 2025); *Palma v. Powell*, No. 7:26-cv299, 2026 WL 7017788 (N.D. Ala. March 12, 2026); *Polo Noel v, Walker*, No. 25-cv-26093, 2026 WL 672903 (S.D. Fla. Mar. 10, 2026); *Sebastian v. Olson*, No. 2:25-cv-167, 2026 WL 672955 (E.D. Ky. Mar. 10, 2026); *Byron A. v. Bondi*, No. 26-1365, 2026 WL 608535 (D. Minn. Mar. 4, 2026); *Jimenez v. Hardin*, No. 2:26-CV-139-KCD-NPM, 2026 WL 522991 (M.D. Fla. Feb. 25, 2026); *Fleurimond v. Noem*, No. CV-26-00037, 2026 WL 507542 (D. Ariz. Feb. 24, 2026); *Saucedo Carera v. Bondi*, No. 1:26-CV-00039, 2026 WL 508084 (D.N.D. Feb. 24, 2026); *Enriquez Pineda v. Noem*, No. 26-CV-00016, 2026 WL 496680 (E.D. Mo. Feb. 23, 2026); *Gallardo Cardenas v. Noem*, No. 3:26-CV-363-JEP-MCR, 2026 WL 496797 (M.D. Fla. Feb. 23, 2026); *Guadarrama de Andrade v. Noem*, No. 0:26-CV-01187, 2026 WL 483279 (D. Minn. Feb. 20, 2026); *Argenis M. v. Bondi*, No. CV 26-1058 , 2026 WL 478189 (D. Minn. Feb. 19, 2026); *Alcan v. Sec'y of DHS*, No. 1:25-CV-961, 2026 WL 472333 (S.D. Ohio Feb. 19, 2026); *Mokanu v. Warden Miami Fed. Det. Ctr.*, No. 1:25-CV-24121, 2026 WL 472294 (S.D. Fla. Feb. 19, 2026); *Alvarez-Felix v. Ramos*, No. CV 26-1041, 2026 WL 438160 (D.P.R. Feb. 17, 2026); *Gonzalez v. Ladwig*, No. 2:26-CV-02017, 2026 WL 413602 (W.D. Tenn. Feb. 13, 2026); *Cisneros v. Noem*, --- F.Supp.3d ---, No. 2:25-CV-1170-HCN, 2026 WL 396300 (D. Utah Feb. 12, 2026); *Perez Chavez v. Noem*, --- F.Supp.3d ---, No. CV-26-00323, 2026 WL 381618 (D. Ariz. Feb. 9, 2026); *Morales v. Noem*, --- F.Supp.3d ---, No. 25-62598-CIV, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026).

who are 'already here' after having illegally entered the country." *Xiaoquan Chen*, ---F. Supp.3d at ---, 2025 WL 3484855, at *5. While this Court reached a different conclusion on the statutory interpretation issue, these decisions confirm that "the law [did] not [] foreclose[] [Respondents'] position during the underlying litigation." *C.M.Z. v. Zuchowski*, No. 5:22-CV-205, 2025 WL 1911824, at *2 (D. Vt. June 27, 2025) (citing *CFTC*, 169 F.3d at 786).

Given the existence of numerous, well-reasoned decisions from federal courts at the district and appellate levels agreeing with Respondents' position, and the absence of controlling authority foreclosing that position, Respondents' arguments were substantially justified. *See Arana v. Decker*, No. 20 Civ. 4104, 2020 WL 7342833, at *8 (S.D.N.Y. Dec. 14, 2020) (United States' position was substantially justified when there was no "binding authority" or "clear guidance" regarding issues); *Brissett v. Decker*, 324 F. Supp. 3d at 448, 449-50 (S.D.N.Y 2018) (denying EAJA fees in case involving mandatory detention where government's position was substantially justified based on its "reasonable" interpretation of the statute's plain language and "in light of the absence of precedent from the Supreme Court and the Second Circuit" foreclosing the interpretation).

Indeed, in an analogous case in this district, the Honorable Eric R. Komitee denied an EAJA fee motion *sua sponte*, concluding that, "[g]iven the split within this circuit concerning the appropriate interpretation of 8 U.S.C. § 1225, the Court cannot conclude that the government's position lacks a 'reasonable basis both in law and fact.' " Feb. 2, 2026 Docket Order, *Singh v. Maldonado*, No. 26-cv-0292 (E.D.N.Y.). *See also, e.g.*, *Lopez v. Trump*, No. 2:25-CV-863, 2026 WL 114708, at *2 (D. Vt. Jan. 14, 2026) (denying EAJA fee motion in habeas case involving Section 1225 statutory interpretation where "courts have differed, and there is no authoritative

appellate guidance on the issue").[2] The same considerations show that Respondents' position was substantially justified in this case.

Notably, Judge Komitee's Docket Order and the decision in *Lopez* were issued *before* Judge Cogan's decision in *Saamishvili*, the Fifth Circuit's decision in *Buenrostro* and the Eighth Circuit's decision in *Avila*. Thus, the issuance of the three more recent decisions makes it even clearer that Respondents' position herein had a reasonable basis in law and fact.

Petitioner's argument to the contrary is not persuasive. Petitioner pointed to the large number of decisions disagreeing with the Respondents' position. Fee Mot. at 3. But this argument impermissibly "collapse [the] antecedent evaluation of the merits" into the "distinct legal standard" of reasonableness set forth by EAJA. *Cooper*, 24 F.3d at 1416. Moreover, as one district court in this Circuit reasoned, "[t]he fact that more district courts . . . have decided this issue differently from this court is neither binding nor persuasive" on the question of which interpretation of the statute is correct. *Candido*, 2025 WL 3484932 at *2.

Not only could "reasonable people differ" as to Respondents' legal arguments, *Pierce*, 487 U.S. at 563-64, but federal courts continue to do so, with dozens of decisions agreeing with Respondents. Therefore, Petitioner is not entitled to fees under EAJA because Respondents' position was substantially justified. *See Michel*, 68 F.4th at 78 (denying fee request where "a number of courts have issued reasoned opinions agreeing with the government").

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[2] *But see, e.g.*, *Cornejo Guanuquiza v. Francis*, No. 25 Civ. 10267, 2025 WL 3678121, at *2 (S.D.N.Y. Dec. 18, 2025) (concluding the government's position with respect to applicability of Section 1225(b)(2) not substantially justified); *Yao v. Almodovar*, No. 25 Civ. 9982 (PAE), 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) (same); *Barco Mercado v. Francis*, No. 25 Civ. 6582 (LAK), 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (same). These decisions, were all issued before the recent decisions by the Fifth Circuit, the Eighth Circuit and Judge Cogan. Respondents respectfully note that many of the above-cited decisions that awarded EAJA fees provide little analysis of the "substantial justification" issue, are incorrectly decided for the reasons set forth herein, and are in any event not binding on this Court.

II. PETITIONER INCORRECTLY CALCULATED THE HOURLY RATE

If the Court does not deny Petitioner's request entirely, any fees awarded be reduced because Petitioner incorrectly calculated the hourly rate by using different CPI-U figures in the "numerator" and "denominator" of his calculation. *See* Fee Mot. at 4-5. In particular, Petitioner's quoted figure of 350.003 for the Current CPI-U was taken from the CPI-U index for New York-Newark-Jersey City, NY-NJ-PA, in which the CPI-U in March 1996 was 166.5 (not 155.7 at Petitioner states). *See also L.R.C. v. Maldonado*, No. 25-cv-6825, 2026 WL 946787 (E.D.N.Y. Apr. 7, 2026) (Donnelly, J.) ("The CPI-U for the New York region in March 1996 was $166.50.") This would equate to an adjusted fee rate of $262.77, not $280.87 as Petitioner claims.

CONCLUSION

For the reasons discussed above, the Court should deny Petitioner's Fee Motion. Should the Court determine that fees are warranted, the Court should award only a reasonable fee based on an hourly rate of $262.77.

Dated: April 15, 2026
Brooklyn, New York

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