**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. 26-CV-60206-DMM

**TELLEZ LOPEZ,**

Petitioner,

v.

**IMMIGRATION and CUSTOMS ENFORCEMENT (ICE); *et al.***

Respondents.
_____/

**RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEYS' FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT**

Respondents, by and through the undersigned Assistant United States Attorney, respectfully submit their Response in Opposition to Petitioner's Motion for Attorneys' Fees and Expenses under the Equal Access to Justice Act ("EAJA") (DE 14] ("Motion for Attorney's Fees"), and state in support thereof as follows:

## INTRODUCTION

Petitioner's Motion for Attorney's Fees argues that he is a prevailing party because the Court granted his habeas petition over Respondents' objections and ordered that Petitioner receive a bond hearing pursuant to 8 U.S.C. § 1226(a). [DE 1, p. 5]. Petitioner asserts that neither the pre-litigation nor litigation position advanced by Respondents was substantially justified thus lacking a reasonable basis in law and fact. *Id.* at p. 8-9. Petitioner further states there are no special circumstances that would make an award of attorney's fees unjust and seeks $4,753.94 – noting if

Respondents oppose this award, any time spent on Petitioner's Reply will also be submitted for consideration. *Id.* at. 11-12.

In sum, Petitioner's Motion for Attorney's' Fee should be denied for the following reasons: (1) there is no waiver of sovereign immunity for attorney's fees in habeas cases. *See, e.g. O'Brien v. Moore*, 395 F.3d 499, 508 (4th Cir. 2005); (2) Petitioner is not entitled to EAJA fees because Respondents' position was substantially justified; and (3) Petitioner has not met his burden of demonstrating that the hours requested are reasonable. Accordingly, Respondents respectfully request that the Court reject Petitioner's EAJA petition in full or, in the alternative, reduce Petitioner's EAJA fee award to exclude hours that were not reasonably expended.

## ARGUMENT

### I. This Court Lacks Jurisdiction to Grant Attorney Fees Because There Has Been No Waiver of Sovereign Immunity.

"The United States, as sovereign, is immune from suit save as it consents to be sued." *United States v. Sherwood*, 312 U.S. 584, 586 (1941). "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *JBP Acquisitions, LP v. U.S. ex rel. F.D.I.C.*, 224 F.3d 1260, 1263 (11th Cir.2000) (citation omitted). Any waiver of sovereign immunity must be "unequivocally expressed," and an expressed waiver will be strictly construed. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33–34 (1992) (citation omitted). Sovereign immunity, when applicable, is "a complete bar to lawsuits" against the United States. *State of Fla., Dep't of Business Regulation v. U.S. Dep't of Interior*, 768 F.2d 1248, 1251 (11th Cir.1985).

Here, Petitioner's Counsel wholly fails to address whether the United States waived sovereign immunity for claims of attorney fees in habeas cases. Indeed, two Courts of Appeals have explicitly held that the United States has not waived sovereign immunity for claims of attorney's fees in habeas cases. The Fourth Circuit ruled that it "cannot reasonably conclude that

the authorization for an award of attorney's fees in 'civil actions,' as provided by the EAJA, includes an unequivocal expression of congressional intent to authorize an award of attorney's fees to a prevailing party against the United States in a habeas proceeding." *O'Brien v. Moore*, 395 F.3d 499, 508 (4th Cir. 2005); *see also, Obando v. Segura v. Garland*, 999 F.3d 190 (4th Cir. 2021) (holding that habeas proceeding was not "civil action" under EAJA and affirming order denying attorney's fees under the EAJA), *but see*, *Daley v. Ceja*, 158 F.4th 1152 (10th Cir. 2025) (holding that habeas actions challenging immigration detention are 'civil actions' to which EAJA authorization of prevailing-party attorney fee awards against federal government applies); *Michelin v. Warden Moshannon Valley Correctional Center*, -- F.4th --, 2026 WL 263483 (3d Cir. 2026) (holding that noncitizens' habeas petitions challenging their immigration detentions were 'civil actions' under EAJA). The Fifth Circuit recently agreed with the Fourth Circuit in *Barco v. Witte*, noting the "hybrid nature of habeas corpus petitions." 65 F.4th 782, 785 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 553 (2024).[1]

Moreover, EAJA applies only in purely civil cases and because habeas proceedings are hybrid proceedings[2], there has been no unambiguous wavier of sovereign immunity for claims of

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[1] The question appears open in the Eleventh Circuit. *Da Silva Martins v. Warden, Folkston ICE Processing Facility*, Case No. 25-CV-152, 2025 WL 3722042, at *1 n.1 (S.D. Ga. Dec. 23, 2025) ("The Court has not identified any Eleventh Circuit Court of Appeals' decision considering the application of the EAJA in the habeas context but notes there is a Circuit split regarding the applicability.").

[2] Respondents acknowledge that this Court has previously found that the decisions of *Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023) and *O'Brien v. Moore*, 395 F.3d 499, 508 (4th Cir. 2005) were "neither controlling nor persuasive", but Respondents preserve this argument for appellate purposes. *See Cordona v. Noem, et al.*, No. 26-cv-60229-DMM, DE 19 (S.D. Fla. April 16, 2026).

attorney fees under EAJA in habeas proceedings. In turn, the Motion for Attorney's Fees should be denied.

## II. Petitioner Is Not Entitled to EAJA Fees Because Respondents' Position Was Substantially Justified.

The EAJA provides for an award of attorney fees and expenses to a party who prevails in litigation against the United States if, among other conditions, the court finds that the position of the United States was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A); *see Comm'r, INS v. Jean*, 496 U.S. 154, 155 (1990). "The EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991).

In *Pierce v. Underwood*, 487 U.S. 552 (1988), the Supreme Court explained that the government's position is substantially justified if it is "justified to a degree that could satisfy a reasonable person" that is, "if it has a reasonable basis in law and fact." *Id.* at 565-66 & n.2; *accord United States v. Jones*, 125 F.3d 1418, 1425 (11th Cir. 1997). The Supreme Court specifically rejected the position that substantial justification requires more than reasonableness. *Pierce*, 487 U.S. at 567-68. A position can be justified even if it is not correct. *Id.* at 566 n.2. In *Pierce*, the Supreme Court found this standard was no different from the "reasonable basis both in law and fact" formulation the Court adopted in *Ashburn v. United States*, 740 F.2d 843, 850 (11th Cir. 1984). *Pierce*, 487 U.S. at 565-66. "Conceivably, the Government could take a position that is not substantially justified, yet win; even more likely, it could take a position that is substantially justified, yet lose." *Pierce*, 487 U.S. at 569.

Because Respondents' position was substantially justified, the Court should deny Plaintiff's Motion for Attorney's Fees. As outlined in the Response to Order to Show Cause [DE

5], the Petition presented a common issue concerning the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a) and whether Petitioner is entitled to a bond hearing. While some courts have determined that Petitioner is not subject to mandatory detention under § 1225(b)(2), other district courts have found to the contrary and agreed with Respondents' position as to same. *See, e.g., Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, DE 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an "applicant for admission" governed by 8 U.S.C. § 1225(b) and rejecting petitioner's argument the government must grant a bond hearing under 8 U.S.C. § 1226)); *Perez Morales v. Noem, et al.*, No.26-60251-CIV DIMITROULEAS, DE 15 (S.D. Fla. Feb. 9, 2026)(same, adopting the analysis of the Fifth Circuit majority opinion in *Buenrostro-Medina*); *Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU, DE 19 (S.D. Fla. Feb. 19, 2026) (holding that 8 USC 1252(g) prohibits the Court in a habeas proceeding from reviewing the denial of bond to a person present without admission or parole who is detained pursuant to 8 U.S.C. § 1225, and, on the merits, finding that petitioner who had been present in the country for years on humanitarian parole was an applicant for admission and subject to detention under 8 USC 1225(b)(2)); and *Hernandez v. Miami Field Office Director*, Case No. 26-20440-ALTMAN, DE 8 (S.D. Fla. Feb. 27, 2026) ("The plain text of § 1225(a)(1) defines aliens, like our [p]etitioner, as "applicants for admission" notwithstanding their distance from the border or the time they've spent in the United States without admission"); *Jimenez-Clemente v. Acting Director, ICE, et al.*, Case No. 26-cv-20096-ALTMAN (S.D. Fla. March 2, 2026).

Furthermore, two appellate courts analyzed this issue and agreed with Respondents' position that Petitioner is subject to mandatory detention under 8 U.S.C. §§ 1225(b)(2)(A). *See*

*Buenrostro-Mendez v. Bondi,* No. 25-20496, 25-40701, ___F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026) (holding that noncitizen petitioners in removal proceedings were subject to mandatory detention under 28 U.S.C. § 1225(b)(2) because they were present in the United States without being admitted or paroled, despite having entered illegally many years ago); *Avila v. Bondi*, --F.4th--, 2026 WL 819258 (8th Cir. March 25, 2026) (holding that noncitizen was subject to mandatory detention as an "applicant for admission" who was "seeking admission" after entering the country illegally without inspection or admission in 2006 and again in 2016).

Lastly, the Eleventh Circuit's recent decision in *Hernandez Alvarez v. Warden*, 25-14065, ___ F.4th ___ (11th Cir. May 6, 2026), which is binding upon this Court, does not adopt Respondents' position on the application of § 1225(b)(2). However, this does not render Respondents' interpretation as lacking in basis of fact or law considering there is now a circuit split. For all these reasons, this Court should find that Respondents' position was reasonable and that the Motion for Attorney Fees lacks merit.

**III. Plaintiff Failed to Demonstrate that the Hours Requested Were Reasonable.**

"The EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991); *see also Jean v. Nelson*, 863 F.2d 759, 775 (11th Cir. 1988) ("Given that the EAJA constitutes a partial waiver of the United States' immunity, the Act must be strictly construed").[3]

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[3] The EAJA allows for an award of attorney fees, costs, and other expenses from the government provided that: (1) the party seeking such fees is the prevailing party in a civil action brought by or against the United States; (2) an application for such fees, including an itemized justification for such amount requested, is timely filed within thirty days of final judgment in the action; (3) the position of the government is not substantially justified; and, (4) no special circumstances make an award unjust. *See* 28 U.S.C. § 2412(d).

The EAJA serves a dual purpose: "to ensure adequate representation for those who need it *and* to minimize the costs of this representation to taxpayers." *Baker v. Bowen*, 839 F.2d 1075, 1083 (5th Cir. 1988) (emphasis original).

As stated previously, the Respondents have set forth that EAJA does not constitute a waiver of sovereign immunity as it applies to habeas petitions. In an abundance of caution, the application of EAJA is nonetheless addressed. Under the EAJA, Plaintiff is only entitled to receive compensation for the number of hours reasonably expended by his attorneys on the case. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates."). Reasons for finding that hours were not reasonably expended include duplication of work, extra time due to inexperience, billing of tasks ordinarily performed by non-attorney personnel, and billing of hours spent on an issue on which the party did not prevail. *See id.* at 434. It is incumbent on the Court to exclude those hours that are excessive, redundant, or otherwise unnecessary. *Id.*; *Perkins v. Mobile Hous. Bd.*, 847 F.2d 735, 738 (11th Cir. 1988); *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988). Indeed, "we have a special responsibility to ensure that taxpayers are required to reimburse prevailing parties for only those fees and expenses ***actually needed*** to achieve the favorable result." *Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 975 (D. D.C. 2004) (emphasis added).

In this case, Petitioner seeks compensation for 33.4 hours with 23.4 hours being paralegal time. [DE 14, p. 21]. Petitioner's counsel filed a Petition [DE 1], Reply to Respondent's Response to Order to Show Cause [DE 6], and Response to Respondents' Objections to Report and Recommendations [DE 12]. Nonetheless, the issue in this case is narrow, as it concerns whether detention authority of Petitioner is under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), and it is being

frequently litigated. Although the issue is contested and federal courts of appeal are split, the issue is not novel or unique.

The majority of the hours expended were unnecessary as they involved instruction by Petitioner's counsel to his paralegal on drafting substantive arguments. *See* [DE 14, p. 22]. The time spent by the paralegal attempting to draft legal documents including the Petition and Reply, resulted in Petitioner's counsel making more corrections and/or revisions – all of which is duplicative time for which taxpayers should not be responsible. *See id.* Clerical tasks billed at a paralegal rate also should not be recoverable, yet such entries exist in the itemization of work performed in this case. *Id.*; *see also Lilley v. Saul*, No. 20-80044, 2021 U.S. Dist. LEXIS 14700, at *1 (S.D. Fla. Jan. 27, 2021). In all, these entries should be rejected, or at a minimum, reduced significantly.

## CONCLUSION

Therefore, because the EAJA applies only to civil matters and habeas proceedings are considered hybrid in nature, this Court should deny the Motion for Attorney's as there has been no waiver of sovereign immunity. In addition, this Court should find that Respondents' position was substantially justified in their response to the Order to Show Cause, since there remains a split amongst the federal courts of appeal reviewing this issue. Lastly, should the Court find that Petitioner is entitled to attorney's fees, such fees should be significantly reduced. Based upon the foregoing, this Court should deny the Motion for Attorney's Fees or reduce the award requested.

Dated: May 11, 2026

Respectfully submitted,

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