UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FREDDY ANTONIO TELLEZ LOPEZ,
Petitioner,

Civil Action No. 0:26cv60206

v.

MARCOS CHARLES, Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Acting Executive Associate Director.
JUAN AGUDELO, Interim Miami Field Office Director.
CHARLES WALL, Principal Legal Advisor for ICE's Office of the Principal Legal Advisor.
PAMELA BONDI, U.S. Attorney General,
KRISTI NOEM, U.S. Secretary of the Department of Homeland Security,
TODD M. LYONS, Senior Official Performing the Duties of the Director of US Immigration and Customs Enforcement.

Respondents.
_____/

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Petitioner, FREDDY ANTONIO TELLEZ LOPEZ ("Petitioner"), by and through undersigned counsel, respectfully replies to Respondents' Response in Opposition to Petitioner's

Motion for Attorneys' Fees and Expenses under the Equal Access to Justice Act ("EAJA") and states as follows:

INTRODUCTION

Respondents' Opposition fails for three independent reasons. First, Respondents incorrectly argue that sovereign immunity bars recovery of attorney's fees in immigration habeas proceedings despite the EAJA's express waiver authorizing fee awards in "any civil action" brought by or against the United States. 28 U.S.C. § 2412(d)(1)(A). As numerous courts have recognized, immigration detention proceedings are civil—not criminal—in nature, and habeas actions challenging such detention fall within EAJA's plain language. Respondents primarily rely on nonbinding out-of-circuit authority that has been repeatedly criticized and rejected by courts addressing civil immigration detention challenges.

Second, Respondents fail to satisfy their burden of demonstrating that their position was "substantially justified." Although Respondents attempt to rely on a developing circuit split and subsequent out-of-circuit authority, this Court expressly rejected Respondents' interpretation of 8 U.S.C. § 1225(b)(2), concluding that it conflicted with the statutory framework governing detention of noncitizens already present in the United States. The later emergence of conflicting authority does not retroactively transform Respondents' repeatedly rejected litigation position into a substantially justified one.

Finally, Respondents' challenge to the reasonableness of the requested fees improperly characterizes substantive litigation work as clerical or duplicative. The billing records reflect extensive legal research, constitutional and statutory analysis, factual investigation, evidentiary development, client conferences, detention-facility visits, and briefing addressing rapidly evolving nationwide authority concerning §1225 and §1226. Counsel further exercised billing

judgment by delegating substantial work to lower-billing support staff, thereby reducing overall litigation costs rather than inflating them. As recognized by the Supreme Court, such delegation promotes efficiency and is compensable under EAJA. *See Richlin Security Service Co. v. Chertoff,* 553 U.S. 571 (2008); *Missouri v. Jenkins,* 491 U.S. 274 (1989).

As expressly stated in Petitioner's original EAJA Motion, Petitioner reserved the right to seek additional fees and expenses incurred should Respondents oppose the Motion and require further briefing. Because Respondents filed the present Opposition, counsel was required to conduct additional legal research, analyze newly cited authority, and prepare the instant Reply. Accordingly, Petitioner also seeks supplemental attorney's fees and expenses incurred in connection with this Reply, for an updated total amount of $7,796.34.

ARGUMENT

I. This Court Has Jurisdiction to Award Attorney's Fees Under EAJA Because Congress Expressly Waived Sovereign Immunity.

Respondents' sovereign immunity argument improperly relies on general principles governing suits against the United States while disregarding EAJA's express statutory waiver. Although sovereign immunity ordinarily bars suits against the United States absent consent, Congress expressly waived sovereign immunity for attorney's fees in "any civil action . . . brought by or against the United States." 28 U.S.C. § 2412(d)(1)(A). Thus, the relevant inquiry is not whether sovereign immunity exists generally, but whether Petitioner's immigration habeas action falls within the scope of EAJA's waiver. Courts addressing immigration habeas proceedings have recognized that such actions fall within EAJA's broad "any civil action" language. *See Vacchio v. Ashcroft,* 404 F.3d 663 (2d Cir. 2005); *Daley v. Ceja,* 158 F.4th 1152 (10th Cir. 2025).

Moreover, immigration detention proceedings are civil—not criminal—in nature. *See Zadvydas v. Davis,* 533 U.S. 678 (2001); *Padilla v. Kentucky,* 559 U.S. 356 (2010). Respondents' basis from *O'Brien v. Moore,* 395 F.3d 499 (4th Cir. 2005), *Barco v. Witte,* 65 F.4th 782 (5th Cir. 2023), and related authority is therefore misplaced because those decisions improperly parallel civil immigration detention proceedings to habeas challenges arising from criminal confinement. As *Michelin v. Warden Moshannon Valley Correctional Center,* 2026 WL 263483 (3d Cir. Feb. 2, 2026) observed, *Obando-Segura* improperly "brushed aside the distinction between challenges to criminal detention and civil" immigration detention proceedings. Courts addressing immigration habeas proceedings have further recognized that Congress expressly excluded tort actions from EAJA while declining to exclude habeas actions, demonstrating that additional implied exceptions should not be judicially created. *See Kholyavskiy v. Schlecht,* 479 F. Supp. 2d 897 (E.D. Wis. 2007)

Respondents' reliance on *United States v. Sherwood, JBP Acquisitions, LP v. U.S. ex rel. F.D.I.C.,* and *State of Florida, Department of Business Regulation v. United States Department of the Interior* is misplaced because those cases merely restate the general principle that sovereign immunity bars suit absent a waiver. Here, Congress expressly provided such a waiver through EAJA.

Likewise, Respondents' reliance on *United States v. Nordic Village, Inc.,* 503 U.S. 30 (1992) is unpersuasive. *Nordic Village* merely held that the prior version of 11 U.S.C. § 106 lacked sufficiently explicit waiver language. Congress subsequently amended the statute to expressly abrogate sovereign immunity, demonstrating that where Congress clearly authorizes relief against the United States, sovereign immunity does not bar recovery. Similarly, Congress

expressly waived sovereign immunity for attorney's fees under EAJA through 28 U.S.C. § 2412(d)(1)(A).

Indeed, Congress amended 11 U.S.C. § 106 specifically in response to *United States v. Nordic Village, Inc.* and *Hoffman v. Conn. Dep't of Income Maint.*, to expressly abrogate sovereign immunity where Congress intended such relief to be available. Thus, *Nordic Village* ultimately reinforces, rather than undermines, the principle that where Congress clearly authorizes relief against the United States, courts should give effect to that waiver as written.

Further, Respondents' jurisdictional argument is inconsistent with *Scarborough v. Principi*, 541 U.S. 401 (2004). As the Supreme Court explained, "[t]he question before us ... does not concern the federal courts' 'subject-matter jurisdiction.' Rather, it concerns a mode of relief (costs including legal fees) ancillary to the judgment of a court that has plenary jurisdiction of the action." The Supreme Court further recognized that "[s]ection 2412(d)'s waiver of sovereign immunity from liability for fees is not conditioned on a fee applicant's meticulous compliance with each and every requirement" of EAJA and that "[o]nce Congress waives sovereign immunity, judicial application of a time prescription to suits against the government ... amounts to little, if any, broadening of the congressional waiver." Consistent with Scarborough, once Congress expressly waived sovereign immunity through EAJA, courts should not construe that waiver in an unduly technical manner so as to judicially narrow the scope of relief Congress authorized.

II. Respondent's Position Was Not Substantially Justified.

Respondents fail to satisfy their burden of demonstrating that their position was substantially justified. Although a position may be substantially justified even where the

Government ultimately loses, the Government must still establish that its position had a reasonable basis in both law and fact. *See Pierce v. Underwood,* 487 U.S. 552 (1988). Here, Respondents continued advancing an interpretation of 8 U.S.C. § 1225(b)(2) that this Court repeatedly rejected and that numerous courts have found inconsistent with the statutory text and structure of the INA.

Respondents principally rely on out-of-circuit and nonbinding authority. However, multiple courts—including courts within this District—have expressly rejected that interpretation. In *Pincay v. Ripa* Case No. 1:26-cv-22390 (S.D. Fla. Apr. 15, 2026)., the court declined to adopt the reasoning of *Buenrostro-Mendez, Morales, and Perez Morales,* concluding that "the best plain textual reading of the relevant statutes compels the conclusion that Section 1226(a) is the proper detention authority for aliens like Petitioner." The court further explained that noncitizens already present in the United States for years cannot remain perpetually "seeking admission" under § 1225 because "[o]ne cannot continue 'the act of entering' in perpetuity, especially into a place he or she already is present."

Similarly, Respondents' reliance on *Hernandez v. Miami Field Office Director,* Case No. 26-20440-ALTMAN, DE 8 (S.D. Fla. Feb. 27, 2026) is unpersuasive. The reasoning in Hernandez improperly treats all noncitizens present without admission as perpetual "applicants for admission" subject to mandatory detention under § 1225(b)(2). This Court rejected that same interpretation, recognizing that §1225(b) "applies primarily to aliens seeking entry into the United States," whereas § 1226(a) applies to noncitizens already present in the country.

Moreover, the existence of a circuit split does not automatically establish substantial justification. Respondents concede that the Eleventh Circuit's recent decision in *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Mia.*, Nos. 25-14065, 25-14075, 2026 U.S. App. (11th Cir. May

6, 2026) did not adopt their interpretation of § 1225(b)(2). Thus, despite having the opportunity to endorse Respondents' expansive detention theory, the Eleventh Circuit declined to do so. The later emergence of conflicting authority does not retroactively transform Respondents' repeatedly rejected litigation position into a substantially justified one.

Further, Respondents continued advancing this interpretation despite repeated criticism of the authorities upon which they rely. Courts have rejected the reasoning of *O'Brien v. Moore* and *Barco v. Witte* for improperly analogizing civil immigration detention habeas proceedings to criminal detention challenges. Courts criticizing those decisions have emphasized that immigration detention proceedings are civil in nature and therefore fall within EAJA's broad "any civil action" language.

Accordingly, Respondents cannot establish that their position possessed a reasonable basis in law where this Court, multiple district courts, and persuasive authority across several jurisdictions concluded that Respondents' interpretation conflicted with the INA's plain meaning and detention framework.

Therefore, the government's position as a whole remains unreasonable.

III. Petitioner's Requested Fees and Hours Are Reasonable.

Respondents incorrectly characterize the requested fees as excessive, duplicative, or clerical in nature. The billing records submitted by Petitioner reflect substantive litigation work performed in connection with a contested federal habeas proceeding involving evolving nationwide authority concerning detention under 8 U.S.C. §§ 1225 and 1226.

Although Respondents argue that this case involved a "narrow" and "frequently litigated" issue, the litigation required substantial statutory interpretation, constitutional analysis, factual development, and response briefing concerning rapidly developing district and circuit authority

nationwide. Counsel researched and drafted arguments regarding Fifth Amendment violations, detention authority under §§ 1225 and 1226, evolving Circuit Court authority, and applicable District Court precedent. The records further reflect extensive factual investigation, client conferences, detention-facility visits, evidentiary development, translation work, and preparation of substantive reply briefing.

Respondents also improperly characterize the paralegal work as duplicative or clerical. The Supreme Court has expressly recognized that compensating paralegal work under fee-shifting statutes promotes efficiency and reduces overall litigation costs. *See Richlin Security Service Co. v. Chertoff,* 553 U.S. 571 (2008). Likewise, routine attorney supervision and review of paralegal drafting does not render the work duplicative. *Missouri v. Jenkins,* 491 U.S. 274 (1989). As Jenkins explained, paralegals routinely perform substantive litigation-support work under attorney supervision, including factual investigation, legal research, document review, citation checking, drafting assistance, and evidentiary preparation.

The billing records here reflect precisely those types of substantive legal-support activities. For example, the paralegal conducted legal research regarding *Doe v. Baker County* and related precedents, drafted Fifth Amendment habeas arguments, researched proper respondents, reviewed evolving district court authority, conducted statutory and case law research concerning §§ 1225 and 1226, prepared responses to DHS's legal arguments, and assisted with constitutional and detention-related briefing. These are substantive litigation tasks—not purely clerical functions.

To the extent a limited number of entries involved filing logistics, exhibit compilation, or document organization, those tasks were intertwined with substantive habeas preparation, evidentiary assembly, and federal filing compliance. Moreover, counsel exercised billing

judgment by delegating substantial work to lower-billing support staff rather than billing all work at attorney rates. Had counsel personally performed all delegated tasks at attorney billing rates, the total fee request would have been substantially higher.

Accordingly, the requested hours and fees are reasonable and adequately supported by the detailed billing records submitted by Petitioner.

IV. Supplemental Fees Incurred in Reply Briefing.

In Petitioner's original Motion for Attorneys' Fees and Expenses under the Equal Access to Justice Act, Petitioner expressly stated that additional fees would be sought if Respondents opposed the Motion and counsel was required to prepare a reply. Respondents thereafter filed their Opposition, requiring counsel to conduct additional legal research, analyze Respondents' cited authorities, review newly issued case law, and prepare the instant Reply.

Accordingly, Petitioner respectfully requests supplemental attorney's fees and expenses incurred in connection with preparation of this Reply. The updated total amount sought under EAJA is $7,796.34.

The supplemental time records supporting the additional fees incurred are attached hereto as Exhibit A.

CONCLUSION

For the foregoing reasons, Respondents have failed to establish that sovereign immunity bars recovery under EAJA, failed to demonstrate that their litigation position was substantially justified, and failed to show that the requested fees and expenses are unreasonable. The record reflects that Respondents continued defending Petitioner's prolonged detention under a statutory

interpretation repeatedly rejected by this Court and numerous other courts, thereby requiring substantial litigation, briefing, factual development, and legal analysis by undersigned counsel.

Accordingly, Petitioner respectfully requests that this Court grant Petitioner's Motion for Attorneys' Fees and Expenses under the Equal Access to Justice Act in full, deny Respondents' Opposition, award Petitioner attorney's fees and expenses in the updated amount of $7,796.34, including supplemental fees incurred in preparing this Reply, and grant such further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matthew Meyers, hereby certify that on May 18, 2026 I caused the foregoing motion to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the 11th Circuit using the Court's appellate CM/ECF system. Respondent's counsel is a registered CM/ECF user and will be served via the Notice of Docket Activity through this Court's CM/ECF system.

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