UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Cristian Midael Cardona Marroquin, Petitioner, v. Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; Todd M. Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement; Garret Ripa, in his official capacity as Miami Field Office Director, Immigration and Customs Enforcement's Enforcement and Removal Operations; Mitchell Diaz, in his official capacity as Assistant Field Office Director, Broward Transitional Center; Cynthia Swain, in her Official capacity as Warden of Broward Transitional Center Respondents.	Case No: 0:26-cv-60229-DMM COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

PEITIONER'S MOTION FOR ATTORNEYS' FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT

COMES NOW the Petitioner, Cristian Midael Cardona Marroquin, by and through his undersigned counsel and hereby submits his Motion for Attorney's Fees and Costs Under the Equal Access to Justice Act ("EAJA"), and states as follows:

This Honorable Court has granted Petitioner's Request for Leave to move for attorney's fees and costs under the EAJA 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 *et seq*.. ECF No. 15 at 2.

INTRODUCTION

Petitioner is a native and citizen of Gautemala who has resided in the United States since June 2023. He was detained at a traffic stop on September 29, 2025 by ICE and transferred to the Broward Transitional Center in Broward County. He was twice denied a bond hearing under 8 U.S.C. § 1226(a).

This Habeas Petition, as many other Petitions, was brought as the Department of Homeland Security ("DHS") has recently revised its interpretation of the Immigration and Nationality Act ("INA") detention provisions and Board of Immigration Appeals' ("BIA") recent affirmation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This Court once again rejected the Government's revised interpretation and granted Petitioner's Petition. The Government was ordered that Petitioner be afforded a substantive bond hearing under 8 U.S.C. § 1226(a) within seven days or be released. ECF No. 13 at 6-7; ECF No. 15 (adopting ECF No. 13). The Court has also granted Petitioner the right to move for attorney's fees and costs under the EAJA. ECF No. 15 at 2.

Under the EAJA, a Petitioner is entitled to attorneys' fees and other expenses when 1) the Petitioner is a prevailing party, 2) the Petitioner shows evidence of the amount sought, 3) the Government's position was not substantially justified. EAJA 28 U.S.C. § 2412(d)(1)(B). Petitioner has thirty days to institute his Fee Motion from the date that time to file an appeal has expired. *Jackson v. Chater*, 99 F.3d 1086, 1095 n.4 (11th Cir. 1996); *see also Shalala v. Schaefer*, 509 U.S. 292, 302-03, 113 S. Ct. 2625, 125 L. Ed. 2d 239 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 96, 111 S. Ct. 2157, 115 L. Ed. 2d 78 (1991) ("The 30-day EAJA clock begins to run after the time to appeal that 'final judgment' has expired."). Finally, the Petitioner

Shows that he has met the appropriate "net worth" requirements under 28 U.S.C. § 2412(d)(2)(B). *See* Ex. 1.

Petitioner shall take each point in turn.

I. Petitioner was the Prevailing Party

In order to proceed, Petitioner must show he was the prevailing party. 8 U.S.C. § 2412(d)(1)(A). The Supreme Court held that, for purposes of fee-shifting statutes such as EAJA, a prevailing party is one who demonstrates that he achieved a "material alteration of the legal relationship of the parties" and a "judicial imprimatur on the change." *Buckhannon Bd. Care & Home Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604-05 (2001). A prevailing party is one who "prevailed on any significant issue in the litigation which achieved some of the benefit the parties sought in bringing the suit." *Powell v. Carey Int'l, Inc.*, 548 F.Supp.2d 1351, 1356 (S.D. Fla. 2008). "An enforceable judgment establishes a plaintiff as a prevailing party because the plaintiff has received at least some relief based upon the merits of a claim." *Util. Automation 2000, Inc. v. Choctawhatchee Elec. Co-op., Inc.*, 298 F.3d 1238, 1248 (11th Cir. 2002). In *Vacchio v. Ashcroft*, 404 F.3d 663, 673-74 (2d Cir. 2005), the court held that an interim order directing release pending adjudication of petitioner's habeas corpus appeal was sufficient to confer prevailing party status. *See also Ali v. Gonzales*, 486 F. Supp. 2d 1197, 1201-03 (W.D. Wash. 2007).

The Court has granted Petitioner's Habeas Corpus Petitioner. ECF No. 15. It is clear he is the prevailing party.

II. Peitioner Shows Proof of the Amount Sought

EAJA fees are "based upon prevailing market rates for the kind and quality of the services furnished, except that . . . 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 proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). Congress increased the statutory hourly rate of compensation for attorneys from $75 to $125 for cases commenced on or after March 29, 1996. Equal Access to Justice Act Amendments, Pub. L. No. 104-121, §§ 231-33, 110 Stat. 847, 862-63 (1996). This amount can be adjusted for inflation based on a cost of living adjustment (COLA) or enhanced based on the presence of a special factor.

The EAJA "establishes a two-step analysis for determining the appropriate hourly rate to be applied in calculating attorney's fees under the Act." *Meyer v. Sullivan*, 958 F.2d 1029, 1033 (11th Cir. 1992). The first step "is to determine the market rate for 'similar services [provided] by lawyers of reasonably comparable skills, experience, and reputation.'" *Id.* (quoting *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988)). "The second step, which is needed only if the market rate is greater than [$125] per hour, is to determine whether the court should adjust the hourly fee upward from [$125] to take into account an increase in the cost of living [since the $125 statutory rate was set], or a special factor." *Id.* at 1033-34. *Watkins v. Bisignano,* No. 24-20014-CIV-SANCHEZ, 2026 U.S. Dist. LEXIS 33434, at *3-4 (S.D. Fla. Feb. 3, 2026). If the market rate exceeds the statutory rate, a cost-of-living adjustment based on the United States Department of Labor's Consumer Price Index for All Urban Consumers ("CPI-U") is warranted. *Bakko*, 2024 U.S. Dist. LEXIS 189596, 2024 WL 4529243, at *2; *Simmons*, 2024 U.S. Dist. LEXIS 187830, 2024 WL 4504354, at *3. *Rosado-Rosario v. Comm'r of Soc. Sec.*, No. 8:24-cv-1933-LSG, 2026 U.S. Dist. LEXIS 2483, at *3 (M.D. Fla. Jan. 7, 2026)

A. Customary Rates in the Area are higher than the Statutory Rate

In 2024, in a matter for (1) breach of contract, (2) violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), (3) negligent misrepresentation; and (4) unjust enrichment, the Southern District of Florida awarded a partner attorney with 19 years of experience hourly rates of $540.00 per hour and $594.00 per hour. In the same case, the Southern District of Florida awarded two attorneys who had been practicing law for approximately five (5) years hourly rates of $418.50 and $441.00 per hour. The Court also awarded a paralegal with 16 years of experience at the law firm an hourly rate of $243.00. *See*, *Wahl Hungaria KFT v. 4G Elecs. Grp. Inc.*, No. 0:22-cv-61334-RS, 2024 U.S. Dist. LEXIS 36103, at *4-5 (S.D. Fla. Mar. 1, 2024). As a matter of fact, the Court in *Wahl Hungaria KFT* noted that even much higher rates for attorneys have been awarded for attorneys depending on experience.

The opinion in *Wahl Hungaria KFT* noted the following.

> Here, Ms. De Franco's hourly rate is $540 and $594; Ms. Villamar's hourly rate is $418.50 and $441; and Ms. Newman's hourly rate is $418.50. [ECF. No. 29-1 at 3]. Ms. DeFranco has been practicing for 19 years and is a Partner at the law firm representing Plaintiff. [*Id.* at 1, 4]. Ms. Villamar and Ms. Newman have been practicing for approximately 5 years. [*Id.* at 4]. Ms. Hastings' hourly rate is $243, and according to the affidavit, "she has worked as a paralegal at Akerman for approximately the last 16 years, since 2007." [*Id.* at 3, 4].
>
> The Court finds that Ms. DeFranco's $540 and $594 hourly rates, Ms. Newman's $418.50 hourly rate, and Ms. Villamar's $418.50 and $441 hourly rates are reasonable. The changing legal landscape in South Florida—along with the Court's knowledge and experience concerning reasonable attorneys' fees—warrants a finding that the hourly attorney and paralegal rates here are reasonable. *See CITGO Petro. Corp. v. Petro. Logistics Serv. USA, Inc.*, 22-MC-20762, 2022 U.S. Dist. LEXIS 216167, 2022 WL 17718802, at *5 (S.D. Fla. Nov. 30, 2022), *report and recommendation adopted*, 22-MC-20762, 2022 U.S. Dist. LEXIS 226105, 2022 WL 17716483 (S.D. Fla. Dec. 15, 2022) (highlighting the increase in hourly rates in South Florida). "Like attorneys and clients, courts, too, must adapt to these changes." *In re Gonzalez*, 20-MC-24628, 2023 U.S. Dist. LEXIS 202887, 2023 WL 7461814, at *4 (S.D.

> Fla. Oct. 6, 2023), *appeal dismissed sub nom. Gonzalez v. Verfruco Foods, Inc.*, 23-13704, 2023 U.S. App. LEXIS 32935, 2023 WL 8623437 (11th Cir. Dec. 13, 2023). Indeed, higher hourly rates have been approved by this district. *See e.g., Domond v. PeopleNetwork APS*, 750 F. App'x 844, 848 (11th Cir. 2018) ("Those partner rates are reasonable in light of the evidence about Miami rates (which included an average partner rate of $655) and in light of counsel's skills, experience, and reputation."); *Family First Life, LLC v. Rutstein*, 22-CV-80243-AMC, 2023 U.S. Dist. LEXIS 148363, 2023 WL 5939620, at *3 (S.D. Fla. Aug. 23, 2023), *report and recommendation adopted*, 22-80243-CIV, 2023 U.S. Dist. LEXIS 161614, 2023 WL 5929434 (S.D. Fla. Sept. 12, 2023) (holding that a fee of $775 is reasonable); *Soc. Life Network, Inc. v. Peak One Opportunity Fund, L.P.*, 21-21373-CV, 2023 U.S. Dist. LEXIS 125302, 2023 WL 5053985, at *7 (S.D. Fla. July 20, 2023), *report and recommendation adopted*, 21-CV-21373, 2023 U.S. Dist. LEXIS 138139, 2023 WL 5036606 (S.D. Fla. Aug. 8, 2023) (holding that fees of $700 for a partner and $500 for a senior associate are reasonable); *CITGO Petroleum Corp.*, 2022 U.S. Dist. LEXIS 216167, 2022 W17718802, at *4-5 (holding that fees of $850 for a partner and $700 for an associate are reasonable); *Caracol TV, S.A. v. Telemundo TV Studios, LLC*, No. 18-23443-CIV, 2022 U.S. Dist. LEXIS 138908, 2022 WL 17583608 (S.D. Fla. Aug. 4, 2022) (recommending fees of $765 for work by a partner and $415 for an associate); *Global Digit. Solutions, Inc. v. Bolzan*, No. 18-80106-CV, 2021 U.S. Dist. LEXIS 255816, 2021 WL 7630524 (S.D. Fla. Aug. 13, 2021) (reducing requested rates for attorneys from $1,230, $990, $850, and $630 to $820, $660, $567, and $420, respectively).
>
> Further, this Court finds the $243 hourly rate requested for work performed by Ms. Hastings to be reasonable. *See Tropical Paradise Resorts, Ltd. Liab. Co. v. JBSHBM, Ltd. Liab. Co.*, No. 18-CV-60912-BLOOM/VALLE, 2021 U.S. Dist. LEXIS 84584, at *24-25 (S.D. Fla. Apr. 30, 2021) (awarding rates between $202.50 to $247.50 for work performed by paralegals with experience ranging from nine to twenty years). Accordingly, based on the above-referenced case law and the Court's own knowledge and experience, the Court concludes that the hourly rates requested for the attorneys and the paralegal in this case are reasonable.

Wahl Hungaria KFT v. 4G Elecs. Grp. Inc., No. 0:22-cv-61334-RS, 2024 U.S. Dist. LEXIS 36103, at *4-6 (S.D. Fla. Mar. 1, 2024) (Footnote omitted).

Attorney for Petitioner, Mr. Wilbur, is a Senior Associate who has previously been awarded rates at $375.00 an hour for his work in other civil litigation matters. *Marine Towing &*

Salvage of S.W. FL. Inc v. One 66' 2019 Sabre Dirigo et al, 2:22-CV-346-SPC-KCD (ECF No. 119). Mr. Wilbur was admitted to practice law in Florida in 2021, practices primarily in insurance and maritime matters, and has a background in maritime law holding a Juris Doctorate in Law with a Maritime Law Certification from Tulane University. Mr. Wilbur is admitted to appear before the Eleventh Circuit Court of Appeals, United States District Court for the Southern District of Florida, the United States District Court for the Middle District of Florida, as well as the United States District Court for the Northern District of Florida. His affidavit in support of this Motion is attached as Exhibit 2.

Petitioners's attorney's market rate exceeds the statutory costs of $125 dollars per hour. The Cost of Liviging adjustment is calculated for 2025 as follows. The figure for 2025 is calculated by taking the "HALF1" CPI-U rate for 2025 and subtracting from it the March 1996 CPI rate (320.229 - 155.7 = 164.53) and then dividing that number by the March 1996 rate (164.53 ÷ 1.557 = 1.056). These calculations result in the cost-of-living percentage increase from March 1996 through November 2025. The cost-of-living percentage increase is then applied to the $125.00 statutory rate to determine the adjusted hourly rated permitted under EAJA ((1.056 x 125) + 125 = 257.00). *See Rosado-Rosario v. Comm'r of Soc. Sec.*, No. 8:24-cv-1933-LSG, 2026 U.S. Dist. LEXIS 2483, at *4 (M.D. Fla. Jan. 7, 2026) (holding that the rate of $252.75 hourly rate for 2025 was de facto reasonable as the upper limit for EAJA in 2025 is $257 per hour).

B. Hourly Rates Spent are Reasonable

In general, fee-shifting statutes like EAJA compensate for time that is "reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (emphasis added). In preparing the fee request, the petitioning party is expected to exercise "billing judgment," i.e., to "make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or

otherwise unnecessary." *Id.* at 434. "'The court, either trial or appellate, is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees[.]'" *Norman*, 836 F.2d at 1303 (quoting *Campbell v. Green*, 112 F.2d 143, 144 (5th Cir. 1940)). Thus, whether to exclude from an award of fees time billed for "excessive or unnecessary work" is within the discretion of the district court. *Norman*, 836 F.2d at 1301. *Rosado-Rosario v. Comm'r of Soc. Sec.*, No. 8:24-cv-1933-LSG, 2026 U.S. Dist. LEXIS 2483, at *4-5 (M.D. Fla. Jan. 7, 2026).

Petitioner is also permitted compensation for time preparing litigation. The Supreme Court has expressly approved compensation for time spent drafting the initial pleadings and developing the theory of the case. *Webb v. Bd. of Educ.*, 471 U.S. 234, 243 (1985). A petitioning party who has established eligibility for a fee award is entitled to recover "fees on fees." In other words, the party is entitled to compensation for time reasonably expended on litigating the fee motion. *Comm'r, Immigration and Naturalization Serv. v. Jean*, 496 U.S. 154, 163-165 (1990).

Petitioner has the right to seek fees under the statute. As proof of the time spent, Petitioner attaches Exhibit 2 to this Motion showing the number of hours spent on this matter. As stated in Exhibit 2's declaration, Petitioner's attorney is not seeking fees for the fully redacted entries. Undersigned determined these completely redacted entried were nonrecoverable under the statute. Based on the prevailing rates, Petitioner requests $18,195.60 in total fees calculated by multipling the $257 hour rate by the hours reasonably spent (70.8 hours) on this matter as required by 28 U.S.C. § 2412(d)(1)(B) Petitioner has also assigned the entirety of his fees to be transferred into the undersigned's trust account. Ex 1.

III. Government's Position Was Never Justified In Either Pre-Litigation Or During Litigation

The Government's position was not substantially justified in either pre-litigation or during litigation. 28 U.S.C. § 2412(d)(1)(A), (d)(2)(D). Nor are there any special circumstances that would make an award unjust. 28 U.S.C. § 2412(d)(3). The government can only avoid payment of fees if it can show that its pre-litigation and litigation position were "substantially justified." In other words, the government bears the burden of proof. *City of Brunswick, Ga. v. United States*,849 F.2d 501, 504 (11th Cir.1988); *United States v. Jones*, 125 F.3d 1418, 1425 (11th Cir. 1997). This reasonable standard must have a basis in both in law and in fact. *See Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (defining substantially justified as "'justified in substance or in the main' – that is, justified to a degree that could satisfy a reasonable person"); *Saysana v. Gillen*, 614 F.3d 1, 5 (1st Cir. 2010) (holding that "it is not necessary for the Government's position to be 'justified to a high degree'") (quotation omitted); *Aronov v. Chertoff*, 562 F.3d 84, 94 (1st Cir. 2009) (en banc) ("The [pre-litigation position] test is whether a reasonable person could think the agency position is correct.") (citing *Pierce*, 487 U.S. at 566 n.2).

Critically, the government must independently establish that the agency misconduct that gave rise to the litigation was substantially justified and that its litigation positions were substantially justified. 28 U.S.C. § 2412(d)(2)(D); *Comm'r, Immigration & Naturalization Serv. v. Jean*, 496 U.S. 154, 158-60 (1990); *Ibrahim v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1168 (9th Cir. 2019) (en banc) ("[T]he substantial justification test is comprised of two inquiries, one directed toward the government agency's conduct, and the other toward the government's attorneys' conduct during litigation."); *Dantran, Inc. v. U.S. Dep't of Labor*, 246 F.3d 36, 41 (1st Cir. 2001) ("To satisfy its burden, the government must justify not only its pre-litigation conduct but also its position throughout litigation."). If the Court finds that the pre-litigation conduct

lacks substantial justification, then this Court does not need to consider whether the litigation position was substantially justified. *Jean*, 496 U.S. at 160 ("The single finding that the Government's position lacks substantial justification, like the determination that a claimant is a 'prevailing party,' thus operates as a one-time threshold for fee eligibility."); *United States v. 515 Granby, LLC*, 736 F.3d 309, 316 (4th Cir. 2013) ("[W]hen the government's unjustified prelitigation position forces a lawsuit, the petitioner may recover fees under the EAJA for the entire suit, even if the government's litigation position was reasonable."); *Anthony v. Sullivan*, 982 F.2d 586, 589 (D.C. Cir. 1993) ("[O]nce a court determines that the government's position on the merits of the litigation is not substantially justified, it may not revisit that question as to any component of the dispute.").

A. The Governement's Position was not Justified Prior to Litigation

The Government's position pre-litigation was unjustified as detailed in the original Habeas Petition. *See generally* ECF No. 1. Petitioner is a J.O.P. class member who should have never been detained given that he cannot be removed with a pending USCIS Aslylum application. ECF No. 1 at 1-3; 11-14; 16; 21-23. There has never been a valid reason articulated for why Petitioner was detained in the first place. Petitioner is a UC who had been released by ORR after it determined he was neither a flight risk nor a danger to the community. ECF No. 1 at 11. He did not have a removal order nor was he removal proceedings, and that he does not have any criminal history. See generally ECF No. 1. Yet he was detained while he was a passenger on his way to work with his coworker with an approved EAD in his possession. ECF No. 1 at 12-13. There has never been any rational purpose to detain Petitioner or to keep him detained. .

During his Bond Deteremination Hearings, OPLA argued that the immigration court had no jurisdiction to conduct an individualized bond hearing. ECF No. 1 at 14-17. The two

immigration judges, ultimately and erroneously agreed with OPLA with one even stating that she was awaiting guidance from EOIR on how to proceed. *Id.* These decisions were in line with troubling reports that Immigration Judges continue to ignore or receive instruction to disregard federal court orders. See ECF No. 1 at N.2.

The Government has knowledge that this Court, and almost all other Federal Courts across the country have rejected the BIA's reasoning for holding individuals such as Petitioner without a bond hearing. *See* ECF No. 1 at 10-21. The Government continued to recycle its previously rejected arguments before the immigration court, causing the Habeas to be filed and granted. At no point was the Government's position justified prior to litigation.

B. The Government's Position was not Justified during Litigaiton

It is clear from the Government's own filings that it knew its position was not justified. Respondents acknowledged that their position had already been rejected by twelves cases in this district. *See* ECF No. 7 at 3-5 ("However, the government acknowledges that Judges in this District have reached the opposite conclusion. *Internal citations omitted.*); *See also ECF No 8* at FN1 (showing the vast majority of federal courts throughout the country reached the same conclusion that the government's position has been rejected). The Government also acknowledged the futility of its position when it failed to submit a formal memorandum of law in support of its position, in violation of the Federal and Local Rules. ECF No. 7 at 3 (stating, "the government respectfully submits this abbreviated response to the Court's Order to Show Cause in lieu of a formal responsive memorandum of law…").

It is clear that there was no reasonable basis the Government could rely upon in their motion and simply recycled previously rejected arguments. This resulted in injury to the

Petitioner by being kept in unlawful detention without a meaningful opportunity to argue for his release, and caused the Court to expend uncessary judicial resources.

Petitioner anticipates that the Government will attempt to use the recent 5th Circuit decision *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) as evidence of its substantial justification. The Government's submission of the split 5th Circuit decision does not change the fact it engaged in unjustified litigation. This Court agreed when it expressly considered the Fifth Circuit's holding and found it unpersuasive. Rather this Court affirmed its position that the 5th Circuit was "contrary to the overwhelming majority of distrct court judges to have considered the issue.") (ECF No. 13 at n.3 (internal citations omitted). The Government's reliance on a case filed weeks after this Habeas Petition and found to be in contravention to the vast majority of Federal Courts does not transmute their case into being reasonable.

This Court rightfully reaffirmed its prior determinations that "8 U.S.C. § 1226 applies to the detention of non-citizens present in the United States who have not been admitted or paroled." ECF No. 13 at 3; ECF No. 15.

IV. Conclusion

In light of the above, Peitioner has shown that it is a party to which fees can be awarded under the EAJA. He has met the appropriate net worth requirements, is a prevailing party, shown evidence of reasonable fees in the amount of $18,195.60 and has shown the Government's position was unjustified. This Court should grant his request for reasonable attorney's fees and costs under the EAJA. Per Petitioner's declaration, Petitioner requests that any award be assigned to its Pro Bono's attorney as expressed in Exhibit 1.

Dated: March 20th, 2026

Respectfully submitted,
By: /s *John H. Wilbur III*
JOHN H. WILBUR III
Florida Bar No. 1031177
Email: john.wilbur@fertig.com
FERTIG AND GRAMLING
200 Southeast 13th Street
Fort Lauderdale, FL 33316
Phone: (954) 763-5020
Fax : (954) 763-5412
Attorney for Petitioner