UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-cv-60229-DMM

CRISTIAN MIDAEL CARDONA MARROQUIN,
Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,
et al.,

Respondents.

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

Respondents, through the undersigned Assistant United States Attorney, respectfully submit this Response in Opposition to Petitioner's Motion for Equal Access to Justice Act ("EAJA") Fees (ECF No. 16 ("Motion for Attorney Fees")), and state as follows:

INTRODUCTION

This Court should deny the Motion for Attorney Fees for four reasons. First, Petitioner did not comply with Southern District of Local Rule 7.3(b) in that Petitioner made no effort to confer with Respondents regarding his claim for attorney's fees. Second, there has been 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). Third, Petitioner is not entitled to EAJA fees because Respondents' position was substantially justified. Fourth, 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. Petitioner Failed to Comply with Local Rule 7.3(b)

Prior to filing the Motion, Petitioner failed to confer with Respondents regarding his request for attorney's fees in violation of Southern District of Florida Local Rule 7.3. Indeed, there is no certificate of conferral in the Motion, confirming the lack of conferral. *See generally*, Motion, ECF No. 16. The Court should deny the Motion on this basis alone. *See Norych v. Admiral Ins. Co.*, Case No. 08-cv-60330-ALTONAGA, 2010 WL 2557502 (S.D. Fla. June 23, 2010) (denying motion for attorney's fees for failure to comply with Local Rule 7.3).

However, there are additional reasons for denying the Motion as described below.

II. 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, 112 S.Ct. 1011, 1014, 117 L.Ed.2d 181 (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 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 attorneys 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). *See also id.* at n.1 (noting conflicting opinions).[1]

Because EAJA applies only in purely civil cases and because habeas proceedings are hybrid proceedings, 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.").

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

III. 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 EAJA motion. In his Complaint for Declaratory and Injunctive Relief and Verified

Petition for Writ of Habeas Corpus (ECF No. 1), Petitioner raised two claims for relief, first that there is a violation of 8 U.S.C. § 1226(a), unlawful denial of bond hearing, and two, that his detention violated his Fifth Amendment Right to Due Process. Petitioner requested that the Court release him from detention, or order a custody redetermination individualized bond hearing. *See* ECF No. 1 at pg. 23-24.

As outlined in the Response to Order to Show Cause [ECF No. 7], 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), whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. While some courts have determined that Petitioner is not subjected to mandatory detention under § 1225(b)(2), other district courts in this district have determined that Petitioner is subject to mandatory detention. *See, e.g., Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 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, ECF No. 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, ECF No. 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, ECF No. 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, the two appellate courts to analyze this issue agree 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).

Still, because Respondents are aware that this Court disagrees with Respondents' position, but because Respondents must still be able to preserve its rights, including the right to appeal, Respondents submitted an abbreviated response to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. For all these reasons, this Court should find that Respondents' position was reasonable and that the Motion for Attorney Fees lacks merit.

IV. Plaintiff Failed to Demonstrate that the Hours Requested Were Reasonable.

Petitioner seeking over $18,000 for this strictly legal issue is wholly unreasonable and excessive, especially in light of the fact that Respondents acknowledge in the Response to the

Order to Show Cause that this Court disagrees with Respondents' position on the statutory authority, and that Respondents stated they submitted the abbreviated response "to preserve the legal issues, ***to conserve judicial and party resources***, and to expedite the Court's consideration of this matter." *See* ECF No. 7 (emphasis added).

"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").[2] 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. Accordingly, 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,

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[2] 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).

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, the hours for which Plaintiff seeks compensation are exorbitant. Petitioner filed a Petition [ECF No. 1], Reply to Respondent's Response to Order to Show Cause [ECF No. 8], and Response to Notice of Supplemental Authority [ECF No. 10], and seeks recovery from the taxpayers of 70.8 hours. However, 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. While the issue is contested and courts are split, the issue is not novel or unique. Furthermore, Respondents note that the multiple redactions to the entries with no clear explanation make it difficult to ascertain the entries for which Petitioner seeks fees.

The majority of the hours expended were unnecessary, such as: (1) spending 2.1 hours "reviewing and analyzing traverse examples to prepare for reply to govt motion" on February 3, 2026, before Respondents even filed their Response to the Order to Show Case; (2) spending 3.6 hours, on February 12, 2026, to prepare for a hearing that was never scheduled; (3) spending 7.3 hours over several days drafting a Traverse that was not ordered by the Court and unnecessary for the adjudication of this Petition and otherwise excessive; and (4) spending 3.7 hours over several days drafting Petitioner's Response to Notice of Supplemental Authority, which does not comply

with Southern District of Florida Local Rule 7.8, as it is well over this maximum word count of 200 words at over 800 words. *See* ECF No. 10. This totals approximately 16.7 hours. These entries should be rejected, or at a minimum, reduced significantly.

Furthermore, another inflated category of hours expended are vague descriptions of conferences with other attorneys to get "guidance" on certain issues. This includes multiple calls and conferences with individuals named Salas, Ramirez, Zadeyah, AIG attorneys, Rios, Zequeria, and Chavez. Many of the topics of these conferences appear to be teaching Petitioner's counsel about this area of law and procedure. Notably, Petitioner's counsel does not indicate that he practices in this area of law and whether he has ever had a habeas case before, instead noting that he practices in the area of maritime law. Petitioner's counsel also did not provide a resume as an attachment to the Motion for Attorney's Fees. One of the entries is for 1.4 hours to research the "summons and service requirements for Habeas", on January 29, 2026. This is not a reasonable amount, and the taxpayers should not have to pay for this needless expenditure of time. The entries indicate that Petitioner's counsel is inexperienced in this area of law, and many of the entries seem to seek recovery for his learning this area of law. The total amount of these types of entries are 16.4 hours, and should be reduced assuming these entries are recoverable.

Next, Petitioner is not entitled to hours expended for work in the administrative immigration proceedings. *See Ardestani v. I.N.S.*, 502 U.S. 129, 137 (1991) (holding that "administrative immigration proceedings do not fall under 'section 554' and therefore are wholly outside the scope of the EAJA"); *Michelin v. Oddo*, Case No. 23-cv-22, 2024 WL 3937228, at *7-8 (W.D. Pa. Aug. 26, 2024) (finding that petitioner was not entitled to an award of fees for work performed related to the administrative immigration proceedings related to the bond hearing); *Kabura v. McNeer*, Case No. 17-cv-881, 2020 WL 4747788, at *5 (D. Utah Aug. 17, 2020)

(concluding that the government correctly objected to the request for fees for representation before the immigration judge). Therefore, Petitioner is not entitled to the entries from 12/12/25, 12/16/25, 12/18/25, and 12/19/25, relating to the administrative immigration proceedings for a total of 8.5 hours.

Finally, Petitioner spent an unreasonable amount of hours researching and drafting his motion for attorney's fees, especially given the fact that he violated the Local Rules by failing to confer with Respondents at all. Petitioner seeks 5.4 hours researching the EAJA and fees on 2/20/26, 2/23/26, 2/27/26, and 3/2/2026, and 3/7/26, and 9.1 hours drafting the motion and declaration for his motion for attorney's fees on 3/2/26, 3/3/26, 3/4/26, 3/12/26, 3/13/26, and 3/19/26 for a total of 14.5 hours. This is excessive and should be reduced. Just an initial review of the hours at issue (hampered by Petitioner's significant redactions for what his counsel deemed to be reflective of "thoughts and impressions" [see DE 16-2, par. 14, pg. 4], thereby making it more difficult to determine how the time was actually spent, demonstrates a total of approximately 56.1 hours of unnecessary time.

For these reasons, if the Court determines that Petitioner is entitled to attorney's fees under the EAJA, the fees should be significantly reduced.

Conclusion

The Motion should be denied for failure to comply with Local Rule 7.3(b) and failing to confer. Furthermore, because the EAJA applies only to civil matters and because habeas proceedings are a hybrid, this Court should deny the Motion because there has been no waiver of sovereign immunity for claims of attorney fees in habeas proceedings. Alternatively, this Court should find that Respondents' position was substantially justified in their response to the Order to Show Cause, as some courts in this district have determined that Petitioner is subject to mandatory

detention under § 1225(b)(2). Furthermore, the two appellate courts to decide this issue also agree with the Respondents' position. There is a split of authorities, and Respondents filed their response to preserve their rights while acknowledging this Court disagrees with Respondents' position and therefore filed an abbreviated response to conserve the parties' and the Court's resources. Finally, if the Court does find that Petitioner is entitled to attorneys' fees, the 70.8 hours Petitioner seeks is excessive and should be significantly reduced.

For all these reasons, this Court should deny the Motion for Attorney Fees or reduce the amount requested.

Respectfully submitted,
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