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

PETITIONER'S REPLY IN SUPPORT OF HIS MOTION FOR ATTORNEY'S 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 Reply in Support of his Motion for Attorney's Fees and Costs Under the Equal Access to Justice Act ("EAJA"), and states as follows:

INTRODUCTION

Respondent seeks to have this Court deny Petitioner's request on four grounds 1) failure to comply with Local Rule 7.3(b), 2) the government has not waived sovereign immunity in

habeas cases, 3) the Respondent's position was substantial justified during litigation[1] and 4) the Petitioner has not shown that the hours requested are reasonable. *See* ECF 17 at 1.[2] Petitioner addresses each in turn.

ARGUMENT

I. The Shortened Timeframe Provided By The EAJA Supersedes Local Rule 7.3(B)

Respondent fails to address the final sentence of Local Rule 7.3(b), "If a federal statute provides a deadline of fewer than sixty (60) days for a motion governed by Local Rule 7.3(a), the parties need not comply with this paragraph's requirements." Local Rule 7.3(b). Under the EAJA, Petitioner has thirty (30) days from the deadline to file an appeal to institute his Fee Motion. 28 U.S.C. § 2412(d)(1)(B); *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.").

Given the urgency of Habeas Petitions and the threat of unlawful detention, the time to appeal is constrained. This Court provided shortened deadlines to Object to its Report and Recommendation. ECF 13 at 7 ("Although a party normally has fourteen days to serve and file written objections…the circumstances of this matter warrant a shorter objection period"). In the instant matter, the thirty-day clock to file Petitioner's fee motion began once this Court remanded the case back to the Immigration Judge to conduct its substantive bond hearing. (ECF No. 13 at 6-7; ECF No. 15 (adopting ECF No. 13). Given the shortened timeframe in which

[1] Respondent failed to address and carry its burden that the governmental agency's pre-litigation was substantially justified. On that basis alone, Petitioner is entitled to attorney fees.

[2] Respondent failed to make any argument as to Petitioner's status as the prevailing party and that issue is no longer before this Court. Respondent also makes no argument as to the hourly rate sought by Petitioner. Should this Court be persuaded by Respondents' arguments and reduce the hours sought, then it must still apply the $257 hourly rate as detailed in Petitioner's Motion. *See* ECF 16 at 3-7.

Petitioner had to file this Motion, it was impossible to comply with the requirements of Local Rule 7.3(b). This is the very reason why the exception to the rule exits.[3]

The case petitioner cites *Norych v. Admiral Ins. Co.*, Case No. 08-cv-60330-ALTONAGA, 2010 WL 2557502 is distinguishable as that court denied attorneys' fees awarded under an Offer of Judgment, not a federal statute's shortened timeframe. It is clear that the shortened deadline under the EAJA triggers the exception to the Rule.

II. The Plain Reading of the EAJA and Historical Application of the Term Any Civil Action Allows Fees For Immigration Habeas Petitions

Respondent improperly attempts to shift the burden to Petitioner by claiming he has failed to address sovereign immunity. ECF at 2-3. This is incorrect. The EAJA statute applies to "**any civil action** (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action." 28 U.S.C. § 2412(d)(1)(A)(emphasis added). Thus, in the immigration context, EAJA fees generally are available in petitions for review, mandamus actions, Administrative Procedure Act suits, and habeas corpus actions.[4] The burden is on Respondent to show why the EAJA should not apply to habeas petitions.

The term "any civil action" is not defined in the act but it is clear indication that the list is meant to be expansive rather than inclusive.[5] The Third Circuit[6] recently upheld this reading stating,

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[3] Without waiving this argument, Petitioner states it did reach out to Respondent after receiving the Response.

[4] *See, e.g., Gomez-Beleno v. Holder*, 644 F.3d 139, 144-45 (2d Cir. 2011) (petition for review); *Sotelo-Aquije v. Slattery*, 62 F.3d 54, 58-59 (2d Cir. 1995) (habeas action); *Aboushaban v. Mueller*, 475 F. Supp. 2d 943, 945-46 (N.D. Cal. 2007) (mandamus).

[5] *See* Mirram Webster Disctionary Definitions of "any" meaning 1) one or some indiscriminately of whatever kind: 2) one, some, or all indiscriminately of whatever quantity: 3) unmeasured or unlimited in amount, number, or extent. https://www.merriam-webster.com/dictionary/any

[6] Petitioner acknowledges that the Eleventh Circuit is silent on this issue and that there is a split amongst the Circuit Courts. This Court should follow the examples of the Second, Third and Ninth Circuits as the rationale for EAJA fees is meant to protect litigants, not serve as a technical barrier to shield the government from unjustifiable litigation.

> Habeas actions are civil actions. And the complete phrase—"any civil action (other than cases sounding in tort)"—clearly encompasses them. We grant the Government this: in some instances, the phrase "civil action" does not cover habeas actions. But those situations are the exceptions, not the rule. And the EAJA cannot plausibly be read that way. "
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> *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418 (3d Cir. 2026).

The Third Circuit went on to explore the legislative history of the EAJA, Habeas Petition history, and the term "civil action"

> To repeat, the EAJA permits awards of fees and costs in "any civil action (other than cases sounding in tort)." 28 U.S.C. § 2412(d)(1)(A). The statute does not define "civil action." In the absence of a statutory definition, we "start with the phrase's plain [*10] meaning" in 1980, when Congress enacted it in 1980. *Clean Air Council v. U.S. Steel Corp.*, 4 F.4th 204, 209 (3d Cir. 2021). It was "well settled" then that habeas corpus is a civil action. *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269, 98 S. Ct. 556, 54 L. Ed. 2d 521 (1978); *see also Stafford v. Briggs*, 444 U.S. 527, 543, 100 S. Ct. 774, 63 L. Ed. 2d 1 (1980) ("Habeas corpus is a civil action." (cleaned up)). Thus, we have acknowledged that the "plain meaning" and "literal scope" of the phrase "civil action" include habeas actions. *See Santana v. United States*, 98 F.3d 752, 754 (3d Cir. 1996). The same is true when we consider "civil action" as a legal term of art. When Congress enacted the EAJA, legal dictionaries defined "civil action" on broad terms that reached habeas proceedings. *See, e.g., Black's Law Dictionary* 222 (5th ed. 1979) (defining civil actions as "[a]ction[s] brought to enforce, redress, or protect private rights" or as "all types of actions other than criminal proceedings"); *Radin Law Dictionary* 55 (2d ed. 1970) (defining a civil action as a "legal proceeding brought to enforce a civil right or obtain redress for its violation"); *Ballentine's Law Dictionary* 202 (3d ed. 1969) (the phrase "comprehend[s] every conceivable cause of action, whether legal or equitable, except such as are criminal in the usual sense").
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> No wonder then that, at the time of the EAJA's enactment, the Federal Rules of Civil Procedure treated habeas proceedings as civil actions…
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> We know of no relevant statute or practice that would have negated the civil status of immigration challenges like this one. In any event, what matters most is that the Rules generally presumed habeas actions were civil actions, even if they were also distinctive ones. *Harris v. Nelson*, 394 U.S. 286, 293-94, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969).
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> The common law history confirms habeas proceedings are civil actions. "When Congress uses a term with origins in the common law, we generally presume that the term 'brings the old soil with it.'" *Kousisis v. United States*, 605 U.S. 114, 124, 145 S. Ct. 1382, 221 L. Ed. 2d 781 (2025) (quoting *Sekhar v. United States*, 570

> U.S. 729, 733, 133 S. Ct. 2720, 186 L. Ed. 2d 794 (2013)); *see also Lackey*, 604 U.S. at 200. "Civil action" is one such term. As we described at the outset, the writ of habeas corpus has deep roots in that rich soil. *See 3 Blackstone* at 115-38; *see also Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 96, 19 L. Ed. 332 (1868) (holding the Supreme Court had the power to issue writs of habeas corpus, one of "the most important powers in civil cases of all the highest courts of England"); *Kurtz v. Moffitt*, 115 U.S. 487, 494, 6 S. Ct. 148, 29 L. Ed. 458 (1885) ("A writ of habeas corpus [*12] . . . is a civil suit or proceeding, brought by him to assert the civil right of personal liberty, against those who are holding him in custody[.]").
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> The Government strains to deny habeas actions are civil. It acknowledges—as it must—that the Supreme Court and our Court have recognized habeas proceedings are at least "technically" civil actions. *See Abioye Opening Br. 21* (quoting *Schlanger v. Seamans*, 401 U.S. 487, 490 n.4, 91 S. Ct. 995, 28 L. Ed. 2d 251 (1971)) (quoting *Santana*, 98 F.3d at 754).

Michelin v. Warden Moshannon Valley Corr. Ctr., 169 F.4th 418 (3d Cir. 2026);

The Second and Ninth Circuits also agree that Habeas Petitions are civil actions. *See Vacchio v. Ashcroft*, 404 F.3d 663, 668 (2d Cir. 2005) (Where The Second Circuit held "we furthermore hold that "civil actions" under EAJA encompass immigration habeas petitions"); *See also In re in re Hill*, 775 F.2d 1037, 1041 (9th Cir. 1985) (holding that, "[m]oreover, the dual purposes underpinning the EAJA are served by characterizing this [habeas petition] as a civil action....").

The Second Circuit relied on the Supreme Court comments that the purpose of the EJA is, in part, designed to protect litigants against the burdensome costs of unjustified governmental litigation. Petitioner, who never should have been detained as a JOP class member, was forced to defend himself from this unjustified litigation when he detained as a passenger at a vehicle stop. ECF 1 at 2, 12-13.

> *See Ardestani v. INS*, 502 U.S. 129, 138, 116 L. Ed. 2d 496, 112 S. Ct. 515 (1991) ("The clearly stated objective of the EAJA is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby deter the unreasonable exercise of Government authority."); *see also SEC v. Price Waterhouse*, 41 F.3d 805, 809 (2d Cir. 1994) (Leval, J., dissenting in part) ("The provisions of the EAJA, despite its somewhat misleading name, are

> designed to compensate victims of unjustified litigation by the Government from some of the burdensome expenses and costs to which they were subjected by the Government's taking of unreasonable positions. . . . The Act essentially recognizes that abusive litigation tactics by the United States government, whether the Government appears in the role of plaintiff or defendant, can inflict great unjustifiable [**21] cost and expense. It is designed to furnish relief from such governmental litigation abuse.") (emphasis omitted). ... In such situations there is no need for an additional financial encouragement, but the EAJA still applies "to compensate victims of unjustified litigation" by the Government. *See id.* (emphasis omitted). The financial incentive purpose is thus somewhat underinclusive when employed as a means of defining "civil action" and is not dispositive as to the scope of the EAJA's coverage.

Vacchio v. Ashcroft, 404 F.3d 663, 670 (2d Cir. 2005)

Respondent then turns to unpersuasive case law to establish that Habeas Petitions are "hybrid" actions not governed by the EAJA. This argument falls flat. As the Third Circuit persuasively held in reviewing an immigration habeas petition,

> But we are not reviewing habeas petitions for release from criminal detention. We are reviewing them for release from immigration detention. In that context, every element is civil. *See Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) (recognizing immigration detention is "civil detention"); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984) (recognizing removal proceedings are civil). Even immigration actions subject to sui generis procedures, like removal proceedings before an immigration judge, are "purely civil." *Lopez-Mendoza*, 468 U.S. at 1038. A hybrid of a civil action and a civil action is a civil action.

Michelin v. Warden Moshannon Valley Corr. Ctr., 169 F.4th 418 (3d Cir. 2026).

It is clear that Petitioner has standing to seek fees for its immigration habeas petition under the EAJA.

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

Respondent makes no response as to the justification of the government agency's conduct prior to litigation. *See generally* ECF 17 at 4-6. They have waived this argument and failed to

carry their burden of proof.[7] 28 U.S.C. § 2412(d)(2)(D).[8] If this Court wishes to weigh further address Respondent's conduct, their actions during litigation are likewise unjustifiable.

Importantly, Respondent's position has been rebutted not only by this Court, but by Federal Courts throughout the Country. *See* ECF No. 7 at 3-5; ECF No 8 at FN1. As the same party, Respondent is imputed with the knowledge of all of these cases, and rulings against it. At the time of filing, Respondent chose outlier cases in an attempt to establish after the fact justification. After the majority of the briefing, Respondent cited to nonbinding Fifth[9] and Eighth Circuit[10] decisions decided after the onset of this Petition. This Court should not allow Respondent the benefit of hindsight, but instead examine the justification requirement under the EAJA of Respondent's filings at the time they were filed.

Finally, Respondent states its rationale for submitting an abbreviated response to "preserve legal issues,[and] to conserve judicial and party resources". ECF 17 at 6. It is clear that Respondents chose a specific litigation strategy to relieve itself of the burden of fully addressing the Habeas Petition. At the same time, it incorporated arguments and law made in other cases, forcing Petitioner to conduct additional research and briefing. It would be inequitable to allow the Government to wield their lack of required memorandum as a sword and shield

IV. Petitioner's Hours were Reasonable Given the Importance of Habeas Petitions and Respondent's Actions Before and During Litigation

Petitioner was unlawfully detained without a bond hearing. Respondent is the U.S. Government with the full backing of the Department of Justice. Petitioner had no resources to fight the U.S. Government and had to rely on pro bono attorneys to argue his case while he

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[7] Given the shortened page limitation of this Reply under Local Rules 7.1, Petitioner reincorporates its law and argument that the government agency's position prior to litigation was unreasonable and lacked substantial justification. ECF 8-11.

[8] As the government agency's conduct was unreasonable, the Court does not need to consider whether the litigation position was justified. *See Commissioner v. Jean, 496 U.S. 154, 160, (1990).*

[9] Petitioner anticipated Respondent's reliance on this case and reincorporates its arugments made in ECF 16 at 11-12.

[10] Decided on March 25, 2026, well after briefing and after this Habeas had been granted.

remained unlawfully detained from September 2025 until this Court granted the Habeas on February 27, 2026. At any time, Respondent could have afforded him a bond hearing or released him.[11] They refused to do so.

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention and granting swift remedy. *Fay v. Noia*, 372 U.S. 391, 400 (1963). Immigration law and the Government's recent reinterpretation of 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a) has upset decades of prior statutory interpretation and practice, and triggered at least dozens of habeas petitions over the last several months. [ECF 13 at 4-5]. This ongoing upheaval, directly caused by Respondent, necessitated hours of research, analysis of immigration statues and legislative history, reexamination of previously controlling case law, and consultations with other attorneys. Unlike Respondent, who has the benefit of being able to submit truncated responses to "conserve judicial and party resources" in support of its new interpretation of decades old statutes, Petitioner has no such luxury. If Petitioner had failed to conduct research, draft argument, and rebut Respondent's position to the best of its ability, Petitioner would still be unlawfully detained due to Respondent's acts.

Petitioner addresses each specific point by Respondent in turn:

A. Respondent's Actions and the Importance of Habeas Petitions Necessitated the Time Spent Preparing Motions and Filings

Petitioner has already shown that Respondent's upsetting decades of precedent, challenging prior interpretations of well held law, and introducing novel readings of statutes necessitated extensive research and briefing. As part of Petitioner's due diligence, other Traverse examples were viewed, researched to ensure good case law and incorporated into Petitioners filings. Likewise, the time spent preparing for potential Hearing was well grounded and that time

[11] Had the Respondent truly been concerned about taxpayer dollars as it alludes to in its Response it would have provided a 1226(b) substantive bond hearing rather than making Petitioner go before three separate Immigration Judges and litigating this Habeas Petition.

and case law likewise incorporated into various filings before this Court. It is patently absurd that Respondent objects to the drafting of a Traverse and Petitioner's Response to Respondent's supplemental briefings. Petitioner does not have the privilege of being able to submit truncated motions or briefings, especially when Petitioner could have remained unlawfully detained.

B. Only the Primary Attorney is Seeking Fees and Multiple Attorneys May Work on the Same Task

It is axiomatic that multiple attorneys can work on the same task.

> The Eleventh Circuit recognizes that "[t]here is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." Norman, 836 F.2d at 1302 (citing Johnson v. Univ. Coll. Of Univ. of Alabama in Birmingham, 706 F.2d 1205, 1208 (11th Cir. 1983)).
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> Rodriguez v. GeoVera Specialty Ins. Co., 2020 U.S. Dist. LEXIS 216713, at *27-28 (S.D. Fla. 2020).

More to the point, none of these other attorneys billed Petitioner for their time nor is Petitioner requesting the other attorney hours be compensated. Their revisions and input were incorporated into the final versions of various motions and briefs. Each of these individuals made distinct contributions to the filings in this case. Petitioner is entitled to have, at minimum, his primary attorney compensated for this time.

C. Petitioner is Entitled to Time and Work Developing Theory of his Case and for Drafting the Initial Pleadings

Respondent objects to time spent prior to the litigation only identified by dates 12/12/25, 12/16, 12/18/and 12/19.[12] Petitioner acknowledges he cannot recover for fees for the initial work performed before the immigration agencies. However, 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). These entries were spent in preparation for drafting the factual basis of the Habeas Petition, reviewing the procedural posture before

[12] Petitioner is forced to guess which specific entries Respondent is objecting to.

three immigration administrative judges, and legal theories under which to draft the Habeas Petition. Petitioner bore the burden of proof to establish a viable Petition under 28 U.S.C. § 2243. All of these entries are rightfully classified as developing the theory of the case.

D. Petitioner's Time is Reasonable Considering the Requirements Under the EAJA

Petitioner has not spent an unreasonable time reviewing and drafting his Motion for Attorney Fees. The EAJA framework is a statutory means of recovering fees against the government with specific requirements. *See generally* EAJA 28 U.S.C. § 2412 et seq. As Respondent correctly states, attempting to sue the US Government for fees is a difficult process due to potential application of Sovereign Immunity and necessitates strict compliance with the EAJA requirements. Spending hours researching a complex federal statute, its legislative history, and case law applications is reasonable. Incorporating that research, drafting the motion, reviewing affidavits and making judicious redactions takes time.

Finally, Petitioner does not understand Respondent's final argument regarding redactions.[13] The partially redacted time entries are the undersigned's mental impressions and recommendations regarding the legal strategy in filing the Habeas Petition. It is axiomatic that such impressions are confidential and not subject to disclosure. These partial redactions are minor and the substantive portion of the entry is available for analysis.[14] Petitioner requests the Court to rely on the entries themselves rather than Respondent's vague objections.

V. Conclusion

In light of the above, Petitioner renews its request for Fees and reserves its right to supplement its request for the time spent researching Respondent's Response, researching additional case law, and drafting this Reply.

[13] As stated before, Petitioner is not seeking hours for completely redacted entries.
[14] Respondent's lack of specificity reveals the weakness in its argument. Respondent failed to identify any individual redaction that "hampered" their ability to substantively respond.

Dated: April 10th, 2026

Respectfully submitted,
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