U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

April 17, 2026

By ECF
Honorable Ramon E. Reyes
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Diaz Esquibel, et al. v. Francis, et al.*
Civil Action No. 26-cv-0586 (Reyes, J.)

Dear Judge Reyes:

The Respondents respectfully submit this letter brief in opposition to Petitioner Elvis Geovani Diaz Esquibel's motion for attorneys' fees in the amount of $6,853.22 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF 12 (the "Fee Motion"). Because the Respondents' legal position was substantially justified—as reflected by the growing number of courts that have agreed with Respondents, including the Fifth Circuit Court of Appeals, the Eighth Circuit of Appeals, and multiple district courts in this Circuit—the motion should be denied. Moreover, should the Court determine that the motion be granted, the amount awarded should be based upon an hourly rate of $262.77, not $280.87, as requested by the Petitioner.

Background

By the time the Petition was filed, the central legal issue in this case – the interpretation of 8 U.S.C. Section 1225 – had already been extensively litigated, in this district and elsewhere. In response to this Court's February 3, 2026 Order, the Respondents acknowledged that the Court's decision on the relevant statutory interpretation issues in *Chander v. Maldonado*, No. 26-cv-021, would control the result in this case, though the Respondents noted their respectful disagreement with the decision. *See* Respondents February 6, 2026 Letter, ECF 4. After the Petitioner filed a reply in further support of his petition, the Court ordered, inter alia, that the Petitioner be released from detention. *See* Order dated February 10, 2026, ECF 7.

Legal Standard

EAJA is a limited waiver of the United States' sovereign immunity, and therefore "must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991). Under EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C.

§ 2412(d)(1)(A). "The test of whether the Government position is substantially justified is essentially one of reasonableness in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 563-64 (1988) (quoting H.R. Conf. Rep. No. 96-1434, p. 22 (1980)). Substantial justification does not mean "justified to a high degree," but rather is satisfied if there is a "genuine dispute" or "if reasonable people could differ as to [the appropriateness of the contested action]." *Id.*

Argument

A. The Respondents' position was substantially justified.

The Petitioner's Fee Motion should be denied because Respondents' position was substantially justified, as reflected by the growing number of courts that have agreed with Respondents, including the Fifth Circuit Court of Appeals, the Eighth Circuit Court of Appeals, as well as multiple district courts in this Circuit and elsewhere.

A party is only entitled to fees and expenses if "the position of the United States" was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). While Respondents have the burden to show that their position was substantially justified, there is no "presumption that the Government position was not substantially justified simply because it lost the case[.]" *Scarborough v. Principi*, 541 U.S. 401, 414 (2004) (quotation omitted); *see also Cooper v. U.S. R.R. Ret. Bd.*, 24 F.3d 1414, 1416 (D.C. Cir. 1994) (explaining that the reasonableness inquiry "may not be collapsed into our antecedent evaluation of the merits, for EAJA sets forth a 'distinct legal standard'") (quoting *FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986)).

As the Supreme Court has explained, "substantially justified" does not mean " 'justified to a high degree,' but rather 'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce*, 487 U.S. at 565. In other words, "[t]he issue for EAJA purposes is not what the law is when the EAJA application is made, but rather whether the government was substantially justified in believing the law not to have foreclosed its position during the underlying litigation." *CFTC v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999) (per curiam); *see also Vacchio v. Ashcroft*, 404 F.3d 663, 677 (2d Cir. 2005) (United States' position was substantially justified even where the government presented a "viable, but far from compelling, legal theory"). Importantly, "[w]hen the issue is a novel one with little to no precedent, courts have been hesitant to find the government's position not substantially justified." *Michel v. Mayorkas*, 68 F.4th 74, 78 (1st Cir. 2023).

Here, Respondents argued that Section 1225(b)(2)(A) mandated the Petitioner's detention. While it is certainly true that that this Court and numerous others have disagreed with the Government's interpretation and application of Section 1225(b)(2)(A), many courts have agreed with the Respondents' position, including the Fifth Circuit Court of Appeals and the Eighth Circuit Court of Appeals. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, No. 25-3248, --- F. 4th --- (8th Cir. Feb. 19, 2026). And several district court judges in this Circuit have agreed with Respondents' position as well. *See Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.); *Portilla Hernandez v. Noem*, No. 25-cv-10393, 2026 WL 836735 (S.D.N.Y. Mar. 26, 2026) (Halpern, J.); *Yinxiao Chen v. Almodovar*, No. 25 Civ. 9995, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Arana v. Arteta*, No. 26 Civ. 240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Weng v. Genalo*, No. 25 Civ.

9595, 2026 WL 184627 (S.D.N.Y. Jan. 23, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25 Civ. 9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Liang v. Almodovar*, No. 25 Civ. 9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *Azizzadeh v. Rhoney*, No. 25-CV-1288, 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) (Sinatra, J.); *Xiaoquan Chen v. Almodovar*, No. 25 Civ. 8350, ---F. Supp.3d ---, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Candido v. Bondi*, 25-CV-00867-JLS, 2025 WL 3484832, at *3 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.). These judges reasoned, consistent with the Respondents' argument, that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Xiaoquan Chen*, ---F. Supp.3d at ---, 2025 WL 3484855, at *5. While this Court reached a different conclusion on the statutory interpretation issue, these decisions confirm that "the law [did] not [] foreclose[] [Respondents'] position during the underlying litigation." *C.M.Z. v. Zuchowski*, No. 5:22-CV-205, 2025 WL 1911824, at *2 (D. Vt. June 27, 2025) (citing *CFTC*, 169 F.3d at 786).

Given the existence of well-reasoned decisions from federal courts at the district and appellate levels agreeing with Respondents' position, and the absence of controlling authority foreclosing that position, the Respondents' arguments were substantially justified. *See Arana v. Decker*, No. 20 Civ. 4104, 2020 WL 7342833, at *8 (S.D.N.Y. Dec. 14, 2020) (United States' position was substantially justified when there was no "binding authority" or "clear guidance" regarding issues); *Brissett v. Decker*, 324 F. Supp. 3d at 448, 449-50 (S.D.N.Y 2018) (denying EAJA fees in case involving mandatory detention where government's position was substantially justified based on its "reasonable" interpretation of the statute's plain language and "in light of the absence of precedent from the Supreme Court and the Second Circuit" foreclosing the interpretation).

Indeed, in an analogous case in this district, the Honorable Eric R. Komitee denied an EAJA fee motion *sua sponte*, concluding that, "[g]iven the split within this circuit concerning the appropriate interpretation of 8 U.S.C. § 1225, the Court cannot conclude that the government's position lacks a 'reasonable basis both in law and fact.'" Feb. 2, 2026 Docket Order, *Singh v. Maldonado*, No. 26-cv-0292 (E.D.N.Y.).[1]

B. <u>The Petitioner has miscalculated the hourly rate.</u>

If the Court does not deny Petitioner's request entirely, any fees awarded be reduced because Petitioner incorrectly calculated the hourly rate by using different CPI-U figures in the "numerator" and "denominator" of his calculation. Specifically, the Petitioner's quoted figure of 350.003 for the Current CPI-U was taken from the CPI-U index for New York-Newark-Jersey City, NY-NJ-PA, in which the CPI-U in March 1996 was 166.5 (not 155.7 as

[1] The Respondents acknowledge the recent decision in *L.R.C. v. Maldonado*, No. 25-cv-6825, 2026 WL 946787 (E.D.N.Y. Apr. 7, 2026), in which Judge Donnelly granted the petitioner's request for EAJA fees. The Respondents note that, in this case, unlike in *L.R.C.*, the Government advanced its position in response to the petition after the Fifth Circuit rendered its ruling in *Mendez v. Bondi*, and after a greater number of district courts within this Circuit had agreed with the Government's position.

Petitioner states). *See* attached Consumer Price Index data; *see also L.R.C. v. Maldonado*, No. 25-cv-6825, 2026 WL 946787 (E.D.N.Y. Apr. 7, 2026) ("The CPI-U for the New York region in March 1996 was $166.50.") This would equate to an adjusted fee rate of $262.77, not $280.87 as the Petitioner claims.

Conclusion

For the reasons stated, the Court should deny the Petitioner's Fee Motion.

Respectfully submitted,

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Use for actions commenced on or after March 29, 1996

Consumer Price Index
All Urban Consumers - (CPI-U)
N.Y. - Northern N.J. - Long Island, NY-NJ-CT
All Items
(1982-84=100)

YEAR	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.	AVG.
1996			**166.5**	166.0	166.4	166.5	166.7	167.2	168.2	168.2	168.4	168.5	167.3
-	-	-	-	-	-	-	-	-	-	-	-	-	-
2017	266.917	267.662	267.582	267.948	268.183	268.666	268.051	268.657	270.059	269.575	269.381	269.564	268.520
2018	270.771	272.214	272.196	272.950	274.001	274.170	274.073	274.441	275.455	275.101	274.478	273.836	273.641
2019	275.144	275.823	276.570	277.441	278.068	278.802	278.817	279.428	279.338	279.255	279.468	279.816	278.164
2020	282.020	282.577	281.975	280.623	282.092	282.333	283.624	283.478	284.551	284.121	283.291	284.350	282.920
2021	285.525	286.474	287.481	289.493	290.991	293.872	293.553	293.927	295.488	296.472	297.490	296.865	292.303
2022	300.164	301.151	305.024	307.781	309.243	313.589	312.615	313.280	313.880	314.338	314.975	315.656	310.141
2023	318.151	319.295	319.038	319.211	320.002	321.290	322.496	324.380	325.613	325.288	324.520	324.691	321.998
2024	328.006	328.606	329.829	331.270	332.633	334.782	335.642	336.534	337.889	338.166	338.535	338.610	334.209
2025	341.144	342.333	342.508	344.047	343.886	346.332	346.385	347.266	348.096		348.620	350.003	345.511
2026													

Hourly Rates Based on Cost of Living Adjustment (COLA)

YEAR	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.	AVG.
1996			**$125.00**	$124.62	$124.92	$125.00	$125.15	$125.53	$126.28	$126.28	$126.43	$126.50	$125.57
-	-	-	-	-	-	-	-	-	-	-	-	-	-
2017	$200.39	$200.95	$200.89	$201.16	$201.34	$201.70	$201.24	$201.69	$202.75	$202.38	$202.24	$202.38	$201.59
2018	$203.28	$204.36	$204.35	$204.92	$205.71	$205.83	$205.76	$206.04	$206.80	$206.53	$206.06	$205.58	$205.44
2019	$206.56	$207.07	$207.64	$208.29	$208.76	$209.31	$209.32	$209.78	$209.71	$209.65	$209.81	$210.07	$208.83
2020	$211.73	$212.14	$211.69	$210.68	$211.78	$211.96	$212.93	$212.82	$213.63	$213.30	$212.68	$213.48	$212.40
2021	$214.36	$215.07	$215.83	$217.34	$218.46	$220.62	$220.39	$220.67	$221.84	$222.58	$223.34	$222.87	$219.45
2022	$225.35	$226.09	$229.00	$231.07	$232.16	$235.43	$234.70	$235.20	$235.65	$235.99	$236.47	$236.98	$232.84
2023	$238.85	$239.71	$239.52	$239.65	$240.24	$241.21	$242.11	$243.53	$244.45	$244.21	$243.63	$243.76	$241.74
2024	$246.25	$246.70	$247.62	$248.70	$249.72	$251.34	$251.98	$252.65	$253.67	$253.88	$254.16	$254.21	$250.91
2025	$256.11	$257.01	$257.14	$258.29	$258.17	$260.01	$260.05	$260.71	$261.33		$261.73	$262.77	$259.39
2026													

Using data from
U.S. Department of Labor
Bureau of Labor Statistics
(212) 337-2400 http://stats.bls.gov/cpi