UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L.S.M.,

Petitioner,

- against -

KENNETH GENALO, *et al.*,

Respondents.

No. 26 Civ. 942 (JAV)

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

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Respondents (the "Government" or "Respondents"), by their attorney Jay Clayton, United States Attorney for the Southern District of New York, respectfully submit this memorandum of law in opposition to Petitioner's motion for attorneys' fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF Nos. 16-18 (hereinafter "Fee Motion" or "Mot.").

Preliminary Statement

Petitioner L.S.M. ("Petitioner") seeks an award of attorneys' fees under the EAJA in the amount of $13,946.63. Because the Government's position was substantially justified and special circumstances render a fee award improper, the motion should be denied. If the Court disagrees and determines that Petitioner is eligible for an award of fees under the EAJA, the Court should reduce the fee request because it does not reflect a reasonable expenditure of hours on this matter, and Petitioner improperly seeks to recover law clerk time at the same rate as attorney time.

BACKGROUND

A. Underlying Litigation

Petitioner is a citizen of Guatemala who unlawfully entered the United States without inspection at an unknown place and time. He evaded apprehension at the border, and he was arrested by immigration authorities for the first time when U.S. Immigration and Customs Enforcement ("ICE") encountered and arrested him in New York on November 10, 2025. Following his arrest, ICE served Petitioner with a Notice to Appear charging him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), and he was placed into removal proceedings. Pending removal proceedings, ICE detained Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A).

On February 3, 2026, Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2241, seeking immediate release from ICE custody. ECF No. 1. The next day, the Court issued an order directing the Government to file a letter responding to certain questions within

two days. ECF No. 4. On February 6, 2026, the Government filed the required letter, and in that letter, acknowledged that the Court had previously decided in a prior case[1] the precise legal issue presented—i.e., whether the statutory authority for Petitioner's detention was 8 U.S.C. § 1225(b)(2)(A) or 8 U.S.C. § 1226(a)—and, in an effort to expedite the Court's consideration of the case and conserve judicial and party resources, further acknowledged that the facts of this case were materially indistinguishable from the Court's prior decision, and that the Court's prior decision would control the result in this case. ECF No. 9. Shortly after the filing of that letter, the same night, the Court issued a memorandum opinion and order granting the petition, and ordering Petitioner's immediate release. ECF No. 10. The Court adhered to its prior decision, meaning that Petitioner could not be detained under § 1225(b)(2)(A), and because ICE had not provided Petitioner with the process due under § 1226(a), his detention was unlawful. *Id.* Judgment was entered on March 18, 2026. ECF No. 22. No appeal was filed, and so the judgment became "final" for EAJA purposes after May 18, 2026. *See, e.g.*, *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991).

B. Petitioner's Fee Motion

On March 9, 2026, Petitioner filed the Fee Motion, along with supporting documentation, requesting $13,946.63 in fees and expenses under the EAJA. ECF No. 16. Specifically, Petitioner seeks fees for a total of 49.4 hours of attorney and law clerk time at a rate of $281.75 per hour.[2] *See* ECF No. 18.

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[1] *Mcdonald v. Francis*, No. 25-cv-9355 (JAV).

[2] Broken down, Petitioner seeks compensation for 29.4 hours of law clerk time and 20.1 hours of attorney time. He seeks the EAJA rate for both law clerks and attorneys.

LEGAL STANDARDS

Sovereign immunity generally deprives a court of authority to award attorney's fees against the United States. *See United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 20-21 (1926). By enacting EAJA, Congress waived that sovereign immunity in part and authorized an award of fees in certain cases. *Ardestani v. INS*, 502 U.S. 129, 136 (1991). Importantly, EAJA "is not an automatic fee-shifting statute in favor of litigants who prevail against the government." *Zapon v. DOJ*, 53 F.3d 283, 284 (9th Cir. 1995). Rather, the statute "must be construed strictly in favor of the United States." *Ardestani*, 502 U.S. at 136.

EAJA allows prevailing parties in non-tort civil lawsuits brought by or against the United States (or one of its agencies) to recover legal fees and expenses.[3] To be awarded attorney's fees under the EAJA, the plaintiff must, among other things: (1) demonstrate that he is the "prevailing party"; (2) demonstrate that he is eligible to receive an award; (3) enumerate the amount sought; (4) show the rate at which fees were computed; and (5) allege that the position of the United States was not substantially justified. *See* 28 U.S.C. § 2412(d); *see Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 158 (1990). The EAJA only authorizes the payment of "reasonable" attorneys' fees and expenses. 28 U.S.C. § 2412(d)(2)(A).

ARGUMENT

The Court should deny Petitioner's Fee Motion because the Government's position was substantially justified and because special circumstances render an award of fees improper. If the Court determines otherwise, the Court should reduce the amount of any fee award because

[3] The Second Circuit has held that habeas petitions are "civil actions" for the purposes of the EAJA. *Vacchio v. Ashcroft*, 404 F.3d 663, 667–72 (2d Cir. 2005). However, there is a circuit split on this issue, and thus Respondents preserve this issue for appeal.

Petitioner improperly bills law clerk time at the EAJA attorney rate, and because, in part, it does not reflect a reasonable expenditure of hours.

A. The Fee Motion Should Be Denied in its Entirety

1. Respondents' Position was Substantially Justified

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 the Government has the burden to show that its 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, 415 (2004); *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 *Fed. Elec. Comm'n 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 v. Underwood*, 487 U.S. 552, 565 (1988) (quoting Advisory Committee's Notes on 1970 Amendments to Fed. R. Civ. P. 37(a)(4)). Further, "[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." *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 787 (2d Cir. 1999)); *see also Vacchio v. Ashcroft*, 404 F.3d 663, 677 (2d Cir. 2005) (the United States' position was substantially justified where the government presented a "viable, but far from compelling, legal theory" in case concerning mandatory detention).

The Court's ruling against the Government in this case does not entitle Petitioner to fees because there is reasonable disagreement nationwide regarding the principal legal issue in this

case—whether a noncitizen in Petitioner's position is subject to detention under 8 U.S.C. § 1225(b)(2)(A), as Respondents assert, or under 8 U.S.C. § 1226, as Petitioner asserts. The Board of Immigration Appeals ("BIA")—the highest administrative appellate body in the United States for interpreting and applying immigration laws—issued a decision adopting ICE's application of § 1225(b)(2) in September 2025. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). And while the majority of district courts have disagreed with the Government's application of § 1225(b)(2)(A), there are nonetheless courts—within this District and elsewhere—that have ruled in favor of the Government's position that § 1225(b)(2)(A) governs detention of a noncitizen in Petitioner's position. In this District, five district court judges—Judges Vyskocil, Cronan, Rearden, Woods, and Halpern—have ruled in the Government's favor on this legal issue. *See, e.g.*, *Liang v. Almodovar*, No. 25-cv-9322 (MKV), 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Chen v. Almodovar*, No. 25-cv-9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026); *Weng v. Genalo*, No. 25-cv-9595 (JHR), 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026); *Arana v. Arteta*, No. 26-cv-240 (GHW), 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026); *Portilla Hernandez v. Noem*, No. 25 Civ. 10393 (PMH), 2026 WL 836735 (S.D.N.Y. Mar. 26, 2026); *see also, e.g.*, *Candido v. Bondi*, No. 25-cv-867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Saamishvili v. Flanagan*, No. 25-cv-6178 (BMC), 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026).

And the Courts of Appeals to directly address the issue so far—the Second, Fifth, Sixth, Eighth, and Eleventh Circuits—are split (with four of the five decisions being split 2-1 decisions), with three decisions ruling against the Government and two ruling in favor of the Government. *See Lopez-Camps v. Raycraft*, --- F.4th ----, 2026 WL 1283891 (6th Cir. May 11, 2026) (in a split 2-1 decision, ruling against the Government's interpretation); *Hernandez*

Alvarez v. Warden, Federal Detention Center Miami, --- F.4th ----, 2026 WL 1243395 (11th Cir. May 6, 2026) (in a split 2-1 decision, ruling against the Government's interpretation); *Barbosa da Cunha v. Freden*, --- F.4th ----, 2026 WL 1146044 (2d Cir. Apr. 28, 2026) (in a unanimous decision, ruling against the Government's interpretation); *Herrera Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) (in a split 2-1 decision, ruling in favor of the Government's interpretation); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (in a split 2-1 decision, ruling in favor of the Government's interpretation).

Courts in this district have recognized that "[r]easonable minds can differ" and until "additional authority from higher courts" on the legal issue presented in Petitioner's habeas case is available, district courts "continue to try [their] best to wrestle with complicated questions of law in good faith." *Goorakani v. Lyons*, No. 25-cv-9456 (DEH), 2025 WL 3632896, at *12 (S.D.N.Y. Dec. 15, 2025); *accord Chen*, 2026 WL 100761, at *14.

The Government's legal position has been accepted by two U.S. Courts of Appeals (and by the dissents on two others), the Board of Immigration Appeals, and a minority of district courts (including five in this District). Although this Court has ruled against Respondents on the merits in this case, the split in federal courts as to the validity of ICE's statutorily grounded application of § 1225(b)(2)(A) demonstrates that reasonable minds can differ on the Government's position, and it is therefore "substantially justified" under the EAJA. *See Vacchio v. Ashcroft*, 404 F.3d 663, 675 (2d Cir. 2005) ("[T]he issue is far from settled law, the Government's legal argument is far from unreasonable, and it thus cannot be said that the Government's position on the question is not substantially justified."); *cf. Kirkland v. Railroad Retirement Bd.*, 706 F.2d 99, 105 (2d Cir. 1983) ("On the facts of this case, we believe the Board

has sustained its burden of showing that its position, although erroneous, was not so devoid of legal or factual support that a fee award is appropriate.").

In the past months, courts across the country who have disagreed with Respondents' position that § 1225(b)(2)(A) mandates detention of applicants for admission have nonetheless rejected EAJA fee applications in connection with habeas cases hinging on Respondents' interpretation. For example, a district court in New Mexico found that it was "unable to say that a position is substantially unjustified, which requires only reasonableness in law and in fact, when a Court of Appeals, the Fifth Circuit, as well as district courts across the country, embrace that same position" and did not permit the petitioner to file an EAJA fee motion. *Garcia-Lopez v. Castro*, No. 25-cv-1144 (JB) (SCY), 2026 WL 524082, at *36 (D.N.M. Feb. 25, 2026). So too did a district court in Nebraska. *Sanchez Lopez v. Jeffreys*, No. 25-cv-3241 (SMB), 2026 WL 309994, at *2 n.3 (D. Neb. Feb. 5, 2026) ("[T]he Court cannot say that the Federal Respondents' pre-litigation decision to treat [the petitioner] as being subject to mandatory detention under § 1225, while not ultimately correct in this Court's view, lacked a reasonable basis in law or fact."); *see also Martinez Amaya v. Bondi*, No. 26-cv-1945 (ESK), 2026 WL 1078278 (D.N.J. Apr. 21, 2026) (denying EAJA fee motion, noting "The statutory interpretation of § 1225(b)(2) is rapidly evolving. Therefore, I cannot say that respondents' position in this Court was unjustified."); *Chang v. Mullin*, No. 26-cv-3019 (SMB), 2026 WL 915456, at *2 (D. Neb. Apr. 3, 2026) ("Though this Court found the Federal Respondents' argument unavailing, it cannot go so far as to say they lacked a 'reasonable basis in law and fact,' particularly when they are made—at the time—'in such an open area of the law'") (quoting *Bah v. Cangemi*, 548 F. 3d 680, 6843 (8th Cir. 2008)). And within the Second Circuit, a Vermont district court similarly denied EAJA fees under these exact circumstances. *See Lala Inamagua v. Hale*, No. 25-cv-892 (GWC),

ECF No. 24 (D. Vt. Jan. 22, 2026) (concluding "the government ha[d] met its burden of showing that its position was 'substantially justified'" despite finding the government's position incorrect in the underlying habeas case); *Lopez v. Trump*, No 25-cv-863 (GWC), 2026 WL 114708, at *2 (D. Vt. Jan. 14, 2026) (holding that "the Government's position cannot be described as unjustified" because, although ruling against the Government in that case, "other courts have differed, and there is no authoritative appellate guidance on the issue"). Because the Government's position was substantially justified, the Fee Motion should be denied.

2. Special Circumstances Render a Fee Award Improper

Alternatively, and for similar reasons, the Court should find that "special circumstances" render a fee award under the EAJA inappropriate. *See* 28 U.S.C. § 2412(d)(1)(A). This exception to the EAJA operates, in part, to ensure "that the Government is not deterred from advancing in good faith the novel but credible extensions of the law that often underlie vigorous enforcement efforts." *Taylor v. United States*, 815 F.2d 249, 252 (3d Cir. 1987) (citing legislative history); *cf. Roanoke River Basin Ass'n v. Hudson*, 991 F.2d 132, 139 (4th Cir. 1993) ("While the EAJA redresses governmental abuse, it was never intended to chill the government's right to litigate or to subject the public fisc to added risk of loss when the government chooses to litigate reasonably substantiated positions, whether or not the position later turns out to be wrong."). Here, the Government advanced a credible argument that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioner—an argument and interpretation that has been upheld by two courts of appeals and accepted by other judges, including five in this District. The Court should therefore deny the Fee Motion.

B. If Eligible for Fees, the Fee Motion Should Be Reduced

1. Law Clerks are Not Entitled to the Attorney EAJA Hourly Rates

To begin, Petitioner seeks attorney's fees at the EAJA hourly rate for both law clerks and attorneys.[4] That is improper. It is well settled that law clerks are not compensated at attorney rates (here, $281.75). Rather, law clerks may be billed only at market rate. *See, e.g.*, *Burkett v. Houslanger & Assocs., PLLC*, 2020 WL 7000188, at *3 (E.D.N.Y. July 23, 2020) ("Judges in [the EDNY] generally compensate law clerks at the same rates as paralegal assistants."), *report and recommendation adopted as modified*, 2020 WL 5834429 (E.D.N.Y. Sept. 30, 2020); *cf. Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590 (2008) (hold that for EAJA, a prevailing party may recover paralegal fees from the Government at prevailing market rates).

Courts in this District have held that law clerks may be compensated at rates between $100 to $125. *See, e.g.*, *Taveras v. City of New York*, No. 20 Civ. 1200 (AS), 2024 WL 756361, at *1 (S.D.N.Y. Feb. 23, 2024) ("The Court will reduce the hourly rate further to $100 for these tasks because the 'prevailing hourly rate for non-attorney staff, including law clerks, paralegals, and clerical staff, is $100 in this District.'" (citation omitted)); *Argudo v. RUGO, LLC*, No. 21 Civ. 5511 (GHW), 2023 WL 6811664, at *4 (S.D.N.Y. Oct. 16, 2023) (finding law clerk rate of $100 to be "commensurate with the hourly rate charged by law clerks in wage-and-hour cases in this district").

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[4] Petitioner provides no support for why law clerks—recent law school graduates who have not passed the bar—are entitled to compensation at the same rate as attorneys. The Supreme Court has explained that, "[t]o inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence" of the proper fee amounts. *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984).

Thus, from the total fee award sought, separating attorney time from law clerk time, and billing them at appropriate rates, would lead to a total fee award sought of $9,338.17 (20.1 hours of attorney time at 281.75 = $5,663.17 plus 29.4 hours of law clerk time at $125 = $3,675).

2. Any Fee Award Should Be Reduced Based on Insufficiently Documented and Excessive Work

Should the Court award fees in this case, the fee demand should be reduced because it is unreasonable. Where a prevailing party qualifies for EAJA fees, "a court may award *reasonable* fees and expenses of attorneys." 28 U.S.C. § 2412(d)(2)(A) (emphasis added); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433–34 (1983) (compensating only time that is "reasonably expended on the litigation"). The EAJA does not entitle a prevailing party to compensation of *all* billed hours—only those *reasonably expended* on the litigation. In preparing a fee request, the petitioning party must exercise "billing judgment," *i.e.*, "make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 434. The burden is on the movant "to keep and present records from which the court may determine the nature of the work done, the need for it, and the amount of time reasonably required." *F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1265 (2d Cir. 1987).

To begin with, entries on the counsel's time sheets reflect overstaffing, which merits the Court's consideration of the reasonableness of the EAJA fee petition. *See R.F.M. v. Nielsen*, No. 18-cv-5068 (LLS) (OTW), 2020 WL 6393583, at *7 (S.D.N.Y. May 4, 2020), *report and recommendation adopted* 2020 WL 6393718 (S.D.N.Y. May 20, 2020) (Government's concern about overstaffing "is not without merit, and courts in the Second Circuit have reduced fee awards based on overstaffing.") (citing *See Houston v. Cotter*, 234 F. Supp. 3d 392, 404-06 (E.D.N.Y. 2017) (reducing the amount of fees requested by Cleary Gottlieb in a Section 1983 action and citing cases); *ACE Ltd. v. Cigna Corp.*, No. 00-cv-9423 (WK), 2001 WL 1286247, at

*3 (S.D.N.Y. Oct. 22, 2001) (("It is well-recognized that when more lawyers than are necessary are assigned to a case, the level of duplication of efforts increases.") (citing *General Electric Co. v. Compagnie Euralair, S.A.*, No. 96-cv-884 (SAS), 1997 WL 398627, at *4 (S.D.N.Y. July 3, 1997))); *Gillberg*, 1996 WL 406682, at *5 ("Obviously, more lawyers leads to more 'conference' time as well as to a certain amount of repetition or 'learning curve' billing which should not be compensable.")).

Here, Petitioner's legal team's timesheets reflect billing by three attorneys and three law clerks for work on a habeas petition that did not raise novel or complex issues; to the contrary, it raised the same legal issues that had been brought in hundreds if not thousands of other habeas cases throughout the country. The entries do not reflect a division of labor so as to show that there was no or little duplication of effort—all six members of the legal team billed time on drafting and reviewing the habeas petition. *See* ECF Nos. 18-1, 18-4. Overstaffing on the case warrants this Court's consideration of a reduction of the fee request. *Hensley*, 461 U.S. at 434 ("The district court should exclude from this initial fee calculation hours that were not reasonable expended. Cases may be overstaffed. . .") (internal quotation marks and citation omitted); *see, e.g.*, *R.F.M.*, 2020 WL 6393583, at *7 (10% reduction agreed to by the parties warranted to address overstaffing); *see also Make Road New York v. Blinken*, No. 19-cv-11633 (GBD) (OTW), 2024 WL 4664712, at *14-15 (S.D.N.Y. Sept. 4, 2024) (accepting counsel's preemptive 10% discount to account for "any inadvertent duplication in attorney time" consequent to the size of the attorney team).

In addition to the overstaffing issue, many of the entries on the time records submitted by Petitioner's attorneys are impermissibly vague, and thus are subject to reduction on this basis as well. *See, e.g.*, *Hensley*, 461 U.S. at 433 (noting that "[w]here the documentation of hours is

inadequate, the district court may reduce the award accordingly"); *id.* at 441 (Burger, C.J., concurring) ("[T]he party who seeks payment must keep records in sufficient detail that a neutral judge can make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed."). For example, time records reflect numerous entries for "draft and revise"; "emails"; and "review" (ECF Nos. 18-2, 18-4)—which fail to provide any detail regarding what work was actually done during any of those given entries.

Courts have reduced or eliminated requests where the descriptions like these are too vague to assess for reasonableness. *See, e.g.*, *F.H. Krear*, 810 F.2d at 1265 ("Katz's time sheets, for example, customarily described his activities in no more than two or three words for any given day, such as 'Rev. Docs' and 'Clients re testimony.'"); *Clarendon Nat'l Ins. Co. v. Compuplan, LLC*, No. 03 Civ. 7966 (LAP) (KNF), 2006 U.S. Dist. LEXIS 88161, at *20 (S.D.N.Y. Dec. 5, 2006) (time entries such as "draft documents" failed to describe adequately the work performed); *Vishipco Line v. Charles Schwab & Co.*, No. 02 Civ. 7823 (SHS), 2003 WL 1936142, at *2 (S.D.N.Y. Apr. 23, 2003) (time entries such as "legal research" too vague to allow court to determine reasonableness of time expended); *Shannon v. Fireman's Fund Ins. Co.*, 156 F. Supp. 2d 279, 301 (S.D.N.Y. 2001) (time entries such as "legal research," which do not indicate the subject matter of the work performed, "do not permit a thorough evaluation"); *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991) (criticizing vague entries such as "legal research," "trial prep," or "met w/client"); *Mercado v. Colvin*, No. 15 Civ. 2283 (JCF), 2016 WL 6271139, at *2 (S.D.N.Y. Oct. 26, 2016) (generic descriptions in time entries are alone a basis for reducing fee award); *D.J. ex rel. Roberts v. City of New York*, No. 11 Civ. 5458 (JGK) (DF), 2012 WL 5431034, at *7 (S.D.N.Y. Oct. 16, 2012) (collecting cases, and stating entries that

"merely state[] that 'research' was performed, without describing the issues for which research was required are generally considered too vague to justify full recovery").

Furthermore, there are numerous blocked-billed entries, warranting a further reduction. To name a few, there is an entry for "draft arguments and relief sought, petition, statement of facts; emails with team and BDS about draft papers and filing"—3.7 hours; "review and analyze documents for client habeas petition; review and revise draft habeas petition; emails with team and BDS regarding same—1.7 hours; "review court opinion granting habeas, correspondence with BDS and OMM teams, government regarding conditions of release, review government letter; draft and file letter related to same"— 3 hours; "emails and discussions regarding potential hearing; review record and correspondence about release conditions; telephone conference with M. Gonzalez and confer with BDS regarding strategy; draft, format, and file letter"— 1.6 hours. ECF No. 18-1.

The Second Circuit approvingly noted that "the obfuscation inherent in block billing frequently renders it impossible to determine the reasonableness of specific charges aggregated within the block billing," and has affirmed percentage reductions of fee awards on this basis. *Green v. City of New York*, 403 F. App'x 626, 630 (2d Cir. 2010); *accord Hines v. City of Albany*, 613 F. App'x 52, 55 (2d Cir. 2015) (affirming percentage reduction in fees, in part due to the prevalence of block-billed time entries). Indeed, courts have held "[f]ee applicants should not 'lump' several services or tasks into one time sheet entry because it is then difficult if not impossible for a court to determine the reasonableness of the time spent on each of the individual services or tasks provided." *Williams v. N.Y.C. Hous. Auth.*, 975 F. Supp. 317, 327 (S.D.N.Y. 1997). "It is not the court's job to decipher time entries and guess how much time each activity took." *Id.* Because many of the time entries in this case are block-billed, most of which are not

susceptible to parsing for reasonableness, it is impossible to determine what is compensable, and should therefore be subject to sizeable reduction.

Finally, Petitioner's counsel's billing records reveal excessive billing for a habeas case which presented indistinguishable facts from hundreds—if not thousands—brought across the country, and for which Respondents essentially conceded based on the Court's prior decision in this case. In determining whether an attorney's hours are excessive or unnecessary, a court may consider the complexity of the case and the familiarity of counsel with the subject matter at issue. *See, e.g.*, *Banks v. Berryhill*, No. 10 Civ. 6462 (KMK) (JCM), 2017 WL 3917141, at *3–4 (S.D.N.Y. June 30, 2017), *report and recommendation adopted*, 2017 WL 3923676 (S.D.N.Y. Sept. 6, 2017). For a case such as this, it is unreasonable for Petitioner's legal team to seek fees for approximately 50 hours of work. *See Rothschild v. Arcadia Recovery Bureau, LLC*, No. 17 Civ. 721 (VB), 2017 WL 6512303, at *1 (S.D.N.Y. Dec. 19, 2017) (finding, in routine case, "18 hours investigating the facts and the law and initiating the action, and 12 hours reviewing the answer and preparing for and attending the initial conference, is plainly excessive" in case that was "quickly resolved"). Indeed, Petitioner's legal team spent nearly 25 hours drafting the habeas petition, which, again, did not raise novel or complex issues, and presented legal issues that had been widely litigated at that point. ECF No. 18-1.

Courts often employ "across the board percentage cuts" as a penalty for block billing and the use of vague entries. *Cathay Bank v. Seo*, No. 06 Civ. 15445 (LTS) (RLE), 2009 WL 5341672, at *5 (S.D.N.Y. Dec. 16, 2009) (collecting cases); *see also Lee v. Mani & Pedi Inc.*, No. 20 Civ. 10787 (JCM), 2022 WL 3645118, at *12 (S.D.N.Y. Aug. 24, 2022) (percentage reduction warranted for block billing and use of vague entries). Here, should the Court grant fees at all, it would be appropriate to reduce the proposed amount by at least 35% (after the

hourly rates are fixed for the law clerks, *see supra*). *See, e.g.*, *Guardians Ass'n of Police Dep't of New York v. City of New York*, 133 F. App'x 785, 786 (2d Cir. 2005) (affirming 80% reduction for "excessive, redundant, or unnecessary hours" in case that "involved only the filing of a complaint and an amended complaint, opposition to a motion to consolidate with another case, some preliminary discovery and interrogatory issues, a settlement, and a fee application"); *Gym Door Repairs, Inc. v. Total Gym Repairs*, No. 15 Civ. 4244 (JGK) (OTW), 2023 WL 6519626, at *16 (S.D.N.Y. Mar. 31, 2023) (reduction of 75% for excessive billing, block billing, and vague entries), *report and recommendation adopted*, 2023 WL 6390156 (S.D.N.Y. Sept. 29, 2023); *Romeo & Juliette Laser Hair Removal, Inc. v. Assara I, LLC*, No. 08 Civ. 442 (TPG) (FM), 2013 WL 3322249, at *8 (S.D.N.Y. July 2, 2013) (reduction of 75% for billed hours "that were either excessive or otherwise unreasonable"), *aff'd*, 679 F. App'x 33 (2d Cir. 2017).

CONCLUSION

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

Dated: New York, New York
May 29, 2026

Respectfully submitted,

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