UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L.S.M.
Petitioner,

v.

Kenneth GENALO, New York Field Office Director for U.S. Immigration and Customs Enforcement; Paul ARTETA, Warden of Orange County Correctional Facility; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. 26-CV-00942 (JAV)

REPLY BRIEF IN SUPPORT OF PETITIONER'S MOTION FOR ATTORNEYS' FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

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INTRODUCTION

Petitioner is entitled to recover fees under the Equal Access to Justice Act ("EAJA") because, as explained in Petitioner's opening brief, ECF No. 17 ("Petitioner's Fee Motion"), and below, he satisfies the EAJA criteria. The Government's attempt to argue otherwise and to show that its position was "substantially justified and because special circumstances render an award of fees improper," ECF No. 25 ("Opp." or "Opposition") at 3, falls flat.

The Government cannot meet its burden of showing its position was substantially justified. As it acknowledges in its Opposition, the Government conceded that this Court had already decided "the precise legal issue presented" on "materially indistinguishable" facts as raised in L.S.M.'s habeas petition, and that the Court's prior decision "would control the result in this case." Opp. at 2. And contrary to its assertion that "reasonable minds can differ" on whether Section 1225(b)(2)(A) governed L.S.M.'s detention, Opp. at 6, the tally in this Circuit tells the real story: as of mid-February 2026, the Government had prevailed in only roughly fifteen cases on this issue and lost in approximately 145. *See K.B. v. Arteta*, 26-CV-01428 (JAV), 2026 WL 1533794, at *2 (S.D.N.Y. June 1, 2026) (Vargas J.). The Government's position—rejected by most federal courts across the country and by this very Court—was not substantially justified.

As a fallback, the Government argues that special circumstances render a fee award improper because it advanced a credible extension of the law. *See* Opp. at 8. But the alleged reasonability of the Government's position does not constitute a special circumstance. And the equities point against the Government. L.S.M. was held in mandatory detention for nearly three months based on an interpretation of the INA this Court had already rejected, and this litigation was his avenue to freedom.

The Government's remaining objections—the law clerk rate, block-billed time entries, and "overstaffing"—are equally unavailing and addressed in turn below.

For the reasons set forth in Petitioner's Fee Motion and in this Reply, L.S.M. respectfully requests that the Court grant his motion and award $13,946.63 in attorneys' fees.

ARGUMENT

Pursuant to the EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in 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, 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). Thus, courts must grant requests for "fees and other expenses" under the EAJA where: (1) the petitioner is a "prevailing party"; (2) the Government's position was not substantially justified; and (3) no special circumstances make an award unjust. *Id.* "Fees and other expenses" include reasonable attorneys' fees. 28 U.S.C. § 2412(d)(2)(A).

As set forth in Petitioner's Fee Motion, Petitioner meets all requirements for an EAJA award and the requested attorneys' fees of $13,946.63 are reasonable.[1]

A. THE GOVERNMENT'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED

"Once a party has demonstrated that it is a prevailing party under the EAJA, the burden shifts to the government to demonstrate that its litigation position was 'substantially justified.'" *Williams v. Kijakazi*, 797 F. Supp. 3d 164, 171 (E.D.N.Y. Aug. 28, 2025) (quoting *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999)). To meet that burden, the

[1] Petitioner is not seeking to recover any expenses, paralegal hours, or hours spent on the EAJA motion under the EAJA. *See* ECF No. 18, March 9, 2026, Declaration of Mia N. Gonzalez ("Gonzalez Decl."), at ¶ 11.

Government "must make a 'strong showing' that its action was 'justified to a degree that could satisfy a reasonable person.'" *Healey v. Leavitt*, 485 F.3d 63, 67 (2d Cir. 2007) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). The Government's position ultimately must have "had a reasonable basis in both law and fact." *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 505 (S.D.N.Y. 2025). Whether the Government's position was substantially justified depends on "not what the law now is, but what the Government was substantially justified in believing it to have been." *Pierce*, 487 U.S. at 561.

First, the Government does not contest that Petitioner was the prevailing party in this case. Second, the Government cannot meet its burden to show its position was substantially justified. This Court's decision in *K.B. v. Arteta, et al.*, 2026 WL 1533794, at *2 (S.D.N.Y. June 1, 2026) is instructive. There, confronting substantially similar facts, the Court held that the Government "failed to 'demonstrate that its litigation position was substantially justified.'" *Id.* at *2. Consistent with its position in *K.B.*, here, the Government acknowledged that this Court decided in a prior case "the precise legal issue presented" in the context of "materially indistinguishable" facts and that the "decision would control the result in this case." *See* Opp. at 2. Yet the Government adhered to its interpretation of the INA—even though it was "contrary to the overwhelming weight of authority in this Circuit." *Mcdonald v. Francis*, 2025 WL 3295906, at *3 (S.D.N.Y. Nov. 26, 2025) (internal quotations omitted). The Government also relied on the same erroneous interpretation of the INA as it did in *K.B.*—one which flouted "'the plain text of the relevant provisions; . . . the statute's context, structure, history, and purpose; . . . the Supreme Court's established understanding of Sections 1225 and 1226; . . . and Executive Branch practice over thirty years and across five Presidential administrations.'" *K.B.*, 2026 WL 1533794, at *2 (cleaned up) (quoting *Barbosa da Cunha v. Freden*, 175 F.4th 61, 69 (2d Cir.

2026)). Its position "was not then—and is not now—substantially justified." *Merlo Puerto v. Leeper*, 26-CV-405, 2026 WL 1600665, at *6 (E.D.N.Y. June 4, 2026).

The Government argues its position is substantially justified 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)." Opp. at 4–5. But "'the overwhelming majority of federal judges across the Nation who considered the Government's position have concluded that the Government's novel interpretation of the immigration statutes defies their plain text.'" *K.B.*, 2026 WL 1533794, at *2 (cleaned up) (quoting *Freden*, 175 4th at 69); *see also Freden*, 175 F.4th at 71 (rejecting government's interpretation of Section 1225(b)(2)(A) and observing that "[o]ur holding is consistent with the decisions of . . . over ninety percent of district court judges [that] have sided with Petitioner"). And in this Circuit—as of mid-February 2026—the Government "had prevailed in only approximately fifteen cases, while losing in approximately 145 cases." *Id.*, at *2 (cleaned up) (quoting *Freden*, 175 4th at 72). "[T]his lopsided record indicates that the Government's litigation position lacks substantial justification." *Id.*; *see also L.R.C. v. Maldonado*, 25-CV-6825 (AMD), 2026 WL 946787, at *2 (E.D.N.Y. Apr. 7, 2026) (awarding attorneys' fees under the EAJA because the government's position "'did not and had never had a reasonable basis in statutory text, structure, or history, and had been rejected with near unanimity in the overwhelming majority of cases across the country." (cleaned up)).

The Government had no reason to believe its position was substantially justified in L.S.M.'s case, particularly in the face of the "overwhelming" rejection of that position. *Mcdonald*, 2025 WL 3295906, at *3; *see also Freden*, 175 F.4th at 69.

B. THERE ARE NO SPECIAL CIRCUMSTANCES THAT WOULD MAKE AN AWARD UNJUST

Where the Government's position was not substantially justified, a court may decline to award fees under the EAJA only where "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The "special circumstances" exception "function[s] as an equitable 'safety valve,'" and "its contours can emerge only on a case-by-case basis." *Vincent v. Comm'r of Soc. Sec.*, 651 F.3d 299, 304 (2d Cir. 2011). The Second Circuit has found such "special circumstances" where the prevailing party's "own misconduct created the circumstances that led to the litigation," or "when that party's contributions to the litigation's success were 'marginal, duplicative and unnecessary.'" *Id.* (citing *Oguachuba v. I.N.S.*, 706 F.2d 93, 94 (2d Cir. 1983) and *United States v. 27.09 Acres of Land, More or Less, Situated in Town of Harrison & Town of N. Castle*, 43 F.3d 769, 771 (2d Cir. 1994)). "That few courts apparently have relied upon this special circumstances exception to EAJA awards in denying fee applications is evidence that the circumstances of a case will infrequently justify a denial of an award." *Torres v. Barnhart*, No. 02 Civ. 9209 (AJP), 2007 WL 1810238, at *13 (S.D.N.Y. June 25, 2007) (cleaned up).

The Government argues the Court should find "special circumstances" and render a fee award improper because it "advanced a credible argument that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioner." Opp. at 8. But the "reasonability of its position" does not amount to a special circumstance. *Trichilo v. Sec'y of Health & Hum. Servs.*, 832 F.2d 743, 745 (2d Cir. 1987). And the Government does not—and cannot—claim that Petitioner "violated any [] specific equitable principles." *Torres*, 2007 WL 1810238, at *13. Instead, the equities strongly favor L.S.M., who was unlawfully detained for almost three months based on the Government's unjustified reinterpretation of the INA. The necessity of this action arose solely from the Government's conduct, and the Government's refusal to remedy their unlawful actions left this litigation as

L.S.M.'s sole recourse. Nothing about L.S.M.'s case suggests that an EAJA fee award would be unjust. *Cf. K.B.*, 2026 WL 1533794, at *3.

C. L.S.M.'S FEES AND COSTS ARE REASONABLE AND WELL-DOCUMENTED

1. The Law Clerks Should be Entitled to the EAJA Hourly Attorney Rate

The Government's position on the appropriate rate for law clerks mischaracterizes both the law and the facts. With respect to the law, the Government argues that "law clerks are not compensated at attorney rates" and that "law clerks may be billed *only at* market rate." Opp. at 9 (emphasis added). Even a case the Government cites explains that the appropriate rate is determined by a reasonableness inquiry that considers, among other factors, "the nature of the work performed by [the law clerk]." *Argudo v. RUGO, LLC*, No. 1:21-cv-5511-GHW, 2023 WL 6811664, at *4 (S.D.N.Y. Oct. 16, 2023). Courts within this Circuit have found that billing associates at the same rate "both pre and post bar admi[ssion]" is reasonable. *See, e.g., Myree v. Loc. 41, Int'l Bhd. of Elec. Workers*, 847 F. Supp. 1059, 1065 n. 6 (W.D.N.Y. 1994), *aff'd sub nom. Myree v. IBEW, Loc. 41*, 29 F.3d 620 (2d Cir. 1994) (rejecting the defendant's argument that "the billing rate for associate time should be adjusted to reflect a different billing rate for work performed before and after [the associate] was admitted to the bar," noting that "[t]his is especially true in the present case, where [the associate,] who devoted considerable time to this matter, performed commendably.").

As explained in Petitioner's Fee Motion, the law clerks drafted the habeas petition and supporting papers and assisted with the subsequent letters Petitioner filed—legally substantive work typically performed by an attorney. *See* Gonzalez Decl. ¶ 10. Unlike the law clerk in *Argudo*, whose time entries detail work that was predominantly clerical and administrative in nature, the three law clerks in this case "devoted considerable time to this matter" and took part in substantive legal research and drafting of a habeas petition, making it reasonable that their pre-

bar admission rate in this instance would be the same as what their rate would be post-bar admission, *i.e.*, the rate of an attorney. *See Argudo v. Rugo, LLC*, No. 1:21-cv-05511-GHW, D.I. 94 and D.I. 94-1 (S.D.N.Y. Oct. 4, 2023) (Decl. of A. Weiss); *Myree v. Loc. 41*, 847 F. Supp. at 1065 n. 6.

With respect to the facts, the Government's assertion that "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," Opp. at 9 n. 4, ignores facts that are clearly in the record. All three law clerks had passed the New York Bar Exam by the time they worked on the Petition. *See* Gonzalez Decl. ¶ 10. Moreover, as Petitioner illustrated in his Fee Motion and supporting materials, *id.*, the substantive nature of the work performed by the law clerks in connection with the Petition, and the fact that they had all passed the New York Bar, but had not been admitted, constitutes sufficient evidence to meet Petitioner's burden of "inform[ing] and assist[ing] the court in the exercise of its discretion" of the proper fee amounts. *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984).

2. The Work Was Adequately Documented, and the Requested Hours Are Reasonable

Despite the Government's assertion that Petitioner's time entries were "impermissibly vague," Opp. at 11, "billing descriptions that are fairly general" can be "sufficiently concrete when viewed in context." *See Nnebe v. Daus*, No. 06-CV-04991 (RJS), 2022 WL 612967, at *7 (S.D.N.Y. Mar. 1, 2022). Here, the context provides clarity. In this case, Petitioner's legal team quickly mobilized to research and draft a habeas petition on an expedited basis because L.S.M. faced a high risk of being transferred out of the jurisdiction through one of the many mass transfers taking place at the time. *See* Gonzalez Decl. ¶ 10; *see also* Aala Abdullahi and Geoff Hing, *ICE Detained Them, and Then They Vanished*, THE MARSHALL PROJECT (June 1, 2026),

https://www.themarshallproject.org/2026/06/01/ice-transparency-immigrants-disappear-transfers. Most of the team's hours were billed on one day, February 3, 2026, and everyone partook in drafting and revising various sections of the habeas petition in tandem. Even if the Court were to determine that a reduction is appropriate, *Nnebe* suggests that the Government's request for a 35% across-the-board reduction is unreasonable given the sufficient specificity of Petitioner's time entries.

Next, the Government argues that the fee request should be reduced because L.S.M.'s legal team was allegedly overstaffed because it was comprised of three lawyers and three law clerks. But, "[i]n assessing the extent of staffing and background research appropriate for a given case, a district court must be accorded ample discretion." *New York State Ass'n for Retarded Child., Inc. v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983). The "use of multiple attorneys… is not unreasonable per se." *Williamsburg Fair Hous. Comm. v. Ross-Rodney Hous. Corp.*, 599 F. Supp. 509, 518 (S.D.N.Y. 1984) (rejecting a request to reduce hours on the basis of using multiple attorneys because "each attorney made a distinct contribution by his presence or participation").

Although the Government is correct that this matter did not present novel questions, it fails to consider the exigent circumstances L.S.M.'s legal team worked under due to the government's practice of moving detainees out of the jurisdiction quickly and without warning. Work that would typically be performed over a longer period of time was compressed principally into a single calendar day, with O'Melveny & Myers LLP ("O'Melveny") and Brooklyn Defender Services ("BDS") working together, and this context drastically shapes the scope and complexity of this matter. *See* Gonzalez Decl. Exs. 1, 4. Furthermore, Petitioner is seeking recovery of 49.5 hours—45.1 hours of legal work performed by O'Melveny and 4.4 hours of

legal work performed by BDS, *see* Gonzalez Decl. ¶ 10, which is close to the amount this Court found reasonable in a similar matter. *See K.B. v. Arteta*, 2026 WL 1533794, at *4 ("find[ing] the following hours of legal work reasonable: 36.5 hours of legal work performed by Covington attorneys… and 5.27 hours of legal work performed by Legal Aid Society attorneys").

Finally, the Government claims that the attorneys' use of block billing warrants an automatic 35% fee deduction. *See* Opp. at 14. But "the practice is by no means prohibited in this Circuit because block billing will not always result in inadequate documentation of an attorney's hours." *Raja v. Burns*, 43 F.4th 80, 87 (2d Cir. 2022). The relevant question is whether the District Court can conduct a meaningful review of the billing records and determine reasonableness. *Id.*; *see also Restivo v. Hessemann*, 846 F.3d 547, 591 (2d. Cir. 2017) ("[B]lock billing is not preferred [but] it is permissible so long as the records allow the court to conduct a meaningful review of the hours requested.").

Like in *Raja*, the billing record in this case is not voluminous. Here, the submitted time entries for Petitioner's Motion total four pages and are contained to a time period of just over a week, with most of the time spent on a single day. *See* Gonzalez Decl. Exs. 1, 4. Thus, the Court can adequately review the time entries to assess which tasks were substantive versus clerical. *Raja*, 43 F.4th at 89. Importantly, the Second Circuit has held that, "[i]dentifying specific deficient entries in this way may justify itemized reductions or a very modest overall reduction, but it does not on its own reasonably lead to a substantial across-the-board cut—much less one as steep as 40%." *Id.* at 90.

L.S.M. therefore respectfully requests that the Court find that the rate requested and the hours expended on this matter are reasonable.

CONCLUSION

For the foregoing reasons, Petitioner respectfully seeks to recover $13,946.63 in attorneys' fees incurred in bringing this Petition and securing L.S.M.'s release from his unlawful detention by the Government.

Date: June 9, 2026

Respectfully submitted,

By: */s/ Mia N. Gonzalez*

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