UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03120-NYW

JOSE MANUEL LOA CABALLERO,

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GAUDIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

MOTION FOR AWARD OF ATTORNEY'S FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

I. Introduction

Petitioner-Plaintiff, Jose Manuel Loa Caballero ("Mr. Loa Caballero") moves for an award of attorney's fees and expenses pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Defendants-Respondents ("Defendants") unlawfully jailed Mr. Loa Caballero under its new and erroneous interpretation of 8 U.S.C. §§ 1226, 1225(b)(2). This Court granted, in part, Mr. Loa Caballero's Verified Petition for Writ of Habeas Corpus (ECF 1), "readily conclud[ing]" that Defendants incarcerated Mr. Loa Caballero under the wrong statute. *Loa Caballero v. Baltazar*, 25-cv-03120-NYW, 2025 WL 2977650, at *8 (D. Colo. Oct. 22, 2025).

Mr. Loa Caballero is therefore a prevailing party entitled to attorney's fees and expenses. Mr. Loa Caballero also meets the EAJA net worth limitation. Defendants' position was not substantially justified and there are no special circumstances that make an award unjust. 28 U.S.C. § 2412(d)(1)(A). Mr. Loa Caballero, through counsel, therefore moves the Court for an award of $14,000. The parties have conferred and the Defendants oppose this motion.

II. Summary of Factual and Procedural History

Mr. Loa Caballero has resided in the United States for approximately 20 years. ECF 1, at ¶ 1. He grew up in Colorado Springs, Colorado where he graduated from Harrison High School and earned an associate degree in art from Pikes Peak Community College. *Id.* He is deeply involved in his community, is employed, and has only minor contact with the criminal legal system. *Id.* Immigration and Customs Enforcement ("ICE") jailed Mr. Loa Caballero on September 17, 2025 and issued him a Notice to Appear ("NTA"), charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at ¶ 2. ICE

also served Mr. Loa Caballero a Notice of Custody Determination stating that ICE was jailing him "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." ECF 6-2, at *6. ICE served Mr. Loa Caballero with a warrant for his arrest that same day, which noted ICE's authority to jail Mr. Loa Caballero pursuant to § 1226(a). ECF 6-2, at *8. Despite ICE issuing three separate documents confirming that its statutory authority to jail Mr. Loa Caballero was pursuant to § 1226(a), Defendants inexplicably changed course and argued that Mr. Loa Caballero was subject to mandatory detention in § 1225(b)(2).

Both the § 1226 and § 1225 detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before immigration judges ("IJ") explaining that, in general, people who entered the country without inspection (also known as "present without admission") were *not* detainable under § 1225 and instead could only be detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts were entitled to bond hearings under § 1226(a) when

placed in § 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

Despite this long-standing practice and the plain text of the statute, a solitary member of the Board of Immigration Appeals ("BIA") issued a two-page unpublished and non-precedential decision on May 22, 2025 holding that noncitizens who entered the United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission." On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," constituted a complete upheaval of statutory interpretation, agency case law, decades of agency practice, and agency regulation, to claim that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who have resided in the U.S. for many years, like Mr. Loa Caballero.

Mr. Loa Caballero filed his Verified Petition for Writ of Habeas Corpus ("Petition") on October 3, 2025, asking for immediate release or a custody redetermination hearing under § 1226(a) within seven days. (ECF 1). He also filed a Temporary Restraining Order and/or Preliminary Injunction ("TRO") asking for the same (ECF 6). This Court granted, in

part, Mr. Loa Caballero's Petition on October 22, 2025, and denied his TRO as moot (ECF 18). *Loa Caballero*, 2025 WL 2977650, at *9. The Court "readily conclude[d]" that Defendants' position that Mr. Loa Caballero was subject to § 1225(b)(2) was "unlawful." *Id.*, at *8. The court ordered that Defendants provide him with a § 1226(a) bond hearing within seven days at which ICE must carry the burden to demonstrate that his custody was necessary. *Id.* at *9. The IJ conducted that hearing on October 29, 2025, and ordered Mr. Loa Caballero released from custody upon payment of $7,500. Mr. Loa Caballero's family attempted to post bond on several occasions, but ICE did not release him from custody for an additional 96 hours after the IJ granted bond. *Loa Caballero*, 2025 WL 2977650, ECF 20, 20-1.

III. Legal Standard for EAJA Applications

A court shall award fees and other expenses to the eligible prevailing party in an action against the United States when that party files a timely and complete application for fees, the government's position was not substantially justified, and no special circumstances exist that would make an award unjust. 28 U.S.C. § 2412(d)(1)(A)–(B); *Al-Maleki v. Holder*, 558 F.3d 1200, 1204 (10th Cir. 2009). The prevailing party must have a net worth of less than two million dollars. 28 U.S.C. § 2412(d)(2)(B)(i). These fundamental EAJA principles apply equally in a habeas corpus action challenging immigration custody. *Daley v. Ceja, et al.*, 158 F.4th 1152, 1166 (10th Cir. 2025) (finding that "EAJA's broad language to unambiguously authorize fees in habeas actions challenging immigration detention").

IV. Argument

a. <u>The Fee Application is Timely</u>.

An EAJA application for fees and other expenses must be filed "within thirty days of final judgement in the action." 28 U.S.C. § 2412(d)(1)(B). The thirty-day EAJA clock does not begin to run until after the time to appeal an effective final judgement expires. *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). In district court cases, a party has 60 days after the final judgment or order is entered by the district court to file an appeal. Fed. R. App. P. 4(a)(1)(B). An EAJA fee application must be filed within 30 days after the expiration of the 60-day period for filing an appeal. The Court entered its order granting, in part, Mr. Loa Caballero's habeas petition on October 22, 2025, and terminated the case on December 2, 2025. ECF 22. This motion is therefore timely.

b. Mr. Loa Caballero is an Eligible and Prevailing Party.

Mr. Loa Caballero is an eligible party under EAJA because he is a private individual whose net worth does not exceed $2,000,000. *See* Exhibit 1; 28 U.S.C. § 2412(d)(2)(B)(i) (requiring net worth to "not exceed $2,000,000 at the time the civil action was filed").

Mr. Loa Caballero is also an eligible party because he is the prevailing party. A party is the "prevailing party" when his or her suit results in a "judicially sanctioned change in the legal relationship of the parties, *Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Resources*, 532 U.S. 598, 604–05 (2001), such that the party "could obtain a court order to enforce the merits of some portion of the claim it made in its suit", *Biodiversity Conservation Alliance v. Stem*, 519 F.3d 1226, 1230 (10th Cir. 2008); *see also Iqbal v. Holder*, 693 F.3d 1189, 1193–94 (10th Cir. 2012) (applying *Buckhannon* to EAJA).

Here, Mr. Loa Caballero is the prevailing party. *Loa Caballero*, 2025 WL 2977650, at *9. This Court found that Defendants decision to jail Mr. Loa Caballero under §

1225(b)(2) was unlawful. *Id.* As such, this Court granted Mr. Loa Caballero's petition, in part, and ordered Defendants to provide him with a bond hearing. *Id.* Because this Court granted Mr. Loa Caballero's habeas petition, he is a "prevailing party" for EAJA purposes.

c. Defendants' Pre-Litigation and Litigation Position was Not Substantially Justified.

As the prevailing party, Mr. Loa Caballero is entitled to fees because the government cannot show that its position "was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). "The position of the United States is defined in the EAJA as the position taken by the United States in the civil action [and] the action or failure to act by the agency upon which the civil action is based" *Al-Maleki*, 558 F.3d at 1206–07 (quoting 8 U.S.C. § 2412(d)(2)(D)). The government's prelitigation actions, including those of the relevant agencies, and its litigation position "are both relevant to the inquiry and must be reasonable in fact and law." *Id.* at 1207 (citation omitted); *Role Models America, Inc., v. Brownlee*, 353 F.3d 962, 967 (DC. Cir. 2004) ("The government . . . must demonstrate the reasonableness not only of its litigation position, but also of the *agency's* actions") (citation omitted, emphasis in original).

Congress placed a heavy burden of proof on the government to establish that its position was substantially justified. H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. 10, 13–14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government"). To meet this burden, the government must show that its position was both factually and legally reasonable. *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988); *Al-Maleki*, 558 F.3d at 1207 (noting that the government "bears the burden of establishing its position [as] justified to a degree that could satisfy a

reasonable person"). The government's position is not justified if it violates or misapplies a clear, unambiguous law. *E.g.*, *Role Models Am., Inc.*, 353 F.3d at 967.

Courts have found that it would be an "abuse of discretion" to find Defendants' position substantially justified if it violates the Constitution, a statute, or its own regulations. *Meinhold v. U.S. Dep't of Defense*, 123 F.3d 1275, 1278 (9th Cir. 1997). Where an agency violates its own regulations in adjudicating a case, the Court may find a per se lack of substantial justification. *Mendenhall v. National Transp. Safety Bd.*, 92 F.3d 871, 874-76 (9th Cir. 1996); *see also Role Models Am.,* 353 F.3d at 967 (D.C.) (no substantial justification when position unsupported by text of applicable regulation). A "string of losses can be indicative" of a position that is not substantially jusitified. *Pierce*, 487 U.S. at 569.

Here, the Court must award Mr. Loa Caballero fees because the government's pre-litigation and litigation positions were not substantially justified.

i. *Defendants' Pre-Litigation Position was Not Substantially Justified.*

The government's decision to jail Mr. Loa Caballero pursuant to § 1225(b)(2) bucked nearly thirty years of practice and was "inconsistent with the statute's plain language . . . [and] inconsistent with the related implementing regulations." *Loa Caballero*, 2025 WL 2977650, at *7.

That is particularly true where—as here—Defendants' pre-litigation "treatment of [Mr. Loa Caballero] appears to conflict with their assertion that he is detained pursuant to § 1225." *Id.* at *8. Indeed, "the Government's own detention paperwork suggest[ed] that Mr. Loa Caballero is detained under § 1226." *Id.* That paperwork included a notice of custody determination, a notice to appear, and a warrant that "supports the conclusion

that Mr. Loa Caballero [was] detained under § 1226." *Id.* Defendants' provided no justification to ignore its own, multiple determinations that Mr. Loa Caballero was eligible for a bond hearing under § 1226(a). Defendants' decision to reverse course and argue that Mr. Loa Caballero was subject to § 1225(b)(2) mandatory detention was therefore not substantially justified.

ii. Defendants' Litigation Position was Not Substantially Justified.

The government's litigation position was equally unreasonable. Every Judge in the District who has considered Defendants' position has found it unlawful. *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4, ECF 16 (D. Colo. Jan. 15, 2026). This District's unanimity is perhaps unsurprising since Defendants' position "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026).

That is particularly true here because an agency must "defend its actions based on the reasons *it gave when it acted* in the interest of promoting agency accountability, instilling confidence in agency decisions, and maintaining an orderly process of review." *DHS v. Regents of the Univ. of Cal.*, 591 US. 1, 24 (2020) (emphasis added). Here, because ICE first "affirmatively decided to treat [Mr. Loa Caballero] as being detained under Section 1226(a)[,] it cannot now be heard to change its position to claim that he is detained under section 1225(b)." *Marrero Yera v. Baltazar, et al.*, 1:26-cv-00476-SCK-SBP, 2026 WL 472014, at *2 (D. Colo. Feb. 19, 2026) (quotation omitted). In other words, Defendants' complete reversal of course to argue that ICE could jail Mr. Loa Caballero under § 1225(b)(2) is not substantially justified.

Indeed, as this Court and district courts across the country have observed, "[Defendants'] interpretation of § 1225 is contrary to the agency's own implementing regulations; it's published guidance; the decisions of immigration judges (until very recently); decades of practice; the Supreme Court's gloss on the statutory scheme; and the overall logic of our immigration system." *Loa Caballero*, 2025 WL 2977650, at *8 (quotation omitted). Under these circumstances, including the overwhelming number of cases decided against them, "[o]ne might assume that" Defendants would acknowledge that "enforcing executive policies premised on a contrary illegal interpretation is improper." *Maldonado Bautista v. Santacruz*, ---F.Supp.3d---, 2026 WL 468284, at *3 (C.D. Cal. Feb. 18, 2026). "Remarkably, that has not been the case." *Id.* Instead, Defendants took a position that was not substantially justified, requiring Mr. Loa Caballero to bring this case to secure his liberty. Such a "string of losses" is not substantially justified. *Pierce*, 487 U.S. at 569.

Perhaps equally remarkable was the government's decision to violate its binding regulations requiring bond hearings for people like. Mr. Loa Caballero. *See* ECF 1, at ¶¶ 20, 41–45; ECF 6, at **12–13. In fact, the government's response does not contest that Defendants violated the regulations. *See generally* ECF 13. The Defendants' failure to abide by its own regulations cannot be substantially justified. *See Mendenhall*, 92 F.3d at 874–76.

Mr. Loa Caballero merits attorney's fees because Defendant's pre-litigation and/or litigation positions were not substantially justified.

d. <u>No Special Circumstances Exist Making an Award of EAJA Fees Unjust</u>.

This case does not present "special circumstances" rendering a grant of an EAJA award "unjust." 28 U.S.C. § 2412(d)(1)(A). Special circumstances include the government advancing in good faith novel but credible extensions and interpretations of law. H.R. Rep. No. 1418 at 11, 86th Cong., 1980 U.S. C.C.A.N. 4984, 1990. This provision must be narrowly construed so as not to interfere with or defeat Congress' purpose in passing EAJA. *E.g.*, *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985). Much like the substantial justification inquiry, the burden of proving the special circumstances rests with the government. *Id.* Defendants are unable to do so in this case.

V. The Requested Fees are Reasonable Under the EAJA.

Mr. Loa Caballero seeks fees in the amount of $8,949 for the litigation of his petition for habeas corpus, and $5,051 for the litigation to date on his EAJA motion. Mr. Loa Caballero believes that enhanced rates should be awarded for the time spent by attorneys Hans Meyer and Conor Gleason. 28 U.S.C. § 2412(d)(2)(A)(ii); *Pierce*, 487 U.S. at 563; *Nadarajah v. Holder*, 569 F.3d 906, 912 (9th Cir. 2009). Mr. Loa Caballero additionally seeks the EAJA statutory rate, with a cost-of-living adjustment, for time spent by attorney Daniel Herrera, and rates for work performed by law clerks, paralegals, and support staff.

Attached are contemporaneous time records documenting the time undersigned Counsel's office has spent on the merits of the habeas petition and the EAJA fee request. Exh. 8, 9. Counsel's office has not billed certain administrative tasks, eliminated time not properly chargeable to Defendants, and the costs of litigation in the exercise of sound billing judgment. *Id.* Therefore, the fees sought are reasonable.

a. Attorneys Hans Meyer and Conor Gleason are Entitled to Fees in Excess of the Adjusted Statutory Rate Because They Possess Special Expertise That was Needed for the Litigation.

"Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation. . . ." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Here, Mr. Loa Caballero received the relief he sought in his petition for habeas corpus. The hours sought are reasonable and thus he should be fully compensated for all hours requested.

Mr. Loa Caballero is entitled to fees in excess of the statutory rate for counsel Hans Meyer and Conor Gleason because this case required specialized expertise involving complex immigration litigation experience. The EAJA expressly authorizes fees in excess of the statutory rate of $125 per hour, adjusted for cost-of-living, when "a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii). The Supreme Court agrees. *Pierce*, 487 U.S. at 563, 572 (acknowledging that higher fees are appropriate when "attorneys having some distinctive knowledge or specialized skill [were] needful for the litigation in question. . . . Examples . . . would be an identifiable practice specialty such as patent law, or knowledge of foreign law or language").

The statutory cap may be exceeded if 1) the attorney has a "distinctive knowledge or specialized skill;" 2) such knowledge and skills were necessary for the litigation; and 3) similar knowledge and skills could not have been obtained at the statutory rate. *Pierce*, 487 U.S. at 572; *Hanson Colorado Farms Partnership v. Vilsack*, No. 11-cv-00675-RPM, 2012 WL 4336174, at **4–5 (D. Colo. Sept. 21, 2012). The "limited availability of counsel exception" is appropriate where "specialized legal services cannot be obtained in the market" for the EAJA statutory rate. *Vibra-Tech Engineers, Inc. v. U.S.*, 787 F.2d 1416, 1420 (10th Cir. 1986).

It is well established that the field of immigration law is considered one of the most difficult and complex areas of law. *See Castro-O'Ryan v. U.S. Dept. of Immigration and Naturalization*, 847 F.2d 1307, 1312 (9th Cir. 1987) (characterizing the immigration laws as "second only to the Internal Revenue Code in complexity.") (quoting E. Hull, *Without Justice for All* 107 (1985)); see also *I.N.S. v. National Center for Immigrant' Rights, Inc.*, 502 U.S. 183, 196, 112 S.Ct. 551, 559 (1991) (describing "the complex regime of immigration law"). Circuits have recognized that immigration law itself is a narrow legal specialty which may be considered a special factor to raise the EAJA fees in excess of the statutory cap. *See, e.g., Jean v. Nelson,* 863 F.2d 759, 774, n.12 (11th Cir. 1988); *Rueda-Menicucci v. INS*, 132 F.3d 493, 496 (9th Cir. 1997) ("a specialty in immigration law could be a special factor warranting an enhancement of the statutory rate"); *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) ("With only a small degree of hyperbole, the immigration laws have been termed second only the Internal Revenue Code in complexity."). This Court has similarly recognized that "knowledgeable attorneys are limited and that immigration issues are often complex and novel." *Barber v. Weber*, 2005 WL 1846985, at *2 (D. Colo. Aug. 1, 2005).

As explained by expert practitioners in the field of immigration law, qualified counsel was not available in this case at the statutory rate provided under EAJA, even if adjusted for inflation. As immigration attorney Jeff Joseph explains based on nearly three decades of experience practicing immigration law in Colorado, "it is my opinion that no such litigators would be available at the EAJA statutory rate even when adjusted for inflation." Exh. 4, Jeff Joseph Declaration ¶ 13 ("Joseph Declaration"). *See also* Exh. 5, Jessica Dawgert Declaration ¶ 10 ("Dawgert Declaration) ("It is my professional opinion

that attorneys with comparable qualifications to Hans Meyer and Conor Gleason are not reasonably available to handle this type of litigation at or near the EAJA statutory rate, even when adjusted for inflation."); Exh. 6, Aaron Hall Declaration ¶ 14 ("Hall Declaration); Exhibit 7, Mark Barr Declaration ¶ 14 ("Barr Declaration").

Rather, this litigation required the specialized experience and knowledge that Mr. Meyer and Mr. Gleason have regarding the interplay of immigration law, immigration detention litigation, and federal court litigation in habeas. These skills were essential to litigate this case and was not available at the EAJA statutory rate. As Jeff Joseph explains, "I can definitively say that out of the more than 400 current AILA members located in Colorado, less than ten of them have the expertise and specialized knowledge necessary to litigate these types of complex habeas corpus cases . . . Hans Meyer and Conor Gleason are two of these highly specialized litigators." Joseph Declaration ¶ 13. He further explains that they were "also at the forefront of this litigation early on to challenge this untested detention theory in the Tenth Circuit." Joseph Declaration ¶ 14.

Ms. Dawgert notes that "Mr. Meyer and Mr. Gleason are among a small group of attorneys nationwide—and an even smaller group in Colorado—who have a specialized expertise in the issues necessary to bring challenges to DHS's novel policies over the last year." Dawgert Declaration ¶ 10. She further elaborates that they are "highly specialized litigators who have the experience and knowledge to effectively practice this niche area of the law and have been at the forefront of this litigation to challenge these detention practices." Dawgert Declaration ¶ 9. Mr. Hall also explains, "Hans Meyer and Conor Gleason are two of the few seasoned litigators with the skills to successfully litigate these types of challenges to new and untested theories of mandatory immigration detention"

Hall Declaration ¶ 13.

Mr. Meyer has practiced law for over 19 years. Exh. 2, Affidavit of Hans Meyer ("Meyer Affidavit"). He is a seasoned litigator with experience challenging unlawful immigration detention and agency action in federal habeas corpus litigation and petitions for review. This includes challenges to the scope of mandatory detention under 8 U.S.C. § 1226(c) in *Baquera v. Longshore*, 948 F. Supp. 2d 1258, 1259 (D. Colo. 2013) and *Andujo v. Longshore*, 14-cv-01532-REB (D. Colo. June 26, 2014). Meyer Affidavit ¶ 6. He has also litigated several cases before the Tenth Circuit Court of Appeals. *Johnson v. Barr*, 967 F.3d 1103 (10th Cir. 2020), (successfully arguing that the Colorado controlled substance schedule is not a categorical match to the federal controlled substance schedule and therefore a Colorado controlled substance offense does not trigger the grounds of removal or mandatory immigration detention); *Aguayo v. Garland* 78 F.4th 1210 (10th Cir. 2023) (establishing the availability of termination of removal proceedings as a remedy for ICE officer violations of federal statute and agency regulation); *Berdiev v. Garland*, 13 F.4th 1125 (10th Cir. 2021) (successfully challenging an erroneous Board of Immigration Appeals decision for failure to correctly exercise *sua sponte* authority to reopen removal proceedings). Meyer Affidavit ¶ 7.

Mr. Gleason is also a seasoned litigator with 12 years of experience in challenging unlawful immigration detention through federal habeas corpus litigation. Exh. 3, Affidavit of Conor Gleason ("Gleason Affidavit"). His experience litigating in federal court is expansive, including novel litigation regarding the burdens in custody hearings, *L.G. v. Choate*, 744 F.Supp.3d 1172 (D. Colo. 2024); *Darko v. Sessions*, 342 F.Supp.3d 429 (S.D.N.Y. 2018), issues involving prolonged immigration detention, *Sheikh v. Choate*, No.

22-cv-01627-RMR (D. Colo. Jul. 27, 2022), and EAJA fees for habeas litigation for noncitizens, *Arias v. Choate*, 1:22-cv-02238-CNS, 2023 WL 4488890 (D. Colo. Jul. 12, 2023). Gleason Affidavit ¶ 3.

Both Mr. Meyer and Mr. Gleason were appointed by the Honorable Judge Rodriguez as class counsel together with the ACLU of Colorado for the conditionally certified class action lawsuit in *Mendoza Guiterrez v. Baltasar et al.*, 1:25-cv-02720-RMR, ECF 47 (D. Colo. Nov. 21, 2025) that challenged the same unlawful detention practices at issue in this case.[1] Meyer Affidavit ¶ 9; Gleason Affidavit ¶ 4. Prior to that suit, they filed one of the first challenges in this circuit to the unlawful detention practices at issue in this case. *Ramirez Ovando v. Baltasar*, 1:25-cv-02597-PAB, ECF 7 (D. Colo. Aug. 27, 2025) (dismissed as moot after ICE released Mr. Ramirez Ovando from custody). Meyer Affidavit ¶ 9; Gleason Affidavit ¶ 4.

Mr. Meyer and Mr. Gleason continue to litigate new and complex habeas corpus cases in this district to challenge other instances of unlawful detention. This includes a successful habeas challenge ICE's unlawful use of the automatic stay provision at 8 C.F.R. § 1003.19(i)(2) to detain a noncitizen otherwise eligible for release on bond. *Balderas-Rivas v. Baltazar, et al.,* No. 26-cv-00442, 2026 WL 444732 (D. Colo. Filed Feb. 5, 2026). It also includes challenges to post-removal order immigration detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), *see e.g. Nguyen v. Baltazar, et al.*, 1:26-cv-00434-GPG (D. Colo. filed Feb. 4, 2026) (pending), as well as habeas challenges related

[1] Mr. Meyer has also been appointed as class counsel by the Honorable R Brooke Jackson alongside the ACLU of Colorado and other co-counsel in the pending class action case of *Ramirez Ovando v. Noem*, ---F.3d---, 2025 WL 3293467 (D. Colo. Nov. 25, 2025), a case which challenges ICE's practice of conducting warrantless arrests without making a flight risk determination as required by federal law.

to the detention of noncitizens who have valid Deferred Action for Childhood Arrival (DACA) or Temporary Protected Status (TPS) and those who are re-detained by ICE without proper due process protections. *Rodriguez Romero v. Baltazar, et al.*, 1:25-cv-03743-KAS (D. Colo. filed Nov. 19, 2025) (voluntarily dismissed after ICE released petitioner). Meyer Affidavit ¶ 10-11; Gleason Affidavit ¶ 5.

Respected immigration litigators Jeff Joseph, Jessica Dawgert, Aaron Hall, and Mark Barr – who are all familiar with the complex issues raised in Petitioner's case – attest to "the limited availability of qualified attorneys" in the market and that Attorney Meyer and Attorney Gleason possession "distinctive knowledge or specialized skill needful for the litigation" the justify an award of enhanced rates in this case. 28 U.S.C. § 2412(d)(2)(A)(ii); *Pierce*, 487 U.S. at 563, 572.

b. Petitioner's Requested Fees Are Reasonable

Once it is established that the attorneys possess specialized skills and knowledge, and that those skills and knowledge were needed for the litigation, attorneys are to be compensated at prevailing market rates. *Pierce*, 487 U.S. at 571-72; 28 U.S.C. § 2412(d)(2)(A); *Nadarajah*, 569 F.3d at 916. "[T]he proper scope of comparison . . . extends to all attorneys in the relevant community engaged in equally complex Federal litigation, no matter the subject matter." *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010).

There are several matrices used by court in determining a reasonable market rate in EAJA fee determinations. One is the "Laffey Matrix," a table issued by the Department of Justice which provides hourly rates in Washington, D.C., which was initially adopted by the Court in *Laffey v. Northwest Airlines*, 572 F. Supp. 354, 371 (D.D.C. 1983), *aff'd in*

par, rev'd in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984). Notably, in *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454–55 (9th Cir. 2010), the Ninth Circuit held that the district court did not abuse its discretion in awarding rates *higher* than those dictated by the *Laffey* Matrix. The Laffey Matrix rates for an attorney like Mr. Meyer with 19 years of litigation experience is $1,019 per hour, and for an attorney like Mr. Gleason with 12 years of litigation experience is $948 per hour.[2]

However, to avoid dispute over this matter and to seek compromise, Petitioners are willing to use an alternative matrix used to calculated reasonable market rates known as the "Fitzpatrick Matrix" – or sometimes referred to as the United States Attorney's Office Fee Matrix ("USAO Fee Matrix"). Exh. 9.[3] The Fitzpatrick Matrix was developed by the U.S. Attorney's Office for the District of Columbia, and courts in the District of Columbia and the Ninth Circuit have approved its use. *See J.T. v. D.C.*, 652 F. Supp. 3d 11, 24–36 (D.D.C. 2023); *Koonwaiyou v. Blinken*, 724 F. Supp. 3d 1222, 1234 (W.D. Wash. 2024). The Fitzpatrick Matrix rate for attorney Hans Meyer with 19 years of litigation experience is $840 per hour, and for attorney Conor Gleason with 12 years of litigation experience is $754 per hour. Here, Mr. Meyer and Mr. Gleason further agree to discount their request for fees by an additional 15% from the Fitzpatrick Matrix rates. As a result, Mr. Meyer seeks reimbursement at a rate of $714 per hour and Mr. Gleason seeks reimbursement at a rate of $640 per hour.

Courts have found hourly rates over $800 reasonable for civil litigation attorneys with similar years of experience. *See e.g. Koonwaiyou v. Blinken,* 724 F. Supp. 3d 1222

---

[2] *Available at* https://www.laffeymatrix.com/see.html (last checked on February 26, 2026).
[3] *Available at* https://www.justice.gov/usao-dc/media/1395096/dl?inline (last checked on February 26, 2026).

(W.D. Wash. 2024) (approving attorney fees of $850 per hour to experienced immigration counsel); *Knudsen v. Hightower Holdings*, LLC, No. 24-cv-0395-KKE, 2024 WL 3430994, at *3 (W.D. Wash. July 16, 2024) (finding reasonable hourly rates of $850 for two attorneys with 32 and 20 years of experience; $755 for attorney with 16 years of experience; $685 for attorney with nine years of experience; and $625 for attorney with six years of experience). Moreover, the Ninth Circuit recognized that more than sixteen years ago, a $500 per-hour rate was reasonable for an immigration litigator with approximately two decades of experience in immigration detention litigation. *Nadarajah*, 569 F.3d at 917.

The rates requested by counsel also correspond with reasonable market rates for such highly specialized knowledge and experience in Colorado. As Mr. Joseph explains, "My current hourly rate for litigation in immigration matters is $800.00 per hour. The rates that our firm charges for litigation in federal court on complex immigration issues range from $800-$950 per hour for senior attorneys or partners with experience comparable to that of Mr. Meyer, and $650 per hour for senior associates with experience levels comparable to Mr. Gleason." Joseph Declaration ¶ 15. He further provides that, "In my opinion, this represents a reasonable market rate for the highly specialized expertise necessary in this niche area of immigration law." *Id.*

Ms. Dawgert's billing rate for "complex immigration-related issues is $750 per hour. The partners in my firm charge between $600 and $750 per hour for less complex cases." Dawgert Declaration ¶ 11. She also concludes that "a rate in the range of $700 to $800 for federal litigation of a complicated immigration issue is a reasonable market rate for a highly specialized attorney with many years of expertise, as that is necessary for effective

legal representation in this area of law." *Id.*

Given the market rates outlined in the USAO Fitzpatric Matrix, Petitioner's agreement to a downward variance of 15% from those rates, the comparable reasonable market rates in Colorado by similarly situated practitioners, and the experience of Mr. Meyer and Mr. Gleason, the Court should conclude that the requested rates in this matter are reasonable.

c. Alternatively, the Court Should Grant Fees at the Adjusted Statutory Rate.

Even if the Court does not grant Mr. Loa Caballero's request for enhanced fees, it should grant fees at the statutory rate of $125 per hour, adjusted for increases in cost of living. 28 U.S.C. § 2412(d)(2)(A)(ii); *Harris v. R.R. Ret. Bd.*, 990 F.2d 519, 521 (10th Cir. 1993); *T.E. v. Kijakazi*, 2023 WL 7089901, at *4 (D. Colo. Oct. 26, 2023). The Ninth Circuit has published a calculation of EAJA hourly rates for 2025 – the time frame that the work in this case was performed – to account for cost-of-living adjustments to the statutory EAJA rate to be $258 per hours in calendar year 2025.[4] Should the Court elect not to grant enhanced rates to Mr. Meyer and Mr. Gleason, it should award the adjust EAJA rate of $258 per hour for the work of both attorneys.

VI. Petitioner is Entitled to EAJA Fees at the Adjusted Statutory Rate for Attorney Herrera and Reasonable Rates for Paralegal Time.

Petitioner requests that attorney Daniel Herrrera be awarded EAJA fees at the statutory EAJA rate adjusted for cost-of-living. The Ninth Circuit has published a calculation of EAJA hourly rates for 2025 – the time frame that the work in this case was performed – to account for cost-of-living adjustments to the statutory EAJA rate to be

[4] *Available at* https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (last checked on February 26, 2026)

$258 per hours in calendar year 2025.[5] 28 U.S.C. § 2412 (d)(2)(A). The Court should grant the statutory EAJA rate with cost-of-living adjustments for Attorney Herrera.

Petitioner is also entitled to compensation for the work performed by paralegals in this case. Under the Fitzpatrick Matrix, the reasonable market rate for paralegal work in 2025 is $255 per hour.[6] Here, Petitioner requests paralegal fees at a significantly reduced rate of $150 per hour. The Court should award these reasonable fees.

VII. In the Exercise of Billing Judgment, Petitioner Waives Certain Billing Entries and Does Not Seek to Recover Costs in This Matter.

Petitioner has further reviewed the time logs and does not seek to recover time entries for certain administrative case tasks and waives recovery of all costs associated with this litigation. This represents an additional 4-5% reduction in fees.

VIII. Conclusion

For the reasons stated above, the Court should grant Mr. Loa Caballeros' request for attorney fees under EAJA for the habeas corpus litigation in the amount of $8,949, and $5,051 for the EAJA litigation to date, for a total fee amount of $14,000.

Respectfully submitted this 27th day of February 2026.

s/ Hans Meyer
Hans Meyer
Conor T. Gleason
The Meyer Law Office
PO Box 40394
Denver, CO 80204
(303) 831 0817
hans@themeyerlawoffice.com
conor@themeyerlawoffice.com
ATTORNEYS FOR PETITIONER-PLAINTIFF

[5] *Available at* https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (last checked on February 26, 2026)
[6] *Available at* https://www.justice.gov/usao-dc/media/1395096/dl?inline (last checked on February 26, 2026).

CERTIFICATE OF CONFERRAL

I certify that consistent with D. Colo. Local Rule 7.1 that before filing this motion, on February 25, 2026, I conferred with counsel for Defendants-Respondents, Winnie Wu, Assistant United States Attorney, U.S. Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants oppose this motion.

/s/ Hans Meyer
Hans Meyer

AI CERTIFICATION

Pursuant to the Court's Standing Order on Generative Artificial Intelligence ("AI") in court filings, counsel certifies that AI was not used to draft this filing or any exhibits.

/s/ Hans Meyer
Hans Meyer

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Hans Meyer
Hans Meyer