UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ANGIE MARALENE GONZALES LOPEZ, Petitioner, v. DONALD J. TRUMP, in his official capacity as President of the United States; PATRICIA HYDE, in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; DAVID W. JOHNSTON, in his official capacity as Vermont Sub-Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; PETE R. FLORES, in his official capacity as Acting Commissioner for U.S. Customs and Border Protection; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; MARCO RUBIO, in his official capacity as Secretary of State; PAMELA BONDI, in her official capacity as U.S. Attorney General; and JONATHAN TUREK, Superintendent, Chittenden Regional Correctional Facility, Respondents.	Case No. 2:25-cv-00863

FEDERAL RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEYS' FEES

Petitioner Angie Maralene Gonzales Lopez seeks an award of attorneys' fees and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF No. 16 (the "Fee

Motion"). [1] Because Federal Respondents' position was substantially justified, the motion should be denied. Alternatively, the Court should stay a decision on the Fee Motion pending resolution of two matters before the Second Circuit that address the same issues involved in the underlying merits of this case. Even if the Court grants the Fee Motion, Petitioner's fee request should be significantly reduced because it does not reflect a reasonable hourly rate or a reasonable expenditure of hours.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner entered the United States without inspection or admission in 2022. *See* Pet. ¶¶ 26-28; Opp'n to Emergency Pet. for Writ of Habeas Corpus at Ex. A ¶ 7, ECF No. 11. U.S. Customs and Border Patrol ("USBP") encountered Petitioner on or about September 29, 2022 at or near San Luis, Arizona. ECF No. 11, Ex. A ¶ 7. Petitioner was released on bond on October 13, 2022. *Id.* ¶ 10.

In August 2025, Petitioner was arrested for driving under the influence of alcohol or drugs, operating a motor vehicle without a license, and failure to drive in a proper lane. *See* Pet. ¶ 29; ECF No. 11, Ex. A ¶ 11. On or around October 30, 2025, ICE detained Petitioner pursuant to 8 U.S.C. § 1225, and cancelled her immigration bond due to her recent criminal arrest. *See* ECF No. 11, Ex. A ¶ 12. Consistent with the Board of Immigration Appeals ("BIA") decision in *Matter of Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216, 221 (BIA 2025), ICE detained Petitioner as an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

On November 1, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, seeking release from government custody. ECF No. 1 (the "Petition"). Federal Respondents opposed the

[1] Petitioner originally filed the Fee Motion on December 16, 2025, ECF No. 15, and filed Notices of Docket Entry Corrections on December 17 and 18, ECF No. 16, 17. Federal Respondents refer herein to the corrected Fee Motion filed on December 17, 2025, ECF No. 16.

Petition. ECF No. 11. On November 17, 2025, this Court held that Petitioner was detained pursuant to 8 U.S.C.§ 1226(a) and ordered Federal Respondents provide her with a bond hearing. *Lopez v. Trump et al.*, 2025 WL 3264151, at *6. Petitioner filed the Fee Motion requesting $16,801.47 in fees and expenses under EAJA on December 16, 2025. ECF Nos. 15, 16. Specifically, counsel requested fees for 63.8 hours of attorney time, split among three lawyers, at a rate of $260.76 per hour. Fee Motion at 9.[2] In support of the Fee Motion, counsel submitted declarations indicating they had between 1-5 years of experience practicing law. Fee Motion at Ex. 2 ¶ 3, ECF No. 16-3 (Decl. of Nathan Virag) ("Virag Decl."); *id.* at Ex. 3 ¶ 3, ECF No. 16-4 (Decl. of Emma Matters) ("Matters Decl."); *id.* at Ex. 4 ¶ 3, ECF No. 16-5 (Decl. of Andrew Pelcher) ("Pelcher Decl."). Petitioner also sought $165.12 in fees for interpretation services. Fee Motion at 9.

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. I.N.S.*, 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 . . . , 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, eligibility for a fee award in any civil action requires: (1) that the claimant be a 'prevailing party'; (2) that the Government's position was not 'substantially justified'; (3) that no 'special circumstances make an award unjust'; and, (4)

[2] The pagination on the Fee Motion does not correspond to that provided by the electronic filing system. For clarity, Federal Respondents refer to the pagination at the bottom of the pages in Petitioner's filing.

pursuant to 28 U.S.C. § 2412(d)(1)(B), that any fee application be submitted to the court within 30 days of final judgment in the action and be supported by an itemized statement." *Comm'r, I.N.S., et al., v. Jean*, 496 U.S. 154, 158 (1990). EAJA only authorizes the payment of "reasonable" attorneys' fees and expenses. 28 U.S.C. § 2412(d)(2)(A).

ARGUMENT

I. RESPONDENTS' POSITION WAS SUBSTANTIALLY JUSTIFIED.

Petitioner's Fee Motion should be denied because Federal Respondents' position was substantially justified, as reflected by a growing number of district courts that have agreed with the government's position, including at least three decisions in this circuit. 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 Federal 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 *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). 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." *C.M.Z. v. Zuchowski*, No. 5:22-CV-205, 2025 WL 1911824, at *2 (D. Vt. June 27, 2025) (quoting *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 786 (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[.]").

Based on the text of the statute, structure of the statute, and legislative history, Federal Respondent argued that Section 1225(b)(2)(A) mandates detention of noncitizens who are "applicants for admission," including individuals present in the country without admission. Petitioner argues Federal Respondents cannot demonstrate this position was substantially justified because Petitioner's "recent previous civil immigration detention was clearly governed under the discretionary framework of 8 U.S.C. § 1226(a)." *See* Fee Petition at 4. However, this argument impermissibly "collapse[s the] antecedent evaluation of the merits" into the "distinct legal standard" of reasonableness set forth by EAJA. *Cooper*, 24 F.3d at 1416.

Courts in this circuit have recognized that Federal Respondents' position with respect to detention of noncitizens was substantially justified when there is no binding precedent that determines the issue. *See Arana v. Decker*, No. 20 CV 4104-LTS, 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 due process issues implicated by detention pursuant to immigration proceedings); *Brissett v. Decker*, 324 F. Supp. 3d 444, 454-55 (S.D.N.Y 2018). In *Brissett v. Decker*, the United States argued that a lawful permanent resident who had a state conviction was subject to mandatory detention upon re-entering the United States. 324 F. Supp. 3d at 448, 449-50. While the court disagreed and held the petitioner was entitled to a bond hearing, *id.* at 451, it concluded that the 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" and the Supreme Court's conclusion

in *Demore v. Kim* that the government can constitutionally detain noncitizens during the limited period of removal proceedings, *id.* at 455.

The same considerations show Federal Respondents' position was substantially justified in this case. Federal Respondents relied on a reasonable interpretation of the plain meaning of the text, as this Court recognized that that Petitioner is "indisputably" an applicant for admission and that "the ordinary language of the[] phrases ['applicants for admission' and 'seeking admission'] might cause one to wonder how an 'applicant for admission' might not be 'seeking admission.'"). *Lopez*, 2025 WL 3264151, at *3. Federal Respondents are also not aware of – nor did Petitioner cite – any precedent from the Supreme Court or the Second Circuit that addresses the issue. And Federal Respondents relied on Supreme Court precedent that recognizes the constitutional validity of detention during removal proceedings. ECF No. 11 at 13. Thus, Federal Respondents' position was substantially reasonable. *But see, e.g.*, *Cornejo Guanuquiza v. Francis*, No. 25-CV-10267, 2025 WL 3678121, at *2 (S.D.N.Y. Dec. 18, 2025) (concluding the government's position with respect to applicability of Section 1225(b)(2) not substantially justified); *Yao v. Almodovar*, No. 25 CIV. 9982 (PAE), 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) (same); *Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (same).

A growing number of federal courts (albeit still the significant minority) have recently agreed with Federal Respondents' interpretation of Section 1225(b)(2), including at least three decisions in this circuit. *See Azizzadeh v. Rhoney*, No. 25-CV-1288 (JLS), 2026 WL 44324, at *1 (W.D.N.Y. Jan. 6, 2026); *Chen v. Almodovar*, No. 1:250cv-8350-MKV, 2025 WL 3484855, at *4-8 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, 25-CV-00867-JLS, 2025 WL 3484832, at *3 (W.D.N.Y. Dec. 4, 2025); *Valencia v. Chestnut*, --- F. Supp. 3d. ----, 2025 WL 3205133, *2-4 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, *1, *3-6

(S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3199872, *4-9 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, *1-5 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, *4-7 (W.D. La. Nov. 4, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, *5, *8-9 (E.D. Wis. Oct. 30, 2025). Thus, not only could a reasonable person find Federal Respondents' position to be correct, a number of federal courts have so held in similar cases. And these decisions confirm "the law [did] not [] foreclose[] [Federal Respondents'] position during the underlying litigation." *C.M.Z.*, 2025 WL 1911824, at *2. Therefore, Petitioner is not entitled to fees under EAJA because Federal Respondents' position was substantially justified.

II. A STAY ON THE FEE MOTION IS WARRANTED.

Alternatively, Federal Respondents request that the Court stay a decision on the Fee Motion until conclusion of relevant appeals that are pending before the Second Circuit. "It is well established that 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *Jenkins v. Miller*, No. 2:12-CV-184, 2025 WL 2828260, at *2 (D. Vt. Oct. 6, 2025) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248 254 (1936)). Courts in the Second Circuit consider the following factors when deciding whether to issue a stay:

> (1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.

Under Cover Roofing Lab., Inc. v. Herrick, No. 2:19-CV-00176, 2020 WL 8714904, at *3 (D. Vt. Aug. 31, 2020) (quoting *Delgado v. NJ Transit Rail Ops.*, 329 F.R.D. 506, 507 (S.D.N.Y. 2019)). Furthermore, district courts in the Second Circuit "regularly defer the award of attorneys' fees or

deny the motion without prejudice pending the resolution of an appeal on the merits." *Apex Emp. Wellness Servs., Inc. v. APS Healthcare Bethesda, Inc.*, No. 11 CIV. 9718 (ER), 2017 WL 456466, at *12 (S.D.N.Y. Feb. 1, 2017) (collecting cases).

Here, the Court should stay a decision on the Fee Motion because the appeal period has not yet run in this matter. No separate document reflecting final judgment has been entered in this matter, as required under Federal Rule of Civil Procedure 58(c)(2), and Federal Respondents are still assessing whether to take an appeal. *See* Fed. R. App. P. 4(a)(1)(B) (notice of appeal may be filed within 60 days after entry of judgment in matters involving the United States). Even if Federal Respondents decide not to appeal, a stay is nonetheless appropriate while the Second Circuit decides pending appeals that address the same issue involved in this case – whether Section 1225(b)(2) mandates detention of noncitizens who are applicants for admission. *See generally Da Cunha v. Bondi*, No. 25-3141 (2d Cir.); *Candido v. Bondi*, No. 25-3169 (2d. Cir.). There would be no prejudice to Petitioner in awaiting resolution of the Fee Motion because her counsel did not charge her for their services; nor would her counsel be prejudiced because they provide *pro bono* services and thus did not have an expectation that they would be paid by Petitioner. *See* Virag Decl. ¶ 8; Matters Decl. ¶ 8; Pelcher Decl. ¶ 8. In contrast, should Federal Respondents' arguments prevail in the appellate courts, they would be substantially prejudiced by having to pay fees in this case and potentially subsequent cases before the merits have been addressed by the Second Circuit. A stay would also avoid the potential for unnecessary expenditure of judicial resources, as the Fee Motion would become moot if the Federal Respondents' position prevails on appeal. Therefore, staying a decision on the Fee Motion pending conclusion of the *Da Cunha* and *Candido* appeals is warranted.

III. PETITIONER'S FEE REQUEST IS UNREASONABLE.

Should the Court disagree and hold Federal Respondents' position was not substantially justified, Petitioner's fee request exceeds a reasonable award for the Vermont market and should be substantially reduced. EAJA provides that "reasonable" attorney's fees "shall be based upon prevailing market rates for the kind and quality of the services furnished," but "shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or 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). Thus, EAJA's statutory rate is a ceiling that is subject to a reasonableness analysis. *Bloom v. Azar*, No. 5:16-CV-121, 2019 WL 10852757, at *8 (D. Vt. Jan. 16, 2019) (EAJA "expressly requires that awards of expenses and fees must be 'reasonable.'").

This Court has recognized "a strong presumption that the lodestar figure represents a reasonable fee." *Anderson v. Sebelius*, No. 5:09-CV-16, 2011 WL 1832771, at *3 (D. Vt. May 12, 2011) (quoting *Quarantino v. Tiffany & Co.*, 166 F3d 422, 425 (2d Cir. 1999)). The lodestar figure represents "the number of hours reasonably expended on the litigation" by a "reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "The presumptively reasonable fee boils down to 'what a reasonable, paying client would be willing to pay,' given that such a party wishes 'to spend the minimum necessary to litigate the case effectively.'" *Porter v. Dartmouth-Hitchcock Med. Ctr.*, No. 2:17–CV–194, 2025 WL 3295806, at *7 (D. Vt. Nov. 26, 2025) (quoting *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 179, 174 (2d Cir. 2009)). Thus, the Second Circuit and this Court have recognized that "attorney's fees are to be awarded with an eye to moderation, seeking to avoid either the reality or the appearance of awarding windfall fees." *Degreenia-Harris v. Life Ins. Co. of N. Am.*, No. 2.19-CV-00218, 2021 WL 5979683, at *11 (D. Vt. Dec. 17, 2021) (quoting *Merck Eprova AG v. Gnosis S.p.A.*, 760 F.3d 247, 266 (2d Cir. 2014)). "A fee applicant has the

burden of establishing the reasonableness of the award[.]" *Anderson*, 2011 WL 1832771, at *3 (citing *Hensley*, 461 U.S. at 433).

A. Petitioner's Proposed Hourly Rate Is Unreasonable.

Petitioner's hourly rate should be reduced because it is inconsistent with hourly rates this Court has recently determined to be reasonable for Vermont lawyers with significantly greater experience. The Second Circuit has "instructed that determination of a reasonable hourly rate 'contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant's counsel,' an inquiry that may 'include judicial notice of the rates awarded in prior cases and the court's own familiarity with the rates prevailing in the district.'" *Townsend v. Benjamin Enters., Inc.*, 679 F.3d 41, 59 (2d Cir. 2012) (quoting *Farbotko v. Clinton Cnty.*, 433 F.3d 204, 209 (2d Cir. 2005)). In determining the reasonable hourly rate, this Court considers "all relevant case-specific variables, along with the prevailing marketplace rates in Vermont for the type of work and the experience of the attorneys." *Jankowski v. Centurion of Vt., LLC*, No. 2:22-CV-169-CR-KJD, 2024 WL 48855, at *2 (D. Vt. Jan. 4, 2024) (citations and quotations omitted).

Petitioner's requested hourly rate of $260.75 significantly exceeds rates that this Court has recently determined to be reasonable for attorneys with more experience. *See Pariseau v. Killington/Pico Ski Resort Partners, LLC*, No. 2:23-CV-43, 2025 WL 1736146, at *6 (D. Vt. June 23, 2025) ($225 reasonable hourly rate attorney who had been practicing for 8 years when he worked on the lawsuit)[3]; *Degreenia-Harris*, No. 2:19-CV-00218, 2021 WL 5979683, at *11 (D.

[3] The attorney graduated from law school in 2015 and then clerked for a federal district court and federal court of appeals. *See* Motion for Attorney Fees at Ex. A ¶ 7, *Pariseau v. Killington/Pico Ski Resort Partners, LLC*, No. 2:23-CV-43, ECF No. 86-1. He worked on the matter in 2024. *Id.* at Ex. A2, ECF No. 86-3.

Vt. Dec. 17, 2021) ($225 reasonable hourly rate attorney who had been practicing for 21 years at the time he worked on this matter)[4]; *see also Cole v. Foxmar, Inc.*, No. 2:18-cv-00220, 2024 WL 4609023 (D. Vt. Oct. 29, 2024) ($205 hourly rate for attorney with 8 years of experience was reasonable but "was at the lower end of usual and customary rates charged in Burlington and Vermont for litigation").[5] This Court has recently held that $150 is a reasonable hourly rate for a new attorney with 1-3 years of experience (and who also had significant prior experience as a paralegal), *Porter*, 2025 WL 3295806, at *12 ($150 reasonable hourly rate for attorney during years 2020-2023),[6] though the Court has generally recognized reasonable hourly rates ranging from $185-$225 for associates at Vermont firms specializing in litigation, *see, e.g.*, *Shapiro v. United States Soc. Sec. Admin.*, No. 2:19-CV-000238, 2022 WL 951371, at *3 (D. Vt. Mar. 30, 2022), *vacated on other grounds*, 160 F.4th 347 (2d Cir. 2025) ($185 was a reasonable hourly rate for a litigation associate) at *3 (D. Vt. Mar. 30, 2022); *Sullivan v. Saint-Gobain Performance Plastics Corp.*, No. 5:16-CV-125, 2021 WL 1851404, at *2 (D. Vt. May 10, 2021) ($225 was a reasonable hourly rate for associates at a litigation firm supervised by an experienced attorney). *Cf. Jankowski*, 2024 WL 48855, at *2 (permitting $250 hourly rate in *uncontested* fee award for an attorney that did not provide an affidavit confirming experience or otherwise supporting the reasonableness of the fees).

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[4] The attorney began practicing law in October 1998. Motion for Attorney' at Ex. 5 ¶ 3, *Degreenia-Harris*, No. 2:19-CV-00218, ECF No. 71-6. He worked on this matter from 2019 – 2020. *Id.* at Ex. 3, ECF No. 71-4.

[5] The attorney was admitted to practice in Vermont in January 2014. *See* Motion for Attorney's Fees and Costs at Ex. 3, *Cole v. Foxmar, Inc.*, No. 2:18-cv-00220, ECF No. 232-1. He worked on this matter from 2018 – 2022. *Id.* at Exs. 1-2.

[6] The attorney became a lawyer during the case, Motion for Attorney's Fees at Ex. 1 ¶ 23, *Porter*, No. 2:17–CV–194, ECF No. 300-1, and she began billing as an attorney in 2020, *see Porter*, 2025 WL 3295806 at *11.

Petitioner's counsel state without support or analysis that the market rate for their services would be over $300. Virag Decl. ¶ 8; Matters Decl. ¶ 8; Pelcher Decl. ¶ 8.[7] However, Petitioner's counsel have less experience than most of the attorneys involved in the cases discussed above, as they have been licensed to practice law for less than one year (Ms. Matters), 3 years (Mr. Virag), and 5 years (Mr. Pelcher). Petitioner's proposed $260.76 hourly rate for attorneys with 1-5 years of experience would reflect a significant escalation of the rates this Court has deemed to be reasonable in other matters. Therefore, Petitioner has not met her burden to establish that $260.76 is a reasonable hourly rate. Based on recent cases before this Court and counsel's experience level, reasonable attorneys' fees would fall within the following ranges: Ms. Matters ($150-$185), Mr. Pelcher ($185-$200), Mr. Virag ($185-$200).

B. Hours Expended Were Unreasonable.

Petitioner's request for fees should be reduced significantly because the number of hours billed was unreasonable. Hours that are not reasonably expended include hours that are "excessive, redundant, or otherwise unnecessary." *Jankowski*, 2024 WL 48855, at *2 (quoting *Hensley*, 461 at 434). Petitioner's only basis for establishing the reasonableness of the hours expended is their own declarations offering their professional opinion that the time they expended on the case was reasonable, Virag Decl. ¶ 7, Matters Decl. ¶ 7, Pelcher Decl. ¶ 7; yet, there is overlap among all three attorneys for most of the work billed, *see* Fee Motion at Ex. 5, ECF No. 16-6 (billing statement).

Petitioner's hours are unreasonable because the time entries fail to establish distinct contributions each attorney made to duplicative items. "The burden is on [the fee applicant] to

[7] With respect to Mr. Pelcher, although he indicates that he was previously a solo practitioner and an associate at a law firm, he does not provide any evidence of his usual and customary rate that was paid by clients. *See* Pelcher Decl. ¶ 1.

show 'the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation.'" *Anderson*, 2011 WL 1832771, at *5 (quoting *Johnson v. Univ. College of Univ. of Ala. in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983)); *see also Nike, Inc. v. Top Brand Co.*, No. 00 CIV. 8179 KMW/RLE, 2006 WL 2946472, at *7 (S.D.N.Y. Feb. 27, 2006) ("The moving party . . . must demonstrate the need for each attorney's expertise."). Petitioner has not shown that that multiple lawyers are necessary or customary for this type of matter. In fact, Petitioner's fee request for 63.8 hours of attorney time among three attorneys is roughly *4.5 times greater* than that of a single attorney handling habeas matters involving the same legal questions at issue here. *See, e.g.*, Petitioner's Verified Motion for Attorney's Fees at Ex. 3, *Japon Benites v. Hale, et al.*, No. 2:25-cv-885, ECF No. 23-4 (D. Vt. Dec. 23, 2025) (requesting fees for 14.2 hours of time for a single attorney); Petitioner's Verified Motion for Attorney's Fees at Ex. 3, *Inamagua v. Hale, et al.*, No. 2:25-cv-892, ECF No. 20-4 (D. Vt. Dec. 23, 2025) (requesting fees for 13.5 hours of time for a single attorney). Thus, Petitioner has not met her burden of establishing the reasonableness of having three attorneys on this matter and each billing a significant number of hours.

Petitioner has also failed to show the distinct contribution each lawyer made to items on which they all worked. For example, counsel collectively billed nine hours for preparing and attending a hearing in this matter. Reduction of this duplicative billing is appropriate because Petitioner provides no explanation for why it was reasonable for three attorneys to prepare for and attend this hearing. *Cf. Porter*, 2025 WL 3295806, at *16 (D. Vt. Nov. 26, 2025) (reducing award for duplicative billing when party seeking fees failed to provide sufficient explanation as to why it was reasonable for two attorneys to attend depositions). Furthermore, the necessity of Mr.

Pelcher's and Ms. Matters' participation with respect to the hearing is also unclear, as neither was admitted to practice in this district at the time of the hearing.[8]

In addition, Petitioner has not shown the distinct contributions each attorney made to drafting the Petition, the accompanying motion for temporary restraining order ("TRO"), and the reply brief. A reduction of hours is warranted when the use of multiple attorneys results in a "duplication of efforts." *Cutajar v. Comm'r of Social Sec.*, No. 1:19-cv-05569, 2020 WL 2999232 (D. Vt. June 4, 2020) (reducing hours when three attorneys each spent time reviewing record and writing brief). Detailed time entries are necessary for a fee applicant to establish whether the use of multiple lawyers is reasonable. *See Anderson*, 2011 WL 1832771, at *5 ("Without detailed entries in the billing records, the court is unable to determine whether and when the contributions of the three attorneys were duplicative."). Petitioner's counsel collectively billed 11 hours for drafting the Petition and request for a TRO, with Mr. Pelcher and Ms. Matters each billing 5 hours for "Drafting Habeas & TRO." Similarly, counsel collectively billed 30 hours for drafting the 13-page reply brief, with each of the three lawyers providing identical relevant entries – "Review of Government Response," "Research for Reply Brief," "Drafting Reply to Opposition," "Met with [co-counsel] re: Reply Strategy," and "Final Review of Reply to Opposition." These vague and redundant entries are insufficient to establish the distinct contributions each lawyer has made.

Separate from being duplicative, the hours expended on the pleadings and reply brief are also generally excessive. First, minimal time was necessary to prepare the motion for a TRO, as counsel for Petitioner have made the same arguments in seeking TROs in other habeas matters.

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[8] Mr. Pelcher and Ms. Matters signed the present fee motion as "Immigration Counsel" in contrast to Mr. Virag, who is listed as "Federal Counsel." It appears Mr. Pelcher and Ms. Matters are scheduled to be admitted on January 20, 2026. *See* Court Calendar, https://www.vtxeuc03.vtd.uscourts.gov/?CalendarName=Court&Op=ShowIt&Amount=Day&NavType=Both&Type=TimePlan&Date=2026%2F1%2F20 (last visited Jan. 8, 2026).

Compare, e.g., Emergency Motion for TRO, *Rashid v. Trump et al*, No. 2:25-cv-732, ECF No. 2 (Sept. 2, 2025) (arguing TRO necessary to ensure Petitioner remains in District to preserve jurisdiction and enable consultation with counsel) *with* ECF No. 2 (same); *see also IMS Health Inc. v. Sorrell*, No. 1:07-CV-188-JGM, 2012 WL 2915845, at *5 (D. Vt. July 17, 2012) (reduction necessary for reasonable fee when counsel "had just litigated a very similar case" and "counsel's work on similar issues . . . [warranted] greater realization of efficiencies"). Before this Petition was filed, there were dozens of district courts across the country advancing the same position, providing a clear roadmap for Petitioner's legal arguments. As such, this was not a case that required novel or creative arguments. Therefore, Petitioner has failed to satisfy her burden to show the hours expended on the Petition, motion for a TRO, and reply brief were reasonable.

Finally, there are several additional entries that reflect unreasonable hours. For example, Mr. Pelcher and Ms. Matters both participated in a one-hour "Client Meeting" with Petitioner, but provide no specification for their distinct contributions. Ms. Matters also submits 0.5 hours for "Correspondence with Client's Aunt" without providing any explanation for why this correspondence was necessary to her representation in this habeas matter. Petitioner has failed to satisfy her burden to show these hours expended were reasonable.

Because a significant portion of counsel's work is duplicative, excessive, or otherwise unnecessary, Federal Respondents request that the number of hours be reduced by 75%, to correspond with fee requests in the comparable *Japon Benites* and *Inamagua* matters. *Cf. Degreenia-Harris*, 2021 WL 5979683, at *12 (reducing requested hours by 70% when applicant requested excessive hours and collecting cases applying 50%-75% reduction); *Maldonado v. La Nueva Rampa, Inc.*, No. 10 CIV. 8195 LLS JLC, 2012 WL 1669341, at *14 (S.D.N.Y. May 14,

2012) ("reduc[ing] all indicated time charges by 70% to fall in line with the hours of similar cases").

C. A Cost-of-Living Adjustment Based on CPI Is Unreasonable.

Rather than presenting evidence or precedent regarding the reasonableness of their fee, Petitioner argues that counsel's hourly rate should be determined by applying a cost-of-living adjustment based on the Consumer Price Index – Urban ("CPI-U") to a $125 hourly rate. Fee Motion at 6-7. However, Petitioner has not identified – nor is counsel for Federal Respondents aware of – any case in which this Court has calculated an uncontested EAJA fee rate using this methodology to account for cost-of-living adjustments. Indeed, application of the CPI-U – which is based on prices for *urban* consumers – would be a poor fit in the rural state of Vermont. Rather, reasonableness remains the touchstone for analyzing fee awards under EAJA and accounting for cost-of-living in this District. *See, e.g.*, *Bloom*, 2019 WL 10852757, at *8 (analyzing EAJA fees though reasonableness when government did not dispute the cost-of-living adjustment); *Anderson*, 2011 WL 1832771, at *1 (analyzing overall reasonableness of fees overall). Because Petitioner's proposed fee based on a CPI-U multiplier is otherwise unreasonable for the reasons discussed above, the Court should decline to adopt a methodology for setting fees based solely as CPI-U. *See Sprinkle v. Colvin*, 777 F.3d 421, 429 (7th Cir. 2015) ("courts may not award an inflation-adjusted rate that is higher than the prevailing market rate in the community for comparable legal services.").

CONCLUSION

For the reasons discussed above, the Court should deny Petitioner's Fee Motion (ECF No. 16). In the alternative, the Court should stay a decision on the Fee Motion until the conclusion of the appellate proceedings in *Da Cunha v. Bondi*, No. 25-3141 (2d Cir.) and *Candido v. Bondi*, No.

25-3169 (2d. Cir.). Finally, should the Court determine that fees are warranted, the Court should award a reasonable fee based on a reduction of the hourly rate requested by counsel as described herein and reduce the hours expended by 75%.

Dated at Burlington, in the District of Vermont, this 13th day of January, 2026.

Respectfully submitted,

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