UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

LUIS GUILLERMO LALA INAMAGUA, Petitioner, v. GREG HALE, in his official capacity as Superintendent of Northwest State Correctional Facility; PATRICIA HYDE, in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; 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; 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; and PAMELA BONDI, in her official capacity as U.S. Attorney General, Respondents.	Case No. 2:25-cv-00892

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

Petitioner Luis Guillermo Lala Inamagua seeks an award of attorneys' fees and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF No. 20. The sole legal issue in this case was whether Petitioner was subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225 or whether he was subject to detention under 8 U.S.C. § 1226 and entitled to a bond hearing. As this Court recently held, Federal Respondents' position on that issue was substantially justified, so the motion should be denied. *Gonzalez Lopez v. Trump*, No. 25-cv-

863, ECF No. 21 (D. Vt. Jan. 14, 2026). Alternatively, the Court should stay a decision on the Fee Motion pending resolution of two matters before the Second Circuit that address that core legal question. And even if the Court grants the Fee Motion, Petitioner's fee request should be reduced because it does not reflect a reasonable hourly rate or a reasonable expenditure of hours.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a citizen of Ecuador who entered the United States without inspection, admission, or parole by an immigration officer. *See* Pet. ¶ 14. On November 5, 2025, Border Patrol agents encountered Petitioner, and he was arrested after agents determined he had entered the United States unlawfully. *See* Pet. ¶ 28. On November 7, 2025, Petitioner was served in person a Notice to Appear (NTA). *See* Ex. A (Notice to Appear). The NTA noted that when Petitioner arrived in the United States, he was "not then admitted or paroled . . . ." *Id.* at 1. The NTA further noted that Petitioner was not in possession of any document entitling him to be admitted to, or remain in, the United States, and he was placed in removal proceedings. *See id.* Federal Respondents position was that Petitioner's detention is governed by 8 U.S.C. § 1225(b) as an applicant for admission, and that he is not entitled to a bond hearing.

On November 21, 2025, Petitioner filed a Petition for Writ of Habeas Corpus that included a single count alleging a violation of the Due Process Clause of the Fifth Amendment and seeking release from government custody or a bond hearing in Immigration Court. ECF No. 1. The Court held a hearing three days later, and Federal Respondents filed an abbreviated opposition to the Petition later that same day, acknowledging that the Court had recently addressed the sole legal issue and recognizing that adherence to its prior decision would likely result in the petition being granted. ECF Nos. 10, 12. Petitioner requested an opportunity to file a reply, which he did on November 26, 2025, introducing new arguments concerning a California class-action. ECF No.

18. On December 1, 2025, this Court granted the petition and ordered Federal Respondents to provide Petitioner a bond hearing on or before December 4, 2025. ECF No. 19, at 6. Petitioner had a bond hearing, posted bond, and was subsequently released.

On December 23, 2025, Petitioner filed the Fee Motion requesting $4,507.50 in fees and expenses under EAJA. ECF No. 20. Specifically, counsel requested fees for 13.5 hours of attorney time, at a rate of $285 per hour. ECF No 20-4. In support of the Fee Motion, counsel submitted a declaration indicating that she graduated from law school in 2021 and became a member of the Vermont bar in 2022. ECF No. 20-3. The declaration further states that $285 per hour is counsel's normal hourly rate and opines that the "average market rate" is over $300 per hour. *Id.* at 3. Petitioner also sought $210 in fees for interpretation services. ECF No. 20-4.

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) 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

This Court recently held that Federal Respondents' position on this very legal issue was substantially justified. *Gonzalez Lopez v. Trump*, No. 25-cv-863, ECF No. 21, at 4 (D. Vt. Jan. 14, 2026) ("For purposes of the EAJA, the court concludes that the government has met its burden of showing that its position was 'substantially justified.'"). There, as here, this Court disagreed with Federal Respondents' position, "[b]ut other courts have differed, and there is no authoritative appellate guidance on the issue." *Id.* There is no reason why Petitioner's fee motion should be resolved differently in this case.

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[.]"). "The test is essentially one of reasonableness." *Gonzalez Lopez v. Trump*, No. 25-cv-863, ECF No. 21, at 4 (quoting *Dunn*, 169 F.3d at 786).

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 offers no argument in support of his assertion that Federal Respondents cannot demonstrate this position was substantially justified. ECF No. 20 at 4-5. And 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. And "there is no authoritative appellate guidance on the issue." *Gonzalez Lopez v. Trump*, No. 25-cv-863, ECF No. 21, at 4 (D. Vt. Jan. 14, 2026). Thus, Federal Respondents' position was substantially justified.

This Court further recognized that other federal courts have recently agreed with Federal Respondents' interpretation of Section 1225(b)(2), including at least three decisions in this circuit. *Gonzalez Lopez v. Trump*, No. 25-cv-863, ECF No. 21, at 3-4 (D. Vt. Jan. 14, 2026); *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). 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.). 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 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 $285 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 for attorney who had been practicing for 8 years when he worked on the lawsuit)[1]; *Degreenia-Harris*, No. 2:19-CV-00218, 2021 WL 5979683, at *11 (D. Vt. Dec. 17, 2021) ($225 reasonable hourly rate for attorney who had been practicing for 21 years at the time he worked on the matter)[2]; *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").[3] 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),[4] 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),

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[1] 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.

[2] 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.

[3] 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.

[4] 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.

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).

Petitioner's counsel states without support or analysis that "the average market rate" is over $300. ECF No. 20-3 ¶ 8. However, Petitioner's counsel has less experience than most of the attorneys involved in the cases discussed above, as she have been licensed to practice law for less than 4 years. *Id.* ¶ 3. Petitioner's proposed $285 hourly rate for an attorney with fewer than 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 his burden to establish that $285 is a reasonable hourly rate. Based on recent cases before this Court and counsel's experience level, reasonable attorneys' fees would fall within a range of $185-$200.

B. Hours expended were unreasonable.

Petitioner's request for fees should also be reduced to account for unnecessary or excessive hours. 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 counsel's own declaration offering a professional opinion that the time expended on the case was reasonable. ECF No. 20-3 ¶ 7.

Two line-items, comprising over 40% of attorney time requested, are of particular note. First, counsel requests compensation for 2.3 hours of time for "Travel to/from NWSCF to attempt

to meet client" on the day that the Court held a hearing. ECF No. 20-4. As the Court is aware, counsel had been temporarily banned from that state facility because she had committed several violations of Department of Corrections Policy. ECF No. 15 (status report filed on behalf of Superintendent Greg Hale). Specifically, Petitioner's counsel "failed to disclose that she was bringing in a family member to use as an interpreter and left the individuals alone in the attorney room." *Id.* at 2. At the November 24 hearing, Petitioner's counsel specifically requested this Court issue an order permitting her to access the state facility; the Court declined to do so. Time spent attempting to enter the state facility after being informed of the ban—a ban with which Federal Respondents played no role—is unreasonable and should not be part of any fee award. Second, Petitioner's counsel spent over a quarter of the requested time (3.7 hours) on the fee litigation itself. That too is unreasonable.

Federal Respondents request that the number of hours be reduced by at least 40% to account for the unnecessary time spent. *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 the 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. ECF No. 20, at 8-10. But 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.").

D. No special factor warrants an upward adjustment to the fee.

Petitioner contends that there are a "limited number of attorneys qualified to litigation this type of proceeding in the District of Vermont," and argues that an upward adjustment is therefore warranted. ECF No. 20, at 10. But courts within the Second Circuit have consistently held that expertise in areas of constitutional and immigration law do not warrant a special factor adjustment. *See Caplash v. Nielsen*, 294 F. Supp. 3d 123, 138 (W.D.N.Y. 2018) (special factor adjustment not warranted in case involving "due process issues in the context of immigration law").

Although EAJA provides that a "special factor" may include "the limited availability of qualified attorney for the proceedings involved," that exception "refers to attorneys having some distinctive knowledge or specialized skill needful for the litigation in question—as opposed to an extraordinary level of general lawyerly knowledge and ability useful in all litigation." *Bloom v. Azar*, No. 5:16-cv-121, 2019 WL 10852757, at *8 (D. Vt. Jan. 16, 2019) (quoting *Pierce v. Underwood*, 487 U.S. 552, 572 (1988). The special factor adjustment applies narrowly when the matter requires "an identifiable practice specialty such as patent law, or knowledge of foreign law or

language." *Pierce v. Underwood*, 487 U.S. 552, 572 (1988); *see also Wells v. Bowen*, 855 F.2d 37, 42 (2d Cir. 1988) (the "special factors" adjustment "must be interpreted narrowly"). Indeed, "[t]he statutory cap cannot be exceeded merely because the issues are novel or difficult or the case is undesirable; nor can a Court award in excess of $125 per hour simply due to the ability and work of counsel, the results obtained, customary fees in similar cases, or the existence of a contingent fee arrangement." *Marschok v. United States*, 150 F. Supp. 2d 522, 526 (E.D.N.Y. 2001) (citing *Pierce*, 487 U.S. at 565-66). Even when a distinctive specialty is present, an upward adjustment is only warranted "[w]here such qualifications are necessary and can be obtained only at rates in excess of the [statutory] cap." *Id.* The legal issue presented in this case required no such distinctive specialty, so an upward adjustment would be inappropriate.

CONCLUSION

For the reasons discussed above, the Court should deny Petitioner's Fee Motion (ECF No. 20). 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 40%.

Dated at Burlington, in the District of Vermont, this 20th day of January, 2026.

Respectfully submitted,

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