ERIC GRANT
United States Attorney
NICHOLAS KARP
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLOS JESUS COLINA-MEIRA, Petitioner, v. TODD LYONS, ET AL., Defendants.	CASE NO. 1:25-CV-01716-CSK RESPONDENT'S OPPOSITION TO MOTION FOR ATTORNEYS' FEES PURSUANT TO 28 U.S.C. § 2412(D)

I. INTRODUCTION

On February 17, 2026, petitioner Carlos Jesus Colina-Meira ("Petitioner") filed a motion for $9,553 in attorneys' fees pursuant to 28 U.S.C. § 2412(d), the Equal Access to Justice Act ("EAJA"). ECF 20. Because EAJA does not waive sovereign immunity for immigration detention habeas cases, the Court should deny Petitioner's motion. Additionally, because Respondent's litigating positions were substantially justified at all stages of this case, the Court should deny the motion. Alternatively, even if the Court finds that an award of EAJA fees is appropriate, the fee amount that Petitioner demands should be substantially reduced because neither his motion nor the exhibits establish that the claimed fees are reasonable.

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II. STATEMENT OF RELEVANT FACTS

Petitioner is an alien who is present in the United States; his county of origin is Venezuela. *See* ECF 12, Ex. 9, at ¶ 6.[1] Petitioner entered or was present in the United States on or about September 29, 2022, without inspection and did not possesses or present a valid immigrant visa or other valid entry document. *Id.* Petitioner has not been admitted to the United States. *See* ECF 12, Ex. 1.

Although charged as an "arriving alien" subject to removal under Immigration and Nationality Act ("I.N.A.") § 212(a)(7)(A)(i)(I), Petitioner was paroled into the United States under I.N.A. § 212(d)(5). *Id.; see also* ECF 12, Ex. 2. On September 6, 2023, Petitioner filed an affirmative asylum application; on October 7, 2025, Petitioner was detained pending removal proceedings. ECF, Ex. 9, at ¶¶ 6-9. Petitioner was in civil detention pending removal proceedings for approximately 60 days at the time he filed his § 2241 petition. ECF 4.

On December 31, 2025, the Court granted Petitioner's § 2241 petition. ECF 17. On February 17, 2026, Petitioner filed a motion for $9,553 in attorneys' fees pursuant to 28 U.S.C. § 2412(d). ECF 20.

III. EAJA DOES NOT WAIVE SOVEREIGN IMMUNITY FOR HABEAS CASES CHALLENGING IMMIGRATION DETENTION

A. Waivers of sovereign immunity must be unmistakably clear and any ambiguities as to their scope are strictly construed in favor of immunity.

Sovereign immunity generally bars all awards of monetary relief against the United States, its agencies, and its employees sued in their official capacities. *See FDIC v. Meyer*, 510 U.S. 471, 475 (1994). The United States may choose to permit such awards by waiving its sovereign immunity, *see Kirtz v. Trans. Union LLC,* 46 F.4th 159, 164 (3d Cir. 2022). Only Congress, however, can waive the United States' sovereign immunity. *Lane v. Peña*, 518 U.S. 187, 192 (1996); *Kirtz*, 46 F.4th at 164.

To respect Congress's prerogative to waive sovereign immunity (or not), the Supreme Court has imposed a stringent standard for finding waivers. It has thus stated "on many occasions that a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *FAA v. Cooper*, 566 U.S. 284,

[1] The statement of facts is taken from Respondent's Opposition to Petition for Writ of Habeas Corpus, which is incorporated by reference herein. *See* ECF 12.

290 (2012) (quoting *Lane*, 518 U.S. at 192). This amounts to a "clear statement" rule: "a waiver of sovereign immunity must be 'unmistakably clear in the language of the statute.'" *Dep't of Agric. v. Kirtz*, 601 U.S. 42, 49 (2024) (quoting *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 76 (2000)).

Whether Congress has waived immunity "trains on statutory text rather than legislative history." *Id.; see also Cooper*, 566 U.S. at 290 ("Legislative history cannot supply a waiver that is not clearly evident from the language of the statute."). Thus, because the dispositive question on whether sovereign immunity has been waived revolves around the precise words used by Congress, "a court charged with asking whether Congress has spoken clearly has its answer long before it might have reason to consult the Congressional Record." *Kirtz,* 601 U.S. at 49.

Even where Congress has enacted a waiver of immunity, the scope of that waiver "must be construed strictly in favor of the sovereign and not enlarged beyond what the language requires." *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685 (1983) (cleaned up). Based on this principle, "[a]ny ambiguities in the statutory language are to be construed in favor of immunity." *Cooper*, 566 U.S. at 290. In the sovereign immunity context, "[a]mbiguity exists if there is a plausible interpretation of the statute that would not allow money damages against the Government." *Id.* at 290-91.

That rule applies both to whether Congress has waived immunity as well as to the scope of that waiver. *See id.* at 291 ("For the same reason that we refuse to enforce a waiver that is not unambiguously expressed in the statute, we also construe any ambiguities in the scope of a waiver in favor of the sovereign."). While the Court may employ "traditional interpretive tools" (not including legislative history, per the above) to determine whether the existence or scope of a waiver is ambiguous, where those tools point to ambiguity, the court must "take the interpretation most favorable to the Government." *Id.*

B. EAJA's limited waiver of immunity is ambiguous as to whether habeas petitions challenging immigration detention are within its scope

EAJA includes a waiver of sovereign immunity for some—but not all—claims for attorney's fees against the United States. Specifically, the statute provides:

[A] court shall award to a prevailing party other than the United States fees and other expenses

> … incurred by that party in any civil action (other than cases sounding in tort) … brought by or against the United States … 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).

This language thus waives immunity for a limited set of claims, in that it applies only to "any civil action (other than cases sounding in tort)." This amounts to a "partial" waiver of sovereign immunity that "must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991) (holding that a different provision of EAJA that applies to some administrative proceedings could not be extended to encompass deportation proceedings).

The upshot is that for EAJA to waive sovereign immunity here, the statutory phrase "civil action" would have to unambiguously and unmistakably encompass habeas petitions challenging immigration detention. It does not. Instead, the term "civil action" is ambiguous as to whether it encompasses such habeas petitions. And that ambiguity alone necessarily precludes EAJA's waiver of sovereign immunity from applying here.

Faced with this ambiguity, the Court is required to construe the waiver in favor of the sovereign and hold that the Government is immune from an award of attorneys' fees.

1. Habeas petitions are unique proceedings that are not categorically civil.

The Supreme Court has recognized that, even though habeas petitions are often categorized as civil for general purposes, "the label is gross and inexact." *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969). Habeas proceedings are instead "unique." *Id.* at 294. Since at least Blackstone's day, habeas has been understood to serve a special role: providing a remedy for "illegal confinement." *Id.* at 291 (quoting 3 William Blackstone, Commentaries *131 (William Draper Lewis ed., 1902)). As a result, the problems presented in habeas proceedings "are materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure." *Harris,* 394 U.S. at 300 n.7. The Court has found it "difficult to believe" that Congress would have intended rules promulgated for civil cases to be applied wholesale to habeas petitions "because their specific provisions are ill-suited to the special problems and character of such proceedings." *Id.* at 296.

Following that line of cases, the Supreme Court has repeatedly refused to construe the statutory

phrase "civil action" as invariably encompassing habeas proceedings. For example, in *Schlanger v. Seamans*, the Court considered the scope of 28 U.S.C. § 1391(e), which "provided for nationwide service of process in a 'civil action in which each defendant is an officer or employee of the United States.'" 401 U.S. 487, 490 n.4 (1971) (quoting 28 U.S.C. § 1391(e) (1964 ed., Supp. V.)).

The Court noted that "[t]hough habeas corpus is technically 'civil,' it is not automatically subject to all the rules governing ordinary civil actions." *Id.* The Court later recognized that *Schlanger* rejected an "overbroad interpretation" of "the phrase 'civil action'" that would have encompassed habeas proceedings. *Stafford v. Briggs*, 444 U.S. 527, 542-43 (1980).

Congress enacted EAJA 21 years after *Harris* and nine years after *Schlanger*. In passing the EAJA, Congress adopted statutory language that used the same phrase—"civil action"—the Court had already held did not encompass habeas petitions. *See* Pub. L. 96-481 § 204(a), 94 Stat. 2321, 2328 (1980). Given that courts "normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent," *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010), Congress presumptively intended to adopt *Schlanger*'s construction of that term as excluding habeas petitions. *See Ankenbrandt v. Richards*, 504 U.S. 689, 700-01 (1992) (holding when Congress added the phrase "all civil actions" to the diversity jurisdiction statute, it intended to maintain the domestic relations exception to diversity jurisdiction from Supreme Court case law). After all, "[w]hen a statutory term is obviously transplanted from another legal source, it brings the old soil with it." *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019).

Indeed, litigation of § 2241 petitions like Petitioner's differs starkly from the proceedings in civil actions. Habeas petitions are filed in the court where the petitioner is confined rather than following civil personal jurisdiction and venue rules. 28 U.S.C. § 2241(a), (b). The petitioner must name "the person who has custody" as the respondent. 28 U.S.C. § 2242; *see Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The statute does not permit the petitioner to serve the petition like a civil complaint; rather, the court determines, in the first instance, whether to "award the writ," summarily deny it because the applicant or person detained "is not entitled thereto," or order "the respondent to show cause why the writ should not be granted." 28 U.S.C. § 2243. The petitioner is not entitled to discovery, and factual development lies within the court's discretion. *See Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997). And these are only some of the differences between ordinary civil actions and habeas petitions.

To be sure, in its jurisprudence addressing which Federal Rules of Civil Procedure apply—and which do not—to habeas proceedings, the Supreme Court has occasionally referred to such proceedings as civil. *See, e.g., Banister v. Davis*, 590 U.S. 504, 507 (2020) (holding that Rule 59(e) motions to reconsider the denial of 28 U.S.C. § 2254 habeas petitions do not constitute second or successive petitions for the purposes of § 2244(b)); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269 (1978) (concluding that untimely motions under Rule 52(b) or 59 do not toll the time to appeal a ruling on a habeas petition under Rule 4(a)). But none of those cases addressed the question here— whether the statutory phrase "civil action" in EAJA unambiguously encompasses habeas petitions.

And even in those decisions, the Supreme Court recognized the fundamentally unique and hybrid nature of habeas petitions, which accordingly requires rule-by-rule determinations as to which civil rules apply. *See Browder*, 434 U.S. at 271 (recognizing "some aspects of the Federal Rules of Civil Procedure may be inappropriate for habeas proceedings"); *Banister*, 590 U.S. at 528 (Alito, J., dissenting) ("Let's count some of the ways in which habeas proceedings deviate from the Civil Rules."). Indeed, the Federal Rules of Civil Procedure themselves recognize that habeas is different—Rule 81 provides that the rules apply in habeas proceedings only "to the extent that the practice in those proceedings … has previously conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(4) and (a)(4)(B). This further highlights the ambiguity regarding whether habeas proceedings can be clearly and unmistakably classified as "civil actions" for purposes of EAJA.

2. The statutory term "civil action" is ambiguous because it can be read to encompass exclusively civil cases or both civil cases and habeas petitions

Against this backdrop, the ambiguity of the term "civil action" in EAJA is, somewhat ironically, unambiguous. In the context of the dispute here, the term "civil action" can be reasonably read in at least two ways. First, it can be read narrowly to include only those cases that are wholly or purely civil in nature, such as civil rights or employment cases, statutory actions, and all the other garden-variety civil actions typically brought in federal court by or against the United States. This reading would exclude habeas petitions because they are not purely civil, but rather are unique, hybrid actions.

Second, "civil actions" can be read broadly to encompass any type of case or proceeding that includes any civil element, such as being governed by some (but not necessarily all) of the Federal Rules

of Civil Procedure or being assigned a civil case number by the district court. This reading would include habeas petitions of all kinds, and specifically the habeas petition challenging immigration detention at issue here.

The qualifiers "any" and "(other than cases sounding in tort)" in § 2412(d)(1)(A) do not change this result. Together, these modifiers tell the reader that, whatever "civil action" means, every case that fits that definition, other than tort cases, falls within the statute. But that does not answer the underlying question of what "civil action" means in the context of unique, hybrid proceedings like habeas petitions.

The word "any" cannot expand the meaning of "civil action," it simply instructs that, to the extent a case is a civil action, it is included within the statute. *See Newmark v. Principi*, 283 F.3d 172, 176 (3d Cir. 2002) (interpreting § 2412(d)'s "civil action" phrase to mean "any type of civil action" (emphasis added)); *cf. Nelson v. United States*, 40 F.4th 1105, 1115-16 (10th Cir. 2022) (the qualifier "any" in the phrase "any statute" in § 2412(b) of EAJA does not change the meaning of the word "statute," but does encompass both federal and state statutes). Thus, while the "adjective 'any' is indeed a broad term, … it cannot expand the reach of the noun it modifies." *San Francisco v. EPA*, No. 23-753, 604 U.S. ----, 2025 WL 676441, at *8 (Mar. 4, 2025).

Circuit Courts have recognized the unique nature of habeas proceedings and have declined to apply the "civil action" label when interpreting statutory text. *See Santana v. United States*, 98 F.3d 752, 754-55 (3d Cir. 1996) *declined to extend by Michelin v. Warden Moshannon Valley Correctional Center*, --F.4 th --, 2026 WL 263483 (3d Cir. 2026) ; *see also O'Brien v. Moore*, 395 F.3d 499, 507-08 (4th Cir. 2005), *Ewing v. Rodgers*, 826 F.2d 967, 969-71 (10th Cir. 1987), and *Boudin v. Thomas*, 732 F.2d 1107, 1112-15 (2d Cir. 1984). Therefore, under these circumstances, the term "civil action" is ambiguous because "there is a plausible interpretation" of the term "that would not authorize money damages against the Government." *Cooper*, 566 U.S. at 290-91.

3. Because the term "civil action" is ambiguous as to habeas petitions challenging immigration detention, EAJA waiver must be construed in favor of immunity.

For purposes of EAJA, there is no meaningful difference between the habeas petition challenging criminal confinement and the habeas petition challenging immigration detention here. Neither type of petition is unambiguously and unmistakably a "civil action," and attorney's fees are thus not available

for either.

While the underlying basis of the confinement at issue in habeas petitions challenging immigration detention is not criminal, that does not change the unique hybrid nature of the habeas remedy itself. Both the Fourth and Fifth Circuits have held as much. *See Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), *cert denied* 144 S.Ct. 553 (Jan. 8, 2024); *Obando-Seguro v. Garland*, 999 F.3d 190 (4th Cir. 2021). And it does not appear that any circuit employing the clear statement rule has reached a contrary conclusion.

In *Obando-Seguro*, the Fourth Circuit rejected the proposition that the nature of the underlying detention makes a meaningful difference, explaining that "the reason for the challenged detention does not change the essence or function of the habeas application to seek release." 999 F.3d at 194; see also id. ("There are not 'criminal habeas writs' and 'non-criminal habeas writs': there are just writs of habeas corpus."). And ultimately the unique nature of all habeas petitions requires interpreting EAJA narrowly in favor of immunity. "Courts sometimes call habeas corpus proceedings 'civil actions.' Yet they are actually unique, hybrid proceedings." *Id.* at 197. As a result, "that uniqueness makes it ambiguous whether habeas proceedings fall under 'any civil action' with the [EAJA]." *Id.* Nor does that ambiguity "disappear when one looks to the type of detention a habeas applicant seeks release from. So taking that ambiguity alongside [the] obligation to construe the waiver of sovereign immunity narrowly, [courts must] find that [an] application for a writ of habeas corpus does not fall within the [EAJA's] reach." *Id.*

The Fifth Circuit achieved the same result, expressly agreeing with the Fourth Circuit. *See Barco*, 65 F.4th at 785. That court explained that "[s]ince 'a habeas corpus proceeding is neither a wholly criminal nor a wholly civil action, but rather a hybrid action that is unique, a category unto itself,' it is not purely a civil action, and the EAJA does not authorize attorney's fees for successful 28 U.S.C. § 2241 motions." *Id.* (quoting *O'Brien v. Moore*, 395 F.3d 499, 505, 508 (4th Cir. 2005)).

This Court should apply the Fourth and Fifth Circuit conclusions and hold that, applying the clear statement rule of *Cooper*, habeas petitions challenging immigration detention are not unambiguously and unmistakably "civil actions" for purposes of EAJA.

Federal courts need only be concerned with what they are being asked to do: remedy illegal confinement via issuance of the writ. *See Obando-Segura*, 999 F.3d at 194 ("[T]he reason for the

challenged detention does not change the essence or function of the habeas application used to seek release."); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[T]he traditional function of the writ is to secure release from illegal custody."); *see also Fay v. Noia*, 372 U.S. 391, 423-24 (1963) (explaining habeas actions are not another stage of the proceedings that led to detention, but are independent "from what has gone before"), *overruled on other grounds*, *Wainwright v. Sykes*, 433 U.S. 72 (1977).

Because of their unique nature, habeas petitions challenging immigration detention are not unambiguously or unmistakably "civil actions" within the meaning of EAJA. Because of this ambiguity, EAJA's text cannot possibly satisfy the Supreme Court's stringent test that "a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *Cooper*, 566 U.S. at 290. Sovereign immunity must bar any EAJA award here.

The government is cognizant that Ninth Circuit has concluded that EAJA fees are available in the context of immigration habeas actions.[2] *See In re Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985). However, this Court should not rely on *Hill*'s rationale to award EAJA fees in this case. In *Hill*—decided three decades before *Cooper*—the Ninth Circuit determined that EAJA fees were available to a noncitizen who challenged the denial of his admission to the United States via a habeas petition. 775 F.2d at 1040. Rather than interpret the statutory text, the court instead rested its decision on "the dual purposes of the EAJA," which the court found are "to remove the financial disincentive for individuals and small businesses challenging or defending against government regulatory conduct where the cost of attorneys may be prohibitive," and "to encourage challenges to improper government action as a means of helping formulate better public policy." *Id.*

Because the *Hill* petitioner was not eligible for appointed counsel, he "had little economic incentive to challenge [the government] action," and had "no custodial incentive" to bring a petition, the court held that the "dual purpose underpinning the EAJA [would be] served by characterizing th[at] particular proceeding as a civil action." *Id.* at 1041. Nowhere in the opinion did the court discuss the definition of the term "civil action," address whether the term was ambiguous, or engage with the

[2] Other circuits have concluded similarly. *See Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d Cir. 2005); *Michelin v. Warden Moshannon Valley Correctional Center*, --F.4 th --, 2026 WL 263483 (3d Cir. 2026); and *Daley v. Ceja, et.al.*, 158 4th 1152 (10th Cir. 2025) (holding for EAJA purposes, habeas immigration actions are "civil actions").

consequences of any such ambiguity. Rather, the court moved directly to analyzing the statute's "structure and purpose." *Id.* at 1040.

That approach does not square with *Cooper* and the modern approach to the sovereign immunity analysis, which requires waiver to be unambiguously expressed in statutory text—not mere vibes sensed from structure and purpose.

At bottom, *Hill* relied on the Ninth Circuit's belief that it would be good public policy consistent with its understanding of Congress's intent in passing EAJA to allow immigration detainees who bring habeas petitions to recover attorney's fees. But the Supreme Court has rejected precisely this mode of reasoning—including *specifically* in the context of EAJA awards in the immigration context. *See Ardestani*, 502 U.S. at 138 (finding no waiver of sovereign immunity despite conceding that "the broad purposes of the EAJA would be served by making the statute applicable to deportation proceedings"). Moreover, *Hill* is not consistent with how the Supreme Court has instructed the lower courts to interpret and apply waivers of sovereign immunity.

Even more telling, however, the factual and procedural scenario in *Hill* would not come up in a habeas petition today. There, the petitioner who successfully challenged the United States' decision to deny him entry was entitled to EAJA fees. 775 F.2d at 1038-40. If an analogous habeas claim was brought today, that claim would be dismissed because it would not be challenging unlawful custody. *See Obando-Segura,* 999 F.3d at 194 n.3 (citing *DHS v. Thuraissigiam*, 591 U.S. 103, 117–20 (2020), and *Skinner v. Switzer*, 562 U.S. 521, 535 (2011)); *see also O'Brien,* 395 F.3d at 508 (noting *Hill* represents "'spotty' adherence to the rule that waivers of sovereign immunity are to be strictly construed").

The Court should deny EAJA attorneys' fees because the Government is immune from such an award.

IV. THE COURT SHOULD NOT AWARD EAJA ATTORNEYS' FEES

Should the Court conclude that EAJA applies in the immigration habeas context, it should nevertheless deny Petitioner's request for attorneys' fees of $9,553.

A. Legal standard

Under the "American Rule," each party ordinarily bears its own attorneys' fees unless there is

express statutory authorization to the contrary. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245 (1975). The EAJA is one such statutory authorization. 28 U.S.C. § 2412(d)(1)(A). 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); *see also United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009). EAJA only authorizes the payment of "reasonable" attorneys' fees and expenses. 28 U.S.C. § 2412(d)(2)(A).

Regarding the second prong, a prevailing plaintiff is not entitled to attorneys' fees under EAJA when the government's positions were substantially justified. *Li v. Keisler*, 505 F.3d 913, 918 (9th Cir. 2007). In an EAJA case, the government bears the burden of demonstrating that its position was substantially justified if the plaintiff is the prevailing party. *See Gonzales v. Free Speech Coal.*, 408 F.3d 613, 618 (9th Cir. 2005). "The test for whether the government [was] substantially justified is one of reasonableness." *Id.* (quoting *League of Women Voters of Cal. v. FCC*, 798 F.2d 1255, 1257 (9th Cir. 1986)). In short, the government "must have a reasonable basis both in law and in fact" for its litigation position. *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1124 (9th Cir. 2004) (citing *United States v. 2659 Roundhill Drive*, 284 F.3d 1146, 1151 (9th Cir. 2002)); see also 28 U.S.C. § 2412(d)(1)(A)(2)(D). The government's position need "not [be] '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). "Put another way, substantially justified

means there is a dispute over which 'reasonable minds could differ.'" *Gonzales*, 408 F.3d at 618 (quoting *League of Women Voters*, 798 F.2d at 1260).

In addition to those first two prerequisites, an EAJA application, which must be submitted to the Court within 30 days of final judgment, must include: (1) a showing that the applicant is eligible to receive an award; and (2) a statement of the amount sought together with an itemized statement that indicates the amount of time expended and the rate at which fees and other expenses were computed. See 28 U.S.C. § 2412(d)(1)(A), (B). Additionally, an award of attorneys' fees under EAJA is generally capped at $125 per hour. *See id.* § 2412(d)(2)(A). A district court may only award fees beyond the statutory maximum if it "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." *Id.*[3]

B. Respondents' litigating position was substantially justified.

Even if EAJA applied to immigration habeas cases, Petitioner is not entitled to fees because the pre-litigation actions that gave rise to Petitioner's habeas petition and the government's litigation position had reasonable bases in law and fact. Therefore, viewing the totality of the circumstances, the government's position was substantially justified.

The Ninth Circuit has recognized that "[t]o establish substantial justification, the government need *not* establish that it was correct or 'justified to a high degree' . . . but only that its position is one that a 'reasonable person could think it correct.'" *Ibrahim v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1167–68 (9th Cir. 2019) (en banc) (emphasis added) (quoting *Pierce*, 87 U.S. at 566 n.2). This standard is met where there is a "genuine dispute" or "if reasonable people could differ" as to the appropriateness of the government's litigating positions. *See Pierce*, 487 U.S. at 565; *Gonzales*, 408 F.3d at 618 (substantially justified means there is a dispute over which "reasonable minds could differ"); *United States v. First Nat'l Bank of Circle*, 732 F.2d 1444, 1447 (9th Cir. 1984) (government need not "show that it had a substantial likelihood of prevailing"). "In making a determination of substantial justification, the court must consider the reasonableness of both the underlying government action at

[3] As a threshold matter, Respondents agree that Petitioner was the prevailing party and that there are no special circumstances making an award unjust.

issue and the position asserted by the government in 'defending the validity of the action in court." *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1230 (9th Cir. 1990) (internal quotation marks omitted).

First, the two disputes before the Court here were whether (1) Petitioner was properly classified as an applicant for admission and (2) whether he was entitled to a pre-deprivation hearing before re-detention under the Due Process Clause of the Fifth Amendment. Contrary to Petitioner's assertion, simply because the Court disagreed with Respondents' position that (1) Petitioner was an applicant for admission and therefore mandatory detention was proper under § 1225 and (2) as an applicant for admission, Petitioner was not afforded a procedural due process right to a bond hearing under § 1225, does not mean Respondent was not substantially justified. As noted above, Respondents are not required to demonstrate that their position was correct, only whether a genuine dispute existed or whether reasonable people could disagree. And Respondents did so here.

Second, in *Buenrostro-Mendez v. Bondi, et.al.* (Case Number 20496, February 6, 2026), the Fifth Circuit, largely on statutory construction grounds, recently adopted the government's interpretation of §1225 argued in this case that individuals similarly situated to Petitioner are not entitled to release on bond and reversed district court orders requiring bond hearings or release. This further supports the notion that Respondents' position was not only substantially justified at the inception of agency action, but throughout this ligation, notwithstanding Petitioner's Fifth Amendment due process arguments.[4]

Accordingly, the Court should deny Petitioner's EAJA motion in full because the government has satisfied its burden of demonstrating that its positions in this matter were substantially justified. *See Bay Area Peace Navy*, 914 F.2d at 1231 (reversing fee award where the government argued its position "'forcefully and well'" and "'difficult questions' were raised and there is an absence of adverse precedent on point").

C. <u>Even if an award is warranted, Petitioner is not entitled to the amount requested.</u>

Even if the Court rules that the government was not substantially justified in its legal positions,

[4] The United States acknowledges that this Court has found the majority's reasoning in *Buenrostro-Mendez* to be unpersuasive on the matter of statutory interpretation of §1225. *See, e,g.,* P.S.S.B. v. Chestnut, et al., No. 1:25-CV-001981- CSK (E.D. Cal. March 9, 2026).

Petitioner's requested fees are excessive. Notwithstanding Petitioner's implicit assertions to the contrary, the issues in this case were not complex. Petitioner carries "the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1982). Here, in this single-petitioner habeas case, Petitioner seeks to recover $9,553 in fees under EAJA by claiming 12.4 hours of legal work for one first-year associate and one veteran attorney and applying enhanced hourly rates for both of them.[5] This Court should reduce the request by: (1) correctly applying the EAJA statutory hourly rate (adjusted for cost of living increases) to all of the billed hours; and then (2) denying claimed work hours that are excessive, duplicative, clerical, and inadequately supported. As the D.C. Circuit has emphasized, courts should be cognizant of the fact that the taxpayer ultimately will pay this award and that "items of expense or fees that may not be unreasonable between a first class law firm and a solvent client[] are not always supported by indicia of reasonableness sufficient to allow [the court] to tax the same against the United States." *Am. Petroleum Inst. v. EPA*, 72 F.3d 907, 912 (D.C. Cir. 1996).

Petitioner's billing records contain multiple specific instances of (1) billing for duplicative or excessive tasks,[6] (2) vaguely described task entries,[7] and (3) billing entries that are non-compensable under EAJA, including time performing clerical tasks. The government also proposes reductions to Petitioner's requested fees by: (1) applying the Ninth Circuit's well-established adjusted EAJA statutory rate to each entry, (2) proposing zero dollars of compensation for non-compensable billing entries, and (3) then applying a 50%, 20%, or 10% overall reduction in fees because nearly every remaining billing entry is inadequately supported (either excessive and duplicative, vaguely described, or clerical).

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[5] Petitioner claims a $540 hourly rate for the first-year associate, and an $850 hourly rate for the 20-year veteran attorney who worked on this case.

[6] Based on the dates of filings on ECF, it appears two attorneys appear to have drafted, reviewed, and/or edited Petitioner's reply to Respondents' Opposition filed December 19, 2025 (ECF 12). *See* ECF 20-1.

[7] Counsel's billing records are relatively vague and often combine multiple tasks into a single line item, making it difficult to attribute time to a particular task. For example, on December 12, 2025, an attorney performed the following: "[c]all with Carlos's wife re: case; served documents on AUSA; email Public Counsel re: update on case." Other entries provide little detail as to the work being performed. Frequent descriptions throughout the records include the words "review," "revise," "prepare," "finalize," and "correspond," among others. *See* ECF 20-1. For example, on December 20, 2025, an attorney "review[ed] reply ISO habeas."

Specifically, as discussed below, even if each billed entry was compensable, the maximum amount that Petitioner could claim under the adjusted EAJA statutory rate is $258.46 which would still result in an excessive award of $3,204.90.[8] The Court should then decline to award Petitioner's counsel fees for clerical tasks, and the duplicative and excessive efforts by an associate and veteran attorney, which would lower the award to $1,111.39. Then, because a vast majority of the remaining entries are inadequately supported, the Court should further apply a 50% overall reduction in fees (lowering the award to $555.70), a 20% overall reduction in fees (lowering the award to $889.11), or at least a 10% overall reduction in fees (lowering the award to $1000.25).

D. The Court should deny fees for claimed hours that are excessive, duplicative, inadequately supported or not compensable under EAJA

1. Duplicative work and excessive time

In calculating the number of hours that were reasonably expended on the litigation, "'it does not follow that the amount of time actually expended is the amount of time reasonably expended." *Bunn v. Bowen*, 637 F. Supp. 464, 469 (E.D.N.C. 1986) (emphasis in original) (citing *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc)). Instead, a party seeking attorney fees must exercise good billing judgment and provide evidence supporting the time claimed. *See Hensley*, 461 U.S. at 432–35, 437. The *Hensley* Court specifically cautioned that "[c]ounsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Id.* at 434.

This case involved one habeas petitioner seeking release or a bond hearing, a request that courts within this District are well-equipped to assess. But Petitioner seeks to recover over $9,500 in fees for two attorneys. To overstaff this case in this manner is unreasonable and disproportionate to the level of complexity of this case, and the government should not be required to expend taxpayer money for it. *See Hensley*, 461 U.S. at 434 (advising district courts to exclude hours that result from cases being

[8] For the Ninth Circuit's well-established table of annually adjusted EAJA rates see https://www.https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (last visited March 10, 2026).

"overstaffed"); *Sorenson v. Mink*, 239 F.3d 1140, 1146-47 (9th Cir. 2001) (court erred in awarding fees for hours that reflected "excessive staffing"); *Metro Data Sys., Inc. v. Durango Sys., Inc.*, 597 F. Supp. 244, 245 (D. Ariz. 1984) (noting that defendant "deployed a little army of thirteen lawyers (five in San Francisco, eight in Phoenix), three paralegals and one law clerk to defend against plaintiff's claims").

Even a cursory review reveals that Petitioner's billing contains numerous duplicative and excessive entries. *See Hensley*, 461 U.S. at 434 (excessive and redundant hours are not "reasonably expended" and thus should be excluded from any fee award). The Court should accordingly reduce the fee demand to account for these duplicative and excessive time entries. *See, e.g., Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) ("[C]ourts ought to examine with skepticism claims that several lawyers were needed to perform a task, and should deny compensation for such needless duplication as when three lawyers appear for a hearing when one would do." (footnote omitted)); *Evans v. Port Auth. of New York & New Jersey*, 273 F.3d 346, 362 (3d Cir. 2001) (finding unreasonable for two partners to bill for work performed on the same aspects of a case); *Maldonado v. Houstoun*, 256 F.3d 181, 185 (3d Cir. 2001) (questioning whether time claimed in a fee petition was reasonable where the appeal "could have been briefed and argued by a single lawyer or two" and noting "the prospects of payment by . . . a defendant with tax collecting powers should not encourage the utilization of an excess number of lawyers on the preparation of the appeal"); *Metro Data Sys.*, 597 F. Supp. at 246 (discounting duplicative hours between two law firms because "[o]nce the Phoenix firm was entrusted with the defense of the action, anything done by the San Francisco firm in formulating a defense strategy was essentially duplicative").

2. Vague time entries

Courts have the discretion to reduce an award of attorney's fees when the request is not properly documented. *Hensley*, 461 U.S. at 433; *see, e.g., Neil v. Comm'r of Soc. Sec.*, 495 F. App'x 845, 847 (9th Cir. 2012) (holding that the district court was within its discretion to reduce fee award for "entry that was vague and inadequately explained" and "to account for block billing"). Petitioner's counsel has the burden to document the hours expended "in a manner that will enable a reviewing court to identify distinct claims." *Hensley*, 461 U.S. at 437; *see Mendez v. County of San Bernardino*, 540 F.3d 1109 (9th

Cir. 2008) (finding district courts have broad discretion to reduce the number of hours included in the fee award where the billing records are vague, insufficiently descriptive, or inflated). Courts within the Ninth Circuit "have reduced fee awards where the billing entries were too vague to conduct 'a meaningful review' or determine whether the time expended was reasonable." *Mohamed v. Barr*, 562 F. Supp. 3d 1128, 1136 (E.D. Cal. 2022) (citing *McCarthy v. R.J. Reynolds Tobacco Co.*, 2011 WL 4928623, at *4 (E.D. Cal. Oct. 17, 2011) (reducing time for a fee award where "most of the entries refer only generally to 'legal research' and 'conversations with [co-counsel]' without identifying the subject of the research or conversations"); *Nolan v. City of Los Angeles*, 2014 WL 12564127, at *7 (C.D. Cal. Feb. 10, 2014) (criticizing "entries that merely indicate that an email was sent or that a phone call was made without describing in any way the reason for or topic of the particular correspondence" and reducing the lodestar)).

Here, Petitioner's billing records contain numerous vague entries for attorneys' correspondence, meeting(s), and calls that lack indicia that the time spent was reasonable, directly attributable to this case, or necessary to achieve the results obtained. A number of entries conflate several tasks into one line item, making it difficult to ascertain the time reasonably attributable to any single task. Simply providing billing records showing that an attorney emailed, had calls, or corresponded with another attorney on the case, or reviewed the record is insufficient to meet Petitioner's burden by clear and convincing evidence that his claimed fees are reasonable.

3. Time entries for clerical tasks

The Court should decline to award Petitioner any fees for time spent on clerical tasks. "It simply is not reasonable for a lawyer to bill, at her regular hourly rate, for tasks that a non-attorney employed by her could perform at a much lower cost." *Davis v. City & Cty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992), *opinion vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993); *see also Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989) ("[P]urely clerical or secretarial tasks should not be billed at a paralegal or [lawyer's] rate, regardless of who performs them."). Accordingly, courts typically eliminate clerical tasks from fee awards. *See, e.g.*, *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009) (holding that clerical tasks such as filing and organization "should have been subsumed in firm

overhead"); *Harris v. L & L Wings, Inc.*, 132 F.3d 978, 985 (4th Cir. 1997) (approving the deduction of hours spent on secretarial tasks from the overall fee calculation); *Neil*, 495 F. App'x at 847 (affirming decision not to award fees for clerical tasks such as filing documents and preparing and serving summons); *Brandt v. Astrue*, No. 08-cv-657, 2009 WL 1727472, at *4 (D. Or. June 16, 2009) ("Preparing a summons and civil cover sheet with attachment is primarily clerical in nature. I therefore deduct the time for these two tasks."). Clerical tasks may include but are not limited to: "creating indexes for a binder; filing emails, memoranda, and other correspondence; updating the case calendar with new dates; copying, scanning, and faxing documents; and filing or serving documents." *Moore v. Chase, Inc.*, No. 1:14-CV-01178- SKO, 2016 WL 3648949, at *3 (E.D. Cal. July 7, 2016) (citing *Prison Legal News v. Schwarzenegger*, 561 F. Supp. 2d 1095, 1102 (N.D. Cal. 2008)).

Here, the Court should reduce any award by declining to award any fees for clerical tasks. Those entries include preparing general internal and external correspondence and finalizing pleadings. All of these clerical tasks could, and should, have been performed by a paralegal or other nonattorney staff member employed by Petitoiner's attorneys. *See Missouri*, 491 U.S. at 288 10 n.10; *Jones v. Metro. Life Ins. Co.*, 845 F. Supp. 2d 1016, 027 (845 F. Supp. 2d 1016 (N.D. Cal. 2012) (deducting time spent filing court documents). Further, in some instances it is impossible to precisely assess how much time an attorney spent on the clerical tasks compared to the non-clerical tasks listed within the same billing entry. Accordingly, the Court should decline to award any fees for each entry that contains a clerical task.

V. CONCLUSION

The Court should deny Petitioner's motion for EAJA attorneys' fees because EAJA does not waive sovereign immunity for immigration detention cases. The Court should further deny attorneys' fees because Respondent's litigation position was substantially justified. Alternatively, the Court should reduce the fee amount sought by Petitioner because he has not demonstrated that the fees were justified or that all hours were reasonably expended.

Dated: March 16, 2026

ERIC GRANT
United States Attorney

By: /s/ NICHOLAS KARP
NICHOLAS KARP
Assistant United States Attorney