

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION**

R.O.A.)
)
 Petitioner,)
)
 vs.)
)
 MIKE LEWIS, in his official capacity as)
 Hopkins County Jailer;)
 SAMUEL OLSON, *Field Office Director for ICE*)
Chicago Field Office, and)
 TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs Enforcement; and)
 KRISTI NOEM, *Secretary of Homeland Security*; and)
 PAMELA BONDI, *U.S. Attorney General*.)
)
 Respondents.)
)

CASE NO.:
4:25-cv-00164-GNS

**PETITIONER’S MOTION FOR COSTS, FEES, AND OTHER EXPENSES UNDER
THE EQUAL ACCESS TO JUSTICE ACT AND BRIEF IN SUPPORT**

Petitioner moves, under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), for attorneys' fees incurred in his petition for writ of habeas corpus challenging his unlawful civil immigration detention by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) at the Hopkins County Jail in Madisonville, Kentucky. This Court granted Petitioner's petition for a writ of habeas corpus on December 16, 2025. *See* ECF No. 15 (Text Order only); ECF No. 17 (Order).

Petitioner seeks an award of attorneys' fees and expenses under EAJA, as set forth below. An award is mandatory because Petitioner is **an eligible party** as his net worth did not exceed \$2,000,000 at the time the civil action was filed. *See* Exhibit 1. **Petitioner is the prevailing party in a civil action** for EAJA purposes; **the government's position was not substantially justified**; and no special circumstances make an award unjust. Further, special factors, including counsel's specialized expertise in immigration federal court and habeas litigation and the limited availability of such counsel in Kentucky, justify an enhanced fee award.

Petitioner's request is timely filed. A fee application must be filed within thirty (30) days of the final judgment. Under 28 U.S.C. § 2412(d)(1)(B), an EAJA application must be filed "within thirty days of final judgment in the action," and "final judgment" is defined as "a judgment that is final and not appealable." 28 U.S.C. § 2412(d)(2)(G); *see* also Fed. R. App. P. 4(a); *Feldpausch v. Heckler*, 763 F.2d 229, 232 (6th Cir. 1985); *Myers v. Sullivan*, 916 F.2d 659, 666 (11th Cir. 1990). Where the United States has taken an appeal but then voluntarily dismisses it, the court of appeals' dismissal order renders the district court's judgment "final and not appealable" for EAJA purposes and immediately starts the thirty-day filing period. *See* Fed. R. App. P. 4(a); *Myers*, 916 F.2d at 672. Here, although the government noticed an appeal from this Court's December 2025 Order, the Sixth Circuit dismissed that appeal on March 3, 2026 (ECF No. 26). This fee application—

filed within thirty (30) days of that date—is timely under EAJA. Contemporaneously with this motion, Petitioner submits an itemized statement from his counsel showing the actual time expended and the rates at which fees and costs are claimed, together with supporting declarations and documentation.

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner assumes the Court’s familiarity with the facts of the case but reiterates the procedural history briefly for purpose of demonstrating the work of Petitioner’s counsel. Petitioner filed this petition for writ of habeas corpus on December 3, 2025. ECF No. 1. On December 4, 2025, Petitioner filed a motion to proceed under a pseudonym (ECF No. 8), which the Court granted on December 5, 2025 (ECF No. 9). On December 8, 2025, Respondents filed their Response to the Order to Show Cause. ECF No. 11. On December 11, 2025, Petitioner filed his reply to the government’s show cause response. ECF No. 13. The Court held a hearing on December 16, 2025. *See* ECF No. 15 (text order). On that same date after the hearing, the Court directed Respondents “to release Petitioner R.O.A. IMMEDIATELY and to certify compliance with the Court’s Order” no later than noon on December 17, 2025. *Id.* Thereafter, the Court issued a written Order granting the petition for a writ of habeas corpus. ECF No. 17. On February 17, 2026, Respondents filed a notice of appeal with the Sixth Circuit Court of Appeals, Case No. 26-5124. ECF No. 23. On February 20, 2026, the Court issued an order terminating the case. ECF No. 25. On March 3, 2026, Respondents voluntarily dismissed their appeal. ECF No. 26.

ARGUMENT

I. The Court Should Award Attorney Fees and Costs to Petitioner under EAJA.

The EAJA statute at 28 U.S.C. § 2412(d)(1)(A) dictates that, unless otherwise specifically provided for by statute, 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 ... 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.”¹ *Pablo Lorenzo v. Barr*, 806 F. App’x 431, 434 (6th Cir. 2020); *Townsend v. Soc. Sec. Admin.*, 486 F.3d 127, 129–30 (6th Cir. 2007).

A. History and Purpose of EAJA

“Congress passed the EAJA in response to its concern that persons may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights.” *Sullivan v. Hudson*, 490 U.S. 877, 883 (1989) (internal quotation and citation omitted); *see also SEC v. Price Waterhouse*, 41 F.3d 805, 809 (2d Cir. 1994) (Leval, J., dissenting in part) (“The provisions of the EAJA [] are designed to compensate victims of unjustified litigation by the Government from some of the burdensome expenses and costs to which they were subjected by the Government’s taking of unreasonable positions.... **The Act essentially recognizes that abusive litigation tactics by the United States government**, whether the Government appears in the role of plaintiff or defendant, can inflict great unjustifiable cost and expense. **It is designed to furnish relief from such governmental litigation abuse.**”) (emphasis added). Thus, the EAJA, which amended 28 U.S.C. § 2412 and 5 U.S.C. § 504, was designed to rectify this situation by providing for a mandatory award of reasonable attorneys’ fees in some cases. Pub. L. 96–481, § 202(c), 94 Stat. 2321, 2325; *Comm’r, I.N.S. v. Jean*, 496 U.S. 154, 163 (1990) (“the specific purpose of the EAJA is to eliminate for the

¹ 28 U.S.C. § 2412(d)(1)(A) states: Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), 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.

average person the financial disincentive to challenge unreasonable governmental actions.”); *Iza v. Arnott*, No. 6:25-CV-3392-MDH, 2026 WL 67152, at *4 (W.D. Mo. Jan. 8, 2026); *Boudin v. Thomas*, 732 F.2d 1107, 1114 (2d Cir. 1984) (“The EAJA was passed partly to encourage challenges to improper actions by government agencies. The drafters perceived legal actions as helping to formulate public policy.” (citations omitted)).

B. Habeas Petitions Challenging Civil Immigration Detention Are Civil Actions.

“A petition for a writ of habeas corpus has been a civil action since before our law was our law.” *Michelin v. Warden Moshannon Valley Corr. Ctr.*, No. 24-2990, 2026 WL 263483, at *1 (3d Cir. Feb. 2, 2026). **The writ of habeas corpus is a civil action:** it is the common law mechanism used to challenge the legality of detention and therefore to redress unlawful detentions. *See Holmes v. Jennison*, 39 U.S. (14 Pet.) 540, 565–67 (1840) (holding a petition for a writ of habeas corpus is a civil action under the Judiciary Act of 1789). And while a waiver of sovereign immunity must be “unequivocally expressed,” the phrase “any civil action (other than cases sounding in tort)” is that unequivocal expression. By explicitly carving out only tort cases, Congress demonstrated its intent to otherwise apply the EAJA broadly. Given the “well settled” civil nature of habeas corpus, Congress did not need to specifically enumerate it; the general term “civil action” was sufficient.² Every federal circuit court at the time of the EAJA’s passage³ had held that habeas was civil.

² A full century before Congress passed EAJA, the Supreme Court explained that “[t]he writ of habeas corpus is the remedy which the law gives for the enforcement of the civil right of personal liberty.” *Ex parte Tom Tong*, 108 U.S. 556, 559, 2 S.Ct. 871 (1883). For that reason, “[s]uch a proceeding ... is, in [the Court’s] opinion, a civil proceeding.” *Id.* at 560, 2 S.Ct. 871. The Supreme Court repeatedly and consistently affirmed this holding.² Thus, by the time the EAJA was enacted in 1980, it was “well settled” under Supreme Court precedent “that habeas corpus is a civil proceeding.” *Daley v. Ceja*, 158 F.4th at 1157 (quoting *Browder v. Dir., Dep’t of Corr. of Ill.*, 434 U.S. 257, 269, 98 S.Ct. 556 (1978)).

³ *See, e.g., Mercado v. United States*, 183 F.2d 486, 487 (1st Cir. 1950) (“[H]abeas corpus [] has always been regarded as a civil proceeding[.]”); *United States ex rel. Meadows v. New York*, 426 F.2d 1176, 1183 n.9 (2d Cir. 1970) (“Since habeas corpus proceedings are civil in nature, they are subsumed under the phrase ‘any civil action.’”); *United States ex rel. Thomas v. New Jersey*, 472 F.2d 735, 741 (3d Cir. 1973) (“Habeas corpus is a civil proceeding.”); *Long v. Robinson*, 436 F.2d 1116, 1119 (4th Cir. 1971) (describing habeas corpus as a “civil process”); *Estep v. U.S.*, 251 F.2d 579, 581 (5th Cir. 1958) (“Habeas corpus petitions ... are, of course, civil proceedings[.]”); *Bowdidge v. Lehman*, 252

Immigration habeas petitions challenging civil immigration detention constitute civil actions that fall under the meaning of “any civil action” in the EAJA statute. *Daley v. Ceja*, 158 F.4th 1152, 1157 (10th Cir. 2025) (holding that habeas actions challenging immigration detention are unambiguously “civil actions” under EAJA); *Michelin*, 2026 WL 263483, at *7 (“The word ‘any’ matters: it conveys that the statute reaches civil actions ‘of whatever kind’—even variations like habeas proceedings.”). The **Second, Third, Ninth, and Tenth Circuits have expressly held that immigration habeas petitions fall within EAJA’s “civil action” language.** See *Vacchio v. Ashcroft*, 404 F.3d 663, 668, 670-72 (2d Cir. 2005) (“‘civil actions’ under EAJA encompass *immigration* habeas petitions” and distinguishing criminal habeas cases treated as “hybrid” civil–criminal proceedings unrecoverable under EAJA) (emphasis in original); *Michelin*, 2026 WL 263483, at *1 (Habeas actions are civil actions and the complete phrase—“any civil action (other than cases sounding in tort)” —in the EAJA statute clearly encompasses habeas actions.); *In re Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985) (applying EAJA to a habeas action brought by noncitizens seeking admission to the United States); *Daley*, 158 F.4th at 1157.

Similarly, the **Sixth Circuit**, along with the First and Eighth Circuits likewise have agreed EAJA applies to immigration habeas without expressly deciding and, in some instances, awarded EAJA fees in the immigration habeas context, even where they did not squarely analyze EAJA’s “civil action” language. See *Dvorkin v. Gonzales*, 173 F. App’x 420, 420 (6th Cir. 2006) (reviewing EAJA award stemming from a petition for habeas corpus); *Saysana v. Gillen*, 614 F.3d

F.2d 366, 368 (6th Cir. 1958) (“Habeas corpus is a civil proceeding[.]”); *U.S. ex rel. Rebenstorf v. Pate*, 417 F.2d 1222, 1225 (7th Cir. 1969) (“[T]he federal habeas corpus remedy[] is civil in nature.”); *Burgess v. King*, 130 F.2d 761, 762 (8th Cir. 1942) (“Habeas corpus is in its nature a civil rather than a criminal proceeding[.]”); *Collins v. Heinze*, 217 F.2d 62, 62 (9th Cir. 1954) (“A habeas corpus proceeding is in the nature of a civil action[.]”); *Hunter v. Thomas*, 173 F.2d 810, 812 (10th Cir. 1949) (“Habeas corpus is a civil proceeding.”); *Jackson v. U.S.*, 353 F.2d 862, 865 n.4 (D.C. Cir. 1965) (“Of course, habeas corpus is considered a civil proceeding[.]”). Combining that judicial perspective with common law history shows that habeas is unambiguously civil. *Daley*, 158 F.4th at 1161. The Eleventh Circuit was not established until 1981, after the EAJA was enacted. Pub. L. 96-452, 94 Stat. 1994 (1980).

1 (1st Cir. 2010) (analyzing EAJA motion stemming from grant of habeas corpus petition regarding immigration detention but denying motion upon finding the government’s position was not unjustified); *Bah v. Cangemi*, 548 F.3d 680, 683 (8th Cir. 2008) (reviewing EAJA decision following an immigration habeas petition). This understanding accords with the Sixth Circuit’s recognition that immigration removal proceedings are civil in nature, see, e.g., *Enriquez-Perdomo v. Newman*, 149 F.4th 623, 635 (6th Cir. 2025), and that immigration habeas petitions fall within EAJA’s reference to “any civil action.”

Numerous district court decisions have also held that immigration habeas cases are “civil actions” covered by the EAJA. See, e.g., *Bernardo-Rodrigues v. Hyde*, No. 2:25-CV-00553-LEW, 2026 WL 370863, at *1 (D. Me. Feb. 10, 2026) (finding an EAJA award is appropriate for civil habeas petitioners challenging immigration detention);⁴ *Salazar v. Noem*, No. 0:26-CV-1040, 2026 WL 381889, at *2, n.2 (D. Minn. Feb. 11, 2026) (“A petitioner seeking release from immigration detention shall be awarded costs and reasonable attorney’s fees pursuant to [EAJA]”) citing *Michelin*, 2026 WL 207266 at *3, and *Bah*, 548 F.3d 680); *Opeoluw Egbele v. Bondi*, No. 0:26-CV-1439, 2026 WL 458242, at *1, n.1 (D. Minn. Feb. 18, 2026) (same); *Arias v. Choate*, 2023 WL 4488890, at *2 (D. Colo. July 12, 2023) (holding that immigration habeas petitions are included in “any civil action” under EAJA and that the waiver of sovereign immunity applies); *Ortega v. Hodgson*, No. CIV.A. 11-10358-MBB, 2012 WL 1658931, at *3 (D. Mass. May 10, 2012) (holding that EAJA’s “civil action” requirement applies to habeas petitions in the

⁴ In *Bernardo Rodrigues*, the district court explained that “[alt]hough governed by their own set of rules and procedures, habeas corpus petitions like the one filed in this case are docketed as civil matters. Through a civil habeas petition, an individual in custody on civil process challenges the lawfulness of their detention through an adversarial civil proceeding. Such a proceeding typically, as here, is brought to secure the vindication of rights due to civil and administrative matters separately instituted by the Federal Government through agency action. In this light, an EAJA award is appropriate for civil habeas petitioners who prevail because, in reference to the requirements of the EAJA, their petitions institute on the Court’s docket civil rather than criminal actions that do not sound in tort and seek judicial review of agency action.” 2026 WL 370863, at *1.

immigration context), citing *Oscar v. Gillen*, 595 F. Supp. 2d 166 (D. Mass. 2009); *Kholyavskiy v. Schlecht*, 479 F. Supp. 2d 897, 901 (E.D. Wis. 2007) (“[I]t cannot be reasonably disputed that the EAJA applies to a habeas action challenging immigration-related detention.”) [] “If Congress had intended to exclude habeas actions from the EAJA, it would have done so as it excluded tort actions.”).⁵ And district courts in the Sixth circuit have allowed EAJA fee requests stemming from civil immigration habeas petitions, even without directly addressing jurisdiction. *See e.g., Rosciszewski v. Adducci*, 983 F. Supp. 2d 910, 916 (E.D. Mich. 2013) (considering EAJA motion in habeas challenging mandatory detention under 8 U.S.C. § 1226(c)); *Rosario v. Prindle*, No. CIV. 11-217-WOB-CJS, 2011 WL 6942560, at *3 (E.D. Ky. Nov. 28, 2011), report and recommendation adopted, 2012 WL 12920 (E.D. Ky. Jan. 4, 2012) (same).

Applying EAJA to civil habeas actions challenging civil immigration detention is also most consistent with the Supreme Court’s repeated description of immigration proceedings and detention as “civil, not criminal, and ... nonpunitive in purpose and effect.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 335 (2018) (dissent) (discussing immigration detention as one of very few instances of civil confinement); *see also Enriquez-*

⁵ The Eleventh Circuit Court of Appeals has not directly considered the application of the EAJA in the habeas context challenging civil immigration detention. *Cf. Pollgreen v. Morris*, 911 F.2d 527, 534 (11th Cir. 1990) (finding EAJA provides for a court to award attorney’s fees to the prevailing party in a civil action and administrative proceedings that are “so intimately connected with judicial proceedings as to be considered part of the ‘civil action’ for purposes of a fee award.”) quoting *Sullivan v. Hudson*, 490 U.S. 877 (1989)). The Fourth and Fifth Circuits have characterized habeas proceedings as “hybrid” actions—neither purely civil nor purely criminal—and on that basis have read EAJA’s reference to “any civil action” and the associated waiver of sovereign immunity more narrowly. *See Obando-Segura v. Garland*, 999 F.3d 190, 193–95, 197 (4th Cir. 2021); *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023). Those decisions, however, did not undertake the same close historical analysis of habeas corpus or the long line of Supreme Court and pre-EAJA circuit authority recognizing habeas as a civil proceeding, and they did not meaningfully distinguish between criminal post-conviction habeas and habeas petitions challenging civil immigration detention. *See Michelin*, 2026 WL 263483 at *9-*10 (explaining that the Fourth and Fifth circuit decisions that relied *O’Brien v. Moore*, 395 F.3d 499 (4th Cir. 2005) 1) “ignored two crucial pieces of the statutory text: the ‘any’ that precedes ‘civil action’ and the torts exception that follows[,]” and 2) “largely neglected the deep common-law history of habeas as a civil action.”). By contrast, *Michelin*, *Daley*, *Vacchio*, and *In re Hill* ground their holdings in that history and in the civil character of immigration detention itself and explicitly distinguish criminal “hybrid” habeas proceedings from civil immigration-detention habeas.

Perdomo v. Newman, 149 F.4th 623, 635 (6th Cir. 2025) (“Because immigration law is civil, the Fifth Amendment would apply to violations of due process in the immigration context.”). Although some habeas petitions are filed by prisoners challenging their conviction and other issues with their confinement, immigration habeas is distinct and does not directly stem from a criminal conviction.

Here, there is no possible dispute that the habeas challenge in this case stemmed from Respondent’s unlawful revocation of Petitioner’s OSUP. Petitioner’s habeas petition fits wholly within the EAJA parameter of “a party in any civil action.” Further, the common-law understanding of habeas is the vehicle for enforcing the “civil right of personal liberty,” and its EAJA’s core purpose to lower financial barriers to challenging unreasonable governmental action. As the Tenth Circuit explained in *Daley v. Ceja*, 158 F.4th at 1157, “[i]mmigration is a sprawling and complicated area of law that can be difficult to navigate without the aid of counsel. It is also difficult for those in immigration detention to afford counsel because they are unable to work while detained. The availability of EAJA fees in habeas actions challenging immigration detention therefore plays an important role in lowering financial barriers to filing such actions.” *Id.*, see *Boudin v. Thomas*, 732 F.2d 1107, 1114 (2d Cir. 1984) (“The EAJA was passed partly to encourage challenges to improper actions by government agencies. The drafters perceived legal actions as helping to formulate public policy.” (citations omitted)). Given the profound private interests at stake in physical liberty and the ability to remain with one’s family in the United States, recognizing immigration habeas as a “civil action” under EAJA promotes access to counsel and ensures that meritorious challenges to unlawful detention can realistically be brought.

C. Petitioner is the Prevailing Party. The Court Granted his Habeas Petition and Ordered the Government to Immediately Release Him from Detention.

To obtain an award of attorneys’ fees and expenses under EAJA, Petitioner must demonstrate that she was the “prevailing party” under 28 U.S.C. § 2412(d)(1)(A). *Scarborough*

v. Principi, 541 U.S. 401, 414 (2004). According to the Supreme Court, “a ‘prevailing party’ is one who has been awarded some relief by a court” and who has obtained a “court-ordered change in the legal relationship” between the parties. *Buckhannon Bd. & Care Home Inc., v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598, 603-605 (2001) (“enforceable judgments on the merits [] create ‘the material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.”); *Rhoten v. Bowen*, 854 F.2d 667, 669 (4th Cir. 1988) (Litigants are considered “prevailing parties” under the EAJA “if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.”); *Marshall v. Comm’r of Soc. Sec.*, 444 F.3d 837, 840 (6th Cir. 2006) (discussing prevailing party status).

The burden then shifts to the government to demonstrate that its position was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A)); *United States v. True*, 250 F.3d 410, 419 n.7 (6th Cir. 2001) (“The government bears the burden of showing that its position was substantially justified.”) (collecting cases); see *Melton v. Saul*, No. 4:17-CV-00075-HBB, 2019 WL 5580958, at *4 (W.D. Ky. Oct. 29, 2019)

Here, Petitioner is a prevailing party because he has achieved a “material alteration of the legal relationship of the parties” and that alteration was “judicially sanctioned.” *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604–05 (2001). In this case, over the government’s opposition, the Court agreed with Petitioner’s position that his detention was unlawful because Respondents failed to properly revoke his Order of Supervision. ECF No. 17. The Court found that because “Respondents failed to follow the regulations,” their “revocation of R.O.A.’s OSUP and [his] continued detention are both unlawful and violate [his] Fifth Amendment right to due process of law.” *Id.* at 2. Accordingly, the Court ordered Respondents to immediately release R.O.A. from detention. *Id.* at 3. Thus, this Court’s December

18, 2025 Order conferred prevailing party status on Petitioner. *See e.g., W.M.V.C. v. Barr*, 926 F.3d 202, 208 n.2 (5th Cir. 2019) (“Because petitioners sought a remand to the BIA, our decision to grant such relief . . . entitles petitioners to prevailing party status.”); *Watkins v. Mobile Housing Board*, 632 F.2d 565, 567 (5th Cir. Unit B 1980) (The prevailing party test is “whether he or she has received substantially the relief requested or has been successful on the central issue”); *Robinson v. Kimbrough*, 652 F.2d 458, 465 (5th Cir. 1981) (Plaintiffs prevailed where their “lawsuit was a catalyst motivating defendants to provide the primary relief sought in a manner desired by litigation.”); *Jean v. Nelson*, 863 F.2d 759, 765 (11th Cir. 1988), *aff’d sub nom. Comm’r, I.N.S. v. Jean*, 496 U.S. 154, 110 S. Ct. 2316 (1990) (plaintiffs prevailed where he district court ruled that INS had violated the APA by failing to engage in formal rulemaking before revising its policy of paroling applicants for asylum).

D. The Government’s Position Was Not Substantially Justified.

Here, the government’s position was not “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). The government bears the burden of establishing that its position was substantially justified. *United States v. True*, 250 F.3d 410, 419 n.7 (6th Cir. 2001) (collecting cases); *Scarborough v. Principi*, 541 U.S. at 414; *accord Peck v. Comm’r of Soc. Sec.*, 165 F. App’x 443, 446 (6th Cir. 2006). The Sixth Circuit has held that “[t]he government’s position was substantially justified if it was ‘justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person.’” *Noble v. Barnhart*, 230 F. App’x 517, 519 (6th Cir. 2007) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (internal quotation marks omitted)). Congress purposefully placed this heavy burden of proof on the government. H.R. Rep. No. 96-1418, 96th

Cong., 2d Sess. 10, 13-14 (1980) (“[T]he strong deterrents to contesting government action require that the burden of proof rest with the government.”).

To meet this burden, the government must show that its position had a reasonable basis both in law and in fact. *Pierce, Secretary of HUD v. Underwood et al.*, 487 U.S. 552, 566 n.2 (1988). Under the EAJA, the “position of the United States” encompasses both “the position taken by the United States in the civil action” and “the action or failure to act by the agency upon which the civil action is based.” *Nkenglefac v. Garland*, 64 F.4th 251, 253 (5th Cir. 2023)⁶ (finding government’s position not substantially justified where the underlying BIA and IJ decisions contravened circuit precedent). Thus, “unreasonable agency action at any level entitles the litigant to EAJA fees,” regardless of whether the government’s litigation arguments were themselves reasonable. *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007) (Because Congress intended for EAJA to be a deterrent for unreasonable agency conduct, regardless of whether the government’s conduct in the federal court proceedings is substantially justified, “unreasonable agency action at any level entitles the litigant to EAJA fees.”). If the government cannot show both positions were substantially justified, the Court must award fees.

The government’s position here does not meet the test for substantial justification and would not have satisfied a reasonable person. Indeed, the Court pointed out how “[t]he Supreme Court has recognized that a federal agency’s failure to comply with its own regulations generally renders the associated agency action unlawful.” ECF No. 17 at 2. Notably, Respondents conceded that they were unable to locate a notice of revocation of supervision issued at the time of Petitioner’s detention. *Id.* Further, “[d]uring the hearing, Respondents also acknowledged that there was no basis to oppose R.O.A.’s immediate release.” *Id.* at 3.

⁶ Quoting *W.M.V.C.*, 926 F.3d at 209-10 (quoting *Baker v. Bowen*, 839 F.2d 1075, 1080 (5th Cir. 1988)).

The Court emphasized the holding in *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D. Ky. Sep. 4, 2025), where the court already outlined the requirements for revocation of an Order of Supervision. *Id.* at 2. The Court found that “Respondents failed to follow their own regulations, and the revocation of R.O.A.’s OSUP and [his] continued detention are both unlawful and violate [his] Fifth Amendment right to due process of law.” *Id.* Clearly, the government’s position was not reasonable or substantially justified.

E. No Special Circumstances That Would Make an Award Unjust.

Absent a showing that its position was substantially justified, the government can only avoid paying a prevailing party’s attorneys’ fees and expenses if it can show that special circumstances would make such an award unjust. 28 U.S.C. §2412(d)(1)(A). This provision “should be narrowly construed so as not to interfere with the congressional purpose” in passing statutes such as EAJA. *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985). Furthermore, “Defendants bear the burden of proving the existence of special circumstances.” *Id.* There are no special circumstances in this case, however, that would make it unjust to award Petitioner attorneys’ fees and costs incurred in this litigation. In fact, it would be unjust if Petitioner were not awarded attorneys’ fees and costs necessarily incurred in order to protect and maintain Petitioner’s family including his three United States citizen children, given that the litigation was a direct result of Respondents’ unlawful detention, depriving him of his right to liberty and causing family separation and hardship despite his lawful admission and 25 year residence in the United States.

II. Fees and Other Expenses to be Awarded to Petitioner.

EAJA provides for the recovery of fees and other expenses, as well as costs. 28 U.S.C. §§ 2412(a), (d)(1)(A). The amount to be awarded for work performed (*e.g.* attorneys’ fees) is based upon “prevailing market rates for the kind and quality of the services furnished, except . . . attorney

fees 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). Petitioner emphasizes that while many attorneys may file such cases, there is a verified scarcity of counsel possessing the specific, high-level expertise required to litigate these matters effectively and expeditiously. As such, counsel’s rates reflect her expertise and experience. Lead counsel was responsible for the core legal strategy, primary brief drafting, and oral argument, justifying the highest requested rate, while other attorneys who assisted with research and discrete drafting tasks are billed at rates commensurate with their respective experience and contributions.

Related, in reviewing a fee claim, the Supreme Court has made clear that the “court should focus on the significance of the overall relief obtained by the plaintiff,” *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S.Ct. 1933 (1983)). As the Supreme Court in *Hensley* explained, [w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.... Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court’s rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters. *Id.* at 435; *Pablo Lorenzo v. Barr*, 806 F. App’x 431, 435 (6th Cir. 2020); *Sakhawati v. Lynch*, 839 F.3d 476, 480 (6th Cir. 2016).

A. The prevailing market rate is above the \$125/hour statutory rate.

A reasonable attorney’s fees award under 42 U.S.C. § 1988 is “properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.” *Blum v. Stenson*, 465 U.S. 886, 888 (1984). This action was filed in the Western District of Kentucky, and that is thus the relevant market for purposes of determining a reasonable hourly



rate.⁷ The “prevailing market rate” is “the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record.” *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 715 (6th Cir. 2016) (citing *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004)). In determining a reasonable rate, “[a] district court may rely on a party’s submissions, awards in analogous cases, state bar association guidelines, and its own knowledge and experience in handling similar fee requests.” *Van Horn v. Nationwide Prop. & Cas. Ins.*, 436 F. App’x 496, 499 (6th Cir. 2011) (citation omitted).

In Kentucky, courts have awarded fees above the statutory rate. *See e.g., Doucette v. Comm’r of Soc. Sec.*, 13 F.4th 484, 491, 492 (6th Cir. 2021) (finding plaintiffs’ evidence established a range of comparable hourly market rates between \$205 and \$500 in the Eastern District of Kentucky for a social security case); *Sisters for Life, Inc. v. Louisville-Jefferson Cnty. Metro Gov’t*, No. 3:21-CV-367-RGJ, 2025 WL 2800004, at *6 (W.D. Ky. Sept. 30, 2025) (finding Court finds an hourly rate of \$400 reasonable for Mr. Bruns and Mr. Manion who both had over 30 years of legal experience); *Reece v. Carey*, No. 3:16-CV-00069-GFVT, 2022 WL 701015, at

⁷ However, in *Pablo Lorenzo v. Barr*, 806 F. App’x 431, 437 (6th Cir. 2020), the Sixth Circuit reviewed a district court’s consideration of the market rate where client’s atty lived and worked (which was California) and held that “we are of the opinion that the Ninth Circuit’s listed statutory maximums are a reasonable basis upon which to award attorney fees.” Thus, if this Court considers the prevailing legal market rate for Atlanta, Georgia, where Petitioner’s counsel is located, it substantially higher than the statutory rate. *See e.g., Ratchford v. Regions Financial Corp. et al.*, 4:18-cv-103-HLM, Docs. 27, 32 (N.D. Ga. Mar. 8, 2019) (approving FLSA settlement and motion for attorneys’ fees for founding partner (Roy Barnes) at **\$750 per hour**, junior partner at \$350, and paralegal at \$150); *Hutchison v. Pkwy 750 Kennesaw, LLC*, No. 1:23-CV-02805-SCJ, 2025 WL 2889181 *4-5 (N.D. Ga. Mar. 20, 2025) (concluding that **\$435** was a reasonable hourly rate for attorney based on the prevailing Atlanta market for Fair Labor Standards Act litigation); *S. Poverty L. Ctr. v. United States Dep’t of Homeland Sec.*, No. 1:16-CV-2871-CAP, 2020 WL 13544121, at *4 (N.D. Ga. Mar. 10, 2020) (awarding hourly rate of **\$525 per hour** for attorneys with 21 and 24 years of experience in 2020); *Spurlock v. Complete Cash Holdings, LLC*, 540 F. Supp. 3d 1201, 1210 (N.D. Ga. 2021) (awarding hourly rate of **\$425** for partners); *Jackson v. P & K Rest. Enter., LLC*, No. 1:15-CV-753-MHC, 2018 WL 2271241, at *1 (N.D. Ga. Jan. 25, 2018), *aff’d sub nom. P & K Rest. Enter., LLC v. Jackson*, 758 F. App’x 844 (11th Cir. 2019) (awarding an hourly rate of **\$400** for attorneys for work done between 2015 and 2018); *Georgia State Conference of the NAACP v. Kemp for Georgia*, No. 1:17-CV-1397-TCB, 2018 WL 2271244, at *1 (N.D. Ga. Apr. 11, 2018) (awarding a range of \$225.00 to **\$487.50** for legal work done during 2017-18.); *Alghadeer Bakery & Mkt., Inc. v. TimePayment Corp.*, No. 1:17-CV-1857-SCJ, 2018 WL 4846015, at *1 (N.D. Ga. May 16, 2018) (awarding a rate of **\$425** per hour in 2017).


*3 (E.D. Ky. Mar. 8, 2022) (finding the rate of \$400 per hour on the high end of those regularly approved in the Eastern District of Kentucky but warranted because of exceptional skill and experience in litigating civil rights cases); *Brooksbank v. Koch*, 2019 WL 7407401, at *3 (W.D. Ky. Apr. 15, 2019) (finding \$350 per hour for Mr. Bruns and \$325 per hour for Mr. Wiest were reasonable rates in 2019); *Sweeney v. Crigler*, 2020 WL 7028703, at *1 (E.D. Ky. Nov. 30, 2020) (adopting report and recommendation recommending Messrs. Bruns and Winter receive \$375 per hour and Mr. Wiest receive \$350 per hour); *Ramsek v. Beshear*, No. 3:20-CV-00036-GFVT, 2022 WL 3591827, at *8 (E.D. Ky. Aug. 22, 2022) (finding \$400 per hour for Mr. Bruns and \$375 per hour for Mr. Wiest reasonable).

In Kentucky, the pool of attorneys with substantial experience in federal immigration habeas litigation is especially limited. As Attorneys Attum (Exhibit 3) and Mamedova (Exhibit 4) explain, most immigration practitioners in this District do not regularly handle high-stakes habeas challenges to detention, and local counsel have often relied on co-counseling with out-of-state specialists to meet the recent surge in complex detention litigation. Attorney Weinstock's Georgia-based practice was engaged here precisely because Kentucky counsel could not readily identify local attorneys with comparable habeas expertise who were available to take on this emergency matter at or near EAJA's statutory rate. Against that backdrop, and in light of Attorney Weinstock's unique combination of decades of immigration practice and federal habeas experience, an increase in the hourly rate under 28 U.S.C. § 2412(d)(2)(A) is warranted.

Attorney Karen Weinstock attests that she has been licensed since 1999, has approximately 24 years of exclusive immigration-law experience, devotes 100% of her practice to immigration and federal immigration litigation, and normally charges  per hour for high-level corporate immigration work, but that at least  per hour is warranted for specialized, urgent federal

court immigration litigation such as this case. Exhibit 2, Declaration from Attorney Weinstock. Also attached is a declaration from Attorneys Attum and Mamedova (Exhibits 3-4), who practice in this district. They opine that given Ms. Weinstock's 24 years of immigration experience and rare depth of federal habeas expertise, a [REDACTED] hourly rate for her work in this litigation is reasonable and while slightly higher than the market rate in Kentucky, it is consistent with prevailing market rates in Georgia for complex civil detention and constitutional litigation and an attorney profile with Ms. Weinstock's breadth of specialized expertise. Therefore, with the prevailing market rate being significantly higher than the statutory amount of \$125 per hour for the "kind and quality of service provided," the Court should award attorneys' fees billed at an hourly rate of [REDACTED] per hour for Ms. Weinstock's work in this case.

Petitioner acknowledges that a [REDACTED] hourly rate is higher than the rates commonly awarded for complex civil litigation in Kentucky, but submits that this rate is justified here by the limited availability of counsel with comparable immigration habeas expertise in this District and is consistent with EAJA's allowance of enhanced rates where "the limited availability of qualified attorneys for the proceedings involved" justifies a higher fee. 28 U.S.C. § 2412(d)(2)(A). In particular, the attached declarations from Attorneys Rania Attum and Nazly Mamedova explain that immigration habeas litigation is a narrow subspecialty with only a small handful of capable practitioners in Kentucky, and that experienced habeas counsel in this niche routinely seek and obtain hourly rates in the high hundreds of dollars for this work. Attorney Mamedova, for example, attests that she has eleven years of immigration experience and has sought EAJA rates of [REDACTED] per hour for her own work on complex immigration habeas matters and [REDACTED] per hour for paralegal time, reflecting the premium the Kentucky market places on specialized immigration habeas representation.

Petitioner also offers that by way of comparison in other markets, courts have also recognized enhanced EAJA rates in complex immigration-detention litigation. In *Nadarajah v. Holder*, 569 F.3d 906, 916–17 (9th Cir. 2009), the Ninth Circuit approved an enhanced EAJA rate of \$500 for work performed between 2004 and 2006, finding that those rates were consistent with prevailing market rates for similar services by lawyers of comparable skill and experience. This confirms that, even under EAJA’s cap, specialized immigration-habeas work by highly experienced counsel can warrant significantly higher hourly rates than the statutory baseline.⁸ These decisions support the finding that prevailing market rates for complex federal litigation by experienced counsel in Georgia are far above EAJA’s \$125 cap. Against that backdrop, and in light of Ms. Weinstock’s more than 24 years of specialized immigration and federal litigation experience, a requested rate of  per hour for this time-sensitive habeas matter is consistent with, and supported by, prevailing market rates.

B. Special Factor Warrant Enhanced Rates

1. Attorney Expertise and Narrow Legal Specialty Required

The Supreme Court has made clear that EAJA’s “special factor” exception is narrow. The hourly rate used in calculating attorney’s fees may be increased only where there is “an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved,” 28 U.S.C. § 2412(d)(2)(A). The Court has indicated that the “special factors” clause “refers to attorneys having some distinctive knowledge or specialized skill needful for the litigation in question,” such as an identifiable practice specialty like patent law or

⁸ Courts in higher-cost markets have likewise approved hourly rates in the \$800–\$850 range for experienced partners handling complex federal litigation, and an enhanced EAJA rate of \$650 in a recent immigration-detention case. See e.g., *Knudsen v. Hightower Holdings, LLC*, No. 24-cv-0395-KKE, 2024 WL 3430994, at *3 (W.D. Wash. July 16, 2024); *Koonwaiyou v. Blinken*, 724 F. Supp. 3d 1222, 1236 (W.D. Wash. 2024); *Rahman v. Bondi*, No. 2:24-CV-02132-JHC-TLF, 2026 WL 323046, at *1 (W.D. Wash. Feb. 6, 2026). Petitioner recognizes that these decisions arise from higher-cost West Coast markets and offers them only to show that a \$1,000 hourly rate for top-tier complex federal litigation is consistent with rates approved nationally.

knowledge of foreign law or language. *Pierce v. Underwood*, 487 U.S. 552, 571–72 (1988); *Jean v. Nelson*, 863 F.2d 759, 773–74 (11th Cir. 1988).

Consistent with this narrow construction, courts applying EAJA have required both a genuinely distinctive, litigation-specific specialty and proof that those specialized skills were actually needed in the case and not available at the statutory rate. *Jean* explains that the “limited availability of qualified counsel” factor is satisfied only where the litigation calls for “distinctive knowledge or specialized skill” beyond general practice and “can be obtained only at rates in excess of the [statutory] cap.” *Jean*, 863 F.2d at 773–74; *see also Sisiliano-Lopez v. Lowe*, 448 F. Supp. 3d 419, 433–34 (M.D. Pa. 2020) (finding immigration counsel’s specialized expertise and the absence of local immigration specialists willing to work at EAJA rates justified a higher rate).

The Eleventh Circuit has recognized that immigration law is a “narrow legal specialty” that may be considered a special factor sufficient for an upward increase in the standard hourly rate. *Jean*, 863 F.2d at 773–74 (noting that “a special expertise in immigration law” “is [a] narrow legal specialty which might entitle them to an adjustment if market rates for their services exceed [\$125].”). *Jean* explained that a narrow legal specialty such as immigration law, or fluency in relevant foreign languages, may justify an upward adjustment where that expertise is necessary to the case and available only at rates above the statutory cap. The determination of whether an immigration attorney warrants an upward adjustment of the hourly rate is left to the discretion of the Court and “will necessarily depend on the complexity of the case (‘the litigation in question’) and on the experience (‘distinctive knowledge’) and acquired expertise (‘specialized skill’) of the particular billing attorney.” *Id.* at 774 n.12. Consistent with *Pierce*, *Jean* makes clear that not every immigration case or every immigration attorney warrants an enhancement; rather, the question is whether the particular litigation required distinctive knowledge or specialized skill beyond general

immigration practice and whether market rates for that skill exceed the cap. *See also Pollgreen v. Morris*, 911 F.2d 527, 537–38 (11th Cir. 1990) (recognizing that a “special factor” rate adjustment may be appropriate for attorneys with special expertise in immigration law and, in appropriate circumstances, where the government’s unusually litigious position justifies an enhancement).

Other courts have likewise recognized that an immigration specialty can, in appropriate circumstances, qualify as a special factor when the *Pierce* standard is met. *See, e.g., Rueda-Menicucci v. I.N.S.*, 132 F.3d 493, 496 (9th Cir. 1997) (acknowledging that a specialty in immigration law could be a special factor warranting enhancement where that expertise is “needful for the litigation in question”); *Nadarajah*, 569 F.3d at 913–14 (awarding enhanced rates in an immigration detention case where counsel demonstrated distinctive knowledge and specialized skill); *see also Muhur v. Ashcroft*, 382 F.3d 653, 656 (7th Cir. 2004) (noting that while immigration lawyers are not ipso facto entitled to fees above the statutory ceiling, some cases “pierce the ceiling for immigration lawyers who bring relevant expertise to a case, such as knowledge of foreign cultures or of particular, esoteric nooks and crannies of immigration law, in which such expertise is needed to give the alien a fair shot at prevailing.”); *Johnson v. Gonzales*, 416 F.3d 205, 213 (3d Cir. 2005) (noting that “a case that required research into little-known areas of immigration law or particular knowledge of [a specific] culture [] might justify an award above the statutory cap.”); *Sisiliano-Lopez v. Lowe*, 448 F. Supp. 3d 419, 433–34 (M.D. Pa. 2020) (finding immigration counsel’s specialized expertise, coupled with evidence of the absence of local immigration specialists willing to work at EAJA rates, justified an hourly rate above the statutory cap); *Nkenglefac v. Garland*, 64 F.4th 251, 255–56 (5th Cir. 2023) (outlining a three-part inquiry for assessing when “special factors” justify rates above EAJA’s statutory cap including (1) whether counsel has a specialized skill necessary for the specific litigation; (2) whether the number of

attorneys with that skill is so limited that litigants with potentially valid claims cannot obtain counsel at the statutory rate; and (3) whether an increased fee award would alleviate that shortage).

In the present case, Petitioner is requesting an enhanced fee because there were very few attorneys available to him in Kentucky with the distinctive knowledge and specialized skill required to successfully litigate his case. Attorney Weinstock explains that she has over 24 years of exclusive immigration law experience and is one of the very few immigration attorneys in the region who have many years of federal court immigration litigation experience, with particular knowledge in habeas work. The declarations of Attorneys Attum and Mamedova confirm that immigration habeas litigation is a highly specialized and limited field even within immigration practice in Kentucky, and that only a small number of attorneys in this District regularly litigate these detention challenges. These facts demonstrate precisely the “limited availability of qualified attorneys for the proceedings involved” that Congress identified in 28 U.S.C. § 2412(d)(2)(A) as a special factor justifying a higher fee.

For successful representation in this case, expertise in both immigration law and federal habeas litigation was required. First, an attorney who does not specialize in immigration would not be sufficiently educated on the Immigration and Nationality Act’s statutory provisions governing admission and detention, particularly given the time constraints presented by this case. Moreover, an attorney who does not specialize in immigration or who has not practiced in this field for several years would have no knowledge of the historical practice of DHS, ICE (and legacy INS) with regard to orders of supervision and the procedures required to revoke them. These intertwined statutory, constitutional, and jurisdictional questions meant that a unique combination of deep immigration-detention expertise and federal habeas experience was not merely helpful but necessary to litigate this case effectively within the compressed timeline.

The work performed in this matter exemplifies the type of litigation-specific tasks that required distinctive immigration-habeas expertise, not merely strong general research or briefing skills. Counsel was required, on an emergency basis, to investigate and reconstruct the history of Petitioner’s Order of Supervision and its purported revocation; interpret and apply the intricate DHS and ICE regulations and policy guidance governing supervision and revocation; and develop a complex due process theory keyed to Respondents’ failure to comply with those regulations in the removal/OSUP context. Counsel also had to draft and file a fully developed habeas petition and reply within days of Petitioner’s detention, tailored to Sixth Circuit and Western District of Kentucky precedent, while simultaneously coordinating with local detention officials and ICE to ensure that any relief ordered by the Court could be implemented promptly and safely. These tasks required the ability to synthesize immigration statutes, regulations, and agency practice with federal habeas doctrine and local detention practices under extreme time pressure—work that, in practical terms, could not have been performed effectively by counsel lacking deep, specialized experience in immigration detention and habeas litigation.

Petitioner is not asking the Court to treat “immigration law” as a generic specialty or to award an enhancement based on ordinary market factors. Rather, Petitioner’s counsel possesses a distinctive sub-specialty at the intersection of complex immigration detention, constitutional habeas litigation, and statutory and regulatory compliance, which was needful in this case. Thus, counsel had to marshal decades of immigration and habeas precedent and present a nuanced statutory argument to ensure the Court ultimately found in Petitioner’s favor. Those skills go well beyond general immigration practice or routine removal defense. The specialized knowledge and skills required here, especially in both immigration law and federal habeas litigation, warrant an enhanced rate. The expertise required is acquired only through experience and constant learning,

and is not available to a general practitioner, even one with excellent research skills. Knowledge of these elements and circumstances was crucial to Petitioner's demonstration of unlawful detention in violation of the statute and constitutional due process.

In short, an attorney who lacked distinctive expertise in immigration law and federal habeas litigation, gained only after numerous years of concentrated practice in this field, could not have effectively represented Petitioner in this litigation. Further, given DHS's continued pursuit of an unsupportable position without evidence, the Court has further discretion to recognize that "the government's unusually litigious position" may constitute a special factor. *Pollgreen*, 911 F.2d at 537–38. Against that backdrop, and in light of Attorney Weinstock's unique combination of decades of immigration practice and federal habeas experience, an increase in the hourly rate under 28 U.S.C. § 2412(d)(2)(A) is warranted based on (1) the distinctive expertise and specialized knowledge in immigration law, detention, federal habeas, administrative law, and constitutional law, and (2) the limited availability of qualified attorneys for the proceedings involved, as demonstrated by the submitted declarations.

Consistent with this limited availability of qualified local counsel, Petitioner was required to retain Attorney Weinstock from Georgia and obtain her admission pro hac vice in this case. The need to import out-of-district counsel with specialized immigration habeas expertise, rather than rely on counsel admitted in this District, further confirms that qualified attorneys for the proceedings involved were not reasonably available at or near EAJA's statutory rate, which is precisely the circumstance Congress identified in authorizing enhanced rates where "the limited availability of qualified attorneys for the proceedings involved" justifies a higher fee. 28 U.S.C. § 2412(d)(2)(A).

2. *Cost-of-living adjustment warrants an increased rate.*

If the Court is not inclined to award the prevailing market rate adjusted for Ms. Weinstock's experience and expertise and also concludes that special factors are not applicable to warrant enhanced fees here, the Court should, at a minimum, determine that the statutory rate should be adjusted for to reflect a cost-of-living adjustment. *Coursey v. Comm'r of Soc. Sec.*, 843 F.3d 1095, 1098 (6th Cir. 2016) (the CPI can be considered in conjunction with evidence of prevailing rates in the community); *see also Washington v. Barnhart*, 93 F. App'x 630, 631 (5th Cir. 2004) (per curiam); *Baker v. Bowen*, 839 F.2d 1075, 1084 (5th Cir. 1988) (while the EAJA does not require a cost-of-living adjustment "if there is a significant difference in the cost of living since [enactment of the statute] in a particular locale that would justify an increase in the fee, then an increase should be granted."). Petitioner requests that the hourly rate billed for his attorneys' time be adjusted above the statutory rate on both grounds.

To calculate the cost-of-living increase since the statutory rate of \$125 per hour was set in March 1996, courts turn to the Consumer Price Index for All Urban Consumers (CPI-U).⁹ The following formula is frequently used:

$$\text{\$125} \times \frac{\text{(Current CPI-U)}}{\text{(March 1996 CPI-U)}}$$

See Ramon-Sepulveda v. INS, 863 F. 2d 1458, 1463, n. 4 (9th Cir. 1988); *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 969 (D.C. Cir. 2004); *Edwards v. Barnhart*, 214 F. Supp. 2d 700, 702, n. 3 (W.D. Tex. 2002). Applying this formula, the hourly rate for attorneys' fees in Petitioner's case should at least be adjusted to \\$260.15, given the increase in the cost of living since the statutory rate of \$125 per hour was established in March 1996, almost 30 years ago. This rate was

⁹ *See Harris v. Sullivan*, 968 F.2d 263, 265 (2d Cir. 1992) ("From the time subsection 2412(d) first became effective on October 1, 1981, almost every court that has applied this subsection has held, [], that 'cost of living' ... is properly measured by the Consumer Price Index"); *Dewalt v. Sullivan*, 963 F.2d 27, 28-30 (3d Cir. 1992); *Sullivan v. Sullivan*, 958 F.2d 574, 578 (4th Cir. 1992); *Begley v. Secretary of HHS*, 966 F.2d 196, 199-200 (6th Cir. 1992); *Johnson v. Sullivan*, 919 F.2d 503, 504 (8th Cir. 1990); *Ramon-Sepulveda v. INS*, 863 F. 2d 1458, 1463 (9th Cir. 1988).

determined by the following calculation: $\$260.15 = \$125 \times (324.05 / 155.7)$, where 324.05 is the CPI-U for All Urban Consumers for December 2025 and 155.7 is the CPI-U for March 1996. See Exhibit 5 (CPI-U).

C. Hours Expended


Included at Exhibit 6 is a record of the hours expended by each attorney that were reasonably and necessarily incurred in this litigation. Exhibit 6 itemizes the work performed, including drafting the habeas petition, analyzing Respondents' opposition and preparing this EAJA fee application.¹⁰ For Attorney Karen Weinstock, a fee of [REDACTED] per hour is requested, based on the special factors in the accompanying Memorandum of Law in Support, the declaration of Petitioner's attorney at Exhibit 2, the record of hours spent by each attorney on Petitioner's case at Exhibit 6, and the declaration from Petitioner confirming the representation agreement at Exhibit


1. In sum, Petitioner requests an award in the amount of [REDACTED]

CONCLUSION

For the foregoing reasons, and based on the record and authorities cited above, Petitioner respectfully requests that the Court award attorneys' fees and costs under 28 U.S.C. § 2412 in the total amount of [REDACTED], calculated at hourly rates of [REDACTED] for Attorney Karen Weinstock and [REDACTED] for Attorney Lauren Fascett—who has 20 years of immigration law and federal litigation experience—based on prevailing market rates and the special factors present in this case. Likewise,

¹⁰ Attorney fees are available under EAJA for hours spent on the fee application. *Comm'r I.N.S. v. Jean*, 496 U.S. 154, 163-166, 110 S. Ct. 2316, 2323 (1990) (finding EAJA allows an award of fees for services rendered during fee litigation because “Congress intended the EAJA to cover the cost of all phases of successful civil litigation addressed by the statute”); *Doucette v. Comm'r of Soc. Sec.*, 13 F.4th 484, 488 (6th Cir. 2021) (“Congress intended the EAJA to cover the cost of all phases of successful civil litigation addressed by the statute,” the Supreme Court has allowed claimants to receive “fees-on-fees” (i.e., attorney’s fees incurred while pursuing attorney’s fees for the substantive portion of the case); *Warren v. Kijakazi*, No. 5:21-CV-68-REW, 2022 WL 16948563, at *5 (E.D. Ky. Nov. 15, 2022) (noting EAJA allows an award of fees for services rendered during fee litigation because “Congress intended the EAJA to cover the cost of all phases of successful civil litigation addressed by the statute”). If additional hours are necessary in this case, they will be submitted at the conclusion of the litigation.

an hourly fee of  for Allison Sickle is justified given that she has 8 years of experience specializing in immigration law in the immigration court system. In the alternative, should the Court decline to award rates above EAJA's statutory cap, Petitioner requests that the Court at a minimum award fees at a cost-of-living-adjusted EAJA rate consistent with the CPI-based calculation set forth above.

Respondents' position was not substantially justified, and there are no special circumstances that would make an award of fees and costs unjust. Consistent with 28 U.S.C. § 2412(d), and for the reasons set forth above regarding prevailing-party status, lack of substantial justification, prevailing market rates, and the limited availability of qualified immigration habeas counsel, Petitioner respectfully requests that the Court award attorneys' fees and costs in the amount of , as calculated in this motion. In the alternative, should the Court decline to award rates above EAJA's statutory cap, Petitioner requests that the Court award fees at a cost-of-living-adjusted EAJA rate as set forth above. ¹¹

Respectfully submitted this 2nd day of April, 2026.

/s/ Karen Weinstock
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¹¹ As a final alternative, if the Court declines to award those market-based or special factor rates and declines to adjust the hourly rate based on the Court's assessment of the prevailing market rate, Petitioner requests that the Court award fees at a minimum at a cost-of-living-adjusted EAJA rate of \$261.00 per hour, for a total fee award of \$8,404.2.

/s/ Rania A. Attum

Rania A. Attum

Local Counsel

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CERTIFICATE OF SERVICE

I certify that on April 2, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock
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