

Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HARRINSON JOSE OSUNA BENITEZ,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,¹

Respondents.

Case No. 2:25-cv-02535-BAT

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
MOTION ATTORNEYS' FEES AND
COSTS**

Noted for Consideration:
April 17, 2026

Federal Respondents oppose Petitioner's motion for an award of \$30,453 in attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. 18 (Petitioner's Motion for Attorneys' Fees and Costs ("Motion")). While Federal Respondents do not concede that their position was not substantially justified, for the purposes of this response, Federal Respondents limit their argument to the excessive amount of fees requested for a single-petitioner, straightforward habeas petition. The attorney's fees should be substantially reduced because Petitioner is not entitled to the enhanced rate he requests and because the 78.56 hours billed on this case are not supported by the evidence and are both excessive and redundant.

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

ARGUMENT

A party may recover EAJA fees and costs only if (1) the party prevailed in the action, (2) the government's position was not "substantially justified" and no special circumstances would make an award unjust, (3) the requested fees and costs are reasonable, and (4) the party filed a timely, supported application. *See* 28 U.S.C. § 2412(b), (d); *United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009). To be found a prevailing party, "a party must successfully obtain a judicially sanctioned material alteration of his or her legal relationship with the United States." *Pabla v. U.S. Citizenship & Immig. Servs.*, No. 2:18-cv-1660, 2019 WL 1436872, at *2 (W.D. Wash. Apr. 1, 2019) (collecting cases).

Attorney fees under EAJA must be reasonable and the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. 28 U.S.C. § 2412(d)(2)(A); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

A. Petitioner is not entitled to enhanced rates under the EAJA

Petitioner requests enhanced fees for Kelly Vomacka (2.7 total hours @ \$650/hour = \$1,755) and Julia Braker (42.35 @ \$473/hour = \$20,032). *See* Exh. A to Motion (Dkt. 18-1). His request should be denied because he has failed to justify any warranted departure from EAJA's statutory framework to merit enhanced fees.

Under the EAJA, a district court may not award attorney's fees awarded under 28 U.S.C. § 2412(d) "in excess of \$125 per hour unless the court determines that an increase in the cost of living or special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii); *see Pierce v. Underwood*, 487 U.S. 552, 573 (narrowly construing exception to exceed EAJA statutory rate cap). The Ninth Circuit has approved a table of annually adjusted EAJA rates based on the cost of living. The statutory

1 maximum hourly rate for work performed in 2025 is \$258.46. See
2 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates> (last visited April 9, 2026).

3 A party seeking enhanced fees has the burden to prove all the following: (1) “the attorney
4 must possess distinctive knowledge and skills developed through a practice specialty,” (2) “those
5 distinctive skills must be needed in the litigation,” and (3) “those skills must not be available
6 elsewhere at the statutory rate.” *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991). Here,
7 regardless of whether Petitioner has shown two of his attorneys have “distinctive knowledge and
8 skills,” he has not demonstrated that distinctive skills were needed in *this* litigation or that qualified
9 counsel was not available at the statutory rate or that those skills were not available elsewhere at
10 the statutory rate. Petitioner only makes a conclusory statement that “there were no attorneys
11 available with the specialized knowledge required for this litigation who would handle this case at
12 the EAJA rates of approximately \$250 per hour.” Motion at pg. 12. While one of his attorneys,
13 Kelly Vomacka, declares that her firm would not have taken the case for the statutory fee, Dkt. 18-
14 5 at ¶ 9, Vomacka only billed 2.7 hours total on this matter. His other attorney seeking enhanced
15 fees, Julia Braker, billed the vast majority of time on this matter at 42.35 total hours. But she does
16 not submit a declaration stating that she is not willing to represent Petitioner at the statutory rate.
17 In fact, she recently represented a petitioner in this district for the statutory rate. See *Daixon*
18 *Ramirez Tesara v. Hermosillo*, No. 25-cv-01723-KKE, Petitioner’s Motion for Attorneys’ Fees
19 and Costs (Dkt. No. 35-2), filed Feb. 24, 2026 (requesting hourly rate of \$258.46 in EAJA fees for
20 Julia Braker). Furthermore, while Braker may be skilled in immigration removal proceedings, this
21 case did not involve removal. In fact, this is only the second habeas case Braker has ever done,
22 Exh. I to Motion (Dkt. 18-9) at ¶ 20, and Braker has not shown that her distinctive skills were
23 needed for this litigation.

1 Although Petitioner also submitted two other declarations from community attorneys who
2 discuss the need for enhanced fees, Exhs. H and I to Motion (Dkts. 18-8 and 18-9), the fact is there
3 are several private attorneys that have been able to obtain relief for noncitizens on substantially
4 similar issues of what circumstances permit Federal Respondents to revoke a noncitizen's prior
5 release from detention without a pre-deprivation hearing. *See, e.g., Saley v. Scott*, No. 26-797-
6 JNW, 2026 WL 914810 (W.D. Wash. Apr. 3, 2026); *Torres Ferrera v. Scott*, No. 26-583-TL, 2026
7 WL 776145 (W.D. Wash. Mar. 19, 2026); *Simmaphilavong v. Noem*, No. 26-458-JHC, 2026 WL
8 593146 (W.D. Wash. Mar. 3, 2026); *Jimenez-Perez v. Bondi*, No. 25-2631-JLR, 2026 WL 445560
9 (W.D. Wash. Feb. 17, 2026); *Chen v. Hermosillo*, No. 26-67, 2026 WL 252077 (W.D. Wash. Jan.
10 30, 2026).

11 Moreover, there are private immigration counsel in this district who take on habeas cases
12 at EAJA's statutory rate. *See, e.g., M.M. v. Hermosillo*, No. 25-2074-TMC, 2026 WL 252076
13 (W.D. Wash. Jan. 30, 2026) and Dkt. 20 therein (motion showing that "Petitioner requests fees
14 and costs at the statutory EAJA rate, adjusted for cost of living in the Ninth Circuit, for time
15 reasonably expended on this case"). In the face of evidence that there are other attorneys in this
16 market willing to take on federal habeas cases tackling similar issues and others who will seek the
17 statutory rate, Petitioner should be required to provide more than just the *ipse dixit* of a handful of
18 attorneys that no one would take on his case absent an enhanced fee.

19 **B. The billing entries are vague**

20 Petitioner's request should also be reduced by at least 20% because it seeks fees calculated
21 by using vague entries "comprised of entries billed in half-hour and full hour increments, with
22 many entries spanning multiple hours, and with the description for each entry lacking any amount
23 of specificity." *Zavorin v. Wamsley*, No. 26-cv-00173-DGE, 2026 WL 879246, at *2 (W.D. Wash.
24

1 Mar. 31, 2026) (applying 20 percent reduction from 23.5 hours to 18.8 hours in habeas EAJA
2 petition and awarding \$4,859.05).

3 Courts have the discretion to reduce an award of attorney's fees when the request is not
4 properly documented. *Hensley*, 461 U.S. at 433; *see, e.g., Neil v. Comm'r of Soc. Sec.*, 495 F.
5 App'x 845, 847 (9th Cir. 2012) (district court was within its discretion to reduce fee award for
6 "entry that was vague and inadequately explained" and "to account for block billing"). "Courts
7 have reduced fee awards where prevailing counsel engaged in inefficient or unreasonably
8 duplicative billing, or where counsel's billing records contain insufficiently descriptive entries,
9 show evidence of block billing, or billing in large time increments." *Cotton v. City of Eureka, Cal.*,
10 889 F. Supp. 2d 1154, 1176 (N.D. Cal. 2012). Petitioner's billing record suffers from insufficiently
11 descriptive entries and the use of large time increments.

12 For example, numerous of Petitioner's billing entries use half hour, hourly, or even multi-
13 hour increments, including but not limited to: 6 hours billed by Braker on 12/10/2025 for
14 "[d]rafting of habeas petition and related forms"; 3 hours billed by Braker on 12/11/2025 for
15 "[f]inalizing habeas petition, OSC, drafting and finalizing proposed order"; 2 hours billed by
16 Valladares on 12/9/2025 for "[c]lient meeting and preparation; LSA review and declaration
17 drafting"; and 2.5 hours billed by Webb on 12/11/2025 for "[h]abeas petition prep, review of OSC
18 and edits." Exh. C to Motion (Dkt. 18-3); *see Zavorin*, 2026 WL 879246, at *2 (holding that similar
19 descriptions "render it difficult for the Court to determine what the timekeeper was actually
20 doing"); *see also Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) ("The
21 district court reasonably concluded that Kantor & Kantor's practice of billing by the quarter-hour
22 resulted in a request for excessive hours); *Robinson v. Plourde*, 717 F.Supp.2d 1092, 1100-01 (D.
23 Haw. 2010) (imposing across the board 20% reduction of hours because practice of billing in
24 quarter hour increments resulted in excessive hours).

C. There is no supporting evidence for four of the timekeepers

There is no information about four of the six timekeepers who billed on this matter: Douglas Valladares, Natalie Webb, Jackie Johnson, and Leo Ariel. Thus, it is not possible to determine what their proposed rate should be.

To the extent these timekeepers are not attorneys, Petitioner may recover paralegal fees at “prevailing market rates.” *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008). But he puts forth no evidence in the form of declarations from the paralegal in question or the surrounding community to justify a rate at the same rate as attorneys. Courts in this district have routinely required evidence in the form of declarations before accepting a paralegal’s rate. *See, e.g., Gnassi v. Del Toro*, No. 20-6095-JHC, 2023 WL 5277798 (W.D. Wash. Aug. 16, 2023); *Stewart v. Snohomish Cnty. Pub. Util. Dist. No. 1*, No. 16-20-JCC, 2017 WL 4538956 (W.D. Wash. Oct. 11, 2017).

Like with their attorneys, Petitioners bear the burden of proof what the prevailing rate for a paralegal should be. *Carson v. Billings Police Dep’t*, 470 F.3d 889, 891 (9th Cir. 2006). When confronted with a similar scarcity of evidence, courts in this circuit have routinely reduced the award for paralegal fees. For example, in *Martinez v. Colvin*, No. 14-3043-BTM, 2017 WL 766665 (S.D. Cal. Feb. 27, 2017), the plaintiff sought paralegal fees at a rate of \$100/hour. *Id.* at *8. The court sua sponte held that because Plaintiff had provided no evidence to support the reasonableness of the requested rate or the paralegals’ experience, it must look to other sources to determine an appropriate rate. *Id.* at *9. There, the court looked to what the Judicial Council of the Ninth Circuit permitted for services under the Criminal Justice Act, which at the time was \$35-60/hour, and awarded paralegal fees at the low end. *Id.* In other cases, the courts based a rate on the United States Consumer Law Attorney Fee Survey Report. *Ulugalu v. Berryhill*, No. 17-1087-GPC-JLB, 2018 WL 2012330, at *4 (S.D. Cal. Apr. 30, 2018) (finding that the appropriate paralegal rate in

San Diego was \$100/hour). Because Petitioner has not presented any evidence, the paralegal fees should be reduced.

D. The hours billed are duplicative and excessive

The billing records also reflect the participation of six timekeepers billing a total of 78.56 hours on this single-petitioner habeas case. Dkt. 18-1. Moreover, according to those records, it appears that numerous hours billed by the six timekeepers are both duplicative and excessive.

Courts reduce fee awards where the number of attorneys involved produces duplication of effort or unnecessary work. *See e.g., Reyes v. NARA*, 356 F. Supp. 3d 155, 169 (D.D.C. 2018) (finding that “the use of two attorneys was unreasonable given the circumstances of this [FOIA] case” and reducing fee award accordingly)². “The number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). The court must exclude hours that are “excessive, redundant, or otherwise unnecessary.” *Hensley*, 461 U.S. at 434.

Here, the records show that multiple timekeepers reviewed the same filings and edited and prepared the same documents. Such duplication is not reasonably necessary to litigate a case of this scope. For example, on December 10, 2025, Braker alone logged 11.5 hours to draft the habeas petition and related forms, research habeas law, and compile evidence. Exh. C to Motion (Dkt. 18-3). That same day, Valladares also logged 1.5 hours to edit the declaration and 2 hours to review evidence while Webb logged 1.5 hours to draft a document and “defendant research and editing.” *Id.* The following day on December 11, Johnson prepared exhibits (i.e. evidence) for 1.5 hours, Webb prepared the habeas petition and edited the order to show cause for 2.5 hours, Valladares

² While this is not a FOIA case, the reasoning and analysis applies with equal force here.

1 logged more than 5 hours to revise and research proposed order and edit the documents, and Braker
2 logged 3 hours to finalize the petition and order to show cause, and draft and finalize the proposed
3 order. *Id.* In sum, nearly 30 hours were billed over the course of two days on duplicative drafting,
4 preparing, reviewing, and editing. *See, e.g., Peyton v. Kijakazi*, 557 F. Supp. 3d 136, 143 (D.D.C.
5 2021) (finding duplicative and unnecessary hours charged for “excessive editing” by two
6 supervising attorneys).

7 Although Federal Respondents filed a simple 3-page return, providing this Court with only
8 the relevant detention authorities and factual background for its consideration, the billing records
9 reflect that Braker, Valladares, Ariel, and Webb logged another 14 hours to update their client and
10 prepare and file an equally simple 3-page traverse. Exh. C to Motion (Dkt. 18-3) (hours billed
11 between December 19 return filing and December 26 traverse filing).

12 Finally, from the time the habeas was granted to present, billing records reflect at least 17
13 more hours billed to prepare this motion and communicate with their client. Notwithstanding the
14 summaries here, there are also another 17 hours billed for various legal strategy meetings,
15 communications with client, research, meetings. etc. Accordingly, Federal Respondents request
16 that the Court discount the total hours billed by 30% due to excessive and redundant billing.

17 CONCLUSION

18 Petitioner’s request for enhanced fees from Vomacka and Braker as set forth in Exh. A to
19 his Motion (Dkt. 18-1) should be denied. Instead, Vomacka’s and Braker’s rate should instead
20 reflect what is set forth in Exh. B to Motion (Dkt. 18-2). Furthermore, for the reasons stated above,
21 this Court should also reduce the total hours billed for the six-person team by at least 30%, from
22 78.56 hours to 55 hours, which would reduce Petitioner’s total fees from \$20,304.62 to \$14,215.30.

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1 DATED this 13th day of April, 2026.

2 Respectfully submitted,

3 s/ Kristen R. Vogel

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14 I certify that this memorandum contains 2,395
15 words, in compliance with the Local Civil Rules.