

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LUIS MANUEL PADUA VARGAS,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-499-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,	:	
	:	
Respondent.	:	

RESPONSE TO MOTION FOR ATTORNEY’S FEES

Petitioner seeks an award of attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, claiming that he is a prevailing party and that Respondent’s position in this litigation was not substantially justified. ECF No. 8. Petitioner is wrong—Respondent’s position was substantially justified. But even if it wasn’t, EAJA fees are not available to a prevailing party in a habeas action. Accordingly, for the reasons set forth below, Petitioner’s motion should be denied.

BACKGROUND

On December 21, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”) claiming that (1) he is not subject to mandatory pre-final order of removal detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and (2) his detention without a bond hearing violates his rights to procedural and substantive due process. ECF No. 1. On December 23, 2025, the Court issued an order directing Respondent to show cause within seven days why the Petition should not be granted in light of the Court’s ruling in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH (M.D. Ga. Nov. 1, 2025). ECF No. 4. Respondent responded on December 29, 2025, arguing that Petitioner’s detention was mandated by 8 U.S.C. § 1225(b)(2)(A) but acknowledging that this Court had

disagreed with this argument in *J.A.M.* ECF No. 5. Respondent preserved his arguments for appeal and conceded that, if the Court were to adhere to its prior legal reasoning, *J.A.M.* would control the outcome of this case. *Id.*

The Court did adhere to its prior legal reasoning and ordered that Petitioner be provided a bond hearing. ECF No. 6. Petitioner was released on bond on December 31, 2025. *See* Ex. A. Petitioner now seeks attorney's fees under EAJA, 28 U.S.C. § 2412. For the reasons set forth below, Petitioner's motion should be denied.

ARGUMENT

I. **EAJA does not waive sovereign immunity for habeas cases challenging immigration detention.**

In his motion, Petitioner argues that he is a prevailing party under EAJA and that Respondent's position was not substantially justified and only argues in the attached memorandum of law that EAJA fees are available in habeas cases. That threshold issue, however, is outcome determinative. The United States has not waived sovereign immunity for collection of fees in habeas actions, and EAJA is therefore inapplicable.

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

“Under settled principles of sovereign immunity, the United States, as sovereign, is immune from suit, save as it consents to be sued[.]” *United States v. Dalm*, 494 U.S. 596, 608 (1990) (internal quotations and citations omitted). 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). “Sovereign immunity is jurisdictional in nature.” *Id.* Only Congress, however, can waive the United States' sovereign immunity. *Lane v. Peña*, 518 U.S. 187, 192 (1996). “The federal courts are without power to waive the sovereign

immunity of the United States either by affording substantive relief broader than that provided by Congress or by liberalizing statutorily prescribed jurisdictional limitations on such relief.” *United States v. One (1) Douglas A-26B Aircraft*, 662 F.2d 1372, 1375 (11th Cir. 1981).

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.” *F.A.A. v. Cooper*, 566 U.S. 284, 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). This is because “in offering its consent to be sued, the United States has the power to condition a waiver of its immunity as broadly or narrowly as it wishes, and according to whatever terms it chooses to impose.” *Zelaya v. United States*, 781 F.3d 1315, 1321-22 (11th Cir. 2015) (citation omitted). 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.* Because sovereign immunity is jurisdictional, *Meyer*, 510 U.S. at 475, the plaintiff “bears the burden of establishing that the federal government has waived its sovereign immunity with respect to [the plaintiff’s] claim,” *Thompson v. McHugh*, 388 F. App’x 870, 872 (11th Cir. 2010) (per curiam). Petitioner has not attempted to show that EAJA waived sovereign immunity as to habeas petitions, and has not carried his burden.

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. *Cooper*, 566 U.S. at 291.

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

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). Similarly, the Third Circuit Court of Appeals has held that habeas petitions are not “civil actions” for purposes of the Prison Litigation Reform Act, explaining that “[i]n light of their hybrid nature, habeas proceedings are often determined to be outside the reach of the phrase ‘civil action.’” *Santana v. United States*, 98 F.3d 752, 754-55 (3d Cir. 1996).

Congress enacted EAJA 21 years after *Harris* and 9 years after *Schlanger*. In passing 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. But courts have rejected such a reading in the criminal habeas context. *See, e.g., Daley v. Federal Bureau of Prisons*, 199 F. App’x 119, 121 (3d Cir. 2006). Such decisions thus render the first interpretation at least plausible, thereby denying Petitioner the unambiguous clarity he needs to establish a waiver of sovereign immunity. 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). Consistent with this approach, the Third Circuit held in *Santana* that the meaning of the phrase “civil action” in the Prison Litigation Reform Act is ambiguous. 98 F.3d at 754-55 (believing the phrase “lacks plain meaning”). The court began with the observation that despite habeas proceedings being “technically civil actions,” the actual “meaning of the phrase ‘civil action’” in that statute was not “plain.” *Id.* The court then reviewed some of the Supreme Court precedent discussed above regarding the unique, hybrid nature of habeas petitions and concluded they do not qualify as “civil action[s]” under the statute. *Id.* (citing *Schlanger*, 401 U.S. at 490 n.4, and *Harris*, 394 U.S., 295-98, well as *Boudin v. Thomas*, 732 F.2d 1107, 1112 (2d Cir. 1984), and *Ewing v. Rodgers*, 826 F.2d 967 (10th Cir. 1987)).

Numerous courts of appeals have recognized the unique nature of habeas proceedings and declined to apply the “civil action” label when interpreting statutory text. *See Santana*, 98 F.3d at 754-55; *see also Daley*, 199 F. App’x at 121 (citing *O’Brien v. Moore*, 395 F.3d 499, 507-08 (4th Cir. 2005), *Ewing*, 826 F.2d at 969-71, and *Boudin*, 732 F.2d at 1112-15). 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 a habeas petition challenging criminal confinement that courts have held was not a “civil action” 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 has reached 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 follow the reasoning from these other courts 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).

All habeas petitions, no matter the nature of the underlying confinement, are unique proceedings that are not wholly civil given that detention—a decidedly *non-civil* concept—is ultimately at issue. *See Santana*, 98 F.3d at 754 ("The civil label is attached to habeas proceedings

in order to distinguish them from criminal proceedings, which are intended to punish and require various constitutional guarantees.”) (quotations omitted). 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 thus bars an award of EAJA fees in this immigration habeas action.

II. Petitioner is not entitled to EAJA fees because Respondent was substantially justified in his litigation positions.

A prevailing party may recover attorney’s fees only if the position of the United States was not “substantially justified.” 28 U.S.C. § 2412(d)(1). “Thus, EAJA fees are not available every time a claimant prevails—only when the [Government’s] position lacks ‘a reasonable basis in law and fact.’” *Bergen v. Comm’r of Soc. Sec.*, 454 F.3d 1273, 1277 (11th Cir. 2006) (quoting *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988)). “To determine whether the [Government’s] position was substantially justified, [t]he court looks to both the agency’s pre-litigation conduct and its litigation position.” *Simpson v. Colvin*, No. 1:11-CV-87 WLS, 2013 WL 5755579, at *1 (M.D. Ga. Oct. 23, 2013) (alteration in original) (internal quotations and citation omitted). Although the prevailing party is required to clearly allege that the position of the United States was not substantially justified, the Government “bears the burden of showing that its position was substantially justified.” *City of Brunswick v. United States*, 849 F.2d 501, 504 (11th Cir. 1988). Here, Respondent’s position was substantially justified at the administrative level and during the habeas litigation.

Respondent’s position pre-litigation was substantially justified. In *In the Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals (“BIA”) held that

non-citizens unlawfully present in the United States without prior inspection and admission are applicants for admission within the meaning of § 1225(a)(1) and subject to mandatory pre-final order of removal detention pursuant to § 1225(b)(2)(A) under the plain meaning and legislative history of that provision. 29 I. & N. Dec. at 220-28. Accordingly, those non-citizens are not entitled to bond hearings before IJs pursuant to § 1226(a) and its implementing regulations. *Id.* The BIA's decision in *Yajure-Hurtado* was binding on Respondent at the administrative level. Petitioner was therefore mandatorily detained under 8 U.S.C. § 1225(b)(2)(A), and, pursuant to *Yajure-Hurtado*, was not entitled to a bond hearing. Even after this Court issued its decision in *J.A.M.* finding that certain detainees in circumstances similar to those faced by Petitioner were detained under § 1226(a) and entitled to a bond hearing, *Yajure-Hurtado* remained binding on the agency. Respondent followed the statutory and regulatory obligations, determined Petitioner to be subject to mandatory detention, and did not release him from custody. Had Respondent given Petitioner a bond hearing without direction from this Court, Respondent would have violated the binding precedent of *Yajure-Hurtado*. Respondent's pre-litigation position was consequently substantially justified.

Respondent's arguments and positions in this litigation are also substantially justified. As set forth above, at the time of Petitioner's detention, *Yajure-Hurtado* bound DHS and Immigration Judges at the administrative level. So, petitioners in Petitioner's position were not automatically entitled to a bond hearing under § 1226(a), and Immigration Judges could not grant that relief. Only armed with an order from this Court was someone in Petitioner's circumstance entitled to a bond hearing, which is exactly what happened here. It is thus unclear how Petitioner is claiming

that his case should have been handled differently.¹ Put another way, regardless of the positions taken by Respondent in opposition to the Petition, Petitioner's pursuit of habeas relief in district court was a necessary occurrence.

Petitioner's claim that Respondent's position was not substantially justified is premised almost entirely on the fact that the Court rejected Respondent's arguments and granted relief in part. But the question of whether the Government won or lost is not determinative, since "the Government . . . could take a position that is substantially justified yet lose." *Pierce*, 487 U.S. at 569. Although the majority of district courts to have addressed the issue of mandatory detention for all applicants for admission have rejected Respondent's position, Petitioner fails to acknowledge that many courts have accepted Respondent's position that non-citizens in Petitioner's circumstance are not entitled to a bond hearing, including the Fifth Circuit Court of Appeals and the Eighth Circuit Court of Appeals. *See, e.g., Buenrostro-Mendez v. Bondi*, 166 F. 4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F. 4th 1128 (8th Cir. 2026); *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519,

¹ Indeed, many petitioners have erroneously invoked this Court's decision in *J.A.M.* in situations that were factually distinguishable. It is thus incumbent on Respondent to address each case independently to determine whether *J.A.M.* does in fact apply.

2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025). “Although sometimes legal authority against the government on a given legal position will build to such a point that it will be difficult to maintain that the government’s continued adherence to that position is reasonable, . . . [t]he government must be permitted to make some strategic choices. It must have the opportunity to make good faith challenges to legal authority with which it reasonably disagrees.” *Jean v. Nelson*, 863 F.2d 759, 768-69 (11th Cir. 1988).

When, as here, “the issue is a novel one on which there is little precedent, courts have been reluctant to find the government’s position was not substantially justified.” *Schock v. United States*, 254 F.3d 1, 6 (1st Cir. 2001). There is—to date—no binding Eleventh Circuit authority on the issue presented in *J.A.M.*² After the order in this case applying *J.A.M.*, the first precedent from any other Circuit Court of Appeals was published, and the Fifth Circuit agreed with Respondent’s position here. See *Buenrostro-Mendez*, 2026 WL 323330 at *1. Subsequently, the Eighth Circuit also agreed with Respondent’s position here. See *Avila*, 170 F. 4th at 1132. Thus, the only circuit cases on point are, although not binding, persuasive authority supporting Respondent’s position. This weighs in favor of finding that Respondent’s position was substantially justified.

While this Court has consistently ruled against Respondent in cases that present in the same factual and procedural posture, the government is required to defend its policies.³ Because congressional enactments enjoy a presumption of constitutionality, “situations in which the government’s defense of the constitutionality of a federal statute fails the ‘substantially justified’

² Two cases addressing the issue resolved by the Court in *J.A.M.* have been appealed to the Eleventh Circuit, consolidated, and expedited in part. *Alvarez v. Warden, Federal Detention Center Miami, et al.*, No. 25-14065 (11th Cir. Dec. 11, 2025). Briefing concluded in January 2026 and the Eleventh Circuit heard oral argument in March 2026.

³ Indeed, there are stringent congressional reporting requirements under 28 U.S.C. § 530D if it fails to defend the constitutionality of government policies/programs

test should be exceptional.” *Nat’l Fed’n of Republican Assemblies v. United States*, 263 F. Supp. 2d 1372, 1377 (S.D. Ala. 2003) (citing *Grace v. Burger*, 763 F.2d 457, 458 n. 1 (D.C. Cir. 1985)). Moreover, unless and until the Eleventh Circuit resolves this issue, Respondent must preserve his arguments for appeal, regardless of whether this Court has previously issued adverse rulings on the same legal issue. As noted above, there are several on-point cases sitting with the Eleventh Circuit, but the Government must protect its positions while those cases remain pending.

Finally, “[t]he longer and more complex the course of litigation necessary to vindicate his position, the more hesitant a private party will be to defend his interests [Accordingly], in categories of cases in which substantial investments of effort and money commonly are required to prosecute suits to their ultimate conclusions, the government should be obliged to make an especially strong showing that its persistence in litigation was justified.” *Nat’l Fed’n of Republican Assemblies*, 263 F. Supp. 2d at 1379 (citations omitted). Here, the underlying issues decided by the Court for the first time in *J.A.M.* may have been complex. But the issues presented in *this* case were not complex, nor was the “course of litigation.” The parties set forth their arguments and obtained a ruling from the Court in three days. In order to simplify the process and conserve the resources of both the Court and the parties, Respondent submitted an abbreviated brief in which he acknowledged that *J.A.M.* would apply if the Court adhered to its legal reasoning from that case. It is hard to imagine a shorter or less complex course of litigation necessary for Petitioner to vindicate his position. Accordingly, this factor also weighs against a finding that Respondent’s position was not substantially justified.

For the above reasons, Respondent’s position was substantially justified, and Petitioner’s motion should be denied.

III. If the Court disagrees with Respondent's arguments above, Petitioner is not entitled to the hourly rate requested.

In the alternative, if the Court finds that Petitioner is entitled to fees under the statute, Respondent should not be required to pay the full amount requested.

First, Petitioner's billing entries include hours not reasonably expended on the litigation. A fee applicant must use "billing judgment" in calculating the number of hours their counsel reasonably expended. *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988) (internal quotations and citations omitted). Courts may exclude any "excessive, redundant or otherwise unnecessary hours," meaning that "the hours excluded are those that would be unreasonable to bill to a client and therefore to one's adversary *irrespective of the skill, reputation or experience of counsel.*" *Id.* (internal quotations and citations omitted) (emphasis in original).

Here, counsel's billing entries include hours which were not reasonably expended on the litigation. First, the number of hours expended on the EAJA fees motion exceeds the entirety of the actual substantive litigation in this case. *See* ECF No. 8-6 (showing 5 hours billed for the substance of the case and 5.4 hours on the EAJA motion). Furthermore, given that Petitioner's counsel has filed dozens of nearly identical petitions, briefs, and fees motions at this point, it is hard to believe that each additional version took the amount of time claimed.

Second, Petitioner is not entitled to recover for claims on which he was not successful. "[A]n award of attorney's fees should be commensurate with the degree of a prevailing party's success." *Jean*, 863 F.2d at 771. Accordingly, Petitioner cannot recover for "time spent on discrete and unsuccessful claims." *Johnston v. Borders*, 36 F.4th 1254, 1286 (11th Cir. 2022) (internal quotations and citations omitted). Unsuccessful claims are "discrete" if they "are based on different

facts and legal theories” than the successful claims. *Hensley v. Eckerhart*, 461 U.S. 424, 434-35 (1983).

Here, Petitioner was only partially successful on eleven claims raised in the Petition, which involved different legal theories which the Court declined to address. Petitioner raised two separate due process claims raising facial challenges to mandatory detention under § 1225(b)(2)(A). Pet. ¶¶ 97-111. However, the Court did not rule in his favor on these claims. Order, ECF No. 6. Petitioner also raised a claim that his detention was *ultra vires* because ICE/ERO had no statutory authority to detain him at all. Pet. ¶¶ 33-135. The Court, however, specifically found that § 1226(a)(2) could govern Petitioner’s detention so long as he received a bond hearing. Petitioner also raised multiple claims under the APA, as well as an *Accardi* claim. *Id.* ¶¶ 112-32, 136-42. The Court did not find any violation of the APA or *Accardi* and did not conduct any analysis under either legal framework. Finally, Petitioner raised a claim based on the class certification in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal. Dec. 18, 2025). Pet. ¶¶ 143-46. Again, the Court did not conduct any analysis on the propriety of this claim.

Petitioner was the prevailing party on Counts One, Two, and Three of the Petition given that those claims directly challenged detention pursuant to § 1225(b)(2)(A) and the applicable regulations. *See* Pet. ¶¶ 85-96. However, he is not the prevailing party on the remaining claims outlined above. As a result, he is not entitled to recover fees for time spent litigating those claims. *Johnston*, 36 F.4th at 1286. Counsel includes a billing entry of 3.3 hours on December 21, 2025 for researching and drafting the Petition raising these claims. ECF No. 8-6. However, this entry was block billed because it did not distinguish between Petitioner’s different claims for relief. “[B]lock billing multiple unrelated tasks in a single billing entry is problematic where the entry contains both recoverable time and non-recoverable time because it is difficult to calculate how

much time an attorney devoted to the recoverable tasks.” *United States ex rel. Young v. BTW Solutions, LLC*, No. No. 3:17-cv-94-CDL, 2025 WL 1908729, at *3 (M.D. Ga. July 10, 2025). To account for Petitioner’s limited success, Respondent respectfully requests reduction of this block-billed entry. *See Ceres*, 476 F. App’x at 203.

Third, as to the lodestar, Petitioner fails to show special factors warranting a rate of \$1,000 per hour. The Court “is itself an expert on [reasonable hours and rates] and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment.” *Norman*, 836 F.2d at 1303 (internal quotations and citation omitted).

Petitioner’s primary argument for his proposed lodestar rate is that that “there were very few attorneys available to him with the distinctive knowledge and specialized skill required to successfully litigate his case.” Mem. in Supp. of Mot. for Att’y Fees, ECF No. 8-7 at 12. Petitioner takes the position that no other attorneys could have secured the same result in a case raising the same issues. *Id.* at 11-14. Yet, as this Court is likely aware, dozens of attorneys have filed similar habeas petitions in this district challenging detention pursuant to § 1225(b)(2)(A). *See Grayson v. Warden, Comm’r, Ala. Dep’t of Corr.*, 869 F.3d 1204, 1225 (11th Cir. 2017) (permitting a court to take judicial notice of filings on its own docket). This belies any argument that counsel was the sole attorney who could handle the claims in this case.

Given the number of attorneys who have successfully litigated nearly identical cases in this Court and across the country, Respondent respectfully contends that counsel’s proposed rate is not reasonable. Petitioner’s proposed lodestar rate should be reduced accordingly. Petitioner proposes an alternative “cost-of-living-adjusted EAJA rate of \$260.16 per hour,” in the Motion, and Respondent agrees that this would be a reasonable hourly rate.

CONCLUSION

For the above reasons, Petitioner's motion for attorney's fees under EAJA should be denied.

Respectfully submitted this 20th day of April, 2026.

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