UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LUIS MANUEL PADUA VARGAS, Petitioner, vs. JASON STREEVAL, *in his official capacity as Warden of Stewart Detention center*; and LADEON FRANCIS, *Field Office Director ICE Atlanta 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-499 CDL-AGH

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR COSTS, FEES, AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

I. EAJA Fees are Available in a Civil Habeas Action as Congress Expressly Waived Sovereign Immunity in "any civil action (other than cases sounding in tort)."

EAJA's fee provision waives sovereign immunity in "any civil action (other than cases sounding in tort)." 28 U.S.C. § 2412(d)(1)(A); *Ardestani v. INS*, 502 U.S. 129, 137 (1991). Multiple courts of appeals have held that immigration habeas actions fall within that text. *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 424, 432 (3d Cir. 2026); *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Daley v. Ceja*, 158 F.4th 1152, 1157, 1161–62 (10th Cir. 2025). When Congress enacted EAJA, habeas was well understood as civil. *Stafford v. Briggs*[1], 444 U.S. 527, 543 (1980); *Michelin*[2], 169 F.4th at 425–26. And immigration detention and removal proceedings are civil. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984); *Jennings v. Rodriguez*, 583 U.S. 281, 335 (2018) (Breyer, J., dissenting). Because Congress excluded only tort cases, the Court should not infer an unstated habeas exception. *Michelin*, 169 F.4th at 429–30; *United States v. Johnson*, 529 U.S. 53, 58 (2000); *Ex parte Collett*, 337 U.S. 55, 58 (1949). Arias reached the same conclusion. *Arias v. Choate*, No. 23-cv-01188, 2023 WL 4488890 (D. Colo. July 12, 2023); *F.A.A. v. Cooper*, 566 U.S. 284, 291 (2012). ("Congress need not state its intent in any particular way. We have never required that Congress use magic words.").[3]

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[1] *See also Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 269, 98 S.Ct. 556 (1978); *Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 96 (1868) (holding the Supreme Court had the power to issue writs of habeas corpus, one of "the most important powers in civil cases of all the highest courts of England"); *Kurtz v. Moffitt*, 115 U.S. 487, 494, 6 S.Ct. 148 (1885) ("A writ of habeas corpus ... is a civil suit or proceeding, brought by him to assert the civil right of personal liberty, against those who are holding him in custody[.]").

[2] Citing *e.g., Black's Law Dictionary* 222 (5th ed. 1979) (defining civil actions as "[a]ction[s] brought to enforce, redress, or protect private rights" or as "all types of actions other than criminal proceedings"); *Radin Law Dictionary* 55 (2d ed. 1970) (defining a civil action as a "legal proceeding brought to enforce a civil right or obtain redress for its violation"); *Ballentine's Law Dictionary* 202 (3d ed. 1969) (the phrase "comprehend[s] every conceivable cause of action, whether legal or equitable, except such as are criminal in the usual sense").

[3] As the Tenth Circuit explained, courts "may not resort to the sovereign immunity canon at the first sign of any potential ambiguity in the text as this would abdicate our responsibility to interpret the statutes in front of us." *Daley*,

Unable to avoid this clear statutory mandate, Respondents try to limit the scope of EAJA's waiver of sovereign immunity for habeas challenges to civil immigration detention arguing they are "unique" and do not constitute "civil actions". But this type of habeas petition involves a challenge to immigration detention and "[i]n that context, every element is civil." *Michelin*, 169 F.4th at 426 ("Habeas actions are civil because they protect the civil right to personal liberty"). Respondent's principal circuit authorities, *Obando-Segura v. Garland,* 999 F.3d 190 (4th Cir. 2021) and *Barco v. Witte,* 65 F.4th 782 (5th Cir. 2023), are not binding and are less persuasive than the Second, Third, Ninth, and Tenth Circuit authorities that distinguish **immigration habeas** from **criminal** habeas and treat civil immigration detention as civil for EAJA purposes—consistent with Supreme Court's repeated recognition that such detention is civil.[4] *Jennings v. Rodriguez*, 583 U.S. 281, 335 (2018) (dissent) (discussing immigration detention as one of very few instances of civil confinement); *Zadvydas*, 533 U.S. 678, 690 (2001) (immigration detention is "civil detention"); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (removal proceedings are civil). Petitioner is not in custody pursuant to any criminal judgment; his confinement rests

158 F.4th at 1157 ("[b]efore turning to the canon, we must exhaust all "traditional tools of statutory construction.") (citations omitted). Both the Third and Tenth Circuits emphasized that courts "apply the canon only after analyzing the statutory language and finding it ambiguous." *Daley*, 158 F.4th at 1157. If there is "no ambiguity left," "[t]here is no need for us to resort to the sovereign immunity canon." *Michelin*, 169 F.4th at 424, quoting *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590, 128 S.Ct. 2007 (2008). Only if, after exhausting these tools, "there is a plausible interpretation of the statute that would not authorize money damages against the Government" do we "take the interpretation most favorable" to it. *Id.* (quoting *Cooper*, 566 U.S. at 290–91); *see 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.).

[4] Respondents citation to *Santana v. United States*, 98 F.3d 752, 754-55 (3d Cir. 1996), which addressed a habeas petition involving the Prison Litigation Reform Act, is not only inapplicable but odd given that the Third Circuit issued a precedential decision in October 2025, in *Michelin*, explicitly holding that habeas challenges to immigration detention are "civil actions" under EAJA. 169 F.4th at 426. Related, *Harris v. Nelson*, 394 U.S. 286, 290 (1969) only reviewed whether state criminal prisoners could use the discovery provisions of Federal Rules of Civil Procedure to serve interrogatories in a habeas proceeding; it did not consider or decide whether a habeas petition under § 2241 challenging immigration detention is a "civil action" for purposes of the EAJA. *See Michelin*, 169 F.4th at 425, n4 (explaining the distinction).

solely on the INA's civil detention authority in the course of civil removal proceedings.[5] The word "any" of "any civil action" matters: it conveys that the statute reaches civil actions "of whatever kind"—even variations like habeas proceedings. *Michelin* at 429. *Ex parte Collett*, 337 U.S. 55, 58 (1949) ("The reach of 'any civil action' is unmistakable."). Because Congress excluded only torts , this Court should not infer an atextual habeas exception that Congress itself did not enact.

Respondents next rely on the Fourth and Fifth Circuits' characterization of habeas proceedings as "hybrid" actions—neither purely civil nor purely criminal—to argue that EAJA's reference to "any civil action" and its waiver of sovereign immunity must be read narrowly. *See* ECF No. 10 at 10–11; *Obando Segura v. Garland*, 999 F.3d 190, 193–95, 197 (4th Cir. 2021); *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023). But those decisions do not meaningfully distinguish between post-conviction criminal habeas and habeas petitions challenging civil immigration detention, and they fail to engage the long line of Supreme Court and pre-EAJA circuit authority recognizing habeas as a civil proceeding. In this case, the only type of habeas at issue is a challenge to civil immigration detention, which the Supreme Court has repeatedly characterized as civil.[6]

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[5] Respondents citation to *Schlanger v. Seamans*, 401 U.S. 487, 490 n.4, (1971) only concerned use of the term "civil action" in 28 U.S.C. § 1391(e) (regarding service of process). *Santana v. United States*, 98 F.3d 752, 754-55 (3d Cir. 1996) addressed "civil actions" for purposes of the Prison Litigation Reform Act. *Ankenbrandt v. Richards*, 504 U.S. 689, 700-01 (1992) discussed the phrase "all civil actions" as added to the diversity jurisdiction statute. Notably, "none of those decisions repudiated the centuries-long doctrine that habeas actions are civil. And none undermined the presumption Congress used the term in the EAJA with that history in mind." *Michelin*, 169 F.4th at 427.

[6] As the Third Circuit explained in *Michelin*, both *Obando Segura* and *Barco* rest on *O'Brien v. Moore*, 395 F.3d 499 (4th Cir. 2005), where the court (1) ignored the word "any" that precedes "civil action," (2) overlooked EAJA's express exception for "cases sounding in tort," and (3) largely neglected the deep common-law history of habeas as a civil action, limiting its own reasoning to habeas challenges to criminal incarceration. *See Michelin*, 169 F.4th at 431–32; *O'Brien*, 395 F.3d at 505, 507. *Obando Segura* then brushed aside the distinction *O'Brien* drew between criminal and immigration detention, while conceding that EAJA covers "any civil action," discounted the word "any" and ignored the torts exception, claiming that any attempt to read "civil action" to include habeas "cannot survive *O'Brien*." 999 F.3d at 194, 196. The Fifth Circuit's decision in *Barco* simply adopts the same flawed reasoning. *See Barco*, 65 F.4th at 783–85.

In *Daley v. Ceja*, 158 F.4th 1152, 1161–62 (10th Cir. 2025), the Tenth Circuit held that habeas actions challenging immigration detention are unambiguously "civil actions" under EAJA because habeas is civil, immigration proceedings are civil, and immigration detention is civil. The court further rejected the Government's argument that procedural differences between habeas and ordinary civil cases remove immigration habeas from EAJA's scope, reasoning that EAJA itself covers proceedings that do not follow ordinary civil procedure. *Daley* also directly addressed *Obando-Segura* and *Barco*, explaining that neither decision persuasively identified any non-civil character in immigration habeas beyond reliance on criminal-habeas authorities. The Tenth Circuit found *Barco* "of limited assistance" because it relied on criminal-habeas cases and did not consider how habeas petitions challenging immigration detention differ. Petitioner's habeas challenge to civil immigration detention is a covered "civil action" under EAJA. See also *Michelin*, 169 F.4th at 432 (EAJA waives federal sovereign immunity for fees in habeas challenges to immigration detention because "any civil action" unambiguously encompasses those cases). The Second and Ninth Circuits reached the same conclusion. *Vacchio*, 404 F.3d at 670–72; *In re Hill*, 775 F.2d at 1040–41. This Court should likewise hold that Petitioner's habeas challenge to his civil immigration detention is a covered "civil action" under EAJA.

II. Respondents' Position Was Not Substantially Justified.

Respondents' position was not substantially justified because both the underlying agency action and the litigation position lacked a reasonable basis in law and fact. 28 U.S.C. § 2412(d)(1)(A), (d)(2)(D); *Comm'r, INS v. Jean*, 496 U.S. 154, 159–62 (1990); *United States v. Jones*, 125 F.3d 1418, 1427–28 (11th Cir. 1997). After this Court rejected Respondents' § 1225(b)(2) theory in *J.A.M.* and *P.R.S.*, DHS continued applying the same policy to materially indistinguishable detainees, including Petitioner, and Respondents continued urging the same

statutory theory here. In *Bruland v. Howerton*, 742 F. Supp. 629 (S.D. Fla. 1990), the court held that substantial justification considers both the agency action and litigation position, and that an unjustified agency action cannot be cured by later reasonable litigation conduct. That reasoning applies here.[7] That pattern of continued adherence to a statutory position this Court had repeatedly rejected, and continued detention in the face of repeated, on-point decisions, is the antithesis of a 'substantially justified' position under EAJA. Allowing the government to repeatedly relitigate and disregard indistinguishable rulings without fee consequences would undermine EAJA's core deterrent function.

The Eleventh Circuit's EAJA jurisprudence confirms that a position is not "substantially justified" when the government persists in a legal theory after controlling or near-controlling authority has rejected it. Here, Respondents' insistence on relitigating the same statutory argument in case after case—despite this Court's repeated, factually indistinguishable rulings in *J.A.M., P.R.S.* and numerous others—mirrors the unjustified persistence condemned by the Eleventh Circuit and underscores that their position lacked a reasonable basis in law or fact. See *Hudson v. Secretary of Health and Human Services*, 839 F.2d 1453, 1456 n.3 (11th Cir. 1988) (for government's position to have been substantially justified, all of its positions must have been reasonable), aff'd, Sullivan v. Hudson[8], 490 U.S. 877 (1989); *Bruland*, 742 F. Supp. 629 (while

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[7] *See also Nkenglefac v. Garland*, 64 F.4th 251, 253 (5th Cir. 2023)[7] (found the 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."). Under EAJA, it is not enough for Respondents to point to one arguably reasonable phase of the litigation; because position of the U.S. includes both agency action and litigation conduct, and the statute requires that the government's position be "substantially justified" in the singular; It cannot avoid fees unless all of its positions were reasonably based in law and fact. 28 U.S.C. § 2412(d)(1)(A), (d)(2)(D); *Jean*, 496 U.S. at 159–62; *Jones*, 125 F.3d at 1427.

[8] Petitioner acknowledges that after this Court ruled on his petition, the Fifth and Eighth Circuit Courts of Appeals have weighed in on this issue and agreed with the government's position. However, those decisions are not binding on this Court, which falls under the Eleventh Circuit, and the government did not have the benefit of those decisions

isolated district-court decisions might not by themselves render a position unreasonable, the agency's refusal to conform its conduct once the Eleventh Circuit had effectively endorsed that view "strongly impact[ed]" the reasonableness analysis and defeated any claim of substantial justification); *Arias* 2023 WL 4488890 (the government's pattern of non-compliance, viewed in light of EAJA's deterrent purpose, rendered the gov't position unreasonable in law and fact). That same reasoning applies here: notably, Reuters reported that in 4,421 cases (majority), more than 400 federal judges had ruled since the beginning of October that ICE was holding people illegally. See Exhibit 1 (Reuters news article).9 That nationwide record reinforces that Respondents' position was not a reasonable one-off interpretation, but a repeatedly discredited policy.

Respondent's remaining substantial-justification arguments do not carry its burden. Even if *Matter of Yajure-Hurtado* bound DHS administratively, EAJA asks a broader question: whether the "position of the United States" as a whole—including the agency action that forced Petitioner to seek habeas relief—was reasonable. See *Bruland*, 742 F. Supp. 629. It was not. The absence of binding Eleventh Circuit precedent did not give Respondent license to continue applying a statutory theory this Court had already rejected in materially indistinguishable cases, particularly where Respondent identifies no factual distinction that would justify a different result here. Nor can later out-of-circuit decisions retroactively justify Petitioner's detention or Respondent's litigation position at the time this case was filed; those decisions did not bind this Court then, nor now. Respondent's reliance on the short duration of this litigation fares no better. This case was

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when they continued to assert their already-rejected legal posture before this Court in the instant case. Moreover, the Second Circuit recently issued a precedential decision rejecting Respondents' position. *See* ***da Cunha v. Freden***, --- F.4th ----, 2026 WL 1146044, *23 (2d Cir. 2026) ("The government's attempt to muddy these textually clear waters defies the statute's context, structure, history, and purpose; contradicts the Supreme Court's dicta in *Jennings* and longstanding Executive Branch practice; and its interpretation of the statute raises serious constitutional questions that should be avoided even if the statutory language were ambiguous.").

[9] https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/ (last accessed April 6, 2026); *see also* https://habeasdockets.org/.

brief because the Court had already resolved the same issue—not because DHS voluntarily provided the § 1226(a) bond hearing that Petitioner was forced to seek through federal habeas litigation. *Bruland* is instructive: there, the court found the government's position unjustified where district-court authority, reinforced by an Eleventh Circuit affirmance without opinion, strongly undermined the agency's view. The same principle applies here. Once this Court had repeatedly rejected Respondent's statutory theory in materially indistinguishable cases, Respondent's continued adherence to that theory lacked a reasonable basis in law and fact. Petitioner still had to file a habeas petition to obtain the bond hearing that DHS should have provided without federal-court intervention.

The Court should also reject Respondents' claim that this detention issue "is a novel one on which there is little precedent." ECF No. 10 at 15. That assertion is implausible where only one reasonable interpretation exists, DHS had agreed with and followed that interpretation for years[10], and Respondents offer no justification for their sudden about-face.[11] Respondents' attempt to recast this as a "novel" issue rendered reasonable by a developing split likewise fails. Although they point to a handful of out-of-circuit decisions, including a recent Fifth Circuit case, in which

[10] The statutory scheme has existed for decades and had been applied correctly by the agencies for years until this administration decided to enact a "sweeping new policy, which the Department of Homeland Security (DHS), in conjunction with the Department of Justice (DOJ), [that] contravene[es] "decades of agency practice and robust due process protections hitherto afforded to such residents under 8 U.S.C. § 1226(a)." *Cabrera-Cortes v. Knight*, No. 2:25-CV-01976, 2025 WL 3240971, at *1 (D. Nev. Nov. 20, 2025). This reality is further evidenced by the countless district courts that immediately rejected Respondents' position as baseless and unlawful. *See e.g., Barco Mercado v. Francis*, 2025 WL 3295903, at *13 ("Respondents' position does not and has never had a reasonable basis in statutory text, structure, or history. Their position has been rejected with near unanimity in the overwhelming majority of cases across the country. Mr. Barco is entitled to reasonable fees and costs.); *see Vashishth Tyagi v. Luis Soto et al.*, No. 26-CV-00962, 2026 WL 478184, at *1 (D.N.J. Feb. 20, 2026) ("[F]ederal courts have in near unanimity similarly rejected respondents' position in approximately 300 cases to date, a number which climbs with every passing day.") citing *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-cv-05488, 2025 WL 3218243, at *4 (E.D. Pa. Nov. 18, 2025).

[11] As discussed in *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1150 (D. Minn. 2025), "the longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up). Historically, noncitizens who resided in the United States, but who had previously entered without inspection, were not deemed "arriving aliens" under § 1225(b), but were instead subject to § 1226(a). *Maldonado*, 795 F. Supp. 3d at 1150, citing *Jennings*, 583 U.S. at 287.

courts have accepted variants of their statutory theory, those isolated authorities do not erase the fact that, by the time of Petitioner's detention and this litigation, this Court had already rejected Respondents' position in materially indistinguishable cases and district courts across the country had overwhelmingly done the same. EAJA assesses the reasonableness of the government's position **when taken**, not whether it can ***later*** point to a few outlier decisions to ***retroactively*** justify months of continued adherence to a repeatedly rejected policy.

In sum, Respondents' position was not reasonable nor substantially justified and this Court should award Petitioner costs and fees under EAJA like other courts. *Yao v. Almodovar*, No. 25 CIV. 9982 (PAE), 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) (finding that 1) habeas petitions challenging immigration detention are civil actions within the meaning of the EAJA, 2) *Yao* was the prevailing party, 3) "ICE's position, rejected this year in some 97% of the cases in which it was litigated, was not substantially justified" and 4) *Yao* was thus entitled to reasonable fees and costs); *Rivera Esperanza v. Francis*, No. 25-CV-8727, 2025 WL 3513983, at *9 (S.D.N.Y. Dec. 8, 2025) (finding petitioner was the prevailing party and the government's position was not substantially justified on the same issue); *Gregorio Sandoval Ortiz v. Arnott*, et al., No. 6:26-CV-3159-MDH, 2026 WL 787589, at *6 (W.D. Mo. Mar. 20, 2026) (The manner in which the provisions have historically been interpreted, legislative intent, statutory construction, and the plain text of the statutes all support that the United States is not substantially justified in its novel interpretation of § 1225.").

III. Petitioner is entitled to the full amount of fees claimed.

Respondent's partial-success argument fails because the Court's decision not to reach alternative theories was not a rejection on the merits. Petitioner obtained the relief sought: a judicial order requiring a § 1226(a) bond hearing, followed by release on bond. ECF No. 10 acknowledges

that the Court ordered a bond hearing and that Petitioner was released on December 31, 2025. The APA, due process, ultra vires, *Accardi*, and class-certification theories all challenged the same detention, same policy, and same requested relief; the work cannot be meaningfully segregated. When the prevailing party has obtained excellent results, "the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 434–35 (1983); *Troy B. v. Comm'r, Soc. Sec. Admin.*, No. 1:19-cv-5503-JSA, 2022 WL 3337618, at *1–2 (N.D. Ga. Feb. 16, 2022).Here, all Petitioner's theories challenged the same detention under the same statutory framework and July 8, 2025 policy, and the work on those intertwined theories cannot be meaningfully segregated from the successful § 1225/§ 1226 claim.[12]

Petitioner's enhanced-rate request rests on the statutory special factor of "limited availability of qualified attorneys for the proceedings involved," not on general immigration experience, case difficulty, or results obtained. 28 U.S.C. § 2412(d)(2)(A); *Bruland*, 742 F. Supp. 629. This case required the combined expertise of immigration detention law, federal habeas practice, INA detention provisions, emergency federal litigation, and expedited statutory interpretation of 8 U.S.C. §§ 1225 and 1226. Respondent's observation that other attorneys have filed similar petitions does not defeat that showing; Petitioner relies on the scarcity of counsel with this combined expertise who were available in Georgia at the statutory EAJA rate. If the Court declines the special-factor rate, Petitioner requests the cost-of-living-adjusted EAJA rate..[13]

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[12] Petitioner's entry reflects the preparation and refinement of a single, integrated habeas petition arising out of the same detention, the same policies, and the same disputed statutory interpretation; the APA and *Accardi* portions are substantially unchanged from prior cases and required only minimal tailoring, whereas developing the statutory interpretation argument and synthesizing the rapidly evolving § 1225/§ 1226 case law accounted for well over 90% of the research and drafting effort. Even if the Court were inclined to discount time devoted exclusively to alternative theories, the vast bulk of the challenged entry was necessarily spent on the statutory claim on which Petitioner prevailed. Consistent with *Hensley*, the modest overall hours and detailed contemporaneous time records already submitted demonstrate the reasonableness of counsel's work and do not justify any such reduction.

[13] Respondents' attack on the requested $1,000/hour rate ignores how the Eleventh Circuit has applied EAJA's "special factor" clause. In *Pollgreen v. Morris*, 911 F.2d 527, 536–38 (11th Cir. 1990), applying *Pierce v. Underwood*, 487 U.S. 552 (1988), the court held that the "special factor" exception is narrow but specifically noted that "practice

Petitioner identified only a small group of attorneys in this region with comparable experience in emergency immigration-detention habeas litigation, underscoring the 'limited availability of qualified attorneys' that EAJA's special-factor clause contemplates. EAJA awards on "prevailing market rates for the kind and quality of the services furnished" and may exceed the cap where "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).

Respondent's objections to the hours billed should also be rejected. The hours claimed were reasonable and necessary to obtain the relief ordered by this Court and to prepare the EAJA application required by statute. Respondent's comparison between merits time and EAJA time is misleading because EAJA briefing required Petitioner to address a separate sovereign-immunity issue, substantial justification, prevailing-party status, the appropriate hourly rate, and Respondent's fee objections. Nor does the challenged petition entry warrant a reduction. The claims arose from the same detention, the same agency policy, the same statutory dispute, and the same requested relief—a bond hearing under § 1226(a). Because the work cannot be meaningfully segregated between successful and alternative theories, no reduction is warranted. For the foregoing reasons, Petitioner respectfully requests that the Court grant his motion and award costs, fees, and other expenses under EAJA in the amount of $14,200.00.[14]

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specialty such as patent law, or knowledge of foreign law or language" may justify a higher rate and suggested that immigration-law expertise and the government's unusually litigious posture can qualify as special factors under § 2412(d)(2)(A). Likewise, in *Jean v. Nelson*, 863 F.2d 759, 773–76 (11th Cir. 1988), aff'd, 496 U.S. 154 (1990), the court distinguished impermissible considerations such as results obtained or general quality of counsel from permissible special-factor enhancements based on specialized immigration expertise and governmental obstinacy in defending unlawful detention policies. Petitioner has submitted unrebutted declarations documenting both the limited availability of experienced federal immigration habeas counsel in Georgia and the specialized expertise required to litigate this matter. Those facts place this request squarely within the "limited availability of qualified attorneys" category that *Pierce*, *Jean*, and *Pollgreen* recognize, rather than the factors those cases forbid.

[14] The original amount of $9,800.00 plus $2,400 for three (3) hours for Attorney Fascett's time in drafting this reply brief (at $800/hour) plus $1,000 for two (2) hours for Attorney Weinstock's review of the reply brief (at $1000/hour) for a total of amount of $14,200. *See Comm'r, INS v. Jean*, 496 U.S. 154, 163.

Respectfully submitted this 5th day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2026, this Foregoing Document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

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