

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

JOSE ALFREDO GIRON BAUTISTA,
Petitioner,

v.

SECRETARY, U.S. DEPT. OF
HOMELAND SECURITY, ET AL.,
Respondents.

Case No. 2:26-cv-75-JES-DNF

**RESPONSE TO MOTION FOR FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT**

Petitioner seeks attorney's fees under the Equal Access to Justice Act ("EAJA") because he prevailed on his immigration habeas petition by receiving a bond hearing. *See* ECF No. 11. The Court should deny Petitioner's request for attorney's fees under EAJA because the Government's position at both the administrative and federal litigation levels was substantially justified. But if the Court finds that the Government's position was not substantially justified, the Court should reduce Petitioner's fee award because Petitioner included clerical tasks that are non-compensable under EAJA. Accordingly, the Court should deny Petitioner's motion in full or, in the alternative, reduce the fee sought.

I. Facts and Procedural Background

After considering briefing on Petitioner's habeas petition, the Court issued an order granting his petition on January 23, 2026. ECF No. 11. This order summarizes the undisputed facts of this case. *Id.* at 1-2. Although the Court ruled against the Government on the merits, the Court did not state that the Government's position lacked substantial justification under EAJA. *See generally*, ECF No. 11. Petitioner filed his EAJA fee motion on February 9, 2026, within 30 days of entry of the Court's order. *See* ECF No. 15 ("EAJA Mtn.").

II. Standard of Review

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); *see also Kurapati v. U.S. Citizenship & Immigr. Servs.*, 700 F. App'x 974, 976 (11th Cir. 2017).

III. Argument

The Government does not dispute that Petitioner was the prevailing party for EAJA purposes or that Petitioner timely filed his EAJA fee motion. Nevertheless, the Court should deny Petitioner's motion for two reasons. First, the Government's position was substantially justified even though the Court concluded that it was not correct. Second, if the Court finds that the Government's position was not substantially justified, the Court should reduce Petitioner's fee time entries include clerical work.

A. The Government's position was substantially justified.

The Court should deny Petitioner's motion because the Government's position was substantially justified. The Government does not need to establish that it was "justified to a high degree;" instead, it must show that it was "'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) ("[A] position can be justified even though it is not correct, and we believe it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact."). A "genuine dispute" or "if reasonable people could differ" about the appropriateness of the government's positions satisfies this standard. *Id.* at 566 n.2; *In re Rasbury*, 24 F.3d 159, 168 (11th Cir. 1994) ("A position that is 'substantially justified' is one that is 'justified to a degree that could satisfy a reasonable person' or that has a 'reasonable basis both in law and fact.'" (citing *Pierce*, 487 U.S. at 565)). In *Kurapati*, the Eleventh Circuit affirmed the district court's denial of attorney fees under EAJA in an immigration case where the plaintiffs challenged the Government's revocation of their immigrant visa petitions without adequate notice. *Kurapati*, 700 Fed. App'x. at 975. Plaintiffs alleged that the Government's position—that Plaintiffs lacked standing—was substantially unjustified because other out-of-circuit courts and the "Portability Provision" of the American Competitiveness in the Twenty-First Century Act foreclosed the argument. *Id.* The district court rejected Plaintiffs' argument and the Eleventh circuit affirmed that decision because though the Government's position was ultimately deemed incorrect, when the Government took

that position, it was reasonable because the matter was of first impression in the district. *Id.* at 976.

The Court should find that the Government's position was substantially justified here for at least two reasons. First, the Government's position in this case was consistent with the Board of Immigration Appeals case *In re Matter of Yajure Hurtado*, 29 I & N Dec. 216 (B.I.A. 2025). This case bound immigration judges at the administrative level, preventing any immigration judge from determining that Petitioner was bond-eligible under his unique circumstances. Second, immigrants similarly situated as Petitioner continue to file habeas petitions alleging the same legal issue in courts nationwide yet there is not yet a consensus on how to resolve the novel legal issue these cases present. Accordingly, the Court should deny Petitioner's motion for fees under EAJA because the Government's position was substantially justified at both the administrative and litigation levels.

- i. Binding BIA precedent in Hurtado required Petitioner's detention after he was detained on January 2, 2026, which substantially justified the Government's administrative position.*

"[T]he position that the Government took when arguing before the BIA" and the immigration court "is fair game" when evaluating Petitioner's EAJA fee motion. *See Amezola-Garcia v. Lynch*, 835 F.3d 553, 555 (6th Cir. 2016). As Respondents explained in their response to the Court's show cause order, under *Thuraissigiam* and the statutory scheme at 8 U.S.C. § 1225(a), "An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1); *DHS v. Thuraissigiam*, 591 U.S. 103,

140 (2020). Such aliens are applicants for admission whether they arrived at a designated port of arrival or not. 8 U.S.C. § 1225(a)(1). This statutory provision thus mandates detention of applicants for admission until certain immigration proceedings have concluded. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). The emphasis is thus on the manner in which an alien enters the United States, not the duration of time for which he has remained here, a position supported by legislative intent. 8 U.S.C. § 1225(a)-(b); *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996). In this case, Petitioner entered the United States without inspection, subjecting him to detention under 8 U.S.C. § 1225 in the Government's view. The Government's position is supported by *Hurtado* in which the Board of Immigration Appeals—an entity with unique expertise in immigration affairs—determined that “immigration judges lack authority to hear bond requests or to grant bond to aliens . . . who are present in the United States without admission.” *Hurtado*, 27 I & N Dec. at 225¹; *see also Ardestani v. U.S. Dep't of Just.*, I.N.S., 904 F.2d 1505, 1508 (11th Cir. 1990) (“When a decision by the Board of Immigration Appeals is supported by substantial evidence, “Congress has mandated that we defer to the Board and affirm.”) (cleaned up).

As the Court stated—and consistent with the Government's interpretation of the facts—Petitioner entered the United States over twenty years ago where he has remained ever since absent a brief authorized departure. ECF No. 11 at 1-2. And

¹ Respondents note that in *Maldonado Bautista*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026) a District Court Judge in the Southern District of California recently purported to vacate the *Hurtado* decision. This decision is now on appeal—*see id.*, ECF No. 117—but notwithstanding this, Respondents also note that the California decision occurred after briefing in this case closed.

Petitioner was detained given his lack of lawful presence. *Id.* at 2, 4. Thus, *Hurtado*—which binds immigration judges presiding over Petitioner’s immigration case—requires denial of a bond hearing because Petitioner would be subject to mandatory detention under 8 U.S.C. § 1225. *See Hurtado*, 27 I & N Dec. at 225. The existence of a BIA decision binding on immigration courts nationwide, supports Respondents’ initial bond determination consistent with that decision, supports the Government’s administrative position in this case, and supports denying EAJA fees here.

Furthermore, other district courts have denied EAJA fees in immigration cases with similar circumstances. For example, in *Rosciszewski*, a Lawful Permanent Resident (“LPR”) was detained without a bond hearing when his deportation case was reopened after being dormant for fifteen years and he filed a habeas petition challenging his detention under 8 U.S.C. § 1226(c). *Rosciszewski v. Adducci*, 983 F. Supp. 2d 910, 912 (E.D. Mich. 2013). The immigration judge there had denied a bond hearing because of the BIA’s interpretation of 8 U.S.C. § 1226(c) in *In re Rojas*, 231 I&N 117 (BIA 2001), and the government relied on that BIA interpretation to support its habeas litigation position. *Id.* at 912, 914-15 (citation omitted). The court granted the petition and awarded the petitioner a bond hearing, but it denied EAJA fees in part because the government relied on the BIA’s interpretation of 8 U.S.C. § 1226(c). *Id.* at 916-17 (citations omitted); *see also Rosario v. Prindle*, No. 11-217, 2011 WL 6942560, at *3 (E.D. Ky. Nov. 28, 2011) (not recommending EAJA fees because of “[t]he lack of Sixth Circuit law on this critical issue” and “the BIA’s decision in *Matter of Rojas*”), R&R adopted at 2012 WL 12920 (E.D. Ky. Jan. 4, 2012).

Similarly, in *Reeves v. Reno*, the LPR petitioner was ordered deported after she was convicted of eight counts of violating Michigan's controlled substances laws. 61 F. Supp. 2d 661, 662 (E.D. Mich. 1999). The BIA and the government interpreted a statute that would bar her from seeking discretionary relief from deportation to be retroactive and thus applicable to her, and the petitioner argued that it was not retroactive and would not bar her from seeking a discretionary waiver of deportation. *Id.* at 664-67. Specifically, the BIA held that the statute applied retroactively to bar her waiver application in *Matter of Soriano*, Int. Dec. No. 3289 (Op. Att'y Gen. Feb. 21, 1997), and the government argued that the court should defer to *Soriano* under *Chevron, U.S.A., Inc. v. Nat. Res. Defense Council, Inc.*, 467 U.S. 837 (1984). *Reeves*, 61 F. Supp. 2d at 664-65. The court granted the habeas petition but denied EAJA fees in part because the Sixth Circuit had not yet ruled on the retroactivity issue and because "the Attorney General's decision in *Matter of Soriano* supports the government's position." *Id.* at 667 (emphasis added). Applying these cases, the Court should deny EAJA fees because *Hurtado*, a binding BIA decision, controlled the outcome at the administrative level here, just as *Rojas* controlled the administrative outcome in *Rosciszewski* and *Soriano* controlled in *Reeves*. See *Rosciszewski*, 983 F. Supp. 2d at 914-17; *Reeves*, 61 F. Supp. 2d at 664-67. Furthermore, the Eleventh Circuit has not yet weighed in on the validity of the Government's position which indeed tracks with other decisions issued out of circuit. See *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

Even if the Court finds that the Government's position at the administrative level was not substantially justified, the Court's substantial-justification inquiry does not end there. *Amezola-Garcia*, 835 F.3d at 555. "[T]he fact that the remainder of the Government's case was justified renders the Government's position in this case, as a whole, substantially justified." *Id.*; 28 U.S.C. § 2412(d)(1)(A). The Government's litigation position on the merits was substantially justified, which shows that the Government's position "as a whole" was substantially justified such that the Court should not award EAJA fees.

- ii. *Judicial disagreement about this novel issue demonstrates that the Government's litigation position was substantially justified.*

Unsettled issues such as the interpretation of the applicability of Sections 1225 and 1226 presented here give the Government some leeway in presenting its argument. *See Kuratapi*, 700 Fed. App'x. at 975. In *Kuratapi*, the Eleventh Circuit concluded that EAJA fees were not appropriate where the Government's position on an issue that—at the time of briefing—was "sufficiently unsettled" to be justified. *Id.* at 976. Here, this issue remains unsettled with many courts finding consistent with Petitioner's position² but also many others finding in favor of the government's

² See *E.g.*, *Perez Ajtum v. Hardin et al*, 2:26-cv-00057-SPC-DNF (M.D. Fla.) (Doc. 7); *Jimenez-Mazariegos v. Warden*, No. 2:26-cv-59-JES-NPM (M.D. Fla.) (Doc. 7); *Vilorio Moncada v. Warden*, No. 2:26-cv-33-JES-DNF (M.D. Fla.) (Doc. 10); *Alonzo Izaguirre v. Warden*, No. 2:26-cv-48-SPC-DNF (Doc. 7); *Landaverde Garcia v. Ripa et al.*, No. 2:26-cv-8-KCD-DNF (Doc. 9); *Giron Bautista v. Sec'y, DHS, et al.*, No. 2:26-cv-75-JES-DNF (Doc. 11); *Vasquez-Vail v. Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement (Collier)*, 2:26-cv-81-JES-NPM (Doc. 11); *Munoz Avendano v. Warden*, No. 2:25-cv-1221-SPC-NPM (Doc. 10); *Jacobo v. Warden*, No. 2:25-cv-1190-KCD-NPM (Doc. 6); *Salinas v. Warden*, No. 2:25-cv-1196-KCD-DNF (Doc. 8); *Gallardo v. Glades Detention Facility*, 2:25-cv-1193-JES-DNF (Doc. 5); *Dixon v. Warden*, No. 2:25-cv1067-KCD-DNF (Doc. 12); *Lopez Arevalo v. Warden*, No. 2:26-cv-18-SPC-DNF (Doc. 15); *Juan Miguel Gomez-Pena v. Secretary, DHS*, No.

position.³ Significantly, the Fifth Circuit recently ruled that aliens who have not been

3:25-cv-1287-MMH-MCR (Doc. 13); *Oldin Gonzalez v. Hardin*, No. 2:25-cv-1227-JES-DNF (Doc. 7); *Melgar v. Secretary*, No. 2:25-cv-1002-JES-DNF (Doc. 12); *Cruz-Ros v. Warden*, No. 2:25-cv-1006-JES-NPM (Doc. 9); *Tomas v. Warden*, No. 2:25-cv-1117-JES-DNF (Doc. 18); *Elizalde Ortiz v. Mordant et al.*; No. 2:25-cv-01160-JES-DNF (Doc. 7); *Padilla Orellana v. Warden*, No. 2:25-cv-1195-SPCNPM (Doc. 13); *Garcia Raya v. ICE*, No. 2:25-cv-1109-KCD-DNF (Doc. 7); *Rosas v. Noem*, No. 2:25-cv-1062-JES-NPM (Doc. 12); *Valle Ortiz v. Warden*, No. 2:25-cv-1114-KCD-DNF (Doc. 16); *Martinez Rios v. Ripa*, No. 2:25-cv-1090-KCD-DNF (Doc. 9); *Rafael Gonzalez v. Warden*, No. 2:25-cv-1047-KCD-DNF (Doc. 17); *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMH-MCR (Doc. 14); *Bravo-Diaz v. Mordant*, No. 2:25-cv-1013-JES-DNF (Doc. 10); *Martinez Chavez v. Ripa*, No. 2:25-cv-1088-KCD-DNF (Doc. 10); *Reyes Rodriguez v. Warden*, No. 2:25-cv-1012-JES-DNF (Doc. 11); *Rafael Avalos v. Hardin*, 2:25-cv-1008-KCD-DNF (Doc. 16); *Valentin Gonzalez Hernandez v. Bondi*, 2:25-cv-1082-SPC-NPM (Doc. 8); *Cetino v. Hardin*, No. 2:25-cv-1037-JES-DNF (Doc. 12); *Hernandez Perez v. Warden*, 2:25-cv-1052-KCD-NPM (Doc. 13); *Cervantes Orellana v. Noem*, No. 2:25-cv-1038-KCD-NPM (Doc. 20); *Castillo-Castro v. Secretary*, DHS, No. 2:25-cv-1045-KCD-DNF (Doc. 16); *Flores Castizo v. Warden*, No. 2:25-cv-1087-SPC-DNF (Doc. 8); *Luis Perera v. Bondi*, 2:25-cv-1054-SPC-NPM (Doc. 10); *Garcia Riquis v. Warden*, No. 2:25-cv-1028-SPC-NPM (Doc. 8); *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM (Doc. 22); *Jose Erazo v. Hardin*, No. 2:25-cv-891-KCD-DNF (Doc. 19); *Norman Paxtor Alvarez v. Ripa*, No. 2:25-cv-964-KCD-NPM (Doc. 9); *Hernandez Lopez v. DHS*, No. 2:25-cv-830-KCD-NPM (Doc. 31); *Hinojosa Garcia v. DHS*, No. 2:25-cv-879-SPC-NPM (Doc. 18); *Vasquez Carcamo v. DHS*, No. 2:25-cv-922-SPC-NPM (Doc. 10).

³ See e.g. *Perez Ramirez v. Holt*, No. 2:25-cv-00156-SCM, 2026 WL 226964, at *2-7 (E.D. Ky. Jan. 28, 2026); *Vidal Alvacora v. Olson*, No. 0:26-cv-00675-DMT-SGE, 2026 WL 220417, at *1-3 (D. Minn. Jan. 28, 2026); *Qiwei Weng v. Genalo*, No. 25 Civ. 09595 (JHR), 2026 WL 194248, at *3-6 (S.D.N.Y. Jan. 25, 2026); *Hernandez v. Olson*, No. 25-cv-1670-bhl, 2026 WL 161509, at *3-7 (E.D. Wis. Jan. 21, 2026); *Singh v. Albarran*, No. 1:26-cv-00244-WBS-CSK, 2026 WL 124881, at *1-2 (E.D. Cal. Jan. 16, 2026); *J.E.P.M. v. Wofford*, No. 1:26-cv00316-WBS-CKD, 2026 WL 125270, at *1 (E.D. Cal. Jan. 16, 2026); *Martinez v. Villegas*, No. 1:25-CV-256-H, 2026 WL 114418, at *3-8 (N.D. Tex. Jan. 15, 2026); *Sargsyan v. Bondi*, No. 1:26-cv-00259-WBS-CKD, 2026 WL 114665, at *1-2 (E.D. Cal. Jan. 15, 2026); *Cutiopala v. Noem*, No. 1:25-cv-00211-MAL, 2026 WL 113567, at *2-5 (E.D. Mo. Jan. 15, 2026); *Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761, at *7-14 (S.D.N.Y. Jan. 14, 2026); *Choudhary v. Albarran*, No. 1:26-cv-00119-WBS-CKD, 2026 WL 102708, at *2 (E.D. Cal. Jan. 14, 2026); *Singh v. Noem*, No. 1:26-cv-00224 WBS CSK, 2026 WL 91787, at *2 (E.D. Cal. Jan. 13, 2026); *Singh v. Noem*, No. 2:25-cv-00157-SCM, 2026 WL 74558, at *3-7 (E.D. Ky. Jan. 9, 2026); *Garibay Robledo v. Noem*, No. 1:25-cv-00177-H, 2026 WL 81679, at *3-9 (N.D. Tex. Jan. 9, 2026); *Rodriguez v. Olson*, No. 1:25-cv-12961, 2026 WL 63613, at *5-8 (N.D. Ill. Jan. 8, 2026); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344, at *3-5 (W.D. Okla. Jan. 6, 2026); *Gomez Hernandez v. Lyons*, No. 1:25-CV-216-H, 2026 WL 31775, at *2-8 (N.D. Tex. Jan. 6, 2026); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *1-4 (E.D. Wis. Dec. 8, 2025); *Suarez v. Noem*, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at *2-3 (E.D. Mo. Nov. 28, 2025); *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (E.D. Cal. Nov. 17, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at *1-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4-9 (C.D. Cal. Nov. 12, 2025); *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972, at *2-6 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025

admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). At least four circuits—including the Eleventh—have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

Additionally, “[w]hile the EAJA redresses governmental abuse, it was never intended to chill the government’s right to litigate or to subject the public fisc to added risk of loss when the government chooses to litigate reasonably substantiated positions, whether or not the position later turns out to be wrong.” *Roanoke River Basin Ass’n v. Hudson*, 991 F.2d 132, 139 (4th Cir. 1993). The fact that the Court ruled against the Government does not support a finding that the Government’s position was not substantially justified. *See Pierce*, 487 U.S. at 569 (stating that the Government “could take a position that is substantially justified, yet lose”). “Here, as in other areas courts need to guard against being ‘subtly influenced by the familiar shortcomings of hindsight judgment.’” *Taucher v. Brown-Hruska*, 396 F.3d 1168, 1173 (D.C. Cir. 2005) (Roberts, J.) (quoting *Beck v. Ohio*, 379 U.S. 89, 96 (1964)). “[A] loss on the merits

WL 3033967, at *2-10 (E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, No. 6:25-cv-00451-DCJCBW, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351, at *4-9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4-5 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657, at *1-2 (E.D. Va. Aug. 5, 2025).

does not mean that legal arguments advanced in the context of our adversary system were unreasonable.” *Taucher*, 396 F.3d at 1174; cf. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (stating that courts “resist the understandable temptation to engage in post hoc reasoning by concluding that, because a [party] did not ultimately prevail, [its] action must have been unreasonable or without foundation”). Courts distinguish between “cases in which the government lost because it vainly pressed a position ‘flatly at odds with the controlling case law’ and cases in which ‘the government lost because an unsettled question was resolved unfavorably.’” *Griffith v. Comm’r of Soc. Sec.*, 987 F.3d 556, 564 (6th Cir. 2021) (quoting *Taucher*, 396 F.3d at 1174); *Reeves*, 61 F. Supp. 2d at 667 (“[A]lthough the government’s position was incorrect[,] it was also not unjustified.”). This case does not present such circumstances.

Whether to apply Section 1225 or 1226 to immigrants like Petitioner is a novel issue, with many districts ruling both for and against the Government. That some courts disagree with the Court’s holding here supports the conclusion that reasonable minds could differ on this issue. *Rosciszewski*, 983 F. Supp. 2d at 917 (concluding that the Government’s “position, while incorrect, was not substantially unjustified” because of an “absence of a definitive decision from the Sixth Circuit Court of Appeals” on the statute at issue “as well as the fact that courts across the country cannot agree on this issue”).

This nationwide disagreement about whether to apply Section 1225 or 1226, combined with the lack of guidance from the Eleventh Circuit, “compel[s] the

conclusion that the Government's position was not substantially unjustified." *Rosciszewski*, 983 F. Supp. 2d at 917. Accordingly, the Court should deny Petitioner's EAJA fee motion and hold that the Government's position was substantially justified.

B. If the Court finds that the Government's position was not substantially justified, the Court should reduce Petitioner's attorney's fees.

If the Court finds that Petitioner is entitled to attorney's fees because the Government was not substantially justified in its legal positions, the Court should reduce the fees sought.

i. The Hourly Rate Sought is Unreasonable

"A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Redish v. Blair*, Case No. 5:14-cv-260-Oc-22-PRL, 2015 WL 6688410, at *2 (M.D. Fla. Oct 30, 2015) (quoting *Norman v. Housing Authority of the City of Mont.*, 836 F.2d 1292, 1299 (11th Cir. 1988)). The burden rests with the party seeking an attorney's fee to produce sufficient evidence "that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 896 (1984). The court is permitted to draw upon its expertise in determining the reasonableness of an hourly rate. *Redish*, 2015 WL 6688410, at *2. "The party seeking fees bears the burden of establishing the market rate and should present the court with 'specific and detailed evidence' from which it can determine the reasonableness of the

proposed rate.” *Wales v. Berry, Inc.*, 192 F.Supp.2d 1313, 1317 (M.D. Fla. 2001) (quoting *Norman*, 836 F.2d at 1303).

Here, Petitioner seeks \$450 per hour for work completed by attorney Evelyn Pabon Figueroa. Petitioner also seeks \$200 per hour for clerical paralegal work completed by Barbara Perez, which will be addressed separately *infra*. As evidence that the attorney rate is reasonable in this case, Petitioner merely asserts that the rate “tak[es] into account the statutory cap and cost-of-living adjustments, and they are consistent with prevailing market rates in the Middle District of Florida for attorneys of similar skill and experience in complex federal habeas litigation.” ECF No. 15, ¶ 20. Petitioner asserts that attorney Pabon Figueroa has been admitted to practice since 2005. *Id.*, ¶ 19. Petitioner fails to describe her legal experience handling habeas corpus immigration litigation or to substantiate in any way the rates charged in the local community for similar services. Further, Petitioner also fails to describe her abilities, skill level, and/or experience practicing federal court litigation, much less litigation in the Middle District of Florida, relying simply only on the number of years licensed. Petitioner has provided no recent examples of EAJA decisions in which fees were awarded in comparable situations. There is simply nothing to support Petitioner’s contention as to the accuracy of the prevailing rate nor the skill and expertise of the attorney who worked on this case. In light of the absence of specific and detailed evidence, the Court should not rely on Petitioner’s vague and unsupported statements alone in determining the reasonableness of the requested hourly rate for counsel in this case. Petitioner has failed to produce satisfactory evidence of the reasonableness

of the requested rate of \$450 per hour as reasonable hourly rates in the Ft. Myers legal community.

The Court “may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses as to value.” *Norman*, 836 F.2d at 1303. The last award of attorney’s fees in the Middle District of Florida in an immigration case that Respondent was able to find issued in 2022.⁴ In that case, located within the Tampa Division, the highest hourly rate awarded was \$214.29 per hour. *See Calhoun v. Kijakazi*, No. 8:21-CV-797-CPT, 2022 WL 10129267, at *2 (M.D. Fla. July 19, 2022). More recent decisions awarding attorney’s fees under EAJA have issued in cases, specifically in the Fort Myers Division of the Middle District of Florida, in other types of federal litigation reflecting a slightly higher hourly rate. *See Rae v. Comm’r of Soc. Sec.*, No. 2:25-CV-66-NPM, 2025 WL 2841180, at *1 (M.D. Fla. Oct. 7, 2025) (granting fees at the rate of \$225.63 per hour); *Raczkowski v. Comm’r of Soc. Sec.*, No. 2:24-CV-1156-NPM, 2025 WL 2841181, at *1 (M.D. Fla. Oct. 7, 2025) (granting fees at a maximum rate of \$256.25 per hour); *Larosa v. Comm’r of Soc. Sec.*, No. 2:24-CV-1114-NPM, 2025 WL 2719051, at *1 (M.D. Fla. Sept. 24, 2025) (granting fees at a maximum rate of \$257.50 per hour); *Conrad v. Comm’r of Soc. Sec.*, No. 2:23-CV-900-

⁴ No cases awarding EAJA fees in the Middle District of Florida in habeas corpus proceedings were identified. As discussed in *Da Silva Martins*, there appears to be no Eleventh Circuit case law supporting an award of attorney’s fees in a habeas action—rather there is a circuit split on its applicability in this context, begging the question of whether it is even appropriate in the first instance here. *See Victor Emmanuel Da Silva Martins v. Warden, Folkston ICE Processing Facility*, No. 5:25-CV-152, 2025 WL 3722042, at *1 n. 1. (S.D. Ga. Dec. 23, 2025).

NPM, 2025 WL 2719050, at *1 (M.D. Fla. Sept. 24, 2025) (granting fees at a maximum rate of \$256.25 per hour).

Here, Petitioner's counsel has not sufficiently demonstrated any experience, much less substantial experience, in litigating with government agencies or in the area of habeas corpus immigration litigation. Because of this, Respondents submit that the rate claimed to be reasonable is excessive and must be significantly reduced on the Court's sound discretion, not to exceed prevailing rates for other federal litigation EAJA matters.

ii. Clerical Tasks Should Be Excluded From Recovery

A party seeking fees must exercise good billing judgment and provide evidence supporting the time claimed. *See Hensley v. Eckerhart*, 461 U.S. 424, 432-35, 437 (1983) ("Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary."). Courts have the discretion to reduce an award of attorney's fees when the requesting party does not properly document its fee request. *Id.* at 433. Here, Petitioner has included billing records for this case, but those records include clerical work improper for EAJ recovery. Accordingly, should the Court determine a fee award is appropriate, it should be reduced accordingly.

"Purely clerical tasks are not compensable under the EAJA." *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989). Clerical work involves tasks that do not require legal knowledge, such as collecting exhibits and filing motions. *See, e.g., Ward v. Astrue*, No. 3:11-CV-523-J-TEM, 2012 WL 1820578, at *3 (M.D. Fla. May 18, 2012)

(distinguishing between legal work performed by counsel and tasks purely administrative in nature and rejecting EAJA compensation for clerical tasks even when performed by attorneys); *Sean Michael McDavitt, v. Comm'r of Soc. Sec.*, No. 2:22-CV-416-NPM, 2023 WL 12175200, at *1 (M.D. Fla. Apr. 6, 2023) (same).

Petitioner has included several such entries in his billing chart.

Date	Assignee	Duration	Rate	Total	Description
1/16/2026	BP	0.15	200 \$	30.00	Paralegal - Filed Disclosure Statement, Notice of Related Action and Notice of Lead Counsel Designation
1/15/2026	BP	1	200 \$	200.00	Paralegal - Filed Habeas Petition, Proposed Summons and Civil Cover Sheet.
1/15/2026	BP	1	200 \$	200.00	Attorney - Prepared proposed summons and civil cover sheet
1/27/2026	EP	0.1	450 \$	45.00	Attorney - Reviewed Judgment in a Civil Case
1/27/2026	EP	1	450	\$450.00	Attorney - Conference with client
1/26/2026	EP	0.5	450 \$	225.00	Attorney - Reviewed Opinion and Order
1/23/2026	EP	1	450 \$	450.00	Attorney - Reviewed Respondents' Response to Petition
1/16/2026	EP	0.1	450 \$	45.00	Attorney - Reviewed Order to Show Cause
1/16/2026	EP	0.15	450 \$	67.50	Attorney - Prepared Disclosure Statement
1/16/2026	EP	0.1	450 \$	45.00	Attorney - Prepared Notice of Lead Counsel
1/16/2026	EP	0.1	450 \$	45.00	Attorney - Prepared Notice of Related Actions
1/15/2026	EP	3	450	\$ 1,350.00	Attorney - Prepared Habeas Petition
		total		\$ 3,152.50	
		Total BP		\$430.00	
		Total EP		\$2,722.50	

ECF No. 15-1.

As the highlighted entries in the chart above show, Petitioner has included time for “Filed Disclosure Statement, Notice of Related Action and Notice of Lead Counsel Designation,” Filed Habeas Petition, Proposed Summons and Civil Cover Sheet,” “Prepared proposed summons and civil cover sheet,” “Prepared Disclosure Statement,” “Prepared Notice of Lead Counsel,” and “Prepared Notice of Related Actions.” *Id.* Because these entries represent purely clerical tasks that do not require

legal knowledge—*see Missouri*, 491 U.S. at 288 n.10; *Ward*, 2012 WL 1820578 at *3—the Court should decline to award any fees for each entry that contains clerical tasks.

IV. Conclusion

The Court should deny Petitioner's EAJA motion because the government's position was substantially justified. Alternatively, the Court should reduce the fee amount sought because Petitioner's counsel included clerical work—some of which completed at the attorney rate no less—and elected to utilize an unjustified, excessive attorney fee rate.

DATED: February 23, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Amanda B. Saylor
AMANDA B. SAYLOR
Assistant United States Attorney
Counsel for the United States
Florida Bar No. 1031480
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6020
Facsimile: (813) 274-6200
E-mail: Amanda.Saylor@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy of this filing on all registered counsels of record.

/s/ Amanda B. Saylor

AMANDA B. SAYLOR

Assistant United States Attorney