UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| N-S-<br>Petitioner<br><br>vs.<br><br>Laura HERMOSILLO, Seattle Field Office Director, U.S. Immigration and Customs Enforcement (ICE), et al.,<br><br>Respondents | Case No. 2:26-cv-00161-BAT<br><br>**REPLY IN SUPPORT OF PETITIONER'S APPLICATION FOR ATTORNEY FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)** |



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Petitioner N.S., by and through undersigned counsel, respectfully submits this reply in support of his application for attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Respondents' opposition (Dkt. 15) does not contest that Petitioner is the prevailing party, that the government's position lacked substantial justification, that the application was timely, or that the hours billed were reasonable. The government raises only three narrow objections: (1) the enhanced hourly rate, (2) the correct statutory rate, and (3) the pro hac vice fee.

## ARGUMENT

### I. PETITIONER HAS SATISFIED ALL THREE PRONGS OF THE *LOVE V. REILLY* TEST, AND THE REQUESTED RATE OF $550 PER HOUR IS REASONABLE.

The government concedes the first two prongs of the *Love v. Reilly* test: that counsel possesses distinctive knowledge and skills developed through a practice specialty, and that those skills were needed in this litigation. 924 F.2d 1492, 1496 (9th Cir. 1991). The government contests only the third prong, arguing that Petitioner has not demonstrated that qualified counsel was unavailable *at a rate lower than $550 per hour*. Dkt. 15 at 3. This misframes the inquiry.

#### A. The Third Prong Asks Whether Qualified Counsel Is Available at the Statutory Rate, Not at Some Intermediate Rate.

The third *Love* prong asks whether the requisite specialized skills are "not available elsewhere *at the statutory rate*." 924 F.2d at 1496 (emphasis added). The question is binary: can a qualified attorney be retained at the EAJA cap, or not? If not, enhanced fees are



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warranted, and the court then determines a reasonable rate based on the prevailing market. *Pierce v. Underwood*, 487 U.S. 552, 571–72 (1988).

Counsel's declaration states unequivocally that he "would not be willing to accept this case, or another similar case, for the statutory rate" and that he is "not aware of any lawyer or law firm with [his] level of experience, willing to accept federal habeas cases at the statutory rate." Dkt. 14 at 11¶ 7. This is precisely the showing *Love* requires. The government's attempt to rewrite the third prong—demanding proof that no attorney would accept the case for *less than $550*—finds no support in Ninth Circuit law. Once the *Love* threshold is crossed, the court determines a reasonable rate by reference to the prevailing market, not by splitting the difference between the statutory cap and counsel's request.

**B. The Requested Rate of $550 Per Hour Is Reasonable and Well Within Prevailing Market Rates in This District.**

Once a party clears the *Love* threshold, "attorneys are to be paid at prevailing market rates." *Pierce*, 487 U.S. at 571–72; *see also Nadarajah v. Holder*, 569 F.3d 906, 913 (9th Cir. 2009) (enhanced rates must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation"). The requested rate of $550 per hour is eminently reasonable:

**This District has approved far higher rates for comparable work.** In *Koonwaiyou v. Blinken*, Case No. 3:21-cv-05474-DGE, Dkt. No. 51 (W.D. Wash. Mar. 20, 2024), the Western District of Washington awarded $850 per hour for lead counsel and $450 per hour for an associate in a complex immigration case. The court explicitly rejected the government's



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attempt to use out-of-district fee matrices, instead relying on expert declarations regarding the local market. Petitioner's request of $550 per hour is $300 less than the rate this District approved.

**The Oregon State Bar Economic Survey confirms this rate.** The 2022 Oregon State Bar Economic Survey reports a mean rate of $474.00 for attorneys with 11 years of experience practicing Business/Corporate Litigation in Downtown Portland. Adjusted for 16% inflation between 2021 and 2024, the presumptive market mean is $549.84. Counsel's requested rate of $550 per hour aligns precisely with the inflation-adjusted local market data.

The government does not identify any attorney who would have undertaken this emergency habeas representation at the statutory rate, nor does it cite any case from this District where $550 per hour was found unreasonable for experienced immigration habeas counsel. Its opposition is silent on *Koomwaiyou* and offers no competing market data.

Two additional declarations of experienced immigration habeas practitioners filed herewith independently confirm that $550 per hour is a reasonable prevailing market rate. Michael T. Purcell, an attorney with over 30 years of immigration law experience and approximately 145 immigration-related federal court cases, states that he would not accept this case at the statutory rate, is not aware of any qualified attorney who would, and that $550 per hour is reasonable based on the inflation-adjusted OSB Economic Survey data. Purcell Decl. ¶¶ 17–18, 25. Geoffrey Doolittle, an attorney who has practiced complex immigration law since 2011, likewise states that he would not accept this case at the statutory rate and that $550 per hour is "highly reasonable—and arguably below market." Doolittle Decl. ¶¶ 7–8.



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## II. THE STATUTORY RATE CORRECTION IS IMMATERIAL TO THE ENHANCED FEE REQUEST.

Respondents correctly note that the Ninth Circuit's adjusted EAJA statutory rate for work performed in 2025 is $258.46, not $251.84 as stated in the motion. Petitioner acknowledges this error. However, this correction is immaterial to the enhanced fee request, which is the primary relief sought. The statutory rate serves only as the floor—the baseline above which enhanced fees are calculated—and the slight difference between $251.84 and $258.46 does not affect the *Love* analysis or the reasonableness of the $550 per hour rate.

To the extent the Court declines to award enhanced fees, Petitioner accepts that the correct alternative calculation is 10.4 hours × $258.46 = $2,687.98 in attorney fees, plus $162.50 in paralegal fees, for a total of $2,850.48.

## III. THE PRO HAC VICE FEE IS RECOVERABLE UNDER EAJA AS A NECESSARY EXPENSE OF THE LITIGATION.

Respondents argue that the $249.00 pro hac vice fee is not recoverable, relying on *Kalitta Air L.L.C. v. Central Texas Airborne Systems, Inc.*, 741 F.3d 955 (9th Cir. 2013). That case is inapposite. *Kalitta Air* addressed the recoverability of pro hac vice fees under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)—the general costs statute—not under EAJA. The EAJA authorizes recovery of "fees and other expenses," 28 U.S.C. § 2412(d)(1)(A), which is broader than the taxable costs enumerated in § 1920.

EAJA defines "fees and other expenses" to include "reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project," and



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"reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A). Courts have consistently interpreted this language broadly to encompass litigation expenses beyond those taxable under § 1920. *See, e.g., International Woodworkers of America v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1986) (EAJA intended to cover the full range of litigation expenses).

Here, the pro hac vice fee was a necessary and unavoidable expense. Petitioner was detained in the Western District of Washington and needed immediate habeas relief. Lead counsel, an Oregon-barred attorney with specialized immigration habeas experience, was required to obtain pro hac vice admission to appear before this Court. As Counsel's declaration explains, the fee "was necessary for the presentation of this case to gain access to the venue where Petitioner was unlawfully held." Dkt. 14 at 11¶10. Without pro hac vice admission, counsel could not have filed or prosecuted the habeas petition at all.

Respondents' assertion that the entire $254 in costs should be denied because the motion does not separately itemize the two components is meritless. The motion clearly identifies the two costs: "$5.00 for the habeas filing fee and $249.00 for the Pro Hac Vice admission fee." Dkt. 14 at¶ 7. The government does not dispute the $5.00 filing fee.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his application for attorney's fees and costs under EAJA in the amount of $6,136.50, reflecting the enhanced rate of $550.00 per hour for 10.4 attorney hours, $125.00 per hour for 1.3 paralegal hours, and $254.00 in costs. In the alternative, if the Court declines to award enhanced fees, Petitioner requests fees calculated at the corrected statutory rate of $258.46 per hour, for a total



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of $2,687.98 in attorney fees, $162.50 in paralegal fees, and $254.00 in costs, totaling $3,104.48.

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