



Further, Respondents' litigation position in this matter was unjustified because it conflicts with the BIA's own decision in *Matter of Sugay*; Supreme Court precedent, and Respondents' prior legal interpretation of the applicable statute.

### **FACTUAL AND PROCEDURAL HISTORY**

Mr. Seijas Aquino will not belabor the facts set forth in his Petition. *See* ECF No. 1. Relevant to this request for attorneys' fees under the EAJA, Mr. Seijas Aquino has resided in the United States since 2023. *Id.* at ¶ 21. After being briefly detained upon entering the country, Mr. Seijas Aquino and his family were released on their own recognizance. *Id.* at ¶¶ 21-23. His family settled in Philadelphia, timely applied for asylum, and fulfilled their reporting obligations by attending scheduled check-ins at a local Immigration and Customs Enforcement (ICE) office. *Id.* at ¶¶ 23-26.

In January of 2025, Mr. Seijas Aquino was detained by ICE outside of his home. *Id.* at ¶ 26. An Immigration Judge granted Mr. Seijas Aquino a bond in the amount of \$4,500. *Id.* at ¶ 27. Mr. Seijas Aquino was released from ICE custody after payment of the bond. *Id.* at ¶ 28. He continued to attend his scheduled check-ins at the ICE office. *Id.*

On the morning of January 21, 2026, Mr. Seijas Aquino was arrested once again by ICE officials outside of his home. *Id.* at ¶ 29. When Mr. Seijas Aquino's

attorney called the ICE office to inquire into why their client had been re-detained despite having an outstanding bond, ICE officials refused to speak to her. *Id.*

That same day, Mr. Seijas Aquino's attorneys at the non-profit organization HIAS Pennsylvania filed a Petition for a Writ of Habeas Corpus. ECF No. 1. The Petition challenged Respondents' detention of Mr. Seijas Aquino on five separate counts. *Id.* Those counts are:

- 1) ICE violated Mr. Seijas Aquino's procedural due process rights under the Fifth Amendment of the U.S. Constitution by failing to provide any pre-deprivation due process during which he would have had an opportunity to demonstrate that he was neither a danger to the community nor a flight risk. *Id.* at ¶¶ 33-38.
- 2) Respondents' policy of denying bond hearings under 8 U.S.C. § 1226(a) to noncitizens like Mr. Seijas Aquino violates his statutory rights. *Id.* at ¶¶ 39-46.
- 3) The re-detention of Mr. Seijas Aquino after having been previously released on bond violates 8 U.S.C. § 1226(b) because Respondents did not demonstrate any changed circumstances justifying the revocation of bond. *Id.* at ¶¶ 47-51.
- 4) The denial of a bond hearing to Mr. Seijas Aquino violates the INA's bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. *Id.* at ¶¶ 52-55.

5) The denial of a bond hearing, or any other individualized determination, by Respondents violates the Administrative Procedures Act. 5 U.S.C. § 701, *et. seq.*; ECF No. 1 at ¶¶ 56-59.

In his petition, Mr. Seijas Aquino requested that he be immediately released, or in the alternative, afforded a bond hearing. ECF No. 1 at 23. He also requested that the Court award him attorneys' fees. *Id.* On January 23, 2026, Respondents filed a Response in opposition to the Petition. ECF No. 3.

The Court granted the Petition on January 29, 2026. ECF No. 8. In granting the Petition, the Court found that Mr. Seijas Aquino was not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Id.* at 2.

Because Respondents had not responded to Mr. Seijas Aquino's request for attorneys' fees, the Court set out a separate briefing schedule. On February 18, 2026, Respondents filed a brief arguing that Mr. Seijas Aquino's request for EAJA fees should be denied because their position was substantially justified. ECF No. 12. Mr. Seijas Aquino now responds to Respondents' opposition to his request for attorneys' fees.

## ARGUMENT

A central purpose of the EAJA is to ensure that expenses do not deter people from seeking review of unjustified government action. *See Clarke v. INS*, 904 F.2d 172, 178 (3d Cir. 1990). Thus, the Act mandates an award of fees and

expenses to a party that prevails in “any civil action,” including judicial review of action taken by a United States agency, unless the position of the United States was substantially justified, special circumstances make an award unjust, or the prevailing party’s net worth exceeded two million dollars at the time the action was filed. *See* 28U.S.C. §§ 2412(d)(1)(A), (2)(B). The Third Circuit recently held that attorneys’ fees under the EAJA are available in habeas corpus cases challenging the legality of immigration detention. *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 2026 U.S. App. LEXIS 3264 at \* 36 (3d Cir. 2025).

Mr. Seijas Aquino meets the criteria for an award of attorneys’ fees under the EAJA:

**A. Mr. Seijas Aquino is the prevailing party.**

To qualify for an EAJA award, an applicant must show that he is a “prevailing party,” which is one who “has been awarded some relief by a court.” *Buckhannon Bd. and Care Home, Inc. v. West Va. Dep’t of Health and Human Resources*, 532 U.S. 598, 603 (2002). Mr. Seijas Aquino sought a Writ of Habeas Corpus challenging his unlawful re-detention without pre-deprivation due process as well as the denial of a statutory bond hearing pursuant to 8 U.S.C. § 1226(a). This Court granted his petition, and ordered Mr. Seijas Aquino’s immediate release. ECF Doc. 8. Thus, he is the prevailing party under the EAJA.

**B. This Application for Fees is Timely**

Successful litigants must file an application for fees under the EAJA within 30 days of “final judgment” in the action. 28 U.S.C. § 2412(d)(1)(B). A “final judgment” is a judgment that is final and not appealable. 28 U.S.C. § 2412(d)(2)(G). Mr. Seijas Aquino’s petition was granted on January 29, 2026. For civil cases, the Government must file any appeal of a district court’s decision within 60 days of the entry of judgment. FRAP Civ. Pro. 4(a)(1)(B). This Application is therefore timely as it is filed on March 3, 2026.

**C. Mr. Seijas Aquino meets the net worth requirement.**

A litigant must have a net worth below \$2,000,000 at the time the action was filed in order to qualify for an EAJA award. 28 U.S.C. § 2412(d)(2)(B). Mr. Seijas Aquino meets this requirement. *See* Ex. A (Declaration of Petitioner). Mr. Seijas Aquino has only been able to retain counsel because HIAS Pennsylvania, a “401(c)(3)” not-for-profit agency, provides *pro bono* legal services to eligible individuals based on income.

**D. The Government’s position is not substantially justified.**

A government position is substantially justified if it has “a reasonable basis in both law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 556 (1988). “The burden of demonstrating substantial justification for its position rests squarely on [the government].” *Hanover Potato Products, Inc. v. Shalala*, 989 F.2d 123, 128 (3d Cir. 1993). In order to establish substantial justification, the government must establish “(1) a reasonable basis in truth for the facts alleged; (2) a [reasonable

basis] in law for the theory it propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced.” *Id.* Significantly, the EAJA “favors treating cases like an inclusive whole, rather than as atomized line items.” *Commissioner, INS v. Jean*, 496 U.S. 154, 162 (1990). Moreover, “in immigration cases, the Government must meet the substantially justified test twice—once with regard to the underlying agency action and again with regard to its litigation position in the proceedings arising from that action.” *Johnson v. Gonzales*, 416 F.3d 205, 210 (3d Cir. 2005).

Here, neither Respondents’ underlying conduct nor the Government’s litigation position was substantially justified.

**1. Respondents’ underlying conduct was not substantially justified because ICE officials disregarded Mr. Seijas Aquino’s due process rights, the INA, and decades old BIA precedent in re-detaining him without showing a change of circumstances justifying the revocation of his prior grant of bond.**

As explained in the Habeas Petition, the Department of Homeland Security’s actions in this case were not reasonable or justified. Mr. Seijas Aquino had previously been taken into ICE custody in early 2025 and released on February 5, 2025 after an Immigration Judge granted him bail in the amount of \$4,500. ECF No. 1 at ¶¶ 26-27. Thus an Immigration Judge had concluded less than a year prior to Mr. Seijas Aquino’s re-detention that he “would not pose a danger to property or persons”, and that he “is likely to appear for a future proceeding.” 8 C.F.R. § 1236.1(c)(8).

While 8 U.S.C. § 1226(b) permits the government to revoke a prior bond, BIA precedent requires that no change should be made [by immigration officials] absent a change of circumstance.” *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1991) *see also Saravia v. Sessions*, 280 F.3d 1168, 1197 (N.D. Cal. 2017) (“According to government counsel, DHS has incorporated [*Sugay*’s holding] into its practice, requiring a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer.”). During these proceedings Respondents presented no evidence that Mr. Seijas Aquino’s circumstance had changed since his prior release on bond.

Similarly, as pled in the petition, ICE officials violated Mr. Seijas Aquino’s due process rights under the Fifth Amendment by taking him into custody without making an individualized determination of whether he was a danger to the community or flight risk. ECF No. 1 at ¶¶ 33-38. The record before the Court indicates that ICE officials did not make any individualized inquiry prior to taking Mr. Seijas Aquino into custody. As stated above, Respondents did not submit any documentation setting forth ICE’s reasoning in either Mr. Seijas Aquino’s removal proceedings or in the record before the Court. While processing Mr. Sequino Aquino for detention, ICE agents refused to speak to his attorney on two separate occasions, *Id.* at ¶¶ 29, further suggesting that the agents sought to avoid scrutiny of their unlawful behavior.

This type of unjustified detention is precisely the evil prohibited under our Constitution. Liberty is a fundamental right, and its deprivation can only be justified by a compelling government interest. *United States v. Salerno*, 481 U.S. 739, 745-52 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Reno v. Flores*, 507 U.S. 292, 301-02 (1993); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Thus, civil immigration detention violates due process without a “sufficiently strong special justification” to “outweigh[]” the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91. Here, Respondents’ decision to detain Mr. Seijas Aquino lacked a compelling government interest, as an Immigration Judge had previously concluded that he was neither a danger or flight risk when he was granted bond just 11 months prior.

Finally, it was unreasonable to subject Mr. Seijas Aquino to mandatory detention under Section 1225 when he has previously been granted bail pursuant to Section 1226 and all of the documentation DHS’s own documentation issued to him explicitly stated that his detention was governed by Section 1226. ECF Doc 1-2 (order of release on recognizance); ECF Doc. 1-4 (administrative warrant of arrest); ECF Doc 1-5 (notice of custody determination); *see also* Doc 1 at ¶¶ 43-44. It was particularly unreasonable for Respondents to contest Mr. Seijas Aquino when he had previously been arrested on an administrative warrant – the hallmark of detention under Section 1226(a). *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). In other words, no reasonable person would believe it

legally justified for the government to detain Mr. Seijas Aquino indefinitely under these circumstances.

**2. Respondents' litigation position was unjustified because it conflicts with both Respondents' prior interpretations of the INA's detention authority as well as Supreme Court precedent.**

Similarly, the Government's litigation position was similarly unjustified. In answering Mr. Seijas Aquino's request for fees, the Government only addresses the statutory question of whether Mr. Seijas Aquino's detention was governed by 8 U.S.C. 1225 or 1226. ECF No. 12 at 4-8. Respondents do not attempt to defend or justify ICE's decision to re-detain Mr. Seijas Aquino when an Immigration Judge had previously granted him bond. *See generally Id.*

Respondents' position cannot be substantially justified when it does not respond to claims at the heart of a petition that was granted by the Court. *Hanover Potato Products, Inc.*, 989 F.2d at 131 (observing that, "substantial justification on the part of the Government in opposing one of the [prevailing party's] claims does not render its position substantially justified as to all of its other claims."). Contrary to Respondents' assertion; ECF No. 12 at 4-5; ICE did not follow BIA precedent when it disregarded *Matter of Sugay*'s command that the agency first identify changed circumstances before re-detaining a noncitizen previously granted bond. 17 I&N Dec. at 640.

Respondents' position that Mr. Seijas Aquino was subject to mandatory detention cuts against the interpretation of the INA adopted by the vast majority

of district courts. Although Respondents point to a handful of district courts agreeing with their position; ECF No. 12 at 6-7; and the Fifth Circuit’s decision in *Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). They also acknowledge that the Seventh Circuit recently issued an interim decision interpreting the INA in the same way advanced by Mr. Seijas Aquino and thousands of other successful habeas petitioners. ECF No. 12 at 6, n. 1 (citing *Castañon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1061–62 (7th Cir. 2025)).

The Court should not find Respondents’ radical interpretation of the INA as substantially justified as it contradicts both Supreme Court precedent and decades of Respondents’ own understanding of the interplay between Sections 1225 and 1226. In *Jennings v. Rodriguez*, the Supreme Court stated clearly that Section 1226(a) contains the “default rule” for noncitizens arrested on a warrant “pending a decision on whether the [noncitizen] is to be removed from the United States.” 583 U.S. 281, 288 (2018) (citing 8 U.S.C. § 1226(a)). And going back nearly three decades, in promulgating regulations implementing Section 1226(a), the then-Immigration and Nationality Service (“INS”) and Executive Office for Immigration Review stated unequivocally that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled ...will be eligible for bond and bond redetermination.” “Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of

Removal Proceedings; Asylum Procedures”, 62 Fed. Reg. 10312, 10323 (Mar. 6., 1997). Thus, Respondents’ position amounts to an unjustified rejection of settled law.

**E. There are no circumstances that make the award of attorneys’ fees unjust.**

The EAJA permits a court to deny fees where “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). The Government bears the burden of proving that such circumstances exist. *See Brinker v. Guiffrida*, 798 F.2d 661, 668 (3d Cir. 1986). This provision protects “the government’s good faith advancement of novel but credible extensions and interpretations of the law, and to protect the court’s discretion to rely on equitable considerations” in denying a fee award. *Id.* at 667. Respondents do not assert that any special circumstances make an award of attorneys’ fees unjust here. *See generally* ECF No. 12.

**F. The fees sought are reasonable and consistent with the EAJA.**

Once entitlement to EAJA fees is determined, the “court’s task of determining what fee is reasonable is essentially the same as that described in [*Hensley v. Eckerhart*, 461 U.S. 424 (1983)].” *Jean*, 496 U.S. at 161. *Hensley* provides that “[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” 461 U.S. at 433. Mr. Seijas Aquino’s fee calculations are included in the log attached at Exhibit B. Mr. Seijas Aquino’s request of

\$4,969.05 is reasonable and relatively modest in the context of fee awards in other immigration habeas matters. *See Michelin* 2026 U.S. App. LEXIS 2364 at \* 5-6 (affirming EAJA attorneys' fees awards of \$18,224 and \$15,841).

**1. The number of hours for which compensation is sought is reasonable.**

“Where a [prevailing party] has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation . . . .” *Hensley*, 461 U.S. at 435. This also includes hours expended on the preparation and litigation of the EAJA fees petition itself. *See Lee v. Johnson*, 799 F.2d 31, 35 (3d Cir. 1986). Courts generally focus on the results obtained by the litigation as a whole, rather than parsing the time spent on each claim. *See Hensley*, 461 U.S. at 435. Accordingly, Mr. Seijas Aquino seeks compensation for his *pro bono* attorney's time spent litigating this matter before the District Court. *See Ex. D*. The total of 19.1 hours claimed is reasonable.

**2. The rates claimed are reasonable.**

The EAJA authorizes fees not to exceed \$125 per hour, adjusted for inflation. 28 U.S.C. § 2412(d)(2)(A)(ii). The Third Circuit has approved the use of the Consumer Price Index (CPI) to measure inflation and adjust the statutory rate accordingly. *See Garcia v. Schweiker*, 829 F.2d 396, 402 (3d Cir. 1987); *Dewalt v. Sullivan*, 963 F.2d 27, 27-30 (3d Cir. 1992); *see also Walker v. Lowe*, No. 15-0887,

2016 WL 6082289, at \*3 (M.D. Pa. Oct. 17, 2016) (identifying a slightly higher inflation-adjusted rate for 2016). For January of 2026, the U.S. Bureau of Labor Statistics calculated that \$125 in March of 1996 is equivalent to \$260.16.

Petitioner seeks only the amount corresponding to the CPI, despite the complexity of this case and the fact that *pro bono* immigration representation for detained noncitizens is even scarcer than paid representation. The fees sought are therefore reasonable.

### CONCLUSION

For the preceding reasons, the Court should grant this application for \$4,969.05 in attorneys' fees under the Equal Access to Justice Act.

Dated: March 3, 2026

Respectfully submitted,

/s/ Christopher P. Setz-Kelly  
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*Attorney for Petitioner*

## CERTIFICATE OF SERVICE

I certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: January 29, 2025

Respectfully submitted,

/s/ Christopher P. Setz-Kelly  
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*Attorney for Petitioner*

## **LIST OF EXHIBITS**

Exh. A – Declaration of Petitioner

Exh. B – Contemporaneous timesheet kept by Petitioner’s counsel

# EXHIBIT A

DECLARATION OF ARNALDO SEIJAS AQUINO

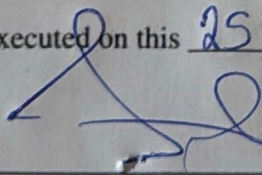
I, Arnaldo Seijas Aquino, swear under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am a private individual and my net worth does not, nor have it ever, exceeded the amount of \$2,000,000.
2. I make this declaration in support of my motion for attorney fees and costs incurred in my successful representation before the United States District Court for the Eastern District of Pennsylvania in *Seijas Aquino v. Jamison*, 2:26-cv-00386.
3. I retained the non-profit organization HIAS Pennsylvania in this case and signed a Representation Agreement with HIAS Pennsylvania.
4. I authorize the recovery of fees and expenses to HIAS Pennsylvania in order to compensate them for work performed on my behalf.
5. I further assign payment of any award of fees and costs to HIAS Pennsylvania.
6. I would like the payment issued to HIAS Pennsylvania, via a check made out to "HIAS Pennsylvania" and mailed to:

HIAS Pennsylvania  
Attn: Christopher Setz-Kelly  
P.O. Box 8688  
Philadelphia, PA 19101

7. To the best of my knowledge, I do not owe any debt to the United States federal government.

Executed on this 25 of February, 2026 at Philadelphia, PA.



\_\_\_\_\_  
Arnaldo Seijas Aquino

# EXHIBIT B

date	time (hours)	task
1/21/26	3.4	drafting petition by attorney Julie Stavarski
1/21/26	2.1	revising and filing petition by attorney Chris Setz-Kelly
1/21/26	0.3	phone call between attorneys Chris Setz-Kelly and Julie Stavarski about petitioner's detention and the filing of the habeas petition
1/22/26	0.2	email from attorney Chris Setz-Kelly to attorney Julie Stavarski with follow-up instruction on service of habeas petition
1/23/26	1	preparing and mailing service packets by attorney Julie Stavarski
1/26/26	0.9	reading response and planning reply by attorney Chris Setz-Kelly
1/27/26	2.9	drafting reply brief and stipulation by attorney Chris Setz-Kelly
1/28/26	1.5	drafting reply brief by attorney Chris Setz-Kelly
1/29/26	1.2	finalizing and filing reply brief by attorney Chris Setz-Kelly
1/29/26	0.2	internal emails to coordinate client's release by attorney Chris Setz-Kelly
2/26/26	0.4	drafting EAJA fees brief by attorney Chris Setz-Kelly
2/26/26	0.6	drafting EAJA fees brief by attorney Chris Setz-Kelly
2/27/26	2.8	drafting EAJA fees brief by attorney Chris Setz-Kelly
3/3	1.6	finalizing and filing EAJA brief by attorney Chris Setz-Kelly
total hours	19.1	
	4969.056	total fees at \$260.16 an hour