UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-294

JAVIER ANDRES GARCIA CORTES,
Petitioner,

v.

TODD M. LYONS,[1] *et al.*,

Respondents.

MOTION FOR FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

On February 2, 2026, this Court granted Petitioner Javier Andres Garcia Cortes's petition for a writ of habeas corpus, ordering his immediate release from immigration custody. ECF No. 13. On February 6, 2026, the Court granted Mr. Garcia's motion to enforce, directing Respondents to return all of his personal property. *See* ECF No. 18.

Undersigned counsel now moves for fees under Fed. R. Civ. P. 54, L. Civ. R. 54.3, and the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in the amount of $28,140, reflecting 47.1 hours of attorney time. On May 18, 2026, Andrew Soler, counsel for Respondents, indicated that the government was not amenable to settlement in this matter.

RELEVANT FACTS

Mr. Garcia is a native and citizen of Colombia. In April 2018, he traveled to the United States with a B-2 visitor visa and was inspected and admitted by immigration officers. *See* ECF No. 1-5, I-94. Since his arrival, he has resided continuously in the United States. Mr. Garcia has

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[1] Pursuant to Fed. R. Civ. P. 25(d), Acting Field Office Director George Valdez, should be automatically substituted for his predecessor.

two minor sons, both of whom reside in the United States. He has a pending petition for classification under the self-petitioning provisions of the Violence Against Women Act (VAWA), and an application for adjustment of status. The United States Citizenship and Immigration Services (USCIS) has granted him work authorization, and renewed that authorization several times. *See* ECF No. 1, ¶¶ 26, 29; ECF No. 3 at 2. In May 2025, USCIS determined that Mr. Garcia established a prima facie case for classification under the VAWA self-petitioning provisions, granting him access to public benefits for one year on the basis that USCIS did not believe his self-petition and adjustment of status application would be adjudicated within that time. *See* ECF No. 1-2.

In August 2025, Mr. Garcia appeared for work to paint the building that contains the Immigration and Customs Enforcement (ICE) Denver Field Office. Upon his arrival, he was apprehended by ICE and placed in custody. *See* ECF No. 1 ¶ 29. ICE did not provide a warrant for his arrest. *Id.* at ¶ 30. ICE later served him with a Notice to Appear, which ICE subsequently amended (contrary to regulations regarding who is authorized to file charges of removal) to charge Mr. Garcia as an "arriving alien" under the theory that he was an applicant for admission who was "seeking admission" (despite his inspection and entry into the U.S. years prior). *See* ECF No. ¶ 30. On August 26, 2025, through undersigned counsel, Mr. Garcia filed a habeas petition in this Court. *See Garcia Cortes v. Noem*, 1:25-cv-2667 (D. Colo.). On September 16, 2025, in one of the first (if not the first) decisions to address the proper statute of detention, this Court ruled that Mr. Garcia was not subject to detention under 8 U.S.C. § 1225(b)(2), but instead subject to detention under 8 U.S.C. § 1226(a). *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025). The Court ruled that Mr. Garcia's detention violated both the Immigration and Nationality Act and his due process rights. *Id.* at *2-4.

Pursuant to this Court's order, on September 22, 2025, an immigration judge held a custody determination at which the Department of Homeland Security (DHS) bore the burden of proof. The immigration judge concluded that Mr. Garcia was neither a flight risk nor a danger to the community and ordered his release on a $15,000 bond. *See* ECF No. 1-1. The immigration judge's order contained no additional requirements or qualifications, including the imposition of reporting requirements with DHS. *Id.* On September 23, 2025, Mr. Garcia's obligor paid the bond and Mr. Garcia was subsequently released from custody. *See* ECF No. 1-7.

Upon Mr. Garcia's release, ICE issued a "call-in letter," directing him to report to ICE Enforcement and Removal Operations one week later for a "check-in and case review." ECF No. 1-8. ICE also imposed additional conditions that were not ordered by the immigration judge. This included requiring Mr. Garcia to participate in ICE's Alternative to Detention Program (ATD). *See* ECF No. 11-1 ¶ 4. As part of this requirement, Mr. Garcia was subject to GPS monitoring through a wrist-worn device, regular check-ins at ICE, weekly home visits, and check-ins and tracking through a mobile app. *Id.* at ¶ 5. Mr. Garcia, who did not understand the regulatory regime governing his detention and release, did not know to question ICE's imposition of additional conditions and merely followed instructions from ICE—a law enforcement agency—upon his release from custody. However, Mr. Garcia's enrollment in this program constituted custody for habeas purposes. *See Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68 (D. Mass. 2025).

Mr. Garcia returned to work, which involves painting commercial buildings often on scaffolding where he is not near his phone or is without cell phone service for more than an hour at a time. On January 21, 2026, ICE officers re-detained Mr. Garcia at a check-in, alleging that he violated his ATD participation by missing biometric check-ins through facial recognition software within the allotted time period. *Id.* at ¶¶ 7-8. ICE determined that Mr. Garcia should remain

detained pending resolution of his removal proceedings. *Id.* at ¶ 9. However, ICE never informed Mr. Garcia nor his obligator of a supposed violation of his bond, and never returned the bond payment to Mr. Garcia's obligor. *See* ECF No. 1-7.

On January 24, 2026, undersigned counsel filed a second petition for a writ of habeas corpus, alleging that Mr. Garcia's re-detention violated the Immigration and Nationality Act and his due process rights. *See* ECF No. 1. He sought a motion for a temporary restraining order and preliminary injunction, highlighting the urgent nature of the constitutional violations in the case. *See* ECF No. 2, 3. Pursuant to the Court's Order to Show Cause, Respondents acknowledged that this Court had already determined that Mr. Garcia was not subject to detention under 8 U.S.C. § 1225(b)(2), but argued that Mr. Garcia should have raised his claims before the immigration judge, as there is a regulatory process available for noncitizens to challenge ICE custody determinations by seeking a custody re-determination hearing before an immigration judge. *See* ECF No. 11 at 4-5. Respondents argued that Mr. Garcia could not "circumvent" the regulations providing for immigration judge review and a subsequent appeal to the Board of Immigration Appeals by filing a habeas petition seemingly in violation of exhaustion principles. *Id.* at 6. Respondents also argued that ICE was free to impose additional conditions upon Mr. Garcia's release, notwithstanding the immigration judge's order that provided for Mr. Garcia's release only upon payment of a monetary bond. *Id.* at 8, 10-11. Regarding Mr. Garcia's motion for injunctive relief, Respondents only asserted that Mr. Garcia failed to show a likelihood of success on the merits but did not defend any of the other factors that are part of the analysis in considering injunctive relief. *Id.* at 11.

In reply, Mr. Garcia pointed out that Respondents did not acknowledge the few cases throughout the country—including a recent case from the District of Colorado—concluding that

ICE may not impose conditions of release that amount to custody when those conditions are beyond the terms of the immigration judge's custody determination, and DHS did not appeal the immigration judge's custody determination itself. *See generally* ECF No. 12 (citing *Batz Barreno v. Baltasar*, -- F. Supp. 3d --, 2026 WL 120253 (D. Colo. Jan. 15, 2026); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025); *N-N- v. McShane*, 813 F. Supp. 3d 496, 500 (E.D. Pa. 2025)). Notably, Mr. Garcia reiterated that ICE violated the immigration judge's custody order, which only provided for release on bond, not additional conditions. *Id.* at 2-3. Indeed, ICE was equally bound by the immigration judge's custody order and if it disagreed with that order and wished to amend it, an appeal option was available. *See* 8 C.F.R. §§ 236.1, 1236.1.

On February 2, 2026, the Court granted Mr. Garcia's habeas petition. ECF No. 13. In a pointed decision, the Court deemed Respondents' position "nonsense" and agreed with Mr. Garcia that his detention violated his due process rights. *Id.* at 1. First addressing Respondents' exhaustion claims, the Court recognized that Respondents had made the same word-for-word argument just weeks before in the first case to address this issue, *Batz Barreno v. Baltasar*, 25-cv-3017. *See* ECF No. 13 at 2-3 (comparing the identical arguments made in pleadings). The Court rejected that argument and found there was no exhaustion obligation prior to raising the claims in the habeas petition. *Id.* at 3. Regarding the merits of the petition, the Court cited the few cases to have addressed conditions ICE unilaterally imposed after an immigration judge issued a custody determination that did not provide for such conditions. *Id.* at 4. The Court clearly concluded that "'Respondents may not impose additional conditions *after an IJ has ordered release on a bond and set conditions of release*, as here.'") (quoting *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025)). The Court then recognized the wealth of case law concluding that individuals such as Mr. Garcia were not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and they

could not "repeatedly violate Petitioner's due process rights." *Id.* at 4. The Court ordered Respondents to immediately release Mr. Garcia, with no conditions other than "the exact terms as set by the Immigration Judge after the bond hearing[.]" *Id.* at 5.

While Respondents complied with that order and released Mr. Garcia from custody, they did not return all of his personal property, including his identification cards. Accordingly, on February 6, 2026, he filed a motion to enforce, requesting an order that all of his property be returned to him. *See* ECF No. 18. The Court immediately granted the motion. Noting that "at its most benign," the government's "failure is an unforced error of preventable dimension. At worst, this is unjustifiable intransigence, where retention of Petitioner's belongings is tantamount to imposition of an additional and illegal condition the immigration judge didn't and hasn't imposed." *Id.* at 2. The Court ordered Respondents to immediately return Mr. Garcia's belongings, requiring Respondents to file a status report within three hours regarding compliance. *Id.* Respondents had already sent Mr. Garcia's belongings out of Colorado and so, four status reports and several days later, Mr. Garcia received all of his belongings. *See* ECF No. 25.

Final judgment was entered in the case on March 2, 2026, and Mr. Garcia now brings this timely motion for attorney's fees under EAJA.

ARGUMENT

I. Legal standard for EAJA applications.

EAJA provides that a court shall award fees and expenses to a prevailing party (who is a nongovernmental party and whose net worth does not exceed two million dollars) in a civil action against the United States unless the government's position was substantially justified or special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A); *Al-Maleki v. Holder*, 558 F.3d 1200, 1204 (10th Cir. 2009); *Hackett v. Barnhardt*, 475 F.3d 1166, 1172 (10th Cir. 2007); *see Daley*

v. Ceja, 158 F.4th 1152 (10th Cir. 2025) (holding that EAJA authorizes fees in a habeas corpus proceeding challenging immigration detention). A party prevails when a court order materially alters the legal relationship between the parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept of Health & Human Res.*, 532 U.S. 598, 604 (2001); *Xlear, Inc. v. Focus Nutrition, LLC*, 893 F.3d 1227, 1236-37 (10th Cir. 2018) (quoting *Buckhannon*); *Biodiversity Conservation Alliance v. Stem*, 19 F.3d 1226 (10th Cir. 2008). "[O]nce an EAJA application is filed, the government is on notice, based on the plain language of the statute, that it must justify both its position in any underlying administrative proceeding and its position in any subsequent district court litigation." *Hackett*, 475 F.3d at 1170; *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The government must justify its position to a degree that could satisfy a reasonable person. *Pierce*, 487 U.S. at 565.

II. Mr. Garcia is statutorily eligible to recover attorneys' fees and costs.

A. Statutory Eligibility.

Mr. Garcia is a nongovernmental party whose net worth does not exceed two million dollars. *See* Garcia Cortes Letter, Exhibit 1. He is the prevailing party in this litigation as he prevailed on the claims he raised and received the requested relief—release from custody based on the constitutional violations in this case and the return of all of his belongings—which materially altered the legal relationship between himself and Respondents. *See* ECF No. 13; *Buckhannon*, 532 U.S. at 603; *Biodiversity Conservation Alliance*, 519 F.3d at 1230. Mr. Garcia seeks to recover the fees he has paid in this case as well as additional fees incurred by his attorney on this case. *Manning v. Astrue*, 510 F.3d 1246 (10th Cir. 2007).

B. Mr. Garcia is a prevailing party.

Mr. Garcia is indisputably the prevailing party in this case. By granting Mr. Garcia's habeas petition, this Court provided "the benefit" that he "sought in bringing the suit." *Texas State Tchrs.*

Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 789 (1989). Mr. Garcia's release pursuant to this Court's order was a "material alteration of the legal relationship of the parties" that was caused by a "judicial imprimatur on the change." *Buckhannon*, 532 U.S. at 603-05.

C. The government's pre-litigation and litigation position was not substantially justified.

The government cannot meet its burden and demonstrate that it was substantially justified in this litigation. *Pierce v. Underwood*, 487 U.S. 552, 566 (1988); *Al-Maleki*, 558 F.3d at 1207 (noting that the government "bears the burden of establishing its position [as] justified to a degree that could satisfy a reasonable person"). The Court must "look to the litigating position" of the government "before the district court and the agency's prelitigation conduct, its action or inaction, [and] the position that gave rise to the litigation in the district court." *Madrid v. Astrue*, 243 F. App'x 387, 390 (10th Cir. 2007) (citing *Cummings v. Sullivan*, 950 F.2d 492, 496 (7th Cir. 1991)); *accord Hackett v. Barnhart*, 475 F.3d 1166, 1170 (10th Cir. 2007). The government's prelitigation actions, including those of both of the relevant respondent agencies, and its litigation position "are both relevant to the inquiry and must be reasonable in fact and law." *Al-Maleki*, 58 F.3d at 1207 (citation omitted); *Role Models America, Inc., v. Brownlee*, 353 F.3d 962, 967 (D.C. Cir. 2004) ("The government . . . must demonstrate the reasonableness not only of its litigation position, but also of the *agency's* actions") (citation omitted); *accord Pierce*, 487 U.S. at 566 n.2. Where an agency violates its own regulations in adjudicating a case, the Court may find a per se lack of substantial justification. *Mendenhall v. National Transp. Safety Bd.*, 92 F.3d 871, 874-76 (9th Cir. 1996); *see also Role Models*, 353 F.3d at 967.

Critically, the burden to show substantial justification is on the government and Mr. Garcia need only allege "a bare ten-word 'allegation' stating that the government's position was not substantially justified." *Hackett*, 475 F.3d at 1170. The Court's order, deeming Respondents'

arguments "nonsense" and the subsequent order on the motion to enforce characterizing Respondents' actions either "an unforced error of preventable dimension" or "unjustifiable intransigence" should alone demonstrate a lack of substantial justification in this litigation. Respondents' unilateral decision to impose additional conditions upon Mr. Garcia's release other than those contained in the immigration judge's decision constitutes flagrant defiance of the immigration judge's order. If ICE had disagreed with the bond determination and conditions set, ICE could have appealed that decision to the Board. *N-N-*, 813 F. Supp. at 500. Instead, ICE took it upon themselves to impose additional conditions not provided for in the order, in violation of Mr. Garcia's due process rights. *Batz Barreno*, 816 F. Supp. 3d at 1258. This position was not substantially justified and Mr. Garcia is entitled to fees under EAJA. *Comm., INS v. Jean*, 496 U.S. 154, 160 (1990) ("The single finding that the Government's position lacks substantial justification, like the determination that a claimant is a 'prevailing party,' thus operates as a one-time threshold for fee eligibility."); *Anthony v. Sullivan*, 982 F.2d 586, 589 (D.C. Cir. 1993) ("[O]nce a court determines that the government's position on the merits of the litigation is not substantially justified, it may not revisit that question as to any component of the dispute.").

While the Court need proceed no further in considering substantial justification, Respondents' litigation position was also not substantially justified. Respondents entirely failed to acknowledge the single recent decision in this district on this issue. *See* ECF No. 11. But there is no question that Respondents were aware of that decision because the response they filed was verbatim to the response filed in that case. *See* ECF No. 13 at 2-3. Nor did Respondents address any of the handful of cases across the country that touched on the issue and were cited by Mr. Garcia in his petition. Instead, Respondents simply argued that ICE has ultimate authority to impose whatever conditions it chooses. This position conflicts with both the regulations and

principles of due process and does not demonstrate substantial justification. *Tchemkou v. Mukasey*, 517 F.3d 506, 510 (7th Cir. 2008) ("Having failed to provide any support for this argument, the Government also has failed to show that its position was substantially justified."). Indeed, Respondents' refusal to comply with orders from the immigration judge and this Court were only further evident by the failure to return Mr. Garcia's property, necessitating a motion to enforce. Accordingly, this Court should conclude that Respondents' prelitigation and litigation positions were not substantially justified.

D. There are no special circumstances rendering a fee unjust.

Finally, there are no special circumstances that would render a fee unjust. 28 U.S.C. § 2412(d)(1)(A). Special circumstances include the government advancing in good faith novel but credible extensions and interpretations of law. H.R. Rep. No. 1418 at 11, 86th Cong., 1980 U.S. C.C.A.N. 4984, 1990. This provision must be narrowly construed so as not to interfere or defeat Congress' purpose in passing EAJA. *E.g.*, *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985). Much like the substantial justification inquiry, the burden of proving the special circumstances rests with the government. *Id.* Respondents have repeatedly taken steps to keep Mr. Garcia in custody and hinder his ability to live and work freely in the United States, by imposing conditions on his release, requiring onerous obligations despite his employment that made complying difficult, and, perhaps most burdensome, refusing to return his identification documents upon release from custody placing him in a more precarious position as a noncitizen without identification documents should he be stopped by law enforcement. Simply, no special circumstances exist here.

III. Mr. Garcia's fee request is reasonable.

After a prevailing party demonstrates eligibility, the district court must determine what fee is reasonable. *Commissioner, INS v. Jean*, 496 U.S. 154 (1990). EAJA fees are typically "calculated under the lodestar method by examining the attorney's reasonable hours expended and her reasonably hourly rate." *Astrue v. Ratliff*, 560 U.S. 586, 602 (2010) (Sotomayor, J., concurring) (recognizing that EAJA uses a lodestar calculation while Social Security Act fees are limited to a percentage of benefits awarded); *see also Jean*, 496 U.S. at 161; *Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998). The hourly rate is typically "based upon prevailing market rates for the kind and quality of the services furnished." *Pierce*, 487 U.S. at 571; *Norman v. Hous. Auth. Of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) (noting that the "inquiry will typically focus on affidavits or testimony of similarly situated practitioners" qualified to comment on prevailing market rates). While the EAJA statute provides a standard $125-per-hour rate, 28 U.S.C. § 2412(d)(2)(A)(ii), fees can be awarded in excess of the statutory amount if "the court determines that 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." *Pierce*, 487 U.S. at 571.

A. This case involved specialized skill justifying enhanced fees.

The limited-availability exception to the statutory rate refers to "attorneys 'qualified for the proceedings' in some specialized sense, rather than just in their general legal competence." *Id.* at 572. As the Supreme Court explained, the special factor "refers to attorneys having some distinctive knowledge or specialized skill needful for the litigation in question—as opposed to an extraordinary level of the general lawyerly knowledge and ability useful in all litigation." *Id.* A necessary specialization in a particular area of law—such as immigration—can warrant enhanced fees. *Id.*; *see, e.g.*, *Nadarajah v. Holder*, 569 F.3d 906, 914 (9th Cir. 2009) (awarding enhanced

fees in a case that "did not involve merely a 'straightforward application' of the rules of immigration law and appellate practice" and where the court "took the fairly unusual step of ordering the immediate release" of the petitioner); *see also Muhur v. Ashcroft*, 382 F.3d 653, 656 (7th Cir. 2004) (recognizing the complexity of the "esoteric nooks and crannies of immigration law, in which such expertise is needed to give the alien a fair shot at prevailing"). This Court has also recognized that "knowledgeable attorneys are limited and that immigration issues are often complex and novel." *Barber v. Weber*, 2005 WL 1846985, at *2 (D. Colo. Aug. 1, 2005).

This case required a specialized skill, namely expertise in both immigration law and procedure and federal habeas litigation. While the Court's decisions recognized the clear and correct result in the case, presenting the issue in a clear way that explained the legal intricacies between DHS and DOJ regulations regarding custody determinations and agency process was anything but straightforward for most litigators. As other federal immigration litigators have attested, some detention issues are simple while others require a more specialized knowledge. *See* Ex. 2 (Green Decl.), Ex. 3 (Hall Decl.), Ex. 4 (Meyer Decl.). This case presents the latter. In fact, the case involved "particular, esoteric nooks and crannies of immigration law" that were critical to obtaining the ultimate relief of immediate release and enforcement of the order. *Muhur*, 382 F.3d at 656; *Nadarajah*, 569 F.3d at 914-15; *see Abanil v. Baltazar*, -- F. Supp. 3d --, 2026 WL 100587 (D. Colo. Jan. 14, 2026). Ms. Dawgert has on the forefront of litigating challenges to ICE's mandatory detention policy. *See* Ex. 5 (Dawgert Decl.). And this case was no exception. Mr. Garcia first obtained release after the Court ruled last fall that the agency's policy was unlawful and he again had to raise a new administratively confusing issue regarding noncompliance. Ultimately, Ms. Dawgert and Ms. Vuong possess distinctive qualifications directly relevant to this litigation, including extensive federal immigration litigation experience and specialized detention

habeas expertise. *See* Exs. 2-4. Accordingly, an enhanced rate is warranted for attorneys Jessica Dawgert and Sarah Vuong in this case.

B. The requested rate of $600 per hour is reasonable.

Mr. Garcia has also demonstrated that $600 per hour is a reasonable prevailing market rate for an expert in immigration habeas litigation. A similarly situated immigration attorney who, like Mr. Garcia's counsel, practices exclusively federal litigation charges $650 per hour, which he believes is below market. *See* Ex. 2; *see Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (considering a declaration discussing hourly rates charged by attorneys in the relevant market in considering fees under 42 U.S.C. § 1988); *accord Plyler v. Evatt*, 902 F.2d 273, 278 (4th Cir. 1990). Another federal immigration litigation specialist in Colorado who graduated law school the same year as Ms. Dawgert reports that his rate for complex litigation is $750 per hour and he believes a rate of $600 is $100-150 lower than the prevailing rate for someone with Ms. Dawgert and Ms. Vuong's experience. *See* Ex. 4. Other courts have found hourly rates over $800 reasonable for civil litigation attorneys with similar years of experience. *See e.g. Knudsen v. Hightower Holdings*, LLC, No. 24-cv-0395-KKE, 2024 WL 3430994, at *3 (W.D. Wash. July 16, 2024) (finding reasonable hourly rates of $850 for two attorneys with 32 and 20 years of experience; $755 for attorney with 16 years of experience; $685 for attorney with nine years of experience; and $625 for attorney with six years of experience); *Ratchford v. Regions Financial Corp. et al.*, 4:18-cv-103-HLM, Docs. 27, 32 (N.D. Ga. Mar. 8, 2019) (approving FLSA settlement and motion for attorneys' fees for founding partner at $750 per hour, junior partner at $350, and paralegal at $150). Moreover, the Ninth Circuit recognized that a $500 per-hour rate was reasonable more than sixteen years ago for an immigration litigator with approximately two decades of experience in immigration litigation relating to immigration detention. *Nadarajah*, 569

F.3d at 917. A rate of $600 per hour is within—if not far below—this range of prevailing market rates and is more-than reasonable in this case.

Other qualified counsel were not available in this case at the statutory rate provided under EAJA, even if adjusted for inflation. *Nadarajah*, 569 F.3d at 915; *Atlantic Fish Spotters Ass'n v. Daley*, 205 F. 3d 488, 492-93 (1st Cir. 2000); *see* Ex. 2-4. Outside of the now-familiar issue relating to detention under 8 U.S.C. § 1225 or § 1226, the majority of the habeas litigation surrounding the new immigration detention policies is conducted by a relatively small number of attorneys with expertise, a group that includes Ms. Dawgert. *See* Exs. 2-4. Other specialists in immigration detention who practice in the District of Colorado are not taking on new cases at this time. Ex. 2. Accordingly, this Court should grant Mr. Garcia's request for a fee enhancement at the rate of $600 per hour.

C. The number of hours reported is reasonable and justified.

Considering the records in this case, the Court should award fees at this enhanced rate for 47.1 hours. *See* Exs. 5-6; *see also Hensley v. Eckerhart*, 461 U.S. 424, 437, n.12 (1983) (noting that counsel "is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures."); *Castaneda-Castillo v. Holder*, 723 F.3d 48, 79 (1st Cir. 2013) ("Records that include the different tasks each attorney performed, the total number of hours billed, the billing rate for those hours, the date on which each tasks was performed, and the amount of time spent on each task generally fulfill [the EAJA] requirement."). The attached records demonstrate that Ms. Dawgert spent a reasonable amount of time researching, preparing, and filing the petition, motion for injunctive relief, reply brief, and motion to enforce in this case. Ms. Dawgert also spent a reasonable amount of time communicating with the client and agency counsel and preparing this motion. Beyond Mr.

Dawgert's hours, ALLC Partner Sarah Vuong, who also has nearly two decades of experience in immigration litigation in federal court, spent a reasonable and minimal amount of time reviewing certain pleadings in this case before filing. *See Anchondo v. Anderson, Crenshaw & Assoc.*, 616 F.3d 1098, 1105, n.6 (10th Cir. 2010) (noting that time records reflected "efficient cooperation, rather than redundancy"). Accordingly, this Court should determine that it is reasonable to award $28,140, based on a total of 47.1 hours at $600 per hour enhanced rate.[2]

D. Alternatively, the Court should grant fees at an adjusted statutory rate

Even if the Court does not grant Mr. Garcia's request for enhanced fees, it should grant fees in the amount of $12,592.66. The EAJA statute provides a rate of $125 per hour, which may be adjusted for increases in cost of living. 28 U.S.C. § 2412(d)(2)(A)(ii); *Harris v. R.R. Ret. Bd.*, 990 F.2d 519, 521 (10th Cir. 1993); *T.E. v. Kijakazi*, 2023 WL 7089901, at *4 (D. Colo. Oct. 26, 2023). According to the Bureau of Labor Statistics Consumer Price Index, the adjusted rate involving cost of living should be $267.36 per hour. *See* Exhibit 7. Multiplied by the total number of 47.1 hours in this case, should the Court consider the adjusted statutory rate in this case, the Court should award a statutory-adjusted amount of $12,592.66 to Mr. Garcia.

May 21, 2026

Respectfully submitted,

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[2] 0.3 hours on January 26 for preparation and mailing of the petition are only listed at $200 per hour, as it was an administrative task.