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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

C.S.M., a minor, by and through M.P.S.M., as Next Friend of Minor,

Petitioner,

v.

RUBY HERNANDEZ, *et al.*,

Respondents.

No. 5:26-cv-01144-JWH-ACCV

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEYS' FEES, AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT [DKT. 31] AND RESPONDENTS' REQUEST TO STAY PETITIONER'S MOTION FOR EAJA FEES PENDING SUPREME COURT DECISION IN *MONTOYA-PALACIOS*

Hearing Date: September 4, 2026
Hearing Time: 9:00 a.m.
Ctrm: 9D

Honorable John W. Holcomb
United States District Judge

TABLE OF CONTENTS

DESCRIPTION PAGE

Contents

TABLE OF AUTHORITIES ii

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. LEGAL STANDARD 4

III. ARGUMENT 4

A. Substantial Justification 4

B. Special Circumstances 7

C. Request is Not Reasonable for a Basic Habeas Petition 9

1. Duplicative Work and Excessive Time 10

2. Vague Time Entries 12

3. Time Entries for Clerical Tasks 13

D. Respondents Request a Stay of the EAJA Fee Motion Pending a Decision in *Montoya Palacios* 14

IV. CONCLUSION 17

TABLE OF AUTHORITIES

DESCRIPTION PAGE

Cases

Am. Petroleum Inst. v. EPA,
72 F.3d 907 (D.C. Cir. 1996) 9
Barco v. Witte,
65 F.4th 782 (5th Cir. 2023) 15
Bay Area Peace Navy v. United States,
914 F.2d 1224 (9th Cir. 1990) 4
Brandt v. Astrue,
No. 08-cv-657, 2009 WL 1727472 (D. Or. June 16, 2009) 13
Bunn v. Bowen,
637 F. Supp. 464 (E.D.N.C. 1986) 9, 10
Chaudhry v. Los Angeles,
751 F.3d 1096 (9th Cir. 2014) 11
CMAX, Inc. v. Hall,
300 F.2d 265 (9th Cir. 1962) 15
Commissioner, I.N.S. v. Jean,
496 U.S. 154 (1990) 4
Copeland v. Marshall,
641 F.2d 880 (D.C. Cir. 1980) 9, 10
Corbin v. Apfel,
149 F.3d 1051 (9th Cir. 1998) 4
Daley v. Ceja,
158 F.4th 1152 (10th Cir. 2025) 15
Davis v. City & Cty. of San Francisco,
976 F.2d 1536 (9th Cir. 1992) 13
Davis v. City &Cty. of San Francisco,
984 F.2d 345 (9th Cir. 1993) 13
Democratic Party of Wash. State v. Reed,
388 F.3d 1281 (9th Cir. 2004) 11
EDF v. Reilly,
1 F.3d 1254 (D.C. Cir. 1993) 9
Evans v. Port Auth. of New York & New Jersey,
273 F.3d 346 (3d Cir. 2001) 11
Harris v. L & L Wings, Inc.,
132 F.3d 978 (4th Cir. 1997) 13
Hensley v. Eckerhart,
461 U.S. 424 (1982) 9, 10, 11, 12
Hoang Ha v. Schweiker,

707 F.2d 1104 (9th Cir. 1983) 4
In re Microwave Prods. of Am.,
102 B.R. 661 (Bankr. W.D. Tenn. 1989) 11
Jones v. Metro. Life Ins. Co.,
845 F. Supp. 2d 1016 14
Jones v. Metro. Life Ins. Co.,
555 Fed. Appx. 733 (9th Cir. 2014) (unpublished) 14
Kevin Isaac Montoya Palacios v. Vernon Liggins, et al.,
No. 25-1223, --- S.Ct. ---, 2026 WL 1855057 (Mem) 3, 14
Landis v. N. Am. Co.,
299 U.S. 248 (1936) 15
Leyva v. Certified Grocers of Cal., Ltd.,
593 F.2d 857 (9th Cir. 1979) 15
Maldonado v. Houstoun,
256 F.3d 181 (3d Cir. 2001) 11
McCarthy v. R.J. Reynolds Tobacco Co.,
2011 WL 4928623 (E.D. Cal. Oct. 17, 2011) 12
Mendez v. County of San Bernardino,
540 F.3d 1109 (9th Cir. 2008) 12
Metro Data Sys., Inc. v. Durango Sys., Inc.,
597 F. Supp. 244 (D. Ariz. 1984) 10, 11
Meza-Vazquez v. Garland,
883 F.3d 726 (9th Cir. 2021) 5
Michelin v. Warden Moshannon Valley Corr. Ctr.,
169 F.4th 418 (3d Cir. 2026) 15
Minor v. United States,
797 F.2d 738 (9th Cir. 1986) 4
Missouri v. Jenkins,
491 U.S. 274 (1989) 13, 14
Mohamed v. Barr,
562 F. Supp. 3d 1128 (E.D. Cal. 2022) 12
Moore v. Chase, Inc.,
No. 1:14-CV-01178- SKO, 2016 WL 3648949 (E.D. Cal. July 7, 2016) 14
Nadarajah v. Holder,
569 F.3d 906 (9th Cir. 2009) 13
Neil v. Comm'r of Soc. Sec.,
495 F. Appx 845 (9th Cir. 2012) 12, 13
Nolan v. City of Los Angeles,
2014 WL 12564127 (C.D. Cal. Feb. 10, 2014) 12
Obando-Segura v. Garland,
999 F.3d 190 (4th Cir. 2021) 15

Paloulian v. Sullivan,
919 F.2d 145 (9th Cir. 1990) 4
Prison Legal News v. Schwarzenegger,
561 F. Supp. 2d 1095 (N.D. Cal. 2008) 14
Rivers v. Walt Disney Co.,
980 F. Supp. 1358 (C.D. Cal. 1997) 15
Sorenson v. Mink,
239 F.3d 1140 (9th Cir. 2001) 10
Thomas v. City of Tacoma,
410 F.3d 644 (9th Cir. 2005) 8
United States.,
775 F.2d 1037 (9th Cir. 1985) 16
Vacchio v. Ashcroft,
404 F.3d 663 (2d Cir. 2005) 15

Statutes

6 U.S.C. §§ 279(b)(1) 5
8 U.S.C. § 1232(b)(3) 7
8 U.S.C. § 1232(c)(3)(A) 5
8 U.S.C. §§ 1232(b)(1) 5
28 U.S.C. § 2412(d)(1)(A) 3, 4, 15

Regulations

45 C.F.R. § 410.1302 6

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner's EAJA motion ("Petitioner's motion") in this case demonstrates an abnormal level of excessive and unnecessary legal billing, which Petitioner's counsel seeks to be paid for by the American public. Petitioner's motion filed by her counsel, the Immigrant Defenders Law Center ("Immigrant Defenders"), a purported non-profit that reports roughly $39 million in annual revenue, asks the American taxpayer to subsidize this case through funds that would otherwise support services for children in federal care.[1]

Immigrant Defenders seeks to be paid **$85,780.75 in taxpayer money** for 330.65 attorney hours it has billed in this **single-petitioner habeas case, which was resolved after the Court entered a Temporary Restraining Order** releasing C.S.M. to M.P.S.M. on March 20. With its EAJA motion, Immigrant Defenders submit testimony from an attorney attaching an addendum to a previously undisclosed "Habeas Representation Agreement" that forces M.P.S.M. to assign all monetary awards to Immigrant Defenders with minimal notice and with no discussion with the attorneys at Immigrant Defenders, according to their billing entries. The addendum states,

> …If there is any conflict between the Habeas Agreement and this Addendum, the terms of this Addendum will control.
>
> In addition to the Engagement defined in the December 23, 2025 Habeas Agreement, ImmDef has agreed to represent you in connection with seeking recovery of costs and attorneys' fees related to the filing and granting of a petition for Writ of Habeas Corpus in the Central District of California. You

[1] *See* ProPublica, Immigrant Defenders law Center Nonprofit Explorer website, https://projects.propublica.org/nonprofits/organizations/474473312 (last visited August 14, 2026); *see also* 2025 IRS Form 990, Return of Organization Exempt from Income Tax for the Immigrant Defenders law Center, https://projects.propublica.org/nonprofits/organizations/474473312/202631769349301448/full; (last visited August 14, 2026).

agree to assign payment of any awarded fees and costs to Immigrant Defenders Law Center…

See Dkt. 32, Exhibit A (sealed)[2]; *see also* Dkt. 31-2.

This EAJA request raises serious concerns. At best, Immigrant Defenders claim for attorney's fees is bloated and preposterous. However, it appears to be an effort to have the federal government subsidize its work on other cases via a claim for attorney's fees in this one action. An approach that seeks to take advantage of U.S. taxpayer dollars and will ultimately result in less funds being available for children in ORR care. Immigrant Defenders has billed *330 hours of attorney time in this limited action habeas case*—which was resolved after C.S.M. was released from custody. Several attorneys at Immigrant Defenders billed for "strategic consultation" and "development of legal theories and litigation resources" in this case, yet they never filed an appearance in the action. Furthermore, attorneys at Immigrant Defenders billed for "Spanish-language interpretation services" for C.S.M.'s friends and family at a court hearing. Moreover, after the release of C.S.M., Immigrant Defenders continued to bill for duplicative and vague work that was not needed such as "research and strategy into *possible* sanctions."

EAJA awards in typical single petitioner habeas cases in this district are between $2,500-$5,000 total.[3]

For Immigrant Defenders to bill the American government over $82,000 for this habeas petition, to be paid to Immigrant Defenders itself is egregiously excessive. Petitioner's extraordinary figure is marked by systemic overstaffing and duplication—

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[2] Petitioner's filing at Dkt. 32 violates Local Rule 79-5.2.2, "in a non-sealed civil case, no document may be filed under seal without prior approval by the Court." Although the case docket has limited viewing permission based on Nature of Suit pursuant to the Privacy Act, it does not give Petitioner free range to file documents under seal without a Court order.

[3] *See, e.g, Gamarra Garcia v. Semaia*, 5:25-cv-03536-HDV-AS at Dkt. 30 ($5,026); *Ixcot Guerra v. Noem*, 5:25-cv-03119-SSS-JC at Dkt. 24 ($3,204.90); *Torres Sotomayor v. Noem*, 5:25-cv-02939-CV-SSC at Dkt. 21 ($2,410.36); *You v. Bondi*, 5:26-cv-00967-SB-ADS at Dkt. 18 ($2,174.18); *Leon v. Noem*, 5:25-cv-02582-FMO-RAO at Dkt. 19 ($2,000); *Gonzalez v. Noem*, 5:26-cv-00357-JWH-AJR at Dkt. 25 ($1,576.61).

and the EAJA, 28 U.S.C. § 2412(d)(1)(A), permits no award here.

First, Respondents' position in this promptly resolved petition was substantially justified. In the habeas setting involving a minor habeas petitioner, the Office of Refugee Resettlement (ORR) exercised careful judgment and advanced good-faith positions grounded in fact and law. Because Petitioner secured relief does not necessarily mean Respondents' positions lacked merit. On the contrary, they approached this litigation reasonably.

Second, special circumstances render any award unjust. Equitable considerations should be seriously considered by the Court because Immigrant Defenders, a multi-million-dollar organization, is asking ORR to subsidize them through funds that would otherwise support services for children in federal care.

Third, because of its manifest unreasonableness, Petitioner's fee demand warrants a drastic reduction even if the Court does not deny it outright. Even a cursory review of their itemized expenses shows that their resource-heavy approach systematically inflated costs, revealing a sustained pattern of excessive billing—marred by pervasive overstaffing and cost irregularities—not a disciplined effort to seek reasonable reimbursement. Dkt. 31-1.

Finally, Respondents also request a stay of the Petitioner's motion until the resolution of a pending United States Supreme Court decision concerning the same legal issues of the availability of EAJA fees. The United States Supreme Court recently granted certiorari in *Kevin Isaac Montoya Palacios v. Vernon Liggins, et al.*, No. 25-1223, --- S.Ct. ---, 2026 WL 1855057 (Mem). Respondents request that this Court hold Petitioner's attorney's fees motion in abeyance until 30 days after the Supreme Court issues a decision in *Montoya Palacios* and stay the briefing schedule pending that decision.

Each ground independently warrants denying Petitioner's motion. Together they reveal an excessive fee demand that tries to turn Petitioner's sponsor's delay in submitting the required information necessary for Petitioner's release into a windfall.

The Court should reject a request so far removed from EAJA's standards.

II. LEGAL STANDARD

The EAJA provides for attorney's fees awards to the prevailing party other than the United States unless the "district court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). "Substantially justified" means justified to a degree that could satisfy a reasonable person and applies to both the underlying action at issue and the government's litigation position. *See Paloulian v. Sullivan*, 919 F.2d 145 (9th Cir. 1990). The government must show that it had a reasonable basis for the facts alleged and that it had a reasonable basis in law for the theories it advanced. *Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998). Evaluation is holistic: EAJA asks whether the government's overall conduct was reasonable, not whether it prevailed on every issue. *Commissioner, I.N.S. v. Jean*, 496 U.S. 154, 161-62 (1990).

In addition, the court may also decline to award attorneys' fees if it finds that "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The Ninth Circuit has held that special circumstances are present where the government makes an argument for "a novel but credible extension or interpretation of the law" (*Hoang Ha v. Schweiker*, 707 F.2d 1104, 1106 (9th Cir. 1983)), where its action concerns an issue on which "reasonable minds could differ," or where it involves an "important and doubtful question." *Minor v. United States*, 797 F.2d 738, 739 (9th Cir. 1986).

III. ARGUMENT

A. Substantial Justification

Respondents' positions—both at the agency level in processing the application of the minor Petitioner's sponsor and in litigation—were substantially justified, foreclosing any EAJA award. Establishing that the government's defense lacked substantial justification under the EAJA is very difficult. *See, e.g., Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1231 (9th Cir. 1990) (reversing EAJA award as an abuse of discretion). The test is not whether the government was correct, but whether it was "for

the most part" justified in taking the position that it did. *See Meza-Vazquez v. Garland*, 883 F.3d 726, 729 (9th Cir. 2021). A position that "was not contrary to clearly established law" is thus substantially justified. *Id.*

Here, ORR's prelitigation conduct was driven by its duty under the Trafficking Victims Protection Reauthorization Act ("TVPRA") to protect a uniquely vulnerable population from trafficking, abuse, and neglect. 8 U.S.C. §§ 1232(b)(1), (c)(1), (c)(3)(A). ORR's goal is to release UACs to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See id.; see also* 6 U.S.C. §§ 279(b)(1), (b)(2)(A)(ii). The TVPRA prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A).

To meet its child protection mandate, ORR required background checks, fingerprinting, and DNA tests of adult household members and certain potential sponsors, home-study referrals in TVPRA mandatory or high-risk cases, and multi-level supervisory review. *See* Dkt. 10-1 (Biswas Decl.), ¶¶ 4-16. Those safeguards were consistent with state-child-welfare best-practice standards and were designed to prioritize child safety over speed, especially considering documented cases where inadequately vetted sponsors had exploited minors.

C.S.M. was already unaccompanied when she entered the United States; she was not in her mother's or other adult family member's care at that time. As set forth in the Biswas Declaration, ORR had been proactively seeking out, arranging for, and facilitating the sister's application from very shortly after the unaccompanied minor Petitioner arrived in the United States, identifying the sister as a potential sponsor as of May 6, 2025, and consistently facilitating the application process thereafter. *See* Biswas

Decl., ¶¶ 17-35. Prior to the TRO hearing on March 20, 2026, ORR also identified the potential sponsor and investigated her and the household members ("HHM") (i.e., people living in the home with the sponsor) to confirm DNA testing and to complete an internet background check. *Id.* ¶¶ 33-35; Dkt. 16-1 (Second Biswas Decl.) ¶ 4. Following the receipt of the sister's completed sponsorship application ("SA") packet on October 15, 2025, ORR diligently took the time needed to go through its sponsorship process. *See* Dkt. 10-1 (Biswas Decl.), ¶¶ 21-27. The delay in C.S.M's release to her eventual sponsor was because several HHMs had delays in the process of fingerprinting and ID checks. *Id.*

On January 2, 2026, ORR reviewed the sponsor's application to ensure the sponsor, HHMs, and alternative caregiver ("ACG") submitted the required social security numbers or Individual Taxpayer Identification Numbers. *Id.* ¶ 26. The ORR Federal Field Specialist ("FFS") continued to provide updates to the sponsor and the child on efforts to schedule the in-person ID and DNA testing appointments. *Id.* ¶¶ 27-30. During this time, the child continued to attend public school and received weekly individual psychotherapy sessions, consistent with the required services identified in 45 C.F.R. § 410.1302. *Id.* ¶ 27. C.S.M. was *never* placed in a traditional immigration detention facility. Before and during litigation, she was temporarily placed with the Marsell Wellness Center-Riverside, an ORR Transitional Foster Care provider, and she housed and resided in Fullerton, California.[4] *See id.* ¶ 17.

And on the evening prior to the TRO hearing, on March 19, 2026, after business hours, ORR received an alert to a general email inbox that the DNA test results were ready. The FFS received and reviewed the DNA tests results on March 20, 2026, at approximately 10:30 a.m. Pacific Time, which was after the TRO hearing had completed. Dkt. 14. The CM/ECF System Notice of Electronic Filing demonstrates the Court's written TRO was entered on March 20, 2026, at 10:13 a.m. Pacific Time, meaning that the TRO hearing was concluded before ORR could communicate to

[4] *See* Marsell Wellness Center website, https://marsellwc.com/foster-family-services (last visited Aug. 14, 2026)

Respondents' counsel. Therefore, Respondents' counsel could not have advised the Court of the DNA test results during the TRO hearing in real time.

During the case, Respondents reasonably defended the sponsor-vetting framework as a balanced, fact-specific system that provided notice, the right to submit supporting documentation, and internal appeals for parents/guardians—while preserving flexibility to address the wide variety of household situations encountered. Although the Court found that the vetting process has taken "far too long" (Dkt. 20, Hearing Transcript at 16), the Court clearly had reasonable justifications wanting ORR to confirm and finalize its vetting process because it still required Respondents to present a status report advising on the outcome of the DNA test and the outcome of any other background investigation. Dkt. 14. And Respondents diligently complied with such request. Dkt. 16. Had the Court not believed that a DNA test or background investigation was necessary, it would have said so in its order. But it did not. *See* Dkt. 14. Collectively, this appears to confirm that ORR's overarching approach reflected careful, pragmatic judgment rather than arbitrariness.

Moreover, nothing in the Report and Recommendation, that the Court adopted, reached a finding that the government's position during the litigation "was contrary to clearly established law." Dkts. 27, 29. In fact, the Report and Recommendation acknowledged that some courts in this District have reached the conclusion that a petitioner's release from custody pursuant to a TRO or preliminary injunction moots the habeas petition as Respondents argued in this case. *See* Dkt. 27 at 3. Here, ORR's litigation position that C.S.M. cannot claim a concrete fear of re-detention, especially when ORR is not an arresting agency and has no legal ability to re-detain him without a referral from another federal agency, 8 U.S.C. § 1232(b)(3), is patently reasonable. Accordingly, both before and during litigation, Respondents' position was reasonable and "substantially justified."

B. Special Circumstances

Special circumstances compel denial of Petitioner's motion. EAJA's legislative

history identifies two special circumstances: (1) novel but credible legal interpretations, and (2) equitable reasons counseling against a fee award. H.R. Rep. No. 96-1418, at 11 (1980). Congress described the "special circumstances" exception as a "safety valve that helps to ensure that the government is not deterred from advancing in good-faith the *novel but credible* extensions and interpretations of the law that often underlie vigorous enforcement efforts." *Id.* at 11 (cleaned up) (emphasis added). Evaluating whether special circumstances exist that militate against an award of fees requires focusing on: "(1) whether allowing attorney fees would further the purposes of [the relevant statute] and (2) whether the balance of equities favors or disfavors the denial of fees." *Thomas v. City of Tacoma*, 410 F.3d 644, 648 (9th Cir. 2005) (construing 42 U.S.C. § 1988) (citation omitted). Respondents focus their argument on the second category of special circumstances.

Petitioner's Request for EAJA fees should be denied on equitable grounds. Crucially, the funds sought by Immigrant Defenders directly detract from the federal child welfare budget. In short, awarding EAJA fees here would do exactly what the "special-circumstances" safety valve is meant to prevent: drain scarce child-welfare funds to underwrite Immigrant Defenders' over-lawyered, cost-insensitive strategy while penalizing an agency that navigated novel, fast-moving legal terrain in good-faith. On the same day that Immigrant Defenders filed the EAJA Motion (August 4, 2026), they also forced M.P.S.M. to enter the Addendum to the Habeas Representation Agreement (August 4, 2026) mandating all recovered fees and costs get paid directly to them. See Dkt. 32, Exhibit A; *see also* Dkt. 31-2. And yet, Immigrant Defenders have no billing entries discussing this addendum with either of their clients C.S.M. or M.P.S.M. (the guardian ad litem) prior to obtaining M.P.S.M.'s signature. *See* Dkt. 31-1 at pg. 21, 24, 26. Because the equities—and Congress's purpose—cut sharply against shifting fees under these circumstances, the Court should deny Petitioner's motion in full.

The source of these funds makes awarding fees in the face of pervasive billing excesses particularly inequitable. From the outset, their demand flouts EAJA's mandate

of strict, reasonable fee shifting. *EDF v. Reilly*, 1 F.3d 1254, 1260 (D.C. Cir. 1993) ("[O]verbilling the government [is] a serious transgression, damaging to the public fisc and violative of the trust reposed in each member of the bar."). As detailed below (Section D, *infra*) and incorporated herein, Immigrant Defender's excessive billing practices confirm that an EAJA award is inequitable under the special circumstance safety valve.

C. Request is Not Reasonable for a Basic Habeas Petition

Even if the Court rules that the government was not substantially justified in its legal positions, Petitioner's requested fees are excessive. Notwithstanding Petitioner's implicit assertions to the contrary, the issues in this case were not complicated. Petitioner carries "the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1982).

The D.C. Circuit has emphasized that courts should be cognizant of the fact that the taxpayer ultimately will pay an award and "items of expense or fees that may not be unreasonable between a first class law firm and a solvent client[] are not always supported by indicia of reasonableness sufficient to allow [the court] to tax the same against the United States." *Am. Petroleum Inst. v. EPA*, 72 F.3d 907, 912 (D.C. Cir. 1996). In calculating the number of hours that were reasonably expended on the litigation, "'it does not follow that the amount of time actually expended is the amount of time reasonably expended." *Bunn v. Bowen*, 637 F. Supp. 464, 469 (E.D.N.C. 1986) (emphasis in original) (citing *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc)). Instead, a party seeking attorney fees must exercise good billing judgment and provide evidence supporting the time claimed. *See Hensley*, 461 U.S. at 432–35, 437. The *Hensley* Court specifically cautioned that "[c]ounsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Id.* at 434.

Here, in this single-petitioner habeas case, Immigrant Defenders seek to recover $85,780.75 in fees under EAJA by claiming 330.65 hours of legal work for seven attorneys, especially when only three of their attorneys made an appearance in the matter. This Court should reduce the request by denying claimed work hours that are excessive, duplicative, clerical, and inadequately supported.

1. Duplicative Work and Excessive Time

In calculating the number of hours that were reasonably expended on the litigation, "'it does not follow that the amount of time *actually* expended is the amount of time *reasonably* expended." *Bunn*, 637 F. Supp. at 469 (emphasis in original) (citing *Copeland*, 641 F.2d at 891 (en banc)). Instead, a party seeking attorney fees must exercise good billing judgment and provide evidence supporting the time claimed. *See Hensley*, 461 U.S. at 432–35, 437. The *Hensley* Court specifically cautioned that "[c]ounsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Id.* at 434.

This case involved one habeas petitioner seeking release, a request that courts within this District are well-equipped to assess. But Immigrant Defenders seeks to recover over $85,000 in fees for seven attorneys (including four attorneys who have not appeared in this action). To overstaff this case in this manner is unreasonable and disproportionate to the level of complexity of this case, and the government should not be required to expend taxpayer money for such excesses. *See Hensley*, 461 U.S. at 434 (advising district courts to exclude hours that result from cases being "overstaffed"); *Sorenson v. Mink*, 239 F.3d 1140, 1146-47 (9th Cir. 2001) (court erred in awarding fees for hours that reflected "excessive staffing"); *Metro Data Sys., Inc. v. Durango Sys., Inc.*, 597 F. Supp. 244, 245 (D. Ariz. 1984) (noting that defendant "deployed a little army of thirteen lawyers (five in San Francisco, eight in Phoenix), three paralegals and one law clerk to defend against plaintiff's claims").

Immigrant Defenders also engaged in excessive internal conferencing, "strategy meetings" and "meetings" with attorney consultants and "support[ing] and review[ing]" draft pleadings, warranting at least a 50% reduction, if not complete denial of conferencing fees. *See* Dkt. 31-1 at pg. 19-26; *see also In re Microwave Prods. of Am.*, 102 B.R. 661, 665 (Bankr. W.D. Tenn. 1989) ("Attorneys should work independently, without the incessant conferring that so often forms a major part of many fee petitions.") (quotation omitted).

Even a cursory review reveals that Immigrant Defenders' billing is replete with duplicative and excessive entries. *See Hensley*, 461 U.S. at 434 (excessive and redundant hours are not "reasonably expended" and thus should be excluded from any fee award). Although "duplicative work is not inherently inappropriate," *Chaudhry v. Los Angeles*, 751 F.3d 1096, 1111-12 (9th Cir. 2014), the Court has discretion and should accordingly reduce the fee demand to account for these duplicative and excessive time entries. *See, e.g., Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) ("[C]ourts ought to examine with skepticism claims that several lawyers were needed to perform a task, and should deny compensation for such needless duplication as when three lawyers appear for a hearing when one would do." (footnote omitted)); *Evans v. Port Auth. of New York & New Jersey*, 273 F.3d 346, 362 (3d Cir. 2001) (finding unreasonable for two partners to bill for work performed on the same aspects of a case); *Maldonado v. Houstoun*, 256 F.3d 181, 185 (3d Cir. 2001) (questioning whether time claimed in a fee petition was reasonable where the appeal "could have been briefed and argued by a single lawyer or two" and noting "the prospects of payment by . . . a defendant with tax collecting powers should not encourage the utilization of an excess number of lawyers on the preparation of the appeal"); *Metro Data Sys.*, 597 F. Supp. at 246 (discounting duplicative hours between two law firms because "[o]nce the Phoenix firm was entrusted with the defense of the action, anything done by the San Francisco firm in formulating a defense strategy was essentially duplicative").

Because Immigrant Defenders have not carried their burden to show that their

overstaffed attorney hours were necessary, non-duplicative, or compensable, every hour should be struck from any fee award.

2. Vague Time Entries

Courts have the discretion to reduce an award of attorney fees when the request is not properly documented. *Hensley*, 461 U.S. at 433; *see, e.g., Neil v. Comm'r of Soc. Sec.*, 495 F. Appx 845, 847 (9th Cir. 2012) (holding that the district court was within its discretion to reduce fee award for "entry that was vague and inadequately explained" and "to account for block billing"). Immigrant Defenders have the burden to document the hours expended "in a manner that will enable a reviewing court to identify distinct claims." *Hensley*, 461 U.S. at 437; *see Mendez v. County of San Bernardino*, 540 F.3d 1109 (9th Cir. 2008) (finding district courts have broad discretion to reduce the number of hours included in the fee award where the billing records are vague, insufficiently descriptive, or inflated).

Courts within the Ninth Circuit "have reduced fee awards where the billing entries were too vague to conduct 'a meaningful review' or determine whether the time expended was reasonable." *Mohamed v. Barr*, 562 F. Supp. 3d 1128, 1136 (E.D. Cal. 2022) (citing *McCarthy v. R.J. Reynolds Tobacco Co.*, 2011 WL 4928623, at *4 (E.D. Cal. Oct. 17, 2011) (reducing time for a fee award where "most of the entries refer only generally to 'legal research' and 'conversations with [co-counsel]' without identifying the subject of the research or conversations"); *Nolan v. City of Los Angeles*, 2014 WL 12564127, at *7 (C.D. Cal. Feb. 10, 2014) (criticizing "entries that merely indicate that an email was sent or that a phone call was made without describing in any way the reason for or topic of the particular correspondence" and reducing the lodestar)).

Here, Immigrant Defenders' billing records contain numerous vague entries for multiple attorneys' "correspondence," "meetings," and "strategy calls" and reviewing and drafting commentary from the National Center for Youth Law (NCYL), a so-called national advocacy nonprofit organization, that is separate entity and not counsel of record. Dkt. 31-1 at pg. 28-30. Moreover, Immigrant Defenders' billing records indicate

they billed 4 hours "Spanish-language interpretation services" for C.S.M.'s friends and family at the TRO hearing and for travel; hours that are discretionary and vague. Dkt. 31-1 at pg. 27. Concerningly, Immigrant Defenders billed for several telephone calls with staff of a U.S. Congressmen who have nothing to do with his habeas case and the lawsuit filed against ORR federal employees. Dkt. 31-1 at pg. 19.

All these billing entries lack any indicia that the time spent was reasonable, directly attributable to this case, or necessary to achieve the results obtained. But simply providing billing records showing that an attorney emailed or had calls with another attorney on the case is insufficient to meet Immigrant Defenders' burden to show that his claimed fees are reasonable. And some of the entries do not identify the participants in the call at all.

3. Time Entries for Clerical Tasks

The Court should decline to award Immigrant Defenders any fees for time spent on clerical tasks. "It simply is not reasonable for a lawyer to bill, at her regular hourly rate, for tasks that a non-attorney employed by her could perform at a much lower cost." *Davis v. City & Cty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992), *opinion vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993); *see also Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989) ("[P]urely clerical or secretarial tasks should not be billed at a paralegal or [lawyer's] rate, regardless of who performs them."). Accordingly, courts typically eliminate clerical tasks from fee awards. *See, e.g.*, *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009) (holding that clerical tasks such as filing and organization "should have been subsumed in firm overhead"); *Harris v. L & L Wings, Inc.*, 132 F.3d 978, 985 (4th Cir. 1997) (approving the deduction of hours spent on secretarial tasks from the overall fee calculation); *Neil*, 495 F. Appx at 847 (affirming decision not to award fees for clerical tasks such as filing documents and preparing and serving summons); *Brandt v. Astrue*, No. 08-cv-657, 2009 WL 1727472, at *4 (D. Or. June 16, 2009) ("Preparing a summons and civil cover sheet with attachment is primarily clerical in nature. I therefore deduct the time for these two tasks."). Clerical tasks may

include but are not limited to: "creating indexes for a binder; filing emails, memoranda, and other correspondence; updating the case calendar with new dates; copying, scanning, and faxing documents; and filing or serving documents." *Moore v. Chase, Inc.*, No. 1:14-CV-01178- SKO, 2016 WL 3648949, at *3 (E.D. Cal. July 7, 2016) (citing *Prison Legal News v. Schwarzenegger*, 561 F. Supp. 2d 1095, 1102 (N.D. Cal. 2008)).

Here, the Court should reduce any award by declining to award any fees for clerical tasks. Those entries include preparing and finalizing forms, reviewing deficiencies notices forms concerning their own errant filings, reviewing their own case file that was already prepared, reviewing scheduling notices, and finalizing pleadings. *See* Dkt. 31-1 at pg. 19-30. All these clerical tasks could, and should, have been performed by a paralegal or other non-attorney staff member employed by Immigrant Defenders. *See Missouri*, 491 U.S. at 288 10 n.10; *Jones v. Metro. Life Ins. Co.*, 845 F. Supp. 2d 1016, 1027 (N.D. Cal. 2012), *aff'd in part, rev'd in part and remanded*, 555 Fed. Appx. 733 (9th Cir. 2014) (unpublished) (deducting time spent filing court documents). Further, in some instances it is impossible to precisely assess how much time an attorney spent on the clerical tasks compared to the non-clerical tasks listed within the same billing entry.

Accordingly, the Court should decline to award any fees for each entry that contains a clerical task.

D. Respondents Request a Stay of the EAJA Fee Motion Pending a Decision in *Montoya Palacios*

On June 29, 2026, the United States Supreme Court granted certiorari in *Montoya Palacios*, No. 25-1223, --- S.Ct. ---, 2026 WL 1855057 (Mem). Respondents request that this Court hold Petitioner's attorney's fees motion in abeyance until 30 days after the Supreme Court issues a decision in *Montoya Palacios* and stay the briefing schedule pending that decision.

The power to stay is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for

counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Although "a district judge should not automatically stay discovery, postpone rulings on pending motions, or generally suspend further rulings upon a parties' motion[,]" *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997), "[a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In determining whether to stay a proceeding, the court considers: (1) "the possible damage which may result from the granting of a stay"; (2) "the hardship or inequity which a party may suffer in being required to go forward"; and (3) "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *See CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

Like this case, *Montoya Palacios* involves a petition for attorney's fees under EAJA following a successful petition for writ of habeas corpus challenging immigration detention. The issue in *Montoya Palacios* is whether, under EAJA, the phrase "any civil action," 28 U.S.C. § 2412(d)(1)(A), encompasses habeas petitions challenging immigration detention.

As in *Montoya Palacios*, Petitioner here brought a successful habeas challenge to immigration detention and subsequently sought attorney's fees under EAJA. The Government maintains that Petitioner is not eligible for attorney's fees because habeas proceedings are not encompassed within the EAJA phrase "any civil action." *See Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023); *Obando-Segura v. Garland*, 999 F.3d 190, 197 (4th Cir. 2021); *but see Vacchio v. Ashcroft*, 404 F.3d 663, 668 (2d Cir. 2005); *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 432 (3d Cir. 2026), *rehearing en banc denied*, 169 F.4th 160 (3d Cir. 2026); *Daley v. Ceja*, 158 F.4th 1152,

1162 (10th Cir. 2025), *rehearing en banc denied*, (10th Cir. Apr. 3, 2026).[5]

Because these proceedings present the same EAJA issue as *Montoya Palacios*, the Supreme Court's decision in that case, with briefing to begin imminently, will inform the outcome of Immigrant Defenders' EAJA motion, as well as any potential appeal thereof. Should the Supreme Court affirm the Fourth Circuit and find that EAJA fees are not available in immigration habeas cases, then EAJA fee applications for immigration habeas cases will be barred, and there will be no need to adjudicate their merits in this District, nor appeal them to the Ninth Circuit. Thus, holding Petitioner's attorney's fees motion in abeyance greatly promotes judicial efficiency and conserves judicial resources.

Conversely, Immigrant Defenders will not suffer any prejudice if this abeyance motion is granted because the Petition was already decided on its merits. And the EAJA, by its nature, contemplates a relatively protracted post-judgment process of adjudication, including elapse of the time to appeal any potential judgment, reflecting the fact that it concerns the narrow issue of seeking a post-judgment award of fees.

For examples of recent orders in this District staying the resolution of EAJA motions in immigration habeas cases during the pendency of *Montoya Palacios*. *See, e.g. Justino Moises Ortega Chavez v. Joshua Johnson, et al.*, 2:26-cv-01349-FMO-JDE, Dkt. no. 24 (July 17, 2026 Order Re: Stay of Proceedings); *Scarleth Tatiana Jarquin-Gadea v. Kristi Noem, et al.*, 5:25-cv-02800-FMO-BFM, Dkt. no. 35 (July 17, 2026 Order re: Stay of Proceedings); *Jose Luis Rivera-Lope v. Fereti Semaia, et al.*, 5:26-cv-01864-FMO-RAO, Dkt. no. 14, (July 7, 2026 order, "In light of the Supreme Court's action, the Court postpones issuing a recommendation on the pending motion. The Court directs Petitioner's counsel to file a status report within 30 days of the Supreme Court issuing a

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[5] While the Ninth Circuit allowed attorney's fees under EAJA following a successful habeas petition in *In re Hill*, that case is inapposite to the circuit split because the petitioner there was not in custody and filed a habeas petition to challenge the denial of an application to enter the United States. 775 F.2d 1037, 1039-41 (9th Cir. 1985). Modern statutes do not allow habeas petitions to be used for that purpose. *Hill* is therefore limited to its unique facts.

decision in *Montoya Palacio*."); *Jitender Singh v. James Janecka, et al.*, 5:26-cv-01414-ACCV, Dkt. No. 21(August 10, 2026 order, "the Court *sua sponte* **STAYS** the motion for attorney fees pending the Supreme Court's decision in *Montoya Palacios v. Liggins*, No. 25-1223. Petitioner is **DIRECTED** to file a renewed motion for fees within twenty-one (21) days after the Supreme Court issues its opinion in *Montoya Palacios v. Liggins*, No. 25-1223."); *Edwin Eduardo Melgar Monterroso v. Fereti Semaia et al.*, 5:26-cv-01911-ACCV, Dkt. No. 15 (August 13, 2026 order, "the Court *sua sponte* stays the motion for attorney fees pending the Supreme Court's decision in *Montoya Palacios v. Liggins*, No. 25-1223. Petitioner [] may file a renewed motion for fees within twenty-one (21) days after the Supreme Court issues its opinion in *Montoya Palacios v. Liggins*, No. 25-1223."). There are no pending deadlines in this closed habeas action and because Petitioner's counsel has already filed their motion, there is no harm to either party in staying the EAJA decision.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Petitioner's motion be denied in its entirety, or alternatively, the fee request be reduced to a reasonable amount.

In addition, Respondents ask this Court to hold Petitioner's motion in abeyance until 30 days after the Supreme Court issues a decision in the pending *Montoya Palacios* case, at which time a status report should be filed.

Dated: August 14, 2026

Respectfully submitted,

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Local Rule 11-6.2 Certificate of Compliance

The undersigned counsel of record certifies that this Opposition Brief contains 5,715 words and is 17 pages which complies with the word limit set by L.R. 11-6.1 and the page limit set by the Court's Standing Order.

Dated: August 14, 2026

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