

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. [REDACTED]

[REDACTED])
)
 Petitioner,)
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)
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 v.)
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)
 MARC J. MOORE, et. al,)
)
 Respondents.)
 _____)

**PETITIONER’S VERIFIED MOTION FOR ATTORNEYS’ FEES AND
INCORPORATED MEMORANDUM OF LAW**

Petitioner [REDACTED], by and through her undersigned counsel and pursuant to 28 U.S.C. § 2412(d), respectfully requests this Honorable Court to grant her attorneys’ fees under the Equal Access to Justice Act (“EAJA”) in the amount of \$21,855.88. The grounds supporting this motion are set forth in the Memorandum of Law in Support of Petitioner’s Motion for Attorneys’ Fees Pursuant to the Equal Access to Justice Act.

BACKGROUND

Ms. [REDACTED] is a lawful permanent resident who was detained by immigration authorities without a bond hearing for nearly 17 months. Ms. [REDACTED] finally received a bond hearing and was released from detention after this Court granted her Petition for Writ of Habeas

Corpus (“Habeas Petition”). While the government initially appealed the Court’s Order, it subsequently moved to dismiss its appeal.

Ms. █████ emigrated from Haiti to the United States in 2004 and became a lawful permanent resident in January 2006. (*See* Docket Entry No. 1 ¶ 15). On July 11, 2012, the Department of Homeland Security (“DHS”) detained Ms. █████ and commenced removal proceedings against her because of two criminal convictions for which she was sentenced to time served and six months probation. (*Id.* at ¶ 20, 21).

In her removal proceedings, Ms. █████ sought asylum, withholding of removal, and relief under the Convention Against Torture based on her transgender identity and sexual orientation. (*Id.* at ¶ 22). The Immigration Judge denied Ms. █████’s applications for relief and ordered her removed. (*Id.* at ¶ 23). Ms. █████ then appealed the decision to the Board of Immigration Appeals (“BIA”). (*Id.*). On March 22, 2013, the BIA dismissed Ms. █████’s appeal. (*Id.*). Ms. █████ was detained throughout removal proceedings and the BIA appeal because the Immigration Judge held she was subject to mandatory detention under 8 U.S.C. §1226(c). (*Id.* at ¶ 21).

On April 25, 2013, Ms. █████ filed a petition for review with the Eleventh Circuit Court of Appeals challenging the BIA’s decision. (*Id.* at ¶ 24). She also filed a motion for a stay of removal pending a decision on the petition for review. (*Id.* at ¶ 24). The Eleventh Circuit granted her an emergency stay of removal on May 16, 2013. (*Id.* at ¶ 25).

On July 1, 2013, almost one year after Ms. █████’s initial detention, Ms. █████ filed a Habeas Petition in this Court seeking a bond hearing. (*See* Docket Entry No. 1). DHS filed a Response to Petition and Motion to Dismiss (“Response”) on August 14, 2013. (*See* Docket Entry No. 8). Ms. █████ then filed a Reply to Respondent’s Response to Petition on August 28,

2013. (See Docket Entry No. 9). This Court granted Ms. [REDACTED]'s Habeas Petition on December 11, 2013, and ordered the Immigration Court to provide Ms. [REDACTED] with a bond hearing. (See Docket Entry No. 15). After 17 months of detention, Ms. [REDACTED] had a bond hearing on December 19, 2013. At the conclusion of that hearing, the Immigration Judge ordered Ms. [REDACTED] released on her own recognizance. She was released from detention on the same day.

The government filed an appeal of the District Court's Order granting Ms. [REDACTED]'s Habeas Petition. However, on April 17, 2014, the government filed a Motion to Dismiss its appeal with prejudice. On May 5, 2014, the Eleventh Circuit granted the government's Motion to Dismiss. (See [REDACTED]).

DISCUSSION

I. THE EQUAL ACCESS TO JUSTICE ACT ENTITLES MS. [REDACTED] TO AN AWARD OF REASONABLE ATTORNEYS' FEES FROM THE UNITED STATES.

Ms. [REDACTED] seeks the recovery of reasonable attorneys' fees incurred on her behalf from the United States under the EAJA 28 U.S.C. § 2412. The EAJA provides, in pertinent part, that

a court shall award to the prevailing party ... fees and other expenses, ... incurred by that party in any civil action ... brought by or against the United States in any court having jurisdiction of that action, *unless* the 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) (emphasis added).

In order to be granted EAJA fees and expenses, the moving party must demonstrate that she is a "prevailing party" within the meaning of EAJA. If this status is demonstrated, the government may avoid a judgment in the movant's favor only if it demonstrates that its position was substantially justified, or that there are circumstances that make an award against the government unjust. *Jean v. Nelson*, 863 F.2d 759, 765 (11th Cir. 1988).

Ms. [REDACTED]'s legal arguments in this litigation satisfy each of the above criteria for an award of attorneys' fees under the EAJA. It is undisputed that Ms. [REDACTED] prevailed on the merits of her Habeas Petition. Further, as demonstrated below, the government cannot carry its considerable burden to prove that its position was substantially justified. Finally, Ms. [REDACTED] has demonstrated that she meets the net worth requirement under 28 U.S.C. § 2412(d)(1)(B) and has timely filed this motion under 28 U.S.C. § 2412(c)(2)(B).

A. Ms. [REDACTED] Is A Prevailing Party Under EAJA.

To obtain an award of attorneys' fees and expenses under EAJA, the movant must demonstrate that he or she was the "prevailing party" within the meaning of the Act. *Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health*, 532 U.S. 598, 603 (2001). A prevailing party is one who "has been awarded some relief by a court." *Id.* at 603. In addition, "it is well established that a party need not obtain relief on every claim or legal theory . . . in order to be considered prevailing under a fee-shifting statute." *Jean*, 863 F.2d at 766 (internal quotations omitted).

The District Court granted Ms. [REDACTED] the relief she sought in her Habeas Petition and ordered a bond hearing. Her status as a prevailing party is beyond dispute. *See, e.g., Oscar v. Gillen*, 595 F. Supp. 2d 166, 169 (D. Mass. 2009) (finding petitioner, who filed a habeas petition and successfully challenged his confinement in immigration detention without a bond hearing to be the prevailing party); *Geegbae v. McDonald*, 2011 WL 841237, at *1 (D. Mass. March 8, 2011) (a party who has successfully petitioned for a writ of habeas corpus is a "prevailing party"); *Muhur v. Ashcroft*, 382 F.3d 653, 654-55 (7th Cir. 2004) (grant of remand to BIA confers status as prevailing party); *accord Johnson v. Gonzalez*, 416 F.3d 205, 209-10 (3d Cir. 2005); *Rueda-Menicucci v. INS*, 132 F.3d 493, 495 (9th Cir. 1997).

B. The Government Cannot Meet Its Burden to Prove Substantial Justification.

Once the party seeking fees establishes prevailing party status, the government can avoid a judgment of EAJA fees only if it can demonstrate that its pre-litigation and litigation positions were substantially justified. *See Comm'r, INS v. Jean*, 496 US 154, 159 (1990). Substantial justification means “justified in substance or in the main – that is, justified to a degree that would satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1998); *see also Jean*, 863 F.2d at 767, *aff'd, Commissioner, INS v. Jean*, 496 U.S. 154 (1990) (“Substantial justification” is determined by a standard of “reasonableness”). The government’s position must have a “reasonable basis both in *law and fact*.” *Pierce*, 487 U.S. at 553 (emphasis added). To demonstrate substantial justification, the government must make a “strong showing.” *S&H Riggers & Erectors, Inc. v. Occupational Safety & Health Review Comm’n*, 672 F.2d 426, 430 (5th Cir. Unit B 1982).

A court must weigh several factors in the reasonableness inquiry: the state at which the litigation was resolved, views expressed by other courts, the legal merits of the government’s position, the clarity of governing law, the foreseeable length and complexity of the litigation, and the consistency of the government’s position. *Jean*, 863 F.2d at 767-68. In determining whether the position of the United States was substantially justified, the court evaluates not only the government’s position, but also the underlying erroneous decision or action of the government agency upon which the civil action is based. 28 U.S.C. § 2412(d)(2)(D); *Jean*, 496 U.S. at 160; *United States v. Certain Real Estate Property*, 838 F.2d 1558, 1562 (11th Cir. 1988); *Stratton v. Bowen*, 827 F.2d 1447, 1449 n.2 (11th Cir. 1987). Here, the government cannot demonstrate either that its actions in holding Ms. [REDACTED] in detention for 17 months without a bond hearing, or its position during the habeas litigation was substantially justified.

The government has never argued, much less established, that Ms. ██████'s protracted detention under § 1226(c) without an individualized bond hearing was lawful. Rather, the government relied on an erroneous argument that § 1231, the post-order statute, governed Ms. ██████'s case, in order to justify Ms. ██████'s detention and its motion to dismiss her Habeas Petition. Specifically, citing *De La Teja v. U.S.*, 321 F.3d 1357, 1363 (2003), the government argued that when the BIA dismissed Ms. ██████'s appeal of her removal order on March 22, 2013, Ms. ██████'s detention shifted from § 1226 to § 1231. (*See* Docket Entry No. 8 at 5). The government then asserted that an individual may only challenge her detention under §1231 after expiration of the six month post-order detention period found reasonable by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). (*Id.* at 6). Because six months had not expired since the BIA dismissed Ms. ██████'s appeal, the government argued her Habeas Petition was premature and should be dismissed for failure to state a claim. (*Id.* at 6-7).

The government's argument that Ms. ██████'s detention was governed by §1231 ignored the plain language of the post-order statute. *See* 8 U.S.C. §1231. This provision governs detention only during the "removal period," which begins *on the latest of* the following:

- (i) The date the order of removal becomes administratively final.
- (ii) *If the order is judicially reviewed and if a court issues a stay of removal of the alien, the date of the court's final order.*
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B) (emphasis added). Contrary to the government's argument, the removal period does not automatically begin when a removal order becomes administratively final. When a reviewing court "issues a stay of removal," the removal period begins on "the date of the court's final order." 8 U.S.C. § 1231(a)(1)(B)(ii). Thus, under the plain language of the statute, where, as here, a petition for review of the removal order is pending and the court has issued a

stay, detention does not shift from § 1226 to § 1231. Additionally, all U.S. Courts of Appeals to have expressly considered the issue have held that § 1226, not §1231, governs detention when a reviewing court has entered a stay of removal. See *Leslie v. Att’y Gen. of U.S.*, 678 F.3d 266, 270 (3d Cir. 2012) (collecting cases); *Wang v. Ashcroft*, 320 F.3d 130, 147 (2d Cir. 2003); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 (9th Cir. 2008); *Bejjani v. INS*, 271 F.3d 670, 689 (6th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)).

In arguing that Ms. ██████’s detention was governed by §1231, the government not only ignored the clear statutory language and the holdings of the four circuits that directly addressed the issue, but it also erroneously relied on *De La Teja*. *De La Teja* was inapplicable because, as this Court recognized, that case “did not consider an administratively final order subject to a stay of removal pending review by an appellate court, but rather considered the decision of an immigration judge that became administratively final when it was not appealed.” (See Docket Entry No. 15 at 7). This Court recognized that unlike *De La Teja*, Ms. ██████ had not entered the post-order “removal period” when she filed her Habeas Petition, and the pre-order detention statute, § 1226, continued to govern Ms. ██████’s detention. (*Id.* at 6).

The government waived any argument that Ms. ██████’s prolonged mandatory detention under the pre-order statute, § 1226(c), was lawful by not raising it in its Response. (*Id.* at 9 n.8 (noting that “Respondent only references the reasonableness of a Section 1226(c) detention *in a footnote*”) (emphasis added)); see *Nichols v. Volunteers of Am., N. Ala., Inc.*, 470 F. App’x 757, 763 (11th Cir. 2012) (argument only discussed in a cursory manner in a footnote is waived). Regardless, the government cannot establish substantial justification for Ms. ██████’s detention without a bond hearing in light of three circuit court decisions finding that prolonged mandatory

detention under § 1226(c) raises due process concerns.

The Supreme Court in *Demore v. Kim* upheld the constitutionality of § 1226(c) only for the “brief period necessary” to complete removal proceedings. *Demore v. Kim*, 538 U.S. 511, 530 (2003). Since *Demore*, three circuit courts - the Ninth, the Sixth and the Third - have addressed the permissible length of detention under § 1226(c) and have agreed that unreasonably prolonged detention is a due process violation. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1138 (9th Cir. 2013); *Ly v. Hansen*, 351 F.3d 263, 271 (6th Cir. 2003); *Diop v. ICE/DHS*, 656 F.3d 221, 234 (3d Cir. 2011). As this Court found, Ms. [REDACTED]’s detention would have been considered unreasonable in all three Circuits. (See Docket Entry No. 15 at 11-12). First, Ms. [REDACTED]’s 17 month mandatory detention was far longer than the six months permitted under the Ninth Circuit’s bright-line rule. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1138 (9th Cir. 2013) (“aliens who have been detained under § 1226(c) for six months are entitled to a bond hearing.”); *id.* Second, this Court noted that under both the Sixth and Third Circuit’s reasonableness tests “the constitutionality of [REDACTED]’s detention under Section 1226(c) ha[d] become increasingly suspect,” given, among other things, that it was far longer than the average detention period and that Ms. [REDACTED] had been granted a stay of removal. (See Docket Entry No. 15 at 11). This Court therefore concluded that Ms. [REDACTED]’s prolonged detention was unreasonable and a due process violation. (*Id.*) The government cannot establish substantial justification for Ms. [REDACTED]’s detention when it disregarded the decisions of three circuit courts and the factors making Ms. [REDACTED]’s detention unreasonable.

C. There Are No Special Circumstances In This Case That Make An Award Against the Government Unjust.

A court may deny attorney’s fees even if the government’s position was not substantially justified if “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). The

government bears the burden of establishing such special circumstances. *U.S. v. Jones*, 125 F.3d 1418, 1425 (11th Cir. 1997). Special circumstances include the government advancing in good faith novel but credible extensions and interpretations of the law. H.R. Rep. No. 96-1418, 11, 86th Cong., 1980 U.S.C.C.A.N. 4984, 4990. This provision is narrowly construed so as not to interfere or defeat Congress' purpose in enacting EAJA. *Martin v. Heckler*, 773 F.2d 1145, 1149 (11th Cir. 1985), overruled on other grounds by *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 784 (1989) (overruling the court's standard for determining prevailing party status under the Civil Rights Attorney's Fees Awards Act). The "special circumstances" defense was not intended to be applied across-the-board to an entire class of cases, but rather to prevent injustice in a particular case. *NAM v. DOL*, 159 F.3d 597, 606 (D.C. Cir. 1998).

Here, the government can point to no special circumstance militating against an EAJA fee award. The government ignored the plain language of the statute and decisions of the only Circuit Courts to have directly addressed the issues. Therefore, the government cannot claim that its position in defending the instant lawsuit was substantially justified in law or fact, or that there are special circumstances that make an award against the government unjust.

D. Petitioner's Application is Timely Filed.

Ms. [REDACTED]'s Motion for Attorneys' Fees is timely filed. Section 28 U.S.C. § 2412 (d)(1)(B) requires fee applications to be filed within 30 days of "final judgment" in the action. 28 U.S.C. § 2412(d)(1)(B). A final judgment means a judgment that is final and not appealable. 28 U.S.C. § 2412(d)(2)(G). The District Court for the Southern District of Florida granted Ms. [REDACTED]'s Habeas Petition on December 11, 2013. The government appealed the Order of the District Court granting Ms. [REDACTED]'s petition to the United States Court of Appeals for the Eleventh Circuit. However, on April 17, 2014, the government filed a Motion to Dismiss the case with prejudice, which the Court granted on May 5, 2014. As a result, on that date the Order

of the District Court became final and the 30-day period required by the EAJA for filing a motion for attorneys' fees began to run. Because the United States Court of Appeals for the Eleventh Circuit rendered its decision on May 5, 2014, Ms. [REDACTED]'s 30-day window to file a motion seeking attorneys' fees under EAJA will expire on June 4, 2014. The motion has been filed within that window.

E. Petitioner Meets the Net-Worth Requirement of the EAJA

Eligibility for an award under EAJA depends upon a petitioner's net worth, which must not have exceeded \$2,000,000 "at the time the civil action was filed." 28 U.S.C. § 2412 (d)(2)(B). In the instant action, Ms. [REDACTED] is eligible for EAJA fees because her net worth was well below the threshold of \$2,000,000 when she filed her petition for Writ of Habeas Corpus. *See* Exhibit 1 (Sworn Declaration of [REDACTED]).

II. MS. [REDACTED] REQUESTS REASONABLE ATTORNEYS' FEES.

Prevailing parties are entitled to be compensated for all time reasonably spent in litigating the matter, including time spent on a motion for attorneys' fees. *See Comm'r, I.N.S. v. Jean*, 496 U.S. 154 at 163-65. Ms. [REDACTED] requests attorneys' fees from the United States in the amount of \$21,855.88 for the reasons stated below.

A. Petitioner's Counsel Is Providing Herein A Statement Of Attorney Hours and Fees as Required Under 28 U.S.C. § 2412(d)(1)(B).

A claim for attorneys' fees and recoverable expenses under EAJA must include a statement for any attorney indicating the actual time expended and the rate at which the fees and recoverable expenses were computed. 28 U.S.C. § 2412(d)(1)(B). Included herein are: declarations of all attorneys and billing statements of attorneys and law students who worked on the instant case. *See* Exhibit 2 (Declaration of Attorney Farrin Anello); Exhibit 3 (Declaration of

Attorney Rebecca Sharpless); Exhibit 4 (Declaration of Attorney Romy Lerner); Exhibit 5 (Billing Statements).

B. This Court Should Award the Petitioner Attorneys' Fees for Law Student Work and Attorneys' Fees Above the Statutory Limit for Attorneys Rebecca Sharpless, Romy Lerner, and Farrin Anello Based on The Cost-of-Living Adjustment.

Congress has set a statutory cap for attorneys' fees at a rate of one hundred twenty-five dollars (\$125.00) per hour *unless* the Court determines that an increase in the cost of living or a special factor permits a higher fee. 28 U.S.C. § 2412(d)(2)(A) (emphasis added)¹. The discussion, which follows, will show that the requested fees are reasonable.

1. This Court Should Award the Petitioner Attorney's Fees for Work Performed by Law Students

The U.S. Supreme Court and lower courts "have approved the inclusion of fees for paralegals, law clerks and law students, in fee awards under EAJA...on the theory that their work contributed to their supervising attorney's work product, was traditionally done and billed by attorneys, and could be done effectively by nonattorneys under supervision for a lower rate, thereby lowering the overall litigation cost." *Cook v. Brown*, 68 F.3d 447, 453 (Fed. Cir. 1995) (citing *Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989); *West Virginia Univ. Hospitals, Inc. v. Casey*, 499 U.S. 83, 89 (1991), superseded by statute, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071; *Miller v. Alamo*, 983 F.2d 856, 862 (8th Cir. 1993)). Thus, EAJA fees are allowed for paralegal and law student work. *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 590 (2008) (holding that a prevailing party may recover its paralegal fees from the Government at prevailing market rates); *Jean*, 863 F.2d at 778; *Nadaraj v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009) (awarding EAJA fees for work done by law student interns).

¹ EAJA was originally enacted in October of 1981 and provided for \$75 fee cap. *Jean v. Nelson*, 863 F.2d at 774. However, EAJA was amended on March 29, 1996, and for the cases commenced on or after this date, the statutory hourly rate is \$125. *Id.*

This Circuit, in particular, has held that EAJA allows a prevailing party to recover fees for time spent by paralegals and law clerks so long as “the paralegal performs work traditionally done by an attorney.” *Jean*, 863 F.2d at 778. Courts within this Circuit have interpreted *Jean* to allow EAJA fees for work performed by supervised law students. *Am. Charities for Reasonable Fundraising Regulation, Inc. v. Pinellas Cnty.*, 278 F. Supp. 2d 1301, 1307 (M.D. Fla. 2003) (awarding \$35,892.45 in EAJA fees for work performed by a law student (and \$257,151.03 in attorneys fees overall)); *see Advanced Diabetes Treatment Ctrs., LLC v. Sebelius*, No. 09-61698, 2012 WL 5077155, at *14 n.18 (S.D. Fla. Sept. 20, 2012) (stating that “[t]ime spent by paralegals, law clerks, and law students is compensable in an EAJA fee award”); *but see Oliva v. Infinite Energy, Inc.*, No. 1:11-cv-232-MP-GRJ, 2013 WL 6815989, at *12 (Dec. 24, 2013) (refusing to award EAJA fees where law students performed “unnecessary” and “redundant” work “not traditionally performed by an attorney”).

Courts across the country have similarly held that EAJA permits fees for law student work whenever students perform work generally done by an attorney and an attorney supervises the law student. *Posey v. Barnhart*, No. C00-0163 WHA, 2002 WL 34239761, at *1 (N.D. Cal. June 14, 2002) (awarding EAJA fees for law student work conducted under attorney supervision); *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996) (“Therefore, the appellant is eligible for reasonable attorneys fees under the EAJA for work performed by the attorney-supervised law student.”); *Cook*, 68 F.3d at 453 (holding that EAJA does not allow for reimbursement of work conducted by unsupervised nonattorneys); *Lindner v. Sullivan*, 799 F. Supp. 888, 893 (N.D. Ill. 1992) (awarding EAJA fees for work performed by law students); *Williams v. Bowen*, 684 F. Supp. 1305, 1308-09 (E.D. Pa. 1988); *Jordan v. U.S. Dep’t of Justice*, 691 F.2d 514, 522 (D.C. Cir. 1982) (holding that FOIA attorneys fee provision permits fees for

law students receiving academic credit Georgetown University Law Center and explaining, “[t]he argument that law-student services cannot possibly form the basis for an attorney’s fee award merely because law students are not lawyers has only superficial vitality”).

The attached declarations of attorneys Farrin Anello, Rebecca Sharpless and Romy Lerner, Exhibits 2, 3, and 4 respectively and the billing statements at Exhibit 5, demonstrate that law students Ms. [REDACTED] performed work generally done by an attorney while under the supervision of a licensed attorney. This Court should therefore award EAJA fees for their work.

2. EAJA Fees Based on Cost-of-Living Adjustment Are Appropriate for Attorneys Farrin Anello, Rebecca Sharpless, and Romy Lerner.

Under *Pierce*, this Court must engage in a two-step analysis in determining fees for attorneys. *Jean*, 863 F.2d at 773-74. First, the Court must determine the prevailing market rates for the kind and quality of the services furnished by counsel. *Id.* at 773. Once the prevailing market rate is determined, if it is above one hundred and twenty-five dollars (\$125.00) per hour, the Court must award at minimum rate of one hundred twenty-five dollars (\$125.00) per hour. *Id.* However, the Court should also determine whether a party is entitled to more based on the special factors or cost-of-living adjustment. *Id.* EAJA expressly provides for such an adjustment. See 28 U.S.C. § 2412(d)(2)(A)(ii).

The attached declarations of attorneys Farrin Anello, Rebecca Sharpless, Romy Lerner, and Ira Kurzban, Exhibits 2, 3, 4 and 7 respectively, establish that prevailing market rates for the type of work performed here exceed the \$125 EAJA rate cap. Therefore, a cost of living rate adjustment should be applied to the fees of the attorneys who worked on the case².

² Prevailing market rates for the work performed exceed \$300 per hour. (See Exhibits 2-4, 7). Ms. [REDACTED] is only seeking a cost of living adjustment to the statutory fee.

When making such an adjustment, there are two computational issues for courts: (1) which cost-of-living index to use; and (2) what period of time to use to compare to the base period (i.e., March 1996, when 28 U.S.C. § 2412(d) was amended and the statutory ceiling was set at \$125 per hour). As to the first issue, “[m]ost courts, including the Eleventh Circuit have approved the use of the Consumer Price Index for All Urban Consumers [“(CPIU”)] as the appropriate index for EAJA cost of living adjustments.” *United States v. Adkinson*, 256 F. Supp. 2d 1297, 1312 (N.D. Fla. 2003). As to the second factor, there are essentially two time periods courts use to compare to the base period when calculating cost-of-living adjustments under EAJA: (1) the period when legal services were performed for the petitioner; or (2) a “current” date, such as the date the petitioner became a prevailing party, or the date when fees are awarded. Most courts have held that the period when services were performed is the correct period to use for calculating the cost-of-living adjustments, not the time when the award is made.³

Here, Ms. ██████’s Habeas Petition was filed on July 1, 2013. Counsel for Ms. ██████ worked on the present litigation from June 2013 until June 4, 2014. *See* Exhibit 5. (Billing Statements of Lead Attorneys and Supervised Law Students). The CPI-U for June 2013 is 233.504 *See* Exhibit 6 (Consumer Price Index-All Urban Consumers, available at <http://www.bls.gov/cpi/cpid1208.pdf>). Assuming CPI-U for the month of June 2013 is used for all work completed across all months (for ease of calculation and to obtain an overall lower-

³ The Eleventh Circuit appears not to have addressed this issue. Except for the Third Circuit, every circuit court that has considered this issue held that the period when services were performed is the correct period to use for calculating the cost-of-living adjustments, not the time when the award is made. *See* *Masonry Masters, Inc. v. Nelson*, 105 F.3d 708, 709-13 (D.C. Cir. 1997); *Marcus v. Shalala*, 17 F.3d 1033, 1038-40 (7th Cir. 1994); *Perales v. Casillas*, 950 F.2d 1066, 1074-77 (5th Cir. 1992); *Chiu v. United States*, 948 F.2d 711, 718-22 (Fed. Cir. 1991). *But see* *Garcia v. Schweiker*, 829 F.2d 396, 402 (3d Cir. 1987) (holding that the date on which the plaintiff became the prevailing party should be used).

bound estimate), the cost-of-living adjusted hourly rate for attorney's fees is calculated as follows:

A = June 2013 CPI-U (233.504)

B = March 1996 CPI-U (155.7)

C = CPI-U adjusted rate

$C = A/B \times \$125/\text{hr} = 233.504/155.7 \times \$125 = \$187.46$

3. The EAJA Fees Requested for Law Students Are Reasonable.

Ms. [REDACTED] requests \$75 per hour for work done by law student interns. An hourly rate of \$75 per hour for law student interns is within, or below, prevailing market rates. In December 1988, the U.S. Court of Appeals for the Eleventh Circuit awarded \$40 an hour in EAJA fees for work performed by paralegals and law clerks. *Jean*, 863 F.2d at 778. A rate of \$40 per hour in December 1988, when this Court decided *Jean*, amounts to a rate of \$77.63 per hour in June 2013, when law students began performing legal services for Ms. [REDACTED]. Inflation adjustments were calculated using the following equation: (CPI-U August 2013) / (CPI-U December 1988) x \$40/hour. This amounts to $(233.877/120.5) \times \$40 = \77.63 per hour. *See* Exhibit 6.

Furthermore, an hourly rate of \$75 per hour is consistent with rates that other courts recently awarded and significantly lower than several other cases. *Rocky Mountain Wild v. Vilsack*, No. 09-cv-01272-WJM, 2013 WL 3233573, at *20 (D. Colo. June 26, 2013) (reducing law student attorneys fees to \$118 per hour); *Carr v. Astrue*, No. 3:10-CV-1474-BH, 2011 WL 5985292, at *2 (N.D. Tex. Nov. 28, 2011) (finding hourly rates of \$75 per hour reasonable for an unlicensed law clerk who conducted legal research, summarized administrative proceedings, and drafted arguments for multiple briefs); *Nadaraj v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009) (awarding \$75 per hour for 119.7 hours of work done by law student interns); *Jones v. White*, No. H-03-2286, 2007 WL 2427976, at * 3 (S.D. Tex. Aug. 22, 2007) (finding hourly rates of \$90

to \$135 reasonable for law clerks who were second and third-year law students). Thus, the requested attorneys' fees are within prevailing market rates for law student interns.

C. Ms. [REDACTED] Requests Total Fees in the Amount of \$21,855.88.

Included in this Motion are the hours expended by each attorney and law student that were reasonably and necessarily incurred in this litigation. *See* Exhibits 2,3,4 and 5. Attorneys Farrin Anello, Rebecca Sharpless, and Romy Lerner have requested an hourly fee based on the cost-of-living adjusted statutory rate. The attorneys have also requested hourly fees for law students [REDACTED] based on a prevailing market rate of \$75 per hour. Ms. [REDACTED]'s total claim for attorneys' fees under EAJA is as follows:

FARRIN ANELLO

Fees (40 x \$187.46/hour) = \$7,498.4

[REDACTED]
Fees (35 x \$75/hour) = \$2,625.00

REBECCA SHARPLESS

Fees (19.7 x \$187.46/hour) = \$3,692.96

[REDACTED]
Fees (19.7 x \$75/hour) = \$1,477.50

[REDACTED]
Fees (22 x \$75/hour) = \$1,650

ROMY LERNER

Fees (11 x \$187.46/hour) = \$2,249.52

[REDACTED]
Fees (19 x \$75/hour) = \$1,425

██████████
Fees (16.5 x \$75/hour) = \$1,237.50

TOTAL ATTORNEYS' FEES
\$21,855.88

CONCLUSION

For the foregoing reasons Ms. ██████████ ██████ respectfully requests this Honorable Court to grant her Motion for Attorneys' Fees against the United States pursuant to the EAJA for **the total amount of \$21,855.88.**

Respectfully submitted,

s/Rebecca Sharpless
REBECCA SHARPLESS
Attorney at Law
Florida Bar No. 0131024
██████████
Law Student
██████████
Law Student
Immigration Clinic
University of Miami School of Law
1311 Miller Drive, Suite E-273
Coral Gables, Florida 33146
(305) 284-3576, direct
(305) 284-6092, clinic
rsharpless@law.miami.edu

Counsel for Petitioner

Dated: June 4, 2014

CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1(a)(3) undersigned counsel certifies that she, in good faith conferred with Gisela Westwater, counsel for the government, in an effort to resolve the issues addressed in this motion. S.D. Fla. L.R 7.1(a)(3). Ms. Westwater advised that the government opposes any award of fees.

s/Rebecca Sharpless
Rebecca Sharpless

VERIFICATION

I, Rebecca Sharpless, hereby attest under penalty of perjury that the contents of this Motion are true and correct to the best of my knowledge.

s/ Rebecca Sharpless
Rebecca Sharpless

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2014, I electronically filed the foregoing document and all attachments with the Clerk of the Court using CM/ECF. I also certify that foregoing the document and all attachments are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/Rebecca Sharpless
Rebecca Sharpless

EXHIBIT 1

SWORN DECLARATION OF [REDACTED]

I, [REDACTED] hereby declare and state:

1. My name is [REDACTED]. My current mailing address is [REDACTED]
[REDACTED]
2. On July 1, 2013, my net worth was less than \$1,000. My net worth has never reached or exceeded the amount of \$2,000,000.
3. I make this declaration in support of my attorney's Motion for Attorney's Fees and Costs incurred in successfully representing me before the United States District Court Southern District of Florida in the case of [REDACTED]
No. [REDACTED]

PURSUANT TO 28 U.S.C. 1746, I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this 2nd day of June 2014.

[REDACTED]

State of Florida

County of Miami-Dade

On this 2nd day of June, 2014 before me personally appeared _____, to me known to be the person who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

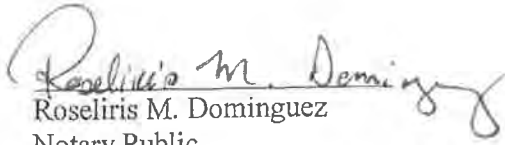

Roseliris M. Dominguez
Notary Public



EXHIBIT 2

DECLARATION OF FARRIN ANELLO, ESQ.

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

I, Farrin Anello, swear under penalty of perjury that the following is correct to the best of my information, knowledge, and belief:

1. I am a Visiting Assistant Clinical Professor in the Immigrants' Rights/International Human Rights Clinic in the Center for Social Justice, Seton Hall Law School. I was previously the Supervising Attorney at the Immigration Clinic at the University of Miami School of Law. This Affidavit is submitted in support of a motion for attorneys' fees, costs, and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* in the case of [REDACTED] [REDACTED].
2. I attended Yale College and Yale Law School, where I received the Charles G. Albom Prize for appellate advocacy in connection with my clinical work. I was an editor for the Yale Law Journal and the Yale Journal of International Law. I graduated from Yale Law School in 2005. In 2006, I became a member of the bar of the State of New York.
3. I clerked for Judge Janet C. Hall of the District of Connecticut and Judge Denise Cote of the Southern District of New York. In 2008, I worked as a litigation associate at Cleary Gottlieb Steen & Hamilton LLP in New York. From 2008 to 2010, I received a Skadden Fellowship to work at the American Civil Liberties Union Immigrants' Rights Project.

4. I was a supervising Attorney and Lecturer in Law at the University of Miami School of Law Immigration Clinic from 2010 to 2013.
5. I am a Director of the Refugee Reunification Project Fund, which provides travel grants to reunite asylees and their families.
6. I concentrate in immigration and immigrants' rights law, including immigrant and non-immigrant petitions, removal defense, and federal litigation.
7. At the time of filing Ms. [REDACTED]'s petition, I had specialized experience relevant to her case. At the ACLU Immigrants' Rights Project, I litigated numerous federal habeas petitions challenging unlawful immigration detention, including circuit court appeals and two class actions. I also litigated other federal civil rights lawsuits, petitions for review, and petitions for *certiorari* to the U.S. Supreme Court, all involving constitutional law and immigrants' rights.
8. Between May 20, 2013 and July 1, 2013, I spent over 40 hours working on Ms. [REDACTED]'s case. I performed legal research and analysis, reviewed briefing in similar cases, consulted with experts in the field and with my law student intern, revised student drafts, and drafted sections of the petition. In my professional opinion, these 40 hours of work were reasonable and necessary to Ms. [REDACTED]'s case.
9. In my professional opinion, the 35 hours of work that my law student intern, [REDACTED] performed in preparing this petition were reasonable and necessary. Attached to the Motion for Attorney's Fees is Exhibit 5, which outlines the hours worked by [REDACTED] and others in the Immigration Clinic. This number reflects a reduction of the number of hours

the students actually spent on their work. I exercised discretion in reducing the quantity of law student hours.

10. While the Immigration Clinic provides free legal services, the market rate for my services would likely have been \$300 or more per hour. I understand that Ms. [REDACTED] is requesting fees for my work at the lower rate of \$187.46 per hour, based upon the Equal Access to Justice Act rate of \$125 per hour and the cost-of-living adjustment formula described in the briefing by Ms. [REDACTED]'s current counsel.



Farrin Anello

6/4/14
Date

EXHIBIT 3

SWORN DECLARATION OF REBECCA SHARPLESS

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I, Rebecca Sharpless, swear under penalty of perjury that the following is correct to the best of my information, knowledge, and belief:

1. I am the Director of the Immigration Clinic at University of Miami School of Law. This Declaration is submitted in support of a Motion for Attorneys' Fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* in the case of [REDACTED]
[REDACTED].
2. I am a graduate of Swarthmore College having graduated with a Bachelor of Arts degree with high honors in 1990. I graduated from the University of Cambridge in 1991, where I received an MPhil masters degree in philosophy. In 1994, I graduated *cum laude* from Harvard Law School and received the degree of *juris doctor*.
3. Following my graduation from Harvard Law School, I became a member of the bar of the State of Florida, United States District Court

for the Southern District of Florida, United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. I am also a member of the Amicus Committee of the American Immigration Lawyers Association (AILA), a Board Member of the South Florida Chapter of AILA, and a member of the Board of Directors of the National Immigration Project of the National Lawyers Guild.

4. As a practicing attorney, I have been actively involved in the immigration bar.
5. I concentrate in immigration and nationality law, including family-based petitions, deportation or removal defense, and federal court litigation. I am also proficient in Spanish.
6. Attached to the Motion for Attorneys' Fees is Exhibit 5 which outlines the hours and fees, incurred by me and the Immigration Clinic at the University of Miami School of Law in connection with this litigation.
7. In my professional opinion, the 19.7 hours of work incurred by me in preparation for this case were reasonable and necessary.

8. In my professional opinion, the 22 hours of work incurred by my former law student intern, [REDACTED], and the 19.7 hours of work incurred by my other former law student intern [REDACTED], in preparation for this case, were reasonable and necessary. These numbers reflect a reduction of hours the students actually spent on their work. I exercised discretion in reducing the number of law student hours.
9. Ms. [REDACTED] is requesting a rate of \$187.46 per hour for my services. While the Immigration Clinic provides free legal services, the market rate for my services would be greater than \$300 per hour.
10. In addition, the market rate for second and third-year law student interns would be \$75 per hour or greater.


Dated: June 4, 2014
Rebecca Sharpless

EXHIBIT 4

DECLARATION OF ROMY LERNER, ESQ.

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I, Romy Lerner, swear under penalty of perjury that the following is correct to the best of my information, knowledge, and belief:

1. I am the Supervising Attorney at the Immigration Clinic at the University of Miami School of Law. This Declaration is submitted in support of a Motion for Attorneys' Fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* in the case of [REDACTED]

2. I received a Bachelor of Arts degree *summa cum laude* from Columbia University in 1999. In 2002, I received a degree of *juris doctor* from Columbia Law School. Following my graduation from Columbia Law School, I became a member of the bar of the State of New York.

3. From 2002 until 2005 I was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison, LLP. In 2005 and from 2007 until 2013

I was an attorney at Americans for Immigration Justice, formerly the Florida Immigrant Advocacy Center. In 2006, I was the recipient of a Fulbright fellowship to Argentina.

4. I concentrate in all areas of immigration and nationality law, including immigrant and non-immigrant petitions and removal defense. I am also fluent in Spanish.
5. Attached to the Motion for Attorneys' Fees is Exhibit 5, which outlines the hours and fees, incurred by me and the Immigration Clinic at the University of Miami School of Law in connection with this litigation.
6. In my professional opinion, the 11 hours of work incurred by me in preparation of the Motion for Attorney's Fees in this case were reasonable and necessary.
7. In my professional opinion, the 16.5 hours of work incurred by my law student intern, [REDACTED], and the 19 hours of work incurred by my other law student intern, [REDACTED], in preparation for this case, were reasonable and necessary. These numbers reflect a

reduction of hours the students actually spent on their work. I exercised discretion in reducing the number of law student hours.

8. Ms. [REDACTED] is requesting a rate of \$187.46 per hour for my services. While the Immigration Clinic provides free legal services, the market rate for my services would be greater than \$300 per hour.


Romy Lerner

Dated: June 4, 2014

EXHIBIT 5

**BILLING STATEMENTS OF
ATTORNEYS REBECCA SHARPLESS AND ROMY LERNER AND SUPERVISED LAW
STUDENTS**

Billing Statement for Attorney Rebecca Sharpless

Date	Work Performed	Hours	Rate	Total
6/24/2013	Drafting of Habeas Corpus Petition	3	\$187.46	\$562.38
6/27/2013	Drafting of Habeas Corpus Petition	2.5	\$187.46	\$468.65
7/7/2013	Review of Order to Show Cause	0.5	\$187.46	\$93.73
8/14/2013	Review of Government Response to Order to Show Cause	1.5	\$187.46	\$281.19
8/19/2013	Research for Reply to Government Response to Order to Show Cause	2	\$187.46	\$374.92
8/20/2013	Case meeting with student interns	1.2	\$187.46	\$224.95
8/23/2013	Review of Government Pleading re Custodian	0.25	\$187.46	\$46.87
8/24/2013	Research for Habeas Corpus Petition Reply	2	\$187.46	\$374.92
8/26/2013	Drafting Habeas Corpus Petition Reply	2.5	\$187.46	\$468.65
8/27/2013	Drafting Habeas Corpus Petition Reply	2.5	\$187.46	\$468.65
8/27/2013	Case meeting with student interns	1	\$187.46	\$187.46
12/11/2013	Review of Court decision	0.75	\$187.46	\$140.60
Total		19.7		\$3,692.96

Billing Statement for Law Student [REDACTED]

Date	Work Performed	Hours	Rate	Total
8/20/2013	Case supervision	1.2	\$75.00	\$90.00
8/21/2013	Research for habeas petition reply, review cases	2	\$75.00	\$150.00
8/22/2013	Work on draft outline for habeas reply	3.5	\$75.00	\$262.50
8/25/2013	Worked on draft edited based on feedback from supervising attorney	4	\$75.00	\$300.00
8/26/2013	Edited draft	2.5	\$75.00	\$187.50
8/27/2013	Case meeting	1	\$75.00	\$75.00
8/28/2013	Research, draft edits, finished Reply	5.5	\$75.00	\$412.50
Total		19.7		\$1,477.50

Billing Statement for Law Student [REDACTED]

Date	Work Performed	Hours	Rate	Total
8/20/2013	Supervisory meeting	1.2	\$75.00	\$90.00
8/21/2013	Research and draft habeas response	4.8	\$75.00	\$360.00
8/22/2013	Drafted habeas response brief	4	\$75.00	\$300.00
8/25/2013	Revised response brief	4.3	\$75.00	\$322.50
8/26/2013	Revised draft of habeas response	2	\$75.00	\$150.00
8/28/2013	Finalized response brief	5.7	\$75.00	\$427.50
Total		22		\$1,650.00

Billing Statement for Attorney Romy Lerner

Date	Work Performed	Hours	Rate	Total
5/21/2014	Habeas Case supervision meeting with [REDACTED] [REDACTED]	1		\$187.46
5/25/2014	Habeas Case supervision phone call with [REDACTED]	1	\$187.46	\$187.46
6/1/2014	Drafted motion for attorneys fees	2	\$187.46	\$374.92
6/1/2014	Research for motion for attorneys fees	2	\$187.46	\$374.92
6/2/2014	Drafted motion for attorneys fees	3	\$187.46	\$562.38
6/3/2014	Worked on draft motion for attorney's fees	2	\$187.46	\$562.38
Total		11		\$2,249.52

Billing Statement for Law Student [REDACTED]

Date	Work Performed	Hours	Rate	Total
5/21/2014	Read 28 U.S.C. s.2412, Supervision meeting	1	\$75	\$75
5/22/2014	Started drafting outline for Motion for Attorney's Fees, requested time sheets for the work done on the habeas corpus petition by former interns	2	\$75	\$150
5/23/2014	Drafted Affidavit for Rebecca Sharpless, finished drafting Outline for Attorney's Fees, researched attorney's fees	2	\$75	\$150
5/27/2014	Did research for attorney's fees motion, drafted Affidavits for Romy Lerner and Farrin Anello.	2	\$75	\$150
5/28/2014	Started working on first draft of the motion for attorney's fees	3	\$75	\$225
5/29/2014	Finished First Draft of Motion (my section of the motion) for Attorney's Fees	3	\$75	\$225
5/30/2014	Worked on second draft of the Motion for Attorney's Fees researched cases for a section of the motion	2	\$75	\$150
5/31/2014	Edited second draft of my part of the motion for attorney's fees and researched on additional issues	2	\$75	\$150
6/1/2014	Edited draft of my part of the motion for attorney's fees	1	\$75	\$75
6/2/2014	Edited draft of attorneys' fees motion	1	\$75	\$75
Total		19		\$1,425

Billing Statement for Law Student [REDACTED]

Date	Work Performed	Hours	Rate	Total
5/21/2014	Case supervision meeting	1	\$ 75.00	\$75.00
5/22/2014	Researched prevailing party issue, drafted affidavit	1	\$ 75.00	\$75.00
5/23/2014	Prepared an outline of the memo, conducted research for Attorney's Fees Motion	3	\$ 75.00	\$225.00
5/25/2014	Case supervision call with attorney	1	\$ 75.00	\$75.00
5/27/2014	Did legal research on attorney's fees, started drafting the Motion	2	\$ 75.00	\$150.00
5/28/2014	Continued drafting Motion for Attorney's Fee's. Reviewed hours and tasks information from attorneys and students.	2	\$ 75.00	\$150.00
5/31/2014	Did legal research on EAJA and "cost of living adjustment"and market rates	1	\$ 75.00	\$75.00
6/1/2014	Continued with the research for attorney's fees and preparation of the Exhibits.	1	\$ 75.00	\$75.00
6/2/2014	Edited attorney's affidavits, revised Exhibits and motion as per attorney instructions	2	\$ 75.00	\$150.00
6/3/2014	Checked citations, edited motion	2.5	\$ 75.00	\$187.50
Total		16.5		\$1,237.50

Billing Statement for Law Student [REDACTED]

Date	Work Performed	Hours	Rate	Total
6/5/2013	Research legal issues for habeas petition	2	\$75.00	\$150.00
6/7/2013	Legal research, began drafting habeas petition	3	\$75.00	\$225.00
6/10/2013	Drafting habeas petition	3	\$75.00	\$225.00
6/11/2013	Drafting habeas petition	2	\$75.00	\$150.00
6/17/2013	Edited draft habeas petition; research legal issues on habeas petition	3	\$75.00	\$225.00
6/18/2013	Edited draft habeas petition	2	\$75.00	\$150.00
6/20/2013	Edited draft habeas petition	2	\$75.00	\$150.00
6/21/2013	Edited draft habeas petition	2	\$75.00	\$150.00
6/25/2013	Edited draft habeas petition	3	\$75.00	\$225.00
6/26/2013	Edited draft habeas petition	3	\$75.00	\$225.00
6/27/2013	Edited draft habeas petition	2	\$75.00	\$150.00
6/28/2013	Edited draft habeas petition	3	\$75.00	\$225.00
7/1/2013	Proofreading, citechecking of habeas petition	5	\$75.00	\$375.00
Total		35		\$2,625.00

EXHIBIT 6

U.S. Department Of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

Consumer Price Index

All Urban Consumers - (CPI-U)

U.S. city average

All items

1982-84=100

Year	Semiannual Avg.		Annual Avg.	Dec-Dec	Percent change Avg-Avg
	1st Half	2nd Half			
1982			96.5	3.8	6.2
1983			99.6	3.8	3.2
1984	102.9	104.9	103.9	3.9	4.3
1985	106.6	108.5	107.6	3.8	3.6
1986	109.1	110.1	109.6	1.1	1.9
1987	112.4	114.9	113.6	4.4	3.6
1988	116.8	119.7	118.3	4.4	4.1
1989	122.7	125.3	124.0	4.6	4.8
1990	128.7	132.6	130.7	6.1	5.4
1991	135.2	137.2	136.2	3.1	4.2
1992	139.2	141.4	140.3	2.9	3.0
1993	143.7	145.3	144.5	2.7	3.0
1994	147.2	149.3	148.2	2.7	2.6
1995	151.5	153.2	152.4	2.5	2.8
1996	155.8	157.9	156.9	3.3	3.0
1997	159.9	161.2	160.5	1.7	2.3
1998	162.3	163.7	163.0	1.6	1.6
1999	165.4	167.8	166.6	2.7	2.2
2000	170.8	173.6	172.2	3.4	3.4
2001	176.6	177.5	177.1	1.6	2.8
2002	178.9	180.9	179.9	2.4	1.6
2003	183.3	184.6	184.0	1.9	2.3
2004	187.6	190.2	188.9	3.3	2.7
2005	193.2	197.4	195.3	3.4	3.4
2006	200.6	202.6	201.6	2.5	3.2
2007	205.709	208.976	207.342	4.1	2.8
2008	214.429	216.177	215.303	0.1	3.8
2009	213.139	215.935	214.537	2.7	-0.4
2010	217.535	218.576	218.056	1.5	1.6
2011	223.598	226.280	224.939	3.0	3.2
2012	228.850	230.338	229.594	1.7	2.1
2013	232.366	233.548	232.957	1.5	1.5

U.S. Department Of Labor
Bureau of Labor Statistics
Washington, D.C. 20212

Consumer Price Index

Urban Wage Earners and Clerical Workers - (CPI-W)

U.S. city average

All items

1982-84=100

Year	Semiannual Avg.		Annual Avg.	Percent change Dec-Dec	Percent change Avg-Avg
	1st Half	2nd Half			
1982			96.9	3.8	6.0
1983			99.8	3.3	3.0
1984	102.1	104.4	103.3	3.6	3.5
1985	106.0	107.8	106.9	3.6	3.5
1986	108.2	109.0	108.6	0.6	1.6
1987	111.2	113.7	112.5	4.5	3.6
1988	115.5	118.4	117.0	4.4	4.0
1989	121.3	123.9	122.6	4.5	4.8
1990	127.1	131.0	129.0	6.1	5.2
1991	133.3	135.2	134.3	2.8	4.1
1992	137.1	139.3	138.2	2.9	2.9
1993	141.3	142.9	142.1	2.5	2.8
1994	144.5	146.8	145.6	2.7	2.5
1995	148.9	150.6	149.8	2.5	2.9
1996	153.1	155.2	154.1	3.3	2.9
1997	157.0	158.1	157.6	1.5	2.3
1998	159.0	160.3	159.7	1.6	1.3
1999	162.0	164.5	163.2	2.7	2.2
2000	167.6	170.2	168.9	3.4	3.5
2001	173.2	173.8	173.5	1.3	2.7
2002	174.9	176.9	175.9	2.4	1.4
2003	179.3	180.3	179.8	1.6	2.2
2004	183.2	185.8	184.5	3.4	2.6
2005	188.8	193.2	191.0	3.5	3.5
2006	196.3	198.0	197.1	2.4	3.2
2007	201.069	204.466	202.767	4.3	2.9
2008	210.309	211.796	211.053	-0.5	4.1
2009	207.883	211.377	209.630	3.4	-0.7
2010	213.426	214.507	213.967	1.7	2.1
2011	220.196	222.954	221.575	3.2	3.6
2012	225.581	226.878	226.229	1.7	2.1
2013	228.812	229.837	229.324	1.5	1.4

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. [REDACTED]

[REDACTED])
)
Petitioner,)
)
v.)
)
MARC J. MOORE, et. al,)
)
Respondents.)
_____)

AFFIDAVIT OF IRA J. KURZBAN, ESQ.

BEFORE ME, the undersigned authority appeared IRA J. KURZBAN, Esq. who after being duly sworn deposes and states as follows:

1. I am a Partner in the law firm of Kurzban Kurzban Weinger, Tetzeli and Pratt P.A. of Miami, Florida. This Affidavit is submitted in support of a Motion for attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* in the above referenced case.

2. I am a graduate of Syracuse University having graduated Magna Cum Laude and Phi Beta Kappa with honors in Political Science from the University in 1971. In 1973, I obtained a Master's Degree from the University of California at Berkeley in the Political Science Department.

3. In 1976, I graduated from the University of California, Berkeley School of Law. Following my graduation from the University of California, Berkeley School of Law, I became a member of the United States District Courts for the Central District of California, the Northern District of California and the Southern District of Florida, the Second, Fourth, Fifth, Sixth, Seventh, Ninth, Eleventh and D.C. Circuit Courts of Appeal and the United States Supreme

Court, and I have either briefed and/or argued cases in all of those Courts. I am also a member of the trial bar of the United States District Court, Southern District of Florida. In 1987, I was awarded an Honorary Fellow Degree by the faculty of the University of Pennsylvania Law School, and in 2003-04, I received the Wasserstein Public Interest Fellowship at Harvard Law School. In 2011, I was named a Fellow of the American Bar Association.

4. Since 1977 I have been active in all aspects of immigration law. I have written over a dozen articles in various aspects of immigration law, including political asylum, criminal issues related to immigration law, naturalization, employment-based immigration, federal judicial review, attorneys' fees and employer sanctions. I was a member of the Board of Editors of the *Immigration Law and Procedure Reporter*. I have written chapters in several treatises on immigration law, including one on Federal Judicial Review for Immigration Law and Defense. I have also written articles in two full length books on immigration: *Democracy and Immigration in Keeping Out the Other* (Brotherton and Kretschmas, 2008) and *Comprehensive Immigration Reform: The Missing Debate* (Robinson and Parsa 2011). I am also the author of the best selling one volume book on immigration law called *Kurzban's Immigration Law Sourcebook*, which is in its Thirteenth Edition (2012).

5. I have also lectured extensively on immigration matters. I have been a lecturer at the Second Circuit Judicial Conference (115 F.R.D. 438), at every National Convention of the American Immigration Lawyers Association since 1981, at every Florida Bar Annual Immigration Seminar and at the American Bar Association's Annual Convention. I am also a regular lecturer at the national conference for clerks of the state and federal courts (CASA), sponsored by the ABA and I have lectured on immigration matters for the clerks in the Seventh and Ninth Circuit Courts of Appeals. I have also participated in the Baron de Hirsch Meyer Lectures at the University of Miami and the Lowenstein International Rights Project at Yale Law School, as well as lecturing at the Harvard Law School.

6. As a practicing attorney, I have also been actively involved in the immigration bar. I am the past president of the South Florida Chapter of the American Immigration Lawyers Association. I was the national president of the American Immigration Lawyers Association in 1987-88, and I thereafter served as its General Counsel. The American Immigration Lawyers Association is an affiliate organization of the American Bar Association and is the only national organization of immigration lawyers in the United States. It has over eleven thousand (11,000) members in thirty-three (33) chapters in the United States and Canada. I am also certified by the Florida Bar as a specialist in immigration law and served on the first committee to draft and grade the certification exam for Florida lawyers.

7. I have also been recognized nationally for my skill as an immigration lawyer. In 1982, I received the American Lawyer's Amny Award for pro bono litigation on behalf of refugees. In 1983, I was named as one of the top twenty immigration lawyers in the United States by the National Law Journal. In the same year I was the recipient of the Jack Wasserman Award for excellence in federal litigation given by the American Immigration Lawyers Association. In 1985, I was recognized as one of "one hundred men and women who are changing the nation" by Esquire Magazine in their 1985 register because of my work on behalf of persons seeking asylum in the United States. In 1986, Newsweek Magazine included me as one of 100 American Heroes in their special edition in commemoration of the 100th Anniversary of the Statue of Liberty. In the same year, Metropolitan Dade County gave me a commendation "for bringing home the meaning of freedom to thousands of refugees seeking liberty on our shores." In 1991, I was named in two categories in The Best Lawyers In America for my work in immigration and labor law and I have been named by every subsequent edition of Best Lawyers. In the same year, Miami Today surveyed my peers and named me one of the twenty best lawyers in Dade County, Florida. Since 2002, I have been named as one of the top lawyers in South Florida and a part of the Legal Elite of South Florida by South Florida Legal Guide and South

Florida Trend magazines. This year, I was named in *Chambers* in the highest category as a “Star Individual” in immigration law. Since 1992, I have received other awards including The Lawyer of the Americas Award in 1992, the Carol King Award for Excellence in Immigration Litigation in 1996 and the Edith Lowenstein Award for Excellence in Immigration Writing in 2002. Since 1996, I have also been named in Who’s Who in America, Who’s Who in American Law and Who’s Who in the World.

8. Since 1977, I have also litigated a variety of civil rights cases and cases against the federal government in the federal and state court systems including over 50 published decisions in the federal courts. Among the cases that I have litigated since that time are *Commissioner v. Haitian Refugee Center, Inc.*, 111 S.Ct. 888 (1991) (due process challenge to INS procedures involving 50,000 farm workers); *Commissioner v. Jean*, 110 S.Ct. 2316 (1990) (established standard for attorneys fees on fees litigation under EAJA); *Jean v. Nelson*, 472 U.S. 846 (1985) (Equal protection challenge to I.N.S. detention of Black Haitian nationals); *Arnott v. USCIS*, 290 F.R.D. 579, 588 (C.D. Cal. 2012) (granting class certification of case involving EB-5 investors that was eventually settled and recognizing counsel’s expertise in class actions); *Chang v. United States*, 327 F.3d 911 (9th Cir. 2003) (Challenge to INS’ retroactive application of policies to foreign investors); *Tefel v. Reno*, 972 F.Supp 623 (S.D. Fla. 1997), (class action involving 40,000 Nicaraguan and other nationalities); *Haitian Refugee Center v. Baker*, 953 F.2d 498 (11th Cir.) *cert. denied*, 112 S.Ct. 1245 (1992) (court denied First and Fifth Amendment and statutory rights to Haitians improperly detained at Guantanamo Naval Base); *Haitian Refugee Center v. Nelson*, 872 F.2d 1555 (11th Cir. 1989) (reversed the denial of 22,000 applications for amnesty status for farm workers); *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008) (enjoined state statute that sought to punish charter operators and travel agents for engaging in federally licensed travel to Cuba); *Tefel v. Reno*, 972 F. Supp. 608, 617-18 (S.D. Fla. 1998); *Michel v. Milhollan*, Case No. 89-1040-Civ-Nesbitt (S.D. Fla. 1989) (enjoined

unlawful change of venue proceedings); *Velasquez v. Nelson*, Case No. 86-1262-Civ-Ryskamp (S.D. Fla. 1986) (same); *Augustin v. Harrison*, Case No. 86-0882-Civ-Marcus (S.D. Fla. 1986) (enjoined implementation of SAVE program); *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. 1982) (established a constitutional right to apply for asylum); *American Airway Charters, Inc. v. City of Hialeah*, Case No. 80-415-CIV-Aronovitz (S.D. Fla. 1980) (enjoined the City of Hialeah from closing plaintiff's business); *Hispania InterAmericana, et al. v. City of Miami*, Case No. 84-1436-CIV-Davis (S.D. Fla. 1984) (enjoined a prohibitive bond requirement restricting the shipment of medicines and clothes for humanitarian reasons to Cuba); *Sannon v. The United States*, 460 F. Supp. 468 (S.D. Fla. 1978) (enjoined exclusion hearings for Haitian refugees); *Smith v. Smathers*, 372 So.2d 427 (Fla. 1979) (original proceeding in mandamus before the Florida Supreme Court challenging the failure to permit write-in ballots).

9. I have also been recognized by the United States District Courts for my professional competence and skill as an attorney, See, e.g., *Arnott v. USCIS*, 290 F.R.D. 579, 588 (C.D. Cal. 2012) (EB-5 investors case; court recognized counsel's expertise in class actions); *Tefel v. Reno*, 972 F. Supp. 608, 617-18 (S.D. Fla. 1998); *Haitian Refugee Center, Inc. v. Smith*, 644 F. Supp. 382, 389 (S.D. Fla. 1984) *affirmed*, 791 F.2d 1489 (11th Cir. 1986) (Order Granting Motion for Fees, Costs and Expenses) and *Louis v. Nelson*, 646 F. Supp. 1300, 1309-1310 (S.D. Fla. 1986) *affirmed in part, vacated and remanded*, 863 F.2d 759 (11th Cir. 1989) (Order Awarding Fees); *Hispania InterAmericana, et al. v. City of Miami*, Case No. 84-1436-Civ-Davis (S.D. Fla. 1984) (Order Awarding Attorney's Fees and Costs at p.5) and *ABC Charters, Inc. v. Bronson*, Case No. 08-21865-Civ-Gold/McAliley (S.D. Fl. 2010) (Report Awarding Attorney's Fees and Costs at p. 11) and by the Florida Supreme Court in bestowing upon me the First Tobias Simon Pro Bond Award in April 1982.

10. The courts in many of the above referenced cases have awarded me fees for legal work ranging up to \$450 per hour under the Civil Rights Attorneys Fees Act, 42 U.S.C. § 1988

and the Equal Access to Justice Act (EAJA). See also, *Young v. Department of Justice*, Case No. AT-0752-91-0154-A-1 (Nov. 14, 1991). The usual hourly rate that I currently charge for all immigration matters, including those requiring litigation, is \$750 per hour.

11. Based on my experience practicing immigration law and litigating in the federal courts, I can attest to the prevailing market rates in South Florida for federal court litigation in immigration and nationality cases.

12. The prevailing market rate for South Florida for federal court litigation in immigration cases ranges between \$400 and \$750 per hour.

13. I have known Rebecca Sharpless for over a decade, and I am familiar with the work of the University of Miami School of Law's Immigration Clinic and in particular its cutting-edge work in federal court litigation on immigration-related matters.

14. Ms. Sharpless is a nationally-recognized litigator and appellate lawyer in immigration-related issues in the federal courts. She has been the current Director of the University of Miami School of Law Immigration Clinic since 2009 and is a former clinical professor at the Florida International University School of Law Immigration Clinic. Prior to becoming a clinical law school professor, Ms. Sharpless was a supervising attorney at Florida Immigrant Advocacy Center (FIAC) from 1996 to 2007 where she was counsel of record on FIAC's Amicus Curiae Brief to the United States Supreme Court in the landmark case, *INS v. St. Cyr*, 533 U.S. 289 (2001).

15. As a clinical professor, Ms. Sharpless and the University of Miami School of Law Immigration Clinic, under her supervision, has continued litigating immigration cases or serving as counsel for amici curiae in federal district courts and before the U.S. Courts of Appeal and the Florida Supreme Court. See *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Hernandez v. State*, 124 So. 3d 757 (Fla. 2012); *Castano v. State*, 119 So. 3d 1208 (Fla. 2012); *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012); *Jean-Pierre*

v. *U.S. Atty. Gen.*, 500 F.3d 1315 (11th Cir. 2007). Ms. Sharpless has also been at the forefront of innovative litigation strategies before the Immigration Courts and has been a frequent author and lecturer on the topic of immigration law at both local and national CLE conferences and seminars and a leader among federal litigation immigration practitioners in South Florida as she is currently serving on the Board of Directors for South Florida AILA.

16. It is my professional opinion that if in private practice, Ms. Sharpless and other supervising attorneys in the Clinic would command hourly rates at or above the prevailing market rates.

FURTHER AFFIANT SAYETH NAUGHT.



IRA J. KURZBAN, ESQ.

STATE OF FLORIDA)
 : ss
COUNTY OF DADE)

On this 4 day of June, 2014, before me, the undersigned authority, personally appeared IRA J. KURZBAN, who is personally known to me, and who took an oath.



NOTARY PUBLIC

My commission expires:

