

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MARLON M.M.,

Case No. 26-CV-106 (NEB/ECW)

Petitioner,

v.

ORDER ON PETITIONER'S
MOTION FOR ATTORNEYS' FEES

DAVID EASTERWOOD, in his official capacity as Field Office Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement; TODD M. LYONS, in his official capacity as Director of Immigration and Customs Enforcement; MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security¹; U.S. DEPARTMENT OF HOMELAND SECURITY; and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

Earlier this year, the Court granted Marlon M.M.'s petition for a writ of habeas corpus. Marlon M.M. moves for attorneys' fees under the Equal Access to Justice Act

¹ The U.S. Senate confirmed Markwayne Mullin as Secretary of the Department of Homeland Security, so pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Markwayne Mullin is substituted as a Respondent in this suit.

("EAJA").² Because Respondents conceded that Marlon M.M. should be released, the motion for attorneys' fees (ECF No. 18) is granted.³

BACKGROUND

Marlon M.M. is a citizen of Nicaragua and asylum-seeker who has lived in the United States since January 2022 when he entered the country without inspection. (ECF No. 10 ("Order") at 1.⁴) In January 2026, Respondents arrested Marlon M.M. and took him into custody. (*Id.*) He filed a petition for a writ of habeas corpus with this Court the next day. (ECF No. 1.)

Respondents claimed that Marlon M.M. was detained under 8 U.S.C. Section 1225(b)(1) rather than Section 1225(b)(2). (ECF No. 7 at 1.) In their response to his petition, Respondents conceded that Marlon M.M. should be released in light of *Make the Road New York v. Noem*, 805 F. Supp. 3d 319 (D.D.C. 2025) and *Make the Road New York v. Noem*, No. 25-5320, 2025 WL 3563313 (D.C. Cir. Nov. 22, 2025) (per curiam).⁵ (ECF No. 7 at 7 ("[R]elease appears appropriate here").) The Court ordered Marlon M.M.'s immediate release. (Order at 2.)

² Marlon M.M. filed this motion within thirty days of final judgment, so the motion is timely. 28 U.S.C. § 2412(d)(1)(B).

³ Marlon M.M. also requests that the Court order Respondents to return his personal property taken during his arrest. (ECF No. 21 at 12.) Because Marlon M.M. confirmed to the Court and Respondents that the property has been returned, the issue is moot.

⁴ All page citations reference ECF pagination.

⁵ Although Respondents agreed to Marlon M.M.'s release, Respondents noted that they disagree with the D.C. Circuit's decision. (ECF No. 7 at 7.)

ANALYSIS

I. Legal Standard

The EAJA provides that the prevailing party in any civil action against the United States (except those sounding in tort) must be awarded attorneys' fees unless the government's position was substantially justified or "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). To be substantially justified, the position must have "a reasonable basis in law and fact," but it "need not be correct." *Bah v. Cangemi*, 548 F.3d 680, 683–84 (8th Cir. 2008) (quoting *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988)). "Once a party establishes that he or she was a prevailing party, the burden shifts to the government to prove that it was substantially justified in asserting its position." *Huett v. Bowen*, 873 F.2d 1153, 1155 (8th Cir. 1989) (per curiam). The requested attorneys' fees must be reasonable. 28 U.S.C. § 2412(d)(2)(A).

II. Entitled to Attorneys' Fees

Marlon M.M. prevailed in his habeas action against the United States. On January 15, 2026, this Court granted his petition and ordered his immediate release. (Order at 2.) Marlon M.M. has established that he is the prevailing party, so the burden shifts to Respondents to prove that their position was substantially justified.

Respondents have not proven that their position was substantially justified. In response to Marlon M.M.'s petition, Respondents agreed that "on the current record, release is appropriate." (ECF No. 7 at 7.) In their objection to Marlon M.M.'s motion for attorneys' fees, Respondents argue that Marlon M.M.'s detention and habeas petition related to the government's interpretation of 8 U.S.C. § 1225(b)(2). (ECF No. 25 at 2.) But in their response to the habeas petition, Respondents were clear that "[t]his case is different from *Andres R.E.* and others like it in this district and elsewhere, addressing the

government's contested interpretation of § 1225(b)(2)" because Marlon M.M. was detained under Section 1225(b)(1). (ECF No. 7 at 1.)

Respondents' objection to Marlon M.M.'s motion for attorneys' fees is thus unresponsive to his underlying habeas petition and the government's prior position in this litigation. Respondents have therefore failed to carry their burden of showing that their position was substantially justified. Marlon M.M. is entitled to attorneys' fees.

III. Reasonableness

Because Marlon M.M. is entitled to attorneys' fees, the Court next turns to whether the requested fees are reasonable. 28 U.S.C. § 2412(d)(2)(A). "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

Rate. Under the EAJA, attorneys' fees "shall not be awarded in excess of \$125 per hour" unless "an increase in the cost of living or a special factor" justifies a higher fee. 28 U.S.C. § 2412(d)(2)(A). Marlon M.M. seeks an upward adjustment from the statutory maximum to \$261.12 per hour based on a cost-of-living adjustment. (ECF No. 21 at 8–9 (citing ECF No. 22 (using the United States Bureau of Labor Statistics' Consumer Price Index ("CPI") Inflation Calculator).) The CPI is "'proper proof' of the increased cost of living since the EAJA's enactment" justifying an award of attorneys' fees greater than the statutory limit. *Johnson v. Sullivan*, 919 F.2d 503, 504 (8th Cir. 1990) (citation omitted).

When a plaintiff provides such proof, the Court retains discretion to increase the hourly rate to account for the cost of living; an increase "is not automatic." *Amy W. v. Kijakazi*, No. 21-CV-2034 (SRN/LIB), 2022 WL 16972521, at *3 (D. Minn. Oct. 24, 2022),

report & recommendation adopted, 2022 WL 16966710 (D. Minn. Nov. 16, 2022); *see McNulty v. Sullivan*, 886 F.2d 1074, 1074 (8th Cir. 1989) (per curiam).

Courts have calculated a cost-of-living adjustment “by multiplying the standard EAJA rate by the CPI for urban consumers for each year attorney's fees are sought, and then dividing the product by the CPI in the month that the cap was imposed, in this case 155.7 for March of 1996, the year the new statutory cap of \$125 was put into place.” *Sarah K. v. Kijakazi*, No. 21-CV-2223 (ECW), 2022 WL 17584414, at *2 (D. Minn. Dec. 12, 2022); *see also Amy W.*, 2022 WL 16972521, at *3.

Marlon M.M.’s request for an hourly rate of \$261.12 is consistent with the CPI for All Urban Consumers in January 2026, when Marlon M.M.’s attorneys began work on his behalf: $\$125$ (statutory rate) \times 325.25 (January 2026 CPI, All Urban Consumers) / 155.7 (March 1996 CPI, All Urban Consumers) = \$261.12. *See* U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), <https://data.bls.gov/cgi-bin/surveymost?cu> (last visited May 5, 2026) (retrieving data for “U.S. city average, All items - CUUR0000SA0”). Given these circumstances, the Court concludes that the requested rate of \$261.12 per hour is reasonable. *See Chaz J. F. v. Dudek*, No. 24-CV-96 (LMP/DLM), 2025 WL 685973, at *2 (D. Minn. Mar. 4, 2025) (concluding that an unopposed requested rate of \$239 based on CPI was reasonable).

Marlon M.M. then asks the Court to multiply this rate by two and apply a rate of \$522.24 per hour because of special factors. (ECF No. 21 at 9–11.) The Court declines to do so. The Court is cognizant that this case arose from federal government action which overwhelmed not just the local immigration bar, but also this Court. And this case was inherently time sensitive both because of the nature of the claim, a challenge to detention,

and because of the government's actions of rapidly transferring individuals like Marlon M.M. across the country with limited or no ability for them to communicate with counsel.

But the Court nonetheless concludes that the cost-of-living increase alone adequately reflects a reasonable rate. Marlon M.M.'s caselaw, which he cites as support for an increase based on special factors, involve courts increasing a rate based on attorney skill and expertise, rather than the considerations articulated here. *Elbert v. United States Dep't of Agric.*, No. 18-CV-1574 (JRT/TNL), 2023 WL 4704450, at *6 (D. Minn. July 24, 2023) ("The Court agrees that an adjustment based on experience is warranted."); *Meyer v. Hegseth*, No. 23-CV-2745 (JRT/DJF), 2025 WL 1031212, at *5 (D. Minn. Apr. 7, 2025) (accepting increased rate because of attorney's extensive civil litigation experience and expertise in military research). And even though the government's actions strained the judiciary and the right to access counsel, the Eighth Circuit has since concluded that, in most habeas petitions that flooded this Court, the government's position was correct. *Avila v. Bondi*, 170 F.4th 1128, 1138 (8th Cir. 2026). The Court declines to double the rate and concludes that a rate of \$261.12 is reasonable.

Time. Marlon M.M.'s attorneys represent that they spent 20.9 hours on this case. (ECF No. 22 ¶¶ 10–11.) The Court concludes that this amount of time is reasonable. *Ibrahim v. Barr*, No. 18-CV-1883 (PAM/BRT), 2019 WL 1487850, at *3 (D. Minn. Apr. 4, 2019) (awarding attorneys' fees for just over twenty hours of work on a habeas petition challenging immigration detention).

While Marlon M.M.'s attorneys used a template to help prepare the habeas petition, habeas petitions involve case-specific factual inquiries. And without any initial proceedings prior to Marlon M.M.'s arrest, his attorneys had to anticipate Respondents' basis for detention. Additionally, time spent by paralegals, time spent on administrative

matters, and time spent on the case after Marlon M.M.'s release were omitted. (ECF No. 22 ¶¶ 9–11.) The time spent on Marlon M.M.'s case is reasonable.

The Court awards Marlon M.M. reasonable attorneys' fees of \$5,457.41 (\$261.12 (rate) x 20.9 (time)).

CONCLUSION

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Marlon M.M.'s Motion for Attorneys' Fees (ECF No. 18) is GRANTED; and
2. Marlon M.M. is AWARDED reasonable attorneys' fees of \$5,457.41, as authorized by 28 U.S.C. Section 2412(d).

Dated: May 5, 2026

BY THE COURT:

s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge