

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

JEFFREY K. LILE,)	
Appellant,)	
)	
v.)	Vet. App. No. 21-6977
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLANT’S APPLICATION FOR AN AWARD OF REASONABLE
ATTORNEY FEES AND EXPENSES UNDER 28 U.S.C. § 2412(D)**

Pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), Appellant, Jeffrey K. Lile, moves this Court for an award of reasonable attorney fees and expenses. Appellant seeks an award in the amount of \$23,394.11 for litigating the merits of this appeal and drafting this petition. In support of this motion, Appellant submits that: (1) he is entitled to an award of attorney fees and expenses under EAJA, 28 U.S.C. § 2412(d); and, (2) an award of \$23,394.11 is reasonable and appropriate.

PRELIMINARY STATEMENT

In 1980, Congress passed the EAJA in response to its concern that persons “may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights.” Pub. L. No. 96-481, tit. II, §204(a), (c), 94 Stat. 2327, 2329 (1980); *Sullivan v. Hudson*, 109 S.Ct. 2248, 2253 (1989). As the Senate observed, in instances in which the cost of securing vindication exceeds the amount at stake, “it is more practical to endure an injustice than to contest it.” S. Rep. No. 96-253, 96th Cong., 1st Sess. 5 (1979). The purpose of the EAJA’s fee-shifting provisions is thus “to eliminate for the average person the financial disincentive to

challenge unreasonable government actions.” *Commissioner, I.N.S. v. Jean*, 110 S.Ct. 2316, 2321 (1990).

It has since become clear that the EAJA applies to proceedings in this Court. In the Federal Courts Administration Act of 1992, Congress amended section 2412(d)(2)(F) to add the United States Court of Veterans Appeals (now Court of Appeals for Veterans Claims) to the definition of Courts authorized to make awards under the EAJA. Pub. L. No. 102-572, tit. V § 506(b), 106 Stat. 4506, 4513 (1993) (found at 28 U.S.C. § 2412 note); S. Rep. No. 342, 102d Cong., 2d Sess. 39 (1992), [hereinafter “S. Rep”]. *See Jones v. Principi*, 985 F.2d 582 (Fed. Cir. 1992) (vacating and remanding *Jones v. Derwinski*, in light of the Federal Courts Administration Act). In amending the EAJA to apply to appeals to this Court, Congress affirmed the Act’s objective of eliminating financial deterrents to defend against unreasonable government action, observing that “[v]eterans are exactly the type of individuals the statute was intended to help.” S. Rep. at 39.

It is also clear that the EAJA amendment applies in this case. The amendment applies, *inter alia*, “to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act, to any appeal filed in that court on or after such date in the United States Court of Appeals for the Federal Circuit.” Pub. L. No. 102-572, tit. V, §506(b), 106 Stat. 4506, 4513 (1992) (found at 28 U.S.C. § 2412 note). The instant case was pending in the United States Court of Appeals for Veterans Claims after October 29, 1992, when the EAJA amendment became effective.

SUMMARY OF PROCEEDINGS

This case involves the Board's decision dated July 15, 2021, to the extent it denied Appellant basic entitlement to VA benefits based on its finding that Appellant's discharge from service resulted from a voided enlistment due to fraud.

In April 2024 the Court issued a panel decision that vacated and remanded the above-noted claim. Specifically, the Court held that, while VA is bound by a service department's act of voiding an enlistment as well as its determination of the dates of a person's entry and separation, VA must conduct an independent assessment of whether a claimant subject to a voided enlistment is eligible for VA benefits. Additionally, the Court determined that the Board failed to provide an adequate statement of reasons or bases where it neglected to (1) address whether Appellant's voided enlistment was due to a statutory prohibition rather than a dishonorable discharge; and (2) properly explain why Appellant's misdemeanors would have prevented enlistment in light of governing regulations.

ARGUMENT

I. APPELLANT IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND EXPENSES UNDER EAJA, 28 U.S.C. § 2412(D).

There are four statutory requirements that a party must satisfy to be eligible for an award of attorney's fees under EAJA, 28 U.S.C. § 2412(d). They are: (1) the party must have been a "prevailing party;" (2) the party must be eligible to receive an award under this subsection;" (3) the position of the United States must not have been "substantially justified;" and (4) there must be no special circumstances which would make an award unjust. If these requirements are met, the Court "shall award" reasonable fees and expenses. *Gavette v. Office of Personnel Management*, 808 F.2d 1456, 1466 (Fed. Cir. 1986) (en banc). As shown below, Appellant meets these requirements.

A. Appellant is a Prevailing Party

Generally, to be a prevailing party, a party must receive “at least some relief on the merits” and the relief must materially alter the legal relationship of the parties. *Higher Taste v. City of Tacoma*, 717 F.3d 712 (Fed. Cir. 2013) citing *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Res.*, 532 U.S. 598 (2001). More specifically, a party prevails with respect to the EAJA if they “succeed on any significant issue in the litigation which achieves some of the benefit the parties sought in bringing the suit.” *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983) (citations omitted); see also *Sullivan v. Hudson*, 109 S. Ct. 2248, 255 (1989); *Texas State Teachers Ass’n v. Garland Indep. School Dist.*, 109 S. Ct. 1486, 1491-92 (1989). In making this inquiry “substance should prevail over form.” *Devine v. Sutermeister*, 733 F.2d 892 (Fed. Cir. 1984). In *Lematta v. Brown*, 8 Vet. App. 504 (1996), this Court held “[I]t is enough for the Court to make some ‘substantive determination in [the] appeal, based upon the record, the parties’ pleadings, and the Court’s precedent, that is favorable to the appellant.” *Id.* at 508 (quoting *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994)).

The Federal Circuit has issued several decisions relating to the attainment of prevailing party status under the EAJA. In *Vaughn v. Principi*, 336 F. 3d 1360 (Fed. Cir. 2003), the court held that a remand to an administrative agency, to consider the effects of legislation enacted while the case is on appeal does not constitute securing relief on the merits for prevailing party purposes. *Id.*, at 1366. There, the Court affirmed the CAVC’s findings that prevailing party status did not attach based on, *inter alia*, the catalyst theory. *Id.*, citing *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Res.* 532 U.S. 598 (2001)(Rejecting the catalyst theory as a basis for fee awards and holding that enforceable judgments on the merits and court-ordered consent decrees create the “material alteration of the legal relationship of the parties). Notably, that case involved a remand for re-adjudication solely in light of the enactment of the VCAA – as opposed to based on VA error. See *Vaughn v. Principi*, 15 Vet. App. at 280; see also *Akers*

v. Sec’y of Veterans Affairs 04-7132 (Fed. Cir. May 26, 2005) (affirming the CAVC determination that Appellant was not a prevailing party inasmuch as the Board decision on appeal was vacated and remanded as a result of a change in law subsequent to the Board’s decision and did not involve a direct finding by the Court on the merits or an order to do anything as a result of an error found either by the Court or the parties.)

In *Former Employees of Motorola Ceramic Products v. United States*, 336 F. 3d 1360 (Fed. Cir. 2003), the Federal Circuit addressed the meaning of “prevailing party” and appeared to clarify its decision in *Vaughn*. There, the court made clear, *inter alia*, that “where a plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party [] without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court. . .” *Id.*, at 1360; *see also Rice Services, Ltd., v. United States*, 405 F.3d 1017 (Fed. Cir. 2005) (Acknowledging *Motorola* for the principle that a remand order to an administrative agency from a court proceeding constitutes the securing of relief on the merits sufficient to attain prevailing party status); *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006).

Most recently, the Federal Circuit in *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016), set out a three-part test “to determine a prevailing party status under the EAJA on administrative agency remands.” Under this three-part test, a party is a prevailing party if (1) the remand was granted based upon or triggered by administrative error, (2) the remanding court did not retain jurisdiction, and (3) the remand clearly orders further agency proceedings, which allows the party “the possibility of attaining a favorable merits determination.” *Blue v. Wilkie*, 30 Vet. App. 61 (2018), *citing Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016). Therefore, by applying the three-part test from *Dover*, the court here should find that Appellant is a prevailing party.

In this case, unlike the facts in either *Vaughn* or *Akers, supra*, the Court of Appeals for Veterans Claims issued a panel decision that vacated and remanded the Board’s

decision. Specifically, the Court determined that the Board failed to provide an adequate statement of reasons or bases where it neglected to (1) address whether Appellant's voided enlistment was due to a statutory prohibition rather than a dishonorable discharge; and (2) properly explain why Appellant's misdemeanors would have prevented enlistment in light of governing regulations.

B. Appellant is a Person Eligible to Receive an Award Under 28 U.S.C. § 2412(2).

In order to be eligible to file a petition for fees under 28 U.S.C. § 2412(d), a prevailing party must not be: (i) an individual whose net worth exceeded \$2,000,000.00 at the time the litigation began, nor (ii) a business entity whose net worth exceeded \$7,000,000.00 and which had more than 500 employees at the time the litigation began. 28 U.S.C. § 2412(d)(2)(B)(i), (ii).

Appellant had a net worth *under* \$2,000,000.00 on the date this action was commenced. (*See* Exhibit A, Certification of Net Worth). Moreover, Appellant was not a business entity. Therefore, Appellant is a person eligible to receive an award under the EAJA.

C. The Position of the Government was not Substantially Justified.

In order to be considered "substantially justified" under the EAJA, the government must show that its position was "justified to a degree that could satisfy a reasonable person," i.e., has a reasonable basis in both law and fact. *Pierce v. Underwood*, 108 S. Ct. 2541, 2549-50 (1988); *Beta Systems v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989). The burden is on the Secretary to demonstrate that his position was substantially justified. *Brewer v. American Battle Monument Comm'n*, 814 F.2d 1964, 1569 (Fed. Cir. 1987); *Gavette*, 808 F.2d at 1465-66; *Essex Electro Eng'rs v. United States*, 757 F.2d 247, 252 (Fed. Cir. 1985).

To determine whether the government's position was substantially justified, the Court is "instructed to look at the entirety of the government's conduct and make a

judgment call whether the government’s overall position has a reasonable basis both in law and fact.” *Chiu v. United States*, 948 F.2d 711, 715 (Fed. Cir. 1991). The “overall” position is that taken by the government “both prior to and during litigation.” *Id.* Thus, to prevail on “substantial justification” in this case, the government must demonstrate that the agency action leading to litigation, i.e. the denial of Appellant’s claim, as well as its litigation position in this Court, were “overall reasonable.”

This Court further explained substantial justification in *Moore v. Gober*, 10 Vet. App. 436 (1997). In *Moore*, the Court held that in order “[t]o determine whether the Secretary’s position was ‘reasonable’ during the administrative proceedings, the Court looks to the relevant determinative circumstances, including the state of the law at the time of the BVA decision.” *Id.* at 440 (citing *Bowyer v. Brown*, 7 Vet. App. 549, 552 (1995)).

In this case, the government’s position leading up to, and throughout this litigation was not “substantially justified” where the Court issued a panel decision that vacated and remanded the above-noted claim. Specifically, the Court determined that the Board failed to provide an adequate statement of reasons or bases where it neglected to (1) address whether Appellant’s voided enlistment was due to a statutory prohibition rather than a dishonorable discharge; and (2) properly explain why Appellant’s misdemeanors would have prevented enlistment in light of governing regulations.

D. No Special Circumstances Make an Award Unjust on this Appeal.

The Secretary does not meet the heavy burden of proving that “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). *See Devine v. Sutermeister*, 733 F.2d 892, 895 (Fed. Cir. 1984); *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991). Courts narrowly construe the “special circumstances” exception so as not to interfere with the Congressional purpose for passing the EAJA, i.e., to ensure that litigants have access to the courts when suing the Government. *See Martin v. Heckler*, 772 F.2d 1145, 1150 (11th Cir. 1985); *Taylor v. United States*, 815 F.2d 249, 253 (3d Cir. 1987).

“[T]hat few courts apparently have relied upon this exception to EAJA awards in denying fee applications is evidence that the circumstances of a case will infrequently justify a denial of an award.” There is no reason or special circumstance to deny this Fee Petition.

II. THE COURT SHOULD AWARD APPELLANT REASONABLE FEES AND EXPENSES OF \$23,394.11.

The EAJA provides that a court “shall” award “fees and other expenses” when the other prerequisites of the statute have been met. 28 U.S.C. § 2412(d)(1)(A). The statute defines “fees and other expenses” to include reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).

When Congress has authorized the award of “reasonable” attorney fees, the amount to be awarded is based upon “the number of hours expended on the litigation multiplied by a reasonable hourly rate.” *See Hensley*, 461 U.S. at 433; *National Ass’n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1325 (D.C. Cir. 1982).

A. Hours Reasonably Expended

As the Declaration of Glenn R. Bergmann, Esq. (attached hereto as Exhibit B) documents, in the exercise of sound billing judgment, Appellant’s counsel is not asking for payment for time spent on administrative matters such as copying or filing, nor for communications (either written or oral) among co-counsel. Moreover, being mindful of the reasonableness requirement, Appellant is not requesting compensation for ***12.5 hours – totaling \$2,996.27*** -- of the total time expended. (*See* Exhibit B). Appellant’s counsel submits that a reasonable attorney, exercising sound billing judgment, would charge for time spent on all matters included in Exhibit B – this may have included limited time expended for “peer review” where necessary to ensure that any briefs filed contained comprehensive and complete arguments pertinent to the underlying appeal. To the extent “peer review” time was expended, such would have involved senior attorneys and would have taken the place of “supervisory review” of a substantive pleading.

B. Reasonable Hourly Rate

Under the EAJA, the amount of fees awarded “shall be based upon the prevailing market rates for the kind and quality of services furnished” but “shall not be awarded in excess of \$125.00 per hour unless the Court determines that an increase in the cost of living” is necessary. Appellant’s counsel, Glenn R. Bergmann, avers that the usual and customary fee for working on similar matters has ranged from \$395.00 in 2019 for attorneys with less than one year experience to \$670.00 per hour in 2021 for attorneys with 20 years’ experience according to the most recent fees matrix prepared by the Civil Division of the United States Attorney’s Office for the District of Columbia (USAO).¹

1. The EAJA Statutory Cap of \$125.00 Should be Adjusted Upward to Reflect the Increase in the Cost of Living.

Under 28 U.S.C. § 2412(d)(2)(A)(ii), attorneys may demonstrate that an increase in the cost of living justifies an increase in the \$125.00 per hour statutory cap. *See Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988) (referring to a cap of \$75.00 per hour “adjusted for inflation.”); *Philips v. General Serv. Admin.*, 924 F.2d 1577, 1583 (Fed. Cir. 1991). An increase for cost of living is generally allowed. *Johnston v. Sullivan*, 919 F.2d 503, 508-10 (8th Cir. 1990); *Animal Lovers Volunteer Ass’n, inc. v. Carlucci*, 867 F.2d 1224, 1227 (9th Cir. 1989); *Coup v. Heckler*, 839 F.2d 313, 320 (3d Cir. 1987); *Baker v. Brown*, 839 F.2d 1075 (5th Cir. 1988) (allowed except in unusual circumstances).

This Court in *Elczyn v. Brown*, 7 Vet. App. 170 (1994), decided for the first time that an Appellant’s attorney can petition for a fee in excess of the then statutory cap based upon the Consumer Price Index as published by the Bureau of Labor Statistics. *Id.* at 179-181. This Court further directed attorneys filing for an increased fee based upon the CPI to choose a mid-point in the litigation to establish the appropriate date for calculating the

¹ See The Fitzpatrick Matrix, 2013-2021, U.S. Attorney’s Office, District of Columbia, Civil Division (“It has been developed to provide ‘a reliable assessment of fees charged for complex federal litigation in the District of Columbia,’ as the United States Court of Appeals for the District of Columbia Circuit urged.”) (quoting *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019)).

cost-of-living increase. *Id.* at 181. In this case, the Court issued a panel decision in April 2024. Appellant selects May 2023, as the date for calculating the CPI increase. *See Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

Appellant submits that the Court should increase the \$125.00 per hour cap by the general inflationary index in the cost of living since March of 1996, as reflected by the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV, area.² According to the most recent report from the Bureau of Labor Statistics, the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV, area – rose 92.94% between March 1996, and May 2023. Applying the increase in the CPI to the statutory rate, Appellant’s counsel should be compensated at the rate of \$241.17 per hour. This rate was calculated by subtracting the CPI-U for May 2023 (305.614) from that of March 1996 (158.4), and dividing the result (147.214) by the CPI-U for March 1996. The result (.9294), representing the increase between March 1996 and May 2023 was then multiplied by the statutory rate (\$125.00), demonstrating an increase of \$116.17, which was added to the \$125.00 statutory rate to arrive at the inflation-adjusted rate of \$241.17 per hour.

In addition, the Court has held that work done by attorney-supervised paralegals and law students fall under the EAJA, and it is compensable at the prevailing market rate for the area in which such work was performed. *Sandoval v. Brown*, 9 Vet. App. 177, 181 (U.S. 1996); *see also Cook v. Brown*, 6 Vet. App. 226, 230 (1994). Appellant avers that paralegals and law clerks should be compensated at a rate of \$180.00 per hour, where the customary market rate for the work done by paralegals and law clerks was, \$199.00 in 2020, and \$200.00 in 2021, according to the most recent legal fees matrix prepared by the

² This Court determined that the local CPI-U should be used to calculate the cost-of-living increase. *Mannino v. West*, 12 Vet. App. 242 (1999). Accordingly, counsel has selected CPI-U for Washington-Arlington-Alexandria, DC-VA-MD-WV, to calculate the rate of inflation.

USAO.³ This fees matrix explains that rates for the 2022 calendar year and subsequent years will be generated using the CPI to adjust for inflation.⁴

Considering the foregoing, Appellant's counsel requests a fee of \$23,362.91 based upon 96.5 hours of attorney work and 0.5 hours of paralegal work; and \$31.20 in expenses (See exhibit B) for a total of \$23,394.11.

Respectfully submitted,

/s/ Glenn R. Bergmann

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Counsel for Appellant

³ See The Fitzpatrick Matrix, *supra*.

⁴ *Id.* (explaining that because the data collected for this matrix runs through 2020, “[t]o generate rates in 2021, an inflation adjustment (rounded to the nearest whole dollar) was added. The United States Attorney’s Office determine that, because courts and many parties have employed the legal service index of the Consumer Price Index to adjust attorney hourly rates for inflations, this matrix will do likewise.”).

Exhibit A

CERTIFICATE OF NET WORTH

I, Glenn R. Bergmann, of Rockville, Maryland, hereby declare that at the time this appeal was filed, Appellant did not have a net worth of, or in excess of, \$2,000,000.00. *See* Paragraph 3 of the retainer agreement filed with the Court.

/s/ Glenn R. Bergmann
Glenn R. Bergmann

Exhibit B
DECLARATION OF APPELLANT'S COUNSEL,
GLENN R. BERGMANN

In support of Appellant's application for attorney's fees under 28 U.S.C. § 2412(d), I Glenn R. Bergmann hereby declare as follows:

1. I am an attorney licensed to practice in the State of Maryland, and am admitted to practice before the United States Court of Appeals for Veterans Claims.
2. Counsel for Bergmann & Moore have represented Jeffrey K. Lile in *Lile v. McDonough*, Vet. App. No. 21-6977 without charge.
3. In June 2024 we visited the website maintained by the U.S. Dept. of Labor, Bureau of Labor Statistics and ascertained the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV, between March 1996 and May 2023.
4. In June 2024 we visited the website maintained by USAO and determined that market rate for paralegals and law clerks was \$199.00 in 2020, and \$200.00 in 2021.

The following is a statement of the exact service rendered and expenses incurred in the representation of the Appellant. In addition to Glenn Bergmann, Esq. (GRB), attorneys who worked on this appeal include: Chloe Canetti (CCC); David Ames (DSA); Greta Allardyce (GRA); Joseph Murphy (JLM); Nicole Steers (NMS); Melissa Hendricks (MAH); Lila Kanovsky (MLK); Rachel Jiang (RBJ); Scott Schulman (SAS); Sharon Kim (SRK); and Tom Polseno (TMP). All are members of the Court's bar. Additionally, the (P)aralegal who worked on this appeal was Brian Poole (P) (BJP). The (L)egal assistants who worked on this appeal include: Katharine Longsworth (L) (KAL); and Robert Johnson (L) (RHJ).

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Timesheet: Jeffrey K. Lile (21-6977)

July 11, 2024

Legal Services Rendered:

Date	Description of Services	Total Hours	(N/C)	Billed Hours
3/9/22	Receive RBA (570 pages) (DSA)	.2	(.2)	.0
3/10/22	Prepare notice of appearance as co-counsel (MAH)	.1		.1
	Review notice to file brief (MAH)	.1		.1
3/25/22	T/c from client Left VM 3/24; listened 3/25 (MAH)	.1		.1
4/1/22	Review order scheduling CLS conference (MAH)	.1		.1
4/4/22	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 1-490 (MAH)	3.0		3.0
	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 491-570 (MAH)	.3		.3
4/5/22	T/c to client Spoke briefly--was at work so said would call back when off. (MAH)	.1		.1
4/6/22	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Research 3.14 & fraudulent entry, defenses (MAH)	1.7		1.7
4/11/22	T/c to client Returning call: spoke about case & told would call back with update after BC on 4/27 (MAH)	.2		.2
4/13/22	Create abstract RBA for CLS review (MAH)	.1	(.1)	.0
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Conduct further research on 3.12 & 3.14; draft memo (MAH)	3.0		3.0
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; finish drafting memo (MAH)	.5		.5

Date	Description of Services	Total Hours	(N/C)	Billed Hours
4/13/22	Revise Rule 33 memo, adding citations to RBA & authorities where necessary (MAH)	.1		.1
	Prepare R33 Certificate of Service (MAH)	.1		.1
	E-corres to VA with R.33 memo (MAH)	.1	(.1)	.0
	Final review of SOI & RBA extracts in preparation for service (MAH)	.1		.1
4/27/22	Review litigation file inc. Rule 33 memo in preparation for CLS conference (MAH)	.2		.2
	Participate in CLS conference (MAH)	.1		.1
	Prepare CLS conference notes for file (MAH)	.3		.3
5/4/22	Supervisory review of conference notes & memo to assess bases for defense (MLK)	.3	(.3)	.0
5/9/22	E-corres to client Re: outcome of BC and sending SOI for him to submit as withdrawing from appeal (MAH)	.1		.1
1/4/23	Supervisory review of case materials after pro se appeal called to panel (TMP)	1.5	(1.5)	.0
1/11/23	T/c to client re: POA (L) (RHJ)	.1	(.1)	.0
1/17/23	Prepare appearance, review/sign POA (GRB)	.1		.1
	Prepare notice of appearance as co-counsel (MAH)	.1	(.1)	.0
1/20/23	Review Court order Re: service of RBA & briefing timeline (MAH)	.1		.1
1/24/23	E-corres from VA re: RBA (JLM/NMS)	.1	(.1)	.0
	Receive RBA (570 pages) (JLM)	.2	(.2)	.0
1/26/23	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 1-570 (JLM)	1.7	(.5)	1.2
	Prepare report re: RBA completeness/legibility; e-corres re: RBA review (JLM)	.4		.4
2/7/23	Prepare statement accepting RBA (MAH)	.1		.1
	Review notice to file brief (MAH)	.1		.1
2/13/23	Review order scheduling CLS conference (MAH)	.1		.1
	Review Court order Revoking Notice to File Brief (MAH)	.1	(.1)	.0
2/28/23	Review Court order Clarifying when parties should file briefs; revoking BC order (MAH)	.1		.1

Date	Description of Services	Total Hours	(N/C)	Billed Hours
4/22/23	Draft principal brief w/ nature of case / summary of issues, statement of relevant facts & procedural history; Commenced (MAH)	3.0		3.0
	Draft principal brief w/ nature of case / summary of issues, statement of relevant facts & procedural history; Completed (MAH)	.5		.5
4/24/23	Draft principal brief; Summary of argument, argument I (MAH)	3.0		3.0
	Draft principal brief; Argument I (MAH)	3.0		3.0
	Draft principal brief; Argument I and II (MAH)	1.0		1.0
4/25/23	Draft principal brief; Argument II and III (MAH)	3.0		3.0
	Draft principal brief; Finish Argument III, conclusion (MAH)	.4		.4
4/27/23	Supervisory review of draft principal brief; review related materials & identify add'l brief content 29 pg brief involving novel legal issues/arg (MLK)	3.5	(.5)	3.0
4/28/23	Supervisory review of draft principal brief; review related materials & identify add'l brief content cont'd (MLK)	3.5	(3.5)	.0
	Supervisory review of draft principal brief; review related materials & identify add'l brief content secondary review of brief submitted to panel re novel legal issue (TMP)	1.5		1.5
5/1/23	Revise principal brief; incorporating supervisory feedback (MAH)	2.0		2.0
	Prepare table of authorities and table of contents for principal brief (MAH)	2.8	(2.8)	.0
5/2/23	Correspondence to client with attached principal brief (GRB)	.1		.1
5/8/23	E-corres from client Indicating receipt of letter with brief (MAH)	.1		.1
	E-corres to client That will reach out once I have an update (MAH)	.1		.1
6/30/23	E-corres to and from VA Re: extension to file VA's brief (MAH)	.2	(.1)	.1
	Review VA's motion to extend time to file brief (MAH)	.1		.1
	Review Court order Granting VA's motion (MAH)	.1	(.1)	.0
8/10/23	E-corres from client Asking if there is an update on case (MAH)	.1		.1

Date	Description of Services	Total Hours	(N/C)	Billed Hours
8/10/23	E-corres to client Giving update (waiting for VA brief) (MAH)	.1		.1
8/14/23	Review notice of VA's brief (MAH)	.1	(.1)	.0
8/28/23	E-corres to and from VA re: our extension; 30-day ext for reply brief; of note VA's brief contains hundreds of pages of attachments which is why need add'l time (MAH)	.2	(.2)	.0
	Prepare motion for extension (MAH)	.1	(.1)	.0
	Review Court order granting our extension (MAH)	.1	(.1)	.0
9/2/23	E-corres from client Re: update (MAH)	.1		.1
9/11/23	E-corres to client Re: update (MAH)	.1		.1
9/20/23	Draft reply brief; Research Duro, cases re: reading regulations (MAH)	3.0		3.0
	Draft reply brief; Research/review Mullen Mem Dec (MAH)	.5		.5
	Draft reply brief; Draft arguments responding to Secretary's assertions re: Duro/Mullen (MAH)	3.0		3.0
	Draft reply brief; Complete arguments responding to Secretary's assertions re: Duro/Mullen (MAH)	.5		.5
9/26/23	Supervisory review of draft reply brief; review related materials & identify add'l brief content (MLK)	.9		.9
	Supervisory review of draft reply brief; review related materials & identify add'l brief content secondary review of panel case (TMP)	.3		.3
9/27/23	Revise reply brief (MAH)	.5		.5
	Prepare table of authorities and table of contents for reply brief (MAH)	.2	(.2)	.0
9/28/23	Correspondence to client with attached reply brief (GRB)	.1		.1
10/4/23	Review Court order Scheduling OA (MAH)	.1		.1
	E-corres from client That received reply brief (MAH)	.1		.1
10/5/23	Review ROP filing notice (MAH)	.1		.1
10/9/23	Review ROP for compliance with Rule 28 and note findings (CCC)	1.6		1.6
10/10/23	Review ROP for compliance with Rule 28 and note findings (CCC)	.3		.3
	Review ROP memo (MAH)	.1	(.1)	.0
	Prepare statement accepting ROP (MAH)	.1		.1

Date	Description of Services	Total Hours	(N/C)	Billed Hours
10/19/23	Prepare notice of appearance as co-counsel 2nd chair, OA (MLK)	.1		.1
12/13/23	E-corres from client Asking for update (MAH)	.1		.1
	E-corres to client Providing update (MAH)	.1		.1
12/26/23	Review briefs/regs/case law for OA on 1/11 (MAH)	3.0		3.0
	Cont'd review briefs/regs/case law for OA on 1/11 (MAH)	.4		.4
12/27/23	Work on outline for OA (MAH)	2.0		2.0
	Practice moot for OA/discussion (MAH)	1.8		1.8
	Prep and participation in moot #1 (MLK)	3.0		3.0
	Prep and participate in moot # 1 (GRA)	3.0		3.0
1/4/24	Review case materials in preparation for moot oral argument (TMP)	1.8		1.8
	Participate in moot oral argument (as judge) & subsequent discussion of issues likely to arise during argument & potential responses (TMP)	1.5		1.5
	Review briefs, cases, and law/regs in preparation for moot oral argument (SAS)	2.8	(.5)	2.3
	Participate in moot oral argument (SAS)	1.5		1.5
	Review briefs & add law / regs, with RBA & leg hx in prep fo moot 2 (GRA)	.9		.9
	Participate in moot 2 (GRA)	1.5		1.5
	Participate in moot 2 (MLK)	1.5		1.5
	Revise outline/practice OA for 2nd moot (MAH)	3.0		3.0
	Participate in moot 2 (MAH)	1.5		1.5
1/5/24	Revise outline/additional research after moot/discussion on 1/4 (MAH)	2.0		2.0
1/8/24	Prepare/practice for OA (MAH)	2.5		2.5
1/9/24	Prepare/practice for OA (MAH)	2.1		2.1
1/10/24	Prepare for OA (MLK)	1.0		1.0
	Add moot/prep for OA (GRA)	1.0		1.0
	Add moot/prep for OA w/ manager/senior attorney (MAH)	1.0		1.0
	Prepare/practice for OA; revise outline following moot prep with manager/senior on team (MAH)	3.0		3.0
1/11/24	2nd chair OA (MLK)	1.5		1.5
	1st chair OA (MAH)	1.5		1.5
1/18/24	E-corres from client Re: update (MAH)	.1		.1
1/22/24	Draft Rule 30(b) motion (MAH)	.3		.3

Date	Description of Services	Total Hours	(N/C)	Billed Hours
1/22/24	Supervisory review R30(b) (MLK)	.2		.2
1/25/24	Review VA's R30(b) motion (MAH)	.3		.3
2/9/24	E-corres from client re: update (MAH)	.1		.1
	E-corres to client re: update (MAH)	.1		.1
2/20/24	E-corres from VA Notice that will be filing 30(b) motion (MAH)	.1		.1
	Review VA's 30(b) motion & attached material (MAH)	.2		.2
4/10/24	E-corres from client Re: update (MAH)	.1		.1
	E-corres to client Re: update (MAH)	.1		.1
4/23/24	Draft assessment re: case goals/merits (MAH)	.1		.1
	Review panel dec.; prepare memo summarizing outcome and consideration of R.35 (MAH)	2.0		2.0
	Supervisory review of case materials inc. court decision & R.35 memo in consideration of seeking further review (MLK)	.3	(.3)	.0
4/24/24	Supervisory review of case materials inc. court decision & R.35 memo in consideration of seeking further review (TMP)	.3	(.3)	.0
4/25/24	T/c to client Left VM (MAH)	.1	(.1)	.0
4/30/24	T/c from client Gave update (MAH)	.1		.1
5/3/24	Commence client correspondence re: case disposition and next steps (RBJ)	2.0		2.0
5/6/24	T/c to client case disposition and next steps (RBJ)	.5		.5
5/7/24	Complete client correspondence re: case disposition and next steps (L) (KAL)	.1	(.1)	.0
	Mail correspondence to client (L) (KAL)	.1	(.1)	.0
7/3/24	Review mandate (GRB)	.1		.1
	Review timesheet entries for accuracy and no-charge time in consideration of reasonableness and billing judgment (SRK)	.5		.5
7/10/24	Prepare EAJA application (P) (BJP)	.5		.5
	Supervisory review of EAJA application (SRK)	.2		.2

Total Services Rendered	<u>109.5</u> hrs	<u>26,359.18</u>
Total Attorney Services Not Charged	(-12.2) hrs	(-2,942.27)
Total Paralegal/Legal Assistant Services Not Charged	(-0.3) hrs	(-54.00)
Total Services Not Charged	<u>(-12.5)</u> hrs	<u>(-2,996.27)</u>
Total Attorney Services Charged	<u>96.5</u> hrs	<u>23,272.91</u>
Total Paralegal Services Charged	<u>0.5</u> hrs	<u>90.00</u>
Total Services Charged	<u>97.0</u> hrs	<u>23,362.91</u>
Expenses		
Priority Mail	9.65 05/02/23	
Priority Mail	8.05 09/28/23	
	5.00 05/07/24	
Priority Mail	8.50 05/07/24	
Total Expenses	31.20	31.20
Total current services rendered plus expenses		<u>\$23,394.11</u>

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/Glenn R. Bergmann July 11, 2024
Glenn R. Bergmann **Date**