

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

Willie Hairston, Jr., )  
Appellant, )  
 )  
v. )  
 )  
Robert L. Wilkie, )  
Secretary of Veterans Affairs, )  
Appellee. )  
 )  
Vet. App. No. EAJA 18-5399

**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"), Mr. Willie Hairston, Jr. ("Appellant" or "Mr. Hairston"), moves this court for an award of reasonable attorney fees in the amount of \$12,143.70.

**Grounds for an award**

This Court identified four elements to award attorney's fees to an eligible party pursuant to the EAJA: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the Government's position is not substantially justified; and (4) an itemized statement of the fees sought. See *Owens v. Brown*, 10 Vet. App. 65, 66 (1997); see also 28 U.S.C. §§ 2412(d)(1)(A), (B). As demonstrated below, Appellant satisfies each of these requirements.

*1. Appellant is a prevailing party*

The Appellant is a prevailing party. In *Blue v. Wilkie*, 30 Vet.App. 61

(2018), No. 15-1844(E), this Court laid out the following three-part test relating to when an appellant is considered a prevailing party under the EAJA:

An appellant who secures a remand to an administrative agency is a prevailing party under the EAJA if (1) the remand was necessitated by or predicated upon administrative error, (2) the remanding court did not retain jurisdiction, and (3) the language in the remand order clearly called for further agency proceedings, which leaves the possibility of attaining a favorable merits determination. *Id.* at 3 (*citing Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016)).

Given this test, the Appellant is the prevailing party. On May 12, 2020, this Court vacated and remanded for re-adjudication the Board's decision on appeal because the Board failed to provide an adequate statement of reasons or bases. Judgment entered June 3, 2020, and Mandate will issue August 2, 2020. Based upon the foregoing, Mr. Hairston is a prevailing party.

*2. Appellant is eligible for an award*

Appellant had a net worth under \$2,000,000.00 on the date this action was commenced and was not a business entity (Exhibit A). Therefore, Appellant is eligible to receive this award. See 28 U.S.C. §2412(d)(2)(B)(i), (ii). Further, no special circumstances make an award unjust and there is no reason or special circumstance to deny this EAJA Application. See *Martin v. Heckler*, 772 F.2d 1145, 1150 (11th Cir. 1985); *Taylor v. United States*, 2d 249, 253 (3d Cir. 1987).

*3. The Secretary's position was not substantially justified*

The Secretary's position precipitating this litigation was not "substantially justified" because the Board failed to provide an adequate statement of reasons

or bases explaining material findings and conclusions as required by the legal framework. 38 U.S.C. §7104(d)(1); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990); *McLendon v. Nicholson*, 20 Vet.App. 79, 81 (2006). This Court withheld judgment on the other issues identified by the Appellant. The Secretary's position during proceedings before the Agency and in Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There is nothing substantially justified in the Board's failure to follow its own rules and regulations.

*4. An itemized statement is attached to this petition*

Appellant has claimed a reasonable amount of attorneys' fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet.App. 51, 53 (1997). Mr. Brandon Steele represented Appellant in this matter. Mr. Steele was licensed to practice law in Florida in 2013 and the *Laffey* Matrix establishes that \$346.00 is the prevailing market rate for an attorney with his experience.<sup>1</sup> An itemized statement of the fees sought is attached as Appendix B.

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<sup>1</sup>The U.S. Attorney's Office maintains a matrix, known as the *Laffey* Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part* by 746 F.2d4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). This Court has approved the use of the *Laffey* Matrix for determining the prevailing market rate for EAJA fees. See, e.g., *Wilson v. Principi*, 16 Vet.App. 509, 213 (2002) (finding the *Laffey* Matrix a "reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes"), vacated on other grounds by 391 F.3d 1203 (Fed. Cir. 2004).

**This Court should award Appellant reasonable Attorney's fees and expenses of \$12,143.70**

The fees and expenses requested are reasonable and should be awarded. 28 U.S.C. §§ 2412(d)(1)(A), (d)(2)(A). 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. 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). The statutory \$125.00 hourly fee should be increased to \$202.25 in light of the increase in the cost of living as demonstrated by the Consumer Price Index. See *Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988); *Elcyzyn v. Brown*, 7 Vet.App. 170, 179-181 (1994); 28 U.S.C. §2412(d)(2)(A)(ii). This Court 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 cost of living increase. *Elcyzyn* 7 Vet.App. at 181. Appellant chooses November 2019, the month that is approximately mid-point to when counsel for Appellant commenced representation and this Court issued its decision, according to the docket.

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 Southern Region. Applying the increase in the CPI to the statutory rate, Appellant's counsel should be compensated at the rate of \$202.25 per hour. This rate was calculated by subtracting the CPI-U for November 2019 (247.385) from that of March 1996 (152.9), and dividing the result (94.485) by the CPI-U for March 1996. The result (.618), representing the increase between March 1996 and November 2019 was then multiplied by the statutory rate (\$125.00), demonstrating an increase of \$77.25, which was added to the \$125.00 statutory rate to arrive at the inflation adjusted rate of \$202.25 per hour. No expenses are being sought. See Exhibit B.

Therefore, Appellant requests fees of \$12,143.70 based upon 60.043 hours of work at the rate of \$202.25. The undersigned has reviewed the billing statement and is satisfied that it accurately reflects the work performed. The undersigned considered and eliminated any time he believed to be either excessive or redundant.

Respectfully submitted,

June 18, 2020

Date

/s/ Brandon A. Steele, Esq.

Brandon A. Steele, Esq.

Counsel for Appellant

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## APPENDIX A

### **DECLARATION OF APPELLANT'S COUNSEL, BRANDON A. STEELE**

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

1. I am an attorney licensed to practice in Florida since 2013, accredited by the Department of Veterans Affairs, and am admitted to practice before the United States Court of Appeals for Veterans Claims.
2. I was employed at the Board of Veterans Appeals and am a current member of the Veteran's Pro Bono Consortium, with experience in veterans law and administrative law.
3. I have represented the Appellant in this CAVC proceeding pro bono.
4. I visited the web site maintained by the United States Department of Labor Bureau of Labor Statistics Office of Consumer Pricing Indexing. From that website I ascertained the Consumer Price Index increases between March 1996, when the EAJA was amended and the relevant dates.
5. Certificate of Net Worth: At no time during the course of his appeal to the Court of Appeals for Veterans Claims, did the Appellant have a net worth of, or in excess of, \$2,000,000.
6. Appendix B is a statement of the exact service rendered and expenses incurred in my representation of the Appellant in this appeal, audited to ensure reasonableness.

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

/s/ Brandon A. Steele, Esq.  
Brandon A. Steele, Esq.

6/18/2020  
Date

## Appendix B

<b>Bill Date</b>	<b>Description</b>	<b>Qty</b>	<b>Rate</b>	<b>Gross</b>
5/1/2019	Prepare and File NOA and other rep p/w	0.083	202.25	16.78675
5/1/2019	Docket Review	0.083	202.25	16.78675
5/1/2019	Screening Memo Review	0.5	202.25	101.125
5/24/2019	Board decision review, with notes and enter into casemap, noting cases and regs cited by Board	0.666	202.25	134.6985
5/24/2019	Review of cases and regs cited by Board, noting differences from text of Board dec	1	202.25	202.25
5/24/2019	RBA Review R.14-45 7:20-8:20 w/ notes and enter into casemap	1	202.25	202.25
5/28/2019	RBA Review R.46-934, 11:00-2:00 w/ notes and enter into casemap	3	202.25	606.75
5/28/2019	RBA Review R.935-2726, 2:45-5:15 w/ notes and enter into casemap	3.5	202.25	707.875
5/29/2019	Legal Research on identified issues, with keyciting and checking for currentness	1.133	202.25	229.14925
5/29/2019	Match key facts id to Board decision, outline issues and formulate basic argument	1.5	202.25	303.375
5/30/2019	Prepare and File RBA Response	0.133	202.25	26.89925
5/31/2019	Review Ct Order for Brief and Calendar	0.133	202.25	26.89925
6/12/2019	Review Ct Order for Rule 33 Cnf and Calendar	0.133	202.25	26.89925
6/22/2019	Outline Rule 33 Memo	0.5	202.25	101.125
6/22/2019	Begin drafting rule 33 memo IMEs argument, + being editing 6:30-9:30	3	202.25	606.75
6/23/2019	Cont. Drafting Rule 33 Memo, revise IME, Board credibility finding, begin editing crediblity findings, R&B 7:00-10:30	3.5	202.25	707.875
6/24/2019	Final edit to Rule 33, cut for space	1	202.25	202.25
6/24/2019	Prepare and file cert of service, file, email memo, update consortium	0.25	202.25	50.5625
6/28/2019	Review and Respond to Sec's Email, update calendar	0.133	202.25	26.89925
6/28/2019	Review Sec's Filing	0.083	202.25	16.78675
7/18/2019	Review email fr Ct Staff re: new Rule 33 mediator	0.016	202.25	3.236
7/19/2019	Prepare for confernce	0.5	202.25	101.125
7/19/2019	Rule 33 Conference	0.332	202.25	67.147
8/3/2019	Begin drafting brief, outline, incorporate Rule 33 into new outline, review notes from conference, jurisdiction of the Court, standards of review 12:00-1:00	1	202.25	202.25
8/3/2019	begin drafting fact section, section II intro, Section 1A and Section 1B 1:00-4:00	3	202.25	606.75
8/5/2019	Cont. drafting Fact section, edit, move around sections	1.5	202.25	303.375
8/5/2019	Cont. editing fact section, begin drafting section II	2	202.25	404.5
8/5/2019	Cont. editing section II	1.25	202.25	252.8125
8/5/2019	Begin drafting Section III and begin editing	2.25	202.25	455.0625

8/6/2019 Draft section I, section on 3.303(b) and fact section for Board dec on appeal 10:30-1:15	2.75	202.25	556.1875
8/6/2019 Cont drafting and editing section 1, and 3.303(b), cont. editing section III 2:00-6:30 (cut 2 hours), draft issue statement	2.5	202.25	505.625
8/7/2019 Final revisions, table of contents, finalize brief, create cover page, create conclusion, edit issue statement, final review, file brief 9:00-12:25 (cut 25 minutes of time)	3	202.25	606.75
8/7/2019 Conf w/ Client re: brief and timelines	0.5	202.25	101.125
10/3/2019 Review and Respond to Sec's ext req email	0.083	202.25	16.78675
10/3/2019 Review Sec's Filing and Calendar update	0.083	202.25	16.78675
11/20/2019 4 emails from Sec and 4 emails to Sec re: CUE claim filed w/ Board after NOA filed and which Sec wanted to construe as a reconsideration	0.25	202.25	50.5625
11/20/2019 1 <sup>st</sup> Conference with Client re: whether he filed recon with Board	0.5	202.25	101.125
11/20/2019 2 <sup>nd</sup> Conference with Client after Sec sent copy of CUE claim	0.3	202.25	60.675
11/20/2019 Working w/ client to w/d the CUE claim and ensure VA did not construe as a recon	0.5	202.25	101.125
11/20/2019 Email to Sec re: Vet's JMR offer and review rejection by Sec	0.083	202.25	16.78675
11/21/2019 Review Sec's brief, make notes, record key case cites, contrast w/ argument in Vet's brief, compare w/ Board decision, double check citations from Sec	1.4	202.25	283.15
11/21/2019 Review cases cited by Sec, distinguish issues	0.666	202.25	134.6985
11/21/2019 Outline reply response	0.5	202.25	101.125
11/21/2019 Conf w/ Client re: Sec's Brief	0.5	202.25	101.125
11/22/2019 Begin drafting reply, post hoc section and section on reweighing evidence	2	202.25	404.5
11/23/2019 Cont. drafting reply, inadequate Board R&B and 3.303(b)	2.5	202.25	505.625
11/24/2019 Cont. drafting reply, edits to R&B and 3.303(b) and being drafting notice section	2	202.25	404.5
11/26/2019 Cont. drafting reply, edits to notice section, continue edits to R&B section, create table of contents and cover page	2	202.25	404.5
11/27/2019 Final edits, finalize reply, file	1	202.25	202.25
12/2/2019 Review Sec Filing and Record of Proceedings, compare to citations in brief and reply	0.25	202.25	50.5625
5/12/2020 Review Ct Mem Dec ad prepare notes for client closing letter	0.5	202.25	101.125
5/15/2020 Prepare closing letter to client w/ next steps	0.5	202.25	101.125
6/18/2020 EAJA application	2.5	202.25	505.625
Total	60.043	202.25	\$ 12,143.70

## Appendix C

### USAO ATTORNEY'S FEES MATRIX — 2015-2018

*Revised Methodology starting with 2015-2016 Year  
Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)*

<u>Experience</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>
31+ years	568	581	602
21-30 years	530	543	563
16-20 years	504	516	536
11-15 years	455	465	483
8-10 years	386	395	410
6-7 years	332	339	352
<b>4-5 years</b>	<b>325</b>	<b>332</b>	<b>346</b>
2-3 years	315	322	334
Less than 2 years	284	291	302
Paralegals & Law Clerks	154	157 1	64

#### Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a feeshifting statute permits the prevailing party to recover "reasonable" attorney's fees. See, e.g., 42 U.S.C. §2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. §552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. §2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does not apply to cases in which the hourly rate is limited by

statute. See 28 U.S.C. §2412(d).

2. A “reasonable fee” is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. See, e.g., *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence’s 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under “PPI Databases,” and “Industry Data (Producer Price Index - PPI),” select either “one screen” or “multi-screen” and in the resulting window use “industry code” 541110 for “Offices of Lawyers” and “product code” 541110541110 for “Offices of Lawyers.” The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 17 .6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPILegal Services index measures. Although it is a national index, and not a local one, cf. *Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.
4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff’d in part, rev’d in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, see note 9 below, the USAO rates for those years will remain the same as previously published on the USAO’s public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, i.e., the original Laffey Matrix updated by the CPI-U for the Washington-Baltimore area. See *Citizens for Responsibility & Ethics in Washington v. Dep’t of Justice*, --- F. Supp. 3d ---, 2015 WL 6529371 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).
5. Although the USAO will not issue recalculated Laffey Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney’s fees under applicable feeshifting statutes for periods prior to June 2015,

provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.

6. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (i.e., at the beginning of the third year following law school). See *Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. See, e.g., *EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.

7. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (i.e., \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).

8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.

9. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (*en banc*). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the USAO as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), cert. denied, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the USAO's *Laffey* Matrix, rather than the so-called "Salazar Matrix" (also known as the "LSI

Matrix” or the “Enhanced Laffey Matrix”), as the “benchmark for reasonable fees” in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Joaquin v. Friendship Pub. Charter Sch.*, 188 F. Supp. 3d 1 (D.D.C. 2016); *Prunty v. Vivendi*, 195 F. Supp. 3d 107 (D.D.C. 2016); *CREW v. U.S. Dep’t of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Pub. Charter Sch.*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne’s Conservation Ass’n v. Dep’t of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). But see, e.g., *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). Since initial publication of the instant USAO Matrix in 2015, multiple courts similarly have employed the USAO Matrix rather than the Salazar Matrix for fees incurred since 2015. E.g., *Electronic Privacy Information Center v. United States Drug Enforcement Agency*, --- F. Supp. 3d ---, 2017 U.S. Dist. LEXIS 111175, at \*17 (D.D.C. 2017) (“After examining the case law and the supporting evidence offered by both parties, the Court is persuaded that the updated USAO matrix, which covers billing rates from 2015 to 2017, is the most suitable choice here.”) (requiring re-calculation of fees that applicant had computed according to Salazar Matrix); *Clemente v. FBI*, No. 08-1252 (BJR) (D.D.C. Mar. 24, 2017), slip op. at 9-10 (applying USAO Matrix, as it is “based on much more current data than the Salazar Matrix”). The USAO contends that the Salazar Matrix is fundamentally flawed, does not use the Salazar Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based