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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

MERRICK GARLAND, Attorney General, *et al.*,

Defendants.

Case No. CV 85-4544-DMG (AGRx)

NOTICE OF MOTION AND
MOTION FOR AWARD OF
ATTORNEYS' FEES;
MEMORANDUM IN SUPPORT OF
MOTION

Hearing: December 10, 2021

Time: 9:30 AM

Judge: Hon. Dolly Gee

Attorneys for Plaintiffs continued

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1 PLEASE TAKE NOTICE that on December 10, 2021, at 9:30 a.m., or as soon
2 thereafter as counsel may be heard, Plaintiffs will and do hereby move the Court for
3 an order awarding them attorneys' fees pursuant to the Equal Access to Justice Act,
4 28 U.S.C. § 2412(d), for fees incurred in securing three Court Orders (Doc. ## 784,
5 799, and 833) which Defendants' appealed (Doc. ## 825, 861, and 931). The appeals
6 were docketed in the Ninth Circuit as case numbers 20-55658 , 20-55753, and 20-
7 55888. The appeals were consolidated on December 3, 2020. *See* Case No. 20-55658
8 (ECF 11). Defendants thereafter moved to dismiss the appeals. The Ninth Circuit
9 Court of Appeals dismissed the appeals on August 31, 2021. (Doc. # 1169).

10 Plaintiffs aver that (1) they are prevailing parties; (2) Defendants' position in
11 this litigation was not substantially justified; and (3) no special circumstances make
12 an award of fees unjust. This motion is based upon the annexed memorandum of
13 points and authorities, Plaintiffs' itemized statements and other supporting exhibits
14 filed concurrently herewith, and upon all other matters of record.

15
16 ///

1 This motion is made following the conference of counsel pursuant to Local
2 Rule 7-3 which took place on September 28, 2021.

3
4 Dated: September 29, 2021.

Respectfully submitted,

5 CENTER FOR HUMAN RIGHTS
6 AND CONSTITUTIONAL LAW
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9 USF SCHOOL OF LAW IMMIGRATION CLINIC
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20 /s/ Peter Schey

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MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

I. INTRODUCTION

Plaintiffs apply for an award of attorneys' fees incurred in this Court to prosecute Plaintiffs' Ex Parte Application for a Temporary Restraining Order and Order to Show Cause re Preliminary Injunction (Doc. # 733) ("Ex Parte Application") in light of the COVID-19 pandemic and the measures Defendants would have to take to address the health and safety of detained Class Members, including the prompt release of Class Members who were not a danger or flight risk, in order to remain in substantial compliance with the terms of the January 28, 1997, Court approved Flores Settlement Agreement ("Agreement"). *See Flores v. Sessions*, 862 F.3d 863, 866 (9th Cir. 2017); *Ex Parte* Application (Doc. ## 733 and 733-1).

On March 28, 2020, the Court granted Plaintiffs' emergency application in substantial part and on April 24, 2020, the Court construed Plaintiffs' request as a motion to enforce and granted the request in substantial part (Doc. ## 740, 768, 784). In all, the Court entered a series of orders (Doc. ## 784, 799, 833, 912, 914, 1014, 1050, 1077, 1098, 1122, 1143, 1158, and 1180) requiring that Defendants Department of Homeland Security ("DHS") and Office of Refugee Resettlement of the U.S. Department of Health and Human Services ("ORR"), *inter alia*, "make every effort to promptly and safely release Class Members who have suitable custodians in accordance with Paragraphs 14 and 18 of the Agreement and the Court's prior orders," Order re Plaintiffs' Motion to Enforce, April 24, 2020 (Doc. # 784) at 18, and to report periodically regarding the conditions and treatment class members experience while in immigration-related detention during the COVID-19 pandemic. *Id.* at 19-21.

Defendants appealed three of these Orders. *See* Notices of Appeal (Doc. ## 825, 861, and 931 (appealing from Doc. ## 784, 799 and 833, respectively).

1 In the Court of Appeals the three appeals were assigned case numbers 20-
2 55658, 20-55658, and 20-55888. The appeals were consolidated on December 3,
3 2020. *See* Case No. 20-55658 (ECF 11). On August 27, 2021, Defendants requested
4 that the Court of Appeals dismiss its appeals. Case No. 20-55658 (ECF 24).
5 Plaintiffs agreed to the request while reserving their right to seek fees for work
6 performed before the District Court. *Id.* On August 31, 2021, the Ninth Circuit
7 Court of Appeals granted Defendants' unopposed motion to dismiss all three
8 appeals. *See* Order, Aug. 31, 2021 (Doc. # 1169); (Ninth Cir. Doc. # 25).

9 Plaintiffs now apply pursuant to the Equal Access to Justice Act, 28 U.S.C.
10 § 2412(d) ("EAJA"), for an award of attorneys' fees incurred in securing the District
11 Court Orders described above.

12 The EAJA allows litigants to recover fees in certain actions against the United
13 States, thus encouraging the vindication of rights by persons who would otherwise be
14 deterred from challenging governmental action because of the expense of litigation.
15 Pub. L. No. 96-481, 94 Stat. 2325. In pertinent part, the EAJA provides:

16 Except as otherwise specifically provided by statute, a court shall award
17 to a prevailing party other than the United States fees and other
18 expenses, in addition to any costs awarded pursuant to subsection (a),
19 incurred by that party in any civil action (other than cases sounding in
20 tort), including proceedings for judicial review of agency action,
21 brought by or against the United States in any court having jurisdiction
22 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.

23 28 U.S.C. § 2412(d)(1)(A).

24 "The clearly stated objective of the EAJA is to eliminate financial
25 disincentives for those who would defend against unjustified governmental action
26 and thereby to deter the unreasonable exercise of Government authority." *Ibrahim*
27 *v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1166 (9th Cir. 2019) (en banc)

(quoting *Ardestani v. I.N.S.*, 502 U.S. 129, 138 (1991)). “Congress specifically intended the EAJA to deter unreasonable agency conduct.” *Id.* at 1166-67 (citing *Comm’r, I.N.S. v. Jean*, 496 U.S. 154, 163 n.11 (1990) and Pub. L. No. 96-481, §§ 201-08, 94 Stat. 2321, 2325-30 (1980)).

As will be seen, Plaintiffs satisfy all requirements for an award of EAJA fees.¹ The Court should accordingly grant the instant motion and award fees as herein requested.

II. TIMELINESS OF FEE REQUEST

The EAJA requires that the successful litigant file the fee application “within 30 days of final judgment.” 28 U.S.C. § 2412(d)(1)(B).²

A “final judgment” is one that is not subject to further review. 28 U.S.C. § 2412(d)(2)(G).

The Court of Appeals dismissed Defendants appeals on August 31, 2021. Plaintiffs motion is therefore timely.

III. ARGUMENT

A. PLAINTIFFS QUALIFY FOR AN AWARD OF EAJA FEES

Pursuant to 28 U.S.C. § 2412(d) “eligibility for a fee award in any civil action requires: (1) that the claimant be ‘a prevailing party’; (2) that the Government’s position was not ‘substantially justified’, (3) that no ‘special circumstances make an award unjust’; and (4) pursuant to 28 U.S.C. § 2412(d), that any fee application be submitted to the court within 30 days of final judgment in the action and be supported by an itemized statement.” *Ibrahim*, 912 F.3d at 1167 (quoting *Jean*, 496 U.S. at 158).³

¹ Plaintiffs incurred but are not seeking recovery of costs.

² The EAJA’s filing deadline controls over Circuit Rule 39-1.6(a). *Al-Harbi v. I.N.S.*, 284 F.3d 1080, 1082 (9th Cir. 2002).

³ The Court also has discretion to determine whether the amount of the requested fees are reasonable. *Pierce v. Underwood*, 487 U.S. 552, 571 (1988).

1 Once this showing is made, the burden shifts to the Government to prove that
2 its position, *both before and during the litigation*, was substantially justified or that
3 special circumstances make an award of attorney's fees unjust. *See Scarborough v.*
4 *Principi*, 541 U.S. 401, 416-17 (2004); *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir.
5 1991).

6 1. Plaintiffs are prevailing parties.

7 Under the EAJA, a party prevails when it has been granted "some relief by a
8 court." *Buchannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health and*
9 *Human Res.*, 532 U.S. 598, 603, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001).⁴ To
10 prove prevailing party status, an EAJA petitioner must establish: (1) a "material
11 alteration of the legal relationship of the parties," and (2) a "judicial *imprimatur* on
12 the change." *Id.* at 604-05 (emphasis in original).

13 A party prevails and thereafter remains prevailing when it has won judicial
14 relief or obtained an enforceable settlement or consent decree. *Prison Legal News v.*
15 *Schwarzenegger*, 608 F.3d 446, 451-52 (9th Cir. 2010); *Keith v. Volpe*, 833 F.2d 850,
16 857 (9th Cir. 1987); *see also Balla v. Idaho*, 677 F.3d 910, 918-20 (9th Cir. 2012)
17 (work for "compliance monitoring" of settlement is compensable even in the absence
18 of new judicial relief). Plaintiffs accordingly prevailed in this action in concluding
19 the Settlement entered herein in 1997.

20 Additionally, the district court's three Orders granted a substantial part of the
21 relief Plaintiffs sought in their ex parte application. Among other things, this Court's
22 several Orders required the Government to promptly release children who have
23 suitable custodians as Paragraphs 14 and 18 of the Agreement require and to file
24

25 ⁴ Although *Buckhannon* involved other fee-shifting statutes and not the EAJA, the
26 Ninth Circuit has held that the requirements of a prevailing party announced in that
27 decision are applicable to EAJA awards as well. *Perez-Arellano v. Smith*, 279 F.3d
28 791, 793-94 (9th Cir. 2002).

1 enhanced reports regarding the conditions and treatment detained children experience
2 during the COVID-19 pandemic. At Defendants' request, the Court of Appeals
3 dismissed Defendants' appeals.

4 The Court clearly ordered Defendants to adjust their policies and practices,
5 Plaintiffs therefore prevailed on their motion, and they accordingly satisfy the first
6 requirement for an EAJA fees and costs award.

7 2. Plaintiffs' net worth is far less than \$2,000,000.

8 Pursuant to 28 U.S.C. § 2412(d)(2)(B)(i), a party's "net worth [must] not
9 exceed \$2,000,000 at the time the civil action was filed"

10 The original plaintiffs in this action were indigent at the time this action
11 commenced. Declaration of Peter Schey, Exhibit 2 ("Schey") ¶ 9. Further, it is
12 virtually self-evident that plaintiff class members are indigent as well. By definition,
13 they are immigrant or refugee minors in federal custody. Agreement ¶¶ 10-11; *see*
14 *also* Schey ¶ 9 (affirming that *Flores* plaintiff class members are on the whole
15 indigent).

16 Plaintiffs accordingly meet the second requirement for an EAJA fee award. *See*
17 *Cobell v. Norton*, 407 F. Supp. 2d 140, 148-49 (D. D.C. 2005) ("[A]ffidavits signed
18 by the class representatives, attesting to the fact that their net worth fell within EAJA
19 statutory guidelines at the time the litigation was initiated . . . amply satisfy the
20 requirements of the statute for the entire class.").

21 3. EAJA fees may be awarded for work to enforce a consent decree.

22 Plaintiffs may recover attorneys' fees related to "compliance monitoring" of a
23 settlement or order "where there has been judicial relief, though the monitoring work
24 is subsequent to the judicial order and produces no new order." *Balla*, 677 F.3d at
25 918; *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478
26 U.S. 546, 558-59, 106 S. Ct. 3088, 92 L.Ed.2d 439 (1986) ("[P]ost-judgment
27
28

1 monitoring of a consent decree is a compensable activity for which counsel is entitled
2 to a reasonable fee.”).

3 In *Delaware Valley*, the plaintiff obtained a consent decree and thereafter
4 conducted additional litigation and administrative advocacy to protect that decree.
5 The Court held the plaintiff entitled to recover attorney’s fees and costs for this post-
6 settlement work. 478 U.S. at 559-60.

7 Following *Delaware Valley*, numerous courts have affirmed litigants’ right to
8 recover attorney’s fees and costs for work to enforce court-approved settlements.
9 E.g., *Keith*, 833 F.2d at 857 (“[T]he district court here ‘was entitled to believe that
10 relief [for the plaintiffs under the consent decree] would occur more speedily and
11 reliably’ if the [plaintiffs’ counsel] engaged in these monitoring activities, and this
12 post-judgment monitoring by the [plaintiffs’ counsel] was, therefore, ‘a necessary
13 aspect of plaintiffs’ “prevailing” in the case.”); *Jeff D. v. Andrus*, 899 F.2d 753, 765
14 (9th Cir. 1989) (plaintiffs entitled to attorney’s fees for work subsequent to the
15 settlement despite waiving pre-settlement fees; “issues in these appeals are separate
16 from the settlement of the underlying litigation and the waiver of attorney’s fees in
17 the settlement does not affect our disposition here.”).⁵

18 4 Defendants’ position lacked substantial justification.

19 Because Plaintiffs both prevailed and meet the EAJA’s net worth standard, “an
20 award of fees is mandatory under the EAJA unless the government’s position is
21 substantially justified or special circumstances exist that make an award of fees
22 unjust.” *Love*, 924 F.2d at 1495. Defendants must carry the burden of proof with
23 respect to both factors. *Id.*; see also *Ibrahim*, 912 F.3d at 1167; *Oregon*
24 *Environmental Council v. Kunzman*, 817 F.2d 484, 498 (9th Cir. 1987); *United States*

25
26 ⁵ In both *Keith* and *Jeff D.*, the court reviewed fees awarded under 42 U.S.C.
27 § 1988. However, identical principles apply to an award of post-judgment
28 attorney’s fees under the EAJA. *Perez-Arellano*, 279 F.3d at 794.

1 v. 22249 *Dolorosa St.*, 190 F.3d 977, 983 (9th Cir. 1999). Defendants must show that
2 the government’s position has “a ‘reasonable basis both in law *and* fact.’” *Meier v.*
3 *Colvin*, 727 F.3d 867, 870 (9th Cir. 2013) (quoting *Pierce v. Underwood*, 487 U.S.
4 552, 565 (1988)) (emphasis added).

5 When analyzing the reasonableness of the Government’s position, a court
6 considers the totality of the circumstances, which incorporates both the challenged
7 underlying governmental action and the Government’s trial court position. *See*
8 *Gutierrez v. Barnhart*, 274 F.3d 1255, 1259 (9th Cir. 2001) (“Thus we ‘must focus
9 on two questions: first, whether the government was substantially justified in taking
10 its original action; and, second, whether the government was substantially justified in
11 defending the validity of the action in court’”) (quoting *Kali v. Bowen*, 854 F.2d 329,
12 332 (9th Cir. 1988)); *see also Rawlings v. Heckler*, 725 F.2d 1192, 1196 (9th Cir.
13 1984). Moreover, “the EAJA – like other fee-shifting statutes – favors treating a case
14 as an inclusive whole, rather than as atomized line-items.” *Ibrahim*, 912 F.3d at 1169
15 (quoting *Jean*, 496 U.S. at 161-62). The Ninth Circuit has “consistently held that
16 regardless of the government’s conduct in the federal court proceedings,
17 unreasonable agency action at any level entitles the litigant to EAJA fees.” *Id.* at
18 1167 (quoting *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007)).

19 Plaintiffs have alleged that Defendants’ position was without substantial
20 justification and that no special circumstances make a fee award unjust. This
21 allegation suffices to shift the burden to Defendants to show that their position was
22 substantially justified or that special circumstances would make a fee award unjust.
23 *Scarborough*, 541 U.S. at 416-17; *see also In re Mgndichian*, 312 F. Supp. 2d 1250,
24 1255 (C.D. Cal. 2003) (prevailing party need only “by alleg[e] that the government's
25 position was not substantially justified and that no special circumstances exist that
26 make an award unjust.”); 28 U.S.C. § 2412(d) (“A party seeking an award of fees ...
27
28

1 shall also allege that the position of the United States was not substantially
2 justified.”).

3 Defendants will not likely succeed in making either showing. There was no
4 substantial justification for Defendants to hold Class Members in unsafe conditions,
5 refuse to make and record prompt and continuous efforts at the release of Class
6 Members, and hold minors in lengthy detention in violation of the Settlement.⁶
7 Defendants’ position was *prima facie* without justification. *Cf. Sampson v. Chater*,
8 103 F.3d 918, 921 (9th Cir. 1996) (no substantial justification “when the agency’s
9 position was based on violations of the Constitution, federal statute, or the agency’s
10 own regulations” (quoting *Mendenhall v. Nat’l Transp. Safety Bd.*, 92 F.3d 871, 874
11 (9th Cir. 1996))).⁷

12 It is clear in this case that the Government’s pre-litigation and litigation
13 positions lacked substantial justification.

14
15 ⁶ Among other things, Defendants’ —

16 (a) failure to have “medical professionals actually make case-by-case
17 determinations of a minor’s eligibility for release,” April 24, 2020 Order
18 at 9;

19 (b) categorically refusing to release “minors with a pending MPP case
20 or removal order,” *id.* at 13-14;

21 (c) failing to make “individualized parole decisions” for accompanied
22 children awaiting decisions in expedited removal proceedings, *id.* at 14-
23 16;

24 (d) refusing to make individualized evaluations of flight risk of
25 accompanied class members whose orders of removal are stayed, *id.* at
26 17-18;

27 are self-evidently without substantial justification.

28 ⁷ It might also be noted that “a string of losses can be indicative” of whether the
government’s position is substantially justified. *Gonzalez*, 408 F.3d at 618 (quoting
Pierce, 487 U.S. at 569).

1 First, Defendants refused to grant relief after being sent a detailed meet and
2 confer letter by counsel outlining steps Defendants could take for the safety of Class
3 Members in light of the COVID-19 pandemic. *See* Schey Declaration ¶ 10 and
4 Exhibit C attached thereto.

5 Second, in light of Defendants’ opposition and the emergent COVID-19 crisis,
6 the Court was required to issued the March 28, 2020 TRO and ordered Defendants
7 Office of Refugee Resettlement (“ORR”) and Immigration and Customs Enforcement
8 (“ICE”) to (1) promptly and safely release Class Members in accordance with
9 Paragraphs 14 and 18 of the Agreement and the Court’s prior orders; (2) submit to
10 inspections by the Juvenile Coordinators; (3) provide evidentiary snapshots to the
11 Court, the Independent Monitor, and Class Counsel; and (4) show cause by April 10,
12 2020, why the Court should not grant Plaintiffs’ motion for preliminary injunction.
13 *See* March 28, 2020 TRO at 13–15 [Doc. # 740]. Thereafter, on April 24, 2020, this
14 Court was required to issue an order enforcing the settlement and two subsequent
15 remedial Orders. [Doc. ## 784, 799, and 833].

16 Defendants’ repeated noncompliance with the Court’s orders was also patently
17 unreasonable. *See, e.g.*, May 22, 2020 at 1-2 (“Contrary to the April 24, 2020 Order,
18 ORR has not provisionally released any minors whose vetted sponsors are unable to
19 obtain fingerprints due to pandemic-related closures” and failed to timely issue field
20 guidance regarding provisional release procedures or home studies); *id.* at 2 (“The
21 ICE report continues to show lack of compliance with Paragraph 18 of the FSA”);
22 June 26, 2020, Order at 2 (addressing “issues raised by Plaintiffs, *amici curiae*, the
23 Independent Monitor, and Dr. Wise regarding ICE’s incomplete, infrequent, and at
24 times, inaccurate, parole determinations and failure to implement best public health
25 practices.”); *id.* at 5 (ordering ORR to “review and amend its fingerprinting policy to
26 provide for a less onerous chain of approvals or show cause to the Court why the
27 policy, as written, is imperative”).

1 Lastly, Defendants never defended their three appeals taken in this case but
2 instead, after much delay and several extensions, finally voluntarily dismissed their
3 appeals. Had Defendants' positions been substantially justified, they likely would not
4 have voluntarily dismissed their appeals.

5 The Government cannot advance "'in good faith' any 'novel but credible
6 extensions and interpretations of the law,' and therefore no equitable considerations
7 weigh against granting Plaintiffs' fee request." Order re Plaintiffs' Motion for
8 Attorneys' Fees at 4, Nov. 12, 2019 (Doc. # 702) (November 12, 2019 Fees Order)
9 (quoting H.R. Rep. No. 96-1418, at 11 (1980)).

10 B. LODESTAR CALCULATION.

11 A "lodestar" figure for the amount of fees Plaintiffs should recover is
12 calculated by multiplying the number of hours counsel reasonably dedicated by the
13 inflation-adjusted EAJA hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.
14 Ct. 1933, 76 L.Ed.2d 40 (1983); *Costa v. Comm'n of Social Security Admin.*, 690
15 F.3d 1132, 1135 (9th Cir. 2012).⁸ Furthermore:

16 In certain cases, courts in the Ninth Circuit may authorize enhanced EAJA
17 rates—above inflation-adjusted rates—where there was a "limited availability
18 of qualified attorneys for the proceedings involved" and the attorneys had
19 "distinctive knowledge" and "specialized skill" that was "needful to the
20 litigation in question" and "not available elsewhere at the statutory rate."
Nadarajah v. Holder, 569 F.3d 906, 912 (9th Cir. 2009) (citations omitted).

21 Order Re Plaintiffs' Motion for Attorneys' Fees and Costs at 6, Nov. 14, 2017 (Doc.
22 # 383) ("November 14, 2017 Fees Order")

23 The inflation-adjusted EAJA base rate for the periods counsel worked on the
24 instant matter is \$207.78. See <https://www.ca9.uscourts.gov/attorneys/statutory->

25
26 ⁸ An increase over the base rate to account for inflation is granted in all but unusual
27 circumstances. *Animal Lovers Vol. Assn. v. Carlucci*, 867 F.2d 1224, 1227 (9th
28 Cir. 1989).

1 maximum-rates/ (last visited September 27, 2021).⁹ Plaintiffs also request fees for a
2 paralegal's work at \$100 per hour. *See Richlin Sec. Service Co. v. Chertoff*, 553 U.S.
3 571, 590 (2008) (“[A] prevailing party that satisfies EAJA’s other requirements may
4 recover its paralegal fees from the Government at prevailing market rates.”); *Lara v.*
5 *Berryhill*, No. 2:16-CV-0034 DB, 2017 WL 4679989, at *3 (E.D. Cal. Oct. 18, 2017)
6 (awarding fees for paralegal time at \$100 per hour).

7 The hours counsel devoted to prosecuting this action, adjusted for time that
8 was poorly documented or excessive, appear in the itemized time records annexed to
9 the declarations of Plaintiffs’ counsel Peter Schey, Exhibit 2 ¶ 12; Carlos Holguín,
10 Exhibit 3 (“Holguín”) ¶ 10; Leecia Welch, Exhibit 4 (“Welch”) ¶¶ 19-20; Holly
11 Cooper Exhibit 7 (“Cooper”) ¶¶ 19-20.¹⁰

12 Plaintiffs’ lodestar fee request at the inflation adjusted statutory rate is
13 \$290,440.¹¹ Plaintiffs’ lodestar fee request including enhanced fees for Plaintiffs’ two
14 Class Counsel, two Senior Co-Counsel, and one paralegal is \$659,614.¹²

15 As will be seen, the Court should award Plaintiffs fees for Class Counsel’s and
16 two Senior Co-Counsel’s time at “enhanced,” or market, hourly rates.

19 ⁹ Prior to 1996 the EAJA set a base rate of \$75 per hour. 28 U.S.C. §
20 2412(d)(2)(A) (1994). In 1996 Congress increased the base rate to \$125 per hour
21 for cases commenced on or after March 29, 1996. *Sorenson v. Mink*, 239 F.3d
22 1140, 1145 (9th Cir. 2001). The Ninth Circuit’s calculations adjust the 1996 rate
23 for inflation.

24 ¹⁰ Time spent preparing the instant EAJA motion is also compensable. *See Jean*,
25 496 U.S. at 163-64. Nevertheless, to encourage a resolution of this motion,
26 Plaintiffs are not seeking compensation for time preparing this motion.

27 ¹¹ This fee request reflects that, after exercising billing judgment, NCYL further
28 reduced its attorneys’ fee request by 10% to account for any duplication or
inefficiencies across its team. That 10% reduction is reflected in the attorneys’ fee
dollar amount referenced here.

¹² *See supra*, fn. 14.

C. SPECIAL FACTORS WARRANT A FEE AWARD AT MARKET RATES FOR PLAINTIFFS' SENIOR COUNSEL.

The EAJA authorizes the Court to award attorney's fees at market rates where there is a "limited availability of qualified attorneys for the proceedings involved." 28 U.S.C. § 2412(d)(2)(A). Enhanced hourly rates may be awarded where plaintiffs' counsel possess "distinctive knowledge" and "specialized skill" that was "needful to the litigation in question" and "not available elsewhere at the statutory rate." *Nadarajah*, 569 F.3d at 912 (quoting *Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th Cir. 2005) and *Love*, 924 F.2d at 1498); *see also Pierce*, *supra*, 487 at 572 ("Examples . . . would be an identifiable practice specialty such as patent law, or knowledge of foreign law or language.").

In *Nadarajah*, the Ninth Circuit held this test satisfied where counsel had "distinctive knowledge and specialized skill in immigration law and, in particular, constitutional immigration law and litigation involving the rights of detained immigrants" and this skill was "needful to the litigation in question." 569 F.3d at 912-14 (quoting *Thangaraja*, 428 F.3d at 876); *see also Fang v. Gonzales*, No. 03-71352, 2006 WL 5669901, *3 (9th Cir. Oct. 30, 2006) (Unpub. Disp.) ("Counsel Smith's specialized skills and distinctive 'knowledge of . . . particular, esoteric nooks and crannies of immigration law,' ... enabled her to ... to succeed in obtaining relief from removal for Fang." (quoting *Thangaraja*, 428 F.3d at 876)). In *Nadarajah*, the Ninth Circuit accordingly awarded the prevailing party's senior counsel fees at market rate. 569 F.3d at 916-18.

Similarly, in *Orantes-Hernandez v. Holder*, 713 F. Supp. 2d 929 (C.D. Cal. 2010), the Government moved to dissolve an injunction requiring immigration authorities to follow specific procedures when detaining, processing and removing Salvadoran nationals. *Id.* at 936. The court largely denied the motion, and the plaintiffs sought EAJA fees at market rates because defending against the

1 Government's motion required specialized knowledge of, *inter alia*, the history of the
2 litigation that had resulted in the injunction. *Id.* at 959-63.

3 The district court awarded fees at market rates for senior counsel. *Id.* at 964. In
4 addition to special knowledge of immigration law and procedure and complex civil
5 litigation, the court found that the prevailing parties' counsel "by virtue of their long
6 involvement in this litigation, possess[ed] distinctive knowledge crucial to litigation
7 of this complicated case," *id.* at 961, and had specialized skills—including
8 proficiency in Spanish—that were necessary to defend the injunction. *Id.* at 960-63.

9 1. Plaintiffs' Class and Senior Co-Counsel possess distinctive knowledge
10 and specialized skill that was needful to the litigation.

11 As in *Orantes-Hernandez* and *Nadarajah*, Plaintiffs' counsel here have
12 extensive experience, knowledge and specialized skill in immigration law, youth law,
13 and more particularly, the rights of detained immigrant and refugee juveniles as they
14 exist at the intersection of the Settlement, the Homeland Security Act of 2002, Pub.
15 L. 107-296, 116 Stat. 2135 ("HSA"), the William Wilberforce Trafficking Victims
16 Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044 ("TVPRA"),
17 and the United States Constitution.

18 First, Plaintiffs' Class Counsel are highly skilled litigators with vast expertise
19 in representing immigrants, refugees and youth in nationwide class action cases.
20 Plaintiffs' Class Counsel are among the leading lawyers litigating class actions on
21 behalf of immigrant and refugee children. They have successfully litigated multiple
22 statewide and nationwide class actions cases involving the rights of immigrant youth
23 for over 40 years. This work was highlighted in the article entitled *Meet the father of*
24 *the landmark lawsuit that secured basic rights for immigrant minors* published by the
25 American Bar Association Journal. Lorelei Laird, *Meet the father of the landmark*
26 *lawsuit that secured basic rights for immigrant minors*, February 1, 2016, at
27
28

1 http://www.abajournal.com/magazine/article/meet_the_father_of_the_landmark_laws
2 [uit_that_secured_basic_rights_for_immig.](http://www.abajournal.com/magazine/article/meet_the_father_of_the_landmark_laws)

3 Here, prosecuting Plaintiffs' action by Class Counsel and Senior Co-Counsel
4 required specialized expertise in immigration law, the *Flores* Agreement and its
5 history, and interpretation of federal consent decrees as these distinct areas of the law
6 affect a discrete and otherwise defenseless subclass: immigrant and refugee youth in
7 federal detention facilities. Distinctive knowledge of the *Flores* Agreement, the
8 meaning of its terms under federal immigration laws, and the Government's policies
9 and practices in implementing the Agreement, as well as the ability to converse in
10 Spanish were necessary to the successful resolution of this litigation. *See*
11 Declarations of Schey, Exhibit 2 at ¶ 6 ("I am able to converse with class members
12 and their mothers in Spanish. The majority of class members in the litigation the
13 CHRCL conducts, including *Flores*, are monolingual Spanish-speakers, and the
14 ability to communicate with these class members in their native language is
15 invaluable."); Holguin, Exhibit 3, ¶ 6 ("I am also fluent in English and Spanish. The
16 majority of class members in the litigation the CHRCL conducts, including *Flores*,
17 are monolingual Spanish-speakers. In my opinion, the ability to communicate with
18 these class members in their native language is essential to afford them a fair chance
19 of prevailing.")

20 This Court has previously held that attorneys Schey and Holguín possesses
21 "intimate knowledge of the Agreement"; that "[i]n addition to litigating the matter
22 that led to the Agreement, both Schey and Holguin have been involved with
23 monitoring the government's compliance with the Agreement since its inception";
24 and that they "are therefore uniquely positioned to efficiently litigate the enforcement
25 action in question." November 14, 2017 Fees Order at 6-7. The Court accordingly
26 awarded both Schey and Holguín fees at market rates. *Id.* at 8.

1 Leecia Welch is a national expert in the area of child welfare and has spent
2 the majority of her career representing children and youth in cases focused on
3 enforcing their statutory and constitutional rights. Declaration of John F. O'Toole,
4 April 16, 2019, Exhibit 5 ("O'Toole") ¶¶ 9, 13; Declaration of Richard M. Pearl,
5 April 18, 2019, Exhibit 6 ("Pearl") ¶ 13. Ms. Welch's specialized expertise at the
6 intersection of child welfare and complex federal class action litigation, her
7 extensive personal involvement in litigating on behalf of detained immigrant
8 children in this case and related litigation, and the National Center for Youth Law's
9 institutional knowledge of this litigation, uniquely positioned her to litigate
10 Plaintiffs' enforcement motion. O'Toole ¶¶ 6-8, 14-15; Pearl ¶ 13; Declaration of
11 Leecia Welch, Exhibit 4 ("Welch") ¶¶ 4, 8, 10, 22.

12 Co-counsel Holly Cooper is similarly accomplished in representing detained
13 immigrant and refugee children, has received multiple national awards for her
14 expertise defending detained immigrant children, has successfully litigated several
15 cases published as precedent, and many more not designated as precedent, in federal
16 court pertaining to detained immigrants, and trains lawyers nationally on complex
17 federal litigation. Declaration of Stacy Tolchin, September 22, 2021, Exhibit 8
18 ("Tolchin") ¶¶ 12-16; Declaration of Holly Cooper, Exhibit 7 ("Cooper") ¶¶ 7, 9-11.
19 Ms. Cooper's specialized expertise at the intersection of immigration law, immigrant
20 children's rights, and complex federal class action litigation, and her extensive
21 personal involvement in litigating on behalf of detained immigrant children in this
22 case and related litigation, uniquely positioned her to litigate Plaintiffs' enforcement
23 motion. Tolchin ¶¶ 8-11, 19-20; Pearl ¶ 14; Cooper ¶¶ 6-7, 14-17.

24 Finally, vindicating the rights of class members in the underlying motion
25 required far more than skill in enforcing contracts: it required specialized expertise in
26 the intersection of multiple sources of law as it affects a discrete and vulnerable
27 subclass: immigrant and refugee youth in federal custody. *See* November 14, 2017

1 Fees Order at 6-7; *see also* November 12, 2019 Fees Order at 5 (“As discussed at
2 length in the November 14, 2017 Order, Holguin is uniquely positioned to efficiently
3 litigate enforcement actions in this case . . .”).

4 2 Other qualified attorneys unavailable.

5 Further, few, if any, other lawyers in the country could or would have
6 prosecuted a complex emergency application on behalf of a class of indigent, non-
7 English-speaking detained minors, many detained in remote locations, at the
8 inflation-adjusted EAJA rate. Holguin, ¶¶ 8-9.

9 When private practitioners do pursue federal litigation, they typically charge
10 much more than the inflation-adjusted EAJA statutory rate.”); Pearl ¶ 13 (“[Ms.
11 Welch’s] specialized skills are certainly not available elsewhere at the statutory rate
12 (plus COLA)”; Tolchin ¶19 (“There are only a handful of litigators in the Ninth
13 Circuit with the expertise necessary to tackle the litigation required in this case,
14 even if compensated at the market rate.”); *Id.* ¶ 20 (“Ms. Cooper is among the very
15 few litigators in the Ninth Circuit with the requisite very high degree of knowledge
16 and skill necessary to litigate this complex case at the intersection of statutory
17 immigration law, immigrant children’s rights, constitutional rights, habeas corpus
18 and class actions.”); *Id.* ¶ 21 (“I do not believe that this work could have been done
19 by any attorney at the EAJA market rate, adjusted for inflation.”); *Id.* n.2 (noting
20 that the enhanced EAJA rate sought by Ms. Cooper is “actually well below the
21 market rate”).

22 These factors warrant the Court’s awarding attorney’s fees at rates “in line
23 with those [rates] prevailing in the community for similar services by lawyers of
24 reasonably comparable skill, experience and reputation.”” *Nadarajah*, 569 F.3d at
25 916 (quoting *Blum v. Stenson*, 465 U.S. 886, 895 & n.11 (1984)).

26
27 ///

1 3. Enhanced Rates

2 Hourly market rates in 2020 for lawyers with skills and experience comparable
3 to plaintiffs' Class Counsel are in the range of \$905 (Holguin) and \$1,050 (Schey).
4 *See* Declaration of Carol Sobel, Exhibit 1 ("Sobel"), ¶¶ 20-23.¹³ Plaintiffs seek fees
5 for Class Counsel Holguin at the reduced rate of \$775/hour. Class Counsel Schey
6 excluded from his hours filed herewith and does not seeking reimbursement for
7 multiple tasks including, for example, routine brief discussions about the litigation
8 with co-class counsel, consultants, and advocates representing class members in their
9 individual cases, brief email traffic with co-counsel, consultants and counsel
10 representing class members, review of media reports and studies regarding the
11 challenged policies or practices, most monitoring activities, and other tasks taking
12 less than ten minutes. Schey at ¶ 12.

13 Market rates for Ms. Welch (\$690 per hour) and Ms. Cooper (\$700 per hour)
14 are supported in the declarations of Richard Pearl and Stacy Tolchin, California
15 attorneys specializing in issues related to court-awarded attorney's fees. Pearl ¶¶
16 12-14, 20; Tolchin ¶¶ 7, 21. Courts have frequently relied on Mr. Pearl's opinions
17 and writings on court-award attorney's fees. Pearl ¶¶ 4, 7-10.

18 Plaintiffs accordingly request an Order granting Plaintiffs their reasonable fees
19 as follows:

20 ///

21
22
23 ¹³ Ms. Sobel is a Los Angeles attorney whose expertise in market rates courts have
24 repeatedly recognized. *See, e.g., Nadarajah*, 569 F.3d at 912-13; *Orantes-*
25 *Hernandez*, 713 F. Supp. 2d at 963-64. As the Court recently held, "[t]he increased
26 rate [of \$950 per hour for Schey] is 'in line with those [rates] prevailing in the
27 community for similar services by lawyers of reasonably comparable skill,
28 experience, and reputation.'" November 12, 2019 Fees Order at 5 (quoting
Nadarajah, 569 F.3d at 916).

Center for Human Rights & Constitutional Law	Hours	Statutory	Senior Counsel Enhanced
Schey	264	54,854	277,200
Holguin	77.86	16,178	60,342
Total	341.86	71,032	337,542
UC Davis			
Cooper	117.57	24,429	82,299
Felt	205.87	42,776	42,776
Mulligan	140.99	29,295	29,295
Julian	116.59	24,225	24,225
Total	581.02	120,724	178,595
Welch ¹⁴	108.4	22,523	67,316
Desai	64.9	12,136	12,136
Juneja	44.3	8,284	8,284
Pitts	73.3	13,707	13,707
Adamson	143	26,741	26,741
de Gramont	67.5	12,623	12,623
Setren	26.7	2,670	2,670
Total	528.1	98,684	143,477

¹⁴ After exercising billing judgment, NCYL further reduced its attorneys' fee request by 10% to account for any duplication or inefficiencies across its team. That 10% reduction is reflected in the attorneys' fee dollar amount requested in this chart.

IV CONCLUSION

For the foregoing reasons, this Court should award Plaintiffs attorney's fees pursuant to 28 U.S.C. § 2412(d) as herein requested.

Dated: September 29, 2021 .

Respectfully submitted,

CENTER FOR HUMAN RIGHTS
AND CONSTITUTIONAL LAW
Peter A. Schey
Carlos R. Holguín

USF SCHOOL OF LAW IMMIGRATION CLINIC
Bill Ong Hing

LA RAZA CENTRO LEGAL, INC.
Stephen Rosenbaum

NATIONAL CENTER FOR YOUTH LAW
Neha Desai
Mishan Wroe
Melissa Adamson
Diane de Gramont

CHILDREN'S RIGHTS
Leecia Welch

/s/ Peter Schey

CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On September 29, 2021 I electronically filed the following document(s):
NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES
AND COSTS; MEMORANDUM IN SUPPORT OF MOTION
with the United States District Court, Central District of California by using the
CM/ECF system. Participants in the case who are registered CM/ECF users will be
served by the CM/ECF system.

/s/Peter Schey
Attorney for Plaintiffs