

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS

Pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, and Local Civil Rule 7, and in accordance with this Court's orders of July 20, 2022 (*Harrison*, ECF 326; *Roe*, ECF 340), Plaintiffs respectfully move this Court for an award of attorney's fees and costs reasonably incurred in these matters. The grounds supporting this motion are:

1. On April 6, 2022, this Court granted Plaintiffs' motions for summary judgment on and denied Defendants'. *Harrison*, ECF 308; *Roe*, ECF 320. Defendants voluntarily dismissed their appeals in July 2022. *Harrison*, ECF 322; *Roe*, ECF 336.

2. Plaintiffs are therefore undisputedly a "prevailing party" within the meaning of the EAJA. *See* 28 U.S.C. § 2412(d)(1)(A). They have met the EAJA's other eligibility requirements for a fee award: the Government's positions both before and during this litigation were not

“substantially justified”; no “special circumstances make an award unjust” here; the individual Plaintiffs’ net worth “did not exceed \$2,000,000 at the time the civil action was filed”; and this motion for fees has been submitted to the court within 30 days of final judgment along with the required supporting materials. *See id.* § 2412(d)(1)(A)–(B), (d)(2)(B).

3. Plaintiffs’ requested fee award is based on attorney hours and market rates that are reasonable under all the relevant factors for calculating the lodestar amount. *See Barber v. Kimbrell’s, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978) (adopting factors set forth in *Johnson v. Georgia Highway Express Inc.*, 488 F.2d 714 (5th Cir. 1974)). Plaintiffs’ pro bono litigation counsel are entitled to the EAJA statutory rate adjusted for inflation, and their civil rights attorneys are entitled to a higher rate on account of their expertise in HIV/LGBTQIA+ civil rights litigation. *See* 28 U.S.C. § 2412(d)(2)(A).

4. The services of law clerks, paralegals, librarians, and other support staff are also recoverable “at prevailing market rates.” *See Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590 (2008).

5. Plaintiffs’ requested litigation expenses and costs are reasonable.

Plaintiffs submit the accompanying memorandum of law, with attached declarations and exhibits, in support of this motion. They request that Defendants be ordered to pay them attorney’s fees in the amount of \$2,408,567.70 and costs in the amount of \$167,257.09.

Dated: August 5, 2022

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that, on August 5, 2022, I caused this document to be filed electronically through the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: August 5, 2022

Respectfully submitted,

/s/ John W. H. Harding

John W.H. Harding