

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

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FRANCISCAN ALLIANCE, INC.,  
*et al.*,

*Plaintiffs,*

v.

XAVIER BECERRA, *et al.*,

*Defendants.*

**No. 7:16-cv-00108-O**

**PLAINTIFFS' REPLY IN SUPPORT OF  
THEIR MOTION FOR  
AWARD OF ATTORNEY'S  
FEES AND EXPENSES**

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## INTRODUCTION

The government doesn't dispute that it prompted this litigation by threatening Plaintiffs with crushing liability unless they violated their consciences. Nor does it dispute that large Texas firms wouldn't touch this case, that Plaintiffs' counsel has more experience defeating HHS under RFRA than any firm in the country, that counsel achieved outstanding results, and that counsel already cut over 15% of its hours. Yet the government seeks to slash Plaintiffs' fees even further—to less than 38¢ on the dollar—through a series of reductions that are unsupported by the record, contrary to precedent, and often conjured entirely out of thin air. The Court should decline.

### A. Counsel's rates are reasonable.

*1. Home Rates.* Counsel's "'home' rates should be considered as a starting point for calculating the lodestar" when "out-of-district counsel are proven to be necessary to secure adequate representation." *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 382-83 (5th Cir. 2011). Here, two experienced attorneys testified that out-of-district counsel were necessary, and the government offers *no* evidence to the contrary.

Instead, it tries to alter the standard—claiming Plaintiffs must first testify that they "*attempted* to locate qualified counsel within the District" but "were unable" to do so. Resp.7. But that is not *McClain's* standard. There, the Fifth Circuit said the district court "clearly erred in finding ... that local attorneys were available to assist in the representation" when "expert employment lawyers" offered affidavits stating that "no Texas attorneys were willing and able to assist in such a large case that might drag on for years without any guarantee of financial remuneration." 649 F.3d at 383. Here, too, an expert attorney with 25 years' experience in the Dallas market testified that it would be "extraordinarily difficult, if not impossible" to find local counsel given the "controversial subject matter," "the longevity and complexity of the litigation," and the "inability of religious nonprofits to pay." Robison Decl. ¶¶ 6, 12-14. As in *McClain*, the government "provide[s] no rebuttal evidence" of its own. 649 F.3d at 383. Thus, it is well within the Court's discretion to find that out-of-district counsel were necessary—and likely "clearly err[oneous]" to find otherwise. *Id.*

Alternatively, the government tries to nitpick the declarations, claiming that because most of

Robison’s experience is “at large international law firms,” he cannot opine on whether “smaller firms” in Dallas might have taken this case. Resp.8. But Robison *currently* works at one of those smaller Dallas firms and testified without contradiction why a larger firm would be needed for a complex and lengthy case like this one. Robison Decl. ¶¶ 2, 14. Given that the government “provide[s] no rebuttal evidence,” there is no basis to accept its argument. *McClain*, 649 F.3d at 383.

Even assuming out-of-district counsel wasn’t necessary, counsel’s home rates are still appropriate if counsel “participate in a market requiring more specialized and sophisticated legal services.” *Sierra Club v. Energy Future Holdings Corp.*, 2014 WL 12690022, at \*6 (W.D. Tex. Aug. 29, 2014). Here, the government doesn’t dispute that Becket participates in such a market—indeed, that Becket has defeated HHS under RFRA more than any firm in the country. Resp.9. Nor does it dispute that Becket’s expertise “was crucial in securing [Plaintiffs’] permanent injunction in this complex case.” Robison Decl. ¶ 12; Schaerr Decl. ¶ 14.

Instead, it claims the case wasn’t complex, mainly citing the introduction of Plaintiffs’ complaint, which said the case involved “a very simple question of statutory interpretation” on the meaning of “sex discrimination.” Resp.9. But while the question seemed simple in 2016, it ultimately became the subject of a circuit split under Title VII, which the Supreme Court resolved *against* Plaintiffs’ position, *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), and which HHS then applied to complicate the litigation in this case, *see* Dkt. 206 at 3-4. The government’s simplicity argument is also belied by the fact that *twenty* different government attorneys appeared on the many motions and briefs filed throughout the case. Goodrich Supp. Decl. ¶ 4.

More importantly, statutory interpretation was hardly the only question; much of this litigation involved whether RFRA entitled Plaintiffs to a religious exemption. And that question was further complicated by the shapeshifting regulatory regime, the government’s novel justiciability arguments, and Defendants’ protracted resistance to injunctive relief. Indeed, the government initially *prevailed* on the scope-of-relief issue, leading Plaintiffs to take the unorthodox step of appealing a grant of summary judgment in their favor. And in ultimately ruling for Plaintiffs on remand, this Court itself emphasized the case’s complexity, calling the government’s post-judgment actions

“Kafkaesque” and like a “Penrose staircase,” Dkt. 206 at 13 & n.10—leading to still another appeal and affirmance in a published opinion, 47 F.4th 368 (5th Cir. 2022). Given these considerations and “two appeals to [the Fifth Circuit],” the Court “cannot overlook the complexity of [this] case.” *Northwinds Abatement, Inc. v. Emps. Ins. of Wausau*, 258 F.3d 345, 355 (5th Cir. 2001).

Alternatively, the government claims counsel is seeking the same rates as “lions at the bar.” Resp.9-10. Not so. As Robison and Schaerr explain, counsel’s rates “are *lower* than the rates my two prior firms and other firms with which I am familiar would charge their clients for attorneys of comparable seniority and expertise on a similar matter.” Robison Decl. ¶¶ 19-20 (emphasis added); Schaerr Decl. ¶ 17. Similar firms charge “significantly higher rates” up to \$2,465/hour—more than double counsel’s top DC rate. Robison Decl. ¶¶ 21-25; Mot.14. Finally, the government says out-of-district rates are unwarranted because Plaintiffs filed in Texas instead of DC. But this overlooks the fact that the State of Texas was a co-plaintiff and sought to file in Texas.<sup>1</sup>

**2. Dallas Rates.** As for counsel’s Dallas rates, Mot.15, the government quibbles with Plaintiffs’ declarations but offers no evidence contradicting them. Nor does it explain how it arrives at its proposed “reduction of \$150” in Dallas rates; it simply picks the number out of thin air. Resp.13. That doesn’t suffice. *See, e.g., C & D Prod. Servs. v. Dir., Off. of Worker’s Comp. Programs*, 376 Fed. App’x 392, 394 (5th Cir. 2010) (rejecting excessive-rate argument because parties “provide only their own unsupported statements as to the appropriate rate and point to two administrative decisions finding [a lower rate] ... reasonable”); *Turner v. Oxford Mgmt. Servs., Inc.*, 552 F. Supp. 2d 648, 654 (S.D. Tex. 2008) (similar).

The government says counsel’s rates should be lower because the caselaw supposedly doesn’t support the requested rates. Resp.12. But the government’s cases aren’t to the contrary. None involved complex or contentious litigation. *Id.* In fact, the first of the government’s cases involved *a default judgment*—and even then, this Court granted rates as high as \$765/hour. *UMB Bank*,

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<sup>1</sup> Anticipating an award of DC rates, the government asks alternatively for a blanket 25% reduction of counsel’s fees. Resp.11-12. But the government cites no case law supporting this request—for good reason. It is clear error to arbitrarily reduce a reasonable fee award without record evidence supporting the reduction. *McClain*, 649 F.3d at 383.

*N.A. v. All Com. Floors, Inc.*, 2022 WL 3146055 (N.D. Tex. July 21, 2022). If those rates are reasonable for a default judgment, then surely counsel’s comparable rates are reasonable for six years of litigation vigorously contested by DOJ.

Finally, the government tells the Court to reduce rates simply because Becket has lower “overhead” than “large international law firms.” Resp.13. Yet this Court has already rejected this argument, explaining that “the size of a law firm” is less important than “an attorney’s skill, experience, and reputation.” *Miller v. Raytheon Co.*, 2013 WL 6838302, at \*9 (N.D. Tex. Dec. 27, 2013). Even the lone case cited by the government didn’t reduce fees based merely on size, but because the court “did not find that the quality of [counsel’s] performance ... support[ed] so high a fee.” *Carroll v. Sanderson Farms, Inc.*, 2014 WL 549380, at \*22 (S.D. Tex. Feb. 11, 2014); *see also Miller*, 2013 WL 6838302, at \*9 (“This approach carries little weight.”). Here, the record evidence on skill, experience, and reputation is undisputed. Robison Decl. ¶¶ 12, 19; Schaerr Decl. ¶¶ 9-14.

**B. Counsel’s hours are reasonable.**

Lacking evidence on rates, DOJ challenges counsel’s hours on six grounds. Each ground fails.

**1. APA Hours.** First, DOJ proposes a sweeping, 30% reduction in fees simply because Plaintiffs’ RFRA claim was also accompanied by a successful APA claim. Resp.18-19. This request fails on two grounds. First, DOJ is simply mistaken that Plaintiffs’ fees must be divided between Section 1988 and § 2412(d) of the EAJA; rather, all of Plaintiffs’ fees are recoverable under Section 1988. Second, even if Plaintiffs’ APA hours were separately subject to the EAJA—and they aren’t—those hours still must be compensated at the EAJA rate.

**a.** Section 1988 authorizes a reasonable fee award “[i]n any action or proceeding to enforce” (among other statutes) RFRA, 42 U.S.C. § 1988(b). Meanwhile, § 2412(d) of the EAJA applies to certain actions against the United States, including APA claims—unless fees are “otherwise specifically provided by statute.” 28 U.S.C. § 2412(d)(1)(A); *see also* Equal Access to Justice Act, Pub. L. No. 96-481, § 206, 94 Stat. 2330 (1980) (“Nothing in section 2412(d) ... alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes” fees).

By its terms, then, § 2412(d) plays a “secondary role” in fee litigation; it applies “only as a

fall-back to other fee shifting provisions”—as DOJ itself has explained. *Payment of Attorney’s Fees in Litigation Involving Successful Challenges to Federal Agency Action Arising Under the Administrative Procedure Act and the Citizen-Suit Provisions of the Endangered Species Act*, 24 Op. O.L.C. 311, 2000 WL 34474453, at \*3, \*4 (2000) (“OLC Op.”). But here, no fallback is needed—Plaintiffs are prevailing parties in an “action or proceeding” to enforce RFRA, so they’re entitled to reasonable fees under Section 1988(b). See *Landwatch v. Jefferies*, 2020 WL 8172994, at \*8 (D. Or. Aug. 7, 2020) (rejecting any allocation of APA fees to § 2412(d), as all fees were recoverable under another fee provision, and “the EAJA fee provisions are subordinated”), *report and recommendation vacated after settlement*, 2021 WL 1022584 (D. Or. Mar. 16, 2021).

That result is especially appropriate since, after November 2019, *all* Plaintiffs’ fees are attributable *solely* to the RFRA claim. At that time, this Court entered a final judgment on the APA claims, which no party appealed, *see* Dkt. 182—meaning that for years of this litigation, including two Fifth Circuit appeals and all proceedings on remand, there are no APA fees to allocate.

Even for fees incurred before that date, the Supreme Court has explained that where claims not compensable under Section 1988 are “related” to claims that are, “a plaintiff ... should not have his attorney’s fee reduced simply because” of the non-compensable claim. *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983). The “key” is whether they “involve a ‘common core of facts’ or are based upon ‘related legal theories.’” *Coleman v. Hous. Indep. Sch. Dist.*, 202 F.3d 264, 1999 WL 1131554, at \*5 (5th Cir. Nov. 8, 1999). If so, the plaintiff “should recover a fully compensatory fee.” *Hensley*, 461 U.S. at 435. And as DOJ has recognized, this same “*Hensley* framework” applies to cases like this one “involving successful EAJA and non-EAJA claims.” OLC Op. at \*3-6.

Here, the RFRA and APA claims involved a common core of facts—HHS’s interpretation of Section 1557 to require Plaintiffs to perform and insure gender transitions and abortions against conscience. And they were briefed together at the preliminary-injunction and summary-judgment stages, Dkts. 25, 37, 57, 136, 158, and adjudicated in tandem by this Court, Dkts. 62, 175. “Where,” as here, “time spent on” separate “issues is difficult to segregate, no reduction of fees is required.” *Abell v. Potomac Ins. Co. of Ill.*, 946 F.2d 1160, 1169 (5th Cir. 1991).

Strikingly, DOJ doesn't dispute the claims' relatedness under *Hensley*; it simply claims that *Hensley* doesn't apply. Resp.18-19. But again, this contradicts both statutory text and DOJ's own Office of Legal Counsel opinion on the subject—which DOJ inexcusably fails to disclose.<sup>2</sup>

Concluding with a naked policy appeal, DOJ complains it would be a “windfall” for Plaintiffs to recover under Section 1988 for time spent winning their APA claim. Resp.19. But that's far *less* a supposed “windfall” than recovery for time spent *losing* a related claim—yet that result is commonplace under *Hensley*. See *Coleman*, 1999 WL 1131554, at \*5 (“ample authority” for full recovery in mixed-result cases). DOJ doesn't say why a different result should obtain here.<sup>3</sup>

**b.** Even assuming the APA and RFRA claims had to be compensated separately—and they don't—the answer wouldn't be (as DOJ suggests) to “slice the total hours” by an arbitrary percentage and deny all compensation for the successful APA claim. *Johnson v. Sw. Rsch. Inst.*, 2019 WL 4003106, at \*6 (W.D. Tex. Aug. 23, 2019). Rather, the Court would identify “time spent exclusively” on the APA claim, *id.* at \*7, and compensate those hours under the EAJA. See OLC Op. at \*8 (“hours and costs necessary to both counts” payable under the non-EAJA statute; “only the hours and costs necessary only to the APA claim” are “to be paid under [the] EAJA”).

Although Plaintiffs weren't required to “track section-by-section progress when drafting a motion or brief,” *Johnson*, 2019 WL 4003106, at \*6, their billing records show 61.4 hours directed primarily at the APA claim. Goodrich Supp. Decl. ¶ 6. Nor has DOJ identified any EAJA limitation that bars recovery here. Resp.18. First, Plaintiffs are “part[ies]” entitled to recover fees under the statute, 28 U.S.C. § 2412(d)(1)(B)—all three are 501(c)(3) nonprofits. Dkt. 137 at 10, 11, 25; <https://cmda.org/about-us/>; see also § 2412(d)(2)(B) (definition of “party”). Second, DOJ's APA

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<sup>2</sup> The specific non-EAJA claims addressed in the OLC Opinion were claims under the Endangered Species Act (ESA), which has its own fee-shifting provision. But the OLC Opinion relied on Section 1988 precedent throughout, noting that *Hensley* is “generally applicable in all cases in which Congress has authorized an award of fees to a “prevailing party.”” OLC Op. at \*3. And “[g]iven the similarity in language and purpose between [Section 1988 and] the attorney's fee provisions of ... the ESA,” courts have held that they “should be interpreted the same way.” *Saint John's Organic Farm v. Gem Cnty. Mosquito Abatement Dist.*, 574 F.3d 1054, 1063 (9th Cir. 2009).

<sup>3</sup> DOJ says Plaintiffs' motion to extend the fee deadline “suggest[ed] ... that they intended to seek fees under Section 2412(d).” Resp.18. But Plaintiffs continue to maintain that § 2412(d) independently authorizes fees for their APA claim. See *infra*. Plaintiffs' position is simply that, under the governing allocation standard, all their fees are also compensable under Section 1988—and in this scenario § 2412(d)'s limitations don't apply.

position was not “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). As this Court explained, HHS’s refusal to incorporate the statutory “religious and abortion” exemptions in its interpretive rule “nullifie[d] Congress’s specific direction” contrary to Congress’s “unambiguously expressed intent.” Dkt. 62 at 28-37. And after this Court held the requirements of the 2016 Rule illegal, HHS reimposed them anyway, “effectuat[ing] a legal Penrose staircase to enforce Section 1557 in the near identical way as, if not an enhanced version of, how the 2016 Rule dictated.” Dkt. 206 at 13.

Thus, even if the APA claim had to be separately compensated, Plaintiffs would at least be entitled to EAJA fees for their APA hours. Those fees are subject to a statutory maximum of \$125/hour, which can be raised based on cost of living. 28 U.S.C. § 2412(d)(2)(A). Applying this provision, this court recently adopted an hourly rate of \$226.70. *Henline v. Kijakazi*, 2022 WL 2975326, at \*3 (N.D. Tex. July 5, 2022). Multiplying that rate by 61.4 hours, Plaintiffs would receive \$13,919.38 for the APA claim—which is a reduction of \$29,856.62 compared with DC rates or \$24,369.62 compared with Dallas rates. Goodrich Supp. Decl., Ex. 4-B at 3.

**2. *Intervenors.*** Next, DOJ contests 462.3 hours that it says “appear” to “relate” to “litigating against the Intervenors.” Resp.14; Humphreys Decl. ¶ 5. Yet DOJ ignores the binding Fifth Circuit standard: “[W]hen claims against multiple parties share a ‘common core of facts’ or ‘related legal theories,’ a fee applicant may claim all hours reasonably necessary to litigate those issues” from the fee-liable defendant. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 327 (5th Cir. 1995); accord, e.g., *Stevenson v. Lasalle Corr. Transp., LLC*, 2015 WL 11120525, at \*2-3 (N.D. Tex. Apr. 21, 2015). Here, as this Court found, the sole basis for intervention was to defend the same HHS actions challenged by Plaintiffs against the same legal theories Plaintiffs urged, *see* Dkt. 175 at 14 (“directly related to the underlying controversy”)—demonstrating this standard is met.

DOJ’s proposed exclusions only underscore the meritlessness of its argument. For example, DOJ seeks to exclude *all* 116.8 hours for Plaintiffs’ 2019 reply in support of summary judgment. *See* Dkt. 227-1, Ex. A-2 at 10-13. Yet the reply countered multiple arguments asserted *by DOJ*. *See* Dkt. 158 at 13-19. And if the reply hadn’t carried the day, Plaintiffs wouldn’t have prevailed—making this a straightforward example of “work ... expended in pursuit of the ultimate result

achieved.” *Fox v. Vice*, 563 U.S. 826, 834 (2011). Indeed, in the analogous contraceptive-mandate context, another court required HHS to pay fees for a plaintiff’s response to arguments ACLU made as an *amicus*; the same follows *a fortiori* where (as here) ACLU defended HHS’s actions as a *party*. *Sharpe Holdings, Inc. v. HHS*, 2015 WL 3773426, at \*6 (E.D. Mo. June 17, 2015).

DOJ says unlike Intervenor, Defendants “acknowledged ... that Plaintiffs were entitled to summary judgment.” Resp.15. But this is a fudge: Defendants *opposed* summary judgment on Plaintiffs’ RFRA claim, Dkt. 154 at 11, and even on the APA claim, Defendants vigorously disputed the scope of relief, *id.* at 12-13. As this Court explained in its ruling, “[n]o matter Defendants’ position, whether Plaintiffs are entitled to the judgment they seek is a decision that rests with the Court,” Dkt. 175 at 17 n.4—the decision Plaintiffs’ reply brief sought to inform.

DOJ (at 14-15) leans on *Avoyelles Sportsmen’s League v. Marsh* to exclude alleged Intervenor hours, but unlike in that case there was no “point” in this litigation after which the government “did not oppose the plaintiffs on any issue on which the plaintiffs ultimately prevailed.” 786 F.2d 631, 633-34, 637 (5th Cir. 1986). To the contrary, HHS—shoulder to shoulder with ACLU—resisted injunctive relief for Plaintiffs all the way until the Fifth Circuit’s affirmance in August 2022.

DOJ also proposes excluding time spent resisting “the propriety of [Intervenor’s] participation in the case.” Resp.14. Even this time has been found recoverable by the Fifth Circuit. *Compare* Appellants’ Br. at 32-34, *DeLeon v. Abbott*, No. 15-51241 (5th Cir. Mar. 28, 2016), *with DeLeon v. Abbott*, 687 F. App’x 340, 343 (5th Cir. 2017) (affirming in full). And in any event, counsel already cut 138.4 ACLU-related hours in its initial exercise of billing judgment. Goodrich Supp. Decl., Ex. 4-C. Thus, Defendants have identified, at most, only 38.65 remaining hours (\$27,037.50 at DC rates or \$24,502.50 at Dallas rates) devoted to opposing intervention. *Id.*, Ex. 4-D.

**3. “Block Billing.”** Third, the government purports to identify 324.4 hours it claims are “block billed.” Resp.20. Those objections are meritless. For example, DOJ objects to time entries such as “Performed research for and drafted motion for summary judgment”; “Performed research for, drafted, and revised reply brief”; and “Prepared for and participated in oral argument at Fifth Circuit.” This isn’t block billing; these entries itemize the time expended on specific tasks. Mot.6.

Even if the government *had* identified block-billed hours beyond the 17.75 block-billed hours counsel already cut (Mot.6-7), “[a] reduction for block billing is not automatic.” *Fralick v. Plumbers & Pipefitters Nat’l Pension Fund*, 2011 WL 487754, at \*5 (N.D. Tex. Feb. 11, 2011). Rather, “lumped time entries”—or “even a failure to provide contemporaneous billing statements” at all— “[do] not preclude an award of fees *per se*, as long as the evidence produced is adequate to determine reasonable hours.” *Hollowell v. Orleans Reg’l Hosp. LLC*, 217 F.3d 379, 392 n.18 (5th Cir. 2000) (cleaned up). Here, the government doesn’t identify any tasks for which supposed block-billing prevented it from determining reasonable hours. Nor does it dispute that counsel “identif[ied] the general subject matter of [their] time expenditures with enough specificity to facilitate judicial review”—and that is what is dispositive. *Johnson*, 2019 WL 4003106, at \*6.<sup>4</sup>

**4. Fee deadline.** Next, the government proposes to exclude 76.6 hours devoted to Plaintiffs’ *successful* motion to set the fee deadline. Resp.16. Although the government says it shouldn’t be responsible for this motion, this motion and briefing were necessary only because the government unreasonably refused to agree to an extension and then vigorously contested it. Dkt. 184 at 1; Dkt. 187. As this Court found, the government suffered no prejudice from Plaintiffs’ motion, Dkt. 193 at 8; its opposition was simply an opportunistic effort to shirk the normal consequence of losing on a civil-rights violation. No reduction is warranted for this successful motion.

**5. Extensions.** Next, the government contests 21 hours for deadline extensions. Resp.17. It admits “extension requests are commonplace” and doesn’t claim the time spent was unreasonable; it simply says such time categorically “should not be recoverable.” *Id.* But no such categorical rule exists; rather, many courts “have allowed a party to recover for time spent on motions for extension of time.” *Veasey v. Wilkins*, 158 F. Supp. 3d 466, 472 (E.D.N.C. 2016) (collecting cases); *see also McClung v. Comm’r, Soc. Sec. Admin.*, 2015 WL 2197963, at \*3 (E.D. Tex. May 11, 2015).

**6. Fees on Fees.** The government doesn’t dispute that fees on fees are recoverable. *Cruz v.*

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<sup>4</sup> The government also engages in double counting. At least 25.8 hours in its proposed block-billing cuts were already reduced by Plaintiffs’ counsel by 50% due to block billing or billing judgment. *See* Mot.6-8; Goodrich Decl. Ex. 1-D at 3-4, 7, 10 (time entries for Darlene Calandra on 10/20/16, 10/21/2016, 1/31/2019, 2/4/2019; for Chelise Fox on 10/21/2016; and for Elizabeth Dobak on 2/15/2017).

*Hauck*, 762 F.2d 1230, 1233 (5th Cir. 1985). Nor does it claim the hours spent were unreasonable. Instead, it says “any fees-on-fees award should be reduced” by the same proportion by which the underlying fee request is reduced. Resp.23. But the government cites no case in this circuit doing so. In fact, many courts in this circuit have awarded full fees on fees even when the underlying fee request was reduced. *See, e.g., Doe v. Fitch*, 2022 WL 4002326, at \*9 (S.D. Miss. Aug. 1, 2022); *Dunigan v. Miss. Valley State Univ.*, 2021 WL 4392132, at \*7 (N.D. Miss. Sept. 24, 2021); *Tunica-Biloxi Tribe of Indians v. Bridges*, 2007 WL 9700867, at \*1 (M.D. La. June 25, 2007). The same is warranted here, particularly given the voluminous fee record and counsel’s diligent billing judgment—including by eliminating over 36% of all hours from the fees-on-fees request. Goodrich Supp. Decl. ¶¶ 13-19. Under Fifth Circuit precedent, the Court should also award \$36,008 for 45.65 hours spent on the fee reply. *Id.* ¶ 20; *Cruz*, 762 F.2d at 1234 (reply is compensable).

**C. *Johnson* factors.**

Lastly, the government says “no enhancement is warranted” because Plaintiffs “do not analyze [the *Johnson*] factors.” Resp.21. But those factors are addressed throughout Plaintiffs’ motion and strongly favor enhancement. This was bet-the-company litigation threatening over \$900 million in penalties against Franciscan alone. Mot.1. It raised a novel question of the legality of HHS’s interpretation of Section 1557—which has now reshaped the way the government regulates religious doctors and hospitals nationwide. Mot.19. Other firms would not take the case due to the controversial subject matter and Plaintiffs’ inability to pay, Mot.1, 11, and taking it prevented counsel from handling other important matters, Goodrich Decl. ¶ 26. Counsel has more expertise than any other firm in the country in cases of this nature. Mot.13. And counsel obtained outstanding results, winning a complete victory—even while other federal courts have rejected identical claims brought by other counsel. *See Am. Coll. of Pediatricians v. Becerra*, 2022 WL 17084365 (E.D. Tenn. Nov. 18, 2022). Thus, an enhancement under *Johnson* is amply justified.

**CONCLUSION**

The Court should grant fees of \$2,382,049.00 and expenses of \$4,209.28, plus any enhancement it deems warranted under *Johnson*. Goodrich Supp. Decl. Ex. 4-A.

Dated: February 1, 2023

Respectfully submitted,

/s/ Luke W. Goodrich

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2023, the foregoing was served on all parties via ECF.

/s/ Luke W. Goodrich

Luke W. Goodrich

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

*Plaintiffs,*

v.

XAVIER BECERRA, *et al.*,

*Defendants.*

No. 7:16-cv-00108-O

**SUPPLEMENTAL  
DECLARATION OF  
LUKE W. GOODRICH**

1. My name is Luke Goodrich. I am over the age of 18 and have personal knowledge of the contents of this declaration.

2. I serve as lead litigation counsel for Franciscan Alliance, Inc., the Christian Medical and Dental Associations, and Specialty Physicians of Illinois, L.L.C. (“Plaintiffs”) in the above captioned matter and have done so throughout this litigation. I offer this declaration in support of Plaintiffs’ petition for attorney’s fees and expenses under 42 U.S.C. § 1988(b).

**Total Fee Award**

3. Plaintiffs seek a total recovery of \$2,382,049 in fees for 3,281.55 hours of work reasonably expended by attorneys and paralegals at the Becket Fund for Religious Liberty. This includes counsel’s original request for \$2,346,041 for 3,235.9 hours of work throughout the case, as well as an additional \$36,008 for 45.65 hours spent preparing the fee petition reply. Exhibit 4-A to this declaration includes a summary of requested fees. It also includes a computation of potential reductions of fees based on various objections at issue in this fee litigation.

**Twenty DOJ Attorneys**

4. One issue in this fee litigation is whether the litigation was complex enough to require the expertise of Becket’s attorneys or the hours expended in this case. In my experience litigating against the federal government, one indicator of a case’s complexity is the number of attorneys from the Department of Justice involved in a case. In this case, DOJ had at least twenty

different attorneys appear on its motions and briefs. Those attorneys include Brian Boynton, Marleigh Dover, McKaye Neumeister, Charles Scarborough, Jack Starcher, Joshua Dos Santos, Ashley Cheung, Alexander Haas, Bradley Humphreys, Jeffrey Clark, Rhett Martin, Adam Grogg, Bailey Heaps, Emily Nestler, Benjamin Mizer, Jennifer Ricketts, Sheila Lieber, Chad Readler, Joseph Hunt, and Michelle Bennett. *See* Defs.’ Br., *Franciscan All., Inc. v. Becerra*, No. 21-11174 (5th Cir. Mar. 28, 2022); Defs.’ Br., *Franciscan All., Inc. v. Becerra*, No. 20-10093 (5th Cir. Nov. 20, 2020); Defs.’ Resp. Ltr., *Franciscan All.*, No. 20-10093 (5th Cir. Apr. 9, 2021); Dkts. 50, 73, 141.

#### **Hours Related to APA Claims**

5. Another issue in this fee litigation is whether counsel can recover for time spent litigating their prevailing claim under the Administrative Procedure Act (APA). As explained in our reply in support of our fee petition, controlling precedent demonstrates that this time is recoverable under 42 U.S.C. § 1988(b), since the APA claim arose from a common core of facts with Plaintiffs’ prevailing claim under the Religious Freedom Restoration Act.

6. If the Court determines that Plaintiffs’ APA hours must be compensated separately, however, I have reviewed our contemporaneous billing records and identified 61.4 hours submitted to this Court for compensation in Plaintiffs’ fee petition (Dkt. 224-1 at 29-104) that were directed primarily or exclusively at the APA claim. Contemporaneous time records reflecting these APA-focused hours are reproduced in Exhibit 4-B to this declaration.

#### **Hours Related to Intervention**

7. Another issue in this fee litigation is whether counsel can recover for time related to the Intervenor—which includes some time devoted exclusively to opposing intervention, and other time devoted to briefing and arguments by Intervenor that were intertwined with briefing and arguments by the government.

8. In the exercise of billing judgment, Plaintiffs already cut from their initial fee request 138.4 hours that were directed primarily at Intervenor. *See generally* Dkt. 224-1 at 106-22.

Some of these hours were exclusively dedicated to opposing intervention, while others—such as time spent litigating Intervenors’ 2017 appeal to the Fifth Circuit—involved both intervention and merits issues. Contemporaneous time records reflecting these already-cut hours are reproduced in Exhibit 4-C to this declaration.

9. The government proposes to deduct additional hours that it believes “appear” to “relate” to “litigating against the Intervenors in this case.” Resp.14; Humphreys Decl. ¶ 5.

10. Controlling precedent demonstrates that all of this time is recoverable, for the reasons explained in Plaintiffs’ reply in support of their fee petition. For example, the government proposes to exclude all the time Plaintiffs spent preparing their reply in support of their 2019 motion for summary judgment—116.8 hours. But that reply addressed arguments raised by both the government and Intervenors, and Plaintiffs had to prevail on these arguments in order to obtain any relief against the government at all.

11. To the extent the Court determines that time spent specifically opposing Intervenors’ intervention should be treated differently, however, I have reviewed the billing entries that the government proposes to deduct as “related to filings and arguments made by Intervenors.” Dkt. 227-1 at 2; Exhibit A-2 to Humphreys Declaration. Of those entries, only 38.65 hours relate exclusively to opposing intervention. The remainder of the entries reflect time that was related to opposing Intervenors’ arguments on the merits and the propriety of relief—issues which overlapped substantially or entirely with the government’s arguments and therefore cannot be disentangled. Contemporaneous time records reflecting these 38.65 hours are reproduced in Exhibit 4-D to this declaration.

12. The value of these hours based on counsel’s DC rates is \$27,037.50, and the value of these hours based on counsel’s Dallas market rates is \$24,502.50. Ex. 4-D at 3.

#### **Hours Related to Fees on Fees**

13. As the government concedes, counsel is entitled to fees for time spent litigating the fee dispute. In the initial fee petition, counsel sought fees based on **135.1 hours** for time spent

preparing the fee petition. *See* Dkt. 227-1, Ex. A-6. The government doesn't argue that this time spent was unreasonable. In fact, counsel exercised billing judgment by eliminating **26.7 hours** from the initial fees-on-fees request (reducing the total from 161.8 hours to 135.1 hours). *See* Goodrich Decl., Ex. 1-D at 15-17.

14. In further exercise of billing judgment, counsel also declined to seek fees for any time spent on the fee petition from December 21 to December 27—immediately before and after the fee petition was filed—eliminating an additional **69.7 hours** billed by counsel and paralegals. Exhibit 4-E includes contemporaneous time records accurately detailing these additional 69.7 hours that counsel eliminated from their fee request entirely. Ex. 4-E at 3.

15. As noted in the reply brief, the Fifth Circuit has held that time spent preparing a reply in support of a fee petition is compensable. Reply.10; *Cruz v. Hauck*, 762 F.2d 1230, 1234 (5th Cir. 1985) (“As any prudent and reasonable attorney would do in this situation, Plaintiffs’ attorneys replied to the Defendants’ objections. The time spent so replying is compensable under § 1988. To hold otherwise would dilute the fee award and be inconsistent with the purposes of § 1988.”).

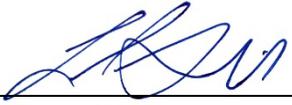
16. Exhibit 4-E also includes contemporaneous time records accurately detailing time spent researching and preparing the reply brief in support of the fee petition. Ex. 4-E at 1. In preparing the reply brief for this fee motion, counsel expended a total of 52.5 hours. In the exercise of billing judgment, counsel has reduced that by **6.85 hours**, to a total of **45.65 hours**. Ex. 4-E at 1, 4.

17. In total, counsel exercised billing judgment in their fees-on-fees request by reducing the time billed from a total of **284 hours** (231.5 hours for the initial motion and 52.5 for the reply) to a requested total of 180.75 hours (135.1 hours for the initial motion and 45.65 for the reply)—a significant reduction of **103.25 hours** or **over 36%**. *Id.* at 1, 3-4.

18. Based on counsel's home rates in DC, the 45.65 hours expended on the fee reply result in **\$36,008** in fees. Ex. 4-E at 2. If the Court awards rates based on counsel's Dallas market rates, that amount would be **\$31,921**. *Id.*

I declare under penalty of perjury under the laws of the United States of America and of this Court that the foregoing is true and correct.

Dated: February 1, 2023

  
\_\_\_\_\_  
Luke W. Goodrich

**EXHIBIT 4-A:**  
Summary of Requested Fees

## Summary of Requested Fees

<b>Total Fee Request</b>	
<b>Plaintiffs' original fee request:</b> <ul style="list-style-type: none"> <li>• This reflects 3,235.9 hours of work at counsel's DC home rates.</li> <li>• It also reflects a billing-judgment reduction of 569.7 hours, or 15%.</li> </ul>	<b>\$2,346,041</b>
<b>Additional fees for fee petition reply:</b> <ul style="list-style-type: none"> <li>• This reflects 45.65 hours of work at counsel's DC home rates.</li> <li>• It also reflects a billing-judgment reduction of 6.85 hours, or 13%.</li> </ul>	<b>\$36,008</b>
<b>Plaintiffs' total fee request:</b> <ul style="list-style-type: none"> <li>• This equals the original fee request + additional fees for fee petition reply</li> </ul>	<b>\$2,382,049</b>
<b>Hours Disputed by Defendants</b>	
<b>Reduction if APA hours are compensated at EAJA rates:</b> <ul style="list-style-type: none"> <li>• The Government seeks a reduction of fees due to hours spent litigating Plaintiffs' APA claims. Resp.18-19. Plaintiffs dispute any such reduction is permissible. Reply.4-6.</li> <li>• To the extent any reduction is made, Plaintiffs should still be compensated at EAJA rates (\$226.70/hr) for the 61.4 hours spent litigating their APA claims—totaling \$13,919.38. Reply 7.</li> <li>• If these 61.4 hours were compensated at counsel's DC home rates, the fees would be \$43,776.00. Thus, awarding \$13,919.38 for these 61.4 hours represents a reduction of \$29,856.62</li> </ul>	<b>\$29,856.62</b>
<b>Reduction if hours opposing intervention are excluded:</b> <ul style="list-style-type: none"> <li>• The Government seeks to exclude all hours that it says appear to relate to litigating against the Intervenors. Resp.14. Plaintiffs already cut 138.4 hours related to intervention in its initial exercise of billing judgment, Goodrich Supp. Decl., Ex. 4-C, and Plaintiffs dispute that any further reduction is permissible. Reply 7-8.</li> <li>• To the extent any further reduction is made, counsel spent 38.65 hours (beyond what was already cut in the exercise of billing judgment) opposing intervention. Goodrich Supp. Decl., Ex. 4-C. The value of these 38.65 hours at counsel's DC home rates is \$27,037.50.</li> </ul>	<b>\$27,037.50</b>
<b>Total Fee Amount after APA and Intervention Reductions</b>	
<b>Plaintiffs' total fees after APA and intervention reductions:</b> <ul style="list-style-type: none"> <li>• Plaintiffs' total fee request (\$2,382,049) minus the reductions for APA hours (\$29,856.62) and hours opposing intervention (\$27,037.50) results in a total award of \$2,325,154.88.</li> </ul>	<b>\$2,325,154.88</b>

## Summary of Fees Reduced to Dallas Rates

<b>Total Fee Request Reduced to Dallas Rates</b>	
<p><b>Plaintiffs' original fee request reduced to Dallas rates:</b></p> <ul style="list-style-type: none"> <li>The Government argues that the Court should use Dallas rates. Resp.6-12. Plaintiffs maintain DC home rates are required. Reply 1-3.</li> <li>If the Court uses Dallas rates, the original request in the fee petition would be reduced by \$249,102—from \$2,346,041 to \$2,096,939.</li> </ul>	<b>\$2,096,939</b>
<p><b>Additional fees for fee petition reply reduced to Dallas rates:</b></p> <ul style="list-style-type: none"> <li>If the work on the fee petition reply (45.65 hours) is compensated at Dallas rates instead of DC home rates, the fees for the reply would be reduced by \$4,079—from \$36,008 to \$31,929.</li> </ul>	<b>\$31,921</b>
<p><b>Plaintiffs' total fee request reduced to Dallas rates:</b></p> <ul style="list-style-type: none"> <li>This equals the original fee request + fee petition reply reduced to Dallas rates</li> </ul>	<b>\$2,128,860</b>
<b>Hours Disputed by Defendants</b>	
<p><b>Reduction if APA hours are compensated at EAJA rates:</b></p> <ul style="list-style-type: none"> <li>The Government seeks a reduction of fees due to hours spent litigating Plaintiffs' APA claims. Resp.18-19. Plaintiffs dispute any such reduction is permissible. Reply.4-6.</li> <li>To the extent any reduction is made, Plaintiffs should still be compensated at EAJA rates (\$226.70/hr) for the 61.4 hours spent litigating their APA claims—totaling \$13,919.38. Reply 7.</li> <li>If these 61.4 hours were compensated at counsel's Dallas rates, the fees would be \$38,289. Thus, awarding \$13,919.38 for these 61.4 hours represents a reduction of \$24,369.62.</li> </ul>	<b>\$24,369.62</b>
<p><b>Reduction if hours opposing intervention are excluded:</b></p> <ul style="list-style-type: none"> <li>The Government seeks to exclude all hours that it says appear to relate to litigating against the Intervenor. Resp.14. Plaintiffs counsel already cut 138.4 hours related to intervention in its initial exercise of billing judgment, Goodrich Supp. Decl., Ex. 4-C, and Plaintiffs dispute that any further reduction is permissible. Reply 7-8.</li> <li>To the extent any further reduction is made, counsel spent 38.65 hours (beyond what was already cut in the exercise of billing judgment) opposing intervention. Goodrich Supp. Decl., Ex. 4-C. The value of these 38.65 hours at counsel's Dallas rates is \$24,502.50.</li> </ul>	<b>\$24,502.50</b>
<b>Total Fee Amount after APA, Intervention, and Dallas-Rate Reductions</b>	
<p><b>Plaintiffs' total fees after APA, intervention, and Dallas-rate reductions:</b></p> <ul style="list-style-type: none"> <li>Plaintiffs' original fee request reduced to Dallas rates (\$2,128,860) minus the reductions for APA hours (\$24,369.62) and hours opposing intervention (\$24,502.50) result in a total reduced fee award of \$2,079,987.88.</li> </ul>	<b>\$2,079,987.88</b>

# **EXHIBIT 4-B:**

## APA Hours

### APA Hours

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Hours</b>
8/1/2016	Stephanie Barclay	Researched re pregnancy discrimination act	0.9
8/4/2016	Stephanie Barclay	APA research	2.5
9/27/2016	Stephanie Barclay	Research and drafting of APA sections of summary judgment motion.	5.5
9/28/2016	Stephanie Barclay	Worked on APA section of summary judgment motion.	4.5
10/10/2016	Stephanie Barclay	Researched APA case law and worked on the summary judgment motion.	4.5
10/19/2016	Luke Goodrich	review relevant order in Texas v. US	0.2
10/31/2016	Mark Rienzi	consider Gloucester Count cert grant and confer with Ms. Windham re impact on litigation	0.5
10/31/2016	Stephanie Barclay	Call with APA expert and follow-up call and work with Mark on response to HHS.	0.8
11/22/2016	Stephanie Barclay	Researched APA case law.	2.9
2/21/2017	Stephanie Barclay	Scheduled APA call and discussed with team.	0.5
2/22/2017	Mark Rienzi	review Title IX materials	0.5
2/22/2017	Stephanie Barclay	Reviewed Title IX letters related to case and worked with paralegals to update folder and deadline schedule.	0.9
2/23/2017	Stephanie Barclay	Call regarding APA research.	0.5
2/23/2017	Luke Goodrich	strategy call re APA issues w outside counsel, S Barclay, and M Rienzi	0.6
2/23/2017	Stephanie Barclay	Researched APA question.	4
2/24/2017	Stephanie Barclay	APA research	4.4
3/14/2017	Stephanie Barclay	Researched admin law remedies and worked on finalizing renewed summary judgment motion.	6
3/22/2017	Luke Goodrich	call w M Rienzi and admin consultants re litigation	0.8
3/22/2017	Mark Rienzi	call w admin expert re litigation	0.8
3/30/2017	Stephanie Barclay	Admin law research.	2.6
1/25/2019	Joseph Davis	Performed research regarding lower courts' interpretation of Price Waterhouse v. Hopkins, for purposes of drafting motion for summary judgment.	1.2

1/29/2019	Joseph Davis	Performed research regarding nationwide-injunction issue, for purposes of drafting motion for summary judgment.	1.1
1/30/2019	Joseph Davis	For purposes of drafting motion for summary judgment, performed research regarding court cases on the meaning of 'sex' in nondiscrimination laws.	1.3
1/31/2019	Joseph Davis	Performed research for and drafted portion of brief in support of summary judgment disputing application of Chevron.	2.6
1/31/2019	Joseph Davis	Performed research regarding historical meaning of 'sex' in 'sex' discrimination, for purposes of revising textual argument in motion for summary judgment.	2.7
1/31/2019	Joseph Davis	Performed research for and drafted APA portion of motion for summary judgment.	3.7
2/6/2019	Joseph Davis	Reviewed and corresponded with Franciscan team about Fifth Circuit decision regarding the meaning of 'sex' in Title VII.	0.9
5/1/2019	Joseph Davis	Performed research regarding nationwide injunctions, for purposes of drafting reply in support of motion for summary judgment.	1.4
11/19/2019	Joseph Davis	Reviewed government's motion to amend judgment and corresponded with case team regarding the same.	1.2
11/20/2019	Joseph Davis	Performed research for and drafted response to government's motion to modify judgment.	1.4
		Total:	61.4

**Total APA Hours**

<b>Timekeeper</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Sum of Hours</b>
Joseph Davis	0	0	0	17.5	0	0	0	17.5
Luke Goodrich	0.2	1.4	0	0	0	0	0	1.6
Mark Rienzi	0.5	1.3	0	0	0	0	0	1.8
Stephanie Barclay	21.6	18.9	0	0	0	0	0	40.5
<b>Total Annual Hours</b>	<b>22.3</b>	<b>21.6</b>	<b>0</b>	<b>17.5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>61.4</b>

Value of 61.4 APA hours using DC rates: \$43,776.00  
 Value of 61.4 APA hours using EAJA rates: – \$13,919.38  
**Fee reduction from DC rates to EAJA rates: \$29,856.62**

Value of 61.4 APA hours using Dallas rates: \$38,289.00  
 Value of 61.4 APA hours using EAJA rates: – \$13,919.38  
**Fee reduction from Dallas rates to EAJA rates: \$24,369.62**

**EXHIBIT 4-C:**  
Prior Billing Judgment Deletions for  
Intervention Hours

**Prior Billing Judgment Deletions for Intervention Hours**

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Hours</b>
9/15/2016	Lori Windham	Discussion re: intervention	0.2
9/15/2016	Luke Goodrich	call w E Rassbach, S Barclay, and M Rienzi re motion to intervene	0.3
9/16/2016	Mark Rienzi	emails re motion to intervene (.3); review and comment on SJ outline (.7)	1
9/19/2016	Luke Goodrich	call w M Rienzi re intervention	0.2
9/19/2016	Mark Rienzi	review motion to intervene and confer with team re same	1.5
9/20/2016	Lori Windham	Review intervention motion	0.2
9/20/2016	Daniel Blomberg	Call with Luke and reviewing intervention motion and calendar	0.4
9/21/2016	Daniel Blomberg	Call with Luke re intervention	1.1
9/21/2016	Luke Goodrich	call w D Blomberg to discuss motion to intervene	1.1
9/21/2016	Daniel Blomberg	Drafting re intervention	4.6
9/22/2016	Daniel Blomberg	Working on intervention opposition	3.1
9/23/2016	Luke Goodrich	call w DOJ re service, intervention, PI & make notes to file	0.5
9/23/2016	Luke Goodrich	revise outline of opposition to intervention	0.6
9/23/2016	Daniel Blomberg	Working on intervention papers	2.9
9/26/2016	Daniel Blomberg	Working on intervention opposition	0.3
9/27/2016	Daniel Blomberg	Working on intervention opposition	0.9
9/27/2016	Daniel Benson	Research re: opposition to motion to intervene	5.4
9/28/2016	Daniel Benson	Research re: response to intervention motion	1.5
9/30/2016	Luke Goodrich	revise extension motion and draft email to intervenors re extension motion	0.4
10/3/2016	Luke Goodrich	review and revise intervention response	1
10/3/2016	Stephanie Barclay	Worked on preparing filing for motion for extension of time re: intervenors.	3.1
10/5/2016	Mark Rienzi	review and comment on intervention response brief	1

10/5/2016	Luke Goodrich	revise intervention opposition	1.2
10/5/2016	Luke Goodrich	revise response to motion to intervene	3.5
10/25/2016	Stephanie Barclay	Reviewed and researched motion from ACLU intervenors	2
10/27/2016	Stephanie Barclay	Reviewed response to ACLU and did case law research and coordinated cite check.	5.7
10/27/2016	Darlene Calandra	Cite check, proofread, edit and format Response to Intervenors' Motion to Stay Briefing.	1.5
10/27/2016	Chelise Fox	Research for S. Barclay, looking for intervenor examples in N.D. Texas. Cite check Response to Motion to Stay Briefing.	6
10/28/2016	Daniel Benson	Case research re timing of summary judgment vs intervention	0.4
11/10/2016	Diana Thomson	reviewing proposed-intervenors' motion to stay case	0.7
1/11/2017	Chelise Fox	Drafted shell response to ACLU intervention.	0.5
1/13/2017	Mark Rienzi	review response on intervention motion	0.7
1/17/2017	Mark Rienzi	work on intervention filing	1
1/17/2017	Darlene Calandra	Cite check, proofread, format and edit Response to Intervenors' Motion on Ruling on Intervention and Stay of Preliminary Injunction Pending Appeal; discuss with L. Goodrich, S. Barclay, C. Fox, E. Dobak	3
1/19/2017	Diana Thomson	reviewing reply to motion to stay intervention	0.2
1/30/2017	Rachel Busick	reviewing intervention	4.2
2/2/2017	Luke Goodrich	research response to motion to intervene	0.7
2/2/2017	Rachel Busick	research re ACLU oppo to intervention	4.6
2/7/2017	Darlene Calandra	Cite check, proofread, format and edit Response to Intervenors' Request for Intervention; discuss with L. Goodrich, S. Barclay, C. Fox.	3
2/8/2017	Mark Rienzi	work on intervention filing	0.5

2/28/2017	Stephanie Barclay	Researched intervention issues and sent initial findings to team.	3.9
2/28/2017	Stephanie Barclay	Researched intervention case law for reply to motion to dismiss.	4.2
3/27/2017	Luke Goodrich	review intervenors' stay motion	0.2
3/28/2017	Stephanie Barclay	Reviewed ACLU motion to stay and reviewed cited case law.	1.6
3/29/2017	Stephanie Barclay	Researched case law re stay of proceedings when intervention is denied and discussed findings with Luke.	3.3
3/31/2017	Luke Goodrich	Correspondence w intervenors and TX re intervenors' motion to bifurcate	0.2
4/4/2017	Luke Goodrich	revise and send to TX the opp to intervenors' stay request	0.2
4/4/2017	Luke Goodrich	review intervenors' motion to bifurcate	0.2
4/4/2017	Luke Goodrich	revise response to intervenors' stay motion	0.6
4/5/2017	Luke Goodrich	review response to intervenors' motion to bifurcate	0.2
4/5/2017	Luke Goodrich	revise and send to TX the response to intervenors motion to bifurcate	0.9
4/5/2017	Chelise Fox	Cite checked opp to intervention mot to stay.	2.5
2/7/2019	Luke Goodrich	call w TX re intervention	0.2
2/7/2019	Luke Goodrich	call w client re intervention strategy	0.2
2/7/2019	Eric Rassbach	call re intervention	0.4
2/7/2019	Luke Goodrich	call w M Rienzi, E Rassbach, and J Davis re intervention	0.4
2/7/2019	Mark Rienzi	call with team re ACLU intervention	0.4
2/7/2019	Joseph Davis	Reviewed motion to intervene filed by ACLU and discussed same with Luke Goodrich, Eric Rassbach, and Mark Rienzi.	1
2/7/2019	Luke Goodrich	research and draft memo to client on intervention	1.6
2/19/2019	Joseph Davis	Received and reviewed draft response to motion to intervene.	0.7
2/19/2019	Luke Goodrich	review draft response to motion to intervene	0.7

2/20/2019	Luke Goodrich	revise opposition to intervention	0.2
2/20/2019	Joseph Davis	Reviewed and revised objections to declarations of putative intervenors.	0.3
2/20/2019	Joseph Davis	Performed research for and revised opposition to renewed motion to intervene.	1.9
8/8/2019	Joseph Davis	Performed research for and drafted supplemental brief regarding standing for permissive intervenors.	6.8
9/10/2019	Joseph Davis	Prepared for hearing on motion to intervene.	0.7
9/11/2019	Joseph Davis	Prepared for hearing on motion to intervene.	4.7
9/12/2019	Joseph Davis	Prepared for hearing on motion to intervene.	6.6
9/13/2019	Joseph Davis	Prepared for and participated in call with Luke Goodrich and counsel for State Plaintiffs regarding hearing on motion to intervene.	0.9
9/13/2019	Joseph Davis	Prepared for hearing on motion to intervene.	4.2
9/14/2019	Joseph Davis	Prepared for hearing on motion to intervene.	1.7
9/15/2019	Joseph Davis	Prepared for and participated in moot argument for hearing on motion to intervene.	2.2
9/16/2019	Joseph Davis	Prepared for, attended, and argued at hearing on motion to intervene.	4.5
9/15/2019	Luke Goodrich	review briefing and meet w J Davis to discuss hearing strategy	3.4
9/15/2019	Luke Goodrich	review hearing docs	1.7
9/16/2019	Luke Goodrich	attend hearing	1.5
9/16/2019	Luke Goodrich	meet w J Davis re admission and hearing strategy	2.3
12/3/2019	Joseph Davis	Reviewed edits to motion to dismiss appeal circulated by intervenors and state plaintiffs.	0.5
		Total:	<b>138.4</b>

**Total Intervention Hours Previously Deleted**

<b>Timekeeper</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Sum of Hours</b>
Joseph Davis	0	0	0	36.7	0	0	0	36.7
Lori Windham	0.4	0	0	0	0	0	0	0.4
Luke Goodrich	8.8	3	0	12.2	0	0	0	24.2
Mark Rienzi	3.5	2.2	0	0.4	0	0	0	6.1
Daniel Blomberg	13.3	0	0	0	0	0	0	13.3
Daniel Benson	7.3	0	0	0	0	0	0	7.3
Eric Rassbach	0	0	0	0.4	0	0	0	0.4
Stephanie Barclay	10.8	13	0	0	0	0	0	23.8
Diana Thomson	0.7	0.2	0	0	0	0	0	0.9
Rachel Busick	0	8.8	0	0	0	0	0	8.8
Chelise Fox	6	3	0	0	0	0	0	9
Darlene Calandra	1.5	6	0	0	0	0	0	7.5
<b>Total Hours</b>								<b>138.4</b>

**EXHIBIT 4-D:**  
Additional Hours Opposing Intervention

**Additional Hours Opposing Intervention**

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Hours</b>
10/3/2016	Chelise Fox	Proofread and revise motion for extension of time to file response.	1
10/3/2016	Darlene Calandra	Cite check Motion for Extension.	1.5
10/5/2016	Luke Goodrich	draft reply ISO extension motion	1
10/6/2016	Luke Goodrich	revise reply ISO motion for extension	0.2
10/6/2016	Luke Goodrich	finalize and file reply ISO extension motion	0.3
1/31/2017	Luke Goodrich	Research for ACLU response	1
1/31/2017	Luke Goodrich	Call w M Rienzi re ACLU response	0.1
1/31/2017	Luke Goodrich	Call w co-counsel re ACLU response	0.2
2/2/2017	Luke Goodrich	Research and draft response to ACLU	3.7
2/3/2017	Luke Goodrich	Research and revise response to ACLU	2
2/6/2017	Luke Goodrich	Revise ACLU response	0.4
2/7/2017	Chelise Fox	Proofread Franciscan response	2.7
2/7/2017	Stephanie Barclay	Revise response.	0.2
2/8/2017	Luke Goodrich	Finalize and file ACLU response	0.4
8/7/2019	Luke Goodrich	Discuss w M Rienzi, research, and draft memo updating clients re supplemental brief	1.5
8/7/2019	Mark Rienzi	Review order, confer with team and co-counsel, confer with client re brief	1
8/7/2019	Joseph Davis	Prepared for and participated in phone call with Luke Goodrich and Lori Windham regarding supplemental-briefing order.	0.2
8/7/2019	Joseph Davis	Reviewed and performed research regarding supplemental briefing notice.	0.6
8/7/2019	Luke Goodrich	call w M Rienzi and co-counsel re supplemental brief	0.3
8/7/2019	Luke Goodrich	call w M Rienzi re briefing order	0.4
8/7/2019	Luke Goodrich	call w L Windham and J Davis re supplemental brief	0.7

8/9/2019	Joseph Davis	Performed research for and drafted brief regarding court's supplemental-briefing order and revised in light of comments from Luke Goodrich.	5.2
8/9/2019	Luke Goodrich	further revise supplemental brief	0.8
8/9/2019	Luke Goodrich	calls and research to revise supplemental brief	2
8/9/2019	Luke Goodrich	call w M Rienzi re supp br	0.2
8/9/2019	Mark Rienzi	Confer with team and client and review draft brief on standing	0.8
8/12/2019	Darlene Calandra	Cite check, proofread, format and edit Supplemental Brief on Standing; discuss with J. Montazzoli, J. Davis and L. Goodrich	1
8/12/2019	Jennifer Montazzoli	Cite check Supplemental Brief on Standing	1
8/12/2019	Joseph Davis	Reviewed and incorporated suggestions into supplemental brief regarding Town of Chester case.	1.7
8/12/2019	Joseph Davis	Finalized and prepared for filing supplemental brief ordered by court.	3
8/12/2019	Luke Goodrich	review and revise supp br	0.3
8/12/2019	Luke Goodrich	email clients re supp br	0.4
9/10/2019	Joseph Davis	Received and reviewed order setting hearing and corresponded with litigation team regarding the same.	1.1
9/13/2019	Darlene Calandra	Prepare Oral Argument binders; discuss with J. Davis and L. Goodrich; update electronic docket and Share Point files.	1.75
		Total:	38.65

**Additional Hours Spent Opposing Intervention**

<b>Timekeeper</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Sum of Hours</b>
Joseph Davis	0	0	0	11.8	0	0	0	11.8
Luke Goodrich	1.5	7.8	0	6.6	0	0	0	15.9
Mark Rienzi	0	0	0	1.8	0	0	0	1.8
Stephanie Barclay	0	0.2	0	0	0	0	0	0.2
Paralegals	2.5	2.7	0	3.75	0	0	0	8.95
<b>Total Hours</b>	<b>4.0</b>	<b>10.7</b>	<b>0</b>	<b>23.95</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>38.65</b>

**Value of Additional Hours Spent Opposing Intervention (DC rates)**

Joseph Davis:		\$8,260
Luke Goodrich:		\$14,598
Mark Rienzi:		\$2,160
Stephanie Barclay:		\$140
Paralegals:	+	<u>\$1,879.50</u>
<b>Total Value (DC Rates):</b>		<b>\$27,037.50</b>

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**Value of Additional Hours Spent Opposing Intervention (Dallas rates)**

Joseph Davis:		\$7,198
Luke Goodrich:		\$13,413
Mark Rienzi:		\$1,890
Stephanie Barclay:		\$122
Paralegals:	+	<u>\$1,879.50</u>
<b>Total Value (Dallas Rates):</b>		<b>\$24,502.50</b>

**EXHIBIT 4-E:**  
Fee Petition Reply Hours

**Fee Petition Reply Hours**

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Hours</b>
1/19/2023	Joseph Davis	Received and reviewed HHS's response to fee motion, performed research regarding reply to same.	1.9
1/19/2023	Joseph Davis	Performed research regarding reply in support of fee petition.	0.9
1/19/2023	Daniel Chen	Review HHS opposition brief and research cases and legal authority cited therein.	2.5
1/20/2023	Luke Goodrich	review DOJ fee response and begin drafting reply	5.3
1/20/2023	Daniel Chen	Research case law for reply brief.	0.6
1/24/2023	Joseph Davis	Performed research for and drafted reply in support of fee petition.	2.7
1/24/2023	Daniel Chen	Research case law to respond to HHS arguments and draft reply brief.	6.9
1/25/2023	Joseph Davis	Performed research for and drafted reply in support of fee petition.	0.5
1/25/2023	Daniel Chen	Research case law in response to HHS arguments and draft reply brief accordingly.	4.85
1/26/2023	Luke Goodrich	revise fee reply	2
1/26/2023	Joseph Davis	Reviewed and revised reply in support of fee petition.	1.1
1/26/2023	Daniel Chen	Revise and edit fee petition reply.	2.3
1/27/2023	Joseph Davis	Drafted and revised reply in support of fee petition.	2.5
1/27/2023	Daniel Chen	Revise and edit reply brief.	2.6
1/30/2023	Luke Goodrich	revise fee reply	2.1
1/30/2023	Joseph Davis	Performed research for and drafted reply in support of fee petition.	0.9
1/30/2023	Joseph Davis	Drafted and revised reply in support of fee petition and ancillary documents.	3.2
1/30/2023	Daniel Chen	Draft and revise declaration and exhibits	1.9
1/30/2023	Daniel Chen	Revise and edit reply brief	0.9
		<b>Total:</b>	<b>45.65</b>

**Hours for Fee Petition Reply**

Daniel Chen:		22.55 hours
Joseph Davis:		13.70 hours
Luke Goodrich:	+	<u>9.40 hours</u>
<b>Total Hours:</b>		<b>45.65 hours</b>

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**Fees for Fee Petition Reply (DC Rates)**

Daniel Chen:		\$15,785.00
Joseph Davis:		\$10,823.00
Luke Goodrich:	+	<u>\$9,400.00</u>
<b>Total Fees for Fee Petition Reply (DC Rates):</b>		<b>\$36,008.00</b>

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**Fees for Fee Petition Reply (Dallas Rates)**

Daniel Chen:		\$13,755.50
Joseph Davis:		\$9,658.50
Luke Goodrich:	+	<u>\$8,507.00</u>
<b>Total Fees for Fee Petition Reply (Dallas Rates):</b>		<b>\$31,921.00</b>

**December 21-27, 2022, Billing-Judgment Deletions for Fees on Fees**

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Hours</b>
12/21/2022	Luke Goodrich	Revise fee petition	1.8
12/21/2022	Luke Goodrich	revise fee pet'n docs	2.2
12/21/2022	Joseph Davis	Drafted and revised fee petition and exhibits.	5.8
12/21/2022	Daniel Chen	Revise and edit fee petition and accompanying documents.	7
12/22/2022	Luke Goodrich	revise fee petition docs	4.1
12/22/2022	Joseph Davis	Performed research for, revised, and drafted fee petition and ancillary documents.	4
12/22/2022	Megan Schilling	Finalize cite check and filing of fee petition	9
12/22/2022	Daniel Chen	Revise and edit fee petition and accompanying documents.	7.5
12/22/2022	Leigh Brown	Cite checking the fee motion	7.5
12/22/2022	Matthew Krauter	Cite check Goodrich declaration	4.2
12/23/2022	Luke Goodrich	finalize and file fee pet'n	3.5
12/23/2022	Joseph Davis	Drafted and revised fee petition and ancillary documents.	4.1
12/23/2022	Zachary Novak	Assisted attorneys with finalizing fee petition documents; coordinated with printer on final versions and instructions for assembly and mailing.	5
12/23/2022	Daniel Chen	Revise and edit fee petition and accompanying documents.	3.5
12/27/2022	Megan Schilling	Coordinate paper copies with printer vendor	0.5
		Total:	69.7

**Billing Judgment Deletions for Fee Petition Reply**

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Hours</b>
1/20/2023	Luke Goodrich	call w J Davis and D Chen to discuss fee reply	0.5
1/20/2023	Daniel Chen	Strategy discussion with Luke Goodrich and Joe Davis re: reply brief.	0.5
1/25/2023	Daniel Chen	Research case law in response to HHS arguments and draft reply brief accordingly.	4.85
1/30/2023	Luke Goodrich	call w J Davis and D Chen re fee reply	0.5
1/30/2023	Daniel Chen	Team strategy meeting regarding edits and arguments with L. Goodrich and J. Davis	0.5
		Total:	6.85