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No. 06-1717

IN THE
Supreme Court of the United States

Richlin Security Service Co.,
Petitioner,

v.

Michael Chertoff,
Secretary of Homeland Security,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

BRIEF *AMICI CURIAE* OF NATIONAL ASSOCIATION OF LEGAL ASSISTANTS, PARALYZED VETERANS OF AMERICA, AND THE NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504(a)(1) and 28 U.S.C. § 2412(d)(1)(A), may a prevailing party be awarded attorney fees for paralegal services at the market rate for such services, as four circuits have held, or does EAJA limit reimbursement for paralegal services to cost only, as the Federal Circuit panel majority below held?

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INTEREST OF *AMICI CURIAE*[1]

1. The **National Association of Legal Assistants (NALA)** is a professional association offering continuing education and professional development programs for paralegals throughout the nation.[2] NALA was established in 1975 as a nonprofit organization under section 501(c)(6) of the Internal Revenue Code. It is composed of 6000 individual members and over 90 state and local affiliated associations, representing about 10,000 paralegals. Detailed information about the association is available at http://www.nala.org.

NALA has served as a leader in the development of the legal profession by supporting continuing education of paralegals and providing ethical guidelines. In 1975, NALA members adopted the first Code of Ethics and Professional Responsibility for paralegals in their day-to-day activities. In 1984, NALA members adopted its Model Standards and Guidelines for Utilization of Legal Assistants to serve as a guide for paralegals and supervising attorneys by describing the role of paralegals in the delivery of legal services. The Model is based on research of state-bar-association-adopted guidelines, ethics opinions, and case law related to paralegal utilization. NALA has

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] In recent years, NALA has found that the term "paralegal" is a preferred term in certain geographic areas; in some states, "legal assistant" is falling by the wayside. This brief uses the terms "legal assistant" and "paralegal" interchangeably.

conducted a nationwide utilization and compensation survey every two to three years since 1986, and survey findings are submitted regularly to the Department of Labor.

In 1989, NALA filed an *amicus curiae* brief in *Missouri v. Jenkins*, 491 U.S. 274 (1989). In the brief, NALA explained that paralegals are a recognized and desirable addition to the modern law office. The delegation of work to a skilled paralegal reduces the cost of legal services to the client and increases attorney efficiency and productivity. Today, the contribution and value of paralegals to cost-effective delivery of legal services is indisputable and recognized even more so than it was in 1989. The paralegal occupation was then and continues to be designated as one of the fastest-growing occupations in the United States. When NALA's brief was filed in 1989, there were an estimated 53,000 paralegals (as of 1984), which was projected to rise to 104,000 by 1994. Today, the Bureau of Labor Statistics estimates that over 200,000 paralegal jobs are held in the United States. The use of paralegals continues to be promoted and encouraged when compensated at market rate as part of court-awarded attorneys' fees. In addition, the public interest is served by encouraging attorney use of paralegals where practical.

2. The **Paralyzed Veterans of America (PVA)** is a national nonprofit organization chartered by the U.S. Congress.[3] *See* 36 U.S.C. § 170101 et seq. Membership in PVA is limited to American citizens who are veterans of the U.S. Armed Forces and have a

[3] Detailed information about PVA is available at www.pva.org.

spinal cord injury or disease. PVA has over 20,000 members, the vast majority of whom use a wheelchair for mobility. The congressionally mandated purposes of the organization include acquainting the public with the needs and problems of paraplegics; promoting medical research regarding injuries to and diseases of the spinal cord; and to advocate for and to foster various programs on behalf of members and other individuals with spinal cord injury or disease. PVA maintains an active practice at both the U.S. Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Federal Circuit litigating cases involving veterans' benefits on behalf of its members and other veterans. The recovery of legal fees and expenses under the Equal Access to Justice Act allows PVA to continue with this important effort on behalf of its members and other veterans. Therefore, the PVA has a vital interest in ensuring that the Equal Access to Justice Act is interpreted consistently with its primary purpose of ensuring that the expenses involved in litigation do not deter citizens subject to unreasonable governmental conduct, such as veterans and other with disabilities, from seeking vindication of their rights.

3. The **National Organization of Social Security Claimants' Representatives (NOSSCR)** is a non-profit membership corporation that provides professional education and related products and services to individuals who represent individuals who claim benefits under the Social Security Act.[4] NOSSCR has filed *amicus* briefs in several other cases before

[4] Detailed information about NOSSCR is available at www.NOSSCR.org.

this Court, presenting the perspective of its membership—approximately 4000 attorneys and non-attorneys who represent Social Security claimants—and of the claimants NOSSCR represents. NOSSCR members include both lawyers and non-lawyers, in legal services organizations and in private practice, located in all parts of the country.

NOSSCR's members represent Social Security claimants before the Social Security Administration and in the courts. Overall, over five percent of all federal district court filings in the twelve-month period ending September 30, 2006 were Social Security cases,[5] and about half of those cases likely will result in some relief entitling NOSSCR's clients to seek attorney's fees under the Equal Access to Justice Act. Many of NOSSCR's members who seek EAJA fees include paralegal services in their requests. Therefore, NOSSCR has a great interest in ensuring that its members be compensated for such an integral part of their legal practice.

SUMMARY OF THE ARGUMENT

In *Missouri v. Jenkins*, this Court held that when the prevailing practice is to bill paralegal work at market rates, paralegal time should be similarly compensated for purposes of fee requests under 42 U.S.C. § 1988. Compensation at market rates, this Court reasoned, would encourage the "cost-effective delivery of legal services." This Court's holding and

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[5] *See* Table C-3, U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending Sept. 30, 2006, *available at* http://www.uscourts.gov/ judbusiness2006/contents.html.

reasoning in *Jenkins* apply fully to requests for paralegal fees under EAJA: If anything, the separate billing of paralegal time at market rates is even more universally accepted now than at the time of this Court's decision in *Jenkins*, and paralegals perform substantive legal work that would otherwise be performed by attorneys, resulting in lower fees for clients and lower requests for compensation under EAJA. The Federal Circuit's assumption that allowing EAJA compensation for paralegal time at market rates would create "perverse incentives" is misplaced, as it fails to take account of both the realities of modern law practice and a court's discretion in fixing the amount of an EAJA award. The Federal Circuit's holding that paralegal fees under EAJA should instead be compensated at the attorney's cost is similarly flawed, as it too is inconsistent with the way in which law firms operate and would impose additional administrative burdens on both attorneys and courts.

ARGUMENT

I. Compensating Paralegal Time at Prevailing Market Rates Is Consistent with Practices Throughout the Country and Will Encourage the Cost-Effective Delivery of Legal Services.

1. In *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989), this Court found it "self-evident" that "the 'reasonable attorney's fee' provided for by" 42 U.S.C. § 1988 "should compensate the work of paralegals, as well as that of attorneys." When it came to assigning a value to paralegals' work, this Court concluded that when "the prevailing practice is to bill paralegal work

at market rates, treating civil rights lawyers' fee requests in the same way is not only permitted by § 1988, but also makes economic sense." *Id.* at 288. Specifically, the Court explained, "[b]y encouraging the use of lower cost paralegals rather than attorneys wherever possible, permitting market-rate billing of paralegal hours 'encourages cost-effective delivery of legal services' . . . ." *Id.* (quoting *Cameo Convalescent Center, Inc. v. Senn*, 738 F.2d 836, 846 (7th Cir. 1984), *cert. denied*, 469 U.S. 1106 (1985)). Noting that the separate billing of paralegals at market rates "appear[ed] to be the practice in most communities," and in particular in the local market in Missouri, this Court upheld the lower courts' decisions ordering compensation for paralegal time at market rates. *Id.* at 289.

This Court's reasoning and holding in *Jenkins* apply fully to this case. First, like section 1988, EAJA authorizes an award of "reasonable attorney fees" to parties who prevail in litigation against the government. *See* 28 U.S.C. § 2412(d)(1)(A) ("[A] court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action (other than cases sounding in tort), . . . brought by or against the United States in any court having jurisdiction 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."); 5 U.S.C. § 504(a)(1) ("An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the

agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust."); 28 U.S.C. § 2412(d)(2)(A) ("For the purposes of this subsection, 'fees and other expenses' includes . . . reasonable attorney fees."); 5 U.S.C. § 504(b)(1)(A) ("For the purposes of this section, 'fees and other expenses' includes . . . reasonable attorney . . . fees."). There is no reason why it should be any less "self-evident" in the context of the EAJA that "the 'reasonable attorney's fee' provided for by statute should compensate the work of paralegals."

Unlike section 1988, EAJA provides specifically that "[t]he amount of fees awarded under [the Act] shall be based upon prevailing market rates for the kind and quality of the services furnished," 28 U.S.C. § 2412(d)(2)(A); 5 U.S.C. § 504(b)(1)(A). And as federal courts have repeatedly recognized (and the government did not challenge in its brief in opposition to certiorari), the practice of billing clients separately for paralegal time at market rates has become even more entrenched throughout the country in the nearly two decades since this Court's decision in *Jenkins*.[6]

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[6] *See, e.g.*, *Edmond v. Oxlite Inc.*, No. Civ. A. 01-2594, 2005 WL 2458235, at *3 (W.D. La. Oct. 5, 2005) (finding separate billing to be the prevailing practice in the court's jurisdiction); *File v. Hastings Entertainment, Inc.*, No. Civ. A. 2-02CV0213J, 2003 WL 21976739, at *3 (N.D. Tex. Aug. 19, 2003) (same); *Cleveland Area Bd. of Realtors v. City of Euclid*, 965 F. Supp. 1017, 1020 n.4 (N.D. Ohio 1997) (same); *Spectrum Leasing Corp. v. GSA*, 93-1 B.C.A. (CCH) P25,317, 1992 GSBCA LEXIS 279, at *30-*31 (July 27, 1992) (same for Washington, D.C. metropolitan area); *see also* Nat'l Ass'n of Legal Assistants, *What Do Legal Assistants Do?*, *available at* http://www.nala.org/whatis.htm (visited Dec. 3, 2007) (explaining that "[p]rofessionally, a paralegal's time for substantive legal work (as opposed to clerical or administrative

Indeed, the American Bar Association's Standing Committee on Paralegals even instructs attorneys that a "paralegal's substantive legal work (i.e., not clerical work) may be billed directly to the client just as an attorney's work is billed, or considered in setting a flat fee just as an attorney's work would be."[7]

2. Although paralegals may have originally performed tasks that closely resembled those of a legal secretary, *see* Lisa S. Quaranta, *The Changing Role of the Paralegal*, 10 W. Va. Law. 9 (1996), they now perform, under the supervision of an attorney, substantive legal work that would otherwise be performed by an attorney – that is, precisely the kind of legal work that Congress intended to compensate under EAJA. This work may include, for example, "attending client conferences, witnessing the execution of documents, preparing transmittal letters, and maintaining estate/guardianship trust accounts,"[8] locating and interviewing witnesses, conducting investigations and statistical research, conducting legal research, drafting legal documents and

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work) is billed to clients much the same way as an attorney's time, but at a lower hourly rate").

[7] ABA Standing Cmte. on Paralegals, *Information for Lawyers: How Paralegals Can Improve Your Practice*, *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#13 (visited July 10, 2007).

[8] ABA Model Guideline 2 for the Utilitization of Paralegal Services cmt., *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#5 (visited Dec. 15, 2007) (emphasis added).

pleadings, and summarizing depositions, interrogatories, and testimony.[9]

Because paralegals are capable of handling a variety of substantive legal work that would otherwise be performed by an attorney, allowing paralegal fees to be compensated at prevailing market rates will, just as this Court noted in *Jenkins*, encourage the cost-effective delivery of legal services, thereby resulting – as the D.C. Circuit has emphasized – not only in lower fees to the client, but also in a lower request for reimbursement.[10] *See In re Donovan*, 877 F.2d 982, 992-93 (D.C. Cir. 1989) (per curiam).

Indeed, the experience of NOSSCR members also demonstrates the economic benefits that can result from the use of paralegals to perform substantive legal tasks that would otherwise be performed by an attorney. In Social Security appeals to federal court, paralegals (under the supervision of an attorney) may perform such important but time-consuming tasks as preparing a summary of the administrative record and drafting the procedural history, statement of the case,

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[9] Nat'l Ass'n of Legal Assistants, *What Do Legal Assistants Do?*, available at http://www.nala,org/whatis.htm (visited Dec. 15, 2007).

[10] *See also* ABA Standing Cmte. on Paralegals, *Information for Lawyers: How Paralegals Can Improve Your Practice, available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#role; *see also* Arthur G. Greene & Therese A. Cannon, *Paralegals, Profitability, and the Future of Your Law Practice* fig. 2.1 (2003), *reprinted at* http://www.abanet.org/legalservices/paralegals/lawyers.html (providing examples of significant savings to client by delegating work such as legal research, reviewing documents, interviewing witnesses, and drafting pleadings to a legal assistant).

and summary of the medical evidence. *See also, e.g.*, *Sandoval v. Apfel*, 86 F. Supp. 2d 601, 609 (N.D. Tex. 2000) (in Social Security case, describing work performed by paralegal and emphasizing that work "might otherwise have been undertaken by [the attorney of record] at a higher hourly rate, while consuming substantially the same amount of time"). In addition to the lower client fees and, ultimately, requests for reimbursement created by the use of paralegals in Social Security cases, NOSSCR members who use paralegals also find that their use of paralegals has the further benefit of freeing up attorney time for the most important aspects of a matter, thereby allowing the attorney to provide legal assistance to more clients than she otherwise would – a particularly important consideration given the limited number of attorneys who are willing to take on Social Security cases at all.[11]

3. In concluding that paralegal fees should be compensated at cost, the Federal Circuit relied heavily on its assumption that allowing recovery of paralegal fees "at or near the full market rate" would "create a perverse incentive." Pet. App. 18a. Because attorney fees under EAJA are capped by statute, the panel majority reasoned, allowing paralegal fees to be compensated at market rates approaching that cap would "distort the normal allocation of work and result in a less efficient performance of legal services." *Id.*

[11] A contrary holding would discourage attorneys from using paralegals. By forcing attorneys themselves to take on more of the work involved in Social Security cases, such a ruling would likely create delays in some federal court cases, as attorneys would be forced to seek extensions to permit them to complete their briefs.

Contrary to the Federal Circuit's assumption, however, allowing EAJA compensation at market rates will not create "perverse incentives." First, although EAJA imposes a cap of $125 per hour on fees for an attorney (with additional adjustment for inflation available, *see* 28 U.S.C. § 2412(d)(2)(A)(ii)), in many areas of the country there is little evidence that billing rates for paralegals are sufficiently high to create the "perverse incentives" that the panel decries. To the contrary, although courts now routinely approve EAJA fees for attorneys (when adjusted for inflation) at rates approaching $170 per hour,[12] *see, e.g.*, *Begolke v. Astrue*, No. 06-C-0445-C, 2007 U.S. Dist. LEXIS 79689 (W.D. Wis. Oct. 26, 2007) (EAJA award for attorney's fees at $165.00 per hour for attorney services); *Lambert v. Nicholson*, No. 04-815(E), 2006 WL 2619658 (Vet. App. Sept. 7, 2006) (EAJA award included attorney's fees reimbursed at rates of $153.38 and $154.31 per hour); *see also* Br. of Pet'r 7 ("The current inflation adjusted cap is approximately $168 per hour."), both the EAJA caselaw and a recent NALA

[12] Indeed, in opposing proposed legislation that would have lifted the statutory cap on EAJA attorney's fees, the government expressly emphasized that, in its experience, "courts routinely take advantage of EAJA's current discretionary authority to exceed the hourly rate cap." Statement of Ryan W. Bounds, Chief of Staff, Office of Legal Pol'y, Dep't of Justice, Before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, U.S. House of Reps., Concerning H.R. 435, the Equal Access to Justice Reform Act, at 7 (May 23, 2006) (citing, *inter alia*, *Former Employees of Tyco Elecs. Fiber Optics Div. v. U.S. Dep't of Labor*, 350 F. Supp. 2d 1075, 1093 (C.I.T. 2004), in which court awarded attorney's fees at $158.70 for work performed in 2004), *available at* www.judiciary.house.gov/media/pdfs/bounds052306.pdf (visited Sept. 20, 2007).

survey indicate that the rates for paralegals are generally – and often well – below $100 per hour. *See, e.g.*, *McKay v. Barnhart*, 327 F. Supp. 2d 263, 270 (S.D.N.Y. 2004) (indicating in Social Security case that "the prevailing rate for paralegal services in the Southern District of New York is $75 per hour"); Nat'l Ass'n of Legal Assistants, 2004 National Utilization and Compensation Survey Report tbl. 3.5, *available at* www.nala.org/Survey_Table.htm (visited June 21, 2007) (in 2004 nationwide survey of legal assistants, only thirty-eight percent reported a current billing rate greater than $90 per hour, and average billing rate for paralegals with five or fewer years of experience was $79 per hour).

Second, contrary to the assumption of the court of appeals, there is no reason to believe that the increased use of legal assistants will always result in the "less efficient performance of legal services." In response to a "demand for expertise," legal assistants have increasingly "develop[ed] knowledge and skills in highly technical or specialized subject areas." Nat'l Federation of Paralegal Ass'ns, *Paralegal Roles and Responsibilities*, *available at* http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=699 (visited June 21, 2007). When reviewing requests for EAJA reimbursement for legal assistants who specialize in a particular area of the law, district courts have expressly acknowledged that an attorney "is not necessarily able to" accomplish the tasks performed by legal assistants "in less time than it takes an experienced paralegal to do so." *Sandoval v. Apfel*, 86 F. Supp. 2d 601, 609 & n.12 (N.D. Tex. 2000) (approving EAJA award that included market rate for

legal assistant with "extensive experience performing paralegal work in social security disability litigation").

Third, to the extent that in some cases legal assistants may require more hours than an attorney to accomplish a particular task, the disparity between the hourly rates for an attorney and those of a legal assistant means that the use of legal assistants will remain cost-effective, as courts considering EAJA requests have repeatedly recognized. *See Nickola v. Barnhart*, No. 03-C-622-C, 2004 WL 2713075, at *1 (W.D. Wis. Nov. 24, 2004) (granting EAJA award for 33.15 hours of attorney time at $148.75 per hour and 44.2 hours of paralegal/law clerk time at $95 per hour and noting that "[a]lthough it might have taken more time for a law clerk to draft a brief than had an attorney drafted it, overall the use of law clerks in this case appears to have been a money-saving measure because it reduced the amount of time the attorney spent on the case").

Fourth, the suggestion of the decision below that, if paralegal fees are compensable at market rates, attorneys will somehow willy-nilly delegate virtually all aspects of a case to their paralegals in the hope of maximizing their compensation under EAJA is simply misplaced in at least two respects. First and foremost, although paralegals may – under the supervision of an attorney – perform a variety of substantive legal tasks that would otherwise be performed by an attorney, the attorney ultimately remains responsible for the work performed and thus has no incentive to delegate beyond the paralegal's capabilities and the point at which delegation is efficient. Thus, even if paralegals are compensated at market rates, many of the most

sensitive projects in a matter will be handled by attorneys, who after careful consideration may conclude that supervising the performance of certain tasks by a paralegal is ultimately less cost-effective for the client than performing the task themselves. Second, to the extent that attorneys may be prompted to delegate work to a paralegal, that delegation is more likely to be attributable to other factors – such as a client's desire to minimize her legal bills – than to the prospect of compensation under EAJA, which is rarely certain because the party seeking fees must first prevail and then be prepared to demonstrate that the government's litigating position was not substantially justified. Third, although paralegal fees under EAJA have long been compensated at prevailing market rates in some circuits, *cf. Burt v. Heckler*, 593 F. Supp. 1125, 1133 (D.N.J. 1984) (compensating for law clerk time at market rate of $25 per hour), the Federal Circuit did not point to any evidence that the "perverse incentives" and inefficiencies prophesized by the decision below have come to pass.

Finally, the decision below completely overlooks that courts may adjust fee awards under EAJA to avoid any "perverse incentive" problem. In *Commissioner v. Jean*, 496 U.S. 154 (1990), this Court emphasized that "a district court will always retain substantial discretion in fixing the amount of an EAJA award." *Id.* at 163. In practice, courts have availed themselves of that discretion to reduce fee awards to account for inefficiencies on the part of both attorneys and paralegals. *See, e.g.*, *Dudelson v. Barnhart*, No. 03 Civ. 7734 (RCC) (FM), 2007 U.S. Dist. LEXIS 19124 (S.D.N.Y. Mar. 20, 2007) (approving an EAJA award that included legal assistant fees at a rate of $75 per

hour but reducing the number of hours covered by the award after finding that "much of the time billed may not have been entirely productive"); *Teixeira v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 295 (Vet. App. Apr. 4, 2006) (reducing EAJA award in light of finding that "representation by multiple counsel resulted in duplicative work and excessive billing for time spent by counsel conferring with each other").

II. Paralegal Fees Should Be Reimbursed Under EAJA at Market Rates, Rather Than at Cost.

The Federal Circuit's holding that paralegal time should be compensated at the cost to the attorney is further flawed because it is likely to impose an additional administrative burden on both attorneys and courts – a burden that can be avoided by holding that paralegal time should instead be billed at market rates.

As described in detail above, *see supra* at 7-8, attorneys overwhelmingly bill out their paralegals' time at prevailing market rates. Under this practice, attorneys have no need to calculate the per-hour cost for each of their paralegals, the majority of whom are salaried employees. *See* Nat'l Ass'n of Legal Assistants (NALA), *2004 National Utilization and Compensation Survey Report*, tbl. 2.5. Nor would it be simple for attorneys to make such a calculation for purposes of an EAJA application, as a paralegal's actual cost to his employer would necessarily include not only his salary, but also additional employer costs such as payroll taxes, workers' compensation insurance, employee benefits such as a pension plan or

health insurance, and overhead costs such as rent, utilities, and administrative support. Moreover, given the many variables that contribute to a paralegal's actual cost, employers would have to conduct an individual cost calculation for each paralegal for whom EAJA compensation is sought, as two otherwise identically situated paralegals – with the same level of experience and the same billing rate – could have markedly different costs to their employer depending on, for example, their seniority in the firm, the number of dependents covered by the firm-provided health insurance, and whether the paralegal is vested in the firm's pension plan. Indeed, the additional expenses associated with calculating the indirect costs of paralegal services in EAJA cases would likely discourage the use of paralegals by NOSSCR members, many of whom practice in small firms with limited accounting resources.

And even if attorneys did calculate the hourly "cost" for paralegal services, allowing compensation at cost would also require courts reviewing EAJA applications to conduct a fact-intensive inquiry to determine the reasonableness of those costs. Such an inquiry would necessarily be far more extensive than the brief Internet search conducted by the Board of Contract Appeals in this case and might include, for example, resolving as-yet-unexplored questions such as how to determine the cost of a paralegal's overtime when the paralegal worked on both EAJA and non-EAJA cases in a single day. By contrast, allowing compensation for paralegals at market rates eliminates much of the burden for both litigants and courts: Litigants can simply submit fee applications that include their market billing rates for paralegals,

while courts may rely on either established fee tables[13] or other cases to ensure that the rates are reasonable. *See, e.g.*, *McKay v. Barnhart*, 327 F. Supp. 2d 263, 270-71 (S.D.N.Y. 2004) (citing other recent cases for evidence of the prevailing market rate for paralegal services).

* * * *

Compensating paralegal time under EAJA at cost would be, as noted above, inconsistent with the realities of modern law practice. Moreover, because such a practice would likely discourage use of paralegals in many small firms, including those of many NOSSCR members, a holding that required paralegal time to be compensated only at cost would directly conflict with one of the goals of the federal fee-shifting statutes – viz., to encourage lawyers to take on cases. By contrast, allowing paralegal fees to be compensated at market rates is consistent with the near-universal practice of attorneys nationwide, encourages the cost-effective delivery of legal services, and frequently will enable attorneys such as members of NOSSCR to take on more cases in which EAJA compensation may be available. Moreover, it will significantly reduce the likelihood of ancillary litigation over the reasonableness of EAJA fee requests, thereby reducing litigation burdens on successful plaintiffs, the federal government, and the courts.

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[13] For example, the U.S. Attorney's Office for the District of Columbia publishes the "Laffey Matrix," a list of market rates that may be cited for fee awards in fee-shifting cases. *See* "Laffey Matrix 2003-2008," http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html (last visited Dec. 17, 2007).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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