

District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESUS BENTO CARDOZO, *et al.*,

Petitioners,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. 2:25-cv-00871-TMC

RESPONSE TO PETITIONER
KHADAJ'S MOTION FOR FEES AND
COSTS

INTRODUCTION

Respondents oppose Petitioner's motion for an award of \$17,659.68 in attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. No. 30, Petitioner's Motion for Fees and Costs ("Motion"). The Court should deny the Motion because Federal Respondents' position was substantially justified.

BACKGROUND

Petitioner Mouloud Ben Khadaj filed a habeas petition along with four other petitioners challenging the lawfulness of his detention by United States Customs and Immigration Enforcement (ICE). Petitioner argued that his continued detention without a bond hearing violated the Due Process Clause. Federal Respondents opposed the petition, arguing that Petitioner's removal proceedings were delayed due to language barriers and that the immigration

1 court had spent a significant amount of time and resources to identify and locate appropriate
2 interpreters for Petitioner.

3 The Court disagreed with Federal Respondents' position and granted a writ of habeas
4 corpus in favor of Petitioner, finding that his "ongoing detention under 8 U.S.C. § 1225(b)
5 without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment
6 to the United States Constitution." Dkt. 28. The Court ordered that "Respondents shall therefore
7 release Mr. Khadaj from detention unless, within 14 days of this Order, Respondents provide Mr.
8 Khadaj an individualized bond hearing that complies with the requirements of *Singh v. Holder*,
9 638 F.3d 1196 (9th Cir. 2011). *Id.* at page 6.

10 On December 5, 2025, Petitioner's counsel filed an application for attorneys' fees and
11 costs under EAJA requesting an award of \$17,659.68 in attorney's fees and costs.¹ As discussed
12 below, Federal Respondents oppose Petitioner's request because their litigation position was
13 substantially justified.

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16 **ARGUMENT**

17 A party may recover EAJA fees and costs only if (1) the party prevailed in the action, (2)
18 the government's position was not "substantially justified" and no special circumstances would
19 make an award unjust, (3) the requested fees and costs are reasonable, and (4) the party filed a
20 timely, supported application. *See* 28 U.S.C. § 2412(b), (d); *United States v. Milner*, 583 F.3d
21 1174, 1196 (9th Cir. 2009). To be found a prevailing party, "a party must successfully obtain a
22 judicially sanctioned material alteration of his or her legal relationship with the United States."
23 *Pabla v. U.S. Citizenship & Immig. Servs.*, No. 2:18-cv-1660, 2019 WL 1436872, at *2 (W.D.
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¹ All but \$5 of the requested amount is attributable to attorney's fees, and the \$5 is to recover Petitioner's filing fee.

1 Wash. Apr. 1, 2019) (collecting cases). Federal Respondents do not dispute that Petitioner Khadaj
2 is the prevailing party in this case.

3 **Respondents' position was substantially justified.**

4 A prevailing party is not entitled to an award of EAJA fees if the government shows that
5 its position in the underlying litigation "was substantially justified." See 28 U.S.C. §
6 2412(d)(1)(A). Although EAJA creates a presumption that fees will be awarded to a prevailing
7 party, Congress did not intend fee shifting to be mandatory. *Flores v. Shalala*, 49 F.3d 562, 567
8 (9th Cir. 1995); *Zapon v. United States Dep't of Justice*, 53 F.3d 283, 284 (9th Cir. 1995). Rather,
9 the Supreme Court has interpreted the term "substantially justified" to mean that a prevailing
10 party is not entitled to recover fees if the government's position is "justified to a degree that could
11 satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 566 (1992). The decision to
12 deny EAJA attorney's fees is within the discretion of the court. *Lewis v. Barnhart*, 281 F.3d
13 1081, 1083 (9th Cir. 2002).

14 The government has the burden of proving its positions were substantially justified. See
15 *Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010). It must demonstrate that its position
16 had a reasonable basis in both law and fact. *Flores*, 49 F.3d at 569-70; see also *Thangaraja v.*
17 *Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005) (noting that "'substantial justification is equated
18 with reasonableness . . . The government's position is substantially justified if it has a reasonable
19 basis in law and fact.'" (quoting *Ramon-Sepulveda v. INS*, 863 F.2d 1458, 1459 (9th Cir. 1988)
20 (alteration in original)). The Ninth Circuit has recognized that "[t]o establish substantial
21 justification, the government need *not* establish that it was correct or 'justified to a high
22 degree' . . . but only that its position is one that a 'reasonable person could think it correct.'"
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1 *Ibrahim v. U.S. Homeland Security*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*) (emphasis
2 added) (quoting *Pierce*, 487 U.S. at 566 n.2).

3 Here, Federal Respondents were substantially justified in arguing that no due process
4 violation had occurred. ICE detained Petitioner pursuant to 8 U.S.C. § 1225(b), which mandates
5 detention of arriving aliens seeking admission to the United States. While Petitioner had been
6 detained for a prolonged period of time – since September of 2024 – it was because the
7 immigration court was spending a significant amount of time and resources to identify and locate
8 appropriate interpreters for Petitioner in order to ensure he received the process he was due.
9 Petitioner had numerous appearances where interpreters of various languages were provided.
10 The Tacoma Immigration Court repeatedly sought an available interpreter that could
11 communicate with Khadaj and translate the master calendar hearing and ultimately was able to
12 provide an appropriate interpreter. Given the efforts made by the immigration court, Respondents
13 were substantially justified in arguing that Petitioner’s detention did not violate due process when
14 analyzed under *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019).
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17 **CONCLUSION**

18 For the foregoing reasons, the Court should decline Petitioner’s request for attorney’s
19 fees, as Federal Respondents’ position was substantially justified. Federal Respondents therefore
20 ask the Court to deny Petitioner’s Motion.
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1 DATED this 19th day of December, 2025.

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3 Respectfully submitted,

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I certify that this memorandum contains 929 words, in compliance with the Local Civil Rules.