

BACKGROUND

Petitioner Arturo Sepulveda Ayala filed a habeas petition arguing that his detention by United States Customs and Immigration Enforcement (ICE) violates federal law because United States Citizenship and Immigration Services (USCIS) had granted him deferred action and work authorization through its U visa bona fide determination process. Petitioner contended that the deferred action bars his removal. Dkt. 23, pages 1-2. Respondents opposed the petition, arguing that while deferred action made Petitioner a lower priority status, it does not preclude removal in the context of a U visa. *Id.* Respondents further argued that Section 1252(g) strips this Court of jurisdiction to grant the relief sought by Petitioner. *Id.* at 5.

The Court disagreed with Respondents' position and first granted a temporary restraining order and preliminary injunction in Petitioner's favor, followed by an order granting a writ of habeas corpus. Dkt. 23. The Court found that Section 1252(g) does not preclude jurisdiction and that deferred action bars removal, "regardless of the specific program or context in which it is granted." *Id.* at 7.

On November 3, 2025, Petitioner's counsel filed an application for attorneys' fees under EAJA requesting an award of \$67,029.50 in attorney's fees, \$49,652.54 of which was attributable to enhanced hourly rates for the two attorneys who represented Petitioner.¹ As discussed below, Respondents oppose Petitioner's request, both because their litigation position was substantially justified, and because Petitioner has not demonstrated an entitlement to the enhanced rate.

ARGUMENT

A party may recover EAJA fees and costs only if (1) the party prevailed in the action, (2) the government's position was not "substantially justified" and no special circumstances would

¹ Petitioner's Motion also seeks \$28 in expenses for parking costs associated with attending a hearing.

1 make an award unjust, (3) the requested fees and costs are reasonable, and (4) the party filed a
2 timely, supported application. *See* 28 U.S.C. § 2412(b), (d); *United States v. Milner*, 583 F.3d
3 1174, 1196 (9th Cir. 2009). To be found a prevailing party, “a party must successfully obtain a
4 judicially sanctioned material alteration of his or her legal relationship with the United States.”
5 *Pabla v. U.S. Citizenship & Immig. Servs.*, No. 2:18-cv-1660, 2019 WL 1436872, at *2 (W.D.
6 Wash. Apr. 1, 2019) (collecting cases). Respondents do not dispute that Petitioner is the
7 prevailing party in this case.

8 **A. Respondents’ position was substantially justified.**

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

19 The government has the burden of proving its positions were substantially justified. *See*
20 *Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010). It must demonstrate that its position
21 had a reasonable basis in both law and fact. *Flores*, 49 F.3d at 569-70; *see also Thangaraja v.*
22 *Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005) (noting that “‘substantial justification is equated
23 with reasonableness . . . The government’s position is substantially justified if it has a reasonable
24 basis in law and fact.’” (quoting *Ramon-Sepulveda v. INS*, 863 F.2d 1458, 1459 (9th Cir. 1988)

1 (alteration in original)). The Ninth Circuit has recognized that “[t]o establish substantial
2 justification, the government need *not* establish that it was correct or ‘justified to a high
3 degree’ . . . but only that its position is one that a ‘reasonable person could think it correct.’”
4 *Ibrahim v. U.S. Homeland Security*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*) (emphasis
5 added) (quoting *Pierce*, 487 U.S. at 566 n.2).

6 Here, Respondents were substantially justified in arguing that Section 1252(g) precludes
7 jurisdiction and that deferred action in the context of a U visa does not bar removal. With respect
8 to the jurisdictional argument, it is clear that reasonable minds could differ on the issue. *See*
9 *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1089 (9th Cir. 2022). The fact that this Court
10 ultimately rejected Respondents’ argument does not raise a presumption that its position was not
11 substantially justified. *See Medina Tovar*, 41 F.4th at 1092. Indeed, another judge in this district
12 had just agreed with the government’s jurisdictional argument in an identical situation. *Velasco*
13 *Gomez*, 2025 WL 1726465, at *4. In *Velasco Gomez*, the petitioner alleged that his detention and
14 pending removal violated the Due Process Clause of the Fifth Amendment to the United States
15 Constitution because USCIS had previously granted him deferred action. *Id.*, at *3. Like here,
16 the petitioner in *Velasco Gomez* sought a preliminary injunction based on ICE’s decision to “*per*
17 *se* revoke his grant of deferred action by detaining him and seeking to execute his removal.” *Id.*,
18 at *6. Judge Robart found that Section 1252(g) stripped the court of jurisdiction because the
19 habeas claims “arise directly from the agency’s allegedly unconstitutional decision and action to
20 detain him and execute his valid removal order despite his deferred action status.” *Id.*, at *5. As a
21 result, Judge Robart denied the preliminary injunction and dismissed the habeas petition. *Id.*, *6.
22 The *Velasco Gomez* decision alone demonstrates that reasonable minds could differ on the
23 application of Section 1252(g) in this case.

1 In addition, Respondents also were substantially justified in arguing that deferred action
2 in the context of a U visa application does not bar removal as it does with other types of deferred
3 action. Here, the notice provided by USCIS when it granted Petitioner deferred action explicitly
4 stated as follows: “Deferred action is an administrative convenience to the government which
5 gives some cases lower priority for removal.” Dkt. No. 1-2, Notice of Action, Bona Fide
6 Determination Notice, dated February 19, 2025; *see also* BFD Chapter § 7 (“Deferred action, as
7 an exercise of prosecutorial discretion to make an alien a lower priority for removal from the
8 United States, is only applicable to aliens in the United States.”).

9 Deferred action with respect to U visas is not the same as deferred action in the context of
10 Deferred Action for Childhood Arrivals (“DACA”). While Respondents recognize that the Court
11 disagrees, it was reasonable for Respondents to argue that the Court should not rely on cases
12 involving challenges concerning deferred action under DACA. *See e.g., Enriquez-Perdomo v.*
13 *Newman*, 54 F.4th 855 (2d Cir. 2022). Under DACA, deferred action is defined “as a form of
14 enforcement discretion not to pursue the removal of certain aliens for a limited period in the
15 interest of ordering enforcement priorities . . .” 8 C.F.R. § 236.21(c)(1). This definition does not
16 apply to the U visa bona fide determination policy. 8 C.F.R. § 236.21(a) (“This subpart does not
17 apply to or govern any other request for or grant of deferred action or any other DHS deferred
18 action policy.”).

19 At the time this case arose, the meaning of deferred action in the context of U visa
20 applications was a novel issue in this District.² And the novelty of a legal issue is an objective
21 indicator of the reasonableness of the government’s position. *See Gonzales*, 408 F.3d at 619;
22 *Medina Tovar*, 41 F.4th at 1091; *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1231

23
24 ² Although the same issue was presented in *Velasco Gomez*, Judge Robart did not address it because he dismissed the petition on jurisdictional grounds. *Velasco Gomez*, 2025 WL 1726465, at *4.

1 (9th Cir. 1990). In addition, while not previously decided in the Western District of Washington,
2 a district court in the Eastern District of California had already stated that the grant of U visa
3 bona fide determination deferred action is not synonymous with a stay of removal. *See Raghav v.*
4 *Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) (“Plaintiff
5 obtaining a BFD in his favor would not prevent his removal”). The *Raghav* decision further
6 demonstrates that reasonable minds can differ on the issue, and the Court should find
7 Respondents’ position substantially justified and deny the Motion.

8 **B. Petitioner fails to show an entitlement to enhanced hourly rates.**

9 Even if the Court rules that Respondents were not substantially justified in their legal
10 positions, Petitioner’s requested fees are excessive. Petitioner carries “the burden of establishing
11 entitlement to an award and documenting the appropriate hours expended and hourly rates.”
12 *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1982).

13 Under EAJA, a district court may not award attorney’s fees “in excess of \$125 per hour
14 unless the court determines that an increase for the cost of living or special factor, such as the
15 limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.” 28
16 U.S.C. § 2412(d)(2)(A)(ii); *see Pierce*, 487 U.S. at 573 (narrowly construing exception to exceed
17 EAJA statutory rate cap). The Ninth Circuit has approved a table of annually adjusted EAJA
18 rates based on the cost of living. The current statutory maximum hourly rate is \$251.84. *See*
19 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates> (last checked December 17,
20 2025). Here, Petitioner’s counsel billed a total of 69 hours. Even if all of that billed time were
21 compensable, the maximum amount they could claim under the adjusted EAJA statutory rate is
22 \$17,376.96.³

23 _____
24 ³ Petitioner’s Motion mentions an award of \$14,858.56 if counsel’s hours (69 hours total) are multiplied by the
EAJA statutory rate of \$251.84. Respondents have used the higher figure of \$17,376.96 because they believe it is
the correct value.

1 Petitioner has failed to justify his demands for a departure of over four times the adjusted
2 EAJA statutory rate. A party seeking enhanced fees must prove *all* of the following: (1) “the
3 attorney must possess distinctive knowledge and skills developed through a practice specialty,”
4 (2) “those distinctive skills must be needed in the litigation,” and (3) “those skills must not be
5 available elsewhere at the statutory rate.” *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991).
6 Here, regardless of whether Petitioner’s counsel have shown they have “distinctive knowledge
7 and skills” that was needed in this litigation, they have not demonstrated that qualified counsel
8 was not available at the statutory rate. *See Nadarajah v. Holder*, 569 F.3d 906, 913 (9th Cir.
9 2009). The Motion states only in a conclusory manner that (1) “Very few attorneys in this district
10 have this combination of [immigration law, constitutional law, and habeas corpus] knowledge
11 and [specialized litigation] skills.” Dkt. 25, Motion, at page 9. And (2) “[T]here were no
12 attorneys available with the specialized knowledge required for this litigation who would handle
13 this case at the EAJA rates of approximately \$250 per hour.” *Id.* at page 10.⁴ The Motion also
14 states that “Counsel anticipates supplementing this motion with supporting declarations from
15 other practitioners, but was not able to secure them before the deadline to file this motion.” *Id.*
16 No supporting declarations were subsequently filed.

17 Without ever identifying the hourly rates they actually charge, Petitioner’s counsel claim
18 the hourly rates established in the “Laffey Matrix” are “reasonable market rates for attorneys
19 with the distinctive knowledge and specialized skill of Mr. Sepulveda Ayala’s counsel.” Dkt. 25,
20 Motion, at page 10. They use the Laffey Matrix to support a request of \$1,141 per hour for Ms.
21 Vomacka (57.5 hours) and \$948 per hour for Mr. Boyd (1.5 hours). *Id.* at page 11; Dkt. 25-1.
22 “[T]he Laffey matrix is an inflation-adjusted grid of hourly rates for lawyers of varying levels of
23

24 ⁴ Without stating how she has this knowledge, Ms. Vomacka’s Declaration also states that she is “not aware that any other lawyer would have taken it on for the statutory fee.” Dkt. 25-2, at ¶ 6.

1 experience in Washington, D.C.” *Cabardo v. Petacsil*, 2022 WL 956951, at *3 (E.D. Cal. March
2 22, 2022). As the court in *Cabardo* explained when declining to adopt it, the Laffey Matrix “only
3 surveys prevailing rates in the Washington, D.C. legal community and does not directly correlate
4 to hourly rates for attorneys and paralegals in other parts of the country.” *Id.* When discussing
5 another district court’s decision not to adopt the Matrix, the Ninth Circuit also has questioned its
6 value, explaining that “just because the *Laffey* matrix has been accepted in the District of
7 Columbia does not mean that it is a sound basis for determining rates elsewhere, let alone in a
8 legal market 3,000 miles away. It is questionable whether the matrix is a reliable measure of
9 rates even in Alexandria, Virginia, just across the river from the nation’s capital.” *Prison Legal*
10 *News v. Schwarzeneger*, 608 F.3d 446, 454 (9th Cir. 2010). Petitioner also fails to cite to any
11 case that has relied on the Matrix to determine fees under EAJA and has done nothing to justify
12 its use here.

13 Accordingly, Petitioner has not established that he is entitled to a departure from the
14 EAJA statutory cap, let alone a rate of over four times the cap, and he has not suggested any
15 other calculation that might apply. If the Court finds that Petitioner’s counsel is entitled to an
16 EAJA award, it should deny their request for special rates.

17 CONCLUSION

18 The Court should deny Petitioner’s request for attorney’s fees, as Respondents’ position
19 was substantially justified. Alternatively, even if the Court determines that fees are appropriate, it
20 should limit counsels’ hourly rate to the EAJA statutory rate, resulting in an award of
21 \$17,376.96.

22 //

23
24 //

1 DATED on this 17th day of December, 2025.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

5 *s/ Michelle R. Lambert*

6 MICHELLE R. LAMBERT, NYS #4666657
7 Assistant United States Attorney
8 United States Attorney's Office
9 Western District of Washington
10 1201 Pacific Avenue, Suite 700
11 Tacoma, Washington 98402
12 Phone: (253) 428-3824
13 Fax: (253) 428-3826
14 Email: michelle.lambert@usdoj.gov

15 *Attorneys for Federal Respondents*

16 *I certify that this memorandum contains 2,368*
17 *words, in compliance with the Local Civil*
18 *Rules.*