

1 TODD BLANCHE  
 Deputy Attorney General of the United States  
 2 SIGAL CHATTAH  
 First Assistant United States Attorney  
 3 District of Nevada  
 Nevada Bar Number 8264  
 4 VIRGINIA T. TOMOVA  
 Assistant United States Attorney  
 5 Nevada Bar No. 12504  
 CHRISTIAN R. RUIZ  
 6 Assistant United States Attorney  
 501 Las Vegas Blvd. So., Suite 1100  
 7 Las Vegas, Nevada 89101  
 Phone: (702) 388-6336  
 8 Fax: (702) 388-6787  
[Virginia.Tomova@usdoj.gov](mailto:Virginia.Tomova@usdoj.gov)  
 9 [Christian.Ruiz@usdoj.gov](mailto:Christian.Ruiz@usdoj.gov)

10 *Attorneys for the Federal Respondents*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 Heriberto Herrera Torralba, Gaudencio  
Dominguez Castillo, Jose Vasquez Jacobo

14 Petitioners,

15 v.

16 Jason Knight, Acting Las Vegas/Salt Lake  
 City Field Office Director, Enforcement  
 17 and Removal Operations, United States  
 Immigration and Customs Enforcement  
 18 (ICE); John Mattos, Warden, Nevada  
 Southern Detention Center; Kristi Noem,  
 19 Secretary, United States Department of  
 Homeland Security; Pamela Bondi,  
 20 Attorney General of the United States;  
 Executive Office for Immigration Review,  
 21

22 Respondents.

Case No. 2:25-cv-01366-RFB-DJA

**Federal Respondents' Opposition to  
 Motion for Fees and Costs under the  
 Equal Justice to Access Act, ECF No.  
 35**

23 Petitioner seeks attorney's fees under the Equal Access to Justice Act ("EAJA"), 28  
 24 U.S.C. § 2412(d), following the Court's order granting habeas relief. Federal Respondents  
 25 do not dispute that Petitioner obtained relief or that he qualifies as a prevailing party for  
 26 EAJA purposes. The only issue before the Court is whether the position of the United  
 27 States was "substantially justified."

28 It was.

1 This case arose in the context of active and ongoing litigation nationwide  
2 concerning DHS's detention authority under the Immigration and Nationality Act and the  
3 legality of the automatic stay regulation governing immigration judge bond decisions.  
4 Multiple courts have upheld the United States' interpretation of the relevant statutes and  
5 regulations advanced in the case at bar, while others had reached contrary conclusions. The  
6 Board of Immigration Appeals also issued precedential decisions supporting DHS's  
7 position.

8 Under settled EAJA principles, where reasonable jurists have disagreed on  
9 questions of statutory interpretation and constitutional law, the United States' position is  
10 substantially justified even if it is ultimately rejected. Because that standard is satisfied here,  
11 Petitioner's motion for attorney's fees should be denied.

## 12 II. POINTS AND AUTHORITIES

### 13 A. Legal Standard Under EAJA

14 Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for  
15 Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United  
16 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,  
17 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioners cannot obtain  
18 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative  
19 immigration proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129  
20 (1991). Their only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject  
21 to exceptions not relevant here, that in an action brought by or against the United States, a  
22 court must award fees and expenses to a prevailing non-government party "unless the court  
23 finds that the position of the United States was substantially justified or that special  
24 circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

25 The Supreme Court has explained that a position is substantially justified if it is  
26 "justified to a degree that could satisfy a reasonable person," meaning that it has a  
27 reasonable basis in both law and fact. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). In  
28 assessing substantial justification, courts evaluate the position of the United States as a

1 whole, including both the underlying agency action and the United States' litigation  
2 posture. *INS v. Jean*, 496 U.S. 154, 159 (1990) (“While the parties' postures on individual  
3 matters may be more or less justified, the EAJA—like other fee-shifting statutes—  
4 favors treating a case as an inclusive whole, rather than as atomized line-items.”). The  
5 mere fact that the United States does not prevail on the merits does not establish a lack of  
6 substantial justification. This is particularly true where a case involves statutory  
7 interpretation and reasonable jurists have reached differing conclusions. *See Medina Tovar v.*  
8 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse  
9 its discretion, in finding that the United States' position was substantially justified for  
10 purposes of EAJA, where different judges disagreed about the proper reading of the statute  
11 and the case involved an issue of first impression).

12 **B. The United States' Statutory Interpretation Was Substantially Justified**

13 In the context of whether 8 U.S.C. § 1225(b)(2) or § 1226(a) governed Petitioners'  
14 detention, Petitioner's motion argues, *inter alia*, “[g]iven the vast number of habeas cases  
15 that have found that the government is violating the INA, its position cannot be  
16 substantially justified.” ECF No. 35, at 7. But that argument is a myopic representation of  
17 immigration jurisprudence.

18 At the time of Petitioner's detention, the Department of Homeland Security  
19 (“DHS”) had adopted a practice of applying the provisions of 8 U.S.C. § 1225(b)(2) to  
20 detain noncitizens who entered without inspection. That interpretation was subsequently  
21 endorsed in a precedential decision of the Board of Immigration Appeals, *Matter of Yajure*  
22 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and formed the basis for detention decisions by  
23 immigration judges nationwide.

24 Setting the BIA's precedential decision aside, the statutory question presented  
25 here—whether § 1225(b)(2)(A) or § 1226(a) governs detention for individuals apprehended  
26 in the interior who entered without inspection—has since been litigated extensively across  
27 the country. While this particular Court has rejected the United States' interpretation, other  
28 federal district courts outside this District have reached a different conclusion and have

1 upheld detention under § 1225(b)(2) in materially similar circumstances as those presented  
2 in the case at bar. The following decisions have found that the law supports the Federal  
3 Respondents' positions: *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept.  
4 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025);  
5 *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at \*1 (E.D. Wis. Oct. 30, 2025);  
6 *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva*  
7 *Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia*  
8 *Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-*  
9 *Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830,  
10 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025  
11 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025  
12 WL 3208284, at \*1 (E.D. Cal. Nov. 17, 2025).

13 For example, the United States District Court for the District of Nebraska and the  
14 United States District Court for the Southern District of California have both issued  
15 decisions holding that, under the plain language of § 1225(a)(1), aliens present in the  
16 United States who have not been admitted are “applicants for admission” and are thus  
17 subject to the mandatory detention provisions of “applicants for admission” under §  
18 1225(b)(2). See *Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other  
19 federal judges have found persuasive the Federal Respondents' position in cases that are  
20 materially similar to the case at bar, the Federal Respondents' position is substantially  
21 justified. See *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that  
22 the district court did not abuse its discretion, in finding that the United States' position was  
23 substantially justified for purposes of EAJA, where different judges disagreed about the  
24 proper reading of the statute and the case involved an issue of first impression).

25 The existence of such disagreement among courts considering the same statutory  
26 question weighs in favor of finding that the United States' position is “substantially  
27 justified” under EAJA, even where this specific Court ultimately disagrees with the United  
28 States' position. See *Medina Tovar*, 41 F.4th at 1091.

1 The United States' interpretation is consistent with longstanding Supreme Court  
2 precedent emphasizing the political branches' broad authority over immigration detention  
3 and the limited role of habeas review in second-guessing detention determinations made  
4 pursuant to the INA. In light of that precedent, and the absence of controlling appellate  
5 authority foreclosing the United States' interpretation at the relevant time, the United  
6 States' position was objectively reasonable for purposes of EAJA.

7 This Court's rejection of the United States' interpretation does not compel a fee  
8 award. EAJA does not require that the United States prevail, only that its position be  
9 reasonable at the time it was taken. Given the existence of binding agency precedent at the  
10 time of Petitioner's detention and the fact that other courts have agreed with the United  
11 States' interpretations of 8 U.S.C. § 1225, the United States' position had a reasonable basis  
12 in law, even though this Court ultimately disagreed.

13 **C. The United States' Defense of the Automatic Stay Regulation and Jurisdictional**  
14 **Arguments Were Substantially Justified**

15 In addition to the statutory arguments discussed above, Petitioner's motion argues  
16 that Federal Respondents' defense of the automatic stay regulation, 8 C.F.R. §  
17 1003.19(i)(2), and jurisdictional arguments were unjustified. ECF No. 35, at 5, 6. ECF No.  
18 23, at 5. Again, the relevant question is not whether the Court ultimately disagreed with the  
19 United States' position, but whether that position was reasonable when advanced.

20 In *Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175819 (D. Ariz. Nov. 23, 2016), the  
21 United States District Court for the District of Arizona considered a habeas challenge to  
22 DHS's invocation of the automatic stay pending BIA review of an immigration judge's  
23 bond decision. The *Altayar* court concluded that a finite automatic stay—limited by  
24 regulation to a maximum of 90 days—did not violate procedural or substantive due process  
25 because it is narrowly tailored to serve a compelling government interest.

26 Federal Respondents do not contend that *Altayar* is binding on this Court, nor do  
27 they dispute that other courts—including this one—have since reached a different  
28 conclusion regarding the regulation's constitutionality. But the existence of *Altayar*

1 demonstrates that the United States' position was supported by judicial authority and  
2 therefore reasonable for EAJA purposes.

3       Regarding the arguments based on lack of exhaustion, Federal Respondents raised  
4 arguments that were grounded by several court decisions, including Ninth Circuit  
5 precedent. Again, although the Court ultimately rejected those arguments, they were  
6 neither frivolous nor foreclosed by controlling authority. The assertion of the exhaustion  
7 requirement as supported by the cited precedent in Federal Respondents' Response (ECF  
8 No. 17) supports a finding that the United States' position regarding jurisdiction was  
9 substantially justified.

10 **D. Petitioners' Argument Regarding Record Supplementation Does Not Undermine**  
11 **Substantial Justification**

12       Petitioners also contend that the United States' position was not substantially  
13 justified because Respondents did not supplement the record following the September 2,  
14 2025, hearing. ECF No. 35, at 6. That argument misapprehends the scope of the EAJA  
15 inquiry.

16       Under EAJA, the Court evaluates the position of the United States "as an inclusive  
17 whole," rather than examining discrete litigation decisions in isolation. *INS v. Jean*, 496  
18 U.S. 154, 161–62 (1990) ("While the parties' postures on individual matters may be more  
19 or less justified, the EAJA—like other fee-shifting statutes—favors treating a case as an  
20 inclusive whole, rather than as atomized line-items.") The relevant question is whether the  
21 United States' overall position—both the underlying agency action and its litigation  
22 posture—had a reasonable basis in law and fact at the time it was advanced.

23       Here, the dispositive issues before the Court concerned the legality of the automatic  
24 stay regulation and the scope of the United States' detention authority under the INA—  
25 questions that the United States reasonably maintained were fundamentally legal and  
26 constitutional in nature. The Court's resolution of those issues did not turn on the existence  
27 or absence of additional factual submissions, but on its legal conclusions regarding due  
28 process and statutory interpretation.



