

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Mouad El Ahrach,

Petitioner,

v.

Juan Baltazar, et al.,

Respondents.

Case No. 25-cv-03195-PAB

**PETITIONER'S VERIFIED MOTION FOR ATTORNEYS' FEES AND
INCORPORATED MEMORANDUM OF LAW**

PRELIMINARY STATEMENT

Petitioner Mouad El Ahrach moves for attorneys' fees and costs incurred in successfully challenging her unconstitutional detention by respondents. *See* Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) (entitling prevailing party to fees and costs in a civil action against the United States). This Court held Ms. El Ahrach's detention unconstitutional under the Fifth Amendment and ordered her release on November 19, 2025. *See Ahrach v. Baltazar*, No. 25-CV-03195-PAB, 2025 WL 3227529 (D. Colo. Nov. 19, 2025). She is now entitled to fees and expenses in the amount of \$7,175.19, including for time spent litigating this fee application.

RELEVANT FACTS AND PROCEDURAL HISTORY

Ms. El Ahrach is a 25-year-old transgender woman who sought asylum in the United States after years of physical abuse and [REDACTED] *Id.* On July 3, 2024, she was arrested by Customs and Border Protection after entering the United States, placed in removal proceedings, and transferred to immigration detention. *Id.* Nine months later, on April 7, 2025, an immigration judge found that she was more likely than not to be persecuted if removed to Morocco, granted her withholding of removal to Morocco, and terminated her removal proceedings. *Id.*

Yet respondents refused to release Ms. El Ahrach from detention until this Court found that they had violated her constitutional right to due process by detaining her indefinitely without good reason to believe that her removal was significantly likely in the reasonably foreseeable future. *Id.* at *4. The Court ordered her released on or before December 3, 2025, almost 17 months after respondents originally detained her and nearly eight months after an immigration judge terminated her removal proceedings with a grant of relief. *Id.* at *5. In those eight months, Respondents claimed to have solicited Mexico, Panama, and Guatemala to accept Ms. El Ahrach.

Id. at *1. But it is undisputed that they never received a response from those countries, nor informed Ms. El Ahrach of the requests, despite her multiple inquiries as to whether respondents were pursuing a third country for removal. *Id.*

Likewise, until the very day that Ms. El Ahrach filed a habeas corpus petition, respondents refused to conduct a post-order custody review of her, *id.* at *2, a process mandated by regulation that requires respondents to determine whether there exists a significant likelihood of removal in the reasonably foreseeable future for a person detained longer than the 90-day period following entry of a removal order. 8 C.F.R. § 241.4(i)(7). At that review, held on October 10, 2025—more than 180 days after the entry of Ms. El Ahrach’s removal order—respondents refused to release her after determining that she was a flight risk. *Id.* at *2.

Ultimately, this Court ordered Ms. El Ahrach’s release after finding there was no significant likelihood of her removal in the reasonably foreseeable future. *Id.* at *4. The Court’s decision was based on the fact that respondents had not undertaken any efforts to remove Ms. El Ahrach since April 9, 2025, over seven months prior, when it solicited Mexico, Panama, and Guatemala to receive her, without response. *Id.* The Court also found that even if a third country were to accept Ms. El Ahrach, efforts to remove her were likely to be complicated by her identity as a transgender woman, which increases her risk of persecution in many parts of the world. *Id.* Respondents also had not committed to continuing the search for a third country. *Id.* Instead, they believed that their determination that Ms. El Ahrach is a flight risk was sufficient cause to continue her detention. *Id.* at *5. But as this Court noted, the Supreme Court has explicitly held that “preventing flight provides a weak or nonexistent justification for indefinite civil detention where removal seems a remote possibility at best.” *Id.* at *5 (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)) (citation modified).

I. Ms. El Ahrach is Entitled to Fees and Costs under EAJA.

“Under EAJA, a fee award is required if: (1) plaintiff is a ‘prevailing party’; (2) the position of the United States was not ‘substantially justified’; and (3) there are no special circumstances that make an award of fees unjust.” *Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007) (quoting 28 U.S.C. § 2412(d)(1)(A)).

Ms. El Ahrach is entitled to fees and costs incurred litigating her habeas petition because she is a prevailing party, the government’s position was not substantially justified, and no special circumstances make the award of fees unjust.

A. Ms. El Ahrach is an eligible and prevailing party.

EAJA defines a “party” as “an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed.” 28 U.S.C. § 2412(d)(1)(B). Ms. El Ahrach is a “party” because she is a private individual whose net worth has never exceeded 2 million dollars. *See* Exh. 1, (Declaration of Ms. El Ahrach), ¶ 1.

Ms. El Ahrach is a “prevailing” party because she has achieved a “material alteration of the legal relationship of the parties” and that alteration was “judicially sanctioned.” *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604–05 (2001). In this case, over the government’s opposition, the Court agreed with Ms. El Ahrach that respondents were violating her constitutional right to due process by detaining her without good reason to believe that her removal was significantly likely to occur in the reasonably foreseeable future. *Ahrach*, at *4. The Court therefore judicially sanctioned her release at habeas by ordering her freed from the government’s custody, thus materially altering the parties’ legal relationship as custodian and detained person. *Id.* at *5. *See also, e.g., Daley v. Ceja*, No. 24-1191, 2025 WL 3058588 (10th Cir. Nov. 3, 2025) (sustaining EAJA award to petitioner who spent over a year in

immigration detention without receiving a timeline for release until ordered released at habeas corpus).

Ms. El Ahrach meets the statutory definition of a “party” and this Court’s November 19, 2025 order conferred her “prevailing party” status. So she is a prevailing party under EAJA.

B. The government’s position was not substantially justified.

An award of fees under EAJA is required where the government’s position is not “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). “The burden of establishing that the position of the United States was substantially justified, § 2412(d)(1)(A) indicates and courts uniformly have recognized, must be shouldered by the Government.” *Scarborough v. Principi*, 541 U.S. 401, 414 (2004).

“The test for substantial justification in this circuit is one of reasonableness in law and fact.” *Hackett v. Barnhart*, 475 F.3d 1166, 1172. The government must meet this burden twice, with regard to: (1) the agency action giving rise to the litigation and (2) its litigation positions. *See* 28 U.S.C. § 2412(d)(2)(D) (defining “position” as both “the position taken by the United States in the civil action” and “the action or failure to act by the agency upon which the civil action is based”). “EAJA fees generally should be awarded where the government’s underlying action was unreasonable even if the government advanced a reasonable litigation position.” *Hackett v. Barnhart*, 475 F.3d 1166, 1174 (citation modified).

Here, the agency’s underlying action was not justified, let alone substantially justified. After the immigration judge terminated Ms. El Ahrach’s removal proceedings with a grant of relief on April 7, 2025, respondents continued to hold her in detention for nearly eight more months, until this Court ordered her release. During that time, they made no efforts to actually remove her beyond claiming to have solicited permission from three countries to receive her, almost immediately following termination

of her removal proceedings. Respondents never received a response from those countries and never followed up after the original requests. They never told Ms. Ahrach that they had made those solicitations, even though she asked them directly on several occasions. Respondents also denied Ms. El Ahrach a 90-day custody review, mandated by regulation, at which they would have had to determine whether there was a significant likelihood of her removal in the reasonably foreseeable future. And when they finally held that review—on the day she filed a habeas petition, more than 180 days after she had been held in detention post-removal order—they still refused to release her based on the clearly erroneous legal position that she was a flight risk and could therefore be held indefinitely.

At litigation, the government defended these unjustified positions by presenting a declaration of an ICE officer that failed to even address the agency's burden to show continuing efforts to remove Ms. El Ahrach. *See Ahrach*, at *5 (“However, respondents provide no reason to believe her removal would be any closer in another thirty days.”). They also attempted to justify the agency's position by arguing that flight risk alone could justify indefinite detention—a position that this Court pointed out “has no bearing on the constitutionality of [Ms. El Ahrach's] continued detention” under longstanding Supreme Court caselaw. *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 684). But “it is not reasonable to ignore agency regulations and judicial precedent.” *Arias v. Choate*, No. 1:22-CV-02238-CNS, 2023 WL 4488890, at *6 (D. Colo. July 12, 2023) (citing *Quintero v. Colvin*, 642 Fed. Appx. 793, 796,798 (10th Cir. 2016)) (citation modified); *see also Benson v. Berryhill*, No. CV 16-1009-GJF, 2018 WL 3873671, at *3 (D.N.M. Aug. 15, 2018) (“Ignoring binding precedent—or even only *arguably* binding precedent—is a risky litigation strategy, particularly when the precedent was repeatedly cited by one's adversary. Taking that risk

in this case was particularly unwise”) (emphasis in original). So the government’s litigation position here was not reasonable.

The government’s position was not substantially justified either pre-litigation or before this Court. So Ms. El Ahrach is entitled to fees and costs under EAJA.

C. No special circumstances make an award unjust.

The government bears the burden of showing special circumstances. *See* 28 U.S.C. § 2412(d)(1)(A) (requiring both a substantially justified position and the existence of special circumstances). Here, none exist. In fact, far from special, Tenth Circuit courts routinely award EAJA fees in habeas corpus challenges to prolonged immigration detention. *See, e.g., Daley v. Choate*, No. 22-CV-03043-RM, 2024 WL 989397 (D. Colo. Mar. 7, 2024), *aff’d sub nom. Daley v. Ceja*, No. 24-1191, 2025 WL 3058588 (10th Cir. Nov. 3, 2025); *Arias v. Choate*, No. 1:22-CV-02238-CNS, 2023 WL 4488890 (D. Colo. July 12, 2023).

Because no special circumstances exist, Ms. El Ahrach is entitled to fees and costs under EAJA.

D. Fees and expenses sought are reasonable.

“Once a plaintiff has satisfied the requirements for entitlement to an EAJA fee award, the court employs the lodestar method to determine a reasonable fee.” *Ernest W. v. O’Malley*, No. 2:23-CV-00247-JCB, 2024 WL 1912461, at *2 (D. Utah Apr. 30, 2024). The lodestar “is the reasonable number of hours spent on the litigation multiplied by a reasonable hourly rate.” *United Phosphorus, Ltd. v. Midland Fumigant, Inc.*, 205 F.3d 1219, 1233 (10th Cir. 2000).

Under EAJA, “attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C.


§ 2412(d)(2)(A). “The cost of living adjustment is determined by multiplying the base EAJA rate (\$125.00) by the current CPI-U and then dividing the product by the CPI-U in the month that the cap was imposed (October 1981 for pre-amendment cases, March 1996 for post-amendment cases).” *Taylor v. Colvin*, No. 13-CV-03152-CMA, 2015 WL 2375907, at *2 (D. Colo. May 15, 2015); *id.* at n.3 (calculating March 1996 CPI-U as \$156.40). “The CPI-U West Urban, however, is the correct index to use because it covers thirteen states in the West Region, including Colorado, which is where Plaintiff’s attorney rendered his services.” *Id.*; *see also Bowers v. Astrue*, No. 07–CV–00454–WYD, 2008 WL 2568801, at *3 (D. Colo. June 24, 2008) (using CPI-U West Urban). The formula for calculating a reasonable rate is thus expressed:

$$\frac{\text{EAJA statutory rate} \times \text{CPI-U West Urban}}{\text{CPI-U in March 1996}}$$

In September 2025, the closest available month of data to when plaintiffs’ attorneys litigated this case, the CPI-U West Urban was 345.294. *See* https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0400SA0,CUUS0400SA0 (last visited Nov. 28, 2025). Plaintiff’s attorneys’ fees were thus calculated using the following formula:


$$\frac{\$125 \times 345.294}{\$156.40}$$

Under this formula, Ms. Al Ahrach’s attorneys’ reasonable hourly rate is \$275.97. This rate is comparable to that of other recent cases from the Tenth Circuit. *See, e.g. Ernest W. v. O’Malley*, 2024 WL 1912461, at *2 (rate of \$258.82 in April 2024); *Lori A. v. Kijakazi*, No. 1:21-CV-00101-JCB, 2023 WL 2403677, at *4 (D. Utah Mar. 8, 2023) (rate of \$244.46 in March 2023).

The total award sought is  *See* Exh. 2, Declaration of Anthony Enriquez, Esq., Exh. 3, Declaration of Sarah T. Gillman, Esq. and Exh. 4, Declaration of Sarah E. Decker, Esq. Ms. Al Ahrach’s will seek additional fees if the government opposes this motion and counsel

must draft a reply.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests an award of  in fees and expenses, in addition to fees for any time spent preparing a reply brief if the government opposes this motion.

DATED: December 27, 2025
New York, New York

Respectfully Submitted,

/s/ Sarah T. Gillman
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Pro Bono Counsel for Petitioner

**Robert F. Kennedy Human Rights is now
Robert & Ethel Kennedy Human Rights Center
effective December 10, 2025, and a request to
Pacer to update has been submitted.*

CERTIFICATE OF SERVICE

I, Sarah T. Gillman, hereby certify that on December 28, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

/s/ Sarah T. Gillman

Pro Bono Counsel for Petitioner