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

13 REYES CABRERA-CORTES,

14 Petitioner,

15 v.

16 JASON KNIGHT, et al.,

17 Respondents.

Case No. 2:25-cv-01976-RFB-MDC

**Federal Respondents Opposition to  
 Motion for Attorney’s Fees and Costs,  
 ECF No. 23**

18 **I. INTRODUCTION**

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

24 It was.

25 This case arose in the context of active and ongoing litigation nationwide  
 26 concerning DHS’s detention authority under the Immigration and Nationality Act and the  
 27 legality of the automatic stay regulation governing immigration judge bond decisions.  
 28 Multiple courts have upheld the United States’ interpretation of the relevant statutes and

1 regulations advanced in the case at bar, while others had reached contrary conclusions. The  
2 Board of Immigration Appeals also issued precedential decisions supporting DHS's  
3 position.

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

## 8 II. POINTS AND AUTHORITIES

### 9 A. Legal Standard Under EAJA

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

21 The Supreme Court has explained that a position is substantially justified if it is  
22 "justified to a degree that could satisfy a reasonable person," meaning that it has a  
23 reasonable basis in both law and fact. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). In  
24 assessing substantial justification, courts evaluate the position of the United States as a  
25 whole, including both the underlying agency action and the United States' litigation  
26 posture. *INS v. Jean*, 496 U.S. 154, 159 (1990) ("While the parties' postures on individual  
27 matters may be more or less justified, the EAJA—like other fee-shifting statutes—  
28 favors treating a case as an inclusive whole, rather than as atomized line-items."). The

1 mere fact that the United States does not prevail on the merits does not establish a lack of  
2 substantial justification. This is particularly true where a case involves statutory  
3 interpretation and reasonable jurists have reached differing conclusions. See *Medina Tovar*  
4 *v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022).

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

6 Petitioner's motion rests on the premise that "Respondents' interpretation of 8  
7 U.S.C. § 1225(b)(2)(A) as mandating detention for long-settled residents like Mr. Cabrera-  
8 Cortes was squarely rejected by nearly every court to address the issue nationwide." ECF  
9 No. 23, at 5. But that argument misstates immigration jurisprudence.

10 At the time of Petitioner's detention, the Department of Homeland Security had  
11 adopted a practice of applying the provisions of 8 U.S.C. § 1225(b)(2)(A) to detain  
12 noncitizens who entered without inspection. That interpretation was subsequently  
13 endorsed in a precedential decision of the Board of Immigration Appeals, *Matter of Yajure*  
14 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which notably was never appealed to a higher  
15 court, and formed the basis for detention decisions by immigration judges nationwide. The  
16 statutory question presented here—whether § 1225(b)(2)(A) or § 1226(a) governs detention  
17 for individuals apprehended in the interior who entered without inspection—has since been  
18 litigated extensively across the country.

19 While this particular Court has rejected the United States' interpretation, other  
20 federal district courts outside this District have reached a different conclusion and have  
21 upheld detention under § 1225(b)(2)(A) in materially similar circumstances. The following  
22 decisions have found that the law supports the Federal Respondents' positions: *Chavez v.*  
23 *Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*,  
24 No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-  
25 1437, 2025 WL 3033967, at \*1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-  
26 01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-  
27 01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168,  
28 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177

1 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex.  
2 Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov.  
3 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at \*1 (E.D. Cal.  
4 Nov. 17, 2025).

5 For example, the United States District Court for the District of Nebraska and the  
6 United States District Court for the Southern District of California have both issued  
7 decisions holding that, under the plain language of § 1225(a)(1), aliens present in the  
8 United States who have not been admitted are “applicants for admission” and are thus  
9 subject to the mandatory detention provisions of “applicants for admission” under §  
10 1225(b)(2). See *Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other  
11 federal judges have found persuasive the Federal Respondents’ position cases that are  
12 materially similar to the case at bar, the Federal Respondents’ position is substantially  
13 justified. See *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that  
14 the district court did not abuse its discretion, in finding that the United States’ position was  
15 substantially justified for purposes of EAJA, where different judges disagreed about the  
16 proper reading of the statute and the case involved an issue of first impression).

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

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

27 / /

28 / /

1 **C. The United States’ Defense of the Automatic Stay Regulation and Jurisdictional**  
2 **Arguments Were Substantially Justified**

3 In addition to the statutory arguments discussed above, Petitioner’s motion argues  
4 that Federal Respondents’ defense of the automatic stay regulation, 8 C.F.R. § 1003.  
5 19(i)(2), and jurisdictional arguments were unjustified. ECF No. 23, at 6. ECF No. 23, at  
6 5. Again, the relevant question is not whether the Court ultimately disagreed with the  
7 United States’ position, but whether that position was reasonable when advanced.

8 Federal Respondents relied on existing district court authority upholding the  
9 automatic stay against due process challenges, including *Altayar v. Lynch*, 2016 U.S. Dist.  
10 LEXIS 175819 (D. Ariz. Nov. 23, 2016). In *Altayar*, the court considered a habeas  
11 challenge to DHS’s invocation of the automatic stay pending BIA review of an  
12 immigration judge’s bond decision. The court concluded that a finite automatic stay—  
13 limited by regulation to a maximum of 90 days—did not violate procedural or substantive  
14 due process because it is narrowly tailored to serve a compelling government interest.

15 Federal Respondents did not contend that *Altayar* is binding on this Court, nor do  
16 they dispute that other courts—including this one—have since reached a different  
17 conclusion regarding the regulation’s constitutionality. But the existence of *Altayar* and  
18 similar decisions demonstrates that the United States’ position was supported by judicial  
19 authority and therefore reasonable for EAJA purposes.

20 Regarding the jurisdictional arguments, Federal Respondents raised jurisdictional  
21 arguments based on the INA’s channeling provisions, including 8 U.S.C. §§ 1252(b)(9) and  
22 (g). Those arguments were grounded in Supreme Court precedent emphasizing the limited  
23 scope of judicial review in immigration matters and the requirement that many claims be  
24 raised through the administrative process.

25 Although the Court ultimately rejected those arguments, they were neither frivolous  
26 nor foreclosed by controlling authority. The assertion of jurisdictional defenses in this  
27 context, as supported by Supreme Court precedent, supports a finding that the United  
28 States’ position regarding jurisdiction was substantially justified.

1 **III. Conclusion**

2 This case involved unsettled and actively litigated questions concerning immigration  
3 detention authority and the automatic stay regulation. At the time Federal Respondents  
4 advanced their positions, those positions were supported by agency precedent and by  
5 judicial decisions, including *Altayar v. Lynch* and the string of cases cited above. The fact that  
6 this Court ultimately disagreed does not render the United States' position unreasonable  
7 under EAJA.

8 Because the position of the United States was substantially justified, Petitioner's  
9 motion for attorney's fees should be denied.

10 Respectfully submitted this 20th day of January 2026.

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