IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03260
OSCAR ARTOLA ARAUZ,
Petitioner,
v.
JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,
ROBERT HAGAN, Field Office Director, Denver, U.S. Immigration and Customs Enforcement,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD LYONS, Director, U.S. Immigration and Customs Enforcement, and
PAMELA BONDI, Attorney General of the United States,
Respondents.

MOTION FOR ATTORNEYS' FEES PURSUANT TO 28 U.S.C. § 2412(d)(1)

I. INTRODUCTION

Petitioner Oscar Artola Arauz moves, under the Equal Access to Justice Act (EAJA), section 2412(d) of Title 28 of the United States Code, for attorneys' fees incurred in successfully litigating his petition for a writ of habeas corpus challenging the lawfulness of his continued detention without a bond hearing under the governing statutory framework. This Court granted the petition and ordered a new bond hearing at which the government bears the burden of proving, by clear and convincing evidence, that Mr. Artola Arauz is a danger to the community or a flight risk. *See* ECF No. 21. [1]

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[1] This fee motion is timely. The Court issued its final judgment on February 6, 2026, *see* ECF No. 25, and this request is submitted before May 7, 2026. *See* 28 U.S.C. § 2412(d)(1)(B); *Pierce v. Barnhart*, 440 F.3d 657, 661 (5th Cir. 2006) ("[T]he thirty-day EAJA clock 'begins to run after the time to appeal that final judgment has expired.'") (quoting *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991)); *see also Fed. Election Comm'n v. Political Contributions Data, Inc.*, 995 F.2d 383, 385-86 (2d Cir. 1993) (holding that 30 deadline for filing an EAJA request does not

Mr. Artola Arauz is therefore a prevailing party entitled to attorney's fees and expenses. Mr. Artola Arauz also meets the EAJA net worth limitation. Respondents' position was not substantially justified and there are no special circumstances that make an award unjust. 28 U.S.C. § 2412(d)(1)(A). Mr. Artola Arauz is entitled to fees in the amount of $15,529.37, including for time spent litigating the instant fee application. The parties have conferred and Respondents oppose this motion.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mr. Artola Arauz moved to the United States when he was nine years old, almost forty years ago. ECF No. 1 at 5 ¶¶ 24, 27. He lives here with his entire family including his son, mother, brother, sister, aunts, uncles, cousins, and nieces. *Id.* ¶ 27. He has lived in Florida for the majority of his life, working to support his family, including his sick US citizen mother. *Id.* While in detention, Mr. Artola Arauz suffered from severe heart failure. ECF No. 3-2 at 3. Respondents failed to take appropriate action in response to Mr. Artola Arauz's heart condition. *Id.* at 4. Mr. Artola Arauz's criminal legal contacts do not subject him to mandatory detention under section 1226(c) of Title 28 of the United States Code. ECF No. 18-1 at 1. Yet still, Respondents, upon taking custody of Mr. Artola Arauz, claimed he was subject to mandatory detention under section 1225(b)(2)(A), as opposed to discretionary detention under section 1226(a). ECF No. 13 at 1-2.

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begin to run until the deadline to petition for certiorari has passed); *Taylor v. United States*, 749 F.2d 171, 175 (3d Cir. 1984); *Kolman v Shalala*, 39 F.3d 173, 175 (7th Cir. 1994); *Al-Harbi v. INS*, 284 F.3d 1080, 108384 (9th Cir. 2002); *Singleton v. Apfel*, 231 F.3d 853, 855 n. 4 (11th Cir. 2000).

Both the section 1226 and section 1225 detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104- 208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before immigration judges ("IJ") explaining that, in general, people who entered the country without inspection (also known as "present without admission") were not detainable under section 1225 and instead could only be detained under section 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination').

Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts were entitled to bond hearings under section 1226(a) when placed in section 1229(a) proceedings. That practice was consistent with additional decades of pre-lIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

Despite this long-standing practice and the plain text of the statute, a solitary member of the Board of Immigration Appeals ("BIA") issued a two-page unpublished and non-

precedential decision on May 22, 2025 holding that noncitizens who entered the United States without inspection were subject to section 1225(b)(2) mandatory detention as "applicants for admission." On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," constituted a complete upheaval of statutory interpretation, agency case law, decades of agency practice, and agency regulation, to claim that all noncitizens present within the U.S. who entered without inspection — no matter how long ago, no matter where, and no matter how — are deemed "applicants for admission" under section 1225 of Title 8 of the United States Code, and thus subject to mandatory detention under section 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who have resided in the U.S. for many years, like Mr. Artola Arauz.

Mr. Artola Arauz filed his Petition on October 15, 2025 asking for immediate release or a custody redetermination hearing under section 1226(a) within seven days. ECF No. 1 at 24 ¶ a. He also filed a Temporary Restraining Order ("TRO") asking for the same and explaining that his situation was urgent due to his dire medical condition. ECF No. 3. On October 31, 2025, this Court granted Mr. Artola Arauz's Petition and denied his TRO as moot. ECF No. 16 at 1. This Court found that Respondents' argument had "no merit" and "once again failed to persuade" the Court after they had attempted the same argument over and over in previous cases. *Id.* at 5. This Court ordered Respondents to provide Mr. Artola Arauz with a bond hearing within seven days at which Respondents must carry the burden to justify Mr. Artola Arauz's continued detention by clear and convincing evidence or immediate release with reasonable conditions of supervision. *Id.* at 10. The IJ conducted a

bond hearing on November 7, 2026 and ordered Mr. Artola Arauz released from custody upon payment of $1,500 and did not impose additional restrictions or requirements on Mr. Artola Arauz. ECF No. 18-1 at 1.

However, when Respondents released Mr. Artola Arauz from custody on November 12, 2026, Respondents placed an ankle monitor tracking device on him and ordered him to appear for an in-person check-in upon his arrival in Seattle, Washington, where an additional tracking device was placed on his phone. ECF No. 19 at 2. Mr. Artola Arauz, through counsel, filed a Notice of Noncompliance with this Court arguing that Respondents violated the Court's order by subjecting him to conditions of release the Court did not order. *See* ECF No. 19. The Court entered an order for Respondents to show cause following this notice. *See* ECF No. 20. Respondents subsequently ceased all tracking activities of Mr. Artola Arauz and terminated his obligations for continued check-ins. ECF No. 23 at 3. The parties filed a joint status report informing the Court that Respondents had ceased surveillance of Mr. Artola Arauz. *See* ECF No. 23. This Court subsequently entered final judgment in this case on February 6, 2026. *See* ECF No. 25.

ARGUMENT

A. Mr. Artola Arauz is an Eligible and Prevailing Party

To qualify for an EAJA award, a petitioner first must establish that he is an eligible, prevailing party. 28 U.S.C. § 2412(d)(1)(B). Mr. Artola Arauz is an eligible party under EAJA because he is a private individual whose net worth has never exceeded 2 million dollars. *See* Exhibit 1 (Declaration of Oscar Artola Arauz), ¶ 2; 28 U.S.C. § 2412(d)(2)(B).

Mr. Artola Arauz is also a prevailing party because he 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); *see also Walker v. City of Mesquite, Tex.*, 313 F.3d 246, 249 (5th Cir. 2002).

In this case, over the government's opposition, the Court agreed with Mr. Artola Arauz's position that Mr. Artola Arauz's detention under section 1225(b)(2)(A) violates the law. *See* ECF No. 16. The Court agreed with Mr. Artola Arauz that his detention is instead governed by section 1226(a) and ordered a bond hearing before an immigration judge. *Id.* This decision directly benefited Mr. Artola Arauz because it ended his detention under the incorrect statutory framework and required the government to provide a bond hearing under section 1226(a), creating a meaningful opportunity for his release from custody. Through that opportunity for release, the Immigration Judge found that Mr. Artola Arauz is neither a danger to the community nor a flight risk and ordered him released from detention after a payment of $1,500 on November 7, 2025. ECF No. 18-1 at 1. Thus, this Court's October 31, 2025, order conferred prevailing party status. *See* ECF No. 16.

Furthermore, EAJA applies in a habeas corpus action challenging immigration custody. *Daley v. Ceja, et al.,* 158 F.4th 1152, 1166 (10th Cir. 2025) (finding that the "EAJA's broad language unambiguously authorize[s] fees in habeas actions challenging immigration detention"). Because of this, Mr. Artola Arauz is eligible for attorneys' fees under EAJA.

B. The Government's Position Was Not Substantially Justified

The government's position in this case was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). In enacting EAJA, Congress placed a heavy burden of proof on the government to demonstrate that its position was substantially justified. H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. 10, 13-14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government."). To meet this burden, the government must show

that its position had a reasonable basis both in law and in fact. *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988); *Hadden v. Bowen*, 851 F.2d 1266, 1267 (10th Cir. 1988). In other words, the government must show that its position is "justified to a degree that could satisfy a reasonable person." *Pierce*, 487 U.S. at 565.

In determining whether the government's position was substantially justified under the EAJA, the court is to examine both "the government's present and past positions on the basis of both the court and agency records." *Madrid v. Astrue*, 243 F. App'x 387, 390 (10th Cir. 2007) (quoting *Cummings v. Sullivan*, 950 F.2d 492, 496 (7th Cir. 1991)). If the court cannot determine that both past and present positions are substantially justified, it must award fees. *See Commissioner, INS v Jean*, 496 U.S. 154, 159 (1990).

The government's "past position," or pre-litigation position, are the actions or inactions the government took that gave rise to the litigation before the district court, and the government's "present position" is in the record laid out *in this civil litigation*. *See Cummings v. Sullivan*, 950 F.2d at 496; 28 U.S.C. § 2412(d)(1)(B). The Tenth Circuit defined "present position" to be "the arguments relied upon by the government in litigation." *U.S. v 2,116 Boxes of Boned Beef*, 726 F.2d 1481, 1487 (10th Cir. 1984). In other words, "not what the law now is, but what the Government was substantially justified in believing it to have been." *Pierce*, 487 U.S. at 561. This is particularly important here, as this is an area of law that remains evolving. While a handful of courts have subsequently ruled the other way on this issue, no circuit courts and no other judge in this district had done so at the time of this litigation. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (holding that noncitizens who entered without inspection are subject to mandatory detention).

Moreover, in determining whether the government's position is substantially justified, the Supreme Court stated that objective indica are factors but not determinative. *Pierce*, 487 U.S. at 568-69. Rather, the Court discussed a number of factors that can inform the district court judges determination, such as failure by the government to appeal; "one would expect that where the Government's case is so feeble as to provide grounds for an EAJA award, there will often be . . . a failure to appeal from the adverse judgment." *Id.* at 560. The Supreme Court also discussed wins and losses, stating, "a string of losses can be indicative; and even more so a string of successes." *Id.* at 569.

However, the Supreme Court definitively stated that a district court's decision regarding attorney's fees is given differential review as a "request for attorney's fees should not result in a second major litigation." *See id.* at 563 (quoting *Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983)).

Lastly, "[w]hen the government's legal position clearly offends established precedent, ... its position cannot be 'substantially justified.'" *Washington v. Heckler*, 756 F.2d 959, 962 (3 Cir. 1985); *accord Golembiewski v. Barnhart*, 382 F.3d 721, 724-25 (7 Cir. 2004) (government lacked substantial justification where its defense of the ALJ contradicted "clear and long judicial precedent").

1. Respondents' pre-litigation position was not substantially justified

The Immigration Judge initially improperly denied Mr. Artola Arauz bond on the ground that he was mandatorily detained under section 1225(b)(2)(A) of Title 8 of the United States Code, which was not applicable in this case. The agency applied the incorrect detention statute and denied bond without affording the procedural protections required under section 1226(a).

That position was contrary to established law governing detention authority and bond eligibility, as later confirmed by this Court's determination that Mr. Artola Arauz's detention was governed by section 1226(a), not section 1225(b)(2)(A). *See* ECF No. 16. Where, as here, the government's legal position rests on detention under the wrong statutory framework and thereby forecloses a bond hearing to which the noncitizen is statutorily entitled, the position clearly offends established precedent and cannot be substantially justified. Respondents adopted a new policy on this issue after a single-member BIA decision suddenly and inexplicably reinterpreted the relevant statute provision after thirty years of consistently interpreting it as Mr. Artola Arauz has advanced. This new policy is not based on law or reason and cannot substantiate Respondents' argument. Thus, at the time of this litigation, Respondents position was not substantially justified. This is especially true based on the string of Respondents' losses on this issue. ECF No. 16 at 5. They also did not notice an appeal.

Further, the Code of Federal Regulations provides explicit justification for parole from custody for serious medical conditions. 8 C.F.R. § 212.5(b)(1) (2026). Mr. Artola Arauz presented with severe heart failure while in Respondents' custody, rising to the standard for humanitarian parole from detention. And yet, Respondents refused to release him for humanitarian reasons. Accordingly, the agency's pre-litigation position fails the EAJA standard.

2. Respondents' litigation position was not substantially justified

In opposing the habeas petition, Respondents argued that Mr. Artola Arauz was subject to mandatory detention under section 1225(b)(2)(A) of Title 8 of the United States Code as an applicant for admission, despite undisputed facts showing that he was not seeking admission and had long been present in the United States. As the Court explained, the plain text of section

1225(b)(2)(A) requires a present-tense act of seeking admission, and that requirement is not satisfied by noncitizens who are already living in the United States.

The Court expressly rejected the government's position, holding that Mr. Artola Arauz's detention under section 1225(b)(2)(A) violates the law and concluding that his detention is governed instead by section 1226(a). *See* ECF No. 16. The Court further observed that Respondents' arguments mirrored those repeatedly rejected by the same and other district courts and adopted the prevailing interpretation of the statutory framework. *Id.* The government nonetheless advanced the same position without meaningfully distinguishing those cases, relying instead on the nonbinding nature of adverse authority rather than on a defensible statutory distinction.

By advancing a legal theory unsupported by the statutory text, the factual record, or controlling authority, the government maintained a position that lacked substantial justification and prolonged Mr. Artola Arauz's detention. In sum, the government's position during the litigation as a whole was unreasonable.

C. There Are No Special Circumstances That Would Make an Award Unjust

There are no special circumstances in this case that would make an award of attorneys' fees unjust. *See* 28 U.S.C. § 2412(d)(3). The burden of proving the special circumstances rests with the government. *See, e.g.*, *Martin v. Heckler*, 754 F.2d 1262, 1264 (5th Cir. 1985); *Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989). The government is unable to do so in this case.

D. The Fees Sought Are Reasonable Because They Have Been Substantially Reduced and Law Student Work Is Long Recognized by Courts

Counsel is submitting records documenting reasonable time spent working on the petition for review and on the instant motion, all of which is reimbursable. Exhibit 2 (Declaration of

Elizabeth Jordan, with attached timesheets); *Comm'r, INS v. Jean*, 496 U.S. 154, 163-65 (1990). This Court calculates hourly rates using the EAJA statutory rate ($125/hour) adjusted for inflation based on a cost-of-living adjustment using the Consumer Price Index for All Urban Consumers (CPI-U) for the year in which the work was performed. *Perales v. Casillas*, 950 F.2d 1066, 1076-77 (5th Cir. 1992). Provided as Exhibit 3 is the Consumer Price Index (CPIU) for the Denver metropolitan area. *See U.S. Dept. of Labor, Bureau of Labor Statistics*, [to locate the relevant CPI-U, go to: https://www.bls.gov/bls/news-release/cpi.htm] . Based on these statistics, the CPI-U for services in the region where this case was litigated was 335.070 in 2025, when Mr. Artola Arauz prevailed. See Exhibit 3. As such, adjusting EAJA's statutory rate to account for inflation results in an hourly rate of $269.00 per hour for each billing attorney. In addition, provided as Exhibit 2 is a summary of the hours and rates, for which compensation is requested. The total award sought is $15,529.37. However, the government has indicated its opposition to Mr. Artola Arauz's motion. If counsel must draft a reply to the government's response, Mr. Artola Arauz will seek additional fees for drafting the reply.

Under the EAJA, a party seeking attorney fees must demonstrate that the request is reasonable and "should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). In this matter, Mr. Artola Arauz has reduced the number of hours expended on this litigation by the students by 15 percent due to this being their first case and the additional time required to become familiar with all aspect of this litigation and how to litigate a *habeas corpus* petition. Mr. Artola Arauz's attorney of record exercised significant billing judgment over the student attorneys' hours.. He has complied with the mandates of

Hensley. *Burr by Burr v. Sobol*, 748 F. Supp. 97, 101 (S.D. N.Y. 1990) (held that a 15% reduction in adjusted hours as to the nine students who had worked on the case over numerous semesters would correct for duplication and inefficiencies).

"[O]nce a private litigant has met the multiple conditions for eligibility for EAJA fees, the district court's task of determining what fee is reasonable is essentially the same as that described in *Hensley*." *Commissioner, I.N.S. v. Jean*, 496 U.S. 154, 161 (1990), citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *see also Lucas v. White*, 63 F. Supp. 2d 1046, 1057 (N.D. Cal. 1999) ("The process for determining a reasonable fee under 28 U.S.C. § 2412(d) is the same as that followed in cases awarding fees under 42 U.S.C. § 1988"). "To determine the reasonableness of a fee request, a court must begin by calculating the so-called 'lodestar amount' of a fee, and a claimant is entitled to the presumption that this lodestar amount reflects a 'reasonable' fee. The lodestar calculation is the product of the number of attorney hours 'reasonably expended' and a 'reasonable hourly rate.'" *Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998) (citing, *inter alia*, *Hensley*, 461 U.S. at 433).

Courts have long awarded attorney's fees to law students who participated in a law school clinical program. *See, e.g.*, *Siggers-El-Barlow*, 433 F.Supp.2d 811, 821 (E.D. Mich. 2006) ("The fact that they were supervised by an attorney and obtained course credit for their work does not diminish the clinic's entitlement to attorney's fees." (citation omitted)); *Jordan v. U.S. Dept. Of Justice*, 691 F.2d 514, 523 (D.C. Cir. 1982) ("Absent direction from Congress, which we do not have, we cannot condone a concept of attorneys' fees so narrow as to exclude the work of law students simply because they are not yet members of the bar."); *DiGennaro v. Bowen*, 666 F. Supp. 426, 431 (E.D. Pa. 1987) (finding "no reason to deny a fee award to a legal service organization for the supervised hours reasonably expended by uncompensated law-

students working in a clinical facility, despite their receipt of academic credit instead of payment for their services"; "Law students working pursuant to the Student Practice Rule of the Eastern District ... provide a valuable service to their clients and the court." at 432). One court stated that use of law students "is a cost-efficient component of the modern practice of law." *Hoopa Valley Tribe v. Watt*, 569 F. Supp. 943, 947 (D. Cal. 1983) (EAJA fee request). Here, two student attorneys worked under the supervision of their professor, who has been involved in federal litigation regarding detained immigrants for years. Thus, because Mr. Artola Arauz was represented by law students operating under adequate supervision who have substantially reduced their hours to account for these particular circumstances, the fees sought should be considered reasonable.

III. CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner Mr. Artola Arauz respectfully requests this Court award the Plaintiff attorneys' fees in the amount of $15,529.37.

Dated: May 5, 2026

Respectfully submitted,

/s/ Elizabeth Jordan
Elizabeth Jordan
John Hathaway
University of Denver Sturm College of Law
Pro Bono Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that on May 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipient by e-mail:

Timothy Jafek
Email: Timothy.Jafek@usdoj.gov

/s/Elizabeth Jordan
Elizabeth Jordan