The Honorable John H. Chun

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIGAL TZAFIR, Petitioner, v. TODD BLANCHE, Acting United States Attorney General,[1] *et al.*, Respondents.	Case No. 2:25-cv-02070-JHC FEDERAL RESPONDENTS' OPPOSITION TO MOTION FOR ATTORNEY'S FEES

Federal Respondents oppose Petitioner Sigal Tzafir's motion seeking attorney fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. 19.

LEGAL STANDARD

A party may recover fees and costs under the EAJA only if (1) the party prevailed in the action; (2) the government's position was not "substantially justified;" (3) no special circumstances would make an award unjust; (4) the requested fees and costs are reasonable; and (5) the party filed a timely and supported application. *See* 28 U.S.C. §§ 2412(d); *United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009). Federal Respondents do not dispute that Petitioner

[1] Todd Blanche is automatically substituted for Pam Bondi pursuant to Fed. R. Civ. P. 25(d).

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

is a prevailing party or that she timely filed an application, but challenge her allegations that its position was not substantially justified or that her requested fees are reasonable.

Although the EAJA creates a presumption in favor of awarding fees to prevailing parties, fee shifting is not mandatory. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). "Attorney's fees are not available if the position of the United States is 'substantially justified,'" *id.*, meaning "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 566 (1992). The government bears the burden of demonstrating substantial justification by showing it had "a reasonable basis both in law and fact." *Flores*, 49 F.3d at 569-70 (quoting *Pierce*, 487 U.S. at 565). "[T]he government need not establish that it was correct or 'justified to a high degree' … but only that its position is one that a 'reasonable person could think [is] correct.'" *Ibrahim v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*) (quoting *Pierce*, 487 U.S. at 566 n.2).

ARGUMENT

A. Federal Respondents' position was substantially justified

Federal Respondents' position was substantially justified. Petitioner challenged her detention on statutory and regulatory grounds, claiming that Federal Respondents violated 8 C.F.R. §§ 241.4(*l*), 8 C.F.R. § 241.13(*i*)(3) and 8 U.S.C. § 1231(a). Dkt. 1, ¶¶ 14-20. Petitioner also raised two due process arguments, the first based on her prior allegations that Federal Respondents violated certain regulations and second, that her detention was not reasonably related to a legitimate government purpose, citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Dkt. 1, ¶¶ 22-23.

The Court ultimately addressed none of Petitioner's arguments in granting the habeas petition on due process grounds, instead utilizing the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That Petitioner ultimately obtained relief on different due process

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

grounds identified by the Court, and not the parties, should weigh against awarding fees under the EAJA. *See Johnson v. Berryhill*, No. 17-10452, 2018 WL 11433969, at *3 (E.D. Mich. Aug. 3, 2018) (citing *Dorrough v. Comm'r of Soc. Sec.*, No. 11-12447, 2013 WL 2048445, at *1 (E.D. Mich. May 14, 2013)).

In evaluating the *Mathews* test, the Court held Petitioner's private interests in this case outweighed the government's asserted interests. Dkt. 17. This disagreement, however, does not render the Federal Respondents' position unjustified. The Ninth Circuit has held "[t]hat the Government lost does not raise a presumption that its position was not substantially justified." *Edwards v. McMahon*, 834 F.2d 796, 802 (9th Cir. 1987) (citation omitted). This principle is particularly applicable where, as here, the governing legal test that the Court raised on its own requires a case-by-case balancing of factors. Furthermore, the fact that other cases within this District have required pre-deprivation hearings for petitioners subject to mandatory detention does not render the Federal Respondents' opposition unjustified. Those cases underscore that there is no categorical rule requiring pre-deprivation hearings; rather, courts apply the *Mathews* balancing test to the circumstances of each case. *See, e.g.*, *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321-24 (W.D. Wash. 2025) (conducting individualized *Mathews* analysis).

B. Petitioner is not entitled to enhanced rates under the EAJA

Even if she is entitled to attorney fees under the EAJA, Petitioner's requested enhanced fees are excessive. Under the EAJA, a district court may not award attorney's fees awarded under 28 U.S.C. § 2412(d) "in excess of $125 per hour unless the court determines that an increase in the cost of living or 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)(ii); *see Pierce*, 487 U.S. at 573 (narrowly construing exception to exceed EAJA statutory rate cap). Petitioner has failed to justify any warranted departure from EAJA's statutory framework to merit enhanced fees.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

A party seeking enhanced fees has the burden to prove all the following: (1) "the attorney must possess distinctive knowledge and skills developed through a practice specialty," (2) "those distinctive skills must be needed in the litigation," and (3) "those skills must not be available elsewhere at the statutory rate." *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991). Here, regardless of whether Petitioner has shown her attorneys have "distinctive knowledge and skills," she has not demonstrated that distinctive skills were needed in *this* litigation or that qualified counsel was not available at the statutory rate or that those skills were not available elsewhere at the statutory rate. Petitioner only makes a conclusory statement that "there were no attorneys available with the specialized knowledge required for this litigation who would handle this case at the EAJA rates of approximately $250 per hour," and cites her attorney's declaration where she states that her firm would not have taken the case at the statutory rate. Dkt. 19, p. 12 (citing Dkt. 19-2).

Although Federal Respondents acknowledge Petitioner submitted other declarations that reached a similar conclusion, the fact is there are several private attorneys that have been able to obtain relief for noncitizens on substantially similar issues of what circumstances permit Federal Respondents to revoke a noncitizen's Order of Supervision just in 2026 alone. *See, e.g.*, *Saley v. Scott,* No. 26-797-JNW, 2026 WL 914810 (W.D. Wash. Apr. 3, 2026); *Torres Ferrera v. Scott,* No. 26-583-TL, 2026 WL 776145 (W.D. Wash. Mar. 19, 2026); *Simmaphilavong v. Noem*, No. 26-458-JHC, 2026 WL 593146 (W.D. Wash. Mar. 3, 2026); *Jimenez-Perez v. Bondi*, No. 25-2631-JLR, 2026 WL 445560 (W.D. Wash. Feb. 17, 2026); *Chen v. Hermosillo*, No. 26-67, 2026 WL 252077 (W.D. Wash. Jan. 30, 2026). Moreover, there are private immigration counsel in this district who take on habeas cases at EAJA's statutory rate. *M.M. v. Hermosillo*, No. 25-2074-TMC, 2026 WL 252076 (W.D. Wash. Jan. 30, 2026) and Dkt. 20 therein (motion showing that "Petitioner requests fees and costs at the statutory EAJA rate, adjusted for cost of living in the Ninth Circuit,

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

for time reasonably expended on this case"). In the face of evidence that there are other attorneys in this market willing to take on federal habeas cases tackling similar issues as hers and others who will seek the statutory rate, Petitioner should be required to provide more than just the *ipse dixit* of a handful of attorneys that no one would take on her case absent an enhanced fee.

C. Petitioner does not justify the rate sought

Petitioner also does not adequately justify the rate sought, although it is her burden to show. *Carson v. Billings Police Dep't*, 470 F.3d 889, 891 (9th Cir. 2006). Petitioner first asks this Court to award fees using the *Laffey* matrix developed by the United States District Court for the District of Columbia and reflects rates charged in that market. Courts in this district have previously stated they are "skeptical of the *Laffey* matrix." *Rahman v. Bondi*, No. 24-2132-JHC-TLF, 2026 WL 323046, at *5 (W.D. Wash. Feb. 6, 2026); *see also Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010). Petitioner provides little argument why that conclusion should be revisited and the Court should again reject Petitioner's arguments that the *Laffey* matrix has any applicability to the Seattle market.

Federal Respondents acknowledge that the *Rahman* court permitted Petitioner's alternative market rate of $650/hour, and that she asks this Court to apply that rate here to all three of her attorneys. 2026 WL 323046, at *6. Even if that rate had some underpinning other than it was approved in *Rahman*, Petitioner fails to explain how Attorney Smith should receive a rate of $650/hour for work performed, when under the first proposal of the *Laffey* matrix, she would only be billed at $508/hour. Unlike Attorneys Boyd and Vomacka, Petitioner has not provided any evidence or discussion of Attorney Smith's experience to justify a rate almost three times what the EAJA would ordinarily provide. Because it is Petitioner's burden to prove the market rate for her attorneys and she has not provided that evidence as to Attorney Smith, her time should be billed at the EAJA statutory rate.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

D. Petitioner has not proven that Federal Respondents acted in bad faith

Petitioner alternatively seeks market-rate attorney's fees by invoking the common-law bad-faith exception, made applicable by 28 U.S.C. § 2412(b). *Su v. Bowers*, 89 F.4th 1169, 1179 (9th Cir. 2024). "This bad faith exception is a narrow one, typically invoked in cases of vexatious, wanton, or oppressive conduct." *Brown v. Sullivan*, 916 F.2d 492, 495 (9th Cir. 1990). "Mere recklessness does not alone constitute bad faith; rather, an award of attorney's fees is justified when reckless conduct is combined with an additional factor such as frivolousness, harassment, or an improper purpose. Naturally, this is a higher burden than § 2412(d)'s requirement that the government's case be substantially justified." *Bowers*, 89 F.4th at 1179 (internal quotations and citations omitted). The mere fact that the government litigated an issue and did not prevail does not support the finding of bad faith. *Rodriguez v. United States*, 542 F.3d 704, 709–10 (9th Cir. 2008).

Here, Petitioner claims Federal Respondents acted in bad faith based on her allegations: (1) she was detained under false pretenses; (2) she was not notified of the reasons for revocation of her Order of Supervision; (3) she never received an informal interview after being detained; (4) the government did not assert that she violated any conditions of her release; (5) her Order of Supervision was revoked before it ever requested a travel document; and (6) its claims that she could be issued a travel document for Uzbekistan, Kazakhstan, Russia, Ukraine, or Georgia based on her parents' blood ties. Dkt. 19, pp. 7-9. Petitioner, however, only cites the allegations in her habeas petition in support. *Id.* She provides no declaration attesting to these allegations. Given it is her burden to prove bad faith and that burden is high, more should be required than just bare assertions in a complaint. *Espinoza-Gutierrez v. Smith*, 94 F.3d 1270, 1279 (9th Cir. 1996).

Also, her allegations at several points are wrong. When she was detained, ICE notified her about why it revoked her Order of Supervision; while the Court determined that the notice was

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

inadequate and not enough to support her detention, its reasons were provided. *See* Dkt. 1-1. ICE also did not rely on violations of her Order of Supervision to detain her, but rather, on its belief that she could be removed in the reasonably foreseeable future, which is an alternative reason to justify re-detention. Dkt. 15, ¶ 17; *see Tran v. Bondi*, No. 25-2335-DGE-TLF, 2025 WL 3725677, at *3 (W.D. Wash. Dec. 24, 2025) (explaining difference between 8 C.F.R. § 241.4 and § 241.13). Petitioner was afforded an informal interview on August 14, 2025, shortly after her detention. Strong Decl., Ex. 1 (Alien Informal Interview Upon Revocation of Order of Supervision). Moreover, Federal Respondents did seek to obtain travel documents for countries other than Israel, but Petitioner was not cooperative in completing any related travel document applications. Dkt. 15, ¶ 21. Again, Petitioner bears the burden to prove bad faith but fails to do so here. *Espinoza-Gutierrez*, 94 F.3d at 1279.

CONCLUSION

For the aforementioned reasons, Federal Respondents respectfully request that the Court deny Petitioner's Motion for Attorney's Fees.

DATED this 8th day of April, 2026.

Respectfully submitted,

s/ James C. Strong
JAMES C. STRONG, WSBA No. 59151
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: james.strong@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 1,973 words in compliance with the Local Civil Rules.