Judge John H. Chun
Magistrate Judge Grady J. Leupold

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

SIGAL TZAFIR, *Petitioner,* v. MARKWAYNE MULLIN,[1] *et al.;* *Respondents.*	CASE NO.: 2:25-cv-2070-JHC-GJL PETITIONER'S REPLY RE ATTORNEYS' FEES Noted for Consideration: April 14, 2026

A. <u>The government's position was not substantially justified.</u>

The government argues that its position was substantially justified both because the Court granted relief on a a basis that neither party briefed and because the government's argument that *Mathews v. Eldridge*, 424 U.S. 319 (1976), does not require a pre-deprivation hearing was a disagreement, not an unjustified position. Dkt. 20, at 2–7.

[1] Under Fed. Rule Civ. Proc. 25(d), the petitioner substitutes Todd Blanche, Acting United States Attorney General, for Pamela Bondi; Julio Hernandez, Acting Seattle Field Office Director, Immigration and Customs Enforcement, for Laura Hermosillo; and Markwayne Mullin, Secretary of Department of Homeland Security, for Kristi Noem.

The government offers no response to the argument of the petitioner, Sigal Tzafir, that the actions of ICE itself were not substantially justified. Dkt. 19, at 4–6. ICE detained Ms. Tzafir without cause or warning, telling her that if she did not come to the ICE office immediately she would not see her mother again. Dkt. 1, at 2. ICE threatened to deport Ms. Tzafir to Israel, even though Israel had made clear in 2009 that Ms. Tzafir is not an Israeli citizen and Israel would not accept her. Dkt. 1, at 5; Dkt. 15, at 3; Dkt. 16, at 3. ICE did not attempt to secure travel documents from Israel until Ms. Tzafir had been in detention for more than three months and had filed the habeas petition. Dkt. 15, at 3. Deportation Officer Christhian De Castro made several false statements to the Court in his declaration, as detailed in Ms. Tzafir's briefing on the merits and in her application for fees. Dkt. 16, at 2; Dkt. 19, at 4–6. Because of "the action or failure to act by the agency upon which the civil action is based," the position of the government is not substantially justified. *Thomas v. Peterson,* 841 F.2d 332, 334-335 (1988).

In addition, although it is a closer question, the government's position during the litigation was not substantially justified. Disagreements are a natural and beneficial part of the adversarial system, but the government's position here was to relitigate a legal principle that had become well-settled in this district and elsewhere. The government now, for the first time, offers evidence that an informal interview occurred as 8 C.F.R. 241.4(*l*)(1) and 8 C.F.R. 241.13(*i*)(3) require, Dkt. 21-1, but Due Process requires more than that. By focusing on *Mathews,* the Court's Order granting habeas relief implicitly says this. Dkt. 17. The government also argues that "there is no categorical rule requiring pre-deprivation hearings; rather, courts apply the *Mathews* balancing test to the circumstances of each case." Dkt. 20, at 3. It cites to *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321-24 (W.D. Wash. 2025) for support, but that case does not

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say the *Mathews* analysis is particular to each individual. Due Process requirements apply equally in comparable circumstances, including ICE's recent pattern of revoking Orders of Supervision without notice or cause. For the government to continue to argue otherwise is not substantially justified.

IV. CONCLUSION

The government's position was not substantially justified, because of the actions and inactions of ICE and because of the arguments of counsel. As to the common-law argument and the amount of fees, the petitioner rests on the prior briefing.

I certify that this memorandum contains 500 words, in compliance with the Local Civil Rules.

Dated: April 14, 2026.

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