The Honorable Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

M.M., Petitioners, v. LAURA HERMOSILLO, Seattle Acting Field Office Director, Enforcement and Removal Operations, *et. al.*,[1] Respondents.	Case No. 2:25-cv-02074-TMC RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT

INTRODUCTION

Federal Respondents oppose Petitioner's motion for an award of $7,041.09 in attorney's fees and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. 20, Motion for EAJA Fees and Costs ("Motion"). The Court should deny the Motion because Federal Respondents' position was substantially justified. Alternatively, if the Court is not prepared to hold that Federal Respondents' position was substantially justified, Federal Respondents respectfully ask the Court to stay the resolution of Petitioner's Motion pending a decision from

[1] Laura Hermosillo, Seattle Acting Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement, is substituted for Cammilla Wamsley, pursuant to Fed. R. Civ. P. 25(d).

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

the Ninth Circuit Court of Appeals in the government's appeal from the Court's order issued on September 30, 2025, in *Rodriguez Vazquez v. Bostock*, Case No. 25-5240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

BACKGROUND

Petitioner M.M. is a member of the Bond Denial Class in *Rodriguez Vazquez v. Bostock*, Case No. 25-5240-TMC. On October 31, 2025, the Court granted Petitioner's petition for writ of habeas corpus, finding that Petitioner was "detained under section 1226(a) and not subject to mandatory detention under section 1225(b)(2)." Dkt. 17, at p. 4. The Court ordered that "[w]ithin ONE day of this Order, Respondents must either release Petitioner or allow Petitioner's release upon payment of the alternative bond amount of $25,000." *Id.* The instant motion followed.

ARGUMENT

To qualify for attorneys' fees under EAJA, the plaintiff must demonstrate that he is a prevailing party. 28 U.S.C. § 2412(d)(1)(A). To be a prevailing party, "a party must successfully obtain a judicially sanctioned material alteration of his or her legal relationship with the United States." *Pabla v. U.S. Citizenship & Immig. Servs.*, No. 2:18-cv-1660, 2019 WL 1436872, at *2 (W.D. Wash. Apr. 1, 2019) (collecting cases). Federal Respondents do not dispute that Petitioner is the prevailing party in this case.

A prevailing party, however, is not entitled to an award of EAJA fees if the government shows that its position in the underlying litigation "was substantially justified." *See* 28 U.S.C. § 2412(d)(1)(A). Although EAJA creates a presumption that fees will be awarded to a prevailing party, Congress did not intend fee shifting to be mandatory. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995); *Zapon v. United States Dep't of Justice*, 53 F.3d 283, 284 (9th Cir. 1995). Rather, the Supreme Court has interpreted the term "substantially justified" to mean that a prevailing party is not entitled to recover fees if the government's position is "justified to a degree that could

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 566 (1992). The decision to deny EAJA attorney's fees is within the discretion of the court. *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002).

The government has the burden of proving its positions were substantially justified. *See Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010). It must demonstrate that its position had a reasonable basis in both law and fact. *Flores*, 49 F.3d at 569-70; *see also Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005) (noting that "'substantial justification is equated with reasonableness ... The government's position is substantially justified if it has a reasonable basis in law and fact.'" (*quoting Ramon-Sepulveda v. INS*, 863 F.2d 1458, 1459 (9th Cir. 1988) (alteration in original)). The Ninth Circuit has recognized that "[t]o establish substantial justification, the 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 it correct.'" *Ibrahim v. U.S. Homeland Security*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*) (emphasis added) (quoting *Pierce*, 487 U.S. at 566 n.2). A court's finding that an agency decision was unsupported by substantial evidence is, however, "a strong indication" that the position of the United States in the litigation was not substantially justified. *Thangaraja*, 428 F.3d at 874.

Here, Federal Respondents were substantially justified in arguing that Petitioner was subject to mandatory detention. As explained more thoroughly in Federal Respondents' Return (Dkt. 15), the plain language of the Immigration and Nationality Act ("INA") mandates that Petitioner – who was present in the United States without having been admitted – was correctly considered an "applicant for admission" and therefore subject to detention under 8 U.S.C. § 1225(b). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded."). The best reading of the statute is that Congress insured that all noncitizens would

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

be inspected by immigration authorities by treating noncitizens who are present in the United States without having been inspected and admitted as applicants for admission. Noncitizens who are present without having been inspected and admitted have the benefit of full removal proceedings and are not subject to expedited removal. But they are subject to detention during their removal proceedings.

Federal Respondents recognize that the Court disagrees with their position, as noted in the Court's Order of September 30, 2025, in *Rodriguez Vazquez v. Bostock*, Case No. 25-5240-TMC, 2025 WL 2782499. But this does not mean Federal Respondents' position lacked a reasonable basis in law or fact, as evidenced by the BIA's recent decision adopting their position in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Because their position was substantially justified, Federal Respondents ask the Court to deny the Motion.

Alternatively, if the Court is not yet prepared to find Federal Respondents' position was substantially justified, Federal Respondents ask the Court to stay its decision on the EAJA motion until the Ninth Circuit issues a decision in the *Rodriguez Vazquez* appeal. Should the Ninth Circuit ultimately agree with Federal Respondents' legal position and reverse the Court's order of September 30, the Ninth Circuit's decision would conclusively establish that Federal Respondents' position in this case was substantially justified. It would therefore be premature for the Court to find that Federal Respondents' position was not substantially justified.

CONCLUSION

The Court should deny Petitioner's motion for attorney's fees and costs, as Federal Respondents' position was substantially justified.

//

//

//

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

DATED this 15th day of December, 2025.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ James C. Strong
JAMES C. STRONG, WSBA # 59151
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Tel: (206) 553-7970
Fax: (206) 553-4073
Email: james.strong@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 996 words, in compliance with the Local Civil Rules.