District Judge Ricardo S. Martinez
Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Giny FRANCOIS, et al.,

Petitioners,

v.

Laura HERMOSILLO, et al.,

Respondents.

Case No. 2:25-cv-2122-RSM-GJL

PETITIONERS' MOTION FOR ATTORNEYS' FEES AND COSTS

Note on Motion Calendar:
March 26, 2026

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INTRODUCTION

Petitioners Francois, Davila, and Pinto file this motion for attorneys' fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, for time reasonably expended challenging Respondents' unlawful re-detention of them last year. They are entitled to recover reasonable fees under EAJA because they are the prevailing party, because Respondents' position in this matter was not substantially justified, and because no special circumstances make an award unjust.

STATEMENT OF FACTS

Petitioners are noncitizens whom Respondents released into the community to pursue their claims for asylum, and then subsequently re-detained without pre-deprivation notice, much less a hearing, where Respondents demonstrated that they were either a flight risk or danger.

Petitioner Francois is a Haitian asylum seeker who entered the United States in August 2024. He was apprehended by immigration authorities and subsequently released on humanitarian parole to pursue removal proceedings. Dkt. 1 ¶¶ 15, 23–24. He applied for asylum in January 2025 and also obtained a work permit. *Id.* ¶¶ 25–26. In May 2025, when he appeared at his first master calendar hearing of his removal proceedings, Respondent Department of Homeland Security (DHS) moved to dismiss his case. After the immigration judge (IJ) granted DHS's request, Mr. Francois was arrested by DHS in the hallway immediately outside the immigration courtroom and transported to the Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC). *Id.* ¶¶ 28–29.

Petitioner Davila is a Venezuela asylum seeker who entered the United States in September 2023. *Id.* ¶¶ 16, 36. He was apprehended by immigration authorities; after passing a credible fear interview, he was granted parole and released from immigration detention in

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October 2023 and given a Notice to Appear for removal proceedings in April 2027. *Id.* ¶¶ 36–37. Mr. Davila filed his asylum application in May 2024 and later received work authorization. *Id.* ¶ 39. He was re-detained by DHS at a September 2025 check-in with ICE and subsequently transported to the NWIPC. He was not given a reason for the revocation of his parole or his re-detention. *Id.* ¶¶ 42, 45.

Petitioner Pinto is a Venezuela asylum seeker who entered the United States in August 2024 along with his wife and child. *Id.* ¶¶ 17, 49. He was released on humanitarian parole and issued a Notice to Appear for removal proceedings in July 2025. *Id.* ¶ 49. He received work authorization in October 2024 and submitted an asylum application in February 2025. *Id.* ¶¶ 50–51. In October 2025, he was re-detained by ICE, who told him he was under arrest for failing to attend court—but the immigration court had rescheduled his last hearing. *Id.* ¶¶ 55–61. Mr. Pinto was taken to the NWIPC. *Id.* ¶ 61.

PROCEDURAL HISTORY

Messrs. Francois, Davila, and Pinto filed the instant petition for a writ of habeas corpus on October 28, 2025, arguing that their re-detention violated their Fifth Amendment right to procedural due process and seeking their release from immigration detention. *See generally* Dkt. 1. At the same time, they filed a motion seeking expedited consideration of their petition as well as an order from the Court preventing Respondents from transferring any of them from this district while it considered their petition. *See* Dkt. 2 at 6–7.

Three days later, they were forced to file a motion for a temporary restraining order (TRO) because Respondents had abruptly transferred Mr. Pinto out of the Western District of Washington on around October 30, 2025, and refused to return him or to agree to provide notice as to any potential transfer of Messrs. Francois and Davila. Dkt. 8 at 1–5. Petitioners asked the

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Court to order Respondents to return Mr. Pinto to this district and to immediately release all three of them from immigration detention. *Id.* at 2. Later that same day, Respondents also transferred Mr. Davila outside this district. Dkt. 13. Respondents responded noting that DHS "has broad authority . . . to determine the placement and transfer of detainees to appropriate detention facilities." Dkt. 15 at 2. On November 3, 2025, this Court granted Petitioners' TRO, finding that they satisfied all three elements for obtaining such emergency relief. Dkt. 16 at 6–10. The Court remarked that "[t]he Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty." *Id.* at 7 (citation modified). It also noted that "Petitioners' re-detainments appear arbitrary, if not baseless," *id.* at 8–9, and remarked that for Mr. Pinto in particular, "his re-detention allegedly based on failing to appear at court when his hearing was, in fact, rescheduled seems blatantly baseless," *id.* at 9. The Court ordered the return of Messrs. Pinto and Davila and the immediate release of all three petitioners "on the conditions of release in place prior to their arrests," and enjoined Respondents from re-detaining them "without prior approval from this Court or until" the Court's TRO order expired. *Id.* at 11–12. The Court also granted Petitioners' request for an expedited briefing schedule. *Id.* at 12.

Respondents filed a return opposing Petitioners' petition, arguing that all three petitioners were "lawfully detained while their asylum claims are pending" because "Congress has mandated detention under 8 U.S.C. § 1225(b) and denied notice for parole revocation." Dkt. 17 at 2. They claimed that Messrs. Davila and Pinto had been re-detained because they had each violated the terms of their release twice. *Id.* at 4–6. They also alleged that Petitioners' detention comported with due process. *Id.* at 9–12. Specifically, they argued that Petitioners' liberty interest was not "coextensive" with that of U.S. citizens and that their release "was always

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subject to conditions of release, and they knew that they could be re-detained if they violated the conditions of parole." *Id.* at 10–11 (citation omitted). They argued that "existing procedures are constitutionally sufficient" because there was no additional process afforded to Petitioners by statute and the "Supreme Court has warned courts against requiring additional procedural requirements into the" Immigration and Nationality Act. *Id.* at 11 (citation modified). Finally, Respondents argued that they have a strong interest "in preventing aliens from remaining in the United States in violation of our law" and in "enforcing compliance with its orders of release on recognizance and returning individuals to custody who violate their terms." *Id.* at 12. Respondents also argued that the Court lacked jurisdiction to review Petitioners' claims. *Id.* at 8.

Petitioners filed a traverse in support of their petition on November 17, 2025, arguing that "[n]othing in Respondents' filing undermines this Court's prior holding that Petitioners are likely to prevail on their due process claim." Dkt. 19 at 1. They explained the Court had jurisdiction over the petition, *id.* at 2–3; noted that Respondents' return did "not raise new arguments with respect to Petitioners' liberty interest that the Court did not previously address" in its TRO decision, *id.* at 5–6; argued that Respondents did not adequately address Petitioners' core claim that they were constitutionally entitled to a *pre*-deprivation hearing before a neutral decisionmaker, *id.* at 6–8; demonstrated that Respondents' purported justifications for re-detaining Messrs. Davila and Pinto—which were irrelevant to the analysis regarding their constitutional entitlement to a pre-deprivation hearing—actually "underscore[d] the need for a pre-deprivation hearing," and furnished additional factual supporting evidence, *id.* at 8–10; highlighted that Respondents raised only "bare, generalized assertions as to the government's" interests without meaningfully addressing the Court's findings as to this factor in its TRO decision, *id.* at 11–12; and asked the Court to afford only limited weight to Respondent's

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evidence because it contained inadmissible statements that were either self-serving hearsay or violations of the best evidence rule under the Federal Rules of Evidence, *id.* at 12–13.

On December 5, 2025, the Court issued an order granting Petitioners' petition for a writ of habeas corpus. Dkt. 22. The Court found that the first *Mathews v. Eldridge*, 424 U.S. 319 (1976), factor weighed in Petitioners' favor, after affirming that "Petitioners' interest in not being detained is the most elemental of liberty interests," and finding that Respondents' assertions that Messrs. Pinto and Davila had had violated their parole conditions were not supported by the record (and, at times, contradicted it). *Id.* at 6 (citation modified). The Court also concluded that the second *Mathews* factor weighed in favor of Petitioners, for "given the [facts of the case], it is undeniable that the risk of an erroneous deprivation would decrease if notice and a hearing had occurred." *Id.* at 7 (citation modified). Finally, the Court found that the third *Mathews* factor favored Petitioners because here, "where Petitioners (A) have complied with check-ins, (B) have followed all the rules, (C) have pending asylum applications and Credible Fear Interviews and appeals, and (D) have at least one positive credible fear finding, as well as that (E) there is no change in their particular factual circumstances prior to the arrests," "the Government's interest . . . is low." *Id.* The Court thus ordered Petitioners' release and decreed that they "may not be re-detained until an immigration court hearing is held, with adequate notice, to determine whether detention is appropriate." *Id.* at 8.

ARGUMENT

I. Messrs. Francois, Davila, and Pinto are entitled to fees under EAJA.

EAJA requires a court to award fees and costs in a civil action against the United States where a party demonstrates that they are a prevailing party and the government does not

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demonstrate that its position was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).[1]

A. Messrs. Francois, Davila, and Pinto are the prevailing party.

To demonstrate they are a prevailing party, a party must show that they (1) have achieved a "material alteration of the legal relationship of the parties," and that (2) the alteration was "judicially sanctioned." *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 604–05 (2001) (citation omitted). Here, Petitioners readily satisfy those requirements: they obtained a final judgment declaring that re-detention violated their Fifth Amendment procedural due process rights, ordering Respondents to release them from immigration detention, and decreeing that any future re-detention comply with due process. *See* Dkt. 22. Such final relief satisfies the prevailing party requirement "by granting enduring judicial relief on the merits." *Lackey v. Stinnie*, 604 U.S. 192, 203–04 (2025).

B. Respondents' position was not substantially justified.

"The EAJA creates a presumption that fees will be awarded to prevailing parties." *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). Respondents can rebut this presumption by showing that the government's conduct "was substantially justified." *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258–59 (9th Cir. 2001); *see also, e.g.*, *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991) ("The burden of proving the special circumstances or substantial justification exception to the mandatory award of fees under the EAJA rests with the government."). Congress placed the

[1] 28 U.S.C. § 2412(d)(2)(B)(i) provides that only parties with a net worth of less than $2,000,000 at the time their complaint was filed may seek fees under EAJA. To qualify for pro bono legal services by undersigned counsel, an individual's income generally must not exceed 200% of the federal poverty guidelines. Aldana Madrid Decl. ¶ 6. Petitioners, who were in immigration detention when this petition was filed, satisfy this requirement. *See* Dkt. 3 ¶ 7 (detained for five months), Dkt. 4 ¶ 6 (detained for one month), Dkt. 5 ¶ 14 (detained for two weeks).

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burden of proof on the government to demonstrate that its position was substantially justified in order for "EAJA to be a deterrent for unreasonable agency conduct." *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007) (order) ("[U]nreasonable agency action at any level entitles the litigant to EAJA fees."); *see also* H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. at 10, 13–14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government.").

"'Substantial justification' under the EAJA means that the government's position must have a reasonable basis in law and fact." *Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998). Here, Respondents' re-detention of Petitioners violated the Fifth Amendment. Dkt. 22 at 6–8. It has long been established that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1320 (W.D. Wash. 2025). An individual's interest in their freedom, moreover, is "the most elemental of liberty interests." Dkt. 22 at 6 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Based on these principles, "[t]he Supreme Court has consistently held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025) (citation modified). This is the case even where an individual has "been released from custody"—"even where such release is conditional, [they] have a liberty interest in their continued liberty." Dkt. 16 at 7 (citation omitted). Despite this caselaw, the immigration authorities re-detained Petitioners, violating the most basic and "fundamental requirement of due process": "the opportunity to be heard at a meaningful time and in a meaningful manner." *E.A. T.-B.*, 795 F. Supp. 3d at 1320 (citation modified). Because the agency ignored this well-

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established applicable law, its position was not "substantially justified." *See Li*, 505 F.3d at 919 (clarifying that where "the record indicates that the Agency's prior action was not consistent with clearly established law at the time the case was before it, then the government's position would not be substantially justified").

Moreover, case after case in this district—and elsewhere—has held that similarly-situated individuals are entitled to a hearing where the burden is on the government to justify re-detention. *See, e.g.*, *E.A. T.-B.*, 795 F. Supp. 3d at 1321–24; *Ledesma Gonzalez v. Bostock*, --- F. Supp. 3d ----, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); *Y.M.M.*, 2025 WL 3101782, at *2; *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025); *Tomas Manuel v. Hermosillo*, No. C25-2353-TL-MLP, 2025 WL 3690778, at *3 (W.D. Wash. Dec. 10, 2025), *report and recommendation adopted*, No. C25-2353-TL-MLP, 2025 WL 3697277 (W.D. Wash. Dec. 19, 2025); *Cabrera Perez v. Hermosillo*, No. 2:25-cv-02542-RSM, 2026 WL 100735, at *6 (W.D. Wash. Jan. 14, 2026); *Tsyamba v. Hermosillo*, No. 2:25-CV-02623-GJL, 2026 WL 237514, at *4–7 (W.D. Wash. Jan. 29, 2026); *Shinwari v. Hermosillo*, No. 2:26-CV-00009-RAJ, 2026 WL 262605, at *4 (W.D. Wash. Jan. 30, 2026); *Arroyo Silva v. Hermosillo*, No. 2:26-CV-00179-GJL, 2026 WL 445003, at *1 (W.D. Wash. Feb. 17, 2026). The Supreme Court and the Ninth Circuit have repeatedly recognized that such "a string of losses can be indicative" that the government's position lacks substantial justification. *Pierce v. Underwood*, 487 U.S. 552, 569 (1988); *see also Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1090 (9th Cir. 2022) (similar).[2]

[2] Moreover, Respondents' conduct also lacked a reasonable basis in fact. As this Court remarked, Respondents' claim that Mr. Davila "violated his parole by failing 'to immediately

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For these reasons, the government cannot demonstrate that its position in this case was substantially justified.

C. No special circumstances render an award unjust.

EAJA provides that fees must be awarded to a prevailing party unless "special circumstances" would make such an award unjust. 28 U.S.C. § 2412(d)(1)(A). The government bears the burden of establishing such circumstances. *Love*, 924 F.2d at 1495. Here, the government cannot point to any special circumstances that would defeat the fee award. To the contrary, an award in Petitioners' favor is more than just. Petitioners are asylum seekers who were leading law-abiding lives, complying with the conditions of their release, pursuing their asylum claims, and attending their court hearings when Respondents arbitrarily re-detained them—separating them from their families and communities and upending their lives. *See generally* Dkt. 3 (Francois Decl.), Dkt. 4 (Davila Dec.), Dkt. 5 (Pinto Decl.); *see also* Dkt. 22 at 7.

II. Petitioners' requested fees are reasonable.

Petitioners are entitled to fees at the EAJA statutory rate adjusted for inflation for the work of attorneys Aaron Kourthis, Amanda Ng, Elizabeth Harrington, Glenda M. Aldana Madrid, and Matt Adams as they are the eligible and prevailing party, the government's position in this matter was not substantially justified, and special circumstances do not make this award unjust. *See* Aldana Madrid Decl. ¶ 7.[3] Petitioners also seek reimbursement for paralegal Sydney

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report any police contact' is contradicted by the Government's own 'Interim Notice of Parole,' which states that Petitioner 'will notify ISAP immediately *or as soon as possible* should [he] have contact with law enforcement for any reason.'" Dkt. 22 at 6. Nor did Respondents refute Petitioners' statements attesting to their compliance with reporting requirements. *See id.*

[3] *See* 28 U.S.C. § 2412(d)(2)(A) (setting the EAJA ceiling at "$125 per hour unless the court determines that an increase in the cost of living [or other factor] . . . justifies a higher fee").

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Maltese's time.[4] Finally, Petitioners also seek reimbursement of $5.00 in filing fees and any other taxable costs under 28 U.S.C. § 1920, and fees for time spent preparing this fee application, *see Comm'r, INS v. Jean*, 496 U.S. 154, 163–65 (1990).

CONCLUSION

Petitioners accordingly respectfully request that this Court grant their requested fees and costs in the amount of $23,160.25, in addition to fees for any time spent preparing a reply brief if this motion is opposed by Respondents.

The applicable statutory rate is $258.46. *Statutory Maximum Rates Under the Equal Access to Justice Act*, United States Courts for the Ninth Circuit, https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates (last visited Mar. 2, 2026) (PDF on file with Petitioners' counsel).

[4] The requested rate of $ 255 per hour reflects the prevailing market rate as established by the Fitzpatrick Matrix, developed and maintained by the U.S. Attorney's Office for the District of Columbia, *see* U.S. Attorney's Office for the District of Columbia, Civil Division, The Fitzpatrick Matrix, at 1, https://www.justice.gov/usao-dc/media/1395096/dl?inline (last visited Mar. 2, 2026) (PDF on file with counsel). The Matrix is "intended for use in cases in which a fee-shifting statute permits the prevailing party to recover 'reasonable' attorney's fees," including EAJA, *id.* at 2, and thus provides an appropriate benchmark for prevailing market rates for complex federal litigation. Courts in this district have previously awarded fees based on the rates reflected by the Fitzpatrick Matrix. *See, e.g.*, *Cardozo v. Bostock*, Case No. 2:25-cv-00871-TMC (W.D. Wash.), Dkts. 31-1 (showing requested paralegal rate of $ 236, consistent with Fitzpatrick Matrix for work performed in 2024), 34 at 6 (granting requested fee award).

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Respectfully submitted this 5th day of March, 2026.

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 3153 words and complies with the word limit requirements of Local Civil Rule 7(e).

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