

The Honorable Ricardo S. Martinez
The Honorable Grady J. Leupold

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINY FRANCOIS, HECTOR MOISES
DAVILA ZURITA, JEAN CARLOS PINTO
BAUTISTA,

Petitioners,

v.

JULIO HERNANDEZ,¹ *et al.*,²

Respondents.

Case No. 2:25-cv-02122-RSM-GJL

FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONERS'
MOTION FOR ATTORNEYS' FEES
AND COSTS

The Federal Respondents oppose Petitioners' motion for an award of \$23,160.25 in attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, Dkt. 17, because the Federal Respondents' position in this case was substantially justified and the rate Petitioners seek for paralegal time is too high.

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

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo/Cammilla Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 circumstances would make an award unjust; (4) the requested fees and costs are reasonable; and
2 (5) the party filed a timely and supported application. *See* 28 U.S.C. §§ 2412(b), (d); *United States*
3 *v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009).

4 Although the EAJA creates a presumption in favor of awarding fees to prevailing parties,
5 fee shifting is not mandatory. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). “Attorney’s fees
6 are not available if the position of the United States is ‘substantially justified,’” *id.*, meaning
7 “justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552,
8 566 (1992). The government bears the burden of demonstrating substantial justification by
9 showing that it had “a reasonable basis both in law and fact.” *Flores*, 49 F.3d at 569-70 (quoting
10 *Pierce*, 487 U.S. at 565). “[T]he government need not establish that it was correct or ‘justified to
11 a high degree’ . . . but only that its position is one that a ‘reasonable person could think [is]
12 correct.’” *Ibrahim v. U.S. Homeland Sec.*, 912 F.3d 1147, 1167-68 (9th Cir. 2019) (*en banc*)
13 (quoting *Pierce*, 487 U.S. at 566 n.2).

14 ARGUMENT

15 The Federal Respondents’ position was substantially justified because it weighed the
16 government’s interest in Petitioners’ detention against Petitioners’ private interests in not being
17 detained, as required by the *Mathews* balancing test that formed the basis of the Petition. *See*
18 Dkt. 17, pgs. 8-12 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). The Court
19 acknowledged the government’s asserted interests but found them to be outweighed by Petitioners’
20 private interests in this case. *See* Dkt. 22, pgs. 5-8. This disagreement, however, does not render
21 the Federal Respondents’ position unjustified. The Ninth Circuit has held “[t]hat the Government
22 lost does not raise a presumption that its position was not substantially justified.” *Edwards v.*
23 *McMahon*, 834 F.2d 796, 802 (9th Cir. 1987) (citation omitted). This principle is particularly
24 applicable where, as here, the governing legal test requires a case-by-case balancing of factors

1 about which reasonable litigants may reach different conclusions.

2 Furthermore, the fact that other cases within this District have required pre-deprivation
3 hearings for petitioners subject to mandatory detention does not render the Federal Respondents'
4 opposition unjustified. Those cases underscore that there is no categorical rule requiring pre-
5 deprivation hearings; rather, courts apply the *Mathews* balancing test to the circumstances of each
6 case. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1321-24 (W.D. Wash. 2025)
7 (conducting individualized *Mathews* analysis). Here, the Federal Respondents set forth Petitioners'
8 specific circumstances and were substantially justified in arguing that the *Mathews* factors
9 weighed against Petitioners under those facts, even though the Court ultimately reached a different
10 conclusion.

11 Petitioners have also not met their burden to prove that the time billed by paralegal Sydney
12 Maltese was performed at the prevailing market rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433
13 (1983) (“the party seeking an award of fees should submit evidence supporting the ... rates
14 claimed”). Petitioners may recover paralegal fees at “prevailing market rates.” *Richlin Sec. Serv.*
15 *Co. v. Chertoff*, 553 U.S. 571 (2008). Petitioners put forth no evidence in the form of declarations
16 from the paralegal in question or the surrounding community to justify a rate at nearly the same
17 rate as attorneys. Courts in this District have routinely required evidence in the form of declarations
18 before accepting a paralegal’s rate. *Gnassi v. Del Toro*, No. 20-6095-JHC, 2023 WL 5277798
19 (W.D. Wash. Aug. 16, 2023); *Stewart v. Snohomish Cnty. Pub. Util. Dist. No. 1*, No. 16-20-JCC,
20 2017 WL 4538956 (W.D. Wash. Oct. 11, 2017).

21 Petitioners bear the burden of proof what the prevailing rate for a paralegal should be.
22 *Carson v. Billings Police Dep’t*, 470 F.3d 889, 891 (9th Cir. 2006). When confronted with a similar
23 scarcity of evidence, courts in this circuit have routinely reduced the award for paralegal fees. For
24 example, in *Martinez v. Colvin*, No. 14-3043-BTM, 2017 WL 766665 (S.D. Cal. Feb. 27, 2017),

1 the plaintiff sought paralegal fees at a rate of \$100/hour. *Id.* at *8. The court sua sponte held that
2 because the plaintiff had provided no evidence to support the reasonableness of the requested rate
3 or the paralegals' experience, it must look to other sources to determine an appropriate rate. *Id.* at
4 *9. There, the court looked at what the Judicial Council of the Ninth Circuit permitted for services
5 under the Criminal Justice Act, which at the time was \$35- 60/hour, and awarded paralegal fees at
6 the low end. *Id.* In other cases, the courts based a rate on the United States Consumer Law Attorney
7 Fee Survey Report. *Ulugalu v. Berryhill*, No. 17-1087-GPC-JLB, 2018 WL 2012330, at *4 (S.D.
8 Cal. Apr. 30, 2018) (finding that the appropriate paralegal rate in San Diego was \$100/hour).

9 For Seattle, a paralegal rate of \$100/hour has been found appropriate. *Robinson v.*
10 *Berryhill*, No. 16-6002-JRC, 2018 WL 2441747 (W.D. Wash. May 31, 2018) ("Although the 3.1
11 paralegal hours reasonably were expended (\$310) ...," i.e., indicating a rate of \$100/hour).
12 Because Petitioners have not presented any evidence, the paralegal fees – to the extent they are
13 compensable – should be reduced.

14 **CONCLUSION**

15 For the foregoing reasons, Petitioners' application for attorneys' fees should be denied.

16 DATED this 20th day of March, 2026.

17 Respectfully submitted,

18 s/ Kristin B. Johnson

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19 *Attorney for Federal Respondents*

20 I certify that this memorandum contains 944 words, in
21 compliance with the Local Civil Rules.
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