

District Judge Ricardo S. Martinez

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Giny FRANCOIS, et al.,
Petitioners,
v.
Julio HERNANDEZ, et al.,¹
Respondents.

Case No. 2:25-cv-2122-RSM
**PETITIONERS' REPLY IN
SUPPORT OF THEIR MOTION
FOR ATTORNEYS' FEES AND
COSTS**

Note on Motion Calendar:
March 26, 2026

¹ Julio Hernandez is the new acting Field Office Director for the Seattle office of Enforcement and Removal Operations, Immigration and Customs Enforcement. He is automatically substituted for former Field Office Director Laura Hermosillo under Federal Rule of Civil Procedure 25(d).

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INTRODUCTION

Respondents' objections to Petitioners' motion for attorneys' fees are unavailing. Petitioners are entitled to attorneys' fees because Respondents' position was not substantially justified as it was contrary to fundamental due process principles well established in caselaw. Petitioners' requested rate for paralegal work, moreover, is a reasonable reflection of prevailing market rates. Accordingly, the Court should grant Petitioners' motion and award their requested fees in full.

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ARGUMENT

I. Substantial Justification

Respondents have not met their burden to show their position was substantially justified. As an initial matter, Respondents must show that both the agency's actions and their litigation positions were substantially justified. *See Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998) ("The government's position must be substantially justified at each stage of the proceedings." (citation modified)). But Respondents focus only on their litigation position, claiming that they "weighed the governments' interest in Petitioners' detention against Petitioners' private interests in not being detained, as required by the *Mathews* balancing test." Dkt. 25 at 2. Not only does this fail to address whether the re-arrest itself was substantially justified, but it is contradicted by their representations to this Court. In opposing Petitioners' habeas petition, Respondents disavowed any requirement to provide any sort of pre-deprivation process, *see* Dkt. 17 at 11 (explaining "there is no requirement for such a hearing before re-detention after revocation of release"), and portrayed the re-detention decision as a wholly unilateral matter at Respondents' discretion without opportunity for input from Petitioners or even consideration of their liberty interests, *see id.* at 10 ("ICE made an individual determination

1 to revoke Petitioners' parole because Francois's removal proceedings were terminated and he
2 was processed for expedited removal, and because Zurita and Bautista violated the conditions of
3 their parole.").

4 Additionally, as Petitioners explained, their entitlement to a pre-deprivation process was
5 well-rooted in established due process principles, and Respondents' failure to abide by
6 established caselaw demonstrates that their actions were not substantially justified. *See* Dkt. 23 at
7 7–8. Respondents' "string of losses" defending their arbitrary re-detentions further confirms this
8 lack of justification. *Id.* at 8 (quoting *Pierce v. Underwood*, 487 U.S. 552, 569 (1988)).
9 Respondents do not address this argument as to their pre-litigation conduct in their response. *See*
10 *generally* Dkt. 25.² Their unreasonable pre-litigation conduct is enough to show that Petitioners
11 are entitled to attorneys' fees. *See, e.g., Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007) (order)
12 ("[R]egardless of the government's conduct in the federal court proceedings, unreasonable
13 agency action at any level entitles the litigant to EAJA fees."); *United States v. Marolf*, 277 F.3d
14 1156, 1163–64 (9th Cir. 2002) ("A reasonable litigation position does not establish substantial
15 justification in the face of a clearly unjustified underlying action.").

16 Finally, Respondents suggest that their position is substantially justified "where, as here,
17 the governing legal test requires a case-by-case balancing of factors about which reasonable
18 litigants may reach different conclusions." Dkt. 25 at 2–3. However, that balancing is required to
19 assess a petitioner's entitlement to the requested relief is no bar to a finding that the
20 government's conduct was not substantially justified. *See, e.g., Cardozo v. Bostock*, No. 2:25-
21 CV-00871-TMC, 2026 WL 304491, at *3 (W.D. Wash. Feb. 5, 2026) (granting fee award where
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24 ² Respondents, moreover, do not rebut Petitioners' showing that their actions lacked a
reasonable basis in fact. *Compare* Dkt. 23 at 8 n.2, *with* Dkt. 25 at 2–3.

1 court decided the due process challenge applying the “multifactor test from *Banda v. McAleenan*,
2 385 F. Supp. 3d 1099 (W.D. Wash. 2019)”); *Parada Calderon v. Bostock*, No. 2:24-CV-01619-
3 MJP-GJL, 2025 WL 2917374, at *1 (W.D. Wash. Oct. 14, 2025) (similar, for different multi-
4 factor test). Moreover, the caselaw in this district makes clear that these factors do not vary
5 meaningfully from case to case where the government has previously arrested a person,
6 permitted that person’s release, and subsequently re-arrested them without intervening conduct
7 such as a serious crime or a final order of removal. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp.
8 3d 1316, 1321–24 (W.D. Wash. 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130,
9 1136–38 (W.D. Wash. 2025); *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1201–03
10 (W.D. Wash. 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at
11 *2–4 (W.D. Wash. Sept. 17, 2025); *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988,
12 at *2–4 (W.D. Wash. Nov. 26, 2025).

13 II. Paralegal rate

14 Respondents also challenge the paralegal rate requested by Petitioners, asserting that
15 declarations were required for Petitioners to meet their burden. Dkt. 25 at 3. However, they point
16 to no such requirement in the statute. *Id.* And although they claim that “courts in this District
17 have routinely required evidence in the form of declarations before accepting a paralegal’s rate,”
18 *id.*, their authorities fail to establish this requirement, *see Gnassi v. Toro*, No. 3:20-CV-06095-
19 JHC, 2023 WL 5277798, at *4 (W.D. Wash. Aug. 16, 2023) (awarding rates based not just on
20 declarations but also “on the Court’s familiarity with the rates charged by Seattle-based
21 employment law attorneys and paralegals in comparable cases”); *Stewart v. Snohomish Cnty.*
22 *Pub. Util. Dist. No. 1*, No. C16-0020-JCC, 2017 WL 4538956, at *1 (W.D. Wash. Oct. 11, 2017)
23 (setting paralegal rate based on the judge’s own experience approving paralegal rates in other

1 cases and another judge’s approval of paralegal rates for one of the paralegals in question in
2 another matter). Mistakenly claiming Petitioners have not met their burden, Respondents instead
3 propose relying on rates under the Criminal Justice Act (CJA) as a benchmark and a 2018 case
4 awarding a similar rate, Dkt. 25 at 4, but CJA rates are not market rates, and rates have increased
5 significantly since 2018, *see, e.g., Kelly v. Wengler*, 822 F.3d 1085, 1103 (9th Cir. 2016)
6 (observing that “actual prevailing rates are very unlikely to be as low” as the rate used in Prison
7 Litigation Reform Act cases, derived from CJA rates).

8 Petitioners, moreover, substantiated their requested rate. They explained they relied on
9 the Fitzpatrick Matrix, which is maintained by the U.S. Attorney’s Office for the District of
10 Columbia to be used “in cases in which a fee-shifting statute permits the prevailing party to
11 recover ‘reasonable’ attorney’s fees.” Dkt. 23 at 10 n.4 (citation omitted). They also provided
12 caselaw support showing that courts in this district have previously awarded fees based on the
13 rates provided for in the Matrix. *Id.* Indeed, the requested rate is consistent with recent fees
14 awards in this district. *See Garcia v. Wamsley*, Case No. 2:25-cv-01980-TMC (W.D. Wash.),
15 Dkt. 13-3 (showing requested paralegal rate of \$255, consistent with Fitzpatrick Matrix), and
16 Dkt. 26 at 17 ¶ 23 (court order granting that rate); *cf. Y.M.M. v. Wamsley*, Case No. 2:25-cv-
17 02075-TMC (W.D. Wash.), Dkt. 23 at 4 ¶¶ 15–16 (reducing paralegal rate to \$236/hour because
18 original attorneys’ fees motion did not “address[]” “the market rate for paralegal work” and
19 citing cases showing compensated paralegal work at rates ranging from \$225-250 per hour).
20 Because Petitioners did address and support their requested paralegal rate, Dkt. 23 at 10 n.4, the
21 Court should grant their requested rate.

1 **CONCLUSION**

2 Petitioners accordingly respectfully request that this Court grant their requested fees and
3 costs in the amount of \$24,116.55, which includes time spent preparing this reply brief. *See*
4 Second Aldana Madrid Decl., Exs. A–B.

5 Respectfully submitted this 26th day of March, 2026.

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 1212 words and complies with the word limit requirements of Local Civil Rule 7(e).

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