The Honorable Tiffany M. Cartwright

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

JUAN LEON FIGUEROA, *et. al.*

Petitioners,

v.

JULIO HERNANDEZ, Seattle Acting Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement,[1] *et al.*,

Respondents.

Case No. 2:25-cv-02228-TMC

FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEY FEES

Federal Respondents oppose Petitioners' motion seeking $10,261.04 in attorney's fees and costs under the Equal Access to Justice Act ("EAJA"). *See also* Dkt. 26 (Petitioners' Motion for Attorney's Fees ("Motion")). The Motion should be denied because Federal Respondents' position was substantially justified in both law and fact and even if the Court concludes otherwise, no special circumstances justify an enhanced fee award under EAJA. Additionally, no bad faith exists that could support an award of market-rate fees.

---

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Julio Hernandez for Laura Hermosillo.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Federal Respondents' position was substantially justified. The declaratory relief granted in *Rodriguez Vazquez v. Bostock*, 802 F. Supp. 3d 1297 (W.D. Wash. 2025) ("*Rodriguez Vazquez*") did not include injunctive relief. Both the statutory scheme enacted by Congress—which precludes class-wide injunctive relief in habeas proceedings—and the language of the *Rodriguez Vasquez* order itself required the filing of individual habeas petitions to obtain injunctive relief. Accordingly, Federal Respondents' position regarding the scope and implementation of *Rodriguez Vasquez* through individual habeas actions was lawful, reasonable, and fully justified. Moreover, Petitioners have not established entitlement to enhanced EAJA rates or identified any bad faith that would permit recovery of market-rate fees against the United States. Accordingly, Petitioners' Motion should be denied.

I. BACKGROUND

Four Petitioners filed a habeas petition challenging their detention by U.S. Immigration and Customs Enforcement ("ICE"), relying on the declaratory judgment entered in *Rodriguez Vasquez*. *See* Dkt. 1; *Rodriguez Vazquez*, 802 F. Supp. 3d at 1303. The Court granted the habeas petition and ordered bond hearings or, in the alternative, release where bond was ordered. Dkt. 23.

On February 17, 2026, Petitioners' counsel filed the present Motion seeking $10,261.04 in attorneys' fees and costs. Dkt. 26. Federal Respondents oppose the Motion because (1) their position was substantially justified, and (2) Petitioners seek fees exceeding the statutory EAJA rate cap without demonstrating entitlement to any enhancement including cost-of-living or special-factor adjustments. Furthermore, Federal Respondents' arguments in the underlying action were not taken in bad faith.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

II. ARGUMENT

A. Petitioners' Motion should be addressed entirely under EAJA

"Sovereign immunity bars an award of attorneys' fees against the United States unless a statute expressly authorizes such an award." *Anderson v. United States*, 127 F.3d 1190, 1191 (9th Cir. 1997). Federal Respondents acknowledge that EAJA is such a waiver of sovereign immunity.

First, Petitioners seek attorney fees under 28 U.S.C. § 2412(d)(2)(A). Under this provision, a party may recover attorney's fees if: (1) the party prevailed; (2) the government's position was not substantially justified; (3) the requested fees are reasonable; and (4) the application is timely and supported. 28 U.S.C. § 2412(d)(1); *see also United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009). Federal Respondents do not dispute that Petitioners are prevailing parties or that the application is timely. As relevant to the Motion, the disputes between the parties turn on substantial justification and the permissible scope of any fee award.

Second, Petitioners purport to base their Motion on a "bad-faith" exception, citing *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 766 (1980). *Roadway* is inapposite because it concerned private parties and not a waiver of sovereign immunity. Nevertheless, Federal Respondents acknowledge 28 U.S.C. § 2412(b) "waives the government's sovereign immunity for the imposition of attorneys' fees to the same extent that any other party would be liable under the common law," which may include "the assessment of attorneys' fees against 'a party that has acted in bad faith.'"[2] *Lu v. United States*, 921 F.3d 850, 854, 859 (9th Cir. 2019) (internal quotations omitted); *accord Brown v. Sullivan*, 916 F.2d 492 (9th Cir. 1990) (recognizing a bad-faith exception under 28 U.S.C. § 2412(b)). Petitioners, however, never mention 28 U.S.C. § 2412(b)

---

[2] Section 2412(b) is separate from 28 U.S.C. § 2412(d)(2)(A). *See Lauritzen v. Lehman*, 736 F.2d 550, 552 (9th Cir. 1984).

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

in their Motion; however, because this is the applicable waiver of sovereign immunity, the Court should analyze their arguments under the cases interpreting that statute.

With those distinctions in mind, we will now address each statutory provision in turn, beginning with 28 U.S.C. § 2412(d), and then 28 U.S.C. § 2412(b).

B. Petitioners are not entitled to attorneys' fees under 28 U.S.C. § 2412(d)

1. Federal Respondents' position was substantially justified

Fees are unavailable if the government demonstrates that its position was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Substantial justification means the position was "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The government need not show it was correct—only that its position had a reasonable basis in law and fact. "That formulation implicitly permits the government some leeway, so long as its conduct on the whole remained justified." *Ibrahim v. U.S. Dep't of Homeland Sec.*, 835 F.3d 1048, 1056 (9th Cir. 2016).

While Federal Respondents acknowledge this Court has recently found their position not substantially justified in a similar matter, they respectfully disagree with that decision for the reasons stated herein. *M.M. v. Hermosillo,* No. 25-2074-TMC, 2026 WL 252076, at *2–3 (W.D. Wash. Jan. 30, 2026). Moreover, the Court in *M.M.* did not have the benefit of the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) in deciding whether Federal Respondents' position was substantially justified. While Federal Respondents recognize that *Buenrostro-Mendez* does not address the scope of what declaratory relief means in the class action context, which is at issue here, and is not binding precedent on this Court, the Fifth Circuit nevertheless reached a different conclusion than the *Rodriguez Vazquez* court about the statutory underpinnings of that declaratory relief. The Fifth Circuit's decision does demonstrate that there is room for disagreement on whether the statutory framework that this Court used to award

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

declaratory relief is correct, which should be sufficient to show substantial justification. *Ibrahim*, 835 F.3d at 1056.

Furthermore, Federal Respondents reasonably litigated the scope of declaratory relief in *Rodriguez Vazquez*. Federal Respondents opposed Petitioners' habeas petition by advancing arguments grounded in the statutory detention framework and the absence of class-wide injunctive relief in *Rodriguez Vasquez*. Dkt. 20. In the alternative, Federal Respondents stipulated that Petitioners Leon Figueroa and Gudiño Herrera were members of the bond denial class for purposes of this litigation, while preserving their position regarding the need for individual relief. *Id.* Meanwhile, Federal Respondents also raised issues about the scope of the bond denial class definition, arguing that Petitioners Carrillo Ahilon and Lopez Mendez were *not* class members because there was no evidence they had requested bond hearings, even though the class was defined in part as applying to noncitizens who "are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 *at the time the noncitizen is scheduled for or requests a bond hearing*," which had not yet been addressed. *Id.*

Federal Respondents' core position—that *Rodriguez Vasquez* granted declaratory relief only—was legally correct and reasonable. This Court in *Rodriguez Vasquez* did not issue class-wide injunctive relief governing future bond hearings or detention decisions. That limitation reflects the jurisdictional constraint imposed by 8 U.S.C. § 1252(f)(1), which generally bars courts from "enjoin[ing] or restrain[ing] the operation" of immigration detention statutes except as applied to an individual noncitizen. Declaratory relief announces the court's interpretation of the law. Where a court grants declaratory relief but injunctive relief is unavailable or expressly declined, it is reasonable, and often necessary, for impacted individuals to seek case-specific relief through individual actions, including habeas petitions.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

As the Supreme Court has long recognized, a declaratory judgment may be used as a predicate to further relief, but it does not itself mandate that relief. *Powell v. McCormack*, 395 U.S. 486, 498-499 (1969); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 300-301 (1943). Thus, as a limitation on its jurisdiction, this Court had the legal authority to declare the law but not to enjoin Federal Respondents to take any particular action in response to the Court's order. Moreover, at the same time, while acknowledging and applying this Court's declaration in *Rodriguez Vasquez*, Federal Respondents were also required to follow their own contrary binding precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).[3] Consequently, Federal Respondents were substantially justified and not acting in bad faith in their approach under these circumstances. Indeed, the Petition here may be seen as a misuse of EAJA to compel Federal Respondents—through the imposition of a series of monetary penalties in the form of EAJA fees—into giving the Court's order in *Rodriguez Vasquez* greater legal effect than that to which it is entitled as a matter of law because of a jurisdictional limitation on the Court's authority. That misuse of EAJA should be soundly rejected.

It is well settled that district court decisions do not freeze the law or require universal acquiescence by the government. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case") (internal quotations omitted). As the Supreme Court further explained in *Camreta*, "district court decisions—unlike those from the courts of appeals do not necessarily settle constitutional standards or prevent repeated claims…." *Id.* The government is therefore permitted to continue litigating unsettled legal

[3] Federal Respondents acknowledge that a district court in California recently vacated *Hurtado*, but that ruling came months after the Court decided this habeas petition. *Maldonado Bautista v. Santacruz*, No. 25-1873-SSS-BFM, 2026 WL 468284, *10 (C.D. Cal. Feb. 18, 2026).

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

questions in subsequent cases. This principle is particularly true in the context of habeas litigation where injunctive relief for a class of petitioners is foreclosed by Congress. 8 U.S.C. § 1252(f)(1).

Although *Camreta* arose in the qualified-immunity context, the Court's reasoning applies with equal force here, especially where this case is currently pending before the Ninth Circuit. *Rodriguez Vazquez v. Bostock,* No. 25-6842 (9th Cir. pending Oct. 29, 2025).[4] District court decisions, particularly declaratory judgments in the habeas context, do not definitively resolve statutory or constitutional questions for all future habeas petitioners. They do not bind other courts, do not displace agency precedent, and do not eliminate the government's ability to seek further clarification through continued litigation and appellate review. As noted previously, that the Fifth Circuit in *Buenrostro-Mendez* has arrived at the opposite conclusion clearly evidences that reasonable minds can differ on the underlying legal questions and weighs heavily in favor of the conclusion that in continuing to advocate for its position in this District and in the Ninth Circuit, despite this Court's decision in *Rodriguez Vazquez*, Federal Respondents are acting in a substantially justified way.

The Supreme Court has further held that the government is not subject to non-mutual offensive collateral estoppel and may litigate the same legal issue in cases involving different parties in subsequent litigation, as its litigation interests differ from private parties. *United States v. Mendoza*, 464 U.S. 154, 160–63 (1984). The Court emphasized that requiring government-wide acquiescence based on a single adverse decision would improperly freeze the development of the law and undermine the government's institutional role. *Id.* at 163. The Ninth Circuit has likewise recognized similar principles. *Hart v. Massanari*, 266 F.3d 1155, 1171-72 (9th Cir. 2001) (discussing binding versus non-binding precedent). In *Hart*, the court explained that non-

[4] Oral argument in *Rodriquez Vasquez v Bostock* occurred before a panel of the Ninth Circuit on March 4, 2026.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

acquiescence in certain contexts is not misconduct, but a lawful and necessary feature of federal adjudication, particularly where issues are unsettled or unpublished. *Id.* at 1177–79.

For these reasons, Federal Respondents' litigation position advanced within an evolving legal framework and now subject to appellate review was therefore objectively reasonable and substantially justified.

2. Petitioners fail to show an entitlement to enhanced EAJA hourly rates under 28 U.S.C. § 2412(d)

Even if this Court rules that Federal Respondents were not substantially justified in their legal positions, Petitioners' requested enhanced fees are excessive. Under EAJA, a district court may not award attorney's fees awarded under 28 U.S.C. § 2412(d) "in excess of $125 per hour unless the court determines that an increase in the cost of living or special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii); *see Pierce*, 487 U.S. at 573 (narrowly construing exception to exceed EAJA statutory rate cap). Petitioners have failed to justify any warranted departure from EAJA's statutory framework to warrant enhanced fees.

A party seeking enhanced fees must prove all of the following: (1) "the attorney must possess distinctive knowledge and skills developed through a practice specialty," (2) "those distinctive skills must be needed in the litigation," and (3) "those skills must not be available elsewhere at the statutory rate." *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991). Here, regardless of whether Petitioners' counsel have shown they have "distinctive knowledge and skills," they have not demonstrated that distinctive skills were needed in *this* litigation or that qualified counsel was not available at the statutory rate or that those skills were not available elsewhere at the statutory rate. *See Nadarajah v. Holder*, 569 F.3d 906, 913 (9th Cir. 2009). Petitioners fail at least the second and third prongs.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Petitioners have not shown that this case required distinctive skills as only knowledge of routine habeas corpus procedures and statutory interpretation concepts were necessary to advance the case. Petitioners state only they "possess the unique skills and expertise necessary to develop and litigate group habeas petitions for meaningful enforcement of the *Rodriguez Vazquez* judgment" and that Petitioners "would never have obtained relief had it not been for class counsel's 'knowledge of … particular, esoteric nooks and crannies of immigration law….'" Dkt. 26, p. 10. But, in fact, several private attorneys have been able to obtain relief for noncitizens seeking to claim they are entitled to habeas relief under *Rodriguez Vazquez*, both recently and closer to the time that Petitioners filed this action. *See, e.g., Garcia de Jesus v. Noem*, No. 26-391-TMC, 2026 WL 547856, at *2 (W.D. Wash. Feb. 24, 2026); *Suraj v. Bondi*, No. 25-2699-TMC (W.D. Wash. Feb. 24, 2026); *Lopez Rojop v. Wamsley*, No. 25-2058-TMC, 2025 WL 3436811 (W.D. Wash. Oct. 28, 2025); *Guzman Alfaro v. Wamsley*, No. 25-1706-TMC, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025). Petitioners also justify an enhanced rate based on the *Rodriguez Vazquez* litigation, not this particular matter. Dkt. 26, p. 11. If Petitioners are entitled to enhanced fees in *Rodriguez Vazquez*, that issue can and should be addressed there. Petitioners, however, must justify an enhanced rate based on whether those skills were needed in this case, not *Rodriguez Vazquez.*

Moreover, Petitioners' argument attempts to have it both ways: asserting that the law was so clear that Federal Respondents acted unreasonably by litigating the issue, while simultaneously claiming that the same litigation was so complex that it required specialized expertise warranting extraordinary compensation. The issues presented here, however, were straightforward statutory detention interpretation and habeas procedure. These issues are routinely litigated in this District by competent counsel at EAJA rates. For example, in *M.M.*, which also concerned the scope of *Rodriguez Vazquez*, this Court awarded attorney fees based on the EAJA statutory rate. Case No. 25-2074-TMC, Dkt. 20 (W.D. Wash.) (motion showing that "Petitioner requests fees and costs at

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

the statutory EAJA rate, adjusted for cost of living in the Ninth Circuit, for time reasonably expended on this case").

Although they have not shown entitlement to enhanced fees, Petitioners have also not met their burden to prove their rates. Petitioners also bear the burden "to prove that the rate charged is in line with the 'prevailing market rate of the relevant community.'" *Carson v. Billings Police Dep't*, 470 F.3d 889, 891 (9th Cir. 2006). The Ninth Circuit has approved a table of annually adjusted EAJA rates for attorneys based on the cost of living. For work performed during the relevant period, the maximum adjusted EAJA rate is $258.46 per hour.[5] Here, Petitioners' counsel billed a total of 15.11 hours for attorney fees. Attorneys are seeking fees at various rates ranging from almost three times to two-and-a-half times the hourly EAJA rate, as shown in the chart below.

Legal Staff	Rate Sought	Percent in Excess of EAJA/ Market Fees	Hours	Total Amount Sought in Dkt. 13	Adjusted Total per EAJA Rate
Leila Kang	$738.00/hr	285%	1.3	$959.40	$336.00
Aaron Korthuis	$691.00/hr	267%	5.4	$3,731.40	$1,395.68
Amanda Ng	$639.00/hr	247%	8.41	$5,373.99	$2,173.65
Total Attorney Fees			15.11	**$10,064.79**	**$3,905.33**

Even if all that billed time were compensable, the maximum amount they could claim under the adjusted EAJA statutory rate is $3,905.33. Petitioners rely on the Fitzpatrick Matrix to justify hourly rates exceeding $600-700 per hour. That reliance is misplaced. Like the Laffey Matrix, the Fitzpatrick Matrix reflects prevailing rates in the Washington, D.C., legal market and does not correlate to rates in this District. The Ninth Circuit has declined to apply D.C.-based matrices. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010). Petitioners cite no

[5] *See* https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates (last visited March 3, 2026).

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

authority applying the Fitzpatrick Matrix to EAJA awards in routine immigration habeas cases and offer no persuasive evidence that qualified counsel was unavailable at EAJA rates as discussed above.

Petitioners' citations to entitlement to the enhanced fee rates in *Wagafe v. Trump*, No. 17-94 (W.D. Wash.) and *Koonwaiyou v. Blinken*, No. 21-5474-DGE (W.D. Wash.) are inapposite because they were not routine immigration habeas cases. The underlying issue in *Wagafe* is a challenge to the Controlled Application Review and Resolution Program used by the U.S. Citizenship and Immigration Service. *Wagafe v. Biden*, 764 F. Supp. 3d 980, 987 (W.D. Wash. 2025). Meanwhile, *Koonwaiyou* concerned novel questions of statutory interpretation about requirements to obtain non-citizen national status for American Samoans. *Koonwaiyou v. Blinken*, 69 F.4th 1004, 1006 (9th Cir. 2023). Petitioners must justify their enhanced fee request within the context of this case, which they have not met here.

Petitioners also seek fees for one paralegal or support staff member's services. Petitioner may recover paralegal fees at "prevailing market rates." *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008). Unlike for their attorney's fees, Petitioners put forth no evidence in the form of declarations from the paralegal in question or the surrounding community to justify a rate of \$255/hour; instead, they appear to solely on the Fitzpatrick matrix. Dkt. 26-3. Courts in this district have routinely required evidence in the form of declarations before accepting the paralegal's rate. *Gnassi v. Del Toro*, No. 20-6095-JHC, 2023 WL 5277798 (W.D. Wash. Aug. 16, 2023); *Stewart v. Snohomish Cnty. Pub. Util. Dist. No. 1*, No. 16-20-JCC, 2017 WL 4538956 (W.D. Wash. Oct. 11, 2017).

Like with their attorneys, Petitioners bear the burden of proof what the prevailing rate for a paralegal should be. *Carson*, 470 F.3d at 891. When confronted with a similar paucity of evidence, courts in this circuit have routinely reduced the award for paralegal fees. For example,

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

in *Martinez v. Colvin*, No. 14-3043-BTM, 2017 WL 766665 (S.D. Cal. Feb. 27, 2017), the plaintiff sought paralegal fees at a rate of $100/hour. *Id.* at *8. The court *sua sponte* held that because Plaintiff had provided no evidence to support the reasonableness of the requested rate or the paralegals' experience, it must look to other sources to determine an appropriate rate. *Id.* at *9. There, the court looked to what the Judicial Council of the Ninth Circuit permitted for services under the Criminal Justice Act, which at the time was $35- 60/hour, and awarded paralegal fees at the low end. *Id.* In other cases, the courts based a rate on the *United States Consumer Law Attorney Fee Survey Report*. *Ulugalu v. Berryhill*, No. 17-1087-GPC-JLB, 2018 WL 2012330, at *4 (S.D. Cal. Apr. 30, 2018) (finding that the appropriate paralegal rate in San Diego was $100/hour).

For Seattle, a paralegal rate of $100/hour has been found appropriate. *Robinson v. Berryhill*, No. 16-6002-JRC, 2018 WL 2441747 (W.D. Wash. May 31, 2018) ("Although the 3.1 paralegal hours reasonably were expended ($310) …," i.e., indicating a rate of $100/hour). Because Petitioner has not presented any other evidence, the paralegal fees – to the extent they are compensable – should be reduced. Even if the Court is not persuaded by law firms specializing in Social Security, in both *Stewart* and *Gnassi*, the law firm of MacDonald Hoague & Bayless, which handles both civil rights and immigration matters,[6] disclosed that its paralegals did not bill at the rate sought by Petitioners here.

C. Petitioners Also Fail to Show the Government Acted in Bad Faith or that Market-Rate Attorney's Fees are Available under the "Bad Faith" Exception

Petitioners alternatively seek market-rate attorney's fees by invoking the common-law bad-faith exception, made applicable by 28 U.S.C. § 2412(b).[7] *Su v. Bowers*, 89 F.4th 1169, 1179 (9th

---

[6] *See* https://www.mhb.com (last accessed Mar. 3, 2026).

[7] Federal Respondents acknowledge that EAJA's statutory cap does not apply to awards made pursuant to 28 U.S.C. § 2412(b).

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Cir. 2024). "This bad faith exception is a narrow one, typically invoked in cases of vexatious, wanton, or oppressive conduct." *Brown*, 916 F.2d at 495. "Mere recklessness does not alone constitute bad faith; rather, an award of attorney's fees is justified when reckless conduct is combined with an additional factor such as frivolousness, harassment, or an improper purpose. Naturally, this is a higher burden than § 2412(d)'s requirement that the government's case be substantially justified." *Bowers*, 89 F.4th at 1179 (internal quotations and citations omitted). The mere fact that the government litigated an issue and did not prevail does not support the finding of bad faith. *Rodriguez v. United States*, 542 F.3d 704, 709–10 (9th Cir. 2008).

Petitioners' bad-faith argument rests on two premises: (1) that once declaratory relief issued in *Rodriguez Vasquez*, the government was obligated to acquiesce and treat that decision as dispositive in all subsequent cases and (2) a quotation attributed to the Western District of Washington United States Attorneys' Office in a news article. Both are incorrect.

First, as explained above, non-acquiescence is not evidence of bad faith. It is well settled that adverse district court decisions do not freeze the law or require government-wide acquiescence. District court rulings do not bind other courts, displace agency precedent, or foreclose continued litigation of unsettled legal questions. *See Camreta*, 563 U.S. at 709 n.7. The Supreme Court has further held that the federal government is not subject to non-mutual offensive collateral estoppel and may litigate the same legal issue in cases involving different parties. *Mendoza*, 464 U.S. at 160–63. Against this backdrop, Federal Respondents' continued habeas litigation over the scope and effect of declaratory relief as to the impact on these Petitioners cannot plausibly be characterized as bad faith and was substantially justified. Petitioners' disagreement with Federal Respondents' legal position does not transform that position into bad faith. Accepting Petitioners' theory would improperly convert routine government litigation over unresolved legal

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

issues into a basis for punitive fee awards, contrary to EAJA's limited waiver of sovereign immunity and controlling Ninth Circuit precedent.

Second, Petitioners' reliance on a news article attributing a statement to the United States Attorney does not change this analysis. The article mischaracterizes the statement at issue and, in any event, journalistic summaries are not evidence of litigation positions or institutional intent. Notably, the same article reflects that even an academic constitutional-law expert struggled to explain the practical distinction between declaratory and injunctive relief in this context[8]—underscoring that translating complex legal concepts for a general, non-legal audience can be imprecise and easily misunderstood. A public explanation in a non-legal setting is not evidence of a litigation position taken by the United States Attorney's Office or, for that matter, Federal Respondents. Indeed, the same article quotes the United States Attorney emphasizing that the immigration court must evaluate this Court's opinion in light of existing authority and decide whether to revisit its policy.[9] Nothing in the record supports the finding of bad faith.

III. CONCLUSION

Federal Respondents advanced colorable legal arguments regarding the scope and effect of declaratory relief, the absence of class-wide injunctive relief, and the procedural mechanism required for individual relief. Those arguments were grounded in statutory text, jurisdictional limits, and settled principles governing declaratory judgments. At most, the parties dispute a novel and currently unsettled legal question now before the Ninth Circuit; such disagreement cannot

---

[8] "'It's a thorny area of law,' said Elizabeth Porter, a University of Washington professor who teaches constitutional law." *See* Nina Shapiro, *Federal court ruling doesn't stop WA immigration judges' bond denials*, SEATTLE TIMES, Oct. 27, 2025, at A1.

[9] "'Now the immigration court has a decision to make,' said Floyd, whose office is defending the government in litigation on the bond cases. Immigration judges must determine 'whether they're going to follow the opinion of Judge Cartwright or the direction of the controlling authority for them,' the U.S. attorney said." *See* Nina Shapiro, *Federal court ruling doesn't stop WA immigration judges' bond denials*, SEATTLE TIMES, Oct. 27, 2025 at A1.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

satisfy the demanding standard for EAJA fees let alone punitive fee shifting. For the foregoing reasons, Petitioners' motion for fees should be denied.

DATED this 4th day of March, 2026.

Respectfully submitted,

s/ James C. Strong
JAMES C. STRONG, WSBA No. 59151
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: james.strong@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 4,192 words in compliance with the Local Civil Rules