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9
10 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 YAKY HOWARD MEJIA SOTO,

12 Petitioner,

13 v.

14 REGGIE RADER, Police Chief, Henderson
Detention Center; MICHAEL
15 BERNACKE, Field Office Director, U.S.
Immigration and Customs Enforcement;
16 SUMMER JOHNSON, US District
Attorney for the District of Nevada;
17 PAMELA BONDI, Attorney General of the
United States; and KRISTI NOEM,
18 Secretary of Homeland Security, in their
official capacities,

19 Respondents.

Case No. 2:25-cv-02281-RFB-EJY

**Federal Respondents Opposition to
Motion for Attorney’s Fees and Costs,
ECF No. 12**

20
21 **I. Introduction**

22 Petitioner moves for attorney’s fees pursuant to the Equal Access to Justice Act
23 (“EAJA”), 28 U.S.C. § 2412(d), following the Court’s order granting habeas relief.

24 Respondents do not dispute that the Court granted relief or that Petitioner qualifies as a
25 prevailing party for purposes of EAJA. The question before the Court is therefore narrow:
26 whether the position of the United States was “substantially justified” within the meaning
27 of the statute.
28

1 Although Federal Respondents did not file a timely merits response before the
2 Court issued its order, the Court expressly recognized that it was familiar with the United
3 States' statutory arguments based on its consideration of numerous materially similar cases
4 and resolved those arguments on the merits notwithstanding the absence of a filing in this
5 case. The legal issue presented—whether detention authority for an alien who has been
6 neither admitted nor paroled is lawful under 8 U.S.C. § 1225(b)(2)(A)—has been actively
7 litigated nationwide, addressed in a precedential decision of the Board of Immigration
8 Appeals, and resolved differently by federal courts in different jurisdictions. Under settled
9 EAJA principles, that posture supports a finding that the United States' position, while
10 ultimately rejected by this Court, was substantially justified. Accordingly, an award of
11 attorney's fees is not warranted.

12 II. POINTS AND AUTHORITIES

13 A. Legal Standard Under EAJA

14 Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for
15 Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United
16 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
17 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioners cannot obtain
18 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
19 immigration proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129
20 (1991). Their only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject
21 to exceptions not relevant here, that in an action brought by or against the United States, a
22 court must award fees and expenses to a prevailing non-government party "unless the court
23 finds that the position of the United States was substantially justified or that special
24 circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

25 The Supreme Court has explained that a position is substantially justified if it is
26 "justified to a degree that could satisfy a reasonable person," meaning that it has a
27 reasonable basis in both law and fact. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). In
28 assessing substantial justification, courts evaluate the position of the United States as a

1 whole, including both the underlying agency action and the United States' litigation
2 posture. *INS v. Jean*, 496 U.S. 154, 159 (1990) (“While the parties' postures on individual
3 matters may be more or less justified, the EAJA—like other fee-shifting statutes—
4 favors treating a case as an inclusive whole, rather than as atomized line-items.”). The
5 mere fact that the United States does not prevail on the merits does not establish a lack of
6 substantial justification. This is particularly true where a case involves statutory
7 interpretation and reasonable jurists have reached differing conclusions. See *Medina Tovar*
8 *v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022).

9 **B. The United States' Position Was Substantially Justified**

10 Respondents acknowledge that Petitioner qualifies as a prevailing party for purposes
11 of EAJA based on the relief ordered by the Court. That determination, however, does not
12 resolve whether an award of fees is appropriate under the statute.

13 Petitioner's motion rests on the premise that the United States' interpretation of its
14 detention authority under the Immigration and Nationality Act was “incorrect and
15 unlawful.” ECF No. 12, at 2. But the premise does not support an award of fees upon
16 further scrutiny.

17 At the time of Petitioner's detention, the Department of Homeland Security had
18 adopted a practice of applying the provisions of 8 U.S.C. § 1225(b)(2)(A) to detain
19 noncitizens who entered without inspection. That interpretation was subsequently
20 endorsed in a precedential decision of the Board of Immigration Appeals, *Matter of Yajure*
21 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which notably was never appealed to a higher
22 court, and formed the basis for detention decisions by immigration judges nationwide. The
23 statutory question presented here—whether § 1225(b)(2)(A) or § 1226(a) governs detention
24 for individuals apprehended in the interior who entered without inspection—has since been
25 litigated extensively across the country.

26 While this Court has rejected the United States' interpretation, other federal district
27 courts outside this District have reached a different conclusion and have upheld detention
28 under § 1225(b)(2)(A) in materially similar circumstances. The following decisions have

1 found that the law supports the Federal Respondents' positions: *Chavez v. Noem*, No. 25-
2 02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526,
3 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL
4 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025
5 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL
6 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942
7 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025);
8 *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025);
9 *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025);
10 *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17,
11 2025).

12 For example, the United States District Court for the District of Nebraska and the
13 United States District Court for the Southern District of California have both issued
14 decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
15 United States who have not been admitted are “applicants for admission” and are thus
16 subject to the mandatory detention provisions of “applicants for admission” under §
17 1225(b)(2). See *Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other
18 federal judges have found persuasive the Federal Respondents' position cases that are
19 materially similar to the case at bar, the Federal Respondents' position is substantially
20 justified. See *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that
21 the district court did not abuse its discretion, in finding that the United States' position was
22 substantially justified for purposes of EAJA, where different judges disagreed about the
23 proper reading of the statute and the case involved an issue of first impression).

24 The existence of such disagreement among courts considering the same statutory
25 question weighs in favor of finding that the United States' position is “substantially
26 justified” under EAJA, even where the Court ultimately disagrees with the United States'
27 position. See *Medina Tovar*, 41 F.4th at 1091.

1 The procedural posture of this case does not alter that analysis. Federal
2 Respondents acknowledge that a merits response was not filed before the Court ruled. The
3 Court expressly addressed that circumstance and nonetheless resolved the Petition by
4 addressing the United States' routinely asserted statutory arguments based on its experience
5 with numerous similar cases. The Court ruled on the merits with full awareness of the
6 United States' legal position. EAJA does not impose fee-shifting as a sanction for delay or
7 default, and the absence of a filing in this case does not convert an otherwise reasonable
8 legal position into one that lacks substantial justification.

9 Nor does the Court's rejection of the United States' interpretation compel a fee
10 award. EAJA does not require that the United States prevail, only that its position be
11 reasonable at the time it was taken. Given the existence of binding agency precedent at the
12 time of Petitioner's detention and the fact that other courts have agreed with the United
13 States' interpretations of 8 U.S.C. § 1225, the United States' position had a reasonable basis
14 in law, even though this Court ultimately disagreed.

15 **C. An Award of Fees Is Not Warranted Under EAJA**

16 This case involved a contested and developing question of statutory interpretation
17 that has divided courts across jurisdictions. The United States' position was grounded in
18 statutory analysis, agency precedent, and judicial decisions reaching differing conclusions.
19 Under controlling EAJA principles, that is sufficient to establish substantial justification.
20 Because EAJA does not authorize an award of fees merely because the United States'
21 position is rejected on the merits, Petitioner's motion for attorney's fees should be denied.

22 Respectfully submitted this 9th day of January 2025.

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24 First Assistant United States Attorney

25 /s/ Christian R. Ruiz
26 CHRISTIAN R. RUIZ
27 Assistant United States Attorney
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