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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

B-R-F-,

Petitioner,

v.

LAURA HERMOSILLO; TODD LYONS; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI,

Respondents.

Case No.: 3:25-cv-02154-AN

RESPONDENTS' RESPONSE TO MOTION FOR ATTORNEYS' FEES AND COSTS

Petitioner seeks an award of attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF 12. Because Respondents' position was substantially justified, the motion should be denied.

This case arose in the context of active and ongoing nationwide litigation concerning the Department of Homeland Security's ("DHS") detention authority under the Immigration and Nationality Act ("INA"). Specifically, DHS asserts that aliens who are present in the United States after having entered without inspection in violation of the immigration laws—like Petitioner—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Both the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Feb. 6, 2026), and the Eighth Circuit in *Avila v. Bondi*, No. 25-3248 (8th Cir. Mar. 25, 2026), have upheld the DHS's interpretation of the relevant statutes and regulations advanced in the case at bar, while other district courts have reached contrary conclusions. The Board of Immigration Appeals also issued precedential decisions supporting DHS's position.

Under settled EAJA principles, where reasonable jurists have disagreed on questions of statutory interpretation and constitutional law, Respondents' position is substantially justified even if it is ultimately rejected. Because that standard is satisfied here, Petitioner's motion for attorneys' fees should be denied. Alternatively, the Court should stay a decision on Petitioner's motion pending resolution of *Rodriguez Vasquez v. Bostock*, 25-6842, currently before the Ninth

Circuit, that involves the same legal issues raised by Petitioner.[1] Finally, Petitioner's fee request should be reduced as it does not reflect a reasonable expenditure of hours.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Guatemala. He had a pending I-130 Petition that was filed by his U.S. citizen spouse, and he had also obtained an I-601A. Neither of these administrative procedures change the fact that Petitioner had entered the United States without inspection in violation of 8 U.S.C. § 1325. ECF 8 at 8.

Petitioner was arrested on November 20, 2025, by officers with Enforcement and Removal Operations ("ERO"). ECF 9 ¶ 3. Petitioner filed a habeas petition at 1:19 P.M. on that date. ECF 1. Respondents, in their Return, argued that detention was mandatory under 8 U.S.C. § 1225(b). ECF 8 at 7.

LAW

A. Legal Standard Under EAJA

Petitioner seeks attorneys' fees and costs pursuant to § 2412 of the EAJA, which allows fee-shifting in civil actions by or against the United States. EAJA has two parts: (1) agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and (2) fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioners cannot obtain fees in this case under 5 U.S.C. § 504 since that provision excludes administrative

[1] Another Ninth Circuit case that involves the same legal issues, *Maldonado Bautista v. U.S. DHS*, 26-1044, is set for oral argument on March 30, 2026.

immigration proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129 (1991). Their only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that in an action brought by or against the United States, a court must award fees and expenses to a prevailing non-government party "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

The Supreme Court has explained that a position is substantially justified if it is "justified to a degree that could satisfy a reasonable person," meaning that it has a reasonable basis in both law and fact. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *Ramon-Sepulveda v. INS*, 863 F.2d 1458, 1459 (9th Cir. 1988). In assessing substantial justification, courts evaluate the position of the United States as a whole, including both the underlying agency action and the United States' litigation posture. *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 159 (1990) ("While the parties' postures on individual matters may be more or less justified, the EAJA — like other fee-shifting statutes — favors treating a case as an inclusive whole, rather than as atomized line-items."). The mere fact that the United States does not prevail on the merits does not establish a lack of substantial justification. This is particularly true where a case involves statutory interpretation, and reasonable jurists have reached differing conclusions. *See Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse its discretion, in finding that the United States' position was substantially justified for purposes of EAJA, where

different judges disagreed about the proper reading of the statute and the case involved an issue of first impression).

ARGUMENT

I. RESPONDENTS' POSITION WAS SUBSTANTIALLY JUSTIFIED.

Petitioner's motion for attorneys' fees and costs should be denied because Respondents position was substantially justified, as reflected by Circuit Courts that have agreed with the arguments set forth by Respondents in this case. See *Avila v. Bondi*, No. 25-3248 (8th Cir. Mar. 25, 2026); *Buenrostro-Mendez v. Bondi*, No. 25-40701 (5th Cir. Feb. 6, 2026).

Further, at the time of Petitioner's detention, DHS had adopted a practice of applying the provisions of 8 U.S.C. § 1225(b)(2) to detained noncitizens who had entered the country without inspection. That interpretation was subsequently endorsed in a precedential decision by the Board of Immigration Appeals, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025),[2] which was reaffirmed in *Buenrostro-Mendez* and *Avila*.

While this Court rejected the United States' interpretation, other federal district courts outside this District have reached a different conclusion and have upheld detention under § 1225(b)(2) in materially similar circumstances as those presented in the case at bar. The following decisions have found that the law supports Respondents' position: *Chavez v. Noem*, 801 F. Supp. 3d 1133 (S.D. Cal. 2025); *Vargas*

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[2] On December 18, 2026, the district court in *Maldonado Bautista* vacated *Yajure Hurtado*. However, the Ninth Circuit stayed the district court's vacatur on March 6, 2026. *Maldonado Bautista v. U.S. DHS*, No. 26-1044, Dkt. 5.1 (9th Cir. Mar. 6, 2026).

Lopez v. Trump, 802 F. Supp. 3d 1132 (D. Neb. 2025); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

The existence of disagreements among courts considering the same statutory question weighs in favor of finding that the United States' position is "substantially justified" under EAJA, even where this specific Court ultimately disagreed with the United States' position. *See Medina Tovar*, 41 F.4th at 1091.

The United States' interpretation is consistent with longstanding Supreme Court precedent emphasizing the Executive's broad authority over immigration detention and the limited role of habeas review in second-guessing detention determinations made pursuant to the INA. Considering that precedent, and the absence of controlling appellate authority foreclosing the United States' interpretation at the relevant time, the United States' position was objectively reasonable for purposes of EAJA. This Court's rejection of the United States' interpretation does not compel a fee award. EAJA does not require that the United States prevail, only that its position be reasonable at the time it was taken. Given the

existence of binding agency precedent at the time of Petitioner's detention and the fact that other courts have agreed with the United States' interpretations of 8 U.S.C. § 1225, the United States' position had a reasonable basis in law, even though this Court ultimately disagreed.

II. A STAY PENDING THE OUTCOME OF A NINTH CIRCUIT DECISION IS APPROPRIATE.

Alternatively, Respondents request this Court consider a stay of its decision on the motion for attorneys' fees and costs until conclusion of relevant appeals that are pending before the Ninth Circuit. "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

Courts should consider competing interests affected by the granting or refusal. "Among those competing interests are the possible damage which may result . . ., hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating issues, proof, and questions of law which could be expected to result from a stay." *Lockyer v. Miant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall,* 300 F.2d 265, 268 (9th Cir. 1962).

Currently pending in the 9th Circuit Court of Appeals are two cases involving immigration detentions and statutory interpretation of 8 U.S.C. § 1225(b) and § 1226. *Rodriguez Vasquez v. Bostock*, No. 25-6842 (oral argument held Mar. 4, 2026); *Maldonado Bautista v. DHS*, No. 25-7958 (oral argument to be held Mar 30, 2026). A

decision on these underlying issues could further support the Respondents' argument that their position was substantially justified.

III. PETITIONER'S FEE REQUEST SHOULD BE REDUCED

Should this Court disagree and hold that Respondents' position was not substantially justified, Petitioner's fee request should be reduced.

Petitioner's counsel claim they spent 3.8 hours combined preparing the Habeas Petition. The Petition was filed at 1:19 P.M., which was 4 hours after Petitioner was detained. The Petition filed in this matter contains 14 paragraphs and a Prayer for Relief. In another matter filed by Petitioner's counsel, *M.T.R. v. Wamsley*, No. 25-cv-1977-MTK, counsel filed a petition on October 24, 2025, containing 12 paragraphs and a Prayer for Relief. In a third case, *L.A.E. v. Wamsley*, Case No. 25-1975-AN, the petition contains 12 paragraphs and a Prayer for Relief. Seven of the 14 paragraphs contained in the Petition filed in this matter are identical to the petitions filed in the earlier matters. The only difference between the three petitions are the facts and claims asserted. In addition, the Motions for Temporary Restraining Order ("TRO") filed contemporaneously in the three cases are identical but for the facts. The number of hours billed for drafting the habeas petition and TRO is clearly excessive and should be reduced.

Further, some of the time claimed is duplicative and thus unreasonable. *See Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1286–87 (9th Cir. 2004). There were two attorneys billing for a status conference and a scheduling conference,

which is clearly excessive and unnecessary for such hearings. The fees for attendance at the conferences should be limited to the time for one attorney.

CONCLUSION

For the foregoing reasons, Respondents request Petitioner's motion for attorneys' fees and costs be denied, or in the alternatives this Court stay its decision on the motion pending Ninth Circuit decision on the merits and/or reduce Petitioner's fees accordingly.

Respectfully submitted this 26th day of March 2026.

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/s/ Susanne Luse
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Attorneys for Respondents