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Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

B.R.F.,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

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

Agency Case No.: A[redacted]

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO MOTION FOR ATTORNEY FEES AND COSTS

Respondents oppose Petitioner's motion for attorney's fee and costs, arguing that their position was substantially justified. Respondents also argue that counsel for Petitioner spent too much time preparing pleadings in this case.

Respondents filed their Return to Petition for Writ of Habeas Corpus on November 26, 2025, nearly two months after the U.S. District Court for the Western District of Washington issued the declaratory judgment in *Rodriguez Vasquez v. Bostock*, 802 F. Supp. 3d 1297 (W.D. Wash. 2025). In *Rodriguez Vasquez*, the court entered judgment declaring that applying mandatory

detention to noncitizens such as Petitioner violated the law. *Id.* at 1336. Respondents ignored the *Rodriguez Vasquez* declaratory judgment and argued that mandatory detention applied to Petitioner. Had Petitioner not filed his petition for writ of habeas so quickly after he was detained, Respondents would have successfully taken Petitioner to Tacoma where he would have become a *Rodriguez Vasquez* class member.

Petitioner was a class member of *Maldonado Bautista v. DHS*, where on November 20, 2025, the U.S. District Court for the Central District of California granted summary judgment in favor of plaintiffs. *Maldonado Bautista v. DHS*, 5:25-cv-01873-SSS-BFM (Nov. 20, 2025) (gov't appeal pending 9th Cir. 26-1044). *Maldonado Bautista* not only holds that mandatory detention of a noncitizen such as Petitioner violated the law, the court also clearly laid out that 8 U.S.C. §§ 1252(b)(9), 1252(a) and 1252(g) do not bar the court's jurisdiction. Respondents had no basis in law to argue that this court lacked jurisdiction to hear this Petition.

Even though the regulations encourage immigration judges to terminate removal proceedings where, as here, the individual has an approved I-601A provisional waiver, Respondents filed a Notice to Appear with the immigration court anyway. *See* 8 C.F.R. § 1003.18(d)(1)(ii)(D). The immigration judge terminated removal proceedings shortly after Respondents filed the Notice to Appear with the immigration court.

When Respondents detained Petitioner, he was well on his way to becoming a lawful permanent resident. But for this Court's judgment and the immigration judge's order terminating removal proceedings, Petitioner would be in limbo – not able to depart the United States and yet in removal proceeding with Respondents trying to obtain an order of removal. On January 25, 2026, Petitioner returned from Guatemala with his immigrant visa and is now a lawful permanent resident of the United States. *See* Copy of Permanent Resident Card attached.

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Here, the government cannot meet its burden to demonstrate substantial justification. Respondents' pre-litigation conduct and their litigation position both lacked reasonable justification given the case law in effect during this litigation.

Respondents take issue with how many hours counsel spent in preparation of pleadings and representing Petitioner. Counsel believes the hours expended were necessary in order to properly represent Petitioner in this action.

"By and large, the court should defer to the winning lawyer's professional judgment as to how much time was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant his requested fees and costs in the amount of $6,311.42, plus the additional $1,473.22 in fees for time spent after filing the motion, bringing the new total requested to $7,784.64.

Respectfully submitted this 6th day of April 2026.

s/Nicole H. Nelson
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EXHIBIT A

B.R.F. v. Noem, et al., 3:25-cv-02154-AN
Statement of Total Amount of Fees and Costs

Attorney Nicole Nelson:

03/30/26:	Reviewed government's response to EAJA motion; researched relevant case law; drafted reply	2.8 hrs
04/06/26:	Edited reply	.7 hrs
TOTAL ADDITIONAL HOURS FOR ATTORNEY NICOLE NELSON:		**3.5 hrs**

Attorney Philip Smith:

03/29/26:	Reviewed government's response; researched case law	2.2 hrs
TOTAL ADDITIONAL HOURS FOR ATTORNEY PHILIP SMITH		**2.2 hrs**

2025 Inflation Adjusted EAJA Rate (9th Circuit) = $258.46

Total hours 5.7 x $258.46 =	$1,473.22
Total Additional Request:	**$1,473.22**