UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Bisser Lissitchev, **Petitioner,** **v.** JUAN BALTASAR, Warden, GEO Group ICE Processing Center; ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; and, in their official capacities, **Respondents.**	Case No.: 25-cv-3790-KAS

MOTION FOR ATTORNEY'S FEES AND EXPENSES

INTRODUCTION

The Equal Access to Justice Act (EAJA) serves to diminish the economic deterrence to seeking review of, or defending against, governmental action by providing in qualifying cases an award of attorney fees and other costs against the United States. *Daley v. Ceja*, 158 F. 4th 1152, 1163 (10th Cir. 2025). For a court to grant an EAJA award, the petitioner must establish that he is a prevailing party (28 U.S.C. § 2412(d)(1)(A)); that pre-litigation and litigation positions of the government were not substantially justified (28 U.S.C. § 2412(d)(1)(A), (d)(2)(D)); that there are no special circumstances that would make an award unjust (28 U.S.C. § 2412(d)(3)), and that the petitioning party has met the appropriate net worth requirements (28 U.S.C. § 2412(d)(2)(B)). In addition, the petitioner must provide a total statement of fees and costs sought along with an itemized account of time expended and rates charged. 28 U.S.C. § 2412(d)(1)(B). Petitions for habeas actions challenging immigration detention are civil actions and can be the basis for an EAJA award under 28 U.S.C. § 2412(d)(1)(A). *Daley v. Ceja*, 158 F. 4th 1152 (10th Cir. 2025). Because all statutory requirements are met in this case, Petitioner seeks an award of attorney fees of $10,583.66 and costs of $163.72.

STATEMENT ON CONFERRAL

Pursuant to D.C.COLO.LCivR 7.1, undersigned counsel provided a draft of this motion and attached exhibits to counsel for Respondents on February 6, 2026. As of the time of filing, Respondents are still evaluating the motion and are thus unable to provide a position at this point.

FACTS AND PROCEDURAL HISTORY[1]

On May 23, 2005, an immigration judge issued Petitioner, a native of Bulgaria, an order of withholding of removal. ECF No. 12 ¶ 6. Since 2014, he had been on an Order of Supervision with ICE. *Id.* ¶ 7. Despite never having violated any condition of that Order of Supervision, he was arrested by ICE at a scheduled check-in on November 8, 2025. *Id.* ¶ 7-8. Following his arrest and up until his ultimate release from custody, he was held at the ICE contract detention facility in Aurora, Colorado. ECF No. 11-1 ¶ 1. ICE never informed Petitioner, or the Court during this litigation, that it had identified a third country to which it could effectuate removal. *See id.* ¶ 10.

On November 22, 2025, Petitioner, through undersigned counsel, filed a Petition for a Writ of Habeas Corpus requesting immediate release from custody. ECF No. 1. On November 25, 2025, this Court issued an Order to Show Cause, to which the government responded opposing the petition on December 26, 2025. ECF Nos. 4, 7.

On December 28, 2025, this Court entered an order setting a January 6, 2026, evidentiary hearing on the petition. ECF No. 8. On January 2, 2026, the Parties submitted a stipulation of facts. ECF No. 12. Also on January 2, 2026, Respondents filed a motion to vacate the evidentiary hearing and Petitioner submitted a traverse in support of the petition for habeas corpus. ECF Nos. 13-14. That same day, the Court denied Respondents' motion to vacate the evidentiary hearing. ECF No. 15.

On January 6, 2026, the Court presided over an evidentiary hearing. At the hearing, Petitioner testified under oath as to the circumstances of his arrest and detention. *See* ECF No. 16. Respondents declined to put on any witnesses or present any additional evidence. *Id.*

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[1] The full set of facts underlying this action is beyond the scope of this motion but is available in the petition, ECF No. 1, the traverse, ECF No. 14, and in the stipulation of facts, ECF No. 12.

At the close of the hearing, the Court ordered Petitioner's immediate release from ICE custody subject to the preexisting Order of Supervision. *Id.* On January 7, 2026, the Court entered final judgment. ECF No. 18. Petitioner was ordered to submit his application for fees and other expenses within 30 days of final judgement. *Id.* The Court later granted a joint motion and extended that deadline to April 7, 2026. ECF No. 21, 22. Petitioner now moves for such fees and expenses consistent with the final judgment and 28 U.S.C. § 2412(d)(1).

PREVAILING PARTY STATUS

To qualify for an EAJA award, the petitioning party must show that they are a prevailing party. 28 U.S.C. § 2412(d)(1)(A). A "prevailing party" is one who "has been awarded some relief by a court." *Buckhannon Bd. Care & Home Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 (2001). The Supreme Court held that, for purposes of fee-shifting statutes such as EAJA, a prevailing party is one who demonstrates that he achieved a "material alteration of the legal relationship of the parties" and a "judicial imprimatur on the change." *Id.* at 604-05 (quotation omitted). "A party need not succeed on every claim in order to prevail. Rather, a plaintiff prevails if she has succeeded on any significant issue in litigation which achieved some of the benefit she sought in bringing suit." *Carbonell v. Immigration & Naturalization Serv.*, 429 F.3d 894, 900 n.5 (9th Cir. 2005) (quotation omitted*); see also J.D. v. Kanawha Cty. Bd. of Educ.*, 571 F.3d 381, 387 (4th Cir. 2009) (stating that "a party need not prevail on every issue or even the most 'central' issue in a proceeding to be considered a 'prevailing party'") (quotation omitted).

Here, Petitioner, having won relief from the Court in the form of a final judgment granting his petition for habeas corpus and ordering his release from ICE custody subject to the preexisting Order of Supervision, is the prevailing party. ECF No. 18.

GOVERNMENT POSITION WAS NOT SUBSTANTIALLY JUSTIFIED

The government position in this case was not substantially justified. 28 U.S.C. § 2412(d)(1)(B). The government, if it wishes to avoid payment of EAJA fees to a prevailing party, must independently establish that the agency misconduct that gave rise to the litigation was substantially justified *and* that the litigation positions also were substantially justified. *Comm'r, Immigration & Naturalization Serv. v. Jean*, 496 U.S. 154, 158-60 (1990).

Here, all parties agreed that Petitioner never violated any term or condition of his Order of Supervision. ECF No. 12 ¶7. Regardless, he was arrested at a check-in and taken into custody. ECF No. 7-1 ¶ 12. Neither at the time of his arrest nor during his time in custody was he given a basis for the revocation of his Order of Supervision. *See id.* ¶ 13-14. Nor was Petitioner told that his Order of Supervision was being revoked at all. *See id.* Instead, ICE asserted during litigation that he had been arrested to execute his final removal from the United States and because he was a significant flight risk. *Id.* ¶ 12. Barred from removing Petitioner to his native Bulgaria due to the immigration judge's order withholding removal, the government presented no evidence in its brief or arguments throughout this litigation that it had taken any substantive progress toward identifying a prospective third country for removal. *See* ECF No. 11-1 ¶ 9. ICE's pre-litigation conduct showed disregard for the regulations on revocations of Orders of Supervision. No officer alleged that Petitioner violated any condition of release, that the purposes of release had been served, or that any change in circumstances justified re-detention. *See* 8 C.F.R. § 241.4(l)(2). No officer afforded him a prompt informal interview to allow him to respond to any alleged reasons for notification. *See* 8 C.F.R. § 241.4(l)(1).

In addition, ICE's reliance on the 90-day "removal period" at 8 U.S.C. § 1231(a)(1)(A), see ECF No. 11-2 (Notice to Alien of File Custody Review indicating that detention would only be reconsidered after the 90-day period was over) is not substantially justified. The 90-day

removal period, by the plain language of 8 U.S.C. § 1231(a)(1)(B), began at the time the order of removal became administratively final in 2005. The ICE notice clearly misstates the law, indicating that the removal period can be 90 days of "*entering custody* with a final order of removal." ECF No. 11-2 (emphasis added). Such statement, used to deprive Petitioner of his liberty, finds no basis in statute. ICE failed to abide by the Constitution's "limit[ing] a [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). ICE's conduct giving rise to this litigation was not substantially justified under the regulations, plain statutory text, or the Constitution.

ICE's underlying conduct giving rise to this litigation is not substantially justified and the court need not delve into whether its litigation positions were substantially justified. *Jean*, 496 U.S. at 160 ("The single finding that the Government's position lacks substantial justification, like the determination that a claimant is a 'prevailing party,' thus operates as a one-time threshold for fee eligibility."); *United States v. 515 Granby, LLC*, 736 F.3d 309, 316 (4th Cir. 2013) ("[W]hen the government's unjustified prelitigation position forces a lawsuit, the petitioner may recover fees under the EAJA for the entire suit, even if the government's litigation position was reasonable.").

However, the government's litigation position was also not substantially justified. The government argued that Petitioner's detention was lawful merely because it has lasted less than two months, ECF No. 7 at 2, 4-8. The government position misread both the relevant detention statute at 8 U.S.C. § 1231 and the constitutional framework articulated in *Zadvydas*. *Zadvydas* did not create a six-month entitlement to detain, nor does it establish a categorical rule that detention is lawful until that point. Rather, the Supreme Court held that post-removal period detention under § 1231 is permissible only for "a period reasonably necessary to bring about the alien's removal

from the United States," and only so long as it bears a reasonable relationship to that purpose. *Zadvydas*, at 678, 689–90.

In addition, the government argued that Petitioner had not shown that ICE violated his due process rights through the revocation of his supervised release. ECF No. 7 at 8. But there was no assertion, even in the government's own filings, that any ICE officer alleged that Petitioner violated any condition of release, that the purposes of release had been served, or that any change in circumstances justified re-detention. Nor was there any assertion that Petitioner was afforded a prompt informal interview to allow him to respond to any alleged reasons for notification. As such, there was not substantial justification for the argument that ICE had not violated Petitioner's due process rights when it failed to abide by binding regulatory requirements for the revocation of an Order of Supervision at 8 C.F.R. § 241.4(l).

If either the underlying government conduct *or* the litigation position of the government are not substantially justified, then the Court can award EAJA fees for the entire litigation. Here, neither was substantially justified and the requirement at 28 U.S.C. § 2412(d)(1)(B) is met.

SPECIAL CIRCUMSTANCES

There are no special circumstances that would make an award unjust. 28 U.S.C. § 2412(d)(3). An EAJA award to Petitioner fits squarely within the statute's purpose of eliminating financial barriers to seeking review of, or defending against, unlawful governmental action.

NET WORTH

To satisfy the net worth requirement under EAJA, an individual party's net worth must not exceed $2,000,000 at the time the lawsuit was filed. 28 U.S.C. § 2412(d)(2)(B). With this motion, Petitioner submits a sworn declaration indicating: "I am a private individual and my net worth

does not, nor has it ever, exceeded the amount of $2,000,000." Ex. 2, Net Worth and Fee Assignment Declaration of Bisser Lissitchev.

CALCULATION OF FEES

Undersigned counsel, and paralegals assigned to this case, have contemporaneously recorded time throughout this case. Time recorded is reflected in the table submitted with the Declaration of Aaron Hall. Ex. 1.

The attorney rate of $276.36 per hour has been calculated using the statutory maximum hourly rate of $125, multiplied by the annual consumer price index ("CPI") for the West Region (343.789[2]), and divided by the CPI for March 1996, the month when the statutory cap was imposed (155.5):

$$125 \times (343.789/155.5) = \$276.36 \text{ per hour}$$

Paralegal rates were obtained using the latest American Immigration Lawyers Association marketplace survey for immigration attorneys. Ex. 3, AILA Practice Pulse 2025. In that marketplace survey, generated from data from over 2,600 immigration attorneys throughout the country, Ex. 3 at 4, the mean hourly billing rate for immigration paralegals with 1-5 years' experience was $97. *Id.* at 48. The mean hourly billing rate for immigration paralegals with 6-10 years' experience was $113. *Id.* The paralegal rate chart is reproduced below:

[2] *Consumer Price Index, West Region—December* 2025, U.S. Bureau of Labor Statistics, available at https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm (last acceded Feb. 5, 2026).

Exhibit 75	Hourly Billing Rate for Paralegals 2025						
	None	$50 - $100	$101 - $150	$151 - $200	$201+	n	2024 Mean
No experience	38%	30%	21%	9%	2%	100%	$71
1-5 years	23%	24%	30%	17%	5%	100%	$97
6-10 years	25%	12%	22%	27%	13%	100%	$113
11+ years	27%	7%	18%	22%	26%	100%	$120

Terry Booher, with ten years' experience as an immigration paralegal, served as lead paralegal on this matter. Ex. 1 at 2-3. Roxanna Rivera, with four years' experience as an immigration paralegal, also provided assistance. Consistent with the AILA marketplace survey's mean rates, Ms. Booher's time has been calculated at $113 per hour. Ms. Rivera's time has been calculated at $97 per hour.

As shown in the table included with the declaration of undersigned counsel, the billed time at the above-described rates total: $9,644.06 (Attorney Aaron Hall); $881.40 (Paralegal Terry Booher); and $58.20 (Paralegal Roxanna Rivera).

Together, this totals $10,583.66 in billed time. The costs, including the filing fee ($5.00), certified mail for service ($76.20), and the cost for ordering the transcripts ($82.52), total $163.72. These totals are current through the filing of this motion. Additional work on a reply to a government response, if needed, would be added at that time.

REQUEST FOR EAJA AWARD

Petitioner is the prevailing party. He spent 59 days, including the holidays, locked up away from his U.S. citizen wife and children due to Respondents' unlawful detention. Facilitation of access to justice in challenging the unlawful government deprivation of liberty is consistent with the purpose and plain text of EAJA. Because this case meets all the statutory criteria for an EAJA

award, Petitioner respectfully requests that the Court award payment in the amount of $10,583.66 in fees and $163.72 in costs for a total of $10,747.38. *See* Ex. 1.

Pursuant to Petitioner's Net Worth and Fee Assignment Declaration, Ex. 2, he requests that any award of fees and costs to Joseph & Hall, P.C. and request payment to Joseph & Hall, P.C. either via a check mailed to Joseph & Hall's office address at 12203 E. 2nd Ave., Aurora, CO 80011, or directly deposited into the office's account.

Respectfully submitted this 25th day of March, 2026,

/s/ Aaron C. Hall
Aaron C. Hall
Colorado Reg. No. 40376
Joseph & Hall, P.C.
12203 East Second Avenue
Aurora, CO 80011
303-297-9171
aaron@immigrationissues.com

Attorney for Petitioner