

1 SHIRA LEVINE (CA SBN #293080), Designated Counsel for Service
Deputy Legal Director
2 Immigration Institute of the Bay Area
476 3rd St.,
3 Oakland, CA 94607
Telephone: 734-262-1930
4 Facsimile: 415-712-0228
Email: slevine@iibayarea.org

5 JONATHAN ABEL (CA SBN #293086),
6 Professor of Law
U.C. Law San Francisco, Immigrants' Rights Clinic
7 200 McAllister Street, Rm. 342-200
San Francisco, CA 94102
8 Telephone: 617-548-6230
Email: abeljonathan@uclawsf.edu

9 *Pro Bono Attorneys for Petitioner*

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 BILAL ALPSEN,

13 Petitioner,

14 v.

15 MINGA WOFFORD, in official capacity,
16 Facility Administrator of Mesa Verde Ice
Processing Center; SERGIO ALBARRAN, in
17 official capacity, Field Office Director of ICE's
San Francisco Field Office; TODD M. LYONS,
18 in official capacity, Acting Director of ICE,
KRISTI NOEM, in official capacity, Secretary
19 of the U.S. Department of Homeland Security;
PAM BONDI, in official capacity, Attorney
20 General of the United States,

21 Respondents.

Case No. 1:25-cv-01715-KES-HBK

**PETITIONER'S MOTION FOR
ATTORNEY'S FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT
AND REQUEST TO HOLD MOTION
IN ABEYANCE**

22 **PETITIONER'S MOTION FOR ATTORNEY'S FEES UNDER THE EQUAL ACCESS**
23 **TO JUSTICE ACT AND REQUEST TO HOLD MOTION IN ABEYANCE**

24 PETITIONER'S MOTION FOR ATTORNEY'S FEES UNDER THE EQUAL ACCESS TO
JUSTICE ACT AND REQUEST TO HOLD MOTION IN ABEYANCE 1

1 Petitioner Bilal Alpsen respectfully moves for an award of attorney’s fees pursuant to the
2 Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). Petitioner files this motion in an
3 abundance of caution to preserve the statutory deadline for EAJA applications. At the same time,
4 Petitioner respectfully requests that the Court hold this motion in abeyance for forty-five (45)
5 days because the parties expect that the matter will be resolved through settlement once the
6 current federal government shutdown concludes.

7 Assistant United States Attorney Robert Fuentes, counsel for Respondents, informed
8 undersigned counsel that Respondents believe the requested EAJA fees are reasonable and that
9 Respondents would like to resolve the fees through settlement, rather than litigation. *See*
10 Declaration of Counsel (“Abel Decl.”). According to AUSA Fuentes, the obstacle to settlement
11 is that the ongoing federal government shutdown has prevented Respondents from obligating the
12 funds necessary to pay any settlement. *Id.* AUSA Fuentes therefore suggested that Petitioner file
13 a “skeletal” EAJA motion to preserve Petitioner’s statutory rights while requesting that the Court
14 hold the motion in abeyance until the shutdown resolves and the parties can finalize settlement.
15 *Id.*

16 For the reasons set forth below, Petitioner satisfies the statutory requirements for an
17 award of attorney’s fees under EAJA, and he requests that the Court hold the motion in abeyance
18 for forty-five days.

19 **1. TIMELINESS**

20 EAJA requires a party seeking attorney’s fees to file an application “within thirty days of
21 final judgment in the action.” 28 U.S.C. § 2412(d)(1)(B). For purposes of EAJA, a judgment
22 becomes “final” only after the time for filing an appeal has expired. *Melkonyan v. Sullivan*, 501
23 U.S. 89, 96 (1991). Because the United States is a party to this action, the time for filing a notice

1 of appeal is sixty days from entry of judgment. Fed. R. App. P. 4(a)(1)(B). Judgment was entered
2 on December 17, 2025. ECF Nos. 8, 9. The sixty-day appeal period therefore expired on
3 February 15, 2026. This motion is filed within thirty days thereafter and is therefore timely under
4 28 U.S.C. § 2412(d)(1)(B).

5 **2. PETITIONER IS A PREVAILING PARTY**

6 EAJA authorizes an award of attorney's fees to a party who prevails against the United
7 States unless the government's position was substantially justified. 28 U.S.C. § 2412(d)(1)(A). A
8 litigant is a prevailing party when the court grants relief that materially alters the legal
9 relationship between the parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health*
10 *& Human Res.*, 532 U.S. 598, 603 (2001). Petitioner plainly satisfies that standard. This Court
11 granted habeas relief after concluding that Respondents' detention of Petitioner was unlawful. In
12 discussing Respondents' assertion that Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(1),
13 the Court concluded: "Respondents' argument has no merit." ECF No. 8 at 4. The Court further
14 concluded that due process was violated when Petitioner was re-detained without a pre-
15 deprivation hearing. ECF No. 8 at 9. The Court noted: "Numerous district courts have reached a
16 similar conclusion." *Id.* Petitioner obtained court-ordered relief that directly altered the parties'
17 legal relationship. Petitioner is therefore a prevailing party under EAJA.

18 **3. PETITIONER MEETS EAJA'S NET-WORTH REQUIREMENT**

19 EAJA applies to individuals whose net worth did not exceed \$2,000,000 at the time the
20 civil action was filed. 28 U.S.C. § 2412(d)(2)(B). Petitioner satisfies that requirement. As noted
21 in the Declaration of Counsel and throughout the habeas litigation, Petitioner and his family are
22 people of very modest financial means. Abel Decl. Petitioner worked as a parking attendant and
23 valet; his detention caused his wife and infant daughter to nearly be evicted from their home and

1 caused them to run out of money for such basic necessities as diapers. Abel Decl. A declaration
2 establishing Petitioner's eligibility will be submitted if necessary.

3 **4. THE GOVERNMENT'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED**

4 Under EAJA, attorney's fees must be awarded unless the government demonstrates that
5 its position was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). The government bears the
6 burden of demonstrating that both its pre-litigation conduct and its litigation position were
7 substantially justified. *Commissioner, INS v. Jean*, 496 U.S. 154, 159 (1990). The government
8 cannot meet that burden here.

9 **a. The Government's Detention of Petitioner Was Not Substantially
10 Justified**

11 Respondents detained Petitioner without providing a pre-deprivation hearing.
12 Respondents justified this detention based on the errant claim that Petitioner was subject to
13 expedited removal—and based on a misreading of what procedural due process requires. As
14 noted above, the Court found the government's actions unlawful. Expedited removal cannot
15 apply to individuals who have been continuously present in the United States for more than two
16 years. At the time of detention, Petitioner had been indisputably present in the United States for
17 approximately three years. ECF No. 8 at 4 (discussing expedited removal argument). Because the
18 statutory prerequisites for expedited removal were plainly absent, the government lacked a
19 reasonable basis in law or fact for detaining Petitioner under a mandatory detention theory.
20 Moreover, because Petitioner had previously been released from detention, he could not be re-
21 detained without a pre-deprivation hearing. The government's pre-litigation conduct therefore
22 was not substantially justified.

23 **b. The Government's Litigation Position Was Not Substantially Justified**

1 The government continued to defend Petitioner's detention in this habeas action by
2 maintaining that Petitioner was subject to mandatory detention under expedited removal
3 procedures. ECF No. 8 at 4 (recounting government's incorrect legal position). That argument
4 depended on the same flawed statutory premise. Because Petitioner had been present in the
5 United States for more than two years, expedited removal could not lawfully apply. The
6 government therefore lacked a reasonable legal basis for continuing to defend the detention
7 during litigation. And it lacked a reasonable basis for defending the detention without a pre-
8 deprivation hearing.

9 **5. NO SPECIAL CIRCUMSTANCES MAKE AN EAJA AWARD UNJUST**

10 EAJA permits denial of fees only where "special circumstances make an award unjust."
11 28 U.S.C. § 2412(d)(1)(A). No such circumstances exist here. This case involved a
12 straightforward constitutional and statutory question in which, according to this Court,
13 "[n]umerous district courts have reached a similar conclusion." ECF No. 8 at 9. The purposes of
14 EAJA are fully served by awarding fees in these circumstances.

15 **6. FEES AND COSTS**

16 Petitioner seeks attorney's fees at the EAJA statutory rate adjusted for inflation, together
17 with any recoverable costs. Before filing this motion, Petitioner provided Respondents with a log
18 of time spent on the litigation. The log noted that it did not include every hour spent or all costs
19 incurred, but was an offer to settle the EAJA issue without the need for litigation. AUSA Robert
20 Fuentes stated in a phone call that Respondents found this amount to be reasonable. Because the
21 parties anticipate resolving the amount of fees through settlement once the federal government
22 shutdown concludes, Petitioner submits this motion primarily to preserve EAJA eligibility.

23 **7. REQUEST TO HOLD MOTION IN ABEYANCE**

24 PETITIONER'S MOTION FOR ATTORNEY'S FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT AND REQUEST TO HOLD MOTION IN ABEYANCE 5

1 Because the parties expect to resolve the fee issue through settlement once the federal
2 government shutdown concludes, Petitioner respectfully requests that the Court hold this motion
3 in abeyance for forty-five days. This request is made to conserve judicial resources and to allow
4 the parties to finalize a negotiated resolution without unnecessary litigation. Respondents do not
5 oppose this request. Indeed, Respondents' counsel suggested that Petitioner file this EAJA
6 motion and request for the issue to be held in abeyance in order to preserve Petitioner's statutory
7 rights while the government shutdown prevents the government from obligating funds. If
8 settlement is not reached, Petitioner may submit additional documentation in support of the
9 EAJA motion, including additional hours spent litigating the EAJA motion.

10 **CONCLUSION**

11 For the foregoing reasons, Petitioner respectfully requests that the Court:

- 12 1. Hold this motion in abeyance for forty-five days; and
13 2. If settlement is not reached, award Petitioner attorney's fees and costs pursuant to the
14 Equal Access to Justice Act, together with any additional documentation or argument
15 submitted in support of the motion at that time.

16 Date: March 14, 2026

Respectfully Submitted,

17 /s/ Jonathan Abel
18 Jonathan Abel
19 Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2026, I filed a copy of the foregoing MOTION FOR ATTORNEY'S FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT AND REQUEST TO HOLD MOTION IN ABEYANCE through the CM/ECF system, which gave service to all counsel of record.

By: /s/Jonathan Abel

Jonathan Abel

Attorney for Petitioner