District Judge David G. Estudillo
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A-C-J-,

Petitioner,

v.

Laura HERMOSILLO, et al.,

Respondents.

CASE NO. 2:25-cv-02486-DGE-MLP

PETITIONER'S MOTION FOR ATTORNEY'S FEES AND COSTS

Noting Date: May 1, 2026

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

INTRODUCTION

Petitioner A-C-J- files this motion for attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, for time reasonably expended challenging Respondents' unlawful re-detention of her in December 2025. She is entitled to recover reasonable fees under EAJA because she is the prevailing party and because Respondents' position in this matter was not substantially justified.

STATEMENT OF FACTS

Ms. C-J- is a citizen of Guatemala who entered the United States as an unaccompanied minor in 2016, when she was 14 years old. (Dkt. 9 at 3, 4). She fled [redacted] in Guatemala. (Dkt. 9 at 4). She was placed in removal proceedings in June 2016 when she was apprehended at the border. (Dkt. 12 at 2). She was placed in custody of the Office of Refugee Resettlement for a few months before she was released to the custody of her uncle. (Dkt. 9 at 4). She was released on an Order of Recognizance. (Dkt. Nos. 12 at 2; 14-1 at 2.).

Ms. C-J- filed an application for asylum on March 13, 2017 pursuant to the Trafficking Victims Protection and Reauthorization Act ("TVPRA"). (Dkt. 12 at 2). Her removal proceedings were administratively closed by the Immigration Judge in December 2017. (Dkt. Nos. 11-1 at 2; 12 at 2.) In the time since, she has married,

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

attended community college, obtained employment, and given birth to two U.S. citizen children, ages three years and nine months at the time of detention. (Dkt. No. 9 at 2, 4.) She has no criminal record. (Dkt. Nos. 8 at 11; 9 at 3.).

On December 3, 2025, Respondents arbitrarily re-detained Ms. C-J- during "Operation Black Rose" and "targeted immigration enforcement operations" when she happened to be a passenger in a van stopped by Immigration and Customs Enforcement (ICE) during these operations. (Dkt. 11-4 at 2). She was re-detained without first being provided a hearing before a neutral decisionmaker to determine if she is now a flight risk and without considering the TVPRA's mandate that unaccompanied children who reach the age of 18 are detained in the least restrictive setting available. 8 U.S.C. § 1232(c)(2); (Dkt. Nos. 12 at 3; 9 at 2; 11-5 at 2; 19 at 10)

Following her re-detention, Ms. C-J- filed this petition.

PROCEDURAL HISTORY

Ms. C-J- filed this petition for a writ of habeas corpus on December 5, 2025, arguing that her re-detention violated her Fifth Amendment right to procedural due process and seeking her immediate release from immigration detention. *See generally* (Dkt. No. 1). She amended the petition on December 11, 2025. (Dkt. No. 8). Respondents filed a return on December 18, 2025 arguing that Petitioner

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

was subject to mandatory detention pursuant to 8 U.S.C. § 1225. (Dkt. No. 10 at 2–4).

On December 30, 2025, the Magistrate Judge issued a report and recommendation to grant the habeas petition. (Dkt. No. 16). On January 9, 2026, the District Court Judge adopted the report and recommendation, granted the habeas petition, and ordered Ms. C-J-'s immediate release. (Dkt. No. 19 at 13).

Ms. C-J- was released from immigration custody on January 10, 2026. (Dkt. 21).

ARGUMENT

I. Ms. C-J- is entitled to fees under EAJA.

Under EAJA, a party seeking fees must generally establish two basic requirements: that they are a prevailing party, and that the position of the United States was not substantially justified. Ms. C-J- satisfies both elements here.

A. Ms. C-J- is the prevailing party.

To qualify for an EAJA award, Petitioner must first establish that she is the prevailing party. 28 U.S.C. § 2412(d)(1)(B). Prevailing parties must show that they (1) have achieved a "material alteration of the legal relationship of the parties," and that (2) the alteration was "judicially sanctioned." *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 604–05 (2001)

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

(citation omitted).[1] Here, Ms. C-J- readily satisfies those requirements: she obtained a final judgment declaring that re-detention violated her Fifth Amendment procedural due process rights, ordering Respondents to release her from immigration detention, and decreeing that any future re-detention comply with due process. (Dkt. 19 at 13). Such final relief satisfies the prevailing party requirement "by granting enduring judicial relief on the merits." *Lackey v. Stinnie*, 604 U.S. 192, 203–04 (2025).

B. Respondents' position was not substantially justified.

"The EAJA creates a presumption that fees will be awarded to prevailing parties." *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). Respondents can rebut this presumption by showing that the government's conduct "was substantially justified or that special circumstances exist to make an award unjust." *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001); *see also, e.g.*, *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991) ("The burden of proving the special circumstances or substantial justification exception to the mandatory award of fees under the EAJA rests with the government."). Congress placed the burden of proof on the government to demonstrate that its position was substantially justified in

[1] In addition, to qualify for EAJA fees a person must have a net worth of less than $2,000,000. 28 U.S.C. § 2412(d)(2)(B)(i). Ms. C-J- —who was detained at the time this case was filed— satisfies this requirement. *See Decl. of A-C-J-* (attached).

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

order for "EAJA to be a deterrent for unreasonable agency conduct." *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007) (order) ("[R]egardless of the government's conduct in the federal court proceedings, unreasonable agency action at any level entitles the litigant to EAJA fees."); *see also* H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. at 10, 13–14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government.").

"'Substantial justification' under the EAJA means that the government's position must have a reasonable basis in law and fact." *Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998). Here, as this Court found, Respondents' re-detention of Ms. C-J- violated the Fifth Amendment. (Dkt. No. 19 at 12–13) ("Respondents' ' arrest and detention of Petitioner with apparently no process at all violates the due process protections afforded to her by the constitution"). It has long been established that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1320 (W.D. Wash. 2025) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). An individual's interest in their freedom, moreover, is "the most elemental of liberty interests." (Dkt. 16 at 4) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Ms. C-J-'s "arrest in

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

public, detention, and transfer, shattering her established life built over years of compliance, employment, marriage, and child-rearing, undeniably constitutes a significant deprivation of this fundamental liberty." (Dkt. No. 16 at 4). Based on these principles, "[t]he Supreme Court has consistently held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025).

Despite this caselaw, the immigration authorities re-detained Ms. C-J-, violating the most basic and "fundamental requirement of due process": "the opportunity to be heard at a meaningful time and in a meaningful manner." *E.A. T.-B.*, 795 F. Supp. 3d at 1320 (citation modified). Because the agency ignored this well-established applicable law, its position was not "substantially justified." *See Li*, 505 F.3d at 919 (clarifying that where "the record indicates that the Agency's prior action was not consistent with clearly established law at the time the case was before it, then the government's position would not be substantially justified).

Moreover, case after case in this district—and elsewhere—have held that similarly-situated individuals are entitled to a hearing where the burden is the government to justify re-detention. *See, e.g.*, *See, e.g.*, *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, ___F.Supp.3d__, 2025 WL 2402130 (W.D. Wash. Aug. 19,

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

2025) (granting habeas petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing prior to any future re detention); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *Hernandez v. Wofford*, No. 1:25-CV-00986-KESCDB (HC), 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025) (same); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (granting temporary protective order and ordering immediate release due to lack of pre-deprivation hearing); *Francois v. Wamsley*, No. C1:25-cv-02122-RSM-GJL, 2025 WL 3063251, at *5–6 (W.D. Wash. Nov. 3, 2025) (same); *Garro Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (granting preliminary injunction and ordering that petitioner not be re-detained without a pre-deprivation hearing before a neutral immigration judge where the government must demonstrate by clear and convincing evidence that she is a flight risk or danger to the community); *Duong v. Kaiser*, No. 25-CV-07598-JST, F.Supp.3d__, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025) (same); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, F.Supp.3d__, 2025 WL 1953796, at *16–18 (W.D.N.Y. July 16, 2025) (granting preliminary injunction, ordering release due to lack of pre-deprivation process, and

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

ordering noncitizen not be re-detained without a "meaningful opportunity to be heard"); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *9–10, 11–13 (E.D. Cal. Aug. 21, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (similar).

The Supreme Court and the Ninth Circuit have repeatedly recognized that such "a string of losses can be indicative" that the government's position lacks substantial justification. *Pierce v. Underwood*, 487 U.S. 552, 569 (1988); *see also Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1090 (9th Cir. 2022) (similar).

Respondents here further argued that Petitioner is subject to mandatory detention under expedited removal proceedings pursuant to 8 U.S.C. § 1225; and there "position appears to be that any and all non-citizens not previously admitted to the United States are subject to mandatory detention, regardless of circumstance." (Dkt. Nos. 10 at 2–4; 19 at 9). However, as this Court found the "record in this case, and the plain meaning of Section 1225, belie this position." (Dkt. No. 19 at 9).

The Agency action and Respondents' position in this litigation were not substantially justified.

Nor are there special circumstances making an award of fees here "unjust." To the contrary, the detention here caused Ms. C-J- and her family significant

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

harm. She is an asylum seeker who entered the United States as a minor, at age 14 fleeing domestic abuse and threats of rape in her home country of Guatemala. (Dkt. No. 9 at 3). She has since built a life in the United States, timely filed for asylum, attended her immigration court hearings, married, and gave birth to two young children, ages 9 months and 3 years at the time of her detention. (Dkt. No. 9 at 2–3). Her detention significantly disrupted the care of her two young children. (Dkt. No. 9 at 4). These facts underscore that a fees award here is not unjust.

II. Petitioner's requested fees are reasonable.

Ms. C-J- is entitled to fees at the rate provided by the Equity Corp of Oregon Program: $308 for attorney time and $133 for paralegal time.

The EAJA permits fee awards "based upon prevailing market rates for the kind and quality of the services furnished." 28 U.S.C. § 2412(d)(1)(D)(2)(A). Rates are usually capped at $125 per hour, "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." *Id.* The cost of living adjustments for work performed in 2025 is $258.46.[2]

Courts award enhanced hourly rates where the attorney possesses (1)

[2] A copy of EAJA's statutory maximum rates and cost of living adjustments from 2016 to 2025 ("EAJA's Rates and Cost of Living Adjustments") is available at https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited on April 9, 2026).

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

"distinctive knowledge" and (2) "specialized skill" that was (3) "needful to the litigation in question" and "not available elsewhere at the statutory rate." *Nadarajah v. Holder*, 569 F.3d 906, 912 (9th Cir. 2009). The Ninth Circuit has found that "a specialty in immigration law could be a special factor warranting an enhancement of the statutory rate." *Rueda-Menicucci v. I.N.S.*, 132 F.3d 493, 496 (9th Cir. 1992) (citing *Pirus v. Bowen*, 869 F.2d 536, 542 (9th Cir. 1989)). In addition, the Circuit has described immigration law as a "labyrinth almost as impenetrable as the Internal Revenue Code." *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir. 2000).

Here, Counsel has specialized knowledge in immigration law. *Alexander Decl.* Further, the rate requested is not significantly higher than the statutory rate but reflects Counsel's rate through the ECO program which recognizes that her over 10 years of experience justifies additional compensation. *Alexander Decl.*, Exh. A.

Ms. C-J- therefore requests compensation at the ECO rates for the work performed in conjunction with this case, as she is the eligible and prevailing party, the government's position in this matter was not substantially justified, and special circumstances do not make this award unjust. Petitioner also seeks reimbursement of taxable costs under 28 U.S.C. § 1920 and fees for time spent preparing this fee

Nancy Alexander
Lucas & Barba LLP
1201 SW 12th Street, Suite 410
Portland, OR 97205
(503) 457-4495

application, *see Comm'r, INS v. Jean*, 496 U.S. 154, 163–65 (1990).

CONCLUSION

Ms. C-J- accordingly respectfully requests that this Court grant her requested fees and costs in the amount of $13,128.58, in addition to fees for any time spent preparing a reply brief if this motion is opposed by Respondents. *See Alexander Decl.*, Exh. B (timekeeping entries); Exh. C (costs).

Dated: April 9, 2026

Respectfully Submitted,

s/Nancy Alexander
Nancy Alexander (Pro Hac Vice)
OSB # 185664
CASB # 293572
Lucas & Barba LLP
1201 SW 12th Ave., Suite 410
Portland, OR 97205
(503) 457-4495

s/Shara Svendsen
Shara Svendsen, WSB # 38151
Law Office of Shara Svendsen PLLC
16300 Mill Creek Blvd. Ste 206
Mill Creek, WA 98012

Attorneys for Petitioner

WORD COUNT CERTIFICATION

I certify that this memorandum contains 2,313 words, in compliance with the Local Civil Rules.

DATED this 9th day of April, 2026.

s/Nancy Alexander
Nancy Alexander (Pro Hac Vice)
OSB # 185664
CASB # 293572
Lucas & Barba LLP
1201 SW 12th Ave., Suite 410
Portland, OR 97205
(503) 457-4495