The Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Harrinson Jose OSUNA BENITEZ, Petitioner, v. Laura HERMOSILLO, et al., Respondents	Case No. 2:25-cv-02535-BAT **PETITIONER'S MOTION FOR ATTORNEY'S FEES AND COSTS** Noting Date: April 17, 2026

I. APPLICATION

Petitioner Harrinson Jose Osuna Benitez (Mr. Osuna) 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 him in November 2025. He is entitled to recover reasonable fees under EAJA because he is the prevailing party and because Respondents' position in this matter was not substantially justified.

II. FACTUAL BACKGROUND

Mr. Osuna is a citizen of Venezuela who entered the United States in September 2024 to seek asylum. Dkt. 1-8 ¶ 1. Mr. Osuna registered to enter the United States through DHS's "CBP One" application. Dkt. 1-8 ¶ 3. When he presented himself at a port of entry, he was detained and

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had his fingerprints taken and biometrics information collected, as well as questioned about his tattoos. *Id.* Mr. Osuna is a tattoo artist who has received professional training. Dkt. 1-8 ¶ 2. After this, DHS released him on parole. Dkt. 1-8 ¶ 3 Mr. Osuna relocated to Oregon with his partner following his release, and the Executive Office for Immigration Review (EOIR) transferred his case to the Portland Immigration Court. Dkt. 1-8 ¶ 4. Mr. Osuna attended his first in-person immigration court hearing in Portland in February, 2025, and then timely filed his asylum application in June 2025. Dkt. 1-8 ¶ 6. He attended a subsequent hearing in August 2025 and was scheduled for another hearing to take place in January 2027. Dkt. 1-8 ¶ 6. In [redacted] 2024, Mr. Osuna and his partner also welcomed a child. Dkt. 1-8 ¶ 8.

In September 2025, Mr. Osuna received a letter by mail to report to ICE-ERO in Portland, Oregon on October 15, 2025. Dkt. 1-8 ¶ 4. When he attended that appointment, he was instructed to return for another appointment on November 17, 2025. Dkt. 1-8 ¶ 4. At that appointment, ICE officers detained Mr. Osuna and transported him to the NWIPC in Tacoma, Washington. Dkt. 1-8 ¶ 5. During his detainment, the officers implied Mr. Osuna was being detained because of his tattoos, and the officers did not provide him with an opportunity to explain his tattoos or otherwise present arguments or evidence against his re-detention. Dkt. 1-8 ¶ 5. Prior to his re-detention at an ICE check-in, Mr. Osuna was not provided with a hearing before a neutral decisionmaker to determine if his re-detention was justified. Mr Osuna did not receive written notice of the revocation of his parole nor of his opportunity to re-apply for parole. Dkt. 1. Following his re-detention, Mr. Osuna filed this petition.

Mr. Osuna filed the instant petition for a writ of habeas corpus on December 11, 2025, arguing that his re-detention violated his Fifth Amendment right to procedural due process and seeking his release from immigration detention. *See generally* Dkt. 1.

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On December 30, 2025, the Court granted the habeas petition. Dkt. 13. The Court explained that it "cannot be disputed Respondents have deprived [Mr. Osuna] of an established interest in his liberty." *Id.* at 7. Applying the three-part *Mathews* test, *see Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the Court first found that Petitioner "has a substantial interest in remaining in his home with his family and maintaining the relationships he has developed . . . in Oregon." Dkt. 13 at 7. Second, the Court found that the risk of erroneous detention was extremely high and favored Mr. Osuna. *Id* at 10. Lastly, The Court found that Respondents' interest in continued civil detention was low and that an interest in detaining Mr. Osuna if he was a flight risk or danger to the community was "nonexistent." *Id.* Accordingly, the Court ordered Mr. Osuna's release and that due process required that Mr. Osuna "be provided a hearing with proper notice before he can be redetained." *Id.*

ARGUMENT

I. Mr. Osuna qualifies for attorneys' fees under EAJA.

Under the Equal Access to Justice Act (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. Mr. Osuna satisfies both elements here.

A. Mr. Osuna is the prevailing party.

To qualify for an EAJA award, Petitioner must first establish that he 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 &*

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Human Res., 532 U.S. 598, 604–05 (2001) (citation omitted).[1] Here, Mr. Osuna readily satisfies those requirements: he obtained a final judgment declaring that re-detention violated his Fifth Amendment procedural due process rights, ordering Respondents to release him from immigration detention, and decreeing that any future re-detention comply with due process. *See* Dkts. 19, 31. 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.

In addition, the government's 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."). "Substantially justified" means "justified in substance or in the main' –that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood,* 487 U.S. 552, 565 (1988). A position can be substantially justified "if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." *Id.* at 556. It means "more than merely undeserving of sanctions for frivolousness." *Id.*; *see also, La Duke v. Nelson,* 762 F.2d 1318, 1333 (9th Cir. 1985). Congress placed the burden of proof on the government to demonstrate that its position was substantially justified for "EAJA to be a deterrent for

[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). Mr. Osuna —who was detained at the time this case was filed— satisfies this requirement. *See* Decl. of Harrinson Jose Osuna Benitez.

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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, Defendants' re-detention of Mr. Osuna violated the Fifth Amendment. Dkt 13. 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. 19 at 6 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). 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 Mr. Osuna, 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).

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Moreover, case after case in this district—and elsewhere—have held that similarly-situated individuals are entitled to a hearing where the burden is on the government to justify re-detention. *See, e.g.*, *E.A. T.-B.*, 795 F. Supp. 3d at 1321–24; *Ledesma Gonzalez v. Bostock*, --- F. Supp. 3d ----, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); *Y.M.M.*, 2025 WL 3101782, at *2; *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025); *Francois v. Wamsley*, No. 2:25-cv-02122-RSM-GJL, 2025 WL 3496557, at *4 (W.D. Wash. Dec. 5, 2025); *Tomas Manuel v. Hermosillo*, No. C25-2353-TL-MLP, 2025 WL 3690778, at *3 (W.D. Wash. Dec. 10, 2025), *report and recommendation adopted*, No. C25-2353-TL-MLP, 2025 WL 3697277 (W.D. Wash. Dec. 19, 2025); *Cabrera Perez v. Hermosillo*, No. 2:25-cv-02542-RSM, 2026 WL 100735, at *6 (W.D. Wash. Jan. 14, 2026); *Tsyamba v. Hermosillo*, No. 2:25-CV-02623-GJL, 2026 WL 237514, at *4–7 (W.D. Wash. Jan. 29, 2026); *Shimwari v. Hermosillo*, No. 2:26-CV-00009-RAJ, 2026 WL 262605, at *4 (W.D. Wash. Jan. 30, 2026); *Arroyo Silva v. Hermosillo*, No. 2:26-CV-00179-GJL, 2026 WL 445003, at *1 (W.D. Wash. Feb. 17, 2026). 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).

Nor are there special circumstances making an award of fees here "unjust." To the contrary, the detention here caused Mr. Osuna and his family significant harm. He is an asylum seeker who entered the United States with his partner. He followed the rules for applying for asylum, including presenting himself at a port of entry, timely filing his Form I-589 Application for Asylum, attending all court hearings required of him, and having no criminal issues in the United States. Dkt 1-8 ¶ 6; Dkt 10-3. After entering, the couple had a child together. Dkt. 1-8 ¶¶

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3, 8. Mr. Osuna served as the primary breadwinner, placing significant strain on his family when he was detained. Dkt. 1-8 ¶ 8. These facts underscore that a fees award here is not unjust.

II. The petitioner qualifies for attorneys' fees under common law because the government acted in bad faith.

Under common law, the Court may award attorney fees if a party acted in bad faith. *Hall v. Cole*, 412 U.S. 1, 5 (1973). This power "is part of the original authority of the chancellor to do equity in a particular situation." *Id.* (quoting *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 166 (1939)). Equity inherently allows for flexibility, *Holland v. Florida*, 560 U.S. 631, 650 (2010), which courts are free to exercise "when the interests of justice so require." *Hall*, 412 U.S. at 5.

The common law allows a court to assess attorney's fees against a party that has acted in bad faith. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991). This power exists not only to protect one party from the other, but also to protect the court itself. To deter similar behavior in the future, to protect Mr. Osuna, and to protect the Court itself from defilement, Mr. Osuna asks the Court to order attorney's fees under the common law. The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of "vindicating judicial authority without resort to the more drastic sanctions available for contempt of court and making the prevailing party whole for expenses caused by his opponent's obstinacy." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (internal citations omitted).

Mr. Osuna does not raise a bad-faith argument against opposing counsel or her office, but rather against her clients. He bases the argument on the following:

Mr. Osuna, having presented himself at a port of entry pursuant to the CBP-One program, was admitted and lived in the United States for over a year in Oregon. At the time of his admission, Mr. Osuna submitted to questioning and examination. This examination included a

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review of his tattoos. This review did not prevent his admission and parole into the United States. However, over a year later, having only added one new tattoo commemorating the birth of his son, Mr. Osuna was detained at an ICE check-in, where Respondent claims they conducted "a review of the subject's possible gang affiliation which reveal[ed] tattoos consistent with [redacted]" and subsequently had his Order of Release on Recognizance (OREC) revoked. However, the record showed Mr. Osuna was issued an I-94 arrival record and was paroled into the United States for humanitarian reasons. The record does not indicate issuance of an OREC, and the Respondents never produced such an order setting forth the conditions that Mr. Osuna allegedly violated.

Additionally, the court found that the record shows Mr. Osuna had no criminal record upon entry and had not broken any laws since. Mr. Osuna always responded to requests to appear before the immigration court or the ICE office. The court found no basis to find Mr. Osuna violated conditions of an OREC because an OREC did not exist. Further, Respondents never identified why Mr. Osuna's tattoos brought about a presumption of gang affiliation.

The court also found that Respondents' claim that Mr. Osuna had "gang ties" was unsupported. At the time of entry, a background check was conducted that showed no criminal history, and immigration officers did not raise concerns about gang ties or the nature of Mr. Osuna's tattoos, even though Mr. Osuna's detention "afforded Respondents ample time to assess such concerns." Dkt. 13. When Mr. Osuna was redetained, officers made no mention that they were unaware of his tattoos, and those same tattoos that did not raise any concerns upon entry were now being relied upon to redetain Mr. Osuna. Additionally, the court notes that Respondents used speculative and vague language to claim Mr. Osuna had "possible gang affilation." The court notes that "[r]espondents appear to have performed no investigation into the tattoos, even though Petitioner told Respondents he was not associated with a gang

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association, is a professional tattoo artist, and has no criminal history." Respondents revoked Mr. Osuna's parole and "detained him solely on the possibility that he might be affiliated with a gang based upon tattoos that are not even described." In their response to this habeas petition, Respondents did not submit any relevant opposition to these facts.

For all these reasons, the government has acted in bad faith. To deter similar behavior in the future, to protect Mr. Osuna, and to protect the court itself from defilement, Mr. Osuna asks the court to order attorney's fees under the common law.

III. Amount of fees.

According to the Ninth Circuit's website, the applicable statutory rates, adjusted for the cost of living for 2025 and 2026 are $258.46. Accordingly, under the statutory EAJA rate, and given the hours worked as described in the attached Time Log, counsel should be awarded $20,309.62 for the time spent working on this litigation. *See* attached Exhs. B-C.

2. Enhanced Rate.

Mr. Osuna seeks an enhanced fee award at market rates because he would not have prevailed in this action absent counsel without "distinctive knowledge or specialized skill needful for the litigation in question." *Pierce*, 487 U.S. at 572. "Where such qualifications are necessary and can be obtained only at rates in excess of the [statutory] cap, reimbursement above that limit is allowed." *Id.* The Ninth Circuit has established three factors to be considered in determining whether an enhanced rate should be granted: (1) whether counsel possesses distinctive knowledge and specialized skills, (2) whether such skills were needful to the litigation in question and (3) whether competent counsel with such skills could be obtained at the statutory rate. *See Nadarajah v. Holder*, 569 F.3d 906, 912-915 (9th Cir. 2009); *see also Muhur v. Ashcroft*, 382 F.3d 653, 656 (7th Cir. 2004) (awarding enhanced fees to attorneys who bring "relevant expertise to…esoteric nooks and crannies of immigration law"). Mr. Osuna meets each

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requirement for enhanced fees.

The first element, distinctive knowledge and specialized skills, requires that the case "involved more than established principles of law with which the majority of attorneys are familiar." *Orantes-Hernandez v. Holder*, 713 F. Supp. 2d 929, 961 (C.D. Cal. 2010) (*citing, Nadarajah,* 569 F.3d at 914). For example, enhanced fees are appropriate if the attorney "has experience representing detained asylum seekers in expedited removal proceedings and litigating cases involving the jurisdiction-stripping statutes at issue in this case." *Garcia v. Barr*, 484 F. Supp. 3d 750, 756 (N.D. Cal. 2020). They are also appropriate where counsel is not only experienced and skillful but also "diligently pursued a just result in the face of discouraging events" where "time was of the essence." *Abdur-Rahman v. Napolitano*, 868 F. Supp. 2d 1158, 1164 (W.D. Wash. 2012).

This is a habeas case for a detained asylum seeker who was re-detained in violation of due process. This case requires knowledge of immigration law, constitutional law, and habeas corpus. It required knowledge not only of immigration law generally, but also specifically of the law governing removal and of the day-to-day process of removal. Very few attorneys in this district have this combination of knowledge and skills. Many immigration lawyers do not practice removal defense and do not have this distinctive knowledge, especially at the level needed for this litigation. And even more significantly, this litigation required knowledge not only of each body of law, but of the intersection of those bodies of law. Most immigration lawyers are not familiar with the constitutional issues and do not have the specialized skill to bring a habeas petition in federal court. Most civil rights lawyers, who might understand the constitutional issues and who might have the skill to bring a federal habeas petition, are not familiar with immigration law. *See* Exhs. H-I (Declarations of Brent Renison and Michael T. Purcell).

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As explained in the attached declarations, petitioner's counsel possesses distinctive knowledge and specialized skill in immigration, including the details of removal; in constitutional law; and in bringing a federal habeas petition. Mr. Osuna is represented by Ms. Julia Braker, supervising immigration attorney at CLEAR Clinic, which is one of the few non-profit organizations in the Pacific Northwest that files habeas petitions with the district courts. Ms. Braker and three other CLEAR Clinic timekeepers (Douglas Valladares, Jacqueline Johnson, and Leo Ariel) are fluent in Spanish, Mr. Osuna and his family's native language, making client appointments more efficient compared to firms where the legal team needs to use an interpreter. Ms. Braker in a 2013 graduate of Columbia Law School and has extensive experience in immigration detention work. She has worked exclusively in immigration law since 2013 and practiced in the federal courts since 2015. She worked in immigration detention from 2013-2014 and 2019 to the present, and, for years, has conducted trainings for the immigration attorneys on related topics. Exh. G (Resume of Julia Braker). Ms. Braker's requested rate is $473/hour. *See* Exh. H (Declarations of Brent Renison recommending $500/hour); Exh. I (Declaration of Michael T. Purcell and attached fee statistics, recommending $473/hour).

Mr. Osuna is also represented by Ms. Kelly Vomacka of the law firm of Gibbs Houston Pauw, which is one of the premier immigration law firms in the Pacific Northwest. It was founded more than 40 years ago and has a regional and even national reputation for the high quality of its advocacy. One of its founding partners, Robert Pauw, literally wrote the book on federal litigation in immigration cases, Litigating Immigration Cases in Federal Court, published by the American Immigration Lawyers Association and now in its 5th edition. Ms. Vomacka has practiced law since 1999 and has long experience in civil rights litigation, including criminal appeals, and in immigration law. She is a frequent presenter on these topics, and she has litigated several Personal Restraint Petitions in Washington state courts, which are substantially the same

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as habeas petitions. *See* Exhs. E-F (Declaration and resume of Kelly Vomacka). Ms. Vomacka's requested rate is $650/hour. *See id.*

Additionally, there were no attorneys available with the specialized knowledge required for this litigation who would handle this case at the EAJA rates of approximately $250 per hour. *See* Exhs. H-L (Declarations of Brent Renison and Michael T. Purcell and attached documents).

Counsel's distinctive knowledge and specialized skill were necessary in order to give Mr. Osuna "a fair shot at prevailing" in this case. *Catholic Social Services, Inc. v. Napolitano*, 837 F. Supp. 2d. 1059, 1076 (E.D. Cal. 2011). "[T]he specific purpose of the EAJA is to eliminate for the average person the financial disincentive to challenge unreasonable government actions." *Commissioner, I.N.S. v. Jean*, 496 U.S. 154, 163 (1990). Consistent with this purpose, the Court should award enhanced EAJA fees at market rates. "The government's general interest in protecting the federal fisc is subordinate to the specific statutory goals of encouraging private parties to vindicate their rights and 'curbing excessive regulation and the unreasonable exercise of government authority.'" *Jean*, 496 U.S. at 164 (footnotes omitted).

Petitioner's counsel includes the Laffey Matrix as instructive to show that the enhanced fees are justified and that enhanced rates of $473 for Ms. Braker and $650 for Ms. Vomacka are fair. Exh. M. The hourly rates established in the Laffey Matrix are reasonable market rates for attorneys with the distinctive knowledge and specialized skill of Mr. Osuna's counsel. Those rates vary by year and by the number of years counsel has been out of law school. The Laffey Matrix rate is $1,109 per hour for Ms. Braker and $1,227 for Ms. Vomacka. Petitioner's counsel does not request full Laffey Matrix fees and includes the Laffey Matrix as instructive guidance that the far lower requested rates of $473 and $650 are reasonable.

Petitioner does not request enhanced fees for any other attorney or paralegal work on this case and instead asks for the standard 2025-2026 EAJA rate of $258.46.

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Thus, the petitioner seeks an award of $30,453 for legal fees. This request is for legal fees through the date of filing this motion. Mr. Osuna and his attorneys believe that the litigation is now final for purposes of requesting EAJA fees. Mr. Osuna asks leave to supplement this request as necessary to include this application.

CONCLUSION

Mr. Osuna accordingly respectfully requests that this Court grant his requested fees and costs in the amount of $30,453 in addition to fees for any time spent preparing a reply brief if this motion is opposed by Respondents. *See* Exs. A-B (chart of fees and costs); Ex. C (timekeeping entries).

DATED this 27th of March, 2026.

s/ Julia M. Braker
Julia M. Braker*, OSB No. 234254
Email: julia.braker@clear-clinic.org
CLEAR Clinic
PO Box 11288
Portland, OR 97211
(971) 258-1372
*Admitted pro hac vice

Counsel for Petitioner

s/ Kelly Vomacka
Kelly Vomacka, WSBA No. 20090
Email: Kelly.Vomacka@ghp-law.net
Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
Seattle, WA 98104
253-303-6050

Local Counsel for Petitioner

WORD COUNT CERTIFICATION

I certify that this memorandum contains 3,904 words, in compliance with the Local Civil Rules.

DATED this 27th day of March, 2026.

s/ Julia M. Braker
Julia M. Braker*, OSB No. 234254
Email: julia.braker@clear-clinic.org
CLEAR Clinic
PO Box 11288
Portland, OR 97211
(971) 258-1372

CLEAR Clinic
P.O. Box 11288
Portland, OR 97211
Telephone: (503) 389-5919