The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

WILLIAM A. BACHES ROCA, *Petitioner,* v. BRUCE SCOTT, et. al., *Respondents.*	Case No.: 2:25-cv-02551-KKE **PETITIONER'S MOTION FOR EAJA FEES AND COSTS** Note on Montion Calendar: February 17, 2026

Petitioner, William Baches Roca, by and through undersigned counsel respectfully moves for fees and costs pursuant to the Equal Access to Justice Act ("EAJA"). Mr. Baches Roca was the prevailing party when the Court granted his writ for habeas corpus and ordered his immediate release from detention.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a noncitizen of Guatemala who first entered the United States without being admitted or paroled in March 2003, when he was 17 years old. Dkt. 1 ¶16. Following his apprehension at entry, and the Department of Homeland Security initiated removal proceedings by filing a notice to appear. *Id.* However, Petitioner failed to appear at his scheduled hearing, and

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the immigration judge ordered him removed *in absentia*. *Id.* Petitioner was arrested and removed to Guatemala in October 2006. *Id.*

Petitioner remained in Guatemala for more than 13 years, and in May 2019 fled to the United States with his oldest son. Dkt. No. 1 ¶ 17. Petitioner was apprehended by United States Border Patrol officials who, as an alternative to detention, placed Petitioner on an order of supervision ("OSUP") to allow him to care for his minor son in the United States. *Id.* While on supervision, Petitioner expressed a fear of return to Guatemala, which entitled Petitioner to a "reasonable fear" interview with United States Citizen and Immigration Services ("USCIS"). Dkt. 8 ¶ 18. However, Petitioner's fear claim was not timely or properly referred to USCIS. *Id.* For several years, Petitioner complied with the OSUP and was never told he had violated the conditions of his OSUP.

At an ICE check-in on July 21, 2025, ICE agents arrested and detained Petitioner "for final adjudication of his reasonable fear claim." *Id.* ¶¶ 18–19.

Petitioner then moved to reopen his immigration proceedings in Newark, requesting that his *in absentia* removal order be rescinded and that he be allowed to apply for relief. Dkt. No. 8 ¶ 22. USCIS subsequently held Petitioner's reasonable fear interview, and an asylum officer found he had not established a reasonable fear. Petitioner requested an immigration court review that determination, and an immigration judge affirmed the USCIS finding and ordered that Petitioner be returned to DHS for removal. ¶¶ 25–26.

The week before the reasonable fear review hearing, an immigration judge in Newark granted in part Petitioner's motion to reopen his original immigration case and voided the fear determination and removal order. *Id.*

Petitioner's immigration case was transferred to the Tacoma immigration court, and Petitioner attended several master calendar hearings with counsel. Dkt. No. 8 ¶¶ 27–30. The

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Tacoma immigration court also held a bond hearing on December 11, 2025, at which time the court found Petitioner subject to mandatory detention, but indicated that it would grant a bond in the amount of $12,000 if Petitioner was not subject to mandatory detention. Dkt. No. 7-1 at 2, Dkt. No. 8 ¶ 31.

On December 12, 2025, Petitioner filed a habeas petition in this Court. Dkt. No. 1. On January 8, 2025, the Court granted Petitioner's petition for writ of habeas corpus based on the finding that the Government's arrest and re-detention of Petitioner violated his constitutional right to due process because they failed to follow their own regulations in revoking his OSUP. Dkt. 10 at 3.

II. ARGUMENT

A. LEGAL REQUIREMENTS FOR EAJA AWARD

The EAJA, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, provides for the award of costs and attorney fees to a prevailing party in litigation against the United States or one of its agencies. The EAJA has been invoked to justify the award of attorney fees and costs in immigration cases. *See e.g., Commissioner, Immigration and Naturalization Service v. Jean*, 496 U.S. 154 (1990). An award of EAJA fees and costs to a prevailing party is justified unless the Court finds either that the position of the U.S. was substantially justified or that special circumstances made an award unjust. *Gutierrez v. Barnhart*, 274 F.3d 1255 (9th Cir. 2001). Federal courts have traditionally recognized that EAJA fees are available in the immigration context, including following successful immigration-related habeas petitions. *See Nadarajah v. Holder*, 569 F.3d 906 (9th Cir. 2009)

B. MR. BACHES ROCA IS THE PREVAILING PARTY BECAUSE THE COURT GRANTED HIS WRIT OF HABEAS CORPUS AND ORDERED HIS IMMEDIATE RELEASE.

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Mr. Baches Roca is the prevailing party in this litigation because the Court granted his petition for a writ of habeas corpus and ordered his immediate release from detention. Dkt. 10 at 7. Specifically, the Court found "that the Government failed to follow its own regulations in detaining Petitioner, and his detention [was] not only unlawful per the regulations but also violate[d] his constitutional right to due process." Dkt. 10 at 3. Accordingly, this Court should award attorneys fees under the EAJA to Petitioner.

C. THE GOVERNMENT'S POSITION WAS NOT "SUBSTANTIALLY JUSTIFIED."

The Government has the burden of proving its position was substantially justified, and it must demonstrate that its position had a reasonable basis in both law and fact. *Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005). "'Substantial justification' in this context means 'justification to a degree that could satisfy a reasonable person.'" *Al-Harbi v. INS*, 284 F.3d 1080, 1084 (9th Cir. 2002) (internal citation omitted).

The Ninth Circuit has stated that "the government must justify both the original agency action and its litigation position. *Gutierrez v. Barnhart*, 274 F.3d 1255, 1259 (9th Cir. 2001). The Ninth Circuit has also held that the government's position per se lacks substantial justification where the position violates the Constitution, a statute, or its own regulations. *Mendenhall v. National Transp. Safety Bd.*, 92 F.3d 871, 874 (9th Cir. 1996) (citation omitted) (overruled in part on other grounds). Irrespective of the government's conduct during litigation, "unreasonable agency action at any level entitles the litigant to EAJA fees." *Li*, 505 F.3d at 919.

It is undoubtedly clear that the Government cannot meet its burden in Petitioner's case because the Government failed to provide any legal argument to justify the Government's pre-litigation actions in arresting Petitioner and detaining him or his continued detention. *See* Dkt. 10 at 5. As noted by the Court several times, the Government's return memorandum is devoid of

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any substantive legal argument justifying its opposition to Petitioner's habeas petition or supporting his continued detention after violating its own regulations. Dkt. 10 at 5-6.

After outlining the regulations governing the revocation of an OSUP, the Government made no substantive legal argument to justify why its agents failed to comply with them in Petitioner's case. Dkt. 6 at 3, 6. Indeed, based on the complete lack of legal argument, the Court rightly determined that Mr. Baches Roca's petition for habeas corpus was "functionally unopposed." *Id.* The Court even commented that the fact that "the Government's return contain[ed] no legal argument at all," Dkt. 10 at 5, is likely "because no well-founded argument exist[ed]" in support of its position. *Id.* at n.3. As a result, the Court correctly found that the Government failed to follow its own regulations in revoking Petitioner's OSUP, and any attempt by the Government to comply with its own regulations "more than *five months* after Petitioner's detention, [was] unacceptable" and a violation of Petitioner's due process rights. Dkt. 10 at 6.

Accordingly, the Court should find that because the Government's conduct violated Mr. Baches Roca's procedural due process rights under the Constitution and the Government's litigation positions were substantially unjustified and without any basis in law or fact. Mr. Baches Roca is entitled to attorney's fees under EAJA.

i. Special circumstances

Petitioner asserts that there are no special circumstances present in this case which would make an award of fees unjust. See 28 U.S.C. §2412(d)(l)(A). Further, as his declaration confirms, Mr. Baches Roca did not have a net worth exceeding $2,000,000.00 at the time these proceedings were initiated, nor does he have such a net worth at the present time. 28 U.S.C. §2412(d)(2)(B).

D. CALCULATION OF ATTORNEY'S FEES

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The EAJA provides that a "fees award...shall be based upon prevailing market rates for the kind of quality of services furnished; the focus therefore being on the market rate." 28 U.S.C. § 2412(d)(2)(A). The current applicable statutory hourly rate adjusted for increases in the cost of living is as follows:

2026: Unavailable

2025: $258.46.

In support of this request are attached the affidavits of Petitioner's counsel listing the time spent on litigating this case and preparing the request for EAJA fees. *See* Declaration of Julia C. Hunter; Attorney Time Log. The total legal fees in this case and costs amount to $XX. The breakdown is summarized in the affidavit and tables attached to this filing.

III. CONCLUSION

For the reasons stated herein and based upon the pleadings previously filed and the exhibits attached hereto, Mr. Baches Roca respectfully requests that the court enter an order on his behalf for legal fees and costs pursuant to the EAJA, and order the government to pay any EAJA award directly to counsel's office.

Dated: January 26, 2025.

/s/ Julia C. Hunter

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing motion has 1494 words and complies with the word limit requirements of Local Civil Rule 7(e).

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