Honorable Grady J. Leupold, Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

L.B.O.M.,

Petitioner,

v.

Julio HERNANDEZ, Seattle Acting Field Office Director, Enforcement and Removal Operations, Immigration and Customs Enforcement (ICE); Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; Todd BLANCHE, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.[1]

Case No. 2:25-cv-02695-GJL

PETITIONER'S MOTION FOR FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT

Noted on Motion Calendar:
May 22, 2026

INTRODUCTION

Petitioner L.B.O.M respectfully moves this Court for an award of attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). Petitioner is a prevailing party in this action: the Court granted her petition and ordered Respondents to provide her with a bond hearing within fourteen days at which the government bore the burden of proof by clear and convincing evidence. Dkt. 15 at 12.

Respondents' litigation position lacks substantial justification. The application of the well-established, six-factor test set out in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash.

[1] Julio Hernandez, Markwayne Mullin, and Todd Blanche are automatically substituted for Laura Hermosillo, Kristi Noem, and Pamela Bondi pursuant to Federal Rule of Civil Procedure 25(d).

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2019), to the facts of this case strongly weighed in Petitioner's favor. Petitioner was detained in prison-like conditions where she languished without any process for nearly ten months. Dkt. 15 at 7–9. Petitioner did nothing to cause any delay. *Id.* at 10. Petitioner had been granted Special Immigration Juvenile ("SIJ") status, and her removal proceedings had been stayed while USCIS adjudicated her eligibility for asylum and SIJ Deferred Action. *Id.* at 2, 9. The Court ultimately found that four of the six *Banda* factors favored Petitioner, one was neutral, and only one favored Respondents. *Id.* at 11.

Accordingly, Petitioner respectfully requests that the Court award her reasonable attorney's fees and costs.

BACKGROUND

Petitioner L.B.O.M., a citizen of Colombia, fled the country seeking protection after [redacted] *Id.* at 2. In 2024, she entered the United States as an unaccompanied minor and was taken to a shelter. *Id.* She was paroled into the custody of her caretaker a few months later. *Id.* Petitioner was detained in April 2025 after entering Canada with her caretaker, then sent to NWIPC. *Id.* She remained detained at NWIPC in Tacoma for nearly ten months. *Id.* at 7–8. While detained, USCIS granted Petitioner SIJ status, meaning she is statutorily eligible to adjust her status to that of a permanent resident once a visa becomes available. *Id.* SIJ status also requires USCIS to consider Petitioner for SIJ Deferred Action, which would grant her a stay of removal. *Id.* at 2–3.

L.B.O.M. filed a petition for writ of habeas corpus on December 24, 2025, arguing that her prolonged detention without a bond hearing violated the Due Process Clause of the Fifth Amendment. Dkt. 1 at 16. On January 12, 2026, the government filed a return, arguing Petitioner's ongoing detention was lawful. Dkt. 11. She filed a traverse on January 20.

On February 2, 2026, the Court granted the petition. Dkt. 15. Applying the six-factor *Banda* test, the Court found that four factors clearly favored Petitioners, one was neutral, and only one favored Respondents. *Id.* at 6–11. Specifically, the Court found that: (1) Petitioner's nearly ten

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months of detention weighed in her favor; (2) the likely duration of future detention favored Petitioner, since her removal proceedings were stayed while USCIS adjudicated her asylum and SIJ Deferred Action eligibility, and, once those proceedings resumed, any appeals would take up to two years; (3) the conditions at NWIPC are similar to those in many prisons and jails, favoring Petitioner; (4) delays caused by Petitioner favored Petitioner, since she had not caused any delays; (5) delays caused by the government favored Respondents, who had not caused any delays; and (6) the likelihood of a final order of removal was neutral, because the outcome of Petitioner's pending applications with USCIS was unknown. *Id.* The Court found that Petitioner's ongoing detention violated the Due Process Clause of the Fifth Amendment and ordered that a bond hearing be held within fourteen days at which the government must bear the burden of proof by clear and convincing evidence. *Id.* at 11–12.

ARGUMENT

EAJA requires a court to award fees and costs to a prevailing party in a civil action against the United States where the government's position was not substantially justified and no special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).[2] The party must also provide a statement of the total amount of fees and costs sought along with an itemized account of time expended and rates charged. *Id.* § 2412(d)(1)(B). Absent a special factor, fees are based on the statutory rate of $125 per hour, subject to annual cost-of-living adjustments published by the Ninth Circuit Court of Appeals. *Id.* § 2412(d)(2)(A); *see also Thangaraja v. Gonzales*, 428 F.3d 870, 876–77 (9th Cir. 2005).

I. Petitioner Is a Prevailing Party.

A prevailing party is one who secures a "material alteration of the legal relationship of the parties" that is "judicially sanctioned." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604–05 (2001) (citation omitted). That standard is met here.

[2] Section 2412(d)(2)(B) provides that only parties with a net worth of less than $2,000,000 may seek fees under EAJA. L.B.O.M. satisfies this requirement. (Petitioners in detention will virtually always meet this requirement because they lack income while detained.)

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The Court granted L.B.O.M.'s petition, requiring Respondents to provide her with an individualized bond hearing at which the government bore the burden of proof by clear and convincing evidence. This relief materially changed the parties' legal relationship by granting Petitioner access to a bond hearing that Respondents argued was not constitutionally required.

II. Respondents' Positions Were Not Substantially Justified.

A prevailing party is entitled to fees and costs under EAJA unless the government can show its pre-litigation conduct and litigation positions were substantially justified at each stage of the proceedings. *See Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998) (citation omitted); 28 U.S.C. § 2412(d)(1)(A). The burden of proof rests with the government. *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991). To meet that burden, "the government's position must have a reasonable basis in law and fact." *Corbin*, 149 F.3d at 1052. Respondents cannot make that showing here.

Although "[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process," Respondents nevertheless insisted that L.B.O.M.'s prolonged detention did not violate her right to due process. *Maliwat v. Scott*, 2025 WL 2256711, at *3 (W.D. Wash. Aug. 7, 2025) (quoting *Banda*, 385 F. Supp. at 1116). In similar recent cases involving application of the *Banda* test, courts in this District have concluded that Respondents' positions lacked substantial justification. The same basic rationale of those decisions—that the cumulative *Banda* factors plainly supported the petitioner—apply here too and demonstrate that an award of fees is appropriate. *See, e.g.*, *Cardozo v. Bostock*, No. 2:25-CV-00871-TMC, 2026 WL 304491, at *3 (W.D. Wash. Feb. 5, 2026); *Toktosunov v. Wamsley*, No. 2:25-cv-01724-TL, 2026 WL 972349, at *3 (W.D. Wash. Apr. 8, 2026).

Respondents unjustifiably argued that most of the *Banda* factors were neutral. Respondents argued the length of detention factor should be neutral because "the current length of [L.B.O.M.'s] detention has not reached the length of what many courts have found to be unreasonable," *id.* at 6, ignoring the many cases in which courts have found as few as seven months' detention

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unreasonable. *See, e.g.*, *Anyanwu v. U.S. ICE Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL, 2024 WL 4627343, at *4 (W.D. Wash. Sept. 17, 2024) ("[E]ven if the Court were to limit its consideration to the first seven months of Petitioner's detention, the first factor would still tilt in his favor as this period exceeds the six-month benchmark established in *Demore*."); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (finding seven months' detention unreasonable); *Masood v. Barr*, No. 19-cv-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (unreasonable where detention extended "for nearly nine months, and there [wa]s no reasonably certain end to [] custody in sight").

Despite knowing that Petitioner's removal proceedings were stayed pending adjudication of her asylum and SIJ Deferred Action eligibility by USCIS—an agency under Respondents' control—Respondents nevertheless argued that the length of future detention factor should be neutral, because "USCIS has not yet issued a decision," so "[a]ny estimate of future detention would be speculative." Dkt. 11 at 6. Respondent DHS is responsible for the actions of its subagencies, including USCIS. Had she not won her bond hearing, L.B.O.M. would have remained in detention until either (1) USCIS granted her application(s) for relief, or (2) she exhausted all appeals in her removal proceedings. The lower limit of that detention—the anticipated date by which USCIS would adjudicate L.B.O.M.'s asylum and SIJ Deferred Action eligibility—is uniquely within Respondents' knowledge; the upper limit is over two years. Respondents, who were in the best position to provide this Court with an estimate of when USCIS would adjudicate L.B.O.M.'s applications for relief, made no effort to secure that information, then argued that its absence supported L.B.O.M.'s continued detention. That was unreasonable.

Respondents also asserted that Petitioner's detention did not violate the Due Process Clause without analyzing the conditions of her confinement. Respondents did not attempt to rebut Petitioner's evidence concerning the similarity between the conditions at NWIPC and criminal carceral facilities, nor did they acknowledge that such evidence favors Petitioner. Instead, Respondents stated only that, "[a]s for the third *Banda* factor—conditions of detention, Petitioner

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is detained at the NWIPC." Courts in this District have consistently recognized that the conditions at NWIPC are "similar . . . to those in many prisons and jails," and that this factor favors petitioners. *See, e.g.*, *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *7 (W.D. Wash. Aug. 7, 2020), *R. & R. adopted as modified on other grounds*, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *Toktosunov v. Wamsley*, No. 2:25-cv-1724-TL, 2025 WL 3492858, at *5 (W.D. Wash. Dec. 5, 2025); *Maliwat v. Scott*, No. 2:25-cv-00788-TMC, 2025 WL 2256711, at *6 (W.D. Wash. Aug. 7, 2025); *Amhirra v. Warden, Nw. Det. Ctr.*, No. 2:25-cv-01376-TL, 2025 WL 3718994, at *7 (W.D. Wash. Dec. 23, 2025); *Rahman v. Garland*, No. 2:24-cv-02132-JHC-TLF, 2025 WL 1920341, at *4 (W.D. Wash. June 26, 2025), *R. & R. adopted*, 2025 WL 1919252 (W.D. Wash. July 11, 2025). Respondents have also been specifically advised that merely stating that a petitioner "is detained at NWIPC" is sufficient for courts to find that this factor favors petitioners. *Amhirra*, 2025 WL 3718994, at *7 ("The United States asserts only that Petitioner 'is detained at the NWIPC.' . . . Given the United States' failure to rebut Petitioner's comparison of the NWIPC to prison, the Court finds that the third Banda factor weighs in favor of granting a bond hearing."); *Rahman v. Garland*, No. 2:24-cv-02132-JHC-TLF, 2025 WL 1920341, at *4 (W.D. Wash. June 26, 2025), *R. & R. adopted*, 2025 WL 1919252 (W.D. Wash. July 11, 2025) (similar). Respondents' refusal to admit this factor favored Petitioner was unreasonable.

Finally, Respondents' argument that the procedural protections of *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), were not required lacked any basis in law. Respondents did not attempt to distinguish this case from the cases cited by Petitioner holding that DHS must bear the burden of proof by clear and convincing evidence at a bond hearing. Dkt. 11 at 7; Dkt. 1 ¶66 (listing cases). Respondents cannot show their position was substantially justified.

III. No Special Circumstances Render an Award Unjust.

EAJA provides that fees must be awarded to a prevailing party unless "special circumstances" would make such an award unjust. 28 U.S.C. § 2412(d)(1)(A). The government

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bears the burden to establish the existence of such circumstances. *Love*, 924 F.2d at 1495. Here, the government cannot point to any special circumstances that would defeat the fee award.

IV. The Requested Fees and Costs Are Reasonable.

Petitioner requests fees and costs at the statutory EAJA rate, adjusted for cost of living in the Ninth Circuit, for time reasonably expended by the attorneys working on this case. *See* 28 U.S.C. § 2412(d)(2)(A). The applicable statutory rate adjusted for inflation is $258.46 for work performed in 2025 and 2026. *See* United States Courts for the Ninth Circuit, Statutory Maximum Rates Under the Equal Access to Justice Act, https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (last visited April 24, 2026). Counsel's declaration and itemized billing records, submitted contemporaneously, reflect the hours worked and the applicable statutory rate. *See* Rey Decl. & Ex. A. Petitioner also seeks reimbursement of $5.00 in filing fees and any other taxable costs under 28 U.S.C. § 1920, and fees for time spent preparing this fee application, *see Comm'r, INS v. Jean*, 496 U.S. 154, 163–65 (1990).

CONCLUSION

For the foregoing reasons, the Court should award fees in the amount requested of $10,550.17, in addition to fees for any time spent preparing a reply brief if Respondents oppose this motion.

Dated this 1st day of May, 2026.

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**I certify that this memorandum contains 2,083 words, in compliance with the Local Civil Rules.*

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