

Magistrate Judge S. Kate Vaughan

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

FRANCISCO HILARIO FRANCISCO
FRANCISCO,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02738-SKV

FEDERAL RESPONDENTS'
RESPONSE TO PETITIONER'S
MOTION FOR EAJA FEES AND COST

Federal Respondents respectfully oppose Petitioner's Motion for Attorney Fees and Costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Although Respondents do not contest that Petitioner is a prevailing party they assert that their position was substantially justified and contest the amount of fees and costs requested.

Petitioner seeks \$8,865.00 in attorney fees plus \$254 in costs, for a total award of \$9,119. While Petitioner prevailed on the habeas petition challenging re-detention, the requested amount is excessive and unreasonable. Respondents respectfully recommend that the Court award no more than \$5,474.20 in total EAJA fees and costs, consisting of 20 attorney hours at the statutory rate of \$258.46 per hour (\$5,169.20), and \$5 filing fees. For the reasons set forth below, the motion should be denied or in the alternative and the award substantially reduced.

I. STATEMENT OF FACTS

Petitioner, who was detained at the Northwest Immigration and Customs Enforcement Processing Center (NWIPC) in Tacoma, Washington, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging ICE's re-detention following an earlier release. Dkt. No. 1. The petition asserted that the re-detention was unlawful, similar to several similar recent cases Petitioner's counsel has filed. *See e.g. G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014274, at *1 (W.D. Wash. Oct. 8, 2025), *report and recommendation adopted*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014035 (W.D. Wash. Oct. 28, 2025); *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *1 (W.D. Wash. Nov. 26, 2025); *L.A.E. v. Wamsley*, No. 3:25-CV-01975-AN, 2025 WL 3485763, at *2 (D. Or. Dec. 4, 2025).

After briefing, including a traverse, the Court granted habeas relief. Dkt. 11. Petitioner timely moved for attorney fees and costs under the EAJA. Dkt. No. 14. Counsel requests compensation at \$258.46 per hour for attorney time, based on the 2025 Inflation Adjusted EAJA Rate for the Ninth Circuit.¹ Petitioner provided a breakdown of hours. The breakdown reflects 34.3 attorney hours for tasks such as legal research, drafting the habeas petition and traverse, filing documents, and pro hac vice procedures. Dkt. 14-2.

Petitioner also seeks \$254 in costs, including \$249 for a pro hac vice filing fee and \$5 habeas filing fee.

II. ARGUMENT

A. Federal Respondents' position was substantially justified

Fees are unavailable if the government demonstrates that its position was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Substantial justification means the position was "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The

¹ <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last accessed April 21, 2026).

1 government need not show it was correct—only that its position had a reasonable basis in law and
2 fact. “That formulation implicitly permits the government some leeway, so long as its conduct on the
3 whole remained justified.” *Ibrahim v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 1048, 1056 (9th Cir.
4 2016).

5 Two circuit courts have considered the applicable statute of detention for noncitizens that
6 enter the United States unlawfully without inspection and are encountered by immigration authorities
7 years later. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026);
8 *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). Both have concluded that
9 such individuals are applicants for admission and subject to detention pursuant to 8 U.S.C. §
10 1225(b)(2)(A). *Buenrostro-Mendez*, 166 F.4th at 507-508; *Avila*, 2026 WL 819258 at *6.

11 Federal Respondents recognize that these decisions are not binding precedent on this Court.
12 However, these decisions demonstrate that there is strong support for Federal Respondents’ position
13 regarding the statutory basis for its position, which should be sufficient to show substantial
14 justification. *Ibrahim*, 835 F.3d at 1056.

15 **B. The Claimed Hours Are Excessive and Not Reasonably Expended**

16 Federal Respondents’ do not contest the proposed rate of \$258.46 per hour. However, the
17 number of hours claimed is excessive and must be substantially reduced. The EAJA authorizes only
18 reasonable attorney fees. 28 U.S.C. § 2412(d)(1)(A). The Supreme Court has placed the burden on
19 the fee applicant to establish the reasonableness of the number of hours expended: The party seeking
20 an award of fees should submit evidence supporting the hours worked and rates claimed. Where the
21 documentation of hours is inadequate, the district court may reduce the award accordingly. *Hensley*
22 *v. Eckerhart*, 461 U.S. 424, 433 (1983) (applied to EAJA fee requests). *Hensley* requires courts to
23 exclude hours that are excessive, redundant, or otherwise unnecessary, and to apply billing judgment
24 to ensure the hours requested reflect what a reasonable attorney would bill a paying client. *Id.* at 434;
see also Gates v. Deukmejian, 987 F.2d 1392, 1397 (9th Cir. 1992). The Ninth Circuit has repeatedly

1 affirmed that district courts have broad discretion to reduce or deny hours that fail this standard. *See*
2 *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948-49 (9th Cir. 2007); *Moreno v. City of Sacramento*,
3 534 F.3d 1106 (9th Cir. 2008).

4 If an attorney files similar pleadings with nearly identical allegations or the amount billed is
5 disproportionate to the complexity, that is a factor to consider in whether an attorney's billed time is
6 excessive. *Eve Nevada, LLC v. Derbyshire*, No. 21-0251-LK, 2022 WL 279030, at *10 (W.D. Wash.
7 Jan. 31, 2022).

8 The time in this case is excessive on its face for the limited scope of the litigation. This case
9 involved a noncitizen encountered at the border, charged with removal in immigration proceedings,
10 released, then redetained by immigration authorities. Dkt. 11, pg. 2-3. Petitioner's legal counsel has
11 several, recent nearly identical cases. *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL
12 3014274, at *1 (W.D. Wash. Oct. 8, 2025), *report and recommendation adopted*, No. 2:25-CV-01255-
13 JNW-TLF, 2025 WL 3014035 (W.D. Wash. Oct. 28, 2025); *P.T. v. Hermosillo*, No. C25-2249-KKE,
14 2025 WL 3294988, at *1 (W.D. Wash. Nov. 26, 2025); *L.A.E. v. Wamsley*, No. 3:25-CV-01975-AN,
15 2025 WL 3485763, at *2 (D. Or. Dec. 4, 2025).

16 Prior awards by a court in this District in similar immigration re-detention habeas cases
17 confirm that 18–25 attorney hours is a more reasonable benchmark for counsel for these types of
18 cases. In *Zavorin v. Wamsley*, 2:26-CV-00173-DGE, 2026 WL 309733 (W.D. Wash. Feb. 5, 2026),
19 the court awarded \$4,859.05 in EAJA attorney fees. At the applicable statutory maximum rate of
20 \$258.46 per hour, this equates to roughly 18–19 attorney hours for analogous detention-related habeas
21 briefing. A reasonable expenditure of time in this matter, particularly where Petitioner's legal counsel
22 has recently litigated nearly identical claims, would total no more than 18–25 attorney hours..

23 Because Petitioner has not met its burden under *Hensley* to demonstrate that all claimed hours
24 were reasonably expended, Petitioner's legal counsel has recently filed nearly identical claims, and
other similar cases have requested a more reasonable rate, Petitioner's reasonable fee should be

1 reduced to 20 hours, or \$5,169. Such a reduction would bring the compensable attorney time in line
2 with the hours that would be reasonable for this straightforward re-detention habeas matter and
3 consistent with prior awards by for similar cases in this District.

4 **C. Most Requested Costs Are Not Recoverable**

5 The Equal Access to Justice Act authorizes only a narrow category of recoverable costs and
6 expenses, expressly limiting any award to those costs enumerated in 28 U.S.C. § 1920 together with
7 other expenses that were both necessarily incurred in the litigation and reasonable in amount. 28
8 U.S.C. § 2412(d)(1)(A). This limitation is strictly construed because the United States has waived
9 sovereign immunity only to the extent expressly provided by statute, and any ambiguity must be
10 resolved in favor of the government. *See Chertoff*, 553 U.S. at 578 (EAJA cost recovery is confined
11 to litigation-related expenses and does not extend to personal or non-essential expenditures); *Hensley*,
12 461 U.S. at 437 (the same exacting documentation and reasonableness requirements that govern
13 attorney fees apply with equal force to costs). The fee applicant bears the burden of proving that each
14 claimed expense falls within these statutory categories and was both necessary and reasonable; failure
15 to make that showing requires disallowance. *Nadarajah*, 569 F.3d at 921 (non-recoverable expenses
16 must be disallowed). Petitioner's request for \$249 in Pro Hac Vice costs falls short of this burden.
17 *Kalitta Air L.L.C. v. Cent. Texas Airborne Sys. Inc.*, 741 F.3d 955, 958 (9th Cir. 2013) (pro hac vice
18 fees are not taxable costs).

19 The \$249 pro hac vice filing fee is equally non-recoverable because it is an expense personal
20 to counsel's admission to this Court rather than an expense of advancing the case itself.

21 **III. CONCLUSION**

22 For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's
23 motion for EAJA fees and costs in substantial part. substantially reduce the number of compensable
24 hours due to excessiveness, and award no more than 18–25 reasonable attorney hours consistent with
prior awards in this District. The Court should also deny recovery of the pro hac vice fee.

1 DATED this 21st day of April, 2026.

2 Respectfully submitted,

3 s/ Jordan C. Steveson

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