

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Marcelo Gondim, SBN 271302
Gondim Law Corp.
1880 Century Park E, Suite 400
Los Angeles, CA 90067
Telephone: 323-282-7770
Email: court@gondim-law.com

Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

**PABLO JAVIER CONCHA-
GONZALES,**
Petitioner,

v.

KRISTI NOEM et al.
Respondents.

No. 1:26-cv-00001-CNS

**NOTICE OF MOTION AND MOTION
FOR ATTORNEY'S FEES AND
COSTS UNDER THE EQUAL
ACCESS TO JUSTICE ACT**

1 PLEASE TAKE NOTICE that on as soon thereafter as the matter may be heard
2 before the Honorable Robert S. Hue, United States District Judge, in Courtroom
3 A738/A702 of the United States District Court for the District of Colorado, located at
4 Alfred A. Arraj United States Courthouse 901 19th Street, Denver, CO 80294, Petitioner
5 will and hereby does move the Court for an award of attorney's fees and costs pursuant
6 to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.
7

8 Petitioner seeks an award of reasonable attorney's fees and costs incurred in
9 connection with this action in the total amount of \$7,072.91, consisting of \$7,047.91 in
10 attorney's fees and \$25.00 in recoverable costs, or such other amount as the Court
11 deems just and proper.
12

13 This Motion is made on the grounds that Petitioner is the prevailing party, the
14 position of the United States was not substantially justified, and no special circumstances
15 exist that would make an award unjust. The fees and costs requested are reasonable
16 and supported by reconstructed time records, declarations of counsel, and the record in
17 this case.
18

19 This Motion is based upon this Notice of Motion and Motion, the accompanying
20 Memorandum of Points and Authorities, the Declarations of Counsel and supporting
21 exhibits, the pleadings and records on file in this action, and upon such further argument
22 and evidence as may be presented at the hearing.
23
24
25
26
27
28

1 Respectfully submitted on February 24, 2026.

2
3 

4 _____
5 Marcelo Gondim (SBN 271302)
6 Gondim Law Corp.
7 1880 Century Park E, Suite 400
8 Los Angeles, CA 90067
9 Phone: (323) 282-7770
10 Email: Court@gondim-law.com

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Counsel for Petitioner

1 Marcelo Gondim, SBN 271302
2 Gondim Law Corp.
3 1880 Century Park E, Suite 400
4 Los Angeles, CA 90067
5 Telephone: 323-282-7770
6 Email: court@gondim-law.com

7 Counsel for Petitioner

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

**PABLO JAVIER CONCHA-
GONZALES,**
Petitioner,

v.

KRISTI NOEM et al.
Respondents.

No. 1:26-cv-00001-CNS

**PETITIONER'S MOTION FOR
ATTORNEY'S FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT
(28 U.S.C. § 2412(d))**

Petitioner, through undersigned counsel, respectfully submits this Motion for Attorney's Fees Under the Equal Access to Justice Act (28 U.S.C. § 2412(d), following this Court's Order Granting Petition for Writ of Habeas Corpus entered on January 26, 2026, Order (ECF No. 9).

INTRODUCTION

1 Petitioner Mr. Pablo Javier Concha-Gonzales respectfully moves for an award of
2 attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28
3 U.S.C. §2412(d).

4 Petitioner prevailed in this action when the Court held that Respondents
5 unlawfully subjected him to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and
6 ordered Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C.
7 § 1226(a) within seven (7) days. The relief ordered was the precise relief sought in
8 the habeas petition.
9

10 Because Petitioner is a prevailing party, the government's position was not
11 substantially justified, and no special circumstances render an award unjust, Petitioner
12 is entitled to reasonable attorney's fees and costs under the EAJA.

13 **FACTUAL BACKGROUND**

14 Petitioner Pablo Javier Concha-Gonzales filed this habeas action after being
15 unlawfully detained by ICE despite having complied with all immigration requirements
16 since his entry into the United States. Petitioner entered the country on March 19, 2022,
17 immediately turned himself in to immigration authorities, and was released on his own
18 recognizance after being issued a Notice to Appear. He was neither detained nor
19 granted parole under INA § 212(d)(5). For more than two years following his release,
20 Petitioner maintained full compliance with immigration authorities, had no criminal
21 history, and posed no danger to the community.
22

23 Following his arrest, ICE detained Petitioner and transferred him to the Denver
24 Contract Detention Facility in Aurora, Colorado and classified him as subject to
25

1 mandatory detention under 8 U.S.C. § 1225(b)(2)(A), thereby denying him any
2 opportunity for a bond hearing. When Petitioner sought a custody redetermination, the
3 Immigration Judge declined jurisdiction based on Respondents' erroneous statutory
4 interpretation.

5 On January 1, 2026, Petitioner filed a habeas petition under 28 U.S.C. § 2241,
6 challenging the legality of his detention and asserting that he was entitled to a bond
7 hearing under 8 U.S.C. § 1226(a).

8 Respondents opposed the petition, arguing that the Court lacked jurisdiction
9 under 8 U.S.C. §§ 1252(g) and 1252(b)(9) and that Petitioner was properly detained
10 under § 1225(b)(2)(A).
11

12 After full briefing, this Court rejected Respondents' jurisdictional arguments,
13 conducted a detailed statutory analysis, and held that:
14

- 15 • Petitioner's habeas claim was not jurisdictionally barred;
- 16 • Petitioner was not an "applicant for admission ... seeking admission" within the
17 meaning of § 1225(b)(2)(A); and
- 18 • § 1226(a) governed Petitioner's detention as the default rule for noncitizens
19 already present in the United States.
20

21 Accordingly, the Court granted the writ and ordered Respondents to provide
22 Petitioner with a bond hearing within seven days. (ECF No. 7.)
23

24 LEGAL STANDARD

1 The EAJA mandates that a court shall award to a prevailing party, other than
2 the United States, fees and expenses incurred in a civil action brought by or against
3 the United States, unless the government shows that its position was "substantially
4 justified" or that special circumstances make an award unjust. 28 U.S.C. §
5 2412(d)(1)(A).
6

7 To obtain fees, a petitioner must demonstrate:

- 8 1. it is a prevailing party;
- 9 2. it meets the net-worth eligibility requirements;
- 10 3. the government's position was not substantially justified; and
- 11 4. the application is timely and supported by itemized statements of time
12 and costs.

13 ARGUMENTS

14 PETITIONER QUALIFIES AS PREVAILING PARTY UNDER EAJA

15
16 Petitioner qualifies as a "prevailing party" under the EAJA because the relief he
17 obtained, his release from ICE custody, occurred only after this habeas action was
18 filed and judicial review commenced. This Court granted the habeas petition and
19 ordered Respondents to provide Petitioner with a bond hearing under § 1226(a),
20 rejecting the government's detention authority under § 1225(b)(2)(A). That relief was
21 not voluntary, not administrative, and not incidental, it was the result of a merits
22 determination by this Court.
23
24
25
26
27
28

1 A petitioner who obtains habeas relief ordering a bond hearing is a prevailing
2 party for EAJA purposes. See *Nadarajah v. Holder*, 569 F.3d 906, 915–16 (9th Cir.
3 2009).

4 Petitioner's application for EAJA fees is timely and procedurally proper. Ninth
5 Circuit precedent recognizes that EAJA applications are not premature where, as
6 here, the primary relief sought has already been obtained. *Lizardi v. Wilkinson*, 986
7 F.3d 1294. The EAJA further specifies that attorney's fees are calculated based on
8 prevailing market rates for comparable legal services, subject to statutory limits that
9 may be exceeded upon adequate justification. 28 U.S.C. § 2412.

10 Unlike cases in which an attorney's-fees request is too speculative to support
11 jurisdiction, Petitioner's EAJA claim presents a concrete monetary interest that
12 preserves this Court's authority to adjudicate the fee dispute. The EAJA's statutory
13 framework specifically contemplates fee awards in cases involving judicial intervention
14 in agency detention decisions, regardless of whether the agency ultimately acts
15 following the litigation. 28 U.S.C. § 2412.

16
17
18
19 **THE GOVERNMENT'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED**

20 The government bears the burden of proving substantial justification. *Thangaraja*
21 *v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005). Respondents insisted that Petitioner
22 was subject to mandatory detention under § 1225(b)(2)(A), despite the statutory
23 requirement that the noncitizen be "seeking admission." As this Court explained,
24 accepting the government's interpretation would render statutory language surplusage
25

1 and collapse the distinction between §§ 1225 and 1226, an interpretation rejected by
2 the Supreme Court in *Jennings v. Rodriguez* and by the overwhelming majority of
3 district courts nationwide.

4 At the time Respondents litigated this case, numerous courts had already held
5 that noncitizens arrested inside the United States after extended residence are
6 governed by § 1226(a), not § 1225(b)(2)(A). Respondents nevertheless advanced an
7 interpretation that this Court correctly found inconsistent with statutory text, Supreme
8 Court precedent, and persuasive authority.

9 Respondents' reliance on §§ 1252(g) and 1252(b)(9) was also not substantially
10 justified. The Supreme Court has repeatedly held that these provisions do not bar
11 habeas challenges to detention itself a principle reaffirmed by this Court.

12 Where the government's position is rejected on the merits after full judicial
13 review, and where that position conflicts with controlling precedent, it is not
14 substantially justified. *Meier v. Colvin*, 727 F.3d 867, 872 (9th Cir. 2013).
15
16

17 18 **REQUESTED FEES AND COSTS**

19 **A. Explanation of Flat-Fee Arrangement**

20 Petitioner's counsel handles § 2241 habeas corpus detention matters on a flat-
21 fee basis, rather than hourly billing. In this case, Petitioner engaged counsel under a
22 flat-fee arrangement for the filing and litigation of his habeas petition challenging his
23 unlawful detention by U.S. Immigration and Customs Enforcement.
24
25

1 Because counsel does not bill habeas detention matters by the hour,
2 contemporaneous time records were not maintained in the ordinary course of
3 representation. Flat-fee arrangements are common in immigration detention litigation
4 due to the urgent nature of habeas proceedings and the need for immediate and
5 intensive legal work within compressed timeframes.

6
7 For purposes of this EAJA fee application, Petitioner's counsel has prepared a
8 reasonable reconstruction of the hours expended on this litigation. The itemized
9 statement reflects the time reasonably necessary to investigate the facts of
10 Petitioner's detention, research jurisdictional and statutory detention issues, draft and
11 revise the habeas petition and supporting pleadings, prepare the reply brief, review
12 Respondents' return, and litigate the matter through the Court's Order Granting the
13 Writ of Habeas Corpus.

14
15 The reconstructed hours are calculated using the applicable EAJA statutory
16 rates, including an enhanced rate for Attorney Marcelo Gondim where justified by
17 specialized expertise in immigration detention and federal habeas litigation, and
18 standard EAJA rates for associate attorneys and paralegal staff, consistent with 28
19 U.S.C. § 2412(d)(2) and Ninth Circuit precedent.

20 **B. Enhanced Rates for Specialized Knowledge**

21 Enhanced rates are warranted under the EAJA's special-factor exception
22 because undersigned counsel possesses distinctive knowledge and specialized skill
23 essential to this litigation and unavailable elsewhere at the statutory rate. See *Pirus v.*
24 *Bowen*, 869 F.2d 536 (9th Cir. 1989).
25

1 Counsel, Marcelo Gondim, has specialized expertise in immigration detention
2 litigation and federal habeas corpus practice, including challenges to prolonged and
3 unlawful detention under 8 U.S.C. §§ 1225 and 1226, jurisdictional issues under 8
4 U.S.C. § 1252, and statutory interpretation of complex immigration detention
5 schemes. This specialized knowledge was critical to addressing the government's
6 jurisdictional defenses and to prevailing on the merits of Petitioner's claim that he was
7 unlawfully subjected to mandatory detention under § 1225(b)(2)(A).
8

9 This case required nuanced analysis of Supreme Court and Ninth Circuit
10 precedent, particularly *Jennings v. Rodriguez* and its progeny, and familiarity with
11 rapidly evolving district-court authority nationwide regarding the distinction between §
12 1225 and § 1226 detention. Such expertise is not commonly available at the EAJA
13 statutory rate.
14

15 Accordingly, Petitioner requests an enhanced hourly rate of \$325.00 for Attorney
16 Gondim, which is reasonable and justified under the Ninth Circuit's three-part test for
17 special-factor enhancements and reflects the specialized skill required to obtain the
18 successful habeas relief ordered by this Court.

19 **C. Summary of Fees and Costs (Reconstructed Hours)**

20 **Attorney Marcelo Gondim — Hourly Rate: \$325.00**

Task Description	Hours
Client consultations regarding detention, procedural posture, and habeas strategy	2.00

Task Description	Hours
Communications with client's family regarding case status and detention issues	3.50
Legal research and drafting, and revision of Petition for Writ of Habeas Corpus	4.70
Review of filings, litigation strategy, and supervision of case	1.50
Drafting and Revision of Reply to Response to Petition	2.00
Total	13.70

Attorney Katherine Souza Pereira — Hourly Rate: \$244.62

Task Description	Hours
Review of administrative and detention-related records	1.50
Communications with client's family regarding procedural developments	1.00
Drafting Motion for Attorney's Fees under EAJA	3.00
Total	5.50

Paralegal Staff — Hourly Rate: \$125.00

Task Description	Hours
Obtaining and organizing client documents and detention records	3.00
Communications with client's immigration court counsel	2.50
Monitoring immigration court docket and filings	1.00
Filing support and case management for habeas pleadings	2.00
Reconstruction of time records for EAJA motion	1.50
Total	10.00

Summary of Attorney's Fees

Role	Hours	Hourly Rate	Subtotal
Attorney Marcelo Gondim	13.70	\$325.00	\$4,452.50
Attorney Katherine Souza Pereira	5.50	\$244.62	\$1,345.41

Role	Hours	Hourly Rate	Subtotal
Paralegal Staff	10.00	\$125.00	\$1,250.00
Total Attorney's Fees			\$7,047.91


Costs and Expenses

Description	Amount
Legal research expenses	\$20.00
CM/ECF filing fee	\$5.00
Total Costs	\$25.00

Total EAJA Award Requested

Category	Amount
Attorney's Fees	\$7,047.91
Costs	\$25.00

Category	Amount
Total	\$7,072.91

Note: The total above reflects reconstructed hours for EAJA purposes only. Petitioner's counsel charges a flat fee of  and did not track time contemporaneously.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Motion and award attorney's fees and costs in the total amount of \$7,072.91 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). Plaintiff further requests that payment be made directly to Gondim Law Corp. pursuant to the executed assignment of fees and for such other relief as the Court deems just and proper.

Respectfully submitted on February 24, 2026.



 Marcelo Gondim (SBN 271302)
 Gondim Law Corp.
 1880 Century Park E, Suite 400
 Los Angeles, CA 90067
 Phone: (323) 282-7770
 Email: Court@gondim-law.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2026, I electronically filed the foregoing
PETITIONER'S MOTION FOR ATTORNEY'S FEES UNDER THE EQUAL ACCESS
TO JUSTICE ACT (28 U.S.C. § 2412(d)) by using the CM/ECF system, in
accordance with U.S. District Court for the Southern District of California's CM/ECF
Administrative Procedures and Local Rules. Notice of this filing will be sent out to all
parties by operation of the Court's electronic filing system.



Marcelo Gondim (SBN 271302)
Gondim Law Corp.
1880 Century Park E, Suite 400
Los Angeles, CA 90067
Phone: (323) 282-7770
Email: Court@gondim-law.com

Counsel for Petitioner