Magistrate Judge Brian A. Tsuchida

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

N.S.,

Petitioner,

v.

LAURA HERMOSILLO, *et.al.*,

Respondents.

Case No. 2:26-cv-00161-BAT

RESPONSE TO PETITIONER'S APPLICATION FOR ATTORNEY'S FEES UNDER EAJA

INTRODUCTION

Respondents oppose Petitioner's application for an award of attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (Dkt. No. 14), to the extent it seeks recovery of fees at an enhanced hourly rate any award of the pro hac vice fee Accordingly, Respondents respectfully ask the Court to reduce the fees requested to reflect the true EAJA statutory rate of $258.46, which would result in award of $2,850.48.

BACKGROUND

Petitioner N.S. filed a habeas petition challenging his detention by United States Customs and Immigration Enforcement (ICE). The Court granted the habeas petition on February 6, 2026. Dkt.11.

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On March 6, 2026, Petitioner's counsel filed an application for attorneys' fees under EAJA requesting an award of $6,136.50 in attorney's fees and cost, $5,720.00 of which was attributable to enhanced hourly rates for the sole attorney who represented Petitioner. Dkt. 14 and 12. As discussed below, Respondents oppose Petitioner's request to the extent it seeks the recovery of fees at an enhanced hourly rate because Petitioner has not demonstrated an entitlement to the enhanced rates he requests. Additionally, Respondents oppose Petitioner's request for reimbursement of pro hac vice cost.

ARGUMENT

A party may recover EAJA fees and costs only if (1) the party prevailed in the action, (2) the government's position was not "substantially justified" and no special circumstances would make an award unjust, (3) the requested fees and costs are reasonable, and (4) the party filed a timely, supported application. *See* 28 U.S.C. § 2412(b), (d); *United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009). To be found a prevailing party, "a party must successfully obtain a judicially sanctioned material alteration of his or her legal relationship with the United States." *Pabla v. U.S. Citizenship & Immigration Servs.*, 2:18-cv-01660-BAT, 2019 WL 1436872, at *2 (W.D. Wash. Apr. 1, 2019) (collecting cases). Here, Respondents oppose Petitioner's application to the extent it seeks fees calculated using an enhanced hourly rate and recovery of pro hac vice cost.

Petitioner carries "the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1982). Under EAJA, a district court may not award attorney's fees "in excess of $125 per hour unless the court determines that an increase for the cost of living or special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii); *see Pierce v. Underwood*, 487 U.S. 552, 573 (1988) (narrowly construing

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exception to exceed EAJA statutory rate cap). The Ninth Circuit has approved a table of annually adjusted EAJA rates based on the cost of living. The statutory maximum hourly rate for work performed in 2025 is $258.46. *See* https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates (last checked March 11, 2026). Petitioner's counsel billed a total of 10.4 hours. Dkt. 14 at 12. Even if all of that billed time were compensable, the maximum amount they could claim under the adjusted EAJA statutory rate is $2,687.98.

Petitioner has failed to justify his demands for a departure of over double the adjusted EAJA statutory rate. A party seeking enhanced fees must prove all of the following: (1) "the attorney must possess distinctive knowledge and skills developed through a practice specialty," (2) "those distinctive skills must be needed in the litigation," and (3) "those skills must not be available elsewhere at the statutory rate." *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991). Here, regardless of whether Petitioner's counsel have shown they have "distinctive knowledge and skills" that was needed in this litigation, they have not demonstrated that qualified counsel was not available at a rate lower than the $550 an hour they seek to recover. *See Nadarajah v. Holder*, 569 F.3d 906, 913 (9th Cir. 2009). While Petitioner's supporting declarations state that the declaring attorneys are not aware of other experienced attorneys who would have accepted a complex immigration habeas case at the EAJA statutory rate, they do not declare that no attorneys with the requisite experience would have taken on the case for less than $550 an hour. To the contrary, the declarant mentions that he would not have taken the case for the statutory rate and that he is not aware of any lawyer or law firm willing to accept federal habeas cases at the statutory rate. Dkt. 14, at 11 ¶ 7. Indeed, Petitioner's counsel misquoted the statutory fee cap for 2025 as $251.84 when the actual statutory fee cap for 2025 is $258.46.

Without ever identifying the hourly rates they actually charge their clients, Petitioner's counsel claims that "based on recent fee awards in this District and the 2022 Oregon State Bar

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Economic Survey, I believe that $550.00 per hour is a reasonable prevailing market fee for the 10.4 hours of legal services I performed in this case, and $125.00 per hour is a reasonable rate for the 1.3 hours of paralegal support." Dkt. 14, at 11 ¶ 9.

Accordingly, Petitioner has not established that he is entitled to a departure from the EAJA statutory cap, let alone a rate of over double the cap, and he has not suggested any other calculation that might apply. Thus, the Court should deny his request for enhanced rates.

Finally, Petitioner's request for $254 in costs must be denied in relevant part. While the civil filing fee may be recoverable, the pro hac vice admission fee is not recoverable under any provision of the EAJA. The Ninth Circuit has squarely held that pro hac vice fees are not recoverable as "costs" under 28 U.S.C. § 1920(1) or Fed. R. Civ. P. 54(d). *Kalitta Air L.L.C. v. Central Texas Airborne Sys., Inc.*, 741 F.3d 955, 957-58 (9th Cir. 2013) (per curiam). They likewise do not qualify as "other expenses" under 28 U.S.C. § 2412(d)(2)(A), which is limited to expert-witness fees and necessary studies or reports. Because the motion does not separate the two components, the entire $254 request should be denied, or at minimum the $249.00 pro hac vice portion must be denied.

DATED this 11th day of March 2026.

Respectfully submitted,

s/ Lawrence Van Daley
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