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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

John Jairo Galvis Viancha,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

EVAN TJADEN, in his official capacity as
Acting ICE Field Deputy Officer Director,

Mike Smith, in his official capacity as the
warden of the Utah County Jail,

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: **2:26-cv-00059-HCN**

REPLY TO RESPONDENTS' RESPONSE
TO PETITIONER'S VERIFIED PETITION
FOR HABEAS CORPUS AND
DECLARATORY ACTION

IMMIGRATION HABEAS CASE

1 **REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S VERIFIED PETITION FOR**
2 **HABEAS CORPUS AND DECLARATORY ACTION**

3 **I. THE CASE ISN OT MOOT AND SHOULD NOT BE DISMISSED**

4 Respondents' motion to dismiss rests principally on mootness, asserting that withdrawal of the
5 immigration detainer after this action was filed eliminates any live controversy. That position is
6 inconsistent with governing mootness doctrine and the undisputed factual record. A case becomes moot
7 only when it is "impossible for a court to grant any effectual relief whatever to the prevailing party."
8 *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012). Moreover, a defendant's
9 voluntary cessation of challenged conduct does not moot a case unless it is "absolutely clear that the
10 allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v.*
11 *Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). Because the immigration detainer caused
12 Petitioner's continued restraint on liberty and because Respondents ceased the challenged conduct only
13 after federal litigation commenced, this case remains justiciable and should not be dismissed.
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17 The factual record confirms that a live controversy existed at the time of filing and that the
18 federal immigration detainer, not independent state custody, caused Petitioner's continued detention.
19 Utah County jail records show that Petitioner was held on an ICE hold with no bail available,
20 demonstrating that the federal detainer operated as the controlling restraint on his liberty. Ex. 2. The
21 accompanying declaration establishes that defense counsel did not request revocation of bond, that the
22 previously issued \$1,380 bond was never revoked, and that Petitioner's inability to accept release
23 stemmed from the ICE hold and the risk of immediate transfer to immigration detention. Exs. 1 and 3.
24 These undisputed facts foreclose Respondents' contention that state criminal custody independently
25 rendered the habeas petition moot and confirm that the challenged federal detainer created the operative
26 restraint on liberty. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (habeas jurisdiction extends
27 to restraints on liberty short of physical federal custody).
28

1 Nor does Respondents' post-filing withdrawal of the detainer extinguish the controversy. The
2 declaration documents repeated pre-litigation efforts, beginning January 8, 2026, to secure removal of
3 the ICE hold through communications with federal authorities, all of which went unanswered or
4 produced no relief. Ex. 1. Only after this habeas action and emergency motion were filed did
5 Respondents withdraw the detainer and invoke mootness. Where litigation itself produces cessation of
6 the challenged conduct, the controversy remains live for purposes of judicial resolution, including
7 declaratory relief and fee-shifting consequences. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)
8 (voluntary cessation moots a case only if it is clear the conduct cannot reasonably recur); *Knox*, 567
9 U.S. at 307 (post-filing cessation does not automatically moot a case).

10 Finally, the minor state criminal charges present at the time of detention do not supply an
11 independent basis for federal immigration custody. Jail records reflect bailable misdemeanor
12 allegations rather than offenses mandating continued detention. Ex. 2. Contemporaneous
13 communications to federal authorities likewise explained that Petitioner was lawfully present in valid
14 F-1 status, had no known visa violations, and faced charges that would not render him removable even
15 if proven. Ex. 1. Civil immigration detention must be grounded in statutory authority tied to
16 removability, not mere arrest or speculative future enforcement. *See Zadvydas v. Davis*, 533 U.S. 678,
17 690 (2001).

18 Respondents conflate two distinct legal concepts: a state-law notation that a charge "involves
19 domestic violence" and the federal categorical determination of whether an offense qualifies as a
20 removable "crime of domestic violence" under 8 U.S.C. § 1227(a)(2)(E)(i). Federal immigration law
21 does not look to charging labels, arrest narratives, or state docket annotations. Instead, removability
22 turns on the categorical approach, which examines only the statutory elements of the offense and asks
23 whether the minimum conduct criminalized necessarily involves the intentional use of violent force

1 against a qualifying domestic victim. *See Leocal v. Ashcroft*, 543 U.S. 1, 7–11 (2004) (requiring the
2 use of “physical force” in the federal sense); *United States v. Zuniga-Soto*, 527 F.3d 1110, 1124 (10th
3 Cir. 2008) (emphasizing that reckless or non-violent conduct falls outside the federal definition). A
4 state-law domestic-violence designation, standing alone, is therefore legally irrelevant to the
5 removability inquiry.
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8 Under that framework, the Utah assault statute is both overbroad and divisible, and its minimum
9 conduct, particularly under Utah Code § 76-5-102(1)(b), does not require the intentional use of violent
10 force as federal law demands. Because the statute permits conviction based on conduct that falls short
11 of the federal crime-of-violence definition, a conviction under the statute cannot categorically
12 constitute a removable crime of domestic violence. *See Leocal*, 543 U.S. at 11; *Zuniga-Soto*, 527 F.3d
13 at 1124. Accordingly, ICE could not lawfully rely on the assault charge as a basis for detention or
14 removability under § 1227(a)(2)(E)(i), and Respondents’ reliance on a state domestic-violence notation
15 reflects a fundamental misunderstanding of the governing categorical analysis.
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18 Because the immigration detainer caused Petitioner’s injury, because Respondents withdrew
19 that detainer only after suit was filed, and because effective judicial relief, including declaratory relief
20 and attorney’s fees, remains available, this case is not moot. The Court should therefore deny
21 Respondents’ motion to dismiss and proceed to judgment on the merits.
22

23 **II. PETITIONER IS ENTITLED TO EAJA FEES**

24 **a. Statutory Basis for Fees**

25 The Equal Access to Justice Act (“EAJA”) provides that a court shall award reasonable
26 attorney’s fees and expenses to a prevailing party in a civil action brought against the United States,
27 unless the Government demonstrates that its position was substantially justified or that special
28 circumstances would make an award unjust. 28 U.S.C. § 2412(d)(1)(A). A habeas action challenging

1 unlawful federal detention or restraint on liberty constitutes a “civil action” within the meaning of the
2 statute, and EAJA therefore authorizes a fee award where the statutory criteria are satisfied.
3

4 To obtain fees under EAJA, a petitioner must show that: (1) he is the prevailing party; (2) the
5 Government’s position was not substantially justified in law or fact; and (3) no special circumstances
6 render a fee award unjust. *See* 28 U.S.C. § 2412(d)(1)(A). Once prevailing-party status is established,
7 the burden shifts to the Government to demonstrate substantial justification. Because EAJA is a
8 remedial statute designed to deter unreasonable governmental action and to ensure meaningful access
9 to judicial review when federal officials impose unlawful restraints on liberty, its provisions are to be
10 applied in a manner consistent with those purposes.
11
12

13 This action falls squarely within EAJA’s scope. Petitioner initiated this habeas proceeding to
14 challenge an immigration detainer that restrained his liberty and mandated continued or imminent
15 federal custody despite the absence of statutory detention authority. Respondents later withdrew the
16 detainer and relied on that withdrawal to argue that the case had become moot.
17

18 Where litigation prompts the Government to provide the very relief sought, EAJA’s fee-shifting
19 framework applies to compensate the prevailing party for the costs required to secure that result.
20

21 Accordingly, because this case is a civil action against the United States and because Petitioner
22 obtained relief as a result of this litigation, EAJA provides the governing statutory basis for an award
23 of reasonable attorney’s fees and expenses.

24 **b. Petitioner Is a “Prevailing Party” Despite Mootness**

25 The Equal Access to Justice Act authorizes attorney’s fees for a party who secures a judicially
26 cognizable, material alteration in the legal relationship between the parties. *See Texas State Teachers*
27 *Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93 (1989). Although prevailing-party status
28 ordinarily requires relief bearing a judicial imprimatur, the Supreme Court has emphasized that the

1 touchstone of the inquiry is whether the plaintiff obtained concrete relief that redressed the challenged
2 governmental conduct and changed the parties' legal relationship in a meaningful way. *See*
3 *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 603–04
4 (2001). EAJA likewise recognizes prevailing-party status where litigation produces the relief sought,
5 even absent a full merits adjudication. *See Shalala v. Schaefer*, 509 U.S. 292, 300–01 (1993).
6

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8 That standard is satisfied here. Petitioner filed this habeas action to challenge an immigration
9 detainer that restrained his liberty and mandated his continued or imminent transfer into federal
10 immigration custody despite the absence of statutory detention authority. Only after this action and the
11 accompanying emergency motion were filed did Respondents withdraw the detainer and invoke that
12 withdrawal as a basis for mootness.
13

14 The detainer's removal provided Petitioner the precise relief requested in the petition,
15 elimination of the unlawful federal restraint on his liberty, and therefore materially altered the legal
16 relationship between the parties as a direct consequence of this litigation.
17

18 Courts consistently reject attempts by the Government to evade fee liability through post-filing
19 voluntary cessation of unlawful conduct. *Commissioner, INS v. Jean*, 496 U.S. 154, 163 (1990);
20 *Friends of the Earth, Inc. v. Laidlaw*, 528 U.S. 167, 189 (2000); *Palmetto Properties, Inc. v. County of*
21 *DuPage*, 375 F.3d 542, 549 (7th Cir. 2004). Allowing the Government to impose an unlawful restraint
22 on liberty, maintain that restraint for an extended period, and then unilaterally provide the requested
23 relief only after litigation begins, while simultaneously asserting mootness to avoid fees, would
24 undermine EAJA's core remedial purpose. EAJA exists to ensure that individuals forced to resort to
25 federal court to halt unlawful governmental action are not left bearing the financial burden once the
26 Government belatedly complies with the law. *See Commissioner, INS v. Jean*, 496 U.S. 154, 163 (1990)
27 (EAJA is intended to eliminate deterrents to challenging unreasonable governmental conduct).
28

1 The chronology of events confirms the causal relationship between this suit and the relief
2 obtained. Before filing, the immigration detainer remained in place and continued to restrain
3 Petitioner’s liberty. Respondents declined to remove that restraint despite notice and opportunity to do
4 so. Only after judicial intervention was sought through this habeas proceeding did Respondents
5 withdraw the detainer and assert mootness. This sequence demonstrates that the litigation, not
6 voluntary government compliance independent of suit, produced the relief Petitioner obtained.
7

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9 Under settled prevailing-party principles, the Government cannot avoid EAJA liability by
10 providing the requested relief after months of unlawful restraint and then invoking mootness as a shield
11 against fees. Because this action achieved the very objective for which it was brought—the termination
12 of the unlawful immigration detainer, Petitioner qualifies as a prevailing party within the meaning of
13 28 U.S.C. § 2412(d)(1)(A).
14

15 Accordingly, the first statutory requirement for an EAJA fee award is satisfied.
16

17 **c. The Government’s Position Was Not Substantially Justified**

18 Under the Equal Access to Justice Act, even where the Government does not contest prevailing-
19 party status, fees must be awarded unless the Government demonstrates that its position was
20 “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). The Government bears the burden of proof on this
21 issue. *See Scarborough v. Principi*, 541 U.S. 401, 414 (2004). To satisfy that burden, the Government
22 must show that its position had a reasonable basis in both law and fact—meaning it was justified to a
23 degree that could satisfy a reasonable person. *See Pierce v. Underwood*, 487 U.S. 552, 565 (1988).
24 Where the Government’s conduct lacks a reasonable legal foundation or where litigation was required
25 to secure compliance with governing law, substantial justification is absent and EAJA fees are required.
26
27 *See Commissioner, INS v. Jean*, 496 U.S. 154, 158–63 (1990).
28

1 The Government cannot meet that standard here. Petitioner initiated this habeas action to
2 challenge an immigration detainer that restrained his liberty despite the absence of statutory detention
3 authority. Rather than defend the legality of the detainer on the merits, Respondents advanced only two
4 procedural arguments: first, that Petitioner's detention was attributable to pending state criminal
5 charges; and second, that the case became moot after ICE lifted the detainer. Neither position provides
6 a reasonable legal or factual basis sufficient to establish substantial justification.
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9 First, the Government never articulated a lawful statutory basis for maintaining the immigration
10 detainer in the first place. EAJA's substantial-justification inquiry evaluates the Government's conduct
11 as a whole, including the underlying agency action that forced the litigation. *See Jean*, 496 U.S. at 159.
12 Here, Respondents did not defend the detainer under any provision of the Immigration and Nationality
13 Act, nor did they identify any ground of removability or detention authority that could justify the federal
14 restraint on Petitioner's liberty. Instead, Respondents abandoned the challenged conduct by
15 withdrawing the detainer after suit was filed.
16

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18 A position that is relinquished rather than defended—particularly where it implicates unlawful
19 restraint of liberty—cannot be considered substantially justified.

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21 Second, the Government's reliance on mootness does not establish substantial justification.
22 Courts repeatedly recognize that post-filing voluntary cessation of unlawful conduct does not
23 retroactively render the Government's prior position reasonable. *See supra*. EAJA's purpose is to
24 eliminate the financial deterrent to challenging unreasonable governmental action, not to reward
25 agencies that comply only after litigation begins. *See Jean*, 496 U.S. at 163. Permitting the Government
26 to impose an unlawful restraint, maintain that restraint for an extended period, and then moot the case
27 through belated compliance, while avoiding fee liability, would undermine EAJA's remedial
28 framework and encourage strategic delay rather than lawful conduct.

1 Third, the chronology of events confirms the absence of substantial justification. Prior to
2 litigation, the immigration detainer remained in place and continued to restrain Petitioner's liberty.
3 Respondents declined to remove the detainer despite notice and opportunity to do so. Only after
4 Petitioner filed this habeas action and sought emergency judicial relief did Respondents withdraw the
5 detainer and assert mootness.
6

7 This sequence demonstrates that the Government's position lacked a reasonable basis and that
8 litigation was necessary to secure compliance with governing law—precisely the circumstance EAJA
9 was enacted to address.
10

11 Because the Government has not shown, and cannot show, that its position was substantially
12 justified in law or fact, the second statutory requirement for an EAJA fee award is satisfied.
13

14 **d. No "Special Circumstances" Make Fees Unjust**

15 Even where a party prevails and the Government's position lacks substantial justification,
16 EAJA permits denial of fees only if "special circumstances make an award unjust." 28 U.S.C. §
17 2412(d)(1)(A). This exception is "narrow" and must be applied consistent with EAJA's remedial
18 purpose of ensuring that individuals are not deterred from seeking judicial review of unreasonable
19 governmental action. See *Commissioner, INS v. Jean*, 496 U.S. 154, 163 (1990). The Government bears
20 the burden of demonstrating such circumstances, and courts apply the exception sparingly to avoid
21 undermining Congress's fee-shifting mandate.
22

23 No special circumstances exist here. Petitioner was compelled to initiate emergency habeas
24 litigation to challenge a federal immigration detainer that restrained his liberty despite the absence of
25 articulated statutory detention authority. Rather than resolve the matter when notice was provided pre-
26 litigation, Respondents maintained the restraint until judicial intervention was sought and then
27 withdrew the detainer only after this action was filed.
28

1 Awarding fees in these circumstances does not create inequity; it fulfills EAJA’s core function
2 of ensuring that individuals forced to litigate to halt unlawful governmental conduct are not left to bear
3 the financial burden of securing compliance with federal law.
4

5 Nor would a fee award impose any unfairness on the Government. EAJA reflects Congress’s
6 considered judgment that, absent substantial justification or truly exceptional circumstances, the public
7 fisc, not the individual subjected to unreasonable governmental action, should bear the cost of litigation
8 required to vindicate federal rights. *See Jean*, 496 U.S. at 163. Denying fees here would invert that
9 principle and effectively reward post-filing voluntary compliance while discouraging prompt
10 adherence to governing law.
11

12 Finally, nothing about the procedural posture of this cas, — including Respondents’ reliance
13 on mootness following withdrawal of the detainer, constitutes a special circumstance. Courts routinely
14 recognize that voluntary cessation of challenged conduct after suit is filed does not render a fee award
15 unjust where litigation was necessary to obtain relief. To hold otherwise would allow agencies to
16 impose unlawful restraints, wait for suit to be filed, and then evade EAJA liability through belated
17 compliance—an outcome incompatible with EAJA’s deterrent and remedial objectives.
18

19 Because Respondents cannot demonstrate any equitable or extraordinary circumstance that
20 would make a fee award unjust, the final statutory prerequisite for EAJA fees is satisfied.
21

22 **e. Reasonableness of Fees (to be supported later)**
23

24 Where a prevailing party satisfies EAJA’s statutory requirements, the Court must award
25 “reasonable attorney fees and expenses.” 28 U.S.C. § 2412(d)(1)(A). Reasonableness is determined
26 under the familiar lodestar framework, which multiplies the number of hours reasonably expended on
27 the litigation by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). EAJA
28 further provides that attorney’s fees shall be based on prevailing market rates, subject to the statutory

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hourly cap as adjusted for increases in the cost of living or other special factors. 28 U.S.C. § 2412(d)(2)(A).

Petitioner will submit, in a forthcoming declaration, detailed contemporaneous billing records establishing the hours reasonably expended in this matter, including time devoted to investigating the unlawful restraint on liberty, preparing the verified habeas petition, drafting the emergency motion for temporary restraining order, effectuating service, reviewing Respondents' filings, and preparing the present EAJA request. The hours incurred were necessary to secure the withdrawal of the immigration detainer and to protect Petitioner from continued unlawful federal restraint. No time included in the forthcoming fee request will be excessive, redundant, or otherwise unnecessary under governing EAJA standards.

Petitioner will also demonstrate that the requested hourly rate complies with EAJA's statutory framework. The fee application will apply the statutory rate, adjusted for cost-of-living increases using the Consumer Price Index, and will be supported by appropriate calculations and authority from this District approving comparable EAJA rates. *See* 28 U.S.C. § 2412(d)(2)(A).

Finally, the total requested award will reflect only those fees and expenses reasonably incurred in achieving the relief obtained through this litigation. Because the work performed was directly tied to securing withdrawal of the detainer and vindicating Petitioner's liberty interests, the forthcoming lodestar calculation will represent a reasonable and fully compensable EAJA award.

Petitioner will submit a supplemental declaration and detailed fee computation within the time permitted by the Court or by applicable rule.

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DATED: February 10, 2026.

Respectfully submitted,

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