UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-0276-WJM-TPO

JOSE PEDRO AARON ALVAREZ HERNANDEZ,

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

GEORGE VALDEZ, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

MOTION FOR AWARD OF ATTORNEY'S FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

I. Introduction

Petitioner-Plaintiff, Jose Pedro Aaron Alvarez Hernandez ("Mr. Alvarez") moves for an award of attorney's fees and expenses pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Defendants-Respondents ("Defendants") unlawfully jailed Mr. Alvarez under its new and erroneous interpretation of 8 U.S.C. §§ 1226, 1225(b)(2). This Court granted Mr. Alvarez's Verified Petition for Writ of Habeas Corpus (ECF 1), finding "no basis to depart" from its "extensive reasoning" finding that Mr. Alvarez merits a bond hearing under 8 U.S.C. § 1226(a). ECF 17, at *7.

Mr. Alvarez is therefore a prevailing party entitled to attorney's fees and expenses. Mr. Alvarez also meets the EAJA net worth limitation. Defendants' position was not substantially justified and there are no special circumstances that make an award unjust. 28 U.S.C. § 2412(d)(1)(A). Mr. Alvarez, through counsel, moves the Court for an award of $5,376. The parties have conferred and the Defendants oppose this motion.

II. Summary of Factual and Procedural History

Mr. Alvarez has resided in the United States for 24 years. ECF 1, at ¶1. He owns a mechanic shop, is married, files taxes, and is the primary breadwinner for his family. *Id.* He has no criminal legal contact that would subject him to mandatory detention under 8 U.S.C. § 1226(c). *Id.* Immigration and Customs Enforcement ("ICE") nevertheless jailed Mr. Alvarez and issued him a Notice to Appear ("NTA"), charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i). ECF 3-2. Despite Mr. Alvarez's long-time residence in the United States, ICE claimed Mr. Alvarez was subject to mandatory detention under § 1225(b)(2) instead of discretionary detention under § 1226(a). *See generally* ECF 16.

Both the § 1226 and § 1225 detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before immigration judges ("IJ") explaining that, in general, people who entered the country without inspection (also known as "present without admission") were *not* detainable under § 1225 and instead could only be detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts were entitled to bond hearings under § 1226(a) when placed in § 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

Despite this long-standing practice and the plain text of the statute, a solitary member of the Board of Immigration Appeals ("BIA") issued a two-page unpublished and non-precedential decision on May 22, 2025 holding that noncitizens who entered the

United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission." On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled "Interim Guidance Regarding Detention Authority for Applicants for Admission," constituted a complete upheaval of statutory interpretation, agency case law, decades of agency practice, and agency regulation, to claim that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and affects people who have resided in the U.S. for many years, like Mr. Alvarez.

Mr. Alvarez filed his Verified Petition for Writ of Habeas Corpus ("Petition") on January 23, 2026 asking for immediate release or a custody redetermination hearing under § 1226(a) within seven days. ECF 1. He also filed a Temporary Restraining Order and/or Preliminary Injunction ("TRO") asking for the same. ECF 3. On February 5, 2026, this Court granted Mr. Alvarez's Petition and denied his TRO as moot. ECF 17. The Court found "no basis to depart" from its "extensive reasoning" in other cases that Mr. Alvarez was not subject to § 1225(b)(2), ordering Defendants to provide him with at § 1226(a) bond hearing within seven days at which ICE must carry the burden to demonstrate that his custody was necessary. *Id.* at **7–8. The IJ conducted that hearing on February 11, 2026, ordered Mr. Alvarez released from custody upon payment of $10,000 and did not impose additional restrictions like 24/7 tracking devices or check in requirements on Mr. Alvarez.

However, when Mr. Alvarez's release from custody on February 12, 2026, ICE ordered him to appear for a in-person check-in on February 19, 2026, and told him that he would be placed on an ankle monitor tracking device. ECF 21. On February 17, 2026, Mr. Alvarez, through counsel, filed a Motion to Ameliorate Conditions with the IJ asking that the IJ enforce both this Court's order requiring ICE to meet a clear and convincing evidence burden to keep Mr. Alvarez in custody through alternatives to detention like an ankle monitor and check-ins. *Id.* On February 17, 2026, the IJ ordered ICE to remove all ICE-imposed alternatives to detention. *Id.* On February 19, 2026, when Mr. Alvarez appeared for his check-in, ICE did not impose the ankle monitor. However, ICE did not comply with the IJ's order regarding the additional restrictions imposed by ICE and instead reset him for a check-in date on August 19, 2026. *Id.*

III. Legal Standard for EAJA Applications

A court shall award fees and other expenses to the eligible prevailing party in an action against the United States when that party files a timely and complete application for fees, the government's position was not substantially justified, and no special circumstances exist that would make an award unjust. 28 U.S.C. § 2412(d)(1)(A)–(B); *Al-Maleki v. Holder*, 558 F.3d 1200, 1204 (10th Cir. 2009). The prevailing party must have a net worth of less than two million dollars. 28 U.S.C. § 2412(d)(2)(B)(i). These fundamental EAJA principles apply equally in a habeas corpus action challenging immigration custody. *Daley v. Ceja, et al.*, 158 F.4th 1152, 1166 (10th Cir. 2025) (finding that "EAJA's broad language to unambiguously authorize fees in habeas actions challenging immigration detention").

IV. Argument

a. The Fee Application is Timely.

An EAJA application for fees and other expenses must be filed "within thirty days of final judgement in the action." 28 U.S.C. § 2412(d)(1)(B). The thirty-day EAJA clock does not begin to run until after the time to appeal an effective final judgement expires. *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). In district court cases, a party has 60 days after the final judgment or order is entered by the district court to file an appeal. Fed. R. App. P. 4(a)(1)(B). An EAJA fee application must be filed within 30 days after the expiration of the 60-day period for filing an appeal. On February 5, 2026, the Court entered its order granting, in part, Mr. Alvarez's habeas petition and setting a deadline of February 23, 2026, for Mr. Alvarez to seek EAJA fees. ECF 17. The Court subsequently entered a final judgment on February 19, 2026. ECF 18. The same day the Court granted Mr. Alvarez an extension to file his EAJA motion until March 4, 2026. This motion is now timely filed within the deadline set by the Court.

b. Mr. Alvarez is an Eligible and Prevailing Party.

Mr. Alvarez is an eligible party under EAJA because he is a private individual whose net worth does not exceed $2,000,000. *See* Exhibit A; 28 U.S.C. § 2412(d)(2)(B)(i) (requiring net worth to "not exceed $2,000,000 at the time the civil action was filed").

Mr. Alvarez is also an eligible party because he is the prevailing party. A party is the "prevailing party" when his or her suit results in a "judicially sanctioned change in the legal relationship of the parties, *Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Resources*, 532 U.S. 598, 604–05 (2001), such that the party "could obtain a court order to enforce the merits of some portion of the claim it made in its suit", *Biodiversity Conservation Alliance v. Stem*, 519 F.3d 1226, 1230 (10th Cir. 2008); *see*

also Iqbal v. Holder, 693 F.3d 1189, 1193–94 (10th Cir. 2012) (applying *Buckhannon* to EAJA).

Here, Mr. Alvarez is the prevailing party. ECF 17. This Court found that Defendants decision to jail Mr. Alvarez under § 1225(b)(2) was unlawful. *Id.* As such, this Court granted Mr. Alvarez's petition and ordered Defendants to provide him with a bond hearing. *Id.* Because this Court granted Mr. Alvarez's habeas petition, he is a "prevailing party" for EAJA purposes.

c. Defendants' Pre-Litigation and Litigation Position was Not Substantially Justified.

As the prevailing party, Mr. Alvarez is entitled to fees because the government cannot show that its position "was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). "The position of the United States is defined in the EAJA as the position taken by the United States in the civil action [and] the action or failure to act by the agency upon which the civil action is based" *Al-Maleki*, 558 F.3d at 1206–07 (quoting 8 U.S.C. § 2412(d)(2)(D)). The government's prelitigation actions, including those of the relevant agencies, and its litigation position "are both relevant to the inquiry and must be reasonable in fact and law." *Id.* at 1207 (citation omitted); *Role Models America, Inc., v. Brownlee*, 353 F.3d 962, 967 (DC. Cir. 2004) ("The government . . . must demonstrate the reasonableness not only of its litigation position, but also of the *agency's* actions") (citation omitted, emphasis in original).

Congress placed a heavy burden of proof on the government to establish that its position was substantially justified. H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. 10, 13–14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government"). To meet this burden, the government must

show that its position was both factually and legally reasonable. *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988); *Al-Maleki*, 558 F.3d at 1207 (noting that the government "bears the burden of establishing its position [as] justified to a degree that could satisfy a reasonable person"). The government's position is not justified if it violates or misapplies a clear, unambiguous law. *E.g.*, *Role Models Am., Inc.*, 353 F.3d at 967.

Courts have found that it would be an "abuse of discretion" to find Defendants' position substantially justified if it violates the Constitution, a statute, or its own regulations. *Meinhold v. U.S. Dep't of Defense*, 123 F.3d 1275, 1278 (9th Cir. 1997). Where an agency violates its own regulations in adjudicating a case, the Court may find a per se lack of substantial justification. *Mendenhall v. National Transp. Safety Bd.*, 92 F.3d 871, 874-76 (9th Cir. 1996); *see also Role Models Am.,* 353 F.3d at 967 (D.C.) (no substantial justification when position unsupported by text of applicable regulation). A "string of losses can be indicative" of a position that is not substantially jusitified. *Pierce*, 487 U.S. at 569.

Here, the Court should award Mr. Alvarez fees because the government's pre-litigation and litigation positions were not substantially justified.

i. *Defendants' Pre-Litigation Position was Not Substantially Justified.*

The government's decision to jail Mr. Alvarez pursuant to § 1225(b)(2) bucked nearly thirty years of practice, violated the statute, the regulations, and Mr. Alvarez's substantive due process rights. ECF 17, at **5–6. There pre-litigation position was therefore not substantially justified.

That is particularly true where—as here—Defendants' pre-litigation treatment of Mr. Alvarez conflicts with their litigation position that he was subject to § 1225(b)(2).

Specifically, Defendants' litigation position that Mr. Alvarez is an arriving noncitizen and therefore subject to § 1225(b)(2) conflicts with the Notice to Appear ("NTA") that ICE served Mr. Alvarez when it jailed him on December 27, 2026. ECF 3-2. That document provides ICE the option to identify Mr. Alvarez as an "arriving [noncitizen]." *Id.* ICE did not choose that option and instead charged Mr. Alvarez as "present in the United States" without admission or parole – and thus eligible for bond under § 1226(a). *Id.* Defendants' decision to reverse course and argue that Mr. Alvarez was subject to § 1225(b)(2) mandatory detention was therefore not substantially justified.

ii. Defendants' Litigation Position was Not Substantially Justified.

The government's litigation position was equally unreasonable. Every Judge in the District who has considered Defendants' position has found it unlawful. *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4, ECF 16 (D. Colo. Jan. 15, 2026) (filed as ECF 1-1). This District's unanimity is perhaps unsurprising since Defendants' position "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026). Such a "string of losses" is not substantially justified. *Pierce*, 487 U.S. at 569.

That is particularly true here because an agency must "defend its actions based on the reasons *it gave when it acted* in the interest of promoting agency accountability, instilling confidence in agency decisions, and maintaining an orderly process of review." *DHS v. Regents of the Univ. of Cal.*, 591 US. 1, 24 (2020) (emphasis added). Here, because ICE charged him in the NTA as being present without admission, "it cannot now be heard to change its position to claim that he is detained under section 1225(b)." *Marrero Yera v. Baltazar, et al.*, 1:26-cv-00476-SCK-SBP, 2026 WL 472014, at *2 (D.

Colo. Feb. 19, 2026) (quotation omitted). In other words, Defendants' complete reversal of course to argue that ICE could jail Mr. Alvarez under § 1225(b)(2) is not substantially justified.

Indeed, as this Court and district courts across the country have observed, Defendants' actions here are illegal three times over. Defendants violated the statute; Defendants violated their own regulations; Defendants violated substantive due process. ECF 17, at **5–6. Defendants' failure to abide by its own regulations cannot be substantially justified. *See Mendenhall*, 92 F.3d at 874–76. Under these circumstances, including the overwhelming number of cases decided against them, "[o]ne might assume that" Defendants would acknowledge that "enforcing executive policies premised on a contrary illegal interpretation is improper." *Maldonado Bautista v. Santacruz*, ---F.Supp.3d---, 2026 WL 468284, at *3 (C.D. Cal. Feb. 18, 2026). "Remarkably, that has not been the case." *Id.* Instead, Defendants took a position that was not substantially justified, requiring Mr. Alvarez to bring this case to secure his liberty.

Mr. Alvarez merits attorney's fees because Defendant's pre-litigation and/or litigation positions were not substantially justified.

d. No Special Circumstances Exist Making an Award of EAJA Fees Unjust.

This case does not present "special circumstances" rendering a grant of an EAJA award "unjust." 28 U.S.C. § 2412(d)(1)(A). Special circumstances include the government advancing in good faith novel but credible extensions and interpretations of law. H.R. Rep. No. 1418 at 11, 86th Cong., 1980 U.S. C.C.A.N. 4984, 1990. This provision must be narrowly construed so as not to interfere with or defeat Congress' purpose in passing EAJA. *E.g.*, *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985). Much like the

substantial justification inquiry, the burden of proving the special circumstances rests with the government. *Id.* Defendants are unable to do so in this case.

V. The Requested Fees are Reasonable Under the EAJA.

The EAJA expressly authorizes fees in excess of the statutory rate of $125 per hour, adjusted for cost-of-living, when "a 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); *Pierce*, 487 U.S. at 563, 572 (acknowledging that higher fees are appropriate when "attorneys having some distinctive knowledge or specialized skill [were] needful for the litigation in question. . . . Examples . . . would be an identifiable practice specialty such as patent law, or knowledge of foreign law or language"). It is well established that the field of immigration law is considered one of the most difficult and complex areas of law. *See Castro-O'Ryan v. U.S. Dept. of Immigration and Naturalization*, 847 F.2d 1307, 1312 (9th Cir. 1987) (characterizing the immigration laws as "second only to the Internal Revenue Code in complexity.") Courts in this district have recognized that "knowledgeable attorneys are limited and that immigration issues are often complex and novel." *Barber v. Weber*, 2005 WL 1846985, at *2 (D. Colo. Aug. 1, 2005).

Here, in the interests of resolution, although counsel possesses highly specialized knowledge in this niche area of the law, Mr. Alvarez does not seek enhanced rates for the work performed in this case. Rather, counsel for Mr. Alvarez seeks an award at the statutory EAJA rate with adjustment for "an increase in the cost of living." 28 U.S.C. § 2412(d)(2)(A)(ii); *Harris v. R.R. Ret. Bd.*, 990 F.2d 519, 521 (10th Cir. 1993); *T.E. v. Kijakazi*, 2023 WL 7089901, at *4 (D. Colo. Oct. 26, 2023). The Ninth Circuit has published a calculation of EAJA hourly rates with cost-of-living adjustments for 2025 to

account for to the statutory EAJA rate to be $258 per hours in calendar year 2025.[1] Although the work in this case was performed in January and February of 2026, for simplicity's sake, Mr. Alvarez requests fees at the published 2025 EAJA statutory adjusted rate of $258 per hour. Mr. Alvarez also requests fees in the amount of $100 per hour for paralegal time billed in this case, which reflects a reasonable paralegal rate.

Mr. Alvarez submits an affidavit summarizing the experience and qualifications of counsel in this case, which details the specialized knowledge of counsel in this area of law. Exhibit B. Also attached are contemporaneous time records documenting the time counsel has spent on litigation of the merits of the habeas petition. Exhibit C. Also attached are hours for EAJA the fee request. Exhibit D. The fees sought are reasonable.

VI. In the Exercise of Billing Judgment, Mr. Alvarez Waives Certain Billing Entries and Does Not Seek to Recover Costs in This Matter.

Petitioner has further reviewed the time logs and does not seek to recover time entries for certain non-relevant time entries or administrative tasks, and waives seeking costs associated with this litigation. This represents an additional reduction in fees.

VII. Conclusion

For the reasons stated above, the Court should grant Mr. Alvarez's request for attorney fees under EAJA for the habeas corpus litigation in the amount of $3,824 and $1,552 for the EAJA litigation to date, for a total fee amount of $5,376.

Respectfully submitted this 4th day of March 2026.

s/ Hans Meyer
Hans Meyer
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Daniel Herrera

[1] *Available at* https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (last checked on March 3, 2026).

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CERTIFICATE OF CONFERRAL

I certify that consistent with D. Colo. Local Rule 7.1 that before filing this motion, on March 3rd and 4th, 2026, I conferred with counsel for Defendants-Respondents, Elliot Werther, Assistant United States Attorney, U.S. Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants oppose this motion.

/s/ Hans Meyer
Hans Meyer

AI CERTIFICATION

Counsel certifies that AI was not used to draft this filing or any exhibits.

/s/ Hans Meyer
Hans Meyer

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Hans Meyer
Hans Meyer