Hon. Richardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
Seattle Division

ROLMA TURENNE, Petitioner, vs. LAURA HERMOSILLO, et al., Respondents	2:26-cv-00275-RSM REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT Noted for August 12, 2026 motion calendar

MOTION

For his reply in support of his motion for EAJA fees, respondent submits as follows.

I. LIMITED SCOPE OF RESPONSE.

Respondents do not challenge any part of the petitioner's motion for EAJA fees other than jurisdiction. In particular there is no challenge to the reasonableness of the time expended or to the fact that petitioner is the prevailing party. The court should consider these elements of the application for EAJA fees to be established.

//

MICHAEL T. PURCELL
Attorney at Law
P.O. Box 14209
Portland , OR 97203
(503) 241-8203
Mpurcell.law@gmail.com

II. THIS REPLY SHOULD BE TREATED AS TIMELY FILED.

Petitioner is not opposed to the grant of government's motion (ECF 24) to allow an untimely response to the petitioner's motion for EAJA fees. That response was filed on August 27, 2026. This reply is filed on August 31, four days later. Petitioner requests that should the court approve respondent's unopposed motion for untimely filing, that this reply be treated as timely filed.

III. THIS IS A CIVIL ACTION FOR EAJA PURPOSES.

This habeas corpus action is a "civil action" for which fees may be awarded under EAJA. *In re Hill*, 775 F.2d 1037, 1040-41 (1985); In *Hill*, the petitioner presented himself as an applicant for admission as nonimmigrant visitor for pleasure. *Hill*, 775 at 1039. Hill made an unsolicited statement that he was a homosexual, which resulted in his referral for exclusion proceedings. *Id.* Hill filed a petition for a writ of habeas corpus in the district court challenging his exclusion on the grounds that the law required a medical certificate to support his exclusion, and there was none. Id. The district court granted the writ, and Hill filed an application seeking an award of EAJA fees under 28 U.S.C. § 2412(d). *Id.*

In *Hill*, the government relied on *Boudin v. Thomas*, 732 F.2d 1107 (2nd Cir. 1984), limited in *Vacchio v. Ashcroft*, 404 F.3d 663, 672 (2d Cir. 2005), to argue that habeas proceedings were not within the meaning of "civil action" as the term is used in 28 U.S.C. § 2412(d)(1)(A). *Hill* stated that "[t]he dual purposes underpinning EAJA

MICHAEL T. PURCELL
Attorney at Law
P.O. Box 14209
Portland , OR 97203
(503) 241-8203
Mpurcell.law@gmail.com

are served by characterizing this particular proceeding as a civil action. Hill, a nonresident alien was not eligible for government provided counsel, see 8 U.S.C. § 1362 (1982) and, as an alien seeking to visit, had little economic incentive to challenge such action. And, unlike the inmate in *Boudin*, a nonresident alien who is a homosexual has no custodial incentive to reverse the Government's action. Application of the EAJA to Hill's petition is appropriate." *Hill*, 775 F. at 1041.

District courts inside and outside the Ninth Circuit have rejected the respondents' position. *A.S. v. Noem*, 1:26-cv-01039 JLT EGC (HC), 2026 U.S. Dist. LEXIS 155834 *, 2026 LX 397967 (E.D. Cal. July 14, 2026), at *3 ("Even so, Respondents' positions are not justified. First, they offer a lengthy, boilerplate argument that the EAJA's waiver of sovereign immunity does not extend to immigration-related habeas matters. The Court finds persuasive the several courts in this Circuit that have rejected these arguments." (citations omitted)). *Doe v. Chestnut*, No. 1:25-cv-01372-CDB (HC), 2026 U.S. Dist. LEXIS 114580 * | 2026 LX 273608 (E.D. Cal. May 25, 2026); *Landazuri v. Mullin*, No. 5:26-cv-01419-WLH-DFM, 2026 U.S. Dist. LEXIS 182452 * | 2026 LX 426391 (C.D. Cal. Aug. 11, 2026) (citing cases); *Morales-Jimenez v. Bostock*, 3:25-cv-00570-MTK, 2026 U.S. Dist. LEXIS 145783 * | 2026 LX 338039 (D. Or. July 1, 2026), at *3 to *6; *N.A.L.C. v. Wolffard*, No. 1:25-cv-01917-KES-CDB, 2026 U.S. Dist. LEXIS 132919 * | 2026 LX 328694 (E.D. Cal. June 15, 2026); *Ruiz v. Chestnut*, No. 1:26-cv-00509-KES-CDB 2026 U.S.

MICHAEL T. PURCELL
Attorney at Law
P.O. Box 14209
Portland , OR 97203
(503) 241-8203
Mpurcell.law@gmail.com

Dist. LEXIS 151801 * | 2026 LX 304327 (E.D. Cal July 9, 2026) (recommendation of U.S. magistrate); *S.F. v. Bostock*, 3:25-cv-01084-MTK, 2026 U.S. Dist. LEXIS 100598 * | 2026 LX 253990 (D. Or. May 5, 2026), at *3 to * 6; *Siguenza v. Moniz*, No. 25-cv-11914-ADB, 2026 U.S. Dist. LEXIS 144638 * | 2026 LX 303078 (D. Mass. June 29, 2026).

Both the Third and Tenth Circuits recently have held that the EAJA unambiguously encompasses habeas challenges to immigration detention, expressly finding that such proceedings qualify as "civil actions" and that, accordingly, prevailing petitioners are eligible for an award of fees. See *Michelin v. Warden, Moshannon Valley Corr. Ctr.,* 169 F.4th 418, 424-25 (3d Cir. 2026), pet. for rehrn'g by panel en banc den'd, 169 F.4th 160 (3d Cir. 2026); see also *Daley v. Ceja*, 158 F.4th 1152, 1166 (10th Cir. 2025).

To *Hill*, *Michelin*, and *Daley* must be added *Vacchio v. Ashcroft*, 404 F.3d 663, 668 (2d Cir. 2005) ("We hold today that Boudin's holding-that the EAJA term "civil actions" does not apply to habeas petitions-is limited to criminal habeas petitions. In the absence of controlling precedent from *Boudin* (since Vacchio's habeas petition was not in the criminal context) we furthermore hold that "civil actions" under EAJA encompass immigration habeas petitions. In reaching this conclusion, we consider (1) post-*Boudin* case law of this Court and others, and (2) the legislative history of EAJA, focusing on Congress's aims in enacting the statute and the question whether

MICHAEL T. PURCELL
Attorney at Law
P.O. Box 14209
Portland , OR 97203
(503) 241-8203
Mpurcell.law@gmail.com

interpreting "civil actions" to include immigration-context habeas petitions is consistent with those aims.").

IV. CONCLUSION.

For the reasons set out above, and in the opening motion and supporting exhibits, this court should grant petitioner's motion for EAJA fees.

DATED this 31st day of August 2026

/s/ Michael T. Purcell

MICHAEL T. PURCELL
WSBA #20707
Attorney for petitioner
P.O. Box 14209
Portland, OR 97293
(503) 241-8203
mpurcell.law@gmail.com

MICHAEL T. PURCELL
Attorney at Law
P.O. Box 14209
Portland , OR 97203
(503) 241-8203
Mpurcell.law@gmail.com