

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Francisco Zamora Guasco,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department  
of Homeland Security,

Todd M. Lyons, Acting Director of  
Immigration and Customs Enforcement,  
and

David Easterwood, Acting Director, St.  
Paul Field Office Immigration and  
Customs Enforcement.

Respondents.

Case No. 26-cv-722 (JMB/ECW)

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
ATTORNEY'S FEES AND COSTS**

**INTRODUCTION**

Petitioner Francisco Zamora Guasco (“Mr. Zamora Guasco” or “Petitioner”), by and through undersigned counsel, moves for an award of attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. This Court previously granted Mr. Zamora Guasco’s Petition for Writ of Habeas Corpus, “concluding that [his] arrest and ongoing detention were unlawful for multiple, independent reasons,” *ECF No. 11, p. 2*, and ordered Respondents to release Mr. Zamora Guasco from custody immediately, “and in any event no later than 4:00 p.m. CST on January 29, 2026,” *ECF No. 8, p. 7*. However,

Petitioner was not released from custody until “late in the morning on January 31, 2026,” more than 36 hours later. *ECF No. 12, p. 1*

### **FACTUAL BACKGROUND<sup>1</sup>**

Petitioner has lived in the United States continuously since 2021. *ECF No. 1, ¶ 12*. Petitioner has a pending I-589 asylum application, has a valid social security number, and does not have a final order of removal. *ECF No. 1, ¶ 13*. Petitioner lives with his wife and children, four of whom were born in the United States, in Minneapolis, Minnesota. *ECF No. 1, ¶ 14*.

Even though Petitioner posed no safety threats to the community, Immigration and Customs Enforcement (“ICE”) arrested Petitioner within the United States, not at or near a border while he was seeking entry, without a warrant on January 27, 2026. *See ECF No. 1, ¶¶ 15, 28, 36, 39, 52*. This arrest was part of an operation called “Operation Metro Surge.” *ECF No. 1, ¶ 16*. This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians and/or observers, pepper spraying and arresting observers, hitting passersby with vehicles at times, and generally attempting to take as many immigrants as possible into custody regardless of the constitutionality of their actions. *ECF No. 1, ¶ 16*.

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<sup>1</sup> Because Respondents did not contest any of the factual allegations in the Petition, the Court deemed these factual allegations to be admitted. *See ECF No. 8, p. 2, n.2* (citing *Bland v. California Dep’t of Corr.*, 20 F.3d 1469, 1474 (9th Cir. 1994), *overruled on other grounds by Schell v. Witek*, 218 F.3d 1017 (9th Cir. 2000)).

Since this operation began on December 1, 2025, the number of immigration officials in the Twin Cities metro area has increased fourfold, and with them these new agents have brought a similarly massive increase in unconstitutional, unlawful, and downright violent behavior towards citizens and non-citizens alike. *ECF No. 1*, ¶ 17. The people of Minnesota – of all races and nationalities – are united in their shock and fear at the events of the past several weeks, and are begging for the attacks on their communities to stop. *ECF No. 1*, ¶ 17.

### PROCEDURAL HISTORY

This case was initiated via a Petition for Writ of Habeas Corpus (“Petition”) to compel Respondents to release Petitioner from custody. *Declaration of Tim Phillips (“Phillips Decl.”)* ¶ 2. The detention of Petitioner, which the Court held fell under 8 U.S.C. § 1226 and not 8 U.S.C. § 1225(b)(2), necessitated this litigation. *Phillips Decl.* ¶ 2.

On January 27, 2026, the Court ordered Respondents to file a response to the Petition by January 29, 2026, at 11:00 AM. *ECF No. 3*. That deadline passed, and Respondents did not timely file a response. *ECF No. 8*, p. 2, ¶ 6. Thus, “Respondents did not make any timely arguments in this case.” *ECF No. 8*, p. 4.

On January 29, 2026, the Court ordered Respondents to release Mr. Zamora Guasco from custody immediately, “and in any event no later than 4:00 p.m. CST on January 29, 2026,” *ECF No. 8*, p. 7. However, Petitioner was not released from custody until “late in the morning on January 31, 2026,” more than 36 hours later. *ECF No. 12*, p. 1.

## LEGAL STANDARD

A petitioner seeking release from immigration detention shall be awarded costs and reasonable attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), unless the Court finds that the government's position was substantially justified or that special circumstances make an award unjust. *See Michelin v. Warden Moshannon Valley Corr. Ctr.*, No. 24-2990, 2026 WL 263483 (3d Cir. Feb. 2, 2026); *see also, e.g., Yeferson G.C. v. Easterwood*, No. 25-CV-4814, 2026 WL 207266, at \*3 (D. Minn. Jan. 21), report and recommendation adopted, 2026 WL 209825 (D. Minn. Jan. 27, 2026); *Mairena-Munguia v. Arnott*, No. 25-CV-3318, 2025 WL 3229132, at \*5 (W.D. Mo. Nov. 19, 2025); *cf. Bah v. Cangemi*, 548 F.3d 680 (8th Cir. 2008) (evaluating the merits of immigration habeas petitioner's EAJA claim).

Petitioner is also entitled to compensation for time reasonably expended on litigating the fee motion. *See, e.g., Comm'r, Immigration and Naturalization Serv. v. Jean*, 496 U.S. 154, 163-165 (1990). Fees and costs under EAJA are assessed without regard to whether or how much money, if any, the client actually paid his or her attorney. As such, attorneys who take cases on a pro bono or "low bono" basis may seek reimbursement under EAJA. *See Declaration of Francisco Zamora Guasco ("Zamora Guasco Decl.")*, ¶ 3.

### A. Petitioner is the Prevailing Party

A "prevailing party" is one who "has been awarded some relief by a court." *Buckhannon Bd. Care & Home Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 (2001). The Supreme Court has stated that, for purposes of fee-shifting statutes such as EAJA, a prevailing party is one who demonstrates that he or she achieved a

“material alteration of the legal relationship of the parties” and a “judicial imprimatur on the change.” *Id.* at 604-05 (quotation omitted).

It is undisputed that Petitioner is the prevailing party in this litigation, because on January 29, 2026, this Court ordered Respondents to release Mr. Zamora Guasco from custody immediately, “and in any event no later than 4:00 p.m. CST on January 29, 2026,” *ECF No. 8, p. 7*; see also *Manuel N. M. v. Noem*, No. 26-CV-224 (MJD/DJF), 2026 WL 242318, at \*3 (D. Minn. Jan. 23, 2026) (finding that the Petitioner was the “prevailing party”), *report and recommendation adopted*, 2026 WL 246840 (D. Minn. Jan. 29, 2026).

#### **B. The Position of the Government was Not Substantially Justified**

The position of the United States was not substantially justified, because prior to Petitioner’s warrantless arrest by federal agents on January 27, 2026, courts had already “overwhelmingly rejected Respondents’ interpretation that [8 U.S.C.] section 1225(b)(2) requires the mandatory detention of all noncitizens living in the country who are ‘inadmissible’ because they entered the United States without inspection.” *ECF No. 8, p. 4* (citing *Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at \*4 & n.22 (S.D.N.Y. Nov. 26, 2025) (noting that this interpretation had been rejected in 350 cases “decided by over 160 different judges sitting in about fifty different courts spread across the United States” and collecting cases in an Appendix A); *Jose Andres R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312, at \*1 n.2 (D. Minn. Nov. 4, 2025) (collecting cases); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at \*5–6 (D. Minn. Oct. 1, 2025) (collecting cases)).

Section 1225(b)(2) applies to persons who presently are applicants for admission and who presently are seeking admission at the time of their detention. *ECF No. 8, p. 5*. This is the plain meaning of the statute. *Id.* Interpreting section 1225(b)(2) as applying to noncitizens who have already entered the country and are not currently seeking admission into the country, as Respondents urge, would also render meaningless a recent amendment to section 1226 by the Laken Riley Act (LRA). *ECF No. 8, p. 5-6*. In addition, Respondents' interpretation of section 1225(b) is "at odds with both the relevant legislative history and longstanding agency practice." *Belsai D.S.*, 2025 WL 2802947, at \*7; *see, e.g., Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1150 (D. Minn. 2025) (discussing the longstanding practice of treating noncitizens who resided in the United States, but who had entered without inspection, as being subject to section 1226(a)).

Indeed, this Court has already awarded EAJA fees against the government for its unsupported legal position. *See, e.g., Manuel N. M. v. Noem*, No. 26-CV-224 (MJD/DJF), 2026 WL 242318, at \*3 (D. Minn. Jan. 23, 2026) (stating that "the Court concludes that Respondents' position is not substantially justified"), *report and recommendation adopted*, 2026 WL 246840 (D. Minn. Jan. 29, 2026) (ordering Respondents "to reimburse Petitioner his reasonable costs and fees pursuant to the Equal Access to Justice Act"); *Yeferson G. C. v. Easterwood*, No. 25-CV-4814 (MJD/DJF), 2026 WL 209825, at \*1 (D. Minn. Jan. 27, 2026) ("Respondents are ordered to reimburse Petitioner his reasonable costs and fees pursuant to the Equal Access to Justice Act.").

Here, Petitioner was detained pursuant to an interpretation of 8 U.S.C. § 1225(b) that has been overwhelmingly rejected by courts, including this Court. "The government

bears the burden of proving that its position was substantially justified.” *U.S. S.E.C. v. Zahareas*, 374 F.3d 624, 627 (8th Cir. 2004). The government must meet this threshold twice. It must independently establish that the agency’s underlying position or conduct that gave rise to the litigation was substantially justified and that its litigation position was also substantially justified. *See Ibrahim v. U.S. Dep’t of Homeland Sec.*, 912 F.3d 1147, 1168 (9th Cir. 2019) (en banc); *see also Dantran, Inc. v. U.S. Dep’t of Labor*, 246 F.3d 36, 41 (1st Cir. 2001).

A reasonable person could not think that individuals who have been residing within the United States for more than two years are somehow “seeking admission.” *See Aronov v. Chertoff*, 562 F.3d 84, 94 (1st Cir. 2009) (en banc) (“The [pre-litigation position] test is whether a reasonable person could think the agency position is correct.”). Even if a reasonable person could think this, a “string of court decisions” against the government indicates that the position of the United States was not substantially justified regardless. *See, e.g., Geegbae v. McDonald*, 2011 WL 841237, at \*2 (D. Mass. Mar. 8, 2011). Moreover, only one federal court of appeals had ruled on the question at issue as of January 27, 2026, and it reached the same conclusion as this Court. *See Castañon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025).

### **C. There are No Special Circumstances that Would Make an Award Unjust**

The government has the burden of proving the existence of special circumstances that would make a fee award unjust. *See, e.g., Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989). Here, there are no such circumstances. The government has falsely imprisoned more than 1,000 immigrants, whose habeas petitions have been granted, and

the government has subsequently failed to comply with countless court orders in these cases:

- On January 23, 2026, Judge Provinzino wrote: “In what is fast becoming a disturbing trend, the Government has yet again violated (and is continuing to violate) this Court’s show-cause order.” *Josue David P.A. v. Bondi, et al.*, No. 26-cv-396, ECF No. 8, at 3 (D. Minn. Jan. 23, 2026). Judge Provinzino explained that “the Government continues to violate the Court’s show-cause order by failing to return Josue David P.A. to Minnesota.” *Id.* at 4.
- On January 25, 2026, Judge Tunheim wrote: “Petitioners alleged that Respondents entered their private dwelling and arrested them without presenting a judicial warrant. The Fourth Amendment provides strong protection against this type of encroachment. . . . Moreover, the Court can scarcely think of a situation requiring more urgency than a 12-year-old allegedly, with health concerns, being arrested unlawfully and whisked away across the country. The Court therefore set a deadline for Respondents to present the Court with evidence of the lawfulness of the entry and arrest—they failed to do so, and the Court granted Petitioners’ release. The Court thereafter provided several days, including at an in-person status conference, for Respondents to communicate the steps being taken to effectuate the Court’s order. Respondents have nevertheless failed to this point to release Petitioners from custody and are in clear violation of the Court’s Orders. *J.B.C.O., et al. v. Bondi, et al.*, No. 26-cv-424, ECF No. 14, at 3-4 (D. Minn. Jan. 25, 2026).

- On January 26, 2026, Judge Schiltz wrote: “This is one of dozens of court orders with which respondents have failed to comply in recent weeks. . . . The detention of an alien is extended, or an alien who should remain in Minnesota is flown to Texas, or an alien who has been flown to Texas is released there and told to figure out a way to get home. The Court has been extremely patient with respondents, even though respondents decided to send thousands of agents to Minnesota to detain aliens without making any provision for dealing with the hundreds of habeas petitions and other lawsuits that were sure to result.” *Juan T.R. v. Noem, et al.*, No. 26-cv-107, ECF No. 7, at 2 (D. Minn. Jan. 26, 2026). Judge Schiltz also wrote that “ICE’s violation of court orders is . . . extraordinary.” *Id.* at 3.
- On January 28, 2026, Judge Schiltz wrote: “Attached to this order is an appendix that identifies . . . court orders that ICE has violated . . . . The extent of ICE’s noncompliance is almost certainly substantially understated. This list is confined to orders issued since January 1, 2026, and the list was hurriedly compiled by extraordinarily busy judges. Undoubtedly, mistakes were made, and orders that should have appeared on this list were omitted. This list should give pause to anyone—no matter his or her political beliefs—who cares about the rule of law.” *Juan T.R. v. Noem, et al.*, No. 26-cv-107, 2026 WL 232015, at \*1 (D. Minn. Jan. 28, 2026).
- On February 20, 2026, Judge Provinzino wrote that “at this point, the refrain of ‘understaffing’ and ‘too many cases’ has worn out its welcome, particularly when it comes at the expense of individual rights. This Court would never allow a private

attorney or litigant to rely on an ‘I’m too busy’ excuse to justify disobedience of a court order. The Government is no different.” *Rigoberto S. J. v. Bondi, et al.*, No. 26-cv-957, ECF No. 23, at 6 (D. Minn. Feb. 20, 2026). Judge Provinzino also wrote that “the Court on February 18 imposed a \$500 daily fine for each day after February 19 that Rigoberto S. J. was without his identification documents.” *Id.* at 7. In addition, Judge Provinzino wrote: “The inability of the U.S. Attorney’s Office to fulfill its duty to ensure compliance with judicial orders has real consequences on real human beings: petitioners are unlawfully left stranded thousands of miles away from Minnesota without their property (that is, if the petitioner is even timely released).” *Id.*

- On February 23, 2026, Judge Tostrud wrote: “Fernando is entitled to compensatory sanctions for Respondents’ civil contempt of the January 20 Order. The Order enjoined Respondents from moving Fernando from the District of Minnesota during the pendency of his Petition. . . . Respondents admit they violated the January 20 Order by transferring Fernando to El Paso, despite knowledge that his movement outside of this District was enjoined. . . . As a result of Respondents’ violation of the January 20 Order and their failure to cure that violation on their own, Fernando and his counsel incurred the undisputed and documented \$568.29 expenditure for Fernando’s return airfare. . . . Accordingly, I find that Respondents’ conduct constitutes civil contempt, and Respondents (as defined herein) are jointly and severally liable for compensatory civil contempt sanctions for airfare costs

Fernando incurred because of the violation.” *Fernando T. v. Noem, et al.*, No. 26-cv-445, ECF No. 23, at 6-7 (D. Minn. Jan. 26, 2026).

- On February 26, 2026, Judge Schiltz wrote: “Unfortunately, the government’s response to the Court’s order was not to do a better job complying with court orders, but instead to attack the Court. . . . But the bottom line is that ICE violated 97 orders in 66 of the cases referred to in the January 28 order. . . . Attached as Appendix B is a list of *additional* cases in which ICE has violated court orders, most of which violations occurred after entry of the January 28 order. . . . Appendix B documents 113 additional orders that ICE has violated in 77 additional cases—again, above and beyond the 97 orders that ICE violated in the 66 cases identified in Appendix A. . . . The Court is not aware of another occasion in the history of the United States in which a federal court has had to threaten contempt—again and again and again—to force the *United States government* to comply with court orders.” *Juan T.R. v. Noem, et al.*, No. 26-cv-107, ECF No. 12, at 2-5 (D. Minn. Feb. 26, 2026).

**D. Petitioner has Met the Appropriate “Net Worth” Requirements**

As shown by the Declaration of Francisco Zamora Guasco, Petitioner has satisfied the “net worth” requirements. *Zamora Guasco Decl.*, ¶ 2.

**E. The Total Amount of Fees and Costs Sought are Reasonable**

Petitioner requests a fee award of \$5,940. *Phillips Decl.*, ¶¶ 10-13. This is a reasonable and appropriate award calculated based on the attorney time spent litigating this matter. *See Phillips Decl.*, ¶¶ 10-13.

There is a strong presumption that the lodestar represents a reasonable fee. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). The reasonable hourly rate is that to which attorneys working in the area would typically be entitled if working on an hourly basis. *See Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140 (8th Cir. 1982). Thus, rates should be presumed reasonable when the market will pay the rates claimed. *See id.* It is appropriate for the lodestar to be calculated using current billable rates. *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989).

Although the EAJA sets a cap on an attorney's hourly rate,<sup>2</sup> upward adjustments are permitted. Courts calculate a cost-of-living adjustment by multiplying the standard EAJA rate by the CPI for urban consumers for each year attorney's fees are sought, and then dividing the product by the CPI in the month that the cap was imposed—in this case, 151.7 for March 1996, the year the new statutory cap of \$125 was put into place. *See Sarah K. v. Kijakazi*, No. 21-cv-2223 (ECW), 2022 WL 17584414, at \*2 (D. Minn. Dec. 12, 2022). Given the significant increase in the Consumer Price Index,<sup>3</sup> an hourly rate of at least \$268 is reasonable. *See, e.g., Dorelle H. v. Kijakazi*, No. 20-cv-1057 (NEB/BRT), 2021 WL 8314955, at \*1 (D. Minn. Nov. 22, 2021) (finding that a rate of \$208.75 was reasonable for

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<sup>2</sup> Pursuant to the EAJA, “attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or 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).

<sup>3</sup> “The Consumer Price Index for All Urban Consumers (CPI-U) increased 2.4 percent over the last 12 months to an index level of 325.252.” U.S. Bureau of Labor Statistics, Consumer Price Index Summary, <https://www.bls.gov/news.release/cpi.nr0.htm>; *see also Phillips Decl., Ex. 6.*

work performed in 2020 and rate of \$212.50 per hour for work performed in early 2021); *Holly G. v Kijakazi*, No. 20-cv-2279 (ECT/LIB), 2022 WL 1205421, at \*6 (D. Minn. Apr. 6, 2022) (finding that a rate of \$209 was reasonable in seeking fees pursuant to the EAJA based on the increase in the cost of living since the statutory rate was established), *report and recommendation adopted*, 2022 WL 1204827 (D. Minn. Apr. 22, 2022); *DeAnna T. v. Kijakazi*, No. 20-cv-576 (ECW), 2022 WL 406658, at \*3 (D. Minn. Feb. 10, 2022) (finding that a rate of \$207.21 was reasonable in seeking fees pursuant to the EAJA); *Gloria P. v. Kijakazi*, No. 20-cv-1542 (ECT/LIB), 2022 WL 1064455, at \*5 (D. Minn. Mar. 23, 2022) (finding that a rate of \$205 was reasonable in seeking fees pursuant to the EAJA), *report and recommendation adopted*, 2022 WL 1063948 (D. Minn. Apr. 8, 2022); *Ibrahim v. Barr*, No. 18-cv-1883 (PAM/BRT), 2019 WL 1487850, at \*3 (D. Minn. Apr. 4, 2019) (finding that a rate of \$202 was reasonable in seeking fees pursuant to the EAJA in a case filed in 2018).

Moreover, one or more special factors justify a higher fee. For example, the limited availability of qualified attorneys for the proceedings involved. *See Phillips Decl.*, ¶ 4. Pursuant to the legislative history of EAJA, attorney's fees should be available in pro bono cases and "should be based on prevailing market rates without reference to the fee arrangements between the attorney and client." *Cornella v. Schweiker*, 728 F.2d 978, 986 (8th Cir. 1984) (quotation and emphasis omitted); *see also Nadarajah v. Holder*, 2009 WL 1588678 (9th Cir. 2009) (approving enhanced rate in *habeas* context). While the party seeking a fee must provide evidence supporting the hours worked and claimed rate, "[t]he [U.S.] Supreme Court has cautioned that a determination of attorney's fees should not

spawn ‘a second major litigation.’” *Ewald v. Royal Norwegian Embassy*, 2015 WL 1746375, at \*4 (D. Minn. Apr. 13, 2015) (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011) (quotation omitted)). The purpose of shifting attorneys’ fees is “rough justice” and the district court “need not, and indeed should not, become [a] green-eyeshade accountant[]” in reviewing the amount of a fee award. *Fox*, 563 U.S. at 838.

When fee requests are authorized by a statute, it is also appropriate to award compensation for the expense of applying for fees. *See United States v. Bayer Corp.*, No. 0:08-cv-5758 (MJD/ECW), 2024 WL 1421081, at \*16 (D. Minn. Jan. 25, 2024) (citing *Jorstad v. IDS Realty Tr.*, 643 F.2d 1305, 1314 (8th Cir. 1981)). Were it otherwise, “attorneys may become wary about taking . . . civil rights cases, or other cases for which attorneys’ fees are statutorily authorized.” *Prandini v. Nat’l Tea Co.*, 585 F.2d 47, 53 (3d Cir. 1978).

If the Court applies undersigned counsel’s hourly rate of \$600, the total attorney’s fees and costs owed are \$5,945 – \$5,940 in attorney’s fees and \$5 in costs. *Phillips Decl.*, ¶¶ 10-13. If, instead, the Court calculates a cost-of-living adjustment by multiplying the standard EAJA rate (\$125) by the CPI for urban consumers for each year attorney’s fees are sought (325.252), and then dividing the product by the CPI in the month that the cap was imposed (151.7 for March 1996), the hourly rate would be \$268 and the total attorney’s fees and costs owed would be \$2,658.20 – \$2,653.20 in attorney’s fees and \$5 in costs.

**CONCLUSION**

For the foregoing reasons, the Court should award attorney's fees and costs in the total amount of \$5,945, in addition to fees for any time spent preparing a reply brief or attending a hearing if Respondents oppose this motion.

Dated: March 2, 2026

*s/Tim Phillips*

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