

The Honorable Judge Tana Lin

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON**

Oswal Ortiz,

Petitioner,

v.

Laura HERMOSILLO, *et. al.*,

Respondents.

Case No.: 2:26-cv-00384-TL

**PETITIONER'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Note on Motion Calendar: April 7, 2026

INTRODUCTION

Petitioner Oswal Ortiz files this motion for attorneys' fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, for time reasonably expended challenging Respondents' unlawful re-detention of him from October 15, 2025. He is entitled to recover reasonable fees under EAJA because he is the prevailing party and because Respondents' position in this matter was not substantially justified.

STATEMENT OF FACTS

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Mr. Ortiz is a citizen of Venezuela who arrived in the United States on September 11, 2023, without being admitted or paroled. Dkt. No. 11 at 3. Upon entry, Mr. Ortiz was detained by Border Patrol and a two days later, on September 13, 2023, he was released on his own recognizance for the purpose of continuing his removal proceedings. Dkt. No. 6 (Ortiz Decl.) ¶ 9; *see also* Dkt. No. 7-1 (NTA) at 2. In the years since his release, Mr. Ortiz has filed for asylum, complied with the check-in requirements imposed by Immigration and Customs Enforcement (ICE), attended his scheduled court hearings, and applied for employment authorization. Dkt. No. 6 ¶ 12-13.

On October 15, 2025, Mr. Ortiz reported in person to the ICE ERO Office in Tukwila, Washington. Dkt. No. 11 at 3. ICE agents brought Mr. Ortiz into a private room, questioned him, took him into custody, and brought him to the NWIPC, where he was held ever since. Dkt. No. 6 ¶¶ 7, 22-26. The Respondents did not provide Mr. Ortiz with any notice or provide him with an opportunity to be heard before re-detaining him. *Id.* Following his re-detention, Mr. Ortiz filed this petition.

PROCEDURAL HISTORY

Mr. Ortiz filed the original petition for writ of habeas corpus on February 2, 2026. On February 9, 2026, Mr. Ortiz retained counsel and an amended petition was timely filed. Dkt 5. The Amended petition argued that his re-detention violated his Fifth Amendment right to procedural due process and sought release from immigration detention. *See generally Id.*

On March 4, 2026, the Court after reviewing all of the briefing from both parties granted Mr. Ortiz's petition for writ of habeas corpus and ordered that Mr. Ortiz be released immediately and not be re-detained without proper notice and a pre-detention hearing unless permissible

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1 under an applicable statute or regulation. Dkt. 16. The Court in its ruling also stated the
2 following “Any motion requesting fees should be filed within the deadlines set by the Equal
3 Access to Justice Act, 28 U.S.C. § 2412.” *Id.*

4 **ARGUMENT**

5 **I. Mr. Ortiz is entitled to fees under EAJA.**

6 Under EAJA, a party seeking fees must generally establish two basic requirements: that
7 they are a prevailing party, and that the position of the United States was not substantially
8 justified. Mr. Ortiz satisfies both elements.

9 **A. Mr. Ortiz is the prevailing party.**

10 To qualify for an EAJA award, Petitioner must first establish that he is the prevailing
11 party. 28 U.S.C. § 2412(d)(1)(B). Prevailing parties must show that they (1) have achieved a
12 “material alteration of the legal relationship of the parties,” and that (2) the alteration was
13 “judicially sanctioned.” *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep’t of Health &*
14 *Human Res.*, 532 U.S. 598, 604–05 (2001) (citation omitted). In addition, to qualify for EAJA
15 fees a person must have a net worth of less than \$2,000,000. 28 U.S.C. § 2412(d)(2)(B)(i). Mr.
16 Ortiz—who was detained at the time this case was filed satisfies this requirement. *See* Decl. of
17 Oswal Ortiz.

18 Here, Mr. Ortiz readily satisfies those requirements: he obtained a final judgement
19 declaring that re-detention violated his Fifth Amendment procedural due process rights, ordering
20 Respondents to release him from immigration detention, and decreeing that any future re-
21 detention comply with due process. *See* Dkts. 16 & 17. Such final relief satisfies the prevailing
22

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1 party requirement “by granting enduring judicial relief on the merits.” *Lackey v. Stinnie*, 604
2 U.S. 192, 203–04 (2025).

3 B. Respondents’ position was not substantially justified.

4 “The EAJA creates a presumption that fees will be awarded to prevailing parties.” *Flores v.*
5 *Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). Respondents can rebut this presumption by showing
6 that the government’s conduct “was substantially justified or that special circumstances exist to
7 make an award unjust.” *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001); see also,
8 e.g., *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991) (“The burden of proving the special
9 circumstances or substantial justification exception to the mandatory award of fees under the
10 EAJA rests with the government.”). Congress placed the burden of proof on the government to
11 demonstrate that its position was substantially justified in order for “EAJA to be a deterrent for
12 unreasonable agency conduct.” *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007) (“[R]egardless of
13 the government’s conduct in the federal court proceedings, unreasonable agency action at any
14 level entitles the litigant to EAJA fees.”); see also H.R. Rep. No. 96-1418, 96th Cong., 2d Sess.
15 at 10, 13–14 (1980) (“[T]he strong deterrents to contesting government action require that the
16 burden of proof rest with the government.”).

17 “‘Substantial justification’ under the EAJA means that the government’s position must
18 have a reasonable basis in law and fact.” *Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998).
19 Here, as this Court found, Respondents’ re-detention of Mr. Ortiz violated the Fifth Amendment.
20 Dkt. 31 at 6–11. It has long been established that “[p]rocedural due process imposes constraints
21 on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within
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the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1320 (W.D. Wash. 2025) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). An individual’s interest in their freedom, moreover, is “the most elemental of liberty interests.” Dkt. 19 at 6 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Based on these principles, “[t]he Supreme Court has consistently held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.” *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025) (citation modified). Despite this caselaw, the immigration authorities re-detained Mr. Ortiz, violating the most basic and “fundamental requirement of due process”: “the opportunity to be heard at a meaningful time and in a meaningful manner.” *E.A. T.-B.*, 795 F. Supp. 3d at 1320 (citation modified). Because the agency ignored this well-established applicable law, its position was not “substantially justified.” *See Li*, 505 F.3d at 919 (clarifying that where “the record indicates that the Agency’s prior action was not consistent with clearly established law at the time the case was before it, then the government’s position would not be substantially justified”).

Moreover, case after case in this district—and elsewhere—have held that similarly situated individuals are entitled to a hearing where the burden is the government to justify re-detention. *See, e.g., E.A. T.-B.*, 795 F. Supp. 3d at 1321–24; *Ledesma Gonzalez v. Bostock*, --- F. Supp. 3d ----, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); *Y.M.M.*, 2025 WL 3101782, at *2; *P.T. v. Hermosillo*, No. C25-2249KKE, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025); *Francois v. Wamsley*, No.

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2:25-cv02122-RSM-GJL, 2025 WL 3496557, at *4 (W.D. Wash. Dec. 5, 2025); *Tomas Manuel v. Hermosillo*, No. C25-2353-TL-MLP, 2025 WL 3690778, at *3 (W.D. Wash. Dec. 10, 2025), report and recommendation adopted, No. C25-2353-TL-MLP, 2025 WL 3697277 (W.D. Wash. Dec. 19, 2025); *Cabrera Perez v. Hermosillo*, No. 2:25-cv-02542-RSM, 2026 WL 100735, at *6 (W.D. Wash. Jan. 14, 2026); *Tsyamba v. Hermosillo*, No. 2:25-CV-02623-GJL, 2026 WL 237514, at *4–7 (W.D. Wash. Jan. 29, 2026); *Shinwari v. Hermosillo*, No. 2:26-CV-00009-RAJ, 2026 WL 262605, at *4 (W.D. Wash. Jan. 30, 2026); *Arroyo Silva v. Hermosillo*, No. 2:26-CV00179-GJL, 2026 WL 445003, at *1 (W.D. Wash. Feb. 17, 2026). The Supreme Court and the Ninth Circuit have repeatedly recognized that such “a string of losses can be indicative” that the government’s position lacks substantial justification. *Pierce v. Underwood*, 487 U.S. 552, 569 (1988); *see also Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1090 (9th Cir. 2022) (similar).

Nor are there special circumstances making an award of fees here “unjust.” To the contrary, the detention here caused Mr. Ortiz significant harm. He is a 62-year-old asylum seeker whose mental well-being suffered from being in detention. He is a valued member of his community and was torn away from them for over 120 days. **Dkt** These facts underscore that a fees award here is not unjust.

II. Petitioner’s requested fees are reasonable.

Mr. Ortiz is entitled to fees at the EAJA statutory rate (adjusted for inflation)¹ for the work performed in conjunction with this case, as he is the eligible and prevailing party, the

¹ See 28 U.S.C. § 2412(d)(2)(A) (setting the EAJA ceiling at “\$125 per hour unless the court determines that an increase in the cost of living [or other factor] . . . justifies a higher fee”). Based on cost of living increasing, the Ninth Circuit set the applicable statutory rate at \$258.46 for work performed in 2025. Statutory Maximum Rates Under the Equal Access to Justice Act,

1 government's position in this matter was not substantially justified, and special circumstances do
2 not make this award unjust. Petitioner also seeks reimbursement of taxable costs under 28 U.S.C.
3 § 1920 and fees for time spent preparing this fee application, *see Comm'r, INS v. Jean*, 496 U.S.
4 154, 163–65 (1990).

5 CONCLUSION

6 Mr. Ortiz accordingly respectfully requests that this Court grant his requested fees and
7 costs in the amount of \$6,978.42, in addition to fees for any time spent preparing a reply brief if
8 Respondents oppose this motion. See Ex. A (chart of 9th Cir. Max. Rates); Ex. B (timekeeping
9 entries).

10 Respectfully submitted on March 17, 2026.

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15 WORD COUNT CERTIFICATION

16 I certify that this reply contains 1666 words, in compliance with the Local Civil Rules.

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21
22 United States Courts for the Ninth Circuit, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates> (last visited Mar. 17, 2026).

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