



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

April 17, 2026

By ECF

Honorable Ann M. Donnelly
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Sumit v. Maldonado, et al.*
Civil Action No. 26-cv-650 (Donnelly, J.)

Dear Judge Donnelly:

The Respondents respectfully submit this letter brief in opposition to Petitioner Sumit Sumit's motion for attorneys' fees in the amount of \$1,051.08 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF 9 (the "Fee Motion"). Because the Respondents' legal position was substantially justified—as reflected by the growing number of courts that have agreed with Respondents, including the Fifth Circuit Court of Appeals, the Eighth Circuit of Appeals, and multiple district courts in this Circuit—the motion should be denied.

Background

By the time the Petition was filed, the central legal issue in this case – the interpretation of 8 U.S.C. Section 1225 – had already been extensively litigated, in this district and elsewhere. In response to this Court's February 6, 2026 Order, the Respondents acknowledged that the Court's decision on the relevant statutory interpretation issues in *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025), would control the result in this case, though the Respondents noted their respectful disagreement with the decision. *See* Respondents' February 9, 2026 Letter, ECF 4. By Memorandum and Decision dated February 10, 2026, the Court granted the writ of habeas corpus and ordered, inter alia, that the Petitioner be released from detention. *See* ECF 5.

Legal Standard

EAJA is a limited waiver of the United States' sovereign immunity, and therefore "must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991). Under EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). "The test of whether the Government position is substantially justified is

essentially one of reasonableness in law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 563-64 (1988) (quoting H.R. Conf. Rep. No. 96-1434, p. 22 (1980)). Substantial justification does not mean “justified to a high degree,” but rather is satisfied if there is a “genuine dispute” or “if reasonable people could differ as to [the appropriateness of the contested action].” *Id.*

Argument

The Petitioner’s Fee Motion should be denied because Respondents’ position was substantially justified, as reflected by the growing number of courts that have agreed with Respondents, including the Fifth Circuit Court of Appeals, the Eighth Circuit Court of Appeals, as well as multiple district courts in this Circuit and elsewhere.

A party is only entitled to fees and expenses if “the position of the United States” was not “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). While Respondents have the burden to show that their position was substantially justified, there is no “presumption that the Government position was not substantially justified simply because it lost the case[.]” *Scarborough v. Principi*, 541 U.S. 401, 414 (2004) (quotation omitted); *see also Cooper v. U.S. R.R. Ret. Bd.*, 24 F.3d 1414, 1416 (D.C. Cir. 1994) (explaining that the reasonableness inquiry “may not be collapsed into our antecedent evaluation of the merits, for EAJA sets forth a ‘distinct legal standard’”) (quoting *FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986)).

As the Supreme Court has explained, “substantially justified” does not mean “‘justified to a high degree,’ but rather ‘justified in substance or in the main’—that is, justified to a degree that could satisfy a reasonable person.” *Pierce*, 487 U.S. at 565. In other words, “[t]he issue for EAJA purposes is not what the law is when the EAJA application is made, but rather whether the government was substantially justified in believing the law not to have foreclosed its position during the underlying litigation.” *CFTC v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999) (per curiam); *see also Vacchio v. Ashcroft*, 404 F.3d 663, 677 (2d Cir. 2005) (United States’ position was substantially justified even where the government presented a “viable, but far from compelling, legal theory”). Importantly, “[w]hen the issue is a novel one with little to no precedent, courts have been hesitant to find the government’s position not substantially justified.” *Michel v. Mayorkas*, 68 F.4th 74, 78 (1st Cir. 2023).

Here, Respondents argued that Section 1225(b)(2)(A) mandated the Petitioner’s detention. While it is certainly true that that this Court and numerous others have disagreed with the Government’s interpretation and application of Section 1225(b)(2)(A), many courts have agreed with the Respondents’ position, including the Fifth Circuit Court of Appeals and the Eighth Circuit Court of Appeals. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, No. 25-3248, --- F. 4th --- (8th Cir. Feb. 19, 2026). And several district court judges in this Circuit have agreed with Respondents’ position as well. *See Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.); *Portilla Hernandez v. Noem*, No. 25-cv-10393, 2026 WL 836735 (S.D.N.Y. Mar. 26, 2026) (Halpern, J.); *Yinxiao Chen v. Almodovar*, No. 25 Civ. 9995, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Arana v. Arteta*, No. 26 Civ. 240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Weng v. Genalo*, No. 25 Civ. 9595, 2026 WL 184627 (S.D.N.Y. Jan. 23, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25 Civ. 9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Liang v. Almodovar*, No. 25 Civ. 9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *Azizzadeh v. Rhoney*, No. 25-

CV-1288, 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) (Sinatra, J.); *Xiaoquan Chen v. Almodovar*, No. 25 Civ. 8350, ---F. Supp.3d ---, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Candido v. Bondi*, 25-CV-00867-JLS, 2025 WL 3484832, at *3 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.). These judges reasoned, consistent with the Respondents' argument, that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Xiaoquan Chen*, ---F. Supp.3d at ---, 2025 WL 3484855, at *5. While this Court reached a different conclusion on the statutory interpretation issue, these decisions confirm that "the law [did] not [] foreclose[] [Respondents'] position during the underlying litigation." *C.M.Z. v. Zuchowski*, No. 5:22-CV-205, 2025 WL 1911824, at *2 (D. Vt. June 27, 2025) (citing *CFTC*, 169 F.3d at 786).

Given the existence of well-reasoned decisions from federal courts at the district and appellate levels agreeing with Respondents' position, and the absence of controlling authority foreclosing that position, the Respondents' arguments were substantially justified. *See Arana v. Decker*, No. 20 Civ. 4104, 2020 WL 7342833, at *8 (S.D.N.Y. Dec. 14, 2020) (United States' position was substantially justified when there was no "binding authority" or "clear guidance" regarding issues); *Brissett v. Decker*, 324 F. Supp. 3d at 448, 449-50 (S.D.N.Y. 2018) (denying EAJA fees in case involving mandatory detention where government's position was substantially justified based on its "reasonable" interpretation of the statute's plain language and "in light of the absence of precedent from the Supreme Court and the Second Circuit" foreclosing the interpretation).

Indeed, in an analogous case in this district, the Honorable Eric R. Komitee denied an EAJA fee motion *sua sponte*, concluding that, "[g]iven the split within this circuit concerning the appropriate interpretation of 8 U.S.C. § 1225, the Court cannot conclude that the government's position lacks a 'reasonable basis both in law and fact.'" Feb. 2, 2026 Docket Order, *Singh v. Maldonado*, No. 26-cv-0292 (E.D.N.Y.).

In making this argument, the Respondents acknowledge this Court's decision in *L.R.C. v. Maldonado*, No. 25-cv-6825, 2026 WL 946787 (E.D.N.Y. Apr. 7, 2026) (Donnelly, J.), in which the Court granted the petitioner's request for EAJA. The Respondents respectfully note that, in this case, unlike in *L.R.C.*, the Government advanced its position in response to the petition after the Fifth Circuit rendered its ruling in *Mendez v. Bondi*, and after a greater number of district courts within this Circuit had agreed with the Government's position.

Conclusion

For the reasons stated, the Court should deny Petitioner's Fee Motion.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: /s/ Richard K. Hayes
Richard K. Hayes
Assistant U.S. Attorney
(718) 254-6050
richard.hayes@usdoj.gov

cc: Counsel for Petitioner (by ECF)