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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

C.S.M., a minor, By and Through M.P.S.M., as Next Friend of Minor,

Petitioner,

v.

RUBY HERNANDEZ, Federal Field Specialist, Office of Refugee Resettlement; NIKY HYMEL, Federal Field Specialist Supervisor, Office of Refugee Resettlement; ALEX J. ADAMS, Assistant Secretary of the Administration of Children and Families; ANGIE SALAZAR, Acting Director of the Office of Refugee Resettlement; and ROBERT F. KENNEDY, Secretary of the U.S. Department of Health and Human Services,

Respondents.

Case No. 5:26-CV-01144

PETITIONER'S REPLY IN SUPPORT OF PETITIONER'S MOTION FOR ATTORNEYS' FEES, AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT

Honorable John W. Holcomb
United States District Judge

Honorable Angela C. Viramontes
United States Magistrate Judge

MEMORANDUM AND POINTS OF AUTHORITY

I. INTRODUCTION

After prevailing in this litigation, Petitioner seeks attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d).

Respondents do not dispute that Petitioner's application is timely, that Petitioner is eligible for EAJA relief, or that Petitioner prevailed. Instead, they reargue positions this Court already rejected, attack the reasonableness of work that secured a TRO, writ of habeas corpus, and judgment finding a procedural due process violation against them, and ask the Court to postpone ruling on a fully briefed motion while they wait to see whether the law changes in their favor. The Court should reject those arguments and grant Petitioner's motion in full.

II. ARGUMENT

A. PETITIONER IS ENTITLED TO EAJA FEES & COSTS

Petitioner satisfies EAJA's requirements. Respondents do not dispute that Petitioner's application was timely filed, Petitioner satisfies EAJA's eligibility requirements, or that Petitioner is the prevailing party. *See generally* ECF No. 33 ("Opp.") Nor do Respondents challenge Petitioner's request for costs. The only disputed issues are whether: Respondents' position was substantially justified, special circumstances exist, and the requested fees are reasonable.

1. RESPONDENTS SHOW NO SUBSTANTIAL JUSTIFICATION

Respondents fail to carry their burden of establishing substantial justification. Respondents argue that ORR acted reasonably in carrying out its obligations under

the TVPRA and that their mootness arguments were justified. Opp. at 4-7. Respondents are wrong. ORR never fulfilled its obligations. Instead, C.S.M. was released only after Petitioner secured court-ordered relief. ECF No. 13, 14.

Respondents' agency-action defense fails. Throughout this litigation, Respondents have emphasized ORR's duty to vet sponsors while providing no reasonable basis for their unlawful detention of C.S.M. and ignoring the judicial intervention ultimately required to secure her release. Their opposition explains why DNA testing and sponsor review were important but never explains why federal litigation was necessary to secure C.S.M.'s release. Opp. at 5. Here, the Court answers that question when it found Petitioner's detention had "taken far too long," ordered her release forthwith, and that Respondents violated Petitioner's procedural due process rights. ECF Nos. 14, 20, 30. Rather than grapple with those findings, Respondents ask the Court to infer significance from what it did *not* say in its orders. *See, e.g.,* Opp. at 7. That is not substantial justification.

Respondents' litigation position was equally unsuccessful. Respondents lost at the TRO stage and on the merits, yet continue to litigate this case as though they prevailed. After Petitioner's release, the Court granted the petition and issued a writ of habeas corpus. ECF Nos. 27, 30. Even now, Respondents continue to defend ORR's unreasonable conduct through the same TVPRA-based arguments the Court repeatedly rejected. *See generally* Opp. Respondents' own authorities illustrate this

does not meet their burden.[1] Here, Respondents lost at the TRO stage, lost on mootness, lost on the merits, and ultimately faced a judgment that their conduct violated Petitioner's constitutional rights.

Finally, Respondents evaluate each component of their conduct in isolation. Opp. at 4-7. That is not the test. The question is whether the Government's overall position was substantially justified. *Commissioner, INS v. Jean*, 496 U.S. 154, 161-62 (1990). It was not. Petitioner obtained release only through court intervention and ultimately secured a judgment that Respondents violated her constitutional rights. ECF Nos. 14, 30. On this record, Respondents have not carried their burden.

2. NO SPECIAL CIRCUMSTANCES MAKE AN AWARD UNJUST

The Ninth Circuit has held that special circumstances exist where the government makes a strong showing that it advanced a novel but credible interpretation of the law in good faith.[2] *Hoang Ha v. Schweiker*, 707 F.2d 1104, 1106 (9th Cir. 1983). Respondents do not argue either circumstance exists here. With no legitimate special circumstance, Respondents' opposition focuses on irrelevant

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[1] *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1231 (9th Cir. 1990)(finding substantial justification where the government argued its position "forcefully and well," difficult questions were raised, and on-point adverse precedent was lacking coupled with plausibly reasonable agency action.); *Meza-Vazquez v. Garland*, 993 F.3d 726, 730 (9th Cir. 2021) (finding substantial justification where the agency's decision was consistent with controlling law when rendered notwithstanding intervening case law on the same issue.); *cf. Ora Vaca, Inc. v. Norton*, 55 F. App'x 433, 437 (9th Cir. 2003)(agency conduct was substantially justified despite losing TRO and prevailing on mootness where agency reasonably relied on expert reports from another federal agency).

[2] *See Flores v. Barr*, No. CV854544DMGAGRX, 2019 WL 7171539, at *3 (C.D. Cal. Nov. 12, 2019)(refusing to apply the equitable prong of special circumstances where the government did not make "strong showing" since its position ignored its "explicit commitments" to release minors to "least restrictive setting available" and relied on a "tortured interpretation" of the *Flores Agreement* that was neither novel nor credible interpretation of the law.)

claims about the funding source of any award and baseless accusations against Petitioner's counsel. Opp. at 8-9. Neither carries their burden.

First, Respondents argue that a fee award is unjust because the funds used to satisfy that award could otherwise be used for child welfare programs. Opp. at 8. But that argument would apply equally to every EAJA award, all of which are paid from public funds. Further, Respondents misunderstand the purpose of EAJA. Congress enacted the statute so that prevailing parties would not be forced to absorb the costs of overcoming unjustified government action. *See* 28 U.S.C. § 2412(d). Here, the resources have already been expended to secure C.S.M.'s release and obtain a judgment for violating her due process rights. Denying fees under these circumstances would frustrate, rather than further, EAJA's purpose.

Second, Respondents make the baseless accusation that counsel "forced" Petitioner's guardian to execute the fee assignment agreement.[3] Opp. at 8. They cite no evidence because none exists. To the contrary, M.P.S.M., C.S.M.'s sister and legal guardian, voluntarily executed the assignment agreement. ECF No. 31-2 at ¶¶ 4-5. Fee assignments are routine in EAJA litigation because fees belong to the prevailing litigant and may thereafter be assigned to counsel. *Astrue v. Ratliff*, 560 U.S. 586, 593-98 (2010). Respondents cite no authority holding that a routine fee assignment

[3] Respondents also suggest that Exhibit A containing the agreement was improperly filed under seal. Opp. at 2 n.2. Petitioner disagrees. In any event, Respondents cannot plausibly claim prejudice. Petitioner provided Respondents with a copy of the document, provided courtesy copies to chambers, and Respondents themselves rely on and quote the challenged document throughout their Opposition.

constitutes a special circumstance warranting denial of an EAJA award.

There are no circumstances in this case that courts have found sufficient to invoke the narrow special circumstances exception—there is no bad faith, inequitable conduct, or obstinate behavior by Petitioner. *See, e.g., Flores*, 2019 WL 7171539, at *3. Respondents have therefore failed to identify any special circumstance that would make an otherwise mandatory EAJA award unjust.

B. THE REQUESTED FEES AND COSTS ARE REASONABLE

EAJA fees calculated under the lodestar-method are presumptively reasonable.[4] Respondents characterize this case as a routine habeas action involving a single petitioner that ended at her release. Opp. at 10. The record shows otherwise.

The reasonableness inquiry focuses on the hours reasonably expended, not the number of petitioners involved. *See Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).[5] Here, counsel secured emergency injunctive relief releasing C.S.M. from ORR custody, defeated Respondents' mootness arguments, litigated the merits through the Report and Recommendation process, and ultimately obtained a judgment finding Respondents violated her procedural due process rights. ECF Nos. 14, 27, 30.

Respondents' comparator cases are inapposite. They all involve adults

[4] *Hensley*, 461 U.S. at 435(most useful starting point for determining the amount of a reasonable fee is number of *hours* reasonably expended on the litigation multiplied by a reasonable hourly rate.); *Metro Data Sys., Inc.*, 597 F. Supp. at 245(same); *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001), (same); Opp at 10 (citing same).

[5] *Hensley* further held that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award and that "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee [] normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified.") 461 U.S. 424, 435-40 (1983) (considering a fee award under 42 U.S.C. § 1988).

challenging ICE detention.[6] Smaller fee awards in materially different cases do not establish that Petitioner's actual hours were unreasonable.

1. REASONABLE, NON-DUPLICATIVE STAFFING

Petitioner's staffing was reasonable and non-duplicative. Respondents argue involvement of multiple attorneys renders the fee request excessive. Opp. at 10. But the number of attorneys is not the relevant inquiry. The question is whether the hours billed were reasonably expended. *See Hensley*, 461 U.S. at 433-35; *Sorenson*, 239 F.3d at 1145. As the chart below shows, unlike *Metro Data Systems*, each attorney served a distinct, necessary role. 597 F. Supp. 244, 245 (overstaffing included 13 lawyers, 3 paralegals and 1 law clerk).

Attorney	Hours	Role
M. Kaloust	1.75	CRP director provided strategic consultation on TRO and post-release litigation
B. Bolt	7.5	L&A substantive review of Petition and TRO
A. Askari	15	L&A substantive drafting of Petition and TRO
M. Zavaleta	4	CRP in-court Spanish-language interpretation services for TRO hearing
C. Felix	30	CRP director drafted Petition, TRO, oversaw release of C.S.M. and status reports
S. Periban	127.2	CRP developed facts, drafted Petition, TRO, status reports, edited merits brief
C. Jolley	145.2	CRP Drafted Traverse, status reports, merits brief, EAJA Motion, argued TRO

Petitioner's records further demonstrate billing judgment. Several attorneys billed only a handful of hours, and supervising attorneys did not bill for substantial time devoted to strategy, consultation, and oversight. ECF No. 31-1, Ex. B at 17-29.

Respondents' duplication argument likewise fails. While courts may reduce truly duplicative time, duplicative work is not inherently unreasonable. *Moreno v.*

[6] *Gamarra Garcia v. Semaia*, 5:25-cv-03536-HDV-AS at Dkt. 30 (adult ICE detainee); *Ixcot Guerra v. Noem*, 5:25-cv-03119-SSS-JC at Dkt. 24 (same); *Torres Sotomayor v. Noem*, 5:25-cv-02939-CV-SSC at Dkt. 21 (same); *You v. Bondi*, 5:26-cv-00967-SB-ADS at Dkt. 18 (same); *Leon v. Noem*, 5:25-cv-02582-FMO-RAO at Dkt. 19 (same); *Gonzalez v. Noem*, 5:26-cv-00357-JWH-AJR at Dkt. 25 (same).

City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008)("*some* degree of duplication as an inherent part of the process"). Respondents identify no specific entries that were unnecessary and seek a blanket reduction based on the participation of multiple attorneys. Opp. at 10-12. That approach is inconsistent with *Hensley*.

2. SUFFICIENT BILLING RECORDS

Petitioner's records are sufficiently detailed. Respondents argue that portions of the records are too vague to permit meaningful review. Opp. at 12-13. But vague entries warrant, at most, targeted reductions to specific entries, not wholesale cuts to an otherwise reasonable fee request. *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012). Respondents therefore must identify the allegedly vague entries and explain why any reduction is warranted. Generalized criticism of Petitioner's records does not satisfy that burden.

Here, Respondents identify only three specific entries. None warrants a reduction. First, Respondents challenge a 2-hour billing entry for referencing National Center for Youth Law ("NCYL"). Opp. at 12-13. This entry was for counsel's review and incorporation of NCYL comments into the habeas petition. ECF No. 31-1, Ex. B at 29. Such work is reasonably related to the development of legal theories and briefing in this case.

Second, Respondents challenge an entry of 4 hours reflecting Spanish-language interpretation services. Opp. at 12. That objection ignores the record. At the TRO hearing, Ms. Zavaleta was sworn as an interpreter, established her qualifications on the record, and provided interpretation for testimony. ECF No. 20 at 23:3-27:22. Respondents not only declined to object to her qualifications but

expressly requested that she be sworn before testimony proceeded. *Id.* That entry was necessary for the TRO proceedings. [7]

Third, Respondents challenge 1.7 hours for communications with Congressman Levin's office. Opp. at 13. Those communications sought congressional assistance in securing C.S.M.'s release, the central objective of this litigation. ECF No. 31-1, Ex. B at 18.

3. CLERICAL TASKS

Petitioner does not dispute that purely clerical tasks are not compensable at attorney rates. *Missouri v. Jenkins by Agyei,* 491 U.S. 274, 288 n.10 (1989); *see also Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992). But that principle applies only to genuinely clerical tasks, such as preparing summonses, or serving process, not tasks requiring legal judgment merely because they contain an administrative component. *Davis*, 976 F.2d at 1543 (court correctly reduced award for "chores such as xeroxing," serving, and filing papers.)

Respondents argue that the Court should disallow any time that "could, and should, have been performed by a paralegal or other non-attorney staff member." Opp. at 19. But Respondents never identify any specific billing entries that allegedly constitute non-compensable clerical work.

That omission is fatal. Courts evaluate specific entries and make targeted

[7] If the Court concludes that interpretation services are more properly recovered as costs rather than attorney time, Petitioner respectfully requests recovery on that basis.

reductions where warranted. *See Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009). Respondents instead offer generalized criticism untethered to a specific entry. The Court should reject a blanket reduction rather than an entry-specific analysis.

C. THE COURT SHOULD DENY RESPONDENT'S STAY

Respondents ask the Court to postpone ruling on Petitioner's EAJA motion pending the Supreme Court's decision in *Montoya Palacios*. Opp. at 14-17. The Court should deny that request. Binding Ninth Circuit authority governs Petitioner's entitlement to fees, this motion is fully briefed and ripe for decision, and Respondents fail to establish that a stay is warranted under *Landis*.

1. EXISTING NINTH CIRCUIT LAW GOVERNS

Respondents assert that Petitioner is not entitled to fees because immigration habeas proceedings are not encompassed within EAJA's reference to "any civil action" and ask the Court to stay these proceedings pending *Montoya Palacios*.[8] Opp. at 15. Respondents cite no Ninth Circuit authority adopting their position. Nor could they. Binding Ninth Circuit precedent recognizes the availability of EAJA fees in habeas proceedings. *See, e.g.*, *Nadarajah*, 569 F.3d 906.

Courts in this Circuit have continued to adjudicate EAJA motions notwithstanding the pendency of *Montoya Palacios*. *See, e.g., E.A.P.C. v. Wofford*,

[8] Respondents also overstate the similarity between this case and *Montoya Palacios*. *Montoya* concerns an adult challenging detention in the ICE context. No. 25-1223, --- S.Ct. ---, 2026 WL 1855057 (Mem). This case involved an unaccompanied child in ORR custody and sponsor reunification. ECF No. 1. Indeed, Respondents themselves acknowledge that C.S.M. "was never placed in a traditional immigration facility." Opp. at 6. While *Montoya* may ultimately address a broader legal issue, Respondents assume both that *Montoya* controls this case and that the Supreme Court will adopt Respondents' preferred rule.

No. 1:25-CV-01546 JLT CDB (HC), 2026 WL 1983910, at *2 (E.D. Cal. July 9, 2026); *Guzman Ruiz v. Chestnut*, No. 1:26-CV-00509-KES-CDB (HC), 2026 WL 1983404, at *2 (E.D. Cal. July 9, 2026); *V.O. v. Noem*, No. 1:25-CV-1796-TLN-JDP, 2026 WL 2169089, at *2 (E.D. Cal. July 28, 2026). The stay orders cited by Respondents do not compel a different result. Those decisions are not binding and involve adult detainees challenging ICE detention.[9]

2. A STAY IS UNWARRANTED

District courts evaluating a stay request consider: (1) prejudice to the non-moving party which may result from granting a stay; (2) the hardship a party may suffer in being required to go forward; and (3) the orderly course of justice. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Here, each factor weighs against a stay.

a) A STAY WOULD PREJUDICE PETITIONER

Petitioner seeks prompt adjudication of her properly filed EAJA application. Respondents argue that Petitioner[10] will not suffer prejudice because the underlying merits of this case have been decided. Opp. at 16. Respondents ignores the record.

[9] The cases are inapposite. None involve an unaccompanied child in ORR custody. *Justino Moises Ortega Chavez v. Joshua Johnson*, No. 2:26-cv-01349-FMO-JDE (C.D. Cal. July 17, 2026); *Scarleth Tatiana Jarquin-Gadea v. Kristi Noem*, No. 5:25-cv-02800-FMO-BFM (C.D. Cal. July 17, 2026); *Jose Luis Rivera-Lope v. Fereti Semaia*, No. 5:26-cv-01864-FMO-RAO (C.D. Cal. July 7, 2026); *Jitender Singh v. James Janecka*, No. 5:26-cv-01414-ACCV (C.D. Cal. Aug. 10, 2026); *Edwin Eduardo Melgar Monterroso v. Fereti Semaia*, No. 5:26-cv-01911-ACCV (C.D. Cal. Aug. 13, 2026)(all involving adult ICE detainees).

[10] Respondents' Opposition repeatedly discusses prejudice to Immigrant Defenders (counsel's non-profit organization) rather than Petitioner. The EAJA applicant, however, is C.S.M., the prevailing party. Any fee assignment does not alter Petitioner's status as the applicant or prevailing party.

This case has already been litigated to final judgment. Petitioner obtained emergency relief, defeated Respondents' mootness arguments, secured a writ of habeas corpus, and obtained a determination that Respondents violated her procedural due process rights. ECF Nos. 14, 27, 29, 30. Having required Petitioner to litigate each stage of this case, Respondents now ask the Court to postpone deciding its final remaining issue. This prejudices Petitioner by keeping her stuck in litigation. Having prevailed, Petitioner is entitled to a determination of her fee application under the law presently governing in this Circuit.

Respondents incorrectly assume that delay carries no cost. It does. EAJA exists so prevailing parties do not bear the financial burden of litigating against unreasonable government action. Delay postpones compensation for work already performed, resources expended, and rights already vindicated. That prejudice is especially significant here, given the resources necessary for the obtained result.

Nor is Respondents' requested delay tied to any present need. The motion is fully briefed and ready for decision. Respondents simply ask the Court to wait and see whether future developments produce a more favorable legal landscape for them. That speculation does not justify postponing resolution of an otherwise ripe motion.

b) <u>RESPONDENTS IDENTIFY NO MEANINGFUL HARDSHIP</u>

Respondents argue that proceeding now could require them to litigate issues that *may* later become unnecessary. Opp. at 15. But, Respondents have already litigated this motion. They have filed a lengthy opposition challenging nearly every

aspect of Petitioner's request. *See* Opp. The hardship identified by Respondents is therefore not the burden of litigating this motion. That work has already been done.

Nor is it a hardship to require Respondents to comply with the law presently governing in this Circuit. Respondents effectively ask the Court to postpone ruling on a ripe, fully briefed motion so that they may wait and see whether future developments produce a more favorable legal landscape. Speculative future litigation is not the hardship contemplated by *Landis* or *CMAX*.

Here, Respondents opposed emergency relief, continued litigating after Petitioner's release, opposed Petitioners fee request. *See* Opp.; ECF Nos. 10, 23, 24. And now ask the Court to delay deciding that request. Having litigated every phase of this case and lost on the merits, Respondents cannot transform their desire to avoid an adverse ruling under existing law into cognizable hardship.

c) JUDICIAL ECONOMY DOES NOT FAVOR A STAY

Respondents ask the Court to stay a fully briefed motion to await a Supreme Court ruling of uncertain timing and scope, and potentially require additional proceedings thereafter. That is not judicial economy. It is more delay.

This motion is the final issue for the Court to decide in this case—the TRO and merits proceedings are complete; judgment has been entered. Respondents' request to "stay the briefing schedule" is particularly misplaced because the filing of this Reply completes the briefing on this issue. Opp. at 14. Judicial economy favors resolving the motion and this case now.

Nor is Respondents' proposed course necessarily more efficient. Respondents *assume* the Supreme Court will adopt their preferred interpretation of EAJA. But, if the Supreme Court does not, a stay will have accomplished nothing except postponing adjudication of a ripe motion.

Most tellingly, Respondents do not seek a stay because this Court lacks governing law or because the issues are not fully presented. Respondents seek a stay because they hope the law changes. The orderly administration of justice is better served by deciding the motion under the law that governs today. Accordingly, the Court should deny Respondents' request for a stay.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' request for a stay and grant Petitioner's Motion in full. Petitioner further requests leave to supplement the fee request for time reasonably incurred litigating the EAJA application, including preparation of the Reply and hearing appearance. *See Commissioner, I.N.S.*, 496 U.S. 154 (1990).

Dated: August 21, 2026

Respectfully Submitted,

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/s/Caitlin Jolley
Caitlin Jolley
Attorney for Petitioner

LOCAL RULE 11-6.1 CERTIFICATE OF COMPLIANCE

The counsel of record for Petitioners certifies that this brief does not exceed 12 substantive pages, in compliance with the Court's Standing Order.