

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

[REDACTED],

Petitioner,

v.

No. [REDACTED]

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations for the El Paso Field Office; JAMIE RAYE CARNES, in official capacity as Warden of Torrence County Detention Facility,

Respondents.

PETITIONER [REDACTED] OPPOSED APPLICATION FOR ATTORNEY FEES AND COSTS PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

Petitioner [REDACTED], through his undersigned counsel, asks this Court for an order granting him attorney’s fees and costs pursuant to the Equal Access to Justice Act (“EAJA”). Petitioner contacted Respondents for their position on this Application, by providing a copy of this Application and the calculation of attorney fees and costs being requested. Respondents’ counsel confirmed this Application for attorney fees and costs is opposed.

Mr. [REDACTED] provides the following basis for his Application:

I. INTRODUCTION AND BACKGROUND

[REDACTED] was brought to the United States from Mexico when he was 12 years old – more than 16 years ago. Since that time, Mr. [REDACTED] has resided in New Mexico where he went to school, worked, participated in recreational soccer programs, attended church, and started a family. On July 10, 2025, following a sentence for a misdemeanor offense of Driving While Intoxicated (1st Offense) to three months of probation, Mr. [REDACTED] was arrested by ICE agents when he reported to his probation officer.

During that time, Mr. [REDACTED] was kept in detention and never provided a bond hearing as required by 8 U.S.C. § 1226(c). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Instead, while his daughter celebrated her first birthday, Mr. [REDACTED] languished in detention without bond as a result of the Trump Administration’s administrative directions to its agencies to apply a novel interpretation of Congressionally enacted immigration law—one that was directly contrary to decades of jurisprudence and practice, and which sought to impermissibly replace the Court’s Article III power to adjudicate cases with an agency’s interpretation of the law. *See* “Interim Guidance Regarding Detention Authority for Applicants for Admission,” (asserting that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225(b)(2)(A)); *see also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 402 (2024) (holding agency interpretations of law are not binding on the Court).¹ District courts across the country repeatedly rejected the government’s new practice and issued orders granting the habeas petitions of those

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

persons unlawfully detained without an opportunity for a bond hearing. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV25-11613-BEM, -- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB) 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248- BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-

RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). Despite the multitude of court orders finding the Trump Administration’s new approach to immigration law to be unlawful and without merit, the Government has continued such practice, including with respect to [REDACTED]

On October 10, 2025, Petitioner [REDACTED] was able to obtain counsel and filed the Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2401. [Doc. 1] On January 12, 2026, following review of all of the briefing in this matter, this Court entered an order granting the petition for habeas corpus for Mr. [REDACTED] and ordered that a bond hearing was to take place within five (5) days by the Immigration Judge. [Doc. 26] Petitioner had to retain legal counsel to assist him in this matter and his counsel’s time and fees are set forth in Exhibit A to this Application. As Petitioner prevailed on the habeas petition and otherwise meets all the requirements set forth by the EAJA, an award of attorney’s fees is appropriate in this matter.

II. EAJA’S APPLICATION TO IMMIGRATION DETENTION CASES

The EAJA provides a mechanism for attorney’s fees to be awarded to a prevailing party in a civil action (other than tort cases) against the United States “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 purpose of the EAJA “is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby deter the unreasonable exercise of Government authority.” *Ardestani v. INS*, 502 U.S. 129, 138, 112 S.Ct. 515. Accordingly, through the EAJA, Congress sought to encourage attorneys to take on cases and controversies arising from unjustified government action in an effort to deter and prevent such arbitrary government action. H.R.Rep. No. 96-1418, at 5 (1979) (The House of Representative’s Report on the EAJA bill confirms its legislative history that “[i]n these cases, it

is more practical to endure an injustice than to contest it” without the ability to recover attorney’s fees).

The EAJA requires the following to be met in order for fees to be awarded:

- (1) Petitioner’s net worth is less than \$2,000,000;
- (2) Petitioner prevailed on a civil action against the Government;
- (3) The Government’s conduct was not substantially justified; and
- (4) There are no special circumstances rendering an award of fees unjust.

28 U.S.C. § 2412(d)(1)(A). In particular, the EAJA sets forth that it is mandatory to award attorney’s fees unless the Government’s conduct was not substantially justified or there were special circumstances rendering such an award of attorney’s fees unjust. *See* § 2412(d)(1)(A) (“[A] court shall award to a prevailing party[.]”); *see also* *Quintero v. Colvin*, 642 Fed. Appx. 793, 798 (10th Cir. 2016).

III. EAJA FEES SHOULD BE ORDERED IN THIS CASE

In this case, Petitioner [REDACTED] meets all the requirements and fees should be awarded.

A. Petitioner’s net worth is less than \$2,000,000.

Mr. [REDACTED] net worth is less than the \$2,000,000 statutory requirement under the EAJA. Prior to being detained, Mr. [REDACTED] worked as a refrigerator repairman and did not otherwise have any other assets or resources that total even close to \$2,000,000.

B. Habeas Proceedings in Immigration Detention Cases Are Civil Actions.

In the Tenth Circuit, habeas petitions in the immigration context are considered civil actions pursuant to the EAJA. *See Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025) (“Because both habeas and the underlying immigration proceedings are civil, habeas actions challenging

immigration detention are purely civil.”). Consistent with the Tenth Circuit’s conclusion that habeas immigration detention cases fall within a “civil action” under the EAJA, other circuit courts have also confirmed and held this principle for decades. *See Vacchio v. Ashcroft*, 404 F.3d 663, 672 (2nd Cir. 2005) (“Accordingly, we...hold that a habeas proceeding challenging immigration detentions constitutes a ‘civil action’ under the EAJA.”); *see also In re Hill*, 775 F.2d 1037, 1041 (9th Cir. 1985) (“[T]he dual purposes underpinning the EAJA are served by characterizing this particular [habeas petition] proceeding as a civil action.”).

Before *Daley*, the district court in Colorado analyzed the issue of whether habeas proceedings in immigration cases fell within the definition of a “civil action” under EAJA. The court specifically noted as part of its support for finding it was a civil action:

ICE has discretion in following agency policy as it relates to the confinement of particularly vulnerable individuals. The EAJA encourages challenges to government action as a means of helping to formulate better public policy.

Arias v. Choate, 2023 WL 4488890, * 5 (D. Colo. July 12, 2023).

C. *The United States’ Conduct Was Not Substantially Justified.*

To determine whether the Government’s position was substantially justified under the EAJA to preclude an award of attorney’s fees, the position must have a “reasonable basis both in law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The Tenth Circuit has concluded that it “is not reasonable to ignore agency regulations and judicial precedent.” *Quintero*, 642 Fed. Appx. at 796, 798. “The government bears the burden of establishing its position was justified to a degree that could satisfy a reasonable person.” *Al-Maleki v. Holder*, 558 F.3d 1200, 1207 (10th Cir. 2009). In *Arias*, the district court concluded that “a reasonable person would have expected [Respondents] to follow non-binding precedent where – as here – there are multiple cases from the same judicial district demonstrating a clear and obvious legal trend” and ultimately concluded

that the Government could not meet its burden to establish that its position was substantially justified. *Arias*, at * 7.

Here, just as in *Arias*, the Government cannot meet its burden as its position (ignoring § 1226(a) entirely and treating all persons pursuant to § 1225(b)) is not reasonable either in law or fact. At the time that the Government was detaining Mr. [REDACTED] and denying him a bond hearing, courts across the country, and in New Mexico, had concluded that the Government's new agency interpretation of federal immigration law was incorrect, not valid, and not binding on this Court. *See supra at pgs. 2-3*.

Unlike other cases in which courts concluded the Government's position was substantially justified, in this case, the Government did not follow existing Congressionally enacted federal law and its decades' worth of interpretation by myriad courts but, instead, took the existing federal law and completely changed the agency's interpretation of it. Accordingly, the Government's position with respect to Mr. [REDACTED], and the multitude of other persons who have been unjustly detained like him, was not based upon a reasonable difference of opinion on a statute that had never been challenged or interpreted. Thus, there was no reasonable basis in law for the Government's position that Mr. [REDACTED] was not entitled to a bond hearing.

In addition, the Government had no reasonable basis in fact for its position to deny Mr. [REDACTED] a bond hearing. In the Government's briefing regarding the Petition for Writ of Habeas Corpus, it admitted that the only basis for construing Mr. [REDACTED] case pursuant to § 1225(b) was by virtue of the non-binding guidance from the Trump Administration and the Immigration Court order in *Matter of Yajure Hurtado*. 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. The facts support that Mr. [REDACTED] was brought to the United States when he was 12 years old but was not arrested and detained by ICE until 16 years

later in July 2025. Accordingly, under no reading of § 1226(a), § 1225(b), or long-held jurisprudence and practice could Mr. [REDACTED], based upon the undisputed facts, be considered to fall under § 1225(b) such that he was not entitled to a bond hearing.

D. There are No Special Circumstances Rendering a Fee Award Unjust.

Finally, as Petitioner meets all the requirements under the EAJA, there is also no special circumstance present to deny attorney's fees. In fact, the opposite is true here. As this Court is aware, the Government's novel interpretation of longstanding federal immigration law and practice has resulted in the unjust detention of hundreds of persons not just in New Mexico but all across the country without an opportunity for a bond hearing. [Doc. 26 (citing *Pu Sacvin v. De Andaybarra*, No. 2:25-CV-01031-KG, 2025 WL 3187432, at *3 (D.N.M. Nov. 14, 2025) (finding that § 1226(a) governs long-term noncitizens already in the country); *Romero v. Hyde*, 795 F. Supp. 3d 271, 282-85 (D. Mass. 2025) (engaging in in-depth analysis of plain text and statutory scheme of §§ 1225 and 1226 to reach the same conclusion); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256-61 (W.D. Wash. 2025) (relying on further canons of construction, like recent legislative history of § 1226(c), to reach the same conclusion). Just within the last few weeks, this Court has granted multiple petitions for habeas corpus, finding the Government's position invalid, and ordering a bond hearing to be conducted. See *Celio Romero Guncay Castro v. Kristi Noem et al.*, 2026 WL 280470 (D.N.M. February 3, 2026); see also *Wistin Abraham Galvan Lopez v. Kristi Noem et al.*, 2026 WL 252513 (D.N.M. January 30, 2026); *Santos Ramirez v. Bondi*, 2026 WL 84515 (D.N.M. January 12, 2026); *Lorenzo v. Bondi*, 2026 WL 84521 (D.N.M. January 12, 2026); *Requejo Roman v. Castro*, 2026 WL 125681 (D.N.M. January 12, 2026); *Lira v. Noem*, No. 1:25-CV-00855-WJ-KK (D.N.M. September 25, 2025); *Noe Patino-Arroyo v. Kristi Noem et al.*, 2026 WL 323630 (D.N.M. 2026); *Jose Caballero Gutierrez et al. v. Joel Garcia et al.*, 2026 WL 310064

(D.N.M. February 5, 2026); *Xiuhan Gao v. Kristi Noem et al.*, 2026 WL 323097 (D.N.M. February 5, 2026); *Gainza v. Noem*, 2026 WL 280568 (D.N.M. February 3, 2026); *Gurwinder Singh v. Mary de Anda-Ybarra et al.*, 26 WL 281140 (D.N.M. February 3, 2026); *Duhan v. Noem*, 2026 WL 266619 (D.N.M. February 2, 2026); *Garcia Sanchez v. Noem*, 2026 WL 266464 (D.N.M. February 2, 2026); *Cholula Rios v. Noem*, 2026 WL 251927 (D.N.M. January 30, 2026); *Martinez Rodriguez v. Castro*, 2026 WL 252503 (D.N.M. January 30, 2026); *Botello Aguirre v. Bondi*, 2026 WL 242575 (D.N.M. January 29, 2026).

The 16 cases cited above are just the orders granting writs for petition of habeas corpus for persons detained without a bond hearing pursuant to the Government's new and unlawful interpretation of federal law within the past two weeks in New Mexico. This list is not exhaustive but demonstrates the importance of encouraging deterrence for arbitrary and unlawful government conduct, as is taking place here.

IV. CONCLUSION

Petitioner [REDACTED] has met the requirements set forth by the EAJA to recover attorney's fees and costs in pursuing the writ for habeas corpus as a result of his unlawful detention and without access to a bond hearing.

WHEREFORE, Petitioner requests this Court enter an order granting Petitioner's Application for Attorney's Fees and Costs Pursuant to the Equal Access for Justice Act and order Respondents to pay the amounts set forth in **Exhibit A**.

Respectfully submitted,

/s/ Rebecca Sheff

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2026, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Julio C. Romero _____

Julio C. Romero