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.

REPLY IN SUPPORT OF PETITIONER [redacted] APPLICATION FOR ATTORNEY FEES AND COSTS PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

Petitioner has met the requirements for his Application for attorney fees and costs pursuant to the Equal Access to Justice Act. Respondents do not challenge the third and fourth factors under the Equal Access to Justice Act (i.e. "(3) the attorneys' fees and costs are reasonable; and (4) that Petitioner timely filed the application"). Respondents concede the third and fourth factors and only argue that Petitioner was not a prevailing party and that Respondents' actions were substantially justified. However, Respondents' arguments opposing Petitioner's Application are unavailing on these two first factors. Accordingly, the Application should be granted.

I. Petitioner is a prevailing party.

Petitioner's original Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 sought plain and straightforward relief. Petitioner asserted that he was unlawfully subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and should have instead been classified as detained under 8 U.S.C. § 1226. [Doc. 1] As a result, Petitioner was unlawfully denied access to individualized review of his custody status by an Immigration Judge. Petitioner accordingly sought relief, specifically declaratory relief finding that Petitioner's detention was unlawful and a grant of the Petition requiring that Respondents either release Petitioner on his own recognizance or promptly conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a). [Doc. 1 at 16]

The Court issued an Order on January 12, 2026, granting the specific relief sought in the Petition. The Court found that Petitioner was entitled to an individualized bond hearing pursuant to 8 U.S.C. § 1226(a) and directed Respondents to conduct the bond hearing before the immigration court within seven days of the Order's entry. [Docs. 26 and 27] Petitioner thus secured the relief that he sought. The Court's Order effectuated a "material alteration of the legal relationship of the parties," in that Petitioner was no longer detained by Respondents under § 1225; his detention was governed instead by § 1226(a). *See Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*, 532 U.S. 598, 604 (2001) ("[I]t seems clearly to have been the intent of Congress to permit…an interlocutory award only to a party who has established his entitlement to *some relief* on the merits of his claims, either in the trial court or on appeal." (quoting *Hanrahan v. Hampton*, 446 U.S. 754, 757, 100 S.Ct. 1987)).

Respondents confuse the issue, contending that Petitioner should not be considered a prevailing party because of the outcome of Petitioner's bond hearing. Respondents ignore the fact that the Petition was solely addressed towards the illegality of Petitioner's detention being rooted

in Respondents' improper application of 8 U.S.C. § 1225(b)(2) to Petitioner. In granting the Petition, the Court determined that Petitioner was instead properly detained pursuant to 8 U.S.C. § 1226(a)'s *discretionary* detention procedures, such that he was entitled to a bond hearing before an Immigration Judge. Because Petitioner had not received the bond hearing that he was due, the Court ordered for Respondents to promptly hold one—granting Petitioner a material alteration in Respondent's legal relationship towards Petitioner. The grant of the Petition was in no way contingent on the outcome of Petitioner's bond hearing. It is axiomatic that the Government's *discretionary* detention authority under § 1226(a) is exactly that—discretionary—such that individuals may be held in ICE custody, based on considerations of flight risk or danger to the community, or may be released based on the absence thereof.

The position that Respondents take now is, in fact, in tension with the position taken in Respondents' Motion to Dismiss in this very case. There, Respondents argued in the alternative that should § 1226 apply to Petitioner's detention, the appropriate relief due to Petitioner would be "a bond review in the normal course" adjudicated by the immigration court.

Finally, to support their argument that Petitioner "did not obtain the ultimate relief sought – release from custody" and thus is not a "prevailing party" under the Equal Access to Justice Act, Respondents cite two "text-only" entries in their Response brief. [Doc. 31 at n.4] However, both *Cholula Rios v. Noem*, 2026 WL 251927 (D.N.M. Jan. 30, 2026) and *Centeno Chavez v. Dedos*, 2026 WL 145335 (D.N.M. Jan. 20, 2026) do not address the question of attorneys' fees under the Equal Access to Justice Act, but instead, are text-only docket entries regarding the completion of the cases in those matters and are not persuasive in this case. Unlike the text-only docket entries in *Cholula Rios* and *Centeno Chavez*, in this case, the Court entered a formal Judgment that clearly states that "IT IS THEREFORE ORDERED AND ADJUDGED that the Petition is granted." [Doc.

27] There is no basis to claim that Petitioner *did not* prevail on his Petition for Writ of Habeas Corpus [Doc. 1] when the Court's Memorandum Opinion and Order and the Judgment precisely granted the relief requested: ruling in favor of Petitioner that he was entitled to a bond hearing and ordered the Respondents to commence one within seven days. Respondents had refused both grounds until the Court's Memorandum Opinion and Order, with the Judgment, granted Petitioner's requested relief and materially altered Respondents legal relationship with Petitioner.

Petitioner [redacted] has established that, pursuant to the Equal Access to Justice Act, he was a prevailing party when the court granted his petition for habeas corpus and ordered the government to hold a bond hearing within seven days.

II. Respondents' position was not substantially justified.

Respondents' argument on the substantial justification analysis is unpersuasive. Petitioner does not ask the Court to arbitrate a "popularity contest" whatsoever.[1] As the Court stated in its Order granting the Petition, there is "no ambiguity" as to the meaning of § 1225(b)(2)(A) as it relates to individuals in Petitioner's circumstances. Subsequent developments have further confirmed that Respondents' position was not substantially justified. On February 18, 2026, the Central District of California granted Plaintiffs' Motion to Enforce in the *Bautista* class action and issued an order vacating the decision of the Board of Immigration Appeals in *Matter of Yajure Hurtado*. *See Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2026 WL 468284 at *10 (C.D.

[1] Respondents cite to *Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005 (D.N.M. Jan. 20, 2026), but the procedural posture of that matter is distinguishable here—in *Singh*, the Court was reviewing the magistrate judge's proposed findings and recommended disposition regarding the issuance of injunctive relief on behalf of a habeas petitioner.

Cal. Feb. 18, 2026).[2] The *Bautista* court took particular issue with the Government's position, stating that the Government has "far crossed the boundaries of constitutional conduct" and "still insist[s] they can continue their campaign of illegal action" even after a judicial declaration of law against the Government's interpretation of the statute at issue. *Id.* at *7. The court characterized the Government as "deliberately seek[ing] to erode any semblance of separation of powers," *id.*, and found that the Government's noncompliance with the court's final judgment was "wast[ing] limited, valuable resources." *Id.* at 12.[3]

Petitioner alerts the Court to a decision by Judge Browning on February 25, 2026 that is adverse to his position as Judge Browning concluded that the petitioner in that case did not demonstrate that the government's position was not substantially justified because the law is "in flux" in this area. *Garcia-Lopez v. Castro, et al.*, 2026 WL 524082, * 36 (D.N.M. February 25, 2026). The *Garcia-Lopez Court* concluded that because there were some district court decisions and one 5th Circuit opinion that supported the government's legal position with respect to the interpretation of § 1225(b)(2)(A), the government's position was reasonable in law or fact. However, it cannot be ignored that the overwhelming majority of courts across the country have continually and repeatedly told the government that their continued interpretation of § 1225(b)(2)(A) is wrong and violates the law. Despite courts across the country telling the government over and over again that its unilateral decision to detain persons without bond, the

[2] The government respondents filed an appeal to the 9th Circuit regarding the district court's decision in that matter. *See Bautista et al. v. Santacruz et al.*, 2026 WL 468284, 9th Cir., February 23, 2026.

[3] The *Bautista* court's order enforcing its final judgment and explicitly vacating *Yajure Hurtado* was issued more recently than the *Buenrostro-Mendez* case to which Respondents cite. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The *Buenrostro-Mendez* case remains the minority position. *See also Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025).

government continues to do so. *See Barco Mercado v. Francis*, 2025 WL 3295903, * 4 ("[T]he administration's new position that all noncitizens who came into the United States illegally, but since have been living in the United States, must be detained until their removal proceedings are completed – has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States."). In Appendix A of *Barco Mercado*, the court identifies the opinions finding the government's change in interpretation of the law to be wrong.

As the *Barco Mercado* Court noted in awarding fees under the Equal Access to Justice Act, the government's position was not substantially justified as it "has been rejected with near unanimity in the overwhelming majority of cases across the country." *Id.* at * 13.

III. No special circumstances render a fee award unjust.

Respondents rely on *Matter of Yajure Hurtado* in arguing that their classification of Petitioner as subject to mandatory detention was "mandated by binding authority" from the Board of Immigration Appeals. Respondents additionally assert that they "continue to be bound by *Hurtado*'s precedent." But as the *Bautista* court recently stated, the Government's position that *Yajure Hurtado* remains binding is in direct contravention to that court's final judgment. *Bautista*, 2026 WL 468284 at *8–10 (stating that the Government "engage[s] in a deliberately dense … maneuver to reach their core absurd conclusion" that *Yajure Hurtado* controls). It is that very noncompliance, and the conduct of Respondents in continuing to violate the rights of class members wrongfully detained without access to bond, that led the *Bautista* court to order further relief to effectuate its final judgment.

IV. Conclusion

The Equal Access for Justice Act was passed by Congress for the express purpose of encouraging attorneys to take on cases to challenge and address unjustified governmental action, and thus to hopefully "deter the unreasonable exercise of Government authority." *Ardestani v. INS*, 502 U.S. 129, 138, 112 S.Ct. 515. The purpose of the Equal Access for Justice Act is fulfilled here particularly given the circumstances of the unjustified government action of detaining without the possibility of bond all noncitizens who came to the United States illegally. For the reasons stated here and in Petitioner's original Application, Petitioner respectfully urges the Court to grant his Application and issue an order granting attorney fees and costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 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
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