

District Judge Kimberly K. Evanson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAIXON JOSE RAMIREZ TESARA,

Petitioner,

v.

CAMILLA WAMSLEY,¹ *et al.*,²

Respondents.

Case No. 2:25-cv-01723-KKE

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
MOTION ATTORNEYS' FEES AND
COSTS**

Noted for Consideration:
March 17, 2026

Federal Respondents oppose Petitioner's motion seeking \$41,475.08 in attorney's fees and costs under the Equal Access to Justice Act ("EAJA"). Dkt. 35 (Petitioner's Motion for Attorneys' Fees and Costs ("Motion")). The Motion should be denied because Federal Respondents' position was substantially justified in both law and fact. Even if the Court were to conclude otherwise, the requested award is excessive due to overstaffing and unreasonable billing practices. Accordingly, Petitioner's Motion should be denied or, at a minimum, substantially reduced.

//

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Camilla Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

I. LEGAL STANDARD

A party may recover fees and costs under the EAJA only if (1) the party prevailed in the action; (2) the government's position was not "substantially justified"; (3) no special circumstances would make an award unjust; (4) the requested fees and costs are reasonable; and (5) the party filed a timely and supported application. *See* 28 U.S.C. § 2412(b), (d); *United States v. Milner*, 583 F.3d 1174, 1196 (9th Cir. 2009).

II. ARGUMENT

A. Federal Respondents' Position was Substantially Justified

Under EAJA, a prevailing party is not entitled to attorney's fees if the government demonstrates that its position was "substantially justified." 28 U.S.C. § 2412(d). A position is substantially justified when it is "justified to a degree that could satisfy a reasonable person," meaning that it has a reasonable basis in both law and fact. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The government need not establish that its position was correct; it must show only that it was reasonable. *Ibrahim v. U.S. Dep't of Homeland Sec.*, 835 F.3d 1048, 1056 (9th Cir. 2016). Federal Respondents' litigation position easily meets that standard.

First, the legal issue presented here was unsettled in this District at the time of the litigation. The only decision addressing a similar procedural issue was *E.A.T.-B*, which arose in a different detention context involving an Order of Release on Recognizance (OREC). *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1321–24 (W.D. Wash. 2025). The case before the Court involved the revocation of discretionary parole under 8 U.S.C. § 1182(d)(5)(A). Because the statutory authority governing detention differed, Federal Respondents reasonably argued that *E.A. T.-B.* did not control the outcome of this case.

Second, *E.A.T.-B* did not establish the categorical rule Petitioner advances. That decision did not hold that a pre-detention hearing was always required. *See, e.g., E.A. T.-B.*, 795 F. Supp.

3d at 1321–24 (conducting individualized *Mathews* analysis).

Federal Respondents’ position was substantially justified because it weighed the government’s interest in Petitioner’s detention against Petitioner’s private interest in not being detained, as required by the *Mathews* balancing test that formed the basis of the Petition. *See* Dkt. 25, pgs. 12-14 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). The Court acknowledged the government’s asserted interests but found them to be outweighed by Petitioner’s private interest in this case. *See* Dkt. 31, pgs. 4-10. This disagreement, however, does not render Federal Respondents’ position unjustified. The Ninth Circuit has held “[t]hat the Government loss does not raise a presumption that its position was not substantially justified.” *Edwards v. McMahon*, 834 F.2d 796, 802 (9th Cir. 1987) (citation omitted). This principle is particularly applicable where, as here, the governing legal test requires a case-by-case balancing of factors about which reasonable litigants may reach different conclusions.

Here, Federal Respondents set forth Petitioner’s specific circumstances, *see* Dkt. 25, pgs. 3-6, and were substantially justified in arguing that the *Mathews* factors weighed against the Petitioner under those facts, *see* Dkt. 25, even though the Court ultimately reached a different conclusion.

Third, the factual posture of this case further supported the government’s position. Petitioner had been granted discretionary parole for a defined twelve-month period, and that parole had expired approximately six months earlier at the time of his re-detention. The record also reflected multiple parole violations. Those facts materially distinguish this case from *E.A. T.-B.* and provided a reasonable factual basis for Federal Respondents’ detention decision.

EAJA does not authorize fee shifting simply because the government does not prevail. *Pierce*, 487 U.S. at 565. Where the government advances a reasonable interpretation of unsettled law supported by the factual record, its position is substantially justified. Because Federal

Respondents' litigation position had a reasonable basis in both law and fact, Petitioner is not entitled to attorney's fees.

B. The Requested Fees Are Excessive

Even if the Court were to conclude that some fee award is appropriate, the amount requested must be substantially reduced. Petitioner seeks \$41,475.08 in attorney's fees. Dkt. 35, pg. 8. The billing records reflect the participation of **ten timekeepers** (eight attorneys and two support staff) on this single-petitioner habeas case. Dkt. 35-2.

Courts evaluating fee petitions must exclude hours that are "excessive, redundant, or otherwise unnecessary." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Courts likewise reduce fee awards where the number of attorneys involved produces duplication of effort or unnecessary work. *See e.g., Reyes v. NARA*, 356 F. Supp. 3d 155, 169 (D.D.C. 2018) (finding that "the use of two attorneys was unreasonable given the circumstances of this [FOIA] case" and reducing fee award accordingly)³. Several aspects of Petitioner's billing records demonstrate that the requested award is excessive.

1. The Case Was Excessively Staffed

The billing records show the participation of eight attorneys and two additional support staff members. Dkt. 32-2. For a single-petitioner habeas case involving routine detention issues, the participation of ten timekeepers is excessive. The billing records reflect five attorneys in Seattle, three attorneys in Oregon, and two support staff personnel. Multiple attorneys billed time reviewing the same filings, editing the same documents, and preparing the same motions. Such duplication is not reasonably necessary to litigate a case of this scope.

The billing records further reflect that several attorneys billed time related to the same

³ While this is a FOIA case, the reasoning and analysis applies with equal force here.

1 hearing and motion practice. For example, the entries related to the TRO proceedings show that
2 multiple attorneys billed time preparing for or reviewing materials related to the same motion.
3 *Peyton v. Kijakazi*, 557 F. Supp. 3d 136, 143 (D.D.C. 2021) (finding duplicative and unnecessary
4 hours charged for “excessive editing” by two supervising attorneys). At least four attorneys (Julia
5 Braker, Leila Kang, Matt Adams, and Aaron Korthuis) billed time connected to the TRO motion
6 and hearing on September 11, 2025, before Judge Pechman. *See* Dkt. 35-3. However, the hearing
7 itself was argued solely by Korthuis. The duplication in this case is compounded by the fact that
8 several attorneys billed time preparing for the hearing even though they did not present argument.

9 “The number of hours to be compensated is calculated by considering whether, in light of
10 the circumstances, the time could reasonably have been billed to a private client.” *Moreno v. City*
11 *of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). The court must exclude hours that are
12 “excessive, redundant, or otherwise unnecessary.” *Hensley*, 461 U.S.at 434.

13 Likewise, at least three attorneys (Adams, Korthuis, and Braker) billed time connected to
14 attending a hearing with this Court on September 22, 2025, at which only Korthuis spoke.
15 Preparation time may be compensable when reasonably necessary, but it is not reasonable to bill
16 for multiple attorneys to attend the same hearing where only one attorney appears and argues the
17 motion. Petitioner offers no argument why these apparently redundant fees are reasonable. The
18 government should not be required to pay for multiple attorneys to prepare for a hearing when
19 only one attorney ultimately appears and argues the motion.

20 Under these circumstances, the reasonable approach is to limit hearing-related preparation
21 and attendance time to the attorney who actually argued the motion.

22 **2. The Billing Records Reflect a Lack of Billing Judgment**

23 Fee applicants bear the burden of demonstrating that the hours claimed were reasonably
24 expended. Courts may reduce fee awards where the billing records show duplication of effort,

1 excessive staffing, or other indications that counsel failed to exercise reasonable billing judgment.

2 Courts frequently apply percentage reductions where the records reflect systemic
3 excessiveness and where it would be impractical to identify and eliminate each improper entry
4 individually. Here, the combination of excessive staffing, duplicative preparation for hearings, and
5 unreasonable travel billing demonstrates that the requested award substantially exceeds what was
6 reasonably necessary to litigate this case.

7 As just one example, the billing records include two entries by Korthuis and Kang totaling
8 1.3 hours each for walking to and from the courthouse for the TRO hearing on September 11,
9 2025. Dkt. 35-3 at 2, 4. Even where travel time may be compensable, counsel must exercise billing
10 judgment and select a reasonable, cost-efficient means of transportation. Here, counsel billed 2.6
11 hours of attorney time at \$258.46 per hour, approximately \$672 in total, for walking to and from
12 the courthouse. That charge reflects a lack of billing judgment.

13 Numerous reasonable alternatives were readily available in downtown Seattle that would
14 have required substantially less attorney time, including the Link light rail, a taxi, or a short
15 rideshare trip. Each option would have reduced the time billed (and thus the cost to the
16 government) to a small fraction of what counsel seeks to recover here. Billing attorney time at
17 professional hourly rates for extended walking time, when faster and inexpensive alternatives were
18 available, is not the type of reasonable expense that should be shifted to the government under the
19 EAJA.

20 The time claimed is also excessive even if walking were appropriate. A simple search using
21 Google Maps shows that the walking time from Petitioner's counsel's office at 615 2nd Ave., Suite
22 400, Seattle, Washington, to the United States District Court at 700 Stewart Street is approximately
23 25 minutes each way (about 50 minutes roundtrip). Yet counsel billed 1.3 hours each. Petitioner
24 offers no explanation for why this amount of time was necessary.

1 Finally, the entries are duplicative. Only Korthuis argued the TRO hearing, yet both
2 attorneys billed the same travel time. Petitioner provides no justification for why two attorneys
3 needed to bill over an hour each for travel to a hearing at which only one attorney appeared. On
4 this record, the claimed travel time is excessive, duplicative, and reflects a failure to exercise
5 billing judgment. It must be excluded from any EAJA award.

6 3. Support Staff Rates are Overcharged

7 Petitioners also seek fees for two paralegal or support staff members' (Sydney Maltese and
8 Jackie Johnson) services at EAJA rates for attorneys. Dkt. 35-2, 35-3. Petitioner may recover
9 paralegal fees at "prevailing market rates." *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).
10 Petitioners put forth no evidence in the form of declarations from the paralegal in question or the
11 surrounding community to justify a rate at the same rate as attorneys. *See generally* Dkts. 35, 35-
12 1, 35-2, 35-3, 34. Courts in this district have routinely required evidence in the form of declarations
13 before accepting a paralegal's rate. *Gnassi v. Del Toro*, No. 20-6095-JHC, 2023 WL 5277798
14 (W.D. Wash. Aug. 16, 2023); *Stewart v. Snohomish Cnty. Pub. Util. Dist. No. 1*, No. 16-20-JCC,
15 2017 WL 4538956 (W.D. Wash. Oct. 11, 2017).

16 Like with their attorneys, Petitioners bear the burden of proof what the prevailing rate for
17 a paralegal should be. *Carson v. Billings Police Dep't*, 470 F.3d 889, 891 (9th Cir. 2006). When
18 confronted with a similar scarcity of evidence, courts in this circuit have routinely reduced the
19 award for paralegal fees. For example, in *Martinez v. Colvin*, No. 14-3043-BTM, 2017 WL 766665
20 (S.D. Cal. Feb. 27, 2017), the plaintiff sought paralegal fees at a rate of \$100/hour. *Id.* at *8. The
21 court sua sponte held that because Plaintiff had provided no evidence to support the reasonableness
22 of the requested rate or the paralegals' experience, it must look to other sources to determine an
23 appropriate rate. *Id.* at *9. There, the court looked to what the Judicial Council of the Ninth Circuit
24 permitted for services under the Criminal Justice Act, which at the time was \$35- 60/hour, and

awarded paralegal fees at the low end. *Id.* In other cases, the courts based a rate on the United States Consumer Law Attorney Fee Survey Report. *Ulugalu v. Berryhill*, No. 17-1087-GPC-JLB, 2018 WL 2012330, at *4 (S.D. Cal. Apr. 30, 2018) (finding that the appropriate paralegal rate in San Diego was \$100/hour).

For Seattle, a paralegal rate of \$100/hour has been found appropriate. *Robinson v. Berryhill*, No. 16-6002-JRC, 2018 WL 2441747 (W.D. Wash. May 31, 2018) (“Although the 3.1 paralegal hours reasonably were expended (\$310) ...,” i.e., indicating a rate of \$100/hour). Because Petitioner has not presented any evidence, the paralegal fees – to the extent they are compensable – should be reduced.

C. Reasonable Fee Calculations

Two alternative calculations demonstrate the extent to which Petitioner’s requested fees should be reduced.

1. Fees Limited to Lead Counsel and Support Staff

If the Court limits recovery to the work reasonably necessary to litigate the case; namely, the work of lead counsel Korthuis (minus walking time), local counsel in Oregon, Braker, to coordinate with the Petitioner, and support staff, the fee award would be as follows:

Timekeeper	Hours	Rate	Total
Aaron Korthuis	41.2	\$258.46	\$10,648.55
Julia Braker	30.02	\$258.46	\$7,758.97
Sydney Maltese	2.75	\$35-100	\$96.25 - \$275
Jackie Johnson	2.1	\$35-100	\$73.50 - \$210
Total			\$18,577.27 - \$18,892.52

2. Fees Reduced by Sixty Percent

Courts are empowered to make percentage reductions of unreasonable fee requests “without performing an item-by-item accounting.” *Copeland v. Marshall*, 641 F.2d 880, 891, 205 U.S. App. D.C. 390 (D.C. Cir. 1980) (en banc)). Applying a sixty-percent reduction to the requested fees would be reasonable under these circumstances, and yields the following:

Category	Amount
Fees Requested	\$41,475.08
Reduction (60%)	-\$24,885.05
Reasonable Fee Award	\$16,590.03
Costs	\$5.00
Total	\$16,595.03

Either approach demonstrates that the requested fee award substantially exceeds the amount reasonably necessary to litigate this case.

III. CONCLUSION

Federal Respondents advanced colorable legal arguments regarding the scope and effect of declaratory relief, the absence of class-wide injunctive relief, and the procedural mechanism required for individual relief. At most, the parties disputed a novel and unsettled legal question; such disagreement cannot satisfy the demanding standard for EAJA fees. Even if the Court were to award fees here, the fees should be substantially reduced for the reasons stated herein. For the foregoing reasons, Petitioners’ motion for fees should be denied.

//

//

1 DATED this 11th day of March, 2026.

2 Respectfully submitted,

3 s/ Alexandria K. Morris

4 ALIXANDRIA K. MORRIS, TX #24095373

5 Assistant United States Attorney

6 United States Attorney's Office

7 Western District of Washington

8 700 Stewart Street, Suite 5220

9 Seattle, Washington 98101

10 Phone: (206) 553-7970

11 Fax: (206) 553-4073

12 Email: alixandria.morris@usdoj.gov

13 *Attorney for Federal Respondents*

14 I certify that this memorandum contains 2,363
15 words, in compliance with the Local Civil Rules.