

District Judge Tiffany M. Cartwright

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

LORNE SCOTT,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,

Respondents.

Case No. 2:25-cv-01819-TMC

FEDERAL RESPONDENTS' RESPONSE TO
PETITIONER'S MOTION FOR FEES AND
COSTS UNDER THE EQUAL JUSTICE TO
ACCESS ACT

**Noted for consideration:
April 13, 2026**

I. INTRODUCTION

Federal Respondents oppose Petitioner Lorne Scott's motion for an award of \$25,527.93 in fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). Dkt No. 23, Motion. This Court should deny Petitioner's motion because Federal Respondents' position was substantially justified. In the alternative, this Court should reduce any award to account for Petitioner's lack of success on his statutory claim.

II. BACKGROUND

A. Immigration Proceedings

Petitioner entered the United States as a lawful permanent resident in 2012. In 2020, Petitioner pleaded guilty to a felony before a California Superior Court and was sentenced to six years in prison for the felony with an additional three-year sentence enhancement. Petitioner

1 served five years and three months. On March 12, 2024, ICE took custody of Petitioner from
2 prison and detained him pursuant to 8 U.S.C. § 1226(c).

3 In December 2024, an immigration judge denied Petitioner's applications for relief from
4 removal and ordered him removed to Jamaica. Petitioner appealed this order to the Board of
5 Immigration Appeals ("BIA").

6 In February 2025, Petitioner's criminal conviction was vacated upon his unopposed motion
7 to withdraw his guilty plea pursuant to California Penal Code § 1473.7(a)(1). He pled no contest
8 to convictions of California Penal Codes § 459 and § 25400(a)(3) with a sentence of six years, 8
9 months. His sentence was deemed served by the time and parole served previously.

10 Shortly thereafter, Petitioner submitted his appellate brief to the BIA concerning his
11 removal order, as well as a motion to remand the proceedings to the immigration court to terminate
12 his removal proceedings due to the vacatur of his original convictions.

13 On August 6, 2025, an immigration judge denied Petitioner's bond redetermination request
14 and found that he was subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). Petitioner
15 administratively appealed this decision.

16 On September 26, 2025, the BIA denied Petitioner's motion to remand and dismissed his
17 appeal of the removal order. In response, Petitioner filed a Petition for Review with the Ninth
18 Circuit of Appeals, which stayed his removal and remains pending. *Scott v. Bondi*, No. 25-6070.

19 **B. Habeas Proceedings**

20 Petitioner filed the instant habeas litigation on September 19, 2025, and asserted three main
21 arguments. Dkt. No. 1, Pet. First, Petitioner argued that his detention under Section 1226(c)
22 violated the Immigration and Nationality Act. Second, Petitioner asserted that his detention
23 violated substantive due process because his continued detention is punitive due to his medical
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1 condition. Third, and *in the alternative*, Petitioner asserted that his continued immigration
2 detention at the NWIPC without an individualized bond hearing violated procedural due process.
3 Notably, Petitioner's first two claims sought his immediate release from immigration detention
4 (Pet., ¶¶ 120, 129), whereas his procedural due process claim sought a court-ordered bond hearing
5 in the alternative. Pet., ¶¶ 133-134.

6 On October 2, 2025, Federal Respondents filed a return memorandum. Dkt. No. 11.
7 Concerning Petitioner's statutory claim, the return argued that Petitioner's Section 1226(c)
8 detention was lawful and that this Court should require Petitioner to exhaust his administrative
9 remedies. Federal Respondents further argued that the issue of Petitioner's detention would
10 require this Court to decide the legality of Petitioner's removability, which is an issue properly
11 before the Ninth Circuit.

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13 Second, Federal Respondents argued that Petitioner's detention was neither unreasonable
14 nor punitive. Specifically, Federal Respondents asserted that his detention is reasonably related to
15 a legitimate governmental objective and that Petitioner failed to provide evidence that his detention
16 is punitive.

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18 Last, Federal Respondents argued that Petitioner's detention did not violate due process
19 under the multi-part analysis of *Martinez v. Clark*, 18-cv-1669, 2019 WL 5968089 (W.D. Wash.
20 May 23, 2019) (Report and Recommendation) (applying multi-factor due process analysis),
21 *adopted by*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019), and that even if a bond hearing is
22 ordered, that the government should not bear the burden of proof.

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24 On December 8, 2025, this Court issued an order denying the habeas petition in part and
25 granting the petition in part. Dkt. No. 19. Petitioner's first two claims seeking his release were
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1 denied. This Court found that his prolonged detention violated procedural due process and ordered
2 a bond hearing where the government had to justify his continued detention.

3 **III. ARGUMENT**

4 **A. Federal Respondents' position was substantially justified**

5 Petitioner is not entitled to fees under EAJA because Federal Respondents' underlying
6 actions and its litigation positions were substantially justified. Under EAJA, a court shall award
7 fees to the prevailing party "unless the court finds the position of the United States was
8 substantially justified." 28 U.S.C. § 2412(d)(1)(A). "The 'position of the United States' includes
9 both the government's litigation position and the underlying agency action giving rise to the civil
10 action." *Tobeler v. Colvin*, 749 F.3d 830, 832 (9th Cir. 2014). "Substantially justified" means
11 "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552,
12 565 (1988). So, a substantially justified position is "one that a reasonable person could think is
13 correct, that is, that the position has a reasonable basis in law and fact." *Pierce*, 487 U.S. at 566
14 n.2; *see also Gonzales v. Free Speech Coalition*, 408 F.3d 613, 618 (9th Cir. 2005) (Substantially
15 justified means there is a dispute over which "reasonable minds could differ.").

16 First, ICE's conduct in initiating removal proceedings against Petitioner and detaining him
17 during those proceedings was reasonable. The immigration judge found that Petitioner was subject
18 to Section 1226(c) detention even after his criminal conviction was vacated. Also, the BIA
19 dismissed Petitioner's appeal. As to Petitioner's prolonged detention, there is no set time for when
20 mandatory detention without a bond hearing becomes unreasonable. This is further solidified by
21 the use of a multifactor test by district courts (here, the *Martinez* test) to analyze the reasonableness
22 of continued detention.
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1 Second, Federal Respondents were substantially justified in opposing the habeas petition
2 on jurisdictional grounds and the merits. Although this Court did not agree that Petitioner should
3 exhaust his administrative remedies concerning the immigration judge's *Joseph* decision, this
4 Court denied Petitioner's claim that his detention violated the Immigration and Nationality Act
5 because, as Federal Respondents raised during oral argument, 8 U.S.C. § 1252(a)(5) prohibited
6 review in this Court because the issue of Petitioner's detention was inextricably linked to his order
7 of removal. Moreover, this Court denied Petitioner's substantive due process claim because
8 Petitioner failed to meet "his burden of proof to show that the deficient treatment has violated his
9 constitutional rights." Order, at 13. And consistent with Federal Respondent's argument, the
10 Court held that Petitioner had not established that such a violation would justify immediate release
11 as he requested.
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13 Similarly, the Government's position on the merits was substantially justified even though
14 the Court did not agree. Federal Respondents argued that Petitioner's mandatory detention
15 pursuant to Section 1226(c) was lawful as applied to him. The Supreme Court "has firmly and
16 repeatedly endorsed the proposition that Congress may make rules as to [noncitizens] that would
17 be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003) (citations
18 omitted). Furthermore, neither the Supreme Court nor the Ninth Circuit has embraced any bright-
19 line rule for when a noncitizen detained under 8 U.S.C. § 1226(c) *may* suffer a due process
20 violation. The fact that this Court ultimately rejected Federal Respondents' argument does not
21 raise a presumption that the government's position was not substantially justified. *See Medina*
22 *Tovar*, 41 F.4th at 1090. However, Federal Respondents acknowledge that district courts have
23 found that detention of noncitizens for similar lengths of time without bond hearings violated due
24 process.
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B. Even if this Court awards Petitioner EAJA fees, those fees should be reduced based on his limited success.

Petitioner did not prevail on his claims tied to his request for release from immigration detention or obtain his immediate release, which was the primary relief sought through this habeas litigation. Pet., ¶¶ 120, 129. While Petitioner clearly prevailed on his procedural due process claim, he did not prevail on either his statutory or substantive¹ due process claims. Thus, any fee award should be reduced based on the extent of Petitioner's success here.

"Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983). In the Ninth Circuit, claims are unrelated if the successful and unsuccessful claims are "distinctly different *both* legally and factually." *Dang v. Cross*, 422 F.3d 800, 813 (9th Cir. 2005) (internal quotation marks and citation omitted). Conversely, claims are related "if they involve a common core of facts or are based on related legal theories." *Id.* (internal quotation marks and citation omitted).

Here, Petitioner's claim that his detention no longer fell under Section 1226(c) is unrelated to both his due process claims. In the statutory claim, Petitioner argued that the vacatur of his conviction resulted in his detention no longer being governed under Section 1226(c). This statutory argument did not apply to Petitioner's due process claims. Thus, the hours spent on the statutory claim should not be included in the fee award. *Id.* Even if this Court were to find that all of Petitioner's claims were related, the fact that Petitioner did not achieve his prime objective

¹ Federal Respondents acknowledge that this Court considered the evidence Petitioner presented regarding his conditions of confinement in his substantive due process claim in its procedural due process analysis. Order, at 15. Thus, these claims are likely related.

1 – immediate release from detention – demonstrates that his success was limited. Thus, a reduction
2 in the fee award would still be appropriate.

3 Because the billing records do not notate what hours were spent on any particular claim,
4 this Court should reduce Petitioner’s fee request by 33 percent or by a third to reflect the
5 unsuccessful outcome on his statutory claim and the denial of his immediate release in relation to
6 the successful procedural due process claim and the alternate relief granted.

7 **C. Petitioner should not recover fees for a paralegal at the statutory rate for an attorney.**

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9 Petitioner seeks to recover fees for paralegal Sydney Maltese at the statutory rate for
10 attorneys (\$258.46/hour). Dkt. No. 24-1. This rate should be reduced to reflect the market rate
11 for paralegal work in this District. Petitioner provides no evidence in the motion of paralegal
12 market rates for this District. Accordingly, Petitioner has not met his burden to demonstrate that
13 this time at this rate is compensable.

14 **IV. CONCLUSION**

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16 This Court should deny Petitioner’s EAJA motion because Federal Respondents’ position
17 is substantially justified. In the alternative, this Court should reduce the fee award to \$17,103.71
18 to reflect a one third reduction to account for Petitioner lack of success on his statutory claim.

19 DATED this 24th day of March, 2026.

20 Respectfully submitted,

21 s/ Michelle R. Lambert

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I certify that this memorandum contains 1,784 words, in compliance with the Local Civil Rules.

Attorneys for Federal Respondents