

The Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Lorne SCOTT,

Petitioner,

v.

Julio HERNANDEZ et al.,

Respondents.

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

**PETITIONER'S REPLY IN
SUPPORT OF HIS MOTION FOR
ATTORNEYS' FEES AND COSTS**

Noted for consideration:
April 13, 2026

1 **INTRODUCTION**

2 Petitioner is entitled to attorneys' fees because Respondents' position was not
3 substantially justified, as it was contrary to Ninth Circuit law governing post-conviction relief in
4 immigration proceedings and fundamental due process principles well established in caselaw.
5 Petitioner's fee award should not be reduced because, as the Court's analysis demonstrates, his
6 statutory claim is directly relevant to his procedural due process claim. Finally, Petitioner's
7 requested rate for paralegal work is a reasonable reflection of prevailing market rates, as
8 supported by this Court's prior fee awards. Accordingly, the Court should grant Petitioner's
9 motion and award his requested fees in full.

10 **ARGUMENT**

11 **I. Respondents' Position Was Not Substantially Justified**

12 Respondents have not met their burden to show their position was substantially justified.
13 As an initial matter, Respondents must show that both the agency's actions and their litigation
14 positions were substantially justified. *See Corbin v. Apfel*, 149 F.3d 1051, 1052 (9th Cir. 1998)
15 ("The government's position must be substantially justified at each stage of the proceedings."
16 (citation modified)). The Court previously observed that Respondents "do not meaningfully
17 contest" Petitioner's assertion that the IJ and BIA blatantly erred by ignoring the holding of *Bent*
18 *v. Garland*, 115 F.4th 934 (9th Cir. 2024), and ruling that he is subject to mandatory detention
19 under INA § 1226(c) after his convictions were vacated. Dkt. 19 at 9.

20 In opposing Petitioner's motion for attorneys' fees, Respondents again decline to defend
21 the IJ and BIA's rulings, merely noting that the IJ and BIA both found that Petitioner was subject
22 to mandatory detention under INA § 1226(c) after his convictions had been vacated (and
23 ignoring that they provided contradicting rationales to reach their conclusions). Dkt. 25 at 4.

1 This cursory summary provides no justification whatsoever for Respondents' pre-litigation
2 actions. Petitioner never would have needed to bring this action had the agency adhered to the
3 controlling precedent in *Bent* as that would have resulted in the termination of Petitioner's
4 removal proceedings, restoration of his lawful permanent resident (LPR) status, and release from
5 detention. Dkt. 1 ¶¶ 23, 29–30, 53–59. Respondents' unlawful rulings ensured Petitioner would
6 remain detained for many months or years as he seeks relief from the Court of Appeals. Dkt. 14
7 at 10 n.3. Respondents have thus failed to meet their burden to demonstrate that their actions
8 were justified, and their unreasonable pre-litigation conduct is enough to show that Petitioner is
9 entitled to attorneys' fees. *See, e.g., Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007)
10 (“[R]egardless of the government’s conduct in the federal court proceedings, unreasonable
11 agency action at any level entitles the litigant to EAJA fees.”); *United States v. Marolf*, 277 F.3d
12 1156, 1163–64 (9th Cir. 2002) (“A reasonable litigation position does not establish substantial
13 justification in the face of a clearly unjustified underlying action.”).

14 As for litigation conduct, Respondents assert that their position as to procedural due
15 process was substantially justified because there is no “bright-line rule for when a noncitizen
16 detained under 8 U.S.C. § 1226(c) *may* suffer a due process violation.” Dkt. 25 at 5. But the
17 absence of a bright-line rule does not insulate the government’s conduct from review. *See, e.g.,*
18 *Cardozo v. Bostock*, No. 2:25-CV-00871-TMC, 2026 WL 304491, at *3 (W.D. Wash. Feb. 5,
19 2026) (granting fee award where court decided the due process challenge applying the
20 “multifactor test from *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019)”; *Parada*
21 *Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 2917374, at *1 (W.D. Wash. Oct.
22 14, 2025) (similar, for different multi-factor test). Respondents do not attempt to rebut
23 Petitioner’s contention that they did not seriously engage with several of the *Martinez* factors.

1 Dkt. 25 at 5; Dkt. 23 at 8. Instead, Respondents concede that “district courts have found that
2 detention of noncitizens for similar lengths of time without bond hearings violated due process.”

3 Dkt. 25 at 5; *see* Dkt. 1 ¶ 109 (listing cases). Respondents’ assertion that the *Martinez* factors
4 favor them (and that Petitioner’s prolonged detention comported with procedural due process),
5 Dkt. 11 at 11–13, therefore lacked substantial justification.

6 Notably, Respondents do not attempt to justify their exhaustion argument, or their
7 argument regarding the applicable burden of proof and evidentiary standard in any bond hearing
8 ordered by the Court. Dkt. 25 at 4–5. Respondents advanced both arguments even though courts
9 in this circuit have resoundingly rejected them. Dkt. 23 at 7–8.

10 Taken together, Respondents have failed to meet their burden to demonstrate that their
11 position was substantially justified. Respondents’ pre-litigation actions are indefensible and
12 necessitated this habeas action, and many of their litigation positions are unsupported by
13 caselaw.

14 **II. The Court Should Award the Full Amount of Fees Requested**

15 As Respondents acknowledge, a fee award reduction is only justified in this circuit if an
16 unsuccessful claim is “both legally and factually distinct.” Dkt. 25 at 6 (citation modified).
17 Respondents concede that Petitioner’s substantive and procedural due process claims are “likely
18 related” because the Court “considered the evidence Petitioner presented regarding his
19 conditions of confinement in his substantive due process claim in its procedural due process
20 analysis.” Dkt. 25 at 6 n.1. The same logic applies to Petitioner’s INA claim. As the Court
21 observed, “Scott’s claim that his mandatory detention under 8 U.S.C. § 1226(c) violates the INA
22 hinges on his argument that the BIA’s decision upholding his removal order ignores the holding
23 of *Bent v. Garland*, 115 F.4th 934 (9th Cir. 2024) and is obviously wrong.” Dkt. 19 at 9. The

1 Court then explicitly found that Petitioner's INA claim is related to his procedural due process
 2 claim. *See* Dkt. 19 at 12 (“[T]he strength of Scott’s arguments in his petition for review are
 3 properly considered as part of this district’s multi-factor test for evaluating whether his ongoing
 4 detention without a bond hearing under § 1226(c) has become unconstitutionally prolonged.”).
 5 The Court further found that the eighth *Martinez* factor, likelihood that the removal proceedings
 6 will result in a final order of removal, “leans strongly in favor of Scott” because he has “not just
 7 a good faith challenge, but strong arguments that the BIA erred by upholding his removal order
 8 and will be reversed by the Ninth Circuit.” Dkt. 19 at 18–19. Thus, Petitioner’s facts and legal
 9 arguments related to his INA claim were explicitly considered as part of his procedural due
 10 process claim, and the two claims are not “distinct” for purposes of the fee reduction analysis.

11 Second, Respondents’ unsupported contention that the fee award should be reduced
 12 because Petitioner did not achieve his “prime objective”—immediate release from detention—is
 13 contrary to caselaw governing EAJA awards. Dkt. 25 at 6–7. The relevant question is whether
 14 Petitioner achieved “excellent results,” and courts have awarded fees in full even where the
 15 petitioner or plaintiff did not receive all requested relief. *See, e.g., Koonwaiyou v. Blinken*, 724
 16 F. Supp. 3d 1222, 1231–36 (W.D. Wash. 2024) (declining to reduce plaintiff’s fee award because
 17 even though he did not achieve a declaration of U.S. national status, he “moved significantly
 18 closer to his goal,” as “[t]he Ninth Circuit’s order forces Defendants to do something they
 19 otherwise would not have to do; namely re-adjudicate Plaintiff’s claim for U.S. nationality when
 20 Defendants’ rationale for denying the claim is no longer valid”); *Freeman v. Berryhill*, No. 2:16-
 21 CV-01826-JRC, 2017 WL 6310504, at *3 (W.D. Wash. Dec. 11, 2017) (declining to reduce an
 22 attorneys’ fees award in a Social Security matter where the plaintiff achieved a remand without a
 23 direction to award benefits). Here, Petitioner’s habeas petition forced Respondents to provide a

1 bond hearing at which the government bears the burden of proof by clear and convincing
2 evidence—relief that afforded Petitioner an opportunity for release that had been denied to him
3 for more than 20 months. Dkt. 19 at 1, 20.

4 Moreover, even if a reduction were warranted—which it is not—it would be much lower than
5 the 33% reduction requested by Respondents. Dkt. 25 at 7. As noted above, the facts and legal
6 argument presented in support of Petitioner’s INA claim were integrally intertwined with Petitioner’s
7 procedural due process claim and would have been included in the petition even if immediate release
8 had not been requested. *See* Dkt. 1 ¶¶ 49–59.

9 **III. The Paralegal Rate Was Adequately Supported**

10 Contrary to Respondents’ assertion that “Petitioner provides no evidence in the motion of
11 paralegal market rates for this District,” Petitioner provided caselaw showing that this Court has
12 previously awarded fees based on the rates provided for in the Fitzpatrick Matrix. Dkt. 23 at 9
13 n.4. Indeed, the requested rate is consistent with recent fees awards in this district. *See*
14 *Toktosunov v. Wamsley*, No. 2:25-cv-1724-TL (W.D. Wash. Apr. 8, 2026), Dkt. 19 at 8–9 ¶ 16
15 (awarding a paralegal rate of \$255 based on the Fitzpatrick Matrix and the petitioner’s citation to
16 a similar fee award in this district); *Garcia v. Wamsley*, No. 2:25-cv-01980-TMC (W.D. Wash.),
17 Dkt. 13-3 (showing requested paralegal rate of \$255, consistent with the Fitzpatrick Matrix), and
18 Dkt. 26 at 17 ¶ 23 (court order granting that rate); *cf. Y.M.M. v. Wamsley*, No. 2:25-cv-02075-
19 TMC (W.D. Wash. Mar. 24, 2026), Dkt. 23 at 4 ¶¶ 15–16 (reducing paralegal rate to \$236/hour
20 because original attorneys’ fees motion did not “address[]” “the market rate for paralegal work”
21 and citing cases showing compensated paralegal work at rates ranging from \$225-250 per hour).
22 Because Petitioner did address and support the requested paralegal rate, Dkt. 23 at 9 n.4, the
23 Court should grant his requested rate.

CONCLUSION

Petitioners respectfully request that this Court grant their requested fees and costs in the amount of \$26,998.55, which includes time spent preparing this reply brief. *See* Ex. A (fees and costs chart); Ex. B (timekeeping entries).

Respectfully submitted this 13th day of April, 2026.

s/ Aaron Korthuis

Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

s/ Leila Kang

Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Matt Adams

Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Kevin Hollinz

Kevin Hollinz, WSBA No. 52043
KHollinz@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

s/ Ilyce Shugall

Ilyce Shugall, CASB No. 250095
Email: ilyce@ild.org

s/ Claudia Valenzuela

Claudia Valenzuela, ILSB No. 6279472
Email: claudia@ild.org

Immigrant Legal Defense
1301 Clay Street #70010
Oakland, CA 94612
(415) 758-3765

Attorneys for Petitioner

WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 1,611 words and complies with the word limit requirements of Local Civil Rule 7(e).

s/ Kevin Hollinz
Kevin Hollinz, WSBA No. 52043
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
(206) 816-3861
KHollinz@nwirp.org