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Attorney for petitioner

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF OREGON

EUGENE DIVISION

B.D.A.A.,	)	6:25-cv-02062-AA
	)	
Petitioner,	)	
	)	
vs.	)	REPLY IN SUPPORT OF
	)	MOTION OF ATTORNEY
	)	FEES AND COSTS UNDER
LAURA HERMOSILLO, et al.,	)	THE EQUAL ACCESS TO
	)	JUSTICE ACT, 28 USC §
Respondents.	)	2412(d)

Respondents' only objections are that (a) some of the time expended on the case was unreasonable and (b) the petitioner is not entitled to an award of fees at an enhanced rate. .

I. The time expended was reasonable.

Respondents argue that 1.25 hours was too much time spent drafting the petition and 0.75 hours was too much time spent drafting the motion for the TRO and the supporting declaration of petitioner's counsel. These objections are not well-taken.

These are critical pleadings, and the petitioner and her counsel are responsible to be as certain as possible that every claim is well grounded in both law and fact. The documents

were brief and simple but they were effective. The time spent drafting them is reasonable.

II. A proper showing has been made for an award at an exceptional rate.

Respondents argue that petitioner must show that absolutely no other lawyer in the state was available to take the case. This misstates the law. There does not need to be a mathematical elimination of the possibility that a lawyer might exist who would accept the case at the adjusted statutory rate.

In *Nadarajah v. Holder*, 569 F.3d 906, 915 (9th Cir. 2009), the Ninth Circuit quoted with approval *Atlantic Fish Spotters Ass'n v. Daley*, 205 F.3d 488, 492-93 (1st Cir. 2000) where the First Circuit stated:

“What the declaration needed to say, with at least modest support, is that as a practical matter the plaintiffs would be unable to find a fisheries law expert for \$ 125 (assuming arguendo that one was required). We say “modest support” because of practical realities. No one expects the plaintiffs to conduct statistical surveys on a collateral matter like attorney's fees, and the antitrust laws do not encourage counsel to spend much time discussing fee levels with competing lawyers.” *Atlantic Fish Spotters*, 205 F.3d at 492-93.

Petitioner has made that showing. This was an emergency situation where a woman was unlawfully arrested in Albany. Her daughters had to quickly mobilize, despite the shock, to keep track of their mother's whereabouts, and contact her U-visa attorney. It was the U-visa attorney, Ms. Esmeralda Santos who was able to contact petitioner's counsel. The chances of the daughters finding a lawyer on their own, driving as they were on the freeway from Albany to Portland, upset about their mother's arrest, would very likely be zero or close to it.

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Present counsel was also counsel for petitioner in *S.F. v. Bostock*, 3:25-cv-01084-MTK (D.Or. May 5, 2025) (Dkt 47), where the court ordered payment of enhanced EAJA fees at a rate of \$500 per hour. The reasons stated in *S.F.* for an award of enhanced fees apply here as well and should justify this court in making such an award.

The salient difference here from *S.F.* is that here petitioner seeks \$700 per hour. Petitioner believes a higher rate is justified here because this case presented facts not present in *S.F.*

Here respondents, believing that habeas was being sought, prevented Ms. Santos from speaking with petitioner at Portland ICE. They then whisked her out of state by special transport, which required two ICE officers to wait around for over an hour at a rest stop for the regular contractor's transport bus to catch up. This was an obvious effort to defeat this court's jurisdiction.

These machinations likely never could have been proven but for respondents making the error of leaving petitioner's cell phone, which had a tracking app on it, in the petitioner's possession. They also erred in not realizing that petitioner's cell phone was on, with her daughters listening, so that callous remarks such as petitioner have been arrested "for your bad luck" were overheard by her daughter.

Given all of this, having made the case as difficult as they could for the petitioner, the respondents can't be heard to claim that this was even close to a routine matter, and an award of \$700 per hour is appropriate.

III. Conclusion.

For the above reasons, petitioner's motion for attorney fees, as amended, should be granted with an award of fees at the rate of \$700 per hour for 27.45 hours, for a total award of \$19,215.00. In the alternative, the court should award petitioner fees at the adjusted statutory rate of \$258.46 per hour for 27.45 hours for a total of \$7,094.73. \$155 in costs should be awarded in either case.

Dated this 25th day of June 2026

/s/ Michael T. Purcell

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