UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOUAMANE SIDQUI,

Petitioner,

-against-

JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of New York Immigration and Customs Enforcement, *et al.* ,

Respondents.

Case No. 25 CV 9349 (VSB)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEY'S FEES AND EXPENSES

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PRELIMINARY STATEMENT

Respondents, by their attorney Jay Clayton, United States Attorney for the Southern District of New York, respectfully submit this memorandum of law in opposition to the motion by petitioner Nouamane Sidqui ("Petitioner") for attorneys' fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). ECF No. 34 ("Mot."). The motion should be denied because Respondents' position was substantially justified and special circumstances render a fee award improper.

FACTUAL BACKGROUND

A. Petitioner's Immigration and Detention History

On August 7, 2024, United States Customs and Border Protection ("CBP") encountered Petitioner in the El Paso, Texas Border Patrol Sector, and determined that he had unlawfully entered the United States from Mexico. Ex. 1 at 2; James-Townend Decl. ¶ 4.[1] Petitioner admitted that he was a citizen of Morocco who had illegally crossed the United States-Mexican border without being inspected by an immigration officer and without legal documents to enter, pass through or remain in the United States. James-Townend Decl. ¶ 5; Ex. 1 at 2-3. Accordingly, CBP officers issued Petitioner a Notice and Order of Expedited Removal under 8 U.S.C. § 1225(b)(1). James-Townend Decl. ¶ 6; Ex. 1 at 3-4; Ex. 2.

Thereafter, Petitioner established to an asylum officer that he had a credible fear of persecution. James-Townend Decl. ¶ 8. U.S. Citizenship and Immigration Services issued Petitioner a Notice to Appear ("NTA"), the charging document used to commence removal

[1] Documents referenced in support of Respondents' opposition are as follows: Exhibits ("Ex.") are attached to Dkt. No. 14, Government Return, dated November 20, 2025; and Declaration of Deportation Officer Justin James-Townend, dated November 20, 2025 ("James-Townend Decl.") appears at Dkt. No. 13.

proceedings, the effect of which was to vacate the order of expedited removal and to place Petitioner into removal proceedings under 8 U.S.C. § 1229a. James-Townend Decl. ¶ 9; Ex. 4. The NTA charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), due to inadequate documentation at the time of application for admission; and inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled, or one who arrived in the United States at any time or place other than as designated by the Attorney General. James-Townend Decl. ¶ 9; Ex. 4. As an applicant for admission with a positive credible fear of persecution, Petitioner's detention was governed by 8 U.S.C. § 1225(b)(1)(B)(ii), which mandated his detention during removal proceedings subject to DHS's discretionary parole authority. Petitioner was subsequently released on parole. James-Townend Decl. ¶ 13; Ex. 5.

Petitioner thereafter relocated to New York City where he remained on parole for approximately one year until he was arrested. Specifically, in October 2024, Petitioner moved his residence to New York City and immigration case to the immigration court in New York City. James-Townend Decl. ¶ 17. Petitioner's location was monitored through his enrollment in ICE's Intensive Supervision Appearance Program ("ISAP"). James-Townend Decl. ¶ 16. In March 2025, Petitioner was arrested by the New York City Police Department for crimes involving strangulation, assault, and property damage. James-Townend Decl. ¶ 20. Petitioner remained in jail for 10 days until, on March 31, he was released on his own recognizance despite ICE having lodged an immigration detainer with New York City Queens Central Booking. James-Townend Decl. ¶ 22. (The criminal charges were later dismissed in July 2025.) In October 2025, his enrollment in ISAP was terminated due to poor program compliance. *Id.* ¶¶ 19, 23. Finally, on November 7, 2025, ICE arrested Petitioner, pursuant to a Form I-200, Warrant of Arrest of

Alien. James-Townend Decl. ¶ 24; Ex. 6. Petitioner was detained at the Orange County Jail in Goshen, New York, throughout the remainder of his habeas case. James-Townend Decl. ¶ 26.

B. Habeas Petition and Procedural Background

Two days after his arrest by ICE, on November 9, Petitioner commenced this action by filing the Petition. ECF No. 1. Petitioner asserted that his detention violated his substantive and procedural due process rights under the Fifth Amendment, *see* Pet., Counts One and Two; and was contrary to his civil and statutory rights, in violation of the Administrative Procedure Act ("APA"), *see* Pet. Count Three. According to Petitioner, the Government was erroneously holding him under 8 U.S.C. § 1225(b)(1)(A)(i), whereas his detention was properly governed by 8 U.S.C. §1226(a). And, under §1226(a), Petitioner had a right to seek release on bond pending his removal proceedings, based on an individualized assessment that he would not pose a flight risk or a danger to the community. *See* Pet. at 6 (¶ 5), 7 (¶ 11). Petitioner alleged that he did not receive sufficient process prior to his detention by ICE, and that he was being denied a bond hearing. Pet. at 2. For relief, Petitioner sought an order requiring his immediate release or a bond hearing before an Immigration Judge; and an award of attorney's fees and costs pursuant to the EAJA. *See* Pet., Prayer for Relief.

In subsequent proceedings, the Court elicited two rounds of submissions from the parties. On November 12, the Court ordered Respondents to respond to the Petition by November 17, and permitted Petitioner to filed a reply by November 20. ECF No. 4. The Court also scheduled the show cause hearing on the Petition for November 24. *Id.* During the November 24 hearing, the Court directed Respondents to clarify aspects of Respondents' legal position and to provide further factual information regarding a number of issues, including the circumstances of Petitioner's arrest by ICE and the statutory basis ICE relied upon to release Petitioner from

custody after his initial detention. Petitioner and Respondents both filed submissions responding to the Court's questions. Dkt. Nos. 20, 21, 28.

By Opinion and Order dated January 30, 2026, the Court granted the Petition and ordered Petitioner's immediate release. Dkt No. 31. The Court held that Petitioner was detained under § 1226(a) and that ICE did not comply with the procedures applicable to § 1226(a) detentions in arresting Petitioner, as ICE had treated Petitioner's detention as governed by 8 U.S.C. § 1225(b)(1)(B)(ii). Petitioner was released later that day. Dkt. No. 33.

C. Fee Motion

On March 23, 2026, Petitioner's counsel filed the instant fee motion, requesting $5,757.83 in fees and expenses under the EAJA. *See* Mot. at 4. Specifically, Petitioner requested fees for 20.5 hours of attorney time, at the EAJA rate of $280.87 per hour. *See* Mot. at 4-5. The motion argued that Respondents' position was not substantially justified because numerous district courts have concluded, like this Court, that § 1226(a) governs the detention of aliens in circumstances such as those in this case, *see id.* at 3, and asserted that there were no "special circumstances" that would make a fee award unjust, *see id.* at 4.

ARGUMENT

A. Legal Standard

The EAJA is a limited waiver of the United States' sovereign immunity, and therefore "must be strictly construed in favor of the United States." *Ardestani v. I.N.S.*, 502 U.S. 129, 137 (1991). Under the EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded . . . , incurred by that party in any civil action . . . brought by or against the United States . . . , unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). "Thus, eligibility for a fee award in any civil action requires: (1) that

the claimant be a 'prevailing party'; (2) that the Government's position was not 'substantially justified'; (3) that no 'special circumstances make an award unjust'; and, (4) . . . that any fee application be submitted to the court [timely] and be supported by an itemized statement." *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 158 (1990). The EAJA authorizes the payment of only "reasonable" attorneys' fees and expenses. 28 U.S.C. § 2412(d)(2)(A).

B. The Fee Motion Should Be Denied in Its Entirety

1. Respondents' Position was Substantially Justified

A party is entitled to EAJA fees and expenses only if "the position of the United States" was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). While Respondents have the burden to show that their position was substantially justified, there is no "presumption that the Government position was not substantially justified simply because it lost the case." *Scarborough v. Principi*, 541 U.S. 401, 415 (2004); *see* also *Cooper v. U.S. R.R. Ret. Bd.*, 24 F.3d 1414, 1416 (D.C. Cir. 1994) (explaining that the reasonableness inquiry "may not be collapsed into our antecedent evaluation of the merits, for EAJA sets forth a distinct legal standard" (internal quotation marks omitted)). As the Supreme Court has explained, "substantially justified" does not mean "justified to a high degree, but rather justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (internal quotation marks omitted). In other words, "[t]he issue for EAJA purposes is not what the law is when the EAJA application is made, but rather whether the government was substantially justified in believing the law not to have foreclosed its position during the underlying litigation." *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 787 (2d Cir. 1999)); *see* also *Vacchio v. Ashcroft*, 404 F.3d 663, 677 (2d Cir. 2005) (the United States' position was substantially justified where the government presented a "viable, but far from compelling, legal theory").

The Court's ruling in this case does not entitle Petitioner to fees because there is reasonable disagreement on the principal legal issue in this case—whether a noncitizen in Petitioner's position is subject to detention under 8 U.S.C. § 1225(b)(1)(B)(ii), as Respondents asserted, or under 8 U.S.C. § 1226, as Petitioner asserted.[2] Relevant here, "[t]here is a lack of consensus among courts regarding whether a petitioner's earlier parole into the United States negates the Government's detention authority under § 1225(b)(1)." *Golloo v. Akshar*, 26 CV 401, 2026 WL 1110266, at *3 (N.D.N.Y. Apr. 24, 2026) (citing *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648 (S.D.N.Y. 2018) ("Although Petitioner here was paroled into the United States in 2000 and . . . has been continuously present in the United States since that date, the

[2] This case is different than the many others throughout the country that deal with whether detention is under 8 U.S.C. § 1225(b)(2)(A) or § 1226, as Petitioner here was subjected to expedited removal at the border, received a positive credible fear finding, was placed into removal proceedings as required by statute, and then released on parole. On the § 1225(b)(2)(A) issue, while many district courts have disagreed with Respondents' application of § 1225(b)(2)(A), two courts of appeals—the Fifth Circuit and the Eighth Circuit—have ruled in favor of Respondents' position that § 1225(b)(2)(A) governs detention of a noncitizen in Petitioner's position. *See Herrera Avila v. Bondi*, 170 F.4th 1128, 1133-38 (8th Cir. 2026) (holding that statutory text, structure, and purpose support Respondents' interpretation and application of § 1225(b)(2)(A)); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498–508 (5th Cir. 2026) (holding that the plain language of § 1225(b)(2) and congressional intent support Respondents' construction that any noncitizen "present in the United States who has not been admitted" is subject to mandatory detention without bond pending removal proceedings). And last week, the Second Circuit issued a decision to the contrary, at least on one set of factual circumstances involving § 1225(b)(2)(A) (where an alien unlawfully entered the United States, avoided apprehension near the border, and was arrested for the first time later in New York). *See Barbosa da Cunha v. Freden*, No. 25-3141-PR, --- F. 4th ----, 2026 WL 1146044 (2d Cir. Apr. 28, 2026). And before that decision, five district court judges in this district—Judges Vyskocil, Cronan, Rearden, Woods, and Halpern—among others within the Second Circuit, had adopted the government's reading of the statute on the § 1225(b)(2)(A) issue. *See, e.g., Liang v. Almodovar*, No. 25 Civ. 9322 (MKV), 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026); *Weng v. Genalo*, No. 25 Civ. 9595 (JHR), 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026); *Arana v. Arteta*, No. 26 Civ. 240 (GHW), 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026); *Portilla Hernandez v. Noem*, No. 25 Civ. 10393 (PMH), 2026 WL 836735 (S.D.N.Y. Mar. 26, 2026); *see also, e.g., Candido v. Bondi*, No. 25 Civ. 867 (JLS), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Saamishvili v. Flanagan*, No. 25 Civ. 6178 (BMC), 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026).

parties agree . . . that Petitioner remains 'at the threshold of initial entry' for immigration purposes."), and *Ivonin v. Rhoney*, 25 CV 6673, 2026 WL 199283, *4 (W.D.N.Y. Jan. 26, 2026) ("[W]here a petitioner's re-arrest was *not* a continuation of the initial border encounter, but an independent decision to detain the individual after the expiration of his parole, the detention pursuant to that re-arrest arises under § 1226") (emphasis in original)). Further, under circumstances similar to those here, Judge Vyskocil determined that § 1225(b)(1)(B)(ii) applied, *Lin v. Almodovar*, 25 CV 9639 (MKV), 2025 WL 3706626, at *3 (S.D.N.Y. Dec. 22, 2025); and in a similar case but with slightly different facts, Judge Kaplan suggested that he may have found § 1225(b)(1)(B)(ii) applicable where an alien had been paroled (like Petitioner here), *see M.K. v. Arteta*, 25 CV 9918 (LAK), 2025 WL 3720779, at *8 (S.D.N.Y. Dec. 23, 2025) (noting that if DHS had paroled petitioner under Section 1182(d)(5)(A), "this might be a different case," because Section 1182(d)(5)(A) expressly contemplates a return to DHS custody when parole ends, whereas Section 1226 "contains no analogous language"); *cf. Al-Thuraya v. Warden, Orange Cnty. Corr. Facility*, 809 F. Supp. 3d 135, 140 (S.D.N.Y. 2025) (in a case with similar facts, where alien was subjected to expedited removal at the border, passed a credible fear interview, put into proceedings, and released on parole, "Al-Thuraya doesn't dispute that his current detention is governed by 8 U.S.C. § 1225(b)(1)(B)(ii), which states that if an immigration officer finds a credible fear of persecution, an 'alien shall be detained for further consideration of the application for asylum'").[3] On the other end of the spectrum, Judges Liman and Caproni

[3] And while the Second Circuit's decision in *Barbosa da Cunha* addressed a different legal question relating to detention under § 1225(b)(2)(A) concerning an alien who was encountered in New York for the first time (*i.e.*, who was not encountered at the border), the decision appears to lend support to the government's position in this case, as Petitioner was apprehended at the "threshold of initial entry." *Barbosa da Cunha*, 2026 WL 1146044, at *6 (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 (2020) (holding that a noncitizen "apprehended just 25 yards from the border" had not effected an "entry") and *Leng*

issued decisions in similar cases where an alien had been paroled after being initially detained under § 1225(b)(1)(B)(ii), concluding that a later re-arrest could only be under § 1226, *see Pastuna Pastuna v. Francis*, 26 CV 398 (VEC), Dkt. No. 15 (Order) (S.D.N.Y. Jan. 23, 2026); *Qasemi v. Francis*, 25 CV 10029 (LJL), 2025 WL 3654098, at *12 (S.D.N.Y. Dec. 17, 2025); and Judge Daniels issued a similar decision in case where the alien had been released on bond (as opposed to parole), *Quinteros Moran v. Joyce*, 25 CV 9645 (GBD), 2025 WL 3632895, at 1-2 (S.D.N.Y. Dec. 15, 2025).

As demonstrated by the foregoing, "[r]easonable minds can differ" on the legal issue presented in Petitioner's habeas case, district courts "continue to try [their] best to wrestle with complicated questions of law in good faith." *Goorakani v. Lyons*, No. 25 CV 9456 (DEH), 2025 WL 3632896, at *12 (S.D.N.Y. Dec. 15, 2025); *accord Chen*, 2026 WL 100761, at *14.

Although the Court has ruled against Respondents on the merits in this case, the split in federal courts as to the validity of ICE's statutorily grounded application of § 1225(b)(1)(B)(ii) demonstrates that reasonable minds can differ on Respondents' position, and it is therefore "substantially justified" under the EAJA. *See Vacchio*, 404 F.3d at 675 ("[T]he issue is far from settled law, the Government's legal argument is far from unreasonable, and it thus cannot be said that the Government's position on the question is not substantially justified."); *cf. Kirkland v. R.R. Ret. Bd.*, 706 F.2d 99, 105 (2d Cir. 1983) ("On the facts of this case, we believe the Board has sustained its burden of showing that its position, although erroneous, was not so devoid of legal or factual support that a fee award is appropriate.").

May Ma v. Barber, 357 U.S. 185, 189 (1958) (treating noncitizens paroled into the country "as [if] stopped at the boundary line")).

Courts across the country who have disagreed with Respondents' position on the more-often litigation issue concerning § 1225(b)(2)(A) have, even though ruling against the government, nonetheless rejected EAJA fee applications in connection with habeas cases hinging on Respondents' interpretation. For example, a district court in New Mexico found that it was "unable to say that a position is substantially unjustified, which requires only reasonableness in law and in fact, when a Court of Appeals, the Fifth Circuit, as well as district courts across the country, embrace that same position" and did not permit the petitioner to file an EAJA fee motion. *Garcia-Lopez v. Castro,* 25 CV 1144, 2026 WL 524082, at *36 (D.N.M. Feb. 25, 2026). So too did a district court in Nebraska. *Sanchez Lopez v. Jeffreys*, 25 CV 3241, 2026 WL 309994, at *2 n.3 (D. Neb. Feb. 5, 2026) ("[T]he Court cannot say that the Federal Respondents' pre-litigation decision to treat [the petitioner] as being subject to mandatory detention under § 1225, while not ultimately correct in this Court's view, lacked a reasonable basis in law or fact."). And within the Second Circuit, a Vermont district court similarly denied EAJA fees under these exact circumstances. *See Lala Inamagua v. Hale*, 25 CV 892, ECF No. 24 (D. Vt. Jan. 22, 2026) (concluding "the government ha[d] met its burden of showing that its position was 'substantially justified'" despite finding the government's position incorrect in the underlying habeas case); *Lopez v. Trump*, No. 25 CV 863, 2026 WL 114708, at *2 (D. Vt. Jan. 14, 2026) (holding that "the Government's position cannot be described as unjustified" because, although ruling against the Government in that case, "other courts have differed, and there is no authoritative appellate guidance on the issue").

Because Respondents' position in this litigation was substantially justified, Petitioner's fee motion should be denied.

2. Special Circumstances Render a Fee Award Improper

Alternatively, and for similar reasons, the Court should find that "special circumstances" render a fee award under the EAJA inappropriate. *See* 28 U.S.C. § 2412(d)(1)(A). This exception to the EAJA operates, in part, to ensure "that the Government is not deterred from advancing in good faith the novel but credible extensions of the law that often underlie vigorous enforcement efforts." *Taylor v. United States*, 815 F.2d 249, 252 (3d Cir. 1987) (citing legislative history); *cf. Roanoke River Basin Ass'n v. Hudson*, 991 F.2d 132, 139 (4th Cir. 1993) ("While the EAJA redresses governmental abuse, it was never intended to chill the government's right to litigate or to subject the public fisc to added risk of loss when the government chooses to litigate reasonably substantiated positions, whether or not the position later turns out to be wrong.").

Here, Respondents advanced a credible argument that 8 U.S.C. § 1225(b)(1)(B)(ii) applies to Petitioner—an argument and interpretation that has been determined correct by other courts. The Court should therefore deny the fee motion.

CONCLUSION

For the reasons set forth above, the Court should deny Petitioner's fee motion in its entirety.[4]

Dated: New York, New York
May 4, 2026

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section 4(A) of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 3322 words.

[4] Should the Court award fees in this case, Respondents' position is that the fee demand is reasonable.