

Chief Judge David G. Estudillo

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

A.C.J.,

Case No. 2:25-cv-02486-DGE

Petitioner,

FEDERAL RESPONDENTS'
RESPONSE TO PETITIONER'S
MOTION FOR EAJA FEES AND COST

v.

JULIO HERNANDEZ, *et al.*,

Respondents.¹

Federal Respondents respectfully oppose Petitioner's Motion for Attorney Fees and Costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Although Respondents do not contest that Petitioner is a prevailing party or that the position of the Federal Respondents was not substantially justified, they contest only the amount of fees and costs requested.

Petitioner seeks \$12,630.11 in attorney and paralegal fees plus \$498.47 in costs, for a total award of \$13,128.58. While Petitioner prevailed on the habeas petition challenging re-detention, the requested amount is excessive and unreasonable. Respondents respectfully recommend that

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondent substitutes ICE/ERO Acting Seattle Field Office Director Julio Hernandez for Laura Hermosillo; Department of Homeland Security Secretary Markwayne Mullin for Kristi Noem; and Acting U.S. Attorney General Todd Blanche for Pamela Bondi.

1 the Court award no more than \$5,479.20 in total EAJA fees and costs, consisting of 20 attorney
2 hours at the statutory rate of \$258.46 per hour (\$5,169.20), a modest 2 hours of paralegal time at
3 a reasonable market rate of \$125 per hour (\$250), and \$60 in limited reasonable postage. For the
4 reasons set forth below, the motion should be denied in part and the award substantially reduced.

5 **I. STATEMENT OF FACTS**

6 Petitioner, who was detained at the Northwest Immigration and Customs Enforcement
7 Processing Center (NWIPC) in Tacoma, Washington, filed a petition for writ of habeas corpus
8 under 28 U.S.C. § 2241 challenging ICE's re-detention following an earlier release. Dkt. No. 1.
9 The petition asserted that the re-detention was unlawful. Petitioner later filed an amended habeas
10 petition. Dkt. No. 8. After briefing, including a traverse, the Court granted habeas relief.

11 Petitioner timely moved for attorney fees and costs under the EAJA. Dkt. No. 23. Counsel
12 requests compensation at \$308 per hour for attorney time, based on participation in the Equity
13 Corps of Oregon (ECO) program and 12 years of experience, and \$133 per hour for paralegal
14 time. Petitioner provided a breakdown of hours showing a total of \$12,630.11 in requested fees.
15 The breakdown reflects approximately 41 attorney hours and several paralegal hours for tasks
16 such as legal research, drafting the initial and amended habeas petitions and traverse, multiple
17 client meetings and phone calls, filing documents, pro hac vice procedures, service, and various
18 administrative/file management entries.

19 Petitioner also seeks \$498.47 in costs, consisting of detainee phone money and
20 commissary funds, parking at an ICE check-in, a pro hac vice filing fee, and several certified and
21 priority postage charges for which receipts have been provided. Petitioner submitted no evidence
22 or briefing demonstrating specialized skill in immigration law beyond general experience, no
23 showing that qualified counsel were unavailable at the statutory rate, and no supporting
24 documentation tying the ECO program rate to proceedings in this district.

II. ARGUMENT

A. Petitioner Has Not Justified an Enhanced Hourly Rate of \$308

The Equal Access to Justice Act imposes a strict statutory cap on attorney fees to protect the public fisc while still providing meaningful access to counsel for litigants challenging government action. Under 28 U.S.C. § 2412(d)(2)(A), attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. This language creates a firm presumption in favor of the statutory cap, and the burden rests squarely, and heavily, on the fee applicant to rebut that presumption with clear, affirmative evidence. *Pierce v. Underwood*, 487 U.S. 552, 573 (1988). The Ninth Circuit has repeatedly emphasized that the cap is not a mere suggestion; it is the default rate, and departures are permitted only in narrow circumstances. *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005) (per curiam).

For work performed in 2025, the cost-of-living-adjusted statutory maximum rate in the Ninth Circuit is \$258.46 per hour. Statutory Maximum Rates Under the Equal Access to Justice Act, U.S. Court of Appeals for the Ninth Circuit (updated for 2025). Petitioner requests \$308 per hour, nearly 19% above the adjusted statutory cap, relying solely on counsel's assertion of 12 years of experience and participation in the ECO program. This request cannot withstand scrutiny.

A special factor justifying an enhancement requires far more than general experience in immigration law. The Supreme Court has made clear that the enhancement is available only where counsel possesses distinctive knowledge or specialized skill that was necessary for the litigation and where qualified attorneys were genuinely unavailable at the statutory rate. *Pierce*, 487 U.S. at 572. Routine expertise in immigration detention matters, even with more than a decade of

1 practice, does not qualify. *Nadarajah v. Holder*, 569 F.3d 906, 912-14 (9th Cir. 2009) (rejecting
2 enhanced rate for experienced immigration counsel absent concrete proof of limited availability
3 in the relevant market); *Thangaraja*, 428 F.3d at 876-77 (immigration expertise alone is
4 insufficient to overcome the statutory cap). The applicant must produce satisfactory evidence,
5 such as affidavits from other attorneys or market surveys, demonstrating that no qualified counsel
6 in the Western District of Washington would have taken the case at the statutory rate. *Nadarajah*,
7 569 F.3d at 914. Bare assertions of experience or reference to an out-of-district program like ECO
8 are wholly inadequate.

9 Here, Petitioner has submitted no competent evidence to support the requested
10 enhancement. The motion and supporting papers contain no declaration articulating any unique
11 or specialized skill beyond ordinary immigration practice, no affidavits from other practitioners
12 attesting to unavailability of counsel at \$258.46 per hour, and no market data specific to this
13 district. The ECO program is an Oregon-based initiative with no demonstrated relevance to fee
14 awards in the Western District of Washington. Petitioner's complete failure to carry the burden
15 imposed by *Pierce* and *Nadarajah* is fatal to the request for an enhanced rate. Allowing the \$308
16 hourly rate in the absence of any supporting evidence would undermine the statutory cap and the
17 careful balance Congress struck in the EAJA. The Court should therefore limit any attorney fee
18 award to the statutory maximum of \$258.46 per hour. Paralegal time may be compensated
19 separately, but only at a reasonable market rate; the claimed \$133 per hour still requires close
20 scrutiny. *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590 (2008).

21 **B. The Claimed Hours Are Excessive and Not Reasonably Expended**

22 Even if the Court were to award fees at the statutory maximum rate of \$258.46 per hour,
23 the number of hours claimed remains grossly excessive and must be substantially reduced. The
24 EAJA authorizes only reasonable attorney fees. 28 U.S.C. § 2412(d)(1)(A). The Supreme Court

1 has placed the burden on the fee applicant to establish the reasonableness of the number of hours
2 expended: The party seeking an award of fees should submit evidence supporting the hours
3 worked and rates claimed. Where the documentation of hours is inadequate, the district court may
4 reduce the award accordingly. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (applied to EAJA
5 fee requests). *Hensley* requires courts to exclude hours that are excessive, redundant, or otherwise
6 unnecessary, and to apply billing judgment to ensure the hours requested reflect what a reasonable
7 attorney would bill a paying client. *Id.* at 434. The Ninth Circuit has repeatedly affirmed that
8 district courts have broad discretion to reduce or deny hours that fail this standard. *See Welch v.*
9 *Metro. Life Ins. Co.*, 480 F.3d 942, 948-49 (9th Cir. 2007); *Moreno v. City of Sacramento*,
10 534 F.3d 1026, 1042-43 (9th Cir. 2008).

11 Here, the provided breakdown claims approximately 41 attorney hours plus several
12 paralegal hours for a relatively straightforward section 2241 habeas proceeding involving an
13 initial petition, one amended petition, a traverse, client meetings at NWIPC, and routine
14 procedural tasks. This volume of time is excessive on its face for the limited scope of the litigation.

15 Prior awards by this Court in nearly identical immigration re-detention habeas cases
16 confirm that 18–25 attorney hours is a more reasonable benchmark for counsel with comparable
17 experience. In *Zavorin v. Wamsley*, 2:26-CV-00173-DGE, 2026 WL 309733 (W.D. Wash. Feb. 5,
18 2026), this Court awarded \$4,859.05 in EAJA attorney fees. At the applicable statutory maximum
19 rate of \$258.46 per hour, this equates to roughly 18–19 attorney hours for analogous detention-
20 related habeas briefing. A reasonable expenditure of time in this matter would therefore total no
21 more than 18–25 attorney hours plus only a modest amount of paralegal time for service and filing
22 tasks.

23 Moreover, the specific entries suffer from multiple deficiencies that independently require
24 reduction. First, numerous entries are vague or inadequately documented, for example, repeated

1 file management blocks (multiple .1–.2 hour entries) and review case status/consider next steps
2 entries (.513, .189, and .318 hours). Such descriptions do not allow the Court to determine
3 whether the time was reasonably expended on substantive work or merely clerical. *Hensley*,
4 461 U.S. at 433; *see also Welch*, 480 F.3d at 948. Second, many entries are duplicative or
5 redundant, including overlapping drafting sessions for the traverse (separate entries of 1.052,
6 1.849, 4.969, and 2.495 hours), multiple short client phone calls (.2, .158, .1, and .89 hours), and
7 repeated client meetings or coordination efforts. Redundant time is not compensable. *Hensley*,
8 461 U.S. at 434. Third, a significant portion of the claimed time appears to consist of
9 administrative or clerical tasks such as file management, service coordination, pro hac vice filing,
10 emailing consent form. These administrative or clerical task are ordinarily performed by
11 paralegals or secretaries and are not properly billed at full attorney rates. *See Chertoff*, 553 U.S.
12 at 590; *Nadarajah*, 569 F.3d at 921.

13 Because Petitioner has not met its burden under *Hensley* to demonstrate that all claimed
14 hours were reasonably expended, and because the billing records contain excessive, duplicative,
15 vague, and clerical entries, the Court should either conduct a line-by-line review or apply an
16 across-the-board percentage reduction of at least 50% (or more) to the attorney hours claimed.
17 *See Welch*, 480 F.3d at 949; *Moreno*, 534 F.3d at 1042. Such a reduction would bring the
18 compensable attorney time in line with the 18–25 hours that would be reasonable for this
19 straightforward re-detention habeas matter and consistent with prior awards by this Court.

20 **C. Most Requested Costs Are Not Recoverable**

21 The Equal Access to Justice Act authorizes only a narrow category of recoverable costs
22 and expenses, expressly limiting any award to those costs enumerated in 28 U.S.C. § 1920
23 together with other expenses that were both necessarily incurred in the litigation and reasonable
24 in amount. 28 U.S.C. § 2412(d)(1)(A). This limitation is strictly construed because the United

1 States has waived sovereign immunity only to the extent expressly provided by statute, and any
2 ambiguity must be resolved in favor of the government. *See Chertoff*, 553 U.S. at 578 (EAJA cost
3 recovery is confined to litigation-related expenses and does not extend to personal or non-
4 essential expenditures); *Hensley*, 461 U.S. at 437 (the same exacting documentation and
5 reasonableness requirements that govern attorney fees apply with equal force to costs). The fee
6 applicant bears the burden of proving that each claimed expense falls within these statutory
7 categories and was both necessary and reasonable; failure to make that showing requires
8 disallowance. *Nadarajah*, 569 F.3d at 921 (non-recoverable expenses must be disallowed).
9 Petitioner's request for \$498.47 in costs falls far short of this burden. The detainee phone money
10 and commissary funds - totaling more than \$150 across multiple entries - are plainly Petitioner's
11 personal living expenses incurred while in custody and have no connection whatsoever to the
12 preparation or prosecution of the habeas petition; they are neither costs under 28 U.S.C. § 1920
13 nor expenses necessarily incurred in the litigation and therefore cannot be shifted to the United
14 States. Likewise, the \$4.35 parking fee at the ICE facility represents a personal travel expense of
15 either Petitioner or counsel and is not a necessary litigation cost. The \$249 pro hac vice filing fee
16 is equally non-recoverable because it is an expense personal to counsel's admission to this Court
17 rather than an expense of advancing the case itself. Although Petitioner has provided receipts for
18 the multiple certified and priority postage charges, postage remains recoverable only to the extent
19 each charge is shown to have been both reasonable in amount and necessary to the litigation.
20 Given the straightforward nature of this single-petitioner re-detention habeas, requiring only
21 routine filings, service, and client communications, the volume of certified and priority mailings
22 appears duplicative and excessive. Petitioner has offered no specific explanation demonstrating
23 that each mailing was required or that less expensive alternatives would not have sufficed.
24 Accordingly, the Court should deny the phone/commissary funds, parking charge, and pro hac

1 vice fee in their entirety and limit any postage award to only those discrete amounts that Petitioner
2 can affirmatively demonstrate were both reasonable and strictly necessary to the litigation.

3 **III. CONCLUSION**

4 For the foregoing reasons, Respondents respectfully request that the Court deny
5 Petitioner's motion for EAJA fees and costs in substantial part. The Court should limit any
6 attorney fees to the statutory maximum rate of \$258.46 per hour, substantially reduce the number
7 of compensable hours due to excessiveness and inadequate documentation, and award no more
8 than 18–25 reasonable attorney hours consistent with prior awards in this district. The Court
9 should also deny recovery of the detainee phone and commissary funds, parking fee, and pro hac
10 vice fee in full, while limiting any postage award to only those amounts shown to be reasonable
11 and strictly necessary to the litigation. In total, any award should be substantially less than the
12 \$13,128.58 requested.

13 DATED this 20th day of April, 2026.

14 Respectfully submitted,

15 s/ Lawrence Van Daley

16 LAWRENCE VAN DALEY, WSBA No. 53102
17 Special Assistant United States Attorney
18 United States Attorney's Office
19 Western District of Washington
20 1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3825
Fax: (253) 428-3826
Email: lawrence.van.daley@usdoj.gov

21 *Attorney for Federal Respondents*

22 I certify that this memorandum contains 2,202
23 words, in compliance with the Local Civil Rules.