

District Judge Kimberly K. Evanson

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

M-Z-H-,

Petitioner,

v.

JULIO HERNANDEZ, Seattle Field Office
Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting
Director of U.S. Immigration Customs
Enforcement ("ICE"); KRISTI NOEM,
Secretary of the Department of Homeland
Security ("DHS"); PAMELA BONDI,
Attorney General of the United States; BRUCE
SCOTT, Warden, Northwest ICE Processing
Center ("NWIPC"); ICE; and DHS.,¹

Respondents.

Case No. 2:25-cv-02523-KKE

**FEDERAL RESPONDENTS'
RESPONSE TO PETITIONER'S
APPLICATION FOR ATTORNEY'S
FEES**

Noted for Consideration:
April 13, 2026

Respondents oppose Petitioner's motion for an award of **\$40,340.44** in attorney's fees and **156.08** hours under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 at Dkt. 19.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo; Secretary of the United States Department of Homeland Security Markwayne Mullin for Kristi Noem; and Acting United States Attorney General Todd Blanche for Pamela Bondi. Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

LEGAL STANDARD

Under the EAJA, a court may award “reasonable” attorney’s fees to a prevailing party. 28 U.S.C. § 2412(d)(1)(A). The fee applicant bears the burden of demonstrating that the hours claimed are reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983). Courts must exclude hours that are “excessive, redundant, or otherwise unnecessary.” *Id.* at 434. The inquiry is whether the time expended is the amount that “reasonably would have been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).

Courts routinely reduce fee awards where billing reflects overstaffing, duplication of effort, or time disproportionate to the demands of the case. *Id.*; *see also Reyes v. NARA*, 356 F. Supp. 3d 155, 169 (D.D.C. 2018).

ARGUMENT

A. The Requested Fees Are Excessive

Although Federal Respondents do not oppose an award of fees in principle², the number of hours requested here far exceeds what the law permits. EAJA is designed to compensate counsel for work reasonably required to litigate a case, not to reward inefficiency or to confer a windfall. The Ninth Circuit made that directive unmistakably clear: courts must award “no more, no less” than a reasonable fee and must guard against outcomes that overcompensate counsel. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).

Petitioner seeks \$40,340.44 for 156.08 hours of attorney time in a single-petitioner habeas action that was resolved on an expedited written record and, critically, without substantive

² Federal Respondents do not dispute that Petitioner is the prevailing party in this matter. While they do not concede that their position lacked substantial justification regarding the issues raised in the Petition for Writ of Habeas Corpus (Dkt. 1), Federal Respondents do not oppose Petitioner’s request for an award of EAJA fees in principle or the request for nearly the statutory maximum EAJA hourly rate of \$258.36 (ten cents below the EAJA maximum rate). However, the number of hours claimed in this case are excessive, duplicative, impermissibly vague, compound and unreasonable, for the reasons set forth herein.

1 opposition from the Government. The Supreme Court has instructed that courts must exclude hours
2 that are “excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424,
3 434 (1983). This request squarely implicates that rule.

4 The case itself was straightforward. It was resolved entirely on the papers, without
5 discovery, without an evidentiary hearing, and without oral argument. The litigation consisted of
6 a petition, a temporary restraining order motion, a combined return, and a traverse. As the Court
7 observed, the Government’s return “lack[ed] an analysis section.” Dkt. 16 at 5 n.5. In practical
8 terms, the absence of developed argument rendered the proceeding functionally equivalent to an
9 unopposed petition. That procedural reality necessarily limits the amount of attorney time that can
10 be reasonably justified.

11 Yet the billing records reflect the opposite. Counsel devoted approximately 102.76 hours
12 to the petition and temporary restraining order phase and an additional 45.82 hours to the traverse,
13 along with further time for post-order work and the fee petition. The traverse alone illustrates the
14 problem in concrete terms. Counsel billed 2.75 hours to review the Government’s seven-page
15 return. They then proceeded to file a twenty-three-page traverse accompanied by a seven-page
16 supplemental declaration with exhibits. That level of effort in response to a short Return
17 Memorandum filing without substantive opposition is not the exercise of reasonable billing
18 judgment. It is the definitive overworking of a case.

19 No reasonable paying client would accept being billed nearly fifty hours to respond to a
20 seven-page, largely non-analytical filing. Nor would such a client expect to finance two attorneys
21 performing overlapping work on the same core documents. The records show precisely that: one
22 attorney billed nearly 100 hours, while a second billed more than 56 hours, largely on the same
23 drafting tasks. Dkt. 19-2. This was not complex, multi-phase litigation requiring layered staffing.
24 It was a streamlined habeas proceeding on an expedited timeline for a single petitioner. The vague

1 and compound descriptions of time entries in this motion exacerbate the problem of overbilling,
2 as they make it difficult to discern precisely what the attorneys are billing for. *Id.*

3 Courts routinely reduce fee awards in these circumstances. The governing standard is not
4 what counsel chose to spend, but what was reasonably required. *Moreno* makes clear that courts
5 must approximate what a reasonable client would pay in the market, and must refuse to shift to the
6 government costs that reflect duplication, overstaffing, or unnecessary effort. 534 F.3d at 1111.
7 The Ninth Circuit warns against converting the EAJA statute into a “windfall” for over-litigation.
8 *Id.*

9 That concern is precisely what is at issue here. Awarding fees based on 156 hours in a case
10 that was effectively unopposed, resolved on the papers, and devoid of novel issues would not
11 merely compensate counsel; it would confer the quintessential windfall that *Moreno* instructs
12 courts to prevent. And it would encourage similarly situated counsel in this district to overwork
13 simple cases seeking a similar benefit. EAJA does not permit recovery of hours that could not
14 reasonably be billed to a private client, and it does not compensate inefficiency.

15 This case proceeded on an expedited schedule, involved a limited record, and presented
16 familiar legal issues. Even in contested cases, 156 hours would be difficult to justify. In a case
17 such as this one, it is indefensible. The Court should therefore reduce the requested hours to reflect
18 the amount of work that was reasonably necessary, ensuring that any award complies with the
19 Ninth Circuit’s command: “compensate counsel at the prevailing rate in the community for similar
20 work; no more, no less.” *Moreno*, 534 F.3d at 1111.

21 **B. Substantial Across-the-Board Reduction Is Warranted**

22 Where billing records reflect systemic excess rather than isolated issues, courts have broad
23 discretion to apply an across-the-board reduction. The Ninth Circuit has recognized that such
24 reductions are appropriate where the overall request is unreasonable, and courts are not required

1 to engage in an item-by-item accounting under those circumstances. *Moreno*, 534 F.3d at 1112;
2 *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc). In applying the use of
3 percentages, the district court must set forth a “concise but clear” explanation of its reason for
4 choosing a given percentage reduction. *See Gates v. Deukmejian*, 987 F.2d 1392, 1400 (9th Cir.
5 1993) (as amended).

6 Here, the excess is pervasive. It reflects a consistent over-allocation of attorney time to a
7 streamlined, straightforward, single petitioner proceeding. A substantial percentage reduction is
8 therefore necessary to bring the award in line with the amount of work reasonably required.

9 An eighty percent reduction appropriately accounts for the excessive total hours, the
10 duplication between attorneys, the disproportionate time spent on routine filings, and the
11 straightforward nature of the proceeding. Applying that reduction to the requested \$40,340.88
12 results in a reasonable fee award of \$8,062.18.

13 This adjusted figure more accurately reflects the reasonable value of the work necessary to
14 litigate this case. And ensures compliance with EAJA’s requirement that fees are sufficient, but
15 not excessive. It also aligns with awards in comparable cases. Courts in this district have awarded
16 significantly lower fees in similar habeas matters, even where the government presented more
17 arguments in opposition. *See, e.g., Zavorin v. Wamsley*, No. 2:26-CV-00173-DGE, 2026 WL
18 879246, at *2 (W.D. Wash. Mar. 31, 2026) (“The Court finds that the requested number of hours
19 should be reduced by 20 percent, from 23.5 hours to 18.8 hours to account for both the use of the
20 large time increments and the vague time entries. Applying the statutory hourly rate pursuant to
21 the EAJA, Petitioner is entitled to \$4,859.05.”).

22 CONCLUSION

23 In sum, while some fee award may be appropriate, the amount requested here is not. The
24 Court should exercise its discretion to reduce the award to a level that reflects reasonable, non-

1 duplicative effort and avoids granting an unwarranted windfall to counsel. *Moreno*, 534 F.3d at
2 1112. For the foregoing reasons, Petitioner's application for attorney's fees should be substantially
3 reduced by at least eighty percent.

4 DATED this 7th day of April, 2026.

5 Respectfully submitted,

6 s/ Alixandria K. Morris

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11 *Attorney for Federal Respondents*

12 I certify this memorandum contains 1,367 words, in
13 compliance with the Local Civil Rules.