UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SELVIN ISAIAS SITUJ GARCIA , Petitioner, v. DERRICK STAMPER, *et al.*, Respondents.	No. 2:26-cv-00025-JAW
ELDER BENJAMIN ORTIZ SINTUJ, Petitioner, v. DERRICK STAMPER, *et al.*, Respondents.	No. 2:26-cv-00027-JAW

OPPOSITION TO MOTIONS FOR ATTORNEY FEES AND COSTS

Respondents, by and through undersigned counsel, oppose Petitioners' Motions for Attorney Fees and Costs. *See* 2:26-cv-00025-JAW, Dkt. #21, Feb. 10, 2026 & 2:26-cv-00027-JAW, Dkt. #22, Feb. 10, 2026 (the "Motions" or "Mots."). The recoveries sought, individually totaling $6,232.43 for each Petitioner, are modest and based on a concededly reasonable $250.00 hourly rate. For the reasons detailed below, however, Respondents submit that fees and costs totaling no more than $3,294.93 for each Petitioner, comprising $2,937.50 in attorney's fees and $357.43 in transportation costs, may be more appropriate.

Background

The Petitions in these related matters were filed on January 18, 2026. Emergency

Orders issued later that same day, which prohibited Petitioners from being transferred outside of the state of Maine. Yet also on January 18—after the Petitions were filed but before the Court issued the Emergency Orders—Respondents were transported to a holding facility in Louisiana.

Telephonic hearings with the Court were held in each case on January 20, 2026, at which the parties agreed to brief the Court on whether the Court could order Petitioners returned to the District of Maine. Orders to Show Cause and Temporary Restraining Orders issued on January 21, 2026, and Respondents filed returns to the Petitions later that day. In those returns, Respondents erroneously stated that Petitioners had departed the state of Maine on a U.S. Immigration and Customs Enforcement ("ICE") flight at approximately 12:00 PM on January 18, 2025.

Habeas relief was granted to Petitioners on January 28, 2026. The Court found that "Respondents' continued detention of [Petitioners] without a bond hearing violates federal law and the Fifth Amendment of the United States Constitution." Orders at 14. The Court accordingly granted in part and deferred in part Petitioners' habeas corpus applications. *Id.* In doing so, the Court directed Respondents to return each Petitioner to the District of Maine within five days of the date of the Orders, *i.e.*, by the end of the day on February 2, 2026. *Id.* The Court ordered "Respondents to file a status update within twenty-four hours of the date of [Petitioners being] return[ed] to the District of Maine, confirming [their] return consistent with th[e] [Orders]." *Id.* Finally, the Court ordered "Respondents to submit within seven days of the date of [the Orders, *i.e.*, by February 4, 2026] an affidavit or sworn declaration confirming the exact time of [each Petitioner] depart[ing] from the District of Maine on January 18, 2026." *Id.* at 14. Additional action on the merits of the Petitions was otherwise deferred. *Id.*

On February 3, 2026, Respondents filed Status Reports and Notices of Correction in the two cases (the "Status Reports"). The Status Reports shared that Petitioners had been transferred from ICE custody in Louisiana to ICE custody at the Mahoning County Jail in Youngstown, Ohio, on February 1, 2026. *Id.* at 2. Petitioners' transfers to Maine were not completed by the February 2 deadline. *Id.* Each remained detained at the Mahoning County Jail through the morning of February 3, when they were released. *Id.* In support of the Status Reports the United States Attorney's Office additionally obtained a declaration from U.S. Border Patrol concerning the exact timing of Petitioners' transport outside of the state of Maine on January 18, 2026. *See* Decl. of BPA Jonathan Lemay ("Declaration" or "Decl."). On the basis of the Declaration, Respondents corrected a prior misstatement of fact, that Petitioners had departed the state of Maine on an ICE flight. Instead, U.S. Border Patrol had transported Petitioners outside of Maine to New Hampshire by around 9:00 AM on January 18, 2026; Petitioners' flight departed Massachusetts between 10:15 AM and 1:30 PM that day. Decl. ¶¶ 7-10.[1]

On February 6, 2026, the Court issued Orders finding that ICE's overlong holding and subsequent release of Petitioners in Ohio violated the prior orders "requiring the Government to return the petitioner[s] from Louisiana to Maine." *Id.* at 1. The Court found that such violations did not occur in bad faith. *Id.* at 6, 7. As a sanction, the Court ordered that "Respondents compensate [Petitioners] for reasonable attorney's fees and costs for [their] entire representation." *Id.* at 7; *see also id.* at 8-9. The Orders further permitted Respondents to file any objections to Petitioners' Motions. *Id.* at 9.

[1] The Petitions were filed in the District of Maine between 11:00 AM and noon, several hours after Petitioners had already left the jurisdiction.

In the interim, Amended Judgments entered, dismissing each Petition as moot on February 9, 2026.

Petitioners each seek "an award of $5,875.00 in attorney's fees, and the award of $357.43 in transportation costs, [for] a total of $6,232.43." Mots. at 4.

Argument

1. Applicable Law Concerning Fees and Costs

Petitioners frame their fees and costs requests as follows:

> Pursuant to Fed. R. Civ. P. 54(d)(1) and 42 U.S.C. § 1988(b), an award of attorney's fees and costs is appropriate. Under federal law, if a plaintiff prevails in a lawsuit against the government that vindicates constitutional rights, the plaintiff is entitled to reasonable attorney fees as part of the costs. 42 U.S.C. § 1988(b). Here, Petitioner[s] [were] ordered an award of attorney's fees and costs following Respondents' violation of the Court's prior order. . . Although Petitioner[s'] petition[s] for a writ of habeas corpus [were] dismissed as moot, Petitioner[s] [are] considered [] prevailing part[ies] nonetheless, as the Court granted [them] relief by blocking future redetention, and issuing a sanction upon Respondents. *Id.*

Mots. at 2. However, neither source of law cited above by Petitioners applies here. "Section 1988(b) cannot provide the basis for the recovery of attorney's fees against the United States," because that provision "only applies to actions brought under 42 U.S.C. sections 1981, 1981a, 1982, 1983, 1985, and 1986," and other enumerated provisions, "none of which are asserted as claims for relief" by Petitioners in their respective 28 U.S.C. § 2241 applications. *See Nino v. United States*, 13-cv-0469, 2014 WL 4988472, at *9 (S.D. Cal. Oct. 6, 2014). Federal Rule of Civil Procedure 54(d)(1) is similarly inapposite. The Rule provides that, "unless a federal statute, these rules, or a court order provides otherwise, costs—*other than attorney's fees*—should be allowed to the prevailing party," though "costs against the United States. . . may be imposed only to the extent allowed by law. *Id.* (emphasis added); *see also United States ex rel. Berge v.*

Regents of Univ. of Ala. at Birmingham, 203 F.3d 824, at *2 (4th Cir. Feb. 2, 2000) (unpublished) ("Rule 54(d)(1) codifies the principle of sovereign immunity, providing that costs may be taxed against the United States 'only to the extent permitted by law'").

Rather than seeking fees under Rule 54(d)(1) and 42 U.S.C. § 1988(b), Respondents understand the Motions to pursue relief first as a sanction, as previously discussed by the Court in its February 6 Orders. *Id.* at 7-8 (citing *Mullane v. Chambers*, 333 F.3d 322, 338 (1st Cir. 2003)); *see generally In re Charbono*, 790 F.3d 80, 87-88 (1st Cir. 2015) ("[w]hen a court confronts a violation of its own order, 'it may choose from a broad universe of possible sanctions'") (quoting *Velázquez Linares v. United States*, 546 F.3d 710, 711 (1st Cir. 2008)). Inherent-power sanctions awarding attorney's fees ordinarily require bad faith, however, a finding not made here. *See Confederación Hípica de Puerto Rico, Inc. v. Confederación de Jinetes Puertorriqueños, Inc.*, 30 F.4th 306, 317 (1st Cir. 2022); *Charbono*, 790 F.3d at 87-88. To the extent attorney's fees and costs may be unavailable based on the Court's inherent powers, this Court has recently ruled that the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), authorizes such awards in 28 U.S.C. § 2241 proceedings against the United States. *See Bernardo Rodrigues v. Hyde*, 2:25-cv-553-LEW, 2026 WL 370863, at *1-2 (D. Me. Feb. 10, 2026) (noting that a long-standing Circuit split "affords an exciting opportunity for the First Circuit to weigh in on the matter at greater length"). Petitioners' "prevailing party" arguments appear to encompass an EAJA claim. Mots. at 2.

Accordingly, Respondents understand the Motions to seek relief pursuant to the Court's inherent sanctions authority, and in the alternative, pursuant to the EAJA.[2]

[2] Respondents' position with respect to the EAJA remains that the text of that statute does not unequivocally waive sovereign immunity for habeas petitions challenging immigration detention, so no EAJA award would be available in these cases. Respondents acknowledge, as discussed above, that this

2. The Attorney's Fees Sought by Petitioners may be Decreased to the Extent Determined to be Duplicative

The Motions request "$5,875.00 in attorney's fees, and the award of $357.43 in transportation costs, [for] a total of $6,232.43." *Id.* at 4. This $6,232.43 sum is sought for each Petitioner. *Id.* These figures are modest and based on facially reasonable hourly billing rates. Each Petitioner's $357.43 transportation costs request is reasonable.

Respondents object only to the extent that Petitioners' attorney's fees may be duplicative. The "complete, detailed billing records, which were contemporaneously recorded and accurately reflect the work done by the attorney" representing each Petitioner, *see* Mots. at 3, display the same time entries, descriptions, billed amounts, and dates. *Compare* 2:26-cv-00025-JAW, Dkt. #21-2 at 2-5 ("Selvin SITUJ GARCIA"), *with* 2:26-cv-00027-JAW, Dkt. #22-2 ("Elder ORTIZ SINTUJ"). Each respectively documents 23.5 hours of work for a total of $5,875.00 per Petitioner. *Id.* at 2. It appears, however, that Petitioners' common counsel did not bill 47 hours between the two cases (23.5 hours x 2), but rather tended to the two matters simultaneously. The legal and factual overlap between the two habeas applications, including how each case progressed in tandem—albeit through two different dockets—likewise appears to have enabled Petitioners' counsel to handle both matters over the course of 23.5 hours, rather than in two 23.5-hour blocks.

Court has ruled directly to the contrary. *Bernardo Rodrigues*, 2026 WL 370863, at *2. ICE further submits that it was bound to take the position that Petitioners needed to be detained pending the outcome of their removal proceedings, with the agency following the precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). Following the closely related matter of *Saysana v. Gillen*, 614 F.3d 1 (1st Cir. 2010), too, ICE's position was substantially justified because it arose in the context of an issue that was emerging, novel, and unaddressed—at that time—by any Court of Appeals. Respondents further submit that the recent decision of *Buenrostro-Mendez v. Bondi*, 25-20496 (5th Cir. Feb. 6, 2026), filed by the U.S. Court of Appeals for the Fifth Circuit, may bear on this Court's analysis of whether Respondents' litigation position was substantially justified concerning the § 1225 mandatory versus § 1226(a) discretionary detention debate underlying the merits of these cases.

Accordingly, the $5,875.00 in attorney's fees sought for each Petitioner may require a 50% decrease.

Conclusion

WHEREFORE, Respondents submit that grounds may exist for each Petitioner to receive fees and costs totaling no more than $3,294.93, comprising $2,937.50 in attorney's fees and $357.43 in transportation costs.

Dated: February 19, 2026
Bangor, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2026, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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