UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Renato Merlo Puerto,

Petitioner,

v.

Raul Maldonado,
in his official capacity as Warden,
Brooklyn Metropolitan Detention Center;

Judith Almodovar,
in her official capacity as Acting New York Field Office Director, U.S. Immigration & Customs Enforcement;

Kristi Noem,
in her official capacity as Secretary, U.S. Department of Homeland Security;

Todd M. Lyons,
in his official capacity as Acting Director of Immigration & Customs Enforcement; and

Pamela Bondi,
in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 26-cv-405-NRM

Reply to Opposition to Motion for EAJA Fees

This Reply is submitted in response to Respondents' Memorandum of Law in Opposition to Petitioner's Motion for EAJA Fees, ECF No. 18 ("Opposition").

Under the EAJA, the Government's position is "substantially justified" only if its conduct was "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 485

U.S. 552, 595 (1988). The Government bears the burden of proving its position was justified. *Scarborough v. Principi*, 541 U.S. 401, 414 (2004). Significantly, the government must meet this threshold *twice*—it must independently establish that the agency misconduct that gave rise to the litigation was substantially justified, *and* that its litigation position also was substantially justified. 8 U.S.C. § 2412(d)(2)(D); *Smith by Smith v. Bowen*, 867 F.2d 731, 734 (2d Cir. 1989) ("Congress made clear that for EAJA purposes, a court should inquire into both the underlying agency determination affecting the party, as well as the Government's litigation strategy in defense of that determination."). *See also Johnson v. Gonzales*, 416 F.3d 210 (3d Cir. 2005) ("[I]n immigration cases, the Government must meet the substantially justified test twice—once with regard to the underlying agency action and again with regard to its litigation position in the proceedings arising from that action.").

Here, Respondents fail to meet their burden to show either that ICE's conduct, or the litigation position taken by the U.S. Attorney's Office in this matter, were substantially justified. Respondents detained Petitioner on January 22, 2026, without any notice or an opportunity for an individualized bond hearing, and thereafter represented to the Court that such action was legal pursuant to 8 U.S.C. § 1225(b)(2). At the time, Respondents were engaged in the newfound practice of detaining non-citizens without notice, and without an opportunity for bond, a campaign that continues without abatement today. There is no debate that this new practice was not the result of a change in the law, but because of politics.[1]

[1] *See Castanon-Nava v. U.S. D.H.S.*, 161 F.4th 1048, 1062 n. 13 (7th Cir. 2025) (internal quotations and citations omitted) ("It also does not escape our notice that Defendants' recent reliance on § 1225(b)(2)(A) to detain noncitizens discovered within the United States upends decades of practice. Before July 8, 2025, DHS's long-standing interpretation had been that § 1226(a) applied to those who have crossed the border between ports of entry and are shortly thereafter apprehended. Mandatory detention of all persons illegally in the United States only became official DHS policy when Acting Director of ICE Todd M. Lyons issued an internal

1. *The Agency's Prelitigation Position was Not Substantially Justified*

In their Opposition, Respondents argue their behavior is "substantially justified" because a minority of judges within the Southern and Eastern Districts of New York, and the Courts of Appeals for the Fifth and Eighth Circuits, have ruled in their favor. But even if this argument justified their litigation position (it doesn't, *see infra*, Part #2), this argument fails to carry their burden of showing that *ICE's* practice of no-bond detention without notice was substantially justified, and this dooms their Opposition altogether. *See United States v. 515 Granby, LLC*, 736 F.3d 309, 316 (4th Cir. 2013) ("[W]hen the government's unjustified prelitigation position forces a lawsuit, the petitioner may recover fees under the EAJA for the entire suit, even if the government's litigation position was reasonable.").

Indeed, "the Government's response . . . makes no reference to its position during the underlying proceedings (focusing instead on the proceedings in our Court), and it has thus waived any argument on this ground." *See Johnson*, 416 F.3d at 211.

But *even if* Respondents had not waived any argument concerning ICE's underlying conduct, a multitude of judges within this District, including Your Honor in this very case, have ruled that ICE's practice of detention without notice is illegal and in violation of the Constitution. *See, e.g.*, ECF No. 8 ("Accordingly, as it did in *Hyppolite*, the Court finds that Petitioner has established that his detention violates his Fifth Amendment right to procedural due process, because Petitioner has lived in the United States for 22 years and is therefore entitled to an individualized, pre-detention bond hearing under the Immigration and Nationality Act.").

---

memorandum on July 8, 2025 explaining that the agency 'revisited its legal position' on the applicability of §§ 1225(b) and 1226(a)."). *See also Matter of Hurtado*, 29 I.&N. Dec. 216, 225 & n.6 (BIA 2025) ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.").

Indeed, the government was on notice that their practices violated the Constitution long before Petitioner's detention. *See, e.g., Hyppolite v. Noem*, 808 F. Supp. 3d 474, 478, 494 (E.D.N.Y. 2025) ("What happened next was anything but routine. Without any prior notice or explanation, as Hyppolite and his father (who had accompanied him to the hearing) left the courtroom, they found themselves surrounded and detained by agents with U.S. Immigration and Customs Enforcement ('ICE'). Although his father was released after establishing that he was a U.S. citizen, Hyppolite was not. Instead, he was placed into handcuffs and leg shackles and forcibly removed to a 'holding area' at a nearby federal office building. . . . [T]his Court concludes that his detention violates his procedural due process rights under the Fifth Amendment, warranting a grant of his habeas petition and his immediate release.").

A violation of the Constitution cannot be substantially justified. *See Meinhold v. U.S. Dep't of Defense*, 123 F.3d 1275, 1278 (9th Cir. 1997) ("If the government's position violates the Constitution . . . a finding that the government was substantially justified would be an abuse of discretion.").

2. *The Agency's Litigation Position was Not Substantially Justified*

As recounted above, Respondents presented to this Court a legal theory that had been rejected by the vast majority of judges to consider the issue, including this Court previously. *See, e.g.*, ECF 8 ("[T]he Court adheres to the reasoning of its earlier decision and the near-unanimous conclusion reached by hundreds of other district courts nationwide who have considered the issue to date."). Indeed, as found only a few weeks ago by Judge Quraishi of the Federal District of New Jersey:

> The Government's handling of Petitioner's detention is emblematic of its approach to immigration enforcement in this state. On the merits, its detentions are illegal. *The Government knows this*. Its reliance on § 1225 has been roundly rejected: federal courts have in near unanimity similarly rejected respondents' position in approximately 300

cases to date, a number which climbs with each passing day.

Cartagena Hueso v. Soto, No. 26-1455 (ZNQ), 2026 WL 539271, at *3 (D.N.J. Feb. 26, 2026) (emphasis added).

Furthermore, as presciently noted by Judge Donnelly just last week in awarding EAJA fees in a similar matter:

> 'The 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.' At the time the parties litigated the petition, the Fifth Circuit had not decided *Buenrostro Mendez* — which, in any event, is not binding on the Court. Nor had any court in this District agreed with the government's position.

L.R.C. v. Maldonado, 25-CV-6825 (AMD), 2026 WL 946787, at *2 (April 7, 2026) (*quoting Commodity Futures Trading Com'n v. Dunn*, 169 F.3d 785, 787 (2d Cir. 1999)). Similarly, *Buenrostro Mendez* was not yet decided at the time this matter was being litigated before the Court, "[n]or had any court in this District agreed with the government's position." *See L.R.C.*, 2026 WL 946787, at *2.

Because Respondents' legal position in this matter was not "substantially justified," EAJA fees are appropriate. *See L.R.C.*, 2026 WL 946787, at *5 (awarding EAJA fees in factually similar habeas proceeding in the amount of $15,497); *Cornejo Guanuquiza v. Francis*, 25-CV-10267 (RA), 2025 WL 3678121, at *2 (S.D.N.Y. Dec 18, 2025) (awarding EAJA fees in factually similar habeas proceeding; "[t]he Court finds that the Government's position 'was not substantially justified,' since it does not 'and has never had a reasonable basis in statutory text, structure, or history.'"); *Yao v. Almodovar*, 813 F. Supp. 3d 461, 478 (S.D.N.Y. Dec. 17, 2025) ("Here, Yao is the prevailing party, and ICE's position, rejected this year in some 97% of the cases in which it was litigated, was not substantially justified. Yao is thus entitled to reasonable fees and costs."); *Rivera Esperanza v. Francis*, No. 25-CV-8727 (RA), 2025 WL 3513983, at *9

(S.D.N.Y. Dec. 9, 2025) (awarding EAJA fees in factually similar habeas action); *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 506 (S.D.N.Y. 2025) ("[Respondents'] position has been rejected with near unanimity in the overwhelming majority of cases across the country. Mr. Barco is entitled to reasonable fees and costs.").

3. *Housekeeping*

- Petitioner agrees with Respondents that the correct hourly rate is $262.77, resulting in an award of $1,970.77 (for 7.5 hours).
- Should the Court find an EAJA award appropriate, the above figure should be increased for the 5 hours spent researching and drafting this Reply, for a total of $3,284.62. *See* Exhibit A.

Dated: April 16, 2026

Respectfully submitted,

/s/ Michael Goldman

The Law Offices of Michael Z. Goldman
100 Church St., Suite 800
New York, NY 10007
212 901-3799
michael@mzglaw.com

Attorney for the Petitioner