**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF COLORADO**

**MARICELA REGALADO-HERNANDEZ,**

*Petitioner*,

*v.*

**JUAN BALTAZAR**, et al.,

*Respondents*.

**Case No. 26-cv-506-GPG**

**MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

## INTRODUCTION

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, Petitioner Maricela Regalado-Hernandez ("Ms. Regalado"), moves for an award of attorney's fees and costs incurred in challenging the legality of her prolonged detention of more than 27 months without a constitutionally adequate bond hearing. Respondents include U.S. government officials and the warden of the ICE Denver Contract Detention Facility in Aurora, Colorado.

This Court granted Ms. Regalado's petition for writ of habeas corpus on March 4, 2026, ordering a bond hearing within seven days at which the Government bore the burden of proof. Dkt. 10 at 3; Dkt. 12. On March 11, 2026, Respondents filed a status report confirming that Ms. Regalado had been released from custody. Dkt. 13. Ms. Regalado is thus a prevailing party entitled to attorney's fees and costs. In addition, she meets EAJA's net worth limitation, the government's position was not substantially justified, and there are no special circumstances that make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

Ms. Regalado moves this Court for an award of **$2,226.70** representing $2,145.22 in fees and $81.48 in costs. Pursuant to D. Colo. Local R. 7.1, Petitioner certifies that on May 26, 2026,

counsel for Petitioner consulted with counsel for Respondents, and Respondents are opposed to this motion.

**SUMMARY OF FACTUAL AND PROCEDURAL BACKGROUND**

The full factual background for Ms. Regalado's claim is laid out in the Verified Petition for Writ of Habeas Corpus filed on February 10, 2025 (Dkt. 1). Relevant portions of the facts are summarized here.

Ms. Regalado is a native of Mexico and a mother of four children, including three U.S. citizens, who had a common-law marriage with a U.S. citizen husband who brutally abused her. She was detained by ICE on November 5, 2023, and had been jailed in an ICE detention facility for more than 27 months at the time she filed this case. Subsequently, on February 9, 2026, an immigration judge granted her cancellation of removal under the Violence Against Women Act, but as of the time of filing her petition, she was still subject to detention. Two years earlier, on February 15, 2024, she had been granted a bond hearing at which she was required to prove two negatives: that she was not a danger and not a flight risk. Because this bond hearing did not comport with constitutional due process, Ms. Regalado filed her habeas petition, seeking a second bond hearing at which the Government bore the burden of justifying her continued detention.

Ms. Regalado filed her habeas petition in this Court on February 10, 2026 and contemporaneously filed a motion for an order to show cause. Dkts. 1-2. Respondents filed a response to the petition on March 3, 2026 (Dkt. 8), in which they largely raised boilerplate arguments about detention under 8 U.S.C. § 1225(b) that have been roundly rejected by courts in this district and which were not relevant to this case, since Petitioner was clearly detained under § 1226(a), having previously received a bond hearing under that statute. On March 4, 2026, the Court entered an order granting Ms. Regalado's petition in part and requiring a bond hearing within

seven days at which the Government bore the burden of justifying her detention. Dkt. 10, 12. Ms. Regalado was released from custody on or about March 10, 2026. Dkt. 13. The Court entered judgment on March 25, 2026. Dkt. 14.

## LEGAL STANDARD

Under 28 U.S.C. § 2412(d)(1)(A)-(B), a court "shall" award fees and other expenses to the eligible prevailing party in an action against the United States when that party files a timely and complete application for fees, the government's position was not substantially justified, and no special circumstances exist that would make an award unjust. *See* 28 U.S.C. § 2412(d)(1)(A)-(B); *Al-Maleki v. Holder,* 558 F.3d 1200, 1204 (10th Cir. 2009). Additionally, the petitioner must have a net worth of less than two million dollars. *See* 28 U.S.C. § 2412(d)(2)(B)(i).

## ARGUMENT

Ms. Regalado is entitled to fees and other expenses under EAJA because she meets each of the statute's requirements: (1) her motion is timely; (2) she is an eligible and prevailing party; (3) the government's position was not substantially justified; and (4) no special circumstances exist to make an award of fees unjust. In sum, Ms. Regalado is entitled to reasonable attorneys' fees and costs amounting to **$2,226.70**.

### A. The Fee Application is Timely

An EAJA application for fees and other expenses must be filed "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). The thirty-day EAJA clock does not begin to run until after the time to appeal an effective final judgment has expired. *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). In district court cases in which the United States is a party, a party has 60 days after the judgment or order is entered by the district court to file an appeal. Fed. R. App. P. 4(a)(1)(B). Thus, an EAJA fee application must be filed within 30 days after the expiration of the

60-day appeal period. *See also Birnell v. Apfel*, 76 F. Supp. 2d 1195, 1196 (D. Kan. 1999) (noting that the 30-day EAJA clock begins to run after the time to appeal has expired). This Court entered its final judgment on March 25, 2026, the 60-day appeal period expired on May 26, 2026, and 30 days after that date is June 25, 2026. This fee application is timely.

**B. Ms. Regalado is Eligible to Receive EAJA Fees and is the Prevailing Party**

Ms. Regalado is eligible to receive EAJA fees and is the prevailing party in the habeas corpus litigation she filed.

1. Ms. Regalado's net worth does not exceed the statutory limit.

Ms. Regalado is eligible for EAJA fees because she is "an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed." *See* 28 U.S.C. § 2412(d)(2)(B)(i). Undersigned counsel represented Ms. Regalado on a pro bono basis because she could not afford to pay for legal counsel. Without the offer of free legal services, Ms. Regalado would not have had the opportunity to challenge her unconstitutional confinement. In support of her eligibility, Ms. Regalado is submitting a declaration with this motion confirming that her net worth is below the statutory threshold. *See* Ex. A, Declaration of Maricela Regalado-Hernandez.

2. This case was a "civil action" for EAJA purposes.

EAJA provides for a fee award in "any civil action." 28 U.S.C. § 2412(d)(1)(A). The Tenth Circuit recently confirmed that immigration habeas cases like this one are civil actions for the purposes of EAJA. *Daley v. Ceja*, 158 F.4th 1152 (10th Cir. 2025).

3. The Court ruled in Ms. Regalado's favor, and she is the prevailing party.

A petitioner is a "prevailing party" when the suit results in a "judicially sanctioned change in the legal relationship of the parties," *Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Resources*, 532 U.S. 598, 604-05 (2001), such that the petitioner "could obtain

a court order to enforce the merits of some portion of the claim it made in its suit." *Biodiversity Conservation Alliance v. Stem*, 519 F.3d 1226, 1230 (10th Cir. 2008); *see also Iqbal v. Holder*, 693 F.3d 1189, 1193-94 (10th Cir. 2012) (applying *Buckhannon* to EAJA).

Ms. Regalado is a prevailing party: she obtained the relief she initially sought, namely an order requiring a constitutionally adequate bond hearing. In its March 4, 2026 Order, this Court ordered that "Respondents shall provide Petitioner with a bond hearing under § 1226(a) within SEVEN DAYS of this Order." Dkt. 10 at 3. Respondents provided notice that Petitioner had been released from custody on March 11, 2026. Dkt. 13. Thus, this Court's Order and Judgment conferred prevailing party status on Ms. Regalado for EAJA purposes. *See, e.g., Arias v. Choate*, 2023 WL 4488890 (D. Colo. July 12, 2023), at *6 ("Petitioner was awarded relief from the Court when her writ of habeas corpus was granted[,] making her a prevailing party"); *Daley v. Choate*, 2024 WL 989397 (D. Colo. March 7, 2024), at *1.

### C. Respondents' Pre-Litigation and Litigation Positions Were Not Substantially Justified.

As a prevailing party, Ms. Regalado is entitled to attorneys' fees because Respondents cannot show that "the position of the United States was substantially justified." 28 U.S.C. § 2412(d)(1)(A). "Substantially justified" means that the government must show that its position had a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565. But "to be substantially justified means, of course, more than merely undeserving of sanctions for frivolousness." *Id.* at 566 (internal quote marks omitted).

In the context of an EAJA attorney's fee award, the government "bears the burden of establishing its position was justified to a degree that could satisfy a reasonable person." *Al-Maleki v. Holder*, 558 F.3d 1200, 1207 (9th Cir. 2009) (internal quotation marks omitted). For purposes of EAJA, "the position of the United States" includes the government's litigation position and the

agency's pre-litigation actions, both of which must be substantially justified, or "reasonable in fact and law." *Id.* at 1206-07. In other words, as relevant to this case, both ICE's pre-litigation decision to confine Ms. Regalado for 828 days without a constitutionally adequate bond hearing, as well as Respondents' positions taken during the course of this litigation must be substantially justified. *See id.* at 1207.

1. Respondents' pre-litigation position was not substantially justified.

At the time this litigation commenced, Respondents had held Ms. Regalado for 828 days without ever affording her a constitutionally adequate bond hearing. Respondents' pre-litigation position was not substantially justified, given that courts in this district – including this Court – have repeatedly held that petitioners subjected to prolonged detention under 8 U.S.C. § 1226(a) are entitled to a bond hearing at which the Government bears the burden of proof. *Batz Barreno v. Baltasar*, 25-cv-3017-GPG, 2025 WL 3190936 (D. Colo. Nov. 14, 2025); *L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024); *Diaz-Ceja v. McAleenan*, 2019 WL 2774211 (D. Colo. July 2, 2019). Given these earlier decisions, Respondents were on notice that their conduct violated Ms. Regalado's due process rights.

Furthermore, Respondents' decision to suddenly claim that Ms. Regalado was detained under § 1225(b) was not substantially justified, given that it had always previously treated her as detained under § 1226(a). *See Salazar v. Noem*, 8:26-cv-44, 2026 WL 594606, at *1 (D. Neb. March 3, 2026) ("The government has not provided any justification, let alone a substantial one, for its radical departure from the historical treatment of noncitizens who entered the United States without inspection … the government apparently expects it can transform an entire area of administrative law because it unilaterally decided that, for thirty years, everyone was wrong about what a statute meant."); *Hurtado v. Bondi*, 0:26-cv-546, 2026 WL 752441

(D. Minn. March 17, 2026) (adopting *Salazar*'s reasoning); *Lamas Aguilar*, 2026 WL 1078966, at *3 ("The Government ignores its burden to prove that the underlying action was substantially justified … [T]he Government does not describe its justification for the change in agency practice"). The Government's abrupt change in agency practice after decades of consistently treating people like Ms. Regalado as eligible for bond is not substantially justified.

2. Respondents' litigation position was not substantially justified.

Three months before this case was filed, this Court decided a legally identical case, *Batz Barreno*, in which it rejected the arguments Respondents made here and granted a new bond hearing under § 1226(a). The only difference between *Batz Barreno* and this case is that Ms. Regalado was detained almost twice as long as Ms. Batz. The Government's response in this case does not mention or attempt to distinguish *Batz Barreno*, nor does it address the other cases from this district that were directly on point, *L.G.* and *Diaz-Ceja.*

Furthermore, as the Court notes in its Order, "This Petition raised legal issues that the Court resolved in favor of petitioners on many prior occasions." Dkt. 10 at 2. The fact that courts in this district had repeatedly rejected Respondents' arguments is significant: "[T]he available caselaw at the outset of and during litigation matters; a string of losses … can indicate whether the Government's position was substantially justified." *Lamas Aguilar*, 2026 WL 1078966, at *3 (citing *Pierce*, 487 U.S. at 569). Here, where at the time of this case, every judge in this district to address the § 1225(b) issue had rejected – *ad nauseam* – Respondents' arguments, those arguments cannot be said to be substantially justified. *See L.R.C. v. Maldonado*, 2026 WL 946787, at *2 (E.D.N.Y. Apr. 7, 2026) ("At the time the parties litigated the petition … [no] court in this District [had] agreed with the government's position … Then – as now – the respondent's position did not and had never had a reasonable basis in statutory text, structure, or history and had been rejected

with near unanimity in the overwhelming majority of cases across the country." (cleaned up) (citing *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 506 (S.D.N.Y. 2025)). Nor does it matter that a few courts have accepted Respondents' arguments, since "a split in nonbinding circuit authority does not necessarily mean that reasonable minds differ." *Lamas Aguilar*, 2026 WL 1078966, at *3.

**D. No Special Circumstances Exist That Would Make An Award of EAJA Fees Unjust.**

Finally, Ms. Regalado's case does not present "special circumstances" that would render an EAJA award "unjust." *See* 28 U.S.C. § 2412(d)(1)(A). The burden of proving the special circumstances exception to the mandatory award of fees under EAJA rests with the government. *See, e.g., Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989); *Dougherty v. Lehman*, 711 F.2d 555, 561 (3d Cir. 1983). "The 'special circumstances' exception to the mandatory award of attorney fees … was developed to ensure that the government is not deterred from advancing good faith but novel legal arguments." *Abela*, 888 F.2d at 1266. However, here, as in *Abela*, "[t]he government advanced no novel legal arguments" and "no equitable considerations preclude an award of attorney fees." *Id.*

**E. The Amount of Attorney's Fees and Expenses is Reasonable.**

Because Ms. Regalado has satisfied EAJA's statutory requirements, she is entitled to "reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A).

In the course of this case, counsel kept contemporaneous records of time spent working on this case, including litigation of the habeas petition as well as the preparation of this EAJA motion, all of which is reimbursable. Ex. B (Declaration of James D. Jenkins, with attachments). Ms. Regalado will seek additional fees if Respondents oppose this motion and counsel must draft a reply.

In total, Ms. Regalado seeks an award of $2,145.22 in fees, representing 8.3 hours of attorney time. The time spent by counsel on this matter was reasonable and necessary to provide an effective presentation of Ms. Regalado's case.

Specifically, Ms. Regalado seeks an award for the work of her attorney at the following rates and amounts:

| **Name** | **Rate** | **Hours** | **Amount** |
|---|---|---|---|
| James D. Jenkins (2004 law graduate) | $258.46[1] | 8.3 | $2,145.22 |

Ms. Regalado's attorney seeks compensation that accounts for the increased cost of living, which is greater than the statutory rate reflected under EAJA, given that Congress has not adjusted the rate since 1996. *See* 28 U.S.C. § 2412(d)(2)(A); *see also Greenhill v. United States*, 96 Fed. Cl. 771, 783 (Fed. Cl. 2011) ("Except in unusual circumstances, a COLA should be freely given to plaintiffs applying for attorneys' fees under EAJA."). Ms. Regalado proposes that the national consumer price index be used for this adjustment. *See Greenhill*, 96 Fed. Cl. at 784 (applying national index); *Thangaraja*, 428 F.3d 870 at 876-77 (same); *see also Harris v. Railroad Retirement Bd.*, 990 F.2d 519, 521 & n.1 (10th Cir. 1993) (granting cost-of-living increase based on consumer price index, with no reference to regional index).

Undersigned counsel's declaration and time accounting is attached, which describe counsel's qualifications and experience, the work performed during the litigation of the habeas case and the present EAJA motion, and provide a detailed accounting of the time spent on

[1] This is the Ninth Circuit's statutory maximum rate under EAJA for 2026, adjusted from the statutory rate of $125 to account for increases in the cost of living. *See* Statutory Maximum Rates Under the Equal Access to Justice Act, available at: https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (accessed April 8, 2026). The rate is based on the cost-of-living adjustment formula set out in *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005).

litigation. *See* Ex. B and attachments thereto. The amount of the fee award is considerably smaller than awards in other immigration habeas cases in district courts in the Tenth Circuit of which Petitioner is aware. *See, e.g., Arias*, 2023 WL 4488890 at *8 (award of $22,601.32 in fees); *Daley*, 2024 WL 989397 at *3 ($18,553.92).

In addition to an award of attorney's fees, Petitioner seeks recovery of the following costs, receipts for which are included with the exhibits filed as an attachment to Ex. B:

- $42.90 for service of process via Certified Mail pursuant to Fed. R. Civ. P. 4(i). *See, e.g., Arnao v. Comm'r of Social Security Admin.*, 2024 WL 710410 (S.D.N.Y. Feb. 21, 2024) (concluding "expenses of serving the summons and [C]omplaint by certified mail … are reasonable and recoverable"); *Barbour v. Colvin*, 993 F. Supp. 2d 284, 292-93 (E.D.N.Y. 2014) ("Reasonable out-of-pocket expenses are generally reimbursed as a matter of right in connection with an award of attorney's fees."). Petitioner acknowledges the decision in *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986), which holds that "postage" is not recoverable under EAJA; however, here, where the cost was not an ordinary postage expense but rather the cost of service of process, Petitioner respectfully suggests that reimbursement should be allowed.
- $33.58 for the cost of printing and copying the petition for service. *See* 28 U.S.C. § 1920(4) (allowing taxation of costs for "the costs of making copies of any materials where the copies are … for use in the case"); *Harts v. Johanns*, 2006 WL 2850289 (D. Kan. Oct. 4, 2006) (finding $72 for copying expenses reasonable under EAJA).
- $5.00 for the filing fee. 28 U.S.C. § 1920(1) (allowing costs for "Fees of the clerk").

In total, Petitioner requests an award of **$2,226.70**, representing $2,145.22 in fees and $81.48 in costs.

## CONCLUSION

For the foregoing reasons, the Court should award reasonable fees and costs in the total amount of **$2,226.70**, plus fees for any time spent preparing a reply brief if Respondents oppose this motion.

Dated: May 27, 2026

Respectfully submitted,

/s/ James D. Jenkins
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## EXHIBITS

Declaration of Maricela Regalado-Hernandez ..... Exh. A

Declaration of James D. Jenkins ..... Exh. B

## CERTIFICATE OF SERVICE

I, James D. Jenkins, hereby certify that on May 27, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

/s/ James D. Jenkins
*Attorney for Petitioner*