UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Jairo U.G., Petitioner, v. Markwayne Mullin, *et al.*, Respondents.	26-cv-03051-JRT-SGE Honorable John R. Tunheim United States District Judge

MOTION TO PLACE CASE IN ABEYANCE

Respondents (the "Government"), by and through their undersigned attorneys of record, move this Court to hold Petitioner's motion for attorney's fees under the Equal Access to Justice Act ("EAJA") in abeyance pending the Supreme Court's decision in *Montoya Palacios v. Liggins*, No. 25-1223. The Government requests that this Court hold Petitioner's attorney's fees motion in abeyance until 30 days after the Supreme Court issues a decision in *Montoya Palacios* and stay the briefing schedule pending resolution of this motion. Should this motion be denied, the Government requests permission to extend the briefing schedule by seven days from the date of an order denying this motion.

Like this case, *Montoya Palacios* involves a petition for attorney's fees under EAJA following a successful petition for writ of habeas corpus challenging immigration detention. The issue in *Montoya Palacios* is whether, under EAJA, the phrase "any civil action," 28 U.S.C. § 2412(d)(1)(A), encompasses immigration habeas petitions.

As in *Montoya Palacios*, Petitioner here brought a successful habeas challenge to immigration detention and subsequently sought attorney's fees under EAJA. The

Government maintains that Petitioner is not eligible for attorney's fees because habeas proceedings are not encompassed within the EAJA phrase "any civil action."[1] *See Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023); *Obando-Segura v. Garland*, 999 F.3d 190, 197 (4th Cir. 2021); *but see Vacchio v. Ashcroft*, 404 F.3d 663, 668 (2d Cir. 2005); *Michelin v. Warden Moshannon Valley Corr. Ctr.*, 169 F.4th 418, 432 (3d Cir. 2026), *rehearing en banc denied*, 169 F.4th 160 (3d Cir. 2026); *Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025), *rehearing en banc denied*, (10th Cir. Apr. 3, 2026).[2]

Because these proceedings present the same issue as *Montoya Palacios*, the Supreme Court's decision in that case, with briefing to begin in August 2026, will inform the outcome of Petitioner's attorney's fees motion. Holding Petitioner's attorney's fees motion in abeyance promotes judicial efficiency and conserves judicial resources. And Petitioner will not suffer any prejudice if this abeyance motion is granted because Petitioner has already been released due to this Court's grant of Petitioner's habeas petition and was not charged any amount by his attorney who took this case *pro bono*. *See* ECF 43.

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[1] Federal Respondents acknowledge that the Eighth Circuit, in *Bah v. Cangemi*, 548 F.3d 680 (8th Cir. 2008), affirmed the denial of an award of EAJA fees in an immigration habeas case; but the issue of whether an award of EAJA fees was allowed in immigration habeas cases was not raised, nor addressed by the Court.

[2] While the Ninth Circuit allowed attorney's fees under EAJA following a successful habeas petition, *In re Hill*, that case is inapposite to the circuit split as the petitioner there was not in custody and filed a petition to challenge the denial of an application to enter the United States. 775 F.2d 1037, 1039-41 (9th Cir. 1985). Modern statutes do not allow habeas petitions to be used for that purpose. *Hill* is therefore limited to its unique facts.

Undersigned counsel contacted Petitioner's counsel regarding Petitioner's position on the relief requested in this motion. Petitioner's counsel opposes this motion.

For the foregoing reasons, the Government moves this Court to hold Petitioner's attorney's fees motion in abeyance until 30 days after the Supreme Court's decision in the pending *Montoya Palacios* case. Should this motion be denied, the Government requests that its response brief be due seven days from the date of the order denying this motion.

Dated: July 31, 2026

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