UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-03051-JRT-SGE

Jairo U.G.,

Petitioner,

v.

MARKWAYNE MULLIN, *et al.*,

Respondents.

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEYS' FEES

Respondents oppose the prevailing Petitioner's request for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Because the legal position of the Respondents was substantially justified, the Petitioner's request must be denied.

ARGUMENT

I. Standards for Awarding EAJA Fees

The Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412 provides that, under certain circumstances, a litigant who prevails against the United States may be awarded his attorneys' fees and other expenses. 28 U.S.C. § 2412(d)(1)(A). In relevant part, the EAJA states:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412 (d)(1)(A). Because the EAJA is a partial waiver of sovereign immunity, "[a]ny such waiver must be strictly construed in favor of the United States." *Ardestani v. INS*, 502 U.S. 129, 137 (1991). The EAJA therefore allows this Court to make an award against the government only to the extent provided by the statute. Thus, when evaluating an EAJA application, the Court must interpret and apply the law strictly and not attempt to "do equity" in a way that is not in accord with the statute. *Levernier Constr., Inc. v. United States*, 947 F.2d 497, 502-03 (Fed. Cir. 1991); *see also RAMCOR Servs. Grp., Inc. v. United States*, 185 F.3d 1286, 1290 (Fed. Cir. 2009) ("EAJA is not a mandatory fee-shifting device.").

The EAJA prohibits an award where the government can demonstrate its original legal position was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). "Substantially justified" does not mean "'justified to a high degree,' but rather 'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). In other words, "[a] substantially justified position need not be correct so long as a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." *Bah v. Cangemi*, 548 F.3d 680, 683-84 (8th Cir. 2008); *Pierce*, 487 U.S. at 569.

II. Respondents' act of detaining Petitioner was substantially justified by law

Respondents' position has always been that Petitioner's detention was justified under statute, that his arrest complied with applicable standards, and that even if errors existed with the arrest, he was not owed release as a result. While the Court ordered release based on its conclusion that the Department of Homeland Security did not properly arrest

Petitioner, it cites to no binding, clearly established law that would show the Department's position was not substantially justified.

Further, Federal Respondents' litigation conduct was reasonable and consistent throughout this litigation. Substantial justification depends on whether the government's litigation conduct was reasonable. *Ibrahim v. DHS*, 912 F.3d 1147, 1168 (9th Cir. 2019) (citing 28 U.S.C. § 2412(d)(1)(B)). Here, the government complied with the Court's order to show cause and TRO, timely filed a response, and advanced the same legal theory consistently throughout this litigation. Federal Respondents did not shift positions or rely on new rationales as the litigation progressed. Federal Respondents' opposition to this motion relies on the same statutory and regulatory framework and does not require the resolution of novel or unsettled legal questions. Federal Respondents' consistent and court-directed litigation conduct supports a finding that its position was substantially justified.

The Respondents' position clearly has a reasonable basis in law and fact, and Federal Respondents acted reasonably and consistently during this litigation and is therefore substantially justified. The Petitioner's request for attorneys' fees under the EAJA must be denied.

CONCLUSION

Substantial justification depends on whether the government's litigation conduct was reasonable. *Ibrahim v. DHS*, 912 F.3d 1147, 1168 (9th Cir. 2019) (citing 28 U.S.C. § 2412(d)(1)(B)). Respondents' litigation conduct was reasonable and consistent throughout.

Dated: July 31, 2026

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