UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jairo Ulloa Gonzales

Plaintiff(s)

v.

Markwayne Mullin et al.

Defendant(s)

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION FOR EAJA FEES

Case No: 0:26-cv-03051-JRT-SGE

Respondents submitted Response in Opposition to Petitioner's Motion for Attorney Fees under the Equal Access to Justice Act (EAJA) pursuant to 28 U.S.C. § 2412. Petitioner submits this Reply to Respondents' Response in Opposition. This Court should find that Respondents' position, both prior to and during litigation, was not substantially justified. Petitioner respectfully requests that the Court grant Petitioner's request for attorney fees under the EAJA and award attorney fees in full, including the initial requested amount of $6,693.09 as well as an additional $1120.17 added for the time spent in drafting this Reply to Respondents' Opposition as well as Petitioner's Reply to Respondents' Motion to Hold Case in Abeyance for a total amount of $7,813.26. *See* Exhibit A. Amended Billing Statements. Should this Court grant Petitioner's motion for attorney's fees, Petitioner respectfully requests this Court order the Government to make payment to Petitioner within 30 days of the Order. *Nyolo v. Mullin,* No. 26-cv-02025-LMP-DLM (D. Minn. 2026).

ARGUMENT

I. Respondents' Legal Position Was Not Substantially Justified.

Respondents do not dispute any of the salient facts of Petitioner's case in their Opposition. Petitioner was unlawfully arrested without a warrant or probable cause and while in a valid period of deferred action. Petitioner has an approved Form I-360 and, as of July 1, 2026, is eligible to adjust status, as a visa is now available to him. Although Petitioner is facing pending state charges for driving under the influence, he was ordered released from state custody the same day that Respondents unlawfully arrested him.

In their Opposition, Respondents state that the Court "ordered release based on its conclusion that the Department of Homeland Security did not properly arrest Petitioner," however, Respondents argue that "[the Court] cites to no binding, clearly established law that would show the Department's position was not substantially justified." This Court should find that Respondents' argument here is misplaced and incorrect.

On July 1, 2026, this Court ordered Petitioner's immediate release from custody. The Order clearly states "[f]or many of the same reasons set forth in another recent decision by this Court – *Hector J.A.S. v. Shea,* No. 26-2242, 2026 WL 1243500 (D. Minn. May 6, 2026) – the Court concludes that Petitioner's arrest was unlawful and will therefore order his immediate release." The Court cites 8 C.F.R. § 236.1 in supporting its conclusion that the I-200 administrative warrant issued for Petitioner's arrest is invalid. As stated by the Court in its decision, ICE's regulations at 8 C.F.R. § 236.1 "empower certain officials, "**[a]t the time of issuance of [a] notice to appear,** or at any time thereafter and up to the time removal proceedings are completed," to arrest a noncitizen

and take them into custody "under the authority of Form I-200, Warrant of Arrest."" (citing 8 C.F.R. § 236.1) (emphasis added).

Further, the Court determined that "in [Petitioner's] case, it appears removal proceedings were not commenced against Petitioner through a Notice to Appear until June 11, 2026 – nearly three weeks after his arrest pursuant to the I-200 warrant." Accordingly, this Court found that "Petitioner's arrest pursuant to the I-200 warrant was unlawful."

The Court also cited 8 U.S.C § 1225(b)(2) and 8 U.S.C. § 1357(a)(2) as further supporting its determination that Petitioner's arrest was unlawful. As stated in the Order granting Petitioner's habeas petition, "to the extent that Respondents reli[ied] on their authority to conduct warrantless arrests under 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1357(a), such arrest was similarly unlawful." In making that determination, this Court found that "the record before the Court does not demonstrate that Petitioner was likely to escape before a valid warrant could be obtained for his arrest." Accordingly, this Court concluded that "[i]n sum, Petitioner's arrest was unlawful, and the proper remedy is to release him." (citing *Hector J.A.S.*, 2026 WL 1243500 at *3).

Respondents' templated Response in Opposition to Petitioner's Motion for EAJA Fees fails to take into account the specific facts of Petitioner's case in any way. This Court undoubtedly cited caselaw and statutory regulations which support the finding that Petitioner's effectively warrantless arrest without probable cause of flight risk as well as Respondents' unreasonable delay of more than three weeks in issuing an NTA vesting jurisdiction with the Immigration Court rendered Petitioner's arrest and detention unlawful from its inception and ordered his immediate release as a result.

Respondents' conduct was not substantially justified in Petitioner's case, nor was it "reasonable and consistent throughout this litigation." Petitioner's initial challenge to his arrest and continued detention centered on (1) his effectively warrantless arrest without probable cause of flight risk in violation of the INA, procedural due process, the Fourth Amendment guarantee against unreasonable searches and seizures, and the Administrative Procedures Act (APA); (2) Respondents' delay in issuing NTA until three weeks after Petitioner's unlawful arrest in violation of procedural due process, the INA, and the APA; (3) and Respondents' arrest of Petitioner while he remained in a valid period of deferred action without any notice of revocation. Because this Court granted Petitioner's request for habeas relief on the basis of his unlawful arrest and detention, the Court did not address his Fourth Amendment claims or claims under the APA. Nor did the Court need to address Petitioner's challenges to Respondents' evidence on hearsay grounds.

Respondents failed to make any substantive argument concerning their failure to comply with the statutory requirement that they obtain a *lawful* warrant prior to arresting Petitioner, or alternatively, *document* the specific and particularized facts which applied to Petitioner in their alleged determination of flight risk in the I-213 to justify his warrantless arrest. Nor did Respondents make any attempt to justify the unreasonable delay in the issuance of the NTA. Nothing on the record suggests that emergency or extraordinary circumstances warranted the delay in issuance of NTA in Petitioner's case. Respondents failed to follow any procedure in arresting and detaining Petitioner and provided no reasonable explanation for the discrepancies and defects identified in his habeas petition.

Respondents' conduct in Petitioner's case raises serious due process concerns and this Court affirmed that the administrative warrant used to arrest Petitioner was defective, the delay in issuance of NTA was unreasonable, and accordingly, ordered his immediate release from custody. Respondents attempt to minimize the serious due process concerns regarding the nature of their unlawful conduct in arresting and detaining Petitioner without a lawful warrant, despite his approved Special Immigrant Juvenile (SIJ) Form I-360 application and the fact that he was in a valid period of deferred action at the time, stating that "even if errors existed with the arrest, he was not owed release as a result."

Not only was Respondents' pre-litigation conduct unreasonable and inconsistent, but Respondents doubled down in their Response to Petitioner's habeas petition and now attempt to do so again in their Opposition to EAJA Fees. This Court should not be convinced. The standard for EAJA fees places the burden of proof on the government to show that its position was substantially justified. There is nothing reasonable about issuing a defective warrant to arrest a noncitizen in a valid period of deferred action and then delaying issuance of NTA for several weeks. No reasonable person would find Respondents' conduct here was substantially justified. Respondents did not have the requisite authority to arrest Petitioner because of their own failure to properly follow procedure. Merely complying with the Court's order to show cause by filing a Response is insufficient to meet that burden.

This Court found that Respondents' purported legal theory was insufficient to justify a valid basis for Petitioner's arrest with a defective administrative warrant, effectively a warrantless arrest, and found that Respondents had failed to establish the requisite probable cause to justify a warrantless arrest, as required by law. Respondents'

position had no reasonable basis in law and fact, and Respondents' conduct was unreasonable throughout the pendency of habeas proceedings before this Court. Respondents claim that they "advanced the same legal theory consistently throughout this litigation" and argue that they "did not shift positions or rely on new rationales as the litigation progressed." Indeed, Respondents have adopted the same unreasonable rationale from their initial Response to present. There is no doubt that Respondents arrested and detained Petition on an I-200 administrative warrant, albeit defective, thus, his detention was governed by § 1226(a), which requires a valid warrant or alternatively, the requisite probable cause for a warrantless arrest. Respondents provided evidence of neither in Petitioner's case and made no meaningful attempt to argue otherwise.

A substantially justified position is one that "had a reasonable basis in law and fact." *Welter v. Sullivan,* 941 F.2d 674, 676 (8th Cir. 1991) (citing *Pierce v. Underwood,* 487 U.S. 552, 565–66 (1988)). Substantially justified means "justified to a degree that could satisfy a reasonable person." *Id.* at 565. 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." *Pierce* at 566 n.2; see also *Brouwers v. Bowen,* 823F.2d 273, 275 (8th Cir. 1987) (holding that the government's position must be "clearly reasonable, well founded in law and fact, solid though not necessarily correct"). The government bears the burden of showing that its position was substantially justified. *Friends of the Boundary Waters Wilderness v. Thomas,* 53 F.3d 881, 885 (8th Cir.1995). Respondents must also show they acted reasonably "at both the prelitigation and litigation stages." *Keasler v. United States,* 766 F.2d 1227, 1231 (8th Cir. 1985) (citation omitted). The burden is on the Respondents to show that their position was substantially

justified. *Lauer v. Barnhart*, 321 F.3d 762, 764 (8th Cir. 2003).

Here, the Respondents' position during and prior to litigation was not substantially justified and Respondents have failed to meet their burden to show that their position was substantially justified. Respondents were not substantially justified in improperly arresting him without a valid warrant or probable cause, or in failing to issue NTA for more than three weeks. The manner in which the provisions have historically been interpreted, legislative intent, statutory construction, and the plain text of the statutes all support that the United States is not substantially justified in its novel interpretation of § 1226. Respondents issued defective I-200, thus, Petitioner's detention is governed by § 1226(a), which requires a valid warrant based on probable cause, or alternatively, an individualized determination of flight risk to justify a warrantless arrest. The Eighth Circuit has found that the government's position lacks substantial justification where it violates the Constitution, a statute, or governing regulations. See *Cornella v. Schweiker*, 728 F.2d 978, 985 (8th Cir. 1984) ("It was not reasonable for the Secretary to ignore her own regulations.").

In *Gonzalez Contreras v. Easterwood*, this Court awarded EAJA fees in materially similar circumstances, finding that Respondents had violated the Administrative Procedure Act (APA) and the requirements of 8 U.S.C. § 1226(a) by arresting and detaining the petitioner without a warrant and continuing to detain him. *Gonzalez Contreras v. Easterwood*, No. 25- cv-4814, 2026 WL 207266, at *3 (D. Minn. Jan 21, 2026) ("The Court recommends the Petition be granted on these grounds and further recommends Petitioner's request for costs and fees under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, be granted.").

In *Nyolo v. Mullin,* this Court awarded EAJA fees in materially indistinguishable circumstances, finding that Respondents had violated federal immigration statutes and the petitioner's constitutional rights by arresting the petitioner without a valid administrative warrant and detaining him without a valid legal basis. *Nyolo v. Mullin,* No. 26-cv-2025-LMP-DLM, at *3 (D. Minn. May 19, 2026) (awarding attorney fees in the amount of $6,092.49 where the Government did not argue that it was "substantially justified in asserting its position.").

In *Valasco Hurtado v. Bondi,* this Court granted petitioners' immediate release under a Writ of Habeas Corpus and cited the reasons articulated in *Salazar v. Noem* in finding "the government's conduct - particularly the underlying conduct of the agencies involved – was not substantially justified." Further, in *Valasco Hurtado*, the Court concluded that the government had failed to carry the burden of proving that its position was substantially justified and awarded attorney fees and costs as "largely required by the government's conduct not only in unlawfully detaining the petitioners, but removing them from the jurisdiction, imposing additional conditions of release upon them, and failing to return their property upon release." *Velasco Hurtado v. Bondi*, No. 0:26-cv-546, (D. Minn. Mar. 17, 2026).

In *Delgado Granado v. Bondi,* this Court granted the petitioner's Writ of Habeas Corpus and ordered his immediate release, finding that Respondents' mandatory detention of the petitioner was in "direct opposition to their own guidance and in disregard of clear caselaw," and subsequently awarded attorneys' fees to petitioner's counsel in the amount of $4,125.70. In *Delgado Granado*, this Court concluded that Respondents conduct constituted "unreasonable governmental conduct," and that "the

underlying action of arresting and detaining Petitioner was not substantially justified." *Delgado Granado v. Bondi*, No. 0:26-cv-516 (DWF/SGE) (D. Minn. Mar. 19, 2026).

Respondents' position "has always been that Petitioner's detention was justified by statute," however, this Court determined Petitioner's detention was not justified by statute and Respondents' position here lacked legal basis. Respondents incorrectly argue that "[Petitioner's] arrest complied with applicable standards." The applicable standards, in this case, the INA and the U.S. Constitution, provide no support for Respondents' conduct, either prior to or during habeas litigation. The Government does not dispute that Petitioner was the prevailing party for EAJA purposes, or that Petitioner timely filed his EAJA fee motion, or that the fees requested are unreasonable. Respondents simply state that the Court should deny the motion for EAJA fees because they believe their legal position was substantially justified. This Court should disagree.

Based upon the foregoing, this Court should conclude that Respondents have failed to meet their burden to show that their position was substantially justified and that Respondents' position, both prior to and during the litigation stage, was not substantially justified. Petitioner respectfully requests that this Court grant his Motion for Attorney Fees under the EAJA and award the amended requested amount of $7,813.26 in attorney's fees, payable to Petitioner's counsel according to the assignment of rights filed with the petition, unless Petitioner has any outstanding debts to the federal Government.

Dated: August 2, 2026

/s/ Karen V. Bryan
Karen V. Bryan (0397399)
4100 Excelsior Blvd
St Louis Park, MN 55416
Office: (612) 345-4782
Fax: (612) 886 3360
Email: karen.bryan@kblawgrp.com