

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Nieto de Gianini v. Commissioner of Social Security

Nieto de Gianini · No. 1:21-cv-00416-CDB (SS) · Decided July 3, 2025

OPINION

(SS) Nieto de Gianini v. Commissioner of Social Security

PER CURIAM.

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

10 11 MARIA CONCEPCION NIETO DE Case No. 1:21-cv-00416-CDB (SS)

GIANINI,

12 ORDER ON STIPULATION FOR AWARD

Plaintiff, OF ATTORNEY FEES PURSUANT TO THE

13 EQUAL ACCESS TO JUSTICE ACT, 28

v. U.S.C. § 2412(d) 14

COMMISSIONER OF SOCIAL SECURITY, (Doc. 28)

15 Defendant. 16

17 Pending before the Court is the stipulated request of Plaintiff Maria Concepcion Nieto de 18
Gianini (“Plaintiff”) for the award of attorney’s fees pursuant to the Equal Access to Justice Act 19
(“EAJA”), 28 U.S.C. § 2412(d), in the amount of \$8,471.78 to counsel for Plaintiff, Jonathan O.
20 Peña.¹ (Doc. 28). 21 The parties agree that an award of attorney’s fees to counsel for Plaintiff
should be made 22 payable to Plaintiff, but if the Department of the Treasury determines that
Plaintiff does not owe 23 a federal debt, then the Commissioner shall cause the payment of fees,
expenses, and costs to be 24 made directly to Plaintiff’s counsel, Jonathan O. Peña. Id. at 2. 25 On
April 2, 2025, the Court granted Plaintiff’s motion for summary judgment and 26 remanded the
case pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner for 27 1 Both parties
have consented to the jurisdiction of a U.S. magistrate judge for all 1 further proceedings. (Doc.
26). Judgment was entered the same day. (Doc. 27). On July 2, 2 2025, Plaintiff filed the pending
stipulation for attorney’s fees as a prevailing party. (Doc. 28). 3 See *Shalala v. Schaefer*, 509 U.S.
292, 300-02 (1993) (concluding that a party who wins a 4 sentence-four remand order under 42
U.S.C. § 405(g) is a prevailing party). Plaintiff’s filing is 5 timely. *Van v. Barnhart*, 483 F.3d 600,
607 (9th Cir. 2007). 6 The EAJA provides for an award of attorney fees to private litigants who
both prevail in 7 civil actions (other than tort) against the United States and timely file a petition

for fees. 28 8 U.S.C. § 2412(d)(1)(A). Under the EAJA, a court shall award attorney fees to the prevailing 9 party unless it finds the government’s position was “substantially justified or that special 10 circumstances make such an award unjust.” (Id.). Here, the government did not show its 11 position was substantially justified and the Court finds there are not special circumstances that 12 would make an award unjust. Moreover, the Commissioner does not oppose the requested 13 relief. (Doc. 26). See *Sanchez v. Berryhill*, No. 1:16-cv-01081-SKO, 2018 WL 509817, at *2 14 (E.D. Cal. Jan. 23, 2018) (finding position of the government was not substantially justified in 15 view of the Commissioner’s assent to remand); *Knyazhina v. Colvin*, No. 2:12-cv-2726 DAD, 16 2014 WL 5324302, at *1 (E.D. Cal. Oct. 17, 2014) (same). 17 Plaintiff requests an award of \$8,471.78 in EAJA fees as authorized by 28 U.S.C. § 18 2412(d). (Doc. 28). The Ninth Circuit maintains a list of the statutory maximum hourly rates 19 authorized by the EAJA, adjusted for increases in the cost of living, on its website. See 20 *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005). Even assuming Plaintiff’s 21 counsel seeks the median of the published maximum rate associated with the relevant years 22 (2021 and 2022) during which he engaged in the majority of his services in this case (which the 23 Court computes as \$226.25),² the requested award would amount to approximately 37 hours of 24 attorney time (not accounting for any paralegal time expended). The Court finds this reasonable 25 and commensurate with the number of hours an attorney would need to have spent reviewing the 26 certified administrative record in this case (approximately 1099 pages; Doc. 12) and preparing a 27 2 Statutory Maximum Rates Under the Equal Access to Justice, available at 1 | motion for summary judgment that includes 16 pages of argument (Doc. 18 at 12-27). With 2 respect to the results obtained, Plaintiff’s counsel obtained a favorable judgment remanding the case for further proceedings. (Docs. 26, 27). 4 EAJA fees, expenses, and costs are subject to any offsets allowed under the Treasury 5 | Offset Program (“TOP”), as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010). If the 6 | Commissioner determines upon effectuation of this order that Plaintiffs EAJA fees are not 7 | subject to any offset allowed under the TOP, the fees shall be delivered or otherwise transmitted 8 | to Plaintiffs counsel. 9 Accordingly, it is HEREBY ORDERED: 10 1. Plaintiff’s stipulated request for attorney’s fees pursuant to the EAJA (Doc. 28) is 11 GRANTED; and 12 2. The Commissioner is directed to pay to Plaintiff as the prevailing party attorney’s fees in 13 the amount of \$8,471.78, pursuant to the terms set forth in the parties’ stipulation. (Doc. 14 28). Fees shall be made payable to Plaintiff, but if the Department of the Treasury 15 determines that Plaintiff does not owe a federal debt, then the government shall cause the 16 payment of fees, expenses, and costs to be made directly to Plaintiff’s counsel, as set 17 forth in the stipulation. 18 | IT IS SO ORDERED. |

Dated: _ July 3, 2025 | Word bo

20 UNITED STATES MAGISTRATE JUDGE

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