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UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

ARTEM VASKANYAN, Petitioner, v. JAMES JANECKA, Warden, Adelanto ICE Processing Center, et al. Respondents.	No. 5:25-cv-01475-CAS-AS

PETITIONER'S REPLY IN SUPPORT OF APPLICATION FOR FEES AND COSTS PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

In their Opposition, Respondents do not contest that Petitioner was the prevailing party in this case or that the fees he is seeking are reasonable. Respondents' sole argument is that their position in this case was substantially justified, but in making the argument they ignore that the Court has already found that Petitioner was entitled to an award of fees and costs. On July 18,

2025, the Court expressly awarded Petitioner "reasonable attorneys' fees pursuant to the Equal Justice Act, 28 U.S.C. § 2412." ECF No. 27 at 8. Accordingly, the Court has made the determination that Petitioner is eligible for an award of fees and costs as the prevailing party within the meaning of the EAJA *and* thus that the government's position was not "substantially justified." 28 U.S.C. § 2412(d)(1)(B). Respondents did not timely seek reconsideration of the Court's order or challenge a grant of fees and costs when they opposed the Petition. Regardless, as set forth below, the government's position in this case was not "substantially justified," and Petitioner respectfully requests that he be awarded the reasonable fees that he has requested.

I. ARGUMENT: THE GOVERNMENT'S POSITION WAS NOT "SUBSTANTIALLY JUSTIFIED"

In their Answer to the Petition (ECF No. 25), Respondents conceded that (1) they could not remove Petitioner to Russia or Azerbaijan, the countries designated for removal; and (2) the Armenian Consulate, as a third country alternative, would not be issuing a travel document to Petitioner. As a result, on facts admitted by Respondents, there was no likelihood that Petitioner would be removed in the reasonably foreseeable future, and Petitioner's ongoing detention was unconstitutional under the clear teaching of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Despite these facts, Respondents had continued to oppose Petitioner's release and would have kept Petitioner in custody but for the Court's decision granting the Petition.

The EAJA specifically provides:

> 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). Accordingly, the Supreme Court held in *Commissioner, I.N.S. v. Jean*, 496 U.S. 154, 15 (1990) that:

> eligibility for a fee award in any civil action requires: (1) that the claimant be "a prevailing party"; (2) that the Government's position was not "substantially justified"; (3) that no "special circumstances make an award unjust"; and, (4) pursuant to 28 U.S.C. § 2412(d)(1)(B), that any fee application be submitted to the court within 30 days of final judgment in the action and be supported by an itemized statement.

Here, the government solely challenges Petitioner's fee award on the argument that its position was "substantially justified." ECF No. 30.

The Ninth Circuit has stated that where

> a movant under the EAJA has established that it is a prevailing party, "the burden is on the government to show that its litigation position was substantially justified on the law and the facts." *Cinciarelli v. Reagan*, 729 F.2d 801, 806 (D.C. Cir. 1984). To establish substantial justification, the government need not establish that it was correct or "justified to a high degree"—indeed, since the movant is established as a prevailing party it could never do so—but only that its position is one that "a reasonable person could think it correct, that is, [that the position] has a reasonable basis in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565, 566 n.2, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988).

Ibrahim v. U.S. Dep't of Homeland Sec., 912 F.3d 1147, 1167–68 (9th Cir. 2019) (footnote omitted) (finding government's position not "substantially justified"). Respondents' position in this case did not have "a reasonable basis in law and fact."

Here, the government did not lose a close case. From the beginning, it was apparent that the government saw nothing wrong with, and would take no responsibility for, their delay in keeping Petitioner in custody despite that he is stateless and falls precisely within the category of noncitizens addressed by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), those who are in "removable-but-unremovable limbo."[1] That Petitioner is stateless was established long ago. Exhibit S to Freidel Decl. I; Exhibits B, D, F to Freidel Decl. II. Through ICE, Petitioner

[1] *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

submitted travel document requests to Azerbaijan repeatedly. Only after keeping Petitioner detained for six months did ICE then decide to have Petitioner apply for Armenian citizenship, first while he was detained in Buffalo, NY and then again, a month later, after ICE arbitrarily transferred Petitioner to Adelanto. Petitioner had no evidence supporting a claim to Armenian citizenship but ICE decided to label him an Armenian citizen anyway (ECF No. 20), even though Petitioner was not and had never been an Armenian citizen.

Respondents prolonged Petitioner's detention by having Petitioner submit multiple, duplicate applications for travel documents, transferring Petitioner multiple times causing more delay, and only deciding to submit a citizenship application to Armenia for Petitioner *after* the presumptively reasonable 180-day removal period had lapsed. *See* ECF No. 18 at 6-7 (recounting facts). The citizenship application was never going to succeed since Petitioner did not possess any of the evidence required by Armenia to establish citizenship. But for the filing of the Petition, Respondents were ready to subject Petitioner to indefinite detention, because Respondents could simply continue to transfer Petitioner around the country while asking him to submit duplicative travel document applications to multiple countries.

Respondents' "shell game" violated Petitioner's right to due process. Based on these facts, the Court granted Petitioner's Motion for a Temporary Restraining Order finding that the Petition was likely to be meritorious. ECF No. 18 at 6 ("The Court finds that Petitioner has demonstrated a likelihood of success on the merits of his due process claim, or at a minimum serious questions going to the merits. Petitioner's detention has exceeded the presumptively reasonable six-month period, and he has 'good reason to believe' that there is no significant likelihood of his removal in the reasonably foreseeable future"). Despite the Court's finding, Respondents continued to detain Petitioner and oppose this action.

The Court's July 18, 2025 decision granting the Petition was then unambiguous:

> **It is abundantly clear that Petitioner's ongoing detention violates his Fifth Amendment right to due process and 8 U.S.C. § 1231(a).** The Court previously concluded that based on the record before it, Petitioner had demonstrated a likelihood of success on the merits of his constitutional claim. See ECF 18. **Petitioner's detention has become more presumptively unreasonable**, and Petitioner still has "good reason to believe" that there is no significant likelihood of his removal in the reasonably foreseeable future. See Zadvydas, 533 U.S. at 701. Indeed, far from rebutting Petitioner's showing, **Respondents' Answer all but concedes that Petitioner's removal is not reasonably foreseeable**. Respondents admits as undisputed that Petitioner has been detained for more than six months and that ICE is unable to remove Petitioner to Russia or Azerbaijan, the countries designated for removal. ECF 25 at 5. It further acknowledges that Armenia, the alternative third country, has now affirmatively indicated that it will not issue Petitioner travel documents at this time and that ICE does not know whether and when the information requested by the Armenian Consulate can be obtained or when it can expect to receive a response from the Consulate. Id. Respondents' nonspecific removal efforts may be ongoing, see id., but as the Court previously explained, "good faith efforts to effectuate . . . deportation" do not demonstrate the lawfulness of continued detention, see Zadvydas, 533 U.S. at 702. [footnote omitted] Petitioner need not show "the absence of any prospect of removal," only that "there is no significant likelihood of removal in the reasonably foreseeable future." Id. **The record plainly reflects that Petitioner has met this standard.**

ECF No. 27 at 7 (emphasis added). Even when Respondents effectively conceded that they could not obtain travel documents for Petitioner, they refused to back down or release Petitioner absent a court order.[2] As the Court concluded, Respondents' legal position was meritless.

Consistent with its position to date and despite the Court's July 18 Order, Respondents now argue that their conduct was substantially justified. Yet, they produce no evidence to explain on what basis they had legal authority to continue to detain Petitioner, because there was none. They simply argue that "[u]pon Petitioner being transferred to ICE custody, on

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[2] Indeed, since Petitioner has been released, the government has subjected Petitioner to an intensive supervision program that restricts Petitioner's travel, requires frequent check-ins in person and by phone, and he is being required to where an obtrusive GPS monitoring device that tracks his location at all hours, requires constant continuous charging, and interferes with Petitioner's sleep and daily activities.

November 12, 2024, Respondents took reasonable steps to remove Petitioner to Azerbaijan and Russia, and then to Armenia." ECF No. 30 at 2. Respondents' minimalist argument does not establish that their position in continuing Petitioner's detention for over eight months, and continuing to defend its position in this litigation, was in fact "reasonable." There was no reasonable basis to believe that Armenia would provide travel documents to Petitioner, and regardless, Respondents waited until they had already detained Petitioner for a presumptively unreasonable amount of time before even having him apply for Armenian citizenship while he was detained in New York. They then arbitrarily transferred him to Adelanto and asked him, one month later, to complete another duplicative application to Armenia, still with no evidence or reason to believe that Armenia would accept Petitioner. This delay both prolonged Respondent's detention and this litigation without justification. In short, neither the government's conduct nor its litigation position was substantially justified. *Ibrahim*, 912 F.3d at 1172.

II. CONCLUSION

Petitioner Artem Vaskanyan respectfully requests that the Court grant this application for fees and costs pursuant to the EAJA and order Respondent to pay him $16,067 in fees as outlined herein.

Dated: August 30, 2025

Respectfully submitted,

By: */s/ Irene C. Freidel*

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CERTIFICATE OF SERVICE

I, Irene C. Freidel, hereby certify that the foregoing document was served on Respondents' counsel on this 30th day of August 2025 via the ECF platform.

/s/ Irene C. Freidel
Irene C. Freidel