

1 TIMOTHY COURCHAINÉ  
United States Attorney  
2 District of Arizona  
THEO NICKERSON  
3 Assistant United States Attorney  
Connecticut State Bar No. 429356  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1800  
5 Phoenix, AZ 85004-4449  
Telephone: (602) 514-7500  
6 Fax: (602) 514-7693  
7 [Theo.Nickerson2@usdoj.gov](mailto:Theo.Nickerson2@usdoj.gov)  
*Attorneys for Respondents*

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 Garbis Krajekian,  
11 Petitioner,  
12 v.  
13 John Cantu, et al.,  
14 Respondents.


No. 25-cv-02666-PHX-DJH (CDB)


**RESPONSE TO PETITIONER'S  
APPLICATION FOR ATTORNEY'S  
FEES PURSUANT TO THE EQUAL  
ACCESS TO JUSTICE ACT ("EAJA")**

15 **I. INTRODUCTION.**

16 Respondents, John E. Cantu, Field Office Director, U.S. Immigration and Customs  
17 Enforcement (ICE); Todd M. Lyons, Acting Director, ICE; Kristi Noem, Secretary of  
18 Department of Homeland Security (DHS); Pamela Bondi, Attorney General of the United  
19 States; and Fred Figueroa, Warden, Eloy Detention Center (Respondents), by and through  
20 undersigned counsel, hereby respond to Petitioner's Application for Attorney's Fees  
21 Pursuant to the Equal Access to Justice Act ("EAJA"). Doc. 27. Respondents' revocation  
22 of Petitioner's Order of Supervision and re-detention of Petitioner and the litigation  
23 position that Petitioner was lawfully detained pursuant to a valid final order that was  
24 enforceable in the reasonably foreseeable future were both substantially justified.  
25 Accordingly, the Court should deny Petitioner's request for EAJA fees.

26 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

27 Petitioner, Garbis Krajekian, is a native and citizen of Syria. Doc. 11, Exhibit A,  
28 Declaration of ICE Deportation Officer, Christopher Fluery ¶ 5. He was born on 

1  in Kessab, Syria. *Id.* On June 28, 1994, Petitioner entered the United States,  
2 through Los Angeles, on an F-1 student visa. Petitioner remained in the United States  
3 and married a United States Citizen. *Id.* ¶ 6. On October 15, 2003, Petitioner's United  
4 States Citizen wife filed a Form I-130 – Petition for Alien Relative on Petitioner's behalf  
5 with United States Citizenship and Immigration Services (USCIS). *Id.* ¶ 7. On July 19,  
6 2004, USCIS approved the Form I-130 – Petition for Alien Relative. *Id.* ¶ 8. On  
7 September 29, 2004, Petitioner filed with USCIS a Form I-485, Application to Register  
8 Permanent Resident or Adjust Status. *Id.* ¶ 9. On January 2, 2008, USCIS approved  
9 Petitioner's Form I-485, and he adjusted his status to that of a lawful permanent resident.  
10 *Id.* ¶ 10.

11 On January 20, 2013, Petitioner was arrested by the Chandler Police Department  
12 in Chandler, Arizona, for domestic violence crimes including disorderly conduct and  
13 criminal damage. Doc. 11, Exhibit A ¶ 11. However, on May 8, 2013, Chandler  
14 Municipal City Court dismissed these criminal charges. *Id.* ¶ 12. On September 17,  
15 2014, the United States Secret Service arrested Petitioner for the crime of uttering  
16 counterfeit currency. *Id.* ¶ 13. On June 8, 2015, the United States District Court for the  
17 District of Arizona, convicted Petitioner of the crime of uttering counterfeit obligations  
18 and securities, sentencing him to forty-one months of incarceration, with three years of  
19 supervised release. *Id.* ¶ 14.

20 On August 30, 2017, ICE encountered Petitioner at Great Plains Correctional  
21 Institute (GPCI) in Hinton, Oklahoma, pursuant to his conviction. ICE lodged an  
22 Immigration Detainer (Form I-247) with GPCI. Doc. 11, Exhibit A ¶ 15. On September  
23 8, 2017, GPCI turned over custody of Petitioner to ICE. *Id.* ¶ 16. On that same date, ICE  
24 issued Petitioner a Notice to Appear (NTA), Form I-862, charging him with removability  
25 pursuant to Immigration and Nationality Act (INA) § 237(a)(2)(A)(iii), as an alien who,  
26 at any time after admission, has been convicted of an aggravated felony as defined by  
27 INA §101(a)(43)(R), that is, for an offense relating to commercial bribery, counterfeiting,  
28 forgery, or trafficking in vehicles the identification numbers of which have been altered,

1 for which the term of imprisonment is more than one year. *Id.*

2 On September 13, 2017, Petitioner was transferred to Prairieland Detention Center  
3 in Alvarado, Texas, pending his removal proceedings. Doc. 11, Exhibit A ¶ 17. On  
4 October 3, 2017, the Immigration Judge (IJ) ordered Petitioner removed to either  
5 Switzerland or Syria. *Id.* ¶ 18. Petitioner waived his right to appeal the IJ's removal  
6 order, making the order administratively final on that date. *Id.*

7 On October 18, 2017, ICE requested official travel documents to facilitate  
8 Petitioner's removal either to Switzerland or Syria. Doc. 11, Exhibit A ¶ 19. On October  
9 26, 2017, the Consulate of Switzerland denied ICE's request for travel documents to  
10 remove Petitioner to Switzerland. *Id.* ¶ 20. On December 15, 2017, ICE conducted a  
11 Post Order Custody Review (POCR). A POCR is where ICE evaluates whether an  
12 individual subject to a final removal order has a significant likelihood of removal in the  
13 reasonably foreseeable future, and if ICE finds that they do not, they will consider  
14 releasing the individual subject to an Order of Supervision (OSUP). That is what  
15 happened here. On December 29, 2017, ICE released Petitioner under an OSUP (Form  
16 I-220B) because ICE found that there was no significant likelihood it would be able to  
17 remove Petitioner in the reasonably foreseeable future at that time. *Id.* ¶ 22.

18 However, the United States Government had been successful in removals to Syria  
19 in recent months, and during a targeted enforcement operation in Chandler, Arizona, on  
20 April 6, 2025, ICE re-detained Petitioner and transported him to the Florence Detention  
21 Center for further processing. Doc. 11, Exhibit A ¶ 23. On April 7, 2025, Petitioner was  
22 transferred to the Eloy Detention Center, where he currently remains in custody pending  
23 execution of his valid final removal order. *Id.* ¶ 24.

24 In an effort to execute Petitioner's valid removal order for an alien convicted of an  
25 aggravated felony, ICE submitted a travel document request to ICE Headquarters  
26 Removal and International Operations (HQRIO). Doc. 11, Exhibit A ¶ 25. On the same  
27 date, HQRIO advised local ICE at Eloy that their travel document request had been sent  
28 to the United States Department of State for citizenship verification and travel document  
issuance. *Id.* HQRIO has advised ICE at Eloy, that their travel document request will be

1 reviewed, and further guidance will be issued soon. *Id.* Accordingly, Petitioner remained  
2 detained in ICE custody at Eloy Detention Center, pending removal from the United  
3 States pursuant to a valid final order of removal, which could have been executed as soon  
4 as his travel documents were received. *Id.* ¶ 17. ICE provided a formal notice of  
5 revocation of Petitioner’s prior OSUP on August 4, 2025, and provided Petitioner with  
6 an informal interview. *Id.* ¶ 16; *see* Doc, 11, Exhibit B, Notice of Revocation of OSUP  
7 and Informal Interview. At Petitioner’s informal interview, he was notified that he could  
8 submit evidence in support of release. *Id.* At the time of the filing of the habeas petition,  
9 ICE had a request for travel documents pending and was still waiting on travel documents  
10 for Petitioner to be issued from Syria. Petitioner had been detained for five months.

### 11 III. LEGAL STANDARDS.

12 “Congress passed the EAJA in response to its concern that persons may be deterred  
13 from seeking review of, or defending against, unreasonable governmental action because  
14 of the expense involved in securing the vindication of their rights.” *Sullivan v. Hudson*,  
15 490 U.S. 877, 883 (1989) (internal quotation and citation omitted). The EAJA, which  
16 amended 28 U.S.C. § 2412 and 5 U.S.C. § 504, was designed to rectify this situation by  
17 providing for a mandatory award of reasonable attorneys’ fees in some cases. *Comm’r*,  
18 *I.N.S. v. Jean*, 496 U.S. 154, 163 (1990) (“the specific purpose of the EAJA is to eliminate  
19 for the average person the financial disincentive to challenge unreasonable governmental  
20 actions.”) It “renders the United States liable for attorney’s fees for which it would not  
21 otherwise be liable and thus amounts to a partial waiver of sovereign immunity. Any such  
22 waiver must be strictly construed in favor of the United States.” *Ardestani v. I.N.S.*, 502  
23 U.S. 129, 137 (1991).

24 The EAJA provides, in relevant part, that:

25 “[e]xcept as otherwise specifically provided by statute, a court shall award to a prevailing  
26 party other than the United States fees and other expenses ... incurred by that party in any  
27 civil action (other than cases sounding in tort), including proceedings for judicial review  
28 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.”

1 28 U.S.C. § 2412(d)(1)(A).

2 “Substantially justified” means “justified in substance or in the main”—that is,  
3 justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487  
4 U.S. 552, 565 (1988). A substantially justified position must have a reasonable basis both  
5 in law and fact. *Id.*; *Flores v. Shalala*, 49 F.3d 562, 569 (9th Cir.1995) (“In this circuit,  
6 we apply a reasonableness standard in determining whether the government’s position  
7 was substantially justified for purposes of the EAJA.”). It is the government’s burden to  
8 show that its position was substantially justified or that special circumstances exist to  
9 make an award unjust. *Meinhold v. U.S. Dep’t of Defense*, 123 F.3d 1275, 1277 (9th Cir.),  
10 *amended by* 131 F.3d 842 (9th Cir.1997); *Love v. Reilly*, 924 F.2d 1492, 1495 (9th  
11 Cir.1991). “The government’s ‘position can be justified even if it is not correct.’” *Pierce*,  
12 487 U.S. at 566 n.2.

#### 13 **IV. RESPONDENT’S POSITION WAS SUBSTANTIALLY JUSTIFIED.**

14 Respondents do not dispute that this immigration habeas case is a civil action for  
15 purposes of the applicability of EAJA. Nor do Respondents contend that there are special  
16 circumstances that would make an award of fees unjust or that the fees requested are  
17 unreasonable. Nevertheless, Respondents contend that the Court should deny Petitioner’s  
18 application for attorney’s fees pursuant to EAJA because Respondent’s pre-litigation  
19 conduct, and litigating position were both substantially justified.

20 Due to his conviction for an aggravated felony, Petitioner was subject to a valid,  
21 final and executable removal order that was issued on October 3, 2017. Doc. 11, Exhibit  
22 A ¶ 17. The removal order was issued and enforceable either to Switzerland or Syria. *Id.*  
23 Originally, ICE was unable to obtain travel documents from Switzerland and therefore  
24 released Petitioner pursuant to an OSUP. *Id.* ¶ 22. ICE’s actions in re-detaining  
25 Petitioner, were based on recent success in obtaining travel documents to Syria and  
26 therefore, during a targeted enforcement operation, ICE re-detained Petitioner. *Id.* ¶ 23.

27 Upon re-detaining Petitioner, ICE complied with the regulations for properly  
28 revoking an OSUP when ICE provided a formal notice of revocation of Petitioner’s prior

1 OSUP on August 4, 2025, and provided petitioner with an informal interview. Doc. 11,  
2 Exhibit A ¶ 16. At Petitioner’s informal interview, he was notified that he could submit  
3 evidence in support of release. *Id.* Here, ICE’s recent prior success obtaining travel  
4 documents to Petitioner’s country of removal, Syria, coupled with its compliance with its  
5 own regulations for revoking OSUP’s renders ICE’s re-detention of Petitioner pursuant  
6 to a valid final executable removable order, that it believed it could execute in the  
7 reasonably foreseeable future, substantially justified.

8 In addition, Respondent’s litigating position was substantially justified because  
9 Petitioner was lawfully detained pursuant to 8 U.S.C. § 1231(a)(6) to effectuate removal.  
10 *See Demore v. Kim*, 538 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining the  
11 removal period was based on the “reasonably necessary” time in order “to secure the  
12 alien’s removal”). The statute provides that—if the alien is not removed—the alien “shall  
13 be subject to supervision” under relevant regulations with certain requirements. 8 U.S.C.  
14 § 1231(a)(3). Here, Petitioner’s OSUP was revoked, and he was re-detained, because at  
15 this time, the Government had determined it was significantly likely to be able to  
16 effectuate his removal to Syria in the reasonably foreseeable future. *See* 8 C.F.R.  
17 §241.13(i)(2). It properly revoked his OSUP and Petitioner had only been re-detained for  
18 approximately five months while the Government attempted to execute his valid final  
19 removal order to Syria—one month less than the presumptively reasonable period to  
20 effectuate removal established in *Zadvydas*. *See Zadvydas v. Davis*, 533 U.S. 678, 689  
21 (2001). Thus, Respondents position—that Petitioner’s continued detention, while the  
22 Government sought to effectuate his removal and enforce a valid final removal order,  
23 violated neither section 1231 nor *Zadvydas*—was substantially justified.

#### 24 V. CONCLUSION.

25 For the foregoing reasons, the Court should deny Petitioner’s Application for  
26 Attorney’s Fees pursuant to EAJA.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted this 3<sup>rd</sup> day of November, 2025.

TIMOTHY COURCHINE  
United States Attorney  
District of Arizona

*s/Theo Nickerson*  
THEO NICKERSON  
Assistant United States Attorney  
*Attorneys for Respondents*