IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Garbis Krajekian,

Petitioner,

v.

John Cantu, et al.,

Respondents.

No. CV 25-02666 PHX DJH (CDB)

REPORT AND RECOMMENDATION

TO THE HONORABLE DIANE J. HUMETEWA:

Before the Court is Petitioner's motion seeking an award of attorney fees. (ECF No. 27).

I. Background

On July 28, 2025, Petitioner filed a petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1). Petitioner asserted he was being wrongfully detained by Respondents in violation of federal statutes and his federal constitutional right to due process of law. Petitioner also filed a motion seeking a temporary restraining order. (ECF No. 2).

Petitioner is a native of Syria, who has been present in the United States since 1994. Petitioner first entered the United States on a student visa in 1994, when he was approximately nineteen years of age. Petitioner remained in the United States and eventually married a United States citizen. On October 15, 2003, Petitioner's spouse filed a Form I-130, a Petition for Alien Relative, on Petitioner's behalf. On January 2, 2008,

United States Citizenship and Immigration Services adjusted his status to that of a lawful permanent resident. (ECF No. 11 at 2).

On June 8, 2015, the United States District Court for the District of Arizona found Petitioner guilty on a charge of uttering counterfeit obligations and securities, and sentenced him to forty-one months of incarceration followed by three years of supervised release. On August 30, 2017, Petitioner was released from incarceration on supervised probation and, pursuant to a detainer, he was placed in the custody of Immigration and Customs Enforcement ("ICE"). Petitioner was charged as being removable as an alien who, at any time after admission, had been convicted of an aggravated felony as defined by Immigration and Nationality Act ("INA") §101(a)(43)(R), i.e., for committing an offense relating to, *inter alia*, counterfeiting, for which the term of imprisonment is more than one year.[1]

Petitioner was detained by ICE for three months in 2017 during his removal proceedings. On October 3, 2017, Petitioner was ordered removed to Syria or Switzerland, and he waived his right to appeal the order of removal. Petitioner did not appeal the issuance of the order of removal because at that time his goal was be released from detention as soon as possible; Petitioner would likely have remained detained had he appealed the order of removal, because he could not be repatriated to Syria due to the suspension of diplomatic relations between the United States and Syria.

On October 18, 2017, ICE requested travel documents to facilitate Petitioner's removal either to Switzerland or Syria. On October 26, 2017, the Consulate of Switzerland denied ICE's request for travel documents. On December 15, 2017, ICE conducted a Post Order Custody Review, evaluating whether there was a significant likelihood that Petitioner could be removed from the United States in the reasonably foreseeable future. On December 29, 2017, ICE released Petitioner under an Order of Supervision (Form I-

[1] Petitioner entered a guilty plea to one count of uttering counterfeit obligations or securities in violation of 18 U.S.C. § 472. *See United States v. Krajekian*, 2:14-cr-1245 GMS.

220B) ("OSUP"), having concluded there was no significant likelihood Petitioner could be removed in the reasonably foreseeable future.

Petitioner was released from ICE custody in December of 2017. The OSUP required Petitioner to attend regular appointments at the Phoenix ICE office and permitted him to apply for work authorization. From December of 2017 through January of 2025, a period of eight years, Petitioner complied with all of the terms of the OSUP.

On January 3, 2025, Petitioner attended his regularly scheduled appointment at the Phoenix ICE office. Petitioner was ordered to return for another appointment on July 10, 2025. However, on April 6, 2025, without advance notice that it was revoking Petitioner's release under supervision, ICE took Petitioner into custody in or near his home in Phoenix, in what it describes as a "targeted enforcement operation." (ECF No. 11-1 at 4). In its response to Petitioner's motion for injunctive relief the government asserted: "the United States Government has been successful in removals to Syria in recent months, and during a targeted enforcement operation in Chandler, Arizona, on April 6, 2025, ICE re-arrested Petitioner and transported him to the Florence Detention Center for further processing." (ECF No. 11 at 3). The government also asserted: "ICE provided a formal notice of revocation of Petitioner's prior OSUP on August 4, 2025 [a few days less than four months after taking Petitioner into custody] and provided petitioner with an informal interview. ... *see* Exhibit B, Notice of Revocation of OSUP and Informal Interview." (ECF No. 11 at 3-4).[2]

---

[2] Exhibit B to the response to the motion for injunctive relief is the record of an "Alien Informal Interview Upon Revocation of Order of Supervision Under 8 C.F.R. § 241.4(l); 8 C.F.R. § 241.13(i)," dated August 4, 2025, stating that an ICE officer explained to Petitioner that "he has committed crimes and ICE is going to review his case based on the change in circumstances." (ECF No. 11-2 at 2). Exhibit B also includes a "Notice of Revocation of Release" dated August 4, 2025, stating, *inter alia*,

> ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On October 3, 2017, you were ordered removed to Switzerland with Syria in the alternative by an authorized U.S. DHS official and you are subject to an administratively final order of removal. Your case is under current review by Switzerland and Syria for the issuance of a travel document.

In his § 2241 habeas petition Petitioner asserted that, since his release from custody in 2017 under the OSUP and prior to his detention in 2025, there was no evidence of any change in circumstance relevant to his detention status, removability, or criminal record, and that his order of release on supervision had never been revoked, withdrawn, or otherwise cancelled. Petitioner maintained ICE did not have the statutory authority to re-detain him eight years after a three-month ICE detention and his release on supervision, arguing he had not violated any condition of release nor had he committed any crime since the OSUP issued. He also asserted he had never been found to be a flight risk or a danger to the community, and that there was no change in diplomatic relations between the United States and Syria that would render his removal to Syria more likely. (ECF No. 1 at 3, 5). Petitioner maintained he had a liberty interest in his freedom, which afforded him a due process right to be free of detention absent notice and a hearing. Petitioner further asserted that, pursuant to the United States Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001), his detention without a good faith probability that he would be removed from the United States to Syria in the reasonably foreseeable future violated his federal constitutional right to due process law.

The day after the § 2241 petition was filed the Court ordered Petitioner's counsel to immediately serve Respondents with a summons and the petition. (ECF No. 6). Respondents answered the habeas petition on August 28, 2025. (ECF No. 21). In an order entered September 5, 2025, the Court summarily granted Petitioner's request for habeas relief pursuant to § 2241, citing *Zadvydas*, and ordered his immediate release from Respondents' custody. (ECF No. 23). The Court declined to address Petitioner's other claims for relief, including his due process claim. (*Id.*).

On October 5, 2025, Petitioner's counsel filed a motion seeking attorney fees and costs in the amount of $8084.06, pursuant to the Equal Access to Justice Act ("EAJA").

> ... If you are not released after the informal interview, you will receive notification of a new review, which will occur within approximately three months of the date of this notice.

(ECF No. 11-2 at 4).

(ECF No. 27). Attached to the motion is an affidavit executed by Petitioner stating he has paid his counsel $7,500 and any EAJA fees awarded to Petitioner in excess of that amount will be paid to his counsel. Petitioner's counsel avers they have billed Petitioner for 32.1 hours of attorney time at $251.84 per hour, the EAJA maximum, for a total of $8084.06. (ECF No. 27-1 at 24-25).

II. Governing Law

The EAJA, codified at 28 U.S.C.A. § 2412(d), allows for an award of attorney fees to a prevailing party in a civil action against the United States, unless the government's position was "substantially justified" or special circumstances make an award of fees unjust. The Ninth Circuit Court of Appeals has consistently interpreted the EAJA to apply broadly, to encourage litigants to vindicate their rights when government action is unreasonable. *See, e.g., Ibrahim v. United States Dep't of Homeland Sec.*, 912 F.3d 1147, 1166-67 (2019); *Li v. Keisler*, 505 F.3d 913, 919 (9th Cir. 2007). A purpose of the EAJA is to remove the financial disincentive for individuals to challenge or defend against government action, and encourage challenges to improper government action as a means of helping the government to formulate better public policy. *See, e.g., Commissioner, I.N.S. v. Jean*, 496 U.S. 154, 163 (1990); *Boudin v. Thomas*, 732 F.2d 1107, 1114 (2d Cir. 1984).

EAJA fees may be awarded in cases involving a petition seeking a writ of habeas corpus pursuant to § 2241. *See Nadarajah v. Holder*, 569 F.3d 906, 914 (2009); *Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025); *Diaz Cruz v. Didos*, No. 25-cv-01117, 2025 WL 3628517, at *3 (D.N.M. Dec. 12, 2025); *Dadfar v. Arnott*, No. 25-cv-3329, 2025 WL 3452372, at *5 (W.D. Mo. Dec. 1, 2025) (awarding a § 2241 petitioner their attorney fees where the government revoked the noncitizen's parole without prior notice). A district court abuses its discretion in this context if its decision regarding fees is based on an erroneous legal conclusion or a clearly erroneous finding of fact. *See United States v. Marolf*, 277 F.3d 1156, 1160 (9th Cir. 2002). , *citing United States v. Rubin*, 97 F.3d 373, 375 (9th Cir. 1996).

To be awarded their attorney fees under the EAJA, a petitioner must be the "prevailing party" in the litigation, i.e., they must achieve a favorable outcome such as the granting of their habeas petition. *Nadarajah*, 569 F.3d at 909-10, 914. The Supreme Court has held that a prevailing party need not win with respect to every issue. *Hanrahan v. Hampton*, 446 U.S. 754, 758 (1980). A party prevails when they succeed "on any significant issue" which results in the relief sought in the action. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Put another way, to be deemed a "prevailing party" the party seeking attorney fees must obtain relief on the merits in the form of a judgment that alters the parties' legal relationship. *See Li*, 505 F.3d at 917, *citing Buckhannon Bd. & Care Home, Inc. v. West Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604-05 (2001).

Additionally, for fees to be assessed against the government, the government's position must not have been "substantially justified," including both the government's litigation position and the underlying agency action that gave rise to the litigation. *Li*, 505 F.3d at 918; *Marolf*, 277 F.3d at 1161. An unreasonable agency action at any level entitles the litigant to EAJA fees, regardless of the government's conduct during the federal court proceedings. *Li*, 505 F.3d at 918. "Substantially justified means 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) (internal quotation marks omitted). A substantially justified position must have a reasonable basis in both law and fact. *Id.* Additionally, fees should not be awarded when "special circumstances" exist that would make an award unjust. However, the Ninth Circuit has applied the special circumstances exception narrowly, requiring a clear showing of circumstances that would render an award inequitable. *See Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989).

In deciding whether to award fees the Court may consider any "extraneous circumstances bearing upon the reasonableness" of the government's litigation position, which can "include relevant legal or factual precedents." *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1090 (9th Cir. 2022) (internal quotations omitted). If the government violated its own regulations with regard to the underlying agency action, or failed to

acknowledge settled law from the federal courts, this weighs heavily against a finding that the government's position was substantially justified. *See Gutierrez v. Barnhart*, 274 F.3d 1255, 1259-60 (9th Cir. 2001); *Singh v. Gonzales*, 502 F.3d 1128, 1129 (9th Cir. 2007). "It is the responsibility of the Department of Justice and its lawyers to be aware when its positions have been rejected by the court." *Singh*, 502 F.3d at 1129.

III. Analysis

In response to the habeas petition Respondents asserted, *inter alia*, that Petitioner's detention was authorized. Respondents argued:

> DHS has enacted regulations relating to aliens who are detained beyond the removal period and subject to release. *See* 8 C.F.R. § 241.4; *see also* 8 C.F.R. § 241.13. Here, ICE properly provided notice of the revocation of release under 8 C.F.R. § 241.13(i)(2)[3] because there is a significant likelihood Petitioner can be removed in the reasonably foreseeable future, as established below. Exhibit A ¶¶ 25, 27; *see also* Exhibit B. Consistent with this regulation, *on August 4, Petitioner was provided notice of the revocation of her [sic] prior release order and an informal interview where he was advised of his right to produce evidence supporting his release*.[4] Exhibit A ¶ 26; *see*

---

[3] (i) Revocation of release—

***

(2) Revocation for removal. The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal.

(3) Revocation procedures. Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview *promptly after his or her return to Service custody* to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13.

[4] Petitioner was taken into custody on April 6, 2025, accordingly, the notice of revocation of his status of release under supervision, dated August 4, 2025, was not provided until four months

> *also* Exhibit B. ICE has complied with the regulations for revoking release under this section, where there is now a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).
>
> ***
>
> Here, Petitioner's OSUP was revoked, and he was re-detained, because at this time, the Government has determined it is significantly likely to be able to effectuate his removal to Syria in the reasonably foreseeable future. *See* 8 C.F.R. §241.13(i)(2).

(ECF No. 11 at 12) (emphasis added).

"Upon" revoking a noncitizen's release, ICE must notify the noncitizen "of the reasons for revocation." 8 C.F.R. 241.13(i)(3). ICE must also "conduct an initial informal interview *promptly* after" the detained person's return to custody "to afford [them] an opportunity to respond to the reasons for revocation stated in the notification." *Id.* (emphasis added). Respondents did not comply with these regulations by serving Petitioner with notice that his OSUP was revoked approximately four months after his detention. *See Puertas-Mendoza v. Bondi*, No. 25-ca-00890, 2025 WL 3142089, at *4 (W.D. Tex. Oct. 22, 2025) ("Here, ICE did not comply with at least the first of these requirements—it did not provide Puertas any reason for his detention 'upon' his being detained. Instead, it took three weeks to provide a reason—assuming the reason it eventually gave was even sufficient to satisfy the requirement.").

Moreover, the government provides no evidentiary support for the statement that in April of 2025, when Petitioner was detained, it was "significantly likely" that Petitioner's removal to Syria could be accomplished in the "reasonably foreseeable future." And, at the time it filed its response to the § 2241 petition, the government still had not been able to "effectuate" Petitioner's removal to Syria.

Petitioner asserts that the government was unable to obtain travel documents for him in 2017 when the order of removal was issued, and that the government was unable to obtain travel documents for him in the subsequent years and since he was taken into

---

after the order of supervision was "revoked." Notably, the notice of revocation was served on Petitioner one week after his § 2241 petition was filed.

custody in April of 2025. Petitioner notes that the government "made no efforts to obtain travel documents" for Petitioner from April 6, 2025, when he was taken into custody, until June 6, 2025, when the government "initiated efforts to obtain travel documents." (ECF No. 27-1 at 7-8). Petitioner further notes that, as of August 28, 2025, the government was "unable to provide any evidence to support their assertion that they would soon be able to execute Mr. Krajekian's removal order," i.e., to obtain travel documents allowing Petitioner to be removed to Syria. (ECF No. 27-1 at 8). Therefore, Petitioner argues, the government's position with regard to the underlying agency action taking him into custody without notifying him of the revocation of his release under supervision, and establishing changed circumstances, was not substantially justified.

Citing to an affidavit, rather than to a document produced to the Court, the government asserts:

> The removal order was issued and enforceable either to Switzerland or Syria. *Id.* Originally, ICE was unable to obtain travel documents from Switzerland and therefore released Petitioner pursuant to an OSUP. *Id.* ¶ 22. ICE's actions in re-detaining Petitioner, were *based on recent success in obtaining travel documents to Syria* and therefore, during a targeted enforcement operation, ICE re-detained Petitioner. *Id.* ¶ 23.

(ECF No. 30 at 5) (emphasis added).

The statement that the government has had "recent success in obtaining travel documents to Syria" is non-specific and non-quantified. Additionally, this statement is not accompanied by any evidence that in April of 2025, when Petitioner was re-detained, the government had actually had any "recent success" in obtaining travel documents from Syria allowing the United States to remove a noncitizen from the United States to Syria, This statement is arguably not entirely plausible, because in April of 2025 Syria was still on the United States' list of countries facilitating terrorism.

The government further asserts:

> Upon re-detaining Petitioner, ICE complied with the regulations for properly revoking an OSUP when ICE provided a formal notice of revocation of Petitioner's prior OSUP on August 4, 2025, and provided petitioner with an informal interview. Doc. 11, Exhibit A ¶ 16. At Petitioner's informal

> interview, he was notified that he could submit evidence in support of release. *Id.* Here, ICE's recent prior success obtaining travel documents to Petitioner's country of removal, Syria, coupled with its compliance with its own regulations for revoking OSUP's renders ICE's re-detention of Petitioner pursuant to a valid final executable removable order, that it believed it could execute in the reasonably foreseeable future, substantially justified.
>
> ***
>
> ... Petitioner's OSUP was revoked, and he was re-detained, because at this time, the Government had determined it was significantly likely to be able to effectuate his removal to Syria in the reasonably foreseeable future. *See* 8 C.F.R. §241.13(i)(2). It properly revoked his OSUP and Petitioner had only been re-detained for approximately five months while the Government *attempted* to execute his valid final removal order to Syria

(ECF No. 30 at 5-6).

Nothing in the government's declaration effectively rebuts the contention that at the time he was detained Petitioner's removal was not likely in the reasonably foreseeable future. The United States Supreme Court has rejected the contention that continued immigration detention is permissible "as long as good faith efforts to effectuate ... deportation continue." *Zadvydas*, 533 U.S. at 702 (internal quotations and citation omitted). Instead, the government must actually make legitimate progress towards removal before it may continue a noncitizen's detention. *See Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 48 (D.D.C. 2002) (finding a noncitizen subject to removal to Liberia should be released from custody, noting that even if Liberia had repatriated some of its citizens in recent years INS had not been able to obtain travel documents for the petitioner, Liberia had not indicated that travel documents were forthcoming, and the noncitizen did not present a clear risk of flight or threat to safety to community); *S.F. v. Bostock*, 25-cv-01084, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) (finding the government's evidence that the petitioner "could be a candidate" for a scheduled charter flight to Iran "speculative" and "insufficient to rebut Petitioner's showing that removal is not significantly likely within the reasonably foreseeable future."); *Hassoun v. Sessions*, 18-cv-586, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (finding the government had not met its burden when it had

four requests for travel documents from third countries pending for about five months and only made "general and vague" assertions regarding the status of those requests).

With regard to its litigation position, the federal courts have clearly held that, pursuant to *Zadvydas*, a noncitizen under an order of removal may not be detained when there is no reasonable probability that they will be removed from the United States in the reasonably foreseeable future. *See Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 (9th Cir. 2001). At best, if the government must provide the noncitizen a bond hearing if it seeks to detain the noncitizen when there is no reasonable probability that they will be removed from the United States in the reasonably foreseeable future. *See Owino v. Napolitano*, 575 F.3d 952, 955-56 (9th Cir. 2009); *Tuan Thai v. Ashcroft*, 366 F.3d 790, 799 (9th Cir. 2004); *Khalafala v. Kane*, 836 F. Supp. 2d 944, 948 (D. Ariz. 2011). Accordingly, the government's litigation position that it was legally permitted to detain Petitioner, who at the time the petition was granted had been detained for more than the "presumably reasonable" period of six months without any type of hearing, was not substantially justified. Nor did the government actually establish at any point in this litigation, through competent evidence, that it was actively seeking Petitioner's removal to Syria or a third country. In a different case, the government failed on the same argument raised herein, i.e., that although the government was not able to remove noncitizens to Syria in the summer of 2025, "this is a rapidly evolving area and subject to change." *Alimam v. Kline*, No. 25-cv-02437, 2025 WL 2552605, at *2 (D. Ariz. Aug. 29, 2025), *report and recommendation adopted*, 2025 WL 2576707 (D. Ariz. Sept. 5, 2025) ("On this record, there is no significant likelihood that Petitioner will be removed to Syria in the reasonably foreseeable future. Indeed, the prospect and timing of possible removal to Syria is speculative."). At the time this matter was being litigated Syria was (and still is) one of four countries (Cuba, North Korea, and Iran are the other three) designated as a state sponsor of terrorism. It is also noted at all times relevant to these proceedings temporary protected status has been extended to Syrian nationals due to the conditions in Syria affecting repatriation. U.S. CITIZENSHIP & IMMIGR. SERV., TEMPORARY PROTECTED STATUS,

https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Dec. 17, 2025). Accordingly, any position taken by the government that Petitioner could legitimately be taken into custody in April of 2025, or held in custody since April of 2025, because he could be removed to Syria in the reasonably foreseeable future was not substantially justified.

Petitioner was the prevailing party in this matter. The government's underlying agency action was not substantially justified. The government's litigation position in this matter was not substantially justified. The amount of attorney fees sought by Petitioner is not unreasonable. There are no special circumstances in this matter that would make an award of fees unjust. Accordingly,

IT IS RECOMMENDED that the motion at ECF No. 27 be **granted**, and that Petitioner be awarded $8,084.06 in attorney fees pursuant to the Equal Access to Justice Act.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the District Court's judgment. Pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Pursuant to Rule 7.2(e)(3) of the Local Rules of Civil Procedure for the United States District Court for the District of Arizona, objections to the Report and Recommendation may not exceed ten (10) pages in length. Failure to timely file objections to any factual or legal determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo appellate consideration of the issues. *See United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

//

//

Dated this 2nd day of January, 2026.

Camille D. Bibles
United States Magistrate Judge