IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

KARIM CHENNAH *Petitioner,* *v.* **JUAN BALTAZAR**, Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.; **ROBERT HAGAN**, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **TODD LYONS** Acting Director of Immigration and Customs Enforcement; **PAMELA BONDI**, Attorney General, U.S. Department of Justice. *Respondents.*	**Case No. 1:26-cv-00112** **MOTION FOR ATTORNEY'S FEES**

I. Introduction

Petitioner Karim Chennah moves, under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), for attorney's fees incurred in pursuing his release from immigration detention. This Court granted Mr. Chennah's Petition for a Writ of Habeas Corpus on January 23, 2026 and ordered Respondents to immediately release Mr. Chennah from custody. ECF No. 17. Mr. Chennah is entitled to attorney's fees in the amount of $16,962.43, including from time spent litigating the instant fee application.[1]

II. Relevant Facts and Procedural History

The Respondents ("the government") jailed Mr. Chennah for being unlawfully present in the United States on or about October 17, 2024, and placed him in removal proceedings. Mr. Chennah had recently entered the United States after fleeing from Morocco. On June 25, 2025, the Immigration Judge entered a final order of removal against Mr. Chennah, which was simultaneously withheld upon the judge's decision to grant Mr. Chennah withholding of removal to Morocco ("Withholding"). ECF No. 1-1 at 2-7. The judge found it "more likely than not" that Mr. Chennah will face persecution in Morocco based on his sexual orientation. *See* ECF No. 1-1 at 4; *see also* 8 U.S.C. § 1231(b)(3). Mr. Chennah would have received asylum but for the Circumvention of

[1] This fee motion is timely. The Court issued its final judgment on February 10, 2026 (ECF No. 21), and this request is submitted before 30 days from the final judgment. *See* 28 U.S.C. § 2412(d)(1)(B).

Lawful Pathways rule. ECF No. 1-1 at 6-7. Both parties waived their right to appeal. ECF No. 1-1 at 7.

Under 8 U.S.C. § 1231, which governs the detention and removal of noncitizens who have been issued final orders, the government may continue detention to facilitate a noncitizen's removal. However, section 1231 provides that removal should be effectuated within a "removal period" of 90 days. 8 U.S.C. § 1231(a)(1)(A). Shortly after Mr. Chennah was granted Withholding, counsel began contacting ICE to advocate for his release given that he has no criminal history and is likely to face persecution based on his sexual orientation if he is removed to another country.[2] ECF No. 1-1 at 9-11. Counsel again requested Mr. Chennah's release when he had not been removed during the 90-day removal period, with no response. ECF No. 1-1 at 11-12. The government did not timely conduct the administrative post-order custody review ("POCR") that it should have conducted to justify detention beyond the removal period as required by 8 C.F.R. § 241.4. *See* 8 C.F.R. § 241.4(h) (describing review required "prior to the expiration of the removal period" with "written notice to the detainee approximately 30 days in advance of the pending records review so that the [detainee] may submit information in writing in support of his or her release").

On November 20, 2025, 148 days post-final-order, Mr. Chennah received a notice (dated November 13) purporting to be outcome of a 90-day POCR. ECF No. 1-1 at 23-25. The decision indicated "ICE has made such determination [to continue

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[2] The government's own longstanding policies support release of noncitizens granted Withholding in these circumstances. *See* ECF No. 1-1 at 33-37.

detention] based upon: The Significant Likelihood of Removal in the Reasonably Foreseeable Future." ECF No. 1-1 at 23. The decision gave no destination or anticipated date for removal. ICE again did not respond to counsel's requests for information about plans for removal. ECF No. 1-1 at 14-18.

In a declaration submitted to this Court, the government mischaracterized the November 13, 2025 POCR, claiming, "ICE determined that Petitioner did not satisfy the criteria for release because he poses a significant risk of flight pending removal and ICE expected to receive the necessary travel documents to effectuate removal." ECF No. 14 at 7, 14-1 ¶ 15. In fact, the POCR offered no findings about pending travel documents or flight risk. ECF No. 1-1 at 23-25. Mr. Chennah had not been asked to apply for travel documents. ECF No. 1 ¶¶ 9, 77. The government made no representations about its efforts to obtain travel documents in filings with this Court. ECF No. 14-1. And because Mr. Chennah did not receive the required notice of the POCR, he had no opportunity to present evidence that he is not a flight risk. *See* ECF No. 1 ¶ 34.

Between 90 and 198 days of post-final-order detention, the government continued to provide no information to counsel or Mr. Chennah about plans for Mr. Chennah's removal, despite repeated requests. ECF No. 1-1 at 11-18, 27. The government never asked Mr. Chennah to apply for any travel documents. ECF No. 1 ¶¶ 9, 77. ICE conducted a personal interview with Mr. Chennah (without his attorney) on December 9, 2025, ostensibly for consideration in the 180-day POCR required by 8 C.F.R. § 241.4(k)(2). ECF No. 1-1 at 29-32. In Court filings, the government claimed

that after this interview, "ICE determined that the criteria for release under 8 C.F.R. § 241.4(e) had not been satisfied and continued to detain Petitioner." ECF No. 14-1 ¶ 16. But Mr. Chennah has never been provided with that decision or the basis for it. ECF No. 1 ¶ 42; *cf.* 8 C.F.R. § 241.4(d) ("A copy of any decision ... shall be provided to the detained [noncitizen]. A decision to retain custody shall briefly set forth the reasons for the continued detention."). Neither did the government provide a copy of the decision to the Court. ICE continued to ignore requests for information about plans for removal through December 2025. ECF No. 1-1 at 15-18. Mr. Chennah had been detained for 180 days post-final-order as of December 22, 2025.

On January 8, 2026, ICE learned of Mr. Chennah's plans to file a petition for a writ of habeas corpus. ECF No. 2-1 at 2-3. On January 9, 2026, ICE served Mr. Chennah with a notice of removal to Cameroon. ECF No. 1-1 at 21. ICE never provided counsel with that notice and did not provide it in filings with the Court. *Id.*; ECF No. 2-1 at 8. The government failed to explain to this Court when or how Cameroon was identified as a destination for removal. *See* ECF No. 14-1. The government gave no description of any assurances sought or obtained from Cameroon, such as assurances that Mr. Chennah would not be returned to Morocco. *See id.* The government did not provide copies of travel documents for Cameroon or claim travel documents had been obtained. *See id.* The government did not claim Cameroon had

agreed to accept Mr. Chennah. *See id.* The government provided no information about when and how they planned to remove Mr. Chennah to Cameroon. *See id.*

The government removed Mr. Chennah from Colorado to Arizona on January 11, 2026. ECF No. 8-1 ¶ 8. Although this Court issued an order on January 11 for Mr. Chennah's return to Colorado (ECF No. 5), the government continued to move him on January 12 from Arizona to Louisiana to Texas for "staging" for removal to Cameroon. ECF No. 8-1 ¶ 10.

Same-sex sexual activity is punishable with prison in Cameroon and violence and persecution against gay people like Mr. Chennah is widespread there. ECF No. 2-1 at 9-77. When the government finally provided Mr. Chennah with a credible fear interview on January 15, 2026, "USCIS determined that [Mr. Chennah] established it is more likely than not that he will be persecuted if removed to Cameroon." ECF No. 14-1 ¶ 22.[3] The government "may not" remove Mr. Chennah to a country where his "life or

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[3] Counsel was telephonically present for this interview on January 15, 2026. *See* Exhibit B ¶ 10 (Declaration of Alison Suthers). For some reason, the government says the interview occurred "[b]etween January 13, 2026, and January 15, 2026." ECF No. 14-1 ¶ 22. Current ICE directives provide that "[i]n cases where the alien affirmatively states a fear, USCIS will generally screen the alien within 24 hours." ECF No. 1-1 at 40 (memo from Respondent Lyons regarding procedures for third country removal). Respondents failed to screen Mr. Chennah for more than five days after he affirmatively raised a fear of removal on January 9, 2026. *See* ECF No. 2-1 at 6 (text from Mr. Chennah describing how he affirmatively raised a fear of removal). The government has never provided a record of the interview to counsel or to this Court. *See* Exhibit B ¶10.

freedom would be threatened" because of his "race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b).

The government nevertheless continued to detain Mr. Chennah, arguing that "ICE is continuing to take steps to effectuate Petitioner's removal by determining whether to pursue renewed proceedings in the immigration court or whether to designate another country for removal." ECF No. 14 at 10.

This Court ordered Mr. Chennah's immediate release on January 23, 2026 before Mr. Chennah could file his reply due on January 25, 2026. ECF No. 17; *see* ECF No. 5.

III. Argument

A. Mr. Chennah is an eligible and prevailing party.

The EAJA authorizes the award of attorney's fees in habeas actions challenging immigration detention. *Daley v. Ceja*, 158 F.4th 1152, 1166 (10th Cir. 2025). To qualify for an EAJA award, a petitioner first must establish that he is an eligible, prevailing party. 28 U.S.C. § 2412(d)(1)(B). Mr. Chennah is an eligible party under EAJA because he is a private individual whose net worth has never exceeded 2 million dollars. *See* Exhibit A ¶ 2 (Declaration of Karim Chennah); 28 U.S.C. § 2412(d)(2)(B).

Mr. Chennah is also a prevailing party because he has achieved a "material alteration of the legal relationship of the parties" and that alteration was "judicially sanctioned." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604–05 (2001). In this case, over the government's opposition, the Court agreed with Mr. Chennah's position that his continued detention is

unconstitutional. ECF No. 17. The Court ordered Mr. Chennah immediately released. *Id.* at 8. Thus, this Court's January 23 order conferred prevailing party status.

B. The government's position was not substantially justified.

The government's position in this case was not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Congress placed the burden of proof on the government to demonstrate that its position was substantially justified. H.R. Rep. No. 96-1418, 96th Cong., 2d Sess. 10, 13-14 (1980) ("[T]he strong deterrents to contesting government action require that the burden of proof rest with the government."). To meet this burden, the government must show that its position had a reasonable basis both in law and in fact. *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988); *Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007). The government must meet this threshold twice — with regard to the agency action giving rise to the litigation and its litigation positions. 28 U.S.C. § 2412(d)(2)(D); *Hackett*, 475 F.3d at 1173. If it cannot do both, the Court must award fees.

1. The government's pre-litigation position was not substantially justified.

The government failed to effectuate Mr. Chennah's removal from the United States during the statutory 90-day removal period. *See* 8 U.S.C. § 1231(a)(1)(A). Thereafter, Mr. Chennah's continued detention was only authorized as "reasonably necessary to bring about [his] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). But the government has offered no facts to establish that they were working to effectuate Mr. Chennah's removal during the time of his continued detention or that there was ever a likelihood of Mr. Chennah's removal. The

government offered no information about any efforts to effectuate third country removal during the 198 days between the grant of withholding of removal on June 25, 2025 and learning of Mr. Chennah's intent to seek release through litigation.

In a declaration submitted to the Court, the government claimed that by November 13, 2025, ICE "expect[ed] to receive" travel documents to effectuate Mr. Chennah's removal. ECF No. 14-1 ¶ 15. But the record contradicts this claim. ICE never informed Mr. Chennah or counsel of expected travel documents. ECF No. 1-1 at 23. ICE never asked Mr. Chennah to apply for travel documents. ECF No. 1 ¶¶ 9, 77. ICE never responded to Mr. Chennah's attorney's requests for information about any planned third country removal. ECF No. 1-1 at 16-18 (emails dated Nov. 30 and Dec. 11, 2025). Nor did ICE provide any information in response to Mr. Chennah's "kite" on November 27, 2025. ECF No. 1-1 at 27. Beyond stating its unsupported expectation, the government provided no details or documentation of its efforts to obtain travel documents in filings with this Court. *See* ECF No. 14-1.

In actuality, the government's late and incomplete administrative review process failed to offer any information substantiating a likelihood of removal. *See* ECF No. 1-1 at 23-25. The government provided this Court with no facts supporting their pre-litigation position that Mr. Chennah's removal was ever likely. *See* ECF No. 14-1. The record therefore shows that, before Mr. Chennah filed his petition, the government refused to release him through administratively available channels despite the absence of any legal or factual justification for his continued detention. *See Vaskanyan v. Janecka*, 2025 WL 2014208 at *5 (C.D. Cal. June 25, 2025) (finding it "notable" that the

government did not initiate efforts at removal until "detention exceeded six months and became presumptively unconstitutional").

Moreover, the government's conduct suggests a pre-litigation attempt to evade this Court's jurisdiction. Although the government was legally entitled to pursue third country removal after June 25, 2025, they took no steps to remove Mr. Chennah for 198 days, until learning of Mr. Chennah's intent to seek relief from detention. ECF No. 1-1 at 19-20. Mr. Chennah's plan to seek release triggered efforts to remove Mr. Chennah from the jurisdiction of this Court and perhaps to Cameroon over the weekend of January 10-11, 2026, without notice to his attorney and before any actions could be subject to judicial review — because the government believed Mr. Chennah planned to file his petition on Monday January 12, 2026. *Id.*

The government provided no alternative explanation for the rush of activity that began on January 9, 2026. *See* ECF No. 14-1. The government did not provide notice of Mr. Chennah's removal to counsel despite being on notice of Mr. Chennah's intent to pursue protection from removal because of his fear of persecution based on his sexual orientation. ECF No. 1-1 at 21, 9, 11, 13, 18. Nor did they offer Mr. Chennah an interview about his fear of removal to Cameroon until January 15, 2026 — more than five days after Mr. Chennah affirmatively stated his fear. *See* Exhibit B (Declaration of Alison Suthers) ¶ 10; *infra* n. 3. These facts suggest that the government hoped to remove Mr. Chennah without evaluating his eligibility for fear-based relief but reconsidered only because Mr. Chennah managed to preserve this Court's jurisdiction by filing his petition earlier than advertised and sought an emergency TRO.

2. The government's litigation position was not substantially justified.

The government's litigation position was also unreasonable. The government agreed that the question for the Court was whether there was a "significant likelihood of removal in the reasonably foreseeable future." ECF No. 14 at 9 (citing *Zadvydas*, 533 U.S. at 701). The government argued that Mr. Chennah's removal was substantially likely in the reasonably foreseeable future because Mr. Chennah "was actively in the process of being removed from the United States to a third country — Cameroon — when he filed his Petition[, and] Respondents are continuing to take active steps to effectuate his removal." ECF No. 14 at 1.

It was an objectively unreasonable litigation position to justify Mr. Chennah's continued detention with the government's unexplained and inexplicable plan to remove Mr. Chennah to Cameroon. Mr. Chennah is undisputedly a gay man who received protection from removal to Morocco based on his sexual orientation. ECF No. 1 ¶ 27-29. If the government was in good faith pursuing legitimate progress toward removal, Cameroon — a place where being gay is punishable with prison — is not an objectively reasonable choice for removal. *See* ECF 2-1 at 10-77 (country conditions reports for Cameroon); *see D.V.D. v. DHS*, 778 F. Supp. 3d 355, 388 (D. Mass. 2025) (noting "a person with a same-sex sexual orientation" would be expected to have a credible fear of persecution in "at least, all 64 countries where such an orientation is illegal such that the individual fears torture").[4] The fear review process the government eventually provided

[4] The obvious threat to Mr. Chennah's liberty caused by the criminalization of same sex sexual activity in Cameroon does not even account for the widespread violence and discrimination against gay people in the country. *See* ECF 2-1 at 10-77.

— however reluctantly — unsurprisingly confirmed that Cameroon was not a viable choice for removal to begin with. ECF No. 14-1 ¶ 22.

Beyond giving Mr. Chennah a piece of paper that counsel has never seen, the government failed to provide any factual support for a claim that they made any legitimate efforts toward removal to Cameroon, such as seeking assurances from the Cameroon government or requesting travel documents. The government did not even confirm that Cameroon had agreed to accept Mr. Chennah. *See* ECF No. 14-1; *see also Abrego Garcia v. Noem*, --- F. Supp. 3d --- , 2025 WL 3545447 *15 (D. Md. Dec. 11, 2025) (finding the government notified a detainee he would be removed to various African countries without any of those countries having agreed to accept him). The government's own submissions to this Court showed no likelihood that Mr. Chennah would or could ever legally be removed to Cameroon.

Furthermore, the government's response admitted that Mr. Chennah "cannot be imminently removed" to Cameroon, but offered no other plans for removal. ECF No. 14 at 1. The government only offered that they would maybe at some point "move to reopen proceedings before the immigration court" (apparently threatening to challenge their own finding that Mr. Chennah cannot be removed to Cameroon)[5] "or designate another [as yet unidentified] country for removal." ECF No. 14 at 8. As this Court found, "[n]umerous courts have persuasively rejected such equivocated, conclusory

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[5] Even if ICE continued to pursue removal to Cameroon in immigration court, Mr. Chennah would either be granted protection from removal to Cameroon or be entitled to further judicial review of the immigration judge's decision. 8 C.F.R. § 1208.31(g)(2).

justifications for continued detention," and "Respondents' own evidentiary submission belies their argument that Petitioner's removal is 'significantly likely in the reasonably foreseeable future.'" ECF No. 17 at 5-6.

This complete failure to provide any support for a conclusion that Mr. Chennah's removal was "substantially likely" to occur in the "reasonably foreseeable future" was not a substantially justified litigation position.[6]

In sum, the government's position as a whole was unreasonable.

C. There are no special circumstances that would make an award unjust.

There are no special circumstances in this case that would make an award of attorney's fees unjust. *See* 28 U.S.C. § 2412(d)(3). The burden of proving the special circumstances rests with the government. *See*, *e.g.*, *Martin v. Heckler*, 754 F.2d 1262, 1264 (5th Cir. 1985); *Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989). The government is unable to do so in this case.

D. The fees sought are reasonable.

Counsel is submitting records documenting reasonable time spent preparing the petition for a writ of habeas corpus and other motions in support of relief, and the instant

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[6] The government devoted much of its argument to the class certification in *D.V.D. v. DHS*. ECF No. 14 at 12 (citing No. 25-cv-10676-BEM (D. Mass.)). But they also acknowledged that Mr. Chennah's "direct request in this matter is for release rather than additional process to assert a fear-based claim," relief which is not governed by D.V.D. ECF No. 14 at 14; *see Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 383 (D. Md. 2025) ("The D.V.D. litigation does not address … whether or when a person may be detained while the government attempts to effectuate a third-country removal."). This Court quickly dismissed this argument for the same reason. ECF No. 17 at 7. Therefore, the *D.V.D.* argument does not substantially justify the government's litigation position.

motion, all of which is reimbursable. Exhibit B (Declaration of Alison Suthers, with attached timesheet); *see Comm'r, INS v. Jean*, 496 U.S. 154, 163-65 (1990).

The request calculates an hourly rate using the EAJA statutory rate ($125/hour) adjusted for inflation based on a cost-of-living adjustment using the Consumer Price Index for All Urban Consumers (CPI-U). *See Perales v. Casillas*, 950 F.2d 1066, 1076-77 (5th Cir. 1992). Provided as Exhibit C is the Consumer Price Index (CPI-U). *See* U.S. Dept. of Labor, Bureau of Labor Statistics, https://www.bls.gov/bls/news-release/cpi.htm (last visited Feb. 18, 2026). Based on these statistics, the CPI-U was 324.054 as of December 2025. Adjusting EAJA's statutory rate to account for inflation as of December 2025 results in an hourly rate of $260.16 per hour.

This hourly rate results in a total request for attorney's fees of $16,962.43. A request for costs was submitted previously (ECF No. 22) based on the Court's award of costs to Petitioner in the final judgment. *See* ECF No. 21. Mr. Chennah will seek additional fees if the government opposes this motion and counsel must draft a reply.

IV. Conclusion

The Court should grant $16,962.43 in attorney's fees, in addition to fees for any time spent preparing a reply brief if the government opposes this motion.[7]

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[7] Mr. Chennah has assigned the payment of fees to undersigned counsel. *See* Exhibit A (Declaration of Mr. Chennah).

Dated: February 18, 2026

s/ Alison Suthers

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Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Alison Suthers, hereby certify that on February 18, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:.

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INDEX OF EXHIBITS

A. Declaration of Karim Chennah

B. Declaration of Alison Suthers with accompanying time sheet

C. Consumer Price Index data, which forms the basis of the calculation of hourly rate requested