UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KE DIAN WANG,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

No. 25-cv-18053

ORDER

THIS MATTER comes before the Court by way of Petitioner's Motion for Attorneys' Fees ("Motion") pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). (ECF No. 47). Respondents failed to timely oppose the Motion, and the Court therefore deems it unopposed. (*See* ECF Nos. 47 (Motion filed February 24, 2026), 38 (ordering Respondents to "file any opposition within ten (10) days of Petitioner's filing")); and

WHEREAS, Petitioner is a 60-year-old Chinese national who entered the United States in 1989. (Pet., ECF No. 3 at ¶¶ 1–2). Following a denial of his asylum application, Petitioner was ordered deported by the Immigration Court on August 23, 2000. (*See* Gov't Resp. Ex. 1, ECF No. 18-1 at 2–3). On May 1, 2007, the Department of Homeland Security ("DHS") issued Petitioner a notice to appear and ordered that he be detained pending removal. (Gov't Resp. Exs. 6–7, ECF Nos. 18-6–7). After over seven months of detention, Petitioner was released on December 18, 2007, subject to an Order of Supervision ("OSUP") requiring him to attend routine check-ins with Immigration and Customs Enforcement ("ICE"). (Gov't Resp. Ex. 10, ECF No. 18-10). Petitioner was issued another OSUP in 2022, (Gov't Resp. Ex. 11, ECF No. 18-11), but has consistently attended all check-ins as required by the OSUPs for well over a decade. (Pet., ECF No. 3 at ¶¶ 3, 36); and

WHEREAS, on November 24, 2025, ICE agents arrested and detained Petitioner when he

reported for his regularly scheduled check-in at ICE offices in New York. (*Id.* at ¶ 4). Petitioner thereafter sought a Writ of Habeas Corpus, challenging his detention as unlawful on constitutional and statutory grounds. (*See id.* at ¶¶ 40–61). Petitioner alleged, *inter alia*, that his detention violated his Fifth Amendment right to due process under *Zadvydas v. Davis*, 533 U.S. 678 (2001). (*Id.* at ¶¶ 40–57); and

WHEREAS, on December 2, 2025, the Court ordered Respondents to file an expedited answer to the Petition and to serve certified copies of certain necessary documents. (ECF No. 13). Respondents filed their answer on December 8, 2025. (ECF No. 18). That same day, the Court ordered Respondents to provide sworn factual evidence by December 9 supporting their assertion in their answer that ICE was obtaining a travel document for Petitioner and that removal was imminent. (ECF No. 21). Respondents thereafter filed a letter stating ICE could not comply due to the time needed to collect and review records from multiple ICE offices. (ECF No. 24); and

WHEREAS, the Court scheduled a hearing for December 10, 2025, and ordered Respondents to produce both Petitioner and a knowledgeable representative prepared to testify regarding Petitioner's re-detention. (ECF No. 26). Prior to the hearing, Respondents informed the Court that they could not produce such a representative at the hearing.[1] (ECF No. 28). At the time of the hearing, Respondents again acknowledged their failure to comply with the Court's Order and could provide no explanation as to why Respondents did not produce a knowledgeable witness. The Court determined that Petitioner's continued detention violated his Due Process rights because he had "been

[1] Following this exchange, the Court warned that continued noncompliance with its December 8 and December 9 Orders may result in an Order to Show Cause regarding sanctions, including Petitioner's counsel fees and costs. (ECF No. 29). The Court later issued such an Order to Show Cause when it ordered Petitioner's release. (ECF No. 31 at 2). In light of the Court's award of attorneys' fees here, however, the Court will vacate the Order to Show Cause, as the relief granted herein adequately compensates Petitioner for Respondents' conduct and addresses Respondents' non-compliance.

detained 248 days and counting in total, which is . . . [f]ar beyond the 180 days that the [Supreme] Court says is presumptively reasonable" in *Zadvydas*, 533 U.S. 678. (Tr., ECF No. 33 at 28). Respondents failed to provide any factual information whatsoever to support any assertion that Petitioner's removal was reasonably foreseeable, particularly considering that his order of removal was issued nearly 25 years ago. Accordingly, the Court granted the Petition and ordered Petitioner immediately released. (ECF No. 31 at 1);[2] and

WHEREAS, Petitioner now seeks attorneys' fees pursuant to the EAJA. Under the EAJA, a court "shall award to a prevailing party" reasonable attorneys' fees unless the Government's "position" was "substantially justified or that special circumstances make an award unjust."[3] 28 U.S.C. § 2412(d)(1)(A). "'[I]n immigration cases, the Government must meet the substantially justified test twice': once for its underlying conduct and once for its decisions in the ensuing litigation about that conduct." *Michelin v. Warden Moshannon Valley Corr. Ctr.*, --- F.4th ---, Nos. 24-2990 & 24-3198, 2026 WL 263483, at *11 (3d Cir. Feb. 2, 2026) (quoting *Johnson v. Gonzales*, 416 F.3d 205, 210 (3d Cir. 2005)). To meet its burden on either front, the Government must show its position had "(1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory

[2] Aside from the instant Motion, Petitioner's release should have concluded this matter. Yet on February 6, 2026, Petitioner informed the Court that ICE had failed to return property seized from him at the time of his detention. (ECF No. 39). Before the Court could hold a status conference to address the issue, (*see* ECF No. 42), ICE "suddenly found and returned [Petitioner's] belongings in full," more than two months after the initial detention, (ECF No. 43). Although these events are not central to the Motion, they nonetheless reflect the same pattern of careless conduct that has characterized Respondents' purported enforcement of the immigration laws in recent months.

[3] Petitioner is plainly the prevailing party in this litigation. The Court granted the writ and ordered Petitioner's release, thereby providing the precise relief he sought. *See Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989) (finding that a "prevailing party" is "one who has succeeded on any significant claim affording it some of the relief sought"); *see also Soriano v. Sabol*, No. 16-0271, 2017 WL 3268400, at *1–2 (M.D. Pa. Aug. 1, 2017) (finding a habeas petitioner whose petition was granted to be the prevailing party under the EAJA); *Sanusi v. Chertoff*, No. 07-16, 2008 WL 1995141, at *1 (D.N.J. May 6, 2008) (same). The remaining question, therefore, is whether Respondents' position was "substantially justified" or whether "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

it propounds; and (3) a reasonable connection between the facts alleged and the legal theory advanced." *Washington v. Heckler*, 756 F.2d 959, 961 (3d Cir. 1985); and

WHEREAS, here, the record demonstrates that Respondents' position was not reasonable, let alone substantially justified in any respect. ICE re-detained Petitioner nearly 25 years after his removal order was entered, and after revoking his OSUP on the ground that it was "acquiring a travel document" and that his removal was "imminent." (ECF No. 18-13). The record developed during these proceedings demonstrated that this assertion had absolutely no basis in fact. A declaration submitted by Respondents revealed that ICE had not even begun preparing a new travel document request until December 9, 2025—several days *after* Petitioner had already been taken into custody. (ECF No. 30 at ¶ 34). Even then, the process had not progressed because Petitioner had not completed a new application, and Respondents acknowledged that obtaining travel documents from China could take "30 days to several months." (*Id.* at ¶¶ 33–36). These facts made clear that Petitioner's removal was neither imminent nor reasonably foreseeable when ICE revoked his supervision and detained him and there was no good faith basis to detain him given his nearly 25 years of documented full and complete compliance with reporting requirements; and

WHEREAS, given that Petitioner had already been detained for more than seven months in the past—beyond the presumptively reasonable six-month benchmark identified in *Zadvydas*—Respondents bore the burden of demonstrating that removal was reasonably foreseeable before re-detaining him. They failed to do so. Instead, Respondents defended the detention, arguing that the pursuit of travel documents and Petitioner's purported failure to obtain them independently justified revocation of his supervision. (Gov't Resp., ECF No. 18 at 5). The evidentiary record plainly contradicted those assertions. Respondents further argued that the duration of the reasonableness of detention should be measured only from the start of Petitioner's most recent detention, citing no controlling authority for that proposition. (*See id.* at 9 n.4). Based on this record, and in light of

Respondents' lack of opposition to the Motion, Respondents' decision to re-detain Petitioner lacked a reasonable factual and legal basis, and their subsequent defense of that decision relied on assertions that the record itself undermined, such that neither the Government's underlying conduct nor its litigation position was substantially justified; and

WHEREAS, there are otherwise no special circumstances in this case that would make an award of attorneys' fees unjust. *See* 28 U.S.C. § 2412(d)(1)(A); and

WHEREAS, the Court has reviewed Motion and supporting documentation and finds that the fees and costs sought therein are reasonable, and Respondents have failed to respond and make any contrary arguments;[4] and therefore

IT IS, on this 12th day of March 2026,

ORDERED that Petitioner's Motion for Attorneys' Fees pursuant to the EAJA, (ECF No. 47), is **GRANTED**; and it is further

ORDERED that Respondents shall pay Petitioner's counsel fees in the amount of $21,775.39 within thirty days of the date of this Order and file a letter on the docket confirming they have done so; and it is finally

ORDERED that the Court's prior Order to Show Cause, (ECF No. 31 at 2), is **VACATED**.

Christine P. O'Hearn

CHRISTINE P. O'HEARN
United States District Judge

[4] McCarter & English LLP and the New York Legal Assistance Group ("NYLAG") effectively represented Petitioner in this matter despite the procedural difficulties and delays that arose during the course of the litigation. In responding to the Court's Order to Show Cause, McCarter & English advised that it intends to donate the entirety of any attorneys' fees awarded to its co-counsel, NYLAG. (ECF No. 36 at 3).