**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| Ousmane Savane,<br><br>*Petitioner*,<br><br>v.<br><br>LaDeon Francis et al.,<br><br>*Respondents*. | Case No. 1:25-cv-6666-GHW |

**PETITIONER'S VERIFIED MOTION FOR ATTORNEYS' FEES AND INCORPORATED MEMORANDUM OF LAW**

## PRELIMINARY STATEMENT

Petitioner, Ousame Savane ("Petitioner" or "Mr. Savane"), moves for attorneys' fees and costs incurred in successfully challenging his unconstitutional detention by respondents. *See* Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) (entitling prevailing party to fees and costs in a civil action against the United States). This Court held Mr. Savane's detention unconstitutional under the Fifth Amendment and ordered his release on September 28, 2025. *See Savane v. Francis*, No. 1:25-CV-6666-GHW, --- F.Supp.3d ----, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025).

He is now entitled to fees and expenses in the amount of $16, 466.22 including for time spent litigating this fee application.

## RELEVANT FACTS AND PROCEDURAL HISTORY

Mr. Savane is a 22-year-old man from Guinea who entered the United States around December 2023, was detained by Immigration and Customs Enforcement (ICE), determined by ICE not to be flight risk or danger to the community, and released from custody. *Id.* at *2. When respondents released him, they issued him a Notice to Appear before an immigration judge in Manhattan on September 17, 2024. *Id.* He went to court on that date, was granted an adjournment to find an attorney, and ordered to return on August 12, 2025. When he returned on August 12 with two volunteer attorneys, he was surrounded by ICE agents and detained without explanation or prior notice or warning. *Id.* He was held overnight at a facility across the street from the immigration court in New York City and then transferred to an immigration detention center in Orange County, New York. *Id.* at *3.

Mr. Savane's attorneys filed a habeas petition with this Court on August 12, 2025. *Id.* Amongst other arguments, he maintained that his re-detention, without any notice or other procedural safeguards, violated his procedural due process rights under the Fifth Amendment. *Id.*

Respondents' counsel defended the government's actions arguing that Mr. Savane was lawfully held in mandatory detention and that the only due process required was that authorized by Congress. *Id.* The parties disputed whether Mr. Savane was properly held under a statute authorizing discretionary immigration detention (i.e. permitting a bond hearing), 8 U.S.C. § 1226, or mandatory immigration detention for an "applicant for admission" who is "seeking admission," *id.* at § 1225(b)(2)(A). But Mr. Savane's attorneys argued that "should the Court be inclined to order release notwithstanding detention under 1225 . . . the Court could rule simply on due process grounds." *Savane*, 2025 WL 2774452, at *6 n.11.

This Court accepted that argument, holding that "[e]ven assuming that § 1225 applies, as Respondents contend, Petitioner's due process rights were violated because Respondents did not afford Petitioner any process at all before detaining him." *Id.* at *6; *see also* *6. n.10 ("ICE is required to adhere to the basic principles of due process. There is no dispute that it is.") (quoting *Munoz Materano v. Arteta*, No. 25 CIV. 6137, 2025 WL 2630826, at *13 (S.D.N.Y. Sept. 12, 2025) (quoting *Kelly v. Almodovar*, No. 25 Civ. 6448, 2025 WL 2381591 at *4 (S.D.N.Y. Aug. 15, 2025)). The Court found that respondents "violated Petitioner's due process rights because they did not comply with the statutorily required process for revoking . . . [his] parole." *Savane*, 2025 WL 2774452, at *8. That process is governed by 8. U.S.C. "§ 1182(d)(5)(A) because that provision is the sole statutory authority under which a noncitizen subject to § 1225(b)(2)(A) may be paroled . . . ." *Id.* at *7.

"Section 1182(d)(5)(A)'s implementing regulations require 'written notice to the alien' prior to parole revocation." *Id.* at *8 (citing 8 C.F.R. 212.5(e)(2)(i)). But Mr. Savane was not "given any prior notice—much less written notice—that he was going to be arrested following his court appearance." *Savane*, 2025 WL 2774452, at *8. "At oral argument, Respondents were not

even aware that 8 C.F.R. 212.5(e)(2)(i) imposed regulatory constraints on the decision to revoke parole." *Id.* And they "could not confirm whether they had complied with 8 C.F.R. 212.5 and could not even identify what that regulation says or doesn't say. *Id.* (citation modified). In light of these failures to comply with clear regulatory text, the court ordered respondents to release Mr. Savane, holding that "the Court does not need to determine exactly what additional or substitute process Mr. Savane is entitled to prior to the revocation of his parole in this case because Petitioner here was not afforded any process . . . . And no process at all is plainly inadequate." *Id.* at *10 (citation modified).

## ARGUMENT

### I. This motion is timely.

An EAJA motion must be filed within 30 days of final judgment in the case. *See* 28 U.S.C. § 2412(B) (setting EAJA motion deadline). "The 30–day EAJA clock begins after the time to appeal that final judgment has expired." *United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993) (citation modified). In a case where the United States is a party, a notice of appeal must be filed within 60 days of the district court's order. Fed. R. App. P. 4(B). If that deadline falls on a legal holiday, it is tolled until the next day that is not a Saturday, Sunday, or legal holiday. Fed. R. Civ. P. 6(a)(2)(C).

This court entered its decision and order on September 28, 2025. Respondents' 60-day deadline to file an appeal occurred on November 27, 2025, a federal holiday. The judgment in this case became final when respondents declined to file a notice of appeal on November 28, 2025. This motion is filed within 30 days of November 28, 2025, so it is timely.

## I. Mr. Ousmane is entitled to fees and costs under EAJA.

"Under the EAJA, 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'; and (3) that no 'special circumstances make an award unjust.' *Gomez-Beleno v. Holder*, 644 F.3d 139, 144 (2d Cir. 2011) (citing *Commissioner, INS v. Jean*, 496 U.S. 154, 158 (1990)) (citation modified).

Mr. Savane is entitled to fees and costs incurred litigating his habeas petition because he is a prevailing party, the government's position was not substantially justified, and no special circumstances make the award of fees unjust.

### A. Mr. Savane is an eligible and prevailing party.

EAJA defines a "party" as "an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed." 28 U.S.C. § 2412(d)(1)(B). Mr. Savane is a "party" because he is a private individual whose net worth has never exceeded 2 million dollars. *See* Ex. 1 (Declaration of Mr. Savane), ¶ 1.

Mr. Savane is 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. Savane that respondents were violating his constitutional right to due process by detaining him without adequate notice of the reasons why, in violation of the plain language of a regulation governing revocation of parole from immigration detention. *Savane*, 2025 WL 2774452, at *10. The Court therefore judicially sanctioned his release at habeas by ordering him freed from the government's custody, thus materially altering the parties' legal relationship as custodian and detained person.

Mr. Savane meets the statutory definition of a "party" and this Court's September 28, 2025 order conferred him "prevailing party" status. So, he is a prevailing party under EAJA.

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

An award of fees under EAJA is required where the government's position is not "substantially justified." 28 U.S.C. § 2412(d)(1)(A). "The burden of establishing that the position of the United States was substantially justified, § 2412(d)(1)(A) indicates and courts uniformly have recognized, must be shouldered by the Government." *Scarborough v. Principi*, 541 U.S. 401, 414 (2004). "To meet that burden, it must make a strong showing that its action was justified to a degree that could satisfy a reasonable person." *Healey v. Leavitt*, 485 F.3d 63, 67 (2d Cir. 2007)

The government must meet this burden twice, with regard to: (1) the agency action giving rise to the litigation and (2) its litigation positions. *See* 28 U.S.C. § 2412(d)(2)(D) (defining "position" as both "the position taken by the United States in the civil action" and "the action or failure to act by the agency upon which the civil action is based"). "It is well-established that the Government's prelitigation conduct or its litigation position could be sufficiently unreasonable by itself to render the entire Government position not substantially justified." *Healey v. Leavitt*, 485 F.3d 63, 67 (citation modified). The Second Circuit also considers whether the government's litigation position was substantially justified in light of its "independent obligation to conduct candid and rigorous evaluations of the agency's explanations of its decisions before choosing to defend those decisions before this or any other court." *Gomez-Beleno v. Holder*, 644 F.3d 139, 146 (citation modified).

Here, the agency's underlying action was not justified, let alone substantially justified. Regardless of the precise level of process to which Mr. Savane was entitled when his parole was revoked, as this Court held, "no process at all is plainly inadequate." *Savane*, at *10. But the agency needn't

have looked far to answer what process was required. It is unambiguously specified in the plain language of the regulation governing revocation of parole: "written notice" to the noncitizen prior to parole revocation." *Id.* at *8 (citing 8 C.F.R. 212.5(e)(2)(i)). The government's pre-litigation position here is remarkably similar to that in *Healey v. Leavitt*, 485 F.3d 63, 66 where "the Medicare statute unambiguously require[d] . . . written notice before [the government could] reduce or terminate home health services for any reason . . . ." And just as in this case, in *Healy*, "although there was some legitimate dispute regarding the precise contours of the Secretary's obligation, this dispute did not justify the Secretary's declining to provide notice in circumstances not subject to dispute." *Id.* at 68. In these circumstances, the agency's "prelitigation conduct was sufficiently unreasonable that it rendered the entire Government position not substantially justified." *Id.* (citation modified). *Healy* thus stands for the proposition that when an agency acts in direct contravention of unambiguous regulatory language, its pre-litigation position itself renders the entire government position unjustified. That is the case here and this Court should find the agency's position substantially unjustified on that basis alone.

But at litigation, the government defended this unjustified position by distracting from the clear regulatory language. Government counsel instead insisted that Mr. Savane's previous release on parole, a year and a half earlier, was simply a "mistake" that could be rectified with mandatory detention without prior notice. *Savane*, at *3. The government declined to present a warrant for the court's examination to determine whether written notice might have complied with its regulatory duty. *Id.* at *8 n.13. And when questioned about the regulation at issue, government counsel was not "even aware that 8 C.F.R. 212.5(e)(2)(i) imposed regulatory constraints on the decision to revoke parole," *id.* at *8, and "could not confirm whether they had complied with 8 C.F.R. 212.5 and could not even identify what that regulation says or doesn't say." *Id.* (citation

modified). A litigation position staked on grounds lacking the most basic of familiarity with the law at issue is not reasonable.

The government's position was not substantially justified either pre-litigation or before this Court. So, Mr. Savane is entitled to fees and costs under EAJA.

**C. No special circumstances make an award unjust.**

The government bears the burden of showing special circumstances. *See* 28 U.S.C. § 2412(d)(1)(A) (requiring both a substantially justified position and the existence of special circumstances). Here, none exist. The Second Circuit has equated special circumstances to a showing that a Petitioner "is without clean hands." *Oguachuba v. I.N.S.*, 706 F.2d 93, 99 (2d Cir. 1983). That is not the case here, where Mr. Savane has dutifully complied with all instructions given to him to report to court hearings, timely filed an application for asylum, and was arrested by government agents while exiting the courtroom where he was diligently pursuing relief before an immigration judge. Because no special circumstances exist, Mr. Savane is entitled to fees and costs under EAJA.

**D. Fees and expenses sought are reasonable.**

The Second Circuit holds that "the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—creates a presumptively reasonable fee." *Millea v. Metro-N. R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011). Under EAJA, "attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). "Courts in this district adjust the hourly cap of $125.00, imposed in March 1996, to its dollar equivalent at the time of the award." *Linda R. on behalf of D. J. R. v. Dudek*, No. 24 CIV. 6514 (SLC), 2025 WL 1135655, at *3

(S.D.N.Y. Apr. 17, 2025). To do so, "district courts determine the cost-of-living adjustment by multiplying the basis EAJA rate by the current consumer price index ("CPI") for urban consumers, and then dividing the product by the CPI for urban consumers in the month that the cap was imposed." *Id.* (citation modified). To determine EAJA fees, the Second Circuit uses the Consumer Price Index . . . for the urban areas of the Northeastern United States." *Barwari v. Mukasey*, 282 F. App'x 896, 899 (2d Cir. 2008). The formula for calculating a reasonable rate is thus expressed:

$$\frac{\text{EAJA statutory rate x CPI-U Northeast Urban}}{\text{CPI-U in March 1996}}$$

In September 2025, the closest available month of data to when plaintiffs' attorneys litigated this case, the CPI-U West Urban was 348.096. *See* https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS12ASA0,CUUSS12ASA0 (last visited Dec. 17, 2025). In March 1996, the CPI-U 155.7. *See* https://www.bls.gov/news.release/history/cpi_041296.txt#:~:text=The%20March%201996%20CPI%2DW%20level%20of%20152.9,(CPI%2DU)%20On%20a%20seasonally%20adjusted%20basis%2C%20thewas (last visited Dec. 17, 2025). Petitioner's attorneys' fees were thus calculated using the following formula:

$$\frac{\$125 \text{ x } 348.096}{155.7}$$

Under this formula, Mr. Savane's attorneys' reasonable hourly rate is $279.46. The total award sought is $16, 466.22. *See* Exh. 2, Declaration of Anthony Enriquez, Esq., Exh. 3, Declaration of Sarah T. Gillman, Esq., Exh. 4, Declaration of Paige Austin, Esq., Exh. 5, Declaration of Sarah E. Decker, Esq. and Exh. 6, Declaration of Harold Solis, Esq.. Mr. Savane will seek additional fees if the government opposes this motion and counsel must draft a reply.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests an award of $16, 466.22 in fees and expenses, in addition to fees for any time spent preparing a reply brief if the government opposes this motion.

DATED: December 27, 2025
New York, New York

Respectfully Submitted,

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**Robert F. Kennedy Human Rights is now Robert & Ethel Kennedy Human Rights Center effective December 10, 2025, and a request to Pacer to update has been submitted.*

**Certificate of Compliance**

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 2, 478 words.