UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Deglis Yohardis SALAZAR OSUNA, Petitioner, -against- LaDeon FRANCIS, Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	25-CV-9823 (RA)

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR ATTORNEYS' FEES

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Petitioner Deglis Yohardis Salazar Osuna, by his attorneys, submits this memorandum of law, accompanied by his Declaration and the Declaration of Victor L. Hou, Esq. ("Hou Decl."), in support of his Motion for Attorneys' Fees. Petitioner respectfully requests that the Court award him, jointly and severally, attorneys' fees in the amount of $26,999.62.

PRELIMINARY STATEMENT

Under the Equal Access to Justice Act ("EAJA"), "a court shall award to [the] prevailing party" in a civil action against the United States the reasonable fees and expenses incurred, unless the court determines that "the position of the United States was substantially justified." 28 U.S.C. § 2412(d)(1)(A), (d)(2). In this case, after determining that Deglis had been unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") and ordering his immediate release, the Court found that Deglis was the prevailing party in his case against the United States and that the United States' position was not substantially justified. *See Salazar Osuna v. Francis*, No. 25-CV-9823 (RA) (S.D.N.Y. Dec. 15, 2025), Dkt. No. 14 ("Mem. Op. & Order"). Accordingly, the Court concluded that Deglis is entitled to reasonable fees and costs under the EAJA. *See id.*

The fees sought against Respondents here are reasonable and there are no special circumstances that make such an award unjust. In less than a week, Petitioner's counsel thoroughly reviewed Deglis's circumstances and conducted comprehensive legal research to support his habeas petition. The fees sought against Respondents are calculated using the "lodestar" method, under which the product of the prevailing hourly rate and hours worked is presumptively reasonable. Here, the hourly rate sought for the work was calculated using the methodology provided by the EAJA. Moreover, Petitioner's counsel has submitted contemporaneously created time records in connection with this Motion. Therefore, Petitioner's

counsel respectfully requests the full attorneys' fees sought in this motion against Respondents, jointly and severally.[1]

BACKGROUND AND PROCEDURAL HISTORY

Deglis fled Venezuela and entered the United States on or around October 7, 2022. Petition for Writ of Habeas Corpus ¶ 2, Dkt. No. 1 ("Pet."). After receiving a Notice to Appear, Deglis was placed into removal proceedings, where he was charged under the Immigration and Nationality Act ("INA") Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Decl. of Deportation Officer Mincheol So dated Dec. 1, 2025 ¶ 6, Dkt. No. 9 ("So Decl."). He was then released on his own recognizance. *See id.*

Deglis lives in New York with his family and is a tenth grade student at [redacted]. *See* Pet. ¶ 52. He is pursuing humanitarian relief before the immigration court. *See id.* ¶ 54. At the time this case began, he had presented himself at every scheduled hearing before the immigration court. *See* So Decl. ¶¶ 7, 8, 13, 15. But on November 25, 2015, Deglis was arrested by ICE agents as he left an immigration hearing, and he was detained at 26 Federal Plaza and then transferred to Orange County Correctional Facility. *See id.* ¶¶ 16–17. He was not provided with any prior notice of his detention, nor was he provided with a showing of changed circumstances and an opportunity to respond. *See id.* ¶ 16; Pet. ¶ 55.

That same day, November 25, 2025, Deglis filed a *pro se* petition for writ of habeas corpus. *See generally* Pet. In that petition, Deglis explained that his detention was

[1] Respondents are not requesting any costs.

governed by 8 U.S.C. § 1226(a) – so he was entitled to an individualized hearing before being re-detained. *See* Pet. ¶¶ 59, 68. Accordingly, Deglis asserted that his detention violated his due process rights, as well as the Immigration and Nationality Act and the Administrative Procedure Act. *See id.* ¶¶ 61–76.

Later that day, the Court filed an order setting forth the schedule for the habeas proceedings. Order of Nov. 25, 2025, Dkt. No. 3. Pursuant to the order, the Government was required to file any opposition by December 1, Deglis was required to file any reply by December 2, and the hearing would be held on December 3. *See id.* On December 1, 2025, following the Court's order granting Deglis *pro bono* counsel, Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb") began representing Deglis. Notice of Appearance of Victor L. Hou, Dkt. No. 6; Hou Decl. ¶ 9.

On December 1, Respondents filed their response, conceding that the circumstances of Deglis's detention were "materially indistinguishable" from those in *Rivera Esperanza v. Francis*, No. 25-CV-8727, 2025 WL 3513983 (S.D.N.Y. Dec. 8, 2025) – a case in which this same Court had concluded that the petitioner's detention violated his due process rights and ordered his immediate release. Respondents' December 1, 2025 Letter Brief 2, Dkt. No. 8 ("Opp."). Despite conceding that Deglis would prevail "if the Court adhere[d] to [its] decision," Respondents asked this Court to deny Deglis's habeas petition or, if it concluded that his detention was impermissible, order a bond hearing rather than his release. *Id.* at 3.

On December 2, Cleary Gottlieb on behalf of Deglis filed a letter reply addressing Respondents' arguments and respectfully requesting that the Court grant Deglis's petition and order his immediate release. *See* Petitioner's Letter Reply, Dkt. No. 11 ("Reply"). It further requested an award of fees and costs under the EAJA. *See id.* at 2.

At the hearing on December 3, the Court granted Deglis's habeas petition and ordered his immediate release. *See* Mem. Op. & Order 1. Deglis was released that same day. *See id.* In its memorandum and order filed on December 15, 2025, the Court explained that Deglis was entitled to immediate release because his arrest was governed by Section 1226(a), he had not been afforded any process prior to that arrest, and he was not required to exhaust his administrative remedies. *See id.* at 2. The Court further found that Deglis was entitled to reasonable costs and fees under the EAJA. *See id.*

ARGUMENT

I. Petitioner Meets the Requirements for An Award of EAJA Fees

Pursuant to 28 U.S.C. § 2412, an individual may seek fees under the EAJA if (1) their net worth was below $2,000,000 at the time the action was filed; (2) the individual was the "prevailing party" in an action against an agency of the United States; (3) "the position of the United States was not substantially justified"; and (4) there are no special circumstances that make a fee award unjust. As this Court has already found, Deglis meets all four of those requirements. At the time the instant habeas petition was filed, his net worth did not exceed $2,000,000. *See* Declaration of Deglis Yohardis Salazar Osuna dated January 16, 2026. This Court explained that Deglis "is the prevailing party in a civil action against the United States" and that "the Government's position 'was not substantially justified,' since it does not 'and has never had a reasonable basis in statutory text, structure, or history.'" Mem. Op. & Order 2 (quoting *Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025)). And it did not find that there were any special circumstances that would make the fee award unjust. *See id.* Accordingly, Deglis is entitled to a fee award.

II. The Hourly Rate Sought by Petitioner's Counsel Is Reasonable

Petitioner's counsel respectfully requests that this court award attorneys' fees of $26,999.62 against Respondents. This amount represents the "lodestar," a presumptively reasonable amount calculated by multiplying the reasonable hourly rate by the hours expended on this petition. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) ("The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate."); *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) ("Both this Court and the Supreme Court have held 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." (internal quotation marks and citation omitted)).

Under the 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 . . . justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). Although "[t]he EAJA does not define cost of living, . . . the Second Circuit has held that it is 'properly measured by the Consumer Price Index.'" *Cutajar v. Comm'r of Soc. Sec.*, 1:19-CV-05569, 2020 WL 2999232, at *2 (S.D.N.Y. June 4, 2020) (quoting *Harris v. Sullivan*, 968 F.2d 263, 265 (2d Cir. 1992)). Accordingly, "[c]ourts calculate the cost of living adjustment by 'multiplying the $125 statutory rate by the annual average consumer price index figure for all urban consumers ("CPI-U") for the years in which counsel's work was performed, and then dividing by the CPI-U figure for March 1996, the effective date of EAJA's $125 statutory rate.'" *Id.* at *2 (quoting *Caplash v. Nielsen*, 294 F. Supp. 3d 123, 136 (W.D.N.Y. 2018)). And when that work is concentrated in a particular region, courts often use the CPI-U rate in that region. *See, e.g., Make Rd. N.Y. v. Blinken*, No. 19-CV-11633, 2024 WL 4664712, at *13 (S.D.N.Y. Sep. 4, 2024).

All of the work on this case was performed for a New York City client in December 2025. The CPI-U rate for December 2025 in that region[2] was 350.003, and the CPI-U rate for March 1996 was 166.5. *See* U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), https://data.bls.gov/PDQWeb/cu (select "New York-Newark-Jersey City, NY-NJ-PA" under area, "All items" under items, click "get data," and then "change output options" to "from: 1996 to: 2025"). Thus, the New York area EAJA rate for December 2025 is $262.77. That rate – which is significantly below the rate typically paid by Cleary Gottlieb's clients – is reasonable. *See Harris*, 968 F.2d at 265 (recognizing "[t]he long time acceptance of [the Second Circuit's] reasonable statutory interpretation" of how to calculate EAJA rates); Hou Decl. ¶ 15.

III. Petitioner's Counsel Expended a Reasonable Amount of Time on This Matter

Petitioner's counsel reasonably expended 102.75 hours on Deglis's habeas petition between December 1, 2025, when Cleary Gottlieb first began work on Deglis's case, and December 3, 2025, when the Court ordered Deglis's immediate release. That time was spent on work directly related to proving that Deglis's detention violated his due process rights. That work included gathering relevant factual information, traveling and meeting with Deglis in detention, drafting the letter reply and preparing for the hearing – which required conducting legal research into the applicability of Section 1226(a), as well as factual research to disprove Respondents' contentions about Deglis's alleged criminal history and detainees' ability to receive bond hearings. Hou Decl. ¶¶ 9–13. The hours spent on these and other tasks were reasonable and necessary to litigate Deglis's case. Moreover, Petitioner's counsel voluntarily

[2] The U.S. Bureau of Labor Statistics labels the area "New York-Newark-Jersey City, NY-NJ-PA." *See* U.S. Bureau of Labor Statistics, *Consumer Price Index for All Urban Consumers (CPI-U)*, https://data.bls.gov/PDQWeb/cu.

excluded all time spent by Cleary Gottlieb paralegals and support staff,[3] as well as hours worked by Cleary Gottlieb attorneys who did not spend substantial time on this matter.

Accordingly, Petitioner's counsel respectfully requests a reasonable attorneys' fee award in the amount of $26,999.62 under the EAJA.

Dated: January 16, 2026
New York, New York

Respectfully submitted,

/s/ Victor Hou

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[3] "[A] prevailing party that satisfies EAJA's other requirements may recover its paralegal fees from the Government at prevailing market rates." *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590 (2008); *see also, e.g., Berrian v. City of New York*, No. 13-CV-1719, 2014 WL 6611356, at * 16 (S.D.N.Y. July 28, 2014) (Freeman, M.J.), *adopted in part*, 2014 WL 6604641 (S.D.N.Y. Nov. 21, 2014) (awarding, in 2014, $100 per hour for paralegal time).