UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L.S.M.
Petitioner,

v.

Kenneth GENALO, New York Field Office Director for U.S. Immigration and Customs Enforcement; Paul ARTETA, Warden of Orange County Correctional Facility; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. 26-CV-00942 (JAV)

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR ATTORNEYS' FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

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INTRODUCTION

Petitioner L.S.M., by and through his undersigned counsel, respectfully moves this Court pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) for recovery of fees from the respondents in this action (the "Government").

On February 6, 2026, the Court entered an order granting L.S.M.'s Petition for Writ of Habeas Corpus, ECF No. 1 (the "Petition"), "[f]or the reasons previously set forth in" *Mcdonald v. Francis et al.*, 2025 WL 3295906 (S.D.N.Y. Nov. 26, 2025), holding that L.S.M. was detained pursuant to 8 U.S.C. § 1226 and in violation of his rights to due process under the Fifth Amendment of the United States Constitution. *See* Order entered February 6, 2026 (the "Order"), ECF No. 10. Therefore, L.S.M. is the prevailing party for the purposes of the EAJA.

In line with its approach in other recent cases, the Government once again relied here on its erroneous interpretation of the Immigration and Nationality Act ("INA") to justify detaining L.S.M. for nearly three months without a bond hearing. Courts across the country—including in this circuit—have overwhelmingly rejected the Government's interpretation. Because the Government's position was not substantially justified and no special circumstances exist that make an award unjust, L.S.M. is entitled to attorneys' fees based on the reasonable time incurred in successfully challenging his unlawful detention.

FACTUAL AND PROCEDURAL HISTORY

On November 10, 2025, three armed men, who did not identify themselves as federal agents, surrounded L.S.M., physically assaulted him, and arrested him without a warrant. *See* Pet. ¶¶ 22-29, 43. L.S.M. remained unlawfully detained until February 6, 2026, when the Court granted his Petition and ordered his release. *See* Order at 2.

Following L.S.M.'s arrest, ICE served him with a Notice to Appear, charged him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), and placed him into removal proceedings and detained him. *See* ECF No. 9 at 2. L.S.M. filed his Petition shortly after midnight on February 4, 2026. *See* Petition. On that same day, the Court directed the Government to state whether it relied on 8 U.S.C. § 1225(b)(2)(A) as the basis for Petitioner's detention, and if so, "whether there is any basis to distinguish this case from *Mcdonald v. Francis*, 25-CV-9355 (JAV)." ECF. No. 4 at 2. In response, the Government confirmed it relied on Section 1225(b)(2)(A) and conceded that the Petitioner's "case is not materially distinguishable from the facts and legal issues presented in the Court's decision in *Mc[dJonald*." ECF No. 9 at 2. On February 6, 2026, the Court rejected the Government's position and granted the Petition, holding that the Government "violated Petitioner's due process rights in exercising its discretionary authority to detain Petitioner under Section 1226(a)." Order at 2. In the same Order, the Court provided direction to the parties, including a briefing schedule, regarding a potential EAJA motion. Specifically, the Court directed (i) the parties to meet and confer with respect to a potential motion for fees; and (ii) if the parties were unable to reach a resolution, the Petitioner was to file a motion in support of the application by March 9, 2026. *See* Order at 2-3.

On March 6, 2026, after conferring with counsel for the Government, counsel for the Petitioner filed a joint request asking that the Court enter judgment in the case and grant an extension of the deadline for submission and response to the fee application. ECF No. 15. *See Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991) ("Accordingly, we hold that a 'final judgment' for purposes of 28 U.S.C. § 2412(d)(1)(B) means a judgment rendered by a court that terminates the civil action for which EAJA fees may be received. The 30-day EAJA clock begins to run after the time to appeal that 'final judgment' has expired.").

As of the time of this current filing, the parties have not received a decision from the Court regarding the joint request for an extension. On the afternoon of March 9, counsel for the Petitioner attempted unsuccessfully to reach counsel for the Government to discuss how to proceed. Counsel for the Petitioner is mindful of the Court's deadline in the Order, and therefore respectfully makes this submission, though the counsel have not yet had a meet and confer regarding the substance of this application.

ARGUMENT

Pursuant to the EAJA, "a court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Thus, courts must grant requests for "fees and other expenses" under the EAJA where: (1) the petitioner is a "prevailing party"; (2) the Government's position was not substantially justified; and (3) no special circumstances make an award unjust. *Id.* "Fees and other expenses" include reasonable attorneys' fees. 28 U.S.C. § 2412(d)(2)(A).

Petitioner meets all the requirements for an award for fees in the amount of $13,946.63. L.S.M is the prevailing party, the Government's position was not substantially justified, and no special circumstances exist that would make an award unjust. The requested attorneys' fees of $13,946.63 are reasonable, and L.S.M. is entitled to an award in that amount under the EAJA.

A. L.S.M.'S MOTION IS TIMELY

Under the EAJA, motions for fees must be filed "within thirty days of final judgment in the action." *Id.* § 2412(d)(1)(B). A final judgment is a "judgment that is final and not

appealable." *Id.* § 2412(d)(2)(G); *see also United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993). EAJA's statutory deadline is not jurisdictional. *See Scarborough v. Principi*, 541 U.S. 401, 414 (2004). Moreover, courts have found that premature motions for fees (i.e., motions filed before a judgment becomes final) are timely. *See, e.g., Bly v. Shulkin*, 883 F.3d 1374, 1377 (Fed. Cir. 2018); *In re Davis*, 899 F.2d 1136, 1137 n.1 (11th Cir. 1990).

Judgment was entered on February 6, 2026. *See* Order. Even if the Court does not enter judgment in response to the parties' March 6 joint request (*see* ECF No. 15), the judgment will become final after the expiration of Respondents' deadline to appeal it, which is April 7, 2026. *See* Fed. R. App. P. 4(a)(1)(B) (60-day deadline). Additionally, the Court set Petitioner's deadline to file a motion for fees for March 9, 2026. *See* Order at 2-3. Petitioner's motion is thus timely because it is filed before the statutory deadline and in compliance with the Court's Order.[1]

B. L.S.M. IS THE PREVAILING PARTY

L.S.M. is indisputably the "prevailing party" under the EAJA. The term "party" as used in the EAJA means "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)(2)(B). Petitioner is statutorily eligible for an award of attorneys' fees and expenses because Petitioner's net worth at the time the Petition was filed did not exceed $2,000,000. *See* March 9, 2026, Declaration of L.S.M. ¶ 2.

For the purposes of the EAJA, a party prevails if the court grants relief to that party based on "an assessment of the merits" and "unquestionably materially alter[s] the existing legal relationship between the parties." *Vacchio v. Ashcroft*, 404 F.3d 663, 674 (2d Cir. 2005); *see also*

[1] Given that the judgment will not become final until April 7, 2026 (if Respondents do not appeal), the Court may wish to hold this motion in abeyance or otherwise wait to rule on the motion until after final judgment.

Barco Mercado v. Francis, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (finding that immigration detainee was "the prevailing party in a civil action" for EAJA purposes where detainee was released pursuant to writ of habeas corpus in similar mandatory detention case).

The Court granted L.S.M.'s Petition based on an assessment of his statutory and constitutional claims. *See* Order. Over the Government's opposition, the Court agreed with L.S.M. that Respondents were detaining him in violation of 8 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment. *See* Order at 2. Accordingly, L.S.M. is a prevailing party and is entitled to recover fees unless the Government's position was substantially justified.

C. THE GOVERNMENT'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED

"Once a party has demonstrated that it is a prevailing party under the EAJA, the burden shifts to the government to demonstrate that its litigation position was 'substantially justified.'" *Williams v. Kijakazi*, 797 F. Supp. 3d 164, 171 (E.D.N.Y. 2025) (quoting *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999)). To meet that burden, the Government "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) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). The Government's position ultimately must have "had a reasonable basis in both law and fact." *Barco Mercado*, 2025 WL 3295903, at *13.

Whether the Government's position was substantially justified depends on "not what the law now is, but what the Government was substantially justified in believing it to have been." *Pierce*, 487 U.S. at 561. 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*, 485 F.3d at 67 (quoting *United States v. $19,047.00 in U.S. Currency*, 95 F.3d 248, 252 (2d Cir. 1996)).

The Government cannot meet its burden. The Court's February 4, 2026, Order to Answer directed the Government to indicate whether it relied on 8 U.S.C. § 1225(b)(2)(A) as the basis for Petitioner's detention, and if so, "whether there is any basis to distinguish this case from *Mcdonald v. Francis*, 25-CV-9355 (JAV)." ECF. No. 4 at 2. In response, the Government confirmed it relied on Section 1225(b)(2)(A) and conceded that the "instant case is not materially distinguishable from the facts and legal issues presented in the Court's decision in *Mc[d]onald*." ECF No. 9 at 2. The Government adhered to its interpretation of the INA even though it was "contrary to the overwhelming weight of authority in this Circuit." *Mcdonald*, 2025 WL 3295906, at *3 (internal quotations omitted); *see also Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *4 n.10 (E.D.N.Y. Dec. 8, 2025). Its "position does not and has never had a reasonable basis in statutory text, structure, or history." *Barco Mercado*, 2025 WL 3295903, at *13.[2]

The Government had no reason to believe that its position was substantially justified in L.S.M.'s case, particularly in the face of the "overwhelming" rejection of that position. *Mcdonald*, 2025 WL 3295906, at *3. Yet the Government unlawfully continued to hold L.S.M. in mandatory detention. L.S.M. is therefore entitled to recover attorneys' fees.

D. THERE ARE NO SPECIAL CIRCUMSTANCES THAT WOULD MAKE AN AWARD UNJUST

Where the Government's position was not substantially justified, a court may decline to award fees under the EAJA only where "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The "special circumstances" exception "function[s] as an equitable

[2] The Government's position is not substantially justified in retrospect now that the Fifth Circuit has adopted the Government's interpretation of the INA, *see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), because the Government had no basis in law or fact to believe its position was reasonable during L.S.M.'s unlawful detention, which began well before the Fifth Circuit decision.

'safety valve,'" and "its contours can emerge only on a case-by-case basis." *Vincent v. Comm'r of Soc. Sec.*, 651 F.3d 299, 304 (2d Cir. 2011). The Second Circuit has found such "special circumstances" where the prevailing party's "own misconduct created the circumstances that led to the litigation," or "when that party's contributions to the litigation's success were 'marginal, duplicative and unnecessary.'" *Id.* (citing *Oguachuba v. I.N.S.*, 706 F.2d 93, 94 (2d Cir. 1983) and *United States v. 27.09 Acres of Land, More or Less, Situated in Town of Harrison & Town of N. Castle*, 43 F.3d 769, 771 (2d Cir. 1994)).

No such special circumstances exist here. The equities strongly favor L.S.M., who was unlawfully detained for almost three months based on the Government's unjustified reinterpretation of the INA. The necessity of this action arose solely from the Government's conduct, and the Government's refusal to remedy their unlawful actions left this litigation as L.S.M.'s sole recourse. Nothing about L.S.M.'s case suggests that a EAJA fee award would be unjust.

E. L.S.M.'S FEES ARE REASONABLE AND WELL-DOCUMENTED

The EAJA sets a baseline rate 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). Courts routinely apply a cost-of-living adjustment ("COLA") based on the Bureau of Labor Statistics' Consumer Price Index ("CPI"), increasing the applicable rate based on the increase in the CPI between March 1996, when the baseline $125 rate was set, and the date fees were incurred. *See Walker v. Comm'r of Soc. Sec.*, No. 20-CV-4426 (WFK), 2022 WL 4079576, at *1 (E.D.N.Y. Sep. 6, 2022) (finding rate of $218 reasonable based on 63% increase in CPI between March 1996 and September 2020); *Garcia v. Comm'r of Soc. Sec.*, No. 20-cv-7201 (AEK), 2022 WL 1684280, at *2 (S.D.N.Y. May 26, 2022) (Krause, Mag. J.) (finding a rate of $222.00 per hour reasonable). The Second Circuit has held that "cost of living" has the ordinary meaning and is

properly measured by the Consumer Price Index. *Harris v. Sullivan*, 968 F.2d 263, 265 (2d Cir. 1992). A relevant excerpt of the Bureau of Labor Statistics of the CPI for All Urban Consumers ("CPI-U") is attached to the March 9, 2026, Declaration of Mia N. Gonzalez ("Gonzalez Declaration") as Exhibit 2, CPI-U 1996,[3] which is filed concurrently with this Memorandum ("Exhibit 2").

As reflected in Exhibit 2, the CPI-U as of March 1996 was 155.7. The CPI-U for NY-NJ-PA for January 2026, which is the closest available data to when Petitioner filed the habeas petition in February 2026, was 350.947. *See* Gonzalez Declaration, Ex. 3. Thus, the COLA can be obtained by dividing 350.947 by 155.7. This results in a COLA of 2.25399. When the statutory cap rate of $125 per hour is multiplied by 2.25399, the statutory rate adjusted for the cost of living in January 2026 is $281.75 per hour. We therefore respectfully submit that an hourly rate of $281.75, which is significantly less than the rate O'Melveny ordinarily charges to paying clients, is reasonable. *See* Gonzalez Declaration ¶ 15. As reflected in contemporaneous billing records, L.S.M.'s attorneys' from O'Melveny seek compensation for 45.1 hours of attorney time.[4] *See* Gonzalez Declaration, Ex. 1.

Petitioner also seeks recovery for certain time that Brooklyn Defender Services ("BDS") attorney Alexandra Lampert spent on this matter. Gonzalez Declaration Exhibit 4 reflects Ms. Lampert's contemporaneous time entries for work she performed. Petitioner is seeking recovery for a total of 4.4 hours for Ms. Lampert at the same hourly rate of $281.75. *See* Gonzalez

[3] This data is also available by selecting the time period 1996 to 2026 at http://data.bls.gov/data Viewer/view/timeseries/CUUR0000SA0.

[4] The O'Melveny attorney time in this matter is comprised of work by two attorneys and three Law Clerks, as explained in Gonzalez Decl. ¶ 10.

Declaration, Ex. 4. Accordingly, L.S.M. respectfully requests a total of $13,946.63 in attorneys' fees under the EAJA.[5]

The amount requested is reasonable and is, in fact, a substantial discount from the amount of fees and costs L.S.M.'s counsel actually incurred. The statutory fee, even as adjusted, is well below the rate that L.S.M.'s attorneys ordinarily charge to paying clients. *See* Gonzalez Declaration ¶ 15. In addition, counsel has exercised judgment in excluding from the request additional time spent on this matter, including time spent by other timekeepers for whom Petitioner is not seeking a fee award and any expenses. *See id.* ¶ 11.

The amount of fees requested in this Motion is reasonable and is appropriate given the complexity of the issues. L.S.M.'s counsel prepared a Petition, along with supporting papers, seeking L.S.M' s release on an expedited basis. *See id.* ¶ 4. And after the Court's Order, O'Melveny and BDS corresponded with the Government's lawyers from the U.S. Attorney's Office for the Southern District of New York regarding L.S.M.'s release from detention. *See id.* ¶ 9. Additionally, O'Melveny drafted and filed a letter requesting that the Court clarify its order to direct Respondents to release L.S.M. from custody without electronic monitoring, reporting requirements, or other additional restraints on L.S.M.'s liberty. *See id.*

L.S.M. therefore respectfully requests that the Court find that the rate requested and the hours expended on this matter are reasonable.

[5] Counsel represented L.S.M. *pro bono*, but it is "well settled that attorneys who represent plaintiffs without charge may still be entitled to an award of attorney's fees under the EAJA." *DiGennaro v. Bowen*, 666 F. Supp. 426, 430 (E.D.N.Y. 1987) (citing *Ocasio v. Schweiker*, 540 F. Supp. 1320, 1323 (S.D.N.Y.1982)); *see also Ceglia v. Schweiker*, 566 F. Supp. 118, 122–23 (E.D.N.Y. 1983) ("Congress did not intend the term 'incurred' as used in the EAJA to limit recovery to those fees for which a plaintiff is actually liable.").

CONCLUSION

For the foregoing reasons, L.S.M. seeks to recover $ $13,946.63 in attorneys' fees incurred in bringing this Petition and securing L.S.M.'s release from his unlawful detention by the Government.

Date: March 9, 2026

Respectfully submitted,

By: */s/ Mia N. Gonzalez*

Mia N. Gonzalez
William E. Craco
O'MELVENY & MYERS LLP
1301 Avenue of the Americas, Suite 1700
New York, NY 10019
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
E-mail: mgonzalez@omm.com
E-mail: wcraco@omm.com

Alexandra Lampert, Esq.
BROOKLYN DEFENDER SERVICES
177 Livingston Street, 7th Fl.
Brooklyn, NY 11201
Telephone: (347) 977-7701
E-mail: alampert@bds.org

Counsel for Petitioner L.S.M.