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)

DECLARATION OF MIA N. GONZALEZ
IN SUPPORT OF PETITIONER'S MOTION FOR ATTORNEYS' FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

I, Mia N. Gonzalez, declare the following:

1. I am a partner with the law firm O'Melveny & Myers LLP ("O'Melveny"), co-counsel with Alexandra Lampert of the Brooklyn Defender Services ("BDS") to Petitioner L.S.M. in this action. I am familiar with this matter in my capacity as counsel to L.S.M.

2. I submit this declaration in support of Petitioner's Motion for Attorneys' Fees Pursuant to the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412(d) ("EAJA Motion").

3. In January 2026, O'Melveny agreed to represent L.S.M. on a *pro bono* basis in federal habeas litigation to argue for L.S.M.'s release from immigration detention.

4. O'Melveny drafted a petition for writ of habeas corpus (the "Petition"), along with supporting papers, seeking L.S.M.'s release, which BDS attorney Alexandra Lampert filed shortly after midnight on February 4, 2026. *See* ECF No. 1.

5. On February 4, 2026, the Court entered an order instructing that Petitioner not be removed from the country nor transferred beyond a facility in this District and directing Respondents to file a letter within two business days to respond to certain enumerated questions, including whether and how Petitioner's case was distinguishable from *Mcdonald v. Francis*, 25-CV-9355 (JAV). *See* ECF No. 4 ("February 4 Order").

6. On February 6, 2026, the Government responded to the February 4 Order, conceding that the "case is not materially distinguishable from the facts and legal issues presented in the Court's decision in *Mc[d]onald v. Francis*." *See* ECF No. 9.

7. Later on February 6, 2026, the Court entered an order granting the Petition and ordering the "Respondents to immediately release Petitioner from custody" and "certify compliance" by February 7, 2026. *See* ECF No. 10 ("February 6 Order").

8. In the February 6 Order, the Court addressed a potential EAJA award, setting forth a briefing schedule in the event that the parties were unable to reach a resolution regarding an EAJA request.

9. Thereafter, O'Melveny and BDS corresponded with the Government's lawyers from U.S. Attorney's Office for the Southern District of New York regarding L.S.M.'s release from detention. O'Melveny also 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* ECF No. 11.

10. Two O'Melveny attorneys—myself and Special Counsel William E. Craco—worked on Petitioner's habeas petition with three O'Melveny Law Clerks. Each of the Law Clerks have passed the New York Bar Exam and were awaiting admission to the Bar during the time they worked on the Petition. The Law Clerks drafted portions of the habeas petition and

supporting papers, as well as helped prepare the letters that we filed. Given the expedited nature of this matter and the fact that our team's work was principally condensed to one day—February 3, 2026—in light of concerns that L.S.M. could be transferred out of Orange County Jail, each of the team members' work contributed to ensuring that Petitioner could move for relief expeditiously.

11. O'Melveny is seeking fees for 45.1 total hours as reflected in **Exhibit 1**, which shows contemporaneous time keeping records for hours O'Melveny personnel spent in February 2026. Exhibit 1 reflects only the time for which we are seeking recovery, not all time spent on this matter (including no time spent on this EAJA Motion nor paralegal time). We are not seeking to recover any expenses. We respectfully submit that the total number of hours expended on this matter is reasonable.

12. 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. Sept. 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).

13. A true and correct copy of the CPI for All Urban Consumers ("CPI-U") available at the Bureau of Labor Statistics is attached as **Exhibit 2**.[1] As reflected in Exhibit 2, the CPI-U as of March 1996 was 155.7.

14. A true and correct copy of the CPI-U for the NY-NJ-PA region from the Bureau of Labor Statistics is attached as **Exhibit 3**.[2] As reflected in Exhibit 3, the CPI-U for the NY-NJ-PA region as of January 2026, which is the closest available data to when Petitioner filed the Petition in February 2026, was 350.947.[3]

15. 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.

16. Petitioner also seeks recovery for certain time that BDS attorney Alexandra Lampert spent on this matter. **Exhibit 4** reflects her 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 described above in paragraph 15.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

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

[2] This data is also available at http://data.bls.gov/dataViewer/view/timeseries/CUURS12ASA0.

[3] 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).

Dated: March 9, 2026
New York, New York

Respectfully Submitted,

Mia N. Gonzalez