

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-03463-NYW

YUNIER SABORIT AGUILAR,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security,

PAMELA BONDI, in her official capacity as
Attorney General of the United States,

TODD LYONS, in his official capacity as
Acting Director and Senior Official Performing the Duties of the Director of U.S.
Immigration and Customs Enforcement,

ROBERT GUADIAN, in his official capacity as
Field Office Director of the Denver Field Office of U.S. Immigration and Customs
Enforcement, Enforcement and Removal Operations,

JUAN BALTAZAR, in his official capacity as
Warden of the Aurora Contract Detention Center

Respondents.

**PETITIONER'S MOTION FOR ATTORNEYS' FEES AND COSTS
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

Petitioner respectfully moves for an award of attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and D.C.COLO.LCivR 54.3 in the total amount of \$14,143.23. Petitioner Yunier Saborit Aguilar respectfully moves this Court for an award of attorneys' fees and costs pursuant to the Equal Access

to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), in the total amount of \$14,143.23. Petitioner prevailed in this habeas corpus proceeding when, on December 8, 2025, this Court granted his Petition for Writ of Habeas Corpus and ordered Respondents to release him within forty-eight hours. See Dk. 24. Petitioner is the prevailing party, his net worth did not exceed \$2,000,000 at the time of filing, the government's position was not substantially justified, and no special circumstances make an award unjust. This Motion is timely filed within thirty days of the date the judgment became final. See 28 U.S.C. § 2412(d)(1)(B).

BACKGROUND

Mr. Yunier Saborit Aguilar, a Cuban national, entered the United States in 2019, was removed to Cuba in March 2020, and suffered torture and abuse [REDACTED]

[REDACTED] Dk. 24 at 2. He re-entered the United States in February 2022, established a reasonable fear of persecution, and was referred to withholding-only proceedings. *Id.* He was released on an Order of Supervision ("OSUP") in May 2022, and complied fully with all conditions of his supervision for over three years. *Id.* at 2-3.

On June 16, 2025, without prior notice or explanation, Respondents revoked Mr. Saborit Aguilar's OSUP and detained him at the Aurora Contract Detention Facility. Dk. 24 at 3. On September 18, 2025, an immigration judge granted Mr. Saborit Aguilar withholding of removal to Cuba. *Id.* The Department of Homeland Security waived its right to appeal, rendering the withholding grant final. *Id.* With Cuba as the only country of removal and no alternative country identified, Respondents nonetheless continued to detain Mr. Saborit Aguilar indefinitely.

Mr. Saborit Aguilar filed his Petition for Writ of Habeas Corpus on October 30, 2025, challenging his detention on four grounds, including procedural due process (Count One), regulatory violations (Count Two), substantive due process under *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Count Three), and the Administrative Procedure Act (Count Four). Dk. 1. This Court issued an Order to Show Cause (Dk. 13). Respondents filed their Return (Dk. 20); Petitioner filed a Traverse and Declaration (Dk. 22).

On December 8, 2025, this Court granted the Petition, finding that the cumulative detention of approximately eight months exceeded the *Zadvydas* presumptive period and that Respondents failed to rebut Petitioner's showing of no significant likelihood of removal in the reasonably foreseeable future. Dk. 24 at 10-12. The Court found that the government's sole evidentiary showing—a conclusory declaration from ICE Officer Egidio Fantauzzi-Perez stating only that "ICE began the process of pursuing ... alternative country"—was insufficient as a matter of law. *Id.* at 11. The Court ordered Respondents to release Mr. Saborit Aguilar within forty-eight hours of the Order. *Id.* at 12-13. In a footnote, the Court observed: "To the extent Petitioner requests attorney's fees, [Dk. 1 at 19], this District's Local Rules require those requests to be made by separate motion, see D.C.COLO.LCivR 54.3." *Id.* at n.5.

LEGAL STANDARD

EAJA provides that "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 ... brought by or against the United States ... 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). To be eligible, a prevailing individual must have had a net worth not exceeding \$2,000,000 at the time the civil action was filed. 28 U.S.C. § 2412(d)(2)(B).

An application for fees “shall be filed within thirty days of final judgment in the action.” 28 U.S.C. § 2412(d)(1)(B). Judgment is “final” for EAJA purposes when the time for appeal has expired. *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). The government has sixty days to appeal in cases where the United States is a party. Fed. R. App. P. 4(a)(1)(B). This Court entered judgment on December 8, 2025; the government’s time to appeal expired on February 6, 2026. The thirty-day EAJA period ran until March 8, 2026, a Sunday; this Motion is therefore timely filed on Monday, March 9, 2026. See Fed. R. Civ. P. 6(a)(1)(C).

The government bears the burden of demonstrating that its position was “substantially justified”—that is, “justified to a degree that could satisfy a reasonable person,” having “a reasonable basis in both law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). This inquiry encompasses both the government’s prelitigation conduct and its litigation position. See *Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007).

ARGUMENT

I. THIS COURT HAS ALREADY INDICATED THAT PETITIONER MAY SEEK FEES BY SEPARATE MOTION

In its December 8, 2025 Order, this Court observed in Footnote 5 that, “[t]o the extent Petitioner requests attorney’s fees, [Dk. 1 at 19], this District’s Local Rules require those requests to be made by separate motion, see D.C.COLO.LCivR 54.3.” Dk. 24 at n.5. In so noting, the Court acknowledged both that Petitioner had requested fees in his Petition and that D.C.COLO.LCivR 54.3 governs the procedure for that request. Petitioner

now files this Motion consistent with the Court's guidance. Because EAJA's thirty-day filing deadline is jurisdictional, see *Scarborough v. Principi*, 541 U.S. 401, 413 (2004), Petitioner respectfully submits this Motion on the last day of the EAJA window.

II. PETITIONER IS ENTITLED TO FEES UNDER EAJA

A. Petitioner Is the Prevailing Party.

A party "prevails" for EAJA purposes when it achieves a "material alteration of the legal relationship of the parties" through a court-ordered change in that relationship. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001). A habeas petitioner who obtains a court order requiring his release unquestionably satisfies this standard. See, e.g., *Al-Harbi v. INS*, 284 F.3d 1219, 1222 (11th Cir. 2002).

Here, on December 8, 2025, this Court granted Mr. Saborit Aguilar's habeas petition and ordered Respondents to release him within forty-eight hours. Dk. 24 at 12-13. That order materially altered the legal relationship between the parties—Respondents were no longer permitted to detain Mr. Saborit Aguilar. Petitioner is the prevailing party.

B. Petitioner Meets the EAJA Eligibility Requirements.

To qualify for an EAJA award, an individual must have had a net worth not exceeding \$2,000,000 at the time the civil action was filed. 28 U.S.C. § 2412(d)(2)(B). At the time Mr. Saborit Aguilar filed his habeas petition on October 30, 2025, his net worth did not exceed \$2,000,000. As a Cuban national detained in immigration custody, his financial resources were extremely limited. The Declaration of Luis Cortes Romero, filed herewith as Exhibit A, attests to this fact.

C. The Government's Position Was Not Substantially Justified.

The government cannot demonstrate that its position was substantially justified. The record demonstrates that the government both engaged in unlawful prelitigation conduct and advanced an unsupportable litigation position.

1. The Government Had No Reasonable Basis to Revoke Petitioner's OSUP Without Notice.

Without prior notice or explanation, Respondents revoked Mr. Saborit Aguilar's OSUP and detained him on June 16, 2025. Dk. 24 at 3. This Court found that Petitioner's detention violated procedural due process. The abrupt revocation of a three-year-old OSUP—with no notice, no stated reason, and no opportunity to be heard—lacked any reasonable basis in the governing law and regulations. The government's litigation defense of this conduct was equally unsupportable.

2. The Government Had No Reasonable Basis to Continue Detention After Withholding of Removal Became Final.

The legal framework governing prolonged immigration detention is not novel. *Zadvydas v. Davis*, 533 U.S. 678 (2001), established that a detention period beyond six months is presumptively unreasonable. Once a detainee demonstrates the presumptive period has elapsed and there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to rebut that showing with particularized evidence. *Id.* at 701.

Mr. Saborit Aguilar was detained for approximately eight months—nearly double the *Zadvydas* threshold. Dk. 24 at 10. He had a final grant of withholding of removal to Cuba, the only identified country of removal, and DHS had waived its appeal of that grant. *Id.* The government presented no evidence of any viable alternative country for removal.

Rather, it proffered only the conclusory declaration of ICE Officer Fantauzzi-Perez, asserting that “ICE began the process of pursuing ... alternative country.” *Id.* at 11. The government identified no country by name, presented no evidence of diplomatic engagement, and offered no timeline.

This Court found that the government’s bare assertions were legally insufficient to rebut Petitioner’s *Zadvydas* showing. Dk. 24 at 11-12. That outcome was not surprising: *Zadvydas*’ framework is well-settled, and the government offered nothing beyond conclusory statements to justify the continued detention of a man with a final withholding grant. Relying on such an evidentiary showing was not a position “a reasonable person could think it correct.” *Pierce*, 487 U.S. at 565. The government cannot demonstrate that its litigation position was substantially justified.

D. No Special Circumstances Exist to Make an Award Unjust.

EAJA permits denial of fees only where “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). This exception is narrow. *See Comm’r, INS v. Jean*, 496 U.S. 154, 158 n.6 (1990). There are no such circumstances here. The government revoked Mr. Saborit Aguilar’s supervision without notice, detained him for eight months despite a final withholding grant, and then defended that detention with bare assertions. Granting EAJA fees in this case furthers the statute’s core purpose: ensuring that individuals are not “deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved.” H.R. Rep. No. 96-1418, at 5-6 (1980). No special circumstances warrant denial.

III. THE REQUESTED FEES AND COSTS ARE REASONABLE

A. The Hours Billed Are Reasonable.

The time expended in this litigation was necessary and reasonable. Counsel reviewed the immigration and administrative file, researched habeas corpus law under *Zadvydas* and related precedents, drafted and filed the Petition for Writ of Habeas Corpus (Dk. 1), reviewed the government's Return (Dk. 20), drafted and filed the Traverse and supporting declaration (Dk. 22), conferred with government's counsel, coordinated client communications, and prepared this fee application. Detailed time records are set forth in the Declaration of Luis Cortes Romero and Exhibit A thereto, filed concurrently with this Motion.

In total, Petitioner's counsel expended 51.8 hours of attorney time and 6.0 hours of paralegal time. These figures are consistent with the complexity and urgency of federal habeas litigation involving prolonged immigration detention. Petitioner's counsel has excluded time that was excessive, redundant, or otherwise not properly billable to an opposing party.

B. The Requested Hourly Rates Are Reasonable.

EAJA provides that attorney fees "shall be based upon prevailing market rates for the kind and quality of the services furnished," subject to a statutory cap 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).

For services performed in 2025, the maximum EAJA rate adjusted for cost of living under the Consumer Price Index for Urban Consumers (CPI-U) is \$258.46 per hour. See

28 U.S.C. § 2412(d)(2)(A); see also *Sorenson v. Mink*, 239 F.3d 1140, 1148 (9th Cir. 2001) (approving CPI-U methodology). Petitioner's counsel seeks this maximum rate for all attorney time. For paralegal services, Petitioner seeks the EAJA statutory cap of \$125.00 per hour, which courts have recognized as presumptively reasonable. See *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590 (2008) (confirming that EAJA fees include paralegal services at prevailing market rates).

C. The Total Fee Request Is \$14,143.23.

The total requested fees and costs are as follows:

Description	Amount
Attorney fees (51.8 hrs × \$258.46/hr)	\$13,388.23
Paralegal fees (6.0 hrs × \$125.00/hr)	\$750.00
Costs (habeas corpus filing fee)	\$5.00
TOTAL	\$14,143.23

A detailed breakdown of the hours expended by each timekeeper, along with contemporaneous time records, is set forth in the Declaration of Luis Cortes Romero and Exhibit A thereto, filed concurrently with this motion.

CONCLUSION

For the foregoing reasons, Petitioner Yunier Saborit Aguilar respectfully requests that this Court award attorneys' fees and costs in the total amount of \$14,143.23 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). A proposed order is not filed herewith per the Court's practice standards, but Petitioner is prepared to submit one upon request.

Respectfully submitted this 9th day of March, 2026.

Respectfully submitted,

s/ Luis Cortes Romero
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CERTIFICATION PURSUANT TO D.C.COLO.LCivR 7.1(a)

Pursuant to D.C.COLO.LCivR 7.1(a), undersigned counsel certifies that he conferred in good faith with counsel for Respondents regarding the relief requested in this Motion, but did not finalize those discussions before this motion was required to be filed. Because of the EAJA statutory deadline, this motion is being filed although the parties may still come to an agreement as to the fees. If such an agreement occurs, the parties will promptly notify the Court.

s/ Luis Cortes Romero _____
LUIS CORTES ROMERO
Attorney for Petitioner Yunier Saborit Aguilar

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, a true and correct copy of the foregoing PETITIONER'S MOTION FOR ATTORNEYS' FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT was filed electronically using the Court's CM/ECF system, which will send electronic notification of such filing to all counsel of record.

s/ Luis Cortes Romero _____
LUIS CORTES ROMERO
Attorney for Petitioner Yunier Saborit Aguilar