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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Renato Merlo Puerto, ***Petitioner,*** **v.** **Bill Leeper, et al.** ***Respondents.***	**No. 26-cv-405-NRM**

MOTION FOR EAJA FEES

Petitioner requests attorney's fees incurred in successfully challenging his constitutional detention by Respondents. *See* Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (entitling a prevailing party to fees and costs in a civil action against the United States). On January 27, 2026, this Court held Petitioner's continued detention by Respondents to be a due process violation, and ordered his release. ECF No. 8. Petitioner now seeks fees in the amount of $2,106.52.

Courts must grant attorney's fees and expenses under the EAJA where: (1) the petitioner requesting the fees has a net worth below $2,000,000; (2) the petitioner is a prevailing party; (3) the respondents cannot meet their burden to show the government's position was substantially justified; (4) no special circumstances make an award unjust; and, (5) the amount requested is reasonable. 28

U.S.C. § 2412(d). Here, Petitioner meets all the requirements for an award for fees.

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

A. *Petitioner's Net Worth Is Below $2,000,000*

Pursuant to 28 U.S.C. § 2412(d)(2)(B), an individual may seek fees and expenses pursuant to the EAJA if their net worth was below $2,000,000 at the time the action was filed. Petitioner is statutorily eligible for an award of attorney's fees and expenses because Petitioner's net worth at the time the instant habeas petition was filed did not exceed $2,000,000. *See* Ex. A.

B. *Petitioner Is a Prevailing Party in This Litigation*

Pursuant to 28 U.S.C. § 2412(b), the Court may award EAJA fees and expenses to the "prevailing party" in an action against an agency of the United States. Since the Court granted Petitioner's habeas petition, ordering his immediate release, Petitioner is a prevailing party. *See Buckhannon Board of Care & Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 603 (2001) ("A 'prevailing party' is one who has been awarded some relief by the court.").

C. *The Position of the United States Was Not Substantially Justified*

Pursuant to 28 U.S.C. § 2412(d)(1)(B), a party seeking an award of fees and expenses shall allege that "the position of the United States was not substantially justified." Furthermore, 28 U.S.C. § 2412(d)(1)(A) provides that "a court shall award a fee to a prevailing party . . . unless the court finds that the position of the United States was substantially justified."

Critically, once "prevailing party" status is established, the burden falls on the government to prove that its position was substantially justified. *Scarborough v. Principi*, 541 U.S. 401, 414 (2004). Significantly, the government must meet this threshold *twice*—it must independently establish that the agency conduct that gave rise to the litigation was substantially justified, *and* that its litigation positions also were substantially justified. 28 U.S.C. § 2412(d)(2)(D). *See also*

Comm'r, Immigration & Naturalization Serv. v. Jean, 496 U.S. 154, 158-60 (1990).

Respondents cannot meet their burden.

1. *The Agency's Prelitigation Position was Not Substantially Justified*

First, the agency's prelitigation position was not substantially justified. On January 22, 2026, ICE detained Mr. Merlo Puerto without an individualized assessment that he posed a flight risk or a danger to the community and, therefore, without due process. This Court has already held that by doing so, Respondents acted in violation of the Constitution. *See* ECF 8 ("[T]he Court finds that Petitioner has established that his detention violates his Fifth Amendment right to procedural due process, because Petitioner has lived in the United States for 22 years and is therefore entitled to an individualized, pre-detention bond hearing under the Immigration and Nationality Act.").

A violation of the Constitution cannot be substantially justified. *See Meinhold v. U.S. Dep't of Defense*, 123 F.3d 1275, 1278 (9th Cir. 1997) ("If the government's position violates the Constitution . . . a finding that the government was substantially justified would be an abuse of discretion.").

2. *The Agency's Litigation Position was Not Substantially Justified*

Respondents presented to this Court a legal theory that, when presented, had been rejected by every judge in the Eastern District of New York, including this Court previously. Because Respondents' legal position was not "substantially justified," EAJA fees are appropriate. *See Cornejo Guanuquiza v. Francis*, 25-CV-10267 (RA), 2025 WL 3678121, at *2 (S.D.N.Y. Dec 18, 2025) (awarding EAJA fees in factually similar habeas proceeding; "[t]he Court finds 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.'"); *Yao v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) ("Here, Yao is the prevailing party, and ICE's

position, rejected this year in some 97% of the cases in which it was litigated, was not substantially justified. Yao is thus entitled to reasonable fees and costs."); *Rivera Esperanza v. Francis*, No. 25-CV-8727 (RA), 2025 WL 3513983, at *9 (S.D.N.Y. Dec. 9, 2025) (awarding EAJA fees in factually similar habeas action); *Barco Mercado v. Francis*, --- F. Supp. 3d ---, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) ("[Respondents'] position has been rejected with near unanimity in the overwhelming majority of cases across the country. Mr. Barco is entitled to reasonable fees and costs.").[1]

D. *There Are Not Special Circumstances in This Case That Would Make a Fee Award Unjust*

Under 28 U.S.C. § 2412(d)(1)(A), "a court shall award a fee to a prevailing party . . . Unless . . . special circumstances make an award unjust." Some courts look to traditional rules of equity to determine whether or not the petitioner has "unclean hands" to determine whether or not the award would be unjust. *See, e.g.*, *Oguachuba v. INS*, 706 F.2d 93, 98 (2d Cir. 1983). In the case at hand, neither Petitioner, nor Petitioner's counsel, have engaged in any type of misconduct that could result in Petitioner being classified as having "unclean" hands.

E. *Petitioner's Request for Fees in this Case is Reasonable*

Petitioner seeks a total of $2,106.52.for 7.5 hours of work performed by his attorney. Attached are specific and contemporaneous statements of hours. *See* Ex. B. The statutory hourly rate of compensation for attorneys is $125 for cases commenced on or after March 29, 1996, when the statutory hourly rate was last raised. The rate can be "adjusted" for inflation based on cost of living adjustments ("COLA"). Courts have held that "cost of living" has the ordinary meaning and is

[1] *See also Mairena-Munguia v. Arnott*, --- F. Supp. 3d---, 2025 WL 3229132, at *5 (W.D. Miss. 2025) ("As explained throughout, the Court finds the position of the United States is not substantially justified. Historical interpretation of enforcement, legislative intent, statutory construction, and the plain text of the statute all support that the United States is not substantially justified in its novel interpretation of § 1225. Thus, Petitioner may pursue an award of reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act.").

properly measured by the Consumer Price Index ("CPI-U"). *Harris v. Sullivan*, 968 F.2d 263, 265 (2d Cir. 1992). The CPI-U as of March 1996 was 155.7. The CPI-U for NY-NJ-PA for December 2025, immediately before Petitioner filed the habeas petition, was 350.003. *See* Ex. C. Thus, the COLA can be obtained by dividing 350.003 by 155.7. This results in a COLA of 2.247. When the statutory cap rate of $125 per hour is multiplied by 2.247, the statutory rate adjusted for the cost of living in 2025 is $280.87 per hour.

As the attached invoices show, Petitioner seeks attorney's fees for 7.5 of hours of work at a rate of $280.87 an hour. Ex. B. Multiplying 7.5 of hours of work by $280.87 per hour results in $2,106.52. These rates are reasonable and represent a downward departure from what are the market rates of Petitioner's attorney's time.

Dated: February 15, 2026

Respectfully submitted,

/s/ Michael Goldman

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