No. _______

IN THE

Supreme Court of the United States

MICHAEL WEBB,

Petitioner,

v.

EDMUND TROMBLEY, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

BRIAN D. GINSBERG

Counsel of record
LISA A. LECOURS
ELLIOT A. HALLAK
HARRIS BEACH
CULLINA MURTHA PLLC
445 Hamilton Avenue
Suite 1206
White Plains, NY 10601
(914) 683-1200
bginsberg@
harrisbeachmurtha.com

QUESTION PRESENTED

When an incarcerated litigant is awarded attorney's fees in a judgment vindicating his civil rights, 42 U.S.C. § 1997e(d)(2) provides that "a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. *If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant*." (Emphasis added).

The question presented is: does the language of the second sentence of 42 U.S.C. § 1997e(d)(2) prohibit awards of attorney's fees that *are* greater than 150% of the judgment?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner Michael Webb was the plaintiff in the district court and appellant in the Second Circuit Court of Appeals.

Respondents Edmund Trombley, Donald Bovair, and Eric Rich were defendants in the district court and appellees in the Second Circuit Court of Appeals. An unnamed "John Doe" corrections officer at the Great Meadow Correctional Facility was also listed as a defendant and appellee.

Christopher Miller, one "NeSmith, P.A.," and one "D. McClenning" were defendants in the district court but not appellees in the Second Circuit.

RELATED PROCEEDINGS

United States Court of Appeals (2d Cir.):

Webb v. Trombley, No. 24-2582-PR (Oct. 24, 2025)

United States District Court (N.D.N.Y.):

Webb v. Miller, No. 9:18-CV-610 (Aug. 29, 2024)

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES– continued

Page(s)

TABLE OF AUTHORITIES– continued

Page(s)

TABLE OF AUTHORITIES– continued

Page(s)

TABLE OF AUTHORITIES– continued

Page(s)

Statutes and Rules

TABLE OF AUTHORITIES– continued

Page(s)

Other Authorities

Supreme Court of the United States

MICHAEL WEBB,
PETITIONER

v.

EDMUND TROMBLEY, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY, ET AL.,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Webb respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Second Circuit in this case.

ORDERS BELOW

The summary order of the Second Circuit (Pet.App.1a-5a) is unpublished but available at 2025 WL 2992510. The relevant order of the district judge (Pet.App.6a-13a) is unpublished but available at 2024 WL 4407006. The order denying rehearing en banc (Pet.App.14a-15a) is unpublished.

JURISDICTION

The judgment of the Second Circuit was entered on October 24, 2025. Pet.App.1a. A motion for rehearing en banc was denied on December 30, 2025.

Pet.App.14a-15a. On March 25, 2026, Justice Sotomayor extended the time in which to file a petition for a writ of certiorari to April 29, 2026. On April 21, 2026, Justice Sotomayor extended further the time in which to file a petition for a writ of certiorari to May 29, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1997e(d)(2) provides, in relevant part: "Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant."

INTRODUCTION

For three decades since the enactment of the Prison Litigation and Reform Act ("PLRA"), federal courts have flouted the "cardinal canon" of statutory interpretation to impose an atextual "fee cap" on incarcerated litigants seeking attorney's fees for successful civil rights claims. This interpretation, unmoored from the plain statutory language, has divided the lower courts on how to apply such a "cap." It has also mushroomed into equally atextual second- and third-order contortions as courts attempt to atone for this original sin.

42 U.S.C. Section 1997e(d)(2) provides that, in a successful civil rights action brought by an incarcerated plaintiff, "[i]f the award of attorney's fees is not greater than 150 percent of the judgment, the excess

shall be paid by the defendant." The plain meaning of this sentence should begin and end the inquiry: it covers the subset of attorney's fees that are not greater than 150 percent of the monetary judgment, providing a statutory presumption that such awards (assuming they otherwise comply with Section 1997e(d)) are reasonable and proportionate and directing that they "shall be paid by the defendant."

Despite this straightforward interpretation, the court below and others have not remained content to "presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992). Instead, courts impermissibly and incorrectly infer that this language governs awards of attorney's fees which *are* greater than 150 percent of the judgment—namely, that it prohibits such awards entirely. Perhaps discomfited by this judicial invention, the courts of appeals have resorted to assailing the statutory language as "awkwardly worded," "not a model of clarity," "not a shining exemplar of good draftsmanship," "inartful," "awkwardly phrased," and "unclear." *See, respectively*, *Keup v. Hopkins*, 596 F.3d 899, 905 (8th Cir. 2010); *Shepherd v. Goord*, 662 F.3d 603, 607 (2d Cir. 2011); *Jimenez v. Franklin*, 680 F.3d 1096, 1100 (9th Cir. 2012); *Robbins v. Chronister*, 435 F.3d 1238, 1240 (10th Cir. 2006); *Boivin v. Black*, 225 F.3d 36, 40 (1st Cir. 2000); and *Walker v. Bain*, 257 F.3d 660, 667 (6th Cir. 2001). But the language of Section 1997e(d)(2) is only "unclear" or "inartful" or "awkwardly worded" if one assumes Congress meant to say more than it said. Indeed, by legislative standards, the statute is downright pellucid.

The case below provides a clean vehicle to resolve the uncertainty engendered by this judicial overreading. It also offers a singular chance to better honor the purpose of the PLRA. By removing this judicially-invented "fee cap," the Court will incentivize more attorneys to take on prison litigation and assist litigants in bringing meritorious claims while dissuading them from clogging the courts' dockets with frivolous ones.

The Court should grant certiorari and reverse.

STATEMENT OF THE CASE

A. Statutory Background

In 1996, Congress enacted the Prison Litigation Reform Act ("PLRA") as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Pub. L. No: 104-134, 110 Stat. 1321 (1996). The PLRA "was intended to deal with what was perceived as a disruptive tide of frivolous prisoner litigation." *Woodford v. Ngo*, 548 U.S. 81, 97 (2006). It did so primarily by mandating that prisoners exhaust their administrative remedies prior to bringing suit, *see* 42 U.S.C. § 1997e(a), directing district courts to screen prison litigation for defects, *see* 28 U.S.C. § 1915(a), and requiring a "prior showing of physical injury or the commission of a sexual act" for claimed mental or emotional injuries. 42 U.S.C. § 1997e(e).

The PLRA also contains provisions governing the awarding of attorney's fees. 42 U.S.C. § 1997e(d). First, the PLRA restricts awards of attorney's fees under 42 U.S.C. § 1988 to instances in which "the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section

1988 of this title." 42 U.S.C. § 1997e(d)(1)(A). In such instances, the PLRA provides further guidance: "Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant." 42 U.S.C. § 1997e(d)(2).

B. Proceedings Below

1. Michael Webb's case arose in June 2015, when, during an intake interview at the Great Meadow Correctional Facility, Mr. Webb was "beat[en] with batons, dragged [] across the floor, and beat[en] [] again." Pet.App.7a. Mr. Webb, acting *pro se*, filed suit against Great Meadow, Sergeant Donald Bovair and Corrections Officers Eric Rich and Edward Trombley. *Id.*

2. In October 2023, having successfully wended his way through five years of administrative and procedural hurdles to carry his Section 1983 excessive force claim past summary judgment, Mr. Webb was appointed *pro bono* trial counsel. Pet.App.2a-3a. The jury found for Mr. Webb. Pet.App.7a. It awarded him $15,000 in damages—$12,500 against Mr. Trombley for use of excessive force and $2,500 against Mr. Bovair for failing to intervene. *Id.*

3. Mr. Webb then moved for attorney's fees under 42 U.S.C. Section 1988. Pet.App.7a-8a. He sought $206,977.50 in fees. Pet.App.9a. Defendants opposed Mr. Webb's motion, arguing that the PLRA "cap[s]" fee awards at 150% of the total recovery. *Id.* The district court acknowledged that the Second Circuit had

read such a cap into the PLRA. Pet.App.11a (citing *Torres v. Walker*, 356 F.3d 238, 242 (2d Cir. 2004), and *Shepherd v. Goord*, 662 F.3d 603, 607 (2d Cir. 2011)). Though the district court "appreciate[d] the Plaintiff's argument here that such an understanding of the PLRA misreads the statute and undermines the aim of Section 1988," it nonetheless found itself "bound by the Second Circuit's interpretation of that statute" and agreed that "that fees must be capped at the 150% rate." Pet.App.11a-12a.

3. A panel of the Second Circuit Court of Appeals affirmed the district court's limitation of the fee award. It, too, explained that it was "bound to follow *Shepherd* until it is 'overruled either by an en banc panel of our Court or by the Supreme Court.'" Pet.App.4a (quotation omitted). It declined to overrule the decision under the Second Circuit's "mini en banc" procedure. Pet.App.5a.

4. On December 30, 2025, the full Second Circuit Court of Appeals denied Mr. Webb's petition for rehearing and rehearing en banc. Pet.App.15a.

5. On March 25, 2026, Justice Sotomayor extended the time in which to file a petition for a writ of certiorari to April 29, 2026. On April 21, 2026, Justice Sotomayor extended further the time in which to file a petition for a writ of certiorari to May 29, 2026.

REASONS FOR GRANTING THE PETITION

The second sentence of Section 1997e(d)(2) reads as follows: "If the award of attorney's fees is not greater than 150 percent of the judgment, the excess [whatever is not satisfied by a portion of the judgment not to exceed 25%] shall be paid by the defendant." 42

U.S.C. § 1997e(d)(2). Petitioner's interpretation takes this language at face value: it governs the subset of attorney's fee awards that are "not greater than 150 percent of the judgment" and does not affect any awards that *are* greater than 150 percent. The statute means what it says and no more. The Court should rectify the entrenched misinterpretation of multiple courts of appeals, resolve the circuit splits it has caused, honor the Congressional purpose behind the statute, and remove a significant, atextual disincentive for attorneys to represent incarcerated litigants.

I. The Decision Below Incorrectly Reaffirms An Atextual Interpretation of the PLRA

A. The Statutory Text Does Not Support Reading in a "Fee Cap"

"[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992). This Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* at 253-54; *see also United States Postal Serv. v. Konan*, 607 U.S. __, 146 S. Ct. 736, 746 (2026) (invoking this "cardinal canon" to supersede the canon against surplusage).

Unfortunately, when confronted with Section 1997e(d)(2), the courts of appeals have turned apostate from this cardinal canon. The lower courts have opted to look beyond the statute's plain meaning to read a "fee cap" into the statute where none exists in the text. On its own terms, the second sentence of Section 1997e(d)(2) applies only "[i]f the award of attorney's fees is not greater than 150 percent of the judgment . . . ." 42 U.S.C. § 1997e(d)(2). The statute says nothing about awards of attorney's fees that *are* greater than 150 percent of the judgment (though the conditional "If" language adverts that such awards may exist). The "cap" prohibiting such awards is one of judicial invention, based on assumptions of Congress's intent. Several courts of appeals have admitted as much expressly. As the Sixth Circuit conceded in rejecting a textualist argument against the fee cap, "[w]hile [plaintiff's] interpretation of § 1997e(d)(2) is consistent with the literal language of the statute, it is inconsistent with the intent of Congress . . . and must therefore be rejected." *Walker v. Bain*, 257 F.3d 660, 667 (6th Cir. 2001); *see also Harris v. Ricci*, 595 F. App'x 128, 134 (3d Cir. 2014) (endorsing and adopting *Walker's* Congressional intent argument); *Foulk v. Charrier*, 262 F.3d 687, 704 (8th Cir. 2001) (same).[1]

Other courts have asserted that this fee cap arises as a "natural reading" of the statute—though they caveat this confidence with throat-clearing admissions

[1] The court in *Walker* noted secondarily that rejecting the supposed "fee cap" would "render[] the second sentence of the provision meaningless" and superfluous. *Walker*, 257 F.3d at 667. As discussed below, that argument is wrong on two fronts. But even were the second sentence of Section 1997e(d)(2) merely a "belt-and-suspenders" provision for a subset of attorney's fee awards (those not greater than 150% of the judgment), that supposed superfluity should not override the plain meaning of the text. "The canon against surplusage is subordinate to the 'cardinal canon' that a legislature says in a statute what it means and means in a statute what it says there." *United States Postal Serv. v. Konan*, 146 S. Ct. at 746 (2026) (internal quotation omitted).

that, "[t]o be sure, Congress might have expressed itself more clearly." *Shepherd*, 662 F.3d at 607; *see also Robbins v. Chronister*, 435 F.3d 1238, 1240 (10th Cir. 2006) ("The statutory language may be inartful, but appellate courts have consistently interpreted the statute to limit a defendant's liability for attorney fees to 150% of the money judgment.").[2] Because the statute says that an attorney's fee award that *is not* greater than 150% of the judgment "shall be paid by the defendant," these courts infer that an award that *is* greater than 150% of the judgment *shall not* be paid by the defendant (effectively prohibiting such awards at all). *See Thompson v. Smith*, 805 F. App'x 893, 912 (11th Cir. 2020) (Martin, J., dissenting) (criticizing this inferential leap).

This train of thought is a classic logical fallacy—the "fallacy of the inverse." Justice Scalia helpfully

[2] In fact, nearly every circuit court to have confronted this statute has offered, by the standards of appellate case law, a blistering assessment of the text. The second sentence of Section 1997e(d)(2) has been described by the First Circuit as "awkwardly phrased," *Boivin v. Black*, 225 F.3d 36, 40 (1st Cir. 2000); by the Second and Fourth Circuits as "not a model of clarity," *Shepherd*, 662 F.3d at 607; *Wilkins v. Gaddy*, 734 F.3d 344, 349 (4th Cir. 2013); the Third Circuit bemoaned that "Congress might have expressed itself more clearly," *Harris*, 595 F. App'x at 135; the Sixth Circuit nodded to the statute's "unclear language," *Walker*, 257 F.3d at 667; The Eighth deemed it "awkwardly worded," *Keup v. Hopkins*, 596 F.3d 899, 905 (8th Cir. 2010); the Ninth savaged it as "not a shining exemplar of good draftsmanship," *Jimenez v. Franklin*, 680 F.3d 1096, 1100 (9th Cir. 2012); the Tenth called it "inartful," *Robbins*, 435 F.3d at 1240; the Eleventh, "awkwardly phrased," *Thompson v. Smith*, 805 F. App'x 893, 908 (11th Cir. 2020). This welter of criticism and confusion alone cries out for this Court to weigh in with an authoritative interpretation.

offered a primer on this deficient reasoning in the United States Reports: it involves "the incorrect assumption that if P implies Q, then not-P implies not-Q." *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 589 (2014) (Scalia, J., concurring) ("If someone avers that a catfish is a cat, and I respond by pointing out that a catfish lives in water and does not have four legs, I have not endorsed the proposition that every land-dwelling quadruped is a cat."). This fallacious reasoning is even less appropriate because it provides "not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function." *Nichols v. United States*, 578 U.S. 104, 110 (2016) (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926)); *see also Murphy v. Smith*, 583 U.S. 220, 224 (2018) (in analyzing 1997e(d)(2), "respect for Congress's prerogatives as policymaker means carefully attending to the words it chose rather than replacing them with others of our own").

Still other courts have fretted that failing to read in a "fee cap" would "render the second sentence of [Section 1997e(d)(2)] meaningless." *Thompson v. Smith*, 805 F. App'x 893, 907 (11th Cir. 2020). To these courts, the "literal language" of the text must be rejected because it makes the second sentence redundant: "Under [plaintiff's] theory: if the fee award is less than 150 percent of the damages, § 1997e(d)(2) applies and defendants are liable for the full amount of the award; if the award of fees is greater than 150 percent of the damages, defendants are liable for the full amount of the award under pre-PLRA law." *Walker v. Bain*, 257 F.3d 660, 667 (6th Cir. 2001). Of course, "redundancy is hardly unusual in statutes addressing costs." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013) (collecting statutes). "The canon against surplusage is not an absolute rule[.]" *Id.* at 385. And the "canon against surplusage is subordinate to the 'cardinal canon' that a legislature says in a statute what it means and means in a statute what it says there." *United States Postal Serv. v. Konan*, 146 S. Ct. at 746 (2026) (internal quotation omitted). Happily, this Court need not pick among "dueling canons" because the second sentence of 1997e(d)(2), read on its own terms, is not superfluous.

First, the mandate that an award not greater than 150% of the judgment "shall be paid by the defendant" can be properly read as a statutory presumption that such an award, assuming it conforms to the actual limitations in 1997e(d)(1) and 1997e(d)(3), is reasonable and proper. The language of Section 1988 authorizing courts to award "a reasonable attorney's fee" to prevailing parties, engenders frequent litigation over the reasonableness of the awarded fee. *See, e.g.*, *Frew v. Young*, 2026 WL 511144 (5th Cir. Feb. 24, 2026) ((reviewing award of attorney's fees under Section 1988 for reasonableness); *Ward v. Borders*, 2025 WL 4679188 (6th Cir. Oct. 14, 2025) (same); *M.B. by Eggemeyer v. Tidball*, 18 F.4th 565 (8th Cir. 2021) (same). The second sentence of 1997e(d)(2) streamlines this process for more modest fee awards and simply directs that they "shall be paid by the defendant." Larger fee awards, greater than 150%, are not subject to this statutory presumption.

Second, the second sentence of 1997e(d)(2) overrides the bifurcation of fees when an offer of judgment under Federal Rule 68 is rejected. "Under normal circumstances, a plaintiff who prevails on a 42 U.S.C. § 1983 claim is entitled to recover costs, including reasonable attorney's fees." *Stanczyk v. City of New York*, 752 F.3d 273, 280 (2d Cir. 2014). "Rule 68, however, precludes a plaintiff from recovering post-offer costs if (a) the defendant timely serves plaintiff with an offer of judgment, (b) plaintiff rejects the offer, and (c) plaintiff prevails but obtains a judgment less than the rejected offer." *Id.* The second sentence of Section 1997e(d)(2) includes a mandatory direction that a defendant "shall" pay an attorney fee award not greater than 150 percent of the judgment, effectively overriding the general prohibition on post-rejected-Rule-68-offer costs. As a simple example, suppose a prison litigant files a 1983 complaint and, the same day, before any significant fees or costs have been incurred, the defendant makes a rule 68 offer of judgment for $100,000. The plaintiff rejects the offer, proceeds to trial, and receives a less favorable judgment of $20,000. Section 1997e(d)(2) permits the district court to properly award attorney's fees up to 150% of the monetary judgment (i.e., $30,000) which "shall be paid" by the defendant notwithstanding Rule 68's prohibition on recovering post-offer costs and fees.

These two examples (and there may be others) demonstrate that a literal reading of Section 1997e(d)(2) still gives independent effect to the second sentence without the need to invent an atextual "fee cap." Congress did not supply a prohibition on fee awards greater than 150% of a judgment in prison litigation in Section 1997e(d)(2). The courts should not step in and do so.

B. The Statutory Context Does Not Support Reading In a "Fee Cap"

The lower courts' insistence on treating Section 1997e(d)(2) as a flat prohibition on fee awards greater than 150% of the monetary judgment is further undermined by the language that *does* appear in the text. While 1997e(d)(2) involves the conditional (and therefore discretionary) "If," it is bracketed on either side by provisions that use the mandatory "shall." Section 1997e(d)(1) provides that attorney's fees "*shall not* be awarded" unless two sub-conditions are met. 42 U.S.C. § 1997e(d)(1) (emphasis added). And Section 1997e(d)(3) provides that "[n]o award of attorney's fees in an action described in paragraph (1) *shall* be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18 for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(3). Indeed, even the first sentence of Section 1997e(d)(2) contains mandatory "shall" language, directing that "a portion of the judgment (not to exceed 25 percent) shall be applied" to satisfy the award of fees. *Murphy*, 583 U.S. at 223 (acknowledging that "the word 'shall' usually creates a mandate, not a liberty"). Counsel has not located any case affirming the "fee cap" that satisfactorily explains why Congress would use this mandatory language three times in rapid succession only to jettison it for conditional language to achieve the same mandate effect. Reading the different, conditional language of (d)(2) as similarly mandatory violates another of this Court's long-standing canons of interpretation: "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (assuming different language in neighboring subsections of a statute was intentional); *see also Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) (dubbing the *Russello* canon "a general principle of statutory construction"); *M & K Emp. Sols., LLC v. Tr. of IAM Nat'l Pension Fund*, 608 U.S. ___, No. 23-1209, 2026 WL 1423319, at *6 (U.S. May 21, 2026) (invoking *Russello* canon).

Treating the conditional language of 1997e(d)(2) as mandatory also commits the same sin the courts have fretted about: it renders part of the statute surplusage. As Judge Martin of the Eleventh Circuit explained, reading in this "fee cap" "renders the clause's use of the word 'if' meaningless. Under the majority's interpretation, there is no 'event,' or second alternative, that may occur because the fee cap applies in all circumstances." *Thompson*, 805 F. App'x at 914 (Martin, J., dissenting).

C. The Statutory Purpose Does Not Support Reading in a "Fee Cap"

"The best evidence of [Congressional] purpose is the statutory text adopted by both Houses of Congress and submitted to the President." *W. Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991) (noting also that "the purpose of a statute includes not only what it sets out to change, but also what it resolves to leave alone"). The plain reading of the statute's text and context both independently confirm that Congress did not intend to impose the fee cap erroneously read in by the lower courts. But should the Court wish to dive into the sparse legislative history, that, too, cuts against the lower courts' reading.

As this Court has noted, the PLRA was passed to combat "what was perceived as a disruptive tide of frivolous prisoner litigation." *Woodford v. Ngo*, 548 U.S. 81, 97 (2006). Courts which have delved into the legislative history note a Congressional fixation on curbing edge case prison litigation: particularly a civil rights case over chunky peanut butter. *See Aref v. Lynch*, 833 F.3d 242, 265 (D.C. Cir. 2016) ("Examples cited by PLRA proponents ranged from due process cases alleging injuries like a defective haircut to, most famously, an inmate filing a cruel and unusual punishment claim after he was given chunky rather than creamy peanut butter."); *Cox v. Mayer*, 332 F.3d 422, 426 (6th Cir. 2003) (citing to floor statements about prison litigation over "insufficient storage locker space, a defective haircut by a prison barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee, and ... being served chunky peanut butter instead of the creamy variety."); *Harris v. Garner*, 216 F.3d 970, 1005 (11th Cir. 2000) (Tjoflat, J., concurring in part) (noting Congressional invocation of the "chunky peanut butter" case as the animating principle behind the PLRA).

But a fee cap for *successful* civil rights litigation (which is definitionally not frivolous) does not advance this purpose. If anything, it curtails it. As a plurality of this Court has warned, "[a] rule that limits attorney's fees in civil rights cases to a proportion of the damages awarded would seriously undermine Congress' purpose in enacting § 1988. Congress enacted § 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986) (plurality opinion). This atextual fee cap, in effect "punishes those prisoners who litigate meritorious lawsuits, not those who contemplate filing frivolous lawsuits." Karen M. Klotz, *The Price of Civil Rights: The Prison Litigation Reform Act's Attorney's Fee-Cap Provision As A Violation of Equal Protection of the Laws*, 73 TEMP. L. REV. 759, 786–87 (2000). It also discourages attorneys from taking on such cases at all, leaving the "vast majority" of incarcerated litigants to proceed *pro se*. Eleanor Umphres, *150% Wrong: The Prison Litigation Reform Act and Attorney's Fees*, 56 AM. CRIM. L. REV. 261, 261 (2019). These *pro se* litigants may not have the same ability and disinterest as trained counsel to distinguish meritorious claims from non-starters, meaning they are more likely to glut the judicial system further with legally untenable claims.

II. The Courts' Atextual Interpretation Has Spawned Multiple Splits Among the Federal Courts

The legally incorrect, atextual reading of 1997e(d)(2) is worth correcting for its own sake. But in attempting to put it into practice, the lower courts have splintered on multiple different applications of this supposed "fee cap." Still other applications may yet split the lower courts as they grapple with this judicial creation. Correcting this erroneous interpretation of 1997e(d)(2) would resolve multiple existing downstream conflicts and head off additional confusion and disarray.

A. The Sixth and Ninth Circuits Are Split on Whether the Supposed "Fee Cap" Applies to Fees Incurred on Appeal

One obvious corollary issue to reading a "fee cap" into Section 1997e(d)(2) is whether it applies "to fees incurred on appeal by a prisoner who successfully defends the verdict that he obtained in the district court." *Woods v. Carey*, 722 F.3d 1177, 1179 (9th Cir. 2013). In 2004, the Sixth Circuit concluded that the cap did apply. It reasoned that uncompensated (or severely diminished compensation for) appellate work puts counsel for an incarcerated litigant in "no different a situation than is faced by every plaintiff's lawyer working on a fixed contingency fee." *Riley v. Kurtz*, 361 F.3d 906, 917 (6th Cir. 2004) (holding that "the PLRA applies to all the attorney's fees generated by a prevailing prisoner—trial, post-trial, and on appeal").

The Ninth Circuit reached the opposite conclusion in 2013. It reasoned that "the statute uses the present tense—'[w]henever a monetary judgment *is* awarded'—meaning the point in the course of an action at which the monetary judgment is awarded, rather than in any case in which a monetary judgment has been awarded. Thus, § (d)(2), applies to the limited circumstance of attorney's fees awarded in conjunction with securing 'a monetary judgment,' not to fees for services performed in the court of appeals." *Woods*, 722 F.3d at 1182 (internal citation omitted) (emphasis original). As the dissent noted, this created a square split with the Sixth Circuit. *See id.* at 1184 (Murguia, J., dissenting) ("I respectfully dissent from the majority's circuit-splitting opinion.").

The Fifth Circuit, while not addressing this issue precisely, has leaned toward the Sixth Circuit's interpretation. In *Volk v. Gonzalez*, that court held that "fees-on-fees"—that is, fees incurred for time "spent proving the right to attorney's fees" were both recoverable under 1997e(d) and limited by the supposed "fee cap." 262 F.3d 528, 536 (5th Cir. 2001) (internal quotation omitted). Appellate fees, spent justifying the underlying verdict and basis for those fees, may well fall into the *Volk* ambit.

Of course, this split arose because each circuit started from the same, flawed premise–that 1997e(d)(2) contains a "fee cap" at all.

B. Lower Courts Are Split as to Whether the Supposed "Fee Cap" Applies to Litigation About Pre-Incarceration Conduct.

Federal courts are at loggerheads as well regarding whether this fee cap applies when an incarcerated plaintiff brings a civil rights claim arising from pre-incarceration events. The Tenth Circuit has held that it does: in *Robbins v. Chronister*, the court rejected an "absurdity canon" argument to "apply[] the restriction on attorney-fee awards to prisoner civil-rights claims arising before incarceration as well as to such claims arising during incarceration." 435 F.3d 1238, 1244 (10th Cir. 2006). And at least two district courts elsewhere have rejected *Robbins*, finding that the PLRA (and its attendant "fee cap") does not apply in such cases. *See Donastorg v. City of Ontario*, 2021 WL 6103545, at *6 (C.D. Cal. Sept. 23, 2021) ("Robbins II, however, is non-binding and inapposite. It purports to apply a 'plain language' analysis of Section 1997e(d), then, viewing the provision in isolation, holds that the

PLRA caps attorneys' fees for preincarceration civil rights claims . . . . Robbins II ignores Section 1997e(a) and relevant case law. . . . . [T]he Court declines to follow Robbins II and its interpretation of Section 1997e(d) of the PLRA."); *Sutton v. City of Yonkers*, 2017 WL 1180918, at *2-3 & n.6 (S.D.N.Y. Mar. 29, 2017) ("this Court declines to limit Plaintiffs' attorneys' fee award pursuant to the PLRA" fee cap, despite defendant's invocation of *Robbins*).

This disagreement, too, arises from a faulty premise which this Court can and should remediate.

C. The Supposed "Fee Cap" Has Engendered Additional Confusion In the Circuit Courts

In order to make sense of the "fee cap" framework read into Section 1997e(d)(2), courts have resorted to carving atextual exceptions out of the atextual limitations courts themselves imposed. Notwithstanding the language providing that d(2) applies "[w]henever a monetary judgment is awarded," multiple circuits have held or adverted that the supposed 150% cap does *not* apply when a litigant secures injunctive relief in addition to a monetary award. *See, e.g.*, *Boivin v. Black*, 225 F.3d 36, 41 n.4 (1st Cir. 2000) ("In a case in which the court orders non-monetary redress (say, an injunction) along with a monetary judgment, the fee cap contained in section 1997e(d)(2) would not restrict the total amount of attorneys' fees that the court could award."); *Walker v. Bain*, 257 F.3d 660, 667 n.2 (6th Cir. 2001) ("We caution that if non-monetary relief is obtained, either with or without money damages, § 1997e(d)(2) would not apply."); *Foulk v. Charrier*, 262 F.3d 687, 703 n.17 (8th Cir. 2001) ("[I]f non-monetary relief is ordered (whether with or without a monetary award), the attorney's fees cap in 42 U.S.C. § 1997e(d)(2) does not apply."); *Dannenberg v. Valadez*, 338 F.3d 1070, 1075 (9th Cir. 2003) ("[F]ees incurred to obtain injunctive relief, whether or not monetary relief was also obtained as a result of those fees, are not limited by this provision.").

Were this confusion not enough, courts have also tacked atextual limits onto the atextual exception to the atextual cap, including where injunctive relief was awarded but vacated on appeal, *see Volk*, 262 F.3d at 532, where the request for injunctive relief was mooted during litigation, *see Pearson v. Welborn*, 471 F.3d 732, 743 (7th Cir. 2006), where the non-monetary relief is not sufficient to avoid the cap, *see Keup v. Hopkins*, 596 F.3d 899, 906 (8th Cir. 2010), and where the district court appeared to be awarding injunctive relief "solely to preclude application of the PLRA attorney's fee cap." *Harris v. Ricci*, 595 F. App'x 128, 135 (3d Cir. 2014) (vacating award of injunctive relief and thereby remanding for capped fee award).

Rather than let the courts of appeals continue to flail at the branches of this invasive species of atextual interpretation, this Court should grant cert to pull it out at the root.

III. This Case Presents an Excellent Vehicle to Resolve Multiple Splits Created By The Lower Courts' Atextual Reading

This petition arrives at this court unencumbered by any ancillary issues, cross-appeals, or other prudential concerns. The lone, pure legal issue litigated at the Second Circuit below is the question presented here, challenging "the district court's reduction of [Mr.

Webb's] recoverable attorney's fees" based on the supposed "fee cap" articulated in *Shepherd v. Goord*. Pet.App.2a; *id.* at 4a ("Our panel is bound to follow *Shepherd* until it is 'overruled either by an en banc panel of our Court or by the Supreme Court'"). The district court, too, passed upon the issue in deciding a standalone motion for attorney's fees. Pet.App.7a-13a. It relied entirely on the Second Circuit's precedent in limiting Mr. Webb's award. Pet.App.11a-12a. ("The Court agrees that fees must be capped at the 150% rate[.]") Judgment in the underlying action has otherwise been entered below. Pet.App.2a Neither party challenges any other aspect of this case. This petition presents a discrete question of statutory interpretation; the last open issue in this litigation, and one raised squarely and in similar fashion at every stage.

IV. Resolution of the Question Presented Is Important

Beyond the judicial conflict and impermissible interpretive methods this "fee cap" represents, it also does an enormous disservice to the attorneys taking on prison litigation by reducing their compensation to a pittance. The effect is especially pronounced where plaintiffs prevail, often after years of litigation, but are awarded only nominal damages. Court after court has felt itself compelled to limit the attorney's fee award to 150% of this nominal sum, consigning lawyers for incarcerated litigants to $1.50 or less in fees. *See, e.g.*, *Boivin*, 225 F.3d at 41 (applying 150% fee cap to nominal damage award of $1.00); *Shepherd v. Goord*, 662 F.3d 603, 610 (2d Cir. 2011) (affirming fee award of $1.40); *Harris*, 595 F. App'x at 135 ("[W]e will vacate the Court's order with respect to its attorney's fee award and remand for entry of an award of \$1.50."); *Wilkins v. Gaddy*, 734 F.3d 344, 351 (4th Cir. 2013) (affirming fee award of \$1.40 under PLRA); *Volk*, 262 F.3d at 537 (affirming fee award of \$3.00); *Royal v. Kautzky*, 375 F.3d 720, 726 (8th Cir. 2004) ("We also affirm the district court's order limiting the attorney fees award to \$1.50, or 150 percent of the damages award."); *Robbins*, 435 F.3d at 1244 ("Therefore, we reverse the district court's award of attorney fees and remand for an award limited to \$1.50.").

This draconian interpretation has the obvious knock-on effect of discouraging attorneys from taking on otherwise meritorious cases brought by incarcerated litigants. *See* Andrea Fenster & Margo Schlanger, *Slamming the Courthouse Door: 25 years of evidence for repealing the Prison Litigation Reform Act*, Prison Policy Initiative (Apr. 26, 2021), available at https://www.prisonpolicy.org/reports/PLRA_25.html ("In 2020, incarcerated civil rights plaintiffs had lawyers in only 7.6% of their cases, compared to 89.8% of civil cases not involving incarceration."). Some courts have voiced concern about the "chilling effect" this atextual fee cap imposes:

> "We are aware that § 1997e(d)(2) will have a strong chilling effect upon counsels' willingness to represent prisoners who have meritorious claims. We are also mindful that the 'marginal or trivial' claims that result in a judgment for a prisoner, such as Walker, do in fact arise out of an actual, proven civil rights violation. We admit to being

> troubled by a federal statute that seeks to reduce the number of meritorious civil rights claims and protect the public fisc at the expense of denying a politically unpopular group their ability to vindicate actual, albeit 'technical,' civil rights violations."

Walker, 257 F.3d at 670 (6th Cir. 2001); *Foulk*, 262 F.3d at 704 (quoting and endorsing the sentiments in *Walker*). Left to fend for themselves, and likely lacking experience navigating both the usual procedural hurdles of federal civil litigation and the extra requirements imposed by the PLRA, incarcerated litigants may be failing to vindicate countless meritorious claims for civil rights violations because they cannot secure competent counsel. Rectifying this atextual "fee cap" would remove this strong disincentive to represent incarcerated litigants.

At the same time, removing this supposed "cap" would not open the floodgates for courts to mulct defendants with outrageous discretionary fee awards for the "chunky peanut butter" cases that so alarmed Congress (assuming, of course, that a plaintiff could press such a claim through screening, a motion to dismiss, a motion for summary judgment, a likely interlocutory appeal on the basis of qualified immunity, and to a successful trial verdict). Fee awards will still be constrained by the neighboring provisions of Section 1997e(d), such that the Court must award only those fees that were "directly and reasonably incurred in proving an actual violation of the plaintiff's rights" and do not exceed "an hourly rate greater than 150 percent of the hourly rate established under section

3006A of title 18 for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(1).

This case sits in the "sweet spot" of judicial review. Applying the correct interpretive methods and giving the statute its best reading will provide a significant, meaningful benefit to a broad, "politically unpopular" subset of the population, without licensing any parade of horribles. The issue is important without threatening a sea change.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BRIAN D. GINSBERG

Counsel of record
LISA A. LECOURS
ELLIOT A. HALLAK
HARRIS BEACH
CULLINA MURTHA PLLC
445 Hamilton Avenue
Suite 1206
White Plains, NY 10601
(914) 683-1200
bginsberg@
harrisbeachmurtha.com

May 29, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED OCTOBER 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 24-2582-pr

MICHAEL WEBB,

Plaintiff-Appellant,

v.

EDMUND TROMBLEY, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY, ERIC RICH, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY, DONALD BOVAIR, SERGEANT, GREAT MEADOW CORRECTIONAL FACILITY, JOHN DOE #1, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY,

Defendants-Appellees,

CHRISTOPHER MILLER, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, NESMITH, P.A., GREAT MEADOW CORRECTIONAL FACILITY, CORRECTIONS OFFICER D. MCCLENNING, FKA JOHN DOE #2,

Defendants.

Filed October 24, 2025

SUMMARY ORDER

PRESENT: BARRINGTON D. PARKER,
SUSAN L. CARNEY,
Circuit Judges.*

Appeal from a judgment of the United States District Court for the Northern District of New York (D'Agostino, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Michael Webb appeals from an August 29, 2024 order of the United States District Court for the Northern District of New York (D'Agostino, *J.*) granting in part his motion for attorney's fees following a judgment entered in his favor against Defendants-Appellees Edmund Trombley and Donald Bovair. Webb challenges the district court's reduction of his recoverable attorney's fees under *Shepherd v. Goord*, 662 F.3d 603 (2d Cir. 2011), asking us to overrule that precedent. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm the district court's attorney's fees award.

Webb, incarcerated and proceeding *pro se*, commenced this action in federal district court on May 23, 2018,

* This case was originally assigned to a three-judge panel, but one member of the panel was unable to participate in consideration of the matter. The remaining members of the panel, who are in agreement, have decided this case pursuant to Second Circuit Internal Operating Procedure E(b).

asserting four causes of action pursuant to 42 U.S.C. § 1983 against Trombley, Bovair, and several other defendants. After Webb moved to proceed in forma pauperis, the district court *sua sponte* screened—and narrowed—his complaint pursuant to 28 U.S.C. §§ 1915(e) and 1915A(b). After granting in part and denying in part Defendants' motion for summary judgment, the district court appointed *pro bono* trial counsel for Webb. Webb then moved for new counsel, after which the district court appointed attorneys Elliot A. Hallak, Brian D. Roy, and Corey J. Carmello. The case proceeded to a jury trial resulting in a verdict entitling Webb to $12,500 in compensatory damages from Trombley, $2,500 in compensatory damages from Bovair, and no other damages. The district court entered a corresponding judgment. Webb then moved for attorney's fees pursuant to 42 U.S.C. § 1988, seeking an award of $206,977.50, and costs in the amount of $5,030.36. The district court granted the motion in part, awarding Webb only $22,500 in attorney's fees—an amount equal to 150% of the monetary judgment—applying a fee cap set by a statutory interpretation adopted in *Shepherd*, 662 F.3d at 607.[1] Webb appealed.[2]

1. Defendants note that the district court's award of attorney's fees appears to conflict the Supreme Court's opinion in *Murphy v. Smith*, 583 U.S. 220 (2018), by not allocating 25% of Webb's recovery to satisfy the fee award, but they have not cross-appealed the award. Defendants' Br. at 10 n.3. We therefore decline to consider the issue further. *See Boule v. Hutton*, 328 F.3d 84, 90 n.6 (2d Cir. 2003).

2. An "order awarding attorney's fees is separately appealable as a final order." *Blatt v. Dean Witter Reynolds InterCapital, Inc.*, 732 F.2d 304, 306 (2d Cir. 1984) (citing *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445 (1982)).

The Prison Litigation Reform Act (PLRA) substantially modifies the procedures to be followed in civil suits brought by incarcerated plaintiffs like Webb. *See* 42 U.S.C. § 1997e. As relevant here, the PLRA prohibits an incarcerated plaintiff from recovering attorney's fees unless those fees were "directly and reasonably incurred in proving an actual violation of the plaintiff's rights," and "the amount of the fee is proportionately related to the court ordered relief for the violation[,] or . . . the fee was directly and reasonably incurred in enforcing the relief ordered." *Id.* § 1997e(d)(1). The PLRA further provides that "[w]henever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant," and that "if the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant." *Id.* § 1997e(d)(2). Our court has held in *Shepherd* that "§ 1997e(d)(2) caps the amount of attorney's fees that a prevailing prisoner-plaintiff may recover from a defendant at 150 percent of the monetary judgment awarded[.]" *Shepherd*, 662 F.3d at 607. Our panel is bound to follow *Shepherd* until it is "overruled either by an en banc panel of our Court or by the Supreme Court." *United States v. Peguero*, 34 F.4th 143, 158 (2d Cir. 2022) (quotation marks omitted).[3]

---

3. *Shepherd*'s interpretation of § 1997e(d)(2) is also consistent with the decisions of every other Court of Appeals to have reached the issue. *See Boivin v. Black*, 225 F.3d 36, 40 (1st Cir. 2000); *Parker v. Conway*, 581 F.3d 198, 201 (3d Cir. 2009); *Wilkins v. Gaddy*, 734 F.3d 344, 349 (4th Cir. 2013); *Volk v. Gonzalez*, 262 F.3d 528, 536 (5th Cir. 2001); *Walker v. Bain*, 257 F.3d 660, 667 (6th

Webb concedes both the applicability of *Shepherd* and its binding effect on our panel, arguing instead that we should overrule that decision using the Court's "mini en banc" procedure. Plaintiff's Br. at 2. Because this case is ill-suited for overruling *Shepherd* using that procedure, we decline Webb's invitation.

* * *

Accordingly, we **AFFIRM** the district court's order awarding reduced fees to Webb.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe
Clerk of Court

Cir. 2001); *Pearson v. Welborn*, 471 F.3d 732, 742 (7th Cir. 2006); *Foulk v. Charrier*, 262 F.3d 687, 704 (8th Cir. 2001); *Dannenberg v. Valadez*, 338 F.3d 1070, 1074–75 (9th Cir. 2003); *Robbins v. Chronister*, 435 F.3d 1238, 1240 (10th Cir. 2006); *Thompson v. Smith*, 805 F. App'x 893, 908 (11th Cir. 2020), *overruled on other grounds*, *Hoever v. Marks*, 993 F.3d 1353, 1363–64 (11th Cir. 2021).

APPENDIX B — DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK, FILED AUGUST 29, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

9:18-CV-610 (MAD/DJS)

MICHAEL WEBB,

Plaintiff,

v.

C. MILLER, *et al.*,

Defendants.

Filed August 29, 2024

DECISION & ORDER

Mae A. D'Agostino, United States District Judge[1]

Before the Court is the Plaintiff's motion for attorneys' fees and costs. *See* dkt. # 162. The parties have briefed the issues, and the Court will decide the matter without oral argument.

1. The Hon. Thomas J. McAvoy presided over this case through trial. The case has now been reassigned to the undersigned.

I. BACKGROUND

This case involved a June 9, 2015, incident that occurred at Great Meadow Correctional Facility ("Great Meadow"), an institution operated by the New York State Department of Corrections and Community Supervision ("DOCCS"). Proceeding under 42 U.S.C. § 1983 ("Section 1983"), Plaintiff Michael Webb, a prisoner at Great Meadow, alleged that Defendants Sergeant Donal Bovair, Corrections Officer Eric Rich, and Corrections Officer Edward Trombley used excessive force to control Plaintiff after he was uncooperative during an intake interview. Plaintiff alleged that some of the Defendants beat him with batons, dragged him across the floor, and beat him again. He alleged that other Defendants violated his rights by failing to intervene to prevent this excessive force.

Judge McAvoy conducted a jury trial in October 2023. Judge McAvoy appointed trial counsel for Plaintiff, who had litigated the case *pro se* to that point. *See* dkt. # 118. At the close of trial, the jury found that Defendant Trombley used excessive force against Plaintiff and Defendant Bovair failed to intervene to prevent that use of excessive force on June 9, 2015. *See* dkt. # 159. The jury awarded Plaintiff $12,500 in damages against Defendant Trombley and $2,500 in damages against Defendant Bovair. *Id.* The jury declined to award punitive damages.

Plaintiff then filed the instant motion seeking fees and costs. Defendants oppose the motion, and the parties have briefed the issues.

II. LEGAL STANDARD FOR ATTORNEYS' FEES

Federal law provides that "[i]n any action or proceeding to enforce a provision of section . . . 1983 the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs[.]" 42 U.S.C. § 1988(b). This provision was designed "to make sure that competent counsel [is] available to civil rights plaintiffs." *Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989). Doing so is designed "to ensure that federal rights are adequately enforced." *Hughes v. Rowe*, 449 U.S. 5, 14-15 (1980). The statute "must be applied broadly to achieve its remedial purpose." *Mid-Hudson Legal Services, Inc. v. G & U, Inc.*, 578 F.2d 34, 37 (2d Cir. 1978). "The determination of an award of attorney's fees under 42 U.S.C. § 1988 is committed to the sound discretion of the district court because the appropriate amount is 'dependent on the unique facts of each case.'" *Raja v. Burns*, 43 F.4th 80, 86 (2d Cir. 2022) (quoting *Clarke v. Frank*, 960 F.3d 1146, 1153 (2d Cir. 1992)). "'A district court abuses its discretion'" in awarding a fee "'when (1) its decision rests on an error of law, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions.'" *Id.* (quoting *Fields v. Kiakazi*, 24 F.4th 845, 852 (2d Cir. 2022)).

"Counsel for prevailing parties seeking a fee award under section 1988 must prepare and submit to the district court 'contemporaneous time records' of the work performed, specifying 'the date, the hours expended, and the nature of the work done.'" *Id.* at 86-87 (quoting *N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983)). The submitted documents need not "'record in great detail how each minute of . . . time was expended,'" but "must 'identify the general subject matter of . . . time expenditures.'" *Id.* at 87 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983)). "In determining the number of hours reasonably expended on a case, a district court properly excludes documented hours that are 'excessive, redundant, or otherwise unnecessary.'" *Id.* (quoting *Hensley*, 461 U.S. at 434). A court can "also decrease the total award from the claimed amount because of 'vagueness, inconsistencies, and other deficiencies in the billing records.'" *Id.* (quoting *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998)).

III. ANALYSIS

A. Attorneys' Fees

Plaintiff seeks $206,977.50 in fees and $5,030.36 in expenses. In opposing the Plaintiff's request for fees, Defendants argue that any fee award should be capped at 150% of the total recovery. They point to the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e, for this proposition. The relevant sections of the PLRA provide that:

> (1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 2 of the Revised Statutes of the

United States [42 U.S.C. § 1988] such fees shall not be awarded, except to the extent that--

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 2 [722] of the Revised Statutes; and

(B)

(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the

> hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel.
>
> (4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 2 [722] of the Revised Statutes of the United States [42 U.S.C. § 1988]

42 U.S.C. § 1997e(d).

In analyzing this provision, the Second Circuit Court of Appeals has concluded that "the PLRA effectively caps a defendant's liability for attorneys' fees in a prisoner's § 1983 action at 150% of a money judgment." *Torres v. Walker*, 356 F.3d 238, 242 (2d Cir. 2004). While the Second Circuit has found that the language of the section is "not a model of clarity," the Circuit has nevertheless held that the provision "caps the amount of attorney's fees that a prevailing prisoner-plaintiff may recover from a defendant at 150 percent of the monetary judgment awarded, including where the judgment is only for $1.00." *Shepherd v. Goord*, 662 F.3d 603, 607 (2d Cir. 2011). The Court appreciates the Plaintiff's argument here that such an understanding of the PLRA misreads the statute and undermines the aim of Section 1988 to encourage attorneys to represent poor people in their attempts to vindicate their civil rights, but the Court is bound by the

Second Circuit's interpretation of that statute. The Court agrees that fees must be capped at the 150% rate stated in Section 1997e(d)(1).

The Court will therefore limit the award of attorneys' fees to 150% of the $15,000 awarded the Plaintiff in the suit, or $22,500. The statute also requires the Court to apply "a portion of the judgment (not to exceed 25 percent) . . . to satisfy the amount of attorney's fees awarded against the defendant." 42 U.S.C. § 1997e(d)(3). One court in the Southern District of New York has analyzed this provision extensively, concluding that "the purpose of the PLRA in discouraging prisoner suits and in requiring that prisoners bear a portion of the cost of litigation points to awarding 25% of the judgment as the best means of effectuating that purpose." *Sutton v. City of Yonkers*, 2017 U.S. Dist. LEXIS 4062 at *24 (S.D.N.Y. Jan 11, 2017). The Court is not entirely persuaded by this reasoning. "Congress passed the Prison Litigation Reform Act in 1995 in an attempt to limit abuse of the legal system by prisoners who repeatedly file frivolous lawsuits." *Gibson v. City Municipality of New York*, 692 F.3d 198, 200 (2d Cir. 2012). A case like this one, which went to trial and resulted in a verdict for a prisoner, could hardly be termed frivolous. Reducing a prisoner's recovery by 25% of the fees to which his attorneys are entitled does nothing to discourage frivolous litigation, but instead imposes a cost for meritorious litigation.

The Court will therefore decline to require the Plaintiff to apply 25% of his award to pay the attorneys' fees. The Court finds that Plaintiff provided all the legal labor to get the case to trial. Without that work, his appointed attorneys would never have had an opportunity to obtain recovery. Thus, while the Court is required to apply some of the recovery towards the attorneys' fees, the Court finds that an amount significantly less than 25% is appropriate in this case. The Court will therefore apply 1% of the judgment, or $150, to the attorneys' fees.

IV. CONCLUSION

For the reasons stated above, the Plaintiff's motion for attorneys' fees and costs, dkt. # 162, is hereby **GRANTED**, as follows:

Plaintiff is granted attorneys' fees in the amount of $22,500. Defendants shall be permitted to apply $150 of the judgment towards the fees.

IT IS SO ORDERED.[2]

Dated: August 29, 2024
Albany, New York

/s/ Mae A. D'Agostino
Mae A. D'Agostino
U.S. District Judge

2. The Clerk of the Court is directed to terminate the letter motion from Plaintiff (dkt. # 174) as moot.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED DECEMBER 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 24-2582

MICHAEL WEBB,

Plaintiff-Appellant,

v.

EDMUND TROMBLEY, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY, ERIC RICH, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY, DONALD BOVAIR, SERGEANT, GREAT MEADOW CORRECTIONAL FACILITY, JOHN DOE #1, CORRECTIONS OFFICER, GREAT MEADOW CORRECTIONAL FACILITY,

Defendants-Appellees,

CHRISTOPHER MILLER, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, NESMITH, P.A., GREAT MEADOW CORRECTIONAL FACILITY, CORRECTIONS OFFICER D. MCCLENNING, FKA JOHN DOE #2,

Defendants.

Filed December 30, 2025

ORDER

Appendix C

Appellant Michael Webb filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe
Clerk