IN THE SUPREME COURT OF THE UNITED STATES

Application No.

MICHAEL WEBB,

Applicant,

v.

EDMUND TROMBLEY, Corrections Officer,
Great Meadow Correctional Facility, et al.,

Respondents.

UNOPPOSED APPLICATION TO THE HON. SONIA SOTOMAYOR FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Pursuant to Rule 13(5) of the Rules of this Court, applicant Michael Webb hereby moves for an extension of time of 30 days, to April 29, 2026, within which to file a petition for writ of certiorari. This Court has jurisdiction to consider the application, and will have jurisdiction to review a timely petition for writ of certiorari, under 28 U.S.C. § 1254(1).

Unless an extension is granted, the deadline for filing the petition will be March 30, 2026.

1. I, Brian D. Ginsberg, am a partner in the law firm Harris Beach Murtha Cullina PLLC and counsel of record for applicant Michael Webb in this case. I am a member of the bar of this Court, as well as the bars of the State of New York and the District of Columbia.

2. The United States Court of Appeals for the Second Circuit issued its panel decision in this case on October 24, 2025. (*See* Exhibit 1.)

3. That court denied a timely petition for rehearing *en banc* on December 30, 2025. (*See* Exhibit 2.)

4. Therefore, currently, any petition for writ of certiorari must be filed by March 30, 2026.

5. On behalf of Mr. Webb, I respectfully submit this unopposed application for an extension of time of 30 days, to April 29, 2026, within which to file a petition for writ of certiorari.

6. The unopposed application is supported by good cause.

7. This case presents an issue of nationwide legal importance: whether, when an incarcerated person succeeds on the merits of his action, 42 U.S.C. § 1997e(d)(2) of the Prison Litigation Reform Act

("PLRA") imposes a cap on attorney fees of 150 percent of the monetary judgment recovered.

8. The Second Circuit's "Yes" answer to that question is erroneous, and reflects a pervasive misinterpretation of § 1997e(d)(2) that greatly impedes the ability of incarcerated persons to attract competent legal counsel for meritorious claims.

9. 42 U.S.C. § 1997e(d)(2) provides, with emphasis added:

> "Whenever a monetary judgment is awarded . . . 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.*"

10. The first sentence obliges plaintiffs to pay a portion of their attorney fees (similar to a contingency fee). As for the second sentence (properly understood), where the "if" condition in the provision applies, *i.e.*, the award of attorney fees is not greater than 150 percent of the judgment, the rest of the sentence applies, and the excess (the portion remaining after plaintiff's contribution)—which is presumed to be reasonable and proportionate—is paid by the defendant. Where the "if" condition is not triggered, the sentence does not apply: There is no presumption that the fees are proportional or that any excess over

plaintiff's contribution will be paid by the defendant. Instead, the payment of attorney's fees may be determined pursuant to the *applicable* provisions of 42 U.S.C. § 1997e(d). This is the most natural reading of the statute, and it is consistent with other subsections of § 1997e(d), which circumscribe the conditions under which attorney fees authorized under 42 U.S.C. § 1988 shall be awarded in inmate cases.

11. "The main purpose of the PLRA . . . was to address the overwhelming number of suits brought by prisoners," *Cano v. Taylor*, 739 F.3d 1214, 1219 (9th Cir. 2014); *see, e.g.*, *Jones v. Bock*, 549 U.S. 199, 199 (2007), particularly frivolous prisoner lawsuits and appeals, *see Escalera v. Samaritan Vill.*, 938 F.3d 380, 384 (2d Cir. 2019), not to "prevent inmates from raising legitimate claims[.]" *Morris v. Eversley*, 343 F. Supp. 2d 234, 242 (S.D.N.Y. 2004) (Chin, J.) (internal quotation marks and citation omitted). Neither the language nor legislative history of the PLRA suggests an intent to cap attorney fee awards in meritorious claims brought by incarcerated people.

12. When Mr. Webb's petition for certiorari is filed, the Court should grant it, hear this case, and consider the important question of statutory interpretation presented.

13. Having substantively handled this matter only since the Second Circuit stage, I require the requested additional time in order to further familiarize myself with the relevant legal issues and factual record in a manner necessary to prepare a petition for writ of certiorari that is sufficiently comprehensive to explain to the Court the urgency with which its intervention is needed.

14. Further, substantial additional professional obligations, including the preparation of appellate briefs to be filed and oral arguments to be presented in federal and state appellate courts, make me unable to prepare the petition for writ of certiorari by the deadline currently in force.

15. Those obligations include, among other things:

a. on February 2, 2026, filing a principal brief in *OCFBrook Holdings, LLC v. Sprung* (N.Y. App. Div. Case No. 2025-06103),

b. on February 4, 2026, filing a principal brief in *Karsch v. Falcon, Rappaport & Berkman PLLC* (N.Y. App. Div. Case No. 2025-02075),

c. on February 23, 2026, filing a principal brief in *Lovell v. 120 Van Wyck Corp.* (N.Y. App. Div. Case No. 2025-04625),

d. on March 2, 2026, presenting oral argument in *VerBridge v. Harpreet Deol, D.D.S., L.L.C* (N.Y. App. Div. Case No. CA 25-00007),

e. on March 6, 2026, filing a petition for rehearing in *Cutner v. City of Rye, New York Board of Appeals* (N.Y. App. Div. Case No. 2024-01404),

f. on March 16, 2026, filing a principal brief in *Santander Consumer USA, Inc. v. City of Yonkers* (U.S. Ct. App. 2d Cir. Case Nos. 25-2609 & 25-2610),

g. on March 17, 2026, presenting oral argument in *Tulis v. City of Yonkers* (N.Y. App. Div. Case No. 2022-04269),

h. on March 19, 2026, filing a principal brief in *Village of Monroe, New York v. Town of Monroe, New York* (N.Y. App. Div. Case No. 2025-04370),

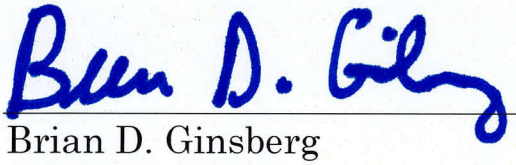
i. and, on March 30, 2026, presenting oral argument in *O'Hanlon v. Renwick* (N.Y. App. Div. Case No. 2022-09448).

16. I have consulted with counsel for respondents who advises me that respondents do not oppose this application.

WHEREFORE, Mr. Webb respectfully requests that his unopposed application for an extension of time to April 29, 2026 in which to file a petition for writ of certiorari be granted.

March 19, 2026

Respectfully submitted,



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Counsel for Applicant
Michael Webb

Exhibit 1

24-2582-pr
Webb v. Trombley

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of October, two thousand twenty-five.

PRESENT:

BARRINGTON D. PARKER,
SUSAN L. CARNEY,
Circuit Judges.[*]

Michael Webb,

Plaintiff-Appellant,

v. **No. 24-2582-pr**

Edmund Trombley, Corrections Officer,
Great Meadow Correctional Facility, Eric

[*] 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).

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.

FOR PLAINTIFF-APPELLANT:

MEGAN E. KNEPKA (Elliot A. Hallak, Brian D. Ginsberg, Lisa A. LeCours & David J. Panzarella, *on the brief*), Harris Beach Murtha Cullina PLLC, Albany, NY.

FOR DEFENDANTS-APPELLEES:

OWEN DEMUTH, Assistant Solicitor General, *for* Barbara D. Underwood, Solicitor General, Jeffrey W. Lang, Deputy Solicitor General, Letitia James, Attorney General, State of New York, Albany, NY.

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, 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]

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

[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)).

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]

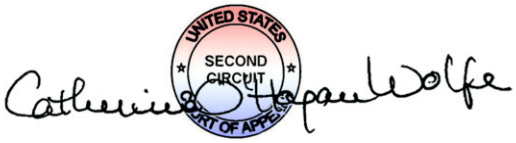
Webb concedes both the applicability of *Shepherd* and its binding effect on our panel, arguing instead that we should overrule that decision using the Court's "mini en banc" procedure. Plaintiff's Br. at 2. Because this case is ill-suited for overruling *Shepherd* using that procedure, we decline Webb's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

* * *

[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 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).

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

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: October 24, 2025
Docket #: 24-2582
Short Title: Webb v. Miller

DC Docket #: 9:18-cv-610
DC Court: NDNY (SYRACUSE)
DC Judge: Trial Judge - Mae A. D'Agostino

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed electronically or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
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DC Court: NDNY (SYRACUSE)
DC Judge: Trial Judge - Mae A. D'Agostino

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

_____

and in favor of

_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

Exhibit 2

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of December, two thousand twenty-five.

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.

ORDER

Docket No: 24-2582

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:

Catherine O'Hagan Wolfe, Clerk