No. 16-1067

In the Supreme Court of the United States

CHARLES MURPHY,
PETITIONER,

v.

ROBERT SMITH AND GREGORY FULK,
RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

The Prison Litigation Reform Act (PLRA) provides that, when a prisoner obtains a monetary judgment, "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 "the excess shall be paid by the defendant." 42 U.S.C. § 1997e(d)(2).

The question presented is whether § 1997e(d)(2) requires that the attorney's fee award be satisfied from the judgment, with the defendant liable for any fees in excess of 25 percent of the judgment.

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BRIEF FOR RESPONDENTS

RELEVANT STATUTORY PROVISION

The appendix attached to petitioner's brief contains the complete text of 42 U.S.C. § 1997e(d). Pet. 1a–4a. Section 1997e(d)(2) provides:

> 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

When Congress enacted the attorney's fee provisions of the PLRA, it sought to put prisoners in roughly the same position as members of the general public when deciding whether to file a lawsuit. To that end, it required a prisoner who wins a monetary judgment to pay a portion of the judgment, capped at 25 percent, to his attorney. If the fee award is less than 25 percent of the judgment, the prisoner keeps more. If the fee award is greater than 25 percent of the judgment, the defendant has to pay the difference. This compromise solution—more generous to prisoners than the American Rule whereby each party pays its own counsel but less generous than fee-shifting under 42 U.S.C. § 1988—closely aligns prisoners' incentives with those of members of the general public weighing whether to enter into a contingent fee agreement.

This straightforward reading of the PLRA is dictated by the text of the relevant provision, which states 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." 42 U.S.C. § 1997e(d)(2) (emphasis added). This interpretation harmonizes § 1997e(d)(2) with the PLRA's other fee-related provisions. It is confirmed by the statute's legislative history. And it is consistent with the PLRA's purposes not only to align prisoners' litigating incentives with those of the general public but also to reduce the cost of prison litigation to government defendants.

Petitioner asks the Court to read § 1997e(d)(2) as conferring discretion on the district court to choose any amount from the judgment to apply to fees, from one penny to 25 percent of the judgment. But this reading is unmoored from the statute's mandatory text, including its mandate that part of the judgment be used to "satisfy the amount of attorney's fees awarded." It overlooks the ways in which the PLRA was designed to constrain judicial discretion with respect to attorney's fees, and it fails to promote that statute's purpose of reducing prison litigation. This Court should reject it.

STATEMENT OF THE CASE

1. At the relevant time, petitioner Charles Murphy was an inmate in the custody of the Illinois Department of Corrections incarcerated at Vandalia Correctional Center in Vandalia, Illinois. Pet. App. 1a. He filed a lawsuit against respondents Robert Smith and Gregory Fulk, as well as two other correctional officers, stemming from an incident on July 25, 2011, in which petitioner alleged that the

officers violated the Eighth Amendment and state law by striking him and leaving him in a cell without medical treatment. *Id*.

Petitioner's case was tried to a jury. Pet. 17a. The jury found in favor of petitioner and against respondent Smith on petitioner's Eighth Amendment excessive-use-of-force and state-law battery claims. Dist. Ct. Doc. 142 at 1, 4. The jury awarded petitioner $48,001 in compensatory damages and $193,000 in punitive damages on those claims. *Id*. at 2, 4. The jury found in favor of petitioner and against respondent Fulk on petitioner's Eighth Amendment deliberate-indifference claim and awarded petitioner $750 in compensatory damages and $168,000 in punitive damages. *Id*. at 6–7. Judgment was entered against Smith in the amount of $241,001 and against Fulk in the amount of $168,750. Dist. Ct. Doc. 143.

After a post-trial motion, the district court remitted the compensatory damages against Smith from $40,001 to $30,983.82. Dist. Ct. Doc. 175 at 20. The court also remitted the punitive damages award against Fulk from $168,000 to $75,000. *Id*. Based on the remittitur, the court found that petitioner was entitled to judgment in the amount of $307,734.82. *Id*. at 21.

2. Petitioner sought attorney's fees at a rate of $350 an hour for a total of $214,298. Pet. App. 18a–19a. Petitioner's counsel submitted a notice of attorney's lien to the Illinois Department of Corrections in which counsel stated that petitioner had agreed to pay him "a sum equal to one-third of whatever amount may be recovered [by petitioner] plus my attorney fees relative to 42 U.S.C. 1988 and 745 ILCS 10/9-102 from suit or settlement." Dist. Ct.

Doc. 158-1. The district court held that under 42 U.S.C. § 1997e(d)(3) the allowable hourly rate was capped at between $165 and $190.50 per hour, depending on when the work was performed. Pet. App. 21a. After determining that the lodestar amount of attorney's fees to be awarded was $108,446.54, the district court then consulted 42 U.S.C. § 1997e(d)(2) to determine what portion of the monetary judgment had to be applied to satisfy the fee award. Pet. App. 27a. Respondents argued that because the fee award was greater than 25 percent of the monetary judgment, § 1997e(d)(2) required 25 percent of the judgment to be applied to the fee award, relying on the Seventh Circuit's decision in *Johnson v. Daley*, 339 F.3d 582 (7th Cir. 2003) (en banc). Pet. App. 27a. The district court, however, found that "the language [in *Johnson*] suggesting that the full 25% allowed by the PLRA must first come from the judgment is dicta." *Id*. The court then found, without any explanation of its reasoning, that petitioner "shall pay 10% of the judgment or $30,773.48 towards the attorney's fees." *Id*.

3. Respondents appealed the district court's determination of the fee apportionment issue and another issue not relevant here. Pet. App. 1a. The Seventh Circuit held that in *Johnson* it had "explained that § 1997e(d)(2) required that 'attorneys' compensation come first from the damages.'" Pet. App. 13a (quoting *Johnson*, 339 F.3d at 585) (internal brackets omitted). Under the Seventh Circuit's interpretation of the statute, "[o]nly if 25% of the award is inadequate to compensate counsel fully does the defendant contribute more to the fees." *Id*. (internal quotation marks omitted). The court concluded that this "is the most natural reading of the

statutory text" and that the statute did not "contemplate[ ] a discretionary decision by the district court" because § 1997e(d)(2) "neither uses discretionary language nor provides any guidance for such discretion." *Id*. The court remanded the case to the district court to modify its judgment to apply $76,933.46 from the judgment "toward satisfying the attorney fee the court awarded." Pet. App. 13a–14a.

SUMMARY OF ARGUMENT

Under 42 U.S.C. § 1997e(d)(2), when a prisoner obtains a monetary judgment, the district court must satisfy the attorney's fee award from the judgment, with the defendant liable for any fees in excess of 25 percent of the judgment.

I. The text of statute 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" and that "the excess shall be paid by the defendant." 42 U.S.C. § 1997e(d)(2). "Shall" is a mandatory term, and the verb "to satisfy" refers to the fulfillment of an obligation. The plain language of § 1997e(d)(2) thus requires the district court to look first to the judgment to fulfill the fee award. The parenthetical phrase "not to exceed 25 percent" reflects Congress's expectation that some fee awards will be satisfied by applying less than 25 percent of the judgment; in such cases, the applied portion is less than 25 percent of the judgment. In all cases, however, the prisoner's liability for statutory attorney's fees is capped at 25 percent of the judgment and the defendant is liable for the remainder, up to the overall statutory cap of 150 percent of the judgment. *Id*.

Petitioner asks this Court to adopt a reading of § 1997e(d)(2) under which district courts may choose any portion of the judgment up to 25 percent to apply to the fee award. That interpretation fails to give effect to the statute's mandatory language and presupposes a degree of judicial discretion that § 1997e(d)(2)'s text neither confers nor channels. Respondents' nondiscretionary interpretation of § 1997e(d)(2), by contrast, gains support from the other provisions of § 1997e(d)—all of which limit both the defendant's fee liability and the district court's discretion—and from the general presumption against fee-shifting.

II. The second sentence of § 1997e(d)(2) as originally introduced in the Senate confirms that the defendant is not liable for attorney's fees unless the fee award is greater than 25 percent of the judgment. Although the Conference Committee altered the second sentence to address a different topic, there is no reason to infer from that unexplained decision that Congress changed its mind about the meaning of the first sentence, which is at issue here.

III. The nondiscretionary interpretation of § 1997e(d)(2) serves the purposes of the PLRA. It deters prisoners from filing marginal suits by roughly aligning their litigation incentives with those of non-prisoners, and it reduces the cost to governments of prison litigation by limiting defendants' fee liability. Petitioner is wrong to argue that his discretionary reading will encourage lawyers to take up meritorious prison cases; attorneys' incentives remain the same regardless of who pays their fee. Nor is § 1997e(d)(2) designed to deter wrongful conduct. That is the function of punitive damages, not fee-shifting.

Finally, the nondiscretionary reading of § 1997e(d)(2) is not inequitable. Rather, it represents a modest departure from the American Rule in prisoners' favor.

ARGUMENT

I. The PLRA's text requires that the attorney's fee award be satisfied from the judgment, with the defendant liable for any fees in excess of 25 percent of the judgment.

A. The text of § 1997e(d)(2) does not confer discretion on the district court to choose a portion to be applied from the judgment.

In matters of statutory construction, courts must "begin 'with the language of the statute.'" *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (quoting *Barnhart v. Sigeman Coal Co.*, 534 U.S. 438, 450 (2002)). The first sentence of § 1997e(d)(2) provides that, when a monetary judgment is awarded in a case governed by the PLRA, "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." 42 U.S.C. § 1997e(d)(2). This language requires the district court to set aside a portion of the judgment to pay the amount of fees awarded. The parenthesized phrase "not to exceed 25 percent," in conjunction with the second sentence of § 1997e(d)(2), makes clear that if 25 percent of the judgment is not enough to satisfy the fee award "the excess shall be paid by the defendant." *Id*.

Section 1997e(d)(2) uses mandatory language. The word "shall" "usually connotes a requirement" because "shall" means "must." *Kingdomware Techs.*,

136 S. Ct. at 1977. Thus, § 1997e(d)(2) "creates a mandatory rule," *State Farm Fire & Cas. Co. v. United States ex rel. Rigsby*, 137 S. Ct. 436, 442 (2016), that district courts must follow in determining who is liable to pay attorney's fees in PLRA cases. Although petitioner acknowledges that the word "shall" is mandatory, he contends that Congress's choice of that word is immaterial because "'shall' modifies 'be applied,' not the percentage." Pet. Br. 9. But petitioner stops too soon, for the rest of the operative sentence provides that a portion of the judgment "shall be applied *to satisfy the amount of attorney's fees awarded against the defendant*." 42 U.S.C. § 1997e(d)(2) (emphasis added).

By using the phrase "to satisfy the amount of attorney's fees awarded," Congress directed that a portion of the judgment must be applied to fulfill the fee award. "Satisfaction" means the "giving of something with the intention, express or implied, that it is to extinguish some existing legal or moral obligation," as well as the "fulfillment of an obligation; esp. the payment in full of a debt." *Black's Law Dictionary* (10th ed. 2014) ("satisfaction"). Similarly, "satisfaction of judgment" means "[t]he complete discharge of obligations under a judgment," *id.* ("satisfaction of judgment"), or "the final act and end of a proceeding," 47 Am. Jur. *Judgments* § 443 (1995). Generally, then, satisfaction of the attorney's fee award means complete payment of that award. *Cf. Bofinger v. Tuyes*, 120 U.S. 198, 204–05 (1887) (explaining that "accord and satisfaction" is "equivalent to payment").

Throughout the United States Code, Congress routinely uses the verb "to satisfy" to refer to the

fulfillment of an obligation. *See*, *e.g.*, 15 U.S.C. § 78fff-3(a) (requiring the Securities Investor Protection Corporation to "advance to the trustee such moneys, not to exceed $500,000, as may be required to pay or otherwise satisfy" net equity claims of customers of the debtor); 26 U.S.C. § 6322 (tax lien created under the Internal Revenue Code "shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time"); 28 U.S.C. § 3201(a) (judgment in a civil action creates a judgment lien on the judgment debtor's property "for the amount necessary to satisfy the judgment, including costs and interest").

Moreover, federal statutes often specify an auxiliary funding source in the event that the primary source is inadequate to satisfy a statutory obligation. For instance, when Congress created the Securities and Exchange Commission Investor Protection Fund to pay approved awards to whistleblowers, it provided that if the amount in the Fund is not "sufficient to satisfy an award" under the whistleblower statute, an amount equal to the "unsatisfied portion of the award" shall be deposited into the Fund from any monetary sanction collected by the Commission. 15 U.S.C. § 78u-6(g)(3)(B). Similarly, Congress provided that the Federal Savings and Loan Insurance Corporation Resolution Fund is to be funded by enumerated sources, but that if those sources "are insufficient to satisfy the liabilities" of that Fund, the Secretary of the Treasury must pay the necessary amounts into the Fund. 12 U.S.C. § 1821a(c)(1).

That is what Congress did here. The first sentence of § 1997e(d)(2) designates a primary funding source for the attorney's fee award, directing the district court to "satisfy the amount" of the award using "a portion of the judgment (not to exceed 25 percent)." 42 U.S.C. § 1997e(d)(2). The second sentence then identifies an auxiliary source, specifying that if 25 percent of the judgment is not enough to satisfy the award, "the excess shall be paid by the defendant," so long as the overall fee award is not greater than 150 percent of the judgment. *Id*. This straightforward interpretation gives meaning to all of § 1997e(d)(2)'s words.

Petitioner's interpretation, by contrast, fails to account for the statutory text that follows the word "applied." He argues that the phrase "not to exceed 25 percent" confers discretion on the district court to choose any portion of the judgment up to 25 percent—and presumably down to as little as one cent—to put toward the fee award. Pet. Br. 9–11. This reading ignores the statute's directive that the portion be applied "to satisfy the amount of attorney's fees awarded against the defendant." 42 U.S.C. § 1997e(d)(2).[1]

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[1] Lower courts that have adopted petitioner's interpretation of § 1997e(d)(2) sometimes apply only one dollar of the judgment to the fee award. *See*, *e.g.*, *Berrian v. City of New York*, No. 13CV1719 DLC, 2014 WL 6604641, at *6 (S.D.N.Y. Nov. 21, 2014) (applying one dollar, or 0.0015%, of $65,000 judgment to fee award); *Murphy v. Gilman*, No. 03-145, 2008 WL 2139611, at *1, *3 (W.D. Mich. May 20, 2008) (applying one dollar, or .000036%, of $2,750,000 judgment to fee award); *Siggers-El v. Barlow*, 433 F. Supp. 2d 811, 815, 823 (E.D. Mich. 2006) (applying one dollar, or 0.00046%, of $219,000 judgment to fee award); *Morrison v. Davis*, 88 F. Supp. 2d 799, 812–13 (S.D. Ohio 2000), amended in part, 195 F. Supp. 2d 1019 (S.D. Ohio 2001) (applying one dollar,

In his brief, petitioner offers no account of the meaning of the phrase "to satisfy the amount of attorney's fees awarded against the defendant." His reading of § 1997e(d)(2) simply treats those words as superfluous. This Court has made clear time and time again that such interpretations should be rejected. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("The rule against superfluities complements the principle that courts are to interpret the words of a statute in context."); *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (it is the court's "duty to give effect, if possible, to every clause and word of a statute") (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)) (internal quotation marks omitted).

To be sure, even under respondents' interpretation of § 1997e(d)(2), 25 percent of the judgment will not always be sufficient to fully satisfy the fee award; that is why the second sentence requires the defendant to pay any excess amount. But on petitioner's account, district courts need not even *try* to satisfy the fee award from the judgment. Instead, they are apparently free to treat the application of § 1997e(d)(2) as an opportunity to dispense justice *ad hoc*, calibrating the allotted portion of the judgment upward or downward in a standardless effort to "deter culpable conduct." Pet. Br. 21. That reading of § 1997e(d)(2) is not supported by the statute's text.

Likewise, the Court should reject petitioner's strained suggestion that respondents interpret the parenthetical phrase "not to exceed 25 percent" to mean "*exactly 25 percent*." Pet. Br. i (emphasis in original). That phrase simply reflects Congress's

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or 0.0067%, of $15,000 judgment to fee award).

expectation that some fee awards will be satisfied by applying less than 25 percent of the judgment. If 10 or 20 percent of the judgment is enough to satisfy the fee award, that is all that need be applied.[2]

For the same reason, petitioner's analogy about the length of briefs (Pet. Br. 10) misses the mark. Of course, a brief of 14,999 (or, for that matter, 100) words complies with a court order directing, without more, that briefs are "not to exceed 15,000 words." But § 1997e(d)(2) does more than just require the district court to set aside a portion of the judgment "not to exceed 25 percent"—it requires the court to apply that portion "to satisfy the amount of attorney's fees awarded." 42 U.S.C. § 1997e(d)(2). In that regard, a more apt analogy is an insurance deductible requiring that any covered charges be satisfied by the insured up to a deductible amount "not to exceed $500," with the excess to be paid by the insurer. No one would contend that the "not to exceed" language confers discretion on the insured to pay whatever she chooses

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[2] Congress's expectation has been borne out: in many cases, prisoners have obtained judgments that are more than four times as large as the fee award. *See*, *e.g.*, *Kahle v. Leonard*, 563 F.3d 736, 742 (8th Cir. 2009) (awarding judgment of $1.1 million and fees of $186,208.88); *Key v. Kight*, No. 6:14-CV-39, 2017 WL 915133, at *9 (S.D. Ga. Mar. 8, 2017), report and recommendation adopted, No. 6:14-CV-39, 2017 WL 1128601 (S.D. Ga. Mar. 24, 2017) (awarding $274,800 in damages and $11,851.88 in fees); *Kensu v. Buskirk*, No. 13-10279, 2016 WL 6465890, at *5–6 (E.D. Mich. Nov. 1, 2016) (judgment of $325,002; fee award of $54,422.39); *Thompson v. Torres*, No. CIV. A. 00-10981-RWZ, 2010 WL 4919058, at *1–2 (D. Mass. Nov. 29, 2010) ($175,001 in damages; $17,661.75 in fees); *Murphy*, 2008 WL 2139611 at *3 (damages of $2.75 million; fee award of $205,814.38).

toward a thousand-dollar doctor's bill so long as the chosen amount is less than or equal to $500.

In the end, petitioner's understanding of § 1997e(d)(2) corresponds to a statute Congress did not write. Tellingly, for example, petitioner asserts that the statute "specifies that any '*portion* of the judgment,' up to 25 percent, shall be applied to satisfy the attorney's fees." Pet. Br. 11 (emphasis in original). But § 1997e(d)(2) does not say that "*any* portion" of the judgment up to the cap may be applied; rather, it states that "a portion" not to exceed 25 percent shall be applied to satisfy the fee award. 42 U.S.C. § 1997e(d)(2). The word "any" implies a discretion that Congress did not confer. Similarly, although Congress could have adopted petitioner's preferred reading by providing that the district court shall apply a portion of the monetary judgment not to exceed 25 percent "toward" the fee award or "to pay a part of" the fee award, it did neither of those things. Instead, Congress required the district court to apply a portion of the judgment to satisfy the amount of attorney's fees awarded, subject to the proviso that if the fee award exceeds 25 percent of the judgment the defendant is liable for the rest.

That simple reading is confirmed by the striking absence from § 1997e(d)(2) of language conferring discretion on the district court. Petitioner contends (Pet. Br. 9) that the phrase "not to exceed 25 percent" counts as "discretionary language" but, as explained above, that is not so: that phrase merely places a cap on the portion of the judgment that must be applied to satisfy the fee award. Petitioner does not even attempt to identify any other "discretionary language" in § 1997e(d)(2), and there is none. On the contrary,

the operative language that Congress chose is precise and mandatory: "a portion of the judgment (not to exceed 25 percent) *shall* be applied *to satisfy the amount of* attorney's fees awarded." 42 U.S.C. § 1997e(d)(2) (emphasis added). Nor does § 1997e(d)(2) contain any language to channel the discretion it supposedly confers, or to guide judicial review on an abuse-of-discretion standard. Likewise, although petitioner concedes that "shall" is mandatory (Pet. Br. 9), his interpretation of § 1997e(d)(2) gives that word no mandatory work to do, except perhaps to ensure that district courts apply $0.01 to the judgment as opposed to $0.00. On petitioner's account, the statute leaves district courts at large to apply as much or as little of the judgment as they please, up to 25 percent, based on criteria that petitioner fails to specify but that appear to focus on the blameworthiness of the defendant's conduct. Pet. Br. 21–23. That reading is simply not grounded in the statute's language.

Respondents' nondiscretionary interpretation of § 1997e(d)(2) gains further support when that provision's two sentences are read together. Section 1997e(d)(2) as a whole defines the circumstances in which a defendant may be liable to pay an attorney's fee award in a PLRA action. The first sentence establishes when the defendant's liability for fees *begins*: when 25 percent of the judgment is inadequate to satisfy the fee award. The second sentence establishes when that liability *ends*: when attorney's fees reach 150 percent of the judgment. 42 U.S.C. § 1997e(d)(2). Section 1997e(d)(2)'s two sentences thus work together to set a numerical trigger for, and a numerical cap on, the defendant's fee liability.

The circuit court decisions petitioner cites, Pet. Br. 12, do not support a different result. None of those decisions undertook a meaningful analysis of the statutory language or discussed the relevance of the phrase "to satisfy the amount of attorney's fees awarded." In *Shepherd v. Goord*, 662 F.3d 603, 605 n.1 (2d Cir. 2011), the Second Circuit noted that the district court's decision to apportion only 10 percent of the monetary judgment to pay the fee award was not challenged on appeal. In *Boesing v. Spiess*, 540 F.3d 886, 892 (8th Cir. 2008), the Eighth Circuit found that "the phrase 'not to exceed 25 percent' clearly imposes a maximum, not a mandatory, percentage." That court, however, did not examine the rest of the sentence, including the "to satisfy" language. *Id*. The Third Circuit in *Parker v. Conway*, 581 F.3d 198, 204–05 (3d Cir. 2009), relied on *Boesing* and likewise did not interpret the rest of the relevant sentence. And in *King v. Zamiara*, 788 F.3d 207, 218 (6th Cir. 2015), the Sixth Circuit did not explain its reading of § 1997e(d)(2) at all. These decisions offer no reason to adopt petitioner's interpretation.

Petitioner suggests that Congress implicitly ratified these decisions and similar ones from district courts by failing to repudiate them. Pet. Br. 15–16. But, of course, the lower courts are not unanimous: the Seventh Circuit has adopted the nondiscretionary interpretation of § 1997e(d)(2). *See Johnson*, 339 F.3d at 585 (en banc); *see also Riley v. Kurtz*, 361 F.3d 906, 911 (6th Cir. 2004). More fundamentally, as this Court has repeatedly cautioned, "[i]t is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of the courts' statutory interpretation." *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive*

Communities Project, Inc., 135 S. Ct. 2507, 2540 (2015) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989)) (internal quotation marks omitted). "[T]his Court has no warrant to ignore clear statutory language on the ground that other courts have done so, even if they have consistently done so for 30 years." *Id*. at 2538 (quoting *Milner v. Dep't of the Navy*, 562 U.S. 562, 575–576 (2011)) (internal quotation marks omitted).

B. Section 1997e(d) as a whole supports respondents' interpretation.

Statutory construction is a "holistic endeavor," in which the meaning of a provision may be "clarified by the remainder of the statutory scheme." *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 217 (2001) (internal quotation marks omitted). It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 135 S. Ct. 2480, 2492 (2015) (internal quotation marks omitted). Although the nondiscretionary reading of § 1997e(d)(2) is dictated by its plain text alone, that reading is reinforced by the other parts of § 1997e(d), all of which constrain judicial discretion in order to limit the defendant's exposure to attorney's fee liability in PLRA actions.

The four subparts of § 1997e(d) work together to impose "substantive limits on the award of attorney's fees." *Martin v. Hadix*, 527 U.S. 343, 353 (1999) (emphasis omitted). Subsection (d)(1) provides that fees cannot be awarded except to the extent that they are "directly and reasonably incurred in proving an actual violation of the plaintiff's rights" and either

"proportionally related to the court ordered relief" or incurred in enforcing relief ordered by the court. 42 U.S.C. § 1997e(d)(1). Subsection (d)(2), of course, requires a portion of the judgment not to exceed 25 percent to be applied to satisfy the fee award; its second sentence also places an overall cap on statutory fee awards by limiting them to 150 percent of the judgment. *Id*. § 1997e(d)(2). Subsection (d)(3) caps attorney's fees at an hourly rate equal to 150 percent of the rate established for court-appointed defense counsel in criminal cases. *Id*. § 1997e(d)(3). And subsection (d)(4) makes clear that the defendant cannot be made liable for any additional fees the plaintiff may have agreed to pay his attorney. *Id*. § 1997e(d)(4).

All of the subparts of § 1997e(d) thus circumscribe the defendant's liability for attorney's fees in PLRA cases—and they all do so by constraining the district court's discretion. By enacting these provisions, Congress reversed course from the wide discretion it had previously accorded to district courts in prison cases under § 1988. *See Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (characterizing § 1997e(d) as "restricting attorney's fees"). Petitioner's discretionary reading of § 1997e(d)(2) thus not only ignores the operative text of that provision; it also clashes with the rest of § 1997e(d).[3]

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[3] Other provisions of the PLRA beyond § 1997e(d) likewise remove discretion from district courts. For instance, the statute's exhaustion requirement mandates that prisoners exhaust available administrative remedies, 42 U.S.C. § 1997e(a)(1), in contrast to the discretion previously enjoyed by district courts to decide whether to insist on exhaustion, *see Booth v. Churner*, 532 U.S. 731, 739 (2001). Similarly, the PLRA

C. Petitioner fails to overcome the presumption against fee-shifting.

In construing fee-related statutes, "background presumptions governing attorney's fees and costs are a highly relevant contextual feature." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013). The "basic point of reference when considering the award of attorney's fees is the bedrock principle known as the American Rule: Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158, 2164 (2015) (internal quotation marks omitted). This rule is justified by the principle that "one should not be *penalized* for merely defending or prosecuting a lawsuit." *Summit Valley Indus., Inc. v. Local 112, United Bhd. of Carpenters & Joiners of Am.*, 456 U.S. 717, 724 (1982) (emphasis in original) (internal quotation marks omitted). While Congress has the authority to permit fee-shifting, it "legislates against the strong background of the American Rule." *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533 (1994). Accordingly, fee-shifting "statutes which invade the common law are to be read with a presumption favoring the retention of long-established and familiar legal principles." *Baker Botts L.L.P.*, 135 S. Ct. at 2164 (internal quotation marks and alterations omitted); *see Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 271 (1975) (explaining that the American Rule "is deeply rooted in our history and in

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sharply limits the circumstances in which district courts may order injunctive relief with respect to prison conditions. *See* 18 U.S.C. § 3626(a). As this Court has noted, "curbing the equitable discretion of district courts was one of the PLRA's principal objectives." *Miller v. French*, 530 U.S. 327, 339 (2000).

congressional policy; and it is not for us to invade the legislature's province by redistributing litigation costs" other than as required by statute).

It is true that in § 1988 Congress authorized the award of attorney's fees to the prevailing party in actions to enforce federal civil rights laws. 42 U.S.C. § 1988(b); *see Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550 (2010). And as this Court has observed, § 1988 contemplated "that a plaintiff's recovery will not be reduced by what he must pay his counsel." *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989). But that statute is of no help to petitioner, because the PLRA expressly *limits* § 1988 in the specific context of prisoner suits, narrowing the permissible scope of fee awards compared to what would otherwise be available under that more general statute. *See Martin*, 527 U.S. at 347. Hence, the very first sentence of § 1997e(d) provides that "[i]n any action brought by a prisoner . . . in which attorney's fees are authorized under section 1988 of this title, such fees *shall not be awarded*" except under specified circumstances. 42 U.S.C. § 1997e(d)(1) (emphasis added). And as described in Section I.B *supra*, all four subparts of § 1997e(d) work together to limit fees paid by defendants in prison cases and to curtail the discretion that § 1988 had previously conferred on district courts in such cases. If anything, then, § 1997e(d)(2)'s placement in the PLRA adds force to the usual presumption against broadly construing fee-shifting statutes.

On respondents' interpretation, § 1997e(d)(2) is broadly consonant with the American Rule: if the award of attorney's fees does not exceed 25 percent of the monetary judgment, the prisoner has to pay his

own lawyer, just like an ordinary non-incarcerated litigant. To the extent that § 1997e(d)(2) diverges from the American Rule, it does so in a way that favors the prisoner: if the fee award exceeds 25 percent of the judgment, the defendant is liable for the excess. By placing the threshold for fee-shifting at 25 percent of the judgment, Congress put prevailing prisoners in a somewhat better position than prevailing non-prisoner plaintiffs in personal injury cases, who typically pay 33 to 40 percent of their damage awards to counsel. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. Pa. L. Rev. 2043, 2083 n.9 (2010) (describing typical contingent fees ranging from 33 to 40 percent); *see US Airways, Inc. v. McCutchen*, 569 U.S. 88, 92 (2013) (personal-injury case involving 40 percent contingent fee). And § 1997e(d)(4) preserves prisoners' ability to enter into contingent fee agreements on top of any statutorily authorized fee award. 42 U.S.C. § 1997e(d)(4).

Petitioner's interpretation, by contrast, represents a marked departure from the American Rule: depending on the district court's discretionary choice, the prevailing prisoner may have to pay his lawyer as little as one cent. Even if § 1997e(d)(2) were ambiguous, petitioner has not come close to overcoming the "presumption favoring the retention of long-established and familiar legal principles" such as the American Rule and the benchmark provided by the standard contingent fee arrangement. *Baker Botts L.L.P.*, 135 S. Ct. at 2164 (internal quotation marks and alterations omitted).

II. The legislative history of § 1997e(d)(2) confirms respondents' interpretation.

Resort to legislative history is unnecessary where, as here, the statute's meaning is clear. *Mohamed v. Palestinian Auth.*, 566 U.S. 449, 458–59 (2012) (citing *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 236 n. 3 (2010)). Still, if additional evidence of legislative intent were needed, the legislative history of § 1997e(d)(2) confirms respondents' interpretation. The precursor to § 1997e(d)(2) provided in full as follows:

> 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 greater than 25 percent of the judgment, the excess shall be paid by the defendant*.

Prison Litigation Reform Act of 1995, S. 1279, 104th Cong., § 7(d)(2) (1995) (emphasis added). The first sentence is identical to the first sentence of § 1997e(d)(2) as enacted. The second sentence confirms that the defendant is liable for attorney's fees only if the fee award is greater than 25 percent of the judgment.

A version of the PLRA that included the language reproduced above was later included in an amendment to an appropriations bill, H.R. 2076. *See* H.R. 2076, 104th Cong. § 7(d)(2) (public print, Oct. 10, 1995). The pertinent language of the second sentence of § 1997e(d)(2) was subsequently altered without explanation in a conference report. *See* H.R. Rep. No.

104-378, at 71 (Dec. 1, 1995) (Conf. Rep.); H.R. Res. 289, 104th Cong. (1995). *See generally* Bernard D. Reams, Jr. & William H. Manz, *A Legislative History of the Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321* (1997).

During the ensuing discussion of H.R. 2076, two of its sponsors explained that the new version of the PLRA achieved the same litigation reforms embodied in the earlier version. *See* 141 Cong. Rec. S18136 (Dec. 7, 1995) (statement of Sen. Hatch) ("The conference bill also contains legislation I introduced with the distinguished majority leader to reform frivolous prison litigation."); *see also* 141 Cong. Rec. S18296 (Dec. 8, 1995) (statement of Sen. Abraham) ("These provisions are based on legislation that I have worked on assiduously along with the distinguished chairman of the Judiciary Committee, Senator Hatch, the majority leader, and Senators Hutchinson and Kyl."). H.R. 2076 was passed by both chambers but vetoed by the president. 141 Cong. Rec. H15166–67 (Dec. 19, 1995). The PLRA provisions from the conference report accompanying H.R. 2076 were then included, without change to the relevant language, in a new bill, H.R. 3019. That bill was passed by both houses of Congress and signed into law by the president on April 26, 1996. Prison Litigation Reform Act of 1996, Pub. L. No. 104–134, 110 Stat. 1321 (1996). The second sentence of § 1997e(d)(2) now reads: "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).

In short, the second sentence of § 1997e(d)(2) as originally introduced in the Senate confirmed respondents' reading of the first sentence: the district

court must satisfy the fee award from a portion of the judgment, but if the fee award exceeds 25 percent of the judgment, the defendant must pay the rest. The Conference Committee then made an unexplained decision to devote the second sentence of § 1997e(d)(2) instead to establishing an overall cap on attorney's fee awards. But it would be odd to infer from that revision of the *second* sentence any change in the meaning of the *first*. Quite the contrary: the most plausible inference is that members of the Conference Committee believed that the first sentence adequately expressed the rule that the defendant does not become liable for attorney's fees until the fee award reaches 25 percent of the judgment, so that they were free to repurpose the second sentence to impose an overall 150 percent cap.

Lower courts have noted that Congress used grammatically awkward language to express an outright 150 percent cap in the second sentence of § 1997e(d)(2). *See*, *e.g.*, *Foulk v. Charrier*, 262 F.3d 687, 703 (8th Cir. 2001); *Walker v. Bain*, 257 F.3d 660, 667 (6th Cir. 2001). The fact that the second sentence was revised so clumsily by the Conference Committee makes it even less plausible that the revision was carefully worded to affect the meaning of the preceding sentence. Overall, then, there is no reason to conclude that Congress intended to depart from the plain meaning of § 1997e(d)(2) that is confirmed by the Senate's original version.

III. The nondiscretionary interpretation of § 1997e(d)(2) promotes the purposes of the PLRA.

Enacted "in the wake of a sharp rise in prisoner litigation in the federal courts," the PLRA was

designed to "bring this litigation under control." *Woodford*, 548 U.S. at 84. Congress's overriding purpose was "to reduce the quantity . . . of prisoner suits." *Id*. (quoting *Porter v. Nussle*, 534 U.S. 516, 524 (2002)) (internal quotation marks omitted; ellipsis in *Woodford*). *See also Jones v. Bock*, 549 U.S. 199, 202 (2007) (PLRA was enacted "[i]n an effort to address the large number of prisoner complaints filed in federal court"). By reducing the overall amount of prison litigation, Congress sought to pursue "the twin goals of decreasing marginal lawsuits and protecting the public fisc." *Walker*, 257 F.3d at 669 (citing *Hadix v. Johnson*, 230 F.3d 840, 845 (6th Cir. 2000)). Respondents' nondiscretionary interpretation of § 1997e(d)(2) serves both of these goals.

A. The nondiscretionary interpretation of § 1997e(d)(2) discourages prisoners from filing marginal lawsuits.

As the PLRA's congressional sponsors recognized, one way to discourage prisoners from filing marginal lawsuits is to make sure that they face the same considerations other citizens face when deciding whether to file suit. Thus, Senator Kyl noted that under the PLRA "[p]risoners will have to make the same decision that law-abiding Americans must make: Is the lawsuit worth the price?" 141 Cong. Rec. S7526 (May 25, 1995). Senator Dole explained that the PLRA sought to place prisoners on a more equal footing with non-incarcerated plaintiffs when it came to paying the "costs associated with a lawsuit." 141 Cong. Rec. S14413 (Sept. 27, 1995). Section 1997e(d)(2) was crafted to align prisoners' incentives with those of would-be plaintiffs outside of prison in precisely this way. Just as members of the general

public often have to choose whether to agree to pay an attorney a fixed percentage of any award before filing an action, under § 1997e(d)(2) a prisoner can expect to pay 25 percent of the judgment to his attorney if the fee award is at least 25 percent of the judgment. Performing this familiar calculus would likely make at least some prisoners with marginal claims think twice about filing a lawsuit.

Petitioner argues that his discretionary reading serves the PLRA's purpose of discouraging marginal lawsuits while not discouraging meritorious ones. Pet. Br. 19–25. In particular, he argues that the attorney's fee provisions of the PLRA are aimed at encouraging lawyers to represent prisoners in strong cases, and that his interpretation of § 1997e(d)(2) "advances this purpose as well." Pet. Br. 21.[4]

But § 1997e(d)(2) has nothing to do with encouraging lawyers to represent prisoners. A lawyer's financial incentives are based on the fee he can expect to recover, and that fee does not change depending on whether a greater or lesser portion of it comes from the plaintiff's judgment. The attorney will receive the awarded fee whether the portion drawn from the judgment is 25 percent or one penny. From the perspective of the lawyer's financial incentives, then, the interpretation of § 1997e(d)(2) makes no difference.[5]

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[4] Petitioner never even attempts to explain how a discretionary reading of § 1997e(d)(2) would affect the incentives of *prisoners*, as opposed to their attorneys, so as to facilitate meritorious claims while stymieing non-meritorious ones, and it is hard to see how it would.

[5] Of course, lawyers are motivated by more than just financial incentives. They are also encouraged to undertake *pro bono*

It is true, as petitioner points out (Pet. Br. 20–21), that a *different* fee-related provision of the PLRA was designed to encourage attorneys to take on stronger cases. By ensuring that prisoners may enter into uncapped contingent fee agreements, Congress safeguarded prisoners' ability to attract counsel in cases that appear to have merit. 42 U.S.C. § 1997e(d)(4). Indeed, in the non-prisoner context, this Court has recognized that the "option of promising to pay more than the statutory fee if that is necessary to secure counsel of [plaintiffs'] choice" furthers § 1988's "general purpose of enabling such plaintiffs in civil rights cases to secure competent counsel." *Venegas v. Mitchell*, 495 U.S. 82, 89–90 (1990). But petitioner never explains why the availability of uncapped contingent fees under § 1997e(d)(*4*) means that the fee apportionment formula in § 1997e(d)(*2*) has anything to do with attracting counsel.

B. The nondiscretionary interpretation of § 1997e(d)(2) reduces the cost to governments of prison litigation.

The PLRA's aim of shielding government defendants from the costs of prison litigation is evident in many of its provisions. The strict exhaustion requirement lowers government defendants' litigation costs by keeping a large proportion of prison disputes out of the court system. *See* 42 U.S.C. § 1997e(a);

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cases as part of their professional obligations. *See*, *e.g.*, Model Rules of Professional Conduct r. 6.1 (Am. Bar Ass'n 2014) ("Every lawyer has a professional responsibility to provide legal services to those unable to pay."); *id*. cmt. 1 ("personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer"). But § 1997e(d)(2) has no effect on these non-economic incentives either.

Woodford, 548 U.S. at 89. The requirement that courts screen out frivolous claims at the beginning of the litigation keeps defense costs from mounting. *See* 28 U.S.C. § 1915A. The prohibition on prisoner suits for mental or emotional injury in the absence of a prior showing of a physical injury further reduces government liability. *See* 42 U.S.C. § 1997e(e). The restriction on circumstances in which federal courts can order injunctive relief with respect to prison conditions curtails federal court micromanagement of state prisons and the costs associated with it. *See* 18 U.S.C. § 3626(a). And in cases where a court appoints a special master, the PLRA shifts the burden of paying the special master from the States to the federal judiciary. *See id*. § 3626(f)(4).

Congress's focus on reducing the cost to governments of prison litigation was on display throughout the debate on the legislation as well. Senator Dole explained that prison litigation costs the States an enormous amount of money annually. 141 Cong. Rec. S14646 (Sept. 29, 1995). Senator Hatch remarked that it was "time to stop this ridiculous waste of taxpayers' money." 141 Cong. Rec. S14627 (Sept. 29, 1995). Senator Abraham stated that the people "certainly don't need [to have their money spent] on defending against endless prisoner lawsuits." 141 Cong. Rec. S14419 (Sept. 27, 1995). Senator Abraham further explained that as a result of the PLRA, "[n]o longer will attorneys be allowed to charge massive amounts to the State for the service of correcting minimal violations," and "no longer will attorneys be allowed to charge very high fees for their time." 141 Cong. Rec. S14317 (Sept. 26, 1995).

Respondents' nondiscretionary reading of § 1997e(d)(2) advances the purpose of protecting government defendants against the costs of prison litigation. By requiring the court to satisfy the fee award from the judgment so long as the award does not exceed 25 percent of the judgment, § 1997e(d)(2) limits the government's fee liability. In contrast, petitioner's reading of § 1997e(d)(2) exposes defendants to nearly absolute fee-shifting at the discretion of the district court, and thus fails to advance this core purpose.

C. The remaining arguments of petitioner and his amici lack merit.

Perhaps recognizing the weakness of his argument that § 1997e(d)(2) affects attorneys' incentives, petitioner offers a second ostensible purpose of the provision: "to deter culpable conduct on the part of prison officials." Pet. Br. 21–22; *see also* ACLU Am. Br. 6–9. He contends that § 1997e(d)(2) should be read to give district courts discretion so that "defendants pay more [] in the more egregious cases." Pet. Br. 21. But this contention misunderstands the purpose of fee-shifting. If the finder of fact has determined that defendants have engaged in "'egregious conduct,'" it may award punitive damages. *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 260–61 (1984) (quoting *Smith v. Wade*, 461 U.S. 30, 49 (1983)). The function of fee-shifting, however, is to attract competent counsel and "ensure effective access to the judicial process for persons with civil rights grievances," *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (quotation omitted), not to punish or deter blameworthy conduct. Appropriate fees under § 1988 are determined by the lodestar method, which

attempts to identify the reasonable hourly rate and the reasonable amount of hours spent on the case. *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). Although this Court has recognized that the lodestar figure may be augmented in rare circumstances, *Perdue*, 559 U.S. at 554, none of those circumstances includes consideration of the defendant's underlying conduct, *id*. at 554–56.

Nor does anything in the PLRA suggest an intent to confer discretion on the district court to apportion the fee award based on the defendant's conduct. Petitioner claims that Congress "virtually always authorizes district courts to exercise considerable discretion" in awarding fees. Pet. Br. 16–17. But as explained in Section I.B *supra*, all of the attorney's fee provisions in the PLRA *limit* the defendant's liability for attorney's fees in PLRA cases by *constraining* the district court's discretion as compared to the general fee-shifting rules applicable under § 1988. *See* 42 U.S.C. § 1997e(d)(1)–(4). None of these provisions refers to the nature of the underlying conduct.

Finally, notwithstanding petitioner and amici's implications to the contrary, respondents' reading of § 1997e(d)(2) is not inequitable. Rather, as noted in Section I.C *supra*, requiring the prisoner to pay 25 percent of the judgment to his lawyer (or less if the fee award is smaller than that amount) effects a modest departure from the American Rule in the prisoner's favor, since the applied portion falls short of the typical contingent fee a non-incarcerated plaintiff could expect to pay. *See* Fitzpatrick, 158 U. Pa. L. Rev. at 2083 n.9. If a contingent fee is needed to attract counsel, § 1997e(d)(4) permits the prisoner and his lawyer to

agree to one, as apparently happened here, *see* Dist. Ct. Doc. 158-1.

The argument that respondents' nondiscretionary reading is inequitable to prisoners is further undercut by the fact that the apportionment rule of § 1997e(d)(2) applies only to judgments awarding monetary relief. In cases involving solely injunctive relief, which can spur important systemic changes to prison conditions, *see*, *e.g.*, *Brown v. Plata*, 563 U.S. 493 (2011), there is no 25 percent apportionment, as there is no monetary judgment to apportion.[6] In addition, the PLRA has no effect on state-law claims, and States remain free to provide fee-shifting for prisoners who prevail on such claims. *See*, *e.g.*, Conn. Gen. Stat. Ann. § 52-251b; 740 ILCS 23/5(c); 1 Me. Rev. Stat. tit. 5, § 4683; Or. Rev. Stat. Ann. § 20.107.

[6] Similarly, all of the courts of appeals that have addressed the issue have held that the overall 150 percent fee cap in the second sentence of § 1997e(d)(2) does not apply when solely injunctive relief is awarded. *See Kelly v. Wengler*, 822 F.3d 1085, 1101 (9th Cir. 2016); *Foulk*, 262 F.3d at 703 n.17; *Walker*, 257 F.3d at 667 n.2; *Boivin v. Black*, 225 F.3d 36, 41 n.4 (1st Cir. 2000).

CONCLUSION

This Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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