No. 16-261

IN THE

Supreme Court of the United States

SARAH HUSAIN, et al,

Petitioners,

v.

MARLENE SPRINGER,

Respondent.

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

AMICUS CURIAE BRIEF OF CURRENT AND FORMER STUDENTS AND FACULTY OF THE CITY UNIVERSITY OF NEW YORK, COMMUNITY MEMBERS, THE CENTER FOR NULEADERSHIP ON URBAN SOLUTIONS, AND THE STUDENT PRESS LAW CENTER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

KENNETH KIMBERLING
Counsel of Record
99 Hudson Street
New York, New York 10013-2815
(202) 966-5932
kkimerling@yahoo.com

Attorney for Amici Curiae

(Counsel list continued on inside cover)

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

OF COUNSEL:

Roger S. Wareham
Attorney-at-Law
394 Putnam Avenue
Brooklyn, NY 11216
(718) 230-5270

Ronald L. Kuby
119 West 23rd Street
Suite 900
New York, NY 10011
(212) 529-0223

Mark Yu
75 Wall St. - Suite 20J
New York, N.Y. 10005
(212) 837-8531

Stephen Bergstein
Bergstein & Ullrich
15 Railroad Avenue
Chester, N.Y. 10918
(845) 469-1277

David Bunji Fromartz
32 Court St. - Suite 507
Brooklyn, N.Y. 11201
(718) 855-7675

Joel R. Kupferman
225 Broadway-Ste. 2625
New York, N.Y. 10007
(212) 334-5551

James I. Meyerson
1065 Avenue of the
Americas - Suite 300
New York, N.Y. 10018
(212) 344-4447

Michael W. Warren
Michael W. Warren, P.C.
30 Wall St. - Suite 800
New York, N.Y. 10005
(718) 709-8200

Nicholas Penkovsky
The Penkovsky Law
Group, P.C.
43 West 43rd Street
New York, N.Y. 10036
(347) 603-7876

Delmas A. Costin, Jr.
The Law Office of
Delmas A. Costin, Jr
177 East 161st Street
Bronx, N.Y. 10451
(718) 618-0589

John Ware Upton
John Ware Upton, Esq.
217 Broadway
Suite 707
New York, N.Y. 10007
(212) 233-9300

QUESTION PRESENTED

Does the lodestar method recognized by *Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010), require that a fee award under 42 U.S.C. § 1988 to a prevailing plaintiff in a meritorious case, after adjustments to the lodestar, award compensation for the minimum number of hours reasonably necessary for plaintiff's attorney to accomplish the work necessary to achieve the meritorious result?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6 *amici curiae* Student Press Law Center ("SPLC") and the Center for NuLeadership On Urban Solutions, Inc. ("CNUS") disclose that they are each non-profit corporations with no parent corporations and no stock, and thus no publicly held corporation owns more 10 percent or more of the stock of SPLC or CNUS.

All the other *amici curiae* are natural persons, not corporations, and therefore not required to make any Corporate Disclosure Statement.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

CASES

UNITED STATES CONSTITUTION

STATUTES

Federal Statutes:

WEB SITES

http://www.cuny.edu/about/administration/offices/ira/ir/data-book/current/enrollment.html
Last visited September 27, 2016 . . . . . 1, 2

https://en.wikipedia.org/wiki/City_University_of_New_York
Last visited September 27, 2016 1

INTEREST OF THE *AMICI CURIAE*[1]

The City University of New York ("CUNY") is the third largest university in the United States with over 500,000 students, including 274,000 matriculated graduate and undergraduate students.[2] The majority of CUNY's 245,000 undergraduate students are Black or Hispanic, nearly 40% live in households with annual family income less than $20,000 and nearly 60% receive federal financial aid grants.[3] Over 40% of CUNY undergraduates are the

---

[1] Petitioners' counsel, Ronald B. McGuire, participated in the preparation of this *amici curiae* brief. Larene Kovalenko, the mother of one of the *amici curiae*, Michael Kovalenko, contributed two hundred and fifty dollars ($250.00) to the preparation of this brief. All other funds for the preparation of this brief were contributed by the other *amici curiae*. All Parties have consented to the filing of this *amici curiae* brief.

[2] Links to "ENRL_OOO1..." and "Non-credit Enrollment . . . " at
http://www.cuny.edu/about/administration/offices/ira/ir/data-book/current/enrollment.html
Last visited September 27, 2016.

See also:
https://en.wikipedia.org/wiki/City_University_of_New_York
Last visited September 27, 2016.

[3] "Fall 2015 Profile of CUNY Undergraduates" (link) at:

(continued...)

first in their families to attend college, 36% were born outside the U.S. mainland and 44% speak a native language other than English at home. *Id*. In short, most CUNY students are members of one or several demographic groups subjected to historic discrimination who are entitled to the most stringent protection under 42 U.S.C. §1983 and 42 U.S.C. §1988. Obviously, very few CUNY students or their families have the means to retain counsel.

The *amici curiae* include 110 current and former students of colleges and schools operated by CUNY. Many of the current and former student *amici* were represented *pro-bono* by Petitioners' counsel in civil rights lawsuits or college disciplinary proceedings or criminal cases arising from political protests. Several of the *amici* and the Petitioners attested to their futile efforts to obtain counsel in student rights cases where attorneys were often unwilling to commit substantial time to test cases involving appeals where there was no possibility of a financial settlement. 155a, ¶¶6-7; 157a-158a, ¶¶10-11; 172a, ¶12; 182a, ¶7; 189a, ¶12; 192a, ¶16.

The student *amici* recognize that the drastic and arbitrary reduction of counsel's fee upheld by the Second Circuit threatens the availability of counsel to the *amici* and similarly situated students in future meritorious cases to defend, define and ex-

---

(...continued)
http://www.cuny.edu/about/administration/offices/ira/ir/data-book/current/enrollment.html
Last visited September 27, 2016.

pand vital constitutional rights of CUNY students who cannot afford to pay for services of counsel.

The *amici* also include 34 current and former CUNY faculty members, including 16 former CUNY students, who recognize that the Second Circuit's decisions on attorney's fees in this case will have a chilling effect on the willingness of private attorneys to litigate significant civil rights cases on behalf of CUNY students. The *amici* also include 25 community members who likewise support the right of CUNY students to obtain counsel and two not for profit public interest organizations.

Amicus curiae Center for NuLeadership On Urban Solutions, Inc. ("CNUS") is a think tank founded and developed by formerly incarcerated professionals working to create new paradigms for achieving Human Justice, a concept developed by CNUS in 2012 to transcend the existing traditional, criminal and social justice paradigms. CNUS has worked on re-entry programs enabling formerly incarcerated persons to attend CUNY colleges and CNUS appreciates the need its constituents and other CUNY students have for access to legal representation in civil rights lawsuits.

The Student Press Law Center ("SPLC") is a national, non-profit, non-partisan organization established in 1974 to perform legal research and provide information, advice and advocacy for student journalists and their advisers to preserve and promote the free expression rights of student journalists. As the only national organization devoted exclusively to defending the legal rights of the stu-

dent press, SPLC has collected information on student press cases nationwide and has submitted amicus briefs to the Supreme Court of the United States and many federal courts of appeal. An important part of the SPLC's work is connecting student journalists with private attorneys who volunteer to represent students in cases related to the rights of student journalists. The decisions of the Second Circuit on appeal in this case trivialize the value of *pro-bono* legal work necessary to define and defend the rights of student journalists and students generally and will have a chilling effect on the availability of private counsel to defend vital First Amendment rights of students like the Petitioners in this case.

Due to limited resources and personnel, SPLC "generally must limit its participation as *amicus curiae* to only those cases that it believes will have a significant, long-term impact on the interests and rights of America's student media." 150a, ¶5. SPLC believed that this case met those criteria and therefore filed an *amicus brief* to the Second Circuit on the merits portion of this case. 150a, ¶6. Now that Petitioners have prevailed on the merits in a precedent setting decision, SPLC recognizes that the decisions on appeal threaten to undermine the ability of student journalists and other students to bring important civil rights cases. The decisions on appeal implicitly undermine the lodestar method by permitting or, in this case, requiring, the district court to arbitrarily reduce attorney fee awards without regard to the hours reasonably expended to prevail. The implicit precedent set by the Second Circuit will deter attorneys from bringing significant civil rights

cases on behalf of student journalists or other students.

STATEMENT OF THE CASE

Petitioners were part of a group of student plaintiffs who brought this case to define and extend this Court's then-recent holding that a metaphysical limited public forum is created whenever public college officials charge a mandatory student activity fee dedicated in whole or in part to supporting expressive student activities, such as student publications. *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 830 and 840 (1995). Petitioners' main claim was that Respondent, the former college president, violated the First Amendment rights of student journalists, candidates in the student government election and all students who paid mandatory student activity fees when Respondent nullified the results of a student government election in retaliation for publication of a partisan election issue of a student newspaper.

CUNY tenaciously defended the prerogative of its college presidents to regulate viewpoints published in student newspapers pertaining to student government elections. Ten attorneys appeared in court or submitted substantial papers on behalf of the Respondent. ¶¶28-30 of Page JA1172 of Volume V of the Joint Appendix filed as Document 32-1 in *Husain v. Springer*, Case No. 15-127 (2d Cir) (hereafter, the "Joint Appendix"). To prevail in this case Petitioners' attorney had to litigate two motions to dismiss, three summary judgment motions, a motion and a hearing for a preliminary injunction, three

substantive magistrate's reports and recommendations that were litigated *de novo* before the district court, a successful sanctions motions against Defendant's initial counsel, two appeals to the Court of Appeals which resulted in the precedential decision in *Husain v. Springer ("Husain IV")*, 494 F.3d 108 (2d Cir. 2007), *cert. denied*, 552 U.S. 1258 (2008), a petition for certiorari [500-1], five depositions and extensive discovery over a period spanning thirteen years. See *Husain v. Springer, Case #16-261,* Petition for Certiorari dated August 11, 2016 (the "Petition") at 25, n.10.

Petitioners were represented by a sole practitioner working *pro bono*. Over a period of thirteen years, Petitioners' attorney worked 3,571.2 hours including 2,741.4 hours of attorney time. Petition at 4. Petitioners requested compensation for 1,949.1 hours of attorney time. Petition at 19. Thus, Petitioners' attorney reduced his own hours by 792, or 29%. 32a-33a. The district court further reduced the compensable hours to 633.5. *Husain v. Springer ("Husain VI")*, No. 97-CV-2982, 2013 U.S. Dist LEXIS 37134 (E.D.N.Y. March 14, 2013). 41a. See Joint Appendix at JA1251-JA1252. On appeal the Second Circuit held that although Petitioners were entitled to a fee award, the award by the district court was excessive and remanded the case for the district court to consider reducing the award further. *Husain v. Springer ("Husain VII")*, 579 F. App'x 3 (2d Cir. August 29, 2014). 17a.

Following remand the district court reduced the allowable hours to 121.82, or 4.4% of the 2,741.4 hours of attorney time worked by Petitioners' coun-

sel. *Husain v. Springer ("Husain VIII")*, No. 97-CV-2982 (E.D.N.Y. December 9, 2014). 7a.

The 95.6% reduction of billable hours was affirmed by the Second Circuit in the Order on Appeal. *Husain v. Springer ("Husain IX")*, 622 F. App'x 13 (2d Cir. November 10, 2015). 4a.

Neither the Second Circuit nor the district court indicated how Petitioners' attorney could have done the work needed to prevail on Petitioners' claims in 121.82 hours.

The excessiveness of the reduction of the fee award to 121.82 hours is highlighted by the fact that in opposing the original fee application Respondent's counsel argued that if fees were awarded Petitioners' counsel should be compensated for 1,033.4 hours of attorney time reduced by 30% for partial success resulting in compensation for 723.4 hours. See page 36 of *Memorandum of Law In Opposition to Plaintiffs' Application For Attorneys Fees and Costs* dated December 21, 2010 filed as Document #504 in case 97-CV-2982 (E.D.N.Y.).

Additional background pertaining to this case is set forth in the Petition at 6-22 and in *Husain IV* at 57a-74a.

REASONS TO GRANT THE PETITION

I. ARBITRARY REDUCTIONS OF FEE AWARDS IN MERITORIOUS CASES WILL UNDERMINE THE PURPOSE OF THE FEE SHIFTING STATUTES.

The purpose of 42 U.S.C §1988 is, as a matter of public policy, to recognize special classes of cases where the public interest is served by encouraging attorneys to undertake representation of plaintiffs who could not afford to retain counsel. This encouragement takes the form of granting fees to prevailing plaintiffs in meritorious cases.

To achieve the purposes of the statute, the fee award should be "sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A*, 559 U.S. 542, 552 (2010). This Court has adopted the lodestar method based on determining a reasonable hourly rate for counsel's services and multiplying that rate by a reasonable number of hours expended to prevail in the case and, in unusual circumstances, adjusting that rate upward or downward. *Hensley v. Eckerhart*, 461 U.S. 424, 433-434 (1983). The purpose of these adjustments is to require the losing party to pay the prevailing party's attorney a "reasonable" fee that is adequate to attract competent counsel but does not produce windfalls to attorneys. *Blum v. Stenson*, 465 U.S. 886, 897 (1984).

The orders on appeal in this case would compensate Petitioners' attorney 121.82 hours, less than 5%

of the hours he devoted to this case or less than 17% of the 723.4 hours Respondent argued would be appropriate at the district court. See page 7, above. That would be unfair and have a chilling effect on the willingness of other attorneys to take similar cases. See 125a, ¶11; 133a, ¶12; 138a, ¶7. Such a result would frustrate the manifest purpose of the fee shifting statute.

There are extraordinary cases where a prevailing party's victory is purely technical. In such cases the court should exercise its discretion and not award any fee. *See, e.g. Farrar v. Hobby,* 506 U.S. 103, 115 (1992) (No fee awarded when prevailing plaintiff sued for 17 million dollars but was awarded only one dollar in a case that did not set any precedents or achieve any significant public purpose). *But see, Farrar v. Hobby*, 505 U.S. at 121, 122, (O'Connor, J., concurring) ("[n]ominal relief does not necessarily a nominal victory make" and advising courts in determining an appropriate fee award to consider three "indicia of success - the extent of relief, the significance of the legal issue on which the plaintiff prevailed, and the public purpose served" by the litigation").

Unlike *Farrar*, the *Husain IV* decision was recognized by the Student Press Law Center as "the most authoritative precedent in the country for the principle that retaliation for student speech need not be directed at the speaker to create a chilling effect."[4]

---

[4] *Brief Amicus Curiae of the Student Press Law* (continued...)

In fact, this case set at least five significant precedents, four at the Second Circuit and one in the district court including holdings that:

a. Public college officials may not require editors of newspapers funded by student activity fees to "balance" published viewpoints; *Husain IV,* 88a;

b. An unconstitutional viewpoint based restriction on a student newspaper need not be a prior restraint, administrative discipline or a denial or reduction in funding; *Husain IV*, 90a-91a;

c. An adverse action by a college official against third parties unaffiliated with a student newspaper is a viewpoint based restriction on the newspaper if the action is taken in response to published viewpoints and the reprisal against the third parties affects subsequent editorial decisions of the editors and staff of the newspaper, *Husain IV*, *Id.*;

d. A public college official who violates established First Amendment rights is not entitled to qualified immunity as a matter of law on the ground that the specific restriction imposed was not previously held to be unconsti-

---

[4](...continued)
Center In Support of Appellants' Brief dated April 29, 2015 at 4 and filed as document #56 in *Husain v. Springer*, (15-127-cv) (2d Cir.).

tutional; *Husain IV*, *supra,* 100a-101a.

e. *Husain v. Springer ("Husain I")*, 193 F. Supp. 2d 664, 670-671 (E.D.N.Y. 2002) is the only reported decision holding a student unaffiliated with a student publication who pays student activity fees has standing to sue public college officials who impose viewpoint based restrictions on publications funded by mandatory student activity fees where the unaffiliated student is an intended recipient of the restricted speech.

The precedents set by this case have been followed by other courts and have compelled CUNY, the third largest university system in the nation, to change its First Amendment policy which previously permitted and encouraged college presidents to attempt to "balance" student media coverage of student elections. *See, e.g. Moore v. Watson*, 838 F. Supp. 2d 735, 756 (N.D. Ill. 2012); *Sigal v. Moses*, 98 Civ. 3940 (S.D.N.Y.) (TPG), 2008 U.S. Dist LEXIS 95039 (November 21, 2008).

Given the precedents that were established by this lengthy litigation, there is no way that the decision on appeal reducing attorney's fees to 121.82 hours could be justified. Petitioners prevailed on the central legal claim in their case, thereby establishing their First Amendment rights. Under the lodestar method for implementing 42 U.S.C. §1988, Petitioners' attorney is entitled to a reasonable number of his hours expended to establish those precedents. The precedents set in *Husain IV* and *Husain I* were essential to block future violations of Plaintiffs'

rights as neither Respondent nor the university were convinced that what they did was unlawful. *See*, Statements by Counsel for the University at 72a and by Respondent at 87a. The practical result of these First Amendment decisions was that Petitioners and other students like them were protected from these unlawful actions in the future. The only way to do that was to pursue these issues and establish these precedents.

II. THIS COURT HAS RECOGNIZED THAT VITAL FIRST AMENDMENT INTERESTS ARE AT STAKE IN DEFINING AND PROTECTING THE RIGHTS OF PUBLIC COLLEGE STUDENTS IN LIMITED PUBLIC FORUMS CREATED WHEN COLLEGES ASSESS MANDATORY STUDENT ACTIVITY FEES DEDICATED TO SUPPORT OF EXPRESSIVE STUDENT ACTIVITIES.

The majority opinion in *Husain IV* recognized that this case implicated the same "vital First Amendment Speech principles" that underlie this Court's decision in *Rosenberger*, 515 U.S. at 835-836. 99a-100a.

However, the dissenting opinion in *Husain IV* characterized this as a "case about nothing," and "a silly thing" of such insignificance that the dissenter refused to even read the majority opinion that he dissented from. 108a-109a. The dissenter impugned

the motives of the student Petitioners for bringing this lawsuit which he characterized as a "slow motion tantrum by children." *Id*. The vitriolic dissent went further to ridicule and mischaracterize Petitioners' beliefs, invoking a notorious terrorist and war criminal without any justification in the record or in reality when the dissenter declared that Petitioners were motivated by "a fantasy of oppression: that plutocrats are trying to stifle an upsurge of Pol-Potism on Staten Island." *Id*.

The dissenting judge presided over both appellate panels in *Husain VII* and *Husain IX* where the Court of Appeals first ordered the district court to further reduce the fee award and ultimately affirmed the district court's decision in *Husain VIII* to compensate Petitioners' counsel for 121.82 of the 2,741.4 hours of attorney time he devoted to this case.

The linchpin of the *Husain VII* decision mandating the district court to reduce Petitioners' attorneys fee award for partial success without regard to the minimum number of hours reasonably necessary to prevail on the central legal claims in this case was a citation to *Carroll v. Blinken*, 105 F.3d 79, 81 (2d Cir. 1997). 14a. In *Carroll* the Second Circuit reduced a fee request from $558,000 to $25,000 because plaintiffs did not succeed on their main claim. However, in a decision that preceded *Husain VII* by three years, the Second Circuit held that this Court's enunciation of the mechanics of the lodestar method in *Perdue* impliedly overruled the unbridled discretion that *Carroll* previously conferred to district courts in fee shifting cases. *See, Millea v. Met-*

ro-North R.R., 658 F.3d 154, 167 and n.3 (2d Cir. 2011)(Jacobs, J.):

> By enacting a fee-shifting provision for FMLA claims, Congress has already made the policy determination that FMLA claims serve an important public purpose disproportionate to their cash value. We cannot second-guess this legislative policy decision.
>
> n.3 To the extent we have held otherwise in the past, *see Carroll v. Blinken*, 105 F.3d 79, 81 (2d Cir. 1997) ("[W]here the damage award is nominal or modest, the injunctive relief has no systemic effect of importance, and no substantial public interest is served, a substantial fee award cannot be justified."), such holdings were (at least) impaired by the declaration in *Perdue* that the lodestar is the "guiding light of our fee-shifting jurisprudence," that it is "presumptively reasonable," that it includes "most, if not all, of the relevant factors" in determining a reasonable fee award, and that it should only be deviated from in "rare" and "exceptional" circumstances. *Perdue*, [559 U.S. at 551-554].

Notably, the judge who presided over the *Husain VII* and *Husain IX* panels authored the *Millea* decision which was not mentioned in either of the appellate decisions in this case.

This case was a tragedy for Petitioners' attorney who was awarded a pittance for almost 3,000 hours of tenacious work. But this Court should review the

Second Circuit's decisions in *Husain VII* and *Husain IX* because those decisions contravene *Perdue* and would give district courts unbridled discretion to arbitrarily set fees without regard to the intent of the fee shifting statutes or the requirement of the lodestar method to compensate prevailing attorneys in meritorious cases the minimum amount necessary for a reasonably competent attorney to accomplish the work necessary to prevail.

More significantly, the Second Circuit's fee decisions in this case will deter attorneys from taking student rights cases for CUNY students and validate the assumption implicit in the *Husain IV* dissent that a case about the fundamental rights of CUNY students amounts to "a case about nothing."[5]

---

[5] The importance of the availability of *pro-bono* counsel to students at the City University of New York is poignantly illustrated by the declarations of Petitioners and *amici* at 153a-198a including the following excerpt from the Declaration of the Honorable Ydanis Rodriguez, a member of the New York City Council who was a client of Petitioners' counsel when Council Member Rodriguez was an immigrant student at CUNY facing possible expulsion and criminal charges for his peaceful political activity organizing sit ins to protest a tuition increase:

"When Mr. McGuire began his career as a student rights lawyer students, including myself, accepted the civil rights catastrophe he condemned as simply the natural state of affairs. Administrators would ban

(continued...)

III. THE COURT SHOULD CLARIFY ITS HOLDING IN *PERDUE* TO SPECIFY THAT DISTRICT COURTS ARE REQUIRED TO JUSTIFY SUBSTANTIAL DOWNWARD

---

[5](...continued)
speakers, suspend students without the due process required by the CUNY bylaws and routinely close meetings to students where decisions were made about policy and funding. As a result of Mr. McGuire's work the speaker bans are a thing of the past and CUNY is now governed by the state's Open Meetings Law and Freedom of Information Laws that were denied in the past and CUNY governance bodies and their committees no longer vote by secret ballot. *See, Perez v. City University*, 5 N.Y.3d 522 (2005); *Smith v. City University*, 92 N.Y.2d 707 (1999). The City now cannot cut community college funding in violation of the state's maintenance of effort law. *Apollon v. Giuliani*, 168 Misc. 2d 363, 637 N.Y.S.2d 270 (N.Y. County Supreme Ct. 1995) and the City can't impose conditions on its funding to CUNY's community colleges. *Perez v. Giuliani*, 182 Misc. 2d 398, 697 N.Y.S.2d 470 (N.Y. County Supreme Ct. 1999). Even in cases where Mr. McGuire's clients did not ultimately prevail he often advanced the interests of his student clients because CUNY administrators now know that students have an advocate who is willing and able to represent them in court and to take cases on multiple appeals to win student rights."

191a-192a, ¶15.

DEVIATIONS FROM THE LODESTAR AS WELL AS ENHANCEMENTS.

In *Perdue* this Court reaffirmed that "the lodestar figure has, as its name suggests, become the guiding light of our fee-shifting jurisprudence." 559 U.S. at 551 [citations and internal quotation marks omitted]. The fee determined by multiplying a reasonable hourly rate by a reasonable number of hours necessary to litigate a meritorious case produces a lodestar figure that is a presumptively reasonable compensation for counsel in a meritorious civil rights case. *Perdue*, 559 U.S. at 551-552, 558. The presumption that the lodestar produces a reasonable amount for attorney compensation is so strong that the presumption may only be overcome in "rare circumstances" *Perdue*, 559 U.S. at 553-554.

In *Perdue* this Court reversed an enhanced hourly rate awarded by a district court because "the District Court did not provide proper justification for the large enhancement that it awarded." *Perdue* at 557. While recognizing that there could be rare circumstances where a substantial upward deviation from the lodestar figure would be equitable, such deviations from the lodestar require the District Court to give an objective basis for the deviation or "adequate appellate review" would not be feasible. *Perdue* at 558.

While *Perdue* dealt with an upward deviation from the lodestar some courts have held that *Perdue* requires a similar objective justification of reductions in the lodestar. *See, e.g., Millea, supra*, 658

F.3d at 167 and n.3. (holding that *Perdue* implicitly overruled the *Carroll v. Blinken* line of cases in the Second Circuit that gave virtually unbridled discretion to trial courts to reduce fee awards for partial success without regard for how many hours were necessary for counsel to do the work necessary to prevail.)

The attorney's fees decisions in this matter act to punish an attorney for pursuing a claim to establish important constitutional precedents. The decision in *Husain VII* directing the lower court to reduce attorney's fees well below what even the Respondent believed was appropriate and below the amount determined by the trial court not only violates this Court's decision in *Perdue*, but acts as a deterrent to pro-bono assistance by attorneys in civil rights cases. Section 1988 was designed to encourage attorneys to take cases like this. The Court below turns *Perdue* on its head.

This Court should grant certiorari to clarify that the requirement that district courts provide specific justification for upward deviations form the lodestar applies equally to instances where the district court awards fees in meritorious cases substantially lower than the lodestar rate.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully ask the Court to grant the petition for certiorari.

Respectfully Submitted,

/s/ KENNETH KIMERLING
KENNETH KIMERLING
Counsel for Amicus Curiae Current and Former Students and Faculty of the City University of New York and Supporters Including the Center For Nu-Leadership On Urban Solutions, Inc. and the Student Press Law Center

99 Hudson Street - 12th Floor
New York, N.Y. 10013-2815
(212) 966-5932
kkimerling@yahoo.com

September 29, 2016

Of Counsel
Roger S. Wareham
Attorney-at-Law
394 Putnam Avenue
Brooklyn, NY 11216
(718) 230-5270

Of Counsel:
James I. Meyerson
1065 Avenue of the
Americas - Suite 300
New York, N.Y. 10018
(212) 344-4447

(Counsel list continued on next page)

Of Counsel:
Ronald L. Kuby
119 West 23rd Street
Suite 900
New York, NY 10011
(212) 529-0223

Of Counsel:
Mark Yu
75 Wall St. - Suite 20J
New York, N.Y. 10005
(212) 837-8531

Of Counsel:
Stephen Bergstein
Bergstein & Ullrich
15 Railroad Avenue
Chester, N.Y. 10918
(845) 469-1277

Of Counsel:
David Bunji Fromartz
32 Court St. - Suite 507
Brooklyn, N.Y. 11201
(718) 855-7675

Of Counsel:
Joel R. Kupferman
225 Broadway-Ste. 2625
New York, N.Y. 10007
(212) 334-5551

Of Counsel:
Michael W. Warren
Michael W. Warren, P.C.
30 Wall St. - Suite 800
New York, N.Y. 10005
(718) 709-8200

Of Counsel:
Nicholas Penkovsky
The Penkovsky Law
Group, P.C.
43 West 43rd Street
New York, N.Y. 10036
(347) 603-7876

Of Counsel:
Delmas A. Costin, Jr.
The Law Office of
Delmas A. Costin, Jr.
177 East 161st Street
Bronx, N.Y. 10451
(718) 618-0589

Of Counsel:
John Ware Upton
John Ware Upton, Esq.
217 Broadway
Suite 707
New York, N.Y. 10007
(212) 233-9300

(Names of 155 Amici Curiae listed in appendix)

APPENDIX

LIST OF *AMICI CURIAE*

ORGANIZATIONS:

Student Press Law Center

Center for NuLeadership On Urban Solutions, Inc.

CURRENT AND FORMER CUNY STUDENTS:

Mael Apollon,
Current Graduate Student, Queens College,
Alumna, Queens College (M.A.),
Alumna, Borough of Manhattan Community College (A.A.);

Lewis Antine,
Alumnus, City College of New York;

Zachary Arcidiacono,
Alumnus, Hunter College (B.A.);

Maria Arettines,
Alumna, Hunter College (B.A.);

Talia Arif
Current Student, Guttman Community College,
Former Staff, City College of New York;

Kazembe Balagun,
Alumnus, Pace University (M.Ed.),
Alumnus, Hunter College (B.A.);

Robert Baskerville, Ph.D.,
Alumnus, Queens College (M.A.),
Alumnus, CUNY Graduate Center (M.Phil.),
Alumnus, Bronx Community College (A.A.),
*(Also faculty amicus);

Michael Bellamy,
Current Student, Hunter College;

Michael Berlin,
Current Student, Hunter College;

Mervian Blue,
Current Student, City College of New York;

Sylvia Blumenfeld,
Alumna, Lehman College (M.S.);

Renate Bridenthal,
Alumna, Columbia University (Ph.D.),
Alumna, City College of New York (B.A.);
*(Also faculty amicus);

Adriane Brown,
Former Student, City College of New York;

Nicole Bugarin,
Alumna, Queens College (B.A.),
Alumna, Borough of Manhattan Community College (A.A.);

Ramiro Campos,
Alumnus, Hunter College (B.A., M.A.);
*(Also faculty amicus);

Asha Cameron,
Alumna, John Jay College of Criminal Justice (B.A., M.A.);

Stephanie Campos, Ph.D.,
Alumna, CUNY Graduate Center (Ph.D.),
Alumna, Hunter College (B.A., M.A.);

Alejandro Cantagallo,
Alumnus, Hunter College (B.A.);

Joshua Chaikin,
Former Student, City College of New York;

Raymond Chen,
Alumnus, Hunter College (B.A., M.S.);

Heidi Chua,
Former Student, Brooklyn College;

Daniel Cione,
Current Student, Hunter College;

Linda Clarke-Brim,
Former Graduate Student, Hunter College,
Alumna, Medgar Evers College (B.A.);

Susan DiRaimo,
Alumna, Lehman (M.S.),
Alumna, City College of New York (B.A., B.S.),
*(Also faculty amicus);

Dobie Dolphin,
Former Student, City College of New York;

Sheila Dugan, Esq.,
Alumna, CUNY School of Law (J.D.),

Daniel Dunn,
Current Student, Borough of Manhattan
Community College;

Iman El-Sayed, R.N.,
Alumnus, College of Staten Island (B.A.);

Liam Flynn-Jambeck,
Alumnus, Hunter College (B.A.),
Former Undergraduate Student Government
President;

Nicole Fontan,
Former Student, Hunter College;

Laurie Funaroff,
Former Student, City College of New York;

James Gagliardo,
Former Student, Brooklyn College;

Elizabeth M. Garcia, Esq., R.N.,
Alumna, Bronx Community College (A.A.S.),
Alumna, Lehman College (B.S.);

Orlando Green,
Alumnus, City College of New York (B.A.);

Neha Gautam
Alumna, City College of New York (B.A.);
Alumna, LaGuardia Community College;

Christopher Gunderson, Ph.D.,
Alumnus, CUNY Graduate School (Ph.D.),
Alumnus, Queens College (M.A.),
Alumnus, Hunter College (B.A.);

Aatika Harchan,
Current Student, College of Staten Island;

Luis Henriquez,
Alumnus, Queens College (B.A.);

Rob Hollander, Ph.D.,
Alumnus, CUNY Graduate Center (Ph.D.),
Alumnus, Hunter College (B.A.),
Former Chair CUNY Doctoral Students' Council,
*(Also faculty amicus);

Farhen Hossain,
Former Student, Queens College;

Helen Jacobs,
Former Student, City College of New York;

Constance Sydney Jordan-Cooley,
Alumna, City College of New York (B.A.)

Laura Kaplan,
Current Student, CUNY Graduate Center,
Alumna, Hunter College (M.A.),
Alumna, New York University (M.A.),
Alumna, Oberlin College (B.A.);

Al Katz, Ph.D.,
Alumnus, CUNY Graduate Center (Ph.D.),
*(Also faculty amicus);

Kenneth M. Kellerman,
Former Student, City College of New York;

Nasif Khan,
Current Student, City College of New York;

Tania Khatun,
Former Student, Bronx Community College;

Rachel Laforest,
Alumna, Hunter College (B.A.),
Former Undergraduate Student Government President;

Carol Lang, Ph.D.,
Alumna, CUNY Graduate Center (Ph.D.),
Alumna, Bronx Community College,
Alumna, City College of New York,
*(Also faculty amicus);

Mike Legaspi,
Current Student, Hunter College;

Rodolfo Leyton,
Alumnus, City College of New York (B.A., M.A.);

Alexis Logsdon,
Alumna, City College of New York (B.A., M.A., M.L.I.S.);

Michael Luciano,
Alumnus, City College of New York (B.A.);

Percy Lujan,
Alumnus, Lehman College (B.A.);

Reginald Mabry,
Alumnus, City College of New York (B.S.);

Errol Maitland,
Former Student, City College of New York;

Renee Marhong, R.N.,
Alumna, College of Staten Island (A.A.);

Esperanza Martell, M.S.W.,
Alumna, City College of New York,
*(Also faculty amicus);

Susanna Martin,
Alumna, Brooklyn College (B.A.);

Hancy Martinez,
Former Student, Hunter College,
Former Student, Borough of Manhattan Community College;

Stephanie Martinez,
Alumna, City College of New York (B.A.);

Amanda Meltzer,
Former Student, Brooklyn College;

Michael Menser, Ph.D.,
Alumnus, CUNY Graduate Center (Ph.D.),
*(Also faculty amicus);

Rajib Miah,
Current Student, City College of New York,
Alumnus, Borough of Manhattan Community College (A.S.);

Javal Minor,
Current Student, Borough of Manhattan Community College;

Erick Moreno,
Alumnus, Queens College;

Lenina Nadal, M.F.A.,
Alumna, Hunter College (B.A.);

Irene Neofotistos,
Alumnus, Hunter College (B.A.),
Former Undergraduate Student Government President;

Padraig O'Donoghue, Alumnus,
Hunter College (B.A.),
Manager of Student Support and Retention, Murphy Institute for Worker Education, CUNY School of Professional Studies;

Anna Ortega-Williams, MSW,
Alumna, Hunter College;

Alyssia Osorio,
Former Student, City College of New York;

Ricardo Parker,
Alumnus, City College of New York (B.S.),
Former President, Undergraduate Student Government;

John Paul Patafio,
Alumnus, College of Staten Island (B.A.);

Christian Peruyero,
Former Student, Lehman College,
Former Student, Queens College;

Miriam Plata,
Alumna, York College (B.A.);

Sarah Poleshuck,
Alumna, Brooklyn College (M.F.A.);

Samantha Quinones,
Former Student, Hunter College;

Talha Rahman,
Current Student, City College of New York;

Omar Rashid,
Current Student, Hunter College;

Pedro Rivera, Ph.D.,
Assistant Professor, Savannah State University,
Alumnus, Hostos Community College,
Alumnus, City College of New York (B.A.);

Daniela Robles,
Current Graduate Student, City College of New York,
Alumnus, City College of New York (B.A.);

Melissa Rodriguez,
Current Student, John Jay College of Criminal Justice,
Current Student, Queens College;

Hon. Ydanis Rodriguez,
Alumnus, City College of New York (B.A., M.Ed.),
Member New York City Council,
Former Chair New York City Committee on Higher Education;

Lauren Sackey,
Current Student, City College of New York;

Nurith St. Pierre, M.P.H.,
Former Student, City College of New York;

Paula Salazar,
Current Student, City College of New York (Macaulay Honors College);

Danny Sanchez,
Alumnus, Queens College (B.S., M.S.);

Luz Schreiber,
Alumna, Hunter College (B.A.);

Thomas Sharkey,
Current Student, Hunter College;

Lydia Shestopalova,
Alumna, City College of New York (B.A., M.A.);
*(Also faculty amicus);

Bradley Sigal,
Alumnus, City College of New York (M.A.);

Tafadar Sourov,
Current Student, City College of New York;

Julie Spooner, Ph.D.,
Alumna, CUNY Graduate Center (Ph.D.),
*(Also faculty amicus);

Elizabeth Starcevic, Ph.D.,
Alumna, City College of New York (B.A.),
*(Also faculty amicus);

Eileen Stareshefsky,
Alumna, City College of New York (B.A.);

Lenore Von Stein,
Alumna, Brooklyn College (M.M.),
Former Student, John Jay College of Criminal Justice;

David Suker,
Alumnus, City College of New York (M.A.);

Howard Swerdloff,
Former Student, City College of New York;
*(Also faculty amicus);

Damian Tejada,
Current Student, LaGuardia Community College;

Rawan Toom,
Current Student, New York City College of Technology;

Mark A. Torres,
Alumnus, City College of New York (B.A., M.Ed.),
Alumnus, Lehman College (TESOL);

Bruce G. Trigg, M.D.,
Alumnus, City College of New York (B.S.);

Raymundo Valentin,
Alumnus, College of Staten Island;

Quentin Walcott,
Alumnus, York College (B.S.);

Robert Wallace, Ph.D.,
Alumnus, CUNY Graduate Center (Ph.D.),
Alumnus, City College of New York,
*(Also faculty amicus);

M. Ndigo Washington,
Former Student, LaGuardia Community College and City College of New York;

Russell Weiss-Irwin,
Current Student, City College of New York;

Hank Williams,
Ph.D. Candidate, CUNY Graduate Center,
Alumnus, CUNY Graduate Center (M.Phil.),
Alumnus, City College of New York (B.A.),
*(Also faculty amicus);

Igwe Williams,
Alumnus, City College of New York (B.A., M.F.A.),
Alumnus, Borough of Manhattan Community College (A.A.),
*(Also faculty amicus);

Sheila Zukowsky,
Alumna, City College of New York (B.A.);

CURRENT AND FORMER CUNY FACULTY:

Cesar J. Ayala, Ph.D.,
Former Associate Professor, Lehman College;

Robert Baskerville, Ph.D.,
Associate Professor, Bronx Community College,
*(Also student amicus);

Renate Bridenthal,
Retired Faculty, Brooklyn College,
Alumna, Columbia University (Ph.D.),
Alumna, City College of New York (B.A.);
*(Also student amicus);

Brent Buell,
Faculty, York College;

Ramiro Campos,
Faculty, Medgar Evers College,
Alumnus, Hunter College (B.A., M.A.);
*(Also student amicus);

Janice Cline,
Faculty, York College;

William Crain, Ph.D.,
Professor, City College of New York;

Walter Daum,
Retired Professor, City College of New York;

Susan DiRaimo,
Faculty, City College of New York,
*(Also student amicus);

Alan Feigenburg,
Professor, City College of New York;

Rob Hollander, Ph.D.,
Adjunct Assistant Professor, John Jay College of Criminal Justice,
*(Also student amicus);

Leonard Jeffries, Ph.D.,
Professor Emeritus, City College of New York;

Al Katz, Ph.D.,
Faculty, City College of New York,
*(Also student amicus);

Sean M. Kennedy,
Faculty, City University of New York,
Alumnus, Rutgers University (M.F.A.),
Alumnus, University of Virginia (B.A.);

Carol Lang, Ph.D.,
Adjunct Faculty, Bronx Community College,
*(Also student amicus);

Henry Lesnick, Ph.D.,
Professor, Hostos Community College,
Alumnus, SUNY Buffalo (Ph.D.),
Alumnus, Case Western Reserve University
(B.A., M.A.);

R. L'Heureux Lewis-McCoy, Ph.D.,
Associate Professor, City College of New York;

Esperanza Martell, M.S.W.,
Faculty, Hunter College,
*(Also student amicus);

Jamal T. Manassah, Ph.D.,
Professor, City College of New York;

Michael Menser, Ph.D.,
Assistant Professor, Brooklyn College,
Doctoral Faculty, CUNY Graduate Center,
*(Also student amicus);

Greggory Morris, M.P.A.,
Assistant Professor, Hunter College;

Marcia Newfield,
Adjunct Faculty, Borough of Manhattan Community
College;

Jeanne Ollivierre,
Faculty, Hunter College,
Former Faculty, City College of New York,
Former Faculty, Lehman College;

Peter Ranis, Ph.D.,
Professor Emeritus, CUNY Graduate Center and
York College;

Daniel C. Robie, Ph.D.,
Assistant Professor, York College;

Lawrence Rushing, Ph.D.,
Professor Emeritus, LaGuardia Community College;

Isaura Santiago, Ph.D.,
Professor Emerita, CUNY Graduate Center,
Former President, Eugenio Maria de Hostos
Community College;

Lydia Shestopalova,
Adjunct Faculty, Guttman Community College,
*(Also student amicus);

Julie Spooner, Ph.D.,
Former Adjunct Professor, City College of New York,
Borough of Manhattan Community College and,
Medgar Evers College,
*(Also student amicus);

Elizabeth Starcevic, Ph.D.,
Professor Emerita, City College of New York,
*(Also student amicus);

Howard Swerdloff,
Faculty, College of Staten Island, Former Student,
City College of New York;
*(Also student amicus);

Robert Wallace, Ph.D.,
Former Adjunct Faculty, City College of New York,
*(Also student amicus);

Hank Williams,
Adjunct Lecturer, Lehman College,
Ph.D. Candidate, CUNY Graduate Center,
*(Also student amicus);

Igwe Williams,
Professor, Borough of Manhattan Community College,
*(Also student amicus);

SUPPORTERS:

Maris Abelson, M.A.,
Community Member, Teacher;

Xochilt Arizmendi,
Community Member;

Bruce Bentley, Esq.,

Benjamin Chametzky,
Alumnus, University of Chicago (B.A.);

Faye Chevalier,
Current Student, Temple University;

Mitchel Cohen,
Former Chair, WBAI Radio, Local Station Board,
Present Volunteer Coordinator, WBAI Radio, (WBAI broadcasts from the City College of New York);

Mark Eisenstadt,
Current Student, Delaware County Community College;

Marie Friquegnon, Ph.D.,
Faculty, William Patterson University;

Daniel Gibbons,
Community Member;

Kirsten Gindler,
Alumna, University of Chicago (A.B.);

Angie Hernandez,
Current Student, New York University;

Skyler Jackson,
Community Member;

Diane Keefe,
Alumna, Columbia University (M.B.A.);
Alumna, Wellesley College (B.A.);

Nasif Khan,
Community Member;

Michael Kovalenko,
Community Member, Documentary Filmmaker;

Jonathan Laks,
Current Student, NYU School of Law,
Alumnus, Haverford College (B.A.);

Matthew Lore,
Community Member;

Rina Mascitti,
Community Member;

Divine Pryor, Ph.D.,
Executive Director,
Center for NuLeadership on Urban Solutions;

Johana Rahman,
Current Student, Temple University;

Alex Renner,
Alumnus, Drexel University (B.S.);

Kyung-Ji Kate Rhee,
Deputy Director,
Center for NuLeadership on Urban Solutions;

Andrea Roberts,
Community Member;

Sebastian Spitz,
Current Student, Bard College;

Martin R. Stolar, Esq.;