

THOMAS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 08–970

SONNY PERDUE, GOVERNOR OF GEORGIA, ET AL.,
PETITIONERS *v.* KENNY A., BY HIS NEXT FRIEND
LINDA WINN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April 21, 2010]

JUSTICE THOMAS, concurring.

Nearly 30 years ago, a group of attorneys sought a fee award under 42 U. S. C. §1988 after “achiev[ing] only limited success” litigating their clients’ constitutional claims. *Hensley v. Eckerhart*, 461 U. S. 424, 431 (1983). This Court’s opinion resolving their claim for fees observed that “in some cases of *exceptional* success an enhanced award” of attorney’s fees under §1988 “may be justified.” *Id.*, at 435 (emphasis added). That observation plainly was dicta, but one year later this Court relied on it to reject the “argument that an ‘upward adjustment’” to the lodestar calculation “is never permissible.” *Blum v. Stenson*, 465 U. S. 886, 897 (1984). Yet “we have never sustained an enhancement of a lodestar amount for performance,” *ante*, at 8, and our jurisprudence since *Blum* has charted “a decisional arc that bends decidedly against enhancements,” 532 F.3d 1209, 1221 (CA11 2008) (Carnes, J.). See also *ante*, at 7–9.

Today the Court holds, consistent with *Hensley* and *Blum*, that a lodestar fee award under §1988 may be enhanced for attorney performance in a “few” circumstances that “are indeed ‘rare’ and ‘exceptional.’” *Ante*, at 10. But careful readers will observe the precise limita-

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tions that the Court imposes on the availability of such enhancements. See *ante*, at 10–12; see also *ante*, at 1 (KENNEDY, J., concurring) (“[I]t must be understood that extraordinary cases are presented only in the rarest circumstances”). These limitations preserve our prior cases and advance our attorney’s fees jurisprudence further along the decisional arc that Judge Carnes described. I agree with the Court’s approach and its conclusion because, as the Court emphasizes, see *ante*, at 7–8, the lodestar calculation will in virtually every case already reflect all indicia of attorney performance relevant to a fee award.