No. 11-129

In the Supreme Court of the United States

GABRIEL G. RODRIGUEZ, AS ADMINISTRATOR OF THE ESTATE OF GIAVANNA MARIA RODRIGUEZ FOR THE BENEFIT OF GABRIEL GENE RODRIGUEZ AND JENNIFER ANN RODRIGUEZ, PETITIONER

v.

KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

The National Childhood Vaccine Injury Act of 1986 (Vaccine Act), 42 U.S.C. 300aa-1 *et seq.*, establishes a system of no-fault compensation for vaccine-related injuries and deaths, with petitions for compensation decided by a special master of the United States Court of Federal Claims, subject to deferential judicial review. A special master who awards a petitioner "compensation" on a vaccine-related claim "shall also award as part of such compensation an amount to cover * * * reasonable attorneys' fees." 42 U.S.C. 300aa-15(e)(1).

The "*Laffey* matrix" is a chart of hourly rates for attorneys, based on number of years of experience, that the United States District Court for the District of Columbia often considers when it determines the reasonable hourly rates to use in computing a lodestar attorney's fee under a fee-shifting statute. The question presented is as follows:

Whether the hourly rates the special master found to be reasonable in this Vaccine Act case were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 42 U.S.C. 300aa-12(e)(2)(B), because those rates were lower than those the *Laffey* matrix would prescribe.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 632 F.3d 1381. The opinion of the Court of Federal Claims (Pet. App. 11a-82a) is reported at 91 Fed. Cl. 453. The opinion of the special master of the Court of Federal Claims (Pet. App. 83a-153a) is unreported but is available at 2009 WL 2568468.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 2011. A petition for rehearing was denied on April 28, 2011 (Pet. App. 154a). The petition for a

writ of certiorari was filed on July 27, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. To stabilize the vaccine market and provide compensation for vaccine-related injuries and deaths, Congress enacted the National Childhood Vaccine Injury Act of 1986 (Vaccine Act), 42 U.S.C. 300aa-1 *et seq*. The Vaccine Act created the National Vaccine Injury Compensation Program, see 42 U.S.C. 300aa-10(a), which provides compensation for vaccine-related injuries and deaths through a no-fault system "designed to work faster and with greater ease than the civil tort system." *Bruesewitz* v. *Wyeth LLC*, 131 S. Ct. 1068, 1073 (2011) (quoting *Shalala* v. *Whitecotton*, 514 U.S. 268, 269 (1995)). A person injured by a vaccine (or the representative of such a person) may file a petition for compensation in the United States Court of Federal Claims (CFC), naming the Secretary of Health and Human Services (Secretary) as respondent. *Ibid*. A special master of the CFC then "makes an informal adjudication of the petition." *Ibid*.

If a party objects to the special master's decision, a judge of the CFC reviews the decision and may "set aside any findings of fact or conclusions of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. 300aa-12(e)(2)(B). The CFC's decision may in turn be appealed to the United States Court of Appeals for the Federal Circuit. 42 U.S.C. 300aa-12(f). A party may either "accept the court's judgment and forgo a traditional tort suit for damages" or "reject the judgment and seek tort relief." *Bruesewitz*, 131 S. Ct. at 1073.

A special master who has awarded a petitioner "compensation" on a vaccine-related claim "shall also award as part of such compensation an amount to cover * * * reasonable attorneys' fees." 42 U.S.C. 300aa-15(e)(1). Even when a petitioner is not awarded any other form of compensation, the special master "may award an amount of compensation to cover petitioner's reasonable attorneys' fees * * * if the special master * * * determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought." *Ibid.* Thus, "[a]ttorney's fees are provided, not only for successful cases, but even for unsuccessful claims that are not frivolous." *Bruesewitz*, 131 S. Ct. at 1074.

b. "The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." *Blum* v. *Stenson*, 465 U.S. 886, 888 (1984) (citing *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983)). "Adjustments to that fee then may be made as necessary in the particular case." *Ibid.* Under this "lodestar" method of calculating attorneys' fees, a reasonable hourly rate is defined as the rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation," and "the burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with [the prevailing market rate]." *Id.* at 896 n.11. A "reasonable" fee "is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious * * * case." *Perdue* v. *Kenny A. ex rel. Winn*, 130 S. Ct. 1662, 1672 (2010). See *Blum*, 465 U.S. at 897 ("[A] reasonable attorney's fee is one that is adequate to

attract competent counsel, but that does not produce windfalls to attorneys.") (internal quotation marks, citation, and alterations omitted).

In performing lodestar calculations in Vaccine Act cases, special masters and judges sometimes use reasonable hourly rates for practitioners in the District of Columbia. See *Avera* v. *Secretary of HHS*, 515 F.3d 1343, 1348-1349 (Fed. Cir. 2008). But if (as is typically the case in Vaccine Act proceedings) the bulk of the work is performed outside the District of Columbia and there is a "very significant difference" between the local hourly rate and the forum hourly rate, fees are based on the local hourly rate. *Id.* at 1349 (quoting *Davis County Solid Waste Mgmt. & Energy Recovery Special Serv. Dist.* v. *EPA*, 169 F.3d 755, 758 (D.C. Cir. 1999)) (emphasis omitted).

c. The *Laffey* matrix is a chart of hourly rates for attorneys, based on number of years of experience, that was originally developed in *Laffey* v. *Northwest Airlines, Inc.*, 572 F. Supp. 354, aff'd in part and rev'd in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985), for use in the United States District Court for the District of Columbia. The United States Attorney's Office for the District of Columbia updates the chart annually to reflect cost-of-living increases. As the special master in this case described it, the *Laffey* matrix "is a court-created mechanism to streamline the issue of reimbursement of attorney fees in fee-shifting cases tried in the U.S. District Court for the District of Columbia."[1] Pet. App. 116a.

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[1] *Laffey* itself involved "complex employment discrimination litigation," see Pet. App. 102a, that was "an extraordinary undertaking in many respects, consuming thirteen years and thousands of personnel hours and raising numerous issues under [two federal employment dis-

Even within the D.C. Circuit, *Laffey* matrix rates are not binding on judges. See *Covington* v. *District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995), cert. denied, 516 U.S. 1115 (1996); *Agapito* v. *District of Columbia*, 525 F. Supp. 2d 150, 155 (D.D.C. 2007); *Muldrow* v. *Re-Direct, Inc.*, 397 F. Supp. 2d 1 (D.D.C. 2005), aff'd, 493 F.3d 160 (D.C. Cir. 2007). Thus, while the D.C. Circuit has recognized that fee matrices, like the *Laffey* matrix, "provide a useful starting point" for determining a reasonable fee, that court also has recognized that the party opposing a fee request can present "contrary evidence tending to show that a lower rate would be appropriate." *Covington*, 57 F.3d at 1109-1110. Such evidence might include "[evidence of] fees that attorneys with similar qualifications have received from fee-paying clients in comparable cases; and evidence of recent fees awarded by the courts or through settlement to attorneys with comparable qualifications handling similar cases." *Id.* at 1109.

2. Petitioner and his wife[2] timely filed a petition for compensation under the Vaccine Act, alleging that their daughter's death had been caused by a vaccination. Pet. App. 3a. The parties negotiated a settlement, and the special master issued a decision awarding compensation

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crimination] statutes." *Laffey*, 572 F. Supp. at 359. According to the attorney who represented the successful *Laffey* litigants and conducted the fee litigation, the matrix sought "to establish the average billing rates * * * charged by the best lawyers within the District in their most complex cases" and "was never designed to set attorney rates in normal federal litigation by competent attorneys." *Ibid.*

[2] Though both petitioner and his wife were initially Vaccine Act petitioners, petitioner was appointed as administrator of his daughter's estate on September 14, 2007, and became the sole petitioner under the Act. Pet. App. 84a n.2.

in the amount agreed upon by the parties. *Id.* at 85a. Petitioner then applied under 42 U.S.C. 300aa-15(e)(1) for an award of $65,925 in attorneys' fees, based on a rate of $450 per hour for his attorney, a solo practitioner in New York City. Pet. App. 3a. Petitioner amended his request to reflect rates ranging from $598 per hour to $645 per hour, and a correspondingly larger award. *Ibid.*[3]

As evidence of a reasonable hourly rate, petitioner offered the *Laffey* matrix, an adjusted *Laffey* matrix (based on consumer-price-index calculations specific to legal services), and a nationwide survey of law-firm billing rates, including rates for attorneys at Washington, D.C. firms. See Pet. App. 66a. The special master determined that "petitioner ha[d] failed to demonstrate that the forum rate is set by either version of the *Laffey* Matrix or by the rates charged by senior partners in DC area law firms for other types of litigation," and that "[p]etitioner ha[d] therefore failed to produce sufficient evidence to establish the forum rate pertaining to Vaccine Act cases." *Id.* at 92a; see *id.* at 122a-129a (evaluating the evidence provided by petitioner and the Secretary).

The special master found more persuasive the Secretary's evidence, which included "information concerning the rate negotiated for a Vaccine Act attorney practicing in Washington, DC," and "information regarding negotiated rates for two firms that handle a substantial number of Vaccine Act cases." Pet. App. 92a. The special master explained that, although petitioner's attorney

[3] Petitioner later filed a supplemental application seeking an award of $10,395 in attorneys' fees, based on rates of $450 and $475 per hour, for work performed by a second attorney in connection with the application for an award of attorneys' fees. Pet. App. 4a.

charged his transportation industry clients $450 per hour, petitioner had failed to show that his attorney's transportation-law practice was "comparable to Vaccine Act litigation" or that the attorney had similar expertise in the two fields. *Id.* at 95a n.16. The special master emphasized that petitioner had requested fees for his attorney at a rate "nearly twice the amount" the attorney had most recently been awarded in Vaccine Act litigation, and at a rate "significantly higher than any fee ever paid to any attorney representing a Vaccine Act petitioner that [the special master] was able to discover." *Id.* at 120a.

Based on her "experience and recent research," the special master concluded "that the initially requested fee of $450.00 per hour is substantially higher than the hourly rates awarded to attorneys of similar years of litigation experience with far more years of experience in Vaccine Act litigation, including attorneys who practice in high cost areas." Pet. App. 114a n.33. Accordingly, she determined that the appropriate hourly rate "for an attorney with more than 20 years of experience, and one with considerable specialized expertise in Vaccine Act cases or litigation of similar or greater complexity, is in the range of $275-360.00 per hour," depending on when the work was performed. *Id.* at 129a. The special master then computed the lodestar fee using hourly rates in or very near that range. See *id.* at 149a, 152a.

3. The CFC denied petitioner's petition for review. Pet. App. 11a-82a. The court concluded, as relevant here, "that petitioner's objections to the special master's rejection of the *Laffey* matrix and the adjusted *Laffey* matrix as prima facie evidence of the forum rate for Vaccine Act cases lack merit." *Id.* at 62a. The CFC therefore held that "[t]he special master's decision in this

respect was not arbitrary, capricious, an abuse of discretion, or contrary to law." *Ibid.*

4. The court of appeals affirmed. Pet. App. 1a-10a. The court explained that the question before it was "whether the reasonable hourly rate for attorneys handling Vaccine Act cases in the District of Columbia should be determined by applying the Laffey Matrix, or whether the rate should be determined by considering a variety of factors, which may or may not include the Laffey matrix." *Id.* at 7a. The court further explained that the special master's decision was subject to a "highly deferential standard of review," and that "[i]f the special master has considered the relevant evidence of record, drawn plausible inferences and articulated a rational basis for the decision, reversible error will be extremely difficult to demonstrate." *Id.* at 5a-6a (citation omitted).

The court of appeals agreed with the special master's reasons for distinguishing Vaccine Act litigation from the sort of litigation for which the *Laffey* matrix was designed. The court found that although Vaccine Act litigation "potentially involv[es] complicated medical issues," it is "not analogous to 'complex federal litigation' as described in *Laffey* so as to justify use of the Matrix instead of considering the rates charged by skilled Vaccine Act practitioners." Pet. App. 8a. The court explained that, unlike traditional civil litigation, "Vaccine Act proceedings * * * involve no discovery disputes, do not apply the rules of evidence, and are tried in informal, streamlined proceedings before special masters well-versed in the issues commonly repeated in Vaccine Act cases." *Id.* at 8a-9a.

The court of appeals further distinguished the two types of litigation by pointing out that in Vaccine Act

cases—unlike in litigation subject to fee-shifting statutes under which the *Laffey* matrix is often used—attorneys' fees may be awarded even to parties who do not prevail. Pet. App. 9a. The court also observed that if attorneys in Vaccine Act litigation were compensated at the same hourly rates as attorneys in litigation subject to less certain fee-shifting, "Vaccine Act attorneys would be more favorably compensated than attorneys who take cases under fee-shifting statutes and are only paid by the opposing side if their clients' claims are meritorious and they skillfully prosecute those claims," unjustifiedly "'improving the financial lot of [Vaccine Act] lawyers.'" *Id.* at 10a (quoting *City of Burlington* v. *Dague*, 505 U.S. 557, 563 (1992)). The court of appeals concluded that the special master had "considered appropriate evidence, including the *Laffey* Matrix, and fully explained the basis for determining the fee rates for petitioner's attorneys." *Ibid.*

ARGUMENT

The decision below correctly respects the special master's determination that reasonable hourly rates in this case were lower than the rates provided by the *Laffey* matrix. It does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

1. "[R]easonable attorney's fees" are determined by "multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." *Blum* v. *Stenson*, 465 U.S. 886, 888 (1984). In fixing a "reasonable hourly rate," the special master in this case followed *Blum* by seeking to determine the rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputa-

tion." See Pet. App. 90a (quoting *Blum*, 465 U.S. at 896 n.11). The special master did not abuse her discretion by rejecting petitioner's invocation of the *Laffey* matrix as prima facie evidence of the forum rate for Vaccine Act cases, or by instead relying on evidence of rates paid to other attorneys experienced in Vaccine Act litigation.

The special master concluded that petitioner had failed to show that the "services provided in civil cases tried in the U.S. District Court for the District of Columbia are similar to Vaccine Act litigation, or that [petitioner's counsel's] skill and reputation are similar to those counsel who command the *Laffey* Matrix rates he requests." Pet. App. 119a. She found instead, as the court of appeals explained it, that "Vaccine Act litigation, while potentially involving complicated medical issues and requiring highly skilled counsel, is not analogous to 'complex federal litigation' as described in *Laffey* so as to justify use of the Matrix instead of considering the rates charged by skilled Vaccine Act practitioners." *Id.* at 8a.

There is ample support for the conclusion that the two types of litigation are different. As the special master observed, for example, the Vaccine Act provides a "less adversarial, streamlined process" and relieves litigants of any "requirement to establish fault, informed consent, defects in design or manufacture, or a failure to warn." Pet. App. 116a (citation omitted). Those features distinguish practice under the Vaccine Act from practice in complex civil litigation, which often demands a senior attorney both experienced in a wider range of substantive and procedural matters and able to successfully manage a team of less experienced attorneys paid at lower hourly rates. And as the court of appeals explained, whatever special challenges some cases under

the Vaccine Act may pose, those difficulties would be reflected and compensated in the other half of the lodestar calculation—the reasonable number of hours expended. *Id.* at 9a.

It was similarly reasonable for the special master to recognize that the *Laffey* matrix is typically invoked in cases that require "a party [to] prevail in the litigation in order to receive fees, a factor that suggests not only that the underlying claim was meritorious, but also that the case was competently tried." Pet. App. 117a. In Vaccine Act cases, by contrast, "nearly all litigants receive attorney fees," and special masters "ha[ve] been extremely generous in finding that unsuccessful petitions were brought in good faith and upon a reasonable basis, in order to award fees and costs to these litigants and their attorneys." *Ibid.* (citation omitted). The special master properly recognized that this feature of the Vaccine Act may affect the going rates for Vaccine Act practitioners, as compared to attorneys in the types of litigation for which the *Laffey* Matrix was intended.

Most fundamentally, the special master found—with abundant support—that "[t]he *Laffey* Matrix does not represent the prevailing market rate [for Vaccine Act cases] as defined by the Supreme Court in *Blum*: that rate paid in the community for 'similar services by lawyers of reasonably comparable skill, experience, and reputation.'" Pet. App. 118a (quoting 465 U.S. at 896 n.11). The special master determined that the rates petitioner had requested were "significantly higher than any fee ever paid to any attorney representing a Vaccine Act petitioner that [the special master] was able to discover." *Id.* at 120a. She noted that, if a "reasonable fee" is one that is "necessary to attract and retain competent counsel," then "the fees that have been awarded in Vac-

cine Act cases in recent years have adequately accomplished that purpose." *Ibid.*

2. Petitioner argues that certiorari is warranted for two reasons. First, he contends that "there is a conflict between the Ninth Circuit, which holds that contingency is irrelevant in calculating the lodestar, and the Federal Circuit, which holds that the absence of contingency can be taken into account in setting the lodestar." Pet. 15. Second, petitioner asks this Court to hold—apparently as a matter of law—that Vaccine Act litigation is sufficiently complex that attorneys' fees must be awarded at the rates described in the *Laffey* matrix. See Pet. 22; see also Vaccine Injured Pet'rs' Ass'n Amicus Br. 7-10. Neither of those arguments provides a sound basis for the Court's review.

a. Contrary to petitioner's contention, the ruling below does not conflict with the Ninth Circuit decisions on which petitioner relies. In any event, this case would be an unsuitable vehicle for resolving the purported disagreement between the circuits.

In *City of Burlington* v. *Dague*, 505 U.S. 557 (1992), this Court held that "an enhancement [of the lodestar] for contingency would likely duplicate in substantial part factors already subsumed in the lodestar. * * * Taking account of it again through lodestar enhancement amounts to double counting." *Id.* at 562-563 (citation omitted). Thus, under fee-shifting statutes that authorize awards only to prevailing parties, "contingency is an inappropriate basis for an enhancement" of the fee award because the "risk of loss *is itself subsumed* within either the number of hours expended, or a higher hourly rate that is the prevailing market rate for an attorney skilled and experienced enough to prevail despite the risk." Pet. 19. Consistent with *Dague*,

the Ninth Circuit has held that "typical federal fee-shifting statutes * * * do not allow for upward adjustments to a lodestar fee on the basis that prevailing party's counsel incurred the risk of nonpayment." *Davis* v. *City & County of San Francisco*, 976 F.2d 1536, 1549 (1992), vacated in part on other grounds, 984 F.2d 345 (1993); see *Welch* v. *Metropolitan Life Ins. Co.*, 480 F.3d 942, 947 (2007) ("[C]ontingency cannot be used to justify a fee enhancement, * * * or an inflated hourly rate.") (citation omitted).

The court of appeals here noted that "Vaccine Act attorneys are practically assured of compensation in *every* case, regardless of whether they win or lose and of the skill with which they have presented their clients' cases." Pet. App. 10a. The court recognized that Vaccine Act attorneys are differently situated from "attorneys who take cases under fee-shifting statutes and are only paid by the opposing side if their clients' claims are meritorious and they skillfully prosecute those claims." *Ibid*. Petitioner construes the court of appeals' discussion as proceeding from the premise—forbidden, in his view, by *Dague*—that an attorney's rate may be adjusted to reflect the contingent (or non-contingent) nature of the representation.

Petitioner misunderstands the court of appeals' opinion. The court did not suggest either that hourly rates under other fee-shifting statutes can be adjusted upward to reflect contingency, or that rates in Vaccine Act cases can be adjusted downward to reflect the possibility of fee awards to unsuccessful claimants. Rather, the court simply recognized that attorneys "skilled and experienced enough to" surmount the "difficulty of establishing [the] merits" in a case where they risk receiving no fee at all will "ordinarily" be the sort of attorneys

who command a "higher hourly rate," *Dague*, 505 U.S. at 562, than will attorneys engaged in a practice (like that under the Vaccine Act) where "attorneys are practically assured of compensation," Pet. App. 10a, in any case "brought in good faith" with "a reasonable basis for the claim," 42 U.S.C. 300aa-15(e)(1). That commonsense conclusion—that different attorneys engaged in different types of practice will command different hourly rates—is firmly grounded in *Dague* itself and consistent with the Ninth Circuit decisions rejecting the consideration of contingency as a basis for further elevating an attorney's reasonable hourly rate.

In any event, even if this aspect of the Federal Circuit's analysis were in tension with the Ninth Circuit decisions on which petitioner relies, this case would not provide a suitable opportunity to resolve that tension. This Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956). The ultimate question for the court of appeals was whether the special master's fee award was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. 300aa-12(e)(2)(B). The special master's decision was amply and independently supported by evidence and careful findings about the going rates for Vaccine Act legal services, see pp. 6-7, *supra*, and those findings do not implicate the purported circuit split petitioner asks the Court to resolve. The Federal Circuit was therefore correct in its judgment sustaining the special master's award in this case, whether or not the relatively non-contingent nature of Vaccine Act fee awards was properly identified as a factor relevant to the lodestar calculation.

b. Petitioner further contends (Pet. 25-33) that Vaccine Act litigation is so complex that it categorically de-

mands awards of attorney fees at *Laffey* matrix rates. That argument lacks merit and does not warrant this Court's review.

The court of appeals and the special master—both thoroughly familiar with the nature of Vaccine Act proceedings—acknowledged that "Vaccine Act litigation * * * potentially involv[es] complicated medical issues and requir[es] highly skilled counsel." Pet. App. 8a. They concluded, however, that Vaccine Act litigation "is not analogous to 'complex federal litigation' as described in *Laffey*" because "[t]he Vaccine Act provides petitioners with an alternative to the traditional civil forum, applies relaxed legal standards of causation, and has eased procedural rules compared to other federal civil litigation." *Ibid.* The court of appeals explained:

> Vaccine Act proceedings, which involve no discovery disputes, do not apply the rules of evidence, and are tried in informal, streamlined proceedings before special masters well-versed in the issues commonly repeated in Vaccine Act cases, are different from the complex type of litigation the Laffey Matrix is designed to compensate.

Id. at 8a-9a. The special master identified the same differences between Vaccine Act suits and the complex litigation for which the *Laffey* Matrix was designed, see *id.* at 118a-119a, and petitioner fails to explain why her conclusions were arbitrary and capricious on the record before her.

Relatedly, petitioner asserts that the special master's rejection of *Laffey* matrix rates for Vaccine Act litigation "is injurious to the ability of Vaccine Act petitioners to find competent counsel practicing in this specialized area, and presents a fundamental obstacle to the

Vaccine Act's purpose of providing fair and swift compensation to injured persons." Pet. 25. Experience and the evidence before the special master show that is incorrect. A reasonable fee is one that is "necessary to attract and retain competent counsel," and, as the special master concluded, "the fees that have been awarded in Vaccine Act cases in recent years have adequately accomplished that purpose." Pet. App. 120a. The special master further observed that the hourly rate sought by petitioner in this case was "significantly higher than any fee ever paid to any attorney representing a Vaccine Act petitioner that [the special master] was able to discover." *Ibid*.

As the CFC explained in upholding the special master's decision, "petitioner offered no persuasive evidence" to the special master "that potential claimants were having any difficulty securing competent counsel with the hourly rates currently awarded under the Vaccine Act." Pet. App. 59a. The special master therefore did not abuse her discretion in declining to award fees at an hourly rate substantially higher than the rates customarily used in calculating Vaccine Act fee awards.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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