

In the Supreme Court of the United States

HEATHER ROGERO and
WALTER ROGERO, II,
Parents of W. R., *a minor*
Petitioners,

vs.

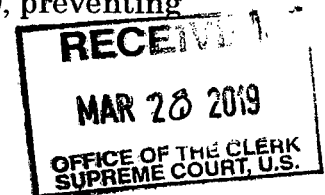
Secretary of Health and Human Services
Respondent.

Supreme Court
of the United States
No. ____

APPLICATION TO EXTEND TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI

Pursuant to Rules of the Supreme Court, Rule 30.2, Petitioners respectfully request an extension of 60 days from the original due date of April 18, 2019. That date is calculated 90 days from the denial of Petition for Rehearing from the U.S. Court of Appeals for the Federal Circuit regarding *Rogero v. HHS*, 18-1684, which issued on January 18, 2019, (mandate issued on January 25, 2019). It appears the new due date for the Petition for Writ of Certiorari to be June 17, 2019.

The reasons needed for this application are two-fold; primarily due to movement in the Federal Court of Claims since the Federal Circuit denial for rehearing in effort to resolve the issues of this case explained below, and secondarily due to scheduled in-patient hospitalization, out of state, at the Children's Hospital for W.R. for 4-7 days prior to the original due date in April 2019, preventing required focus for the Petition in remaining current time.



Summary of Rogero v. HHS

This case involves a medically diagnosed and legally defined vaccine-related acquired brain injury of encephalopathy with focal neurological signs as defined by The National Childhood Vaccine Injury Act of 1986, caused from Petitioner's 4th DTaP vaccine administered to W.R. on May 4, 2010, also a causal medical theory in The Vaccine Act and Vaccine Injury Table, with a Petition timely filed November 15, 2011, 3 years from "first symptom" of following vaccination from 1st DTaP of "severe eczemic eruption" and "hypersensitivity reaction" of Challenge/Rechallenge causality, and 18 months after the injury of the case, vaccine-related encephalopathy. As opined by both HHS expert MD's and W.R.'s experts, and evidence substantiated with MD exams, he also had an "subsequent", "later", and "secondary" autism following encephalopathy onset defined as "sequelae" of encephalopathy, §100.3(d)(3) meaning the encephalopathy injury caused the autism, not his vaccination or vaccinations, thus autism is legally and medically causally unrelated to vaccination, not the injury claimed, also stated in Decision.

The Federal Court of Claims Decision, HHS experts and DOJ Counsel documented proof of required "preponderance" from the relevant evidence substantiated by W.R.'s medical records and opine determining his compensation eligibility of vaccine-related encephalopathy from 4th DTaP for compensation under required standard, specifically §300aa-11(c)(1)(C)(ii)(II), but the special master focused on his subsequent, irrelevant, causally unrelated to vaccination autism, and applied the Vaccine Act's causation standard to subsequent autism disability (**rights violation of accurate and impartial procedural due process rights 5th & 12th Amendments**) instead of the claim of vaccine-related encephalopathy defined by law without any legal basis, (**rights violation of equal protection of the laws rights 12th Amendment, or autism disability discrimination**).

In short, The U.S. Court of Appeals for Federal Circuit Panel affirmed the Special Master's Entitlement Decision. In this regard, violating constitutional rights, and affirming that (1) a special master may discriminate based on disability in the Federal Courts without a legal basis, contradicting Binding Federal Circuit *Pafford v. HHS*, (2) a special master may violate W.R.'s right to accurate and impartial procedural due process, knowingly misrepresenting to the Court and public, Petitioner's medical record injury diagnoses of encephalopathy, and expert treating MD opine and instead use "neurodevelopmental disorder" for causation with citations to evidence of his diagnosed neurological encephalopathy (satisfying legal criterion of fraud action) and contradict Supreme Court Precedents that defined encephalopathy as acquired injury to the brain manifested by neurological focal signs associated with DTaP vaccine¹ and "autism is a neurodevelopmental disorder"² and (3) a Panel may overlook Petitioner's medical theory found in findings, and instead require proof of a mechanism of aluminum which conflicts Federal Circuit Binding *Althen* stating that is "inconsistent with the Vaccine Act".

¹ Shalalah v. Whitecotton, 514 U.S. 268 (1995), and §300aa-14(b)(3)(A).

² Endrew F. v. Douglas County School Dist. RE-1, No. 15-827, 580 U.S.S.C. (2017),(798 F. 3d 1329,(-))

**Reason of Federal Court of Claims Movement
Following Denial of Rehearing in Federal Circuit for Appeals**

On February 21, 2019, in an effort to resolve *Rogero v. HHS*, with the Federal Circuit's findings of the accurate claim of 4th DTaP alleged to encephalopathy, that disrupted the misrepresented allegations of the special master, ones used to deny compensation, Petitioner filed under R.C.F.C. Vaccine Rule 36/RCFC59 (ECF 220, correction 221) under date of counting "entry of last judgement" under Vaccine Rules, R.C.F.C., and F.R.C.P. that did not exclude a January 25, 2019 judgement in the Rules, with circumstantial rules if an Appeal was filed with argument and clear and convincing evidence of satisfying eligibility factors documented by HHS and The Decision of actual claim, under required causation standards³ resulting in "manifest injustice" to deny compensation and violation of equal protection of the laws to have denied on causally unrelated to vaccination subsequent autism, as firmly established in the record by both parties counsel, experts, affidavit, and Decision determination.

On March 4, 2019, Judge Kaplan's Opinion and Order denied Petitioners VR36/RCFC 59 holding his RCFC 59 to specific RCFC 60 grounds (ECF 222) on the basis of being "pro se" and the court "observes" time for a RCFC 59 had elapsed. (Thus, resulting in impermissibly raising Petitioner's burden for his Vaccine Rules 36⁴/RCFC 59 grounds to also meet RCFC 60 specific grounds, when VR counting date is only from "entry of Judgement" not precluding a later Judgement, and Petitioner's RCFC 60 and grounds had not yet been filed to Federal Court of Claims. Both a Response and Redactions were due on March 18, 2019.

On March 6, 2019, the Federal Court of Claims received a Motion for Correction after Petitioner observed the Docket entries that had denied a RCFC 60, when no RCFC 60 had been filed, and only specific RCFC 59 grounds by mistake, as Petitioner reserved the right to file RCFC 60 grounds dependent on outcome of RCFC 59, (the Opinion and Order arrived on March 11, 2019 via postal service).

³ Each statutory standard of required causation standard to determine eligibility on the verifiable adjudicative fact of Petitioner's claim was also a violation of accurate and impartial procedural due process protected by the 5th & 12th Amendments.

⁴ Under RCFC, Appx. B, Vaccine Rules 36, both a RCFC 59 and RCFC 60 are for "Relief of Judgement" unlike the RCFC Rules, and VR 1 states RCFC Rules only apply to the extent in keeping with the Vaccine Rules, meaning the Federal Court of Claims had no reason to change Petitioner's RCFC 59 to "Relief of Judgement" as under Vaccine Rules 36, it already was determined as such, and in Vaccine Rules, FRCP, and RCFC Rules with date to timely file counting days not excluding a January 25, 2019 "entry of judgement" making circumstantial provisions in Vaccine Rules if an Appeal was filed.

On March 21, 2018, under RCFC 6(d) timing, *Petitioner's Combined Redaction Response and RCFC 60 Motion for Relief of Judgement Pursuant to 60(b) & (d) Grounds* and Appendix was timely received by the Federal Court of Claims, which to date has not been Docketed, but confirmed received, nor has the Opinion been unsealed. Petitioner's R.C.F.C. (also F.R.C.P.) 60 Grounds were under

- (1) 60(b)(4); the Judgement is void due to 8 Counts of violations of accurate and impartial procedural due process violations,
- (2) 60(b)(6); manifest injustice for violations of equal protection of the laws and evidence of HHS and The Special Master's Decision documenting "preponderance" of every factor determining W.R. eligible for compensation under The Vaccine Program, but denying on the basis of a causally unrelated to vaccination autism, or autism disability discrimination, and
- (3) 60(d)(3); 4 counts of fraud on the court, by officers of the court, as defined by case law, with clear and convincing known evidence that harmed W.R., and misrepresentations to which both The Federal Circuit and Federal Court of Claims relied, filed by Respondent's Counsel and conclusions absent supportive legitimate evidence by the Special Master.

No subsequent docket movement has been made to date.

Secondarily, W.R. has extensive follow-up specialty neurological testing at the Children's hospital out of state leaving April 14, 2019 for 4 or 7 days limiting the focus time to ensure a timely Petition.

CONCLUSION AND RELIEF REQUESTED

Concluding, the application request is due to interim and seemingly still pending Federal Court of Claims docket movement on Petitioner's actual RCFC 60 Motion on 60 grounds, since the time of denial for rehearing from the Federal Circuit of Appeals on January 18, 2019, mandate on January 25, 2019.

Petitioner respectfully requests an extension of 60 days extending the original April 18, 2019 due date to new due date of June 17, 2019 for the justifiable reasons and case history pursuant to Rules of the Supreme Court, Rule 30.2.