No. 26-302

In the Supreme Court of the United States

ERIC ALAN ISAACSON,
Petitioner,

v.

NATIONAL VETERANS LEGAL SERVICES PROGRAM, et al.,
Respondents.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

As required by Supreme Court Rule 29.6, respondents the National Veterans Legal Services Program, the National Consumer Law Center, and the Alliance for Justice disclose the following: There is no parent or publicly held company owning 10% or more of their stock.

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INTRODUCTION

Three days ago, this Court denied a petition by the same pro se objector, raising the same question presented. *See Isaacson v. Moses*, No. 25-1411, *cert. denied* (Nov. 9, 2026). The Court should do the same here.

The Court has now denied certiorari on this question six times in recent years, and this petition is the worst vehicle yet. It purports to tee up the propriety of service awards in class actions—an issue now pending before the Rules Committee. But that issue is not presented here because the class representatives in this case expended more in "attorney time and expenses in leading th[e] litigation" than they would receive in service awards. Pet. App. 81a. The petitioner's own cases "acknowledge[] that 'a plaintiff suing on behalf of a class can be reimbursed for attorneys' fees and expenses incurred in carrying on the litigation.'" *Id.* (quoting *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1257 (11th Cir. 2020)). If that weren't enough, the petitioner's lead argument in the court of appeals was a novel objection to the district court's subject-matter jurisdiction—a logically antecedent question that is not independently certworthy. Finally, because this petition arises from litigation that challenged policy decisions of the Judicial Conference, and from a settlement approved by the leadership of the Judicial Branch, it is unclear whether this case could be heard by the full Court.

STATEMENT

The decision below affirmed the approval of a class-action settlement over the objection of one pro se class member who seeks to renew his objection in this Court.

1. This is a certified class action against the federal judiciary, concerning the fees that the judiciary charges for access to records through the Public Access to Court Electronic Records system, or PACER. The case was

filed in 2016, and it alleged that PACER fees exceeded the amount permitted by statute, 28 U.S.C. § 1913 note. Eight years of litigation ensued. In 2020, in a certified interlocutory appeal, the Federal Circuit "agree[d] with the district court's interpretation that [the statute] limits PACER fees to the amount needed to cover expenses incurred in services providing public access to federal court electronic docketing information." *NVLSP v. United States*, 968 F.3d 1340, 1350 (Fed. Cir. 2020). The court further held that PACER fees had been unlawfully used to cover projects unrelated to the provision of public access to federal court electronic docketing information. *Id.* at 1357–58. Those projects should have been funded through the appropriations process. The Federal Circuit thus "agree[d] with the district court's determination that the government is liable for the amount of the PACER fees used to cover [those projects]." *Id.* at 1357.

Because of uncertainty as to the extent of the government's liability, and to avoid protracted litigation and discovery on the judiciary's use of PACER fees, the parties agreed to mediate. With the help of a professional mediator, they reached a settlement under which the government will reimburse the vast majority of PACER users for past PACER charges in full. The settlement creates a common fund of $125 million from which each class member will automatically be reimbursed up to $350 for any PACER fees paid during the class period. Those who paid over $350 in fees during the class period will receive their pro rata share of the remaining settlement funds, and any unclaimed funds will be allocated evenly. In addition to this monetary relief, the case has spurred the judiciary to eliminate fees for about 75% of users going forward and has prompted action in Congress to abolish the fees altogether. Further, because the three nonprofit organizations serving as class representatives

devoted significant in-house attorney time to the case over eight years of litigation, the settlement authorized the plaintiffs to seek up to $10,000 per representative as a service award, subject to court approval.

Class members had a nearly universal positive reaction to the settlement. Of the hundreds of thousands of people in the class (potentially the most litigious class ever certified) counsel received just two timely objections from class members, both pro se. These objections were contradictory: One claimed that the settlement was unfair to *large* PACER users; the other—Eric Isaacson, a serial class-action objector and the petitioner here—claimed that the settlement was unfair to *small* PACER users. Isaacson took the view that this was a "run-of-the-mill settlement" that "achieve[s] a remarkably mediocre result." Fed. Cir. App. 4499. Among other objections, he argued that the service awards are per se unauthorized. He did not deny, however, that they are reasonable.

2. In March 2024, the district court issued a 48-page opinion approving this "historic settlement" as fair and reasonable and carefully considering (and rejecting) every objection. Pet. App. 29a–83a. The court awarded $10,000 to each class representative because it found that each had spent "over $10,000 worth of attorney time and expenses in leading this litigation." Pet. App. 81a.

3. Out of hundreds of thousands of class members, only Isaacson appealed. On appeal, the Federal Circuit affirmed. Because Isaacson had raised a threshold jurisdictional objection, maintaining that the district court lacked subject-matter jurisdiction under the Little Tucker Act, the court was required to address that issue first. It spent six pages explaining why there was subject-matter jurisdiction under circuit precedent. Pet. App. 8a–14a. It then turned to the merits. The Federal Circuit held

that the district court had not abused its discretion in approving the settlement and the service awards. In doing so, the Federal Circuit joined the "overwhelming" consensus recognizing that two 19th-century (and pre-Rule 23) cases from this Court, *Trustees v. Greenough*, 105 U.S. 527 (1881), and *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885), "do not preclude district courts from granting [service] awards." Pet. App. 21a.

Following the Federal Circuit's decision, Isaacson then filed this petition—his latest attempt on a seven-year effort to obtain certiorari from this Court on the question presented. By choosing to appeal the district court's approval and to pursue this issue all the way to this Court—an issue about the propriety of concededly reasonable $10,000 service awards—Isaacson has cost the class about $10 million by depriving it of funds for the past two-and-a-half years. *See* Bureau of Labor Statistics, *Consumer Price Index*, https://perma.cc/E9G9-AUX5.

REASONS FOR DENYING THE PETITION

Earlier this week, this Court denied a petition by the same pro se objector raising the same question as in this case. *See Isaacson v. Moses*, No. 25-1411, *cert. denied* (Nov. 9, 2026). That was the sixth time that the Court has denied certiorari on this question in recent years, and the petitioner here was counsel (and sometimes a party) in all but one. *See Dart v. Scott*, No. 24-464, *cert. denied* (Feb. 24, 2025); *Isaacson v. Meta Platforms, Inc.*, No. 24-259, *cert. denied* (Jan. 27, 2025); *Carson v. Hyland*, No. 22-634, *cert. denied* (Apr. 17, 2023); *Johnson v. Dickenson*, No. 22-389, *cert. denied* (Apr. 17, 2023); *Bowes v. Melito*, No. 19-504, *cert. denied* (Dec. 16, 2019).

1. This petition is even less worthy of review. *First*, as the district court recognized, the question presented is not actually presented by this case because the class

representatives—three nonprofit organizations with in-house counsel who have actively monitored, directed, and participated in the litigation since early 2016—spent more in "attorney time and expenses in leading th[e] litigation" than they would receive in service awards. Pet. 81a. No circuit has held such an award to be improper. "[E]ven the Eleventh Circuit—and the Supreme Court cases on which Isaacson relies—acknowledges that 'a plaintiff suing on behalf of a class can be reimbursed for attorneys' fees and expenses incurred in carrying on the litigation.'" Pet. App. 81a (quoting *Johnson*, 975 F.3d at 1257).[1]

Second, in the court of appeals, the petitioner's lead argument was that the district court lacked subject-matter jurisdiction under the Little Tucker Act, 28 U.S.C. § 1346(a)(2), to approve the settlement because it includes class members for whom "complete relief" would exceed the Act's $10,000 per-claim limit. *See* Opening Fed. Cir. Br. 18. This novel jurisdictional issue is logically antecedent to the question presented, and the petitioner does not contend that it is independently certworthy. Yet, because it goes to the district court's subject-matter jurisdiction over the settlement, the issue would be unavoidable and could complicate (or even derail) review. The last time (and, to our knowledge, the only time) that this Court granted a petition filed by a pro se class-action objector, the case was similarly derailed by a threshold jurisdictional issue not surfaced in the petition. *See Frank v. Gaos*, 586 U.S. 485, 488 (2019) (per curiam).

Third, although the typical class-action settlement arises from civil litigation between private parties and

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[1] Unless otherwise noted, all internal citations, brackets, quotation marks, alterations, and emphases are omitted from quotations throughout this brief.

involves individual class representatives who may receive an award for the time spent leading a suit against a corporation, the scenario here is anything but typical. This case is a category of one: a certified class action against the federal judiciary. Because the underlying litigation challenged policy decisions made by the Judicial Conference of the United States, and because the settlement was approved by the federal judiciary, the Chief Justice's role as the administrative head of the Judicial Branch and the Judicial Conference is directly implicated. If certiorari were granted, these unusual facts could prevent this case from being heard by a full complement of the Justices.

2. Certiorari would be unwarranted even if these vehicle problems could be set aside. Although the petition asserts that there is a circuit split that warrants review, this Court has denied certiorari five times since the creation of that purported split. During that time, "every circuit to have expressly considered the question" has joined the "overwhelming" consensus view that service awards are not "categorically prohibited." Pet. App. 21a n.5, 28a. If anything, as the Federal Circuit's decision shows, the consensus has been only further reinforced.

There is simply no need for this Court's intervention. The question presented is of little practical importance. Service awards typically involve "relatively modest" sums of money, like the $10,000 awards to each of the three class representatives in this case, which will come out of a historic $125 million dollar settlement. *See* William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 17:8 (6th ed., June 2026 update) (finding that the median service award out of about 1,200 class actions from 2006 to 2011 was $5,250); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An*

Empirical Study, 53 UCLA L. Rev. 1303, 1310–11 (2006) (similarly finding that the median service award was 0.02% of the class recovery). These awards look nothing like the awards in *Greenough*, for example, which were "equivalent to more than $1.4 million today." *Scott v. Dart*, 99 F.4th 1076, 1087 (7th Cir. 2024).

There is a reason that service awards tend to be modest. Courts have an independent obligation under Rule 23 to scrutinize every class-action settlement and to reject those with unreasonable service awards. *See* Fed. R. Civ. P. 23(e)(2)(A), (D). The district court did that here, and the petitioner has never argued that the awards in this case are unreasonable or inequitable. Pet. App. 28a. He has argued only that service awards are *categorically* impermissible. So the question he brings to this Court affects only reasonable settlements with *reasonable* awards (like those here)—not unreasonable awards.[2]

Nor does the question implicate any of the important distribution and allocation concerns that are the focus of most debates over class-action governance, and that have attracted this Court's attention. It doesn't implicate intra-class allocation conflicts, for example, as was the case in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997), and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999). Nor does it implicate *cy pres* awards to non-parties. *See Frank*, 586 U.S. 485; *Marek v. Lane*, 571 U.S. 1003 (2013) (Roberts, C.J., statement respecting the denial of certiorari).

Nor does the question implicate any real need for uniformity in the circuits. A recent empirical study found that the centerpiece of the petitioner's claimed split—the

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[2] Even then, the question presented affects only federal-question cases, not diversity cases, which are "governed by state law." *Matus v. Sport Squad, Inc.*, 2026 WL 783031, *7 (S.D. Fla. 2026).

Eleventh Circuit's 2020 decision in *Johnson*—has not "affected class action filings in the Eleventh Circuit." *See* Brian T. Fitzpatrick & Colton Cronin, *Do Representative Payments Matter? An Empirical Study*, 22 J. Empirical Legal Stud. 414, 420 (2025) (explaining that the study's methodology would have "detect[ed] even minute declines in filing rates if there was such a decline," and that there was no evidence of even a decline of "less than 1%"). At most, *Johnson* just means that some class actions in that circuit must be settled without allocating a few thousand dollars of the recovery to a service award.

This Court's intervention is not just unnecessary; it would also be unwise. The question presented is currently under active consideration by the Advisory Committee on Civil Rules. Following *Johnson*, the Rules Committee has received recommendations to consider amendments on service awards, and this past May it issued a report to the Standing Committee making clear that this issue is "under study." Advisory Committee on Civil Rules, *Report to the Standing Committee on Civil Rules* 3 (May 6, 2026), https://perma.cc/PV87-X8NU. Action by the Rules Committee would obviate any need for review by this Court and could alter or even moot the issue in the event of a grant. *See Johnson*, 975 F.3d at 1260 ("[I]f … the Rules Committee … doesn't like the result we've reached, they are free to amend Rule 23.").

3. Finally, the decision below was correct. Isaacson's argument on the merits rests entirely on two nineteenth-century cases that predate the class-action device, *Trustees v. Greenough*, 105 U.S. 527 (1881), and *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885). But, as an overwhelming consensus of circuits have recognized, "neither *Greenough* nor *Pettus* prohibits incentive awards in class actions." *Moses v. N.Y. Times*,

Co., 79 F.4th 235, 256 (2d Cir. 2023).[3] As this Court has recognized, in a typical class action, "[t]he class representative might receive a share of class recovery above and beyond her individual claim"—for example, through a "$25,000 incentive award." *China Agritech, Inc. v. Resh*, 584 U.S. 732, 747 n.7 (2018). This Court's recognition is consistent with the prevailing view that "[t]he plaintiff who" does the work "to lead the class" may get an "attendant financial benefit." *Id.* at 747.

But the decision below may be affirmed on an even narrower ground that sidesteps the need to decide the question presented by the petition. One of Isaacson's two cases, *Greenough*, specifically allowed a bondholder whose suit benefited others to recover his "reasonable costs, counsel fees, charges, and expenses incurred in the fair prosecution of the suit," but held that he couldn't recover an annual salary for his "personal services" or recoup his "private expenses." 105 U.S. at 537; *see Johnson*, 975 F.3d at 1257 (drawing this line). Because the service payments in this case indisputably fall on the correct side of this line—that is, because they cover time by "counsel … incurred in the fair prosecution of the suit," *Greenough*, 105 U.S. at 537—the decision below may be easily affirmed without reaching Isaacson's argument attacking service awards writ large. *See* Pet. App. 81a (district court opinion below doing exactly that).

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[3] *See, e.g.*, *Scott*, 99 F.4th at 1085–88; *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 785–86 (9th Cir. 2022); *Murray v. Grocery Delivery E-Servs. USA Inc.*, 55 F.4th 340, 353 (1st Cir. 2022); *accord Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017); *Pelzer v. Vassalle,* 655 F. App'x 352, 361 (6th Cir. 2016); *Tennille v. W. Union Co.*, 785 F.3d 422, 434–35 (10th Cir. 2015); *Berry v. Schulman*, 807 F.3d 600, 613–14 (4th Cir. 2015); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (en banc); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001).

CONCLUSION

This Court should deny the petition for certiorari.

Respectfully submitted,

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