

IN THE
SUPREME COURT OF THE UNITED STATES

No. ____

KABANI & COMPANY, INC.; MICHAEL DEUTCHMAN, CPA;
KARIM KHAN MUHAMMAD, CPA; and HAMID KABANI, CPA,

Applicants,

v.

U.S. SECURITIES & EXCHANGE COMMISSION,

Respondent.

**APPLICATION TO THE HON. ELENA KAGAN
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Applicants Kabani & Company, Inc., Michael Deutchman, Karim Khan Muhammad, and Hamid Kabani hereby move for an extension of time of 30 days, to and including January 23, 2019, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be December 24, 2018.

In support of this request, Applicants state as follows:

1. A panel of the U.S. Court of Appeals for the Ninth Circuit rendered its memorandum opinion on August 13, 2018 (Exhibit 1), and denied a timely motion for reconsideration, which it also construed as a petition for panel rehearing, on September 25, 2018 and stated that no further petitions for rehearing would be accepted (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves important legal questions concerning the proper interpretation and application of this Court’s decisions in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), and *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010), the Appointments Clause, and fundamental principles of constitutional due process. The Securities and Exchange Commission (“SEC”) deferred to a Public Company Accounting Oversight Board (“PCAOB”) hearing officer’s decision to impose penalties on Applicants for purportedly violating PCAOB Accounting Standard No. 3. After briefing in the Ninth Circuit on Applicants’ petition for review of the SEC decision was complete, this Court released its opinion in *Lucia*. Applicants provided the Ninth Circuit with a prompt notice of supplemental authority, to which the government responded, but the Ninth Circuit thereafter decided to cancel the already-scheduled oral argument, submitted the case on the briefs without hearing oral argument, and denied Applicants’ petition without addressing Applicants’ Appointments Clause claim as to the propriety of the PCAOB hearing officer. Applicants moved for reconsideration, urging the Ninth Circuit to apply *Lucia*’s logic regarding SEC administrative law judges to PCAOB hearing officers, but the Ninth Circuit perfunctorily denied that motion and refused to reconsider its initial decision. The Ninth Circuit’s failure to address (let alone distinguish) *Lucia* thus injects needless uncertainty into the post-*Lucia* world and has potential consequences far beyond the PCAOB hearing officers at issue in this case.

3. Applicants’ Counsel of Record, George W. Hicks, Jr., was recently retained and did not represent Applicants in the proceedings below. Because counsel

is new to the case, he requires additional time to research the factual record and complex legal issues presented in this case. Furthermore, between now and the current due date of the petition, counsel has substantial obligations in this Court, including briefs in opposition to petitions for certiorari in *Amgen Inc. v. Sanofi*, No. 18-127 (due November 19) and *Nichols v. Chesapeake Operating, LLC*, No. 18-168 (due November 21), a reply brief on certiorari in *Parker Drilling Management Services, Ltd. v. Newton*, No. 18-389 (due December 11), a reply brief on the merits in *Herrera v. Wyoming*, No. 17-532 (due December 13), and preparation for oral argument in *Herrera*, likely to be scheduled for early January. In addition, the current period for preparing the petition for certiorari encompasses both the Thanksgiving and Christmas holiday periods.

4. Applicants thus request a modest extension for counsel to prepare a petition that fully addresses the important issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including January 23, 2019, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,



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