

NO. 20-942

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER L. BUIE,

Petitioner,

v.

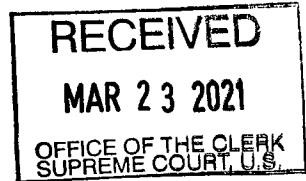
U.S. DEPARTMENT OF LABOR,
ADMINISTRATIVE REVIEW BOARD

Respondent.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner, Christopher L. Buie (Buie), presents substantial grounds not previously presented that weigh in favor of granting a rehearing of the order denying his petition for a writ of certiorari.

1. In 1996, the U.S. Secretary of Labor established the department's Administrative Review Board (ARB) by executive order.¹ The order delegated the Secretary's responsibility of oversight and the issuance of final decisions in adjudications to the ARB without providing the Secretary with any means to review or countermand any decisions.

2. Buie filed a complaint with the Occupational Safety and Health Administration (OSHA), alleging that his former employer fired him in violation of the Surface Transportation Assistance Act. OSHA dismissed his complaint, and he requested a hearing before the Department of Labor's Office of Administrative Law Judges. Buie's case was assigned to administrative law judge Paul R. Almanza who heard the case on the merits on August 29-30, 2016.

3. Judge Almanza issued the initial decision denying Buie's claims on December 6, 2018. Buie appealed the decision to the ARB, unaware of any structural issues concerning the Board. The ARB issued the final decision affirming judge Almanza's decision on October 31, 2019. Buie appealed the final decision to the Eighth Circuit court of appeals.

4. In the appeal proceedings at the Eighth Circuit, the ARB asserted in its brief that: "As of April 20, 2020, too late to be applicable here, a party aggrieved by a decision of the Board

¹ Secretary's Order 2-96 - Authority and Responsibilities of the Administrative Review Board, 61 Fed. Reg. 19978, 19978-79 (May. 3, 1996).

may file a petition for discretionary review by the Secretary...85 Fed. Reg. 13,034, 13,034-35 (Mar. 6, 2020).”²

5. The Eighth Circuit affirmed the ARB’s final decision, and Buie petitioned for a rehearing en banc, which the court denied. Buie timely filed a petition for a writ of certiorari with this Court. The Court denied the petition on March 8, 2021.

REASON FOR GRANTING A REHEARING

By admission in its brief to the Eighth Circuit, the ARB issued the final decision in Buie’s case while the Secretary had no means to fulfill his responsibility of oversight and review of final decisions. It was only after Buie appealed the final decision that the Secretary, by executive order, reestablished his oversight authority over adjudications.

Buie contends that when the ARB issued the final decision, its members acted collectively as a principal officer without having been appointed by the President with the consent of Congress and violated the Constitution’s Appointments Clause, U.S. Const. art. II, § 2, cl. 2. Buie further contends that because the ARB issued its final decision in violation of art. II, the initial questions presented in his petition for a writ of certiorari are moot.

The Court recently heard arguments in *United States v. Arthrex Inc.*, No. 19-434 (U.S. Mar. 1, 2021); *Smith & Nephew Inc. v. Arthrex Inc.*, No. 1452 (U.S. Mar. 1, 2021); and *Arthrex Inc. v. Smith & Nephew Inc.*, No. 1458 (U.S. Mar. 1, 2021). Those cases involve structural constitutional challenges, and it’s foreseeable that the Court’s decision will affect most, if not all, administrative agencies, as did its decision in *Lucia v. Securities and Exchange Comm’n*.

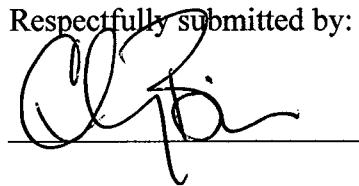
This Court does consider structural constitutional challenges that were not raised below, as the federal judiciary has a strong interest in “maintaining the constitutional plan of separation

² Secretary’s Order 01–2020—Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 85 Fed. Reg. 13186, 13188 (Mar. 6, 2020).

of powers.” *See Freytag v. Commissioner*, 501 U.S. 868, 878-79 (1991) (citation and quotation omitted). Since Buie raises the important question of whether the ARB acted as a principal officer without having been properly appointed when it issued the final decision, and because the Secretary has reestablished his oversight authority over adjudications, the Court should grant the rehearing, declare that the ARB issued the final decision unconstitutionally, vacate the Eighth Circuit opinion, and remand with instructions for the Secretary to conduct a new, lawful, and meaningful review of judge Almanza’s decision, consistent with procedural due process and the rule of law.

Dated: March 13, 2021

Respectfully submitted by:



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CERTIFICATION OF PARTY

I, Christopher L. Buie, hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

March 13, 2021



Christopher L. Buie