

No. 17-475

IN THE
Supreme Court of the United States

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Petitioner,

v.

DAVID F. BANDIMERE,

Respondent.

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

SUPPLEMENTAL BRIEF FOR RESPONDENT

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Pursuant to this Court's Rule 15.8, Respondent David Bandimere respectfully submits this supplemental brief in light of the government's recent admission in a co-pending case that the Tenth Circuit's decision was entirely correct. The government's change in position confirms that its petition in this case should be denied.

The government's petition did not assert any error in the Tenth Circuit's holding that the administrative law judge (ALJ) of the U.S. Securities and Exchange Commission (SEC) who presided over Mr. Bandimere's proceeding was unconstitutionally appointed. Instead, it deferred opining on the legal issue until its response

to the petition in *Lucia v. SEC*, No. 17-130. *See* Pet. 9. The government has now filed its *Lucia* response, in which it admits—contrary to the position it took in years of litigation in this case—that SEC ALJs are “Officers of the United States” whose appointment must conform to the Appointments Clause. Br. for Resp. 10, *Lucia* (filed Nov. 29, 2017).

The government’s change in position, though welcome, only reinforces that its petition in Mr. Bandimere’s case should be denied. All parties now agree that the Tenth Circuit’s decision in Mr. Bandimere’s case was correct. And the government has no legitimate reason whatsoever to prolong an appeal in an administrative proceeding that *the government itself* believes was unconstitutional. Accordingly, regardless of the disposition of the *Lucia* petition, the government’s petition in this case should be denied. *See* Br. in Opp. 13-15.

Respectfully submitted.

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