

Client Alert

Government Urges SCOTUS to Declare ALJ Process Unconstitutional

December 8, 2017

On November 29, 2017, the United States filed a brief in support of certiorari in *Raymond J. Lucia Cos., Inc. v. SEC*, urging the U.S. Supreme Court to use the case to hold that the existing hiring process for federal administrative law judges (ALJs) is unconstitutional. To date, federal courts of appeals have split on the question: the D.C. Circuit ruled that ALJs are mere “employees” of the federal government and are properly hired through a competitive process overseen by the Office of Personnel Management (OPM); the Tenth and Fifth Circuits, on the other hand, ruled that ALJs are “inferior officers” of the United State and must therefore be appointed as dictated by the Appointments Clause of the U.S. Constitution, as previously discussed [here](#) and [here](#). The answer to the question could have significant consequences for thousands of ALJs serving in dozens of federal agencies who are routinely charged with overseeing discovery in agency proceedings, issuing subpoenas, making findings of fact, and deciding cases. The Supreme Court should decide whether to accept the case for argument early next year. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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