No.

IN THE

Supreme Court of the United States

MARCUS RAPER,

Petitioner,

v.

COMMISSIONER OF SOCIAL SECURITY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Lucia v. SEC*, this Court held that "the 'appropriate' remedy for an adjudication tainted with an appointments violation" is a "new 'hearing'" before a different, "properly appointed" administrative law judge. 585 U.S. 237, 251 (2018) (quoting *Ryder v. United States*, 515 U.S. 177, 183, 188 (1995)). This remedy is required even if the original ALJ has received a constitutionally valid appointment in the meantime. *Id.*

An ALJ who all agree was unconstitutionally appointed denied Marcus Raper's Social Security disability claim. After that decision was partially vacated on the merits, Mr. Raper's case was remanded to the same ALJ. That same ALJ again denied Mr. Raper's claim. Even so, the Eleventh Circuit held that there was no Appointments Clause violation because the ALJ had received a constitutionally valid appointment by the time of the second proceeding. In so holding, the Eleventh Circuit expressly disagreed with both courts of appeals that have addressed this same situation.

The question presented is whether, in light of *Lucia*, an Appointments Clause violation persists when a decision by an unconstitutionally appointed ALJ is vacated on the merits and remanded to the same ALJ, who has received a constitutionally valid appointment in the interim.

RELATED PROCEEDINGS

Marcus Raper v. Comm'r of Soc. Sec., No. 22-11103 (11th Cir.) (judgment entered Jan. 3, 2024).

Marcus Raper v. Comm'r of Soc. Sec., No. 5:20-cv-00597-PRL (M.D. Fla.) (judgment entered Mar. 28, 2022).

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INTRODUCTION

This case presents an important and recurring question about the proper cure for an Appointments Clause violation.

In *Lucia v. SEC*, this Court held that Securities and Exchange Commission ALJs are "Officers of the United States" subject to the Constitution's Appointments Clause. 585 U.S. 237, 247-51 (2018). The SEC ALJ who decided the underlying case in *Lucia* was not constitutionally appointed; like all SEC ALJs at the time, he was appointed by "SEC staff members," not by the agency head. *Id.* at 244-45. This Court held that "the 'appropriate' remedy for an adjudication tainted with an appointments violation is a new 'hearing before a properly appointed' official." *Id.* at 251 (quoting *Ryder v. United States*, 515 U.S. 177, 183, 188 (1995)).

This Court then "add[ed] … one thing more," *id.*—what this petition will call *Lucia*'s Remedy Rule. On remand, the properly appointed official "cannot be" the original ALJ, "*even if he has by now received … a constitutional appointment*." *Id.* (emphasis added). Rather, "[t]o cure the constitutional error, another ALJ (or the Commission itself) must hold the new hearing." *Id.* at 251-52.

In response to *Lucia*, the head of the Social Security Administration (SSA) ratified the appointments of all of the agency's ALJs in order to cure their previous, unconstitutional appointments. *See* Pet. App. 13a; SSR 19-1p, 84 Fed. Reg. 9582, 9583 (Mar. 15, 2019). Following those new appointments, the

government sought to find a way around *Lucia* in certain cases. Specifically, the government argued that *Lucia*'s Remedy Rule is limited to cases in which the remand occurs *because the officer was unconstitutionally appointed*. If instead the ALJ was unconstitutionally appointed but the case is vacated and remanded *on the merits*, the government says that the same ALJ can preside over subsequent proceedings if their appointment was ratified in the interim.

The Fourth and Ninth Circuits have rejected this argument. They hold that after-the-fact ratification of an ALJ's constitutionally defective appointment cannot cure an Appointments Clause violation and any subsequent proceedings on remand must be conducted by a different and properly appointed ALJ, regardless of the reason for the remand. *Cody v. Kijakazi*, 48 F.4th 956, 958 (9th Cir. 2022); *Brooks v. Kijakazi*, 60 F.4th 735, 736 (4th Cir. 2023).

Like the claims in *Cody* and *Brooks,* Mr. Raper's Social Security disability claim was denied by an ALJ who was unconstitutionally appointed. Pet. App. 14a. After the ALJ's decision was vacated and remanded on the merits, that same ALJ, whose appointment had been ratified in the interim, again presided over Mr. Raper's case and again denied his claim for benefits. Mr. Raper appealed, arguing that his case should have been remanded to a new ALJ under *Lucia*, and that because it was not, the ALJ's second decision was tainted by an Appointments Clause violation. But, expressly "disagree[ing] with the Fourth and Ninth Circuits," the Eleventh Circuit held that there was "no need for a *Lucia* remedy" because a "merits-based

vacatur … eliminate[s] the taint of the unconstitutional appointment." Pet. App. 17a.

That holding expressly departs from two other courts of appeals, and it is irreconcilable with *Lucia*, which makes clear that a litigant like Mr. Raper is entitled to have his case heard by an ALJ who is free of the taint of an unconstitutional appointment. The Court should resolve the circuit split on this important and recurring issue now and in this case.

OPINIONS AND ORDERS BELOW

The Eleventh Circuit's decision is reported at 89 F.4th 1261 and reproduced at Pet. App. 1a-35a. The district court's decision is unreported but can be found at 2022 WL 1078128 and is reproduced at Pet. App. 36a-53a.

JURISDICTION

The Eleventh Circuit entered judgment on January 3, 2024, *see* Pet. App. 1a-35a, and denied a timely rehearing petition on May 24, 2024, *see* Pet. App. 127a-128a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Appointments Clause of the United States Constitution provides:

> [The President] … [,] by and with the Advice and Consent of the Senate, shall appoint … Officers of the United States, whose Appointments are not herein

> otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

STATEMENT OF THE CASE

An unconstitutionally appointed ALJ denies Mr. Raper's claim for Social Security disability benefits

In March 2015, Mr. Raper applied for Social Security disability benefits because he had become disabled and stopped working due to high blood pressure, high cholesterol, sleep apnea, back pain with muscle spasms, and eye degeneration. Pet. App. 3a. In October 2017, after holding a hearing, ALJ Kevin J. Detherage, who all agree required but lacked constitutional appointment, issued a partially favorable decision, finding that Mr. Raper became disabled as of August 8, 2017. *Id.* Mr. Raper sought review of the 2017 decision by the SSA Appeals Council. *Id.*

Lucia *holds that, to cure an Appointments Clause violation, a case must be remanded to a new, properly appointed ALJ*

Meanwhile, on June 21, 2018, this Court held in *Lucia* that SEC ALJs were "Officers of the United States" subject to the Constitution's Appointments

Clause. 585 U.S. at 241. As noted above, this Court held that "the 'appropriate' remedy for an adjudication tainted with an appointments violation is a new 'hearing before a properly appointed' official." *Id.* at 251 (quoting *Ryder*, 515 U.S. at 183, 188).

This Court also held that the properly appointed official "cannot be" the original ALJ, "even if he has [since] received … a constitutional appointment." *Id.* That is because the original ALJ "has already both heard [the individual's] case and issued an initial decision on the merits," and therefore "cannot be expected to consider the matter as though he had not adjudicated it before." *Id.*

In response to *Lucia*, the SSA Commissioner in July 2018 ratified the appointments of all SSA ALJs, including ALJ Detherage. Pet. App. 13a; SSR 19-1p, 84 Fed. Reg. at 9583.

The Appeals Council vacates and remands Mr. Raper's case on the merits, and the same ALJ again denies Mr. Raper's disability claim

In September 2018, the Appeals Council rejected Mr. Raper's request for review, rendering the ALJ's decision the final decision of the Commissioner. Pet. App. 3a, 93a. Mr. Raper then appealed the ALJ's decision to the district court, where the Commissioner moved, without opposition, to remand the case with instructions "to obtain supplemental vocational expert testimony" regarding the limitations on Mr. Raper's ability to work prior to August 8, 2017. Pet. App. 3a-4a, 92a (citation omitted). In August 2019, the district court granted the Commissioner's motion.

Pet. App. 4a, 91a-92a. On remand, the Appeals Council affirmed ALJ Detherage's determination that Mr. Raper became disabled on August 8, 2017, but vacated his findings related to the period before that date and remanded to obtain supplemental evidence from a vocational expert. Pet. App. 4a, 87a-90a.

In September 2020, ALJ Detherage held the administrative hearing on remand. Pet. App. 4a. As noted above, he was the same ALJ who previously presided over Mr. Raper's case, and he since had received a constitutionally valid appointment. As directed by the Appeals Council, a vocational expert testified at the hearing. *Id.* Mr. Raper also testified about his medical conditions and the limitations they imposed on his ability to work. *Id.* In October 2020, ALJ Detherage issued his second decision, which mirrored his first decision. Once again, he found that Mr. Raper was not disabled prior to August 8, 2017, and once again, he denied Mr. Raper disability benefits for that period. Pet. App. 4a-5a.

The Eleventh Circuit holds that an ALJ who previously was unconstitutionally appointed can continue to hear a case following a merits-based vacatur

Mr. Raper appealed once more to the district court, challenging the merits of ALJ Detherage's decision and alleging an Appointments Clause violation based on the agency's remand of the case to the same ALJ who was not constitutionally appointed at the time he initially resolved the case. Pet. App. 7a-8a. The district court affirmed, upholding ALJ Detherage's re-denial of pre-August 8, 2017 benefits, and

concluding that there was no Appointments Clause violation because "the only ALJ decision under review was the October 2020 decision." Pet. App. 8a-9a, 36a-53a.

On appeal, the Eleventh Circuit affirmed, finding it consistent with the Appointments Clause for ALJ Detherage to have continued presiding over Mr. Raper's case following vacatur of his prior decision on the merits. Pet. App. 17a. Specifically, the Eleventh Circuit held that "[t]here is no live Appointments Clause violation" here because, following vacatur of the first adjudication on the merits, "the entire second administrative adjudication was conducted by a constitutionally appointed ALJ." Pet. App. 17a-18a. According to the Eleventh Circuit, Mr. Raper's "situation [thus] differs" from *Lucia*. Pet. App. 14a. It was immaterial to the Eleventh Circuit that—like the ALJ in *Lucia*—ALJ Detherage was unconstitutionally appointed at the time he first presided over Mr. Raper's case and issued his first decision.

The Eleventh Circuit acknowledged that the Fourth and Ninth Circuits have reached exactly the opposite conclusion: that, under *Lucia*, this very scenario violates the Appointments Clause. Pet. App. 14a (citing *Cody*, 48 F.4th 956, and *Brooks*, 60 F.4th 735). The Eleventh Circuit expressly "disagree[d]" with those decisions and "decline[d]" to follow them. Pet. App. 14a, 17a. The full court then declined to rehear the case. Pet. App. 127a-128a.

REASONS FOR GRANTING THE PETITION

I. The Question Presented Is The Subject Of An Acknowledged Circuit Split.

This case and the Fourth and Ninth Circuits' decisions in *Brooks* and *Cody* all feature the very same situation. An unconstitutionally appointed ALJ denies a claim for Social Security disability benefits in an initial decision issued after an administrative hearing. Following *Lucia*, the Commissioner ratifies the ALJ's appointment. The claimant seeks review of the ALJ's decision, and some other tribunal vacates on the merits and remands. On remand, the original ALJ again denies benefits. The claimant seeks review in a federal district court, which finds no Appointments Clause violation because the ALJ was properly appointed by the time of the proceedings on remand. *See* Pet. App. 9a; *Brooks*, 60 F.4th at 738-39; *Cody*, 48 F.4th at 959-60. Contrary to the decision below, both *Brooks* and *Cody* reversed. The Eleventh Circuit's express departure from the Fourth and Ninth Circuits creates a clear circuit split, which only this Court can resolve.

A. The Fourth and Ninth Circuits hold that an Appointments Clause violation persists when a decision by an unconstitutionally appointed ALJ is vacated on the merits and remanded to the same ALJ.

1. In a case materially indistinguishable from this one, the Ninth Circuit held that "claimants are entitled to an independent decision issued by a different

ALJ if a timely challenged ALJ decision is 'tainted' by a pre-ratification ALJ decision." *Cody*, 48 F.4th at 963. *Cody* explains that the Appointments Clause is violated when an ALJ rehears and re-denies an individual's benefits claim after a merits-based vacatur of the ALJ's prior ruling, regardless of whether they were constitutionally reappointed in the meantime. *Id.* at 960-63.

The Ninth Circuit emphasized that the Appointments Clause implicates crucial "structural interests … not … of any one branch of Government but of the entire Republic." *Id.* at 960 (quoting *Freytag v. Comm'r*, 501 U.S. 868, 880 (1991)). Thus, an Appointments Clause violation is "no mere technicality or quaint formality"; rather, "it weakens our constitutional design." *Id.* Given those structural concerns, the court stressed that *Lucia* had "established remedies with bite for Appointments Clause violations." *Id.*

Against that backdrop, the Ninth Circuit concluded that the claimant in *Cody* was entitled on remand to a new hearing before a different, properly appointed ALJ. The court reasoned that, under *Lucia*, "the appropriate remedy for an adjudication tainted with an appointments violation is a new hearing before a properly appointed official." *Id.* at 961 (quoting *Lucia*, 585 U.S. at 251). In *Cody*, "the [ALJ's] 2017 decision tainted the [ALJ's] post-ratification 2019 decision," and "because the same ALJ issued both decisions, Cody did not receive what *Lucia* requires: an adjudication untainted by an Appointments Clause violation." *Id.* at 962. It did not matter that the first ALJ decision was not the decision on appeal, the

court continued, because *Lucia*'s rationale applies to "any 'adjudication *tainted* with an appointments violation.'" *Id.* (quoting *Lucia*, 585 U.S. at 251).

As the court explained, a hearing before a new ALJ supports *Lucia*'s "remedial aims." *Id.* It "promotes the 'structural purposes' of the Appointments Clause by ensuring only a properly appointed Officer takes part in deciding [the claimant's] case." *Id.* (quoting *Lucia*, 585 U.S. at 251 n.5). And it incentivizes claimants to raise Appointments Clause claims because "[w]ithout a remand to a new ALJ, claimants … would see little benefit in defending the constitutional requirement," especially given the likelihood that the original ALJ would ultimately arrive at the same conclusion they did before. *Id.*

2. The Fourth Circuit agrees with the Ninth Circuit: "[I]f an ALJ makes a ruling absent a proper constitutional appointment, and if the claimant interposes a timely Appointments Clause challenge, the appropriate remedy is for the claim to be reheard before a new decisionmaker." *Brooks*, 60 F.4th at 743-44. In *Brooks*, as in *Cody* and here, the same ALJ who initially heard and denied the claim while unconstitutionally appointed presided over a second hearing after his initial decision was vacated and remanded on the merits and after he had since received a constitutionally valid appointment. *Id*. at 736-37.

The Fourth Circuit chose to follow *Cody*, recognizing that its reasoning "is practically on all-fours, and there is no reason for us to reach a different conclusion and thus create a circuit split." *Id.* at 742. Specifically, the Fourth Circuit shared the view that "the

constitutional error committed" at the time of the first ALJ decision "was a continuing violation that infected [the ALJ's second] adjudication of the same claim." *Id.* After all, "the 'entire administrative adjudication' necessarily included the flawed [first ALJ] [d]ecision," and so the same ALJ "could not thereafter properly rule" on the disability-benefits claim. *Id.* Thus, "[b]ecause the Appointments Clause acts to 'preserve[] … the Constitution's structural integrity,'" "'remedies with bite' should be applied." *Id.* at 740 (quoting *Ryder*, 515 U.S. at 182; *Cody*, 48 F.4th at 960).

The Fourth Circuit also rejected the Commissioner's argument that *Lucia*'s Remedy Rule did not apply. According to the Commissioner, that rule was "unnecessary and irrelevant" because the "merits-based vacatur" already apprised the ALJ of "something [being] substantively wrong in her … [first] decision," which meant the ALJ would not automatically reach the same decision as before. *Id.* at 742-43. On the contrary, the Fourth Circuit explained, "the Appeals Council's merits-based vacatur simply is not relevant to [the claimant's] Appointments Clause challenge." *Id.* at 743. *Lucia* "did not carve out any exception to the remedy's necessity for the situation where a constitutionally infirm ALJ decision has been vacated on a merits-related issue." *Id.* Rather, once an unconstitutionally appointed ALJ adjudicates a claim, "the structural constitutional error will remain in place unless and until a different, properly appointed ALJ assesses and resolves the claim." *Id.* Just as in *Lucia*, on remand, "the same ALJ would be hard-pressed to 'consider the matter as though [she] had not adjudicated it before.'" *Id.* (quoting *Lucia*, 585

U.S. at 251). Because the original ALJ has "heard and decided the merits" of the claim, "a strong possibility remained" that she would "simply make the same ruling." *Id.*

B. In the decision below, the Eleventh Circuit expressly departed from the Fourth and Ninth Circuits.

In acknowledged conflict with the Fourth and Ninth Circuits, the Eleventh Circuit held in this case that there is no Appointments Clause violation when an earlier decision by an unconstitutionally appointed ALJ is vacated on the merits and remanded to the same, now constitutionally appointed ALJ. Pet. App. 17a. And in the meantime, the Eleventh Circuit has doubled down on that same reasoning. *See Rismay v. Comm'r of Soc. Sec.*, No. 23-11030, 2024 WL 3520152, at *3-4 (11th Cir. July 24, 2024).

According to the Eleventh Circuit, *Lucia* "dealt with [a] situation[] different from" Mr. Raper's. Pet. App. 14a. *Lucia* was different, it said, because "[t]here was no question about whether there was a live Appointments Clause violation—an unconstitutionally appointed ALJ had issued the decision before the Court." *Id*. The Eleventh Circuit found it dispositive that, here, "[w]hen [the ALJ] issued his second decision[,] … the ALJ had been constitutionally appointed." *Id.*

The Eleventh Circuit expressly "decline[d]" to "follow the lead of the Ninth and Fourth Circuits." Pet. App. 15a. The Eleventh Circuit believed that the merits-based vacatur of the first ALJ decision

"eliminated the taint of the unconstitutional appointment." Pet. App. 17a. In the court's view, that meant there was no "live" Appointments Clause violation, so the *Lucia* Remedy Rule did not apply. Pet. App. 17a.

II. The Eleventh Circuit's Decision Conflicts With This Court's Decision In *Lucia*.

Certiorari is also warranted because the Eleventh Circuit's decision contradicts *Lucia*, and its justifications for departing from *Lucia* do not withstand scrutiny.

A. The decision below is not faithful to *Lucia*.

The Eleventh Circuit's conclusion that there is no constitutional violation is not faithful to the holding or the underlying rationale of *Lucia*. *Lucia* explained that SEC ALJs are "Officers" within the meaning of the Appointments Clause and therefore must be appointed by the "President," "Courts of Law," or "Heads of Departments." 585 U.S. at 243 (quoting U.S. Const. art. II, § 2, cl. 2). Prior to this decision, SEC ALJs were unconstitutionally appointed by "SEC staff members." *Id.* Thus, any adjudication by an SEC ALJ who had been appointed in that fashion was "tainted with an appointments violation." *Id.* at 251. And *Lucia* specified the "'appropriate' remedy": The cure for "an adjudication tainted with an appointments violation is a new 'hearing before a properly appointed' official." *Id.* (quoting *Ryder*, 515 U.S. at 183, 188).

Relevant here, *Lucia* explained that this "official cannot be" the prior ALJ, "even if he has by now

received (or receives sometime in the future) a constitutional appointment." *Id.* That is because the prior ALJ "has already both heard [the] case and issued an initial decision on the merits," so he "cannot be expected to consider the matter as though he had not adjudicated it before," even if in the meantime he has been constitutionally appointed. *Id.*

Lucia's Remedy Rule is directly applicable here. All agree that ALJ Detherage was unconstitutionally appointed at the time he held the first hearing and denied Mr. Raper's benefits claim in 2017. Accordingly, *Lucia* makes clear that, following remand, Mr. Raper's case should have been reheard by a different, constitutionally appointed ALJ, or else the constitutional flaw would continue. In *Lucia*'s words, ALJ Detherage "ha[d] already both heard [Mr. Raper's] case and issued an initial decision on the merits," so he could "[]not be expected to consider the matter as though he had not adjudicated it before," even if he had received a constitutionally valid appointment by the time of the second proceeding. *Id.* The Eleventh Circuit's contrary holding requires a litigant affirmatively to prove that the Appointments Clause violation actually tainted the decision. *See Rismay*, 2024 WL 3520152, at *4 (relying on *Raper* to conclude that there was no error where the claimant failed to prove that the ALJ did not "reweigh all of the evidence on remand"). That is flatly irreconcilable with *Lucia*.

B. The Eleventh Circuit's reasons for departing from *Lucia* do not withstand scrutiny.

The Eleventh Circuit gave three main reasons for rejecting Mr. Raper's Appointments Clause challenge. Each is at odds with *Lucia*.

1. According to the Eleventh Circuit, "[w]hen the ALJ began anew" on remand, "the entire second administrative adjudication was conducted by a constitutionally appointed ALJ, which brings this case outside the bounds of *Lucia*." Pet. App. 18a. This, it reasoned, "eliminated the taint of the unconstitutional appointment." Pet. App. 17a.

That conclusion is contrary to *Lucia*, which holds that the only way to eliminate the taint of an unconstitutional appointment is for the proceedings on remand to be conducted by a different ALJ. 585 U.S. at 251-52; *see Cody*, 48 F.4th at 958; *Brooks*, 60 F.4th at 736. When an ALJ "hear[s] and decide[s]," *Lucia*, 585 U.S. at 251, a case without those protections, it undermines "the Constitution's structural integrity," *Ryder*, 515 U.S. at 182 (quoting *Freytag*, 501 U.S. at 878). For that reason—as well as to encourage litigants to raise Appointments Clause challenges—"[t]o cure the constitutional error, another ALJ … must hold the new hearing." *Lucia*, 585 U.S. at 251-52. That is "the 'appropriate' remedy for an adjudication tainted with an appointments violation." *Id.* at 251 (quoting *Ryder*, 515 U.S. at 183). The decision below does not explain why remanding to the same ALJ, now constitutionally appointed, is *im*permissible when their decision was vacated because of the

appointment itself, but permissible when an unconstitutionally appointed official also erred on the merits.

2. Next, the Eleventh Circuit said that because "the District Court and the Appeals Council explicitly told him what was wrong with the 2017 decision," "there [was no] danger that the ALJ would lack notice of the deficiency in his earlier decision," and "[n]othing in the record suggests that he failed to take a fresh look at Raper's claim." Pet. App. 18a-19a. But nothing in *Lucia* turns on whether the ALJ had notice of deficiencies in his initial decision. On the contrary, and as just discussed, *Lucia* focuses on the ALJ's inability to put their prior decision out of their head.

That this case involves vacatur on the merits, rather than on Appointments Clause grounds, makes no difference. *Lucia* suggested in a footnote that an ALJ might be *especially* unlikely to revisit his earlier judgments if he had "no reason to think he did anything wrong on the merits," 585 U.S. at 251 n.5, but nowhere did the Court suggest that the constitutional violation vanishes if the ALJ is aware of what they previously did wrong. On the contrary, the Court unequivocally held that the cure for an Appointments Clause violation is reassignment on remand to a different and properly appointed ALJ. *Id.* at 251-52. And sensibly so: Under the Eleventh Circuit's view, a decision by an improperly appointed ALJ is tainted, but a decision by an improperly appointed ALJ who *also* errs on the merits is not. That rule would make little sense, and nothing in *Lucia* supports it. *See Cody*, 48 F.4th at 960-63; *Brooks*, 60 F.4th at 741-43.

The Eleventh Circuit's supposition that the ALJ undertook a "fresh look" is equally unavailing. Pet. App. 19a. Nothing in *Lucia*, whose Remedy Rule was based on structural considerations, purported to assess whether an ALJ can or does take a "fresh look." And the Eleventh Circuit identified no discernible standard for assessing whether a "fresh look" took place, or how one would get inside the ALJ's head to do so. What we know here is that, as to Mr. Raper's pre-August 8, 2017 benefits claim, ALJ Detherage reached the same conclusion based on the same analysis after the 2020 hearing that he reached after the 2017 hearing, despite new evidence further supporting the claim.[1]

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[1] For example, in this case, evidence from "a treating physician must be given substantial or considerable weight unless 'good cause' is shown to the contrary," whereas evidence from a consulting or one-time visited physician is given less weight. *Crawford v. Comm'r of Soc. Sec.*, 363 F.3d 1155, 1159-60 (11th Cir. 2004) (citation omitted), *superseded by regulation with respect to claims filed on or after March 27, 2017*, 20 C.F.R. § 404.1520c(a). As part of his initial case, Mr. Raper submitted a medical opinion of his treating physician, Dr. Razack, but the signature on it was illegible, and the ALJ only afforded it "some weight." Pet. App. 6a n.5; Pet. App. 120a. At the 2020 hearing, Mr. Raper specifically testified that this medical opinion was prepared and signed by Dr. Razack. Pet. App. 41a-42a. The opinion therefore should have been given substantial or considerable weight, unless the ALJ could properly articulate why the standard of good cause was met. But ALJ Detherage ultimately treated this opinion in the same way in his second adjudication. *Compare*, *e.g.*, Pet. App. 120a ("As for the opinion evidence, some weight [is] given to the medical source statement because it is consistent with the sedentary level exertion. However, extreme limitations inconsistent with the records are not given weight."),

3. Finally, the Eleventh Circuit posited that "our entire judicial system works on the premise that a judge can set aside his or her earlier decision and look at a case anew" on remand, and there is "no reason to disrupt that system here." Pet. App. 19a. That reasoning is flatly at odds with *Lucia*, which explains that an ALJ in this circumstance "*cannot* be expected to consider the matter as though he had not adjudicated it before." 585 U.S. at 251 (emphasis added).

The Eleventh Circuit's reasoning comes straight out of the *Lucia* **dissent**. Justice Breyer saw "no reason why [the prior ALJ] could not rehear the case," given that "when a judge is reversed on appeal and a new trial ordered, typically the judge who rehears the case is the same judge who heard it the first time." *Lucia*, 585 U.S. at 267 (Breyer, J., dissenting in part). The *Lucia* majority disagreed, *id.* at 251 n.5, and that is controlling here.

III. The Question Presented Is Important And Recurring.

The practical consequences of the question presented are especially significant in the Social Security context. SSA "employ[s] more ALJs than all other Federal agencies combined." SSR 19-1p, 84 Fed. Reg. at 9583. Many claimants navigate the claims process pro se, and Social Security payments are indispensable for claimants and their families. Layering

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with Pet. App. 79a ("[I] give some weight to this assessment to the extent consistent with the current residual functional capacity. However, the extreme limitations noted are not given weight due to their inconsistency with the records.").

unremedied Appointments Clause violations on top of that system deprives claimants of a fair and proper process for adjudicating their claims.

The consequence of the decision below is that whether a constitutional violation will be remedied depends entirely on the happenstance of where an individual files their Social Security claim. California and Florida dwarf the number of Social Security beneficiaries in most other states[2]—and federal courts in those jurisdictions will apply conflicting rules. Resolving the question presented will promote the critical goal of bringing nationwide uniformity and consistency to agency adjudication procedures.

Not surprisingly, the question presented is recurring. In addition to the three circuits that have reached diametrically opposite conclusions, numerous district courts have addressed the issue and are in conflict—including courts within a circuit and even within the same state. And more cases implicating this question continue to arise and remain pending.[3]

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[2] *See, e.g.*, Social Security Administration, *Annual Statistical Supplement to the Social Security Bulletin, 2023* at Table 5.J2, SSA Publication No. 13-11700 (Nov. 2023), https://www.ssa.gov/policy/docs/statcomps/supplement/2023/supplement23.pdf.

[3] *Compare, e.g.*, *Digiondomenico v. Kijakazi*, 656 F. Supp. 3d 527, 532-33 (M.D. Pa. 2023) (requiring remand to a different, constitutionally appointed ALJ); *Rajo v. Kijakazi*, 663 F. Supp. 3d 1222, 1227 (D. Colo. 2023) (same); *Sandell v. Kijakazi*, No. 21-CV-4226(EK), 2023 WL 6308050, at *4 (E.D.N.Y. Sept. 28, 2023) (same); *Dwayne F. v. Comm'r of Soc. Sec.*, No. 6:21-CV-6583-EAW, 2023 WL 2549608, at *5-6 (W.D.N.Y. Mar. 17, 2023)

IV. This Case Is An Ideal Vehicle To Resolve The Question Presented.

The question presented was expressly raised, preserved, and ruled on in this case, both in the district court and in the court of appeals. Pet. App. 1a-35a; Pet. App. 36a-53a. The Eleventh Circuit issued a clear and explicit holding that directly presents the issue for this Court's review: It expressly held that there is no Appointments Clause violation when an earlier

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(same); *Michael D. v. Kijakazi*, No. 2:20-CV-12309, 2022 WL 3703206, at *6 (D.N.J. Aug. 26, 2022) (same); *Melissa L.R. v. Kijakazi*, No. 1:21-CV-00318(BKS), 2022 WL 3153937, at *3 (N.D.N.Y. Aug. 8, 2022) (same); *Hoerle v. Comm'r of Soc. Sec.*, No. 2:21-cv-11605, 2022 WL 2442203, at *16 (E.D. Mich. June 16, 2022) (same); *Misty D. v. Kijakazi*, No. 3:18-CV-206, 2022 WL 195066, at *3 (N.D.N.Y. Jan. 21, 2022) (same); *Evanitus v. Kijakazi*, No. 1:20-CV-1187, 2021 WL 5494282, at *4-5 (M.D. Pa. Nov. 23, 2021) (same); *Mary D. v. Kijakazi*, No. 3:20-cv-656 (RAR), 2021 WL 3910003, at *10-11 (D. Conn. Sept. 1, 2021) (same); *Welch v. Comm'r of Soc. Sec.*, No. 2:20-CV-1795, 2021 WL 1884062, at *5 (S.D. Ohio May 11, 2021), *report and recommendation adopted*, 2021 WL 2142805 (S.D. Ohio May 26, 2021) (same)*, with, e.g.*, *Cheryl L. D. v. Comm'r of Soc. Sec.*, No. 21CV00704(SALM), 2022 WL 2980821, at *3-4 (D. Conn. July 28, 2022) (not requiring remand to a different ALJ); *Figueroa v. Comm'r of Soc. Sec.*, No. 20-346-E, 2022 WL 721283, at *1 n.2 (W.D. Pa. Mar. 10, 2022) (same); *Govachini v. Comm'r of Soc. Sec.*, No. 19-1433, 2020 WL 5653339, at *1 n.1 (W.D. Pa. Sept. 23, 2020) (same); *Gary B. v. Saul*, No. 19 CV 2000, 2020 WL 586812, at *7 (N.D. Ill. Feb. 6, 2020) (same). *See also, e.g.*, *Mollie Marie F. v. Comm'r of Soc. Sec.*, No. 22-cv-08418-GRJ, 2023 WL 5917660, at *10-11 (S.D.N.Y. Sept. 11, 2023) (recognizing a division of authority within the Second Circuit and more broadly), *appeal filed*, No. 23-7715 (2d Cir.); *Wheeler v. Comm'r of Soc. Sec.*, No. 22-14251 (11th Cir.); *Leiva v. Comm'r of Soc. Sec.*, No. 20-cv-62286 (S.D. Fla.); *Blumenstein v. Comm'r of Soc. Sec.*, No. 20-cv-02059 (M.D. Fla.).

decision by an unconstitutionally appointed ALJ is vacated on the merits and remanded to the same, now constitutionally appointed ALJ. *Supra* 7.

In addition, the Eleventh Circuit's resolution of that question was outcome-determinative. If this Court reverses the Eleventh Circuit, Mr. Raper's case will be properly heard on remand by a different, constitutionally appointed ALJ. Mr. Raper has twice had his disability claim heard and decided by an ALJ who was tainted by having been unconstitutionally appointed. Mr. Raper is entitled to have his disability claim adjudicated by a different, constitutionally valid ALJ.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

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