UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of **Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.,** **Respondents.**

RESPONDENT RAYMOND J. LUCIA, SR. REPLY IN SUPPORT OF MOTION FOR RELIEF FROM BARS

OS Received 08/07/2025

I. INTRODUCTION

Respondent Raymond J. Lucia, Sr. respectfully submits this reply to the Division of Enforcement's Brief in Opposition.

The Division's assertion that "nothing has changed" since Mr. Lucia's 2020 settlement is not only inaccurate—it is breathtaking in its disregard for intervening Supreme Court precedent that directly repudiates the constitutional framework under which that settlement was obtained. Since 2020, the Supreme Court has issued two landmark decisions—*Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), and *SEC v. Jarkesy*, 603 U.S. 109 (2024)—that confirm the very rights Mr. Lucia was denied: the right to challenge the SEC's administrative proceeding in federal court before suffering irreparable professional harm, and the right to a jury trial in civil penalty cases alleging securities fraud. These decisions, along with Lucia's own case, *Lucia v. SEC*, 585 U.S. 237 (2018), make clear that Mr. Lucia was deprived of fundamental constitutional protections throughout the enforcement process that led to his coerced settlement. To claim that these developments do not constitute a change in circumstances—legal, factual, or equitable—is untenable.

Rather than engage with these constitutional shifts or the real-world consequences of its own misconduct, the Division instead relies on formalistic arguments and a selective reading of the record. It ignores the extraordinary and uncontroverted evidence that Mr. Lucia's bar has become a *de facto* lifetime ban, preventing him from engaging in even limited professional activities due to reputational damage caused by the SEC's press release and administrative action. The Division fails to confront the undeniable fact that prior to the SEC's public press release accusing Mr. Lucia of fraud, no investor ever complained or was found to have lost money, that every one of Mr. Lucia's presentations were pre-approved by his FINRA registered broker-dealers' compliance departments, and that his use of the term "backtest" was consistent

OS Received 08/07/2025

with industry norms. Most tellingly, the Division makes no attempt to defend the merits of its original fraud theory. It does not engage with the dissenting opinion of then Commissioners Daniel Gallagher and Michael Piwowar, who concluded that Mr. Lucia's materials were neither misleading nor deceptive. And it is entirely silent on the SEC's own dissemination of similar backtesting presentations—using assumed inflation rates without disclaimers—at its 2008 seniors' retirement summit. In short, the Division's opposition confirms not only the constitutional infirmities of Mr. Lucia's original proceeding but also the arbitrariness of the denial of relief the Division now urges.

II. ARGUMENT

A. Contrary to the Division's Claim, Profound Legal and Equitable Changes Have Occurred Since Mr. Lucia's Settlement

The Division's effort to ignore the seismic legal developments since Mr. Lucia's 2020 settlement reflects a fundamental misapprehension of current constitutional law. (Opposition, 8-11). The Division fails to acknowledge, let alone grapple with, two landmark rulings—*Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), and *SEC v. Jarkesy*, 603 U.S. 109 (2024)—that together invalidate the coercive procedural architecture the Commission used to extract Mr. Lucia's settlement. In *Axon*, the Court held that parties targeted in SEC administrative proceedings have the right to challenge the constitutionality of those proceedings in federal district court before suffering irreversible professional and reputational harm. And in *Jarkesy*, the Court confirmed that civil penalty actions alleging fraud—such as those brought against Mr. Lucia—must be tried before an Article III judge and jury. The Division's refusal to so much as cite these decisions in opposing Mr. Lucia's motion signals not legal rigor, but institutional denial.

OS Received 08/07/2025

These two Supreme Court rulings powerfully confirm what Mr. Lucia has long argued: the Commission denied him his day in court, deprived him of a jury, and forced him to choose between additional years of ruinous litigation in an unconstitutional forum or settlement on terms he could not fairly contest. That the Division now insists Mr. Lucia voluntarily and finally relinquished his rights is remarkable given the Supreme Court's conclusion in *Axon* that agencies like the SEC are aware "that few can outlast or outspend the federal government" and "agencies sometimes use this as leverage to extract settlement terms they could not lawfully obtain any other way." 598 U.S. 175 at 216. The SEC used precisely that leverage to extract settlement terms against Mr. Lucia. After nearly a decade of proceedings, financial depletion, and reputational destruction, he accepted the settlement "offer" of adhesion provided to him by the Division and later accepted by the Commission. As *Axon* and *Jarkesy* now make clear, the entire foundation of the SEC's proceeding—including the Administrative Law Judge's ("ALJ's") factual findings and the Commission's in-house appellate review—was constitutionally illegitimate.

The coercive nature of the process is not a matter of opinion; it is a matter of record. As early as 2014, the then-Director of Enforcement admitted to Reuters that the Division merely had to threaten administrative proceedings to extract settlements from respondents: "[t]here have been a number of cases in recent months where we had threatened administrative proceedings… and they settled."[1] That is precisely what happened here.

After a multi-year investigation, in 2012 the Commission brought its case against Mr. Lucia before an unconstitutional tribunal; after a year of litigation, the unconstitutionally

[1] Sarah N. Lynch, *SEC to file some insider-trading cases in its in-house court*, REUTERS (June 11, 2014), https://www.reuters.com/article/us-sec-insidertrading/sec-tofile-some-insider-trading-cases-in-its-in-house-courtidUSKBN0EM2DI20140611.

OS Received 08/07/2025

appointed ALJ heard nine days of testimony and argument, and, in 2013 issued an initial opinion.[2] After several more years of litigation, in 2015 the Commission (in a 3-2 split decision) affirmed the ALJ's initial opinion, specifically rejecting Mr. Lucia's argument that the ALJ's appointment was unconstitutional.[3] After several more years of litigation, in 2016 and 2017, the D.C. Circuit (ultimately in a 5-5 *en banc* split) upheld the SEC's opinion and concluded the ALJ had not been unconstitutionally appointed. *Lucia v SEC*, 868 F.3d 1021 (2017). After yet more litigation, in 2018 the United States Supreme Court concluded that the ALJ had in fact been unconstitutionally appointed, reversing the Court of Appeals and remanding for further proceedings. *Lucia v SEC*, 585 U.S. 237 (2018). In 2019, the SEC assigned the matter to a new ALJ to start the entire process over, and that new ALJ proceeded to reject Mr. Lucia's renewed constitutional objections to the proceedings, refusing to stay the proceedings while Mr. Lucia sought resolution of those constitutional objections in federal court.[4]

By 2020, the path before Mr. Lucia resembled a modern-day Sisyphus. To vindicate his constitutional rights, he would have had to return to an administrative hearing before an unconstitutional tribunal the Supreme Court would later find unlawful, then appeal an adverse decision to the full Commission, then to the D.C. Circuit, and then—if necessary—back to the Supreme Court. Even a second Supreme Court victory would not have ended the ordeal, but merely sent the case back to the starting line for yet more proceedings, beginning the cycle anew.

Then, in 2020 in the middle of the COVID epidemic when he was exhausted—financially, professionally, and emotionally—from more than 8 years of SEC investigation, litigation, and appeals, the Commission offered Mr. Lucia a settlement in exchange for dropping

---

[2] Available at https://www.sec.gov/files/alj/aljdec/2013/id495ce.pdf
[3] Available at https://www.sec.gov/files/litigation/opinions/2015/34-75837.pdf
[4] Available at https://www.sec.gov/files/alj/aljorders/2019/ap-6628.pdf

OS Received 08/07/2025

his federal appeal of his constitutional rights—at a time of extreme personal stress and national uncertainty, when his wife had recently experienced a serious health emergency during the early COVID panic. The threat worked, and the case settled.

For the Division to now argue that "nothing has changed" is to willfully ignore the Supreme Court's condemnation of this very enforcement strategy. The SEC's byzantine administrative procedural maze that led to Mr. Lucia's settlement no longer exists. His inability to access a jury or federal court was not an accident of timing; it was a deliberate outcome of the Commission's litigation strategy, pursued with full awareness of the leverage it created. The subsequent rulings in *Axon* and *Jarkesy* obliterate any claim that the settlement was voluntary in any meaningful constitutional sense. At minimum, *Axon* and *Jarkesy* represent precisely the sort of changed legal and equitable circumstances that warrant relief under the Commission's rules—and yet the Division pretends they do not exist.

B. The Division Misleads the Commission by Failing to Disclose the SEC's Recent Vacatur of Dozens of Bars Without Pursuit of Incremental Relief

The Division contends that vacatur of settled industry bars is exceedingly rare, citing a handful of isolated instances to suggest that Mr. Lucia's request is extraordinary. (Opposition at 5-8, representing without qualification, "While the Commission rarely vacates administrative bars, it has done so in a few cases where the applicant has been granted incremental relief and, after receiving that relief, has demonstrated consistent compliance").

The Division's framing is not just incomplete—it is affirmatively misleading. The Division fails to disclose that, as recently as 2023, the Commission vacated dozens of bars in a sweeping set of dismissals prompted by constitutional infirmity. That failure to acknowledge (much less distinguish) precedent directly relevant to the Division's representations to the Commission renders the Division's argument fatally misleading by omission.

OS Received 08/07/2025

In *In re Pending Admin. Proceedings*, Order Vacating Certain Associational Bars, 2023 WL 3695923, SEC Release No. 33-11199 (June 2, 2023) (the "Bartko Vacaturs")**,** the Commission vacated more than 45 industry bars resulting from unconstitutional practices by the Commission.[5] As the Commission explained in the Bartko Vacaturs, in *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017), the D.C. Circuit found the Commission's retroactive application of certain provisions of Dodd-Frank to impose investment adviser, municipal securities dealer, and transfer agent bars on Gregory Bartko (collectively, the "Collateral Bars"), violated the Constitution's *Ex Post Facto* Clause, Contract Clause, and the Fifth Amendment's Due Process Clause of the Constitution. *Id*. at 1223 (citing Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-203, 124 Stat. 1376 (2010)). On the basis of those constitutional violations, the D.C. Circuit granted Bartko's petition challenging his Collateral Bars. *Id*. at 1228.

In response, the Commission did not contest the court's holding. Instead, less than a month after the D.C. Circuit's decision, the Commission launched an "expedited" vacatur protocol under which other respondents who had been subjected to the same unconstitutional retroactive application of Dodd-Frank could seek vacatur of their bars. *See* Commission Statement Regarding Decision in *Bartko v. SEC* (Feb. 23, 2017).[6] In 2023, six years after the D.C. Circuit's decision in *Bartko*, the Commission vacated 46 bars. *See* Bartko Vacaturs. The

---

[5] In June 2023, the SEC also dismissed 42 active administrative proceedings after admitting that Enforcement Division staff had improper access to memoranda prepared for Commissioners in deciding those matters—an internal control failure breaching the required separation between its prosecutorial and adjudicative functions. Given the nature of Mr. Lucia's proceeding and its procedural history, it is highly likely that, had he not been pressured into settling in 2020, his case would have been among those dismissed, further underscoring the need for relief from the resulting bars. Available at: https://www.sec.gov/files/litigation/opinions/2023/33-11198.pdf.
[6] Available at https://www.sec.gov/newsroom/speeches-statements/commission-statement-regarding-bartko-v-sec.

OS Received 08/07/2025

Commission did not require any of the 46 respondents to seek incremental relief, obtain a sponsor, or overcome other procedural obstacles as the Division suggests Mr. Lucia must. Rather, the Commission simply vacated bars that had been imposed as a result of the Commission's unconstitutional practices.

It is telling that the Division fails to bring this example to the Commission's attention while making sweeping claims about the exceptional nature of Mr. Lucia's request. Contrary to the Division's representation, the Commission has in very recent memory granted systemic vacatur of settled bars—under circumstances that mirror Mr. Lucia's Motion. The structural constitutional violations confirmed in *Axon* and *Jarkesy*—denial of a jury and denial of a federal forum—are at least as fundamental as those underlying the Bartko Vacaturs. Yet only in Mr. Lucia's case does the Division invoke "finality" as a shield to preclude meaningful review.

The Division's characterization of Mr. Lucia's request as "rare" alongside its failure to discuss the Bartko Vacaturs is not a mere oversight—it is an apparently deliberate omission that distorts the legal and institutional context in which this Motion arises. The Commission cannot fairly assess the equities here without full visibility into its own recent precedents. Mr. Lucia does not seek special treatment; he seeks the same recognition of injustice that the Commission has afforded others who were subjected to constitutionally flawed or unlawful enforcement actions. That the Division withholds this relevant history from the Commission, while simultaneously painting Mr. Lucia's Motion as unprecedented and insisting that he must seek incremental relief, reflects a troubling lack of candor in advocacy before the agency.

Mr. Lucia's Motion does not bypass process; it invokes it—through a formal filing grounded in recent Supreme Court authority. The Commission should reject the Division's attempt to obscure its own practices and apply an artificially heightened standard that it has not previously demanded of other similarly situated individuals.

C. The Division's Characterization of "Misconduct" Relies on Discredited Findings and a Now-Abandoned Enforcement Approach

The Division's claim that Mr. Lucia is "relitigating a settled case" mischaracterizes both the nature and purpose of this Motion. (Opposition at 7 & 9). Mr. Lucia does not seek to undo liability findings but to present exculpatory issues and legal developments—such as the SEC's own dissemination of backtesting in seminars and the recent Supreme Court decisions highlighting the unconstitutional process that led to the 2020 Settlement Order's findings—that bear directly on the fairness and proportionality of the continued bar. Where the government maintains and enforces an ongoing sanction, it cannot invoke finality to avoid scrutiny of its own inconsistent and unconstitutional conduct. The Motion seeks not relitigation but correction of an ongoing injustice rooted in selective enforcement and newly clarified constitutional rights.

The Division's reliance on the findings in the Commission's 2020 settlement order to support its claims of "misconduct" is both circular and constitutionally unsound. (Opposition at 4-5, "Thus, the seriousness and duration of Respondent's conduct as described in the Order counsel against granting the requested relief."). As detailed above, the findings included in the settlement order were the direct product of an unconstitutional administrative enforcement regime—one that the Supreme Court has now rejected in *Axon* and *Jarkesy*. The Division cannot simply point to its own coerced and procedurally defective findings as proof that Mr. Lucia engaged in misconduct. Because those findings were obtained—not through an adversarial fact-finding process of any kind—but rather through an administrative forum that denied Mr. Lucia both a jury trial and meaningful access to federal court, some scrutiny of the Settlement Order findings is not only appropriate—it is essential to any fair evaluation of this Motion.

OS Received 08/07/2025

That scrutiny reveals that Mr. Lucia's conduct—specifically, his use of financial illustrations involving hypothetical inflation and returns—was well within industry norms at the time and cannot reasonably be deemed fraudulent. Critically, the Division's assertion of serious misconduct is undermined by the undisputed fact that no investors complained about or suffered financial losses from Mr. Lucia's presentations, a point even the original ALJ acknowledged, and which highlights the absence of any tangible harm to justify the severe sanctions imposed. Indeed, as Commissioners Gallagher and Piwowar explained in their dissenting opinion, the Commission's majority engaged in "rulemaking by opinion," punishing Mr. Lucia and creating "from whole cloth specific requirements for advertisements that include the word 'backtest,'" despite the absence of any statutory or regulatory definition of the term.[7] The dissenters noted that the Commission imposed liability despite clear disclosures in Mr. Lucia's materials regarding the use of assumed inflation rates, and despite the lack of any statutory or regulatory definition of "backtesting." They further concluded that the use of the term "backtest" in Mr. Lucia's slideshow was not misleading to a reasonable investor.

The unfairness of the SEC's "rulemaking by opinion" is underscored by subsequent regulatory developments. In 2020, the Commission adopted the Investment Adviser Marketing Rule (Rule 206(4)-1), which, for the first time, set forth specific requirements governing the use of hypothetical and backtested performance. 17 CFR § 275.206(4)-1. This rule explicitly permits backtesting provided appropriate disclosures are made—precisely the kind of disclosures Mr. Lucia included in his presentations nearly a decade earlier. That the Commission found it necessary to promulgate a rule in this area only after aggressively prosecuting Mr. Lucia for his

[7] Available at https://www.sec.gov/newsroom/speeches-statements/dissenting-opinion-gallagher-piwowar

use of the term "backtesting" highlights the injustice of the agency's prior approach. It confirms that Mr. Lucia was held to a standard that did not yet exist—what the dissenting Commissioners rightly called "rulemaking by opinion."

The injustice of the Commission's enforcement approach is further underscored by the Supreme Court's recent decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron* judicial deference to agency interpretations of ambiguous statutes. For decades, *Chevron* allowed agencies like the SEC to apply evolving interpretations—such as those concerning the term "backtesting"—without engaging in notice-and-comment rulemaking. That framework is now gone. At the time of Mr. Lucia's conduct, the SEC provided no rule, regulation, or interpretive guidance prohibiting Mr. Lucia's use of backtested performance. Under *Chevron*, the SEC could enforce vague standards without public rulemaking, shielding its actions from scrutiny. Post-*Loper Bright*, such enforcement would no longer receive judicial deference and is much less defensible. Punishing Mr. Lucia for an undefined practice violated fair notice and due process, rendering the Commission's findings fundamentally unjust.

The inequity is made more stark by the SEC's refusal to act against others who employed similar methods contemporaneously. As detailed in Mr. Lucia's Motion, other investment professionals publicly used slides and charts (including slides and charts disseminated by the Commission itself) involving assumed inflation and backtested projections—without facing any SEC enforcement action. (*See* Motion at 8-9). The Commission's selective enforcement against Mr. Lucia, while turning a blind eye to similar or identical conduct by others, raises serious equal protection and due process concerns and undermines any claim that Mr. Lucia's materials were misleading in any objective sense.

OS Received 08/07/2025

The Division's Opposition fails to address this regulatory inconsistency. Instead, it doubles down on an outcome driven not by any clear violation of law, but by the unchecked discretion of an agency that, at the time, operated in a self-contained, deferential, and constitutionally defective forum. The Supreme Court has since confirmed that respondents like Mr. Lucia were denied essential protections throughout the process he endured. To now uphold the resulting SEC "findings of misconduct" in the Settlement Order is to compound the original injustice.

In short, the Commission's own dissenting Commissioners, its later rulemaking, and its past (and continued) tolerance of similar industry practices all support the conclusion that Mr. Lucia's conduct was neither clearly unlawful nor deserving of professional exile. The Division's attempt to resurrect the flawed findings of a constitutionally impermissible proceeding cannot justify the continued imposition of industry bars—especially where those bars serve no remedial purpose and reflect an outdated enforcement posture the Commission has since abandoned.

D. The Division's Demand for Additional Waiting Periods and Procedural Hurdles Lacks Merit and Contradicts the Public Interest

The Division's insistence that Mr. Lucia must wait longer or satisfy additional procedural requirements is both arbitrary and misaligned with the Commission's rehabilitative goals. (Opposition at 5-8). Moreover, the Division's suggestion that Mr. Lucia must seek incremental relief under Rule 193 as a prerequisite for other relief is misplaced in light of the Commission's own precedent and the unique circumstances of Mr. Lucia's case. (Opposition at 10).[8]

---

[8] The Division's suggestion that Mr. Lucia was on notice that Rule 193 would govern this motion is profoundly incorrect. (Opposition at 10). To be sure, the adhesion "offer" document drafted by the Division and signed by Mr. Lucia states that any application to reapply made directly to the Commission "would be reviewed under the processes specified in Rule 193 of the Commission's Rules of Practice [17 C.F.R. 201.193], or *as specified in the order in this proceeding*." *Id*. (emphasis added). However, in the Settlement Order entered by the Commission, the Commission explicitly elected to omit any reference to Rule 193.

OS Received 08/07/2025

The Division vaguely asserts that Mr. Lucia has not demonstrated “consistent compliance over time” but fails to identify any instance of noncompliant conduct since the events underlying the 2012 proceedings—over 13 years ago. Since the 2020 settlement, Mr. Lucia has fully complied with all terms, including payment of the $25,000 civil penalty, and no regulator has suggested any violations of securities laws or other misconduct. The Division’s refusal to specify how much longer Mr. Lucia should wait or what additional compliance he must demonstrate renders its position untenable. This lack of clarity underscores the punitive, rather than remedial, nature of the Division’s opposition, particularly when the three-year bar period, backdated to September 3, 2015, expired nearly seven years ago. Imposing an indeterminate waiting period serves no investor protection purpose and only perpetuates the *de facto* permanent exclusion Mr. Lucia faces, contrary to the Commission’s recent policy shift favoring rehabilitation, as evidenced in *In re Denha* (Release No. 40-6872, April 2025) (“Bars encourage rehabilitation by separating the violator from the industry and environment that provided the opportunity for the underlying violation . . .”).[9] Mr. Lucia has now been separated from the industry for well over a decade with no suggestion of violative conduct – a period more than sufficient to demonstrate rehabilitation.

Regarding the Division’s insistence that Mr. Lucia must first avail himself of Rule 193 procedures, the Division concedes that Rule 193 applications are decided by none other than the Division itself under authority delegated to it by the Commission. (Opposition at n 3). In a stunningly ironic statement, the Division reassures the Commission and Mr. Lucia that such delegated authority is perfectly just and fair because the Division has on occasion granted applications for re-entry and, in any event, Mr. Lucia could always appeal a denial by the

[9] Available at https://www.sec.gov/files/litigation/admin/2025/ia-6872.pdf

OS Received 08/07/2025

Division to the Commission. *Id*. Such a statement to Mr. Lucia, whose landmark Supreme Court victory after years of litigation established the unconstitutionality of the SEC's ALJ process despite its appealability to the Commission, cannot be serious. Insisting on the flawed Rule 193 framework as a prerequisite for relief because Mr. Lucia could appeal an adverse Division decision to the Commission perpetuates the very procedural injustices Mr. Lucia has suffered through and successfully challenged.

Further, the Commission's 2023 Bartko Vacaturs demonstrate that it has vacated bars without requiring incremental relief under Rule 193 when constitutional infirmities underpin the original sanctions, as they do here. The Supreme Court's rulings in *Axon* and *Jarkesy* confirm that Mr. Lucia was denied fundamental rights to a federal forum and jury trial, rendering the settlement process constitutionally defective. Requiring Mr. Lucia to navigate Rule 193's incremental reentry process—designed for cases without such profound constitutional flaws—would unjustly prolong the harm caused by an illegitimate enforcement action.

The Division's suggestion that Mr. Lucia must wait some indeterminate additional time or endure further procedural obstacles ignores the Commission's own recognition that reentry is appropriate where, as here, an individual demonstrates the absence of violative conduct for over a decade and poses no ongoing risk to investors. Granting relief now aligns with the public interest by allowing Mr. Lucia to contribute his expertise to society, rather than perpetuating an outdated and unjust sanction.

III. CONCLUSION

Raymond J. Lucia, Sr.'s motion for relief from the SEC's industry bars is grounded in profound constitutional shifts, as affirmed by landmark Supreme Court decisions in *Axon Enterprise* and *SEC v. Jarkesy*, which exposed the coercive and unconstitutional nature of the administrative process that led to Mr. Lucia's 2020 settlement. The Division of Enforcement's

OS Received 08/07/2025

Opposition relies on discredited findings, ignores the Commission's recent precedent in vacating bars after constitutional violations, and fails to justify perpetuating a *de facto* lifetime ban that serves no remedial purpose. Mr. Lucia's exemplary compliance, lack of investor harm, and the SEC's evolving rehabilitative policies strongly support the relief he is requesting. Accordingly, Mr. Lucia respectfully requests that the Commission grant his motion to vacate the industry bars, in accordance with principles of fairness and the public interest.

Dated: August 7, 2025

[redacted]

INVESTOR CHOICE ADVOCATES NETWORK
NICOLAS MORGAN (SBN 166441)
nicolas.morgan@icanlaw.org
453 S Spring St, Ste 400
Los Angeles, CA 90013-2074
Telephone: (310) 849-0384

Attorneys for Raymond J. Lucia, Sr.

OS Received 08/07/2025