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Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Citation of Supplemental Authority
Axon Enterprise, Inc. v. FTC et al Appeal No. 20-15662
Oral Argument July 17, 2020 (Lee, Bumatay, Siler)

Appellant Axon submits the following supplemental authority:

Seila Law LLC v. Consumer Financial Protection Bureau, No. 19-7, 591 U.S. ---, 2020 WL 3492641, at *5 (June 29, 2020) (holding CFPB for-cause removal structure violates separation of powers).

See OB35, 44-45, 50, 58-59; RB13-14, 28 n.15¹ on Constitutional Injury
“In the specific context of the President’s removal power, we have found it sufficient that the challenger ‘sustain[s] injury’ from an executive act that allegedly exceeds the official’s authority.” *Seila Law*, 2020 WL 3492641, at *8 (citing *Bowsher v. Synar*, 478 U.S. 714, 721 (1986)).

When a removal provision “violates the separation of powers it inflicts a ‘here-and-now’ injury on affected third parties that can be remedied by a court.” *Id.* (citing *Bowsher*, 478 U.S., at 727, n. 5 and finding Court of Appeals “correctly entertained petitioner’s constitutional defense on the merits” expressly rejecting the “argument that consideration of the effect of a removal provision is not ‘ripe’ until that provision is actually used.”).

¹ “OB” references are to Axon’s Corrected Opening Brief (Dkt.18). “RB” references are to Axon’s Reply Brief (Dkt.28).



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See OB46 n.23; RB12-13 on Colorable Constitutional Claim

The Court observed that its conclusion in *Humphrey's Executor* “that the FTC did not exercise executive power has not withstood the test of time.” *Seila Law*, 2020 WL 3492641, at *10 n.2.

Dated: July 9, 2020

Respectfully submitted,

/s/ Pam Petersen

Pamela B. Petersen

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July 10, 2020

By CM/ECF

Molly C. Dwyer
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Re: *Axon Enterprise, Inc. v. FTC*, No. 20-15662

We write in response to Axon’s letter citing the Supreme Court’s decision in *Seila Law LLC v. CFPB*, --- S. Ct. ---, 2020 WL 3492641 (June 29, 2020). In that case, the Consumer Financial Protection Bureau demanded certain documents and information from the petitioner related to its debt-relief services. *Id.* at *6. The petitioner refused to comply with that demand, and the Bureau initiated a district court action under 12 U.S.C. § 5562(e)(1) to compel compliance. *Id.* at *7; *see also* 12 U.S.C. § 5562(e)(1) (authorizing the Bureau to “file, in the district court of the United States” a petition to enforce this kind of demand). As a defense to that enforcement action, petitioner alleged that the statutory removal restrictions on the Bureau’s Director violated the constitutional separation of powers. *Id.* The Supreme Court agreed with the merits of that challenge, *id.* at *12-18, and also held that the petitioner possessed Article III standing, *id.* at *7-8, that the Court could decide a challenge to removal restrictions even in the absence of a contested removal, *id.* at *8, and that the parties’ agreement on the merits of the constitutional question did not end the parties’ controversy, *id.* at *9.

Nothing in *Seila Law* affects the issues raised in this appeal, and those issues are dispositive. Axon can and has raised its constitutional claims in the pending FTC proceedings, and if Axon is ultimately aggrieved by an FTC decision it may obtain

judicial review in this Court—but the FTC Act precludes Axon from suing to enjoin those proceedings in district court before they are completed. Answering Br. 11-30. And in challenging ongoing FTC proceedings, Axon has failed to challenge final agency action. Answering Br. 31-32 (*FTC v. Standard Oil Co.*, 449 U.S. 232, 241-44 (1980)). The district court correctly concluded that Axon’s complaint should be dismissed for lack of jurisdiction, and this Court should affirm that decision.

Sincerely,

/s/ Daniel Aguilar

DANIEL AGUILAR

U.S. Department of Justice

Civil Division, Appellate Staff

CERTIFICATE OF COMPLIANCE

I certify that this letter complies with the word limits of Fed. R. App. P. 28(j)
because it contains 318 words.

/s/ Daniel Aguilar
DANIEL AGUILAR