



1700 G Street NW, Washington, D.C. 20552

July 29, 2020

**VIA CM/ECF**

Molly C. Dwyer, Clerk of Court  
United States Court of Appeals for the Ninth Circuit  
P.O. Box 193939z  
San Francisco, CA 94103

Re: *Consumer Financial Protection Bureau v. Seila Law LLC*, No. 17-56324

Dear Ms. Dwyer:

The Consumer Financial Protection Bureau writes to notify the Court that on July 9, 2020, the Bureau's Director, Kathleen Kraninger, ratified the petition to enforce a civil investigative demand (CID) at issue in this case. Director Kraninger's declaration of ratification is attached.

On June 29, 2020, the Supreme Court vacated the panel's judgment and remanded for further proceedings. It held that the provision in the Bureau's statute purporting to limit the President's ability to remove the Bureau Director (1) unconstitutionally impedes the President's executive authority under Article II, and (2) is severable from the rest of the statute. In light of that decision, the Director is now removable by the President at will.

The Supreme Court remanded the case to allow this Court to address the parties' arguments regarding ratification. To facilitate that review, the Bureau has attached the prior ratification of this action by the Bureau's former Acting Director, Mick Mulvaney. In addition, following the Supreme Court's ruling,

Director Kraninger ratified the decisions to issue the CID, to deny Seila Law's request to modify or set aside the CID, and to file a petition in court to enforce the CID. Her ratification is also attached.

Under this Court's precedent, Director Kraninger's ratification alone would be sufficient to "cure[]" any initial Article II deficiencies" with this proceeding. *See CFPB v. Gordon*, 819 F.3d 1179, 1190-92 (9th Cir. 2016) (refusing to dismiss enforcement action initially approved by unconstitutionally appointed official because properly appointed official ratified it); *see also FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 708-09 (D.C. Cir. 1996) (it was "neither necessary nor appropriate" to dismiss enforcement action filed by unconstitutionally structured agency where agency later became properly structured and then ratified the action). Acting Director Mulvaney's ratification would itself be enough as well. Bureau Br. at 13-19 (Doc. 23).

The fact that the CID has now been approved by not one but two officials fully accountable to the President only confirms that it should be enforced. Setting aside the CID at this point would undermine, not respect, the executive authority vested in the President by Article II.

Respectfully submitted,

*/s/ Kevin E. Friedl*

Kevin E. Friedl

*Counsel for Petitioner-Appellee*

*Consumer Financial Protection Bureau*

cc (via CM/ECF):

Thomas H. Bienert, Jr.

Anthony Bisconti

Kannon K. Shanmugam

## CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit on July 29, 2020, by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 29, 2020

/s/ Kevin E. Friedl

Kevin E. Friedl

Consumer Financial Protection Bureau

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*Counsel for Petitioner-Appellee*

*Consumer Financial Protection Bureau*

# **Attachment 1**

**DECLARATION OF KATHLEEN L. KRANINGER, DIRECTOR OF  
PETITIONER CONSUMER FINANCIAL PROTECTION BUREAU,  
REGARDING RATIFICATION**

I, Kathleen L. Kraninger, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Director of the Consumer Financial Protection Bureau. I have served in that capacity since December 11, 2018. I was nominated to this position by the President on June 20, 2018 and confirmed by the Senate on December 6, 2018.

2. In June 2017, the Bureau petitioned to enforce a civil investigative demand issued to Seila Law LLC. After the district court entered an order granting the Bureau's petition, Seila Law filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit on September 1, 2017. After the Ninth Circuit affirmed, Seila Law filed a petition for certiorari, which the Supreme Court granted on October 18, 2019.

3. On June 29, 2020, the Supreme Court issued a decision in the case, *Seila Law LLC v. Consumer Financial Protection Bureau*, No. 19-7, 2020 WL 3492641 (U.S.). That decision held that a provision of the Bureau's organic statute that permitted the President to remove the Bureau's Director only for "inefficiency, neglect of duty, or malfeasance in office" was unconstitutional. The Court accordingly severed that provision from the statute. In light of this decision, I understand that the President may now remove me with or without cause.

4. In my capacity as the Bureau's Director, I have considered the basis for the Bureau's decisions to issue the civil investigative demand to Seila Law, to deny Seila Law's request to modify or set aside the CID, and to file a petition requesting that the district court enforce the CID.

5. On behalf of the Bureau, I hereby ratify the decisions to issue the civil investigative demand to Seila Law, to deny Seila Law's request to modify or set aside the CID, and to file a petition requesting that the district court enforce the CID.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2020.

  
Kathleen L. Kraninger  
Director  
Consumer Financial Protection Bureau

# **Attachment 2**



1700 G Street NW, Washington, DC 20552

March 16, 2018

### Decision Memorandum from the Acting Director

<b>FROM</b>	Mick Mulvaney
<b>TO</b>	Mary McLeod
<b>SUBJECT</b>	Ratification of decisions in connection with the Bureau's civil investigative demand to Seila Law, LLC

I ratify the Bureau's earlier decisions to issue the February 27, 2017, civil investigative demand (CID) to Seila Law, LLC; to deny Seila Law's request to set aside the CID in an order dated April 10, 2017; and to file a petition on June 22, 2017, requesting the district court enforce the CID.

  
Mick Mulvaney  
Acting Director  
Consumer Financial Protection Bureau

3-16-18  
Date