

Nos. 19-1434 & 19-1452

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IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,  
*Petitioner,*

v.

ARTHREX, INC.; SMITH & NEPHEW, INC.;  
AND ARTHROCARE CORP.,  
*Respondents.*

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SMITH & NEPHEW, INC.,  
AND ARTHROCARE CORP.,  
*Petitioners,*

v.

ARTHREX, INC.,  
AND UNITED STATES OF AMERICA,  
*Respondents.*

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**On Petitions for Writs of Certiorari  
to the United States Court of Appeals  
for the Federal Circuit**

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**MEMORANDUM IN RESPONSE  
FOR RESPONDENT ARTHREX, INC.**

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## QUESTIONS PRESENTED

The Appointments Clause requires principal officers to be appointed by the President with the advice and consent of the Senate, but permits inferior officers to be appointed by department heads. U.S. Const. art. II, §2. In the decision below, the court of appeals held that the Patent Office’s administrative patent judges (“APJs”) are principal officers who are not appointed in the manner that provision requires. APJs issue final decisions on behalf of the agency that are not reviewable by any superior executive officer. And they are removable from office only under a restrictive for-cause standard.

The questions presented are:

1. Whether the court of appeals correctly held that APJs are principal officers, where they issue final decisions that are not reviewable by any superior executive officer and are removable from office only for cause.
2. Whether the court of appeals correctly held that Arthrex timely raised its Appointments Clause challenge for the first time in the court of appeals, where the agency had no authority to adjudicate the claim; and if not, whether the court of appeals permissibly held that it had discretion to consider the claim regardless.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to this Court's Rule 29.6, respondent Arthrex, Inc., states that it has no parent corporation and that no publicly held company owns 10% or more of its stock.

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