

No. 20-6882

In The
Supreme Court of the United States

BO ZOU —PETITIONER

vs.

LINDE ENGINEERING NORTH AMERICA, INC. —RESPONDENT

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, Petitioner hereby respectfully petitions for rehearing of this case before a full nine-Member Court. Petitioner moves this Court to grant this petition for rehearing because of following substantial grounds:

a. The Tenth Circuit knowingly deny that magistrate judge issued preliminary injunctions, dismiss Petitioner's appeal and deprive Petitioner's appeal right in violation of Constitutional First Amendment and the rights protected by the Due Process Clause of the Fourteenth Amendment. The substantial ground was not previously presented by Petitioner.

b. There are enough grounds for intervening circumstances of a substantial effect on whether magistrate judge may knowingly usurp judicial authority to issue injunctive reliefs without or in excess of her jurisdictions and authority.

c. There are enough grounds for intervening circumstances of a substantial effect on whether Respondent and Respondent counsels' nefarious deeds in perjury and falsifying documents, and contempt may be knowingly protected by federal judges.

d. The dismissal decision made by the Tenth Circuit conflicts with the decision of not only this court in *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) but also the Ninth Circuit in *Buckingham v. Gannon (In re Touch America Holdings, Inc. ERISA Litig.)*, 563 F.3d 903,906 (9th Cir. 2009); and *Negrete v. Allianz Life Ins. Co. of North America*, 523 F.3d 1091, 1097 (9th Cir. 2008). There is an overriding need for national uniformity.

The petition for rehearing is filed in good faith and within 25 days of this Court's decision in this case.

Petitioner states detailed grounds to support the rehearing as follows:

1. The United States Court of Appeals for the Tenth Circuit dismissed Petitioner's interlocutory appeal in violation of Constitutional First Amendment and the rights protected by the Due Process Clause of the Fourteenth Amendment.

This Court can clearly see magistrate judge Jodi F. Jayne knowingly violated 28 U.S. Code § 636(b)(1)(A) to issue injunctions to prohibit Petitioner from:

(1). filing any further motions for sanctions or for contempt in relation to any of Defendant's current discovery responses.

(2). issuing any further written discovery requests to Defendant, absent leave of Court.

Under 28 U.S. Code § 636(b)(1)(A), magistrate judge does not have any authority to issue injunctions unless consented by all parties. In this case, both parties never consent to magistrate judge. Petitioner filed the interlocutory appeal (Case No. 20-5099) to the Tenth Circuit in compliance with 28 U.S. Code §1292(a)(1). Both the Tenth Circuit and this Court have the jurisdiction of the interlocutory appeal under 28 U.S. Code §1292(a)(1). But, the Tenth Circuit knowingly deny that magistrate judge's preliminary injunctions are "injunctions", and dismissed Petitioner's appeal in violation of the First Amendment to the United States Constitution, which guarantees freedom of speech, the right to peaceably assemble, and the right to petition the government for a redress of grievances. These rights are protected from infringement by State governments by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Tenth Circuit knowingly deprive Petitioner's appeal and constitutional rights. Petitioner's rehearing and writ of certiorari should be granted. The substantial ground was not previously presented by Petitioner.

2. This case involves a challenge to U.S. laws, including whether guilt and crime may be knowingly protected by federal judges, and whether judicial authority may be knowingly usurped.

(1). Magistrate judge Jodi F. Jayne knowingly usurped judicial authority to issue preliminary injunctions in violation of 28 U.S. Code § 636(b)(1)(A), and excise civil contempt authority in violation of 28 U.S. Code § 636(e)(4) without or in excess of her jurisdictions and authority to protect Respondent's falsification on documents,

perjury and contempt.

Petitioner has provided irrefutable and indisputable factual evidence that Respondent and Respondent's counsels falsified a lot of documents in the lawsuit. *See* Dkt. Nos. 22, 28, 38, 60, 75, 86, 110, 111, 114, 125 and 151. Also, Petitioner has also provided irrefutable and indisputable factual evidence that Respondent committed perjury in answering Petitioner's FIRST and SENCOND sets of interrogatories, and committed contempt in refusing to produce documents **RFP 2, 3, 4, 6, 7, 21, 26** ordered twice to produce by magistrate judge herself. *See* Dkt. Nos. 86, 89. Magistrate judge issued the injunctions to protect Respondent's guilt, crime and contempt, and further open a convenient door for Respondent to falsify documents and refuse to produce any documents without sanctioning. It's severely irreparable consequences to harm Petitioner in the lawsuit, and impossible for Petitioner to get evidence to allege Respondent's discrimination against Petitioner's race and age. Magistrate judge's injunctions would substantially affect the case, and change the result of this lawsuit. Petitioner cannot obtain any relief except immediate appeal.

Furthermore, because magistrate judge's preliminary injunctions arise on proceedings of this case, the same issues could arise again in this case following proceedings and entry of a final judgment. On December 9, 2020, magistrate judge openly instructed and guided Respondent to file case-wide filing restrictions after the Tenth Circuit dismissed Petitioner's appeal case. Magistrate judge stated that *"Defendant requests only the sanction of dismissal and does not request lesser sanctions such as case-wide filing restrictions."* *See* Dkt. No. 136, Pg. 3. And, the judicial usurpation to issue injunctive reliefs and excise civil contempt authority might be advanced in other cases anywhere nationwide because of the court of appeals' dismissal decision. This Court should intervene in the circumstance in case that magistrate judges knowingly usurps judicial authority to issue injunctions and excise civil contempt authority without or in excess of their jurisdictions and authority. It is absolutely necessary for this Court to keep laws to be respected and

abided by, and warrant prohibition from usurpation of judicial authority.

(2). Magistrate judge Jodi F. Jayne abused her discretion, and knowingly covered and protected Respondent and Respondent counsels' guilt, crime and contempt to prohibit Petitioner from filing motions to sanction Respondent's nefarious deeds. Until now, Respondent cannot dispute the irrefutable factual evidence for Respondent's falsification on documents, perjury and contempt of the district court. So, Respondent filed motion for protective order (Dkt. No. 94) to request to waive answering Petitioner's motions for sanction (Dkt. No. 86), and motion for contempt (Dkt. No. 89) on August 11, 2020. *See* Dkt. No. 94, Pg. 7. Both motions are key evidence to show Respondent's falsification on documents, perjury and contempt in the lawsuit. However, the next day (08/12/2020), magistrate judge immediately granted Respondent NOT to answer why they falsified documents, and committed perjury and contempt, only with the pretext of avoiding unnecessary litigation expense. *See* Dkt. No. 95.

Moreover, this case is a very common discrimination case, which never involves in Respondent's any financial information, competitive information, trade secret or other types of sensitive information. However, magistrate judge actively initiated to grant Respondent a protective order for the emails only between two custodians. *See* Dkt. No. 37, Pgs. 4, 5. These requested emails are very common emails only involving in Defendant's internal response to Plaintiff's complaints. Later, regardless of Petitioner's opposition (*See* Dkt. No. 48), magistrate judge forcibly granted Respondent the protective order (Dkt. No. 71) without a good cause in violation of Fed. R. Civ. P. 26(c)(1). Under the protective order, Respondent falsified a lot of documents. Especially, Respondent blatantly falsified whole engineering organization chart "*Linde[Zou] 000294*". *See* Dkt. No. 151, Pgs. 3, 4, 5.

Falsifying a document is a crime punishable as a felony. If Respondent and Respondent counsels' nefarious deeds may be knowingly covered and protected by federal judges, WHY the public need laws and courts?

An independent judge should assure that everybody's case would be decided according to the law and the facts. Courts should interpret and apply the law to solve parties' dispute impartially, instead of knowingly violating laws to help and protect illegal behaviors or even criminals. It is absolutely necessary for this Court to intervene and stop the nefarious deeds happened in the U.S. District Court for the Northern District of Oklahoma. There are enough grounds for this Court to intervene in the circumstance of a substantial effect on impartiality of laws and warrant prohibition from magistrate judge's protection to guilt and crime.

3. The Tenth Circuit knowingly disregarded and ignored the fact that magistrate judge issued injunctions, and the essential attributes of an injunction, and cited wrong case to dismiss Petitioner's appeal case in conflict with the decision of both this Court and the Ninth Circuit. There is an overriding need for national uniformity.

It's indisputable and irrefutable for magistrate judge to issue injunctions. But, the Tenth Circuit knowingly disregarded and ignored the fact and the essential attributes of an injunction, and cited wrong case *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) to consider magistrate judge's preliminary injunctions only as the conduct or progress of litigation to dismiss Petitioner's appeal case. In case *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988), a district court order denying a motion to stay or dismiss an action when a similar suit is pending in state court is not immediately appealable under 28 U.S. Code§1291 or 1292 (a)(1). However, the situation in case *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) is entirely different from that of Petitioner's case.

In this case, it's magistrate judge to knowingly violate 28 U.S. Code§636(b)(1)(A) and 28 U.S. Code§636(e)(4) to issue preliminary injunctions and excise civil contempt authority to help and protect Respondent and Respondent counsels' nefarious deeds in perjury, falsification on documents, and contempt. It's clearly erroneous for the

Tenth Circuit to cite case *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) to dismiss Petitioner's appeal case.

Furthermore, the decision of this Court in *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) clearly stated that an order that does not expressly grant or deny an injunction may nevertheless be appealable under 28 U.S. Code § 1292(a)(1) if it: (1) has the practical effect of granting or denying an injunction; (2) could cause serious or irreparable harm; and (3) can only be "effectually challenged" by immediate appeal. See also *Buckingham v. Gannon (In re Touch America Holdings, Inc. ERISA Litig.)*, 563 F.3d 903, 906 (9th Cir. 2009); and *Negrete v. Allianz Life Ins. Co. of North America*, 523 F.3d 1091, 1097 (9th Cir. 2008).

Magistrate judge's injunctions effectively preclude Petitioner from proceedings in discovery and further other actions, and has serious and irreparable consequences to harm Petitioner in discovery and trial, and meet with essential attributes of injunctions, and the requirements for immediate appeal under *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) and the decision made by the Ninth Circuit.

Therefore, besides violation of constitutional First Amendment and the rights protected by the Due Process Clause of the Fourteenth Amendment, the decision of the Tenth Circuit is also clearly in conflict with the decision of not only this Court but also the Ninth Circuit. Therefore, there is an overriding need for national uniformity.

CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted.

Respectfully submitted,



Date: April 12, 2021

CERTIFICATE OF *PRO SE* PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not
for delay.


Pro Se Petitioner

No. 20-6882

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BO ZOU — PETITIONER

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LINDE ENGINEERING NORTH AMERICA, INC. — RESPONDENT

PROOF OF SERVICE

I, BO ZOU, do swear or declare that on this date, April 12, 2021, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Jonathan G. Rector, 2001 Ross Avenue, Suite 1500, Lock Box 116,
Dallas, TX 75201

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 12, 2021.

Bo Zou

(Signature)

RECEIVED

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SUPREME COURT, U.S.