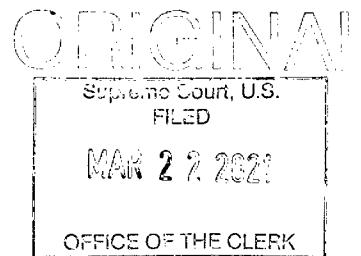


20-7650

No. _____



In The

Supreme Court of the United States

In re BO ZOU

—PETITIONER

VS.

LINDE ENGINEERING NORTH AMERICA, INC. —RESPONDENT

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

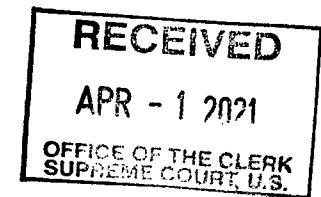
PETITION FOR WRIT OF PROHIBITION

BO ZOU

4920 S Yorktown Avenue, #122

Tulsa, OK 74105

Phone: 713-835-8655



QUESTION(S) PRESENTED

1. How did the United States Court of Appeals for the Tenth Circuit disregard and ignore the facts and factual evidence, and prohibition criteria, which require magistrate judge Jodi F. Jayne's disqualification, and make its decision in conflict with the U.S. Supreme Court's decision, *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988)?
2. May magistrate judge Jodi F. Jayne knowingly abuse her discretion to cover and protect Respondent and Respondent counsels' guilt and crime in perjury and falsifying documents, and contempt and copyright infringement without disqualifying?
3. May magistrate judge Jodi F. Jayne knowingly usurp judicial authority to rule on Petitioner's motions (Dkt. Nos. 34, 89) and issue temporary restraining order (Dkt. No. 95) and preliminary injunctions (See APPENDIX "B", a11, a13) without or in excess of her jurisdictions and authority without disqualifying?
4. Whether Respondent and Respondent counsels' nefarious deeds in perjury and falsifying documents, contempt and copyright infringement may be knowingly protected by federal judges, who are unaccountable for their misconduct under the pretext of judicial rulings?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Note: The Hon. Jodi F. Jayne, is the magistrate judge to whom prohibition is sought.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Bo Zou v. Linde Engineering North America, Inc., No. 19-cv-554, U.S. District Court for the Northern District of Oklahoma. Refusal of Disqualification entered Sept. 21, 2020.

Bo Zou v. Linde Engineering North America, Inc., No. 19-cv-554, U.S. District Court for the Northern District of Oklahoma. Denial of Objection to Magistrate Judge's Refusal of Disqualification entered December 14, 2020.

Bo Zou v. Linde Engineering North America, Inc., No. 21-5002, U.S. Court of Appeals for the Tenth Circuit. Denial of Petition for Writ of Prohibition entered March 1, 2021.

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APPENDIX B: Opinion and Order by Magistrate Judge of U.S. District Court for the Northern District of Oklahoma refusing to disqualify herself, and denying Petitioner's requests to sanction Respondent and Respondent counsels' guilt and crime in perjury and falsifying documents without any causes and a hearing; ruling on Petitioner's motion for contempt (Dkt. No. 89) without or in excess of her jurisdictions and authority filed September 21, 2020

APPENDIX C: Order by District Judge of U.S. District Court for the Northern District of Oklahoma denying objections to Magistrate Judge's refusal of disqualification filed December 14, 2020

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF PROHIBITION

Petitioner respectfully prays that a writ of prohibition issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B,C,D,E to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 1, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1651(a).

RELIEF SOUGHT

An order directing Magistrate Judge Jodi F. Jayne to be prohibited from Petitioner's case in any further proceedings in the matter of Bo Zou v. Linde Engineering North America, Inc., Case No. 4:19-cv-00554-JFH-JFJ.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 455 (a) provides:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Code of Conduct for United States Judges Canon 3 A(4) provides:

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:

.....

28 U.S.C. § 1651 (a) provides:

(a). The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

18 U.S. Code § 1621 (2) provides:

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

28 U.S. Code § 1746 provides:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

28 U.S. Code § 636 (e)(4) provides:

(4) CIVIL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES.—

In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

28 U.S. Code § 636 (b)(1)(A) provides:

(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss

or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

8 U.S. Code § 1324c provides:

(a) ACTIVITIES PROHIBITED

It is unlawful for any person or entity knowingly—

- (1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this chapter or to obtain a benefit under this chapter,
- (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter or to obtain a benefit under this chapter,
- (3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter or obtaining a benefit under this chapter,
- (4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title or obtaining a benefit under this chapter, or

.....
(d) ENFORCEMENT

.....
(3). CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY

With respect to a violation of subsection (a), the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of —

- (A) not less than \$250 and not more than \$2,000 for each document that is the subject of a violation under subsection (a), or
- (B) in the case of a person or entity previously subject to an order under this paragraph,

not less than \$2,000 and not more than \$5,000 for each document that is the subject of a violation under subsection (a).

Oklahoma Statute title 21, § 1572 provides:

Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or,
2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or,
3. The return of any officer, court or tribunal to any process of any court, is guilty of forgery in the second degree.

Oklahoma Statute title 21, § 1624 provides:

The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

STATEMENT OF THE CASE

Plaintiff/Petitioner filed complaints against Defendant/Respondent's discrimination against Petitioner's race and age on October 18, 2019.

In discovery phase, magistrate judge Jodi F. Jayne abuses her discretion to cover and protect Respondent and Respondent counsels' guilt and crime in perjury and falsifying documents, and contempt and copyright infringement; usurps judicial authority to rule on Petitioner's two motions and issue temporary restraining order and preliminary injunctions without or in excess of her jurisdictions and authority. Also, magistrate judge violates Code of Conduct for United States Judges Canon 3A(4) to actively initiate *ex parte* communication with Respondent.

On June 1, 2020, Petitioner filed *Plaintiff's Motion for Change of Magistrate Judge* (Dkt. No. 40). But, magistrate judge refused to disqualify herself. *See APPENDIX "B"*, Pgs. a7, a8, a9. Petitioner filed Petitioner's appeal and objections to the district judge on October 2, 2020. *See* Dkt. No. 114, Pgs. 9–11. However, the District Judge denied Petitioner's objections on December 14, 2020. *See APPENDIX "C"*.

Petition for Writ of Prohibition was timely filed to the United States Court of Appeals for the Tenth Circuit for review. *See* Case No. 21-5002. On March 1, 2021, the United States Court of Appeals for the Tenth Circuit entered a decision to deny Petitioner's Writ of Prohibition.

The jurisdiction of this Court is invoked under **28 U.S. Code § 1651 (a)** for the denial of the Tenth Circuit.

The facts and factual evidence to support the writ are stated as follows:

(a). Magistrate judge actively initiated *ex parte* communication with Respondent, and asked Respondent to provide extra other documents for her. Magistrate judge has violated Code of Conduct for United States Judges Canon 3A(4) and 28 U.S.C. § 455(a).

In discovery phase, Petitioner requested Respondent to produce documents in Plaintiff's first and second set of requests for production of documents. However, Respondent refused to produce the documents. So, on March 9, 2020, Petitioner filed "*Plaintiff's motion to compel production of documents and for sanctions responsive to Plaintiff's first request for documents*" (Dkt. No. 22) to the district court. In Petitioner's reply in support of Plaintiff's motion to compel and for sanctions, Petitioner requested the district court to compel Respondent producing Respondent's internal investigation documents "*Linde [Zou] Priv 0004, 0005 & 0006*". See Dkt. No. 28, Pg. 6.

Linde [Zou] PRIV 0004, 0005 & 0006 (See Dkt. No. 28, EXHIBIT "2") are internal investigation documents made by HR department of Respondent for Petitioner's internal complaint prior to reduction-in-force. *Linde [Zou] PRIV 0004, 0005 & 0006* are never work product privilege, and should have been compelled to produce by the district court. But, magistrate judge actively initiated *ex parte* communication with Respondent to ask Respondent to submit her an *ex parte* letter. Magistrate judge stated that "*Defendant's description is not sufficient to establish a 'work product' privilege. Defendant may either produce the documents, or submit the documents in camera to the Court for review, along with an explanation via ex parte letter to the Court as to why these notes and memorandum qualify for a work product privilege*". See APPENDIX "D", Pg. a22. Magistrate judge ran afoul of Code of Conduct for United States Judges Canon 3A(4), which prohibits a judge from initiating, permitting, or considering *ex parte* communications.

Moreover, *Linde [Zou] PRIV 0004, 0005 & 0006* are paper documents. Magistrate judge asked Respondent to submit documents in camera. It means that magistrate judge asked Respondent to provide extra other documents for her. And, providing *Linde [Zou] PRIV 0004, 0005 & 0006* is only a pretext. Magistrate judge violates 28 U.S.C. § 455(a), and her impartiality is questioned.

Further, magistrate judge ordered that *“Defendant shall submit its ex parte letter, with attached documents, no later than 10 days from the date of this Order, if desired”*. See APPENDIX “D”, Pg. a27. Magistrate judge’s deeds have demonstrated that she improperly discussed with Respondent and Respondent’s counsels about *ex parte* letter and extra other documents because Respondent never requested *ex parte* communication *via* any motions, and also never filed any motions to assert that *Linde [Zou] PRIV 0004, 0005 & 0006* are work product privilege.

Also, magistrate judge actively initiated to grant Respondent a protective order for the emails only between two custodians. See APPENDIX “D”, Pgs. a19, a20. These requested emails are very common emails only involving in Defendant’s internal response to Plaintiff’s complaints. Later, the protective order (Dkt. No 71) was granted Respondent to produce documents in the case without a good cause in violation of Fed. R. Civ. P. 26(c)(1). Respondent falsified a lot of documents under the protective order. See Dkt. Nos. 22, 28, 38, 60, 75, 86, 110, 111, 114, 125, 146, and 151. Magistrate judge’s deeds demonstrate magistrate judge not only violates 28 U.S.C. § 455(a), but also displays deep-seated favoritism to Respondent, and antagonism to Petitioner.

(b). Magistrate judge knowingly abused her discretion to cover and protect Respondent and Respondent counsels’ guilt, crime, contempt and copyright infringement. Magistrate judge not only violated 28 U.S.C. § 455 (a), but also broke laws and her oaths.

In *Plaintiff’s Motion to Compel Production of Documents for Fourth Set of Requests for Documents, and Motion for Sanctions* (Dkt. No. 86) filed on July 31, 2020, Petitioner provided irrefutable factual evidence for the District Court that Respondent and Respondent’s counsels committed guilt and crime in perjury and falsifying documents in answering Plaintiff’s **first** and **second** sets of interrogatories.

(1). In answering Plaintiff’s **First** set of Interrogatories No. 8, Respondent stated that

“Kenny Sharp and Dustin Duncan are both tenured Piping Engineers with design experience,”. See Dkt. 86, EXHIBIT “9”, Pg. 7 (emphasis added).

(2). In answering Plaintiff's Second set of interrogatories No. 20, Respondent stated that *“There is not a position titled as ‘tenured’ Piping Engineer. Piping Engineers Kenny Sharp and Dustin Duncan began working at Linde before than Plaintiff, making them senior in tenure and status to Plaintiff at the time of the reduction-in-force. ...”* See Dkt. No. 86, EXHIBIT “10”, Pg. 4 (emphasis added).

(3). However, in answering Plaintiff's Third set of interrogatories No. 23, Respondent stated that *“Dustin Duncan was hired as a PDS Designer 1 on or about April 11, 2011. He was promoted to Piping Designer II on or about April 1, 2013. On or about January 4, 2016, he was promoted to Piping Design Engineer. Kenny Sharp was hired as a Piping Designer on or about June 23, 2014. He was promoted to Piping Design Engineer on or about August 27, 2018.”* See Dkt. No. 86, EXHIBIT “3” Pg. 4 (emphasis added). From Defendant's answers in Plaintiff's Third set of interrogatories, both Dustin Duncan and Kenny Sharp's job titles are piping design engineer only, NOT “piping engineer”. Respondent committed perjury in falsifying Kenny Sharp and Dustin Duncan's job titles as “Piping Engineers”.

(4). In the documents *“Linde [Zou] 001071–Linde [Zou] 001076”* provided by Respondent (See Dkt. No. 86, EXHIBIT “11”), this Court can see both Dustin Duncan and Kenny Sharp's job titles are piping design engineer only, NOT “piping engineer”.

(5). On October 18, 2019, Petitioner provided the irrefutable factual evidence for the District Court to show both Dustin Duncan and Kenny Sharp's job titles are Piping Design Engineers. The factual evidence shows only Petitioner's job title is piping engineer. See Dkt. No. 146, EXHIBIT “1”; or Dkt. No. 1, Pgs. 24, 25.

Petitioner is unique piping engineer at Respondent. Piping engineer is Petitioner's job title. Respondent and Respondent's counsels falsified FAKE job titles for both Dustin Duncan

and Kenny Sharp to try to demonstrate both Dustin Duncan and Kenny Sharp were *senior in tenure and status to Petitioner at the time of the reduction-in-force*. But, Respondent and Respondent counsels' falsification is failed. So, Respondent and Respondent's counsels commit perjury, and also are guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both pursuant to 18 U.S. Code § 1621 (2) because Respondent signed under penalty of perjury under 28 U.S. Code § 1746. *See* Dkt. No. 30, EXHIBIT "4"; Dkt. No. 60, EXHIBIT "4"; Dkt. No. 86, EXHIBIT "5", or Dkt. No. 125, EXHIBITS "2", "3".

Moreover, Respondent committed perjury in denying withholding any other documents on the basis of attorney client privilege or the work product doctrine. *See* Dkt. 38, EXHIBIT "A", Pg. 3.

Further, Respondent and Respondent's counsels commit crime in falsifying documents on a large scale.

(A). In *Linde [Zou] 001071–Linde [Zou] 001073*, and *Linde [Zou] 001073–001076*. Respondent intentionally modified and deleted Dustin Duncan and Kenny Sharp's job titles between January 1, 2020 and May 6, 2020. *See* Dkt. No. 75, EXHIBIT "3"; or Dkt. No. 86, EXHIBIT "11". Petitioner has shown and mentioned to the District Court how Respondent falsified the document. *See* Dkt. No. 75, Pg. 4; Dkt. No. 86, Pgs. 3, 4; Dkt. No. 110, Pg. 5; Dkt. No. 111, Pg. 5; Dkt. No. 114, Pg. 8; Dkt. No. 125, Pg. 3.

(B). Respondent falsified the document *Linde [Zou] 000289*, *See* Dkt. 22, EXHIBIT VII (1). Petitioner has shown magistrate judge how Respondent falsified the document. *See* Dkt. 22, Pg. 7; Dkt. 28, Pgs. 5, 6.

(C). Respondent falsified the document *Linde [Zou] 000277*. *See* Dkt. 22, EXHIBIT VIII (1). Petitioner has shown or mentioned to magistrate judge how Respondent falsified piping engineer job responsibilities with a WORD document over and over. *See* Dkt. 22, Pg. 8;

Dkt. No. 28, Pgs. 6; Dkt. No. 38, Pg. 3. Petitioner has provided an authentic and original piping engineer job responsibilities for the District Court. *See* Dkt. 22, EXHIBIT VIII (2).

(D). In *Linde [Zou] 000273–000274*, Respondent falsified the email from Randy Rogers to David Close. *See* Dkt. 22, EXHIBIT IX (1). Petitioner has shown magistrate judge how Respondent falsified the document over and over. *See* Dkt. No. 22, Pg. 9; Dkt. No. 28, Pg. 6; Dkt. No. 38, Pg. 3; Dkt. No. 60, Pgs. 2, 3, 4; Dkt. No. 75, Pg. 2.

(E). Respondent falsified documents *Linde [Zou] 000292–000293*. *See* Dkt. No. 60, EXHIBIT “10”. Respondent intentionally modified and deleted Dustin Duncan and Kenny Sharp’s information and positions in the documents. This Court can NEVER find both Dustin Duncan and Kenny Sharp’s information and positions from the documents.

(F). Respondent and Respondent’s counsels 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. Respondent and Respondent’s counsels must be severely punished pursuant to 8 U.S. Code §1324c, Oklahoma Statute title 21, § 1572 and Oklahoma Statute title 21, §1624.

However, magistrate judge Jodi F. Jayne knowingly disregarded, ignored, never mentioned and never considered the facts and irrefutable factual evidence, which demonstrate Respondent and Respondent counsels’ perjury and falsification in documents even though Petitioner requested the district court to sanction Respondent and Respondent counsels’ perjury and falsification over and over. See Dkt. Nos. 22, 28, 38, 60, 75, 86, 110, 111, 114, and 125. Magistrate judge never mentioned or discussed Respondent and Respondent counsels’ perjury and falsification in documents in her rulings. *See* APPENDIX “B”, Pg. a7. Later, magistrate judge violated 28 U.S.C. § 455 (a), and abused her discretion to rule on Plaintiff’s motion for sanctions (Dkt. No. 86) as frivolous without any causes and a hearing to cover and protect Respondent and Respondent counsels’ guilt and crime. *See* APPENDIX “B”, Pg. a7,

a12. Magistrate judge breaks laws and her oaths, either.

(c). Magistrate judge usurped judicial authority to rule on Petitioner's motions (Dkt. Nos. 34, 89), and issue temporary restraining order (Dkt. No. 95) and preliminary injunctions (*See APPENDIX "B", a11, a13*) without or in excess of her jurisdictions and authority.

On March 4, 2020, Petitioner filed *Plaintiff's motion for imposing sanction on Defendant's copyright infringement and providing "made up" evidence and allegation* (Dkt. No. 34) under Fed. R. Civ. P. 11 because Respondent illegally contacted Petitioner's former employer ICC Group Inc. ("ICC") and got Petitioner's email from ICC to assert that Petitioner threatened employees' safety at ICC and Respondent. Magistrate judge Jodi F. Jayne knew that she never has any authority to rule on Petitioner's motion for imposing sanction on Respondent's copyright infringement under Fed. R. Civ. P. 11. However, magistrate judge knowingly violated Fed. R. Civ. P. 11 to rule on and deny Petitioner's motion for imposing sanction on Respondent's copyright infringement without any causes and a hearing. *See APPENDIX "E", Pg. a28.*

On August 6, 2020, Petitioner filed *Plaintiff's motion for contempt* (Dkt. No. 89) for Respondent's violation of the District Court orders and refusal to produce the documents, RFP 2, 3, 4, 6, 7, 21, 26, which were ordered **twice** to produce by magistrate judge Jodi F. Jayne herself. *See APPENDIX "D", Pgs. a18, a20, a21; and APPENDIX "E", Pg. a30.* It's in contempt of the Court for Respondent to refuse to abide by the District Court's order to produce the documents.

Pursuant to 28 U.S. Code § 636 (e)(4), magistrate judge does NOT have any civil contempt authority unless both parties consent to magistrate judge. In this case, both parties never consent to magistrate judge. However, magistrate judge knew that the motion for contempt was not referred to her, and she does not have any civil contempt authority; but,

knowingly used General Order 05–09 of the District Court to supersede 28 U.S. Code § 636 (e)(4) to rule on *Plaintiff's motion for contempt* (Dkt. No. 89). *See APPENDIX "B", Pg. a3, footnote "1".* Later, magistrate judge ruled on *Plaintiff's motion for contempt* as frivolous motion without any causes and a hearing to cover and protect Respondent and Respondent counsels' contempt. *See APPENDIX "B", Pg. a7, a12.*

Also, magistrate judge knowingly violated Fed. R. Civ. P. 65 (b) to issue a temporary restraining order (Dkt. No. 95) to prohibit Petitioner from filing further motions without a hearing on August 12, 2020. Magistrate judge lifted the temporary restraining order on September 21, 2020. *See APPENDIX "B", Pg. a13.* The temporary restraining order had stopped the proceedings for forty-one (41) days.

Further, magistrate judge knowingly violated 28 U.S. Code § 636 (b)(1)(A) to issue preliminary injunctions to prohibit Petitioner from following:

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

(ii). Prohibiting Plaintiff from issuing any further written discovery requests to Defendant, absent leave of Court.

(iii). Limiting Defendant's deposition to four (4) fact witnesses.

See APPENDIX "B", Pgs. a11, a13 (emphasis added).

The forgoing facts demonstrate that magistrate judge usurps judicial authority in ruling on Petitioner's motions and issuing temporary restraining order and preliminary injunctions without or in excess of her jurisdictions and authority; and also displays her bias and prejudice, deep-seated antagonism to Petitioner, and favoritism to Respondent,

(d). Magistrate judge violated 28 U.S.C. § 455 (a) and openly instructed and guided Respondent how to file motions for sanctions to sanction Petitioner and restrict Petitioner's legal rights.

Respondent never requested the district court to sanction Petitioner in *Defendant's Motion for Protective Order* (Dkt. No. 94). However, magistrate judge openly instructed and guided Respondent how to file motion for sanctions to sanction Petitioner. Magistrate judge stated that "*If Defendant seeks to impose sanctions against Plaintiff under Rule 11 or otherwise, it shall file a properly styled motion that clearly triggers procedural rules governing such motions.*" See APPENDIX "B", Pg. a12. As anticipated, after Petitioner filed "*Plaintiff's Emergency Motion for Stay for Magistrate Judge's Preliminary Injunction, and other Restriction in Discovery*" (Dkt. No. 110) and "*Plaintiff's Motion for Objecting to Magistrate Judge's Order to Prohibit Plaintiff from Filing Any Further Motions for Sanctions or Contempt, and Motion to Dissolve, Deny or Remove Magistrate Judge's Preliminary Injunction*" (Dkt. No. 111) on September 25, 2020, Respondent immediately filed *Defendant's motion for sanctions* (Dkt. No. 112) without conferring with Petitioner to assert that Petitioner violated magistrate judge's order and injunctions, which prohibit Petitioner from filing any further motions **for contempt or for sanctions**, and requested the District Court to dismiss the case and reward Respondent fees, costs, even though Petitioner never violated magistrate judge's any orders and injunctions.

Also, magistrate judge openly instructed and guided Respondent how to file motion for sanctions for case-wide filing restrictions. 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. It is strong and irrefutable factual evidence for magistrate judge to instruct and guide Respondent how to file motions for sanctions to sanction Petitioner and restrict Petitioner's legal rights. It demonstrates that Magistrate judge openly violated 28 U.S.C. § 455 (a) and displayed deep-seated favoritism to Respondent, and antagonism to Petitioner.

(e). Magistrate judge violated 28 U.S.C. § 455 (a) to make up some false statements

against Petitioner, and force Petitioner to answer Respondent's unilaterally Special Discovery Management Order to help Respondent in changing deposition for 6–10 fact witnesses to 4 fact witnesses in violation of Fed. R. Civ. P. 30(a).

Magistrate judge made up some false statements against Petitioner in her rulings, such as *“Although Plaintiff contends only threatening legal action, certain language could be viewed as threats to the safety of ICC and its employees.”* See APPENDIX “D”, Pg. a26. However, Petitioner never contended that Petitioner’s email to ICC is threatening legal action in Petitioner’s any motions filed to the district court. By contrast, Petitioner objected to magistrate judge’s *“made up”* false statements over and over. *See* Dkt. No. 38, Pg. 7; and Dkt. No. 76, Pg. 4.

Moreover, magistrate judge intentionally made up the other false statement, which is *“and (3) the two Joint Status Reports setting forth detailed factual summaries.”* See APPENDIX “B”, Pg. a4. However, there is NEVER the second joint status report to exist in the lawsuit. Petitioner objected to the District Court’s order to file the second joint status report. *See* Dkt. No. 72. Also, Petitioner timely objected to magistrate judge’s *“made up”* false statements. *See* Dkt. No. 114, Pg. 4

Furthermore, on August 10, 2020, magistrate judge issued a minute order (Dkt. No. 93) to force Petitioner to answer Respondent’s a unilaterally Special Discovery Management Order in *Defendant’s unilateral status report* (Dkt. No. 80) to help Respondent. Respondent wanted to change and alter some terms agreed by both parties in the joint status report (Dkt. No. 16), such as (1) changing deposition for 6–10 fact witnesses to 4 fact witnesses; (2) limiting the parties to seventy-five (75) total requests for production, etc. Later, magistrate judge blatantly violated Fed. R. Civ. P. 30(a) to grant Respondent to change deposition for 6–10 fact witnesses to 4 fact witnesses. *See* APPENDIX “B”, Pg. a5, a12.

Magistrate judge knowingly violates 28 U.S.C. § 455 (a) and Federal Rules of Civil

Procedure, and displays her bias and prejudice, deep-seated antagonism to Petitioner, and favoritism to Respondent, again.

(f). The United States Court of Appeals for the Tenth Circuit erred in disregarding and never addressing the facts and factual evidence, and prohibition criteria, which meet with the requirements to disqualify magistrate judge Jodi F. Jayne.

(1). The United States Court of Appeals for the Tenth Circuit disregard and never address that magistrate judge actively initiated *ex parte* communication with Respondent. Magistrate judge violated not only Code of Conduct for United States Judges Cannon 3A (4), but also 28 U.S.C. § 455(a). The decision made by the panel is clearly erroneous.

(2). The United States Court of Appeals for the Tenth Circuit disregard and ignore the facts and factual evidence that magistrate judge knowingly abuses her discretion to cover and protect Respondent and Respondent counsels' guilt, crime, contempt and other misconducts, and that magistrate judge has broken laws and her oaths. The decision made by the Tenth Circuit is clearly erroneous, and in conflict with the decision of this Court in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).

(3). The United States Court of Appeals for the Tenth Circuit disregard and never address magistrate judge's usurpation of judicial authority to rule on Petitioner's motions: (i) *Plaintiff's Motion for Contempt* (Dkt. No. 89); (ii) *Plaintiff's Motion for imposing sanction on Defendant's copyright infringement and providing "made up" evidence and allegation* (Dkt. No. 34), and issue temporary restraining order (Dkt. No. 95) and preliminary injunctions (See APPENDIX "B", Pgs. a11, a13). Magistrate judge deeds require her disqualification because she knowingly abused her power without or in excess of her jurisdictions and authority. Although magistrate judge knowingly usurps judicial

authority, the Tenth Circuit disregard and ignore the facts and factual evidence, and prohibition criteria, and deny magistrate judge has usurped judicial authority. The decision made by the panel is clearly erroneous, and should be reversed by this Court.

(4). The decision of the United States Court of Appeals for the Tenth Circuit should be reversed and overturned because two honorable judges Timothy M. Tymkovich and Gregory A. Phillips are the same judges to review Petitioner's another appeal case 20-5099 filed on October 15, 2020. Petitioner does not believe that the Tenth Circuit **randomly** assign the judges to Petitioner's case.

REASONS FOR GRANTING THE WRIT

I. This case presents four independent issues that satisfy this Court's prohibition criteria.

Petitioner has clearly established four genuine questions concerning magistrate judge's impartiality.

(1). Magistrate judge actively initiated *ex parte* communication with Respondent, and asked Respondent to provide extra other documents for her. Magistrate judge violated not only Code of Conduct for United States Judges Cannon 3A (4), but also 28 U.S.C. § 455 (a). Code of Conduct for United States Judges Cannon 3A(4) prohibits a judge from initiating, permitting, or considering *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. Magistrate judge was prejudicial, and enough of a showing of favoritism to Respondent, and made fair judgment impossible.

(2). Magistrate judge knowingly abuses her discretion to cover and protect Respondent and Respondent counsels' guilt and crime in perjury and falsifying documents on a large scale,

and contempt of the Court and copyright infringement.

Abuse of discretion occurs when a court does not apply the correct law or if it bases its decision on a clearly erroneous finding of a material fact. *See Jeff D. v. Otter*, 643 f.3d 278 (9th Cir. 2011). A court may also abuse its discretion when the record contains no evidence to support its decision. Although Petitioner has provided irrefutable factual evidence for the district court and requested to sanction Respondent and Respondent counsels' guilt, crime, contempt and copyright infringement over and over, magistrate judge knowingly covers and protects Respondent and Respondent counsels' guilt, crime, contempt and copyright infringement. Magistrate judge abuses her discretion, and breaks laws and her oaths, either.

Moreover, magistrate judge's deeds trigger an exception to the extrajudicial source doctrine because magistrate judge lacks impartiality in ruling on evidence for Respondent's guilt, crime, contempt and copyright infringement. Magistrate judge makes fair judgment impossible. Magistrate judge's deeds require her disqualification.

(3). Magistrate judge usurps judicial authority to rule on Petitioner's motions (Dkt. Nos. 34, 89) in violation of Fed. R. Civ. P. 11 and 28 U.S. Code § 636 (e)(4) respectively, and issue temporary restraining order (Dkt. No. 72) in violation of Fed. R. Civ. P. 65(b), and issue preliminary injunctions (*See APPENDIX "B"*, Pgs. a11, a13) in violation of 28 U.S. Code § 636 (b)(1)(A) to help and protect Respondent without or in excess of her jurisdictions and authority.

Writs of Prohibition arrest the proceeding of any "tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. Such writ may be issued when no plain, speedy and adequate remedy exists in the ordinary course of law.

Magistrate judge's usurpation of judicial authority meets with the requirements of Writs of Prohibition to arrest the proceeding of any "tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction

of such tribunal, corporation, board or person. Magistrate judge makes fair judgment impossible, and should be disqualified. This Court should grant the petition for writ of prohibition.

(4). Magistrate judge not only abuses her discretion and usurps judicial authority, but also openly instructs and guides Respondent how to file motion for sanctions to sanction Petitioner and restrict Petitioner's legal rights, and makes up some false statements against Petitioner and forces Petitioner to answer Respondent's unilaterally Special Discovery Management Order to help respondent in violation of 28 U.S.C. § 455 (a) and Federal Rules of Civil Procedure.

Title 28 U.S.C. § 455(a) provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The goal of this provision is to avoid even the appearance of partiality. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988). A violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances.

Moreover, pursuant to 28 U.S.C. § 455, a court is not required to accept the factual allegations as true "and the test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *Glass v. Pfeffer*, 849 F.2d at 1268 (internal quotation marks omitted). *See also Hinman v. Rogers*, 831 F.2d at 939 (10th Cir. 1987). The standard is objective and the inquiry is limited to outward manifestations and reasonable inferences drawn there from. *See United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993).

Magistrate judge displays her bias and prejudice, and deep-seated antagonism to petitioner, and favoritism to respondent in violation of 28 U.S.C. § 455 (a). Magistrate judge's

deeds make judgment impossible, and should be disqualified.

II. The decision of the United States of Appeals for the Tenth Circuit is wrong.

Although Petitioner provided the facts and factual evidence which satisfy magistrate judge Jodi F. Jayne's disqualification, the Tenth Circuit disregarded and ignored the facts and factual evidence: (1) magistrate judge Jodi F. Jayne actively initiated *ex parte* communication with Respondent and asked Respondent to provide extra other documents for her; (2) magistrate judge knowingly abused her discretion to help and protect respondent's guilt, crime, and contempt, copyright infringement; (3) magistrate judge knowingly usurped judicial authority to rule on Petitioner's motions (Dkt. Nos. 34, 89) in violation of Fed. R. Civ. P. 11 and 28 U.S. Code § 636 (e)(4) respectively, and issue temporary restraining order (Dkt. No. 95) and preliminary injunctions (*See APPENDIX "B"*, Pgs. a11, a13) in violation of Fed. R. Civ. P. 65(b) and 28 U.S. Code § 636 (b)(1)(A) without or in excess of her jurisdictions and authority. The decision of the Tenth Circuit is in conflict with the U.S. Supreme Court's decision in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988), which clearly states that *"Disqualification of a judge is appropriate when he or she reasonably should have known that the situation created an appearance of impropriety, even if the judge was not actually aware of the details of the situation."* Now, the situation in the case is that magistrate judge had known about Respondent and Respondent's guilt, crime, contempt, copyright infringement and other misconducts, but knowingly covered and protected Respondent and Respondent's guilt, crime, contempt, copyright infringement and other misconducts. Also, magistrate judge had known that she did not have authority to rule on Petitioner's motions (Dkt. Nos. 34, 89), but knowingly usurped judicial authority to rule on Petitioner's motions to help Respondent without or in excess of her jurisdictions and authority. Magistrate judge displays her bias and prejudice, and deep-seated antagonism to Petitioner, and favoritism to Respondent. But, the Tenth Circuit disregarded and ignored the facts and factual evidence which satisfy magistrate

judge Jodi F. Jayne's disqualification. The decision of the Tenth Circuit is clearly erroneous, and in conflict with in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).

So, it's exceptional important for this Court to grant the Writ of Prohibition to reverse the decision of the Tenth Circuit to ensure national conformity with the decision of this Court in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).

III. The pretext of judicial rulings creates exceptional circumstances for this case, and needs to be solved by this Court.

Petitioner presents this Court the issue whether Respondent and Respondent counsels' nefarious deeds in perjury and falsifying documents on a large scale, contempt and copyright infringement may be knowingly protected by federal judges, who are unaccountable for their misconduct under the pretext of judicial rulings.

Each justice or judge of the United States shall take the oath or affirmation before performing the duties of the office. A judge should be faithful to, and maintain professional competence in the law to follow his/her oath or affirmation.

However, from this case, this Court can see that magistrate judge Jodi F. Jayne actively initiates *ex parte* communication with Respondent, knowingly abuses her discretion to cover and protect Respondent and Respondent counsels' guilt, crime, contempt and copyright infringement, knowingly usurps judicial authority to rule on Petitioner's two motions and issue temporary restraining order and preliminary injunctions without or in excess of her jurisdictions and authority, and displays her bias and prejudice, and deep-seated antagonism to Petitioner, and favoritism to Respondent. Petitioner has established four genuine questions concerning magistrate judge's impartiality.

However, the Tenth Circuit disregarded and ignored the facts and factual evidence, and prohibition criteria, and denied Petitioner's writ of prohibition under the pretext of judicial rulings. If so, a judge may arbitrarily and knowingly abuse his/her discretion, usurp judicial

authority, blatantly break laws and his/her oaths to help and protect criminals. But, laws can do nothing for an innocent under the pretext of judicial rulings. The task of the Circuit Courts is strictly to follow laws and statutes to determine whether or not the law was applied correctly in the trial court, and correct lower Courts' errs and judges' misconduct. But, Petitioner cannot see any impartiality from the decision of the Tenth Circuit under the pretext of judicial rulings.

So, the pretext of judicial rulings creates exceptional circumstances for this case, and needs to be solved by this Court. It's exceptional important for the Public to know whether U.S. laws should be respected and abided by, whether a judge may knowingly break laws and his/her oaths under the pretext of judicial rulings, and whether a federal judge may actively initiate *ex parte* communication, knowingly abuse his/her discretion to help and protect guilt and crime, and knowingly usurp judicial authority without disqualifying and punishing. Any courts cannot say that it's a judge's judicial ruling, and unaccountable for his/her misconduct. This Court should solve the issue and warrant prohibition.

Petitioner believes that the Public never permit a judge may knowingly disregard and ignore irrefutable factual evidence to protect Respondent's guilt and crime, and being unaccountable for his/her misconduct under the pretext of judicial rulings.

It's exceptional important for this Court to solve the issues to warrant prohibition and make the Public and Petitioner be confident in laws.

CONCLUSION

Petitioner respectfully requests U.S. Supreme Court for a Writ of Prohibition directing Magistrate Judge Jodi F. Jayne to be prohibited from Petitioner's case in any further proceedings in the matter of *Bo Zou v. Linde Engineering North America, Inc.*

The Petition for Writ of Prohibition should be granted by the U.S. Supreme Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin".

Date: March 22, 2021