

No. 20-7650

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**In The
Supreme Court of the United States**
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Bo Zou,
Petitioner,

v.

LINDE ENGINEERING NORTH AMERICA, INC.,
Respondent.

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On Petition for Writ of Prohibition to the
United States Court of Appeals for the Tenth Circuit

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BRIEF IN OPPOSITION
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QUESTION PRESENTED

Whether the United States Supreme Court should use its extraordinary power under the All Writs Act to enjoin Magistrate Judge Jodi F. Jayne of the Northern District of Oklahoma from making any further rulings in Petitioner's employment discrimination lawsuit, based on Petitioner's disagreement with Magistrate Judge Jayne's orders on Petitioner's various discovery-related motions and motion for recusal.

PARTIES TO THE PROCEEDING

1. Petitioner, Bo Zou (“Petitioner”), was the Plaintiff/Appellant in the Court of Appeals.
2. Respondent, Linde Engineering North America LLC (f/k/a Linde Engineering North America, Inc.) (“Linde”) was the Defendant/Appellee in the Court of Appeals.
3. The Honorable Magistrate Judge Jodi F. Jayne was the Magistrate Judge in the District Court proceeding.
4. The Honorable Chief Judge Timothy Tymkovich, Judge Gregory A. Phillips, and Judge Allison H. Eid were the Tenth Circuit Judges who denied Petitioner’s Writ of Prohibition to the Tenth Circuit Court of Appeal seeking the Magistrate Judge to recuse herself from Petitioner’s District Court proceeding.

RULE 29.6 DISCLOSURE STATEMENT

Respondent Linde Engineering North America LLC (f/k/a Linde Engineering North America, Inc.) states it is a wholly owned subsidiary of Linde Holdings, LLC. There are no publicly held corporations that own ten percent or more of Respondent Linde Engineering North America LLC's or Linde Holdings, LLC's stock.

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INTRODUCTION

This Petition arises primarily from several discovery disputes brought by a *pro se* plaintiff in an employment discrimination lawsuit. During the discovery phase of his suit, Petitioner sought numerous documents and other information related to his employment and other matters. Respondent lodged some objections, and Petitioner thereafter filed various motions to compel. Discovery matters were referred to the Magistrate Judge, who made some rulings in Petitioner's favor and some rulings in Respondent's favor.

Petitioner disagrees strongly with the Magistrate Judge's rulings in Respondent's favor, and believes that those rulings are evidence of the Magistrate Judge's bias and impartiality. Petitioner now asks this Court to intervene using its extraordinary powers under the All Writs Act, 28 U.S.C. § 1651, to bar the Magistrate Judge from further involvement in his employment discrimination case.

But a writ of prohibition is an extraordinary power to be used sparingly. It should be granted only where the right to relief is indisputable and no other means of relief are available. Here, Petitioner's claims can all be raised on appeal upon the disposition of his lawsuit by the District Court. Further, this Court held in *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147 (1994) that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion."

Petitioner has not carried his burden of showing entitlement to the relief available under the All Writs Act, and his Petition should be denied.

STATEMENT OF THE CASE

I. Factual and Procedural Background

Petitioner filed suit against Respondent on October 18, 2019, alleging that his termination as part of a reduction-in-force was the result of discrimination and retaliation in violation of Title VII and the ADEA. (Resp. App’x H, 75a-99a). Although there have been more than 150 filings at the district court level in this case¹—which is still in the discovery stage—this Petition involves the Magistrate Judge’s orders on several of Petitioner’s discovery-related motions.

Since the inception of his lawsuit, Petitioner has filed a number of motions to compel and for sanctions related to discovery matters. (Resp. App’x J, 109a-121a). Among his many claims, Petitioner alleges that Respondent engaged in “copyright infringement” when it attached one of Petitioner’s threatening emails to a third party in support of Respondent’s motion for sanctions and for a protective order, and that Respondent committed “perjury” in its interrogatory responses and falsified various documents it produced during discovery. (Resp. App’x G, 24a-39a). The Magistrate Judge declined to grant Petitioner relief on these issues raised in the various and repetitive motions Petitioner filed with the District Court. (Resp. App’x B, 3a-6a). Petitioner thereafter filed an objection to the Magistrate Judge’s rulings. (Resp. App’x C, 7a-17a; Resp. App’x J, 109a-121a).

¹ These filings primarily consist of various discovery and sanctions motions filed by Petitioner, as well as the responses thereto. (Resp. App. J, 109a-121a).

Upon Respondent’s later motion for a protective order, the Magistrate Judge temporarily enjoined Petitioner from making further filings until his numerous discovery disputes could be resolved. (Resp. App’x J, 117a [Dkt. No. 95]). In a subsequent order, that filing restriction was lifted, although the Magistrate Judge barred Petitioner—who had already served eleven sets of discovery—from serving Respondent with additional discovery requests absent leave of the court. (Resp. App. C, 7a-17a). The Magistrate Judge additionally entered a Special Discovery Management Order under FED. R. CIV. P. 26(b)(2)(A), limiting both parties to four fact witness depositions. Either party could seek relief from the deposition limit upon a showing of good cause. *Id.*

Petitioner disagreed with these and other rulings and filed numerous objections seeking, *inter alia*, to have the Magistrate Judge recuse herself from Petitioner’s case under 28 U.S.C. § 455(a) and (b)(1). The Magistrate Judge denied the motions, finding Petitioner’s claims of impartiality to be frivolous, and the District Court Judge found no error. (Resp. App’x C, 7a-17a; Resp. App’x D, 18a-19a). In denying Petitioner’s recusal motion, the Magistrate Judge noted that she “has no relationship with Defendant, its lawyers, or its witnesses[,]” and that “Plaintiff’s assertions of bias are based on [the Magistrate Judge’s] substantive discovery rulings.” (Resp. App’x G, 49a).

Petitioner thereafter filed a petition for a writ of prohibition in the Tenth Circuit Court of Appeals, asking the Tenth Circuit to enjoin the Magistrate Judge from any further involvement in his employment discrimination case based on the same claims of alleged impartiality he gleaned from the

Magistrate Judge’s rulings in Respondent’s favor. (Resp. App’x G, 24a-74a). A three-judge panel denied the petition, noting that Petitioner had overlooked several of the Magistrate Judge’s rulings in his favor and, regardless, recognizing this Court’s holding in *Liteky v. United States*,² that “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” (Resp. App’x A, 1a-2a).

On March 22, 2021, Petitioner filed the instant Petition for Writ of Prohibition with the Court, under Case No. 20-7650.³

REASONS TO DENY THE WRIT OF PROHIBITION

The authority of this Court to enjoin the Magistrate Judge from further involvement in Petitioner’s employment discrimination case is the All Writs Act, 28 U.S.C. § 1651(a). Under this Court’s rules, “[i]ssuance ... of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised.” SUP. CT. R. 20.1. An injunction under the All Writs Act “is appropriate only if (1) it is necessary or appropriate in aid of [the Court’s] jurisdiction; and (2) the legal rights at issue are indisputably clear.” *Turner Broadcasting System, Inc. v. F.C.C.*, 507 U.S. 1301, 1301, 113 S.Ct. 1806, 1807 (1993) (internal quotation marks and

² 510 U.S. at 555.

³ On January 14, 2021, Petitioner also sought a Writ of Certiorari with the Court, under Case No. 20-6882. On March 22, 2021, the Court denied Petitioner’s Writ of Certiorari. On April 12, 2021, the Petitioner filed a Petition for Rehearing in Case No. 20-6882, which is pending the Court’s Conference on May 13, 2021.

citations omitted). Finally, issuance of a writ is appropriate only where “adequate relief cannot be obtained in any other form or from any other court.” SUP. CT. R. 20.1.

The basis for Petitioner’s request for a writ of prohibition is his disagreement with the Magistrate Judge’s rulings on various discovery-related motions, which Petitioner contends is evidence of the Magistrate Judge’s bias and impartiality. But this is not a proper basis upon which to issue a writ under 28 U.S.C. § 1651(a).

First, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky v. U.S.*, 510 U.S. at 555 (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710 (1966)). “[O]nly in the rarest circumstances [can judicial rulings] evidence the degree of favoritism or antagonism required” to support the issuance of a writ. *Id.* Petitioner points to no conduct by the Magistrate Judge that takes her discovery-related rulings outside of those ordinarily issued in civil litigation. Indeed, as noted by both the Magistrate Judge and the Tenth Circuit, Petitioner ignores the several rulings issued in his favor. (Resp. App’x C, 7a-17a; Resp. App’x 1a-2a). And as the Magistrate Judge made clear, she has no relationship with Respondent, its counsel, or its witnesses in the employment discrimination suit. (Resp. App’x C, 7a-17a).

Second, the issuance of a writ under 28 U.S.C. § 1651(a) is only appropriate (assuming all other criteria are met) when “adequate relief cannot be obtained in any other form or from any other court.” SUP. CT. R. 20.1. Petitioner’s claims of alleged bias and impartiality are all grounds for appeal upon the

disposition of his employment discrimination suit at the district court level. *Liteky v. U.S.*, 510 U.S. at 555, 114 S.Ct. at 1157. Because Petitioner can challenge the Magistrate Judge's alleged impartiality and bias on appeal, the issuance of a writ is not warranted here.

CONCLUSION

Petitioner has not shown his entitlement to the extraordinary relief under the All Writs Act, and his Petition should be denied.

Dated: May 3, 2021

Respectfully submitted,

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