

No.21-503

IN THE

RKB
SUPREME COURT OF THE UNITED STATES

Bo Peng,
Petitioner

Supreme Court, U.S.
FILED
DEC 15 2021
OFFICE OF THE CLERK

v.

F.M. Tarbell Co.
Respondent

On Petition For A Rehearing Of The Order Denying The
Petition For The Writ Of Certiorari TO The 2nd
Appellate District Of California Court Of Appeal

PETITION FOR REHEARING

Bo Peng
Pro Per
2332 Crystal Pointe
Chino Hills, CA, 91709
951-423-0594

TABLE OF CONTENTS

I. UNDER THE PRESSURE OF THE JURY TRIAL, DEFENDANT USED THE LARGE AMOUNT OF ILLEGAL GAINS TO INFLUENCE AND CORRUPT THE UPPER AND LOWER TWO LEVELS OF JUDICIAL SYSTEM AND GAVE TWO UNLAWFUL ORDERS TO THE CORRUPT JUDGES (AA318, 322) ..	2
II. JUSTICE HOFFSTADT ENGAGED IN CORRUPTION AND FORMED A CLOSED-LOOP GOVERNMENT WHICH IS OUTSIDE THE CONSTITUTION, PRECLUDING THE CALIFORNIA AND U.S. SUPREME COURT, LED BY HIMSELF, COMPOSED OF CORRUPT TRIAL JUDGES, NOT BONDED BY THE CONSTITUTION, AND FUNDED BY THE DEFENDANT'S LARGE AMOUNT OF ILLEGAL GAINS	3
III. DUE TO THE CORRUPTION, JUSTICE HOFSTADTER SYSTEMATICALLY UNDERMINED THE RULE OF LAW IN ORDER TO ACCOMPLISH DEFENDANT'S UNLAWFUL OBJECTIVES, WAS HIGHLY PARTIAL TO THE DEFENDANT, WAS UNABLE TO REMAIN IMPARTIAL AND SERVED FOR THE INTEREST OF THE DEFENDANT	4
A. Justice Hoffstadt deliberately violated the rule of random assignment of a case, indicating that he has pecuniary interest in this case.....	5
B. Justice Hoffstadt has no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution	5

C. Justice Hoffstadt violated the Constitutional separation of powers, arbitrarily changed the established laws and became the legislator	7
D. Justice Hoffstadt, driven by the corruption, through the closed loop government outside the Constitution led by him, committed fraud upon the court to continuously extort attorney's fees and impose lawless violence	9
IV. ONLY THE SUPREME COURT OF THE UNITED STATES HAS THE PARAMOUNT POWER AND DUTY TO STOP THE CORRUPTION AND LAWLESS VIOLENCE OF THE CLOSED LOOP GOVERNMENT OUTSIDE THE CONSTITUTION, LED BY JUSTICE HOFFSTADT, AND CLOTHED WITH THE CALIFORNIA STATE'S POWER.	10
V. CONCLUSION	11

TABLE OF AUTHORITIES

Cases

Ableman v. Booth, 21 Howard 506 (1859).....	10
Baker Marquart LLP v. Kantor, 22 Cal. App. 5th 729, 231 Cal. Rptr. 3d 796 (2d Dist. 2018)	3
Baker Marquart LLP v. Kantor, 22 Cal. App. 5th 729, 231 Cal. Rptr. 3d 796 (2d Dist. 2018).	3
Cohen . Virginia, (1821), 6 Wheat. 264 and U.S. v. Will, 149 U.S. 200.....	6
Cone v. Harris (Okl. 1924), 230 P. 721, 723	11
Cooper v. Aaron, 358 U.S. 1 (1958).....	11
Downs v. Bidwell, 182 U.S.244, 382, (1901).....	11
Gardiner v. A.H. Robins Company, Inc., 747 F.2d 1180, 1191 (8th Cir. 1984). at 1183, 1191.....	5
Gipson v. Davis Realty Co., <i>supra</i> , 215 Cal. App. 2d 190, 207. Resnik v. Anderson & Miles (1980) [109 Cal. App. 3d 570, 573].....	8
Marshall v. Phillips, 39 Cal. App. 2d 404, 103 P.2d 240 (2d Dist. 1940)	6
Nagel v. P & M Distributors, Inc. (1969) 273 Cal. App.2d 176, 180, 78 Cal. Rptr. 65.....	7
Nudd v. Burrows (1875), 91 US 426, 23 Led 286,290.....	6
People v. Superior Court (Marks), 1 Cal. 4th 56, 2 Cal. Rptr. 2d 389, 820 P.2d 613 (1991)	6
Pioneer Land Co. v. Maddux, 109 Cal. 633	8
Pioneer Land Co. v. Maddux, 109 Cal. 633	8
Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd. (2018) 24 Cal. App. 5th 115, 134, 233 Cal. Rptr. 3d 814	7
Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd. (2018) 24 Cal. App. 5th 115, 134, 233 Cal. Rptr. 3d 814].....	7
Universal Oil Prods. Co. v. Root Refining Co., (1946), 328 U.S. 575 580.....	9
Withrow v. Larkin, 421 U.S. 35 (1975).....	5

Statutes

CCP §1717	6
CCP §631.8	7
labor code § 98.2	6, 7

Other Authorities

CRPC 3.5(b) (formerly CRPC 5-300(B))	3
https://www.supremecourt.gov/about/constitutional.aspx	10
https://www.transparency.org/en/our-priorities/judiciary-and-law-enforcement	1
PAHIS, Corruption in Our Courts, <i>supra</i> at P1924	4
PAHIS, Corruption in Our Courts: What It Looks Like and Where It Is Hidden (2009) 118 THE YALE LAW JOURNAL 1900, 1903	1
The Federalist No. 47, at 303	8
THE FEDERALIST No. 78, at 523 (Hamilton)	10
TI, Global Corruption Report 2007 <i>supra</i> P62	4
Witkin, Cal. Proc. 5th Trial § 233 (2020)	3

Rules

Rule 44.2 of this Court	1
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PETITION FOR REHEARING

Pursuant to Rule 44.2 of this Court, Petitioner Bo Peng, respectfully petitions for a rehearing of the order denying “the petition for the writ of certiorari to The 2nd Appellate District Of California Court of Appeal.”

In this case, defendant used a large amount of illegal gains as an effective tool of corruption to purchase a judicial decision in favor of defendant, exempting defendant from million dollar of damages compensation, and exempting defendant from tens of millions of dollars of government fines caused by defendant’s willful misclassification evading government taxes. Comparing with its loss of this litigation, defendant does not care the costs of corruption for multiple judges. Judicial corruption for defendant is a business that makes money without losing money, which causes miscarriage of justice and injustice under the law for the rich and the poor.

Recent surveys and events indicate that judicial corruption could be a significant problem in the United States.¹ “Judicial corruption can be understood as the selling and purchasing of legal decisions.” ²

Corruption in the judicial system breaks the basic principle of equality before the law and deprives people of their right to a fair trial. In a corrupt judicial system, money and influence may decide which cases are prioritized or dismissed. Perpetrators may get away unpunished while victims are left with no answer and no justice.³

¹ PAHIS, Corruption in Our Courts: What It Looks Like and Where It Is Hidden (2009) 118 THE YALE LAW JOURNAL 1900, 1903

² Id P1906,

³ <https://www.transparency.org/en/our-priorities/judiciary-and-law-enforcement>

**I. Under the pressure of the jury trial,
Defendant used the large amount of illegal
gains to influence and corrupt the upper
and lower two levels of judicial system and
gave two unlawful orders to the corrupt
Judges. (AA 318, 322)**

The facts of this case are clear and the evidences are conclusive. Defendant president expressed his willingness to pay \$23,000 unpaid wages without paying the damage at the meet and confer. Jury trial posed a great pressure to defendant since defendant could not use illegal gains to influence and control many jurors who are randomly selected. Defendant felt it is impossible to win this case. Defendant filed Status Conference Statement (FINAL.) to express: "Tarbell remains willing and able to discuss settlement, including at the Final Status Conference." (AA 322,).

If this case were to settle, it means that the attorney's fees of the defendant's attorney would end, the benefit of the judge would be zero, and the defendant would face huge damages compensation. The defendant knew that a similar case, Bararsani v. Coldwell Banker Residential Brokerage Co. B251588, paid \$4,500,000 for Settlement.

The defendant believes that using corruption as an effective tool to influence and control corrupt judges, purchase judicial decisions, and eliminate jury trials is the best way to exempt the defendant from tens of millions of the government fines.

Defendant attorney engaged in the improper ex parte communication with the judge. And the judge permitted and accepted improper ex parte communication which showed that he can be induced and corrupted.

Improper ex parte communications between an arbitrator and a litigant can serve as a basis for a corruption, fraud, or other undue means finding as

would support the vacation of an arbitration award.⁴ Persons with whom contact prohibited: **applies to a judge or judicial officer.** (Witkin, Cal. Proc. 5th Trial § 233 (2020))

Judges pursuing private gains made risk assessment; they knew the actual value of this case that the defendant will face a fine of over tens of millions dollars from government due to willful misclassification; and also knew defendant's unlawful objectives; they considered that it was a rare opportunity for benefiting financially from this case with high returns and low risk or even zero risk because plaintiff is self representing. So Judges pursing private gains accepted the corruption.

In order to show the loyalty to the defendant, without the notice, the motion and the hearing, Judge Moreton permitted that defendant unilaterally drafted the order exempting defendant itself from all penalties; did not give appellant the opportunity to oppose; approved this order without changing a word; and which is a violation of the Constitutional due process, which indicated that the judge was highly partial to defendant and was corrupted. Then corrupt judge unjustified sanctioned appellant \$500 to force appellant to comply with his void order and prevent appellant to raise the claim.

II. Justice Hoffstadt engaged in corruption and formed a closed-loop government which is outside the Constitution, precluding the California and U.S. Supreme Court, led by himself, composed of corrupt trial judges, not bonded by the Constitution, and funded by the defendant's large amount of illegal gains.

Of course, appellate cases are less likely to be reviewed again by state high courts or the Supreme Court, which makes bribery more attractive at this level.

⁴Baker Marquart LLP v. Kantor, 22 Cal. App. 5th 729, 231 Cal. Rptr. 3d 796 (2d Dist. 2018).

But the effect of the lower rate of reversal may be mitigated by the fact that appellate judges often must decide cases in panels of three or more. Successfully corrupting a decision, therefore, requires bribing two or more judges, which raises the price of the bribe and the risk of being caught for both the bribing party and the judges involved."⁵

The defendant is an unscrupulous businessman only considering profit. The defendant considers that judicial corruption can exempt his tens of millions from government fine. Therefore, the defendant doesn't care the costs for judicial corruption.

These cases do seem to intimate that corruption has a potentially infective quality and flourishes when those higher up in the hierarchical structure engage in it.⁶

The bribery of judges has a direct impact on the very essence of the judicial function, which is to deliver an independent, fair and impartial decision. The consequence is unfairness and unpredictability in the legal process from start to finish, and a systematic undermining of the rule of law. Corruption in the judiciary is all the more damaging because of the important role the judiciary is expected to play in combating this very evil. As a consequence judicial corruption hampers national development, and the institution at the heart of the fight against corruption is disabled.⁷

III. Due to the corruption, Justice Hofstadter systematically undermined the rule of law in order to accomplish defendant's unlawful objectives, was highly partial to the defendant, was unable to remain impartial and served for the interest of the defendant.

⁵ PAHIS, Corruption in Our Courts, *supra* at P1924

⁶ *Id*

⁷ TI, Global Corruption Report 2007 *supra* P62

A. Justice Hoffstadt deliberately violated the rule of random assignment of a case, indicating that he has pecuniary interest in this case.

Justice Hoffstadt violated the constitutional passive role of a judge, actively transferred this case to himself for proceeding without the order of the California Supreme Court or the presiding judge after this case had been randomly assigned to division one almost for six months.

A judge who departs from the essentially passive role that is characteristic of the adversary system deprives civil litigants of due process of law⁸

In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a **pecuniary interest in the outcome**, [Footnote 14] and in which he has been the target of personal abuse or criticism from the party before him. [Footnote 15] "(Withrow v. Larkin, 421 U.S. 35 (1975))[Emphasis added]

B. Justice Hoffstadt has no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution

Justice Hoffstadt from court of appeal affirmed and supported in full the void orders, void judgment, and void amended judgment, rendered by trial court corrupt Judge Moreton and corrupt Judge Linfield, which means that he shall bear full responsibility for trial court corrupt judges' violations of the Constitution, the Law and the Rules.

⁸ *Gardiner v. A.H. Robins Company, Inc.*, 747 F.2d 1180, 1191 (8th Cir. 1984). at 1183, 1191.

In order to accomplish the defendant's unlawful objective to obtain attorney's fees, the defendant's attorney and corrupt Judge Linfield conspired to openly fabricate a contract action that does not exist in this case, and extort attorney's fees from plaintiff. This case is trial in which labor code § 98.2 is the legal principle and the 5 claims are subjects of action. The labor code legal action and the contract action are two different types of actions. This case has no jurisdiction over contract action. In particular, the jurisdiction of a subject matter over which a court has otherwise no jurisdiction cannot be conferred by motion⁹, and contract¹⁰.

"Judges have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution".¹¹ Lack of subject-matter jurisdiction means an entire absence of power to hear or determine the case.¹² There is no the prevailing party of the contract at all. Therefore that the defendant's attorney and corrupt Judge Linfield fabricated CCP §1717 contract action and prevailing party in the contract action, itself is a fraud upon the court. "Fraud destroys the validity of everything into which it enters."¹³ A judgment rendered by a court that lacked jurisdiction over the subject matter of the action or the person of the defendant or that granted relief the court had no

⁹Kurtz v. Cutler, 178 Cal. 178, 172 P. 590 (1918)

¹⁰Marshall v. Phillips, 39 Cal. App. 2d 404, 103 P.2d 240 (2d Dist.

1940)

¹¹ Cohen . Virginia, (1821), 6 Wheat. 264 and U.S. v. Will, 149 U.S.

200

¹² People v. Superior Court (Marks), 1 Cal. 4th 56, 2 Cal. Rptr. 2d 389, 820 P.2d 613 (1991)

¹³ Nudd v. Burrows (1875), 91 US 426, 23 Led 286,290

power to grant is void."¹⁴

The void judgment cannot be used as the basis for entitlement of attorney's fees, and the defendant is not entitled to attorney's fees at all.

The judgment absolutely void on its face is subject to attack, directly or collaterally, whenever it presents itself, either by parties or strangers; the judgment is simply a nullity and neither basis nor evidence of any right whatever; when the judgment on face of the judgment roll is void for lack of jurisdiction, it may be attacked at any time.¹⁵

Likewise, corrupt judges cannot use oral motion of CCP §631.8 to usurp the jurisdiction which is not given. Without conducting the trial in which labor code § 98.2 is the legal principle and the 5 claims, there is no the prevailing party in this case. The corrupt judges used the trial without jurisdiction and the prevailing party which the defendant self- claimed, to defraud the court. "Fraud destroys the validity of everything into which it enters." and the judgment made with motion of CCP §631.8 without jurisdiction is a void judgment. The void judgment cannot be used as the basis for entitlement of attorney's fees, and the defendant is not entitled to attorney's fees at all.

C. Justice Hoffstadt violated the Constitutional separation of powers, arbitrarily changed the established laws and became the legislator

In order to accomplish defendant's unlawful objectives, that is, changing from a losing lawsuit to a winning lawsuit, finally being the prevailing party, and extorting the attorney's fees \$40,000, Justice Hoffstadt

¹⁴ Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd. (2018) 24 Cal. App. 5th 115, 134, 233 Cal. Rptr. 3d 814]

¹⁵ Nagel v. P & M Distributors, Inc. (1969) 273 Cal. App.2d 176, 180, 78 Cal. Rptr. 65

deliberately violated the constitutional separation of the powers, changed the established laws; became a legislator enacting laws suitable for accomplishing the defendant's unlawful objectives.

Justice Hoffstadt changed the labor code §98.2 from "hearing de novo" to "de novo appeal" in order to usurp the jurisdiction which is not given by the Constitution and the statute.

Justice Hoffstadt changed the consequence of the Penal code 132, changing the defendant attorney's tampering with the plaintiff's evidences from committing a felony to "re-labeling".

Justice Hoffstadt changed the established laws that "we conclude, therefore, that a salesman, insofar as his relationship with his broker is concerned, cannot be classified as an independent contractor. Any contract which purports to change that relationship is invalid as being contrary to the law".¹⁶ Justice Hoffstadt forcibly and wrongfully determined a licensed real estate salesman as independent contractor.

Justice Hoffstadt determined so many void judgments rendered in violation of the Constitution, without jurisdiction, in violation of due process and in fraud upon the court, valid.

The law-making power made the difference, and the courts cannot change the law.¹⁷ The affirmance of a void judgment upon appeal imparts no validity to the judgment, but is itself void by reason of the nullity of the judgment appealed from.¹⁸ "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator."¹⁹

¹⁶ Gipson v. Davis Realty Co., *supra*, 215 Cal. App. 2d 190, 207. Resnik v. Anderson & Miles (1980) [109 Cal. App. 3d 570, 573

¹⁷ The People v. Brewer, 328 Ill. 472, 160 N.E. 76 (Ill. 1927)

¹⁸ Pioneer Land Co. v. Maddux, 109 Cal. 633

¹⁹ The Federalist No. 47, at 303.

D. Justice Hoffstadt, driven by the corruption, through the closed loop government outside the Constitution led by him, committed fraud upon the court to continuously extort attorney's fees and impose lawless violence

In order to accomplish defendant's unlawful objective obtaining attorney's fees, corrupt Judge Linfield fabricated contract action which the court has no jurisdiction. Without jurisdiction, Justice Hoffstadt furthered the fraud upon the court by fabricating a non-existent contract action in the labor commissioner and made Judge Linfield's void judgment valid. Both of them collaborated and continuously committed the fraud upon the court: violated 14th Amendment to the U.S.

Constitution to extort from appellant the attorney's fees totaling \$137,123.33 (wage property and lien on the real property) till now which amount is still increasing in the closed loop government outside the Constitution. This is nonsupervisory and endless judicial violence.

Under color of the court of appeal, Justice Hoffstadt engaged in corruption, affirmed in full the contract action without jurisdiction fabricated through "fraud upon the court", valid. In fact, it was a gambling on the reversal rate that excluded the California and U.S. Supreme Court. He bet on that since the decision of court of appeal is not supervised by California and U.S. Supreme Court, his corrupt opinion would be final.

"The power to unearth such a fraud is the power to unearth it effectively." ²⁰ "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits." ²¹ "No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an

²⁰Universal Oil Prods. Co. v. Root Refining Co., (1946), 328 U.S. 575
580

²¹ Lockwood v. Bowles, 46 F.R.D. 625, 634 (D.D.C. 1969)

attempt to enforce it beyond these boundaries is nothing less than lawless violence." ²²

IV. Only the Supreme Court of the United States has the paramount power and duty to stop the corruption and lawless violence of the closed loop government outside the Constitution, led by Justice Hoffstadt, and clothed with the California State's power.

In the closed-loop government which is outside the Constitution, precluding the California and U.S. Supreme Court, led by Justice Hoffstadt, composed of corrupt trial judges, not bonded by the Constitution, and funded by the defendant's large amount of illegal gains, the corrupt judges violated the Constitutional separation of powers; commingled the legislative and judicial powers into their own hands.

[If] the legislative and judicial powers united... [t]he lives, liberties, and properties of the citizens would be committed to arbitrary judges, whose decisions would, in effect, be dictated by their own private opinions, and would not be governed by any fixed or known principles of law²³"

"As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution,"²⁴ only U.S. Supreme Court has the paramount power to exert its full authority to prevent all violation of the principles of the Constitution.

"No state legislator or executive or judicial officer can war against the Constitution without violating his

²² Ableman v. Booth, 21 Howard 506 (1859)

²³ THE FEDERALIST No. 78, at 523 (Hamilton)

²⁴ <https://www.supremecourt.gov/about/constitutional.aspx>

solemn oath to support it.”²⁵ If the judge himself is a party to the fraud, the ground for interference is especially strong and such a case it need not be shown that he intentionally did wrong.²⁶

“It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violation of the principles of the Constitution.”²⁷

V. Conclusion

This case is actually a Constitutional matter of safeguarding the citizens' rights guaranteed by the Constitution and protecting citizens' life, liberty, and property from violation.

The essence of this case is the fight between the rule of law and the rule of man, fight between integrity and corruption, and fight between justice and the evil.

For the reasons set forth in this Petition, Petitioner Bo Peng requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Respectfully submitted,



Bo Peng

Date: 12/15/21

²⁵ Cooper v. Aaron, 358 U.S. 1 (1958)

²⁶ Cone v. Harris (Okl. 1924), 230 P. 721, 723

²⁷ Downs v. Bidwell, 182 U.S.244, 382, (1901)

CERTIFICATION OF BO PENG

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully submitted,

Executed on 12/15/ , 2021

By: 
Bo Peng, Petitioner, Pro Per