

NO#22-7786

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In The Supreme Court of the United States

LEI YIN -PETITIONER Vs. BIOGEN, -RESPONDENT

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals
For The First Circuit**

PETITION FOR REHEARING

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Dated November 6th, 2023.

 Nov 6th, 2023

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MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS:

I am still living solely with my SSDI, everything is the same as my previous Motion for leave in Forma Pauperis in my filing docketed on June 3, 2023.

PETITION OF REHEARING (RULE 44):

Pursuant to Rule 44, Petitioner Lei Yin, Pro Se with disability (SSDI), requests rehearing and reconsideration of the Court's Oct 2nd, 2023 order denying the Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds not previously presented.

Both my July 2023 filing entitled "Status Update and Adding Full Copy of Emails Record (Appendix H) Between Lei Yin with Biogen's Susan Kalled to Further Support My Case NO#22-7786", together with 101 Pages of Email Records between me and Biogen Susan Kalled in 2011 as Appendix are missing in Court Docket System (tracking # 9505510337443202727760).

Summary of the non-docketed July 2023 filing together with Appendix of July 2023 filing had proven Biogen's Susan Kalled's Testimony to Courts are all false, therefore all court orders based upon Biogen Susan Kalled's false testimony shall be reconsidered/reversed, including this Court's Oct 2nd, 2023 order denying the Petition for a Writ of Certiorari.

I. Biogen Susan Kalled's testimony to courts that had been accepted and cited (Appendix W, X, Y with my Petition FOR WRIT OF CERTIORARI):

1. Lei Yin was only working well in Biogen for the first one or two weeks of April 2011.
2. Lei Yin was unable to finish one simple lab task well –antibody titration, as the performance reason to terminate Lei Yin's position in Biogen.

II. My July 2023 filing with 101 Pages of Email Records as Appendix are missing in Court Docket System.

I have received decision letter dated on October 2nd, 2023 regarding my petition for a writ of certiorari. It came to my attention that my previous filing in

July 2023, is still NOT docketed in court filling system. My July 2023 filling is entitled "Status Update and Adding Full Copy of Emails Record (Appendix H) Between Lei Yin with Biogen's Susan Kalled to Further Support My Case NO#22-7786". The shipment tracking # is 9505510337443202727760. By calling Clerk Office in October 2023, it was confirmed the court had already received my July 2023 filling together with my Emails Record of 101 pages as Appendix H, but without docketed in the formal filling system as official as Rules required. I had then filed "Docket Requests about my July 2023 filling", and also Petition for Rehearing on October 10, 2023, Court Clerk returned the Petition for failure to comply with Rule 44 (dated on October 25, 2023, and a 15 days filing deadline was set.)

III. Summary of my July 2023 Filling that had not been docketed:

The Quote here is from my July 2023 filling "I am here to address my allegations on Susan Kalled's research misconduct in Biogen in following steps by citing Appendix H (H1-H101):

1. Use emails of June 2, 2011 and June 3rd 2011 as an example to prove my productivity and working ethics, that directly contradictory with Susan Kalled's testimony that I was only able to work well in the first or two week of April 2011.
2. Three parts of my contribution in Biogen in 2011 were confirmed with Emails Chains between Myself and Biogen's Susan Kalled.
3. Two emails (dated of June 3, and July 1st, 2011) had reminded Susan Kalled herself and Biogen management about Susan Kalled had intentionally bypassing the Gate step in flow cytometry that violates research integrity.
4. My own lab Book in Biogen that recorded BCMA antibody effect in Neurological Disease Had Been Tampered by covering 4 pages up in DIA hearing in 2018."

The Summary of the 101 Pages of Email Record between myself and Biogen Key witness- Susan Kalled as Appendix H of my July 2023 filing, covering my work period in Biogen were listed here :

APPENDIX H Part One is **antibody titration** and phenotyping for both Susan Kalled and Kevin Optibody in Biogen;

APPENDIX H Part Two was to build- up a **new experimental system** in Immunology Biogen that B cell activation by CpG is an early event, happened in hours in both B cell lines and primary human B cell from blood sample;

APPENDIX H Part Three is Dr Kalled's **BCMA Antibody's treatment effect** in Neurological Disease (patent in 2015).

APPENDIX H (101 pages) is Emails Chains Record Between Lei Yin and Susan Kalled from private emails covering two days of every week regarding 3 parts of my works in Biogen, as requested by Susan Kalled (a part-time employee of Biogen, who stayed at her home without pay on those two days each week) covering April 2011 to July 7, 2011. These Emails Chains proved I had finished Three Parts of Works with Good Quality of Data, together with Susan Kalled's Agreement and Satisfaction in her total fourteen emails of April 28 (Appendix H2), of May 3 (Appendix H6), of May 11 @7:38am (Appendix H14), of May 19 @9:01PM (Appendix H22), of May 20 (Appendix H31), of May 23 (Appendix H33), of May 25 (Appendix H32), of May 26 (Appendix H35), of June 2 @9:42PM (Appendix H42), of June 3rd @2:58pm (Appendix H55), of June 7 (Appendix H70), of June 10 @10:23PM (Appendix H80), of June 28 (Appendix H98), of June 30 (Appendix H96).

APPENDIX H Part One is **antibody titration** and phenotyping for both Susan Kalled and Kevin Optibody of Biogen: Antibody Titration For Susan Kalled was recorded in my following emails to Susan Kalled: email of April 29, 2011 (see appendix H1, H3), email May 18, 2011 (appendix H14, H18); email of June 21 (appendix H81); email of June 28, 2011 (appendix H91); For Kevin Optibody' antibody titration: I had email records of May 13, 2011 (appendix H18) , email of June 2nd, 2011 (appendix H38); email of June 28, 2011 (appendix H99). (as comparision to Susan Kalled's testimony to courts that Lei Yin was only working well in Biogen for the first one or two weeks of April 2011 and Lei Yin was unable to finish one simple lab task well –antibody titration, as the performance reason to terminate Lei Yin's position in Biogen.)

APPENDIX H Part Two was to build- up a new experimental system in Biogen that **B cell activation** by CpG is an early event, happened in hours in both human B cell lines and primary human B cell collected from blood sample, as comparing Biogen 's believing that this B cell activations happened in multiple days (4-5 days) see Susan Kalled email on May 20, 2011

(appendix H31) This CpG- B Cell Activation System had proved to work in both B cell lines and primary B cells isolated from human blood sample, as early as 1.5 hours, up to 4 days and 5 days with my work in Biogen .

For B cell lines, see Emails on **May 3** of 2011 showing Day 3 activation (Appendix H4); **May 5**, 2011 of activation at 18 hours (Appendix H6); **May 10**, 2011 showing activation of 5 days (Appendix H10); **May 18**, 2011 showing activation at 18 hours again (Appendix H14); **May 19** 2011 showing activation at 3 Day (Appendix H18); **May 27** 2011 **reproduced** time sequence again **for whole set time points** (Appendix H18) that was set by Susan Kalled as discussed in emails of May 23 (Appendix H37); , and May 26 with Susan Kalled (Appendix H35); , with Susan Kalled's satisfaction and agreement in her emails.

For primary B cells isolated from human blood sample, see emails of **June 2nd** 2011 that activation in primary B cells from human blood was at **1.5 hours** after CpG activation (Appendix H46); ; email of **June 3rd**, 2011 showing B Cell activation in human blood B cell at **18 hours** after CpG treatment (Appendix H50), all tested B Cell Activation markers of CD 54, CD 86 and CD 69 are all activated after 18 hours of CpG treatment (Appendix H50); Emails of **June 10** , 2011 (Appendix H75) showing **at Day 4** , **all B Cell Activation marker were activation as good as in 18 Hour of CpG treatment** (Appendix H50) .

(as comparison to Susan Kalled's testimony to courts that Lei Yin was only working well in Biogen for the first one or two weeks of April 2011 and Lei Yin was unable to finish one simple lab task well –antibody titration, as the performance reason to terminate Lei Yin's position in Biogen.)

APPENDIX H Part Three is Susan Kalled's patented **BCMA Antibody's treatment effect in Neurological Disease** (see Susan Kalled's patent in 2015: US Patent 9034324B2). (see Appendix H7 as example).

Please NOTE that in both emails of June 3rd, 2011 (See Appendix H55) and July 1st 2011 (see Appendix H96) , I had sounded alarms twice in writing to Susan Kalled and Immunology Director of Biogen about Susan Kalled's bypassing Gate step in flow cytometry. In June 3rd email (Appendix H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in her flow cytometry. In July 1st email (see Appendix H96), I had sounded alarms to Biogen Immunology Director that QA/QC needed in Susan Kalled's research (see Appendix H96). Two working days later, I was fired at night by a phone call.

REASON for REHEARING:

I. My Hard/Quantitative evidence had proven Susan Kalled's SOFT /SUBJUCTIVE TESTIMONIAL EVIDENCE were all FALSE. Courts' Dismissal Decisions based soly upon Susan Kalled's soft subjective testimonial statements shall be corrected.

As Courts Dockets shows, my case was dismissed after courts had accepted weak testimonial evidence by Biogen witness (mainly Susan Kalled) that I had worked well in Biogen only for the first one or two weeks after I joined Biogen in April 2011, and I was unable to do a simple task of antibody titration well as poor performance review (see Appendix W, X, Y with my Petition FOR WRIT OF CERTIORARI). The Courts had decided based on Biogen's weak testimonial statements that my termination was bona fide personnel action (see Appendix G5 with my Petition FOR WRIT OF CERTIORARI, as example). Courts had totally neglected my Hard/Quantitative evidence I had presented to courts, *including the original emails between myself and Biogen key witness, Susan Kalled, covering two-days work record for each every week of my entire service in Biogen (See Appendix Part II, 101 pages total).* (Susan Kalled was a part-time employee of Biogen, she only worked 3 days each week. When she supposedly NOT working for those two days each week at her home, she had contacted me by calls and emails to push her projects (BCMA antibody effect in human disease) forward in order to survive the ongoing layoff. These 101 pages of original Emails record (Appendix H of my July 2023 filing) had shown that I had come in to the Biogen lab in 7am in the morning, left Biogen lab late at 9 pm, and 10 PM at nights (see Appendix Part II, H42). In order to be in the Biogen lab at 7am, I had to **get up at 5am** in the morning, as I had pretty long commute from home to Biogen (Commuter Rail first, then 2 collor train of T in Boston). When I worked till late night at 10 PM, I came **back to home at 12PM midnight.**

Another piece of Hard and Quantitative evidence-Biogen Time Card (Appendix V with my Petition FOR WRIT OF CERTIORARI) had also shown that the same Susan Kalled had issued doubled-paid bonus each every week after I joined in Biogen,

including May , June of 2011 (*vs Susan Kalled's weak testimony to court that I was only working well for the first one or two weeks of April 2011*). On June 3rd, 2011, there were at least 5 emails I had written in one day to answer her phone calls, (see Appendix H60, H61 @11:06 AM, @11:46 AM,@ 2:58 PM, @3:28 PM, and @ 4:03 PM), besides many phone communications with Susan Kalled who was staying at her home and got no-pay from Biogen (see Appendix Part II, H60, H61). Please note Susan Kalled had her own Biogen associate, Robin, who had named me "slave" and had complained that she had nothing to do. If Susan Kalled knew my work was good ONLY in the first one or two weeks of April 2011, why Susan Kalled had called me and emailed me about 10 times a day when she supposed to rest in home in May 2011 and June 2011? Why not contact her own associate Robin to do all the work for her? In all Susan Kalled's fourteen emails (Appendix Part II, H2, H6, H14, H22, H31, H32, H33, H35, H42, H55, H70, H80, H98), Susan Kalled had never shown any doubt or dissatisfaction on my work, including antibody titration. It proves Susan Kalled had made false testimony to the courts(Susan Kalled's weak testimony to court that I was only working well for the first one or two weeks of April 2011).

Both Susan Kalled and the second Biogen witness Kevin Optidy had told courts that I was unable to finish one lab task well –antibody titration, as the performance reason to terminate my position (Appendix W, X, Y with my Petition FOR WRIT OF CERTIORARI). However, in all her fourteen emails she had written to me, Susan Kalled had only showed her conferment and satisfaction in all her total fourteen emails (see Appendix Part II, as of April 28 (Appendix Part II, H2), **of** May 3 (Appendix Part II, H6), **of** May 11 @7:38am (Appendix Part II, H14), **of** May 19 @9:01PM (Appendix Part II, H22), **of** May 20 (Appendix Part II, H31), **of** May 23 (Appendix Part II, H33), **of** May 25 (Appendix Part II, H32), **of** May 26 (Appendix Part II, H35), **of** June 2 @9:42PM (Appendix Part II, H42), **of** June 3rd @2:58pm (Appendix Part II, H55), **of** June 7 (Appendix Part II, H70), **of** June 10 @10:23PM (Appendix Part II, H80), **of** June 28 (Appendix Part II, H98), **of** June 30 (Appendix Part II, H96). There is zero hints in all her fourteen emails Susan Kalled had shown her dissatisfaction in my antibody titration work. Please note that Susan Kalled had written her emails in early morning, as early as 7:38am, and in late night at

@9:01PM, @9:42PM, and @10:23PM (Appendix Part II, H80). At the same time, I had submitted my antibody titration assays seven times to Susan Kalled from April to end of June 2011, dates were on **April 29, 2011** (see Appendix Part II, H1, H3), **May 13, 2011** (Appendix Part II, H18), email **May 18, 2011** (Appendix Part II, H14, H18); email of **June 2nd, 2011** (Appendix Part II, H38); email of **June 21** (Appendix Part II, H81); email of **June 28, 2011** (Appendix Part II, H91, H99). **On June 28, 2011**, I had submitted multiple antibody titrations for multiple projects in one single day for both Susan Kalled and Kevin Optidy (see Appendix Part II, H91, H99). **It proves both Biogen Susan Kalled and Biogen Kevin Optidy had made false testimony to the courts** (that I was unable to finish one lab task well – antibody titration).

II. Biogen's Violation of Research Integrity Public Policy:

As for Susan Kalled's research misconduct/violation of research integrity of public policy, I had sounded alarms at least twice to Biogen in written in my emails: In my emails of June 3rd, 2011@3:28 PM (See Appendix Part II, H55) and July 1st 2011 @10:01AM(see Appendix Part II, H96) , I had sounded alarms to Susan Kalled and Immunology Director of Biogen about Susan Kalled's bypassing Gate step in flow cytometry analysis to get false positive data of her BCMA antibody effect in human disease (patented in 2015). In my June 3rd email (Appendix Part II, H55), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in flow cytometry analyzer. In my July 1st email (see Appendix Part II, H96), I had sounded alarms to Immunology Director of Biogen that QA/QC needed in Susan Kalled's research. Then I was fired at night by a phone call days later.

The Flow cytometry is a fundamental research tool for Immunology study (see Appendix Part I, page 14, 15, 16). In Susan Kalled's 2015 patent, entitled **"Anti-BCMA antibodies US9034324B2"**,

<https://patents.google.com/patent/US9034324B2/en>, nearly all data were collected by flow cytometry. In her 2015 patent, 14 of total 16 DATA Figures are all flow cytometry figures (see Appendix part I, Page15).

There is only one universal gold protocol of flow cytometry , worldwide used by all users , that is flow cytometry with Gatesee Appendix Part I, Page 14, 15). District Court had downplayed this worldwide used Gold protocol as some “new test method in developing” (see APPENDIX c of my Petition FOR WRIT OF CERTIORARI). Susan Kalled had intentionally bypassed the gate step in her flow cytometry to get false positive data, and then in her 2015 patent, she had **NOT** made any necessary declaration that she had collected those 14 sets of datas by flow cytometry without a Gate step. (see Patent of 2015 “Anti-BCMA antibodies U\$9034324B2”, <https://patents.google.com/patent/US9034324B2/en>),).

District Court had downplayed his statement that I was unable to declare which public policy Biogen had violated after he downplayed the violation of a worldwide used gold protocol (Appendix Part I, page 14, 15) as a “new test method in developing “(see APPENDIX c of my Petition FOR WRIT OF CERTIORARI). **Research Integrity policy** defines reseach misconductions as fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in report research results. Susan Kalled is a well trained immunologist , she shall know very well the outcome when she decided to bypass the Gate step in flow cytometry. In order to survive her employment in Biogen as she had changed to part-time in 2011, Susan Kalled had intended to bypass the Gate Step in her flow cytometry, and she had instructed me to do the something, even promise a permanent position as an lure. I felt it is my civic duty to say NO to her

wrongdoings. I had first discussed with Susan Kalled the mistakes and pitfalls when she shown me she had bypassed gate step in May 2011 and June 2011 (see Appendix Part II, H55 for example), I had reminded Susan Kalled the pitfalls and mistakes she had bypassed the Gate step in flow cytometry analyzer (Appendix Part II, H55), even though she had pushed me deadly hard to cook my own data by following her dirty trick, the physical and psycological pressure were so high that I had to take 5 days NO-PAY leave in May 2011 and June 2011 (see Biogen Time card of 2011, Appendix Part 1, page 13). When I was very sure Susan Kalled's willingful intention and her purposed wrongdoings, I had further sounded alarms to Department Director of Biogen Immunology in writing *that Susan Kalled's research need QA/QC in my formal complain dated on July 1, 2011* (see Appendix Part II, H96). Two days later, I was fired at night via a phone call.

"See something say something" is a protected civic activity. After I sounded alarms to Biogen at least twice in writing in June and July 2011 that Susan Kalled had cooked her research book (as recorded in Appendix Part II, H55 and H96), the abrupt termination at night via a phone without any sign-off procedure had clearly violated Research Integraty public policy, and that is clearly wrongful termination.

III. There were 4 pages of of my own Lab Book of Biogen had been COVERED Up by Susan Kalled and Biogen (Appendix Part I, page 11):

Biogen had rejected all my motions to collect needed documents from Biogen for eleven times in District Court of MA. Further more, in DIA hearing in June 2018, I was able to identify those "BCMA Ab treatment effect " are recorded in my lab book of May 6, 9, 10, June 6, 14, and 15 of 2011, contradictory to District Court's

In-camera Review result of “nothing relevant found”, without my presence (Appendix C of my Petition FOR WRIT OF CERTIORARI). I had also found out there were 4 pages of lab record in my own lab book had been covered up by Susan Kalled and Biogen. And an emergency report to DIA had been filed on June 16th, 2018, with DIA Receiving Seal dated of June 18, 2018 (Appendix S of my Petition FOR WRIT OF CERTIORARI, also see **Appendix Part I, page 11**). There were also phone communications and emails about this Tampering Evidence on the same day of hearing to my then-attorney and to DIA on June 16th, 2011. Tampering evidence used in District Court of MA by covering up four pages of my Biogen Lab Book is further prove Susan Kalled/Biogen had violated Research Integrity public policy.

REQUEST:

REQUEST ONE: Please rule to make my July 2023 Filling with Appendix of 101 pages of Email Record in 2011 docketed, so that my July 2023 filling will be finalized accordingly to the Rule of this Court.

REQUEST TWO: I have used HARD EVIDENCE that had been neglected by courts to prove to Supreme Court that Susan Kalled’s SOFT SUBJECTIVE TESTIMONIAL EVIDENCE are all FALSE. Therefore, the previous decisions made by Courts based upon Susan Kalled’s soft subjective testimonial evidence shall be summary reversed. Or Petition for Writ of Certiorari should be reconsidered and granted.

REQUEST THREE: Pro Se Right shall be reiterated by this court. Under what conditions in a civil case , a Pro Se shall provide an attorney for free? American Legal System is updating and progressing. In 1963, this court ruled in favor of Gideon that guaranteeing the “right to legal counsel” for criminal defendants in both federal and state courts, and then public defender system were set up. In

2011, this court ruled that “some other safeguard” must be provided to reduce the risk of erroneous deprivation of liberty in civil contempt cases. I understand the extreme public burden to ask for an attorney for free in a civil case for some of the people, but is there any slim chance to start with a small population-those most suppressed/disadvantaged groups of citizen first, like people in disability or elder without financial capability? Are those poor group people who can not represent them well doomed be forgotten by the Constitution, and abandoned by American Legal system?

Historical Data show that civil nonprisoner pro se litigation has ranged from 9 to 10 percent of federal district court, that constitutes about fifteen thousands federal district cases each year involving nonprisoner pro se plaintiffs and about three thousands defendants, giving a total number of less than twenty thousands pro se federal district court cases each year. Once added senior ages >65, together with pro se with disability, even I donot have exact ratio, I guess, the number will be a much smaller than twenty thousands each year, presumably only in several thousands each year. "EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. 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.

Here I ask this court consider “right to Counsel” extend to certain civil sphere, starting from those might only a handful thousands a year in federal district court, to ensuring the American people the promise of equal justice under law, as you can see that those handful thousands pro se , are really cannot represent them well, even to a minimium standard, in my case, for more than ten years, I cannot get Biogen'listed witness contact info and witness statements,

I cannot enforce the Subpoena District Court Clerk Issued, and I cannot get my hard evidence be seen and admitted, and I cannot get my complaint be heard by Federal Courts System for ten years. Can you imagine the difficulties for one, who typed lenthey petition with a more than 15 years old computer with software were all out of license, by living in a van about half of his time, taking more than 10 pills each day for keeping his thought and mind sleeping? I cannot tell how much I am grateful to FDR, without FDR's Social Security Act in 1939, I couldn't imagine how could I still survive at present high-cost living and extreme painful legal process with Biogen for that long about 10 years.

CONCLUSION

The Court should grant the Petition for Rehearing, and grant certiorari in this case.

CERTIFICATE : Pursuant to Rule 44, Lei Yin, Pro Se living with SSDI, certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. I also certify that this Petition is presented in good faith and not for delay. And the email record between Lei Yin and Biogen Susan Kalled presented here as Appendix are from Original Record, and I am ready to be inspected by court about the authenticity.

Dated: November 6th, 2023 Respectfully submitted,

Lei Yin, Pro Se with SSDI

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Certificate of Service (I, Lei Yin, certify that I have this day, November 6th, 2023, served copy of the foregoing by first class mail to :

Clerk Office, Mr Scott Harris, Clerk,
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543