9/29/24

No. 24-611

In The
Supreme Court of the United States

BO ZOU —*Petitioner*

v.

LINDE ENGINEERING NORTH AMERICA, —
Respondent

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

PETITION FOR WRIT OF CERTIORARI

BO ZOU
3500 SW 29th Street. #88
Topeka, KS 66614
Phone: 713-835-8655

QUESTION(S) PRESENTED

1. Whether the 10th Circuit of Appeals may arbitrarily deprive of Petitioner's Constitutional rights for appeal by abusing 28 U.S.C. § 1291 to deny Petitioner's interlocutory order appeal.

2. Whether the 10th Circuit of Appeals may arbitrarily violate the Code of Conduct for United States Judges and knowingly departed from the course of the judicial proceedings.

3. Whether magistrate judge has a jurisdiction to arbitrarily overturn the joint status report.

4. Whether Respondent's deposition, which has been ordered to take by the district court, may be quashed by Respondent, and approved by the district court and granted Respondent a protective order.

5. Whether the 10th Circuit of Appeals may knowingly make an absurd dismissal decision in conflict with the decisions of this Court and other circuit of appeals involving in Petitioner's Constitutional rights to discovery and Respondent's criminal acts.

LIST OF PARTIES

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

[ ] 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. Opinion and Order entered July 18, 2024.

Bo Zou v. Linde Engineering North America, Inc., No. 24-5087, U.S. Court of Appeals for the Tenth Circuit. Dismissal order entered August 15, 2024.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES CITED

Cases

CONSTITUTION

STATUTES AND RULES

OTHER

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a writ of certiorari to review the interlocutory order of the Oklahoma Northern District Court to deprive of petitioner's Constitutional rights to discovery and cover up Respondent's criminal acts in perjury, falsification on documents and contempt of the court.

OPINIONS BELOW

[X] 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,

[X] is unpublished.

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

[ ] reported at; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 15, 2024.

[X] 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 _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1292 (b) provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. §1291 provides:

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the

> District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

18 U.S.C. § 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).

Fed. R. Civ. P. 30(a) provides:

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to

the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

.....

Fed. R. App. P. 3 provides:

.....

(4) An appeal by permission under 28 U.S.C. §1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rule 5 and 6, respectively.

.....

Fed. R. Civ. P. 26(b)(1) provides:

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Local Rule *LCvR30-1(a)(2)* provides:

> (2) reasonable notice to parties as contemplated by Fed. R. Civ. P. 30(b)(1) for the taking of depositions shall be seven days.

The Code of Conduct for United States Judges Cannon 2 provides:

> .....
>
> Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.
>
> .....

STATEMENT OF THE CASE AND FACTS

Petitioner, Bo Zou, sued Respondent, Linde Engineering North America, Inc. for race and age discrimination under the Title VII of the Civil Rights Act of 1964 and ADEA on October 18, 2019.

During the proceedings, from October 18, 2019 to November, 2020, Respondent refused to produce a lot of key documents relevant to the race and age discrimination, including the documents Respondent admitted to withhold. In this case. Respondent decided whether to produce documents (*See* Dkt. No. 220, Pg. 3) even if Petitioner has shown the district court documents existed and very relevant to the case. Moreover, Respondent blatantly refused to produce the documents ordered by magistrate judge (*See* Dkt. No. 37). Respondent committed contempt of the court due to its refusal to abide by the court order. However, Respondent's refusal and contempt were supported by the district court without sanctioning. In contrast, Petitioner was sanctioned to be prohibited from filing any motions for sanctions and contempt. *See* Dkt. No. 108, Pgs. 9-11. All Petitioner's requests for production were denied by the district court without a reason.

Moreover, Respondent committed perjuries over and over on young engineers Kenny Sharp and Dustin Duncan's job positions without sanctioning. The district court even never mentioned or addressed Respondent's perjuries even if Petitioner requested the district court ruled on Respondent's perjury over and over. *See* Dkt. Nos. 86, 104, 173, 180, 200.

Also, Respondent blatantly falsified a lot of documents without sanctioning. The district court never mentioned or addressed Respondent's falsification on documents even if Petitioner requested the district court ruled on Respondent's falsification on documents over and over. *See* Dkt. Nos. 60, 86, 104, 173, 180, 200.

Furthermore, magistrate judge arbitrarily violated 28 U.S. Code § 636 (e)(4) to rule on Petitioner's motion for contempt. Also, magistrate judge arbitrarily violated 28 U.S. Code § 636 (b)(1)(A) to issue injunctions to prohibit Petitioner from filing motion for sanction and contempt, and limit Petitioner to depose only 4 fact witnesses in violation of Fed. R. Civ. P. 30 (a) and joint status report.

The district court stayed the case more than three (3) years, from November 13, 2020 to December 19, 2023 without a reason.

On December 19, 2023, the case was reopened. On February 7, 2024, the case was reassigned to district judge John D. Russell. Due to manifest errors in prior rulings of the district court, Petitioner filed *"Plaintiff's requests to rescind the limitation on deposition and production, and injunctions to prohibit Plaintiff from filing motion for sanction and contempt, and re-rule Plaintiff's motions for sanctions and contempt, and compel Defendant to produce documents and answer interrogatories"* on May 15, 2024. *See* Dkt. No. 173. (Hereinafter *"Plaintiff's requests"*)

A district court has the discretion "to depart from its own prior rulings," *Allison v. Bank One-Denver,* 289 F.3d 1223, 1247 (10th Cir. 2002). A district court may revisit its prior interlocutory ruling without applying the three circumstances generally warranting departure from the prior ruling: "(1) new and different evidence; (2) intervening controlling authority; or (3) a clearly erroneous prior decision which would work a manifest injustice." *Rimbert v. Eli Lilly & Co.,* 647 F.3d 1247, 1251 (10th Cir. 2011).

Respondent has been claiming young engineers Kenny Sharp and Dustin Duncan were piping engineer under penalty of perjury. *See* Dkt. No. 30, EXHIBIT "2", Pg. 6, However, in Respondent's production documents, Kenny Sharp and Dustin Duncan were only piping design engineers, rather than piping engineers. So, Respondent committed perjury.

But, in Respondent's response to *"Plaintiff's requests"* filed to the district court on June 5, 2024, Respondent committed perjury again by claiming that young engineers Kenny Sharp and Dustin Duncan were NOT piping engineers. *See* Dkt. No. 177, Pg. 7. The new perjury committed by Respondent meets with the requirement of new and different evidence.

Also, Petitioner provided new falsified evidence Linde [Zou] 002830, Linde [Zou] 002832 and Linde [Zou] 000294 for the Court. *See* Dkt. No. 173, Pgs. 20, 22; Dkt. No. 180, Pgs. 16 & 20; Dkt. No. 200, Pg. 16.

Respondent's perjury, falsification on documents and contempt of the court and refusal to production meet with the requirements of intervening controlling authority, and clearly erroneous prior decisions which would work a manifest injustice.

However, on July 18, 2024, district judge John D. Russell declined to review and re-rule on Plaintiff's motion by claiming that Plaintiff's motions for sanctions (Dkt. Nos. 30, 31, 60, 86, 89, 173, 180) violated the limited protection order and the issues have already been addressed by the district court. *See* **Appendix B**, at 13a. District judge John D. Russell knowingly misrepresented the facts and evidence. Plaintiff filed Plaintiff's motions for sanctions and contempt (Dkt. Nos. 30, 31, 60, 86, 89) before magistrate judge issued the injunctions to prohibit Plaintiff from filing motions for sanctions and contempt. *See* Dkt. No. 108, Pgs. 9-11. In the Case, a limited protection order is not existed in protecting Defendant's criminal acts. District judge John D. Russell made the *pretext* and refused to revisit and re-rule the clearly erroneous prior decision which would work a manifest injustice.

In *"Plaintiff's requests"* and reply (Dkt. Nos. 173, 180, 200), Plaintiff provided new evidence for Defendant's falsified documents, Linde [Zou] 002830, Linde [Zou] 002832, Linde [Zou] 000294 (*See* Dkt. No. 173, Pgs. 20, 22; Dkt. No. 180, Pgs. 16 & 20; Dkt. No. 200, Pg. 16) and Defendant's new perjury committed (*See* Dkt. No. 180, Pgs. 2-6) for the Court. It is extremely erroneous ruling and contrary to law that Respondent's perjury, falsification on documents and

contempt of the court may be protected by the district court. Any court order cannot be above US laws to protect criminal acts.

Moreover, the district court directly denied Petitioner's motions for sanctions and contempt without a hearing, and without mentioning and addressing any material facts and evidence. *See* Dkt. No. 108, Pgs. 9-11. District judge John D. Russell knowingly misrepresented the facts by claiming that Petitioner's motion for contempt was covered by a protection order and magistrate judge has the jurisdiction to review and hear the motion for contempt and issue the injunctions to prohibit Petitioner from filing motions for sanctions and contempt. Also, District judge John D. Russell knowingly misrepresented the facts by claiming that the district court have already addressed Plaintiff's issues. *See* **Appendix B**, at 13a. The district court never addressed or mentioned the material facts and evidence to allege on Respondent's perjuries, falsification on documents and contempt of the court, and refusal to produce documents. *See* Dkt. Nos. 108, 138, 143.

Furthermore, district judge John D. Russell ignored Plaintiff's new evidence to accuse on Defendant's falsification on documents Linde [Zou] 002830, Linde [Zou] 002832 Linde [Zou] 000294, and Defendant's new perjury by denying young engineers Kenny Sharp and Dustin Duncan being piping engineers (Dkt. No. 177, Pg. 13) in conflict with Respondent's previous claims that Kenny Sharp and Dustin Duncan were piping engineers, but instead,

misrepresented the facts and evidence by claiming that "Plaintiff has failed to show any new sanctionable actions by Linde." *See* **Appendix B**, at 13a.

Respondent's perjury, falsification on documents and contempt of the court were coved up by the district court over and over. Respondent's refusal to production were not mentioned and addressed by district judge John D. Russell in his order, either.

On July 19, 2024, Petitioner filed the Notice of Appeals to the district court. The Notice of Appeal was docketed by the 10th Circuit Court of Appeals on July 22, 2024. On Petitioner's Notice of Appeals, Petitioner clearly stated that the appeal is by permission under 28 U.S.C. §1292 (b) and the Fourteenth Amendment to the Constitution of the United States. *See* Dkt. No. 205.

However, next day, the 10th Circuit Court of Appeals immediately issued an order to try to deny Petitioner's appeal by claiming that the 10th Circuit Court of Appeals did not have the appeal jurisdiction. The 10th Circuit Court of Appeals absurdly stated that "Specifically, the order appellant Bo Zou seeks to appeal does not appear to be a final decision. As a result, the court is considering this appeal for summary disposition." *See* Appellate Case: 24-5087, Document: 2, Pg. 1.

On August 3, 2024, Petitioner filed the response to the 10th Circuit Court of Appeals' erroneous order and stated that Petitioner's appeal was granted by

permission under 28 U.S.C. §1292 (b) and the Fourteenth Amendment to the Constitution of the United States again. *See* Appellate Case: 24-5087, Document: 7. But, the panel of the 10th Circuit Court of Appeals still knowingly abused 28 U.S.C. §1291 to dismiss Petitioner's appeal. *See* **Appendix A.**

Especially, the presiding judge of the panel is judge Gregory A. Phillips, who arbitrarily violated the Code of Conduct for United States Judges Cannon 2, appearance of impropriety, to continue reviewing Petitioner's three different appeal cases (20-5099, 21-5002, 24-5087). Judge Gregory A. Phillips should have disqualified himself. But, he did not do it.

Also, no judge signed the dismissal order. The 10th Circuit Court of Appeals knowingly did not post the dismissal order on the website of the 10th Circuit of Appeals in case Public and law experts know their extremely erroneous and absurd decision.

Petitioner timely files the Petition for a Writ of Certiorari to this Court.

REASONS FOR GRANTING THE PETITION

Petitioner's petition for Writ of Certiorari should be granted by the U.S. Supreme Court. The reasons are as follows:

I. The 10th Circuit Court of Appeal arbitrarily deprived of Petitioner's Constitutional rights

for appeal by abusing 28 U.S.C. § 1291 to deny Petitioner's interlocutory order appeal.

Pursuant to 28 U.S.C. §1292 (b) and Fed. R. App. P. 3, appeal as of right, an interlocutory order may be appealed as long as such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order.

Also, the case involving in the Constitutional rights to discovery may be appealed directly to the Circuit Court of Appeals.

The 10th Circuit Court of Appeals abused discretion to dismiss Petitioner's appeal case. The Panel of the 10th Circuit Court of Appeals erroneously used 28 U.S.C. §1291, which only stipulates Circuit Courts of Appeals to hear final decision, to dismiss Petitioner's interlocutory order appeal. The decision of the 10th Circuit Court of Appeals is clearly erroneous and in violation of 28 U.S.C. §1292 (b) and Fed. R. App. Civ. P. 3 and the Constitution of the United States.

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). The decision

of the 10th Circuit Court of Appeals conflicts with that of the 9th Circuit Court of Appeals.

Not only does the panel opinion conflict with precedent, Statute and the decisions of other Circuit Courts of Appeals, but, if the Supreme Court of the United States allow denying the interlocutory order appeal, it will open the floodgates in future interlocutory order to be erroneously and knowingly denied by the Circuit Courts of Appeals or State Appeal Courts. Litigants' Constitutional rights will be deprived of.

II. The dismissal decision of the 10th Circuit of Appeals must be vacated or reversed due to the violations of the Code of Conduct for United States Judges and knowingly departed from the course of the judicial proceedings.

(1). Judge Gregory A. Phillips at the 10th Circuit Court of Appeals violated the Code of Conduct for United States Judges Cannon 2, appearance of impropriety, to continue reviewing Petitioner's three different appeal cases (20-5099, 21-5002, 24-5087), and erroneously use legal laws and Statute to dismiss or deny Petitioner's appeal cases. Judge Gregory A. Phillips should have disqualified himself, but he never did it. At the 10th Circuit Court of Appeals, a judge must be assigned a case randomly, rather than continue to preside over different appeal cases originated from the same case with the same Appellant and Appellee. The dismissal decision must be vacated or reversed due to judge Gregory A. Phillips' appearance of impropriety.

(2). The judges in the panels openly violated Federal Appellate Court Rules and never signed their name in their extremely erroneous decisions in Petitioner's three appeal cases in case Public and law experts find their erroneous decisions and their extreme unfairness and bias. All the three erroneous decisions were signed by the electronic signatures of Clerk.

(3). The 10th Circuit of Appeals knowingly departed from the course of judicial proceedings by (a) immediately issuing an order to question Petitioner's appeal case appealable and consider summary dismissal (*See* Appellate Case: 24-5087, Document: 2) after Petitioner filed the Notice of Appeal. In Petitioner's Notice of Appeal, Petitioner clearly stated that the appeal was based on 28 U.S.C. §1292(b) and the Fourteenth Amendment to the Constitution of the United States for interlocutory order appeal. *See* Dkt. No. 205. But, the 10th Circuit of Appeals knowingly misrepresented U.S. law and Statutes by claiming that the 10th Circuit of Appeals only reviewed judgment case based on 28 U.S.C. § 1291; (b) hiding the absurd dismissal order not to release the judges' extremely erroneous decisions on the website of the 10th Circuit of Appeals to stop the Public and law experts from knowing their violations of laws and extreme unfairness. Petitioner's three appeal cases were dismissed or denied without posting on the website of the 10th Circuit of Appeals.

III. The district court order raises exceptionally important issues about whether magistrate judge has a jurisdiction to

arbitrarily overturn the joint status report.

On December 9, 2019, the district court directed both parties to file joint status report. On January 8, 2020, the joint status report was filed to the district court. Both parties granted that each party may depose 6-10 fact witnesses in the joint status report. *See* Dkt. No. 16, Pg. 5.

On June 1, 2020, Respondent's attorney contacted Petitioner to claim that Respondent wanted to depose Petitioner in July, 2020. On June 2, 2020, Petitioner replied to Respondent by accepting the deposition. At the same time, Petitioner notified Respondent by email that Petitioner planned to depose Respondent on June 22-26, 2020. Respondent did not object to Petitioner's request in writing or by phone.

So, on June 5, 2020, Petitioner sent Petitioner's notice of deposition to Respondent. The deposition dates were set between June 23 and June 29, 2020. Petitioner had given Respondent 18 days' notice in advance, or 21 days' notice if 3 days' notice by email is accounted. After the notice of deposition was sent to Respondent, Respondent still neither objected nor had questions on the deposition until June 15, 2020. Respondent asked why Petitioner needed to depose 10 deponents. Petitioner timely answered Respondent's questions why Petitioner needed to depose 10 deponents. *See* Dkt. No. 68, Pg. 2.

However, on June 18, 2020, only 3 business days left for deposition, Respondent abruptly filed an

emergency motion to quash and motion to stay deposition and motion for protective order to the Court (*See* Dkt. Nos. 51, 53, 54) without notifying Petitioner in advance. In the motions to quash and to stay and for protective order, Respondent misrepresented the facts to claim that Petitioner unilaterally sent the notice of deposition to Respondent. Also, Respondent claimed Petitioner harassed Respondent by deposing some employees and Respondent's executives. But, all Respondent's claims were without facts support and basis of laws.

Moreover, Respondent hided the facts that at least 6 deponents of 10 deponents had left Respondent before Respondent filed its motion to quash and to stay and for protective order. For example,

Vice president David Close was fired around April 17, 2020; Jerry Gump and Kenny Sharp were laid off around May 12, 2020;

CEO Carlos Conerly was kicked out around June 15, 2020;

Other employees like Dustin Duncan and the African-American gentleman Bryant Tyler left Respondent around June 15, 2020.

Magistrate judge Jodi F. Jayne immediately granted Respondent protective order and quashed Respondent's deposition without a hearing in violation of Fed. R. Civ. P. 30 and local rule *LCvR30-1(a)(2)*, and deprived of Petitioner's equal right in the proceedings.

Furthermore, magistrate judge limited Petition-

er to depose 4 fact witnesses. (*See* Dkt. No. 108, Pgs. 9-11). It means that magistrate judge entirely overturned the joint status report conferred by both parties and approved by former district presiding judge John E. Dowdell. It also means that the huge flaw exists in the case because the joint status report has been ineffective.

On May 15, 2024, Petitioner requested the district judge John D. Russell rescinded the limitation on fact witnesses because the limitation is in violation of Fed. R. Civ. P. 30 and local rule *LCvR30-1(a)(2)*. It is clearly erroneous and contrary to law. But, district judge John D. Russell declined and supported the limitation. *See* **Appendix B**, at 12a.

This Court must solve the law issue whether a magistrate judge, who is not consented by both parties for the proceedings, has the jurisdiction to arbitrarily overturn the join status report, and limit Petitioner to depose only 4 fact witnesses.

IV. The district court order raises exceptionally important issues about whether Respondent's deposition, which has been ordered to take by magistrate judge, may be quashed by Respondent and granted by magistrate judge.

Petitioner requests that this Court solve the law issue whether Respondent's deposition, which has been granted by an order of the district court, may be quashed by Respondent and granted by magistrate

judge.

On May 28, 2024, Petitioner in good faith notified Respondent that Petitioner planned to depose Respondent's employees Deana Hoey and Rebecca Ford on June 11 & 12, 2024.

On May 29, 2024, Respondent's attorney Jonathan Rector said that he was unavailable on June 11 & 12, 2024. Petitioner in good faith would rather change the schedule to June 17 & 18, 2024. *See* Dkt. No. 178, Pg. 19. However, Respondent's attorney Jonathan Rector used other *pretexts* to refuse the deposition like an interpreter needed and mitigation information. *See* Dkt. No. 178, Pg. 18.

Petitioner in good faith had let Respondent and its attorneys select two days to be convenient for them on deposition since May 30, 2024. *See* Dkt. No. Pg. 178, Pg. 17. But, Respondent's attorneys never gave Petitioner any response even if Petitioner sent emails to them numerous times.

On June 5, 2024, Petitioner sent the notice of deposition to Respondent, pursuant to Fed. R. Civ. P. 30 and local rule *LCvR30-1(a)(2)*. The dates of deposition are set on June 20 & 21, 2024. Petitioner has given Respondent 15 days' writing notice, which is 8 days more than that required by local rule *LCvR30-1(a)(2)*. If adding more than one week's email notice, Petitioner has given Respondent 24 days' notice in advance.

Based on Respondent's intentional refusal to

deposition, on June 11, 2024, Petitioner was forced to file a notice of service regarding the notice of deposition to the Court. *See* Dkt. No. 178. In the notice of service, Petitioner notified the Court that Respondent was damaging the deposition. Petitioner submitted all emails communicating with Respondent to the district court.

On June 13, 2024, only four (4) business days left, as Respondent did in 2020, Respondent sent a proposed protective order to magistrate judge and filed an emergency motion to quash Petitioner's Notice of Deposition and for protective order to the district court without notifying and conferring with Petitioner in advance again. *See* Dkt. No. 179.

This time, magistrate judge denied Respondents' motion to quash and for a protective order, and ordered Respondent's Deana Hoey and Rebecca Ford would be deposed on June 20 & 21, 2024, respectively. *See* Dkt. No. 185. However, only one day later, in the morning of June 20, 2024, when Petitioner was deposing the fact witness Deana Hoey, Respondent filed the second motion to quash and for a protective order to quash Rebecca Ford's deposition of June 21, 2024. *See* Dkt. No. 186. Respondent's *pretext* was that Rebecca Ford was not in Tulsa, OK. However, magistrate judge immediately granted and approved Respondent's second motion to quash and for a protective order without giving Petitioner any chance to object to Respondent's second motion to quash and for a protective order. *See* Dkt. No. 187.

The law issue is how Respondent may quash

Respondent's deposition which had been ordered to take by magistrate judge. Respondent had quashed a wrong object, i.e. magistrate judge's order, rather than Plaintiff's notice of deposition. That Respondent may only do is that Respondent requests magistrate judge to stay or delay the deposition, rather than quash Rebecca Ford's deposition and magistrate judge's order. Magistrate judge abused discretion to grant Respondent to quash herself order. Although Petitioner has been objecting to Respondent to quash Respondent's deposition ordered by magistrate judge, Petitioner's objection was denied without a good reason and law.

This Court must solve the exceptionally important law issue raised by the district court.

V. The dismissal decision of the 10th Circuit Court of Appeals conflicts with the decisions of this Court and other circuit courts involving in Petitioner's Constitutional rights and Respondent's criminal acts.

A. The dismissal decision entirely deprives of Petitioner's Constitutional rights to discover evidence. The judges in the district court and the 10th Circuit Court of Appeals are suppressing the evidence for the disposition and trial.

Petitioner is prohibited from discovery in the proceedings. Respondent has been refusing to produce the key documents and evidence relevant to the discrimination case. Respondent has filed 6

motions to quash and 6 motions for protective order to refuse deposition and to produce documents. *See* Dkt. Nos. 19, 20, 44, 51, 54, 94, 179, 186. Respondent even refused to produce the documents ordered by magistrate judge. *See* Dkt. No. 37. So, Petitioner filed *"Plaintiff's Motion for Contempt"*. *See* Dkt. No. 89. But, the district court supported Respondent's contempt of the court and granted Respondent's refusal to produce documents. *See* Dkt. No. 108.

In contrast, Petitioner was sanctioned to be prohibited from filing any motions for sanctions and contempt. *See* Dkt. No. 108, Pgs. 9-11. Petitioner's all requests to compel to produce documents, answer interrogatories and admissions were denied without a reason. *See* Dkt. Nos. 108, 196, 204, 220. All the rulings and decisions made by the district Court never mentioned and addressed the material facts and evidence, but instead, misrepresented the facts and evidence, and then conclusively denied.

Now, magistrate judge even permits Respondent itself to decide whether there are documents existed (*See* Dkt. No. 220, Pg. 3) or produce documents even if Respondent's fact witness Deana Hoey had admitted the documents were withheld by Respondent. *See* Dkt. No. 216, Pgs. 25-26. That's a matter of course for Respondent to deny the documents existed and refuse production. *See* Dkt. No. 221, Pg. 1.

Especially, district judge John D. Russell never mentioned and addressed the facts and evidence and denied Petitioner's requests for production (*See*

Appendix B) even if Petitioner had stated detailed grounds why the documents are relevant to the discrimination case. *See* Dkt. Nos. 173 & 200.

The overruling for documents production clearly violated Fed. R. Civ. P. 26(b)(1), which provides for discovery of any relevant nonprivileged matter that is proportional to the needs of the case. *See Trujillo v. Pacificorp,* 524 F.3d 1149, 1159 (10th Cir. 2008).

The district court order (**Appendix B**) has effectively precluded Petitioner from discovery and further other actions, and has serious and irreparable consequences to harm Petitioner in disposition and trial.

Petitioner's equal rights in the proceedings granted by the Fourteenth Amendment to the Constitution of the United States are entirely deprived of by the district court. The deprival was supported by the 10th Circuit of Appeals for the absurd dismissal decision. Petitioner's constitutional rights to discovery should be protected by this Court. *Brady v. Maryland* | 373 U.S. 83 (1963).

B. The dismissal decision to cover up Respondent's criminal acts on perjury conflicts with the decision of this Court.

In Respondent's response (Dkt. No. 177) to *"Plaintiff's requests to rescind the limitation on deposition and production, and injunctions to prohibit Plaintiff from filing motion for sanction and contempt, and re-rule Plaintiff's motions for*

sanctions and contempt, and compel Defendant to produce documents and answer interrogatories" (*See* Dkt. No. 173), Respondent stated that *"Interrogatory No. 23 asks for the date for both Kenny Sharp and Dustin Duncan were promoted as Piping Engineers." See Dkt. No. 200, Exhibit 3. In response, Defendants objected because Plaintiff assumed these individuals were promoted to Piping Engineers during the relevant timeframe; they were not. Defendant then went on to provide the promotion history for both of these employees by date."* (Emphasis added). *See* Dkt. No. 177, Pg. 13. Respondent denied that both Kenny Sharp and Dustin Duncan are piping engineers in its response in conflict with its previous claims and statement under penalty of perjury and produced documents as follows:

(1) Respondent's denial conflicts with Respondent's previous answer to interrogatory No. 8 of Petitioner's first set of interrogatories. Respondent stated that *"Kenneth Sharp and Dustin Duncan, who are both tenured Pipe Engineers with engineering design experience, continued to handle the general duties for the Pipe Engineers after the reduction-in-force. Kenneth Sharp and Dustin Duncan previously handled the Pipe Engineer duties immediately prior to Plaintiff's hire". See* Dkt. No. 30, EXHIBIT "2", Pg. 6; or Dkt. No. 177, EXHIBIT "2", Pg. 8. From Respondent's answer, young engineers Dustin Duncan and Kenny Sharp were piping engineers. The answer to Petitioner's interrogatory No. 8 was signed under penalty of perjury by Respondent's Jerry Gump. *See* EXHIBIT "4", or Dkt. No. 75, EXHIBIT "4", Pg. 18 of 21; Dkt. No. 180, EXHIBIT "1".

(2). Respondent's denial conflicts with

Respondent's organization chart (Linde [Zou] 000294, or Linde [Zou] 002830) (*See* Dkt. No. 200, EXHIBIT "1", or Dkt. Nos. 173, Pg. 20, or Dkt. Nos. 180, EXHIBIT "2") produced by Respondent. Both Dustin Duncan and Kenny Sharp's positions were claimed and stated as "Piping Engineers".

(3). Respondent's denial conflicts with Respondent's previous answer to interrogatory No. 20 of Petitioner's second set of interrogatories. 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. 200, Pg. 31, or Dkt. Nos. 60, Pg. 31. The answer to Petitioner's interrogatory No. 20 was signed under penalty of perjury by Respondent's Aaron Watson. *See* Dkt. No. 200, Pg. 33, or Dkt. No. 60, Pg. 34.

(4). Respondent's denial conflicts with Respondent's document Linde [Zou] 000290.01 (Dkt. No. 173, EXHIBIT "5", Pg. 25 of 33) produced by Respondent. Respondent's Jerry Gump stated that *"Dustin Duncan and Kenny Sharp are both Piping Engineers in the piping design department. They were handling George's position until he was brought on board and will be able to pick up where he left off with no problem."* (Emphasis added). *See* Dkt. No. 200, Pg. 35. So, Respondent has been claiming and stating under oath that both Dustin Duncan and Kenny Sharp are piping engineers. Now, Respondent denied that both Dustin Duncan and Kenny Sharp were Piping Engineers. Respondent committed perjury again.

Perjury is defined in federal criminal law as "false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States v. Dunnigan,* 507 U.S. 87, 94, 113 S.Ct. 1111 (1993) (summarizing the elements of 18 U.S.C. § 1621). Clearly, committing perjury is acting in "bad faith."

Pursuant to 18 U.S.C.§1621 (2), which states that *"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;"*. Perjury carries significant penalties. Under federal statute 18 U.S.C. § 1621, anyone found guilty of perjury can face up to five years in prison. In addition to imprisonment, the court might also impose fines. These penalties aim to deter individuals from lying under oath and maintain the credibility of judicial proceedings.

However, the district court ignored and never mentioned the facts and evidence in the erroneous order (*See* **Appendix B**). Respondent's new perjury was covered up.

C. The dismissal decision to cover up Respondent's criminal acts on falsification on documents conflicts with the decision of the 9th Circuit Court of Appeals.

Respondent falsified Respondent's

organization chart Linde [Zou] 00294, Linde [Zou] 002830, and other documents Linde [Zou] 000292-000293, Linde [Zou] 002829, etc. Respondent's organization charts Linde [Zou] 00294, and Linde [Zou] 002830 are the same chart, but, with different Bates label number and repeatedly provided. *See* Dkt. No. 200, Pgs. 16-17. In the organization charts, young engineers Kenny Sharp and Dustin Duncan's positions were falsified as "Piping Engineers". Respondent has admitted that Kenny Sharp and Dustin Duncan's positions were only "Piping Design Engineer", rather than "Piping Engineer". *See* Dkt. No. 177, Pg. 13. During Deana Hoey's deposition of June 20, 2024, Deana Hoey denied Kenny Sharp and Dustin Duncan's positions were "Piping Engineers". *See* Dkt. No. 216, Pg. 33. Respondent falsified documents Linde [Zou] 000292-000293, in which this Court cannot find young engineers Kenny Sharp and Dustin Duncan's information. Respondent intentionally deleted Kenny Sharp and Dustin Duncan's information in the chart. *See* Dkt. No. 200, Pgs. 20-21. Respondent falsified another organization chart Linde [Zou] 002829, whose format is the same as those of Linde [Zou] 00294, and Linde [Zou] 002830. *See* Dkt. No. 208, Pgs. 38-39. Respondent falsified Respondent's organization chart Linde [Zou] 00294, Linde [Zou] 002830, and other documents Linde [Zou] 000292—000293, Linde [Zou] 002829, etc. But, Respondent's falsification on documents was covered up by the district court. The district court declined to review and re-address Respondent's falsification on documents not only in violation of 8 U.S.C. §1324 (c), which stipulates that "It is unlawful for any person or entity knowingly 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", but also in conflict with the decision of the 9th Circuit Court of Appeal, in which the Ninth Circuit expressly approved of the sanction of dismissal where the plaintiff provided false evidence. *See Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 349 (9th Cir. 1995).

D. The dismissal decision to cover up Respondent's criminal act on contempt conflicts with those of other Circuit Court of Appeals.

The district court ordered that Respondent produced documents RFP 2, 3, 4, 6, 7, 21, 26. *See* Dkt. No. 37. But, Respondent refused to produce the documents. So, Petitioner filed *"Plaintiff's Motion for Contempt"* (Dkt. No. 89) to request the Court to sanction Respondent on its contempt of the Court. But, magistrate judge Jodi F. Jayne, who is without contempt powers, usurped judicial jurisdiction to rule on *"Petitioner's Motion for Contempt"* in violation of 28 U.S. Code § 636 (e)(4), and refused to impose sanctions on Respondent's contempt not to produce documents and furthermore supported Respondent not to produce documents. *See* Dkt. No. 108. So, Petitioner requested district judge John D. Russell re-rule *"Plaintiff's Motion for Contempt"* and impose sanctions on Respondent.

However, district judge John D. Russell declined to re-address Petitioner's legal and lawful requests and knowingly misrepresented the facts that

Plaintiff's motion for contempt may be covered by protection order and magistrate judge has the jurisdiction to rule Plaintiff's motion for contempt. Respondent's contempt of the court was further covered up.

The rulings of the district court are clearly erroneous and contrary to law. The decision of the district court conflicts with the decision of the 2nd Circuit Court of Appeals. In *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1062 (2nd Cir. 1995), the 2nd Circuit Court of Appeals stated that "contempt order is warranted only where the moving party establishes by clear and convincing evidence that the alleged contemnor violated the district court's edict". In this case, the evidence is clear and convincing.

(1) the order the Respondent failed to comply with is clear and unambiguous. *See* Dkt. No. 37.
(2) the proof of the noncompliance is clear and convincing. *See* Dkt. No. 89.
(3) Respondent has refused to produce the documents.

The U.S. Supreme Court has also explained that civil contempt sanctions "may be imposed in an ordinary civil proceeding upon notice and opportunity to be heard."

However, the district Court not only refused to sanction on Respondent's contempt of the court but also awarded Respondent not to produce the documents which are relevant to the discrimination case and previously ordered to produce by magistrate judge herself. In contrast, Petitioner was sanctioned to be prohibited from filing motion for contempt. *See*

Dkt. No. 108.

Overall, Respondent not only falsified documents but also committed perjuries, and was in contempt of the court. It should have been enough for district judge John D. Russell to enter a judgment against Respondent due to its perjuries, falsification on documents and contempt of the Court, and refusal to produce documents.

However, district judge John D. Russell declined to re-rule and re-address the factual evidence to cover up Respondent's criminal acts in the proceedings. It is clearly erroneous and contrary to law for district judge to decline to revisit and re-address the clear errors.

A court may revise an interlocutory order under the same circumstances in which it may depart from the law of the case. *See Carlson v. Bos. Sci. Corp.*, 856 F.3d 320 (4th Cir. 2017). A district court may revisit its prior interlocutory ruling without applying the three circumstances generally warranting departure from the prior ruling: "(1) new and different evidence; (2) intervening controlling authority; or (3) a clearly erroneous prior decision which would work a manifest injustice." *Rimbert v. Eli Lilly & Co.*, 647 F.3d 1247, 1251 (10th Cir. 2011).

The appeal from the district court order may materially advance the ultimate termination of the litigation due to Respondent's criminal acts on perjury, falsification on documents and contempt of the court. So, it is very necessary for this Court to grant the writ of Certiorari.

VI. CONCLUSION

The dismissal decision of the 10th Circuit of Appeals is extremely erroneous and harms the federal judicial system. The dismissal decision entirely deprived of Petitioner's Constitutional rights for appeal and to discovery and covered up Respondent's criminal acts. The dismissal decision conflicts with the decisions of not only this Court but also other Circuit Courts of Appeals. The appeal from the district court order may materially advance the ultimate termination of the litigation due to Respondent's criminal acts. The Petition for Writ of Certiorari should be granted by this Court.

Respectfully submitted,

Date: November 25, 2024