

Case No. 07-74701

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONGXIAO YUE,

Petitioner,

v.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

Respondent.

Real Parties in Interest: Storage Technology Corporation, Sun Microsystems,
Inc., EMC Corporation, Darden Restaurants Inc., IBM Corporation.,
defendants; Netbula, LLC, plaintiff.

**MOTION FOR DETAILED OPINION ON ORDER DENYING
PETITION FOR WRIT OF MANDAMUS**

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Unrepresented

ARGUMENT

In his Petition for Writ of Mandamus, Yue raised the following issues:

1. Whether district court judge's "cease and desist" order which prohibits Petitioner from filing anything is proper;
2. Whether a party can use a "motion for administrative relief" to seek to vacate a properly scheduled hearing of a motion for injunctive relief;
3. Whether it is proper for the district judge to issue an *ex parte* order which grants SUN defendants' "administrative" motion to vacate the hearing of Petitioner's motion for injunctive relief;
4. Whether it is proper for the district judge to permit SUN defendants to use confidential documents in another case, including Petitioner's source code, while refuse to hear Petitioner's timely filed opposition and prohibit Petitioner to speak in the court;
5. Whether Judge Jenkins' judicial actions evince bias that requires the case to be reassigned to another judge.

These issues were about Yue's constitutionally protected due process rights. For instance, the first question Yue asks is very basic and fundamental: Under what laws of the United States that Yue's access to courts may be denied?

Yue and Real Parties in Interest -- SUN, EMC, DARDEN -- filed many pages of arguments. The panel's order, in its entirety, was the following:

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. See *Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

However, Yue applied the five factors in *Bauman* in his Petition. See *Bauman v. United States Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977).

Specifically, Yue argued on each of the following *Bauman* factors (section titles in his Petition):

1. Petitioner has no other adequate means to attain the relief. Petition for Writ of Mandamus at p.9.
2. Petitioner will be irreparably harmed and prejudiced if mandamus relief is not granted. *Id.* at p.9.
3. The trial court's orders are clearly erroneous as a matter of law. *Id.* at p.11.
4. The trial court's orders manifested a persistent disregard of federal rules. *Id.* at p.11.
5. The trial court's orders raise new and important problems. *Id.* p.12.

CONCLUSION

Citing *Bauman*, the Court denied Yue's Petition for Writ of Mandamus. Since Yue did apply the five factors in *Bauman* in his Petition, he respectfully requests the Court to issue a reasoned ruling why his Petition was denied, so he can meaningfully petition to the U.S. Supreme Court.

Respectfully submitted,

Date: December 13, 2007



Dongxiao Yue
Pro Se

CERTIFICATE OF SERVICE

I certify that I served the foregoing Reply Brief and supporting exhibits on the following persons on December 13, 2007:

- 1) Honorable Martin J. Jenkins, U.S. District Court Judge, Northern District of California, by delivering a true copy to the Clerk's Office, in an envelope addressed to Judge Jenkins;
- 2) The real parties in interest, by emailing a true copy in PDF format to their attorneys of record, Mr. Laurence Pulgram, Mr. Jedediah Wakefield, Mr. Albert Sieber, Mr. David Eiseman, Ms. Vonnah M. Brillet, in accordance with an agreement on service by email.



Dongxiao Yue