

In The
SUPREME COURT OF THE UNITED STATES
October Term 2019

Michael Anthony Thibodeaux,
Applicant/Petitioner,

v.

Drew Evans, Superintendent, Minnesota
Bureau of Criminal Apprehension,
Respondent.

**Application for an Extension of Time File a Petition
for a Writ of Certiorari to the
Supreme Court of the State of Minnesota**

**APPLICATION TO THE HONORABLE JUSTICE
NEIL GORSUCH AS CIRCUIT JUSTICE**

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APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Michael Anthony Thibodeaux, through his attorney, hereby requests a 45-day extension of time within which to file a petition for a writ of certiorari up to and including November 8, 2019.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Thibodeaux v. Evans*, 926 N.W.2d 602 (Minn. Ct. App. 2019) (attached as Exhibit 1). The Supreme Court of the State of Minnesota denied Applicant's petition for review on June 26, 2019 (attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court. A petition for a writ of certiorari was due to be filed on September 24, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 45-day extension of time within which to file a petition for a writ of certiorari in this case, up to and including November 8, 2019.

Background

This is a civil action in which Mr. Thibodeaux challenged the Minnesota Bureau of Criminal Apprehension's (BCA) requirement that he register as a predatory offender, despite Mr. Thibodeaux never having been convicted of an offense which would require him to register and his plea agreement that specifically provided that he would not have to register as a predatory offender.

Mr. Thibodeaux filed the instant suit against respondent Drew Evans, the

Superintendent of the Bureau of Criminal Apprehension, the agency that is responsible for registration in Minnesota. Mr. Thibodeaux argued that Evans violated his due-process rights by requiring him to register as a predatory offender, and that Evans was estopped from requiring his registration based on the 1997 plea agreement. Both parties moved for summary judgement, which the district court granted to Evans.

Mr. Thibodeaux then appealed the grant of summary judgement to the Minnesota Court of Appeals on April 1, 2019. The Minnesota Court of Appeals affirmed the district court's grant of summary judgment on April 1, 2019 (Exhibit 1). Mr. Thibodeaux filed a petition for review with the Minnesota Supreme Court; the Minnesota Supreme Court denied his petition for review on June 26, 2019 (Exhibit 2).

Argument

Mr. Thibodeaux respectfully asks Justice Gorsuch, as Circuit Justice for the Eighth Circuit, to extend the time for Thibodeaux to file a petition for writ of certiorari. Mr. Thibodeaux requests that the deadline be extended by forty-five days, so that the new deadline would be Friday, November 8, 2019. To establish good cause for his request, Mr. Thibodeaux makes the following arguments in favor of extending the deadline.

First, Mr. Thibodeaux is being represented by the Legal Assistance to Minnesota Prisoners (LAMP) Clinic. The LAMP clinic is operated with the Mitchell Hamline School of Law, and participating student attorneys represent incarcerated clients under the supervision of Professor Bradford Colbert.

Mr. Thibodeaux was represented by one student attorney during his trial at the district court, and then another student attorney during his appeal. Since his appeal, the student attorneys who formerly worked on Mr. Thibodeaux's case are no longer in the LAMP Clinic. Mr. Thibodeaux will be represented by a third student attorney for the

purposes of this petition, but this representation commenced only within this semester.

Second, LAMP is currently the only legal service entity which represents incarcerated persons in the state of Minnesota. LAMP strives to represent as many clients as it is able, and serves over 100 clients each year. Given its caseload, LAMP cannot devote time solely to this case.

Third, this case touches upon an issue over which various state courts and federal circuits have split. Most courts agree that once a defendant is convicted of a predatory offense, that defendant can be required to register as a predatory or sexual offender with no further process.

However, this case involves the predatory registration of a person who was not convicted of a predatory offense and courts across the country have reached different conclusions whether further process is required. *Compare Gunderson v. Hvass*, 339 F.3d (8th Cir. 2003); *Boutin v. LaFluer*, 591 N.W.2d 711 (Minn. 1999) with *Meza v. Livingston*, 607 F.3d 392 (5th Cir. 2010); *Williams v. Ballard*, 466 F.3d 330 (5th Cir. 2006); *Doe v. Dep't of Public Safety*, 444 P.3d 116 (Alaska 2019); *Doe v. Sex Offender Registry Bd.*, 882 N.E.2d 298 (Mass. 2008). *See also* Marissa Ceglian, *Predators or Prey: Mandatory Listing of Non-Predatory Offenders on Predatory Offender Registries*, 12 J. L. Pol'y 843 (2004). The question of what process a person who has not been convicted of a sex offense and yet is being required to register as a sex offender is due is yet unresolved, and courts around the country could benefit from clarification.

Conclusion

For those reasons, Mr. Thibodeaux respectfully asks Justice Gorsuch, as Circuit Justice for the Eighth Circuit, to extend the time for Thibodeaux to file a petition for writ of certiorari. Mr. Thibodeaux requests that the deadline be extended by forty-five days, so that the new deadline would be Friday, November 8, 2019.

Dated: September 12, 2019

Respectfully submitted,

LEGAL ASSISTANCE TO
MINNESOTA PRISONERS

/s/ Bradford Colbert

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No. 18A-_____

In the Supreme Court of the United States

MICHAEL ANTHONY THIBODEAUX,

PETITIONER

v.

DREW EVANS, SUPERINTENDENT

OF THE BUREAU OF CRIMINAL APPRHENSION,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that on September 12, 2019, at the time of express delivery to this Court, I served the foregoing Application, pursuant to Rules 29.3 and 29.4(a), on counsel for the respondent, by depositing a copy of the same, first class postage prepaid, in the United States mails, addressed to:

Angela Helseth Kiese
Assistant Attorney General
445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101

As a result, all parties required to be served have been served.

Dated: September 12, 2019

/s/ Bradford Colbert

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