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IN THE  
SUPREME COURT OF THE UNITED STATES  
No. 20-7390

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EMEM UFOT UDOH,

*Petitioner,*

**vs.**

NATE KNUTSON, *Warden, Moose Lake,*

*Respondent.*

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ON PETITION FOR REHEARING  
TO REVIEW THE APRIL 05, 2021 ORDER  
ENTERED BY THE CLERK

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**PETITION FOR REHEARING**

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## QUESTIONS PRESENTED FOR REHEARING

Undisputed facts show the presence of COVID-19 virus in Nigeria with more than 117,000 positive cases and 1485 deaths. Undisputed facts also show that President Joseph R. Biden satisfied one of his campaigned promises of the 2020 election by issuing an executive order on January 20 - 22, 2021 that bans deportation or removability. See *Executive Order No. [\_\_], [\_\_] Fed. Reg. [\_\_]* (January 22, 2020) entitled “[\_\_\_\_\_]”. These are the intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented in this case. Thus, the main question presented for rehearing is:

1. Whether The January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability And The Presence Of COVID-19 Virus In Nigeria Constitutes Exceptional, Intervening And/Or Changed Circumstances Or Grounds That Would Warrant Rehearing Of This Proceeding?

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

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Petitioner, Emem Ufot Udo, respectfully petition for a rehearing to review the April 05, 2021 order entered by the clerk due the intervening circumstances of a substantial or controlling effect of the undisputed facts that shows the presence of COVID-19 virus in Nigeria with more than 117,000 positive cases and 1485 deaths; and in light of the undisputed facts, that clearly show that President Joseph R. Biden satisfied one of his campaigned promises of the 2020 election by issuing an executive order on January 20 - 22, 2021 that bans deportation or removability. See *Executive Order No. [ ] , [ ] Fed. Reg. [ ] (January 22, 2020) entitled [“ ”].* These are the other substantial grounds or circumstances not previously presented in this case.

**STATEMENT OF JURISDICTION**

Petitioner filed a Motion to reopen the order entered *In-Absentia* on April 19, 2019. The Board of Immigration Appeal for the United States Department of Justice affirmed the denial Petitioner's motion on June 24, 2020. The Eighth Circuit Court of Appeals entered its judgment

on October 27, 2020, and denied Petitioner's petition for Rehearing on December 04, 2020. See USCA8 No. 20-3033 and 20-2949, and *Appendix*.

On April 05, 2021, this Court denied certiorari in an order entered by the Clerk. See *Appendix* at 1. This Court's jurisdiction is invoked under Rule 44 of the Supreme Court Rules, for Rehearing.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Relevant statutory and constitutional provisions involved in this case are as follows:

The Fifth Amendment provides in relevant part:

"No person shall be held to answer for a capital, or otherwise infamous crime, ... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; ... nor be deprived of life, liberty, or property without due process of law ... ."

The Fourteenth Amendment of the Constitution provides in relevant part:

"No State shall ... 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."

### **STATEMENT OF THE CASE AND FACTS IN SUPPORT FOR REHEARING**

This court should "find that [Petitioner] has satisfied these conditions for rehearing. The proffered evidence include[s] the January 20 – 22, 2021 executive order of President Joseph R. Biden that bans deportation or removability, articles [from Google, articles published by the Human Rights Defense Center (Prison Legal News), and a Kite from the Rush City Librarian under Judicial Notice of Changed Country Conditions In Light of The Presence of Coronavirus (COVID-19) Pandemic In Nigeria] discussing [the] increasing [presence of COVID-19 pandemic in Nigeria]:

In this Rule 44 Certification Of Mr. Emem Ufot Udo, Mr. Udo swear and avers that he has a well-founded fear of severe illness and death if he were returned to Nigeria. Mr. Udo's life and freedom would be threatened by the unprecedented and dangerous risk of death brought on by a global Coronavirus (COVID-19) pandemic in Nigeria due to his age and underlying or pre-existing conditions.

The circumstances in Nigeria have changed due to the COVID-19 epidemic in that country. Public data and information clearly shows that there are more than 117,000 number of positive COVID-19 cases in Nigeria, and more the 1,485 number of COVID-19 related deaths in Nigeria as of April 12, 2021.

This new evidence of COVID-19 status in Nigeria is material evidence that was unavailable at the time of the *in-absentia* removal hearing in April 17, 2019, motion to rescind the *in-absentia* order in June/July 2019, and during his appeal to the Board (BIA) in September 2019 through June 24, 2020.

If Mr. Udoth returns to Nigeria, he will be unable to procure the medication used to control the Coronavirus and he would face a death sentence. Mr. Udoth's freedom would be threatened upon return to Nigeria on account of the presence of COVID-19 in Nigeria, and for the fact that it is unknown when the Coronavirus (COVID-19) vaccination could be available in Nigeria according to *Reuters*.

Mr. Udoth did not present this new evidence to the immigration court or to the Board because he only learned of the COVID-19 status in Nigeria two weeks after he filed his Reply Brief on December 18, 2020, and Mr. Udoth had not yet considered the long-term effect of having a life-threatening disease. Mr. Udoth recently learned of the COVID-19 state in Nigeria on January 5, 2021 from the MCF – Rush City Librarian.

Mr. Udoth avers that there are various public report regarding the COVID-19 epidemic in Nigeria and the Nigerian government failure to manage the problem to date. Mr. Udoth notes that there are no treatment centers in Nigeria for COVID-19. Mr. Udoth is not aware of any and there are no known information regarding the type of vaccinations or treatments available in Nigeria for COVID-19. If Mr. Udoth is retuned to Nigeria, Mr. Udoth would have no access to medication for COVID-19 at any medical facilities in Nigeria.

Mr. Udoth also avers that he suffers from other serious health and medical problems, including asthma, high blood pressure and fluids in his lungs, that has all resulted in Mr. Udoth's breathing problems. See the copy of Medical Evidence or Report filed on September 14, 2020 in this court's record from Hennepin County Medical Center. See also *Udoth v. Knutson*, Civil No. 19-CV-1311 (MJD/HB), Docket No. 87 at 1 - 7 filed on August 7, 2020.

Mr. Udoth avers that he is eligible for asylum and cancellation of removal reliefs by virtue of his continuous residence in the United States for more ten years. Mr. Udoth avers that removal would result in an extreme hardship and danger to Mr. Udoth's life, to Mr. Udoth's wife (Tonya Udoth), and to Mr. Udoth's children (Carson and Cayden Udoth) given the presence of the global COVID-19 pandemic in Nigeria.

Mr. Udoh avers that he is eligible for voluntary departure relief. Mr. Udoh avers that he is eligible For A Request for A Hearing on A Decision In Naturalization Proceeding Under Section 336 With Form N-336. Mr. Udoh avers that he is eligible For A Notice Of Appeal To The Board From A Decision Of A DHS Officer With Form EOIR-29. Mr. Udoh avers that he is eligible for An Application for Naturalization With Form N-400. Mr. Udoh avers that the January 20 – 22, 2021 executive order of President Joseph R. Biden bans deportation or removability.

**A. Petitioner's Petition For Review Of The June 24, 2020 Board's Decision And Pending Appeals In Federal Courts.**

Substantive allegations are set forth in *Udoh v. Garland*, Supreme Court Case No. 20-7565 for brevity purposes. The Department of Justice *Administrative Record* was filed in the Eighth Circuit Court of Appeal Case No. 20-2389 on August 28, 2020.

**B. The January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability.**

Undisputed facts show that President Joseph R. Biden satisfied one of his campaigned promise of the 2020 election by issuing an executive order on January 20 - 22, 2021 that bans deportation or removability. See *Executive Order* No. [\_\_], [\_\_] Fed. Reg. [\_\_] (January 22, 2021) entitled [“\_\_\_\_\_”]. Fed. R. Evid. 201. The executive order of President Joe Biden, issued by President Joseph R. Biden as a restraining order or ban on deportation, admirably constitutes *newly discovered evidence* or *new evidence* on this appeal. The executive order of President Joe Biden involves a material change in fact, information or law, as it relates to removability, and this executive order is applicable to all aliens. This executive order merits remanding this case to the Board or Immigration judge, on the ground that the decision of President Joe Biden occurred between January 20, 2021 and January 22, 2021, couple of days after he assumed office on January 20, 2021.

The substantial evidence of the executive order of President Joe Biden indicates a *material change in circumstances* that has vitiated all grounds of removability to all aliens because the

executive order puts a pause or ban on removability or deportation. This executive order is a *public accessible* decision, and was obtained after the date of the immigration judge's or Board's decision in this case. This executive order of President Joe Biden is an intervening order of a final regulation that serves as an *independent* basis for remand. The executive order of President Joe Biden is a new material factor pertinent to the issues of this case, and the provisions of the executive order in its applicability to this case involves a substantial issue of first impression in this court. These underlying circumstances makes this case of general public interest. Thus, there is an *exigent* need to establish a precedent, either in this appellate court or within the Board pursuant to the wisdom of *Feleke v. INS*, 118 F.3d 594, 599 – 600 (8<sup>th</sup> Cir. 1997), in properly construing the meaning of the new executive order promulgated by President Joe Biden that expressly bans deportation or removability, and the new law in *Session v. Dimaya*, affirming the Ninth Circuit holding that 18 U.S.C. §16(b), as incorporated in the Immigration and Nationality Act, is unconstitutional vague. 200 L. Ed 2d 549, 138 S Ct. 1204.

Therefore, under the extraordinary circumstances created by the executive order of President Joe Biden and the Supreme decision in *Session v. Dimaya*, 200 L. Ed 2d 549, 138 S Ct. 1204 (2018), remand should favor a proper interpretation, and administration of justice to the Board's, the Attorney General, and Petitioner's on the implementation of the January 20 - 22, 2021 executive order of President Joseph R. Biden. Petitioner's decision to remove will harm Petitioners' with U.S. citizen children by depriving them of their liberty interest in family integrity. The right not to be separated from one's immediate family is well-established. See *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)(holding that plaintiff's right to rejoin her immediate family is a right that ranks high among the interests of the individual).

**C. FORM N-336: Petitioner's Eligibility For A Request For A Hearing On A Decision In Naturalization Proceeding Under Section 336.**

Substantive allegations are set forth in the *Administrative Record* in *Udoh v. Garland*, Eighth Circuit USCA8 Case No. 20-2389 for brevity purposes.

**D. FORM EOIR-29: Petitioner's Eligibility For A Notice Of Appeal To The Board From A Decision Of A DHS Officer.**

Substantive allegations are set forth in the *Administrative Record* in *Udoh v. Garland*, Eighth Circuit USCA8 Case No. 20-2389 for brevity purposes.

**E. FORM N-400: Petitioner's Eligibility For An Application For Naturalization.**

Substantive allegations are set forth in the *Administrative Record* in *Udoh v. Garland*, Eighth Circuit USCA8 Case No. 20-2389 for brevity purposes.

**REASONS FOR GRANTING THE PETITION FOR REHEARING IN LIGHT OF THE JANUARY 20 - 22, 2021 EXECUTIVE ORDER OF PRESIDENT JOSEPH R. BIDEN THAT BANS DEPORTATION OR REMOVABILITY AND THE PRESENCE OF COVID-19 VIRUS IN NIGERIA THAT CONSTITUTES EXCEPTIONAL, INTERVENING AND/OR CHANGED CIRCUMSTANCES OR GROUNDS THAT WOULD WARRANT REHEARING OF THIS PROCEEDING**

Appellant notes that this court has charitably construed an Appellant's argument on appeal under the reasoning applied in *United States v. Destefano*, 178 Fed. Appx. 613, 615 n.4 (8th Cir. 2006). Appellant respectfully ask this court to liberally construe his arguments. With regards to all issues and claims, Appellant argues under the reasoning applied in *Wever v. Lincoln County*, 388 F.3d 601 (8th Cir. 2004) that this court "consider a newly raised argument [or issues]" for the first time on appeal. See *Wever*; *Winegar v. Des Moines Indep. Com. Sch. Dist.*, 20 F.3d 895, 899 n.2 (8th Cir. 1994). Appellant respectfully ask this court to consider all claims or issues raised because the claims or issues were "[t]hough not artfully pleaded" in the petitions but these claims and arguments are purely legal, requires no additional factual developments, and manifest injustice would result if these arguments are not considered for appellate review.

Pursuant to *Diaz v. Lynch*, 824 F.3d 758, 760 – 61 (8<sup>th</sup> Cir. 2016), the Eighth Circuit Court of Appeals held that “[Petitioner] motion to reopen [to apply for asylum] is thus time-barred, unless he demonstrates his application for asylum is “based on changed country conditions. ...” See §1229a(c)(7)(c)(i),(ii). Evidence of the changed conditions must not have been available or discoverable at the time of the [2019] hearing. See §1229a(c)(7)(c)(ii).” This Court’s jurisdiction is invoked under 8 C.F.R. §3.2(c)(1994), because of the changed circumstances in Nigeria as required by 8 C.F.R. §1003.2(c)(3)(ii).

Pursuant to *Feleke v. INS*, 118 F.3d 594, 599 – 600 (8<sup>th</sup> Cir. 1997), Petitioner respectfully motion for leave to adduce additional evidence and “seeks to supplement the record with additional evidence that was no considered by the Board. *Id.* Although we are not to take evidence, we may remand to the Board to consider newly discovered evidence and to create an adequate record. 28 U.S.C. §2347(c); *Makonnen*, 44 F.2d at 1385. Any additional evidence sought to be adduced must be material and reasonable grounds must be shown for the initial failure to adduce such evidence to the agency. *Id.*” *Feleke*, *Id* at 599.

The most significant document are *the* January 20 – 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability and two [articles dated May 2020 and June 2020, and a kite Response dated January 5, 2021, from the Library at MCF-Rush City], an administrator of [MCF-Rush City Library], outlining [the current state of COVID-19 Pandemic in Nigeria] and [Petitioner’s Rule 44 Certification Of Mr. Emem Ufot Udoh] expressing a belief that [he] would be subject to [a great and unforeseen risk of severe illness or death brought on by a global pandemic], on his return to [Nigeria]. This court should “believe that consideration of this evidence is crucial to the development of an adequate record in this case. Accordingly, we remand to the Board pursuant to 28 U.S.C. §2347(c). See *Makonnen*, 44 F.3d AT 1385.” *Feleke*, *Id* at 599.

In this motion, Petitioner seeks to adduce evidence on the issue of his eligibility for cancellation of removal, voluntary departure under §1229c(b)(See *Dada v., Mukasey*, 554 U.S. 1, \*6 (2008)) because while his appeal in this court and in state court (A20-0633) has been pending, he has became eligible, by virtue of continuous residence in the United States for more than ten years. See IIRIRA; 8 U.S.C. §1254(a)(1)(Supp. 1996); 8 U.S.C. §1229b(b)(1)(A)(Supp. 1997); 8 U.S.C. §1229b(d)(1)(Supp. 1997). Therefore, under, the reasoning and remedy applied in *Feleke v. INS*, *Id* at 600, this matter, including whether and to what extent IIRIRA is applicable to Mr. Udo, is for the Board to consider in the first instance. *Id.*

Petitioner ask this court to include an Rule 44 Certification Of Mr. Emem Ufot Udo or declaration as newly discovered evidence of the January 20 – 22, 2021 executive order of President Joseph R. Biden that bans deportation or removability and “changed country conditions” or as new evidence of such particularized and worsening conditions in Nigeria under Judicial Notice of the recent public data, evidence, report, and information regarding the presence of COVID-19 virus in Nigeria. This court, as well as other circuits used 28 U.S.C. §2347(c) to invoke discretionary authority to remand immigration cases in which 8 U.S.C. 1105a(a)(4) applied, so that new, non-record evidence could be admitted on appeal and remanded for consideration by the Board. See e.g., *Makonnen v. INS*, 44 F.3d 1378, 1384 -86 (8<sup>th</sup> Cir. 1995). Pursuant to *Diaz v. Lynch*, 824 F.3d 758, 760 – 61 (8<sup>th</sup> Cir. 2016), this court held that “[Diaz] motion to reopen [to apply for asylum] is thus time-barred, unless he demonstrates his application for asylum is “based on changed country conditions. ...” See §1229a(c)(7)(c)(i),(ii). Evidence of the changed conditions must not have been available or discoverable at the time of the [2019] hearing. See §1229a(c)(7)(c)(ii).”

Petitioner claims that he recently learned of the January 20 – 22, 2021 executive order of President Joseph R. Biden that bans deportation or removability and the changed conditions in

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Nigeria due the presence of the coronavirus (Covid-19) pandemic in Nigeria. This fact demonstrates a change in conditions in Nigeria between the *in-absentia* 2019 hearing and his current petition for review of the June 24, 2020 order denying the motion to reopen. See *Zheng v. Mukasey*, 523 F.3d 893, 896 (8<sup>th</sup> Cir. 2008). Thus, remand is merited in this case, so that the BIA can consider the motion to reopen the in-absentia order of removal on the basis of new and material evidence relating to Petitioner's potential eligibility to apply for voluntary departure under §1229c(b), asylum and/or withholding of removal under 8 U.S.C. §§§1101, 1158, and 1231, or to raise these new issues before the immigration judge ("IJ"). *Bracic v. Holder*, 603 F.3d 1027 (8<sup>TH</sup> Cir. 2010)(remanded the matter to the IJ for a for determination of whether the alien was entitled to a discretionary grant of [voluntary departure,] asylum and/or withholding of removal in light of all the evidence on the record); *Id* at 1032(a court reviews an alien due process challenge *denovo*, as the question of whether an immigration hearing violates due process is a pure legal issue); *Id* at 1033.

Petitioner failure to file a brief at the BIA was due to the lack of access to the prison law library due to Coronavirus pandemic in light of *Flittie v. Solem*, 827 F.2d 276, 280 (8<sup>th</sup> Cir. 1987)(meaningfully access to court would require at least 3 days per week at the Prison law library under restricted status); *Bound v. Smith*, 430 U.S. 817 (1977) (prisoner's right of access to court). The Board of Immigration Appeals should have granted Petitioner's request for an extension of time for lack of access to the Prison Law Library and to obtain the record and transcripts of the immigration hearings to meaningfully, adequately and fairly present his case at the Board of Immigration Appeal, in light of *Bound v. Smith*, 430 U.S. 817 (1977) (prisoner's right of access to court) ; *Hebbe v. Pliler*, 627 F.3d 338, 342 – 43 (9<sup>th</sup> Cir. 2010)(possible constitutional violation when prisoner denied access to prison library, preventing him from filing a brief in appeal of the

[government's order]) reasoning; *Skinner v. Switzer*, 131 S. Ct. 1289, 1293 – 94 (2011)(held prisoner's Fourteenth Amendment right of access to evidence to undergo a civil proceeding or testing in [government] or federal court); *Kennedy v. Lockyer*, 379 F.3d 1041, 1054 (9<sup>th</sup> Cir. 2004) (held that failure to provide Defendant with a complete transcript of prior proceedings had a "substantial and injurious effect on the jury verdict"); *Britt v. North Carolina*, 404 U.S. 226, 227 (1971) (the agency must provide an indigent defendant with a transcript when that transcript is needed for an effective defense or appeal); *United States v. MacCollom*, 426 U.S. 317, 320 – 21 (1976)(same); *State v. Beecroft*, 813 N.W.2d 814, 842 (Minn. 2012)(recognized that a "meaningful access to justice and the due process right to present a complete defense encompass a right to the basic tools of an adequate defense"). This implicates [Petitioner's] right of access to court under *Bounds v. Smith*.

The constitution guarantees prisoners the right to a meaningful access to the courts. *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (Prisoner have fundamental constitutional right to *adequate, effective and meaningful access to court to challenge violations of constitutional rights*); *Kristian v. Dep't of Corr.*, 541 N.W.2d 623, 628 (Minn. Ct. App. 1996)(prison inmate have a constitutional right to access to the court that derives from the due process). Thus under *Bounds v. Smith*, Petitioner has a right to the adjudication of his [immigration or removal] appeal. As such, not reopening the removal proceeding will unreasonably interfere with Petitioner's due process and fundamental right to access to court under *Bounds v. Smith*; *Kristian v. Dep't of Corr* and under *Marbury v. Madison* holding, *ld* at 137, where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded. *ld. Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (to establish an unconstitutional denial of access to the courts, a prisoner must show a *lost opportunity to pursue a non-frivolous claim*).

Remand should apply to this case when the prison “restrictions” or regulation due to COVID-19 is a “systematic denial” of the right of access constituting such a “fundamental deprivation that it is an injury in itself.” *Blaise v. Fenn*, 48 F.3d 337, 340 (8<sup>th</sup> Cir. 1995)(quoting *Hershberger v. Scaletta*, 33 F.3d 955, 956 (8<sup>th</sup> Cir. 1994). The “restrictions” in this case, does rise to the level of a systematic deprivation, and therefore Petitioner respectfully move this court for A Leave to Reopen under these circumstances. See *State v. Udo*h, Case No. A19-1129 (Minn. December 9, 2020) Order from the Chief Justice of the Minnesota Supreme Court noting that “Petitioner’s motion includes information on restrictions imposed by the Department of Corrections during the pandemic.” There is no statutory provision for the reopening of a removal proceeding, and the regulations do not specify the condition under which a motion to reopen must be granted. *Khalaj v. Cole*, 46 G..3d 828, 833 (8<sup>th</sup> Cir 1995)(citing *INS v. Doherty*, 502 U.S. 314, 321 -23 (1992)). The applicable regulation indicates that a motion to reopen for additional evidence must state new and material facts that were not available and could not have been discovered or presented at the prior hearing. 8 C.F.R. §3.2(c)(1994), such as the changed circumstances in Nigeria as required by 8 C.F.R. §1003.2(c)(3)(ii).

Remand is merited in this case because the BIA or IJ does not know and has not appreciated the seriousness of the January 20 – 22, 2021 executive order of President Joseph R. Biden that bans deportation or removability and these changed country conditions due the presence of COVID-19 in Nigeria, that both federal and state courts in:

*United States v. Michaels*, 8:16-CR-76-JVS (C.D. Cal. March 26, 2020); *United States v. Colvin*, No. 3:19-CR-179-JBA, 2020 WL 1613943 (D. Conn. April 2, 2020); *United States v. Jepsen*, No. 3:19-CV-00073-VLB, 2020 WL 1640232 (D. Conn. April 1, 2020); *Hartford Courant* (March 24, 2020); *In Re: Court Operations Under The Exigent Circumstances Created By COVID-19* (D. Conn. April 7, 2020); *United States v. Powell*, No. 1:94-CR-316-ESH (D.D.C. March 28, 2020); *United States v. Meekins*, No. 1:18-CR-222-APM (D.D.C. March 31, 2020); *United States v. Jaffee*, No. 19-CR-88-

RDM (D.D.C. March 26, 2020); *United States v. Mclean*, No. 19-CR-380 (D.D.C. March 28, 2020); *United States v. Harris*, No. 1:19-CR-356-RDM (D.D.C. March 26, 2020); *United States v. Tovar*, No. 19-CR-341-DCN, Dkt. No. 42 (D. Idaho April 2, 2020); *United States v. Davis*, No. 1:20-CR-9-ELH, 2020 WL 1529158 (D. Md. March 30, 2020); *United States v. Underwood*, No. 8:18-CR-201-TDC (D. Md. March 31, 2020); *United States v. Barkma*, No. 19-CR-0052 (RCJ-WGC), 2020 U.S. Dist. LEXIS 45628 (D. Nev. March 17, 2020); *United States v. Claudio-Montes*, No. 3:10-CR-212-JAG-MDM, Docket No. 3374 (D.P.R. April 1, 2020); *United States v. Copeland*, No. 2:05-CR-135-DCN at 7 (D.S.C. March 24, 2020); *United States v. Hakim*, No. 4:05-CR-40025-LLP (D.S.D. April 6, 2020); *United States v. Kennedy*, 18-CR-20315 (JEL) (E.D. Mich. March 27, 2020); *United States v. Marin*, No. 15-CR-252, Dkt. No. 1326 (E.D.N.Y. March 30, 2020); *United States v. Foster*, No. 1:14-CR-324-02, Dkt. No. 191 (M.D. Pa. April 3, 2020); *United States v. Garlock*, No. 18-CR-00418-VC-1, 2020 WL 1439980 (N.D. Cal. March 25, 2020); *In the Matter of The Extradition of Alejandro Toledo Manrique*, No. 19-MJ-71055-MAG, 2020 WL 1307109 (N.D. Cal. March 19, 2020); *United States v. Bolston*, No. 1:18-CR-382-MLB (N.D. Ga. March 30, 2020); *Mays v. Dart*, No. 20 C 2134 (April 7, 2020); *United States v. Hernandez*, No. 18-CR-20474 (S.D. Fla. April 2, 2020); *United States v. Grobman*, No. 18-CR-20989 (S.D. Fla. March 29, 2020); Amended Order, *United States v. Perez*, No. 19-CR-297-PAE, at 1 (S.D.N.Y. March 19, 2020); *United States v. Resnik*, No. 14-CR-910-CM, 2020 WL 1651508 (S.D.N.Y. April 2, 2020); *United States v. Stephens*, No. 15-CR-95-AJN, 2020 WL 1295155 (S.D.N.Y. March 19, 2020); *United States v. Zukerman*, No. 1:16-CR-194-AT (S.D.N.Y. April 3, 2020); *United States v. Perez*, No. 17-CR-515-3-AT (S.D.N.Y. April 1, 2020); *United States v. Muniz*, No. 4:09-CR-199 (S. D. Tex. March 30, 2020); *United States v. Hector*, No. 2:18-CR-3-002 (W. D. Va. March 27, 2020); see also *United States v. Hector*, No. 18-CR-3 (4<sup>th</sup> Cir. March 27, 2020); *United States v. Edwards*, No. 6:17-CR-00003 (W. D. Va. April 2, 2020); *Xochichua-Jaimes v. Barr*, No. 18-CV-71460 (9<sup>th</sup> Cir. March 23, 2020); *Castillo v. Barr*, No. 20-CV-605 –TJH- AFM, at 10 (C.D. Cal. March 27, 2020); *Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. March 26, 2020); *Jovel v. Decker*, No. 12-CV-308-GBD at 2 (S.D.N.Y. March 26, 2020); *Coronel v. Decker*, No. 20-CV-2472-AJN at 10 (S.D.N.Y. March 27, 2020); *Basank v. Decker*, No. 20-CV-2518-AT at 7, 10 (S.D.N.Y. March 26, 2020); *Thakker v. Doll*, No. 20-CV-480-JEJ, at 8 (M.D. Pa. March 31, 2020); and *Karr v. Alaska*, Nos. A-13630/13639/13640 (Alaska March 24, 2020);

have held to constitutes a showing, sufficient for extraordinary or change circumstances for extraordinary reliefs, including the January 20 – 22, 2021 executive order of President Joseph R. Biden that bans deportation or removability. Remand is merited under these circumstances because the BIA or IJ has a discretionary decision in reopening the proceeding on its own motion, *sua sponte*, as permitted by 8 C.F.R. §1003.2(a) to give Petitioner a reasonable opportunity “to

apply or reapply for [voluntary departure,] asylum or withholding of [removal that is] based on changed circumstances arising in the country of nationality," 8 C.F.R. §1003.2(c)(3)(ii), which applies to this motion.

This court has repeatedly held that because an allegation of wholesale failure to consider evidence implicates due process, remand is appreciated for the BIA or IJ to review this constitutional question. See *Tun v. Gonzales*, 485 F.3d 1014, 1025 (8<sup>th</sup> Cir. 2007)(stating that the Fifth Amendment's Due Process Clause entitles an alien to fair hearing in removal proceeding where he may "fairly present evidence, offer arguments, and develop the record"); See also 8 U.S.C. §1229a(b)(1)("[t]he immigration judge shall .... receive evidence ...."). The record does support Petitioner's claim that neither the immigration judge nor the BIA had considered his new and material evidence submissions, and this lack was due to the *in-absentia* order and the BIA's failure to grant Petitioner the record and extension of time to file an opening brief due to the COVID-19 pandemic at the MCF-Rush City Facility where Petitioner is detained, does implicate Petitioner's due process argument. Remand is merited in this case because the alien had reasonably explained his failure to initially request voluntary departure, asylum, and/or withholding of removal reliefs on the basis of newly discovered evidence due to the *in-absentia* order. Remand gives Petitioner the opportunity to make a timely application for voluntary departure, or to apply for asylum and withholding of removal until his pending federal and state court cases are resolved in light of the supporting changed country conditions due to the presence of COVID-19 in Nigeria allegations and Rule 44 Certification Of Mr. Emem Ufot Udo set forth in this motion. Reversal and Remand allows Petitioner a reasonable opportunity to file the motion in the removal proceeding, seeking to present new evidence to support his claim for relief under the United Nations Convention Against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Dec. 10, 1984, 1465 U.N.T.S. 85, 23 I. L. M. 1027.

In this case, Petitioner has shown how the procedural error would have changed the outcome of the immigration removal proceeding because he has offered new evidence or advanced new issues that would have established his entitlement to asylum, voluntary departure and/ or withholding of removal. Because he has done so, Mr. Udoth has shown prejudice, to the extent, that he has established a *prima facie* case for the underlying substantive relief sought. According, just like in *Feleke*, *Id* at 599 - 600, where this court remands for consideration of two unsworn letters that were never presented to the agency and indeed were not written by the author, until after the Board of Immigration appeals decision under review pursuant to the authority of 28 U.S.C. §2347(c) and this court decision in *Makonnen*, 44 F.2d at 1385, this court should grant a similar relief in this case consistent with *Feleke*'s opinion, *Id*, to give Petitioner an opportunity to apprise the immigration judge of theses changed conditions in Nigeria because Petitioner did not know of the COVID-19 status in Nigeria at the time of his original proceedings and never failed to notify the immigration judge of theses changed conditions in 2018 through 2019 because the evidence was not previously available.

### CONCLUSION

Wherefore, Petitioner pray the court reopens this proceeding.

Dated: April 12, 2021

Respectfully Submitted,



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Emem U. Udoth, 245042  
Pro se Litigant,  
7600 525<sup>TH</sup> Street  
Rush City, MN 55069

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 33.2(b), Petitioner certifies that this Petition complies with the page limitation in that rule. According to Microsoft Word 2019, the word processing program used to produce this Petition, it contains 14 pages.

Dated: April 12, 2021

Respectfully Submitted,

Udoh

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Emem U. Udoth,  
*Pro se* Litigant, 245042  
7600 525<sup>th</sup> Street  
Rush City, MN 55069

## CERTIFICATE OF SERVICE

On April 12, 2021, Petitioner hereby certify that a copy of the following documents:

1. Motion for Leave to Proceed In Forma Pauperis On Rehearing;
2. Petition For Rehearing; and Rule 44 Certification Of Mr. Emem Udoth; and
3. Appendix.

was served upon the Clerk of the United States Supreme Court, properly addressed to Clerk's Office at One First Street North East, Washington, D.C. 20543, and on every other person required to be served by U.S. Mail as follows:

**KEITH ELLISON**  
Minnesota Attorney General  
1400 Bremer Tower, Suite 1800  
445 Minnesota Street  
St. Paul, MN 55101

**MICHAEL O. FREEMAN**  
Hennepin County Attorney  
**JONATHAN P. SCHMIDT**  
Assistant Hennepin County Attorney  
C-2000 Government Center  
300 South Sixth Street  
Minneapolis, MN 55487

Dated: April 12, 2021

Respectfully Submitted,

Udoh

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Emem U. Udoth,  
*Pro se* Litigant, 245042  
7600 525<sup>th</sup> Street  
Rush City, MN 55069

IN THE  
SUPREME COURT OF THE UNITED STATES  
No. 20-7390

EMEM UFOT UDOH,

*Petitioner,*  
vs.

NATE KNUTSON, *Warden, Moose Lake,*

*Respondent.*

**RULE 44 CERTIFICATION OF MR. EMEM UFOT UDOH**

1. In this Certification, Mr. Udooh swear and avers that he has a well-founded fear of severe illness and death if he were returned to Nigeria. Mr. Udooh's life and freedom would be threatened by the unprecedented and dangerous risk of death brought on by a global Coronavirus (COVID-19) pandemic in Nigeria due to his age and underlying or pre-existing conditions.
2. Mr. Udooh avers that this petition is presented in good faith and not for delay because the circumstances in Nigeria have changed due to the COVID-19 epidemic in that country. Public data and information clearly shows that there are more than 117, 000 number of positive COVID-19 cases in Nigeria, and more the 1, 485 number of COVID-19 related deaths in Nigeria as of April 12, 2021.
3. Mr. Udooh avers that this petition is presented in good faith and not for delay because this new evidence of COVID-19 status in Nigeria is material evidence that was unavailable at the time of the *in-absentia* removal hearing in April 17, 2019, motion to rescind the *in-absentia* order in June/July 2019, and during his appeal to the Board (BIA) in September 2019 through June 24, 2020.
4. Mr. Udooh avers that this petition is presented in good faith and not for delay because if Mr. Udooh returns to Nigeria, he will be unable to procure the medication used to control the Coronavirus and he would face a death sentence. Mr. Udooh's freedom would be threatened upon return to Nigeria on account of the presence of COVID-19 in Nigeria, and for the fact that it is unknown when the

RECEIVED  
APR 27 2021

Coronavirus (COVID-19) vaccination could be available in Nigeria according to *Reuters*.

5. Mr. Udoth avers that this petition is presented in good faith and not for delay because he did not present this new evidence to the immigration court or to the Board because he only learned of the COVID-19 status in Nigeria two weeks after he filed his Reply Brief on December 18, 2020, and Mr. Udoth had not yet considered the long-term effect of having a life-threatening disease. Mr. Udoth recently learned of the COVID-19 state in Nigeria on January 5, 2021 from the MCF – Rush City Librarian.
6. Mr. Udoth avers that this petition is presented in good faith and not for delay because there are various public report regarding the COVID-19 epidemic in Nigeria and the Nigerian government failure to manage the problem to date. Mr. Udoth notes that there are no treatment centers in Nigeria for COVID-19. Mr. Udoth is not aware of any and there are no known information regarding the type of vaccinations or treatments available in Nigeria for COVID-19. If Mr. Udoth is returned to Nigeria, Mr. Udoth would have no access to medication for COVID-19 at any medical facilities in Nigeria.
7. Mr. Udoth also avers that this petition is presented in good faith and not for delay because he suffers from other serious health and medical problems, including asthma, high blood pressure and fluids in his lungs, that has all resulted in Mr. Udoth's breathing problems. See the copy of Medical Evidence or Report filed on September 14, 2020 in this court's record from Hennepin County Medical Center. See also *Udoth v. Knutson*, Civil No. 19-CV-1311 (MJD/HB), Docket No. 87 at 1 - 7 filed on August 7, 2020.
8. Mr. Udoth avers that this petition is presented in good faith and not for delay because he is eligible for asylum and cancellation of removal reliefs by virtue of his continuous residence in the United States for more ten years. Mr. Udoth avers that removal would result in an extreme hardship and danger to Mr. Udoth's life, to Mr. Udoth's wife (Tonya Udoth), and to Mr. Udoth's children (Carson and Cayden Udoth) given the presence of the global COVID-19 pandemic in Nigeria.
9. Mr. Udoth avers that this petition is presented in good faith and not for delay because he is eligible for voluntary departure relief.
10. Mr. Udoth avers that this petition is presented in good faith and not for delay because he is eligible For A Request For A Hearing On A Decision In Naturalization Proceeding Under Section 336 With Form N-336.

11. Mr. Udoх avers that this petition is presented in *good faith* and *not for delay* because he is eligible For A Notice Of Appeal To The Board From A Decision Of A DHS Officer With Form EOIR-29.
12. Mr. Udoх avers that this petition is presented in *good faith* and *not for delay* because he is eligible for An Application For Naturalization With FORM N-400.
13. Mr. Udoх avers that this petition is presented in *good faith* and *not for delay* because the January 20 – 22, 2021 executive order of President Joseph R. Biden bans deportation or removability.

The undersigned declares under penalty of perjury that the information contained therein is true and correct. Minn. Stat. §358.116. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 12, 2021

Respectfully Submitted,

  
\_\_\_\_\_  
Emem U. Udoх, 245042  
7600 525<sup>TH</sup> Street  
Rush City, MN 55069

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IN THE  
SUPREME COURT OF THE UNITED STATES  
NO. 20-7390

---

EMEM UFOT UDOH,

*Petitioner,*

vs.

NATE KNUTSON, *Warden, Moose Lake,*  
*Respondent.*

---

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON THIS  
PETITION FOR A ~~WRIT OF CERTIORARI~~ REHEARING**

Petitioner, Emem Ufot Udoh, hereby move this court for leave to proceed in forma pauperis ("IFP") on this petition for rehearing.

Petitioner, Emem Ufot Udoh, motion for leave to proceed *in forma pauperis* on appeal was granted on October 27, 2020 by The Eighth Circuit Court of Appeals. Schiltz in *Udoh v. Knutson*, USCA8 20-3033 (8<sup>th</sup> Cir. Minn., October 27, 2020 Judgment). Petitioner, Emem Ufot Udoh, has attached an affidavit or declaration to support this motion for leave to proceed *in forma pauperis*.

Petitioner, Emem Ufot Udoh, the undersigned declare under penalty of perjury that the foregoing information contained herein is true and correct. 28 U.S.C. §1746; Minn. Stat. §358. 116.

Executed on: April 12, 2021

Respectfully Submitted,  
Udoh

Emem U. Udoh,  
*Pro se* Litigant, 245042  
7600 525<sup>th</sup> Street, Rush City, MN 55069

IN THE  
 SUPREME COURT OF THE UNITED STATES  
 NO. 20-7390

EMEM UFOT UDOH,  
*Petitioner,*  
 vs.

NATE KNUTSON, *Warden, Moose Lake,*  
*Respondent.*

**AFFIDAVIT OR DECLARATION IN SUPPORT FOR MOTION FOR LEAVE TO PROCEED IN  
 FORMA PAUPERIS ON PETITION FOR REHEARING  
 (Long Form)**

**Affidavit in Support of the Motion**

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.

Signed: Ufemien, UDOH

**Instructions**

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: April 12, 2021

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amount, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income amount during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <input type="radio"/>	\$ <input type="radio"/>	\$ <input type="radio"/>	\$ <input type="radio"/>
Self-employment	\$ <input type="radio"/>	\$ <input type="radio"/>	\$ <input type="radio"/>	\$ <input type="radio"/>
Income from real property (such as rental income)	\$ <input type="radio"/>	\$ <input type="radio"/>	\$ <input type="radio"/>	\$ <input type="radio"/>

Interest and dividends	\$ 0	\$	\$ 0	\$
Gifts	\$ 0	\$	\$ 0	\$
Alimony	\$ 0	\$	\$ 0	\$
Child support	\$ 0	\$	\$ 0	\$
Retirements (such as social security, pensions annuities, insurance)	\$ 0	\$	\$ 0	\$
Disability (such as social security, insurance payments)	\$ 0	\$	\$ 0	\$
Unemployment payments	\$ 0	\$	\$ 0	\$
Public-assistance (such as welfare)	\$ 0	\$	\$ 0	\$
Other (specify):	\$ 0	\$	\$ 0	\$
<b>Total monthly income:</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
NIA	NIA	NIA	\$ 0
NIA	NIA	NIA	\$ 0

3. List your spouse's employment history for the past two years, most recent employer first (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0  
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
NIA	NIA	\$ 0	\$
NIA	NIA	\$ 0	\$

N/A	N/A	\$ 0	\$
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5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Assets owned by you or your spouse	
Home (Value)	\$ 0
Other real estate (Value)	\$ 0
Motor vehicle #1 (Value)	\$ 0
Make and year:	
Model:	
Registration #:	
Motor vehicle #2 (Value)	N/A
Make and year:	
Model:	
Registration #:	
Other assets (Value)	\$ 0
Other assets (Value)	\$ 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ 0	\$
N/A	\$ 0	\$
N/A	\$ 0	\$

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age
C.U.	Son	8 yrs
C.U.	Son	8 yrs

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show that monthly rate.

	You	Your Spouse
Rent or home-mortgage payment ( <i>including lot rented for mobile home</i> ) Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$ 0	\$
Utilities ( <i>electricity, heating fuel, water, sewer, and telephone</i> )	\$ 10	\$
Home maintenance ( <i>repairs and upkeep</i> )	\$ 0	\$
Food	\$ 40	\$
Clothing	\$ 10	\$
Laundry and dry-cleaning	\$ 10	\$
Medical and dental expenses	\$ 10	\$
Transportation ( <i>not including motor vehicle payments</i> )	\$ 0	\$
Recreation, entertainment, newspapers, magazines, etc.		
Insurance ( <i>not deducted from wages or included in mortgage payments</i> )	N/A	
Homeowner's or renter's:	\$ 0	\$
Life:	\$ 0	\$
Health:	\$ 0	\$
Motor Vehicle:	\$ 0	\$
Other:	\$ 0	\$
Taxes ( <i>not deducted from wages or included in mortgage payments</i> ) (specify):	\$ 0	\$
Installment payments	N/A	
Motor Vehicle:	\$ 0	\$
Credit care ( <i>name</i> ):	\$ 0	\$
Department store ( <i>name</i> ):	\$ 0	\$
Other:	\$ 0	\$
Alimony, maintenance, and support paid to others	\$ 0	\$

Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$
Other (specify) <u>Legal Stationery &amp; Envelops</u>	\$ 30	\$
<b>Total monthly expenses:</b>	<b>\$ 11 00</b>	<b>\$ 0.00</b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money or services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the cost of these proceedings.

Currently incarcerated and the Eighth Circuit Court of Appeal granted IFP on appeal.

13. Identify the city and state of your legal residence.

Your daytime phone number: NIA

Your age: NIA Your years of schooling: NIA

NIA

Executed On: April 12, 2021

Respectfully Submitted,

V. Schenck

Emery U. Udoh, 245042  
7600 525th Street  
Rush City, MN 55069

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IN THE  
SUPREME COURT OF THE UNITED STATES  
No. 20-7390

---

EMEM UFOT UDOH,

*Petitioner,*

**vs.**

NATE KNUTSON, *Warden, Moose Lake,*

*Respondent.*

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APPENDIX

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	<b>Pages</b>
April 5, 2021 Order .....	1 – 1
Respondent's Waiver.....	2 – 2
Eighth Circuit Judgment.....	3 – 4
District Court Order.....	5 – 10

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

April 5, 2021

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

Mr. Emem Ufot Udoh  
Prisoner ID #245042  
7600 525th Street  
Rush City, MN 55069

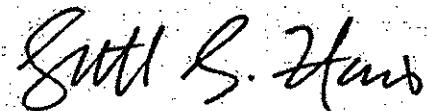
Re: Emem Ufot Udoh  
v. Nate Knutson, Warden  
No. 20-7390

Dear Mr. Udoh:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

# W A I V E R

## SUPREME COURT OF THE UNITED STATES

No. 20-7390

Emem Ufot Udo

(Petitioner)

Nate Knutson, Warden

V.

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- I am filing this waiver on behalf of all respondents.
- I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

Please check the appropriate box:

- I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature:

Jon Schmidt

Digitally signed by Jon Schmidt  
Date: 2021.03.15 10:26:30 -05'00'

Date:

3/15/21

(Type or print) Name

Jonathan P. Schmidt

Mr.

Ms.

Mrs.

Miss

Firm

Hennepin County Attorney's Office

Address

C2000 Government Center, 300 S. 6th Street

City & State

Minneapolis, Minnesota

Zip 55487

Phone

612-543-4588

Email Jon.Schmidt@hennepin.us

A copy of this form must be sent to petitioner's counsel or to petitioner if *pro se*. Please indicate below the name(s) of the recipient(s) of a copy of this form. No additional certificate of service or cover letter is required.

cc: Emem Ufot Udo, OID # 245042  
MCF - Moose Lake  
1000 Lake Shore Drive  
Moose Lake, MN 55767

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 20-2949

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Emem Ufot Udoth

Petitioner - Appellant

v.

Nate Knutson

Respondent - Appellee

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No: 20-3033

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Emem Ufot Udoth

Petitioner - Appellant

v.

Nate Knutson

Respondent - Appellee

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Appeal from U.S. District Court for the District of Minnesota  
(0:19-cv-01311-MJD)  
(0:19-cv-01311-MJD)

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**JUDGMENT**

Before SHEPHERD, KELLY, and GRASZ, Circuit Judges.

Appellant's motions to proceed on appeal in forma pauperis are granted. Case number 20-2949 is dismissed as untimely. Case number 20-3033 is summarily affirmed in accordance with Eighth Circuit Rule 47A.

October 27, 2020

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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EMEM UFOT UDOH,

Case No. 19-CV-1311 (MJD/HB)

Plaintiff,

v.

**ORDER**

NATE KNUTSON,

Defendants.

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This matter is before the Court on the application to proceed *in forma pauperis* (“IFP”) on appeal of Plaintiff Emem Udooh. *See Docket No. 86.* Although Mr. Udooh may qualify to proceed IFP, he does not have a pending appeal, so his request is moot. Additionally, the Court notes that since April of 2020, Mr. Udooh has submitted numerous letters and documents wherein he appears to seek further review of his petition. *See Docket Nos. 78-85, 87-94.* As the Court previously informed him on April 15, 2020, his case is closed and the Court has no authority to take further action. *See Docket No. 77.* Petitioner is reminded that he cannot seek any relief in this closed case. *Id.* He has now filed another Motion to Vacate this Court’s judgment (*docket no. 88*), as well as a Motion for a Certificate of Appealability from this Court’s previous orders (*docket no. 90*), a new Notice of Appeal (*docket no. 91*), and an implicit Request for Remand from the Eighth Circuit (*docket no. 94*). Both this Court and the Eighth Circuit have already considered the merits of his case. He will not be granted continual chances to make challenges within the framework of this old closed case. The Court will briefly discuss each of his new filings below.

First, as to Mr. Udoh's requests that the Court reopen or vacate the earlier proceedings and reconsider its earlier orders, the Court will not do so because Mr. Udoh has asked for reconsideration and been denied. *See* Docket Nos. 60, 67, 77. Additionally, he has already attempted to pursue appellate review with no success *See Udoh v. Knutson*, Case No. A19-3181 (8th Cir. Jan. 28, 2020). These steps of review having been completed, the case is closed and new motions to reopen are not welcome, as the Court previously explained. *See* Docket No. 77. Therefore, the Renewed Motion to Vacate Judgment and Order (docket no. 88) is hereby denied.

Second, as to Mr. Udoh's request for a certificate of appealability, there is nothing new to consider, and he has already been denied a certificate of appealability for this case by the Eighth Circuit. *See Udoh v. Knutson*, Case No. A19-3181 (8th Cir. Jan. 28, 2020). Therefore, his Motion for a Certificate of Appealability (docket no. 90) is denied. The same goes for the Notice of Appeal (docket no. 91), there is nothing to appeal from so an appeal will not be docketed.

Third, Mr. Udoh also filed a notice of a Motion for Remand (docket no. 94). It appears that he is discussing a motion for remand filed in the appeal of his immigration case from the decision by the Bureau of Immigration Appeals. *See Udoh v. William P. Barr*, Case No. 20-2389 (8th Cir. 2020). His motion for a remand has already been publicly denied by the Eighth Circuit. *See id.* (Aug. 31, 2020). This Court never had jurisdiction over that case, and it has no authority to interfere in unrelated proceedings.

Fourth, and finally, as to the numerous other letters and documents filed (docket nos. 78-85, 87, 89, 91-93) the Court will not entertain these filings because the case is

closed. Any new issues he wishes to raise with the courts must be brought through the appropriate channels. For example, the Court previously cautioned him that in order to further challenge his state court conviction he must seek permission to file a second or successive petition from the Eighth Circuit Court of Appeals. (docket no. 67). Publicly accessible records demonstrate that he has filed for second or successive leave in July of 2020, but his request has not yet been granted. *See Udoh v. Janssen*, No. 20-2391 (8th Cir. 2020). Accordingly, the Court will not take action on any of his new filings.

### ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that the application to proceed *in forma pauperis* on appeal of Petitioner Udoh (Docket No. [86]) is **DENIED AS MOOT**, his renewed motion to vacate (Docket No. [88]) is **DENIED**, his motion for a certificate of appealability (Docket No. [90]) is **DENIED**, and his implicit request to remand (Docket No. [94]) is **DENIED**.

Dated: September 14, 2020

s/ Michael J. Davis

Michael J. Davis

United States District Court

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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EMEM UFOT UDOH,

Petitioner,

v.

MEMORANDUM OF LAW & ORDER  
Civil File No. 19-1311 (MJD/HB)

NATE KNUTSON,

Respondent.

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Emem Ufot Udo, pro se.

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The above-entitled matter comes before the Court upon Petitioner Emem Ufot Udo's Motion to Vacate. [Docket No. 65]

On May 31, 2019, United States Magistrate Judge Hildy Bowbeer issued a Report and Recommendation recommending that Petitioner's Petition for Writ of Habeas Corpus be dismissed without prejudice. [Docket No. 5] With regard to Petitioner's claims challenging the validity of his state court conviction, the Report and Recommendation explained that the Court lacks jurisdiction over his successive habeas petition because Petitioner had not received authorization from the Eighth Circuit Court of Appeals to file a successive habeas petition. On

August 29, 2019, this Court adopted the Report and Recommendation, dismissed Petitioner's Petition for Writ of Habeas Corpus without prejudice, declined to issue a Certificate of Appealability, and entered judgment. [Docket No. 53] Petitioner appealed to the Eighth Circuit Court of Appeals. [Docket No. 57]

In September 2019, Petitioner filed a Motion to Reconsider [Docket No. 56] and a Letter requesting reconsideration of the Court's denial of his extension of time to file objections to the Report and Recommendation [Docket No. 55]. On September 18, 2019, this Court denied both motions. [Docket No. 60]

On January 30, 2020, Petitioner's current Motion to Vacate, signed by Petitioner on January 27, 2020, was filed in this Court. [Docket No. 65] On January 28, 2020, the Eighth Circuit denied Petitioner's application for a certificate of appealability, denied Petitioner's motion to remand, and dismissed the appeal. [Docket No. 64]

In the Motion to Vacate, Petitioner argues that he should be granted authorization to file a successive habeas and requests that the judgment of this Court be vacated and that the matter be "remand[ed] for further consideration." (Motion at 13.) As the Court explained in previous orders, only the Eighth Circuit Court of Appeals can issue an authorization to file a successive habeas

petition in this Court. This Court does not have jurisdiction to decide whether such authorization is warranted. Petitioner's current motion provides no basis for this Court to vacate its prior orders or judgment.

Accordingly, based upon the files, records, and proceedings herein, **IT IS  
HEREBY ORDERED:**

Petitioner Emem Ufot Udo's Motion to Vacate [Docket No. 65] is **DENIED.**

Dated: February 4, 2020

s/ Michael J. Davis

Michael J. Davis  
United States District Court