

20-7563

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
NO. _____

Supreme Court, U.S.
FILED
MAR 01 2021
OFFICE OF THE CLERK

EMEM UFOT UDOH,

Petitioner,
vs.

BECKY DOOLEY, *Warden, Moose Lake,*

Respondent.

ON PETITION FOR WRIT FOR CERTIORARI
TO REVIEW THE USCA8 CASE NO. 20-3473 IN
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT (0:16-CV-4174 (PAM/HB))

PETITION FOR WRIT OF CERTIORARI

KELLY O'NEILL MOLLER
Hennepin County Attorney's Office
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

EMEM U. UDOH
MCF – Rush City
7600 525TH Street
Rush City, MN 55069

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

RESPONDENT

PRO SE PETITIONER

QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE: WHETHER A FEDERAL COURT HAS THE AUTHORITY TO ISSUE AN ORDER FOR IMMEDIATE RELEASE AND/OR STAY OF EXECUTION OF THE REMAINING UNLAWFUL SENTENCE TO A STATE PRISONER (A) DUE TO THE PRESENCE OF COVID-19 PANDEMIC AT STATE PRISONER'S PRISON IN QUESTION (MINNESOTA DEPARTMENT OF CORRECTIONS – RUSH CITY FACILITY); (B) DUE TO THE STATE PRISONER'S LACK OF ACCESS TO THE PRISON LAW LIBRARY RESULTING FROM THE SPREAD OF COVID-19 CORONAVIRUS PANDEMIC IN THE STATE PRISON IN QUESTION (MINNESOTA DEPARTMENT OF CORRECTIONS – RUSH CITY FACILITY; AND (C) WHERE NEWLY DISCOVERED EVIDENCE OF STATE PRISONER'S ACTUAL INNOCENCE IS CLEARLY DEMONSTRATED IN THE FEDERAL COURT'S RECORD IN EXHIBITS 1, 2 AND 3, PURSUANT TO THE AUTHORITY IN 28 U.S.C. §1651(A) AND THE AUTHORITY GIVEN TO FEDERAL JUDGES IN THE CARES ACT SIGNED INTO LAW BY THE PRESIDENT DONALD J. TRUMP ON MARCH 27, 2020?

QUESTION TWO: WHETHER CERTIFICATE OF APPEALABILITY SHOULD ISSUE IN THIS CASE UNDER THE EXTRAORDINARY AND/OR EXCEPTIONAL CIRCUMSTANCES PRESENT IN THIS CASE FOR AN IMMEDIATE RELEASE AND/OR STAY OF EXECUTION OF THE REMAINING UNLAWFUL SENTENCE TO PETITIONER?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	II
TABLE OF CITED AUTHORITIES	IV
LIST OF PARTIES	IV
STATEMENT OF JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
PETITIONER IS CURRENTLY DETAINED BY RESPONDENT AT RUSH CITY FACILITY	3
COVID-19 PRESENCE OF AT THE RUSH CITY FACILITY	3
PETITIONER'S PRE-EXISTING AND UNDERLYING CONDITIONS	3
PETITIONER'S IS ACTUALLY INNOCENT TO THE ALLEGED CRIME AND CONVICTION.....	4
PROCEDURAL HISTORY	4
STATEMENT OF FACTS	4
REASONS FOR A GRANTING THE WRIT.....	8
CONCLUSION.....	11
CERTIFICATE OF COMPLIANCE	11

TABLE OF CITED AUTHORITIES

CASES

<i>Gilliam v. Foster</i> , 61 F.3d 1070 (4 th Cir. 1995)-----	10
<i>Johnson v. Marsh</i> , 227 F.2d 528 (3 rd Cir. 1955) -----	10
<i>Rado v. Meachum</i> , 699 F. Supp. 25 (D. Ct. 1988)-----	8
<i>United States v. Ballone</i> , 762 F.2d 1381, 1383 (11 th Cir. 1985)-----	8
<i>United States v. DiSomma</i> , 951 F.2d 494, 497 – 98 (2 nd Cir. 1991) -----	10
<i>United States v. Giraldo</i> , 86 F.3d 1368, 1379 (5 th Cir. 1996) -----	10
<i>United States v. LaGiglio</i> , 384 F.3d 925, 926 (7 th Cir. 2004) -----	10
<i>United States v. Maull</i> , 773 F.2d 1479, 1483 (8 th Cir. 1985)-----	8
<i>United States v. Steinhorn</i> , 927 F.2d 195, 196 (4 th Cir. 1991)-----	10

STATUTES

28 U.S.C. §1651(a) -----	ii, 1, 3, 7
<u>CARES Act</u> -----	1, 3, 7
Fed. R. Civ. Pro. 60(B)(6) -----	2
Fifth Amendment -----	3
Fourteenth Amendment -----	3

LIST OF PARTIES

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

IN THE
SUPREME COURT OF THE UNITED STATES
NO. _____

EMEM UFOT UDOH,

Petitioner,
vs.

BECKY DOOLEY, *Warden, Moose Lake,*

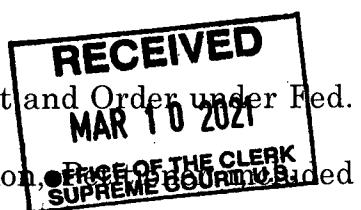
Respondent.

ON PETITION FOR WRIT FOR CERTIORARI
TO REVIEW THE USCA8 CASE NO. 20-3473 IN
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT (0:16-CV-4174 (PAM/HB))

Petitioner, Emem Ufot Udo, respectfully petition for a Writ of Certiorari to review the USCA8 case No. 20-3473 in the United States Eighth Circuit Court of Appeals pursuant to 28 U.S.C. §1254(1) in light of (a) the showing that This Case Merits Deviation From Normal Appellate Practice Due To The Ongoing Covid-19 Outbreak That Has Clearly Implicated Petitioner's Right Of Access To State And Federal Courts, that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this court, and (b) pursuant to this Court's Sua Sponte Order, 28 U.S.C. §1651(a), the CARES Act signed into law by the President on March 27, 2020, and the January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability.

STATEMENT OF JURISDICTION

On February 5, 2020, Petitioner filed a Motion to Vacate the Judgement and Order under Fed. R. Civ. Pro. 60(B). See ECF No. 56, 0:16-CV-4174 (PAM/HB). In his motion,



Exhibits 1 through 3. See ECF No. 57. On February 6 2020, the district court denied Petitioner's motion. See ECF No. 58. Between April 13, 2020 and June 29, 2020, Petitioner notified the district court of the *extraordinary circumstances* and *collateral consequences* that justify the relief he requested. See ECF No. 59 through 69. On June 29, 2020, Petitioner filed a Renewed Motion to Vacate the Judgement and Order pursuant to Fed. R. Civ. Pro. 60(B)(6). See ECF No. 70. In his motion, Petitioner incorporated ECF No. 59 through 69 as supporting evidence, as well as, Exhibits 1 through 3 in ECF No. 57 for relief. On July 14, 2020, the district court denied the renewed motion. See ECF No. 73.

While Petitioner's appeal was pending in the Eighth Circuit Court of Appeals, on October 19, 2020, Petitioner filed an Emergency Motion For Release Pending Appeal Due to COVID-19 Pandemic in Rush City Facility at the District Court Of Minnesota in *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB). On October 29, 2020, the district court denied Petitioner's Emergency Motion For Release Pending Appeal Due to COVID-19 Pandemic in Rush City Facility. See ECF No. 88. The Eighth Circuit Court of Appeal denied Petitioner's appeal of the district's court order on December 3, 2020. The Eighth Circuit Court of Appeal also denied Petitioner's motion for leave to file an untimely petition for rehearing and rehearing en banc as untimely on February 1, 2021. A corrected order was issued on February 3, 2021. See *Appendix* and USCA8 No. 20-3473.

On March 19, 2020, this Court extended the deadline to file petitions for writ of certiorari in all cases due on or after the date of that March 19, 2020 order to 150 days from the date of the lower court judgment due to the ongoing public health concerns relating to COVID-19. See (ORDER LIST): 589 U.S. ____ (March 19, 2020). Therefore, Petitioner's petition for writ of certiorari is due by May 3, 2021 under this Court's March 19, 2020 Order. This Court's jurisdiction is invoked under 28 U.S.C §1254(1) and §1254(2). This Court has jurisdiction over Petitioner's **Stay and Release Reliefs**

pursuant to this Court's *Sua Sponte* Order, 28 U.S.C. §1651(a), and the **CARES Act** signed into law by the President on March 27, 2020. This Court has both subject matter and personal jurisdiction over Petitioner's request for the release relief and over the parties pursuant to 28 U.S.C. §1651(a) and the **CARES Act**. The venue is proper in this Court.

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."

PETITIONER IS CURRENTLY DETAINED BY RESPONDENT AT RUSH CITY FACILITY

As of today, the record of this Court clearly shows that, Petitioner is currently detained at Rush City Facility by Respondent. This Facility is located at 7600 525TH Street, Rush City, MN 55069.

COVID-19 PRESENCE OF AT THE RUSH CITY FACILITY

Undisputed facts show the presence of COVID-19 virus at the Rush City Facility where Petitioner is currently incarcerated by Respondent. See the Memorandum(s) filed in the district court record regarding the positive COVID-19 cases found in Rush City Facility.

PETITIONER'S PRE-EXISTING AND UNDERLYING CONDITIONS

The Record of Medical Evidence At Hennepin County Medical Center (HCMC) filed on August 7, 2020 in *Udoh v. Knutson*, Civil No. 19-CV-1311(MJD/HB), Docket No. 87 at 1 -7, by Petitioner *clearly shows* Petitioner's pre-existing and underlying conditions that places him in the population most susceptible to COVID-19 at Rush City Facility. This puts Petitioner at a substantially heighten

risk of dangerous complication should he contract COVID-19 virus in light of the Internal Memo dated October 02, 2020 regarding the positive COVID-19 cases found in Rush City Facility that suspended programing and activities.

PETITIONER'S IS ACTUALLY INNOCENT TO THE ALLEGED CRIME AND CONVICTION

Petitioner is actually innocent to the alleged crime and conviction. See **Exhibits 1 through 3** filed on February 5, 2020, and entered on February 6, 2020 in the district court record in *Udoh v. Knutson*, Civil No. 19-CV-1311(MJD/HB), Docket No. 69. Petitioner prays that this court issue an **Order for Immediate Release or Stay of Execution of the Remaining Unlawful Sentence** pending the resolution of Petitioner's petition for fairness, integrity, and the public reputation of the judicial system. It is of the public interest against the imposition of wrongful convictions and unlawful sentences. See the University of Michigan, *The National Registry of Exonerations*. (<http://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx>). It is of the public interest in preserving family and not separating parent and children. Furthermore, **Judicial Economy** is of the public interest to grant the **Reliefs** requested in this motion.

PROCEDURAL HISTORY

Petitioner adopts the Procedural Facts and History described in the Docket History Report for brevity purposes.

STATEMENT OF FACTS

A. Petitioner's Post-Conviction In 2018

On April 10, 2018, Defendant initiated this State post-conviction action raising several issues or claims of constitutional violations and seeking reliefs. Amongst the issues or claims raised for post-conviction relief, Defendant raised the Ground that - Defendant is entitled to an acquittal and release based on the newly discovered exonerating evidence showing actual innocence which is based on recantations of key material witnesses' testimony for relief as described in Defendant's first post-

conviction petition. The first post-conviction petition is supported by **Exhibit A** (Decision of Minnesota Court of Appeal (A1), Detective Melissa Malecha's (Parker) Reports on February 19, 2013 (A2), Don Bartley's Reports on February 21, 2013 (A3), Molly Lynch's Report (A4), CornerHouse Checklist (A5), CornerHouse Forensic Examination on March 6, 2013 (A6), Recantations Affidavits by K.K.W., and K.C.W. to Judge Tamara Garcia (A7), Report and Recommendations by Magistrate Judge Steven E. Rau (A8), Order by District Judge Paul A. Magnuson (A9)) filed on April 10, 2018. Defendant sought relief for an evidentiary hearing to be held to examine the material facts and allegations surrounding Defendant's first post-conviction petition. On June 15, 2018, the State post-conviction court issued an order denying the post-conviction petition in part and granting an evidentiary hearing in part on the issue of witnesses' recantation. On June 18, 2018, the State post-conviction court issued a scheduling order for an evidentiary hearing to be held on July 27, 2018. On July 11, 2018, the State post-conviction court issued an order **denying** Defendant's request for subpoena(s) of witnesses (Krista White, Christa Groshek, Kelly Moore, Davi E. Axelson, Donothon Bartley, Ann Norton, Melissa Malecha, Molly Lynch, Joanne Wallen, Karen Wegerson, Ann Mock, Bill Koncar, Grace Werner Ray, Dr. Linda Thompson, Catrina Blair, Patricia Harmon) in part and **granting** Defendant's request in part (Mr. Bond, Tonya Udo, K.C.W., K.K.W., and Bobby Woody).

I. Evidentiary Hearing Testimony Of The Recanting Witnesses' (K.K.W., and K.C.W.) For Release Relief

The recantation affidavits from K.K.W and K.C.W were re-signed by K.K.W and K.C.W. at the evidentiary hearing. Both the re-signed signatures from K.K.W and K.C.W matched the March 2018 affidavits. The recantation affidavits from K.K.W and K.C.W were entered as evidence into the evidentiary hearing record without an objection (Tr. 166 – 167; Tr. 235 – 237) as Exhibits 1 and 2 in (Vol. II) transcripts. The recantation affidavits and recantation testimony are *exculpatory facts* clearly showing that no incident of sexual abuse happened between April 2012 through February 2013 in **PETITION by Udo – Page 5**

Defendant's home or within the Hennepin County Jurisdiction. The recantation affidavits and recantation testimony are *impeachment evidence* related to the threats, the demands, the pressure, the coaching, the coercions, the benefits, and the promises made to K.K.W. and K.C.W. to give a statement of sexual abuse against Defendant between February 2013 through August 2014, and a trial testimony of sexual abuse against Defendant in August 2014.

After receiving evidentiary hearing testimony from K.K.W. and K.C.W., Defendant re-requested or renewed his motion for subpoena(s) to call - Ms. White, Christa Groshek, Kelly Moore, Davi E. Axelson, Donothan Bartley, Ann Norton, Melissa Malecha, Molly Lynch, Joanne Wallen, Karen Wegerson, Ann Mock, Bill Koncar, Grace Werner Ray, Dr. Linda Thompson, Catrina Blair, Patricia Harmon - as witnesses to the case because he has produced enough evidence for them to be a witness in this case (Tr. 340 – 348).

On July 27, July 30, 2018 through August 01, 2018, the State post-conviction court first evidentiary hearing was concluded after the court granted Defendant's request for a continuance to October 18, 2018.

B. Defendant's Good-Faith Attempt to Appeal The June 15, 2018 Post-Conviction Order Was Dismissed As Premature

August 17, 2018, the Chief Judge dismissed Defendant's appeal of the June 15, 2018 Post-Conviction Order.

C. Defendant's Good-Faith Attempt to File A Second Petition For Post-Conviction Relief Based On The Evidence Received At the First Evidentiary Hearing

After the conclusion of the first evidentiary hearing, Defendant filed a motion to dismiss Respondent's witnesses on September 13, 2018 (See *Index No. 222*). On September 19, 2018,

Defendant filed a written objection to the State's (Respondent) witness list (See *Index No.* 228). On September 27, 2018, Defendant filed a second petition for post-conviction relief in *Index No.* 234¹.

D. Defendant's Writ For Mandamus In 2019 For Post-Conviction Appeal

On August 06, 2019, this Court treated Defendant's Writ of Mandamus as a Notice of Appeal to appeal the Post-Conviction June 15, 2018 and February 05, 2019 Court Orders. That appeal was dismissed because Defendant could not file an opening brief due by March 16, 2020.

E. Petitioner's Emergency Motion For Release Pending Appeal Due to COVID-19 Pandemic in Rush City Facility At The Federal Court.

While Petitioner's appeal was pending in the Eighth Circuit Court of Appeals, on October 19, 2020, Petitioner filed an Emergency Motion For Release Pending Appeal Due to COVID-19 Pandemic in Rush City Facility at the District Court Of Minnesota in *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB). On October 29, 2020, the district court denied Petitioner's Emergency Motion For Release Pending Appeal Due to COVID-19 Pandemic in Rush City Facility. See ECF No. 88. The Eighth Circuit Court of Appeal denied Petitioner's appeal of the district's court order on December 3, 2020. The Eighth Circuit Court of Appeal also denied Petitioner's motion for leave to file an untimely petition for rehearing and rehearing en banc as untimely on February 1, 2021. A corrected order was issued on February 3, 2021. See *Appendix* and USCA8 No. 20-3473. This Court's jurisdiction is invoked under 28 U.S.C §1254(1) and §1254(2). This Court has jurisdiction over Petitioner's **Stay and Release Reliefs** pursuant to this Court's *Sua Sponte* Order, 28 U.S.C. §1651(a), and the **CARES Act** signed into law by the President on March 27, 2020. This Court has both subject matter and personal jurisdiction over Petitioner's request for the release relief and over the parties pursuant to 28 U.S.C. §1651(a) and the **CARES Act**. The venue is proper in this Court.

¹ See the January 13, 2020 appellate court order from this court (recognizing Appellant's second petition for post-conviction relief filed on 09/18/2018).

REASONS FOR A GRANTING THE WRIT

The issues presented in this case is beyond the particular facts and parties involved but for growing interest of the public, society at large and integrity of the judicial system. The state and federal courts holding cannot be squared or reconciled with this Court's decisions on constitutional law, in granting a COA. Most significantly, the lower court decided important constitutional claims in a way that conflicts with relevant decisions of this Court and has so far departed from the usual and accepted course of justice. Because Minnesota tried and convicted an innocent man without due process of law, allowing such decision to hold will affect other similarly situated in Petitioner's situation and this further underscores the importance of granting review in this case.

There are supporting authorities for release. See *Rado v. Meachum*, 699 F. Supp. 25 (D. Ct. 1988) (a federal court has the inherit power to release a state prisoner on bail pending resolution of his petition). Also see *United States v. Maull*, 773 F.2d 1479, 1483 (8th Cir. 1985)(en-banc)(district court judge is a judicial officer under Bail Reform Act). Furthermore, a Magistrate Judge qualifies as a judicial officer under the Bail Reform Act. 18 U.S.C. §3141, §3156(a)(1); *United States v. Wong-Alvarez*, 784 F.2d 1530, 1531 (11th Cir. 1986)(per curiam).

The right to consideration of bail pending appeal does not exist until after conviction. See *United States v. Ballone*, 762 F.2d 1381, 1383 (11th Cir. 1985) (Petitioner's right to bail pending appeal could not be assessed until after his conviction); 18 U.S.C §3143(b)(pending appeal, convicted defendant must provide clear and convincing evidence to overcome presumption of flight and dangerousness to community). A Petitioner must file a motion for release pending appeal in the district court and the district court must act on release applications. 18 U.S.C. §3143; *United States v. Hochevar*, 214 F.3d 342, 342 (2nd Cir. 2000); *United States v. Hart*, 779 F.2d 575, 576 – 77 (10th Cir. 1985) (the district court appeal has a duty pursuant to §3145(c) and Fed. R. App. P. 9(b) to act on an

application for release pending appeal); *United States v. Fisher*, 55 F.3d 481, 487 (10th Cir. 1995) (same).

Petitioner points this court to federal cases that granted release due to COVID-19 pandemic at prison and detention facilities:

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 (4th 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 (9th 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);

These are extraordinary circumstances and exceptional reasons to grant the **Reliefs** requested in this petition. See *Johnson v. Marsh*, 227 F.2d 528 (3rd Cir. 1955) (granting bail pending a decision on the merits of the petition); *Gilliam v. Foster*, 61 F.3d 1070 (4th Cir. 1995) (the court issued a temporary order enjoining further state prosecution until the federal court conducts an evidentiary proceeding). A **Stay** of the Remaining Sentences is required in this case under the reasoning of *Barbour v. Haley*, *ld* at 1280 where the district court granted Petitioner's motion to Stay because the court had insufficient time to adequately consider the petition, the decision on the merit required additional briefing, evidence and perhaps an evidentiary hearing, and the petition included claims of actual innocence in which the federal court could not decide without giving Petitioner the opportunity of meeting the standards for a showing of actual innocence, just like in this case.

Immediate Release or Stay of Execution of the Remaining Unlawful Sentence should issue because Petitioner's actual innocence demonstrated by witness recantation is clear and convincing evidence that he posed no danger to the community and exception reasons for this court to grant immediate release or stay of execution this unlawful sentence. This is also clear and convincing evidence that he posed no flight risk and extraordinary circumstances attending to Petitioner's situation for immediate release or stay of execution of this unlawful sentence. See *United States v. DiSomma*, 951 F.2d 494, 497 – 98 (2nd Cir. 1991)(release motion granted); *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991)(release motion granted); *United States v. Giraldi*, 86 F.3d 1368, 1379 (5th Cir. 1996)(same); *United States v. LaGiglio*, 384 F.3d 925, 926 (7th Cir. 2004)(same).

CONCLUSION

For the foregoing reasons, Petitioner prays that this court grants the writ and issue a Certificate of Appealability to review the judgment and opinion of the District Court.

Dated: March 1, 2021

Respectfully Submitted,



Emem U. Udoh,
Pro se Litigant, 245042
7600 525th 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 11 pages.

Dated: March 1, 2021

Respectfully Submitted,



Emem U. Udoh,
Pro se Litigant, 245042
7600 525th Street
Rush City, MN 55069