

No. _____

**In The
Supreme Court of the United States**

Dwight D. Mitchell, individually and on behalf of his children
X.M. and A.M.; Bryce Mitchell; Stop Child Protection Services
From Legally Kidnapping,

Petitioners,

v.

Dakota County Social Services; Emily Piper, in her official capacity as Commissioner of Department of Human Services; Patrick Coyne, individually and in his official capacity as Executive Director of Dakota County Social Services; Joan Granger-Kopesky, individually and in her official capacity as Deputy Director of Dakota County Social Services; Leslie Yunker, individually and in her official capacity as Supervisor of Dakota County Social Services; Diane Stang, individually and in her official capacity as Supervisor of Dakota County Social Services; Susan Boreland, individually and in her official capacity as Social Worker of Dakota County Social Services; Chris P'Simer, individually and in his official capacity as Social Worker of Dakota County Social Services; Christina Akolly, individually and in her official capacity as Social Worker of Dakota County Social Services; Jacob Trotzky-Sirr, individually and in his official capacity as Guardian ad Litem of Dakota County; Tanya Derby, individually and in her official capacity as Public Defender of Dakota County; Kathryn Scott, individually and in her official capacity as Assistant County Attorney of Dakota County; Elizabeth Swank, individually and in her official capacity as Assistant County Attorney of Dakota County; Lucinda Jesson, individually and in her official capacity as Commissioner of Department of Human Services;
County of Dakota,

Respondents.

APPLICATION TO FILE PETITION OUT OF TIME **RECEIVED**

JAN 27 2021

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

To: The Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the U.S. Court of Appeals for the Eighth Circuit.

Petitioners Dwight D. Mitchell, individually and on behalf of his children X.M. and A.M., Bryce Mitchell, and Stop Child Protection Services From Legally Kidnapping, through their attorney, make an application to the Court for an extension of time under 28 U.S.C. § 210(c) and Supreme Court Rule 13, to file a petition for a writ of certiorari out-of-time, that is after the deadline of December 14, 2020. This application is based on counsel of record not being able to timely file because of an employee who tested COVID-positive on December 11, 2020 resulting in a 10-day office shutdown beginning December 11th, consistent with Minnesota Governor Tim Walz's executive orders.

REASONS FOR GRANTING THE APPLICATION

Procedural History.

County officials seized the applicant Dwight Mitchell's three children, keeping two children for five months (approximately 150 days) and held another child for 22 months (approximately 660 days) for parental bottom spanking of one of his children. Although no medical attention was required, the county deemed spanking as "child abuse" with one official asserting that all black families are too quick to spank their children. The County deemed

Mitchell a “fit parent” to have two of his children returned to him, yet kept his third child for another 17 months despite the child’s repeated pleas to county officials to be returned to his father.

Mitchell sued the county, as did his children, in a 42 U.S.C. § 1983 federal court action. The United States District Court for the District of Minnesota granted the Defendants’ motions to dismiss. On appeal, the United States Court of Appeals for the Eighth Circuit affirmed the district court’s decision, applying the “shock the conscience” legal standard, and denied Mitchell’s motion for a rehearing en banc. The appellate decision and judgment sought to be reviewed is from the U.S. Court of Appeals for the Eighth Circuit, *Mitchell v. Dakota County Soc. Services*, 959 F.3d 887 (8th Cir. 2020).

The Petition seeks resolution on a split in the circuits and on children’s rights to recovery for harm when governmental seizure occurs.

The questions presented in the petition involve circuit splits regarding the “shock the conscience” standard versus the “strict scrutiny” standard as applied to pre-investigation allegations of parents under Minnesota’s statutes that chill constitutionally-protected parental discipline. Likewise, although children’s rights are measured in “degrees,” the same “shock the conscience” standard is applied to the children’s liberty interests of familial association in preserving an existing enduring family relationship. This includes children’s

rights to due process to ensure the psychological effects and trauma of separation in a wrongful seizure are minimal to assert constitutional claims under the First, Fourth, and Fourteenth Amendments against government officials.

An original application for extension of time was filed on December 11, 2020.

The original application for an extension of time was sent to the Court on Friday, December 11, 2020, delivered on Monday, December 14, 2020 (according to FedEx records), and stamp received by the Clerk of Court on December 16 (according to court records). The Clerk returned the December 11 application by letter dated January 8, 2021, with the filed petition for a writ of certiorari (filed on December 29th) and it was received by counsel's office on January 14, 2021. Additionally, on January 19, 2021, counsel's office finally received the same letter from the Clerk of Court dated December 21, 2020 rejecting the original application for an extension. That December 21 letter indicated the return of the application was because the extension of the deadline for filing a petition for a writ of certiorari due on or after March 19, 2020 was 150 days from the lower court judgment. The December 29 filing of Mitchell's petition was filed after that 150-day deadline which fell on December 14.

Counsel of record needed an extension because of extraordinary circumstances caused by a COVID-19 illness of a small law firm employee who contaminated the office resulting in a 10-day office shutdown three days before the petition was due.

Supreme Court Rule 13 requires an applicant for an extension of time to set out specific reasons why the application should be granted. Here, the counsel of record's reasons relate to a COVID-19 illness of a small law firm employee who had contaminated our office resulting in shutting down the office on December 11th resulting in the unavailability of attorneys and staff to complete their assistance in the petitioning process required for a December 14th filing.

To begin, but for our colleague's COVID hospitalization, illness, and contamination of the office, and the ten-day office closure on December 11, 2020, the petition would have been timely filed on December 14, 2020.

The facts are straightforward. First, during the morning of December 11, 2020, a colleague in our office went to a hospital with pneumonia, COVID-19 symptoms and difficulty breathing. The hospital determined that he likely had contracted the COVID-19 virus and administered a COVID-19 test. He tested positive for COVID-19 and pneumonia. A copy of the COVID-19 test results is attached.

Unfortunately, our colleague had come into the office every weekday that week with COVID-19 unbeknownst to him prior to his hospitalization.

His presence not only contaminated the office with COVID-19, but exposed all of the people in the office and potentially each of their respective family members. The severity of the COVID-19 pandemic needs no elaboration with over 400,000 deaths attributed to the virus.

On the morning of December 11, 2020, the firm recognized our colleague had contaminated our Minneapolis office and exposed all attorneys and staff to COVID-19 over the previous weekdays. The revelation was astonishing as it was devastating because of the implications. Our firm only has six attorneys. Our firm only has two legal secretaries. Immediately upon notice of the exposure, with two colleagues over the age of 60 (one with accompanying health conditions), the firm closed the office. All attorneys and staff were advised to leave everything in the office due to potential COVID contamination, and not to return to the office for no less than 10 days. The office closure was a result of the firm's implemented strict COVID 19 protocol as required and consistent with Minnesota Governor Tim Walz's executive orders related to office-type businesses.

Because of the size of the firm, moneys to decontaminate the office were not available to do a deep-clean decontamination as had been recommended. Moreover, the closure of the office also triggered a mandatory building COVID-19 policy that required no one to re-enter the office for seven days, including the building's cleaning staff and other personnel.

The office closure had another significant impact on the firm and its functions. One staff member, assisting with the petition, does not have remote access to the firm's server at home. While the attorneys and other staff, assisting with the petition, have home computers and internet capacity, their respective situations were complicated because some would self-quarantine from their own immediate family members and with the already imposed office restrictions did not have access to the documents and other information relating to the case left in the office. Additionally, while counsel of record was familiar with Supreme Court Rules regarding formatting and printing requirements, no one in the office had the software skills to complete the task.

Because of the small size of the firm, and the need to work in a collaborative manner, with the confusion and immediacy of dealing with the COVID-19 office emergency, it was determined that it would be impossible to file the petition on December 14th. First, to make matters worse, one petition team member's internet service experienced intermittent service for part of the remaining day after arriving home and getting himself and family situated after the office closure. Second, due to his COVID illness and hospitalization, that attorney, who was also part of the petition team and had worked on the petition, was unavailable to assist in completing the petition for filing. Third, there were no other attorneys or staff to help to finalize and

file the petition due to scheduling conflicts and/or simultaneous filing deadlines—and they were unfamiliar with the petition. Fourth, the U.S. Supreme Courts has rules on petition formatting and typeface requirements. No one in the firm has the knowledge or ability to accomplish this task themselves. The firm retains a third-party service to format the final petition and thus, were unable to supply the petition to it because counsel of record and others needed access to quarantined documents relating to the case and computers in the office to complete the submission to the third-party formatting service for filing by December 14th.

With the unexpected COVID 19 contamination of the office, counsel of record concluded on December 11th, based on staff and the court's requirements, that finalizing the petition and filing it, consistent with the Court's rules, by the due date of December 14th was impossible. That is why the original application for extension was mailed on December 11.

While counsel was well aware of this Court's Order dated March 19, 2020, regarding a 150 day extension for petition filings, the COVID-19 illness on December 11 and the ten-day office closing was unforeseen and unexpected and occurred at a critical time in the finalizing of the petition for which an extension was requested prior to the deadline. Having this office emergency experience was far from either intentional or preferred as it had

up-ended the people (and their families) for which this counsel's office has primary concern.

In short, the COVID 19 office contamination and shutdown could not have occurred at a worse possible time for the filing of this petition...a perfect storm. The application for filing out-of-time is based on a COVID-19 crisis in our office three days before the petition was due. If the COVID-19 crisis had not occurred on December 11th, shutting down counsel of record's law office, the petition would have been timely filed on December 14th.

My office did contact other counsel involved in this matter. The Dakota County Attorney representing Dakota County objected. Nevertheless, counsel believes the extra time requested for the petition's filing to Tuesday, December 29, 2020, is necessary.

CONCLUSION

Therefore, it is respectfully requested that the time within which to file the petition for a writ of certiorari for Dwight D. Mitchell, individually and on behalf of his children X.M. and A.M., Bryce Mitchell, and Stop Child Protection Services From Legally Kidnapping, be extended to and including Tuesday, December 29, 2020. The Court should grant this application to file the petition out-of-time.

Dated: January 22, 2021

/s/Erick G. Kaardal

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COVID-19 (HCMC) - Details

COVID-19 (PUI)

Results
Abnormal

Status: Final result (Collected: 12/11/2020 10:30 AM)

Covid-19 Positive Report

Now that you've tested positive for COVID-19, please do the following:

Stay home for at least 10 days after your symptoms started or 10 days after you were tested if you never develop symptoms. If you do have symptoms, you should have at least 24 hours with no fever (without using a fever-reducing medication such as acetaminophen or ibuprofen) and have improvement of your symptoms before you can return to your normal activities. This may be longer than 10 days.

Note: If you were severely ill with COVID-19 or have a compromised immune system (for example, due to cancer, history of organ or bone marrow transplant, HIV, or use of certain medications such as steroids or immunosuppressants); you may need to isolate for longer and should speak to a health care professional.

You do NOT need to return for re-testing unless instructed by a healthcare professional. You may continue to test positive for many weeks, even after you're no longer contagious (able to spread the virus to others).

During your isolation period:

1. **Stay home** except to get medical care. Avoid non-essential trips outside of your home and do not use public transportation including ride-sharing or taxis. Do not go to work, school, or public areas.
2. Take care of yourself. Get rest and stay hydrated.
3. Separate yourself from other people and animals in your home. As much as possible, you should stay in a specific room away from other people in your home. Use a separate bathroom if available. Avoid pets.
4. Call ahead before visiting your health care provider
5. Wear a mask if you must be around other people (even at home). Children under 2 years of age should not wear cloth face coverings.
6. Cover your coughs and sneezes.
7. Wash your hands often with soap and water for at least 20 seconds or use an alcohol-based sanitizer containing over 60% alcohol. Avoid touching your face.
8. Avoid sharing personal household items, including dishes, cups, utensils, towels, clothing, or bedding. These items should be cleaned thoroughly with soap and water after use. Clean all "high touch" surfaces every day
9. **Notify** anyone that you've had close, prolonged contact with about your test results. This includes anyone you've been within 6 feet of for 15 minutes or more starting 2 days before your symptoms started through the end of your isolation period. They should self-

quarantine for 14 days after their last close contact. If they develop symptoms, they should be tested.

Monitor your symptoms. Contact your provider if you are feeling worse. If you have shortness of breath, difficulty breathing, persistent chest pain or pressure, new confusion, inability to wake or stay awake, or blue tinted lips or face; call 911 and tell them you are positive for COVID-19.

If you have any questions, you can call us 24/7 at 763-581-CARE (2273).

You may also call the Minnesota Department of Health (MDH) COVID-19 Hotline at 651-201-3920 which is available Monday-Friday from 9am-4pm.

The most up to date advice for preventing the spread of COVID can be found here:
<https://www.cdc.gov/coronavirus>

For information regarding Worker Protections related to COVID-19:
[Worker protections](#)

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