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ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
NO. 21

Supreme Court, U.S.
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EMEM UFOT UDOH,

Petitioner,

vs.

NATE KNUTSON, *Warden, Moose Lake,*

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO REVIEW THE
USCA8 *Appellate 21-2398*, CASE NOS. *21-2398*
IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT (0:19-CV-1311 (MJD/HB))

PETITION FOR WRIT OF CERTIORARI

JONATHAN P. SCHMIDT
Hennepin County Attorney's Office
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

EMEM U. UDOH
MCF – Faribault
1101 Linden Lane
Faribault, MN 55021

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

In light of the recent binding precedent of this court, dated April 17, 2018, in *Session v. Dimaya*, 200 L. Ed 2d 549, 138 S Ct. 1204, affirming the Ninth Circuit holding that 18 U.S.C. §16(b), as incorporated in the Immigration and Nationality Act, is unconstitutional vague, the second question presented for review on grounds consistent with Petitioner's actual innocence is:

1. Whether The Supreme Court holding in *Session v. Dimaya* vacates each and every administrative allegations and charges bearing upon the "residual clause" of 18 U.S.C. §16(b) as a "crime of violence" by Respondent because the April 17 holding provided that the residual clause of 18 U.S.C. §16(b) defining "crime of violence" was unconstitutionally vague – that is, too arbitrary and indistinct to comport with the constitution's guaranteed of due process. *Id* 1212 – 13? And In light of the January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability?

Undisputed facts show the presence of COVID-19 virus at the Rush City Facility where Petitioner is currently detained by Respondent. See the Memorandum(s) filed in the district court record regarding the positive COVID-19 cases found in Rush City Facility in *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 106 at 11; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), as well as, in the *Administrative Record*. The third, fourth and fifth questions presented for review on grounds consistent with Petitioner's actual innocence is:

2. Whether The Board Of Immigration Appeal Should Have Granted Petitioner's Request For Extension Of Time Due To Petitioner's Lack Of Access To The Prison Law Library Resulting From The Spread Of Covid-19 Coronavirus Pandemic In Minnesota Department Of Corrections in light of *Bound v. Smith*, 430 U.S. 817 (1977); and *Flittie v. Solem*, 827 F.2d 276, 280 (8th Cir. 1987)? And In light of the January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability?

3. Whether The Board Of Immigration Appeal Should Have Granted Petitioner's Request For Extension Of Time To Obtain The Record And Transcripts Of The Immigration Hearings To Fully And Fairly Present His Case For Reopening In Light of *Bound v. Smith*, 430 U.S. 817 (1977)? And In light of the January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability?

4. Whether The Board Of Immigration Appeal June 24, 2020 Order That Affirmed The In-Absentia Order Is Invalid In Light Of (A) Petitioner's Actual Innocence Clearly Demonstrated In The *Administrative Record* (B) Petitioner's Ongoing Proceedings In State And Federal Courts; (C) Petitioner's Notification To The Court Of This Change Of Address On February 2019 Pursuant To 8 U.S.C.S. §1305; (D) The Fact That Notice To Appear And Hearing Was Not Sent To Petitioner's Address After The Change As Required Under 8 U.S.C.S. §1229(A); And (E) This Absentia Order Violates Petitioner's Due Process For Failure To Notify Petitioner Of His Hearing And To Appear Even Where Petitioner Never Spoke Or Saw A Judge, Was Never Call Or Subpoenaed To Any Hearing, Never Participated Or Consented In Any Telephonic Conference *In light of Ghounem v. Ashcroft*, 378 F.3d 740 (8th Cir. 2004); *Williams – Igwonobe v. Gonzales*, 437 F.3d 453 (5th Cir. 2006)? And In light of the January 20 - 22, 2021 Executive Order Of President Joseph R. Biden That Bans Deportation Or Removability?

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Petitioner, Emem Ufot Udoh, respectfully petition for a Writ of Certiorari to review the judgment of the Eighth Circuit Court of Appeals entered on **September 3, 2021**) 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 **September 3, 2021**, and denied Petitioner's petition for Rehearing on **October 6, 2021**. See USCA8 No. **21-2398** and *Appendix*.

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 ~~March 4, 2022~~ under this Court's March 19, 2020 Order. This Court's jurisdiction is invoked under 28 U.S.C §1254(1) and §1254(2).

OPINIONS BELOW

The opinion and judgment of the Eighth Circuit Court of Appeals is unpublished and appears in *Udoh v. Knutson*, 2021 U.S. App. LEXIS _____, 2021 WL _____ Fed. Appx. _____ (8th Cir. Minn., ~~September 3,~~ September 3, 2021). See USCA8 Case No. 20-2389 and See USCA8 No. ~~21-2398~~ and ~~21-2398~~, and *Appendix*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions and claims involved in this case are the Fifth Amendment, which 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”

and the Fourteenth Amendment of the Constitution, which 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

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 ~~September 3,~~ September 3, 2021. See USCA8 No. 20-2389 and See USCA8 No. ~~21-2398~~ and ~~21-2398~~ and *Appendix*.

On May 2019, Petitioner filed a 28 U.S.C §2241 Actual Innocence Petition regarding the *InAbsentia* Order and the Magistrate Judge held that Petitioner alleged that Respondent's action in entering an In-Absentia order in April 2019 amounts to a violation of his constitutional rights.

See the Federal Magistrate Judge Report and Recommendation in Udoh v. Knutson, 2019 WL 5150141 (D. Minn. May 31, 2019). Petitioner also included the Magistrate Judge holding to his Motion to ReOpen and to the Board of Immigration Appeal in an enclosed **Pages 1 through 4**. The Magistrate Judge Dismissed the Petition because Petitioner has not exhausted his administrative remedies with regards to this issue:

§2241 Actual Innocence (Ground Twenty Two): The Absentia Order is Invalid in light of (a) the issues raised in *Grounds One through Twenty One*, (b) Petitioner's actual innocence clearly demonstrated in **Exhibit 2**, (c) Petitioner's ongoing proceedings in State and Federal Courts, (d) Petitioner's notification to the Court of this Change of Address on February 2019 pursuant to 8 U.S.C.S. §1305, (e) the fact that Notice to Appear and Hearing was not sent to Petitioner's address after the Change as required under 8 U.S.C.S. §1229(a), and (f) this Absentia Order violates Petitioner's due process for failure to notify Petitioner of his Hearing and to Appear even where Petitioner never spoke or saw a Judge, was never call or subpoenaed to any hearing, never participated or consented in any telephonic conference.

On **June 9, 2021** in this case, the District Court in *Udoh v. Knutson*, 2021 WL

(D. Minn. **June 9, 2021**) held that because the court adopts the Report and Recommendation and dismisses Petitioner's petition, Petitioner's motion for injunctive relief is *denied as moot*. Additionally, because the court has dismissed Petitioner's claims, Petitioner's requests to stay State and immigration proceeding and to release Petitioner pending this district court's decision on those claims *are moot*. The District Judge further held that Petitioner's motion for extension of time and application to proceed in the district court without prepaying fees or cost is *denied as moot*. *Id* at *8. Because Petitioner's petition is dismissed, his IFP application is *denied as moot*. *Id* at *8.

On September 18, 2019, in this case, the District Court in *Udoh v. Knutson*, 2019 WL 5620406 *4 (D. Minn. September 18, 2019) held that, Petitioner's request for reconsideration of the district court's denial of his extension of time to file objections to R & R (Doc. No. 55) and Petitioner's motion to reconsider (Doc. No. 56) are denied.

On ~~April 14, 2021~~, in this case, the Magistrate Court in *Udoh v. Knutson*, 2019 WL 4073392 *3 (D. Minn. ~~April 14, 2021~~) recognized Petitioner's ongoing removal or immigration proceeding that have been carried out *in absentia*, in violation of Petitioner's due process rights. This is an adverse collateral legal consequences imposed on the basis of the challenged conviction. The District Court in *Udoh v. Knutson*, 2019 WL 4073392 *1 – 10 (D. Minn. August 28, 2019) also recognized this adverse collateral legal consequences.

On May 31, 2019, in this case, the Magistrate Judge in *Udoh v. Knutson*, 2019 WL 5150141 *2 (D. Minn. May 31, 2019) recognized Petitioner's claims "including prosecutorial misconduct, ineffective assistance of counsel, and newly discovered evidence," but that Petitioner has not received the necessary authorization from this appellate court to consider the 28 U.S.C. §2241 habeas petition claims challenging the validity of his state convictions. *Id* at *3.

Petitioner, Emem Ufot Udoh, also certify to the Board of Immigration Appeal in an Affidavits that on February 22, 2019, Petitioner was on a Writ to a State Court Hearing at Hennepin County Court and his address changed. See the Record of Medical Evidence In Support of Petitioner's Renewed Rule 60(B)(6) Motion To Show That He Was At Hennepin County Medical Center (HCMC) And Did Not Receive Any Notice Of Appearance For Hearing From Respondent Or The Court in the Appendix at 1 through 8.

Pursuant to 8 U.S.C.S. §1305, Petitioner notified the Court and DHS of this change of address. 8 U.S.C.S. §1305 requires only a written notice of change of address, but no Notice to Appear was sent to Petitioner's new address for the March 6, 2019 or April 17, 2019 hearing. Petitioner did not receive any Notice to Appear for March 6, 2017 or April 17, 2019 hearing as required under 8 U.S.C.S. §1229(a) from DHS. This violates Petitioner's due process clause for failure to notify Petitioner of his Hearing as required by 8 U.S.C.S. §1229(a) in light of *Contreras-*

Rodriguez v. United States AG, 462 F.3d 1314 (11th Cir. 2006)(held a motion to reopen in absentia proceeding can be made at any time if the Petitioner can show that he did not receive notice. 8 C. F. R. §1002.23(b)(4)(ii)).

Petitioner, Emem Ufot Udoh, also certify to the Board of Immigration Appeal in an Affidavits that he did not consent to any telephonic conference and no video conference was held as required by 8 U.S.C.S. §1229(a).

STATEMENT OF THE FACTS

Substantive allegations are set forth in *Administrative Record* of this case. Tonya Udoh (“Tonya”) is the mother of four minor children, K.K.W., K.C.W., C.U., and C.U. Emem Udoh (“Emem”) is Tonya’s husband, the father of C.U., and C.U., and the stepfather of K.K.W., and K.C.W. Tonya was a social work student and a DHS-licensed certified nursing assistant. Emem was a Software Engineer at Stratasys, Inc.

A. Newly Discovered Evidence of Witnesses’ Recantation Discovered In Petitioner’s Post-Conviction In 2018.

On April 10, 2018, Mr. Udoh initiated a 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, Mr. Udoh raised the Ground that - Mr. Udoh 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 Mr. Udoh first post-conviction petition. Mr. Udoh’s first post-conviction petition was supported by Recantations Affidavits by K.K.W., and K.C.W. to Judge Tamara Garcia Report and was filed on April 10, 2018 in the State District Court. Mr. Udoh sought relief for an evidentiary hearing to be held to examine the material facts and allegations surrounding Mr. Udoh’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.

B. Evidentiary Hearing Testimony Of The Recanting Witnesses' (K.K.W., and K.C.W.) For Newly Discovered Evidence, And To Vacate The Judgement And Order.

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 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).

C. Appellant's Ongoing Cases In State And Federal Courts.

Petitioner currently has the following cases in State Court at the Minnesota Supreme Court in State v. Udoh, Case No. A21-1044 (Minn. App. Ct. 2021). Petitioner sent an application to the

Eighth Circuit Court seeking authorization to file a second or successive habeas corpus petition. See Udoh v. Janssen, Civil No. 21-CV-0099 (WMW/LIB) in the District Court of Minnesota, and Udoh v. Janssen, USCA8 Case No. 21-**2196** (8th Cir. Minn., 2021).

REASONS FOR 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 lower courts holding cannot be squared or reconciled with this Court's decisions on constitutional law. Most significantly, the lower courts 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. Allowing such decision to hold will affect other similarly situated in Petitioner's situation.

This appeal concerns the issues of whether Respondent violated Petitioner's clearly established rights or laws under United States Constitutions. Remand for consideration of Petitioner's habeas petition for relief is merited under the principle of Judicial Notice¹ because the record do in fact entail adverse collateral legal consequences, such as the immigration removal proceeding², juvenile proceeding³ and lifetime supervised release.

¹ See *Smisek v. Comm'r of Pub. Safety*, 400 N.W. 2d 766, 768 (Minn. App. 1987) that “[a]n appellate court may take judicial notice of a fact for the first time on appeal.”

² See the May 31, 2019 Federal Magistrate Judge Report and Recommendation in 19-CV-1311(MJD-HB) as facts related to the immigration or removal proceeding. See also the *In-Absentia* Order entered on April 17, 2019 in Exhibit 1 at ECF No.1 - 2 at 1 – 21 on 19-CV-1311(MJD-HB), 8 U.S.C. §1101 et seq, 8 U.S.C §1101(a)(43)(A), (F); 8 U.S.C. §1227(a)(2)(E)(i), 8 U.S.C. §1229a.

³ See the August 06, 2019 (recognizing the termination of parental rights in the juvenile court case 27-JV-18-5208) and September 18, 2019 (recognized the lifetime conditional or supervised release conditions) court orders where this court recognized those proceedings and conditional release. See also Minn. R. Evid. 201; Minn. Stats. §599.04, §599.10.

Remand for consideration of Petitioner's habeas petition for relief is merited under the reasoning applied in *Archuleta v. Hedrick*, 365 F.3d 644, 648 – 49 (8th Cir. 2004) where this court remanded the matter to the district court because petitioner had cognizable claim that could lead to his release under 28 U.S.C. §2241(c)(3). See 28 U.S.C. §2241(c)(3)(when a Petitioner is in custody in violation of the Constitution or laws or treaties of the United States). In this case, Petitioner's motion for release was *denied as moot*.

Remand for consideration of Petitioner's habeas petition for relief is merited under the reasoning applied in *Brewer v. Iowa*, 19 F.3d 1248, 1250 (8th Cir. 1994)(held that a habeas corpus action is moot when there is no possibility that *any collateral legal consequences* will be imposed on the basis of the challenged conviction); *Leonard v. Nix*, 55 F.3d 370, 373 (8th Cir. 1995)(held that *only* the possibility of a collateral legal consequences is needed to avoid *mootness*). This habeas corpus action is *not moot* when there is a possibility of collateral legal consequences already imposed on the basis of the challenged conviction in this case. The *Brewer v. Iowa's* and *Leonard v. Nix's* courts considered the habeas petition because of the possibility of adverse collateral legal consequences. Both courts proceeded to consider the merit of the habeas corpus action. See *Glenn v. Dallman*, 686 F.2d 418, 422 (6th Cir. 1982); *State v. Thompson*, 1996 WL 653951 *3 (Minn. Ct. App. 1996); *In re Welfare of L.B.*, 404 N.W.2d 341 (Minn. Ct. App. 1987); *State v. Jones*, 516 N.W.2d 545, 549 n.1 (Minn. 1994); *Sibron v. New York*, 392 U.S. 40, 55 (1968).

Remand for consideration of Petitioner's habeas petition for relief is merited under the reasoning applied in *Kuhlmann v. Wilson*, 477 U.S. 436, 454 (1986) because that the “end of justice” permits a district court to examine the merits of a successive petition “only where the prisoner supplements his constitutional claim with a colorable showing of factual innocence.” In this case, Petitioner supplemented his constitutional claims “including prosecutorial misconduct, ineffective

assistance of counsel,” with a colorable showing of actual innocence in the “newly discovered evidence.” See *Udoh v. Knutson*, 2019 WL 5150141 *2 (D. Minn. May 31, 2019). The Seventh Circuit in *Mosley v. Atchison*, 689 F.3d 838, 854 (7th Cir. 2012) remanded the habeas petition and directed the district court to consider the evidence presented in the evidentiary hearing, to hold a new hearing, or both, and to determine whether, based on new evidence, trial counsel was, constitutional ineffective.

Remand for consideration of Petitioner’s habeas petition for relief is merited under the reasoning applied in *Glenn v. Dallman*, 686 F.2d 418, 422 – 23 (6th Cir. 1982) where the appellate court reversed and remanded with instruction to the district court to reclassify the Petitioner’s conviction due to adverse collateral consequences that *could* result if the conviction was not reclassified. At this point, Petitioner is asking that this court remand to the district court to **address Petitioner’s petition**.

Remand for consideration of Petitioner’s habeas petition for relief is merited because as Petitioner’s had no access to the use the prison law library during the pendency of the immigration proceeding. This restriction is inconsistent with this court holding in *Flittie v. Solem*, 827 F.2d 276, 280 (8th Cir. 1987) (held the use of the prison law library on an average of three (3) days per week is a reasonable restriction imposed for a rational reason).

Remand for consideration of Petitioner’s habeas petition for relief is merited under the reasoning and in light of *Kucana*; *Pereira*; *Sugule*; *Miah*; *Dada*; and *Williams – Igwonobe v. Gonzales*; *Ghounem* holding to show that the Board of Immigration Appeal erred in its decision to reopen the In-Absentia Order. *Id.* This further underscores the importance of granting review in this case.

I. THE BOARD OF IMMIGRATION APPEAL SHOULD HAVE GRANTED PETITIONER'S REQUEST FOR EXTENSION OF TIME DUE TO PETITIONER'S LACK OF ACCESS TO THE PRISON LAW LIBRARY RESULTING FROM THE SPREAD OF COVID-19 CORONAVIRUS PANDEMIC IN MINNESOTA DEPARTMENT OF CORRECTIONS.

Petitioner, Emem Ufot Udoh, incorporates and adopts as if re-alleged herein the factual allegations and arguments in:

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 201-0 at 1-2 through 201-4 at 10; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 82-1 at 1-35; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 62-1 at 1- 35 (Evidence In Support Of Lack Of Access To The Prison Law Library To File A Brief In A19-1129);

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 195 at 1 - 5, Docket No. 199-1 at 1 - 5; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 76 at 1, 76-1 at 1-5, 76-2 at 1, Docket No. 79 at 1, 79-1 at 1-5, 79-2 at 1; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 59 at 1, 59-1 at 1 – 5 (Extraordinary Circumstances Exist In This Case To Justify The Reliefs Requested);

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 197 at 1 - 4, Docket No. 199 at 1-5; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 81-1 at 1 - 4; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 63-1 at 1-5 (Evidence In Support Of Petitioner's Denial And/Or Lack Of Access To The Prison Law Library To Appeal A19-1129 Case At The Minnesota Court Of Appeals Due To Coronavirus (Covid-19) Pandemic);

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 205 at 1 - 32; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 83-1 at 1 - 32; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 64-1 at 1 - 32 (Judicial Notice Of A Proceeding In Carlton County District Court Regarding Coronavirus Pandemic Found In The Minnesota Department Of Correction, Filed By American Civil Liberties Union, On A Petition For Mandamus And Writ Of Habeas Corpus);

Udoh v. Dooley, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 69-3 at 1 – 10 (March 02, 2020 Order From Hennepin County District Court In Exhibit 5), Docket No. 69-4 at 1 – 46 (Respondent Actions That Prevented Petitioner From Fully And Fairly Presenting His Case For Relief In Exhibit 6);

Udoh et al v. Minnesota Department of Human Services et al, 2020 U.S. Dist. LEXIS 84151 *1 - *9 (D. Minn. May 13, 2020), Civil No. 0:16-CV-3119 (PJS/SER);

Udoh v. Dooley, 2020 U.S. Dist. LEXIS 123571 *1 - *6 (D. Minn. July 14, 2020), Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 73;

into this Petition for Certiorari as “extraordinary and/or exceptional circumstances” that justifies the reliefs requested and to show that the Board of Immigration Appeals should have granted Petitioner’s request for an extension of time at the Board of Immigration Appeal. This is a showing of good cause to grant Petitioner’s request for an extension of time for lack of access to the prison law library due to Coronavirus pandemic in light of *Flittie v. Solem*, 827 F.2d 276, 280 (8th 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).

II. THE BOARD OF IMMIGRATION APPEAL SHOULD HAVE GRANTED PETITIONER’S REQUEST FOR EXTENSION OF TIME TO OBTAIN THE RECORD AND TRANSCRIPTS OF THE IMMIGRATION HEARINGS TO FULLY AND FAIRLY PRESENT HIS CASE FOR REOPENING.

Petitioner, Emem Ufot Udoh, incorporates and adopts as if re-alleged herein the factual allegations and arguments in:

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 201-0 at 1-2 through 201-4 at 10; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 82-1 at 1-35; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 62-1 at 1- 35 (Evidence In Support Of Lack Of Access To The Prison Law Library To File A Brief In A19-1129);

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 195 at 1 - 5, Docket No. 199-1 at 1 - 5; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 76 at 1, 76-1 at 1-5, 76-2 at 1, Docket No. 79 at 1, 79-1 at 1-5, 79-2 at 1; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 59 at 1, 59-1 at 1 – 5 (Extraordinary Circumstances Exist In This Case To Justify The Reliefs Requested);

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 197 at 1 - 4, Docket No. 199 at 1-5; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 81-1 at 1 - 4; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 63-1 at 1-5 (Evidence In Support Of Petitioner’s Denial And/Or Lack Of Access To The Prison Law Library To Appeal A19-1129 Case At The Minnesota Court Of Appeals Due To Coronavirus (Covid-19) Pandemic);

Udoh et al v. Minnesota Department of Human Services et al, Civil No. 0:16-CV-3119 (PJS/SER), Docket No. 205 at 1 - 32; *Udoh v. Knutson*, Civil No. 0:19-CV-1311(MJD/HB), Docket No. 83-1 at 1 - 32; *Udoh v. Dooley*, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 64-1 at 1 - 32 (Judicial Notice Of A Proceeding In Carlton County District Court Regarding Coronavirus Pandemic Found In The Minnesota Department Of Correction, Filed By American Civil Liberties Union, On A Petition For Mandamus And Writ Of Habeas Corpus);

Udoh v. Dooley, Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 69-3 at 1 – 10 (March 02, 2020 Order From Hennepin County District Court In Exhibit 5), Docket No. 69-4 at 1 – 46 (Respondent Actions That Prevented Petitioner From Fully And Fairly Presenting His Case For Relief In Exhibit 6);

Udoh et al v. Minnesota Department of Human Services et al, 2020 U.S. Dist. LEXIS 84151 *1 - *9 (D. Minn. May 13, 2020), Civil No. 0:16-CV-3119 (PJS/SER);

Udoh v. Dooley, 2020 U.S. Dist. LEXIS 123571 *1 - *6 (D. Minn. July 14, 2020), Civil No. 0:16-CV-4174 (PAM/HB), Docket No. 73;

into this Petition for Certiorari as “extraordinary and/or exceptional circumstances” that justifies the reliefs requested and to show that 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 (9th Cir. 2010)(possible constitutional violation when prisoner denied access to prison library, preventing him from filing a brief in appeal of his state conviction) 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 state or federal court); *Kennedy v. Lockyer*, 379 F.3d 1041, 1054 (9th 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.

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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 Defendant’s right of access to court under *Bound v. Smith*.

III. THE LOWER COURT JUDGEMENT THAT AFFIRMED THE IN-ABSENTIA ORDER SHOULD BE VACATED IN LIGHT OF: (A) PETITIONER’S ACTUAL INNOCENCE CLEARLY DEMONSTRATED IN THE ADMINISTRATIVE RECORD; (B) PETITIONER’S ONGOING PROCEEDINGS IN STATE AND FEDERAL COURTS; (C) PETITIONER’S NOTIFICATION TO THE COURT OF THIS CHANGE OF ADDRESS ON FEBRUARY 2019 PURSUANT TO 8 U.S.C.S. §1305; (D) THE FACT THAT NOTICE TO APPEAR AND HEARING WAS NOT SENT TO PETITIONER’S ADDRESS AFTER THE CHANGE AS REQUIRED UNDER 8 U.S.C.S. §1229(A); AND (E) THIS ABSENTIA ORDER VIOLATES PETITIONER’S DUE PROCESS FOR FAILURE TO NOTIFY PETITIONER OF HIS HEARING AND TO APPEAR EVEN WHERE PETITIONER NEVER SPOKE OR SAW A JUDGE, WAS NEVER CALL OR SUBPOENAED TO ANY HEARING, NEVER PARTICIPATED OR CONSENTED IN ANY TELEPHONIC CONFERENCE.

Petitioner seeks appropriate relief in the form of an **Order** reopening the Removal Proceeding under *Reyes Mata v. Lynch*, 135 S. Ct. 2150 (2015)(held Petitioner has a statutory right to file a motion to reopen under 8 U.S.C.S. §1229a(C)(7)(A)); *Dada v. Mukasey*, 554 U.S. 1, 12 (2008)(a motion to reopen is a form of procedural relief that ask the Court to change its decision in light of newly discovered evidence [in Exhibit 1, 2, see ECF No. 1-3 at 1 – 181] or a change in circumstances) pending the federal court resolution of Petitioner’s actual innocence application under 28 U.S.C §2241. This Court has jurisdiction over Petitioner’s Motion to Reopen the Removal Proceeding pursuant to 8 U.S.C. §1229a. The venue is proper in this Court. The factual allegations in this motion to reopen are new facts that will be proven at the hearing to be held, and are supported by affidavits and other evidentiary material in **Exhibits 1 through 5**.

An **Order** to reopen the removal proceeding should issue because changed circumstances in the applicable crime on May 31, 2019 is clearly proven by the Magistrate Judge holding in 2019

WL 5150141 *2, ECF No. 5, as incorporated herein in this motion above, that Petitioner “was [wrongfully] convicted in state court on one count of” the applicable crime. The Magistrate Judge holding vacates each and every administrative allegations and charges bearing upon moral turpitude, which requires two or more separate or multiple crimes not arising out of a single scheme of criminal misconduct, such as those enumerated in 8 U.S.C. §1227(a)(2)(A)(i) and (ii).

An **Order** to reopen the removal proceeding should issue because changed circumstances in the applicable law on April 17, 2018 is clearly proven by the Supreme Court decision 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. The Supreme Court holding in *Session v. Dimaya* vacates each and every administrative allegations and charges bearing upon the “residual clause” of 18 U.S.C. §16(b) as a “crime of violence” by DHS, because the April 17 holding provided that the residual clause of 18 U.S.C. §16(b) defining “crime of violence” was unconstitutionally vague – that is, too arbitrary and indistinct to comport with the constitution’s guaranteed of due process. *Id* 1212 – 13. The Supreme Court clearly ruled against removal under 8 U.S.C. §1101 et seq. This holding implicates all administrative allegations and charges bearing on “crime of violence,” such as 8 U.S.C §1101(a)(43)(A), (F)(a “crime of violence” as defined in section 16 of the title 18, United States Code) and 8 U.S.C. §1227(a)(2)(E)(i)(domestic violence and abuse for the purpose of this clause means any “crime of violence” as defined in section 16 of title 18, United States Code).

This change in circumstances materially affects Petitioner’s motion to reopen the removal proceeding, including changes in the applicable law and crime. Under 8 U.S.C. §1229a, the failure to grant the **Reliefs** requested will “result in a fundamental miscarriage of justice” in light of the newly discovered evidence (**Exhibit 1, 2 and 3, see ECF No. 1-3 at 1 - 181**) that

demonstrate and establish Petitioner's actual innocence because it was more likely than not that no reasonable juror would have convicted Petitioner in light of the new evidence in **Exhibit 1, 2 and 3.**

An **Order** to reopen the removal proceeding should issue because on February 22, 2019, Petitioner was on a Writ to a State Court Hearing at Hennepin County Court and his address changed. Pursuant to 8 U.S.C.S. §1305, Petitioner notified the Court and DHS of this change of address. 8 U.S.C.S. §1305 requires only a written notice of change of address, but no Notice to Appear was sent to Petitioner's new/change of address for the hearing. Petitioner did not receive any Notice to Appear for hearing as required under 8 U.S.C.S. §1229(a) from DHS. This violates Petitioner's due process clause for failure to notify Petitioner of his Hearing as required by 8 U.S.C.S. §1229(a). See *Contreras-Rodriguez v. United States AG*, 462 F.3d 1314 (11th Cir. 2006)(held a motion to reopen in absentia proceeding can be made at any time if the Petitioner can show that he did not receive notice. 8 C. F. R. §1002.23(b)(4)(ii)).

An **Order** to reopen the removal proceeding should issue because Petitioner did not consent to any telephonic conference and **no** video conference was held as required by 8 U.S.C.S. §1229(a). See the Magistrate Judge holding in n.2 that "[e]ven if Udoh is correct that this amounts to a violation of his constitutional rights, he nevertheless has the opportunity to raise that objection through the immigration proceeding themselves." Thus, having a hearing in the absence of Petitioner, even after Petitioner requested by writing for a video conference clearly violates Petitioner's due process right. See *Earl v. Fabian*, 2010 WL 1780189 *2 (D. Minn. 2010) where the Magistrate Judge conducted a hearing and the "Petitioner appeared via interactive video conference." This clearly supports the fact that the Department of Correction ("DOC") have system-in-place with sworn affidavits of other aliens who will testify to having their removal proceeding

hearing done via video conferencing in a place called Unit 4. Petitioner never spoke or saw a Judge at the alleged April 17, 2019 hearing or in this proceeding. Petitioner was never call or subpoenaed to any hearing in this proceeding as a *pro se* litigant in “State Custody.” Petitioner never participated in any video conference as required by 8 U.S.C.S. §1229(a) and never consented to any telephonic conference in this proceeding while in “State Custody.” As stated above, Petitioner did not receive the notice for a hearing under the reasoning of *Joshi v. Ashcroft*, 389 F.3d 732, 736 (7th Cir. 2004)(“[b]ut when as in this case the issue is not notice but receipt, because the statute allows an alien ordered removed in an absentia proceeding to reopen the proceeding if he did not receive notice even if the notice was sent, whether or not it was received, satisfied the statutory and constitutional requirements, the intended recipient’s affidavits of non-receipt is evidence”):

Under 8 U.S.C.S. §1229a(b)(5)(C)(i) and (ii), Petitioner clearly shows that this motion to reopen is filed within 180 days after the date of the order of removal. Petitioner clearly shows that the factual allegation in this motion clearly demonstrates that the failure to appear was because of exceptional circumstances as defined in subsection (e)(i). This motion to reopen is filed at any time because the factual allegations in this motion clearly shows that Petitioner did not receive the notice in accordance with paragraph (1) or (2) of section 239(a) [8 U.S.C.S. §1229(a)]. Petitioner clearly shows that the factual allegation in this motion demonstrates that he was in State Custody and the failure to appear was through no fault of the Petitioner. The filing of this motion to reopen described in clause (1) and (ii) shall stay the removal proceeding pending disposition of the motion by the Judge.

Petitioner’s ongoing State and Federal Court proceedings include substantial claims and closed questions that could result in a vacatur, new trial or reversal of this wrongful conviction and unlawful sentence. See *Hacker v. Fed. BOP*, 450 F. Supp. 2d 705 (E. D. Mich. 2006) (the court held that 28 U.S.C. §2241 was the appropriate vehicle for an inmate to challenge the manner in which his sentence was executed). These **ongoing State and Federal Court proceedings include** coupled with Petitioner’s actual innocence and supporting evidence in **Exhibit 1, 2 and 3** (ECF No. 1 - 3 at 1 - 181) demonstrates a likelihood of success that the §2254 Actual Innocence petition will prevail on the merits. These are extraordinary, exceptional and compelling circumstances beyond the control of Petitioner and reasons to grant the **Reliefs** requested in this motion.

Petitioner’s actual innocence with supporting newly discovered evidence in **Exhibit 1, 2 and 3, ongoing State and Federal Court proceedings**, Petitioner’s wrongful
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conviction and unlawful sentence, disclosure of confidential and privileged communication to Hennepin County Attorneys and the Absentia Order are extraordinary, exceptional and compelling circumstances beyond the control of Petitioner and reasons attending to Petitioner's situation warranting the grant of the Reliefs. These circumstances, including the ongoing State and Federal Court proceedings and the Absentia Order proceedings makes this case materially distinguishable from other cases. The **Absentia Order** proceeding constitutes significant deprivation of Petitioner's right that will cause irreparable harm to the Petitioner. See *Baptiste v. AG United States*, 841 F.3d 601, 615 n.17 (3rd Cir. 2016) ("... **because deportation strips a non-citizen of his rights**"); *Shuti v. Lynch*, 828 F.3d 440, 446 (6th Cir. 2016) (same); *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015)(Petitioner cannot be deprived of life, liberty or property without due process of law in removal proceeding); *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)(same).

An **Order** to reopen the removal proceeding should issue because the August 17, 2018 Order conferred Petitioner the right to appeal the issues raised in his post-conviction petition. See Civ. No. 19-CV-1311 (MJD), Exhibit 1 (ECF No. 1 - 2 at 3 - 8). The issues raised in Petitioner's post-conviction and habeas corpus petition are "substantial claims" and are "closed questions" that involve judicial bias, ineffective assistance of trial and appellate counsels; *Brady v. Maryland*, 373 U.S. 83 (1963) violation; *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), *Pyle v. Kansas*, 317 U.S. 213 (1942), *Napue v. Illinois*, 360 U.S. 264, 269 (1959), *Giglio v. United States*, 405 U.S. 150, 152 - 55 (1972), and *Youngblood v. W.Va.*, 547 U.S. 867 (2006) violations; prosecutorial misconduct, illegal search and seizure, double jeopardy violation under the reasoning of *Mosley v. Atchison*, 689 F.3d 838, 854 (7th Cir. 2012)(habeas petition remanded to determine whether, based on new evidence trial counsel was constitutionally ineffective).

These "substantial claims" are "closed questions" that also involve Petitioner's substantive and procedural due process liberty interest that is protected by the Due Process Clause, such as Petitioner's liberty interest in his fundamental right to privacy in personal confidential matters, communications and information under federal and state constitutions, statutes and laws. Petitioner's liberty interest in his fundamental right to marry, including marital privacy and

privileges in personal confidential matters, communications and information under federal and state constitutions, statutes and laws. Petitioner's liberty interest in his fundamental right to the care, custody and management of his children and his fundamental right to the privacy of his familial decisions on the matters of his family under federal and state constitutions, statutes and laws.

An **Order** to reopen the removal proceeding should issue because Petitioner protected liberty interest or legal right was created by the Due Process Clause, by the ongoing state and federal court proceedings under the reasoning of *Gonzales-Fuentes v. Molina*, 607 F.3d 864, 890 (1st Cir. 2010) (liberty interest created by lower court decisions). The Ongoing state and federal court proceedings created this legal right or liberty interest to post-conviction appeal under the reasoning of *Walter v. Griesheim*, 990 F.2d 381, 384 (8th Cir. 1993) (liberty interest created by court order). See *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 293 n.3 (1998) ("if a state establishes post-conviction proceedings, these proceedings must comport with due process"). Therefore, Minn. Stats. §§590.01 – 06 and Minn. R. Crim. P. 28.02, Subd. 2(1) are state-created liberty interest or legal right to post-conviction appeal.

An **Order** to reopen the removal proceeding should issue because 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 post-conviction 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, *Id* 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. *Id. 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*).

An **Order** to reopen the removal proceeding in this case is necessary because the “substantial claims” presented or raised in Petitioner’s post-conviction and §2254 Actual Innocence petitions would **otherwise escape review entirely** under the reasoning of *Sampson v. United States*, 724 F.3d 150, 161 (1st Cir. 2013)(writ of advisory mandamus granted where claims or issues would otherwise escape review entirely); *Goff v. Bagley*, 601 F.3d 445, 482 (6th Cir. 2010)(**habeas petition granted** unless state courts reopen appeal within 120 days to permit Petitioner to raise issue or claim of ineffective assistance of appellate counsel).

An **Order** to reopen the removal proceeding should issue on Petitioner’s **Personal Recognizance** resulting from his family ties (see record of Petitioner’s wife and children in the attached **Exhibit 6**), no criminal history, **actual innocence** to this wrongful conviction, professional employment history and educational background, ties to the community, about three (3) years remaining from this unlawful sentence, the Absentia Order and, considering the fact that Petitioner was granted *state habeas corpus* writs to appear in State Courts on multiple occasion and Petitioner complied with the strictures of those writs even without being on shackles and bond. These are extraordinary circumstances and exceptional reasons meriting the **Reliefs** requested under the reasoning of *Williams-Igwonobe v. Gonzales*, 437 F.3d 453 (5th Cir. 2006)(held because there was **no valid in absentia order** – meaning **no hearing on the merit of the record before the Judge**) and *Ghounem v. Ashcroft*, 378 F.3d 740 (8th Cir. 2004).

Courts have found denial of fundamental fairness to include Petitioner's circumstances where an indigent Petitioner does not have the assistance of an Attorney during the immigration hearing. See *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973) (in certain proceedings, fundamental fairness requires a right to counsel). Fundamental fairness required the assistance of counsel for a full and fair immigration hearing and to satisfy the equal protection of law by an impartial decision-maker. This was a *prejudicial error* under the reasoning applied in *Bucci v. U.S.*, 662 F.3d 18, 34 – 35 (1ST Cir. 2011)(Petitioner entitled to a new immigration hearing and appointment of counsel because *prior* immigration hearing for separate defendant, where petitioner had no counsel, resulted in judgment against both parties); *McGriff v. Dep't of Corr.* 338 F.3d 1231, 1235 (11th Cir. 2003)(Petitioner entitled to new immigration hearing and appointment of counsel because the district court failed to appoint counsel at immigration hearing). This is a showing that the merits of this factual dispute were not resolved in the immigration court hearing.

The lack of legal representation by a counsel was a structural defect or error warranting Vacatur because the immigration court left Petitioner to a “proceeding between an individual and agents of the State ... that amounts to ‘trial-like confrontations,’ at which counsel would help the accused ‘in coping with legal problems or ... meeting his adversary.’” *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 212 n.16 (2008); *State v. Maddox*, 825 N.W.2d 140, 144 (Minn. 2013)(same). Petitioner was not afforded due process of law under the reasoning applied in *Powell v. Alabama*, 287 U.S. 45 (1932) that a “hearing includes the right and aid of counsel when so desired. The ordinary layman, even the intelligent and educated layman, is not skilled in the science of law and needs the advice and direction of competent counsel. [Petitioner was] in effect denied the [statutory] right to counsel.”

It cannot be said that it was harmless-error for Petitioner not to have the representation or services of a legal counsel at the hearing because courts have recognized that “[t]aking deposition, conducting witness examinations, applying the rules of evidence, and making opening statements are beyond the ability of most *pro se* litigants.” *James v. Eli*, 889 F. 3d 320 (7th Cir. 2018); *Walker v Price*, 900 F.3d 933 (7th Cir. 2018). The Courts found prejudice because Petitioner was unable to pursue discovery, subpoena(s) and to properly respond to the situations as the case became “increasingly complex” as it progressed, which resulted in a decision against Petitioner.

The lack of legal representation for Petitioner at the immigration hearing is a prima facie showing or evidence of presumed prejudice that “offends some principle of justice so noted in the tradition and conscience of our people as to be ranked as fundamental” under the reasoning applied in *Green v. United States*, 262 F.3d 715 (8th Cir. 2001)(such defect constitutes a structural error); *Cooper v. Oklahoma*, 517 U.S. 348, 363-65(1996)(a state law or practice that betrays a fundamental principle of justice offends the Due Process Clause); *Chamber v. Mississippi*, 410 U.S. 284, 294 (1973)(a state court’s error in applying a state rule can have constitutional implications); *United States v. Vasquez*, 7 F.3d 81 (5th Cir. 1993)(failure to appoint counsel necessitates a Vacatur); *United States v. Bendolph*, 409 F.3d 155 (3rd Cir. 2005)(prejudice must be presumed when Petitioner statutory right to counsel is thus abridged).

Prejudice is shown because the requested transcripts of the full immigration hearing was necessary to remedy Petitioner’s fundamental right.

For the foregoing reasons above, Petitioner prays that this court issue an **Order** to reopen the removal proceeding pending the resolution of Petitioner’s **actual innocence** petition for fairness, integrity, and the public reputation of the judicial system. It is of the public interest against the imposition of wrongful conviction and unlawful sentence. 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. See *Shuti v. Lynch*, 828 F.3d 440, 450 – 51 (6th Cir. 2016) and *Jordan v. De George*, 341 U.S. 223, 243 (1951) (Jackson, J. *dissenting*).
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Furthermore, **Judicial Economy** is of the public interest to grant the **Reliefs** requested in this motion.

Under the Actual Innocence and Miscarriage of Justice Exception, the failure to review the claims will “result in a fundamental miscarriage of justice” in light of the newly presented evidence (**Exhibit 1, 2 and 3**) that demonstrate and establish Petitioner’s actual innocence. This exception excuses any procedural default, even in the absence of cause, because it was more likely than not that no reasonable juror would have convicted Petitioner in light of the new evidence in **Exhibit 1, 2 and 3**.

Petitioner has newly discovered exonerating evidence that is material and exculpatory. This evidence involves the false and inaccurate trial testimony of the state key witnesses. Petitioner incorporates the transcripts of the held July 27, 2018, July 30, 2018 through August 01, 2018 evidentiary hearing to this Actual Innocence Petition for relief (See **Exhibit 1, 2 and 3**).

Petitioner is entitled to an acquittal and release based on the newly discovered exonerating evidence showing actual innocence based on recantations. See **Exhibit 1, 2 and 3**. Petitioner has newly discovered exonerating evidence regarding substantive evidence that was referenced throughout Petitioner’s evidentiary hearing. Petitioner also incorporates **Exhibit 1, 2 and 3** as if re-alleged to this Petition for Review. On June 15, 2018, Honorable Judge Tamara Garcia issued an order stating, see *ld* at ¶2:

The recantations come in the form of notarized affidavits signed by the [complainants] themselves, thus they bear sufficient indicia of trustworthiness for the Court to consider them. Assuming then, as it must, that the allegations laid out in Petitioner’s claim as supported by the affidavits are true, the Court is persuaded that but for the [complainants’] alleged false testimony, the jury might have reached a different conclusion. While it is true, as the State points out in its brief, that both [complainants] were impeached with their character for untruthfulness and that the motives for fabrication were presented in part at trial, the fact that the recanting witnesses are the [complainants] in trial is significant. The State did produce other evidence of Petitioner’s abuse of the [complainants] at trial, however, all of that evidence was ultimately based on the statements of the two [complainants]. The Court is not convinced that if these two witnesses had testified at trial consistent with the affidavits attached to Petitioner’s petition or were to do so at a new trial, the jury would reach the same conclusion.

The evidence in the held July 27, 2018, July 30, 2018 through August 01, 2018 evidentiary hearing, see **Exhibit 1, 2 and 3**, was said to have been told to Molly Lynch (Police Officer), Elizabeth Bergman (Therapist) and Prosecutor, all investigating the false allegations made against Petitioner. Petitioner, the government, state and Prosecutor suppressed and withheld this evidence either willfully or inadvertently. Petitioner, the government, state and Prosecutor failed to turn over evidence that is known to the prosecution, police officers, investigators and therapist. Petitioner, the government, state and Prosecutor failed to disclose this evidence that the prosecution, police officer, investigator, therapist and law enforcements were aware of, to Defense Counsel. Petitioner knowingly presented false testimony from K.K.W. and K.C.W. to seek wrongful convictions of Mr. Udoh at trial.

The Absentia Order dated April 17, 2019 is invalid on the Grounds of Petitioner's Change of Address. On February 2019, Petitioner's address changed and pursuant to 8 U.S.C.S. §1305, Petitioner notified the Court and DHS of this change of address. 8 U.S.C.S. §1305 requires only a written notice of change of address. Therefore, because the Notice to Appear was not sent to Petitioner's new address for the hearing, Petitioner had not received any Notice to Appear as required under 8 U.S.C.S. §1229(a) from DHS or the Court. This violates Petitioner's due process clause for failure to notify Petitioner's of his Hearing as required by 8 U.S.C.S. §1229(a).

The Absentia Order dated April 17, 2019 is invalid in light of

(a) the issues raised in Petitioner's **ongoing State and Federal Court proceedings**, (b) Petitioner's actual innocence clearly demonstrated in **Exhibit 1, 2 and 3**, (c) Petitioner's pending court proceedings in State and Federal Courts, (d) Petitioner's notification the Court and DHS of this Change of Address on February 2019 pursuant to 8 U.S.C.S. §1305, (e) the fact that Notice to Appear and Notice of Hearing was not sent to Petitioner's address for the hearing as required under 8 U.S.C.S. §1229(a) from DHS or the Court, and (f) this Absentia Order violates Petitioner's due process clause for failure to notify Petitioner of his Hearing and to Appear as required by 8 U.S.C.S. §1229(a). Petitioner never consented to any telephonic conference as required by 8 U.S.C.S. §1229(a).

See **Exhibit 1**. Petitioner never spoke or saw a Judge in this proceeding. Petitioner was never call or subpoenaed to any hearing in this proceeding as a *pro se* litigant. Petitioner never participated

in any video conference as required by 8 U.S.C.S. §1229(a) and never consented to any telephonic conference in this proceeding.

CONCLUSION

Wherefore, Petitioners pray the court issues a Writ of Certiorari to review the judgment and opinion of the Eighth Circuit Court of Appeals.

Dated: October 27, 2021

Respectfully Submitted,



Emem U. Udoh, 245042
Pro se Litigant,
MCF-Faribault
1101 Linden Lane
Faribault, MN 55021

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 25 pages.

Dated: October 27, 2021

Respectfully Submitted,



Emem U. Udoh,
Pro se Litigant, 245042
MCF-Faribault
1101 Linden Lane
Faribault, MN 55021