

IN THE  
SUPREME COURT OF THE UNITED STATES

Application No. \_\_ - \_\_\_\_

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EMEM UFOT UDOH,

*Petitioner,*

vs.

MINNESOTA DEPARTMENT OF CORRECTIONS ET AL,

*Respondents.*

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APPLICATION FOR EXTENSION OF TIME  
TO FILE WRIT OF CERTIORARI

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MINNESOTA APPELLATE CASE NO. A21-1041

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Udoh

**(PRO SE) PETITIONER**



**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES ..... ii**  
**REASON FOR GRANTING THE EXTENSION OF TIME..... 1**  
**CONCLUSION..... 4**  
**CERTIFICATE OF COMPLIANCE..... 4**  
**APPENDIX..... 0**  
**PROOF OF SERVICE..... 1**

**TABLE OF AUTHORITIES**

**CASES**

*Bound v. Smith*, 430 U.S. 817, 821 (1997)..... 3  
*Kristian v. Dep't of Corr.*, 541 N.W.2d 623, 628 (Minn. Ct. App. 1996) ..... 3

## REASON FOR GRANTING THE EXTENSION OF TIME

1. Petitioner was indigent and granted IFP by the Chief Judge (Hons. Ivy Bernhardson) to proceed *pro se* in A19-1129 appellate proceeding. A19-1129 appeal is Petitioner's appeal of the final postconviction June 15, 2018 and February 5, 2019 orders. **Mot. App. 2 - 3.**

2. That A19-1129 postconviction appeal was dismissed on March 23, 2020 due to an untimely briefing as a result of Petitioner's lack of access to the MCF - Rush City prison law library without any adequate assistance from persons trained in the law. **Mot. App. 2 - 3.**

3. On December 14, 2020, Petitioner filed a petition for a writ of habeas corpus in the Chisago County District Court. **Mot. App. 3.** Petitioner also filed Exhibits in support of the petition, and an application to proceed IFP in the Chisago County District Court.

4. In the petition, Petitioner seeks relief on the ground that he has been denied his constitutional right to access the Minnesota Court of Appeals because physical access to the prison law library has been restricted due to COVID-19. Petitioner had been unable to use the prison law library to timely file his principal brief in A19-1129 appeal at the Minnesota Court of Appeals by March 16, 2020 to appeal the issues or claims decided by the criminal district court in its June 15, 2018 and February 5, 2019 final postconviction orders (See Dkt. 90). **Mot. App. 6 - 9.**

5. Additionally, Petitioner claims that the restrictions that Defendants has placed on law library access to prevent the spread of COVID-19 without any adequate assistance from persons trained in the law **violates** his constitutional right of access to the Minnesota Court of Appeals to timely file his principal brief in A19-1129 appeal by March 16, 2020. **Mot. App. 1 – 4.**

6. The case was assigned to Honorable Bridgid E. Dowdal, who on April 11, 2021 *granted* Petitioner's application to proceed IFP and *Ordered* Respondents to respond to the petition and exhibits by May 10, 2021.

7. On May 10, 2021, Respondents filed a response to the petition and exhibits.

8. On August 9, 2021, the district court denied the petition, and the Minnesota Court of Appeals affirmed the district court order and judgment on February 8, 2022. **Mot. App. 1 – 4.**

9. On April 19, 2022, the Minnesota Supreme Court *granted* Petitioner's motion for leave to proceed in forma pauperis but ultimately denied the petition for further review. **Mot. App. 5.**

10. Under this Supreme Court rules, Petitioner's petition for writ of certiorari is due by July 18, 2022. This Court's has jurisdiction over the Minnesota Appellate Court's decisions under 28 U.S.C. §1257.

11. **Petitioner is currently incarcerated.** Petitioner may be incarcerated but Petitioner do have rights under the Federal and Minnesota

Constitutions, Minnesota Statutes and rules, and decisions of the Federal and Minnesota Courts. Article I, Section 7, provides “[no] person shall ... be deprived of life, liberty or property without due process of law.” The United States and Minnesota Constitutions guarantees prisoner the right of meaningful access to courts. *Kristian v. Dep’t of Corr.*, 541 N.W.2d 623, 628 (Minn. Ct. App. 1996) (prison inmates have a constitutional right to access to the court that derives from the due process); *Bound v. Smith*, 430 U.S. 817, 821 (1997).

12. **Petitioner need more time to research supporting case laws, rules and statutory provisions** “[to] vindicate prisoners’ rights of access to courts, [because] the state<sup>1</sup> must provide either adequate prison law library or adequate assistances from persons trained in the law. *Id.* at 828, 97 S. Ct. at 1498.” Petitioner need more time for legal research, to type, to successfully complete and file a reasoned petition for writ of certiorari before this Honorable Court. **Mot. App. 6 - 9.**

13. Under these circumstances, Petitioner respectfully move this Honorable Court for a thirty (30) to sixty (60) days extension of time in which to file a petition for writ of certiorari in the above entitled matter.

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<sup>1</sup> State refers to Respondents (Minnesota Department of Corrections et al).

## CONCLUSION

WHEREFORE, Petitioner prays that the court grants the application for extension of time.

Dated: June 27, 2022

Respectfully Submitted,



Emem U. Udoh  
*Pro Se*, 245042  
1101 Linden Lane  
Faribault, MN 55021

## CERTIFICATE OF COMPLIANCE

Petitioner, Emem Ufot Udoh, hereby certifies that this Application for Extension of Time to File Writ of Certiorari complies with the word limitation, type-face, and type-volume requirements of the Supreme Court Rule. According to Microsoft Word 2019, the word processing program used to produce this Application, it contains 683 words proportionally (double) spaced, and exclusive of pages containing the caption, table of contents, table of authorities, and Appendix that are exempted by the Supreme Court Rules.

Dated: June 27, 2022

Respectfully Submitted,



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APPENDIX

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MINNESOTA APPELLATE CASE NO. A21-1041

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Opinion of the Minnesota Court of Appeals Dated February 8, 2022.....	1 – 4
Decision of the Minnesota Supreme Court Dated April 19, 2022.....	5
Minnesota Department of Corrections COVID-19 Response.....	6 - 9

Dated: June 27, 2022

Respectfully Submitted,



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Go to ▾

Page

Page #



udoh 1 of 30 ▾



Search Document 🔍

< 1 of 26 | Results list >

## ◆ Udoh v. Minn. Dep't of Corr., 2022 Minn. App. LEXIS 21

Copy Citation

Court of Appeals of Minnesota

February 8, 2022, Decided; February 8, 2022, Filed

A21-1041

### Reporter

2022 Minn. App. LEXIS 21 \* | 2022 WL 433244

Emem Ufot **Udoh**, Appellant, vs. Minnesota Department of Corrections, et al., Respondents.

**Subsequent History:** Review denied by, Motion granted by Emem Ufot **Udoh** v. Minn. Dep't of Corr., 2022 Minn. LEXIS 143 (Minn., Apr. 19, 2022).

**Prior History:** [\*1] Chisago County District Court File No. 13-CV-20-792. State v. **Udoh**, 2016 Minn. App. Unpub. LEXIS 181, 2016 WL 687328 (Minn. Ct. App., Feb. 22, 2016).

### Core Terms

district court, convictions, forfeited, habeas corpus petition, post conviction relief, memorandum, custody, inmates, criminal sexual conduct, ineffective assistance, habeas petition, direct appeal, habeas corpus, second-degree, asserting, petitions, sentenced, corpus, courts

## Case Summary

### Overview

HOLDINGS: [1]-Because defendant's habeas corpus petitions in the district court did not

mention of any of the claims raised in his brief to the court of appeals, he forfeited consideration of each of these claims and the court of appeals declined to review them.


**Outcome**

Order affirmed.

▼ LexisNexis® Headnotes

Civil Procedure > Appeals ▼ > [Reviewability of Lower Court Decisions](#) ▼ > [Preservation for Review](#) ▼

**HN1**  **Reviewability of Lower Court Decisions, Preservation for Review**

The court of appeals considers issues that are not raised in the district court but are raised for the first time on appeal to be forfeited.  [More like this Headnote](#)

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Civil Procedure > Appeals ▼ > [Appellate Briefs](#) ▼  
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**HN2**  **Appeals, Appellate Briefs**

Issues not briefed are waived.  [More like this Headnote](#)

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**Judges:** Considered and decided by Worke, Presiding Judge; Ross, Judge; and Larkin, Judge.

**Opinion by:** Renee L. Worke

## Opinion

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### ORDER OPINION

#### BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Emem Ufot **Udoh** was convicted and sentenced in 2014 for first- and second-degree criminal sexual conduct for sexually abusing his two stepdaughters. Since that time, **Udoh** has challenged his convictions in a direct appeal and two separate petitions for postconviction relief. On direct appeal, although this court reversed one conviction for second-degree criminal sexual conduct based on a violation of [Minn. Stat. § 609.04, subd. 1](#) (2012), it affirmed the remaining two convictions and sentences. [State v. Udoh](#), No. A14-2181, 2016 Minn. App. Unpub. LEXIS 181, 2016 WL 687328, at \*1, 4 (Minn. App. Feb. 22, 2016) (**Udoh I**), *rev. denied* (Minn. Apr. 27, 2016).

2. **Udoh's** appeal from the denial of his first petition for postconviction relief was ultimately dismissed after his repeated failures to file a timely brief. *State v. Udoh*, No. A19-1129 (Minn. App. Mar. 23, 2020) (order op.) (**Udoh II**). And **Udoh's** appeal from the district court's denial of his second postconviction petition was affirmed in an order opinion on the ground that his claims were barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (Minn. 1976). *Udoh v. State*, No. A20-0633 (Minn. App. Feb. 1, 2021) (order op.) (**Udoh III**), *rev. denied* (Minn. Mar. 30, 2021).

3. On December [\*2] 14, 2020, **Udoh** filed a petition for a writ of habeas corpus in district court, asserting that the restrictions imposed by the Minnesota Department of Corrections (DOC) on inmates' access to the prison's law-library facilities violates his constitutional right to meaningful access to the courts. **Udoh** requested his immediate release from custody or, alternatively, a transfer to a facility with a lower custody classification so that he can be afforded access to the law library, as well as any other declaratory or injunctive relief the district court may deem appropriate.

4. Also on December 14, 2020, **Udoh** filed an "amended" petition for a writ of habeas corpus and an accompanying memorandum. These documents appear to be edited copies of a petition and memorandum that had been filed in April of 2020 on behalf of three inmates at a different correctional facility in a completely unrelated matter. That petition sought release from custody and mandamus relief based upon the facility's failure to adequately safeguard its inmates from COVID-19. The only substantive change that **Udoh** appears to have made to the petition and memorandum was to include language regarding his right of access to the [\*3] courts in his assertions of error. [1]

5. The district court denied **Udoh's** petitions on August 9, 2021, and **Udoh** now appeals.

6. In his brief to this court, **Udoh** raises only claims related to the validity of his convictions and says nothing pertaining to the claims made in his habeas corpus petitions in district court. In fact, **Udoh's** brief is identical to the one he filed in *Udoh III*, the appeal from his second petition for postconviction relief in which this court concluded that all of his claims were *Knaffla*-barred. The claims presented in his brief relate to (1) newly-discovered evidence, (2) ineffective assistance of trial counsel, (3) ineffective assistance of appellate counsel, (4) a *Brady* violation, (5) the state's knowing use of false testimony, and (6) prosecutorial misconduct based upon the state's vouching for the credibility of the complainants.

7. In its response brief, the state argues that **Udoh** forfeited consideration of each of these claims due to his failure to raise them in the district court proceeding. We agree. *HN1* "We consider issues that are not raised in the district court but are raised for the first time on appeal to be forfeited." *State v. Balandin*, 944 N.W.2d 204, 220 (Minn. 2020). Here, **Udoh's** habeas corpus petitions in district [\*4] court did not mention of any of the claims raised in his brief to this court, and the district court did not reference or address the claims. Accordingly, we conclude that **Udoh** has forfeited consideration of these issues and we decline to review them.

8. We also decline to review the issues presented in **Udoh's** petitions for habeas corpus in district court. *HN2* "Ordinarily, issues not briefed are waived." *State v. Edwards*, 736 N.W.2d 334, 340 (Minn. App. 2007), *rev. denied* (Minn. Sept. 26, 2007). Here, the brief **Udoh** submitted in this appeal makes no mention of the bases for relief presented in his habeas corpus petitions and provides no argument in support of them. **Udoh** has therefore forfeited consideration of these issues and we elect not to address their merits.

**IT IS HEREBY ORDERED:**

1. The order of the district court dismissing **Udoh's** petitions for habeas corpus is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: February 8, 2022

**BY THE COURT**

/s/ Renee L. Worke

Judge Renee L. Worke

**Footnotes**

**1**

Incidentally, this court affirmed the district court's denial of relief in that unrelated matter. Foster v. Minn. Dep't of Corr., No. A20-0976, 2021 Minn. App. Unpub. LEXIS 357, 2021 WL 1346617, at \*1 (Minn. App. Apr. 12, 2021).



**A Emem Ufot Udoh v. Minn. Dep't of Corr., 2022 Minn. LEXIS 143****Copy Citation**

Supreme Court of Minnesota

April 19, 2022, Decided; April 19, 2022, Filed

A21-1041

**Reporter****2022 Minn. LEXIS 143 \***Emem Ufot **Udoh**, Petitioner, vs. Minnesota Department of Corrections, et al., Respondents.**Notice:** DECISION WITHOUT PUBLISHED OPINION**Prior History:** [Udoh v. Minn. Dep't of Corr., 2022 Minn. App. LEXIS 21, 2022 WL 433244 \(Minn. Ct. App., Feb. 8, 2022\)](#)**Judges:** [\*1] Lorie S. Gildea, Chief Justice.**Opinion by:** Lorie S. Gildea**Opinion**

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ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Emem Ufot **Udoh** for leave to proceed in forma pauperis be, and the same is, granted.IT IS FURTHER ORDERED that the petition of Emem Ufot **Udoh** for further review be, and the same is, denied.

Dated: April 19, 2022

BY THE COURT:

/s/ Lorie S. Gildea

Lorie S. Gildea

Chief Justice



**I. COVID-19 Response**

10. On March 13, 2020, Governor Walz declared a peacetime emergency related to COVID-19. Both before and since that declaration, the DOC has under taken many actions based on guidance from the Minnesota Department of Health (MDH) and the Centers for Disease Control and Prevention (CDC) to mitigate the introduction and spread of COVID-19 in its correctional facilities, including MCF-Rush City. These measures have included the following:

- On March 6, 18, and 26, 2020, Commissioner Paul Schnell sent a memorandum to all inmates warning of the dangers of COVID-19 and stressing the importance of proper hygiene and social distancing.
- Beginning March 11, 2020, the DOC suspended in-person visitation at its facilities and postponed all events involving outsiders entering those facilities. It also waived medical copays to encourage inmates to report symptoms and began distributing additional bars of soap to all inmates.
- On March 13, 2020, the DOC's Medical Director, based on guidance from the MDH and CDC, issued COVID-19 screening, testing, and infection control guidelines for all facilities. These guidelines include enhanced hygienic measures, screenings of all inmates presenting COVID-19 symptoms, the screening and quarantining of all new offender intakes, the use of appropriate personal protective equipment by staff and inmates, the isolation of symptomatic inmates, and the quarantine of inmates who have been in close contact with confirmed or suspected cases of COVID-19. The guidelines have continuously been revised as scientific understanding of the coronavirus has evolved.
- Under the current version of the DOC's guidelines, which have been in place since April 26, 2021, inmates who exhibit COVID-19 symptoms are evaluated by medical staff, tested, and placed in isolation. They can be cleared to leave isolation if they have been fever free for at least 24 hours without the use of fever-reducing medications, their other symptoms have improved, and at least 10 days have passed since their symptoms first appeared. Those who have been exposed to others with COVID-19 are placed in quarantine for 14 days and must have a negative test before their release from quarantine.
- On March 15, 2020, Commissioner Schnell activated an Incident Management Team (IMT) to put in place an emergency command structure to address the prevention and mitigation of COVID-19 at each DOC facility.
- Beginning on March 16, 2020, the DOC implemented a mandatory screening process for all staff and contractors entering any correctional facility, including MCF-Rush City. This includes the completion of a COVID-19 screening form and temperature screening prior

to entry. Staff who, among other things, exhibit a fever or symptoms of COVID-19 are not allowed into the facility and are placed on paid leave until they have completed a required quarantine period and have been cleared by a doctor to return to work.

- On March 18, 2020, the DOC began installing additional handwashing and hand-sanitizing stations at all correctional facilities.
- In April 2020, the DOC distributed masks to all inmates and facility staff. Inmates were initially encouraged to wear the masks, but the DOC later made mask wearing mandatory any time inmates were out of their cells. To promote compliance with the mask mandate, facility staff were informed they might be subject to disciplinary action, and inmates were informed they could be subject to sanctions if they failed to wear a mask outside of their cells. Additional masks have been distributed to inmates and staff throughout the pandemic, including at MCF-Rush City.
- In early April 2020, the DOC implemented "Stay with Unit" plans at each facility to promote social distancing and mitigate the potential for COVID-19 spread. Under those plans, inmates from different living units are not allowed to commingle during facility activities, including any programming, recreation, library, or meal times.
- In late May 2020, the DOC began mass testing of inmates and staff at each of its facilities. Mass testing at MCF-Rush City began in June 2020, and the DOC has continued to test inmates and staff at all facilities on a regular basis. Staff who test positive for COVID-19 are placed on paid leave for a period recommended by MDH, and inmates who test positive or otherwise exhibit symptoms of COVID-19 are placed in isolation and receive medical care needed to manage their symptoms. As of August 4, 2021, the DOC had administered over 123,941 inmate tests across its facilities, including 8,230 tests at MCF-Rush City. See DOC COVID-19 Updates, <https://mn.gov/doc/about/covid-19-updates> (last visited Aug. 4, 2021).
- On June 16, 2020, Commissioner Schnell again encouraged all inmates to maintain social distancing, regularly wash their hands, wear their masks, fully participate in testing, and report any symptoms.
- Throughout the pandemic, the DOC has limited transfers of inmates between facilities. When an inmate must be transferred, they are tested and screened before the transfer and placed in quarantine upon arrival at the new facility for 14 days.
- The DOC has also taken several measures to reduce the prison population in order to increase the ability of inmates to social distance. In March 2020, Commissioner Schnell directed the Hearings and Release Unit to apply tighter standards to the revocation and reimprisonment of offenders who violate the conditions of their release to limit the number of offenders returning to prison. The DOC also expanded its work release and conditional medical release programs in response to COVID-19. As a result of these population reduction measures, the DOC has reduced its total prison population and worked to mitigate the spread of COVID-19.

- MCF-Rush City currently has three active cases of COVID-19. The facility has administered 8,230 tests to inmates, a total of 219 inmates have tested positive, two tests are pending, 215 have recovered, and there has been one death since the beginning of the pandemic. See DOC COVID-19 Updates, <https://mn.gov/doc/about/covid-19-updates> (last visited Aug. 4, 2021).

11. On December 31, 2020, the DOC began administering its first doses of the COVID-19 vaccine to its healthcare staff and particularly vulnerable inmates housed in specialized medical units, pursuant to the initial vaccine priority order established by MDH. At the end of March 2021, the DOC was allocated large quantities of COVID-19 vaccine and held mass vaccination clinics at all facilities.

12. MCF-Rush City held two mass vaccination events for staff and inmates on April 2 and 6, 2021. As of April 9, 2021, the DOC had vaccinated all inmates within DOC custody who had accepted the offer to receive the COVID-19 vaccine and were medically eligible to receive the vaccine. A small percentage of DOC inmates were not medically eligible to receive the vaccine at that time because they had an active case of COVID-19.

13. During the week of April 19, 2021, MCF-Rush City held an additional vaccination clinic where an additional 37 inmates were vaccinated.

14. Currently at MCF-Rush City, 477 offenders are fully vaccinated and 94 more are partially vaccinated. See DOC COVID-19 Updates, <https://mn.gov/doc/about/covid-19-updates> (last visited Aug. 4, 2021).

15. As of May 10, 2021, Udoh declined the DOC's offer to be vaccinated against COVID-19. <sup>pending full FDA formal vaccine authorization or approval</sup>

Staff at MCF-Rush City went to each inmate's cell between April 9 and 11, 2021 to ask all offenders who had not responded to a previous questionnaire about the vaccine if they were willing to be vaccinated. Udoh indicated that he did not want to receive <sup>to sign a waiver of complications</sup> a vaccine. <sup>on emergency</sup> Inmates who have



~~to sign a waiver of complication liability to the emergency~~  
declined vaccination have been encouraged to notify health services if they change their mind and want to be vaccinated.

16. As of the date of this Order, the Court does not have any information that Udoh has chosen ~~to sign a waiver of complication liability~~ to receive the COVID-19 vaccination, pending Full FDA vaccine approval.

## II. Access to Law Library and Telephone

17. The DOC provides all inmates in its facilities with access to legal materials. at the facility law library upon request At MCF-Rush City, inmates may generally schedule through a kiosk to the warden law several sessions of library time per week, but this was reduced to no ~~one~~ session a week in order to comply with the "Stay with Unit" policy and keep inmates from different living units physically separated to prevent the spread of COVID-19 within the facility. MCF-Rush City's law library was also closed to physical access due to COVID-19 restrictions for more than ~~about~~ three months total, during the thirty (30) days time period Udoh was required to file PFR<sup>1</sup> November to early January 2021. law library closure During these periods, inmates were not ~~able~~ able to request copies of cases, statutes, policies, and other legal materials through library staff and also request that staff print copies of their typed legal documents, until approved by the Warden.

18. DOC policy does not permit inmates to request a legal phone call. even when the law library is closed Instead, inmates must contact their attorney through mail, but when additional communication is required, an attorney must ~~may~~ request to schedule a private legal telephone call with the inmate client. by DOC policy and regulation through the case worker Inmates themselves cannot ~~may not~~ schedule a private legal call. Through this policy, inmates at MCF-Rush City do not ~~have~~ have access to speak with their legal counsel by telephone, where the law library is closed until scheduled by their case manager. Paul Schnell and Vicki Janssen

19. Udoh has commenced a § 1983 civil action against the DOC in the United States District Court for the District of Minnesota, in file 21-CV-00099-WMW-LIB, where he raises these same access-to-courts claims, due to this Court delay in issuing a writ on Udoh's emergency petition filed on December 14, 17, 2020. DOC cannot be sued under the Eleventh Amendment.

<sup>1</sup> PFR is Udoh's petition for further review of the March 23, 2020 dismissal of A19-1129 appeal.

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*Respondent.*

---

**PROOF OF SERVICE**

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Petitioner, Emem Ufot Udoh, hereby certifies that on this date, June 27, 2022  
as required by Supreme Court Rule 29, a copy of the following documents:

1. Application for Extension of Time to File Writ of Certiorari
2. Appendix; and
3. Proof of Service

was served upon the Clerk of the United States Supreme Court and on every other  
person required to be served by U.S. Mail as follows:

**CLERK'S OFFICE**  
**UNITED STATES SUPREME COURT**  
One First Street North East,  
Washington, D.C. 20543

**KEITH ELLISON**  
Minnesota Attorney General  
**CORINNE WRIGHT**  
Assistant Attorney General  
445 Minnesota Street, Suite  
1400  
St. Paul, MN 55101

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

Respectfully Submitted,



---

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