

## APPENDIX

### TABLE OF CONTENTS

#### Appendix A —

Order, *Kiefer v. Isanti County*, State of Minnesota,  
A24-1574  
Minnesota Supreme Court (Sep. 17, 2025) ..... 1a

Judgment, *Kiefer v. Isanti County*, State of  
Minnesota, A24-1574  
Minnesota Court of Appeals (Sep. 24, 2025) ..... 2a

Opinion, *Kiefer v. Isanti County*, State of Minnesota,  
A24-1574  
Minnesota Court of Appeals (Jun. 23, 2025) ..... 4a

Petition for Review, *Kiefer v. Isanti County*, State of  
Minnesota, A24-1574  
Minnesota Supreme Court (Jul, 23, 2025) ..... 15a

#### Appendix B —

Constitutional Provision ..... 25a

Statutory Provision ..... 25a

**APPENDIX A**

STATE OF MINNESOTA

IN SUPREME COURT

A24-1574

FILED September 17, 2025

Keith Allen Kiefer,  
Petitioner,

vs.

Isanti County,  
Respondent,

State of Minnesota,  
Respondent.

**O R D E R**

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

IT IS HEREBY ORDERED that the petition of  
Keith Allen Kiefer for further review is denied.

Dated: September 17, 2025 BY THE COURT:

s/  
Natalie E. Hudson  
Chief Justice

2a

**STATE OF MINNESOTA COURT OF APPEALS  
JUDGMENT**

Keith Allen Kiefer, Appellant,

vs.

Isanti County, Respondent,

State of Minnesota, Respondent.

Appellate Court # A24-1574

Trial Court # 30-CV-23-743

FILED September 24, 2025

*Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Isanti County District Court herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.*

*Dated and signed: September 24, 2025*

*FOR THE COURT*

*Attest: s/*  
*Christa Rutherford-Block*  
*Clerk of the Appellate Courts*

*By: s/*  
*Crystal Roquette*  
*Assistant Clerk*

**STATE OF MINNESOTA    COURT OF APPEALS**  
**TRANSCRIPT OF JUDGMENT**

*I, Christa Rutherford-Block, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.*

*Witness my signature at the Minnesota Judicial Center,*

*In the City of St. Paul      September 24, 2025*  
*Dated*

*Attest: s/ \_\_\_\_\_*  
*Christa Rutherford-Block*  
*Clerk of the Appellate Courts*

*By:      s/ \_\_\_\_\_*  
*Crystal Roquette*  
*Assistant Clerk*

4a

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA**

**IN COURT OF APPEALS**

**A24-1574**

Keith Allen Kiefer,  
Appellant,

vs.

Isanti County,  
Respondent,

State of Minnesota,  
Respondent.

**Filed June 23, 2025**

**Affirmed**

**Worke, Judge**

Isanti County District Court  
File No. 30-CV-23-743

Erick G. Kaardal, Mohrman, Kaardal & Erickson,  
P.A., Minneapolis, Minnesota (for appellant)

Andrew A. Wolf, Paul Donald Reuvers, Iverson  
Reuvers, Bloomington, Minnesota (for respondent  
Isanti County)

Keith Ellison, Attorney General, Jeff Timmerman,  
Assistant Attorney General, St. Paul, Minnesota (for

respondent State of Minnesota)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

### **NONPRECEDENTIAL OPINION**

**WORKE**, Judge

Appellant challenges the district court's order granting respondent county's motion to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e), and respondent state's motion to dismiss for lack of subject-matter jurisdiction under Minn. R. Civ. P. 12.02(a). Because the district court did not err by granting either motion, we affirm.

### **FACTS**

We derive the following facts from appellant Keith Allen Kiefer's November 29, 2023 complaint, including documents referenced and exhibits attached thereto. In 2008, respondent Isanti County (the county) charged Kiefer with a misdemeanor for violating a solid-waste ordinance. After trial, a jury found Kiefer guilty, and he served 60 days in jail. The county then sued Kiefer for violating the same ordinance. The district court determined that Kiefer violated the ordinance and ordered him to remove particular items from his property. Kiefer appealed, and we reversed, concluding that the district court erroneously interpreted the text of the ordinance. *See County of Isanti v. Kiefer*, No. A15-1912, 2016 WL 4068197, at \*2-4 (Minn. App. Aug. 1, 2016).

Based on our decision in the civil matter, Kiefer petitioned to vacate his 2009 criminal conviction. On

October 8, 2018, a postconviction court granted the petition, reasoning that this court’s interpretation of the solid-waste ordinance in the county’s civil action “constitutes a new interpretation of law” that applies retroactively to Kiefer’s criminal conviction. *See* Minn. Stat. § 590.01, subd. 4(b)(3) (2024).

With his conviction vacated, Kiefer sued the county for malicious prosecution and false imprisonment. Kiefer also sued respondent State of Minnesota (the state), seeking declaratory judgment that Minn. Stat. § 590.11 (2024), a provision of the Minnesota Imprisonment and Exoneration Remedies Act (MIERA), violates the United States and Minnesota Constitutions by excluding him from receiving compensation for the time he wrongly served on his misdemeanor conviction. According to Kiefer, the statute violates the Equal Protection Clause because it allows persons exonerated for felonies, but not misdemeanors, to receive compensation. *See* Minn. Stat. § 590.11, subd. 5.

Although the statute of limitations for his claims was two years, *see* Minn. Stat. § 541.07(1) (2024), he argued that the claims were timely because an earlier federal lawsuit—which he filed on October 2, 2020—remained pending until the United States Supreme Court denied his petition for a writ of certiorari on October 30, 2023, just over a month after he filed the petition on September 27, 2023.<sup>1</sup> *See* 28 U.S.C. § 1367(d) (2018) (tolling the limitation period on state claims over which a federal court exercises supplemental jurisdiction while the claims are pending and for 30 days afterward); *Kiefer v. Isanti*

---

<sup>1</sup> Kiefer provided the date on which he filed the petition at a hearing on respondents’ motions to dismiss.

*County*, No. 20-cv-2106, 2022 WL 607397, at \*1 (D. Minn. Mar. 1, 2022) (dismissing Kiefer’s claims against the state without prejudice), *aff’d*, 71 F.4th 1149 (8th Cir. 2023), *cert. denied*, 144 S. Ct. (2023).

After Kiefer filed his complaint, the county moved to dismiss the false-imprisonment and malicious-prosecution claims under Minn. R. Civ. P. 12.02(e). The county argued that the two-year statute of limitations expired because, at the latest, his claims remained pending until July 20, 2023, when the Eighth Circuit issued a mandate affirming the district court, *see* Fed. R. App. P. 41, and the district court entered the mandate as its final judgment. The county provided a copy of the mandate to support its motion, along with verification of the district court entering the mandate and closing the case.

Likewise, the state moved to dismiss the equal-protection claim under Minn. R. Civ. P. 12.02(a). The state argued that Kiefer lacked standing to bring his claim because “MIERA has not caused Kiefer an injury-in-fact and the [district court] cannot fashion relief that would render Kiefer eligible for exoneration-compensation under MIERA.” Specifically, it argued that, because there was no “evidence of factual innocence,” Kiefer was not “exonerated” under Minn. Stat. § 590.11, subd. 1(b), (c).

The district court agreed with respondents and granted both motions to dismiss. Kiefer appeals.

## DECISION

Kiefer challenges the district court’s order granting the county’s motion to dismiss under Minn. R. Civ. P. 12.02(e) and the state’s motion to dismiss under Minn. R. Civ. P. 12.02(a).



We review de novo a district court's decision to grant motions to dismiss under Minn. R. Civ. P. 12.02(a) and (e). *Forslund v. State*, 924 N.W.2d 25, 30 (Minn. App. 2019) (addressing both types of dismissals). In doing so, we consider “only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the non-moving party.” *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 826-27 (Minn. 2011) (failure to state a claim); *Brenny v. Bd. of Regents of Univ. of Minn.*, 813 N.W.2d 417, 420 (Minn. App. 2012) (subject-matter jurisdiction). We affirm dismissal only “if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Bahr v. Cappella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted) (failure to state a claim); *Brenny*, 813 N.W.2d at 420 (subject-matter jurisdiction).

Nevertheless, when we review dismissal under rule 12.02(e), and “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.” Minn. R. Civ. P. 12.02; *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). Materials are outside the pleading when the pleading neither includes nor references the materials. *See N. States Power Co.*, 684 N.W.2d at 491. We review a grant of summary judgment de novo and affirm “if no genuine issues of material fact exist and if the court accurately applied the law.” *Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 371-72 (Minn. 2022). In doing so, “we view the evidence in the light most favorable to the nonmoving party.” *Id.* at 372 (quotation omitted).

**Motion to dismiss for failure to state a claim  
upon which relief can be granted**

First, Kiefer argues that the district court erred by granting the state's motion to dismiss his false-imprisonment and malicious-prosecution claims by incorrectly concluding that the two-year statute of limitations on both claims expired.

To begin, we note that an important fact in the district court's analysis was the date that the Eighth Circuit issued its mandate. However, nowhere in the complaint does Kiefer mention the mandate, nor did he mention or attach documents that discuss it. Instead, the mandate first appears in the record when the county discussed and provided a copy of the document to support its motion to dismiss. Because the mandate is outside Kiefer's complaint, and because the district court considered the mandate in ruling on the motion to dismiss, we treat the district court's decision as a grant of summary judgment that we review *de novo*. See *N. States Power Co.*, 684 N.W.2d at 491.

Kiefer's challenge revolves around 28 U.S.C. § 1367(d) and the duration of its tolling period. Under section 1367(d), "[t]he period of limitations" for state claims over which a federal court exercises supplemental jurisdiction, "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless [s]tate law provides for a longer tolling period." Kiefer contends that the district court misapplied section 1367(d) because his claims remained "pending" while he waited to hear from the United States Supreme Court on his petition for a writ of certiorari.

To resolve Kiefer's argument, we address when claims are "pending" in federal court and the relationship between the pendency of those claims

and the process by which parties petition for Supreme Court review. The Eighth Circuit has explained that a claim is no longer pending in a federal court of appeals when the court issues a mandate affirming judgment, and it is no longer pending in federal district court when the court enters that mandate as its final judgment. *See Carlson v. Hyundai Motor Co.*, 222 F.3d 1044, 1045 (8th Cir. 2000).<sup>2</sup> Upon entry of judgment, a party must generally petition for a writ of certiorari within 90 days. 28 U.S.C. § 2101(c) (2018); Sup. Ct. R. 13. However, if a party wishes to pause entry of judgment while it petitions for a writ of certiorari, it may pursue a stay on judgment “for a reasonable time.” 28 U.S.C. § 2101(f) (2018). The judge who grants the stay may condition it on the party giving security in the event the party fails to petition for or to obtain a writ of certiorari. *Id.* A party may also move to stay a mandate while pursuing certiorari review, provided it demonstrates that “the petition would present a substantial question and that there is good cause for a stay.” Fed R. App. P. 41(d). Again, a court may condition the stay on the party providing security. Absent a stay, a party’s act of petitioning for a writ of certiorari does not prevent a judgment from becoming final. *Glick v. Ballentine Produce, Inc.*, 397 F.2d 590, 594 (8th Cir. 1968).

Within this context, section 1367(d) tolls the statute of limitations while a claim is pending, and upon dismissal, tolling continues for an additional 30 days. Nowhere does the statute suggest that a party petitioning for a writ of certiorari once a claim is no

---

<sup>2</sup> Although not binding, we afford “due deference” to Eighth Circuit opinions on matters of federal law and may treat them as persuasive authority. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003).

longer pending in the lower federal courts, and after the 30-day grace period ends, alters or reinitiates the tolling period. To the contrary, the existence of the 90-day deadline to petition for a writ of certiorari enables a party to file a petition long after the tolling period under section 1367(d) ends. And if a party wishes to preserve the pendency of a claim, and in turn preserve the tolling period under section 1367(d), it may pursue a stay on the entry of judgment or on the issuance of a mandate.

Here, Kiefer's claims arose on October 8, 2018, and he filed his federal lawsuit on October 2, 2020, a mere six days before the statute of limitations would have otherwise run. On appeal, the Eighth Circuit affirmed the district court's dismissal of his claims without prejudice and issued a mandate on July 20, 2023. The district court entered the mandate as its final judgment that same day. Kiefer never moved for a stay. As a result, on July 20, 2023, his claims were no longer pending. Over two months later, well past the 30-day grace period under section 1367(d), and the running of the time remaining on the statute of limitations from before he filed his federal lawsuit, Kiefer petitioned for a writ of certiorari on September 27, 2023. The United States Supreme Court denied the petition on October 30, 2023. Given the timing of Kiefer's activities in federal and state court, the district court properly determined that Kiefer's claims against the county were untimely. We conclude that summary judgment was appropriate.

### **Motion to dismiss for lack of subject-matter jurisdiction**

Next, Kiefer argues that the district court erred by granting the state's motion to dismiss his equal-

protection claim for lack of subject-matter jurisdiction after it concluded that he did not have standing to bring suit.

“To have standing, a party must have a sufficient stake in the controversy to seek relief from the court so that the issues before the court will be vigorously and adequately presented.” *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn. 2015) (quotation omitted). Standing is essential for a court to exercise jurisdiction over a dispute. *Clapp v. Sayles-Adams*, 15 N.W.3d 648, 652 (Minn. 2025). “We review the existence of standing de novo.” *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024).

A party can acquire standing when it is “the beneficiary of some legislative enactment granting standing,” or as is the case here, by asserting an “injury-in-fact.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). An injury-in-fact requires “a concrete and particularized invasion of a legally protected interest.” *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014) (quotation omitted). “[T]he injury must be fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Id.*

Under Minn. Stat. § 590.11, subd. 2, a party can “petition for an order declaring eligibility for compensation based on exoneration . . . before the district court where the original conviction was obtained.” To be “[e]xonerated” requires, among other things, that “a court . . . vacated . . . a judgment of conviction on grounds consistent with innocence.” Minn. Stat. § 590.11, subd. 1(b). “[G]rounds consistent with innocence” include when a party is “exonerated because the judgment of conviction was vacated . . . and there is *any evidence of factual innocence* whether it was available at the time of investigation or trial or is

newly discovered evidence.” *Id.*, subd. 1(c) (emphasis added).

Here, the parties disagree about whether a favorable judicial decision would likely redress Kiefer’s alleged constitutional injuries, given the requirement under Minn. Stat. § 590.11, subd. 1(c), that for a party to be exonerated, there must be “evidence of factual innocence.”

The supreme court has interpreted the phrase “[f]actual innocence” to mean “the state of being not guilty of a crime . . . but only when the reason is restricted to or based on facts.” *Kingbird v. State*, 973 N.W.2d 633, 642 (Minn. 2022). In *Kingbird*, a party was convicted for unlawfully possessing a firearm under Minn. Stat. § 609.165, subd. 1b(a) (2014). *Id.* at 635. Law enforcement had found him with an “air-compressed BB gun.” *Id.* at 636. The party’s conviction was later vacated after the supreme court determined, in a separate case, that “air-compressed BB gun[s]” are not firearms within the meaning of the unlawful-firearm-possession statute. *Id.* (citing *State v. Haywood*, 886 N.W.2d 485, 487 (Minn. 2016)). The party then petitioned for compensation under section 590.11, but the district court denied the petition. *Id.* On appeal, the supreme court affirmed, concluding that the party was not exonerated based on factual innocence—meaning innocence for reasons “restricted to or based on facts”—but rather because there was no legal basis for his guilt. *Id.* at 642. The court emphasized that the party “admitted as part of his plea agreement that he possessed a BB gun at a time when he was ineligible to possess certain firearms” and his conviction was vacated simply because of the subsequent *Haywood* decision. *Id.* at 642-43.

We conclude that *Kingbird* governs this case. Here, a postconviction court vacated Kiefer’s conviction

because this court interpreted a law—the county ordinance—in a manner inconsistent with his guilt. In its order, the postconviction court expressly stated that it vacated his conviction because of how this court interpreted the ordinance during Kiefer’s appeal in the civil action. As a result, even if a court rendered unconstitutional the limitation under section 590.11 that only those individuals exonerated of felonies can receive compensation, the district court would still be unable to provide Kiefer with compensation because the reasons for his exoneration are not “restricted to or based on facts.” *Kingbird*, 973 N.W.2d at 642. Therefore, “no facts, which could be produced consistent with the pleading . . . would support granting the relief demanded.” *Brenny*, 813 N.W.2d at 420 (quotation omitted).

We conclude that the district court did not err by determining that Kiefer lacked standing, and in turn, did not err by granting the state’s motion to dismiss for lack of subject-matter jurisdiction under Minn. R. Civ. P. 12.02(a).

**Affirmed.**

15a

**State of Minnesota  
In Supreme Court**

---

A24-1574

Keith Allen Kiefer,  
Appellant/Petitioner,

v.

Isanti County, State of Minnesota,  
Respondents/Respondents.

---

**PETITION FOR REVIEW**

---

Erick G. Kaardal, 229647	Paul Donald Reuvers,
MOHRMAN, KAARDAL	0217700
& ERICKSON, P.A.	Andrew A. Wolf, 398589
150 South Fifth Street,	IVERSON REUVERS
Suite 3100	9321 Ensign Avenue So.
Minneapolis, MN 55402	Bloomington, MN 55438
Telephone: 612-341-1074	Telephone: (952) 548-7200
Email:	paul@iversonlaw.com
kaardal@mklaw.com	andrew@iversonlaw.com

*Attorneys for Petitioner*

*Attorneys for Isanti  
County*

Jeff Timmerman, 0352561  
Assistant Attorney General  
445 Minnesota Street, Ste. 1400  
St. Paul, MN 55101-2131  
Telephone: (651) 583-7660  
Jeffrey.Timmerman@ag.state.mn.us

July 23, 2025

*Attorneys for State of Minnesota*



### Statement of Legal Issues

Whether the statute of limitations for state tort claims continues to be tolled during the pendency of a petition to the U.S. Supreme Court for a writ of certiorari as a court of final review.

- Appellate court opined statute of limitations is not tolled. ADD.6–8.

An appeal is always an interpretation of law and when an appellate court’s interpretation identifies the law’s applicability to a fact, yet the absence of the fact is the basis of a criminal prosecution and incarceration and hence, at that moment, the targeted party cannot be guilty of the alleged crime, whether the lower court’s application of the principle of “legal significance” under Minn. Stat. § 590.11, Minnesota’s Imprisonment and Exoneration Remedies Act, is conflated with “factual innocence” thereby depriving an innocent incarcerated party from MIERA compensation.

- Appellate court opined *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022) controlled. ADD.10–11.

### Introduction

Whether the statute of limitations for state tort claims continues to be tolled during the pendency of a petition to the U.S. Supreme Court for a writ of certiorari as a court of final review is an issue of first impression for this Court. Petitioner Keith Kiefer state tort claims were dismissed because the Court of Appeals found the statute of limitations had run while his timely filed Supreme Court petition was

pending—a normal part of the federal appellate process. Indeed, if a petition for a writ of certiorari is granted, any statute of limitation would be tolled. However, here, although the appellate court did not rely upon any case *on point*, it determined that under 28 U.S.C. § 1367(d), governing the 30 day tolling period of state claims after dismissal of an action in federal court (exercising supplemental jurisdiction), the provision excludes the limitations period while petitions for writs of certiorari are pending before the U.S. Supreme Court. The impact of the appellate court’s decision, without further review, affects the relationship between the federal courts exercising supplemental jurisdiction and state law governing tort statutes of limitations. It affects the right of parties to participate in the federal appellate process.

In addition, there is confusion regarding lower court application of this Court’s decision in *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022) regarding the principle of “[f]actual innocence” as found under Minnesota’s Imprisonment and Exoneration Remedies Act, Minn. Stat. § 590.11 (MIERA). In *Kingbird*, this Court determined the phrase to mean “the state of being not guilty of a crime...but only when the reason is restricted to or based on facts.” *Id.* at 642. The appellate court conflated the principles of “factual innocence” and “legal significance” when court did not find a new rule of law as contemplated under *Danforth v. State*, 761 N.W.2d 493 (Minn. 2009).

Again, the significance of the legal issue involved warrants this Court’s additional review.

### **Criteria Supporting the Petition**

In accordance with Minn. R. Civ. App. P. 117, subd. 2 (a), (d)(1), (2), (3), the questions presented are important in which this Court should rule. The questions call for this Court to develop new principles of law affecting the tolling period of state tort statute of limitations during the pendency of federal court appellate review (exercising supplemental jurisdiction) and harmonize the application of the current legal principles of “legal significance” and “factual innocence” (*e.g.*, *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022)).

Both issues will have statewide impact or will likely recur if not resolved.

### **Statement of the Case**

Isanti County criminally prosecuted and incarcerated Petitioner Keith Kiefer under the County’s Solid Waste Ordinance in 2009. ADD.2. In 2011, Isanti civilly prosecuted Kiefer under the exact same provision of the Ordinance for storing personal property outside. While Kiefer stored property outside, he did not operate a solid waste management facility. The district court found Kiefer had violated the Solid Waste Ordinance. In 2016, in an unpublished decision, the appellate court reversed the district court’s decision. It declared that “it is obvious that the ordinance is meant to apply to conventional solid-waste-management operations, and not merely outdoor storage in general.” *Cnty. of Isanti v. Kiefer*, No. A15-1912, 2016 WL 4068197, at \*3 (Minn. App. Aug. 1, 2016). After additional district court proceedings concluding the matter, consistent with the appellate decision, in 2018, the court

granted Kiefer’s petition for post-conviction relief vacating his previous criminal conviction. The court stated, in part, “that [the appellate] Court concluded that [the] Solid Waste Ordinance did not apply to...Kiefer’s use of his property.” ADD.12, ¶2.

Kiefer thereafter sued Isanti County in federal court for civil rights violations and state claims of false imprisonment and malicious-prosecution. The federal district court dismissed Kiefer’s federal claim and on appeal the Eighth Circuit affirmed. *Kiefer v. Isanti Cnty., Minnesota*, 71 F.4th 1149 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 353 (2023). Thereafter, Kiefer timely filed a petition for a writ of certiorari to the U.S. Supreme Court. *Id.*

Following the denial of certiorari review, in November 2023, Kiefer filed a state court complaint. It included state tort claims of false imprisonment and malicious-prosecution and an equal protection claim challenging Minn. Stat. § 590.11, subd. 5(a)(1). The court granted Isanti’s motion to dismiss concluding the statute of limitations had run on the tort claims under 28 U.S.C. § 1367(d) because “pending” under § 1367 did not include the time period for a filed petition to the U.S. Supreme Court. On appeal, the Minnesota appellate court agreed and affirmed the district court’s decision. ADD.1–11.

## **Argument**

### **I. Petitioning the U.S. Supreme Court tolls state statute of limitation periods.**

There is no case law on point either in this State or in the Eighth Circuit to interpret 28 U.S.C. § 1367(d) as establishing a principle or rule of law that “pending” excludes the petition period to the U.S.

Supreme Court, as the Minnesota appellate court found. ADD.6-8. Indeed, a petition to the Supreme Court is a normal and established part of the federal appellate process. U.S. Const. art. III, § 2; U.S. Sup. Ct. Rule 10. While there is no right to an automatic review as it is discretionary, a person has the right to pursue the review of preserved constitutional claims (here, 42 U.S.C. § 1983) through the petitioning process and procedures of the Court. *See, e.g.*, U.S. Sup. Ct. Rule 10; 28 U.S.C. § 1254, subd. 1. *See also*, *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896–897 (1984) (“This Court's precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes. ‘[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.’”); *United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n*, 389 U.S. 217, 222 (1967); *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

Further, the U.S. Supreme Court has opined in *Artis v. D.C.*, 583 U.S. 71 (2018), that under § 1367(d) a statute of limitation is tolled where the claim is “sub judice elsewhere.” 583 U.S. at 80. “Sub judice” means “before the court or judge before determination.” *Black’s Law Dictionary* 1466 (Bryan A. Garner ed., 8th ed., Thomson-West 2004). Indeed, a petition for a writ of certiorari is a “sub judice elsewhere” as a pending federal appellate matter.

Although the Eighth Circuit has not directly opined on this issue, the Minnesota appellate court sought to do so as a new rule of law which should be the purview of this Court under these circumstances. ADD.6. *State v. Khalil*, 956 N.W.2d 627, 633 (Minn. 2021) (Role limited to interpreting current law); *In re*

*Pub. Hearing on Vacancies in Jud. Positions in Fifth Jud. Dist.*, 375 N.W.2d 463, 470 (Minn. 1985)

(Legitimate role is in the orderly and effective administration of justice). Moreover, the lower court is mistaken. The court *cited* an Eighth Circuit appellate decision in *Carlson v. Hyundai Motor Co.*, 222 F.3d 1044 (8th Cir. 2000) as precarious support at best, to contend that a claim is no longer *pending* in a federal court of appeals when a mandate is issued. *Id.* ADD.6-7. But, the Eighth Circuit never stated nor reached the issue regarding whether a case remains *pending* when a petition for a writ of certiorari is timely filed with the U.S. Supreme Court. 222 F.3d 1045. The appellate court failed to state the very next sentence in *Carlson*: “*And her case was not pending in the Supreme Court because Carlson did not petition the Supreme Court for a writ of certiorari on or before [the deadline for filing a petition].*” Emphasis added. ADD.6. Kiefer’s timely filed petition was a matter pending elsewhere in the federal appellate process. *See Artis*, 583 U.S. at 80.

The impact of the appellate court’s decision, without further review, affects the relationship between the federal courts exercising supplemental jurisdiction and state law governing tort statutes of limitations. It affects the right of parties to participate in the federal appellate process when a petition is timely filed with the U.S. Supreme Court.

## **II. The appellate court’s statutory interpretation was not of “legal significance.”**

The appellate court conflated the principles of “legal significance” with “factual innocence” under MIERA (Minn. Stat. § 590.11). Every appeal is an

interpretation of law, thus, could be a matter of “legal significance.” But when the appellate decision does not change the meaning of a law and the law is not applicable to the facts in the first instance to criminally prosecute and incarcerate an individual, “factual innocence” is restricted to or based on the facts that determine “the state of being not guilty of a crime.” If a person could not have been found prosecuted under the law as a matter of fact in the first instance, then the application of the principle of “legal significance” is inappropriately applied. The result is the conflating of “legal significance” with “factual innocence” requiring clarification of the application of the two principles to ensure an innocent party can seek appropriate remedies as the State legislature intended.

Indeed, the district court referred to the appellate decision in *Cnty. of Isanti v. Kiefer*, No. A15-1912, 2016 WL 4068197, at \*3 (Minn. App. Aug. 1, 2016), regarding Isanti’s Solid Waste Ordinance as constituting a “new interpretation of law sufficient to satisfy Minnesota Statutes section 590.01, subdivision 590.01, subdivision 4(b)(3).” ADD.13, ¶5. The appellate court on review here, relied upon this statement. ADD. 10. But, “new” here, is in the sense that the offending Ordinance had never been challenged prior to Kiefer’s successful appeal. As this Court has stated, “When a decision merely interprets and clarifies an existing rule ... and does not announce an altogether new rule of law, the court's interpretation is merely a restatement of existing law.” *Danforth v. State*, 761 N.W.2d 493, 501 (Minn. 2009). The existing ordinance applied only to a party operating a solid waste facility which Kiefer did not. The appellate court did not break new ground as if imposing a new obligation to say the court’s ruling

was of “legal significance.” *Id.* “However, because Isanti’s Solid Waste Ordinance had yet to be interpreted, the appellate court’s ruling is “new” to apply § 590.01 to vacate Kiefer’s criminal conviction.

Here, the government criminally prosecuted and incarcerated a person under a county ordinance that did not apply as a matter of “fact.” Hence, the statute did not apply, but Isanti criminally prosecuted Kiefer regardless. The inapplicability of the Ordinance is proof of “the state of being not guilty of a crime.” This conclusion deprived Kiefer of compensatory recovery under MIERA.<sup>1</sup>

### Conclusion

For these reasons, the petitioner seeks an order granting review of the decision of the Court of Appeals.

Dated: July 23, 2025	<u>/s/Erick G. Kaardal</u> Erick G. Kaardal, 229647 Mohrman, Kaardal & Erickson, P.A. 150 South Fifth Street, Suite 3100 Minneapolis, MN 55402 Telephone: 612-341-1074 Email: kaardal@mklaw.com <i>Attorneys for Petitioner</i>
----------------------	--

---

<sup>1</sup> Kiefer also had an Equal Protection claim challenging MIERA to suggest it applied to incarcerated misdemeanors and not limited to incarcerated felons.



**CERTIFICATE OF COMPLIANCE  
WITH MINN. R. APP. P. 132.01, Subd. 3**

The undersigned certifies that the Brief submitted herein contains 1,976 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional space font size of 13 pt. The word count is stated in reliance on Microsoft 365, the word processing system used to prepare this Brief.

Dated: July 23, 2025    /s/ *Erick G. Kaardal*  
Erick G. Kaardal

**Use of AI Technology Certification**

Counsel attests that appropriate steps to verify whether AI technology systems have been used in preparation of this submission and if so, appropriate steps were taken, to the best of counsel's ability, to verify the truthfulness and accuracy of facts and citations of that content before submission to this Court. This submission did rely upon the ordinary or customary research tools and other available research sources such as, but not limited to, Westlaw or Lexis.

Dated: July 23, 2025    /s/ *Erick G. Kaardal*  
Erick G. Kaardal

## **APPENDIX B**

### **Constitutional Provision**

Congress shall make no law ... prohibiting...the right of the people... to petition the Government for a redress of grievances.

U.S. Const. amend. I.

### **Statutory Provisions**

28 U.S. C. § 2101(c):

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

28 U.S.C. § 1376(a):

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C. § 1376(d):

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.