

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

**STATE'S NOTICE OF
CRITICAL IMPACT**

Plaintiff,

v.

J. Alexander Kueng,

Court File No.: 27-CR-20-12953

Thomas Kiernan Lane,

Court File No.: 27-CR-20-12951

Tou Thao,

Court File No.: 27-CR-20-12949

Defendants.

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendants; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402; Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101; Thomas Plunkett, U.S. Bank Center, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101.

NOTICE OF CRITICAL IMPACT

Pursuant to Minn. R. Crim. P. 28.04, subd. 2(1), this serves as the State's notice of its intent to appeal this Court's January 11 and January 21, 2021, orders severing Defendants for trial and setting this matter for separate trials in March and August of 2021. After ordering that the trial for Defendants Kueng, Lane, and Thao be joined with Defendant Chauvin's trial, the District Court *sua sponte* severed Defendant Chauvin's trial in violation of Minnesota Rule of Criminal Procedure 17.03. The District Court also ordered that Defendant Chauvin's trial proceed on March 8, 2021—and that a separate trial for Defendants Kueng, Lane, and Thao would proceed on August 23, 2021—notwithstanding warnings from public health experts that holding a trial in this case in March is dangerous, and that holding two separate trials increases public health risks.

The Court of Appeals has the inherent authority to hear pretrial appeals in certain circumstances even absent a showing of “critical impact.” *See State v. Obeta*, 796 N.W.2d 282, 287 (Minn. 2011); *State v. Lessley*, 779 N.W.2d 825, 831 (Minn. 2010). Because this is such a case, review is warranted irrespective of any critical impact. Alternatively, the Court of Appeals has jurisdiction to issue a writ of prohibition pursuant to Minnesota Rule of Appellate Procedure 120, and the Court of Appeals accordingly may construe the State’s notice of appeal and appellate briefs in this case as a petition for a writ of prohibition.

Dated: January 28, 2021

Respectfully submitted,

KEITH ELLISON
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/s/ Matthew Frank
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