

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 February 11, 2021 order denying the State's motion to add the charge of Murder in the Third Degree. Notwithstanding the Court of Appeals' contrary decision in *State v. Noor*, \_\_\_ N.W.2d \_\_\_, 2021 WL 317740 (Minn. App. Feb. 1, 2021), the District Court held that a third-degree murder charge may not be submitted to the jury where "the death-causing act was solely directed at a single person and was not eminently dangerous to others." Order and Memo. Op. Denying State's Mot. to Reinstate or Add Third-Degree Murder Charge 6 (Feb. 11, 2021).

The District Court's decision "will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subd. 2(1). The Minnesota Supreme Court has held that a decision dismissing or barring prosecution of one charge against a defendant has "a critical impact" "even

when other charges remain.” *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009). The Court of Appeals has likewise held that the denial of leave to add an offense to the complaint satisfies the “critical impact” standard so long as the “series of incidents that were the basis for the charges in the original complaint are the exact same incidents that are the basis for the added counts in the proposed amended complaint.” *State v. Baxter*, 686 N.W.2d 846, 851 (Minn. App. 2004). As the Court of Appeals has explained, when the added counts “are part of the same behavioral incidents, the state would be barred from prosecuting on the additional counts at a later time if the [defendant] is convicted on all counts in the original complaint.” *Id.* This “potential bar” satisfies the “critical impact” standard. *Id.* Here, the second-degree murder and second-degree manslaughter charges are based on the “exact same incident[]” as the third-degree murder charge—namely, the events that led to George Floyd’s death. *Id.* Thus, the District Court’s decision barring the State from adding a third-degree murder charge readily satisfies the critical impact standard.

Dated: February 12, 2021

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

*/s/ Matthew Frank*  
MATTHEW FRANK  
Assistant Attorney General  
Atty. Reg. No. 021940X  
445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1448 (Voice)  
(651) 297-4348 (Fax)  
matthew.frank@ag.state.mn.us

NEAL KUMAR KATYAL (*pro hac vice*)  
SUNDEEP IYER (*pro hac vice*)  
Special Attorneys for the State of Minnesota  
Hogan Lovells U.S. LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5600 (Voice)  
neal.katyal@hoganlovells.com

ATTORNEYS FOR PLAINTIFF