No. ___________

IN THE

Supreme Court of the United States

JASON GREEN,

Petitioner,

v.

WARREN L. MONTGOMERY,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

CUAUHTEMOC ORTEGA
Federal Public Defender
EMILY J.M. GROENDYKE *
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012
Telephone: (213) 894-2061
Facsimile: (213) 894-0081
Emily_Groendyke@fd.org

Attorneys for Petitioner
**Counsel of Record*

To the Honorable Elena Kagan, Associate Justice of the United States and Circuit Justice for the Ninth Circuit:

Petitioner Jason Green, respectfully requests a 60-day extension of time to file a Petition for a Writ of Certiorari in this matter. The Court of Appeals entered its opinion affirming the denial of habeas relief on May 31, 2023. Without an extension of time the petition for writ of certiorari would be due on August 29, 2023. (App. A). Mr. Green is filing this Application at least ten days before the current deadline. (Supr. Ct. R. 13.5.) This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

BACKGROUND

The Ninth Circuit Court of Appeals affirmed the district court's denial of habeas relief. The issue raised on appeal was prosecutorial misconduct and the Due Process right to a fair trial.

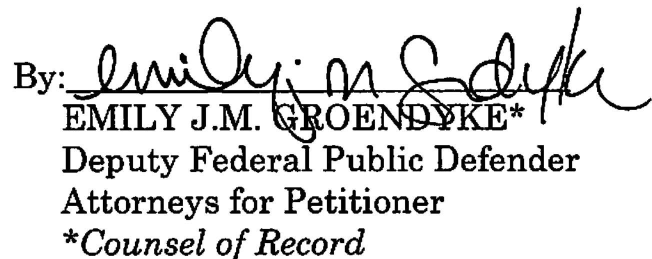
There is good cause for counsel's motion.

The attached declaration of counsel provides the basis for granting this request for an extension of time. Counsel has begun work on the petition for writ of certiorari, but requires additional time to discuss the petition with Mr. Green, including arranging for a confidential legal call with Mr. Green, who is incarcerated.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: August 18, 2023

By: 
EMILY J.M. GROENDYKE*
Deputy Federal Public Defender
Attorneys for Petitioner
Counsel of Record

DECLARATION OF EMILY J.M. GROENDYKE

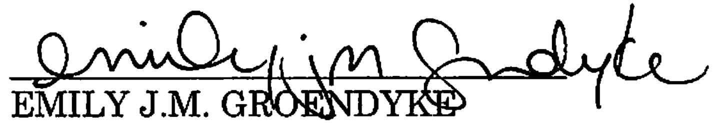
I, Emily Groendyke, declare:

1. I am an attorney licensed to practice law in the State of California. I am a Deputy Federal Public Defender with the Office of the Federal Public Defender for the Central District of California ("FPD"). I represent Petitioner Jason Green in this habeas corpus action. I make this declaration in support of Mr. Green's request for a 60-day extension of time to file his petition for a writ of certiorari with this Court.

2. The Ninth Circuit Court of Appeals issued its decision affirming the denial of habeas relief on May 31, 2023. The petition is currently due on August 29, 2023.

3. I have written a substantial portion of the petition and anticipate completing the petition before the deadline. However, I need to discuss the petition with my client, Mr. Green, which will require arranging a confidential legal call with Ironwood State Prison where he is incarcerated. Often arranging such calls takes several days or even weeks.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 18, 2023, at Los Angeles, California.



EMILY J.M. GROENDYKE

No. __________

IN THE

Supreme Court of the United States

JASON GREEN

Petitioner,

v.

WARREN L. MONTGOMERY

Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF SERVICE

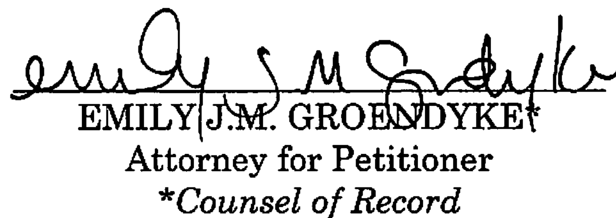
I, EMILY J.M. GROENDYKE, a Deputy Federal Public Defender in the Office of the Federal Public Defender who was appointed as counsel for Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006(A)(b), hereby certify that on August 18, 2023, a copy of **MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI** was mailed postage prepaid to:

The names and addresses of those served are as follows:

Nancy Ladner
Office of the Attorney General of
California
300 S. Spring, Suite 1702
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2023.



EMILY J.M. GROENDYKE*
Attorney for Petitioner
**Counsel of Record*

APPENDIX

FILED

MAY 31 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON GREEN, Petitioner-Appellant, v. WARREN L. MONTGOMERY, Warden, Respondent-Appellee.	No. 21-56166 D.C. No. 2:18-cv-06443-JLS-SHK MEMORANDUM*
LYNETTE PENNINGTON, Petitioner-Appellant, v. JANEL ESPINOZA, Acting Warden of the Central California Women's Facility; DERRAL G. ADAMS, Warden, Respondents-Appellees.	No. 21-56174 D.C. No. 2:17-cv-07004-JLS-SHK

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted March 8, 2023
Pasadena, California

Before: KLEINFELD, WATFORD, and COLLINS, Circuit Judges.

Jason Green and Lynette Pennington appeal the district court's dismissals of their habeas petitions, in which they argue that certain tactics employed by the prosecution violated their rights to due process.

We have jurisdiction pursuant to 28 U.S.C. § 2253. We review the district court's decisions de novo and decide whether the state court's decision falls afoul of the standards set forth in § 2254(d). *Van Lynn v. Farmon*, 347 F.3d 735, 738 (9th Cir. 2003). We decide it does not, so we affirm.

As a preliminary matter, we reject Green and Pennington's argument that the California Court of Appeal's decision "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2). The court did not base its decision on a factual determination that "the prosecutor's dismissal and refiling was not motivated by the improper purpose of *forum shopping*" (emphasis added). Rather, it decided as a matter of law that a defendant's right to due process does not prohibit the prosecution from forum shopping, "even if the purpose of the refiling was to avoid an adverse ruling."

Next, Green and Pennington also fail to establish that the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Their burden is heavy, as the state court decision must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

Green and Pennington did not identify a Supreme Court decision clearly holding that prosecution forum-shopping violates due process. The three Supreme Court cases they cite recognized different aspects of a state prosecution that may contravene due process: in *Chambers v. Mississippi*, it was state evidentiary rules that arbitrarily excluded the confession of a true murderer, 410 U.S. 284, 302 (1973); in *Donnelly v. DeChristoforo*, misrepresentation of evidence by the prosecution, 416 U.S. 637, 646 (1974); and in *Lisenba v. California*, the prosecution's use of a coerced confession, 314 U.S. 219, 236–37 (1941). But none of them concerned prosecution forum-shopping. To the extent that Green and Pennington cite *Chambers* and *Lisenba* for the proposition that a prosecutor's actions might offend due process even though permitted under state law, we agree

but hold below that the state court's decision is consistent with that clearly established rule.

Without the support of a clearly on-point Supreme Court precedent, Green and Pennington's argument boils down to the claim that their cases fit the general principle that prosecutorial misconduct violates due process when it "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly*, 416 U.S. at 643. But state courts are only required to extend an abstract principle to a new scenario when the principle "so obvious[ly]" applies "that there could be no 'fairminded disagreement' on the question." *White v. Woodall*, 572 U.S. 415, 427 (2014) (quoting *Harrington*, 562 U.S. at 103). Here, we decide that fairminded jurists may disagree on whether the alleged misconduct meets the Supreme Court's demanding standard. Consequently, the state court's refusal to extend existing law does not constitute an unreasonable application of federal law.

Lastly, Green and Pennington are mistaken in arguing that the California Court of Appeal held that because the prosecution's forum-shopping practice was permitted by state law, it necessarily satisfied the federal Constitution's due-process requirement. This argument reads the state court's statement out of context. The court did decide that the prosecution complied with state law in

refiling charges against Green and Pennington. Nevertheless, it also considered whether the conduct violated their rights to due process under the federal Constitution, and gave independent and adequate reasons for holding that it did not.

AFFIRMED.