NO. 25-724

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN DUDEN, individually,

Plaintiff-Appellant,

v.

THE STATE OF WASHINGTON and WASHINGTON STATE DEPARTMENT OF CORRECTIONS and JOHN AND JANE DOES 1-10,

Defendants-Appellees.

ON APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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SUPREME COURT, U.S.

To the Honorable Elena R. Kagan, Associate Justice and Circuit Justice for the Ninth Circuit:

Per 28 U.S.C. § 2101(c) and this Court's Rules 13.5, 22, and 30.3, I, Kevin Duden, respectfully request that my time to file a petition for a writ of certiorari be extended by 60 days to January 9, 2027. Unless an extension is granted, the deadline for filing the petition for certiorari will be November 10, 2026. The U.S. Court of Appeals for the Ninth Circuit rendered its decision on August 12, 2026. (Exhibit A). I am filing this application at least ten days before the deadline of November 10, 2026. See, Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257(a).

Background

I, Kevin Duden, was employed by the Washington State Department of Corrections (Washington State Penitentiary in Walla Walla, WA), from February 2018, to October 2021. The State. The last position I held, before I was terminated, was Corrections Specialist 3.

On September 3, 2021, I requested a religious exemption from the vaccine due to my sincerely held religious beliefs. Following this, I received a religious exemption from the State on September 21, 2021. In the same letter dated September 21, 2021, I also received notice that my religious accommodation was limited to reassignment. However, at this time, the State was requiring all employees, even those working

remotely, to be vaccinated. Essentially, because of this requirement, reassignment was impossible. About seven days later, the State advised me that no reassignment could be found and I was not reassigned to a different position that allowed me to remain employed with the State. In an email dated 10/13/2021, I also requested paid leave as an accommodation, but that was also denied. Ultimately, The State determined that no accommodation was possible and terminated me on October 18, 2021.

Procedural History

I, Kevin Duden, filed this action in Superior Court in Walla Walla County and it was removed to the United States District Court Eastern District of Washington. On January 2, 2025, The Honorable Stanley A. Bastian, Chief Judge of the District Court, granted the State's motion for summary judgment. The appeal was filed on January 31, 2025. On appeal a divided panel affirmed the district court decision on August 12, 2026.

Reasons for Granting an Extension

The time to file a petition for a writ of certiorari should be extended by 60 days to January 9, 2027, for the following reasons:

1. The attorney who handled my case all the way to the Ninth Circuit, Harold Franklin, Jr. with the Pacific Justice Institute

(PJI) advised me that neither he, nor anyone in his firm, is admitted to the Supreme Court Bar.

2. I have been trying to obtain counsel to represent me and to file my Writ of Certiorari, but have been unsuccessful. Many of my inquiries have gone unanswered and two public-interest firms, who initially showed interest, ultimately declined to represent me. The search is slow and painstaking. It will undoubtedly become more so with the upcoming Holiday season.

3. Any counsel I obtain will need time to review my case, which is complex. They will also time to prepare the writ of certiorari itself.

4. Respondents will not be prejudiced by an extension. As the winner below, the status quo currently favors Respondents, and this is my first request for an extension of time.

5. The forthcoming petition will present the following important question:

a. Whether "undue hardship" requires a *showing* by the State "that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." *Groff v. DeJoy*, 600 U.S. 447, 470 (2023) and whether the State's burden

can be met merely by making generalized assertions of cost. *Groff* held that the Courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light

of the nature, size and operating costs of [an] employer." *Id.* at 470–71 and the Courts are not applying this test as set forth in *Groff.*

The petition presents the novel issue based on this Court's ruling in *Groff.*

Conclusion

For all these reasons, the time to file a petition for a writ of certiorari in this matter should be extended by 60 days, to January 9, 2027.

Respectfully submitted this 30th day of October, 2026.

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EXHIBIT A