

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Dushon Nichalos Green,

4 Petitioner

5 v.

6 Tim Garrett, et al.,

7 Respondents

Case No. 2:14-cv-01388-APG-NJK

ORDER

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10 In this habeas corpus action, I appointed counsel for the petitioner Dushon Nichalos
11 Green. ECF No. 83. The Federal Public Defender for the District of Nevada appeared on
12 Green's behalf on August 12, 2022. ECF No. 84. The respondents have also appeared. ECF No.
13 9.

14 **I THEREFORE ORDER:**

- 15 1. The Federal Public Defender, through C.B. Kirschner, is appointed as counsel for the
16 petitioner Dushon Nichalos Green under 18 U.S.C. § 3006A(a)(2)(B). Counsel will
17 represent Green in all federal proceedings related to this matter, including any appeals
18 or certiorari proceedings, unless allowed to withdraw.
- 19 2. If necessary, Green must file a second amended petition for writ of habeas corpus
20 within 120 days after entry of this Order. The second amended petition must
21 specifically state whether each ground for relief has been exhausted in state court.
22 For each claim that has been exhausted in state court, the second amended petition
23 must state how, when, and where, the claim was exhausted. If Green determines that

1 a second amended petition need not be filed, then, within 120 days after entry of this
2 Order, Green must file a notice to that effect.

- 3 3. The respondents will have 60 days following the filing of the second amended
4 petition to file an answer or other response to the second amended petition. If Green
5 does not file a second amended petition, the respondents will have 60 days following
6 the due date for the second amended petition to file an answer or other response to the
7 first amended petition. In any answer filed on the merits, the respondents shall
8 specifically cite to and address the applicable state court written decision and state
9 court record materials, if any, regarding each claim within the response to that claim.
- 10 4. Green will have 30 days following the filing of an answer to file a reply. The
11 respondents will thereafter have 30 days following the filing of a reply to file a
12 response to the reply.
- 13 5. If the respondents file a motion to dismiss, Green will have 60 days following the
14 filing of the motion to dismiss to file a response to that motion. The respondents will
15 thereafter have 30 days following the filing of the response to file a reply.
- 16 6. If Green wishes to move for leave to conduct discovery, Green must file such motion
17 concurrently with, but separate from, the response to the respondents' motion to
18 dismiss or the reply to the respondents' answer. Any motion for leave to conduct
19 discovery filed by Green before that time may be considered premature, and may be
20 denied, without prejudice, on that basis. The respondents must file a response to any
21 such motion concurrently with, but separate from, their reply in support of their
22 motion to dismiss or their response to Green's reply. Thereafter, Green will have 20
23 days to file a reply in support of the motion for leave to conduct discovery.


1 7. If Green wishes to request an evidentiary hearing, Green must file a motion for an
2 evidentiary hearing concurrently with, but separate from, the response to the
3 respondents' motion to dismiss or the reply to the respondents' answer. Any motion
4 for an evidentiary hearing filed by Green before that time may be considered
5 premature, and may be denied, without prejudice, on that basis. The motion for an
6 evidentiary hearing must specifically address why an evidentiary hearing is required
7 and must meet the requirements of 28 U.S.C. § 2254(e). The motion must state
8 whether an evidentiary hearing was held in state court, and, if so, state where the
9 transcript is located in the record. If Green files a motion for an evidentiary hearing,
10 the respondents must file a response to that motion concurrently with, but separate
11 from, their reply in support of their motion to dismiss or their response to Green's
12 reply. Thereafter, Green will have 20 days to file a reply in support of the motion for
13 an evidentiary hearing.

14 8. All procedural defenses raised by the respondents, including exhaustion, must be
15 raised in a single consolidated motion to dismiss. I do not wish to address any
16 procedural defenses in seriatim fashion in multiple successive motions to dismiss.
17 Procedural defenses omitted from such motion to dismiss will be subject to potential
18 waiver. The respondents shall not file a response that consolidates their procedural
19 defenses, if any, with their responses on the merits, except under 28 U.S.C §
20 2254(b)(2) as to any unexhausted claims clearly lacking merit. If the respondents
21 seek dismissal of unexhausted claims under § 2254(b)(2) they must: (a) do so within
22 the single motion to dismiss and not in the answer; and (b) specifically direct their
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1 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*
2 *Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005).

- 3 9. The parties must redact personal-data identifiers in all documents filed with the Court
4 as required by LR IC 6. Any state court record and related exhibits must be filed in
5 accordance with LR IA 10-3 and LR IC 2-2 and must be filed with a separate index of
6 exhibits identifying the exhibits by number. The index must be filed in CM/ECF’s
7 document upload screen as the base document to receive the base docket number
8 (*e.g.*, ECF No. 10). Each exhibit must then be filed as “attachments” to the base
9 document—*i.e.*, the index—to receive a sequenced sub-docket number (*e.g.*, Exhibit
10 A (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so
11 forth). If the exhibits will span more than one filing, the base document in each
12 successive filing must be either a copy of the index or volume cover page. *See* LR IC
13 2-2(a)(3)(A). Paper copies of any exhibits over 50 pages—for this case—must be
14 appropriately bound, tabbed, and delivered to the Las Vegas Clerk’s office. *See* LR
15 IA 10-3(i); LR IC 2-2(g). Courtesy copies must be addressed to the attention of
16 “Staff Attorney” on the mailing address label.

17 Dated: September 22, 2022.

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20 ANDREW P. GORDON
21 UNITED STATES DISTRICT JUDGE
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