NOT FOR PUBLICATION

FILED

OCT 27 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JORGE LUIS SOSA,

Petitioner - Appellant,

v.

LANDON BIRD, Warden, Valley State Prison; ROB BONTA, Attorney General, State of California,

Respondents - Appellees.

No. 25-2882

D.C. No.
3:22-cv-01022-AGS-BLM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Andrew George Schopler, District Judge, Presiding

Submitted October 23, 2026**
Pasadena, California

Before: BUMATAY, VANDYKE, and MENDOZA, JR., Circuit Judges.

Jorge Luis Sosa appeals the district court's denial of his 28 U.S.C. § 2254 petition challenging his California convictions for child-sex offenses. The district

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

court granted a certificate of appealability on whether Sosa's due-process challenge to the charging periods is procedurally defaulted and, if not, whether charging discrete offenses over periods as long as five years and four months violated due process. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We affirm.

We review de novo a district court's denial of a petition for a writ of habeas corpus. *Kipp v. Davis*, 971 F.3d 939, 948 (9th Cir. 2020); *see Scott v. Schriro*, 567 F.3d 573, 580 (9th Cir. 2009) (per curiam) (explaining that de novo review applies to denial of relief based on a procedural bar). A federal court generally may not review a federal claim rejected by a state court on an independent and adequate state procedural ground. *Coleman v. Thompson*, 501 U.S. 722, 729–30 (1991). An application may be inadequate when it is "novel and unforeseeable" and lacks "fair or substantial support in prior state law." *Cruz v. Arizona*, 598 U.S. 17, 32 (2023) (holding that Arizona's procedural ruling was inadequate in which it represented an unforeseeable departure from the State's prior interpretation of its postconviction rule). But a procedural rule does not become inadequate merely because no prior decision applied it to "the precise facts of the case at bar." *Lee v. Kemna*, 534 U.S. 362, 382 n.13 (2002).

Here, the California Court of Appeal applied California's contemporaneous-objection rule. Sosa does not dispute the rule's general adequacy. *See Fauber v.*

Davis, 43 F.4th 987, 1002 (9th Cir. 2022) ("We have repeatedly recognized California's contemporaneous objection rule as an adequate and independent state law ground that forecloses our review." (internal quotation marks omitted)). He argues instead that the California Court of Appeal applied it in a novel and unforeseeable manner by requiring him to renew an objection after he had already raised the same fair-notice concern at the preliminary hearing. He alternatively suggests that application of the rule was exorbitant. We disagree.

The state court's application of the rule was neither novel nor unforeseeable. California law provided fair support for the forfeiture ruling here. An objection need not take any particular form, but it must fairly alert the trial court and opposing party to the specific problem so that the court has an opportunity to address it. *People v. Partida*, 122 P.3d 765, 770 (Cal. 2005) (distinguishing between attaching a constitutional consequence to the same evidentiary error raised below and asserting a different reason why the evidence should have been excluded). California therefore does not require a party to repeat an objection when the precise issue has already been presented and decided. *See People v. Morgan*, 23 Cal. Rptr. 3d 224, 227 (Ct. App. 2005) (finding no forfeiture because the prosecutor expressly addressed hearsay, and the trial court ruled that the challenged statements were not hearsay as another objection would have been "superfluous"). But an objection on one ground does not preserve a *materially*

different ground that the trial court was never asked to consider. *See People v. Polk*, 118 Cal. Rptr. 3d 876, 881 (Ct. App. 2010) (finding forfeiture because the defendant raised other *Miranda* challenges below but never challenged the substantive adequacy of the warnings asserted on appeal).

Sosa's preliminary-hearing objection did not present the challenge that he later raised on appeal. At the preliminary hearing, the court pointed out two notice issues. First, Sosa's counsel expressed difficulty matching the alleged acts to particular counts and date ranges. Counsel explained that it was unclear how the alleged acts corresponded to the counts and ranges then charged. The court agreed that such difficulties in child-sex cases could implicate "fair notice" and matters "fundamental to due process." Notably, counsel expressly disclaimed an objection to the use of date ranges themselves.

Second, the court noted that the prosecutor's explanation for restructuring the date ranges created a separate notice issue. It acknowledged that the charging structure and date ranges had changed as the investigation developed and could change again after the witnesses testified. But the court contemplated revisiting the issue if that testimony revealed a "substantial disconnect" between the complaint, any amended complaint, and the evidence. The court thus did not resolve whether the charges provided adequate notice, recognizing that the question could look different once the testimony and operative charges were

settled.[1]

Nor was requiring another objection exorbitant. In *Kemna*, the Supreme Court declined to enforce state procedural requirements when, among other circumstances, compliance largely would have required counsel to repeat information already before the trial court and would not have addressed the reason the court denied relief. 534 U.S. at 381–85. But a renewed objection here would have resulted in neither of these outcomes. By the time Sosa could have objected again, both the charges and the evidentiary record had materially changed. The prosecution had expanded the charging periods, and the witnesses' testimony supplied a basis for deciding whether those periods adequately notified Sosa of the accusations against him. A renewed objection therefore would have posed a more concrete question than the one discussed at the preliminary hearing. It also would have given the prosecution an opportunity to respond and the trial court an opportunity to correct any defect while one could still be remedied.

The preliminary-hearing court's references to "fair notice" and "due

[1] And it did. After the preliminary hearing, the prosecution filed an information with substantially broader charging periods, some reaching five years and four months. By then, the witnesses had also supplied the testimony against which those periods could be evaluated. Yet Sosa did not object to the broadened periods or ask the trial court to decide whether they provided constitutionally adequate notice in light of that testimony. The California Court of Appeal could therefore treat Sosa's later challenge as unpreserved without departing from settled California law.

process" do not change the result. Those comments show that the court understood the general constitutional concern, but they do not show that it decided the distinct challenge Sosa later advanced. The comments preceded the longer charging periods and arose during a discussion that expressly contemplated revisiting any mismatch after the testimony clarified the relationship between the evidence and the charges. Requiring Sosa to object once that record existed was therefore not an empty formality.

Because the California Court of Appeal relied on an independent and adequate state procedural ground, Sosa's due-process claim is procedurally defaulted. We therefore do not reach the question whether the charging periods themselves violated due process.

AFFIRMED.