

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,	}	CA No. 08-99028	
Petitioner-Appellant,		}	D.C. No. CV-99-08089-JFW
v.			
R.K. WONG, Warden,		}	
Respondent-Appellee.			

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**APPELLANT’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO  
FILE APPELLANT’S OPENING BRIEF AND EXCERPTS OF RECORD**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE JOHN F. WALTER  
United States District Judge

SEAN K. KENNEDY  
Federal Public Defender  
MARK R. DROZDOWSKI  
KATHERINE FROYEN BLACK  
Deputy Federal Public Defenders  
321 East 2nd Street  
Los Angeles, California  
Telephone: (213) 894-2854  
Facsimile: (213) 894-0081

Attorneys for Petitioner-Appellant  
ARMENIA LEVI CUDJO, JR.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,	)	CA No. 08-99028
Petitioner-Appellant,	)	
v.	)	D.C. No. CV-99-08089-JFW
R.K. WONG, Warden,	)	
Respondent and Appellee.	)	

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**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE  
APPELLANT'S OPENING BRIEF AND EXCERPTS OF RECORD**

Petitioner-Appellant, Armenia Levi Cudjo, Jr., hereby requests an extension of 75 days, to and including August 19, 2009, to file and serve his opening brief and excerpts of record. This request is made under Rule 31 of the Federal Rules of Appellate Procedure and Circuit Rule 31-2.2(b) and is based on the attached Declaration of Mark R. Drozdowski.

Dated: May 28, 2009

Respectfully submitted,

SEAN K. KENNEDY  
Federal Public Defender

By     /s/ Mark R. Drozdowski      
MARK R. DROZDOWSKI  
Deputy Federal Public Defender

Attorneys for Petitioner-Appellant

## **DECLARATION OF MARK R. DROZDOWSKI**

I, Mark R. Drozdowski, declare:

1. I am an attorney licensed to practice law in the State of California and I am admitted to practice in this Court. I am a deputy federal public defender with the Office of the Federal Public Defender for the Central District of California (“FPD”). I am also the supervising attorney of the FPD’s capital habeas unit (“CHU”), and as such am responsible for overseeing the CHU’s 14 attorneys and its caseload of about 62 federal capital habeas cases (including two 28 U.S.C. § 2255 actions), roughly 34 federal noncapital habeas cases and direct appeals, and federal trial work. I am one of the attorneys assigned to represent Cudjo in this appeal. I make this declaration in support of Cudjo’s request for a 75-day extension of time, to and including August 19, 2009, to file and serve his appellant’s opening brief and excerpts of record.

2. Cudjo filed, and the Court granted, three previous unopposed motions for 30-day extensions of time to file and serve the opening brief and excerpts, bringing the total amount of extensions granted thus far to 90 days and making the current due date for these documents June 5, 2009. I make this request for a longer extension of 75 days because, realistically looking at my schedule over the next two months, the staffing available for this case, and the work that remains to be done, I believe that we need that amount of time to complete the brief and related work. I am optimistic that if the Court grants this extension request, we will not need to file another one. The reasons for the request are as follows:

3. I am primarily responsible for drafting the opening brief. The district court sua sponte granted a certificate of appealability (“COA”) on one claim, involving lethal injection, but we will seek to expand the COA in the opening brief to include the claims on which we had an evidentiary hearing in district court and probably on one or more record-based claims.

4. One of the two other attorneys assigned to this appeal, Katherine Froyen Black, went out on maternity leave on or about May 1, 2009. She will remain on maternity leave until next fall. She has been unavailable to work on this case since going out on leave. The other attorney assigned to the appeal, John Littrell, has an active caseload in our trial unit. He has been assigned to draft one of the claims in the appeal (the one he handled at the evidentiary hearing), but he has not finished drafting that claim.

5. I have been unable to complete my legal research and record review for the opening brief, and a draft of the portions of the brief assigned to me, because of my obligations in other cases and as CHU supervisor. Since the Court granted the prior extension request on May 1, 2009, I have engaged in the following work in other cases:

6. I am the sole attorney representing Robert Fairbank in his capital habeas appeal *Fairbank v. Ayers*, Ninth Circuit Case No. 08-99018. Fairbank’s opening brief and excerpts of record are due June 8, 2009. I spent numerous hours the past month working on Fairbank’s appeal. I expect to file one final extension request in *Fairbank* but even if it is granted, I will have to file his brief in June.

7. I am the sole attorney representing Mario Guerra in his noncapital

habeas appeal *Guerra v. Felker*, Ninth Circuit Case No. 07-55891. I filed Guerra's opening brief and excerpts on January 20, 2009. Mr. Guerra asked for leave to file his own supplemental brief, and the Court granted my request to withdraw the opening brief and re-file another one hopefully more to Mr. Guerra's liking. That brief is due June 10, 2009, and I anticipate meeting that deadline. I have spent some time the past week revising the brief.

8. I am the sole attorney assigned to represent the appellant in the noncapital habeas appeal *Trotter v. Harrison*, Ninth Circuit Case No. 07-55451. This Court affirmed the judgment against Mr. Trotter in March. In the past week, I drafted a petition for a writ of certiorari that is due by June 15, 2009.

9. One of my duties as CHU supervisor is to review draft Ninth Circuit briefs prepared by other lawyers in our office. I reviewed reply briefs that were filed in two noncapital habeas appeals in May.

10. In addition to the *Fairbank* opening brief, I anticipate having to work on the following matters between now and the end of June:

11. I am co-counsel for the capital habeas petitioner in *Panah v. Wong*, C.D. Cal. Case No. 05-7606-RGK. Panah's informal reply in support of his state exhaustion petition is due June 8, 2009. It will take me several days to finish my portions of the reply. One of the two other lawyers assigned to the case is on paternity leave.

12. I am the sole counsel currently representing Tracy Cain in his capital habeas case *Cain v. Wong*, C.D. Cal. Case No. CV 96-2584-ABC. (Katherine Froyen Black is my co-counsel but she is on maternity leave, as mentioned above.)

Cain's amended federal petition must be filed by June 15, 2009, and I will have to spend time working on the petition before then.

13. I am one of the attorneys representing the capital habeas petitioner in *Jennings v. Brown*, E.D. Cal. Case No. 91-CV-00684-OWW. Petitioner's supplemental motion for an evidentiary hearing is due June 24, and I expect to have to draft all or at least most of the motion.

14. My supervisory duties have consumed at least roughly 20 hours per week since May 1.

15. I have worked everyday, including weekends and Memorial Day, since the prior extension request was granted on May 1. To give myself more time to try to complete my work, I cancelled a pre-planned vacation to Hawaii (set for June 4-8) and cancelled my plans to attend an out-of-state training seminar that my boss had asked me to attend. I intend to go on the vacation I planned long ago for the week of June 27.

16. For the reasons stated above and in the prior extension requests, counsel for Cudjo have not been able to complete, and will not be able to complete, the opening brief and excerpts by the current June 5, 2009 due date. I respectfully request a 75-day extension of time, to and including August 19, 2009, to file and serve the opening brief and excerpts of record. I have exercised diligence and will file the brief and excerpts within the time requested.

17. On May 29, 2009, at about 2:30 p.m., I telephoned Bill Bilderback, counsel for Appellee, and stated that I intended to file this request and the reasons therefore. Mr. Bilderback informed me that Appellee does not oppose the request.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 28, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski  
MARK R. DROZDOWSKI

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By     /s/ Mark R. Drozdowski      
MARK R. DROZDOWSKI  
Deputy Federal Public Defender