

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.			

**APPELLANT’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE 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

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ARMENIA LEVI CUDJO, JR.

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Petitioner-Appellant,		}	D.C. No. CV-99-08089-JFW
v.			
R.K. WONG, Warden,		}	
Respondent and Appellee.			

**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 35 days, to and including September 23, 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: August 12, 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
ARMENIA CUDJO

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 13 attorneys and its caseload of about 63 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 35-day extension of time, to and including September 23, 2009, to file and serve his appellant’s opening brief and excerpts of record.

2. Cudjo filed, and the Court granted, four previous unopposed motions for extensions of time to file and serve the opening brief and excerpts, bringing the total amount of extensions granted thus far to 165 days, and making the current due date for these documents August 19, 2009. I make this request for an extension of 35 days because, given my schedule over the next month, 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.

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 record-based claim.

4. One of the two other attorneys assigned to this case, 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 the FPD's trial unit. He has been assigned to draft the argument for one of the claims in the appeal (the one he handled at the evidentiary hearing), but he has not finished drafting that argument.

5. I have been unable to complete 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 previous extension request on June 3, 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. I filed Fairbank's opening brief and excerpts of record on July 7, 2009, and spent the bulk of my work time between June 3 and July 7 working on Fairbank's appeal.

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 of record on June 10, 2009, and spent numerous hours between June 3 and June 10 finalizing the brief for filing.

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 Trotter last March. On June 10, 2009, I filed a petition for a writ of certiorari on Trotter's behalf. I spent a decent amount of time between June 3 and June 10 working on the petition.

9. I am co-counsel for the capital habeas petitioner in *Panah v. Wong*, C.D. Cal. Case No. 05-7606-RGK. On June 8, 2009, I filed Panah's informal reply in support of his state exhaustion petition. I spent several days between June 3 and June 8 drafting portions of the reply.

10. I represent 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.) I filed Cain's amended federal habeas petition on June 15, 2009, and spent some time the week before working on the petition. His traverse is due on August 28, and I anticipate having to spend some time finalizing that document for filing.

11. I am one of the attorneys representing the capital habeas petitioner in *Jennings v. Brown*, E.D. Cal. Case No. 91-CV-00684-OWW. I filed petitioner's supplemental motion for an evidentiary hearing on July 8, and was solely responsible for drafting the motion. The reply in support of our motion is due on September 8.

12. My supervisory duties have consumed roughly 20 hours per week since June 3.

13. I worked every day, including weekends and holidays, between April 22 and July 10, 2009 to try to meet my obligations in this case and the other cases listed above. To give myself more time to try to complete my work, I cancelled

two pre-planned vacations out of state that I had scheduled for early June and around the Fourth of July, and also cancelled plans to attend an out-of-state training seminar that my boss had asked me to attend.

14. 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 August 19, 2009 due date. I respectfully request a 35-day extension of time, to and including September 23, 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.

15. On August 7, Bill Bilderback, counsel for Appellee, and I exchanged telephone messages in which I stated that I intended to file this extension request and he stated that Appellee did not oppose any such request.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on August 12, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski
MARK R. DROZDOWSKI

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 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