

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.			
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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 30 days, to and including October 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: September 16, 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 15 attorneys and its caseload of about 64 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 30-day extension of time, to and including October 23, 2009, to file and serve his appellant’s opening brief and excerpts of record. We have made considerable progress since the last extension request and, barring some unforeseen development, I do not anticipate making another request for more time to file the opening brief and excerpts.

2. Cudjo filed, and the Court granted, five 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 200 days, and making the current due date for these documents September 23, 2009. I make this request for an extension of 30 days because, given 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 at least 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 the end of October. She has been unavailable to work on this case since going out on leave.

5. The other attorney assigned to the appeal, John Littrell, has an active caseload in the FPD's trial unit. Mr. Littrell has drafted parts of the brief addressing several claims. However, Mr. Littrell is currently out of the country on a prepaid vacation (he left on September 8) and will not return until September 29. He is thus unavailable to continue to work on the brief before the current September 23 deadline.

6. Much of the legal research for my sections of the brief have been completed, but I still need to complete my review of the record and drafts of the portions of the brief assigned to me. I have been unable to make more progress on these tasks since I filed the previous extension request on August 12 because of my obligations as CHU supervisor and in other cases. In the past five weeks, I have spent at least 20 hours per week on administrative duties, including a lot of time on attorney hiring and training (three attorneys left the CHU in the past six months and we have spent a considerable amount of time recruiting, interviewing and hiring attorneys to replace them and to fill additional positions). In my cases, on August 28, 2009, I filed a traverse on behalf of Tracy Cain in his capital habeas case *Cain v. Wong*, C.D. Cal. Case No. CV 96-2584-ABC. On September 8, my co-counsel filed a reply in support of our supplemental motion for an evidentiary hearing in the capital habeas case *Jennings v. Brown*, E.D. Cal. Case No. 91-CV-

00684-OWW. I spent numerous hours finalizing the *Cain* traverse and the *Jennings* reply for filing.

7. 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 September 23, 2009 due date. I respectfully request a 30-day extension of time, to and including October 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. I realize that the Court has been gracious in granting Cudjo's extension requests. Absent some unforeseen circumstance, I do not anticipate making another request to extend the due dates for these documents.

8. On September 15, 2009, 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 September 16, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski
MARK R. DROZDOWSKI

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 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