

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

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,		}	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 three weeks, to and including November 13, 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. Cudjo will not make another request to extend this deadline.

Dated: October 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 17 attorneys and its caseload of about 66 federal capital habeas cases (including two 28 U.S.C. § 2255 actions), roughly 30 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 three-week extension of time, to and including November 13, 2009, to file and serve his appellant’s opening brief and excerpts of record. We have made good progress since the last extension request but cannot adequately represent Cudjo without the additional time requested herein.

2. Cudjo filed, and the Court granted, six 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 230 days, and making the current due date for these documents October 23, 2009. I make this request for an extension of three weeks 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 several other claims.

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 but will be able to assist in completing the brief if this extension is granted. Ms. Black has worked on the case longer than me or the other attorney on the case, John Littrell, and we consider her the lead lawyer on the case. Her assistance will improve the quality of the brief and enable us to complete the brief by November 13.

5. Mr. Littrell has an active caseload in the FPD's trial unit. He has drafted parts of the brief addressing several claims. However, he was out of the country on a prepaid vacation for most of September and was unable to work on the brief then.

6. The vast bulk of the legal research for my sections of the brief has been completed, as have drafts of some sections of the brief, but I need additional time to complete drafts of other sections. I have been unable to make more progress on these tasks since I filed the previous extension request on September 16 because of my obligations as CHU supervisor and in other cases. In the past month, I have spent at least 20 hours per week on administrative duties, including a lot of time on attorney hiring and training. We have had three new attorneys join our unit since the end of August and another has been hired to begin soon. I have spent a considerable amount of time recruiting and training attorneys the past month.

7. In my cases, I have an evidentiary hearing motion due on October 23 in the capital habeas case *Cain v. Wong*, C.D. Cal. Case No. CV 96-2584-ABC. I have spent time the past several weeks working on the motion and supervising others on the case. I also spent time the past several weeks assisting the attorneys

and staff in the capital habeas cases *Marlow v. Wong*, C.D. Cal. Case Nos. CV 05-6477-ABC and CV 05-6478-ABC, where habeas petitions are due to be filed by October 22.

8. On October 13, I filed a protective federal habeas corpus petition on behalf of the capital habeas petitioner in *Howard v. Wong*, CV 08-6851-SGL. When I filed Cudjo's prior extension request, I did not anticipate having to file a petition on Howard's behalf, but the Attorney General declined my request to file a joint document with some additional language to try to further protect Howard's right to federal habeas review in the event his pending state petition, which was filed past the presumptively timely deadline, is later deemed untimely. I spent a lot of time working on the petition to file it within one year of the conclusion of direct review (i.e., by October 14, 2009). This was time taken away from this case.

9. On Saturday, September 26, I attended a mandatory all-day training, and on October 1 and 2, I attended a mandatory FPD retreat out of town. Including those days, I have worked every day, including weekends and Columbus Day, since filing the prior extension request to try to complete Cudjo's brief and meet my other obligations.

10. I will be out of the office for most of October 16 on a pre-planned and -paid vacation, returning the morning of Monday, October 19. I will be out of the office for two weeks beginning on October 24 on a pre-planned and -paid vacation. I had anticipated completing the brief before then, as stated in the prior request, but now that I am behind schedule because of the *Howard* case and other duties, these vacations are taking away time I could be working on the brief and require me to ask for an extension until November 13, six days after I return from the two-week vacation. I cancelled several vacations last June to complete an

opening brief in another capital habeas case (*Fairbank*) and do not wish to do so again.

11. Finally, my boss, Federal Public Defender Sean Kennedy, wants time to review a draft of the brief before we file it, and I am going to be unable to do that under the current deadline. Mr. Kennedy supports this extension request.

12. 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 October 23, 2009 due date. I respectfully request a three-week extension of time, to and including November 13, 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, and I will not make another request to extend the due date for the opening brief.

13. On October 15, 2009, I left a message for Bill Bilderback, counsel for Appellee, informing him that I intended to file this extension request and the reasons therefore. He replied 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 October 16, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski
MARK R. DROZDOWSKI

CERTIFICATE OF SERVICE

I hereby certify that on October 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