

08-99028

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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| <p>ARMENIA LEVI CUDJO, JR., Petitioner and Appellant, v. ROBERT AYERS, JR., Respondent and Appellee.</p> |
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On Appeal from the United States District Court
for the Central District of California

No. CV 99-08089-JFW
The Honorable John F. Walter, Judge

**UNOPPOSED MOTION FOR EXTENSION OF
TIME TO FILE APPELLEE'S BRIEF**

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Respondent-Appellee Robert K. Wong, Acting Warden of San Quentin State Prison, hereby moves this Court for an order under Federal Rule of Appellate Procedure 26(b) for a 60-day extension of time, to March 30, 2010, in which to file the Appellee's Brief herein. This motion is based on the attached declaration of James William Bilderback II, the files and records in the instant case, and the District Court file underlying this matter.

Dated: January 22, 2010

Respectfully Submitted,

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**DECLARATION OF JAMES WILLIAM BILDERBACK II
IN SUPPORT OF UNOPPOSED MOTION FOR EXTENSION
OF TIME**

I, James William Bilderback II, hereby declare, under penalty of perjury of the laws of the United States, as follows:

1. I am a Supervising Deputy Attorney General with the California Department of Justice licensed to practice law in the State of California and admitted before the United States Court of Appeals for the Ninth Circuit.

2. I have principal responsibility for preparing all pleadings on behalf of Respondent-Appellee in *Cudjo v. Ayers*, case number 08-99028.

3. Pursuant to this Court's Order of November 30, 2009, the Appellee's Brief in the instant case is due for filing on January 29, 2010.

4. The Appellant's Opening Brief in the instant case is 126 pages long, and contains 10 separately-enumerated claims. The excerpts of record attached by appellant are 2,321 pages in length.

5. I will not be able to complete and file the brief by the due date. Since the opening brief was filed in this case I have been preparing internal memoranda regarding possible further action following this Court's December 9, 2009 *en banc* decision in the capital habeas corpus matter *Pinholster v. Ayers*, case numbers 03-99003 & 03-99008. I also prepared a Federal Rule of Appellate Procedure 28(j) letter and participated in oral argument in the federal habeas corpus appeal *Emery v. Clark*, case number 08-55249. I have also been preparing the answering brief

for Respondent-Appellee in this Court in the capital habeas corpus appeal *Gonzalez v. Ayers*, case number 08-99025, which is currently due on a fourth extension on February 5, 2009. Further, my responsibilities as a Supervising Deputy Attorney General have required me to review before filing five pleadings in the California Court of Appeal. I also took several days off from work to be with my family during the Christmas Holiday season.

6. Before beginning work on the instant case, I must first complete the internal processes regarding further action in the *Pinholster* matter, which may require the preparation and filing of a petition for writ of certiorari. I must also complete and file the answering brief in *Gonzalez*. Also, I have been tasked with assisting in the presentation of respondent's case at an evidentiary hearing in the capital habeas corpus matter *Livaditis v. Woodford*, U.S.D.C. C.D. Cal. case number 96-2833-RMT.

7. Accordingly, I request that this Court grant a 60-day extension of time, to March 30, 2010, within which to file the Appellee's Brief.

8. I have spoken with counsel for Petitioner-Appellant, Katherine Froyen Black, who informed me she has no objection to this extension request.

Executed this 22nd day of January 2010, at Los Angeles, California.

S/ JAMES WILLIAM BILDERBACK II
JAMES WILLIAM BILDERBACK II
Supervising Deputy Attorney General

