

08-99028

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,

Petitioner and Appellant,

v.

ROBERT AYERS, JR.,

Respondent and Appellee.

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 SECOND EXTENSION OF
TIME TO FILE APPELLEE'S BRIEF**

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Respondent-Appellee Vincent Cullen, Acting Warden of San Quentin State Prison, hereby moves this Court for an order under Federal Rule of Appellate Procedure 26(b) for a second 60-day extension of time, to May 29, 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: March 19, 2010

Respectfully Submitted,

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**DECLARATION OF JAMES WILLIAM BILDERBACK II
IN SUPPORT OF UNOPPOSED MOTION FOR SECOND 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 January 26, 2010, the Appellee's Brief in the instant case is due for filing on March 30, 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 this Court granted respondent's first request for an extension of time, I have completed and filed the answering brief for Respondent-Appellee in this Court in the capital habeas corpus appeal *Gonzalez v. Ayers*, case number 08-99025. I also prepared and filed in *Cullen v. Pinholster*, USSC case no. 09-1088 a petition for writ of certiorari of this Court's December 9, 2009 *en banc* decision in the capital habeas corpus matter *Pinholster v. Ayers*, case numbers 03-99003 & 03-99008. Further,

my responsibilities as a Supervising Deputy Attorney General required me to review before filing eight pleadings in the California Court of Appeal. And I am currently preparing for oral argument before this Court in *Earp. v. Ayers*, case no. 08-99005, scheduled for March 22, 2010.

6. It is my intention to begin work on the instant matter following the oral argument in *Earp*. However, I am responsible for 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. That hearing has been moved, at the petitioner's request, to April 28, 2010. I may therefore have to interrupt my work on this case in order to attend to that matter.

7. Accordingly, I request that this Court grant a second 60-day extension of time, to May 29, 2010, within which to file the Appellee's Brief.

8. I spoke with Mark R. Drozdowski, counsel for Petitioner-Appellant, who informed me he has no objection to this extension request.

Executed this 19th day of March, 2010 at Los Angeles, California.

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

CERTIFICATE OF SERVICE

Case Name: ARMENIA LEVI CUDJO, JR. No. 08-99028
v. ROBERT AYERS, JR.

I hereby certify that on March 19, 2010, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

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

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 19, 2010, at Los Angeles, California.

Bernard M. Santos

Declarant

s/ Bernard M. Santos

Signature