

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

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Respondent-Appellee Vince 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 third 60-day extension of time, to August 1, 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: May 25, 2010

Respectfully Submitted,

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**S/ JAMES WILLIAM BILDERBACK II**  
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**DECLARATION OF JAMES WILLIAM BILDERBACK II  
IN SUPPORT OF UNOPPOSED MOTION FOR THIRD 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 March 25, 2010, the Appellee's Brief in the instant case is due for filing on June 2, 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 second request for an extension of time, I have participated in oral argument before this Court in *Earp v. Ayers*, case no. 08-99005. Further, I have prepared for and participated 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-SVW. Further, I have prepared and filed a reply to the opposition to the 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 thirteen briefs in the California Court of Appeal, and two briefs in the California Supreme Court.

6. I have begun preparing the appellee's brief in the instant case. As noted above, I was forced to interrupt my work on the instant case in order to work on the *Livaditis* and *Pinholster* matters described above. Further, I am now preparing a response to appellant's motion to this Court to vacate the briefing order and, essentially, stay the appeal, in the capital federal habeas corpus appeal *Gonzales v. Wong*, case number 08-99025. Upon completion of my response to the motion in *Gonzales*, it is my intention to return my attention to the instant case.

7. Accordingly, I request that this Court grant a third 60-day extension of time, to August 1, 2010, within which to file the Appellee's Brief.

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

Executed this 25th day of May, 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. v. ROBERT AYERS, JR.

No. 08-99028

I hereby certify that on May 25, 2010, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**UNOPPOSED MOTION FOR THIRD 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 May 25, 2010, at Los Angeles, California.

Bernard M. Santos  
Declarant

s/ Bernard M. Santos  
Signature