

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.	}		

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**APPELLANT’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO  
FILE APPELLANT’S OPENING BRIEF**

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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.

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. <sup>1</sup>	}		

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

Petitioner-Appellant, Armenia Levi Cudjo, Jr., hereby requests an extension of 30 days to and including April 6, 2009, to file his opening brief. 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 Declarations of Katherine Froyen Black and Mark R. Drozdowski.

Dated: February 24, 2009

Respectfully submitted,

SEAN K. KENNEDY  
Federal Public Defender

MARK R. DROZDOWSKI  
Deputy Federal Public Defender

By /s/ Katherine Froyen Black  
KATHERINE FROYEN BLACK  
Deputy Federal Public Defender

Attorneys for Petitioner-Appellee

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<sup>1</sup> In conformance with Rule 43(c)(2) of the Federal Rules of Appellate Procedure, Petitioner-Appellant hereby substitutes R.K. Wong, Warden, San Quentin State Prison, for Robert L. Ayers, Jr., who is now the former Warden.

## **DECLARATION OF KATHERINE FROYEN BLACK**

I, Katherine Froyen Black, 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 in the Central District of California (“FPD”), and I am one of the attorneys assigned to represent Armenia Levi Cudjo, Jr., in this appeal. I make this declaration in support of Mr. Cudjo’s request for a 30-day extension of time, to and including April 6, 2009, to file and serve his appellant’s opening brief and excerpts of record.

2. The opening brief is currently due for filing on March 5, 2009. I request an extension of time for a period of 30 days, to and including April 6, 2009, to file the opening brief and excerpts.

3. This is Petitioner-Appellant’s first request for an extension of time in which to file his opening brief.

4. I do not believe that I will be able to complete the opening brief by the current due date, in part because of other case responsibilities. Since this Court set the current briefing schedule, on November 26, 2008, I have spent time fulfilling the following responsibilities in other capital cases:

5. In November and December 2008, I assisted in the preparation of a Petition for Writ of Habeas Corpus in a capital habeas case assigned to the FPD, case no. 07-08310-JVS. The petition was filed on December 17, 2008. Although I am not counsel of record in the case, I was temporarily assigned to the case in order to assist current counsel of record in completing the petition within the one-

year statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act. This case is one of the largest federal capital habeas matters now pending in the Central District -- a habeas corpus challenge to a California judgment of convictions and sentences of death involving 15 separate criminal incidents, including 12 first-degree murder convictions. The reporter's transcripts alone comprise 243 volumes. I participated in planning and supervising the investigation of the case, in drafting and rewriting claims for the petition, and in proofreading, editing, and preparing the petition for filing. I have also assisted, albeit in a more limited role, in the continued investigation, consultation with experts, and other tasks involved in preparing to file a state exhaustion petition in the California Supreme Court on or before March 17, 2009. My responsibilities in this voluminous and complex case consumed a large portion of my time during November and December 2008.

6. In addition to my role as counsel of record for Petitioner-Appellant Cudjo, I am appointed counsel of record for five other capital habeas petitioners in the Central District. My responsibilities in these cases have been ongoing: C.D. Cal. case nos. CV-03-07848-GW; CV-96-02584-ABC; CV-05-04971-JFW; CV-07-00519-FMC; and CV 94-06417-AHS.

7. In one of these cases, case no. CV 94-06417-AHS, the FPD was appointed to replace federal habeas counsel for the petitioner on August 14, 2008, and I was assigned to the case shortly thereafter. Since my assignment to this case, in early September 2009, I have spent considerable time reviewing the prior pleadings in both state and federal court, including the state appellate briefing,

four prior Petitions for Writ of Habeas Corpus that have been filed on the petitioner's behalf in the California Supreme Court, and four prior Petitions for Writ of Habeas Corpus that have been filed in federal district court. I have also received and reviewed many case materials that were forwarded to me by prior federal habeas counsel. On January 15, 2009, the district court issued a scheduling order allowing the petitioner leave to file an amended petition in federal court on or before March 2, 2009. Since then, I have spent much of my time preparing to file an amended petition. I have a request currently pending for a one-week extension of time in which to prepare and file this amended federal petition for writ of habeas corpus, to and including March 9, 2009. Should my request be granted, I anticipate spending the majority of time between now and March 9, 2009, preparing and filing the amended federal petition in case no. CV 94-06417-AHS.

8. Finally, in January 2009, I spent a portion of my time reviewing records in another of my capital habeas cases, CV 07-00519-FMC, in which a state exhaustion petition is currently pending in the California Supreme Court. I invested the time in reviewing the case records in order to prepare an informal discovery request, which I sent to the District Attorney's Office on or about January 23, 2009.

9. My co-counsel on Mr. Cudjo's appeal, Deputy Federal Public Defenders Mark R. Drozdowski and John L. Littrell, also have case and other professional obligations that have prevented them from completing the necessary record review, legal research, and writing for the opening brief in this capital case.

Mr. Drozdowski's supervisory and other case obligations, which have prohibited him from devoting substantial time to preparing the opening brief, are detailed in his attached declaration. Mr. Littrell's other case obligations are as follows:

10. Mr. Littrell has been assigned to represent the petitioner in another capital habeas case: *Bradford v. Woodford*, No. CV 97-6221-TJH. The traverse to the petition for writ of habeas corpus, which contains twenty-nine claims and sub-claims, most of which the Respondent contends are procedurally barred, is due on March 20, 2009.

11. Mr. Littrell is also counsel of record in two non-capital habeas cases, both of which involve prisoners serving terms of life. In one case, *Maldonado v. Scribner*, CV 06-2050-VAP (FMO), he is preparing post-hearing briefing following an evidentiary hearing on Mr. Maldonado's *Batson* claim. Mr. Littrell's initial post-hearing briefing, which includes a statistical analysis of peremptory strikes, was due February 23, 2009. Mr. Littrell also has an additional brief scheduled to be filed in that case on March 23, 2009. In the other case, *In re Paul Gaul*, Mr. Littrell has an original habeas petition due in the California Supreme Court no later than February 25, 2009. He also must represent Mr. Gaul at a lifer parole hearing at Avenal State Prison on March 3, 2009.

12. In addition to these capital and non-capital habeas cases, Mr. Littrell is counsel of record in approximately thirty federal criminal trial cases, several of which are set for trial in the coming months. Mr. Littrell is currently scheduled to begin a jury trial in *United States v. Kaneshia Hughes*, CR 08-892-GW, a fraud case, on March 10, 2009. Trial will last approximately three days. Mr. Littrell is

also scheduled to begin a jury trial in *United States v. Arthur Leroy Shoot*, CR 08-1178-SJO, a sex offense case with a mandatory minimum sentence of 25 years, on April 7, 2009. Trial will last approximately one week.

13. In spite of these ongoing obligations in other cases, my co-counsel and I have exercised and will continue to exercise due diligence with respect to this appeal. Despite our diligence in pursuing Petitioner's appeal, we require additional time to complete the opening brief.

14. On February 24, 2009, I spoke with Deputy Attorney General James William Bilderback II, who is counsel of record for Respondent-Appellee, and informed him of my intention to file this motion. Mr. Bilderback advised me that Respondent has no objection to the motion.

I declare under the penalty of perjury that the foregoing is true and correct.  
Executed on February 24, 2009, at Los Angeles, California.

/s/ Katherine Froyen Black  
KATHERINE FROYEN BLACK

## **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 62 federal capital habeas cases (including two 28 U.S.C. § 2255 actions), roughly 34 federal noncapital habeas cases, 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 April 6, 2009, to file and serve his appellant’s opening brief and excerpts of record.

2. I have been unable to complete my legal research and record review for the opening brief, and a draft of the portions of the brief that have been assigned to me to write, because of my obligations in other cases and as CHU supervisor. Since the Court set the current due date for the brief on November 26, 2008, I have engaged in the following work in other cases:

3. I am the sole attorney representing Robert Fairbank in his capital habeas appeal *Fairbank v. Ayers*, Ninth Circuit Case No. 08-99018. Fairbank’s opening brief and excerpts of record are presently due by March 9, 2009. Although I have not made as much progress on Fairbank’s brief as I had hoped, I have spent numerous hours the past several months reviewing the record and conducting legal research in his case.



4. I am the sole attorney representing Mario Guerra in his noncapital habeas appeal *Guerra v. Felker*, Ninth Circuit Case No. 07-55891. I filed Guerra's opening brief and excerpts on January 20, 2009. I spent a lot of time in January working on the brief and conducting legal research and record review.

5. I am the sole attorney representing the appellant in the noncapital habeas appeal *Menefee v. Felker*, Ninth Circuit Case No. 08-55657. I filed Menefee's reply brief and supplemental excerpts of record on January 26, 2009. Because of an error in the ECF filing, the brief was submitted for review again the next day. I was solely responsible for researching and writing the reply brief, and I spent numerous hours in January working on the reply.

6. One of my duties as CHU supervisor is to review draft Ninth Circuit briefs prepared by other lawyers in our office or by outside co-counsel in cases in which our office is appointed. In January 2009, I spent a considerable amount of time reading and editing drafts of opening briefs filed in *McKenzie v. Brown*, Ninth Circuit Case No. 07-56135, *Earp v. Ayers*, Ninth Circuit Case No. 08-99005, and *James v. Woodford*, Ninth Circuit Case No. 08-55216. I have also spent time this month helping an attorney prepare for the oral argument scheduled for February 27, 2009 in *Visciotti v. Ayers*, Ninth Circuit Case No. 06-75628.

7. As CHU supervisor, I also had to spend time the past month or so preparing status reports in two capital habeas cases in which our office was recently appointed, *Jennings v. Brown*, E.D. Cal. Case No. 91-CV-00684-OWW, and *Romero v. Wong*, C.D. Cal. Case No. CV 09-0410 JVS.

8. My supervisory duties have consumed at least roughly 20 hours per week since the Court set the present briefing schedule in late November 2008.

9. Cudjo's opening brief is presently due on March 5, 2009. The day before, I have an oral argument scheduled in *Trotter v. Harrison*, Ninth Circuit Case No. 07-55451, and an appellant's opening brief due in *Smith v. Harrison*, Ninth Circuit Case No. 08-56915. I have co-counsel in *Smith* but I have yet to complete my portions of the brief. I will need to devote considerable time to *Trotter* and *Smith* between now and March 4.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on February 24, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski  
MARK R. DROZDOWSKI

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 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/ Katherine Froyen Black  
KATHERINE FROYEN BLACK  
Deputy Federal Public Defender