

08-99028

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,

Petitioner-Appellant,

v.

ROBERT AYERS, JR.,

Respondent-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

**APPELLEE'S UNOPPOSED MOTION TO
EXCEED THE WORD LIMIT FOR THE
SUPPLEMENTAL ANSWERING BRIEF**

KAMALA D. HARRIS
Attorney General of California
LANCE E. WINTERS
Senior Assistant Attorney General
A. SCOTT HAYWARD
Deputy Attorney General
KEITH H. BORJON
Supervising Deputy Attorney General
JAMES WILLIAM BILDERBACK II
Supervising Deputy Attorney General
State Bar No. 161306
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2049
Fax: (213) 897-6496
Email: DocketingLAAWT@doj.ca.gov
Attorneys for Respondent

Pursuant to Ninth Circuit Rule 32-2, Appellee-Respondent Warden Kevin Chapelle¹ (Respondent) hereby moves to file a brief in excess of the 11,200-word limit for the Supplemental Answering Brief imposed by this Court's Order of December 5, 2011. Respondent requests leave to file a brief containing 17,696 words. A copy of the Supplemental Answering Brief is being lodged concurrently with this request. The reasons for the request are set forth in the attached declaration of Supervising Deputy Attorney General James William Bilderback II.

¹ Warden Chapelle has succeeded Warden Ayers as Petitioner's custodian at San Quentin State Prison, and should be substituted as the properly named Appellee in this case. Fed. R. App. P. 43(c)(2)

DECLARATION OF JAMES WILLIAM BILDERBACK II

I, JAMES WILLIAM BILDERBACK II, hereby declare under penalty of perjury the following:

1. I am a Supervising Deputy Attorney General for the State of California in the Appeals, Writs and Trials Section of the Criminal Law Division of the California Department of Justice in Los Angeles, California. I am the attorney assigned to represent the Appellee-Respondent in this capital case, *Armenia Levi Cudjo, Jr., v. Robert L Ayers, Warden*, case number 08-99028.

2. Pursuant to this Court's Order of December 5, 2011, the word limit for Respondent's Supplemental Answering Brief is 11,200 words. Respondent asks to be relieved from this limit because of the number and complexity of the issues that the Order directs Respondent to address, as evidenced by the length of the Appellant's Opening Brief.

3. Ninth Circuit Rule 32-4 contemplates that in capital cases the parties will file principal briefs of the same length (21,000 words). In the instant case, Petitioner-Appellant Armenia Levi Cudjo, Jr. (Petitioner) requested—without opposition—and was granted permission to file an opening brief in

excess of the word limit. Specifically, Petitioner was granted permission to file an Appellant's Opening Brief 27,259 words long.

4. The Certificate of Appealability issued by the District Court contemplated one of the seven issues Petitioner raised in the opening brief, and this Court's Order of December 5, 2011 directed Respondent to respond to five of the six remaining uncertified issues. Those issues constitute the vast majority of Petitioner's opening brief. By Respondent's calculation, the single omitted issue only constitutes 1,167 words of the Appellant's Opening Brief. Thus, Respondent has been required to respond to an opening brief that is effectively 26,092 words long.

5. Respondent's original Appellee's Brief was 6,761 words long. The attached Supplemental Answering Brief is 17,696 words long. Together, this totals 24,457 words, which is less than the word volume this Court granted to Petitioner to raise the arguments to which Respondent has responded.

6. The reasons provided by Petitioner—and apparently accepted by this Court—in support of Petitioner's request to file an oversize opening brief apply with equal force to Respondent's answering briefing. And the equities contemplated by Ninth Circuit Rule 32-4 would suggest that

Respondent would be entitled to at least the same word volume as Petitioner to respond to Petitioner's arguments. For these reasons, Respondent requests permission to file the instant 17,696-word Supplemental Answering Brief.

7. On January 4, 2012, I spoke with Petitioner's counsel, Deputy Federal Public Defender John Littrell. Mr. Littrell said that he does not object to this request to exceed the word limit.

I declare under penalty of perjury that the foregoing is true and correct.

s/ James William Bilderback II
JAMES WILLIAM BILDERBACK II
Supervising Deputy Attorney General

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CERTIFICATE OF SERVICE

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

I hereby certify that on January 6, 2012, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEE’S UNOPPOSED MOTION TO EXCEED THE WORD LIMIT FOR THE SUPPLEMENTAL ANSWERING 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 January 6, 2012, at Los Angeles, California.

L. Luna
Declarant

s/ L. Luna
Signature

JWB:ll
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