

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.			

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

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.

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FOR THE NINTH CIRCUIT

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Petitioner-Appellant,		}	D.C. No. CV-99-08089-JFW
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R.K. WONG, Warden,		}	
Respondent and Appellee.			

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
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Petitioner-Appellant, Armenia Levi Cudjo, Jr., hereby requests an extension of 30 days to and including May 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: March 30, 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

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 May 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 April 6, 2009. I request an extension of time for a period of 30 days, to and including May 6, 2009, to file the opening brief and excerpts.

3. This is Petitioner-Appellant’s second 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. 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-03-07948-GW; CV-96-02584-ABC; CV-05-04971-JFW; CV-07-00519-FMC; and CV 94-06417-AHS. During the past 30 days, since this Court granted Petitioner’s first request for an extension of time in which to file his opening brief, I have spent time fulfilling the following responsibilities in these other capital cases:

5. In case no. CV 94-06417-AHS, I filed an amended federal petition for writ of habeas corpus on March 9, 2009. Because the FPD was appointed to replace federal habeas counsel for the petitioner in August 2008, I spent considerable time prior to filing the federal amended petition reviewing the pleadings that had previously been filed in both state and federal court (including the state appellate briefing, four prior Petitions for Writ of Habeas Corpus that were filed on the petitioner's behalf in the California Supreme Court, and four prior Petitions for Writ of Habeas Corpus that were filed in federal district court). On January 15, 2009, the district court issued a scheduling order allowing the petitioner leave to file an amended petition in federal court; I thus spent much of my time between January 15, 2009, and March 9, 2009, preparing the amended federal petition.

6. Since March 9, 2009, I have spent time reviewing the record and doing legal research in preparation for drafting several portions of Mr. Cudjo's opening brief. However, I have not had time to complete the sections of the brief that I have been assigned. In addition to working on Mr. Cudjo's opening brief, since March 9, 2009, I have spent three days out of the office, reviewing documents 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 case records, which we had discovered in the possession of prior state habeas counsel, on March 19, March 24, and March 26, 2009.

7. 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:

8. 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, which contains twenty-nine claims and sub-claims, most of which the Respondent contends are procedurally barred, is due on May 22, 2009.

9. 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 has been preparing post-hearing briefing following an evidentiary hearing on Mr. Maldonado's *Batson* claim. Mr. Littrell's initial post-hearing briefing, which included a statistical analysis of peremptory strikes, was filed February 23, 2009. In the other case, *In re Paul Gaul*, Mr. Littrell assisted in drafting and filing an original habeas petition in the California Supreme Court. That petition was filed February 25, 2009.

10. In addition to these capital and non-capital habeas cases, Mr. Littrell is counsel of record in approximately twenty-five federal criminal trial cases, several of which are set for trial in the coming months. Mr. Littrell also spent time

preparing for and conducting a jury trial in *United States v. Kanisha Hughes*, CR 08-892-GW, a fraud case. Trial lasted three days, from March 10-12, 2009.

11. 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.

12. On March 30, 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 March 30, 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 37 federal noncapital habeas cases and direct appeals, 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 May 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 I have been assigned 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 April 8, 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. I am the sole attorney assigned to represent the appellant in the noncapital habeas appeal *Trotter v. Harrison*, Ninth Circuit Case No. 07-55451. I represented Trotter at the oral argument held on March 4, 2009, and I spent time beforehand preparing for the argument.

7. That same day, March 4, my co-counsel filed the appellant's opening brief in *Smith v. Harrison*, Ninth Circuit Case No. 08-56915. My co-counsel did the bulk of the work on the brief; however, I drafted two of the three legal arguments, and spent numerous hours working on those arguments.

8. 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 spent time in February trying to help an attorney prepare for the oral argument held on February 27 in *Visciotti v. Ayers*, Ninth Circuit Case No. 06-75628. I also spent time reviewing a reply brief that another attorney filed on March 9 in *Bamrick v. Martel*, Ninth Circuit Case No. 06-55080.

9. As CHU supervisor, I also had to spend time in February 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. I also spent time preparing for a status conference held in *Jennings* on March 25, 2009.

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

11. Since the prior extension request was filed in late February 2009, I was out of the office (and unable to work on this appeal) on the following days: March 10-14 for a mandatory management conference in Washington, D.C. and for one day's vacation; and March 20, for a talk I was asked to give at the California Appellate Project in San Francisco.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on March 29, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski
MARK R. DROZDOWSKI

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 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