

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,)
) CA No. 08-99028
Petitioner-Appellant,)
v.) D.C. No. CV-99-08089-JFW
)
ROBERT AYERS, JR., Warden,)
)
Respondent-Appellee.)
)
_____)

**APPELLANT’S UNOPPOSED MOTION TO EXCEED THE PAGE
LIMITATION FOR HIS SUPPLEMENTAL REPLY BRIEF**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE JOHN F. WALTER
United States District Judge

SEAN K. KENNEDY
Federal Public Defender
JOHN L. LITTRELL
MARK R. DROZDOWSKI
Deputy Federal Public Defenders
321 East 2nd Street
Los Angeles, California
Telephone: (213) 894-2854
Facsimile: (213) 894-0081

Attorneys for Petitioner-Appellant
ARMENIA LEVI CUDJO, JR.

Pursuant to Ninth Circuit Rule 32-2, Petitioner Armenia Levi Cudjo hereby moves to file a brief in excess of the 5,600-word limitation set by this Court's December 5, 2011 order for his supplemental reply brief. Petitioner respectfully requests leave to file a brief containing approximately 11,800 words. A copy of the opening brief has been filed concurrently. The reasons for the requests are set forth in the attached declaration of Deputy Federal Public Defender John L. Littrell.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: January 26, 2012

By /s/ John L. Littrell
JOHN L. LITTRELL
Deputy Federal Public Defender

Attorneys for Petitioner-Appellant
ARMENIA LEVI CUDJO

DECLARATION OF JOHN L. LITRELL

I, John Littrell, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California. I am licensed to practice law in the State of California and I am admitted to practice in this Court. I represent Armenia Levi Cudjo in his capital habeas appeal. Two attorneys from my office – myself and Supervising Deputy Federal Public Defender Mark Drozdowski are responsible for drafting and filing Mr. Cudjo’s supplemental reply brief.

2. I submit this application to file an oversize reply brief in excess of the 5,600-word limit set by this Court’s December 5, 2011 order. I am filing the brief concurrent with this request. The brief contains approximately 11,800 words.

3. Respondent’s Supplemental Reply brief raised many new arguments that could not have been anticipated when the opening brief was filed. Many are based on precedent from both this Court and the Supreme Court that have made significant changes to the law, in particular, the Supreme Court’s decisions in *Cullen v. Pinholster*, 131 S. Ct. 1388 (2011), and *Walker v. Martin*, 131 S. Ct. 1120 (2011). Addressing the impact of these cases required substantial discussion in the brief. Moreover, because many of Respondent’s arguments challenged Petitioner’s ability to show prejudice, which is a fact-intensive inquiry, it was

necessary to describe the facts presented at trial at length in order to respond.

4. As a result of the complexity of the issues presented, Respondent sought and received leave of this Court to file a brief in excess of the 11,200 word limitation set by this Court. The brief filed by Respondent was 17,696 words long, which is 6,496 words longer than the limitation set by this Court.

5. I attempted to address all of the issues presented in Respondent's Supplemental Brief within the page limitation set by this Court, but it was impossible to do so given the complexity of the arguments, both legally and factually. I have, however, edited the brief extensively, reducing it from a draft that was over 16,000 words to its current word count of 11,800. The resulting brief is nearly 6,000 words shorter than Respondent's supplemental brief.

6. For the foregoing reasons, I believe that exceeding the page limitation set by this Court is necessary to effectively represent Petitioner and aid the Court in addressing the legal and factual issues in this case. I therefore respectfully request that the Court permit me to file a brief that exceeds the page limitation.

7. On January 26, 2012, I spoke with Respondent's counsel, Deputy Attorney General Bill Bilderback, regarding this request. Mr. Bilderback indicated that he had no objection to my request to exceed the page limitation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: January 26, 2012

/s/ John L. Littrell
JOHN L. LITTRELL

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2012, 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.

/s/ John L. Littrell
JOHN L. LITTRELL