

Rules of the United States Court of Appeals for the Ninth Circuit and is based on the files and records in this case and the attached declaration of David Kowal.

DATED: December 12, 2012

Respectfully submitted,

ANDRÉ BIROTTE JR.
United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
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s/ David Kowal
DAVID KOWAL
Assistant United States Attorney
Organized Crime Drug Enforcement
Task Force Section

Attorneys for Plaintiff-Appellee
UNITED STATES OF AMERICA

DECLARATION OF DAVID KOWAL

I, DAVID KOWAL, hereby declare and state as follows:

1. I am an Assistant United States Attorney (AUSA) in the Central District of California.

2. I am responsible for preparing for the government the second cross-appeal brief in United States v. Charles Lynch, C.A. Nos. 10-50219 and 10-50263. Pursuant to this Court's July 26, 2012 order granting defendant's motion to file a late, oversized first cross-appeal opening brief, the second cross-appeal brief was originally due on August 27, 2012, and then extended by order of the Court at the government's request to December 21, 2012. For the reasons set forth below, the government requests a 75-day extension of time to file that brief such that the brief will be due on March 6, 2013. This is the government's second request for an extension. The period requested is the minimum amount of time the government believes that it will need to complete its work on its second cross-appeal brief, including consulting with other offices of the Department of Justice.

3. Previously, after a delay granted due to default in preparation of transcripts by the court reporter, this Court granted defendant 12 further extensions of time to file his opening brief which totaled a period of approximately one year, nine months. These extensions include five extensions of time covering more than six months after the Court ordered that

further requests for extension of time by defendant would be "disfavored." Defendant was also granted leave to file a late and oversized opening brief.

4. The government requests a 75-day extension in order to complete its preparation and review of its answering/opening brief in this matter.

5. The following circumstances, among others, support the requested extension of time:

(A) In addition to filing oversized brief, defendant has filed 16 volumes of excerpts of record which has added to the complexity of the appeal and the time needed to re-familiarize myself with the record, review the legal issues, and prepare the government's brief. Moreover, since the government's first extension request, an amicus brief has been filed on behalf of the defendant, and at least one other amicus has sought leave to file a brief, which together has further added to the difficulty of preparing the government's brief. Although I was one of the trial counsel in this matter, due to the trial court extensively extending the sentencing proceedings and the issuance of its final judgment, and the prior extensions granted to defendant on appeal, I have had to continue to spend substantial time re-familiarizing myself with the relevant facts, law, and record in this case, which took place several years ago.

(B) Because this case involves a cross appeal by the

government, after I complete review the record in the case, as well as the relevant case law on the issues presented, I need additional time to finish consulting further with AUSAs in the Criminal Appeals Section regarding the cross-appeal. That process, which I have is not yet complete due to my other on-going responsibilities and the other factors set forth herein, also involves the need to engage in extensive consultation within our office with the Chief of the Criminal Appeals Section, the Chief of the Criminal Division, the First Assistant United States Attorney, and the United States Attorney. Further, on the cross-appeal, our office will also have to work with the Criminal Division of the Department of Justice in Washington, D.C. and the Office of Solicitor General. This process will add to the time of preparing the government's brief in this case, a process that I understand will be further lengthened by the up-coming holiday season.

(C) I have been and remain the government's sole remaining trial counsel, and am responsible for working on the appeals in United States v. Manual Yepiz et. al, C.A. Nos. 07-50051, 07-50062, 07-50063 07-50067, 07-50070, 07-50098, 07-50133, 07-50142, 07-50264. That matter is the consolidated appeal of nine defendants from a complex, two-month racketeering trial. In that case, the appellants have filed a joint opening brief of over 150 pages as well as individual briefs for each of the nine

defendants collectively totaling several hundred more pages. I will continue to need to spend substantial time assisting in the preparation of the government's consolidate brief in that case, which I anticipate will have to address at least two dozen discrete legal issues, including sufficiency of evidence claims, sentencing and suppression issues. Among my responsibilities in district court, I am sole trial counsel in United States v. Marquez-Marquez, CR No. 10-370-DMG, a multi-defendant wiretap investigation that has been designated as a complex case by the district court. This case was initiated by another AUSA no longer with this office. In that matter, in addition to my responsibilities for learning the case, I have been handling the sentencing of a half dozen defendants currently before the trial court, and managing the investigation of fugitive defendants believed to be in other countries. I also have a trial for one defendant in that matter set for February 26, 2013. Further, I have been responsible and assigned to several complex pre-trial, non-public investigations over the last several months. These have included multiple multi-defendant wiretap cases, as well as separate, large criminal enforcement projects which typically require substantial daily direct involvement and management. While I expect that the completion of the government's appeal in this matter will be my first priority over the coming weeks, I also believe that these pretrial matters, and the other

responsibilities set forth above, will require continue to require substantial work and effort that cannot reasonably be delayed or reassigned.

6. I have exercised and will continue to exercise diligence with respect to this appeal, and this request is not meant for the purposes of delay.

7. On December 11, 2012, I informed defendant's counsel, Alexandra Yates by electronic mail that the government intended to move for this requested extension. Ms. Yates replied by e-mail that she had no objection to the request.

8. The defendant is presently on bond pending appeal.

9. The court reporter is not in default with respect to any transcripts.

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

EXECUTED December 12, 2012, in Los Angeles, California.

s/ David Kowal
DAVID KOWAL

9th Circuit Case Number(s)

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that 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 on (date) .

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.

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I hereby certify that 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 on (date) .

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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