

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

|                           |   |  |
|---------------------------|---|--|
| UNITED STATES OF AMERICA, | ) | C.A. Nos. 10-50219, 10-50264           |
|                           | ) | D. Ct. No. CR 07-689-GW                |
| Plaintiff-Appellee/       | ) | (Cent. Dist. Calif.)                   |
| Cross-Appellant           | ) |  |
|                           | ) | <u>GOVERNMENT'S AMENDED UNOPPOSED</u>  |
| v.                        | ) | <u>MOTION FOR EXTENSION OF TIME TO</u> |
|                           | ) | <u>FILE ANSWERING/OPENING BRIEF;</u>   |
| CHARLES C. LYNCH,         | ) | <u>DECLARATION OF DAVID KOWAL</u>      |
|                           | ) |  |
| Defendant-Appellant/      | ) |  |
| Cross-Appellee.           | ) |  |
| _____                     | ) |  |

Plaintiff-Appellee/Cross-Appellant, United States of America, by and through its counsel of record, hereby moves this Court for an extension of time within which to file the government's answering/opening brief in the above-captioned matter. The government's brief currently is currently due June 5, 2013. The government requests a 60-day extension of time, such that the brief will be due on August 4, 2013. The request is not opposed by the defendant-appellant.

The government initially intended to file this motion on May 24, 2013. However, on that day, it instead inadvertently filed a copy of its prior February 27, 2013 extension motion which had already been granted by the Court extending the deadline to June 5, 2013. On May 31, 2013, the Court denied this inadvertently refilled motion as "unnecessary." Upon realizing it's error on seeing this denial, the government is now filing as an amended

motion, the motion that it originally intended to file on May 24, 2014. The facts support this Amended Motion have not changed since May 24, 2013. The undersigned counsel apologies for this error.

The motion is made pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure and Rule 31-2.2(b) of the 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: May 31, 2013

Respectfully submitted,

ANDRÉ BIROTTE JR.  
United States Attorney

ROBERT E. DUGDALE  
Assistant United States Attorney  
Chief, Criminal Division

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 orders of the Court at the government's request to June 5, 2013. For the reasons set forth below, the government requests a 60-day extension of time to file that brief such that the brief will be due on August 2, 2013. This is the government's fourth 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, as further set forth below.

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 60-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) Because this case involves a cross appeal by the government, our office is consulting and working with Criminal Division of the Department of Justice in Washington, D.C. and the Office of Solicitor General. Although at the time of the government's last extension, I expected this process with the Criminal Division and Office of Solicitor General to be complete without need for more time, I understand from the appellate section of my office with whom I am working on this appeal that further time is needed. Although I have personally completed much of my own work as part of this process and with respect to the cross-appeal in general, the overall process of consultation with this office's appellate division and components of the Department of Justice in Washington D.C. has taken longer and been more complicated than usual. This is because some of the issues potentially to be raised by the government's appeal in

this case are similar to those raised in other pending Department appeals in other parts of the country, and specifically within this Circuit. Additional time is needed to make sure the Department has time to properly analyze all of these cases. While that process is not complete, I believe that the requested extension herein will provide sufficient time to complete that process and to incorporate the results of that process into the government's brief.

(B) The delays set forth above have combined with the fact this is overall a complex appeal that has required a longer than usual time to complete, and to coordinate all of its various parts including the appeal, cross-appeal, and excerpts of record. 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 review the legal issues, and prepare the government's brief. Moreover, two amicus briefs have been filed on behalf of the defendant. Together these briefs further added to the difficulty of preparing the government's brief. As previously noted, due to the protracted proceedings in the district court before issuance of its final judgment, and the prior extensions granted to defendant on appeal, it has taken substantial time merely re-familiarizing with the extensive record and issues and to organize them as part of the government's responsive briefings. Since the last extension

request, I have made substantial additional progress with respect to these tasks, and have also obtained the assistance of another attorney who has been assigned to assist me with this appeal. However, we still need additional time to complete these task as part of preparing the government's briefs in this case. In addition, I cannot fully complete all of this work until the cross-appeal process describe above is compete.

(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 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 now for June 18, 2013. Further, I have been and remain responsible and assigned to several complex pre-trial, non-public investigations over the last several months that are on-going. These have include large criminal enforcement projects which typically require substantial daily direct involvement and management such as the approval of time-sensitive warrants and related court process. These pretrial matters, and the other responsibilities set forth above, will 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. I am eagre to complete the government's brief in this matter, and have made substantial progress in doing so since the government's last extension request, but need the requested time to properly represent the government for the reasons set forth herein. This request is not meant for the purposes of delay.

7. On May 22, 2013, I communicated to defendant's counsel,

Alexandra Yates, by e-mail about the requested extension. Ms. Yates replied by e-mail that she had no objection to the request, and would be willing to allow a request of longer length if needed. However, I have requested herein only that time which I believe reasonably necessary to complete the government's briefs in light of the factors set forth above.

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 May 24, 2013, in Los Angeles, California.

s/ David Kowal  
DAVID KOWAL



9th Circuit Case Number(s) 10-50219; 10-50264

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