

**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 UNOPPOSED MOTION</u>
v.	)	<u>FOR EXTENSION OF TIME TO FILE</u>
	)	<u>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 October 10, 2013. The government requests a 14-day extension of time, such that the brief will be due on October 24, 2013. The request is not opposed by the defendant-appellant.

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: September 27, 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 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 October 10, 2013. For the reasons set forth below, the government requests a 14-day extension of time to file that brief such that the brief will be due on October 24, 2013. This is the government's sixth request for an extension. I am confident that this will be the government's last 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 and obtaining relevant new information, 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 included 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 14-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) This is a complex appeal. Defendant's oversized opening brief raises at least 19 distinct legal and factual issues arising from extensive pretrial litigation, a ten-day jury trial, post-conviction litigation that included four new trial motions, and protracted sentencing proceedings that stretched out over 18 months. Defendant's opening submission also included 16 volumes of excerpts of record in support of these issues. The government is also preparing a cross appeal raising issues concerning defendant's sentence which will add additional excerpts from the voluminous lower court record. Moreover, two amicus briefs have been filed on behalf of the defendant. The parties have also attempted, but have been unable to resolve the case through settlement, despite extensive efforts.

(B) As noted in the government's last request for an extension, because this case involves a cross appeal, this office has had to engage in unusually long and protracted consultation with the Department of Justice in Washington, D.C., including, but not limited to, the Office of the Solicitor General. This process was lengthened and extended because some of the same issues raised in the government's cross appeal, and some of the very rulings at issue in this case, were raised in other pending government appeals in the Circuit. The consultation and approval process was further complicated and delayed by the recent issuance of two major two major national policy announcements by the Department that potentially bear on matters in this appeal. On August 12, 2013, the Department issued detailed new guidance on, among other things, the handling of prosecutions involving mandatory minimum sentences. This appeal and the cross appeal involve mandatory minimum sentences in a marijuana case. On August 29, 2013, the Department issued detailed new guidance on the handling of cases involving marijuana. These policy pronouncements have again complicated and delayed the consultation process beyond what I anticipated. I had expected that process to be complete more than a week ago. However, since the last extension request, I was required to spend substantial time assisting my office in providing further input to the Department on the application of these policies to the instant

cases. To date, we have not yet received final input and approval from the Department with respect to the various issues on the cross-appeal, but expect to receive that final input within the next few days. The extension request will provide sufficient, but no more time than necessary, to incorporate this final input into the government's brief, given the complexity of the issues and brief.

(C) As mentioned in our last extension request, the government has been seeking additional new material relevant to its cross appeal. Specifically, we had requested expedited transcripts of a recent trial conducted by the district judge whose ruling are at issue in the government's sentencing cross-appeal. In the recent case, the same district judge reportedly made pointed comments about his motivation for issuing the sentencing ruling at issue in the cross-appeal in this case. I have just received the last three of those transcripts (of six total transcripts) from the recent case approximately one week after I had anticipated receiving them when I made my last extension request. I need additional time to review and analyze these transcripts, and, if appropriate, include these material in the government's cross-appeal brief along with a motion for judicial notice of the pertinent transcripts.

(D) The delays set forth above combined with the overall complexity of this appeal to necessitate the additional

short extension requested herein. As noted, this is a complex appeal involving many issues over a wide-ranging record. Even once all issues above are resolved and the legal arguments finalized, the government needs additional time thereafter to properly complete the brief. Much of the government's briefing effort involves describing, citing, and compiling the complicated factual and procedural record and materials from the district court including an extensive supplemental experts of record with sealed materials. Completion of those tasks in accord with the Court's rules is interconnected with the pending issues and require additional time to fully complete. Moreover, in finalizing the briefs I am being assisted by not only by our appellate unit, by my co-counsel Rasha Gerges, who has also handled discrete parts of the appeal. The delays and complications set forth above have made it difficult for her to efficiently complete her tasks and help finalize the brief by the currently scheduled due date in light of her pending oral argument before this Court scheduled for October 9, 2013. (United States v. Nwobi, CA No. 12-50413). The short extension requested will allow her sufficient time to complete her work on this case while being fully prepared for the oral argument in that matter.

6. Absent an extraordinary event, such as a government shutdown that prevents me and my colleagues from working, I am

confident that the government will be able to complete its brief in the time requested herein. I will continue to exercise diligence with respect to this appeal, and my office continues to make completion of this brief a priority. For example, since the last extension request, my appellate unit has reassigned two other pending appeals from my district court cases to other attorneys so that I could continue to work on completing the briefs in the present case.

7. I further believe that although the government has received several prior extensions, there is good cause for this extension because defendant received many extensions in similar circumstances, because the extension is necessitated in significant part as a result of developments and events since the last extension, and because further time will cause no prejudice to the defendant. Defendant is on bond pending appeal. I also know from my prior communications with her that defendant's appellate counsel, Alexandra Yates, will be on maternity leave during the entire course of this extension, and is expected to need additional time thereafter before she can begin work in preparing defendant's next brief.

8. On September 26, 2013, the chief of my office's appellate section, AUSA Jean-Claude Andre, contacted Ms. Yates's colleagues regarding this requested extension. Mr. Andre has informed me that defendant's trial counsel, Reuven Cohen, after



consulting with Ms. Yates, told him that defendant has no objection to this extension request.

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 September 27, 2013, in Los Angeles, California.

s/ David Kowal  
DAVID KOWAL

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

**NOTE:** To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

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