

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	C.A. Nos. 10-50219, 10-50264
	)	D.C. No. CR 07-689-GW
Plaintiff-Appellee/Cross-	)	(Central Dist. Cal.)
Appellant,	)	
	)	<b>GOVERNMENT'S</b>
v.	)	<b>UNOPPOSED LATE MOTION</b>
	)	<b>FOR FURTHER EXRTENSION</b>
CHARLES C. LYNCH,	)	<b>OF TIME TO FILE</b>
	)	<b>ANSWERING BRIEF;</b>
Defendant-Appellant/Cross-	)	<b>DECLARATION OF DAVID</b>
Appellee.	)	<b>KOWAL</b>

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Plaintiff-Appellee United States of America, by and through its counsel of record, hereby moves this Court for a further extension of the time within which the government must file its second brief on cross-appeal in the above-captioned matter. The government's second brief on cross-appeal currently is due on October 24, 2013. The government requests an additional and final eight-day extension of time to and including November 1, 2013. Defendant does not oppose this request.

The motion is made pursuant to Federal Rules of Appellate Procedure 26(b) and 27 and Ninth Circuit Rule 31-2.2(b) and is based on the files and records in this case and the attached declaration of David Kowal.

Defendant is not in custody.

No court reporter is in default with regard to any designated transcript.

DATED: October 23, 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, David Kowal, am an Assistant United States Attorney in the Central District of California and a member of my office's Organized Crime Drug Enforcement Task Force Section.

2. I am responsible for preparing the government's appellate briefing in *United States v. Lynch*, C.A. Nos. 10-50219, 10-50264. On July 3, 2012, defendant-appellant Charles C. Lynch ("defendant") filed his first brief on cross-appeal after a delay due to default in preparation of transcripts by the court reporter and 12 further extensions of time requested by defendant, totaling a period of approximately one year and nine months. The government previously has sought and obtained seven extensions of its deadline for filing its second brief on cross-appeal, which presently is due on October 24, 2013.

3. Although I have exercised diligence with respect to this appeal and will continue to do so, I do not anticipate being able to complete the government's answering brief by its current October 24, 2013, due date and anticipate needing an additional (and final) eight days to do so for the following reasons (some related to and some beyond the reasons articulated in the government's prior extension requests):

a. Although my draft of the government's second brief on cross-appeal is complete, between the issues that defendant raises in his first brief on cross-appeal and the additional issues that I have had

to address by virtue of the cross-appeal, the government is addressing 27 distinct issues. My brief, which is currently under the peer-review process required by my office and our appellate section, is 228 pages. While the number of issues and complex procedural record warrants lengthy treatment, my appellate section would like additional time to make sure all steps are taken before filing to work to substantially shorten the brief, and, among other things, thereby obviate the need for any order from the Court requiring the same. Due to the fact that the brief is far longer than a normal brief, I have also been told that the peer-review process and the back-and-forth that typically takes place during that process will necessarily take longer than usual, and longer than I anticipated. The end result, however, will hopefully be that the government will submit a final brief that is meaningfully shorter than my completed draft.

b. In addition to the expected lengthy peer-review process, there is a significant “arts-and-crafts” component to getting the government’s second brief on cross-appeal on file. Not only do I expect the generation of tables of contents and authorities to take the better part of a day to complete once the brief is finalized but my proposed supplemental excerpts of record are lengthy and will require significant time of my support staff to finalize their on-going efforts before I may insert the excerpt cites into the final brief.

c. My office and I have continued to exercise diligence in this matter notwithstanding the extension requested herein and prior extensions. My workload has been readjusted, so that I could work nearly exclusively on this matter for many weeks, and so that it could be my primary priority for far longer than that. I have continued to work continuously, always striving to avoid further requests for extensions from this Court.

d. Our office received final authorization from Washington, D.C., to persist in our cross-appeal on October 10, 2013, which required adjustment to the government's brief although that part of the brief had been substantially completed. *See* 28 C.F.R. § 0.20(b) (only the Solicitor General has the authority to “[d]etermin[e] whether, *and to what extent*, appeals will be taken by the Government” (emphasis added)).

4. My office is mindful that this Court expects motions for extensions of time to be filed at least seven days before a brief's due date and apologizes for its inability to timely file this motion. Nonetheless, compliance with the Court's seven-day rule was not possible here (at least not without risking yet one more shorter extension) because neither I nor my appellate peer-reviewer could meaningfully predict when the government's brief and excerpts of record would be finalized until we had a completed draft of the brief in hand. In light of the extremely large overall task that I faced in

drafting this brief and in light of having received final authorization to persist in the cross-appeal portion of this case just one week before any further extension motion would have been timely, we were unable to discern, until already inside the seven-day period, how much additional time we would need.

5. On October 22, 2013, my office's appellate chief conferred with counsel for defendant, Deputy Federal Defender Alexandra Yates, via email regarding the requested extension. She does not object to the extension.

6. Defendant is not in custody.

7. No court reporter is in default with regard to any designated transcript.

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

EXECUTED this 23rd day of October, in Los Angeles, California.

*/s/ David Kowal*

DAVID KOWAL  
Assistant United States Attorney

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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**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.

Signature (use "s/" format)

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**CERTIFICATE OF SERVICE**

**When Not 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)  .

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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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