

CA NOS. 10-50219, 10-50264
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES C. LYNCH,

Defendant-Appellant.

DC NO. CR 07-689-GW

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S THIRD CROSS-APPEAL BRIEF**

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

HONORABLE GEORGE H. WU
United States District Judge

HILARY POTASHNER
Acting Federal Public Defender
ALEXANDRA W. YATES
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012-4202
Telephone: (213) 894-5059
Facsimile: (213) 894-0081
Email: Alexandra_Yates@fd.org

Attorneys for Defendant-Appellant

CA NOS. 10-50219, 10-50264
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES C. LYNCH,

Defendant-Appellant.

DC NO. CR 07-689-GW

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S THIRD CROSS-APPEAL BRIEF**

Defendant-Appellant Charles C. Lynch, by and through counsel of record Deputy Federal Public Defender Alexandra W. Yates, applies to this Court under Ninth Circuit Rule 31-2.2 for a four-month extension of time to file the third cross-appeal brief in this case, to March 12, 2014. The third cross-appeal brief is currently due November 12, 2014. This is the second request for an extension of time to file the third cross-appeal brief. Opposing counsel has no objection to this request.

This motion is based upon the attached Declaration of Counsel, all files and records in this case, and any other information that may be properly brought to the attention of this Court in connection with the consideration of this motion.

Respectfully submitted,

HILARY POTASHNER
Acting Federal Public Defender

DATED: November 5, 2014

By /s/ Alexandra W. Yates
ALEXANDRA W. YATES
Deputy Federal Public Defender
Attorneys for Defendant-Appellant

DECLARATION OF ALEXANDRA W. YATES

I declare under penalty of perjury that, to the best of my knowledge, the following is true and correct:

I am a Deputy Federal Public Defender in the Central District of California. I represent Defendant-Appellant Charles Lynch in this appeal and cross-appeal. Mr. Lynch is on bond pending appeal.

The third cross-appeal brief is due on November 12, 2014. I previously requested one extension of six months to file the third cross-appeal brief. I am seeking one additional four-month extension of time, to March 12, 2015, to file the third cross-appeal brief.

On July 3, 2012, after receiving several extensions of time, Mr. Lynch filed his first-cross appeal brief and accompanying sixteen volumes of excerpts of record. The brief is eighty pages long and raises eight separate challenges to Mr. Lynch's conviction and sentence, most of which have multiple sub-issues. Shortly thereafter, two amici curiae filed supporting briefs.

The government's second cross-appeal brief was initially due on August 27, 2012. On November 1, 2013, after receiving several extensions of time, the government lodged an oversized brief, which this Court rejected. The government also filed 1,046 pages of supplemental excerpts of record. On March 14, 2014, the government lodged a revised oversized brief, which this Court accepted on April 11, 2014. The government's brief is 149 pages long. The brief raises two new

cross-appeal issues, and the responses to many of Mr. Lynch's claims raise issues that Mr. Lynch will need to address in the first instance in his third cross-appeal brief.

To prepare the third cross-appeal brief, I need to refamiliarize myself with these voluminous filings. This will be a particularly lengthy task given the time that has passed since the filing of the first cross-appeal brief in July 2012.

In my initial request for an extension of time to file the third cross-appeal brief, I anticipated that I could begin intensive work on this project in September, allowing for a November filing date. However, I have not been able to do so, for the following reasons:

First, in August and early September, I spent several weeks preparing the reply brief in *United States v. Jones*, CA Nos. 12-50324 & 12-50329, consolidated appeals from a twenty-year-plus sentence where the opening and answering briefs each ran approximately 100 pages. I filed the *Jones* brief on September 16. Since then, I have had to devote substantial time to reviewing the record and directing investigation in *Evans v. Miller*, CA No. 13-55087, an appeal from the denial of a pro se petition for habeas relief, and related CA No. 14-72470, an application to file a second or successive petition in the same matter. The petitioner in *Evans* is serving a sentence of life without parole for a 1992 quadruple homicide. Until my appointment in July, he had not been represented by an attorney since 1996. His case raises very serious issues about whether he is actually innocent of the offenses

for which he was convicted. A supplemental (counseled) application in CA No. 14-72470 is due later this month; the opening brief in CA No. 13-55087 is due in December. I also spent several weeks preparing and filing the opening brief in *United States v. Lara*, CA No. 14-50120, a case that raises an issue of first impression in any federal court.

Second, I have been working on several other cases that have upcoming deadlines, including: *United States v. Avila Barrera*, CA No. 14-50136 (opening brief due November 19); *United States v. Hernandez*, CA No. 14-50214 (opening brief due December 1); *United States v. Luna Alvarado*, CA No. 14-50330 (opening brief due December 5); *United States v. Jimenez*, CA No. 14-50006 (reply brief due December 5); the above-mentioned *Jones* cases (oral argument scheduled for December 8); *United States v. Valdez*, CA No. 14-50251 (opening brief due December 8); *United States v. Taylor*, CA No. 14-50370 (opening brief due December 15); and *Ochoa v. Thomas*, CV No. 11-6864-JGB-CW (habeas reply brief due December 26). I have been supervising the preparation of Petitioner's Reply Brief in *Balint v. Warden*, CV No. 11-6307-BRO-PLA, a habeas case where the client previously was pro se, due November 7; the preparation of oral argument in *Jordan v. McGrew*, CA No. 14-55652, scheduled for November 17; and the initial work on a new habeas case, *Tibbs v. Grounds*, CV No. 14-8934-SJO-MRW, assigned to our office in October.

Third, I have spent a significant amount of time on my office's clemency work. In January, the Obama administration announced its plans to grant executive clemency to defendants who meet certain criteria. The administration asked the defense bar to help identify qualified defendants and prepare clemency petitions on their behalf. In an effort to respond to this time-sensitive initiative, my office formed a three-person Clemency Team, of which I am a member. The other two members are our office's Acting Federal Public Defender and Chief Deputy. The Clemency Team is responsible for sorting through several hundred potential candidates, identifying the most promising, and coordinating the preparation of petitions.

Fourth and finally, a member of my immediate family has been critically ill since early October. I had to make one emergency trip to the east coast in October, and expect that I will need to spend additional time on the east coast in the coming months.

Given my continued work in the *Evans* matter; the numerous November and December deadlines in my other cases; my work on the Clemency Team; and my family member's health, I believe that a realistic timeframe for beginning intensive work on the third cross-appeal brief is some time in January. In light of the extensive record and briefing in these cross appeals, I believe that a realistic filing date is March 12, 2015—four months from the current due date.

Yesterday, I contacted Assistant United States Attorney David Kowal, who informed me that the government has no objection to this request.

The court reporters are not in default with regard to any designated transcripts.

Executed on November 5, 2014, in Los Angeles, California.

/s/ Alexandra W. Yates
ALEXANDRA W. YATES

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2014, I electronically filed the foregoing **UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S THIRD CROSS-APPEAL BRIEF** 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.

DATED: November 5, 2014

Lorena Macias
LORENA MACIAS

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 11/05/2014 at 2:58:24 PM PST and filed on 11/05/2014

Case Name: USA v. Charles Lynch

Case Number: [10-50219](#)

Document(s): [Document\(s\)](#)

Docket Text:

Filed (ECF) Appellant Charles C. Lynch in 10-50219, Appellee Charles C. Lynch in 10-50264 Unopposed Motion to extend time to file Third Brief on Cross-Appeal brief until 03/12/2015. Date of service: 11/05/2014. [9303188] [10-50219, 10-50264] (AWY)

Notice will be electronically mailed to:

Mr. David P. Kowal, Assistant U.S. Attorney
Mr. Joseph David Elford
Mr. Jean-Claude Andre, Assistant U.S. Attorney
Alexandra Wallace Yates, Federal Public Defender
Professor Jenny Elizabeth Carroll

The following document(s) are associated with this transaction:

Document Description: Main Document

Original Filename: Lynch EOT Third Brief-11-5-14.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=11/05/2014] [FileNumber=9303188-0]
[73c78a970f0ac73de0bba28a75415f767fe43049b558c7fd4f8b87ef73d231d03f6c82b2fa0cb9f782db48f98fe1320fc02562b11df4e851ee88d12e81cba5d7]]