

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee/Cross-Appellant,

v.

CHARLES C. LYNCH,

Defendant-Appellant/Cross-Appellee.

DC NO. CR 07-689-GW

**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

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Defendant-Appellant/Cross-Appellee 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 three-month extension of time to file the third cross-appeal brief in this case, to June 12, 2015. The third cross-appeal brief is currently due March 12, 2015. This is the third request for an extension of time to file the third cross-appeal brief.

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: March 5, 2015

By /s/ Alexandra W. Yates
ALEXANDRA W. YATES
Deputy Federal Public Defender

Attorneys for Defendant-Appellant/
Cross-Appellee

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/Cross-Appellee Charles Lynch in this appeal and cross-appeal. Mr. Lynch is on bond pending appeal.

The third cross-appeal brief is due on March 12, 2015. I previously requested two extensions of six and four months, respectively, to file the third cross-appeal brief. I am seeking an additional three-month extension of time, to June 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 last 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 January, allowing for a March filing date. I was, in fact, able to begin intensive work on Mr. Lynch's case in January. However, new developments in the case required me to spend the time that I had allocated not on the third cross-appeal brief, but instead on a motion that I filed in this Court on February 24.

Specifically, in December, Congress passed and the President signed into law a provision of the 2015 appropriations bill that prohibits the Department of Justice from spending funds that prevent California, among other states, from implementing its medical marijuana laws. Beginning in early January, I spent several weeks developing, researching, and drafting an argument that the legislation requires the government to cease spending funds on Mr. Lynch's case. On January 30, my office notified the government of Mr. Lynch's position and provided a draft of my briefing. I then spent additional time in February conducting further research on the matter, which resulted in extensive changes to

my draft. On February 24, I filed the revised “Motion To Enforce Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, or in the Alternative for a Limited Remand,” as well as a motion for leave to file an oversize motion, with this Court.

Since filing the motion last week, I have had to turn my attention to other cases with upcoming deadlines, most significantly *United States v. Hernandez*, CA No. 14-50214, an appeal from a three-day trial where I have received several extensions of time to file the opening brief, which is due on March 31.

I will not again be able to give Mr. Lynch’s case the sustained attention that is required to refamiliarize myself with the record and issues and to research and draft the third-cross appeal brief until early May due to the following deadlines: appellant’s reply brief in *United States v. Lara*, CA No. 14-50120 (due March 23); state exhaustion petition in *Tibbs v. Grounds*, CV No. 14-8934-SJO-MRW (due March 30); appellant’s opening brief in the above-mentioned *Hernandez* case (due March 31); petitioner’s reply brief in *Balint v. Warden*, CV No. 11-6307-BRO-PLA (due April 2) (I am not the attorney of record on this case, but am supervising the assigned attorney and will need to review and revise the reply brief); oral argument in *United States v. Jimenez*, CA No. 14-50006 (scheduled for April 7); appellee’s answering brief in *United States v. Roberts*, CA No. 14-50356 (due April 17); appellant’s opening brief in *United States v. Luna Alvarado*, CA No. 14-50330 (due April 20); petitioner’s omnibus reply brief in *Ochoa v. Thomas*, CV

No. 11-6864-JGB-CW (due April 27); appellant's reply brief in *United States v. Avila Barrera*, CA No. 14-50136 (due April 30); and appellant's opening brief in *United States v. Saifan*, CA No. 14-50417 (due May 5).

I also need 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 last year, 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 and the opening brief in CA No. 13-55087 are due this summer.

Finally, I expect to spend a significant amount of time on work related to the President's clemency initiative, for which I am the point-person in my office.

Given these obligations and deadlines, many of which I have already extended, I believe that a realistic timeframe for beginning intensive work on the third cross-appeal brief is early May. In light of the extensive record and briefing in these cross appeals, I believe that a realistic filing date is June 12, 2015—three months from the current due date.

As set forth in the pending "Motion To Enforce Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, or in the

Alternative for a Limited Remand,” it is Mr. Lynch’s position that opposing counsel would violate federal statutory and constitutional law if they were to expend any resources on this case. I therefore have not contacted opposing counsel to ascertain their position on this motion.

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

Executed on March 5, 2015, in Los Angeles, California.

/s Alexandra W. Yates
ALEXANDRA W. YATES

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2015, I electronically filed the foregoing **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.

Lorena Macias
LORENA MACIAS

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United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 03/05/2015 at 2:27:00 PM PST and filed on 03/05/2015

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 Motion to extend time to file Third Brief on Cross-Appeal brief until 06/12/2015. Date of service: 03/05/2015. [9446955] [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-3-5-15.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=03/05/2015] [FileNumber=9446955-0]

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