

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 TO STAY BRIEFING SCHEDULE

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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COMES NOW Defendant-Appellant/Cross-Appellee Charles C. Lynch, by and through counsel of record Deputy Federal Public Defender Alexandra W. Yates, and applies to this Court under Ninth Circuit Rules 27-1 and 27-11 to stay the briefing schedule in these cross-appeals pending a final resolution of Mr. Lynch's pending motion for rehearing en banc. Mr. Lynch's third cross-appeal brief is currently due June 12, 2015.

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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 L. POTASHNER
Acting Federal Public Defender

DATED: June 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 C. Lynch in this appeal and cross-appeal. Mr. Lynch is on bond pending appeal.

The third cross-appeal brief is due on June 12, 2015. I previously requested and received three extensions of time to file the third cross-appeal brief.

On April 27, 2015, I filed a motion for rehearing en banc in this case. (Dkt. 101.) That motion seeks urgent review of a motions panel's denial of Mr. Lynch's earlier-filed Motion to Enforce Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015. (Dkt. 91.) As Mr. Lynch argued in these motions, Section 538 prohibits the Department of Justice from spending funds on this medical marijuana prosecution and makes any such expenditure criminal.

On May 5, United States Representatives Dana Rohrabacher and Sam Farr filed an *amici curiae* brief in support of Mr. Lynch's motion for rehearing en banc. (Dkt. 103.) On May 7, California State Senators Mark Leno and Mike McGuire, and former Senator Darrell Steinberg, filed an *amici curiae* brief in support of Mr. Lynch's motion for rehearing en banc. (Dkt. 107.)

As of the filing of this motion, the Court has not taken any action on the pending en banc request.

Ninth Circuit Rule 27-11 states, “Motions requesting the types of relief noted below shall stay the schedule for . . . briefing pending the Court’s disposition of the motion” Ninth Cir. R. 27-11(a). The types of relief listed include “dismissal.” *Id.* at (a)(1). Motions for reconsideration may stay the briefing schedule if so ordered by the Court. *See id.* at (b).

Rule 27-11 does not provide for an automatic stay of the briefing schedule in this case. Technically, the relief sought in Mr. Lynch’s pending motion is an order prohibiting the Department of Justice from spending additional funds on this prosecution. However, the practical effect of a favorable ruling on the pending motion should and would be dismissal of Mr. Lynch’s federal criminal case.

In other words, if this Court grants Mr. Lynch’s pending motion and rules in Mr. Lynch’s favor, there will be no need for additional substantive briefing in this case. Such a ruling would moot the substantive appeal.

This case is thus very similar to the kinds of cases addressed by Circuit Rule 27-11(a)(1), where a pending motion automatically stays the briefing schedule. Mr. Lynch asks this Court to exercise its discretion to stay the briefing schedule pending a final resolution of Mr. Lynch’s motion. In addition, Mr. Lynch asks this Court to order that, if the final resolution of the pending motion is not in Mr. Lynch’s favor, the due date for the third cross-appeal brief be reset to sixty days from the date of that final resolution.

Because the pending motion may make preparation of the third cross-appeal brief unnecessary, and mindful of my obligation as a deputy federal public defender to use my time and resources most efficiently, I have not yet prepared the third cross-appeal brief. Since my last request for an extension of time to file the third cross-appeal brief, I have instead: prepared and filed an opposition and two supplemental filings to the government's motion to delay Section 538 proceedings in this case; prepared and filed the pending motion for rehearing en banc in this case; coordinated the filing of the two amicus briefs in support of that motion; prepared and presented oral argument in this Court in *United States v. Jimenez*, CA No. 14-50006; prepared and filed, with co-counsel, a state habeas petition in *Tibbs v. Grounds*, CV No. 14-8934-SJO-MRW; prepared and filed appellant's reply brief in *United States v. Lara*, CA No. 14-50120, a case raising an issue of first impression in any federal court where I was unable to request further extensions of time because argument in the case is scheduled for July; devoted extensive time to supervising the preparation and filing of a habeas brief in *Balint v. Warden*, CV No. 11-6307-BRO-PLA; addressed time-sensitive matters in *Evans v. Miller*, CA Nos. 14-1670 & 14-1956, noncapital habeas cases that required, among other things, a sixteen-hour roundtrip journey to meet with the client and several days of pre-meeting preparation; and devoted substantial time to my role as the point-person in my office for matters related to the President's clemency initiative.

At present, I am preparing appellant's opening brief in *United States v. Hernandez*, CA No. 14-50214, a direct appeal from a three-day criminal trial where the opening brief is due on July 1, and further extensions of time are strongly disfavored.

I believe that it is in the Court's and my clients' best interest that I continue work on the *Hernandez* brief, as well as several additional briefs that I am scheduled to file in the coming weeks, unless and until it becomes clear that further substantive briefing in Mr. Lynch's case will be necessary.

Technically, a request by Mr. Lynch to extend the time to file the third cross-appeal brief in this case is due today. However, in light of the pending motion that would moot the need for further briefing, I believe that this request to stay the briefing schedule is more appropriate. I am therefore filing this motion in lieu of a motion for an extension of time.

As set forth in the pending motion for rehearing en banc, it is Mr. Lynch's position that opposing counsel would violate federal 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 reporter is not in default with regard to any designated transcripts.

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

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

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2015, I electronically filed the foregoing **MOTION TO STAY BRIEFING SCHEDULE** 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