

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

**APPELLANT LYNCH'S MOTION FOR AN ADDITIONAL 60-DAY
EXTENSION OF TIME TO FILE THE 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 Jonathan D. Libby, hereby respectfully moves this Court for an additional 60-day extension of time, or until April 18, 2016, to file the third cross-appeal brief. This motion is made pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Circuit Rule 31-2(b) and is based on the attached Declaration of Jonathan D. Libby, all files and records in this case, and any further information the Court may request

Respectfully submitted,

HILARY L. POTASHNER
Federal Public Defender

DATED: February 10, 2016

By: /s/ Jonathan D. Libby
JONATHAN D. LIBBY
Deputy Federal Public Defender

DECLARATION OF JONATHAN D. LIBBY

I, JONATHAN D. LIBBY, hereby declare and state:

I am a Deputy Federal Public Defender in the Central District of California and due to an extended leave recently begun by Deputy Federal Public Defender Alexandra W. Yates, I was assigned responsibility to represent Defendant-Appellant/Cross-Appellee Charles Lynch in this appeal and to prepare the third cross-appeal (reply/answering) brief on his behalf. I make this declaration in support of our motion for an additional 60-day extension of time to file the third brief on cross-appeal, until April 18, 2016. Following multiple extensions and a stay of the briefing schedule, the third brief on cross-appeal is currently due February 16, 2016. This is the third extension of time I have sought since the case was assigned to me to prepare the pending brief. The court reporters are not in default with regard to any designated transcripts. Mr. Lynch is on bond pending appeal and thus not in custody.

Mr. Lynch was prosecuted for and convicted of operating a medical marijuana dispensary lawful under California law. On appeal, Mr. Lynch filed an oversized opening brief of eighty pages in which he raised eight separate challenges to his conviction and sentence, most of which have multiple sub-issues. Two amici curiae filed supporting briefs. The government filed an oversized second cross-appeal brief of 149 pages which raised two additional 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. In addition, after the filing of those briefs, Mr. Lynch filed a motion in this Court challenging the legality of the government's litigation of this appeal in light of federal legislation (Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015) that prohibits the Department of Justice from spending funds that prevent California, among other states, from implementing its medical marijuana laws. A motions panel of this Court denied that motion without prejudice to renewing it in the third cross-appeal brief; after two new amici curiae, including the authors of the relevant legislation, filed briefs in support of further review, the Court denied en banc review of the issue in June.

Although multiple extensions of time were previously granted to DFPD Yates to prepare the pending brief before she began her extended leave of absence, I have had no prior involvement in this case. As a result, although I have been diligent in this case, because I have been essentially beginning from scratch I will require significant additional time in order to familiarize myself with the lengthy record and complex legal issues raised by both sides and by the amici curiae in this case and then draft the brief. Moreover, I maintain a heavy load of appeals and habeas matters with pending deadlines and teach two courses at the University of Southern California Gould School of Law. Thus, additional time is also necessary because of my work on other pending matters that require my attention. For example, in the past month alone: I filed in this Court an opening brief in *United*

States v. Arlington, CA No. 15-50327, on January 19, 2016, an opening (*Anders*) brief in *United States v. Park*, CA No. 14-50200, on January 20, 2016, an opening brief in *United States v. Song Ja Cha*, CA No. 12-10486, an appeal from a multi-week trial in the District of Guam for which the client received a life sentence, on February 2, 2016, and a reply brief in *United States v. Cornejo*, CA No. 15-50015, on January 25, 2016; I also filed in the United States Supreme Court a certiorari petition in *United States v. Merlos*, S. Ct. No. 15-7881/CA No. 13-50536 (on January 21, 2016), and prepared a clemency (commutation) petition to the President I filed with Clemency Project 2014 on February 4, 2016. On February 12, 2016, I must file with this Court a petition for rehearing in *United States v. Chaney*, CA No. 13-50015, and currently have an opening brief due in *United States v. Sun*, CA No. 15-50009, that same day, and must file a motion for reconsideration of an order denying a certificate of appealability in *United States v. Mitchell*, CA No. 15-55401, due by February 16, 2016. I also must prepare a reply brief to the government's oversized 85-page answering brief in *United States v. Brown*, CA No. 11-10089, an appeal from a lengthy trial in the Eastern District of California, which due to the age of the case should be prepared promptly, which is currently due on February 25, 2016. I also am currently supervising multiple appeals being prepared by trial attorneys in my office. I therefore request an additional 60 days to file the third cross-appeal brief, until April 18, 2016.

I have not contacted counsel for the government to ascertain its position on this motion because, as set forth in Mr. Lynch's "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 the government were to expend any resources on this case; although that law expired, it is my understanding that the law referenced in that motion was renewed in the most recent appropriations act passed by Congress.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 10th day of February, 2016, at Los Angeles, California.

/s/ Jonathan D. Libby
JONATHAN D. LIBBY

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2016, I electronically filed the foregoing **APPELLANT LYNCH'S MOTION FOR AN ADDITIONAL 60-DAY EXTENSION OF TIME TO FILE THE 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.

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