

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 90-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 90-day extension of time, or until November 14, 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: August 16, 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 90-day extension of time to file the third brief on cross-appeal, until November 14, 2016. Following multiple extensions and a stay of the briefing schedule, the third brief on cross-appeal is currently due August 16, 2016. This is the sixth 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 2015.

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 and dealing with a truly voluminous record in the trial court and in this Court, I continue to require additional time in order to familiarize myself with the lengthy record and numerous complex legal issues raised by both sides and by the amici curiae in this case and then draft the brief.

Moreover, today, this Court issued a decision in *United States v. McIntosh*, CA No. 15-10117 (consolidated with nine other cases), addressing the very argument Mr. Lynch advanced with respect to the Section 538 legislation (now §

542 of the Consolidated Appropriations Act, 2016) that prohibits the Department of Justice from spending funds to prevent states' implementation of their medical marijuana laws, and which is being raised in this third cross-appeal brief. This Court concluded that § 542 does, in fact, prohibit the Department of Justice from prosecuting those individuals who engaged in conduct permitted by state medical marijuana laws, such as Mr. Lynch, who fully complied with those laws. As a result, additional time is necessary for counsel to review and evaluate the decision, discuss that decision with Mr. Lynch, and make new arguments as a result of the decision.

Finally, I have several other briefs and petitions which must be filed in this Court and the Supreme Court over the next several weeks that require my immediate attention, including an opening brief due on August 31, 2016, in *United States v. Rodriguez*, CA No. 15-50328, a Petition for Rehearing En Banc due on August 24, 2016, in *United States v. Zhou*, CA No. 14-50288, and a Petition for a Writ of Certiorari due on September 5, 2016, in *United States v. Brown*, CA No. 11-10089. I also currently have three opening briefs due on September 6, 2016, in *United States v. Lombardi*, CA No. 15-50520, *United States v. Omagbemi*, CA No. 16-50050, and *United States v. Price*, CA No. 15-50556, as well as a reply brief due September 14, 2016, in *United States v. Sun*, CA 15-50009.

I am aware of the Court's preference for as few extension requests as possible being requested in a given case, and I am doing my best to prepare the

instant brief while also addressing the multiple other cases that also require my attention. I therefore request an additional 90 days to file the third cross-appeal brief, until November 14, 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; that position appears to have been affirmed by this Court's decision today in *United States v. McIntosh*, as discussed above.

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

Executed this 16th day of August, 2016, at Los Angeles, California.

/s/ Jonathan D. Libby
JONATHAN D. LIBBY

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2016, I electronically filed the foregoing **APPELLANT LYNCH'S MOTION FOR AN ADDITIONAL 90-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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