



Defendant is not in custody. Defense counsel does not oppose this request.

No court reporter is in default with regard to any designated transcript.

DATED: March 15, 2017

Respectfully submitted,

SANDRA R. BROWN.  
Acting United States Attorney

LAWRENCE MIDDLETON  
Assistant United States Attorney  
Chief, Criminal Division

*/s/ David Kowal*

JEAN-CLAUDE ANDRÉ  
DAVID KOWAL  
Assistant United States Attorneys

Attorneys for Plaintiff-Appellee  
UNITED STATES OF AMERICA

## DECLARATION OF DAVID KOWAL

I, David Kowal, hereby declare and state as follows:

1. I am an Assistant United States Attorney in the Central District of California.
2. I am counsel of record in *United States v. Lynch*, Case Nos. 10-50219, 10-50264. I am responsible for writing the government's response to defendant's oversized motion, "Defendant-Appellant's FRAP 12.1 Notice and Request for a *McIntosh* Remand or Relief," filed electronically on March 3, 2017 (Court of Appeals Docket No ("CTA") 137, the "Motion"). Pursuant to Fed. R. App. P. 26(c) and 27, the government's response to the Motion is currently due on March 16, 2017. I am filing the present request for a seven-day extension to file the government's response, that is, until March 23, 2017.
3. I need the additional time to respond to defendant's motion for the following reasons:
  - a. On February 6, 2017, in defendant's twelfth request for an extension of time to file defendant's third brief on cross-appeal in this matter, defense counsel stated that counsel was contemplating filing a motion in this Court at some point based on the district court's February 2, 2017 disposition of defendant's indicative motion in the district court. (CTA 130). However, prior to the filing of the instant Motion on March 3, 2017, defense counsel did not seek the government's position on the Motion or otherwise notify when and if defendant would

file the Motion. Thus, I had no advance warning that I would have to respond to the Motion so that I could arrange my schedule in advance to work on the government's response.

b. At the time the Motion was filed, I had other pressing matters requiring my attention that prevented me from starting work on the government's response to the Motion. Specifically, I was writing the government's response to this Court's request for a supplemental briefing in another appeal, *United States v. Klienman*, Case No. 14-50585. That brief was completed and filed on the evening of March 7, 2017. Because that matter was scheduled for oral argument on April 4, 2017, I could not reasonably request an extension of time on the supplemental brief in order to work on the response to defendant's Motion in this matter. In addition, as a trial attorney at the United States attorney's office, I have several active cases and investigations that require my daily attention. I thus needed additional time to address pending matters, and to clear out my schedule in order to make time available to respond to the Motion. For example, I sought a continuance to file a sentencing brief in a district court matter that I would otherwise have had to write this week. Once my pending matters were addressed or rescheduled, in order to exercise diligence in this matter, starting approximately one week from the March 16, 2017 filing deadline, I have been working primarily, and usually exclusively, on

preparing the government's response to the Motion, including over the weekend.

c. Additional time is also needed because of the size and nature of defendant's Motion. Defendant's Motion consists of an oversized 27-page brief, presents multiple issues, and includes two volumes of exhibits. I expect that to adequately respond to the Motion, the government will likely seek leave to file an oversized response. While I am familiar with some of the issues raised in defendant's Motion from past litigation, including in the district court, there are several new issues the government intends to address, including the history of recent proceedings in the district court and the procedural soundness of the Motion itself. In addition, even where I have addressed legal issues previously in past briefing, it is time consuming to include and customize any prior briefing into the specific procedural setting and issues raised by defendant's Motion in order to create a coherent and tailored response. Further, while defendant has filed several exhibits with his Motion, I expect that the government's response will have to include many additional exhibits from a voluminous prior record in the district court and in this Court, which will take time to compile and organize.

d. I am being assisted in this matter by my office's Chief of Appeals, Jean-Claude André. While Mr. André will be able to assist me with the editing of the government's response, due current absences

from our appellate unit and numerous other pending appeals on which he is working, he is not able to assist me in drafting the government's response.

e. My office and I have continued to exercise diligence in this matter notwithstanding the extension requested herein. This request is not for the purposes of delay, but my best estimate of the minimum time necessary to complete the government's response. I am confident that the government will be able to complete its response by the new deadline requested herein.

4. Based on my communications with him, I know that on March 14, 2017, Mr. André emailed counsel for defendant, Deputy Federal Defender Alexandra Yates, regarding the requested extension. She responded that she has no objection.

5. Defendant is not in custody. No court reporter is in default with regard to any designated transcript.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 15th day of March, 2017, in Los Angeles, California.

*/s/ David Kowal*

DAVID KOWAL  
Assistant United States Attorney

9th Circuit Case Number(s) 10-50219, 10-50264

**NOTE:** To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system

on (date) Mar 15, 2017 .

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.

Signature (use "s/" format) s/ Susan Cruz

\*\*\*\*\*

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When Not All Case Participants are Registered for the Appellate CM/ECF System

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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