

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,)	C.A. Nos. 10-50219, 10-50264
)	D. Ct. No. 07-cr-00689-GW
Plaintiff-Appellee/)	(Cent. Dist. Calif.)
Cross-Appellant)	
)	<u>GOVERNMENT'S UNOPPOSED MOTION</u>
v.)	<u>FOR EXTENSION OF TIME TO FILE</u>
)	<u>ANSWERING/OPENING BRIEF;</u>
CHARLES C. LYNCH,)	<u>DECLARATION OF DAVID KOWAL</u>
)	
Defendant-Appellant/)	
Cross-Appellee.)	
_____)	

Plaintiff-Appellee/Cross-Appellant, United States of America, by and through its counsel of record, hereby moves this court for an extension of time within which to file the government's answering/opening brief in the above-captioned matter. The government's brief currently is due on August 27, 2012. The government requests a 119-day extension of time, such that that brief will be due on December 21, 2012.

The motion is made pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure and Rule 31-2.2(b) of the

Rules of the United States Court of Appeals for the Ninth Circuit and is based on the files and records in this case and the attached declaration of David Kowal.

DATED: August 1, 2012

Respectfully submitted,

ANDRÉ BIROTTE JR.
United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

s/ David Kowal
DAVID KOWAL
Assistant United States Attorney
Organized Crime Drug Enforcement
Task Force Section

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 (AUSA) in the Central District of California.

2. I am responsible for preparing for the government the second cross-appeal brief in United States v. Charles Lynch, C.A. Nos. 10-50219 and 10-50263. Pursuant to this Court's July 26, 2012 order granting defendant's motion to file a late, oversized first cross-appeal opening brief, the second cross-appeal brief is due on August 27, 2012. For the reasons set forth below, the government requests a 119-day extension of time to file that brief such that the brief will be due on December 21, 2012

3. The government has not requested any prior extensions of time in this case. After the time period for defendant's opening brief was initially delayed over a month due to default in preparation of transcripts by the court reporter, defendant received 12 further extensions of time to file his opening brief which totaled a period of approximately one year, eight months and 23 days. These extensions include five extensions of time covering more than six months after the Court, on October 13, 2011, ordered that further requests for extension of time by defendant would be "disfavored." Defendant was also granted leave to file a late and oversized opening brief.

4. The government requests a 119-day extension in order to

complete its preparation and review of its answering/opening brief in this matter.

5. The following circumstances, among others, support the requested extension of time:

(A) Although I was one of the trial counsel in this matter, due the trial court extensively extending the sentencing proceedings and the issuance of its final judgment, and the above-referenced extensions granted to defendant on appeal, the subject matter of the case is no longer fresh in my mind. Defendant was convicted by a jury on or about August 5, 2008, almost four years ago. Judgment was entered after sentencing on or about April 29, 2010, over two years ago. I will thus have to spend substantial time re-familiarizing myself with the relevant facts and record in this case.

(B) Defendant has filed 16 volumes of excerpts of record and an oversized brief, further adding to the complexity of preparing the government's brief. Moreover, multiple amicus have sought leave to file briefs, which I will likely have to review and address.

(C) In addition to my current responsibilities as a trial counsel for the government on matters currently before the district court and my other responsibilities as an AUSA, I am the government's sole remaining trial counsel, and am responsible for working on the appeals in United States v. Manual Yepiz et. al,

C.A. Nos. 07-50051, 07-50062, 07-50063 07-50067, 07-50070, 07-50098, 07-50133, 07-50142, 07-50264. That matter is the consolidated appeal of nine defendants from a complex, two-month racketeering trial. In that matter, the appellants have filed a joint opening brief of over 150 pages as well as individual briefs for the nine defendants collectively totaling several hundred more pages. In the coming months, I anticipate that I will need to spend substantial time assisting in the preparation of the government's brief in that case. In addition, I am counsel of record for the appeal in United States v. Lizdale, C.A. No. 10-50445, which is scheduled for oral argument on October 11, 2012. Finally, among my responsibilities in district court, I have recently been assigned as the sole trial counsel in United States v. Marquez-Marquez, CR No. 10-370-DMG, a multi-defendant wiretap investigation that has been designated as a complex case by the district court. This case was initiated by another AUSA no longer with this office, and I am in the process of familiarizing myself with the voluminous discovery and other materials. In that matter, in addition to my responsibilities for learning the case, handling the sentencing of seven defendants currently before the trial court, and managing the investigation of fugitive defendants, I have a trial set for one defendant on October 9, 2012.

(D) Because this case involves a cross appeal by the

government, after I review the record in the case, as well as the relevant case law on the issues presented, I will have to consult further with AUSAs in the Criminal Appeals Section regarding the cross-appeal. That process will also involve the need to engage in extensive consultation within our office with the Chief of the Criminal Appeals Section, the Chief of the Criminal Division, the First Assistant United States Attorney, and the United States Attorney. Further, on the cross-appeal, our office will also have to work with the Criminal Division of the Department of Justice in Washington, D.C. and the Office of Solicitor General. This process will add to the time of preparing the government's brief in this case.

6. I have exercised and will continue to exercise diligence with respect to this appeal.

7. On July 6, 2012, I informed defendant's counsel, Alexandra Yates by electronic mail that the government intended to move for a 120-day extension in this case. On July 9, 2012, Ms. Yates informed me by e-mail that she had no objection to the request.

8. The defendant is presently on bond pending appeal.

//

//

//

//

9th Circuit Case Number(s) 10-50619, 1050264

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

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) .

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)

CERTIFICATE OF SERVICE

When Not 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) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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:

Signature (use "s/" format)