

**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. CR 07-689-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 currently due June 5, 2013. The government requests a 45-day extension of time, such that the brief will be due on September 19, 2013. The request is not opposed by the defendant-appellant.

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: July 26, 2013

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 was originally due on August 27, 2012, and then extended by orders of the Court at the government's request to August 5, 2013. For the reasons set forth below, the government requests a 45-day extension of time to file that brief such that the brief will be due on September 19, 2013. This is the government's fifth request for an extension. The period requested is the minimum amount of time the government believes that it will need to complete its work on its second cross-appeal brief, including consulting with other offices of the Department of Justice, as further set forth below.

3. Previously, after a delay granted due to default in preparation of transcripts by the court reporter, this Court granted defendant 12 further extensions of time to file his opening brief which totaled a period of approximately one year, nine months. These extensions included five extensions of time

covering more than six months after the Court 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 45-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) Because this case involves a cross appeal by the government, our office is consulting and working with Criminal Division of the Department of Justice in Washington, D.C. and the Office of Solicitor General. I understand from the appellate section of my office with whom I am working on this appeal that further time is needed for this process. Although I have personally completed much of my own work as part of this process and with respect to the cross-appeal in general, the overall process of consultation with this office's appellate division and components of the Department of Justice in Washington D.C. has taken longer and been more complicated than usual. This is because some of the issues potentially to be raised by the government's appeal in this case are similar to those raised in other pending Department appeals in other parts of the country, and specifically within this Circuit. Additional time is needed

to make sure the Department has time to properly analyze all of these cases. I understand this process is expected to be complete during early portion of the extension period requested herein. I will thereafter need additional time thereafter to incorporate final feedback and decisions from this process into the government's final briefing. I believe that the requested extension herein will provide sufficient time to complete that process and to incorporate the results of that process into the government's brief.

(B) During the time since the government's last request for an extensions, the parties have been engaged in significant negotiations in an attempt to settle this matter, which have covered several weeks. I have not been personally involved in these negotiations, but understand from discussions with senior members of my office that if there were a settlement it would obviate the need for further appellate practice in this Court. I have thus been instructed to temporarily suspend work on the government's brief until those negotiations are complete in the effort to save resources, a benefit of any potential settlement.

(C) The delays set forth above have combined with the fact this is overall a complex appeal that has required a longer than usual time to complete, and to coordinate all of its various parts including the appeal, cross-appeal, and excerpts of record.

In addition to filing oversized brief, defendant has filed 16 volumes of excerpts of record which has added to the complexity of the appeal and the time needed to review the legal issues, and prepare the government's brief. Moreover, two amicus briefs have been filed on behalf of the defendant. Together these briefs further added to the difficulty of preparing the government's brief. As previously noted, due to the protracted proceedings in the district court before issuance of its final judgment, and the prior extensions granted to defendant on appeal, it has taken substantial time merely re-familiarizing with the extensive record and issues and to organize them as part of the government's responsive briefings. Since the last extension request, I have made additional progress with respect to these tasks. However, we still need additional time to complete these task as part of preparing the government's briefs in this case in light of the circumstances set forth above.

(D) I have been and remain 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 case, the appellants have filed a joint opening brief of over 150 pages as well as individual briefs for each of the nine

defendants collectively totaling several hundred more pages. I will continue to need to spend substantial time assisting in the preparation of the government's consolidate brief in that case, which I anticipate will have to address at least two dozen discrete legal issues, including sufficiency of evidence claims, sentencing and suppression issues. Among my responsibilities in district court, I am 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. In that matter, in addition to my responsibilities for learning the case, I have been handling the sentencing of a half dozen defendants currently before the trial court, and managing the investigation of fugitive defendants believed to be in other countries. Further, I have been and remain responsible and assigned to several complex pre-trial, non-public investigations over the last several months that are on-going. These have include large criminal enforcement projects which typically require substantial daily direct involvement and management such as the approval of time-sensitive warrants and related court process. These pretrial matters, and the other responsibilities set forth above, will continue to require substantial work and effort that cannot reasonably be delayed or reassigned.

6. I have exercised and will continue to exercise

diligence with respect to this appeal. I wish to complete the government's brief in this matter, and have made substantial progress in doing so, but need the requested time to properly represent the government for the reasons set forth herein. This request is not meant for the purposes of delay.

7. On July 25, 2013, I learned that my counterpart, defense counsel, Alexandra Yates, is on maternity leave. Thus, on July 26, 2013, the chief of my office's appellate section, AUSA Curtis Kin, contacted Ms. Yates supervisor, Michael Tanaka the chief of the appellate section for the Federal Public Defender, regarding this requested extension. Mr. Kin has informed me that Mr. Tanaka told him that his office has no objection to this extension request.

8. The defendant is presently on bond pending appeal.

9. The court reporter is not in default with respect to any transcripts.

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

EXECUTED July 26, 2013, in Los Angeles, California.

s/ David Kowal
DAVID KOWAL

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

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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) Jul 29, 2013 .

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/ David Kowal

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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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