

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

**MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S 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 Alexandra W. Yates, applies to this Court under Ninth Circuit Rule 31-2.2 for a ninety-day extension of time to file the third cross-appeal brief in this case, to November 19, 2015. The third cross-appeal brief is currently due August 21, 2015. I previously filed three requests to extend the time to file the third cross-appeal brief and one request to stay the briefing schedule pending the resolution of a motion, which resulted in an additional sixty-day extension of time.

This motion is based upon the attached Declaration of Counsel, all files and records in this case, and any other information that may be properly brought to the attention of this Court in connection with the consideration of this motion.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: August 14, 2015

By /s/ Alexandra W. Yates

ALEXANDRA W. YATES
Deputy Federal Public Defender

Attorneys for Defendant-Appellant/
Cross-Appellee

DECLARATION OF ALEXANDRA W. YATES

I declare under penalty of perjury that, to the best of my knowledge, the following is true and correct:

I am a Deputy Federal Public Defender in the Central District of California. I represent Defendant-Appellant/Cross-Appellee Charles Lynch in this appeal and cross-appeal. Mr. Lynch is on bond pending appeal.

The third cross-appeal brief is due on August 21, 2015. As explained in greater detail below, I previously filed three requests to extend the time to file the third cross-appeal brief and one request to stay the briefing schedule pending the resolution of a motion, which resulted in an additional sixty-day extension of time.

On July 3, 2012, after receiving several extensions of time, Mr. Lynch filed his first-cross appeal brief and accompanying sixteen volumes of excerpts of record. The brief is eighty pages long and raises eight separate challenges to Mr. Lynch's conviction and sentence, most of which have multiple sub-issues. Shortly thereafter, two amici curiae filed supporting briefs.

The government's second cross-appeal brief initially was due on August 27, 2012. On November 1, 2013, after receiving several extensions of time, the government lodged an oversized brief, which this Court rejected. The government also filed 1,046 pages of supplemental excerpts of record. On March 14, 2014, the government lodged a revised oversized brief, which this Court accepted on April 11, 2014. The government's brief is 149 pages long. The brief raises two new

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.

After the government filed its second cross-appeal brief, I sought extensions of time to file the third cross-appeal brief because of the need to refamiliarize myself with these voluminous filings. I represented to the Court that I would be able to begin intensive work on Mr. Lynch's case in January 2015.

I did begin intensive work on Mr. Lynch's case in January. However, in December, Congress passed and the President signed into law a provision of the 2015 appropriations bill that prohibits the Department of Justice from spending funds that prevent California, among other states, from implementing its medical marijuana laws. Thus, beginning in early January, I spent several weeks developing, researching, and drafting an argument that the legislation requires the government to cease spending funds on Mr. Lynch's case. On January 30, my office notified the government of Mr. Lynch's position and provided a draft of my briefing. I then spent additional time in February conducting further research on the matter, which resulted in extensive changes to my draft. On February 24, I filed the revised "Motion To Enforce Section 538 of the Consolidated and Further Continuing Appropriations Act, 2015, or in the Alternative for a Limited Remand," as well as a motion for leave to file an oversize motion, with this Court.

I filed additional briefing on the motion in March and April, and on April 13, a motions panel of this Court denied the motion without prejudice to renewing it along with the third cross-appeal brief.

On April 27, I filed a motion for en banc rehearing of the motions panel's decision. Two new amici curiae, including the authors of the relevant legislation, filed briefs in support of that motion. The motion remained pending in early June, when Mr. Lynch's third cross-appeal brief would have been due.

On June 5, I filed a motion to stay the cross-appeal briefing schedule pending resolution of the then-pending motion for rehearing en banc. As I explained in that request, a favorable ruling on the then-pending motion would moot the substantive appeal in this case. Because preparation of the third cross-appeal brief might have been unnecessary, and mindful of my obligation as a deputy federal public defender to use my time and resources most efficiently, I had not prepared the third cross-appeal brief, but instead focused my attention on Mr. Lynch's motion litigation and time-sensitive matters in other cases.

On June 22, the Court denied Mr. Lynch's motion for rehearing en banc and extended the deadline to file the third cross-appeal brief to August 21. The Court also sua sponte extended the time to file the optional cross-appeal reply brief to September 18.

I was out of town on annual leave on June 22, and did not return to the office until June 29. Upon my return, I prepared for oral argument in *United States v.*

Lara, CA No. 14-50120, a case raising an issue of first impression in any circuit court, which took place on July 7.

In the five weeks since the *Lara* argument, I have supervised two separate state-court filings in *Tibbs v. Grounds*, CV No. 14-8934-SJO-MRW, a noncapital habeas case, that were due on July 24 and August 4, respectively; worked with co-counsel on the reply brief in *United States v. Avila Barrera*, CA No. 14-50136, which was filed on August 12; researched and partially drafted the opening brief in *United States v. Hernandez*, CA No. 14-50214, an appeal from a three-day trial, which is due August 17; and supervised a trial deputy handling the direct appeal in *United States v. Castro*, CA No. 14-50463, where the opening brief is due August 24.

I also have devoted substantial time to reviewing the record and directing investigation in *Evans v. Miller*, CA No. 13-55087, an appeal from the denial of a pro se petition for habeas relief, and related CA No. 14-72470, an application to file a second or successive petition in the same matter. The petitioner in *Evans* is serving a sentence of life without parole for a 1992 quadruple homicide. Until my appointment last year, he had not been represented by an attorney since 1996. His case raises very serious issues about whether he is actually innocent of the offenses for which he was convicted. I recently obtained stays in this Court in both of the *Evans* cases pending the filing of an exhaustion petition in state court.

I will be out of the office on an extended leave from approximately October 2015, through June 2016. In anticipation of that upcoming leave, I have had regular, detailed conversations with my supervisor about how best to prioritize my case work. The goal of each of these conversations has been to minimize the impact of my leave on my clients, the courts, and our office's limited resources.

Taking these interests into consideration, my supervisor has asked me to complete my work on the *Hernandez* and *Evans* matters, and draft an omnibus reply brief in *Ochoa v. Thomas*, CV No. 11-6864-JGB-CW, prior to my leave. The office is in the process of reassigning responsibility for filing the third cross-appeal brief in Mr. Lynch's case to another appellate attorney.

The attorney assigned to file the third cross-appeal brief will need time to familiarize him- or herself with the lengthy record and complex legal issues in this case and then draft the brief. I therefore request an additional ninety days to file the third cross-appeal brief, to November 19, 2015, to allow the newly assigned attorney sufficient time to do so.

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 they were to expend any resources on this case. I therefore have not contacted opposing counsel to ascertain their position on this motion.

The court reporters are not in default with regard to any designated transcripts.

Executed on August 14, 2015, in Los Angeles, California.

/s/ Alexandra W. Yates
ALEXANDRA W. YATES

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2015, I electronically filed the foregoing **MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S 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.

Nicole Arias
NICOLE ARIAS

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United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 08/14/2015 at 2:06:04 PM PDT and filed on 08/14/2015

Case Name: USA v. Charles Lynch

Case Number: [10-50219](#)

Document(s): [Document\(s\)](#)

Docket Text:

Filed (ECF) Appellant Charles C. Lynch in 10-50219, Appellee Charles C. Lynch in 10-50264 Motion to extend time to file Third Brief on Cross-Appeal brief until 11/19/2015. Date of service: 08/14/2015. [9647816] [10-50219, 10-50264] (AWY)

Notice will be electronically mailed to:

Mr. David P. Kowal, Assistant U.S. Attorney
Mr. Joseph David Elford
Mr. Michael V. Schafner
Mr. Jean-Claude Andre, Assistant U.S. Attorney
Alexandra Wallace Yates, Federal Public Defender
Ms. Paula M. Mitchell
Professor Jenny Elizabeth Carroll

The following document(s) are associated with this transaction:

Document Description: Main Document

Original Filename: Lynch EOT Third Brief-8-14-15.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1106763461 [Date=08/14/2015] [FileNumber=9647816-0]

[48b8b9d6d93c60be9bf6d4ab4154c1c2c444681c71b45099449d4a981fffd64e6099ee7bb50613b756b92aa7218e67fc91ad6b7dce4c703a8c80e6a7072c1f74]]