

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, to May 15, 2017. This motion is based upon the attached declaration of counsel, all files and records in this case, and any other information the Court may request.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: February 6, 2017

By /s/ Alexandra W. Yates
ALEXANDRA W. YATES
Deputy Federal Public Defender

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.

Following numerous extensions of time, the third cross-appeal brief is due on February 13, 2017.

Mr. Lynch was prosecuted for and convicted of operating a medical marijuana dispensary in California. On appeal, he filed an oversized opening brief of eighty pages, which 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 cross-appeal brief of 149 pages, which raised two additional cross-appeal issues; the responses to many of Mr. Lynch's claims raise issues that he will need to address in the first instance in the third cross-appeal brief.

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 denied the motion without prejudice to renewing it with 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.

Because preparation of the third cross-appeal brief might be unnecessary in light of the congressional legislation, 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 by that time, but instead focused my attention on Mr. Lynch's motion litigation and time-sensitive matters in other cases.

Shortly thereafter, another attorney from my office was assigned the responsibility for preparing the third cross-appeal brief, due to my impending extended leave of absence from the office. That attorney, who had no previous experience with Mr. Lynch's case, requested and received six extensions of time to prepare and file the third cross-appeal brief during my leave. I returned to the office in November, and resumed responsibility for Mr. Lynch's case.

In August, this Court decided *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016), addressing the very argument Mr. Lynch had advanced with respect to the Section 538 (now Section 542) legislation. This Court concluded that Section 542 prohibits the Department of Justice from expending funds prosecuting individuals engaged in conduct permitted by state medical marijuana laws.

Because of concerns about some of the language in the *McIntosh* opinion, several defendants in that case petitioned for rehearing. While I was preparing to return from leave, I coauthored an amicus brief in support of the *McIntosh* defendants' motion. The Court denied the petition on November 29, 2016.

McIntosh directs criminal defendants challenging their prosecutions under Section 542 to seek relief in district court. On December 12, less than two weeks after *McIntosh* became final, I filed a motion for an indicative ruling in district court, pursuant to Federal Rule of Appellate Procedure 12.1 and *McIntosh*. The parties filed their respective opposition and reply, and I argued the motion in district court on February 2. The district court recognized that the motion raised substantial issues, but declined to rule on the matter without further guidance from this Court.

It has been just four days since the district court hearing, and I am still researching and evaluating how best to proceed with Mr. Lynch's *McIntosh* litigation. Once I complete that evaluation and file whatever motion or briefing I deem appropriate, I will be in a position to turn my attention back to Mr. Lynch's substantive cross-appeals. However, I will not be able to focus exclusively on Mr. Lynch's case, due to the following upcoming deadlines: appellant's opening brief in *United States v. Hernandez-Ornelas*, CA No. 16-50379, due February 13; appellant's opening brief in *United States v. Brewer*, CA No. 16-50411, due March 8; motion for remand in *Evans v. Miller*, CA No. 13-55087, an appeal from the

denial of a pro se petition for habeas relief from a sentence of life without parole, due March 23; appellant's opening brief in *United States v. Yeung*, CA No. 16-50314, due March 27; appellant's opening brief in *United States v. Taylor*, CA No. 16-50465, due April 10; appellant's opening brief in *United States v. Litonjua-Moore*, CA No. 16-50493, due April 19; appellant's opening brief in *United States v. Singui*, CA No. 16-50206, due May 8; and appellant's opening brief in *United States v. Wallenstein*, CA No. 17-50003, due May 15. I also am supervising habeas briefing in *Balint v. Warden*, CV No. 11-6307-BRO-PLA, due February 17; and I am preparing a novel, time-sensitive motion for expungement of a client's record.

I therefore request a ninety-day extension of time to file the third cross-appeal brief, to May 15, 2017.

In light of Section 542, 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 February 6, 2017, in Los Angeles, California.

/s/ Alexandra W. Yates
ALEXANDRA W. YATES

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, 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.

Lorena Macias
LORENA MACIAS