

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 ONE-DAY EXTENSION OF TIME TO FILE
APPELLANT'S *MCINTOSH* REPLY**

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 one-day extension of time to file his reply to the government's opposition to his request for *McIntosh* relief, to April 24, 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: April 21, 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.

On March 3, 2017, I lodged a twenty-seven-page pleading notifying this Court of an indicative ruling by the district court, pursuant to Federal Rule of Procedure 12.1, and seeking a remand or relief. The request is based on this Court's decision in *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016), which held that a congressional appropriations rider prohibits the Department of Justice from spending funds on a criminal prosecution if the defendant's conduct was authorized by state medical marijuana laws.

On March 23, following an extension of time, the government lodged a fifty-six-page opposition, and filed a request to file an oversize pleading. This Court has not acted on the government's request, but assuming the government's opposition is accepted, my reply initially was due on April 3. On that date, I filed a request for an extension of time to today, April 21. That request remains pending.

As I explained in my April 3 request, I was then engaged in preparing a lengthy Rule 60(b) motion in *Evans v. Miller*, CA Nos. 13-55087 & 14-72470, habeas cases where the client is serving life without the possibility of parole for a

quadruple homicide and our office developed substantial evidence demonstrating his actual innocence. Because Evans must show diligence in bringing his new evidence and claims to the federal courts, that motion was time-sensitive. I completed and filed the *Evans* motion late in the day on April 7. The following day, I left for a previously scheduled weeklong trip out of the country.

On April 17, my first day back in the office, I led a previously scheduled all-day meeting on a capital case where I am lead counsel, and where other members of the team travelled to Los Angeles from the East Coast to attend.

Once that meeting ended, I turned my attention to the reply brief in this case. I have completed most of the brief, but will not have it ready early enough today to allow my support staff to compile the necessary tables and file it with the Court.

I therefore request a one-day extension of time, to April 24, to file the reply brief. I have exercised diligence in preparing the reply, and will file it on April 24.

In light of the congressional appropriations rider, 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.

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

Executed on April 21, 2017, in Los Angeles, California.

/s Alexandra W. Yates
ALEXANDRA W. YATES

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2017, I electronically filed the foregoing **MOTION FOR ONE-DAY EXTENSION OF TIME TO FILE APPELLANT'S *MCINTOSH* REPLY** 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