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March 29, 2018

Molly C. Dwyer  
Clerk, Ninth Circuit Court of Appeals  
P.O. Box 193939  
San Francisco, CA 94119-3939

**Re: *United States v. Charles C. Lynch*, CA Nos. 10-50219, 10-50264**  
**Scheduled for Argument: April 13, 2018, Pasadena, California**

Dear Ms. Dwyer:

Defendant-Appellant/Cross-Appellee Lynch submits this letter pursuant to Federal Rule of Appellate Procedure 28(j), advising the Court of pertinent new authority.

In *United States v. Espinoza*, 880 F.3d 506 (9th Cir. 2018), this Court considered evidence that would have supported a third-party-culpability defense but was excluded at trial. The evidence was “minimally probative,” *id.* at 515, and somewhat cumulative of other admitted evidence, *see id.* at 510. Moreover, the defense was “not particularly compelling,” *id.* at 519, “speculative,” and insubstantial, *id.* at 517. Nevertheless, this Court reversed because the evidence met the low bar for relevance on a contested element. *See id.* at 514-17. Its exclusion was not harmless because the defense was “plausible” and the evidence *could* have swayed the jury. *Id.* at 519. Like Lynch, Espinoza “was able to poke holes in the prosecution’s case and offer innocent explanations for some of her behavior, [but] the exclusion of [the] evidence precluded her from” fully responding on the main issues before the jury. *Id.* at 518.

In *United States v. Preston*, 873 F.3d 829 (9th Cir. 2017), this Court cumulatively assessed evidentiary errors, many unpreserved, and found they required a new trial. Even if “no single error . . . independently warrant[ed] reversal,” *id.* at 835 (internal quotation marks omitted), the “cumulative effect [was] clear” because the errors all went to “the key issue in th[e] case,” *id.* at 845. Similarly, in Lynch’s case, there were myriad errors that went to the key issues of what the DEA told Lynch and whether he could and did reasonably rely on those representations. (*See* First Cross-Appeal Br. 20-57.) These errors are “not isolated,” but rather “stand in unique symmetry such that they amplify each other in relation to the key, and only,

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contested issue in the case” (Lynch’s affirmative defense). *Preston*, 873 F.3d at 845-46 (alterations and internal quotation marks omitted).

While the main takeaway from *Preston* is the prejudice analysis, Lynch also notes the Court’s helpful discussion of Federal Rule of Evidence 403 balancing. *See id.* at 841-42.

*Espinoza* and *Preston* support Lynch’s argument that the errors he raised require reversal.

Sincerely,

*/s Alexandra W. Yates*

Alexandra W. Yates  
Deputy Federal Public Defender