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8 Attorneys for Defendant
 CHARLES LYNCH
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10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **WESTERN DIVISION**
 13

14 UNITED STATES OF AMERICA,
 15 Plaintiff,
 16 v.
 17 CHARLES LYNCH,
 18 Defendant.

Case No. CR 07-689-GW

DEFENDANT’S *EX PARTE*
APPLICATION TO CONTINUE
SCHEDULE; PROPOSED ORDER

19
 20 Defendant, Charles Lynch, through his counsel of record, Rebecca M. Abel and
 21 David Wasserman, Deputy Federal Public Defenders, moves *ex parte* to continue the
 22 remaining dates set forth in the Court’s September 13, 2021 scheduling order (Dkt. No.
 23 536), based on the following facts provided by the undersigned defense counsel:

- 24 1. On October 15, 2020, on stipulation of the parties, the Court entered a new
 25 scheduling order setting forth dates for discovery and motion practice pertaining to the
 26 matters on remand. (Dkt. Nos. 522-523.)
- 27 2. On May 4, 2020, the parties reciprocally disclosed the experts they intend
 28 to rely on, the basis for their expertise, and the subjects of their testimony.
3. Following the defense’s review of the government’s initial expert

1 disclosure, the defense disclosed a supplemental expert on August 28, 2020, who the
2 defense expects will provide evidence and testimony in support of the defense's initial
3 expert opinions, as well as evidence and testimony to rebut the opinions the
4 government expects to offer.

5 4. By this application, the defense seeks to extend the remaining deadlines
6 for motion practice and the evidentiary hearing.

7 5. Due to the COVID-19 pandemic, one of the defense's experts was
8 unavailable could not complete his review of the documents in this matter or complete
9 his declaration, which are necessary for the defense to file its motion to enjoin
10 spending.

11 6. In addition, defense counsel Rebecca M. Abel—who is the primary
12 attorney handling the briefing in this matter—was on parental leave from February 2,
13 2021 to August 2, 2021. Due to her leave, she was temporarily unavailable to assist
14 with completing the briefing in this matter. Since returning from leave, Ms. Abel has
15 been working on the briefing and gathering the supporting evidence. Due to the
16 schedules of the defense's experts and pressing matters in trial cases, she has been
17 unable to complete the opening brief and supporting exhibits.

18 7. On November 10, 2021, defense counsel David Wasserman was
19 reassigned to this matter, replacing prior supporting defense counsel, Angela
20 Viramontes, who is no longer available to assist on this case. Mr. Wasserman requires
21 additional time to review the record, communicate with the experts, and familiarize
22 himself with the novel legal issues.

23 8. Defense counsel recently learned that one of its experts may be unable to
24 continue to assist with this matter. Defense counsel needs additional time to determine
25 whether the expert will be available to provide expert evidence in this case, and if not,
26 to identify an alternate expert who will need time to review the record and provide an
27 expert declaration. The length of the continuance requested herein takes into account
28 the time necessary to find a replacement expert, if necessary, for that expert to perform

1 his or her analysis, and for him or her to complete a report.

2 9. Defense counsel, Rebecca M. Abel, has several conflicts, including: a
3 sentencing in *United States v. Brandon Evans Lovett*, Case No. ED CR 20-00002-JGB,
4 which is set for February 7, 2022; a trial in *United States v. Charles Kertesz*, Case No.
5 ED CR 20-00012-JGB, which is set to begin on April 5, 2022; a trial in *United States v.*
6 *Salvador Charles*, Case No. 18-CR-0348-AB, which is set to begin on April 20, 2022; a
7 trial in *Unites States v. David Sims*, Case No. SA CR 20-00191-JFW, which is set to
8 begin on May 3, 2022; a trial in *Unites States v. Marty Michaels*, Case No. LA CR 21-
9 00457-MCS, which is set to begin on May 24, 2022; and a trial in *Unites States v.*
10 *Fernando Carnero*, Case No. LA CR 21-00489-MWF, which is set to begin on June
11 28, 2022.

12 10. Defense counsel, David Wasserman, has several conflicts, including: a
13 sentencing in *United States v. Francisco Sustaita*, Case No. CR 20-00514-JFW, which
14 is set for December 13, 2021; a sentencing in *United States v. Samuel Brown*, which is
15 set for December 21, 2021; a trial in *United States v. Noe Rodriguez*, Case No. CR 21-
16 00326-FMO, which is set to begin to begin on December 14, 2021; a trial in *United*
17 *States v. Donovan Romo*, Case No. CR 20-00375-VAP, which is set to begin on
18 February 22, 2022; and a trial in *United States v. Duane Trow*, Case No. CR 20-00565-
19 JAK, which is set to begin on April 19, 2022.

20 11. Finally, there are several bills pending in the United States Congress,
21 which, if enacted, would likely moot the proceedings in this matter. *See* Marijuana
22 Opportunity, Reinvestment and Expungement Act (“MORE”) Act of 2021, H.R. 3617,
23 117th Cong. (2021); States Reform Act, H.R. 5977, 117th Cong. (2021). Because
24 passage of these bills is uncertain and the proceedings here are independent of the
25 proposed bills, the defense does not request additional time solely based on this
26 potential legislation. However, should these bills become law, it is likely that
27 additional and/or more conclusive avenues of relief would be available to the defense,
28 supplanting the need for the pending *McIntosh* proceedings.

1 12. The undersigned defense counsel contacted assigned counsel for the
 2 United States, Assistant United States Attorney David Kowal, by email on November
 3 19, 2021, regarding the defense's requested continuance as set forth herein. On
 4 November 22, 2021, Mr. Kowal indicated the government does not object to the
 5 requested continuance.

6 13. The defense requests a continuance of the remaining dates set in the
 7 scheduling order as follows:

	Date Currently Set	Requested Date
Deadline for Expert Discovery:	Completed	Completed
Defendant's Motion to Enjoin Spending:	November 18, 2021	June 23, 2022
Government's Opposition to Motion to Enjoin Spending:	December 16, 2021	July 21, 2022
Defendant's Reply to Motion to Enjoin Spending:	January 13, 2022	August 18, 2022
Final Discovery Cut Off	January 27, 2022	September 1, 2022
Status Conference	February 10, 2022 at 9:30 a.m.	September 15, 2022 at 9:30 a.m.
Evidentiary Hearing	February 17, 2022 at 9:30 a.m.	September 22, 2022 at 9:30 a.m.

22 10. The defense represents that this request is not for the purposes of the
 23 delay, but a reasonable period to complete their work in light of an exercise of due
 24 diligence and the factors identified herein.

1 For these reasons, the defense respectfully request the Court continue the dates
2 set in the scheduling order as outlined above.

3 Respectfully submitted,
4
5 CUAUHTEMOC ORTEGA
6 Federal Public Defender

7 DATED: November 23, 2021

By /s/ Rebecca M. Abel

8 REBECCA M. ABEL
9 DAVID WASSERMAN
10 Deputy Federal Public Defenders
11 Attorneys for Defendant CHARLES LYNCH
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**[PROPOSED] SCHEDULING
ORDER**

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