IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,) No. 13-30000
Plaintiff-Appellee,))) D.C. No. CR11-022-RJB
V.	D.C. No. CR11-022-RJBDistrict of Alaska(Anchorage)
FRANCIS SCHAEFFER COX,) (Thieriotage)
Defendant-Appellant.	\
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APPELLANT'S UNOPPOSED MOTION TO EXTEND TIME FOR FILING REPLY BRIEF

Appellant Francis Schaeffer Cox, through his attorneys, Federal Public Defender Michael Filipovic and Assistant Federal Defender Ann Wagner, moves this Court for an order extending the time for the appellant to file a his reply brief from March 20, 2017, to May 22, 2017.

The Federal Public Defender for the Western District of Washington was appointed to represent Mr. Cox on January 27, 2016. On October 7, 2016, after having received an extension of time to file due to the complicated legal analysis and voluminous record of the case, counsel for Mr. Cox file an oversized, substitute opening brief along with supplemental excerpts of record. Dkts. 112, 113. On February 27, 2017, counsel for the government filed their corrected

substitute answering brief and supplemental excerpts of record, also oversized, after having received an extension of time to file them. Dkts. 126, 127. The Court then set March 20, 2017, as the due date for Mr. Cox to reply to the answering brief. *See* Dkt. 127.

Because the multiple issues presented by Mr. Cox's appeal and the government's answering brief are both novel and complex, an extension of 60 days to file his reply brief is warranted.

In addition, during the past month and coming two months, counsel for Mr. Cox are briefing or have recently briefed several appeals before this Court, in addition to submissions to and court appearances before the district court for the Western District of Washington.

This motion is brought under Rule 27 of the Federal Rules of Appellate Procedure, the attached declarations of counsel, and the records and files in this case. Counsel has corresponded with Assistant United States Attorney Yvonne Lamoureux, who stated by email that she does not oppose this motion.

DATED this 17th day of March, 2017.

Respectfully submitted,

s/ *Michael Filipovic* Federal Public Defender

s/ *Ann Wagner*Assistant Federal Public Defender
Attorneys for Francis Schaeffer Cox

CERTIFICATE OF SERVICE

I certify that on March 17, 2017, I electronically filed the foregoing document with the Clerk of the Court using the appellate CM/ECF system, which will send notification of filing to all registered parties.

I further certify I mailed a copy of this motion, first-class postage prepaid, to Francis Schaeffer Cox, Reg. No. 16179-006, USP Marion, P.O. Box 1000, Marion, IL 62959.

s/ Suzie Strait
Paralegal

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DECLARATION OF MICHAEL FILIPOVIC IN SUPPORT OF APPELLANT'S UNOPPOSED MOTION TO EXTEND TIME FOR FILING REPLY BRIEF

- I, Michael Filipovic, declare:
- 1. I am one of the attorneys assigned to represent Mr. Cox.
- 2. I am the third appellate attorney assigned to his case.
- 3. This Court has previously denied Mr. Cox's request to represent himself.
- 4. I have had numerous communications with Mr. Cox about his appeal, and have discussed the briefing with him.
- 5. In order to maintain that collaborative effort, it is important for me to be able to provide him with a draft of our reply brief before it is filed so that I can receive his input before exercising my professional judgment on the final product.

- 6. Mr. Cox is housed at FCI Marion in the Communications Management Unit (CMU). Arranging for such a discussion requires that I either travel to Southern Illinois for our next meeting or arrange for more than one phone conference with the prison after I have a draft prepared and sent to him.
- 7. In addition to these logistical concerns, I have several other matters that required my attention this month and will require my attention over the next two months. With respect to cases, I have filed briefs in *In re: Galmesa Elemo*, No. 93716-8 (personal restraint petition in the Washington Supreme Court); *Mastro v*. Corliss, Adv. No. 14-01043-MLB (Fifth Amendment issue in adversary proceeding in United States Bankruptcy Court in the Western District of Washington); and Chauncey Williams v. United States, No. CV16-5559-BHS (related to § 2255 motion in United States District Court). Additionally, I have a brief due on March 27, 2017, in Kenneth Agtuca v. United States, No. CV16-1981-RSL (related to § 2255 motion in United States District Court); a petition for rehearing and rehearing en banc due on April 5, 2017, in *United States v. David* Schwabland, No. 16-30011 (in the Ninth Circuit Court of Appeals); and an opening brief due in United States v. Templeton, No. 17-30003, on April 11, 2017 (in the Ninth Circuit Court of Appeals). In addition I have a number of other triallevel matters pending in United States District Court for the Western District of

Washington, and as Federal Defender I have a number of management-related issues I need to attend to over the next two months.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of March, 2017.

Respectfully submitted,

s/ *Michael Filipovic*Federal Public Defender
Attorney for Francis Schaeffer Cox

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DECLARATION OF ANN WAGNER IN SUPPORT OF APPELLANT'S UNOPPOSED MOTION TO EXTEND TIME FOR FILING REPLY BRIEF

- I, Ann Wagner, declare:
- 1. In the weeks since the government first filed its 27,339-word answering brief on February 24, 2017, I submitted a 6,471-word opening brief to this Court in Case No. 16-35837, represented two clients in complex resentencing proceedings pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015), and conferred with multiple additional clients about the effect of the recent Supreme Court decision in *Beckles v. United States*, 580 U.S. ___ (2017), on pending § 2255 motions and related appellate proceedings.

2. During the 60-day period between the current reply due date, March 20, 2017, and the requested extension due date, I am currently scheduled to submit two opening briefs to this Court in Case Nos. 16-35647 and 16-30293 and a reply brief in Case No. 16-35837, in addition to work in the district court.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of March, 2017.

s/ Ann Wagner
Assistant Federal Public Defender
Attorney for Francis Schaeffer Cox