

No. 13-56454

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Eugene Evan Baker,

Plaintiff-Appellant,

v.

Eric H. Holder, Jr., et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV 13-05807-RMW)

**APPELLANT'S UNOPPOSED MOTION TO FURTHER STAY
APPELLATE PROCEEDINGS; DECLARATION OF SEAN A. BRADY**

C. D. Michel (S.B.N. 144258)
Clinton B. Monfort (S.B.N. 255609)
Sean A. Brady (S.B.N. 262007)
Anna M. Barvir (S.B.N. 268728)
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Tel. No: (562) 216-4444
Fax No: (562) 216-4445
E-mail: cmichel@michellawyers.com

Counsel for Plaintiff-Appellant

I. RELIEF SOUGHT

In accordance with Federal Rule of Appellate Procedure Rule 27 and Ninth Circuit Rule 27-1, Plaintiff-Appellant Eugene Baker respectfully moves this Court for a stay pending final disposition of *United States v. Chovan*, No. 11-50107.

Appellant previously requested to stay appellate proceedings pending *Chovan* on January 13, 2014. Decl. Sean A. Brady Supp. Mot. Stay Appellate Proceedings (“Brady Decl.”) ¶ 4. Two days later, this Court granted Appellant’s motion in part, staying the proceedings for 124 days, until May 19, 2014. Brady Decl. ¶ 4. Appellant’s Opening Brief is presently due on May 19, 2014. Brady Decl. ¶ 4.

On April 22, 2014, the court denied Mr. Chovan’s petition for rehearing or rehearing en banc. Brady Decl. ¶ 5. Appellant’s counsel contacted Mr. Devin J. Burstein, counsel of record for appellant in *Chovan*, on April 29, 2014, asking whether appellant Mr. Chovan planned to file a petition for writ of certiorari with the United States Supreme Court. Brady Decl. ¶ 5. Mr. Burstein confirmed that appellant Mr. Chovan intends to file a petition for writ of certiorari. Brady Decl. ¶ 5. Mr. Chovan’s petition for writ of certiorari is currently due on or before July 21, 2014. U. S. Sup. Ct. R. 13. However, the United States Supreme Court will recess at the end of June until it reconvenes on October 4, 2014. U.S. Sup. Ct. R. 4.

For these reasons, Appellant respectfully requests the Court continue the stay pending resolution of the petition for writ of certiorari in *Chovan*. In the alternative, Appellant respectfully requests a stay of the proceedings for 180 days.

II. POSITIONS OF COUNSEL

Counsel for both Appellees, United States Attorney General Eric Holder and California Attorney General Kamala Harris, have informed counsel for Appellant that they do not oppose Appellant's motion. Brady Decl. ¶¶ 2-3.

III. THE COURT SHOULD STAY THIS PROCEEDING PENDING RESOLUTION OF *CHOVAN*

A. The Court Has the Authority To Stay a Case Pending the Outcome of Another Case

The United States Supreme Court has recognized the inherent power of this Court "to stay proceedings in one suit until the decision of another" in furtherance of the fair and efficient administration of justice. *Landis v. N. Am. Co.*, 299 U.S. 248, 249, 254 (1936). Justice Cardozo explained "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Id.* at 254. The Supreme Court delineated two basic requirements for the grant of a discretionary stay. First, a party that seeks such a stay "must make a clear case of hardship or inequity in being required to go forward." *Id.* Second,

such a stay must have a time limit that is reasonable under the circumstances. *Id.* at 257. The high Court made it clear, however, that there is nothing per se impermissible about staying a lawsuit until the outcome of another related action has been determined. *Id.* at 258.

Appellant respectfully submits that all necessary preconditions continue to exist for a reasonable stay to remain in effect in this matter.

B. The Parties Will Soon Learn Whether the *Chovan* Decision, Which Addresses Substantially Similar Legal Issues and the Controlling Legal Standard in This Matter, Will Become Final

On February 18, 2014, the appellant in *Chovan* filed a petition for rehearing en banc and a motion to file a petition for rehearing en banc exceeding the type-volume limitation. Brady Decl. ¶ 5. One month later, on March 18, 2014, the Ninth Circuit granted the appellant's motion to file an oversized petition for rehearing en banc. Brady Decl. ¶ 5. On April 22, 2014, appellant's petition was denied. *Chovan* is currently preparing a petition for writ of certiorari to file with the United States Supreme Court. Brady Decl. ¶ 5.

A stay of the present appeal pending the petition for writ of certiorari in *Chovan* is warranted for several reasons. Both cases involve challenges to the constitutionality of restricting an individual's fundamental Second Amendment rights pursuant to 18 U.S.C.A. § 922(g), based on a misdemeanor domestic

violence conviction occurring many years ago.

The current *Chovan* opinion not only addresses the legality of 18 U.S.C.A. § 922(g), but articulates this Circuit's legal standard for reviewing Second Amendment challenges in general. If the parties were to brief this appeal under the existing *Chovan* opinion, mostly all of the briefing in this case would become obsolete if the United States Supreme Court grants the petition for writ of certiorari, particularly if it issues an opinion that is different from the *Chovan* panel decision. Thus, staying this proceeding pending the petition for writ of certiorari in *Chovan* will substantially save the parties' and the Court's time, effort, and resources.

C. No Identifiable Prejudice Would Result From the Court Issuing a Stay in This Case

A stay of proceedings pending the petition for writ of certiorari in *Chovan* will preserve valuable time and resources for both parties by preventing the risk of having to redraft their briefs. Further, a stay will not cause any undue delay that would prejudice the parties. Indeed, by not opposing this motion, the Appellees agree that a stay will not cause any undue delay. But even if undue delay that prejudiced the parties was somehow to occur, the parties can seek relief from the Court with an appropriate motion.

D. This Court Has Issued Stays Before in Similar Circumstances

Precedent of this Court supports the issuance of a stay. The Court previously stayed proceedings in this case pending resolution of the ongoing appeals process in *Chovan*. Additionally, the Court stayed several other cases to see if the pending en banc decision in *Nordyke v. King*, 681 F.3d 1041 would provide legal analysis affecting them. *Peruta v. County of San Diego*, No.10-56971, Order Staying Proceedings, Dec. 20, 2011 (Doc. No. 77); Order, *Richards v. Prieto*, No. 11-16255 (9th Cir. June 19, 2012); Order at 1, *Rothery v. County of Sacramento*, No. 09-16852 (9th Cir. May 14, 2012); Order, *Mehl v. Blanas*, No. 08-15773 (9th Cir. July 20, 2010).

IV. CONCLUSION AND REQUEST

Based upon the foregoing, in the interests of justice, fairness, and judicial economy, Appellant respectfully requests the Court issue an Order continuing the stay on all proceedings in this case pending resolution of the petition for writ of certiorari in *Chovan*, or, in the alternative, staying the proceeding for an additional 180 days.

Date: May 2, 2014

MICHEL & ASSOCIATES, P.C.

/s/ Clinton B. Monfort
 Clinton B. Monfort
 Attorney for *Plaintiff-Appellant*

DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, declare as follows:

1. I am attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an Associate attorney at Michel & Associates, P.C., attorneys of record for Plaintiff-Appellant. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. On April 30, 2014, I sent an e-mail to counsel of record for Defendant-Appellee, U.S. Attorney General Eric Holder, David A. DeJute, asking whether the Attorney General would oppose Appellant's motion to stay this matter. Because Mr. DeJute did not respond, I contacted him via telephone on May 2, 2014. He informed me that he had not received my previous e-mail and that the Attorney General does not oppose the motion.


3. On April 30, 2014, I sent an e-mail to counsel of record for Defendant-Appellee, California Attorney General Kamala Harris and the State of California Department of Justice, Anthony R. Hakl, asking whether the Attorney General would oppose Appellant's motion to stay this matter. Mr. Hakl responded on May 2, 2014, stating that the Attorney General does not oppose the motion.

4. Appellant previously requested to stay appellate proceedings pending *Chovan* on January 13, 2014. On January 15, 2014, the Court granted Appellant's motion in party, staying the proceedings until May 19, 2014. Appellant's Opening Brief is presently due on May 19, 2014.

5. On April 22, 2014, the *Chovan* court denied appellant Chovan's petition for rehearing or rehearing en banc. On April 29, 2014, I contacted Mr. Devin J. Burstein, counsel of record for appellant in *Chovan* via telephone, asking whether appellant Mr. Chovan planned to file a petition for writ of certiorari with the United States Supreme Court. Mr. Burstein confirmed that he will be preparing and filing appellant Chovan's petition for writ of certiorari with the United States Supreme Court.

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

Executed this 2nd day of May, 2014, in Long Beach California.


Sean A. Brady
Declarant

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2014, an electronic PDF of **APPELLANT'S UNOPPOSED MOTION TO FURTHER STAY APPELLATE PROCEEDINGS; DECLARATION OF SEAN A. BRADY** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: May 2, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for Plaintiffs-Appellants