

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**

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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 to continue the stay that is currently in place in this appeal pending this Court's final disposition of the related case of *Enos v. Holder*, No. 12-15498.

Appellant previously requested to stay appellate proceedings pending the filing of a petition for writ of certiorari in *Chovan v. United States*, No. 11-50107, on May 2, 2014. Decl. Sean A. Brady Supp. Mot. Stay Appellate Proceedings ("Brady Decl.") ¶ 4. On May 6, 2014, the court granted Appellant's request, staying proceedings for 180 days. Brady Decl. ¶ 4.

On June 26, 2014, Chovan filed a petition for writ of certiorari and motion to proceed in forma pauperis with the United States Supreme Court. Brady Decl. ¶ 5. Just this week, on October 6, 2014, that petition was denied. Brady Decl. ¶ 5.

While the original reason for Appellant's stay, the resolution of *Chovan*, no longer remains, a new reason has arisen. On September 25, 2014, this Court scheduled oral arguments in the related case of *Enos v. Holder* to take place on October 9, 2014, at 9:00 A.M. Brady Decl. ¶ 6. The expected decision in *Enos* could be dispositive in this case or may significantly narrow the issues being presented.

Appellant's Opening Brief is presently due on November 3, 2014, well before any decision in *Enos* will be issued. Brady Decl. ¶ 4. By continuing the stay pending the resolution of *Enos*, this Court will substantially save the parties' and the Court's time, effort, and resources.

For these reasons, Appellant respectfully requests the Court continue the stay pending the forthcoming decision in *Enos*. 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 *ENOS*

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. A Decision in *Enos* Will Soon be Forthcoming, Which Will Likely Address Substantially Similar Legal Issues and the Controlling Legal Standard in This Matter

A stay of the present appeal pending oral arguments in *Enos* is warranted for several reasons. Both cases involve challenges to the constitutionality of permanently 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.

Enos also challenges the Federal government’s authority to prohibit firearm ownership for individuals who have been stripped of their Second Amendment

rights due to a misdemeanor conviction of domestic violence, but who later sought relief under Cal. Penal Code § 1203.4, which effectively erases an eligible conviction for all other purposes. *Enos* argues that such relief should restore civil rights, including firearm possession. Appellant sought and received the same relief under Section 1203.4 as the appellant in *Enos*. Should the appellant in *Enos* prevail, Appellant likewise should also prevail in his claim that 18 U.S.C.A. § 922(g) is unconstitutional as applied to him because his rights have been restored pursuant to California law.

If the parties were to brief this appeal prior to a decision in *Enos*, such briefing may become obsolete following the opinion in *Enos*. By staying proceedings pending a resolution of *Enos*, this Court 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 a decision in *Enos* 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 to lift the stay.

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 the resolution of *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 the forthcoming decision in *Enos v. Holder*, No. 12-15498, or, in the alternative, staying the proceeding for an additional 180 days.

Date: October 7, 2014

MICHEL & ASSOCIATES, P.C.

/s/ Sean A. Brady

Sean A. Brady

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 September 29, 2014, I sent an email 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. Mr. DeJute responded that his office has no objection to continuing the current stay.

3. On September 29, 2014, I sent an email 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 that his office has no objection to continuing the current stay.

4. Appellant previously requested to stay appellate proceedings pending *Chovan* on May 2, 2014. On May 6, 2014. The court granted Appellant's request to stay appellate proceedings pending the filing of the petition for writ of certiorari in *Chovan*, staying the proceedings for 180 days until November 3, 2014.


Appellant's Opening Brief is presently due on November 3, 2014.

5. On June 26, 2014, a petition for review in *Chovan* was made to the United States Supreme Court. On October 6, 2014, that petition was denied.

6. Oral argument in *Enos v. Holder*, No. 12-15498, are scheduled to take place on October 9, 2014, at 9:00 A.M.

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

Executed October 7, 2014, in Long Beach California.


Sean A. Brady
Declarant

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 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: October 7, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for Plaintiffs-Appellants