

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 for a stay pending resolution of the petition for en banc review to be filed in *Enos v. Holder*, No. 12-15498.

Appellant Baker requested to stay appellate proceedings on May 2, 2014, pending the filing of the petition for writ of certiorari in *Chovan v. United States*, No. 11-50107. Decl. Sean A. Brady Supp. Mot. Stay Appellate Proceedings (“Brady Decl.”) ¶ 4. On May 6, 2014, the Court granted Appellant Baker’s request, staying the proceedings for 180 days until November 3, 2014. *Id.*

On October 7, 2014, Appellant Baker again requested a stay of this case, pending this Court’s disposition of *Enos*. Brady Decl. ¶ 5. The Court granted, in part, Appellant Baker’s request, staying proceedings until January 2, 2015. *Id.* In granting Appellant Baker’s stay, the Court stated that Appellant Baker must either “file the opening brief or file an appropriate motion addressing the status of [*Enos*] and requesting continuance of the stay or other relief.” Order, Oct. 10, 2014.

On October 16, 2014, a panel of this Court issued a memorandum disposition of *Enos*. Thereafter, the *Enos* parties filed a motion/stipulation requesting a 15-day extension to file a petition for en banc review, signifying to

the Court appellants' intention to file a petition. Motion/Stipulation of the Parties: Request of Extension of Time to File Petition for En Banc Review, *Enos v. Holder*, No. 12-15498, ECF No. 38. The Court granted the motion and the *Enos* appellants' en banc petition is now due on December 15, 2014. Order, *Enos v. Holder*, No. 12-15498 (Oct. 10, 2014), ECF No. 39. Amicus briefs in support of review are due on or before December 26, 2014.

Appellant Baker here respectfully requests the Court continue the stay until the Court denies the *Enos* petition for review or, if the Court accepts review, until the en banc panel issues its ruling. In the alternative, Appellant Baker respectfully requests a stay of the proceedings for 180 days.

II. POSITIONS OF COUNSEL

Counsel for both Appellees have informed Appellant Baker's counsel that they do not oppose this motion. Brady Decl. ¶¶ 2-3.

III. THE COURT SHOULD STAY THIS PROCEEDING PENDING RESOLUTION OF THE PETITION FOR EN BANC REVIEW IN *ENOS*

A. The Court Has the Authority to Stay a Case for a Reasonable Period Pending the Outcome of Another Case to Avoid Hardship

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 Baker respectfully submits that all necessary preconditions continue to exist for a reasonable stay to remain in effect in this matter. The *Enos* decision is not yet final, and moving forward before it is will waste the resources of both parties and the Court.

Again, *Enos*, whatever its ultimate outcome, will direct the outcome of this appeal for both cases involve substantially similar questions regarding the constitutionality of permanently restricting an individual’s fundamental Second Amendment rights based on a misdemeanor domestic violence conviction occurring many years ago. And both cases address the Second Amendment claim

that 18 U.S.C.A § 922(g) is unconstitutional as applied to individuals who have had their misdemeanor crime of domestic violence convictions erased under state law for all purposes but firearm possession.

If the *Baker* parties commence briefing prior to a final decision in *Enos*, such briefing will become obsolete if *Enos* is accepted and, ultimately, reversed. This will require supplemental briefing to ensure the application of the proper legal standards. By further staying proceedings, this Court will substantially save the parties' and the Court's time, effort, and resources.

Moreover, if this case proceeds forward before *Enos* is final, relying on the legal standards set forth therein, and results in an unfavorable decision, the dismissal of Appellant Baker's claims will become final. And so, even if *Enos* is ultimately accepted for review and then overruled, Appellant Baker will be left with no recourse.

For these reasons, Appellant Baker reasonably seeks to stay this appeal only until the *Enos* decision is final—i.e., until the Court denies the *Enos* petition for review or, if the Court accepts review, until the en banc panel issues its ruling—or, alternatively, for 180 days.

B. No Identifiable Prejudice Will Result From the Court Issuing a Stay in This Case

A further stay of the proceedings will not cause any undue delay that would prejudice the parties. By not opposing this motion, Appellees tacitly agree. Instead, a stay pending the resolution of the anticipated *Enos* petition for en banc review will preserve valuable resources for both the parties and the Court as described above.

C. 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*, and in this case pending oral argument and disposition of *Enos*. Additionally, the Court has stayed several other Second Amendment cases to see if a then-pending en banc decision in *Nordyke v. King*, 681 F.3d 1041, would provide legal guidance, affecting the outcome of those cases. *See, e.g.*, *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

Based upon the foregoing, in the interests of justice, fairness, and judicial economy, Appellant Baker respectfully requests the Court issue an order continuing the stay on all proceedings in this case pending final resolution of the petition for en banc review in *Enos v. Holder* or for 180 days.

Date: November 13, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel

C.D. Michel

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 or about November 7, 2014, I sent an e-mail to Mr. David A. DeJute, counsel of record for Defendant-Appellee the United States Attorney General, asking whether his client would oppose Appellant's motion to stay this matter. On or about November 12, 2014, Mr. DeJute responded via e-mail, confirming that his office has no objection to continuing the current stay.


3. On or about November 7, 2014, I sent an e-mail to Mr. Anthony R. Hakl, counsel of record for Defendants-Appellees the California Attorney General and the State of California Department of Justice, asking whether his clients would oppose Appellant's motion to stay this matter. On or about November 12, 2014, Mr. Hakl responded via email, confirming that his office has no objection to continuing the current stay.

4. Appellant Baker requested to stay appellate proceedings on May 2, 2014, pending the filing of the petition for writ of certiorari in *Chovan v. United States*, No. 11-50107. On May 6, 2014, the Court granted Appellant Baker's request, staying the proceedings for 180 days until November 3, 2014.

5. On October 7, 2014, Appellant Baker again requested a stay of this case, pending this Court's disposition of *Enos*. The Court granted, in part, Appellant Baker's request, staying proceedings until January 2, 2015.

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

Executed November 13, 2014, in Long Beach California.



Sean A. Brady
Declarant

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 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: November 13, 2014

MICHEL & ASSOCIATES, P.C.

/s/ Sean A. Brady

Sean A. Brady

Attorney for Plaintiff-Appellant