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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA

13 Plaintiff(s),

14 v.

15 CLIVEN D. BUNDY

16 Defendant.

17 Case No.:
18 2:16-CR-00046-GMN-PAL-1

19 **MOTION TO EXTEND TIME FOR FILING OF THE NOTICE OF APPEAL**

20 FRCP 4(b) states that in a criminal case, defendant’s notice of appeal must be filed in the
21 District Court within 14 days after the . . . (i) the entry of either the judgment or the order being
22 appealed FRCP 4(b)(4) states that “upon a finding of excusable neglect or good cause, the
23 District Court may – before or after the time has expired with or without notice and motion – extend
24 the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time
25 otherwise prescribed by this Rule 4(b). The 14 days in which to appeal set forth in FRCP 4(b)(1)
26 would have expired on June 8, 2016. Therefore, this Motion for Extension of Time is timely, since
27 it is filed within 30 days after June 8, 2016.
28

1 The excusable neglect which occurred in this matter is that the Defendant filed his Notice of
2 Appeal of the Order of Detention (DK 452) dated May 31, 2016 on June 16, 2016. See Order
3 attached as Exhibit A.

4 However, due to a miscommunication in the office of Mr. Hansen, it was understood that
5 this Notice of Appeal applied not only to the appeal of the detention order but also to the appeal
6 from Judge Navarro's Order denying Defendant's Motion to Disqualify. That Order was entered on
7 May 24, 2016. Because the two hearings, that is the hearing on the detention of the Defendant and
8 the hearing on the Motion to Disqualify Judge Navarro were held on the same day, that is on May
9 10, 2016, the confusion arose that the appeal from both the denial of the detention motion and the
10 denial of the motion for recusal were taken care of in one notice of appeal. That was simply a
11 mistake on the part of counsel, and it is understandable that the two matters would be conflated
12 given their overlapping hearings and directions from this court.
13

14 Wherefore, it is respectfully requested that this court extend the time for the filing of the
15 Notice of Appeal of the Judge's Order of May 24, 2016, Document 446 until July 8, 2016.
16

17 Dated: July 1, 2016

COOPER LEVENSON, P.A.

18 /s/ Joel F. Hansen, Esq.
19 **JOEL F. HANSEN, ESQ.**
20 Nevada Bar No. 1876
Attorney for Defendant

21 **CERTIFICATE OF SERVICE**

22 The undersigned hereby certifies that service of the above entitled MOTION TO EXTEND
23 TIME FOR FILING NOTICE OF APPEAL was made this 17th day of June, 2016 by using the
24 CM/ECF system, which will send a notice of electronic filing to opposing
Counsel registered on CM/ECF.

25 /s/ Joel F. Hansen
26 Joel F. Hansen, Esq.
27
28

EXHIBIT A

EXHIBIT A

EXHIBIT A

#563

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FILED

UNITED STATES COURT OF APPEALS

JUN 17 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>CLIVEN D. BUNDY, AKA Cliven Bundy,</p> <p>Defendant - Appellant.</p>

No. 16-10264

D.C. No. 2:16-cr-00046-GMN-PAL-1
District of Nevada,
Las Vegas

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

On June 16, 2016, appellant filed a notice of appeal expressing his intent to appeal from the district court’s order entered on May 25, 2016. Because the notice of appeal was filed more than 14 days after May 25, 2016, and also more than 14 days after the district court’s “Detention Order Pending Trial,” which was entered on June 1, 2016, the notice of appeal was not timely under Federal Rule of Appellate Procedure 4(b)(1)(A). The notice of appeal was, however, filed within 30 days after the expiration of the time to file the notice of appeal. *See Fed. R. App. P. 4(b)(4).*

Accordingly, this case is remanded to the district court for the limited purpose of permitting the district court to provide appellant notice and an opportunity to request that the time for filing the notice of appeal be extended, for a period not to exceed 30 days from the expiration of the time prescribed by Rule 4(b), upon a finding of excusable neglect or good cause. *See* Fed. R. App. P. 4(b)(4); *United States v. Ono*, 72 F.3d 101, 103 (9th Cir. 1995) (order); *United States v. Ajimura*, 598 F.2d 510 (9th Cir. 1979); *United States v. Stolarz*, 547 F.2d 108 (9th Cir. 1976).

The district court is requested to make this determination at its earliest convenience and to send to this court a copy of its order setting forth the basis for its determination. In addition, the district court is requested to serve its order on the parties.

The proceedings in this court are held in abeyance pending the district court's determination.

The Clerk shall serve this order on the district judge.