

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 15 2018

JEFFREY P. COLWELL
CLERK

PAUL W. BERGRIN, AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff, Petitioner(s),

v.

Civil Action No.:

UNITED STATES DEPARTMENT OF JUSTICE,
(JEFFREY SESSIONS, UNITED STATES ATTORNEY
GENERAL), UNITED STATES FEDERAL BUREAU OF
PRISONS, MARK INCH, DIRECTOR, JOHN AND JANE
DOES, ET AL.,

Defendants, Respondent(s).

MOTION FOR DECLARATORY JUDGMENT

BACKGROUND - FACTS

Plaintiff is an incarcerated inmate at the United States Penitentiary, Administrative Maximum (hereinafter ADX), Florence, Colorado since November 1, 2016; and an prisoner of the Federal Bureau of Prisons, since his detention in accord with 18 U.S.C. § 3142 on May 20, 2009.

Plaintiff is a retired United States Army Major, having served 35.6 years in the United States Army, honorably and impeccably. His career included being honor graduate of the United States Army's Command and General Staff College, having received a full scholarship

to an Ivy League Law School and graduating in the top 1% of his class with a Juris Doctorate Degree; having served as an homicide prosecutor and Assistant United States Attorney, in New Jersey; being lead counsel in the Iraq war trials at Abu Ghraib, the murders at Objective Iron Triangle and the Leon Parker, Tank Commander homicide. He also completed six tours of duty in Iraq and Afghanistan and is a decorated and proud soldier and civilian defense counsel; having represented the Federal and State Police Union's and Law Enforcement Officers nationally.

Plaintiff was designated to the ADX only subsequent to his filing of a Writ of Habeas Corpus, pursuant to 28 U.S.C. 2255, wherein he accused federal prosecutors of significant prosecutorial misconduct and criminality. Moreover, only subsequent to his counsel's filing of a motion in accord with Rule 33, Federal Rules of Procedure, which also exposed and delineated (with evidential proofs) prosecutorial misconduct and crimes. Both of which are pending in The District of New Jersey.

Prior to Plaintiff's designation to the ADX he was provided with documentation depicting Special Administrative Measures (SAM), which he vigorously objected to but, essentially never had a meaningful opportunity to contest and litigate the underlying basis. Despite this enigmatic guarantee, Plaintiff vociferously objected to both the SAM

and his designation to the ADX.

On or about August 29, 2017, Plaintiff's SAM was renewed with minor modifications. Both the original SAM, dated August 12, 2016 and the modified renewal were devoid of any (emphasis added) restrictions pertaining and relevant to inmate funds being sent by any individuals not specifically delineated in the SAM. As a matter of fact (emphasis added), from institution of the SAM on August 12, 2016, to on or about November, 2017 (emphasis added), there ~~were~~ NO restrictions nor prohibitions against such contributions and Plaintiff received unencumbered funds from a third party friend.

The new SAM restrictions were placed on SAM inmates at the capricious whim of someone in the Justice Department, devoid of any rational nor logical reason. As this Court is cognizant, all funds sent to an inmates account originate by the Sender, transmitting a check or electronic transaction to Western Union, who then sends it to the designated inmate institution, who then transmits it to the Trust Fund for crediting in the inmate account.

Most importantly, as a SAM inmate all correspondence received by or sent from an inmate is capriciously scrutinized by both an Special Investigative Service (SIS) Correctional Officer of the BOP and (emphasis added), a US DOJ federal agent. Additionally,

all telephone communications which are strictly restricted are meticulously scrutinized through contemporaneous monitoring.

Henceforth, there is absolutely no opportunity for a SAM inmate to engage in improper communications in derogation of the SAM or non-compliance with its administrative intent: to limit contacts which endanger the community, society and national interests. There exists no reasonable or logical justification for funds being held and not credited to inmates.

As this Court is wholly cognizant, in order to file a civil action (Complaint), with this Honorable Court-jurisdiction it costs filing and administrative fees of \$400.00.

Consequently, Plaintiff who has approximately \$470. being wrongfully and violatively held would suffer immeasurable prejudice if compelled to file a civil complaint. In reality it would be cost ineffective and prohibitive. He would continue to have funds wrongfully withheld and be stymied by inequitable conditions; while suffering substantial administrative, procedural and substantive constitutional violations.

Equitable interests and the manifest protection of rights and justice implores this Court to act on this meritorious cause of action.

Plaintiff has spent his life defending our Constitution, its principles

citizens of this great nation on both the battlefield and in the courtroom. To arbitrarily and capriciously withhold his legal funds results in a manifest denial of justice and equity.

Plaintiff has exhausted his BOP administrative remedies through the administrative remedies process, although it is a fruitless and rubber stamp procedure at this institution and beyond. Plaintiff has been unable to resolve this issue, although there was never notification nor any process to contest the seizure and withholding of funds; nor was any determination ever made that the sending of funds from an individual not specifically named in the SAM as a contact is nefarious, in contravention of the SAM or even a communication. Moreover, the funds continue to be wrongfully held and the Sender's money converted to essentially an unconstitutional seizure. All without any meaningful recourse nor credible justification.

WHEREFORE, Plaintiff respectfully seeks DECLARATORY JUDGMENT from This Honorable Court adjudging as follows:

(a). That the electronic or sending of funds through Western Union by a Sender is not a communication with an imak, as prescribed and restricted by a SAM;

(b). That third parties have the unfettered right to send funds, either electronically or through the United States Mail, to an imak, even

and although they are not specifically delineated as an approved contact on the inmate's SAM;

(c). That the inmate must be formally notified of any modifications to his SAM which permits the seizure or withholding of any funds and procedural due process to object to such action;

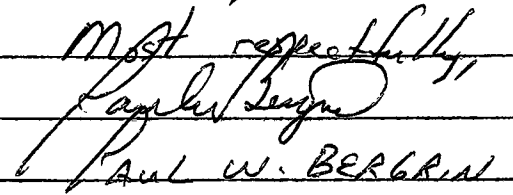
(d). That withholding funds to be deposited in an inmate's account is tantamount to a change of substance in a SAM and prohibited, unless specifically and formally delineated by the Attorney General of the United States;

(e). That the DOJ and BOP cease and desist from withholding inmate funds that were sent by a third party not specifically named in a SAM; unless the DOJ or BOP can prove, show or evince that the funds were being sent by someone with criminal intent or that the funds were illicitly obtained.

(f). That due to the manifest deprivation of fundamental Due Process rights and the extraordinary burden placed upon the inmate of with-held-ceased-converted funds, that this matter proceed as a Declaratory Judgment and not a civil action mandating a Civil Complaint. For instance: The ADX Warden contravenes and

7

our Due Process rights by failing to memorialize his rationalization for holding our funds in contravention of FLM 4500.09 (5) A, U. A.

Most respectfully,

PAUL W. BERGMAN

Dated: 4 Mar 18.

Enclosures A - Proof of the exhaustion of Administrative Remedies.

B. Institution Supplement, FLM 4500.09 (5) A.



Name: Paul Bergin
Reg No: 16235050
U.S. Penitentiary MAX
P.O. Box 8500
Florence, CO. 81226-8500

01m-18-016-022-0

Honorable Judge Gordon P. Gallagher
United States Magistrate
District of Colorado
Alfred A. Array Courthouse
901-19th Street, Room A105
Denver, Colorado 80294-3589

Approximate Maximum
Dimensions
10 1/2" x 16 1/2" x 5 1/2"
This card was processed through special
mailing procedures for forwarding to you. The letter
has been opened and inspected. If the writer
has indicated a problem over which this facility
for facility information, you may wish to return the material
enclosed correspondence for clarification. If the writer
addressed, please return the enclosure to another
address.

MAR 12 2018

4 March 2018

Honorable Judge Gordon P. Gallagher
United States Magistrate
District of Colorado
Alfred A. Arvaj Courthouse
901-19th Street, Room A105
Denver, Colorado 80294-3589

Re: Bergin v. United States, et Al.

Dear Honorable Judge Gallagher:

Please accept this hand-written motion seeking Declaratory Judgment in lieu of a more formal response.

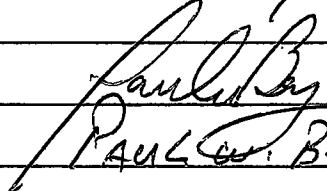
This institution is devoid of any ink type-writers, word-processors and even meaningful access to a law library. Henceforth, I most respectfully This Honorable Court to forgive the hand-written nature of the motion, any minor grammatical or syntax errors and implore its consideration with the same sincerity-genuineness to which it was written.

Moreover, I have expounded why I seek Declaratory Judgment as compared to filing a Civil Complaint and pray you accept my recourse; considering the trampling of fundamental Constitutional

Due Process rights, equitable considerations and the tenets of fairness.

Thank you whole-heartedly.

Most respectfully,


PAUL W. BERGIN

P.S. I have filed this cause of action directly with you as it contains similar deprivations and issues as case number 1:18-cv-00386 (GPG).

Most importantly: The ADX warden eviscerates the Due Process rights of inmates because he fully comprehends the cost ineffectiveness and unduly harsh fiscal burdens of filing a Civil Complaint. For instance, FLM 4500.09(5) A, 111. A, mandates that before an inmates account can be encumbered the Warden MUST (emphasis added) sign a memorandum indicating and approving such action. This never occurs. It is in contravention of principled rights and this Court must protect our Constitutional and Statutory rights.

PAUL BERGRIN, 16235-050
FLORENCE ADMAX USP UNT: H QTR: H02-204L
PO BOX 8500
FLORENCE, CO 81226

15101

RECEIVED

FEB 13 2018

ADX Warden's Office

A

Administrative Remedy No. 919276-A1
Part B - Response


This is in response to your Central Office Administrative Remedy Appeal where you claim staff at the ADX is improperly holding money sent to your inmate account. You contend receiving money through Western Union to your inmate account is devoid of communication with the sender, which you argue is the essence of your Special Administrative Measures (SAM). You claim holding this money is unjust, devoid of any rationale and violates due process. You request this matter be addressed and your funds released.

The Warden and Regional Director adequately addressed the issues raised in your complaint and we concur with the responses provided. You were advised why the funds recently sent to your inmate account via the LockBox were encumbered at that time. You are not entitled to a hearing for this action which is permitted pursuant to Program Statement 4500.11, Trust Fund/Deposit Fund Manual. You have also been advised staff are attempting to verify if the sender is an authorized correspondent. While you disagree with this action, institution staff have an obligation to take appropriate measures when ensuring the safety and security of the institution as well as the public. We find staff has exercised sound correctional judgment regarding this matter.

You may follow-up with the Trust Fund Supervisor for further action/disposition of your encumbered funds.

This response is provided for informational purposes.

11/25/18
Date


Ian Connors, Administrator
National Inmate Appeals *LME*

U.S. Department of Justice

Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: BERGRIN PAUL W 16235050 HA ADX
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL

I was placed on SAM and transferred to the ADX to strictly scrutinize communications and to ensure that there are no improper contacts; which could cause victimization to others. The SAM meticulously delineates who I am permitted to contact and communicate with, by mail and telephone; the ONLY means available to communicate. Sending funds evinces communication.

Due Process demands that if the government intends to increase my administrative restrictions, such as who can deposit money through Western Union, to the Trust Fund at ADX and to my account, then there must be strict scrutiny and a hearing to ensure it was not arbitrary and capricious. Every letter I send or call I make is contemporaneously monitored + scrutinized. Sending funds electronically to Western Union avoids ANY CONTACT WITH THE INMATE. It is devoid of any communication. To place this restriction on me subsequent to almost a year on SAMs is unjust, unjustified and devoid of any rationale; especially with the scrutiny up and under.

12-12-17

DATE

SIGNATURE OF REQUESTER

Part B - RESPONSE

RECEIVED

DEC 26 2017

Administrative Remedy Section
Federal Bureau of Prisons

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 919276-A1

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL



PRINTED ON RECYCLED PAPER

BP-231(13)
JUNE 2002



U. S. Department of Justice

Federal Bureau of Prisons

United States Penitentiary, Administrative Maximum

Florence, Colorado

INSTITUTION SUPPLEMENT

OPI: Trust Fund
NUMBER: FLM 4500.09(5)A
DATE: March 4, 2014

Inmate Accounts

/s/

Approved: D. Berkebile, Warden
ADX Florence

- I. PURPOSE AND SCOPE: To establish procedures concerning funds in inmate Trust Fund accounts.
- II. DIRECTIVES AFFECTED:
 - A. Directives Rescinded: Institution Supplement FLM 4500.08(5)A, Inmate Accounts,

B

dated October 26, 2012.

- B. **Directives Referenced:** Program Statement 4500.09, Trust Fund/Deposit Fund Manual, dated January 13, 2014.
- C. **Standards Referenced:** None

III. **PROCEDURES:**

- A. **Encumbrance/Administrative Hold of Inmate Funds:** Encumbrance of inmate funds, to include placing an inmate account on Administrative Hold status, is an act of placing a hold on inmate funds, thus not allowing use of the funds by the inmate. Encumbrance of inmate funds may be necessary for various reasons, e.g., to ensure inmates do not seriously deplete their funds prior to release, disciplinary measures, inmate's request, claims, etc. Administrative Held Funds are funds from outside sources which are placed on hold for a specific inmate due to investigation or suspicious conduct. If it is determined that funds are to be placed on Administrative Hold, all subsequent income received from outside sources will be placed on Administrative Hold until the hold is removed.

All encumbrances and/or Administrative Holds are at the Warden's discretion, or the result of a Disciplinary Hearing Sanction. Funds the Warden encumbers may only be released upon his/her approval or upon inmate release. This authority shall not be delegated below the Associate Wardens.

A memorandum signed by the Warden shall be prepared indicating the amount of funds to be encumbered, or whether to place an inmate account on Administrative Hold status. The memo will include a detailed reason for the encumbrance and/or Administrative Hold. If the funds to be encumbered are a result of a Discipline Hearing Sanction, the signed Discipline Hearing Officer (DHO) sanction will replace the memorandum. The original memorandum shall be forwarded to the Trust Fund Specialist who shall properly establish the encumbrance.

- B. **Withdrawals:** Request for Withdrawal of Inmate Personal Funds, (BP-199.045), must be completed legibly in ink, or typewritten, and signed by the inmate in the presence of Unit Management staff and hand-delivered by the staff member to the appropriate approving official who will sign the form and hand-deliver it to the Trust Fund Specialist responsible for processing.

C. Approving Officials: The following employees are designated as Approving Officials for withdrawal of inmate funds:

1. Unit Managers and Supervisors of Education: BP-199.045 for amounts up to \$500.00.
2. Associate Warden, Superintendent of Industries, and Camp Administrator: BP-199.045 for amounts in excess of \$500.00. A completed copy of Attachment 1 will accompany all BP-199.045 forms submitted to the Associate Warden for approval.
3. Chaplain: BP-200(45) for the purchase of religious articles.
4. Captain: For security reasons, all BP-200(45)'s must be approved by the Captain prior to being hand-carried to Trust Fund.

D. Inmate Savings Accounts: An inmate desiring to establish a savings account in a local bank will make the request via Inmate Request to Staff Member submitted to his Case Manager. The inmate will also submit to his Case Manager a letter to the bank conveying his request. The Case Manager will forward the letter to the bank with a cover letter (Attachment 2) stating the conditions under which the account may be established. Passbooks and certificates will be maintained in the inmate's Central File.

Restrictions:

1. Accounts must be in the inmate's name with himself as a single signer on the account. Joint accounts are not permitted.
2. Deposits must be limited to U.S. Treasury checks.
3. Withdrawals prior to the inmate's release from confinement are not permitted. Exceptions to this restriction may be authorized by the Warden in writing to the bank for each approved exception.
4. Transfers from the account are not permitted.
5. The bank will be notified by the Warden, in writing, of the release of an inmate with an account at the bank.
6. Inmates are permitted to receive statements from the bank.

E. Subscriptions: Inmates may subscribe to newspapers at their own expense by submitting to their unit team a BP-199.045 with a letter or completed newspaper subscription form requesting the subscription be established. A stamped

envelope addressed to the newspaper must be submitted with the BP-199.045. These items will then be hand-carried to the Trust Fund Specialist.

A Treasury check will be drawn made payable to the publisher listed on the BP-199.045, and the institution will be the mailing address for the U.S. Treasury check. The check and enclosures will be forwarded by the Trust Fund Specialist to the publisher in the envelope provided by the inmate. The newspaper will be delivered via U.S. Mail only.

- F. **Copier and Postage Costs for Legal Material:** A BP-199.045 must be signed by the inmate for payment of copier charges and postage costs of legal material. The BP-199.045 will be for the amount in excess of any cost provided by the institution. The BP-199.045 must reflect "ADX Florence" as the Payee even though the funds collected for these purposes are deposited to the U.S. Treasury and not retained at the institution. If the inmate lacks sufficient funds in his account to allow the BP-199.045 to be processed, a debt will be set up in TRUFACS and the debt will be collected automatically by the TRUFACS system when the inmate has sufficient funds on account. Ordinarily, 100% of incoming funds are encumbered for these debts.

- G. **Confiscated Funds:** The Warden, or authorized representative, provides in writing a determination as to whether the funds are considered confiscated funds or credited to the inmate's account. Confiscated funds are deposited immediately to Miscellaneous Receipts Account. A memorandum (Attachment 3) will be forwarded to Trust Fund notifying them of the disposition of funds either in Miscellaneous Receipts Account, or deposit to the inmates account.

- H. **Account Inquiries:** Periodic statements of inmate personal accounts will not be provided to inmates. Inmates who have specific questions concerning their personal funds should submit an Inmate Request to Staff Member (Cop-Out) to the Trust Fund Specialist in the Trust Fund office. The request should be as detailed as possible to enable the responding staff member to provide a complete response. If, in the determination of the responding staff member, the inquiry may best be addressed by providing a printout of the inmate's personal account, the report may be provided to the inmate. This should be only in very rare exceptions.

- I. **Requests for "Pauper" Statements:** When an inmate intends to claim pauper status in conjunction with legal proceedings, the inmate will submit the appropriate form to his Counselor, who will verify the inmate's personal funds balance. The Counselor will make the necessary entries on the form and return it to the inmate.

DISTRIBUTION:

Directives Libraries
All Department Heads

Associate Wardens
AFGE

BP-199 CHECK SHEET (ATTACH TO BP-199)

INMATE NAME: _____ REG. NO.: _____ UNIT: _____

1. Is this person a relative?

2. Is this person on the visiting list?

YES _____ NO _____

3. Is this person named in the PSI?

YES _____ NO _____ If so, where and why?

4. Has money been sent to this person before?

YES _____ NO _____

5. If this person is not a relative, does the inmate have an FRP obligation?

YES _____ NO _____

6. Is he current on his FRP obligations?

YES _____ NO _____

7. Has the SIS expressed an interest in this inmates' status, FRP or otherwise?

YES _____ NO _____

8. Other information, if any,. (Justification - Who, Why, Relationship of person.)

CC: CENTRAL FILE
SECTION SIX

(Date)

(Bank Name)
Street Address
(City, State, Zip)

Dear Sir:

Mr. _____, an inmate at this institution, has requested permission to open a savings account with your bank. Inmates are encouraged to establish savings within the community, however, there are certain restrictions which are necessary.

1. Accounts must be in the inmate's own name with themselves as a single signer on the account. Joint accounts are not permitted.
2. Deposits must be limited to U.S. Treasury checks only. No other type of deposit is permitted.
3. Withdrawals prior to the inmate's release from confinement are not permitted. Exceptions to this restriction may be authorized only by the Warden, in writing, to the bank for each exception.
4. Transfers from the account are not permitted.
5. The bank will be notified by the Warden, in writing, of the release on an inmate with an account at the bank.

Would you please complete the bottom portion of this letter and return it to the undersigned at the address shown above. Questions concerning this inmate's saving account may be directed to (Unit letter) Unit Manager.

Sincerely,

Warden

This bank (will) (will not) accept this account under these restrictions.

(Signature, Name & Title)



**U.S. Department of Justice
Federal Bureau of Prisons**

*United States Penitentiary -
Administrative Maximum*

Florence, CO 81226

Date

MEMORANDUM FOR: TRUST FUND SUPERVISOR

FROM: _____, Captain

SUBJECT: **Disposition of Confiscated Funds**

The enclosed funds, \$_____, were discovered on ____ (date) _____. Disposition of the funds should be made as follows:

- ____ 1. Ownership cannot be determined. The funds should be deposited to the "Miscellaneous Receipts" Account 151060.
- ____ 2. The funds have been identified as belonging to inmate _____, Register Number _____, and should be deposited to his personal Trust Fund Account.
- ____ 3. A final determination of disposition of the funds has not yet been made. Please deposit the funds to the Miscellaneous Receipts Account, 151060 pending final disposition. You will be provided written instructions once disposition is determined.
- ____ 4. A determination of the final disposition of the \$_____ provided to you on _____ has been made. The funds are to be:
 - ____ A. Confiscated and remain in "Miscellaneous Receipts" account. (151060)
 - ____ B. Transferred to the Personal Funds account of inmate _____, Reg. No. _____.

(Captain's Signature)

(Date)



**U.S. Department of Justice
Federal Bureau of Prisons**

*United State Penitentiary –
Administrative Maximum*

Florence, CO 81226

DATE:

MEMORANDUM FOR: TRUST FUND SUPERVISOR

FROM:

SUBJECT: **Disposition of Confiscated Funds**

TO BE COMPLETED BY REPORTING STAFF:

_____ Funds were found in a common area of the institution in the amount of \$ _____.
No ownership can be established.

_____ Inmate _____ Reg. # _____ was found to be in
possession of unauthorized funds in the amount of \$ _____.

TO BE COMPLETED BY FINANCIAL MANAGEMENT STAFF:

_____ Ownership Unknown - Funds deposited to the Miscellaneous Receipts account (151060).
A receipt and applicable back-up have been placed in the log.

_____ Funds found in the possession of an inmate have been deposited to the Miscellaneous
Receipts account (151060), pending disposition. A receipt and applicable back-up have
been placed in the log.

DISPOSITION – For funds found in the possession of an inmate

_____ Funds are to remain in the Miscellaneous Receipts account (151060).

_____ Funds are to be credited to the inmate's account via TRUFACS, using income type
"Confiscated Funds Return."