



Lawrence S. Lustberg
Director

Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
llustberg@gibbonslaw.com

June 28, 2021

By ECF

Honorable Madeline Cox Arleo
United States District Judge
Martin Luther King Jr.
Federal Building & United States Courthouse
50 Walnut Street P.O. Box 999
Newark, New Jersey 07101-0999

Re: Bergrin v. United States, Civ. Action No. 16-3040

Dear Judge Arleo:

Please accept this letter in lieu of a more formal request for a second extension of time within which to file Petitioner's brief in support of motion (or amended motion) to vacate sentence. As Your Honor is aware, this Court appointed the undersigned counsel to represent Petitioner in this matter pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, and directed us to file a brief in support of Petitioner's motion to vacate sentence (or, to the extent counsel deems it necessary, an amended motion to vacate sentence) within 90 days of the Order. This Court then granted our request for an extension to June 24 (ECF No. 73), but we now respectfully request a further extension, *nunc pro tunc*, of 60 days to complete the brief or amended motion, an extension which is necessary, at least in part, because we are fully engaged at the moment in filing Mr. Bergrin's reply brief in his appeal to the United States Court of Appeals for the Third Circuit from the denial of his motion for a new trial under Federal Rule of Criminal Procedure 33, briefing which we have only just begun because the Government, after a number of extensions (to which we consented), filed its brief only a few days ago, on June 22, 2021.

As noted in our prior letter (ECF No. 72), this case involves voluminous briefing and the issues presented in this case are complex. Indeed, preparing Petitioner's submission is an enormous undertaking, including reviewing and incorporating thousands of pages of transcripts, *pro se* pleadings (themselves some 830 pages), and other discovery materials, and while counsel is certainly familiar with Petitioner's criminal case, including as a result of our appointment as standby counsel for Petitioner at trial and as counsel on appeal and for the motion seeking a new trial based upon newly discovered evidence (and the pending appeal in that matter), the review of the unique pleadings and issues presented by this civil action still require a great deal of time.

Further, the process of this review has been hampered by Mr. Bergrin's incarceration at the USP Florence ADMAX, the Federal Bureau of Prisons' highest security facility, where Mr. Bergrin is subject to Special Administrative Measures which limit our access to him; he does not, for example, have access to email, and, although the staff at the ADMAX is extremely helpful,

GIBBONS P.C.

June 28, 2021
Page 2

due to the constraints under which they operate, it is not always easy to set up legal calls with Mr. Bergrin, and in any event those calls are limited to an hour. Moreover, mail—disturbingly, even legal mail—is subject to review, and to the delays inherent in that review. For example, I aware that, as of today, Mr. Bergin has not yet received a copy of the Government’s brief in his pending appeal.

Finally, this season has been busy, and promises to continue to be; beyond the Third Circuit appeal discussed above, I have an oral argument tomorrow in the New Jersey Supreme Court, and numerous other matters, both before this and other courts, which have made it impossible to complete the work necessary for us to provide the effective assistance of counsel to which Mr. Bergrin is entitled on this submission, and which will allow us to provide submissions that will be most helpful to Your Honor.

We believe that an extension of 60 days will enable us to draft, finalize and file Mr. Bergrin’s submission. Accordingly, appointed counsel for Mr. Bergrin proposes that his submission be due on or before Friday, August 27, 2021. I have been in touch with Assistant U.S. Attorney Steven G. Sanders, who, on behalf of the Government, has graciously consented to this request. If this revised schedule is satisfactory to the Court, please so order it (we have provided a space below for the Court to do so). Of course, if Your Honor has any questions or concerns with regard to this matter, please do not hesitate to contact me. Thank you very much for your kind consideration of this request.

Respectfully Submitted,



Lawrence S. Lustberg

cc: Steven G. Sanders, Esq. (by ECF and email)

So ordered this ____ day of June, 2021

Hon. Madeline Cox Arleo, U.S.D.J.