



U.S. Department of Justice

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January 17, 2017

By ECF and Courthouse Mail

Hon. Jose L. Linares, U.S.D.J.
Martin Luther King Jr.
Federal Building & Courthouse
50 Walnut Street, P.O. Box 999
Newark, NJ 07101-0999

Re: *United States v. Bergrin*, No. 09-cr-369 (JLL)

Your Honor:

I write to propose one last extension of the briefing schedule for resolving defendant Paul Bergrin's Rule 33 motion.

Bergrin contends that various categories of supposedly newly discovered evidence warrant granting him a new trial. Responding to those claims has required the Government to review voluminous material, including wiretap recordings never introduced at Bergrin's trials but produced to him long before his first trial and thousands of pages of transcripts and pleadings. The Government remains committed to providing this Court with as complete and organized a response as possible to help this Court resolve the Rule 33 motion. Unfortunately, I still need more time to fulfil my part of that important task. I have busy revising the Government's draft response, which currently exceeds 90 pages, but in light of other pressing matters (including recent calls for oral argument in two high profile appellate matters that I am supervising), I still have more to do to ensure that the Government's response is as concise as possible.

Under the current scheduling order, the Government's response is due today, and Bergrin's reply is due Friday, March 10, 2017. I now believe that an extension of two weeks will allow me to finalize the Government's response. If this Court agrees, appointed counsel's deadline for filing Bergrin's reply should be extended as well. Accordingly, the Government proposes the following amended schedule for resolution of the Rule 33 motion:

1. The Government's memorandum of law in opposition to the Rule 33 motion shall be filed no later than Tuesday, January 31, 2017.
2. Bergrin's reply memorandum of law in further support of the Rule 33 motion shall be filed no later than Friday, March 24, 2017.
3. Upon completion of briefing, the Court will determine whether any hearing or argument on the Rule 33 motion is necessary.

This extended briefing schedule should ease the burden on this Court by enabling the Government to submit a more concise memorandum regarding the merits of the Rule 33 motion. And the 52-day time period for the reply should enable appointed counsel to review the reply with Bergrin before filing it. The Government, of course, would consent to more time than that, should appointed counsel need it.

Accordingly, the Government respectfully requests that its proposed amended briefing schedule for the Rule 33 motion be entered. I apologize to this Court, appointed counsel and Bergrin for any hardship that this extension might cause. Should anyone be faulted, the fault lies with me and me alone.

Respectfully submitted,

PAUL J. FISHMAN
UNITED STATES ATTORNEY



By: Mark E. Coyne
Assistant U.S. Attorney
Chief, Appeals Division

cc: Lawrence S. Lustberg, Esq. (by ECF)

So ordered this ____ day of
January, 2017

Hon. Jose L. Linares, U.S.D.J.