



U.S. Department of Justice

U.S. Attorney's Office – District of New Jersey

Appeals Division

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BY ECF

Hon. Madeline Cox Arleo, U.S.D.J.
U.S. District Court, D.N.J.
Martin Luther King Jr.
Federal Building & Courthouse
50 Walnut Street, P.O. Box 999
Newark, NJ 07101-0999

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

Dear Judge Arleo:

In a letter and certification filed today (ECF No. 63), defendant Paul Bergrin asks this Court to default the Government for its supposed failure to respond to a motion allegedly filed in July invoking *United States v. Davis*, 139 S. Ct. 2319 (2019). But the docket reflects no such *Davis*-based motion. And even if it did, that motion would be untenable for the same reasons explained in the Government's May 13, 2019 letter (ECF No. 60), *i.e.*, Bergrin was not convicted of or sentenced for any crime that uses the terms "violent felony" or "crime of violence." Thus, *Davis* and the decisions on which it relied (*Johnson* and *Dimaya*) have no bearing on Bergrin's convictions.

Bergrin also asks this Court to order an emergency deposition to preserve the testimony of Syed Rehman because it allegedly would support his claim of actual innocence on the drug convictions. The Government addressed the claims about Rehman in its principal opposition. *See* ECF No. 27 at 52–53 (using page numbers in the ECF legend at the top of the pleading). As the Government argued there, Rehman was available as a defense witness at trial but did not testify because Bergrin waited too long to subpoena him. No wonder the Third Circuit rejected Bergrin's complaint on direct appeal that Judge Cavanaugh abused his discretion by refusing to continue the trial to secure Rehman's testimony. And never mind that Rehman, at best, would have impeached the credibility of Abdul Williams, whose credibility Bergrin

attacked. Contrary to premise of Bergrin's pleading today, the drug counts hardly turned on Williams's testimony.

Beyond all of this, Rehman has been available since trial concluded in March 2013. Yet in the 6-plus years that have passed, Bergrin has failed to secure a sworn statement from him. Thus, the only thing supporting the emergent request for a Court-ordered deposition is Bergrin's unsworn proffer (which itself must be based on hearsay, as Bergrin has had no direct contact with Rehman). Thus, Bergrin's "request amounts to an entreaty to engage in a fishing expedition. The law is clear, however, that such speculative discovery requests should be rejected." *Williams v. Beard*, 637 F.3d 195, 210–11 (3d Cir. 2011); *see Murphy v. Johnson*, 205 F.3d 809, 814 (5th Cir. 2000) ("Simply put, Rule 6 does not authorize fishing expeditions."); *accord Charles v. Artuz*, 21 F. Supp. 2d 168, 169 (E.D.N.Y. 1998) (denying relief where Charles's "motion amounts to a 'fishing expedition' which he hopes will yield a document providing ground for a writ").*

Respectfully submitted,

CRAIG CARPENITO
United States Attorney

By: s/ STEVEN G. SANDERS
Assistant U.S. Attorney

cc: Paul W. Bergrin (by U.S. Mail)

* Bergrin's pleading also was filed in his criminal action, but *pro se* pleadings are not permitted under the terms of the Order Judge Linares filed in 2016. *See United States v. Bergrin*, Crim. No. 09–369, ECF No. 626 at ¶¶ 2–4.