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By ECF AND E-MAIL

Hon. Dennis M. Cavanaugh, U.S.D.J.
U.S. District Court, District of New Jersey
Post Office Building & Federal Courthouse, Room 451
Newark, New Jersey 07101-0999

Re: United States v. Bergrin, Crim. No. 09-369 (DMC)

Dear Judge Cavanaugh:

On July 24, 2013, this Court filed an opinion and order denying in all respects defendant Paul Bergrin's post-trial motions. ECF Nos. 555, 556. On August 8, 2013, Bergrin submitted what he styled as a *pro se* "motion for reconsideration." ECF No. 569. Bergrin argues that: (1) the Government misconducted itself by sponsoring false testimony from Anthony Young; (2) this Court should recuse itself because an objective observer could reasonably question this Court's impartiality; (3) the Government purposely delayed indicting Bergrin to gain an unfair tactical advantage; and (4) the Government impermissibly intercepted Bergrin's jailhouse communications. These claims are untimely and meritless.

I. Bergrin's Recusal Motion Is Both Untimely And Meritless.

Bergrin's recusal motion asserts that this Court's "impartiality might be reasonably questioned" given its "personal and professional relationships with parties accused of misconduct in this case." ECF No. 569 at 4.¹ This claim is both untimely and meritless.

Title 28 contains two sections governing recusal: § 144 and § 455. Section 144 provides that a district court judge should recuse if the party seeking recusal submits a

¹Although this is the second claim in Bergrin's motion, this Court should resolve it first as recusal would require this Court to refrain from taking further action in the case.

“timely and sufficient affidavit” illustrating that the judge has a personal bias or prejudice towards a party. Bergrin has not submitted an affidavit pursuant to § 144, and his motion is anything but “timely.” Section 455, on which Bergrin apparently relies, requires a Judge to recuse “in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). The decision whether to recuse lies within the discretion of the Judge. United States v. Wilensky, 757 F.2d 594, 599-600 (3d Cir. 1985). Further, a recusal motion must be based on “objective facts,” not mere “possibilities” and “unsubstantiated allegations.” United States v. Martorano, 866 F.2d 62, 68 (3d Cir. 1989).

A. The Recusal Motion Is Untimely.

Motions for recusal are untimely if a party is aware of the grounds supporting removal yet fails to act until the judge issues an adverse ruling. In re Kensington Int'l, Ltd., 368 F.3d 289, 314-15 (3d Cir. 2004). While § 455 does not contain an express timeliness requirement, one is read into the statute because “the judicial process can hardly tolerate the practice of a litigant with knowledge of the circumstances suggesting possible bias or prejudice holding back, while calling upon the court for hopefully favorable rulings, and then seeking recusal when they are not forthcoming.” Smith v. Danyo, 585 F.2d 83, 86 (3d Cir. 1978).

Here, Bergrin admits that “[t]he[] relationships” underlying his recusal motion “apparently were public knowledge.” But he claims that they were “unknown to Defendant until after trial.” ECF No. 569 at 5. There is ample reason to question the accuracy of this assertion. Bergrin brought his recusal motion only *after* an adverse jury verdict and *after* an adverse decision on his post-trial motions. “[T]hese considerations suggest that [Bergrin’s] motion is a desperate effort to overturn an adverse decision.” Martin v. Monumental Life Ins. Co., 240 F.3d 223, 236 (3d Cir. 2001). Bergrin “cannot be permitted to sit silently on recusal grounds and then to advance them only after [he has] lost the case.” Faulkner v. Nat'l Geographic Soc'y, 296 F. Supp. 2d 488, 490 (S.D.N.Y. 2003), aff'd, 409 F.3d 26, 41-43 (2d Cir. 2005); see United States v. Bravo Fernandez, 792 F. Supp. 2d 178, 183 (D.P.R. 2011) (denying motion as untimely recusal motion brought just prior to sentencing where “[t]he acts that give rise to defendant Martinez's belief of bias or prejudice occurred in 1993 and have been in the public record for eighteen years”); United States v. Sypher, Crim. No. 09-85, 2010 WL 5393849, at *2 (W.D. Ky. Dec. 22, 2010) (denying motion for recusal as untimely where defendant failed to “specifically indicate what previously unknown facts she learned, when she became aware of them, or why she waited until nearly two months after the end of her trial to bring them to light” where many of the facts had been “publicly available since the inception of her case”).

Further, the Certification of Louis Stephens, which Bergrin submitted in support of his pretrial motions one year ago, demonstrates Bergrin’s intimate knowledge of Roberts

and his personal and professional relationships. The Stephens Certification alleged that “Roberts is a former assistant prosecutor who was portrayed in the movie ‘American Gangster,’ a movie about Roberts’ successful prosecution of a large-scale drug dealer Frank Lucas who he then forged a closed friendship [with] after Lucas’ conviction,” and that “Roberts has close professional and/or personal relationships with agents and attorneys who work in the United States Attorney’s Office and is reported to have brought one or more of these colleagues to the American Gangster movie premiere.” Stephens Cert. ¶¶ 59-60. It strains credulity to contend that Bergrin knew about *those* “close professional and/or personal relationship[s],” but not the alleged relationship that he now claims requires recusal. See United States v. Brinkworth, 68 F.3d 633, 640 (2d Cir. 1995) (defendant’s “455(a) motion, conveniently filed soon after the district court refused to make a pre-plea commitment to sentencing, was untimely”).

Indeed, Bergrin maintained a law office in Essex County for over 17 years, and he was hired as an Essex County Assistant Prosecutor by Vincent Nuzzi 30 years ago. See Exhibits A and B. Further, it is the Government’s understanding that Roberts and Bergrin were close friends prior to Bergrin’s 2009 arrest. Thus, it is almost inconceivable that Bergrin—an Essex County insider himself—did not know of the alleged relationships that he now claims require recusal.

In sum, because Bergrin concedes that the public record contained all of the supposed “facts” on which he premises his recusal motion, he waived his right to relief under § 455(a) by waiting until the eve of sentencing to file his motion. See Jones v. Pittsburgh Nat. Corp., 899 F.2d 1350, 1356 (3rd Cir. 1990) (finding that a recusal motion filed after entry of an order dismissing complaint and imposing sanctions was not timely because “[a]ny other conclusion would permit a party to play fast and loose with the judicial process by ‘betting’ on the outcome”); see also United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986) (noting that “a motion for recusal filed weeks after the conclusion of trial is presumptively untimely absent a showing of good cause for its tardiness.”); Bravo-Fernandez, 792 F. Supp. 2d at 183.

B. The Recusal Motion Is Meritless.

In any event, Bergrin’s recusal motion fails on the merits. Section 455(a) requires a judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” The judge has discretion to determine whether a basis for recusal is present. In re Kensington Int’l. Ltd., 368 F.3d at 301 & n.12. Bergrin’s claim must be “evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance.” Liteky v. United States, 510 U.S. 540, 548 (1994).

Bergrin claims that a reasonable observer would question this Court’s impartiality because of its “personal and professional relationships” with attorneys Bergrin allegedly has accused of misconduct. Specifically, Bergrin notes that his pretrial motions accused

attorney Richard Roberts, Esq. of representing several cooperating witnesses and seeking to obtain “movie rights” from two such witnesses. Bergrin also claims that his pretrial motion and the trial testimony named three other attorneys: Vincent Nuzzi, Esq., John Azzarello, Esq., and Christopher Adams, Esq. Without so much as a single citation to the record, Bergrin claims that “the information provided to the Court specifically detailed how these attorneys . . . breached their professional obligations . . . and acted outside the bounds of the law.” ECF No. 569 at 4. Bergrin then sets forth what he considers to be the personal and professional relationship between this Court and these lawyers that require recusal under § 455(a). ECF No. 569 at 4-5. Bergrin’s motion fails for any or all of three reasons: (1) because the relationships between this Court and the four attorneys Bergrin names are insufficiently close; (2) because the attorneys at issue represent cooperators, not a party at the trial (*i.e.*, the United States or Bergrin); and (3) because Bergrin’s allegations of misconduct on the part of those attorneys do not call into question this Court’s ability to remain impartial.

1. A Close Personal Relationship Between A Judge And A Party Is Insufficient To Justify Recusal Under § 455(a).

Bergrin contends that this Court has a close personal relationship with four named attorneys. But even if true, that does not call into question this Court’s ability to remain impartial in this case. As Judge Frank Easterbook wrote nearly twenty years ago:

In today’s legal culture friendships among judges and lawyers are common. They are more than common; they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of legal decisions. Social interactions also make service on the bench, quite isolated as a rule, more tolerable to judges. Many well-qualified people would hesitate to become judges if they knew that wearing the robe meant either discharging one’s friends or risking disqualification in substantial numbers of cases. Many courts therefore have held that a judge need not disqualify himself just because a friend—even a close friend—appears as a lawyer.

United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985) (citations omitted); accord Marcavage v. Board of Trustees of Temple University, 232 F. App’x. 79, 83 (3d Cir. 2007) (not precedential) (“Common membership in a legal organization between a judge and counsel is not, by itself, enough to create a situation in which a judge’s impartiality might reasonably be questioned.”); Henderson v. Dep’t of Pub. Safety and Corr., 901 F.2d 1288, 1295-96 (5th Cir. 1990) (affirming a denial of a § 455(a) motion where the trial judge and opposing counsel knew each other for a long time and the judge had been a friend of the opposing counsel’s late father); Smith v. Manasquan Sav. Bank, Civil No. 12-85(JAP), 2012 WL 4339561, at *4 (D.N.J. Sept. 20, 2012) (Judge’s impartiality could

not reasonably be questioned simply because he attended the same law school as the state court judges who had presided over plaintiff's legal matters). So even if Bergrin's motion accurately recites the nature of the relationship, recusal would not be required.

At any rate, Bergrin's motion likely overstates the nature and extent of this Court's relationship with the four attorneys Bergrin identifies—something only this Court can say with certainty. Bergrin strings together otherwise innocuous facts (if fact they be), and then draws wholly unsupported conclusions, *i.e.*, an extraordinarily close personal relationship. E.g., ECF 569 at 5 (concluding that this Court has a close personal relationship with Roberts because Roberts considered Joseph Lordi as a second father and because Your Honor and Roberts attended the same law school from 1970 to 1972); *id.* (concluding that this Court has a close “intrapersonal relationship” with Joseph Hayden, Jr., because Your Honor served as a law clerk for Francis Hayden). Bergrin also asserts, incorrectly, that Your Honor was a partner in the firm that currently employs John Azzarello. But Azzarello is a partner in Arseneault, Whipple, Fassett & Azzarello, *not* Whipple, Ross and Hirsch. If Bergrin's allegations of an extraordinarily close personal relationship are false or exaggerated, then this Court should deny the recusal motion on that ground alone. See United States v. Olis, 571 F. Supp. 2d 777, 786-87 (S.D. Tex. 2008) (denying recusal motion under § 455(a) where the facts alleged did not establish an extraordinarily close personal relationship between Judge and prosecutor).

2. The Attorneys In Question Were Not Counsel Of Record To Any Party At The 2013 Trial.

Even if Bergrin accurately characterizes this Court's relationship with all four attorneys named in his motion (which is doubtful), *none* of those attorneys “appear[ed] as a lawyer” in this case. Murphy, 768 F.2d at 1537. In fact, Murphy shows the deficiency of Bergrin's motion. In that case, the lead prosecutor and the District Judge were long-time friends, and their families had preexisting plans to vacation together after the trial. The Seventh Circuit found that the Judge should have disclosed those plans and ensured that the defendants had no objection. Murphy, 768 F.2d at 1537-39. Here, in contrast, the attorneys Bergrin names—Roberts, Azzarello, Nuzzi, and Adams—represent cooperating witnesses, only one of whom (*i.e.*, Abdul Williams) actually testified at trial.² In other words, even if this Court would recuse itself under § 455(a) if one of those attorneys appeared as counsel for *a party*, that would not require it to do so just because one of those attorneys represents a cooperating witness.

² Roberts, to be sure, initially represented Rondre Kelly, but he ceased doing so because Kelly began to cooperate against Bergrin. Tr. at 3466-67. During trial, Abdul Williams discharged defense attorney Wanda Aken, Esq., and hired Roberts. But as the Government established one year ago, and again during trial, Williams proffered about Bergrin before meeting with or hiring Roberts. Tr. at 4361-62, 4440.

3. Specious Allegations Of Misconduct Do Not Require Recusal Under § 455(a).

Under the decisional law cited above, it takes much more than a close personal or professional relationship between a judge and an attorney to require recusal. The standard is “whether an astute observer ... would conclude that the relation between judge and lawyer (a) is very much out of the ordinary course, and (b) presents a potential for actual impropriety if the worst implications are realized.” Murphy, 768 F.2d at 1537. Put another way, the key question is whether “the judge feels capable of disregarding the relationship and whether others can reasonably be expected to believe that the relationship is disregarded.” Id. (citation omitted).

Here, even if Bergrin has accurately alleged a “relation between judge and lawyer” that “is very much out of the ordinary course,” he alleges *nothing* “present[ing] a potential for actual impropriety if the worst implications are realized.” Murphy, 768 F.2d at 1537. No reasonable person, fully informed of the relevant facts, would question this Court’s ability to remain impartial given the allegations of misconduct Bergrin supposedly leveled against attorneys for cooperating witnesses. As this Court properly found last year, “Bergrin’s claims are purely speculative.” ECF No. 392-1 at 13. If a defendant cannot secure recusal by making disparaging statements about the Judge presiding over his case, e.g., United States v. Bray, 546 F.2d 851, 858 (10th Cir. 1976), then *a fortiori* he cannot secure recusal by disparaging attorneys he claims have close relationships with the Judge.

With respect to Nuzzi and Adams, Bergrin’s motion is plainly deficient. He fails to cite a single pleading or piece of testimony suggesting that he accused those attorneys of any misconduct. And while Bergrin notes that Ramon Jimenez filed an ethics complaint against Azzarello, Jimenez did not testify at the 2013 trial. Further, Jimenez reiterated in the ethics complaint and in his 2011 testimony that he had told the truth about Bergrin. That falls woefully short of proving grounds for recusal. See United States v. Lovaglia, 954 F.2d 811, 815 (2d Cir. 1992) (recusal is not required where “a case . . . involves remote, contingent, indirect or speculative interests”); see also United States v. Jordan, 49 F.3d 152, 162 (5th Cir. 1995) (Garza, J., dissenting) (“Friendship plus the speculation of retaliation is not enough.”); Olis, 571 F. Supp. 2d at 786-87 (where defendant’s habeas motion alleged that former U.S. Attorney had violated Sixth Amendment by pressuring defendant’s corporate employer to stop paying defense costs, District Judge denies recusal motion alleging that he and former U.S. Attorney were close personal friends).

Beyond that, Bergrin has produced no evidence suggesting that his purely speculative allegations caused (or reasonably would have been perceived as having caused) such animosity that a reasonable observer would question this Court’s ability to remain impartial. Indeed, this Court’s trial rulings undermine any suggestion that this Court harbored animosity towards Bergrin or was somehow bent on protecting the attorneys Bergrin names in his motion. At trial Bergrin brought out the fact that Roberts

represented or had contact with various cooperating witnesses. E.g., Tr. at 3646-48, 3668-71, 4360-62, 7624-25. He also elicited from Lemont Love—who testified as a defense witness—that Roberts allegedly urged Love to falsely inculpate Bergrin. Tr. at 8320-21. Given that this Court permitted Bergrin to elicit from Love that Roberts had supposedly coached him to lie, no reasonable person would question this Court’s impartiality.³

In sum, this Court should reject Bergrin’s “desperate effort to overturn an adverse decision.” Martin, 240 F.3d at 236.

II. Bergrin’s Prosecutorial Misconduct Claim Is Untimely And Meritless.

Bergrin claims that the Government committed prosecutorial misconduct by sponsoring Anthony Young’s testimony about the Avon Avenue meeting. He bases this claim almost entirely on the fact that none of the calls intercepted over a cell phone used by Hakeem Curry show him actually arranging the meeting with Bergrin, and on his belief that two December 4th calls prove that no such meeting occurred. Bergrin included this claim in a *pro se* supplemental brief in which he also claimed that he only recently learned the factual basis for his motion. ECF No. 564. This Court acknowledged the dispute between the parties over the December 4th calls and accepted the Government’s contention that Bergrin would have used those calls if they were as exculpatory as he now claims. ECF No. 565 at 8 n.3. But this Court did not formally address and reject Bergrin’s claim that the Government knowingly sponsored false testimony from Young. Given that Bergrin may seek to raise this issue on appeal, the Government explains why Bergrin’s claim is both untimely and meritless and asks this Court to so hold.

A. Bergrin’s Claim Is Untimely.

Federal Rule of Criminal Procedure 33(b)(2) requires defendants to file motions for a new trial within 14 days of the verdict, or within such additional time as a district court may grant under Rule 45(b)(1). That deadline had expired by the time Bergrin first raised his claim of prosecutorial misconduct in his *pro se* Letter dated July 15, 2013. See ECF 564. Under Rule 45(b)(2), this Court may extend an already-expired deadline “if the party failed to act because of excusable neglect.” Fed. R. Crim. P. 45(b)(2).

³Tellingly, despite securing this testimony, Bergrin neither renewed his outrageous Government conduct claim, nor argued in summation what he had alleged in his pretrial motion: that the Government was using Roberts as its “*de facto* agent” to get witnesses to falsely inculpate Bergrin. The reason for that is plain: Bergrin had no evidence to support such an argument. Thus, the trial record reinforces this Court’s decision to deny Bergrin’s pretrial motion without a hearing.

Apparently attempting to show excusable neglect, Bergrin claims that he discovered the December 4, 2003 recordings only after the deadline for filing post-trial motions because (1) “it was virtually impossible to scrutinize in excess of 33,000 recordings in the time allotted for pre-trial preparation and in the dysfunctional condition in which [Bergrin] and his defense team received the recordings,” and (2) he “was assured by others that the calls were not incriminating and that it would be a waste of time to review.” ECF No. 569 at 3. Both claims are specious.

Initially, Bergrin’s reference to 33,000 Title III intercepts is misleading. While that is the entire universe of calls intercepted during the Hakeem Curry investigation, only a small fraction pertain to Bergrin. Significantly, moreover, Bergrin was represented by counsel when the Government produced in discovery all of the intercepted calls on July 1, 2009. As a matter of agency law, notice to Bergrin’s then-counsel (as agent) was notice to Bergrin (as principal). See In re Kensington Int’l. Ltd., 368 F.3d 289, 315 (3d Cir. 2004) (quoting Restatement (Second) of Agency § 9(3) (1958) (“A person has notice of a fact if his agent has knowledge of the fact”)). Thus, as a matter of law, Bergrin has had constructive knowledge of the contents of the suppressible calls since July 1, 2009.

In fact, Bergrin’s counsel knew the contents of the December 4, 2003 calls a mere four months after having received the intercepted calls in discovery. In urging the Government not to seek the death penalty, Bergrin’s counsel argued, “Remarkably, the electronic surveillance never picked up any hint of the meeting described by Mr. Young or that McCray had been targeted at that time for death.” Letter from David A. Ruhnke, Esq., Nov. 30, 2009, at 11 n.10. Bergrin thus had constructive knowledge at a minimum, yet he claims he only recently discovered these very same facts. If Bergrin means to argue that his attorneys did not share this information with him, then he arguably has waived the attorney-client privilege and made discoverable any and all correspondence related to the intercepted calls. See United States v. Garba, 285 F. Supp. 2d 504, 509 n.3 (D.N.J. 2003), aff’d, 128 F. App’x 855 (3d Cir. 2005). In that same vein, Bergrin should be required to disclose the “others” who allegedly assured him “that the calls were not incriminating and that it would be a waste of time to review.”

At any rate, common sense suggests that Bergrin had actual knowledge of the content of those calls. Bergrin had over *two years* to review them prior to the first trial, and an additional 14 months prior to the second trial. It strains credulity to contend that Bergrin did not scour the calls intercepted in November and December 2003 to determine if they corroborated or contradicted Young’s account, which was first made public in early 2007 when Young testified at the William Baskerville trial. In fact, at the 2013 trial, Bergrin brazenly asserted that none of the 33,000 intercepted calls showed him arranging a meeting with the Curry Organization after Baskerville’s arrest. Tr. at 162. And at the 2011 trial, Bergrin asked cross-examination questions that strongly suggested that he had reviewed the November and December 2003 calls. 10/19/2011 Tr. at 146.

Finally, and remarkably, Bergrin asserts that he could not have located the December 4th calls earlier because “the call files were not named, itemized or indexed, and complete transcripts were not provided.” ECF No. 569 at 3. That is false: on the CD-ROMs produced in discovery, each .WAV file for each call was labeled by the date and time of the call. See Exhibit C (screen prints of the CD-ROM clearly depicting the calls over Curry’s cellphone in late November and December 2003). All Bergrin had to do was open the CD-ROM, read the file-names, and play whatever file he desired.⁴

In short, Bergrin has failed to show the excusable neglect necessary under Rule 45(b)(2) to further extend the time limit prescribed in Rule 33(b)(2).

B. Bergrin’s Prosecutorial Misconduct Claim Is Meritless.

Because Bergrin knew the basis for his claim before the trial concluded, he was required to raise it in a timely fashion so that this Court could decide whether any curative action was necessary. Fed. R. Crim. P. 51(b). Because Bergrin did not do so, he forfeited his claim, meaning that Bergrin can obtain a remedy only by showing plain error affecting substantial rights. Fed. R. Crim. P. 52(b); see United States v. Brennan, 326 F.3d 176, 186 (3d Cir. 2003). If “the record indicates that counsel for the complaining party deliberately avoided making the proper objection or request, plain error will almost never be found,” because courts “will not tolerate ‘sandbagging’ defense counsel lying in wait to spring post-trial error.” United States v. Sisto, 534 F.2d 616, 624 n.9 (5th Cir. 1976); accord United States v. Syme, 276 F.3d 131, 154 n.9 (3d Cir. 2002).

Bergrin claims that the Government violated the due process principle articulated in Napue v. Illinois, 360 U.S. 264 (1959), by sponsoring Young’s testimony that the Avon Avenue meeting occurred sometime after Thanksgiving 2003, which Bergrin claims the Government knew and knows is false. To establish a Napue violation, Bergrin must prove that “(1) [Young] committed perjury; (2) the Government knew or should have known that [Young] committed perjury but failed to correct his testimony; and (3) there is a reasonable likelihood that the false testimony could have affected the verdict.” United States v. Stadtmauer, 620 F.3d 238, 267 (3d Cir. 2010) (citation omitted).

⁴ The first time Bergrin complained that he had any difficulty playing the intercepted calls was in his two *pro se* submissions, filed in July and August 2013. The Government was surprised to hear this, given that Bergrin insisted on remaining at MDC in Brooklyn because he had access to a computer he was actively using to review discovery. E.g., 8/27/2012 Letter from Lawrence S. Lustberg, Esq. But even if Bergrin’s complaints are true (which is doubtful), that is a direct consequence of Bergrin’s decision to represent himself, which he was specifically warned about in 2011 when he chose to proceed *pro se*. 9/12/2011 Tr. at 31-33. Bergrin cannot now use his decision to represent himself to excuse an otherwise untimely claim.

Bergrin's claim fails at step one because he has not proved that Young perjured himself. As the Government has already explained in two prior submissions, there was no evidence conclusively corroborating or disproving Young's testimony about the meeting. Thus, it was up to the jury to decide whether Young was credible based on all of the evidence that corroborated other aspects of his testimony, evidence that the Government meticulously summarized in summation. As this Court found in denying Bergrin's Rule 29 motion, a rational jury could have found that Young was credible and rejected Bergrin's claim that he was lying. ECF No. 565 at 6-8 & n.3.

Bergrin nonetheless insists that the December 4th calls prove that Young lied. But that claim is meritless. See Lambert v. Blackwell, 387 F.3d 210, 249 (3d Cir. 2004) (no due process violation when prosecution elicits testimony that is contradicted by other evidence of which it is aware); United States v. Julien, 318 F.3d 316, 322 (1st Cir. 2003) (no due process violation where defendant who claimed that witness's testimony was inherently implausible had the opportunity to make that argument to the jury). Indeed, the Third Circuit rejected a similar claim alleging that the Government purposely created a misleading picture of a witness's credibility by allowing the witness to testify to facts that the Government knew were contradicted by statements documented in FBI 302s. The Third Circuit held that existence of evidence contradicting the witness's in-court testimony did not show that the witness was lying, much less that the Government knew that he was lying. Stadtmauer, 620 F.3d at 268. Bergrin's claim fails for the same reason.

Nor can Bergrin prove that the Government knew or should have known that Young testified falsely. In deciding to call Young as a witness, the Government took into account the corroborative evidence that the Government painstakingly described in summation in March 2013, as well as additional evidence that was not admitted at the 2013 trial (*e.g.*, suppressible Title III calls, testimony from the 2011 trial, *etc.*) that further corroborated Young's account. Bergrin apparently construes testimony and arguments in the 2007 William Baskerville trial as an admission that Young's testimony about Bergrin was false. ECF No. 569 at 2 n.1. To the contrary, Young's testimony about Bergrin's role in the McCray murder was the same in 2007 as it was in 2013. The statements Bergrin quotes simply show that the Government acted responsibly by bringing charges only when it was satisfied it could prove his guilt beyond a reasonable doubt.

Bergrin takes this Court to task for agreeing with the Government that Bergrin would have opened the door to other suppressible calls had he sought to use the December 4th calls to impeach Young's trial testimony. Bergrin claims that the Government offered no proof that any of the suppressible calls corroborated Young. ECF No. 569 at 1-2. But if none of the suppressible calls corroborated Young, then Bergrin had no reason to fear the consequences of using the December 4th calls at trial. Besides, Bergrin is wrong: the Government previously described two suppressible calls on November 25, 2003 that corroborated Young. The first was the 2:28 p.m. call, which Bergrin opened the door to at trial through his misleading cross-examination of Special

Agent Stephen Cline. The second was the 4:00 p.m. call, which corroborated Young's testimony that Bergrin mispronounced Kemo's name as "Kamo" when speaking to Curry. ECF No. 563 & 563-1. Put simply, Bergrin's failure to use the December 4th calls shows that he has dramatically overstated the impeachment value of these calls, and it fatally undermines his claim that those calls prove that Young lied.

Finally, Bergrin places great weight on the fact that he told Curry on December 4th that he could secure a 13-year plea agreement for Baskerville. According to Bergrin, that supposedly proves that neither he nor the Curry Organization could have believed that Baskerville was facing substantial imprisonment after the December 4th bail hearing (while contradictorily asserting that everyone knew that the case against Baskerville was airtight). But Bergrin was told at the December 4th hearing that, as a career offender, Baskerville's (then-mandatory) Guidelines range was 360 months to life imprisonment. See GX2218 at 3. Further, Baskerville faced (and ultimately received) mandatory life under 21 U.S.C. § 841(b)(1)(A) due to his prior convictions. Beyond that, the Government never considered a thirteen-year plea agreement, and Bergrin neither made nor solicited a plea offer *of any kind* from the Government. Thus, Bergrin (who at trial repeatedly invoked his experience as a criminal defense attorney) obviously knew Baskerville was facing life imprisonment. All the December 4th calls show is that Bergrin told Curry something that was untrue.

In sum, this Court should reject Bergrin's claim of prosecutorial misconduct as both untimely and meritless.

III. Bergrin Waived His Meritless Claim Of Preindictment Delay.

Bergrin claims that he is the victim of prejudicial preindictment delay. Bergrin waived this claim by not raising it in a pretrial motion, and he fails to show excusable neglect for not raising it in his Rule 33 motion. At any rate, the claim is meritless.

A. Bergrin Waived His Claim.

Federal Rule of Criminal Procedure 12(b) lists five categories of motions that "must be raised prior to trial." Fed. R. Crim. P. 12(b) (emphasis added). The first category includes "defenses and objections based on defects in the institution of the prosecution." Fed. R. Crim. P. 12(b)(3)(A). "A party waives any Rule 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) or by any extension the court provides. For good cause, the court may grant relief from the waiver." Fed. R. Crim. P. 12(e). A claim of prejudicial preindictment delay alleges a "defect[] in the institution of the prosecution" under Rule 12(b)(3)(A). See United States v. Brown, 498 F.3d 523, 526-27 (6th Cir. 2007). Here, Bergrin "never moved to dismiss the indictment based on delay. His argument on appeal is therefore waived," *id.*, because he "has offered no explanation, other than that he was proceeding *pro se*, why he did not raise the issues" earlier. United

States v. Rose, 538 F.3d 175, 184 (3d Cir. 2008); see United States v. Ladson, 238 F. App'x. 874, 876 n.1 (3d Cir. 2007) (not precedential) (“the District Court correctly concluded that Ladson had waived this [pre-indictment delay] argument as it was available to him at the time he filed his motion to dismiss”).

B. Bergrin's Claim Is Untimely.

Even were this Court to disregard the waiver, Bergrin's motion is untimely as it comes long after the deadline for filing post-trial motions. Fed. R. Crim. P. 33(b)(2). As Bergrin has failed to show excusable neglect for not raising this claim earlier, see Fed. R. Crim. P. 45(b)(2), this Court should dismiss it as untimely. See United States v. Rivera, Crim. No. 09-619, 2013 WL 2627184, at *3 (E.D.N.Y. June 11, 2013) (where defendants did “not advance any reason for their more than five (5) month delay in advancing” their claims, district court finds “that their failure to advance such a claim by July 18, 2011, the extended deadline for filing post-trial motions, was not the result of excusable neglect”).

C. Bergrin's Claim Is Meritless.

The statute of limitations is the “primary guarantee against bringing overly stale criminal charges,” but it “does not fully define the [defendant’s] rights with respect to the events occurring prior to indictment.” United States v. Marion, 404 U.S. 307, 322, 324 (1971). Pre-indictment delay violates the Due Process Clause if the defendant can prove both “(1) that the government intentionally delayed bringing the indictment in order to gain some advantage over him, and that (2) this intentional delay caused the defendant actual prejudice.” United States v. Ismaili, 828 F.2d 153, 169 (3d Cir. 1987) (citing Marion, 404 U.S. at 325).

“The prosecution,” however, “has wide discretion in deciding to delay the securing of an indictment in order to gather additional evidence against an individual.” United States v. Lovasco, 431 U.S. 783, 790 (1977). “Investigative delay is fundamentally unlike delay undertaken by the Government solely ‘to gain tactical advantage over the accused,’” and does not deprive a defendant of due process even if he is “somewhat prejudiced by the lapse of time.” Id. Thus, no deviation from “fundamental conceptions of justice” is evidenced when a prosecutor “refuses to seek indictments until he is completely satisfied that he should prosecute and will be able promptly to establish guilt beyond a reasonable doubt.” Id. at 790.

Here, Bergrin claims that the Government’s delay in indicting him on the McCray murder enabled the Government to gather additional evidence of his guilt. In other words, Bergrin’s real claim is that, had the Government indicted him when it indicted William Baskerville, Bergrin would have had a much better chance of acquittal because the Government lacked sufficient evidence to convict at that time, as it admitted in 2007. E.g., ECF No. 569 at 8 (“The government further bolstered its case and obtained a

significant tactical advantage through their unreasonable delay in charging Bergrin by procuring, inducing and hiring confidential informant Oscar Cordova to obtain recorded statements from Bergrin.”); *id.* (“the Esteves charges . . . were used as 404(b) evidence for the jury to consider in weighing the McCray evidence”); *id.* (“the Government intentionally delayed pursuing the McCray murder charge to bolster the other charges in its 2009 indictment”). Given the clear language from Lovasco quoted above, the tactical advantage about which Bergrin complains is not legally cognizable.

To put it bluntly, the Government represents to this Court that it did not charge Bergrin with the McCray murder until May 2009 because it was gathering additional evidence supporting that crime and other crimes by Bergrin uncovered during the course of that investigation—all of which showed that Bergrin was operating a criminal enterprise through which he committed crimes extending well beyond the McCray murder. That is perfectly proper. See United States v. Beckett, 208 F.3d 140, 151 (3d Cir. 2000) (“We see no evidence of improper delay while the federal government was building its case against Beckett regarding the robbery of the Home Unity Bank, an armed robbery not charged by the state authorities.”); United States v. Crooks, 766 F.2d 7, 11 (1st Cir. 1985) (“The government states, without contradiction from Crooks, that any delay resulted from its efforts to discover all those who participated in the conspiracy and to try them together. And, this reason, in context, provides a legitimate explanation.”).

Bergrin, to be sure, complains about the supposed loss of evidence potentially exculpatory evidence. But the question of prejudice is beside the point if the reason for the delay was to gather sufficient evidence to convict, and not to interfere with the defendant’s ability to defend. Snyder v. Klem, 438 F. App’x 139, 142 (3d Cir. 2011) (not precedential) (“the state courts correctly observed that apart from a demonstration of actual prejudice, the applicable caselaw likewise requires that the delay be motivated by an intent to gain an unfair tactical advantage over the defendant”). At any rate, Bergrin’s claims of prejudice would be far too speculative to justify relief.

For example, Bergrin claims that the New York District Attorney’s Office colluded with the Government by extending a lenient plea offer that Bergrin had no choice to accept, only to have the Government use that guilty plea to support one of the charged RICO predicates. ECF No. 569 at 7-8. That claim is false. Further, Bergrin offers no proof of any such collusion, and he never moved to withdraw his guilty pleas in New York, which alone shows that he pleaded guilty because he was guilty, and not because the lenient plea offer was just too tempting to refuse. Further, the Government’s evidence on the prostitution-related predicate was extremely strong. Thus, Bergrin’s guilty plea added little to the strength of the Government’s case. And even if the guilty plea strengthened the Government’s case, that is not cognizable “prejudice.” See generally United States v. Martinez, 77 F.3d 332, 335-36 (9th Cir. 1996) (delay that resulted in

entry of state-court conviction against defendant not prejudicial simply because federal prosecutor could have used it for impeachment purposes under Rule 609).⁵

Bergrin also complains that the delay inhibited his defense of the McCray murder, citing the loss of Stacey Webb as a witness, the loss of supposedly exculpatory E-Z Pass records, diminished witness memories, and the inability to locate unnamed witnesses who supposedly moved. ECF 569 at 8. But “[v]ague assertions of lost witnesses, faded memories, or misplaced documents are insufficient to establish a due process violation from pre-indictment delay.” United States v. Beszborn, 21 F.3d 62, 66 (5th Cir. 1994); see United States v. Al-Muqsit, 191 F.3d 928 (8th Cir. 1999) (“even if such diminishment could be shown to be material, there were ample alternate sources for this evidence given that Logan had access to the records from three earlier state court trials concerning the events of the robbery”), rev’d in part on other grounds, 210 F.3d 820 (8th Cir. 2000) (en banc); United States v. Dudden, 65 F.3d 1461, 1466 (9th Cir. 1995) (“She does not show how these or the other records *would* have been exculpatory.”).

The trial record shows that Bergrin was not prejudiced. He elicited from Detective Sabur what Sabur had learned from Stacey Webb. Tr. at 1172-78. On redirect, Detective Sabur confirmed that Webb did not have a good opportunity to see who shot McCray. Tr. at 1216-17. And Bergrin got Agent Brokos to admit that the description of the getaway car that Webb provided differed from what Young told her, and that Williams could not identify the shooter when Brokos went to interview him in 2005. Tr. at 1742, 1773, 1808-14. Further, Bergrin did not call Webb as a witness in the 2011 trial, putting the lie to Bergrin’s current claim (ECF 569 at 8) that Webb could have contradicted Young’s testimony but for his death in 2013. Bergrin also attacked the integrity of the investigation because there were no E-Z Pass records proving (or disproving) that he was in Newark after Thanksgiving 2003. Tr. at 7622-23.

In sum, Bergrin’s claim of pre-indictment delay is waived and meritless.

⁵Bergrin cites an FBI-302 that was produced to him as Jencks material *in 2011*, which documents the Government’s request that New York authorities hold off on arresting Bergrin because of covert recordings the Government was attempting to capture. The recordings at issue involved Shelton Leverett, who testified at trial. Bergrin cannot claim that he has been prejudiced simply because the delay in his arrest by New York authorities allowed the Government to obtain additional evidence supporting the narcotics charges the Government was investigating. See Martinez, 77 F.3d at 335-36. To the extent Bergrin tries to resurrect his Sixth Amendment claim, ECF No. 569 at 8 (citing “United States v. Massiah”), Judge Martini rejected that argument, ECF No. 238 at 3-4, and this Court adhered to that rejection last year, 9/12/2012 Tr. at 63-64.

IV. Bergrin's Complaint About The Government's Monitoring Of His Jail-House Communications Is Both Untimely And Meritless.

Bergrin also asserts, without citing a single case, that the Government's monitoring of his communications at the Metropolitan Detention Center ("MDC") "clearly violated the Department of Justice's [sic] Electronic Surveillance Manual and Title III of the Wire Intercept Act as well as the auspices and spirit of the Fourth Amendment prohibition against unreasonable search and seizures." ECF No. 569 at 10. This claim is both untimely and patently meritless.

A. Bergrin's Claim Is Untimely.

Without objection, the Government cross-examined defense witness Ana DeStefano using e-mails she had exchanged with Bergrin while he was incarcerated at MDC. Tr. at 8031-37. Bergrin's post-trial motion did not challenge the Government's review and use of his e-mails. And he makes no effort to show excusable neglect for not doing so. See Fed. R. Crim. P. 45(b)(2). Accordingly, this Court should dismiss Bergrin's claim as untimely. See Rivera, 2013 WL 2627184, at *3.

B. Bergrin's Claim Is Meritless.

At any rate, Bergrin cannot show error, much less plain error affecting substantial rights. See Fed. R. Crim. P. 52(b); Brennan, 326 F.3d at 186.

Bergrin claims "the government obtrusively, and in contravention of Bergrin's Fourth Amendment, Constitutional and due process rights, seized all of Bergrin's e mails and telephone conversations, without judicial authorization or prior notice to Bergrin." ECF 569 at 11. He further asks this Court to ascertain "the extent of the monitoring, how the Government used this information to counter the defense's strategy and impede the defense's investigation and trial preparation, and whether other actions were taken to interfere with the defense . . . to determine the full impact on Bergrin's due process rights and, in particular, whether acts prejudicial to the administration of justice were engaged in by members of the Department of Justice." Id. These claims are meritless.

1. There Was No Due Process Violation.

To elevate an alleged violation of the attorney-client privilege to a due process claim of outrageous misconduct, a defendant must demonstrate "deliberate intrusion into" his attorney-client relationship and "actual and substantial prejudice." United States v. Voigt, 89 F.3d 1050, 1067 (3d Cir. 1996). Here, Bergrin cannot legitimately assert the privilege as to communications he admittedly knew were not confidential. See Point IV.B.2. below. But even if he could, Bergrin cannot prove the "deliberate intrusion into" that privilege, let alone "actual and substantial prejudice," that Voigt requires.

As Judge Martini previously recognized, the Government has a “Filter Team—an independent privilege review team walled off from the Government’s trial attorneys.” ECF No. 238 at 8. The Filter Team employed procedures that prevented both the Filter Team and the trial AUSAs from reviewing any potentially privileged information:

All reviews of e-mails and other communications of Bergrin were done in accordance with established Department of Justice and Bureau of Prisons policies and procedures, utilizing a filter team of agents and attorneys separate and distinct from the prosecution team.

The filter team specifically set up a protocol so that communications between Bergrin and his standby counsel were not reviewed by the filter team. Material was relayed to the prosecution team only after the filter team insured that no attorney client communications were being disclosed.

Exhibit D, Letter from AUSA Thomas Eicher, dated Aug. 14, 2013. Thus, neither the filter team nor the trial AUSAs had access to any potentially privileged communications. See Voigt, 89 F.3d at 1063 (noting that AUSA “Ernst turned [documents received from attorney-informant] over to an AUSA who was not part of the investigation into the Trust to make an independent privilege determination”); see also United States v. Taylor, 764 F. Supp. 2d 230, 236 (D. Me 2011) (“as the record stands, not even the filter agent read any privileged communications”). And for the same reason, Bergrin cannot show that the Government used such communications to further its case. See Voigt, 89 F.3d at 1070 (“if Voigt’s assertion that ‘the evidence introduced both prior to and at the trial included hundreds, if not thousands, of privileged attorney-client communications had any merit whatsoever, he would have pointed to at least one document Travis provided the government that was privileged’”).

Accordingly, Bergrin’s outrageous government conduct claim fails.

2. Bergrin Cannot Claim Any Privilege Or Expectation Of Privacy In Non-Confidential Communications.

In any event, Bergrin properly admits that he knew that his communications were not confidential. ECF No. 569 at 10. Indeed, he signed numerous documents consenting to the monitoring of his phone calls—documents which confirmed that legitimate calls to attorneys would not be monitored. Exhibit E at 3, 6, and 7. Further, prior to each use of the MDC’s electronic mail system (called “TRULINCKS”), Bergrin had to click the “accept” button at the bottom of a screen containing the following warning:

I understand and consent to having my electronic messages and system activity monitored, read, and retained by authorized personnel. I understand

and consent that this provision applies to electronic messages both to and from my attorney or other legal representative, and that such electronic messages will not be treated as privileged communications, and that I have alternative methods of conducting privileged legal communication.

Exhibit F. That destroys any privilege claim, and it eviscerates Bergrin's assertion that the Government violated the Fourth Amendment or Title III.

"[I]t is fundamental that the [attorney-client] privilege only applies to confidential communications, which are intended as confidential." United States v. Cariello, 536 F. Supp. 698, 702 (D.N.J. 1982). But where "inmates and their lawyers were aware that their conversations were being recorded, they could not reasonably expect that their conversations would remain private." United States v. Hatcher, 323 F.3d 666, 674 (8th Cir. 2003); see United States v. Mejia, 655 F.3d 126, 133 (2d Cir. 2011) ("on the basis of the undisputed fact that Rodriguez was aware that his conversation was being recorded by BOP, Rodriguez's disclosure to his sister of his desire to engage in plea discussions with his attorney was not made in confidence and thus constituted a waiver of the privilege").⁶

For similar reasons, Bergrin cannot claim a reasonable expectation of privacy in his jail-house communications. Monitoring of telephone communications does not offend the Fourth Amendment because prisoners have "no reasonable expectation of privacy." United States v. Friedman, 300 F.3d 111, 123 (2d Cir. 2002); accord United States v. Van Poyck, 77 F.3d 285, 292 (9th Cir. 1996) ("any expectation of privacy in outbound calls from prison is not objectively reasonable and the Fourth Amendment is therefore not triggered by the routine taping of such calls"). "So long as a prisoner is provided notice that his communications will be recorded and 'he is in fact aware of the monitoring program [but] nevertheless uses the telephones, by that use he impliedly consents to be monitored for purposes of Title III.'" United States v. Balon, 384 F.3d 38, 44 (2d Cir. 2004) (quoting United States v. Workman, 80 F.3d 688, 693 (2d Cir. 1996)). Here, as set forth above, Bergrin admits he received notice that his jail-house communications would not remain confidential. Accordingly, he cannot show the expectation of privacy necessary to trigger the Fourth Amendment, and the monitoring is permissible under 18

⁶Similarly, the marital communication privilege does not apply "where the spouse . . . knows that the other spouse is incarcerated," because it was unreasonable to expect such communication to be confidential given "the well-known need for correctional institutions to monitor inmate conversations." United States v. Madoch, 149 F.3d 596, 602 (7th Cir. 1998); accord United States v. Barlow, 307 F. App'x 678, 681 (3d Cir. 2009) (not precedential) (finding defendant's assertion that jail-house call to his wife was protected by the marital communication privilege to be "completely without merit").

U.S.C. § 2511(2)(c), Title III's consent provision. See United States v. Sababu, 891 F.2d 1308, 1329 (7th Cir. 1989) (holding that a non-prisoner had no reasonable expectation of privacy when speaking to a prisoner on the telephone because, as a frequent visitor to the prison, she was "well aware of the strict security measures in place" and that the Code of Federal Regulations puts the public on notice that prison officials are authorized to monitor prisoners' telephone calls); see also United States v. Shavers, 693 F.3d 363, 389-90 (3d Cir. 2012) (defendant who was not incarcerated when he placed a call to an inmate had no reasonable expectation of privacy because he had previously been incarcerated and, thus, knew calls were monitored), vacated on other grounds, 133 S. Ct. 2877 (2013).

Bergrin baldly asserts that "[i]nmates consent to the screening of telephone conversations and emails while detained within the Bureau of Prisons. This consent, however, is not limitless. It is implicitly understood that interception and monitoring is for security purposes only." ECF No. 569 at 10. But the only court that appears to have addressed such a claim has rejected it. See United States v. Noriega, 764 F. Supp. 1480, 1491 (S.D. Fla. 1991) ("Here, Noriega's consent extended to the recording of his third-party conversations in their entirety, rendering their interception squarely within the scope of his consent."). The court noted that the defendant's complaint addressed not the interception of the jail-house recordings, but their disclosure to the prosecution team, a disclosure that, even if wrongful, would not result in suppression. Id. at 1491-92 ("Whatever the merits of this claim, it is clear that where the alleged violation consists solely of an improper disclosure or use of otherwise legally intercepted communications, the only remedy under Title III is a civil action for damages").

In sum, Bergrin cannot establish a violation of either the Fourth Amendment or Title III because he lacked a reasonable expectation of privacy in, and validly consented to the monitoring of, his jail-house communications.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

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

cc: Lawrence S. Lustberg, Esq.
Bruce A. Levy, Esq.
Amanda M. Protess, Esq.
(all by ECF & e-mail)

EXHIBIT A

30 March 1983

Dear Mr. Ruzzi,

Enclosed please find a copy of my West Point case and my latest boxing achievement. I want to keep the office apprised of my experience and contributions.

I look forward to starting work and relocating to Essex County; although the taxes are absurd and home prices astronomical. I'm contemplating renting an apartment in downtown Newark. (only kidding).

Can you please send me those books on evidence and procedure, for I want to be thoroughly familiar with the code and laws, before I begin work.

Thank you,
Paul W. Bergin



DEPARTMENT OF THE ARMY
United States Army Trial Defense Service
Fort Dix Field Office
Fort Dix, New Jersey 08640

Bergin
file

23 May 1983

Mr. Vincent Nuzzi
Chief Assistant Prosecutor
Essex County Prosecutors Office
Essex County Court House
Newark, N.J.

Dear Mr. Nuzzi:

My active duty tour terminates on the end of this month and I am looking forward to my new career, in your office.

Media coverage of Mr. Schneiders' case was quite extensive and I was extremely proud to be able to associate myself, with the Prosecutor and office which did such a quality job. It is a great pleasure to work with a superior who leads by example; it gives a great incentive to subordinates.

As I prepare for my position in your office certain statements keep repeating themselves in my mind, ie..."If you only need a job, then this is not the place to work; but if you want to learn how to become a better trial attorney, then you want to work for us." These are the initial interview comments you made to me.

Enclosed are commendations I recently received. You informed me that you wanted to be kept abreast of any new developments pertaining to me, as well as me staying in close contact with you.

Please give my sincerest congratulations to Mr. Schneider. I look forward to beginning work and my relocation in Essex County.

Sincerely,
Paul W. Bergin
PAUL W. BERGIN

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862-205-9273 Sprint 2003-12-13 00-40-02 11451	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 00-40-40 11452	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 01-06-17 11453	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 01-15-53 11454	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 01-17-13 11455	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 01-17-44 11456	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 01-26-05 11457	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 01-32-18 11458	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 03-23-20 11459	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 03-29-38 11460	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 04-57-33 11461	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 08-51-14 11462	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 09-31-05 11464	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 09-34-41 11465	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 09-35-41 11466	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 09-41-25 11467	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-06-52 11468	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-25-45 11469	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-39-38 11470	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-42-38 11471	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-43-28 11472	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-43-56 11473	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 10-53-32 11474	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 11-28-23 11475	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 11-40-56 11476	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-09-45 11477	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-26-29 11478	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-27-11 11479	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-30-08 11480	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-34-16 11481	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-44-42 11482	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-53-59 11483	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 12-57-41 11484	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-04-29 11485	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-08-53 11486	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-15-01 11487	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-19-54 11489	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-20-07 11490	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-21-33 11491	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-21-34 11492	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-39-26 11493	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-39-27 11494	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-44-08 11495	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-44-09 11496	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-48-53 11497	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-48-53 11498	0	File folder	5/14/2004 1:41 PM
862-205-9273 Sprint 2003-12-13 13-55-11 11499	0	File folder	5/14/2004 1:41 PM



U.S. Department of Justice

United States Attorney
District of New Jersey

Criminal Division

Thomas J. Eicher
Chief

970 Broad Street, Suite 700
Newark, New Jersey 07102

(973) 353-6092
Fax: (973) 297-2094

August 14, 2013

By ECF and E-mail

Hon. Dennis M. Cavanaugh, U.S.D.J.
United States District Court, District of New Jersey
United States Post Office Building & Federal Courthouse, Room 451
Newark, New Jersey 07101-0459

Re: United States v. Paul Bergrin, Crim. No. 09-369

Dear Judge Cavanaugh:

I was the attorney supervising the filter team in connection with United States v. Paul Bergrin. I wish to inform the Court of the following, as it may be relevant to defendant Paul Bergrin's current motion for reconsideration:

All reviews of e-mails and other communications of Bergrin were done in accordance with established Department of Justice and Bureau of Prisons policies and procedures, utilizing a filter team of agents and attorneys separate and distinct from the prosecution team.

The filter team specifically set up a protocol so that communications between Bergrin and his standby counsel were not reviewed by the filter team. Material was relayed to the prosecution team only after the filter team insured that no attorney client communications were being disclosed.

Very truly yours,

Paul J. Fishman
United States Attorney

By: Thomas J. Eicher
Criminal Chief

cc: Lawrence Lustberg, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
Llustberg@gibbonslaw.com

EXHIBIT D

Renee Caggia
Senior U.S. Probation Officer
United States Probation Office
50 Walnut Street, Room 1005
Newark, New Jersey 07101-0459

BP-A0407

APR 10

U.S. DEPARTMENT OF JUSTICE**ACKNOWLEDGMENT OF INMATE, PART 1 & 2 CDFRM****FEDERAL BUREAU OF PRISONS**

This form is to be completed by each inmate upon initial entry into the custody of the BOP. Staff shall also complete and sign as appropriate. The form is then re-completed only when the inmate desires a change in any section.

Inmate's Name BERGRIN, PAUL	Register No. 16235050	Institution MDC
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1. CORRESPONDENCE

The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you. "Special Mail" (mail from the President and Vice President of the U.S., Attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal Law enforcement officers, State Attorney General, Prosecuting Attorneys, Governors, U.S. Courts, (including U.S. Probation Officers and State Courts) may be opened only in your presence to be checked for contraband. This procedure occurs only if the sender adequately identifies himself or herself on the envelope and the front of the envelope is marked "Special Mail-Open only in the presence of the inmate." Other mail may be opened and read by the staff.

If you do not want your general correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You may choose whether you want your general correspondence delivered to you subject to the above conditions, or returned to the Postal Service. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.

Part I - General Correspondence to be Returned to the Postal Service

I have read or had read to me the foregoing notice regarding mail. I do not want my general correspondence opened and read. I REQUEST THAT THE BUREAU OF PRISONS RETURN MY GENERAL CORRESPONDENCE TO THE POSTAL SERVICE. I understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate	Register No.	Date
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Part II - General Correspondence to be Opened, Read and Delivered

I have read or had read to me the foregoing notice regarding mail, I WISH TO RECEIVE MY GENERAL CORRESPONDENCE. I understand that the Bureau of Prisons may open and read my general correspondence if I choose to receive same. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of inmate <i>Paul B.</i>	Register No. 16235050	Date 25 Mar 13
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Inmate refused to sign this form. He (she) was advised by me that the Bureau of Prisons retains the authority to open and read all general correspondence. The inmate was also advised that his (her) refusal to sign this form will be interpreted as an indication that he (she) wishes to receive general correspondence subject to the conditions in Part II above.

Printed Name/Signature of Staff Member	Date
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2. AUTHORIZATION FOR DISPOSITION OF FUNDS

While confined within a prison facility under custody of the U.S. Attorney General or the Attorney General's designee(s), an inmate is prohibited from directly receiving or possessing (unless specifically authorized by the local institution) U.S. currency or checks, or other forms of negotiable instruments. To account for funds received on behalf of the inmate, the Bureau of Prisons establishes for each inmate a Prisoner's Trust Fund Account. The Director, Bureau of Prisons, or the Director's authorized designee(s) serves as the custodian of any and all funds received by an inmate while the inmate is incarcerated in the custody of the U.S. Attorney General.

I hereby (authorize) (do not authorize) (cross out one) the Director, Bureau of Prisons, or the Director's authorized designee(s), and the Warden or the Warden's authorized designee(s) in this or in any other federal institution in which I may later be confined, to sign my name as endorsement on all checks, money orders, or bank drafts, or other forms of negotiable instruments, for deposit to my credit in the Prisoner's Trust Fund Account, as long as I am a prisoner in the Bureau of Prisons. I understand that by not providing this authorization, I will not be able to receive checks, money orders, or bank drafts, or other forms of negotiable instruments while confined.

I further understand that all negotiable instruments sent to me should reference my name and register number in order to provide for proper deposit to my account. If my name and register number are not referenced the institution mail room officer may return the negotiable instrument to the sender.

Signature of Inmate <i>PB</i>	Register No. 16235050	Date 25 Mar 13
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Inmate refused to sign this form. He (she) was advised by me that his (her) refusal to sign this form will be interpreted as an indication that he (she) does not authorize the Bureau of Prisons to endorse on his (her) behalf all checks, money orders, or bank drafts, or other forms of negotiable instruments for deposit to his (her) credit in the Prisoner's Trust Fund Account and that he (she) will not be able to receive such funds while confined.

Printed Name/Signature of Staff Member	Date
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Record Copy - Central File; Copy - Inmate
PDF Prescribed by P5800

Replaces BP-407(58) of OCT 88

EXHIBIT E

This form is to be completed by each inmate upon initial entry into the custody of the BOP. Staff shall also complete and sign as appropriate. The form is then re-completed only when the inmate desires a change in any section.

Name of Inmate	PAUL BERGRIN	Register Number	16235050	Institution	MDC BROOKLYN
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1. CORRESPONDENCE

The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you. "Special Mail" (mail from the President and Vice President of the U.S., Attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal Law enforcement officers, State Attorney General, Prosecuting Attorneys, Governors, U.S. Courts, (including U.S. Probation Officers and State Courts) may be opened only in your presence to be checked for contraband. This procedure occurs only if the sender adequately identifies himself or herself on the envelope and the front of the envelope is marked "Special Mail-Open only in the presence of the inmate." Other mail may be open and read by the staff.

If you do not want your general correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You may choose whether you want your general correspondence delivered to you subject to the above conditions, or returned to the Postal Service. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.

Part I - General Correspondence to be returned to the Postal Service

I have read or had read to me the foregoing notice regarding mail. I do not want my general correspondence opened and read. I REQUEST THAT THE BUREAU OF PRISONS RETURN MY GENERAL CORRESPONDENCE TO THE POSTAL SERVICE. I understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate		Register Number		Date	
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Part II - General Correspondence to be Opened, Read and Delivered

I have read or had read to me the foregoing notice regarding mail. I WISH TO RECEIVE MY GENERAL CORRESPONDENCE. I understand that the Bureau of Prisons may open and read my general correspondence if I choose to receive same. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate	X Paul B	Register Number	16235050	Date	12 Jan 00
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Inmate refused to sign this form. He (She) was advised by me that the Bureau of Prisons retains the authority to open and read all general correspondence. The inmate was also advised that his (her) refusal to sign this form will be interpreted as an indication that he (she) wishes to receive general correspondence subject to the conditions in Part II above.

Printed Name /Signature of Staff Member		Date	
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2. AUTHORIZATION FOR DISPOSITION OF FUNDS

While confined within a prison facility under custody of the U.S. Attorney General or the Attorney General's designee(s), an inmate is prohibited from directly receiving or possessing (unless specifically authorized by the local institution) U.S. currency or checks, or other forms of negotiable instruments. To account for funds received on behalf of the inmate, the Bureau of Prisons establishes for each inmate a Prisoner's Trust Fund Account. The Director, Bureau of Prisons, or the Director's authorized designee(s) serves as the custodian of any and all funds received by an inmate while the inmate is incarcerated in the custody of the U.S. Attorney General.

I hereby authorize do not authorize [mark one] the Director, Bureau of Prisons, or the Director's authorized designee(s), and the Warden or the Warden's authorized designee(s) in this or in any other federal institution in which I may later be confined, to sign my name as endorsement on all checks, money orders, or bank drafts, or other forms of negotiable instruments, for deposit to my credit in the Prisoners Trust Fund Account, as long as I am a prisoner in the Bureau of Prisons. I understand that by not providing this authorization, I will not be able to receive checks, money orders, or bank drafts, or other forms of negotiable instruments while confined.

I further understand that all negotiable instruments sent to me should reference my name and register number in order to provide for proper deposit to my account. If my name and register number are not referenced the institution mail room officer may return the negotiable instrument to the sender.

Signature of Inmate	X Paul B	Register Number	16235050	Date	12 Jan 00
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Inmate refused to sign this form. He (she) was advised by me that his (her) refusal to sign this form will be interpreted as an indication that he (she) does not authorize the Bureau of Prisons to endorse on his (her) behalf all checks, money orders, or bank drafts, or other forms of negotiable instruments for deposit to his (her) credit in the Prisoner's Trust Fund Account and that he/she will not be able to receive such funds while confined.

Printed Name /Signature of Staff Member		Date	
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BP-S408.058 **ACKNOWLEDGMENT OF INMATE, PART 3 & 4** CDFRM

MAY 94

U. S. DEPARTMENT OF JUSTICE**FEDERAL BUREAU OF PRISONS****3. MONITORING OF INMATE TELEPHONE CALLS**

The Bureau of Prisons reserves the authority to monitor (this includes recording) conversations on any telephone located within its institutions, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. An inmate's use of institutional telephones constitutes consent to this monitoring. A properly placed phone call to an attorney is not monitored. You must contact your unit team to request an unmonitored attorney call.

I have read or have read to me (cross out one) the above notification on the monitoring of inmate telephone calls. I understand that telephone calls I make from institution telephones may be monitored and recorded.

Signature of Inmate *

11/03/2011

I hereby certify that the above information was (cross out incorrect statements) (provided to the inmate to read) and/or was (read and fully explained by me to the above inmate). The inmate (signed) / (refused) to sign.
Printed Name/Signature of Staff Member M. A. Facey/

11/03/2011

4. NOTIFICATION IN CASE OF DEATH/ILLNESS, DISPOSITION OF PROPERTY

In the event I should die, I direct that my Daughter, whose name is Beth Bergman
(Relationship)

In the event the Bureau of Prisons staff is unable to locate the above designated person, following a reasonable search, I authorize the substitution of the following person in his or her stead.

(Name)	(Relationship)	(Address)	(Telephone Number)
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I authorize the Bureau of Prisons to transmit my property and personal effects including money remaining to my credit in, or due me from the Bureau of Prisons to my next of kin in accordance with state law.

I agree further that disposition may be made of my personal property located within the prison facility, including clothing, in accordance with the rules and regulations of the Bureau of Prisons.

In case of serious illness or other emergency the above named persons may be contacted to be notified of my condition. I also desire and authorize that the following be notified.

NAME	RELATIONSHIP	ADDRESS	TELEPHONE NO.
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Signature of Inmate *

Date 11/05/2011

I hereby certify that the above notification was (cross out incorrect statements) (provided to the inmate to read) and/or was (read and fully explained by me to the above named inmate) before the inmate (voluntarily signed) / (refused to sign) this notification, this 05 day of November December, 19 2011.
Printed Name/Signature of Staff Member M. A. Facey/

11/03/2011

Record Copy - Central File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-408(58) dated August 1991.

BP-A407.058
MAY 94

ACKNOWLEDGEMENT OF INMATE, PART 1 & 2

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

This form is to be completed by each inmate upon initial entry into the custody of the BOP. Staff shall also complete and sign as appropriate. The form is then re-completed only when the inmate desires a change in any section.

Name of Inmate PAUL BERGRIN	Register Number 16235-050	Institution Bilo
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1. CORRESPONDENCE

The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you. "Special Mail" (mail from the President and Vice President of the U.S., Attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal Law enforcement officers, State Attorney General, Prosecuting Attorneys, Governors, U.S. Courts, (including U.S. Probation Officers and State Courts) may be opened only in your presence to be checked for contraband. This procedure occurs only if the sender adequately identifies himself or herself on the envelope and the front of the envelope is marked "Special Mail-Open only in the presence of the inmate." Other mail may be open and read by the staff.

If you do not want your general correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You may choose whether you want your general correspondence delivered to you subject to the above conditions, or returned to the Postal Service. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.

Part I - General Correspondence to be returned to the Postal Service

I have read or had read to me the foregoing notice regarding mail. I do not want my general correspondence opened and read. I REQUEST THAT THE BUREAU OF PRISONS RETURN MY GENERAL CORRESPONDENCE TO THE POSTAL SERVICE. I understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate	Register Number	Date
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Part II - General Correspondence to be Opened, Read and Delivered

I have ~~read~~ read to me the foregoing notice regarding mail. I WISH TO RECEIVE MY GENERAL CORRESPONDENCE. I understand that the Bureau of Prisons may open and read my general correspondence if I choose to receive same. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate Kathy B	Register Number 16235-050	Date 6/10/09
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Inmate refused to sign this form. He (She) was advised by me that the Bureau of Prisons retains the authority to open and read all general correspondence. The inmate was also advised that his (her) refusal to sign this form will be interpreted as an indication that he (she) wishes to receive general correspondence subject to the conditions in Part II above.

Printed Name /Signature of Staff Member	Date
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2. AUTHORIZATION FOR DISPOSITION OF FUNDS

While confined within a prison facility under custody of the U.S. Attorney General or the Attorney General's designee(s), an inmate is prohibited from directly receiving or possessing (unless specifically authorized by the local institution) U.S. currency or checks, or other forms of negotiable instruments. To account for funds received on behalf of the inmate, the Bureau of Prisons establishes for each inmate a Prisoner's Trust Fund Account. The Director, Bureau of Prisons, or the Director's authorized designee(s) serves as the custodian of any and all funds received by an inmate while the inmate is incarcerated in the custody of the U.S. Attorney General.

I hereby authorize do not authorize [mark one] the Director, Bureau of Prisons, or the Director's authorized designee(s), and the Warden or the Warden's authorized designee(s) in this or in any other federal institution in which I may later be confined, to sign my name as endorsement on all checks, money orders, or bank drafts, or other forms of negotiable instruments, for deposit to my credit in the Prisoners Trust Fund Account, as long as I am a prisoner in the Bureau of Prisons. I understand that by not providing this authorization, I will not be able to receive checks, money orders, or bank drafts, or other forms of negotiable instruments while confined.

I further understand that all negotiable instruments sent to me should reference my name and register number in order to provide for proper deposit to my account. If my name and register number are not referenced the institution mail room officer may return the negotiable instrument to the sender.

Signature of Inmate PB	Register Number 16235-050	Date 6/10/09
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Inmate refused to sign this form. He (she) was advised by me that his (her) refusal to sign this form will be interpreted as an indication that he (she) does not authorize the Bureau of Prisons to endorse on his (her) behalf all checks, money orders, or bank drafts, or other forms of negotiable instruments for deposit to his (her) credit in the Prisoner's Trust Fund Account and that he (she) will not be able to receive such funds while confined.

Printed Name /Signature of Staff Member	Date
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Replaces BP-407(58) of OCT 88

BP-A407.058
MAY 94

ACKNOWLEDGEMENT OF INMATE, PART 1 & 2

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

This form is to be completed by each inmate upon initial entry into the custody of the BOP, then re-completed only when the inmate desires a change in any section.

Staff shall also complete and sign as appropriate. The form is

Name of Inmate Paul Bergin

Register Number

16235-050

Institution

Gant PHZ

1. CORRESPONDENCE

The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you. "Special Mail" (mail (excluding the Bureau of Prisons but including U.S. Attorneys)), other Federal Law enforcement officers, State Attorney General, Prosecuting Attorneys, procedure occurs only if the sender adequately identifies himself or herself on the envelope and the front of the envelope is marked "Special Mail-Open only in the presence of the inmate." Other mail may be open and read by the staff.

If you do not want your general correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You may choose whether you want your general correspondence delivered to you subject to the above conditions, or returned to the Postal Service. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.

Part I - General Correspondence to be returned to the Postal Service

I have read or had read to me the foregoing notice regarding mail. I do not want my general correspondence opened and read. I REQUEST THAT THE BUREAU OF PRISONS RETURN MY GENERAL CORRESPONDENCE TO THE POSTAL SERVICE. I understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate Paul Bergin PWB

Register Number

16235-050

Date

20 May 09

Part II - General Correspondence to be Opened, Read and Delivered

I have read or had read to me the foregoing notice regarding mail. I WISH TO RECEIVE MY GENERAL CORRESPONDENCE. I understand that the Bureau of Prisons may open and read my general correspondence if I choose to receive same. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

Signature of Inmate Paul Bergin

Register Number

16235-050

Date

20 May 09

Inmate refused to sign this form. He (She) was advised by me that the Bureau of Prisons retains the authority to open and read all general correspondence. The inmate was also advised that his (her) refusal to sign this form will be interpreted as an indication that he (she) wishes to receive general correspondence subject to the conditions in Part II above.

Printed Name /Signature of Staff Member

Date

2. AUTHORIZATION FOR DISPOSITION OF FUNDS

While confined within a prison facility under custody of the U.S. Attorney General or the Attorney General's designee(s), an inmate is prohibited from directly receiving or possessing (unless specifically authorized by the local institution) U.S. currency or checks, or other forms of negotiable instruments. To account for funds received on behalf of the inmate, the Bureau of Prisons establishes for each inmate a Prisoner's Trust Fund Account. The Director, Bureau of Prisons, or the Director's authorized designee(s) serves as the custodian of any and all funds received by an inmate while the inmate is incarcerated in the custody of the U.S. Attorney General.

I hereby authorize do not authorize [mark one] the Director, Bureau of Prisons, or the Director's authorized designee(s), and the Warden or the Warden's authorized designee(s) in this or in any other federal institution in which I may later be confined, to sign my name as endorsement on all checks, money orders, or bank drafts, or other forms of negotiable instruments, for deposit to my credit in the Prisoners Trust Fund Account, as long as I am a prisoner in the Bureau of Prisons. I understand that by not providing this authorization, I will not be able to receive checks, money orders, or bank drafts, or other forms of negotiable instruments while confined.

I further understand that all negotiable instruments sent to me should reference my name and register number in order to provide for proper deposit to my account. If my name and register number are not referenced the institution mail room officer may return the negotiable instrument to the sender.

Signature of Inmate

Paul Bergin

Register Number

16235-050

Date

20 May 09

Inmate refused to sign this form. He (she) was advised by me that his (her) refusal to sign this form will be interpreted as an indication that he (she) does not authorize the Bureau of Prisons to endorse on his (her) behalf all checks, money orders, or bank drafts, or other forms of negotiable instruments for deposit to his (her) credit in the Prisoner's Trust Fund Account and that he(she) will not be able to receive such funds while confined.

Printed Name /Signature of Staff Member

Date

BP-A408.058 ACKNOWLEDGMENT OF INMATE, PART 3 & 4 CDFRM
MAY 94

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

3. MONITORING OF INMATE TELEPHONE CALLS

The Bureau of Prisons reserves the authority to monitor (this includes recording) conversations on any telephone located within its institutions, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. An inmate's use of institutional telephones constitutes consent to this monitoring. A properly placed phone call to an attorney is not monitored. You must contact your unit team to request an unmonitored attorney call.

I have read or had read to me (cross out one) the above notification on the monitoring of inmate telephone calls. I understand that telephone calls I make from institution telephones may be monitored and recorded.

Signature of Inmate Paula BurquinDate 20 May 09

I hereby certify that the above information was (cross out incorrect statements) (provided to the inmate to read) and/or was (read and fully explained by me to the above inmate). The inmate (signed) / (refused) to sign.

Printed Name/Signature of Staff Member TKer BushDate DAW

4. NOTIFICATION IN CASE OF DEATH/ILLNESS, DISPOSITION OF PROPERTY

In the event I should die, I direct that my WIFE, whose name is Barbara Bonner

~~SEARCH, I authorize the substitution of the following person in his or her stead~~ ~~following a reasonable~~

Yolanda Jauregui Friend
(Name) (Relationship)

I authorize the Bureau of Prisons to transmit my property and personal effects including money remaining to my credit in, or due me from the Bureau of Prisons to my next of kin in accordance with state law.

I agree further that disposition may be made of my personal property located within the prison facility, including clothing, in accordance with the rules and regulations of the Bureau of Prisons.

In case of serious illness or other emergency the above named persons may be contacted to be notified of my condition. I also desire and authorize that the following be notified.

NAME	RELATIONSHIP	ADDRESS	TELEPHONE NO.

Signature of Inmate Paula BurquinDate DAW

I hereby certify that the above notification was (cross out incorrect statements) (provided to the inmate to read) and/or was (read and fully explained by me to the above named inmate) before the inmate (voluntarily signed) / (refused to sign) this notification, this 20 day of May, 2009.

Printed Name/Signature of Staff Member TKer BushDate DAWRecord Copy - Central File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-408(58) dated August 1991.

BP-A0408

ACKNOWLEDGMENT OF INMATE, PART 3 & 4 CDfrm

APR 10

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

3. MONITORING OF INMATE TELEPHONE CALLS

The Bureau of Prisons reserves the authority to monitor (this includes recording) conversations on any telephone located within its institutions, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. An inmate's use of institutional telephones constitutes consent to this monitoring. A properly placed phone call to an attorney is not monitored. You must contact your unit team to request an unmonitored attorney call.

I have read or had read to me (cross out one) the above notification on the monitoring of inmate telephone calls. I understand that telephone calls I make from institution telephones may be monitored and recorded.

Signature of Inmate Paul BDate 25 Mar 13

I hereby certify that the above information was (cross out incorrect statements) (provided to the inmate to read) and/or was (read and fully explained by me to the above inmate). The inmate (signed)/(refused) to sign.

Printed Name/Signature of Staff Member _____

Date _____

4. NOTIFICATION IN CASE OF DEATH/ILLNESS, DISPOSITION OF PROPERTY

In the event I should die, I direct that my Daughter, whose name is Beth Bergman

In the event the Bureau of Prisons staff is unable to locate the above designated person, following a reasonable search, I authorize the substitution of the following person in his or her stead.

(Name)	(Relationship)	(Address)	(Telephone Number)
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I authorize the Bureau of Prisons to transmit my property and personal effects including money remaining to my credit in, or due me from the Bureau of Prisons to my next of kin in accordance with state law.

I agree further that disposition may be made of my personal property located within the prison facility, including clothing, in accordance with the rules and regulations of the Bureau of Prisons.

In case of serious illness or other emergency the above named persons may be contacted to be notified of my condition. I also desire and authorize that the following be notified.

NAME	RELATIONSHIP	ADDRESS	TELEPHONE NO.
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Same as Above Beth Bergman

Signature of Inmate Paul Bergman Date 25 Mar 13

I hereby certify that the above notification was (cross out incorrect statements) (provided to the inmate to read) and/or was (read and fully explained by me to the above named inmate) before the inmate (voluntarily signed)/(refused to sign) this notification, this _____ day of _____, 20 _____.
 (initials)

Printed Name/Signature of Staff Member _____

Date _____

Screen closes in: 02 Minutes 58 Seconds

TRULINCS and ELECTRONIC MESSAGING: WARNING/RESPONSIBILITY/ACKNOWLEDGMENT

Warning: This computer system is the property of the United States Department of Justice. The Department may monitor any activity on the system and search and retrieve any information stored within the system. By accessing and using this computer, I am consenting to such monitoring and information retrieval for law enforcement and other purposes. I have no expectation of privacy as to any communication on or information stored within the system.

Responsibility: I must abide by all terms prescribed in Bureau of Prisons' policy regarding my use of TRULINCS and electronic messaging systems, which I acknowledge having read and understood. I understand and consent to having my electronic messages and system activity monitored, read, and retained by authorized personnel. I understand and consent that this provision applies to electronic messages both to and from my attorney or other legal representative, and that such electronic messages will not be treated as privileged communications, and that I have alternative methods of conducting privileged legal communication. I will not share passwords and will log off the system when leaving the TRULINCS terminal. I am only authorized to use the TRULINCS and electronic messaging systems to communicate with those persons on my authorized contact list; check account balances; complete forms; access the electronic law library, and other TRULINCS functions.

My use of TRULINCS in violation of the procedures may result in inmate disciplinary action and/or criminal prosecution. Any grievance I may have related to the TRULINCS program may be raised through the Bureau's Administrative Remedy Program.

Acknowledgment: By accessing the program, I understand and agree to all the above provisions and consent to have the Bureau withdraw all required program fees directly from my deposit fund account.

My participation in the electronic messaging program is voluntary and I may decline participation, or withdraw at anytime, without penalty or cost, except as provided in the procedures related to fees which may have already been collected from me. In the absence of electronic messaging program participation, I may still maintain contact with persons in the community through written correspondence, telephone, and visiting, as provided in those relevant Bureau policies.

The Warden may discontinue my participation in the electronic messaging program, or reject incoming/outgoing messages, whenever it is determined that my participation violates the procedures or otherwise jeopardizes the safety, security, or good order of the institution, or protection of the public. Additionally, my participation may be limited or discontinued at anytime due to program unavailability resulting from system maintenance, modification, segregated housing assignment or other reason unrelated to my participation conduct.

EXHIBIT F

I Accept

I Do Not Accept

System Generated Message
Acceptance required by public before emails begin

From: <info@corrlinks.com>
To:
Date: 8/27/2009 10:37 AM
Subject: Inmate :

This is a system generated message informing you that the above-named person is a federal prisoner who seeks to add you to his/her contact list for exchanging electronic messages. There is no message from the prisoner at this time.

You can ACCEPT this prisoner's request or BLOCK this individual or all federal prisoners from contacting you via electronic messaging at www.corrlinks.com. To register with CorrLinks you must enter the emailaddress that received this notice along with the following identification code: S62T72RX

This identification code will expire in 10 days.

By approving electronic correspondence with federal prisoners you consent to have the Bureau of Prison staff monitor the content of all electronic messages exchanged.

Once you have registered with Corrlinks and approved the prisoner for correspondence the prisoner will be notified electronically.

For additional information related to this program, please visit the http://www.bop.gov/inmate_programs/trulincs_faq.jsp FAQ page.

Este es un mensaje generado por el sistema que le informa que la persona mencionada es un preso federal que pretende añadirlo a usted a su lista de contactos para intercambiar mensajes electrónicos. No hay ningún mensaje del preso en este momento

Usted puede ACEPTAR esta petición del preso o BLOQUEAR a esta persona o a todos los presos federales de contactarlo a usted a través de la mensajería electrónica en www.corrlinks.com. Para inscribirse en CorrLinks debe introducir la dirección de correo electrónico que recibió esta notificación, junto con el siguiente código de identificación: S62T72RX

Este código de identificación expirará en 10 días.

Al aprobar la correspondencia electrónica con presos federales usted está consintiendo a que personal de la Oficina de Prisiones supervise el contenido informativo de todos los mensajes electrónicos intercambiados y cumplir con todas las reglas y procedimientos del Programa.

Una vez registrado en Corrlinks y aprobado para la correspondencia el preso será notificado por vía electrónica.

Para obtener información adicional relacionada con este programa, por favor visite la página de preguntas frecuentes http://www.bop.gov/inmate_programs/trulincs_faq.jsp.