



U.S. Department of Justice

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February 14, 2017

By ECF and Email

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

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

Your Honor:

I write to request one more extension of the briefing schedule for resolving defendant Paul Bergrin's Rule 33 motion. Opposing counsel has informed me that he cannot consent to this request without first talking to Bergrin, and that the earliest a call to Bergrin can be made is February 23rd.

Bergrin contends that various categories of supposedly newly discovered evidence warrant granting him a new trial. Responding to those claims has required the Government to review voluminous material, including wiretap recordings never introduced at Bergrin's trials but produced to him long before his first trial and thousands of pages of transcripts and pleadings. The Government remains committed to providing this Court with as complete, organized and succinct a response as possible to help this Court resolve the Rule 33 motion. Unfortunately, I still need more time to fulfil my part of that important task, given other pressing matters that have consumed much of my working hours these past few weeks.

Under the current scheduling order, the Government's response is due today, February 14th, and Bergrin's reply is due Friday, April 7, 2017. I now hope two more weeks will allow me to finalize and file the Government's response. If this Court agrees, appointed counsel's deadline for filing Bergrin's reply should be extended as well. Accordingly, the Government proposes the following amended schedule for resolution of the Rule 33 motion:

1. The Government's memorandum of law in opposition to the Rule 33 motion shall be filed no later than Tuesday, February 28, 2017.

2. Bergrin's reply memorandum of law in further support of the Rule 33 motion shall be filed no later than Friday, April 21, 2017.
3. Upon completion of briefing, the Court will determine whether any hearing or argument on the Rule 33 motion is necessary.

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

Accordingly, the Government respectfully requests that its proposed amended briefing schedule for the Rule 33 motion be entered. I apologize to this Court, appointed counsel and Bergrin for any hardship that this extension might cause, and I thank this Court and appointed counsel for the courtesies both have shown me. Should anyone be troubled by the time it is taking to file the Government's opposition papers, the fault lies with me and me alone.

Respectfully submitted,

PAUL J. FISHMAN
UNITED STATES ATTORNEY



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

cc: Lawrence S. Lustberg. Esq. (by ECF and email)

So ordered this ____ day of
February, 2017

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