

November 17, 2019

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

Re: Paul W. Benguin v. United  
States, Criminal No.: 09-369, Civil  
No.: 16-3040

Dear Honorable Judge Arleo:

It is incumbent upon me to submit this letter as I was informed by my counsel, Lawrence Lustberg, during a recent legal call that you had not received my supplemental Johnson, Dimaya, Davis motion dated October 29, 2019. This was shocking but not an aberration at this institution. There is a concerted effort here to stymie, impede and diminish any potential you have to

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effectively assist counsel or competently represent yourself.

This institution is as close to a modern day concentration camp as possible; there are absolutely no checks nor balances and flagrant infliction of sadistic misery, pain and sorrow the norm.

Over a year ago any legal means to receive case law updates, summaries or to research the law was abruptly removed. It takes a virtual miracle to be escorted to the law computer and the cases contained therein are more than nine (9) months removed; at a minimum, they have deleted and for over a year refused to supply Criminal Law Reports or updated cases. It is impossible to be current on the law.

Moreover, please forgive the handwritten nature of my submissions as the use of a flexible pen is our only means to communicate. Furthermore, legal submissions, Court documents, orders, letters and mail are intentionally delayed, which effectively impedes our ability to timely respond and submit legal motions.

I am enclosing another copy of

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my motion and in summation, plead - explore with this Court to sincerely scrutinize my Rule 33 Motion and 2255 submissions - motions. I am truly innocent and pray it has been proven to you. I have been wrongfully convicted and now tortured by being designated to the ADX.

In light of the Supreme Court's recent decision in United States v. Davis, \_\_\_ S.Ct. \_\_\_, 2019 WL 2570623 (June 24, 2019) my convictions must be vacated and I should be resentenced; as the principle aggravating factor unconstitutionally and wrongfully predominating - guiding my sentence, was this factor. Crimes no longer delineated "violent crimes" in accord with new Supreme Court decisions - precedent controlled my sentencing.

The government has conceded that most of my convictions are now non-violent throughout jurisdictions in the United States mandating I be resentenced. For instance, Racketeering and Conspiracy to Commit Racketeering, (18 U.S.C. § 1962D), offenses such as the serious crime of Hobbs Act Robbery, Attempted Murder, Drug offenses, Conspiracies, Travel Acts, etc. at the time of

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my sentencing, once considered violent crimes - felonies are no longer crimes of violence - violent crimes.

The Davis decision categorically held that these crimes now fail to qualify as "a crime of violence." See, United States v. McGinn, 1:13-cr-229 (D. Md. August 7, 2019), United States v. Simms, 914 F.3d 229, 233 (4th Cir. 2019) (en banc), Salina v. United States, 522 U.S. 52, 62 (1997), United States v. Shumilo, 2016 WL 6302524, at \*6 (C.D. Cal. Oct. 24, 2016), and Alvarado v. United States, 2016 WL 6302517, at \*9-10 (C.D. Cal. Oct. 14, 2016) etc....

The Davis decision held that the relevant portion of § 924(c) defining a "crime of violence" has two clauses. The first clause - 924(c)(3)(A) is commonly referred to as the force clause. The other - § 924(c)(3)(B) - is commonly referred to as the residual clause. Because the Supreme Court in Davis held that the § 924(c) residual clause is unconstitutionally void in violation of the Due Process Clause, the conspiracy offenses cannot (emphasis added)

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qualify as "a crime of violence" under § 924(c) residual clause.

Conspiracy offenses categorically fail to qualify as "crimes of violence" under § 924(c) force clause because they require the defendant to "prove only that the defendant agreed with another to commit actions, which if realized would violate [the object of the conspiracy]". (Emphasis added). Such an agreement does not invariably require the actual, attempted, or threatened use of force. United States v. Simms, 914 F. 3d 229, 233-34, (4th Cir. 2019) (en banc) (and as the government conceded). (Emphasis added). Consequently, in my case especially, the "crime of violence" element of § 924(c) cannot be satisfied in ~~at least~~ every offense I was convicted of under this statute.

My convictions - sentences violates the Due Process Clause and United States laws and result(s) in a fundamental miscarriage of justice. I am entitled to a vacatur of my convictions - sentences.

The proper remedy is to vacate my sentences - convictions under the sentencing

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package doctrine and conduct a resentencing.  
 See Dean v. United States, 137 S.Ct. 1170, 1176 (2017); United States v. Smith, 115 F.3d 241, 244 (4th Cir. 1997).

Under 28 U.S.C. § 2255(a), a petitioner is entitled to relief when his original conviction "was imposed in violation of the Constitution or laws of the United States." 28 U.S.C. § 2255(a). My conviction-sentence was dependent upon an unconstitutionally vague residual clause:

Most importantly, because my post-Davis<sup>substantive and</sup> conspiracy offenses categorically fail to satisfy the "crime of violence" element under § 924(c), the indictment failed to state offenses that are no longer criminal.

As the Solicitor General has already conceded, Davis is retroactive on collateral review because it is substantive. See Brief for the United States, United States v. Davis, Sup. Ct. No. 18-431 (Feb 12, 2019), at 52 ("A holding of this Court that Section 924(c)(3)(B) requires an ordinary-case categorical approach—and thus is

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unconstitutionally vague - would be a retroactive substantive rule on "collateral views.") (Citing Welch v. United States, — U.S. —, 136 S.Ct. 1257, 1264 (2016)).

The Solicitor General is correct. A decision is "substantive" if it "alters the range of conduct or the class of persons that the law punishes." Welch, 136 S.Ct. at 1265.

Davis alters sentences and thereby alters the range of conduct and class of persons that can be punished and, is therefore retroactive.

### CONCLUSION

For the aforementioned reasons it is most respectfully requested that the Honorable Court grant my motion in accord with 28 U.S.C. § 2255 and vacate, set aside and correct my unconstitutional and unjust convictions - sentences.

Most respectfully,  
 Paul W. Bergin  
 PAUL W. BERGIN

Dated: 17 November 2019.

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IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

PAUL W. BERGRIN

Criminal No: 09-369

Civil No: 16-3040

TO:

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

MOTION TO GRANT PETITIONER'S  
MOTION PURSUANT TO JOHNSON v. UNITED  
STATES, 135 S.Ct. 2551, SESSIONS v. DIMAYA,  
138 S.Ct. 1204 and UNITED STATES v. DAVIS,  
588 U.S. \_\_\_\_ (2019); AS WELL AS  
TO PERMIT THE SWORN DEPOSITION-  
TESTIMONY OF CRITICAL WITNESS



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SYED REHMAN, DUE TO EXIGENT  
CIRCUMSTANCES.

The Petitioner submits the enclosed  
Certification under the penalties of perjury  
in support of this motion and seeks  
emergent relief.

Respectfully submitted,  
*Paul W. Bergin*  
PAUL W. BERGIN

Dated: October 29, 2019.

Placed in institutional mail on this date.

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IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF NEW JERSEY

PAUL W. BERGRIN,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent

Criminal No.: 09-369

Civil No.: 16-3040

CERTIFICATION OF PAUL W. BERGRIN

I, Paul W. Bergin, am the Petitioner in the above captioned matter and submit this Certification under the penalty of perjury. Every word contained herein is the absolute truth.

1. As Petitioner in the above captioned matter I am wholly familiar with the facts I hereby submit.
2. I most respectfully implore the Honorable Court's forgiveness and indulgence for this submission being handwritten. Under my conditions of confinement I do not have the use nor benefit of a word processor nor a typewriter and have handwritten this motion, certification, notice of motion, with a

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flexible pen and while leaning over a cement block.

3. On or about July, 2019 I submitted a formal motion pursuant to the Supreme Court's monumental decisions of Johnson, Dimaya and Davis. I was confident as to its applicability to the case sub judice and that a multitude-plethora of my convictions should be vacated. The Davis motion transmitted-filed electronically by Lawrence Lustberg, Esquire and on my behalf, supplemented a motion-legal submission I had filed relevant to Dimaya, Johnson and its progeny of cases.

4. The government replied to my Dimaya - Johnson motion, but HAS REFUSED TO RESPOND-REPLY TO my DAVIS MOTION. (Emphasis added).

I submit wholeheartedly that four (4) months have passed since the Government received my Davis motion and in accord with F.R. Civ. P. 87(b) has conceded to the facts, law I argued. Their failure to respond which is now profusely untimely and to which I vociferously object they be given this opportunity, is an admission-concession as to the merit of my motion. They thereby have no legal basis to object to the Court's granting of my motion. Their failure to respond is a blatant agreement to the merits of my cause of action.

SYED REHMAN

5. There is an objective-independent-unbiased

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witness named Syed Rehman. (Hereinafter Rehman),

6. Rehman has absolutely no relationship to me, no connection whatsoever to me or my case and no motive-reason to assist me in any manner.

Rehman is a devout Muslim and extremely close friend-confidant of Government witness, Abdul Mutallic Williams. They consider each other Muslim brothers, prayed together and confided in each other, as brothers do. He is an extraordinarily important witness.

7. Rehman was incarcerated at the Hudson County Jail, Kearny, New Jersey together and along with Government witness Abdul Mutallic Williams (Williams).

Rehman knows to an absolute certainty that I am innocent of the drug trafficking crimes I was wrongfully convicted of and was sentenced to multiple life sentences for. Rehman and Williams contrived, fabricated and schemed Williams perjured testimony against me and he knows that this manufactured testimony of my involvement in drug distribution was wholly false. He is a critical witness in my "actual innocence" motion claim and justice, on my behalf. His testimony must be preserved.

Rehman's Testimony must be heard by this Honorable Court and preserved.

8. It has recently come to my attention that Rehman plead guilty and was sentenced for a

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federal crime. There may be immigration-deportation issues with Rehman. I cannot afford to lose him.

9. In order for this Court to make an informed, just and the right decision on my pending motions You must (emphasis added) hear Rehman's sworn testimony. It will be a game changer and decisive.

I am willing to waive my personal appearance for this proceeding and be present at my institution via closed circuit.

I am truly innocent and was wrongfully convicted. I know that if this Honorable Court hears Rehman and other witnesses my case will be reversed.

10. I begged, pleaded and implored that the government polygraph Anthony Young and other vital cooperating witnesses as to whether they were truthful in their testimony - cooperation but to no avail.

This Court is my only chance to ever seek justice. Once this Court reads my motions along with Lustberg's submissions, (especially the Young recordings) you will know why I shed so many tears of innocence.

Thank you,  
Most respectfully,  
Paul Bergin