

**Motion to Vacate, Set Aside, or Correct a Sentence  
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

**Instructions**

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out an in forma pauperis form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:
  - Camden: Mitchell H. Cohen U.S. Courthouse 4th & Cooper Streets Camden, NJ 08101
  - Trenton: Clarkson S. Fisher Fed. Bldg. & U.S. Courthouse 402 East State St. Trenton, NJ 08608
  - Newark: Martin Luther King Jr. Fed. Bldg. & U.S. Courthouse 50 Walnut St. Newark, NJ 07101
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

**RECEIVED**  
JUN 20 2016  
AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH, CLERK

/

MOTION UNDER 28 U.S.C. §.2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District of New Jersey	
Name (under which you were convicted): Paul Bergrin		Docket or Case No.: 09-369	
Place of Confinement: Federal Correctional Institute, Terre Haute, In.		Prisoner No.: 16235050	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
v.		Paul Bergrin	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court, District of New Jersey,  
Newark, New Jersey

(b) Criminal docket or case number (if you know): District Court - 09-369; Third Cir. 13-3934

2. (a) Date of the judgment of conviction (if you know): September 23, 2013

(b) Date of sentencing: September 23, 2013

3. Length of sentence: Life

4. Nature of crime (all counts): Murder, murder conspiracy, drug trafficking conspiracy, murder for hire conspiracy, aiding prostitution and evading reporting requirements.

RECEIVED

JUN 20 2016

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH, CLERK

5. (a) What was your plea? (Check one)

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No

8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Name of court: Third Circuit Court of Appeals, United States Supreme Court

(b) Docket or case number (if you know): 13-3934 (3d Cir.); Supreme Court - No. 14-9461

(c) Result: Convictions affirmed. Certiorari denied.

(d) Date of result (if you know): Third Cir. December 18, 2014; Supreme Court May 26, 2015

(e) Citation to the case (if you know): No. 13-3934, 2014 U.S. APP. LEXIS 23818 (3d Cir. Dec. 18, 2014)

(f) Grounds raised: (1). Repeated unfairly prejudicial rulings denied defendant his Sixth Amendment right to present a defense; (2). Failure to Order continuance; (3). Judicial interference during defendant's jury addresses; (4). Curtailed cross examination of Government witnesses; (5). Denial of funds for transcripts; (6). Preclusion of defense witnesses; (7). Prosecutorial misconduct; (8). Vouching for Government witness's credibility; (9). Rulings preventing defendant from a fair opportunity to review Government evidence; (10). Denial of access to exculpatory evidence; (11). Erroneous evidentiary hearings contributed to trial's fundamental unfairness; (12). Mis-statement of facts for sentencing.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know): 14-9461

(2) Result: Denied

(3) Date of result (if you know): Certiorari denied.

(4) Citation to the case (if you know):

(5) Grounds raised: (1). The Court should grant a Writ of Certiorari to clarify that the number of issues raised does not excuse an Appellate Court's obligation to perform cumulative error review;

(2). The common place conduct of criminal defense Attorney's alone may not establish key elements of conspiracy and aider/abettor liability.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Third Circuit Court of Appeals

(2) Docket or case number (if you know): 13-3934

(3) Date of filing (if you know): 2011, 2012

(4) Nature of the proceeding: Government appealed rulings from District Court.

(5) Grounds raised: (1). Whether the District Court erred in dismissing the RICO and VICAR counts of the Indictment.

(2). Should the sitting District Court Judge, William J. Martini, be recused from the case and the case reassigned.

(3). Did the District Court err in severing counts from the Indictment.

(4). Did the District Court err in suppressing evidence.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: Third Circuit reversed District Court's rulings and reassigned case.

(8) Date of result (if you know): 2011, 2012.

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

The cases are cited at:

(1). United States v. Bergrin, 650 F.3d 257 (3d Cir. 2011).

(2). United States v. Bergrin, 682 F.3d 261 (3d Cir. 2012).

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? The government appealed motions. We replied.

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: We replied to the government's appeal. It was our ardent and vociferous position that the Honorable Judge William J. Martini ruled in accord with the facts and law and was correct, in his rulings.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

We replied to the government's appeal. It was our ardent and vociferous position that the Honorable Judge William J. Martini ruled in accordance with the facts and law and was correct in his rulings.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:**

The Government's denial of "use immunity" to material witnesses who would have exculpated Petitioner and provided seminal impeachment of the prosecutor's case violated Due Process of Law.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The breadth of this point is submitted in the attached supplication. This is NOT a motion pursuant to the auspices of judicially granted immunity.

This issue establishes that the government clearly identified material defense witnesses such as Jamal Baskerville, Jemal McNeil, Hakeem Curry, Rakeem Baskerville, Michael Lopez, Jason Nieves, Edward Peoples, Jose Bracero, Yolanda Jauregui, Ramon Jiminez, Maria Correia, Syed Rehman, Drew Rahoo, and others and intimidated, coerced, and wrongfully influenced them to consult with an attorney to improperly invoke their Fifth Amendment right against self-incrimination.

The government had a legal, moral and professional responsibility to grant each of the witnesses "use immunity" and compel their testimony. Instead, the government was allowed to present its case while Petitioner was denied calling the witnesses whose testimony would refute and/or challenge the evidence against him.

Please see Point I in the attached brief memorandum offered in support of this motion.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Appeal to the Circuit Court of Appeals, Third Circuit

Name and location of the court where the motion or petition was filed:

Third Circuit Court of Appeals

Docket or case number (if you know): 13-3934

Date of the court's decision: 12/18/2014

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Third Circuit Court of Appeals

Docket or case number (if you know): 13-3934

Date of the court's decision: 12/18/2014

Result (attach a copy of the court's opinion or order, if available):

Denied.

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Re: 5 above: Yes. It was raised collaterally as dicta and part of another issue.

**GROUND TWO:**

Petitioner's constitutional rights to due process & a fair trial were infringed upon by conflicted/compromised attorney who acted as de facto agents for the government.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Point II in the attached brief. Several attorneys labored under a conflict of interest in this case as set forth at length in Point II. Richard Roberts in particular engaged in egregious misconduct. Roberts solicited Petitioner's former clients, offering them a discount and moved into the offices where Petitioner practiced prior to his arrest and incarceration. Roberts represented, met with, counseled and/or solicited movie deals from the majority of cooperating witnesses in Petitioner's case. Included among them were: Albert Castro, Abdul Williams, Rondre Kelly Eugene Braswell, Yolanda Jauregui and Maria Correia.

Most disturbing is that a number of Roberts' clients gave contrary claims of Petitioner's alleged complicity. At least two of Roberts' clients falsely implicated Petitioner. Roberts and the government knew or should have known Roberts' clients were lying when it was evident the allegations against Petitioner contradicted one another. Both could not be true.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

The issue was not fully known nor developed at the time of the appeal.

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):



(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

It was not fully known nor developed at the time the appeal was filed and perfected.

**GROUND THREE:**

The Government's failure to delineate recordings proving "actual innocence" violated Petitioner's constitutional rights.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During pre-trial discovery, the government provided Bergrin with over 100 CDs containing over 20,000 pages of records, discovery, including testimony from other trials and evidence, telephone records, tax records, real estate records, and multiple CDs containing approximately 40,000 recorded conversations from Title III interceptions in United States v. Hakeem Curry.

The government buried and camouflaged these recordings amongst the massive mounds of un-itemized and unindexed mounds of paperwork. The government made it very clear that they were not using the conversations against Petitioner.

Moreover, the government emphatically stated there were no exculpatory conversations nor interceptions that would help Petitioner's case; all the time being abundantly cognizant there were a multitude of conversations proving Petitioner's "actual innocence" and evidence which would have eviscerated the testimony of their sole witness in the Kemo murder (Anthony Young).

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

It was not ripe.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Pro Se Letter brief prior to sentencing & supplementing R. 29 motion

Name and location of the court where the motion or petition was filed:

Honorable Judge Dennis Cavanaugh, United States District Court, District of New Jersey, Newark U/102

Docket or case number (if you know): 09-369

Date of the court's decision: 9/23/2013

Result (attach a copy of the court's opinion or order, if available):

Post-conviction and at sentencing on September 23, 2013  
No written opinion. Oral denial

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

United States Court of Appeals for the Third Circuit

Docket or case number (if you know): 13-3934

Date of the court's decision: 12/18/2014

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

\* Re: (5) above, Yes. Not in the form or substance evidenced in the attached brief.

**GROUND FOUR:**

Petitioner is actually, factually and legally innocent of aiding and abetting in the Kemo murder.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The government based its aiding and abetting charge of the Kemo murder solely upon statements which its sole witness Anthony Young claimed Petitioner made. The government charged Petitioner for murder-the most serious of all criminal acts-based solely upon an allegation of Petitioner's words. But, as the United States Supreme Court decision in U.S. v. Elonis makes clear, proof of speech alone is not a crime, despite how others interpret or act upon another's statements. Assuming arguendo, the statements Young claimed Petitioner made actually were stated, the statements are not enough to prove Petitioner intended to aid and abet a specific crime let alone the specific crime of murder. The statements were vague and subject to various interpretations, i.e., criminal and/or noncriminal acts which do not entail murder (threaten/convince) or no criminal act at all (explaining the case to a client's brothers and cousin). They do not prove an intent to aid and abet the murder a witness. No rational jury could have found Petitioner aided and abetted the Kemo murder because the government offered no evidence of the requisite mens rea and actus rea elements. In U.S. v. Rosemond, a decision that came down after Petitioner's verdict, the Supreme Court held a defendant can be found to have aided and abetted IF AND ONLY IF he obtained advance knowledge of the specific substantive crime the principal committed, shared the intent that the principal commit that specific crime, and knowingly performed an act which he intended to further the principal succeed in carrying out that specific crime. Despite the recordings proving Petitioner's innocence, the government charged Petitioner with the Kemo murder as a strategy to bolster its RICO case, fully knowing that no jury would be able to compartmentalize and isolate the evidence relating to the Kemo murder in a RICO mega trial. Please see argument Point IV attached.

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

The Elonis case had not been decided by the Supreme Court.

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Third Circuit Court of Appeals

Docket or case number (if you know): 13-3934

Date of the court's decision: 12/28/2014

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

The Rosemond and Elonis decisions were handed down after Petitioner's trial and before Petitioner's appeal was perfected.

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

(a) Points IV, V, VII. Rosemond v. U.S., 134 S. Ct. 1240 (2014) was decided subsequent to Petitioner's appeal being perfected. Elonis v. U.S., 135 S. Ct. 2001, 192 L.Ed. 1, 2015 U.S. Lexis 3719, 83 U.S.L.W. 4360, 13-983 (2015) was decided subsequent to submission of Petitioner's appeal; (b) Point VI: Constitutional challenges can be made at any time; (c) Point IX: The extent of undisclosed evidence was not known at the time; (d) Point X was not ripe for appeal but for Habeas Corpus filing; (e) Point XI, and in particular XI: A, L, M, N. Improperly creating juror bias and intruding on jury's fact finding; immeasurable prejudice that resulted from improperly "impeaching" Petitioner by treating his non-testimonial statements in conducting the trial as testimonial; and the extensive documentation of interference, disparagement and bias of the government and court. (Some of the latter cited on appeal.); (f) Point VIII, XII and XII (Napue violations, Inexcusable/Wrongful Delay for a tactical advantage, Malicious and vindictive retaliatory prosecution.) Not all information known. Motions were required to be filed after indictment.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Gerald Shargell, Madison Avenue, NY, NY

(b) At arraignment and plea:

Gerald Shargell, Madison Avenue, NY, NY

(c) At trial:

Pro Se with standby counsel Lawrence Lustberg, esq., Gibbons, P.C., One Gateway Center, Newark, NJ 07102

(d) At sentencing:

Pro Se with standby counsel Lawrence Lustberg, esq., Gibbons, P.C., One Gateway Center, Newark, NJ 07102

(e) On appeal:

Lawrence Lustberg, esq., Gibbons, P.C., One Gateway Center, Newark, NJ 07102

(f) In any post-conviction proceeding:

Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

The government appealed motions. We replied to the government's appeal. It was our ardent and vociferous position that the Honorable Judge William J. Martini ruled in accord with the facts and law and was correct in his rulings.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

### GROUND FIVE

The erroneous, prejudicial jury instructions deviated from the model jury charges; deleted sections; improperly mixed elements and lowered the burden of proofs for various offenses; and aiding/abetting to negligence.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The instructions given to the jury on aiding and abetting deviated from the Third Circuit's model jury charges. An entire paragraph was deleted explaining what the jury must consider before it could find the government satisfied the actus rea elements needed to aid and abet. The modified instructions substantially lessened the burden of proof and caused a "grave danger" that the jury convicted Petitioner for an act of negligence or because the consequences of his statements could have been foreseeable. Moreover, the very same instructions given to the jury in Petitioner's case were rejected by the Supreme Court in its 2015 Rosemond decision. The District Court clearly erred in its instructions to the fact finder on the charges of aiding and abetting, thereby requiring reversal of Petitioner's convictions; especially since the Kemo murder charges inflamed the passions of the jury against Petitioner and prejudiced the jury's verdict on all counts.

The facts enunciated in Point V in the attached memorandum of law depict that no rational jury applying the correct instructions would ever have found the government met its burden of proof. Moreover, the government failed to prove that Petitioner shared Young's intent to murder Kemo to prevent his testimony or to possess or use a handgun when committing the murder.

- (b) Direct Appeal of Ground FIVE:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

- (c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Ineffective assistance of appellate counsel whom did not raise Rosemond as a direct and singular issue. The appeal had not been perfected at the time the Rosemond decision was handed down and Elonis was decided after the appeal was submitted. Moreover, Petitioner was not present for the jury charge conference and Petitioner did not review the final instructions. The final instructions were completed just before closing arguments. The jury was read the instructions and sent back to deliberate right after closing arguments concluded.

**GROUND SIX**

No jury could have understood the complicated, contradictory and confusing instructions.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The jury was asked to apply 160 pages of instructions to an 130 page indictment alleging 23 counts stemming from plots. In count one alone, the jury was instructed on 22 different crimes. Between the predicate acts and substantive counts, the jury was asked to consider the elements of proof for 42 distinct offenses.

The instructions were impossible to apply. Crimes by the same name, such as conspiracy were given different definitions, elements and burdens of proof depending upon the state law applicable (New York or New Jersey) as well as federal law. Because the jury could not understand the instructions, Petitioner was denied due process of law and his conviction cannot stand.

(b) Direct Appeal of Ground **SIX**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Appellant counsel did not assert this argument in the appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):



(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND SEVEN**

The RICO statute is unconstitutional. The RICO statute is unconstitutional as applied to Petitioner's case.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The statute is unconstitutional because it is vague. No one can understand its meaning and no jury or court can be expected to apply it consistently. Moreover, it is unconstitutional because it is overly broad. Normally used to challenge statutes on First Amendment grounds, the overbreadth doctrine should apply to an analysis of RICO. The RICO statute gives the government too much discretion over what acts it will and will not seek to prosecute. The point at which a crime committed more than once in a ten year period becomes a "pattern of racketeering" as opposed to multiple conspiracies.

The statute is unconstitutional as applied to the charges against Petitioner. The multiple conspiracies which involved different crimes, individuals, and do not share a common purpose would never be charged against Petitioner unless they fell under RICO. As explained in the jury charge arguments, the statute's application to multiple conspiracies makes it vague and overly broad for the reasons stated above. The statute also prevented Petitioner from testifying as to certain charges and alleged conspiracies unless he chose to testify to all of 23 counts in the indictment.

(b) Direct Appeal of Ground SEVEN:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

It was not ripe.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

It was not ripe.

**GROUND EIGHT:**

Petitioner lacked the requisite mental state, mens rea and scienter to be convicted of the Kemo Deshawn McCray murder, the attempted murder of witnesses, witness tampering and related offenses.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): See supporting memorandum of law attached. The Government's use of an "objective indicia" or factual criteria in their quest to prove Petitioner's "specific" intent was erroneous; especially in light of the newly decided Supreme Court precedent; and, assuming arguendo, Petitioner ever made the alleged statements. *Elonis v. U.S.*, 135 S. Ct.2001, 19 L.Ed. 1, 2015 U.S. LEXIS 3719, No. 13-983 (2015) clearly re-defines the court's progressive analysis of intent. Point VIII of the attached memo delineates this point meticulously and how the district court's instructions on this issue requires reversal of the convictions.

(b) **Direct Appeal of Ground EIGHT:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

The Elonis case had not been decided by the Supreme Court.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Third Circuit Court of Appeals

Docket or case number (if you know): 13-3934

Date of the court's decision: 12/28/2014

Result (attach a copy of the court's opinion or order, if available):

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND NINE:**

The government, to an absolute certainty, obstructed justice, committed outrageous misconduct, suborned perjury and eviscerated the Constitution's Due Process Clause.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See detailed memorandum.

This motion will conclusively prove that Anthony Young, the government's sole and exclusive witness against Petitioner in the charges relating to the Kemo murder, contrived, fabricated and perjured evidence; and the government knew about it, suborned the perjury and assisted in its preparation.

This motion explains the magnitude of the Title III intercepted recordings in proving blatant perjury and government misconduct. It also examines issues relevant to Brady and Giglio with the recordings. It also establishes Petitioner's innocence and that he could not have uttered the material substance of what Young alleged.

This motion argues facts and law to aver that the government presented evidence and argued facts they knew were false and coached witnesses to support later theories and perjure themselves. A copious analysis and presentation of false and misleading evidence is presented.

**(b) Direct Appeal of Ground NINE:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Re: (1), no Partially but not fully. The recordings, theories and enormous prosecutorial misconduct was not argued on appeal. It was not fully developed.

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

It was not ripe.

**GROUND TEN:**

The Government violated Bergin's Constitutional Due Process Rights by Failing to Reveal Favorable Evidence and deliberately concealing it.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Point X in attached memorandum of law. This motion proves through conclusive and uncontroverted facts that the government knowingly, intentionally, purposely and even recklessly withheld favorable evidence from Petitioner as well as compelling impeachment materials which would have vindicated his cause.

Based upon the facts presented and law argued on this issue, the government eviscerated any opportunity Petitioner had to Due Process of law and subverted the truth seeking process of justice. The court is implored to consider the cumulative effect of the suppressed evidence. From the Third Circuit, Petition vociferously avers that the government violated the holdings in U.S. v. Tykarsky, 446b F.3d 458, 478 (3d Circ. 2006).

**(b) Direct Appeal of Ground TEN:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Partially but not as an individual issue. Ineffective assistance of appellate counsel

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I am raising it now. Appellate counsel believed it would politically harm his firm if it was raised.

**GROUND ELEVEN**

Petitioner would have been vindicated if he had effective assistance of his investigator.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Point XI of memorandum of law attached. Petitioner's investigator Lou Stevens failed to competently perform his responsibilities as an investigator, appointed pursuant to the Criminal Justice Act (CJA). The motion will detail how Stevens was suffering from illness; how the failure to receive CJA payments affected the quality and quantity of his duties and performance; and how he even contrived how he performed investigation, which he never did. Additionally, the evidence will clearly prove how Petitioner implored Stevens to conduct extremely important material investigation, which would have proven Petitioner's innocence and impeached critical witnesses but to no avail.

(b) Direct Appeal of Ground **ELEVEN**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*Ineffective assistance of investigator is ripe now for appeal.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

It was not ripe.

## GROUND TWELVE

Petitioner was blocked from presenting a defense and the government and court created jury bias.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was blocked from presenting a defense in violation of the Due Process, Fifth and Sixth Amendment Rights. Petitioner did not testify in his defense but the government treated petitioner's in-court statements as impeachable testimony, accusing him of trial misconduct. This inflamed the jury's passions, intruded upon its fact finding function and created such bias it completely undermined any confidence in the verdict. The government smugly mocked Petitioner, telling the jury that Petitioner had "years to contrive what to say;" and commented on the lack of witnesses Petitioner called in his defense, impermissibly and prejudicially shifting the burden of proof to Petitioner. Petitioner was subjected to repeated interference in refuting the government's case. The government and the court interrupted Petitioner 700 times, seven times during his opening; continually disparaged him, repeatedly accusing him of trying to deceive witnesses and the jury. This was especially damaging given Petitioner was accused of committing crimes as a lawyer. The judge's undisclosed conflict of interest and bias was apparent when he acted as an advocate for the government, refuting Petitioner's points instead of waiting for the government to do so; vouching for witnesses, including the government's key witness Anthony Young; and permitting the government to make continual speaking objections to coach witnesses' and to "testify" to their credibility. Petitioner was immeasurably prejudiced by the interference with his defense and his credibility was eviscerated, without ever having testified. It resulted in an angry, biased jury who closed its ears to Petitioner's defense and the acts intruded upon its fact finding function and credibility determinations so infecting the trial that its verdict cannot stand.



(b) Direct Appeal of Ground **TWELVE**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Partially with respect to witness vouching. Arguments re: testimonial treatment of Petitioner's in-court statements, creating juror bias and intrusion upon fact finding were not made.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ~~Twelve~~ **Thirteen**

The indictment was inexcusably and wrongfully delayed in order to achieve tactical and strategic adv

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Point XIII in the attached brief. In May of 2005, William Baskerville was indicted for the murder of Deshawn Kemo McCray and tried in April, May of 2007. During the course of Baskerville's jury trial, AUSA's Minish, Frazier and FBI SA Shawn Brokos either testified or argued that Petitioner was a co-conspirator and guilty of murder. In January of 2007, Petitioner was indicted in New York County for the crimes of conspiracy to commit money laundering, conspiracy to promote prostitution and misconduct by an attorney. The offense conduct was alleged to have occurred in 2004, 2005. The federal government violated Petitioner's due process, constitutional rights and delayed the indictment to achieve a tactical and strategic advantage. See Point XIII in the attached brief which explains factually and legally the basis of the ground.

(b) Direct Appeal of Ground **Thirteen**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*I did not realize the enormity of the issue until researching for this motion and I did not have all the necessary facts to delineate.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

## GROUND FOURTEEN

Petitioner's prosecution was malicious retaliation and the result of vindictiveness

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See memorandum attached, Point XIV. This issue pertains to Petitioner's career as a state and federal prosecutor, defense attorney and dedicated soldier who refused to permit fellow soldiers and law enforcement to be scapegoated, abused and wrongfully sentenced to a life in prison; and more importantly, held criminally and wrongfully culpable for crimes and misconduct they were not responsible for. This ground presents the monumental and consistent acts committed against Petitioner because of his defenses and successes as a soldier and defense attorney.

(b) Direct Appeal of Ground **FOURTEEN**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Appellate counsel refused. I implored and pleaded with him to raise it but he was afraid it would antagonize the government.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I am raising it now. Appellate counsel believed it would politically harm his firm if it was raised.

**GROUND FIFTEEN**

Imposing six life sentences without a fact-finding hearing violated due process and the guidelines.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The District Court denied Petitioner his constitutional right to due process and violated the sentencing guidelines when it declined to hold a hearing to resolve disputed facts and, instead, relied upon facts that lacked sufficient indicia of reliability in calculating and sentencing Petitioner to more than Six (6) Life Terms. . See argument in Point XV of attached memorandum of law regarding deviating from sentencing guidelines and *Alleyne v. U.S.* which requires any fact by law, which increases the penalty for a crime, must be submitted to the jury.

(b) Direct Appeal of Ground **FIFTEEN**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*New case law was developed subsequent to appeal.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N/A filed within one year of U.S. Supreme Court's denial of Certiorari, which occurred on May 26, 2015.

---

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

*That the Indictment be dismissed in its entirety and Petitioner granted a new trial.*

or any other relief to which movant may be entitled.

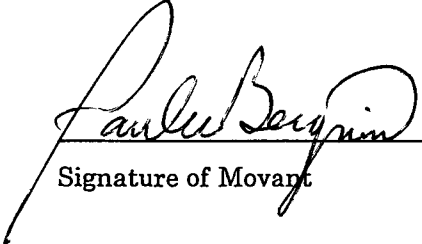
---

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

(month, date, year). *June 14, 2016*

Executed (signed) on *June 14, 2016* (date).

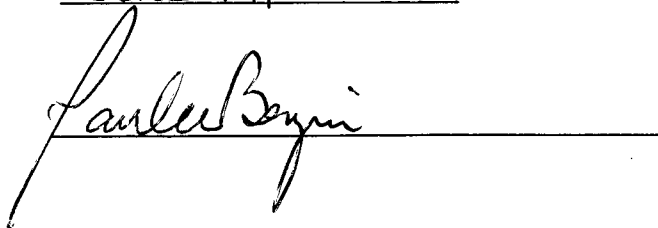
  
Signature of Movant



I declare (or certify, verify, or state) under penalty of perjury that I have been notified that I must include in this motion all the grounds for relief from the conviction or sentence that I challenge, and that I must state the facts that support each ground. I also understand that if I fail to set forth all the grounds in this motion, I may be barred from presenting additional grounds at a later date.

Executed (signed) on June 14, 2016 (date)

Signature of Movant

A handwritten signature in cursive script, appearing to read "Paul B. Bynum", is written over a horizontal line.

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.