

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**PAUL W. BERGRIN,**

**Petitioner,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

**Civil Action No. 16-3040 (JLL)**

**ORDER**

---

IT APPEARING THAT:

1. Petitioner filed his amended motion to vacate sentence on or about June 20, 2016. (ECF No. 3).
2. On June 28, 2016, this Court ordered the Government to respond to the amended vacate within forty five days. (ECF No. 4).
3. On July 14, 2016, Petitioner filed with this Court a motion in which he seeks to amend his motion to vacate to add further briefing in support of one of his previously asserted claims, asks this Court to appoint him counsel, requests that this Court deny any and all requests for extensions of time from the Government, and disqualify the Newark Office of the United States Attorney, as well as certain FBI agents, from being involved in this matter. (ECF Nos. 6-7). In support of his motion to disqualify the United States Attorney Office, Petitioner offers nothing more than the assertions he makes in his own motion to vacate sentence, which he insists would establish misconduct on the part of the United States Attorneys involved in his criminal case if proven. (Document 1 attached to ECF No. 7). Petitioner provides no information in support of his counsel request. (ECF No. 7).

4. Turning first to Petitioner's request for counsel, this Court notes that habeas petitioners do not have an automatic right to the appointment of counsel. *See Morris v. Baker*, No. 14-6785, 2015 WL 5455651, at \*1 (D.N.J. Sept. 15, 2015); *see also Reese v. Fulcomer*, 946 F.2d 247, 263 (3d Cir. 1991), *superseded on other grounds by statute*, 28 U.S.C. § 2254(d). Pursuant to 18 U.S.C. § 3006(a)(2)(B), a district court may appoint counsel to an indigent petitioner where "the interests of justice so require." In making that determination, "the district court must first decide if the petitioner has presented a nonfrivolous claim and if the appointment of counsel will benefit the petitioner and the court." *Reese*, 946 F.2d at 263. The courts look to three factors in making that determination: the likelihood of success on the merits, the complexity of the issues involved in the petitioner's case, and the ability of the petitioner to investigate and present his case. *See, e.g., Shelton v. Hollingsworth*, No. 15-1249, 2015 WL 5116851, at \*2 (D.N.J. Aug. 31, 2015).

5. Although this Court recognizes that Petitioner received CJA counsel during his criminal case, even assuming his indigence, it would not be in the interests of justice to appoint counsel at this time. While this Court has determined that Petitioner's claims are of sufficient arguable merit to proceed beyond the initial screening stage, Petitioner has yet to convince the Court that his motion to vacate sentence is likely to succeed on the merits, especially in the absence of a response by the Government as of yet. Likewise, although Petitioner does present claims of some complexity, this Court has no reason to doubt that Petitioner is able to investigate and present his case in this matter considering the extensive briefing he has already provided and the fact that he was an experienced criminal attorney at the time of his arrest. Thus, having weighed the appropriate factors, this Court finds that it would not be in the interests of justice to appoint counsel at this time, and will deny the counsel request without prejudice.

6. As to Petitioner's next request, that this Court deny any and all extension requests the Government may seek in the future, that request is denied as patently without merit. The Government has yet to file any such request, and in the event the Government does so request, Petitioner is free to file opposition if he so chooses. This Court is aware of no basis for preemptively preventing the Government from seeking extensions, and finds that, in light of the long list of claims Petitioner has presented, to do so at this stage without first permitting the Government to address any need for additional time they may have would be essentially unfair, and this Court therefore denies Petitioner's request.

7. As to Petitioner's request that he be permitted to amend his complaint to include the additional arguments presented in Petitioner's proposed amendment (ECF No. 6), this Court will grant Petitioner's amendment request as the Government has yet to file a response and "a petitioner may amend his or her [motion to vacate sentence] once as a matter of course at any time before a responsive pleading is served." *United States v. Thomas*, 221 F.3d 430, 435 (3d Cir. 2000).

8. Finally, Petitioner requests that this Court disqualify the entire Newark Office of the United States Attorney from appearing in this matter, as well as disqualify a named FBI agent from participating in any part of this matter. As one court in this District has explained, "[o]nly the most extraordinary circumstances would justify the removal of the entire United States Attorney's Office from a case, [see] e.g., *United States v. Dyess*, 231 F. Supp. 2d 493 (S.D.W. Va. 2002)[, and d]isqualification of an entire United States Attorney's Office is nearly unprecedented. See, e.g., *United States v. Whitaker*, 268 F.3d 185 (3d Cir. 2001)." *United States v. Manna*, No. 97-2034, 2006 WL 3063456, at \*8 (D.N.J. Oct. 25, 2006). Indeed, even the disqualification of a single attorney in the United States Attorney's Office is a "drastic measure and a court should hesitate to impose it except where necessary." *Id.* (quoting *United States v. Bolden*, 353 F.3d 870,

878 (10th Cir. 2003)). In this matter, Petitioner has provided little more than his own allegations in his motion to vacate sentence to support his request for the disqualification of the United States Attorney's Office in this matter, and has certainly not established that the improprieties he alleges in fact occurred. Likewise, it is not yet clear that any of the attorneys who worked on Petitioner's criminal matter will actually be assigned to this matter, and Petitioner has provided no basis for this Court to impute any alleged issues those attorneys may have to the remainder of the United States Attorney's Office. Petitioner has not provided any substantial basis for the disqualification of the United States Attorney's Office, and his request for disqualification will be denied without prejudice at this time.

IT IS THEREFORE on this day 25<sup>th</sup> of July, 2016,

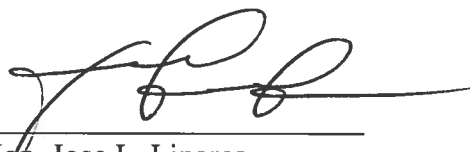
ORDERED that Petitioner's request for permission to amend his motion to vacate sentence (ECF Nos. 6) is hereby GRANTED; and it is further

ORDERED that Petitioner's request to bar the Government from seeking any extensions in this matter (ECF No. 7) is DENIED; and it is further

ORDERED that Petitioner's request for the appointment of counsel (ECF No. 7) is DENIED WITHOUT PREJUDICE; and it is further

ORDERED that Petitioner's request for the disqualification of the United States Attorney's Office in Newark is DENIED WITHOUT PREJUDICE; and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Respondent electronically, and upon Petitioner by regular mail.

  
\_\_\_\_\_  
Hon. Jose L. Linares,  
United States District Judge