

ORDER



**U.S. Department of Justice**

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December 19, 2016

By ECF and Courthouse Mail

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 propose a further extended briefing schedule for resolving Bergrin's recently filed Rule 33 motion.

Bergrin contends in his motion that various categories of supposedly newly discovered evidence warrant granting him a new trial. Responding to that motion has required the Government to review voluminous material, including wiretap recordings never introduced at Bergrin's trials but produced to Bergrin long before his first trial. Compounding the problem, one crucial member of the three-AUSA trial team left the Office after many years of distinguished service, while another has been preparing for a multi-week trial now scheduled to begin in late January before the Hon. William H. Walls, Sr. U.S.D.J. Meanwhile, Bergrin's appointed counsel will need substantial time to reply to the Government's response.

The Government remains committed to providing this Court with as complete and organized a response as possible to help this Court resolve the Rule 33 motion. Unfortunately, I will need more time to fulfil my part of that important task. The Government's draft response currently exceeds 100 pages, but much work remains to be done to ensure that this Court has what it needs. Under the current scheduling order, the Government's response is due Wednesday, December 21, 2016, and Bergrin's reply is due Wednesday, January 18, 2017. I believe that a final extension of approximately four weeks should suffice for me to finalize the Government's response. If this Court agrees, appointed counsel's deadline for filing Bergrin's reply should be extended as well. That, at least, will spare appointed counsel from having to work on the reply during this holiday season.

Accordingly, the Government proposes the following amended schedule for resolution of the Rule 33 motion:

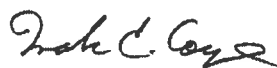
1. The Government's memorandum of law in opposition to the Rule 33 motion shall be filed no later than Tuesday, January 17, 2017.
2. Bergrin's reply memorandum of law in further support of the Rule 33 motion shall be filed no later than Friday, March 10, 2017.
3. Upon completion of briefing, the Court will determine whether any hearing or argument on the Rule 33 motion is necessary.

This extended briefing schedule should enable both parties to prepare well-researched and supported memoranda 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, however, 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. Should anyone be faulted, 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)

GRANTED.

So ordered this 20<sup>th</sup> day of  
December, 2016



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