



U.S. Department of Justice

*United States Attorney
District of New Jersey*

Appeals Division

*Steven G. Sanders
Assistant U.S. Attorney*

*970 Broad Street, Suite 700
Newark, NJ 07102*

*(973) 297-2019
FAX (973) 297-2007*

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ELECTRONICALLY FILED

Hon. Dennis M. Cavanaugh, U.S.D.J.
U.S. District Court, District of New Jersey
Post Office Building & Federal Courthouse
Room 451
Newark, New Jersey 07101-0999

Re: United States v. Bergrin, Crim. No. 09-369 (DMC)

Dear Judge Cavanaugh:

As Your Honor instructed, the parties yesterday filed initial briefs supporting their pretrial motions. A sizable portion of those briefs addresses the question whether any severance is required and what evidence may be used to prove the murder charged in Counts 12 and 13 (which murder is also charged in Counts 1 and 3). However, Point III of Defendant Bergrin's Brief seeks a pretrial hearing to inquire into allegations of prosecutorial misconduct, based largely on a 20-page, 159-paragraph Certification signed by Louis Stephens, Bergrin's investigator.

At first glance, many of the arguments Bergrin raises are facially implausible, insufficient as a matter of law to warrant any remedy (let alone a hearing), or both. Thus, the request for a hearing seems like a ploy to delay the trial and obtain a deposition of Government witnesses. At any rate, the Government simply cannot respond to those allegations by Friday, even though it can—and will—timely respond to the arguments raised in Points I, II and IV of Bergrin's brief.

Bearing in mind that this Court's foremost concern is deciding the scope of the forthcoming trial, the Government—with the consent of standby counsel for Bergrin—respectfully requests that this Court modify its Scheduling Order to permit the Government to file its response to the prosecutorial misconduct claim by Friday, August 31, 2012, with the caveat that the Government will respond to the other claims by Friday, August 24. The proposed modification would allow this Court to preserve the September

12th date for addressing and resolving whether the trial will encompass Counts 1 through 26 (as the Government requests) or only Counts 12 and 13 (as Bergrin requests). It also will allow the Government to determine whether any of the allegations in the Stephens Certification are legally sufficient to justify an evidentiary hearing (an issue this Court could also address on September 12). But until the Government has had sufficient time to sort through those (dubious) allegations, it cannot appropriately respond to them.

For the foregoing reasons, the Government respectfully requests that this Court modify its scheduling order by extending until August 31, 2012 the Government's time to respond to Point III of Bergrin's brief.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

By: /s STEVEN G. SANDERS
Assistant U.S. Attorney

cc: Lawrence S. Lustberg, Esq.
Amanda B. Protes, Esq.
(by ECF and e-mail)