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December 10, 2018

VIA ECF

Honorable Jose L. Linares
Chief Judge, United States District Court
for the District of New Jersey
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)

Dear Chief Judge Linares:

I write with regard to our filing of November 21, 2018. At that time, we filed a Declaration from Defendant Paul W. Bergrin which was unsigned because of difficulties in obtaining Mr. Bergrin's signature in time for filing, due to his present incarceration at ADX Florence in Colorado. We have now obtained Mr. Bergrin's signature on that Declaration, which also contains a few hand-written annotations by Mr. Bergrin, but is otherwise identical to the original, unsigned filing. The signed Declaration is attached to this letter and filed herewith.

Thank you for your time and consideration throughout the course of this matter.

Respectfully submitted,

/s/ Lawrence S. Lustberg
Lawrence S. Lustberg

cc: Mark E. Coyne, Esq. (by ECF and Email)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF PAUL W. BERGRIN

I, PAUL W. BERGRIN, of full age, do certify that:

1. I am the defendant in the above-captioned criminal matter. I submit this declaration in support of my motion for a new trial on the basis of newly discovered evidence under Federal Rule of Criminal Procedure 33. Everything contained in this declaration is completely true and accurate to the best of my knowledge and recollection, and I understand that if anything in this declaration is willfully false, I may be subject to punishment.
2. I was tried twice. In both cases, I represented myself *pro se* with the assistance of the Gibbons law firm as standby counsel. The division of labor between me and standby counsel was as follows: I was responsible for reviewing discovery, directing the investigation, preparing and conducting cross-examination of witnesses, and preparing and conducting opening and closing arguments; Gibbons attorneys assisted me by researching, drafting, and arguing motions, voicing and arguing objections, and assisting with investigative tasks as directed by me.

3. Throughout preparations for both trials, I was incarcerated, either in county jail (briefly), or at the Metropolitan Detention Center (MDC) in Brooklyn, NY. It was extremely difficult to review discovery and prepare for trial in these environments. In the county jail, there was no computer available for inmate use, and so it was impossible to review any recordings. In the MDC, there was one (1) computer to be shared among approximately 110-120 pretrial detainees, which often meant that I was able to review discovery using the computer for one hour per day or less. In both facilities, it was very loud and difficult to concentrate or read documents in an expedient manner.
4. Nonetheless, I worked day and night to prepare for my trials. I put enormous time and effort into my defense, as my life was at stake, and I worked diligently to leave no stone unturned.
5. Among tens of thousands of other pieces of discovery, I was provided evidence of recordings made by the Government of Hakeem Curry's telephone calls pursuant to a wiretap. I was actually provided this evidence in two forms on different occasions. On one occasion, I was provided audio recordings and transcripts of two calls between Curry and me on November 25, 2003—the day William Baskerville was arrested. On another occasion, I was provided with hundreds of compact discs containing tens of thousands of audio recordings, consisting primarily of surveillance recordings of Curry from November 25, 2003 onward, all of which was unindexed.

6. When I received the isolated audio and transcript of the two November 25 calls, I believe I either reviewed the transcript, the recordings, or both together with Lavinia Mears, Esq. while at the MDC. In the first of these calls, I told Curry that William Baskerville had been arrested, and in the second, after having met with Will and appeared in his case, I told Curry the charges that William was facing, his exposure, and what I knew of the Government's case, including the existence of an informant witnesses named "Kamo." These calls were unremarkable to me at the time and I did not focus on them. The existence and details of these calls had been widely publicized in State-wide periodicals by then, and I did not consider these calls to be inculpatory; I believed—as I still maintain—that these calls showed nothing more than an attorney properly discussing a pending charge with a trusted associate of a client. More importantly, Curry and Baskerville grew up in the same household and were both raised by their maternal grandmother. They were like brothers. PCB

7. With regard to the recordings of Curry provided amidst hundreds of CDs, I never reviewed these before the conclusion of my trial. I never so much as listened to a single one of these recordings. From the beginning, I was told by the Government that the Curry calls were highly inculpatory and offered no exculpatory evidence. The Government also stated that the recordings had not been properly sealed, and that the Government would not seek to present them as evidence against me. The Government stated that I was very fortunate, because but for the sealing error, the recordings would have been used against me to great effect. The Government also warned me, both before my trials and during my trials, that if I tried to use any of the recordings in my defense, that this would open the door and allow the

Government to bury me with other, damning recordings. Believing that I did not need to listen to the recordings to understand evidence that would be used against me, and that listening to the recordings for the purpose of discovering exculpatory material would be fruitless, I did not listen at all. Instead, particularly in light of the other, massive discovery materials and the sprawling nature of the indictment, I focused my time and efforts on different aspects of trial preparation.

8. It was only after I had been convicted, when the Government submitted a response to my motion under Federal Rule of Criminal Procedure 29, that I began to explore the Curry recordings. This came about when the Government alleged that the infamous (and fictitious) "No Kemo, no case" meeting occurred on December 4, 2003, as evidenced by a Curry phone call after 7:00 p.m. that evening. I knew that no such meeting had occurred, and discovered that in fact the phone call referenced by the Government did not substantiate the Government's claim. But upon listening to that audio recording, it occurred to me for the first time that the Government had not been truthful in its representations of what the recordings contained. At that point, I began listening to the recordings and analyzing them in detail, and discovered their exculpatory value, as discussed in my Rule 33 motion and habeas corpus petition.

9. To my knowledge, no member of my defense team listened to the Curry audio recordings prior to my conviction, either. Certainly, if anyone did so, this was never discussed with me.

10. I did, however, learn some summary information about the Curry recordings from Curry himself. I recall a specific conversation I had with Curry at the Passaic County Jail on one occasion; as I remember it, I was representing William Baskerville at the time and the Government had recently filed a motion to disqualify me as counsel. Curry told me on that occasion that the Government was concocting an unfounded theory of McCray's killing, including a hypothesis that a meeting occurred in which Curry, me, and others conspired to kill McCray. Curry told me that either he or his legal team had listened to audio surveillance of Curry, which he had received in discovery in his own case, and that there was no evidence of such a meeting in any recording during the relevant time period.

11. I conveyed this information to my first attorney, David Ruhnke. I know for certain, however, that Ruhnke never listened to the audio recordings, personally. In fact, Ruhnke conducted no investigation on my case whatsoever, and was relieved as counsel before he would have done so.

12. Among the other copious discovery materials provided to me were records of my own telephone calls. These records contained only telephone numbers, without corresponding names. I repeatedly asked the Government for some reference material identifying the individuals whose phone numbers were listed on my call records, but none was ever provided.

13. In the time period during which the Government alleged that I was involved in narcotics trafficking, I spoke with DEA Agent Gregory Hilton by telephone on a number of occasions about Alejandro Barraza-Castro. My purpose in doing so was

to alert the DEA that Barraza-Castro was a major drug dealer. I wanted Agent Hilton to testify to these calls at trial, to rebut the claim that I was involved in narcotics trafficking with Barraza-Castro. Obviously, if Barraza-Castro had been my partner in crime, it would have been reckless and nonsensical for me to report him. To determine Agent Hilton's recollection of these calls, I asked standby counsel Lawrence Lustberg, Esq., to speak to him. Agent Hilton told Mr. Lustberg, at the courthouse, that he had no idea what Mr. Lustberg was asking about, and denied that any such calls occurred. I interpreted this response to mean that Agent Hilton would not assist me as a witness.

14. After I was convicted, while I was incarcerated in Arizona, an investigator working on my case, Kirk Schwindel, provided me with Agent Hilton's telephone number. Mr. Schwindel was able to obtain this information through contacts at the DEA. I provided Agent Hilton's telephone number to Ginger Galvani, Esq., an attorney and friend who was then assisting me with my case. Ms. Galvani then analyzed the records of my phone calls provided to me by the Government and determined that I had called Agent Hilton over 50 times during the relevant time period. I had absolutely nothing pending with DEA or Hilton and, thus, the only reason I had 54 contacts was to provide material incriminating information about Barraza-Castro. PW3

15. I wanted Hakeem Curry and Rakeem Baskerville to testify in my defense. I had no idea how they might testify, but I knew that there had never been a meeting at which I was present and uttered the words "No Kemo, no case," and I thought it would be in each of their self-interests to testify truthfully to this fact. However, I was never able to obtain an interview of either witness. It is my understanding and belief that the Government warned each of these individuals that they could be charged with

McCray's murder and to avoid involvement in my case. Each ultimately invoked his Fifth Amendment privilege and refused to testify. Neither has been charged with McCray's killing.

16. I wanted Deirdre Baskerville to testify on my behalf, and I attempted to have my investigators interview her before trial. However, Deirdre sold her home and moved to an unknown location. My investigators spent many hours surveilling her last known address but did not see her. I attempted to have her subpoenaed but to no avail—she refused service and I was unable to compel her presence. I did not know how Deirdre Baskerville would testify, but I knew that she had called me on the morning of November 25, 2003, and that she was at her home at the time of that call. I hoped that she would testify truthfully to this fact at trial. It is my understanding and belief that the Government frightened Deirdre Baskerville and urged her to go into hiding, either by threatening her with potential prosecution or by telling her that she could be harmed by me or others if her location were discovered. Deidre would have eviscerated Anthony Young's credibility - RC

17. I wanted Yolanda Juaregui to testify in my defense. I did not know what she would say, as she had said many different, conflicting things with regards to the charges against me. But I knew the truth, which is that I was never involved in drug-dealing. My investigators tried to interview Yolanda, but she refused to speak with them. It is my understanding and belief that the Government threatened Yolanda with a Draconian sentence on her own charges in order to keep her from assisting in my defense.

18. I drafted a prospective declaration for Yolanda Juaregui. The information I put in that declaration reflected my understanding of the truth, information culled from discovery materials I received from the Government, including FBI reports of interviews with Yolanda (Form 302s), and as to those things of which I lacked personal knowledge, my hypotheses. I did not know if all of the information in the draft declaration was completely accurate, but it reflected my sincere belief as to the truth, and I hoped that Yolanda would agree that it was accurate in material respects, correct any inaccuracies, and sign it.

19. My investigators interviewed Sonja Erickson on one occasion while she was living in Louisiana. From this interview, I learned that Sonja could testify that FBI agents had pressured her daughter, Theresa Vannoy, to implicate me in drug dealing, but that Theresa refused to do so because it was untrue. I subpoenaed Sonja to testify at my trial, but the subpoena arrived late, and the judge refused to enforce it and stay the trial pending her arrival.

20. Marisa Jimenez and Loriann Ortiz were both prospective witnesses who my investigators were unable to find. In Marisa's case, a subpoena was issued but never served. It is my understanding and belief that Marisa and Loriann went into hiding preceding and during my trial in response to warnings from the Government. In particular, it is my understanding that the Government cautioned these women that I might be a danger to them while facing trial, and encouraged them to disappear.

21. Maria and Jose Jimenez were both prospective witnesses that I wanted to testify as part of my defense, but it is my understanding that the Government relocated these witnesses to Alaska before my trial and my investigators were unable to locate them.

22. I called Robert Vannoy to testify in my second trial. On the day he was to testify, I was allotted only five minutes to interview him before he took the stand. During this time period, I asked the questions I could and then examined him accordingly. I did not have enough time to ask him about what I have since learned and which has been presented to the Court in support of my Rule 33 motion, that Robert told the Government I was never involved in drug-dealing with Barraza-Castro. The Government never provided this information to me.

23. I directed my investigators to interview Hassan Miller before my second trial. Miller refused to be interviewed because he had serious open charges, and he feared Government retaliation if he were to assist my defense. He was also a cooperating Government witness who did not want to risk his cooperation being withdrawn. PWB

24. I give the information in this declaration freely and of my own will to demonstrate that I was at all times diligent in investigating my case, and that in particular, I was diligent in learning and procuring the testimony of the witnesses whose evidence I have provided in support of my Rule 33 motion for a new trial. My efforts were frustrated by my incarcerated status, the Government's use of fear and threats to render important witnesses unavailable, the Government's failure to abide by its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), the inefficacy of the marshal service in serving subpoenas, and the District Court's refusal to assist in protecting my rights to compulsory process and a fair trial. The evidence I have

presented in support of my Rule 33 motion is indeed newly discovered, and warrants a new trial.

25. I have set forth a comprehensive account of my trial in a petition for writ of *habeas corpus*. As the present declaration is for a more limited purpose, I do not repeat that complete account here, but as to any details of my case not contained within this declaration, I refer the Court to Case Number 2:16-cv-03040, ECF No. 1, which I hereby incorporate by reference as if fully set forth herein.

Paul W. Bergrin

Dated: November 27, 2018