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July 3, 2018

By Email and 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:

As has been the parties' practice in this case, please accept this letter in lieu of more formal application for a final extension of the time within which defendant Paul W. Bergrin may file his reply brief in further support of his motion for a new trial based upon newly discovered evidence under Federal Rule of Criminal Procedure 33. That motion has been pending since June 27, 2016; the Government filed its response, after eleven requests to extend the briefing schedule, on April 28, 2017. In seeking these requests, to which Mr. Bergrin never objected, as well as in informal communications, the Government (by Assistant U.S. Attorney Mark E. Coyne, Chief of the Appellate Section of the U.S. Attorney's Office) has repeatedly expressed its consent to any request that we, as appointed counsel, might make for an extension of the time within which our reply was to be filed. *See, e.g.*, ECF Document No. 657. On May 10, 2018, the Court granted Mr. Bergrin's fifth request for an extension of time to file his reply brief in further support of his motion for a new trial. Due to extenuating circumstances we are again forced to make such a request, for the following reasons:

First, as was noted previously, the Government's opposition is voluminous, including a 78-page brief and a 6 volume, 2,549-page appendix, and replying to it has required a significant effort, including investigation in order to respond to various allegations in this submission. As Your Honor is aware, this process has been complicated by Mr. Bergrin's incarceration at the USP Florence ADMAX, the Federal Bureau of Prisons' highest security facility, where Mr. Bergrin is subject to Special Administrative Measures ("SAM") which limit our access to him; he does not, for example, have access to email, and has limited ability to set up legal calls. While Mr. Bergrin's investigators are diligently pursuing leads to Mr. Bergrin's motion (limited to those issues previously raised by Mr. Bergrin in his pending Rule 33 motion, *see* Docket No. 626, ¶ 3), the SAMs restrictions have inevitably resulted in difficulties in communication with Mr. Bergrin, which has impeded our progress. Specifically, these restrictions have prevented Mr. Bergrin from actively participating in his defense and providing needed direction for the

GIBBONS P.C.

Hon. Jose L. Linares, U.S.D.J.
July 3, 2018
Page 2

continuing investigation. In order to alleviate some of this difficulty I plan to travel to Colorado meet with Mr. Bergrin to discuss this matter, in early August (the week beginning August 6) so that he may approve and we may finalize our submission.

Beyond these issues, this has been a particularly challenging time. The associate who has been working on this matter with me, Thomas B. Jones, announced his resignation from the Firm and is leaving this week. Meanwhile, I have had a number of pressing matters in both state and federal courts, including others before Your Honor (*i.e.*, *United States ex rel. Simpson v. Bayer Corp., et al.*, Civil Action No. 05-3895 (JLL), and *United States v. Grant*, Criminal No. 90-328 (JLL)); as well, several of the most significant investigations in which I have been involved, with the U.S. Attorney's Office, are at critical junctures, while several of my most complex state cases, have been argued during the time period during the past month (*e.g.*, *State of New Jersey, ex rel. Hayes v. Bank of America Corp. et al.*, Docket No. Mer-L-2087-09). Finally, I will be leaving for vacation on July 13, which has further compressed my schedule and explains the additional time period here requested. For all of these reasons, beyond the magnitude of replying to the government's many arguments, it has been impossible to complete the work necessary for us to draft a helpful reply to the Court, and to provide the effective assistance of counsel to which Mr. Bergrin is entitled on this motion.

The net result of these events is that some additional time is required for us to complete our investigation and reply to the government's brief. Under the current scheduling order, Mr. Bergrin's reply brief is due on Friday, July 6, 2018. We believe that a final extension of ninety (90) days, until October 8, 2018, will enable us to draft, finalize and file Mr. Bergrin's reply brief and, while this case has had a number of unexpected problems, we do not anticipate that any further extensions will then be required; it is absolutely our intention to file Mr. Bergrin's reply brief by that time and he has made clear that he does not wish any further extensions beyond that date. Accordingly, appointed counsel for Mr. Bergrin proposes that his reply brief be due on or before Monday, October 8, 2018, after which the Court – as it has made clear previously – may determine whether any hearing or argument on the Rule 33 motion shall occur. I communicated today with Assistant U.S. Attorney Coyne who again graciously consented to this request.

If this revised schedule is satisfactory to the Court, please so order it, as Your Honor has done in the past when presented with such applications (we have provided a space for the Court to do so). Of course, if Your Honor has any questions or concerns with regard to this matter, please do not hesitate to contact me. Thank you very much, once again, for your kind consideration of this request.

Respectfully submitted,

/s/ Lawrence S. Lustberg

Lawrence S. Lustberg

GIBBONS P.C.

Hon. Jose L. Linares, U.S.D.J.
July 3, 2018
Page 3

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

Request For
extension GRANTED.

So ordered this 5th day of
July, 2018



Honorable Jose L. Linares, Chief Judge