



LAWRENCE S. LUSTBERG
Director

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4731 Fax: (973) 639-6285
llustberg@gibbonslaw.com

March 20, 2013

FILED VIA ECF AND REGULAR MAIL

Honorable Dennis M. Cavanaugh
United States District Judge
U.S. Post Office & Courthouse Building, Room 451
P.O. Box 999
Newark, New Jersey 07101-0999

Re: United States v. Paul W. Bergrin,
Docket No. 09-369

Dear Judge Cavanaugh:

Please accept this letter on behalf of defendant Paul W. Bergrin, in lieu of a more formal motion, requesting that he be returned to the Metropolitan Detention Center (MDC) in Brooklyn, New York to facilitate his preparation for post-trial motions and sentencing. On March 18, 2013, following the verdict in this matter, the undersigned standby counsel learned that Mr. Bergrin had been transferred to the Essex County Jail, where he is being held in isolation, in suicide watch. Although Mr. Bergrin appreciates the concern for his well-being, it is unnecessary: he is resolute in his desire to continue his legal fight and hopeful of its outcome. Indeed, the most psychologically difficult issue he faces at the moment results from his isolation at the Essex County Jail. Accordingly, if that is the reason for his transfer, it is unfounded.

More significantly, as noted in Mr. Bergrin's August 27, 2012 response to the Court's letter setting forth the possibility that he be transferred to the Bergen County Jail for trial, the consequences of his transfer from MDC pose acute disadvantages to his ability to communicate with standby counsel and, more importantly here, to prepare for the next phase of this case. Significantly, Mr. Bergrin still represents himself with respect to his post-trial motions, sentencing, and, as it stands at this time, for his appeal. As a result, he still requires access to his trial preparation materials, including the trial transcripts, his notes, and the discovery materials relevant to each witness, which he has compiled and organized at the MDC. Even if these are transferred intact to the Essex County Jail -- which is a significant concern for Mr. Bergrin-- he will not be able to draft the appropriate briefs, or, in the event that standby counsel drafts these materials, to meaningfully participate in his defense in conjunction with standby counsel, while at that facility. This is because, while MDC offers the necessary physical space to review these materials, the Essex County Jail does not. Nor, he is concerned, will he now be able to keep the preparation materials, such as legal pads, writing utensils and folders, which we have provided him to help him organize the volume of materials necessary to review in anticipation of the post-trial phase of these proceedings.

GIBBONS P.C.

Honorable Dennis M. Cavanaugh
March 20, 2013
Page 2

Moreover, Mr. Bergrin's confinement at the Essex County Jail also hinders his ability to communicate with standby counsel. Mr. Bergrin is being confined to his cell for 23 or more hours per day at the Essex County Jail, and has extremely limited time to contact counsel. Likewise, telephone access is far more restricted at the Essex County Jail than it is at the MDC. But worst of all, the Essex County Jail also does not afford Mr. Bergrin computer access. The federal email system, Corrlinks, available at MDC, enabled Mr. Bergrin to communicate easily with standby counsel numerous times each day. Indeed, we have already been notified that he has lost access to Corrlinks and is no longer able to send and receive communications to and from us. That convenient mode of communication is particularly necessary at this phase of the proceedings because we will no longer be seeing Mr. Bergrin on a daily basis in court, yet we will need to confer frequently on his post-trial and sentencing strategy, and to exchange drafts of briefs, submissions to Probation and the like.

Finally, as Your Honor is aware, Mr. Bergrin is an observant Jew, who observes the Sabbath to the extent possible and prays daily. At the MDC, there is a prayer room, which provides the Sabbath necessities, such as Challah (the Sabbath bread), grape juice (in lieu of wine, given the prison environment), and where a light is kept on during the Sabbath so that an inmate will not have to switch one on. Appropriate religious material, such as prayer books and Tefillin are provided. None of these appear to be available to him at the Essex County Jail. This concern is particularly pressing in light of the upcoming Passover holiday, which will continue from sundown on Monday March 25 through April 2, and which necessitates similar observance as the Sabbath in addition to a restricted dietary regimen. As his religious practices form a strong foundation for his mental well being at this time, Mr. Bergrin respectfully requests that the Court put an end to this disruption to his ability to practice his faith and allow him to return to the MDC.

For all of these reasons, Mr. Bergrin respectfully requests that the Court order the United States Marshals Service return him to the MDC, just as Your Honor ordered at the beginning of this trial, and as Judge Martini did when this issue arose at the first trial of this matter. *See* DE 234 (minute entry of September 16, 2011, reflecting discussion of where Mr. Bergrin would be held during trial). Notably, unlike during trial, the United States Marshals Service no longer will face the inconvenience of traveling to Brooklyn to transport him each day, eliminating the sole disadvantage to the prior circumstances of his incarceration at that facility.

GIBBONS P.C.

Honorable Dennis M. Cavanaugh
March 20, 2013
Page 3

Of course, if Your Honor has any questions or concerns, please do not hesitate to contact me, or to schedule a hearing, telephonically or in person, with regard to this matter. Thank you for your kind consideration of this request.

Respectfully submitted,

s/ Lawrence S. Lustberg

Lawrence S. Lustberg
Standby Counsel for Defendant Paul W. Bergrin

cc: John Gay, Assistant U.S. Attorney (via ECF)
Joseph N. Minish, Assistant U.S. Attorney (via ECF)
Steven G. Sanders, Assistant U.S. Attorney (via ECF)
Paul W. Bergrin