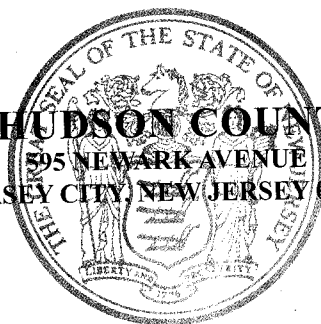


OFFICE OF THE HUDSON COUNTY PROSECUTOR

595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306



GAETANO T. GREGORY
ACTING PROSECUTOR

TELEPHONE: (201) 795-6400

FAX: (201) 795-3365

February 21, 2013

Hon. William T. Walsh
United States District Court
Martin Luther King Jr.
Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07101

RECEIVED

FEB 25 2013

AT 8:30 _____ M
WILLIAM T. WALSH, CLERK

Re: United States v. Bergrin
Case No. 09-369
State v. Moran
Indictment No. 964-05-2009
File No. 09-0050

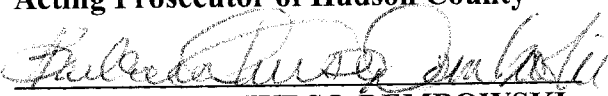
Dear Mr. Walsh:

Enclosed herewith please find the original and two copies of the State's Motion to Quash regarding the above-captioned matter.

On this date, we are serving one copy of same upon Lawrence Lustberg, Esq., Anthony Iacullo, Esq. and Edward Fitzgerald as per the attached Certification.

Very truly yours,

GAETANO T. GREGORY
Acting Prosecutor of Hudson County

By: 
AP BARBARA TURSO-DEMBOWSKI
Chief Trial Attorney

BTD:pd
Enclosure

cc: **Lawrence Lustberg, Esq.**
Anthony Iacullo, Esq.
Joseph N. Minish, Assistant U.S. Attorney
William Walsh, Clerk's Office

United States District Court

for the

District of New Jersey

United States of America :

Plaintiff :

v. :

Criminal Case No. 09-369

Paul W. Bergrin :

Defendant :

RECEIVED
FEB 25 2013
AT 8:30 _____ M
WILLIAM T. WALSH, CLERK

MOTION OF NON-PARTY TO QUASH SUBPOENA

Non-party, The Hudson County Prosecutor's Office for the State of New Jersey (hereinafter referred to as "Movant"), hereby respectfully requests that this Court quash the subpoena purportedly served upon Movant, or in the alternative declare that no valid subpoena has been properly served upon the Movant pursuant to **Fed. R. Crim. P. 17.**

As grounds therefore, Movant states as follows:

1. Defendant in the instant action faces various criminal charges in United States District Court including but not limited to racketeering and witness tampering. Thomas Moran is listed as a co-defendant in this matter.
2. In a wholly unrelated matter, Thomas Moran was charged on or about December 19, 2008 with Eluding, contrary to the provisions of **N.J.S.A. 2C:**

29-2B, along with Summonses for Reckless Driving contrary to **N.J.S.A. 39:4-96**, and Failure to observe Traffic Control Device contrary to **N.J.S.A. 39:4-81**.

3. The matter involving Mr. Moran was assigned a Hudson County Prosecutor's Office file No. 09-50, and was the subject of a Grand Jury presentation. On or about April 16, 2009 the matter was Billed by a Hudson County Grand Jury and Indictment 964-05-2009 resulted. The file is assigned to Assistant Prosecutor Colleen Hannon. The matter is pending before the Hon. Fred Theemling, Jr., and is currently deemed inactive due to the inability of the court to produce defendant Moran in Hudson County Superior Court, as he is in Federal custody. This indictment is unrelated to the instant proceedings in United States District Court.
4. On or about February 19, 2013 the Hudson County Prosecutor's Office received a *subpoena duces tecum* for "any/all records or files, reports pertaining to Thomas Moran's arrest for 2nd degree eluding." (Exhibit A attached.)
5. While producing a public record such as the Indictment may be appropriate, producing the entire prosecution file 09-50 for an unrelated United States District Court action may negatively impact the future prosecution of the Hudson County case. In addition, some items, such as the Grand Jury transcript are protected by **New Jersey Court Rule 3:6-1 et. seq.** and **Fed. R. Crim. P. 6** and should ordinarily not be turned over to a third party without formal order of the court.

Legal Argument

On a timely motion, the issuing Court may quash or modify the subpoena if compliance would be unreasonable or oppressive. **Fed. R. Crim. P. 17(c) (2)**. As the Indictment 964-05-2009 has not yet been addressed in Hudson County Superior Court, the defendant and/or the State may have motions or other procedural concerns in producing the file for an unrelated third party. Even if a request were made under **New Jersey's Open Public Records Act, N.J.S.A. 47:1A1 et seq.**, the majority of the file would be considered a criminal investigatory record and exempt from disclosure under that statute. **Id.**

As to the Grand Jury proceedings, the secrecy mandates of those proceedings are firmly rooted in our common law and are reflected in the New Jersey Court Rules. **R. 3: 6-6; R. 3:6-7**, see also **United States v. Proctor & Gamble Co.**, **356 U.S. 677, 681-683 (1958)**; **Davidson v. Boles**, **266 F. Supp. 645, 650 (U.S. Dt. Ct. N.D. West Virginia, 1967)**; **State v. Doliner**, **96 N.J. 236, 246-247 (1984)**.

CONCLUSION

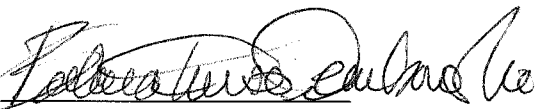
Accordingly, the information sought to be compelled by the *subpoena duces tecum* is totally irrelevant to the proceeding before this Court. No circumstances exist that would demonstrate the relevancy or necessity for the production of such materials. Lastly, materials related to the Grand Jury proceedings into Mr. Moran's conduct are privileged and a protected matter under **Federal Rule of Criminal**

Procedure 6. Therefore, the Movant respectfully requests that this Court grant the Motion to Quash the Subpoena.

Respectfully submitted,

GAETANO GREGORY

**ACTING PROSECUTOR OF HUDSON
COUNTY**

By: 

BARBARA TURSO-DEMBOWSKI

Assistant Prosecutor

GAETANO T. GREGORY
Acting Prosecutor of Hudson County
Administration Building
595 Newark Avenue
Jersey City, New Jersey
(201) 795-6400

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL ACTION NO. 09-369

United States of America

Plaintiff, :

-v- :

CERTIFICATION

Paul Bergrin :

Defendant. :

Barbara Turso-Dembowski, of full age, hereby certifies that:

I am an Assistant Prosecutor in the Office of the Hudson County Prosecutor, Administration Building, 595 Newark Avenue Jersey City, New Jersey 07306.

On the 21st day of February, 2013, I served **via REGULAR U.S. MAIL**, one copy of the State's Motion to Quash, in the above-captioned matter, upon the Clerk, William T. Walsh and on the 21st day of February, 2013, I served **via REGULAR U.S. MAIL** one copy of the State's Motion to Quash, in the above-captioned matter, upon Lawrence M. Lustberg, Gibbons P.C., One Gateway Center, Newark, New Jersey 07102,

standby counsel for Paul Bergrin; Edward Fitzgerald,
L.F.Stephens, Inc., 854 Mountain Avenue, Mountainside, New
Jersey; and Anthony Iacullo, 247 Franklin Ave., Nutley, New
Jersey 07110, attorney for Thomas Moran.

I certify that the foregoing statements made by me are
true. I am aware that if any of the foregoing statements
made by me are willfully false, I am subject to punishment.

/s/ Barbara Turso-Dembowski

Dated: February 21, 2013

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

District of New Jersey

United States of America

v.

Paul W. Bergrin

Defendant

Case No. 09-369

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To:

Custodian of Records Hudson County Prosecutor's Office.

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: U.S. District Court for the District of NJ U.S. Post Office & Courthouse Bldg. One Federal Square, Newark, NJ 07101	Courtroom No.: Room 451
	Date and Time: 1/15/13 10:00am 01/07/2013 10:00 am

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

Dues Team: Provide any/all records or files, reports pertaining to Thomas Moran's arrest for 2nd degree e/b&mg.

(SEAL)

Date:

1/15/13

CLERK OF COURT

[Handwritten Signature]

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) _____, who requests this subpoena, are:

Paul W. Bergrin

Exhibit A

John W. Crouthamel
L.F. Stephens, Inc.
854 Mountain Avenue
Mountainside, NJ 07092

February
January 18, 2013

RECIPIENT'S NAME
RECIPIENT'S ADDRESS

Re: Subpoena to Appear at *United States v. Bergrin*, Criminal No. 09-369

This firm has been appointed as investigators for defendant Paul W. Bergrin with respect to the criminal charges pending against him in *United States v. Bergrin*, Criminal No. 09-369. You have served you with a subpoena to appear at the United States District Court for the District of New Jersey on ~~January 7, 2013~~, at 9:30 a.m., to testify in connection with that case.

Feb 25, 2013

We wish to inform you that, although you are still being commanded to comply with the subpoena, January 7, 2013, the first day of trial, which has since passed, is, of course, not the day on which your testimony will be taken. Please contact me at my office, (908) 654-7974, or on my mobile telephone, (973) 714-6767, to make arrangements as to the date and time on which your testimony will actually be taken. Your date of appearance and all listed items is ~~March 1, 2013~~. In lieu of appearance you may deliver the requested information to Amanda Protes, Esq., Gibbons P.C., 1 Gateway Center, Newark, NJ 07102-5310.

Feb 25th 2013

Please note that your failure to comply with this subpoena may result in your being held in contempt pursuant to Federal Rule of Criminal Procedure 17(g).

Please feel free to call me with any questions.

Very truly yours,



John W. Crouthamel

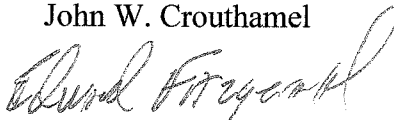
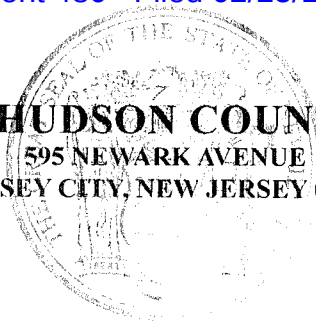


Exhibit A

OFFICE OF THE HUDSON COUNTY PROSECUTOR

595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306



GAETANO T. GREGORY
ACTING PROSECUTOR

TELEPHONE: (201) 795-6400

FAX: (201) 795-3365

February 21, 2013

Edward Fitzgerald
John W. Crouthamel
L.F. Stephens, Inc.
854 Mountain Avenue
Mountainside, New Jersey 07902

Re: United States v. Bergrin
Case No. 09-369
State v. Moran
Ind. No. 964-05-2009
File No. 09-50


Dear Mr. Fitzgerald:

This office is in receipt of your *Subpoena Duces Tecum* in the above referenced matter. Please be advised that on this date a Motion to Quash has been filed with the United States District Court for the District of New Jersey, in which we oppose the release of the State's file in the ongoing criminal matter involving Thomas Moran.

Under the Open Public Records Act, you may be given a copy of the pending indictment in the Moran matter, which is hereby attached, along with a copy of the Motion to Quash and Certification.

Sincerely,

GAETANO T. GREGORY
Acting Prosecutor of Hudson County

By: 
AP BARBARA TURSO-DEMBOWSKI
Chief Trial Attorney

BTD:pd

cc: Lawrence Lustberg, Esq., standby counsel for Paul Bergrin
Anthony Iacullo, Esq., attorney for Thomas Moran
Joseph N. Minish, Assistant U.S. Attorney

**SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION-CRIMINAL BRANCH**

A.D. 2009 TERM

3RD SESSION

1ST PANEL B

THE STATE OF NEW JERSEY

INDICTMENT NO. **0964 05 2009**

vs.

CHARGE(S):

THOMAS J. MORAN JR.

ELUDING (NJS 2C:29-2b)

DEFENDANT(S)

THE GRAND JURORS OF THE STATE OF NEW JERSEY FOR THE COUNTY OF HUDSON UPON THEIR OATHS, PRESENT THAT THOMAS J. MORAN JR. ON OR ABOUT THE 19TH DAY OF DECEMBER 2008, IN THE TOWNSHIP OF NORTH BERGEN IN THE COUNTY OF HUDSON AFORESAID AND WITHIN THE JURISDICTION OF THIS COURT, while operating a motor vehicle on any street or highway in this State, knowingly did flee or attempt to elude a police or law enforcement officer, namely, Police Officer Scudieri and Police Officer Vargas, after having received any signal from such officers to bring the vehicle to a full stop, in a manner creating a risk of death and/or serious injury to Police Officer Scudieri and/or Police Officer Vargas, contrary to the provisions of N.J.S. 2C:29-2b, against the peace of this State, the Government and dignity of the same.

LH/cc



Edward J. De Fazio, PROSECUTOR

A TRUE BILL

ASSIGNED TO THE SUPERIOR COURT

FOREMAN

MAY 14 2009 20

PRESENTED:

APR 16 2009

ASSIGNMENT JUDGE SUPERIOR COURT

OFFICE OF THE PROSECUTOR
HUDSON COUNTY ADMINISTRATION BLDG
595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

OFFICE OF THE PROSECUTOR
HUDSON COUNTY ADMINISTRATION BLDG
595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

RECEIVED
FEB 22 2013
AT 8:30
WILLIAM T. WALSH, CLERK

Hon. William T. Walsh
United States District Court
Martin Luther King Jr.
Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07101

02 1M
0008002691
MAILED FROM ZIP CODE 07306
\$01.92
FEB 22 2013
STREET BOWES

