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Hon. Lewis A. Kaplan
Senior United States District Judge
UNITED STATES DISTRICT COURT
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

April 20, 2022

BY CERTIFIED FIRST CLASS MAIL

Regarding: Brennerman v. United States, 22 Cv. 996 (LAK)
(arising from Criminal Case No. 17 Cr. 155 (LAK))
MOTION FOR RECONSIDERATION

Dear Judge Kaplan:

Petitioner Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits this motion for reconsideration (the "Motion for Reconsideration") to the order of this Court at 22 Cv. 996 (LAK), EFC No. 19, denying his Collateral Attack Petition (the "Collateral Attack Motion") and in reliance on his U.S. Constitutional rights, all applicable law and Federal Rule. Furthermore, this is an endeavor to fully develop the record.

COLLATERAL ATTACK PROCEDURAL HISTORY:

On January 31, 2022, Petitioner filed his "Omnibus Motion including Collateral Attack Relief" at United States v. Brennerman, et. ano., 17 Cr. 155 (LAK), EFC No, 211 and at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 1. Concurrent with filing the Omnibus Motion, Petitioner also filed his "Affidavit and Motion in furtherance and support of his Omnibus Motion" at 17 Cr. 155 (LAK), EFC No. 212 and at 22 Cv. 996 (LAK), EFC No. 2

On February 11, 2022, Petitioner filed his "Addendum to Collateral Attack Motion" to clarify pertinent arguments at Grounds Two and Four of his Omnibus Motion including Collateral Attack Relief at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 4 and at U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 218

On February 9, 2022, for unequivocal clarification, Petitioner filed an additional motion, "Request for Evidence in support of Collateral Attack Motion" at 17 Cr. 155 (LAK), EFC No. 215 and at 22 Cv. 996 (LAK), EFC No. 9. Petitioner appended as exhibit evidence in the form of trial transcript of the testimony of Government sole witness from ICBC (London) plc, Mr. Julian Madgett who testified as to the importance of the requested documents/evidence to this case and the existence of the documents/evidence with their New York based counsel, Linklaters LLP and Attorney Paul S. Hessler, U.S. v. Brennerman et. ano. 17 Cr. 155 (LAK), EFC No. 215 Ex. 1; see also Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 9 Ex. 1). Petitioner essentially put forth the argument that the ICBC documents/evidence which he required are in New York, New York, United States with ICBC's counsel, Linklaters LLP.

On February 15, 2022, in an order at 17 Cr. 155 (LAK), EFC No. 216 and at 22 Cv. 996 (LAK), EFC No. 6, this Court engaged in an attempt to obfuscate the request for documents/evidence by stating that Petitioner requested for [unspecified] documents/evidence. This was/is an erroneous statement intentionally made by this Court to cause prejudice as more succinctly presented in Petitioner's submission titled: "Response to Court Order (Re: Request for Evidence)" at Brennerman v. U.S., 22 C. 996 (LAK), EFC Nos. 11, 12 and at U.S. v. Brennerman et ano., 17 Cr. 155 (LAK), EFC Nos. 223, 224. Petitioner also sought 60 days extension to file his Reply motion to Government's answer. This Court granted Petitioner 30 days to file his Reply motion to Government's answer at United States v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 225 and at Brennerman v. United States, 22 Cv. 996 (LAK), EFC No. 15

On March 4, 2022, Government filed motion seeking for this Court to deny the collateral attack petition and hold it in abeyance pending the resolution of appeal at the Second Circuit U.S. Court of Appeals at docket no. 22-329. This Court denied Government's request. See 22 Cv. 996 (LAK), EFC Nos. 13, 14 and 17 Cr. 155 (LAK), EFC Nos. 220, 221.

On March 22, 2022, Government filed their opposition memorandum, in a letter, to Petitioner's Collateral Attack Motion. See Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 16 and U.S. v. Brennerman et ano., 17 Cr. 155 (LAK), EFC No. 226.

On March 21, 2022, Petitioner submitted Supplemental Motion in support of his Omnibus Motion including Motion for Collateral Attack Relief Pursuant to 28 U.S.C.S. 2255 and other reliefs. Petitioner, among others, requested for the documents/evidence, ICBC [underwriting file], [meeting minutes], [notes], [e-mails] from ICBC's New York based counsel, Linklaters LLP at 1290 Avenue of the Americas, New York, New York, USA and from Attorney Paul S. Hessler. See Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 17 and U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 227

On March 30, 2022, Petitioner submitted request, seeking an extension of 30 days to file his Reply Motion from receipt of requested documents/evidence. See Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 18 and U.S. v. Brennerman et. ano. 17 Cr. 155 (LAK), EFC No. 228.

These submission together form the complete "Collateral Attack Motion" at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC Nos. 1, 2, 4, 9, 11, 17, 18 and at U.S. v. Brennerman, 17 Cr. 155 (LAK), EFC Nos. 211, 212, 215, 218, 223, 227, 228

APPLICABLE LAW:

"The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Reconsideration should only be granted when the movant identifies "an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr., 729 F.3d 99, 104 (2d Cir. 2013) (quoting Virgin Atl. Airways, Ltd v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992). "A motion for reconsideration" is not a vehicle for relitigating old issues....or otherwise taking a 'second bite at the apple'" Analytical Surveys, Inc. v. Tonga Partners, L.P., 684 F.3d 36 52 (2d Cir. 2012), as amended (July 13, 2012) (quoting Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998)).

DISCUSSION/ISSUES:

On April 13, 2022, this Court (Judge Lewis A. Kaplan) in a summary order (without any legal opinion or authority) abruptly denied all pending motions in respect to Petitioner's Collateral Attack Petition/Proceedings and Government's opposition memorandum at 17 Cr. 155 (LAK), EFC No. 226. In denying Petitioner's motion, this Court ignored its own prior order at 17 Cr. 155 (LAK), EFC No. 225 and at 22 Cv. 996 (LAK), EFC No. 15, permitting Petitioner 30 days from Government's answer dated March 22, 2022, to file his Reply motion, thus, denying and depriving Petitioner the opportunity to reply to Government's answer and to fully develop the record. This is a violation of Petitioner's Constitutional rights.

Moreover, while this Court summarily based its denial of Petitioner's motion on Government's opposition letter at 17 Cr. 155 (LAK), EFC No. 226, this Court also denied Government's opposition letter at 17 Cr. 155 (LAK), EFC No. 226 stating in relevant part: "Accordingly, all of Brennerman's pending motion (including DKts 226 and 227) are denied in the merits." The abrupt denial order lacks proper judicial adjudication on the significant issue of Conspiracy to deprive Petitioner of the ICBC documents/evidence particularly given that the Conspiracy involves the Government acting on behalf of this Court. In addition, the denial of all of Petitioner's motion, including Government's motion at Dkt. 226, highlights why this Court should have recused/disqualified itself from presiding over Petitioner's Collateral Attack Proceedings. This also highlights partiality, abuse of power and discretion.

On record and at issue is the subject of "conspiracy"; by the Government, acting on behalf of this Court (Judge Lewis A. Kaplan) with Linklaters LLP through Attorney Paul S. Hessler, to intentionally deprive Petitioner of the ICBC documents / evidence by deliberately withholding the production of those

documents/evidence which Petitioner required for his defense at trial and which he [Petitioner] requires now to fully develop the record.

Furthermore, while this Court highlights that the Hague Evidence Convention or Fed. R. Civ. P. 28(b)(2) makes no sense in a criminal context, first, this Court ignores or overlooks the fact that that was not Petitioner's Reply motion (which was due 30 days from March 22, 2022) to Government's answer but a comment by Petitioner to highlight one of the the options for obtaining evidence. Second, this Court ignores the fact that Petitioner highlighted that the ICBC documents / evidence which he requires and requests are already with ICBC's New York attorney - Linklaters LLP at 1290 Avenue of the Americas, New York, York, see 17 Cr. 155 (LAK), EFC No. 215 and 22 Cv. 996 (LAK), EFC No. 9, thus the Federal Rule of Criminal Procedure and its statutes certainly affords Petitioner the opportunity to obtain those documents prior to trial and during the Collateral Attack Petition.

Petitioner was deprived his Sixth Amendment right to an effective assistance of counsel, when his trial counsel, Thompson Hine LLP through Attorneys Maranda Fritz and Brian Waller, failed to compel from ICBC's New York based counsel, Linklaters LLP, production of the ICBC documents/evidence which Petitioner required at trial to present his complete defense and confront witness(es) against him as more succinctly presented in his complete Collateral Attack Petition and Supplemental Motion at 17 Cr. 155 (LAK), EFC No. 215, 227 and 22 Cv. 996 (LAK), EFC No. 9, 17.

For unequivocal confirmation, appended as "Exhibit 1" is excerpt of trial testimony with Government's witness, Mr. Julian Madgett of ICBC, testifying in the interrelated criminal case, at case no. 17 Cr. 337 (RJS), trial tr. 551-554 that the bank, ICBC (London) plc provided all pertinent and exculpatory documents to ICBC's New York based counsel, Linklaters LLP who were required to turn those documents over to the U.S. Attorney Office and ultimately to Petitioner for his defense. That did not happen, because, the Government conspired with Linklaters LLP New York Office through Attorney Paul S. Hessler to withhold production of those exculpatory and pertinence documents/evidence including ICBC [underwriting file], [meeting minutes], [notes], [e-mails] required by Petitioner at trial for his complete defense.

Notwithstanding this clear evidence, this Court (Judge Lewis A. Kaplan) has now attempted to obfuscate the issue of conspiracy with the Government, acting on the Court's behalf, to conspire with Attorney Paul S. Hessler to intentionally withhold production of those documents, in an endeavor to deprive Petitioner of the documents/evidence for his defense.

An impartial judge would have permitted Petitioner to file his reply motion, then ordered the production of the ICBC evidence / documents and an evidentiary hearing with Attorney Paul S. Hessler, a partner at Linklaters LLP New York office, under oath, testifying as to why he intentionally withheld the production of the documents / evidence. However, this Court cannot and will not do that because such will expose the conspiracy.

RELIEF REQUESTED:

Petitioner respectfully requests that this Court set-aside its order at 22 Cv. 996 (LAK), EFC No. 9, and permit him [Petitioner] the opportunity to file his reply motion (the "Reply Motion"), to rebut Government's response to his Collateral Attack Motion, and to fully develop the record, prior to adjudication of his Collateral Attack Motion.

CONCLUSION:

Petitioner respectfully submits the above and prays that this Court grant his requests in its entirety.

Dated: April 20, 2022

White Deer, Pa. 17887-1000

Respectfully submitted

/s/ Raheem J. Brennerman

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Pro Se Petitioner