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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RAHEEM J. BRENNERMAN,

Petitioner/Movant,

-vs-

Civil Action No. 22 Cv. 996 (LAK)

(arising from Criminal Case No. 17 Cr. 155 (LAK))

UNITED STATES OF AMERICA,

Respondent,

=====

PETITIONER REPLY MOTION IN FURTHERANCE AND SUPPORT OF HIS OMNIBUS MOTION INCLUDING
MOTION FOR COLLATERAL ATTACK RELIEF PURSUANT TO 28 U.S.C.S. 2255 AND OTHER RELIEFS

I. RELIEF REQUESTED

Petitioner/Movant Pro Se Raheem Jefferson Brennerman ("Brennerman or Petitioner") respectfully submits this Reply motion (the "Reply Motion") in furtherance and support of his Collateral Attack Petition (the "Collateral Attack Motion") and will move this Court before Honorable Lewis A. Kaplan, United States District Judge at 500 Pearl Street, New York, New York 10007 for an order:

- (a.) Granting Brennerman's collateral attack petition pursuant to 28 United States Code Section 2255 (the "Collateral Attack Motion") to set-aside the judgment of conviction and vacate the sentence;
- (b.) Granting request for the requested ICBC documents/evidence and evidentiary hearing with Attorney Paul S. Hessler, testifying under oath.

II. 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 by 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 Nos. 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 Cv. 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, Respondent 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 Respondents request. See 22 Cv. 996 (LAK), EFC Nos. 13, 14 and 17 Cr. 155 (LAK), EFC Nos. 220, 221.

On March 21, 2022, Petitioner submitted Supplemental Motion in support of his Omnibus Motion including Motion for Collateral Attack Relief Pursuant to 28 United States Code Section 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 22, 2022, Respondent filed their opposition 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. Respondent (Government) did not oppose Petitioner's request for the ICBC documents/evidence.

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

On April 13, 2022, this Court in an abrupt order denied all of Petitioner's pending motion including Respondent's opposition motion at 17 Cr. 155 (LAK), EFC No. 226. See Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 19. Petitioner filed Response to Court order at 22 Cv. 996 (LAK), EFC No. 19 and Motion for Reconsideration, to allow Petitioner file his reply motion.

This Reply Motion follows.

III. ARGUMENTS

A. GROUND TWO: THE CONVICTION WAS OBTAINED AND SENTENCE IMPOSED IN VIOLATION OF THE RIGHT TO AN EFFECTIVE ASSISTANCE OF COUNSEL.

Applicable Law:

"To establish ineffective assistance of counsel 'a defendant must show both deficient performance by counsel and prejudice.'" Premo v. Moore, 562 U.S. 115, 121, 131, S. Ct. 733, 178 L. Ed. 2d 649 (2011) (quoting Knowles v. Mirzayance, 556 U.S. 111, 122, 129 S. Ct. 1411, 173 L. Ed 2d 251 (2009)). Deficient performance requires a showing that "counsel's representation fell below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984). "A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." Harrington v. Richter, 562 U.S. 86, 104, 131 S. Ct. 770, 178 L. Ed 2d 624 (2011) (quoting Strickland v. Washington, 466 U.S. at 689). A person challenging a conviction thus must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland v. Washington, 466 U.S. at 687. Establishing prejudice requires Petitioner to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. at 694.

Discussion:

Respondent in their opposition motion states: "First, as this Court explained in advance of the trial in this case, the Federal Rules of Criminal Procedure and statutes governing a defendant's ability to obtain evidence from witnesses outside the United States did not provide a mechanism for the defendant to compel the production by ICBC of the materials he claims his counsel

failed to obtain. See U.S. v. Brennerman, No. 17 Cr. 155 (LAK), 2017 WL 4513563 at *2 (S.D.N.Y. Sept 1, 2017)" This argument, to the extent it could be construed as an argument, is frivolous.

Respondent previously made contrasting argument in other court filing(s), concurring that Petitioner's trial counsel failed to obtain and present the ICBC documents/ evidence using appropriate mechanism for gathering evidence. See U.S. v. Brennerman, No. 18-3546, EFC No. 146 at page 48, arguing that: ("...in any case, Brennerman failed to seek a subpoena pursuant to Federal Rule of Criminal Procedure 17, make a timely request for a deposition under Federal Rule of Criminal Procedure 15, or ask the District Court to issue letter rogatory pursuant to 28 U.S.C. Section 1781 to obtain documentary evidence or secure testimony from the United Kingdom where ICBC maintains its records....."); see also U.S. v. Brennerman, No. 17 Cr. 337 (RJS), EFC No. 239 (same argument), hence respondent's instant argument is without merit.

Prior to the criminal prosecution, the Respondent issued subpoena to ICBC's legal advisor in New York, Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY, obtaining in-excess of 5,000 pages of discovery from them. Petitioner's trial counsel Thompson Hine LLP through Attorneys Maranda Fritz and Brian Waller failed to seek production of the missing ICBC pertinent and exculpatory evidence/documents including ICBC [underwriting file], [meeting minutes], [notes], [e-mails] from Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY, pursuant to Federal Rule of Criminal Procedure 17.

Furthermore, in "United States v. Brennerman, No. 18-1033(L), WL 3053867 at *1 (2d Cir. June 9, 2020)", the Second Circuit Court highlighted that Petitioner, through his trial counsel Thompson Hine LLP - Attorneys Maranda Fritz and Brian Waller, failed to comply with the rules governing subpoenas under Rule 17(d) of the Federal Rules of Criminal Procedure, for compelling the production of the ICBC (London) plc transaction documents/evidence including the [underwriting file], [meeting minutes], [notes], [e-mails] which Petitioner required at trial.

Further and alternatively, Federal Rule of Civil Procedure 28(b)(2) states that: "A deposition may be taken in a foreign country: (A) under an applicable treaty or convention; (B) under a letter of request....; (C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or (D) before a person commissioned by the court to administer any necessary oath and take testimony. "Fed. R. Civ. P. 28(b). Title 28, United States Code Section 1781(b) (2), allows a federal court to transmit letter of request to a foreign or international tribunal, officer, or agency. 28 U.S.C.S. 1781 (b)(2). In addition, they could have compelled ICBC (London) plc directly for the missing evidence/documents.

In this instance case at 17 Cr. 155 (LAK), EFC Nos. 57, 59, 60, 61 and the interrelated case at 17 Cr. 337 (RJS), EFC Nos. 58, 59, 71, notwithstanding Petitioner's trial counsels' endeavor to obtain and argument for the ICBC pertinent and exculpatory documents/evidence, they [Petitioner's trial counsel] failed to comply with the rules governing subpoenas under Rule 17(d) of the Federal Rules of Criminal Procedure, for compelling the production of the missing ICBC evidence/documents from Linklater LLP's New York office nor did they adopt the appropriate mechanism for gathering evidence located abroad. Even when this Court put them on notice through its denial of their request for the ICBC documents/evidence at U.S. v. Brennerman, et. ano., 17 Cr. 155 (LAK), EFC No. 76, they [Petitioner's trial counsel] still failed to gather the required documents/evidence using appropriate mechanism. Furthermore, nothing contained within this Court's memorandum and order at U.S. v. Brennerman, et. ano., 17 Cr. 155 (LAK), EFC No. 76 prohibited Petitioner's trial counsel from adopting the appropriate mechanism for gathering the required ICBC documents/evidence from Linklaters LLP's New York office pursuant to Federal Rule of Criminal Procedure 17 or directly from ICBC (London) plc in London, United Kingdom through letter rogatory, but their incompetence and deficient performance.

Respondent further argues stating: "Second, the defendant has not and cannot establish any prejudice from his counsel's purported failure to obtain "[t]he complete ICBC transaction file." (Mot. 31) In ruling on the defendant's post-trial discovery request for the same documents, the Court concluded that "the documents he seeks would afford no basis for habeas or 2255 relief." *United States v. Brennerman*, No. 17 Cr. 155 (LAK), 2018 WL 4043141, at *2 (S.D.N.Y. Aug 10, 2018). The defendant offers no authority or new facts to cast doubt on the Court's prior conclusion. In his motion, like in his post-trial discovery request, the defendant suggests that the documents he seeks might have shown that he was "prioritizing the negotiation of the settlement agreement rather than providing more discovery." (Mot. 32) This argument is equally meritless.

Prejudice occurs when a right conferred by the Constitution is abridged. The right to present a defense is "a fundamental element of Due Process of law," and "preclusion of all inquiry by the defense on a particular aspect of the case violates that right." See *United States v. Stewart*, 104 F.3d 1397, 1384 U.S. App. D.C. 29 (D.C. Cir. 1997) (quoting *Washington v. Texas*, 388 U.S. 14, 19 87 S. Ct. 1920, 18 L. Ed 2d 1019 (1967), and *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)).

Deficient performance and failure by Petitioner's trial counsel deprived him of the ability to present a complete defense and meaningfully confront witness(es) against him, in violation of his Sixth Amendment right as promulgated by the United States Supreme Court, that a criminal defendant has a Sixth Amendment right to present a complete defense. See "*Crane v. Kentucky*, 476 U.S. 683 (1986) (holding that, "it is a federal law that a criminal defendant has a Constitutional right to present a complete defense")" The United States Court of Appeals for the Second Circuit adopted such holding in "*Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019)"

Petitioner's trial counsel failed to obtain and present the required ICBC pertinent and exculpatory evidence including the [underwriting file], [notes], [e-mails], [meeting minutes] depriving Petitioner of the ability to present those evidence / documents for jury consideration in their deliberation of Petitioner's innocence or guilt.

In a motion after trial, which was not in compliance with Rules 33 of the Federal Rule of Criminal Procedure or 2255, Petitioner requested for the ICBC transaction file, however this Court stated, as highlighted by Respondent, that "the documents he seeks would afford no basis for habeas or 2255 relief." In a post-trial context, that may be correct because the transaction file alone would not offer the complete picture of Petitioner's argument. However, in this collateral attack proceeding and context, Rule 6 and 7 governing 2255 Proceedings in the United States District Court affords Petitioner the opportunity to expand the record with discovery which will support his arguments and demonstrate that he is entitled to relief.

Petitioner requested for the documents/evidence which his trial counsel failed to obtain and present at trial including, ICBC [underwriting file] related to the bridge loan transaction between ICBC (London) plc, The Blacksands Pacific Group, Inc., and Blacksands Pacific Alpha Blue, LLC, which would have demonstrated to the jury at trial, the basis why agents of ICBC (London) plc preferred settlement rather than obtaining more discovery. In addition to ICBC [meeting minutes], [notes], and [e-mails] related to the settlement negotiations, which would have demonstrated to the jury at trial that agents of ICBC (London) plc repeatedly advised agents of Blacksands and Petitioner that they preferred settlement rather than receiving more discovery. Thus, Petitioner did not willfully disobey a legally issued court order, but rather, he believed he was complying with the court order particularly the second court order which stipulated for the parties to either settle or provide discovery.

Respondent further argues: "As this Court previously held, however, there is "no merit" to this argument because, as a matter of law, "[t]he existence of settlement discussions in a civil case in which a court order is issued does not excuse a defendant from compliance absent an order by the court suspending or otherwise modifying the requirement to comply." *Brennerman*, 2018 WL 4043141 at *1-2 (internal quotation marks omitted)." Respondent presenting this argument is misguided, the standard for civil contempt and criminal contempt differs particularly in a jury trial.

Here, Respondent misconstrues Petitioner's argument. The argument here is whether Petitioner was prejudiced at trial where his trial counsel failed to adopt the appropriate mechanism for gathering evidence required by Petitioner at trial, thereby depriving Petitioner of the ability to present his complete defense in presenting those documents/evidence to the jury at trial for their consideration during deliberation of his innocence or guilt. Evidence of agents of ICBC, the recipient of discovery ordered by the Court, repeatedly advising Petitioner that they preferred settlement rather than receiving more discovery would have created reasonable doubt in the minds of the jury, because, "no reasonable juror would have found Petitioner guilty [,]...in light of the requested ICBC documents/evidence," particularly given that Petitioner, in an endeavor to comply with the court order

engaged with agents of ICBC in settlement negotiations which resulted in both parties agreeing settlement agreement inline with ICBC's request. See U.S. v. Brennerman et ano., 17 Cr. 155 (LAK), EFC No. 12 Ex. 10.

Petitioner requires the requested pertinent and exculpatory evidence, ICBC [underwriting file], [notes], [meeting minutes], [e-mails] related to the bridge loan transaction and settlement discussion between ICBC (London) plc and The Blacksands Pacific Group, Inc., and Blacksands Pacific Alpha Blue, LLC, to assert his actual innocence, highlight prejudice he suffered during trial due to his trial counsel's incompetence and deficient performance and to expand the record in support of his collateral attack claim.

B. GROUND FOUR: THE CONVICTION WAS OBTAINED AND SENTENCE IMPOSED IN VIOLATION OF THE CONSTITUTIONAL RIGHT GUARANTEE

Applicable Law:

"[A]ctual innocence, if proved, serves as a gateway through which a Petitioner may pass" if he or she has otherwise procedurally defaulted federal habeas review of a claim. *McQuiggin v. Perkins*, 569 U.S. 383, 133 S. Ct. 1924, 1928, 185 L. Ed 2d 1019 (2013); see also *House v. Bell*, 547 U.S. 518 536-37, 126 S. Ct. 2064, 165 L. Ed 2d 1 (2006). A claim is compelling when the petitioner demonstrates that, "no reasonable juror would have found [him] guilty [,]...in light of the new evidence." *Schlup v. Delo*, 513 U.S. 298, 329, 115 S. Ct. 851, 130 L. Ed 2d 808 (1995).

"The habeas court's scope of review as to claims of prosecutorial misconduct is quite limited." *Ogletree v. Graham*, 559 F. Supp. 2d 250, 259 (N.D.N.Y. 2008). "To prevail on a prosecutorial misconduct claim, a habeas petitioner must demonstrate that the prosecutor engaged in egregious misconduct." *Williams v. Duncan*, 2007 U.S. Dist. LEXIS 54727, 2007 WL 2177075, at *26 (N.D.N.Y. July 27, 2007) (quoting *Floyd v. Meachum*, 907 F.2d 347, 353 (2d Cir. 1990)). It "is not enough that the prosecutors' remarks were undesirable or even universally condemned." *Darden v. Wainwright*, 477 U.S. 168, 181, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986). Instead, the question on habeas review is whether the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.* (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed 2d 431 (1974)). "In considering a claim of prosecutorial misconduct the alleged misconduct must be placed into context and evaluated based upon its severity, the curative measures taken, and the likelihood of conviction absent its occurrence." *Skervin v. Graham*, 2008 U.S. Dist. LEXIS 97027, 2008 WL 5100297, at *5 (N.D.N.Y. Nov. 26, 2008) (citing *Blissett v. Lefevre*, 924 F.2d 434, 440 (2d Cir. 1991)).

Discussion:

Respondent intentionally obfuscated and misconstrued Petitioner's argument with respect to Ground Four. Petitioner submitted "Addendum to Collateral Attack Motion" at *United States v. Brennerman, et. ano.*, 17 Cr. 155 (LAK), EFC No. 218 and at *Brennerman v. United States*, 22 Cv. 996 (LAK), EFC No. 4, which succinctly presents the argument: "The Conviction was obtained and sentence imposed in violation of the Constitutional right guarantee."

This argument is not procedurally barred because Petitioner asserts actual innocence. Moreover, in *Bracy v. Superintendent*, 986 F.3d 274 (3d Cir. 2021), which was decided a year after Petitioner's direct appeal, the Circuit Court held that the prosecutors have an [absolute duty] to disclose Brady material. It held that the defense has no obligation to scavenge for it even if the material can be found in public records. The defense has the right to expect that the prosecution has complied with its obligation to disclose exculpatory and impeachments material. Thus, argument of intentional misconduct with Government conspiring to deprive Petitioner of exculpatory and impeachment materials, so as to deprive him of his right to liberty, is not procedurally barred from review

Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed 2d 215 (1963) ("Brady") requires the prosecution to turn over evidence favorable to the accused where the evidence is material to guilt or punishment. This includes evidence that affects the credibility of witnesses. *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009). Evidence is material if there is a "reasonable probability" of a different outcome had the evidence not be suppressed. *United States v. Bagley*, 476 U.S. 667, 678, 105 S. Ct. 3375, 87 L. Ed 2d 481 (1985). The prosecution has the obligation to disclose Brady material. *Dennis v. Secretary*, 834 F.3d 263, 284 (3d Cir. 2016). The accused does not have to prove that he would have won the case if the prosecution had disclosed the evidence, but rather he has to show that the failure to produce the evidence undermined the right to a fair trial. The evidence must be reviewed in totality. A different outcome includes an acquittal, hung jury, or a conviction on a lesser included offense. *Turner v. United States*, 137 S. Ct. 1885, 1897 (2017). In *United States v. Lang*, 2019 U.S. Dist. Lexis 65428 (4/17/19, DVI. St. Croix), the court dismissed an indictment charging conspiracy to commit bank robbery and robbery based on the reckless failure to disclose Brady material

Here, the issues are even more significant than normal Brady violation because the Government intentionally conspired with Linklaters LLP through Attorney Paul S. Hessler, to withhold and deprive Petitioner of pertinent and exculpatory evidence in a deliberate endeavor to deprive him [Petitioner] of his Constitutional right to liberty. Government never requested, obtained nor independently reviewed the ICBC documents/evidence, nor did they comply with their absolute duty to learn of impeachment and favorable materials. The reason why the Government refused to request, obtain or independently review the documents/evidence is so that they can argue that it [ICBC documents/evidence] is not Brady material, because if the documents/evidence were never in their custody/possession then they could argue that they are not obligated to produce it to Petitioner for his defense. This was done with the deliberate intention to violate Petitioner's Constitutional rights.

In Petitioner's direct review, the Second Circuit Court, did not have occasion to consider the issue of Government conspiring to suppress the ICBC documents/evidence so as not to possess and produce such documents/evidence to Petitioner for his defense. This is a significant and serious situation, where those who we trust, conspire to deprive an innocent person of his right to liberty. Government further argued that they produced all ICBC documents/evidence which were responsive to their subpoena. Apparently, the only ICBC documents/evidence which were non-responsive are the pertinent and exculpatory documents/evidence including the [underwriting file], [meeting minutes], [notes], [e-mails] which would have demonstrated Petitioner's innocence, despite the fact that Government's own witness, Mr. Julian Madgett testified in an interrelated fraud trial at 17 Cr. 337 (RJS), trial tr. 551-554, that the bank, ICBC London produced all the pertinent and exculpatory documents/evidence to their New York based attorney, Linklaters LLP who were required to turn them over to the Government and ultimately to Petitioner for his defense.

The requested documents/evidence from ICBC (London) plc including [underwriting file], [meeting minutes], [notes], [e-mails] in addition to an evidentiary hearing with Attorney Paul S. Hessler providing testimony under oath on the issue of conspiracy to suppress ICBC pertinent and exculpatory documents/evidence or the reasons for withholding those documents/evidence will among others, demonstrate the conspiracy between Government and Attorney Paul S. Hessler that led him to withhold pertinent and exculpatory documents/evidence in an endeavor to deliberately deprive Petitioner of his right to liberty.

U.S. democracy affords every person within its territory the right to liberty without unwarranted infringement of such rights by the Government through conspiracy. This will conclusively demonstrate Petitioner's actual innocence and support his collateral attack arguments that he is entitled to relief. The issue here with Government acting on behalf of this Court when they initiated this prosecution(s) with this Court now repeatedly refusing to recuse/disqualify itself from considering this collateral attack petition, the opportunity at fact-finding to develop the record on the issue of conspiracy to suppress evidence and violate Petitioner's Constitutional rights may be suppressed and denied.

For instance, at trial, Petitioner's trial counsel asked Mr. Hessler during cross-examination whether any settlement meeting occurred between agents of ICBC London and agents of Blacksands Pacific including Petitioner on the eve of thanksgiving in 2016. The reason for that question was to lead into the follow-up question, whether he [Mr. Hessler] heard agents of ICBC London repeatedly advising agent of Blacksands Pacific and Petitioner that they preferred settlement rather than receiving more discovery. However, this Court interjected in the cross-examination, stating: "there is no evidence that any meeting occurred in London."

Thus, the requested ICBC London documents/evidence will demonstrate, first, that settlement negotiation meeting occurred between agents of ICBC London and agents of Blacksands Pacific including Petitioner on the eve of thanksgiving in 2016 at the Exotix Partner's London office. The ICBC documents/evidence will also demonstrate that Mr. Hessler participated in the settlement negotiation meeting, through conference call and that during the negotiations, agents of ICBC London repeatedly advised agents of Blackands Pacific including Petitioner that they preferred settlement rather than receiving more discovery. Finally, the ICBC documents/evidence will highlight that Petitioner was deprived of the ability to present those pertinent and exculpatory evidence for the jury to consider during their deliberation of his innocence or guilt of the charged crime, which significantly prejudiced him.

Petitioner reiterates his request for the pertinent and exculpatory evidence from Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY and/or ICBC (London) plc at 81 King William Street, London, U.K., as specified and highlighted above and in prior submissions to allow Petitioner the opportunity to succinctly rebut every argument presented by Respondent and demonstrate that he [Petitioner] is entitled to relief.

C. GROUND ONE: THE CONVICTION WAS OBTAINED AND SENTENCE IMPOSED IN VIOLATION OF THE RIGHT TO A FAIR TRIAL AND PROCEEDINGS.

Given that this Court has not granted the request for the pertinent and exculpatory documents/evidence from ICBC (London) plc, as succinctly highlighted above and at U.S. v. Brennerman et ano., 17 Cr. 155 (LAK), EFC Nos. 212, 215, 223, 227 and at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC Nos. 2, 9, 11, 17 and has repeatedly refused to recuse/disqualify itself from continuing to preside over this case/collateral attack proceeding, to allow an impartial judge to consider the arguments, particularly arguments concerning this Court's own conduct which caused Constitutional rights deprivation, Petitioner will not present any additional arguments as to this particular issue but instead rely on his argument contained within his opening brief with respect to Ground One of the Collateral Attack Motion.

Petitioner's argument is not procedurally barred given that he asserts actual innocence and the Circuit court on direct review did not consider the new issues presented in Petitioner's instant collateral attack motion, including the Constitutional rights deprivation and prejudice suffered by Petitioner.

"No-one should be a judge of his or her own cause." United States Congress laid down that principle in 1792. However this Court is now a judge of his own cause.

D. GROUND THREE: THE CONVICTION WAS OBTAINED AND SENTENCE IMPOSED IN VIOLATION OF THE RIGHT TO EQUAL PROTECTION OF THE LAW

Given that this Court has repeatedly refused to recuse/disqualify itself from continuing to preside over this case/collateral attack proceeding, to allow an impartial judge to consider the arguments, particularly arguments concerning this Court's own conduct which caused Constitutional rights deprivation, Petitioner will not present any additional arguments as to this particular issue but instead rely on his argument contained within his opening brief with respect to Ground Three of the Collateral Attack Motion.

Petitioner's argument is not procedurally barred given that he asserts actual innocence and the Circuit Court on direct review narrowly focused on whether this Court properly redacted the civil contempt order, hence did not consider the Constitutional rights deprivation and implications of presenting a civil contempt order which was adjudged in violation of the Second Circuit Court's own prior ruling and established law in "OSRecovery", that: "District Court cannot hold a non-party in contempt solely for the purpose of discovery because, it is unfair to transform a non-party in a civil case into a party but solely for the purpose of discovery despite the fact that the non-party remains a non-party for other aspect of the civil case. The Circuit Court certainly did not consider the Constitutional implications of presenting an erroneously adjudged civil contempt order to the jury during trial in the criminal contempt case.

"No-one should be a judge of his or her own cause." United States Congress laid down that principle in 1792. However this Court is now a judge of his own cause.

IV. PETITIONER REQUESTS FOR DISCOVERY (PERTINENT AND EXCULPATORY EVIDENCE FROM ICBC (LONDON) PLC) AND EVIDENTIARY HEARING, IN SUPPORT OF HIS COLLATERAL ATTACK ARGUMENTS TO DEMONSTRATE HIS ACTUAL INNOCENCE AND THAT HE IS ENTITLED TO RELIEF. FURTHERMORE, GOVERNMENT DID NOT OPPOSE PETITIONER'S REQUEST FOR DISCOVERY, HENCE THIS COURT SHOULD GRANT PETITIONER'S REQUEST FOR ICBC LONDON DOCUMENTS/EVIDENCE.

Standard of Review:

Discovery in Section 2255 proceedings is governed by Rule 6 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Leave of court is required to engage in discovery which may be granted for good cause. See Rule 6 (a). Such discovery is conducted under the Federal Rules of Criminal or Civil Procedure, or "in accordance with the practices and principles of law." *id.* The party requesting discovery must provide reasons for the request, which must "include any proposed interrogatories and requests for admission, and must specify any requested documents." Rule 6 (b).

A petitioner may also be entitled to an evidentiary hearing. Section 2255 provides that a court shall hold an evidentiary hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." To determine whether a hearing is necessary, the court "must review the answer, any transcripts and records of prior proceedings, and any [additional materials submitted by the parties]." Rule 8 (a). If a hearing is necessary, the court must appoint an attorney to any moving party who qualifies for the appointment of counsel under 18 U.S.C. Section 3006A. See Rule 8 (c). A hearing is generally warranted only where the petitioner establishes a plausible claim. See *Puglisi v. United States*, 586 F.3d 209, 213 (2d Cir. 2009).

The Second Circuit has further described the standard for holding a Section 2255 evidentiary hearing as follows:

In ruling on a motion under Section 2255, the district court is required to hold a hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. Section 2255; see e.g., *Pham v. United States*, 317 F.3d 178, 185 (2d Cir. 2003) (Section 2255 does not permit summary dismissals of motions that present facially valid claims). However, the filing of a motion pursuant to Section 2255 does not automatically entitle the movant to a hearing, that section does not imply that there must be a hearing where the allegations are "vague, conclusory or palpably incredible." *Machibroda v. United States*, 368 U.S. 487, 495, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962); see e.g., *Chang v. United States*, 250 F.3d 79, 85 (2d Cir. 2001). To warrant a hearing, the motion must set forth specific facts supported by competent evidence, raising detailed and controverted issues of fact that, if proved at a hearing, would entitle him to relief. See, e.g., *Machibroda*, 368 U.S. at 494, 82 S. Ct. 510; *United States v. Aiello*, 814 F. 2d 109, 113-14 (2d Cir. 1987). *Gonzalez v. United States*, 772 F. 3d 118, 130-31 (2d Cir. 2013).

Section 2255 also provides that, "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall....grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." 28 U.S.C.S. 2255(b).

A defendant seeking a hearing on an ineffective assistance of counsel claim "need establish only that he has a 'plausible' claim of ineffective assistance of counsel, not that he will necessarily succeed on the claim." puglisi v. United States, 586 F.3d 209, 213 (2d Cir. 2009) (internal quotation marks omitted). To warrant a hearing, a petitioner's "application must contain assertions of fact that [the] petitioner is in a position to establish by competent evidence." United States v. Aiello, 814 F.2d 109, 113 (2d Cir. 1987).

Discussion:

At U.S. v. Brennerman et ano., 17 Cr. 155 (LAK), EFC Nos. 212, 215, 223, 227 and at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC Nos. 2, 9, 11, 17, Petitioner presented arguments requesting for the pertinent and exculpatory evidence from Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY and/or ICBC (London) plc, at 81 King William Street, London, U.K., which he requires in support of his collateral attack argument to demonstrate his actual innocence and that he is entitled to relief.

This Court at U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC Nos. 214, 216 and at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC Nos. 3, 6 directed the Government through its order to respond to Petitioner's request for the ICBC pertinent and exculpatory evidence including [underwriting file], [notes], [e-mails], [meeting minutes] related to the bridge loan transaction and settlement discussions between ICBC (London) plc, The Blacksands Pacific Group, Inc., and Blacksands Pacific Alpha Blue, LLC.

Government in their response to Petitioner's collateral attack petition, at 17 Cr. 155 (LAK), EFC No. 226 and at 22 Cv. 996 (LAK), EFC No. 16 did not mention or oppose Petitioner's request for ICBC London document/evidence. Hence this Court should grant Petitioner's request for the ICBC pertinent and exculpatory documents/evidence which he requires to demonstrate his actual innocence and that he is entitled to relief.

Furthermore, to succinctly highlight and present demonstrable evidence of the conspiracy between Linklaters LLP through Attorney Paul S. Hessler and the U.S. DOJ prosecutors from USAO, SDNY (Government/Respondent), Petitioner respectfully requests an evidentiary hearing, with Mr. Hessler providing testimony under oath, to answer and explain why he intentionally withheld pertinent and exculpatory documents/evidence from ICBC (London) plc, including the [underwriting file], [meeting minutes], [notes], [e-mails], which Petitioner required to present his complete defense.

V. CONCLUSION.

Petitioner Pro Se Raheem J. Brennerman ("Brennerman or Petitioner") respectfully submits the above reply motion (the "Reply Motion") in furtherance and support of his Collateral Attack Motion.

Dated: April 21, 2022
White Deer, Pa. 17887-1000

Respectfully submitted

/s/ Raheem J. Brennerman
RAHEEM JEFFERSON BRENNERMAN
Federal Correctional Institution
Allenwood Low
P. O. Box 1000
White Deer, Pa. 17887-1000

Pro Se Petitioner

x

APPENDIX

The documents/evidence appended are:

1.) Excerpt of trial testimony of Government sole witness from ICBC (London) plc, Mr. Julian Madgett, testifying as to the importance of the ICBC [underwriting file] which documents the basis for the bank, ICBC (London) plc approving the bridge loan, thus highlights what was "Material" to the bank in its approval of the bridge loan. Further that, the bank, ICBC (London) plc provided all documents/evidence to their New York based attorney, Linklaters LLP who were required to turn over the documents/evidence to the U.S. Attorney Office (the Government) and ultimately to Petitioner for his defense.

As highlight by Petitioner in the Collateral Attack Motion at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC Nos. 1, 2, 4, 9, 12, 17, 18 and at U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC Nos. 211, 212, 215, 222, 223, 227, 228, the Government [U.S. Attorney Office for the Southern District of New York] prior to trial issued subpoena to Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, New York, USA to obtain over 5,000 pages of discovery documents.

Apparently, the only documents/evidence which the Government did not obtain from Linklaters LLP New York office were the ICBC pertinent and exculpatory evidence including the [underwriting file], [meeting minutes], [notes], [e-mails] because the Government conspired with Linklaters LLP through Attorney Paul Stephen Hessler to withhold production of the pertinent and exculpatory documents/evidence from ICBC (London) plc, including ICBC [underwriting file] related to the bridge loan transaction between ICBC (London) plc, The Blacksands Pacific Group, Inc., and Blacksands Pacific Alpha Blue, LLC, and [e-mails], [notes], [meeting minutes] related to the settlement negotiations between agents of ICBC (London) plc and agents of The Blacksands Pacific Group, Inc., including Petitioner, which resulted in the negotiated draft settlement agreement.

The Government, acting on behalf of Judge Lewis A. Kaplan, conspired with Linklaters LLP through Attorney Paul S. Hessler to withhold production of the ICBC pertinent and exculpatory documents/evidence. Judge Kaplan is now endeavoring to cover-up the conspiracy by abruptly denying Petitioner's motion and closing the collateral attack proceedings without permitting granting the requested ICBC documents/evidence to permitting an evidentiary hearing with Attorney Hessler testifying under oath as to why he intentionally withheld production of the ICBC documents/evidence.

2.) Negotiated draft "Settlement Agreement," between ICBC (London) plc, The Blacksands Pacific Group, Inc., and Blacksands Pacific Alpha Blue, LLC, to settle the civil case before Judge Lewis A. Kaplan at ICBC (London) plc v. The Blacksands Pacific Group, Inc, 15 Cv. 0070 (LAK), which was negotiated and agreed prior to commencement of the criminal prosecutions.

As argued by Petitioner in the Collateral Attack Motion at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC Nos. 1, 2, 4, 9, 12, 17, 18 and at U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC Nos. 211, 212, 215, 222, 223, 227, 228, Petitioner requested for the documents/evidence from ICBC (London) plc including [underwriting file], [e-mails], [notes], [meeting minutes] related to the bridge loan transaction and settlement negotiations. Petitioner requires those ICBC documents/evidence to demonstrate his actual innocence and that he is entitled to relief.

--THE END--

XXXXXXXXXX

EXHIBIT 1

XXXXXXXXXX

1 (Jury present)

2 THE COURT: Okay. Have a seat. We will now begin the
3 cross-examination of Mr. Madgett by Mr. Waller.

4 CROSS EXAMINATION

5 BY MR. WALLER:

6 Q. Good afternoon, Mr. Madgett.

7 A. Good afternoon.

8 Q. When did you say you started working for ICBC?

9 A. 2009.

10 Q. And you work for ICBC in London, correct?

11 A. Correct.

12 Q. And it is a subsidiary of a Chinese bank?

13 A. It is a subsidiary and a branch of a Chinese bank.

14 Q. ICBC London is not FDIC insured; is that correct?

15 A. You are referring to the U.S. arrangement?

16 Q. That's correct.

17 A. No, it would not be because it's an operation in the U.K.

18 Q. When your credit committee makes a decision, a credit
19 decision whether or not to give a loan or not to give a loan,
20 what sort of documentation does it produce? Does it produce a
21 memo that explains its reasons or analysis for giving a loan?

22 A. The credit committee will have a series of minutes which
23 reflects a discussion of the case in credit committee and
24 records the decision of the credit committee.

25 Q. Did you ever produce the documents from that credit

1 committee, the ones you just described, to the government?

2 MR. ROOS: Objection.

3 THE COURT: You can answer.

4 A. To my knowledge, no. But I need to state perhaps it's
5 appropriate to say this: After the loan was defaulted, the
6 internal process of the bank means that the direct relationship
7 managers who were responsible for that dialogue step away and
8 the defaulted loan is then passed to a different department.
9 So, I'm not fully aware of all aspects of what has happened to
10 the management of the loan after around April 2014.

11 Q. And when I say produced to the government, I meant to the
12 prosecutors here in this case. You understood that?

13 A. I understood that and to my knowledge, no, that has not
14 been the case.

15 Q. But ICBC did produce a lot of documents to the government,
16 correct?

17 A. All I can state is that the documents were provided to our
18 legal advisors and then our legal advisors have interacted with
19 the U.S. Attorney's office.

20 Q. Would it be fair to say that some documents that are in the
21 underwriting file for ICBC were produced to the document and
22 others were not?

23 A. Some documents will have been passed across. I do not know
24 whether or not all or some. I'm not in -- I don't have that
25 knowledge.

1 Q. Is there an underwriting file for a loan application such
2 as the one we are dealing with in this case?

3 A. There would be a credit application document which is where
4 the case for making the loan has been summarized, and that is
5 the credit application document which then goes to credit
6 committee for approval or decline.

7 Q. Do you know if that -- well who would have prepared that
8 document?

9 A. I would have been one of the main authors of that document.

10 Q. Do you know if that document was produced to the
11 government?

12 A. I do not and I wouldn't see great relevance in it, but I do
13 not know if it has gone to the government.

14 Q. Well, relevance is not really your determination, correct?

15 A. Correct, correct. Yes.

16 Q. So you don't know if it was produced to the government and
17 it certainly wasn't produced to the defense, correct, by ICBC?

18 THE COURT: Well, do you know?

19 THE WITNESS: I don't know, but I'm assuming from your
20 question that it wasn't.

21 THE COURT: Well, don't assume.

22 THE WITNESS: Okay, sorry. My apologies.

23 THE COURT: The jury knows not to assume anything from
24 a question. So, you just answer as to what you know.

25 THE WITNESS: All right.

1 BY MR. WALLER:

2 Q. Was there an answer?

3 A. Could you repeat the question, please?

4 Q. Yes.

5 Do you know if that document that we were talking
6 about was ever produced?

7 THE COURT: He answered. He said I don't know.

8 THE WITNESS: I don't know.

9 THE COURT: And then he started assuming things and
10 that's when I jumped in.

11 BY MR. WALLER:

12 Q. So the answer is you don't know?

13 A. I don't know.

14 Q. Now, you first met Mr. Brennerman in 2011, correct?

15 A. Yes.

16 Q. Did you meet him in person for a meeting?

17 A. Yes.

18 Q. Jumeirah Carlton Tower Hotel, does that sound right?

19 A. On one occasion I met him in a hotel, yes.

20 Q. At that point when you met him I think you testified that
21 there were no firm deals that he was bringing to you at that
22 point? There were no deals that he was bringing to you, he was
23 just making an introduction?

24 A. When the initial interaction between us started, yes.

25 Q. And, do you recall when the first deal was that he brought

1 MS. FRITZ: Your Honor, your Honor, no. We have it
2 here, but --

3 THE COURT: You haven't served it yet?

4 MS. FRITZ: We wanted to hear what your Honor said.

5 THE COURT: In any event, the witness has indicated he
6 doesn't possess the documents, so the documents are not with
7 him. He doesn't have them. According to his testimony,
8 they're in London with the bank's files that he turned over
9 once the deal went south. He certainly said he didn't review
10 them in preparation for his testimony. He doesn't possess them
11 now.

12 So, to the extent the bank is subpoenaed with a Rule
13 17 subpoena, then that would be a different issue, but I don't
14 think serving Mr. -- who is the lawyer, Mr.?

15 MR. HESSLER: Hessler, your Honor.

16 THE COURT: Yes, Mr. Hessler. I'm sorry.

17 I don't think serving Mr. Hessler is adequate service
18 for purposes of the bank.

19 MS. FRITZ: Let me explain why we did it that way,
20 because initially last night, we had an ICBC subpoena drafted,
21 and the reason that we did it this way is, again, I don't
22 necessarily agree with your Honor's definition of possession.
23 I do think that Julian Madgett, I think quite plainly, has
24 access to these documents. People very rarely walk around with
25 the documents that you're asking for from them, but they do

Exhibit 10

Waller, Brian

From: Fritz, Maranda
Sent: Monday, May 01, 2017 5:40 PM
To: Waller, Brian
Subject: FW: ICBC
Attachments: ICBC Blacksands Stipulation.docx

Maranda E. Fritz | Partner | Thompson Hine LLP
335 Madison Avenue | New York, NY 10017
Office: 212.908.3966
Email: maranda.fritz@thompsonhine.com



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From: CHRISTOPHER.HARRIS@lw.com [<mailto:CHRISTOPHER.HARRIS@lw.com>]
Sent: Friday, April 28, 2017 9:40 AM
To: Fritz, Maranda
Cc: Virginia.Tent@lw.com
Subject: FW: ICBC

Please see below

From: Hessler, Paul [<mailto:paul.hessler@linklaters.com>]
Sent: Thursday, April 27, 2017 10:47 PM
To: Harris, Christopher (NY)
Cc: Tent, Virginia (NY)
Subject: RE: ICBC

Chris,

Attached is a draft stipulation along the lines we discussed. I am sending this to you now, notwithstanding that it remains subject to review and revision on our side, so that you and your client can review it. This is for discussion purposes only, and is not binding on ICBC unless and until it is executed.

Best,
Paul

From: CHRISTOPHER.HARRIS@lw.com [mailto:CHRISTOPHER.HARRIS@lw.com]
Sent: 26 April 2017 11:57
To: Hessler, Paul <paul.hessler@linklaters.com>
Cc: Virginia.Tent@lw.com
Subject: RE: ICBC

Hi Paul – I'm following up on this. Last week you indicated you would send the settlement agreement shortly. Thanks.

From: Harris, Christopher (NY)
Sent: Monday, April 24, 2017 6:32 PM
To: Paul Hessler (paul.hessler@linklaters.com)
Cc: Tent, Virginia (NY)
Subject: ICBC

Paul, could you please send us the draft of the settlement agreement as soon as possible?
Thank you.

Christopher Harris

LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
Direct Dial: +1.212.906.1880
Fax: +1.212.751.4864
Email: christopher.harris@lw.com
<http://www.lw.com>

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SETTLEMENT COMMUNICATION SUBJECT TO FRE 408**

STIPULATION AND [PROPOSED] ORDER

This stipulation and order is entered into by and between (i) ICBC (London) plc (“ICBC”) and (ii) The Blacksands Pacific Group, Inc. (“BPG”), Blacksands Pacific Alpha Blue LLC (“Alpha Blue,” and together with BPG, “Blacksands”), and Raheem Brennerman (“Brennerman”). For the purposes of this stipulation, ICBC, BPG, Blacksands and Brennerman are referred to as the “Parties.”

A. Introduction

The Court entered judgment in favor of ICBC and against BPG on September 30, 2015. The court entered an amended judgment on March 8, 2016 (the “Blacksands Judgment”). On September 26, 2016, the United States Court of Appeals for the Second Circuit affirmed the Blacksands Judgment in its entirety.

The Court entered judgment in favor of ICBC and against Brennerman on January 5, 2017 (the “Brennerman Judgment,” and together with the Blacksands Judgment, the “Judgments”). Although Brennerman appealed the Brennerman Judgment, the Second Circuit has dismissed that appeal.

The Blacksands Judgment awards ICBC \$5 million, plus interest, plus attorneys’ fees. The Brennerman Judgment awards ICBC \$131,749.60. By this stipulation, the Parties, intending to be bound, agree on the base amount (subject to potential increase, as set forth below) required to satisfy the Judgments.

B. Representations and Warranties

In order to induce ICBC to enter into this stipulation, Raheem Brennerman represents and warrants, under penalty of perjury, that:

1. Entities that Brennerman beneficially owns and controls (the “Brennerman Entities”), which are related to BPG and Alpha Blue, have negotiated transactions with BP Oil International Ltd. (“BP”) including a five-year crude oil offtake agreement, a \$200 million prepayment finance loan, and a \$35 million call option (the “BP Transactions”), pursuant to which BP will (among other things) pay to the Brennerman Entities a \$40 million upfront payment, from which Brennerman will cause the Judgments to be paid in the amount specified in paragraph B.1, below.
2. The BP Transactions are predicated on the Brennerman Entities’ entitlement to the crude oil production under oil mining licenses (“OMLs”) issued by the Nigerian government to the Brennerman Entities, including OMLs 26, 30, 34, 42, 60, 61, 62 and 63 (the “Brennerman OMLs”).

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3. The Brennerman OMLs have been properly and legally granted to the Brennerman Entities, and the Brennerman Entities currently, and for the duration of the BP Transactions shall, have a fully vested right to the crude oil production under the Brennerman OMLs.
4. The Brennerman Entities have properly and legally made all payments required to be made, and performed all obligations required to be performed, to obtain and maintain for the duration of the BP Transactions the Brennerman Entities' entitlement to the crude oil production under the Brennerman OMLs. All representations made by, and in the future to be made by, Brennerman and the Brennerman Entities to induce the Nigerian government to issue the Brennerman OMLs to the Brennerman Entities, have been and shall be true and correct in all material respects.
5. The Brennerman Entities have properly and legally made all payments required to be made, and performed all obligations required to be performed, in connection with the BP Transactions.
6. All representations made by, and in the future to be made by, Brennerman and the Brennerman Entities to induce BP to enter into the BP Transactions, have been and shall be true and correct in all material respects.
7. Brennerman, BPG, Alpha Blue, and the Brennerman Entities all have received, in connection with ICBC's extension of the Bridge Loan to Alpha Blue in November 2013, and are receiving, in connection with ICBC's agreement to this stipulation, substantial benefits which constitute good and sufficient consideration for Brennerman's, BPG's, Alpha Blue's, and the Brennerman Entities' obligations hereunder.
8. Brennerman, BPG, Alpha Blue, and the Brennerman Entities are, and at the time of and following payment of the Judgments in the amount set forth in paragraph C.1. below will (a) have assets the fair value of which exceed the value of his, its or their liabilities; (b) reasonably be capable of paying his, its or their debts as they come due; and (c) have adequate capital to conduct his, its or their businesses.

C. Terms of Stipulation and Agreement

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, as follows:

1. Amount of the Judgment if Paid On or Before [June 2, 2017]: The Parties agree that the amount necessary to satisfy the Judgments shall be:
 - a. \$8.0 million, if Blacksands and/or Brennerman cause that amount to be paid in immediately available funds so as to be received by ICBC on or before [May 19, 2017]; or

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- b. \$8.2 million if Blacksands and/or Brennerman cause that amount to be paid in immediately available funds so as to be received by ICBC after [May 19, 2017] but before [May 26, 2017]; or
 - c. \$8.4 million if Blacksands and/or Brennerman cause that amount to be paid in immediately available funds so as to be received by ICBC after [May 26, 2017] but on or before [June 2, 2017].
2. Amount of the Judgment if Paid After [June 2, 2017]. If Blacksands and/or Brennerman do not pay the amount set forth in paragraph 1 above on or before [June 2, 2017], then the amount required to satisfy the Judgment as of any date thereafter shall be \$8.3 million, plus interest accrued from and after [June 2, 2017] through the date of payment, plus all additional attorneys' fees and costs incurred by ICBC to enforce the Judgments from and after [June 2, 2017] through the date of payment, plus all contempt fines levied against BPG and Brennerman in the Court's orders dated, respectively, October 24, 2016 and December 15, 2016, plus any other amounts that the Court may in the future award to ICBC.
3. Immediate Release by Blacksands and Brennerman. To induce ICBC to enter into this stipulation, effective immediately upon their execution of this stipulation, BPG, Alpha Blue and Brennerman hereby release ICBC from any and all claims, counterclaims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been or could have been asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, foreign, or common law), by or on behalf of BPG, Alpha Blue or Brennerman, against ICBC or any of its parent entities, affiliates, or subsidiaries and each and all of their respective past or present officers, directors, employees, and agents, which BPG, Alpha Blue or Brennerman ever had, now have, or may have had. Without limiting the generality of the preceding sentence, BPG, Alpha Blue and Brennerman hereby irrevocably instruct Latham & Watkins, within three days of the execution of this stipulation, to dismiss with prejudice the counterclaims that BPG and Alpha Blue asserted in this litigation. By its signature on this stipulation, Latham & Watkins acknowledges and agrees that it will do so.
4. Forbearance and Conditional Release by ICBC. ICBC agrees that, from the date of execution of this stipulation until [May 19, 2017], it shall forbear from taking any action to enforce the Judgments, *except that* ICBC may take any action to obtain from Brennerman, Blacksands or others information regarding his and their assets. If the Judgments are paid by [June 2, 2017] in the full applicable amount set forth in paragraph C.1, above, then, effective as of the date ICBC receives such payment, ICBC shall conditionally release BPG, Alpha Blue and Brennerman from any and all claims, counterclaims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or

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unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been or could have been asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, foreign, or common law), by or on behalf of ICBC, against BPG, Alpha Blue or Brennerman, or any of their parent entities, affiliates, or subsidiaries and each and all of their respective past or present officers, directors, employees, and agents, which ICBC ever had, now has, or may have had, *provided that* ICBC's conditional release shall be null and void upon the occurrence of any of the following:

- a. all or any portion of the amount paid pursuant to paragraph C.1 is sought to be clawed back, reclaimed, recovered, remitted, forfeited, seized or avoided in any manner by BPG, Alpha Blue, Brennerman, BP, any bankruptcy trustee, liquidator, administrator, governmental authority, or anyone else, prior to the expiration of six years and one day from the date on which such payment is received by ICBC; or
- b. any of the representations set forth in section B of this stipulation are false.

Blacksands and Brennerman acknowledge and agree that if ICBC's conditional release becomes null and void for any of the foregoing reasons, all of Blacksands' and Brennerman's obligations, including their discovery obligations, shall be reinstated, and ICBC's rights to enforce those obligations shall be unimpaired, as if ICBC had never conditionally released them. Any applicable statute or period of limitations, statute of repose, or other time-based limitation or any similar defense, whether at law, in equity, under statute, contract or otherwise (including, but not limited to, the doctrine of laches or waiver), applicable to ICBC's enforcement of the Judgments, shall be tolled from the date on which it receives payment pursuant to paragraph C.1, above, until the date which is 30 days following ICBC's receipt of actual notice of grounds rendering its conditional release null and void (the "Tolling Period"), and Blacksands and Brennerman shall not assert, plead or raise any legal or equitable defense to such enforcement that relies in whole or in part on the time elapsed during the Tolling Period.

5. Survival of Blacksands' and Brennerman's Obligations. For the avoidance of doubt, pending ICBC's receipt of the full amount due pursuant to paragraph C.1 or C.2, above, ICBC does not release Blacksands or Brennerman from any obligations imposed on them pursuant to Court order, rule, or process, including their discovery obligations.
6. Other Matters. This stipulation is between the Parties only, and does not affect the Court's or any governmental authority's power or ability to impose or seek relief against Blacksands or Brennerman.
7. Miscellaneous. This stipulation shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York. The Parties acknowledge that this stipulation was drafted jointly by the Parties, that each Party has consulted with attorneys

**DRAFT – FOR DISCUSSION PURPOSES ONLY
SETTLEMENT COMMUNICATION SUBJECT TO FRE 408**

of his or its choosing and fully understands the terms hereof, that to the extent it or he deemed necessary each Party has received legal advice from such Party’s own attorneys regarding the advisability of entering into this stipulation, and that each Party is executing this stipulation voluntarily. This stipulation shall not be strictly construed against any Party on the ground that the rules for the construction of contracts require the resolution of any ambiguity against the Party that drafted the document. This stipulation may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this stipulation as of the ___ day of _____, 2017.

ICBC (London) plc
By: Linklaters LLP

By _____
Name:
Title:

The Blacksands Pacific Group, Inc.
By: Latham & Watkins, LLP

By _____
Name:
Title:

Blacksands Pacific Alpha Blue, LLC
By: Latham & Watkins, LLP

By _____
Name:
Title:

Raheem Brennerman

SO ORDERED:

United Stated District Judge

Federal Rules of Appellate Procedure Form 7. Declaration of Inmate Filing

United States District Court for the District of Southern District of New York

Rahiem J. Brennerman)
Plaintiff,)
v.)

Case No. 22-Cv-996 (LAK)

United States of America)
Defendant.)

I am an inmate confined in an institution. Today, 5/3/22 [insert date], I am depositing the REPLY MOTION [insert title of document; for example, "notice of appeal"] in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here /s/ Rahiem Brennerman

Signed on 5/3/22 [insert date]

[Note to inmate filers: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(C).]

x

Raheem J. Brennerman
Reg. No. 54001-048
Federal Correctional Institution
Allenwood Low
P. O. Box 1000
White Deer, Pa. 17887-1000

Clerk of Court
UNITED STATES DISTRICT COURT
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

April 21, 2022

BY CERTIFIED FIRST CLASS MAIL

Regarding: Brennerman v. United States
Civil Action No. 22 Cv. 996 (LAK)
REPLY MOTION TO COLLATERAL ATTACK PETITION

Dear Clerk:

The undersigned, Raheem J. Brennerman ("Brennerman or Petitioner") respectfully submits the appended reply motion (the "Reply Motion To Collateral Attack Petition"), to be docketed at the above referenced case no. 22 Cv. 996 (LAK)

Should you require any clarification(s), please do not hesitate to write to be at the above referenced address

Dated: April 21, 2022
White Deer, Pa. 17887-1000

Respectfully submitted

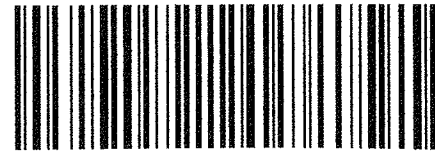
/s/ Raheem J. Brennerman
RAHEEM JEFFERSON BRENNERMAN
Federal Correctional Institution
Allenwood Low
P. O. Box 1000
White Deer, Pa. 17887-1000

Pro Se Petitioner

↔54001-048↔

Raheem J Brennerman
FCC Allenwood LOW
1000 P O Box
Lycoming A Unit
White DEER, PA 17887-1000
United States

CERTIFIED MAIL



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1000



10007

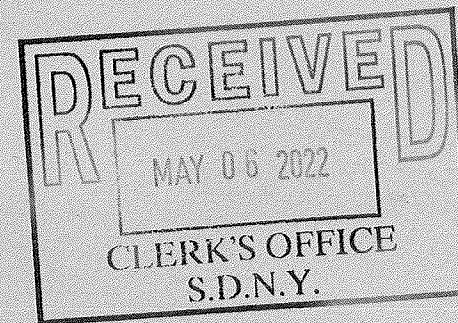
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Pro Se JAR



↔54001-048↔

Clerk Of Court
Daniel Patrick Moynihan
500 Pearl ST
U.S. District Court
NEW YORK, NY 10007
United States

2022 MAY -9 PM 2:29

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SDNY PRO SE OFFICE

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