

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

UNITED STATES OF AMERICA,

Respondent,

v.

RAHEEM BRENNERMAN,

Petitioner/Movant,

Case No.: 17-cr-337 (RJS)

**DEFENDANT AFFIDAVIT IN SUPPORT OF OMNIBUS MOTION
INCLUDING MOTION FOR COLLATERAL ATTACK RELIEF PURSUANT
TO 28 UNITED STATES CODE SECTION 2255 AND OTHER RELIEFS**

RAHEEM J. BRENNERMAN, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I, Raheem Jefferson Brennerman ("Brennerman") am the Petitioner in this instant action, and as such I am familiar with the facts of this case.
2. I am a Pro Se Defendant.
3. The "procedural default" rule bars the collateral review of non-constitutional, non-jurisdictional claims that could have been raised on direct appeal, unless the petitioner shows cause for failing to raise the claims on direct review and actual prejudice or actual innocence. *See Bousley*, 523 U.S., at 622-23 (citations omitted); see also *United States v. Thorn*, 659 F.3d 227, 231 (2d Cir. 2011); *Brennan v. United States*, 867 F.2d 111, 117 (2d Cir. 1989) ("non-constitutional; and non-jurisdictional claims are generally procedurally foreclosed to a section 2255 petitioner if not raised on direct appeal").

To satisfy the cause component, the petitioner must show circumstance, "external to the petitioner, something that cannot be fairly attributed to him." *Marone v. United States*, 10 F.3d 65, 67 (2d Cir. 1993). To satisfy the prejudice component the petitioner must demonstrate prejudice that creates an "actual and substantial disadvantage, infecting...error of constitutional dimensions." *See United States v. Frady*, 456 U.S. 152, 170, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982). To establish actual innocence, the petitioner must show "that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *Bousley*, 523 U.S. at 623 (internal quotation marks and citation omitted). But this rule does not apply to ineffective-assistance-of-counsel claims, which may be brought in a 2255 motion regardless of whether they could have been raised, or were raised, on direct appeal. *See Massaro v. United States*, 538 U.S. 500, 508-09, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003).

4. To satisfy the cause component in this instant collateral attack motion pursuant to 28 U.S.C.S. 2255, Petitioner presents constitutional claims. Furthermore, during the direct review of this instant criminal case at appeal docket no. 18-3546(L); 19-497(CON) and the direct review of the interrelated criminal contempt of court case at appeal docket no. 18-1033(L); 18-1618(CON), Petitioner made requests to his appeal counsels, Attorneys John Meringolo and Attorney Anjelica Cappellino of Meringolo and Associates, PLLC, to present the constitutional claims which Petitioner now presents in his collateral attack motion including judicial misconduct and bias which violated Petitioner's right to a fair trial, prosecutorial misconduct which violated Petitioner's right to Constitutional due process among other claims, however his appeal attorneys advised him that those arguments can only be presented in a collateral attack motion pursuant to 28 U.S.C. § 2255 rather than in a direct review, hence they (appeal counsel) refused to present

the arguments for direct review. When Petitioner continued to request that appeal counsel highlight those issues for direct review, they withdrew from continuing to represent him.

5. Petitioner suffered and continues to suffer significant prejudice infecting...error of constitutional dimensions, where the judge that presided over his entire criminal proceeding intentionally misrepresented evidence so as to falsely satisfy the law to convict and imprison him. The trial judge also intentionally deprived him access to the very evidence - ICBC underwriting file, which he required to prove his innocence, while permitting the prosecution witness to testify as to the contents of the evidence - ICBC underwriting file, to satisfy the essential element of MATERIALITY of the alleged misrepresentations, knowing that the Petitioner would be unable to challenge the testimony as to substance and credibility on the issues (given that he had been deprived of the very evidence to do so). Petitioner was significantly prejudiced where his right to liberty has been continually abridged. Furthermore, his appellate counsel refused to highlight these egregious miscarriage of justice for direct review exacerbating the prejudice by depriving him of his Sixth Amendment right to an effective assistance of counsel.

6. Petitioner is innocent of the charges because absent the judicial misconduct and bias and the prosecutorial misconduct, no reasonable juror would have convicted him in light of all the evidence, which demonstrated that the alleged conduct did not violate federal law and statute and given that he was deprived of the very evidence he required to prove his innocence. The misconduct deprived Petitioner of his Constitutional rights precipitating his wrongful conviction and incarceration.

WHEREFORE, Petitioner respectfully submits the above in support of his omnibus motion including collateral attack motion pursuant to 28 U.S.C. § 2255 and for other reliefs.

Dated: November 7, 2021
White Deer, Pa. 17887-1000

Respectfully submitted

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

Pro Se Petitioner