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)

OMNIBUS MOTION INCLUDING MOTION FOR COLLATERAL ATTACK RELIEF PURSUANT TO 28 UNITED STATES CODE SECTION 2255 AND OTHER RELIEFS

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November 7, 2021

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I. RELIEF SOUGHT

Petitioner/Movant Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits this Omnibus Motions (the "Omnibus Motion") and will move this Court before Honorable Richard J. Sullivan, United States Circuit Judge, at 40 Foley Square, New York, New York 10007 for an order: (a.) Granting Brennerman`s collateral attack motion pursuant to 28 United States Code § 2255 (the "Collateral Attack Motion") to set-aside the judgment of conviction and vacate the sentence; (b.) Granting Brennerman`s motion for bail pending the determination of the collateral attack motion pursuant to 18 United States Code § 3143(b); (c.) Granting Brennerman`s motion to stay enforcement of the judgment of conviction and sentence pending determination of the collateral attack motion pursuant to Rule 38 of the Federal Rule of Criminal Procedure; (d.) Granting Brennerman`s motion to disqualify and/or seek recusal of the Court (Sullivan, J.) to consider and determine the omnibus motion pursuant to 28 United States Code § 455(a), or any other relief which this Court may deem just, necessary or appropriate including evidentiary hearing.

II. JURISDICTION

The Court of Appeals judgment affirming Petitioner`s conviction and sentence was entered on June 9, 2020. Brennerman`s motion for rehearing en banc was denied on July 31, 2020. *U.S. v. Brennerman*, No. 18-3546, EFC No. 190; 195. Brennerman filed Petition for writ of certiorari to the Supreme Court of the United States. *Brennerman v. U.S.*, S. Ct. No. 20-6638 (EFC Dec 09, 2020). The Supreme Court of the United States denied to grant certiorari on January 25, 2021. A one-year limitation for Brennerman to bring collateral attack motion challenging his judgment of conviction and sentence expires on January 24, 2022. This omnibus motion was presented prior to the one-year time limitation.

III. ISSUES PRESENTED

BACKGROUND

The history of this matter began in 2014 when ICBC (London) PLC ("ICBC London") sued The Blacksands Pacific Group, Inc ("Blacksands") in New York Supreme Court primarily alleging, inter alia that Blacksands had failed to repay approximately $4.4 million dollars extended to Blacksands pursuant to a Bridge Loan Agreement, after ICBC London had reneged on the original $1.35 Billion dollars financing agreed with Blacksands. Significantly, Petitioner Raheem J. Brennerman, the CEO of Blacksands, was not named as a defendant in that action. *ICBC (London) PLC v. The Blacksands Pacific Group*, Inc., Notice of Removal; Cv. Cover Sheet, No. 15 Cv. 70 (LAK), EFC Nos. 1-2.

Blacksands removed the case to the Southern District of New York and the matter was assigned to Hon. Lewis A. Kaplan, under the caption *ICBC (London) PLC v. The Blacksands Pacific Group, Inc*. Notice of Removal, No. 15 Cv. 70 (LAK), EFC No. 1.

Based on the loan documents, Judge Kaplan granted ICBC London`s motion for summary judgment against Blacksands. *ICBC*, Mem. Op., No. 15 Cv. 70 (LAK), EFC No. 38.

ICBC London then served Blacksands with extremely broad post-judgment discovery requests. Blacksands counsel, Latham & Watkins LLP ("Latham") interposed objections to those demands and filed a brief in support of those objections. *ICBC*, Def. Interrog., No. 15 Cv. 70 (LAK), EFC No. 84 Ex. 2; Mem.; Def.'s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 85, 86. The Court conducting no analysis regarding the permissible scope of post-judgment discovery of the actual breadth of plaintiff`s demands, instead in conclusionary fashion declared that the objections were "baseless" and that Blacksands "shall comply fully." *ICBC*, Order, No. 15 Cv. 70 (LAK), EFC No. 87).

Subsequently, ICBC London moved for contempt and coercive sanctions against Blacksands. *ICBC*, Order to Show Cause; Pl.'s Decl.; Mem., No. 15 Cv. 70 (LAK), EFC Nos. 101, 102-103. On October 24, 2016, Judge Kaplan granted ICBC London`s motion holding Blacksands in contempt and imposing coercive sanctions. *ICBC*, Order, No. 15 Cv. 70 (LAK), EFC No. 108. Over the course of the next two weeks, on November 4 and November 10, 2016, Mr. Brennerman on behalf of Blacksands provided detailed discovery responses to ICBC London, including approximately 400 pages of documents, in an effort to comply with ICBC London`s discovery requests. *ICBC*, Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC. No. 123, ¶¶ 9, 11-12. Mr. Brennerman also made continued efforts without support from other shareholders and partners to settle the matter with ICBC London, including meeting with ICBC London executives in London and providing them with even more information about Blacksands and its pending transaction, which were pertinent to Blacksands settlement efforts. *ICBC*, Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC No. 123, ¶¶ 45, 9, 11-12.

On December 7, 2016, ICBC London moved for civil contempt against Mr. Brennerman personally, even though he was not a named defendant in the matter and was not personally named in any discovery orders. *ICBC*, Order; Mem.; Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 121-23. A contempt hearing was scheduled for December 13, 2016, less than a week later. *ICBC*, Corrected Order, No. 15 Cv. 70 (LAK), EFC No. 125.

Mr. Brennerman, however, did not have counsel. In fact, Latham repeatedly and consistently communicated to the Court, and to Mr. Brennerman that they did not represent Mr. Brennerman personally. *ICBC*, Letter, No. 15 Cv. 70 (LAK), EFC No. 124. Although Mr. Brennerman was out of the country at the time he learned of the pending contempt hearing against him, he immediately sought to retain counsel to represent him in the contempt proceeding and wrote the

Court requesting a reasonable adjournment because he was currently outside the United States and needed more time to retain counsel. *ICBC*, Email; Letter, No. 15 Cv. 70 (LAK), EFC Nos. 127-28 (Judge Kaplan was previously a partner at Paul Weiss LLP which represented Mr. Brennerman at the time thus the law firm could not appear before Judge Kaplan hence why Mr. Brennerman had to retain another law firm to represent him for the contempt proceedings). Judge Kaplan denied Mr. Brennerman`s request on December 12, 2016 (Order, No. 15 Cv. 70 (LAK), EFC No. 134), and found Mr. Brennerman personally in contempt on December 13, 2016. *ICBC*, Orders, No. 15 Cv. 70 (LAK), EFC Nos. 139-40. While Mr. Brennerman had provided a substantial document production in November, after Blacksands was found in contempt, the Court made no mention of it and appeared not to have reviewed or considered that production in its determination that Mr. Brennerman was himself in contempt. *ICBC*, Orders, 15 Cv. 70 (LAK), EFC. Nos. 139-40.

On December 13, 2016 when Judge Kaplan held Mr. Brennerman personally in contempt, he [Judge Kaplan] ignored the law from the Second Circuit U.S. Court of Appeals in *OSRecovery*, where the Appeals Court stated directly to Judge Kaplan in relevant parts: ("[T]he District Court abused its discretion by issuing a contempt order to a non-party for failing to respond to discovery request propounded to him as a party without providing sufficient legal authority or explanation for treating him as a party solely for the purpose of discovery)) and held Mr. Brennerman in contempt (even though there were no court order[s] directed at him personally. No subpoena or motion-to-compel were directed at him). *OSRecovery, Inc., v. One Groupe Int`l, Inc.*, 462 F.3d 87, 90 (2d Cir. 2006).

Judge Kaplan also ignored the federal rule to conduct extra-judicial research into Mr. Brennerman by Googling him. *Brennerman,* Bail Hr.'g Tr., No. 17 Cr. 155 (LAK), EFC No. 12

Ex. 1 at 28. Then following the erroneous contempt propounded against Mr. Brennerman, Judge Kaplan referred him to the Manhattan federal prosecutors (United States Attorney Office for the Southern District of New York "USAO, SDNY") and persuaded the prosecutors to arrest Mr. Brennerman and prosecute him criminally. *United States v. Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2.

THE CRIMINAL REFERRAL, THE PETITION AND EX PARTE CONFERENCE BETWEEN JUDGE KAPLAN AND THE GOVERNMENT

In late 2016 or early 2017, Judge Kaplan referred Blacksands and Mr. Brennerman personally to the United States Attorney`s Office for criminal prosecution.

Thereafter, on March 3, 2017, the government filed a Petition seeking to initiate criminal contempt proceedings against Blacksands and Mr. Brennerman personally, including an Order to Show Cause for them to appear in Court to answer the charges. On March 7, 2017, Judge Kaplan summoned AUSAs Robert Benjamin Sobelman and Nicolas Tyler Landsman-Roos to his robing room to advise that an arrest warrant should be issued for Mr. Brennerman. *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2. The prosecution, consistent with Fed. R. Crim. P. 42, had prepared an Order to Show Cause that would have directed Blacksands and Mr. Brennerman to appear before the Court on a date in the future. The Court made clear, however that it did not agree with the government`s approach and advised the prosecutors that the Court should issue an arrest warrant instead as to Mr. Brennerman, stating his assumption that "the United States can`t find him." The prosecutors repeatedly expressed their view that execution of an arrest warrant was not necessary under the circumstances. *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2. The prosecutors advised, first, that Mr. Brennerman had actually called them on Friday, March 3, 2017, the same day that the Petition was filed to talk to them about that Petition. *Id.* The prosecutors informed Mr. Brennerman that he could not speak with

him, and Mr. Brennerman then provided his phone number so that "there may be a way for the government to be in touch with him via that telephone number." The prosecutors then proposed that the Order to Show Cause previously prepared and filed by the government, could be entered to require Mr. Brennerman to attend the conference and "should he not appear, a summons or arrest warrant be issued to secure his appearance." *Id*.

The Court continued to press the issue of an arrest warrant, asking '[w]hy shouldn`t I, given the history in this case issue a warrant?" *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2 At 5. The Prosecutors responded with a number of reasons, stating:

> Mr. Brennerman did try to contact the government on Friday, and we don`t know that he has absconded or seeks to abscond. He`s already knowledgeable about the petition. His email address is included on the ECF notification that went out when the petition was publicly filed. He appears to have the resources to have fled had he intended to, and the government thinks it`s prudent to provide him an opportunity to appear at the conference voluntarily.

Id. The prosecution went on to say that, even if the Court issued an arrest warrant, "the government would likely provide Mr. Brennerman an opportunity to surrender rather than dispatching law enforcement to apprehend him without providing that opportunity." *Id*.

The Court pressed on, stating "I`m inclined to issue an arrest warrant" and pushed back against the prospect that Mr. Brennerman should be allowed to surrender: "Now, if the government is going to give him an opportunity to surrender; there`s a substantial question as to whether I`m wasting my time because I think the odds are not unreasonable that he will abscond." *Id*. at 6.

Eventually the prosecutors deferred to the Court and confirmed that if an arrest warrant was issued, they would discuss in their office how best to proceed. *Id*. at 7. Thus, as of March 7, 2017, when the government entered the robing room, there was no pending investigation of fraud as to Mr. Brennerman with the prosecutors in the Southern District of New York, and the

government was prepared to proceed with a contempt proceeding by Order to Show Cause and had no concern that Mr. Brennerman would seek to abscond.

Thus pursuant to the arrest warrant prepared and signed by Judge Kaplan, Mr. Brennerman was arrested on April 19, 2017 at his home in Las Vegas. As of the date of the arrest warrant and because the Court had declined to sign the order to show cause presented by the government, there was no actual contempt charge pending against Mr. Brennerman. The Court omitted Mr. Brennerman from the signed Order to Show Cause but then failed to otherwise rule or grant the government`s Petition as it related to Mr. Brennerman. There was, therefore, no proper basis for the arrest warrant. The Court`s decision to alter the warrant to reference the Petition was inadequate to support the warrant. (The arrest warrant included an option for a Probation Violation Petition; those instruments, unlike a Petition in a contempt proceeding, actually do charge an offense). *Brennerman*, Arrest Warrant, No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 3.

Mr. Brennerman`s arrest on April 19, 2017 (when government seized his electronic devices and documents (which was adduced as evidence (e-mails between Mr. Brennerman (on behalf of Blacksands) and Madgett (ICBC London) at trial of the contempt and fraud case (where the government actually never obtained or reviewed any pertinent ICBC transaction files from ICBC (London) plc) was in violation of both Mr. Brennerman`s Fourth and Fifth Amendment rights.

THE INDICTMENT AND ORDER TO SHOW CAUSE

On May 31, 2017, weeks after Mr. Brennerman was released on bail in the criminal contempt of court case, he was re-arrested by the U.S. Attorney`s Office pursuant to an indictment alleging fraud in connection with the transaction that was at issue in the underlying civil action, No. 15 Cv. 70 (LAK) between ICBC (London) PLC and The Blacksands Pacific Group, Inc (even though the civil action had been ongoing for two and half years at that point). Mr. Brennerman

was charged with Conspiracy to commit bank and wire fraud, bank fraud and wire fraud. *Id*. The case was assigned to Hon. Richard J. Sullivan, under the caption, *United States v. Brennerman*, No. 17 Cr. 337 (RJS).

In August 2017, because Judge Kaplan had failed to sign the Order to Show Cause as it related to Mr. Brennerman in the criminal contempt of court case at No. 17 Cr. 155 (LAK) (even though Mr. Brennerman had been arrested at the behest of Judge Kaplan). The government realizing their error filed a new two count Order to Show Cause Petition formally charging Mr. Brennerman in the criminal contempt of court case. *Brennerman*, Order to Show Cause, No. 17 Cr. 155, EFC No. 52.

THE DISTRICT COURT`S DECISION

In August 2017, prior to trial for the criminal contempt of court case, Mr. Brennerman sought to obtain the complete ICBC records (including the underwriting file and negotiations between agents of Blacksands and ICBC London) to demonstrate his innocence and to present a complete defense. However Mr. Brennerman`s request to the Manhattan federal prosecutors was denied. The [Manhattan federal prosecutors] refused to obtain or review the complete ICBC records including the underwriting files, arguing that they were not obligated to collect any additional evidence from ICBC London beyond what the bank had selectively provided to them. Judge Kaplan also denied Mr. Brennerman`s request seeking to compel the complete ICBC record. *Brennerman*, Mem. & Order, No. 17 Cr. 155 (LAK), EFC No. 76.

In November 2017, prior to trial for the fraud case, Mr. Brennerman made request to Judge Sullivan in his motion-in-limine requesting that the Court exclude the testimony of any witness from ICBC London because he had been unable to obtain the complete ICBC records including the underwriting files, which he required to engage in cross-examination of the witness and that

the government will be able to elicit testimony from such witness while he would be deprived of the ability to engage in any meaningful cross-examination of the witness as to substance and credibility on the issues. Mr. Brennerman argued that his Constitutional rights including his right to a fair trial will be deprived. Mr. Brennerman also argued that he would be deprived of his ability to present a complete defense, thus depriving his Sixth Amendment right. However Judge Sullivan denied his request. *Brennerman*, Mem. in Opp'n; Mot. in Lim.; Mem. In Supp., No. 17 Cr. 337 (RJS), EFC Nos. 54, 58, 59.

THE TRIAL AND POST-TRIAL PROCEEDINGS
FRAUD CASE AT NO. 17 CR. 337 (RJS)

During trial, following testimony by government's sole witness from ICBC London, Julian Madgett, that evidence (ICBC underwriting files) existed with the bank`s file which document the basis for approving the bridge finance including representations relied upon by the bank in approving the bridge finance and that the prosecution never requested or obtained the ICBC underwriting files, thus never provided it to the defense. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554). Mr. Brennerman again filed motion to compel for the evidence arguing that he required it to present a complete defense (that the bank did not rely on any representation or alleged misrepresentation in approving the bridge finance) and to confront witness against him. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71. Judge Sullivan denied Mr. Brennerman`s request while acknowledging that government`s witness, Julian Madgett had testified that the evidence (ICBC underwriting files) were with the bank`s file in London, U.K. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 96 at 4 (617).

Government presented evidence - Government Exhibits GX1-57A; GX1-73; GX529 to demonstrate that Mr. Brennerman opened a wealth management account at Morgan Stanley. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167. The evidence presented clearly

demonstrated that the wealth management account was opened at Morgan Stanley Smith Barney, LLC. Government witness, Kevin Bonebrake testified that he worked for the Institutional Securities division of Morgan Stanley which is a wholly-owned subsidiary of Morgan Stanley & Company LLC (*Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 34-35 (384-85)); That "this was very preliminary stage of our conversation" (Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 59 (409)); That "Morgan Stanley would not typically provide the money"; "It would seek financing from outside investors," and "my recollection was that what the company wanted was unclear. We didn`t get very far in our discussion." *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 37-38 (387-388).

Government presented four FDIC certificates - Government Exhibit - GX530 (FDIC certificate for Morgan Stanley Private Bank); GX531 (FDIC certificate for Citibank); GX532 (FDIC Certificate for Morgan Stanley National Bank NA); GX533 (FDIC certificate for JP Morgan Chase).

Another Government witness, Barry Gonzalez, FDIC commissioner testified "that the FDIC certificate of one subsidiary does not cover another subsidiary or the parent company because each will require its own separate FDIC certificate. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 132-33 (1060-61). Gonzalez also testified that FDIC certificates only cover depository accounts and would not cover the Institutional Securities division/subsidiary of Morgan Stanley and that there was no confirmation that Morgan Stanley Smith Barney, LLC was FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 129 (1057) (testifying that FDIC certificates only cover depository accounts and do not cover divisions/subsidiaries); Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 131 (1059) (testifying no conformation that Morgan Stanley Smith Barney, LLC was FDIC insured). His testimony

demonstrated that neither ICBC (London) PLC, Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division/subsidiary are FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 131-33 (1059-61).

The trial commenced on November 26, 2017 and concluded on December 6, 2017 with the jury returning a guilty verdict on all counts.

After trial, Mr. Brennerman again moved to compel for the ICBC underwriting files to prepare his post-trial motions however Judge Sullivan denied his requests. *Brennerman*, Orders, No. 17 Cr. 337 (RJS), EFC Nos. 153, 161, 187, 200, 235, 236, 240, 241. Judge Sullivan also ignored evidence which Mr. Brennerman presented to the Court to demonstrate that there was a statutory error with his conviction for bank fraud as it relates to his interaction with non-FDIC subsidiaries of Morgan Stanley however Judge Sullivan ignored him and ultimately denied his post-trial motions. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167.

THE COURT OF APPEAL DECISION
FRAUD CASE APPEAL AT, NOS. 18 3546(L); 19 497(CON)

The United States Court of Appeals for the Second Circuit affirmed Mr. Brennerman`s conviction and sentence in a Summary Order on June 9, 2020.

The Court misapprehended the record with respect to the FDIC-insured status of Morgan Stanley and overlooked Mr. Brennerman`s argument about the non FDIC insured personal wealth division (Morgan Stanley Smith Barney, LLC) and the non-FDIC-insured Institutional Securities division, generalizing that:

> [T]he record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based on false representation about his citizenship, assets, and the nature and worth of his company.

Brennerman, Slip Op., No. 18 3546, EFC No. 183 at 3.

With respect to Mr. Brennerman`s Constructive amendment argument, the Circuit Court similarly misunderstood the crucial distinction between the subsidiary divisions of Morgan Stanley, relying on the Government`s arguments at summation and finding that no constructive amendment had occurred because:

> It is clear from the indictment that the scheme against ICBC was merely one target of Brennerman`s alleged fraud.....At trial, the government offered evidence that Morgan Stanley was one of those "other financial institutions." (*See* App`x at 608-09) (testimony of Morgan Stanley`s Kevin Bonebrake about a January 2013 telephone call with Brennerman discussing financing to develop asset). Thus, there was not a "a substantial likelihood that the defendant may have been convicted of an offence other than that the one charged by the grand jury." *United States v. Vebeliunas*, 76 F.3d at 1290.

Brennerman, Slip Op., No. 18 3546, EFC No. 183 at 4.

With respect to the ICBC file, the Circuit Court disagreed with Mr. Brennerman on the first two points and did not issue a written opinion on the third, writing that:

> The government`s discovery and disclosure obligations extend only to information and documents in the government`s possession. *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998) (explaining that the *Brady* obligation applies only to evidence "that is known to the prosecutor"). The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligations. Nor was the government under any obligation under the Jencks Act to collect materials about Madgett that were not in the government`s possession. *See United States v. Bermudez*, 526 F.2d 89, 100 n.9 (2d Cir. 1975).
>
> Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17 . . . The only indication that such documents are extant comes from Brennerman`s bare assertions.

Brennerman, Slip Op., No. 18 3546, EFC No. 183 at 4-5).

The panel denied a motion for rehearing by order dated July 31, 2020.

ERROR(S) WITH THE COURT OF APPEALS' DECISION
FRAUD CASE APPEAL AT, NOS. 18 3546(L); 19 497(CON)
ARISING FROM CRIMINAL CASE AT DISTRICT COURT
AT, NO. 17 CR. 337 (RJS)

A. THE SECOND CIRCUIT ERRED WHEN IT MISAPPREHENDED KEY FACTS ABOUT WHICH MORGAN STANLEY SUBSIDIARY WAS FDIC INSURED AND MISUNDERSTOOD WHY A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT OCCURRED.

I. THE FEDERAL BANK FRAUD STATUTE REQUIRES INTENT TO DEFRAUD AN FDIC-INSURED INSTITUTION AND PETITIONER`S CONSTITUTIONAL RIGHT WAS VIOLATED WHERE HIS CONVICTION FOR BANK FRAUD AND BANK FRAUD CONSPIRACY IS ILLEGAL AND IN VIOLATION OF THE BANK FRAUD STATUTE AND LAW.

Title 18 United States Code § 1344 makes it a crime to "knowingly execut[e], or attemp[t] to execute, a scheme or artifice - (1) to defraud a financial institution; . . ." "The well established elements of the crime of bank fraud are that the defendant (1) engaged in a course of conduct designed to deceive a federally chartered or insured financial institution into releasing property, and (2) possessed an intent to victimize the institution by exposing it to actual or potential loss." *United States v. Barrett*, 178 F.3d 643, 647-48 (2d Cir. 1999); 18 U.S.C. § 20 (defining "financial institution"). "[A] defendant cannot be convicted of violating § 1344(1) merely because he intends to defraud an entity...that is not in fact covered by the statute." *United States v. Bouchard*, 828 F.3d 116, 125 (2d Cir. 2016).

Petitioner was convicted of bank fraud and bank fraud conspiracy based on an account he opened at Morgan Stanley Smith Barney, LLC. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167 (highlighting Government Exhibit - GX1-57A; GX1-73; GX529 - Morgan Stanley Smith Barney, LLC account opening form, correspondence and account statement). The government failed to confirm through government witness, Barry Gonzalez, the FDIC commissioner that Morgan Stanley Smith Barney, LLC was/is FDIC insured. The Court also

stated that Brennerman had a single telephone call with Kevin Bonebrake, who worked at Morgan Stanley Institutional Securities division, which is not FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 34-35, 37-38, 59 (384-85, 387-88, 409).

Although Petitioner`s wealth management account at Morgan Stanley Smith Barney, LLC was not a depository account, the funds were held by Morgan Stanley Smith Barney, LLC in a depository account at Morgan Stanley Bank National Association. Any statements made by Petitioner to Scott Stout, who worked at Morgan Stanley Smith Barney, LLC would have been insufficient to establish that Petitioner took any step toward defrauding an FDIC-insured institution.

When Petitioner presented evidence to Judge Sullivan, demonstrating that his account was held at Morgan Stanley Smith Barney, LLC which is not FDIC insured and not at Morgan Stanley Private Bank, the judge ignored him. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 167. The judge also ignored the testimony by Barry Gonzalez, FDIC commissioner which confirmed that neither Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division are FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 131 (1059) (Testifying that Morgan Stanley Smith Barney, LLC is not FDIC insured). Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 129 (1057) (Testifying that Morgan Stanley Institutional Securities division is not FDIC insured). Further that the FDIC certificate of one subsidiary/division does not cover other subsidiary/division within Morgan Stanley because each subsidiary/division will require its own FDIC certificate. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 132-33 (1060-61). Thus highlighting that the FDIC certificates presented by the government at trial for Morgan Stanley Private Bank (Government Exhibit - GX530) and Morgan Stanley National Bank NA (Government Exhibit - GX532) does not cover

either Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division which Petitioner interacted with and thus Petitioner could not be convicted for bank fraud and bank fraud conspiracy for interacting with institutions which are not FDIC insured. Notwithstanding these evidence and confirmation, Judge Sullivan allowed Petitioner to be wrongly convicted.

On appeal, the Second Circuit ignored Petitioner`s argument while stating that Petitioner defrauded Morgan Stanley, an FDIC insured institution by receiving perks (even though Petitioner was not charged for receiving perks) and for making a single telephone call to Kevin Bonebrake to discuss about financing without acknowledging the testimony from Barry Gonzalez which did not confirm that either Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division are FDIC Insured to satisfy the essential element necessary to convict for bank fraud. That Morgan Stanley has different subsidiaries and divisions, further than each subsidiary/division will require its own FDIC certificate as the FDIC certificate of one subsidiary/division does not cover the other subsidiary/division.

II. CONSTRUCTIVE AMENDMENT OF AN INDICTMENT OCCURS WHEN THE CHARGING TERMS ARE ALTERED AND PETITIONER`S CONSTITUTIONAL RIGHT WAS VIOLATED

Constructive amendment of an indictment "occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them." *United States v. LaSpina*, 299 F.3d 165, 181 (2d Cir. 2002) (citations omitted). "To prevail on a constructive amendment claim, a defendant must demonstrate that the proof at trial....so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was the subject of the grand jury`s indictment." *LaSpina*, 299 F.3d at 181 (citations omitted).

Petitioner was indicted with "having made false representation to financial institutions in the course of seeking loans and other forms of financing for purported business ventures" however during summation the prosecution and again during appearance on November 19, 2018 (sentencing hearing) the Court, each argued the theory of the bank fraud and bank fraud conspiracy that the defendant became entitled to "perks" including fancy credit card and preferential interest rate however the defendant was not charged with obtaining perks. Moreover the fancy credit card was not issued by any Morgan Stanley subsidiary or division and was closed with zero balance. The account which the defendant opened at Morgan Stanley Smith Barney, LLC was only opened for three weeks and not long enough for him to earn any perks. Most important, both Morgan Stanley Smith Barney, LLC where Petitioner opened his account and Morgan Stanley Institutional Securities division where Kevin Bonebrake (whom he had a single telephone call about financing) worked at are not FDIC insured, an essential element necessary to convict for bank fraud and bank fraud conspiracy.

On appeal, when the Petitioner highlighted the constructive amendment issue, the Second Circuit refused to review the record on which Petitioner was convicted (theory of bank fraud) and statement made by trial court during appearance on November 19, 2018 (sentencing hearing) as to the theory of the bank fraud which was argued by the government and trial judge as receiving perks and as to his single telephone call to Kevin Bonebrake about financing. The Court also stated that there was no constructive amendment because the Petitioner spoke to Kevin Bonebrake who worked for the Institutional Securities division of Morgan Stanley without acknowledging the trial records which clearly demonstrated that the Institutional Securities division of Morgan Stanley is not covered by any FDIC certificate thus cannot satisfy the essential element to convict for bank fraud and bank fraud conspiracy.

III. THE CIRCUIT COURT`S DECISION OVERLOOKED THE FACT THAT BRENNERMAN HAD MADE ATTEMPTS TO BBTAIN AND TO COMPEL THE PRODUCTION OF THE COMPLETE ICBC FILE AND ERRONEOUSLY ASSUMED THAT THE ONLY INDICATION OF THE DOCUMENT`S EXISTENCE CAME FROM BRENNERMAN`S BARE ASSERTIONS.

Both during the related case in front of Judge Kaplan (*United States v. Brennerman*, No. 17 Cr.155 (LAK)) and in the instant case from which this application arose (*United States v. Brennerman*, No. 17 Cr. 337 (RJS)) in front of Judge Sullivan, Petitioner moved for discovery of the full ICBC file related to the bridge loan to Blacksands. Petitioner avers as confirmed by government witness that the file would contain ICBC employee Julian Madgett`s notes related to the credit paper, underwriting documents and credit decision to approve the loan and would support Petitioner`s theory of defense. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554). Both Judge Kaplan and Judge Sullivan denied Petitioner`s request for a subpoena to obtain these documents; Judge Sullivan additionally declined to compel the Government to produce them at trial even after government witness, Julian Madgett testified to its existence in open Court. *Brennerman*, Mem. & Order, No. 17 Cr. 155 (LAK), EFC No. 76; Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71; Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554); Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 96 at 4 (617).

For these reasons, the Second Circuit was mistaken that the record contained no evidence that Petitioner had attempted to obtain the complete ICBC files and the Court`s assumption that the only indication that such documents (ICBC file) are extant came from Petitioner`s bare assertion was erroneous.

B. THE SECOND CIRCUIT ERRED BECAUSE THE PANEL`S DECISION CONFLICTS WITH SETTLED LAW ON THE SIXTH AMENDMENT RIGHTS OF A CRIMINAL DEFENDANT TO CROSS-EXAMINE THE WITNESSES AGAINST HIM AND TO PRESENT A COMPLETE DEFENSE.

The Due Process Clause requires the Government to make a timely disclosure of any exculpatory or impeaching evidence that is material and in its possession. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972). The Government is further obligated under *Kyles,* to "learn of any favorable evidence known to the others acting on the government`s behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

In some circumstances, discovery may be obtained from abroad. *In re del Valle Ruiz*, 939 F.3d 520, 533 (2d Cir. 2019) ("[A] district court is not categorically barred from allowing discovery....of evidence located abroad....") (internal reference omitted). "[I]t is far preferable for a district court to reconcile whatever misgivings it may have about the impact of its participation in the foreign litigation by issuing a closely tailored discovery order rather than by simply denying relief outright." *Mees v. Buiter*, 793 F.3d 291, 302 (2d Cir. 2015).

Petitioner was deprived of the ability to present a complete defense in violation of his Sixth Amendment right as promulgated by the United States Supreme Court in *Crane v. Ky*., where Petitioner requested for evidence (ICBC underwriting files), following testimony by government sole witness from ICBC London, Julian Madgett, that evidence (the ICBC underwriting files) existed with the bank`s file which document the basis for approving the bridge finance including representations relied upon by the bank in approving the bridge finance. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS). EFC No. 71 (requesting evidence – ICBC underwriting files); Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554); *Crane v. Ky*., 476 U.S. 683 (1986).

The prosecution never requested or obtained the ICBC underwriting files, thus never provided it to the defense. When Brennerman requested for the files so that he may use it in presenting a complete defense (that the bank did not rely on any representation or alleged misrepresentation in approving the bridge finance) and confront witness against him, trial judge (Judge Richard J. Sullivan) denied his request while acknowledging that the prosecution witness, Julian Madgett had testified that the evidence (ICBC underwriting files) existed with the bank`s file in London, U.K. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 96 at 4 (617). The Judge`s denial was in contrast with the Second Circuit ruling in *In re del Valle Ruiz*, which stated that District Courts were not categorically barred from permitting evidence located abroad. *In re del Valle Ruiz,* 939 F.3d 520 (2d Cir. 2019).

Moreover trial judge permitted government sole witness from ICBC London, Julian Madgett to testify as to the content of the ICBC Underwriting files (to satisfy the essential element of "MATERIALITY") while Petitioner was deprived of the ability to engage in any meaningful cross-examination of the witness depriving him a fair trial.

Under *Kyles* Government had an obligation to learn of any favorable evidence known to the others acting on the Government behalf in the case, thus when Government witness, Julian Madgett testified in open Court that evidence (ICBC underwriting file) existed in the bank`s file which document the basis for approving the bridge finance including representation relied upon by the bank in approving the bridge finance which Government never requested or obtained. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554); *Kyles v. Whitley*, 514 U.S. 419 (1995). Government had an obligation to collect the evidence after learning of its existence particularly where Petitioner made request to the Court (for among others) that the Court compel Government to collect the evidence (ICBC underwriting file).

Brennerman, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71. However, Government`s failure to collect or learn of the evidence violated its *Brady* obligations.

It follows that if Government never obtained or reviewed the pertinent evidence (ICBC underwriting file) it [Government] failed to conduct any independent investigation on the transaction at issue prior to indicting and prosecuting Petitioner thus deliberately violating Petitioner`s right to the Due Process clause. The Court (Judge Richard J. Sullivan) exacerbated the Constitutional violation when it refused to compel Government to satisfy its *Brady* obligation, particularly following the testimony by Government witness, Julian Madgett that pertinent evidence (ICBC underwriting file) existed which Government never obtained or reviewed. Thus, the Court and Government deliberately violated Petitioner`s right to the Due Process clause.

On appeal, the Second Circuit that recently made decision in *Scrimo*, which stated that "It is a federal law that a criminal defendant has a Constitutional right to present a complete defense" ignored Petitioner`s argument that he was deprived of his Constitutional right to present a complete defense. *Brennerman*, Summ. Order, No. 18 3546(L), EFC No. 186; *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019). The Second Circuit also made an erroneous statement that "the only indication that the evidence is extant comes from Brennerman`s bare assertion" Such statement was/is inaccurate and in contrast with the trial records which clearly highlight government witness, Julian Madgett, confirming that the evidence are extant and with the bank`s file in London, U.K. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554); *Brennerman*, Summ. Order, No. 18 3546(L), EFC No. 186 at 5.

IV. REASON FOR GRANTING COLLATERAL ATTACK MOTION

STANDARD OF REVIEW

A federal prisoner may challenge his detention under 28 U.S.C. §§ 2241 and 2255. 28 U.S.C. § 2255: *Adams v. United States*, 372 F.3d 132, 134 (2d Cir. 2004); *Chambers v. United States*, 106 F.3d 472, 474 (2d Cir. 1997). Section 2255 is proper mechanism for a prisoner to attack the imposition of a sentence. *Adams*, 372 F.3d at 134; *McQueen v. Shult*, No. 9:08-cv-903 (GLS/GHL), 2008 U.S. Dist. LEXIS 87668 at *2 (N.D.N.Y. Oct 28, 2008). A motion pursuant to U.S.C. § 2255 must be brought in the sentencing court. *Boumediene v. Bush*, 553 U.S. 723, 774-75 (2008) ("Section 2255 directed claims challenging a federal sentence on the ground that it was imposed in violation of the Constitution or law of the United States "not to the court that had territorial jurisdiction over the place of the petitioner`s confinement but to the sentencing court, a court already familiar with the fact of the case."); *Williams v. Winn*, 2005 U.S. Dist. LEXIS 12966 at *1 (D. Mass Jun 30, 2005).

ARGUMENT

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

I. SIGNIFICANT JUDICIAL MISCONDUCT AND BIAS WITH THE COURT MISREPRESENTING AND DISTORTING EVIDENCE TO FALSELY SATISFY THE ESSENTIAL ELEMENT NECESSARY TO CONVICT PETITIONER FOR BANK FRAUD AND BANK FRAUD CONSPIRACY.

During trial in the criminal case at 17 Cr. 337 (RJS) before Hon. Richard J, Sullivan (Sullivan, J.) in November and December 2017, Government presented evidence to highlight Brennerman`s interaction with Morgan Stanley. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167 (highlighting Government Exhibit - GX1-57A; GX1-73; GX529 - Morgan Stanley Smith Barney, LLC account opening form, correspondence and account statement). All

evidence presented by Government demonstrated that Brennerman interacted with Government witness, Scott Stout who worked at Morgan Stanley Smith Barney, LLC where Brennerman opened his wealth management brokerage account. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167 (highlighting Government Exhibit GX1-73 - confirming that the email was sent by an employee of Morgan Stanley Smith Barneys, LLC); Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 254, Ex. C.

After trial, in June 2018, Brennerman submitted evidence in support of his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 ("Rule 29 motion") highlighting that he interacted with non-FDIC insured institution and that Government failed to prove that Morgan Stanley Smith Barney, LLC is FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 131 (1059) (testimony of Government witness, Barry Gonzalez); Def.'s Mot. No. 17 Cr. 337 (RJS), EFC No. 254, Ex. G; Ex. C (supplemental evidence).

In November 2018, Judge Sullivan verbally denied the Rule 29 motion for judgment of acquittal and sentenced Brennerman. Notwithstanding the demonstrable evidence submitted Judge Sullivan denied Brennerman`s Rule 29 motion by surreptitiously supplanting a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC insured institution, Morgan Stanley Private Bank, in an endeavor to falsely satisfy the essential element necessary to convict Brennerman for bank fraud in violation of 18 U.S.C. § 1344(1) and conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. *Brennerman*, 17 Cr. 337 (RJS), EFC No. 167. This is the significant issue.

Judge Sullivan improperly stated on the record that the fraud was a scheme or artifice to defraud the private banking arm of Morgan Stanley, an FDIC insured institution even though Government presented no evidence to support such ruling. *Brennerman*, Sentencing Tr., No. 17

Cr. 337 (RJS), EFC No. 206, at 19; Def.'s Mot. No. 17 Cr. 337 (RJS), EFC No. 254, Ex. D. Under certain circumstances a judge`s behavior can be "per se misconduct." *United States v. Marquez-Perez*, 835 F.3d 153, 158 (1st Cir. 2016). This happens when judges "exceed their authority" by "testify[ing] as witnesses, or add[ing] to or distort[ing] the evidence." *Id.* Here the Court (Sullivan, J.) distorted the evidence in order to convict Brennerman of bank fraud and bank fraud conspiracy.

To the extent that the Court affirms its prior ruling that Brennerman opened his wealth management account at the private banking arm of Morgan Stanley or that Scott Stout whom Brennerman interacted with worked there, then Brennerman sought evidence to support such ruling given that the criminal case records at 17 Cr. 337 (RJS) lacks indicia of any evidence to support such ruling. However the Court did not provide any evidence, opinion or memorandum of law other than a single word "Denied".

II. JUDICIAL MISCONDUCT AND BIAS WITH THE COURT INTENTIONALLY DENYING BRENNERMAN'S REQUEST FOR PERTINENT EVIDENCE WHICH BRENNERMAN REQUIRED TO PROVE HIS INNOCENCE

Brennerman requested for evidence of Morgan Stanley presented by the prosecution at trial particularly given the divergence between the evidence presented on record at trial and the Court`s ruling on November 19, 2018 during sentencing and denial of Brennerman`s motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 with respect to Morgan Stanley. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167.

Moreover, the evidence will irrefutably and conclusively demonstrate that Brennerman opened a wealth management brokerage account in January 2013 at Morgan Stanley Smith Barney, LLC in Beverly Hills, California. That he did not receive any perks because the account was opened for a few weeks and was closed in February 2013. The charge card which was issued

by another non-Morgan Stanley institution was closed with zero balance. Further that, Brennerman had a single preliminary telephone call about oil asset financing with Kevin Bonebrake who worked at the institutional securities division of Morgan Stanley, a subsidiary of Morgan Stanley & Company, LLC, which is also not FDIC-insured.

Additionally, testimony of FDIC commissioner, Barry Gonzalez at trial confirmed that the prosecution did not prove that either Morgan Stanley Smith Barney, LLC (where Brennerman opened his wealth management brokerage account) and the Institutional Securities division of Morgan Stanley (where Kevin Bonebrake worked) are FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 129-33 (1057-61). Testimony of Government witness, Barry Gonzalez, FDIC commissioner also confirmed that Morgan Stanley & Company, LLC, the parent company for all Morgan Stanley businesses and subsidiaries is not FDIC insured. *Id.* Not FDIC-insured. Not Bank fraud.

Brennerman highlighted to the Court that the evidence will prove that he has been wrongfully convicted and sentenced, however the Court ignored him and denied his request for relief. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 256.

Such intentional deprivation of evidence was also demonstrated where the Court permitted Government witness, Julian Madgett to testify at trial that evidence (ICBC underwriting file) exist with the bank`s file in London, U.K., which documents the basis for the bank approving the bridge finance thus highlights the representations relied upon by the bank. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554).

Brennerman, upon learning of the evidence (ICBC underwriting file) and its importance to his defense immediately requested that the Court either compel the Government to obtain it

because it was *Brady* material given that Government were present when their witness testified about its existence in open Court.

Government had already obtained over 6,000 pages of discovery (excluding the critical and pertinent evidence (ICBC underwriting file which Brennerman required for his defense) through ICBC`s lawyers, Linklaters LLP with global offices including in London and New York. When Brennerman requested for the evidence, Government refused to obtain it even after Julian Madgett testified to its existence and the Court refused to compel the Government.

Brennerman, in the alternative, requested that the Court compel ICBC (London) plc to provide the evidence to him so that he may use it to confront (impeach) witness against him and to present a complete defense, however the Court (Sullivan, J.) denied his request while permitting Government witness, Julian Madgett to testify as to the contents of the evidence knowing that Brennerman would be unable to challenge (impeach) the uncorroborated testimony of Julian Madgett. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71. No file. No trial.

In essence, Brennerman was charged with wire fraud in violation of 18 U.S.C. § 1343 and Conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 based on the transaction between ICBC (London) plc, a British subsidiary of a Chinese bank headquartered in Beijing, China and The Blacksands Pacific Group, Inc., a Delaware-U.S. oil and gas development and production company headquartered in Los Angeles, California.

However during trial, the Court (Sullivan, J.) intentionally and deliberately denied Brennerman access to the most critical evidence – the ICBC underwriting file, which documents the basis for the bank approving the bridge loan thus highlights representations that were MATERIAL to the bank in its approval of the bridge loan. Notwithstanding permitting

Government witness, Julian Madgett to testify as to the existence of the evidence in open Court in the presence of the Court and Government. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554).

Even after learning of the evidence and its importance to the defense argument, Government continued to refuse to obtain or produce the evidence to the defense highlighting a *Brady* violation. Even though they [Government] could have easily obtained the evidence via e-mail within seconds given that they had already obtained over 6,000 pages of discovery from ICBC (London) plc through their New York based lawyers, Linklaters LLP. Government witness, Julian Madgett testified that ICBC (London) plc had handed over the files to Linklaters LLP. The Court (Sullivan, J.) denied Brennerman`s request for this critical evidence – ICBC underwriting file stating that the evidence was in London, U.K. notwithstanding that over 6,000 pages of discovery were already produced by ICBC from London, U.K. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71.

More importantly the Court (Sullivan, J.) permitted Government sole witness, Julian Madgett to testify as to the contents of the evidence knowing that Brennerman would be unable to challenge the uncorroborated testimony presented before the jury at trial, given that Brennerman had been deprived of the evidence which he required to impeach the testimony. This was a fundamental miscarriage of justice where the presiding judge intentionally and significantly abridged the Constitutional rights of a criminal defendant.

Even after trial, the Court continued to deliberately and intentionally deny and deprive Brennerman access to the evidence (ICBC underwriting file) which he [Brennerman] required to prove his innocence of the crime of wire fraud in violation of 18 U.S.C. § 1343 and wire fraud

conspiracy in violation of 18 U.S.C. § 1349. *Brennerman*, No. 17 Cr. 337 (RJS), EFC Nos. 153, 161, 187, 200, 236, 240, 241, 248, 250, 254, 256.

Additionally, during trial for the fraud case at No. 17 Cr. 337 (RJS), the prosecution were in possession of Brennerman`s birth certificate, an exculpatory evidence, which could have exonerated him [Brennerman] of indicted offense. At trial, the Government made contrasting argument to the jury and deliberately refused to present the evidence (Brennerman`s birth certificate) to the jury for consideration/deliberation notwithstanding their allegation that Brennerman made false statement about his place of birth. The evidence corroborated Brennerman`s statement regarding his place of birth and was exculpatory however the prosecution deliberately omitted its presentment to the jury for consideration.

After trial, Brennerman sought to obtain the evidence from the Government in an endeavor to seek relief through the Court. When the Government ignored his request, he made application directly to the Court to compel for the evidence however the Court denied his request without offering any explanation. Brennerman again submitted further requests to the Court to compel the Government for the evidence (Brennerman`s birth certificate). To-date, the Court has ignored him. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC Nos. 236, 240, 241, 248, 250.

III. THE JUDICIAL MISCONDUCT AND BIAS WERE SO EGREGIOUS AND SIGNIFICANT AS TO CALL INTO QUESTION THE INTEGRITY AND FAIRNESS OF THE ENTIRE CRIMINAL PROCEEDINGS

Brennerman contends that he was denied his Constitutional rights to a fair trial. Further that, his Constitutional rights were intentionally abridged due to the significant judicial misconduct, partiality and bias by the presiding judge (Sullivan, J.) as highlighted above. The enforcement of judgment of conviction and sentence should be stayed in the interest of justice.

Defendants in the American judicial system have the right to a fair trial, and part of this right is fulfilled by a judicial officer who impartially presides over the trial. *See* e.g., *Bracy v. Gramley*, 520 U.S. 899, 904-05 (1997). However "most questions concerning a judge`s qualifications to hear a case are not constitutional ones, because the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard." *Id.* at 904. A judge will, however, violate a defendant`s due process right if he is biased against the defendant or has an interest in the outcome of the case. *Id.* at 905. A likelihood or appearance of bias can disqualify a judge as well. *Taylor v. Hayes*, 418 U.S. 488, 501 (1974). "A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him." *Edwards v. Balisok*, 520 U.S. 641, 647 (1997) (citations omitted).

A presiding judge misrepresenting and distorting evidence so as to falsely satisfy the essential element necessary to convict a criminal defendant cannot be said to be impartial because he has clearly exhibited an interest in the outcome of the case. Moreover misrepresenting or distorting the evidence so as to convict a criminal defendant is a per se misconduct.

Under certain circumstances, a judge`s behavior can be "per se misconduct." *United States v. Marquez-Perez*, 835 F.3d 153, 158 (1st Cir. 2016). This happens when judges "exceed their authority" by "testify[ing] as witnesses, or add[ing] to or distort[ing] the evidence." *Id.* It can also happen when judges "opin[e] to the jury on the credibility of witnesses, the character of the defendant, or the ultimate issue." *Id*.

Because the judge (Sullivan, J.) who presided over the entire criminal proceeding demonstrated partiality by intentionally distorting evidence of non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC-insured institution, Morgan Stanley Private

Bank, so as to falsely satisfy the essential element necessary to convict Brennerman, Brennerman is entitled to have his conviction set-aside.

In *Liteky*, the Supreme Court held that a trial judge exhibits "such a high degree of favoritism or antagonism as to make fair judgment impossible" when the trial judge veers from the permissible norm. *Liteky v. U.S.*, 510 U.S. 540, 555 (1994). Brennerman contends that misrepresenting evidence to falsely satisfy the essential element necessary to convict him and intentionally depriving him access to evidence – ICBC underwriting file which he required to confront (impeach) witnesses against him and to present a complete defense demonstrates a degree of favoritism to the Government and antagonism to him [Brennerman] as to make fair judgment impossible.

Due process guarantees a fair trial, not a perfect one. *United States v. Ayala-Vazquez*, 751 F.3d 1, 23-24 (1st Cir. 2014). To prevail on a judicial misconduct claim, a party must show that (1) the judge acted improperly, (2) thereby causing him prejudice. *United States v. Lanza-Vazquez*, 799 F.3d 134, 143 (1st Cir. 2015).

Here, it cannot be said that the presiding judge`s conduct of misrepresenting and distorting evidence so as to falsely satisfy the essential element necessary to convict a criminal defendant constitutes proper conduct, thus the judge acted improperly. The judge (Sullivan, J.) did so, in an endeavor to falsely deprive the criminal defendant, Brennerman, his Constitutional right to liberty thereby causing him significant prejudice.

Trial judges cross the line of neutrality, if they "misemploy [their] powers." *Id.* by assuming "the role of an advocate or 'otherwise us[ing] [their] judicial powers to advantage or disadvantage a party unfairly." *Ayala-Vazquez*, 751 F.3d at 24 (quoting *Logue v. Dore*, 103 F.3d 1040 (1st Cir. 1997)). Remaining impartial in a justice system built on jury trials is essential to

guaranteeing the due process rights of criminal defendant, for the jury may be swayed by a judge`s "lightest word or intimation." *Starr v. United States*, 153 U.S. 614, 626 (1894).

Here, trial judge (Sullivan, J.) permitted Government witness to testify as to the existence of evidence - ICBC underwriting file in open Court in the presence of the Court and jury. The Court denied Brennerman`s request to obtain the evidence (ICBC underwriting file) which Brennerman required to confront (impeach) witness against him and to present a complete defense. The trial judge (Sullivan, J.) did so, while permitting Government witness to testify as to the contents of the evidence (ICBC underwriting file) to satisfy the essential element of MATERIALITY in highlighting which representations were material to the bank in its approval of the bridge loan, knowing that Brennerman would be unable to challenge (impeach) the uncorroborated testimony before the jury. The trial judge (Sullivan, J.) employed his judicial powers to disadvantage Brennerman unfairly thus depriving him of his Constitutional right to a fair trial.

B. GROUND TWO: THE CONVICTION WAS OBTAINED AND SENTENCE IMPOSED IN VIOLATION OF THE RIGHT TO CONSTITUTIONAL DUE PROCESS

APPLICABLE LAW

Prosecutorial misconduct can cause constitutional error in two ways. *Underwood v. Royal*, 894 F.3d 1154, 1167 (10th Cir. 2018). First, it can prejudice a specific constitutional right amounting to a denial of the right. *Id.* Second, "absent infringement of a specific constitutional right, a prosecutor`s misconduct may in some instances render a . . . trial 'so fundamentally unfair as to deny [a defendant] due process." *Id*. (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 645 (1974); *see United States v. Anaya*, 727 F.3d 1043, 1052-53 (10th Cir. 2013) ("Prosecutorial misconduct violates a defendant`s due process if it infects the trial with unfairness and denies the defendant`s right to a fair trial." (quotations and alterations omitted).

I. GOVERNMENT`S FAILURE TO PRESENT EVIDENCE IN THEIR POSSESSION (DURING TRIAL) TO THE JURY FOR CONSIDERATION IN RESPECT OF COUNT FOUR OF THE INDICTMENT

During trial for the fraud case at No. 17 Cr. 337 (RJS), the prosecution were in possession of Petitioner`s birth certificate, an exculpatory evidence, which could have exonerated Petitioner of indicted offense. At trial, the prosecution made contrasting argument to the Court and jury and deliberately refused to present the evidence (Petitioner`s birth certificate) to the Jury for consideration/deliberation notwithstanding their allegation that Petitioner made false statement about his place of birth. The evidence corroborated Petitioner`s statement regarding his place of birth and was exculpatory however the prosecution deliberately omitted its presentment to the jury for consideration/deliberation.

After trial, Petitioner sought to obtain the evidence from the prosecution in an endeavor to seek relief through District Court. When the prosecution ignored his request, he made application to District Court to compel for the evidence however District Court ignored his request.

II. VIOLATION OF DUE PROCESS GUARANTEE ARISING FROM THE GOVERNMENT`S DELIBERATE VIOLATION OF PETITIONER`S CONSTITUTIONAL RIGHTS

The entire prosecution was commenced with the deliberate endeavor to violate the Due Process Clause with the prosecution ignoring the law in *OSRecovery*, to commence criminal prosecution against a non-party who was not involved in the underlying civil case in ICBC (London) PLC. *OSRecovery*, 462 F.3d at 90; *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.*, No. 15 Cv. 70 (LAK). No subpoena or motion-to-compel were ever directed at him personally. To exacerbate the prejudice, during trial the prosecution then presented the erroneously adjudged civil contempt order propounded against a non-party to the jury resulting in a fundamental miscarriage of justice. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC

No. 236, Ex. 3 at 17 (Law 360 Article - one of the jurors informing the media that the civil contempt order presented at trial swayed their decision to find Petitioner guilty).

The prosecution went a step further and failed to investigate whether Morgan Stanley Smith Barney, LLC where Petitioner previously maintained an account was federally insured and whether Morgan Stanley Institutional Securities division where Kevin Bonebrake, whom Petitioner had a single telephone call in 2013 to discuss financing for an oil asset, worked, was federally insured. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 167. Had the prosecution undertaken the necessary investigation they would have realized that both subsidiaries/division within Morgan Stanley & Co, LLC are not federally insured thus the prosecution lacked jurisdiction to prosecute.

The prosecutors commenced this prosecution at District Court, No. 17 Cr. 337 (RJS) in respect of the underlying transaction between ICBC (London) PLC and The Blacksands Pacific Group, Inc., without obtaining or reviewing the pertinent underwriting transaction files which document the basis for approving the transaction to highlight materiality or the lack thereof of any representation or alleged misrepresentation. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554).

III. *BRADY* VIOLATION ARISING FROM THE GOVERNMENT`S DELIBERATE VIOLATION OF PETITIONER`S CONSTITUTIONAL RIGHTS

The core issue here occurred when Government witness, Julian Madgett testified that evidence (ICBC underwriting file) exists with the bank`s file in London, U.K. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554). First, the testimony/record confirmed that the Circuit Court panel either erroneously ignored or intentionally omitted the record. Second, it demonstrated that District Court (Judge Richard J. Sullivan) erred when

Petitioner requested for the evidence (ICBC underwriting file) so that he may present a complete defense in reliance on Supreme Court ruling in *Crane v. Ky*. adopted by the Second Circuit in *Scrimo v. Lee*, and confront the witnesses against him, however the Court (Judge Sullivan) denied his request. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71; *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019).

More important and in reliance on the holdings in *Kyles* regarding *Brady* violation. Government witness, Julian Madgett testified at trial he did so on behalf of the Government in open Court, hence when Mr. Madgett testified that evidence exists (documenting the basis for the approval of the transaction at issue) which the Government never requested or obtained, the Government became aware of such evidence and thus was obligated to collect and learn of it. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554); *see Kyles v. Whitley*, 514 U.S. 419 (1995). Their failure to collect or learn of the evidence was a *Brady* violation and violated Petitioner`s right to the Due Process Clause because Government deprived him of his Constitutional right to liberty without considering all available evidence or undertaking an independent investigation on the transaction at issue prior to commencing this prosecution. Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively" possesses it. E.g., *United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); *cf. Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that, to satisfy *Brady* and *Giglio*, prosecutors have "a duty to learn of any favorable evidence known to the others acting on the Government`s behalf in the case"). In particular, in *Patemina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith effort to obtain Jencks Act

statements possessed by a third party that had cooperated extensively and had close relationship with the Government. *United States v. Patemina-Vergara*, 749 F.2d 993 (2d Cir. 1984); *see also United States v. Kilroy*, 488 F. Supp. 350, 362 (E.D. Wis. 1981) ("Since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government`s files any record which Standard Oil has and which the Government wants, however, is not unreasonable to treat the records as being within the Government`s control at least to the extent of requiring the Government to request the records on the defendant`s behalf and to include them in its files for the defendant`s review if Standard Oil agrees to make them available to the Government."
(emphasis added)); *see also United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).[1]

Both the Court (Judge Richard J. Sullivan) and the prosecution (United States Attorney Office for the Southern District of New York) intentionally deprived Petitioner Raheem J. Brennerman access to the evidence (ICBC London underwriting file) for among other reasons, because the file will reveal that there was no fraud or violation of the wire fraud statute. The file will reveal the disclaimer stipulated by Blacksands and Petitioner to ICBC London, which states in part: "The foregoing information is confidential and the contents thereof may not be reproduced or distributed. The statements contained herein are based upon information that we believe to be reliable, but we cannot guarantee and make no representation that they are complete and accurate." Thus highlighting that ICBC London did not rely on any representation or alleged misrepresentation by Blacksands and Petitioner Raheem J. Brennerman.

[1] Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligation, either on the basis of a Due Process violation or under the Court`s inherent supervisory powers, including when the Government belatedly disclosed Jencks Act materials. E.g., *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).

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

APPLICABLE LAW

Kimmelman reads, in pertinent parts, as follows:

> The right to counsel is a fundamental right of criminal defendants; it assures the fairness and their legitimacy of our adversary process. E.g., *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The essence of an ineffective assistance claim is that counsel`s unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect. *See*, e.g., *Strickland v. Washington*, 466 U.S. at 686; *United States v. Cronic*, 466 U.S. 648, 655-657 (1984). In order to prevail, the defendant must show both that counsel`s representation fell below an objective standard of reasonableness, *Strickland*, 466 U.S. at 688, and that there exists a reasonable probability that, but for counsel`s unprofessional errors, the result of the proceeding would have been different. *Id*. at 694; 477 U.S. at 372.
>
> The right of an accused to counsel is beyond a fundamental right. *See*, e.g. *Gideon*, 372 U.S. at 344, 83 S. Ct. at 796 ("The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in other countries, but it is in ours."). Without counsel, the right to a fair trial would be of little consequences...for it is through counsel that the accused secures his other rights . . . 477 U.S. at 377, 106 S. Ct. at 2584.

Kimmelman v. Morrison, 466 U.S. 365 (1986).

Strickland recognized that an attorney`s duty to provide reasonably effective assistance includes "the duty to make reasonable investigations or make a reasonable decision that makes particular investigations unnecessary. *Strickland*, 466 U.S. at 691; *see also* ABA Standards for Criminal Justice: Prosecution Function and the Defense Function, 4-4. 1(a) (3rd Edition 1993) ("Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case..."). *See also Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (finding ABA standard useful guide to determining what is reasonable" (quoting *Wiggins v. Smith*, 539 U.S. 510, 524 (2003)).

The right to effective assistance of counsel includes the right to have the lawyer adequately investigate the facts and prepare the case for plea or for trial. *Powell v. Alabama*, 287 U.S. 45, 57-58 (1932) (presuming prejudice where there was "no attempt made to investigate" noting that "consultation, thorough-going investigation and preparation are vitally important" in providing effective representation); *United States v. Baynes*, 622 F.2d 66 (3d Cir. 1980) (failure to investigate voice exemplars); *United States v. Gray*, 878 F.2d 702 (3d Cir. 1989); *Couch v. Booker*, 632 F.3d 241, 246 (6th Cir. 2011); *Kenley v. Armontrout*, 937 F.2d 1298 (8th Cir. 1991); *Crisp v. Duckworth*, 743 F.2d 580 (7th Cir. 1984); *House v. Balkom*, 725 F.2d 608 (11th Cir. 1984); *Langone v. Smith*, 682 F.2d 282 (2d Cir. 1982).

Other Circuits agree that the failure to conduct a reasonable investigation constitutes deficient performance. The Third Circuit has held that "ineffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice when s/he [sic] has not yet obtained the facts on which such a decision could be made." *United States v. Gray*, 878 F. 2d 702, 711 (3d Cir. 2011). A lawyer has a duty to "investigate what information . . . potential eye-witnesses possess[], even if he later decides not to put them to the stand." *Id*. at 712; *Hoots v. Allsbrook*, 785 F.2d 1214, 1220 (4th Cir. 1986) ("Neglect even to interview available witnesses to a crime simply cannot be ascribed to trial strategy and tactics."); *Brit v. Montgomery*, 709 F.2d 690, 701 (7th Cir. 1983) cert. denied, 469 U.S. 874 (1984) ("Essential to effective representation...is the independent duty to investigate and prepare."); *Mosley v. Atchison*, 689 F. 3d 838 (7th Cir. 2012).

Defense counsel has a duty to investigate the facts, learn the law, and evaluate the application to the facts of the case. *Everett v. Beard*, 290 F.3d 500, 509 (3d Cir. 2002); *United States v. Bui*, 769 F.3d 831, 835 (3d Cir. 2014); *Correale v. United States*, 479 F.2d 944 (1st Cir. 1973); *Hill v.*

Lockhart, 894 F.2d 1009 (8th Cir. 1990); *Cooks v. United States*, 461 F. 2d 530 (5th Cir. 1972); *Government of Virgin Islands v. Vanderpool*, 767 F.3d 157, 169 (3d Cir. 2014) ["[a]n attorney`s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*"]; *Hinton v. Alabama*, 134 S. Ct. 1081, 1089, 188 L. Ed 2d I (2014); *Medina v. DiGuglielmo*, 461 F.3d 417, 428 (3d Cir. 2006).

I. TRIAL COUNSEL DEPRIVED PETITIONER AN EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE THEIR FAILURE SIGNIFICANTLY PREJUDICED PETITIONER WHERE HE WAS CONVICTED AND INCARCERATED FOR ALLEGED CONDUCT WHICH DID NOT VIOLATE THE LAW AND FEDERAL STATUTE

During trial in the criminal case at 17 Cr. 337 (RJS) before Hon. Richard J. Sullivan (Sullivan, J.) in November and December 2017, Government presented evidence to highlight Brennerman`s interaction with Morgan Stanley. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167 (highlighting Government Exhibit - GX1-57A; GX1-73; GX529). All evidence presented by Government demonstrated that Brennerman interacted with Government witness Scott Stout who worked at Morgan Stanley Smith Barney, LLC where Brennerman opened his wealth management brokerage account. *Brennerman*, Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167 (highlighting Government Exhibit GX1-73 - confirming that the email was sent by an employee of Morgan Stanley Smith Barneys, LLC); Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 254, Ex. C.

The evidence also demonstrated that Brennerman had a single preliminary telephone call about oil asset financing with Kevin Bonebrake, who worked at the Institutional securities division of Morgan Stanley, a subsidiary of Morgan Stanley & Company, LLC which is also not

FDIC-insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 34-35, 37-38, 59 (384-85, 387-88, 409).

Additionally, testimony of FDIC commissioner, Barry Gonzalez at trial confirmed that the prosecution did not prove that either Morgan Stanley Smith Barney, LLC (where Brennerman opened his wealth management brokerage account) and the Institutional Securities division of Morgan Stanley (where Kevin Bonebrake worked) are FDIC insured. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 98 at 129-33 (1057-61). Testimony of Government witness, Barry Gonzalez, FDIC commissioner also confirmed that Morgan Stanley & Company, LLC, the parent company for all Morgan Stanley businesses and subsidiaries is not FDIC insured.

Notwithstanding these overwhelming and demonstrable evidence, during trial, trial counsel Thompson Hine LLP through Attorneys Maranda Fritz and Brian D. Waller failed to highlight to the Court, prosecutors and jury that Morgan Stanley Smith Barney, LLC where Scott Stout worked, and Petitioner opened his wealth management account was not federally insured (No FDIC). Nor did they [trial counsel] highlight to the Court, prosecutors, and jury that the Institutional Securities division of Morgan Stanley where Kevin Bonebrake, with whom Petitioner had a brief discussion about oil asset financing, worked was not federally insured (No FDIC). Trial counsel`s failure to highlight that these subsidiaries of Morgan Stanley that Petitioner interacted with were not federally insured (No FDIC) significantly prejudiced Petitioner, thus their professional error and deficiency caused Petitioner to be convicted and incarcerated for alleged conducts which did not violate the law and federal statute.

II. TRIAL COUNSEL DEPRIVED PETITIONER AN EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE THEIR FAILURE SIGNIFICANTLY PREJUDICED PETITIONER WHERE THEY FAILED TO OBTAIN AND PRESENT EVIDENCE (ICBC UNDERWRITING FILE) WHICH PETITIONER REQUIRED TO ENGAGE IN MEANINGFUL CROSS-EXAMINATION (IMPEACHMENT) OF WITNESSES AGAINST HIM AND TO PRESENT A COMPLETE DEFENSE

Prior to trial and during trial, trial counsel failed to highlight, argue and make request to the Court (Sullivan, J.) for the Court to order and compel for the complete evidence from ICBC (London) plc including the pertinent underwriting file pursuant to Rule 17 of the Federal Rule of Criminal Procedure or "Letter Rogatory" pursuant to 28 U.S.C. § 1781. Even following Government witness, Julian Madgett testifying in open Court about the missing evidence - the underwriting file, and that it documents the basis for the bank, ICBC (London) plc approving the bridge finance at issue in this case and thus will highlight if the bank relied on any representations or alleged misrepresentations from Petitioner, trial counsel failed to request for the evidence pursuant to Rule 17 for obtaining evidence located overseas. *Brennerman*, Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 94 at 201-204 (551-554).

Again, during trial, following the Court`s (Sullivan, J.) denial of Petitioner`s request for the evidence with the Court stating that "If it was a Rule 17 request then that would be a different matter," trial counsel still failed to make such request for the pertinent evidence pursuant to Rule 17 even though it was obvious that Petitioner required the evidence to meaningfully cross-examine Government witness and to present his complete defense. *Brennerman*, Def.'s Mot., No. 17 Cr. 337 (RJS), EFC No. 71 (requesting evidence); Trial Tr., No. 17 Cr. 337 (RJS), EFC No. 96 at 4 (617) (stating, "If it was a Rule 17 request then that would be a different matter").

Trial counsel`s errors and deficient performance in failing to make a Rule 17 request to obtain and present the pertinent evidence - ICBC underwriting file, deprived Petitioner of the

very evidence he required to confront (impeach) witness against him and to present his complete defense at trial, thus causing significant prejudice to him and violating his Constitutional rights.

The Court of Appeals in its affirmation summary order stated in pertinent part: "Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17." *Brennerman*, Slip OP., No. 18-3546, EFC No. 183 at 4-5. Although the Court of Appeals erred when the Court failed to review the record to realize the testimony of Government witness, Julian Magett where he testified to the existence of the evidence and its significance to Petitioner, because it documents the basis for the bank approving the bridge finance. Their [Court of Appeals] promulgation highlights the significant prejudice suffered by Petitioner due to counsel`s ineffectiveness and failure to make a Rule 17 request to obtain and present pertinent evidence which Petitioner required to confront (impeach) the Government witness and to present his complete defense.

Counsel`s performance(s) were so egregious that it was tantamount to a denial of Petitioner`s Constitutional right to an effective assistance of counsel. In this case, it is unequivocal that but for the deficient performance by trial counsel, the outcome of the case would have been vastly different.

III. TRIAL COUNSEL DEPRIVED PETITIONER AN EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE THEIR FAILURE SIGNIFICANTLY PREJUDICED PETITIONER WHERE THEY FAILED TO PRESENT EXCULPATORY EVIDENCE IN THEIR POSSESSION DURING TRIAL FOR JURY CONSIDERATION AND DELIBERATION

Trial counsel failed to highlight and present Petitioner`s birth certificate, which was in their possession and in the possession of the prosecutors, to the Court and jury during trial. Such evidence was required to impeach and challenge the erroneous arguments and assertions by the prosecutors. Their failure to present the evidence (birth certificate) significantly prejudiced

Petitioner and deprived him of the very exculpatory evidence he required to demonstrate his innocence of the charged offense.

V. REASON FOR GRANTING MOTION FOR BAIL PENDING DETERMINATION OF COLLATERAL ATTACK MOTION

APPLICABLE LAW

The Court has the "inherent power to release on bail a habeas petitioner who challenges his detention after a criminal conviction," but "[t]he standard....is a difficult one to meet": "The petitioner must demonstrate that the habeas petition raise[s] substantial claims and that extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 223, 226 (2d Cir. 2001).

"The standard for release on bail under 28 U.S.C. § 2255 is even higher than under 18 U.S.C. § 3143(b)," requiring "a demonstrated likelihood that the petition will prevail, based upon claims of a substantial nature upon which the petitioner has a high probability of success....so that victory for petitioner can be predicted with confidence." *United States v. Yarmoluk*, 1997 U.S. Dist. LEXIS 16140 at *1 (S.D.N.Y. Oct. 17 1997) (internal quotation marks omitted); *Beras v. United States*, 2012 U.S. Dist. LEXIS 82297 at *1 (S.D.N.Y. June 12, 2012) ("Judges in this district have ruled that this high hurdle requires that the petitioner show a demonstrated likelihood the petition will prevail such that the petitioner has a 'high probability of success.").

DISCUSSION

Petitioner contends that he was deprived of his Constitutional right to a fair trial and that he suffered and continues to suffer gross miscarriage of justice where the presiding judge misrepresented and distorted evidence to falsely satisfy the law to convict and imprison him. The presiding judge also intentionally deprived Petitioner of the very evidence - ICBC underwriting

file, which he required to prove his innocence. Bail pending the determination of the collateral attack motion is warranted in the interest of justice.

During this unfortunate prosecution, Petitioner lost his mother who was sick at the time of his arrest. Due to the fact that Petitioner was deprived of the ability to donate his kidney to her (as he was a match) and care for her (even though Petitioner pleaded with the Court (Sullivan, J.) to allow him access to the evidence (ICBC (London) plc underwriting file) so that he may clear his name and return to care for his mother. *Brennerman*, Letter No. 17 Cr. 337 (RJS), at EFC. No. 188. She passed away in 2019 while waiting for Petitioner to clear his name and return to care for her, demonstrating one of the most egregious prejudice suffered through this deliberate violation of Petitioner`s Constitutional and human rights, civil rights and liberties.

Petitioner also contracted Covid-19 in December 2020, alongside with 114 out-of 116 inmates at his housing unit at Allenwood Low. He was later diagnosed with Covid-19 pneumonia which lead to significant breathing difficulties and suffering while Allenwood Low, where he is currently incarcerated provided no medication or therapeutics, further exacerbating the Constitutional rights violations already suffered.

As of September 3, 2021, Allenwood Low where Petitioner is currently incarcerated has been categorized as "Level 3 (Red) Intense Modification" by the Federal Bureau of Prisons as regards Covid-19 threat level, this is the BOP`s highest categorization. Petitioner is very concerned about his health and welfare, as he suffers from diabetes and hypertension both medical vulnerabilities promulgated by the C.D.C. that puts him at a heightened risk of serious illness or death, given that the Covid-19 delta variant is now resurging in the community and inside prison walls.

VI. REASONS FOR GRANTING STAY OF ENFORCEMENT OF JUDGMENT OF CONVICTION AND SENTENCE PENDING DETERMINATION OF COLLATERAL ATTACK MOTION

DISCUSSION

This motion is submitted pursuant to Fed. R. Crim. P. 38 to stay the enforcement of Judgment ("Judgment of Conviction") entered in the United States District Court for the Southern District of New York, arising from the criminal case in *United States v. Brennerman*, No. 17 Cr. 337 (RJS) and the judgment of affirmation ("Summary Order affirming Judgment of Conviction") at appeal EFC No. 18-3546(L); 19-497(Con) in the United States Court of Appeals for the Second Circuit.

This application to stay enforcement of judgment presents an opportunity for this Court to rectify the fundamental miscarriage of justice given the extraordinary circumstance where trial Court deliberately abridged and abrogated the fundamental rights of criminal defendant conferred by the U.S. Constitution, thus violating his Fifth, Sixth, Thirteenth and Fourteenth Amendment rights of the United States Constitution. The issue for consideration here is not whether Petitioner is entitled to reprieve from the deliberate civil and Constitutional rights deprivation but rather whether the continued infringement on his Constitutional rights and civil liberties affects the very fabric of United States democracy.

Rule 38 of the Federal Rules of Criminal Procedure authorizes a court to enter a stay pending appeal of relief/collateral attack from judicial misconduct and bias in a criminal proceeding. A stay pending appeal/collateral attack "is not a matter of right," and "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The traditional factors that govern whether to grant a stay of court order pending appeal/collateral attack are "(1) whether the stay Petitioner has made a

strong showing that he is likely to succeed on the merits; (2) whether the Petitioner will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id*. at 434; *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Cooper v. Town of East Hampton*, 83 F.3d 31, 36 (2d Cir. 1996).

Petitioner submits that the judge (Judge Richard J. Sullivan) who presided over the criminal case in the lower Court surreptitiously supplanted evidence of a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC-insured institution, Morgan Stanley Private Bank to falsely satisfy the essential element necessary to convict Petitioner for bank fraud in violation of 18 U.S.C. § 1344(1) and bank fraud conspiracy in violation of 18 U.S.C. § 1349. Petitioner presents demonstrable evidence that when he highlighted this issue to the Court (Sullivan, J.) in twelve separate filings, the Court continually ignored him. Petitioner will further highlight that the Court denied and deprived him access to pertinent evidence (ICBC underwriting file) which he requested approximately twelve times including during trial immediately upon learning from Government witness, Julian Madgett during his testimony that the evidence (ICBC underwriting file) exists with the bank`s file in London, United Kingdom. Petitioner requested for the evidence so as to confront witness [Julian Madgett] against him and so that he may present a complete defense in reliance on applicable law and his Constitutional rights particularly given that the Court permitted Government witness, Julian Madgett to testify as to the contents of the evidence - ICBC underwriting file. The Court (Sullivan, J.) denied all of Petitioner`s requests for the evidence thus depriving him of the ability to exercise his Constitutional rights.

Petitioner contends that such actions and deeds by the Court (Sullivan, J.) veered from the permissible norm to an impermissible realm, warranting a stay of enforcement of the judgment of conviction and sentence. The questions which this Court should consider are quite simple – (a.) are federal judges permitted to misrepresent or distort evidence in an endeavor to deprive criminal defendants their right to liberty; and (b.) whether federal judges can capriciously and intentionally abridge Constitutional rights conferred to criminal defendants.

The four factors which motion for stay must satisfy:

1. Whether the stay Petitioner has made a strong showing that he is likely to succeed on the merits - To answer this question, we must consult our jurisprudence in deciding whether the lower Court is bound by an obligation to protect the Constitutional rights of criminal defendant or whether the lower Court can capriciously and arbitrarily abrogate and abridge the rights conferred to every Persons within the United States territories. Our jurisprudence informs that where lower Court deliberately deprives a criminal defendant of his Constitutional rights through its own misconduct by surreptitiously supplanting evidence to falsely satisfy the essential element to convict Petitioner for a federal crime, this Court should exercise its inherent supervisory role and appellate discretion to rectify such injustice.

This case presents a matter of significant public interest in highlighting the extraordinary circumstances where the Court, that has an obligation to protect the Constitutional rights of a criminal defendant, veers from the permissible to the impermissible with the Court deliberately violating the Constitutional rights of Petitioner. The attack on Petitioner Raheem Jefferson Brennerman is an attack on the rule of law, civil rights and liberties affecting everyone as well as the very fabric of United States democracy. The United States Court of Appeals has a Constitutional obligation to review de novo, meaning for clear error.

2. Whether the Petitioner will be irreparably injured absent a stay – Brennerman is currently incarcerated because the Court surreptitiously supplanted evidence to falsely satisfy the essential element to convict Petitioner for a federal crime. The Court also intentionally denied Petitioner requests for evidence (ICBC underwriting file) which would have proven his innocence, while allowing Government witness, Julian Madgett to testify that the evidence exists and to the contents of the file.

A Person who has been substantively prejudiced through the loss of their fundamental rights conferred by the Constitution suffers irreparable injury. Petitioner has been subjected to Constitutional right deprivation through the loss of liberty due to the deliberate endeavor of the prosecution and Court to falsely satisfy the essential element to convict him. The Fifth Amendment of the United States Constitution states, "No person shall be deprived....of life, liberty or property without the due process of law." The due process right is enshrined in the bedrock of our democracy, however in this case, the prosecution and Court deliberately deprived Petitioner of his Constitutional rights in an unusual endeavor to deprive him of liberty.

Exacerbating the prejudice highlighted above, the global pandemic caused by Covid-19 presents an even heightened and amplified severity to such prejudice as Petitioner will remain incarcerated, absent a stay of the judgment, at a time when the coronavirus is resurging and claiming more lives every day in the community and inside prison walls. To-date over thirty million (30,000,000) cases of Covid-19 have been reported in the United States alone with in-excess of five hundred thousand deaths in the United states. Petitioner remains at a heightened risk from Coivd-19 should he contract the virus again given his medical vulnerabilities including diabetes, hypertension, BMI (Body-Mass-Index) of 37; all medical vulnerabilities promulgated by the Center for Disease Control and Prevention (C.D.C.). Petitioner already suffered Constitutional right deprivation where in December 2020, he tested positive for Covid-19 along with 114-out of 116 inmates at his housing unit testing positive for Covid-19. He was later diagnosed with Covid-19 pneumonia which caused severe breathing difficulty, pain and suffering exposing him to serious illness and possibility of death. Exacerbating the prejudice already suffered, he is now at risk of serious injury or death should he contract Covid-19 again

due to his continued incarceration in an environment where social distancing and recommended hygiene practices are impossible.

Although Petitioner was vaccinated in January and February of 2021, such vaccination do not attenuate the significant Constitutional rights deprivation or the prejudice which Petitioner has already suffered or will continue to suffer. Moreover, there has been no conclusive study to demonstrate that Petitioner is fully (100%) protected from the new strains of Covid-19. A stay is warranted to avert further miscarriage of justice.

3. Whether issuance of the stay will substantively injure the other parties interested in the due proceeding - No, it will not. The prosecution (United States Attorney Office for the Southern District of New York) and Court (Sullivan, J.) are not entitled to the continued deprivation of rights imposed upon Petitioner where they deliberately violated his rights to the Due Process Clause and the U.S. Constitution. The prosecution, which serves as advocate for the People of the United States and the Courts which has an obligation as an independent arbiter to protect the Constitutional rights of criminal defendants, veers to the impermissible by deliberately depriving a criminal defendant his Constitutional rights. A stay is warranted in the interest of justice to limit the suffering and injustice imposed on Petitioner.

4. Where the public interest lies - The danger of this wrongful prosecution, the continued incarceration, the judicial misconduct and bias and the Constitutionally impermissible Court rulings, is amply demonstrated by the consequences of erosion of public trust in the United States justice system and other institutions. As the Fourth Circuit recently promulgated, "what gives people confidence in our justice system is not that we merely get things right, rather it is that we live in a system that upholds the rule of law even when it is inconvenient to do so". The Court through its misconduct and bias veered from the rule of law in this case. Interest of comity - in addition to fairness and substantial justice as embodied in the Due Process Clause and the U.S. Constitution - warrant a stay of enforcement of the judgment.

VII. REASON FOR GRANTING RECUSAL /DISQUALIFICATION OF THE COURT (SULLIVAN, J.).

DISCUSSION

There are few characteristics of a judiciary more cherished and indispensable to justice than impartiality. By enacting 28 U.S.C. § 455(a) Congress has mandated that justice must not only be impartial but also that is must reasonably be perceived to be impartial. To that end, the

Supreme Court held in *Liljeberg*, that judges must apply an objective, "reasonable person" standard in deciding whether disqualification is mandated by § 455(a), rather than making a subjective assessment of whether the facts and circumstances warrant disqualification. *Liljeberg v. Health Servs. Corp*., 486 U.S. 847 (1988), If a judge`s impartiality "reasonably might be questioned" in a case, the judge must disqualify himself or herself "even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible." *Id*. at 860 (quoting *Health Servs. Acquisition Corp. v. Liljeberg*, 796 F.2d 796, 802 (5th Cir. 1986)); *Chase Manhattan Bank v. Affiliated FM Ins. Co*., 343 F.3d 120, 127 (2d Cir. 2003). Indeed, in that case, the Court held that the judge should have recused himself even though he was unaware of the circumstances that gave rise to the conflict, because a reasonable person could conclude that the judge should have been aware. *Liljeberg*, 486 U.S. at 861. Only in this manner can the congressional purpose underlying § 455(a) be achieved, namely, "to promote public confidence in the integrity of the judicial process." *Liljeberg*, 486 U.S. at 859-60.

Judge Sullivan is disqualified from continuing to preside over this matter because a reasonable person who is aware of the Court`s action with respect to misrepresenting and distorting evidence to falsely satisfy the essential element and law to convict and imprison Petitioner would conclude that Judge Sullivan`s impartiality in this case "reasonably might be questioned." 28 U.S.C. § 455(a).

VIII. LEGAL AUTHORITY GOVERNING PRO SE PETITIONER

Petitioner Raheem J. Brennerman, is a pro se petitioner, therefore his pleadings are generally liberally construed and held to a less stringent standard than pleadings drafted by an attorney. *Hughes v. Rowe*, 449 U.S. 6, 9 (1980) (per curiam); *Estelle v. Gamble*, 429 U.S. 97 (1976).

IX. CLOSING STATEMENT

Given the extraordinary circumstances highlighted above, grant of the relief requested in its entirety is warranted as a matter of public interest to promote the rule of law and emphasize conformity and uniformity with the law and Constitution and to avoid continued attack on the civil rights and liberties of Petitioner.

CONCLUSION

The Omnibus motion for an order of this Court granting: (a.) Collateral attack motion to set-aside the judgment of conviction and vacate the sentence; (b.) Bail pending determination of the collateral attack motion; (c.) Stay of enforcement of the judgment of conviction and sentence pending determination of the collateral attack motion; (d.) Recusal and/or disqualification of the Court (Sullivan, J.) from considering and determination of the Omnibus motion, should be granted in its entirety. In addition to any other relief which this Court may deem just, necessary and appropriate, including granting an evidentiary hearing.

Dated: White Deer, Pennsylvania
October 3, 2021

Respectfully submitted

/s/ Raheem J. Brennerman
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EXHIBIT

EXHIBIT 1

No. 20-4164 (Lead)
No. 21-654 (Consolidated)

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Respondent,

v.

RAHEEM JEFFERSON BRENNERMAN,

Applicant,

MOTION FOR STAY OF ENFORCEMENT
OF JUDGEMENT OF CONVICTION AND SENTENCE

Raheem J. Brennerman
FCI ALLENWOOD LOW
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Pro Se Defendant-Appellant

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I. APPLICATION FOR STAY OF ENFORCEMENT OF JUDGEMENT

Applicant Raheem Jefferson Brennerman ("Brennerman") respectfully submits this motion for stay of enforcement of Judgment ("Judgment of Conviction") entered in the United States District Court for the Southern District of New York in the criminal case, No. 17 Cr. 337 (RJS) and the Judgment ("Summary Order affirming Judgment of Conviction") entered in the United States Court of Appeals for the Second Circuit at Appeal EFC Nos. 18-3546(L); 19-497(Con) on June 9, 2020. *U.S. v. Brennerman*, No. 17 Cr. 337 (RJS); *U.S. v. Brennerman*, No. 18-3546, 818 F. App`x 25 (2d Cir. June 9, 2020) (19-497 (Con)).

II. JURISDICTION

Applicant Raheem Jefferson Brennerman appeals from the final order entered in the United States District Court for the Southern District of New York at No. 17 Cr. 337 (RJS), doc. nos. 249, 251 and 257 denying motion for relief from judicial misconduct and bias at 17 Cr. 337 (RJS), EFC Nos. 248, 250, 254, 256.

Brennerman filed a timely notice of appeal from the original November 20, 2020, final order, on November 27, 2020. A supplemental notice of appeal from the final order was filed on March 17, 2021, giving rise to EFC No. 21-645, which is Consolidated with this appeal. The district court had jurisdiction pursuant to 18 U.S.C. §§3231 and 3238.

This Court has jurisdiction pursuant to 28 U.S.C. §1291.

III. JUDGMENT(S) WHICH MOTION FOR STAY IS BEING SOUGHT

On November 19, 2018, the United States District Court for the Southern District of New York (Judge Richard J. Sullivan) entered Judgment of Conviction

and imposed Sentence and restitution (copy Judgment of Conviction appended as Appendix to this application) and on June 9, 2020, the United States Court of Appeals for the Second Circuit entered Judgment affirming the Judgment of Conviction ("Summary Order affirming Judgment of Conviction") (copy Summary Order affirming Judgment of Conviction appended as Appendix to this application). And the interrelated ("Judgment of Conviction") entered on May 23, 2018 in the United States District Court for the Southern District of New York (Judge Lewis A. Kaplan), at 17 CR. 155 (LAK), EFC No. 145 (copy Judgement of Conviction appended as Appendix to this Application) and ("Summary order affirming Judgement of Conviction") entered on June 9, 2020 in the United States Court of Appeals for the Second Circuit, at appeal 18-1033(L), EFC No. 319 (copy Summary Order Affirming Judgement of Conviction appended as Appendix to this Application.)

IV. PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

V. RELIEF SOUGHT

This motion is submitted pursuant to Fed. R. Crim. P. 38 and Fed. R. App. P. 8 to stay the enforcement of Judgment ("Judgment of Conviction") entered in the United States District Court for the Southern District of New York, arising from the criminal case in *United States v. Brennerman*, No. 17 Cr. 337 (RJS) and the judgment of affirmation ("Summary Order affirming Judgment of Conviction") at appeal EFC No. 18-3546(L); 19-497(Con) in the United States Court of Appeals for the Second Circuit.

This application to stay enforcement of judgment presents an opportunity for this Court to rectify the fundamental miscarriage of justice given the extraordinary circumstance where trial Court deliberately abridged and abrogated the fundamental rights of criminal defendant conferred by the U.S. Constitution, thus violating his Fifth, Sixth, Thirteenth and Fourteenth Amendment rights. The issue for consideration here is not whether applicant is entitled to reprieve from the deliberate civil and Constitutional rights deprivation but rather whether the continued infringement on his Constitutional rights and civil liberties affects the very fabric of United States democracy.

Rule 38 of the Federal Rules of Criminal Procedure authorizes a court to enter a stay pending appeal of relief from judicial misconduct and bias in a criminal proceeding. A stay pending appeal "is not a matter of right," and "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The traditional factors that govern whether to grant a stay of court order pending appeal are "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id*. at 434; *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see Cooper v. Town of East Hampton,* 83 F.3d 31, 36 (2d Cir. 1996).

Applicant contends that actions and deeds by the Court (Sullivan, J.) veered from the permissible norm to an impermissible realm, warranting a stay of

enforcement of the judgment of conviction and sentence. The questions which this Court should consider are quite simple – (a.) are federal judges permitted to misrepresent or distort evidence in an endeavor to deprive criminal defendants their right to liberty; and (b.) whether federal judges can capriciously and intentionally abridge Constitutional rights conferred to criminal defendants.

The four factors which motion for stay must satisfy:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits - To answer this question, we must consult our jurisprudence in deciding whether the lower Court is bound by an obligation to protect the Constitutional rights of criminal defendant or whether the lower Court can capriciously and arbitrarily abrogate and abridge the rights conferred to every Persons within the United States territories. Our jurisprudence informs that where lower Court deliberately deprives a criminal defendant of his Constitutional rights through its own misconduct by surreptitiously supplanting evidence to falsely satisfy the essential element to convict applicant for a federal crime, this Court should exercise its inherent supervisory role and appellate discretion to rectify such injustice.

This case presents a matter of significant public interest in highlighting the extraordinary circumstances where the Court, that has an obligation to protect the Constitutional rights of a criminal defendant, veers from the permissible to the impermissible with the Court deliberately violating the Constitutional rights of applicant. The attack on applicant Raheem Jefferson Brennerman is an attack on the rule of law, civil rights and liberties affecting everyone as well as the very fabric of United States democracy.

2. Whether the applicant will be irreparably injured absent a stay – Brennerman is currently incarcerated because the Court surreptitiously supplanted evidence to falsely satisfy the essential element to convict applicant for a federal crime. The Court also intentionally denied applicant requests for evidence (ICBC underwriting file) which would have proven his innocence, while allowing Government witness, Julian Madgett to testify that the evidence exists and to the contents of the file.

Applicant has been subjected to Constitutional right deprivation through the loss of liberty due to the deliberate endeavor of the prosecution and Court to falsely satisfy the essential element to convict him.

Exacerbating the prejudice highlighted above, the global pandemic caused by Covid-19 presents an even heightened and amplified severity to such prejudice as applicant will remain incarcerated, absent a stay of the judgment, at a time when the coronavirus is resurging and claiming more lives every day in the community and inside prison walls. Applicant remains at a heightened risk from Coivd-19 should he contract the virus again given his medical vulnerabilities including diabetes, hypertension, BMI (Body-Mass-Index) of 37; all medical vulnerabilities promulgated by the C.D.C. Applicant already suffered Constitutional right deprivation where in December 2020, he tested positive for Covid-19 along with 114-out of 116 inmates at his housing unit. He was later diagnosed with Covid-19 pneumonia which caused severe breathing difficulty, pain and suffering exposing him to serious illness and possibility of death. Exacerbating the prejudice already suffered, he is now at risk of serious injury or death should he contract Covid-19 again due to his continued incarceration in an environment where social distancing and recommended hygiene practices are impossible.

Although applicant was vaccinated in January and February of 2021, such vaccination do not attenuate the significant Constitutional rights deprivation or the prejudice which applicant has already suffered or will continue to suffer. A stay is warranted to avert further miscarriage of justice.

3. Whether issuance of the stay will substantively injure the other parties interested in the due proceeding - No, it will not. The prosecution and Court

(Sullivan, J.) are not entitled to the continued deprivation of rights imposed upon applicant where they deliberately violated his rights to the Due Process Clause and the U.S. Constitution. The prosecution, which serves as advocate for the People of the United States and the Courts which has an obligation as an independent arbiter to protect the Constitutional rights of criminal defendants, veers to the impermissible by deliberately depriving a criminal defendant his Constitutional rights. A stay is warranted in the interest of justice to limit the suffering and injustice imposed on applicant.

4. Where the public interest lies - The danger of this wrongful prosecution, the continued incarceration, the judicial misconduct and bias and the Constitutionally impermissible Court rulings, is amply demonstrated by the consequences of erosion of public trust in the United States justice system and other institutions. As the Fourth Circuit recently promulgated, "what gives people confidence in our justice system is not that we merely get things right, rather it is that we live in a system that upholds the rule of law even when it is inconvenient to do so". The Court through its misconduct and bias veered from the rule of law in this case. Interest of comity - in addition to fairness and substantial justice as embodied in the Due Process Clause and the U.S. Constitution - warrant a stay of enforcement of the judgment.

VI. ISSUES PRESENTED

BACKGROUND

See Brennerman v. U.S., S.Ct. No. 20-6638, 6-9 (EFC Dec 09 2020) at App. L.

THE CRIMINAL REFERRAL, THE PETITION AND EX PARTE CONFERENCE BETWEEN JUDGE KAPLAN AND THE GOVERNMENT

See Brennerman v. U.S., S.Ct. No. 20-6638, 10-13 (EFC Dec 09 2020) at App. L.

THE INDICTMENT AND ORDER TO SHOW CAUSE

See Brennerman v. U.S., S.Ct. No. 20-6638, 13-14 (EFC Dec 09 2020) at App. L.

THE DISTRICT COURT`S DECISION

See Brennerman v. U.S., S.Ct. No. 20-6638, 14-15 (EFC Dec 09 2020) at App. L.

THE TRIAL AND POST-TRIAL PROCEEDINGS
CRIMINAL CONTEMPT OF COURT CASE AT NO. 17 CR. 155 (LAK)

See Brennerman v. U.S., S.Ct. No. 20-6895, 14-16 (EFC Dec 30 2020) at App. M.

THE TRIAL AND POST-TRIAL PROCEEDINGS
FRAUD CASE AT NO. 17 CR. 337 (RJS)

See Brennerman v. U.S., S.Ct. No. 20-6638, 15-18 (EFC Dec 09 2020) at App. L.

THE COURT OF APPEAL DECISION
FRAUD CASE APPEAL AT, NOS. 18 3546(L); 19 497(CON)

See Brennerman v. U.S., S.Ct. No. 20-6638, 18-19 (EFC Dec 09 2020) at App. L.

THE COURT OF APPEAL DECISION
CRIMINAL CONTEMPT OF COURT APPEAL AT, NOS. 18 1033(L); 18 1618(CON)

See Brennerman v. U.S., S.Ct. No. 20-6895, 16-17 (EFC Dec 30 2020) at App. M.

ERROR(S) WITH THE COURT OF APPEALS' DECISION
FRAUD CASE APPEAL AT, NOS. 18 3546(L); 19 497(CON)
ARISING FROM CRIMINAL CASE AT DISTRICT COURT AT, NO. 17 CR. 337 (RJS)

I. THE SECOND CIRCUIT ERRED WHEN IT MISAPPREHENDED KEY FACTS ABOUT WHICH MORGAN STANLEY SUBSIDIARY WAS FDIC INSURED AND MISUNDERSTOOD WHY A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT OCCURRED.

See Brennerman v. U.S., S.Ct. No. 20-6638, 20-26 (EFC Dec 09 2020) at App. L.

II. THE SECOND CIRCUIT ERRED BECAUSE THE PANEL`S DECISION CONFLICTS WITH SETTLED LAW ON THE SIXTH AMENDMENT RIGHTS OF A CRIMINAL DEFENDANT TO CROSS-EXAMINE THE WITNESSES AGAINST HIM AND TO PRESENT A COMPLETE DEFENSE.

See Brennerman v. U.S., S.Ct. No. 20-6638, 26-30 (EFC Dec 09 2020) at App. L.

ERROR(S) WITH THE COURT OF APPEALS' DECISION
CRIMINAL CONTEMPT OF COURT APPEAL AT, NOS. 18 1033(L); 18 1616(CON)
ARISING FROM CRIMINAL CASE AT DISTRICT COURT AT, NO. 17 CR. 155 (LAK)

I. THE SECOND CIRCUIT ERRED IN APPROVING THE DISTRICT COURT`S (1) ADMISSION OF THE CIVIL CONTEMPT ORDER AGAINST APPLICANT; (2) FAILURE TO COMPEL PRODUCTION OF CERTAIN EXCULPATORY MATERIALS; AND (3) PRECLUSION OF THE ADMISSION OF EVIDENCE PERTAINING TO SETTLEMENT NEGOTIATIONS, BECAUSE THE ISSUE RAISED ARE QUESTIONS OF EXCEPTIONAL IMPORTANCE. THIS CASE RAISE ISSUE OF IMPORTANT SYSTEMIC CONSEQUENCES FOR THE DEVELOPMENT OF THE LAW AND ADMINISTRATION OF JUSTICE.

See Brennerman v. U.S., S.Ct. No. 20-6895, 18-24 (EFC Dec 30 2020) at App. M.

VII. REASONS FOR GRANTING STAY OF ENFORCEMENT OF JUDGEMENT OF CONVICTION AND SENTENCE

ARGUMENT

I. BRENNERMAN SUFFERED AND CONTINUES TO SUFFER SIGNIFICANT PREJUDICE AND CONSTITUTIONAL RIGHT VIOLATION BASED ON JUDICIAL MISCONDUCT AND BIAS BY THE COURT (SULLIVAN, J.)

A. SIGNIFICANT JUDICIAL MISCONDUCT AND BIAS WITH THE COURT MISREPRESENTING AND DISTORTING EVIDENCE TO FALSELY SATISFY THE ESSENTIAL ELEMENT NECESSARY TO CONVICT APPLICANT FOR BANK FRAUD AND BANK FRAUD CONSPIRACY.

During trial in the criminal case at 17 Cr. 337 (RJS) before Hon. Richard J, Sullivan (Sullivan, J.) in November and December 2017, Government presented evidence - Government Exhibit GX1-57; GX1-57A; GX1-73; GX529 to highlight Brennerman`s interaction with Morgan Stanley. All evidence presented by Government demonstrated that Brennerman interacted with Government witness, Scott Stout who worked at Morgan Stanley Smith Barney, LLC where Brennerman opened his wealth management brokerage account. *See* GX1-73 Notice to Recipient: confirming that the email was sent by an employee of Morgan Stanley Smith Barneys, LLC; *see* also 17 CR. 337 (RJS), EFC No. 167; 17 CR. 337 (RJS), EFC No. 254, Ex. C.

After trial, in June 2018, Brennerman submitted evidence in support of his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 ("Rule 29 motion") highlighting that he interacted with non-FDIC insured institution and that Government failed to prove that Morgan Stanley Smith Barney, LLC is FDIC insured. *See* Trial Tr., No. 17 Cr. 337 (RJS), at 1059 (Test. of Gov't witness, Barry

Gonzalez); *see* also 17 CR. 337 (RJS), EFC No. 254, Ex. G; 17 CR. 337 (RJS), at doc. no. 167; 17 CR. 337 (RJS), EFC No. 254, Ex. C (supplemental evidence).

In November 2018, Judge Sullivan denied the Rule 29 motion for judgment of acquittal and sentenced Brennerman. Notwithstanding the demonstrable evidence submitted Judge Sullivan denied Brennerman`s Rule 29 motion by surreptitiously supplanting a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC insured institution, Morgan Stanley Private Bank, in an endeavor to falsely satisfy the essential element necessary to convict Brennerman for bank fraud in violation of 18 U.S.C. § 1344(1) and conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. 17 CR. 337 (RJS), EFC No. 167. This is the significant issue.

Judge Sullivan improperly stated on the record that the fraud was a scheme or artifice to defraud the private banking arm of Morgan Stanley, an FDIC insured institution even though Government presented no evidence to support such ruling. *See* Sentencing Tr., No. 17 CR. 337 (RJS), EFC No. 206, at 19; *see* also 17 CR. 337 (RJS), EFC No. 254, Ex. D. Under certain circumstances a judge`s behavior can be "per se misconduct." *U.S. v. Marquez-Perez*, 835 F.3d 153, 158 (1st Cir. 2016). This happens when judges "exceed their authority" by "testify[ing] as witnesses, or add[ing] to or distort[ing] the evidence." *Id*. Here the Court (Sullivan, J.) distorted the evidence in order to convict Brennerman of bank fraud and bank fraud conspiracy.

B. JUDICIAL MISCONDUCT AND BIAS WITH THE COURT INTENTIONALLY DENYING BRENNERMAN'S REQUEST FOR PERTINENT EVIDENCE WHICH BRENNERMAN REQUIRED TO PROVE HIS INNOCENCE

Brennerman requested for evidence of Morgan Stanley presented by the prosecution at trial particularly given the divergence between the evidence presented on record at trial and the Court`s ruling on November 19, 2018 during sentencing and denial of Brennerman`s motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 with respect to Morgan Stanley. *See* 17 CR. 337 (RJS), EFC No. 167.

Moreover, the evidence will irrefutably and conclusively demonstrate that Brennerman opened a wealth management brokerage account in January 2013 at Morgan Stanley Smith Barney, LLC in Beverly Hills, California. That he did not receive any perks because the account was opened for a few weeks and was closed in February 2013. The charge card which was issued by another non-Morgan Stanley institution was closed with zero balance. Further that, Brennerman had a single preliminary telephone call about oil asset financing with Kevin Bonebrake who worked at the institutional securities division of Morgan Stanley, a subsidiary of Morgan Stanley & Company, LLC, which is also not FDIC-insured.

Additionally, testimony of FDIC commissioner, Barry Gonzalez at trial confirmed that the prosecution did not prove that either Morgan Stanley Smith Barney, LLC (where Brennerman opened his wealth management brokerage account) and the Institutional Securities division of Morgan Stanley (where Kevin Bonebrake worked) are FDIC insured. *See* Trial Tr., No. 17 Cr. 337 (RJS), 1057-1061. Testimony of Government witness, Barry Gonzalez, FDIC commissioner also confirmed that Morgan Stanley & Company, LLC, the parent company for all

Morgan Stanley businesses and subsidiaries is not FDIC insured. *Id*. Not FDIC-insured. Not Bank fraud.

Brennerman highlighted to the Court that the evidence will prove that he has been wrongfully convicted and sentenced, however the Court ignored him and denied his request for relief. *See* 17 CR. 337 (RJS), EFC No. 256.

Such intentional deprivation of evidence was also demonstrated where the Court permitted Government witness, Julian Madgett to testify at trial that evidence (ICBC underwriting file) exist with the bank`s file in London, U.K., which documents the basis for the bank approving the bridge finance thus highlights the representations relied upon by the bank. Trial Tr., No. 17 Cr. 337 (RJS), at 551-554.

Brennerman, upon learning of the evidence (ICBC underwriting file) and its importance to his defense immediately requested that the Court either compel the Government to obtain it because it was *Brady* material given that Government were present when their witness testified about its existence in open Court.

Government had already obtained over 6,000 pages of discovery (excluding the critical and pertinent evidence (ICBC underwriting file which Brennerman required for his defense) through ICBC`s lawyers, Linklaters LLP. When Brennerman requested for the evidence, Government refused to obtain it even after Julian Madgett testified to its existence and the Court refused to compel the Government.

Brennerman, in the alternative, requested that the Court compel ICBC (London) plc to provide the evidence to him so that he may use it to confront (impeach) witness against him and to present a complete defense, however the Court (Sullivan, J.) denied his request while permitting Government witness, Julian

Madgett to testify as to the contents of the evidence knowing that Brennerman would be unable to challenge (impeach) the uncorroborated testimony of Julian Madgett. 17 Cr. 337 (RJS), EFC No. 71. No file. No trial.

In essence, Brennerman was charged with wire fraud in violation of 18 U.S.C. § 1343 and Conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 based on the transaction between ICBC (London) plc, a British subsidiary of a Chinese bank headquartered in Beijing, China and The Blacksands Pacific Group, Inc., a Delaware-U.S. oil and gas development and production company headquartered in Los Angeles, California.

However during trial, the Court (Sullivan, J.) intentionally and deliberately denied Brennerman access to the most critical evidence – the ICBC underwriting file, which documents the basis for the bank approving the bridge loan thus highlights representations that were MATERIAL to the bank in its approval of the bridge loan. Notwithstanding permitting Government witness, Julian Madgett to testify as to the existence of the evidence in open Court in the presence of the Court and Government. Trial Tr., No. 17 CR. 337 (RJS), at 551-554.

Even after learning of the evidence and its importance to the defense argument, Government continued to refuse to obtain or produce the evidence to the defense highlighting a *Brady* violation. Even though they [Government] could have easily obtained the evidence via e-mail within seconds given that they had already obtained over 6,000 pages of discovery from ICBC (London) plc through their New York based lawyers, Linklaters LLP. Government witness, Julian Madgett testified that ICBC (London) plc had handed over the files to Linklaters LLP. The Court

(Sullivan, J.) denied Brennerman`s request for this critical evidence – ICBC underwriting file stating that the evidence was in London, U.K. notwithstanding that over 6,000 pages of discovery were already produced by ICBC from London, U.K. 17 CR. 337 (RJS), EFC No. 71.

More importantly the Court (Sullivan, J.) permitted Government sole witness, Julian Madgett to testify as to the contents of the evidence knowing that Brennerman would be unable to challenge the uncorroborated testimony presented before the jury at trial, given that Brennerman had been deprived of the evidence which he required to impeach the testimony. This was a fundamental miscarriage of justice where the presiding judge intentionally and significantly abridged the Constitutional rights of a criminal defendant.

Even after trial, the Court continued to deliberately and intentionally deny and deprive Brennerman access to the evidence (ICBC underwriting file) which he [Brennerman] requires to prove his innocence of the crime of wire fraud in violation of 18 U.S.C. § 1343 and wire fraud conspiracy in violation of 18 U.S.C. § 1349. 17 Cr. 337 (RJS), EFC Nos. 153, 161, 187, 200, 236, 240, 241, 248, 250, 254, 256.

II. THE JUDICIAL MISCONDUCT AND BIAS WERE SO EGREGIOUS AND SIGNIFICANT AS TO CALL INTO QUESTION THE INTEGRITY AND FAIRNESS OF THE ENTIRE CRIMINAL PROCEEDINGS

Brennerman contends that he was denied his Constitutional rights to a fair trial. Further that, his Constitutional rights were intentionally abridged due to the significant judicial misconduct, partiality and bias by the presiding judge (Sullivan, J.) as highlighted above. The enforcement of judgment of conviction and sentence should be stayed in the interest of justice.

Defendants in the American judicial system have the right to a fair trial, and part of this right is fulfilled by a judicial officer who impartially presides over the trial. *See* e.g., *Bracy v. Gramley*, 520 U.S. 899, 904-05 (1997). However "most questions concerning a judge`s qualifications to hear a case are not constitutional ones, because the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard." *Id*. at 904. A judge will, however, violate a defendant`s due process right if he is biased against the defendant or has an interest in the outcome of the case. *Id*. at 905. A likelihood or appearance of bias can disqualify a judge as well. *Taylor v. Hayes*, 418 U.S. 488, 501 (1974). "A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him." *Edwards v. Balisok*, 520 U.S. 641, 647 (1997) (citations omitted).

A presiding judge misrepresenting and distorting evidence so as to falsely satisfy the essential element necessary to convict a criminal defendant cannot be said to be impartial because he has clearly exhibited an interest in the outcome of the case. Moreover misrepresenting or distorting the evidence so as to convict a criminal defendant is a per se misconduct.

Under certain circumstances, a judge`s behavior can be "per se misconduct." *U.S. v. Marquez-Perez*, 835 F.3d 153, 158 (1st Cir. 2016). This happens when judges "exceed their authority" by "testify[ing] as witnesses, or add[ing] to or distort[ing] the evidence." *Id*. It can also happen when judges "opin[e] to the jury on the credibility of witnesses, the character of the defendant, or the ultimate issue." *Id*.

Because the judge (Sullivan, J.) who presided over the entire criminal proceeding demonstrated partiality by intentionally distorting evidence of non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC-insured institution, Morgan Stanley Private Bank, so as to falsely satisfy the essential element necessary to convict Brennerman, Brennerman is entitled to have his conviction set-aside.

In *Liteky v. United States*, the Supreme Court held that a trial judge exhibits "such a high degree of favoritism or antagonism as to make fair judgment impossible" when the trial judge veers from the permissible norm. 510 U.S. 540, 555 (1994). Brennerman contends that misrepresenting evidence to falsely satisfy the essential element necessary to convict him and intentionally depriving him access to evidence – ICBC underwriting file which he required to confront (impeach) witnesses against him and to present a complete defense demonstrates a degree of favoritism to the Government and antagonism to him [Brennerman] as to make fair judgment impossible.

Due process guarantees a fair trial, not a perfect one. *U.S. v. Ayala-Vazquez*, 751 F.3d 1, 23-24 (1st Cir. 2014). To prevail on a judicial misconduct claim, a party must show that (1) the judge acted improperly, (2) thereby causing him prejudice. *U.S. v. Lanza-Vazquez*, 799 F.3d 134, 143 (1st Cir. 2015).

Here, it cannot be said that the presiding judge`s conduct of misrepresenting and distorting evidence so as to falsely satisfy the essential element necessary to convict a criminal defendant constitutes proper conduct, thus the judge acted improperly. The judge (Sullivan, J.) did so, in an endeavor to falsely deprive the criminal

defendant, Brennerman, his Constitutional right to liberty thereby causing him significant prejudice.

Trial judges cross the line of neutrality, if they "misemploy [their] powers." *Id*. by assuming "the role of an advocate or 'otherwise us[ing] [their] judicial powers to advantage or disadvantage a party unfairly." *Ayala-Vazquez*, 751 F.3d at 24 (quoting *Logue v. Dore*, 103 F.3d 1040, 1045 (1st Cir. 1997)). Remaining impartial in a justice system built on jury trials is essential to guaranteeing the due process rights of criminal defendant, for the jury may be swayed by a judge`s "lightest word or intimation." *Starr v. U.S.*, 153 U.S. 614, 626 (1894).

Here, trial judge (Sullivan, J.) permitted Government witness to testify as to the existence of evidence - ICBC underwriting file in open Court in the presence of the Court and jury. The Court denied Brennerman`s request to obtain the evidence (ICBC underwriting file) which Brennerman required to confront (impeach) witness against him and to present a complete defense. The trial judge (Sullivan, J.) did so, while permitting Government witness to testify as to the contents of the evidence (ICBC underwriting file) to satisfy the essential element of MATERIALITY in highlighting which representations were material to the bank in its approval of the bridge loan, knowing that Brennerman would be unable to challenge (impeach) the uncorroborated testimony before the jury. The trial judge (Sullivan, J.) employed his judicial powers to disadvantage Brennerman unfairly thus depriving him of his Constitutional right to a fair trial.

III. THE COURT (SULLIVAN, J.) ABUSED ITS DISCRETION WHEN IT FAILED TO PROMULGATE THE BASIS FOR DENYING RELIEF TO A CRIMINAL DEFENDANT, BRENNERMAN, WHO SOUGHT RELIEF FROM THE COURT'S OWN MISCONDUCT AND BIAS.

The United States Court of Appeals for the Second Circuit reviews a district court`s denial of relief from judgment for abuse of discretion. *Devlin v. Transp. Commc'ns Int`l Union*, 175 F.3d 121, 132 (2d Cir. 1999).

Here the Court (Sullivan, J.) provided no opinion or memorandum of law from which a meaningful appellate review could be undertaken. The Court provided no rational basis for the denial of relief. *See* 17 Cr. 337 (RJS), EFC No. 257. Hence, because the Court provided no basis in law or fact for its denial of relief to a criminal defendant, it [the Court] abused its discretion by not explaining the basis for its denial of relief from asserted and demonstrable judicial misconduct and bias.

IV. PROSECUTORIAL MISCONDUCT ARISING FROM CONDUCT IN THE CRIMINAL CASES AT DISTRICT COURT. *UNITED STATES V. THE BLACKSANDS PACIFIC GROUP, INC., ET AL*, NO. 17 CR. 155 (LAK) AND *UNITED STATES V. BRENNERMAN*, NO. 17 CR. 337 (RJS)

A. GOVERNMENT`S FAILURE TO PRESENT EVIDENCE IN THEIR POSSESSION (DURING TRIAL) TO THE JURY FOR CONSIDERATION IN RESPECT OF COUNT 4 OF THE INDICTMENT

During trial for the fraud case at No. 17 Cr. 337 (RJS), the prosecution were in possession of Applicant`s birth certificate, an exculpatory evidence, which could have exonerated Applicant of indicted offense. At trial, the prosecution made contrasting argument to the Court and jury and deliberately refused to present the evidence (Applicant`s birth certificate) to the Jury for consideration/deliberation notwithstanding their allegation that Applicant made false statement about his place of birth. The evidence corroborated Applicant`s statement regarding his place of birth and was exculpatory however the prosecution deliberately omitted its presentment to the jury for consideration/deliberation.

After trial, Applicant sought to obtain the evidence from the prosecution in an endeavor to seek relief through District Court. When the prosecution ignored his request, he made application to District Court to compel for the evidence however to-date, the Court has ignored him. *See* No. 17 Cr. 337 (RJS), EFC Nos. 236, 240, 241, 248, 250.

B. VIOLATION OF DUE PROCESS GUARANTEE ARISING FROM THE GOVERNMENT`S DELIBERATE VIOLATION OF APPLICANT`S CONSTITUTIONAL RIGHTS

The entire prosecution was commenced with the deliberate endeavor to violate the Due Process Clause with the prosecution ignoring the law in *OSRecovery, Inc.,* to commence criminal prosecution against a non-party who was not involved in the underlying civil case in *ICBC (London) PLC v. Blacksands Pacific Group, Inc.*, No. 15 Cv. 70 (LAK). No subpoena or motion-to-compel were ever directed at him personally. To exacerbate the prejudice, during trial the prosecution then presented the erroneously adjudged civil contempt order propounded against a non-party to the jury resulting in a fundamental miscarriage of justice. (*See* Law 360 Article, No. 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17) (one of the jurors informing the media that the civil contempt order presented at trial swayed their decision to find Applicant guilty).

The prosecution went a step further and failed to investigate whether Morgan Stanley Smith Barney, LLC where Applicant previously maintained an account was federally insured and whether Morgan Stanley Institutional Securities division where Kevin Bonebrake, whom Applicant had a single telephone call in 2013 to discuss financing for an oil asset, worked, was federally insured. Had the prosecution undertaken the necessary investigation they would have realized that

both subsidiaries/division within Morgan Stanley & Co, LLC are not federally insured thus the prosecution lacked jurisdiction to prosecute.

The prosecutors commenced this prosecution at District Court, No. 17 Cr. 337 (RJS) in respect of the underlying transaction between ICBC (London) PLC and The Blacksands Pacific Group, Inc., without obtaining or reviewing the pertinent underwriting transaction files which document the basis for approving the transaction to highlight materiality or the lack thereof of any representation or alleged misrepresentation. *See* Trial Tr., No. 17 Cr. 337 (RJS), at 551-554.

C. *BRADY* VIOLATION ARISING FROM THE GOVERNMENT`S DELIBERATE VIOLATION OF APPLICANT`S CONSTITUTIONAL RIGHTS

The core issue here occurred when Government witness, Julian Madgett testified that evidence (ICBC underwriting file) exists with the bank`s file in London, U.K. Trial Tr., No. 17 Cr. 337 (RJS), at 551-554. First, the testimony/record confirmed that the Circuit Court panel either erroneously ignored or intentionally omitted the record. Second, it demonstrated that District Court (Judge Richard J. Sullivan) erred when Applicant requested for the evidence (ICBC underwriting file) so that he may present a complete defense in reliance on Supreme Court ruling in *Crane v. Kentucky* adopted by the Second Circuit in *Scrimo v. Lee*, and confront the witnesses against him, however the Court (Judge Sullivan) denied his request. (Def.'s Letter Mot., No. 17 Cr. 337 (RJS), EFC No. 71); *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019).

More important and in reliance on the holdings in *Kyles* regarding *Brady* violation. Government witness, Julian Madgett testified at trial he did so on behalf of the Government in open Court, hence when Mr. Madgett testified that evidence

exists (documenting the basis for the approval of the transaction at issue) which the Government never requested or obtained, the Government became aware of such evidence and thus was obligated to collect and learn of it. Their failure to collect or learn of the evidence was a *Brady* violation and violated Applicant`s right to the Due Process Clause because Government deprived him of his Constitutional right to liberty without considering all available evidence or undertaking an independent investigation on the transaction at issue prior to commencing this prosecution. *See* also *U.S. v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).[1]

Given the extraordinary circumstances highlighted above. A Stay of enforcement of Judgment(s) is warranted as a matter of public interest to promote the rule of law and emphasize conformity and uniformity with the law and Constitution and to avoid continued attack on the civil rights and liberties of criminal defendants.

CONCLUSION

The application for Stay of enforcement of Judgment of Conviction and Sentence should be granted.

Dated: White Deer, Pennsylvania,
July 26, 2021

Respectfully submitted
/s/ Raheem J. Brennerman

RAHEEM JEFFERSON BRENNERMAN
Reg. No. 54001-048
FCI Allenwood Low
White Deer, Pa. 17887-1000

[1] Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligation, either on the basis of a Due Process violation or under the Court`s inherent supervisory powers, including when the Government belatedly disclosed Jencks Act materials. E.g., *U.S. v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).

APPENDIX

APPENDIX A

Order of the United States Court of
Appeals for the Second Circuit in
United States v. Brennerman, No. 18-3546 Cr.
(Affirming Conviction and Sentence)

18-3546(L)
United States v. Raheem Brennerman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 9th day of June, two thousand twenty.

Present: ROSEMARY S. POOLER,
REENA RAGGI,
WILLIAM J. NARDINI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 18-3546, 19-497

RAHEEM BRENNERMAN,
AKA JEFERSON R. BRENNERMAN,
AKA AYODEJI SOETAN,

Defendant-Appellant.

Appearing for Appellant: John C. Meringolo, Meringolo & Associates, P.C., Brooklyn, N.Y.

Appearing for Appellee: Danielle R. Sassoon, Assistant United States Attorney (Nicholas Roos, Robert B. Sobelman, Matthew Podolsky, Assistant United States Attorneys, *on the brief*), *for* Geoffrey S. Berman, United

States Attorney for the Southern District of New York, New York, N.Y.

Appeal from the United States District Court for the Southern District of New York (Sullivan, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is **AFFIRMED**.

Defendant-Appellant Raheem Brennerman appeals from the February 12, 2019, amended judgment of conviction entered in the United States District Court for the Southern District of New York (Sullivan, *J.*), sentencing him principally to 144 months' imprisonment, 3 years' supervised release, forfeiture in the amount of $4,400,000, and restitution in the amount of $5,264,176.19. Following a jury trial, Brennerman was convicted of one count of conspiracy to commit bank and wire fraud, in violation of 18 U.S.C. § 1349; one count of bank fraud, in violation of 18 U.S.C. §§ 1344 and 2; one count of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2; and one count of visa fraud, in violation of 18 U.S.C. § 1546(a). We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

On appeal, Brennerman argues: (1) there was insufficient evidence to convict him on the conspiracy count, the substantive bank fraud count, and the substantive wire fraud count; (2) the government made an impermissible constructive amendment to the indictment; (3) the search warrant for Brennerman's Las Vegas apartment was unlawful; (4) the admission of the testimony of Julian Madgett violated Brennerman's constitutional rights; (5) the district court erred by applying a two-offense level enhancement for obstruction of justice, pursuant to U.S.S.G. § 3C1.1; and (6) the district court incorrectly determined the restitution amount.

I. Sufficiency of the Evidence

A defendant challenging the sufficiency of the evidence bears a "heavy burden," *United States v. Gaskin*, 364 F.3d 438, 459 (2d Cir. 2004), as the standard of review is "exceedingly deferential," *United States v. Hassan*, 578 F.3d 108, 126 (2d Cir. 2008). Ultimately, "the task of choosing among competing, permissible inferences is for the [jury], not for the reviewing court." *United States v. McDermott*, 245 F.3d 133, 137 (2d Cir. 2001).

Brennerman argues there was insufficient evidence to convict him of a conspiracy. He argues the jury could not have adduced the existence of an agreement because the record does not contain a single response from Peter Aderinwale, the purported co-conspirator with whom Brennerman corresponded over email. His argument is both factually and legally flawed. First, the record did contain two responsive emails from Aderinwale concerning draft emails to be sent to ICBC as part of the scheme. Second, a response from an alleged co-conspirator following conspiratorial communication is not legally necessary to establish the existence of a conspiracy. We agree with the government that a reasonable jury could infer the requisite intent from emails in which Brennerman solicited Aderinwale's input on aspects of the fraud scheme and from Brennerman's transfer of substantial scheme proceeds to Aderinwale. These facts would have supported the inference that Aderinwale was a co-conspirator, even in the absence of any email

response from Aderinwale. The jury would have been entitled to infer that Aderinwale's responses had been conveyed over the phone or in person. "This is so because a conspiracy by its very nature is a secretive operation, and it is a rare case where all aspects of a conspiracy can be laid bare in court with the precision of a surgeon's scalpel." *United States v. Pitre*, 960 F.2d 1112, 1121 (2d Cir. 1992) (internal quotation marks and citation omitted). Thus, viewing the evidence in the light most favorable to the government, we find there was sufficient evidence from which the jury could have reasonably inferred the existence of a conspiracy.

Brennerman also argues that there was insufficient evidence that he intended to defraud an institution insured by the Federal Deposit Insurance Corporation ("FDIC") as required for bank fraud, because most of the evidence offered at trial showed that he targeted the Industrial and Commercial Bank of China's London branch ("ICBC"), which is not FDIC-insured. Contrary to Brennerman's assertions, however, the record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based on false representations about his citizenship, assets, and the nature and worth of his company. Indeed, the government argued just this theory on summation, asserting that Brennerman was guilty of bank fraud because "he engaged in a scheme to defraud Morgan Stanley" through lies told to a Morgan Stanley employee, which were "all part of an attempt to defraud an FDIC-insured institution." App'x at 1709-10. Defense counsel in summation also emphasized that Morgan Stanley was the sole FDIC-insured institution involved. And the district court instructed the jury on the proper elements of bank fraud, including the FDIC-insured institution element. Brennerman's challenge, therefore, is foreclosed by "the law's general assumption that juries follow the instructions they are given," which applied here would indicate that the jury properly accounted for the evidence related to Morgan Stanley when convicting Brennerman of the bank fraud count. *United States v. Agrawal*, 726 F.3d 235, 258 (2d Cir. 2013).

As to the wire fraud count, Brennerman argues there was insufficient evidence to establish a domestic violation of the statute. "[W]ire fraud involves sufficient domestic conduct when (1) the defendant used domestic mail or wires in furtherance of a scheme to defraud, and (2) the use of the mail or wires was a core component of the scheme to defraud." *Bascuñán v. Elsaca*, 927 F.3d 108, 122 (2d Cir. 2019). We conclude that the evidence here was sufficient. The record at trial established that Brennerman used domestic wires to carry out the fraudulent scheme. Indeed, he concedes that he used telephone lines and email in the United States to make fraudulent representations in furtherance of the scheme. In addition, the account to which ICBC wired the loan money was a Citibank account within the United States, and Brennerman subsequently moved that money to domestic accounts. This is precisely the kind of use of domestic wires that we have held sufficient under the wire fraud statute. *See, e.g.*, *United States v. Kim*, 246 F.3d 186, 190 (2d Cir. 2001).

II. Constructive Amendment

An impermissible constructive amendment occurs only when the government's proof and the trial court's jury instructions "modify essential elements of the offense charged to the point that there is a substantial likelihood that the defendant may have been convicted of an offense

other than the one charged by the grand jury." *United States v. Vebeliunas*, 76 F.3d 1283, 1290 (2d Cir. 1996) (internal quotation marks and citation omitted).

Brennerman contends that the government constructively amended counts one and two of the indictment by proving a fraud against Morgan Stanley at trial—while the indictment, especially the speaking part, focuses on the fraud against ICBC. We disagree. It is clear from the indictment that the scheme against ICBC was merely one target of Brennerman's alleged fraud. The indictment alleged that Brennerman's scheme in fact targeted "several financial institutions around the world, including in the United States." App'x at 39. It also specifically alleged that Brennerman defrauded an FDIC-insured financial institution. The indictment did not limit the proof only to Brennerman's scheme against ICBC. While the indictment discusses ICBC activity at length, it makes clear that those allegations are illustrations, asserting that "[b]eginning in or about January 2013, [Brennerman] made similar [false] representations to other financial institutions in an effort to induce those institutions to provide financing to Blacksands Pacific and Blacksands Alpha." App'x at 42. At trial, the government offered evidence that Morgan Stanley was one of those "other financial institutions." *See* App'x at 608-09 (testimony of Morgan Stanley's Kevin Bonebrake about a January 2013 telephone call with Brennerman discussing financing to develop oil asset). Thus, there was not a "a substantial likelihood that the defendant may have been convicted of an offense other than the one charged by the grand jury." *Vebeliunas*, 76 F.3d at 1290.

III. Search Warrant

Brennerman challenges the lawfulness of the search warrant of his Las Vegas apartment. Even assuming, for the sake of argument only, that the search warrant was unlawful, we conclude that the good faith exception to the Fourth Amendment's exclusionary rule would apply. We therefore need not address the propriety of the search warrant. The district court found that the law enforcement agents who executed the warrant reasonably relied on its terms in good faith, and Brennerman has not challenged this finding. Where, as here, evidence is obtained by police officers executing the search "in objectively reasonable reliance" on a warrant, the good faith exception to the exclusionary rule applies. *United States v. Falso*, 544 F.3d 110, 125 (2d Cir. 2008) (internal quotation marks and citation omitted).

IV. Testimony of Julian Madgett

Brennerman argues that Julian Madgett's testimony at trial violated due process and his Sixth Amendment rights to confrontation and compulsory process because he was unable to obtain certain exculpatory personal notes from Madgett, and the government would not turn the notes over or otherwise retrieve them from ICBC.

The government has an obligation under the Due Process Clause to make a timely disclosure of any exculpatory or impeaching evidence that is material and in its possession. *See Brady v. Maryland*, 373 U.S. 83 (1963); *see also Giglio v. United States*, 405 U.S. 150 (1972). Additionally, the Jencks Act provides that, "[a]fter a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement . . . of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified." 18 U.S.C. § 3500(b).

Brennerman's argument claiming constitutional violations as a result of Madgett's testimony is without merit. The government's discovery and disclosure obligations extend only to information and documents in the government's possession. *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998) (explaining that the *Brady* obligation applies only to evidence "that is known to the prosecutor"). The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligation. Nor was the government under any obligation under the Jencks Act to collect materials about Madgett that were not in the government's possession. *See United States v. Bermudez*, 526 F.2d 89, 100 n.9 (2d Cir. 1975).

Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17, never made a timely request for a deposition under Federal Rule of Criminal Procedure 15, and never asked the district court to issue letters rogatory pursuant to 28 U.S.C. § 1781 to obtain documentary evidence or secure testimony from the United Kingdom where ICBC maintains its records. The only indication that such documents are extant comes from Brennerman's bare assertions.

V. Sentence

At sentencing, the court applied a two-offense level enhancement for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, a finding that relied on, as an alternative basis, Brennerman's false representations in his bail applications to the court. Brennerman argues that those misrepresentations cannot support an obstruction of justice enhancement because the misstatements "were at most minimally connected to the offense conduct in this case and did not obstruct the prosecution in any meaningful way." Appellant's Br. at 54. However, this argument has already been rejected by our Court in *United States v. Mafanya*, 24 F.3d 412, 415 (2d Cir. 1994) ("Appellant's false statement to a judicial officer (the magistrate judge) was an attempt to obstruct justice. Therefore, the district court properly Applied the [Section 3C1.1] enhancement . . . ."). Accordingly, the district court did not err in applying the enhancement.

VI. Restitution

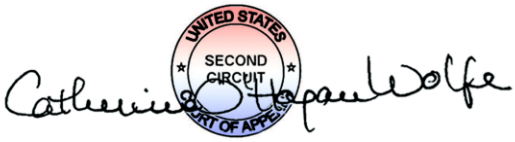
The Mandatory Victims Restitution Act of 1996 ("MVRA") provides that "[i]n each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A). "[A]t sentencing, the government bears the preponderance burden of proving actual loss supporting a restitution order." *United States v. Rutigliano*, 887 F.3d 98, 109 (2d Cir. 2018). "[W]e review a district court's order of restitution under the MVRA for abuse of discretion." *United States v. Zangari*, 677 F.3d 86, 91 (2d Cir. 2012).

Brennerman argues that the district court improperly imposed restitution in the full amount of the $5 million ICBC loan even though Brennerman had already made a payment of $446,466.13. But the testimony at trial established that ICBC released approximately $4.4 million to Brennerman and the rest was used to finance loan servicing fees. The $446,466.13

paid to ICBC by Brennerman was an interest-only payment that did not reduce the $5 million principal owed. Therefore, ICBC's loss of $5 million as a result of the fraud was supported, and Brennerman points to nothing that undermines the district court's finding.

We have considered the remainder of Brennerman's arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



APPENDIX B

Judgment of Conviction and Sentence
United States District Court for the Southern District of N.Y.
in *United States v. Brennerman*, No. 17 Cr. 337

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
Raheem Brennerman

JUDGMENT IN A CRIMINAL CASE

Case Number: 17-cr-337

USM Number: 54001-048

Scott Tulman
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) 1, 2, 3, and 4 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to commit bank fraud and wire fraud	6/1/2017	One
18 U.S.C. § 1344	Bank Fraud	6/1/2017	Two
18 U.S.C. § 1343	Wire Fraud	6/1/2017	Three

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/19/2018
Date of Imposition of Judgment

Signature of Judge

Richard J. Sullivan, U.S.C.J., Sitting by Designation
Name and Title of Judge

11/19/2018
Date

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1546(a)	Visa Fraud	6/1/2017	Four

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

144 months on Counts One, Two, and Three, and 120 months on Count Four, to run concurrent with each other and to run consecutive to the two year sentence imposed by Judge Kaplan in 17-cr-155.

☑ The court makes the following recommendations to the Bureau of Prisons:

that Defendant be sentenced to a facility in California.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 years, to run concurrent on all counts.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

ADDITIONAL SUPERVISED RELEASE TERMS

You must submit your person, residence, place of business, vehicle, and any property or electronic devices under your control to a search on the basis that the probation officer has reasonable suspicion that contraband or evidence of a violation of the conditions of your probation/supervised release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. You must inform any other residents that the premises may be subject to search pursuant to this condition.

You shall not open any new lines of credit, take out any mortgages, open any credit card accounts, or otherwise assume new debt without the permission of the United States Probation Office. You must provide the probation officer with access to any requested financial information.

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 400.00	$	$	$

☑ The determination of restitution is deferred until 2/18/2019 . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☑ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Raheem Brennerman
CASE NUMBER: 17-cr-337

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
Defendant shall forfeit $4,400,000 as substitute assets reflecting Defendant's proceeds from this offense.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C

Motion and Order of the United States
District Court for the Southern District of N.Y.
in *United States v. Brennerman*, No. 17 Cr. 337
(EFC Nos. 71; 167; 248; 250; 254; 256)

THOMPSON HINE
ATLANTA CLEVELAND DAYTON WASHINGTON, D.C.
CINCINNATI COLUMBUS NEW YORK

November 29, 2017

Via ECF and Email

Hon. Richard J. Sullivan
Thurgood Marshall
United States Courthouse, Room 905
40 Foley Square
New York, NY 10007

Re: *United States v. Raheem J. Brennerman*; No. 17 Cr. 337 (RJS)

Dear Judge Sullivan,

We write to address the issue raised today with respect to the production of certain documents. Specifically, we learned today that that the notes of the Government's witness, Julian Madgett, pertaining to matters to which he testified, were not obtained by the Government, or provided to the defense. For the reasons detailed below, it is our position that the materials should have been produced pursuant to Fed. Rule Crim. P. 16 and the Jencks Act, 18 U.S.C. § 3500; in addition, the defendant is serving a subpoena on counsel for this witness, Paul Hessler, for their production and the production of other documents.

The Government has asserted that Mr. Madgett's notes – made by the alleged victim and pertaining to the precise subject matter at issue in this trial – are not in its actual "possession," and therefore it has no obligation to produce them. But possession is not so narrowly defined. Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively" possesses it. *E.g.*, *United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); *cf. Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that, to satisfy *Brady* and *Giglio*, prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case"). In particular, in *United States v. Paternina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith efforts to obtain Jencks Act statements possessed by a third party that had cooperated extensively, and had a close relationship with, the Government. 749 F.2d 993 (2d Cir. 1984). And in *United States v. Stein*, the court directed the Government to produce documents in the actual possession of a third party, KPMG, because KPMG had voluntarily agreed to do so in an deferred prosecution agreement. 488 F. Supp. 2d 350, 361 (S.D.N.Y. 2007) (noting that the term "control" has been "broadly construed"); *see also United States v. Kilroy*, 488 F. Supp. 2d 350, 362 (E.D. Wis. 1981) ("Since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government's files any records which Standard Oil has and

Maranda.Fritz@ThompsonHine.com Fax: 212.344.6101 Phone: 212.908.3966

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THOMPSON HINE

which the Government wants, however, it is not unreasonable to treat the records as being within the Government's control *at least to the extent of requiring the Government to request the records on the defendant's behalf and to include them in its files for the defendant's review if Standard Oil agrees to make them available to the Government*." (emphasis added)).[1]

Here, there can be no question that Mr. Madgett and his employer, ICBC (London) plc ("ICBC"), are in a cooperative relationship with the Government. ICBC is the complainant and alleged victim in this case. Moreover, counsel for ICBC confirmed in the recent criminal contempt trial before Judge Kaplan that ICBC had voluntarily produced more than 5000 pages of documents at the mere request of the Government. And Mr. Madgett is voluntarily appearing as a Government witness. Given this close relationship, and one demonstrating extensive cooperation between Mr. Madgett, ICBC, and the Government, the Government had (and has) an obligation to obtain and produce to Mr. Brennerman materials required by Rule 16 and the Jencks Act. Yet, Mr. Madgett testified today that the Government never asked him for any notes.

Mr. Brennerman therefore moves this Court to direct the Government to request, at a minimum, Mr. Madgett's notes that pertain to the subject matter of this case and his testimony. This is especially necessary given the critical importance of such materials to this case and Mr. Brennerman's defense, as *no* documents have been produced to date that pertain to the critical issue of ICBC's decision-making process with respect to the loan it provided to Mr. Brennerman – i.e., the transaction at the very core of the Government's case.

Additionally, since Mr. Brennerman has been unable to obtain any such materials, and in light of Mr. Madgett's testimony, we are issuing a subpoena directly to ICBC, through its counsel Mr. Hessler, for these records and others.

We are prepared to address these issues at any time convenient to the Court.

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[1] Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligations, either on the basis of a due process violation or under the court's inherent supervisory powers, including where the Government belatedly disclosed Jencks Act materials. *E.g.*, *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).

THOMPSON HINE

Respectfully,

s/ Maranda E. Fritz

Maranda E. Fritz

Enclosures

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America
v.
Raheem J. Brennerman
Defendant

Case No. 1:17-cr-0377-RJS

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

To: Julian Madgett

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:	Courtroom No.:
Southern District of New York 500 Pearl Street New York, New York	15C
	Date and Time: 12/06/2017 9:30 am

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

Please see attached rider.

(SEAL)

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Raheem J. Brennerman, who requests this subpoena, are:

Maranda E. Fritz, Esq.
Brian D. Waller, Esq.
Brian K. Steinwascher, Esq.
Thompson Hine LLP
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
(212) 908-3966
Maranda.Fritz@ThompsonHine.com, Brian.Waller@ThompsonHine.com & Brian.Steinwascher@ThompsonHine.com

Case No. 1:17-cr-0377-RJS

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

RIDER

(Subpoena to Julian Madgett)

Definitions and Instructions:

1. Please produce any documents responsive to this Subpoena by 12/6/2017 at 9:30 am.

2. Please produce requested records in electronic form (native format where necessary to view the material in its full scope) in a manner that is OCR-searchable, and with all available electronic metadata.

3. The term "documents" includes writings, emails, text messages, drawings, graphs, charts, calendar entries, photographs, audio or visual recordings, images, and other data or data compilations, and includes materials in both paper and electronic form.

4. The term "ICBC" refers to the Plaintiff in the civil litigation in the Southern District of New York captioned *ICBC (London) plc v. The Blacksands Pacific Group, Inc.*, 15 Cv. 70 (LAK) and includes its agents, representatives and counsel.

5. The term "Blacksands Pacific" includes The Blacksands Pacific Group Inc. and the Blacksands Pacific Alpha Blue, LLC or any Blacksands Pacific entity and any of its subsidiaries and affiliates, and any officer, employee, volunteer, representative, or agent of those entities.

6. The Subpoena calls for the production of documents from the period January 1, 2013 to March 3, 2017.

7. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

Materials to be Produced:

1. All notes relating to meetings and communications with representatives of Blacksands Pacific.

2. All documents relating to or reflecting the decision by the credit committee at ICBC to issue a bridge loan to Blacksands Pacific including but not limited to the "credit paper" and memorialization of the committee's decision.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

FROM: 54001048
TO:
SUBJECT: Re: LEGAL CORRESPONDENCE -06.20.18
DATE: 06/20/2018 02:25:49 PM

x

Raheem J. Brennerman (54001-048)
Metropolitan Detention Center
P O Box 329002
Brooklyn, New York 11232

Honorable Judge Richard J. Sullivan
United States District Judge
United States District Court
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

June 20, 2018

Re: United States v. Raheem J. Brennerman
Case No: 1:17-cr-337 (RJS)

Dear Judge Sullivan

Defendant Pro Se, Raheem Brennerman ("Brennerman") submits additional evidence to bolster his arguments, which are succinctly highlighted in correspondences dated June 10, 2018 (see 17-cr-337 (RJS), dkt. no. 164), the June 11, 2018 and June 17, 2018 correspondences.

Brennerman submits, Government Exhibit 1-57, e-mail correspondence between Mr. Scott Stout and Brennerman, which highlights the e-mail signature of Scott Stout and the Beverly Hills, California address of Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank); Government Exhibit 1-57A, the account opening form, which highlights "Morgan Stanley Smith Barney (not Morgan Stanley Private Bank)" at the top right corner of the form; Government Exhibit 1-73, e-mail between Scott Stout and Brennerman, which highlights Brennerman`s alleged fraud - the perks which he became entitled to, however more important, page two of the e-mail correspondence highlights within the "Important Notice to Recipient" in relevant parts that "The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"); Government Exhibit 529, the Morgan Stanley account statement, which highlights Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank) at the bottom left corner of the bank statement cover page. Additionally Brennerman submits the profile of Mr. Scott Stout which highlights that Mr. Scott Stout worked at Morgan Stanley Wealth Management between May 2011 and November 2014, as well the announcement on September 25, 2012 by Morgan Stanley Smith Barney LLC stating in relevant parts that "Morgan Stanley Smith Barney is now Morgan Stanley Wealth Management.

These evidence are important to highlight that Brennerman interacted with Morgan Stanley Smith Barney LLC which is indisputably not FDIC insured and thus the essential element necessary to convict for bank fraud in violation of 18 United States Code Section 1344(1) and its related conspiracy - conspiracy to commit bank fraud in violation of 18 United States Code Section 1349 cannot be satisfied and Brennerman`s relief for judgment of acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure should be granted, and that Government failed to conduct the necessary diligence or investigation prior to indicting and prosecuting Brennerman.

Brennerman highlights the following as to the wire fraud charge and its related conspiracy. Brennerman was charged in two criminal cases - criminal contempt of court in case no. 17-cr-155 (LAK), before Hon. Judge Lewis A. Kaplan and the related fraud case in case no. 17-cr-337 (RJS), before Hon. Richard J. Sullivan, both stemming from the underlying civil case, case no. 15 cv 70 (LAK) captioned - ICBC (London) PLC v. The Blacksands Pacific Group, Inc before Hon. Judge Lewis A. Kaplan. Because the trial in the case before Judge Kaplan was scheduled ahead of that before this court, Brennerman sought to obtain the relevant ICBC London lending and underwriting file which is probative as to materiality an essential element of the charged crime of wire fraud and its related conspiracy. Because Brennerman`s request to both the government and directly to ICBC (London) PLC had been denied, Brennerman sought to compel for the relevant files through U.S District Court (S.D.N.Y), since the criminal cases stemming from the ICBC (London) PLC transaction were being prosecuted at the U.S District Court (S.D.N.Y), however Brennerman`s request to U.S District Court (S.D.N.Y) was denied (see 17-cr-155 (LAK), dkt. no. 76). Deprived of the relevant files necessary to cross-examine any government witness as to substance or credibility, Brennerman moved in his motion-in-limine and reply to Government`s motion-In-limine, prior to trial of the related fraud charge, for U.S District Court (S.D.N.Y) to exclude the testimony of any witness from ICBC (London), because such testimony will be highly

prejudicial and unfair to Brennerman as government will simply be allowed to present any witness, who will be able to say anything without corroboration and without Brennerman having the opportunity to cross-examine him as to substance or credibility, as Brennerman would not have been able to review the relevant lending and underwriting files. Moreover, he will be unable to assert his good faith defense, thus violating Brennerman`s constitutional rights to a fair trial.

Even after trial, Brennerman has presented evidence to highlight that Mr. Robert Clarke (not Mr. Julian Madgett) was responsible for the relevant transaction at ICBC (London) PLC as evidenced through his affidavit in the underlying civil case at 15 cv 70 (LAK). (See copy of Robert Clarke affidavit at, (17-cr-337 (RJS), dkt. no. 164, exhibit 2). Additionally Brennerman submitted evidence - Government Exhibit 1-19 and 1-22 which highlights that Blacksands had already incurred and disbursed $6.45 million in satisfying the finance conditions of ICBC (London) PLC and that the bridge finance was agreed to replace part of those funds which Blacksands already disbursed, further that Brennerman informed both Mr. Bo Jiang and Mr. Julian Madgett at ICBC (London) PLC and ICBC (London) PLC agreed to the use of the bridge finance. (See 17-cr-337 (RJS), dkt. no. 164, exhibit 2). Among others, Brennerman submitted newly discovered evidence (see 17-cr-337 (RJS), dkt. no. 164, exhibit 3) - the 2017 ICBC (London) PLC financial and company disclosure which was made publicly available on June 6, 2018, after trial. The disclosure highlights that there was no fraud. Because ICBC (London) PLC, the alleged victim of the wire fraud and related conspiracy has made no disclosure, representation or announcement that the transaction involving Blacksands Pacific was fraudulent or that it became a victim of fraud due to the transaction with Blacksands. Notwithstanding, that ICBC (London) PLC, a financial institution and publicly traded company in United Kingdom (England and Wales) is mandated by regulations to disclose publicly, if it became a victim of fraud or became involved with fraudulent transaction. This is particularly significant, where Government never reviewed, adduced or presented the relevant ICBC London lending and underwriting files, and because Brennerman was deprived from engaging in any meaningful cross-examination of the sole witness presented by Government from ICBC (London) PLC as to credibility and substance. In addition to the fact that, the sole witness - Mr. Julian Madgett, is not a member of the credit committee responsible for approving the transaction at ICBC (London) PLC.

Thus, Brennerman submits, arguing that since Government ostensibly argued (although erroneously) that Scott Stout worked at Morgan Stanley Private Bank (instead of Morgan Stanley Smith Barney) in their opposition to his Rule 29 and 33 motion. (See 17-cr-337 (RJS), dkt. no. 149), now highlighted as an erroneous proffer by Government given the overwhelming evidence which were all available to Government. Government`s credibility is questionable; further that, because Brennerman was deprived of the relevant ICBC London lending and underwriting file prior to trial and even Government concedes that it had not reviewed the files; additionally, because Robert Clarke and not Julian Madgett is/was responsible for the relevant transaction at ICBC (London) PLC as highlighted through his affidavit; additionally, because Brennerman suffered for ineffective assistance of counsel due to the conflict of interest issue, with his trial counsel; additionally, because Brennerman submitted and highlighted newly discovered evidence - the 2017 financial and company disclosure, by ICBC (London) PLC, which was filed and made public on June 6, 2018. Brennerman respectfully requests and pleads for the Court to resolve the factual dispute as to the relevant ICBC London transaction with Blacksands Pacific, as it pertains to this case, by reviewing the relevant ICBC London lending and underwriting files, especially in light of the newly discovered evidence which demonstrates that, ICBC (London) PLC, the alleged victim has not disclosed or represented that the transaction with Blacksands was fraudulent or that it became a victim of fraud through the transaction with Blacksands, which it would have had to disclose by regulation if any fraud occurred.

The above presents significant issues, because Brennerman suffered prejudicial spillover on other counts of the charged crime, due to Government`s erroneous argument and presentment to the court and jury at trial. In addition, Brennerman suffered prejudice due to the conflict of interest issue with his trial counsel. Evidence submitted to date, supports, Brennerman`s pleading for a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Brennerman submits the above and the appended evidence in addition to his submissions at (dkt. no. 164), his June 11, 2018 and June 17, 2018 correspondences, and awaits the Court`s decision

Dated: June 20, 2018
New York City, New York

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman
Defendant Pro Se

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: BRENNERMAN R. J@Executive Office
Subject: Re: Morgan Stanley (Wealth Management)
Date: Tuesday, January 8, 2013 9:09:49 AM
Attachments: Morgan Stanley (Client Profile).pdf
Importance: High

Dear Scott,

As discussed, attached is the completed forms, as advised the account will be in the corporate name however you wanted me to also complete a form with personal information. As discussed, I will require Debit Card and AMEX card with the account.

Please let know what are the next steps.

Best Regards

From: Stout, Scott
Sent: Monday, December 10, 2012 1:10 PM
To: mailto:rbrennerman@blacksandspacific.com
Subject: RE: 2013 Preparation

Hi RJ,

Just a reminder to get those forms to me so I can get everything in order prior to our lunch on Friday.

Thanks,
Scott

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

http://www.morganstanley.com/fa/scott.stout
scott.stout@morganstanley.com

GOVERNMENT EXHIBIT 1-57 17 Cr. 337 (RJS)

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

Morgan Stanley SmithBarney

Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name KAREN JEFFERSON BRENNERMAN

Address 245 PARK AVENUE, 37 FL

City NEW YORK State NEW YORK Zip Code 10167

Home Phone _____ Business _____

Cell 917 699 6430 Fax 310 861 1057

SS# or Tax ID [redacted] US Citizen (Y) N

Marital Status SINGLE #of Dependents N/A Date of Birth 04/21/78

E-mail Address kbrenneman@blacksandpacific.com

Telephone access Prompts **Mother's Maiden Name** _____

City of Birth _____ **or 1st School Attended** DWIGHT

Employer BLACKSAND PACIFIC ENERGY CORPORATION

Nature of Business OIL & GAS Occupation OIL & GAS EXECUTIVE

Est. Annual Compensation $ 720K (BASE SALARY) Employed Since 2010

Primary Source of Income-Check all that apply

Annual Salary X Investments X Retirement Assets ____ Amount $ _____

Est. Total Annual Income (all sources) _____

Est. Liquid Net Worth $ 45M Est. Total Net Worth $ _____

Tax Bracket (percentile) _____

Investment Objectives: (*Please rank 1 through 4, in order of priority*)

Growth 1X Current Income 3 Tax Deferral 4 Liquidity X 2

Investing Since (*year*) Stocks 99 Bonds 99 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive ___ Moderate X Conservative ___

Speculation Yes ____ No ____

Primary Financial Need: (circle one)

(Wealth Accumulation) Major Purchase Healthcare Education
Estate Planning Retirement Charity Income

Outside Investments: **Firms Used:** _____
Equities $ _____ **Fixed Income $** _____ **Cash$** _____ **Alt Investments** _____
Time Horizon _____ **Liquidity Needs** _____

Are you or anyone in your household a major share holder in a publicly traded company? Y (N)
Are you an executive of a publicly traded company? Y (N)
Do you or anyone in your immediate family work for a brokerage house? Y (N)
Is anyone in your immediate family employed by CitiGroup? Y (N)

1/5/13

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

GOVERNMENT EXHIBIT 1-57A
17 Cr. 337 (RJS)

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

MorganStanley SmithBarney

Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name JEFFERSON III HOLDINGS LLC

Address 3960 HOWARD HUGHES PARKWAY, SUITE 500

City LAS VEGAS State NEVADA Zip Code 89169

Home Phone _____ Business _____

Cell 917 699 6430 Fax _____

SS# or Tax ID [redacted] US Citizen (Y) N

Marital Status N/A #of Dependents _____ Date of Birth _____

E-mail Address _____

Telephone access Prompts **Mother's Maiden Name** _____

City of Birth _____ or **1st School Attended** DWIGHT

Employer _____

Nature of Business INVESTMENTS Occupation _____

Est. Annual Compensation $_____ Employed Since _____

Primary Source of Income-Check all that apply

Annual Salary____ Investments____ Retirement Assets____ Amount $_____

Est. Total Annual Income (all sources)_____

Est. Liquid Net Worth $_____ Est. Total Net Worth $_____

Tax Bracket (percentile)_____

Investment Objectives: (*Please rank 1 through 4, in order of priority*)

Growth 1 Current Income 2 Tax Deferral 3 Liquidity 4

Investing Since (*year*) Stocks 99 Bonds 99 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive ___ Moderate X Conservative ___

Speculation Yes_____ No_____

Primary Financial Need: (circle one)

Wealth Accumulation (Estate Planning) Major Purchase Retirement Healthcare Charity Education Income

Outside Investments: **Firms Used:** _____

Equities $_____ **Fixed Income $**_____ **Cash$**_____ **Alt Investments**_____

Time Horizon _____ **Liquidity Needs** _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N
Are you an executive of a publicly traded company? Y N
Do you or anyone in your immediate family work for a brokerage house? Y N
Is anyone in your immediate family employed by CitiGroup? Y N

1/5/13

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: Gevarter, Mona
Subject: Re: Platinum AMEX
Date: Wednesday, January 9, 2013 7:24:39 PM
Importance: High

Dear Mona,

Are you able to call me on my cellphone 917 699 6430 regarding the email below

Best Regards

From: Stout, Scott
Sent: Wednesday, January 09, 2013 4:45 PM
To: mailto:rbrennerman@blacksandspacific.com
Cc: Gevarter, Mona
Subject: Platinum AMEX

RJ,

Please give Mona a call to set up your Platinum AMEX card. 310 205 4751.

As a Morgan Stanley perk, if you spend $100k annually we deposit $500 into your account to cover your annual fee ($450).

Other MS/Platinum Perks Include:

- First Class Lounge Access
- $200 annually in airline fee credits (checking bags, etc)
- No foreign transaction fees
- Premium upgrades for car rentals
- Concierge
- 20% Travel Bonus

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

http://www.morganstanley.com/fa/scott.stout
scott.stout@morganstanley.com

Please do not use e-mail to request, authorize or effect the purchase or sale of any security or commodity. Unfortunately, we cannot execute such instructions provided in e-mail. Thank you.

SDNY_008384

Morgan Stanley

CLIENT STATEMENT | For the Period January 1-31, 2013

#BWNJGWM

RAHEEM JEFFERSON BRENNERMAN
245 PARK AVENUE
39 FLOOR
NEW YORK NY 10167-4000

TOTAL VALUE LAST PERIOD (as of 12/31/12)	☐
NET CREDITS/DEBITS	200,000.00
CHANGE IN VALUE	0.88
TOTAL VALUE OF YOUR ACCOUNT (as of 1/31/13)	**$200,000.88**

(Total Values include accrued interest)

Your Branch
9665 WILSHIRE BLVD STE 600
BEVERLY HILLS, CA 90212
Telephone: 310-285-2600
Alt. Phone: 800-458-9838
Fax: 310-285-2696

Your Financial Advisor
Scott Stout

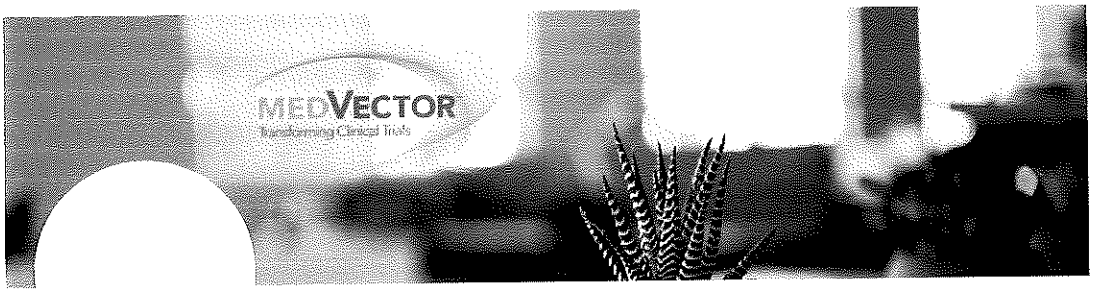
Client Interaction Center
800-869-3326
24 Hours a Day, 7 Days a Week

Access your accounts online
www.morganstanley.com/online

GOVERNMENT EXHIBIT 529
17 Cr. 337 (RJS)

Morgan Stanley Smith Barney LLC. Member SIPC.

197 - 012515 - 054 - 1 - 0



Scott Stout • 3rd

CEO, Co-Founder at MedVector Clinical Trials

El Segundo, California

Invite

MedVector Clinical Trials

University of Arizona

See contact info

500+ connections

MedVector's mission is to advance medicine by streamlining the clinical trial industry. We provide Pharmaceutical & Biotech companies, Contract Research Organizations (CRO) and research institutes a global patient network, which enables them to quickly identify clinical trial candidates, exponentially im...

Show more

Experience

CEO & Co-Founder
MedVector Clinical Trials
Jun 2017 – Present • 1 yr 1 mo
El Segundo, CA

MedVector's mission is to advance medicine by streamlining the clinical trial industry. We provide Pharmaceutical & Biotech companies, Contract Research Organizations (CRO) and research institutes a global patient network utilizing Telemedicine. This enables researchers to quickly identify and connect to more clinical trial candidates, exponentially improving time to market.

Once suitable candidates have been identified, MedVector connects our research clients to trial participants utilizing a state of the art, HIPAA compliant, telemedicine network, allowing them to virtually move patients to clinical trial site-locations from anywhere in the world.

Our process allows clinical trial sites (locations) to capture marketshare, creates economies-of-scale by removing redundancies in the current marketplace, creates revenue for hospitals not conducting clinical trials, gives remote populations access to cutting edge medicine, and significantly expedites the process of bringing life saving, advanced medicine to market.

To learn more visit: www.MedVectorTrials.com

Financial Advisor
Wells Fargo Private Bank
Oct 2014 – Apr 2018 • 3 yrs 7 mos
Los Angeles, California

Built a Wealth Management team within the Private Bank, incorporting Wealth Managers, Portfolio Managers, Private Bankers and Financial Advisors.

Financial Advisor
Morgan Stanley Wealth Management
May 2011 – Nov 2014 • 3 yrs 7 mos
Beverly Hills

D & S Investments
Jan 2008 – May 2011 • 3 yrs 5 mos

Advised a Family Office regarding options strategy.

Education

University of Arizona
Bachelor of Science (BS), Marketing
1997 – 2002
Activities and Societies: Delta Chi

Interests

University of Arizona
214,411 followers

MedVector Clinical Trials
4 followers

University of Arizona Alumni
34,140 members

Barrington Legal, Inc.
40 followers

Delta Chi Fraternity
5,471 members

Fortis Partners
1,045 followers

See all

Morgan Stanley Smith Barney is Now Morgan Stanley Wealth Management

Sep 25, 2012

Morgan Stanley's U.S. Wealth Management Business Has a New Name Following Largest-Ever Integration in the Wealth Management Industry

New York —

Morgan Stanley (NYSE: MS) today announced that its U.S. wealth management business, Morgan Stanley Smith Barney, has been renamed Morgan Stanley Wealth Management (MSWM).

Morgan Stanley Wealth Management is an industry leader, managing $1.7 trillion in client assets through a network of 17,000 representatives in 740 locations. Morgan Stanley on September 11 announced an agreement with Citigroup to increase its majority ownership of MSWM such that Morgan Stanley will assume full control by June of 2015, subject to regulatory approval. The business was formed in 2009 as a joint venture between Morgan Stanley and Citi's Smith Barney.

"Today, as we move under one name, we are culminating a three-year effort to integrate two outstanding franchises," said James Gorman, Chairman and Chief Executive Officer of Morgan Stanley. "The Smith Barney name stood for investment excellence for three-quarters of a century, and Morgan Stanley Wealth Management will provide the first-class service that has distinguished Morgan Stanley as a firm for more than 75 years. Going forward, we remain focused on being the world's premier wealth management group."

Said Greg Fleming, President of Morgan Stanley Wealth Management, "Today, we are one integrated business, with one overarching mission: to earn the trust of our clients every day

through superior advice and execution. Our name has changed to reflect our integration, but our mission remains the same: We are committed to helping our clients reach their financial goals."

The broker-dealer designation for Morgan Stanley Wealth Management will remain "Morgan Stanley Smith Barney LLC."

Morgan Stanley Wealth Management, a global leader in wealth management, provides access to a wide range of products and services to individuals, businesses and institutions, including brokerage and investment advisory services, financial and wealth planning, credit and lending, cash management, annuities and insurance, retirement and trust services.

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Raheem J. Brennerman
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PRESENCE OF INMATE
P. O. Box 1000
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Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

November 3, 2020

BY E-MAIL & CERTIFIED FIRST CLASS MAIL
Email: Temporary_Pro_Se_Filing@nysd.uscourts.gov

Re: United States v. Brennerman
Case No. 1:17-cr-337 (RJS)
REQUEST FOR EVIDENCE REQUIRED FOR COMPASSIONATE RELEASE
(PURSUANT TO 18 U.S.C.S. 3582(c)(1)(A))

Dear Judge Sullivan:

Defendant Pro Se, Raheem J. Brennerman ("Brennerman") respectfully submits this letter motion and will move this Court - United States District Court for the Southern District of New York, pursuant to Federal Rule of Civil Procedure 28 United States Code Section 1782 (28 U.S.C.S. 1782) and in reliance on the Second Circuit promulgation in "In re del Valle Ruiz, 939 F.3d 520 (2d Cir. 2019)" for an order and/or such disposition compelling ICBC (London) PLC and ICBC London Branch ("ICBC London") at 81 King William Street, London, EC4N 7BG, United Kingdom for pertinent evidence relating to the bridge loan transaction between ICBC (London) PLC and The Blacksands Pacific Group, Inc., ("Blacksands") and Blacksands Pacific Alpha Blue, LLC ("BSPAB") including but not limited to: (a.) Complete underwriting file comprising of the Credit Application including all notes and internal communication relating to the submission of the credit application to the credit committee; (b.) Sanction (Approval) of the credit application by the credit committee including all notes and internal communication relating to the approval thereof; (c.) All settlement discussion and negotiations between agents of ICBC London and Blacksands; and (d.) Compel the Government to provide Brennerman, a copy of his birth certificate in their possession, collectively (the "evidence") required by Brennerman to present complete argument and pleading for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A).

The Second Circuit U.S. Court of Appeals in "United States v. Brooker (Zullo), No. 19-3218, 2020 WL 5739712 (2d Cir. Sept. 25, 2020)" held that the First Step Act of 2018 ("FSA") empowers district courts evaluating motions for compassionate release to consider any "extraordinary and compelling reasons" for granting release or a sentence reduction, not just those criteria set forth by the Sentencing Commission in guidelines that have been unmodified since the FSA`s passage. The circuit emphasized that the FSA was intended to expand and expedite compassionate release by allowing defendants to make motions directly to the district courts thus ending the BOP`s role as the "sole arbiter" of such claims and by permitting those courts greater discretion in granting release. Accordingly, the Circuit Court held that the constraints imposed by previously-enacted Sentencing Guideline S 1B1.13 do not apply to compassionate release motions brought to the courts directly by defendants, as opposed to by the BOP.

The Circuit Court further noted that while the Court would be within its right to deem the Guideline "as in effect abolished," it instead would interpret "the Guideline as surviving, but now applying only to those motions that the BOP has made." Because the Guideline does not apply to compassionate release motion brought by defendants, it "cannot constrain district courts' discretion to consider whether any reasons are extraordinary and compelling."

The Circuit Court affirmed the breadth of this sentencing discretion. The Court rejected the Government`s claim that the specific factor at issue in the case, including the defendant`s claim that his initial sentence was excessive, could not qualify as "extraordinary and compelling reasons" to grant compassionate release or a sentence reduction. The Court stressed that a court`s sentencing discretion is broad and that the length of the original sentence, the defendant`s rehabilitation, his youth at the time of the offense, and any other relevant factors, including "the present coronavirus pandemic," may all be considered. Brennerman invokes the length of the original sentence and the present coronavirus pandemic as compelling and extraordinary reasons particularly as he suffers from diabetes, hypertension and BMI (Body Mass Index of 37) all medical vulnerabilities promulgated by the Center for Disease Control and Prevention, thus Brennerman satisfies the threshold for submitting motion for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A).

The text of 18 U.S.C.S. 3582(c)(1)(A) requires the reviewing Court to consider the 3553 factors in considering any motion for Compassionate release. The Court may also find, after considering the factors set forth in 18 U.S.C.S 3553(a) to the extent that they are applicable, that "extraordinary and compelling reasons warrant a reduction" of the defendant`s sentence and that "such reduction is consistence with applicable policy statements issued by the Sentencing Commission[.]" (Id.). The findings required for release include that "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C.S. 3142(g)." U.S.S.G. S 1B1.13(2), p.s. (2018). Thus Brennerman requires the evidence from ICBC London to present complete and comprehensive pleading and argument in respect of the 3553(a) factors for the Court`s consideration for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A).

During trial of the instant case, the Government sole witness from ICBC London, Julian Madgett testified (at 1:17-cr-337 (RJS), Tr. 551-554) that evidence exists (ICBC underwriting files) which document the basis (including representation or alleged misrepresentation which the bank relied upon) for approving the bridge loan at issue in this instant case and that the Government never requested or obtained that evidence thus never provided it to the defendant to use for his defense or to present as mitigating evidence pursuant to Rule 32 of the Federal Rule of Criminal Procedure. The Court acknowledged (at 1:17-cr-337 (RJS), Tr. 617) that Government sole witness, Julian Madgett had testified to the existence of the evidence (ICBC underwriting file) with the bank`s file in London, U.K. Thus, when Government sole witness from ICBC London, Julian Madgett testified in open Court during trial, he did so on behalf of the Government and Government became aware of the existence of the evidence (ICBC underwriting file) particularly where Defendant requested for the evidence (at 1:17-cr-337 (RJS), doc. no. 71) for his defense and requested that the Court compel Government to obtain the evidence from ICBC London and present it to him for his defense, however Government never endeavored to learn of the evidence which was/is in violation of their Brady obligations.

Courts have required the Government to disclose evidence material to the defense when the Government "actually or constructively" possessed it. E.g., United States v. Joseph, 996 F.2d 36, 39 (2d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); cf Kyles v. Whitley, 514 U.S. 410, 437 (1995) (holding that to satisfy Brady or Giglio prosecutors have "a duty to learn of any favorable evidence known to the others acting on the Government`s behalf in the case"). In particular in United States v. Patemina-Vergara, the Second Circuit held that the Government had an obligation to make good faith effort to obtain Jencks Act statements possessed by a third party that had cooperated extensively and had close working relationship with the Government, 749 F.2d 993 (2d Cir. 1984); see also United States v. Kilroy, 488 F. Supp 2d 350, 362 (E.D. Wis. 1981) ("since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government`s files any record which Standard Oil has and which the Government wants, however, is not unreasonable to treat the records as being within the Government`s control at least to the extent of requiring the Government to request the records on the defendant`s behalf and to include them in its files for the defendant`s review if Standard Oil agrees to make them available to the Government." (emphasis added)). See also United States v. Chapman, 524 F.3d 1073 (9th Cir. 2009)

During prior proceedings, Attorney Scott B. Tulman ("Tulman") appointed to represent Brennerman pursuant to the Criminal Justice Act, 18 U.S.C.S. 3006 refused to obtain or present the evidence (ICBC underwriting file) as mitigating evidence pursuant to Rule 32 of the Federal Rule of Criminal Procedure notwithstanding advising Brennerman in writing on September 18, 2018 and October 7, 2018 that he would obtain and present the evidence to argue with respect to the 3553 factors. Tulman later informed Brennerman that he was pressured to not obtain or present the evidence.

After trial, Brennerman made requests to the Court (at 1:17-cr-337 (RJS), doc. nos. 153, 161, 187, 200, 236, 240, 241) for the evidence (ICBC underwriting file and his birth certificate) to present complete post-trial motion(s) in respect of the 3553 factors given that Government sole witness, Julian Madgett had been allowed to testify as to the contents of the evidence (ICBC underwriting file) while Brennerman was deprived of the ability to obtain the evidence to confront the witness against him or present a complete defense at trial, however was denied.

Brennerman now requires the evidence (ICBC underwriting file and his birth certificate) to present a complete, comprehensive and compelling motion for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factors. To deny Brennerman access to the evidence will be highly prejudicial as he would be deprived of the ability to present a complete argument for Compassionate release particularly in light of the Covid-19 pandemic and his medical vulnerabilities which puts him at a heightened risk from serious illness or death should he contract the Coronavirus. The Court has an obligation to protect the Constitutional rights of criminal defendants and Brennerman relies on such obligation in submitting his request.

WHEREFORE, Defendant Pro Se, Brennerman respectfully submits the above and prays that the Court grants his requests in its entirety.

Dated: November 3, 2020
White Deer, PA 17887-1000

RESPECTFULLY SUBMITTED

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

Pro Se Defendant

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: RECONSIDERATION MOTION LETTER - PART I
DATE: 11/08/2020 11:04:49 PM

x

Raheem J. Brennerman
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Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
For the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

November 9, 2020

Regarding: United States v. Brennerman
Case No. 1:17-cr-337 (RJS)
RECONSIDERATION CORRESPONDENCE

Dear Judge Sullivan:

Defendant Pro Se Raheem J. Brennerman ("Brennerman") respectfully submits this correspondence for reconsideration of the denial order (at 1:17-cr-337 (RJS), Dkt. No. 249) and will move this Court for the issuance of subpoena pursuant to Federal Rule of Criminal Procedure 17; request for deposition under Federal Rule of Criminal Procedure 15 and for the issuance of letter rogatory pursuant to 28 U.S.C.S. 1781 to obtain documentary evidence (complete ICBC underwriting file) and testimony from ICBC (London) plc and ICBC London Branch. In addition, other evidence (birth certificate) as requested in the motion (at 1:17-cr-337 (RJS), Dkt. No. 248). This reconsideration is submitted particularly in light of the record (at 1:17-cr-337 (RJS) Trial Tr. 551-554) which the Court previously overlooked.

I. APPLICABLE LAW:

The Standard for granting a motion for reconsideration is strict. "[R]econsideration will generally be denied unless the moving party can point to controlling decision 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). Possible grounds upon which a motion for reconsideration may be granted include "(1) an intervening change in law; (2) the availability of evidence not previously available, and (3) the need to correct a clear error of law or prevent manifest injustice." Shannon v. Verizon New York, Inc., 519 F. Supp 2d 304, 307 (N.D.N.Y. 2007) (citation omitted)

II. DISCUSSION:

The Court is correct in stating that Brennerman, a Pro Se Defendant, misapprehended the true intent of the statute under Section 1782, however the Court overlooked its obligation to protect the Constitutional rights of a criminal defendant, the law and general principle stipulating that "pleadings of Pro Se Defendants are generally liberally construed and held to a less stringent standard than pleadings drafted by an attorney" See Hughes v. Rowe, 449 U.S. 6, 9 (1980) (per curiam); Estelle v. Gamble, 429 U.S. 97 (1976), because Brennerman presented an unambiguous request for evidence (ICBC underwriting file) from ICBC (London) plc and ICBC London Branch located at 81 King William Street, London, United Kingdom, which he requires to argue as to the 3553 factor in his motion for Compassionate release, the Court should have liberally construed his motion under Section 1781 for the issuance of letter rogatory, or any applicable statute necessary to compel for such evidence. Furthermore, the Court has an obligation to protect the Constitutional rights of a criminal defendant however overlooked the various Brady and Constitutional rights violation(s) highlighted instead dedicating its attention to the misapprehension of a statute by a Pro Se defendant rather than construing his pleadings liberally and applying the appropriate statute to his pleadings.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

A. BRENNERMAN`s OFFERED JUSTIFICATION FOR THE INTRODUCTION OF EVIDENCE THAT WAS NOT INTRODUCED AT TRIAL WHICH BRENNERMAN HAS REPEATEDLY REQUESTED NINE (9) TIMES (AT 1:17-cr-337 (RJS), Dkt. Nos. 71, 153, 161, 187, 200, 236, 240, 241, 248):

In reliance on the Sixth Amendment right of the U.S. Constitution, the Supreme Court of the United States promulgated in "Crane v. Kentucky, 476 U.S. 683 (1986)" that a criminal defendant has a Constitutional right to present a complete defense. This holding was adopted by the Second Circuit U.S. Court of Appeals in "Scrimo v. Lee, 935 F.3d 103 (2d Cir. 2019)" However in this instant case, following testimony by Government sole witness from ICBC (London) plc, Julian Madgett (at 1:17-cr-337 (RJS), Trial Tr. 551-554) (see appended excerpt of trial transcript as "Exhibit 1") that evidence (ICBC underwriting file) exists which document the basis for the bank`s approval of the bridge loan transaction which is at issue in this case and which document the representation or alleged misrepresentation which the bank relied upon. Further that, the Government never obtained or reviewed the evidence and thus never provided it to the defendant to use for his defense. Brennerman immediately made request to this Court (at 1:17-cr-337 (RJS), Dkt. No. 71) (see appended copy of letter motion at doc. no. 71 as "Exhibit 2") arguing that he required the evidence (ICBC underwriting file) to present a complete defense however this Court denied his request.

Government sole witness from ICBC (London) plc, Julian Madget testified at trial, doing so on behalf of the Government before this Court and in an open hearing, thus the Government became aware of the evidence (ICBC underwriting file) however Government failed to obtain or learn of the evidence and failed to present the evidence to Brennerman for his defense violating their Brady obligation. Notwithstanding, this Court which has an obligation to protect the Constitutional rights of Brennerman, a criminal defendant, overlooked such failure but instead relied on the erroneous decision by the Second Circuit which imposed a Constitutional impermissible abuse of discretion standard with its review by overlooking the record and law to continue to refuse Brennerman`s request for the evidence.

During trial, Government sole witness from ICBC (London) plc, Julian Madgett was permitted by this Court to testify as to the contents of the evidence (ICBC underwriting file) while Brennerman was deprived of the ability to use the evidence to present a complete defense or confront the witness against him. Because Government witness testified to the content of the evidence (ICBC underwriting file) Brennerman should be provided access to the evidence.

In the present context, this Court will consider the 3553 factors in adjudicating any Compassionate release motion presented by Brennerman while Brennerman is deprived of the evidence (ICBC underwriting file) which he requires to present a complete, comprehensive and compelling argument as to the 3553 factors in his Compassionate release motion.

To-date, the Court has taken every possible step to deprive Brennerman access to the evidence (ICBC underwriting file), initially during trial arguing that the witness, Julian Madgett had testified that the evidence (ICBC underwriting file) was with the bank`s file in London, United Kingdom (see 1:17-cr-337 (RJS), Trial Tr. 617) (see excerpt of trial transcript appended as "Exhibit 3") then after trial arguing that Brennerman was no longer entitled to discovery and now ignoring the record to concur with the erroneous decision by the Second Circuit, that the evidence does not exist beyond Brennerman`s bare assertion. It is inexplicable that a Court which has an obligation to protect the Constitutional rights of a criminal defendant would deliberately deprive the criminal defendant of his Constitutional rights. First, this Court was present at trial when Government sole witness from ICBC (London) plc, Julian Madgett testified (at 1:17-cr-337 (RJS), Trial Tr. 551-554), furthermore, this Court has access to the trial records including the transcript hence it is inexplicable why the Court will engage in an attempt to challenge the existence of the evidence (ICBC underwriting file).

While Brennerman is not entitled to a perfect trial, the law and Constitution entitles him to a fair trial. The appearance of unfairness is prevalent throughout this trial where Government deliberately refused to obtain or learn of the evidence at the core of the transaction being prosecuted and where Government witness was permitted to testify as to the contents of the evidence (ICBC underwriting file) which the Government never independently reviewed and which Brennerman has been deprived and denied access to use for his complete defense or to confront witness(es) against him.

The U.S. Constitution and law affords Brennerman, a criminal defendant, an equal protection of the law. This deliberate endeavor to deprive him of the said evidence (ICBC underwriting file) is simply an endeavor to continually deprive him of his civil and Constitutional right to liberty. In this instant case, Brennerman has repeated the arguments highlighted above, while the Court has continually refused to allow the presentment of the core evidence (the ICBC underwriting file) which will conclusively confirm (beyond the unchallenged testimony from Government sole witness from ICBC (London) plc, Julian Madgett) whether ICBC (London) plc in approving the bridge loan transaction at issue in this prosecution relied on any representation or alleged misrepresentation from Brennerman. It is inconceivable that Brennerman has requested for the evidence (ICBC underwriting file) nine (9) times (at 1:17-cr-337 (RJS), Dkt. Nos. 71, 153, 161, 187, 200, 236, 240, 241, 248) while the Government and the

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

Court have continually refused to allow access to the evidence. The ICBC underwriting file is the sole evidence (emphasis supplied) which would conclusively demonstrate any fraud.

The simple question is why was the evidence not introduced at trial. Given that Brennerman made request to the Court following testimony by Government sole witness, Julian Madgett, that the evidence exists with the bank`s file in London, U.K. The simple conclusion is because the Court denied Brennerman`s request and ignored the Government`s Brady obligation violation while neglecting its obligation to protect Brennerman`s Constitutional rights.

Brennerman now requires the evidence (ICBC underwriting file) to argue as to the 3553 factors which the Court will consider in the adjudication of his motion for Compassionate release. It would be patently unfair and highly prejudicial that the Court will consider the 3553 factors in the adjudication of the Compassionate release while Brennerman is deprived of the ability to use the evidence (ICBC underwriting file) in presenting complete argument(s) as to the 3553 factors.

B. THE RULING AT UNITED STATES v. BRENNERMAN, No. 17-cr-155 (LAK), 2017 WL 4513563, at *2 (S.D.N.Y. Sept 1, 2017):

In relying on the ruling highlighted above, the Court overlooked the record which indisputably demonstrates that this prosecution was commenced following Judge Lewis A. Kaplan ignoring the federal rule to Google Brennerman (See 17-cr-155 (LAK), Dkt. No. 12, transcript of May 2, 2017 bail hearing), a non-party in the underlying civil case, realizing that he is a black man, Judge Kaplan ignored the law promulgated by the Second Circuit in "OSRecovery, Inc., v. One Groupe Int`l, Inc., 462 F.3d 87, 90 (2d Cir. 2006)" to deprive Brennerman an equal protection of the law by holding him, a non-party, in contempt then persuading the Government to prosecute him criminally (which the Government obliged without regard for the law in "OSRecovery").

Thus, Judge Kaplan applying the erroneous statue, Section 1783, rather than Section 1781, to the request for evidence (ICBC underwriting file) is in consonant with the Court`s (Judge Kaplan) intent and endeavor to deliberately deprive Brennerman of evidence (complete ICBC file) which he required to present a complete defense. This was done by the Court so as to violate Brennerman's Constitutional rights and unjustly incarcerate him.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: RECONSIDERATION MOTION LETTER - PART II
DATE: 11/08/2020 11:04:55 PM

C. THE ERRONEOUS SECOND CIRCUIT DECISION
(United States v. Brennerman, 818 F. App`x 26, 29 30 (2d Cir. 2020))

The United States Court of Appeals for the Second Circuit imposed a Constitutionally impermissible abuse of discretion standard with its review of the case, where the Circuit Court ignored the law and record to affirm District Court`s decision by sanctioning the errors of District Court.

This Court (District Court) overlooked the record in relying on the erroneous decision by the Circuit Court (notwithstanding that this Court was present during the various testimonies highlighted below).

(i.) The Circuit Court`s decision overlooked the fact that Brennerman has made attempts to obtain and to compel the production of the complete ICBC file nine (9) times and erroneously assumed that the only indication of the document`s existence came from Brennerman`s bare assertions; (ii.) The Second Circuit erred because the panel`s decision conflicts with settled law on the Sixth Amendment rights of a criminal defendant to cross-examine the witnesses against him and to present a complete defense; (iii.) Brady violation.

During trial, Government sole witness from ICBC London, Julian Madgett (See 17-cr-337 (RJS), Trial Tr. 551-554) testified that evidence (ICBC underwriting file) existed with the bank`s file which document the basis for approving the bridge finance including representations relied upon by the bank in approving the bridge finance which the prosecution never requested or obtained, thus never provided to the defense. Brennerman again filed motion to compel for the evidence arguing that he required it to present a complete defense (that the bank did not rely on any representation or alleged misrepresentation in approving the bridge finance) and to confront witness against him. (See 17-cr-337 (RJS), Dkt. No. 71). Judge Sullivan denied Brennerman`s request while acknowledging (See 17-cr-337 (RJS), Trial Tr. 617) that Government`s witness, Julian Madgett had testified that the evidence (ICBC underwriting files) were with the bank`s file in London, U.K.

The Second Circuit in its Summary Order affirming the conviction - With respect to the ICBC file, the Circuit Court disagreed with Brennerman on the first two points and did not issue a written opinion on the third, writing that:

> The government`s discovery and disclosure obligations extend only to information and document in the government`s possession. United States v. Avelino, 136 F.3d 243, 255 (2d Cir. 1998) (explaining that the Brady obligation applies only to evidence "that is know to the prosecutor") The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligations. Nor was the government under any obligation under the Jencks Act to collect materials about Madgett that were not in the government`s possession. See United States v. Bermudez, 526 F.2d 89, 100 n.9 (2d Cir. 1975).
>
> Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17.....The only indication that such documents are extant comes from Brennerman`s bare assertions.

United States v. Brennerman, 18-3546, Slip Op. at 4-5

Brennerman did request for the evidence (See 1:17-cr-337 (RJS), Dkt. No. 71) upon becoming aware during trial, following testimony from Government sole witness from ICBC (London) plc, Julian Madgett, that evidence existed which the Government never requested or obtained thus never reviewed or presented to Brennerman for his defense. During the hearing on November 7, 2017 prior to trial, Government (A.U.S.A. Danielle R. Sassoon) represented to the Court that all evidence had been provided to the defense and that any attempts to issue subpoena to ICBC (London) plc will be quashed by the Government as that would be cumulative.

It is indisputable from the appended excerpts of trial transcript that the Circuit Court overlooked the record and ignored the fact that Government sole witness from ICBC (London) plc, testified to the existence of the evidence (ICBC underwriting file) beyond Brennerman`s bare assertion. Because the Circuit Court overlooked and ignored the record, its decision equally overlooked the

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

Constitutional violation where Brennerman was deprived of the ability to use the evidence (ICBC underwriting file) for his complete defense.

When Julian Madgett testified, he did so on behalf of the Government before this Court in an open hearing and Government became aware of the missing evidence (ICBC underwriting file). Brennerman (among others) requested that the Court compel the Government to obtain and learn of the evidence (See 17-cr-337 (RJS), Dkt. No. 71) however the Government failed to do so thus violating its Brady obligation.

"Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively: possesses it. E.g., United States v. Joseph, 996 F. 2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); cf. Kyles v. Whitley, 514 U.S. 419, 437 (1995) (holding that to satisfy Brady and Giglio prosecutors have "a duty to learn of any favorable evidence known to the others acting on the Government`s behalf in the case"). In particular in United States v. Patemina-Vergara, the Second Circuit held that the Government had an obligation to make good faith effort to obtain Jencks Act statements possessed by a third party that had cooperated extensively and had close working relationship with the Government, 749 F.2d 993 (2d Cir. 1984); See also United States v. Kilroy, 488 F. Supp 2d 350, 362 (E.D. Wis. 1981) ("since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government`s files any record which Standard Oil has and which the Government wants, however, is not unreasonable to treat the records as being within the Government`s control at least to the extent of requiring the Government to request the records on the defendant`s behalf and to include them in its files for the defendant`s review if Standard Oil agrees to make them available to the Government." (emphasis supplied)). See also United States v. Chapman, 524 F.3d 1073 (9th Cir. 2008)"

iv.) The Second Circuit erred when it misapprehended key facts about which Morgan Stanley subsidiary was FDIC insured and misunderstood why a constructive amendment of the indictment occurred; (v.) Constructive Amendment of an indictment occurs when the charging terms are altered and Brennerman`s Constitutional right was violated.

During trial, Government presented evidence - Government Exhibits GX1-57A; GX1-73; GX529 (See 17-cr-337 (RJS), Dkt. No. 167) (See appended as "Exhibit 6") to demonstrate that Brennerman opened a wealth management account at Morgan Stanley. The evidence presented clearly demonstrated that the wealth management account was opened at Morgan Stanley Smith Barney, LLC. Government witness, Kevin Bonebrake testified that he worked for the Institutional Securities division of Morgan Stanley which is a wholly-owned subsidiary of Morgan Stanley & Company, LLC (See 17-cr-337 (RJS), Trial Tr. 384-385); That "this was very preliminary stage of our conversation" (See 17-cr-337 (RJS), Trial Tr. 409); That "Morgan Stanley would not typically provide the money"; "It would seek financing from outside investors" and "my recollection was that what the company wanted was unclear. We didn`t get very far in our discussion" (See 17-cr-337 (RJS), Trial Tr. 387-388)

Government presented four FDIC certificates - Government Exhibit - GX530 (FDIC certificate for Morgan Stanley Private Bank); GX531 (FDIC certificate for Citibank); GX532 (FDIC certificate for Morgan Stanley National Bank NA); GX533 (FDIC certificate for JP Morgan Chase)

(Trial Transcripts 384-385; 409; 387-388 are appended as "Exhibit 4")

Another Government witness, Barry Gonzalez, FDIC commissioner testified "that the FDIC certificate of one subsidiary does not cover another subsidiary or the parent company because each will require its own separate FDIC certificate (See 17-cr-337 (RJS), Trial Tr. 1060-1061) and that FDIC certificates only cover depository accounts and would not cover the Institutional Securities division/subsidiary of Morgan Stanley (See 17-cr-337 (RJS), Trial Tr. 1057); That there was no confirmation that Morgan Stanley Smith Barney, LLC was FDIC insured (See 17-cr-337 (RJS), Trial Tr. 1058). His testimony demonstrated that neither ICBC (London) PLC, Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division/subsidiary are FDIC insured (See 17-cr-337 (RJS), Trial Tr. 1059-1061)

(Trial Transcript 1060-1061; 1057; 1058; 1059-1061 are appended as "Exhibit 5")

Judge Sullivan ignored the evidence which Brennerman presented to the Court to demonstrate that there was a statutory error with his conviction for bank fraud and bank fraud conspiracy as it relates to his interaction with non-FDIC subsidiaries of Morgan Stanley (see 17-cr-337 (RJS), Dkt. No. 167) and ultimately denied his post-trial motions.

vi.) The Second Circuit misapprehended the record with respect to the FDIC-insured status of Morgan Stanley and overlooked Brennerman`s argument about the non FDIC insured personal wealth division (Morgan Stanley Smith Barney, LLC) and the non -FDIC-insured Institutional Securities division, generalizing that:

> [T]he record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based on false representation about his citizenship, assets, and the nature and worth of his company

United States v. Brennerman, 18-3546, Slip Op. (June 9, 2020) at 3

vii.) With respect to Brennerman`s Constructive amendment argument, the Circuit Court similarly misunderstood the crucial distinction between the subsidiary divisions of Morgan Stanley, relying on the Government`s arguments at summation and finding that no constructive amendment had occurred because:

> It is clear from the indictment that the scheme against ICBC was merely one target of Brennerman`s alleged fraud.....At trial, the government offered evidence that Morgan Stanley was one of those "other financial institutions." See App`x at 608-09 (testimony of Morgan Stanley`s Kevin Bonebrake about a January 2013 telephone call with Brennerman discussing financing to develop oil asset). Thus there was not a "substantial likelihood that the defendant may have been convicted of an offense other than that the one charged by the grand jury." Vebeliunas, 76 F.3d at 1290.

id. Slip Op at 4.

Title 18 United States Code Section 1344 makes it a crime to "knowingly execut[e], or attemp[t] to execute a scheme or artifice - (1) to defraud a financial institution;...." "The well established elements of the crime of bank fraud are that the defendant (1) engaged in a course of conduct designed to deceive a federally chartered or insured financial institution into releasing property, and (2) possessed an intent to victimize the institution by exposing it to actual or potential loss. "United States v. Barrett, 178 F.3d 643, 647-48 (2d Clr. 1999); see also 18 U.S.C.S. 20 (defining "financial institution"). "[A] defendant cannot be convicted of violating Section 1344(1) merely because he intends to defraud an entity....that is not in fact covered by the statute." United States v. Bouchard, 828 F.3d 116, 125 (2d Cir. 2016)

Brennerman was convicted of bank fraud and bank fraud conspiracy based on an account he opened at Morgan Stanley Smith Barney, LLC (See 17-cr-337 (RJS), Dkt. No. 167 highlighting Government Exhibit - GX1-57A; GX1-73; GX529 - Morgan Stanley Smith Barney, LLC account opening form, correspondence and account statement). The Government failed to confirm through Government witness, Barry Gonzalez, the FDIC commissioner that Morgan Stanley Smith Barney, LLC was/is federally insured. The Court also stated that Brennerman had a single telephone call with Kevin Bonebrake (see 17-cr-337 (RJS), Trial Tr. 387-388; 409) who worked at Morgan Stanley Institutional Securities division (See 17-cr-337 (RJS), Trial Tr. 384-385) which is not federally insured.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: RECONSIDERATION MOTION LETTER - PART III
DATE: 11/08/2020 11:05:02 PM

Although Brennerman`s wealth management account at Morgan Stanley Smith Barney, LLC was not a depository account, the funds were held by Morgan Stanley Smith Barney, LLC in a depository account at Morgan Stanley Bank National Association. Any statements made by Brennerman to Scott Stout, who worked at Morgan Stanley Smith Barney, LLC would have been insufficient to establish that Brennerman took any step toward defrauding a federally-insured institution.

When Brennerman presented evidence to Judge Sullivan (at 17-cr-337 (RJS), Dkt. No. 167) demonstrating that his account was held at Morgan Stanley Smith Barney, LLC which is not federally insured and not at Morgan Stanley Private Bank, the judge ignored him and the evidence. The judge also ignored the testimony by Barry Gonzalez, FDIC commissioner which *confirmed that neither Morgan Stanley Smith Barney, LLC (See 17-cr-337 (RJS), Trial Tr. 1059) or Morgan Stanley Institutional* Securities division (See 17-cr-337 (RJS), Trial Tr. 1057) are federally insured. Further, that the FDIC certificate of one subsidiary/division does not cover other subsidiary/division within Morgan Stanley because each subsidiary/division will require its own FDIC certificate (See 17-cr-337 (RJS), Trial Tr. 1060-1061). Thus highlighting that the FDIC certificates presented by the government at trial from Morgan Stanley Private Bank (See Government Exhibit - GX530) and Morgan Stanley National Bank NA (See Government Exhibit - GX532) does not cover either Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division which Brennerman interacted with and thus Brennerman could not be convicted for bank fraud and bank fraud conspiracy for interacting with institution which are not federally insured. Notwithstanding these evidence and confirmation, Judge Sullivan allowed Brennerman to be wrongly convicted.

Constructive amendment of an indictment "occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them." "United States v. LaSpina, 299 F.3d 165, 181 (2d Cir. 2002) (citation omitted)." "To prevail on a constructive amendment claim, a defendant must demonstrate that the proof at trial....so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was the subject of the grand jury`s indictment." LaSpina, 299 F.3d at 181 (citations omitted)

Brennerman was indicted with "having made false representation to financial institutions in the course of seeking loan and other forms of financing for purported business ventures" however during summation the prosecution and again during appearance on November 19, 2018 (See page 19-20 of 11/19/18 Sentencing hearing transcript) the Court, each argued the theory of the bank fraud and bank fraud conspiracy that the defendant became entitled to "perks" including fancy credit card and preferential interest rate however the defendant was not charged with obtaining perks. The fancy credit card was not issued by any Morgan Stanley subsidiary or division and was closed with zero balance. The account which the defendant opened at Morgan Stanley Smith Barney, LLC was only opened for three weeks and not long enough for him to earn any perks. Most important, both Morgan Stanley Smith Barney, LLC where Brennerman opened his account and Morgan Stanley Institutional Securities division where Kevin Bonebrake (whom he had a single telephone call about financing) worked at are not federally insured, an essential element necessary to convict for bank fraud and bank fraud conspiracy.

Notwithstanding the record and overwhelming evidence of Brennerman`s innocence of the charged crime, the Court refused to protect Brennerman`s civil and Constitutional rights allowing him to be wrongly convicted and incarcerated. There is also no doubt that the Court will continue to demonstrate an indifference to the Constitutional violations suffered by Brennerman.

The Court in its order stated "Of course, the legal niceties of statutory authority and personal jurisdiction have never deterred Brennerman from making demands of this sort, and it bears noting that the instant discovery request is simply the latest in a long string of nearly identical requests from Brennerman that are largely an attempt to retry this case." The Court has overlooked the fact that the niceties of legal authority and Constitutional rights did not deter Judge Kaplan from ignoring the federal rule to Google Brennerman (See 17-cr-155 (LAK), Dkt. No. 12, May 2, 2017 bail hearing), realizing that he is a black man, Judge Kaplan ignored the law in "OSRecovery" to hold him, a non-party, in contempt then persuaded the Government to prosecute him criminally; the niceties of legal authority and Constitutional rights did not deter the Government from ignoring the law in "OSRecovery" to pursue Brennerman, a non-party, criminally; the niceties of legal authority and Constitutional rights did not deter this Court from permitting Government sole witness from ICBC (London) plc, Julian Madgett from testifying as to the contents of the evidence (ICBC underwriting file) while depriving Brennerman access to the evidence (ICBC underwriting file) which he required to present a complete defense and to confront witnesses against him; the niceties of legal authority and Constitutional rights did not deter this Court from ignoring the evidence presented by Brennerman (at 17-cr-337 (RJS), Dkt. No. 167); the niceties of legal authority and Constitutional rights did not deter the Circuit Court from misapprehending the law and record to continue to deprive Brennerman of his liberty.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

Brennerman has suffered significant and irreparable civil and Constitutional rights violation. His mother passed away on May 18, 2019 while waiting for him to obtain the evidence (ICBC underwriting file) and clear his name so that he may return to donate his kidney to her as well continue to care for her (See 17-cr-337 (RJS), Dkt. No. 188 pleading by Brennerman to the Court to allow him access to the evidence (ICBC underwriting file)). Now Brennerman who is at a heightened risk from serious illness or death should he contract Covid-19 due to his medical vulnerabilities (including diabetes, hypertension, BMI of 37) as promulgated by the Center for Disease Control and Prevention (C.D.C.), is again requesting for the evidence (complete ICBC underwriting file) which he requires to present arguments as to the 3553 factors with motion for Compassionate release. However, the Court is inexplicably questioning Brennerman's continued rational for requesting evidence (ICBC underwriting file) which should have been afforded to him prior to trial.

Respect for the law, Constitutional rights and true administration of justice is not prosecuting someone for a transaction involving documents without obtaining and reviewing all the documents where the Government refuses to obtain evidence they do not want to have to provide to a defendant for a defendant to present a complete defense and the ability to confront witnesses. The Government flew their sole witness from London, U.K. to New York, USA to testify at trial. Yet, the Government and Court would like the public to believe that it was not possible to e-mail, fax, or mail/courier evidence or even for the witness to bring the evidence with him.

The evidence are the only documents which can conclusively demonstrate that a crime may have been committed by highlighting what the bank relied upon in approving the bridge loan. The trial was based solely on the Government asking Julian Madgett what the bank relied upon and Julian Madgett saying (in open Court) anything and everything with the understanding that the Court and Government had furtively deprived Brennerman, a criminal defendant, access to the evidence (ICBC underwriting file), and that it was impossible for Brennerman to challenge his (Julian Madgett) words or confront him. If this is true administration of Justice in America, then all minorities are at risk because anyone whom a federal judge Googles and dislikes can be prosecuted and imprisoned.

Notwithstanding, the Court is expected to make another excuse and refuse to permit the presentment of the evidence (ICBC underwriting file) because they (Government and Court) cannot show the public the evidence. Brennerman has nothing to hide. If fraud really occurred then show the public the evidence (ICBC underwriting file) from the bank that will conclusively demonstrate what the bank relied upon in approving the finance at issue, not the words of a single person from the bank without any independent corroborating evidence. Julian Madgett is not a member of the credit committee at the bank that is responsible for approving financing. This is not an attempt for retrial but respect for the law and the Constitutional rights of a criminal defendant by obtaining evidence which should have been learned before trial and immediately upon Government witness testifying to its existence.

Without reviewing the record and trial transcript, the Court is now insinuating that the evidence (ICBC underwriting file) does not exist beyond Brennerman`s bare assertion, setting a dangerous standard for the public, by pivoting to the erroneous decision by the Circuit Court which is in contrast with the record and evidence. This case and prosecution presents an extraordinary circumstance where the Court that has an obligation to protect the Constitutional rights of a criminal defendant veers from the permissible to the impermissible with the Court misrepresenting the record, evidence and deliberately violating the Constitutional rights of the criminal defendant. The danger of the Court`s rule is amply demonstrated by the consequences of erosion of public trust in the United States justice system and other institutions.

Because of the loss of confidence in this Court that it would abide by the law and protect the Constitutional rights of a criminal defendant, Brennerman and other civil rights activists commenced a campaign against this Racial injustice at www.freeraheem.com and www.freerjbrennerman.com; submitted Complaint to the Chief Judge of the United States Court of Appeals for the Second Circuit; initiated Petition (which was recently commenced) to U.S. Congress for an investigation; is preparing submissions to the United States Supreme Court; and engaged media strategist to bring national and international public awareness to this Racial injustice and deliberate endeavor to continually violate the Constitutional rights of Brennerman, a criminal defendant, because of his race.

This reconsideration correspondence will further develop the record for future review and succinctly presents the various civil and Constitutional rights deprivation to the Court.

WHEREFORE, Defendant Pro Se Raheem J. Brennerman respectfully submits the above and reminds the Court that everyday, during this Covid-19 global pandemic (with in-excess of two hundred and forty thousand Covid-19 related deaths in the United States alone), the Court deprives him access to the evidence (ICBC underwriting file) which Brennerman requires to present compelling argument as to the 3553 factors in a Compassionate release motion (pursuant to 18 U.S.C.S. 3582(c)(1)(a)), Brennerman remains exposed to serious illness or death due to his medical vulnerabilities including diabetes, hypertension, BMI of 37 as promulgated by the Center for Disease Control and Prevention. The Court has an obligation to protect the civil and

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

Constitutional rights of Brennerman, a criminal defendant.

Dated: November 9, 2020
White Deer, Pa. 17887-1000

Respectfully submitted

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

Pro Se Defendant

Cc: www.freeraheem.com
Cc: www.freerjbrennerman.com
Cc: REDACTED

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 1
DATE: 11/08/2020 03:35:05 PM

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EXHIBIT 1

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(Jury present)

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

CROSS EXAMINATION

BY MR. WALLER:

Q. Good afternoon, Mr. Madgett.

A. Good afternoon.

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

A. 2009.

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

A. Correct.

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

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

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

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

Q. That's correct.

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

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

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

Q. Did you ever produce the documents from that credit

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

MR. ROOS: Objection.

THE COURT: You can answer.

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

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

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

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

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

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

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

Q. Is there an underwriting file for a loan application such as the one we are dealing with in this case?
A. There would be a credit application document which is where the case for making the loan has been summarized, and that is the credit application document which then goes to credit committee for approval or decline.
Q. Do you know if that -- well who would have prepared that document?
A. I would have been one of the main authors of that document.
Q. Do you know if that document was produced to the government?
A. I do not and I wouldn't see great relevance in it, but I do not know if it has gone to the government.
Q. Well, relevance is not really your determination, correct?
A. Correct, correct. Yes.
Q. So you don't know if it was produced to the government and it certainly wasn't produced to the defense, correct, by ICBC?
THE COURT: Well, do you know?
THE WITNESS: I don't know, but I'm assuming from your question that it wasn't.
THE COURT: Well, don't assume.
THE WITNESS: Okay, sorry. My apologies.
THE COURT: The jury knows not to assume anything from a question. So, you just answer as to what you know.
THE WITNESS: All right.

BY MR. WALLER:

Q. Was there an answer?

A. Could you repeat the question, please?

Q. Yes.

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

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

THE WITNESS: I don't know.

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

BY MR. WALLER:

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

A. I don't know.

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

A. Yes.

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

A. Yes.

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

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

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

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

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

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 2
DATE: 11/08/2020 03:35:23 PM

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EXHIBIT 2

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THOMPSON HINE
ATLANTA CLEVELAND DAYTON WASHINGTON, D.C.
CINCINNATI COLUMBUS NEW YORK

November 29, 2017

Via ECF and Email

Hon. Richard J. Sullivan
Thurgood Marshall
United States Courthouse, Room 905
40 Foley Square
New York, NY 10007

Re: *United States v. Raheem J. Brennerman*; No. 17 Cr. 337 (RJS)

Dear Judge Sullivan,

We write to address the issue raised today with respect to the production of certain documents. Specifically, we learned today that that the notes of the Government's witness, Julian Madgett, pertaining to matters to which he testified, were not obtained by the Government, or provided to the defense. For the reasons detailed below, it is our position that the materials should have been produced pursuant to Fed. Rule Crim. P. 16 and the Jencks Act, 18 U.S.C. § 3500; in addition, the defendant is serving a subpoena on counsel for this witness, Paul Hessler, for their production and the production of other documents.

The Government has asserted that Mr. Madgett's notes – made by the alleged victim and pertaining to the precise subject matter at issue in this trial – are not in its actual "possession," and therefore it has no obligation to produce them. But possession is not so narrowly defined. Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively" possesses it. *E.g.*, *United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); *cf. Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that, to satisfy *Brady* and *Giglio*, prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case"). In particular, in *United States v. Paternina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith efforts to obtain Jencks Act statements possessed by a third party that had cooperated extensively, and had a close relationship with, the Government. 749 F.2d 993 (2d Cir. 1984). And in *United States v. Stein*, the court directed the Government to produce documents in the actual possession of a third party, KPMG, because KPMG had voluntarily agreed to do so in an deferred prosecution agreement. 488 F. Supp. 2d 350, 361 (S.D.N.Y. 2007) (noting that the term "control" has been "broadly construed"); *see also United States v. Kilroy*, 488 F. Supp. 2d 350, 362 (E.D. Wis. 1981) ("Since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government's files any records which Standard Oil has and

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THOMPSON HINE

which the Government wants, however, it is not unreasonable to treat the records as being within the Government's control *at least to the extent of requiring the Government to request the records on the defendant's behalf and to include them in its files for the defendant's review if Standard Oil agrees to make them available to the Government*." (emphasis added)).[1]

Here, there can be no question that Mr. Madgett and his employer, ICBC (London) plc ("ICBC"), are in a cooperative relationship with the Government. ICBC is the complainant and alleged victim in this case. Moreover, counsel for ICBC confirmed in the recent criminal contempt trial before Judge Kaplan that ICBC had voluntarily produced more than 5000 pages of documents at the mere request of the Government. And Mr. Madgett is voluntarily appearing as a Government witness. Given this close relationship, and one demonstrating extensive cooperation between Mr. Madgett, ICBC, and the Government, the Government had (and has) an obligation to obtain and produce to Mr. Brennerman materials required by Rule 16 and the Jencks Act. Yet, Mr. Madgett testified today that the Government never asked him for any notes.

Mr. Brennerman therefore moves this Court to direct the Government to request, at a minimum, Mr. Madgett's notes that pertain to the subject matter of this case and his testimony. This is especially necessary given the critical importance of such materials to this case and Mr. Brennerman's defense, as *no* documents have been produced to date that pertain to the critical issue of ICBC's decision-making process with respect to the loan it provided to Mr. Brennerman – i.e., the transaction at the very core of the Government's case.

Additionally, since Mr. Brennerman has been unable to obtain any such materials, and in light of Mr. Madgett's testimony, we are issuing a subpoena directly to ICBC, through its counsel Mr. Hessler, for these records and others.

We are prepared to address these issues at any time convenient to the Court.

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[1] Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligations, either on the basis of a due process violation or under the court's inherent supervisory powers, including where the Government belatedly disclosed Jencks Act materials. *E.g.*, *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).

THOMPSON HINE

Respectfully,

s/ Maranda E. Fritz

Maranda E. Fritz

Enclosures

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America)
v.)
) Case No. 1:17-cr-0377-RJS
Raheem J. Brennerman)
Defendant)

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

To: Julian Madgett

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:	Southern District of New York 500 Pearl Street New York, New York	Courtroom No.:	15C
		Date and Time:	12/06/2017 9:30 am

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

Please see attached rider.

(SEAL)

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

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

Maranda E. Fritz, Esq.
Brian D. Waller, Esq.
Brian K. Steinwascher, Esq.
Thompson Hine LLP
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
(212) 908-3966
Maranda.Fritz@ThompsonHine.com, Brian.Waller@ThompsonHine.com & Brian.Steinwascher@ThompsonHine.com

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. 1:17-cr-0377-RJS

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

RIDER
(Subpoena to Julian Madgett)

Definitions and Instructions:

1. Please produce any documents responsive to this Subpoena by 12/6/2017 at 9:30 am.

2. Please produce requested records in electronic form (native format where necessary to view the material in its full scope) in a manner that is OCR-searchable, and with all available electronic metadata.

3. The term "documents" includes writings, emails, text messages, drawings, graphs, charts, calendar entries, photographs, audio or visual recordings, images, and other data or data compilations, and includes materials in both paper and electronic form.

4. The term "ICBC" refers to the Plaintiff in the civil litigation in the Southern District of New York captioned *ICBC (London) plc v. The Blacksands Pacific Group, Inc.*, 15 Cv. 70 (LAK) and includes its agents, representatives and counsel.

5. The term "Blacksands Pacific" includes The Blacksands Pacific Group Inc. and the Blacksands Pacific Alpha Blue, LLC or any Blacksands Pacific entity and any of its subsidiaries and affiliates, and any officer, employee, volunteer, representative, or agent of those entities.

6. The Subpoena calls for the production of documents from the period January 1, 2013 to March 3, 2017.

7. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

Materials to be Produced:

1. All notes relating to meetings and communications with representatives of Blacksands Pacific.

2. All documents relating to or reflecting the decision by the credit committee at ICBC to issue a bridge loan to Blacksands Pacific including but not limited to the "credit paper" and memorialization of the committee's decision.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 3
DATE: 11/08/2020 03:35:44 PM

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EXHIBIT 3

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

THE COURT: You haven't served it yet?

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

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

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

MR. HESSLER: Hessler, your Honor.

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

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

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

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 4
DATE: 11/08/2020 03:36:05 PM

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EXHIBIT 4

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Q. Is that the same title you had or position you had while you were at Morgan Stanley?

A. My title -- my specific job title at Morgan Stanley varied as I was promoted from vice president, to director, to managing director, and I worked within what they called the institutional securities division. My current title is managing director at Lazard within what they call the financial advisory division, but I'm doing substantially the same job, except I'm more solely focused on mergers and acquisitions now and not so much on financings, if that makes sense.

Q. Staying with Morgan Stanley, you mentioned that Morgan Stanley has two business lines?

A. Broadly, if you look at their financials, that's how they characterize it, yes.

Q. And can you just explain, to the extent you understand, what you mean by "business lines"?

A. Certainly. So, Morgan Stanley has a private wealth management business, which is one of the aforementioned two business lines. That business is composed of individuals who somewhat confusingly are also called financial advisors, who work with high net worth individuals to help them manage their money.

And then the other business line that I was referring to, which I was a part of, is called the institutional securities division. And within that division is housed what

is the traditional investment banking activities, which is capital markets, underwriting, so think about initial public offerings, helping companies with that. Mergers and acquisitions, when two companies merge, and then aside from that, there's sales and trading, which is basically making markets in various securities around the world, and also asset management.

Q. You said business lines, but they're really separate entities; is that correct?

A. They're all a part of the Morgan Stanley & Company LLC, which is listed on the New York Stock Exchange, but we report up through different superiors.

Q. You say "part of." Are they the same company? Are they a separate entity?

A. They're wholly-owned subsidiaries of Morgan Stanley & Company LLC.

Q. And you called it, I believe, wealth management. Is it also referred to as the private bank?

A. I don't believe I have the expertise to answer that.

Q. I understand.

A. I could speculate, but...

Q. So you're not really familiar with anything that's handled on the wealth management side, other than sometimes you have clients referred?

A. I've never worked on the wealth management side, so I don't

BY MR. STEINWASCHER:

Q. Did you have specific recollection as to your conversations -- specific details of your conversations with Mr. Brennerman prior to looking at the documents when meeting with the government?

A. I had recollections of conversations with Mr. Brennerman that were enhanced by looking at the documents. I did recall the conversations before seeing the documents, but the documents were very helpful.

Q. So, it's safe to say that for some specific details, your memory was refreshed by the documents and not something that you just remembered independently prior?

A. That's a broad statement. I'm not sure I could agree or disagree with that, but...

Q. That's fine. That's fine.

On the topic of financing, you said that for these types of deals, the ones that you have handled primarily, and specifically the one involving Mr. Brennerman, Morgan Stanley would not provide the money that it would seek financing from outside investors; is that correct?

A. They would not typically provide the money. There are some cases where Morgan Stanley -- let me rephrase that. I can only speak for my particular division. So, Morgan Stanley is a $700 billion company operating across the globe with over 50,000 employees. So my particular division would typically

not be providing the financing directly, but we might backstop an offering where we commit that if we can't find third-party investors to purchase these securities, then we would provide the money. But that was not the majority of the cases.

Q. And in the particular case of the proposal from Mr. Brennerman, I believe you said that it was something that you understood he was looking for Morgan Stanley to find financing from investors for?

A. My recollection was that it was unclear. We didn't get very far in our discussions. And then, after reviewing the emails, I think it's still unclear.

Q. You mentioned several times, I believe, a distinction between dealing with public companies and private companies?

A. Yes.

Q. At one point I believe you said your knowledge of the number of private companies that are involved in this type of business that you do, the oil and gas business, you're a little less certain of the specific number because the information is not publicly available; is that correct?

A. Correct.

Q. So, for a private company like Blacksands Pacific, it wouldn't be unusual that you hadn't heard of them, given that they're a private company, and you're not familiar with every single private company out there?

A. It would be unusual that a company -- that I had not heard

BY MS. SASSOON:

Q. Just to clarify, turning back to Exhibit 1-61, page 6, is it clear to you one way or the other from looking at this e-mail whether this is an asset-based lending proposal?

A. It's not clear to me, it would be speculation.

Q. Looking at page 7, going back to the part in blue with the asterisk, can you read that, please?

A. 50 percent working interest owned by Black Sands Pacific Alpha Blue, LLC.

MS. SASSOON: No further questions.

THE COURT: Okay. Any recross?

MR. STEINWASCHER: Very briefly, your Honor.

RECROSS EXAMINATION

BY MR. STEINWASCHER:

Q. Can we go back to that same exhibit, same page?

Very briefly, Mr. Bonebrake. Did this proposal provide you -- I say proposal, overview summary proposal, did it provide you with really any information on which Morgan Stanley could make a decision about financing?

A. To get to the point of actually, quote, making a decision on financing, there would have been a lot more work and information needed than this. Again, this was very preliminary stage of our conversation.

MR. STEINWASCHER: Thank you.

THE COURT: Okay. You can step down. Thanks very

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 5
DATE: 11/08/2020 03:36:24 PM

xxxxxxxxxx

EXHIBIT 5

xxxxxxxxxx

don't.

Q. If it had no depository accounts, would there be any reason for it to need FDIC insurance?

A. I'm not certain.

Q. Does FDIC insurance cover anything else other than depository accounts?

A. No.

Q. So if there is a company that has many different sub-entities, some of those that hold depository accounts and some of those that don't, a financial institution I should say, it's safe to say the FDIC would only offer insurance to those portions of the company that handle depository accounts?

A. You kind of lost me. Can you repeat that?

Q. If there is a financial institution that has one division that covers investments and another division that covers depository accounts, would the FDIC insure the division that covers investment banking?

A. If it does not have a certificate of deposit insurance it would not.

Q. If it had no depository accounts, there was no reason for that institution to seek a certificate of insurance?

A. I can't opine on what someone would want to do, in terms of seeking insurance or not seeking insurance.

Q. Well, there would be nothing for the FDIC to insure in that instance, is that correct?

MR. SOBELMAN: Objection.

THE COURT: Sustained.

Move on.

MR. STEINWASCHER: Can we go to Exhibit 529.

Can I ask the government's indulgence. I don't think we have an electronic version of this. The same page that Mr. Sobelman showed the witness, page 4.

Thank you. I appreciate that.

Q. Mr. Gonzalez, you looked at this with Mr. Sobelman a few minutes ago, correct?

A. Yes.

Q. I think he directed you to the kind of italicized text, almost toward the bottom of the page under "cash deposits and money market funds," correct?

A. Yes.

Q. Then he put up on the screen next to this statement the two certificates of insurance from the FDIC that pertain to Morgan Stanley Bank NA and Morgan Stanley Private Bank National Association, correct?

A. Yes.

Q. Morgan Stanley Bank NA and Morgan Stanley Private Bank National Association, are those the same entity?

A. The same entity as what?

Q. As each other.

A. No. They have distinct certificate numbers.

Q. OK. I am not sure it's reflected on this page, but maybe on the first page of this exhibit.

You see at the bottom here, on the bottom left, there is an italicized text that reads "Morgan Stanley Smith Barney LLC"?

A. It's hard for me to see.

Q. Do you see that text now?

A. Yes.

Q. Are you aware if Morgan Stanley Smith Barney LLC is insured by the FDIC?

A. I'm not aware of that.

Q. Did you conduct any search to confirm that?

A. No.

Q. The rest of this text, it has "member SIPC." Do you see that?

A. Yes.

Q. Are you familiar with that acronym SIPC?

A. I'm not familiar with that acronym.

Q. Does that, as far as you know, pertain to the FDIC in any way?

A. No.

Q. Does the FDIC insure banks outside of the United States?

A. No.

Q. So if there is a bank located in London, in the United Kingdom, that would not be covered by the FDIC?

A. Not without a certificate of deposit insurance.

Q. I just want to clear this up. Your answer to my previous question was the FDIC does not insure banks outside of the United States.

A. A foreign bank?

Q. Correct.

A. No.

Q. So if there is a foreign bank located in London, even if it held depository accounts, the FDIC could not insure it, is that correct?

A. That is correct.

Q. I apologize for this. I want to go back to one point.

Those two Morgan Stanley banks that we looked at, those two entities that had certificates of insurance with the FDIC, if an entity is a subsidiary of a parent in a financial institution, does the fact that the subsidiary is FDIC insured also mean that the parent is FDIC insured?

A. Can you repeat that? I'm not sure I understand.

Q. Does FDIC insurance for a financial institution, which is a subsidiary of another financial institution, so the FDIC has issued a certificate to that subsidiary, does that certificate somehow also cover the parent corporation?

A. No.

Q. So the parent entity would need a separate certificate of insurance?

A. Yes.

Q. The same thing for an affiliate within a company or affiliates between companies, each entity would require a separate certificate of insurance in order to be FDIC insured?

A. That is correct.

MR. STEINWASCHER: We are just about approaching lunch and I am done with this witness.

THE COURT: Any redirect?

MR. SOBELMAN: No, your Honor.

THE COURT: Why don't we break then. We will pick up at 2.

Don't discuss the case and bring your books with you into the jury room, but don't take them outside of the jury room. Have a good lunch.

All rise for the jury, please.

(Jury exits courtroom)

THE COURT: You can step down. Thank you very much, Mr. Gonzalez.

Have a seat. Let's talk about what we have left and an ETA.

MR. ROOS: We have six witnesses remaining, two of them are on the longer side and the other ones are about the length that some of these shorter witnesses have been today. And we also have three stipulations to read into the record at some point. We can do it right after lunch.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 6
DATE: 11/08/2020 10:19:13 PM

xxxxxxxxxx

EXHIBIT 6

xxxxxxxxxx

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

FROM: 54001048
TO:
SUBJECT: Re: LEGAL CORRESPONDENCE -06.20.18
DATE: 06/20/2018 02:25:49 PM

x

Raheem J. Brennerman (54001-048)
Metropolitan Detention Center
P O Box 329002
Brooklyn, New York 11232

Honorable Judge Richard J. Sullivan
United States District Judge
United States District Court
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

June 20, 2018

Re: United States v. Raheem J. Brennerman
Case No: 1:17-cr-337 (RJS)

Dear Judge Sullivan

Defendant Pro Se, Raheem Brennerman ("Brennerman") submits additional evidence to bolster his arguments, which are succinctly highlighted in correspondences dated June 10, 2018 (see 17-cr-337 (RJS), dkt. no. 164), the June 11, 2018 and June 17, 2018 correspondences.

Brennerman submits, Government Exhibit 1-57, e-mail correspondence between Mr. Scott Stout and Brennerman, which highlights the e-mail signature of Scott Stout and the Beverly Hills, California address of Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank); Government Exhibit 1-57A, the account opening form, which highlights "Morgan Stanley Smith Barney (not Morgan Stanley Private Bank)" at the top right corner of the form; Government Exhibit 1-73, e-mail between Scott Stout and Brennerman, which highlights Brennerman`s alleged fraud - the perks which he became entitled to, however more important, page two of the e-mail correspondence highlights within the "Important Notice to Recipient" in relevant parts that "The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"); Government Exhibit 529, the Morgan Stanley account statement, which highlights Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank) at the bottom left corner of the bank statement cover page. Additionally Brennerman submits the profile of Mr. Scott Stout which highlights that Mr. Scott Stout worked at Morgan Stanley Wealth Management between May 2011 and November 2014, as well the announcement on September 25, 2012 by Morgan Stanley Smith Barney LLC stating in relevant parts that "Morgan Stanley Smith Barney is now Morgan Stanley Wealth Management.

These evidence are important to highlight that Brennerman interacted with Morgan Stanley Smith Barney LLC which is indisputably not FDIC insured and thus the essential element necessary to convict for bank fraud in violation of 18 United States Code Section 1344(1) and its related conspiracy - conspiracy to commit bank fraud in violation of 18 United States Code Section 1349 cannot be satisfied and Brennerman`s relief for judgment of acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure should be granted, and that Government failed to conduct the necessary diligence or investigation prior to indicting and prosecuting Brennerman.

Brennerman highlights the following as to the wire fraud charge and its related conspiracy. Brennerman was charged in two criminal cases - criminal contempt of court in case no. 17-cr-155 (LAK), before Hon. Judge Lewis A. Kaplan and the related fraud case in case no. 17-cr-337 (RJS), before Hon. Richard J. Sullivan, both stemming from the underlying civil case, case no. 15 cv 70 (LAK) captioned - ICBC (London) PLC v. The Blacksands Pacific Group, Inc before Hon. Judge Lewis A. Kaplan. Because the trial in the case before Judge Kaplan was scheduled ahead of that before this court, Brennerman sought to obtain the relevant ICBC London lending and underwriting file which is probative as to materiality an essential element of the charged crime of wire fraud and its related conspiracy. Because Brennerman`s request to both the government and directly to ICBC (London) PLC had been denied, Brennerman sought to compel for the relevant files through U.S District Court (S.D.N.Y), since the criminal cases stemming from the ICBC (London) PLC transaction were being prosecuted at the U.S District Court (S.D.N.Y), however Brennerman`s request to U.S District Court (S.D.N.Y) was denied (see 17-cr-155 (LAK), dkt. no. 76). Deprived of the relevant files necessary to cross-examine any government witness as to substance or credibility, Brennerman moved in his motion-in-limine and reply to Government`s motion-in-limine, prior to trial of the related fraud charge, for U.S District Court (S.D.N.Y) to exclude the testimony of any witness from ICBC (London), because such testimony will be highly

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

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prejudicial and unfair to Brennerman as government will simply be allowed to present any witness, who will be able to say anything without corroboration and without Brennerman having the opportunity to cross-examine him as to substance or credibility, as Brennerman would not have been able to review the relevant lending and underwriting files. Moreover, he will be unable to assert his good faith defense, thus violating Brennerman`s constitutional rights to a fair trial.

Even after trial, Brennerman has presented evidence to highlight that Mr. Robert Clarke (not Mr. Julian Madgett) was responsible for the relevant transaction at ICBC (London) PLC as evidenced through his affidavit in the underlying civil case at 15 cv 70 (LAK). (See copy of Robert Clarke affidavit at, (17-cr-337 (RJS), dkt. no. 164, exhibit 2). Additionally Brennerman submitted evidence - Government Exhibit 1-19 and 1-22 which highlights that Blacksands had already incurred and disbursed $6.45 million in satisfying the finance conditions of ICBC (London) PLC and that the bridge finance was agreed to replace part of those funds which Blacksands already disbursed, further that Brennerman informed both Mr. Bo Jiang and Mr. Julian Madgett at ICBC (London) PLC and ICBC (London) PLC agreed to the use of the bridge finance. (See 17-cr-337 (RJS), dkt. no. 164, exhibit 2). Among others, Brennerman submitted newly discovered evidence (see 17-cr-337 (RJS), dkt. no. 164, exhibit 3) - the 2017 ICBC (London) PLC financial and company disclosure which was made publicly available on June 6, 2018, after trial. The disclosure highlights that there was no fraud. Because ICBC (London) PLC, the alleged victim of the wire fraud and related conspiracy has made no disclosure, representation or announcement that the transaction involving Blacksands Pacific was fraudulent or that it became a victim of fraud due to the transaction with Blacksands. Notwithstanding, that ICBC (London) PLC, a financial institution and publicly traded company in United Kingdom (England and Wales) is mandated by regulations to disclose publicly, if it became a victim of fraud or became involved with fraudulent transaction. This is particularly significant, where Government never reviewed, adduced or presented the relevant ICBC London lending and underwriting files, and because Brennerman was deprived from engaging in any meaningful cross-examination of the sole witness presented by Government from ICBC (London) PLC as to credibility and substance. In addition to the fact that, the sole witness - Mr. Julian Madgett, is not a member of the credit committee responsible for approving the transaction at ICBC (London) PLC.

Thus, Brennerman submits, arguing that since Government ostensibly argued (although erroneously) that Scott Stout worked at Morgan Stanley Private Bank (instead of Morgan Stanley Smith Barney) in their opposition to his Rule 29 and 33 motion. (See 17-cr-337 (RJS), dkt. no. 149), now highlighted as an erroneous proffer by Government given the overwhelming evidence which were all available to Government. Government`s credibility is questionable; further that, because Brennerman was deprived of the relevant ICBC London lending and underwriting file prior to trial and even Government concedes that it had not reviewed the files; additionally, because Robert Clarke and not Julian Madgett is/was responsible for the relevant transaction at ICBC (London) PLC as highlighted through his affidavit; additionally, because Brennerman suffered for ineffective assistance of counsel due to the conflict of interest issue, with his trial counsel; additionally, because Brennerman submitted and highlighted newly discovered evidence - the 2017 financial and company disclosure, by ICBC (London) PLC, which was filed and made public on June 6, 2018. Brennerman respectfully requests and pleads for the Court to resolve the factual dispute as to the relevant ICBC London transaction with Blacksands Pacific, as it pertains to this case, by reviewing the relevant ICBC London lending and underwriting files, especially in light of the newly discovered evidence which demonstrates that, ICBC (London) PLC, the alleged victim has not disclosed or represented that the transaction with Blacksands was fraudulent or that it became a victim of fraud through the transaction with Blacksands, which it would have had to disclose by regulation if any fraud occurred.

The above presents significant issues, because Brennerman suffered prejudicial spillover on other counts of the charged crime, due to Government`s erroneous argument and presentment to the court and jury at trial. In addition, Brennerman suffered prejudice due to the conflict of interest issue with his trial counsel. Evidence submitted to date, supports, Brennerman`s pleading for a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Brennerman submits the above and the appended evidence in addition to his submissions at (dkt. no. 164), his June 11, 2018 and June 17, 2018 correspondences, and awaits the Court`s decision

Dated: June 20, 2018
New York City, New York

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman
Defendant Pro Se

From:	BRENNERMAN, R. J @The Executive Office
To:	Stout, Scott
Cc:	BRENNERMAN R. J@Executive Office
Subject:	Re: Morgan Stanley (Wealth Management)
Date:	Tuesday, January 8, 2013 9:09:49 AM
Attachments:	Morgan Stanley (Client Profile).pdf
Importance:	High

Dear Scott,

As discussed, attached is the completed forms, as advised the account will be in the corporate name however you wanted me to also complete a form with personal information. As discussed, I will require Debit Card and AMEX card with the account.

Please let know what are the next steps.

Best Regards

From: Stout, Scott
Sent: Monday, December 10, 2012 1:10 PM
To: mailto:rbrennerman@blacksandspacific.com
Subject: RE: 2013 Preparation

Hi RJ,

Just a reminder to get those forms to me so I can get everything in order prior to our lunch on Friday.

Thanks,
Scott

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

http://www.morganstanley.com/fa/scott.stout
scott.stout@morganstanley.com

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

MorganStanley
SmithBarney

Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name RAHEEM JEFFERSON BRAVERMAN

Address 245 PARK AVENUE, 31FL

City NEW YORK State NEW YORK Zip Code 10167

Home Phone _____ Business _____

Cell 917 699 6930 Fax 310 861 1057

SS# or Tax ID [redacted] US Citizen (Y) N

Marital Status SINGLE #of Dependents N/A Date of Birth 04/21/78

E-mail Address rbraverman@blacksandpac.com

Telephone access Prompts **Mother's Maiden Name** _____

City of Birth _____ **or 1st School Attended** DWIGHT

Employer BLACKSAND PACIFIC ENERGY CORPORATION

Nature of Business OIL & GAS Occupation OIL & GAS EXECUTIVE

Est. Annual Compensation $ 720,000 (BASE SALARY) Employed Since 2010

Primary Source of Income-Check all that apply

Annual Salary X Investments X Retirement Assets ____ Amount $ _____

Est. Total Annual Income (all sources) _____

Est. Liquid Net Worth $ 45M Est. Total Net Worth $ _____

Tax Bracket (percentile) _____

Investment Objectives: ***(Please rank 1 through 4, in order of priority)***

Growth 1X Current Income 3 Tax Deferral 4 Liquidity X 2

Investing Since ***(year)*** Stocks 99 Bonds 99 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive ___ Moderate X Conservative ___

Speculation Yes _____ No _____

Primary Financial Need: (circle one)

(Wealth Accumulation) Major Purchase Healthcare Education
Estate Planning Retirement Charity Income

Outside Investments: **Firms Used:** _____
Equities $ _____ **Fixed Income $** _____ **Cash$** _____ **Alt Investments** _____
Time Horizon _____ **Liquidity Needs** _____

Are you or anyone in your household a major share holder in a publicly traded company? Y (N)
Are you an executive of a publicly traded company? Y (N)
Do you or anyone in your immediate family work for a brokerage house? Y (N)
Is anyone in your immediate family employed by CitiGroup? Y (N)

1/5/13

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.
THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

GOVERNMENT EXHIBIT 1-57A 17 Cr. 337 (RJS)

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

Morgan Stanley
SmithBarney

Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name JEFFERSON III HOLDINGS LLC

Address 3960 HOWARD HUGHES PARKWAY, SUITE 500

City LAS VEGAS State NEVADA Zip Code 89169

Home Phone _____ Business _____

Cell 917 619 6430 Fax _____

SS# or Tax ID [redacted] US Citizen (Y) N

Marital Status N/A #of Dependents _____ Date of Birth _____

E-mail Address _____

Telephone access Prompts **Mother's Maiden Name** _____

City of Birth _____ or **1st School Attended** DALCROFT

Employer _____

Nature of Business INVESTMENTS Occupation _____

Est. Annual Compensation $_____ Employed Since _____

Primary Source of Income-Check all that apply

Annual Salary____ Investments____ Retirement Assets____ Amount $_____

Est. Total Annual Income (all sources)_____

Est. Liquid Net Worth $_____ Est. Total Net Worth $_____

Tax Bracket (percentile)_____

Investment Objectives: (*Please rank 1 through 4, in order of priority*)

Growth 1 Current Income 2 Tax Deferral 3 Liquidity 4

Investing Since *(year)* Stocks 99 Bonds 99 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive ___ Moderate X Conservative ___

Speculation Yes_____ No____

Primary Financial Need: (circle one)

Wealth Accumulation	Major Purchase	Healthcare	Education
(Estate Planning)	Retirement	Charity	Income

Outside Investments: **Firms Used:** _____

Equities $_____ **Fixed Income $**_____ **Cash$**_____ **Alt Investments**_____

Time Horizon _____ **Liquidity Needs** _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N
Are you an executive of a publicly traded company? Y N
Do you or anyone in your immediate family work for a brokerage house? Y N
Is anyone in your immediate family employed by CitiGroup? Y N

1/5/13

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: Gevarter, Mona
Subject: Re: Platinum AMEX
Date: Wednesday, January 9, 2013 7:24:39 PM
Importance: High

Dear Mona,

Are you able to call me on my cellphone 917 699 6430 regarding the email below

Best Regards

From: Stout, Scott
Sent: Wednesday, January 09, 2013 4:45 PM
To: mailto:rbrennerman@blacksandspacific.com
Cc: Gevarter, Mona
Subject: Platinum AMEX

RJ,

Please give Mona a call to set up your Platinum AMEX card. 310 205 4751.

As a Morgan Stanley perk, if you spend $100k annually we deposit $500 into your account to cover your annual fee ($450).

Other MS/Platinum Perks Include:

- First Class Lounge Access
- $200 annually in airline fee credits (checking bags, etc)
- No foreign transaction fees
- Premium upgrades for car rentals
- Concierge
- 20% Travel Bonus

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

http://www.morganstanley.com/fa/scott.stout
scott.stout@morganstanley.com

GOVERNMENT EXHIBIT 1-73 17 Cr. 337 (RJS)

Please do not use e-mail to request, authorize or effect the purchase or sale of any security or commodity. Unfortunately, we cannot execute such instructions provided in e-mail. Thank you.

Morgan Stanley

CLIENT STATEMENT For the Period January 1-31, 2013

#BWNJGWM

RAHEEM JEFFERSON BRENNERMAN
245 PARK AVENUE
39 FLOOR
NEW YORK NY 10167-4000

TOTAL VALUE LAST PERIOD (as of 12/31/12)	[redacted]
NET CREDITS/DEBITS	200,000.00
CHANGE IN VALUE	0.88
TOTAL VALUE OF YOUR ACCOUNT (as of 1/31/13)	$200,000.88

(Total Values include accrued interest)

Your Branch

9665 WILSHIRE BLVD STE 600
BEVERLY HILLS, CA 90212
Telephone: 310-285-2600
Alt. Phone: 800-458-9838
Fax: 310-285-2696

Your Financial Advisor

Scott Stout

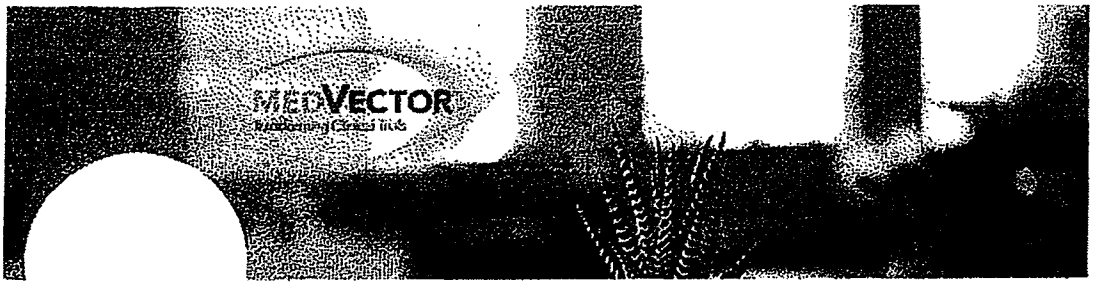
Client Interaction Center

800-869-3326
24 Hours a Day, 7 Days a Week

Access your accounts online

www.morganstanley.com/online

GOVERNMENT EXHIBIT 529 17 Cr. 337 (RJS)



Scott Stout • 3rd

CEO, Co-Founder at MedVector Clinical Trials

El Segundo, California

Invited

MedVector Clinical Trials

University of Arizona

See contact info

500+ connections

MedVector's mission is to advance medicine by streamlining the clinical trial industry. We provide Pharmaceutical & Biotech companies, Contract Research Organizations (CRO) and research institutes a global patient network, which enables them to quickly identify clinical trial candidates, exponentially im...

Show more

Experience

CEO & Co-Founder
MedVector Clinical Trials
Jun 2017 – Present • 1 yr 1 mo
El Segundo, CA

MedVector's mission is to advance medicine by streamlining the clinical trial industry. We provide Pharmaceutical & Biotech companies, Contract Research Organizations (CRO) and research institutes a global patient network utilizing Telemedicine. This enables researchers to quickly identify and connect to more clinical trial candidates, exponentially improving time to market.

Once suitable candidates have been identified, MedVector connects our research clients to trial participants utilizing a state of the art, HIPAA compliant, telemedicine network, allowing them to virtually move patients to clinical trial site-locations from anywhere in the world.

Our process allows clinical trial sites (locations) to capture marketshare, creates economies-of-scale by removing redundancies in the current marketplace, creates revenue for hospitals not conducting clinical trials, gives remote populations access to cutting edge medicine, and significantly expedites the process of bringing life saving, advanced medicine to market.

To learn more visit: www.MedVectorTrials.com

Financial Advisor
Wells Fargo Private Bank
Oct 2014 – Apr 2018 • 3 yrs 7 mos
Los Angeles, California

Built a Wealth Management team within the Private Bank, incorporting Wealth Managers, Portfolio Managers, Private Bankers and Financial Advisors.

Financial Advisor
Morgan Stanley Wealth Management
May 2011 – Nov 2014 • 3 yrs 7 mos

D & S Investments
Jan 2008 – May 2011 • 3 yrs 5 mos

Advised a Family Office regarding options strategy.

Education

University of Arizona
Bachelor of Science (BS), Marketing
1997 – 2002
Activities and Societies: Delta Chi

Interests

University of Arizona
214,411 followers

Barrington Legal, Inc.
40 followers

MedVector Clinical Trials
4 followers

Delta Chi Fraternity
5,471 members

University of Arizona Alumni
34,140 members

Fortis Partners
1,045 followers

See all

Morgan Stanley Smith Barney is Now Morgan Stanley Wealth Management

Sep 25, 2012

Morgan Stanley's U.S. Wealth Management Business Has a New Name Following Largest-Ever Integration in the Wealth Management Industry

New York —

Morgan Stanley (NYSE: MS) today announced that its U.S. wealth management business, Morgan Stanley Smith Barney, has been renamed Morgan Stanley Wealth Management (MSWM).

Morgan Stanley Wealth Management is an industry leader, managing $1.7 trillion in client assets through a network of 17,000 representatives in 740 locations. Morgan Stanley on September 11 announced an agreement with Citigroup to increase its majority ownership of MSWM such that Morgan Stanley will assume full control by June of 2015, subject to regulatory approval. The business was formed in 2009 as a joint venture between Morgan Stanley and Citi's Smith Barney.

"Today, as we move under one name, we are culminating a three-year effort to integrate two outstanding franchises," said James Gorman, Chairman and Chief Executive Officer of Morgan Stanley. "The Smith Barney name stood for investment excellence for three-quarters of a century, and Morgan Stanley Wealth Management will provide the first-class service that has distinguished Morgan Stanley as a firm for more than 75 years. Going forward, we remain focused on being the world's premier wealth management group."

Said Greg Fleming, President of Morgan Stanley Wealth Management, "Today, we are one integrated business, with one overarching mission: to earn the trust of our clients every day

through superior advice and execution. Our name has changed to reflect our integration, but our mission remains the same: We are committed to helping our clients reach their financial goals."

The broker-dealer designation for Morgan Stanley Wealth Management will remain "Morgan Stanley Smith Barney LLC."

Morgan Stanley Wealth Management, a global leader in wealth management, provides access to a wide range of products and services to individuals, businesses and institutions, including brokerage and investment advisory services, financial and wealth planning, credit and lending, cash management, annuities and insurance, retirement and trust services.

Morgan Stanley (NYSE: MS) is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services. The Firm's employees serve clients worldwide including corporations, governments, institutions and individuals from more than 1,200 offices in 43 countries. For further information about Morgan Stanley, please visit www.morganstanley.com.

Media Relations Contact:

Jeanmarie McFadden, 212.761.2433

Jim Wiggins, 914.225.6161

KAMALA D. HARRIS
CALIFORNIA

WWW.HARRIS.SENATE.GOV

United States Senate

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
COMMITTEE ON THE JUDICIARY
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON THE BUDGET

June 29, 2020

Mr. Raheem J. Brennerman Reg. 54001-048
LSCI Allenwood
PO Box 1000
White Deer, PA 17887-1000

Dear Mr. Brennerman

RACIAL INJUSTICE PACKAGE
(PLACE ON TOP OF PACKAGE)

KAMALA D. HARRIS
CALIFORNIA

WWW.HARRIS.SENATE.GOV

United States Senate

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
COMMITTEE ON THE JUDICIARY
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON THE BUDGET

July 22, 2019

Mr. Raheem J. Brennerman
LSCI Allenwood
PO Box 1000
White Deer, PA 17887-1000

x

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
P. O. Box 1000
White Deer, Pa. 17887-1000

Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

with copy to:

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

February 2, 2021

BY E-MAIL & CERTIFIED FIRST CLASS MAI
Email: Temporary_Pro_Se_filing@nysd.uscourts.gov

Regarding: United States v. Brennerman
District Court Case No. 17 CR. 337 (RJS)
MOTION FOR COMPASSIONATE RELEASE EVIDENCE

Dear Judge Sullivan:

Defendant Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits this motion with appended evidence together (the "Motion") in reliance on his Constitutional rights, applicable law and federal rule and will move this Court before Honorable Richard J. Sullivan, United States Circuit Judge, at Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, New York 10007 for an order directing the prosecutors, United States Attorney Office for the Southern District of New York to obtain and present to the Court and Brennerman (a.) evidence of Brennerman`s interaction with Morgan Stanley in light of the surreptitious endeavor by the Court to falsely satisfy the FDIC essential element necessary to convict Brennerman for bank fraud and bank fraud conspiracy by improperly supplanting a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC "MSSB" (which Government presented as Government

Exhibit - GX1-57; GX1-57A; GX529; GX1-73 during trial as evidence of Brennerman`s interaction with Morgan Stanley (see 17 CR. 337 (RJS), doc. no. 167)) with a FDIC insured institution, Morgan Stanley Private Bank "MSPB" (even though Government presented no evidence of Brennerman`s interaction with MSPB (see appended evidence at "Exhibit C" underlined for clarity)), in an endeavor to wrongly convict and imprison Brennerman; (b.) the pertinent evidence mainly the ICBC (London) plc underwriting file relating to the transaction between ICBC (London) plc and The Blacksands Pacific Group, Inc., in light of the arguments presented within the appended evidence (correspondence dated January 22, 2021 and evidence). Brennerman requires the evidence highlighted above to present a comprehensive Compassionate release pursuant to 18 U.S.C. Section 3582(c)(1)(A) as directed by the Court in its order (at 17 CR. 337 (RJS), doc. no. 253)

On January 22, 2021, Brennerman submitted via electronic mailing at Temporary_Pro_Se_filing@nysd.uscourts.gov to the Clerk of Court for the U.S. District Court for the Southern District of New York, correspondence with respect to his Covid-19 infection and other issues for the record in an endeavor to compel the Court to order evidence which he requires for his pleadings. On February 2, 2021, the Court (Sullivan, J.) (at 17 CR. 337 (RJS), doc. no. 253) through an order refused to docket the correspondence and relied on an erroneous assumption that the appended correspondence and evidence dated January 22, 2021 was an endeavor by Brennerman to supplement his appellate record. Brennerman emphatically asserts that such assumption is erroneous because this instant motion from which Brennerman seeks affirmative relief differs significantly from previous relief sought. This instant motion and relief sought is made in reliance on the Due Process, Brady and Constitutional rights. Moreover, federal rule and applicable law mandates that the Clerk of Court shall docket all submissions to the Court irrespective of its nature.

Given the significance of the issues cited within the appended evidence (correspondence and evidence dated January 22, 2021) and in light of the urgency that Covid-19 presents to Brennerman. Brennerman respectfully submits this motion and appended evidence seeking affirmative relief as stated above from this Court.

Defendant Raheem Brennerman, is a pro se defendant, therefore his pleadings are generally liberally construed and held to a less stringent standard than pleadings drafted by an attorney. See Hughes v. Rowe, 449 U.S. 6, 9 (1980) (per curiam) ; Estelle v. Gamble, 429 U.S. 97 (1976).

Brennerman respectfully submits the above and appended evidence and prays that this Court grants his request in its entirety.

Dated: February 2, 2021
White Deer, Pa. 17887-1000

Respectfully Submitted

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

Defendant Pro Se

Cc: REDACTED
Cc: REDACTED
Cc: www.freeraheem.com
Cc: www.freerjbrennerman.com
Cc: U.S. Attorney Office (S.D.N.Y.)

Enclosure:
Correspondence with evidence for record dated January 22, 2021

EXHIBIT A

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
P. O. Box 1000
White Deer, Pa. 17887-1000

Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
Southern District of New York
40 Foley Square
New York, New York 10007

January 22, 2021

BY E-MAIL & CERTIFIED FIRST CLASS MAIL
Email: Temporary_Pro_Se_filing@nysd.uscourts.gov

Regarding: United States v. Brennerman
District Court Case No. 17 CR. 337 (RJS)
CORRESPONDENCE WITH EVIDENCE FOR THE RECORD

Dear Judge Sullivan:

Defendant Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits the appended record and evidence pursuant to all applicable law and federal rule in an endeavor to document his Covid-19 infection and other issues for the record.

I. COVID-19 INFECTION:

On December 17, 2020, Brennerman who is currently incarcerated at FCI Allenwood Low ("Allenwood") arising from the above criminal cases tested positive for Covid-19 and a few days later was diagnosed with Covid-19 pneumonia causing severe breathing difficulty among other Covid-19 symptoms. Brennerman suffers from diabetes and hypertension, medical conditions promulgated by the Center for Disease Control and Prevention ("CDC") that places him at a heightened risk of serious illness or death should he contract Covid-19 (A copy of the medical record is appended as "Exhibit A")

Brennerman is currently incarcerated at FCI Allenwood Low pursuant to an order of Judge Richard J. Sullivan arising from the criminal case at 17 CR. 337 (RJS). Notwithstanding, proclamation by the prosecutors that the BOP had formulated preventive measures and action plan with respect to protecting incarcerated persons from contracting Covid-19. On December 17, 2020 approximately 114 inmates out of 116 inmates residing at the same unit at FCI Allenwood Low with Brennerman tested positive for Covid-19. Thereafter, Brennerman was denied adequate care or medication and endured significant pain and suffering arising from Covid-19 with symptoms including high body temperature, severe difficulty with breathing and pneumonia, body aches, violent coughs among others.

Although Brennerman strenuously presented evidence of Constitutional violation with his conviction where he was deprived evidence which he required to present complete defense and highlighted erroneous proclamation by the Court in respect of which Morgan Stanley subsidiary he interacted with, the Court has refused to correct its errors. Brennerman has also continued to request and persuade the Court to allow him access to evidence which he requires to present a comprehensive Compassionate release motion pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factor (which the Court will consider in the adjudication of the motion) however the Court has continued to ignore him, thus Brennerman remains unjustly incarcerated and the institution where he is currently incarcerated failed to provide any medication or therapeutic treatment to Brennerman while enduring significant suffering arising from Covid-19 infection which exacerbates the Constitutional violation already suffered and highlights the deliberate indifference while the Court (Sullivan, J.) continues to wrongly convict and imprison Brennerman.

Brennerman now faces the serious possibility of a second wave of Covid-19 infection while he remains incarcerated with a much weakened immune system while the Court (Sullivan, J.) continues to deny and deprive him access to pertinent evidence for his release.

II. REQUEST FOR EVIDENCE TO PRESENT COMPREHENSIVE COMPASSIONATE RELEASE MOTION PURSUANT TO 18 U.S.C.S. 3582(c)(1)(A):

Prior to contracting Covid-19, Brennerman strenuously requested and pleaded with the Court (Sullivan, J.) see 17 CR. 337 (RJS), doc. nos. 248, 250 to provide him with the pertinent evidence (ICBC underwriting file) which he required to present a comprehensive Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factors. The Court (Sullivan, J.) at 17 CR. 337 (RJS), doc. no. 249, 251 instead pivoted to the erroneous disposition by the Second Circuit U.S. Court of Appeals ("Second Circuit") which inaccurately stated that "the only indication that the document are extant comes from Brennerman`s bare assertion".

III. MOTION-TO-RECALL MANDATE AT THE SECOND CIRCUIT:

Brennerman has presented overwhelming evidence from the case proceedings including trial transcripts and other evidence to both the Chief Judge of the Second Circuit (Hon. Debra Ann Livingston) and Second Circuit (panel Court) in an endeavor to allow the Court to recall the mandate and correct its erroneous disposition. see Appeal Docket No. 18-3546(L), doc. nos. 211, 212, 217 and Appeals Docket No. 18-1033(L), doc. nos. 334, 335.

IV. PETITION FOR WRIT OF CERTIORARI AT THE SUPREME COURT OF U.S.:

Brennerman has also succinctly presented issues with extensive evidence to the Supreme Court of the United States ("Supreme Court") in an endeavor to document and present pertinent record (irrespective of whether certiorari is granted) at docket no. 20-6638 (arising from appeal docket nos. 18-3546(L); 19-497(Con) at the Second Circuit and 17 CR. 337 (RJS) at the U.S. District Court (S.D.N.Y.)) and at docket no. 20-6895 (arising from appeal docket nos. 18-

1033(L); 18-1618(Con) at the Second Circuit and 17 CR. 155 (LAK) at the U.S. District Court (S.D.N.Y.))

V. ISSUES WITH BANK FRAUD AND BANK FRAUD CONSPIRACY (18 U.S.C.S. 1344):

Brennerman, in an endeavor to strenuously present pertinent evidence is again appending with this correspondence, evidence at 17 CR. 337 (RJS), doc. no. 167 which irrefutably demonstrate that Brennerman opened his account at Morgan Stanley Smith Barney, LLC ("MSSB") and interacted with Scott Stout who worked at MSSB (A copy of evidence at 17 CR. 337 (RJS), doc. no. 167 is appended as "Exhibit B"). This evidence from trial records directly contradict the erroneous proclamation by the Court that Brennerman interacted with the "private bank of Morgan Stanley" which was proffered by the Court (Sullivan, J.) during the hearing on November 19, 2018 when the Court denied Brennerman`s motion for judgment of acquittal submitted pursuant to Fed. R. Crim. P. 29. (A copy of excerpt from the hearing transcript is appended as "Exhibit C" and underlined for clarity). The erroneous proclamation was made in a surreptitious endeavor to falsely satisfy the FDIC essential element necessary to convict Brennerman for bank fraud (18 U.S.C.S. 1344(1)) and bank fraud conspiracy (18 U.S.C.S. 1349) by improperly supplanting a non-FDIC institution (MSSB) for a FDIC insured institution (Morgan Stanley Private Bank) where there was no evidence presented at trial to demonstrate that Brennerman interacted with Morgan Stanley Private Bank. Brennerman presented evidence at 17 CR. 337 (RJS), doc. no. 167 (appended as "Exhibit B") which conclusively demonstrated that he interacted with a non-FDIC insured institution. Even the erroneous disposition by the Second Circuit points to Brennerman`s single telephone call with Kevin Bonbrake who worked for another non-FDIC subsidiary of Morgan Stanley. (A copy of trial transcripts at 17 CR. 337 (RJS), trial. tr. 384-385; 409; 387-388; 1057; 1059; 1060-1061 appended as "Exhibit F") Notwithstanding these overwhelming evidence, Brennerman remains incarcerated for bank fraud and bank fraud conspiracy solely because of the erroneous proclamation by the Court (Sullivan, J.)

VI. ISSUES WITH WIRE FRAUD AND WIRE FRAUD CONSPIRACY (18 U.S.C.S. 1343):

Already demonstrated through extensive submissions at appeal docket no. 18-3546(L), doc. nos. 211, 212, 217, trial transcripts from 17 CR. 337 (RJS) contradict the Court (Sullivan, J.) and Second Circuit panel Court, that the pertinent evidence (ICBC underwriting file, which documents the basis for approving the bridge finance and thus confirms "Materiality" of any representation or alleged misrepresentation) is not extant beyond Brennerman`s assertion. Indeed, Government sole witness from ICBC (London) plc, Julian Madgett confirmed that the evidence (ICBC underwriting file) is/was extant and with the bank`s file in London, United Kingdom (A copy of the trial transcript with Government witness, Julian Madgett, 17 CR. 337 (RJS), Trial Tr. 551-554 is appended as "Exhibit D") and the Court (Sullivan, J.) confirmed that the witness (Julian Madgett) had confirmed that the evidence (ICBC underwriting file) is/was extant with the bank`s file in London, United Kingdom (A copy of the trial transcript, 17 CR. 337 (RJS), Trial Tr. 617 is appended as "Exhibit E").

The Court continues to deny request for the evidence (ICBC underwriting file) stating that the Court cannot permit indiscriminate introduction of evidence which was not presented at trial,

even though during trial the Court denied Brennerman`s request for the evidence (A copy of the letter motion submitted by Brennerman to request for the evidence (ICBC underwriting file) submitted at 17 CR. 337 (RJS), doc. no. 71 is appended at "Exhibit G") upon learning of its existence following testimony by Government sole witness from ICBC (London) plc, Julian Madgett that evidence (ICBC underwriting file) exists with the bank`s file which document the basis for ICBC (London) plc approving the bridge finance and thus confirms "Materiality" of any representation or alleged misrepresentation. Further that, the Government never obtained or reviewed the evidence (ICBC underwriting file). The Court (Sullivan, J.) denied Brennerman`s request for the evidence (ICBC underwriting file) which he required to present a complete defense and confront witness against him while permitting Government witness, Julian Madgett to testify as to the contents of the evidence (ICBC underwriting file) to satisfy "Materiality (an essential element of charged crime)" of any representation or alleged misrepresentation contained within the evidence (ICBC underwriting file) which was considered in the approval of the bridge finance.

VII. OTHER ISSUES:

Additionally, Brennerman has strenuously requested for a copy of his birth certificate which is/was in the Government`s possession at time of trial and which Government never presented to the jury for consideration in their deliberation. Brennerman requested for this evidence (birth certificate) to present comprehensive argument in a Compassionate release motion pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factor, however the Court (Sullivan, J.) continues to ignore his request. see 17 CR. 337 (RJS), doc. nos. 236, 240, 241, 248, 250.

VIII. CONCLUSION:

In light of the above and the overwhelming evidence, Brennerman respectfully submits the appended evidence in compliance with applicable law and federal rule on record.

Dated: January 22, 2021
White Deer, Pa. 17887-1000

Respectfully submitted

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

Defendant Pro Se.

Cc: REDACTED
Cc: REDACTED
Cc: www.freeraheem.com
Cc: www.freerjbrennerman.com
Cc: U.S. Attorney Office (S.D.N.Y.)

EXHIBIT B

Bureau of Prisons
Health Services
Clinical Encounter

Inmate Name: BRENNERMAN, RAHEEM J			Reg #: 54001-048
Date of Birth: [redacted]	Sex: M	Race: BLACK	Facility: ALF
Encounter Date: 12/22/2020 09:59	Provider: Moclock, Michael MD		Unit: G03

Physician - Evaluation encounter performed at Health Services.

SUBJECTIVE:

COMPLAINT 1 Provider: Moclock, Michael MD

Chief Complaint: INFECTIOUS DISEASE

Subjective: Patient Covid positive. He c/o worsening cough. No sputum production. No fever.

Pain: No

OBJECTIVE:

Exam:

Cardiovascular

Auscultation

Yes: Regular Rate and Rhythm (RRR), Normal S1 and S2

No: M/R/G

Infectious Disease

COVID 19

Yes: Vital Signs w/O2 sat recorded in flowsheet, Alert and oriented, Lung sounds clear bilaterally, Adequate respiratory effort

No: Using accessory muscles

Exam Comments

Lungs clear in all fields. No egophony. No tachypnea.

ASSESSMENT:

Confirmed case COVID-19, U07.1 - Current

PLAN:

Disposition:

Placed in Quarantine

Other:

1. Covid positive with worsening cough. Await CXR report. Exam unremarkable. Con't supportive care.

Patient Education Topics:

Date Initiated	Format	Handout/Topic	Provider	Outcome
12/22/2020	Counseling	Plan of Care	Moclock, Michael	Verbalizes Understanding

Copay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Completed by Moclock, Michael MD on 12/22/2020 10:04

Bureau of Prisons
Health Services
Clinical Encounter - Administrative Note

Inmate Name:	BRENNERMAN, RAHEEM J			Reg #:	54001-048
Date of Birth:	[redacted]	Sex:	M Race:BLACK	Facility:	ALF
Note Date:	12/22/2020 10:37	Provider:	Stoltz, John PA-C	Unit:	G03

Admin Note - General Administrative Note encounter performed at Health Services.

Administrative Notes:

ADMINISTRATIVE NOTE 1 Provider: Stoltz, John PA-C

X-ray completed today showed subtle mixed interstitial and alveolar opacities in both lungs. Correspond with COVID pneumonia. Will have pt. monitored more frequently the daily.

ASSESSMENTS:

Viral pneumonia, unspecified, J129 - Current

New Non-Medication Orders:

Order	Frequency	Duration	Details	Ordered By
Vitals	Daily	5 days	Please completed vitals each evening along with completing the COVID screening. Please notify MLP if SPO2 is less the 92% or if pt. develops concerning signs or symptoms. Thanks. Screening will also be completed each morning.	Stoltz, John PA-C

Order Date: 12/22/2020

Copay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Completed by Stoltz, John PA-C on 12/22/2020 10:44

Bureau of Prisons
Health Services
Clinical Encounter - Administrative Note

Inmate Name:	BRENNERMAN, RAHEEM J			Reg #:	54001-048
Date of Birth:	[redacted]	Sex:	M Race: BLACK	Facility:	ALF
Note Date:	12/22/2020 10:50	Provider:	Brown, Desiree RN	Unit:	G03

Admin Note - General Administrative Note encounter performed at Health Services.

Administrative Notes:

ADMINISTRATIVE NOTE 1 Provider: Brown, Desiree RN

Incentive spirometer given to inmate per MLP15. Inmate instructed/educated on how to use and frequency. Inmate verbalized understanding.

Supplies Issued:

Supply	Quantity	Date Issued
Incentive Spirometer	1	12/22/2020

Copay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Completed by Brown, Desiree RN on 12/22/2020 10:52

EXHIBIT C

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

FROM: 54001048
TO:
SUBJECT: Re: LEGAL CORRESPONDENCE -06.20.18
DATE: 06/20/2018 02:25:49 PM

x

Raheem J. Brennerman (54001-048)
Metropolitan Detention Center
P O Box 329002
Brooklyn, New York 11232

Honorable Judge Richard J. Sullivan
United States District Judge
United States District Court
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

June 20, 2018

Re: United States v. Raheem J. Brennerman
Case No: 1:17-cr-337 (RJS)

Dear Judge Sullivan

Defendant Pro Se, Raheem Brennerman ("Brennerman") submits additional evidence to bolster his arguments, which are succinctly highlighted in correspondences dated June 10, 2018 (see 17-cr-337 (RJS), dkt. no. 164), the June 11, 2018 and June 17, 2018 correspondences.

Brennerman submits, Government Exhibit 1-57, e-mail correspondence between Mr. Scott Stout and Brennerman, which highlights the e-mail signature of Scott Stout and the Beverly Hills, California address of Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank); Government Exhibit 1-57A, the account opening form, which highlights "Morgan Stanley Smith Barney (not Morgan Stanley Private Bank)" at the top right corner of the form; Government Exhibit 1-73, e-mail between Scott Stout and Brennerman, which highlights Brennerman's alleged fraud - the perks which he became entitled to, however more important, page two of the e-mail correspondence highlights within the "Important Notice to Recipient" in relevant parts that "The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"); Government Exhibit 529, the Morgan Stanley account statement, which highlights Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank) at the bottom left corner of the bank statement cover page. Additionally Brennerman submits the profile of Mr. Scott Stout which highlights that Mr. Scott Stout worked at Morgan Stanley Wealth Management between May 2011 and November 2014, as well the announcement on September 25, 2012 by Morgan Stanley Smith Barney LLC stating in relevant parts that "Morgan Stanley Smith Barney is now Morgan Stanley Wealth Management.

These evidence are important to highlight that Brennerman interacted with Morgan Stanley Smith Barney LLC which is indisputably not FDIC insured and thus the essential element necessary to convict for bank fraud in violation of 18 United States Code Section 1344(1) and its related conspiracy - conspiracy to commit bank fraud in violation of 18 United States Code Section 1349 cannot be satisfied and Brennerman's relief for judgment of acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure should be granted, and that Government failed to conduct the necessary diligence or investigation prior to indicting and prosecuting Brennerman.

Brennerman highlights the following as to the wire fraud charge and its related conspiracy. Brennerman was charged in two criminal cases - criminal contempt of court in case no. 17-cr-155 (LAK), before Hon. Judge Lewis A. Kaplan and the related fraud case in case no. 17-cr-337 (RJS), before Hon. Richard J. Sullivan, both stemming from the underlying civil case, case no. 15 cv 70 (LAK) captioned - ICBC (London) PLC v. The Blacksands Pacific Group, Inc before Hon. Judge Lewis A. Kaplan. Because the trial in the case before Judge Kaplan was scheduled ahead of that before this court, Brennerman sought to obtain the relevant ICBC London lending and underwriting file which is probative as to materiality an essential element of the charged crime of wire fraud and its related conspiracy. Because Brennerman's request to both the government and directly to ICBC (London) PLC had been denied, Brennerman sought to compel for the relevant files through U.S District Court (S.D.N.Y), since the criminal cases stemming from the ICBC (London) PLC transaction were being prosecuted at the U.S District Court (S.D.N.Y), however Brennerman's request to U.S District Court (S.D.N.Y) was denied (see 17-cr-155 (LAK), dkt. no. 76). Deprived of the relevant files necessary to cross-examine any government witness as to substance or credibility, Brennerman moved in his motion-in-limine and reply to Government's motion-in-limine, prior to trial of the related fraud charge, for U.S District Court (S.D.N.Y) to exclude the testimony of any witness from ICBC (London), because such testimony will be highly

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

prejudicial and unfair to Brennerman as government will simply be allowed to present any witness, who will be able to say anything without corroboration and without Brennerman having the opportunity to cross-examine him as to substance or credibility, as Brennerman would not have been able to review the relevant lending and underwriting files. Moreover, he will be unable to assert his good faith defense, thus violating Brennerman's constitutional rights to a fair trial.

Even after trial, Brennerman has presented evidence to highlight that Mr. Robert Clarke (not Mr. Julian Madgett) was responsible for the relevant transaction at ICBC (London) PLC as evidenced through his affidavit in the underlying civil case at 15 cv 70 (LAK). (See copy of Robert Clarke affidavit at, (17-cr-337 (RJS), dkt. no. 164, exhibit 2). Additionally Brennerman submitted evidence - Government Exhibit 1-19 and 1-22 which highlights that Blacksands had already incurred and disbursed $6.45 million in satisfying the finance conditions of ICBC (London) PLC and that the bridge finance was agreed to replace part of those funds which Blacksands already disbursed, further that Brennerman informed both Mr. Bo Jiang and Mr. Julian Madgett at ICBC (London) PLC and ICBC (London) PLC agreed to the use of the bridge finance. (See 17-cr-337 (RJS), dkt. no. 164, exhibit 3) 164, exhibit 2). Among others, Brennerman submitted newly discovered evidence (see 17-cr-337 (RJS), dkt. no. 164, exhibit 2) - the 2017 ICBC (London) PLC financial and company disclosure which was made publicly available on June 6, 2018, after trial. The disclosure highlights that there was no fraud. Because ICBC (London) PLC, the alleged victim of the wire fraud and related conspiracy has made no disclosure, representation or announcement that the transaction involving Blacksands Pacific was fraudulent or that it became a victim of fraud due to the transaction with Blacksands. Notwithstanding, that ICBC (London) PLC, a financial institution and publicly traded company in United Kingdom (England and Wales) is mandated by regulations to disclose publicly, if it became a victim of fraud or became involved with fraudulent transaction. This is particularly significant, where Government never reviewed, adduced or presented the relevant ICBC London lending and underwriting files, and because Brennerman was deprived from engaging in any meaningful cross-examination of the sole witness presented by Government from ICBC (London) PLC as to credibility and substance. In addition to the fact that, the sole witness - Mr. Julian Madgett, is not a member of the credit committee responsible for approving the transaction at ICBC (London) PLC.

Thus, Brennerman submits, arguing that since Government ostensibly argued (although erroneously) that Scott Stout worked at Morgan Stanley Private Bank (instead of Morgan Stanley Smith Barney) in their opposition to his Rule 29 and 33 motion. (See 17-cr-337 (RJS), dkt. no. 149), now highlighted as an erroneous proffer by Government given the overwhelming evidence which were all available to Government. Government's credibility is questionable; further that, because Brennerman was deprived of the relevant ICBC London lending and underwriting file prior to trial and even Government concedes that it had not reviewed the files; additionally, because Robert Clarke and not Julian Madgett is/was responsible for the relevant transaction at ICBC (London) PLC as highlighted through his affidavit; additionally, because Brennerman suffered for ineffective assistance of counsel due to the conflict of interest issue, with his trial counsel; additionally, because Brennerman submitted and highlighted newly discovered evidence - the 2017 financial and company disclosure, by ICBC (London) PLC, which was filed and made public on June 6, 2018. Brennerman respectfully requests and pleads for the Court to resolve the factual dispute as to the relevant ICBC London transaction with Blacksands Pacific, as it pertains to this case, by reviewing the relevant ICBC London lending and underwriting files, especially in light of the newly discovered evidence which demonstrates that, ICBC (London) PLC, the alleged victim has not disclosed or represented that the transaction with Blacksands was fraudulent or that it became a victim of fraud through the transaction with Blacksands, which it would have had to disclose by regulation if any fraud occurred.

The above presents significant issues, because Brennerman suffered prejudicial spillover on other counts of the charged crime, due to Government's erroneous argument and presentment to the court and jury at trial. In addition, Brennerman suffered prejudice due to the conflict of interest issue with his trial counsel. Evidence submitted to date, supports, Brennerman's pleading for a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Brennerman submits the above and the appended evidence in addition to his submissions at (dkt. no. 164), his June 11, 2018 and June 17, 2018 correspondences, and awaits the Court's decision

Dated: June 20, 2018
New York City, New York

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman
Defendant Pro Se

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: BRENNERMAN R. J@Executive Office
Subject: Re: Morgan Stanley (Wealth Management)
Date: Tuesday, January 8, 2013 9:09:49 AM
Attachments: Morgan Stanley (Client Profile).pdf
Importance: High

Dear Scott,

As discussed, attached is the completed forms, as advised the account will be in the corporate name however you wanted me to also complete a form with personal information. As discussed, I will require Debit Card and AMEX card with the account.

Please let know what are the next steps.

Best Regards

From: Stout, Scott
Sent: Monday, December 10, 2012 1:10 PM
To: mailto:rbrenneman@blacksandspacific.com
Subject: RE: 2013 Preparation

Hi RJ,

Just a reminder to get those forms to me so I can get everything in order prior to our lunch on Friday.

Thanks,
Scott

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

http://www.morganstanley.com/fa/scott.stout
scott.stout@morganstanley.com

GOVERNMENT EXHIBIT 1-57 17 Cr. 337 (RJS)

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

Morgan Stanley SmithBarney

Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name Kenton Jefferson Brenckman

Address 345 Park Avenue, 31st

City New York State New York Zip Code 10154

Home Phone _____ Business _____

Cell 917 622 6430 Fax 310 861 1557

SS# or Tax ID [redacted] US Citizen (Y) N

Marital Status Single #of Dependents n/a Date of Birth 04/21/75

E-mail Address kbrenckman@blackstone.com

Telephone access Prompts **Mother's Maiden Name** _____

City of Birth _____ or **1st School Attended** Dwight

Employer Blackstone Group Management LLC

Nature of Business Oil & Gas Occupation Oil & Gas Investment

Est. Annual Compensation $ 200k (Base Salary) Employed Since 2010

Primary Source of Income-Check all that apply

Annual Salary X Investments X Retirement Assets ___ Amount $ _____

Est. Total Annual Income (all sources) _____

Est. Liquid Net Worth $ 15m Est. Total Net Worth $ _____

Tax Bracket (percentile) _____

Investment Objectives: (*Please rank 1 through 4, in order of priority*)

Growth 1X Current Income 3 Tax Deferral 4 Liquidity X 2

Investing Since *(year)* Stocks 11 Bonds 11 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive ___ Moderate X Conservative ___

Speculation Yes ___ No ___

Primary Financial Need: (circle one)

(Wealth Accumulation) Major Purchase Healthcare Education
Estate Planning Retirement Charity Income

Outside Investments: **Firms Used:** _____

Equities $ _____ **Fixed Income $** _____ **Cash$** _____ **Alt Investments** _____

Time Horizon _____ **Liquidity Needs** _____

Are you or anyone in your household a major share holder in a publicly traded company? Y (N)
Are you an executive of a publicly traded company? Y (N)
Do you or anyone in your immediate family work for a brokerage house? Y (N)
Is anyone in your immediate family employed by CitiGroup? Y (N)

[signature] 1/5/12

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.
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GOVERNMENT EXHIBIT 1-57A 17 Cr. 337 (RJS)

9665 Wilshire Boulevard
Suite 900 Beverly Hills, CA 90212

MorganStanley SmithBarney

Kindly provide all personal information.
For additional owners, please complete a 2nd profile.

Full Name Jefferson III Builders LLC

Address 3960 Howard Hughes Parkway, Suite 500

City Las Vegas State Nevada Zip Code 89169

Home Phone _____ Business _____

Cell 917 671 6430 Fax _____

SS# or Tax ID [redacted] US Citizen(Y / N)

Marital Status NA #of Dependents _____ Date of Birth _____

E-mail Address _____

Telephone access Prompts **Mother's Maiden Name** _____

City of Birth _____ or **1st School Attended** Dwight

Employer _____

Nature of Business Investments Occupation _____

Est. Annual Compensation $_____ Employed Since _____

Primary Source of Income-Check all that apply

Annual Salary____ Investments ____ Retirement Assets____ Amount $_____

Est. Total Annual Income (all sources)_____

Est. Liquid Net Worth $_____ Est. Total Net Worth $_____

Tax Bracket (percentile)_____

Investment Objectives: (*Please rank 1 through 4, in order of priority*)

Growth 1 Current Income 2 Tax Deferral 3 Liquidity 4

Investing Since *(year)* Stocks 19 Bonds 21 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive ___ Moderate X Conservative ___

Speculation Yes_____ No_____

Primary Financial Need: (circle one)

Wealth Accumulation (Estate Planning) Major Purchase Retirement Healthcare Charity Education Income

Outside Investments: **Firms Used:** _____

Equities $_____ **Fixed Income $**_____ **Cash$**_____ **All Investments**_____

Time Horizon _____ **Liquidity Needs** _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N
Are you an executive of a publicly traded company? Y N
Do you or anyone in your immediate family work for a brokerage house? Y N
Is anyone in your immediate family employed by CitiGroup? Y N

11/5/15

Please sign and date above

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From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: Gevarter, Mona
Subject: Re: Platinum AMEX
Date: Wednesday, January 9, 2013 7:24:39 PM
Importance: High

Dear Mona,

Are you able to call me on my cellphone 917 699 6430 regarding the email below

Best Regards

From: Stout, Scott
Sent: Wednesday, January 09, 2013 4:45 PM
To: mailto:rbrennerman@blacksandspacific.com
Cc: Gevarter, Mona
Subject: Platinum AMEX

RJ,

Please give Mona a call to set up your Platinum AMEX card. 310 205 4751.

As a Morgan Stanley perk, if you spend $100k annually we deposit $500 into your account to cover your annual fee ($450).

Other MS/Platinum Perks include:

- First Class Lounge Access
- $200 annually in airline fee credits (checking bags, etc)
- No foreign transaction fees
- Premium upgrades for car rentals
- Concierge
- 20% Travel Bonus

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

http://www.morganstanley.com/fa/scott.stout
scott.stout@morganstanley.com

GOVERNMENT EXHIBIT 1-73 17 Cr. 337 (RJS)

SDNY_008384

Morgan Stanley

CLIENT STATEMENT For the Period January 431, 2013

#BWNJGWM

RAHEEM JEFFERSON BRENNERMAN
245 PARK AVENUE
39 FLOOR
NEW YORK NY 10167-4000

TOTAL VALUE LAST PERIOD (as of 12/31/12)	☐
NET CREDITS/DEBITS	200,000.00
CHANGE IN VALUE	0.88
TOTAL VALUE OF YOUR ACCOUNT (as of 1/31/13)	$200,000.88

(Total Values include accrued interest)

Your Branch
9665 WILSHIRE BLVD STE 600
BEVERLY HILLS, CA 90212
Telephone: 310-285-2600
Alt. Phone: 800-458-9838
Fax: 310-285-2696

Your Financial Advisor
Scott Stout

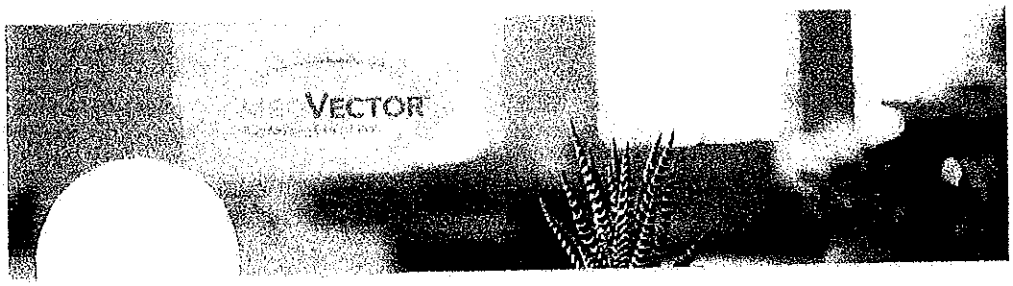
Client Interaction Center
800-869-3326
24 Hours a Day, 7 Days a Week

Access your accounts online
www.morganstanley.com/online

GOVERNMENT EXHIBIT 529
17 Cr. 337 (RJS)

Morgan Stanley Smith Barney LLC. Member SIPC.

197 - 012515 - 064 - 1 - 0



Scott Stout · 3rd

CEO, Co-Founder at MedVector Clinical Trials

El Segundo, California

MedVector Clinical Trials

University of Arizona

See contact info

500+ connections

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Experience

CEO & Co-Founder
MedVector Clinical Trials
Jun 2017 – Present · 1 yr 1 mo
El Segundo, CA

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Once suitable candidates have been identified, MedVector connects our research clients to trial participants utilizing a state of the art, HIPAA compliant, telemedicine network, allowing them to virtually move patients to clinical trial site-locations from anywhere in the world.

Our process allows clinical trial sites (locations) to capture marketshare, creates economies-of-scale by removing redundancies in the current marketplace, creates revenue for hospitals not conducting clinical trials, gives remote populations access to cutting edge medicine, and significantly expedites the process of bringing life saving, advanced medicine to market.

To learn more visit: www.MedVectorTrials.com

Financial Advisor
Wells Fargo Private Bank
Oct 2014 – Apr 2018 · 3 yrs 7 mos
Los Angeles, California

Built a Wealth Management team within the Private Bank, incorporting Wealth Managers, Portfolio Managers, Private Bankers and Financial Advisors.

Financial Advisor
Morgan Stanley Wealth Management
May 2011 – Nov 2014 · 3 yrs 7 mos

D & S Investments
Jan 2008 – May 2011 • 3 yrs 5 mos

Advised a Family Office regarding options strategy.

Education

University of Arizona
Bachelor of Science (BS), Marketing
1997 – 2002
Activities and Societies: Delta Chi

Interests

University of Arizona
214,411 followers

MedVector Clinical Trials
4 followers

University of Arizona Alumni
34,140 members

Barrington Legal, Inc.
40 followers

Delta Chi Fraternity
5,471 members

Fortis Partners
1,045 followers

See all

Morgan Stanley Smith Barney is Now Morgan Stanley Wealth Management

Sep 25, 2012

Morgan Stanley's U.S. Wealth Management Business Has a New Name Following Largest-Ever Integration in the Wealth Management Industry

New York —

Morgan Stanley (NYSE: MS) today announced that its U.S. wealth management business, Morgan Stanley Smith Barney, has been renamed Morgan Stanley Wealth Management (MSWM).

Morgan Stanley Wealth Management is an industry leader, managing $1.7 trillion in client assets through a network of 17,000 representatives in 740 locations. Morgan Stanley on September 11 announced an agreement with Citigroup to increase its majority ownership of MSWM such that Morgan Stanley will assume full control by June of 2015, subject to regulatory approval. The business was formed in 2009 as a joint venture between Morgan Stanley and Citi's Smith Barney.

"Today, as we move under one name, we are culminating a three-year effort to integrate two outstanding franchises," said James Gorman, Chairman and Chief Executive Officer of Morgan Stanley. "The Smith Barney name stood for investment excellence for three-quarters of a century, and Morgan Stanley Wealth Management will provide the first-class service that has distinguished Morgan Stanley as a firm for more than 75 years. Going forward, we remain focused on being the world's premier wealth management group."

Said Greg Fleming, President of Morgan Stanley Wealth Management, "Today, we are one integrated business, with one overarching mission: to earn the trust of our clients every day

through superior advice and execution. Our name has changed to reflect our integration, but our mission remains the same: We are committed to helping our clients reach their financial goals."

The broker-dealer designation for Morgan Stanley Wealth Management will remain "Morgan Stanley Smith Barney LLC."

Morgan Stanley Wealth Management, a global leader in wealth management, provides access to a wide range of products and services to individuals, businesses and institutions, including brokerage and investment advisory services, financial and wealth planning, credit and lending, cash management, annuities and insurance, retirement and trust services.

Morgan Stanley (NYSE: MS) is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services. The Firm's employees serve clients worldwide including corporations, governments, institutions and individuals from more than 1,200 offices in 43 countries. For further information about Morgan Stanley, please visit www.morganstanley.com.

Media Relations Contact:

Jeanmarie McFadden, 212.761.2433

Jim Wiggins, 914.225.6161

EXHIBIT D

IBJQBREs

there's a grid or a table. You probably can't see it, but it's a chart, and there's a column here on the far left. That's the offense level column. It starts at number one and goes down to level 43. The judge goes down that column until the judge gets to the number that the judge found to be the offense level.

The judge then goes across these other columns from left to right, each of which reflects a criminal history category, and the judge keeps going until the judge gets to the criminal history category that the judge found to be appropriate. Where the judge's finger finally stops then after that exercise, well, that's the range that in the view of the commission that prepares this book would be appropriate.

I don't have to follow this book. This book is not mandatory. It's advisory. But I do have to consider it, and I have to make my findings under it. So we are going to spend a few minutes now talking about how this book applies in this case. It can be a little complicated. It can be sort of a little like accounting, but it's not too hard to follow, and I think the issues here are relatively straightforward and understandable. So we'll pick them up. All right?

According to the presentence report prepared by the probation department, beginning on page 6 -- there are four counts of conviction here, so according to probation, Counts One, Two and Three are grouped together pursuant to a different section of the guidelines that says where you have crimes that

IBJQBREs

are distinct crimes but they all involve the same conduct, in most cases you group them all together and you do an analysis all together. You don't count them separately and add them up. You do them together. So the conspiracy to commit bank and wire fraud, the bank fraud and the wire fraud are all treated together, and they're all covered by the same guidelines provision, which is Section 2B1.1. That's the general fraud provision under the guidelines.

Now, I do think, frankly, that it's worth pointing out that the bank fraud calculation here I think would be quite different than the wire fraud, and I guess I want to hear from the parties on that. But the bank fraud here was a scheme or artifice to defraud the private banking arm of Morgan Stanley to enable Mr. Brennerman to get access to the perks which are tangible. They're worth money, free checking among them. I don't get that. And some other perks. But also to get some more intangible perks, which would be access to other arms of the Morgan Stanley family of entities.

I'm only really focused on the first category here. It seems to me the first category here, there's been no evidence that I've seen that suggests that was worth more than $6,500 or so.

Mr. Roos, do you disagree?

MR. ROOS: I think that's right, your Honor.

THE COURT: You agree, OK.

IBJQBREs

And I assume, Mr. Tulman, you agree with that.

MR. TULMAN: I have no problem with that, Judge.

THE COURT: So, that being the case then, the base offense level is 7, because the maximum sentence of bank fraud is 30 years, but there's no enhancement for loss because the loss amount in dollar terms for the bank fraud count did not exceed $6,500.

Is the government arguing there are any other enhancements for the bank fraud count? I didn't see any, but maybe I'm wrong.

MR. ROOS: Well, your Honor, the PSR sets forth sophisticated means.

THE COURT: Sophisticated means for the bank fraud?

MR. ROOS: It's identified as sophisticated means include, like, for instance, his papering of a fake company, his setting up shell entities. The government's proof at trial was -- while I think your Honor is right that from the FDIC institution, the potential loss to that institution was low, he still used those various sophisticated means, basically, the papering of a company that didn't exist in order to get access to those benefits and expose the bank's potential loss. So I think that enhancement would apply.

THE COURT: Mr. Tulman, thoughts on that?

MR. TULMAN: I don't know that there's anything particularly sophisticated about the conduct.

IBJQBREs

THE COURT: Well, it does require you to create a company. It might require you to incorporate a company. It requires you to develop financials for that company and brochures and things like that. There was a lot of evidence about those things. I guess that's more sophisticated than a typical situation where somebody just uses a false name when they go into a bank or adds a zero to their income in a form. I think it's more sophisticated than that. I think ultimately it's not going to matter, the impact of that doesn't add much of anything here, but I think that that argument is -- I'm persuaded there has been proof of sophisticated means that by a preponderance would warrant a two-level increase. So the bank fraud would be at level 9, before we get to obstruction. And I think that's going to be a lot lower than the wire fraud. The wire fraud is what drives this here. So the wire fraud is also going to be a base offense level of 7, correct?

MR. ROOS: That's correct, your Honor.

THE COURT: And then there the loss amount is disputed. The probation department concludes that the loss amount was $20 million because that is what the defendant -- that was the nominal amount of the loan that he fraudulently secured. He didn't get it all, but I guess the argument is that he didn't have to have gotten it all to be on the hook for the full $20 million. It's the loss and the intended loss, at least with the conspiracy count, but probably even for the

IBJQBREs

substantive count, the intended loss would be relevant. So why don't we talk about that.

The restitution amount will be lower. Obviously, it's not going to be 20 million for restitution. The restitution is not the driver of loss for intended loss. So the government's view is this nominal amount alone of $20 million, that's the fraud?

MR. ROOS: Your Honor, I think this is a relatively conservative estimate by probation. There was plenty of proof at trial that the defendant went to both the ICBC and the non-FDIC insured branch of Morgan Stanley and sought out considerably more --

THE COURT: He was trying to get $600 million. I guess at one point that was what there was discussion about, but you're not seeking that as the loss amount, right?

MR. ROOS: That's right, your Honor, although I think there was evidence at trial that he intended that amount. Julian Madgett testified that this bridge loan of $20 million wasn't contemplated as the exclusive deal. Rather, it was sort of the entree to a much larger deal that the bank was totally serious about. So, I think there actually would be a basis for the Court to conclude that there was a $300 million intended loss.

The government isn't pursuing that though, and that's not what probation did. I think this is very reasonable. He

IBJQBREs

had a contract, something reduced to writing for $20 million. Sure, the drawdown happened before the fraud was exposed was approximately $5 million, but there is not only a clear evidence in the trial record of intention to take $20 million from the bank, but actually multiple steps taken by the defendant, up to the point of entering into a contract, having money transferred into an escrow account.

So, there is more -- as your Honor pointed out, the test is not exclusively what actually was lost by the bank. That's may be it for restitution, but in terms of intended loss, there is more than sufficient evidence in the record to conclude that $20 million is the appropriate amount.

THE COURT: Mr. Tulman, do you want to be heard on that?

MR. TULMAN: Yes, your Honor.

The issue, as the government rightly points out, is of intended loss, and what Mr. Brennerman has pointed out to the Court is simply the fact that of the $20 million, as a matter of English law, the $15 million was not controlled by Mr. Brennerman, he would never have been able to gain access to it. It was held in a pledged account to ICBC. So he could not and did not intend ever to receive any of those $15 million.

THE COURT: Why are you saying he never intended to get that money?

MR. TULMAN: That's right. What he maintains is that

EXHIBIT E

(Jury present)

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

CROSS EXAMINATION

BY MR. WALLER:

Q. Good afternoon, Mr. Madgett.

A. Good afternoon.

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

A. 2009.

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

A. Correct.

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

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

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

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

Q. That's correct.

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

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

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

Q. Did you ever produce the documents from that credit

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

MR. ROOS: Objection.

THE COURT: You can answer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Correct, correct. Yes.

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

THE COURT: Well, do you know?

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

THE COURT: Well, don't assume.

THE WITNESS: Okay, sorry. My apologies.

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

THE WITNESS: All right.

BY MR. WALLER:

Q. Was there an answer?

A. Could you repeat the question, please?

Q. Yes.

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

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

THE WITNESS: I don't know.

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

BY MR. WALLER:

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

A. I don't know.

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

A. Yes.

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

A. Yes.

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

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

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

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

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

EXHIBIT F

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

THE COURT: You haven't served it yet?

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

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

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

MR. HESSLER: Hessler, your Honor.

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

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

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

EXHIBIT G

Q. Is that the same title you had or position you had while you were at Morgan Stanley?

A. My title -- my specific job title at Morgan Stanley varied as I was promoted from vice president, to director, to managing director, and I worked within what they called the institutional securities division. My current title is managing director at Lazard within what they call the financial advisory division, but I'm doing substantially the same job, except I'm more solely focused on mergers and acquisitions now and not so much on financings, if that makes sense.

Q. Staying with Morgan Stanley, you mentioned that Morgan Stanley has two business lines?

A. Broadly, if you look at their financials, that's how they characterize it, yes.

Q. And can you just explain, to the extent you understand, what you mean by "business lines"?

A. Certainly. So, Morgan Stanley has a private wealth management business, which is one of the aforementioned two business lines. That business is composed of individuals who somewhat confusingly are also called financial advisors, who work with high net worth individuals to help them manage their money.

And then the other business line that I was referring to, which I was a part of, is called the institutional securities division. And within that division is housed what

is the traditional investment banking activities, which is capital markets, underwriting, so think about initial public offerings, helping companies with that. Mergers and acquisitions, when two companies merge, and then aside from that, there's sales and trading, which is basically making markets in various securities around the world, and also asset management.

Q. You said business lines, but they're really separate entities; is that correct?

A. They're all a part of the Morgan Stanley & Company LLC, which is listed on the New York Stock Exchange, but we report up through different superiors.

Q. You say "part of." Are they the same company? Are they a separate entity?

A. They're wholly-owned subsidiaries of Morgan Stanley & Company LLC.

Q. And you called it, I believe, wealth management. Is it also referred to as the private bank?

A. I don't believe I have the expertise to answer that.

Q. I understand.

A. I could speculate, but...

Q. So you're not really familiar with anything that's handled on the wealth management side, other than sometimes you have clients referred?

A. I've never worked on the wealth management side, so I don't

BY MS. SASSOON:

Q. Just to clarify, turning back to Exhibit 1-61, page 6, is it clear to you one way or the other from looking at this e-mail whether this is an asset-based lending proposal?

A. It's not clear to me, it would be speculation.

Q. Looking at page 7, going back to the part in blue with the asterisk, can you read that, please?

A. 50 percent working interest owned by Black Sands Pacific Alpha Blue, LLC.

MS. SASSOON: No further questions.

THE COURT: Okay. Any recross?

MR. STEINWASCHER: Very briefly, your Honor.

RECROSS EXAMINATION

BY MR. STEINWASCHER:

Q. Can we go back to that same exhibit, same page?

Very briefly, Mr. Bonebrake. Did this proposal provide you -- I say proposal, overview summary proposal, did it provide you with really any information on which Morgan Stanley could make a decision about financing?

A. To get to the point of actually, quote, making a decision on financing, there would have been a lot more work and information needed than this. Again, this was very preliminary stage of our conversation.

MR. STEINWASCHER: Thank you.

THE COURT: Okay. You can step down. Thanks very

BY MR. STEINWASCHER:

Q. Did you have specific recollection as to your conversations -- specific details of your conversations with Mr. Brennerman prior to looking at the documents when meeting with the government?

A. I had recollections of conversations with Mr. Brennerman that were enhanced by looking at the documents. I did recall the conversations before seeing the documents, but the documents were very helpful.

Q. So, it's safe to say that for some specific details, your memory was refreshed by the documents and not something that you just remembered independently prior?

A. That's a broad statement. I'm not sure I could agree or disagree with that, but...

Q. That's fine. That's fine.

On the topic of financing, you said that for these types of deals, the ones that you have handled primarily, and specifically the one involving Mr. Brennerman, Morgan Stanley would not provide the money that it would seek financing from outside investors; is that correct?

A. They would not typically provide the money. There are some cases where Morgan Stanley -- let me rephrase that. I can only speak for my particular division. So, Morgan Stanley is a $700 billion company operating across the globe with over 50,000 employees. So my particular division would typically

not be providing the financing directly, but we might backstop an offering where we commit that if we can't find third-party investors to purchase these securities, then we would provide the money. But that was not the majority of the cases.

Q. And in the particular case of the proposal from Mr. Brennerman, I believe you said that it was something that you understood he was looking for Morgan Stanley to find financing from investors for?

A. My recollection was that it was unclear. We didn't get very far in our discussions. And then, after reviewing the emails, I think it's still unclear.

Q. You mentioned several times, I believe, a distinction between dealing with public companies and private companies?

A. Yes.

Q. At one point I believe you said your knowledge of the number of private companies that are involved in this type of business that you do, the oil and gas business, you're a little less certain of the specific number because the information is not publicly available; is that correct?

A. Correct.

Q. So, for a private company like Blacksands Pacific, it wouldn't be unusual that you hadn't heard of them, given that they're a private company, and you're not familiar with every single private company out there?

A. It would be unusual that a company -- that I had not heard

don't.

Q. If it had no depository accounts, would there be any reason for it to need FDIC insurance?

A. I'm not certain.

Q. Does FDIC insurance cover anything else other than depository accounts?

A. No.

Q. So if there is a company that has many different sub-entities, some of those that hold depository accounts and some of those that don't, a financial institution I should say, it's safe to say the FDIC would only offer insurance to those portions of the company that handle depository accounts?

A. You kind of lost me. Can you repeat that?

Q. If there is a financial institution that has one division that covers investments and another division that covers depository accounts, would the FDIC insure the division that covers investment banking?

A. If it does not have a certificate of deposit insurance it would not.

Q. If it had no depository accounts, there was no reason for that institution to seek a certificate of insurance?

A. I can't opine on what someone would want to do, in terms of seeking insurance or not seeking insurance.

Q. Well, there would be nothing for the FDIC to insure in that instance, is that correct?

Q. OK. I am not sure it's reflected on this page, but maybe on the first page of this exhibit.

You see at the bottom here, on the bottom left, there is an italicized text that reads "Morgan Stanley Smith Barney LLC"?

A. It's hard for me to see.

Q. Do you see that text now?

A. Yes.

Q. Are you aware if Morgan Stanley Smith Barney LLC is insured by the FDIC?

A. I'm not aware of that.

Q. Did you conduct any search to confirm that?

A. No.

Q. The rest of this text, it has "member SIPC." Do you see that?

A. Yes.

Q. Are you familiar with that acronym SIPC?

A. I'm not familiar with that acronym.

Q. Does that, as far as you know, pertain to the FDIC in any way?

A. No.

Q. Does the FDIC insure banks outside of the United States?

A. No.

Q. So if there is a bank located in London, in the United Kingdom, that would not be covered by the FDIC?

A. Not without a certificate of deposit insurance.
Q. I just want to clear this up. Your answer to my previous question was the FDIC does not insure banks outside of the United States.
A. A foreign bank?
Q. Correct.
A. No.
Q. So if there is a foreign bank located in London, even if it held depository accounts, the FDIC could not insure it, is that correct?
A. That is correct.
Q. I apologize for this. I want to go back to one point.

Those two Morgan Stanley banks that we looked at, those two entities that had certificates of insurance with the FDIC, if an entity is a subsidiary of a parent in a financial institution, does the fact that the subsidiary is FDIC insured also mean that the parent is FDIC insured?
A. Can you repeat that? I'm not sure I understand.
Q. Does FDIC insurance for a financial institution, which is a subsidiary of another financial institution, so the FDIC has issued a certificate to that subsidiary, does that certificate somehow also cover the parent corporation?
A. No.
Q. So the parent entity would need a separate certificate of insurance?

A. Yes.

Q. The same thing for an affiliate within a company or affiliates between companies, each entity would require a separate certificate of insurance in order to be FDIC insured?

A. That is correct.

MR. STEINWASCHER: We are just about approaching lunch and I am done with this witness.

THE COURT: Any redirect?

MR. SOBELMAN: No, your Honor.

THE COURT: Why don't we break then. We will pick up at 2.

Don't discuss the case and bring your books with you into the jury room, but don't take them outside of the jury room. Have a good lunch.

All rise for the jury, please.

(Jury exits courtroom)

THE COURT: You can step down. Thank you very much, Mr. Gonzalez.

Have a seat. Let's talk about what we have left and an ETA.

MR. ROOS: We have six witnesses remaining, two of them are on the longer side and the other ones are about the length that some of these shorter witnesses have been today. And we also have three stipulations to read into the record at some point. We can do it right after lunch.

EXHIBIT H

November 29, 2017

Via ECF and Email

Hon. Richard J. Sullivan
Thurgood Marshall
United States Courthouse, Room 905
40 Foley Square
New York, NY 10007

Re: *United States v. Raheem J. Brennerman*; No. 17 Cr. 337 (RJS)

Dear Judge Sullivan,

We write to address the issue raised today with respect to the production of certain documents. Specifically, we learned today that that the notes of the Government's witness, Julian Madgett, pertaining to matters to which he testified, were not obtained by the Government, or provided to the defense. For the reasons detailed below, it is our position that the materials should have been produced pursuant to Fed. Rule Crim. P. 16 and the Jencks Act, 18 U.S.C. § 3500; in addition, the defendant is serving a subpoena on counsel for this witness, Paul Hessler, for their production and the production of other documents.

The Government has asserted that Mr. Madgett's notes -- made by the alleged victim and pertaining to the precise subject matter at issue in this trial – are not in its actual "possession," and therefore it has no obligation to produce them. But possession is not so narrowly defined. Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively" possesses it. *E.g.*, *United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); *cf. Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that, to satisfy *Brady* and *Giglio*, prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case"). In particular, in *United States v. Paternina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith efforts to obtain Jencks Act statements possessed by a third party that had cooperated extensively, and had a close relationship with, the Government. 749 F.2d 993 (2d Cir. 1984). And in *United States v. Stein*, the court directed the Government to produce documents in the actual possession of a third party, KPMG, because KPMG had voluntarily agreed to do so in an deferred prosecution agreement. 488 F. Supp. 2d 350, 361 (S.D.N.Y. 2007) (noting that the term "control" has been "broadly construed"); *see also United States v. Kilroy*, 488 F. Supp. 2d 350, 362 (E.D. Wis. 1981) ("Since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government's files any records which Standard Oil has and

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THOMPSON HINE

which the Government wants, however, it is not unreasonable to treat the records as being within the Government's control *at least to the extent of requiring the Government to request the records on the defendant's behalf and to include them in its files for the defendant's review if Standard Oil agrees to make them available to the Government*." (emphasis added)).[1]

Here, there can be no question that Mr. Madgett and his employer, ICBC (London) plc ("ICBC"), are in a cooperative relationship with the Government. ICBC is the complainant and alleged victim in this case. Moreover, counsel for ICBC confirmed in the recent criminal contempt trial before Judge Kaplan that ICBC had voluntarily produced more than 5000 pages of documents at the mere request of the Government. And Mr. Madgett is voluntarily appearing as a Government witness. Given this close relationship, and one demonstrating extensive cooperation between Mr. Madgett, ICBC, and the Government, the Government had (and has) an obligation to obtain and produce to Mr. Brennerman materials required by Rule 16 and the Jencks Act. Yet, Mr. Madgett testified today that the Government never asked him for any notes.

Mr. Brennerman therefore moves this Court to direct the Government to request, at a minimum, Mr. Madgett's notes that pertain to the subject matter of this case and his testimony. This is especially necessary given the critical importance of such materials to this case and Mr. Brennerman's defense, as *no* documents have been produced to date that pertain to the critical issue of ICBC's decision-making process with respect to the loan it provided to Mr. Brennerman – i.e., the transaction at the very core of the Government's case.

Additionally, since Mr. Brennerman has been unable to obtain any such materials, and in light of Mr. Madgett's testimony, we are issuing a subpoena directly to ICBC, through its counsel Mr. Hessler, for these records and others.

We are prepared to address these issues at any time convenient to the Court.

---

[1] Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligations, either on the basis of a due process violation or under the court's inherent supervisory powers, including where the Government belatedly disclosed Jencks Act materials. *E.g.*, *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).

THOMPSON HINE

November 29, 2017
Page 3

Respectfully,

s/ Maranda E. Fritz

Maranda E. Fritz

Enclosures

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America
v.
Raheem J. Brennerman
Defendant

Case No. 1:17-cr-0377-RJS

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

To: Julian Madgett

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:	Southern District of New York 500 Pearl Street New York, New York	Courtroom No.: 15C
		Date and Time: 12/06/2017 9:30 am

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

Please see attached rider.

(SEAL)

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Raheem J. Brennerman, who requests this subpoena, are:

Maranda E. Fritz, Esq.
Brian D. Waller, Esq.
Brian K. Steinwascher, Esq.
Thompson Hine LLP
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
(212) 908-3966
Maranda.Fritz@ThompsonHine.com, Brian.Waller@ThompsonHine.com & Brian.Steinwascher@ThompsonHine.com

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. 1:17-cr-0377-RJS

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

RIDER
(Subpoena to Julian Madgett)

Definitions and Instructions:

1. Please produce any documents responsive to this Subpoena by 12/6/2017 at 9:30 am.

2. Please produce requested records in electronic form (native format where necessary to view the material in its full scope) in a manner that is OCR-searchable, and with all available electronic metadata.

3. The term "documents" includes writings, emails, text messages, drawings, graphs, charts, calendar entries, photographs, audio or visual recordings, images, and other data or data compilations, and includes materials in both paper and electronic form.

4. The term "ICBC" refers to the Plaintiff in the civil litigation in the Southern District of New York captioned *ICBC (London) plc v. The Blacksands Pacific Group, Inc.*, 15 Cv. 70 (LAK) and includes its agents, representatives and counsel.

5. The term "Blacksands Pacific" includes The Blacksands Pacific Group Inc. and the Blacksands Pacific Alpha Blue, LLC or any Blacksands Pacific entity and any of its subsidiaries and affiliates, and any officer, employee, volunteer, representative, or agent of those entities.

6. The Subpoena calls for the production of documents from the period January 1, 2013 to March 3, 2017.

7. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

Materials to be Produced:

1. All notes relating to meetings and communications with representatives of Blacksands Pacific.

2. All documents relating to or reflecting the decision by the credit committee at ICBC to issue a bridge loan to Blacksands Pacific including but not limited to the "credit paper" and memorialization of the committee's decision.

x

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
P. O. Box 1000
White Deer, Pa. 17887-1000

Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

with copy to:

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

March 6, 2021

BY E-MAIL & CERTIFIED FIRST CLASS MAIL
Email: Temporary_Pro_Se_filing@nysd.uscourts.gov

Regarding: United States v. Brennerman
Case No. 1:17-CR-337 (RJS)
MOTION FOR RECONSIDERATION AND APPROPRIATE RELIEF

Dear Judge Sullivan:

Defendant Pro Se Raheem J. Brennerman ("Brennerman") respectfully submits this letter motion for reconsideration of the motion (at 1:17-cr-337 (RJS), doc. no. 254 as it relates to the Morgan Stanley issue) in reliance on his rights pursuant to the United States Constitution, all applicable law and federal rules. In the alternative, Brennerman seeks just and proper relief from the Constitutional violation, manifest injustice and prejudice suffered in light of the misconduct highlighted below in addition to the other issues highlighted (at 1:17-cr-337 (RJS), at doc. nos. 248, 250, 254), particularly given that the same trial judge presided over the entire criminal prosecution in this instant case.

I. APPLICABLE LAW

The Standard for granting a motion for reconsideration is strict. "[R]econsideration will generally be denied unless the moving party can point to controlling decision 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). Possible grounds upon which a motion for reconsideration may be granted include "(1) an intervening change in law; (2) the availability of evidence not previously available, and (3) the need to correct a clear error of law or prevent manifest injustice. "Shannon v. Verizon New York, Inc., 519 F. Supp 2d 304, 307 (N.D.N.Y. 2007) (citation omitted)

II. DISCUSSION

The Court stated in its denial order (at 17 CR. 337 (RJS), at doc. no. 255) "Indeed, Brennerman appears to want this discovery only so the he may "relitigate broad swaths of his case, (Doc. No, 251 at 1")" and "Brennerman renews previous request that the Court grant him certain discovery that Brennerman says he "requires....to present a comprehensive [c]ompassionate release [motion]" at the future. (Id. at 2)""

Here, the Court overlooked a significant issue. The evidence sought (at 17 CR. 337 (RJS), at doc. no. 254) goes beyond the filing of compassionate release motion in the future or an endeavor to relitigate broad swaths of Brennerman`s case. It [the evidence] will allow Brennerman to seek and obtain appropriate relief from the Constitutional violation, manifest injustice and prejudice suffered in light of the significant misconduct highlighted below.

Given that Judge Sullivan presided over the entire criminal prosecution (including trial and sentencing) in this instant case, and in light of the other issues highlighted at 17 CR. 337 (RJS), at doc. nos. 248, 250, 254, Brennerman in reliance on his Constitutional rights, applicable law and federal rules seeks just and proper relief from the Constitutional violation, manifest injustice and prejudice suffered in light of the significant misconduct highlighted below. Here the trial judge exhibited "such a high degree of favoritism or antagonism as to make fair judgment impossible." Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d. 474 (1994)

Significant Misconduct:

In this instant case, during trial in November/December 2017, Government presented evidence - Government Exhibit - GX1-57; GX1-57A; GX1-73; GX529 to highlight Brennerman`s interaction with Morgan Stanley. All evidence presented by Government demonstrated that Brennerman interacted with Government witness, Scott Stout who worked at Morgan Stanley Smith Barney, LLC (see GX1-73, Notice to Recipient: confirming that the email was sent by an employee of Morgan Stanley Smith Barney, LLC) where Brennerman opened his wealth management brokerage account (see 17 CR. 337 (RJS), at doc. no. 167; also see 17 CR. 337 (RJS), at doc. no. 254, exhibit C).

After trial, in June 2018, Brennerman submitted supplemental evidence in support of his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 ("Rule 29 motion") highlighting that he interacted with non-FDIC insured institution and that Government failed to prove that Morgan Stanley Smith Barney, LLC is FDIC insured (see testimony of Government witness, Barry Gonzalez, at 17 CR. 337 (RJS), at trial tr.1059; see also 17 CR. 337 (RJS), at doc. no. 254, exhibit G; also see supplemental evidence submitted at 17 CR. 337 (RJS), at doc. no. 167; and 17 CR. 337 (RJS), at doc. no. 254, exhibit C)

In November 2018, Judge Sullivan denied the Rule 29 motion for judgment of acquittal and sentenced Brennerman. Notwithstanding the demonstrable evidence submitted at 17 CR. 337 (RJS), at doc. no. 167. Judge Sullivan denied Brennerman`s Rule 29 motion by surreptitiously supplanting a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC insured institution, Morgan Stanley Private Bank, in an endeavor to falsely satisfy the essential element necessary to convict Brennerman for bank fraud in violation of 18 U.S.C.S. 1344(1) and conspiracy to commit bank fraud in violation of 18 U.S.C.S. 1349. This is the significant issue.

Judge Sullivan, improperly stated on the record that the fraud was a scheme or artifice to defraud the private banking arm of Morgan Stanley, an FDIC insured institution (see 17 CR. 337 (RJS), at doc. no. 206, sentencing tr. at 19; see also 17 CR. 337 (RJS), at doc. no. 254, exhibit D) even though Government presented no evidence to support such ruling. Under certain circumstances, a judge`s behavior can be "per se misconduct." Marquez-Perez, 835 F.3d at 158. This happens when judges "exceed their authority" by "testify[ing] as witnesses, or add[ing] to or distort[ing] the evidence." Id.

To the extent that the Court affirms its prior ruling, that Brennerman opened his wealth management account at the private banking arm of Morgan Stanley or that Scott Stout whom Brennerman interacted with worked there, then Brennerman seeks evidence to support such ruling, given that the criminal case records at 17 CR. 337 (RJS) lacks indicia of any evidence to support such ruling.

Required Evidence:

Brennerman requests for evidence of Morgan Stanley presented by the prosecution at trial (see 17 CR. 337 (RJS), at doc. no. 167) particularly given the divergence between the evidence presented on record at trial and the Court`s ruling during sentencing and denial of Brennerman`s motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 with respect to Morgan Stanley.

Moreover, the evidence will irrefutably and conclusively demonstrate that Brennerman opened a wealth management brokerage account in January 2013 at Morgan Stanley Smith Barney, LLC in Beverly Hills, California. That he did not receive any perks because the account was opened for a few weeks and the charge card which was issued by another non-Morgan Stanley institution was closed with zero balance. Further that, Brennerman had a single preliminary telephone call about oil asset financing with Kevin Bonebrake who worked at the Institutional

securities division of Morgan Stanley, a subsidiary of Morgan Stanley & Company, LLC which is not FDIC-insured.

Additionally, testimony of FDIC commissioner, Barry Gonzalez at trial confirmed that the prosecution failed to prove that either Morgan Stanley Smith Barney, LLC (where Brennerman opened his wealth management brokerage account) and the Institutional Securities division of Morgan Stanley (where Kevin Bonebrake worked) are FDIC insured. (see 17 CR. 337 (RJS) at trial tr. 1057-1061)

The evidence will prove that Brennerman has been wrongfully convicted and sentenced. Not FDIC insured, No bank fraud.

III. PRO SE APPLICABLE LAW

Defendant, Raheem Brennerman, is a Pro Se defendant, therefore his pleadings are generally liberally construed and held to a less stringent standard than pleadings drafted by an attorney. See Hughes v. Rowe, 449 U.S. 6, 9 (1980) (per curium); Estelle v. Gamble, 429 U.S. 97 (1976).

IV. CONCLUSION

Brennerman respectfully submits the above and prays that the Court grant his request for relief in its entirety.

Dated: March 6, 2021
White Deer, Pa 17887-1000

Respectfully submitted

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

Pro Se Defendant

APPENDIX D

Trial Transcript of Proceedings
United States District Court for the Southern District of N.Y.
in *United States v. Brennerman*, No. 17 Cr. 337
(Trial Tr. 551-554; 617)
(Trial Tr. 384-385; 409; 387-388)
(Trial Tr. 1057-1061)

(Jury present)

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

CROSS EXAMINATION

BY MR. WALLER:

Q. Good afternoon, Mr. Madgett.

A. Good afternoon.

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

A. 2009.

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

A. Correct.

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

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

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

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

Q. That's correct.

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

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

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

Q. Did you ever produce the documents from that credit

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

MR. ROOS: Objection.

THE COURT: You can answer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Correct, correct. Yes.

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

THE COURT: Well, do you know?

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

THE COURT: Well, don't assume.

THE WITNESS: Okay, sorry. My apologies.

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

THE WITNESS: All right.

BY MR. WALLER:

Q. Was there an answer?

A. Could you repeat the question, please?

Q. Yes.

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

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

THE WITNESS: I don't know.

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

BY MR. WALLER:

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

A. I don't know.

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

A. Yes.

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

A. Yes.

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

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

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

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

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

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

THE COURT: You haven't served it yet?

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

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

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

MR. HESSLER: Hessler, your Honor.

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

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

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

Q. Is that the same title you had or position you had while you were at Morgan Stanley?

A. My title -- my specific job title at Morgan Stanley varied as I was promoted from vice president, to director, to managing director, and I worked within what they called the institutional securities division. My current title is managing director at Lazard within what they call the financial advisory division, but I'm doing substantially the same job, except I'm more solely focused on mergers and acquisitions now and not so much on financings, if that makes sense.

Q. Staying with Morgan Stanley, you mentioned that Morgan Stanley has two business lines?

A. Broadly, if you look at their financials, that's how they characterize it, yes.

Q. And can you just explain, to the extent you understand, what you mean by "business lines"?

A. Certainly. So, Morgan Stanley has a private wealth management business, which is one of the aforementioned two business lines. That business is composed of individuals who somewhat confusingly are also called financial advisors, who work with high net worth individuals to help them manage their money.

And then the other business line that I was referring to, which I was a part of, is called the institutional securities division. And within that division is housed what

is the traditional investment banking activities, which is capital markets, underwriting, so think about initial public offerings, helping companies with that. Mergers and acquisitions, when two companies merge, and then aside from that, there's sales and trading, which is basically making markets in various securities around the world, and also asset management.

Q. You said business lines, but they're really separate entities; is that correct?

A. They're all a part of the Morgan Stanley & Company LLC, which is listed on the New York Stock Exchange, but we report up through different superiors.

Q. You say "part of." Are they the same company? Are they a separate entity?

A. They're wholly-owned subsidiaries of Morgan Stanley & Company LLC.

Q. And you called it, I believe, wealth management. Is it also referred to as the private bank?

A. I don't believe I have the expertise to answer that.

Q. I understand.

A. I could speculate, but...

Q. So you're not really familiar with anything that's handled on the wealth management side, other than sometimes you have clients referred?

A. I've never worked on the wealth management side, so I don't

BY MS. SASSOON:

Q. Just to clarify, turning back to Exhibit 1-61, page 6, is it clear to you one way or the other from looking at this e-mail whether this is an asset-based lending proposal?

A. It's not clear to me, it would be speculation.

Q. Looking at page 7, going back to the part in blue with the asterisk, can you read that, please?

A. 50 percent working interest owned by Black Sands Pacific Alpha Blue, LLC.

MS. SASSOON: No further questions.

THE COURT: Okay. Any recross?

MR. STEINWASCHER: Very briefly, your Honor.

RECROSS EXAMINATION

BY MR. STEINWASCHER:

Q. Can we go back to that same exhibit, same page?

Very briefly, Mr. Bonebrake. Did this proposal provide you -- I say proposal, overview summary proposal, did it provide you with really any information on which Morgan Stanley could make a decision about financing?

A. To get to the point of actually, quote, making a decision on financing, there would have been a lot more work and information needed than this. Again, this was very preliminary stage of our conversation.

MR. STEINWASCHER: Thank you.

THE COURT: Okay. You can step down. Thanks very

BY MR. STEINWASCHER:

Q. Did you have specific recollection as to your conversations -- specific details of your conversations with Mr. Brennerman prior to looking at the documents when meeting with the government?

A. I had recollections of conversations with Mr. Brennerman that were enhanced by looking at the documents. I did recall the conversations before seeing the documents, but the documents were very helpful.

Q. So, it's safe to say that for some specific details, your memory was refreshed by the documents and not something that you just remembered independently prior?

A. That's a broad statement. I'm not sure I could agree or disagree with that, but...

Q. That's fine. That's fine.

On the topic of financing, you said that for these types of deals, the ones that you have handled primarily, and specifically the one involving Mr. Brennerman, Morgan Stanley would not provide the money that it would seek financing from outside investors; is that correct?

A. They would not typically provide the money. There are some cases where Morgan Stanley -- let me rephrase that. I can only speak for my particular division. So, Morgan Stanley is a $700 billion company operating across the globe with over 50,000 employees. So my particular division would typically

not be providing the financing directly, but we might backstop an offering where we commit that if we can't find third-party investors to purchase these securities, then we would provide the money. But that was not the majority of the cases.

Q. And in the particular case of the proposal from Mr. Brennerman, I believe you said that it was something that you understood he was looking for Morgan Stanley to find financing from investors for?

A. My recollection was that it was unclear. We didn't get very far in our discussions. And then, after reviewing the emails, I think it's still unclear.

Q. You mentioned several times, I believe, a distinction between dealing with public companies and private companies?

A. Yes.

Q. At one point I believe you said your knowledge of the number of private companies that are involved in this type of business that you do, the oil and gas business, you're a little less certain of the specific number because the information is not publicly available; is that correct?

A. Correct.

Q. So, for a private company like Blacksands Pacific, it wouldn't be unusual that you hadn't heard of them, given that they're a private company, and you're not familiar with every single private company out there?

A. It would be unusual that a company -- that I had not heard

don't.
Q. If it had no depository accounts, would there be any reason for it to need FDIC insurance?
A. I'm not certain.
Q. Does FDIC insurance cover anything else other than depository accounts?
A. No.
Q. So if there is a company that has many different sub-entities, some of those that hold depository accounts and some of those that don't, a financial institution I should say, it's safe to say the FDIC would only offer insurance to those portions of the company that handle depository accounts?
A. You kind of lost me. Can you repeat that?
Q. If there is a financial institution that has one division that covers investments and another division that covers depository accounts, would the FDIC insure the division that covers investment banking?
A. If it does not have a certificate of deposit insurance it would not.
Q. If it had no depository accounts, there was no reason for that institution to seek a certificate of insurance?
A. I can't opine on what someone would want to do, in terms of seeking insurance or not seeking insurance.
Q. Well, there would be nothing for the FDIC to insure in that instance, is that correct?

Q. OK. I am not sure it's reflected on this page, but maybe on the first page of this exhibit.

You see at the bottom here, on the bottom left, there is an italicized text that reads "Morgan Stanley Smith Barney LLC"?

A. It's hard for me to see.

Q. Do you see that text now?

A. Yes.

Q. Are you aware if Morgan Stanley Smith Barney LLC is insured by the FDIC?

A. I'm not aware of that.

Q. Did you conduct any search to confirm that?

A. No.

Q. The rest of this text, it has "member SIPC." Do you see that?

A. Yes.

Q. Are you familiar with that acronym SIPC?

A. I'm not familiar with that acronym.

Q. Does that, as far as you know, pertain to the FDIC in any way?

A. No.

Q. Does the FDIC insure banks outside of the United States?

A. No.

Q. So if there is a bank located in London, in the United Kingdom, that would not be covered by the FDIC?

A. Not without a certificate of deposit insurance.
Q. I just want to clear this up. Your answer to my previous question was the FDIC does not insure banks outside of the United States.
A. A foreign bank?
Q. Correct.
A. No.
Q. So if there is a foreign bank located in London, even if it held depository accounts, the FDIC could not insure it, is that correct?
A. That is correct.
Q. I apologize for this. I want to go back to one point.

Those two Morgan Stanley banks that we looked at, those two entities that had certificates of insurance with the FDIC, if an entity is a subsidiary of a parent in a financial institution, does the fact that the subsidiary is FDIC insured also mean that the parent is FDIC insured?
A. Can you repeat that? I'm not sure I understand.
Q. Does FDIC insurance for a financial institution, which is a subsidiary of another financial institution, so the FDIC has issued a certificate to that subsidiary, does that certificate somehow also cover the parent corporation?
A. No.
Q. So the parent entity would need a separate certificate of insurance?

A. Yes.

Q. The same thing for an affiliate within a company or affiliates between companies, each entity would require a separate certificate of insurance in order to be FDIC insured?

A. That is correct.

MR. STEINWASCHER: We are just about approaching lunch and I am done with this witness.

THE COURT: Any redirect?

MR. SOBELMAN: No, your Honor.

THE COURT: Why don't we break then. We will pick up at 2.

Don't discuss the case and bring your books with you into the jury room, but don't take them outside of the jury room. Have a good lunch.

All rise for the jury, please.

(Jury exits courtroom)

THE COURT: You can step down. Thank you very much, Mr. Gonzalez.

Have a seat. Let's talk about what we have left and an ETA.

MR. ROOS: We have six witnesses remaining, two of them are on the longer side and the other ones are about the length that some of these shorter witnesses have been today. And we also have three stipulations to read into the record at some point. We can do it right after lunch.

APPENDIX E

Sentencing Transcript of Proceedings
United States District Court for the Southern District of N.Y.
in *United States v. Brennerman*, No. 17 Cr. 337
(ECF No. 206, Sentencing Tr. 19 on November 19, 2018)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA

v. 17 CR 337 (RJS)
Sentence

RAHEEM J. BRENNERMAN

Defendant
----------x

New York, N.Y.
November 19, 2018
11:00 a.m.

Before:

HON. RICHARD J. SULLIVAN
District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
NICOLAS T. ROOS
DANIELLE SASSOON
Assistant United States Attorney

SCOTT B. TULMAN
Attorney for Defendant Brennerman

-Also Present-

THOMPSON HINE LLP
Prior Attorneys for Defendant
MIRANDA E. FRITZ
BRIAN D. WALLER

PAUL HESSLER
Attorney for ICBC LONDON PLC

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(Case called)

THE COURT: Good morning. Let me take appearances for the government.

MR. ROOS: Good morning. Nicolas Roos and Danielle Sassoon for the government.

THE COURT: Good morning to each of you.

For the defendant.

MR. TULMAN: For Mr. Brennerman, good morning, your Honor, Scott Tulman.

THE COURT: Yes, Mr. Tulman.

Mr. Brennerman, good morning.

We have some other folks here in attendance as well. One is related to ICBC. Is that correct, Mr. Roos?

MR. ROOS: That's correct, your Honor.

THE COURT: Just if you could state who that is.

MR. ROOS: It's Paul Hessler, who is counsel for ICBC in various civil litigations.

THE COURT: Mr. Hessler, good morning.

MR. HESSLER: Good morning.

THE COURT: I noticed Ms. Fritz and Mr. Waller here, so good morning to you. I'm not sure if you are intending to speak or if you are in here to watch.

MS. FRITZ: Completely up to you. Mr. Roos kindly advised us over the weekend that he had included a request for funds that were received by Thompson Hine as legal fees. He

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advised us that that is mentioned in his sentencing submission, so that is why we are here, and we'd be happy to address it if and when it comes up.

THE COURT: All right. Thank you.

Then there was the government's letter from July 20 also mentioned that there would be another person here, Ms. Ifejika?

MR. ROOS: That's correct, your Honor. She is the principal of Brittania U, which is mentioned in our sentencing letter. She made arrangements to be in New York for the prior sentencing date of July 27, but, which, as your Honor knows, was adjourned, and she was unable to make this date.

THE COURT: So she is not here.

MR. ROOS: Correct.

THE COURT: That's fine.

So I have a mountain of materials which I guess I'll go through in a minute. I guess where I thought I would start is with a motion for a new trial under Rule 29 and 33. That was a motion made by Mr. Brennerman some time ago and supplemented at various points along the way.

I issued a short order denying the motion. It was actually several motions. There also was a motion to refer the prosecutors to the Southern Districts's grievance committee. I think I will just address that now in a little more detail.

This was a four-count indictment. The jury returned a

guilty verdict on each count. Mr. Brennerman has moved for relief on all counts of conviction on a variety of arguments. With respect to Count One, which was the conspiracy to commit bank fraud and wire fraud, he challenges that conviction principally on venue grounds.

I think there is sufficient evidence to support venue by a preponderance of the evidence. First of all, he used a fraudulent visa to obtain a social security card that was also fraudulent in Manhattan, and in Manhattan he then used to further the bank fraud and wire fraud conspiracy. He also entered into a contract with Regus for an office in Manhattan that was held out as a Blacksands office. I think that would give you venue as well. He also met with Ms. Charles in Manhattan. He then later used her name without her knowledge or permission, listing her as an employee of Blacksands. And then finally there were various wire transfers into and out of accounts here in Manhattan. So I think there was ample venue on the conspiracy count.

Count Two, the bank fraud conviction, there are a number of grounds for relief that are articulated by Mr. Brennerman. The first is that the government did not introduce evidence at trial to demonstrate that Morgan Stanley Smith Barney or Morgan Stanley Investment Bank were FDIC insured. Actually, there was testimony or evidence about the private bank being FDIC insured. I think there was also

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evidence that the Investment Bank was not FDIC insured, but I think the theory here that went forward to the jury was that the private bank was defrauded by false statements made by Mr. Brennerman about his assets, about his holdings, about his history; that he was then enabled to open a private banking account that allowed him to have access to various perks, including free checking, including some sky miles that I don't think were actually used, but also access to other entities within the bank, within the larger holding company of Morgan Stanley.

So I think that that was sufficient to go forward. I think it ultimately didn't lead to a whole lot of loss, so when we talk about loss amount, it seems to me the loss amount associated with Count Two is pretty negligible, but that's a sentencing issue. In terms of the elements of FDIC insured, I think the record was ample on that score, and, therefore, I'll deny a motion on that.

He also challenges whether the jury could adduce from the evidence at trial that he intended to cause any loss or potential liability to Morgan Stanley's private bank. Again, I think the evidence reflects that he opened an account at the private bank using false information, false documents; that that resulted in him having access to perks and benefits that he wouldn't otherwise be entitled to.

So I think that the intent can be inferred from that.

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I think the intent can also be intended to use that relationship to then parlay that into connection to an investment bank, which was the ultimate goal of the wire fraud scheme, and I think the evidence shows that in spades. So I will deny the motion on those grounds as well.

He also has a venue challenge, which I've already articulated with respect to the conspiracy. The same evidence on venue applies here.

Mr. Brennerman also argues that the government constructively amended their indictment by proceeding with this private bank theory late in the day. Look, the indictment alleges that the defendant willfully and knowingly did execute and attempt to execute a scheme or artifice to defraud a financial institution, the deposits of which were then insured by the FDIC; to obtain monies, funds, credits, assets, securities and other property owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations and promises. I think that language tracks the language of the statute. It is sufficient notice, and it is broad enough to cover the conduct at issue here. And so I will deny that motion as well.

With respect to Count Three, that's the wire fraud count. The first argument asserted by Mr. Brennerman is that he was denied his right to cross-examine witnesses by the government's failure to obtain and turn over the ICBC London

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lending file. This is a recurrent theme throughout much of Mr. Brennerman's papers and sentencing submissions. The reality is that the government doesn't have an affirmative duty to procure those documents even if they are potentially exculpatory. And, by the way, I've seen nothing to suggest they are potentially exculpatory other than Mr. Brennerman's assertions, but no basis beyond that. So I think the right to cross-examination was not affected.

Mr. Brennerman also asserts that there were violations under *Brady* and *Giglio* by the government's presentation of Mr. Madgett to testify without those files and without those documents. Basically, he is asserting that the government procured perjured testimony. Again, there is no basis to conclude that it was perjured testimony. And, again, the government had no obligation to obtain files that were not in their custody that were in a different country that belonged to a third party, so as well I will deny that.

Ineffective assistance of counsel due to a conflict of interest, I already previously ruled on this as to whether there was a conflict of interest. The government didn't end up calling the witness or introduce evidence about the issue that related to the potential conflict of interest so that resolved the issue, and we didn't get into it any more.

That may be raised again today, I gather. We'll see. But with respect to the trial motions, the Rule 29 and Rule 33

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motions, I see no basis to conclude that there was ineffective assistance of counsel based on a conflict of interest that never materialized and didn't even end up needing to be waived.

The next argument relied upon by Mr. Brennerman is that the government committed fraud on the Court by its calling Mr. Madgett, who asserts testified falsely under oath, and that the government had an obligation to correct his false testimony. He basically relies on an assertion that there was testimony about a bridge loan agreement and check that was inconsistent with arguments made before Judge Kaplan in that trial. I think that was characterized as actually the evidence in the two trials and I think the fact is that Mr. Madgett testified that he was under oath, he was cross-examined, and had ample opportunity to confront him with these alleged inconsistencies and to ask the jury to draw inferences against Mr. Madgett as a result. So I don't see that there was any fraud on the Court or any obligation to do more than what was done at trial and before trial.

The next argument relied upon by Mr. Brennerman is that the government had an obligation to present all the evidence available. This is a variation, I think, on his claim that ICBC and Mr. Madgett should have produced additional documents that were in London that the government didn't possess and, therefore, didn't turn over in discovery or present at trial. Again, there is no basis for concluding that

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the government had an obligation to produce those things or that those things were somehow exculpatory.

Improper summation remarks is another argument on which Mr. Brennerman relies for his Rule 29 and Rule 33 motions. He argues that the government's description of the $11.25 million check as a fake parent guarantee during his closing arguments somehow tainted the verdict. I think the government's argument was supported by the evidence and, therefore, it was fair game for them to characterize it as such. The jury didn't have to credit it. There was argument that it was no such thing, but I don't think it was unfair argument on the part of the government based on the evidence introduced at trial, nor do I think could Mr. Brennerman demonstrate prejudice as a result of this improper summation remark. So I think that one, again, has no legs.

The next argument raised by Mr. Brennerman is with respect to his Fourth and Fifth Amendment rights, which he insists were violated as a result of an illegal search of his home in Las Vegas. The government searched that home pursuant to a valid warrant. I see nothing to undermine the validity of that warrant and, therefore, that motion is also denied.

Finally, he makes also an improper venue motion with respect to Count Three. I have already talked about venue in connection with the conspiracy count, but some of those same facts and same evidence supports venue on Count Three.

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Finally, the visa fraud count, Count Four, Mr. Brennerman first challenges the sufficiency of the evidence. He makes numerous arguments about what the evidence consisted of. He asserted counterfactual arguments based on his own assertions or things not in the record. I think he has not accurately characterized the record. There was evidence before the jury that supported the elements of a visa fraud count, and so I'm going to deny the motion on sufficiency of the evidence.

He also challenges the indictment because he says it did not include an allegation that defendant's visa was knowingly forged, counterfeited, altered or falsely made. The indictment alleges quite clearly that the defendant knowingly used a visa which he knew to be falsely made; to wit, Brennerman used and possessed a visa that he had procured by making false statements regarding, among other things, his name, national origin, and the nature of scope and status of the corporate entity which sponsored his application. That is certainly sufficient to put Mr. Brennerman on notice as to what the charge is and also tracks the language of the statute.

Mr. Brennerman also alleges that the government constructively amended the indictment. He doesn't really explain how that happened. That was sort of an assertion that didn't really seem to be developed, so I see no basis for that argument and deny that one as well.

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He also argues that Count Four, the visa fraud count, requires that a statement be made under oath, and so he says the Court should apply the Rule of Lenity and find that the statute requires that any immigration document or statement must have been made under oath to qualify as a false statement. I think it mischaracterizes the section at issue here, which is 18 United States Code, Section 1546(a) which prohibits the making of knowingly false statements. So I will deny that.

He also makes an improper venue motion for Count Four as well, which fails for the same reasons I articulated before.

And then there may be a lot of other arguments. Some of them are unintelligible; some of them are variations on arguments that I've already discussed. It goes on for pages and multiple submissions. It's all been docketed, and I don't think it is necessary for me to go through every line of every letter submitted by Mr. Brennerman to simply say that I found there to be nothing meritorious in his motion for a new trial or reversal of the verdict under Rule 29 and Rule 33. OK? So I wanted to just elaborate on my short order.

So, we are now here for sentencing, obviously. I have reviewed a number of materials that were submitted in connection with sentencing specifically. I've also reviewed all the other things I've talked about, the various motions and correspondence for Mr. Brennerman, but I just want to focus now on sentencing.

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There was a presentence report that was submitted by the probation department on July 13 of 2018. It's a 23-page submission that includes a sentencing recommendation, a number of sentencing submissions, objections to the draft PSR dated June 27, objections to the presentence report dated July 16 for Mr. Brennerman, also requesting a Fatico hearing. Another memorandum from Mr. Brennerman that's dated, I guess, it's also July 13. He characterizes it as a presentencing memorandum with amended presentence report objections.

I have the government's July 20 sentencing submission, which is 11 pages single-spaced. It also includes some attachments which were discussed in their letter, so I've reviewed those as well. I have reviewed the victim statement prepared by ICBC of London that was docketed with the government's submission on July 20, was signed by Paul Hessler, who is here today.

I've also reviewed the July 25 sentencing submission from Mr. Brennerman. That's really about the appointment of counsel, which was another recurring theme as to whether Mr. Brennerman was going to represent himself or whether he was going to have standby counsel, whether he was going to have appointed counsel to represent him, whether he would have new counsel to represent him rather than appointed counsel or whether he would then revert back to representing himself, so on any given day, it might have been any of those things. So

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there are a number of submissions made by Mr. Brennerman related to that topic. I resolved that previously, but some of those submissions also relate to sentencing issues so I refer to them now for that purpose.

There was a July 31 submission from Mr. Brennerman in which he writes in an effort to clarify a few misunderstandings with the government's sentencing submission. So I have reviewed that. It also includes a number of attachments related to Brittania U.

I have an August 5 submission from Mr. Brennerman, which he describes as defendant's statement intended to apprize the Court of his pleadings during the appearance that took place previously. He also raises a bond issue, a $100,000 bond that was posted in connection with bail.

He also references his Rule 29 and Rule 33 motions, and then also talks about his request for additional evidence related to his innocence from ICBC, which goes to sentencing as well.

I reviewed the transcript of the proceedings we had on August 6, which was largely about counsel issues.

I reviewed the supplemental sentencing memorandum on behalf of Mr. Brennerman filed by Mr. Tulman. That's dated November 5. It wasn't docketed, I think, until the 13th. That also included a number of exhibits: Exhibits A, B, C, D and E, some of them are quite lengthy. I have read all of them.

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Then I have the government's November 13 submission, which is a five-page, single-spaced submission largely responding to Mr. Tulman's submission.

I guess last, but not least, I have two letters dated back in June. I got in them June but I mention them now, just because they are letters from Mr. Brennerman's fiancee and his fiancee's daughter. I'm not sure how old the daughter is. How old is the daughter?

THE DEFENDANT: 18.

THE COURT: She is old enough then to be mentioned, so it's a letter from Jamie Sanderson and Haley Logan, letters from each of them. So I've reviewed those as well.

Is there anything else that I've overlooked? Anything that should be before the Court in connection with sentencing that I haven't mentioned. Mr. Roos?

MR. ROOS: No, your Honor.

THE COURT: Mr. Tulman.

MR. TULMAN: No, your Honor.

THE COURT: So let's start then with the presentence report. Mr. Brennerman has a number of objections to the presentence report, both the original version submitted by the probation department to the parties that I didn't receive, and then also the final report, so I'm not sure what the best way to go through that is.

Mr. Tulman, do you have any thoughts?

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MR. TULMAN: I know that there is a document 173 identifying the objections, and I believe that to some extent the officer of probation sought to respond to those objections.

THE COURT: Right. I'm not going to go through the objections to the first draft of the presentence report because some of those objections resulted in changes to the presentence report. And since I don't get that one anyway, I only get the final, I want to stay focused on the objections to the final report. Some of the objections to the earlier report were rejected or the probation department at least explained why they weren't making a change. So I guess we could sort of reverse engineer it, but I'm not inclined to do that now.

Are there particular paragraphs in the presentence report that Mr. Brennerman objects to and that the Court needs to make findings on?

MR. TULMAN: The primary objection that Mr. Brennerman has to the presentence report would be the guidelines calculation to the extent that they include an obstruction enhancement.

THE COURT: We'll talk about that in a minute for sure.

MR. TULMAN: And the second would be the determination that the fraud loss amount exceeded $7 million as opposed to the $4.4 million that was received by Mr. Brennerman. And so those objections are the primary objections that he has.

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THE COURT: All right. So guidelines objections we'll talk about in a minute. I think that Mr. Brennerman also, frankly, disputes the factual characterizations that are contained from paragraphs 10 through 21 or so. Those were all, I think, supported by the evidence introduced at trial and are consistent with the jury's verdict, so I am not going to change those.

With respect to the guidelines, we'll talk about those in a minute.

Mr. Brennerman, as I mentioned to you previously, one of the factors that I have to consider in fashioning the sentence is the United States Sentencing Guidelines Manual. Remember I mentioned that to you before?

THE DEFENDANT: Yes.

THE COURT: So the guidelines manual is this big book put out by a commission. It's a commission called the United States Sentencing Commission. That's a group of individuals that consists of some judges and some lawyers and some experts in the field of criminal law.

So the way this book works is that it's designed to give guidance to judges like me to have to impose sentences on real people. So for every crime or type of crime, there's a chapter in this book, and the judge in a particular case is then instructed to go to the chapter or chapters that relate to the conduct that formed the offense. And once in that chapter,

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the judge makes findings of fact. And then once the judge makes findings of fact, the judge is then prompted to assigned points. It's like an accounting process, really. The judge makes his findings, assigns points consistent to what's in the book, the judge then adds up points, in some cases subtracts points, and the judge then comes up with a number. That number is referred to as the offense level.

The judge then goes to another chapter in this book, and that's a chapter that relates to criminal history. Not surprisingly, people who have committed crimes before or who were sentenced to prison before, well they typically will be treated more harshly than people who have no prior convictions.

The judge then goes to the chapter on criminal history, makes findings about whether there were prior convictions. If so, when, and for how long the sentence was. Based on the answers to those questions, the judge assigns points. The judge add up those points, and the judge comes up with another number. That number is referred to as the criminal history category.

There are six criminal history categories. Category I is the lowest and least serious. Category VI is the highest and most serious.

With those two numbers that I just talked about, the offense level on the one hand and the criminal history category on the other, the judge goes to the back of this book where

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there's a grid or a table. You probably can't see it, but it's a chart, and there's a column here on the far left. That's the offense level column. It starts at number one and goes down to level 43. The judge goes down that column until the judge gets to the number that the judge found to be the offense level.

The judge then goes across these other columns from left to right, each of which reflects a criminal history category, and the judge keeps going until the judge gets to the criminal history category that the judge found to be appropriate. Where the judge's finger finally stops then after that exercise, well, that's the range that in the view of the commission that prepares this book would be appropriate.

I don't have to follow this book. This book is not mandatory. It's advisory. But I do have to consider it, and I have to make my findings under it. So we are going to spend a few minutes now talking about how this book applies in this case. It can be a little complicated. It can be sort of a little like accounting, but it's not too hard to follow, and I think the issues here are relatively straightforward and understandable. So we'll pick them up. All right?

According to the presentence report prepared by the probation department, beginning on page 6 -- there are four counts of conviction here, so according to probation, Counts One, Two and Three are grouped together pursuant to a different section of the guidelines that says where you have crimes that

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are distinct crimes but they all involve the same conduct, in most cases you group them all together and you do an analysis all together. You don't count them separately and add them up. You do them together. So the conspiracy to commit bank and wire fraud, the bank fraud and the wire fraud are all treated together, and they're all covered by the same guidelines provision, which is Section 2B1.1. That's the general fraud provision under the guidelines.

Now, I do think, frankly, that it's worth pointing out that the bank fraud calculation here I think would be quite different than the wire fraud, and I guess I want to hear from the parties on that. But the bank fraud here was a scheme or artifice to defraud the private banking arm of Morgan Stanley to enable Mr. Brennerman to get access to the perks which are tangible. They're worth money, free checking among them. I don't get that. And some other perks. But also to get some more intangible perks, which would be access to other arms of the Morgan Stanley family of entities.

I'm only really focused on the first category here. It seems to me the first category here, there's been no evidence that I've seen that suggests that was worth more than $6,500 or so.

Mr. Roos, do you disagree?

MR. ROOS: I think that's right, your Honor.

THE COURT: You agree, OK.

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And I assume, Mr. Tulman, you agree with that.

MR. TULMAN: I have no problem with that, Judge.

THE COURT: So, that being the case then, the base offense level is 7, because the maximum sentence of bank fraud is 30 years, but there's no enhancement for loss because the loss amount in dollar terms for the bank fraud count did not exceed $6,500.

Is the government arguing there are any other enhancements for the bank fraud count? I didn't see any, but maybe I'm wrong.

MR. ROOS: Well, your Honor, the PSR sets forth sophisticated means.

THE COURT: Sophisticated means for the bank fraud?

MR. ROOS: It's identified as sophisticated means include, like, for instance, his papering of a fake company, his setting up shell entities. The government's proof at trial was -- while I think your Honor is right that from the FDIC institution, the potential loss to that institution was low, he still used those various sophisticated means, basically, the papering of a company that didn't exist in order to get access to those benefits and expose the bank's potential loss. So I think that enhancement would apply.

THE COURT: Mr. Tulman, thoughts on that?

MR. TULMAN: I don't know that there's anything particularly sophisticated about the conduct.

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THE COURT: Well, it does require you to create a company. It might require you to incorporate a company. It requires you to develop financials for that company and brochures and things like that. There was a lot of evidence about those things. I guess that's more sophisticated than a typical situation where somebody just uses a false name when they go into a bank or adds a zero to their income in a form. I think it's more sophisticated than that. I think ultimately it's not going to matter, the impact of that doesn't add much of anything here, but I think that that argument is -- I'm persuaded there has been proof of sophisticated means that by a preponderance would warrant a two-level increase. So the bank fraud would be at level 9, before we get to obstruction. And I think that's going to be a lot lower than the wire fraud. The wire fraud is what drives this here. So the wire fraud is also going to be a base offense level of 7, correct?

MR. ROOS: That's correct, your Honor.

THE COURT: And then there the loss amount is disputed. The probation department concludes that the loss amount was $20 million because that is what the defendant -- that was the nominal amount of the loan that he fraudulently secured. He didn't get it all, but I guess the argument is that he didn't have to have gotten it all to be on the hook for the full $20 million. It's the loss and the intended loss, at least with the conspiracy count, but probably even for the

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substantive count, the intended loss would be relevant. So why don't we talk about that.

The restitution amount will be lower. Obviously, it's not going to be 20 million for restitution. The restitution is not the driver of loss for intended loss. So the government's view is this nominal amount alone of $20 million, that's the fraud?

MR. ROOS: Your Honor, I think this is a relatively conservative estimate by probation. There was plenty of proof at trial that the defendant went to both the ICBC and the non-FDIC insured branch of Morgan Stanley and sought out considerably more --

THE COURT: He was trying to get $600 million. I guess at one point that was what there was discussion about, but you're not seeking that as the loss amount, right?

MR. ROOS: That's right, your Honor, although I think there was evidence at trial that he intended that amount. Julian Madgett testified that this bridge loan of $20 million wasn't contemplated as the exclusive deal. Rather, it was sort of the entree to a much larger deal that the bank was totally serious about. So, I think there actually would be a basis for the Court to conclude that there was a $300 million intended loss.

The government isn't pursuing that though, and that's not what probation did. I think this is very reasonable. He

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had a contract, something reduced to writing for $20 million. Sure, the drawdown happened before the fraud was exposed was approximately $5 million, but there is not only a clear evidence in the trial record of intention to take $20 million from the bank, but actually multiple steps taken by the defendant, up to the point of entering into a contract, having money transferred into an escrow account.

So, there is more -- as your Honor pointed out, the test is not exclusively what actually was lost by the bank. That's may be it for restitution, but in terms of intended loss, there is more than sufficient evidence in the record to conclude that $20 million is the appropriate amount.

THE COURT: Mr. Tulman, do you want to be heard on that?

MR. TULMAN: Yes, your Honor.

The issue, as the government rightly points out, is of intended loss, and what Mr. Brennerman has pointed out to the Court is simply the fact that of the $20 million, as a matter of English law, the $15 million was not controlled by Mr. Brennerman, he would never have been able to gain access to it. It was held in a pledged account to ICBC. So he could not and did not intend ever to receive any of those $15 million.

THE COURT: Why are you saying he never intended to get that money?

MR. TULMAN: That's right. What he maintains is that

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the only funds that he ever could have had access to would have been, not even $5 million, but $4.4 million that was ultimately disbursed after $440,000 or so was paid over to ICBC, which is certainly not a loss to ICBC. The fact that they are collecting their fees and the like.

With regard to the other $15 million, Mr. Brennerman could not have had the intent because his position is that he knew at the time that there was no way that he could ever have access to those monies. So, therefore, the loss amount in this case would be what was intended by him, which would be the $4.4 million.

THE COURT: I don't think that's consistent with the evidence. It seems to me Mr. Brennerman was happy to take this as far as he could go. Morgan Stanley, the investment banking side, didn't give him the time of day. They weren't interested. If he couldn't produce documents to their satisfaction, they were just ready to ignore him. ICBC was more intrigued or more interested in doing business with him, and Mr. Brennerman strung them along for a long time, and did basically everything he could to get loan proceeds. And it seems to me that he had arranged for a $20 million loan. The goal was to get even more after that, and I don't think that there is anything to suggest that he was content with or satisfied with $4 and a half million, and that's where the thing was going to end. It seems to me he was very interested

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in pursuing this much further to get the balance of the $20 million and to get additional monies after that by falsely presenting himself as the head of a pretty serious operation with a lot of employees and with a lot of assets that was all fiction. So I certainly think that the intended loss amount exceeds -- I'm looking at the newer guidelines. I guess we should be looking at the older guidelines.

Mr. Brennerman, just so you know, this book has changed from when you were first charged to now. There was a new book that came out in the last month or so. So, normally, the way it works is that if it is to your benefit, then we go with the new version. If it is to your detriment, then we go with the old version. Whichever one is better for you is the one we go with. It looks like they're both the same. So $9 and a half million is the threshold for a 20-level enhancement and I think you were easily going to get $9 and a half million. So I will add 20.

The next enhancement under the presentence report is for the use of sophisticated means, and that involved the use of fraudulent documents, the use of glossy brochures that were made just to perpetuate this fraud, the creation of corporations that didn't really exist but with documentation that could create the impression that they did, the use of legitimate law firms to add the venire or appearance of legitimacy was very sophisticated and very thorough, incredibly

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bold, incredibly ambitious that one would be willing to take on those expenses in order to do the big con, which seems to have been the goal all along. Just a shameless, absolutely unapologetic con to get as much as you could by saying whatever you needed to say to whomever. And to dress yourself up to look like the real genuine part. So I think a two-level enhancement is certainly warranted for the wire fraud. I think it's also warranted for the bank fraud, but as to the wire fraud, there is no question. So I will impose two additional levels under 2B1.1(b)(10)(C) for sophisticated means.

There is then a two-level enhancement that probation recommends because the victim was a financial institution.

Mr. Tulman, do you want to be heard on that one?

MR. TULMAN: No, your Honor. It need not be an FDIC institution.

THE COURT: So that then puts us at 31.

The next enhancement that probation recommends is an adjustment for obstruction of justice. This one I know is disputed, so I want to talk about that. There is the obstruction that took place in the civil action before Judge Kaplan, which then metastasized into a criminal action that predated the indictment here. There are additional things, I guess, that the government would also characterize as obstruction.

So I think it is good to maybe nail down what are the

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facts that the government is relying on as obstruction; to what extent are those facts already baked into Judge Kaplan's case; to what extent are they separate in this case; and does it really matter is the final issue. He had two criminal cases. He made bail applications in both. The bail applications included false representations. That I think alone would be enough to support an enhancement for an obstruction of justice, but there is a question as to whether we should create two piles: One for Kaplan and one for me.

Mr. Roos, I'll hear from you first and then I will give Mr. Tulman a chance to respond.

MR. ROOS: Your Honor, you have our letter, but on the questions you raised, I think the first one in our submission which relates to the ICBC conduct is the underlying conduct in the criminal contempt prosecution. Our view is obstructive conduct --

THE COURT: Well, the underlying, you mean in the civil case?

MR. ROOS: That's correct. What the defendant did in the civil case was intended to obstruct ultimate criminal investigation and prosecution of his fraud scheme. And to your Honor's question about -- so certainly there is overlap between the conduct. The entirety of that civil case and what the defendant did in it was the basis for the contempt convictions before Judge Kaplan. But sort of the difference between what

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was there and what we have here is sort of the motive or the reason. There, Judge Kaplan was imposing a punishment for failure to follow court orders.

The reason the defendant did it, and the reason why the defendant in that case did things like submit interrogatory responses or deny the existence of documents, beyond disobeying court orders, was to prevent those materials, the materials that were then later seized through a search warrant and shown to the jury in this case, prevented those materials from becoming known because he knew once they were known, you know, the fraud is up.

So that is why, if your Honor recalls, there were some emails that were shown to the jury in this case where the defendant had lists. Some of those things were basically things he felt like he needed to do in order to prevent, you know, there from being issues. He would write things like, "Deal with X." One of those "deal with" was ICBC because ICBC not game, and part of the defendant's scheme was to basically deal with law firms or agree with banks that could potentially result in serious problems for the defendant.

That's the reason why that conduct, which was certainly the basis for the criminal conviction before Judge Kaplan is relevant conduct here in terms of imposing the obstruction of justice offense.

The second reason we listed relates to the evidence of

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an attempt to basically discourage a witness from Brittania U from testifying against the defendant. Certainly, that is not a core part of the scheme relating to ICBC. It post dates it in time. While the scheme itself is largely the same --

THE COURT: So what does it have to do with this? How does it obstruct this case?

MR. ROOS: Your Honor, that's a witness who potentially could have been -- the government did not call the witness at trial, to be clear.

THE COURT: Because of conflict issues.

MR. ROOS: Because of conflict issues, and the government felt like -- and I think as your Honor put it, thin to win maybe is sometimes prudent. So we didn't think it was necessary to call that witness or made sense to call that witness in this case.

That said, the defendant made an attempt to discourage that witness from coming forward. The witness could have offered direct proof by the defendant; could have been a 404(b) witness; could have been a witness relevant at the time of sentencing. So we certainly think that is obstructive conduct.

The, to your Honor's last question, I think your Honor is absolutely right that the various lies and misrepresentations that the defendant made in connection with various bail applications to the courts would constitute sufficient conduct to qualify for the obstruction enhancement

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as well.

THE COURT: Then that would go to additional issue of concurrent versus consecutive.

MR. ROOS: That's correct, your Honor.

THE COURT: Let's hold on on that one.

Anything else with the false statements in the bail applications, for example?

MR. ROOS: Well, yes, your Honor. In the context of the bail applications, the defendant -- to be clear, these were written applications through counsel. The defendant never took the stand or anything lying that. But certainly it was the defendant's position throughout that he was a businessman in these applications who needed to return to work.

If your Honor recalls the initial bail application, the argument was made that he had all these deals pending, and if he was just released, he could complete them and pay back ICBC. So certainly there was sort of an attempt to tell the Court that things were not as they seemed, and he was ready to go back to work and obtain money that would make the victims whole. And that's after he was indicted.

THE COURT: Mr. Tulman?

MR. TULMAN: Yes, your Honor.

With respect to the obstruction with respect to Judge Kaplan and the civil matter, it is our position that the obstruction guideline distinguishes between affirmative conduct

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to obstruct an investigation. While it's true that the criminal investigation does not necessarily have to be in existence, the conduct in which the individual engages has to be in some way related to that criminal conduct and that it is not an obstruction enhancement to simply take steps to avoid incriminating oneself.

THE COURT: Well, it wasn't just steps to avoid incriminating oneself. It was steps designed to frustrate the civil litigation process to prevent certain facts from being known, and also to chill the victim from, I guess, proceeding with their litigation and with whatever criminal investigation might follow from it. I think that's really the argument, right?

MR. TULMAN: With regard to the latter, your Honor, we have in document 188, the emails are there, I believe. 188 contains the emails, which are the subject matter, I believe, of the government's contention of obstruction, and we just rely upon those documents. They do not appear to indicate obstruction. To the contrary, it was the witness who was to be obstructed who was communicating with Mr. Brennerman. There is an exchange taking place and it is a matter of record. That's document 188, which Mr. Brennerman attached those emails to.

Going back to Judge Kaplan, we maintain and pointed out in the supplemental memorandum that was Mr. Brennerman did not obstruct an investigation; he caused by an investigation by

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his conduct. There was no investigation until the time that he actually engaged in conduct in an effort to perhaps not cooperate in a civil matter, and this is what caused the investigation to take place.

I don't think there is any claim that he ever lied about anything. He didn't take the witness stand and he didn't engage in any other conduct that is described under the guidelines as the kind of conduct that would typically be viewed as being obstructive. So, for that reason, we believe that both of those matters do not rise to the level of obstruction.

With regard to the statement made by his counsel in support of his bail applications and the Court's rejection of those, all we can say in regard to that is Mr. Brennerman maintains that he was a legitimate businessman for a period of years.

THE COURT: Born in the U.K.?

MR. TULMAN: In the U.K.

THE COURT: He was born in the U.K.?

MR. TULMAN: He maintains, your Honor, and it is in his submission that he was born in 1978 and raised between London, New York, and Switzerland primarily by his mother. That is what he maintains, yes, your Honor.

THE COURT: All right. Well, I mean, that's a disputed issue and the jury found that he engaged in visa

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fraud, right? Mr. Brennerman makes a number of bail applications even after his conviction in which he asserts facts about his citizenship, right?

MR. TULMAN: That is correct, your Honor, because he maintains it.

THE COURT: He can maintain it all he wants. It doesn't mean I have to credit it, and it doesn't mean I just have to say, well, I guess I've got to take his word for it, right?

MR. TULMAN: Well, your Honor, I know there are documents, passports, other immigration documents which tend to indicate he was an English national. Mr. Brennerman is here. He can't do anything other than state what it is that he knows to be the truth, and that is the truth that he maintains.

He further maintains, your Honor, that prior to his being charged in this case, that he had been involved with in excess of $10 billion United States dollars in legitimate deals, financial transactions involving oil and gas and real estate transactions. That is what he maintains. I wasn't there. I don't know. I'm the mouthpiece here, but he is here, and this is what he maintains. It's what he put in writing before I was assigned to this matter. He has not told me that any of this is false, and so this is what he maintains, your Honor.

So, since all of that is in fact true, and since the

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statements made in his bail application were true, obviously, there was no obstruction intended and no obstruction involved in any of his bail applications.

THE COURT: Do you want to respond to that, Mr. Roos?

MR. LANDSMAN-ROOS: Well, in terms of the facts of the bail application, as your Honor pointed out, we see it differently, and we think the proof at trial was different.

One thing I want to highlight about the case before Judge Kaplan, and to add to Mr. Tulman's comment about, you know, the defendant didn't obstruct. He actually sort of exposed himself to law enforcement, that argument is nonsensical, the idea that once the defendant is caught, and his acts obviously are what led to his being caught in some form, therefore, there could never be obstruction.

Here, there were a number of steps the defendant took including writing things in pleadings, like -- and this is not from a lawyer. He's writing things himself, things like "the company you're looking for doesn't exist any more" or "I'm not the director of that entity." All of these things were designed to obscure the picture, to deter creditors, and ultimately authorities that would investigate the defendant and hold him accountable for his fraud. So I think this is ample evidence for this enhancement.

THE COURT: I am persuaded that obstruction of justice is warranted here several times over. I do think that the

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conduct taken in the civil action before Judge Kaplan would alone suffice to establish obstruction of justice of this case and this investigation. It was designed to prevent the victim from being able to proceed with recourse in the U.S. legal system.

But it's more than that. I think the bail applications both before and after trial persisted in portraying Mr. Brennerman as a person who was born in the U.K. and had different immigration status there than I think was demonstrated at trial. Certainly, his attempts to manipulate a potential witness to either come forward or not come forward with information favorable or unfavorable to Mr. Brennerman by making false statements about his being in the hospital, his having family issues that prevented him from paying back what was owed. I think all of that was designed to manipulate witnesses so that they would not come forward, not cooperate with the government, and not be available either at trial, at bail hearings, or at sentencing. So I think all of that is sufficient to justify an enhancement here.

The only question for me, which we'll get to in a minute, is whether or not there is a good reason to make the sentences here consecutive sentences in this case and the sentence before Judge Kaplan consecutive as opposed to concurrent. But I think without question a two-level enhancement for obstruction is warranted, so I will impose that

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as well. So that puts us at level 33

The guidelines for the fourth count, the conviction for the visa fraud are ultimately of no moment here, just because they're so much lower. Let me just find the presentence report.

So according to the presentence report, the guidelines for Count Four, which is grouped separately, are base offense level of 8, no additional enhancements given the distance between level 33, which is the wire fraud guidelines, and level 8, which is the visa fraud guidelines, there is no additional enhancement for the visa fraud. So, that puts us at level 33.

The only conviction Brennerman has is his conviction for criminal contempt before Judge Kaplan, and probation has deemed related to this, and, therefore, doesn't count as criminal history, so it results in no criminal history points.

The government agrees with that?

MR. ROOS: Yes, your Honor.

THE COURT: I assume, Mr. Tulman, you do not disagree with that?

MR. TULMAN: Not at all, your Honor.

THE COURT: That us then at a level of 33, Criminal History Category of I, which results in a guidelines range of 135 to 168 months, which is basically 11 to 14 years. Those are the guidelines.

Now, the guidelines are just one factor the Court has

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to consider, Mr. Brennerman. There are other factors as well. I think you know this, but I will remind you what the other factors are. In addition to the guidelines, I have to consider, first of all, your own personal history, the facts and circumstances of your life. I have to also consider the facts and circumstances of this crime, or these crimes, which are serious crimes. So, it's important that the sentence I impose reflects the seriousness of the crime; that it promotes respect for the law and provides just punishment for the crimes. So I have to tailor the sentence both to you as an individual and to the particulars of these crimes. I have to consider the need to deter or discourage you and others from committing crimes like this in this future. That is the hope that by imposing sentence on you to today, I will send a message to you and others that this conduct won't be tolerated; that the consequences are severe, and hopefully you and others will think twice before ever doing it again.

That is the hope. I don't have a crystal ball. I can't know for sure what impact my sentence will have on your future behavior or on anybody else's. I have to use my best judgment nonetheless. Sometimes that means looking at how a person responds when confronted with their prior bad conduct in the past, whether it chills them or deters them from doing it again. So I have to consider that, and I will consider that.

I have to consider your own needs while you're in

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custody. That means taking into account your medical history, your psychological, your substance abuse history, your need for treatment, your need for job training, your need for other opportunities while in prison. Those are things that courts have to consider; to make sure that when a person is released, they're in a position to succeed, to avoid mistakes that got them tied up with the criminal justice system in the first place.

Then, finally, the last factor that I have to consider is the need to avoid unwarranted sentencing disparities among similarly situated people. That is kind of a fancy way of saying that before I impose a sentence on you in this case, I have to make sure that that sentence is consistent with or in line with sentences imposed on other people who have engaged in similar conduct and who have similar histories.

Now, no two people are exactly alike, but where there are strong similarities between conduct and histories of defendants, then the sentences should be similar. Otherwise, it might encourage disrespect for the law, and it would look arbitrary. So that is another factor I have to consider.

So, my job is to balance all of those different factors and to come up with a sentence that I think is appropriate in light of all of them. Sometimes that's hard to do because some of these factors are sometimes in tension with one another, and so it requires some judgment and experience.

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And that is certainly what I will try to bring to bear as I decide what is an appropriate sentence.

So what we are going to do going forward is I'm going to hear from the attorneys on these other factors. We've talked about the guidelines. I've made my findings under the guidelines, but I want to hear from the lawyers further on these other factors. They've touched on them in their submissions, but I will give them a chance now to speak more fully. We will begin with Mr. Tulman. I will then hear from the government. After that, I will hear from the victim if the victim wants to be heard. Then after that, I will give you, Mr. Brennerman, an opportunity to address the Court if you'd like. OK?

Mr. Tulman.

MR. TULMAN: Your Honor, there have been voluminous submissions in this case.

THE COURT: I would say that's a fair characterization.

MR. TULMAN: So I will be brief because so much of it is there in papers. Mr. Brennerman, for example, in document number 175, his presentence memorandum, in part two of his memorandum, page 5, summarizes his background and history, and in there maintains that he had been involved in excess of $10 billion in legitimate financing transactions in the oil, gas, and real estate business. He has no prior criminal

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history. He has no history of violence.

THE COURT: Well, no history of violence I think that we can agree on. I'm not sure the government is going to agree that he has much experience in the oil and gas business as you've just articulated.

MR. TULMAN: I am speaking to what Mr. Brennerman maintains, and in the presentence report what it says is that matters are largely uncorroborated, and this is what Mr. Brennerman maintains.

I would say this, Judge. It is always a difficult situation for counsel at a time of sentencing to ask or make a recommendation for any kind of sentence at a time when the defendant maintains his innocence of the allegations.

I can say that under the New York State law, had he been convicted in the state courts of grand larceny in the first degree, which is what this would be, a larceny by false pretenses of which he stands convicted, the maximum sentence permissible under the law would be an indeterminate sentence of eight and a third to 25 years for a larceny in excess of $1 million obtained under false pretenses. We're obviously not in the state court.

All I can say then is this, Judge: Mr. Brennerman has requested that a sentence of time served be imposed upon him. And the reason why that sentence of time served is appropriate is because the claim is that he is an innocent person. If your

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Honor agreed with that, the rulings on the Rule 29 and Rule 33 perhaps would be different than they are in this case. The Court perhaps would have granted the adjournment; that is, a standing request for adjournment of sentencing. We know the Court has denied it. Mr. Brennerman maintains that if the Court only had the documents from ICBC, which he maintains had been concealed by ICBC, then the truth would be clear that there was no fraud involved in this case at all, and that the puffery and statements that were made by him were wholly immaterial to the issue of the loan in question in this case with regard to ICBC.

So I am not going to make any kind of recommendation myself other than to echo Mr. Brennerman's hope that the Court would appreciate that he has already been sentenced by Judge Kaplan; that for a person who has never been incarcerated before, the harsh conditions of confinement are particularly, particularly difficult for him; that he is now 40 years old; he has family and responsibilities at home; and so for that reason, he would request a sentence of time served. Thank you.

THE COURT: All right.

Mr. Roos, anything you'd like to say in response or just more generally about the factors related to sentencing?

MR. ROOS: Certainly, your Honor.

And, like Mr. Tulman, I won't belabor it. I know your Honor has a great deal of paper, including multiple submissions

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from us, but I want to pick up where defense counsel started, which is with the claim that the defendant has $10 billion worth of legitimate prior oil, gas, and real estate experience which is what he said in his submission. I think that is just one example of many examples in his submissions and his post conviction filings where the defendant has really just doubled down on lies, lies that were proven to be falsehoods at the time of trial, various lies that seemingly almost have no importance other than the fact that they've been subsequently been proven false: Where the defendant is from, what his background is, whether his family had a role in the gas and oil industry in the United States; defendant's claim that he has a not-for-profit that helps people come to the United States from Eastern Europe, to assist them in getting an education. All of these things, some of them material to the fraud that he perpetrated against ICBC and attempted on Morgan Stanley or the various other individuals outlined in our sentencing submission, some of them not material at all, but what they do show as a common theme is that the defendant is relentless in pursuing this false narrative about himself and his business. And why that matters, I think it really goes to the question of specific deterrence and the possibility of recidivism and why a guideline sentence is appropriate. And the defendant has done nothing to suggest that he has accepted responsibility; that he's remorseful; that he won't do it again; that he's changed

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his habits; that upon release, he won't go back to the same bills.

In fact, I think the evidence suggests the opposite, which is that the defendant is very likely to be released from prison at some point, and then restart the fraud; return to oil and gas and maybe some different business that he will come up with and attempt to pursue victims to obtain money. Certainly we hope that his conviction, at least under the names that are on the indictment, will prevent future victimization of banks or individuals or investors, but a lengthy and a serious sentence is certainly necessary to disable this defendant from doing that anytime son.

So that is the primary reason why the government thinks a guideline sentence is appropriate. Your Honor also has our points about the seriousness of the offense, the nature of the defense; but unless your Honor has questions, we will otherwise rest on our submissions.

THE COURT: I guess I have questions about forfeiture and whether the sentence should be consecutive or concurrent.

MR. ROOS: Certainly, your Honor.

So, on the question of forfeiture, the government seeks an imposition of forfeiture in the amount of $4.4 million related to the ICBC fraud, and then $800,000 relating to the fraud on Brittania U. The government would ask the Court to impose specific forfeiture, and if the Court agrees with this

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recommendation, we can submit an order as to these two specific property items.

Number one, the defendant's watch that was a piece of evidence at trial, which is worth thousands of dollars. The government proposes that that be forfeited towards the sum of forfeiture that I've identified.

THE COURT: That's the watch that was purchased with the proceeds from the loan.

MR. ROOS: From the ICBC, that is correct. The second is the $100,000 that was posted as bail money. This is in various things that your Honor has seen previously, but to sort of recap, the defendant shortly before his arrest received $800,000 from Brittania U. Brittania U was told they were investing in an oil and gas project in Africa. The defendant used the money very quickly to pay for various luxury items, personal expenses, and then ultimately some of it for legal expenses, in particular, the posting of his $100,000 bail in the case before Judge Kaplan.

This fact is not really controverted. First of all, there are bank records. I brought them here today that clearly show the deposit of $800,000 into an account called Blacksands, the near-intermediate transfer in multiple hundred thousand dollars increments into an account name of Raheem Brennerman, and then the use of those funds, including a payment to American Express cards which are then used to pay his bail.

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And the reason we know that is because in the case before Judge Kaplan, there was a litigation dispute between whether that money should go back to Mr. Brennerman or to his prior counsel, because Mr. Brennerman apparently assigned or his prior counsel claims to have assigned that hundred thousand dollars in the event it was returned back to counsel. And in the pleadings in that, the pleadings indicate --

THE COURT: Wait. In the pleadings in what?

MR. ROOS: In the Judge Kaplan case. The pleadings by Mr. Brennerman's prior counsel indicate that the payment came out of the accounts that we're talking about here. So, there's a very straight tracing from the funds that came from Brittania U to what ultimately was posted as bail, to the money that recently in October was returned to Mr. Brennerman's prior counsel.

So the government would ask as a second item of specific forfeiture, and, again, we would give your Honor an order if you were to find this way, that the one hundred thousand dollars that was previously posted as bail and then given to prior defense counsel be forfeited.

THE COURT: Wait. The hundred thousand dollars was already -- there was a hundred thousand dollars posted, and that money now is reverted former defense counsel?

MR. ROOS: Thompson Hine.

THE COURT: And so that might be why Ms. Fritz is

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MR. ROOS: That's correct. That's my understanding.

THE COURT: But you're asking then for the specific property that was posted as bail to be -- that now is in the possession of a third party to be covered by a forfeiture order.

MR. ROOS: Correct, your Honor.

THE COURT: All right. And then the third party can fight this out later, I suppose, right?

MR. ROOS: That's correct, your Honor. Generally, my understanding the way it would work would be that the Court imposes a forfeiture order, and that that effectively the third party is a claimant who would then make an application on to the forfeited property.

THE COURT: But the $100,000 is related to what Brittania U gave to Mr. Brennerman, right?

MR. ROOS: That's correct, your Honor.

THE COURT: You're saying that that is covered by this indictment?

MR. ROOS: Well, your Honor, our view is that it's part of the defendant's overall scheme. Your Honor is absolutely correct, that the defendant was not convicted of this issue.

THE COURT: He wasn't charged with this, right? It's not in the indictment, is it?

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MR. ROOS: So the indictment on this question is general. That is a question your Honor posed to us a number of months ago, and we at the time elected not to proceed on this question. I do think the temporal range in the indictment and the description would cover this conduct.

THE COURT: Well, it certainly doesn't name Brittania U.

MR. ROOS: That's correct. I don't think that's necessary in terms of --

THE COURT: Brittania U is not a financial institution, right?

MR. ROOS: Correct.

THE COURT: So where, for instance, would it be in the indictment?

MR. ROOS: It would be the wire fraud conspiracy, your Honor.

THE COURT: But, I mean, it doesn't say anything --

MR. ROOS: Your Honor is absolutely right. They're not named in the indictment. Our view is they are covered by the temporal period, and there is no obligation on the government to identify every victim in the indictment.

THE COURT: The temporal period being 2011 up to and including the present.

MR. ROOS: Correct.

THE COURT: All right. But so the $100,000 -- this

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could have easily been charged as a separate fraud, right?

MR. ROOS: That's right, your Honor.

THE COURT: I suppose it still can. The statute of limitations hasn't run, right?

MR. ROOS: Yes, I believe -- I have to think through if there was a jeopardy issue, but otherwise your Honor is absolutely correct, the statute has not run.

THE COURT: Well, maybe a jeopardy issue whether or not the indictment covers this?

MR. ROOS: That's right, your Honor.

THE COURT: I don't think there is any basis for thinking the indictment covers this, but you think it may?

MR. ROOS: I think the indictment generally charges that the defendant committed a wire fraud and wire fraud conspiracy between 2011 and 20 --

THE COURT: You think that covers every possible wire fraud he engaged in during that period?

MR. ROOS: I think what's described as the wire fraud is a scheme where the defendant made false representations about an oil and gas, business, which is exactly what he said to Brittania U.

THE COURT: But a different oil and gas business?

MR. ROOS: The same oil and gas business; different project.

THE COURT: Different project, right. So the

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indictment talks about Blacksands, right?

MR. ROOS: Right. And that's the entity he used to defraud Brittania U. I think it is in some ways is analogous to if an indictment charged between 2011 and the present the defendant robbed a bunch of banks and at trial the government proved up one of the bank robberies and during that period the defendant --

THE COURT: Well, wait a minute. No. No. Because Count One, which is the conspiracy count, that one is a speaking indictment, right?

MR. ROOS: Right.

THE COURT: The other counts are not.

MR. ROOS: Correct.

THE COURT: And the speaking indictment in Count One talks about financial institutions. It doesn't say that he tried to steal money from anybody who was not a financial institution, does it?

MR. ROOS: I don't believe so, your Honor. I'm not sure that the general language of the speaking indictment does anything that provides notice. I don't know necessarily that those paragraphs bind the government from proceeding on some other theory of the case.

THE COURT: You are trying to get yourself so that you can't prosecute separately for the Brittania U. That seems to be what you're trying to do. You are trying to argue that

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you're precluded from separately indicting because jeopardy --

MR. ROOS: No, your Honor. I'm saying I think there is a colorable argument, and this was definitely part of a large scheme where the defendant used very similar, if not the same, materials, the same strategy, the same company, the same entities to defraud Brittania U. If it's not covered by the indictment, then your Honor is correct, there is no jeopardy issue, and we could certainly prosecute the defendant again.

THE COURT: I don't see anything in here to suggest it's covered by the indictment. You think differently?

MR. ROOS: Well, I think our view is that it's covered certainly sufficiently for purposes of forfeiture.

THE COURT: What does that mean? Forfeiture you have to forfeit the proceeds of the crime.

MR. ROOS: Mmm-hmm.

THE COURT: Right. So if that crime is not charged in here, why would it be covered as forfeiture?

MR. ROOS: I guess that then brings us back to the same question of whether or not the indictment covers the charge.

THE COURT: So if I don't agree with you about that, then what does that mean with respect to the $100,000. That was Mr. Brennerman's $100,000, right?

MR. ROOS: Well, if your Honor's view is that it's not --

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THE COURT: Who posted the $100,000?

MR. ROOS: He posted the $100,000.

MS. FRITZ: No. No.

MR. ROOS: If I may, I believe it was posted through his counsel, and there is assignment agreement, or at least a purported assignment agreement. I don't want to weigh in on whether or not it's real or true or correct, but there is an assignment agreement that I believe says, at least in writing, the hundred thousand dollars is then is turned over to Thompson Hine upon release.

So, if your Honor decides that the hundred thousand dollars is not acceptable to criminal forfeiture in this action, I think then there is either no dispute that it is with Thompson Hine or there is perhaps a civil dispute as to whether defense counsel of Thompson Hine has it, and certainly I guess the government could proceed in some sort of separate either criminal or civil action on these funds.

THE COURT: But you haven't to date.

MR. ROOS: Correct.

THE COURT: Did you want to be heard briefly, Ms. Fritz?

MS. FRITZ: I do, your Honor. I just want to clarify the circumstances under which Thompson Hine received those funds and the circumstances under which bail was posted.

This was not posted by Mr. Brennerman. These were

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funds that were paid to Thompson Hine prior to there being any fraud charge in place for legal fees. When Judge McMahon then set bail, Mr. Brennerman requested of the firm that it agreed to use those funds received by the firm for legal fees; that it agreed to put those forward as bail pursuant to being assigned. The firm agreed to do that.

All of this was actually explored in front of Judge Kaplan recently. Judge Kaplan ordered the exoneration of bail and the return to Thompson Hine of those funds because they were received by us as legal fees and earned legal fees. So I think that's the clarification with respect to those funds.

We agree with your Honor that under 982, these are not within the scope of the forfeiture allegation. The issue was aired in front of Judge Kaplan --

THE COURT: It wasn't aired in front of him when? At sentencing?

MS. FRITZ: Recently.

THE COURT: It really wasn't relevant to the sentencing, right?

MS. FRITZ: No, it was not relevant to the sentencing. As a matter of fact, at no time, even when that $100,000 was posted, did the government ever raise any issue with respect to the $100,000, but nonetheless recently -- was it two months ago, we filed a motion for exoneration of bail and return of the funds to Judge Kaplan.

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The government had every opportunity at that point to put forth any argument they wanted to, and, again, did not make any motion or assert any basis. Perhaps because this all has to do with this sort of separate Brittania U issue.

So our position is it's not in the scope of 982. No evidence was put forth with respect to it being proceeds of any fraud, much less the fraud charged in the indictment, and that those were properly received by my firm for legal fees.

THE COURT: OK. Mr. Roos, do you want to respond?

MR. ROOS: Just to clarify, your Honor, a few things.

Number one, the funds, the account out of which the funds came was the subject of a seizure warrant, I guess a little too late. That happened in 2017. That warrant was produced in discovery. So certainly this has been a live issue for quite some time.

THE COURT: Well, a seizure warrant in connection with this investigation or something else?

MR. ROOS: That's correct, and what happened before Judge Kaplan.

THE COURT: The seizure warrant was to seize what?

MR. ROOS: The seizure warrant was to seize the funds from the Brittania U fraud. At the time the warrant was executed, the funds in question in question had already been taken out of that account. So the warrant was executed in September and the drawdown happened in June, May.

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THE COURT: But the seizure warrant is not this case, right? It was issued in a separate matter, correct?

MR. ROOS: It relates to and identifies --

THE COURT: It's got a mag. docket, right?

MR. ROOS: Certainly, the mag docket.

THE COURT: So magistrate judge issued a seizure warrant for the $800,000 that was the Brittania U.

MR. ROOS: Whatever remained in the account, that's correct.

THE COURT: All right.

MR. ROOS: That's point number one.

The second is I don't think defense or former defense counsel has the record quite right regarding Judge Kaplan. This is an issue we've raised and we have had discussions about repeatedly about the hundred thousand dollars. We asked Judge Kaplan to physically put a hold on it pending your Honor's decision today on forfeiture. Judge Kaplan declined, and that's why it was released back to defense counsel.

THE COURT: Right. He exonerated the bonds.

MR. ROOS: I don't think he was necessarily making any sort of determination as whether or not it was forfeitable, whether or not it was crime proceeds, traceable to the crime or the offense conduct.

THE COURT: All right. But the fact is that the indictment doesn't talk about it, the presentence report

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doesn't really talk about it, right?

MR. ROOS: That's correct.

THE COURT: There is nothing in the presentence report about the Brittania U $800,000, right?

MR. ROOS: No, your Honor.

THE COURT: All right. Mr. Tulman, do you want to be heard on this?

MR. TULMAN: No, your Honor, except it seems to me that it would not be forfeitable property in this case. But as a practical matter, Judge Kaplan has already directed that those funds be turned over to Thompson Hine. The matter was resolved. Mr. Brennerman no longer has an interest in those funds.

THE COURT: I don't know whether it has or not been resolved. It seems to me there may be a battle brewing between Thompson Hine and the government whether civil or something else, but I don't think there is anything in the presentence report that would lead me to conclude that that $800,000 are the proceeds of this criminal conduct. That's not to say that the shenanigans that went on with Brittania U and the principals there doesn't constitute obstruction of justice because I think that that person would have been a potential witness and might have offered either 404(b) evidence or might have provided additional evidence of the fictional nature of Blacksands and the other entities controlled by Mr. Brennerman.

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So I don't think that this upsets my ruling on obstruction of justice with respect to just that piece of it. There are some many other examples of obstruction of justice that I'm not worried about that two-level enhancement. But I think there is nothing inconsistent in my saying that I am not going to order $800,000 of these proceeds to be part of the forfeiture order. It seems to me the forfeiture order should include what Mr. Brennerman got from ICBC. He didn't really get anything else other than the free checking and perks of minimal value that the government is not seeking restitution or forfeiture on that, right?

MR. ROOS: That's right.

THE COURT: All right. So I'm not going order forfeiture of the whatever is ultimately tracing back to Brittania U. It seems to me if you want to charge Mr. Brennerman with that, you should. If you want to proceed civilly on that property, you should. But I don't think the back door here is the way to do it when there is nothing about it in the presentence report. OK.

And then restitution, you're seeking, what you've asked for is basically 90 days to develop the record further, but the restitution would be what?

MR. ROOS: Well, your Honor, I take it your view would be the same as to Brittania U and any other victims not identified in the PSR?

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THE COURT: Yes. Look, I just don't think -- restitution is to make victims whole. I think that that victim is not here today; has not submitted a victim statement; is not in the presentence report; is sort of a shadow. I don't even think there was talk about it at the bail hearing, and I think there were false statements made, and part of what was going on in connection with bail was designed to make it look like he was a legitimate businessman. But I don't know that I have enough for me to conclude that they are a victim that would be entitled to restitution. Not everybody who's been victimized by a con man gets restitution payments at the sentencing on certain counts of an indictment.

MR. ROOS: Certainly, your Honor. So in that case, restitution should be limited to ICBC. Your Honor has ICBC's submission. So the amount of the loss I believe was $4.4. ICBC's submission identifies interests and costs that have developed since then, which I think would be the appropriate amount for restitution. If Mr. Hessler has an exact figure and your Honor deems it appropriate or as the government has recently offered, we'd be happy to put in a restitution order.

THE COURT: I would think since his submission, the numbers are different now just because of the passage of time, right?

MR. ROOS: Correct, your Honor. So we could certainly work with ICBC to come up with the final number that

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incorporates any costs and interests.

THE COURT: That we could do. We have time. Forfeiture we need to resolve today.

Restitution under the law we have additional time to nail that down. So there will be restitution here, no question, but the exact amount I think I'll reserve until I get an up-to-date submission from the government and/or ICBC, and I will give Mr. Tulman a chance to respond. I don't think there should be any mystery if it fist reasonable interests and reasonable expenses associated with being made whole, that would be covered by restitution.

Anything else?

MR. ROOS: Your Honor also wanted to hear about the concurrent versus consecutive question.

THE COURT: Yes.

MR. ROOS: As your Honor knows, and as our submission sets forth in our policy statement which is a recommendation and obviously is not binding on your Honor pursuant to the Second Circuit and Supreme Court case law that's cited in our most recent letter, indicates obviously a presumption under these circumstances in favor of a concurrent sentence.

I think here the argument for consecutive and the one that was set forth by Judge Kaplan was that while, certainly, this is relevant conduct that is relevant to the question of obstruction, there are two different crimes here: One, is a

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refusal to follow court orders. The other, and perhaps the motive of that was concealing of fraud, it's really a different type of offense. The defendant chose to go to trial on both of these, which is his right, absolutely. He didn't accept responsibility of neither of them. One of the offenses has a pretty substantial loss amount. It has a victim or victims. The other one, the victim is the Court or justice. And so because there are different harms, different victims, different types of conduct, the government believes, as Judge Kaplan set forth, and pursuant to the various policy statements that the Court should exercise its discretion and impose a consecutive sentence.

THE COURT: Thank you.

Mr. Tulman, do you want to be heard on any of those things?

MR. TULMAN: Briefly, your Honor. The views expressed by the department of probation and the policy guideline in the Sentencing Guidelines we think it appropriate here that the sentence be imposed concurrently.

THE COURT: Mr. Hessler, anything you would like to say beyond what's in your submission? If you do, come up. You can use the lectern there.

MR. HESSLER: Thank you, your Honor.

THE COURT: For the benefit of the court reporter, if you could just state your name and spell your name?

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MR. HESSLER: Paul Hessler, H-E-S-S-L-E-R, on behalf of ICBC London PLC.

Your Honor, thank you for the opportunity to be heard. Based on what I have just heard, I anticipate that your Honor would order restitution to make my client whole. We will work with the government to submit a detailed statement of what that loss is. On that subject, I would just say that I have heard several references to what I would consider a base amount of a $4.4 million loss, which I believe people are conceding of as the net amount of the loss of principal to my client. The net loss to my client of principal is $5 million. And just to be very brief about that, your Honor, the price of entering into the $20 million loan agreement was a $500,000 fee. That amount--

THE COURT: Was earned.

MR. HESSLER: -- was earned and owed to my client in addition to the $5 million principal. The fact is that as a convenience to borrowers in these types of situations, banks net out that fee so that the borrower doesn't have to bring a separate $500,000 check and you hand out $500,000. Just so your Honor is not surprised when you see it, the base amount we will be seeking, plus interest in fees, is $5 million.

Your Honor, the only other thing I wanted to address today was that in the underlying civil litigation in front of Judge Kaplan and in the sentencing submissions and the

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arguments that have been made today by the defendant, the defendant continues to attack ICBC, my client, which is to say he continues to attack the victim of his crimes.

He is doing that in multiple ways. One is he continues to maintain a counterclaim against my client in front of Judge Kaplan. We expect to obtain dismissal of that counterclaim through a supplemental motion for sanctions that we intend to file shortly. But the reality is that even today, he maintains a counterclaim seeking $50 million, based on what can only be concluded to be perjured statements that are directly contradicted by witnesses that testified in the trial in front of your Honor, including the owners of the oil field that Mr. Brennerman purported to be dealing with, as well as the representatives of Morgan Stanley who entirely refuted sworn statements that Mr. Brennerman had made in front of Judge Kaplan.

Secondly, your Honor, there is a theme that has been running through the statements and arguments today that my client is hiding documents or somehow undermining the proceedings here. We entirely reject any such notion, your Honor. I don't think there is any claim against my client. I think your Honor has rejected the notion that the defendant is entitled to documents from my client, but we would just like to say as a financial institution that does business in this country that has litigated in front of this court, that my

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client never engaged in any conduct to undermine any proceeding in front of this Court, has not hidden anything, and we reject any suggestion or indeed statements of impropriety by my client.

Third, your Honor, there is a statement in one of the sentencing submissions by the defendant that my client misled either this Court or its financial regulators in London because in filing a financial statement in 2015 relating to the calendar year 2014, that my client did not disclose that it had been defrauded by the defendant. And I guess all I would say in regards to that, your Honor, is that we filed a civil case in front of Judge Kaplan in late 2014, December 2014. We maintained that suit as a civil suit for years, and it was not until the very end of that case, indeed, when we got into enforcement, that it became obvious to us, mostly through proceedings by the government that were initiated around that time and the fact my client had been defrauded.

So, again, we just want to state on the record that we reject any of the allegations and any of the direct statements of impropriety by my client.

That's all I have to say unless your Honor has any questions.

THE COURT: No. I will want to see the details just as to what the costs were and what the interest is as far as you're concerned, but I'm sympathetic.

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MR. HESSLER: Thank you, your Honor.

THE COURT: Mr. Brennerman, you have a right to address the Court if you'd like. You are not required to, but you are certainly welcome to.

Is there anything you would like to say before I impose sentence?

THE DEFENDANT: Your Honor, I will be short. I just want to offer my sincere apologies for anything that I may have done wrong. Thank you.

THE COURT: OK. Thank you.

What I would like to do, if it's all right, is take a short recess to collect my thoughts, maybe five minutes. I will then come back, state my sentence, explain my reasons for it, and then formally impose sentence. OK? Is that all right? So just five minutes or so. Thanks.

(Recess)

THE COURT: Thanks for your patience. Let me state the sentence I intend to impose and the reasons for it.

In our system, Mr. Brennerman, judges have to explain themselves. They have to give reasons. I think that's a good thing. I don't think a defendant should ever have to wonder what the judge was thinking. I don't think the defendant's family, friends, or the public should have to wonder either. So we ask our judges to explain themselves. Our proceedings take longer as a result, but I think that's a good thing. It

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makes our system transparent and makes it more thorough, which is a good thing generally.

So, this is a case I'm certainly familiar with the facts. There have been a lot of submissions. I sat through the trial. I've sat through lots of hearings and bail hearings, arguments. I've read all the submissions. And I think I come away, unremarkably, to the conclusion, or I come away with the conclusion that you are just an inveterate con man. You're a crook. You are somebody for whom truth has no value. You seem to lie at the drop a hat and indiscriminately even when it's unnecessary just because a well-told lie seems to be attractive to you. But, ultimately, your lies were all designed to get you free and easy money, to allow you to live at a very high level without doing what was necessary to earn those things legitimately, and there were victims that were out serious money because of your willingness to engage in a very elaborate, very, very ambitious fraud.

And the fact that you have perpetuated that fraud throughout, the fact that you continue to insist that you are things that you are not, you continue to pretend you are this legitimate businessman, the fact that you created fictional characters as employees of your companies, that you used the name of a person who actually did exist and whom you did know without her permission pretending that she was an employee, the fact that you had used law firms that were legitimate law firms

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and had brochures made up and milked people with real knowledge so that you could make your submissions and your glossy brochures more realistic is just, I think, further indication of just how selfish you are and how utterly dismissive you are of people, of institutions, of courts, of laws, of rules of just sort of basic human decency. You are just -- you're a liar. You are among one of the most dishonest people I've encountered. So shame on you.

So, what's the right sentence? Candidly, I have no hesitation to sentence you within the guidelines range, and inexplicably to me, probation has recommended a sentence below the guidelines. I don't see any reason for it. I certainly intend to sentence you within the guidelines.

The harder part for me is whether it should be consecutive or concurrent. Ultimately, I don't know that it makes that much difference. If I were told that it should be concurrent, then I think would give you the high end of the guidelines range, 14 years. But I think Judge Kaplan makes a good point; I think the government makes a good point; that the time should be consecutive because the harms caused in Judge Kaplan's case were real. Not everybody engages in a wholesale assault of the civil criminal justice system the way you did. A lot of people, even people who get obstruction of justice points in criminal cases, are not so arrogant and so disrespectful as to engage in a wholesale fraud on the court in

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civil litigation in an effort to utterly thwart the wheels of that system.

So Judge Kaplan was, I think, right when he was incensed at and he sentenced you to two years for the monkey business and shenanigans that you engaged in in the civil litigation system of the federal courts, because you've used that system as an important one that allows people with real disputes to have those disputes resolved with judges and laws and rules of civil procedure that are designed to resolve actual disputes. And you were determined to absolutely frustrate that entire process.

So I am comfortable basically sentencing you to 12 years here, with the two years Judge Kaplan imposed consecutive. If that ever came back to me, I'd give you 14 because if it was all baked in together, I think at the end of the day, 14 for all of this strikes me as appropriate. You are incorrigible. You're unrepentant. You will do this again, I'm convinced, the minute you get out. My only hope is that 14 years in jail will maybe mellow you to the point where you just decide this isn't worth it, but I'm not hugely confident of that. And I imagine wherever you end up, you'll just do it again because you strike me as somebody who enjoys this, who enjoys this.

So the sentence I intend to impose is 12 years consecutive to the two-year term imposed by Judge Kaplan, to be

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followed by a term of supervised release of three years with conditions that I will set forth in a moment.

I am going to order forfeiture, but forfeiture in the amount of $4.4 million, which is what you received net. I will order restitution, but that's going to be at a later date after submissions from the victims.

I am also going to impose a $400 special assessment. That's mandatory. That has to be paid promptly.

That's the sentence I intend to impose.

Is there any legal impediment to my imposing that sentence? Mr. Roos?

MR. ROOS: Well, your Honor, I think it's clear from what you've already said about consecutive versus concurrent, but as you know from our submission, the Second Circuit has said the District Court must consider the policy recommendation in Section 5G --

THE COURT: No, I've considered all of that in spades, and I think because I do think that these are different harms. One might disagree. One might say that Judge Kaplan's entire case is really baked into mine. I don't agree with that because I don't think everybody who engages in a wire fraud or bank fraud conspiracy or visa fraud conspiracy necessarily engages in a massive fraud in civil court in the United States District Court. So I think that the harms are distinct.

But if anyone disagreed and thought that they are not

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distinct, that this is all one thing, then my calculation would probably be a little different, but I'm segregating out the obstructions here which are particular to this case and the separate harms that prompted the criminal contempt case before Judge Kaplan, which is really focused on the abuse of the civil process, the refusal to follow court orders and the federal rules of procedure.

So I think that does it. I hope that does it. But that's the sentence that I intend to impose.

Is there any legal impediment to my imposing that sentence otherwise?

MR. ROOS: No, your Honor.

THE COURT: Mr. Tulman?

MR. TULMAN: No. And we accept -- of course we disagree with your Honor's reasoning -- but otherwise, there is no impediment.

THE COURT: Mr. Brennerman, let me ask you to stand.

Mr. Brennerman, as a result of the jury's guilty verdicts on all four counts, I sentence you as follows:

I sentence you to a term of incarceration of 12 years concurrent on each count. Actually, Count Four is a maximum of ten years. So Count Four would really be much, much lower separately, but I guess it doesn't really matter. It's a 12-year total sentence. 144 months on Counts One, Two, and Three, 120 months on Count Four, all to run concurrent, but

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consecutive to the undischarged term that was imposed by Judge Kaplan in 17 CR 155.

I'm going to impose three years of supervised release to run concurrently on all four counts of conviction. That will include the mandatory conditions set forth in the presentence report.

You cannot commit another federal, state, or local crime.

You cannot use a controlled substance.

You cooperate in the collection of DNA; that you comply with lawful directives of the immigration authorities.

There are standard conditions, 13 in all. You must follow those as well.

There are special conditions that will include that you provide any requested financial information to the probation officer; that you not open new credit charges or open additional lines of credit without the approval of the probation officer.

I'm ordering forfeiture in the amount of $4.4 million. That's the proceeds of the crimes as charged in the indictment. I'm also going to order restitution, but on a schedule I will ask the government to make a submission in 45 days. Is that all right?

MR. ROOS: Certainly, your Honor.

THE COURT: You will coordinate with the victim on

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that.

Then there is a $400 special assessment. That's mandatory.

Any recommendations you'd like me to make, Mr. Tulman?

MR. TULMAN: Two things, your Honor. I would request on behalf of Mr. Brennerman of the Bureau of Prisons that he be designated to an institution out west in California. Mr. Brennerman apparently has ties there.

THE COURT: I'll make that recommendation.

MR. TULMAN: And the second thing, your Honor, is that in the letter motion seeking the request for an adjournment of sentencing, I also included a request on my part that following the sentencing and filing a notice of appeal in this matter that I be relieved as counsel.

THE COURT: Yes, I will grant that request after the period for filing notice of appeal has passed.

Mr. Brennerman, you have the right to appeal this sentence. I think you're aware of that. If you wish to appeal, you would need to file a notice of appeal within two weeks. I'm going to ask Mr. Tulman to assist you in filing that notice of appeal. After that, he will be relieved. If you wish to appeal and wish to have counsel appointed for the purpose of appeal, you can let me know that or let the Court of Appeals know that, and counsel will be appointed. OK?

All right. Anything else we should cover today?

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MR. ROOS: No, your Honor.

THE COURT: No. Good luck to you, Mr. Brennerman.

Let me thank you the marshals, and let me thank the court reporter as well.

Thanks.

(Adjourned)

APPENDIX F

Order and Ruling of Proceedings
United States District Court for the Southern District of N.Y.
in *United States v. Brennerman*, No. 17 Cr. 337
(EFC Nos. 249; 251; 257)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

RAHEEM J. BRENNERMAN,

Defendant.

No. 17-cr-337 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

The Court is in receipt of a *pro se* letter from Defendant Raheem J. Brennerman, requesting that the Court order certain discovery from the government and ICBC (London) plc, the victim in this case, which discovery Brennerman believes will assist him in preparing a forthcoming motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). (Doc. No. 248.) For the reasons set forth below, Brennerman's request for discovery is DENIED.

As an initial matter, Brennerman asserts that he is entitled to discovery from ICBC under 28 U.S.C. § 1782. (Doc. No. 248 at 1.) But Brennerman misapprehends the purpose of that statutory provision. Section 1782 "permits a district court . . . to order a person within its jurisdiction to 'give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal.'" *Mees v. Buiter*, 793 F.3d 291, 294 (2d Cir. 2015) (quoting 28 U.S.C. § 1782(a)). In other words, the statute provides for discovery where that discovery will be used in a legal proceeding happening abroad. It does not, as Brennerman suggests, supply criminal defendants with the right to seek discovery from foreign entities for use in U.S.-based criminal proceedings.

But even if § 1782 could be stretched to the limits urged by Brennerman, there is no indication in Brennerman's letter that the Court has jurisdiction over ICBC, the London branch of a Chinese entity, for purposes of a discovery request related to a post-conviction motion for compassionate release. *See In re del Valle Ruiz*, 939 F.3d 520, 524 (2d Cir. 2019) (explaining that "§ 1782's reach [extends only] to the limits of personal jurisdiction consistent with due process"). The mere fact that ICBC was a victim of Brennerman's criminal scheme does not automatically confer personal jurisdiction over this London-based bank.

And to the extent that Brennerman's *pro se* letter can be construed as a request to issue a subpoena to ICBC under Federal Rule of Criminal Procedure 17 and 28 U.S.C. § 1783, that too fails. As Judge Kaplan explained when declining to enforce a subpoena Brennerman issued to ICBC in another criminal matter, "ICBC is a foreign bank located approximately 3,500 miles from the courthouse" and "is not a national of the United States who is in a foreign country," meaning that "Section 1783(a) does not authorize issuance of a subpoena to it." *United States v. Brennerman*, No. 17-cr-155 (LAK), 2017 WL 4513563, at *2 (S.D.N.Y. Sept. 1, 2017) (internal quotation marks omitted).

Of course, the legal niceties of statutory authority and personal jurisdiction have never deterred Brennerman from making demands of this sort, and it bears noting that the instant discovery request is simply the latest in a long string of nearly identical requests from Brennerman that are largely an attempt to retry his case. Unfortunately, Brennerman has never "offered [any] justification for the indiscriminate introduction of evidence that was not introduced at trial." (Doc. No. 166 at 2.) So, for that reason and others, the Court has rejected each of Brennerman's prior requests, which primarily sought the same information that he pursues in his present motion. (*E.g.*, Doc. Nos. 153, 161, 166, 187, 235.) In the interim, the Second Circuit has affirmed Brennerman's

conviction, explaining that the government complied with its disclosure obligations in this case, and that "[t]he only indication that [the] documents [Brennerman seeks] are extant comes from Brennerman's bare assertions." *United States v. Brennerman*, 818 F. App'x 25, 29–30 (2d Cir. 2020); *see also* Doc. No. 247 (mandate issued following the Second Circuit's denial of a similar "motion for discovery relief" submitted by Brennerman). Brennerman's letter supplies no reason for the Court to deviate from these past rulings.

Accordingly, Brennerman's request for discovery is DENIED. The Clerk of Court is respectfully directed to terminate the motion pending at docket number 248, and to mail a copy of this order to Brennerman.

SO ORDERED.

Dated: November 5, 2020
New York, New York

RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

RAHEEM J. BRENNERMAN,

Defendant.

No. 17-cr-337 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

By order dated November 5, 2020, the Court denied a *pro se* discovery request submitted by Defendant Raheem J. Brennerman, which sought records from both ICBC (London) plc, the victim in this case, and the government. (Doc. Nos. 248, 249.) In response, Brennerman has submitted a *pro se* letter requesting that the Court reconsider that decision. (Doc. No. 250.) Like most of his filings, Brennerman spends the bulk of his letter criticizing this Court's and other courts' past decisions and attempting to relitigate broad swaths of his case. (*Id.* at 2–8.) As the Court has already made clear, however, these arguments provide no basis on which to grant Brennerman the discovery he requests given that he "has never 'offered [any] justification for the indiscriminate introduction of evidence that was not introduced at trial.'" (Doc. No. 249 at 2 (quoting Doc. No. 166 at 2).) That is particularly true because the Second Circuit, in a decision that is binding on this Court, already determined that the government complied with its disclosure obligations in this case. (*Id.* at 2–3.)

Brennerman's request for reconsideration also makes several passing references to the ongoing COVID-19 pandemic, suggesting that because of his pre-existing medical conditions, Brennerman is at acute risk of complication should he contract the disease. (Doc. No. 250 at 8.)

Even if that is true, that fact is irrelevant to a motion seeking discovery into the merits of Brennerman's underlying crime. To the extent Brennerman believes that COVID-19 demands his release from incarceration, he can make that argument in a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).

Accordingly, nothing in Brennerman's letter alters the Court's prior conclusion, and Brennerman's request for reconsideration is therefore DENIED. The Clerk of Court is respectfully directed to mail a copy of this order to Brennerman.

SO ORDERED.

Dated: November 20, 2020
New York, New York

RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

x

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
P. O. Box 1000
White Deer, Pa. 17887-1000

Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

with copy to:

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

March 6, 2021

BY E-MAIL & CERTIFIED FIRST CLASS MAIL
Email: Temporary_Pro_Se_filing@nysd.uscourts.gov

Regarding: United States v. Brennerman
Case No. 1:17-CR-337 (RJS)
MOTION FOR RECONSIDERATION AND APPROPRIATE RELIEF

Dear Judge Sullivan:

Defendant Pro Se Raheem J. Brennerman ("Brennerman") respectfully submits this letter motion for reconsideration of the motion (at 1:17-cr-337 (RJS), doc. no. 254 as it relates to the Morgan Stanley issue) in reliance on his rights pursuant to the United States Constitution, all applicable law and federal rules. In the alternative, Brennerman seeks just and proper relief from the Constitutional violation, manifest injustice and prejudice suffered in light of the misconduct highlighted below in addition to the other issues highlighted (at 1:17-cr-337 (RJS), at doc. nos. 248, 250, 254), particularly given that the same trial judge presided over the entire criminal prosecution in this instant case.

I. APPLICABLE LAW

The Standard for granting a motion for reconsideration is strict. "[R]econsideration will generally be denied unless the moving party can point to controlling decision 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). Possible grounds upon which a motion for reconsideration may be granted include "(1) an intervening change in law; (2) the availability of evidence not previously available, and (3) the need to correct a clear error of law or prevent manifest injustice. "Shannon v. Verizon New York, Inc., 519 F. Supp 2d 304, 307 (N.D.N.Y. 2007) (citation omitted)

II. DISCUSSION

The Court stated in its denial order (at 17 CR. 337 (RJS), at doc. no. 255) "Indeed, Brennerman appears to want this discovery only so the he may "relitigate broad swaths of his case, (Doc. No, 251 at 1")" and "Brennerman renews previous request that the Court grant him certain discovery that Brennerman says he "requires....to present a comprehensive [c]ompassionate release [motion]" at the future. (Id. at 2)""

Here, the Court overlooked a significant issue. The evidence sought (at 17 CR. 337 (RJS), at doc. no. 254) goes beyond the filing of compassionate release motion in the future or an endeavor to relitigate broad swaths of Brennerman`s case. It [the evidence] will allow Brennerman to seek and obtain appropriate relief from the Constitutional violation, manifest injustice and prejudice suffered in light of the significant misconduct highlighted below.

Given that Judge Sullivan presided over the entire criminal prosecution (including trial and sentencing) in this instant case, and in light of the other issues highlighted at 17 CR. 337 (RJS), at doc. nos. 248, 250, 254, Brennerman in reliance on his Constitutional rights, applicable law and federal rules seeks just and proper relief from the Constitutional violation, manifest injustice and prejudice suffered in light of the significant misconduct highlighted below. Here the trial judge exhibited "such a high degree of favoritism or antagonism as to make fair judgment impossible." Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d. 474 (1994)

Significant Misconduct:

In this instant case, during trial in November/December 2017, Government presented evidence - Government Exhibit - GX1-57; GX1-57A; GX1-73; GX529 to highlight Brennerman`s interaction with Morgan Stanley. All evidence presented by Government demonstrated that Brennerman interacted with Government witness, Scott Stout who worked at Morgan Stanley Smith Barney, LLC (see GX1-73, Notice to Recipient: confirming that the email was sent by an employee of Morgan Stanley Smith Barney, LLC) where Brennerman opened his wealth management brokerage account (see 17 CR. 337 (RJS), at doc. no. 167; also see 17 CR. 337 (RJS), at doc. no. 254, exhibit C).

After trial, in June 2018, Brennerman submitted supplemental evidence in support of his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 ("Rule 29 motion") highlighting that he interacted with non-FDIC insured institution and that Government failed to prove that Morgan Stanley Smith Barney, LLC is FDIC insured (see testimony of Government witness, Barry Gonzalez, at 17 CR. 337 (RJS), at trial tr.1059; see also 17 CR. 337 (RJS), at doc. no. 254, exhibit G; also see supplemental evidence submitted at 17 CR. 337 (RJS), at doc. no. 167; and 17 CR. 337 (RJS), at doc. no. 254, exhibit C)

In November 2018, Judge Sullivan denied the Rule 29 motion for judgment of acquittal and sentenced Brennerman. Notwithstanding the demonstrable evidence submitted at 17 CR. 337 (RJS), at doc. no. 167. Judge Sullivan denied Brennerman`s Rule 29 motion by surreptitiously supplanting a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC with a FDIC insured institution, Morgan Stanley Private Bank, in an endeavor to falsely satisfy the essential element necessary to convict Brennerman for bank fraud in violation of 18 U.S.C.S. 1344(1) and conspiracy to commit bank fraud in violation of 18 U.S.C.S. 1349. This is the significant issue.

Judge Sullivan, improperly stated on the record that the fraud was a scheme or artifice to defraud the private banking arm of Morgan Stanley, an FDIC insured institution (see 17 CR. 337 (RJS), at doc. no. 206, sentencing tr. at 19; see also 17 CR. 337 (RJS), at doc. no. 254, exhibit D) even though Government presented no evidence to support such ruling. Under certain circumstances, a judge`s behavior can be "per se misconduct." Marquez-Perez, 835 F.3d at 158. This happens when judges "exceed their authority" by "testify[ing] as witnesses, or add[ing] to or distort[ing] the evidence." Id.

To the extent that the Court affirms its prior ruling, that Brennerman opened his wealth management account at the private banking arm of Morgan Stanley or that Scott Stout whom Brennerman interacted with worked there, then Brennerman seeks evidence to support such ruling, given that the criminal case records at 17 CR. 337 (RJS) lacks indicia of any evidence to support such ruling.

Required Evidence:

Brennerman requests for evidence of Morgan Stanley presented by the prosecution at trial (see 17 CR. 337 (RJS), at doc. no. 167) particularly given the divergence between the evidence presented on record at trial and the Court`s ruling during sentencing and denial of Brennerman`s motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29 with respect to Morgan Stanley.

Moreover, the evidence will irrefutably and conclusively demonstrate that Brennerman opened a wealth management brokerage account in January 2013 at Morgan Stanley Smith Barney, LLC in Beverly Hills, California. That he did not receive any perks because the account was opened for a few weeks and the charge card which was issued by another non-Morgan Stanley institution was closed with zero balance. Further that, Brennerman had a single preliminary telephone call about oil asset financing with Kevin Bonebrake who worked at the Institutional

securities division of Morgan Stanley, a subsidiary of Morgan Stanley & Company, LLC which is not FDIC-insured.

Additionally, testimony of FDIC commissioner, Barry Gonzalez at trial confirmed that the prosecution failed to prove that either Morgan Stanley Smith Barney, LLC (where Brennerman opened his wealth management brokerage account) and the Institutional Securities division of Morgan Stanley (where Kevin Bonebrake worked) are FDIC insured. (see 17 CR. 337 (RJS) at trial tr. 1057-1061)

The evidence will prove that Brennerman has been wrongfully convicted and sentenced. Not FDIC insured, No bank fraud.

III. PRO SE APPLICABLE LAW

Defendant, Raheem Brennerman, is a Pro Se defendant, therefore his pleadings are generally liberally construed and held to a less stringent standard than pleadings drafted by an attorney. See Hughes v. Rowe, 449 U.S. 6, 9 (1980) (per curium); Estelle v. Gamble, 429 U.S. 97 (1976).

IV. CONCLUSION

Brennerman respectfully submits the above and prays that the Court grant his request for relief in its entirety.

Dated: March 6, 2021
White Deer, Pa 17887-1000

Respectfully submitted

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

Pro Se Defendant

IT IS HEREBY ORDERED THAT Defendant's Motion for Reconsideration and Appropriate relief is DENIED. The Clerk of the Court is respectfully directed to mail a copy of this memorandum endorsement to Brennerman.

SO ORDERED:
March 12, 2021
Richard J. Sullivan
U.S.C.J., Sitting by Designation

APPENDIX G

Opinion and Decision of the United States Court
of Appeals for the Second Circuit in
OSRecovery, Inc., v. One Groupe Int`l, Inc.,
462 F.3d 87, 90 (2d Cir. 2006)

Docket No. 05-4371-cv
United States Court of Appeals, Second Circuit

Osrecovery v. One Group Intern

462 F.3d 87 (2d Cir. 2006)
Decided Sep 5, 2006

Docket No. 05-4371-cv.

Argued: May 16, 2006.

88 Decided: September 5, 2006. *88

89 Appeal from the United States District Court for the Southern District of New York, Lewis A. Kaplan, J. *89

Franklin B. Velie, Sullivan Worcester LLP, New York, N.Y. (Richard Verner, on the brief), for Appellant.

Lawrence W. Newman, Baker McKenzie LLP, New York, N.Y. (Scott C. Hutchins, on the brief), for Defendants-Appellees.

Before CARDAMONE, CALABRESI, POOLER, Circuit Judges.

POOLER, Circuit Judge.

Appellant Gray Clare appeals from an August 3, 2005, order of the United States District Court for the Southern District of New York (Kaplan, J.) holding him in contempt of court. *See OSRecovery, Inc. v. One Groupe Int'l, Inc.*, No. 02 Civ. 8993(LAK), 2005 WL 1828736, *2, 2005 U.S. Dist. LEXIS 15699, *5 (S.D.N.Y. Aug. 3, 2005). The court issued the order in response to a motion from defendant-appellee, Latvian Economic Commercial Bank ("Lateko"), requesting that the court hold Clare in contempt for his failure to comply with a January 13, 2005, order compelling Clare to respond to Lateko's discovery requests. *See id.* 2005 WL 1828736 at *1, 2005 U.S. Dist. LEXIS 15699, at *1-2. The January 13, 2005, order instructed Clare to respond to all of Lateko's requests, including document requests annexed to Clare's Notice of Deposition, requests for production, and interrogatories. Clare objects to these requests, the January 13, 2005, order compelling discovery, and the contempt order on the basis that he is not a party to the underlying litigation, and he was not subpoenaed as a non-party. *Id.* 2005 WL 1828736, at *1, 2005 U.S. Dist. LEXIS 15699, at * *2-3.

All parties have agreed and asserted to this Court that Clare is not actually a party. The district court, while also acknowledging Clare's non-party status, treated Clare as a party — but only for discovery purposes — by using two theoretical devices: estoppel and party by proxy.

We first hold that we have jurisdiction over the instant appeal because it is "final" within the meaning of 28
90 U.S.C. § 1291. Although appeals from civil contempt orders *90 issued against parties are not "final" and thus not immediately appealable, such appeals by non-parties are "final." *See Int'l Bus. Machs. Corp. v. United States*, 493 F.2d 112, 114-15 n. 1 (2d Cir. 1973). Because Clare is in fact a non-party, the appeal from his contempt order is properly appealable at this juncture.

We next hold that the district court abused its discretion by issuing a contempt order to a wow-party for failing to respond to discovery requests propounded to him as a *party* without providing sufficient legal authority or explanation for treating him as a party solely for the purposes of discovery. Non-parties are entitled to certain discovery procedures, such as receiving a subpoena, before they are compelled to produce documents. *See* Fed.R.Civ.P. 34(c); Fed.R.Civ.P. 45. The district court, however, permitted Lateko to treat Clare as a party, thereby eliminating some of the procedural protections that would have been afforded to Clare had he been dealt with as a non-party. We offer no opinion on whether the district court's theories for proceeding in this manner were appropriate in the instant case because we find that the contempt order applying these theories did not lend itself to meaningful review by this Court and therefore must be vacated solely on that basis.

We therefore vacate the order of the district court holding Clare in contempt of court and remand the case to the district court for further proceedings in accordance with this decision.

BACKGROUND

OSRecovery, Inc. and a number of plaintiffs who have been referred to as numbered "Doe" plaintiffs throughout the litigation (collectively, "plaintiffs") brought suit against defendants, including Lateko, for, inter alia, violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, alleging that defendants were engaged in a Ponzi scheme to defraud investors. The Doe plaintiffs' identities were kept under seal and confidential, so that neither Lateko — nor the district court at one point — knew which individuals were Doe plaintiffs. It is this unusual circumstance that created much of the confusion that gave rise to the instant appeal.

At the time the action was filed, Clare was president of OSRecovery, a corporation formed for the purposes of bringing the underlying action. Clare was also the sole shareholder of OSRecovery. He was not, however, a plaintiff individually named in the action, and, as ultimately became apparent, he was not one of the Doe plaintiffs either.

Because the identities of the Doe plaintiffs were unknown to the district court and to Lateko, much confusion arose regarding whether Clare was actually one of the Doe plaintiffs. This confusion created issues during discovery regarding the appropriate procedure for propounding discovery requests to Clare. Clare contributed to this confusion by initially referring to himself as a plaintiff. For instance, in a letter sent to the district court and dated May 28, 2004, plaintiffs' counsel requested that the court take action on behalf of "one of the Plaintiffs, the President of OSRecovery, Inc. — Gray Clare."

In Clare's brief, he argues that he initially referred to himself as a plaintiff because he was attempting to become one, but his efforts were rejected by the district court. According to Clare, a motion was filed on April 15, 2004, to amend the complaint, which would have, inter alia, added Clare as one of the Doe plaintiffs. But, on May 17, 2004, the district court denied the motion to amend the complaint. Clare suggests that it was at this
91 point that he *91 realized he would not have an opportunity to become a plaintiff. Despite this supposed realization, however, on May 28, 2004 — nearly two weeks after the court's denial order — plaintiffs' counsel sent the letter to the court in which Clare was characterized as "one of the Plaintiffs."

Allegedly unsure of Clare's party status, Lateko propounded numerous discovery requests to Clare as if he were a plaintiff. OSRecovery and the Doe plaintiffs objected to these requests on Clare's behalf. Notably, their objections did not include a claim that the requests were not properly propounded to Clare under the rules pertaining to non-parties. Clare concedes that plaintiffs' counsel erred in neglecting to raise his status as an

objection, but he claims that this omission occurred because counsel anticipated that Clare would ultimately become a plaintiff, given that the motion to amend the complaint to add Clare as a plaintiff had not yet been rejected at this point.

On January 13, 2005, the district court issued an order compelling Clare to respond in full to Lateko's discovery requests by answering the interrogatories and turning over the requested documents, and on February 8, 2005, the court denied Clare's motion to reconsider its decision. In its order denying Clare's motion for reconsideration, the court addressed Clare's contention that he was not a party to the underlying litigation. The court explained that "[w]hile it appears that all now agree that Gray Clare is not in fact a plaintiff in this case . . . the fact remains that his attorneys repeatedly referred to him as a plaintiff and Lateko relied upon those references in the unique circumstances here, in which the names of the individual plaintiffs have been filed under seal." Because of this, the court determined that Clare "[was] estopped to deny, at least for the purposes of amenability to party discovery, that he is a plaintiff." The court rejected Clare's argument that counsel had referred to Clare as a plaintiff because there was confusion over whether he was one. According to the court, plaintiffs' counsel, who were also Clare's counsel, plainly knew who their clients were.

Subsequently, Lateko filed a motion for summary judgment dismissing plaintiffs' complaint. On August 1, 2005, the district court partially granted Lateko's summary judgment motion, dismissing some of the Doe plaintiffs and OSRecovery from the litigation. With OSRecovery no longer a plaintiff, the only plaintiffs remaining were the Doe plaintiffs who were not dismissed from the lawsuit upon the court's grant of Lateko's summary judgment motion.

Maintaining that he was not a party, Clare continued to refuse to comply with the January 13, 2005, order compelling his response to discovery, and on August 3, 2005, the district court issued an order holding Clare in contempt. *See OSRecovery, Inc.*, No. 02 Civ. 8993(LAK), 2005 WL 1828736, at *2, 2005 U.S. Dist. LEXIS 15699, at *5-6. The order decrees that Gray shall be fined $2,500 for each day, commencing on August 12, 2005, that he fails to comply with the January 13, 2005, order. *Id.* 2005 WL 1828736, at *2 2005 U.S. Dist. LEXIS 15699, at *5. It also directs that "Clare be arrested wherever in the United States and its possessions he may be found, transported to an appropriate detention facility in [the] district, and there held pending further order of [the district court], which will be forthcoming when [Clare] demonstrates that he has complied fully with the January 13, 2005 order." *Id.* (internal citation omitted).

In the order, the court addresses Clare's contention that he is not a party to the underlying litigation and therefore should not be compelled to respond to the discovery requests. *See id.* 2005 WL 1828736, at *1, 2005
92 U.S. Dist. LEXIS 15699, at *3. *92 The court, again rejecting this argument, maintains its position that Clare is estopped to deny, for discovery purposes, that he is not a party. *Id.* Additionally, the court finds that Clare should be treated as a party because "OSRecovery is nothing more than a front for Clare, who entirely dominates and controls it." *Id.* Thus, according to the court, Clare is a party as OSRecovery's proxy. *Id.* 2005 WL 1828736, at *1, 2005 U.S. Dist. LEXIS 15699, at *3-4.

Subsequently, Clare filed a motion in this Court seeking a stay of the contempt order pending his appeal.[1] During the hearing on this motion, Clare persisted in his position that he has never been a party to the underlying litigation, arguing that "[everybody agrees [Clare] was not a party." Lateko's counsel concurred, stating that he did not think there was a doubt about it: "[Clare] is, *in fact*, a third-party," and "[there is] a final order with respect to him." Both Clare and Lateko also agreed that "[Clare] never received a subpoena." This

Court then sought affirmation from both parties that everyone was in agreement that Clare is in fact a non-party. Again, Lateko's counsel affirmed that "[both sides] are in agreement on that, yes." The motions panel granted a stay, and we heard argument on May 16, 2006.

[1] During the instant appeal, Clare filed a motion to file exhibits with his reply brief, including the transcript of the stay hearing, and this Court granted his request.

DISCUSSION

I. Jurisdiction

We have jurisdiction to review "final" decisions of the district courts of the United States pursuant to 28 U.S.C. § 1291. In general, an order of civil contempt[2] is not "final" within the meaning of Section 1291 but is interlocutory and therefore may not be appealed until the entry of a final judgment in the underlying litigation. *Int'l Bus. Machs. Corp.*, 493 F.2d at 114-15. "Exceptions to this rule are rare, but where they occur it is because the interlocutory nature of the order is no longer present. Hence, civil contempts against *non-parties* are immediately appealable because the appeal does not interfere with the orderly progress of the main case." *Id.* at 115 n. 1 (emphasis added). However, civil contempt orders against *parties* are interlocutory and therefore *not* immediately appealable. Rather, they must await the termination of the underlying litigation. *See In re von Bulow*, 828 F.2d 94, 98 (2d Cir. 1987).

[2] It is not disputed that the district court's order was a civil contempt order rather than a criminal contempt order, and this is indeed correct. A civil contempt order is remedial in nature while a criminal contempt order is punitive. *Int'l Bus. Machs. Corp.* . 493 F.2d at 115. A civil contempt order is also contingent and coercive. *Id.* Just because a contempt order includes a large fine and/or prison term does not render the order criminal. *Id.* at 115-16. An order that imposes sanctions on a party for each day she disobeys the court's discovery order is a civil contempt order. *See id.* This is precisely the type of order at issue in the instant case.

Clare's status in the underlying litigation is therefore critical to whether we have jurisdiction over this appeal at this juncture. If he is a party, we may not now entertain his appeal, but if he is not a party, we may. As the district court recognized, and all parties have agreed, Clare is in fact not a party to the underlying litigation. Even the district court, who treated Clare as a party for the limited purposes of discovery, did not deem Clare a party for all purposes; thus, it is clear that Clare is not actually a party to the underlying litigation, and the
93 contempt order *93 is "final," 28 U.S.C. § 1291. We therefore have jurisdiction over his appeal.

II. The Contempt Order

We review a finding of contempt for abuse of discretion. *Hester Indus., Inc. v. Tyson Foods, Inc.*, 160 F.3d 911, 915 (2d Cir. 1998). "We have held, however, that because the power of a district court to impose contempt liability is carefully limited, our review of a contempt order for abuse of discretion is more rigorous than would be the case in other situations in which abuse-of-discretion review is conducted." *Id.* at 916 (internal quotation marks omitted). We find that the district court abused its discretion by holding Clare in contempt as a party without sufficient explanation or citation to legal authority supporting the bases upon which the court relied in treating Clare as a party — for discovery purposes only — despite the fact that Clare was not actually a party.

The contempt order relies on two theories for treating Clare as a party: a party-by-estoppel theory and a party-by-proxy, or alter-ego, theory. *See OSRecovery, Inc.*, No. 02 Civ. 8993(LAK), 2005 WL 1828736, at *1, 2005 U.S. Dist. LEXIS 15699, at *3-4 The contempt order, however, does not provide citation to legal support for applying either theory in this context. In particular, the order does not explain how Clare could be transformed into a party for discovery purposes but not for any other aspect of the litigation. *See id.* Additionally, the order

does not provide enough information on the precise legal theories it is attempting to invoke. For instance, the order states merely that Clare is "estopped" to deny that he is a party for discovery purposes. *See id.* 2005 WL 1828736, at *1, 2005 U.S. Dist. LEXIS 15699, at *3. However, there are numerous types of estoppel, including, inter alia, judicial and equitable estoppel, to which the district court may have been referring. *See Bates v. Long Island R.R. Co.*, 997 F.2d 1028, 1037-38 (2d Cir. 1993) (stating the differences between judicial and equitable estoppel).[3] The order also states simply that Clare should be treated as a party because he has acted as OSRecovery's proxy, but it does not explain what party-by-proxy theory it is invoking. *See OSRecovery, Inc.*, No. 02 Civ. 8993(LAK), 2005 WL 1828736, at *1, 2005 U.S. Dist. LEXIS 15699, at *3-4. From the court's brief statements, we are unable to discern, for example, whether the proxy theory to which it is
94 referring is something more *94 akin to "piercing the corporate veil," *see, e.g., Am. Fuel Corp. v. Utah Energy Dev. Co.*, 122 F.3d 130, 134 (2d Cir. 1997) ("Typically, piercing analysis is used to hold individuals liable for the actions of a corporation they control."), or to treating someone as a "controlling person" under the Securities laws, *see, e.g., SEC v. First Jersey Sec, Inc.*, 101 F.3d 1450, 1472-73 (2d Cir. 1996) (explaining that controlling-person liability may attach if there is proof of both a violation by the controlled person and control of the primary violator by the defendant).

3 Judicial estoppel, which requires, inter alia, that "a party both takes a position that is inconsistent with one taken in a prior proceeding, and has had that earlier position adopted by the tribunal to which it was advanced," *Uzdavines v. Weeks Marine, Inc.*, 418 F.3d 138, 148 (2d Cir. 2005) (internal quotation marks omitted), is likely inapplicable in the instant case where any inconsistencies appear limited to the same proceeding, *see Adler v. Pataki*, 185 F.3d 35, 41 n. 3 (2d Cir. 1999) ("[J]udicial estoppel applies only when a tribunal in a prior *separate* proceeding has relied on a party's inconsistent factual representations and rendered a favorable decision.").

Unlike judicial estoppel, which is designed to protect the integrity of the judicial process, equitable estoppel ensures the fairness between the parties. Bates, 997 F.2d at 1037. Equitable estoppel is proper where the enforcement rights of one part}' would create injustice to the other party who has justifiably relied on the words or conduct of the party against whom estoppel is sought. *Kosakow v. New Rochelle Radiology Assocs.*, 274 F.3d 706, 725 (2d Cir. 2001). According to federal law, "a party may be estopped from pursuing a claim or defense where: 1) the party to be estopped makes a misrepresentation of fact to the other party with reason to believe that the other party will rely on it; 2) and the other party reasonably relies upon it; 3) to her detriment." *Id.*

It is unclear, however, which estoppel and which party-by-proxy theory the court applied because the contempt order does not specify.[4] Nor does the January 13, 2005, order compelling Clare's compliance with the discovery requests shed any light on this issue. That order merely states that it grants Lateko's motion to compel discovery, but it does not provide a rationale for treating Clare as a party, especially in light of the peculiar circumstance of treating him as a party for this limited purpose only.[5]

4 The contempt order similarly fails to specify on which facts the court relies in concluding that OSRecovery is merely a front for Clare.

5 The district court also used this party-byestoppel theory to treat Clare as a party in the February 8, 2005, order denying Clare's motion for reconsideration of the court's order compelling Clare to respond to discovery. This order also lacks citation to precedent or an explanation for applying estoppel in this manner.

Although we review the district court's order for abuse of discretion, "[r]eviewable-for-abuse-of-discretion does not mean unreviewable." *In re Mazzeo*, 167 F.3d 139, 142 (2d Cir. 1999); *see also Jones v. UNUM Life Ins. Co. of Am.*, 223 F.3d 130,138 (2d Cir. 2000). The lower court's findings of fact and conclusions of law must be sufficient to permit meaningful review, "and where such findings and conclusions are lacking, we may vacate

and remand." *In re Mazzeo*, 167 F.3d at 142. Moreover, we think it is fundamentally unfair to hold Clare in contempt as if he were a party without sufficient legal support for treating him, a non-party, as a party but only for the purposes of discovery.

There may be grounds for applying equitable estoppel, and even for applying it solely to discovery as the district court did in the instant case. But, if those are the grounds, the district court should provide: (1) more explicit factual findings supporting this, and (2) since it seems to us to be possibly a new legal theory, citations to whatever adjacent support exists. That way we may decide whether to adopt that theory, which may be a broadening of the concept of equitable estoppel. Alternatively, if it is not a broadening because there are cases on point, we invite the district court's assistance in telling us so.

We therefore vacate the order and remand the case, so that the district court may decide how to proceed. If the court deems it appropriate to hold Clare in contempt of court, it should address the issues set forth above, so that this Court may ascertain the appropriateness of such action.

CONCLUSION

For the foregoing reasons, we vacate the contempt order and remand the case to the district court for proceedings in accordance with this decision.

95 *95

APPENDIX H

Motion and submission of Proceedings
United States District Court for the Southern District of N.Y.
in *United States v. Brennerman*, No. 17 Cr. 337
(EFC No. 236, Ex. 3)

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Oil Exec Accused Of Lying To Banks Is Convicted Of Contempt

By **Jack Newsham**

Law360, New York (September 12, 2017, 8:40 PM EDT) -- An oil businessman who failed to disclose his assets to a Chinese bank that won a $5 million judgment against him was found guilty of criminal contempt on Tuesday, with a New York federal jury taking less than three hours to convict.

Raheem J. Brennerman and his company, sued in 2015 by an affiliate of the Industrial and Commercial Bank of China for defaulting on a loan, were each found guilty of two counts of contempt for failing to comply with discovery requests. The verdict comes about three months after prosecutors hit Brennerman with new charges for trying to trick ICBC and at least one other lender out of $300 million.

In closing arguments Tuesday, a lawyer for Brennerman said ICBC buried him with questions about his financial information at the same time as settlement talks were ongoing, and said the bank already had the information he was charged with hiding. But U.S. Department of Justice lawyers told jurors the evidence was clear, showing that Brennerman knew his obligations and willfully ignored them.

"The defense's arguments are distractions," prosecutor Robert Sobelman said. "If you look at the evidence in this case without distractions, then the defendants are done."

Brennerman's lawyers sometimes bucked at the constraints upon them. Although Maranda Fritz, a partner at Thompson Hine LLP, rejected prosecutors' charge that her client showed "defiance" of the court's orders and suggested he simply deferred to his lawyers for matters related to the ICBC case, her effort to explain his actions was at times stymied.

When Fritz said the list of discovery demands slapped on her client was "as big as a truck," the prosecution's objection was sustained, with U.S. District Judge Lewis Kaplan telling jurors that it didn't matter whether the pile of interrogatories was "as big as a truck or as small as a SmartCar." The judge also clamped down when Fritz made a reference to evidence that wasn't admitted.

"They are not permitted to suggest that my rulings are wrong," he instructed jurors.

The jury didn't take long to reach its verdict, breaking for lunch and deliberations at 2 p.m. and returning shortly before 5 p.m., finding both Brennerman and his company, Blacksands Pacific Group Inc., guilty of two counts of criminal contempt related to two discovery orders they were accused of ignoring.

A juror who spoke to Law360 and gave her last name as Gordon said the jury was swayed most strongly by Judge Kaplan's civil contempt orders against Brennerman. One juror was initially unsure of whether he was fully aware of the consequences, but the judge's second contempt order was very clear, Gordon said.

"He had to know [of the legal risks] because if he didn't comply he was going to be fined a lot of money," she said. The closing arguments were not particularly influential, Gordon added, saying jurors stuck to the evidence and followed the judge's instructions.

Sentencing is set for Dec. 21.

Meanwhile, Brennerman faces still more criminal charges related to the ICBC dispute. He was arrested and his bail revoked earlier this year after prosecutors charged him with bank fraud, wire fraud, visa fraud and conspiracy to commit fraud for falsely claiming to ICBC that he had a deal lined up to buy a California oil field so he could obtain a loan. He told other banks a similar story, the government alleged.

Pretrial motions in that case are due at the end of next week.

A lawyer for Brennerman and Blacksands declined to comment. The Justice Department doesn't comment on lawsuits.

The government is represented by Robert B. Sobelman and Nicolas T. Landsman-Roos of the U.S. Department of Justice.

Brennerman is represented by Maranda E. Fritz and Brian D. Waller of Thompson Hine LLP.

The case is U.S. v. Blacksands et al., case number 1:17-cr-00155, in the U.S. District Court for the Southern District of New York.

--Editing by Catherine Sum.

APPENDIX I

Order of the United States Court of
Appeals for the Second Circuit in
United States v. The Blacksands Pacific Group, Inc.,et. al.,
No. 18-1033(L) (EFC No. 319)
(Affirming Conviction and Sentence)

18-1033(L)
United States v. Raheem Brennerman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 9th day of June, two thousand twenty.

Present: ROSEMARY S. POOLER,
REENA RAGGI,
WILLIAM J. NARDINI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 18-1033, 18-1618

RAHEEM BRENNERMAN,

Defendant-Appellant,

THE BLACKSANDS PACIFIC GROUP, INC.,

Defendant.

Appearing for Appellant: John C. Meringolo, Meringolo & Associates, P.C., Brooklyn, N.Y.

Appearing for Appellee: Danielle Renee Sassoon, Assistant United States Attorney
(Nicholas Tyler Roos, Robert B. Sobelman, Anna M. Skotko,

Assistant United States Attorneys, *on the brief*), *for* Geoffrey S. Berman, United States Attorney for the Southern District of New York, New York, N.Y.

Appeal from the United States District Court for the Southern District of New York (Kaplan, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is **AFFIRMED**.

Defendant-Appellant Raheem Brennerman appeals from the May 21, 2018, judgment of conviction entered in the United States District Court for the Southern District of New York (Kaplan, *J.*), sentencing him principally to 24 months' imprisonment followed by 3 years' supervised release. Following a jury trial, Brennerman was convicted of two counts of criminal contempt, in violation of 18 U.S.C. § 401(3). We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

On appeal, Brennerman argues that the district court committed reversible error by: (1) denying his motion to compel compliance with a subpoena that sought the production of certain documents from the Industrial and Commercial Bank of China's London branch ("ICBC"); (2) making improper evidentiary rulings; (3) denying his second Rule 33 motion as untimely; and (4) imposing a procedurally and substantively unreasonable sentence. He further argues that he received constitutionally deficient assistance of counsel.

I. ICBC Subpoena

Rule 17 of the Federal Rules of Criminal Procedure governs the issuance of trial subpoenas in criminal cases. A decision to deny, quash, or modify a subpoena "must be left to the trial judge's sound discretion" and "is not to be disturbed on appeal unless it can be shown that [the district court] acted arbitrarily and abused its discretion or that its finding was without support in the record." *In re Irving*, 600 F.2d 1027, 1034 (2d Cir. 1979).

We find that the district court appropriately concluded that Brennerman failed to effect service of the subpoena on ICBC as required by Rule 17(d). Significantly, Rule 17 provides that "[t]he server must deliver a copy of the subpoena to the witness." Fed. R. Crim. P. 17(d). In an attempt to serve the subpoena, Brennerman sent a copy to ICBC's New York-based attorney in the underlying civil case, not to ICBC's London branch. This plainly did not comply with the rule.

To the extent Brennerman argues that the government was required to retrieve the documents for him, that argument is also meritless. ICBC is not an agent of the government, and therefore the prosecution was under no obligation to make efforts to obtain information beyond what it previously collected and turned over to Brennerman. *Cf. United States v. Yousef*, 327 F.3d 56, 112 (2d Cir. 2003).

II. Evidentiary Rulings

Brennerman next challenges the exclusion of certain evidence concerning settlement discussions with opposing counsel in the civil case, as well as documents Brennerman purportedly provided to ICBC in 2013. He also argues that the district court improperly admitted the redacted civil contempt orders.

"We review a district court's evidentiary rulings under a deferential abuse of discretion standard, and we will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous." *United States v. McGinn*, 787 F.3d 116, 127 (2d Cir. 2015) (internal quotation marks and citation omitted). "Under Rule 403, so long as the district court has conscientiously balanced the proffered evidence's probative value with the risk for prejudice, its conclusion will be disturbed only if it is arbitrary or irrational." *United States v. Awadallah*, 436 F.3d 125, 131 (2d Cir. 2006).

As to the settlement discussions, Brennerman argues that the district court should have allowed him to introduce certain evidence of those discussions because it showed he was acting in good faith to comply with the court's orders. But we disagree with Brennerman's characterization of the record. The record shows that the district court did allow Brennerman to introduce evidence concerning settlement discussions on the condition that he establish his knowledge of the substance of the exhibits and their relationship to the relevant time period. At the end of trial, the district court admitted those exhibits for which the connection was made. Also, through cross-examination, Brennerman was able to introduce evidence about the parties' settlement discussions. In summation, defense counsel relied on that evidence to argue that Brennerman did not willfully disregard the orders. In our view, the district court did not abuse its discretion in admitting some but not all of this evidence, and Brennerman has failed to point to any specific evidence that would have helped his case had it been admitted.

Brennerman's challenge to the district court's exclusion of documents he turned over to ICBC in 2013 also fails. Such evidence, Brennerman argues, would have cast doubt on his willfulness on his behalf in disobeying orders, because it would have shown that he did not realize he had to re-produce documents that ICBC already possessed. But, as the district court aptly noted, the documents were evidently provided to ICBC long before the civil case began, and were only minimally response to ICBC's discovery requests, so their production was not probative at all of Brennerman's compliance with those discovery requests and subsequent court orders.

Finally, with respect to the admission of the redacted contempt orders, we find no error. As the district court correctly determined, the civil contempt orders were relevant to Brennerman's willfulness. To minimize any potential prejudicial effect, the district court redacted portions of the orders and instructed the jury on the limited purposes for which it could consider the civil contempt orders in the context of a trial about criminal contempt. Thus, the district court appropriately accounted for the probative value of the evidence as well as its potentially prejudicial effect, and we cannot conclude that its decision was arbitrary, irrational, or manifestly erroneous.

III. Rule 33 Motion

Brennerman first filed a Rule 33 motion on February 14, 2018, which was denied without prejudice in the event that he were to terminate counsel and proceed pro se. Brennerman elected to proceed without counsel on February 26, and on February 28, 2018 he filed another Rule 33 motion. He then filed what he styles as an amended Rule 33 motion on March 26, 2018, also pro se. On appeal, Brennerman challenges the district court's denial of his March 26 motion as untimely.

A Rule 33 motion for a new trial on grounds other than newly discovered evidence must be filed within fourteen days after the verdict. Fed. R. Crim. P. 33(b)(2). Pursuant to Rule 45(b)(1)(B), however, this time limit may be extended if the moving party failed to act because of "excusable neglect." Fed. R. Crim. P. 45(b)(1)(B). When, as here, a defendant does not raise an argument below, we review for plain error. *United States v. Alcantara,* 396 F.3d 189, 207 (2d Cir. 2005.)

Brennerman concedes that his March 26 motion was untimely, but he argues excusable neglect because his counsel withdrew. We are not convinced that Brennerman's justification is sufficient for a finding of excusable neglect. Brennerman was permitted to proceed pro se on February 26 and nonetheless timely file his February 28 motion. Nor is there any allegation that the information contained in the March 26 motion was newly discovered. Accordingly, because the delay was not justified, the district court did not err—let alone plainly err—by denying the March 26 motion as untimely. In any event, the district court addressed the merits of Brennerman's motion.

IV. Sentence

Brennerman further challenges the procedural and substantive reasonableness of his sentence. A district court commits procedural error if it fails to calculate the Guidelines range, makes a mistake in its Guidelines calculation, treats the Guidelines as mandatory, does not consider the Section 3553(a) factors, or rests its sentence on a clearly erroneous finding of fact. *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc). Facts in support of a sentencing calculation need be established only by a preponderance of the evidence. *United States v. Beverly*, 5 F.3d 633, 642 (2d Cir. 1993).

In calculating Brennerman's Guidelines range, the district properly found that Brennerman's conduct "resulted in substantial interference with the administration of justice" and applied the appropriate offense level enhancement, pursuant to U.S.S.G. § 2J1.2(b)(2). Examples of "substantial interference with the administration of justice" include "the unnecessary expenditure of substantial governmental or court resources." U.S.S.G. § 2J1.2 cmt. n.1. The district court found that Brennerman lied to and withheld documents from the court, requiring the government to spend substantial time and resources in connection with his trial for criminal contempt. Accordingly, the district court's decision to impose a three-level enhancement was not an abuse of discretion.

In reviewing claims of substantive unreasonableness, we consider "the totality of the circumstances, giving due deference to the sentencing judge's exercise of discretion," and we "will . . . set aside a district court's *substantive* determination only in exceptional cases where the

trial court's decision cannot be located within the range of permissible decisions." *Cavera*, 550 F.3d at 189-90 (internal quotation marks and citations omitted).

On the record before us, Brennerman's sentence of 24 months' imprisonment is not substantively unreasonable. The district court imposed a sentence on the low end of the Guidelines range. Indeed, Brennerman makes no argument, and cites no authority or facts, to support his claim that his conduct warranted a below-Guidelines sentence. In light of these circumstances and the deference we owe to the district court, we cannot say that the sentence falls outside the range of permissible decisions.

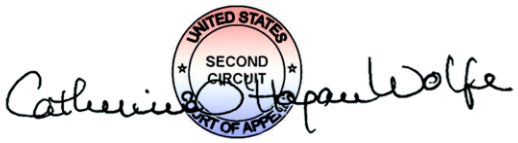
V. Ineffective Assistance of Counsel

Lastly, Brennerman faults his attorney for failing to obtain records from ICBC and for moving to disqualify the district court judge. We decline to address Brennerman's ineffective assistance of counsel arguments at this time.

Our Circuit has "a baseline aversion to resolving ineffectiveness claims on direct review." *United States v. Khedr*, 343 F.3d 96, 99 (2d Cir. 2003). Though we have exercised our discretion to address these claims when their resolution is beyond a doubt, *id.*, we decline to do so here given the absence of a fully developed record on this issue. *See Sparman v. Edwards*, 154 F.3d 51, 52 (2d Cir. 1998) (explaining that, "except in highly unusual circumstances," a lawyer charged with ineffectiveness should be given "an opportunity to be heard and to present evidence, in the form of live testimony, affidavits, or briefs"). Accordingly, we dismiss Brennerman's ineffective assistance counsel claims without prejudice.

We have considered the remainder of Brennerman's arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

APPENDIX J

Judgment of United States District Court
for the Southern District of N.Y.
in *United States v The Blacksands Pacific Group, Inc.*, et. al.,
No. 17 CR 155 (LAK), (EFC No. 145)

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
RAHEEM J. BRENNERMAN

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17-CR-155-001(LAK)

USM Number: 54001-048

Raheem J. Brennerman, Pro Se
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) One and Two after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 401(3)	Criminal Contempt	9/27/2016	One
18 U.S.C. 401(3)	Criminal Contempt	3/3/2017	Two

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/21/2018
Date of Imposition of Judgment

Signature of Judge

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: MAY 23 2018

Hon. Lewis A. Kaplan, U.S.D.J.
Name and Title of Judge

5/23/18
Date

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

24 Months on each count, the terms to run concurrently.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 Years subject to the following special conditions:

The defendant shall follow all directions of the Bureau of Citizenship and Immigration Services in any proceedings it may institute.

If the defendant is removed or deported from the United States, he shall not reenter the United States illegally.

The defendant shall provide the probation officer with any financial information he or she may request.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 200.00	$	$ 10,000.00	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 10,200.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX K

Motion and Order of the United States
District Court for the Southern District of N.Y. in
ICBC (London) Plc., v. The Blacksands Pacific Group, Inc.,
No. 15 CV 70 (LAK) (EFC Nos. 139-140)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ICBC (LONDON) PLC,

Plaintiff,

-against-

THE BLACKSANDS PACIFIC GROUP, INC.,

Defendant.

15 Civ. 0070 (LAK) (FM)

~~[PROPOSED]~~ ORDER OF CONTEMPT as with respect to Raheem Brennerman

THE BLACKSANDS PACIFIC GROUP, INC. and BLACKSANDS PACIFIC ALPHA BLUE, LLC,

Counter-Plaintiffs

-against-

ICBC (LONDON) PLC,

Counter-Defendant.

Plaintiff ICBC (London) plc's motion [ECF 125] seeking an Order holding Raheem Brennerman in civil contempt of court and imposing coercive sanctions against him is granted (except that) The Court reserves decision on the portion of ICBC's motion requesting an award of compensatory damages.

Having considered the papers submitted by ICBC, Mr. Brennerman having failed to file any papers in opposition, and the Court having heard oral argument, the Court finds that (1) its orders of August 22, 2016 and September 27, 2016 compelling Defendant The Blacksands Pacific Group, Inc. ("**Blacksands**") to fully comply with ICBC's post-judgment discovery requests (the "**Outstanding Discovery Orders**") are clear and unambiguous, (2) the proof of Blacksands' willful noncompliance with the Outstanding Discovery Orders is undisputed, clear

and convincing, (3) Blacksands has not diligently attempted to comply with those orders in a reasonable manner, and (4) Mr. Brennerman is properly charged with contempt because he has abetted and directed Blacksands' noncompliance with the Outstanding Discovery Orders and because he is legally identified with Blacksands. The Court therefore ORDERS that:

1. Mr. Brennerman shall pay a coercive fine of $1,500 per day, commencing December 13, 2016, for each day in which Blacksands continues to fail to comply with the Outstanding Discovery Orders. The amount of the coercive fine will double every seventh day until it reaches $100,000 per day, and it will thereafter continue at the rate of $100,000 per day, unless otherwise ordered by this Court.

2. If Mr. Brennerman and Blacksands comply fully with the Outstanding Discovery Orders, the judgment is satisfied, or at least $3 million cash is paid on account of the judgment, in each case by 5:00 p.m. New York time on December 20, 2016, the Court will abrogate the coercive fines imposed on Mr. Brennerman and incurred through that date; provided, that such production or payment shall not moot the contempt that has been committed.

3. Upon application by the Plaintiff, the Court will consider the imposition of further sanctions, if there is an adequate showing that those imposed by this Order do not achieve compliance. Without limiting the generality of the foregoing, ICBC is at liberty to commence by appropriate process further civil and/or criminal contempt proceedings against Mr. Brennerman and anyone else who is properly chargeable with contempt in this matter.

4. The substance of this order was issued orally on December 13, 2016.

12/15/16

SO ORDERED

LEWIS A. KAPLAN, USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ICBC (LONDON) PLC,

Plaintiff,

-against-

THE BLACKSANDS PACIFIC GROUP, INC., 15 Civ. 0070 (LAK)

Defendant-Counterclaimant,

-and-

BLACKSANDS PACIFIC ALPHA BLUE, LLC,

Additional Counterclaimant.

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge.*

On December 12, 2016, this Court denied an *ex parte* application by Raheem Brennerman for an extension of time within which to resist a motion to hold him in civil contempt and impose sanctions on him. This memorandum and order explains that decision.

The Background

ICBC (London) plc ("ICBC"), The Blacksands Pacific Group, Inc. ("Blacksands"), and counterclaimant Blacksands Pacific Alpha Blue, LLC ("Alpha Blue"), a Blacksands subsidiary, entered into a bridge loan agreement ("BLA") on November 25, 2013.[1] Under the BLA, ICBC provided a $20 million, 90-day loan to Alpha Blue, which Blacksands absolutely and unconditionally guaranteed.[2] Of the available $20 million, Alpha Blue withdrew $5 million.[3]

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1 DI 1, Ex. A Part 6, at 3 (Pl.'s Mem. of Law in Supp. of Pl.'s Mot. for Summ. J. in Lieu of Compl. under CPLR 3213).

2 *Id.*; BLA § 9.1. The BLA was attached as an exhibit to the Clark Affidavit in ICBC's original filing, but when the case was removed and docketed electronically, the BLA was

Neither Alpha Blue, as primary obligor, nor Blacksands, as guarantor, repaid the amount owed when it matured in February 2014.[4] ICBC extended the deadline for repayment of principal on two occasions, first to March 31, 2014, and later to July 31, 2014, while still collecting interest payments.[5] After each of these deadlines was missed, however, ICBC sent a notice of default to Blacksands.[6]

On or about December 8, 2014, plaintiff ICBC commenced this action in the New York Supreme Court against defendant Blacksands to recover $5 million plus interest and attorneys' fees of nearly $400,000 on Blacksands' guarantee of the obligations of Alpha Blue under the BLA. Under New York procedure, ICBC moved for summary judgment in lieu of a complaint.[7] Blacksands promptly removed the case to this Court and, in due course, both Blacksands and Alpha Blue filed counterclaims against ICBC.[8]

By order dated September 29, 2015, this Court granted ICBC's motion for summary judgment on its claim on Blacksands' guarantee and granted in substantial part its motion to dismiss the counterclaims.[9] It also granted a Rule 54(b) certificate with respect to ICBC's claim against Blacksands. The Clerk then entered judgment in favor of ICBC and against Blacksands.

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split among four entries: DI 1, Ex. A Part 2 at 11-27; DI 1, Ex. A Part 3; DI 1, Ex. A Part 4; and DI 1, Ex. A Part 5 at 1-11. The Court will cite simply to the BLA for ease of reference. *See also* DI 13 ¶ 4 (Blacksands' Rule 56.1 Response to Plaintiff's Statement of Material Facts) (acknowledging formation of BLA).

3 DI 1, Ex. 6, at 5.

4 *Id.*; DI 13 ¶ 15.

5 DI 1, Ex. 6, at 4-5.

6 The first notice of default was sent on April 4, 2014 by fax, which Blacksands claims not to have received. *See* DI 1, Ex. A Part 5, at 17-21 (April 4, 2014 Notice of Default); DI 1, Ex. A Part 5, at 13 (January 30, 2014 letter from Blacksands providing fax number); DI 13 ¶ 19 (Blacksands disputing receipt of April fax). The second notice was sent by courier in August 2014, and Blacksands acknowledges receipt. DI 13 ¶¶ 23, 25 (Blacksands acknowledging receipt of August 2014 Notice of Default).

7 *See* N.Y. C.P.L.R. 3213.

8 DI 11.

9 *ICBC (London) plc v. Blacksands Pacific Grp., Inc.*, 2015 WL 5710947 (S.D.N.Y. Sept. 29, 2015).

Blacksands appealed. As no supersedeas bond or other security was posted, however, ICBC began post-judgment discovery in an effort to locate assets that might be used to satisfy the judgment, serving document requests and interrogatories on or about March 24, 2016.[10]

Blacksands initially stonewalled the discovery requests, interposing frivolous objections. ICBC then moved to compel responses. The Court granted the motion and, on August 22, 2016, directed Blacksands to respond in full within fourteen days after the date of the order.[11]

On September 6, 2016, the day Blacksands was obliged to comply with the August 22, 2016 order (the "First Order"), Blacksands' counsel wrote to the Court and claimed that Blacksands had "agree[d]" to pay the judgment "pending its appeal" and purportedly requested the Court's assistance in determining the amount due under the judgment.[12] In reliance on the apparent commitment to pay, ICBC did not immediately seek further relief with respect to compliance with the First Order. The Court, at Blacksands' request, then held two conferences with counsel in what was said by Blacksands to be an effort to determine the amount owing.[13] On September 27, 2016, however, at the conclusion of the second conference, the Court entered the following order (the "Second Order"):

> "On August 22, 2016, this Court directed defendant to comply fully with certain outstanding discovery requests within fourteen days. It has not complied with that order.
>
> "Unless the case is fully and definitively settled on or before October 3, 2016, defendant shall comply fully with those discovery requests no later than 4 p.m. on that date. Any failure to comply with this order may result in the imposition of sanctions, including those associated with contempt of court, as well as in the imposition of coercive sanctions and other relief for civil contempt."[14]

No settlement was reached. Accordingly, Blacksands became obligated under the Second Order to comply fully with ICBC's discovery requests by 4 p.m. on October 3, 2016. It

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10 DI 84 ¶ 3.

11 DI 87.

12 DI 88.

13 The point supposedly at issue was the interest calculation. *See* DI 88.

14 DI 92. For the background in this paragraph, see Hessler Decl. [DI 102] ¶¶ 5-6.

failed to respond.[15]

In the meantime, the Court of Appeals affirmed the judgment against Blacksands.[16]

The Contempt Adjudication as to Blacksands and the Contempt Application as to Brennerman

Blacksands

On October 13, 2016, ICBC moved to hold Blacksands in contempt. No opposition was filed. On October 20, 2016, the Court held Blacksands in civil contempt and imposed coercive sanctions on it. In addition, the written order entered on October 24, 2016 [DI 108] reiterated the Court's prior warning[17] that Blacksands' principal, Raheem Brennerman, would be at risk of contempt proceedings directed at him personally in the event full compliance was not forthcoming:

> "Upon application by the Plaintiff, the Court will consider the imposition of further sanctions, if there is an adequate showing that those imposed by this Order do not achieve compliance. Without limiting the generality of the foregoing, ICBC is at liberty to commence by appropriate process civil and/or criminal contempt proceedings against Raheem Brennerman and anyone else who is properly chargeable with contempt in this matter."

Brennerman

On December 7, 2016, ICBC—based on a reasonably documented assertion that Brennerman "controls every aspect of Blacksands' existence and operation," is "legally identified" with it, and "has directed its continuing contempt of Court"[18]—moved by order to show cause to

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15 DI 102 ¶ 7.

16 ___ F. App'x ___, No. 15-3387, 2016 WL 5386293 (2d Cir. Sept. 26, 2016).

17 Tr., Oct. 20, 2016 [DI 110] at 8.

18 Hessler Decl. [DI 123] ¶ 10.

The Court notes that the notice of appeal from the summary judgment against Blacksands was signed by Brennerman personally, on behalf of Blacksands and Alpha Blue, rather than by any attorney. DI 46. In addition, he personally wrote the Court to oppose, on behalf of Blacksands, a motion by its first lawyers in this case to withdraw. DI 37.

hold Brennerman in civil contempt of Court and to impose coercive sanctions.[19] The Court granted the order to show cause, made it returnable on December 13, 2016, and required the service and filing of any responsive and reply papers at or before 4 p.m. on December 11 and 12, 2016, respectively.[20] The order to show cause and supporting papers were served electronically[21] on Brennerman himself at 3:50 p.m. on December 7, 2016.[22] They were served also on Blacksands by personal service on Latham & Watkins ("Latham"), its counsel of record, contemporaneously.[23]

The Ex Parte *Application*

At 6:34 a.m. on Sunday, December 10, 2016, Brennerman sent an email to the Court's deputy clerk at his court email address.[24] The email is headed PRIVILEGED & CONFIDENTIAL CORRESPONDENCE. Although it indicates that copies were sent to lawyers at Latham, it bears no indication that copies were sent to ICBC's counsel despite the fact that Brennerman knows their email addresses.

Attached to the email was a letter purportedly by Brennerman to the undersigned.[25] The first two paragraphs requested more time to respond to the contempt motion, stated that Brennerman's choice of counsel to represent him in this matter was Paul Weiss which was unable to represent him on this matter, and stated that Brennerman was "in the process of engaging new personal counsel." Attached to the letter were copies of two emails with respect to his purported attempt to retain Paul Weiss and a very long settlement proposal with respect to the ICBC dispute. There was no indication that the letter and emails were sent to ICBC's counsel. At a December 13

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19 DI 122, at 19-23.

20 DI 121; DI 125.

21 Brennerman has refused to provide any information concerning the location of any of his residences or his personal whereabouts. Latham & Watkins, which came into the case on behalf of Blacksands and Alpha Blue and remains their counsel of record, claims not to know anything about his location or whereabouts. *See* Tent Decl. [DI 136]; Harris Aff. [DI 132].

22 Pollak Aff. [DI 126] & Ex. B.

23 DI 126 & Ex. A.

24 DI 127.

25 DI 128.

court proceeding, ICBC counsel confirmed that they had not received copies from Brennerman.

Discussion

The rules authorize extensions of time within which acts may be done on a showing of good cause where, as here, the extension is sought in advance of the deadline.[26] Extensions usually will be granted "unless the moving party has been negligent, lacked diligence, acted in bad faith, or abused the privilege of prior extensions."[27] And while the rules do not explicitly require that notice be given of such applications, "[t]he prudent course . . . is always to file a motion that complies with Rule 7(b) when requesting an extension of a time period,"[28] which among other things requires service on the opposing party. In any case, such applications lie within the broad discretion of the district court.[29] The Court here considers the relevant factors to be these:

1. This application was made *ex parte*. The fact that Brennerman wrote his letter *pro se* gives no excuse for his failure to give notice to ICBC's counsel, as he copied lawyers at Latham, which ostensibly does not represent Brennerman personally.

2. The history of this matter gives little comfort that this application—extraordinary in at least because of its *ex parte* letter and its explication of a purported settlement offer that evidently has not been communicated to the opposing party—is anything other than an attempt to delay matters. Among the indications are these:

- Brennerman was warned on October 20, 2016 that he faced the possibility of an attempt to hold him personally in contempt of court if Blacksands did not fully comply with the First and Second Orders.[30] Brennerman evidently controls Blacksands and therefore presumably knew that Blacksands would not comply. He therefore has known for almost two months that he was extremely likely to face a contempt proceeding. Circumstances do not lend a great deal of credibility to the notion that he first sought to obtain personal counsel in that regard on December 9.

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26 Fed. R. Civ. P. 6(b)(1)(A).

27 1 James Wm. Moore et al., *Moore's Federal Practice* § 6.06[2] (3d ed. 2016).

28 *Id.*

29 *E.g.*, *Saviano v. Town of Westport*, 337 F. App'x 68, 69 (2d Cir. 2009).

30 *See* Harris Aff. [DI 129]; Tent Decl. [DI 131].

- Brennerman has advanced no reason to think that Latham, which has been in this case since the fall of 2015 on behalf of Blacksands, could not represent him personally.

- This is the third and, depending on one's interpretation of the record, perhaps the fourth, instance in this case in which Brennerman has sought an unspecified delay, ostensibly to retain counsel.

  - Brennerman delayed retaining counsel to represent Blacksands in this case despite the fact that he had engaged in extended pre-suit correspondence with plaintiff in which plaintiff made clear that it would sue unless Blacksands paid its debt to ICBC. Counsel did not appear on Blacksands' behalf until January 7, 2015, nearly a month after the action commenced, and they immediately sought a 30-day extension of time on the ground that they were "only retained . . . last week."[31]

  - After Blacksands' first attorneys were granted leave to withdraw on September 18, 2015, new counsel—Latham—did not appear until November 20, 2015.[32] Latham then promptly sought an extension of time within which to cure a default on a motion by a belated filing.

  - Almost immediately after entry of the Second Order and on the day on which the first contempt motion was made, Latham sought to withdraw. The motion was made with Brennerman's consent and ostensibly on the basis that "the only remaining issues relat[e] to Blacksands' counterclaim and Plaintiff's enforcement of the judgment."[33] But the withdrawal, had it been permitted, would have left Blacksands unrepresented. Whatever may have been in Latham's mind, Brennerman's consent to its withdrawal would have been consistent with an intention on his part to leave an unrepresented

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31 DI 5.

32 Blacksands and Alphablue were unrepresented during the intervening two months. During that period, Brennerman purported to act on their behalves although he is not a member of the Bar. *See* DI 37, DI 46.

33 Harris Decl. [DI 97] ¶ 4.

The Court denied the motion without prejudice to renewal after complete disposition of the contempt motion, which had been filed by the time the order was entered. DI 100. The motion has not been renewed.

corporate entity to face the contempt proceeding that either had begun or obviously was imminent and with a further excuse for a delay to find new counsel.

3. ICBC asserts that events have been and are in train that have resulted, or may result, in assets being placed beyond its reach.[34] Moreover, Brennerman's email to a lawyer at Paul Weiss enclosed a proposal—not submitted to the Court—for a reorganization of "Blacksands Pacific Group + Personal Re-Organization."[35] The risk of prejudice to ICBC in consequence of further delay is palpable.

4. Finally, the entire purpose of these *civil* contempt proceedings has been to coerce compliance with the First and Second Order, which do no more than require full and complete responses to the document requests and interrogatories ICBC served in March 2016, approaching a year ago. It thus has been open to Brennerman for that entire period to eliminate the reason for civil contempt proceedings by producing the discovery. The fact that he has not caused Blacksands to do so despite court orders compelling that action has been in bad faith throughout and remains so.

The Disposition of the Contempt Motion Against Brennerman

No appearance was filed and neither Brennerman nor any attorney for Brennerman appeared at the December 13 hearing. The Court held Brennerman in civil contempt and imposed coercive fines on him for each day during which Blacksands continued in its failure fully to comply with the First and Second Orders. It reserved decision on ICBC's request for compensatory damages and attorneys fees.[36] Moreover, the Court made clear if Blacksands complied with the orders, paid the judgment, or paid at least $3 million on account of the judgment on or before December 20, 2016, the Court would abrogate any coercive fines against Brennerman that accrued from December 13, 2016 to and including the date of compliance or payment. It indicated also that if Brennerman on or before December 20, 2016 submitted any papers in opposition to the contempt motion directed at him, the Court would determine whether to consider them despite their lateness and reserved the right to reopen the contempt proceeding with respect to Brennerman.

Conclusion

It long has been said that a person jailed for civil contempt holds the keys to the jail

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34 *See* Hessler Decl. [DI 123] ¶¶ 13, 23, 50-57.

35 DI 128, at 3 of 8.

36 These rulings were embodied in a written order dated December 15, 2016.

in his or her pocket. All that needs to be done to gain release is to do what the Court has ordered. That is true here, albeit not in a strictly literal sense. Brennerman need only see to it that Blacksands complies with the orders to moot or reduce the civil contempt issue. His failure to do so, and hence his application for yet more time to avoid coercive personal sanctions, is bad faith conduct.

The Court concludes also that Brennerman's *ex parte* application was made without notice to ICBC in the hope that the Court would act favorably on his application without benefit of ICBC's input. ICBC was and remains at significant risk of being further prejudiced by delay as Brennerman proceeds, or may proceed, with various steps that may make collection of its judgment even more difficult. Brennerman has articulated no reason why Latham, which has long been in this case, could not represent him on the personal contempt application. And even if there were some issue, or if Brennerman simply would prefer other counsel, he has been on notice of the likelihood of this application since October 20, 2016 and thus has had ample time within which to arrange representation.

In all the circumstances, the Court declined to adjourn the contempt hearing scheduled for December 13, 2016. It declined also to extend the time within which Brennerman was obliged to submit any responsive papers. In the event he files responsive papers before the Court decides the motion, the Court will determine whether it will consider them despite the fact that they will have been filed out of time. Should Brennerman submit such untimely papers, he would be well advised to respond to all of the concerns articulated in this memorandum.

SO ORDERED.

Dated: December 15, 2016

Lewis A. Kaplan
United States District Judge

APPENDIX L

Petition for Writ of Certiorari
Supreme Court of the United States,
Brennerman v. United States
at docket No. 20-6638, (EFC Dec 09 2020)

No. 20-6638

ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 2020

RAHEEM JEFFERSON BRENNERMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Raheem J. Brennerman
FCI ALLENWOOD LOW
P. O. Box 1000
White Deer, Pa. 17887-1000
Pro Se Petitioner

I. QUESTIONS PRESENTED

1. Whether the abuse of discretion standard imposed by the United States Court of Appeals for the Second Circuit is Constitutionally impermissible - where trial Court which had an obligation to protect the Constitutional rights of a criminal defendant deliberately deprived him of his Constitutional rights and the United States Court of Appeals for the Second Circuit refused to correct the errors of trial Court.

2. Whether trial Court abused its obligation to protect the Constitutional rights of a criminal defendant at trial - where trial Court deliberately caused the deprivation of a criminal defendant`s Constitutional right in an endeavor to unjustly deprive him of liberty.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

II. Table of Contents

III. Table of Authorities

Cases

Statutes

IV. PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALSFOR THE SECOND CIRCUIT

Petitioner Raheem Jefferson Brennerman respectfully petitions this Court for a writ of certiorari to review the judgment and order of the United States Court of Appeals for the Second Circuit entered on June 9, 2020. Mr. Brennerman`s motion for rehearing en banc was denied on July 31, 2020.

V. OPINION BELOW

On June 9, 2020, a panel of the Second Circuit affirmed Petitioner`s conviction. *United States v. Brennerman*, No. 18 3546, 818 F. App'x 1 (2d. Cir. June 9, 2020) (19-497(Con)). Mr. Brennerman`s motion for rehearing en banc was denied by an Order of the Second Circuit dated July 31, 2020. *United States v. Brennerman*, No. 18 3546 Cr., EFC No. 195.

VI. JURISDICTION

The Court of Appeals' judgment affirming Petitioner`s conviction and sentence was entered on June 9, 2020. Mr. Brennerman`s motion for rehearing en banc was denied on July 31, 2020. *See* No. 18 3546, EFC No. 190; 195. Following a 150-day period for filing, including the ordinary 90-day filing period plus the 60-day additional time provided by administrative order relating to the COVID-19 pandemic, this Petition for Certiorari would have expired on December 31, 2020. The petition is being filed postmark on or before that date. Sup. Ct. R. 13(1); 13(3); 13(5); 29(2); 30(1). Petitioner invokes this Court`s jurisdiction under 28 U.S.C. § 1254(1).

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 18, § 1344(1) provides:

> (a) Whoever knowingly executes, or attempts to execute, a scheme or artifice--
>
> (1) to defraud a federally chartered or insured financial institution, or
>
> "(b) As used in this section, the term "federally chartered or insured financial institution" means--
>
> (1) a bank with deposits insured by the Federal Deposit Insurance Corporation;
>
> (2) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;
>
> (3) a credit union with accounts insured by the National Credit Union Administration Board;
>
> (4) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. § 1422), of the Federal home loan bank system; or
>
> (5) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States.

The Fifth Amendment provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limbo, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VIII. STATEMENT OF CASE

This case presents a matter of significant public interest in highlighting the unusual instance where the Courts, that have an obligation to protect the Constitutional rights of a criminal defendant, veers from the permissible to the impermissible with the Courts deliberately violating the Constitutional rights of Petitioner. The attack on Petitioner Raheem J. Brennerman is an attack on the rule of law, civil rights and liberties affecting everyone as well as the very fabric of United States' democracy. The United States Court of Appeals for the Second Circuit has a Constitutional obligation to review de novo meaning for clear error. *See United States v. Bershchansky*, 755 F.3d 102, 108 (2d Cir. 2015) (internal citation and quotation marks omitted) The Circuit Court exacerbated the Constitutional deprivation already suffered by Petitioner by imposing a Constitutionally impermissible abuse of discretion standard with its review.

Petitioner seeks review of this case for clarification on the obligations of the Courts - United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York particularly where a criminal defendant`s right has been so abridged and abrogated because of his race resulting in a fundamental miscarriage of justice.

The Fifth Amendment of the United States Constitution states, "No person shall be deprived.....of life, liberty or property without the due process of law." The due process right is enshrined in the bedrock of our democracy by imposing the equal protection of law doctrine. *See Abdul-Akbar v. McKelvie*, 239 F.3d 307, 316-17 (3d Cir. 2001) (en banc) (Although the Fifth Amendment contains no Equal Protection Clause.....[t]he [Supreme] Court has construed the Fifth Amendment to contain an Equal Protection Guarantee [;]....Fifth Amendment Equal Protection claims are examined under the same principle that apply to such claims under the Fourteenth Amendment) (internal citations omitted).

The Court had previously promulgated that a criminal defendant has a Sixth Amendment right to present a complete defense. *See Crane v. Ky.*, 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 recently adopted such holding in *Scrimo* while creating disparity with Petitioner. *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019).

Review of this case is warranted as a matter of public interest to emphasize conformity and uniformity with the law and Constitution among lower Courts in ensuring adherence with their Constitutional obligations and to avoid attack on the civil rights and liberties of criminal defendants because of their race, sex or religion.

BACKGROUND

The history of this matter began in 2014 when ICBC (London) PLC sued The Blacksands Pacific Group, Inc ("Blacksands") in New York Supreme Court primarily alleging, inter alia that Blacksands had failed to repay approximately $4.4 million dollars extended to Blacksands pursuant to a Bridge Loan Agreement. Significantly, Petitioner Raheem J. Brennerman, the CEO of Blacksands, was not named as a defendant in that action. (Notice of Removal; Cv. Cover Sheet, *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.*, No. 15 Cv. 70 (LAK), EFC No. 1-2).

Blacksands removed the case to the Southern District of New York and the matter was assigned to Hon. Lewis A. Kaplan, under the caption *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.* (Notice of Removal, No. 15 Cv. 70 (LAK), EFC No. 1). Based on the loan documents, Judge Kaplan granted ICBC London`s motion for summary judgment against Blacksands. (Mem. Op., No. 15 Cv. 70 (LAK), EFC No. 38).

ICBC London then served Blacksands with extremely broad post-judgment discovery requests. Blacksands counsel, Latham & Watkins LLP ("Latham") interposed objections to those demands and filed a brief in support of those objections. (*See* Def. Interrog., No. 15 Cv. 70 (LAK), EFC No. 84 Ex. 2); (Mem.; Def.'s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 85, 86). The Court conducting no analysis regarding the permissible scope of post-judgment discovery of the actual breadth of plaintiff`s demands, instead in

conclusionary fashion declared that the objections were "baseless" and that Blacksands "shall comply fully." (*See* Order, No. 15 Cv. 70 (LAK), EFC No. 87).

Subsequently, ICBC London moved for contempt and coercive sanctions against Blacksands. (Order to Show Cause; Pl.'s Decl.; Mem., No. 15 Cv. 70 (LAK), EFC Nos. 101, 102-103). On October 24, 2016, Judge Kaplan granted ICBC London`s motion holding Blacksands in contempt and imposing coercive sanctions. (Order, No. 15 Cv. 70 (LAK), EFC No. 108). Over the course of the next two weeks, on November 4 and November 10, 2016, Mr. Brennerman on behalf of Blacksands provided detailed discovery responses to ICBC London, including approximately 400 pages of documents, in an effort to comply with ICBC London`s discovery requests. (*See* Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC. No. 123, ¶¶ 9, 11-12). Mr. Brennerman also made continued efforts without support from other shareholders and partners to settle the matter with ICBC London, including meeting with ICBC London executives in London and providing them with even more information about Blacksands and its pending transaction, which were pertinent to Blacksands settlement efforts. (*See* Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC No. 123, ¶¶ 45, 9, 11-12).

On December 7, 2016, ICBC London moved for civil contempt against Mr. Brennerman personally, even though he was not a named defendant in the matter and was not personally named in any discovery orders. (Order; Mem.; Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 121-23). A contempt hearing

was scheduled for December 13, 2016, less than a week later. (Corrected Order, No. 15 Cv. 70 (LAK), EFC No. 125).

Mr. Brennerman, however, did not have counsel. In fact, Latham repeatedly and consistently communicated to the Court, and to Mr. Brennerman that they did not represent Mr. Brennerman personally. (*See* e.g. Letter, No. 15 Cv. 70 (LAK), EFC No. 124). Although Mr. Brennerman was out of the country at the time he learned of the pending contempt hearing against him, he immediately sought to retain counsel to represent him in the contempt proceeding and wrote the Court requesting a reasonable adjournment because he was currently outside the United States and needed more time to retain counsel. (Email; Letter, No. 15 Cv. 70 (LAK), EFC Nos. 127-28) (Judge Kaplan was previously a partner at Paul Weiss LLP which represented Mr. Brennerman at the time thus the law firm could not appear before Judge Kaplan hence why Mr. Brennerman had to retain another law firm to represent him for the contempt proceedings). Judge Kaplan denied Mr. Brennerman`s request on December 12, 2016 (Order, No. 15 Cv. 70 (LAK), EFC No. 134), and found Mr. Brennerman personally in contempt on December 13, 2016. (Orders, No. 15 Cv. 70 (LAK), EFC Nos. 139-40). While Mr. Brennerman had provided a substantial document production in November, after Blacksands was found in contempt, the Court made no mention of it and appeared not to have reviewed or considered that

production in its determination that Mr. Brennerman was himself in contempt. (Orders, 15 Cv. 70 (LAK), EFC. Nos. 139-40).

On December 13, 2016 when Judge Kaplan held Mr. Brennerman personally in contempt, he [Judge Kaplan] ignored the law from the Second Circuit U.S. Court of Appeals in *OSRecovery,* where the Appeals Court stated directly to Judge Kaplan in relevant parts: ("[T]he District Court abused its discretion by issuing a contempt order to a non-party for failing to respond to discovery request propounded to him as a party without providing sufficient legal authority or explanation for treating him as a party solely for the purpose of discovery)) and held Mr. Brennerman in contempt (even though there were no court order[s] directed at him personally. No subpoena or motion-to-compel were directed at him). *OSRecovery, Inc., v. One Groupe Int'l, Inc.*, 462 F.3d 87, 90 (2d Cir. 2006).

Judge Kaplan also ignored the federal rule to conduct extra-judicial research into Mr. Brennerman by Googling him. (*See* Bail Hr.'g Tr., *United States v. Brennerman*, No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 1 at 28). Then following the erroneous contempt propounded against Mr. Brennerman, Judge Kaplan referred him to the Manhattan federal prosecutors (United States Attorney Office for the Southern District of New York "USAO, SDNY") and persuaded the prosecutors to arrest Mr. Brennerman and prosecute him criminally. (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2).

THE CRIMINAL REFERRAL, THE PETITION AND EX PARTE CONFERENCE BETWEEN JUDGE KAPLAN AND THE GOVERNMENT

In late 2016 or early 2017, Judge Kaplan referred Blacksands and Mr. Brennerman personally to the United States Attorney`s Office for criminal prosecution.

Thereafter, on March 3, 2017, the government filed a Petition seeking to initiate criminal contempt proceedings against Blacksands and Mr. Brennerman personally, including an Order to Show Cause for them to appear in Court to answer the charges. On March 7, 2017, Judge Kaplan summoned AUSAs Robert Benjamin Sobelman and Nicolas Tyler Landsman-Roos to his robing room to advise that an arrest warrant should be issued for Mr. Brennerman. (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2). The prosecution, consistent with Fed. R. Crim. P. 42, had prepared an Order to Show Cause that would have directed Blacksands and Mr. Brennerman to appear before the Court on a date in the future. The Court made clear, however that it did not agree with the government`s approach and advised the prosecutors that the Court should issue an arrest warrant instead as to Mr. Brennerman, stating his assumption that "the United States can`t find him." The prosecutors repeatedly expressed their view that execution of an arrest warrant was not necessary under the circumstances. (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2). The prosecutors advised, first, that Mr. Brennerman had actually called them on Friday, March 3, 2017, the same day that the Petition was filed to talk to them about that Petition. *Id.* The

prosecutors informed Mr. Brennerman that he could not speak with him, and Mr. Brennerman then provided his phone number so that "there may be a way for the government to be in touch with him via that telephone number." The prosecutors then proposed that the Order to Show Cause previously prepared and filed by the government, could be entered to require Mr. Brennerman to attend the conference and "should he not appear, [] a summons or arrest warrant be issued to secure his appearance." *Id.*

The Court continued to press the issue of an arrest warrant, asking '[w]hy shouldn`t I, given the history in this case issue a warrant?" (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2 At 5). The Prosecutors responded with a number of reasons, stating:

> Mr. Brennerman did try to contact the government on Friday, and we don`t know that he has absconded or seeks to abscond. He`s already knowledgeable about the petition. His email address is included on the ECF notification that went out when the petition was publicly filed. He appears to have the resources to have fled had he intended to, and the government thinks it`s prudent to provide him an opportunity to appear at the conference voluntarily.

Id. The prosecution went on to say that, even if the Court issued an arrest warrant, "the government would likely provide Mr. Brennerman an opportunity to surrender rather than dispatching law enforcement to apprehend him without providing that opportunity." *Id.*

The Court pressed on, stating "I`m inclined to issue an arrest warrant" and pushed back against the prospect that Mr. Brennerman should be allowed to surrender: "Now, if the government is going to give him an

opportunity to surrender; there`s a substantial question as to whether I`m wasting my time because I think the odds are not unreasonable that he will abscond". *Id.* at 6.

Eventually the prosecutors deferred to the Court and confirmed that if an arrest warrant was issued, they would discuss in their office how best to proceed. *Id.* at 7. Thus, as of March 7, 2017, when the government entered the robing room, there was no pending investigation of fraud as to Mr. Brennerman with the prosecutors in the Southern District of New York, and the government was prepared to proceed with a contempt proceeding by Order to Show Cause and had no concern that Mr. Brennerman would seek to abscond.

Thus pursuant to the arrest warrant prepared and signed by Judge Kaplan, Mr. Brennerman was arrested on April 19, 2017 at his home in Las Vegas. As of the date of the arrest warrant and because the Court had declined to sign the order to show cause presented by the government, there was no actual contempt charge pending against Mr. Brennerman. The Court omitted Mr. Brennerman from the signed Order to Show Cause but then failed to otherwise rule or grant the government`s Petition as it related to Mr. Brennerman. There was, therefore, no proper basis for the arrest warrant. The Court`s decision to alter the warrant to reference the Petition was inadequate to support the warrant. (The arrest warrant included an option for a Probation Violation Petition; those instruments, unlike a Petition

in a contempt proceeding, actually do charge an offense). (*See* Arrest Warrant, No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 3).

Mr. Brennerman`s arrest on April 19, 2017 (when government seized his electronic devices and documents (which was adduced as evidence (e-mails between Mr. Brennerman (on behalf of Blacksands) and Madgett (ICBC London) at trial of the contempt and fraud case (where the government actually never obtained or reviewed any pertinent ICBC transaction files from ICBC (London) plc) was in violation of both Mr. Brennerman`s Fourth and Fifth Amendment rights.

THE INDICTMENT AND ORDER TO SHOW CAUSE

On May 31, 2017, weeks after Mr. Brennerman was released on bail in the criminal contempt of court case, he was re-arrested by the U.S. Attorney`s Office pursuant to an indictment alleging fraud in connection with the transaction that was at issue in the underlying civil action, No. 15 Cv. 70 (LAK) between ICBC (London) PLC and The Blacksands Pacific Group, Inc (even though the civil action had been ongoing for two and half years at that point) Mr. Brennerman was charged with Conspiracy to commit bank and wire fraud, bank fraud and wire fraud. *Id.* The case was assigned to Hon. Richard J. Sullivan, under the caption, *United States v. Brennerman*, No. 17 Cr. 337 (RJS).

In August 2017, because Judge Kaplan had failed to sign the Order to Show Cause as it related to Mr. Brennerman in the criminal contempt of

court case at No. 17 Cr. 155 (LAK) (even though Mr. Brennerman had been arrested at the behest of Judge Kaplan) he had revoked the bail granted to Mr. Brennerman even without any violations of the bail conditions. The government realizing their error filed a new two count Order to Show Cause Petition formally charging Mr. Brennerman in the criminal contempt of court case. (*See* Order to Show Cause, *Brennerman* No. 17 Cr. 155, EFC No. 59).

THE DISTRICT COURT`S DECISION

In August 2017, prior to trial for the criminal contempt of court case, Mr. Brennerman sought to obtain the complete ICBC records (including the underwriting file and negotiations between agents of Blacksands and ICBC London) to demonstrate his innocence and to present a complete defense. However Mr. Brennerman`s request to the Manhattan federal prosecutors was denied. The [Manhattan federal prosecutors] refused to obtain or review the complete ICBC records including the underwriting files, arguing that they were not obligated to collect any additional evidence from ICBC London beyond what the bank had selectively provided to them. Judge Kaplan also denied Mr. Brennerman`s request seeking to compel the complete ICBC record. *See* 17-cr-155 (LAK), Dkt. No. 76

In November 2017, prior to trial for the fraud case, Mr. Brennerman made request to Judge Sullivan in his motion-in-limine requesting that the Court exclude the testimony of any witness from ICBC London because he had been unable to obtain the complete ICBC records including the

underwriting files, which he required to engage in cross-examination of the witness and that the government will be able to elicit testimony from such witness while he would be deprived of the ability to engage in any meaningful cross-examination of the witness as to substance and credibility on the issues. Mr. Brennerman argued that his Constitutional rights including his right to a fair trial will be deprived. Mr. Brennerman also argued that he would be deprived of his ability to present a complete defense, thus depriving his Sixth Amendment right. However Judge Sullivan denied his request. (*See* Mem. in Opp'n; Mot. in Lim.; Mem. In Supp., No. 17 Cr. 337 (RJS), EFC Nos. 54, 58, 59).

THE TRIAL AND POST-TRIAL PROCEEDINGS

During trial, following testimony by government sole witness from ICBC London, Julian Madgett that evidence (ICBC underwriting files) existed with the bank`s file which document the basis for approving the bridge finance including representations relied upon by the bank in approving the bridge finance and that the prosecution never requested or obtained the ICBC underwriting files, thus never provided it to the defense. (Trial Tr., No. 17 Cr. 337 (RJS), at 551-554). Mr. Brennerman again filed motion to compel for the evidence arguing that he required it to present a complete defense (that the bank did not rely on any representation or alleged misrepresentation in approving the bridge finance) and to confront witness against him. (*See* Letter Mot., No. 17 Cr. 337 (RJS), EFC No. 71). Judge

Sullivan denied Mr. Brennerman`s request while acknowledging that government`s witness, Julian Madgett had testified that the evidence (ICBC underwriting files) were with the bank`s file in London, U.K. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 617).

Government presented evidence - Government Exhibits GX1-57A; GX1-73; GX529 to demonstrate that Mr. Brennerman opened a wealth management account at Morgan Stanley. (*See* Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167). The evidence presented clearly demonstrated that the wealth management account was opened at Morgan Stanley Smith Barney, LLC. Government witness, Kevin Bonebrake testified that he worked for the Institutional Securities division of Morgan Stanley which is a wholly-owned subsidiary of Morgan Stanley & Company LLC (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 384-385); That "this was very preliminary stage of our conversation" (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 409); That "Morgan Stanley would not typically provide the money"; "It would seek financing from outside investors," and "my recollection was that what the company wanted was unclear. We didn`t get very far in our discussion." (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 387-388).

Government presented four FDIC certificates - Government Exhibit - GX530 (FDIC certificate for Morgan Stanley Private Bank); GX531 (FDIC certificate for Citibank); GX532 (FDIC Certificate for Morgan Stanley National Bank NA); GX533 (FDIC certificate for JP Morgan Chase).

Another Government witness, Barry Gonzalez, FDIC commissioner testified "that the FDIC certificate of one subsidiary does not cover another subsidiary or the parent company because each will require its own separate FDIC certificate (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 1060-1061). Testified that FDIC certificate only cover depository accounts and would not cover the Institutional Securities division/subsidiary of Morgan Stanley (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 1057); That there was no confirmation that Morgan Stanley Smith Barney, LLC was FDIC insured. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 1059). His testimony demonstrated that neither ICBC (London) PLC, Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division/subsidiary are FDIC insured. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 1059-1061).

The trial commenced on November 26, 2017 and concluded on December 6, 2017 with the jury returning a guilty verdict on all counts.

After trial, Mr. Brennerman again moved to compel for the ICBC underwriting files to prepare his post-trial motions however Judge Sullivan denied his requests. (*See* Orders, No. 17 Cr. 337 (RJS), EFC Nos. 153, 161, 187, 200, 235, 236, 240, 241). Judge Sullivan also ignored evidence which Mr. Brennerman presented to the Court to demonstrate that there was a statutory error with his conviction for bank fraud as it relates to his interaction with non-FDIC subsidiaries of Morgan Stanley however Judge

Sullivan ignored him and ultimately denied his post-trial motions. (*See* Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167).

THE COURT OF APPEAL DECISION

The United States Court of Appeals for the Second Circuit affirmed Mr. Brennerman`s conviction and sentence in a Summary Order on June 9, 2020.

The Court misapprehended the record with respect to the FDIC-insured status of Morgan Stanley and overlooked Mr. Brennerman`s argument about the non FDIC insured personal wealth division (Morgan Stanley Smith Barney, LLC) and the non-FDIC-insured Institutional Securities division, generalizing that:

> [T]he record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based on false representation about his citizenship, assets, and the nature and worth of his company.

(Slip Op., *United States v. Brennerman*, No. 18 3546, EFC No. 183 at 3).

With respect to Mr. Brennerman`s Constructive amendment argument, the Circuit Court similarly misunderstood the crucial distinction between the subsidiary divisions of Morgan Stanley, relying on the Government`s arguments at summation and finding that no constructive amendment had occurred because:

> It is clear from the indictment that the scheme against ICBC was merely one target of Brennerman`s alleged fraud.....At trial, the government offered evidence that Morgan Stanley was one of those

> "other financial institutions." *See* App`x at 608-09 (testimony of Morgan Stanley`s Kevin Bonebrake about a January 2013 telephone call with Brennerman discussing financing to develop asset). Thus, there was not a "a substantial likelihood that the defendant may have been convicted of an offence other than that the one charged by the grand jury." *United States v. Vebeliunas*, 76 F.3d at 1290.

(Slip Op., No. 18 3546, EFC No. 183 at 4).

With respect to the ICBC file, the Circuit Court disagreed with Mr. Brennerman on the first two points and did not issue a written opinion on the third, writing that:

> The government`s discovery and disclosure obligations extend only to information and documents in the government`s possession. *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998) (explaining that the *Brady* obligation applies only to evidence "that is known to the prosecutor"). The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligations. Nor was the government under any obligation under the Jencks Act to collect materials about Madgett that were not in the government`s possession. *See United States v. Bermudez*, 526 F.2d 89, 100 n.9 (2d Cir. 1975).
>
> Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17.....The only indication that such documents are extant comes from Brennerman`s bare assertions.

(Slip Op., No. 18 3546, EFC No. 183 at 4-5).

The panel denied a motion for rehearing by order dated July 31, 2020.

IX. REASON FOR GRANTING CERTIORARI

ARGUMENT

This Petition presents an opportunity for the Court to clarify (a.) whether the abuse of discretion standard imposed by United States Court of Appeals for the Second Circuit is Constitutionally permissible - where the Circuit Court refused to correct errors which substantively abridges and abrogates the rights of criminal defendant which are protected by the United States Constitution and (b) where trial Court deliberately deprived the criminal defendant of his Constitutional rights thus violating his Fifth and Sixth Amendment rights of the U.S. Constitution.

This case will clarify the obligations of lower Courts as a matter of public interest to emphasize conformity and uniformity with the law and Constitution among lower Courts in ensuring adherence with their Constitutional obligations and avoid attack on the civil rights and liberty of criminal defendants because of their race, sex or religion.

I. THE SECOND CIRCUIT ERRED WHEN IT MISAPPREHENDED KEY FACTS ABOUT WHICH MORGAN STANLEY SUBSIDIARY WAS FDIC INSURED AND MISUNDERSTOOD WHY A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT OCCURRED.

A. THE FEDERAL BANK FRAUD STATUTE REQUIRES INTENT TO DEFRAUD AN FDIC-INSURED INSTITUTION AND PETITIONER`S CONSTITUTIONAL RIGHT WAS VIOLATED WHERE HIS CONVICTION FOR BANK FRAUD AND BANK FRAUD CONSPIRACY IS ILLEGAL AND IN VIOLATION OF THE BANK FRAUD STATUTE AND LAW.

Title 18 United States Code § 1344 makes it a crime to "knowingly execut[e], or attemp[t] to execute, a scheme or artifice - (1) to defraud a financial institution; . . ." "The well established elements of the crime of bank fraud are that the defendant (1) engaged in a course of conduct designed to deceive a federally chartered or insured financial institution into releasing property, and (2) possessed an intent to victimize the institution by exposing it to actual or potential loss." *United States v. Barrett*, 178 F.3d 643, 647-48 (2d Cir. 1999); *See* also 18 U.S.C. § 20 (defining "financial institution"). "[A] defendant cannot be convicted of violating § 1344(1) merely because he intends to defraud an entity...that is not in fact covered by the statute." *United States v. Bouchard*, 828 F.3d 116, 125 (2d Cir. 2016).

Petitioner was convicted of bank fraud and bank fraud conspiracy based on an account he opened at Morgan Stanley Smith Barnet, LLC. (*See* Def.'s Letter, No. 17 Cr. 337 (RJS), EFC No. 167) (highlighting Government Exhibit - GX1-57A; GX1-73; GX529 - Morgan Stanley Smith Barney, LLC account opening form, correspondence and account statement). The government failed to confirm through government witness, Barry Gonzalez, the FDIC commissioner that Morgan Stanley Smith Barney, LLC was/is FDIC insured. The Court also stated that Brennerman had a single telephone call with Kevin Bonebrake (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 387-388; 409) who worked at Morgan Stanley Institutional Securities division (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 384-385) which is not FDIC insured.

Although Petitioner`s wealth management account at Morgan Stanley Smith Barney, LLC was not a depository account, the funds were held by Morgan Stanley Smith Barney, LLC in a depository account at Morgan Stanley Bank National Association. Any statements made by Petitioner to Scott Stout, who worked at Morgan Stanley Smith Barney, LLC would have been insufficient to establish that Petitioner took any step toward defrauding an FDIC-insured institution.

When Petitioner presented evidence to Judge Sullivan at No. 17 Cr. 337 (RJS), EFC. No. 167, demonstrating that his account was held at Morgan Stanley Smith Barney, LLC which is not FDIC insured and not at Morgan Stanley Private Bank, the judge ignored him. The judge also ignored the testimony by Barry Gonzalez, FDIC commissioner which confirmed that neither Morgan Stanley Smith Barney, LLC (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 1059) or Morgan Stanley Institutional Securities division (*See* Trial Tr., 17-cr-337 (RJS), at 1057) are FDIC insured. Further that the FDIC certificate or one subsidiary/division does not cover other subsidiary/division within Morgan Stanley because each subsidiary/division will require its own FDIC certificate. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 1060-1061). Thus highlighting that the FDIC certificates presented by the government at trial for Morgan Stanley Private Bank (*See* Government Exhibit - GX530) and Morgan Stanley National Bank NA (*See* Government Exhibit - GX532) does not cover either Morgan Stanley Smith Barney, LLC or Morgan Stanley

Institutional Securities division which Petitioner interacted with and thus Petitioner could not be convicted for bank fraud and bank fraud conspiracy for interacting with institutions which are not FDIC insured. Notwithstanding these evidence and confirmation, Judge Sullivan allowed Petitioner to be wrongly convicted.

On appeal, the Second Circuit ignored Petitioner`s argument while stating that Petitioner defrauded Morgan Stanley, an FDIC insured institution by receiving perks (even though Petitioner was not charged for receiving perks) and for making a single telephone call to Kevin Bonebrake to discuss about financing without acknowledging the testimony from Barry Gonzalez which did not confirm that either Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division are FDIC Insured to satisfy the essential element necessary to convict for bank fraud. That Morgan Stanley has different subsidiaries and divisions, further than each subsidiary/division will require its own FDIC certificate as the FDIC certificate of one subsidiary/division does not cover the other subsidiary/division.

B. CONSTRUCTIVE AMENDMENT OF AN INDICTMENT OCCURS WHEN THE CHARGING TERMS ARE ALTERED AND PETITIONER`S CONSTITUTIONAL RIGHT WAS VIOLATED

Constructive amendment of an indictment "occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them." *United States v.*

LaSpina, 299 F.3d 165, 181 (2d Cir. 2002) (citations omitted). "To prevail on a constructive amendment claim, a defendant must demonstrate that the proof at trial....so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was the subject of the grand jury`s indictment." *LaSpins*, 299 F.3d at 181 (citations omitted).

Petitioner was indicted with "having made false representation to financial institutions in the course of seeking loans and other forms of financing for purported business ventures" however during summation the prosecution and again during appearance on November 19, 2018 (sentencing hearing) the Court, each argued the theory of the bank fraud and bank fraud conspiracy that the defendant became entitled to "perks" including fancy credit card and preferential interest rate however the defendant was not charged with obtaining perks. Moreover the fancy credit card was not issued by any Morgan Stanley subsidiary or division and was closed with zero balance. The account which the defendant opened at Morgan Stanley Smith Barney, LLC was only opened for three weeks and not long enough for him to earn any perks. Most important, both Morgan Stanley Smith Barney, LLC where Petitioner opened his account and Morgan Stanley Institutional Securities division where Kevin Bonebrake (whom he had a single telephone call about financing) worked at are not FDIC insured, an essential element necessary to convict for bank fraud and bank fraud conspiracy.

On appeal, when the Petitioner highlighted the constructive amendment issue, the Second Circuit refused to review the record on which Petitioner was convicted (theory of bank fraud) and statement made by trial court during appearance on November 19, 2018 (sentencing hearing) as to the theory of the bank fraud which was argued by the government and trial judge as receiving perks and as to his single telephone call to Kevin Bonebrake about financing. The Court also stated that there was no constructive amendment because the Petitioner spoke to Kevin Bonebrake who worked for the Institutional Securities division of Morgan Stanley without acknowledging the trial records which clearly demonstrated that the Institutional Securities division of Morgan Stanley is not covered by any FDIC certificate thus cannot satisfy the essential element to convict for bank fraud and bank fraud conspiracy.

C. THE CIRCUIT COURT`S DECISION OVERLOOKED THE FACT THAT BRENNERMAN HAD MADE ATTEMPTS TO OBTAIN AND TO COMPEL THE PRODUCTION OF THE COMPLETE ICBC FILE AND ERRONEOUSLY ASSUMED THAT THE ONLY INDICATION OF THE DOCUMENT`S EXISTENCE CAME FROM BRENNERMAN`S BARE ASSERTIONS.

Both during the related case in front of Judge Kaplan (*United States v. Brennerman*, No. 17 Cr.155 (LAK)) and in the instant case from which this petition arose (*United States v. Brennerman*, No. 17 Cr. 337 (RJS)) in front of Judge Sullivan, Petitioner moved for discovery of the full ICBC file related to the bridge loan to Blacksands. Petitioner avers as confirmed by government witness that the file would contain ICBC employee Julian Madgett`s notes

related to the credit paper, underwriting documents and credit decision to approve the loan and would support Petitioner`s theory of defense. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 551-554). Both Judge Kaplan and Judge Sullivan denied Petitioner`s request for a subpoena to obtain these documents; Judge Sullivan additionally declined to compel the Government to produce them at trial even after government witness, Julian Madgett testified to its existence in open Court. *See.*, e.g., (Mem. & Order, No. 17 Cr. 155 (LAK), EFC No. 76); (Def.'s Letter Mot., No. 17 Cr. 337 (RJS), EFC No. 71); (Trial Tr., No. 17 Cr. 337 (RJS), at 551-554); (Trial Tr., No. 17 Cr. 337 (RJS), at 617).

For these reasons, the Second Circuit was mistaken that the record contained no evidence that Petitioner had attempted to obtain the complete ICBC files and the Court`s assumption that the only indication that such documents (ICBC file) are extant came from Petitioner`s bare assertion was erroneous.

II. THE SECOND CIRCUIT ERRED BECAUSE THE PANEL`S DECISION CONFLICTS WITH SETTLED LAW ON THE SIXTH AMENDMENT RIGHTS OF A CRIMINAL DEFENDANT TO CROSS-EXAMINE THE WITNESSES AGAINST HIM AND TO PRESENT A COMPLETE DEFENSE.

The Due Process Clause requires the Government to make a timely disclosure of any exculpatory or impeaching evidence that is material and in its possession. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972). The Government is further obligated under *Kyles,* to "learn of any favorable evidence known to the others acting on the

government`s behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

In some circumstances, discovery may be obtained from abroad. *In re del Valle Ruiz*, 939 F.3d 520, 533 (2d Cir. 2019) ("[A] district court is not categorically barred from allowing discovery....of evidence located abroad....") (internal reference omitted). "[I]t is far preferable for a district court to reconcile whatever misgivings it may have about the impact of its participation in the foreign litigation by issuing a closely tailored discovery order rather than by simply denying relief outright." *Mees v. Buiter*, 793 F.3d 291, 302 (2d Cir. 2015).

Petitioner was deprived of the ability to present a complete defense in violation of his Sixth Amendment right as promulgated by the United States Supreme Court in *Crane v. Ky.*, where Petitioner requested for evidence (ICBC underwriting files) at No. 17 Cr. 337 (RJS), EFC No. 71, following testimony by government sole witness from ICBC London, Julian Madgett (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 551-554) that evidence (the ICBC underwriting files) existed with the bank`s file which document the basis for approving the bridge finance including representations relied upon by the bank in approving the bridge finance. *Crane v. Ky.*, 476 U.S. 683 (1986).

The prosecution never requested or obtained the ICBC underwriting files, thus never provided it to the defense. When Brennerman requested for the files so that he may use it in presenting a complete defense (that the bank

did not rely on any representation or alleged misrepresentation in approving the bridge finance) and confront witness against him, trial judge (Judge Richard J. Sullivan) denied his request while acknowledging that the prosecution witness, Julian Madgett had testified that the evidence (ICBC underwriting files) existed with the bank`s file in London, U.K. (*See* Trial Tr., No. 17 Cr. 337 (RJS). at 617). The Judge`s denial was in contrast with the Second Circuit ruling in *In re del Valle Ruiz*, which stated that District Courts were not categorically barred from permitting evidence located abroad. *In re del Valle Ruiz*, 939 F.3d 520 (2d Cir. 2019).

Moreover trial judge permitted government sole witness from ICBC London, Julian Madgett to testify as to the content of the ICBC Underwriting files (to satisfy the essential element of "MATERIALITY") while Petitioner was deprived of the ability to engage in any meaningful cross-examination of the witness depriving him a fair trial.

Under *Kyles* Government had an obligation to learn of any favorable evidence known to the others acting on the Government behalf in the case, thus when Government witness, Julian Madgett testified in open Court that evidence (ICBC underwriting file) existed in the bank`s file which document the basis for approving the bridge finance including representation relied upon by the bank in approving the bridge finance which Government never requested or obtained. (Trial Tr., No. 17 Cr. 337 (RJS), at 551-554). Government had an obligation to collect the evidence after learning of its

existence particularly where Petitioner made request to the Court (for among others) that the Court compel Government to collect the evidence (ICBC underwriting file). (Def.'s Letter Mot., No. 17 Cr. 337 (RJS), EFC No. 71). However Government`s failure to collect or learn of the evidence violated its *Brady* obligations.

It follows that if Government never obtained or reviewed the pertinent evidence (ICBC underwriting file) it [Government] failed to conduct any independent investigation on the transaction at issue prior to indicting and prosecuting Petitioner thus deliberately violating Petitioner`s right to the Due Process clause. The Court (Judge Richard J. Sullivan) exacerbated the Constitutional violation when it refused to compel Government to satisfy its *Brady* obligation, particularly following the testimony by Government witness, Julian Madgett that pertinent evidence (ICBC underwriting file) existed which Government never obtained or reviewed. Thus, the Court and Government deliberately violated Petitioner`s right to the Due Process clause.

Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively" possesses it. E.g., *United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); cf. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that to satisfy *Brady* and *Giglio*

prosecutors have "a duty to learn of any favorable evidence known to the others acting on the Government`s behalf in the case"). In particular in *Patemina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith effort to obtain Jencks Act statements possessed by a third party that had cooperated extensively and had close working relationship with the Government, *United States v. Patemina-Vergara* 749 F.2d 993 (2d Cir. 1984); *see* also *United States v. Kilroy*, 488 F. Supp 2d 350, 362 (E.D. Wis. 1981) ("since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government`s files any record which Standard Oil has and which the Government wants, however, is not unreasonable to treat the records as being within the Government`s control at least to the extent of requiring the Government to request the records on the defendant`s behalf and to include them in its files for the defendant`s review if Standard Oil agrees to make them available to the Government." (emphasis added)). See also *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).[1]

On appeal, the Second Circuit that recently made decision in *Scrimo,* which stated that "It is a federal law that a criminal defendant has a Constitutional right to present a complete defense" ignored Petitioner`s

[1] Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligation, either on the basis of a Due Process violation or under the Court`s inherent supervisory powers, including when the Government belatedly disclosed Jencks Act materials. E.g., United States v. Chapman, 524 F.3d 1073 (9th Cir. 2008).

argument that he was deprived of his Constitutional right to present a complete defense. (Summ. Order, No. 18 3546(L), EFC No. 186); *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019). The Second Circuit also made an erroneous statement that "the only indication that the evidence is extant comes from Brennerman`s bare assertion" Such statement was/is inaccurate and in contrast with the trial records which clearly highlight government witness, Julian Madgett, confirming that the evidence are extant and with the bank`s file in London, U.K. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 551-554); (Summ. Order, No. 18 3546(L), EFC No. 186 at 5).

The danger of the Second Circuit`s rule is amply demonstrated by the consequences of erosion of public trust in the United States justice system and other institutions. As the Fourth Circuit recently promulgated "what gives people confidence in our justice system is not that we merely get things right rather, it is that we live in a system that upholds the rule of law even when it is inconvenient to do so". The lower courts - United States Court of Appeals for the Second Circuit and United States District Court for the Southern District of New York veered from the rule of law in this case. Interests of comity - in addition to fairness and substantial justice as embodied in the Due Process Clause and the U.S. Constitution - warrant reversal of the Second Circuit`s decision.

X. CONCLUSION

The petition for certiorari should be granted.

Dated: White Deer, Pennsylvania
December 1, 2020

Respectfully submitted,
/s/ Raheem J. Brennerman

RAHEEM JEFFERSON BRENNERMAN
Reg. No. 54001-048
FCI Allenwood Low
White Deer, Pa. 17887-1000

Petitioner Pro Se

XI. APPENDIX TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE

No. 20-

RAHEEM JEFFERSON BRENNERMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 7,613 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2020

/s/ Raheem J. Brennerman

RAHEEM JEFFERSON BRENNERMAN
Petitioner

APPENDIX M

Petition for Writ of Certiorari
Supreme Court of the United States,
Brennerman v. United States
at docket No. 20-6895, (EFC Dec 30 2020)

20-6895

No. 20-_____

ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 2020

RAHEEM JEFFERSON BRENNERMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Raheem J. Brennerman
FCI ALLENWOOD LOW
P. O. Box 1000
White Deer, Pa. 17887-1000
Pro Se Petitioner

I. QUESTIONS PRESENTED

1. Whether the abuse of discretion standard imposed by the United States Court of Appeals for the Second Circuit is Constitutionally impermissible - where trial Court which had an obligation to protect the Constitutional rights of a criminal defendant deliberately deprived him of his Constitutional rights and the United States Court of Appeals for the Second Circuit refused to correct the errors of trial Court.

2. Whether trial Court abused its obligation to protect the Constitutional rights of a criminal defendant at trial - where trial Court deliberately caused the deprivation of a criminal defendant`s Constitutional right in an endeavor to unjustly deprive him of liberty.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page

II. Table of Contents

III. Table of Authorities

Cases

Statutes

IV. PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Raheem Jefferson Brennerman respectfully petitions this Court for a writ of certiorari to review the judgment and order of the United States Court of Appeals for the Second Circuit entered on June 9, 2020. Mr. Brennerman`s motion for rehearing en banc was denied on September 9, 2020.

V. OPINION BELOW

On June 9, 2020, a panel of the Second Circuit affirmed Petitioner`s conviction. *United States v. Brennerman*, No. 18 1033, 2020 WL 3053867 (2d Cir. June 9, 2020) (Summary Order). Mr. Brennerman`s motion for rehearing en banc was denied by an Order of the Second Circuit dated September 9, 2020. *See* No. 18 1033 Cr., EFC No. 318.

VI. JURISDICTION

The Court of Appeals' judgment affirming Petitioner`s conviction and sentence was entered on June 9, 2020. *See* 18 1033, EFC No. 286. Mr. Brennerman`s motion for rehearing en banc was denied on September 9, 2020. *See* No. 18 1033, EFC No. 314; 318. Following a 150-day period for filing, including the ordinary 90-day filing period plus the 60-day additional time provided by administrative order relating to the COVID-19 pandemic, this Petition for Certiorari would have expired on February 9, 2021. The petition is being filed postmark on or before that date. Sup. Ct. R. 13(1); 13(3); 13(5); 29(2); 30(1). Petitioner invokes this Court`s jurisdiction under 28 U.S.C. § 1254(1).

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C § 401(3) provides:

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The Fifth Amendment provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limbo; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VIII. STATEMENT OF CASE

This case presents a matter of significant public interest in highlighting the unusual instance where the Courts, that have an obligation to protect the Constitutional rights of a criminal defendant, veers from the permissible to the impermissible with the Courts deliberately violating the Constitutional rights of Petitioner. The attack on Petitioner Raheem J. Brennerman is an attack on the rule of law, civil rights and liberties affecting everyone as well as the very fabric of United States' democracy. The United States Court of Appeals for the Second Circuit has a Constitutional obligation to review de novo meaning for clear error. *See United States v. Bershchansky*, 755 F.3d 102, 108 (2d Cir. 2015) (internal citation and quotation marks omitted) The Circuit Court exacerbated the Constitutional deprivation already suffered by Petitioner by imposing a Constitutionally impermissible abuse of discretion standard with its review.

Petitioner seeks review of this case for clarification on the obligations of the Courts - United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York particularly where a criminal defendant`s right has been so abridged and abrogated because of his race resulting in a fundamental miscarriage of justice.

The Fifth Amendment of the United States Constitution states, "No person shall be deprived . . .of life, liberty or property without the due process of law." The due process right is enshrined in the bedrock of our democracy by imposing the equal protection of law doctrine. *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 316-17 (3d Cir. 2001) (en banc) (Although the Fifth Amendment contains no Equal Protection Clause . . .[t]he [Supreme] Court has construed the Fifth Amendment to contain an Equal Protection Guarantee [;] . . .Fifth Amendment Equal Protection claims are examined under the same principle that apply to such claims under the Fourteenth Amendment) (internal citations omitted).

The Court had previously promulgated that a criminal defendant has a Sixth Amendment right to present a complete defense. *See Crane v. Ky.*, 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 recently adopted such holding in *Scrimo* while creating disparity with Petitioner. *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019).

Review of this case is warranted as a matter of public interest to emphasize conformity and uniformity with the law and Constitution among lower Courts in ensuring adherence with their Constitutional obligations and to avoid attack on the civil rights and liberties of criminal defendants because of their race, sex or religion.

BACKGROUND

The history of this matter began in 2014 when ICBC (London) PLC sued The Blacksands Pacific Group, Inc ("Blacksands") in New York Supreme Court primarily alleging, inter alia that Blacksands had failed to repay approximately $4.4 million dollars extended to Blacksands pursuant to a Bridge Loan Agreement. Significantly, Petitioner Raheem J. Brennerman, the CEO of Blacksands, was not named as a defendant in that action. (Notice of Removal; Cv. Cover Sheet, *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.*, No. 15 Cv. 70 (LAK), EFC No. 1-2).

Blacksands removed the case to the Southern District of New York and the matter was assigned to Hon. Lewis A. Kaplan, under the caption *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.* (Notice of Removal, No. 15 Cv. 70 (LAK), EFC No. 1). Based on the loan documents, Judge Kaplan granted ICBC London's motion for summary judgment against Blacksands. (Mem. Op., No. 15 Cv. 70 (LAK), EFC No. 38).

ICBC London then served Blacksands with extremely broad post-judgment discovery requests. Blacksands counsel, Latham & Watkins LLP ("Latham") interposed objections to those demands and filed a brief in support of those objections. (*See* Def. Interrog., No. 15 Cv. 70 (LAK), EFC No. 84 Ex. 2); (Mem.; Def.'s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 85, 86). The Court conducting no analysis regarding the permissible scope of post-judgment discovery of the actual breadth of plaintiff's demands, instead in

conclusionary fashion declared that the objections were "baseless" and that Blacksands "shall comply fully." (*See* Order, No. 15 Cv. 70 (LAK), EFC No. 87).

Subsequently, ICBC London moved for contempt and coercive sanctions against Blacksands. (Order to Show Cause; Pl.'s Decl.; Mem., No. 15 Cv. 70 (LAK), EFC Nos. 101, 102-103). On October 24, 2016, Judge Kaplan granted ICBC London`s motion holding Blacksands in contempt and imposing coercive sanctions. (Order, No. 15 Cv. 70 (LAK), EFC No. 108). Over the course of the next two weeks, on November 4 and November 10, 2016, Mr. Brennerman on behalf of Blacksands provided detailed discovery responses to ICBC London, including approximately 400 pages of documents, in an effort to comply with ICBC London`s discovery requests. (*See* Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC. No. 123, ¶¶ 9, 11-12). Mr. Brennerman also made continued efforts without support from other shareholders and partners to settle the matter with ICBC London, including meeting with ICBC London executives in London and providing them with even more information about Blacksands and its pending transaction, which were pertinent to Blacksands settlement efforts. (*See* Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC No. 123, ¶¶ 45, 9, 11-12).

On December 7, 2016, ICBC London moved for civil contempt against Mr. Brennerman personally, even though he was not a named defendant in the matter and was not personally named in any discovery orders. (Order; Mem.; Pl.'s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 121-23). A contempt hearing

was scheduled for December 13, 2016, less than a week later. (Corrected Order, No. 15 Cv. 70 (LAK), EFC No. 125).

Mr. Brennerman, however, did not have counsel. In fact, Latham repeatedly and consistently communicated to the Court, and to Mr. Brennerman that they did not represent Mr. Brennerman personally. (*See* e.g. Letter, No. 15 Cv. 70 (LAK), EFC No. 124). Although Mr. Brennerman was out of the country at the time he learned of the pending contempt hearing against him, he immediately sought to retain counsel to represent him in the contempt proceeding and wrote the Court requesting a reasonable adjournment because he was currently outside the United States and needed more time to retain counsel. (Email; Letter, No. 15 Cv. 70 (LAK), EFC Nos. 127-28) (Judge Kaplan was previously a partner at Paul Weiss LLP which represented Mr. Brennerman at the time thus the law firm could not appear before Judge Kaplan hence why Mr. Brennerman had to retain another law firm to represent him for the contempt proceedings). Judge Kaplan denied Mr. Brennerman`s request on December 12, 2016 (Order, No. 15 Cv. 70 (LAK), EFC No. 134), and found Mr. Brennerman personally in contempt on December 13, 2016. (Orders, No. 15 Cv. 70 (LAK), EFC Nos. 139-40). While Mr. Brennerman had provided a substantial document production in November, after Blacksands was found in contempt, the Court made no mention of it and appeared not to have reviewed or considered that

production in its determination that Mr. Brennerman was himself in contempt. (Orders, 15 Cv. 70 (LAK), EFC. Nos. 139-40).

On December 13, 2016 when Judge Kaplan held Mr. Brennerman personally in contempt, he [Judge Kaplan] ignored the law from the Second Circuit U.S. Court of Appeals in *OSRecovery,* where the Appeals Court stated directly to Judge Kaplan in relevant parts: ("[T]he District Court abused its discretion by issuing a contempt order to a non-party for failing to respond to discovery request propounded to him as a party without providing sufficient legal authority or explanation for treating him as a party solely for the purpose of discovery)) and held Mr. Brennerman in contempt (even though there were no court order[s] directed at him personally. No subpoena or motion-to-compel were directed at him). *OSRecovery, Inc., v. One Groupe Int`l, Inc.*, 462 F.3d 87, 90 (2d Cir. 2006).

Judge Kaplan also ignored the federal rule to conduct extra-judicial research into Mr. Brennerman by Googling him. (*See* Bail Hr.'g Tr., *United States v. Brennerman*, No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 1 at 28). Then following the erroneous contempt propounded against Mr. Brennerman, Judge Kaplan referred him to the Manhattan federal prosecutors (United States Attorney Office for the Southern District of New York "USAO, SDNY") and persuaded the prosecutors to arrest Mr. Brennerman and prosecute him criminally. (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2).

THE CRIMINAL REFERRAL, THE PETITION AND EX PARTE CONFERENCE BETWEEN JUDGE KAPLAN AND THE GOVERNMENT

In late 2016 or early 2017, Judge Kaplan referred Blacksands and Mr. Brennerman personally to the United States Attorney`s Office for criminal prosecution.

Thereafter, on March 3, 2017, the government filed a Petition seeking to initiate criminal contempt proceedings against Blacksands and Mr. Brennerman personally, including an Order to Show Cause for them to appear in Court to answer the charges. On March 7, 2017, Judge Kaplan summoned AUSAs Robert Benjamin Sobelman and Nicolas Tyler Landsman-Roos to his robing room to advise that an arrest warrant should be issued for Mr. Brennerman. (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2). The prosecution, consistent with Fed. R. Crim. P. 42, had prepared an Order to Show Cause that would have directed Blacksands and Mr. Brennerman to appear before the Court on a date in the future. The Court made clear, however that it did not agree with the government`s approach and advised the prosecutors that the Court should issue an arrest warrant instead as to Mr. Brennerman, stating his assumption that "the United States can`t find him." The prosecutors repeatedly expressed their view that execution of an arrest warrant was not necessary under the circumstances. (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2). The prosecutors advised, first, that Mr. Brennerman had actually called them on Friday, March 3, 2017, the same day that the Petition was filed to talk to them about that Petition. *Id.* The

prosecutors informed Mr. Brennerman that he could not speak with him, and Mr. Brennerman then provided his phone number so that "there may be a way for the government to be in touch with him via that telephone number." The prosecutors then proposed that the Order to Show Cause previously prepared and filed by the government, could be entered to require Mr. Brennerman to attend the conference and "should he not appear, [] a summons or arrest warrant be issued to secure his appearance." *Id.*

The Court continued to press the issue of an arrest warrant, asking '[w]hy shouldn`t I, given the history in this case issue a warrant?" (*See* Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2 At 5). The Prosecutors responded with a number of reasons, stating:

> Mr. Brennerman did try to contact the government on Friday, and we don`t know that he has absconded or seeks to abscond. He`s already knowledgeable about the petition. His email address is included on the ECF notification that went out when the petition was publicly filed. He appears to have the resources to have fled had he intended to, and the government thinks it`s prudent to provide him an opportunity to appear at the conference voluntarily.

Id. The prosecution went on to say that, even if the Court issued an arrest warrant, "the government would likely provide Mr. Brennerman an opportunity to surrender rather than dispatching law enforcement to apprehend him without providing that opportunity." *Id.*

The Court pressed on, stating "I`m inclined to issue an arrest warrant" and pushed back against the prospect that Mr. Brennerman should be allowed to surrender: "Now, if the government is going to give him an

opportunity to surrender; there`s a substantial question as to whether I`m wasting my time because I think the odds are not unreasonable that he will abscond". *Id.* at 6.

Eventually the prosecutors deferred to the Court and confirmed that if an arrest warrant was issued, they would discuss in their office how best to proceed. *Id.* at 7. Thus, as of March 7, 2017, when the government entered the robing room, there was no pending investigation of fraud as to Mr. Brennerman with the prosecutors in the Southern District of New York, and the government was prepared to proceed with a contempt proceeding by Order to Show Cause and had no concern that Mr. Brennerman would seek to abscond.

Thus pursuant to the arrest warrant prepared and signed by Judge Kaplan, Mr. Brennerman was arrested on April 19, 2017 at his home in Las Vegas. As of the date of the arrest warrant and because the Court had declined to sign the order to show cause presented by the government, there was no actual contempt charge pending against Mr. Brennerman. The Court omitted Mr. Brennerman from the signed Order to Show Cause but then failed to otherwise rule or grant the government`s Petition as it related to Mr. Brennerman. There was, therefore, no proper basis for the arrest warrant. The Court`s decision to alter the warrant to reference the Petition was inadequate to support the warrant. (The arrest warrant included an option for a Probation Violation Petition; those instruments, unlike a Petition

in a contempt proceeding, actually do charge an offense). (*See* Arrest Warrant, No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 3).

Mr. Brennerman`s arrest on April 19, 2017 (when government seized his electronic devices and documents (which was adduced as evidence (e-mails between Mr. Brennerman (on behalf of Blacksands) and Madgett (ICBC London) at trial of the contempt and fraud case (where the government actually never obtained or reviewed any pertinent ICBC transaction files from ICBC (London) plc) was in violation of both Mr. Brennerman`s Fourth and Fifth Amendment rights.

THE INDICTMENT AND ORDER TO SHOW CAUSE

On May 31, 2017, weeks after Mr. Brennerman was released on bail in the criminal contempt of court case, he was re-arrested by the U.S. Attorney`s Office pursuant to an indictment alleging fraud in connection with the transaction that was at issue in the underlying civil action, No. 15 Cv. 70 (LAK) between ICBC (London) PLC and The Blacksands Pacific Group, Inc (even though the civil action had been ongoing for two and half years at that point) Mr. Brennerman was charged with Conspiracy to commit bank and wire fraud, bank fraud and wire fraud. *Id.* The case was assigned to Hon. Richard J. Sullivan, under the caption, *United States v. Brennerman*, No. 17 Cr. 337 (RJS).

In August 2017, because Judge Kaplan had failed to sign the Order to Show Cause as it related to Mr. Brennerman in the criminal contempt of

court case at No. 17 Cr. 155 (LAK) (even though Mr. Brennerman had been arrested at the behest of Judge Kaplan) he had revoked the bail granted to Mr. Brennerman even without any violations of the bail conditions. The government realizing their error filed a new two count Order to Show Cause Petition formally charging Mr. Brennerman in the criminal contempt of court case. (*See* Order to Show Cause, *Brennerman* No. 17 Cr. 155, EFC No. 59).

THE DISTRICT COURT`S DECISION

In August 2017, prior to trial for the criminal contempt of court case, Mr. Brennerman sought to obtain the complete ICBC records (including the underwriting file and negotiations between agents of Blacksands and ICBC London) to demonstrate his innocence and to present a complete defense. However Mr. Brennerman`s request to the Manhattan federal prosecutors was denied. The [Manhattan federal prosecutors] refused to obtain or review the complete ICBC records including the underwriting files, arguing that they were not obligated to collect any additional evidence from ICBC London beyond what the bank had selectively provided to them. Judge Kaplan also denied Mr. Brennerman`s request seeking to compel the complete ICBC record. *See* 17-cr-155 (LAK), Dkt. No. 76

THE TRIAL AND POST-TRIAL PROCEEDINGS

During trial, District Court (Judge Kaplan) rejected defendant argument regarding presentment of the civil contempt order to the jury, ruling that the government could present evidence that both the company

and Mr. Brennerman had been found in contempt of Court (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 3-7). A juror named Gordon later told the media - Law 360 that the civil contempt orders swayed the jury to find Mr. Brennerman guilty of criminal contempt (*See* Law 360 Article, No. 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17).

Mr. Brennerman was deprived of the very evidence he required to defend himself. Although such evidence (agents of ICBC London requesting settlement discussion) plainly was relevant to the issue of Mr. Brennerman`s willfulness in failing to comply with the Court`s discovery orders, the District Court refused repeatedly to allow counsel to elicit such evidence on the issue and so the record was devoid of the precise evidence that would have demonstrated the defendant`s lack of intent (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 269-277; 236-249).

The District Court went a step further and proposed an instruction to the jury that settlement discussions in a civil case did not excuse a defendant`s failure to comply with the court's discovery order absent an order suspending or modifying the requirement to comply (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 509-510). Defense counsel objected arguing that even if that were technically true, if the parties specifically engaged in settlement discussion with the understanding that discovery would not be pursued, such evidence was certainly relevant to defendant`s intent in not complying with the Court`s order and should have been considered by the jury. The District

Court (Judge Kaplan) overruled counsel`s objection and instructed the jury as indicated. (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 538-544).

The trial commenced on September 6, 2017 and concluded on September 12, 2017 with the jury returning a guilty verdict on both counts of criminal contempt.

THE COURT OF APPEAL DECISION

The Second Circuit found that the District Court did not err in its failure to compel ICBC`s production of its entire file because Brennerman did not comply with the rules governing subpoenas under Rule 17(d) of the Federal Rules of Criminal Procedure when he served ICBC`s New York-based attorney, not the ICBC`s London branch. *United States v. Brennerman,* No. 18 1033(L), WL 3053867 at *1 (2d Cir. June 9, 2020). The Court further concluded that, "the prosecution was under no obligation to make efforts to obtain information beyond what it previously collected and turned over to Brennerman." *Id.*

As to the evidence concerning settlement discussions, the Second Circuit found that the district court had allowed Brennerman "to introduce evidence concerning settlement discussions on the condition that he establish his knowledge of the substance of the exhibits and their relationship to the relevant time period..." and that "through cross-examination, Brennerman was able to introduce evidence about the parties' settlement discussions. *Id.* at *2. The Second Circuit found that "the district court did not abuse its

discretion in admitting some but not all of this evidence, and Brennerman had failed to point to any specific evidence that would have helped his case had it been submitted." *Id.*

In regard to the admission of the civil contempt order against Brennerman, the Second Circuit found that "the district court correctly determined, the civil contempt orders were relevant to Brennerman`s willfulness. To minimize any potential prejudicial effect, the district court redacted portions of the orders and instructed the jury on the limited purposes for which it could consider the civil contempt orders in the context of a trial about criminal contempt." *Id.*

The panel denied a motion for rehearing by order dated September 9, 2020. (*See* Order, No. 18 1033, EFC No 318).

IX. REASON FOR GRANTING CERTIORARI

ARGUMENT

This Petition presents an opportunity for the Court to clarify (a) whether the abuse of discretion standard imposed by United States Court of Appeals for the Second Circuit is Constitutionally permissible - where the Circuit Court refused to correct errors which substantively abridges and abrogates the rights of criminal defendant which are protected by the United States Constitution and (b) where trial Court deliberately deprived the criminal defendant of his Constitutional rights thus violating his Fifth and Sixth Amendment rights of the U.S. Constitution.

This case will clarify the obligations of lower Courts as a matter of public interest to emphasize conformity and uniformity with the law and Constitution among lower Courts in ensuring adherence with their Constitutional obligations and avoid attack on the civil rights and liberty of criminal defendants because of their race, sex or religion.

I. THE SECOND CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT`S 1) ADMISSION OF THE CIVIL CONTEMPT ORDER AGAINST PETITIONER; 2) FAILURE TO COMPEL PRODUCTION OF CERTAIN EXCULPATORY MATERIALS; AND 3) PRECLUSION OF THE ADMISSION OF EVIDENCE PERTAINING TO SETTLEMENT NEGOTIATIONS, BECAUSE THE ISSUES RAISED ARE QUESTION OF EXCEPTIONAL IMPORTANCE. THIS CASE RAISE ISSUES OF IMPORTANT SYSTEMIC CONSEQUENCES FOR THE DEVELOPMENT OF THE LAW AND ADMINISTRATION OF JUSTICE

A. ADMISSION OF THE CIVIL CONTEMPT ORDER VIOLATED PETITIONER`S CONSTITUTIONAL RIGHTS WHERE THE COURT FAILED TO AFFORD HIM THE EQUAL PROTECTION GUARANTEE AND THE PROSECUTION VIOLATED HIS RIGHT TO DUE PROCESS OF LAW

In *OSRecovery*, the Second Circuit U.S. Court of Appeals vacated civil contempt adjudicated by Judge Lewis A. Kaplan ("Judge Kaplan") against a party who was not part of the civil case. *OSRecovery, Inc., v. One Groupe Int`l, Inc.*, 462 F.3d 87, 90 (2d Cir. 2006). In vacating the contempt order the Court of Appeals stated directly to Judge Kaplan that the Court abused its discretion by holding a non-party in civil contempt propounded against him solely for the purpose of discovery without providing any legal authority or clear explanation for doing so. In 2016, Judge Kaplan ignored the law and held Petitioner, a non-party who was not involved in the underlying case, *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.*, in contempt without providing any legal authority or clear explanation. (*See* Order; Mem. & Order, No. 15 Cv. 70 EFC. Nos. 139-40). This time, Judge Kaplan went a step further and referred Petitioner to Manhattan prosecutors to be prosecuted criminally. The prosecution undertook no diligence or investigation prior to initiating criminal contempt charges against Petitioner.

During trial of the criminal contempt of court case, Judge Kaplan permitted the prosecution to present to the jury the civil contempt order erroneously adjudged against Petitioner which was in tension with the law. (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 3-7). Such presentment significantly prejudiced Petitioner, because the judge allowed the presentment of an

erroneously adjudged civil contempt order as evidence to the jury (that concluded that Petitioner must be guilty of criminal contempt), without allowing Petitioner to present the background to the adjudication of the civil contempt order. (*See* Law 360 Article, No. 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17).

The question of whether the civil contempt order was properly admitted against Petitioner goes beyond a simple analysis of Rules 403 and 404(b) of the Federal Rules of Evidence. Petitioner was a non-party in the civil lawsuit at the time of the order. Because the order was erroneously adjudged against him, its erroneous admission had more serious legal implication above and beyond an abuse of discretion analysis.

The Second Circuit had previously held that "because the power of a district court to impose contempt liability is carefully limited, our review of a contempt order for abuse of discretion is more rigorous than would be the case in other situations in which abuse-of-discretion review is conducted." *Hester Indus., Inc. v. Tyson Foods, Inc.*, 160 F.3d 911, 916 (2d Cir. 1998). "Moreover, we think it is fundamentally unfair to hold [a non-party] in contempt as if he were a party without legal support for treating him, a non-party, as a party but only for the purpose of discovery." *OSRecovery, Inc.*, 462 F.3d at 90. In *OSRecovery*, the Second Circuit court had found that the district court abused its discretion by holding a person "in contempt as a party without sufficient explanation or citation to legal authority supporting

the basis upon which the court relied in treating [him] as a party—for discovery purposes only—despite the fact that [he] was not actually a party." *Id.* at 93.

Here Judge Lewis A. Kaplan (the same district judge whose contempt order the Second Circuit court found inappropriate in *OSRecovery*) held Petitioner in civil contempt as a non-party and failed to provide any legal authority or present any particular theory for treating him as a party solely for the purpose of discovery. (*See* Order; Mem. & Order, No. 15 Cv. 70 (LAK), EFC. Nos. 139-40). No court orders, subpoenas, or motion to compel were ever directed at Petitioner personally nor was he present during the civil case`s various proceedings.

The erroneous admission of the civil contempt order was more than an evidentiary error. It violated the Second Circuit court`s instructions concerning contempt order against non-parties. On appeal, the Second Circuit affirmed district court`s rulings creating disparity with the Second Circuit`s treatment and review of such order`s and deprived Petitioner of his Constitutional right to an equal protection guarantee.

B. FAILURE TO COMPEL PRODUCTION OF CERTAIN EXCULPATORY MATERIALS VIOLATED PETITIONER`S SIXTH AMENDMENT RIGHT, WHERE HE WAS DEPRIVED OF THE EVIDENCE HE REQUIRED TO PRESENT A COMPLETE DEFENSE

Petitioner`s central argument concerning the ICBC production requests is that there existed exculpatory evidence materials that were not provided to him and could not otherwise be compelled due to Rule 17

limitations regarding foreign entities. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 551-554). The Second Circuit did not address Petitioner's argument that, if the government claimed that it had produced all documents in its possession but the omission of the entire file was glaringly obvious, then it follows that the government was aware that relevant information existed and was therefore, withholding material that it could (and should) have obtained, in violation of *Brady*. *See Brady v. Maryland*, 373 U.S. 83 (1963).

Because Petitioner was effectively barred from obtaining relevant evidence, such as the entirety of his communications with ICBC representatives, due to subpoena constraints, he was denied the opportunity to put forth a complete defense.

Because no meaningful inquiry was conducted, either at the district court or before the Second Circuit, concerning the discrepancies between the government's representations that the production was complete and the obviously incomplete materials produced, the issue of whether *Brady* obligations were flouted by the government remains open. *See Brady v. Maryland*, 373 U.S. 83 (1963). The sanctity of *Brady* obligations cannot be interpreted as anything less than a question of exceptional importance warranting further reconsideration on this point. *See Id.*

C. PRECLUSION OF THE ADMISSION OF EVIDENCE PERTAINING TO SETTLEMENT NEGOTIATIONS (DUE TO FAILURE TO PERMIT FULL SETTLEMENT NEGOTIATION EVIDENCE) VIOLATED PETITIONER`S CONSTITUTIONAL RIGHT WHERE HE WAS DEPRIVED OF EVIDENCE HE REQUIRED TO PRESENT A COMPLETE DEFENSE

Without the entire ICBC file, Petitioner was precluded from presenting evidence regarding settlement negotiations between Blacksands and ICBC. Petitioner avers that evidence of these negotiations would have convinced the jury that he had not willfully disobeyed any court orders.

Although Petitioner was permitted certain lines of questioning concerning settlement negotiations, the admitted evidence was woefully inadequate to set forth his complete defense. Petitioner was attempting to elicit evidence of settlement discussions with agents of ICBC that, he argued, would have demonstrated that he was not willfully disobeying the district court`s discovery orders but was instead prioritizing settlement with ICBC over Blacksands' discovery obligations. This evidence was not permitted, could not be elicited through cross-examination of witnesses, and was not part of the jury instruction. (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 236-277). Although such evidence was plainly relevant to the issue of Petitioner`s willfulness in failing to comply with the court`s discovery orders, the record was devoid of the precise evidence that would have demonstrated the Petitioner`s lack and intent. The district court exacerbated the harm by instructing the jury that settlement discussions in a civil case did not excuse a defendant`s failure to comply with the court`s discovery order absent an

order suspending or modifying the requirements to comply. (*See* Trial Tr., No. 17 Cr. at 509-510; 538-544).

The limitation on evidence of settlement negotiations was not merely an evidentiary issues, but rather, a constitutional one which violated Petitioner`s right to present a defense. The violation was compounded by the fact that the district court essentially eviscerated the element of intent in determining whether Petitioner was guilty of criminal contempt. The Second Circuit`s decision failed to address the manner in which the district court`s evidentiary rulings precluded Petitioner`s right to present a complete defense.

The danger of the Second Circuit rule is amply demonstrated by the consequences of erosion of public trust in the United States Justice system and other institutions. As the Fourth Circuit recently promulgated "what gives people confidence in our justice system is not that we merely get things right rather, it is that we live in a system that upholds the rule of law even when it is inconvenient to do so". The lower Court - United States Court of Appeals for the Second Circuit and United States District Court for the Southern District of New York veered from the rule of law in this case. Interests of comity - in addition to fairness and substantial justice as embodied in the Due Process Clause and the U.S. Constitution - warrant reversal of the Second Circuit decision.

X. CONCLUSION

The petition for certiorari should be granted.

Dated: White Deer, Pennsylvania
December 28, 2020

Respectfully submitted,
/s/ Raheem J. Brennerman

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XI. APPENDIX TABLE OF CONTENTS