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

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UNITED STATES OF AMERICA,

Respondent,

-vs-

Criminal Case No. 17 Cr. 337 (RJS)

RAHEEM J. BRENNERMAN,

Petitioner/Movant,

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PETITIONER SUPPLEMENTAL MOTION IN FURTHERANCE AND SUPPORT OF HIS OMNIBUS MOTION  
INCLUDING MOTION FOR COLLATERAL ATTACK RELIEF PURSUANT TO 28 UNITED STATES CODE  
SECTION 2255 AND OTHER RELIEFS

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I. RELIEF REQUESTED

Petitioner/Movant Pro Se Raheem Jefferson Brennerman ("Brennerman or Petitioner") respectfully submits this supplemental motion (the "Supplemental Motion") in furtherance and support of his Omnibus Motion including Collateral Attack Petition (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 1007 for an order:

(a.) Expediting the adjudication of Brennerman's Omnibus Motion including Collateral Attack Motion and Other Reliefs at EFC Nos. 269, 270, 272 and the Opposition to preliminary order of forfeiture as to substitute asset at EFC Nos. 260, 261, 262, 265;

(b.) Granting Brennerman's collateral attack petition pursuant to 28 United States Code Section 2255 (the "Collateral Attack Motion") to set-aside the judgment of conviction and vacate the sentence; and

(c.) Granting Brennerman's request for an order (the "Order") directing: (1.) ICBC (London) plc and ICBC London Branch, located at 81 King William Street, London. EC4N 7BG, England, United Kingdom, pursuant to the appropriate Federal Rule of Civil Procedure, or Federal Rule of Criminal Procedure and 28 United States Code Section 1781 ("Letter Rogatory"); and (2.) United States Attorney Office for the Southern District of New York; (3.) Linklaters LLP located at 1290 Avenue of the Americas, New York, New York 10104 and (4.) Attorney Paul S. Hessler, to produce to Petitioner, the Government and this Court, copies of the documents/evidence - ICBC (London) plc [underwriting file] related to the bridge loan transaction between ICBC (London) plc ("ICBC London"), The Blacksands Pacific Group, Inc., ("BSPG") and Blacksands Pacific Alpha Blue, LLC ("BSPAB") pursuant to Rule 6 and 7 of the Rules Governing Section 2255 Proceedings for the United States District Court to support arguments contained within Petitioner's Omnibus Motion including Collateral Attack Motion and demonstrate that he is entitled to relief, or any other relief which this Court may deem just, necessary or appropriate including evidentiary hearing. Furthermore to develop the record for publication.

II. COLLATERAL ATTACK PROCEDURAL HISTORY

On November 16, 2021, Petitioner's "Omnibus Motion including Collateral Attack Relief" was docketed at United States v. Brennerman, 17 Cr. 337 (RJS), EFC No. 269. Concurrently with docketing the Omnibus Motion, Petitioner's "Affidavit in furtherance and support of his Omnibus Motion including Collateral Attack Relief" was also docketed at 17 Cr. 337 (RJS), EFC No. 270.

On December 23, 2021, Petitioner filed correspondence in furtherance and support of his "Omnibus Motion including Collateral Attack Relief" and the "Affidavit in furtherance and support of his Omnibus Motion including Collateral Attack Relief" requesting

among others for recusal/disqualification of this Court (Judge Richard J. Sullivan) from continuing to preside over and/or adjudicate his Collateral Attack Petition. United States v. Brennerman, 17 Cr. 337 (RJS), EFC No. 272.

This instant supplemental motion follows.

### III. ARGUMENTS

A. THIS COURT (JUDGE RICHARD J. SULLIVAN) SHOULD EXPEDITE THE REVIEW OF PETITIONER'S CLAIM IN HIS OMNIBUS MOTION AND GRANT PETITIONER'S REQUEST FOR RECUSAL/DISQUALIFICATION OF THIS COURT AND/OR HIS REQUEST TO SET-ASIDE THE JUDGMENT OF CONVICTION AND VACATE THE SENTENCE

#### APPLICABLE LAW:

"[A]ctual innocence, if proved, serves as a gateway through which a petitioner may pass" if he or she has otherwise procedurally defaulted federal habeas review of a claim. *McQuiggin v. Perkins*, 569 U.S. 383, 133 S. Ct. 1924, 1928, 185 L. Ed 2d 1019 (2013); see also *House v. Bell*, 547 U.S. 518, 536-37, 126 S. Ct. 2064, 165 L. Ed 2d 1 (2006). The exception is limited to instances where the claim of innocence is both credible and compelling. *Rivas v. Fischer*, 687 F.3d 514, 541 (2d Cir. 2012). A claim is credible if the petitioner sets forth new, reliable evidence that was not presented at trial. *Id.* A claim is compelling when the petitioner demonstrates that "no reasonable juror would have found [him] guilty[,]...in light of the new evidence." *Schlup v. Delo*, 513 U.S. 298, 329, 115 S. Ct. 851, 130 L. Ed 2d 808 (1995).

#### DISCUSSIONS:

As highlighted within the "Affidavit in furtherance and support of Petitioner's Omnibus Motion including Collateral Attack Relief" at *United States v. Brennerman*, 17 Cr. 337 (RJS), EFC No. 270, Petitioner asserts "actual innocence" where this Court (Judge Richard J. Sullivan) in a demonstration of partiality and interest in the outcome of the criminal proceedings, intentionally misrepresented (fabricated) evidence by surreptitiously supplanting Morgan Stanley Smith Barney, LLC, a non-FDIC insured institution with Morgan Stanley Private Bank, a FDIC insured institution, so as to falsely satisfy the law to convict and imprison Brennerman for bank fraud and bank fraud conspiracy. See *U.S. v. Brennerman*, 17 Cr. 337 (RJS), EFC Nos. 269, 270, 272; see also 17 Cr. 337 (RJS), EFC No. 272 (emphasis added).

Petitioner further asserts actual innocence in respect of other counts of conviction and contends that he was intentionally deprived of pertinent and exculpatory documents/evidence - ICBC [underwriting file] which he required at trial to present his complete defense and confront witness(es) against him. In this collateral attack proceeding, he requires the pertinent and exculpatory evidence - ICBC [underwriting file] to support his arguments as more succinctly detailed below.

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 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 rights 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." *Edward v. Balisok*, 520 U.S. 641, 647 (1997) (citations omitted).

Here, because the judge (Judge Richard J. Sullivan) who presided over the entire criminal proceedings demonstrated his partiality and interest in the outcome of the case by intentionally misrepresenting and distorting evidence so as to falsely satisfy the essential element necessary to convict a criminal defendant, Brennerman. He (Judge Sullivan), cannot be said to be impartial because he has clearly demonstrated an interest in the outcome of the case.

Petitioner suffers from serious medial condition(s) as already highlighted in prior filings. Thus, given that Petitioner asserts actual innocence, review of his federal habeas claim is warranted. Furthermore, in light of the Supreme Court holding in "*Edward v. Balisok*, 520 U.S. 641, 647 (1997) (citation omitted)," this Court should set aside the conviction and vacate the sentence, to avoid continued exacerbation of the Constitutional rights deprivation and gross miscarriage of justice already suffered by Petitioner in this case.

B. THIS COURT (JUDGE RICHARD J. SULLIVAN) SHOULD GRANT PETITIONER'S REQUEST FOR PERTINENT AND EXCULPATORY EVIDENCE - ICBC (LONDON) PLC [UNDERWRITING FILE] WHICH PETITIONER REQUIRES IN SUPPORT OF HIS COLLATERAL ATTACK PETITION ARGUMENTS AND TO DEMONSTRATE THAT HE IS

## ENTITLED TO RELIEF

## APPLICABLE LAW:

"A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practice and principles of law". Rule 6(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts. "A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents." Rule 6(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts. "Before addressing whether petitioner is entitled to discovery under [Rule 6 of the Rules Governing Section 2255 Proceedings for the United States District Courts ("Rule 6")] to support his [constitutional violation] claim, [the court] must first identify the 'essential elements' of that claim." *Bracy v. Gramley*, 520 U.S. 899, 904, 117 S. Ct. 1793, 1797, 138 L. Ed 2d 97 (1997).

A petitioner "bears a heavy burden in establishing a right to discovery." *Renis v. Thomas*, No. 02 Civ. 9256 (DAB)(RLE), 2003 U.S. Dist. LEXIS 18417, 2003 WL 22358799, at \*2 (S.D.N.Y. Oct. 16, 2003) (citing *Bracy*, 520 U.S. at 904 [117 S. Ct. 1793]). In order to show 'good cause,' a petitioner must present "specific allegations" that gives the Court "reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is....entitled to relief." *Bracy*, 520 U.S. at 908-09 [117 S. Ct. 1793] (quoting *Harris v. Newlon*, 394 U.S. 286, 300 [89 S. Ct. 1082, 22 L. Ed 2d 281] (1969)). A court may deny a petitioner's request for discovery "where the petitioner provides no specific evidence that the requested discovery would support his habeas corpus petition." *Hirschfeld v. Comm'r of the Div. of Parole*, 215 F.R.D. 464, 465 (S.D.N.Y. 2003); see also *Charles v. Artuz*, 21 F. Supp. 2d 168, 170 (E.D.N.Y. 1998). Generalized statements regarding the possibility of the existence of discoverable material will not be sufficient to establish the requisite "good cause" See *Gonzalez v. Bennett*, No. 00 Civ. 8401 (VM), 2001 U.S. Dist LEXIS 19798, 2001 WL 1537553, at \*4 (S.D.N.Y. Nov. 30, 2001); *Green v. Artuz*, 990 F. Supp. 267, 271 (S.D.N.Y. 1998); *Munoz v. Keane*, 777 F. Supp 282, 287 (S.D.N.Y. 1991), *aff'd sub nom., Linares v. Senkowski*, 964 F.2d 1296 (2d Cir. 1992). *Ruine v. Walsh*, 00 Civ. 3798 (RWS), 2005 U.S. Dist. LEXIS 14297, 2005 WL 1668855 at \*6 (S.D.N.Y. July 14, 2005) (Sweet, D.J.). Furthermore, "Rule 6 does not license a petitioner to engage in a "fishing expedition by seeking documents merely to determine whether the requested terms contain any ground that might support his petition, and not because the documents actually advance his claims of error." *Ruine v. Walsh*, *supra*, 2005 U.S. Dist. LEXIS 14297, 2005 WL 1668855 at \*6, quoting *Charles v. Artuz*, 21 F. Supp. 2d 168, 169 (E.D.N.Y. 1998).

To obtain relief on an ineffective assistance of counsel claim, a movant must establish that his counsel's performance was: (1.) deficient, such that "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed 2d. 674 (1984); and (2) prejudicial so "that counsel's error were so serious as to deprive the defendant of a fair trial whose result is reliable." *Id.* at 687, 104 S. Ct. at 2054

#### DISCUSSION:

The United States Court of Appeals for the Second Circuit 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. This promulgation, highlighted that Brennerman's trial counsel Thompson Hine LLP through Attorneys Maranda Fritz and Brian Waller, failed to seek subpoena pursuant to Federal Rule of Criminal Procedure 17 for the production of pertinent and exculpatory evidence, the ICBC (London) plc transaction documents / evidence including the [underwriting file], which Petitioner required at trial. Such failure by Petitioner's trial counsel deprived him [Petitioner] of the ability to present a complete defense and confront witness(es) against him, in violation of his Sixth Amendment right as promulgated by the United States Supreme Court, that a criminal defendant has a Sixth Amendment right to present a complete defense. See "Crane v. Kentucky, 476 U.S. 683 (1986) (holding that "It is a federal law that a criminal defendant has a Constitutional right to present a complete defense".)" The United States Court of Appeals for the Second Circuit adopted such holding in "Scrimo v. Lee, 935 F.3d 103 (2d Cir. 2019)."

The aforementioned documents/evidence, ICBC London [underwriting file] would have highlighted to the Court and jury that Petitioner was/is actually innocent of the charged crime because ICBC (London) plc did not rely on any representations or alleged misrepresentations by Petitioner or BSPG in approving the bridge loan finance, however Petitioner was deprived of the ability to present the ICBC London document/evidence which would have created reasonable doubt in the minds of the jury, due to his trial counsel's deficient performance and failure to compel for the production of those documents/evidence using appropriate Federal Rule of Criminal Procedure or Civil Procedure or "Letter Rogatory" pursuant to 28 United States Code Section 1781 for documents/evidence located abroad at the ICBC (London) plc office in London, United Kingdom.

The requested documents/evidence - ICBC London [underwriting file] related to the bridge loan transaction will allow Petitioner to succinctly demonstrate his actual innocence and expand the record in support of his arguments contained within his Collateral Attack Motion and to demonstrate that he is entitled to relief.

Government sole witness from ICBC London, Mr. Madgett testified that the bank, ICBC (London) plc produced the entire transaction documents related to the bridge loan transaction between ICBC London, BSPG and BSPAB to their New York based attorney, Linklaters LLP who were required to turn those documents/evidence to the U.S. Attorney Office.

Furthermore, the aforesaid requested documents/evidence - ICBC London [underwriting file] will also demonstrate the conspiracy to deprive Petitioner of those documents/evidence by highlighting the communication(s) between the prosecutors at United States Attorney Office for the Southern District of New York ("USAO, SDNY") and Linklaters LLP which led to Attorney Paul S. Hessler withholding the production of those pertinent documents/evidence, a reason why the prosecution and Court endeavors to suppress the production of those documents/evidence and deprive Petitioner of the documents/evidence he requires in support of his arguments contained within his Collateral Attack Motion and to demonstrate that he is entitled to relief.

For unequivocal clarification and specificity, the ICBC London [underwriting file] is the document/evidence which Government witness, Mr. Julian Madgett testified to at U.S. v. Brennerman, 17 Cr. 337 (RJS), trial tr. 551-554; see also U.S. v. Brennerman, 17 Cr. 337 (RJS), EFC No. 272 Ex. 1; U.S. v. Brennerman, et. ano., 17 Cr. 155 (LAK), EFC No. 215 Ex. 1; and Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 9 Ex. 1.

#### HISTORY OF CONSPIRACY TO DEPRIVE PETITIONER OF THE REQUESTED DOCUMENTS/EVIDENCE SO AS TO WRONGLY CONVICT AND FALSELY IMPRISON HIM

The history of this conspiracy commenced in 2016, when Judge Lewis A. Kaplan ignored the federal rule to conduct extra-judicial research into Petitioner, Raheem Jefferson Brennerman ("Brennerman"), including Googling Brennerman and realizing that he a black businessman, Judge Kaplan invited Linklaters LLP through Attorney Paul S. Hessler, who was responsible for the ICBC London relationship at Linklaters LLP's New York office to pursue Brennerman for contempt even while there was no court order directing Brennerman personally to do anything. The underlying civil case before Judge Lewis A. Kaplan, at Civil Action No. 15 Cv. 0070 (LAK) was between ICBC London and BSPG, an oil and gas corporation where Brennerman was Chairman and CEO. Without even filing a motion to compel Brennerman personally, Mr. Hessler filed an order to hold Brennerman in contempt of court, illegally piercing through the corporate veil of BSPG. Judge Kaplan did not permit either Brennerman or his attorney enough time to appear in Court before granting Mr. Hessler's request and holding Brennerman

personally in civil contempt. Following which Judge Kaplan then actively sought U.S. DOJ prosecutors at USAO, SDNY to prosecute Brennerman criminally. When the initial set of federal prosecutors refused to prosecute, Judge Kaplan actively sought more willing prosecutors.

In early 2017, the new U.S. DOJ prosecutors from USAO, SDNY charged Brennerman in two interrelated criminal cases, criminal contempt of court at case no. 17 Cr. 155 (LAK), before the same judge who initiated the prosecution, Judge Lewis A. Kaplan and fraud case at case no. 17 Cr. 337 (RJS), before Judge Richard J. Sullivan.

The criminal contempt of court case charged Brennerman with flagrant defiance and willful disobedience of a legal court order issued by Judge Lewis A. Kaplan to BSPG notwithstanding that Brennerman was not personally named in the said court order. The fraud case charged Brennerman with fraud related to the bridge loan transaction between ICBC London, BSPG and BSPAB. Both criminal cases required the requested documents/evidence, [underwriting file], [meeting minutes], [notes], [e-mail] from ICBC London, to demonstrate that neither BSPG or Brennerman willfully disobeyed or defied the court order, because agents of ICBC London continually advised agents of BSPG and Brennerman that they were interested in settling rather than receiving more discovery (BSPG had already provided over 400 pages of discovery at that point), compelling Brennerman and agents of BSPG to focus on settlement rather than discovery. A settlement was agreed-in-principle prior to commencement of the prosecution (see Draft Settlement Agreement at U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 12 Ex. 10), however Judge Kaplan insisted on proceeding with the criminal prosecution. The [underwriting file] was also required for Brennerman's defense in the fraud case, for him to demonstrate that ICBC London did not rely on any representations or alleged misrepresentations by BSPG or Brennerman, in approving the bridge loan.

However, Linklaters LLP through Attorney Paul S. Hessler conspired with the U.S. DOJ prosecutors at USAO, SDNY acting on behalf of Judge Lewis A. Kaplan, to deprive Brennerman access to the documents/evidence by intentionally withholding the production of those pertinent and exculpatory evidence/documents to the U.S. DOJ prosecutors at USAO, SDNY, so as to ensure that they [prosecutors] would not produce the documents/evidence to Brennerman for his defense.

During trial of this instant fraud case, the U.S. DOJ prosecutors from USAO, SDNY presented their sole witness from ICBC London, Mr. Julian Madgett, who testified to the jury as to the contents of the underwriting file in establishing the essential element of "Materiality" necessary to convict Brennerman, knowing that Brennerman had been deprived of the documents/evidence he required to challenge Mr. Madgett's testimony and defend himself. The U.S. DOJ prosecutors from USAO, SDNY never obtained or independently reviewed the underwriting file to corroborate the statements of Mr. Madgett prior to charging Brennerman with a crime or presenting his testimony at trial. More significantly, the U.S. DOJ prosecutors from USAO, SDNY never obtained or produced those documents/evidence to Brennerman for his defense. The reason why the prosecutors refused to obtain or independently review the underwriting file is so that they can argue that it [ICBC underwriting file] is not BRADY material, because if the documents/evidence were never in their custody then they can argue that they are not obligated to produce it to Brennerman for his defense. This was done with the deliberate intention to violate Brennerman's Constitutional rights.

At trial, Mr. Madgett testified as to the existence of the underwriting file, its importance to the criminal cases. He [Madgett] testified that the underwriting file documents the basis for the bank, ICBC London approving the bridge loan finance between ICBC London, BSPG and BSPAB, thus highlights what the bank relied upon in approving the bridge loan. Yet the U.S. DOJ prosecutors from USAO, SDNY refused to obtain review or produce the documents/evidence. Mr. Madgett also testified that the bank, ICBC (London) plc produced all documents/evidence related to the transaction to their New York based counsel, Linklaters LLP and Attorney Paul S. Hessler and he [Madgett] was unaware whether those documents / evidence were fully turned over to the defense. See U.S. v. Brennerman, 17 Cr. 337 (RJS), trial tr. 551-554; see also U.S. v. Brennerman, 17 Cr. 337 (RJS), EFC No. 272 Ex. 1; U.S. v. Brennerman et ano., 17 Cr. 155 (LAK), EFC No. 215 Ex. 1; and Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 9 Ex. 1.

To convict Brennerman for bank fraud and bank fraud conspiracy, Judge Richard J. Sullivan then intentionally misrepresented (fabricated) evidence by surreptitiously supplanting Morgan Stanley Smith Barney, LLC, a non-FDIC insured institution with Morgan Stanley Private Bank, a FDIC insured institution, so as to falsely satisfy the law to convict and imprison Brennerman. See U.S. v. Brennerman, 17 Cr. 337 (RJS), EFC Nos. 269, 270, 272; see also 17 Cr. 337 (RJS), EFC No. 272 (emphasis added). Throughout the prosecutions, both Judge Kaplan and Judge Sullivan intentionally denied and deprived Brennerman access to those ICBC London documents/evidence. See United States v. Brennerman, 17 Cr. 337 (RJS), EFC Nos. 71, 153, 161, 187, 200, 236, 241, 248, 250, 254, 256.

During appeal of the criminal convictions, as highlighted at U.S. v. Brennerman, 17 Cr. 337 (RJS), EFC No. 269, the Second Circuit U.S. Court of Appeals' panel Court of three appellate judges, in an endeavor to protect Judge Sullivan, obfuscated on the issue of misrepresentation with respect to the bank fraud conviction and falsely stated in their affirmation summary order

that "the only indication that such documents [ICBC underwriting file] are extant comes from Brennerman's bare assertions (Slip Op., No. 18-3546, EFC No. 183 at 4-5)" in contrast with the case record and testimony at U.S. v. Brennerman, 17 Cr. 337 (RJS), trial tr. 551-554.

#### IV. CONCLUSION

Petitioner Pro Se Raheem J. Brennerman respectfully submits this supplemental motion in support of his Omnibus motion including Collateral Attack Petition, and prays that this Court grants his requests in its entirety.

Dated: March 28, 2022  
White Deer, Pa. 17887-1000

Respectfully submitted

/s/ Raheem J. Brennerman  
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