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The Rt. Hon. David Cameron MP
United Kingdom Foreign Secretary
Foreign Commonwealth & Development Office
King Charles Street
London, SW1A 2AH
United Kingdom

The Rt. Hon. David Rutley, MP
Minister for Americas and the Caribbean
Foreign, Commonwealth & Development Office
King Charles Street
London, SW1A 2AH
United Kingdom

The Rt. Hon. Greg Hands MP
Member of Parliament for Chelsea and Fulham
Chairman of the Conservative Party
House of Commons
London, SW1A 0AA
United Kingdom

re: Raheem Jefferson Brennerman
FCDO Reference No. CON-340635

Dear Sirs:

I am writing on behalf of my client, Raheem Brennerman, regarding the serious flaws inherent in his two related criminal convictions in the United States. These flaws resulted in a clear miscarriage of justice. The American judicial system has failed to correct that injustice, so he is relying on your help. This letter summarizes the most significant errors; more details regarding those cases can be found in my previous letter, dated September 1, 2023.

The Fraud Case: *United States v. Brennerman*, 17-cr-337 (S.D.N.Y.)

a. Failure to Provide Critical Evidence

When the prosecution began to investigate whether Mr. Brennerman's relationship with the London Branch of the Industrial Commercial Bank of China (ICBC) involved fraud, it sought relevant documents from the bank's New York-based counsel, Paul S. Hessler. Hessler provided documents involving communications between the bank and Mr. Brennerman, along with communications between the bank and Blacksands Pacific (the oil and gas company Mr. Brennerman founded). However, he did *not* provide internal ICBC documents underlying the bank's decision to provide Blacksands a loan. Conspicuously absent was the transaction underwriting file, which would have supported or disproved the allegation that Brennerman had misled the bank when he applied for the loan on behalf of Blacksands. Significantly, those documents would also indicate which statements made by Mr. Brennerman to ICBC were material to the bank's decision to go ahead with a loan.¹ Also absent were notes made by Julian Madgett, the ICBC banker who dealt with Brennerman, and was the prosecution's key witness at trial.

Defense counsel attempted to serve Mr. Hessler with a subpoena, requesting, *inter alia*, "[a]ll documents relating to any application by Blacksands to ICBC for financing including loan applications" (*United States v. Blacksands Pacific Group, Inc.*, 15-cv-70, Doc. #165-1). Hessler refused to accept the subpoena, and "emphasized that ICBC (London) is a 'foreign bank' and so may not be otherwise subject to service" (*Id.*, Doc. 164 at p. 3).

Accordingly, the defense moved for an order to show cause, arguing that such a court ruling was "the only means by which to obtain the documents necessary to respond to the government's claims" (Doc. 164 at p.4). The trial court denied the defense motion (*Id.*, Doc. 174).

The defense also sought the prosecution's help in obtaining the missing documents. The prosecution failed to obtain or review the missing ICBC files.

At the fraud trial, Mr. Madgett testified that contained within the underwriting file 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" (*United States v. Brennerman*, 17- cr-337, trial transcript at 553). In response to his testimony, the defense renewed its request that the court compel the prosecution to obtain the missing ICBC files (*Id.*, Doc. 71). The court denied Mr. Brennerman's request (*Id.*, trial transcript at 617-623).

¹ Whether or not statements made by Mr. Brennerman were material was essential to determining whether he was guilty of the crimes charged. As the judge instructed the jury, an essential element of the fraud charges was that "the scheme or artifice or the false and fraudulent statements or representations concerned material facts" (*United States v. Brennerman*, 17- cr-337, trial transcript at pp. 1620, 1622).

The requested documents would have established that, contrary to Madgett's testimony, Brennerman had made no material misrepresentations influencing the bank's decision to make the loan. Since Mr. Brennerman was denied of this critical evidence, which was vital to support his defense, his convictions were clear miscarriages of justice.

b. The fatal variance between the allegations in the indictment and the evidence at trial

The gravamen of the Brennerman indictment was that he obtained a loan from ICBC through fraud. The only other allegation of financial fraud was a generic claim that he "made similar misrepresentations" to other, unnamed financial institutions in order to obtain financing for Blacksands.

However, faced with the reality that its allegations about the ICBC loan would not support a bank fraud conviction since ICBC was not FDIC-insured, as required by the relevant statute, the prosecution pivoted at trial and argued that Mr. Brennerman's guilt was established by his dealings with Morgan Stanley, where he opened an account which came with "special perks, things like fancy credit cards and lower rates" (*United States v. Brennerman*, 17-cr-337, prosecutor's summation, trial transcript at 1430).

When, as here, the prosecution, through its argument, broadens the bases of conviction beyond those charged in the indictment, a prejudicial variance occurs. This fatal variance violated Mr. Brennerman's Fifth Amendment right to be indicted by a grand jury. It also violated his right to be informed of what he is accused of doing so that he could prepare his defense.

Moreover, even had the indictment included the Morgan Stanley "banking perks" theory, that evidence could not legitimately establish Mr. Brennerman's guilt of bank fraud because the entity that gave him those 'perks' was not FDIC-insured either. Nonetheless, the judge allowed the case to go to the jury on that theory, confusing that entity (Morgan Stanley's Wealth Management subsidiary, a non-FDIC-insured entity) with its FDIC-insured affiliate, and denied Mr. Brennerman's motion for a new trial or judgment of acquittal. The judge's ruling was fatally flawed as a matter of fact and law. As a matter of fact, the conviction could not stand because the government failed to prove that the subsidiary was a federally insured bank. As a matter of law, without evidence that it was a bank under the applicable statute, Mr. Brennerman's conviction could not stand.

The Criminal Contempt Case: *United States v. Brennerman*, 17-cr-155 (S.D.N.Y.)

a. Failure to Provide Critical Evidence

In 2014, ICBC instituted a civil suit against Blacksands to recoup the monies it had loaned to the company's subsidiary, and the district judge granted the bank's motion for summary judgment. As part of a post-judgment effort to locate the company's assets, ICBC served discovery requests on Blacksands. At the same time, Blacksands and ICBC were actively engaged in settlement negotiations, and Blacksands' attorney informed the court that it had agreed to pay the monetary judgment pending appeal.

The parties failed to reach a settlement and Blacksands failed to comply with the discovery request. The district court held Blacksands in civil contempt.

Mr. Brennerman was not a party to that case; nonetheless, the district judge held him in civil contempt for failure to comply with discovery requests. The judge subsequently referred the contempt matter to the prosecutor's office and recommended that the government pursue criminal contempt charges.

In preparation for trial and in support of his defense that he did not willfully disobey the court's order but rather was negotiating a settlement with the bank, Mr. Brennerman subpoenaed ICBC for all documents related to Blacksands, as well as any communications between ICBC and the Department of Justice. When ICBC did not comply, Mr. Brennerman filed a motion to compel discovery, contending that there were exculpatory materials which were not provided to him and were otherwise unavailable to him. His motion was denied, *inter alia*, on the ground that the subpoena was unenforceable against a foreign bank.

Because Mr. Brennerman was effectively barred from obtaining relevant evidence, he was denied his constitutional right to present a complete defense.

b. Improper Admission of the Civil Contempt Order at the Criminal Contempt Trial

At Mr. Brennerman's criminal trial, the trial judge allowed the prosecution to introduce the civil contempt order into evidence. Since the civil contempt order should never have been imposed in the first place, it was highly improper, and extremely prejudicial, to compound that error by introducing it as evidence against him in the criminal trial.

Mr. Brennerman was not a party to the civil case at the time he was held in contempt. The law is clear that the only way a non-party can be impelled to produce requested materials in a federal court is through a subpoena duces tecum. But Mr. Brennerman was never served with a subpoena in that case. Thus, he had no obligation to provide information and should not have been held in contempt for failing to do so. And the district court judge must have been well aware of that fact, since in a case involving the same judge, the appeals court vacated a civil contempt order, holding that it was "fundamentally unfair" to hold a non-party in contempt. *OSRecovery, Inc. v. One Groupe Int'l, Inc.*, 462 F.3d 87, 94 (2d Cir. 2006).

Not only was it clearly improper to have held Mr. Brennerman in civil contempt, introducing the contempt order in the criminal case had a devastating impact. In fact, after Brennerman's conviction, a juror told a journalist that "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 [other] contempt order was very clear, [the juror] said." Jack Newsham, *Oil Exec Accused of Lying to Banks Is Convicted of Contempt*, LAW 360 (Sept. 12, 2017), available at <https://www.law360.com/articles/963329/oil-exec-accused-of-lying-to-banks-is-convicted-of-contempt>.

The erroneous admission of the civil contempt order was more than an evidentiary error; it was a violation of clearly settled law, a violation which determined the outcome of the trial.

Since Mr. Brennerman's convictions were obtained in violation of his constitutional rights to present a fulsome defense and to a fair trial, we hope you will advocate on his behalf to correct what we believe are miscarriages of justice.

In regard to your query as to my experience: I have worked as a criminal defense attorney since I graduated from law school in 1978. I became an appellate specialist in 1985, and, since 1996, I have limited my practice to federal criminal appeals. I am admitted to practice law in the United States Supreme Court, the Second Circuit Court of Appeals, and the State of New York.

Respectfully submitted,

A handwritten signature in black ink that reads "MTaubehaus". The signature is written in a cursive, slightly stylized font.

Marsha R. Taubehaus
Attorney for Raheem Brennerman

cc: Ms. Kaddy Bojang
Hon. Volker Turk
Rep. Hakeem Jeffries
Sen. Charles Schumer