

In re The Blacksands Pacific Group, Inc. and Raheem Jefferson Brennerman

I. QUESTION PRESENTED

- 1) Whether the abuse of process and discretion standard imposed by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit, is Constitutionally permissible - where trial Court (United States District Court for the Southern District of New York) 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 deliberate violation of trial Court.
- 2) Whether trial Court (United States District Court for the Southern District of New York) abused its obligations to protect the Constitutional rights of a criminal defendant during and after trial - where trial Court deliberately caused the deprivation of a criminal defendant's Constitutional rights in an endeavor to unjustly deprive him of liberty.

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III. TABLE OF AUTHORITIES

IV. PETITION FOR AN EXTRAORDINARY WRIT

Petitioner petitions this Court for an Extraordinary Writ pursuant to 28 U.S.C. § 1651(a) to vacate or reverse the judgment of conviction and sentence in the United States District Court for the Southern District of New York, in criminal case **United States v. The Blacksands Pacific Group, Inc., et al.**, No. 1:17 CR 155 (LAK), at ECF No. 145 ("Judgment of Conviction and Sentence"); at ECF No. 169 ("Judgment of Conviction and Sentence"); the Summary Order and Judgment entered in 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), ECF No. 286, **United States v. The Blacksands Pacific Group, Inc., et al.**, -- Fed. App'x --, No. 18-1033, 2020 WL 3053867 (2d Cir. 2020) ("Summary Order and Judgment"); the civil contempt order adjudged against **Petitioner** in the civil action **ICBC (London) plc v. The Blacksands Pacific Group, Inc.**, Case No. 1:15 CV 0700 (LAK), at ECF Nos. 139-140 ("Civil Contempt Order"); and dismiss the petition presented pursuant to Fed. R. Crim. P. 42 ("FRCP 42") to initiate the criminal contempt of court case in the United States District Court for the Southern District of New York, in criminal case **United States v. The Blacksands Pacific Group, Inc., et al.**, No. 17 CR 155 (LAK), at ECF No. 1, because it violates the Due Process Clause, the Fourth and Fifth Amendment Constitutional rights, the Sixth Amendment Constitutional rights to a fair trial and proceeding, and the Constitutional right to Equal Protection of the law.

V. OPINION BELOW

VI. JURISDICTION

This **Petition** is necessary to rectify the miscarriage of justice where the **United States Court of Appeals for the Second Circuit** has blatantly refused to correct the intentional deprivation of Constitutional rights and other errors of the **United States District Court for the Southern District of New York**—where, prior to the criminal trial in June/July 2017, **Petitioner** endeavored to appeal the civil contempt order adjudged against him in appeal No. 17-00395-cv. However, because he had inadvertently failed to submit the form titled "Acknowledgment and Notice of Appearance," the Second Circuit Court denied him the ability to appeal the erroneously adjudged civil contempt order from which the criminal contempt of court case arose. After trial, **Petitioner** highlighted the fundamental miscarriage of justice to the Second Circuit's panel court in the direct appeal—**Petition for Rehearing En Banc** at Appeal No. 18-1033(L), Doc. No. 314 (Denied at Doc. No. 318); in the motion to recall mandate at Appeal No. 18-1033(L), Doc. Nos. 334; and in the **Appeal of the Denial of Collateral Attack Petition** at Appeal No. 22-1282. The **United States Court of Appeals for the Second Circuit** had ample opportunity to rectify the fundamental miscarriage of justice in this case, however, refused to do so. Significantly, the miscarriage of justice concerns highlighted in this case arose from the conduct, or rather misconduct, of the **United States District Court for the Southern District of New York** (Kaplan, J.). Thus, this **Petition** for an Extraordinary Writ is in aid of this Court's appellate jurisdiction because exceptional circumstances warrant the exercise of this Court's discretionary powers, and adequate relief has not been and cannot be obtained in any other form or from any other court,

warranting the grant of relief by this Court. **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

18 U.S.C.S. 401. POWER OF COURT

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.

AMENDMENT IV OF THE U.S. CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V OF THE U.S. CONSTITUTION

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 offence to be twice put in jeopardy of life or limb; 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.

AMENDMENT VI OF THE U.S. CONSTITUTION

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.

AMENDMENT XIV OF THE U.S. CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The **Fifth Amendment** of the United States Constitution states, "No person shall be deprived of life, liberty, or property without 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 principles that apply to such claims under the Fourteenth Amendment") (internal citations omitted).

The **Fifth Amendment** guarantees a criminal defendant the right to due process of law. **U.S. CONST. amend. V** ("No defendant shall be deprived of life, liberty, or property... without due process of law"). Inherent in the guarantee of due process is that the trial procedure itself shall be fair and unbiased. **See Smith v. Phillips**, 455 U.S. 209, 219 (1983) ("The touchstone of due process analysis... is the fairness of the trial..."); **Sawyer v. Whitley**, 505 U.S. 333, 361 (1992) (Stevens, J., concurring) (citing Friendly, "Is Innocence Irrelevant? Collateral Attack on Criminal Judgment," 38 **U. CHI. L. REV.** 142, 151-154 (1970)) ("[T]here are contexts in which, irrespective of guilt or innocence, constitutional errors violate fundamental fairness... fundamental fairness is more than accuracy at trial. Justice is more than guilt or innocence.").

The Court had previously promulgated 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 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 a holding in **Scrimo v. Lee**, 935 F.3d 103 (2d Cir. 2019), creating disparity with **Petitioner**.

Review and grant of this **Petition** is warranted as a matter of public interest to emphasize conformity and uniformity with the law and Constitution among lower courts in ensuring adherence to their constitutional obligations and to avoid attacks on the civil rights and liberties of criminal defendants because of their race, sex, or religion.

VIII. STATEMENT OF CASE

This **Petition** for an Extraordinary Writ presents a matter of significant public interest by highlighting the unusual instance where the courts, which have an obligation to protect the constitutional rights of a criminal defendant, veer from the permissible to the impermissible, with the courts deliberately violating the constitutional rights of **Petitioner**. The attack on **Petitioners** Raheem J. Brennerman and **The Blacksands Pacific Group, Inc.** 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 citations and question marks omitted). The circuit court exacerbated the constitutional deprivation already suffered by **Petitioner** by imposing a constitutionally impermissible abuse of process and discretion standard with its review.

This **Petition** presents an opportunity for this Court to rectify the fundamental miscarriage of justice given the extraordinary circumstance where the Court (Kaplan, J.) deliberately abridged and abrogated the fundamental rights of a criminal defendant conferred by the **U.S. Constitution**, thus violating his **Fourth, Fifth, Sixth, and Fourteenth Amendment** rights. 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.

Petitioner submits that after conducting extrajudicial research into **himself** (the **Petitioner**) through Google, **Judge Kaplan**, in December 2016, deliberately ignored the law and federal rules, and within four (4) days, illegally pierced the corporate veil of the company **Blacksands Pacific** to hold **Petitioner** personally in civil contempt of court, even though he was

not part of the civil lawsuit between **ICBC (London) plc** and **The Blacksands Pacific Group, Inc.** No subpoena, motion to compel, or order to show cause was ever directed at **Petitioner** personally, nor was he present during the various civil proceedings (the fine from the civil contempt order is now in-excess of US\$300 million). However, after erroneously holding **Petitioner** in civil contempt, **Judge Kaplan** then actively persuaded a set of prosecutors from the **Manhattan U.S. Attorney's Office** to prosecute **Petitioner** criminally after the initial set of federal prosecutors refused his request to do so. After referring **Petitioner** for criminal prosecution, **Judge Kaplan** then assigned the criminal case to himself so he could preside over the case. In 2017, **Judge Kaplan** forged the arrest warrant and persuaded the prosecutors to arrest **Petitioner**, even though there was no basis or probable cause for his arrest. There was no information, indictment, or order to show cause pending when **Petitioner** was arrested at his Las Vegas home in April of 2017. **Judge Kaplan** had crossed out a section of the arrest warrant and written in his own offense conduct: "The Petition," which was invalid as no signed petition existed at the time. During the trial of the criminal contempt case, **Judge Kaplan** denied **Petitioner's** request for the missing pertinent evidence—**ICBC settlement discussion documents**, including the [meeting minutes], [notes], and [emails]—which **Petitioner** required to present his complete defense and to confront witnesses against him. Having shielded the jury from considering the missing pertinent **ICBC** documents, **Judge Kaplan** then permitted the prosecutors to present his erroneously adjudged civil contempt order to the jury, which influenced their decision to find **Petitioner** guilty of criminal contempt of court, according to one of the jurors named Gordon.

Petitioner contends that such actions and deeds by the Court (**Kaplan, J.**) veered from the permissible norm to an impermissible realm, warranting the grant of an Extraordinary Writ. The questions which this Court should consider are quite simple: (a) Are federal judges permitted to

ignore the law and federal rules in an endeavor to deprive criminal defendants of their right to liberty? and (b) Can federal judges capriciously and intentionally abridge constitutional rights conferred on criminal defendants?

The crucial thing is the impact of the thing done wrong on the minds of other men, not on one's own, in the total setting. **United States v. Hasting**, 461 U.S. 499, 516, 103 S. Ct. 1974, 1984, 76 L. Ed. 2d 97 (1983) (Stevens, J., concurring).

This **Petition** for an Extraordinary Writ boils down to an extraordinary assertion that the constitutional violations here are simply too blatant and consequential to ignore. **Petitioner** seeks review and grant of this **Petition** for clarification on the obligations of the courts—the **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 rights have been so abridged and abrogated because of his race, resulting in a fundamental miscarriage of justice.

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. 1. **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 or the actual breadth of plaintiff's demands, instead in conclusory 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, pp. 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, pp. 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 requests 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 orders 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 extrajudicial 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 in 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 with 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 with** 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 the government seized his electronic devices and documents (which were 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 a 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 a 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 would 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, would be deprived. **Mr. Brennerman** also argued that he would be deprived of his ability to present a complete defense, thus depriving him of 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

CRIMINAL CONTEMPT OF COURT CASE AT NO. 17 CR. 155 (LAK)

During trial, **District Court (Judge Kaplan)** rejected the defendant's argument regarding the 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. **Brennerman**, 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. **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. **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. **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 the 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. **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

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

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 **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).

ERROR(S) WITH THE COURT OF APPEALS' DECISION

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

ARISING FROM CRIMINAL CASE AT DISTRICT COURT AT, NO. 17 CR. 155 (LAK)

A. THE SECOND CIRCUIT ERRED IN APPROVING 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 OF EXCEPTIONAL IMPORTANCE. THIS CASE RAISES ISSUES OF IMPORTANT SYSTEMIC CONSEQUENCES FOR THE DEVELOPMENT OF THE LAW AND THE ADMINISTRATION OF JUSTICE.

I. 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, United States v. Brennerman, 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 implications 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 motions 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 orders against non-parties. On appeal, the **Second Circuit** affirmed the **district court's** rulings, creating disparity with the **Second Circuit's** treatment and review of such orders and deprived **Petitioner** of his Constitutional right to an equal protection guarantee.

II. 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.**

III. 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 **Petitioner's** lack of 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 issue, 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.

IX. REASONS FOR GRANTING EXTRAORDINARY WRIT

ARGUMENTS

This **Petition** for an Extraordinary Writ presents an opportunity for this Court to rectify the fundamental miscarriage of justice given the extraordinary circumstance of: (a) the abuse of process and discretion standard imposed by the **United States District Court for the Southern District of New York** and the **United States Court of Appeals for the Second Circuit**, where the district and circuit courts refused to correct deliberate violations and errors of the Court that

substantively abridged and abrogated the rights of **Petitioner**, a criminal defendant, protected by the **United States Constitution**, and (b) where the trial court deliberately deprived the criminal defendant, **Petitioner**, of his constitutional rights, thus violating his **Fourth, Fifth, and Sixth Amendment** rights of the **United States Constitution**.

The grant of this **Petition** will also clarify the obligations of lower courts as a matter of public interest, emphasizing conformity and uniformity with the law and Constitution among lower courts in ensuring adherence to their constitutional obligations and avoiding attacks on the civil rights and liberties of criminal defendants because of their race, sex, or religion.

I. PETITIONER WAS DEPRIVED AN EQUAL PROTECTION OF LAW, IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS, WHEN THE COURT IGNORED THE LAW TO ERRONEOUSLY ADJUDICATE THE CIVIL CONTEMPT ORDER AGAINST HIM.

American federal law is clear: the only way to compel a non-party to produce documents or other materials is through a subpoena duces tecum. **Wright & Miller, Federal Practice and Procedure** § 2456 (9A). See also **Hobley v. Burge**, 433 F.3d 946, 949 (7th Cir. 2006); **In re Sealed Case**, 141 F.3d 337, 341 (D.C. Cir. 1998) ("Rule 34(c) explicitly makes the subpoena process of Rule 45 the route to compelling production of documents from nonparties."). To obtain document discovery from nonparties, a litigant must use a subpoena duces tecum pursuant to **FED. R. CIV. P. 45(d)(1)**. See, e.g., **Carlisle, Jay C., "Nonparties Document Discovery from Corporations and Government Entities Under the Federal Rules of Civil Procedure," 32 NYL. SCH. L. REV. 9, 10 (1987)**.

In short, **Petitioner** was a non-party to **ICBC's** civil suit against **Blacksands Pacific**, and he was never served with a subpoena. Absent a subpoena, he was under no obligation to provide any documents or information to **ICBC**¹. Nonetheless, **Judge Lewis A. Kaplan** vigorously pursued both civil and criminal contempt against **Petitioner** for not providing documents he was not required to provide absent a subpoena². At the same time, **Judge Kaplan** refused to order **ICBC**, on whose behalf the request for documents had been made, to produce any documents to either **Blacksands** or **Petitioner**.

In June/July 2017, prior to the trial of the criminal contempt of court case arising from the civil contempt adjudged against him, **Petitioner** endeavored to appeal the civil contempt order. **See appeal at United States Court of Appeals for the Second Circuit**, Appeal No. 17-00395-cv. However, because he had inadvertently failed to submit the form titled "Acknowledgment and Notice of Appearance," the **Second Circuit Court** denied him the ability to appeal the erroneously adjudged civil contempt order from which the criminal contempt of court case arose.

The injustice in this sequence of events is self-evident.

¹ Although federal courts in the United States are vested with certain inherent post-judgment discovery powers, there is no broad general inherent power to order a non-party to produce documents. Rather, under FED. R. CIV. P. 69(a)(2) which controls discovery post-judgment, such discovery is controlled by the same rules that apply to pre-judgment discovery.

² Notably, in 2006, the Second Circuit U.S. Court of Appeals, vacated similar contempt order issued by Judge Kaplan, because, as here, the defendant, although the head of the defendant corporation, was not a party to the underlying litigation. *OSRecovery, Inc. v. One Groupe Int'l*, 462 F.3d 87, 90 (2d Cir. 2006).

II. DENIAL OF PETITIONER'S EFFORT TO OBTAIN DISCOVERY - THE MISSING ICBC (LONDON) PLC ('ICBC') FILES INCLUDING [THE UNDERWRITING FILE] AND SETTLEMENT DISCUSSION [MEETING MINUTES], [NOTES] AND [E-MAILS] WHICH HE REQUIRED FOR HIS COMPLETE DEFENSE AND TO CONFRONT WITNESSES AGAINST HIM, VIOLATED HIS CONSTITUTIONAL RIGHTS.

Prior to trial, the prosecution made a request to **ICBC's** New York-based counsel, **Linklaters LLP**, through Attorney **Paul S. Hessler**, to obtain in excess of 5,000 pages of discovery. However, missing from the discovery production were the pertinent **ICBC** files, including the transaction **[underwriting file]** and settlement discussion **[meeting minutes]**, **[notes]**, **[emails]**, which **Petitioner** required to present his complete defense and confront witnesses against him at trial.

To prepare for trial, **Petitioner** made requests to the prosecution for the missing **ICBC** files. However, they refused to obtain or review those files from **ICBC**. **ICBC** also refused **Petitioner's** direct request for the files, and **Judge Lewis A. Kaplan** denied **Petitioner's** request for a subpoena to compel the production of the missing **ICBC** files. Thus, at trial, **Petitioner** was deprived of the very evidence—the missing **ICBC** files—which he required to present his complete defense and confront witnesses against him, thereby depriving him of his right to a fair trial.

Petitioner posits that the missing evidence, **the ICBC files**, would have cast significant doubt in the minds of the jurors, particularly given that the second court order of September 2016 specifically stipulated for the "parties to either settle or produce for discovery," and agents of **ICBC**, the recipient of the discovery, repeatedly and continually advised **Petitioner** and

Blacksands Pacific that they did not want more discovery but rather preferred to negotiate settlement.

Agents of **ICBC** and **Blacksands Pacific** negotiated settlement, resulting in the draft settlement agreement at case No. 1:17 CR. 155 (LAK), ECF No. 12 Ex. 10. The missing **ICBC** file would have shown that neither **Blacksands Pacific** nor **Petitioner** willfully or defiantly disobeyed the court order(s) directed at the company, **Blacksands Pacific**.

III. PETITIONER WAS SIGNIFICANTLY PREJUDICED THROUGH THE PRESENTMENT OF THE ERRONEOUSLY ADJUDGED CIVIL CONTEMPT ORDER TO THE JURY DURING THE CRIMINAL CONTEMPT OF COURT TRIAL, IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

Judge Lewis A. Kaplan erroneously adjudged the civil contempt order against **Petitioner** by ignoring the findings in **OSRecovery, Inc. v. One Groupe Int'l**, 462 F.3d 87 (2d Cir. 2006), and the rules and law for compelling non-parties to produce for discovery. After **Judge Kaplan** improperly held **Petitioner** in civil contempt in the antecedent civil case at **1:15 CV 0070 (LAK)**, ECF Nos. 139-140, he referred him (**Petitioner**) for criminal prosecution.

During the trial for the criminal contempt of court case, after preventing the jury from considering the missing **ICBC** files, **Judge Kaplan** then permitted the prosecution to present the erroneously adjudged civil contempt order to the jury. See **Trial Tr. No. 17 CR. 155 (LAK)**, **Trial Tr. 3-7**.

In **OSRecovery**, the **Second Circuit Court** promulgated: "Moreover, we think it is fundamentally unfair to hold a [non-party] 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 purpose of discovery."

OSRecovery, Inc., 462 F.3d at 90. In **OSRecovery**, the **Second Circuit** 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 Kaplan** (the same 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 **ICBC (London) plc v. The Blacksands Pacific Group, Inc.**, 15-cv-0070 (LAK) (S.D.N.Y. 2016) at ECF Nos. 139-140. No court order, subpoena, or motion to compel was ever directed at **Petitioner** personally, nor was he present during the civil case's various proceedings.

The presentment of the erroneously adjudged civil contempt order swayed the jury to find **Petitioner** guilty of criminal contempt of court, according to an interview given by one of the jurors (named Gordon) to the media. See **Law 360 article at case No. 1:17 CR. 337 (RJS), ECF No. 236, Ex. 3 at 17**. The question of whether the civil contempt order was improperly adjudged against **Petitioner** goes beyond a simple analysis of Rule 403 and 404(b) of the **Federal Rules of Evidence**. **Petitioner** was a non-party in the civil case lawsuit at the time of the civil order. Because the order was erroneously adjudged against him, its erroneous admission had more serious legal implications beyond an abuse of discretion analysis.

The erroneous admission of the civil contempt order was more than an evidentiary error. It violated the **Second Circuit Court's** instructions concerning contempt orders against non-parties.

X. CONCLUSION

The danger of the **United States District Court for the Southern District of New York** and **United States Court of Appeals for the Second Circuit's** rule is amply demonstrated by the consequences of the erosion of public trust in the United States justice system and other institutions. As the **Fourth Circuit** 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 the **United States District Court for the Southern District of New York**—veered from the rule of law in this case. The interest of comity, in addition to fairness and substantial justice as embodied in the **Due Process Clause** and the **United States Constitution**, warrants vacatur or reversal of the **United States Court of Appeals for the Second Circuit's** decision and the **United States District Court for the Southern District of New York's** judgment of conviction and sentence, as well as dismissal of the **FRCP 42** notice initiating the criminal contempt of court case.

XI. APPENDIX

Petition for writ of Certiorari at the United States

Supreme Court at docket no. 20-6895 APPENDIX A

Law 360 article at United States District Court at

criminal case no. 17 CR. 337 (RJS), ECF No. 236,

Ex. 3 at 17 APPENDIX B

Omnibus motion including Collateral Attack Petition

at United States District Court at civil action no. 22

Cv. 996 (LAK), ECF no. 1 APPENDIX C