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April 27, 2024

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,

Marsha R. Taubenhaus
Attorney for Raheem Brennerman

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

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-U-B

FROM: 54001048
TO:
SUBJECT: MISCARRIAGE OF JUSTICE SUMMARY (PART ONE)
DATE: 07/07/2024 01:05:26 PM

BELOW IS THE MISCARRIAGE OF JUSTICE SUMMARY:

1.) MISCARRIAGE OF JUSTICE CONCERNS IN THE FRAUD CASE
Case: United States v. Brennerman, case no: 1:17-cr-0337 (RJS)

(a.) MR. BRENNERMAN WAS DEPRIVED OF THE PERTINENT EVIDENCE [ICBC UNDERWRITING FILE] WHICH HE REQUIRED TO SUPPORT HIS DEFENSE AND ALSO CONFRONT WITNESSES AGAINST HIM.

Following referral of Mr. Brennerman for criminal prosecution by Judge Lewis A. Kaplan, the prosecution commenced their investigation by making requests of ICBC's New York based counsel, Linklaters LLP through Attorney Paul S. Hessle for the pertinent ICBC documents. Mr. Hessler provided the prosecution with communications between Blacksands Pacific and ICBC on the one part and Mr. Brennerman and ICBC on the other part. However, glaringly obvious from the document production were the missing pertinent ICBC documents - there was no transaction underwriting file, no ICBC internal documents or minutes and no settlement discussion notes, meeting minutes or emails.

The prosecution then proceeded to obtain search warrant, upon Judge Kaplan insisting on them enforcing his arrest warrant, to obtain Mr. Brennerman's electronic devices so they may prove that those communications provided by Attorney Hessler were from Mr. Brennerman.

Prior to trial, Mr. Brennerman notified the prosecution of the missing ICBC documents which he required for his defense. The prosecution refused to obtain or review those missing ICBC files and the Courts - Judges Kaplan and Sullivan denied Mr. Brennerman's request to compel for the missing ICBC files.

During trial of the fraud case, the prosecutor;s sole witness from ICBC, Mr. Julian Madgett testified in open Court before the Court, prosecutor and jury that the missing ICBC files including the underwriting file were provided by ICBC to their counsel, Linklaters LLP and that their counsel had communicated with the U.S. Attorney office. He also testified that the missing ICBC underwriting file documents the basis for the bank, ICBC, approving the bridge finance thus would highlight which representation or alleged misrepresentation were MATERIAL to the bank in approving the bridge finance. See Trial Tr. No. 17 CR. 337 (RJS), ECF No. 94 at 201 - 204 (Trial Tr. 551 - 554).

During trial following Mr. Madgett's testimony, Mr. Brennerman again requested that Judge Sullivan compel the prosecution to obtain the missing ICBC files and present it to him for his complete defense or in the alternative for ICBC to provide the missing ICBC file to him for his complete defense. See 17 CR. 337 (RJS), ECF No. 71, however, Judge Sullivan denied Mr. Brennerman's request while permitting Mr. Madgett to testify as to the contents of the missing ICBC underwriting file knowing that Mr. Brennerman was already deprived of the evidence [ICBC underwriting file] and would be unable to meaningfully cross-examine Mr. Madgett as to substance and credibility on the issue. Mr. Madgett made misleading statement to the jury, however, Mr. Brennerman was deprived of the ability to rebut his statements. That violated Mr. Brennerman's right to a fair trial by depriving him pf his right to present his complete defense and to confront witnesses against him. See Trial Tr. No. 17 CR. 337 (RJS), ECF No. 96 (trial tr. 617 - 623)

During Mr. Brennerman's direct appeal, the Second Circuit U.S. Court of Appeal incorrectly stated that "[t]he only indication that the document (ICBC file) is extant comes from Brennerman's bare assertion" in contrast with the trial records.

(b.) MR. BRENNERMAN WAS CONVICTED BASED UPON A THEORY WHICH BEARS NO RESEMBLANCE TO THE THEORY PROPOUNDED IN THE CHARGING DOCUMENT AND THE COURT (JUDGE RICHARD J. SULLIVAN) MADE FACTUALLY AND LEGALLY FLAWED RULING TO WRONGLY CONVICT AND IMPRISON HIM.

Mr. Brennerman was charged with "obtaining financing through fraud for purported business venture" however during trial when the evidence and testimony did not support that theory, the prosecution pivoted to argue that Mr. Brennerman became entitled to banking perks including sky miles (frequent flier miles), free checking account and lower interest rate worth $6,500 which was never charged in the charging document.

However, to convict Mr. Brennerman for bank fraud, the institution were he received the alleged banking perks had to be federally insured (FDIC insured). During trial, Judge Sullivan permitted the case to proceed to the jury, confusing the non-FDIC

insured entity, Morgan Stanley Smith Barney, LLC (MSSB) where Mr. Brennerman maintained his wealth management account and thus would have received the alleged banking perks with its FDIC-insured affiliate, the private banking arm of Morgan Stanley (MSPB), even though the prosecution adduced no evidence that Mr. Brennerman ever interacted with this affiliate entity.

After trial, Mr. Brennerman highlighted the confusion to Judge Sullivan in his motion for judgment of acquittal and motion for new trial (See Rule 29/33 motion of the Federal Rule of Criminal Procedure at No. 17 CR. 337 (RJS), at ECF No. 167), in response, Judge Sullivan then misrepresented the evidence, by supplanting the non-FDIC insured (not federally insured) institution, MSSB, where Mr. Brennerman opened his wealth management account based on all evidence adduced at trial with a FDIC-insured (federally insured) affiliate institution, MSPB, even though there was no evidence presented by either the prosecution or Judge Sullivan to support such ruling.

The factually and legally flawed ruling by Judge Sullivan falsely satisfied the law and statute, which requires that the institution be FDIC insured (federally insured). Judge Sullivan made such flawed ruling purposely to wrongly convict and imprison Mr. Brennerman (See sentencing Tr. No. 17 CR. 337 (RJS), ECF No. 206 at 19). This deprived Mr. Brennerman of his human and Constitutional right to a fair trial and liberty.

Judge Sullivan has been advised numerous times of his factually and legally flawed ruling to wrongly convict and imprison Mr. Brennerman, however, he has chosen to ignore him. (See motion at No. 17 CR. 337 (RJS), at ECF Nos. 269, 290, 298, 303)

"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)

2.) MISCARRIAGE OF JUSTICE CONCERNS IN THE CRIMINAL CONTEMPT OF COURT CASE
Case: United States v. The Blacksands Pacific Group, Inc., et. al., case no. 1:17-cr-0155-2 (LAK)

(a.) DENIAL OF MR BRENNERMAN'S EFFORT TO OBTAIN DISCOVERY - THE MISSING ICBC (LONDON) PLC ("ICBC") FILEES INCLUDING [THE UNDERWRITING FILE] AND SETTLEMENT DISCUSSION [MEETING MINUTES], [NOTES], AND [E-MAILS]

Prior to trial, the prosecution made 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], [e-mails] which Mr. Brennerman required to present his complete defense and confront witnesses against him at trial.

To prepare for trial, Mr. Brennerman made requests to the prosecution for the missing ICBC files, however they refused to obtain or review those files from ICBC, ICBC also refused Mr. Brennerman's direct request for the files and Judge Lewis A. Kaplan denied Mr. Brennerman's request for subpoena to compel for the missing ICBC files. Thus at trial, Mr. Brennerman was deprived of the very evidence, 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.

Mr. Brennerman posits that the missing evidence, ICBC files, would have cast significant doubt in the minds of the jurors particularly given that the second court order in September 2016, specifically stipulated for the "parties to either settle or produce for discovery" and agents of ICBC, recipient of the discovery, repeatedly and continually advised Mr. Brennerman 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 17 CR. 155 (LAK), ECF No. 12 Ex. 10. The missing ICBC files would have shown that neither Blacksands Pacific nor Mr. Brennerman willfully or defiantly disobeyed the Court order(s) directed at the company, Blacksands Pacific.

(b.) MR. BRENNERMAN WAS SIGNIFICANTLY PREJUDICED THROUGH THE PRESENTMENT OF THE ERRONEOUSLY ADJUDGED CIVIL CONTEMPT ORDER TO THE JURY DURING THE CRIMINAL CONTEMPT OF COURT TRIAL

Judge Lewis A. Kaplan erroneously adjudged the civil contempt order against Mr. Brennerman by ignoring the finding in "OSRecovery, Inc., v. One Groupe Int'l, Inc., 462 F.3d 87 (2d Cir. 2006)" and the rules and law for compelling non-parties to produce for discovery. So after Judge Kaplan improperly held Mr. Brennerman in civil contempt in the antecedent civil case at 15 CV. 70 (LAK), ECF Nos. 137-140, he referred him for criminal prosecution.

During trial for the criminal contempt of court case, having prevented the jury from considering the missing ICBC files, Judge

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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 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 Kaplan (the same judge whose contempt order the Second Circuit Court found inappropriate in OSRecovery) held Mr. Brennerman 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-70 (LAK) (S.D.N.Y. 2016) at ECF Nos. 139-140. No court order, subpoena or motion to compel were ever directed at Mr. Brennerman personally nor was he present during the civil case's various proceedings.

The presentment of the erroneous adjudged civil contempt order swayed the jury to find Mr. Brennerman 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 17 CR. 337 (RJS), ECF No. 236 Ex. 3 at 17). The question of whether the civil contempt order was improperly adjudged against Mr. Brennerman goes beyond a simple analysis of Rule 403 and 404(b) of the Federal Rule of Evidence. Mr. Brennerman 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 above and beyond an abuse of discretion analysis.

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

SUMMARY OF COURT FILINGS HIGHLIGHTING THE MISCARRIAGE OF JUSTICE CONCERNS

1.) SUPREME COURT OF THE UNITED STATES

a.) Petition for Writ of Certiorari (Fraud case) at docket no. 20-6638

b.) Petition for Writ of Certiorari (Criminal contempt of court case) at docket no. 20-6895

2.) UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

a.) Petition for Rehearing En Banc (Fraud case) at Appeal No. 18-3546(L), Doc. No. 190

b.) Petition for Rehearing En Banc (Criminal contempt of court case) at Appeal No. 18-1033(L), Doc. No. 314

c.) Appeal of Omnibus motion at Appeal No. 23-6180

3.) UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

a.) Omnibus motion including collateral attack petition (Fraud case) at case no. 1:17-cr-0337 (RJS), at ECF Nos. 269, 272, 274, 289, 290, 291.

b.) Notification of violation to Court (Fraud case) at case no. 1:17-cr-0337 (RJS), at ECF No. 298.

c.) Omnibus motion including collateral attack petition (Criminal contempt of court) at case no. 22-cv-0996 (LAK), [all docket entries]

d.) Civilian crime report submitted to U.S. Attorney Office, S.D.N.Y. and at case no. 1:17-cr-0337 (RJS), at ECF Nos. 286, 294, 301.

-- THE END --