

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-3546(L); 19-497(CON)

Caption [use short title]

Motion for: Motion for Reconsideration of
 Motion-to-Recall Madate

UNITED STATES OF AMERICA

Set forth below precise, complete statement of relief sought:
 Defendant/Appellant respectfully submits this motion
 for reconsideration of his motion-to-recall Mandate
 to allow panel Court consider the appended evidence

v.

RAHEEM J. BRENNERMAN

MOVING PARTY: Raheem J. Brennerman

OPPOSING PARTY: United States of America

 Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Raheem J. Brennerman, Pro Se

OPPOSING ATTORNEY: Robert B. Sobelman, Esq.

[name of attorney, with firm, address, phone number and e-mail]

LSCI-Allenwood

US Attorney Office

PO Box 1000

One St. Andrew's Plaza

White Deer, PA 17887-1000

New York, NY 10007

Court- Judge/ Agency appealed from: US Circuit Judge Richard J. Sullivan

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

 Yes No (explain): _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

 Yes No

Has this relief been previously sought in this court?

Requested return date and explanation of emergency: _____

Opposing counsel's position on motion:

 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:

 Yes No Don't Know

Is oral argument on motion requested?

 Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

 Yes No If yes, enter date: _____

Signature of Moving Attorney:

/s/ Raheem Brennerman Date: Feb. 8, 2021 Service by: CM/ECF Other [Attach proof of service]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE*

18-3546(L); 19-497(CON)

Docket Number: _____

v.

RAHEEM J. BRENNERMAN

I, RAHEEM J. BRENNERMAN, hereby certify under penalty of perjury that
(print name)
on February 8, 2021, I served a copy of Motion for Reconsideration
(date)

(list all documents)

by (select all applicable)**

Personal Delivery United States Mail Federal Express or other
Overnight Courier
 Commercial Carrier E-Mail (on consent)

on the following parties:

Robert Sobelman, Esq	USAO, One St. Andrew's Plaza	New York	NY	10007
Name	Address	City	State	Zip Code

Nicolas Landsman-Roos, Esq	USAO, One St. Andrew's Plaza	New York	NY	10007
Name	Address	City	State	Zip Code

Name	Address	City	State	Zip Code
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Name	Address	City	State	Zip Code
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*A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed.

**If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

February 8, 2021

Today's Date

/s/ Raheem J. Brennerman

Signature

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Docket Nos. 18-3546(L); 19-497(CON)

RAHEEM J. BRENNERMAN,

Defendant-Appellant,

MOTION FOR RECONSIDERATION OF
MOTION-TO-RECALL MANDATE

RAHEEM JEFFERSON BRENNERMAN, hereby affirms under penalty of perjury:

1. I, Raheem Jefferson Brennerman ("Brennerman") am the Defendant-Appellant in this instant action.

2. I am a Pro Se Defendant-Appellant in this matter. As such, I am familiar with the facts and circumstances of this action.

3. I am a Petitioner at the Supreme Court of the United States, Petition at docket no. 20-6638, which arose from this instant appeal.

4. On January 5, 2021, Brennerman submitted motion-to-recall mandate for this instant appeal, 18-3546(L), doc. no. 211. On January 19, 2021, and submitted supplemental papers in support of his motion-to-recall mandate at this instant appeal, 18-3546(L), doc. no. 217.

5. On January 28, 2021, this Court denied Brennerman's motion seeking for panel Court to recall mandate.

6. REDACTED

7. On February 2, 2021, Brennerman submitted motion with evidence to District Court at criminal case no. 1:17-CR-337-RJS from which this instant appeal arose (District Court has refused to docket the evidence on record). The motion included evidence which highlighted misrepresentation of material facts and evidence by District Court, where the Court improperly supplanted facts and evidence of interaction with non-FDIC insured institution, Morgan Stanley

Smith Barney, LLC "MSSB" (presented by Government at trial through Exhibits - GX1-57; GX1-57A; GX529; GX1-73 (see 1:17-CR-337-RJS, doc. no. 167) to demonstrate Brennerman's interaction with Morgan Stanley) with a FDIC-insured institution, Morgan Stanley Private Bank "MSPB" (even though Government adduced no evidence of Brennerman interacting with that institution) in a surreptitious endeavor to falsely satisfy the essential element necessary to convict Brennerman for bank fraud in violation of 18 U.S.C.S. 1344 and Conspiracy to commit bank fraud in violation of 18 U.S.C.S. 1349.

8. Given the significance and materiality of this supplemental information where Brennerman was surreptitiously convicted for his interaction with Morgan Stanley Smith Barney, LLC "MSSB", a non-FDIC insured institution (see transcript of hearing on November 19, 2018 at 1:17-CR-337-RJS, doc. no. 206, Tr. 19 at 9-18) where District Court described the theory of the bank fraud and improperly supplanted MSSB with a FDIC insured institution, private bank of Morgan Stanley. This Court which reviews de novo should correct the clear error.

9. This Court should correct the clear error because the single telephone call which panel Court highlighted as satisfying the essential element to convict Brennerman, in its Summary Order dated June 9, 2020 was made to Kevin Bonebrake, who worked at another non-FDIC insured subsidiary of Morgan Stanley & Co, LLC (see 1:17-CR-337-RJS, doc. 384-385; 387-388; 409) highlighting testimony of Kevin Bonebrake that he worked at the Institutional Securities subsidiary of Morgan Stanley & Co and that Morgan Stanley & Co operates through various subsidiaries. Also see 1:17-CR-337-RJS, doc. no. 1057-1061 for testimony of Barry Gonzalez, FDIC commissioner testifying that Government failed to present FDIC certificate for the Institutional Securities subsidiary of Morgan Stanley & Co, because it is not FDIC-insured. Further that, the FDIC certificate of one subsidiary does not cover another subsidiary or the parent company as each will require its own FDIC certificate.

10. Pursuant to FRAP and the Court's Local Rules, Defendant-Appellant Raheem Jefferson Brennerman respectfully submits this motion with appended evidence to allow panel Court to reconsider its decision on Brennerman's motion-to-recall mandate at 18-3546(L), doc. no. 211, 217.

WHEREFORE, the Court should grant this motion in its entirety.

Dated: February 8, 2021
White Deer, Pa. 17887-1000

Respectfully submitted

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

EXHIBIT

x

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
P. O. Box 1000
White Deer, Pa. 17887-1000

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

with copy to:

Clerk of Court
UNITED STATES DISTRICT COURT
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

February 2, 2021

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

Regarding: United States v. Brennerman
District Court Case No. 17 CR. 337 (RJS)
MOTION FOR COMPASSIONATE RELEASE EVIDENCE

Dear Judge Sullivan:

Defendant Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits this motion with appended evidence together (the "Motion") in reliance on his Constitutional rights, applicable law and federal rule and will move this Court before Honorable Richard J. Sullivan, United States Circuit Judge, at Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, New York 10007 for an order directing the prosecutors, United States Attorney Office for the Southern District of New York to obtain and present to the Court and Brennerman (a.) evidence of Brennerman's interaction with Morgan Stanley in light of the surreptitious endeavor by the Court to falsely satisfy the FDIC essential element necessary to convict Brennerman for bank fraud and bank fraud conspiracy by improperly supplanting a non-FDIC insured institution, Morgan Stanley Smith Barney, LLC "MSSB" (which Government presented as Government

Exhibit - GX1-57; GX1-57A; GX529; GX1-73 during trial as evidence of Brennerman's interaction with Morgan Stanley (see 17 CR. 337 (RJS), doc. no. 167)) with a FDIC insured institution, Morgan Stanley Private Bank "MSPB" (even though Government presented no evidence of Brennerman's interaction with MSPB (see appended evidence at "Exhibit C" underlined for clarity)), in an endeavor to wrongly convict and imprison Brennerman; (b.) the pertinent evidence mainly the ICBC (London) plc underwriting file relating to the transaction between ICBC (London) plc and The Blacksands Pacific Group, Inc., in light of the arguments presented within the appended evidence (correspondence dated January 22, 2021 and evidence). Brennerman requires the evidence highlighted above to present a comprehensive Compassionate release pursuant to 18 U.S.C. Section 3582(c)(1)(A) as directed by the Court in its order (at 17 CR. 337 (RJS), doc. no. 253)

On January 22, 2021, Brennerman submitted via electronic mailing at Temporary_Pro_Se_filing@nysd.uscourts.gov to the Clerk of Court for the U.S. District Court for the Southern District of New York, correspondence with respect to his Covid-19 infection and other issues for the record in an endeavor to compel the Court to order evidence which he requires for his pleadings. On February 2, 2021, the Court (Sullivan, J.) (at 17 CR. 337 (RJS), doc. no. 253) through an order refused to docket the correspondence and relied on an erroneous assumption that the appended correspondence and evidence dated January 22, 2021 was an endeavor by Brennerman to supplement his appellate record. Brennerman emphatically asserts that such assumption is erroneous because this instant motion from which Brennerman seeks affirmative relief differs significantly from previous relief sought. This instant motion and relief sought is made in reliance on the Due Process, Brady and Constitutional rights. Moreover, federal rule and applicable law mandates that the Clerk of Court shall docket all submissions to the Court irrespective of its nature.

Given the significance of the issues cited within the appended evidence (correspondence and evidence dated January 22, 2021) and in light of the urgency that Covid-19 presents to Brennerman. Brennerman respectfully submits this motion and appended evidence seeking affirmative relief as stated above from this Court.

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

Brennerman respectfully submits the above and appended evidence and prays that this Court grants his request in its entirety.

Dated: February 2, 2021
White Deer, Pa. 17887-1000

Respectfully Submitted

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

Defendant Pro Se

Cc: REDACTED

Cc: REDACTED

Cc: www.freeraheem.com

Cc: www.freerjbrennerman.com

Cc: U.S. Attorney Office (S.D.N.Y.)

Enclosure:

Correspondence with evidence for record dated January 22, 2021

EXHIBIT A

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
P. O. Box 1000
White Deer, Pa. 17887-1000

Hon. Richard J. Sullivan
United States Circuit Judge
UNITED STATES DISTRICT COURT
Southern District of New York
40 Foley Square
New York, New York 10007

January 22, 2021

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

Regarding: United States v. Brennerman
District Court Case No. 17 CR. 337 (RJS)
CORRESPONDENCE WITH EVIDENCE FOR THE RECORD

Dear Judge Sullivan:

Defendant Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits the appended record and evidence pursuant to all applicable law and federal rule in an endeavor to document his Covid-19 infection and other issues for the record.

I. COVID-19 INFECTION:

On December 17, 2020, Brennerman who is currently incarcerated at FCI Allenwood Low ("Allenwood") arising from the above criminal cases tested positive for Covid-19 and a few days later was diagnosed with Covid-19 pneumonia causing severe breathing difficulty among other Covid-19 symptoms. Brennerman suffers from diabetes and hypertension, medical conditions promulgated by the Center for Disease Control and Prevention ("CDC") that places him at a heightened risk of serious illness or death should he contract Covid-19 (A copy of the medical record is appended as "Exhibit A")

Brennerman is currently incarcerated at FCI Allenwood Low pursuant to an order of Judge Richard J. Sullivan arising from the criminal case at 17 CR. 337 (RJS). Notwithstanding, proclamation by the prosecutors that the BOP had formulated preventive measures and action plan with respect to protecting incarcerated persons from contracting Covid-19. On December 17, 2020 approximately 114 inmates out of 116 inmates residing at the same unit at FCI Allenwood Low with Brennerman tested positive for Covid-19. Thereafter, Brennerman was denied adequate care or medication and endured significant pain and suffering arising from Covid-19 with symptoms including high body temperature, severe difficulty with breathing and pneumonia, body aches, violent coughs among others.

Although Brennerman strenuously presented evidence of Constitutional violation with his conviction where he was deprived evidence which he required to present complete defense and highlighted erroneous proclamation by the Court in respect of which Morgan Stanley subsidiary he interacted with, the Court has refused to correct its errors. Brennerman has also continued to request and persuade the Court to allow him access to evidence which he requires to present a comprehensive Compassionate release motion pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factor (which the Court will consider in the adjudication of the motion) however the Court has continued to ignore him, thus Brennerman remains unjustly incarcerated and the institution where he is currently incarcerated failed to provide any medication or therapeutic treatment to Brennerman while enduring significant suffering arising from Covid-19 infection which exacerbates the Constitutional violation already suffered and highlights the deliberate indifference while the Court (Sullivan, J.) continues to wrongly convict and imprison Brennerman.

Brennerman now faces the serious possibility of a second wave of Covid-19 infection while he remains incarcerated with a much weakened immune system while the Court (Sullivan, J.) continues to deny and deprive him access to pertinent evidence for his release.

II. REQUEST FOR EVIDENCE TO PRESENT COMPREHENSIVE COMPASSIONATE RELEASE MOTION PURSUANT TO 18 U.S.C.S. 3582(c)(1)(A):

Prior to contracting Covid-19, Brennerman strenuously requested and pleaded with the Court (Sullivan, J.) see 17 CR. 337 (RJS), doc. nos. 248, 250 to provide him with the pertinent evidence (ICBC underwriting file) which he required to present a comprehensive Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factors. The Court (Sullivan, J.) at 17 CR. 337 (RJS), doc. no. 249, 251 instead pivoted to the erroneous disposition by the Second Circuit U.S. Court of Appeals ("Second Circuit") which inaccurately stated that "the only indication that the document are extant comes from Brennerman's bare assertion".

III. MOTION-TO-RECALL MANDATE AT THE SECOND CIRCUIT:

Brennerman has presented overwhelming evidence from the case proceedings including trial transcripts and other evidence to both the Chief Judge of the Second Circuit (Hon. Debra Ann Livingston) and Second Circuit (panel Court) in an endeavor to allow the Court to recall the mandate and correct its erroneous disposition. see Appeal Docket No. 18-3546(L), doc. nos. 211, 212, 217 and Appeals Docket No. 18-1033(L), doc. nos. 334, 335.

IV. PETITION FOR WRIT OF CERTIORARI AT THE SUPREME COURT OF U.S.:

Brennerman has also succinctly presented issues with extensive evidence to the Supreme Court of the United States ("Supreme Court") in an endeavor to document and present pertinent record (irrespective of whether certiorari is granted) at docket no. 20-6638 (arising from appeal docket nos. 18-3546(L); 19-497(Con) at the Second Circuit and 17 CR. 337 (RJS) at the U.S. District Court (S.D.N.Y.)) and at docket no. 20-6895 (arising from appeal docket nos. 18-

1033(L); 18-1618(Con) at the Second Circuit and 17 CR. 155 (LAK) at the U.S. District Court (S.D.N.Y.))

V. ISSUES WITH BANK FRAUD AND BANK FRAUD CONSPIRACY (18 U.S.C.S. 1344):

Brennerman, in an endeavor to strenuously present pertinent evidence is again appending with this correspondence, evidence at 17 CR. 337 (RJS), doc. no. 167 which irrefutably demonstrate that Brennerman opened his account at Morgan Stanley Smith Barney, LLC ("MSSB") and interacted with Scott Stout who worked at MSSB (A copy of evidence at 17 CR. 337 (RJS), doc. no. 167 is appended as "Exhibit B"). This evidence from trial records directly contradict the erroneous proclamation by the Court that Brennerman interacted with the "private bank of Morgan Stanley" which was proffered by the Court (Sullivan, J.) during the hearing on November 19, 2018 when the Court denied Brennerman's motion for judgment of acquittal submitted pursuant to Fed. R. Crim. P. 29. (A copy of excerpt from the hearing transcript is appended as "Exhibit C" and underlined for clarity). The erroneous proclamation was made in a surreptitious endeavor to falsely satisfy the FDIC essential element necessary to convict Brennerman for bank fraud (18 U.S.C.S. 1344(1)) and bank fraud conspiracy (18 U.S.C.S. 1349) by improperly supplanting a non-FDIC institution (MSSB) for a FDIC insured institution (Morgan Stanley Private Bank) where there was no evidence presented at trial to demonstrate that Brennerman interacted with Morgan Stanley Private Bank. Brennerman presented evidence at 17 CR. 337 (RJS), doc. no. 167 (appended as "Exhibit B") which conclusively demonstrated that he interacted with a non-FDIC insured institution. Even the erroneous disposition by the Second Circuit points to Brennerman's single telephone call with Kevin Bonbrake who worked for another non-FDIC subsidiary of Morgan Stanley. (A copy of trial transcripts at 17 CR. 337 (RJS), trial. tr. 384-385; 409; 387-388; 1057; 1059; 1060-1061 appended as "Exhibit F") Notwithstanding these overwhelming evidence, Brennerman remains incarcerated for bank fraud and bank fraud conspiracy solely because of the erroneous proclamation by the Court (Sullivan, J.)

VI. ISSUES WITH WIRE FRAUD AND WIRE FRAUD CONSPIRACY (18 U.S.C.S. 1343):

Already demonstrated through extensive submissions at appeal docket no. 18-3546(L), doc. nos. 211, 212, 217, trial transcripts from 17 CR. 337 (RJS) contradict the Court (Sullivan, J.) and Second Circuit panel Court, that the pertinent evidence (ICBC underwriting file, which documents the basis for approving the bridge finance and thus confirms "Materiality" of any representation or alleged misrepresentation) is not extant beyond Brennerman's assertion. Indeed, Government sole witness from ICBC (London) plc, Julian Madgett confirmed that the evidence (ICBC underwriting file) is/was extant and with the bank's file in London, United Kingdom (A copy of the trial transcript with Government witness, Julian Madgett, 17 CR. 337 (RJS), Trial Tr. 551-554 is appended as "Exhibit D") and the Court (Sullivan, J.) confirmed that the witness (Julian Madgett) had confirmed that the evidence (ICBC underwriting file) is/was extant with the bank's file in London, United Kingdom (A copy of the trial transcript, 17 CR. 337 (RJS), Trial Tr. 617 is appended as "Exhibit E").

The Court continues to deny request for the evidence (ICBC underwriting file) stating that the Court cannot permit indiscriminate introduction of evidence which was not presented at trial,

even though during trial the Court denied Brennerman's request for the evidence (A copy of the letter motion submitted by Brennerman to request for the evidence (ICBC underwriting file) submitted at 17 CR. 337 (RJS), doc. no. 71 is appended at "Exhibit G") upon learning of its existence following testimony by Government sole witness from ICBC (London) plc, Julian Madgett that evidence (ICBC underwriting file) exists with the bank's file which document the basis for ICBC (London) plc approving the bridge finance and thus confirms "Materiality" of any representation or alleged misrepresentation. Further that, the Government never obtained or reviewed the evidence (ICBC underwriting file). The Court (Sullivan, J.) denied Brennerman's request for the evidence (ICBC underwriting file) which he required to present a complete defense and confront witness against him while permitting Government witness, Julian Madgett to testify as to the contents of the evidence (ICBC underwriting file) to satisfy "Materiality (an essential element of charged crime)" of any representation or alleged misrepresentation contained within the evidence (ICBC underwriting file) which was considered in the approval of the bridge finance.

VII. OTHER ISSUES:

Additionally, Brennerman has strenuously requested for a copy of his birth certificate which is/was in the Government's possession at time of trial and which Government never presented to the jury for consideration in their deliberation. Brennerman requested for this evidence (birth certificate) to present comprehensive argument in a Compassionate release motion pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factor, however the Court (Sullivan, J.) continues to ignore his request. see 17 CR. 337 (RJS), doc. nos. 236, 240, 241, 248, 250.

VIII. CONCLUSION:

In light of the above and the overwhelming evidence, Brennerman respectfully submits the appended evidence in compliance with applicable law and federal rule on record.

Dated: January 22, 2021
White Deer, Pa. 17887-1000

Respectfully submitted

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

Defendant Pro Se.

Cc: REDACTED
Cc: REDACTED
Cc: www.freeraheem.com
Cc: www.freerjbrennerman.com
Cc: U.S. Attorney Office (S.D.N.Y.)

EXHIBIT B

**Bureau of Prisons
Health Services
Clinical Encounter**

Inmate Name: BRENNERMAN, RAHEEM J	Sex: M	Race: BLACK	Reg #: 54001-048
Date of Birth: 05/01/1988	Provider: Moclock, Michael MD		Facility: ALF
Encounter Date: 12/22/2020 09:59			Unit: G03

Physician - Evaluation encounter performed at Health Services.

SUBJECTIVE:

COMPLAINT 1 Provider: Moclock, Michael MD

Chief Complaint: INFECTIOUS DISEASE

Subjective: Patient Covid positive. He c/o worsening cough. No sputum production. No fever.

Pain: No

OBJECTIVE:

Exam:

Cardiovascular

Auscultation

Yes: Regular Rate and Rhythm (RRR), Normal S1 and S2

No: M/R/G

Infectious Disease

COVID 19

Yes: Vital Signs w/O2 sat recorded in flowsheet, Alert and oriented, Lung sounds clear bilaterally,

Adequate respiratory effort

No: Using accessory muscles

Exam Comments

Lungs clear in all fields. No egophony. No tachypnea.

ASSESSMENT:

Confirmed case COVID-19, U07.1 - Current

PLAN:

Disposition:

Placed in Quarantine

Other:

1. Covid positive with worsening cough. Await CXR report. Exam unremarkable. Con't supportive care.

Patient Education Topics:

Date Initiated	Format	Handout/Topic	Provider	Outcome
12/22/2020	Counseling	Plan of Care	Moclock, Michael	Verbalizes Understanding

Copay Required: No

Cosign Required: No

Telephone/Verbal Order: No

Completed by Moclock, Michael MD on 12/22/2020 10:04

**Bureau of Prisons
Health Services
Clinical Encounter - Administrative Note**

Inmate Name:	BRENNERMAN, RAHEEM J			Reg #:	54001-048
Date of Birth:	<u>04/21/1978</u>	Sex:	M	Race:	BLACK
Note Date:	12/22/2020 10:37	Provider:	Stoltz, John PA-C		
		Facility:	ALF		
		Unit:	G03		

Admin Note - General Administrative Note encounter performed at Health Services.

Administrative Notes:

ADMINISTRATIVE NOTE 1 Provider: Stoltz, John PA-C

X-ray completed today showed subtle mixed interstitial and alveolar opacities in both lungs. Correspond with COVID pneumonia. Will have pt. monitored more frequently the daily.

ASSESSMENTS:

Viral pneumonia, unspecified, J129 - Current

New Non-Medication Orders:

<u>Order</u>	<u>Frequency</u>	<u>Duration</u>	<u>Details</u>	<u>Ordered By</u>
Vitals	Daily	5 days	Please completed vitals each evening along with completing the COVID screening. Please notify MLP if SPO2 is less the 92% or if pt. develops concerning signs or symptoms. Thanks.	Stoltz, John PA-C

Screening will also be completed each morning.

Order Date: 12/22/2020

Copay Required: No

Cosign Required: No

Telephone/Verbal Order: No

Completed by Stoltz, John PA-C on 12/22/2020 10:44

Bureau of Prisons
Health Services
Clinical Encounter - Administrative Note

Inmate Name:	BRENNERMAN, RAHEEM J		Reg #:	54001-048
Date of Birth:	12/21/1988	Sex: M	Race: BLACK	Facility: ALF
Note Date:	12/22/2020 10:50	Provider: Brown, Desiree RN	Unit: G03	

Admin Note - General Administrative Note encounter performed at Health Services.

Administrative Notes:

ADMINISTRATIVE NOTE 1 Provider: Brown, Desiree RN

Incentive spirometer given to inmate per MLP15. Inmate instructed/educated on how to use and frequency.
Inmate verbalized understanding.

Supplies Issued:

<u>Supply</u>	<u>Quantity</u>	<u>Date Issued</u>
Incentive Spirometer	1	12/22/2020

Copay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Completed by Brown, Desiree RN on 12/22/2020 10:52

EXHIBIT C

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

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

x

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

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

June 20, 2018

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

Dear Judge Sullivan

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

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

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

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

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

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

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

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

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

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

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

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman
Defendant Pro Se

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

Dear Scott,

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

Please let know what are the next steps.

Best Regards

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

Hi RJ,

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

Thanks,
Scott

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

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

GOVERNMENT
EXHIBIT
1-57
17 Cr. 337 {RJS}

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

Morgan Stanley
Smith Barney

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

Full Name Kyleon Jefferson BRENNERMAN

Address 245 PARK Avenue, 37FL

City NEW YORK State NEW YORK Zip Code 10167

Home Phone _____ Business _____

Cell 917 677 6930 Fax 310 861 1057

SS# or Tax ID [REDACTED] US Citizen Y N

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

E-mail Address Ybrennerman@blackburnlpclaw.com

Telephone access Prompts _____ Mother's Maiden Name _____

City of Birth _____ or 1st School Attended DWIGHT

Employer BLACKBURN MECHANICAL ENERGY CORPORATION

Nature of Business OIL & GAS Occupation OIL & GAS EXCUTIVE

Est. Annual Compensation \$ 720,000 (BSE SALES) Employed Since 2010

Primary Source of Income-Check all that apply

Annual Salary X Investments X Retirement Assets _____ Amount \$ _____

Est. Total Annual Income (all sources) _____

Est. Liquid Net Worth \$ 45m Est. Total Net Worth \$ _____

Tax Bracket (percentile) _____

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

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

Investing Since (year) _____ Stocks 11 Bonds 11 Commodities 01 Options 02

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

Speculation Yes _____ No _____

Primary Financial Need: (circle one)

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

Outside Investments: Firms Used: _____

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

Time Horizon _____ Liquidity Needs _____

Are you or anyone in your household a major share holder in a publicly traded company? Y(N)

Are you an executive of a publicly traded company? Y(N)

Do you or anyone in your immediate family work for a brokerage house? Y(N)

Is anyone in your immediate family employed by CitiGroup? Y(N)

DA 15/13

Please sign and date above

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

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

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

9685 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

Morgan Stanley
Smith Barney

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

Full Name JEFFERSON III HOLDINGS LLC

Address 3960 FLAMING THIGHS PARKWAY SUITE 500

City LAS VEGAS State NEVADA Zip Code 89169

Home Phone _____ Business _____

Cell 702 619 6430 Fax _____

SS# or Tax ID [REDACTED] US Citizen Y N

Marital Status NP #of Dependents _____ Date of Birth _____

E-mail Address _____

Telephone access Prompts _____ Mother's Maiden Name _____

City of Birth _____ or 1st School Attended DWIGHT

Employer _____

Nature of Business INVESTMENTS Occupation _____

Est. Annual Compensation \$ _____ Employed Since _____

Primary Source of Income-Check all that apply

Annual Salary _____ Investments _____ Retirement Assets _____ Amount \$ _____

Est. Total Annual Income (all sources) _____

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

Tax Bracket (percentile) _____

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

Growth 1 Current Income 2 Tax Deferral 3 Liquidity 4
Investing Since (year) Stocks 99 Bonds 99 Commodities 01 Options 02

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

Speculation Yes _____ No _____

Primary Financial Need: (circle one)

Wealth Accumulation	Major Purchase	Healthcare	Education
<u>Estate Planning</u>	Retirement	Charity	Income

Outside Investments: Firms Used: _____

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

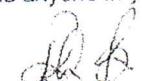
Time Horizon _____ Liquidity Needs _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N

Are you an executive of a publicly traded company? Y N

Do you or anyone in your immediate family work for a brokerage house? Y N

Is anyone in your immediate family employed by CitiGroup? Y N

Please sign and date above

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

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

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

Dear Mona,

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

Best Regards

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

RJ,

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

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

Other MS/Platinum Perks Include:

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

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

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

Important Notice to Recipients:

GOVERNMENT
EXHIBIT
1-73
17 Cr. 337 {RJS}

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

The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"). If you have received this communication in error, please destroy all electronic and paper copies and notify the sender immediately. Erroneous transmission is not intended to waive confidentiality or privilege. Morgan Stanley reserves the right, to the extent permitted under applicable law, to monitor electronic communications. This message is subject to terms available at the following link: <http://www.morganstanley.com/disclaimers/mssbeemail.html>. If you cannot access this link, please notify us by reply message and we will send the contents to you. By messaging with Morgan Stanley you consent to the foregoing.

SDNY 008384

CLIENT STATEMENT For the Period January 31, 2013

Morgan Stanley

#BVRJGWM

TOTAL VALUE LAST PERIODS (as of 1/23/12)	□
NET CREDITS/DEBITS	200,000.00
CHANGE IN VALUE	0.88
TOTAL VALUE OF YOUR ACCOUNT (as of 1/31/13) <small>(Total Values include accrued interest)</small>	\$200,000.88

YourFinancialAdvisor

Scott Stout

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

Your Branch

9665 WILSHIRE BLVD STE 600
BEVERLY HILLS, CA 90212
Telephone: 310-265-2600
Alt. Phone: 800-458-9838
Fax: 310-265-2696

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

Access your accounts online
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Shop Stickers



Scott Stout • 3rd

CEO, Co-Founder at MedVector Clinical Trials
El Segundo, California

MedVector Clinical Trials

- University of Arizona
- See contact info
- 500+ connections

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Earn Your MSW Online from
USC. No GRE Required.

Experience

CEO & Co-Founder



MedVector Clinical Trials

Jun 2017 – Present • 1 yr 1 mo
El Segundo, CA

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

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

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

To learn more visit: www.MedVectorTrials.comFinancial Advisor
Wells Fargo Private BankOct 2014 – Apr 2018 • 3 yrs 7 mos
Los Angeles, California

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

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

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

Advised a Family Office regarding options strategy.

Education



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

Interests

Univ ersity of Arizona	University of Arizona 214,411 followers	Barrington Legal, Inc.	Barrington Legal, Inc. 40 followers
Med Vector Clinical Trials	MedVector Clinical Trials 4 followers	Delta Chi Fraterni ty	Delta Chi Fraternity 5,471 members
Univ ersity of Arizona	University of Arizona Alumni 34,140 members	Forti s Partners	Fortis Partners 1,045 followers

[See all](#)

6/8/2018 ✓

Morgan Stanley Smith Barney is Now Morgan Stanley Wealth Management

Sep 25, 2012

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

New York —

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

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

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

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

6/8/2018 ✓

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

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

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

Morgan Stanley (NYSE: MS) is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services. The Firm's employees serve clients worldwide including corporations, governments, institutions and individuals from more than 1,200 offices in 43 countries. For further information about Morgan Stanley, please visit www.morganstanley.com.

Media Relations Contact:

Jeanmarie McFadden, 212.761.2433

Jim Wiggins, 914.225.6161

EXHIBIT D

IBJQBREs

1 there's a grid or a table. You probably can't see it, but it's
2 a chart, and there's a column here on the far left. That's the
3 offense level column. It starts at number one and goes down to
4 level 43. The judge goes down that column until the judge gets
5 to the number that the judge found to be the offense level.

6 The judge then goes across these other columns from
7 left to right, each of which reflects a criminal history
8 category, and the judge keeps going until the judge gets to the
9 criminal history category that the judge found to be
10 appropriate. Where the judge's finger finally stops then after
11 that exercise, well, that's the range that in the view of the
12 commission that prepares this book would be appropriate.

13 I don't have to follow this book. This book is not
14 mandatory. It's advisory. But I do have to consider it, and I
15 have to make my findings under it. So we are going to spend a
16 few minutes now talking about how this book applies in this
17 case. It can be a little complicated. It can be sort of a
18 little like accounting, but it's not too hard to follow, and I
19 think the issues here are relatively straightforward and
20 understandable. So we'll pick them up. All right?

21 According to the presentence report prepared by the
22 probation department, beginning on page 6 -- there are four
23 counts of conviction here, so according to probation, Counts
24 One, Two and Three are grouped together pursuant to a different
25 section of the guidelines that says where you have crimes that

IBJQBREs

1 are distinct crimes but they all involve the same conduct, in
2 most cases you group them all together and you do an analysis
3 all together. You don't count them separately and add them up.
4 You do them together. So the conspiracy to commit bank and
5 wire fraud, the bank fraud and the wire fraud are all treated
6 together, and they're all covered by the same guidelines
7 provision, which is Section 2B1.1. That's the general fraud
8 provision under the guidelines.

9 Now, I do think, frankly, that it's worth pointing out
10 that the bank fraud calculation here I think would be quite
11 different than the wire fraud, and I guess I want to hear from
12 the parties on that. But the bank fraud here was a scheme or
13 artifice to defraud the private banking arm of Morgan Stanley
14 to enable Mr. Brennerman to get access to the perks which are
15 tangible. They're worth money, free checking among them. I
16 don't get that. And some other perks. But also to get some
17 more intangible perks, which would be access to other arms of
18 the Morgan Stanley family of entities.

19 I'm only really focused on the first category here.
20 It seems to me the first category here, there's been no
21 evidence that I've seen that suggests that was worth more than
22 \$6,500 or so.

23 Mr. Roos, do you disagree?

24 MR. ROOS: I think that's right, your Honor.

25 THE COURT: You agree, OK.

IBJQBREs

1 And I assume, Mr. Tulman, you agree with that.

2 MR. TULMAN: I have no problem with that, Judge.

3 THE COURT: So, that being the case then, the base
4 offense level is 7, because the maximum sentence of bank fraud
5 is 30 years, but there's no enhancement for loss because the
6 loss amount in dollar terms for the bank fraud count did not
7 exceed \$6,500.

8 Is the government arguing there are any other
9 enhancements for the bank fraud count? I didn't see any, but
10 maybe I'm wrong.

11 MR. ROOS: Well, your Honor, the PSR sets forth
12 sophisticated means.

13 THE COURT: Sophisticated means for the bank fraud?

14 MR. ROOS: It's identified as sophisticated means
15 include, like, for instance, his papering of a fake company,
16 his setting up shell entities. The government's proof at trial
17 was -- while I think your Honor is right that from the FDIC
18 institution, the potential loss to that institution was low, he
19 still used those various sophisticated means, basically, the
20 papering of a company that didn't exist in order to get access
21 to those benefits and expose the bank's potential loss. So I
22 think that enhancement would apply.

23 THE COURT: Mr. Tulman, thoughts on that?

24 MR. TULMAN: I don't know that there's anything
25 particularly sophisticated about the conduct.

IBJQBREs

1 THE COURT: Well, it does require you to create a
2 company. It might require you to incorporate a company. It
3 requires you to develop financials for that company and
4 brochures and things like that. There was a lot of evidence
5 about those things. I guess that's more sophisticated than a
6 typical situation where somebody just uses a false name when
7 they go into a bank or adds a zero to their income in a form.
8 I think it's more sophisticated than that. I think ultimately
9 it's not going to matter, the impact of that doesn't add much
10 of anything here, but I think that that argument is -- I'm
11 persuaded there has been proof of sophisticated means that by a
12 preponderance would warrant a two-level increase. So the bank
13 fraud would be at level 9, before we get to obstruction. And I
14 think that's going to be a lot lower than the wire fraud. The
15 wire fraud is what drives this here. So the wire fraud is also
16 going to be a base offense level of 7, correct?

17 MR. ROOS: That's correct, your Honor.

18 THE COURT: And then there the loss amount is
19 disputed. The probation department concludes that the loss
20 amount was \$20 million because that is what the defendant --
21 that was the nominal amount of the loan that he fraudulently
22 secured. He didn't get it all, but I guess the argument is
23 that he didn't have to have gotten it all to be on the hook for
24 the full \$20 million. It's the loss and the intended loss, at
25 least with the conspiracy count, but probably even for the

IBJQBREs

1 substantive count, the intended loss would be relevant. So why
2 don't we talk about that.

3 The restitution amount will be lower. Obviously, it's
4 not going to be 20 million for restitution. The restitution is
5 not the driver of loss for intended loss. So the government's
6 view is this nominal amount alone of \$20 million, that's the
7 fraud?

8 MR. ROOS: Your Honor, I think this is a relatively
9 conservative estimate by probation. There was plenty of proof
10 at trial that the defendant went to both the ICBC and the
11 non-FDIC insured branch of Morgan Stanley and sought out
12 considerably more --

13 THE COURT: He was trying to get \$600 million. I
14 guess at one point that was what there was discussion about,
15 but you're not seeking that as the loss amount, right?

16 MR. ROOS: That's right, your Honor, although I think
17 there was evidence at trial that he intended that amount.
18 Julian Madgett testified that this bridge loan of \$20 million
19 wasn't contemplated as the exclusive deal. Rather, it was sort
20 of the entree to a much larger deal that the bank was totally
21 serious about. So, I think there actually would be a basis for
22 the Court to conclude that there was a \$300 million intended
23 loss.

24 The government isn't pursuing that though, and that's
25 not what probation did. I think this is very reasonable. He

IBJQBREs

had a contract, something reduced to writing for \$20 million. Sure, the drawdown happened before the fraud was exposed was approximately \$5 million, but there is not only a clear evidence in the trial record of intention to take \$20 million from the bank, but actually multiple steps taken by the defendant, up to the point of entering into a contract, having money transferred into an escrow account.

So, there is more -- as your Honor pointed out, the test is not exclusively what actually was lost by the bank. That's may be it for restitution, but in terms of intended loss, there is more than sufficient evidence in the record to conclude that \$20 million is the appropriate amount.

THE COURT: Mr. Tulman, do you want to be heard on that?

MR. TULMAN: Yes, your Honor.

The issue, as the government rightly points out, is of intended loss, and what Mr. Brennerman has pointed out to the Court is simply the fact that of the \$20 million, as a matter of English law, the \$15 million was not controlled by Mr. Brennerman, he would never have been able to gain access to it. It was held in a pledged account to ICBC. So he could not and did not intend ever to receive any of those \$15 million.

THE COURT: Why are you saying he never intended to get that money?

MR. TULMAN: That's right. What he maintains is that

EXHIBIT E

HBT5bre7

Madgett - cross

1 (Jury present)

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

4 CROSS EXAMINATION

5 BY MR. WALLER:

6 Q. Good afternoon, Mr. Madgett.

7 A. Good afternoon.

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

9 A. 2009.

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

11 A. Correct.

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

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

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

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

16 Q. That's correct.

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

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

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

25 Q. Did you ever produce the documents from that credit

HBT5bre7

Madgett - cross

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

2 MR. ROOS: Objection.

3 THE COURT: You can answer.

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

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

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

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

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

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

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

HBT5bre7

Madgett - cross

1 Q. Is there an underwriting file for a loan application such
2 as the one we are dealing with in this case?

3 A. There would be a credit application document which is where
4 the case for making the loan has been summarized, and that is
5 the credit application document which then goes to credit
6 committee for approval or decline.

7 Q. Do you know if that -- well who would have prepared that
8 document?

9 A. I would have been one of the main authors of that document.

10 Q. Do you know if that document was produced to the
11 government?

12 A. I do not and I wouldn't see great relevance in it, but I do
13 not know if it has gone to the government.

14 Q. Well, relevance is not really your determination, correct?

15 A. Correct, correct. Yes.

16 Q. So you don't know if it was produced to the government and
17 it certainly wasn't produced to the defense, correct, by ICBC?

18 THE COURT: Well, do you know?

19 THE WITNESS: I don't know, but I'm assuming from your
20 question that it wasn't.

21 THE COURT: Well, don't assume.

22 THE WITNESS: Okay, sorry. My apologies.

23 THE COURT: The jury knows not to assume anything from
24 a question. So, you just answer as to what you know.

25 THE WITNESS: All right.

HBT5bre7

Madgett - cross

1 BY MR. WALLER:

2 Q. Was there an answer?

3 A. Could you repeat the question, please?

4 Q. Yes.

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

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

8 THE WITNESS: I don't know.

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

11 BY MR. WALLER:

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

13 A. I don't know.

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

15 A. Yes.

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

17 A. Yes.

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

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

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

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

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

EXHIBIT F

HBUKBRE1

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

3 THE COURT: You haven't served it yet?

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

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

12 So, to the extent the bank is subpoenaed with a Rule
13 17 subpoena, then that would be a different issue, but I don't
14 think serving Mr. -- who is the lawyer, Mr.?

15 MR. HESSLER: Hessler, your Honor.

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

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

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

EXHIBIT G

HBTKBRE2

Bonebrake - Cross

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

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

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

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

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

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

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

HBTKBRE2

Bonebrake - Cross

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

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

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

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

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

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

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

20 Q. I understand.

21 A. I could speculate, but...

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

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

HBT5bre3

Bonebrake - recross

1 BY MS. SASSOON:

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

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

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

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

10 MS. SASSOON: No further questions.

11 THE COURT: Okay. Any recross?

12 MR. STEINWASCHER: Very briefly, your Honor.

13 RECROSS EXAMINATION

14 BY MR. STEINWASCHER:

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

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

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

24 MR. STEINWASCHER: Thank you.

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

HBTKBRE2

Bonebrake - Cross

1 BY MR. STEINWASCHER:

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

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

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

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

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

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

21 A. They would not typically provide the money. There are some
22 cases where Morgan Stanley -- let me rephrase that. I can only
23 speak for my particular division. So, Morgan Stanley is a
24 \$700 billion company operating across the globe with over
25 50,000 employees. So my particular division would typically

HBTKBRE2

Bonebrake - Cross

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

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

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

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

14 A. Yes.

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

20 A. Correct.

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

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

HC48BRE4

Gonzalez - Cross

1 don't.

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

4 A. I'm not certain.

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

7 A. No.

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

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

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

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

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

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

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

HC48BRE4

Gonzalez - Cross

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

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

6 A. It's hard for me to see.

7 Q. Do you see that text now?

8 A. Yes.

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

11 A. I'm not aware of that.

12 Q. Did you conduct any search to confirm that?

13 A. No.

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

16 A. Yes.

17 Q. Are you familiar with that acronym SIPC?

18 A. I'm not familiar with that acronym.

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

21 A. No.

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

23 A. No.

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

HC48BRE4

Gonzalez - Cross

1 A. Not without a certificate of deposit insurance.

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

5 A. A foreign bank?

6 Q. Correct.

7 A. No.

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

11 A. That is correct.

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

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

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

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

23 A. No.

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

HC48BRE4

1 A. Yes.

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

5 A. That is correct.

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

8 THE COURT: Any redirect?

9 MR. SOBELMAN: No, your Honor.

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

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

15 All rise for the jury, please.

16 (Jury exits courtroom)

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

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

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

EXHIBIT H



ATLANTA

CLEVELAND

DAYTON

WASHINGTON, D.C.

CINCINNATI

COLUMBUS

NEW YORK

November 29, 2017

Via ECF and Email

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

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

Dear Judge Sullivan,

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

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

THOMPSON
HINE

November 29, 2017

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

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

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

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

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

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

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HINE

November 29, 2017

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Respectfully,

s/ Maranda E. Fritz

Maranda E. Fritz

Enclosures

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

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

Defendant)

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

To: Julian Madgett

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

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

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

Please see attached rider.

(SEAL)

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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

Maranda E. Fritz, Esq.

Brian D. Waller, Esq.

Brian K. Steinwascher, Esq.

Thompson Hine LLP

335 Madison Avenue, 12th Floor

New York, New York 10017-4611

(212) 908-3966

Maranda.Fritz@ThompsonHine.com, Brian.Waller@ThompsonHine.com & Brian.Steinwascher@ThompsonHine.com

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

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

PROOF OF SERVICE

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

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

_____ on (*date*) _____; or

I returned the subpoena unexecuted because: _____

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

\$ _____.

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER
(Subpoena to Julian Madgett)

Definitions and Instructions:

1. Please produce any documents responsive to this Subpoena by 12/6/2017 at 9:30 am.
2. Please produce requested records in electronic form (native format where necessary to view the material in its full scope) in a manner that is OCR-searchable, and with all available electronic metadata.
3. The term “documents” includes writings, emails, text messages, drawings, graphs, charts, calendar entries, photographs, audio or visual recordings, images, and other data or data compilations, and includes materials in both paper and electronic form.
4. The term “ICBC” refers to the Plaintiff in the civil litigation in the Southern District of New York captioned *ICBC (London) plc v. The Blacksands Pacific Group, Inc.*, 15 Cv. 70 (LAK) and includes its agents, representatives and counsel.
5. The term “Blacksands Pacific” includes The Blacksands Pacific Group Inc. and the Blacksands Pacific Alpha Blue, LLC or any Blacksands Pacific entity and any of its subsidiaries and affiliates, and any officer, employee, volunteer, representative, or agent of those entities.
6. The Subpoena calls for the production of documents from the period January 1, 2013 to March 3, 2017.
7. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

Materials to be Produced:

1. All notes relating to meetings and communications with representatives of Blacksands Pacific.
2. All documents relating to or reflecting the decision by the credit committee at ICBC to issue a bridge loan to Blacksands Pacific including but not limited to the “credit paper” and memorialization of the committee’s decision.