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May 22, 2022

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Regarding: Brennerman v.  
United States, 22  
Cv. 996 (LAK)  
(arising from  
Criminal case no. 17  
Cr. 155 (LAK))

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X

Hon. Lewis A. Kaplan  
UNITED STATES DISTRICT COURT  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, New York 10007

RESPONSE TO DENIAL ORDER AT 22 cv. 996 (LAK), EFC No. 28 AND 17 cr. 155 (I-AK), EFC No. 235  
AND NOTIFICATION OF CRIMES & MISCONDUCT AGAINST PETITIONER- DEFENDANT

Dear Judge Kaplan:

The undersigned, Petitioner Pro se Raheem Jefferson Brennerman ("Brennerman or Petitioner") respectfully submits this correspondence in response to the denial of his Collateral Attack Petition at Brennerman v. U.S., 22 Cv. 996 (LAK), EFC No. 28 and U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 235. Furthermore, Brennerman respectfully submits this correspondence, to notify, appraise and inform this Court of CRIMES/misconduct perpetuated against him through the United States District Court for the Southern District of New York, and seeks appropriate relief (the "Relief") from those crimes and misconduct, as more succinctly highlighted below.

Background:

Petitioner incorporates the Background section contained within the Reply Motion to his Collateral Attack Petition (the "Reply Motion") at Brennerman v. U.S., 22 cv. 996 (LAK), EFC No. 25 and U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 234

In addition, on May 5, 2022, Petitioner submitted further correspondence to the Chief Judge of the Southern District of New York, Judge Laura Taylor Swain, informing, appraising and notifying her of CRIMES perpetuated against him by federal prosecutors and judges using the United States District Court for the Southern District of New York. See copy letter at 22 Cv. 996 (LAK), EFC No. 26 and U.S. v. Brennerman et. ano., 17 cr. 155 (LAK), EFC Nos. 236, 237.

Discussion:

Petitioner now presents this response to the denial order of this court at 22 Cv. 996 (LAK), EFC No. 28 and U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 235 and further notifies, appraise and inform this Court (Judge Lewis A. Kaplan) of CRIMES committed against him by federal prosecutors and judges through the U.S. District Court for the Southern District of New York.

This Court (Judge Lewis A. Kaplan) began its denial memorandum and order by stating in relevant part "Defendant Brennerman was convicted by a jury of two counts of criminal contempt of court and sentence principally to a term of imprisonment of 24 months." This was an attempt by this Court to obfuscate and cover-up the CRIME of conspiracy with the Government prosecutors, acting on behalf of this Court, conspiring with Linklaters LLP (attorney of alleged victim) through

Attorney Paul Stephen Hessler to intentionally withhold production of pertinent and exculpatory evidence, ICBC files, which demonstrates Brennerman's innocence and thus exonerates him from the alleged crime. Because of the conspiracy to deprive him

[Brennerman] of those evidence, the ICBC files, he was unable to present them [ICBC files] to the jury for their consideration during deliberation of his innocence or guilt thereby depriving Brennerman of his Constitutional rights to a fair trial and his Constitutional rights to liberty.

The 2255 Motion

The 2255 motion assigned four grounds for relief. For purpose of this response, Petitioner will truncate his response in two categories.

1. Ground Two: Ineffective assistance of counsel.

This Court, in its endeavor to cover-up the crime of conspiracy, puts forth an inaccurate assertions which Petitioner did not present in his 2255 motion, thereby adjudicating on arguments which Petitioner did not present to the Court. Furthermore the false narrative put forth by the Court is a deliberate attempt by this Court to obfuscate and avoid granting the request for the ICBC files and testimony of Attorney Paul S. Hessler as those will expose the crime of conspiracy.

In the purported memorandum and order, this Court stated: "Ground Two claims that defendant's counsel were constitutionally ineffective in failing to obtain various files of ICBC (London) which, movant asserts, might have shown that ICBC (London) was more interested in settling its business dispute with movant than with engaging in post-judgment discovery for the purpose of enforcing its judgment. This in turn supposedly would have been a defense to the criminal contempt charges,"

Instead, Petitioner put forth the argument that, his trial counsel were constitutionally ineffective for failing to compel production of the missing evidence, ICBC files, from ICBC's New York based legal advisors, Linklaters LLP at 1290 Avenue of the

Americas, New York, NY through subpoena issued by this Court pursuant to Federal Rule of Criminal Procedure 17, particularly given that Government had obtained in-excess of 5,000 pages of discovery from Linklaters LLP New York office and those missing evidence were quite obvious, since the only non-responsive discovery were the pertinent and exculpatory evidence. Furthermore, in contrast with the concocted arguments presented by this Court in its purported adjudication of Petitioner's Collateral Attack Petition, there would be no concern with enforceability of such subpoena issued by this Court.

This Court then goes on to make various arguments which does not answer Petitioner's presented arguments. This Court strenuously endeavored to obfuscate the argument and present a different narrative to that argued by Petitioner. Missing from the entire purported adjudication is the core argument presented by Petitioner. An excerpt of Petitioner's reply motion at Brennerman v. U.S., 22 cv. 996 (LAK), EEC No. 25 and U.S. v. Brennerman, 17 cr. 155 (LAK), No. 234 is highlighted below.

This Court concocted its own argument in an endeavor to cover-up the core issue and to avoid granting Petitioner's request for the missing ICBC file and testimony of Attorney Paul S. Hessler as to why he [Mr. Hessler] intentionally withheld production of those missing evidence. Petitioner's argument is not based on his trial counsel obtaining the missing evidence from ICBC (London) plc in London, U.K. but rather obtaining the missing ICBC files from ICBC (London) plc's New York based counsel, Linklaters LLP using Federal Rule of Criminal Procedure 17 to compel production of those missing file because Government, itself, obtained in-excess of 5,000 pages from Linklaters LLP New York, however intentionally refused to obtain the missing files which exonerates Petitioner of the charged crime. The relevant part of the reply motion states:

"Respondent in their opposition motion states: "First, as this Court explained in advance of the trial in this case, the Federal Rule of Criminal Procedure and statutes governing a defendant's ability to obtain evidence from witnesses outside the United States did not provide a mechanism for the defendant to compel the production by ICBC of the materials he claims his counsel failed to obtain. see U.S. v. Brennerman, No. 17 cr. 155 (LAK), 2017 WL 4513563 at \*2 (S.D.N.Y. sept 1, 2017)." This argument to the extent it could be construed as an argument, is frivolous.

Respondent previously made contrasting argument in other court filing(s), concurring that Petitioner's trial counsel failed to obtain and present the ICBC documents/evidence using appropriate mechanism for gathering evidence. See U.S. v.

Brennerman, No. 18-3546, EFC No. 146 at page 48, arguing that: ("....in any case, Brennerman failed to seek a subpoena pursuant to Federal Rule of Criminal Procedure 17, make a timely request for a deposition under Federal Rule of Criminal Procedure 15, or ask the District Court to issue letter rogatory pursuant to 28 U.S.C. Section 1781 to obtain documentary evidence or secure testimony from the United Kingdom where ICBC maintains its records...."); see also *I.J.S. v. Brennerman*, No. 17 Cr. 337 (RJS), EFC No. 239 (same argument), hence respondent's instant argument is without merit.

Prior to the criminal prosecution, the Respondent issued subpoena to [CBC's legal advisor in New York, Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY, obtaining in-excess of 5,000 pages of discovery from them.

Petitioner's trial counsel Thompson Hine LLP through Attorneys Maranda Fritz and Brian Waller failed to seek production of the missing ICBC pertinent and exculpatory evidence/documents including ICBC [underwriting file], [meeting minutes], [notes], [emails] from Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY, pursuant to Federal Rule of Criminal Procedure 17."

"In this instant case at 17 Cr. 155 (LAK), EFC Nos. 57, 59, 60, 61 and the interrelated case at 17 Cr. 337 (RJS), EFC No. 58, 59, 71, notwithstanding Petitioner's trial counsels' endeavor to obtain and argument for the ICBC pertinent and exculpatory documents/evidence, they [Petitioner's trial counsel] failed to comply with the rules governing subpoenas under Rule 17(d) of the Federal Rule of Criminal Procedure, for compelling the production of the missing ICBC evidence/documents from Linklaters LLP's New York office nor did they adopt the appropriate mechanism for gathering evidence located abroad. Even when this court put them on notice through its denial of their request for the ICBC documents/evidence at *U.S. v. Brennerman, et. ano.*, 17 Cr. 155 (LAK), EFC No. 76, they [Petitioner's trial counsell still failed to gather the required documents/evidence using appropriate mechanism. Furthermore, nothing contained within this Court's memorandum and order at *I.J.S. v. Brennerman, et. ano.*, 17 Cr. 155 (LAK), EFC No. 76 prohibited Petitioner's trial counsel from adopting the appropriate mechanism for gathering the required [CBC documents/evidence from Linklaters LLP's New York office pursuant to Federal Rule of Criminal Procedure 17 or directly from ICBC (London) plc in London, United Kingdom through letter rogatory, but their incompetence and deficient performance."

This Court further stated:

".....Thus, movant has failed to establish even a colorable argument that his counsel's failure to pursue any of the speculative avenues fell below the minimum constitutional standard of adequate representation. But "the clincher," as it were, is that movant in any case has not shown prejudice - i.e., that a constitutionally sufficient performance probably would have led to a different result. see *Strickland v. Washington*, 466 U.S. 668, 695 (1984)."

However this Court ignored the argument presented by Petitioner in his reply motion, which states as follows:

"Prejudice occurs when a right conferred by the Constitution is abridged. The right to present a defense is "a fundamental element of Due Process of law," and "preclusion of all inquiry by the defense on a particular aspect of the case violates that right" see *United States v. Stewart*, 104 F.3d 1397, 1384 U.S. App. D.C. 29 (D.C. Cir. 1997) (quoting *Washington v. Texas*, 388 U.S. 14, 19 87 S. ct. 1920, 18 L. Ed 2d 1019 (1967) and *Chambers v. Mississippi*, 410 U.S. 284, 302 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)).

Deficient performance and failure by Petitioner's trial counsel deprived him of the ability to present a complete defense and meaningfully confront witness(es) against him, in violation of his Sixth Amendment right as promulgated by the United States Supreme Court, that a criminal defendant has a Sixth Amendment right to present a complete defense. See "*Crane v. Kentucky*, 476 U.S. 683 (1986) (holding that, "it is a federal law that a criminal defendant has a Constitutional right to present a complete defense")" The United States Court of Appeals for the Second Circuit adopted such holding in "*Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019)"

Petitioner's trial counsel failed to obtain and present the required ICBC pertinent and exculpatory evidence including the [underwriting file], [notes], [e-mails], [meeting minutes] depriving Petitioner of the ability to present those evidence/documents for jury consideration in their deliberation of Petitioner's innocence or guilt.

Linklaters LLP on March 17, 2022 wrote to Petitioner to acknowledge that the missing evidence, ICBC files, were in their possession, however that, as a law firm, they require consent from their client or a court order to turn over those missing

evidence to Petitioner. Hence any attempt to obfuscate the argument that Petitioner's trial counsel were ineffective for failing to obtain the missing evidence, ICBC files, from Linklaters LLP's New York office at 1290 Avenue of the Americas, New York, NY, using Federal Rule of Criminal Procedure 17 is inaccurate.

The Court further states "As this Court long ago ruled, the fact that movant was engaged in settlement negotiations with the bank when he failed to comply with this Court's discovery orders - if that actually was the case - would not have been a defense to the criminal contempt charges. Moreover, any contrary argument by movant has been procedurally defaulted."

At trial, this Court charged the jury as follows:

"Now, you have heard a lot of evidence - and a lot of argument - that the parties in the civil suit at one point or another engaged in what one side characterized as settlement discussions and the other side spoke of it as something else.

"I instruct you that the crime of criminal contempt is complete, has been committed, when a defendant, with knowledge of a reasonably specific court order that requires that he do something at a particular time, or by a particular time, knowingly and fails to comply with that court order when required to do so. The existence of settlement discussions in a civil case in which a court order is issued does not excuse a defendant from compliance absent an order by the court suspending or otherwise modifying the requirement to comply. To put it in a slightly different way, it does not excuse a failure to comply unless there is an order by the court suspending or otherwise modifying the requirement of compliance."

This Court certainly ignored Petitioner's argument in his reply motion which read in relevant part as follows:

"Here, Respondent misconstrues Petitioner's argument. The argument here is whether Petitioner was prejudiced at trial where his trial counsel failed to adopt the appropriate mechanism for gathering evidence required by Petitioner at trial, thereby depriving Petitioner of the ability to present his complete defense in presenting those documents/evidence to the jury at trial for their consideration during deliberation of this innocence or guilt. Evidence of agent of ICBC, the recipient of discovery ordered by the Court, repeatedly advising Petitioner that they preferred settlement rather than receiving more discovery would have created reasonable doubt in the minds of the jury, because, "no reasonable juror would have found Petitioner guilty [...] in light of the requested ICBC documents/evidence," particularly given that Petitioner, in an endeavor to comply with the court order engaged with agents of ICBC in settlement negotiations which resulted in both parties agreeing settlement agreement in line with ICBC's request. See U.S. v. Brennerman et. ano., 17 Cr. 155 (LAK), EFC No. 12 Ex. 10."

This particular argument goes to the heart of the CRIME perpetuated against Petitioner by Government prosecutors, acting on behalf of this Court - conspiring with Linklaters LLP through Attorney Paul S. Hessler to intentionally withhold production of those documents/evidence which exonerates Petitioner.

First, taking into consideration the instruction by this Court to the jury, clearly the jury had not heard those specific evidence which exonerates Petitioner where agents of ICBC repeatedly and continually advised Petitioner that they did not want more discovery but instead, preferred to negotiate settlement. Appended to the reply motion is a copy of the negotiated draft settlement agreement.

Furthermore, the missing evidence, which Government prosecutors conspired to hide away from Petitioner would have cast significant reasonable doubts in the mind of the jurors, particularly given that the second court order specifically stipulated for the "parties to either settle or produce more discovery" and agents of ICBC, recipient of the discovery, repeatedly and continually advised Petitioner that they did not want more discovery but rather preferred to negotiate settlement. However, Government prosecutors, acting on behalf of this Court, conspired with Linklaters LLP (attorney for ICBC) through Attorney Paul S. Hessler to hide away the evidence from Petitioner so he would be unable to present it to the jury at trial. This is a crime and an intentional and deliberate violation of Petitioner's Constitutional and civil rights. Now this Court is obfuscating in its endeavor to cover-up the crime.

The appellate Court did not consider the fact that Government prosecutors, acting on behalf of this Court, intentionally and deliberately conspired with Linklaters LLP (attorney for ICBC) through Attorney Paul S. Hessler to intentionally withhold production of the pertinent and exculpatory missing evidence, ICBC files, so as to intentionally deprive Petitioner from using those evidence for his defense at trial. The Second Circuit Court did not have occasion to consider the crimes perpetuated by Government prosecutors, acting on behalf of this Court, against Petitioner as highlighted above.

In summary, Petitioner's trial counsel were constitutionally ineffective for failing to compel production of the missing evidence, ICBC files, from ICBC's New York based legal advisors, Linklaters LLP at 1290 Avenue of the Americas, New York, NY through subpoena issued by this Court pursuant to Federal Rule of Criminal Procedure 17, particularly given that Government had obtained in-excess of 5,000 pages of discovery from Linklaters LLP New York office and those missing evidence were quite obvious, since the only non-responsive discovery to Government's subpoena were the pertinent and exculpatory evidence which demonstrates Petitioner's innocence. Furthermore, there would be no concern with enforceability of such subpoena issued by this Court, had Petitioner's trial counsel sought to compel Linklaters LLP New York.

## 2. Ground(s) One, Three, Four: Crimes and Misconduct Against Petitioner.

At the heart of the issue is this Court's entanglement in the crime perpetuated by Government prosecutors, acting on its behalf, to intentionally and deliberately deprive Petitioner of evidence, ICBC files, which he required for his defense, thus violating his Constitutional and civil rights.

Petitioner strenuously requested for this Court to disqualify/recuse himself from continuing to preside over the Collateral Attack Proceedings, given that the Government prosecutors who acted on its behalf committed crimes against Petitioner. However this court refused to recuse/disqualify itself so as to enable it obfuscate and cover-up the crime of conspiracy as highlighted above. This Court should not be allowed to be a judge of its own cause.

Petitioner further submits this correspondence to formally notify, appraise and inform this Court that crimes which violates his civil rights have been committed against him through the United States District Court for the Southern District of New York as more succinctly highlighted below:

a.) Judge Lewis A. Kaplan, in an inexplicable endeavor, sought more willing federal prosecutors when the initial set of federal prosecutors refused to prosecute Brennerman criminally. Thereafter, United States Department of Justice ("ChS, DOJ") federal prosecutors at United States Attorney Office for the Southern District of New York ("USAO, SDNY"), acting on behalf of Judge Lewis A. Kaplan, charged Brennerman with federal crimes then conspired with Linklaters LLP (attorney for alleged victim) through Attorney Paul Stephen Hessler, to intentionally withhold production of pertinent and exculpatory documents/evidence, ICBC files, including the [underwriting file] and others which exonerate Brennerman and which Brennerman required to prove his innocence at trial.

U.S. DOJ federal prosecutors charged Brennerman in two interrelated criminal cases, empaneled a jury trial then conspired with the alleged victim's counsel, Linklaters LLP, to intentionally withhold production of the very evidence which demonstrates Brennerman's innocence, in an endeavor to enslave him by wrongly convicting and falsely imprisoning him.

The conspiracy affected Brennerman's ability to defend himself in both interrelated criminal cases, the criminal contempt of court before this court (Judge Lewis A. Kaplan) and the fraud case before Judge Richard J. Sullivan.

b.) To exacerbate the deliberate civil and Constitutional rights deprivation, Judge Richard J. Sullivan, then intentionally misrepresented (fabricated) evidence, by surreptitiously supplanting Morgan Stanley Smith Barney, LLC, a non-FDIC insured institution with Morgan Stanley Private Bank, a FDIC insured institution, in a deliberate endeavor to falsely satisfy the law to convict and imprison Brennerman of bank fraud and bank fraud conspiracy.

Government prosecutors indicted, prosecuted and imprisoned Brennerman for bank fraud and conspiracy to commit bank fraud where there was no conduct that violated the federal statute. That precipitated Judge Richard J. Sullivan to intentionally misrepresent (fabricate) evidence by surreptitiously supplanting Morgan Stanley Smith Barney, LLC, a non-FDIC insured

institution where Brennerman had a wealth management brokerage account with Morgan Stanley Private Bank, a FDIC-insured institution where Brennerman had no interaction, in an endeavor to falsely satisfy the law to convict and imprison Brennerman.

C.) Presently, in the Collateral Attack proceedings, Judge Richard J. Sullivan has remained silent for more than six (6) months while enslaving Brennerman as he remains unjustly imprisoned. Judge Lewis A. Kaplan has endeavored to cover-up the crime of conspiracy, initially by abruptly denying all pending motions and ordering the closure of the Collateral Attack proceedings and now by purporting an adjudication of concocted argument which Petitioner did not present, all so as not to grant the request for the pertinent and exculpatory ICBC documents/evidence and the testimony of Attorney Paul S. Hessler under oath, as those will expose the conspiracy.

Evidence of the above are succinctly documented at:

i.) Brennerman v. United States, Case No. 22 Cv. 996 (LAK), [all docket entries] ii.) United States v. Brennerman, case No. 17 Cr. 337 (RJS), EFC Nos. 269, 270, 272, 274.

Discovery:

As expected, this court (Judge Lewis A. Kaplan) refused to grant request for the missing ICBC files which Petitioner sought in support of his Collateral Attack arguments, even though Linklaters LLP New York office already confirmed possession of the missing evidence, ICBC files. In addition, Petitioner sought deposition of Attorney Paul S. Hessler, who conspired with Government prosecutors to intentionally deprive Petitioner of the exculpatory evidence, under oath. However, this court will not and cannot grant those requests and they will expose the conspiracy.

Should the courts, Judges Kaplan and Sullivan, disagree with Brennerman, they are entitled to refer Brennerman for further prosecution, however they cannot and will not do so, because such action will entitle Brennerman to discovery pursuant to Federal Rule of Criminal Procedure 16/17 where Brennerman will become entitled to discovery and be able to request and obtain the missing ICBC documents/evidence. Furthermore, pursuant to Federal Rule of Criminal Procedure 15, Brennerman will be able to depose Attorney Paul S. Hessler under oath as to why he intentionally withheld production of the ICBC documents/evidence, thereby exposing the conspiracy, in addition to deposing other partners at Linklaters LLP as to why Attorney Paul S. Hessler was "kicked-out" of the law firm upon the federal prosecutors indicting Brennerman in June 2017. Brennerman will also become entitled to depose Judge Richard J. Sullivan as to why he intentionally misrepresented (fabricated) the evidence so as to falsely satisfy the law to convict and imprison him of bank fraud and bank fraud conspiracy.

Conclusion:

These are not mere legal arguments which require adherence to legal proceedings or judicial misconduct, these are significant and egregious CRIMES and civil rights violations committed against Brennerman and perpetuated by federal prosecutors and judges in an intentional and deliberate endeavor to enslave Brennerman by misusing the law and their position as judges and prosecutors. This was done to intentionally deprive Brennerman of his civil and Constitutional rights to liberty as well as cause significant reputational damage to him.

While submitting this notification and correspondence Brennerman does not believe any action will be taken given his assumption that the Courts do not believe he is entitled to any civil and Constitutional rights. Notwithstanding this correspondence is submitted pursuant to all applicable law, the Court's local rules, federal rule, U.S. Constitution, American Bar Association and New York Bar Association rules and regulations, to further develop the record and to precipitate the next steps given the civil rights violation.

Brennerman respectfully submits the above and notifies this Court of those portions of the highlighted misconduct, crimes and civil rights violation involving this case and Court. This situation is beyond a mere legal proceedings or judicial misconduct, this is an affront to the rule of law and United States' democracy.

Dated: May 22, 2022

White Deer, Pa. 17887-1000

Respectfully submitted

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