

Raheem J. Brennerman  
Reg. No. 54001-048  
SPECIAL MAIL-OPEN IN THE  
PRESENCE OF COMPLAINANT  
LSCI-Allenwood  
White Deer, PA 17887-1000

Clerk of Court  
United States Court of Appeals  
for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, New York 10007

November 13, 2020

Regarding: Judicial Complaint regarding SDNY District Judge Lewis A. Kaplan and Second Circuit Judge Richard J. Sullivan.

ADDENDUM TO COMPLAINT (submitted pursuant to Judicial and Disability Act of 1980. 28 U.S.C.S. 351-364)

Dear Clerk:

The undersigned, Raheem Jefferson Brennerman ("Brennerman"), respectfully submits this addendum to his Complaint dated October 20, 2020. This addendum is submitted in furtherance of the formal Complaint submitted in respect of Second Circuit Judge Richard J. Sullivan, to highlight further actions of Judge Sullivan which violates the Judicial Conduct and Disability Act of 1980. 28 U.S.C.S. 351-364 and calls into question the moral aptitude of the Court with Judge Sullivan endeavoring to misrepresent evidence and record in an attempt to obliterate the Court's obligation to protect the civil and Constitutional rights of Brennerman, a criminal defendant.

On November 5, 2020 (at 1:17-cr-337 (RJS), Dkt. No. 249) Judge Sullivan issued an order which essentially ignored the evidence and record of testimonies which occurred before the Court by pivoting to the erroneous decision in the appeals at United States v. Brennerman, 18-3546(L) and United States v. The Blacksands Pacific Group, Inc., 18-1033(L) where the panel Court at the Second Circuit ignored the law, evidence and record to sanction the errors of the lower Court, while erroneously stating that "the only indication that the evidence (ICBC underwriting file) is extant comes from Brennerman's bare assertion", which is in contrast with trial record (see Nov. 9, 2020 correspondence, Exhibit 1) and ignored the record and evidence at trial which conclusively demonstrate that Morgan Stanley has several subsidiaries/division and that Brennerman interacted with the non-FDIC insured subsidiaries/division of Morgan Stanley (see Nov. 9, 2020 correspondence, Exhibits 4, 5, 6)

On November 9, 2020 (Nov. 9, 2020 correspondence) Brennerman submitted evidence with various excerpts of the trial record including testimony by Government sole witness from ICBC (London) plc, Julian Madgett (see Nov. 9, 2020 correspondence, Exhibit 1) where Julian Madgett testified in open Court before Judge Sullivan, that the evidence (ICBC underwriting file) exists which documents the basis for the bank approving the bridge loan transaction at issue in the case including the representations or alleged misrepresentation which the bank relied upon. Further that Government never obtained or reviewed the evidence thus never provided it to Brennerman for his defense. The trial record also highlights that Government was present in Court when Julian Madgett proffered his testimony thus Government became aware of the missing evidence (ICBC underwriting file), yet they [Government] failed to learn of the evidence thus violating their Brady obligation. The trial record highlights that Brennerman made request (see Nov. 9, 2020 correspondence, Exhibit 2) to obtain the missing evidence (ICBC underwriting file) so as to present a complete defense and confront witnesses against him in compliance with the law and his Sixth Amendment rights however Judge Sullivan denied his request.

Judge Sullivan's attempt at misrepresenting the record by pivoting to the erroneous decision by the Second Circuit (even though the testimony was proffered in his presence during trial) is simply an endeavor to cover-up the Brady and Constitutional rights violations that occurred and continue to persist. Furthermore it is a violation of Brennerman's Constitutional rights to deprive him of the evidence (ICBC underwriting file) which he now requires to argue as to the 3553 factors in a Compassionate release. Such deprivation is consequential given the global Covid-19 pandemic which has claimed in-excess of two hundred and forty thousand lives in the United States alone and Brennerman's medical vulnerabilities including diabetes, hypertension e.t.c. as promulgated by the Center for Disease Control and Prevention which puts him at a heightened risk from serious illness or death should he contract the coronavirus.

This latest attempt by Judge Sullivan is in addition to the issue complained of where Judge Sullivan ignored the evidence which Brennerman submitted to the Court (at 1:17-cr-337 (RJS), Dkt. No. 167) that clearly demonstrate that Brennerman opened his wealth management account at Morgan Stanley Smith Barney, LLC which is not federally insured (see Nov. 9, 2020 correspondence, Exhibit 6) because Judge Sullivan misrepresented the record in order to wrongly convict Brennerman for bank fraud and bank fraud conspiracy (see 1:17-cr-337 (RJS), Dkt. No. 206, Transcript as to Proceeding on November 19, 2018) where Judge Sullivan inaccurately stated that Brennerman's wealth management account was at the "Private Bank" of Morgan Stanley notwithstanding the evidence which had been presented to the Court (at 1:17-cr-337 (RJS), Dkt. No. 167). Judge Sullivan inaccurately stated the wrong subsidiary of Morgan Stanley - Morgan Stanley Private Bank so as to inappropriately satisfy the essential element (FDIC insurance requirement) of the charged crime.

Judge Sullivan equally ignored the testimony proffered at trial by Government witness, Barry Gonzalez, FDIC commissioner whose testimony demonstrated that Government failed to prove that either Morgan Stanley Smith Barney, LLC (where Scott Stout worked and where Brennerman opened his wealth management account (see 1:17-cr-337 (RJS), Dkt. No. 167)) and the Institutional Securities division of Morgan Stanley (where Kevin Bonebrake whom Brennerman had a single telephone call about financing for an oil asset worked) (see Nov. 9, 2020 correspondence, Exhibit 4) are federally insured. (see Nov. 9, 2020 correspondence,

Exhibit 5). Further that Morgan Stanley has various subsidiaries/divisions within Morgan Stanley & Company, LLC (see Nov. 9, 2020 correspondence, Exhibit 4) and that the FDIC certificate of one subsidiary does not cover another subsidiary or the parent company as each subsidiary/division will require its own FDIC certificate (see Nov. 9, 2020 correspondence, Exhibit 5). Notwithstanding this overwhelming evidence Judge Sullivan ignored the record so as to wrongly convict Brennerman.

This entire prosecution commenced following SDNY District Judge Lewis A. Kaplan ignoring the federal rule to Google Brennerman (see 1:17-cr-155 (LAK), Dkt. No. 12, bail hearing of May 2 & 4, 2017), realizing that Brennerman is a black man, Judge Kaplan deprived him an equal protection of the law by ignoring the Second Circuit law in "OSRecovery, Inc., v. One Groupe, Int'l, Inc., 462 F.3d 87, 90 (2d Cir. 2006)" to hold him, a non-party, in contempt then persuaded the Manhattan federal prosecutors to pursue him criminally (see 1:17-cr-155 (LAK), Dkt. No. 12-2). The Manhattan federal prosecutors equally ignored the law in "OSRecovery" to pursue Brennerman. Then within weeks, they [Government] indicted Brennerman for fraud without ever obtaining or reviewing the pertinent evidence (ICBC underwriting file) which document the basis for approving the bridge finance transaction including the representations or alleged misrepresentations which the bank relied upon in approving the bridge finance. Judge Sullivan then took steps to cause significant civil and Constitutional rights deprivation as aforementioned. This is in addition to the Court's present endeavor to obfuscate the record and evidence.

The inescapable actions of SDNY District Court Judge Lewis A. Kaplan and Second Circuit Judge Richard J. Sullivan presents a danger to the public particularly minorities given that this prosecution was commenced following Judge Kaplan Googling Brennerman.

The undersigned respectfully submits the above as addendum to this formal complaint dated October 20, 2020

Dated: November 13, 2020  
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

Cc: [www.freeraheem.com](http://www.freeraheem.com)  
Cc: [www.freerjbrennerman.com](http://www.freerjbrennerman.com)  
Cc: REDACTED

FROM: 54001048  
TO:  
SUBJECT: RECONSIDERATION MOTION LETTER - PART I  
DATE: 11/08/2020 11:04:49 PM

x

Raheem J. Brennerman  
Reg. No. 54001-048  
LSCI-Allenwood  
SPECIAL MAIL-OPEN IN THE  
PRESENCE OF INMATE  
P. O. Box 1000  
White Deer, Pa. 17887-1000

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

November 9, 2020

Regarding: United States v. Brennerman  
Case No. 1:17-cr-337 (RJS)  
RECONSIDERATION CORRESPONDENCE

Dear Judge Sullivan:

Defendant Pro Se Raheem J. Brennerman ("Brennerman") respectfully submits this correspondence for reconsideration of the denial order (at 1:17-cr-337 (RJS), Dkt. No. 249) and will move this Court for the issuance of subpoena pursuant to Federal Rule of Criminal Procedure 17; request for deposition under Federal Rule of Criminal Procedure 15 and for the issuance of letter rogatory pursuant to 28 U.S.C.S. 1781 to obtain documentary evidence (complete ICBC underwriting file) and testimony from ICBC (London) plc and ICBC London Branch. In addition, other evidence (birth certificate) as requested in the motion (at 1:17-cr-337 (RJS), Dkt. No. 248). This reconsideration is submitted particularly in light of the record (at 1:17-cr-337 (RJS) Trial Tr. 551-554) which the Court previously overlooked.

#### I. APPLICABLE LAW:

The Standard for granting a motion for reconsideration is strict. "[R]econsideration will generally be denied unless the moving party can point to controlling decision or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Possible grounds upon which a motion for reconsideration may be granted include "(1) an intervening change in law; (2) the availability of evidence not previously available, and (3) the need to correct a clear error of law or prevent manifest injustice." Shannon v. Verizon New York, Inc., 519 F. Supp 2d 304, 307 (N.D.N.Y. 2007) (citation omitted)

#### II. DISCUSSION:

The Court is correct in stating that Brennerman, a Pro Se Defendant, misapprehended the true intent of the statute under Section 1782, however the Court overlooked its obligation to protect the Constitutional rights of a criminal defendant, the law and general principle stipulating that "pleadings of Pro Se Defendants 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), because Brennerman presented an unambiguous request for evidence (ICBC underwriting file) from ICBC (London) plc and ICBC London Branch located at 81 King William Street, London, United Kingdom, which he requires to argue as to the 3553 factor in his motion for Compassionate release, the Court should have liberally construed his motion under Section 1781 for the issuance of letter rogatory, or any applicable statute necessary to compel for such evidence. Furthermore, the Court has an obligation to protect the Constitutional rights of a criminal defendant however overlooked the various Brady and Constitutional rights violation(s) highlighted instead dedicating its attention to the misapprehension of a statute by a Pro Se defendant rather than construing his pleadings liberally and applying the appropriate statute to his pleadings.

A. BRENNERMAN's OFFERED JUSTIFICATION FOR THE INTRODUCTION OF EVIDENCE THAT WAS NOT INTRODUCED AT TRIAL WHICH BRENNERMAN HAS REPEATEDLY REQUESTED NINE (9) TIMES (AT 1:17-cr-337 (RJS), Dkt. Nos. 71, 153, 161, 187, 200, 236, 240, 241, 248):

In reliance on the Sixth Amendment right of the U.S. Constitution, the Supreme Court of the United States promulgated in "Crane v. Kentucky, 476 U.S. 683 (1986)" that a criminal defendant has a Constitutional right to present a complete defense. This holding was adopted by the Second Circuit U.S. Court of Appeals in "Scrimo v. Lee, 935 F.3d 103 (2d Cir. 2019)" However in this instant case, following testimony by Government sole witness from ICBC (London) plc, Julian Madgett (at 1:17-cr-337 (RJS), Trial Tr. 551-554) (see appended excerpt of trial transcript as "Exhibit 1") that evidence (ICBC underwriting file) exists which document the basis for the bank's approval of the bridge loan transaction which is at issue in this case and which document the representation or alleged misrepresentation which the bank relied upon. Further that, the Government never obtained or reviewed the evidence and thus never provided it to the defendant to use for his defense. Brennerman immediately made request to this Court (at 1:17-cr-337 (RJS), Dkt. No. 71) (see appended copy of letter motion at doc. no. 71 as "Exhibit 2") arguing that he required the evidence (ICBC underwriting file) to present a complete defense however this Court denied his request.

Government sole witness from ICBC (London) plc, Julian Madgett testified at trial, doing so on behalf of the Government before this Court and in an open hearing, thus the Government became aware of the evidence (ICBC underwriting file) however Government failed to obtain or learn of the evidence and failed to present the evidence to Brennerman for his defense violating their Brady obligation. Notwithstanding, this Court which has an obligation to protect the Constitutional rights of Brennerman, a criminal defendant, overlooked such failure but instead relied on the erroneous decision by the Second Circuit which imposed a Constitutional impermissible abuse of discretion standard with its review by overlooking the record and law to continue to refuse Brennerman's request for the evidence.

During trial, Government sole witness from ICBC (London) plc, Julian Madgett was permitted by this Court to testify as to the contents of the evidence (ICBC underwriting file) while Brennerman was deprived of the ability to use the evidence to present a complete defense or confront the witness against him. Because Government witness testified to the content of the evidence (ICBC underwriting file) Brennerman should be provided access to the evidence.

In the present context, this Court will consider the 3553 factors in adjudicating any Compassionate release motion presented by Brennerman while Brennerman is deprived of the evidence (ICBC underwriting file) which he requires to present a complete, comprehensive and compelling argument as to the 3553 factors in his Compassionate release motion.

To-date, the Court has taken every possible step to deprive Brennerman access to the evidence (ICBC underwriting file), initially during trial arguing that the witness, Julian Madgett had testified that the evidence (ICBC underwriting file) was with the bank's file in London, United Kingdom (see 1:17-cr-337 (RJS), Trial Tr. 617) (see excerpt of trial transcript appended as "Exhibit 3") then after trial arguing that Brennerman was no longer entitled to discovery and now ignoring the record to concur with the erroneous decision by the Second Circuit, that the evidence does not exist beyond Brennerman's bare assertion. It is inexplicable that a Court which has an obligation to protect the Constitutional rights of a criminal defendant would deliberately deprive the criminal defendant of his Constitutional rights. First, this Court was present at trial when Government sole witness from ICBC (London) plc, Julian Madgett testified (at 1:17-cr-337 (RJS), Trial Tr. 551-554), furthermore, this Court has access to the trial records including the transcript hence it is inexplicable why the Court will engage in an attempt to challenge the existence of the evidence (ICBC underwriting file).

While Brennerman is not entitled to a perfect trial, the law and Constitution entitles him to a fair trial. The appearance of unfairness is prevalent throughout this trial where Government deliberately refused to obtain or learn of the evidence at the core of the transaction being prosecuted and where Government witness was permitted to testify as to the contents of the evidence (ICBC underwriting file) which the Government never independently reviewed and which Brennerman has been deprived and denied access to use for his complete defense or to confront witness(es) against him.

The U.S. Constitution and law affords Brennerman, a criminal defendant, an equal protection of the law. This deliberate endeavor to deprive him of the said evidence (ICBC underwriting file) is simply an endeavor to continually deprive him of his civil and Constitutional right to liberty. In this instant case, Brennerman has repeated the arguments highlighted above, while the Court has continually refused to allow the presentment of the core evidence (the ICBC underwriting file) which will conclusively confirm (beyond the unchallenged testimony from Government sole witness from ICBC (London) plc, Julian Madgett) whether ICBC (London) plc in approving the bridge loan transaction at issue in this prosecution relied on any representation or alleged misrepresentation from Brennerman. It is inconceivable that Brennerman has requested for the evidence (ICBC underwriting file) nine (9) times (at 1:17-cr-337 (RJS), Dkt. Nos. 71, 153, 161, 187, 200, 236, 240, 241, 248) while the Government and the

Court have continually refused to allow access to the evidence. The ICBC underwriting file is the sole evidence (emphasis supplied) which would conclusively demonstrate any fraud.

The simple question is why was the evidence not introduced at trial. Given that Brennerman made request to the Court following testimony by Government sole witness, Julian Madgett, that the evidence exists with the bank's file in London, U.K. The simple conclusion is because the Court denied Brennerman's request and ignored the Government's Brady obligation violation while neglecting its obligation to protect Brennerman's Constitutional rights.

Brennerman now requires the evidence (ICBC underwriting file) to argue as to the 3553 factors which the Court will consider in the adjudication of his motion for Compassionate release. It would be patently unfair and highly prejudicial that the Court will consider the 3553 factors in the adjudication of the Compassionate release while Brennerman is deprived of the ability to use the evidence (ICBC underwriting file) in presenting complete argument(s) as to the 3553 factors.

B. THE RULING AT UNITED STATES v. BRENNERMAN, No. 17-cr-155 (LAK), 2017 WL 4513563, at \*2 (S.D.N.Y. Sept 1, 2017):

In relying on the ruling highlighted above, the Court overlooked the record which indisputably demonstrates that this prosecution was commenced following Judge Lewis A. Kaplan ignoring the federal rule to Google Brennerman (See 17-cr-155 (LAK), Dkt. No. 12, transcript of May 2, 2017 bail hearing), a non-party in the underlying civil case, realizing that he is a black man, Judge Kaplan ignored the law promulgated by the Second Circuit in "OSRecovery, Inc., v. One Groupe Int'l, Inc., 462 F.3d 87, 90 (2d Cir. 2006)" to deprive Brennerman an equal protection of the law by holding him, a non-party, in contempt then persuading the Government to prosecute him criminally (which the Government obliged without regard for the law in "OSRecovery").

Thus, Judge Kaplan applying the erroneous statute, Section 1783, rather than Section 1781, to the request for evidence (ICBC underwriting file) is in consonant with the Court's (Judge Kaplan) intent and endeavor to deliberately deprive Brennerman of evidence (complete ICBC file) which he required to present a complete defense. This was done by the Court so as to violate Brennerman's Constitutional rights and unjustly incarcerate him.

FROM: 54001048

TO:

SUBJECT: RECONSIDERATION MOTION LETTER - PART II

DATE: 11/08/2020 11:04:55 PM

C. THE ERRONEOUS SECOND CIRCUIT DECISION

(United States v. Brennerman, 818 F. App'x 26, 29 30 (2d Cir. 2020))

The United States Court of Appeals for the Second Circuit imposed a Constitutionally impermissible abuse of discretion standard with its review of the case, where the Circuit Court ignored the law and record to affirm District Court's decision by sanctioning the errors of District Court.

This Court (District Court) overlooked the record in relying on the erroneous decision by the Circuit Court (notwithstanding that this Court was present during the various testimonies highlighted below).

(i.) The Circuit Court's decision overlooked the fact that Brennerman has made attempts to obtain and to compel the production of the complete ICBC file nine (9) times and erroneously assumed that the only indication of the document's existence came from Brennerman's bare assertions; (ii.) The Second Circuit erred because the panel's decision conflicts with settled law on the Sixth Amendment rights of a criminal defendant to cross-examine the witnesses against him and to present a complete defense; (iii.) Brady violation.

During trial, Government sole witness from ICBC London, Julian Madgett (See 17-cr-337 (RJS), Trial Tr. 551-554) testified that evidence (ICBC underwriting file) existed with the bank's file which document the basis for approving the bridge finance including representations relied upon by the bank in approving the bridge finance which the prosecution never requested or obtained, thus never provided to the defense. Brennerman again filed motion to compel for the evidence arguing that he required it to present a complete defense (that the bank did not rely on any representation or alleged misrepresentation in approving the bridge finance) and to confront witness against him. (See 17-cr-337 (RJS), Dkt. No. 71). Judge Sullivan denied Brennerman's request while acknowledging (See 17-cr-337 (RJS), Trial Tr. 617) that Government's witness, Julian Madgett had testified that the evidence (ICBC underwriting files) were with the bank's file in London, U.K.

The Second Circuit in its Summary Order affirming the conviction - With respect to the ICBC file, the Circuit Court disagreed with Brennerman on the first two points and did not issue a written opinion on the third, writing that:

The government's discovery and disclosure obligations extend only to information and document in the government's possession. United States v. Avelino, 136 F.3d 243, 255 (2d Cir. 1998) (explaining that the Brady obligation applies only to evidence "that is known to the prosecutor") The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligations. Nor was the government under any obligation under the Jencks Act to collect materials about Madgett that were not in the government's possession. See United States v. Bermudez, 526 F.2d 89, 100 n.9 (2d Cir. 1975).

Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17.....The only indication that such documents are extant comes from Brennerman's bare assertions.

United States v. Brennerman, 18-3546, Slip Op. at 4-5

Brennerman did request for the evidence (See 1:17-cr-337 (RJS), Dkt. No. 71) upon becoming aware during trial, following testimony from Government sole witness from ICBC (London) plc, Julian Madgett, that evidence existed which the Government never requested or obtained thus never reviewed or presented to Brennerman for his defense. During the hearing on November 7, 2017 prior to trial, Government (A.U.S.A. Danielle R. Sassoon) represented to the Court that all evidence had been provided to the defense and that any attempts to issue subpoena to ICBC (London) plc will be quashed by the Government as that would be cumulative.

It is indisputable from the appended excerpts of trial transcript that the Circuit Court overlooked the record and ignored the fact that Government sole witness from ICBC (London) plc, testified to the existence of the evidence (ICBC underwriting file) beyond Brennerman's bare assertion. Because the Circuit Court overlooked and ignored the record, its decision equally overlooked the

Constitutional violation where Brennerman was deprived of the ability to use the evidence (ICBC underwriting file) for his complete defense.

When Julian Madgett testified, he did so on behalf of the Government before this Court in an open hearing and Government became aware of the missing evidence (ICBC underwriting file). Brennerman (among others) requested that the Court compel the Government to obtain and learn of the evidence (See 17-cr-337 (RJS), Dkt. No. 71) however the Government failed to do so thus violating its Brady obligation.

"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. Patemina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith effort to obtain Jencks Act statements possessed by a third party that had cooperated extensively and had close working relationship with the Government, 749 F.2d 993 (2d Cir. 1984); 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 record which Standard Oil has and which the Government wants, however, 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 supplied)). See also *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008)"

iv.) The Second Circuit erred when it misapprehended key facts about which Morgan Stanley subsidiary was FDIC insured and misunderstood why a constructive amendment of the indictment occurred; (v.) Constructive Amendment of an indictment occurs when the charging terms are altered and Brennerman's Constitutional right was violated.

During trial, Government presented evidence - Government Exhibits GX1-57A; GX1-73; GX529 (See 17-cr-337 (RJS), Dkt. No. 167) (See appended as "Exhibit 6") to demonstrate that Brennerman opened a wealth management account at Morgan Stanley. The evidence presented clearly demonstrated that the wealth management account was opened at Morgan Stanley Smith Barney, LLC. Government witness, Kevin Bonebrake testified that he worked for the Institutional Securities division of Morgan Stanley which is a wholly-owned subsidiary of Morgan Stanley & Company, LLC (See 17-cr-337 (RJS), Trial Tr. 384-385); That "this was very preliminary stage of our conversation" (See 17-cr-337 (RJS), Trial Tr. 409); That "Morgan Stanley would not typically provide the money"; "It would seek financing from outside investors" and "my recollection was that what the company wanted was unclear. We didn't get very far in our discussion" (See 17-cr-337 (RJS), Trial Tr. 387-388)

Government presented four FDIC certificates - Government Exhibit - GX530 (FDIC certificate for Morgan Stanley Private Bank); GX531 (FDIC certificate for Citibank); GX532 (FDIC certificate for Morgan Stanley National Bank NA); GX533 (FDIC certificate for JP Morgan Chase)

(Trial Transcripts 384-385; 409; 387-388 are appended as "Exhibit 4")

Another Government witness, Barry Gonzalez, FDIC commissioner testified "that the FDIC certificate of one subsidiary does not cover another subsidiary or the parent company because each will require its own separate FDIC certificate (See 17-cr-337 (RJS), Trial Tr. 1060-1061) and that FDIC certificates only cover depository accounts and would not cover the Institutional Securities division/subsidiary of Morgan Stanley (See 17-cr-337 (RJS), Trial Tr. 1057); That there was no confirmation that Morgan Stanley Smith Barney, LLC was FDIC insured (See 17-cr-337 (RJS), Trial Tr. 1058). His testimony demonstrated that neither ICBC (London) PLC, Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division/subsidiary are FDIC insured (See 17-cr-337 (RJS), Trial Tr. 1059-1061)

(Trial Transcript 1060-1061; 1057; 1058; 1059-1061 are appended as "Exhibit 5")

Judge Sullivan ignored the evidence which Brennerman presented to the Court to demonstrate that there was a statutory error with his conviction for bank fraud and bank fraud conspiracy as it relates to his interaction with non-FDIC subsidiaries of Morgan Stanley (see 17-cr-337 (RJS), Dkt. No. 167) and ultimately denied his post-trial motions.

vi.) The Second Circuit misapprehended the record with respect to the FDIC-insured status of Morgan Stanley and overlooked Brennerman's argument about the non FDIC insured personal wealth division (Morgan Stanley Smith Barney, LLC) and the non -FDIC-insured Institutional Securities division, generalizing that:



[T]he record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based on false representation about his citizenship, assets, and the nature and worth of his company

United States v. Brennerman, 18-3546, Slip Op. (June 9, 2020) at 3

vii.) With respect to Brennerman's Constructive amendment argument, the Circuit Court similarly misunderstood the crucial distinction between the subsidiary divisions of Morgan Stanley, relying on the Government's arguments at summation and finding that no constructive amendment had occurred because:

It is clear from the indictment that the scheme against ICBC was merely one target of Brennerman's alleged fraud.....At trial, the government offered evidence that Morgan Stanley was one of those "other financial institutions." See App'x at 608-09 (testimony of Morgan Stanley's Kevin Bonebrake about a January 2013 telephone call with Brennerman discussing financing to develop oil asset). Thus there was not a "substantial likelihood that the defendant may have been convicted of an offense other than that the one charged by the grand jury." *Vebeilunas*, 76 F.3d at 1290.

id. Slip Op at 4.

Title 18 United States Code Section 1344 makes it a crime to "knowingly execut[e], or attempt[t] to execute a scheme or artifice - (1) to defraud a financial institution;...." "The well established elements of the crime of bank fraud are that the defendant (1) engaged in a course of conduct designed to deceive a federally chartered or insured financial institution into releasing property, and (2) possessed an intent to victimize the institution by exposing it to actual or potential loss. "United States v. Barrett, 178 F.3d 643, 647-48 (2d Cir. 1999); see also 18 U.S.C.S. 20 (defining "financial institution"). "[A] defendant cannot be convicted of violating Section 1344(1) merely because he intends to defraud an entity....that is not in fact covered by the statute." United States v. Bouchard, 828 F.3d 116, 125 (2d Cir. 2016)

Brennerman was convicted of bank fraud and bank fraud conspiracy based on an account he opened at Morgan Stanley Smith Barney, LLC (See 17-cr-337 (RJS), Dkt. No. 167 highlighting Government Exhibit - GX1-57A; GX1-73; GX529 - Morgan Stanley Smith Barney, LLC account opening form, correspondence and account statement). The Government failed to confirm through Government witness, Barry Gonzalez, the FDIC commissioner that Morgan Stanley Smith Barney, LLC was/is federally insured. The Court also stated that Brennerman had a single telephone call with Kevin Bonebrake (see 17-cr-337 (RJS), Trial Tr. 387-388; 409) who worked at Morgan Stanley Institutional Securities division (See 17-cr-337 (RJS), Trial Tr. 384-385) which is not federally insured.

FROM: 54001048

TO:

SUBJECT: RECONSIDERATION MOTION LETTER - PART III

DATE: 11/08/2020 11:05:02 PM

Although Brennerman's wealth management account at Morgan Stanley Smith Barney, LLC was not a depository account, the funds were held by Morgan Stanley Smith Barney, LLC in a depository account at Morgan Stanley Bank National Association. Any statements made by Brennerman to Scott Stout, who worked at Morgan Stanley Smith Barney, LLC would have been insufficient to establish that Brennerman took any step toward defrauding a federally-insured institution.

When Brennerman presented evidence to Judge Sullivan (at 17-cr-337 (RJS), Dkt. No. 167) demonstrating that his account was held at Morgan Stanley Smith Barney, LLC which is not federally insured and not at Morgan Stanley Private Bank, the judge ignored him and the evidence. The judge also ignored the testimony by Barry Gonzalez, FDIC commissioner which confirmed that neither Morgan Stanley Smith Barney, LLC (See 17-cr-337 (RJS), Trial Tr. 1059) or Morgan Stanley Institutional Securities division (See 17-cr-337 (RJS), Trial Tr. 1057) are federally insured. Further, that the FDIC certificate of one subsidiary/division does not cover other subsidiary/division within Morgan Stanley because each subsidiary/division will require its own FDIC certificate (See 17-cr-337 (RJS), Trial Tr. 1060-1061). Thus highlighting that the FDIC certificates presented by the government at trial from Morgan Stanley Private Bank (See Government Exhibit - GX530) and Morgan Stanley National Bank NA (See Government Exhibit - GX532) does not cover either Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division which Brennerman interacted with and thus Brennerman could not be convicted for bank fraud and bank fraud conspiracy for interacting with institution which are not federally insured. Notwithstanding these evidence and confirmation, Judge Sullivan allowed Brennerman to be wrongly convicted.

Constructive amendment of an indictment "occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them." *United States v. LaSpina*, 299 F.3d 165, 181 (2d Cir. 2002) (citation omitted). "To prevail on a constructive amendment claim, a defendant must demonstrate that the proof at trial....so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was the subject of the grand jury's indictment." *LaSpina*, 299 F.3d at 181 (citations omitted)

Brennerman was indicted with "having made false representation to financial institutions in the course of seeking loan and other forms of financing for purported business ventures" however during summation the prosecution and again during appearance on November 19, 2018 (See page 19-20 of 11/19/18 Sentencing hearing transcript) the Court, each argued the theory of the bank fraud and bank fraud conspiracy that the defendant became entitled to "perks" including fancy credit card and preferential interest rate however the defendant was not charged with obtaining perks. The fancy credit card was not issued by any Morgan Stanley subsidiary or division and was closed with zero balance. The account which the defendant opened at Morgan Stanley Smith Barney, LLC was only opened for three weeks and not long enough for him to earn any perks. Most important, both Morgan Stanley Smith Barney, LLC where Brennerman opened his account and Morgan Stanley Institutional Securities division where Kevin Bonebrake (whom he had a single telephone call about financing) worked at are not federally insured, an essential element necessary to convict for bank fraud and bank fraud conspiracy.

Notwithstanding the record and overwhelming evidence of Brennerman's innocence of the charged crime, the Court refused to protect Brennerman's civil and Constitutional rights allowing him to be wrongly convicted and incarcerated. There is also no doubt that the Court will continue to demonstrate an indifference to the Constitutional violations suffered by Brennerman.

The Court in its order stated "Of course, the legal niceties of statutory authority and personal jurisdiction have never deterred Brennerman from making demands of this sort, and it bears noting that the instant discovery request is simply the latest in a long string of nearly identical requests from Brennerman that are largely an attempt to retry this case." The Court has overlooked the fact that the niceties of legal authority and Constitutional rights did not deter Judge Kaplan from ignoring the federal rule to Google Brennerman (See 17-cr-155 (LAK), Dkt. No. 12, May 2, 2017 bail hearing), realizing that he is a black man, Judge Kaplan ignored the law in "OSRecovery" to hold him, a non-party, in contempt then persuaded the Government to prosecute him criminally; the niceties of legal authority and Constitutional rights did not deter the Government from ignoring the law in "OSRecovery" to pursue Brennerman, a non-party, criminally; the niceties of legal authority and Constitutional rights did not deter this Court from permitting Government sole witness from ICBC (London) plc, Julian Madgett from testifying as to the contents of the evidence (ICBC underwriting file) while depriving Brennerman access to the evidence (ICBC underwriting file) which he required to present a complete defense and to confront witnesses against him; the niceties of legal authority and Constitutional rights did not deter this Court from ignoring the evidence presented by Brennerman (at 17-cr-337 (RJS), Dkt. No. 167); the niceties of legal authority and Constitutional rights did not deter the Circuit Court from misapprehending the law and record to continue to deprive Brennerman of his liberty.

Brennerman has suffered significant and irreparable civil and Constitutional rights violation. His mother passed away on May 18, 2019 while waiting for him to obtain the evidence (ICBC underwriting file) and clear his name so that he may return to donate his kidney to her as well continue to care for her (See 17-cr-337 (RJS), Dkt. No. 188 pleading by Brennerman to the Court to allow him access to the evidence (ICBC underwriting file)). Now Brennerman who is at a heightened risk from serious illness or death should he contract Covid-19 due to his medical vulnerabilities (including diabetes, hypertension, BMI of 37) as promulgated by the Center for Disease Control and Prevention (C.D.C.), is again requesting for the evidence (complete ICBC underwriting file) which he requires to present arguments as to the 3553 factors with motion for Compassionate release. However, the Court is inexplicably questioning Brennerman's continued rational for requesting evidence (ICBC underwriting file) which should have been afforded to him prior to trial.

Respect for the law, Constitutional rights and true administration of justice is not prosecuting someone for a transaction involving documents without obtaining and reviewing all the documents where the Government refuses to obtain evidence they do not want to have to provide to a defendant for a defendant to present a complete defense and the ability to confront witnesses. The Government flew their sole witness from London, U.K. to New York, USA to testify at trial. Yet, the Government and Court would like the public to believe that it was not possible to e-mail, fax, or mail/courier evidence or even for the witness to bring the evidence with him.

The evidence are the only documents which can conclusively demonstrate that a crime may have been committed by highlighting what the bank relied upon in approving the bridge loan. The trial was based solely on the Government asking Julian Madgett what the bank relied upon and Julian Madgett saying (in open Court) anything and everything with the understanding that the Court and Government had furtively deprived Brennerman, a criminal defendant, access to the evidence (ICBC underwriting file), and that it was impossible for Brennerman to challenge his (Julian Madgett) words or confront him. If this is true administration of Justice in America, then all minorities are at risk because anyone whom a federal judge Googles and dislikes can be prosecuted and imprisoned.

Notwithstanding, the Court is expected to make another excuse and refuse to permit the presentment of the evidence (ICBC underwriting file) because they (Government and Court) cannot show the public the evidence. Brennerman has nothing to hide. If fraud really occurred then show the public the evidence (ICBC underwriting file) from the bank that will conclusively demonstrate what the bank relied upon in approving the finance at issue, not the words of a single person from the bank without any independent corroborating evidence. Julian Madgett is not a member of the credit committee at the bank that is responsible for approving financing. This is not an attempt for retrial but respect for the law and the Constitutional rights of a criminal defendant by obtaining evidence which should have been learned before trial and immediately upon Government witness testifying to its existence.

Without reviewing the record and trial transcript, the Court is now insinuating that the evidence (ICBC underwriting file) does not exist beyond Brennerman's bare assertion, setting a dangerous standard for the public, by pivoting to the erroneous decision by the Circuit Court which is in contrast with the record and evidence. This case and prosecution presents an extraordinary circumstance where the Court that has an obligation to protect the Constitutional rights of a criminal defendant veers from the permissible to the impermissible with the Court misrepresenting the record, evidence and deliberately violating the Constitutional rights of the criminal defendant. The danger of the Court's rule is amply demonstrated by the consequences of erosion of public trust in the United States justice system and other institutions.

Because of the loss of confidence in this Court that it would abide by the law and protect the Constitutional rights of a criminal defendant, Brennerman and other civil rights activists commenced a campaign against this Racial injustice at [www.freeraheem.com](http://www.freeraheem.com) and [www.freerjbrennerman.com](http://www.freerjbrennerman.com); submitted Complaint to the Chief Judge of the United States Court of Appeals for the Second Circuit; initiated Petition (which was recently commenced) to U.S. Congress for an investigation; is preparing submissions to the United States Supreme Court; and engaged media strategist to bring national and international public awareness to this Racial injustice and deliberate endeavor to continually violate the Constitutional rights of Brennerman, a criminal defendant, because of his race.

This reconsideration correspondence will further develop the record for future review and succinctly presents the various civil and Constitutional rights deprivation to the Court.

WHEREFORE, Defendant Pro Se Raheem J. Brennerman respectfully submits the above and reminds the Court that everyday, during this Covid-19 global pandemic (with in-excess of two hundred and forty thousand Covid-19 related deaths in the United States alone), the Court deprives him access to the evidence (ICBC underwriting file) which Brennerman requires to present compelling argument as to the 3553 factors in a Compassionate release motion (pursuant to 18 U.S.C.S. 3582(c)(1)(a)), Brennerman remains exposed to serious illness or death due to his medical vulnerabilities including diabetes, hypertension, BMI of 37 as promulgated by the Center for Disease Control and Prevention. The Court has an obligation to protect the civil and

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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Constitutional rights of Brennerman, a criminal defendant.

Dated: November 9, 2020  
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

Pro Se Defendant

Cc: [www.freeraheem.com](http://www.freeraheem.com)  
Cc: [www.freerjbrennerman.com](http://www.freerjbrennerman.com)  
Cc: REDACTED

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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FROM: 54001048

TO:

SUBJECT: EXHIBIT 1

DATE: 11/08/2020 03:35:05 PM

XXXXXXXXXX

EXHIBIT 1

XXXXXXXXXX

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

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.

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.



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

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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FROM: 54001048

TO:

SUBJECT: EXHIBIT 2

DATE: 11/08/2020 03:35:23 PM

XXXXXXXXXX

EXHIBIT 2

XXXXXXXXXX



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

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mf 4848-8339-0807.3

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THOMPSON  
HINE

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November 29, 2017

Page 2

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)).<sup>1</sup>

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.

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<sup>1</sup> 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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THOMPSON  
HINE

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November 29, 2017  
Page 3

Respectfully,

s/ Maranda E. Fritz

Maranda E. Fritz

Enclosures

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## 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 &amp; Brian.Steinwascher@ThompsonHine.com

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.



TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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FROM: 54001048

TO:

SUBJECT: EXHIBIT 3

DATE: 11/08/2020 03:35:44 PM

XXXXXXXXXX

EXHIBIT 3

XXXXXXXXXX

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

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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FROM: 54001048

TO:

SUBJECT: EXHIBIT 4

DATE: 11/08/2020 03:36:05 PM

XXXXXXXXXX

EXHIBIT 4

XXXXXXXXXX

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

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

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

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

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



TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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FROM: 54001048

TO:

SUBJECT: EXHIBIT 5

DATE: 11/08/2020 03:36:24 PM

XXXXXXXXXX

EXHIBIT 5

XXXXXXXXXX

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?

1 MR. SOBELMAN: Objection.

2 THE COURT: Sustained.

3 Move on.

4 MR. STEINWASCHER: Can we go to Exhibit 529.

5 Can I ask the government's indulgence. I don't think  
6 we have an electronic version of this. The same page that Mr.  
7 Sobelman showed the witness, page 4.

8 Thank you. I appreciate that.

9 Q. Mr. Gonzalez, you looked at this with Mr. Sobelman a few  
10 minutes ago, correct?

11 A. Yes.

12 Q. I think he directed you to the kind of italicized text,  
13 almost toward the bottom of the page under "cash deposits and  
14 money market funds," correct?

15 A. Yes.

16 Q. Then he put up on the screen next to this statement the two  
17 certificates of insurance from the FDIC that pertain to Morgan  
18 Stanley Bank NA and Morgan Stanley Private Bank National  
19 Association, correct?

20 A. Yes.

21 Q. Morgan Stanley Bank NA and Morgan Stanley Private Bank  
22 National Association, are those the same entity?

23 A. The same entity as what?

24 Q. As each other.

25 A. No. They have distinct certificate numbers.

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?

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?

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.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

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FROM: 54001048

TO:

SUBJECT: EXHIBIT 6

DATE: 11/08/2020 10:19:13 PM

XXXXXXXXXXXX

EXHIBIT 6

XXXXXXXXXXXX

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

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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 landing 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

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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 presentment 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

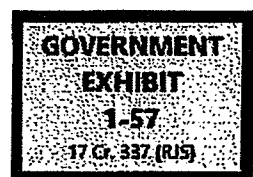
Hi RJ,

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., 6<sup>th</sup> Floor  
Beverly Hills, CA 90212

<http://www.morganstanley.com/fa/scott.stout>  
[scott.stout@morganstanley.com](mailto:scott.stout@morganstanley.com)



9665 Wilshire Boulevard  
Suite 600 Beverly Hills, CA 90212

Morgan Stanley  
Smith Barney

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

Full Name KATHLEEN JEFFERSON FRANKMAN  
Address 245 PARK AVENUE, 37 FL  
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 ☒ N  
Marital Status SINGLE # of Dependents N/A Date of Birth 04/21/78  
E-mail Address thfrankman@blacksandspacifi.com  
Telephone access Prompts \_\_\_\_\_ Mother's Maiden Name \_\_\_\_\_  
City of Birth \_\_\_\_\_ or 1<sup>st</sup> School Attended DWIGHT  
Employer BLACKSAND PACIFIC ENERGY CORPORATION  
Nature of Business OIL & GAS Occupation OIL & GAS EXECUTIVE  
Est. Annual Compensation \$ 720,000 (Base Salary) Employed Since 2010

**Primary Source of Income-Check all that apply**

Annual Salary ☒ Investments ☒ 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 ☒ Current Income ☒ Tax Deferral ☒ Liquidity ☒ 2  
Investing Since (year) \_\_\_\_\_ Stocks 99 Bonds 99 Commodities 01 Options 02  
Risk Tolerance (check one) Aggressive \_\_\_\_\_ Moderate ☒ 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

[Signature] 1/5/13

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



9665 Wilshire Boulevard  
Suite 600 Beverly Hills, CA 90212Morgan Stanley  
Smith BarneyKindly provide all personal information.  
For additional owners, please complete a 2<sup>nd</sup> profile.

Full Name JERSON III HOLDINGS LLC  
 Address 3960 HOWARD HUGHES PARKWAY, SUITE 500  
 City LAS VEGAS State NEVADA Zip Code 89169  
 Home Phone \_\_\_\_\_ Business \_\_\_\_\_  
 Cell 97769 6430 Fax \_\_\_\_\_  
 SS# or Tax ID [REDACTED] US Citizen ☒ Y ☐ N  
 Marital Status NA # of Dependents \_\_\_\_\_ Date of Birth \_\_\_\_\_  
 E-mail Address \_\_\_\_\_  
 Telephone access Prompts \_\_\_\_\_ Mother's Maiden Name \_\_\_\_\_  
 City of Birth \_\_\_\_\_ or 1<sup>st</sup> School Attended DANFORTH  
 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 \$ \_\_\_\_\_ All 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

[Signature] 1/5/13  
 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

**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@blacksandspace.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., 6<sup>th</sup> Floor  
Beverly Hills, CA 90212

<http://www.morganstanley.com/fa/scott.stout>  
[scott.stout@morganstanley.com](mailto: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/mssbemail.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

#BWLJGMM

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

Your Branch  
9685 WILSHIRE BLVD STE 600  
BEVERLY HILLS, CA 90212  
Telephone: 310-285-2600  
Alt. Phone: 800-458-8838  
Fax: 310-285-2696

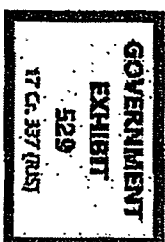
Client Interaction Center  
800-869-3326  
24 Hours a Day, 7 Days a Week

Access your accounts online  
www.morganstanley.com/online

Morgan Stanley Smith Barney LLC, Member SIPC

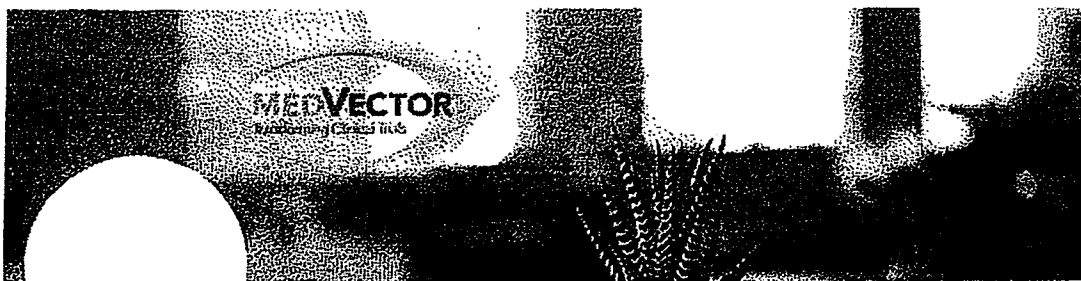
TOTAL VALUE LAST PERIOD of 12/31/12	□
NET CREDITS/DEBITS	200,000.00
CHANGE IN VALUE	0.88
<b>TOTAL VALUE OF YOUR ACCOUNT (as of 1/31/13)</b>	<b>\$200,000.88</b>
<small>(Total Values include rounded interest)</small>	

Your Financial Advisor  
Scott Stout





A Board Position for You - These companies need board members. Click here to be matched with them. Ad ...



Brand yourself.  
Properly.

Shop Stickers



## Scott Stout • 3rd

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

Initial



MedVector Clinical Trials

University of Arizona

See contact info

500+ connections

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, which enables them to quickly identify clinical trial candidates, exponentially im...

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## 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.com](http://www.MedVectorTrials.com)



### Financial Advisor

Wells Fargo Private Bank

Oct 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

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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

University of Arizona	Barrington Legal, Inc.
214,411 followers	40 followers
MedVector Clinical Trials	Delta Chi Fraternity
4 followers	5,471 members
University of Arizona Alumni	Fortis Partners
34,140 members	1,045 followers

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# 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

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](http://www.morganstanley.com).

**Media Relations Contact:**

Jeanmarie McFadden, 212.761.2433

Jim Wiggins, 914.225.6161

KAMALA D. HARRIS  
CALIFORNIA

[WWW.HARRIS.SENATE.GOV](http://WWW.HARRIS.SENATE.GOV)

COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS

COMMITTEE ON THE JUDICIARY

SELECT COMMITTEE ON INTELLIGENCE

COMMITTEE ON THE BUDGET

## United States Senate

June 29, 2020

Mr. Raheem J. Brennerman Reg. 54001-048  
LSCI Allenwood  
PO Box 1000  
White Deer, PA 17887-1000

Dear Mr. Brennerman

RACIAL INJUSTICE PACKAGE  
(PLACE ON TOP OF PACKAGE)

KAMALA D. HARRIS  
CALIFORNIA

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COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS

COMMITTEE ON THE JUDICIARY

SELECT COMMITTEE ON INTELLIGENCE

COMMITTEE ON THE BUDGET

## United States Senate

July 22, 2019

Mr. Raheem J. Brennerman  
LSCI Allenwood  
PO Box 1000  
White Deer, PA 17887-1000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

RAHEEM J. BRENNERMAN,

Defendant.

No. 17-cr-337 (RJS)  
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

The Court is in receipt of a *pro se* letter from Defendant Raheem J. Brennerman, requesting that the Court order certain discovery from the government and ICBC (London) plc, the victim in this case, which discovery Brennerman believes will assist him in preparing a forthcoming motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). (Doc. No. 248.) For the reasons set forth below, Brennerman’s request for discovery is DENIED.

As an initial matter, Brennerman asserts that he is entitled to discovery from ICBC under 28 U.S.C. § 1782. (Doc. No. 248 at 1.) But Brennerman misapprehends the purpose of that statutory provision. Section 1782 “permits a district court . . . to order a person within its jurisdiction to ‘give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal.’” *Mees v. Buiter*, 793 F.3d 291, 294 (2d Cir. 2015) (quoting 28 U.S.C. § 1782(a)). In other words, the statute provides for discovery where that discovery will be used in a legal proceeding happening abroad. It does not, as Brennerman suggests, supply criminal defendants with the right to seek discovery from foreign entities for use in U.S.-based criminal proceedings.

But even if § 1782 could be stretched to the limits urged by Brennerman, there is no indication in Brennerman's letter that the Court has jurisdiction over ICBC, the London branch of a Chinese entity, for purposes of a discovery request related to a post-conviction motion for compassionate release. *See In re del Valle Ruiz*, 939 F.3d 520, 524 (2d Cir. 2019) (explaining that "§ 1782's reach [extends only] to the limits of personal jurisdiction consistent with due process"). The mere fact that ICBC was a victim of Brennerman's criminal scheme does not automatically confer personal jurisdiction over this London-based bank.

And to the extent that Brennerman's *pro se* letter can be construed as a request to issue a subpoena to ICBC under Federal Rule of Criminal Procedure 17 and 28 U.S.C. § 1783, that too fails. As Judge Kaplan explained when declining to enforce a subpoena Brennerman issued to ICBC in another criminal matter, "ICBC is a foreign bank located approximately 3,500 miles from the courthouse" and "is not a national of the United States who is in a foreign country," meaning that "Section 1783(a) does not authorize issuance of a subpoena to it." *United States v. Brennerman*, No. 17-cr-155 (LAK), 2017 WL 4513563, at \*2 (S.D.N.Y. Sept. 1, 2017) (internal quotation marks omitted).


Of course, the legal niceties of statutory authority and personal jurisdiction have never deterred Brennerman from making demands of this sort, and it bears noting that the instant discovery request is simply the latest in a long string of nearly identical requests from Brennerman that are largely an attempt to retry his case. Unfortunately, Brennerman has never "offered [any] justification for the indiscriminate introduction of evidence that was not introduced at trial." (Doc. No. 166 at 2.) So, for that reason and others, the Court has rejected each of Brennerman's prior requests, which primarily sought the same information that he pursues in his present motion. (*E.g.*, Doc. Nos. 153, 161, 166, 187, 235.) In the interim, the Second Circuit has affirmed Brennerman's

conviction, explaining that the government complied with its disclosure obligations in this case, and that “[t]he only indication that [the] documents [Brennerman seeks] are extant comes from Brennerman’s bare assertions.” *United States v. Brennerman*, 818 F. App’x 25, 29–30 (2d Cir. 2020); *see also* Doc. No. 247 (mandate issued following the Second Circuit’s denial of a similar “motion for discovery relief” submitted by Brennerman). Brennerman’s letter supplies no reason for the Court to deviate from these past rulings.

Accordingly, Brennerman’s request for discovery is DENIED. The Clerk of Court is respectfully directed to terminate the motion pending at docket number 248, and to mail a copy of this order to Brennerman.

SO ORDERED.

Dated: November 5, 2020  
New York, New York



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RICHARD J. SULLIVAN  
UNITED STATES CIRCUIT JUDGE  
Sitting by Designation

Raheem J. Brennerman  
Reg. No. 54001-048  
LSCI-Allenwood  
SPECIAL MAIL-OPEN ONLY IN  
PRESENCE OF INMATE  
P. O. Box 1000  
White Deer, PA 17887-1000

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

November 3, 2020

BY E-MAIL & CERTIFIED FIRST CLASS MAIL  
Email: Temporary\_Pro\_Se\_Filing@nysd.uscourts.gov

Re: United States v. Brennerman  
Case No. 1:17-cr-337 (RJS)  
REQUEST FOR EVIDENCE REQUIRED FOR COMPASSIONATE RELEASE  
(PURSUANT TO 18 U.S.C.S. 3582(c)(1)(A))

Dear Judge Sullivan:

Defendant Pro Se, Raheem J. Brennerman ("Brennerman") respectfully submits this letter motion and will move this Court - United States District Court for the Southern District of New York, pursuant to Federal Rule of Civil Procedure 28 United States Code Section 1782 (28 U.S.C.S. 1782) and in reliance on the Second Circuit promulgation in "In re del Valle Ruiz, 939 F.3d 520 (2d Cir. 2019)" for an order and/or such disposition compelling ICBC (London) PLC and ICBC London Branch ("ICBC London") at 81 King William Street, London, EC4N 7BG, United Kingdom for pertinent evidence relating to the bridge loan transaction between ICBC (London) PLC and The Blacksands Pacific Group, Inc., ("Blacksands") and Blacksands Pacific Alpha Blue, LLC ("BSPAB") including but not limited to: (a.) Complete underwriting file comprising of the Credit Application including all notes and internal communication relating to the submission of the credit application to the credit committee; (b.) Sanction (Approval) of the credit application by the credit committee including all notes and internal communication relating to the approval thereof; (c.) All settlement discussion and negotiations between agents of ICBC London and Blacksands; and (d.) Compel the Government to provide Brennerman, a copy of his birth certificate in their possession, collectively (the "evidence") required by Brennerman to present complete argument and pleading for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A).



The Second Circuit U.S. Court of Appeals in "United States v. Brooker (Zullo), No. 19-3218, 2020 WL 5739712 (2d Cir. Sept. 25, 2020)" held that the First Step Act of 2018 ("FSA") empowers district courts evaluating motions for compassionate release to consider any "extraordinary and compelling reasons" for granting release or a sentence reduction, not just those criteria set forth by the Sentencing Commission in guidelines that have been unmodified since the FSA's passage. The circuit emphasized that the FSA was intended to expand and expedite compassionate release by allowing defendants to make motions directly to the district courts thus ending the BOP's role as the "sole arbiter" of such claims and by permitting those courts greater discretion in granting release. Accordingly, the Circuit Court held that the constraints imposed by previously-enacted Sentencing Guideline S 1B1.13 do not apply to compassionate release motions brought to the courts directly by defendants, as opposed to by the BOP.

The Circuit Court further noted that while the Court would be within its right to deem the Guideline "as in effect abolished," it instead would interpret "the Guideline as surviving, but now applying only to those motions that the BOP has made." Because the Guideline does not apply to compassionate release motion brought by defendants, it "cannot constrain district courts' discretion to consider whether any reasons are extraordinary and compelling."

The Circuit Court affirmed the breadth of this sentencing discretion. The Court rejected the Government's claim that the specific factor at issue in the case, including the defendant's claim that his initial sentence was excessive, could not qualify as "extraordinary and compelling reasons" to grant compassionate release or a sentence reduction. The Court stressed that a court's sentencing discretion is broad and that the length of the original sentence, the defendant's rehabilitation, his youth at the time of the offense, and any other relevant factors, including "the present coronavirus pandemic," may all be considered. Brennerman invokes the length of the original sentence and the present coronavirus pandemic as compelling and extraordinary reasons particularly as he suffers from diabetes, hypertension and BMI (Body Mass Index of 37) all medical vulnerabilities promulgated by the Center for Disease Control and Prevention, thus Brennerman satisfies the threshold for submitting motion for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A).

The text of 18 U.S.C.S. 3582(c)(1)(A) requires the reviewing Court to consider the 3553 factors in considering any motion for Compassionate release. The Court may also find, after considering the factors set forth in 18 U.S.C.S 3553(a) to the extent that they are applicable, that "extraordinary and compelling reasons warrant a reduction" of the defendant's sentence and that "such reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]" (Id.). The findings required for release include that "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C.S. 3142(g)." U.S.S.G. S 1B1.13(2), p.s. (2018). Thus Brennerman requires the evidence from ICBC London to present complete and comprehensive pleading and argument in respect of the 3553(a) factors for the Court's consideration for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A).

During trial of the instant case, the Government sole witness from ICBC London, Julian Madgett testified (at 1:17-cr-337 (RJS), Tr. 551-554) that evidence exists (ICBC underwriting files) which document the basis (including representation or alleged misrepresentation which the bank relied upon) for approving the bridge loan at issue in this instant case and that the Government never requested or obtained that evidence thus never provided it to the defendant to use for his defense or to present as mitigating evidence pursuant to Rule 32 of the Federal Rule of Criminal Procedure. The Court acknowledged (at 1:17-cr-337 (RJS), Tr. 617) that Government sole witness, Julian Madgett had testified to the existence of the evidence (ICBC underwriting file) with the bank's file in London, U.K. Thus, when Government sole witness from ICBC London, Julian Madgett testified in open Court during trial, he did so on behalf of the Government and Government became aware of the existence of the evidence (ICBC underwriting file) particularly where Defendant requested for the evidence (at 1:17-cr-337 (RJS), doc. no. 71) for his defense and requested that the Court compel Government to obtain the evidence from ICBC London and present it to him for his defense, however Government never endeavored to learn of the evidence which was/is in violation of their Brady obligations.

Courts have required the Government to disclose evidence material to the defense when the Government "actually or constructively" possessed it. E.g., *United States v. Joseph*, 996 F.2d 36, 39 (2d 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. 410, 437 (1995) (holding that to satisfy Brady or 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. Patemina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith effort to obtain Jencks Act statements possessed by a third party that had cooperated extensively and had close working relationship with the Government, 749 F.2d 993 (2d Cir. 1984); 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 record which Standard Oil has and which the Government wants, however, 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)). See also *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2009)

During prior proceedings, Attorney Scott B. Tulman ("Tulman") appointed to represent Brennerman pursuant to the Criminal Justice Act, 18 U.S.C.S. 3006 refused to obtain or present the evidence (ICBC underwriting file) as mitigating evidence pursuant to Rule 32 of the Federal Rule of Criminal Procedure notwithstanding advising Brennerman in writing on September 18, 2018 and October 7, 2018 that he would obtain and present the evidence to argue with respect to the 3553 factors. Tulman later informed Brennerman that he was pressured to not obtain or present the evidence.

After trial, Brennerman made requests to the Court (at 1:17-cr-337 (RJS), doc. nos. 153, 161, 187, 200, 236, 240, 241) for the evidence (ICBC underwriting file and his birth certificate) to present complete post-trial motion(s) in respect of the 3553 factors given that Government sole witness, Julian Madgett had been allowed to testify as to the contents of the evidence (ICBC underwriting file) while Brennerman was deprived of the ability to obtain the evidence to confront the witness against him or present a complete defense at trial, however was denied.

Brennerman now requires the evidence (ICBC underwriting file and his birth certificate) to present a complete, comprehensive and compelling motion for Compassionate release pursuant to 18 U.S.C.S. 3582(c)(1)(A) and argue as to the 3553 factors. To deny Brennerman access to the evidence will be highly prejudicial as he would be deprived of the ability to present a complete argument for Compassionate release particularly in light of the Covid-19 pandemic and his medical vulnerabilities which puts him at a heightened risk from serious illness or death should he contract the Coronavirus. The Court has an obligation to protect the Constitutional rights of criminal defendants and Brennerman relies on such obligation in submitting his request.

WHEREFORE, Defendant Pro Se, Brennerman respectfully submits the above and prays that the Court grants his requests in its entirety.

Dated: November 3, 2020

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

Pro Se Defendant