MARSHA R. TAUBENHAUS
Attorney at Law
1632 1st Ave. #21040
New York, New York 10028
tel: (917) 426-4880

124 North Fifth Street
Saint Peter, MN 56082
tel: (507) 317-1614

email: taubenhauslawoffice@gmail.com

September 1, 2023

The Rt. Hon. James Cleverly MP
United Kingdom Foreign Secretary
Foreign, Commonwealth & Development Office
King Charles Street
London, SW1A 2AH
United Kingdom

The Rt. Hon. David Rutley, MP
Minister for Americas and the Caribbean
Foreign, Commonwealth & Development Office
King Charles Street
London, SW1A 2AH
United Kingdom

The Rt. Hon. Greg Hands MP
Member of Parliament for Chelsea and Fulham
Chairman of the Conservative Party
House of Commons
London, SW1A 0AA
United Kingdom

Dear Sirs:

I am writing on behalf of my client, Raheem Brennerman, to give you background information about his criminal convictions in the United States and to let you know about the serious problems inherent in those convictions. Since Mr. Brennerman has exhausted all possible avenues of relief available in the American judicial system, we are hopeful that you can help him find redress.

Raheem Brennerman and Blacksands Pacific

The prosecution opened Mr. Brennerman's fraud trial by telling the jury: "This is a case about a con man, a con man who invented a fake company [Blacksands Pacific], a con man who said he had oil fields all over the world and thousands of barrels of oil to sell. But none of that was true. It was all a lie" (Fraud Trial Tr. [hereinafter "Tr."] at 76). Furthermore, the government claimed, Blacksands had "*never* owned oil assets" (Tr. at 1407, 1409)(*emphasis added*). Mr.

Brennerman had only "invented the company" to steal money (Tr. at 76). "There was no oil company, ... no oil fields. The defendant just made them up" (Tr. at 79). Blacksands' business operations consisted "of little more than Raheem Brennerman sitting in his apartment... or in a fancy hotel room... lying about the oil assets he never owned" (Tr. at 1409). The prosecutors also told the jury that Mr. Brennerman had only pretended to know about the oil business.

In truth, it was the prosecution's characterization of both Mr. Brennerman and the company he founded that was completely false.

Mr. Brennerman is a 45 year-old British businessman who has been doing business in both the U.K., the U.S., and on the African continent since 2001. Until the instant convictions, Mr. Brennerman had an unblemished record, with no arrests or convictions in either the United States or the United Kingdom. He began his career working in the real estate market, and started a real estate investment and development business called BLV Group Corp. BLV Group operates in the U.S. and the U.K., among other countries.[1]

In 2010, he founded an oil and gas exploration company, made up of two separate entities: (1) Blacksands Pacific Group, Inc. and its subsidiaries operating in the United States; and (2) Blacksands Pacific International Ltd. and its subsidiaries operating from the United Kingdom with an international reach, and many projects in Africa. Blacksands was hardly a sham company: contrary to the prosecution's claims, it had ownership interests in many oil fields in various countries. Attached to this letter as Exhibit One is a summary of Blacksands' acquisitions in Nigeria, Equatorial Guinea, the United States and Canada as of the time of trial.

Moreover, contrary to the prosecution's claims, Mr. Brennerman had a genuine interest in, and knowledge of, the energy market. In fact, he wrote a number of pieces about the oil industry that were published in various outlets. *See, e.g.,* Raheem Brennerman, *4.9 Million Reasons Why the GoM Will be Central to Our Energy Future*, HART ENERGY, Nov. 7, 2014, *available at* https://www.hartenergy.com/opinions/49-billion-reasons-why-gom-will-be-central-our-energy-future-122250; Raheem Brennerman, *Investing in Africa's Future is Good for Ours,* THE HILL, Oct. 13, 2014, *available at* https://thehill.com/blogs/congress-blog/foreign-policy/220564-investing-in-africas-future-is-good-for-ours. One of his articles was even used as a learning aid in a workshop on the exportation of oil and gas organized by the the Gulf Research Center Cambridge.[2]

FACTS UNDERLYING THE FRAUD AND CONTEMPT CONVICTIONS

The Cat Canyon Deal; Negotiations with ICBC

[1] *See* Kevin Brass, *Developer of Belgravia Offers Insights into the Wants and Desires of Super Rich Buyers,* NEW YORK TIMES, Aug. 8, 2008, *available at* https://archive.nytimes.com/raisingtheroof.blogs.nytimes.com/2008/08/08/developer-of-belgravia-project-offers-insights-into-the-wants-and-desires-of-super-rich-buyers/?_php=true&_type=blogs&_r=0 (discussing a multi-million dollar project BLV Group was engaged in).

[2] The workshop was called "Challenges Facing GCC Oil and Gas Exports, https://gulfresearchmeeting.net/documents/1584444245111_WS1%20-%20Challenges%20Facing%20GCC%20Oil%20and%20Gas%20Exports%20-%20checked.pdf. Mr. Brennerman's article was entitled "What Next for Middle East Shale Oil & Gas?" *Id.* at p.7.

In 2011, Mr. Brennerman began a working relationship with Julian Madgett, a bank executive at the London Branch of Industrial Commercial Bank of China (ICBC). He told Madgett that Blacksands was a relatively young company and wanted backing for its activities in oil and gas exploration.

In 2012, Mr. Brennerman became aware of a potential opportunity for Blacksands: a company called ERG was looking to sell Cat Canyon, an oil field in California, for $650 million. Blacksands and ERG engaged in extensive negotiations about the deal. Mr. Brennerman met with ERG executives several times and visited the oil field. Mr. Brennerman even secured an "offtaker" (Sinochem) for the oil.

Mr. Brennerman wanted to move forward with the purchase and sought financing for the deal from ICBC. Madgett seemed eager to assist. So Blacksands spent a good deal of time and money trying to make the deal happen: it hired three prominent law firms, a project management and engineering firm specializing in oil and gas, among others. It also created a "data room" so that ICBC and other potential investors could have access to pertinent confidential documents and information.[3]

ERG was willing to sell Cat Canyon to Blacksands, but, as the loan negotiations between Blacksands and ICBC dragged on for months without a firm commitment from ICBC, ERG began to doubt whether Blacksands was a viable purchaser. Toward the end of that period, Mr. Brennerman made Blacksands' displeasure known to ICBC, and expressed the intention to obtain financing from a different bank. According to emails between Madgett and Brennerman (included in Brennerman's fraud case, Gov. Exhibit 1-19), ICBC had not conducted any "serious review of the data supplied in the data room." Madgett expressed ICBC's concern that the Blacksands was not "a major or well established trader." Brennerman responded that this had been well known to the bank when they began negotiations. He added: "[P]erhaps you should have stated this earlier so we would not have committed so much time with ICBC." Moreover, Mr. Brennerman reminded him, Madgett had told him that the other operations of Blacksands were "irrelevant" to the financing related to Cat Canyon, and that the proposal under discussion would be "considered on an isolated basis which was the basis in which we progressed discussions." *Id.*

Eventually, ICBC and Blacksands agreed on a $20 million 90-day bridge loan with maximum $5 million net release to assist Blacksands with the costs associated with the deal.

In return, ICBC asked for a significantly higher interest (Libor plus 9.95%) and fees (4% of $20 million), given the unsecured nature of the bridge loan. However, the Cat Canyon deal fell

[3] A virtual data room is essentially a secure website where confidential documents can be kept and only read by people authorized to access them. Blacksands' data room contained thousands upon thousands of documents.

through,[4] and, although Blacksands paid approximately $1.1 million to ICBC in fees and interest, Blacksands and ICBC could not agree about repayment for the remainder of the loan.[5]

The Contempt Conviction

ICBC instituted a civil suit against Blacksands to recoup the $5 million. ICBC London PLC v. Blacksands Pacific Group, 15-cv-70 (S.D.N.Y.). Mr. Brennerman was not a party to the suit. On September 29, 2015, Federal District Judge Kaplan granted ICBC's motion for summary judgment and entered judgment against Blacksands for $5 million plus interest, costs, and attorneys' fees. At the same time that Judge Kaplan granted ICBC summary judgment, he denied Blacksands' request for discovery from ICBC.[6]

ICBC initiated post-judgment discovery to locate assets to satisfy the judgment: document requests and interrogatories were served on Blacksands' counsel. Blacksands' attorneys and ICBC attempted to reach a settlement. After they were unable to come to an agreement over the terms of the proposed settlement, Blacksands produced interrogatory responses and documents to ICBC.

However, ICBC was not satisfied by Blacksands' response. The bank moved to hold Mr. Brennerman personally responsible, and, on December 13, 2016, the district court granted the bank's motion to hold him, as well as Blacksands, in civil contempt. When Blacksands did not satisfy ICBC's discovery requests, Judge Kaplan referred the contempt matter to the United States Attorney's Office who, at the judge's urging, moved for an order directing Mr. Brennerman to show cause why he should not be found in criminal contempt. District Judge Kaplan issued the order.

The matter escalated when, on March 7, 2017, Judge Kaplan called the prosecutors into his robing room to insist that an arrest warrant be issued and that Mr. Brennerman should not be permitted to appear voluntarily. At the time, the prosecutors did not agree with the judge's assessment. At the judge's urging, Mr. Brennerman was arrested pursuant to an arrest warrant.[7]

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[4] According to ERG's owner, toward the end of 2013, the company decided that it did not want to proceed further without some "proof of funds." United States v. Brennerman, 18-3546 (2d Cir. 2017), Doc. 96 at p.254.

[5] Blacksands contended that it agreed to the bridge loan in reliance on ICBC's promise to issue a $70 million revolving credit facility (RCF) 90 days after the issuance of the bridge loan. The bridge loan was intended to be refinanced into the RCF, as Madgett acknowledged in an October 27, 2013 email, stating: "The $5 million net bridge funds should be included as refinanced by the main advance" minus the interest, which would be paid by Blacksands. 15-cv-70, doc. No. 11, Exhibit 1, attached to this letter as Exhibit 2.

[6] Blacksands sought the discovery from ICBC in support of its counterclaim against the bank, alleging that it had agreed to the bridge loan in reliance on ICBC's agreement to refinance the bridge loan into the RCF. Judge Kaplan's order granting summary judgment while denying Blacksands any discovery violated settled law. *See, e.g.,* Clark v. Capital Credit & Collection Services, Inc., 460 F.3d 1162, 1178 (9th Cir. 2006)("summary motion should not be granted while [an] opposing party timely seeks discovery of potentially favorable information").

[7] The day before Mr. Brennerman was arrested, he had negotiated an agreement between Blacksands and Brittania-U Nigeria Limited (a Nigerian company), whereby Brittania-U would pay Blacksands $100 million in return for a 20%

Following a trial before Judge Kaplan, Mr. Brennerman was convicted of criminal contempt. United States v. Brennerman, 17-cr-155. The Probation Department, which is responsible for providing a sentencing judge with a recommendation of the appropriate sentence to be imposed pursuant to the United States Sentencing Guidelines, informed the judge that under the Guidelines, Mr. Brennerman's sentence should be at least 15 months, but no more than 21 months' imprisonment. It further recommended that he be sentenced to a term of imprisonment of 15 months. Ignoring both the Guidelines and the Probation Department's recommendation, Judge Kaplan sentenced Mr. Brennerman to a 24-month term of imprisonment.[8]

The Contempt Conviction was a Miscarriage of Justice

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

In short, Mr. Brennerman was not a party to ICBC's civil suit against Blacksands, and he was never served with a subpoena. Absent a subpoena, he was under no obligation to provide any documents or information to ICBC.[9] Nonetheless, Judge Kaplan vigorously pursued both civil and criminal contempt charges against Mr. Brennerman for not providing documents he was not required to provide absent a subpoena.[10] At the same time, it refused to order ICBC, on whose behalf

interest in Blacksands subsidiaries holding eight oil reserves (attached hereto as Exhibit 3). Blacksands intended to use a portion of that money to repay ICBC for the bridge loan. However, when Brittania-U learned of the contempt charge, it cancelled its agreement with Blacksands (attached hereto as Exhibit 4).

[8] After Mr. Brennerman's fraud trial, the Probation Department recommended that he be sentenced to a 120-month term of imprisonment for the fraud convictions. It based that recommendation on his minimal criminal history as well as the fact that he was not considered a physical danger to the community. The Probation Department stated that Brennerman's fraud sentence should be served *concurrently* with his undischarged term of 24 months' imprisonment in the contempt case. As had Judge Kaplan, Judge Sullivan completely ignored the recommendation of the Probation Department, and sentenced Mr Brennerman to a term of imprisonment of 144 months, to run *consecutive* to the 24-month term from the contempt case.

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

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

the request for documents had been made, to produce any documents to either Blacksands or Mr. Brennerman. The injustice inherent in this sequence of events is self-evident.

The Fraud Conviction

Mr. Brennerman's fraud charges also flowed from the civil case against Blacksands for its failure to repay the bridge loan. On May 31, 2017, the United States Attorney's Office filed the fraud indictment against Mr. Brennerman, charging him with conspiracy, and the substantive offenses of bank, wire, mail, and visa fraud. The case proceeded to trial, presided over by Federal District Court Judge Sullivan.

The allegations set forth in the indictment detailed the ICBC transaction at issue in the civil case. It alleged that in negotiating the ICBC loan, Brennerman had misrepresented Blacksands' involvement in the oil and gas market, along with several other alleged exaggerations.

The indictment's only other allegation of financial fraud was a general claim that Mr. Brennerman "made similar representations to other financial institutions, in an effort to induce those institutions to provide financing to Blacksands Pacific and Blacksands Alpha."

At trial, the prosecution alleged that Mr. Brennerman's effort to obtain financing from ICBC was a "scheme" that began as early as 2011. It claimed that his conduct before and after getting the bridge loan was indicative of fraud:

> He invented a business, he fabricated documents, he said he owned assets he didn't, he made up fake employees, he claimed to have real offices, he lied about millions of dollars in revenue. ...
>
> ... [H]e got the loan not to buy an oil field, but to cash in and spend the money on himself and his partner in crime. Tr. at 1420 **.**

However, as the government belatedly recognized, even if those allegations had been true, they would not have supported a bank fraud conviction, since ICBC was not FDIC-insured, as required by the relevant statute (18 U.S.C. §1344). *See, e.g.,* United States v. Everett, 270 F.3d 986 (6th Cir. 2001)(one of the three essential elements required for a bank fraud conviction is "that the financial institution was insured by the FDIC"). *See also* 18 U.S.C. §20, which defines a "financial institution" as "an [FDIC] insured depository institution."

Thus, at trial, the government shifted gears and focused on a different theory, one that had not even been mentioned in the indictment: that Brennerman had also targeted another bank, Morgan Stanley, opening an account at its Wealth Management department and conning "Morgan Stanley's bankers with the same lies he told ICBC." Tr. at 80. The prosecution claimed that Morgan Stanley Wealth Management was "an FDIC insured institution," *id.* at 1429, and that Mr. Brennerman lied to the get the bank to open a Morgan Stanley Wealth Management personal account as a

way to get introduced to the Morgan Stanley's investment banking team, with the aim of getting the money he was having trouble getting from ICBC.

By the end of the case, the prosecutors realized that they couldn't rely on that theory either. It was a non-starter because Kevin Bonebrake, the investment banker Brennerman dealt with, testified that his particular unit would not have been involved with lending out the bank's money, but rather would have focused on finding non-FDIC insured third parties to invest in Blacksands' endeavors. *See id.* at 407. So the government dropped its allegation that Mr. Brennerman had violated 18 U.S.C. §1344(2), and proceeded solely on §1344(1), on the theory that he opened the account in order to "get special perks, things like fancy credit cards and lower rates," *id.* at 1431.[11] *See, e.g., id.* at 1493-94 ("through this fraud on Morgan Stanley..., Mr. Brennerman got access to special perks other people couldn't get, like lower rates, and fancy credit cards, and also the ... opportunity to meet and access to do business with people like Kevin Bonebrake").

What the government and Judge Sullivan failed to recognize, however, was that Morgan Stanley's Wealth Management department was not part of Morgan Stanley's banking arm. Rather, it was part of Morgan Stanley Smith Barney, a subsidiary which is *not* FDIC insured. In fact, on its website, it states explicitly: "Morgan Stanley Wealth Management is a business of Morgan Stanley Smith Barney LLC. Morgan Stanley Smith Barney LLC is a registered Broker/Dealer SIPC, and not a bank." Wealth Management/Morgan Stanley, *available* at https://www.morganstanley.com/what-we-do/wealth-management#. That Mr. Brennerman was seeking to open an account with the non-FDIC-insured Morgan Stanley Smith Barney, and *not* the FDIC-insured Morgan Stanley Bank, is obvious from the application he filled out to open his account: it clearly states that it is a Morgan Stanley Smith Barney application. *See* MSSB application, attached to this letter as Exhibit 5.

In denying Mr. Brennerman's motion for a new trial or judgment of acquittal, Judge Sullivan stated: "I think the evidence reflects that he opened an account at the private bank using false information, false documents; that that resulted in him having access to perks and benefits that he wouldn't otherwise be entitled to." United States v. Brennerman, 17-cr-337, Sentence Transcript at 4. Since Brennerman's account was not with Morgan Stanley's private bank, but rather with the non-FDIC-insured Wealth Management group, the judge's ruling was factually and legally flawed. And, given that the issue of FDIC insurance was pivotal to the bank fraud/conspiracy charges, the ruling was fatally flawed.

Moreover, the theory that the government's entire case turned on — that Brennerman had essentially made up Blacksands in order to defraud financial institutions — was based on the false assumption that Blacksands was not a real company, was not involved in the oil and gas market, and was not finacially viable. In fact, Blacksands — and particularly its subsidiaries in Africa —

[11] The indictment alleged that Mr. Brennerman had violated both prongs of the bank fraud statute, 18 U.S.C. §1344(1) and (2). Section One requires proof that the defendant schemed to "defraud a financial institution." Section Two requires proof that he schemed to "obtain any of the moneys, funds, credits, assets, securities or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises."

had various oil assets worth at least as much as Brennerman had represented to both ICBC and Morgan Stanley Smith Barney. *See* Exhibit One, attached hereto. And nothing better demonstrates the fictitiousness of the government's theory than the fact that Blacksands Pacific International Ltd. and its subsidiaries are still operational.[12]

Denial of Mr. Brennerman's Effort to Obtain Discovery

Additionally, Mr. Brennerman's ability to defend against the fraud charges was severely limited by his inability to obtain the full ICBC file. Just as he had done in the contempt case, Mr. Brennerman moved for discovery of the file. And just as Judge Kaplan had done, Judge Sullivan denied his requests for a subpoena to obtain these documents. Judge Sullivan additionally refused to compel the government to obtain the documents and produce them at trial.

That file would have included notes made by ICBC employee Julian Madgett, one of the government's key witnesses, along with the bank's underwriting file and settlement discussions.[13] Without those documents, Mr Brennerman was prevented from thoroughly cross-examining Madgett and demonstrating where aspects of his testimony were misleading.[14]

Brennerman argued to the jury that he had negotiated in good faith with ICBC, had provided accurate information about Blacksands, and had engaged in good faith negotiations regarding repayment of the loan. However, absent the documentary proof supporting his good-faith defense, his ability to support that argument was unfairly limited.

The Fraud Convictions were a Miscarriage of Justice

It goes without saying that a miscarriage of justice has occurred when a conviction is obtained: (1) without providing the defendant with the evidence necessary to support his defense; (2) based on a flimsy theory; and (3) based upon a theory which bears no resemblence to the theory propounded in the charging document. *See, e.g.,*, Dunn v. United States, 442 U.S. 100, 107 (S.Ct. 1979). And that is precisely what happened here.

Raheem Brennerman's convictions were based on the bogus theory that Blacksands was a fictitious company that did not really exist. His bank fraud convictions were obtained despite the requirement of the bank fraud statute that the 'defrauded' institution be FDIC insured. And they

[12] Blacksands Pacific International Ltd. is owned through a trust, and the trustees of the trust run the business. Due to Mr. Brennerman's conviction, he was removed from the trust.

[13] An underwriting file documents the basis for a bank's decision to loan money. Documents relating to the settlement discussions would also include meeting minutes, notes, and emails. In this case, Mr. Brennerman continuously attempted to obtain both from ICBC.

[14] Mr. Brennerman's motion to preclude Madgett from testifying, on the grounds that the defense had not been provided the complete file, was denied. Further, Judge Sullivan stated: "I'm not going to allow any sort of negative inference argument to be made on the basis of these notes being... not produced." United States v. Brennerman, 17-cr-337, trial transcript at 620.

were obtained in violation of his right to present a fullsome defense. Since Mr. Brennerman has exhausted all possible avenues of redress through the United States court system without getting any relief, we are hopeful that you will advocate on his behalf and achieve a just outcome for him.

In regards to your query as to my experience: I have worked as a criminal defense attorney since I graduated from law school in 1978. I became an appellate specialist in 1985, and, since 1996, I have limited my practice to federal appeals. I am admitted to practice law in the United States Supreme Court, the Second Circuit Court of Appeals, and the State of New York.

Respectfully submitted,

Marsha R. Taubenhaus, Esq.
Attorney for Raheem Brennerman

cc: Ambassador Madame Karen Pierce
Vice Consul Ms. Lisa Strathdee
Honorable Mr. Voker Turk
Ambassador Dame Barbara Woodward
Ambassador Linda Thomas-Greenfield