20-1414

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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

RAHEEM BRENNERMAN,

Defendant- Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK IN CASE NO. 17-CR-337

BRIEF FOR DEFENDANT - APPELLANT

Raheem J. Brennerman
LSCI ALLENWOOD
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Pro Se Defendant – Appellant

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INTRODUCTION

Pursuant to 18 U.S.C. § 3145, Defendant - Appellant, Raheem Brennerman ("Brennerman"), respectfully appeals to this Court from the April 27, 2020 denial order, by Judge Richard J. Sullivan of the United States District Court for the Southern District of New York, on the erroneous decision to deny my request for discovery to present clear and convincing evidence pursuant to 18 U.S.C. § 3143(b) (17-cr-337 (RJS)).

JURISDICTION

Section 3145(c) of the Bail reform Act provides that an appeal from orders relating to release or detention are "governed by the provisions of § 1291 of title 28," which states that "[t]he courts of appeals....shall have jurisdiction of appeals from all final decisions of the district courts of the United States." 18 U.S.C. § 3145(c); 28 U.S.C. § 1291. Mr. Brennerman timely filed this appeal on March 27, 2020 pursuant to Rule 4(b)(1) of the Federal Rules of Appellate Procedure.

STANDARD OF REVIEW

"A district court`s ultimate decisions as to the admission or exclusion of evidence are reviewed for abuse of discretion and will not be disturbed unless they are manifestly erroneous." *United States v. Ulbricht*, 858 F.3d 71, 122 (2d Cir. 2017) (internal quotation marks omitted). In the context of a motion for bail

pending appeal, it is appropriate to note that a district court has broad discretion to admit or exclude evidence, and that reversal is warranted "only where a ruling to admit or exclude evidence is manifestly erroneous and such constitutes abuse of discretion." *United States v. Samet*, 466 F.3d 251, 254 (2d Cir. 2006) (internal quotations marks omitted). In general, a district court is said to abuse its discretion, "when its decision cannot be located within the range or permissible decisions or is based on a clearly erroneous factual finding or an error of law." *United States v. Rigas*, 490 F.3d 208, 238 (2d Cir. 2007) (internal quotation marks omitted).

STATEMENT IN SUPPORT OF EXPEDITED RELIEF

Pursuant to FRAP 9(a)(2), Mr. Brennerman respectfully requests an expedited determination of this appeal. Continuing detention without allowing Mr. Brennerman to satisfy the conditions pursuant to 18 U.S.C. § 3143(b) is extremely prejudicial to Mr. Brennerman particularly given the current corona virus pandemic and the fact that Mr. Brennerman is at a heightened risk from the corona virus given his medical pre-conditions (diabetes and hypertension) as promulgated by the C.D.C.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This entire prosecution was initiated following Manhattan Federal Judge Lewis A. Kaplan holding Brennerman, a non-party in civil contempt in tension

with the law promulgated by the Second Circuit U.S. Court of Appeals in "*OSRecovery, Inc., v. One Groupe Int`l, Inc*., 462 F.3d 87, 90 (2d Cir. 2006) where the Appeals Court stated directly to Judge Kaplan in relevant parts ("[T]he District Court abused its discretion by issuing a contempt order to a non-party for failing to respond to discovery requests propounded to him as a party without providing sufficient legal authority or explanation for treating him as a party solely for the purpose of discovery")") even though there were no court order(s) directed at him personally. No subpoena or motion to compel were every directed at him [Brennerman]. Further, following the erroneous civil contempt propounded against Brennerman Judge Kaplan then referred him to the Manhattan prosecutors (United States Attorney Office for the Southern District of New York "USAO SDNY") and insisted that he (Judge Kaplan) wanted Brennerman prosecuted criminally. See (1:17-CR-155-LAK, doc. no. 12-2) and (1:17-CR-337-RJS, doc. no. 236, Exhibit 3).

Thereafter, pursuant to the arrest warrant prepared and signed by Judge Kaplan, Brennerman was arrested on April 19, 2017, at his home in Las Vegas where he had lived for approximately five years. As of the date of that arrest warrant, and because the Court had declined to sign the order to show cause presented by the government, there was no actual contempt charge pending against Brennerman. The Court omitted Brennerman from the signed order to show case

but then failed to otherwise rule or grant the government`s Petition as it related to Brennerman. There was, therefore, no proper basis for the arrest warrant; the Court`s decision to alter the arrest warrant to reference the Petition was inadequate to support the warrant. (The arrest warrant included an option for a Probation Violation Petition; those instruments, unlike a Petition in a contempt proceeding actually do charge an offense.) See (1:17-CR-155-LAK, doc. no. 12-3)

Thus, Brennerman`s arrest on April 19, 2017 (when he was initially arrested and government seized his electronic devices and documents (which was the source of the evidence (e-mails between Brennerman (Blacksands) and Madgett (ICBC London)) presented at trial of the contempt and fraud case since the government never obtained or reviewed the pertinent ICBC files) was in violation of Brennerman`s Fourth and Fifth Amendment Constitutional rights.

On May 4, 2017, Chief Judge Colleen McMahon sitting Part I, granted Brennerman bail after considering a raft of government argument that Brennerman was a flight risk. (See 1:17-CR-155-LAK, doc. nos. 12, 13, 15, 16)

On May 31, 2017, a grand jury sitting in the Southern District of New York returned a multiple count indictment alleging inter alia that the transaction between ICBC (London) PLC ("ICBC London") and The Blacksands Pacific Group, Inc ("Blacksands") and Blacksands Pacific Alpha Blue, LLC ("BSPAB") was fraudulently conceived. On June 1, 2017, Brennerman was arraigned in the

Southern District of New York and ordered detained. District Court (Sullivan, J.) adopted the findings by Chief Judge Colleen McMahon however determined that he was a flight risk because the calculus had changed given the heightened severity of the crime Brennerman was charged with in the indictment (thus to rebut such calculus Brennerman intends to present clear and convincing evidence to rebut against the charged crime) and because government proffered that Brennerman had contacted an alleged victim while on bail (although Brennerman was unaware that she was an alleged victim when she contacted him. Government later decided not to present her at trial when Brennerman requested to challenge her under oath). Without presenting any clear and convincing evidence to District Court to rebut the presumption as to flight risk, Brennerman`s trial counsel, Thompson Hine LLP, appealed the denial of bail to the Second Circuit U.S. Court of Appeal. The Court affirmed the order finding no clear error in District Court`s decision particularly given that Brennerman`s trial counsel had failed to present any clear and convincing evidence to District Court to rebut the presumption as to flight risk prior to appealing.

In August 2017, because Brennerman was charged in two interrelated criminal cases: criminal contempt of court at docket no. 1:17-CR-155-LAK (currently under appeal at Appeal docket nos. 18-1033(L); 18-1618(Con)) and the related fraud case at docket no. 1:17-CR-337-RJS (currently under appeal at

Appeal docket nos. 18-3546(L); 19-497(Con)), prior to the trial for the criminal contempt of court case which commenced first on September 6, 2017, Brennerman sought to obtain the complete discovery (ICBC files) however his request to both the prosecution and directly to ICBC (London) plc were denied. He then made request to compel for the discovery through District Court (Kaplan, J.). However District Court denied his request (at 1:17-CR-155-LAK, doc. no. 76) stating that ICBC (London) plc was 3,500 miles from the Courthouse. This Court [Second Circuit] has recently promulgated in "*In re del Valle Ruiz*, 939 F.3d 520 (2d Cir. 2019)" abrogating such assumption, thus highlighting that District Court`s reasoning for the denial of discovery was erroneous. Moreover recent promulgation by this Court [Second Circuit] in "*Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019) (quoting "*Crane v. Kentucky*, 476 U.S. 683 (1986)") demonstrates that such erroneous denial of evidence substantially prejudiced Brennerman by depriving him of the ability to present a complete defense. Additionally at trial the Court (Kaplan, J.) allowed the presentment of the civil contempt order which was erroneously adjudged against a non-party [Brennerman] (in tension with this Courts promulgation in "*OSRecovery, Inc., v. One Groupe Int`l, Inc.,* 462 F.3d 87, 90 (2d Cir. 2006)") to the jury which was highly prejudicial. For instance, see 1:17-CR-337-RJS, doc. no. 236, Exhibit 3 where a juror named Gordon advised

the media after trial that the presentment of the civil contempt order against Brennerman swayed the jury to find him guilty.

On November 26, 2017 trial commenced for the aforesaid indictment and on December 6, 2017 a jury sitting in the Southern District of New York returned a guilty verdict on all counts. On appeal Brennerman presented a number of substantial question of law which will likely result in reversal or an order for a new trial. Including Constructive Amendment of the Indictment; failure to present a federally insured financial institution (an essential element to convict for the federal bank fraud) as to Counts One and Two. Recently this Court [Second Circuit] promulgated in "*Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019) (quoting "*Crane v. Kentucky*, 476 U.S. 683 (1986)") holding that a criminal defendant has a constitutional right to present a complete defense. At trial when Brennerman sought to obtain discovery which he required to present a complete defense (at 1:17-CR-337-RJS, doc. no. 71) following testimony by Government sole witness from ICBC (London) plc, Julian Madgett, to having notes relating to the credit decision making process which the government never requested or obtained. The Court (Sullivan, J) acknowledged that the witness had testified to the existence of the evidence (ICBC files) (which Brennerman required to present a complete defense) in the bank`s file in London, United Kingdom (see Trial. Tr. 617 at *5-10) However, the Court denied his [Brennerman] request at a time when the Court had

an obligation to protect Brennerman`s constitutional rights (See Appeal Reply Brief at 18-3546, doc. no. 158) District Court`s denial was based on an assumption which is now abrogated by this Court [Second Circuit] promulgation in "*In re del Valle Ruiz*, 939 F.3d 520 (2d Cir. 2019)". The deprivation of evidence required to present a complete defense affects the conviction as to Counts One, Two and Three of the indictment.

Thereafter in May 2018, Brennerman was sentenced in the criminal contempt of court case at 1:17-CR-155-LAK before Judge Kaplan to twenty-four months incarceration for that conviction, a notice of appeal was filed.

In June or July 2018, Brennerman again moved for bail without presenting any clear and convincing evidence (at 1:17-CR-337-RJS, doc. no. 144) while the resolution of his post-trial motion (in the related fraud case) was pending and the Court denied his bail (holding that Brennerman presented no clear and convincing evidence warranting reconsideration of its prior denial order) Brennerman appealed the denial at Appeal docket no. 18-1671. At the same time Brennerman filed a joint application for bail from the conviction and sentence in the criminal contempt of court case at Appeal docket no. 18-1033. Both application were combined as 18-1033 (application for bail) and 18-1671 (appeal of bail denial), the Second Circuit U.S. Court of Appeals denied both application stating at Appeal 18-1033 (Denied. *United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985)) and at 18-1671

(Denied. *United States v. Abuhamra*, 389 F.3d 309 319 (2d Cir. 2004)) Clearly highlighting that Brennerman had failed to present clear and convincing evidence to satisfy the burden to rebut against continued detention. In August, Brennerman in his capacity as a pro se defendant filed an Amendment Appeal Brief at 18-1033(L); 18-1618(Con) and again renewed his request for bail with District Court (Kaplan, J) (without presenting clear and convincing evidence) and was denied at 1:17-CR-155-LAK, doc. no. 163.

On November 19, 2018, Brennerman was sentenced in the related fraud case (at 1:17-CR-337-RJS) before Judge Sullivan. A notice of appeal was filed in November 2018 and another notice of appeal was filed in February 2019 following the imposition of restitution.

As of January 29, 2019 the sentence imposed in the criminal contempt of court conviction had been fully served (with good-time credit).

Brennerman is now a Defendant-Appellant in two interrelated appeals at the Second Circuit U.S. Court of Appeal, at Appeal Docket Nos. 18-1033 (L); 18-1618 (Con) for the appeal of the criminal contempt of court conviction and at Appeal Docket Nos. 18-3546 (L); 19-497 (Con) for the appeal in the related fraud case. In August 2019, Brennerman filed an appeal supplemental reply brief for the appeal of the criminal contempt of court conviction at 18-1033, doc. no. 252 and on December 23, 2019 (Defect Cured on January 6, 2020), he filed the appeal reply

brief for the appeal of the related fraud case at 18-3546, doc. no. 158. The Second Circuit U.S. Court of Appeals has scheduled for both appeals to be heard in tandem.

Brennerman is also entitled to collateral review on both convictions pursuant to 28 U.S.C. § 2255 and has a liberty interest pursuant to 18 U.S.C. § 3143(b). Notably, the "the standard for release on bail under 28 U.S.C. § 2255 is even higher than...for release pending direct appeal." *United States v. Whitman*, 153 F. Supp. 3d 658, 661 (S.D.N.Y. 2015); *Mapp v. Reno*, 241 F.3d 221, 223, 226 (2d Cir. 2001) thus it is imperative for Brennerman to obtain the requested discovery to present clear and convincing evidence.

Nothing in the statutory construct of 18 U.S.C. § 3143(b) or in its legislative history or case law prohibits (because of his [Brennerman] prior bail applications) Brennerman from seeking bail or from presenting clear and convincing evidence to rebut against detention with his bail application pursuant to 18 United States Code § 3143(b).

Brennerman on March 27, 2020 (at 1:17-CR-337-RJS, doc. nos. 236, 240, 241) filed an Omnibus motion for bail; and in the alternative for discovery to present clear and convincing evidence with his bail application requesting inter alia (1.) to compel ICBC (London) PLC and ICBC London Branch at 81 King William Street, London. EC4N 7BG. United Kingdom pursuant to Federal Rule of Civil

Procedure 28 United States Code § 1782 (28 U.S.C. § 1782) for pertinent evidence relating to the bridge loan transaction between ICBC (London) plc ("ICBC London") and The Blacksands Pacific Group, Inc ("Blacksands") and Blacksands Pacific Alpha Blue, LLC ("BSPAB") including but not limited to (a.) 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; required to demonstrate that there was no fraud or contempt of court to prosecute with the transaction between ICBC London and Blacksands: (2.) Deposition and/or Affidavit from Mr. Scott Stout (Government witness) to clarify whether he worked at Morgan Stanley Smith Barney, LLC (which is not federally insured) or at Morgan Stanley Private Bank (which is federally insured). His [Scott Stout] affidavit and/or deposition will corroborate Government Exhibits - GX1-57A; GX529; GX1-73 in unequivocally confirming that he worked at Morgan Stanley Smith Barney, LLC which is not federally insured, thus federal government lacked jurisdiction to charge or convict for federal bank fraud: (3.) copy of Brennerman`s birth certificate already in Government`s possession, to rebut the finding by Chief Judge Colleen McMahon (which was based on government proffer) that he

misrepresented his place of birth and the argument made by government to the court and jury at trial as to Count 4 of the indictment, which alleged that Brennerman misrepresented his place of birth (an essential element necessary to convict for Count 4): (4.) copy of pages from Brennerman`s U.K. passport to rebut against Government proffer and argument. All these discovery will rebut against detention and presumption that Brennerman is a flight risk as it will exonerate and demonstrate Brennerman`s innocence of the charged crime. Moreover, these discovery will change the calculus as to the heightened severity articulated by Judge Sullivan in ordering detention.

However District Court (Sullivan, J.) denied Brennerman`s request for discovery to present clear and convincing evidence with his bail application without providing any explanation or legal authority to support such decision (See 1:17-CR-337-RJS, doc. no. 242) and without affording Brennerman the opportunity of a hearing in tension with the holding in *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004)

ARGUMENT

A convicted defendant who has been sentenced to imprisonment must be detained unless the Court finds "by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released [and] that the appeal is not for the purpose of delay and

raises a substantial question of law or fact likely to result in....reversal [or] an order for a new trial....."18 U.S.C. § 3143(b)(1)(A)-(B). It is the defendant`s burden to rebut the presumption in favor of detention by clear and convincing evidence. See, e.g., *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004) (citations omitted). If a defendant meets this substantial burden, bail pending appeal is mandatory. See *id*. (quoting 18 U.S.C. § 3143(a) for the post-verdict, pre-sentencing context; the mandatory language in 18 U.S.C. § 3143(b) for the post-sentencing context is identical).

The latter part of the second requirement- that the appeal raises a substantial question of law or fact likely to result in a reversal or order for a new trial-does not mean that the district court must "predict the probability of reversal." *United States v. Randell*, 761 F.2d 122, 124 (2d Cir. 1985) (quoting *United States v. Miller*, 753 F.2d 19, 23 (3rd Cir. 1985) (internal quotation marks omitted). Instead the requirement goes to "the significance of the substantial issue to the ultimate disposition of the appeal." *Id*. (quoting *Miller*, 753 F.2d at 23) (internal quotation marks omitted). To determine whether this requirement is satisfied, a court must first determine whether the question on appeal is substantial. *Id*. at 125. A substantial question is more than "frivolous" and "is a close question or one that very well could be decided the other way." *Id*. (quoting *United States v. Giancola*, 754 F.2d 898, 901 (11th Cir. 1985) (internal quotation marks omitted). If the

question is substantial, a court "must then consider whether than question is 'so integral to the merits of the conviction on which defendant is to be imprisoned that a contrary appellate holding is likely to require reversal of the conviction or a new trial.'" *Id*. (quoting *Miller*, 753 F.2d at 23). Put differently, the appeal must raise a substantial question that, if decided in a defendant`s favor, will likely result in a reversal or order for a new trial.

I. District Court abused its discretion and prejudiced the defendant (A Defendant who has liberty interest) when it denied Brennerman`s request for discovery which he requires to present clear and convincing evidence pursuant to 18 U.S.C. § 3143(b); *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004) to rebut against detention and the presumption against flight risk, particularly where District Court presents no legal authority or clear explanation for denying the discovery request.

Mr. Brennerman should be afforded the opportunity to satisfy the conditions for release pursuant to 18 U.S.C. § 3143(b) by presenting clear and convincing evidence to rebut against the presumption cited by District Court. District Court denied his request for discovery without providing any legal citation or clear explanation for such denial.

In *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004), this Court reasoned:

> In balancing these competing post-verdict interests to determine the process due to a defendant who seeks bail release pending sentencing, we are mindful that Congress has itself weighted the procedural balance quite decidedly in favor of the government. As already noted, 18 U.S.C. § 3143(a) creates a presumption in favor of detention, it places the burden on the defendant to

> defeat the presumption, and it requires the defendant to carry that burden by clear and convincing evidence, not by a mere preponderance. Only if a defendant clears these high procedural hurdles is he entitled to release pending sentencing. From this statutory structure, however, we can conclude that the minimal process due a post-verdict defendant who seeks continued release pending sentencing is the opportunity to demonstrate that he satisfies the burden of proof established by § 3143(a)(1). In short, he is entitled to "some kind of hearing" at which this issue can be fairly resolved. See Henry J. Friendly, Some Kind of Hearing, 123 U. Pa. L. Rev. 1267, 1296 (1975) (quoting *Wolff v. McDonnell*, 94 S. Ct. at 2975).

Mr. Brennerman has not been afforded even the opportunity to demonstrate that he satisfies the burden of proof established by § 3143(b). Instead District Court arbitrarily denied his request for discovery to do so without providing any legal citation or clear explanation for such denial. Thus, while District Court states in relevant parts of the denial order (see doc. no. 242) "Because Brennerman has not come close to proving that he is not a flight risk, the Court need not even address his arguments concerning the merits of his appeal or COVID-19." it [District Court] also prejudice Mr. Brennerman by denying him the ability to "come close to proving that he is not a flight risk."

The discovery which Mr. Brennerman seeks (to present clear and convincing evidence pursuant to § 3143(b)) strikes at the heart of the criminality for which he is being detained. The discovery are exculpatory and will demonstrate his innocence of the charged crime, thus demonstrating that he is not a flight risk.

Prior to trial, Mr. Brennerman sought to obtain discovery to present a complete defense, however his requests to both the Government and directly to

ICBC (London) plc were denied. He then sought to compel the discovery through District Court however the Court (Kaplan, J.) denied his request (at 1:17-CR-155-LAK, doc. no. 76). Again during trial in the related fraud case (1:17-CR-337-RJS) following Government sole witness from ICBC (London) plc, Julian Madgett testifying to having notes relating to the bank`s credit decision making process which the Government never requested or obtained. Mr. Brennerman again compelled District Court (at 1:17-CR-337-RJS, doc. no. 71) for the evidence (ICBC files) for his defense so that he may present a complete defense. District Court (Sullivan, J) acknowledged at (1:17-CR-337-RJS, Trial. Transcript 617 *at 5-10) that the witness had testified that the evidence which Mr. Brennerman required was with the bank`s file in London, United Kingdom, however District Court (Sullivan, J.) denied his request at a time when the Court had an obligation to protect his Constitutional rights.

The evidence (ICBC files) will exonerate Mr. Brennerman. While Government argued that they had no obligations to collect or produce the pertinent evidence (ICBC files) to Mr. Brennerman for his defense, because neither ICBC (London) plc or its attorney, Paul Hessler are agents of the Government. Government obtained approximately 5,000 pages of e-mail communications (without the pertinent internal ICBC files related to the credit decision making process or sanction) between ICBC (London) plc and The Blacksands Pacific

Group, Inc (through Mr. Brennerman) which were selectively presented at trial while also presenting Mr. Julian Madgett to testify as to the contents of the ICBC files which Government refused to obtain or present. After trial, Mr. Brennerman sought to obtain the evidence (ICBC files) to present with his post-trial motions and for other relief however his requests were denied (at 1:17-CR-337-RJS, doc. nos. 153, 161, 187, 200, 236, 240, 241)

The additional discovery which Mr. Brennerman requested to present clear and convincing evidence (deposition and/or affidavit from Mr. Scott Stout to confirm whether he worked at Morgan Stanley Smith Barney, LLC which FDIC commissioner, Barry Gonzalez confirmed at trial was not FDIC insured or at Morgan Stanley Private Bank which is FDIC insured) will corroborate Government`s own exhibits submitted (at 1:17-CR-337-RJS, doc. no. 167) - GX1-57A (Morgan Stanley Smith Barney, LLC account opening form); GX529 (Morgan Stanley Smith Barney, LLC account statement); and GX1-73 (e-mail from Scott Stout with signature § confirming that the e-mail was from an employee of Morgan Stanley Smith Barney, LLC) that Mr. Brennerman opened his wealth management account at Morgan Stanley Smith Barney, LLC where Scott Stout worked and that Government lacked jurisdiction to indict and prosecute Mr. Brennerman for his interaction with an institution which is not federally insured.

Furthermore, Mr. Brennerman requested for a copy of his birth certificate which is in Government`s possession and was in Government`s possession during trial while Government made contrasting argument to the Court and jury. This evidence will completely abrogate the inaccurate argument presented to the jury and exonerate Mr. Brennerman of the charged crime as to Count 4 of the indictment. An essential element to convict for Count 4 was that Mr. Brennerman misrepresented his place of birth, this evidence will demonstrate that while Government argued to the jury that he did, evidence which exonerates him was in Government`s possession.

The significance of these evidence outweigh the § 3142 factors cited by District Court. Moreover, District Court`s arbitrary denial of Mr. Brennerman`s request substantively prejudiced him and affects his Fifth Amendment liberty interest pursuant to 18 U.S.C. § 3143(b); *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004)

II. Whether Defendant`s Liberty Interest pursuant to 18 United States Code § 3143(b) is foreclosed because of previous bail applications made prior to the imposition of the instant sentence from which Defendant seeks discovery to present clear and convincing evidence with his bail application.

Nothing in the statutory construct, legislative history or at case law forecloses defendant (Mr. Brennerman) from making bail application pending appeal (or from presenting clear and convincing evidence with his bail application)

because he previously made other bail applications prior to the imposition of the instant sentence from which he seeks bail pending appeal. However, District Court extensively highlighting Mr. Brennerman`s previous bail application without citation of legal authority or case law in its denial of Mr. Brennerman`s request for discovery to present clear and convincing evidence pursuant to 18 U.S.C. § 3143(b); *United States v. Abuhamra*, 389 F. 3d 309, 319 (2d Cir. 2004)

Indeed § 3143(b) was enacted by Congress for defendants such as Mr. Brennerman to seek release from detention following the imposition of sentence if the defendant is able to satisfy the burden of proof pursuant to 18 U.S.C. § 3143(b).

CONCLUSION

For all the foregoing, Mr. Brennerman motion for discovery to present clear and convincing evidence pursuant to 18 U.S.C. § 3143(b); *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004) should be granted in its entirety.

Mr. Brennerman respectfully requests a prompt hearing on this motion.

FOOTNOTE:

(b.) Section 3142(f)(2)(B) expressly states that the federal rules of evidence do not apply at bail hearing. Because the "rules concerning admissibility of evidence in criminal trials do not apply" to bail hearings, See 18 U.S.C. § 3142(f)(2)(B)

Dated: May 7, 2020
White Deer, PA 17887-1000

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman

Raheem Jefferson Brennerman
Defendant - Appellant

Pro Se Appellant

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) in that it is 5071 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) in that it is proportionately spaced typeface Times New Roman using 14-point type by the Microsoft Word program.

Dated: May 7, 2020

Respectfully Submitted,

/s/ Raheem J. Brennerman

Raheem Jefferson Brennerman
Defendant - Appellant

Pro Se Appellant

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:
United States of America

v.

Raheem Brennerman

CERTIFICATE OF SERVICE*
Docket Number: 20-1414

I, Raheem Brennerman, hereby certify under penalty of perjury that
(print name)

on May 7, 2020, I served a copy of Appeal Brief
(date) (list all documents)

by (select all applicable)**

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May 7, 2020
Today's Date

/s/ Raheem Brennerman
Signature

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