**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF NEW YORK**

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| UNITED STATES OF AMERICA,    Respondent,  v.  RAHEEM JEFFERSON BRENNERMAN,    Petitioner/Movant, |

Case No.: 17-cr-155 (LAK)

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**OMNIBUS MOTION INCLUDING MOTION FOR COLLATERAL ATTACK**

**RELIEF PURSUANT TO 28 UNITED STATES CODE SECTION 2255 AND OTHER RELIEFS**

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December 1, 2021

**Table of Contents**

**TABLE OF CONTENTS .............................................................................................................. i**

**TABLE OF AUTHORITIES ...................................................................................................... iii**

**I. RELIEF SOUGHT ........................................................................................................... 1**

**II. JURISDICTION ............................................................................................................... 1**

**III. ISSUES PRESENTED ..................................................................................................... 2**

Background ..................................................................................................................... 2

The Criminal Referral, The Petition and Ex Parte

Conference Between Judge Kaplan and the Government ....................................... 5

The Indictment and Order to Show Cause .................................................................. 7

The District Court’s Decision ....................................................................................... 8

The Trial and Post-Trial Proceedings ......................................................................... 9

The Court of Appeal Decision ...................................................................................... 11

Error(s) with the Court of Appeals’ Decision .......................................................... 13

**IV. REASONS FOR GRANTING COLLATERAL ATTACK MOTION ....................... 21**

Standard of Review ...................................................................................................... 21

Arguments ...................................................................................................................... 21

A. Ground One: The Conviction was Obtained and

Sentence Imposed in Violation of the Right to a

Fair Trial and Proceedings .................................................................................... 21

B. Ground Two: The Conviction was Obtained and

Sentence Imposed in Violation of the Right to an

Effective Assistance of Counsel .......................................................................... 30

C. Ground Three: The Conviction was Obtained and

Sentence Imposed in Violation of the Right to

Equal Protection of the Law ................................................................................ 35

**V. REASONS FOR STAY OF ENFORCEMENT OF JUDGEMENT**

**OF CONVICTIONPETITION AND SENTENCE PENDING**

**DETERMINATION OF COLLATERAL ATTACK PETITION .............................. 41**

Discussion ....................................................................................................................... 41

**VI. REASONS FOR GRANTING RECUSAL/DISQUALIFICATION**

**OF THE COURT (KAPLAN, J) .................................................................................... 43**

Discussion ..................................................................................................................... 43

**VII. LEGAL AUTHORITY GOVERNING PRO SE PETITIONER ................................ 47**

**VIII. CLOSING STATEMENT .............................................................................................. 49**

**CONCLUSION ........................................................................................................................... 50**

**EXHIBIT ..................................................................................................................................... 51**

**TABLE OF AUTHORITIES**

**CASES Page(s)**

*Adams v. United States*,

372 F.3d 132 (2d Cir. 2004) .................................................................................................... 21

*Boumediene v. Bush*,

553 U.S. 723 (2008) ................................................................................................................ 21

*Bracy v. Gramley*,

520 U.S. 899 (1997) ................................................................................................................ 28

*Brennerman v. United States*,

Supreme Court No. 20-6638 (EFC Dec 09, 2020) .................................................................... 1

*Brit v. Montgomery*,

709 F.2d 690 (7th Cir. 1983) ............................................................................................. 36-37

*Chambers v. United States*,

106 F.3d 472 (2d Cir. 1997) .................................................................................................... 21

*Chase Manhattan Bank v. Affiliated FM Ins. Co*.,

343 F.3d 120 (2d Cir. 2003) .................................................................................................... 48

*Cooks v. United States*,

461 F.2d 530 (5th Cir. 1972) ................................................................................................... 37

*Cooper v. Town of East Hampton*,

83 F.3d 31 (2d Cir. 1996) ........................................................................................................ 44

*Correale v. United States*,

479 F.2d 944 (1st Cir. 1973) .................................................................................................... 37

*Couch v. Booker*,

632 F.3d 241 (6th Cir. 2011) ................................................................................................... 36

*Crisp v. Duckworth*,

743 F.2d 580 (7th Cir. 1984) ................................................................................................... 36

*Edwards v. Balisok*,

520 U.S. 641 (1997) ................................................................................................................ 28

*Estelle v. Gamble*,

429 U.S. 97 (1976) .................................................................................................................. 48

*Everett v. Beard*,

290 F.3d 500 (3d Cir. 2002) .................................................................................................... 37

*Gideon v. Wairnwright*,

372 U.S. 335 (1963) ................................................................................................................ 35

*Government of Virgin Islands v. Vanderpool*,

767 F.3d 157 (3d Cir. 2014) .................................................................................................... 37

*Health Servs. Acquisition Corp. v. Liljeberg*,

796 F.3d 796 (5th Cir. 1986) ................................................................................................... 48

*Hill v. Lockhart*,

894 F.2d 1009 (8th Cir. 1990) ................................................................................................. 37

*Hilton v. Braunshill*,

481 U.S. 770 (1987) ................................................................................................................ 44

*Hinton v. Alabama*,

134 S. Ct. 1081 (2014) ............................................................................................................ 37

*Hoots v. Allsbook*,

785 F.2d 1214 (4th Cir. 1986) ................................................................................................. 36

*House v. Balkom*,

725 F.2d 608 (11th Cir. 1984) ................................................................................................. 36

*Hughes v. Rowe*,

449 U.S. 6 (1980) (per curiam) ................................................................................................ 48

*ICBC (London) PLC v. The Blacksands Pacific Group, Inc*.,

No. 15 Cv. 70 (LAK) .................................................................................................... 2-4, 7, 32

*In re del Valle Ruiz*,

939 F.3d 520 (2d Cir. 2019) ............................................................................................... 18-19

*In re Murchison,*

349 U.S. 133 (1955) ................................................................................................................ ??

*Kenley v. Armontrout*,

937 F.2d 1298 (8th Cir. 1991) ................................................................................................. 36

*Kimmelman v. Morrison*,

466 U.S. 365 (1986) ................................................................................................................ 35

*Langone v. Smith*,

682 F.2d 282 (2d Cir. 1982) .................................................................................................... 36

*Liljeberg v. Health Servs. Corp*.,

486 U.S. 847 (1988) ................................................................................................................ 48

*McQueen v. Shult*,

2008 U.S. Dist. LEXIS 87668 (N.D.N.Y. 2008) ..................................................................... 21

*Medina v. DiGuglielmo*,

461 F.3d 417 (3d Cir. 2006) .................................................................................................... 37

*Mosley v. Atchison*,

689 F.3d 838 (7th Cir. 2012) ................................................................................................... 37

*Nken v. Holder*,

556 U.S. 418 (2009) ........................................................................................................... 43-44

*OSRecovery, Inc., v. One Groupe Int`l, Inc*.,

462 F.3d 87 (2d Cir. 2006) .................................................................................................. 4, 31

*Powell v. Alabama*,

287 U.S. 45 (1932) .................................................................................................................. 36

*Rippo v. Baker,*

580 U.S. (2017) ....................................................................................................................... ??

*Rompilla v. Beard*,

545 U.S. 374 (2005) ................................................................................................................ 36

*Strickland v. Washington*,

466 U.S. 686 (1984) .......................................................................................................... 35, 37

*Taylor v. Hayes*,

418 U.S. 488 (1974) ................................................................................................................ 28

*United States v. Baynes*,

622 F.2d 66 (3d Cir. 1980) ...................................................................................................... 36

*United States v. Blacksands Pacific Group, Inc., et. al,,*

No. 17 Cr. 155 (LAK) ............................................................................................................. 13

*United States v. Brennerman*,

No. 17 Cr. 155 (LAK) ...................................................................................................... 4-8, 17

*United States v. Brennerman*,

No. 18-1033(L), WL 3053867 (2d Cir. Jun 9, 2020) ................................. 1, 11-13, 20, 40, 43

*United States v. Bui*,

769 F.3d 831 (3d Cir. 2014) .................................................................................................... 37

*United States v. Cronic*,

466 U.S. 648 (1984) ................................................................................................................ 35

*United States v. Gray*,

878 F.2d 702 (3d Cir. 1989) .................................................................................................... 36

*United States v. Gray,*

878 F.2d 702 (3d Cir. 1993) .................................................................................................... 34

*United States v. Johnpoll,*

739 F.2d 702 (2d Cir. 1984) .................................................................................................... 34

*United States v. Korolkov,*

870 F.Supp 60 (S.D.N.Y. 1994) .............................................................................................. 29

*Williams v. Pennsylvania,*

579 U.S. \_\_\_ (2016) ................................................................................................................ ??

*Williams v. Winn*,

2005 U.S. Dist. LEXIS 12966 (D. Mass 2005) ....................................................................... 21

*Withrow v. Larkin,*

421 U.S. 35 (1975) .................................................................................................................. ??

**STATUTES Page(s)**

28 U.S.C. § 455 .................................................................................................................... 1, 47-48

28 U.S.C. § 1781 ........................................................................................................................... 39

28 U.S.C. § 1783 ........................................................................................................................... 21

28 U.S.C. § 2255 ................................................................................................................. 1, 21, 31

**RULES Page(s)**

Fed. R. Crim. P. 17 ............................................................................................................ 12, 39-40

Fed. R. Crim. P. 38 .................................................................................................................... 1, 43

Fed. R. Crim. P. 42 .......................................................................................................................... 5

Fed. R. Evid. 403 ............................................................................................................................ 1

Fed. R. Evid. 404(b) ........................................................................................................................ 1

**CONSTITUTION Page(s)**

U.S. Const. amend. IV .................................................................................................................... 1

U.S. Const. amend. V ...................................................................................................................... 1

U.S. Const. amend. VI .................................................................................................................... 1

U.S. Const. amend. XIII .................................................................................................................. 1

U.S. Const. amend. XIV ................................................................................................................. 1

**I. RELIEF SOUGHT**

Petitioner/Movant Pro Se Raheem Jefferson Brennerman ("Brennerman") respectfully submits this Omnibus Motion (the "Omnibus Motion") and will move this Court before Honorable Lewis A. Kaplan, United States District Judge, at 500 Pearl Street, New York, New York 10007 for an order: (a.) Granting Brennerman`s collateral attack motion pursuant to 28 United States Code Section 2255 (the "Collateral Attack Motion") to set-aside the judgment of conviction and vacate the sentence; (b.) Granting Brennerman`s motion to stay enforcement of the judgment of conviction and sentence pending determination of the collateral attack motion pursuant to Rule 38 of the Federal Rule of Criminal Procedure; (c.) Granting Brennerman`s motion to disqualify and/or seek recusal of the Court (Kaplan, J.) to consider and determine the omnibus motion pursuant to 28 United States Code Section 455(a), or any other relief which this Court may deem just, necessary or appropriate including evidentiary hearing.

**II. JURISDICTION**

The Court of Appeals judgment affirming Petitioner`s conviction and sentence was entered on June 9, 2020. Brennerman`s motion for rehearing en banc was denied on September 9, 2020. See 18-1033, EFC No. 314; 318. Brennerman filed Petition for writ of certiorari to the Supreme Court of the United States. See Brennerman v. U.S., S. Ct. No. 20-6895 (EFC Dec. 30, 2020). The Supreme Court of the United States denied to grant certiorari on February 22, 2021. A one-year limitation for Brennerman to bring collateral attack motion challenging his judgment of conviction and sentence expires on February 21, 2022. This omnibus motion was presented prior to the one-year time limitation.

**III. ISSUES PRESENTED**

Background

The history of this matter began in 2014 when ICBC (London) PLC (“ICBC London”) sued The Blacksands Pacific Group, Inc ("Blacksands") in New York Supreme Court primarily alleging, inter alia that Blacksands had failed to repay approximately $4.4 million dollars extended to Blacksands pursuant to a Bridge Loan Agreement, after ICBC London had reneged on the original $1.35 Billion dollars financing agreed with Blacksands. Significantly, Petitioner Raheem J. Brennerman, the CEO of Blacksands, was not named as a defendant in that action. *ICBC (London) PLC v. The Blacksands Pacific Group*, Inc., Notice of Removal; Cv. Cover Sheet, No. 15 Cv. 70 (LAK), EFC Nos. 1-2.

Blacksands removed the case to the Southern District of New York and the matter was assigned to Hon. Lewis A. Kaplan, under the caption *ICBC (London) PLC v. The Blacksands Pacific Group, Inc*. Notice of Removal, No. 15 Cv. 70 (LAK), EFC No. 1.

Based on the loan documents, Judge Kaplan granted ICBC London`s motion for summary judgment against Blacksands. *ICBC*, Mem. Op., No. 15 Cv. 70 (LAK), EFC No. 38.

ICBC London then served Blacksands with extremely broad post-judgment discovery requests. Blacksands counsel, Latham & Watkins LLP ("Latham") interposed objections to those demands and filed a brief in support of those objections. *ICBC*, Def. Interrog., No. 15 Cv. 70 (LAK), EFC No. 84 Ex. 2; Mem.; Def.’s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 85, 86. The Court conducting no analysis regarding the permissible scope of post-judgment discovery of the actual breadth of plaintiff`s demands, instead in conclusionary fashion declared that the objections were "baseless" and that Blacksands "shall comply fully." *ICBC*, Order, No. 15 Cv. 70 (LAK), EFC No. 87).

Subsequently, ICBC London moved for contempt and coercive sanctions against Blacksands. *ICBC*, Order to Show Cause; Pl.’s Decl.; Mem., No. 15 Cv. 70 (LAK), EFC Nos. 101, 102-103. On October 24, 2016, Judge Kaplan granted ICBC London`s motion holding Blacksands in contempt and imposing coercive sanctions. *ICBC*, Order, No. 15 Cv. 70 (LAK), EFC No. 108. Over the course of the next two weeks, on November 4 and November 10, 2016, Mr. Brennerman on behalf of Blacksands provided detailed discovery responses to ICBC London, including approximately 400 pages of documents, in an effort to comply with ICBC London`s discovery requests. *ICBC*, Pl.’s Decl., No. 15 Cv. 70 (LAK), EFC. No. 123, ¶¶ 9, 11-12. Mr. Brennerman also made continued efforts without support from other shareholders and partners to settle the matter with ICBC London, including meeting with ICBC London executives in London and providing them with even more information about Blacksands and its pending transaction, which were pertinent to Blacksands settlement efforts. *ICBC*, Pl.’s Decl., No. 15 Cv. 70 (LAK), EFC No. 123, ¶¶ 45, 9, 11-12.

On December 7, 2016, ICBC London moved for civil contempt against Mr. Brennerman personally, even though he was not a named defendant in the matter and was not personally named in any discovery orders. *ICBC*, Order; Mem.; Pl.’s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 121-23. A contempt hearing was scheduled for December 13, 2016, less than a week later. *ICBC*, Corrected Order, No. 15 Cv. 70 (LAK), EFC No. 125.

Mr. Brennerman, however, did not have counsel. In fact, Latham repeatedly and consistently communicated to the Court, and to Mr. Brennerman that they did not represent Mr. Brennerman personally. *ICBC*, Letter, No. 15 Cv. 70 (LAK), EFC No. 124. Although Mr. Brennerman was out of the country at the time he learned of the pending contempt hearing against him, he immediately sought to retain counsel to represent him in the contempt proceeding and wrote the Court requesting a reasonable adjournment because he was currently outside the United States and needed more time to retain counsel. *ICBC*, Email; Letter, No. 15 Cv. 70 (LAK), EFC Nos. 127-28 (Judge Kaplan was previously a partner at Paul Weiss LLP which represented Mr. Brennerman at the time thus the law firm could not appear before Judge Kaplan hence why Mr. Brennerman had to retain another law firm to represent him for the contempt proceedings). Judge Kaplan denied Mr. Brennerman`s request on December 12, 2016 (Order, No. 15 Cv. 70 (LAK), EFC No. 134), and found Mr. Brennerman personally in contempt on December 13, 2016. *ICBC*, Orders, No. 15 Cv. 70 (LAK), EFC Nos. 139-40. While Mr. Brennerman had provided a substantial document production in November, after Blacksands was found in contempt, the Court made no mention of it and appeared not to have reviewed or considered that production in its determination that Mr. Brennerman was himself in contempt. *ICBC*, Orders, 15 Cv. 70 (LAK), EFC. Nos. 139-40.

On December 13, 2016 when Judge Kaplan held Mr. Brennerman personally in contempt, he [Judge Kaplan] ignored the law from the Second Circuit U.S. Court of Appeals in *OSRecovery*, 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 request 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)) and held Mr. Brennerman in contempt (even though there were no court order[s] directed at him personally. No subpoena or motion-to-compel were directed at him). *OSRecovery, Inc., v. One Groupe Int`l, Inc.*, 462 F.3d 87, 90 (2d Cir. 2006).

Judge Kaplan also ignored the federal rule to conduct extra-judicial research into Mr. Brennerman by Googling him. *Brennerman,* Bail Hr.’g Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 1 at 28. Then following the erroneous contempt propounded against Mr. Brennerman, Judge Kaplan referred him to the Manhattan federal prosecutors (United States Attorney Office for the Southern District of New York "USAO, SDNY") and persuaded the prosecutors to arrest Mr. Brennerman and prosecute him criminally. *United States v. Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2.

The Criminal Referral, the Petition and Ex Parte

Conference between Judge Kaplan and the Government

In late 2016 or early 2017, Judge Kaplan referred Blacksands and Mr. Brennerman personally to the United States Attorney`s Office for criminal prosecution.

Thereafter, on March 3, 2017, the government filed a Petition seeking to initiate criminal contempt proceedings against Blacksands and Mr. Brennerman personally, including an Order to Show Cause for them to appear in Court to answer the charges. On March 7, 2017, Judge Kaplan summoned AUSAs Robert Benjamin Sobelman and Nicolas Tyler Landsman-Roos to his robing room to advise that an arrest warrant should be issued for Mr. Brennerman. *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2. The prosecution, consistent with Fed. R. Crim. P. 42, had prepared an Order to Show Cause that would have directed Blacksands and Mr. Brennerman to appear before the Court on a date in the future. The Court made clear, however that it did not agree with the government`s approach and advised the prosecutors that the Court should issue an arrest warrant instead as to Mr. Brennerman, stating his assumption that "the United States can`t find him." The prosecutors repeatedly expressed their view that execution of an arrest warrant was not necessary under the circumstances. *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2. The prosecutors advised, first, that Mr. Brennerman had actually called them on Friday, March 3, 2017, the same day that the Petition was filed to talk to them about that Petition. *Id.* The prosecutors informed Mr. Brennerman that he could not speak with him, and Mr. Brennerman then provided his phone number so that "there may be a way for the government to be in touch with him via that telephone number." The prosecutors then proposed that the Order to Show Cause previously prepared and filed by the government, could be entered to require Mr. Brennerman to attend the conference and "should he not appear, a summons or arrest warrant be issued to secure his appearance." *Id*.

The Court continued to press the issue of an arrest warrant, asking '[w]hy shouldn`t I, given the history in this case issue a warrant?" *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2 At 5. The Prosecutors responded with a number of reasons, stating:

Mr. Brennerman did try to contact the government on Friday, and we don`t know that he has absconded or seeks to abscond. He`s already knowledgeable about the petition. His email address is included on the ECF notification that went out when the petition was publicly filed. He appears to have the resources to have fled had he intended to, and the government thinks it`s prudent to provide him an opportunity to appear at the conference voluntarily.

*Id*. The prosecution went on to say that, even if the Court issued an arrest warrant, "the government would likely provide Mr. Brennerman an opportunity to surrender rather than dispatching law enforcement to apprehend him without providing that opportunity." *Id*.

The Court pressed on, stating "I`m inclined to issue an arrest warrant" and pushed back against the prospect that Mr. Brennerman should be allowed to surrender: "Now, if the government is going to give him an opportunity to surrender; there`s a substantial question as to whether I`m wasting my time because I think the odds are not unreasonable that he will abscond." *Id*. at 6.

Eventually the prosecutors deferred to the Court and confirmed that if an arrest warrant was issued, they would discuss in their office how best to proceed. *Id*. at 7. Thus, as of March 7, 2017, when the government entered the robing room, there was no pending investigation of fraud as to Mr. Brennerman with the prosecutors in the Southern District of New York, and the government was prepared to proceed with a contempt proceeding by Order to Show Cause and had no concern that Mr. Brennerman would seek to abscond.

Thus pursuant to the arrest warrant prepared and signed by Judge Kaplan, Mr. Brennerman was arrested on April 19, 2017 at his home in Las Vegas. As of the date of the 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 Mr. Brennerman. The Court omitted Mr. Brennerman from the signed Order to Show Cause but then failed to otherwise rule or grant the government`s Petition as it related to Mr. Brennerman. There was, therefore, no proper basis for the arrest warrant. The Court`s decision to alter the 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). *Brennerman*, Arrest Warrant, No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 3.

Mr. Brennerman`s arrest on April 19, 2017 (when government seized his electronic devices and documents (which was adduced as evidence (e-mails between Mr. Brennerman (on behalf of Blacksands) and Madgett (ICBC London) at trial of the contempt and fraud case (where the government actually never obtained or reviewed any pertinent ICBC transaction files from ICBC (London) plc) was in violation of both Mr. Brennerman`s Fourth and Fifth Amendment rights.

The Indictment and Order to Show Cause

On May 31, 2017, weeks after Mr. Brennerman was released on bail in the criminal contempt of court case, he was re-arrested by the U.S. Attorney`s Office pursuant to an indictment alleging fraud in connection with the transaction that was at issue in the underlying civil action, No. 15 Cv. 70 (LAK) between ICBC (London) PLC and The Blacksands Pacific Group, Inc (even though the civil action had been ongoing for two and half years at that point). Mr. Brennerman was charged with Conspiracy to commit bank and wire fraud, bank fraud and wire fraud. *Id*. The case was assigned to Hon. Richard J. Sullivan, under the caption, *United States v. Brennerman*, No. 17 Cr. 337 (RJS).

In August 2017, because Judge Kaplan had failed to sign the Order to Show Cause as it related to Mr. Brennerman in the criminal contempt of court case at No. 17 Cr. 155 (LAK) (even though Mr. Brennerman had been arrested at the behest of Judge Kaplan). The government realizing their error filed a new two count Order to Show Cause Petition formally charging Mr. Brennerman in the criminal contempt of court case. *Brennerman*, Order to Show Cause, No. 17 Cr. 155, EFC No. 52.

The District Court`s Decision

In August 2017, prior to trial for the criminal contempt of court case, Mr. Brennerman sought to obtain the complete ICBC records (including the underwriting file and negotiations between agents of Blacksands and ICBC London) to demonstrate his innocence and to present a complete defense. However Mr. Brennerman`s request to the Manhattan federal prosecutors was denied. The [Manhattan federal prosecutors] refused to obtain or review the complete ICBC records including the underwriting files, arguing that they were not obligated to collect any additional evidence from ICBC London beyond what the bank had selectively provided to them. Judge Kaplan also denied Mr. Brennerman`s request seeking to compel the complete ICBC record. *Brennerman*, Mem. & Order, No. 17 Cr. 155 (LAK), EFC No. 76.

In November 2017, prior to trial for the fraud case, Mr. Brennerman made request to Judge Sullivan in his motion-in-limine requesting that the Court exclude the testimony of any witness from ICBC London because he had been unable to obtain the complete ICBC records including the underwriting files, which he required to engage in cross-examination of the witness and that the government will be able to elicit testimony from such witness while he would be deprived of the ability to engage in any meaningful cross-examination of the witness as to substance and credibility on the issues. Mr. Brennerman argued that his Constitutional rights including his right to a fair trial will be deprived. Mr. Brennerman also argued that he would be deprived of his ability to present a complete defense, thus depriving his Sixth Amendment right. However Judge Sullivan denied his request*. Brennerman*, Mem. in Opp’n; Mot. in Lim.; Mem. In Supp., No. 17 Cr. 337 (RJS), EFC Nos. 54, 58, 59.

The Trial and Post-Trial Proceedings

Criminal Contempt of Court Case at No. 17 Cr. 155 (LAK)

During trial, District Court (Judge Kaplan) rejected defendant argument regarding presentment of the civil contempt order to the jury, ruling that the government could present evidence that both the company and Mr. Brennerman had been found in contempt of Court. *Brennerman*, Trial Tr., No. 17 Cr. 155 (LAK), at 3-7. A juror named Gordon later told the media - Law 360 that the civil contempt orders swayed the jury to find Mr. Brennerman guilty of criminal contempt. Law 360 Article, No. 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17.

Mr. Brennerman was deprived of the very evidence he required to defend himself. Although such evidence (agents of ICBC London requesting settlement discussion) plainly was relevant to the issue of Mr. Brennerman`s willfulness in failing to comply with the Court`s discovery orders, the District Court refused repeatedly to allow counsel to elicit such evidence on the issue and so the record was devoid of the precise evidence that would have demonstrated the defendant`s lack of intent. Trial Tr., No. 17 Cr. 155 (LAK), at 269-277; 236-249.

The District Court went a step further and proposed an instruction to the jury that settlement discussions in a civil case did not excuse a defendant`s failure to comply with the court's discovery order absent an order suspending or modifying the requirement to comply. Trial Tr., No. 17 Cr. 155 (LAK), at 509-510. Defense counsel objected arguing that even if that were technically true, if the parties specifically engaged in settlement discussion with the understanding that discovery would not be pursued, such evidence was certainly relevant to defendant`s intent in not complying with the Court`s order and should have been considered by the jury. The District Court (Judge Kaplan) overruled counsel`s objection and instructed the jury as indicated. Trial Tr., No. 17 Cr. 155 (LAK), at 538-544.

The trial commenced on September 6, 2017 and concluded on September 12, 2017 with the jury returning a guilty verdict on both counts of criminal contempt.

The Court of Appeal decision

Criminal Contempt of Court Appeal at,

Nos. 18 1033(L); 18 1618(Con)

The Second Circuit found that the district court did not err in its failure to compel ICBC`s production of its entire file because Brennerman did not comply with the rules governing subpoenas under Rule 17(d) of the Federal Rules of Criminal Procedure when he served ICBC`s New York-based attorney, not the ICBC`s London branch. *United States v. Brennerman*, No. 18 1033(L), WL 3053867 at \*1 (2d Cir. June 9, 2020). The Court further concluded that, "the prosecution was under no obligation to make efforts to obtain information beyond what it previously collected and turned over to Brennerman." *Id*.

As to the evidence concerning settlement discussions, the Second Circuit found that the district court had allowed Brennerman "to introduce evidence concerning settlement discussions on the condition that he establish his knowledge of the substance of the exhibits and their relationship to the relevant time period..." and that "through cross-examination, Brennerman was able to introduce evidence about the parties' settlement discussions. *Id*. at \*2. The Second Circuit found that "the district court did not abuse its discretion in admitting some but not all of this evidence, and Brennerman had failed to point to any specific evidence that would have helped his case had it been submitted." *Id*.

In regard to the admission of the civil contempt order against Brennerman, the Second Circuit found that "the district court correctly determined, the civil contempt orders were relevant to Brennerman`s willfulness. To minimize any potential prejudicial effect, the district court redacted portions of the orders and instructed the jury on the limited purposes for which it could consider the civil contempt orders in the context of a trial about criminal contempt." *Id*.

The panel denied a motion for rehearing by order dated September 9, 2020. (*See* Order, No. 18 1033, EFC No 318).

Error(s) With the Court of Appeals’ Decision

Criminal Contempt of Court Appeal at, Nos. 18 1033(L); 18 1618(Con)

arising from criminal case at District Court

at, No. 17 Cr. 155 (LAK)

**A. The Second Circuit Erred in Approving the District Court’s (1) Admission of the Civil Contempt Order Against Petitioner (2) Failure to Compel Production of Certain Exculpatory Materials; and (3) Preclusion of the Admission of Evidence Pertaining to Settlement Negotiations, because the Issues Raised are of Exceptional Importance. This Cases Raises Issues of Important Systemic Consequences for the Development of the Law and the Administration of Justice.**

**i. Admission of the Civil Contempt Order Violated Petitioner`s Constitutional Rights Where the Court Failed to Afford him the Equal Protection Guarantee and the Prosecution Violated his Right to Due Process of Law.**

In *OSRecovery*, the Second Circuit U.S. Court of Appeals vacated civil contempt adjudicated by Judge Lewis A. Kaplan ("Judge Kaplan") against a party who was not part of the civil case. *OSRecovery, Inc., v. One Groupe Int`l, Inc.*, 462 F.3d 87, 90 (2d Cir. 2006). In vacating the contempt order the Court of Appeals stated directly to Judge Kaplan that the Court abused its discretion by holding a non-party in civil contempt propounded against him solely for the purpose of discovery without providing any legal authority or clear explanation for doing so. In 2016, Judge Kaplan ignored the law and held Petitioner, a non-party who was not involved in the underlying case, *ICBC (London) PLC v. The Blacksands Pacific Group, Inc*., in contempt without providing any legal authority or clear explanation. (*See* Order; Mem. & Order*,* No. 15 Cv. 70 EFC. Nos. 139-40). This time, Judge Kaplan went a step further and referred Petitioner to Manhattan prosecutors to be prosecuted criminally. The prosecution undertook no diligence or investigation prior to initiating criminal contempt charges against Petitioner.

During trial of the criminal contempt of court case, Judge Kaplan permitted the prosecution to present to the jury the civil contempt order erroneously adjudged against Petitioner which was in tension with the law. (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 3-7). Such presentment significantly prejudiced Petitioner, because the judge allowed the presentment of an erroneously adjudged civil contempt order as evidence to the jury (that concluded that Petitioner must be guilty of criminal contempt), without allowing Petitioner to present the background to the adjudication of the civil contempt order. (*See* Law 360 Article, No. 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17).

The question of whether the civil contempt order was properly admitted against Petitioner goes beyond a simple analysis of Rules 403 and 404(b) of the Federal Rules of Evidence. Petitioner was a non-party in the civil lawsuit at the time of the order. Because the order was erroneously adjudged against him, its erroneous admission had more serious legal implication above and beyond an abuse of discretion analysis.

The Second Circuit had previously held that "because the power of a district court to impose contempt liability is carefully limited, our review of a contempt order for abuse of discretion is more rigorous than would be the case in other situations in which abuse-of-discretion review is conducted." *Hester Indus., Inc. v. Tyson Foods, Inc*., 160 F.3d 911, 916 (2d Cir. 1998). "Moreover, we think it is fundamentally unfair to hold [a non-party] in contempt as if he were a party without legal support for treating him, a non-party, as a party but only for the purpose of discovery." *OSRecovery, Inc*., 462 F.3d at 90. In *OSRecovery*, the Second Circuit court had found that the district court abused its discretion by holding a person "in contempt as a party without sufficient explanation or citation to legal authority supporting the basis upon which the court relied in treating [him] as a party—for discovery purposes only—despite the fact that [he] was not actually a party." *Id.* at 93.

Here Judge Lewis A. Kaplan (the same district judge whose contempt order the Second Circuit court found inappropriate in *OSRecovery*) held Petitioner in civil contempt as a non-party and failed to provide any legal authority or present any particular theory for treating him as a party solely for the purpose of discovery. (*See* Order; Mem. & Order*,* No.15 Cv. 70 (LAK), EFC. Nos. 139-40). No court orders, subpoenas, or motion to compel were ever directed at Petitioner personally nor was he present during the civil case`s various proceedings.

The erroneous admission of the civil contempt order was more than an evidentiary error. It violated the Second Circuit court`s instructions concerning contempt order against non-parties. On appeal, the Second Circuit affirmed district court`s rulings creating disparity with the Second Circuit`s treatment and review of such order`s and deprived Petitioner of his Constitutional right to an equal protection guarantee.

**ii. Failure to Compel Production of Certain Exculpatory Materials Violated Petitioner`s Sixth Amendment Right, Where he was Deprived of the Evidence he Required to Present a Complete Defense**

Petitioner`s central argument concerning the ICBC production requests is that there existed exculpatory evidence materials that were not provided to him and could not otherwise be compelled due to Rule 17 limitations regarding foreign entities. (*See* Trial Tr., No. 17 Cr. 337 (RJS), at 551-554). The Second Circuit did not address Petitioner`s argument that, if the government claimed that it had produced all documents in its possession but the omission of the entire file was glaringly obvious, then it follows that the government was aware that relevant information existed and was therefore, withholding material that it could (and should) have obtained, in violation of *Brady. See Brady v. Maryland*, 373 U.S. 83 (1963).

Because Petitioner was effectively barred from obtaining relevant evidence, such as the entirety of his communications with ICBC representatives, due to subpoena constraints, he was denied the opportunity to put forth a complete defense.

Because no meaningful inquiry was conducted, either at the district court or before the Second Circuit, concerning the discrepancies between the government`s representations that the production was complete and the obviously incomplete materials produced, the issue of whether *Brady* obligations were flouted by the government remains open. *See Brady v. Maryland*, 373 U.S. 83 (1963). The sanctity of *Brady* obligations cannot be interpreted as anything less than a question of exceptional importance warranting further reconsideration on this point. *See* *Id*.

**iii. Preclusion of the Admission of Evidence Pertaining to Settlement Negotiations (Due to Failure to Permit Full Settlement Negotiation Evidence) Violated Petitioner`s Constitutional Right Where he was Deprived of Evidence he Required to Present a Complete Defense**

Without the entire ICBC file, Petitioner was precluded from presenting evidence regarding settlement negotiations between Blacksands and ICBC. Petitioner avers that evidence of these negotiations would have convinced the jury that he had not willfully disobeyed any court orders.

Although Petitioner was permitted certain lines of questioning concerning settlement negotiations, the admitted evidence was woefully inadequate to set forth his complete defense. Petitioner was attempting to elicit evidence of settlement discussions with agents of ICBC that, he argued, would have demonstrated that he was not willfully disobeying the district court`s discovery orders but was instead prioritizing settlement with ICBC over Blacksands' discovery obligations. This evidence was not permitted, could not be elicited through cross-examination of witnesses, and was not part of the jury instruction. (*See* Trial Tr., No. 17 Cr. 155 (LAK), at 236-277). Although such evidence was plainly relevant to the issue of Petitioner`s willfulness in failing to comply with the court`s discovery orders, the record was devoid of the precise evidence that would have demonstrated the Petitioner`s lack and intent. The district court exacerbated the harm by instructing the jury that settlement discussions in a civil case did not excuse a defendant`s failure to comply with the court`s discovery order absent an order suspending or modifying the requirements to comply. (*See* Trial Tr., No. 17 Cr. at 509-510; 538-544).

The limitation on evidence of settlement negotiations was not merely an evidentiary issue, but rather, a constitutional one which violated Petitioner`s right to present a defense. The violation was compounded by the fact that the district court essentially eviscerated the element of intent in determining whether Petitioner was guilty of criminal contempt. The Second Circuit`s decision failed to address the manner in which the district court`s evidentiary rulings precluded Petitioner`s right to present a complete defense.

**IV. REASON FOR GRANTING COLLATERAL ATTACK MOTION**

Standard of Review

A federal prisoner may challenge his detention under 28 U.S.C. §§ 2241 and 2255. 28 U.S.C. § 2255: *Adams v. United States*, 372 F.3d 132, 134 (2d Cir. 2004); *Chambers v. United States*, 106 F.3d 472, 474 (2d Cir. 1997). Section 2255 is proper mechanism for a prisoner to attack the imposition of a sentence. *Adams*, 372 F.3d at 134; *McQueen v. Shult*, No. 9:08-cv-903 (GLS/GHL), 2008 U.S. Dist. LEXIS 87668 at \*2 (N.D.N.Y. Oct 28, 2008). A motion pursuant to U.S.C. § 2255 must be brought in the sentencing court. *Boumediene v. Bush*, 553 U.S. 723, 774-75 (2008) ("Section 2255 directed claims challenging a federal sentence on the ground that it was imposed in violation of the Constitution or law of the United States "not to the court that had territorial jurisdiction over the place of the petitioner`s confinement but to the sentencing court, a court already familiar with the fact of the case."); *Williams v. Winn*, 2005 U.S. Dist. LEXIS 12966 at \*1 (D. Mass Jun 30, 2005).

Argument

**A. Ground One: The Conviction was Obtained and Sentence Imposed in Violation of the Right to a Fair Trial and Proceedings.**

**i. The Court (Judge Lewis A. Kaplan) who Presided Over the Trial and Entire Criminal Proceeding was Partial, Depriving Petitioner of the Right to a Fair Trial and Proeedings.**

After ignoring the federal rule to conduct extra-judicial research into Brennerman by Googling him (See Bail Hr.`g Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 1 at 28), and realizing that he is a black man. The Court (Judge Lewis A. Kaplan) was determined to convict and imprison Brennerman.

The Court (Judge Kaplan) invited the plaintiff in the civil case in ICBC (London) plc v. The Blacksands Pacific Group, Inc., 17 Cv. 70 (LAK), to pursue Brennerman personally, thereby illegally piercing through the corporate veil of the company, The Blacksands Pacific Group, Inc. ICBC`s counsel then, at the Court`s invitation, turned its attention to Brennerman.

Without even filing a motion to compel against Brennerman, on Wednesday, December 7, 2016, ICBC sought a finding of civil contempt against Brennerman personally by Order to Show Cause. See 17 Cv. 70 (LAK), EFC No. 121. In this year-old proceeding, Judge Kaplan granted ICBC`s Order to Show Cause, scheduling a hearing for December 13, 2016, only 4 business days later, and requiring that opposition papers be filed by 4 p.m. on Sunday, December 11, 2016. Id. When Brennerman received notice of the Order to Show Cause, he promptly informed the Court that he was out of the country in Switzerland and was trying to retain counsel, and requested additional time to respond. (The law firm, Paul Weiss LLP that represented Brennerman at the time could not appear before Judge Kaplan as Judge Kaplan was previously a partner at that law firm, hence Brennerman needed to engage a new law firm to answer the Order to Show Cause). See 17 Cv. 70 (LAK), EFC Nos. 127- 128.

The Court (Judge Kaplan) denied Brennerman`s request the next day. See 17 Cv. 70 (LAK), EFC No. 134. Judge Kaplan then proceeded with the contempt hearing on December 13, 2016, in the absence of Brennerman or his counsel, and found Brennerman personally to be in contempt. See 17 Cv. 70 (LAK), EFC No. 140. While Brennerman had provided discovery responses and a substantial document production in November 2016, immediately after the Court`s civil contempt order directed to Blacksands, the Court made no mention of it and appeared not to have reviewed or considered that production in its determination that Brennerman was himself, in contempt.

In the contempt order, the Court (Judge Kaplan) did not provide citation to legal support for applying the theory it adopted. In particular, the order did not explain how Brennerman could be transformed into a party for discovery purposes but not for any other part of the litigation. Additionally, the order does not provide enough information on the precise legal theories it invoked in adjudging the civil contempt against Brennerman. See 17 Cv. 70 (LAK), EFC No. 140. The Court also ignored the law in "OSRecovery, Inc., v. One Groupe Int`l, Inc., 462 F.3d 87 (2d Cir. 2006)" and Second Circuit Court instructions regarding adjudicating civil contempt order against non-party.

Following the adjudication of the civil contempt order against Brennerman, the Court (Judge Kaplan) then referred Brennerman to the Manhattan federal prosecutors (United States Attorney Office for the Southern District of New York "USAO, SDNY"), when the initial prosecutors refused to prosecute, Judge Kaplan sought more willing prosecutors.

In response to the criminal referral from Judge Kaplan, the prosecutors on March 3, 2017 filed a Petition seeking to initiate criminal proceedings to hold Brennerman in criminal contempt. Rather than properly filing the Petition as a new criminal or miscellaneous proceeding, subject to random assignment, the prosecution filed that Petition in the pending civil case. See 17 Cv. 70 (LAK), EFC No. 146.

After the prosecutors filed the Petition and Order to Show Cause, Judge Kaplan, on March 7, 2017, summoned the prosecutors to his robing room. See Ex Parte Tr. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2 ("THE COURT: "I asked you to come in...."). Acknowledging that the Petition constituted a new proceeding - but that the AUSAs had not properly filed it - the Court told the prosecutors that he would "direct the clerk to assign a criminal docket number to require all subsequent filings in the contempt proceeding to bear the criminal caption." Id at 8. Judge Kaplan thereby circumvented the process that applies to any new action, i.e., the random assignment of the action by the clerk. Judge Kaplan insisted on presiding over the criminal case which he initiated.

The transcript of the ex parte proceeding in the robing room demonstrates that Judge Kaplan successfully sought to influence, and substantially alter, the approach that the prosecutors had taken relating to the contempt charge. The prosecution had prepared and filed not only the Petition but also an Order to Show Cause that, consistent with FRCP 42, directed Blacksands and Brennerman simply to appear before the Court on a future date. But rather than ruling on the application that was before him, Judge Kaplan insisted that the prosecutors adopt a far more aggressive approach as to Brennerman. As the ex parte conference began, Judge Kaplan advised the prosecutors that the Court should issue an arrest warrant for Brennerman, putting forth the entirely invalid assumption that "the United States can`t find him." Id. at 2. In response, the prosecutors repeatedly expressed their view that execution of an arrest warrant was not warranted under the circumstances. Id. at 3. The prosecutors advised, first, that Brennerman had actually called them on Friday, March 3, 2017, the same day that the Petition was filed, to talk with them about that Petition. Id. The prosecutors advised Brennerman that he could not speak with them, and Brennerman then advised his phone number so, the prosecutor explained, "there may be a way for the prosecution to be in touch with him via that telephone number." Id. The prosecutor then proposed to the Court that the Order to Show Cause could be issued to require Brennerman to attend the conference and "should he not appear [] a summons or arrest warrant be issued to secure his appearance." Id.

Judge Kaplan continued to press the issue, asking "[w]hy shouldn`t I, given the history in this case, issue a warrant." Id. at 5. The prosecutor reasoned:

Mr. Brennerman did try to contact the government on Friday...[W]e don`t know

that he`s absconded or seeks to abscond. He`s already knowledgeable about the

petition. He appears to have the resources to have fled had he intended to, and

the government thinks it`s prudent to provide him an opportunity to appear at the

conference voluntarily.

Id. The prosecutors went on to say that, even if the Court issued an arrest warrant, "the government would likely provide Brennerman an opportunity to surrender rather than dispatching law enforcement to apprehend him without providing that opportunity." Id.

Judge Kaplan persisted, stating: "I`m inclined to issue an arrest warrant" (Id. at 7) and pushed back against the prospect that Mr. Brennerman would be allowed to surrender: "Now, if the government is going to give him an opportunity to surrender, there`s a substantial question as to whether I`m wasting my time because I think the odds are not unreasonable that he will vanish." Id. at 6.

Eventually the prosecutors deferred to the Court and confirmed that if an arrest warrant was issued, they would discuss in their office how best to proceed. Judge Kaplan continued to argue that the prosecution should effectuate the arrest warrant and apprehend Brennerman. Id. at 7-8.

The Court then presented the prosecution with documents that it had already prepared: a revised Order to Show Cause directed only to Blacksands, an arrest warrant for Brennerman, and an order to the clerk to initiate the criminal action. Id. at 8-9. Notably, the Court and the prosecutors discussed the fact that there was no appropriate "box to check" on the arrest warrant in terms of the document that charged the offense. Id. at 9. The Court decided to alter the arrest warrant to state that the charging document was the Petition - a document that does not charge an offense but rather only requests that the Court issue the proposed Order to Show Cause. Id. at 9-10.

Thus on April 19, 2017, Brennerman was arrested at his Las Vegas residence at the behest of Judge Kaplan even though there was no outstanding indictment, complaint or Order to Show Cause. The Court issued no subpoena or motion-to-compel. There was therefore no reason to arrest Brennerman other than Judge Kaplan`s insistence.

Prior to trial, Brennerman sought recusal of Judge Kaplan, however he refused to recuse himself. Brennerman`s trial counsel then made request for the pertinent evidence (complete ICBC transaction files) which Brennerman required for his defense however they made significant professional error by seeking the evidence through an order to show cause rather than "letter rogatory," hence Judge Kaplan was aware that Brennerman lacked the evidence he required to defend himself at trial.

For the trial, conviction and punishment, Judge Kaplan then exacerbated the severity and punitive nature of this case by empaneling [sic] a jury even though the prosecution took no position on the issue (see 17 Cr. 155 (LAK), EFC No. 49). An impartial judge would not have empaneled a jury in such a manner as it thereby elevated an otherwise misdemeanor case into a felony case, allowing Judge Kaplan to impose a harsher punishment on Petitioner. Judge Kaplan abused and misused his authority so as to achieve his desire and vendetta against Petitioner.

During the criminal contempt of court trial, Judge Kaplan, who had an obligation to protect the Constitutional rights of Brennerman, a criminal defendant, permitted the prosecution witnesses to testify knowing that Brennerman would be unable to challenge their testimony because he had been unable to obtain the very evidence - complete ICBC transaction files which he required to challenge (impeach) the testimony of prosecution witness and present his complete defense. Judge Kaplan had previously denied Brennerman`s request for the complete ICBC transaction files. See 17 Cr. 155 (LAK), EFC No. 76.

Judge Kaplan also encouraged and permitted the prosecution to present the civil contempt order which was erroneously adjudged against a non-party in violation of the OSRecovery law, to the jury. See Trial Tr. No. 17 Cr. 155 (LAK), EFC No. 3-7, causing significant prejudice to Brennerman. The jury were swayed by the civil contempt order to find Brennerman guilty of the criminal contempt. See copy of Law Journal, Law 360 article, No. 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17).

Through action, words and deeds, Judge Lewis A. Kaplan exhibited partiality in the outcome of the criminal contempt case for Brennerman to be convicted and imprisoned. At sentencing for the criminal contempt of court conviction, Judge Kaplan exhibited his influence over Judge Richard J. Sullivan (See Sentencing Tr. No. 17 Cr. 155 (LAK), EFC No. 152). Judge Sullivan had presided over the interrelated criminal case, which was initiated by the same prosecutors who Judge Kaplan sought to prosecute Brennerman criminally. In the interrelated criminal case, similar to the partiality and egregious conduct exhibited by Judge Kaplan, Judge Sullivan intentionally misrepresented evidence to falsely satisfy the law to convict and imprison Brennerman among other deliberate Constitutional rights violation.

**ii. The Judicial Partiality was so Egregious and Significant as to call into Question the Integrity and Fairness of the Entire Proceedings.**

Brennerman contends that he was denied his Constitutional rights to a fair trial. Further that, his Constitutional rights were intentionally abridged due to the significant partiality by the presiding judge (Kaplan, J.) as highlighted above.

Defendants in the American judicial system have the right to a fair trial, and part of this right is fulfilled by a judicial officer who impartially presides over the trial. See e.g., Bracy v. Gramley, 520 U.S. 899, 904-05 (1997).

However, "most questions concerning a judge`s qualifications to hear a case are not constitutional ones, because the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard." Id. at 904. A judge will, however, violate a defendant`s due process right if he is biased against the defendant or has an interest in the outcome of the case. Id. at 905. A likelihood or appearance of bias can disqualify a judge as well. Taylor v. Hayes, 418 U.S. 488, 501 (1974). "A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him. "Edwards v. Balisok, 520 U.S. 641, 647 (1997) (citations omitted)".

Judge Kaplan acted as the chief complainant, prosecutor and judge by transforming a non-party, Brennerman, into a party but solely for the purpose of discovery, so that he [Judge Kaplan] may propound civil contempt against him. Following which Judge Kaplan then actively persuaded the prosecutors to prosecute Brennerman and he [Judge Kaplan] circumvented the process for assigning criminal cases by improperly assigning the criminal case to himself so that he may rule to achieve his endeavor to convict and imprison Brennerman for criminal contempt, thereby clearly exhibiting an interest in the outcome of the criminal case. "No-one should be a judge of his or her own cause." Congress laid down that principle in 1782. Moreover, Judge Kaplan`s actions is a per se misconduct by abusing his [Judge Kaplan] judicial authority to pursue a non-party after improperly (against federal rule) conducting extra-judicial research into him and realizing that he is a black man.

Because the judge (Kaplan, J.) who presided over the entire criminal proceeding demonstrated partiality, first by ignoring the federal rule to research Brennerman, upon realizing that Brennerman is a black man, he [Judge Kaplan] ignored the law in OSRecovery to transform Brennerman, a non-party into a party but solely for the purpose of discovery so as to adjudge civil contempt against him.

Judge Kaplan adjudged the civil contempt order against Brennerman with the deliberate intent to actively persuade the federal prosecutors to arrest and prosecute him for criminal contempt of court. Judge Kaplan then permitted the prosecution witness to testify at trial as to issues, knowing that Brennerman had been denied access to the very evidence which he required to confront (impeach) the prosecution witnesses or present his complete defense. Judge Kaplan also permitted the prosecutors to present the civil contempt order adjudged against Brennerman to the jury during trial. The jury were swayed by the civil contempt orders to find Brennerman guilty of criminal contempt of court. See law journal, Law 360, 17 Cr. 337 (RJS), EFC No. 236, Ex. 3 at 17)

Because Judge Kaplan exhibited partiality through his actions which demonstrated his interest in the outcome of the case. Brennerman is entitled to have his conviction set-aside.

**B. Ground Two: The Conviction was Obtained and Sentence Imposed in Violation of the Right to an Effective Assistance of Counsel**

Applicable Law

Kimmelman v. Morrison, 466 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986) reads, in pertinent parts, as follows:

The right for counsel is a fundamental right of criminal defendants, it assumes the fairness and their legitimacy of our adversary process. E.g. Gideon vs. Wainwright, 372 U.S. 335, 344 83 S. Ct. 792, 796 9 L. ED 799 (1963). The essence of an effective assistance claim is that counsel`s unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect. See, e.g., Strickland vs Washington, 466 U.S. at 686, 104 S. Ct. at 2064, United States v. Cronic, 466 U.S. 648, 655-657, 104 S. Ct. 2039, 2044-2046, 80 L. Ed. 2d 657 (1984). In order to prevail, the defendant must show both that counsel`s representation fell below an objective standard of reasonableness. Strickland, 466 U.S. at 688, 104 S. Ct. at 2064, and that there exists a reasonable probability that, but for counsel`s unprofessional errors, the result of the proceeding would have been different, Id at 694 104 S. Ct. at 2068, 477 U.S. at 372, 106 S. Ct. at 2574

The right of an accused to counsel is beyond a fundamental right. See, e.g. Gideon, 372 U.S. at 344, 83 S. Ct. at 796 ("The right to one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in other countries, but it is in ours."). Without counsel, the right to a fair trial would be of little consequences...for it is through counsel that the accused secures his other rights...477 U.S. at 377, 106 S. Ct. at 2584.

Strickland recognized that an attorney`s duty to provide reasonably effective assistance includes "the duty to make reasonable investigations or make a reasonable decision that makes particular investigations unnecessary. "Strickland, 466 U.S. at 691, 104 S. Ct. at 2052; see also ABA Standards for Criminal Justice. Prosecution Function and the Defense Function, 4-4. 1(a) (3rd Edition 1993) ("Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case...."). See also Rompilla v. Beard, 545 U.S. 374, 387, 125 S. Ct. 2456, 162 L ED 2d 360 (2005) (finding ABA standard useful guide to determining what is reasonable" quoting Wiggin, 539 U.S. at 524, 123 S. Ct. 2527)

The right to effective assistance of counsel includes the right to have the lawyer adequately investigate the facts and prepare the case for plea or for trial. Powell v. Alabama, 287 U.S. 45, 57-58, 53 S. Ct. 55, 77 L. Ed 158 (1932) (Presuming prejudice where there was "no attempt made to investigate" noting that "consultation, thorough-going investigation and preparation are vitally important" in providing effective representation), United States v. Baynes, 622 F.2d 66 (3rd Cir. 1980) (failure to investigate voice exemplars), United States v. Gray, 878 F.2d 702 (3rd Cir. 1989), Couch v. Booker, 632 F.3d 241, 246 (6th Cir. 2011), Kenley v. Armontrout, 937 F.2d 1298 (8th Cir. 1991), Crisp v. Duckworth, 743 F.2d 580 (7th Cir. 1984), House v. Balkom, 725 F.2d 608 (11th Cir. 1984), Langone v. Smith, 682 F.2d 282 (2d Cir. 1982)

Other Circuits agree that the failure to conduct a reasonable investigation constitutes deficient performance. The third Circuit has held that "ineffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice when s/he [sic] has not yet obtained the facts on which such a decision could be made." See United States v. Gray, 878 F.2d 702, 711 (3rd Cir. 2011). A lawyer has a duty to "investigate what information...potential eye-witnesses possess[], even if he later decides not to put them to the stand." Id at 712. See also Hoots vs. Allsbrook, 785 F.2d 1214, 1220 (th Cir. 1986) ("Neglect even to interview available witnesses to a crime simply cannot be ascribed to trial strategy and tactics."); Brit v. Montgomery, 709 F.2d 690, 701 (7th Cir. 1983) cert. denied, 469 U.S. 874 (1984) ("Essential to effective representation...is the independent duty to investigate and prepare."), Mosley v. Atchison, 689 F.3d 838 (7th Cir. 2012)

Defense counsel has a duty to investigate the fact, learn the law, and evaluate the application to the facts of the case. Everett v. Beard, 290 F.3d 500, 509 (3rd Cir. 2002), United States v. Bui, 769 F.3d 831, 835 (3rd Cir. 2014), Correale v. United States, 479 F.2d 944 (1st Cir. 1973), Hill v. Lockhart, 894 F.2d 1009 (8th Cir. 1990), Cooks v. United States, 461 F.2d 530 (5th Cir. 1972). Government of Virgin Islands v. Vanderpool, 767 F.3d 157, 169 (3rd Cir. 2014) ["[a]n attorney`s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland." Hinton v. Alabama, 134 S. Ct. 1081, 1089, 188 L. Ed 2d I (2014), Medina v. DiGuglielmo, 461 F.3d 417, 428 (3rd Cir. 2006).

**i. Trial Counsel Deprived Petitioner an Effective Assistance of Counsel Because Their Failure Significantly Prejudiced Petitioner Where They Failed to Obtain and Present Evidence (Complete ICBC Pertinent Transaction File Inducing Underwriting File) Which Petitioner Required to Engage in Meaningful Cross-Examination (Impeach) of Witnesses Against Him and to Present a Complete Defense.**

The Second Circuit found that the district court did not err in its failure to compel ICBC`s production of its entire file because Brennerman did not comply with the rules governing subpoenas under Rule 17(d) of the Federal Rules of Criminal Procedure where he served ICBC`s New York-based attorney, not the ICBC`s London branch. United States v. Brennerman, No. 18-1033(L), WL 3053867 at \*1 (2d Cir. June 9, 2020). Highlighting trial counsel`s errors and deficient performance which significantly prejudiced Petitioner.

Prior to trial, Petitioner`s trial counsel, Thompson Hine LLP through Attorneys Maranda Fritz Esq. and Brian Waller Esq. filed an order to show cause to compel for the pertinent evidence (complete pertinent ICBC transaction files) which Petitioner required to prepare for trial, confront (impeach) witnesses against him and present a complete defense during trial. In response, district court issued a ruling stating in relevant parts: "In this case, defendants (Brennerman and Blacksands) did not seek, and this Court did not issue, an order authorizing the issuance of this subpoena. Nor would the Court authorize its issuance nunc pro tunc because it is undisputed that ICBC is "a foreign bank located approximately 3,500 miles from the courthouse." DI 69. It is not "a national of the United States who is in a foreign country." Accordingly Section 1783(a) does not authorize issuance of a subpoena to it. See Aristocrat Leisure, 262 F.R.D. at 305; United States v. Korolkov. 870 F. Supp. 60, 65 (S.D.N.Y. 1994) (citing Fed. R. Crim. P. 17(e)(2), 28 U.S.C. Section 1783, and United States v. Johnpoll, 739 F.2d 702, 709 (2d Cir. 1984)); accord WRIGHT, supra, Section 2462. For the foregoing reasons, defendants' motion to compel ICBC [DI 59] to respond to the subpoena dated August 22, 2017 is denied in all respects."

Notwithstanding the ruling by district court, trial counsel still failed to compel district court for the pertinent evidence (complete pertinent ICBC transaction files) pursuant to the appropriate federal rule for obtaining evidence located overseas including "Letter Rogatory" pursuant to 28 United States Code Section 1781 or appropriate Federal Rule of Criminal Procedure governing evidence located abroad thus significantly prejudiced Petitioner. The resulting prejudice, because of trial counsel's professional error Petitioner was deprived of the very evidence (complete pertinent ICBC transaction files) which he required to prepare for trial and confront (impeach) witnesses against him and present his complete defense during trial.

The complete ICBC transaction file would have demonstrated that agents of ICBC (London) plc repeatedly advised agents of The Blacksands Pacific Group, Inc., including Petitioner that they were not interested in discovery but in settlement on which Blacksands and Brennerman focused their attention, thereby negotiating and presenting a draft settlement agreement (See 17 Cr. 155 (LAK), EFC No. 12 Ex. 10 - copy draft settlement agreement). Thus, Petitioner and Blacksands did not willfully disobey any Court orders because by prioritizing the negotiation of the settlement agreement rather than providing more discovery, they (Blacksands and Petitioner) assumed that they were complying with the Court order, particularly the second court order which stipulated for the parties to settle or provide discovery, and given the discussion with agents of ICBC (London) plc (during the meeting at the Exotix London office) that settlement was preferred to discovery. Petitioner was however deprived of the very evidence (complete pertinent ICBC transaction files which includes records of discussions and minutes of meetings between agents of ICBC and Blacksands) during trial to confront (impeach) witnesses against him and to present his complete defense, thereby violating his Constitutional rights including his right to an effective assistance of counsel. The existence and importance of the evidence (complete pertinent ICBC transaction files) was highlighted through testimony of prosecution sole witness from ICBC (London) plc, Julian Madgett. *United States v. Brennerman,* No. 17 Cr. 337 (RJS), at Trial Tr. 551-554. This conclusively demonstrates that Petitioner was significantly prejudiced where he was deprived of very important evidence which existed at the time of trial however was not obtained or presented by this trial counsel for his defense. Thus highlighting that [but for] trial counsel’s ineffectiveness and deficient performance and the outcome of the criminal proceeding and trial would have been vastly different.

**C. Ground Three: The Conviction was Obtained and Sentence Imposed in Violation of the Right to Equal Protection of the Law**

**i. The Court (Judge Lewis A. Kaplan) Intentionally Ignored the Law in OSRecovery to Adjudge Civil contempt Order Against a Non-Party then Permitted the Presentment of the Erroneously Adjudged Civil Contempt Order to the Jury at Trial of the Criminal Contempt of Court Case, Thereby Swaying the Jury to Prejudice Petitioner.**

The history of this matter began in 2014 when ICBC (London) PLC ("ICBC London") sued The Blacksands Pacific Group, Inc ("Blacksands") in New York Supreme Court primarily alleging inter alia that Blacksands has failed to repay approximately $4.4 million dollars extended to Blacksands pursuant to a Bridge Loan Agreement, after ICBC London had reneged on the original $1.35 Billion dollars financing agreed with Blacksands.

Significantly, Defendant Brennerman, the CEO of Blacksands, was not named as a defendant in that action. (Notice of Removal; Cv. Cover Sheer, ICBC (London) PLC v. The Blacksands Pacific Group, Inc., No. 15 Cv. 70 (LAK), EFC No. 1-2).

Blacksands removed the case to the Southern District of New York and the matter was assigned to Hon. Lewis A. Kaplan, under the caption ICBC (London) PLC v. The Blacksands Pacific Group, Inc. (Notice of Removal, No. 15 Cv. 70 (LAK), EFC No. 1).

Based on the loan documents, Judge Kaplan granted ICBC London`s motion for summary judgment against Blacksands. (Mem. Op., No. 15 Cv. 70 (LAK), EFC No. 38.

ICBC London then served Blacksands with extremely broad post-judgment discovery requests. Blacksands counsel, Latham & Watkins LLP ("Latham") interposed objections to those demands and filed a brief in support of those objections. (See Def. Interrog., No. 15 Cv. 70 (LAK), EFC No. 84 Ex. 2); (Mem.; Def`s Decl., No. 15 Cv. 70 (LAK), EFC Nos. 85, 86). The Court, conducting no analysis regarding the permissible scope of post-judgment discovery of the actual breadth of plaintiff`s demands, instead in conclusionary fashion declared that the objections were "baseless" and that Blacksands "shall comply fully." (See Order, No. 15 Cv. 70 (LAK), EFC No. 87)

Subsequently, ICBC London move for contempt and coercive sanctions against Blacksands (Order to Show Cause; P1.`s Decl.; Mem., No. 15 Cv. 70 (LAK), EFC Nos. 101, 102-103). On October 24, 2016, Judge Kaplan granted ICBC London`s motion holding Blacksands in contempt and imposing coercive sanctions. (Order, No. 15 Cv. 70 (LAK), EFC No. 108). Over the course of the next two weeks, on November 4 and November 10, 2016. Brennerman on behalf of Blacksands provided detailed discovery responses to ICBC London, including approximately 400 pages of documents, in an effort to comply with ICBC London`s discovery requests. (See P1`s Decl., No. 15 Cv. 70 (LAK), EFC No. 123, 9, 11-12). Brennerman also made continued efforts without support from other shareholders and partners to settle the matter with ICBC London, including meeting with ICBC London executives in London and providing them with even more information about Blacksands and its pending transaction, which were pertinent to Blacksands settlement efforts. (See P1.`s Decl., No. 15 Cv. 70 (LAK), EFC No. 123, 45, 9, 11-12).

On December 7, 2016, ICBC London moved for civil contempt against Brennerman personally, even though he was not a named defendant in the matter and was not personally named in any discovery orders. (Order; Mem.; P1.`s Decl. No. 15 Cv. 70 (LAK), EFC Nos. 121-123). A contempt hearing was scheduled for December 13, 2016, less than a week later. (Corrected Order, No. 15 Cv. 70 (LAK), EFC No. 125)

Brennerman, however, did not have counsel. In fact, Latham repeatedly and consistently communicated to the Court, and to Brennerman that they did not represent Brennerman personally. (See e.g., Letter, No. 15 Cv. 70 (LAK), EFC No. 124). Although Brennerman was out of the country at the time he learned of the pending contempt hearing against him, he immediately sought to retain counsel to represent him in the contempt proceeding and wrote the Court requesting a reasonable adjournment because he was currently outside the United States and needed more time to retain counsel. (Email; Letter; No. 15 Cv. 70 (LAK), EFC Nos. 127-128) (Judge Kaplan was previously a partner at Paul Weiss LLP which represented Brennerman at the time thus the law firm could not appear before Judge Kaplan hence why Brennerman had to retain another law firm to represent him for the contempt proceedings). Judge Kaplan denied Brennerman`s request on December 12, 2016 (Order, No. 15 Cv. 70 (LAK), EFC No. 134), and found Brennerman personally in contempt on December 13, 2016 (Orders, No. 15 Cv. 70 (LAK), EFC Nos. 139-140). While Brennerman had provided a substantial document production in November 2016, after Blacksands was found in contempt, the Court made no mention of it and appeared not to have reviewed or considered that production in its determination that Brennerman was himself in contempt (Orders, 15 Cv. 70 (LAK), EFC. No. 139-140.

The document (at Order, 15 Cv. 70 (LAK), EFC No. 139) was drafted by the plaintiff and presented to the Court. That document was later supplanted by the Court`s findings in its Memorandum and Order (at Memorandum and Order, 15 Cv. 70 (LAK), EFC No. 140). In holding Brennerman in contempt the Court stated in its Memorandum and Order the basis for propounding the contempt order against Brennerman, stating:

"On December 7, 2016, ICBC - based on a reasonably documented assertion that Brennerman "controls every aspect of Blacksands' existence and operation," is "legally identified" with it, and "has directed its continuing contempt of court" - moved by order to show cause to hold Brennerman in civil contempt of court and to impose coercive sanctions. The Court granted the order to show cause, made it returnable on December 13, 2016, and required the service and filing of any responsive and reply papers at or before 4 p.m.. on December 11 and 12, 2016, respectively....."

(See Memorandum and Order, 15 Cv. 70 (LAK), EFC No. 140 at. 18 - 19)

Following the civil contempt order propounded against Brennerman, Judge Kaplan referred Brennerman to the Manhattan federal prosecutors (United States Attorney Office for the Southern District of New York "USAO, SDNY") and persuaded the prosecutors to arrest Brennerman and prosecute him criminally (See No. 17 Cr. 155 (LAK), EFC No. 12 Ex. 2)

Reasons for application of "OSRecovery, Inc., v. One Groupe Int`l, Inc., 462 F.3d 87 (2d Cir. 2006)":

In "OSRecovery, Inc., v. One Groupe Int`l, Inc., 462 F.3d 87 (2d Cir. 2006)" in a written opinion, the Second Circuit Court promulgated a new law which instructed all lower Courts in the Circuit`s jurisdiction about contempt orders against non-party. The law has been cited in numerous cases since its promulgation.

Brennerman now highlights the analogous aspects of the civil contempt adjudged against him and the Second Circuit court promulgations in OSRecovery:

In OSRecovery, the Court stated that the civil contempt determination against a non-party in that case exceeded the Court`s discretion because the district court (Judge Lewis A. Kaplan) treated a non-party "as a party - for discovery purposes only - despite the fact that [the non-party] was not actually a party" and "without sufficient explanation or citation to legal authority supporting the bases upon which" it did so. OSRecovery, 462 F.3d at 93.

Here, Judge Lewis A. Kaplan (the same district judge whose contempt order the Second Circuit court found inappropriate in OSRecovery) held Brennerman in civil contempt as a non-party and failed to provide any legal authority or present any particular theory for treating him as a party solely for the purpose of discovery. (See Order; Mem. & Order. No. 15 Cv. 70 (LAK), EFC No. 140 at 18-19). No court orders, subpoenas or motion to compel were ever directed at Brennerman personally nor was he present during the civil case`s various proceedings.

Notwithstanding the identical situation between the civil contempt adjudged against Brennerman and the OSRecovery ruling, the Court (Judge Kaplan), insinuates that OSRecovery should be viewed narrowly to apply solely to Clare Gray. (see Memorandum & Order, 17 Cr. 155 (LAK), EFC No. 207). This is inaccurate. The Court instead cites to another case from 10 years earlier - "People of the State of New York v. Operation Rescue, 80 F.3d 64, 70 (2d Cir. 1996)", however the Court (Judge Kaplan) did not rely on that case in adjudging the civil contempt order against Brennerman, nor did the Court cite the case or any other case[s] in its Memorandum and Order (at 15 Cv. 70 (LAK), EFC No. 140). In fact the case which the Court now cites was available to the Second Circuit Court, when that Court adjudicated ten years later in OSRecovery, the Second Circuit court did not adopt that case and found contempt order against non-party, to be inappropriate.

The Court further states: "In the Civil case, the plaintiff, in support of its motion to hold Brennerman in civil contempt, made a detailed evidentiary and legal showing that Brennerman has aided and abetted and/or was legally identified with The Blacksands Pacific Group, Inc., in its disobedience of the Court`s order to comply with discovery obligations."

This was an unchallenged allegation by the plaintiff because the Court had denied Brennerman`s request for more time to engage new counsel to represent him, due to the fact that Judge Kaplan was previously a partner at Paul Weiss LLP (the law firm that represented Brennerman at the time). Moreover, because the plaintiff made such representation does not make it accurate or appropriate, and the Court in its adjudication of the civil contempt order against Brennerman stated:

"On December 7, 2016, ICBC - based on a reasonably documented assertion that Brennerman "controls ever aspect of Blacksands' existence and operation," is "legally identified" with it, and "has directed its continuing contempt of court" - moved by order to show cause to......."

demonstrating that the Court made no fact-finding, nor was Brennerman or his counsel present at the time. Instead the Court adopted the assertion by the Plaintiff to hold Brennerman in civil contempt, based on an alter-ego theory.

Relying on the Second Circuit court`s promulgation in OSRecovery, that court rejected similar basis which the Court cited in adjudicating the civil contempt order against Brennerman, stating: "The contempt order relies on two theories for treating Clare as a party: a party-by-estoppel theory and a party-by-proxy or alter-ego theory. The contempt order, however does not provide citation to legal support for applying either theory in this context. In particular, the order does not explain how Clare could be transformed into a party for discovery purposes but not for any other aspect of the litigation. See id. Additionally, the order does not provide enough information on the precise legal theories it is attempting to invoke.

The same is similar in the civil contempt adjudicated against Brennerman. Here, the court did not provide citation to legal support for applying the theory it adopted. In particular, the order did not explain how Brennerman could be transformed into a party for discovery purposes but not for any other aspect of the litigation. Additionally, the order does not provide enough information on the precise legal theories it invoked in adjudging the civil contempt order against Brennerman.

For the reasons cited above, OSRecovery is the most analogous law and case in reviewing and adjudicating the appropriateness of the civil contempt order against Brennerman. Brennerman asserts his reliance on OSRecovery, that the civil contempt order adjudged against him by Judge Kaplan was erroneous.

The Court (Judge Kaplan) then stated: Second, Brennerman`s contention that the receipt of the civil contempt evidence in the Criminal case was error already has been rejected by the Second Circuit, and certiorari has been denied. Brennerman, 816 Fed. App`x at 587 ("with respect to the admission of the redacted contempt order, we find no error")

Here, the Court highlights the affirmation of the Second Circuit court however ignores the fact that the Second Circuit narrowly considered the issue of admission of the civil contempt order from an evidentiary perspective. That is, whether the redaction was adequate to satisfy Rule 403 and 404(b). The Second Circuit court however failed to engage in a comprehensive review of the contempt adjudication and the Constitutional implications of its presentment to the jury particularly in light of the similarities with the civil contempt adjudication in OSRecovery. Likewise, the issue was not considered on its merit by the Supreme Court of the United States because that court only accepts 1% - 2% of cases on certiorari hence the court denied to hear Brennerman`s case (rather than deny it on its merits).

Furthermore, the Court appears to mistake Brennerman`s contention. Brennerman does not intend to relitigate the adjudication of the civil contempt orders but rather he argues as to the Constitutional implications and prejudice suffered from the presentment of an erroneously adjudged (in violation of the law) civil contempt order to the jury during the trial of the Criminal contempt case. The resulting prejudice is well documented by the Law journal, Law 360, where a juror advised that the civil contempt order adjudged against Brennerman swayed the jury to find him [Brennerman] guilty of criminal contempt of court.

For all the reasons cited above, a reasonable jurist will more than likely conclude that the adjudication of the civil contempt order in this case was erroneous and Brennerman was significantly prejudiced when the Court permitted the presentment of an erroneously adjudged civil contempt order to the jury during trial in the Criminal contempt case.

**V. REASON FOR GRANTING STAY OF ENFORCEMENT OF JUDGEMENT OF CONVICTION AND SENTENCE PENDINGDETERMINATION OF COLLATERAL ATTACK MOTION**

Discussion

This motion is submitted pursuant to Fed. R. Crim. P. 38 to stay the enforcement of Judgment ("Judgment of Conviction") entered in the United Stated District Court for the Southern District of New York, arising from the criminal case in United States v. The Blacksands Pacific Group, Inc., et. al., No. 17 Cr. 155 (LAK)

This motion to stay enforcement of judgment presents an opportunity for this Court to rectify the fundamental miscarriage of justice given the extraordinary circumstance where trial Court deliberately abridged and abrogated the fundamental rights of criminal defendant conferred by the U.S. Constitution, thus violating his Fourth, Fifth, Sixth, Thirteenth and Fourteenth Amendment rights of the United States Constitution. The issue for consideration here is not whether Petitioner is entitled to reprieve from the deliberate civil and Constitutional rights deprivation but rather whether the continued infringement on his Constitutional rights and civil liberties affects the very fabric of United States democracy.

The Supreme Court precedents require recusal where the “probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Rippo v. Baker*, 580 U.S. --------- (2017) (per curium) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). The operative inquiry is objective: whether, "considering all the circumstances alleged," *Rippo*, 580 U.S. at \_\_\_. "the average judge in [the same] position is likely to be neutral, or whether there is an unconstitutional potential for bias" *Williams v. Pennsylvania*, 579 U.S. \_\_\_\_, \_\_\_\_, (2016) (internal quotation marks omitted). The Supreme Court has acknowledged that "[a]llowing a decisionmaker to review and evaluate his own prior decision raises problem." *Withrow*, 421 U. S. at 58, n.25, perhaps because of the risk that a judge might "be so psychologically webbed to his or her previous position" that he or she will "consciously or unconsciously avoid the appearance of having erred or changed position." *Williams,* 579 U. S., at \_\_\_\_. (quoting *Withrow*, 421 U. S., at 57). And it has warned that a judge`s "personal knowledge and impression" of a case may sometimes outweigh the parties' arguments. *In re Murchison*, 349 U. S. 133\_\_\_\_ (1955).

Rule 38 of the Federal Rule of Criminal Procedure authorizes a court to enter a stay appeal or collateral attack of judgment of conviction and sentence in a criminal proceeding. A stay pending appeal or collateral attack "is not a matter of right," and "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. Nken v. Holder, 556 U.S. 418, 433-34 (2009). The traditional factors that govern whether to grant a stay of court order pending appeal are "(1) whether the stay applicant has made strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Id. at 434; Hilton v. Braunskill, 481 U.S. 770, 776 (1987); see Cooper v. Town of East Hampton, 83 F.3d 31, 36 (2d Cir. 1996).

Petitioner submits that the judge (Judge Lewis A. Kaplan) who presided over the entire criminal case acted as the chief complainant, prosecutor and judge thereby exhibiting his partiality and interest in the outcome of the entire proceeding as more succinctly highlighted above within the "Reasons for granting collateral attack motion". A stay of enforcement of judgment of conviction and sentence in warranted in the interest of justice and to promote the rule of law.

**VI. REASONS FOR GRANTING RECUSAL / DISQUALIFICATION OF THE COURT (KAPLAN, J.)**

Discussion

There are a few characteristics of a judiciary more cherished and indispensable to justice than impartiality. By enacting 28 U.S.C.S. 455(a) Congress has mandated that justice must not only be impartial but also that it must reasonably be perceived to be impartial. To that end, the Supreme Court held in Liljeberg v. Health Servs. Corp., 486 U.S. 847 (1988), that judges must apply an objective, "reasonable person" standard in deciding whether disqualification is mandated by section 455(a), rather than making a subjective assessment of whether the facts and circumstances warrant disqualification. If a judge`s impartiality "reasonably might be questioned" in a case, the judge must disqualify himself or herself "even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible." Liljeberg, 486 U.S. at 860 (quoting Health Servs. Acquisition Corp. v. Liljeberg, 796 F.2d 796, 802 (5th Cir. 1986)). See also Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120, 127 (2d Cir. 2003). Indeed, in that case the Court held that the judge should have recused himself even though he was unaware of the circumstances that gave rise to the conflict, because a reasonable person could conclude that the judge should have been aware. Liljeberg, 486 U.S. at 861. Only in this manner can the congressional purpose underlying section 455(a) be achieved, namely, "to promote public confidence in the integrity of the judicial process." Liljeberg, 486 U.S. at 859-60.

Judge Kaplan is disqualified from continuing to preside over this matter because a reasonable person who is aware of the Court`s actions would conclude that Judge Kaplan`s impartiality in this case "reasonably might be question." 28 U.S.C. Section 455(a), where Judge Kaplan ignored the federal rule to conduct extra-judicial research into a non-party, Petitioner, then upon realizing that he is a black man, ignored the law in OSRecovry to transform him [Petitioner] into a party but solely for the purpose of discovery and not other part of the litigation to adjudicate civil contempt order against him. Following which Judge Kaplan then referred him [Petitioner] for criminal prosecution and actively sought willing prosecutors, then persuaded the prosecutors to arrest and prosecute Petitioner as well, assigning the criminal case to himself to preside over it. During trial for the criminal contempt case, Judge Kaplan permitted the prosecution to present the erroneously adjudged civil contempt order to the jury (which swayed the jury to find Petitioner guilty of criminal contempt) and also failed to protect the Constitutional rights of Petitioner by allowing prosecution witness to testify as to issues at trial, knowing that Petitioner will be unable to challenge their testimony because he (Judge Kaplan) had denied Petitioner access to the very evidence (complete ICBC files) which he required to confront (impeach) witness against him and present a complete defense. "No-one should be a judge of his or her own cause." Congress laid down that principle in 1792.

**VII. LEGAL AUTHORITY GOVERNING PRO SE PETITIONER**

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

**VIII. CLOSING STATEMENT**

The history of the partiality, judicial misconduct and bias commenced after Judge Lewis A. Kaplan ignored the federal rule to conduct extra-judicial research into Brennerman by Googling him (See Bail Hr.`g. Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 1 at 28). Judge Kaplan became determined to cause maximum reputational damage, convict and imprison Brennerman after becoming aware that he [Brennerman] is a black businessman with business interests outside the United States. See Bail Hr.`g. Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 2 at 6, with Judge Kaplan stating: ("I think the record is reasonably clear that he spends a great deal of time and has business interests outside of the United States, and in all circumstances. I'm inclined to issue an arrest warrant"). see also ICBC (London) plc v. The Blacksands Pacific Group, Inc., No. 15-cv-0070 (LAK), EFC Nos. 127-128.

The arrest warrant clearly demonstrates that the basis for its issuance was erroneous. First, the arrest warrant was issued from the civil case as it bore the civil case No. 15-cv-00700 (LAK), rather than from any criminal cases (See Bail Hr.`g. Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 3). Second, the arrest warrant states: "There is probable cause to believe that defendant has committed criminal contempt of court, in violation of 18 U.S.C. Section 401(3), all as more fully set forth in the petition filed by the Government, a copy of which is incorporated herein and attached hereto." The petition was not attached because the Government had not filed any petition and the Court had failed to execute the order to show cause presented by the Government as it related to Brennerman, meaning there was no criminal allegation for Brennerman to answer at the time of his arrest. Third, there was no proper basis for the issuance of the arrest warrant other than Judge Kaplan`s insistence on causing maximum reputational damage and Constitutional rights violation to Brennerman. Because no basis existed for the issuance of the arrest warrant, Judge Kaplan actually amended one of the check boxes and wrote-in his own desire for arresting Brennerman, which was not based on the facts.

For the trial, conviction and punishment, Judge Kaplan then exacerbated the severity and punitive nature of this case by empaneling [sic] a jury even though the prosecution took no position on the issue (17 Cr. 155 (LAK), EFC No. 49). An impartial judge would not have empaneled a jury in such a manner as it thereby elevated an otherwise misdemeanor case into a felony case, allowing Judge Kaplan to impose a harsher punishment on Petitioner. Judge Kaplan abused and misused his authority so as to achieve his desire and vendetta against Petitioner.

Moreover, the parties in the underlying civil case, ICBC (London) PLC and The Blacksands Pacific Group, Inc., from which the criminal contempt of court case arise, had negotiated a settlement agreement to resolve the dispute at the time Judge Kaplan insisted on arresting, convicting and imprisoning Brennerman (See Bail Hr.`g. Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 10)

The above among other conducts conclusively demonstrated Judge Kaplan`s partiality and interest in the outcome of the criminal proceedings. See United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC Nos. 205, 209.

At Sentencing for the criminal contempt of court case, Judge Kaplan exhibited his influence over Judge Richard J. Sullivan (See Sentencing Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 152). Judge Sullivan had presided over the interrelated criminal case, which was initiated by the same prosecutors who Judge Kaplan had sought to prosecute Brennerman criminally. In the interrelated criminal case at 17 Cr. 337 (RJS), similar to the partiality and egregious misconduct exhibited by Judge Kaplan, Judge Sullivan exhibited partiality by ignoring the evidence at United States v. Brennerman, No. 17 Cr. 337 (RJS), EFC No. 167 and intentionally misrepresented evidence to falsely satisfy the law to convict and imprison Brennerman among other deliberate Constitutional rights violation (See Sentencing Tr. United States v. Brennerman, No. 17 Cr. 337 (RJS), EFC No. 206 at 19; see also United States v. Brennerman, No. 20-4164(L), at EFC No. 62.

Because "A criminal defendant tried by a partial judge is entitled to have his conviction set aside no matter how strong the evidence against him. "Edwards v. Balisok, 520 U.S. 641, 647 (1997) (citation omitted), this Court should grant Brennerman`s motion in its entirety.

Given the extraordinary circumstances highlighted above, grant of the relief requested in its entirety is warranted as a matter of public interest to promote the rule of law and emphasize conformity and uniformity with the law and Constitution and to avoid the continued attack on the civil rights and liberties of Petitioner.

**CONCLUSION**

The Omnibus motion for an order of this Court granting: (a.) Collateral attack motion to set-aside the judgment of conviction and vacate the sentence; (b.) Stay of enforcement of the judgment of conviction and sentence pending determination of the collateral attack motion; (c.) Recusal and/or disqualification of the Court (Kaplan, J.) from considering and determination of the Omnibus motion, should be granted in its entirety. In addition to any other relief which this Court may deem just, necessary and appropriate, including granting an evidentiary hearing.

The history of the partiality, judicial misconduct and bias commenced after Judge Lewis A. Kaplan ignored the federal rule to conduct extra-judicial research into Brennerman by Googling him (See Bail Hr.'g. Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 1 at 28). Judge Kaplan became determined to cause maximum reputational damage, convict and imprison Brennerman after becoming aware that the [Brennerman] is a black businessman with business interests outside of the United States. See Bail Hr.'g. Tr. United States v. Brennerman, No. 17 Cr. 155 (LAK), EFC No. 12 Ex 2 at 6, with Judge Kaplan stating: ("I think the record is reasonably clear that he spends a great deal of time and has business interests outside of the United States, and in all circumstances, I'm inclined to issue an arrest warrant"); see also ICBC (London) plc v. The Blacksands Pacific Group, Inc., No. 15-cv-0070 (LAK), EFC Nos. 127-128.

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Because "A criminal defendant tried by a partial judge is entitled to have his conviction set aside no matter how strong the evidence against him." Edwards v. Balisok, 520 U.S. 641, 647 (1997) (citations omitted), this Court should grant Brennerman`s motion in its entirety.

Dated: White Deer, Pennsylvania

December 1, 2021

Respectfully submitted

/s/ Raheem J. Brennerman

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**EXHIBIT**

Petition for writ of certiorari and Appendix at

The Supreme Court of the United States in

*Brennerman v. United States*,

S. Ct. No. 20-6895 (EFC Dec 30, 2020) ............................................................................ Exhibit 1