

No. _____

In the
Supreme Court of the United States



IN RE RAHEEM BRENNERMAN,

Petitioner.

On Petition for an Extraordinary Writ to the
United States Court of Appeals for the Second Circuit,
United States v. Raheem Brennerman, No. 18-1033

APPENDIX

Raheem Jefferson Brennerman
Petitioner Pro Se
Register Number: 54001-048
FCI ALLENWOOD LOW
P.O. Box 1000
White Deer, PA 17887
(646) 693-1948

July 31, 2026

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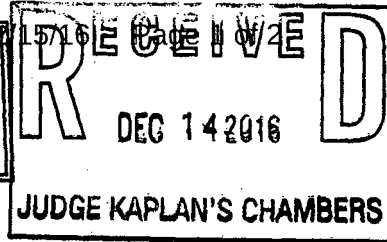
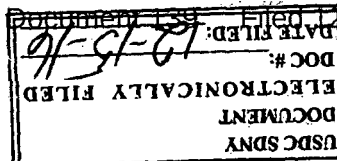
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APPENDIX A:

Order of civil contempt in civil action, *ICBC (London) PLC v. The Blacksands Pacific Group, Inc.* at the United States District Court, case no. 1:15-cv-00700-LAK (S.D.N.Y.), at ECF No. 139-140



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ICBC (LONDON) PLC,

Plaintiff,

-against-

THE BLACKSANDS PACIFIC GROUP, INC.,

Defendant.

THE BLACKSANDS PACIFIC GROUP, INC. and
BLACKSANDS PACIFIC ALPHA BLUE, LLC,

Counter-Plaintiffs

-against-

ICBC (LONDON) PLC,

Counter-Defendant.

15 Civ. 0070 (LAK) (FM)

~~PROPOSED~~ ORDER OF
CONTEMPT WITH

RESPECT TO
RAHEEM BRENNERMAN

Plaintiff ICBC (London) plc's motion [ECF 125] seeking an Order holding Raheem Brennerman in civil contempt of court and imposing coercive sanctions against him is ~~excepted~~ granted. The Court reserves decision on the portion of ICBC's motion requesting an award of compensatory damages.

Having considered the papers submitted by ICBC, Mr. Brennerman having failed to file any papers in opposition, and the Court having heard oral argument, the Court finds that (1) its orders of August 22, 2016 and September 27, 2016 compelling Defendant The Blacksands Pacific Group, Inc. ("**Blacksands**") to fully comply with ICBC's post-judgment discovery requests (the "**Outstanding Discovery Orders**") are clear and unambiguous, (2) the proof of Blacksands' willful noncompliance with the Outstanding Discovery Orders is undisputed, clear

and convincing, (3) Blacksands has not diligently attempted to comply with those orders in a reasonable manner, and (4) Mr. Brennerman is properly charged with contempt because he has abetted and directed Blacksands' noncompliance with the Outstanding Discovery Orders and because he is legally identified with Blacksands. The Court therefore ORDERS that:

1. Mr. Brennerman shall pay a coercive fine of \$1,500 per day, commencing December 13, 2016, for each day in which Blacksands continues to fail to comply with the Outstanding Discovery Orders. The amount of the coercive fine will double every seventh day until it reaches \$100,000 per day, and it will thereafter continue at the rate of \$100,000 per day, unless otherwise ordered by this Court.
2. If Mr. Brennerman and Blacksands comply fully with the Outstanding Discovery Orders, the judgment is satisfied, or at least \$3 million cash is paid on account of the judgment, in each case by 5:00 p.m. New York time on December 20, 2016, the Court will abrogate the coercive fines imposed on Mr. Brennerman and incurred through that date; provided, that such production or payment shall not moot the contempt that has been committed.
3. Upon application by the Plaintiff, the Court will consider the imposition of further sanctions, if there is an adequate showing that those imposed by this Order do not achieve compliance. Without limiting the generality of the foregoing, ICBC is at liberty to commence by appropriate process further civil and/or criminal contempt proceedings against Mr. Brennerman and anyone else who is properly chargeable with contempt in this matter.
4. The substance of this order was issued orally on December 13, 2016.

12/15/16

SO ORDERED

LEWIS A. KAPLAN, USDJ

APPENDIX B:

Judgment of Conviction and Sentence in criminal case, *United States v. The Blacksands Pacific Group, Inc.* at the United States District Court, case no. 1:17-cr-00155-LAK (S.D.N.Y.), at ECF No. 145

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

RAHEEM J. BRENNERMAN

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17-CR-155-001(LAK)

USM Number: 54001-048

Raheem J. Brennerman, Pro Se

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☒ was found guilty on count(s) One and Two
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 401(3)	Criminal Contempt	9/27/2016	One
18 U.S.C. 401(3)	Criminal Contempt	3/3/2017	Two

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/21/2018

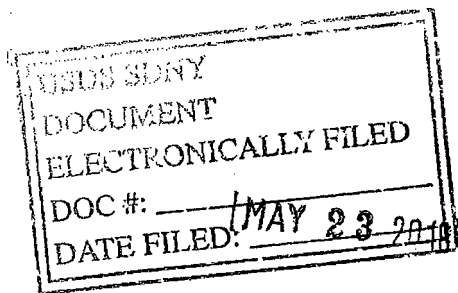
Date of Imposition of Judgment

Signature of Judge

Hon. Lewis A. Kaplan, U.S.D.J.

Name and Title of Judge

Date



DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

24 Months on each count, the terms to run concurrently.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 Years subject to the following special conditions:

The defendant shall follow all directions of the Bureau of Citizenship and Immigration Services in any proceedings it may institute.

If the defendant is removed or deported from the United States, he shall not reenter the United States illegally.

The defendant shall provide the probation officer with any financial information he or she may request.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: RAHEEM J. BRENNERMAN
 CASE NUMBER: 1:17-CR-155-001(LAK)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$ 10,000.00	\$

- ☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	\$	0.00	\$	0.00
--------	----	------	----	------

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RAHEEM J. BRENNERMAN
CASE NUMBER: 1:17-CR-155-001(LAK)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 10,200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C:

Summary Order and Judgment in appeal, *United States v. The Blacksands Pacific Group, Inc., et. al.*, at the United States Court of Appeals for the Second Circuit, at appeal no. 18-1033(L), at ECF No. 286

18-1033(L)
United States v. Raheem Brennerman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 9th day of June, two thousand twenty.

Present: ROSEMARY S. POOLER,
REENA RAGGI,
WILLIAM J. NARDINI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

18-1033, 18-1618

RAHEEM BRENNERMAN,

Defendant-Appellant,

THE BLACKSANDS PACIFIC GROUP, INC.,

Defendant.

Appearing for Appellant: John C. Meringolo, Meringolo & Associates, P.C., Brooklyn, N.Y.

Appearing for Appellee: Danielle Renee Sassoon, Assistant United States Attorney
(Nicholas Tyler Roos, Robert B. Sobelman, Anna M. Skotko,

Assistant United States Attorneys, *on the brief*), for Geoffrey S. Berman, United States Attorney for the Southern District of New York, New York, N.Y.

Appeal from the United States District Court for the Southern District of New York (Kaplan, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is **AFFIRMED**.

Defendant-Appellant Raheem Brennerman appeals from the May 21, 2018, judgment of conviction entered in the United States District Court for the Southern District of New York (Kaplan, J.), sentencing him principally to 24 months' imprisonment followed by 3 years' supervised release. Following a jury trial, Brennerman was convicted of two counts of criminal contempt, in violation of 18 U.S.C. § 401(3). We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

On appeal, Brennerman argues that the district court committed reversible error by: (1) denying his motion to compel compliance with a subpoena that sought the production of certain documents from the Industrial and Commercial Bank of China's London branch ("ICBC"); (2) making improper evidentiary rulings; (3) denying his second Rule 33 motion as untimely; and (4) imposing a procedurally and substantively unreasonable sentence. He further argues that he received constitutionally deficient assistance of counsel.

I. ICBC Subpoena

Rule 17 of the Federal Rules of Criminal Procedure governs the issuance of trial subpoenas in criminal cases. A decision to deny, quash, or modify a subpoena "must be left to the trial judge's sound discretion" and "is not to be disturbed on appeal unless it can be shown that [the district court] acted arbitrarily and abused its discretion or that its finding was without support in the record." *In re Irving*, 600 F.2d 1027, 1034 (2d Cir. 1979).

We find that the district court appropriately concluded that Brennerman failed to effect service of the subpoena on ICBC as required by Rule 17(d). Significantly, Rule 17 provides that "[t]he server must deliver a copy of the subpoena to the witness." Fed. R. Crim. P. 17(d). In an attempt to serve the subpoena, Brennerman sent a copy to ICBC's New York-based attorney in the underlying civil case, not to ICBC's London branch. This plainly did not comply with the rule.

To the extent Brennerman argues that the government was required to retrieve the documents for him, that argument is also meritless. ICBC is not an agent of the government, and therefore the prosecution was under no obligation to make efforts to obtain information beyond what it previously collected and turned over to Brennerman. *Cf. United States v. Yousef*, 327 F.3d 56, 112 (2d Cir. 2003).

II. Evidentiary Rulings

Brennerman next challenges the exclusion of certain evidence concerning settlement discussions with opposing counsel in the civil case, as well as documents Brennerman purportedly provided to ICBC in 2013. He also argues that the district court improperly admitted the redacted civil contempt orders.

“We review a district court’s evidentiary rulings under a deferential abuse of discretion standard, and we will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous.” *United States v. McGinn*, 787 F.3d 116, 127 (2d Cir. 2015) (internal quotation marks and citation omitted). “Under Rule 403, so long as the district court has conscientiously balanced the proffered evidence’s probative value with the risk for prejudice, its conclusion will be disturbed only if it is arbitrary or irrational.” *United States v. Awadallah*, 436 F.3d 125, 131 (2d Cir. 2006).

As to the settlement discussions, Brennerman argues that the district court should have allowed him to introduce certain evidence of those discussions because it showed he was acting in good faith to comply with the court’s orders. But we disagree with Brennerman’s characterization of the record. The record shows that the district court did allow 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. At the end of trial, the district court admitted those exhibits for which the connection was made. Also, through cross-examination, Brennerman was able to introduce evidence about the parties’ settlement discussions. In summation, defense counsel relied on that evidence to argue that Brennerman did not willfully disregard the orders. In our view, the district court did not abuse its discretion in admitting some but not all of this evidence, and Brennerman has failed to point to any specific evidence that would have helped his case had it been admitted.

Brennerman’s challenge to the district court’s exclusion of documents he turned over to ICBC in 2013 also fails. Such evidence, Brennerman argues, would have cast doubt on his willfulness on his behalf in disobeying orders, because it would have shown that he did not realize he had to re-produce documents that ICBC already possessed. But, as the district court aptly noted, the documents were evidently provided to ICBC long before the civil case began, and were only minimally responsive to ICBC’s discovery requests, so their production was not probative at all of Brennerman’s compliance with those discovery requests and subsequent court orders.

Finally, with respect to the admission of the redacted contempt orders, we find no error. As 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. Thus, the district court appropriately accounted for the probative value of the evidence as well as its potentially prejudicial effect, and we cannot conclude that its decision was arbitrary, irrational, or manifestly erroneous.

III. Rule 33 Motion

Brennerman first filed a Rule 33 motion on February 14, 2018, which was denied without prejudice in the event that he were to terminate counsel and proceed pro se. Brennerman elected to proceed without counsel on February 26, and on February 28, 2018 he filed another Rule 33 motion. He then filed what he styles as an amended Rule 33 motion on March 26, 2018, also pro se. On appeal, Brennerman challenges the district court's denial of his March 26 motion as untimely.

A Rule 33 motion for a new trial on grounds other than newly discovered evidence must be filed within fourteen days after the verdict. Fed. R. Crim. P. 33(b)(2). Pursuant to Rule 45(b)(1)(B), however, this time limit may be extended if the moving party failed to act because of "excusable neglect." Fed. R. Crim. P. 45(b)(1)(B). When, as here, a defendant does not raise an argument below, we review for plain error. *United States v. Alcantara*, 396 F.3d 189, 207 (2d Cir. 2005.)

Brennerman concedes that his March 26 motion was untimely, but he argues excusable neglect because his counsel withdrew. We are not convinced that Brennerman's justification is sufficient for a finding of excusable neglect. Brennerman was permitted to proceed pro se on February 26 and nonetheless timely file his February 28 motion. Nor is there any allegation that the information contained in the March 26 motion was newly discovered. Accordingly, because the delay was not justified, the district court did not err—let alone plainly err—by denying the March 26 motion as untimely. In any event, the district court addressed the merits of Brennerman's motion.

IV. Sentence

Brennerman further challenges the procedural and substantive reasonableness of his sentence. A district court commits procedural error if it fails to calculate the Guidelines range, makes a mistake in its Guidelines calculation, treats the Guidelines as mandatory, does not consider the Section 3553(a) factors, or rests its sentence on a clearly erroneous finding of fact. *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc). Facts in support of a sentencing calculation need be established only by a preponderance of the evidence. *United States v. Beverly*, 5 F.3d 633, 642 (2d Cir. 1993).

In calculating Brennerman's Guidelines range, the district properly found that Brennerman's conduct "resulted in substantial interference with the administration of justice" and applied the appropriate offense level enhancement, pursuant to U.S.S.G. § 2J1.2(b)(2). Examples of "substantial interference with the administration of justice" include "the unnecessary expenditure of substantial governmental or court resources." U.S.S.G. § 2J1.2 cmt. n.1. The district court found that Brennerman lied to and withheld documents from the court, requiring the government to spend substantial time and resources in connection with his trial for criminal contempt. Accordingly, the district court's decision to impose a three-level enhancement was not an abuse of discretion.

In reviewing claims of substantive unreasonableness, we consider "the totality of the circumstances, giving due deference to the sentencing judge's exercise of discretion," and we "will . . . set aside a district court's *substantive* determination only in exceptional cases where the

trial court's decision cannot be located within the range of permissible decisions." *Cavera*, 550 F.3d at 189-90 (internal quotation marks and citations omitted).

On the record before us, Brennerman's sentence of 24 months' imprisonment is not substantively unreasonable. The district court imposed a sentence on the low end of the Guidelines range. Indeed, Brennerman makes no argument, and cites no authority or facts, to support his claim that his conduct warranted a below-Guidelines sentence. In light of these circumstances and the deference we owe to the district court, we cannot say that the sentence falls outside the range of permissible decisions.

V. Ineffective Assistance of Counsel

Lastly, Brennerman faults his attorney for failing to obtain records from ICBC and for moving to disqualify the district court judge. We decline to address Brennerman's ineffective assistance of counsel arguments at this time.

Our Circuit has "a baseline aversion to resolving ineffectiveness claims on direct review." *United States v. Khedr*, 343 F.3d 96, 99 (2d Cir. 2003). Though we have exercised our discretion to address these claims when their resolution is beyond a doubt, *id.*, we decline to do so here given the absence of a fully developed record on this issue. *See Sparman v. Edwards*, 154 F.3d 51, 52 (2d Cir. 1998) (explaining that, "except in highly unusual circumstances," a lawyer charged with ineffectiveness should be given "an opportunity to be heard and to present evidence, in the form of live testimony, affidavits, or briefs"). Accordingly, we dismiss Brennerman's ineffective assistance counsel claims without prejudice.

We have considered the remainder of Brennerman's arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

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

ROBERT A. KATZMANN
CHIEF JUDGE

Date: June 09, 2020
Docket #: 18-1033, 18-1618
Short Title: United States of America v. The Blacksands
Pacific Group,

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:17-cr-155-2
DC Court: SDNY (NEW YORK
CITY)DC Docket #: 1:17-cr-155-
2
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Kaplan

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

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

ROBERT A. KATZMANN
CHIEF JUDGE

Date: June 09, 2020
Docket #: 18-1033, 18-1618
Short Title: United States of America v. The Blacksands
Pacific Group,

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:17-cr-155-2
DC Court: SDNY (NEW YORK
CITY)DC Docket #: 1:17-cr-155-
2
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Kaplan

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to
prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature

**Additional material
from this filing is
available in the
Clerk's Office.**