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 8

9 UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

10 * * * * *

11 UNITED STATES OF AMERICA,)
)
 12 Plaintiff,)
)
 13 v.)
)
 14 ALEXANDER SMIRNOV,)
)
 15 Defendant,)
 16)
 17)

CASE NO. 2:24-MJ-00166-DJA

18 **DEFENDANT’S EMERGENCY MOTION FOR IMMEDIATE DETENTION**
 19 **HEARING AND RELEASE ON PREVIOUSLY IMPOSED CONDITIONS**

20 COMES NOW, Defendant, ALEXANDER SMIRNOV (“Mr. Smirnov”), by and through
 21 his attorneys, DAVID Z. CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the
 22 law firm of CHESNOFF & SCHONFELD and hereby move this Honorable Court to set an
 23 immediate hearing under Rule 5(a) to seek the release of Mr. Smirnov from custody, as more
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1 fully explained below.

2 Dated this 22nd day of February, 2024.

3 Respectfully Submitted:

4 CHESNOFF & SCHONFELD

5 /s/ David Z. Chesnoff

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Procedural History

1. Mr. Smirnov was arrested in Las Vegas, Nevada on or about February 14, 2024.
2. The two-count Indictment filed in the Central District of California charges him with: 1) Making False Statements to a Government Agent, in violation of 18 U.S.C. § 1001; and 2) Falsification of Records in a Federal Investigation, in violation of 18 U.S.C. § 1519.
3. Mr. Smirnov had his initial appearance before this Court on February 15, 2024. At the conclusion of the initial hearing, and at the Government’s request, his hearing under Rule 5 of the Federal Rules of Criminal Procedure (the “hearing”) was continued to February 20, 2024 at 3:00 p.m.
4. Prior to the hearing, Mr. Smirnov filed a motion seeking his release on conditions, and the Government filed a motion for pretrial detention.
5. Prior to the hearing, the Pretrial Services Office issued a report recommending that Mr. Smirnov be released on various conditions.
6. At the hearing on February 20, 2024, the parties argued their respective positions concerning pretrial release of detention. At the conclusion of the hearing, the Honorable Daniel J. Albregts, United States Magistrate Judge for the United States District Court for the District of Nevada, granted Mr. Smirnov’s motion and ordered him released on various conditions. At the conclusion of the hearing, the Government asked to Court to stay its order of release; however, the Magistrate Judge denied that motion to stay on the record. *See* Transcript of Detention Hearing (Feb. 20, 2024) (attached as Exhibit 1).

- 1 7. Pursuant to the Magistrate Judge’s order, Mr. Smirnov was released from custody on or about
2 February 20, 2024. He has remained fully compliant with his conditions of release since his
3 court-ordered release.
- 4
5 8. On February 21, 2024, the Government filed an application to reopen the detention hearing in
6 the underlying case (*United States v. Smirnov*, 2:24-cr-00091-ODW-1) in the Central District
7 of California. The Government’s application makes no mention of any second, then-unserved
8 arrest warrant for Mr. Smirnov based on the same charges.
- 9
10 9. Despite Judge Albregts’s prior ruling, denial of the stay request, and Mr. Smirnov’s prior
11 release from custody, on the morning of February 22, 2024, Mr. Smirnov was arrested for a
12 second time – on the same charges and based on the same indictment set forth *supra* at ¶2 –
13 while at the undersigned counsel’s law office for meetings with counsel. It should further be
14 noted that the fact that the Defendant was attending a legal consultation meeting at his
15 attorneys’ office contradicts the notion that he is a risk of flight. It also highlights the
16 interference with his cherished Sixth Amendment rights.
- 17
18 10. 18 U.S.C. section 3145 provides the Government’s remedy if it disagrees with Judge
19 Albregts’s release order. That remedy is to file a motion for revocation or modification of the
20 conditions of release. That motion is filed in the originating jurisdiction. The Government
21 filed that Motion. There are no provisions for the re-arrest of Mr. Smirnov in this District
22 after being Ordered released. Any such provision would undermine the entire purpose of a
23 Defendant having the right to a Rule 5 hearing in the District in which he is arrested. It also
24 undermines the Court’s denial of the Government’s request for a stay of the release order.
- 25
26 11. The arrest warrant for this second arrest was issued by the Central District of California and
27 dated February 22, 2024, Los Angeles, California (attached as Exhibit 2).
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1 12. As of February 22, 2024, no order setting a date and time for Mr. Smirnoff's appearance and
2 detention hearing in California has been set. Thus, at no time since his release on February
3 20, 2024 has Mr. Smirnov left Clark County, Nevada, let alone appeared in court in
4 California.

5 **II.**

6 **Applicable Legal Standards**

7 13. "Rule 9 states, in relevant part, that when following an arrest, the defendant first appears
8 before the court, the court must proceed according to Rule 5 Rule 5 states, in relevant
9 part, that "[a] person making an arrest within the United States must take the defendant
10 without unnecessary delay before a magistrate judge. . ." Fed. R. Crim. P. 5(a)(1)(A). Thus,
11 Rules 5 and 9 deal with unnecessary delay between a defendant's arrest and first appearance
12 before a magistrate judge." *United States v. Brown*, 2007 WL 9711677, Nos. CR 03-0847
13 ABC, CR 04-0697 (Mar. 5, 2007) (unpublished).

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15 14. Mr. Smirnov's research into available remedies (including a petition for a writ of habeas
16 corpus) are ongoing.

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18 15. At present, however, Mr. Smirnov respectfully requests that this Honorable Court set his
19 second initial appearance "without unnecessary delay" which, under these bizarre
20 circumstances, mean: forthwith, and Order his release. Alternatively, Mr. Smirnov requests
21 an emergency hearing before the Chief Judge of the United States District Court for the
22 District of Nevada.

23 16. If the Court cannot hold an immediate detention hearing, it is respectfully requested that the
24 Court enter an interim Order directing the United States Marshal Service to keep Mr.
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Smirnov in this district pending his Rule 5 hearing.

DATED this 20th day of February, 2024.

Respectfully Submitted:

CHESNOFF & SCHONFELD

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