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Attorneys for Defendant, ALEXANDER SMIRNOV

8  
9 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

10 \* \* \* \* \*

11  
12 UNITED STATES OF AMERICA, )

CASE NO. 2:24-CR-00091-ODW

13 Plaintiff, )

**DEFENDANT’S REPLY TO  
OPPOSITION TO MOTION TO  
COMPEL PRODUCTION OF  
DISCOVERY**

14 v. )

15  
16 ALEXANDER SMIRNOV, )

**Honorable Otis D. Wright II  
November 18, 2024, at 10:00 a.m.**

17 Defendant, )

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19  
20 **COMES NOW**, Alexander Smirnov by and through his attorneys, DAVID

21 Z. CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the law firm of

22 CHESNOFF & SCHONFELD, and hereby submits his Reply to the Government’s

23 Opposition to his Motion to Compel Production of Discovery.

1 This Reply is made and based upon the attached Memorandum of Points and  
2 Authorities, the papers and pleadings on file herein, and any oral argument that is  
3 heard by the Court.

4  
5 Dated this 31<sup>st</sup> day of October 2024.

6 CHESNOFF & SCHONFELD

7 /s/ David Z. Chesnoff

8 DAVID Z. CHESNOFF, ESQ.

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1 MEMORANDUM OF POINTS AND AUTHORITITES

2 I. GOVERNMENT’S REPRESENTATION AS TO ISSUES BEING  
3 RESOLVED:  
4

5 The government represents that the following requests are resolved:

- 6 1. Rule 16(a)(1)(F), (G) reports of examinations, scientific test, and expert  
7 reports. The government asserts that it is not aware of any such reports and  
8 will not be calling any experts at trial.  
9
- 10 2. The government acknowledges that the Defendant is entitled to *Giglio*  
11 material as requested in paragraphs 10 and 19 of Exhibit 2, the Defendant’s  
12 March 5, 2024, discovery letter. However, the government asserts that it  
13 will produce that material “at least” one week before trial. It should be noted  
14 that the request was made by the Defendant on March 5, 2024, and the late  
15 production proposed by the government may necessitate a trial delay.  
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17
- 18 3. The government, in response to requests number 24 to 27 of the March 5,  
19 2024 letter (requesting Burisma related communications), asserts that it has  
20 already produced this material (if it exists) or will produce this material as  
21 *Giglio* production at least one week before trial.  
22
- 23 4. The government asserts that it has produced the only U.S. Passport in its  
24 possession that belongs to Mr. Smirnov.  
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1           **II. UNRESOLVED ISSUES:**

2           1. The government asserts that it has produced communications between  
3           the Defendant and his Handler for the time period prior to 2016, as a  
4           result of the production of the Defendant's Icloud account and image  
5           of his i-phone. The government fails to recognize that Defendant, as  
6           a result of his services to the United States, utilized phones other than  
7           the i-phone and i-cloud account at issue. Those other devices were  
8           used to communicate with the FBI Handler that was assigned to Mr.  
9           Smirnov for over a decade. The government has failed to produce (or  
10          even explain why it refuses to produce) the communications from the  
11          Handler's electronic devices, which would be the only method of  
12          having a complete record of the Defendant's communication with his  
13          Handler.  
14          Handler.

15          Moreover, the production that Defendant's counsel has received does  
16          not include the entirety of communication prior to 2016. Rather, there  
17          are gaps in the communications. There are no text messages between  
18          Defendant and the Handler before January 16, 2014, there are no text  
19          messages from June 19, 2014 to November 11, 2015, there are no text  
20          messages from March 16, 2016 to April 20, 2016, and there are no  
21          emails before 2016. Most significant, the Whatsapp communication  
22          communication  
23          communication  
24          communication  
25          communication  
26          communication

1 between the Defendant and the Handler, a very common form of  
2 communication between them, only covers the time period of  
3 04/30/2016 through 03/27/2022.  
4

5 2. The Defendant requested, on March 5, 2024 at Paragraph 22 of the  
6 discovery letter, the Pittsburgh Assessment that is referenced in  
7 paragraph 22 of the Indictment. The Defendant, at paragraph 23 of  
8 the same letter, requested all communication between FBI Pittsburgh  
9 and Mr. Smirnov's Handler. These requests directly relate to  
10 allegations lodged in the Indictment. The government asserts that it  
11 has produced some of the material requested and the *Jencks* material  
12 "involving communications of testifying law enforcement officers"  
13 will be produced at least one week before trial. What the government  
14 failed to inform the Court is that the production it is referencing did  
15 not take place until October 25, 2024, notwithstanding that the request  
16 was made in March of 2024. The government has, and continues to,  
17 refuse to produce some of the additional material and asserts that it  
18 will produce *Jencks* material related to "testifying officers", which is  
19 a further limitation on what the government will produce. That  
20 limitation does not satisfy the request. The discovery at issue is  
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1 material, is referenced in the Indictment, and cannot be limited to only  
2 testifying witnesses.

3 The fact that the production was made on October 25, 2024, nearly 8  
4 months after the request was made, just over one month prior to trial,  
5 and after opposing the Defendant's request for a continuance of the  
6 trial date, should be deemed unacceptable by the Court.  
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8  
9 3. The Defendant requested all reports, memorandum and  
10 communications related to the alleged August 29, 2023, meeting  
11 between the FBI investigators and the Handler mentioned in  
12 paragraph 43-44 of the Indictment. This request was also made nearly  
13 eight months ago and the government claims that it will produce  
14 *Jencks* material at least one week before trial. The government's  
15 characterization of this request, limiting it to only *Jencks* material, is  
16 unacceptable. Again, this will likely necessitate a trial continuance.  
17 The government should not be permitted to have it both ways, on the  
18 one hand opposing a continuance of the trial, and on the other hand  
19 apparently withholding a volume of discovery until one week before  
20 trial.  
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24 4. The Defendant requested reports related to his efforts as a CHS for  
25 "opened official investigations" into third parties that Defendant  
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1 reported on (to his Handler) as a result of Defendant's interactions  
2 with Associate 1. The government asserts that it recently (October  
3 25, 2024) produced FBI Form 1023's that document  
4 information/allegations made by the Defendant about other  
5 individuals and entities. However, the government has not provided  
6 the complete contents of the investigations. Moreover, the  
7 government chooses to ignore that a request was made on March 5,  
8 2024, at paragraph 15, for the FBI 302 reports, Form FD1023, and/or  
9 any other reports/documentation related to Mr. Smirnov's  
10 cooperation with the FBI or any other agency of the United States  
11 Government. The government, in producing this late discovery after  
12 opposing a trial continuance, has provided no explanation for the  
13 lateness of the disclosure.

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18 5. The Defendant requested access to his seized phone so that the content  
19 can properly be examined. The Defendant offered to stipulate to the  
20 chain of custody and the government utilizing a mirror image of the  
21 phone for trial purposes. The government refused and still opposes  
22 the Defendant's request. At a minimum, the Court should order the  
23 government to produce the phone at the Courthouse where the United  
24 States Marshal Service can bring the Defendant, with his counsel  
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1 present, so that the Defendant and his counsel can inspect and access  
2 the content of the phone.

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4 6. The Defendant requested communication related to the request that  
5 U.S. Attorney David Weiss’s team “assist” with “an investigation of  
6 allegations” related to the FD-1023. The government refuses to  
7 produce this material and ignores that fact that the government chose  
8 to include the following language in the Indictment: “In July 2023,  
9 the FBI requested that the U.S. Attorney’s Office for the District of  
10 Delaware assist the FBI in an investigation of allegations related to  
11 the 2020 1023. At that time, the United States Attorney’s Office for  
12 the District of Delaware was handling an investigation and  
13 prosecution of Businessperson 1.” Accordingly, not only did the  
14 government, in its Indictment, place the communications at issue, it is  
15 clear that the communication are relevant and discoverable. This  
16 request has been outstanding since March 5, 2024.

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21 7. The Defendant requested U.S. Department of State records that were  
22 cited in a New York Times Article. Specifically, the request (which  
23 is at Exhibit 4 to Defendant’s Motion) provided: “According to news  
24 accounts published in the New York Times and reprinted by CNN on  
25 August 13, 2024, Hunter Biden’s letter (which, itself, has not been  
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1 released) “asked for help from the US State Department as he sought  
2 to make a deal for a Ukrainian gas company in Italy while his father  
3 was vice president . . . . According to the Times, Hunter Biden sent at  
4 least one letter to the US ambassador to Italy in 2016 on behalf of the  
5 company, Burisma, where he was a board member at the time. The  
6 outreach, a businessman involved in the project told the Times, came  
7 when the company was having difficulty securing regulatory approval  
8 for a geothermal project in Tuscany.” CNN, Hunter Biden asked State  
9 Dept. for Help Securing Burisma Project in 2016,  
10 <https://www.cnn.com/2024/08/13/politics/hunter-biden-state->  
11 [department-help-burisma-project](https://www.cnn.com/2024/08/13/politics/hunter-biden-state-) (Aug. 13, 2024).”

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15 This request directly relates to the allegations in the Indictment and  
16 the government, while attempting to minimize the nature of the  
17 request, has provided no explanation for the failure to produce. Given  
18 that material was apparently provided to the media, the government’s  
19 refusal to produce the material to the Defendant in this case is  
20 unfounded.  
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23 For the foregoing reasons, and based upon the law cited in Mr. Smirnov’s  
24 original motion, the Court should order production of the discovery outlined above.  
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1 Finally, it should be noted that the government's Opposition is the first time  
2 that the government has substantively asserted its position related to the numerous,  
3 and repeated, efforts on the part of Mr. Smirnov to secure discovery so that he can  
4 defend himself in this matter. Notwithstanding the foregoing, and the late  
5 production of discovery on October 25, 2024, the government opposed Mr.  
6 Smirnov's request for a trial continuance so that he can adequately prepare his  
7 defense.  
8  
9

10 DATED this 31<sup>st</sup> day of October, 2024.  
11

12 Respectfully Submitted:

13 CHESNOFF & SCHONFELD  
14

15 /s/ David Z. Chesnoff  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of October 2024, I caused the forgoing document to be served via the Court’s e-filing/e-service system a true and correct copy of the foregoing to all parties listed on the Court’s Service List.

/s/ Camie Linnell  
Employee of Chesnoff & Schonfeld

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