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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 * * * * *

15 UNITED STATES OF AMERICA,) CASE NO. 2:24-CR-00091-ODW
16)
17 Plaintiff,) **DEFENDANT’S OPPOSITION TO**
18) **“FOURTH MOTION *IN LIMINE***
19 v.) **TO EXCLUDE ALLEGED**
20) **DEFECTS IN THE**
21 ALEXANDER SMIRNOV,) **PROSECUTION” (ECF NO. 153)**
22)
23) **Honorable Otis D. Wright II**
24 Defendant.) **November 25, 2024 at 10:00 a.m.**
25)
26 _____)

27 Comes Now, Defendant Alexander Smirnov, by and through his counsel of
28 record David Z. Chesnoff, Esq., and Richard A. Schonfeld, Esq., and hereby submits
his Opposition to the Government’s “Fourth Motion In Limine to Exclude Alleged
Defects in the Prosecution,” filed November 1, 2024. *See* ECF No. 153 (“Gov.
Mot.”).

1 This Opposition is made and based upon the papers and pleadings on file
2 herein, the attached Memorandum of Points and Authorities, and any argument that
3 is heard.
4

5 Dated this 15th day of November, 2024.

6 Respectfully Submitted:

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8 CHESNOFF & SCHONFELD

9 /s/ David Z. Chesnoff

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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 **A. Background and Statement**

4 The two-count indictment in the present case (ECF No. 1) charges Mr.
5 Smirnov with: 1) Making False Statements to a Government Agent, in violation of
6 18 U.S.C. § 1001; and 2) Falsification of Records in a Federal Investigation, in
7 violation of 18 U.S.C. § 1519. As alleged in the indictment, Mr. Smirnov served as
8 a confidential human source (“CHS”) for the FBI for at least 10 years, from 2013
9 through October 2023. As shown from the discovery, the FBI reports documenting
10 Mr. Smirnov’s years of service to United States contain positive references and
11 commendations; they contain no evidence of him serving or aiding any foreign
12 government. Recognizing this, and seeking to convict Mr. Smirnov at any price, the
13 government is seeking to prevent Mr. Smirnov from adducing *any* evidence (or
14 asking *any* questions) that might add up to a fair and honest trial defense.
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19 In the present motion, the government seeks to preclude Mr. Smirnov from
20 “introducing evidence, argument, or questioning that suggests or otherwise implies
21 that the prosecution is politically motivated, that the government is selectively or
22 vindictively prosecuting him, that government agents or prosecutors engaged in
23 outrageous government misconduct, that the prosecution of him is unlawful for any
24 reason, that the prosecution is costly or inappropriately funded, or that the
25 prosecutors or agents are conflicted.” Gov. Mot. at 2 (emphases added).
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1 Critically, this Court has no intention of letting Special Counsel pursue his
2 evidence-blocking persecution of Mr. Smirnov. To the contrary, this Court made a
3 statement clearly indicating its intent to protect Mr. Smirnov’s right to a fair trial:
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5 [N]othing—we’re going to do absolutely nothing to interfere with your
6 ability to mount a vigorous defense, and if there are documents that will
7 enable you to do that, then, by all means, you’re entitled to those things,
8 absolutely entitled.

9 *United States v. Smirnov* (No. 2:24-CR-00091-ODW), Hear. Tr. (Sep. 9, 2024) at 22
10 (emphases added).

11 Mr. Smirnov relies on this Court’s reassurance to counterbalance the
12 prosecution’s desire to convict him not just by restricting—but by completely
13 gutting—his right to present a full and fair defense at trial. *See, e.g., Sherman v.*
14 *Gittere*, 92 F.4th 868, 878–79 (9th Cir. 2024) (“The constitutional right to ‘a
15 meaningful opportunity to present a complete defense’ is rooted in both the Due
16 Process Clause and the Sixth Amendment. [*Crane v. Kentucky*, 476 U.S. 683, 690]
17 (1986) (quoting [*California v. Trombetta*, 467 U.S. 479, 485] (1984); *see Chambers*
18 *v. Mississippi*, 410 U.S. 284, 294 (1973) *Washington v. Texas*, 388 U.S. 14, 19
19 (1967) (“The [Sixth Amendment] right to offer the testimony of witnesses, and to
20 compel their attendance, if necessary, is in plain terms *the right to present a defense,*
21 *the right to present the defendant’s version of the facts as well as the prosecution’s*
22 *to the jury so it may decide where the truth lies.*”) (emphases added).
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1 **B. Evidence and Inquiry Into the FBI’s Conduct, Bias, and Record-Keeping**
2 **Are Relevant to Mr. Smirnov’s Defense**

3 Mr. Smirnov intends, as part of his defense, to introduce relevant evidence
4 that his FBI handler often failed to competently document his (Mr. Smirnov’s)
5 communications and reports. As argued in another opposition to yet another one of
6 the government’s motions (ECF No. 152), Mr. Smirnov will adduce evidence in the
7 form of (among other things) the numerous specific acts of Mr. Smirnov
8 communicating with his Handler (and assisting the government), with no
9 corresponding record of the same. Such evidence impeaches the quality of the law
10 enforcement conduct in this case, which goes to the heart of Mr. Smirnov’s defense:
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14 1) that his Handler’s shoddy work involved repeatedly failing to follow appropriate
15 procedures; and 2) that this obvious negligence is consistent with the lack of record
16 keeping regarding Defendant’s disclosure related to Burisma, as claimed in the
17 Indictment. *See, e.g., Bowen v. Maynard*, 799 F.2d 593, 613 (10th Cir. 1986) (“A
18 common trial tactic of defense lawyers is to discredit the caliber of the investigation
19 or the decision to charge the defendant, and we may consider such use in assessing
20 a possible *Brady* violation”); *Lindsey v. King*, 769 F.2d 1034, 1042 (5th Cir. 1985)
21 (new trial granted to prisoner convicted in state court where withheld *Brady* evidence
22 “carried within it the potential . . . for the . . . discrediting . . . of the police methods
23 employed in assembling the case”);); *United States v. Sager*, 227 F.3d 1138, 1145
24 (9th Cir.2000) (quoting *Kyles*); *United States v. Sager*, 227 F.3d 1138, 1145 (9th
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1 Cir.2000) (quoting *Kyles v. Whitley*, 514 U.S. 419 (1995) and referring to “the utility
2 of attacking police investigations as ‘shoddy’”).
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4 To the extent the government (in its present motion) seeks to preclude specific
5 incidents of good conduct or incidents of sloppy record-keeping by labeling such
6 evidence “outrageous government misconduct” or evidence of an “unlawful”
7 prosecution (Gov. Mot. at 2), then this Court should reject such efforts based on the
8 precedent and this Court’s own assurance that “absolutely nothing” will “interfere
9 with [Mr. Smirnov’s] ability to mount a vigorous defense[.]” Hear. Tr. (Sep. 9, 2024)
10 at 22; *see also United States v. Ofray-Campos*, 534 F.3d 1, 36 (1st Cir. 2008)
11 (“Under the Confrontation Clause, a defendant has the right to cross-examine the
12 government’s witness about his bias against the defendant and his motive for
13 testifying.”) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).
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17 **C. Conclusion**
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19 For the foregoing reasons, Mr. Smirnov respectfully requests that this Court
20 deny ECF No. 153; rule that the evidence (and inquiry) discussed above is highly
21 probative of Mr. Smirnov’s trial defense and not “substantially outweighed” by any
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1 of Fed. R. Evid. 403's risks and dangers; and allow Mr. Smirnov to put on the trial
2 defense to which he is constitutionally entitled.
3

4 DATED this 15th day of November, 2024.

5 Respectfully Submitted:

6
7 CHESNOFF & SCHONFELD

8 /s/ David Z. Chesnoff

9 DAVID Z. CHESNOFF, ESQ.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2024, I caused the forgoing document to be filed electronically with the Clerk of the Court through the CM/ECF system for filing; and served on counsel of record via the Court’s CM/ECF system.

/s/ Camie Linnell
Employee of Chesnoff & Schonfeld