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12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 * * * * *

15 UNITED STATES OF AMERICA,)	
)	
16 Plaintiff,)	
)	CASE NO. 2:24-CR-00091-ODW
17 v.)	
)	
18 ALEXANDER SMIRNOV,)	DATE OF HEARING:
)	February 26, 2024
)	TIME OF HEARING: 9:00 a.m.
19 Defendant,)	
20 _____)	

21 **DEFENDANT’S OPPOSITION TO GOVERNMENT’S “APPLICATION**
 22 **FOR REVIEW OF MAGISTRATE JUDGE’S BAIL ORDER”**
 23

24 COMES NOW, Defendant, ALEXANDER SMIRNOV (“Mr. Smirnov”), by
 25 and through his attorneys, DAVID Z. CHESNOFF, ESQ., and RICHARD A.
 26 SCHONFELD, ESQ., of the law firm of CHESNOFF & SCHONFELD and hereby
 27

1 move this Honorable Court to follow both 1) the guidance of the Pretrial Services
2 Office in Las Vegas, Nevada, and 2) the ruling and guidance of the Honorable
3 Magistrate Judge Daniel J. Albregts, and deny the government's application for
4 pretrial detention. *See* Gov. App. (ECF No. 11) (Feb. 21, 2024).
5

6 This Opposition is made and based upon the attached Memorandum of Points
7 and Authorities; the transcript of the detention hearing before the Magistrate Judge
8 Albregts (Feb. 20, 2024) (attached as Exhibit 1) ("Tr."); the argument of counsel;
9 and any other such evidence as may be presented at the time of hearing on the
10 government's application.
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12

13 This opposition is timely.

14 Dated this 23rd day of February, 2024.
15

16 Respectfully Submitted:

17 CHESNOFF & SCHONFELD
18

19 /s/ Richard A. Schonfeld
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Background, Procedural History, and the Pretrial Services’**
3 **Recommendation of Pretrial Release on Conditions**

4 At the outset, Mr. Smirnov notes that he is an American citizen with dual-
5 nationality (United States and Israel); that the Government has possession of his
6 United States passport; that the undersigned counsel provided Mr. Smirnov’s Israeli
7 passport to the Pretrial Services Office for the District of Nevada after the detention
8 hearing on February 20, 2024; that he lives in Las Vegas, Nevada; that, before
9 moving to Las Vegas, he was a long time resident of the State of California; and that
10 he has no criminal history of any sort.
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14 Mr. Smirnov was arrested and detained on or about February 14, 2024, in Las
15 Vegas, Nevada. The two-count Indictment filed in the Central District of California
16 charges Mr. Smirnov with : 1) Making False Statements to a Government Agent, in
17 violation of 18 U.S.C. § 1001; and 2) Falsification of Records in a Federal
18 Investigation, in violation of 18 U.S.C. § 1519.
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21 As alleged in the Indictment, Mr. Smirnov served as a confidential human
22 source (“CHS”) for the FBI for several preceding years. Virtually all of the
23 allegations recited in Count One, however, occurred in 2020 (*see* Ind. at 34, ¶57)
24 and the alleged falsifications pertain to alleged acts taking place between 2015 and
25 2017. *See id.* at 34-35. Similarly, the alleged falsifications charged in Count Two
26 pertain to alleged acts that took place in June 2020.
27
28

1 It should further be noted that the United States Sentencing Guidelines
2 calculation for the offenses with which Mr. Smirnov is charged include a base
3 offense level of 14 which results in a sentencing range of 15-21 months if convicted
4 at trial. *See* U.S.S.G. § 2J1.2.¹

6 On February 15, 2024, after making an initial appearance, Mr. Smirnov – for
7 whom English is a second (if not third) language – was interviewed without counsel
8 (at that point, the Public Defender) by Emily McKillip, Senior United States Pretrial
9 Services Officer.

11 Officer McKillip thereafter prepared a Pretrial Services Report (“PTS”),²
12 recommending Mr. Smirnov’s release on the following conditions: 1) submit to
13 supervision by and report for supervision to the U.S. Pretrial Services Offices; 2)
14 continue to actively seek employment; 3) surrender any passport to U.S. Pretrial
15 Services; 4) travel is restricted to the continental United States; and 5) avoid all
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21 ¹ In anticipation of the Government asserting that every conceivable guideline
22 enhancement applies, which they do not, the highest guideline level that the
23 Government could seek is a level 19 which results in a sentencing range of 30-37
24 months.

25 Moreover, in addition to the low guidelines range at issue here, neither crime
26 charged in the Indictment carries a statutory presumption in favor of detention under
27 18 U.S.C. § 3142(e)(2),(3). *See* Tr. at 30.

28 ² Because it contains personal information regarding Mr. Smirnov, the PTS will be
cited to, but not included as an exhibit.

1 contact, directly or indirectly, who is or may be a victim or witness in the
2 investigation or prosecution, including: government provide witness list. PTS at 3.
3

4 **B. Additional Relevant Background Information**

5 Mr. Smirnov is 43 years old, has no prior criminal history, has been in a
6 relationship with his significant other, Diana Lavrenyuk (“Diana”), for decades,
7 resides with Diana in her home in Las Vegas, has lived in Las Vegas for two years,
8 has a Nevada Driver’s License, and lived in California for the 16 years prior to
9 moving to Las Vegas. Mr. Smirnov clearly has a stable residential history.
10
11

12 Mr. Smirnov also has significant ties to the United States with familial
13 relationships. Diana’s son (Nikolay Lavrenyuk, a former Marine Sergeant who has
14 been a part of Mr. Smirnov’s life for decades) lives in Washington D.C. along with
15 his wife and has a good relationship with Mr. Smirnov. Additionally, Mr. Smirnov’s
16 cousin Linor Shefer resides in Florida and, like Nikolay, she flew to Las Vegas at
17 her own expense to attend Mr. Smirnov’s detention hearing on February 20, 2024.
18
19 *See Letters at Exhibits 2 and 3, attached.*
20

21 Mr. Smirnov suffers from significant medical issues related to his eyes that
22 require ongoing treatment. Mr. Smirnov has had seven surgeries in the last year;
23 he must take prescription medication daily.
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1 It should be noted that Mr. Smirnov has no history of drug or alcohol abuse
2 and has no history of mental illness. His personal history supports release on
3 conditions to be fashioned by this Honorable Court.
4

5 **C. After Briefing and a Full Detention Hearing, Magistrate Judge Albregts**
6 **Orders Mr. Smirnov Released On Stringent Conditions**

7 From the outset, the Government has labelled Mr. Smirnov as inherently
8 untrustworthy. *See, e.g.*, Tr. at 6 (“[T]he defendant has demonstrated he can't be
9 trusted.”), 7 (alleging he “lied to his FBI handler), 10-13 (alleging defendant lied
10 about his net worth and cash in his various accounts), 14 (“So we’ve got lies, sort
11 of, big and small in his very first instance of interacting with the Court[.]”), 14-15
12 (alleging that, “in his first interaction with Pretrial Services and the Court, he
13 withheld information that shows he has access to millions of dollars that he could
14 use if he were to flee the United States”). The Government asserted that while Mr.
15 Smirnov lacked strong ties to the United States, *see* Tr. at 7-8 (“His family members
16 live in Israel. He doesn’t own any property here. He doesn’t have a job here
17 [T]hat doesn’t make for significant ties”), he did maintain ties with “foreign
18 intelligence.” *See* Tr. at 8 (claiming that Mr. Smirnov’s “contacts with foreign
19 intelligence services, specifically Russian intelligence services and operatives,” was
20 “*the most extraordinary feature* of this defendant”) (emphasis added).
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26 Throughout the Government’s presentation, the unbiased Magistrate Judge
27 periodically interjected with questions designed to determine the strength of the
28

1 connection between the Government’s torrent of allegations, on the one hand, and
2 the relevant statutory bail factors, on the other. The Magistrate Judge was, to be sure,
3
4 understandably alert to the potential flight risk posed by a dual citizen who routinely
5 travelled abroad. *See, e.g.*, Tr. at 38 (Magistrate Judge agrees that Mr. Smirnov’s
6 foreign contacts are factors it should “notice and note” and further agrees “that that’s
7
8 a concern and certainly raised by the Government that I should consider it”).

9 But the Magistrate Judge nevertheless questioned the Government whether
10 those foreign contacts were sufficiently pronounced to make the possibility of a
11 flight risk foreordained, and then preclude imposition of conditions to mitigate the
12 risk. Tr. at 38 (“I just don’t know . . . that that is *as grave a concern as the*
13 *Government outlines.*”) (emphasis added); *see also id.* (expressing skepticism that
14 Mr. Smirnov would jump bail here and try to settle in Russia: “[M]y guess is at this
15 stage he probably thinks that’s not the most attractive place to go . . .”).
16
17

18 Thus, when the Government suggested that Mr. Smirnov had lied about the
19 value of his assets to the Pretrial Services Officer, the ³Magistrate Judge proposed a
20
21

22 ³ Defense counsel stated (and the Government did not contest) the following:
23

24 Your Honor, we asked Pretrial Services about this question of
25 financial disclosure because when we read their motion this
26 morning, both Mr. Schonfeld and I said, “What happened here?”
27 So we contacted the Pretrial officer. We asked to meet with her.
28 And we asked her specifically, “Did you ask him about any other
account than a personal account?” And the officer was candid

1 less sinister alternative, particularly for a non-English speaker who had just been
2 arrested and was not, then, represented by counsel: “I mean, you’re so certain that
3 these are just blatant misrepresentations . . . why wouldn’t it possibly be confusion
4 when he’s just been arrested, he’s been taken into custody, and somebody shows up
5 and starts asking him questions?” Tr. at 12; *see also* id. at 25-26 (defense counsel
6 explains – and the Government never contests – the nature of Pretrial Services’
7 questioning of Mr. Smirnov).
8
9

10 The Magistrate Judge also questioned whether, as the Government suggested:
11
12 1) the United States would be flatly unable to find Mr. Smirnov if he did flee abroad
13 (*see* Tr. at 10: “You think the long arm of the United States of America couldn’t find
14 him on this planet?), or 2) Pretrial Services would somehow be unable to monitor
15 him if he tried to flee. *See* Tr. at 23 (Magistrate asks “[w]hat if I put geographical
16 limits on where he can go and we monitor that so that the minute he leaves Clark
17 County, Pretrial’s notified of that?” Government replies: “My understanding of the
18 technology is that it's not that – it is limited, that there are lags, that there are – you
19 know, that the geographic space is not tight enough to know if someone is in an
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23 _____
24 and said no. *It’s exactly why my client answered the question the*
25 *way he did because he was not asked about anything else.*

26 Tr. at 27-28 (emphasis added). Nor did Officer McKillip, who addressed the Court
27 repeatedly throughout the hearing, suggest that any of these representations were
28 inaccurate.

1 airport as opposed to some other location.”). The Government’s “limited . . .
2 understanding of the technology,” was indeed later shown to be just that – electronic
3 restrictions can, and often are, plausibly imposed as conditions of release. *See* Tr. at
4 41 (Officer McKillip assures the Court: “We *can* put an exclusion zone around the
5 airport so if he goes into the area of the airport, we *will* get notified.”) (emphases
6 added).
7
8

9 Having considered the parties’ arguments and invoked the applicable statutory
10 principles (primarily, the Bail Reform Act and Section 3142), the Magistrate Judge
11 issued a careful, balanced analysis:
12

13 I think *it’s pretty clear to this Court that Mr. Smirnov is a flight*
14 *risk by a preponderance of the evidence.* His dual citizenship, his
15 possession of passports, his foreign ties, his extensive foreign
16 travel, and some questions about his employment and where he
17 makes his money . . . clearly rise to the level that he’s a risk of
18 nonappearance by a preponderance of the evidence.

19 The bigger question . . . is *whether or not there are conditions or*
20 *a combination of conditions that can address those concerns.*

21 I do have concerns about his access to money and . . . some of
22 the representations made to Pretrial . . . , but I also place those in
23 the context of . . . the language issue, the nature of the Pretrial
24 interviews and how quickly they occur, he did not have counsel
25 at the time, the context in which the questions were asked. . . . *I*
26 *don’t know that . . . I’m convinced that he was sitting there . . .*
27 *intentionally lying to Pretrial to keep them from knowing about*
28 *his finances.* I just . . . don’t know that it rises to that level.

29 The other concern . . . is the allegations and his relationship with
30 his handler I do on some level . . . recognize that how he
31 deals with his handler and the FBI . . . would probably be

1 *different* than how he would treat a Court order or a Court
2 decision, and whether or not the lack of trust he showed,
3 according to the Government, with his handler would rise to the
4 level of a lack of trust that he would not follow my orders
5 *I'm not convinced of that given the complex nature of that*
6 *relationship.*

6 Tr. at 36-37 (emphases added).

7 The Magistrate then noted that, despite its wide-ranging attacks on Mr.
8 Smirnov, the substance of those attacks did not preclude the type of release
9 contemplated by the Bail Reform Act – particularly where the independent Pretrial
10 Services Office was itself recommending release on conditions.
11

12 The Government has argued the nature and circumstances of the
13 offense. They put about a quarter of their 28-page brief to discuss
14 the nature and circumstances and the weight of the evidence. And
15 . . . those are the least important factors And they argue that
16 his ties to the community are weak, and they've argued that both
17 in their pleading and here today such that there are no condition
18 or combination of conditions that would address that [I]
19 understand the concern about foreign intelligence agencies
20 potentially resettling Mr. Smirnov outside of the United States,
21 his connections to them, *but I think on some level that's*
22 *speculative as well*

21 [T]his Court . . . puts a lot of stock into Pretrial Services and their
22 investigation and their recommendations and their belief about
23 whether or not they believe somebody *can* be supervised with
24 conditions. And in this case Pretrial Services believes,
25 notwithstanding some of the issues that the Government's raised,
26 *and they acknowledge those issues*, they believe that Mr.
27 Smirnov *can* be supervised and that there *are* conditions that can
28 be placed upon him And so that carries weight with the
29 Court as well [I]t's not just [defense counsel] saying his
30 client should be released, *but Pretrial Services believes that*
31 *conditions can be fashioned.*

1
2 Tr. at 37-40 (emphases added).

3 The Magistrate Judge then fashioned the stringent conditions for Mr.
4 Smirnov's release.
5

6 I'm finding today that the Government has not met their burden
7 as it relates to conditions because I believe that conditions can be
8 fashioned because Pretrial believes that

9 I'm going to release you on your personal recognizance, which
10 is just your signature and promise to appear in court and to follow
11 these conditions. If you do not, that will be revoked and you will
12 be detained

13 I'm going to go through [the conditions] somewhat quickly. If
14 you don't understand everything, you will have time to talk to
15 [defense counsel] and make sure you understand.

16 First, you're to submit to supervision by Pretrial Services . . .
17 immediately . . . and follow their direction for supervision.

18 I'm going to allow them to order you to seek employment
19 [Y]ou're not going to be able to continue with your consulting
20 business while this case is pending. *You're going to have to*
21 *figure out some other way to conduct business because I'm not*
22 *going to allow foreign travel. In fact, I'm not going to allow any*
23 *travel.* So you need to seek employment that Pretrial approves
24 and that's appropriate while this case is pending.

25 You're to surrender your U.S. passport and your Israeli passport
26 to Pretrial Services immediately. I believe that the Government
27 took your United States passport. [Defense counsel]. . . shall give
28 [the Israeli passport] to Ms. McKillip upon the conclusion of this
hearing.

Number four, *you shall not obtain a passport or any other*
international travel documents.

1 Number five, I'm going to order you that your travel is restricted
2 to Clark County, Nevada I'm going to allow the travel in
3 Clark County alone and exclude you from the airport. *So if you*
4 *are in the zone of the airport, . . . they will be notified immediately*
. . . . So you are not allowed to go to that airport.

5 Tr. at 40-42.

6 Despite the stringency of these conditions, Mr. Smirnov – after being released
7 and spending a single day out of from custody – was rearrested at his lawyer's office
8 while preparing his defense. He was ordered detained and transported to California
9
10 *See Exhibit 4 (attached).*

11
12 **D. Statement of the Law: *De Novo* Review Does Not Justify Prejudging a**
13 **Detention Issue**

14 While this Court reviews the Magistrate Judge's release order under a *de novo*
15 standard, *see, e.g., United States v. Koenig*, 912 F.2d 1190, 1192-93 (9th Cir. 1990),
16 that non-deferential standard does not justify what is happening here: that is, *pre-*
17 *judging of a detention issue.*

18
19 Thus, in ordering Mr. Smirnov summarily rearrested, detained, and brought
20 to California, this Court stated flatly that – in doing their jobs and representing their
21 client – defense counsel was “likely to *facilitate his absconding* from the United
22 States.” Order Setting Hearing on Gov't Mot. for Review of Release Order (Feb. 22,
23 2024) at 1 (emphasis added) (attached as Exhibit 4). The suggestion that defense
24 counsel is participating in an unlawful plot by advocating for release under Section
25 3142 is wrong. The Court's Order stating that it had already granted the
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1 Government's Application, without having heard from the Defendant, further
2 revealed that this Court has already decided to detain Mr. Smirnov at the February
3
4 26 hearing.

5 Nevertheless, in a case where the detention issue had not been prejudged, the
6 starting point would be *United States v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095
7
8 (1987). There, the Supreme Court stated that, in the United States, liberty is the
9 norm, and detention is the carefully limited exception. The Court found that the Bail
10 Reform Act of 1984 operates only on individuals who have been arrested for
11 particularly serious offenses, and carefully delineates the narrow circumstances
12 under which detention is permitted.
13

14 The Bail Reform Act of 1984 does allow a court to detain a defendant if no
15 release conditions "will reasonably assure the appearance of the person and the
16 safety of any other person in the community." But it is only under those rare
17 circumstances where no condition or combination of conditions will reasonably
18 assure the appearance of the person as required and the safety of any other person in
19 the community, that a court may reasonably (not to mention, constitutionally) order
20 the pretrial detention of a never-convicted, presumptively innocent defendant like
21 Mr. Smirnov.
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25 These principles were reinforced in *United States v. Gebro*, 948 F.2d 1118
26 (9th Cir. 1991), where the Ninth Circuit stated that the Bail Reform Act required
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28

1 release of persons under the least restrictive condition or combination of conditions
2 that will reasonably assure appearance of the person and the safety of community.
3
4 *See Gebro*, 948 F.2d at 1121. “Only in rare circumstances should release be denied,
5 and doubts regarding the propriety of release should be resolved in the defendant's
6 favor.” *Id.* (citing *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985)).
7
8 Finally, “[o]n a motion for pretrial detention, the government bears the burden of
9 showing [1] by a preponderance of the evidence that the defendant poses a flight
10 risk, and [2] by clear and convincing evidence that the defendant poses a danger to
11 the community.” *Gebro*, 948 F.2d at 1121.⁴
12

13 Citing 18 U.S.C. § 3142(g), the *Motamedi* Court stated: “The court must take
14 into account available information concerning the nature and circumstances of the
15 offense charged, the weight of the evidence against the person, the history and
16 characteristics of the person, including his character, physical and mental condition,
17 family ties, employment, financial resources, length of residence in the community,
18 community ties, past conduct, history relating to drug and alcohol abuse, criminal
19 history, record concerning appearance at court proceedings, and the nature and
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25 ⁴ The parties and Magistrate Judge agreed that the principal detention issue in this
26 case concerns the risk of non-appearance, not the danger to the community. *See Tr.*
27 at 35 (“I’ll take the . . . the danger prong, which requires the Government to provide
28 evidence of clear and convincing evidence that he's a danger to the community.
That’s not what they’ve asked or argued, and that's not what any of the parties have
raised.”).

1 seriousness of the danger to any person or the community that would be posed by
2 the person's release.” *Motamedi*, 767 F.2d at 1407.
3

4 As shown below, these factors – coupled with the Pretrial Service Office’s
5 recommendation of pretrial release for Mr. Smirnov – militate overwhelmingly in
6 favor of release in this case. Pointedly, when he was arrested for a second time, Mr.
7 Smirnov was already free and working on his defense in his lawyers’ office. This is
8 hardly what would be expected of a person preparing to jump bail and flee the
9 country; to the contrary, had he not been rearrested, Mr. Smirnov would have
10 voluntarily traveled to Los Angeles with his lawyers to attend the upcoming hearing.
11
12

13 **E. The *Motamedi* Factors Militate Overwhelmingly In Favor Of Release:**

14 **Nature and seriousness of the offense charged.**

15 As stated above, Mr. Smirnov is charged under 18 U.S.C. § 1001 and 18
16 U.S.C. § 1519, both of which accuse him of making false statements in connection
17 the current president’s (and, particularly, the current president’s son’s) connection
18 to a business deal with a company based in Ukraine. These allegations are
19 makeweight and related to political issues; they do not involve espionage or theft
20 and are thus not “serious,” especially as to the penalty.
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23

24 **Weight of evidence against defendant.**

25 The Ninth Circuit has held that the “weight of the evidence” is the least
26 important factor to be considered during the pretrial detention hearing. *See, e.g.*,
27
28

1 *Motamedi*, 767 F.2d at 1408. This guards against the possibility of making a
2 “preliminary determination of guilt” that then leads to punishment in the form of a
3 refusal to grant release. *Id.* “The [] factor may be considered only in terms of the
4 likelihood that the person will fail to appear or will pose a danger to any person or
5 to the community.” *Id.*; *see also United States. v. Armstrong*, 2010 WL 5102203 (D.
6 Ariz. 2010) (granting pretrial release to defendant charged with two separate armed
7 bank robberies while recognizing that the evidence against the defendant was strong
8 because bank surveillance photos show her committing the robberies and because
9 she admitted her participation.).
10
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13 While it is not clear what the government’s evidence consists of at this
14 preliminary stage, Mr. Smirnov vigorously disagrees with the Government’s
15 recitation of the facts. That aside, when the “evidence factor” is considered in
16 conjunction with the other factors outlined here, the balance weighs in favor of
17 release.
18
19

20 **Defendant’s character, physical and mental condition.**

21 Mr. Smirnov has an exemplary character and is in good mental health. Mr.
22 Smirnov has ongoing medical issues related to his eyes and will need continuing
23 care.
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1 **Defendant's family and community ties.**

2 Mr. Smirnov has lived in Las Vegas for two years, lived in California for the
3 sixteen years prior to moving to Las Vegas, has relatives that live in the United
4 States, and has his long term significant other that he resides with in Las Vegas. He
5 thus has strong ties to the community and has the strong support of family and
6 friends.
7
8

9 **Defendant's past conduct, history relating to drug and alcohol abuse,**
10 **criminal history.**

11 Mr. Smirnov has no criminal history and there is no indication of any drug or
12 alcohol abuse whatsoever.
13

14 **The nature and seriousness of danger to any person or community that**
15 **would be posed by defendant's release.**

16 Mr. Smirnov is 43 years old and has no criminal history. Any concern that
17 Mr. Smirnov is a danger while on release can be adequately addressed through the
18 imposition of certain conditions including electronic monitoring, maintaining his
19 residence, travel restrictions, and any other condition the Court deems necessary.
20
21

22 **Additional, Critical Factors Unique to This Case.**

23 In the days leading up to his detention hearing on February 20, 2024 in
24 Nevada, Mr. Smirnov was detained by the U.S. Marshals. It took the undersigned
25 counsel several hours on February 16 (not to mention many phone calls), to secure
26
27
28

1 even a brief phone call with Mr. Smirnov – at which the matter of legal
2 representation, and nothing else, was discussed.

3
4 Moreover – and particularly relevant to the issue of pretrial release – a
5 representative from the facility where Mr. Smirnov is being held advised counsel: 1)
6 that Mr. Smirnov is in protective custody; and 2) that, given this restrictive
7 classification, the entire facility needed to be “frozen” just so Mr. Smirnov could
8 take this brief, non-substantive phone call. It is not anticipated that the confinement
9 conditions will be drastically different in Los Angeles.
10
11

12 Given the foregoing – and coupled with the volume of records that the
13 government will doubtless produce and the overriding need for in-person trial
14 preparation with the client – it will be virtually impossible to mount an effective trial
15 defense through intermittent telephone calls and truncated, sparse jail visits.
16

17 The federal courts warn that pretrial detention can hamstring trial preparation:

18
19 The Supreme Court has recognized that “to deprive a person of
20 counsel during the period prior to trial may be more damaging than
21 denial of counsel during trial itself.” *Maine v. Molton*, 474 U.S. 159,
22 170, 106 S. Ct. 477 (1985); see also *Wolfish v. Levi*, 573 F.2d 118,
23 133 (2d Cir.1978) (“[O]ne of the most serious deprivations suffered
24 by a pretrial detainee is the curtailment of his ability to assist in his
25 own defense.”), *rev’d on other grounds*, *Bell v. Wolfish*, 441 U.S.
26 520, 99 S. Ct. 1861 (1979).

27 *Estrada v. Munoz*, No. 2010 WL 1999525, at *2 (C.D. Cal. May 17, 2010).

28 Moreover, with Mr. Smirnov in custody he will not be able to facilitate his
counsel’s contact with critical witnesses, and assist counsel with language barriers

1 that are sure to exist. In *Kinney v. Lenon*, 425 F.2d 209 (9th Cir. 1970), the Ninth
2 Circuit found the detention of a juvenile to interfere with his due process right to a
3 fair trial, as the Defendant was likely the only person that witnesses would cooperate
4 with due to “age and race.” Here, with the cultural and language barriers, it is
5 anticipated that Mr. Smirnov will be the only person that can effectively contact and
6 facilitate interviews of critical witnesses for his defense.
7

8
9 Keeping Mr. Smirnov in custody will thus work an irreparable harm to his
10 ability – indeed, *right* – to prepare effectively for trial.
11

12 **F. Mr. Smirnov is Neither a Flight Risk Nor a Danger to the Community**

13 Federal courts embrace the “strong presumption against detention.” *See, e.g.,*
14 *United States v. Hanson*, 613 F. Supp. 2d 85, 87 (D.D.C. 2009); *United States v.*
15 *Karni*, 298 F. Supp. 2d 129 (D.D.C. 2004). And, along these lines, we refer this
16 Court to Letters attached at Exhibits 2 and 3 for a personal explanation as to why
17 Mr. Smirnov will not flee.
18

19
20 In both *Hanson* and *Karni*, the courts held that conditions for release could be
21 fashioned to ensure the appearance of defendants who – unlike the Mr. Smirnov –
22 did *not* have significant ties to the United States and who *did* pose a serious danger
23 to the United States. There, the defendant was an Israeli national who had been
24 residing in South Africa for the last eighteen years. He was charged with violating
25 federal law by allegedly acquiring “products that are capable of triggering nuclear
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1 weapons and [exporting] them to Pakistan, via South Africa, avoiding the
2 requirement of obtaining an export license for the devices.” *Karni*, 298 F. Supp. 2d
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4 at 130. Despite the serious nature of his crime and the fact that he “had no ties to the
5 United States or to the Washington, D.C. area,” the court determined that the
6 defendant should be released subject to certain conditions including release into third
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8 party custody, home detention, and electronic monitoring.

9 In *Hanson*, the defendant was a Chinese citizen who had become a naturalized
10 citizen of the United States. She was alleged to have illegally exported unmanned
11 aerial vehicle (“UAV”) autopilot components to the People's Republic of China.
12 According to the government, Mrs. Hanson carried these UAV components to
13 Germany and handed them to an acquaintance who took them to China. The
14 government represented that these sophisticated components enable UAVs to
15 perform certain tasks without the aid of human pilots, including autonomous take
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17 offs, bungee launches, and hand launches and landings, and that they have other
18 tactical military uses. Moreover, according to the government's expert, UAVs
19 equipped with these components could be used to simulate stealth planes and cruise
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21 missiles to test air defense detection systems, and potentially could be armed. The
22 government argued that she was a flight risk because 1) she had closer ties to China
23 than to the United States; 2) her marital relationship in the United States was
24 faltering, and she had no other family ties here; 3) she faced a steep jail sentence and
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1 the government had strong evidence against her; 4) it would have been easy for her
2 to get a new Chinese passport and depart to China; 5) and she had strong business
3 interests, family ties, and property in China. After hearing the evidence, the court –
4 like the Magistrate Judge in this case -- found that conditions *could* be fashioned that
5 would reasonably assure the defendant’s presence.
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8 These cases (and countless others like them) illustrate the type of conditions
9 that can easily be fashioned to ensure that Mr. Smirnov attends all Court hearings.

10 Again, it should also be noted that Mr. Smirnov is dual-citizen who is lawfully
11 in the United States. His dual citizenship should not be a concern for this Honorable
12 Court, and both Pretrial Services and the Magistrate Judge in Nevada have
13 recognized that conditions can be fashioned regarding the factor of alleged flight.
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1 **G. Conclusion**

2 Despite this Court having already decided to arrest Mr. Smirnov, we are
3 optimistic that it will apply the law of the Ninth Circuit and direct Mr. Smirnov's
4 release, consistent with Pretrial Services' and Magistrate Judge Albregts' prior
5 recommendations.
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8 DATED this 23rd day of February, 2024.

9 Respectfully Submitted:

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11 CHESNOFF & SCHONFELD

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 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/ Rosemary Reyes_____
Employee of Chesnoff & Schonfeld