

1 DAVID Z. CHESNOFF, ESQ.  
2 *Pro Hac Vice*  
3 RICHARD A. SCHONFELD, ESQ.  
4 California Bar No. 202182  
5 CHESNOFF & SCHONFELD  
6 520 South Fourth Street  
7 Las Vegas, Nevada 89101  
8 Telephone: (702) 384-5563  
9 dzchesnoff@cslawoffice.net  
10 rschonfeld@cslawoffice.net  
11 Attorneys for Defendant, ALEXANDER SMIRNOV

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 \* \* \* \* \*

15 UNITED STATES OF AMERICA, )  
16 )  
17 Plaintiff, )  
18 ) CASE NO. 2:24-CR-00091-ODW  
19 v. )  
20 )  
21 ALEXANDER SMIRNOV, )  
22 )  
23 Defendant, )  
24 )  
25 )  
26 )  
27 )  
28 )

21 **DEFENDANT'S EMERGENCY EX PARTE MOTION FOR MEDICAL**  
22 **FURLOUGH FOR THE NEXT THIRTY DAYS PURSUANT TO**  
23 **18 U.S.C. § 3142(i) OR IN THE ALTERNATIVE FOR AN ORDER**  
24 **REQUIRING THE UNITED STATES MARSHAL SERVICE TO**  
25 **TRANSPORT DEFENDANT FOR SURGERY AND POST-OPERATIVE**  
26 **CARE WITH DR. TANAKA IN SAN FRANCISCO, CALIFORNIA**

26 COMES NOW, Defendant, ALEXANDER SMIRNOV ("Mr. Smirnov"), by  
27 and through his attorneys, DAVID Z. CHESNOFF, ESQ., and RICHARD A.  
28

SCHONFELD, ESQ., of the law firm of CHESNOFF & SCHONFELD and hereby Submits his Emergency *Ex Parte* Motion for Medical Furlough for the Next 30 Days pursuant to the authority of 18 U.S.C. § 3142(i). Specifically, Defendant is seeking to be released on March 26, 2024, so that he can travel to San Francisco, California, for eye surgery on March 27, 2024, with H. George Tanaka, MD and to attend all medically required post-operative care through April 26, 2024.

Alternatively, Defendant requests that this Honorable Court issue an Order requiring the United States Marshal Service to transport Defendant for surgery to take place on March 27, 2024, at 7:00am with Dr. Tanaka as well as for all post-operative appointments<sup>1</sup>.

This Emergency *Ex Parte* Motion is made and based upon the attached Memorandum of Points and Authorities, Declaration of Counsel, the letter from

---

<sup>1</sup> On March 8, 2024, Counsel Chesnoff spoke to a United States Marshals' Office Los Angeles representative (named either R. Kith or R. Keith) who works in Detention Management. The following is a summary of the conversation, and it is to the best of counsel's recollection (and if there are any inaccuracies counsel will stand corrected). The representative of the USMS stated that it would not be within the Marshals' protocol to travel with a prisoner for six hours to San Francisco for surgery. He further stated that the process requires the Defendant to first notice the medical staff at the Santa Ana City jail of his medical problem issues. After that, a medical staff member will be assigned to evaluate Defendant's request for surgery and his underlying medical issues. That medical staff member in turn should make a recommendation to the national USMS medical center who in turn either denies the request for the surgery or directs the jail and the USMS to utilize a surgeon under contract to the jail for the procedure. As stated herein, it is respectfully submitted that this protocol will not address Defendant's serious eye issues in a timely manner and may result in irreparable harm. For that reason, that Defendant is seeking the alternative remedy of a Court Order directing the USMS to transport Defendant for the surgery and post-operative care with Dr. Tanaka.

1 Dr. Tanaka submitted herewith, and the curriculum vitae of Dr. Tanaka submitted  
2 herewith.

3  
4 Undersigned counsel conferred with counsel for the government via email  
5 on March 8, 2024, but the parties could not resolve the issues. The government  
6 opposes this Motion.

7  
8 This *Ex Parte* Motion is brought in light of the emergency medical issues  
9 related to Defendant's health, specifically Defendant's eyes and as further detailed  
10 in the attached letter from Dr. Tanaka. Undersigned counsel has also notified  
11 counsel for the government, via email, of the filing of this *Ex Parte* Motion.

12  
13 Dated this 11<sup>th</sup> day of March, 2024.

14  
15 Respectfully Submitted:

16 CHESNOFF & SCHONFELD

17  
18 /s/ David Z. Chesnoff

19 DAVID Z. CHESNOFF, ESQ.

20 *Pro Hac Vice*

21 RICHARD A. SCHONFELD, ESQ.

22 California Bar No. 202182

23 520 South Fourth Street

24 Las Vegas, Nevada 89101

25 Telephone: (702)384-5563

26 rschonfeld@cslawoffice.net

27 dzchesnoff@cslawoffice.net

28 Attorneys for Defendant

ALEXANDER SMIRNOV



**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. THE COURT SHOULD ORDER THAT DEFENDANT BE RELEASED ON MEDICAL FURLOUGH FOR THE NEXT THIRTY DAYS PURSUANT TO 18 U.S.C. § 3142(i) SO THAT DEFENDANT CAN TRAVEL TO SAN FRANCISCO, CALIFORNIA, FOR EYE SURGERY ON MARCH 27, 2024, WITH DR. TANAKA AND SO THAT DEFENDANT CAN OBTAIN ALL MEDICALLY REQUIRED POST-OPERATIVE CARE**

On February 26, 2024, at the Detention Hearing for Mr. Smirnov, counsel Chesnoff advised the Court of his concern related to Mr. Smirnov's glaucoma and the need for surgery. Notwithstanding the significant medical concern, Mr. Smirnov was Ordered detained and is now in the custody of the United States Marshals Service.

Attached hereto as Exhibit A is a letter from H. George Tanaka, MD, the physician responsible for treatment related to Mr. Smirnov's significant eye condition.

Attached hereto as Exhibit B is the curriculum vitae ("CV") for Dr. Tanaka. The CV reflects that Dr. Tanaka graduated from the Harvard Medical School, performed his internship at the Harvard Medical School, and did his Fellowship in Glaucoma Service at the Department of Ophthalmology Northwestern University.

Dr. Tanaka recites in his letter that Mr. Smirnov has a history of advanced open angle glaucoma in both eyes. Mr. Smirnov has undergone several surgeries to treat his glaucoma and prevent blindness; however, his intraocular pressure

1 continues to be poorly controlled despite maximal tolerated medical therapy. Mr.  
2 Smirnov has suffered severe optic nerve damage from glaucoma. In spite of multiple  
3 surgeries in both eyes Mr. Smirnov's intraocular pressure is under poor control, even  
4 with maximal tolerated medical therapy. Therefore, Mr. Smirnov requires additional  
5 glaucoma surgery to lower his intraocular pressure and prevent irreversible blindness  
6 from glaucoma.  
7

8  
9 Dr. Tanaka has scheduled Mr. Smirnoff to have glaucoma surgery in his right  
10 eye on March 27, 2024, at Eye Surgery Center of San Francisco, San Francisco,  
11 California, located at 1160 Post Street, San Francisco, California. The surgery will  
12 be performed at 7:00 AM and he will be required to report to this facility at 6:00 AM  
13 for pre-operative registration and preparation. This surgery is an outpatient  
14 procedure done under local anesthesia and does not require an overnight hospital  
15 stay. As this surgery entails some risks (surgical failure, infection, bleeding, need  
16 for re-operation, loss of vision), Mr. Smirnov will require weekly post-operative  
17 visits after his surgery to monitor his healing and manage any potential post-  
18 operative complications. In addition, Mr. Smirnov requires daily application of  
19 glaucoma eyedrop medication to control his intraocular pressure until he undergoes  
20 his surgery on March 27, 2024.  
21

22  
23 He will also require daily application of post-operative eyedrop medications  
24 to prevent infection and encourage proper healing of his operated eye.  
25  
26  
27  
28

1        **i. IRREPARABLE HARM**

2        Undersigned counsel does not take the submission of this *Ex Parte*  
3  
4        Motion lightly. Due to the time sensitive nature of the request (given that  
5        surgery is scheduled for 16 days from now), and in light in Defendant's medical  
6        condition, and the need for surgery to lower his intraocular pressure and prevent  
7        irreversible blindness from glaucoma, it is respectfully submitted that emergency ex-  
8        parte relief is warranted under the circumstances. It is respectfully submitted that  
9        the threat of irreparable harm (i.e. blindness/loss of eyesight) is not speculative.  
10

11  
12        As detailed in Dr. Tanaka's letter:

13        Mr. Smirnoff [has] a history of advanced open angle glaucoma in both  
14        eyes. Mr. Smirnov has undergone several surgeries to treat his  
15        glaucoma and prevent blindness; however, his intraocular pressure  
16        continues to be poorly controlled despite maximal tolerated medical  
17        therapy. Mr. Smirnoff has suffered severe optic nerve damage from  
18        glaucoma and as a result has marked constriction of his peripheral  
19        vision in both eyes. (see enclosed visual field tests) In spite of multiple  
20        surgeries in both eyes Mr. Smirnov's intraocular pressure is under poor  
21        control, even with maximal tolerated medical therapy. Therefore, Mr.  
22        Smirnov requires additional glaucoma surgery to lower his intraocular  
23        pressure and prevent irreversible blindness from glaucoma....

24        Mr. Smirnov will require weekly post-operative visits after his surgery  
25        to monitor his healing and manage any potential post-operative  
26        complications. These postoperative visits should be performed by a  
27        fellowship-trained glaucoma specialist such as myself in a properly  
28        equipped ophthalmic outpatient clinic.

29        In addition, Mr. Smirnov requires daily application of glaucoma  
30        eyedrop medication to control his intraocular pressure until he  
31        undergoes his surgery on March 27. He will also require daily



1 application of post-operative eyedrop medications to prevent infection  
2 and encourage proper healing of his operated eye.

3 *See* Exhibit A.

4 **B. STATEMENT OF LAW**

5  
6 18 U.S.C. § 3142(i) provides that this Court (as “judicial officer”) “may, by  
7 subsequent order, permit the temporary release of the person, in the custody of a  
8 United States marshal or another appropriate person, to the extent that the judicial  
9 officer determines such release to be necessary for . . . *another compelling reason.*”

10  
11 18 U.S.C.A. § 3142(i) (emphasis added).

12  
13 Mr. Smirnov’s medical condition is “compelling” and thus warrants  
14 temporary release on a medical furlough for 30 days. First, he cannot receive the  
15 needed surgery for his eye condition in the facility where he’s currently housed; in  
16 fact, that facility does not have a surgical theatre. Second, his eye condition is  
17 causing him pain today: he is not simply “worried” that his eyes “might” worsen at  
18 some indeterminate point in the future. Third, he will gladly consent to the  
19 imposition of any other reasonable conditions of temporary release while on medical  
20 furlough. And fourth, he was fully compliant with his prior conditions of release  
21 during the short, two-day period after his release but prior to his second arrest.  
22  
23 *Compare United States v. Parton*, No. 321CR107KACJEM1, 2023 WL 2957803, at  
24  
25 \*1 (E.D. Tenn. Apr. 14, 2023) (unpublished) (unlike Mr. Smirnov’s case, 1) “staff  
26 at [the convicted Parton’s] detention facility have provided him proper medical care  
27  
28

1 and assistance;” 2) Parton “speculatively” worried about “potentially getting an  
2 infection” while awaiting sentencing in custody; and 3) Parton’s “prior conduct  
3 while on pretrial release in this case continues to demonstrate that he poses a serious  
4 flight risk and ‘danger to the safety of any other person or the community’).

6 Here, it is respectfully submitted that it would be objectively unreasonable for  
7 the government to oppose and restrict the requested, “compelling” medical  
8 procedures and treatment for Defendant.

10 In addition, it should be noted that the Eighth Amendment to the United States  
11 Constitution prohibits “cruel and unusual punishments...” Moreover, substantive  
12 due process requires the government to provide medical care to persons who are  
13 injured while in custody. *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244  
14 (1983). The Supreme Court’s decision in *Kingsley v. Hendrickson*, 576 U.S. 389  
15 (2015) changed the landscape for claims by pre-trial detainees. *Kingsley* recognized  
16 that the Fourteenth Amendment (and by extension, the Fifth) provides a different  
17 constitutional standard than the Eighth Amendment for non-prisoner excessive force  
18 claims; while the Eighth Amendment prohibits only cruel and unusual punishment,  
19 “pretrial detainees (unlike convicted prisoners) cannot be punished at all.” *Id.* at  
20 400. The *Kingsley* Court therefore held that, under the Due Process clauses, a  
21 government official need not be subjectively aware that their actions are  
22 unreasonable; an aggrieved individual need only show that the government’s  
23  
24  
25  
26  
27  
28



1 conduct was objectively unreasonable under the circumstances. *See id.* at 391-92.  
2 Since it was decided, the Ninth Circuit Court of Appeals has held that medical-care  
3 claims brought by pretrial detainees under the Fourteenth Amendment are subject to  
4 the objective unreasonableness inquiry. *Gordon v. Cnty. of Orange*, 888 F.3d 1118,  
5 1120, 1122-25 (9th Cir. 2018) (medical-need claim).  
6  
7

8 **C. ALTERNATIVE RELIEF**

9 As described in footnote number 1, the USMS has a procedure for an inmate  
10 to request treatment through the USMS. That procedure entails multiple levels of  
11 review and ultimately may, or may not, result in Defendant receiving the needed  
12 surgery. However, if the surgery were to take place, it would not be done by Doctor  
13 Tanaka. Dr. Tanaka has been the Defendant's treatment provider, has excellent  
14 credentials, and is the most familiar with the Defendant's treatment needs.  
15  
16

17 Accordingly, notwithstanding the USMS policy described in footnote 1, if this  
18 Honorable Court does not grant the medical furlough request it is respectfully  
19 requested that this Honorable Court enter an Order directing the USMS to transport  
20 Defendant for surgery to take place on March 27, 2024, at 7:00am with Dr. Tanaka  
21 as well as for all post-operative appointments.  
22  
23  
24  
25  
26  
27  
28

1 **D. CONCLUSION**

2 Defendant respectfully requests that this Honorable Court grant this  
3  
4 Emergency *Ex Parte* Motion for Medical Furlough for the Next 30 Days pursuant  
5 to 18 U.S.C. § 3142(i). Specifically, Defendant should be released from custody  
6 and permitted to be able to travel to San Francisco, California, for eye surgery on  
7  
8 March 27, 2024, with Dr. Tanaka and to attend all medically required post-  
9 operative care through April 26, 2024.

10 DATED this 11<sup>th</sup> day of March, 2024.

11  
12 Respectfully Submitted:

13 CHESNOFF & SCHONFELD

14  
15 /s/ David Z. Chesnoff

16 DAVID Z. CHESNOFF, ESQ.

17 *Pro Hac Vice*

18 RICHARD A. SCHONFELD, ESQ.

19 California Bar No. 202182

20 520 South Fourth Street

21 Las Vegas, Nevada 89101

22 Telephone: (702)384-5563

23 rschonfeld@cslawoffice.net

24 dzchesnoff@cslawoffice.net

25 Attorneys for Defendant

26 ALEXANDER SMIRNOV  
27  
28

**DECLARATION OF COUNSEL**

I, David Z. Chesnoff, do hereby declare that the following statements are true and correct:

1. I am co-counsel of record for Defendant Alexander Smirnov in this case;
2. The assertions in the underlying Motion are true and correct to the best of my knowledge and belief.
3. Undersigned counsel, in conjunction with counsel Schonfeld, conferred with counsel for the government via email on March 8, 2024, but the parties could not resolve the issues.
4. This *Ex Parte* Motion is brought in light of the emergency issues related to Defendant's health, specifically Defendant's eyes and as detailed in the attached letter from Dr. Tanaka.
5. Undersigned counsel, in conjunction with counsel Schonfeld, has also notified counsel for the government via email of the filing of this *Ex Parte* Motion. Specifically, the following counsel for the government are being notified by email of this Motion:

Derek Edward Hines  
US Department of Justice  
Office of Special Counsel David C. Weiss  
950 Pennsylvania Avenue NW Room B-200  
Washington, DC 20530  
771-217-6091  
Email: deh@usdoj.gov



1 Leo J. Wise  
2 US Department of Justice  
3 Office of Special Counsel David C. Weiss  
4 950 Pennsylvania Avenue, NW, Room B-200  
5 Washington, DC 20530  
6 771-217-6091  
7 Email: LJW@USDOJ.GOV (Inactive)

8 Christopher Michael Rigali  
9 Office of Special Counsel, U.S. Dept. of Justice  
10 950 Pennsylvania Avenue NW, Room B-200  
11 Washington, DC 20530  
12 202-616-2652  
13 Email: christopher.rigali2@usdoj.gov

14 Sean F Mulryne  
15 Office of the Special Counsel - Weiss  
16 950 Pennsylvania Avenue NW, Room B-200  
17 Washington, DC 20530  
18 202-430-4880  
19 Email: sfm@usdoj.gov

20 I declare under penalty of perjury under the laws of the United States of  
21 America that the foregoing is true and correct.

22 Executed on this 11<sup>th</sup> day of March, 2024.

23  
24  
25  
26  
27  
28



DAVID Z. CHESNOFF

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of March, 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