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 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

No. CR 2:24-cr-00091-ODW

GOVERNMENT’S OPPOSITION TO
DEFENDANT’S SECOND RENEWED
EMERGENCY *EX PARTE* MOTION FOR
(1) PROVISION OF EYE DROPS, AND
(2) MEDICAL FURLOUGH

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 19 Defendant Alexander Smirnov (“Defendant”) filed a second renewed emergency
 20 motion yesterday seeking the immediate provision of eye drops to Defendant and a
 21 medical furlough during which Defendant may pursue surgery with his doctor, Dr. Tanaka.
 22 ECF No. 70. This afternoon, defense counsel—for the first time—clarified *which* eye
 23 drops they believe Defendant needs, naming three prescriptions. ECF No. 71. Thereafter,
 24 government counsel was able to confirm that Defendant, through Santa Ana City Jail, has
 25 in fact been receiving two of these prescriptions, and counsel for Defendant (Mr.
 26 Chesnoff) just confirmed to government counsel that Defendant is indeed already getting
 27 two of these prescriptions (but stated it is Dr. Tanaka’s view that Defendant needs all
 28 three).

1 In any event, the motion should be denied. As explained below, the government
2 understands that Defendant is being moved (imminently) to a different prison facility
3 where the U.S. Marshals Service expects he will have access to medical care he needs.
4 Defendant’s extraordinary request for a medical furlough should be denied for the reasons
5 set forth in its prior filings—namely, that Defendant is a flight risk and the U.S. Marshals
6 Service have reasonable procedures in place to ensure that the medical needs of persons
7 in its custody are met. Regarding Defendant’s request for the immediate provision of eye
8 drops, government counsel provided the list of prescriptions recommended by Dr. Tanaka
9 to a Deputy U.S. Marshal, who is providing the information to the new prison facility. In
10 short, the Marshals Service is actively taking steps to address Defendant’s medical needs,
11 including by moving him to a facility where they expect he will have access to appropriate
12 medical care.

13 Dated: May 22, 2024

14 Respectfully submitted,

15 DAVID C. WEISS
16 Special Counsel

17 /s/ _____

18 LEO J. WISE
19 Principal Senior Assistant Special Counsel

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25 United States Department of Justice
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. BACKGROUND & ARGUMENT

3 On March 11, 2024, Defendant filed a motion seeking a “medical furlough” during
4 which he would be released from custody for approximately 30 days. Specifically,
5 Defendant sought release for surgery with a doctor in San Francisco and then to attend
6 weekly post-operative care visits. Alternatively, if his furlough was denied, Defendant
7 asked this Court to order the United States Marshals Service (“USMS”) to transport him
8 to his surgery and post-operative visits. On March 13, 2024, the Court denied
9 Defendant’s motion, noting the established protocol for inmates to request and receive
10 medical treatment through USMS and the local custodial facility, and concluding: “The
11 Court finds the established protocol is reasonable, considering the limited resources of
12 the USMS and the fact that he is presently housed in a large metropolitan area equipped
13 with first-rate medical resources necessary to address defendant’s needs while not
14 compromising the security interests of the government.” ECF No. 56. The Ninth Circuit
15 affirmed this Court’s denial of Defendant’s motion. No. 24-1133, ECF No. 14. On March
16 26, 2024, this Court also denied Defendant’s motion for reconsideration. ECF No. 63.

17 On May 10, 2024, Defendant filed a renewed motion for the immediate provision
18 of eye drops and a court order directing the immediate scheduling of, and transportation
19 to, his eye surgery. ECF No. 67. On May 15, 2024, this Court denied Defendant’s motion
20 as moot, noting that “surgery has been scheduled to take place in less than two weeks[.]”
21 ECF No. 69.

22 Defendant now files a second renewed motion seeking similar relief, *i.e.*, (1) the
23 immediate provision of eye drops and (2) a medical furlough so Defendant may pursue
24 surgery with his doctor, Dr. Tanaka, in San Francisco. The Court should deny (once
25 again) this extraordinary request for relief.

26 Reading Defendant’s motion, government counsel was under the impression that it
27 was the defense’s assertion that Defendant was receiving no eye drops whatsoever.
28

1 Government counsel asked defense counsel (Mr. Chesnoff) this morning to specify the
2 prescriptions they believed Defendant needs; thereafter, defense counsel furnished the
3 name of three prescriptions recommended by Dr. Tanaka, and later filed a supplement to
4 the instant motion to that effect. *See* ECF No. 71 (identifying three prescription
5 medications). Late this afternoon, a Deputy U.S. Marshal advised government counsel
6 that Defendant was actively receiving two medications for his eyes—both of which were
7 on the list furnished by defense counsel. Counsel Chesnoff subsequently confirmed that
8 Defendant is indeed already getting two of these prescriptions (but stated it is Dr.
9 Tanaka’s view that Defendant needs all three). As such, it is not the case that Defendant
10 is not receiving any prescription medication to address his apparent eye issues (and it is
11 not clear from Dr. Tanaka’s letter if he was aware Defendant is in fact receiving two of
12 these prescriptions). In any event, government counsel furnished a Deputy U.S. Marshal
13 with the list of prescriptions recommended by Dr. Tanaka, and the Deputy U.S. Marshal
14 confirmed he would provide that list to the facility where Defendant is housed.

15 The Marshals Service is also actively taking other steps to address Defendant’s
16 medical needs. Earlier today (May 22, 2024), a Deputy U.S. Marshal advised that, to
17 facilitate Defendant’s medical needs and access to certain care, the Marshals Service
18 requested to move Defendant to a Bureau of Prisons (“BOP”) facility—MDC Los
19 Angeles—where the Marshals Service expects Defendant to have access to medical care
20 that will address the issues he raises in his motion (whether at the facility or through
21 services provided by outside providers). Upon arrival at MDC Los Angeles, Defendant
22 will undergo a medical screening, where his current medical needs will be assessed and
23 treated accordingly.¹ And again, the Deputy U.S. Marshal advised that he intends to
24 furnish MDC Los Angeles with the above-referenced prescription information provided

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1 Government counsel was advised today that the medical procedure that was
previously scheduled for next week is not currently on the schedule. It is anticipated that
once he receives his medical screening at MDC Los Angeles, any necessary appointments
and procedures will be rescheduled.

1 by defense counsel. The Deputy Marshal has advised that the transfer from the Santa
2 Ana City Jail to MDC Los Angeles will happen imminently. As with any inmate, the
3 government expects the inmate to receive, in accordance with applicable policies and
4 procedures, necessary medical treatment while in BOP and Marshals Service custody.

5 Defendant's request for a medical furlough should be denied for the reasons argued
6 by the government in its prior briefings on this issue, *see* ECF Nos. 54, 62, 68; for the
7 reasons set forth by this Court in its previous orders denying the same request, *see* ECF
8 Nos. 56 & 63; and because Defendant presents a substantial flight risk as recognized by
9 both this Court and the Ninth Circuit, *see* ECF Nos. 15 & 46; No. 24-1133, ECF No. 14.
10 Further, Defendant's request for immediate provision of eye drops should be denied
11 because the Marshals Service is actively taking steps to address Defendant's medical
12 needs, including by (a) ensuring he is receiving prescription medication for his eyes; and
13 (b) expeditiously moving him to a facility where they expect he will have access to
14 medical care that he needs (including the specific issues raised in his motion(s)).

15 II. CONCLUSION

16 Based on the above, this Court should deny Defendant's Second Renewed
17 Emergency *Ex Parte* Motion for (1) Provision of Eye Drops, and (2) Medical Furlough.
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DECLARATION OF COUNSEL

I, Christopher M. Rigali, do hereby declare that the following statements are true and correct to the best of my knowledge and belief:

1. I am co-counsel of record for the United States of America in this case.
2. The assertions in the underlying brief are true and correct to the best of my knowledge and belief.
3. Undersigned counsel conferred with the United States Marshals Service (“USMS”), specifically a Deputy U.S. Marshal, on May 22, 2024.
4. The Deputy U.S. Marshal advised that, according to Santa Ana City Jail, Defendant is currently receiving, on a daily basis, (a) timolol (twice per day), and (b) bimatoprost (once every evening).
5. The Deputy U.S. Marshal advised that, to further facilitate Defendant’s medical needs, Defendant was being transferred from the Santa Ana City Jail to MDC Los Angeles.
6. The Deputy U.S. Marshal stated that he expects Defendant to have access to medical care he needs once in a Bureau of Prisons facility. He also advised that Defendant would receive a medical screening upon intake at MDC Los Angeles. The Deputy U.S. Marshal advised he would specifically raise Defendant’s medical concerns to the MDC Los Angeles staff.

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record for Defendant.

Dated: May 22, 2024

/s/ _____

LEO J. WISE
Principal Senior Assistant Special Counsel

DEREK E. HINES
Senior Assistant Special Counsel

SEAN F. MULRYNE
CHRISTOPHER M. RIGALI
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