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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-00702-ODW
)	
16 Plaintiff,)	DEFENDANT’S SENTENCING
)	MEMORANDUM IN MITIGATION
17 v.)	OF PUNISHMENT
)	
18 ALEXANDER SMIRNOV,)	
)	Honorable Otis D. Wright II
19 Defendant,)	January 8, 2025 at 10:30 a.m.
_____)	

20
 21 Comes Now, Defendant Alexander Smirnov, by and through his counsel of
 22 record, David Z. Chesnoff, Esq., and Richard A. Schonfeld, Esq., of the law firm of
 23 Chesnoff & Schonfeld, and hereby submits his Sentencing Memorandum in
 24 Mitigation of Punishment in advance of the sentencing hearing set for January 8,
 25 2025.
 26
 27
 28

1 At the time of filing this Sentencing Memorandum, Mr. Smirnov has not
2 received the Presentence Investigation Report (“PSR”), which is being produced on
3 an expedited basis. Mr. Smirnov reserves the right to respond and/or object to the
4 PSR at the time of the sentencing hearing.
5

6 This Memorandum is made and based upon the papers and pleadings on file
7 herein, any exhibits to this Memorandum, and any argument that is heard or
8 testimony that is adduced.
9

10 Dated this 24th day of December, 2024.
11

12 Respectfully Submitted:

13 CHESNOFF & SCHONFELD

14 /s/ David Z. Chesnoff

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| 1. | FILED UNDER SEAL |
| 2. | FILED UNDER SEAL |
| 3. | Letter from Dr. H. George Tanaka |
| 4. | Letter from Anet Smirnov |
| 5. | Letter from Ekaterina Li |
| 6. | Letter from Anna Stone |
| 7. | Letter from Angelika and Anatoly Baryshevs |
| 8. | Letter from Linor Shefer |
| 9. | Letter from Diana Lavrenyuk |
| 10. | Letter from Alexei Odesskiy |

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. INTRODUCTION**

4 Mr. Smirnov accepts responsibility for his conduct which led to his conviction
5 in this case. As will be discussed below, Mr. Smirnov is a dedicated family member
6 and friend. He has support from his family, friends, and his community. He is a
7 caring and compassionate person. Furthermore, the attached letters show that he has
8 been a person of good character and that his remorse is sincere. Mr. Smirnov is a
9 first-time offender and a former Confidential Human Source (“CHS”) who faithfully
10 and effectively served the Federal Bureau of Investigation (“FBI”) for over a decade.
11 *See infra.* Moreover, it is respectfully submitted that Mr. Smirnov is not a danger to
12 the public and he has significant health issues related to his eyes. *See infra.*

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16 It is respectfully submitted that in accordance with the negotiations in this
17 case, this Honorable Court should impose a custodial sentence of no more than 48
18 months. Due to the unique circumstances of this case, it is submitted that such a
19 sentence is sufficient, but not greater than necessary to comply with the statutory
20 purposes of sentencing and would sufficiently deter and promote respect for the law.

21
22 **II. PROCEDURAL HISTORY AND PLEA NEGOTIATIONS**

23
24 Mr. Smirnov was arrested for the first time in his life on or about February 14,
25 2024, in Las Vegas, Nevada. The two-count Indictment filed in the Central District
26 of California (“Ind. No. 1”) charged Mr. Smirnov with: 1) Making False Statements
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28

1 to a Government Agent, in violation of 18 U.S.C. § 1001; and 2) Falsification of
2 Records in a Federal Investigation, in violation of 18 U.S.C. § 1519.
3

4 Mr. Smirnov made his initial appearance in Las Vegas before the Honorable
5 Daniel J. Albregts, United States Magistrate Judge, on February 15, 2024. Five days
6 later, following the recommendation of the Pretrial Services Office, Judge Albregts
7 released Mr. Smirnov on various conditions.
8

9 Mr. Smirnov was rearrested on the same charges on an arrest warrant issued
10 by this Court on February 22, 2024. At a hearing on February 26, 2024, this Court
11 overruled Judge Albregts and ordered that Mr. Smirnov detained.
12

13 On November 22, 2024, just ten days before the trial date, the second
14 Indictment (“Ind. No. 2”) was returned. This latter Indictment charged Mr. Smirnov
15 with various federal tax violations, including three violations of 28 U.S.C. § 7201,
16 under Counts 1, 5, and 8, which charged tax evasion for the tax years 2020, 2021,
17 and 2022, respectively.
18

19
20 On December 16, 2024, Mr. Smirnov appeared before this Honorable Court
21 and pled guilty to pursuant to a binding plea agreement under Rule 11(c)(1)(C)
22 (“Plea. Ag.”). Pursuant to that agreement, this Court shall sentence him in total on
23 both cases to be served concurrently to not less than 48 and not more than 72 months’
24 imprisonment, as well as one year supervised release (with conditions to be fixed by
25 the Court), a \$400 special assessment, and \$675,502 in restitution.
26
27
28

1 **III. APPLICATION OF THE FOREGOING 3553 FACTORS MILITATES**
2 **IN FAVOR OF A SENTENCE OF 48 MONTHS**

3 **1. The history and characteristics of the defendant**

4 **i. Mr. Smirnov’s background**

5 Section 3553(a)(1) requires courts to consider the “history and circumstances”
6 of each defendant. This command reflects the federal judicial tradition for the
7 sentencing judge to view “every convicted person as an individual and every case as
8 a unique study in the human failings that sometimes mitigate, sometimes magnify,
9 the crime and the punishment to ensue.” *Gall v. United States*, 552 U.S. 38, 52
10 (2007); *see also Pepper v. United States*, 562 U.S. 476, 488 (2011) (possessing “the
11 fullest information possible concerning the defendant’s life and characteristics” is
12 “[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence.”)
13 (internal citations omitted).
14
15
16

17 While it is not possible to capture the complexity of a person’s life in a legal
18 filing (even when it is supplemented by many strong character references, as shown
19 in the attached letters), that is perhaps uniquely true for Mr. Smirnov. As described
20 below, he has lived a remarkable life but has, since his first indictment in February
21 2024, experienced a personal downfall.
22
23

24 Mr. Smirnov is a dual citizen of the United States and Israel. Besides this case,
25 he has no criminal history in this—or any other—country. He was born in the
26 U.S.S.R. (now Ukraine) and, at approximately seven years old, he immigrated to
27
28

1 Israel with his mother. He enlisted in the Israeli military and served in
2 counterterrorism after recruitment by another branch of the Israel government. [REDACTED]

3 [REDACTED]
4 [REDACTED]. After his service, Mr. Smirnov immigrated to the
5 United States and in July 2007, he became a lawful permanent resident of the United
6 States. [REDACTED].

7 [REDACTED]
8 [REDACTED]

9 [REDACTED]

10 [REDACTED]. [REDACTED]. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]
15 [REDACTED]

16 [REDACTED]
17 [REDACTED]

18 [REDACTED]

19 [REDACTED]
20 [REDACTED]. [REDACTED]

21 [REDACTED]. [REDACTED]

22 [REDACTED]

23 [REDACTED]
24 [REDACTED]

25 [REDACTED]

26 [REDACTED]. [REDACTED]. [REDACTED]

1 [REDACTED]

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28 [REDACTED]

1 [REDACTED]

2 [REDACTED]. [REDACTED].

3
4 Prior to this case, Mr. Smirnov had never been charged or arrested. [REDACTED]

5 [REDACTED] As a result of his service as a CHS for the FBI, Mr. Smirnov’s *risked*
6 *his life and put his family’s life in danger.* [REDACTED]. Mr.

7
8 Smirnov’s substantial assistance to the United States government—while not
9 specifically resulting from a government motion under Section 3553(e)—is just one
10 aspect of his “history,” and one of his many “characteristics,” that support a 48-
11 month sentence. *See, e.g., United States v. Evans-Martinez*, 611 F.3d 635, 642–43
12 (9th Cir. 2010) (substantial assistance may support in below-guidelines sentence).

13
14 Furthermore, as shown from the letter (coupled with the prior letters) of Dr.
15 H. George Tanaka (attached as Exhibit 3), and as directly implicated by 18 U.S.C. §
16 3553(a)(2)(D) (reasonable sentence must take into account need for defendant’s
17 “medical care”), Mr. Smirnov suffers from advanced open angle glaucoma in both
18 eyes. *See also* Document 52-1 (Mar. 11, 2024); *see infra*. Now in his mid-40s, Mr.
19 Smirnov is not only highly unlikely to re-offend, but he also suffers outsized, and
20 ongoing, physical punishment. *See Human Rights Watch, Old Behind Bars: The*
21 *Ageing Prison Population in the United States* 7, 43-88 (2012).

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24
25 Mr. Smirnov has suffered for years from severe optic nerve damage due to
26 glaucoma. As a result, he has marked constriction of his peripheral vision in both
27

1 eyes. He has undergone several surgeries to treat his glaucoma and prevent
2 blindness; however, his intraocular pressure continues to be poorly controlled
3 despite maximal tolerated medical therapy.
4

5 As this Court is well aware, Mr. Smirnov's repeated efforts to obtain a needed
6 eye operation while in custody has not been approved. Mr. Smirnov's eye
7 deterioration certainly will not reverse (much less heal) itself, and Dr. Tanaka's
8 attached letter makes plain that a six-year sentence would unnecessarily prolong his
9 suffering. *See* Exhibit 3. Dr. Tanaka states in part: "This court's decision regarding
10 Mr. Smirnov's sentencing will profoundly affect his ability to access the medical
11 care he urgently needs. A sentence of forty-eight (48) months would not only allow
12 Mr. Smirnov to address his health sooner but also provide an opportunity for him to
13 contribute meaningfully to society within the constraints of his disability." *See id.*
14 It is respectfully requested that this Court consider this among other factors in
15 fashioning a sentence that is "sufficient, but not greater than necessary," to "reflect
16 the seriousness of the offense, to promote respect for the law, and to provide just
17 punishment for the offense." 18 U.S.C. §§ 3553(a) and (a)(2)(A); 18 U.S.C. §§
18 3553(a)(2)(D) (sentence must be based on need to provide defendant with needed
19 "medical care"); *see, e.g., United States v. O'Leary*, No. CR 19-33-M-DLC, 2021
20 WL 3677109, at *2 (D. Mont. Aug. 19, 2021) ("Take for example the factor related
21 to medical care, 18 U.S.C. § 3553(a)(2)(D), or the overarching consideration that the
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1 defendant shall not be subjected a punishment that is greater than necessary, 18
2 U.S.C. § 3553(a).
3

4 **ii. Letters of Support**

5 Mr. Smirnov's sister, Anet Smirnov, writes in part:

6 Alexander has always been a deeply patriotic and proud American. He
7 loves his country and embodies the values of service and community.
8 He consistently goes out of his way to assist those around him, whether
9 they are family members, friends, or even strangers. His kindness and
generosity have touched the lives of many.

10 As his sister, I have had the privilege of growing up with Alexander
11 and seeing firsthand what an incredible person he is. He is a devoted
12 and supportive brother, always there when I need him, whether for
13 advice, encouragement, or simply a listening ear. Alexander is also a
14 wonderful uncle—deeply loved and admired by his nieces and
15 nephews. He has always gone out of his way to create joyful memories
with them, and I know he is looking forward to meeting his newest
niece, who was recently born.

16 Family is everything to Alexander. His love, care, and unwavering
17 support for those around him are a testament to the kind of person he
18 is: selfless, compassionate, and reliable.

19 While I cannot excuse his conduct, I want to emphasize that he has
20 taken full responsibility for his actions. He deeply regrets what
21 happened and has shown genuine remorse. He understands the impact
22 of his decisions and is committed to learning and growing from this
experience.

23 I respectfully ask the Court to consider Alexander's positive
24 contributions to his family and community, as well as his sincere regret
25 and acceptance of responsibility. I truly believe that he will take this as
26 an opportunity to better himself and continue being the good-hearted
and dependable person we all know him to be.

27 Exhibit 4.
28

1 Anna Stone, a friend for approximately 10 years, writes in part:

2 We can describe him as a man who is considerate and genuine. He did
3 everything for friends and family. Impeccable. We like everyone else
4 we're shocked to learn his informant life. With that being said we are
5 convinced that Alex is a person who is capable of recognizing his
6 mistakes and take full responsibility for his actions.

7 Exhibit 5.

8 Ekaterina Li, writes in part:

9 From my experience, Alex is a deeply family-oriented person,
10 consistently gentle and caring with his loved ones. His true happiness
11 seems to lie in ensuring the well-being and security of those closest to
12 him, a responsibility he fulfills selflessly, without seeking anything in
13 return.

14 Over time, I have observed the thoughtfulness in his actions, reflecting
15 a genuine effort to always do what is right. It is for that reason that I
16 believe his conduct in this case is aberrant.

17 I, along with all of Alex's loved ones, humbly rely on your
18 understanding and gracious consideration. We believe in his ability to
19 acknowledge mistakes, and start anew with a clean slate. Alex has
20 accepted responsibility and expressed remorse, and therefore we
21 believe that he falls within that group of people.

22 Exhibit 6.

23 Friends for approximately 10 years, Angelika and Anatoly Baryshevs,
24 write in part:

25 We recognize the seriousness of the charges and the impact that Mr.
26 Smirnov's actions may have had on the community, and we do not
27 intend to minimize the gravity of the situation.

28 We have known Alex Smirnov for about 10 years. We eventually
became good friends through the introduction of mutual friends. As a

1 friend, Alex Smirnov has always displayed qualities of honesty,
2 integrity, and responsibility. He always offered his help to his friends
3 and family. As an example, when our mom, who still lives in Ukraine
4 and due to her medical conditions was in needs of medication and food,
5 he just simply said “Don’t worry, I’ll take care of that,” and the very
6 next day everything was delivered to her. It is an honor to vouch for his
7 character, generosity and integrity in our time knowing him.

8 We would like to highlight Mr. Smirnov’s genuine remorse for his
9 actions. He has expressed deep regrets for what he has done. He has no
10 prior criminal record. In addition, he is a dedicated family member and
11 friend. His actions in this case are an aberration, and those who know
12 him personally can attest to his inherent kindness, integrity, and
13 generosity.

14 Exhibit 7.

15 His cousin, Linor Shefer, writes in part:

16 Growing up together in Israel we both spent a lot of time together. Alex
17 was always a well-rounded and responsible individual, always stood for
18 justice and took responsibility for his actions. Alex has good friends
19 from childhood who love and worry about him. He is an extrovert even
20 though it doesn’t seem that way always. He is sociable and can always
21 carry on a good conversation. He is very knowledgeable and spends
22 his time self-educating constantly.

23 I understand he placed himself in a very difficult situation. As his only
24 family in the US, I find great responsibility to deliver to you my concern
25 and hope that with everything Alex did right for the good of the United
26 States of America, you can take into account his good actions when
27 deciding on his sentence.

28 Of course, there’s nothing more I would like to see than Alex going
back to his life as a loving partner to Diana, Son to Irina, Cousin to me,
and friend to many.

I speak to your heart as a representative of the family. Please help us
get Alex back to his life as soon as possible. He is sincerely remorseful
and accepts responsibility.

1 Exhibit 8.

2 Mr. Smirnov's significant other, Diana Lavrenyuk, writes in part:

3
4 Alexander Smirnov is the man I have been blessed to share my life with
5 for many years.

6 I have always known Alex to be a man of integrity, kindness and
7 loyalty-someone who consistently demonstrates responsibility and care
8 for those around him. He has built a life centered on family and
9 gratitude for the opportunities he has been given.

10 I could never have imagined we would find ourselves in this situation.
11 I know Alex to be a proud patriot of America, a country he loves deeply
12 and grateful beyond words for the opportunities this land has given him.

13 Your Honor, I humbly and sincerely ask for your mercy, compassion
14 and understanding.

15 I ask that you please forgive Alex. He has always been a man who takes
16 responsibility for his actions and works tirelessly to make amends when
17 necessary. His remorse is sincere.

18 Exhibit 9.

19 Friend since 2008, Alexei Odesskiy, writes in part:

20 During my time serving in the Marine Corps, I was stationed at Camp
21 Pendleton, California, far from my home on the East Coast. Alex played
22 a pivotal role in making my transition to the West Coast much easier.

23 From the very beginning, Alex treated me like family, creating a sense
24 of belonging that I deeply appreciated during my service. He and his
25 wonderful girlfriend welcomed me into their home with open arms,
26 offering support, companionship, and a sense of stability. Their
27 kindness and generosity left a lasting impression on me, and I will
28 always be grateful for how they helped me during that time.

Even after my service, Alex has consistently stayed in touch, checking
in on my well-being and proving himself to be a caring and dependable

1 friend. He has always been someone I could count on, a person with a
2 good heart who genuinely cares about others.

3 Exhibit 10.

4 Accordingly, it is evident that Mr. Smirnov is a man of good character, and
5 he has accepted responsibility and his remorse is sincere.
6

7 **2. The need for the sentence imposed**

8 **(A) to reflect the seriousness of the offense, to promote respect**
9 **for the law, and to provide just punishment for the offense;**

10 **(B) to afford adequate deterrence to criminal conduct**

11
12 Additional factors under Section 3553(a) support a sentence of 48 months. For
13 example, promoting “respect for the law” is a two-way street under § 3553(a). *See,*
14 *e.g., United States v. Stern*, 590 F.Supp.2d 945, 956 (N.D. Ohio 2008) (“Respect for
15 the law is promoted by punishments that are fair . . . not those that simply punish for
16 punishment’s sake”) (emphasis omitted). A four-year sentence would thus reflect
17 nuance and thoughtful calibration, rather than vindictiveness towards a man with
18 years of loyal United States service under his belt.
19

20
21 Furthermore, Mr. Smirnov has caused himself shame and sustained a felony
22 conviction due to his actions giving rise to this case. As Senior Judge Block noted
23 in the United States District Court for the Eastern District of New York, there are
24 “nearly 50,000 federal and state statutes and regulations that impose penalties,
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1 disabilities, and disadvantages on convicted felons.” *See U.S. v. Nesbeth*, 188
2 F.Supp.3d 179, 184 (E.D. N.Y. 2015).
3

4 In the event that this Honorable Court imposes a sentence of 48 months, Mr.
5 Smirnov will serve a significant custodial sentence which will deter other individuals
6 as well. Mr. Smirnov has learned a very grave lesson and proffers to this Honorable
7 Court that he will not find himself on this side of the law again.
8

9 **(C) to protect the public from further crimes of the defendant;**

10 Mr. Smirnov is not a danger to the public. These are non-violent offenses and
11 besides the charges in this case, Mr. Smirnov has no prior criminal history.
12 Accordingly, the “public” (that is, the grateful United States citizens whom Mr.
13 Smirnov helped by serving as their effective CHS) will not need to be “protected”
14 from him when he is released from custody. *See* 18 U.S.C. § 3553(a)(2)(C) (sentence
15 must reflect need “to protect the public from further crimes of the defendant”). Mr.
16 Smirnov is an ailing, middle-aged man who has never been involved in any other
17 criminal activity—or, cited for any form of emotional or mental instability or drug
18 or alcohol abuse—in his entire life. *See, e.g., United States v. Cole*, 622 F. Supp. 2d
19 632, 638 (N.D. Ohio 2008) (“In this case, there is little need for incapacitation. Cole
20 has no appreciable prior record of criminal conduct. He did not engage in any violent
21 offense and it is highly unlikely that he will be in a position to use insider information
22 in the future. The Court therefore finds that incapacitation [under Section
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1 3553(a)(2)(C)] is not a significant concern in this case.”); *see also* Pub. L. No. 98-
2 473, § 239, 98 Stat. 1987, 2039 (1984) (note to 18 U.S.C. § 3551) (directing that
3 “sentencing decisions should be designed to ensure that prison resources are, first
4 and foremost, reserved for those violent and serious criminal offenders who pose the
5 most dangerous threat to society,” and that “alternative sentences” should be
6 considered for less serious offenders). Accordingly, this factor supports a sentence
7 of 48 months as being sufficient under the circumstances.
8
9

10 **(D) to provide the defendant with needed educational or vocational training,**
11 **medical care, or other correctional treatment in the most effective**
12 **manner**

13 Mr. Smirnov has an educational and vocational training history. As stated
14 above, Mr. Smirnov has suffered for years from severe optic nerve damage due to
15 glaucoma. Mr. Smirnov will need medical care and extended period of incarceration
16 would further jeopardize his health and expend the BOP’s resources even further.
17 Accordingly, this factor weighs in favor of a sentence of 48 months.
18

19
20 **3. The kinds of sentences available**

21 Here, a sentence of 48 months is reasonable. While Mr. Smirnov does not
22 request a sentence less than 48 months, the following are examples of cases where
23 defendants engaged in fraudulent conduct and received sentences other than
24 incarceration in a federal prison:
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1 * *U.S. v. Cole*, 765 F.3d 884 (8th Cir. 2014) (affirming sentence of three years’
2 probation where guideline range called for 135-168 months of imprisonment).
3

4 In *Cole*, the Eighth Circuit in affirming the sentence of three years’ probation
5 where guideline range called for 135-168 months of imprisonment stated: “The court
6 focused on Cole’s history and characteristics, emphasizing that she had no prior
7 contact with law enforcement and was ‘markedly different’ than ‘most of the
8 fraudsters who appear before th[e] Court’ in that Cole ‘is not a consummate
9 fraudster....’” *Id.* at 886.
10

11
12 * *U.S. v. Roth*, No. 05 CR 792-5, 2008 WL 686783, *3-4, 7 (N.D. Ill. Mar. 11,
13 2008). The Court departed from guidelines range of 63 to 78 months to probation on
14 charge of making false statement to the FBI due, in part, to defendant's sincere
15 remorse and absence of criminal history, all indicating no threat of recidivism);
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17 * *U.S. v. Wood*, 5:05-CR-00044, (D. N.C. 2010) (imposing sentence of four
18 years’ probation and six months home confinement, among other conditions, in
19 relation to securities fraud case involving \$15,000,000 after a jury verdict);
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21 * *U.S. v. Edwards*, 595 F.3d 1004 (9th Cir. 2010) (affirming probation for
22 bankruptcy fraud where guideline range was 27-33 months);
23

24 * *U.S. v. Whitehead*, 532 F. 3d 991 (9th Cir. 2008) (affirming sentence of 1000
25 hours of community service, restitution, and five years’ supervised release where
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1 guideline range was 41-51 months where defendant was convicted of selling more
2 than \$1,000,000 in counterfeit access cards);

3
4 * *U.S. v. Steven Rubinstein*, Southern District of Florida, Case No. 09-CR-
5 60166. Hid approximately \$7 million in undisclosed accounts he used to purchase
6 real estate and South African Kruggerands. Sentenced to 3 years' probation, 12
7 months home detention, and a fine of \$40,000;

9 * *U.S. v. Juergen Homann*, District of New Jersey, Case No. 09-CR-724.
10 Control account of \$5 million and made a conscious decision not to seek out and
11 enter into the IRS' voluntary disclosure program. Sentenced to 5 years' probation,
12 300 hours community service, and a fine of \$60,000.

14 * *U.S. v. Jules Robbins*, Southern District of New York, Case No. 10-CR-333.
15 Created a sham corporation to be listed as the nominal holder of his UBS accounts
16 containing nearly \$42 million. Sentenced to 12 months' probation, and a fine of
17 \$2,000.

19 * *U.S. v. Andrew Silva*, Eastern District of Virginia, Case No. 10-CR-00044.
20 Repatriated funds from his undisclosed offshore account by mailing himself 26
21 packages of currency and carrying another two packages into the U.S., always
22 structured in amounts under \$10,000. Sentenced to 2 years' probation, 4 months'
23 home detention, 100 hours community service, and a fine of \$20,000.
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1 * *U.S. v. Fred E. Cooper*, 394 F.3d 172 (3rd Cir. 2005) (holding a four-level
2 downward departure was warranted because of the defendant's good works that were
3 of a personal nature). The departure resulted in three years' probation for a defendant
4 who pleaded guilty to one count of securities fraud and one count of subscribing to
5 a false tax return, and had a Guidelines range of fifteen to twenty-one months.
6

7
8 **4. Guidelines, Policy, and Other Criteria of Sentencing Commission**

9 The fourth and fifth factors in § 3553(a)(4)-(5) require the Court to consider
10 the Guidelines and Policy Statements applicable to the case. As set forth above, a
11 sentence of 48 months is reasonable. Additionally, under the circumstances, it is
12 submitted that incarceration beyond 48 months would be an inefficient use of
13 resources.
14

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16 **5. The need to avoid unwarranted sentence disparities among defendants
17 with similar records who have been found guilty of similar conduct**

18 While not involving the same federal charges as Mr. Smirnov's charges, both
19 President-elect Trump and Hunter Biden (the current President's son) were all
20 caught up in the same web of federal prosecutions commenced by the current
21 administration's special counsel: Mr. Weiss (in this case and the Hunter Biden
22 "firearm case") and Jack Smith (in President-elect Trump's "document case" in the
23 Southern District of Florida). Both of those defendants have walked free and clear
24 of any meaningful punishment: the President-elect (by filing a meritorious motion
25 to dismiss the Indictment) and Hunter Biden, by dint of President Biden's decision
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1 to issue his son a broad, sweeping pardon, due to (in President Biden’s own words)
2 the unfairness of his son’s indictments. *See, e.g.*, “Hunter Biden prosecutor pushes
3 back on president’s politicization claim,” NBC News (posted Dec. 2, 2024)
4 (President Biden states that he “believe[s] [the] raw politics [spurring the instant
5 Special Counsel to prosecute his son] has infected this process and . . . led to a
6 miscarriage of justice”).
7
8

9 Mr. Smirnov respectfully requests that this Court do its best to avoid (or, at
10 least, mitigate) these obvious sentencing disparities under 18 U.S.C. § 3553(a)(6)
11 and impose a low-end sentence of 48 months.
12

13 **6. The need to provide restitution to any victims of the offense**

14 Here, Mr. Smirnov has agreed to pay a substantial restitution fee of \$675,502.
15 *See* Plea Ag. at ¶¶13, 19; *see also* 18 U.S.C. § 3553(a)(7). Importantly, Mr. Smirnov
16 shall pay this restitution “immediately” and such payment is subject to immediate
17 enforcement in full by the United States. He intends to do so contemporaneously
18 with his sentencing. Subsection (a)(7) thus further militates in favor of the low end
19 of the bargained-for range.
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1 **IV. CONCLUSION**

2 For the reasons set forth below and for those prescribed in 18 U.S.C. §
3 3553(a), a custodial sentence at the low-end of the binding, bargained-for range (48
4 months, with credit for time served from February 22, 2024 to the time of
5 sentencing) is warranted for both cases. *See* U.S.S.G. § 5G1.3 (Bureau of Prisons
6 may credit “time served” under 18 U.S.C. § 3585(b) against stipulated sentence); *see*
7 *also* 18 U.S.C. § 3585(b).¹

8 DATED this 24th day of December, 2024.

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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.

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20 Attorneys for Defendant

21 ALEXANDER SMIRNOV

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23
24
25 ¹ Under 18 U.S.C. § 3585(b), a defendant must be given credit for time spent in “official detention”
26 before the sentence commences. Specifically, 18 U.S.C. § 3585(b) provides in relevant part that
27 “[a] defendant shall be given credit toward the service of a term of imprisonment for any time he
28 has spent in official detention prior to the date the sentence commences . . . as a result of the offense
for which the sentence was imposed.” *See also, e.g., Hughes v. Slade*, 347 F.Supp.2d 821 (C.D.
Cal. 2004) (defendant was entitled to credit for time served in Mexican jail while awaiting
extradition to the United States on attempted extortion charge).

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 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

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