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10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 In the Matter of

Case No. 16FE020660
Department: 12C

14 VICTOR MIROSCHNICHENKO,

MOTION AND MOTION IN
SUPPORT OF COMPASSIONATE
RELEASE PURSUANT TO PENAL
CODE SECTION 1172.2

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17 On July 31, 2026, the Department of Corrections and Rehabilitation sent the
18 Court, People and Public Defender a recommendation for compassionate release
19 pursuant to Penal Code §1172.2 relating to Victor Miroschnichenko (See Exhibit
20 A.).
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23 I. LEGAL AUTHORITY

24 Penal Code §1172.2 enables CDCR to recommend recall of sentence for
25 inmates with a serious and advanced illness with an end-of-life trajectory. There is
26 a presumption favoring recall and resentencing, which may only be overcome if a
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1 II. ARGUMENT

2 *A. Mr. Miroshnichenko has a qualifying diagnosis with a serious and*
3 *advanced illness with an end-of-life trajectory within the meaning of*
4 *Pen. Code § 1172.2.*
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7 Dr. Brittany Brizendine, Director of Health Care Services for CDCR
8 submitted a diagnostic study pursuant to Penal Code section 1172.2 for Mr.
9 Miroshnichenko. (See Exhibit A.)
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11 Mr. Miroshnichenko is a 75-year-old man currently residing at the California
12 Medical Facility in Vacaville, California. (*Id.*) He is suffering from metastatic
13 gastric neuroendocrine cancer and is suspected of having a second cancer originating
14 from the prostate that has spread to the liver, bone and several lymph nodes. (*Id.*) He
15 also has hypertension, diabetes, GERD, anemia and hyperthyroidism, among other
16 chronic illnesses. (*Id.*) Mr. Miroshnichenko was initially diagnosed in 2010 with
17 metastatic gastric neuroendocrine cancer. (*Id.*) In 2010, the gastric neuroendocrine
18 tumor on his gastric polyp was removed, but in 2016, imaging showed multiple liver
19 lesions that metastases from his neuroendocrine tumor. (*Id.*)
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24 On May 22, 2025, Mr. Miroshnichenko was hospitalized for acute kidney
25 injury and was found to have a variety of symptoms suggesting the high likelihood
26 of Stage IV metastatic prostate cancer. (*Id.*) Given the widespread metastatic lesions,
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1 Mr. Miroshnichenko chose to forego chemotherapy and radiation instead opting for
2 palliative care and hospice. (*Id.*)

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4 Cal. Pen. Code §1172.2 requires that the defendant suffer from a qualifying
5 disease that is “serious” and has an “end-of-life trajectory.” ((*Cal. Pen. Code*
6 §1172.2(b)(1)). While the code does not expressly identify every possible disease
7 that could be considered a qualifying “serious and advanced illness with an end-of
8 life trajectory,” (Cal. Pen. Code § 1172.2(b)(1).) it does include “metastatic solid-
9 tumor cancer” in its list of diseases.
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13 Mr. Miroshnichenko’s symptoms upon being hospitalized most recently
14 included multiple liver masses, multiple sclerotic bony lesions, prostate
15 enlargements, bladder wall thickening and more. (See Exhibit A.) Mr.
16 Miroshnichenko has a prognosis of less than six months. (*Id.*) Due to the terminal
17 nature of his disease, after consultation with his oncologist, he was admitted to
18 hospice on June 10, 2026. (*Id.*)
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21 It is not the task of this Court to legally conclude that Mr. Miroshnichenko is
22 terminal or that he is at the end-of-life stage. It is only before this court to determine
23 if Mr. Miroshnichenko is facing an end-of-life trajectory OR if he is permanently
24 medically incapacitated. Here, the answer to the end-of-life trajectory, as related by
25 the licensed medical professionals at CDCR, is yes.
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1 ***B. Mr. Miroshnichenko does not pose an unreasonable risk to public safety***
2 ***given his current physical condition.***
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4 To deny release, the court must find that based on the defendant's current
5 physical and mental state there is a risk the defendant could commit a super strike.
6 (*People v. Lewis* (2024) 101. Cal.App.5th 401, 408-409). Generalized concerns
7 about a risk to public safety do not indicate that the defendant is an unreasonable
8 risk to public safety. (*Nijmeddin v. Superior Court* (2023) 90 Cal.App.5th 77, 83).
9
10 Further, a defendant possessing the mere capacity to commit a super-strike, even
11 when they have previously been convicted of one, does not prove that they are an
12 unreasonable risk to the public if they are released. (*Lweis, supra*, 101 Cal.App.5th
13 at 401).
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17 Mr. Miroshnichenko is not an unreasonable risk of danger to the public
18 because he has widespread metastatic lesions to the extent that he has been placed
19 on hospice care and given a prognosis of 6 months. He is frail and only capable of
20 walking with the help of a walker. (See Exhibit A.) Institutional records confirm that
21 Mr. Miroshnichenko presents minimal risk. He is currently housed as a Level II
22 incarcerated person with a classification placement score of 19, and his overall risk
23 assessment score is "1." (See Exhibit A). While incarcerated, Mr. Miroshnichenko
24 has maintained positive institutional behavior and has received no Rules Violation
25 Reports. (*Id.* at 6). Mr. Miroshnichenko has verified support in the community and
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July 31, 2026

The Honorable Laurel D. White
Superior Court of California
County of Sacramento
500 G Street
Sacramento, CA 95814

Re: MIROSHNICHENKO, VICTOR
CDCR No: BF8200
Case No: 16FE020660
Date of Sentence: 3/16/2018

Dear Judge Laurel D. White:

After careful evaluation of this case, it is the determination of California Correctional Health Care Services (CCHCS) and the California Department of Corrections and Rehabilitation (CDCR) that Mr. Miroshnichenko, BF8200, meets the criteria for the court's consideration for recall and resentencing of the current prison commitment and sentence pursuant to Penal Code Section 1172.2. The court is required to hold a hearing within 10 days of receipt of this notification.

Mr. Miroshnichenko is a 75-year-old patient residing in the hospice at the California Medical Facility in Vacaville, California. CCHCS Clinical Executives have determined that Mr. Miroshnichenko has an end-of life trajectory. Additional details regarding their prognosis can be found in the attached CDCR 128-C.

Details of Mr. Miroshnichenko's convictions and recent in custody behavior can be found in the attached Case Factor Summary.

Attached are the following items for the court's consideration for the compassionate release of Mr. Miroshnichenko:

- Case Factor Summary
- CDCR 128-C Medical-Psychiatric-Dental (Chrono)
- CDCR 3038 Notification and Authorization to Incarcerated Person Regarding Compassionate Release
- CDCR 3039 Waiver of Defendant's Physical or Remote Presence at Compassionate Release Hearing
- CDCR 7385 Authorization for Release of Protected Health Information
- Abstract of Judgement
- Probation Officer's Report (or arrest report/other court document in lieu of the Probation Officer's Report)
- Legal Status Summary



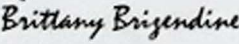
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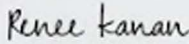
If the court grants compassionate release, CDCR will release the individual to either parole or Post Release Community Supervision. Penal Code Section 1172.2 requires CDCR to release the individual within 48 hours unless the individual agrees to a longer period. Mr. MIROSHNICHENKO has agreed to remain in custody with CDCR for up to 30 days to receive assistance in finding a suitable placement upon release. As such, we request the court include the following language in its order. *The California Department of Corrections and Rehabilitation shall release the incarcerated person within 30 calendar days to a location where access to care is available.*

Upon rendering a decision, we respectfully ask the court to send a copy of the amended Abstract of Judgment or Minute Order to the attention of the Case Records Manager, California Medical Facility, at (707) 448-6306, and also email a copy to CDCR's Classification Services Unit at m_DAICSUCompRLandMP@cdcr.ca.gov. The original should be mailed to the attention of the Case Records Office, California Medical Facility, Post Office Box 2000, Vacaville, CA 95696-2000.

If you have any questions regarding Mr. MIROSHNICHENKO's clinical or medical information, or require any additional information, please contact CCHCSComplexCare@cdcr.ca.gov.

If you have any non-medical questions or require further information, please contact m_DAICSUCompRLandMP@cdcr.ca.gov.

Signed by:

ADCSFOCZBC7046S...
Brittany Brizendine, PsyD, MBA, CCHP-MH
Director, Health Care Services
California Correctional Healthcare Services

Signed by:

DOSSFP9B18B224HB...
Renee Kanan, M.D.
Deputy Director, Medical Services
California Correctional Healthcare Services

Attachment(s)

cc: The Honorable Lawrence G. Brown, Presiding Judge
Sacramento District Attorney
Sacramento Public Defender