

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS'UD KHEIR AL-MARIMI,**

Defendant.

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Case No. 22-cr-392 (DLF)

**GOVERNMENT'S MOTION FOR LEAVE TO FILE
SUR-REPLY REGARDING DEFENDANT'S MOTION TO SUPPRESS STATEMENT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion for leave to file a sur-reply to the defendant's reply [ECF 174] in support of the motion to suppress the defendant's statement [ECF 159]. The proposed sur-reply is attached to this pleading.

As detailed in the government's sur-reply, the defense reply includes new facts and arguments that were not present in their opening brief. The government has not had an opportunity to respond to these newly raised points. As the authorities below establish, these circumstances warrant a sur-reply.

Although neither the Federal Rules of Criminal Procedure nor the local criminal rules provide for the filing of sur-replies, the law is clear that "[i]ssues may not be raised for the first time in a reply brief." *United States v. Apodaca*, 251 F. Supp. 3d 1, 5 (D.D.C. 2017); *see also Rollins Envtl. Servs. (NJ) Inc. v. EPA*, 937 F.2d 649, 652 n.2 (D.C. Cir. 1991)). By making new arguments for the first time in his reply, the defendant has potentially placed this Court in the position of reviewing novel assertions and arguments without the benefit of the government's response. *See, e.g., McBride v. Merrell Dow and Pharm., Inc.*, 800 F.2d 1208, 1211 (D.C. Cir. 1986).

Federal Rule of Civil Procedure 7(b) has been construed to permit the filing of a sur-reply where, as here, a party raises issues for the first time in a reply brief. “The standard for granting a leave to file a surreply [in a civil case] is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party’s reply.” *Lewis v. Rumsfeld*, 154 F. Supp. 2d 56, 61 (D.D.C. 2001). “A surreply may be filed ... only to address new matters raised in a reply, to which a party would otherwise be unable to respond.” *Gonzalez-Vera v. Townley*, 83 F. Supp. 3d 306, 315 (D.D.C. 2015) (citing *United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*, 238 F.Supp.2d 270, 276 (D.D.C. 2002)). In this Circuit, “district court[s] routinely grant[] such motions” when this standard is satisfied. *Ben-Kotel v. Howard Univ.*, 319 F.3d 532, 536 (D.C. Cir. 2003). Although the government will respond to the defense at the hearing, the novelty of the defense reply still necessitates a written sur-reply.

Accordingly, the government requests that the Court accept the attached pleading.

Respectfully submitted,

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