UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**No. 1:22-cr-392 (DLF)**
	)	
ABU AGILA MOHAMMAD	)	
MAS'UD KHEIR AL-MARIMI,	)	
Defendant.	)	

MR. AL-MARIMI'S NOTICE OF FILING PUBLIC COPIES OF ECF NO. 260 AND ITS ATTACHMENTS

Pursuant to the Court's December 31, 2025, Minute Order, Mr. Al-Marimi herein files public copies of ECF Nos. 260 and 260-1 and a redacted copy of ECF No. 260-2.

Respectfully submitted,

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Federal Public Defender

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	)	
	)	
Defendant.	)	

CONSENT MOTION FOR LEAVE TO FILE MR. AL-MARIMI'S MOTION TO ACCEPT REDACTED TRANSCRIPT AT SUPPRESSION HEARING OF RULE 15 TESTIMONY UNDER SEAL

The defendant, Abu Agila Mohammad Mas'ud Kheir Al-Marimi, through undersigned counsel and with no objection from the government, respectfully moves this Court for permission to file his Motion to Accept Redacted Transcript at Suppression Hearing of Rule 15 Testimony under seal because the motion relates to anticipated Rule 15 deposition testimony, which is a subject that remains under seal.

The Court has the inherent power to seal materials submitted to it. *See United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980); *United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (the trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests).

Because all briefing of the Rule 15 deposition testimony at issue remains under seal, counsel moves to file Mr. Al-Marimi's Motion to Accept Redacted Transcript at

Suppression Hearing of Rule 15 Deposition Testimony under seal. Furthermore, undersigned counsel has discussed this sealing request with the government. The government has indicated that it does not oppose this sealing request.

Respectfully submitted,

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SEALING ORDER

This matter having come before the Court on the defendant's Motion to Seal pursuant to Local Criminal Rule 5.1(h), with no objection from the government and for good cause shown, the Court finds that sealing is necessary in order to effectuate the Court's Order that matters related to Rule 15 testimony of the witness at issue remain under seal at the current time.

For the foregoing reasons, it is hereby ORDERED that the defendant's Consent Motion to Seal is GRANTED, and it is FURTHER ORDERED that the defendant may file his Motion to Accept Redacted Transcript at Suppression Hearing of Rule 15 Testimony under seal.

Entered this _____ day of _____, 202__.

_____
The Honorable Dabney L. Friedrich
United States District Judge

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MR. AL-MARIMI'S MOTION TO ACCEPT REDACTED TRANSCRIPT AT SUPPRESSION HEARING OF RULE 15 TESTIMONY

During earlier litigation in this case, the parties proposed that the Court take [redacted] deposition before holding the evidentiary hearing on Mr. Al-Marimi's suppression motion. *See* 11/18/25 Tr. at 377-81. [redacted]

Accordingly, Mr. Al-Marimi moves the Court to accept a redacted transcript of [redacted] Rule 15 testimony at the suppression hearing in this case in lieu of live, duplicative testimony. That approach best balances Mr. Al-Marimi's constitutional rights and the public's right to access court proceedings.

I. Hearsay evidence is routinely presented and accepted at suppression hearings.

The proposed procedure is fully consistent with well-established principles governing suppression hearings, where hearsay evidence is routinely admitted. In general, the rules of evidence are more relaxed at preliminary hearings, including suppression hearings. *United States v. Matlock*, 415 U.S. 164, 177-73 (1974). As the Supreme Court stated in *Matlock*, "in proceedings where the judge h[er]self is considering the admissibility of evidence, the exclusionary rules, aside from rules of privilege, should not be applicable; and the judge should receive the evidence and give it such weight as h[er] judgment and experience counsel". *Id.* at 175. The distinction is a function of "the difference in standards and latitude allowed in passing upon the distinct issues of guilt" and other topics like the preliminary admissibility of evidence. *See id.* at 173 (quoting *Brinegar v. United States*, 338 U.S. 160, 174 (1949)). For example, "[s]earch warrants are repeatedly issued on ex parte affidavits containing out-of-court statements of identified and unidentified persons." *Id.* at 174. The consideration of similar hearsay evidence at a suppression hearing violates neither the rules of evidence nor an accused's Sixth Amendment right to confrontation or Fifth Amendment right to due process. *Id.* at 175.[1]

[1] *See also United States v. Rowe*, 878 F.3d 623, 625-26 (8th Cir. 2017) (approving trial court relying on testimony from earlier suppression hearing in codefendants' case at instant suppression hearing); *States v. White*, 116 F.3d 903, 914 (D.C. Cir. 1997) (observing that "it is within the judge's discretion to admit hearsay evidence that has at least some degree of reliability" at pretrial hearing to determine admissibility of evidence at trial); *United States v. Cutchin*, 956 F.2d 1216, 1218 (D.C. Cir. 1992) (remanding case for new suppression hearing where evidence excluded solely on hearsay grounds at suppression hearing).

Indeed, the Federal Rules of Evidence themselves make clear that the rules do not apply to hearings—like suppression hearings—that address the preliminary admissibility of specific evidence at trial. *See* Fed. R. Evid. 104(a) ("The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege."); Fed. R. Evid. 1101(d)(1) (providing that the Rules of Evidence—except those based on privilege—do not apply to "the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility"); *see also Matlock*, 415 U.S. at 172-73 ("it should be recalled that the rules of evidence normally applicable in criminal trials do not operate with full force at hearings before the judge to determine the admissibility of evidence").

That is not to say that due process is abandoned at a suppression hearing, of course; but the due process standard at a suppression hearing is a less rigorous one than at trial. *See, e.g.*, *United States v. Raddatz*, 447 U.S. 667, 679 (1980) ("We conclude that the process due at a suppression hearing may be less demanding and elaborate than the protections accorded the defendant at the trial itself."). Courts must remain sensitive to the challenge of making credibility determinations on a cold record. *Id.* [redacted]

II. To the extent necessary and in order to effectuate the requested procedure, Mr. Al-Marimi waives his right to demand that the public have access to [redacted] live testimony for purposes of the suppression hearing.

The concern that the Court expressed with the proposed procedure—[redacted]—involved the public's right of access at a suppression hearing.

Mr. Al-Marimi, and only Mr. Al-Marimi, has a personal Sixth Amendment right to demand public proceedings in his case. *See Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 379-80 (1979). The right is personal to Mr. Al-Marimi and cannot be asserted by the public, including the press, who possess no similar right. *Id.* at 379-81 ("There is not the slightest suggestion . . . that there is any correlative right in members of the public to insist upon a public trial.").

Because that right is a personal right, Mr. Al-Marimi can choose to waive it, as he has done in agreeing that [redacted]. *Id.* at 381 (recognizing that personal Sixth Amendment right to public proceeding can be waived). The parties can further agree to close a particular proceeding to the public where a public proceeding would conflict with a competing constitutional right of the accused, such as the accused's right to a fair trial. *Id.* at 385.

[redacted]

[redacted]

III. The public's right to access the suppression hearing is limited and outweighed by the risk of prejudice to Mr. Al-Marimi, and it is reasonably served by the parties' proposal.

The public's right to access the suppression hearing is founded only in the First Amendment and can be qualified by competing constitutional interests. *See Gannett Co., Inc.*, 443 U.S. at 392-93; *see also In re Public Defender Service for the District of Columbia to Unseal Certain Records*, 607 F. Supp. 3d 11, 22 (D.D.C. 2022) (recognizing that the public has a qualified First Amendment right to access pretrial suppression hearings). Here, it is outweighed by Mr. Al-Marimi's right to a fair trial.

In *Gannett*, the Supreme Court upheld a trial court's decision to completely seal the courtroom as well as the transcript of a suppression hearing from the public because of the significant risk that pretrial publicity posed to the defendants' right to receive a fair trial. In that case, as here, there was a great deal of pretrial publicity.

[2] Counsel have discussed this proposal with Mr. Al-Marimi, and he agrees with the procedures proposed in this motion.

Gannett, 443 U.S. at 371-74. The defendants had moved to suppress their statements on voluntariness grounds. *Id.* at 374-75. At the suppression hearing, the defense moved—and the prosecution did not object—to seal the courtroom for the suppression hearing. *Id.* at 374. The judge also reserved decision on whether to immediately release the transcript of the suppression hearing. *Id.* at 375.

In reviewing a challenge to the trial court's decision to seal the courtroom and temporarily withhold public access to the suppression hearing transcript, the Supreme Court observed that "pretrial proceedings, precisely because of the same concern for a fair trial, were never characterized by the same degree of openness as were actual trials." *Id.* at 387-88. Under English common law, "the public had no right to attend pretrial proceedings" at all. *Id.* at 389. And a number of states historically closed pretrial proceedings "upon the request of the defendant" to protect against prejudicial pretrial publicity. *Id.* at 390; *see In re Motions of Dow Jones & Co.*, 142 F.3d 496, 502-03 (D.C. Cir. 1998) (observing that difference between outcomes in *Press-Enterprise Co. v. Superior Court of California for Riverside County*, 478 U.S. 1, 10-11 (1986) (evaluating public access to preliminary hearings), and *Gannett* was the type of pretrial hearing at issue and the historical provision of public access). The Supreme Court concluded the trial court had rightly determined that the public's First Amendment right to attend the suppression proceeding "was outweighed by the defendants' right to a fair trial" because "an open proceeding would pose 'a reasonable probability of prejudice to these defendants.'" *Id.* at 393.

Here, the procedure that the parties proposed to the Court does not seek to limit the public's access to the suppression hearing as extensively as what the Supreme Court approved in *Gannett*. Rather, the parties proposed that for the purpose of the suppression hearing, the parties would publicly submit a transcript of [redacted] deposition testimony that redacts [redacted] other information not relevant to the Court's consideration of the pending suppression motion. The defense approves of and asks for that procedure to minimize the prejudice to Mr. Al-Marimi's right to a fair trial while maintaining appropriate access to the suppression hearing for the public, consistent with the constitutional interests at play.

CONCLUSION

For the foregoing reasons, the Court should accept a redacted transcript of [redacted] portion of the government's evidence at the suppression hearing in this case. The proposed procedure is fully consistent with well-established principles governing suppression hearings, where hearsay evidence is routinely admitted. Moreover, the proposed procedure appropriately balances the competing constitutional interests at stake: it preserves the Court's ability to make fulsome credibility determinations based on [redacted] while simultaneously protecting Mr. Al-Marimi's constitutional rights to be presumed innocent and receive a fair trial and providing the public with meaningful access to a redacted transcript of [redacted]. Such access is far greater than what the Supreme Court approved in *Gannett*. The Court should

therefore grant this motion and accept the redacted transcript of [redacted] deposition testimony at the suppression hearing in lieu of live, duplicative testimony.

Respectfully submitted,

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