

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**MOTION FOR LEAVE TO FILE**  
**DEFENDANT'S MOTION IN LIMINE REGARDING RULE 15 DEPOSITION**  
**UNDER SEAL**

The defendant, Abu Agila Mohammad Mas'ud Kheir Al-Marimi, through undersigned counsel, respectfully moves this Court for permission to file his Motion in Limine Regarding Rule 15 Deposition under seal because his motion will include proposed trial testimony.

1. On February 2, 2026, the Defendant filed his Motion in Limine.
2. Counsel's position references potential testimony from a government witness and relates to information in prior sealed motions filed by the government.
3. 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).
4. The government does not oppose this motion.



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

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	)	
<b>v.</b>	)	<b>No. 22-cr-392</b>
	)	
<b>ABU AGILA MOHAMMAD</b>	)	
<b>MAS'UD KHEIR AL-MARIMI,</b>	)	
<b>Defendant.</b>	)	

**SEALING ORDER**

This matter having come before the Court on the defendant’s unopposed Motion for Leave to File Defendant’s Motion in Limine Regarding Rule 15 Deposition Under Seal pursuant to Local Criminal Rule 5.1(h) and for good cause shown, the Court finds that sealing is necessary in order to safeguard confidential information relating to trial witnesses.

For the foregoing reasons it is hereby ORDERED that the defendant’s Motion for Leave to File Defendant’s Motion in Limine Regarding Rule 15 Deposition Under Seal is GRANTED, and it is FURTHER ORDERED that the defendant may file his Motion under seal.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
The Honorable Dabney L. Friedrich  
United States District Judge

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 MOTION IN LIMINE REGARDING THE DEPOSITION  
OF [REDACTED]

The defendant, Abu Agila Mohammad Mas'ud Kheir Al-Marimi, by and through counsel, hereby moves *in limine* for the following relief in advance of [REDACTED] Rule 15 deposition: (1) an instruction limiting [REDACTED] testimony to matters about which he has personal knowledge; and (2) preservation of Mr. Al-Marimi's right to challenge admissibility of the testimony obtained pursuant to a Rule 15 deposition conducted in accordance with a foreign declaration of confidentiality.

**BACKGROUND**

Mr. Al-Marimi is charged in a three-count indictment with destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(2), 34, and 2; destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(1), 34, and 2; and destruction of a vehicle used in foreign commerce by means of an explosive, resulting in death, in violation of 18 U.S.C. § 844(i), for his alleged role in the destruction of Pan Am Flight 103 in 1988. Trial is set for August 2026.

Pursuant to Federal Rule of Criminal Procedure 15, the government sought to

take the deposition of [REDACTED], among other witnesses, to preserve his testimony given his advanced age and unwillingness to travel to the United States for trial. [REDACTED]

[REDACTED]

The Court granted the government's motion for deposition on August 19, 2025. ECF No. 140. This deposition is set to begin [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As such, the defense respectfully requests that the Court instruct counsel to refrain from eliciting deposition testimony on matters beyond [REDACTED] personal knowledge.

On January 22, the Defense received a proposed Declaration of Confidentiality governing the Rule 15 deposition to be conducted in [REDACTED] pursuant to the Mutual Legal Assistance Treaty between the United States and [REDACTED]. The Declaration states that the deposition will proceed under U.S. law and Federal Rule of Criminal Procedure 15, while also providing that the [REDACTED] will oversee the proceeding, issue binding instructions to participants, and determine whether certain questions may be answered based on [REDACTED] law.<sup>1</sup> The Declaration further limits participants' note-taking and restricts the use and disclosure of information obtained during the deposition, including prohibitions on using such information for investigation or as evidence outside the MLAT process. Execution of the Declaration by all participants is required as a condition of attending and questioning the witness. The Defense's anticipated execution of the Declaration and participation in the Rule 15 deposition are undertaken subject to an express reservation of all constitutional, statutory, and evidentiary objections to the conduct of the deposition and to the admissibility and use of any resulting testimony at trial.

## ARGUMENT

### **I. [REDACTED] deposition testimony must be limited to matters within his personal knowledge.**

While the defense does not dispute that [REDACTED] may testify regarding matters within his own role and responsibilities with [REDACTED], the Court should

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<sup>1</sup> Negotiations regarding the final language of the Declaration remain ongoing as of the filing of this Motion.

prospectively limit the scope of his deposition to ensure compliance with Federal Rule of Evidence 602.

Rule 602 permits a witness to testify only to matters about which the witness has personal knowledge, to wit, matters the witness personally observed, participated in, or perceived. A witness may not testify based on speculation, assumption, or secondhand information regarding the conduct, knowledge, or decisions of others. *United States v. Whittemore*, 776 F.3d 1074, 1082 (9th Cir. 2015); *United States v. Slatten*, 395 F.Supp.3d 45, 75 (D.C. Cir. 2019).

Here, the anticipated deposition testimony risks extending beyond those limits. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Absent a proper foundation establishing personal involvement or observation,

[REDACTED] lacks personal knowledge to testify regarding:

- [REDACTED];
- [REDACTED]

- [REDACTED]  
[REDACTED].

Permitting testimony on such matters would improperly allow [REDACTED] to serve as a conduit for the knowledge and actions of absent witnesses, contrary to Rule 602. *See United States v. Williams*, 827 F.3d 1134, 1155-1156 (D.C. Cir. 2016). [REDACTED]

[REDACTED]  
[REDACTED]

These concerns are heightened in the context of a Rule 15 deposition conducted abroad. Because improper testimony may be embedded in the deposition record and later presented to the jury, it is appropriate for the Court to impose clear evidentiary boundaries in advance. Accordingly, the defense respectfully requests that the Court instruct counsel to refrain from eliciting deposition testimony on matters beyond [REDACTED] personal knowledge and to require an adequate Rule 602 foundation before questioning proceeds into [REDACTED]. In the alternative, the defense requests that any deposition testimony exceeding [REDACTED] personal knowledge be excluded at trial.

**II. The restrictions imposed by the [REDACTED] Declaration of Confidentiality may render the deposition testimony inadmissible under the Sixth Amendment.**

The government has indicated that it intends to conduct the foreign Rule 15 deposition pursuant to a mandatory declaration of confidentiality that the parties will be required to execute in advance of the deposition. Although the defense anticipates

participating in that deposition, any such participation, and any execution of the confidentiality declaration, must be understood as expressly conditional and without waiver of Mr. Al-Marimi's Sixth Amendment rights. Because the restrictions contemplated by the declaration risk materially impairing the defense's ability to conduct a meaningful cross-examination, the resulting deposition testimony may be inadmissible at trial.

Rule 15 depositions are an exception to the preference for live testimony and are permissible only when consistent with constitutional guarantees. *See United States v. McKeeve*, 131 F.3d 1, 8 (1st Cir. 1997); *United States v. Wilson*, 601 F.2d 95, 97 (3rd Cir. 1979); *United States v. Drogoul*, 1 F.3d 1546, 1552 (11th Cir. 1993). Even where a witness is unavailable, the Confrontation Clause permits the admission of testimonial statements only if the defendant had a meaningful opportunity for effective cross-examination. *Crawford v. Washington*, 541 U.S. 36 (2004); *United States v. Burden*, 934 F.3d 675, 685 (D.C. Cir. 2019). Whether that standard is satisfied depends not merely on the form of questioning allowed, but on the conditions under which the deposition is conducted. *See generally Coy v. Iowa*, 487 U.S. 1012 (1988).

The Declaration of Confidentiality proposed here contemplates restrictions that may limit defense counsel's ability to disclose, discuss, or investigate the witness's testimony outside the deposition setting. Such restrictions raise serious constitutional concerns. The D.C. Circuit has recognized implicitly that effective

cross-examination necessarily includes the ability to prepare for questioning through investigation, consultation with investigators and experts, and the development of impeachment material. *United States v. Celis*, 608 F.3d 818, 836 (D.C. Cir. 2010) (noting disclosures must be made in sufficient time for counsel to make effective use of the disclosed evidence). If confidentiality restrictions foreclose or chill those preparatory steps, the opportunity for cross-examination may be rendered constitutionally inadequate, even if questioning is nominally unrestricted during the deposition itself.

These risks are heightened in the context of a foreign Rule 15 deposition. Foreign depositions typically lack compulsory process, limit contemporaneous investigation, and preclude recall of the witness should new impeachment information emerge. As a result, the adequacy of cross-examination at the time the testimony is taken is of heightened importance. Restrictions that constrain counsel's ability to investigate or follow up on testimony before, during, or after the deposition therefore raise substantial Sixth Amendment concerns.

The defense's anticipated execution of the confidentiality declaration does not constitute a waiver of these constitutional objections. Waiver of the right to confrontation must be knowing, voluntary, and intentional. *Brookhart v. Janis*, 384 U.S. 1, 4 (1966). The defense's participation in the deposition will be undertaken to avoid forfeiting the opportunity to confront the witness altogether, not to relinquish the right to challenge the admissibility of testimony obtained under constitutionally

problematic conditions. The Constitution does not permit the government to require a defendant to choose between participation under restrictive conditions and abandonment of confrontation rights. *See generally Simmons v. United States*, 390 U.S. 377, 394 (1968).

The defense expressly reserves all objections to the admissibility, scope, and constitutional sufficiency of any testimony obtained through the Rule 15 deposition.

### CONCLUSION

For the foregoing reasons, Mr. Al-Marimi respectfully requests that this Court grant his Motion in Limine and (1) instruct counsel that [REDACTED] testimony is to be limited as to matters about which he has personal knowledge; and (2) explicitly reserve Mr. Al-Marimi's right to challenge admissibility of the testimony obtained pursuant to a Rule 15 deposition conducted in accordance with a foreign declaration of confidentiality

