

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

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

GOVERNMENT'S NOTICE OF FILING REDACTED VERSION OF ECF 344

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, in accordance with the Court's Minute Order on February 22, 2026, hereby files the redacted version of ECF 344.

Respectfully submitted,

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UNITED STATES ATTORNEY

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**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 SUPPLEMENT TO
PLEADING REGARDING
RULE 15 AND VIDEO TESTIMONY**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this supplement to its pleading regarding Rule 15 and video testimony (ECF 303-1), as directed in the Court’s minute order of February 2, 2026.

LEGAL STANDARD

The Court has directed the government to explain why the testimony of each prospective witness is “is critical to the government’s case” and “cannot be proved at trial through any other means.” 2/2/2026 Minute Order. Accordingly, this pleading will explain the importance of each witness and why their testimony could not be replicated by an available witness or other admissible evidence. The government respectfully submits, however, that the law does not require either of these criteria to be satisfied before a Rule 15 deposition can be admitted at trial. As argued in the government’s prior pleading, all that is required is that the witness’s anticipated testimony provide “substantial proof of a material fact in a felony prosecution.” *See generally* ECF 303-1 at 10-13.

The government is not aware of any authority suggesting the existence of a “critical witness” requirement. The Court has previously cited two cases when explaining that “case-specific public policy interests regarding a particularly critical witness may under some

circumstances overcome” the preference for in-person confrontation. 11/12/25 Tr. at 69-70 (citing *United States v. Trabelsi*, 06-cr-89 (RDM), 2023 WL 4344526, at *16-19 (D.D.C. June 5, 2023); *United States v. Abu Ali*, 528 F.3d 210, 239–40 (4th Cir. 2008)). We submit, however, that the best reading of these cases is that “critical” testimony from an otherwise-unavailable witness is a sufficient — but not necessary — condition to satisfy *Craig*’s “important public policy” prong.

In *Trabelsi*, the court quoted the government’s description of the witness offering “unique testimony about [the defendant’s] criminal conduct, including his travel to Afghanistan where he met Osama bin Laden, enlisted to become a martyr, and received training to commit an attack.” 2023 WL 4344526, at *2. Later in the opinion, the court described the witness as “uniquely situated to provide an eyewitness account of certain key events,” which (paired with the government’s extraordinary efforts to obtain her live testimony), was “*more than* sufficient” to meet the *Craig* “important public policy” standard. *Id.* at *19 (emphasis added). But the court did not discuss how great a showing of importance the Confrontation Clause required, and the importance of the witness’s testimony did not appear to be in dispute.

In *Abu Ali*, the court made reference to the “critical importance” of “testimony of two Saudi government officials... who presided over the interrogation of” the defendant. 528 F.3d at 240. But in the immediately preceding paragraph, the court described “seven days of deposition testimony from several [Saudi] officers involved in the arrest, detention, and interrogation of” the defendant, *id.*, suggesting that the two “critical” witnesses were among a broader set of less-critical ones who were deposed. Regardless, when applying the *Craig* standard, the court did not suggest that the testimony must be “critical.” The court held instead that the *Craig* standard was satisfied because the testimony was “important,” and that its absence would, “to put it mildly, have greatly hindered efforts to prosecute the defendant, because the circumstances surrounding the confession bore crucially on any jury assessment of its voluntariness.” *Id.* at 241. The government submits

that “important” testimony is exactly what is already demanded by Rule 15(c)(3)’s requirement of “substantial proof of a material fact.”

Moreover, Rule 15(c)(3) requires only that the testimony “provide substantial proof of a material fact,” without any further requirement that the testimony be “critical.” That omission is significant because, if the Confrontation Clause required that the testimony be critical, Rule 15’s lower standard would authorize a great number of depositions that would ultimately be inadmissible at trial. The Supreme Court, which promulgates the Rules of Criminal Procedure, would not have approved the rule if this were the case. *See generally* ECF 303-1 at 12-13 (describing the Supreme Court’s rejection of live-video rule because it insufficiently protected Confrontation rights).

The government is also not aware of cases imposing a uniqueness requirement before Rule 15 testimony can be admitted. Such a requirement could in many cases impair the government’s ability to put on a case, because it is often crucial to corroborate key facts rather than elicit them from only a single source. Regardless, as discussed below, the government in this case is only seeking Rule 15 testimony from witnesses who will provide facts that cannot be had elsewhere.¹

¹ The only exception is witnesses whose testimony may be obviated by the admission of exhibits upon which the Court has not yet ruled. In some instances this pending issue presents a chicken-or-egg problem, because some of the exhibits in question may involve the application of the residual exception, Fed. R. Evid. 807, which also involves an analysis of whether the proponent has other evidence that can offered instead.

GOVERNMENT’S PROFFER

Against that background, we provide the following summary of each witness’s anticipated testimony and explanation of its importance:

Allen Feraday – The Court is already familiar with Feraday’s testimony. Among other critical facts, Feraday testified to the forensic analysis that established that (1) Pan Am Flight 103 was destroyed by an improvised explosive device, like the defendant said in his statement; (2) the bomb was built into a radio, like the defendant said in his statement; (3) the explosive substance was Semtex, like the defendant said in his statement; and (4) the suitcase containing the bomb was packed with certain articles of clothing that (as a separate witness will establish) were purchased in Malta. None of these facts are available from other sources, because the other qualified witnesses from Feraday’s lab have declined to make themselves available even for a Rule 15 deposition.

Jamal – The importance of Jamal’s testimony is self-evident. He is the only witness who can authenticate and establish the voluntariness of the defendant’s statement, and that statement is the strongest evidence of the defendant’s guilt. Moreover, the defendant was physically present for the deposition.

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[REDACTED]

CONCLUSION

For the above reasons, at a time closer to the start of trial and upon a showing that each of the relevant witnesses is unavailable, the Court should admit recorded Rule 15 deposition testimony and allow live video testimony.

Respectfully submitted,

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