

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.)	

SUPPLEMENT TO MR. AL-MARIMI'S
MOTION TO DISMISS FOR DUE PROCESS VIOLATIONS

The defendant, Abu Agila Mohammad Mas'ud Kheir Al-Marimi, submits this supplement in support of his motion to dismiss for due process violations. *See* ECF 251; ECF 253-2 (unredacted). This supplement incorporates information from documents produced by the government after Mr. Al-Marimi filed his motion, as well as the latest testimony from the Jamal, the Libyan interrogator.

I. The timeline of international cooperation supports Mr. Al-Marimi's arguments.

In his motion, Mr. Al-Marimi provided background about the timeline of the Pan Am 103 investigation and the cooperation between the U.S., Scottish, and Libyan governments as they pursued that investigation and investigated Mr. Al-Marimi's alleged involvement. ECF No. 253-2, at 3–8, 25–26. In early February, the U.S. government provided additional discovery regarding the countries' cooperation after the fall of the Qaddafi regime in 2011. This new information further supports Mr. Al-Marimi's arguments that the prejudicial delay in this case warrants dismissal, and that there existed a joint venture such that the conduct of foreign authorities is attributable to the United States. *See* ECF 253-2, at 27–28.

[REDACTED]

[REDACTED]

3

[REDACTED]

Then, a pause.

[REDACTED]

[REDACTED]

3 [REDACTED]

4 [REDACTED]

[REDACTED]

On October 13, 2015, Frontline aired the third episode of its documentary on the Lockerbie tragedy, identifying Mr. Al-Marimi as a suspect of interest. *See* ECF 175, at 10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on the recent discovery, it appears that nearly two years passed before the next major step involving Libyan authorities. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While some of these cross-border interactions took the form of formal letters or requests between governments, others were far from arms-length. [REDACTED]

[REDACTED]

[REDACTED] The information presented above strongly supports that this was a “joint venture” relationship for purposes of Mr. Al-Marimi’s due process challenge.

[REDACTED]

[REDACTED] supports the argument that the glacial pace in bringing charges against Mr. Al-Marimi was the prerogative of the United States government. Its awareness of Mr. Al-Marimi's imprisonment and declining health further support that the delay was at least reckless with respect to the prejudice it has caused Mr. Al-Marimi.⁵

II. Jamal's testimony [REDACTED], if considered and credited, confirms the reckless loss or destruction of the interrogation video and supports the present unavailability of other evidence.

During a [REDACTED] suppression hearing that took place the [REDACTED] the Libyan police officer who claims to have interrogated Mr. Al-Marimi [REDACTED]. Among other topics, Jamal's testimony addressed some of the missing evidence that Mr. Al-Marimi noted in his motion to dismiss. While the defense maintains Jamal has significant credibility issues and preserves all its challenges and objections to his testimony, the following testimony may be relevant to the due process challenges.

First, regarding the video recording of the interrogation, Jamal's latest testimony agrees that recordings were made and subsequently lost. Jamal testified that the interrogation took place over two days and that he began recording both sessions using his personal phone. ([REDACTED] transcript, at 44–45; [REDACTED] transcript, at 11). He stated he took his phone home overnight to charge it, but the

⁵ While these issues are important, they are also only one part of Mr. Al-Marimi's broader argument focused on prejudicial delay, and the period summarized above should be viewed in the context of the entire investigation and prosecution.

battery still died during the recording on the second day. ([REDACTED] transcript, at 44–45). Jamal’s phone was a Nokia N8 that used a micro-SD card, though Jamal previously claimed it was a Nokia N73. ([REDACTED] transcript, at 53–57; 2/10 11:17AM transcript, at 40–41). After the interrogation, Jamal never reviewed or watched the recordings. ([REDACTED] transcript, at 9). He kept the phone, with the SD card, in a safe in his home. ([REDACTED] transcript, at 53–57). It remained there until 2024 when he provided it to the FBI. (*Id.*).

The phone, of course, did not contain the video recordings, which have not been located. The potential exculpatory value of the videos is both clear and substantial, and Jamal’s latest testimony confirms their loss or destruction. While Jamal has not testified that he intentionally destroyed this evidence, his suppression of its existence and his failures to check, secure, and preserve it support that its destruction was reckless. This is particularly so in light of Jamal’s testimony about his training and experience as a police officer, which involved conducting hundreds of interviews and impressed on him the importance of a confession as evidence. (*See* [REDACTED] transcript, at 22–27).

Second, regarding the written statements Jamal claims he made contemporaneously during the interrogation, Jamal testified that he handwrote the answers he received and noted corrections based on his conversations with those he was interviewing. ([REDACTED] transcript, at 47–50). He stored the original documents in the same safe in his home. (*Id.* at 78). Eventually, years later in 2014 or 2015, he provided the original documents to Al-Siddique Al-Sor via hand delivery.

(*Id.* at 78–82). Specifically, after scheduling a meeting with Al-Sor over the phone, Jamal put the originals in a folder and gave them to Al-Sor himself. [REDACTED] transcript, at 38–40). He never saw those documents afterwards. (*Id.* at 40). While Jamal denied ever discussing the substance of the purported interrogations until he provided the original writings to Al-Sor, he previously stated he told a [REDACTED] [REDACTED] about the interrogations and provided [REDACTED] with information about them to pass along to Al-Sor. (*Id.* at 20–24).

Jamal further claimed that he kept a copy of the written statements at his home even after providing the originals to Al-Sor. (*Id.* at 39–40). When pressed, he clarified that the written statements were made using carbon paper, and that he provided Al-Sor the top layers but kept the carbon copies for himself. (*Id.* at 48–49). He claimed that he still had the carbon copies. (*Id.*). While he previously had acknowledged retaining copies of the written statements, he had not previously stated they were carbon copies because he was never asked directly about that.

So, based on Jamal’s latest testimony, there are two “originals” of the written statements that have not been produced: the top layers, which may be in the possession of Al-Sor, and the carbon copies, which Jamal claims to possess. The ongoing failure to provide these originals supports a due process violation for the reasons identified in Mr. Al-Marimi’s motion. *See* ECF 253-2, at 30.

III. An update on potentially unavailable witnesses.

The defense has received additional information indicating that [REDACTED] [REDACTED] and [REDACTED] may still be alive. *See* ECF No. 253-2, at 17. Our

