

**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)

MOTION TO EXCLUDE THE TESTIMONY OF ANTHONY MAY

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court to exclude the proposed expert testimony of Anthony May at trial. The Court should preclude May’s testimony because his expert notice is inadequate and his testimony is irrelevant.

BACKGROUND

On January 22, 2026, the defense noticed a potential forensics and explosives expert as a witness for trial. *See Ex. 1* (defense expert notice). They noticed Anthony May, a former U.S. Army Explosives Ordnance Disposal Technician and former Explosives Enforcement Specialist at the U.S. Bureau of Alcohol, Tobacco and Firearms. He is specifically noticed as an expert witness “primarily in response to the government’s expert, Mr. Allen Feraday.” *Id.* at 3. The notice listed twenty possible “opinions;” however, the list was not opinions, but rather broad swaths of topics. They included topics such as “1. What qualifies an individual as an experienced explosives investigator;” and “7. How to determine if an incident is an explosive event.” *Id.*

On February 12, 2026, the government sent an email to defense asking for more clarification on May’s possible opinions:

The notice identifies general topics but does not specify what May’s testimony about those topics will be. For example, point (5) states that Mr. May will testify about “[t]he process for assessing an explosive incident and the suspected crime

scene,” but it fails to say what that process is. Likewise, point (12) is “What is a high performance and low performance explosive and how does an examiner determine if either is present,” but it does not provide Mr. May’s definition of high performance and low performance explosive or explain specifically how an examiner can determine if either is present. The same applies to all of the topics numbered (1) through (20) in the notice.

On March 3, 2026, the defense submitted a supplemental notice, with only seventeen topics listed. *See Ex. 2.* Some of the topics are more fleshed out, but all remain vague. Compare his “opinion” from the January 22, 2026 notice:

How to determine if an incident is an explosive event

to the “opinion” noticed on March 3, 2026:

Determining if an incident is an explosive event, versus a mechanical event is done by examining the evidence collected to determine if an explosive device was used. Specifically, examination of the physical damage that exhibits blast and thermal damage to its environment.

There is no explanation of how the damage would indicate that an event is an explosive event versus a mechanical one.

Moreover, while the notice again states that May will be called “primarily in response to the government’s expert, Mr. Allen Feraday,” there is no indication about how he would respond to Feraday. *Id.* at 3. The notice goes on to state that he will be offered as expert witness in “device design, functions, effects, post blast procedures, and evidence collection.” *Id.* It also mentions he will testify based in part on his “review of the exhibits and reports presented in discovery.” *Id.* Nowhere in the notice does it state what May will say about the evidence collection in this case, the testing done in this case, the reports produced, the post-blast procedures, or his opinions on the conclusions of Feraday.

For the reasons outlined below, the Court should exclude May’s testimony as (1) his notice is insufficient and (2) his testimony is not relevant.

ARGUMENT

I. The Defendant's Notice is Insufficient

Federal Rule of Criminal Procedure 16(b)(1)(C) mandates that an expert disclosure by the defense include, among other things, “a *complete statement* of *all* opinions that the defendant will elicit from the witness in the defendant’s case-in-chief” (emphasis added). This requirement was added as part of the 2022 amendment to the Rule, imposing a higher standard than the previous version that required only “a written summary of any [expert] testimony that the defendant intends to use.” Fed. R. Crim. Pro. 16(b)(1)(C) (2021 ver.). The express purpose of the amendment was to “ensure that parties receive adequate information about the content of the witness's testimony and potential impeachment.” Fed. R. Crim. Pro. 16, Notes to 2022 Amendments. Although this statement need not be “verbatim,” it must be “complete.”

Even under the old, less-rigorous standard, a mere “list of testimony topics” was insufficient notice under Rule 16. *United States v. Rogers*, 2006 WL 5249745, at *3 (D.D.C. 2006) (string citations omitted). *See also, e.g., United States v. Duvall*, 272 F.3d 825, 828 (7th Cir. 2001) (“The Rule requires a summary of the expected testimony, not a list of topics”); *United States v. Beavers*, 756 F.3d 1044, 1054 (7th Cir. 2014) (noting that expert notice was “insufficient[]” as it provided only a “general list of examination topics” and one sentence, conclusory in nature, about one opinion the witness would offer at trial); *United States v. Concessi*, 38 F. App’x 866, 868 (4th Cir. 2002) (upholding district court decision to exclude expert testimony where notice was provided late and “failed to describe the witnesses[’] opinions or provide the bases and reasons for the witnesses’ opinions”); *United States v. Ulbricht*, 858 F.3d 71, 115 (2d Cir. 2017) (affirming that expert notices were “plainly inadequate” because they “merely listed general and in some cases

extremely broad topics on which the experts might opine”), *abrogated on other grounds by Carpenter v. United States*, 138 S. Ct. 2206 (2018).

The primary purpose of Rules 16(b)(1)(B) and (C) is to prevent unfair surprise at trial and to permit each party “to prepare rebuttal reports and to prepare for cross-examination at trial.” *Id.* “Rule 16(b)(1)(C) is ‘intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert’s testimony through focused cross-examination.’” *Id.* (quoting Fed. R. Crim. P. 16 advisory committee’s note). A defendant is “not entitled to surprise the government with ill-defined expert testimony.” *Beavers*, 756 F.3d at 1054.

“A failure to comply with these Rules may result in the exclusion of the proffered evidence.” *Naegele*, 468 F. Supp. 2d at 176 (citing Fed. R. Crim. P. 16(d); *United States v. Barile*, 286 F.3d 749, 758–59 (4th Cir. 2002); *United States v. Day*, 433 F. Supp. 2d 54, 57 (D.D.C. 2006)).

Here, the defense has provided a mere list of topics. The defense has failed to describe the witness’s opinions. The defense has also failed to provide any of the bases and reasons for the witness’s opinions. “[E]xperts’ opinions are worthless without data and reasons.” *United States v. Mamah*, 332 F.3d 475, 478 (7th Cir. 2003) (quoting *Kenosha v. Heublein*, 895 F.2d 418, 420 (7th Cir. 1990)). There is no indication what, if anything, May would say about the processes and procedures followed by the forensic scientists in this case. There are no opinions proffered from May about the conclusions that Feraday testified to in this case. Accordingly, the defense’s expert notice is deficient. Because the defense has failed to provide sufficient expert notice, May should be precluded from testifying.

II. The Testimony is Not Relevant

The proposed testimony noticed in May's expert disclosure is not relevant to the facts at issue in this case. Federal Rule of Evidence 401 defines evidence as relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *See* Fed. R. Evid. 401. Relevant evidence is admissible unless otherwise provided by the U.S. Constitution, a federal statute, the Federal Rules of Evidence, or other rules prescribed by the U.S. Supreme Court. *See* Fed. R. Evid. 402. "Irrelevant evidence is not admissible." *Id.* Any piece of evidence that fails this test under Rule 401 is not relevant under Federal Rule of Evidence 402. *See, e.g., United States v. Doe*, 903 F.2d 16, 20 (D.C. Cir. 1990) (citing 22 C. Wright & K. Graham, *Federal Practice & Procedure* § 5202 at 237 (1978)). And expert testimony must have more than bare relevance; it must be "more likely than not" to "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid 703(a).

May's testimony is not relevant or helpful for the jury because the defense has provided no indication how any of the topics referenced in the letter are relevant to this case. As it stands, there is nothing in this notice that will aid the factfinder about what did or did not happen as it relates to the investigation in this case. For example, his first "opinion" that "an experienced explosive investigator should have training in explosives and explosives effects, crime scene and post-blast investigations procedures, and evidence collection and documentation" is a meaningless statement. *Ex. 2* at 4. There is no explanation of what kind of training is satisfactory in his mind, or the different ways a person could get that kind of training. There is no statement or opinion about the training Feraday received in each of these procedures and how that training was sufficient or deficient. Further, there is no tie between how that training may have affected the explosives

analysis, crime scene and post-blast investigations procedures, and evidence collection and documentation that was done in this case. Furthermore, there is no tie between *any* of the seventeen listed topics and the facts of this case. Because the testimony is irrelevant as proffered, May's testimony should be excluded.

CONCLUSION

For the foregoing reasons, the Court should GRANT the government's motion to exclude the testimony of Anthony May.

Respectfully submitted,

JEANINE FERRIS PIRRO
UNITED STATES ATTORNEY

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January 22, 2026

Via E-mail

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Re: *United States v. Abu Agila Mohammad Mas'ud Kheir Al-Marimi*
Case No. 1:22CR392

Dear Counsel:

This letter is to formally advise you that, on behalf of Mr. Al-Marimi, we expect to call Mr. Anthony May as an expert witness at trial in this case. His attached *curriculum vitae* sets forth his extensive credentials and lists his publications. In the past four years, he has testified one time, in the case of *State of Washington v. Herbert Tiley* (Pierce Cty. Superior Court Crim. Case No. 20-1-02243-0).

Qualifications

Mr. May has been qualified as an expert witness in United States courts in criminal violations of federal and state explosives laws in the area of device design, characteristics, functioning, and explosion effects. He has worked with the State Department conducting Anti-terrorism Assessments for foreign governments and has investigated explosions and fire scenes to determine cause and origins.

During his nineteen years in the United States Army, Mr. May served as a Explosive Ordnance Disposal (EOD) Response Team member. He was responsible for the accurate identification, render safe and disposal of military ordnance, commercial explosives, chemical and nuclear weapons, and improvised explosive devices. He

received extensive hands-on experience with explosives and explosives effects, and other hazardous material, while mitigating the hazards presented by these materials. Mr. May obtained the rank of First Sergeant, ultimately responsible for managing, coordinating, and supervising EOD operations.

Mr. May worked as an Explosives Enforcement Officer for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for twenty years. He provided technical support to ATF Special Agents and other law enforcement officers on matters related to explosives and explosives affects of improvised explosive devices (IED), and post blast investigations. Mr. May was responsible for investigating violations of federal explosives laws according to state and federal regulations. He examined and evaluated reports, materials and exhibits related to explosive incidents to determine their classification under federal law. He prepared final case statements upon completion of full investigations and lab analysis. His technical support included on-site investigative assistance for post-blast investigations to determine the cause and seat of the blast, examination of recovered evidence, and the identification, reconstruction, and testing of homemade bombs and other destructive devices; As a certified Hazardous Device Technician, Mr. May further rendered safe procedures and coordinated safe disposal of explosives and explosive devices.

Mr. May further conducted safety and certification training classes for ATF employees and other federal, state and local law enforcement agencies throughout the United States. These classes train agents on identification and destruction of hazardous materials, post blast investigation procedures, bomb threat searches, collection, preservation of evidence, and explosive safety training as it related to explosive effects.

Mr. May assisted in the investigation of cause of the explosion of TWA Flight 800. He was responsible for examining physical wreckage to locate the explosion (seat of the blast) on the aircraft and what caused the explosion.

Mr. May was a member of the ATF's National and International Response team for Explosive Post Blast and fire Investigation. He was assigned to the US State Departments Anti-Terrorist Assessment Team tasked with evaluating a host country's ability to protect the US Embassy and US Citizens. He conducted Antiterrorism and Threat Assessments for the US State Department Embassies and Consulates throughout South America, Middle East, and North Africa.

Mr. May assisted in the investigation of the 1996 Atlanta Olympic park bombing, which included working the post-blast scene collecting evidence recovered, and using the evidence to reconstruct the device used. He also participated in the investigation of Eric Rudolph, suspected in the bombing of a Birmingham abortion clinic and two other locations in Atlanta.

Mr. May worked post-blast investigation and explosive exploitation in Baghdad, Iraq. He was assigned to a team responsible for examining the scenes of attacks on U.S. and Coalitions forces where explosives or improvised explosives devices were used.

Mr. May holds a degree in Security Management, a Master Explosives Ordnance Disposal Badge, and certifications in Hazardous Waste Management. While working with ATF he was a Certified Hazardous Device Technician, and is currently a Certified International Post Blast Investigator with the International Association of Bomb Technicians and Investigators (IABTI).

Mr. May's Opinions

We intend to call Mr. May as an expert witness primarily in response to the government's expert, Mr. Allen Feraday – including testimony and the RARDE report that the Government may offer as evidence at trial against Mr. Al-Marimi – however, his testimony could respond to any expert the government calls regarding forensic explosives analysis and their methodology to satisfy Daubert.

Specifically, Mr. May may testify to the following:

1. What qualifies an individual as an experienced explosives investigator;
2. The reasonable scope of expert testimony regarding the cause of explosion;
3. The components of an explosive device and their role in creating an explosive event;
4. The nature of an explosive event, including what happens during an explosion and the various phases of the blast;
5. The process for assessing an explosive incident and the suspected crime scene;
6. The standards for examination of evidence in a suspected explosive incident;
7. How to determine if an incident is an explosive event;
8. The process and criteria to determine where an explosion originated (the "blast seat");
9. The degree of specificity that can be determined regarding location of seat of blast and his conclusion that the seat of the blast typically cannot be determined within centimeters in a significant explosion;
10. The ability and process to determine effects of explosives in contact with other items and what can and cannot be determined from that examination;
11. The expected physical characteristics of items that came in contact with the explosion;
12. What is a high performance and low performance explosive and how does an examiner determine if either is present;

13. The ability and limitations in determining the nature of the explosives based on the physical characteristics of blast-involved evidence;
14. The role of chemical testing in explosives analysis and the degree of reliance that can be placed on that in examining an explosives-involved incident;
15. The significance of RDX and PETN being found in the same explosion;
16. The degree of post-blast investigation that is reasonable for an investigator in an explosives event to maintain and unbiased approached and the effect it may have on his or her conclusions;
17. The ability of an expert in this field to testify to the circumstances of the event versus determining what the evidence is consistent with or would lead a reasonable expert to believe;
18. The standards and processes for conducting comparison explosive tests;
19. Why the testing circumstances need to replicate the incident circumstances as closely as possible and why variations in the chemical used, the amount of the chemical used, the surrounding material, and the environment will all impact the ability to replicate the explosion;
20. The effect of an explosion occurring in the air versus an explosion occurring on the ground and the reasons why explosive testing conducted at sea level does not sufficiently replicate an explosion at a height of 30,000 feet.

The bases and reasons for Mr. May's opinions are his training, education, and experience as detailed above and in his *curriculum vitae*. Mr. May may also rely on peer-reviewed literature and publications.

In accordance with Federal Rule of Criminal Procedure 16(b)(1)(c)(v), I approve this disclosure:

Anthony L. May

Please feel free to call me should you have any questions.

Sincerely,

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March 2, 2026

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Re: *United States v. Abu Agila Mohammad Mas'ud Kheir Al-Marimi*
Case No. 1:22CR392

Dear Counsel:

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Mr. May has been qualified as an expert witness in United States courts in criminal violations of federal and state explosives laws in device design characteristics, functioning, and explosion effects. He has worked with the State Department conducting Anti-terrorism Assessments for foreign governments and has investigated explosions and fire scenes to determine cause and origins.

During his nineteen years in the United States Army, Mr. May served as an Explosive Ordnance Disposal (EOD) Response Team member. He was responsible for the accurate identification, rendering safe and disposal of military ordnance,

commercial explosives, chemical and nuclear weapons, and improvised explosive devices. He received extensive hands-on experience with explosives and explosives effects, and other hazardous material, while mitigating the hazards presented by these materials. Mr. May obtained the rank of First Sergeant, ultimately responsible for managing, coordinating, and supervising EOD operations.

Mr. May worked as an Explosives Enforcement Officer for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for twenty years. He provided technical support to ATF Special Agents and other law enforcement officers on matters related to explosives and explosives effects of improvised explosive devices (IED), and post blast investigations. Mr. May was responsible for investigating violations of federal explosives laws according to state and federal regulations. He examined and evaluated reports, materials and exhibits related to explosive incidents to determine their classification under federal law. He prepared final case statements upon completion of full investigations and lab analysis. His technical support included on-site investigative assistance for post-blast investigations to determine the cause and seat of the blast, examination of recovered evidence, and the identification, reconstruction, and testing of homemade bombs and other destructive devices; As a certified Hazardous Device Technician, Mr. May further conducted rendered safe procedures and coordinated safe disposal of explosives and explosive devices.

Mr. May further conducted safety and certification training classes for ATF employees and other federal, state and local law enforcement agencies throughout the United States. These classes train agents on identification and destruction of hazardous materials, post blast investigation procedures, bomb threat searches, collection of evidence, and explosive safety training related to explosive effects.

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Mr. May worked post-blast investigation and explosive exploitation in Baghdad, Iraq. He was assigned to a team responsible for examining the scenes of attacks on U.S. and Coalitions forces where explosives or improvised explosives devices were used. The team collected evidence of the devices to determine their construction and exploited the evidence to assist in safeguarding military operations.

Mr. May holds a degree in Security Management, a Master Explosives Ordnance Disposal Badge, and certifications in Hazardous Waste Management. While working with ATF he was a Certified Hazardous Device Technician and is a Certified International Post Blast Investigator with the International Association of Bomb Technicians and Investigators (IABTI).

We intend to call Mr. May as an expert witness primarily in response to the government's expert, Mr. Allen Feraday – including testimony and the RARDE report that the Government may offer as evidence at trial against Mr. Al-Marimi – however, his testimony could respond to any expert the government calls regarding forensic explosives analysis and their methodology to satisfy Daubert.

Specifically, Mr. May may testify to the following:

1. An experienced explosive investigator should have training in explosives and explosive effects, crime scene and post-blast investigations procedures, and evidence collection and documentation.
2. The reasonable scope of expert testimony regarding the cause of explosion requires focus on physical damage and evidence collection to determine cause of the explosion and its location.
3. The components of an explosive device and their role in creating an explosive event include:
 1. a power source, specifically a battery, if it is an electronic-initiated
 2. an igniter or blasting cap
 3. the explosives
 4. a switch or means of initiation, which could be triggered by a timer, command, or altitude.
4. An explosive event initially causes positive pressure, which creates a shock wave moving outward from the seat of the blast, and a negative pressure, which creates a wave that moves back toward the seat of the explosion, both of which cause damaging effects on the surroundings.
5. The effects of the velocity of detonation (VOD) are based on the nature of the explosives. High explosives are designed to shatter and break with a VOD of 15,000 feet per second (FPS) to 29,000 FPS. Low explosives are designed to push and shove and have a VOD less than 15,000 FPS.
6. The process for assessing an explosive incident and the suspected crime scene includes:
 - a. Identification of the seat of the blast;
 - b. Evidence collection and documentation;
 - c. Physical examination of the physical items recovered in evidence to determine what was used to construct the explosive device;

- d. Forensic chemical examination to determine the type of explosives used.
7. Determining if an incident is an explosive event, versus a mechanical event is done by examining the evidence collected to determine if an explosive device was used. Specifically, examination of the physical damage that exhibits blast and thermal damage to its environment.
8. Examination of the surrounding structures for evidence of physical and thermal damage is critical for determining the seat of the blast, as an explosion usually creates a crater or other obvious physical damage caused by an explosion. The degree of specificity that can be determined regarding location of seat of blast, depends on the physical and thermal damage of the surrounding environment and, typically, the formation of a “crater.”
9. The ability to determine the location of the explosives is based on the physical characteristics of blast-involved evidence. A reasonable measure of a specific location is outward damage to metal structures.
10. A post-blast investigator should rely on samples provided to laboratory technicians for forensic analysis to determine the type of explosives involved in an incident. The resulting laboratory report has a high degree of reliability, if laboratory testing is conducted properly.
11. The significance of RDX and PETN being found together indicates the probability of Semtex, however, it is possible for the two substances to be used separately in an explosion.
12. An investigator in an explosives event should maintain an unbiased approach when examining the evidence and the effect it may have on his or her conclusions and should limit his/her post-blast investigation to the physical evidence that is available and the analysis of that physical evidence.
13. An expert in this field should limit his/her testimony to what the physical evidence demonstrates.

14. When conducting comparison explosive tests, examiners should attempt to replicate the environment in which the incident occurred as specifically as possible. Similarly, examiners should seek to prevent conditions that vary from the suspected explosive incident. Variation in conditions such as different atmospheric conditions, using a pressurized cargo hold versus an unpressurized, or confinement, such as a closed container versus an open container, are likely to taint or produce different conclusions.
15. Atmospheric conditions affect the velocity of detonation of an explosion. There would, therefore, be a difference in the velocity of detonation (VOD) occurring at a height of 30,000 feet versus at sea level (or slightly above). Atmospheric pressure provides the medium (air) that an explosion compresses to create a shock wave. Higher initial atmospheric pressure can result in a blast wave with a lower peak overpressure and may also affect the negative pressure wave. Lower ambient pressure can lead to a higher velocity for the blast wave. A shock wave increases as ambient pressure decreases, possibly causing more damage. The air pressure difference between sea level and 31,000 feet is approximately 10.5 psi, as the air pressure at sea level is approximately 14.7 psi and is 4.18 to 4.26 psi at an elevation of 31,000 feet.

Mr. May will be offered as an expert witness in device design, functions, effects, post-blast procedures, and evidence collection. He will testify to his training and background, and his review of the exhibits and reports presented in discovery.

In accordance with Federal Rule of Criminal Procedure 16(b)(1)(c)(v), I approve this disclosure:

Anthony L. May

Please feel free to call me should you have any questions.

Sincerely,

Whitney E.C. Minter
Laura J. Koenig
Brooke S. Rupert
Assistant Federal Public Defenders

Counsel for Mr. Al-Marimi