

**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 SECOND NOTICE OF SUPPLEMENTAL
EVIDENCE FOR MOTION TO SUPPRESS HEARING**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this proffer of additional facts to supplement the record of the hearing on the defendant's Motion to Suppress Statements.

A. Carbon Copy

Following the hearing on the defendant's Motion to Suppress Statements, at the Court's and government's request, the Libyan Police Officer (the "Officer") sent photographs of the version of the statement that he retained, which he has referred to as a carbon copy.¹ He has also sent a video paging through portions of his copy. The government received approximately 20 images and a video of portions of the Officer's copy of the statement. Copies of those images and the video will be submitted the Court and counsel via USAfx as Exs. E and Ex. F, respectively.²

¹ The government will refer to this version as the "Officer's copy." The Officer informed the government that he tried to send a photograph of each page, but that the messaging platform did not successfully transmit each photograph. The FBI has confirmed that on its end, the messaging platform shows that multiple messages were sent but not delivered.

² The government received the images in Ex. E as separate .jpg photograph files. The government has combined those files in a single .pdf for convenience.

The Officer also described the process by which he created the carbon copies: He began with a set of sheets of lined paper. He then took a black piece of “carbon” paper, inserted it between two of those sheets, and wrote as he described in his testimony. For the first page, this process resulted in two copies of page “1,” one original and one carbon copy. He then moved the carbon paper to the next sheet and repeated the process, resulting in two copies of page “2,” and so on. When the statement was finished, he brought both the original and the carbon copy of the page back to the interviewee for review and signature, again using the black carbon paper to replicate the signature from the original onto the carbon copy.

The images and videos sent by the Officer depict white paper and black writing, as he described. They moreover lack the red “copy” stamp about which he provided testimony, which is to be expected, as that stamp signifies that it is a copy of a copy. *See* Officer Depo. Tr. Vol. I at 22. The Officer has also previously stated that the red stamp is typically applied by the prosecutor’s office. The text of the images and videos sent by the Officer appear to be a word-for-word match to the version the government later received through the Scottish authorities, which was introduced at the hearing as Exhibit 500. The photographs and videos sent by the officer also contain some black markings in the corners of the sheet that are not present on Exhibit 500, and the words on the Officer’s Copy also contain underlines of the type that are present on Exhibit 500, which the Officer testified he did not make. The Officer stated that he does not presently have a specific memory regarding how those underlines would have been made on his copy.

The government has not viewed the physical version of the Officer’s copy. The images and video provided by the Officer are largely corroborative of his testimony: he provided portions of a copy, white with black writing, that, as evidenced from the lack of red stamp, he kept from prior to the time that the stamp was affixed to it. The type of paper depicted is consistent with how the

officer stated he creates carbon copies. If the Officer was unable to recall some specific details about how underlining was put on his copy, that is consistent with him being asked very specific questions about mundane details more than 13 years after the statement was taken and more than 10 years after he provided it to a Libyan official. Moreover, the Officer's willingness to respond quickly to the Court's inquiry and send the videos further demonstrates his willingness to provide information as requested, despite being under no obligation to do so; that willingness underscores the government's argument that the Court should view favorably the Officer's credibility.

B. Letter from the Minister

Following the hearing, the Officer stated that he had retrieved a copy of his tasking letter and sent it to the FBI, and he was surprised when the FBI informed him that it had not received that letter. The Officer stated that he had sent a digital copy of the letter to the FBI on a messaging platform, and that he did not have the device he had used to send the image with him at that time. In a later conversation, the Officer stated that he had checked the messaging application, and the messages in question had been deleted (this is consistent with the Officer's routine practice of deleting his correspondence with the FBI for security reasons). He did not have a copy of the image on his phone, because he had taken the photograph directly in the messaging application. The Officer agreed to try to retrieve another copy from his employer. As of this submission, the Officer has been unable to do so, but he has agreed to keep trying.

CONCLUSION

After considering the above evidence and proffers, in addition to that evidence and argument presented at the hearing and in the briefing on this matter, the defendant's motion should be denied.

Respectfully submitted,

JEANINE FERRIS PIRRO
UNITED STATES ATTORNEY

By: /s/ Erik M. Kenerson
ERIK M. KENERSON (OH Bar No. 82960)
CONOR MULROE (NY Bar No. 5289640)
BRITTANY KEIL (D.C. Bar No. 500054)
Assistant United States Attorneys
JEROME J. TERESINSKI (PA Bar No. 66235)
Special Assistant United States Attorney
601 D Street NW, Washington, D.C. 20530
(202) 252-7201 // Erik.Kenerson@usdoj.gov

KATHLEEN CAMPBELL (MD Bar No. 9812170031)
JENNIFER BURKE (MD Bar No. 9706250061)
Trial Attorneys, Counter Terrorism Section
National Security Division
950 Pennsylvania Avenue NW, Washington, D.C. 20530