

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>v.</b>	)	<b>No. 1:22-cr-392 (DLF)</b>
	)	
<b>ABU AGILA MOHAMMAD</b>	)	
<b>MAS’UD KHEIR AL-MARIMI,</b>	)	
<b>Defendant.</b>	)	

**MR. AL-MARIMI’S RESPONSE IN OPPOSITION TO THE GOVERNMENT’S  
MOTION TO LIMIT THE TESTIMONY OF REBECCA MURRAY**

Mr. Al-Marimi has provided notice of his intent to present Rebecca Murray as an expert on Libyan political conditions and Libyan prison conditions, including temporary detention facilities, from the fall of 2011 through 2015<sup>1</sup>. The government has challenged that Ms. Murray is not qualified as an expert on political conditions in Libya from 2011 to 2015, that her testimony is not relevant or reliable because she does not have personal knowledge of Mr. Al-Marimi’s imprisonment, and that her testimony is not admissible under Federal Rule of Evidence 403. *See* ECF No. 361. But, the evidence indicates that Ms. Murray is qualified, her testimony is relevant, and Rule 403 does not preclude her anticipated expert testimony. The Court should thus deny the government’s motion in limine.

---

<sup>1</sup> While the Court limited the scope of Ms. Murray’s testimony at the suppression to the 2011-2013 timeframe, the defense submits that the Court has ample reason to doubt Jamal’s credibility about the timing of his alleged interrogation of Mr. Al-Marimi. The defense anticipates that foundation to doubt Jamal’s credibility will only increase as the evidence in this case is developed at trial. Thus, the defense continues to proffer Ms. Murray’s expertise through on Libyan political and prison conditions through 2015.

**I. Rebecca Murray is qualified as an expert on Libyan political conditions as they relate to Libyan prison conditions, including temporary detention facilities, from the fall of 2011 through 2015.**

The government argues Ms. Murray is not qualified to opine on Libyan political conditions from the fall of 2011 through 2015. *See* ECF No. 361 at 3-5. The government first challenges that because Ms. Murray has worked as a freelance journalist, she is not qualified to present expert testimony to the jury because she “has no specific expertise in the analysis of the political conditions in Libya from 2011-2015”. *Id.* at 4. But, Ms. Murray’s testimony indicates otherwise.

Ms. Murray testified that when she reports on conflict-ridden areas such as Libya, she lives in that area in order to “understand the context in entirety, so living within a community, understanding who the relevant actors are is very important”. 2/11/26 PM Tr. at 46. She prepares for her reporting projects by immersing herself in literature review, meeting with media colleagues and peers, meeting with officials—such as from the United Nations, “embassy officials, government officials, members of the security forces, as well as local media, fixers, translators, civil society members, N[on-]G[overnmental]O[rganization]s”. *Id.*

Ms. Murray also develops a deep understanding of the political conditions and security risks present in the country. In the conflict-ridden places where Ms. Murray has worked, including Libya, “politics [are] absolutely intertwined in the security situation”. *Id.* at 47. Ms. Murray has to be intimately familiar with the security risks present not only for her own personal safety but for that of her sources. *Id.* To develop that deeper understanding, Ms. Murray relies on “local media, local analysts,

international analysts who are working, doing field work in the country. Again, NGOs who are working there, civil society who is working there, UN officials, human rights watchdogs, and then government officials, security officials”. *Id.*

She relies on reports she has found to be reliable in her work such as “Human Rights Watch; Amnesty International; then there’s the International Crisis Group that does great context work, Chatham House; Carnegie, which is based here. And then we would have, again, UN reports, especially OHCHR, which is the human rights body of the UN”. *Id.* at 48. Ms. Murray triangulates these sources, meaning that she tests the validity of information from various sources against information from other sources before deeming the information reliable. *Id.*

Ms. Murray lived and worked in Libya for significant periods of time. She lived in Tripoli, traveling across the country for work, from February 2012 to November 2012. *Id.* at 49; *see also* Def. Suppression Hr’g Ex. 1a at 1 (indicating that Ms. Murray lived and worked in Libya for sustained periods of time from 2012-2015). During this time, Ms. Murray engaged with Libyan government officials on a pretty much daily basis and had constant contact with members of armed groups/militias and politicians in Tripoli and Misrata. *Id.* at 50-51. While Ms. Murray lived in Tripoli, she worked in Misrata as described above every couple of weeks. *Id.* at 51. In Misrata, Ms. Murray engaged regularly with Misratan government officials, armed groups/militia members, the Misrata military council, and intelligence officials. *Id.* at 52-53.

Further, in 2015, Ms. Murray worked as a field researcher for the United States Institute of Peace (“USIP”) to update a study of Libyan prison conditions that USIP had conducted in 2012. Ms. Murray co-authored the 2015 follow-on report about Libyan prison conditions, which described how—consistent with Ms. Murray’s testimony—Libya’s prison system had been under enormous amounts of stress because of the ongoing political conditions in the country. *See* Def. Suppression Hr’g Ex. 2 at 5-9, 13-24, 27, 39-40. The report concluded that while a “few” dedicated prison officials had been able to provide basic care for prisoners and “to keep prison facilities secure and functional in very challenging environments”, other prisons:

although nominally under Ministry of Justice jurisdiction—still operate with the significant involvement of politically aligned armed groups, and the management of and conditions within such prisons are of grave concern. Furthermore, reports of extrajudicial detentions outside the criminal justice system by both state-affiliated and nonstate armed groups have mushroomed since the outbreak of civil war in 2014, with documented accounts of arbitrary detention, incommunicado detention, disappearances, physical and psychological abuse, and torture occurring throughout Libya.

*Id.* at 40.

It is these experiences—the thorough research and investigation, the constant contact with government figures and political actors, and her personal on-the-ground observations—that qualify Ms. Murray as an expert on political conditions in Libya from 2011 to 2015. The government has carped at Ms. Murray not being a professional academic. But, Ms. Murray’s experience investigating and reporting on Libyan prison conditions after the 2011 revolution and the specialized knowledge she acquired qualify her to opine as an expert on those conditions.

Federal Rule of Evidence 702 allows for expert testimony based on “*knowledge*, skill, *experience*, training, or education” where “it is more likely than not that [] the expert’s scientific, technical, *or other specialized knowledge* will help the trier of fact to understand the evidence or to determine a fact in issue”. Fed. R. Evid. 702(a) (emphasis added). The Advisory Committee Note to Rule 702 reports:

Nothing in this amendment is intended to suggest that experience alone—or experience in conjunction with other knowledge, skill, training or education—may not provide a sufficient foundation for expert testimony. To the contrary, the text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience. In certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony.

Fed. R. Evid. 702 advisory committee’s note to 2000 amendment; *see also United States v. Wilson*, 605 F.3d 985, 1026 (D.C. Cir. 2010) (stating “if a witness lacks firsthand knowledge[], he may testify only if qualified as an expert. To hold otherwise would conflate the ‘particularized’ knowledge necessary to testify as a lay witness with the ‘specialized’ personal knowledge gained from previous experience”).

Ms. Murray’s experience—in combination with her knowledge gained through her work as an analyst and a field researcher—qualifies her as an expert on Libyan political conditions as well as Libyan prison conditions, including temporary detention facilities, from the fall of 2011 through 2015. *See, e.g., United States v. Smith*, 640 F.3d 358, 365 n.3 (D.C. Cir. 2011) (observing that there is no bar in the D.C. Circuit against an expert serving as both a fact witness and an expert witness); *see also* Fed. R. Evid. 702 advisory committee’s note (“Since much of the criticism of expert testimony has centered upon the hypothetical question, it seems wise to

recognize that opinions are not indispensable and to encourage the use of expert testimony in non-opinion form when counsel believes the trier can itself draw the requisite inference.”).

As at the suppression hearing, the defense expects the government to cross-examine Ms. Murray about questions it may have about her qualifications, but such questions do not render Ms. Murray unqualified as an expert on Libyan political conditions from the fall of 2011 through 2015. *See, e.g., Daubert v. Merrell Down Pharms., Inc.*, 509 U.S. 579, 595 (1993) (“Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”); Fed. R. Evid. 702 advisory committee’s note to 2000 amendment (“A review of the caselaw after *Daubert* shows that the rejection of expert testimony is the exception rather than the rule. *Daubert* did not work a ‘sea change over federal evidence law,’ and ‘the trial court’s role as gatekeeper is not intended to serve as a replacement for the adversary system.” (quoting *United States v. 14.38 Acres of Land Situated in Leflore County, Mississippi*, 80 F.3d 1074, 1078 (5th Cir. 1996)).

To the contrary, as one of the few independent observers allowed within Libyan prisons in 2015 and permitted access to those with detailed information about Libyan prisons in the preceding years and how the political conditions in the country affected Libyan prisons, Ms. Murray is exceptionally qualified to present expert testimony in this case on Libyan political conditions and prison conditions from the fall of 2011 through 2015.

**II. Ms. Murray’s anticipated expert testimony is relevant to the jury’s general understanding of the circumstances in which Mr. Al-Marimi had been imprisoned before making his alleged confession<sup>2</sup> in this case.**

The government next argues Ms. Murray’s opinions are not relevant because she cannot offer firsthand knowledge about the facilities<sup>3</sup> Mr. Al-Marimi was held at when he supposedly made inculpatory statements, at the time he was there. *See* ECF No. 361 at 5-7. But the bar for relevance is not so high—not even close. *See* Fed. R. Evid. 401 (stating evidence is relevant if it has *any tendency* to make a factor more or less probable); *Daubert*, 509 U.S. at 587 (quoting Rule 401 and describing Rule 401’s standard for relevance as “a liberal one”).

Even if the Court denies Mr. Al-Marimi’s suppression motion challenging the voluntariness of his alleged confession, Mr. Al-Marimi’s right to challenge the reliability of his alleged confession before a jury includes the right to present evidence surrounding the making of an alleged confession. *See Jackson v. Denno*, 378 U.S. 368,

---

<sup>2</sup> Should the Court suppress Mr. Al-Marimi’s statement, which the Court has an ample foundation to do given Jamal’s lack of credibility, then the defense agrees that Ms. Murray’s testimony is not relevant for the jury to consider.

<sup>3</sup> To the extent that the government’s argument about the relevance of Ms. Murray’s testimony depends on her earlier identification of the Al-Ribat temporary prison facility as being a part of Al-Huda, that earlier identification was premised solely on the information the defense provided to Ms. Murray from the Jamal-related discovery that the facility Mr. Al-Marimi was allegedly interrogated in had been a military intelligence facility. *See* 2/11/26 PM Tr. at 65-66; 2/12/26 AM Tr. at 47. The government did not provide coordinates for the alleged facility until the end of December 2025—after the defense had to disclose Ms. Murray’s expert notice. As the original expert notice indicated—*see* ECF No. 244-1 at 15, if additional information became available after submitting the notice, the defense would supplement Ms. Murray’s notice. And that is what happened. As Jamal testified, Mr. Al-Marimi had been held at a secret prison where the location and the identification of the detainees therein was closely guarded against outside discovery. *See* Second Day AM Tr. at 32. It is, therefore, not difficult to imagine that it was challenging for the defense to pin down an exact location of the facility before the government provided coordinates.

386 n.13 (1964). In *Jackson*, the Supreme Court evaluated the constitutionality of a New York procedure where the trial judge submitted the question of voluntariness to the jury. *Id.* at 374-75. In distinguishing the question of voluntariness (which must be addressed by courts pretrial) and reliability, the *Jackson* Court observed that while courts retain the determination of admissibility of evidence, juries must make their own determinations about the credibility of witnesses and the probative value of evidence—including confessions. *Id.* at 386 n.13. It is within this context, in determining the credibility of witnesses and the probative value of particular evidence, that the defense maintains the right to present evidence of the circumstances surrounding a confession to the jury. *Id.* (“Since the evidence surrounding the making of a confession bears on its credibility, such evidence is presented to the jury under the orthodox rule not on the issue of voluntariness or competency of the confession, but on the issue of its weight.”); *see also Lego v. Twomey*, 404 U.S. 477, 485-86 (1972) (“Nothing in *Jackson* questioned the province or capacity of juries to assess the truthfulness of confessions. Nothing in that opinion took from the jury any evidence relating to the accuracy or weight of confessions admitted into evidence. A defendant has been as free since *Jackson* as he was before to familiarize a jury with circumstances that attend the taking of his confession . . .”).

As Ms. Murray testified at the suppression hearing, after the fall of the Qaddafi government in 2011, people affiliated with the Qaddafi government, including mid-level government officials—were “being picked up or disappeared”. 2/11/26 PM Tr. at 87-88. The United Nations reported that Mr. Al-Marimi, along with five others, had

been captured by armed groups in September 2011 and taken to Misrata. *Id.* at 99; *see also* U.N. Support Mission in Libya and Off. of the U.N. High Comm’r for Hum. Rts., *Rep. on the Trial of 37 Former Members of the Qadhafi Regime* at 2 (Case 630/2012) at 25 & n.25 (Feb. 21, 2017) (“February 2017 U.N. Report”), <https://unsmil.unmissions.org/sites/default/files/regime-trial-report-english.pdf>. The United Nations was unable to even locate let alone visit Mr. Al-Marimi and the five others until they were transferred to Al-Jawiyah—a new prison in Misrata—in May 2014. *Id.*

Ms. Murray testified that grave concerns existed in the international community about the existence of and treatment of prisoners in secret prison facilities in Misrata. Ms. Murray related that “many, many armed groups in Misrata” held prisoners in villas and compounds around Misrata. 2/11/26 PM Tr. at 100. International human rights groups and the United Nations were “extremely concerned with what was happening behind these compound doors or behind villa walls”. *Id.* There was no way for government officials or international officials to police whether Libya’s Law Number 5 that intended to “standardize prison treatment and bring it up to international standards” was being complied with. *Id.* at 100-01.

An expert can opine about the prevalence of a phenomenon without personal knowledge about whether it occurred at a particular time. *See, e.g., Elosu v. Middlefork Ranch Incorporated*, 26 F.4th 1017, 1024 (9th Cir. 2022) (“An expert’s specialized knowledge and experience can serve as the requisite ‘facts or data’ on which they render an opinion.”); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43

F.3d 1311, 1318 (1995) (“the test under *Daubert* is not the correctness of the expert’s conclusions but the soundness of his methodology”). Here, particularly given that Ms. Murray’s opinion about secret prisons related to the grave concern in the international community about the existence of and treatment of prisoners in secret prison facilities in Misrata because no neutral organization could monitor compliance with Libya’s Law Number 5, it is hard to understand how that opinion is not relevant for the jury to consider in evaluating the circumstances surrounding Mr. Al-Marimi’s alleged interrogation. The requirement that expert testimony be relevant does not demand that Ms. Murray have personally observed Mr. Al-Marimi in his state of confinement. Rather, her evidence has—as Rule 401 requires—*any tendency* to make a fact more or less probable.

In short, Ms. Murray’s testimony will provide necessary, objective expert information about the conditions of confinement at the Libyan prisons and temporary detention facilities that Mr. Al-Marimi was imprisoned at in Libya from 2011 to 2015. Such testimony is clearly relevant.

**III. The scope of Ms. Murray’s expert evidence does not violate Federal Rule of Evidence 403.**

Lastly, the government argues that Ms. Murray’s expert evidence would mislead the jury. *See* ECF No. 361 at 7-8. Saying only that Ms. Murray’s evidence is “marginally probative”, the government does not explain how it believes Ms. Murray’s evidence would mislead the jury. The government’s position on this issue is particularly perplexing given Jamal’s own testimony.

Jamal testified that: 1) Mr. Al-Marimi was held with several other men in an

underground room that was not designed to imprison human beings, Second Day 9:20 AM Tr. at 16, 29; 2) the men were kept in this room all of their time in this facility, First Day 9:48 AM Tr. at 58; 3) the only outside light came in through small windows at the top of the far wall in the room, First Day 9:48 AM Tr. at 59; 4) the men's incarceration in this facility was so extraordinary that they could not be taken to a hospital if needed because of a desire to keep the men's location secret, Second Day 9:20 AM Tr. at 32; and 5) these men were imprisoned by armed militia members consistent with a military artillery unit, Second Day 9:20 AM Tr. at 20-21. Further, Jamal took precautions to ensure that no one saw his alleged interrogation of these men, including allowing the men to have a lawyer present, which Jamal found had a "negative effect" on his interrogations. Second Day 11:17 AM Tr. at 5-6, 30-31.

Thus, rather than misleading the jury, Ms. Murray's expert testimony confirms what the government's own witness has testified about the circumstances of Mr. Al-Marimi's alleged interrogation. Detention in secret, underground prisons was extraordinary, harsh, and inconsistent with basic expectations of human rights for prisoners. As such, there is no basis for the Court to exclude Ms. Murray's testimony under Rule Federal Rule of Evidence 403.

### **CONCLUSION**

For the foregoing reasons, the Court should deny the government's motion to limit the testimony of Rebecca Murray. Ms. Murray is well-qualified to testify as an expert on Libyan political conditions and prison conditions from 2011 through 2015 based on her extensive field research, her work as a Libyan analyst and field

researcher, and her co-authorship of a comprehensive USIP report on Libya's detention facilities. Her testimony is directly relevant to the circumstances surrounding Mr. Al-Marimi's alleged confession, as it will provide the jury with necessary context about the conditions of confinement in Libyan prisons and temporary detention facilities during the period in question. Her anticipated testimony does not violate Rule 403. The Court should deny the government's motion.

Respectfully submitted,  
**ABU AGILA MOHAMMAD**  
**MAS'UD KHEIR AL-MARIMI**

By:                     /s/                      
Whitney E.C. Minter  
Va. Bar # 47193  
Brooke Sealy Rupert  
Va. Bar #79729  
Assistant Federal Public Defender  
Attorney for Mr. Al-Marimi  
1650 King Street, Suite 500  
Alexandria, Virginia 22314  
(703) 600-0855 (telephone)  
(703) 600-0880 (facsimile)  
Whitney\_Minter@fd.org (email)

Laura Koenig  
Va. Bar #86840  
Assistant Federal Public Defender  
Attorney for Mr. Al-Marimi  
701 E. Broad Street, Suite 3600  
Richmond, Virginia 23219  
(804) 343-0800 (telephone)  
(804) 648-5033 (facsimile)  
Laura\_Koenig@fd.org (email)