

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 v.) Case No. 22CR392 (DLF)
)
 ABU AGILA MOHAMMAD)
 MAS'UD KHEIR AL-MARIMI,)
 Defendant.)

**DEFENDANT'S REPLY REGARDING PROPOSED FACT TESTIMONY AND
EXPERT TESTIMONY PURSUANT TO FEDERAL RULE OF
EVIDENCE 702 AND *DAUBERT v. MERRELL DOW PHARMACEUTICAL***

The government has provided notice that it seeks to adduce testimony at trial from Government's Expert Disclosure Letter, dated October 8, 2025. As previously argued [ECF 364], the testimony of Mr. Tiedge, as an expert in the field of "aviation security and the Air Carrier Standard Security Program regulations from the late 1980s" should be limited to that which is justified by his knowledge, skill, experience, training, or education, or his own observations, but the treatment of the testimony depends on the nature of the testimony and which Federal Rule of Evidence governs its admissibility.

ARGUMENT

- I. While the government is not prohibited from introducing "hybrid" testimony from Mr. Tiedge, this Court should carefully scrutinize the purpose of each form of testimony and whether it is admissible or warrants a limiting instruction.**

As addressed in his original motion, Mr. Al-Marimi acknowledges that fact and expert testimony from a single witness is permissible, however, the Court must

prevent improper overvaluation of the fact testimony, simply because it comes from an expert.¹

Moreover, given the conclusions noted in the existing expert notice, it seems likely that different portions of Mr. Tiedge's testimony may be governed by different Federal Rules of Evidence: as expert testimony under FRE 702 or as fact testimony under FRE 701. Hearsay, for example, should be treated very differently by the Court, depending on whether it relates to Mr. Tiedge's testimony as a fact witness or as an expert witness. That is not to say that such testimony would automatically be admissible in an expert capacity, but clearly the analysis as to admissibility would be different.²

The government has indicated that it intends to introduce evidence of certain records at trial through a witness or witnesses, as well as past interviews. As this Court is aware, admissibility of hearsay as relied on by an expert can turn heavily on the facts of the case. Therefore, without knowing the basis by which the government will move to introduce any particular piece of evidence or testimony at issue, Mr. Al-Marimi cannot, at this time, anticipate any and all objections to its admissibility. He maintains, however, his position that qualification of a witness as an expert does not permit wholesale admission of hearsay or other impermissible evidence, especially where the witness may be testifying solely as to facts and entitled to no special

¹ *United States v. Sutton*, 642 F. Supp. 3d 57, 77 (D.D.C. 2022), *on reconsideration in part*, No. CR 21-0598 (PLF), 2022 WL 17572835 (D.D.C. Dec. 7, 2022) (citing *Phoenix Restoration Grp., Inc. v. Liberty Mut. Grp. Inc.*, Civ. Action No. 18-2121, 2020 WL 622152, at *4 (D.D.C. Feb. 10, 2020)).

² This issue has been litigated extensively in this matter and Mr. Al-Marimi does not repeat the arguments here, but incorporates and relies on those made in related briefing at ECF 243-2 and 269-2.

consideration under the Federal Rules of Evidence.³ Analysis of admissibility under the Confrontation Clause is likewise fact specific.⁴

Finally, Mr. Al-Marimi also maintains his position that it may be necessary for this Court to admonish the jury during Mr. Tiedge's testimony to consider each category of testimony only for its permissible purpose and may also need to similarly instruct the jury at the time of deliberations.

CONCLUSION

The government's proposed expert testimony should not be conflated with any fact witness testimony. While it may be allowable for Mr. Tiedge to testify as both a fact witness and an expert witness, the scope and admissibility of the testimony is subject to different standards and should be assessed by this Court accordingly.⁵

³ "An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. *If* experts in the particular field *would reasonably rely* on those kinds of facts or data *in forming an opinion* on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury *only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.*" Fed. R. Evid. 703 (emphasis added).

⁴ *Davis v. Washington*, 547 U.S. 813, 827-30 (2006).

⁵ Mr. Al-Marimi raises the above objections based on the notice of expert testimony filed by the government. He reserves the right to object to testimony or exhibits as appropriate at trial.

Respectfully submitted
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