

**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)

**REPLY TO DEFENDANT’S RESPONSE TO GOVERNMENT’S MOTION TO
EXCLUDE THE TESTIMONY OF REBECCA MURRAY**

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 Rebecca Murray at trial. The Court should preclude Murray’s testimony because she is not qualified to testify as an expert in the case at bar.

ARGUMENT

Murray’s handling of her expert notice in this case shows the unreliability of her opinions and conclusions. The Court heard testimony at the suppression hearing that Murray had “assumed,” for purposes of providing expert notice in this case that the facility at which the defendant was housed was within the complex of a separate detention facility know as Al-Huda. *See* 2/11/26 PM Hr’g Tr., p. 65 line 21 through 66. The defense attempts to blame the government for Murray’s assumption, stating that “the government did not provide coordinates for the alleged facility until December 2025.”¹ ECF 384 at 7 n.3. Setting aside the fact that, in preparation for the expert report, the defense did not seek to learn the coordinates for the facility despite possessing an FBI report stating that the government possessed that information, Murray signed her initial

¹ The coordinates, which the defense rightly takes as accurate, and on which their expert relied in drafting her second report, were provided by the Libyan Police Officer.

expert disclosure, in which she stated unequivocally, “[t]he defendant was held at a building associated with the Al-Huda prison facility for over two years, from February 23, 2012, until April 15, 2014, when he was transferred to the new ‘model’ prison of Al-Jawiyah in Misrata.” ECF 244-1 at 7. The notice then juxtaposed that incorrect statement, now known to have been made based on an assumption, with reports on torture at the Al-Huda facility specifically. *Id.* at 8-9. Quite simply, Murray does not have the knowledge to be a reliable source of information about the topics for which she is proffered as an expert.

The defense argues that Murray’s testimony is directly relevant to the circumstances surrounding the defendant’s confession, and that it will provide context about confinement in Libyan prisons and temporary detention facilities during the period in question. *See* ECF392 at 12. With respect to relevance, the court must determine whether the proffered testimony is sufficiently tied to the facts of the case and whether it will aid the jury in resolving a factual dispute. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993). Murray would need to have knowledge about the prison conditions in the place where the defendant was held, when he was held there, in order for her testimony about the circumstances surrounding the defendant’s confession to be relevant. Not only had Murray never heard of Al-Ribat (the name of the facility at which the defendant was held, according to the document drafted by the defendant’s son which the defense introduced at the hearing), Murray testified she did not know anything at all about the conditions within Al-Ribat at the time the defendant was held there. *See* 2/12/26 AM Hr’g Tr., p. 46 lines 22-24. Murray testified she did not have knowledge about the conditions within any of the other locations where the defense alleges that the defendant was held, during the time the defense alleges he was held in those locations. *See* 2/12/26 AM Hr’g Tr., pp. 38-42. As a result, Murray’s proposed testimony is not relevant, and the Court should not permit her to testify at trial.

Additionally, Murray's proposed testimony is too vague to be of assistance to a jury. For example, the defense questioned Murray about her knowledge of secret prisons. Murray's expert notice is void of any reference to secret prisons, and her testimony was so ambiguous that it is difficult to imagine that it would be of assistance to the jury. (See ECH 361 ex. 1)

Q. So were you aware, Ms. Murray, about the existence or suspected existence of secret prison facilities in Misrata?

A. I was aware that they existed, but I was not aware of the specific. [*sic*]

Q. In terms of secret facilities in Misrata, were there international or even domestic concerns about what conditions could exist in such facilities?

A. Yes.

Q. What were the nature of those concerns?

A. The concerns were -- and especially in Misrata, as I said earlier, there were many, many armed groups in Misrata, and they were usually based in villas or compounds in and around the city. It was extremely -- watch dogs and the UN were extremely concerned with what was happening behind those compound doors or behind the villa walls, and many reports were written to attest to this, which was one of the chief -- chief concerns of Salah Marghani, who was the new minister of justice at the time in the fall of 2012.

See 2/11/26 PM Hr'g Tr., p. 99 line 23 - p. 100 line 15. If Murray were to be presented to the jury as an expert, there is a grave danger that her opinions would be given more credit by virtue of her being labeled an expert. "[T]here is often an inherent danger with expert testimony unduly biasing the jury 'because of its aura of special reliability and trust.'" *United States v. Anderson*, 851 F.2d 384, 393 (D.C. Cir. 1988) (quoting *United States v. Amaral*, 488 F.2d 1148, 1152 (9th Cir. 1973)).

As the quotation above shows, faced with Murray's lack of concrete knowledge about relevant prison conditions, the defense attempted to fill the gap with innuendo. The fact that the United Nations and unnamed "watch dogs" were "extremely concerned" about "what was happening behind those compound doors" has no legitimate probative value. To the contrary, this

vague appeal to the “concerns” of humanitarian authorities would only mislead the jury and unfairly prejudice the government by casting an aspersion that is so generalized, and so lacking in factual support, as to be impossible to refute. Rule 403 would forbid such testimony, but that result is even clearer here because Murray would be conveying hearsay to the jury (“many reports were written to attest to this”), making the applicable balancing test Rule 703’s more demanding requirement that the testimony’s “probative value in helping the jury evaluate the [expert’s] opinion substantially outweigh[] [its] prejudicial effect.” Under either standard, the testimony should be excluded. The issues in this case must be decided based not on “concerns,” but on facts, and Murray has provided none.²

Further, the defense continues to argue that Murray should be allowed to opine on political and prison conditions in Libya through 2015. At the hearing, the Court heard credible evidence from the Libyan Police Officer establishing that he took the statement in September 2012. But, even if the Court does not credit the Officer as to the specific date, the defense has not put forth any evidence that affirmatively establishes an alternative date. There is no evidence from which a reasonable juror could conclude that the statement was taken after fall 2012, or at the latest early 2013. There is no basis in the record for permitting testimony regarding events and conditions related to political and prison conditions in Libya after early 2013.

² On redirect the defense asked Murray about facilities to which access was denied. “Q: And so why were there concerns, if access was not given?” *See* 2/12/26 AM Hr’g Tr., p. 52 lines 8-21 Again, Murray’s answer was amorphous and untethered to a solid factual basis for concern. “A: Why were there concerns, because there’s a whole amount of people who are unaccounted for as well as lots of testimony of people that had -- were released afterwards. And in the Misrata case, this especially was in regard to Tawerghans, many of whom were held without charge.” *Id.*

CONCLUSION

The Court should GRANT the government's motion to exclude the testimony of Rebecca Murray.

Respectfully submitted,

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