

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)

**RESPONSE TO DEFENDANT'S SUPPLEMENTAL REPLY REGREADING PROPOSED
FACT TESTIMONY AND EXPERT TESTIMONY PURSUANT TO FEDERAL RULE OF
EVIDENCE 702 AND *DAUBERT V. MERRELL DOW PHARMACEUTICAL***

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this response to the defendant's supplemental reply regarding proposed fact testimony and expert testimony pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceutical*.

The defense has conceded that "the proposed expert testimony from Mr. Tiedge, as outlined in the government's expert notice and its response to Mr. Al-Marimi's initial motion" is appropriate. *See* ECF 422 at 2. The Court should thus permit the expert testimony of Mr. Tiedge as outlined in the government's notice and response, including the opinions cited at page 7 of ECF 383.

The government agrees that, as with any witness, it is impossible to foresee all potential objections ahead of time. The government takes the defense supplemental reply, however, as agreeing that Tiedge may both rely on and relate basis-related hearsay to the jury regarding his conclusions that interline baggage reconciliation was not carried out in December 1988, as described at ECF 383 at 9-16. Accordingly, the defense's potential objection to "the potential inadmissibility of hearsay testimony, *if introduced through Mr. Tiedge's role as a fact witness,*"

ECF 422 at 1 (emphasis added) would not apply to the interviews underlying his conclusions as to interline baggage reconciliation. That objection would apply to some other, as-yet unnamed testimony.

The government would have no objection to an appropriate limiting instruction of the type contemplated by (b) and (c) of the defendant's enumerated list. *See* ECF 422 at 2.

CONCLUSION

For the above reasons, the Court should permit the expert testimony of David Tiedge as outlined in the government's notice and response.

Respectfully submitted,

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