

**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 RESPONSE TO DEFENDANT'S RESPONSE TO 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 response to the defendant's response to the government's second notice of supplemental evidence for motion to suppress hearing (ECF 392). For the reasons that follow, in addition to the lengthy testimony the Court received from the Libyan Police Officer and others at that hearing, the Court should deny the defendant's motion.

The government is attempting to determine precisely what type of documents the Officer sent, as depicted in Exhibits E and F. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The government is attempting to obtain the original version of the documents depicted in Exhibits E and F, and it will be in a better position to opine on what types of documents they are once that happens. Notwithstanding the ongoing nature of the government's efforts on this front, the Court can and should deny the defendant's Motion to Suppress Statements on the existing record before it.

Even were the document in the officer's possession a photocopy, as opposed to a carbon copy, that should not affect the outcome of the motion to suppress. The officer had no conceivable reason to lie about possessing a carbon copy, and this fact (like his attempt to record the interview) is one that never would have come to light if he had not volunteered it. The defense has offered no theory for why the officer would convey what he knew was a falsehood when he stood to gain nothing by doing so – especially because he would have known he would be asked to provide the document. The far more plausible explanation is that the officer genuinely believed that the document in his possession was the carbon copy. The government expects that this issue will be clarified by the time the jury receives the officer's testimony, and at that time the defense can make whatever permissible use of it on cross that they see fit. In the meantime, this issue does not cast substantial doubt on the officer's credibility – certainly not to a level that would prevent the Court from crediting the parts of his testimony that are actually relevant to the defendant's motion.

The fact that the Officer took the time to send the photographs and video he did to the government on a quick turnaround, [REDACTED],

demonstrates good faith. The photographs sent by the Officer demonstrate that he had a copy in his house, that it looks similar to how he described it, and it lacks the red stamp, demonstrating that he was not simply provided an exact copy of what was provided to the United States. Those points are all corroborative of his testimony, even if it turns out that he was incorrect about whether it was a carbon copy.

Moreover, the Officer's core testimony about the circumstances surrounding the taking of the statement remains unchallenged and uncontradicted. The officer's testimony also remains unchallenged and uncontradicted regarding the substance of the statement, and a review of that text demonstrates the statement's voluntariness, as the government has argued both in the papers and at the close of the hearing. The Officer testified credibly, answering questions from all counsel and the court without any combativeness or evasiveness. He did not try to sugar-coat the political situation in Libya circa 2012, nor did he try to hide the fact that the facility at which the interviews took place was not a government-run jail or that the group in charge of it were not Libyan government employees. He agreed with the defense on questions that the defense later cited at argument, including about the head of the facility needing the secrecy of the facility with how serious a medical need might be to determine whether a detainee should receive medical care. *See* Libyan Police Officer Depo. Vol. III at 32.

The Officer's testimony is also corroborated: He was corroborated on the general atmosphere within Libya by the defense witness, Rebecca Murray, as well as Supervisory Special Agent Tunstall. The latter also corroborated the Officer's description of when conditions began improving in Libya. *See* Feb. 11, 2026, a.m. Hr'g Tr. at 157-58. The Officer's testimony regarding the name of the Libyan Official to whom he gave the statement is corroborated – it was that same official who provided the statement to Scotland, and it was provided to Scotland on a timeline

consistent with the Officer's description of when he first provided it to that official. *See id.* at 26.¹ The Officer did not hide that information either – he provided it to the government in summer 2023. *Id.* at 158. The Officer's description of when and for where the Libyan minister who assigned him to conduct the interviews left his post is corroborated by the open-source information the parties were able to find regarding that departure. *See* ECF 360 at 7.

The theories that the defense has proffered about the possibility that the statement is a later fabrication are not supported by a shred of evidence, and any claims of fabrication are belied by the corroborating evidence, including on minute nonpublic details, such as those that Supervisory Special Agent Todd Tunstall presented at the hearing, including that the defendant traveled to East Germany in 1986 under the same passport number under which he later traveled to Malta in 1988. Those same records indicate that the defendant traveled to East Germany with the exact person he stated he did in the statement as recorded by the Officer.

The absence of any evidence contrary to the core facts presented by the officer demonstrates his credibility, and his testimony (along with the exhibits and the testimony of Supervisory Special Agent Tunstall) establishes that the statement was voluntarily given. There is no evidence in the record that would establish the “egregious facts” necessary to suppress a statement as involuntary. *See United States v. Mohammed*, 693 F.3d, 192, 198 (D.C. Cir. 2012). In addition to the Officer's testimony, the content and structure of the statement itself supports its voluntariness – the questions were open-ended, non-threatening, non-leading, and entirely inconsistent with an involuntarily given statement. The defendant has put forth no evidence that the statement taken by the Officer incorrectly records his questions or the defendant's answers. An

¹ The defense has also not propounded a theory for why, if the statement was fabricated to please the United States as they claim, it was provided to Scotland and not to the United States.

analysis of the statement itself thus supports the government's argument that the statement was voluntary. *See United States v. Murdock*, 667 F.3d 1302 (1305-06), D.C. Circuit 2012 (voluntariness inquiry should include an analysis of the nature of the questioning).

The defense will have an opportunity to attack the Officer's credibility before the jury, and it will undoubtedly vigorously attempt to do so.² But the entirety of the evidence establishes by a preponderance of the evidence that the defendant's statement was voluntarily given, and the images of the statement as provided by the Libyan Police Officer after the hearing do not affect that calculus. The defendant's motion should be denied.

² The defendant states that he has established a genuine question about the original statement's authenticity and/or that admission of a copy would be unfair to him. *See* ECF 392 at 3, n.2; Fed. R. Evid. 1003. The government disagrees, but the Court need not resolve that question to resolve the suppression motion. The Court has already admitted Exhibit 500 over the defendant's authentication objection related to its status as a copy, *see* Libyan Police Officer Depo. Tr. Vol. II at 26, and he has presented no additional evidence calling the original's authenticity into question, nor any establishing unfairness.

CONCLUSION

For the above reasons, as well as all other reasons as previously stated, the Court should deny the defendant's motion to suppress statements.

Respectfully submitted,

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