

**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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No. 1:22-cr-392 (DLF)

**MR. AL-MARIMI'S RESPONSE TO COURT'S MAY 20, 2026, MINUTE
ORDER REGARDING DR. CUTLER**

On May 20, 2026, the Court found that as it relates to Dr. Cutler, “the current notice fails to provide any expert opinions specific to the defendant and this case and thus fails to comply with Rule 16”. 5/20/26 Minute Order. The Court then directed the defense to supplement, on or before May 22, 2026, “Dr. Cutler’s expert notice with a statement of all opinions that the defense intends to elicit from him”. *Id.*

The purpose of Dr. Cutler’s anticipated testimony is to educate the jury about false confessions generally and about factors that can influence the veracity of a confession. *See* ECF No. 340-1 at 5 (“The purpose of expert psychological testimony on false confessions is to educate the factfinder about false confessions in general and the individual and situational risk factors that give rise to them.”). Expert testimony about false confessions does not provide **any** opinion about the veracity of a particular defendant’s alleged confession or whether a particular defendant’s confession was coerced. *Id.* (“The purpose is not to evaluate and opine on the veracity of a defendant’s confession, for such evaluations are understood to be the purview of factfinders and not expert witnesses.”).

For example, in *United States v. Trabelsi*, 1:06cr89 (D.D.C. Feb. 1, 2024), Dr. Cutler stated in both the *Daubert* hearing and in his trial testimony that he would not opine on the veracity of Mr. Trabelsi's statements or give any opinion about whether Mr. Trabelsi was coerced into giving a confession. *See United States v. Trabelsi*, 1:06cr89, ECF No. 684 at 9 (D.D.C. June 15, 2023); *United States v. Trabelsi*, 1:06cr89, ECF No. 663 at 37 (D.D.C. June 15, 2023). Rather, Dr. Cutler's opinions and testimony were submitted to "provide information to the fact finders, the jury, about the psychology of interrogations and false confessions". *United States v. Trabelsi*, 1:06cr89, ECF No. 663 at 37 (D.D.C. June 15, 2023).

Expert testimony about false confessions typically "involves foundational work in psychology that underlies false confessions," such as that discussed in Dr. Cutler's expert notice, and a discussion of case-specific factors that can increase the risk of false confessions. *See* ECF No. 340-1 at 5. But, without uncontroverted evidence documenting the circumstances of a confession such as a video of the entire interrogation, false confession experts do not opine about whether a particular risk factor is present in a particular defendant's case because whether a particular risk factor is present in a particular defendant's case is within the province of the factfinder—here, the jury. *See, e.g., United States v. Santiago Martinez*, 1:21cr1934, ECF No. 173 at 10 (D.N.M. Feb. 26, 2025) (denying government's motion to exclude Dr. Cutler's testimony and finding that "there is a meaningful difference between an expert testifying that a confession is likely false and an expert testifying about interrogation tactics and the fact that such tactics can increase the risk of a false

confession. Dr. Cutler’s intended testimony falls squarely into the latter category.”).

Thus, the defense intends, by May 22, 2026, to supplement Dr. Cutler’s notice with what Dr. Cutler’s opinions will be about whether and how certain risk factors (such as the length of interrogation, the location and setting of an interrogation, and social influence)—should the jury find that such risk factors exist in this case—could impact the veracity of Mr. Al-Marimi’s alleged confession. *See, e.g.*, ECF No. 340-1 at 10-22. Dr. Cutler will render no opinions about the veracity of a particular defendant’s alleged confession or whether a particular defendant’s confession was coerced.

Should, however, the Court determine that the defense needs to supplement Dr. Cutler’s notice with specific references to discovery materials or to Jamal’s prior testimony in this case, the defense will need additional time beyond next week (which will require the defense to move to continue the *Daubert* portion of the hearing next week). Such an effort, however, will result in the defense still seeking to submit the same testimony as described above and in Dr. Cutler’s notice: general information about false confessions, *see Trabelsi*, 1:06cr89, ECF No. 663 at 23 (permitting such evidence to go to the jury); and the individual and situational risk factors that can give rise to false confessions, *see Santiago Martinez*, 1:21cr1934, ECF No. 173 at 10-11 (permitting such evidence to go to the jury). Even with specific references to discovery materials or to Jamal’s prior testimony in this case, Dr. Cutler will continue to testify that he cannot provide any opinion about the veracity of a particular defendant’s alleged confession or whether a particular defendant’s confession was

coerced.

Thus, to the extent that Mr. Al-Marimi's planned supplementation of Dr. Cutler's expert notice addresses the Court's concerns set forth in the May 20, 2026, Minute Order, the defense will proceed in that fashion. Alternatively, should the Court determine that the defense needs to supplement Dr. Cutler's notice with specific references to discovery materials or to Jamal's prior testimony in this case, the defense moves to continue the May 22, 2026, deadline to supplement Dr. Cutler's expert notice and to continue the *Daubert* portion of the May 27, 2026, hearing.

Respectfully submitted,
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