

**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 OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO LIMIT  
OR EXCLUDE THE TESTIMONY OF DR. YU-LUNG CHIU**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this opposition to the defendant's motion *in limine* to limit or exclude the testimony of Dr. Yu-Lung Chiu. For the reasons stated in the government's motion to exclude or limit the testimony of the defense metallurgy expert, ECF 447-1 (partially redacted version at ECF 446), the government does not expect to call Dr. Chiu in its case-in-chief, and should the Court agree with the government, the defense's proposed metallurgy testimony would be irrelevant. However, because the Court may still permit the defendant to present metallurgy testimony, the government reserves the right to call Dr. Chiu in its rebuttal case.<sup>1</sup> For the reasons stated below, if metallurgy is raised in the defendant's case, the Court should permit Dr. Chiu's testimony in the government's rebuttal case.

**FACTS**

Following the Scottish trial of co-conspirators Abdelbaset Ali Al-Megrahi and Lamin Khalifah Fhimah, beginning in or around 2012, the Scottish authorities commissioned additional

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<sup>1</sup> Prior to filing this response, the government asked the defense whether it could agree that metallurgy would not be at issue in the case, thus allowing the parties to withdraw their respective motions. The defense stated that it could not definitively rule out the possibility.

rounds of metallurgical testing on the printed circuit board (PCB) fragment known as PT/35(b), as well as control samples. This testing was led by Dr. John Wright, whom the government does not expect will testify at trial. The testing conducted by Dr. Wright took place in 2012 and 2013, and it resulted in him issuing two reports: The first was dated December 7, 2012, and the second was dated November 20, 2013. Dr. Wright also issued a supplement to his second report, dated March 8, 2014. Broadly speaking, Dr. Wright's reports concluded that the MEBO control samples he tested contained a layer of pure tin (which corresponds with the pure tin found on PT/35(b)), which was later hand-covered by solder, which was a mixture of tin and lead. In other words, Dr. Wright's analysis supports the argument that PT/35(b) did in fact originate from a MEBO timer. For the round of testing that resulted in the November 2013 report, Dr. Wright was assisted by a metallurgist employed by the University of Birmingham in England named Yu-Lung Chiu.

Dr. Chiu is a Professor of Physical Metallurgy at the University of Birmingham. He holds a Ph.D in Materials Science from the University of Hong Kong, and he conducted research at institutions in Hong Kong, France, Switzerland, and New Zealand before joining the University of Birmingham in 2008. Dr. Chiu has co-authored scores of papers stemming from his research, and he has taught undergraduate and graduate students, as well as supervised postgraduate students, in the metallurgy field. During his assistance to Dr. Wright, Dr. Chiu received and personally analyzed the same raw data that Dr. Wright did, and he independently came to the conclusions referenced in the government's expert notice for him, which is attached hereto as Exhibit 1.

## **ARGUMENT**

### **A. Dr. Chiu Testifying to his Own Conclusions Would Not Violate the Confrontation Clause.**

Dr. Chiu was a full participant in the testing that led to the report issued by Dr. Wright in November 2013, and he will testify to his own conclusions that he drew from that testing. The

defense's focus on the fact that "the reports at issue here, including the initial report, the second report and the supplement, were authored by Dr. Wright," ECF 448 at 3, is thus inapposite. The government does not intend to admit Dr. Wright's reports as evidence, and Dr. Chiu's testimony as noticed will be limited to the testing he participated in and his own conclusions he drew from the results of that testing.<sup>2</sup>

The defense's claim that "Dr. Chiu is precisely the kind of surrogate witness *Bullcoming* [v. *New Mexico*, 564 U.S. 647 (2011)] prohibits," ECF 448 at 4, is incorrect precisely because he participated in the analysis about which he will be testifying. In *Bullcoming*, a DWI case, the state presented a signed certificate of the analyst who analyzed the defendant's blood. 564 U.S. at 655. It did so despite not presenting the analyst's testimony, and it presented the certificate during a different scientist's testimony, *who had neither observed nor reviewed* the original analyst's work. *Id.* (emphasis added). The report admitted included the analyst's findings, including his conclusion as to the defendant's blood-alcohol content. *Id.* at 653. Crucial to the Supreme Court's holding in *Bullcoming* was the fact that the testifying witness played no role in the analysis at issue. *See id.* at 657 (noting that the question for which Court granted certiorari was "[d]oes the Confrontation Clause permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst *who did not sign the certification or personally perform or observe the performance of the test reported in the certification*" (emphasis added)).

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<sup>2</sup> The defense supplemental metallurgy expert notice, which was only provided on May 6, 2026, purports to call into question the efficacy of the testing conducted by both Drs. Wright and Chiu. The government has moved to preclude that testimony, *see generally* ECF 446, but if the Court allows it, the government would seek to amend Dr. Chiu's notice to allow him to respond to Dr. Buc's allegations regarding Dr. Wright's work. As currently drafted and contemplated, however, Dr. Chiu's notice only relates to work he personally participated in.

Here, by contrast, Dr. Chiu did in fact participate in the testing that led to Dr. Wright's November 2013 report. Dr Chiu did so for two rounds of testing: one involving an environmental scanning electron microscopy (ESEM), and a second involving a focused ion beam and an electron beam, often referred to as "FIB/SEM." For both rounds of testing, Dr. Chiu personally discussed with Dr Wright and the investigation team and then proposed the analysis techniques/machines to be used at the University of Birmingham; reviewed the data produced by the machines and came to his own conclusions as to the chemical composition of the materials at issue. Those conclusions are reflected in his expert notice. For the FIB/SEM testing which was proposed by Dr Chiu, he was physically present when it was carried out. For the ESEM testing, Dr. Chiu was in a room just outside the machinery, but his analysis is based on his firsthand review of the raw data that came from that testing. The government intends to introduce those conclusions Dr. Chiu drew from the testing in which he was involved and for which he analyzed the data. The government does not intend to introduce any of Dr. Wright's conclusions regarding this testing into evidence, and *Bullcoming* is accordingly not on point.<sup>3</sup>

**B. Dr. Chiu May Properly Testify to his Own Conclusions.**

For similar reasons, the defendant's argument about basis testimony under Rule 703 fails. Dr. Chiu was both present for the testing and is qualified to render his own opinion, based on his

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<sup>3</sup> To the extent that the government needs to establish, as a factual matter, what happened when Dr. Chiu was not present for the ESEM testing, it can do so through a witness who was present. The government submits, however, given that Dr. Chiu personally reviewed the data, that any gaps in terms of what happened in the ESEM room, are akin to breaks in the chain of custody and go to weight, not admissibility. The government agrees that it will limit Dr. Chiu's testimony regarding the ESEM examinations to what he directed and intended without eliciting factual information from him regarding what happened that he could not directly observe. *See* ECF 448 at 5-6. Dr. Chiu is, however, permitted to rely on what others told him in coming to his conclusions, including what happened when he was not in the room. Although the government does not intend to elicit on direct examination from Dr. Chiu what others told him about the ESEM room as a factual matter, defense cross-examination may open the door to such testimony on redirect.

own interpretation of the raw data. The government does not intend to “admit[] or disclos[e] Dr. Wright’s conclusions to the jury through Dr. Chiu’s testimony.” *See* ECF 448 at 5. The government instead seeks to admit and disclose Dr. Chiu’s conclusions about the testing he participated in, which is entirely permissible.

The defense finally insinuates that Dr. Chiu’s opinions are not genuinely his own, but those of Dr. Wright. *See* ECF 448 at 7. The government has no reason to believe that Dr. Chiu – a Professor of Metallurgy at the University of Birmingham in the United Kingdom for over 15 years who has co-authored scores of publications and who has lectured on electron microscopy, materials science, and nuclear reactor materials, among other topics – would allow himself to throw his scientific training (and reputation) out the window and rely solely on a colleague’s work, but the defense has certainly presented no allegation, beyond innuendo, that he did so. To the extent the defense has a good-faith basis to think that Dr. Chiu’s conclusions are not his own, it can pursue that line of inquiry on cross-examination. He will have that opportunity precisely because the government calling Dr. Chiu would not violate the Confrontation Clause.<sup>4</sup>

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<sup>4</sup> The defense also reserves the right to *voir dire* Dr. Chiu. ECF 448 at 8. The government has no objection to appropriate expert *voir dire*.

## CONCLUSION

For the above reasons, the Court should admit the testimony of Dr. Chiu as outlined in his notice, if the government offers that testimony.

Respectfully submitted,

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