

**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 REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE OR LIMIT
THE TESTIMONY OF PROFFERED METALLURGY EXPERT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this reply in support of its motion to exclude or limit the testimony of the defense's proffered metallurgy expert, Elizabeth Buc.

ARGUMENT

A. Relevance

The government and defense are in broad agreement over how the Court should handle the government's relevance challenge to Dr. Buc's testimony. *Compare* ECF 446 at 4 n.1 *with* ECF 472 at 3. In short, the parties agree that the Court should make the relevance determination at the close of the government's case in chief. The defense has also, however, stated, "[t]he physical composition of PT/35(b) is a matter the jury may be asked to consider independent of any particular government witness, and testimony bearing on the reliability of the government's analysis of that composition may be relevant independent of whether the government calls its own expert." ECF 472 at 3 n.1. The government wishes to emphasize that Dr. Buc's expert notice is specifically styled as a response to the work done by Drs. Wright and Chiu. *See* ECF 446-1 at 3 ("Dr. Buc may offer opinions responding to the testimony and analyses of the government's metallurgical expert"); 446-2 at 2 (With regard to the methodology employed by the government's expert, Dr. Buc is

specifically expected to testify to the following”). Other than her proffered opinions regarding Dr. Wright’s and Dr. Chiu’s work, the notice states only that she will testify about background principles of analysis and metallurgy. *See* ECF 446-1 at 2-3. The government is skeptical that expert testimony specifically responsive to a government expert’s work can become relevant in the absence of the government expert testifying, but we agree that the Court should make that decision at the close of the government’s case.

If the defense is contemplating affirmatively presenting metallurgy testimony that is not directly responsive to Dr. Chiu, *see* ECF 472 at 3 n.1 (“[s]hould the evidence at trial warrant it, the defense further reserves the right to seek leave to amend or supplement its expert notice accordingly”), the notice as written is insufficient on its face. Absent something truly unforeseen, the Court should not contemplate a midtrial amendment of notice. The defense has had the government’s metallurgy notice since October 8, 2025. Defense responsive notice was initially due in January 2026, and it sought and received an extension of that deadline. *See* Minute Order dated January 16, 2026. The defense has proffered that, following the Scottish trial, “a question arose regarding the provenance of a key piece of evidence, PT/35(b).” ECF 448 at 1. In short, the defense is on notice of the universe of possible evidence regarding the metallurgical testing of PT/35(b) and related analyses. If the defense intends to affirmatively introduce metallurgical expert testimony in its case in chief, it has had ample opportunity to draft a notice stating as much. The Court should view with skepticism any claims that the defense needs to amend the notice as written to a version it could have timely written if it so chose.

B. Sufficiency of Notice

1. Independence of Analysis and Confirmation Bias

The defense’s response to the government’s motion confirms why the notice of Dr. Buc’s proffered opinions regarding alleged confirmation bias and analysis are insufficient: it concedes

that she will offer an opinion regarding “*whether* the government expert’s analysis conformed to that principle” of independent analysis, and “*whether* the approach, sequence, or reporting reflects confirmation bias.” ECF 472 at 5 (emphasis added). But neither the Buc notice nor the defendant’s response states what Dr. Buc’s opinion is. *See id.*; ECF 446-2 at 2. Did she conclude that the government’s expert’s analysis conformed to that principle of independent analysis, or did she conclude that it did not? Did she conclude that the approach, sequence, or reporting reflects confirmation bias, or did she conclude that it did not? How did she come to those conclusions? Stating that an expert will opine on a topic without stating what that opinion is does not constitute any statement of the witness’s opinions and the bases for them, let alone a “complete” statement thereof. *See* Fed. R. Crim. P. 16(a)(1)(G)(iii). Nor does that lack of opinion “reflect[] a reliable application of the principles and methods to the facts of the case,” Fed. R. Evid. 702(d), or help the trier of fact to understand the evidence or to determine a fact in issue.” Rule 702(a). Whatever Dr. Buc’s opinion is on this topic, it must be excluded under the rules.

2. Limitations of Analytical Equipment and Non-Destructive Evidence Handling

The government agrees that the defense’s notice on this topic, as revised in their response, *see* ECF 472 at 6, is now sufficient. The government thus accordingly withdraws its sufficiency-of-notice objection to this opinion.

3. Limitations of Exclusively Non-Destructive Analysis

The government disagrees with the defense’s framing of the notice requirement, and it accordingly maintains its sufficiency objection to this opinion. The defense position that “Rule 16 does not require a defendant to produce a written expert report, disclose every data point the expert will reference, or quantify every conclusion in advance of trial. It requires a description of opinions and their bases and reasons” is only half correct. *See* ECF 472 at 7. While the government agrees that Rule 16 does not require a written report, disclosure of every data point, or for every

conclusion to be quantified, it does require a “*complete statement of all opinions*” (emphasis added) that the expert will testify to, as well as the bases and reasons for those opinions.

The government agrees that the notice is sufficient regarding the background principles at play in this opinion. Like with the first opinion regarding confirmation bias, however, the notice does not state what Dr. Buc’s opinion is with respect to her perceived shortcomings in the government’s expert’s work. The notice instead that she “may offer opinions regarding *the extent to which* the government’s exclusive reliance on non-destructive techniques limited the quality and completeness of the resulting data and the reliability of the conclusions drawn therefrom.” ECF 446-2 at 3. To what extent has she in fact concluded that any reliance on non-destructive techniques has limited the data and the reliability of the conclusions? The notice does not even conclusively state that she has concluded that the data were insufficient and unreliable, let alone to what extent the data and reliability of the conclusions may have been expected.

4. Failure to Validate Limited Analyses

Here, the defense wisely concedes that the government did in fact analyze comparison samples, contrary to Dr. Buc’s notice. The government does not object to the remainder of this noticed opinion on notice grounds.

5. Insufficiency of Data Points

The Court should reject the defense’s contention that it does not need to reveal the bases for an expert’s opinion. Rule 16 requires a *complete* statement of the expert’s opinions and the bases and reasons therefor. The defense response seems to concede that they know the bases on which Dr. Buc bases her opinions, but that the defense simply does not wish to reveal them prior to her testimony. *See id.* at 9 (“Whether [Dr. Buc’s] assessment is grounded in an industry standard, peer-reviewed methodology, or the expert’s professional scientific judgment is a matter for cross-examination, not a prerequisite to notice sufficiency” and “this [the government’s request for a

statement of how the data fell short or to what degree] again demands a level of evidentiary detail that belongs in a full expert report, not a Rule 16 notice”). The defense chose not to produce a full report to accompany Dr. Buc’s notice, and it chose not to include the basis on which she came to this conclusion in its notice. While the government agrees that the defense need not produce a verbatim transcript, the purpose of the 2022 amendments to Rule 16, which previously only required a “written summary” of expert testimony, was to “ensure that parties receive adequate information about the content of the witness’s testimony and potential impeachment.” Fed. R. Crim. P. 16, Advisory Committee Notes (2022 Amendment). Withholding information about the basis and breadth of the expert’s opinion does not comply with the rule.

CONCLUSION

The government’s motion to limit or exclude the testimony of Dr. Buc should be granted, in line with the withdrawal of objections as noted in this pleading.

Respectfully submitted,

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