

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 22CR392 (DLF)
	)	
ABU AGILA MOHAMMAD	)	
MAS'UD KHEIR AL-MARIAMI,	)	
Defendant.	)	

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

Mr. Al-Marimi replies briefly to the government's response, ECF No. 471, to two related objections: that Dr. Chiu's anticipated testimony violates the Confrontation Clause under *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), and that it implicates the limitations on basis testimony under Federal Rule of Evidence 703. As set forth below, the defense does not abandon either objection, and both are preserved for trial.

ARGUMENT

I. Confrontation Clause

The defense acknowledges that *Bullcoming's* core holding turned on the complete absence of the testifying witness from the underlying analysis, and that Dr. Chiu's involvement in the testing at issue is factually distinguishable from the witness in that case. Mr. Al-Marimi cannot abandon his Confrontation Clause objection, however, as the precise nature and extent of Dr. Chiu's participation remains a factual question that cannot be fully resolved on the present record. The

government's own account draws a distinction between the two rounds of testing: Dr. Chiu was physically present for the FIB/SEM testing, but for the ESEM testing, he was situated outside the testing room and based his analysis on his review of raw data output. Whether that degree of involvement satisfies the Confrontation Clause's requirements is a question that can only be resolved at trial, when the full scope of his testimony can be evaluated in context.

The defense also notes the government's representation that it does not intend to introduce any of Dr. Wright's conclusions into evidence, and that Dr. Chiu's testimony will be limited to his own conclusions drawn from the testing in which he was involved. The defense respectfully requests that the Court hold the government to that representation, and that an appropriate limiting instruction be given should Dr. Wright's conclusions be referenced, directly or indirectly, during the course of Dr. Chiu's testimony.

II. Rule 703

The government's response to the defense's Rule 703 objection largely tracks its *Bullcoming* argument and fails for similar reasons. As discussed above, the extent to which Dr. Chiu's opinions are genuinely his own — drawn from his firsthand review of raw data rather than from conclusions reached by Dr. Wright — depends on factual questions that cannot be fully resolved on the present record, particularly with respect to the ESEM testing. The defense's 703 objection is accordingly preserved for trial.

The defense notes, however, the government's unambiguous representation that it does not intend to admit or disclose Dr. Wright's conclusions to the jury through Dr. Chiu's testimony. The defense will hold the government to that commitment.

Finally, the government characterizes the defense's concern as "innuendo" about Dr. Chiu's integrity. ECF No. 471 at 5. That characterization misses the point. The defense raises no personal allegation against Dr. Chiu, whose qualifications are not in dispute. The concern is structural: where a testifying expert's opinions are developed in close collaboration with a non-testifying analyst whose conclusions are reflected in the same body of testing, the line between independent opinion and surrogate testimony warrants scrutiny. That scrutiny is precisely what cross-examination is for.

CONCLUSION

For the foregoing reasons, Mr. Al-Marimi respectfully requests that this Court grant the relief requested herein and in Defendant's Motion in Limine to Limit or Exclude the Testimony of Dr. Yu-Lung Chiu (ECF No. 448) and enter an order limiting or excluding the testimony of Dr. Chiu and permitting defense counsel to voir dire Dr. Chiu regarding his qualifications and the basis for his opinions.

Respectfully submitted
By Counsel,
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