

**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 SUPPLEMENT REGARDING
U.S. PARTICIPATION AT SCOTTISH TRIAL**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Supplement to its response [ECF 542] to the defendant's Motion *In Limine* Regarding Former Testimony by Unavailable Witnesses [ECF 528]. This Supplement addresses the Court's request for further information about the manner and extent of U.S. participation in the previous Scottish trial of alleged co-conspirators Abdelbaset al-Megrahi and Lamén Fhimah at "Camp Zeist" in the Netherlands.

In response to the Court's request, the government consulted with a Scottish prosecuting official who was involved in the Camp Zeist trial. That official explained that the U.S. presence at the trial consisted of two U.S. Department of Justice ("USDOJ") attorneys. Consistent with the facts described in the government's Response, the Scottish official confirmed that the USDOJ personnel had no formal role in conducting the trial and no formal means to control the examination of witnesses or any other aspect of the Scots' trial presentation. *See* ECF 542 at 5 (quoting former U.S. State Department official).

The Scottish official also provided further detail establishing that the USDOJ attorneys likewise lacked any informal means of controlling the proceedings and that no such influence would have been tolerated.

To start, the Scottish official provided the below photograph of the courtroom at Camp Zeist:



Visible in the foreground are a “front bench” and a “back bench” where the prosecution side would sit. Although one might assume that a person’s position on the front versus back bench would reflect their seniority, the Scottish official explained that the reality is quite different: the different benches reflect qualitatively distinct roles in the Scottish system, in a way that does not have an analogue in the U.S. system and that bears on the Court’s consideration of this motion.

The front bench was occupied by the Crown Counsel, who were responsible for presenting the case in court. The back bench was occupied by the Procurators Fiscal, who had been responsible for investigating the case and preparing it for prosecution, but were *not* responsible for trying the case in court. Different Procurators Fiscal had primary responsibility for different

parts of the case, and those with discrete subject-matter specialization would rotate in and out of the courtroom depending on what topic was being covered on a given day.

When there was room on the back bench, the USDOJ attorneys would sit there with the Procurators Fiscal. This was especially true on days when the subject matter included evidence or witnesses that came from the United States. From the Scots' perspective, the Americans' presence was so that they could report back to senior USDOJ leadership about the progress of the trial, coordinate logistics involving U.S. witnesses, and be available for occasional consultation to clarify factual points from parts of the case they had helped to develop (e.g., witnesses who had testified in U.S. grand jury proceedings). The USDOJ attorneys also provided indirect assistance to the defense in logistical ways like arranging for them to interview U.S. witnesses.

The trial presentation was controlled exclusively by Crown Counsel on the front bench. In the Scottish system, the independence of Crown Counsel is regarded as “a constitutional safeguard of the greatest importance in the system of criminal justice.” *Grier v. The Lord Advocate* (2022), CSIH 57, para 122.¹ That independence includes independence even from the Procurators Fiscal who are part of the same broader prosecuting authority: it is the responsibility *solely* of Crown Counsel to decide how to try a criminal case. For this independence to have been breached by anyone – much less by representatives of a foreign government – would have been inconsistent with fundamental constitutional principles. Accordingly, although Crown Counsel may have occasionally sought factual clarification or assistance from the USDOJ attorneys, either through the Procurators Fiscal or in their presence, they never sought direction on how any aspect of the case should be presented.

¹ Available at <https://judiciary.scot/home/sentences-judgments/judgments/2022/12/20/david-grier-against-the-lord-advocate-and-the-chief-constable-of-police-scotland>.

CONCLUSION

Because the United States government exercised no degree of “control” over the Scottish trial, let alone the high degree of control required under the applicable standard, the Court should deny the defense’s motion.

Respectfully submitted,

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