UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**No. 1:22-cr-392 (DLF)**
	)	
ABU AGILA MOHAMMAD	)	
MAS'UD KHEIR AL-MARIMI,	)	
Defendant.	)	

MR. AL-MARIMI'S SUR-REPLY REGARDING MLAT PRODUCTIONS

Mr. Al-Marimi responds to the government's latest arguments regarding the admissibility of certain official records produced pursuant to Mutual Legal Assistance Treaties (MLATs). *See* ECF 626-1 (gov't brief); ECF 643 (defense's initial response); ECF 660 (defense's supplemental response); ECF 680 (gov't reply); 10/15/26 Hearing Tr. at 50–75; ECF 685 (gov't additional materials); ECF 703 (gov't supplemental information). Without conceding any prior arguments, this response focuses narrowly on the MLATs' requirements and the government's compliance with them.[1]

First, regarding the U.S.-Czech Republic MLAT,[2] Article 10 states that the requested state shall provide copies of any records "that are in the possession of a government department or agency or a court in that State," and that such records shall, "upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty." It then addresses the

[1] Regarding the applicability of the Apostille Convention to the visa-related documents, the defense has not located authority extending the diplomatic/consular exemption to such documents.

[2] https://www.congress.gov/105/cdoc/tdoc47/CDOC-105tdoc47.pdf.

admissibility of records authenticated by Form C. *See* ECF 685-2 (Form C). The only other circumstance addressed by Article 10 concerns the absence of an official record, which may be certified via Form D to the treaty.

Form C attests that the signer's government office or agency is authorized by law to maintain official records, and that the signer in her official capacity "caused the production of true and accurate copies of records maintained by that public authority[.]" *Id.* Previously, the government offered a certification using that same language, which the Court found insufficient because it was factually inaccurate—in this case, the certifying officials did not "cause the production" of records in the possession of a public authority to the United States. Instead, the U.S. received records from the Scottish government, which had obtained them from elsewhere, and thereafter sent those records out for certification by foreign officials. The government now plans to use a modified attestation, ECF 685-3, that reflects the unusual circumstances of this case.

The problem for the government is that the text of the U.S.-Czech MLAT and the unusual circumstances of this case create a Catch-22 that forecloses the government's reliance on the treaty. Regardless of the utility of the modified attestation for any other purpose, it does not satisfy the requirements of Article 10. Assuming that the treaty contains a negotiated basis for authentication and admissibility, that basis requires the use of Form C. The article refers specifically to Form C, and consistent with the attestations in Form C, the article's language contemplates the production of the records by the foreign office/official responsible for

them. Article 10 does not allow for the modification of Form C in any circumstance, including when such direct production is impractical or impossible. *See also* ECF 680-3, at 17 (technical analysis focusing on completion of Form C). The use of a modified authentication form fails to trigger the negotiated rule, even if it is necessary to pursue an alternative means of authentication.

Second, regarding the U.S.-Switzerland MLAT,[3] a similar problem seems to arise. Article 19, ¶ 1, states that, upon request, "the requested state shall obtain a copy of an official record . . . and shall have it authenticated by the attestation of an authorized person." Paragraph 2 states, "a copy of any official record *in the requested state*, or entry therein, shall be admissible in evidence without any additional foundation or authentication if authenticated and certified as provided in paragraph 1 and otherwise admissible." While the Swiss MLAT does not contain a required form like the Czech Form C, the text of the Swiss MLAT similarly limits application of any negotiated rule. Paragraph 1 seems to contemplate Swiss officials obtaining a copy of the requested records from the office responsible for maintaining them, in addition to the seal and signature requirements. Paragraph 2 is more direct: it is only records "in the requested state" that are subject to the article's rules. Here, the records were not obtained "in the requested state"—they were provided to the Swiss officials by the United States.

Third, regarding the U.S.-U.K. MLAT,[4] Article 9 addresses government

[3] https://www.rhf.admin.ch/dam/fr/sd-web/iv6uMJ2WSAwq/sr-0-351-933-6-e.pdf.

[4] https://www.congress.gov/104/cdoc/tdoc2/CDOC-104tdoc2.pdf.

records. Paragraph 3 provides that official records provided pursuant to Article 9 shall be authenticated "in the manner indicated in Appendix B to this Treaty" and that "[n]o further authentication or certification shall be necessary in order for such records to be admissible in evidence in proceedings in the territory of the Requesting Party." Consistent with that reference, the technical analysis states that "documents provided under [Article 9] will be authenticated pursuant to a certificate in a form appended to the Treaty." ECF 680-4, at 22. Appendix B contains fixed language surrounding blank fields to be filled in; it is not wholly mutable.

Paragraph 3 further states: "Records provided pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority." Thus, unlike the U.S.-Czech MLAT, the U.S.-U.K. MLAT seems to contemplate deviation from the referenced form in certain cases. However, the technical analysis does not acknowledge or interpret that sentence, leaving the text to the Court's interpretation. *See id.* The text does not permit *ad hoc* deviations but rather permits the Central Authorities to "prescribe" other forms or manners of authentication. The verb "prescribe" means "to dictate, ordain, or direct; to establish authoritatively (as a rule or guideline)." *Prescribe*, Black's Law Dictionary (12th ed. 2024), *available on* Westlaw. The term implies a rulemaking process whereby the central authority crafts generally applicable procedures to substitute for Appendix B; it does not broadly authorize the use of any substitute form crafted by any DOJ attorney, such as Gov. Exh. 229-c.

CONCLUSION

To the extent the Court considers the MLATs as bases for authentication of the records, it should not deviate from the textual requirements of the treaties.

Respectfully submitted,

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