

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States v. Abu Agila Mohammad Mas’ud Kheir Al-Marimi

Al-Marimi · No. No. 22-cr-392 (DLF) · Decided January 8, 2026

SUMMARY

The United States District Court for the District of Columbia grants the government’s sealed motions under Federal Rule of Criminal Procedure 15 to depose three witnesses before trial. The Court finds the testimony material and provisionally determines that the witnesses are substantially likely to be unavailable for trial, while deferring final admissibility and unavailability determinations. The depositions are ordered sealed and generally must occur in the defendant’s physical presence, with scheduling and status-report requirements imposed.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Dabney L. Friedrich
JURISDICTION	United States District Court for the District of Columbia
DECIDED	January 8, 2026
DOCKET	No. 22-cr-392 (DLF)
DISPOSITION	other
PROCEDURAL POSTURE	The government moved under Federal Rule of Criminal Procedure 15 to depose three prospective witnesses before trial to preserve their testimony. The defendant agreed that the depositions should occur but objected to any deposition occurring outside his physical presence and to one proposed deposition location abroad.
STANDARD OF REVIEW	The court applied Federal Rule of Criminal Procedure 15(a)(1), requiring materiality and substantial likelihood that the prospective witness will be unavailable at trial, and exercised its discretion to determine whether exceptional circumstances and the interest of justice supported depositions.
PRECEDENTIAL VALUE	persuasive

TOPICS

- criminal procedure
- discovery criminal
- evidence

PRACTICE AREAS

criminal procedure

criminal discovery

evidence

QUESTIONS PRESENTED

1. Whether the government established exceptional circumstances and the interest of justice under Federal Rule of Criminal Procedure 15 to depose three prospective witnesses before trial.
2. Whether the depositions should occur in the physical presence of the defendant, including whether one deposition could proceed abroad with the defendant participating by videoconference.
3. Whether the depositions and related docket activity should be sealed pending further order.

HOLDINGS

1. The government satisfied Rule 15 by showing that the witnesses' testimony was material and that the witnesses were provisionally substantially likely to be unavailable to testify at trial; the depositions were therefore authorized in the interest of justice.
2. The depositions were authorized only to the extent that they take place in the physical presence of the defendant. The court did not authorize the defendant's absence from the overseas deposition and required the government to continue efforts to facilitate his physical presence.
3. The depositions and related docket activity were ordered sealed until further order of the court.

KEY QUOTATIONS

"To demonstrate that 'exceptional circumstances' necessitate a Rule 15 deposition, the party seeking the deposition must show: '(1) the materiality of the testimony; and (2) the unavailability of the witness to testify at trial.'" (p. 1)

"When the question is close a court may allow a deposition in order to preserve a witness' testimony, leaving until trial the question of whether the deposition will be admitted as evidence." (p. 2)

"The Court will therefore order that the depositions be sealed until further order of the Court." (p. 6)

FACTUAL BACKGROUND

The government sought to preserve the testimony of three witnesses who reside outside the United States. The witnesses' testimony was deemed material, and the court provisionally found that the witnesses were substantially likely to be unavailable to testify at trial. One witness had expressed a present willingness to travel to the United States, while the government had not yet determined whether all witnesses could travel for trial. The defendant was in federal custody and objected to participating in one deposition remotely rather than being physically present.

PROCEDURAL HISTORY

The United States filed sealed motions to depose three witnesses residing outside the United States. The parties agreed that the testimony should be preserved, but disputed the defendant's physical presence and the location and manner of one deposition. The district court granted the motions subject to procedures requiring the

defendant's physical presence, directing further efforts concerning an overseas deposition, and ordering the deposition materials sealed.

DISPOSITION

other

CASES CITED

- United States v. Trabelsi, No. 06-cr-89 (RDM), 2023 WL 4341429, at *2 (D.D.C. Apr. 5, 2023)
- United States v. Cooper, 947 F. Supp. 2d 108, 112-13 (D.D.C. 2013)
- United States v. Kelley, 36 F.3d 1118, 1125 (D.C. Cir. 1994)
- Brady v. Maryland, 373 U.S. 83 (1963)
- United States v. Vo, 53 F. Supp. 3d 77, 81 (D.D.C. 2014)
- United States v. Mann, 590 F.2d 361, 366 (1st Cir. 1978)
- United States v. Drogoul, 1 F.3d 1546, 1553 (11th Cir. 1993)
- United States v. Vilar, 568 F. Supp. 2d 429, 439 (S.D.N.Y. 2008)
- Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33 (1984)

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