

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)

OPINION

PER CURIAM.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA, v. No. 22-cr-392 (DLF) ABU AGILA MOHAMMAD MAS'UD KHEIR AL-MARIMI, Defendant. MEMORANDUM OPINION AND ORDER Before the Court are sealed motions by the United States to depose three witnesses pursuant to Federal Rule of Criminal Procedure 15. Dkts. 129, 130, 131.

The government seeks to depose all of whom reside outside of the United States. While the government initially moved to conduct all three depositions abroad, it now believes that may be able to travel to the United States for their depositions.

For the following reasons, the Court will grant the motions, subject to the procedures outlined below. I. LEGAL STANDARDS Under Rule 15, a party "may move that a prospective witness be deposed in order to preserve testimony for trial." Fed. R. Crim. P. 15(a)(1).

The Court "may grant the motion because of exceptional circumstances and in the interest of justice." Id. "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.'" United States v. Trabelsi, No. 06-cr-89 (RDM), 2023 WL 4341429, at *2 (D.D.C.

Apr. 5, 2023) (quoting *United States v. Cooper*, 947 F. Supp. 2d 108, 112 (D.D.C. 2013); *United States v. Kelley*, 36 F.3d 1118, 1125 (D.C. Cir. 1994)). II. ANALYSIS The parties agree that the Court should "permit depositions to be taken of all three witnesses to preserve their testimony" for trial, Dkt. 136 at 1, but the defendant objects to any deposition occurring outside his physical presence, *id.* at 1-2.

Because the government has not yet determined whether any of the witnesses are unable to travel to the United States for trial, the Court will not decide that issue. The Court will, however, grant the government's motion to depose the witnesses before trial.

The government has satisfied its burden in showing that the testimony of these witnesses is material. And the Court has provisionally determined that the witnesses are substantially likely not to be available to testify at trial. 1 See *United States v. Mann*, 590 F.2d 361, 366 (1st Cir. 1978). A. First, materiality. "In assessing whether testimony is material for Rule 15(a)(1) purposes, courts have used the standards developed for applying and interpreting *Brady v. Maryland*, 373 U.S. 83 (1963)."

United States v. Vo, 53 F. Supp. 3d 77, 81 (D.D.C. 2014). "Evidence is material 1 This Order authorizes only the taking of these three depositions. The Court defers any decision on the admissibility of the depositions until a date closer to trial. See Fed. R. Crim. P. 15(f). At this time, the Court does not make any final determination that the witnesses are unavailable for trial, a decision the Court will also defer until a date closer to trial.

Nor does the Court address the parties' arguments concerning the defendant's rights under the Confrontation Clause. The Court will request supplemental briefing on these issues as necessary. 2 within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Id.* (citation modified).

Second, the government argues that I I is substantially likely to be unavailable for trial. The government "need not prove conclusively that the prospective deponent will be unavailable to testify at trial." *Cooper*, 947 F. Supp. 2d at 11-3 (citing *United States v. Drogoul*, 1 F.3d 1546, 1553 (11th Cir. 1993)).

For purposes of Rule 15, the Court may make a provisional determination that the witness is substantially likely not to testify at trial and defer a final determination of unavailability at trial. See *Mann*, 590 F.2d at 366 ("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.").

The Court focuses on the witness's "unavailability 'for trial' and not [on] whether they have actually consented to make themselves available for the deposition." *United States v. Vilar*, 568 F. Supp. 2d 429, 439 (S.D.N.Y. 2008). 3 Finally, because I I testimony will preserve critical evidence

for trial and because the defendant will be present for the deposition, the Court concludes that - - deposition is in the interest of justice.

The Court will authorize - - deposition under Rule 15. - has expressed a present willingness to travel to the United States, and the government "will continue to make efforts to secure... appearance in the United States for a deposition." Dkt. 139 at 1.

Accordingly, the deposition shall take place at the U.S. District Court for the District of Columbia, in the presence of the defendant. B. - 4 The Court will therefore authorize I I deposition under Rule 15. Because he has expressed a present willingness to travel to the United States and because the government "will continue to make efforts to secure appearance in the United States for a deposition," Dkt.

139 at 1, the deposition shall take place at the U.S. District Court for the District of Columbia in the presence of the defendant. C. - - testimony is material for the reasons stated by the government. 111111111111 The Court will also make the provisional finding that - is unavailable for trial for the reasons given by the government, with which the defendant agrees.

Dkt. 136 at 15. 5 The Court will therefore authorize I I deposition under Rule 15. The parties disagree over the defendant's location during the deposition. The government contends that the defendant, who is in federal custody, "cannot travel to...., because it lacks the authority to maintain custody over the defendant in a foreign country. Dkt. 130 at 13- 14.

The government notes that the Department of Justice's Office of International Affairs (OIA) believes that- authorities are "unlikely to accept custody of the defendant," but that "OIA has asked the - authorities for their position directly, and the government will file a notice when it receives the- response." Dkt. 139 at 3-4. Invoking Rule 15(c)(3), the government proposes that the defendant participate in the deposition by videoconference from the United States.

Dkt. 130 at 13-14. The defendant objects and argues that the government has offered insufficient grounds to establish that it cannot make him available for a deposition in..... Dkt. 136 at 6--8. Although the Court will authorize- - deposition in _ _, at this juncture, it will not authorize the defendant's absence.

The government shall continue to make efforts to facilitate the defendant's physical presence in. If those efforts are unsuccessful, the Court will decide whether the I I deposition can occur outside the United States with the defendant participating by videoconference from the United States. D. Sealing The government argues that the depositions and related docket activity should be sealed and closed to the public "unless and until [deposition testimony] is offered at trial or another public proceeding."

Dkt. 129 at 17; Dkt. 130 at 14; Dkt. 131 at 28; see Fed. R. Crim. P. 15(e) (noting 6 that a Rule 15 deposition “must be taken and filed in the same manner as a deposition in a civil action”); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984) (“[P]retrial depositions... are not public components of a civil trial.”).

The defendant agrees. Dkt. 136 at 1. The Court will therefore order that the depositions be sealed until further order of the Court. Accordingly, it is ORDERED that the government’s sealed motions to take depositions under Federal Rule of Criminal Procedure 15, Dkts. 129, 130, 131, are GRANTED, to the extent that the depositions take place in the physical presence of the defendant and according to the procedures outlined above.

It is further ORDERED that the parties shall meet and confer and propose a schedule for the depositions. The Court will schedule these depositions during the period October 20, 2025, to November 14, 2025. It is further ORDERED that the parties shall file a joint status report on or before August 29, 2025, and every 14 days thereafter, updating the Court on the government’s ability to comply with the directives in this Order.

It is further ORDERED that the depositions and related docket activity shall be sealed. SO ORDERED. _____ DABNEY L. FRIEDRICH United States District Judge August 19, 2025 7