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 MOTION TO LIMIT THE ANTICIPATED TESTIMONY OF ALISON PARGETER

The government has noticed Ms. Alison Pargeter as an expert witness on "the history of Libya in the 20th and 21st centuries". *See* Ex. A at 1. The defense does not contest that Ms. Pargeter generally qualifies as an expert historian about Libya during the 20th and 21st centuries; but, there are three aspects of Ms. Pargeter's proposed testimony that warrant objection. First, Ms. Pargeter's expert notice includes a broad span of alleged bad acts by others in the Libyan government that Mr. Al-Marimi did not participate in. Second, Ms. Pargeter's expert notice includes a spate of inflammatory language, much of which is hearsay. And third, the government's notice does not provide a sufficient foundation for Ms. Pargeter's opinions listed about External Security Organization employees, particularly as those opinions may be implied or later openly argued to relate to Mr. Al-Marimi. This anticipated testimony is not admissible under Federal Rules of Evidence 402, 403, 404, 702, 703, and 801. The Court should accordingly limit Ms. Pargeter's proposed testimony.

BACKGROUND

The government's notice of Ms. Pargeter's proposed testimony covers a wide swath of topics ranging from Libya's geography and business sectors to Qaddafi's personal history and foreign policy to Libya's prior dealings with the United States and a proposed history of Libya's external security apparatus. *See* Ex. A. None of Ms. Pargeter's proposed testimony involves Mr. Al-Marimi. Most of Ms. Pargeter's proposed testimony is laced with bad acts that others[1]—not Mr. Al-Marimi—allegedly directed or participated in and inflammatory phrases or quotes.

For example, Ms. Pargeter's notice includes proposed testimony about the following:

1. Qaddafi's alleged execution in 1975 of twenty-one Misratan officers who were allegedly involved in an attempted coup against Qaddafi[2], *see* Ex. A at 3;
2. Said Rashid's alleged killing of Omar al-Meheshi, the person believed to have organized the 1975 attempted coup against Qaddafi, in 1983, *see* Ex. A at 3;
3. The hanging of a group of student protestors in Benghazi in 1977, *see* Ex. A at 3;
4. Student executions in 1984 on university campuses in Tripoli and Benghazi, *see* Ex. A at 3;

[1] Ms. Pargeter's notice also includes information about the La Belle incident in Germany, which is the subject of litigation pending before the Court in ECF Nos. 147, 174, 182.

[2] Ms. Pargeter's notice does not clearly spell out that this alleged coup was against Qaddafi, but her book, *Libya: The Rise and Fall of Qaddafi* 75 (2012), does.

5. Forced executions in 1993 of the leaders of an attempted coup by army officers from the Werfella tribe in Bani Walid, *see* Ex. A at 4;
6. Qaddafi's alleged retaliation in 1996 against members of the Hasawna tribe, *see* Ex. A at 4;
7. The burning of the French embassy in Tripoli and the French consulate in Benghazi (Ms. Pargeter's notice does not list a year for these attacks. Neither does Ms. Pargeter's book at page 122, but the years listed on other parts of page 122 range from 1972 to 1976), *see* Ex. A at 4;
8. Qaddafi's alleged favoring of a violent opposition toward Israel, *see* Ex. A at 5;
9. Crowds in Tripoli burning the U.S. embassy there in 1979, *see* Ex. A at 5;
10. A cow being slaughtered during an anti-American demonstration in Tripoli with "Reagan" painted on the side of the cow, *see* Ex. A at 5;
11. Death sentences from a Permanent Military Revolutionary Court that Ibrahim al-Bishari was alleged to have led, *see* Ex. A at 8;
12. The alleged kidnapping in Egypt of Libyan dissident Mansour Rachid El-Kikhia, *see* Ex. A at 8;
13. Descriptions of a group of allegedly high-ranking government officials purportedly known as "the Blood Group", *see* Ex. A at 8;
14. Said Rashid's alleged killing of Izadinne Lahderi in 1980, *see* Ex. A at 8;
15. The killing of a number of people identified as Libyan exiles, journalists, and lawyers, *see* Ex. A at 8;

16. Musa Kusa's statement about approving of the killing of and plans to kill people in London, *see* Ex. A at 8;
17. The killing of a British policewoman, Yvonne Fletcher, in 1984, *see* Ex. A at 8; and
18. The alleged activities of Libyan revolutionary committees under Qaddafi's government, *see* Ex. A at 3, 8-11.

There is no evidence that Mr. Al-Marimi participated in any of these events or was a part of any Libyan revolutionary committee.

Further, Ms. Pargeter's notice includes proposed testimony of a number of inflammatory statements, including:

1. Qaddafi ruling "through repression and fear", *see* Ex. A at 3;
2. Qaddafi exerting "ruthless control", *see* Ex. A at 3;
3. Qaddafi and Libya sponsoring terrorism[3], *see* Ex. A at 5;
4. Qaddafi allegedly declaring that a particular latitude was a "Line of Death", *see* Ex. A at 6;
5. Qaddafi allegedly flying into "a rage of anger and fear" in response to U.S. airstrikes, *see* Ex. A at 7;
6. A statement by Qaddafi that "The Yankees have no morals; they have no conscience. They should not be treated as humans. They constitute a threat to the future of mankind.", *see* Ex. A at 7;

[3] None of the charges that Mr. Al-Marimi faces in this case require the government to prove that Libya was a state sponsor of terror or that require the government to prove acts of terrorism. *See* ECF No. 7.

7. A statement by Qaddafi that "Today we say, o brother, to hell with America, to hell with colonialism, to hell with imperialism, to hell with Zionism . . . . If America continues to obey Reagan, the American people will pay the price of such stupidity and ignorance and of this disregard of convincing facts.", *see* Ex. A at 7;
8. A statement by Qaddafi that America was "playing the role of Satan on earth" and that "Whoever stands with America joins Satan; they are the devil's party", *see* Ex. A at 6; and
9. Said Rashid's alleged statement promising to "kill tens of Americans in return for every victim in this raid", referring to U.S. airstrikes against Libya, *see* Ex. A at 8.

There is no evidence that Mr. Al-Marimi was aware of these statements allegedly being made or that he agreed in any way with any of the contents of these statements.

Additionally, the foundation of Ms. Pargeter's expertise does not appear to provide her with an adequate basis to opine on the structure and general activities of Libya's external security apparatus. The government's notice indicates that "[g]iven the nature of [the ESO's] activities, there is very limited information in the public domain about its workings." Ex. A at 8. The notice further states that "[a]lthough there is little information available about the structural organization of the ESO, according to the former head of its Foreign Companies Section, Mohamed Mehdi Farjani, it comprised" four divisions. *Id.* at 9.

The notice then cites a June 20, 2018, opinion article titled "Snack with Sadiq and Mansour." Ex. B(1)[4]. The post indicates that Mr. Farjani "resigned from the apparatus a while ago" and that "after [he] was excluded from the scene", others took over his work with the external security service in Libya. Ex. B(1) at 2. There is no timeframe listed as to when Mr. Farjani resigned from the apparatus, or when other individuals took over his work and how long they remained in those posts. But, Ms. Pargeter's notice, citing this opinion article as the source of her information, makes it appear as if the structure and listed heads of various divisions was fixed throughout the length of the Qaddafi government.

Unlike other portions of Ms. Pargeter's notice, the citations in the section labeled "The External Security Organization (ESO)" consist primarily of internet postings. *See* Ex. A at 8-11 n. 30, 33-35, 37-47. Based on these internet posts and the limited information listed that Ms. Pargeter provides two weighty opinions: (1) "Indeed, from the late 1970s until the late 1980s, and under al-Bashari's leadership in particular, the ESO had almost unlimited powers to arrest, torture and liquidate regime opponents," *see* Ex. A at 8; and (2) "only the most loyal and trusted individuals were permitted to work in the organization," *see* Ex. A at 11.

[4] Exhibit B(1) is an English version of the post linked in Ms. Pargeter's notice at page 9, note 34. Exhibit B(1) was produced using Microsoft Edge's "Immersive reader" application to eliminate ads and using Microsoft Translator to produce a rough English version at this point. It ends with the text "It was the summer of 1988". An original version of the post linked in Ms. Pargeter's notice at page 9, note 34 in Arabic is attached as Exhibit B.

ARGUMENT

As an initial matter, the defense agrees that Ms. Pargeter generally qualifies as an expert on the history of Libya in the 20th and 21st centuries and that a limited measure of historical background about Libya's history is appropriate for the jury to consider. But, Ms. Pargeter's notice is replete with bad acts evidence that does not involve Mr. Al-Marimi, inflammatory language—much of which is hearsay, and does not provide a sufficient basis for her opinions expressed about the activities and employees of Libya's external security apparatus. The Court should limit Ms. Pargeter's testimony accordingly.

I. The government's expert cannot be allowed to testify about other alleged bad acts in which Mr. Al-Marimi did not participate.

Federal Rules of Evidence 402, 403, and 404(b) apply with equal force to expert testimony. *See, e.g.*, *United States v. Oreira*, 29 F.3d 185, 190 (5th Cir. 1994) (holding that expert testimony should have been excluded because its "its probative value was minimal and was substantially outweighed by the prejudicial impact of injecting the specter of" inflammatory evidence into the case). Expert evidence of other acts evidence—although arguably relevant—that creates an unfair prejudice must be excluded under Rule 403. *See, e.g.*, *Old Chief v. United States*, 519 U.S. 172, 180 (1997) (observing that "unfair prejudice" in Rule 403 "speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged").

Here, there can be no question that allowing Ms. Pargeter to testify about alleged brutal violence that is not connected to Mr. Al-Marimi poses a substantial risk of unfair prejudice. If the jury were to hear that Qaddafi ordered or that some members of his government publicly executed student protestors and killed those opposed to Qaddafi's views, among other bad acts identified above and in Exhibit A, this evidence paired with testimony about Mr. Al-Marimi's alleged work for the Qaddafi government would create not only unfair prejudice, but also confusion of the issues under Rule 403.

Furthermore, as part of the relevance inquiry into Rule 404(b) evidence, courts must consider whether "a reasonable jury could find by a preponderance of the evidence that the ***defendant, and not someone else***, was responsible for the" uncharged conduct. *United States v. Burwell*, 642 F.3d 1062, 1066 (D.C. Cir. 2011), reh'g en banc granted, judgment vacated (Oct. 12, 2011), opinion reinstated and aff'd, 690 F.3d 500 (D.C. Cir. 2012) (emphasis added) (citing *Huddleston v. United States*, 485 U.S. 681, 690 (1988)). This is so because the relevance of other-act evidence is conditional on the other act connecting to the defendant and the charged crimes in a way that serves a non-propensity purpose. *Id.*; *see* Fed. R. Evid. 104(b). To hold otherwise, would allow a jury to find an accused guilty by association rather than beyond a reasonable doubt. The Court should prohibit Ms. Pargeter from testifying about other bad acts not involving Mr. Al-Marimi.

II. The government's expert cannot be allowed to use inflammatory rhetoric while providing historical background.

Ms. Pargeter's notice is also replete with inflammatory language that is not admissible under Rule 403. In addition to the description from *Old Chief* above, unfair prejudice under Rule 403 has also been characterized as "the possibility that the evidence will excite the jury to make a decision on the basis of a factor unrelated to the issues properly before it." *United States v. Simpson*, 910 F.2d 154, 158 (4th Cir. 1990) (finding abuse of discretion to admit evidence that the defendant fit profile of a drug courier during trial for possession of a firearm) (quoting *Mullen v. Princess Anne Volunteer Fire Co.*, 853 F.2d 1130, 1134 (4th Cir. 1988)).

And word choice matters, particularly in high profile cases that involve associations with perceived terrorists. *See, e.g.*, *United States v. Al-Moayad*, 545 F.3d 139, 165-66 (2d Cir. 2008) (vacating convictions where jury heard "inflammatory, highly charged" testimony about terrorism and "the defendants were charged with conspiring to, attempting to, and providing material support to Hamas and al-Qaeda, but not with violent terroristic acts"); *United States v. Elfgeeh*, 515 F.3d 100, 127 (2d Cir. 2008) (explaining that "[t]here can be little doubt that . . . evidence linking a defendant to terrorism in a trial in which he is not charged with terrorism is likely to cause undue prejudice" where witness testified about moving "money from the United States to Yemen for terrorist causes"); *United States v. Amawi*, 541 F. Supp. 2d 945, 950-51 (N.D. Oh. 2008) (holding that even if testimony about terrorism "had some probative value, the risk of unfair prejudice substantially outweighs any such probative value" because "[f]ew terms have a greater inherent risk of prejudgment

than terrorism, terrorist"); *United States v. Mostafa*, 16 F. Supp. 3d 236, 264-67 (S.D.N.Y. 2014) (excluding various evidence related to terroristic acts); *United States v. Benkahla*, 530 F.3d 300, 310 (4th Cir. 2008) (describing testimony about terrorism as "alarming"); *United States v. Felton*, 417 F.3d 97, 103 (1st Cir. 2005) (noting that "terrorists" is a "provocative term, freighted with images of terrible events").

Here, allowing Ms. Pargeter to testify about a "Line of Death" or "Yankees" being "a threat to mankind", among other inflammatory statements noted above and in Exhibit A, risks luring "the factfinder into declaring guilt on a ground different from proof specific to the offense charged". *Old Chief*, 519 U.S. at 180.

Additionally, many of these inflammatory statements are hearsay. Rule 703 does not allow an expert to backdoor in unduly prejudicial hearsay. To the contrary, "if the facts or data [underlying an expert opinion] would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect". Fed. R. Evid. 703.

For these reasons, the Court should exclude the inflammatory statements in Ms. Pargeter's notice.

III. The government's notice does not provide a sufficient foundation for Ms. Pargeter's opinions about External Security Organization employees, particularly as those opinions may be implied to relate to Mr. Al-Marimi.

The Court has a duty to ensure that expert testimony does not exceed its proper scope. *See United States v. Zhong*, 26 F.4th 536, 556 (2d Cir. 2022). Expert opinion testimony must be well-grounded, well-reasoned, and not surmised. *See, e.g.*, Fed. R.

Evid. 702 advisory committee's note to 2000 amendment ("The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and not speculative before it can be admitted."). Where an expert's testimony relates to the structure of an organization, particular care is required "distinguish 'the legitimate use of an . . . expert . . . to explicate an organization's . . . structure' from 'the illegitimate and impermissible substitution of expert opinion for factual evidence'". *Zhong*, 26 F.4th at 556 (quoting *United States v. Mejia*, 545 F.3d 179, 190 (2d Cir. 2008)).

In *Mejia*, the Second Circuit made poignant observations about the dangers of expert opinions that address organizational structures intertwined with elements that the government has to prove beyond a reasonable doubt as part of its burden to prove the case. The Second Circuit observed that this type of testimony:

> must be limited to those issues where sociological knowledge is appropriate. An increasingly thinning line separates the legitimate use of an officer expert to translate esoteric terminology or to explicate an organization's hierarchical structure from the illegitimate and impermissible substitution of expert opinion for factual evidence. If the officer expert strays beyond the bounds of appropriately "expert" matters, that officer becomes, rather than a sociologist describing the inner workings of a closed community, a chronicler of the recent past whose pronouncements on elements of the charged offense serve as shortcuts to proving guilt. As the officer's purported expertise narrows from "organized crime" to "this particular gang," from the meaning of "capo" to the criminality of the defendant, the officer's testimony becomes more central to the case, more corroborative of the fact witnesses, and thus more like a summary of the facts than an aide in understanding them. The officer expert transforms into the hub of the case, displacing the jury by connecting and combining all other testimony and physical evidence into a coherent, discernible, internally consistent picture of the defendant's guilt.

545 F.3d at 190-91. The D.C. Circuit has relied on *Mejia* in expressing concern about

an expert basing his opinion on inadmissible hearsay that did not demonstrate a reliable methodology. *See Gilmore v. Palestinian Interim Self-Government Authority*, 843 F.3d 958, 972 (D.C. Cir. 2016) (upholding district court decision excluding expert who appeared to be repeating hearsay evidence to generate opinion); *Henkel v. Varner*, 138 F.2d 934, 935 (D.C. Cir. 1943) ("where the jury is just as competent to consider and weigh the evidence as is an expert witness and just as well qualified to draw the necessary conclusions therefrom, it is improper to use opinion evidence for the purpose").

That is exactly the danger here of Ms. Pargeter's opinions about Libya's external security apparatus. The government has charged Mr. Al-Marimi with aiding and abetting others affiliated with the ESO to destroy Pan Am 103. ECF No. 7, ¶10. In this case, as far as the defense knows currently, the government intends to call only one former alleged ESO member. That witness can testify about matters that conform with the Federal Rules of Evidence and with Mr. Al-Marimi's constitutional rights. But, short of that one witness, and the government's anticipated attempt to introduce the substance of the interrogations of the other men imprisoned with Mr. Al-Marimi that Jamal allegedly took[5], it appears that the government intends to use Ms. Pargeter's proffered testimony about Libya's external security apparatus as an impermissible substitution for factual evidence of ESO employees and activities.

Additionally, Ms. Pargeter's notice indicates that as it relates to Libya's external security apparatus, she does not have specialized knowledge about what

[5] Mr. Al-Marimi has briefed objections to such an effort in ECF No. 284-2 at 2-11 and ECF No. 306-2 at 1-3.

activities the ESO was authorized to undertake or that "only the most loyal and trusted individuals were permitted to work in the organization," *see* Ex. A at 11. Rather, she appears to be parroting online postings and limited public accounts to assert those opinions. Such a basis is insufficient under Federal Rule of Evidence 702(b). Thus, the Court should not allow Ms. Pargeter to testify to these proffered opinions about Libya's external security apparatus.

CONCLUSION

As set forth above, the government should not be permitted to use Ms. Pargeter's expert testimony to introduce unduly prejudicial bad acts evidence unconnected to Mr. Al-Marimi, inflammatory and potentially hearsay statements, or inadequately grounded opinions about Libya's external security apparatus and its personnel. To allow otherwise would risk depriving Mr. Al-Marimi of his right to a fair trial—one in which guilt is determined by evidence specific to the charged offenses, not by association with the broader conduct of a government in which he served.

Respectfully submitted,
ABU AGILA MOHAMMAD MAS'UD KHEIR AL-MARIMI

By: _____/s/_____

Whitney E.C. Minter
Va. Bar # 47193
Brooke Sealy Rupert
Va. Bar #79729
Assistant Federal Public Defender
Attorney for Mr. Al-Marimi
1650 King Street, Suite 500
Alexandria, Virginia 22314
(703) 600-0855 (telephone)
(703) 600-0880 (facsimile)

Whitney_Minter@fd.org (email)

Laura Koenig
Va. Bar #86840
Assistant Federal Public Defender
Attorney for Mr. Al-Marimi
701 E. Broad Street, Suite 3600
Richmond, Virginia 23219
(804) 343-0800 (telephone)
(804) 648-5033 (facsimile)
Laura_Koenig@fd.org (email)