

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS'UD KHEIR AL-MARIMI,**

Defendant.

:
:
:
:
:
:
:
:
:
:

Case No. 22-cr-392 (DLF)

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO LIMIT THE ANTICIPATED
TESTIMONY OF ALISON PARGETER**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Response to the defendant's Motion to Limit the Anticipated Testimony of Alison Pargeter (ECF 363). For the following reasons, the motion should be denied.

BACKGROUND

The defendant is charged with offenses related to the bombing of Pan American Airways Flight 103 ("Pan Am Flight 103") over Lockerbie, Scotland, on December 21, 1988. As alleged in the indictment, the defendant was a technical specialist employed by the External Security Organization ("ESO"), an intelligence service of the Libyan government whose functions included "conduct[ing] acts of terrorism against other nations and repress[ing] the activities of Libyan dissidents abroad." ECF 7 (Indictment) at 2-3. In his capacity as an ESO operative, the defendant is alleged to have "unlawfully, willfully, and knowingly, conspire[d], combine[d], and agree[d] with others affiliated with the ESO, to commit terrorist acts against the United States of America and its citizens," including by committing the bombing of Pan Am Flight 103. *Id.* at 3. The

government's evidence will establish that, in preparing and activating the explosive device used in the crime, the defendant acted on orders from superiors within the ESO.

This offense was committed at the direction of the Libyan government during a period of adversity between Libya and the United States. The specific factual allegations are therefore inseparable from the geopolitical conditions of the 1980s, of which many jurors will have little or no recollection. Accordingly, the government intends to call Alison Pargeter, a historian specializing in Libya, as an expert witness to provide necessary context. Through Pargeter's testimony, the jury will receive the background information necessary to understand the political and social circumstances of the attack. Pargeter's testimony will also establish certain basic facts about the ESO, including its role in Libyan society and the identities of some of its key personnel.

Pargeter's academic research has focused on Libya since 1999, roughly twelve years before the fall of Qaddafi. *See* ECF 363-1 at 14 (government's expert notice). In the course of her studies, she visited Libya both before and after the 2011 revolution, and interviewed "hundreds of Libyans from different walks of life, including over 60 officials and former officials, 40 tribal sheikhs or notables, hundreds of dissidents, as well as over 60 academics, activists and journalists." *Id.* Pargeter combined this field research with reliance on primary and secondary sources including "media reports, official documentation published by the Qaddafi regime, speeches and commentary by Qaddafi contained in the Sijil Al-Quomi (National Record), social media posts, and memoirs and books by former regime members[s]." *Id.* She has published extensively, testified in multiple countries, and consulted for the private sector. *Id.* at 14-18.

ARGUMENT

The defense has moved to exclude central parts of Pargeter's anticipated testimony concerning (1) certain public actions by Libyan leader Qaddafi and others; (2) certain public

statements by Qaddafi and others; and (3) the structure, membership, and functions of the ESO. For the reasons below, all of this testimony should be allowed.

A. Acts by Qaddafi and others are relevant for multiple non-propensity purposes.

The defense first argues that Pargeter should not be permitted to testify about “other alleged bad acts” committed by persons other than the defendant. ECF 363 at 7. This argument is unavailing, because the public actions of Qaddafi’s government are relevant for multiple purposes unrelated to showing propensity, and are therefore admissible under Rule 404(b).

As an initial matter, the defense is wrong to argue that Rule 404(b) evidence can only involve acts by the defendant and not any other persons. *See* ECF 363. The Rule’s text is not so limited: it applies to acts by a “person,” not by a “defendant.” Thus, as the Ninth Circuit has explained, “the text of Rule 404(b) compels” the conclusion that it “appl[ies] to any person.” *United States v. McCourt*, 925 F.2d 1229, 1235 (9th Cir. 1991); *see also id.* at 1233-36 (discussing issue at length). If the quotation offered by the defense from *United States v. Burwell* seems to suggest the opposite, that is only because they omitted an important qualifying phrase. *See* ECF 363 at 8 (citing *Burwell*, 642 F.3d 1062, 1066 (D.C. Cir. 2011)). *Burwell* did not hold that only the defendant’s own acts, and not those of third parties, can be admitted under Rule 404(b). Rather, in the part of the quotation omitted by defense, *Burwell* explained that “when the government seeks to introduce evidence *that a defendant committed* another crime,” it is necessary that there be sufficient evidence for a reasonable jury to find that fact by a preponderance of the evidence. *Burwell*, 642 F.3d at 1066 (emphasis added). That is just a straightforward application of Rule 104(b) (“When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist”), and it is equally straightforward that, when a party seeks to introduce evidence of an act by a different person, the proof must be

sufficient for the jury to find that the person committed the act. Pargeter's expert testimony will easily satisfy that standard.

Moving to the application of Rule 404(b) to Pargeter's anticipated testimony, this analysis properly "begins with the question of relevance: is the other crime or act relevant and, if so, relevant to something other than the [actor's] character or propensity? If yes, the evidence is admissible unless excluded under other rules of evidence such as Rule 403." *United States v. Bowie*, 232 F.3d 923, 930 (D.C. Cir. 2000). It does not matter if the evidence "may tend to show that" the defendant or anyone else was "a person of bad character"; the evidence is admissible as long as it is not offered "solely to prove character." *United States v. Cassell*, 292 F.3d 788, 795 (D.C. Cir. 2002) (quoting *United States v. Miller*, 895 F.2d 1431, 1436 (D.C. Cir. 1990)) (emphasis in original).

Here, the various acts listed in the defense's motion are relevant for multiple non-propensity reasons, starting with intent, knowledge, and motive.

"Intent, knowledge, and motive are 'well-established non-propensity purposes for admitting evidence of prior crimes or acts,'" especially when "the government has alleged conspiracy." *United States v. Straker*, 800 F.3d 570, 590 (D.C. Cir. 2015) (quoting *United States v. Bowie*, 232 F.3d 923, 930 (D.C. Cir. 2000); *United States v. Mathis*, 216 F.3d 18, 26 (D.C. Cir. 2000)). Where a conspiracy is at issue, "the government is usually allowed considerable leeway in offering evidence of other offenses "to inform the jury of the background of the conspiracy charged, to complete the story of the crimes charged, and to help explain to the jury how the illegal relationship between the participants in the crime developed." *Mathis*, 216 F.3d at 26.

In this case, while there is no conspiracy offense separately charged, the indictment nonetheless alleges a conspiracy between the defendant and others "to commit terrorist acts against

the United States of America and its citizens,” resulting in the bombing of Pan Am Flight 103. ECF 7 at 3. Moreover, coordinated action between the defendant and co-conspirators is an essential part of the government’s factual theory of the case, and part of the evidence for that coordination action is the conspirators’ being together at relevant times and places. Therefore in this prosecution, no less than in any other case charging conspiracy, “the government’s evidence must overcome the possibility that a particular defendant’s association with criminal co-conspirators was wholly innocent or that, if he was with them at the scene of criminal activity, he was ‘merely present,’ without guilty knowledge or intent.” *United States v. Rodriguez*, 215 F.3d 110, 119 (1st Cir. 2000).

Knowledge and intent will be key issues in the trial. The charged offenses are not strict liability crimes; to secure a conviction, the government must prove that the defendant acted “willfully” (Counts One and Two) and “maliciously” (Count Three). The defense is likely to argue that, even if the defendant was the person who assembled and activated the bomb that destroyed Pan Am Flight 103, he did not know or intend that it would be used for a wrongful purpose like killing civilians. The government is entitled to refute this argument by showing the jury Gaddafi’s routine use of the ESO to murder those whom he perceived as his enemies, as well as the brazen publicity that accompanied these acts. The regime’s unabashed record of atrocities is highly probative evidence to counter any notion that the defendant was an ordinary government employee who carried out orders from superiors in good faith without realizing their wrongful purpose. By joining and remaining in the ESO, the defendant must have known he was signing up to commit acts like the bombing of an American passenger plane.¹ And even if the defense does not contest knowledge and intent in this way, the government still has the burden of proving the *mens rea*

¹ Put differently, the notoriety of Qaddafi’s enmity towards Americans is relevant to show “absence of mistake,” another permitted use under Rule 404(b)(2).

elements beyond a reasonable doubt, so the justification for allowing this part of Pargeter's testimony would be equally strong. *See United States v. Cassell*, 292 F.3d 788, 794 (D.C. Cir. 2002) (rejecting as a "non sequitur" defendant's argument in firearm case that, "because he did not contest intent or knowledge, the prosecution could not have offered his prior gun possession evidence [under Rule 404(b)] for the purpose of proving those elements").

Proving motive is likewise critical to the government's case. "Motive is always relevant in a criminal case, even if it is not an element of the crime." *United States v. Sanford Ltd.*, 878 F. Supp. 2d 137, 145 (D.D.C. 2012) (quoting *United States v. Hill*, 643 F.3d 807, 843 (11th Cir. 2011)); *see also United States v. Day*, 591 F.2d 861, 874 (D.C. Cir. 1978) ("Motive is a state of mind that is shown... as a circumstance showing the probability of appropriate ensuing action (and) it is always relevant." (quoting 1 Wigmore on Evidence § 118 at 558, 561 (3d ed. 1940))). Killing hundreds of innocent people is an act that someone would only commit if they had a very powerful motive to do so. Here, the government alleges that the defendant was led to act by orders from his ESO superiors as part of Qaddafi's quest for vengeance against the United States. "Hostility is a paradigmatic motive for committing a crime," *United States v. Russell*, 971 F.2d 1098, 1107 (4th Cir. 1992), and Pargeter's testimony will establish that the Qaddafi government in which the defendant served was deeply hostile to the United States and manifested that hostility in ways that included the bombing of Pan Am Flight 103. *Cf. e.g., United States v. Mills*, 704 F.2d 1553, 1560 (11th Cir. 1983) (evidence about Aryan Brotherhood, including "illegal or otherwise improper acts which did not constitute elements of the crime charged," admissible under Rule 404(b) because relevant to "context, motive, and set-up of" murder).

Qaddafi's violent authoritarianism is relevant for other reasons too. It helps explain why, for so many years, no evidence about Pan Am 103 emerged from Libya despite some number of

people in its government possessing information about what happened: the atmosphere was not one that promoted whistleblowing. Similarly, giving the jury a truthful picture of the character of Qaddafi's style of rule will help them to understand how some government witnesses experienced direct or implicit intimidation because of their association with the case (including the fear associated with "betraying" the Qaddafi government even after his death). *See, e.g., Miller*, 895 F.2d at 1436 (D.C. Circuit joining Third and Eleventh Circuits in holding that "Rule 404(b) permits the introduction of bad-acts evidence to prove material issues unrelated to the defendant's conduct, including 'the witness' motives.'" (quoting *United States v. Scarfo*, 850 F.2d 1015, 1021 (3d Cir.); and citing *United States v. Foster*, 889 F.2d 1049, 1053 (11th Cir.1989)).

All of the above are valid theories of relevance that do not depend upon a propensity inference.

Nor does Rule 403 preclude Pargeter's testimony on these topics. The defense has not identified what "issues" might be "confused," ECF 363 at 8, and there seems to be little risk of confusion given that the defendant is charged with a single discrete act and that the challenged evidence constitutes background testimony offered by a single witness. Nor would the anticipated testimony pose a risk of any unfair prejudice to the defense. The defense invokes "guilt[] by association," *id.*, but as noted above, the defendant's voluntary affiliation with the violent regime is highly probative of his membership in the alleged conspiracy and directly relevant to his intent and knowledge. In a case alleging murder on orders from the leader of a more conventional criminal organization, it would not be unfair to present evidence about the nature of that organization, and for the same reason it is not unfair here to present a complete picture of the institutions that were integral to the offense conduct. *See, e.g., Mills*, 704 F.2d at 1559 (rejecting defendant's argument that excessive gang evidence violated Rule 403, and explaining: "[t]he

evidence required to prove motive and the events leading to [the charged] murder was necessarily substantial because the Aryan Brotherhood is a covert organization within the prison system, a culture strange and foreign to a lay jury even in its most obvious aspects”). There is nothing unfair about painting the complete picture.

To the contrary, fairness necessitates completeness, because concealing the disputed topics from the jury would unfairly prejudice the government. U.S. foreign policy and military interventions in the Middle East and North Africa are highly controversial topics, and without historical context there is a risk that jurors’ deliberations might be affected by strongly held views about contemporary activities in the region by the United States and its allies, possibly to the point of risking jury nullification. Especially because the historical timeline will include the U.S. airstrikes on Tripoli in 1986, it must be made clear that Qaddafi was not a benevolent freedom fighter who became a victim of western imperialism, but rather a ruthless dictator who employed mass violence to protect his own power. If the defense sees the facts differently, they can challenge Pargeter’s testimony on the merits through cross-examination or otherwise.

Accordingly, the Court should not limit Pargeter’ anticipated testimony from describing the actions and methods of the Qaddafi government and ESO.

B. The testimony will include no inadmissible “inflammatory rhetoric.”

Next, and relatedly, the defense argues that Pargeter “cannot be allowed to use inflammatory rhetoric while providing historical background.” ECF 363 at 9. Most of the quotations they identify, however, are not Pargeter’s “rhetoric” but that of Muammar Qaddafi and Said Rashid, the defendant’s superiors within the Libyan government. This argument therefore appears to be a variation on the defense’s first argument, in that the Qaddafi and Rashid’s incendiary statements are a species of “bad act” that purportedly “risk[] luring ‘the factfinder into

declaring guilt on a ground different from proof specific to the offense charged.” ECF 363 at 10 (quoting *Old Chief v. United States*, 519 U.S. 172, 180 (1997))).

For all the same reasons that the Qaddafi government’s physical conduct is relevant and admissible, the regime’s statements are too. The public pronouncements by Qaddafi and Rashid are directly relevant to the charged offenses, and their inflammatory nature is part of what makes them so. In particular, as noted above, motive is strongly at issue in this case. Without an understanding that Qaddafi and his subordinates harbored strong animosity toward the United States, it would be difficult for a jury to find beyond a reasonable doubt that the Libyan government murdered 270 people, mostly Americans. All of the quotations from Qaddafi and Rashid are strongly probative of that hostility, which as noted above is “a paradigmatic motive for committing a crime.” *Russell*, 971 F.2d at 1107. Moreover, given that the statements were made publicly and garnered sufficient notice to be remembered decades later, it is reasonable to infer that the defendant was aware of them, making them relevant to his knowledge and intent.

These statements are not hearsay. For starters, none of the quotations from Qaddafi or Rashid are being offered for the truth of any matter asserted. Indeed, when the defense’s argument is spelled out it refutes itself. Qaddafi’s statement that “[t]he Yankees have no morals” would only be hearsay if offered to prove that Americans lack morality. ECF 636 at 4. The statement that America was “playing the role of Satan on earth” would only be hearsay if offered to prove that the United States was, in fact, “the devil’s party.” *Id.* at 5. Plainly that is not the purpose of any of these quotations. “Hearsay” is not a catchall objection for any out-of-court statement the defense doesn’t like; it has a specific definition, *see* Fed. R. Evid. 801, which does not come close to applying here.

Separately and additionally, Qaddafi's and Rashid's statements are definitionally non-hearsay because they are co-conspirator statements admissible under Fed. R. Evid. 801(d)(2)(E). As established by evidence including the defendant's statement, a conspiracy existed "to commit terrorist acts against the United States of America and its citizens," ECF 7 at 3, and the defendant, Qaddafi, and Rashid were part of that conspiracy together. The virulently anti-American statements that Pargeter's testimony will describe were part of the way Qaddafi's regime stoked hatred and thereby increased popular support for its posture of hostility toward the United States. They were therefore made in furtherance of the conspiracy and are admissible regardless of whether they are offered for the truth of anything said in them. The defense contends that "[t]here 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." But "that does not matter." *United States v. Leveille*, 18-CR-2945-WJ, 2023 WL 5835889, at *14 (D.N.M. Sept. 8, 2023) (rejecting as irrelevant defendants' argument that they were "not aware of," "did not hear," or "did not agree with" putative co-conspirator statements).

What remains are some of Pargeter's own statements, such as that Qaddafi ruled "through repression and fear" and exercised "ruthless control." ECF 363 at 4. These opinions are relevant for all the same reasons discussed in Section A above, and far from unduly "inflammatory," they are accurate statements stated in language proportionate to the subject being discussed. There is nothing improper about the substance of these statements, and no obvious way to express them without using the type of language that the defense argues is objectionable.

Likewise Pargeter's opinion that Qaddafi sponsored terrorism. This fact has real probative value, because Qaddafi's sponsorship of terror was a key factor in the emergence of hostilities between the United States and Libya in the years leading up to the bombing of Pan Am Flight 103.

See ECF 363-1 at 5 (“Relations with the United States worsened as Qaddafi’s rule continued. By the late 1970s, Libya’s sponsorship of terrorism [and other factors] led the United States to view the country as a possible adversary.”). As discussed above, fairness to the government requires that the jury have a fair understanding of why the United States and Libya considered each other enemies at the time of the bombing. Qaddafi’s use of terrorist proxies was a link in the chain of events that led to the commission of the charged offense; it is therefore relevant and admissible even though “terrorism” is not an element of the charged offenses.

C. Pargeter’s opinions about the ESO are well founded and admissible.

The defense lastly argues that Pargeter’s “expertise does not appear to provide her with an adequate basis to opine on the structure and general activities of” the ESO, and that her testimony on that topic should accordingly be limited. ECF 363 at 5, 10-13. The Court should reject this argument, because Pargeter is well qualified to offer conclusions about the ESO that are based upon reliable sources and methodology. In particular, the government anticipates that Pargeter’s testimony will establish the following:

Libya’s ESO under Qaddafi was a secretive organization, and in that respect was similar to other secretive organizations, including especially other intelligence entities in authoritarian regimes. Such entities pose challenges for historians because of the lack of publicly available information and reluctance on the part of many insiders to speak openly. Nonetheless, professional historians consider it important to study organizations like the ESO because of the role they play in propping up their sponsoring regimes and in exacting and maintaining control.² Understanding these institutions is critical to any understanding of authoritarian persistence.

² See, e.g., 97 SOCIAL SCIENCE QUARTERLY no. 4, *Observing Autocracies from the Ground Floor* (Dec. 2016), available at <https://www.jstor.org/stable/e26612353>; Florina Cristiana Matei and Jeff Rogg, *Domestic Intelligence in Nondemocratic Regimes*, 3 INT’L J. OF INTELLIGENCE AND

Experts in the field have therefore developed a set of generally accepted methodological tools that allow practitioners to reach conclusions about the structure, membership, purposes, and activities of secretive organizations like the ESO based on the information that is available. These include gathering information from as many sources as possible, “triangulating” or cross-referencing information to determine which sources are consistent or inconsistent with each other, evaluating the likely biases and motives of each source, and ultimately ascertaining the dominant narratives and themes that emerge from the collective body of material. Once this is accomplished, any new information that emerges can be considered in relation to the historian’s existing understanding, which may cause the historian to accept or question the new information, or to reevaluate prior conclusions. Indeed, there have been a number of important studies of secret organizations in authoritarian states that have been published over recent years.³

Here, Pargeter employed those tools to reach reliable conclusions about the ESO. It bears noting first that the sources cited in the expert notice, which were offered to support specific factual points, do not constitute the sum total of sources that have informed Pargeter’s understanding of the ESO and of the Qaddafi regime’s activities generally. To the contrary, Pargeter has been studying this topic as her career for more than 25 years, and her knowledge is based on countless sources including her own numerous interviews of Libyans inside and outside the Qaddafi government.

COUNTERINTELLIGENCE 823 (2024), *available at* <https://www.tandfonline.com/doi/full/10.1080/08850607.2024.2307451#d1e104>

³ *See, e.g.*, Jens Gieseke, *THE HISTORY OF THE STASI* (2014); Sheena Chestnut Greitens, *DICTATORS AND THEIR SECRET POLICE: COERCIVE INSTITUTIONS AND STATE VIOLENCE* (2016); Netanel Flamer, *THE HAMAS INTELLIGENCE WAR AGAINST ISRAEL* (2024), *available at* <https://www.cambridge.org/core/books/hamas-intelligence-war-against-israel/intelligence-and-national-security-in-africa-and-the-middle-east/58098895485FDCE522078F891C0AA0EE>; Lisa Blaydes, *STATE OF REPRESSION: IRAQ UNDER SADDAM HUSSEIN* (2018).

With that background, Pargeter is more than qualified to assess the reliability of sources of information about the ESO and, where warranted, to incorporate the information into her own body of knowledge. For example, regarding the source that the defense attached to their motion, ECF 363-3, Pargeter recognized that the author's descriptions of the ESO and its top personnel were consistent with her preexisting knowledge about the organization and its leadership, as well as with Qaddafi's various public statements and pronouncements. Seeing no motive on the part of the author to fabricate this information, Pargeter considered it likely to be accurate and added it to her understanding of the ESO.

Another example from the many sources contributing to Pargeter's expert knowledge is the book *Figures Around Qaddafi* by Abdel Shalgam, a former senior member of Qaddafi's government. *See, e.g.*, ECF 363-1 at 8, nn. 28, 31, 32. Pargeter was familiar with Shalgam and thereby able to assess his likely motives in publishing the book, which likely included a desire to distance himself from the regime's worst atrocities. Regarding the book's discussion of the ESO and its leading figures, however, Pargeter had no reason to believe that Shalgam had any axe to grind with these people, and therefore no reason to suspect that the book's treatment of these topics was anything other than Shalgam's truthful recounting of events to his best recollection – the type of material that professional historians routinely rely upon.

In applying this level of critical scrutiny, Pargeter sometimes rejects sources as insufficiently reliable. For example, Pargeter is aware of certain interviews with former members of Libya's "Revolutionary Committees"⁴ that she recognized as self-serving attempts to rehabilitate the reputations of the interviewees and their former colleagues by whitewashing the

⁴ As explained in the expert notice, "Revolutionary Committee members were mostly young ideologues who permeated almost all state institutions and hunted down regime opponents." ECF 363-1 at 3.

historical record of the Committees' conduct. Exercising this form of judgment requires a finely tuned set of analytical skills as well as a vast body of subject-matter knowledge. Pargeter has both, which is why she is a leading practitioner in her field and supremely well qualified to testify about all of the facts in the expert notice, including those relating to the ESO.

In other words, this is a case where the expert is “applying [her] extensive experience and a reliable methodology” to the source materials, not “simply repeating hearsay evidence without applying any expertise whatsoever.” *Gilmore v. Palestinian Interim Self-Gov't Auth.*, 843 F.3d 958, 972 (D.C. Cir. 2016) (quoting *United States v. Mejia*, 545 F.3d 179, 197 (2d Cir. 2008) (internal quotation marks omitted)). Pargeter's anticipated testimony is therefore unlike the testimony ruled inadmissible in the cases cited by the defense. In particular:

In *Gilmore v. Palestinian Interim Self-Gov't Auth.*, the D.C. Circuit held that the district court did not abuse its discretion in excluding an expert report offered by the plaintiffs in support of allegations that a Palestinian soldier murdered a U.S. citizen in Israel. 843 F.3d 958, 972 (D.C. Cir. 2016). The excluded expert opinion was that it was “more likely than not” that the soldier murdered the decedent; it was based on case-specific evidence that the district court had excluded as hearsay; and it was developed through an analytical approach that went largely unexplained and did not appear to “differ from that of a layperson.” *Id.* at 972-73. Here, by contrast, Pargeter's opinions about the ESO do not go to the ultimate issue of the case, they are based on source materials that are not otherwise evidence in the case, and they are the product of specialized analytical methods generally relied upon in her field of expertise.

In *United States v. Mejia*, the Second Circuit found that a law enforcement witness, offered as an expert in the gang MS-13, testified improperly when he “merely repeat[ed] information he had read or heard” about the gang rather than providing information that “resulted from his

synthesis of various source materials.” 545 F.3d at 197. Because the officer did not “explain how he had pieced together bits of information from different sources and reached a studied conclusion,” he was “acting not as an expert but instead as a case agent” who “did not analyze his source materials so much as repeat their contents.” *Id.* That will not be the case for Pargeter: as summarized above and as her trial testimony will establish, she reaches her conclusions through a “synthesis of various source materials,” *id.*, not by merely parroting things she has heard.

The defense quotes at length from *Mejia*, but not from the part of the opinion addressing the expert’s basis of knowledge. Their block quote is instead from a background discussion about the trend of “officer experts” – that is, law enforcement agents who, in the course of their investigative duties, develop specialized knowledge about a particular criminal organization. When such officers participate in an investigation and then testify to the jury as experts during the resulting prosecution, there is a danger that their testimony becomes improperly case-specific, transforming from that of a “sociologist describing the inner workings of a closed community” to that of a “chronicler of the recent past whose pronouncements on elements of the charged offense serve as shortcuts to proving guilt,” including by opining on “the criminality of the defendant.” *Id.* at 190. Hence in *Mejia*, the court faulted the prosecution for calling a state police investigator to give an expert opinion that “MS-13 had committed between eighteen and twenty-three murders since 2000.” *Id.* at 195. This opinion, which “essentially summarized the results of the [police’s] investigation,” purported to directly establish an element of the charged offense and thereby constituted a “shortcut around [the government’s] obligation to prove murder beyond a reasonable doubt.” *Id.*

Those concerns from *Mejia* are inapplicable here. Pargeter is not a law enforcement officer who investigated the defendant and his ESO co-conspirators; she is an academic who has no

connection to the case other than having been retained as an expert. Her anticipated testimony will say nothing about the defendant himself nor offer any opinion about Libya's culpability for the bombing of Pan Am Flight 103; she is therefore making no "pronouncements on the elements of the offense" or providing any "shortcut[] to proving guilt." *Id.* at 190. Moreover, unlike the experts in *Mejia* and *Gilmore*, Pargeter has not based her opinions on any of the evidence that makes up the government's case in chief. She will therefore not provide a "summary of the facts" or "transform[] into the hub of the case" by "connecting and combining all other testimony and physical evidence into a coherent, discernible, internally consistent picture of the defendant's guilt." *Id.*⁵

In short, Pargeter's anticipated testimony about the ESO will be well founded and well within the bounds of permissible expert opinion. The Court should not preclude it.

⁵ The defense also cites *Henkel v. Varner* for the proposition that, "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." ECF 363 at 12 (quoting 138 F.2d 934, 935 (D.C. Cir. 1943)). But the jury here is not "just as competent to consider and weigh" the countless primary and secondary sources upon which Pargeter has relied, nor would the rule against hearsay even allow them to consult these materials directly. *Henkel* otherwise appears to be completely inapposite: it is a personal injury case from the 1940s in which the "expert testimony" was from a plumber who believed a bathtub faucet was incorrectly repaired.

CONCLUSION

For the above reasons, the defense's motion should be denied.

Respectfully submitted,

JEANINE FERRIS PIRRO
UNITED STATES ATTORNEY

By: /s/ *Conor Mulroe*
CONOR MULROE (NY Bar No. 5289640)
ERIK M. KENERSON (OH Bar No. 82960)
BRITTANY KEIL (D.C. Bar No. 500054)
Assistant United States Attorneys
JEROME J. TERESINSKI (PA Bar No. 66235)
Special Assistant United States Attorney
601 D Street NW, Washington, D.C. 20530
(202) 740-4595 // Conor.Mulroe@usdoj.gov

KATHLEEN CAMPBELL (MD Bar No. 9812170031)
JENNIFER BURKE (MD Bar No. 9706250061)
Trial Attorneys, Counter Terrorism Section
National Security Division
950 Pennsylvania Avenue NW, Washington, D.C. 20530