

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

Mr. Al-Marimi has agreed that much of what the government noticed in Ms. Pargeter's expert testimony is admissible. He challenged only three specific concerns with her proposed testimony, which are well founded in the Federal Rules of Evidence. Yet, the government's response dismisses these serious concerns out of hand. The government seeks to inject evidence into the trial that Rules 403 and 404(b) are designed to exclude. Further, the government still fails to point to sufficient data to support Ms. Pargeter's opinions about the External Security Organization—opinions which, if admitted, would effectively lessen the government's burden of proof in this case. The Court should reject the government's attempts to overreach with Ms. Pargeter's testimony and grant Mr. Al-Marimi's motion *in limine* in ECF No. 363.

I. The Court should reject the government's attempts to generalize relevance and non-propensity motives of other alleged bad acts in which Mr. Al-Marimi did not participate.

The government maintains that it should be allowed to introduce evidence at the trial accusing Mr. Al-Marimi of participating in causing the explosion of Pan Am Flight 103 of, among other equally unrelated and unfairly prejudicial allegations,

Qaddafi ordering the execution of student protestors in Libya, executions of Libyan political challengers, and the burning of French diplomatic stations in Libya as well as crowds burning an American embassy in Tripoli in 1979 and the killing of a British police officer in 1984. There is no evidence that Mr. Al-Marimi condoned let alone supported or participated in any of those events. It should not take pages of briefing to determine that such evidence has no business being admitted in the trial against Mr. Al-Marimi.

But, further argument is apparently needed. The government's response does not engage with the crux of the Rule 403 challenge that Mr. Al-Marimi raised to the admission of the incendiary acts of others. Rule 403 provides that courts may “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. It is hard to imagine how evidence such as executions of Libyan citizens would not unfairly prejudice Mr. Al-Marimi or confuse the issue that the jury must decide in this case—whether Mr. Al-Marimi participated in the destruction of Pan Am Flight 103. There are few things more unduly prejudicial under Rule 403 in a case alleging mass murder than evidence of other, unrelated violent acts. *Compare United States v. Dencklau*, 160 F.4th 1046, 1056 (9th Cir. 2025) (upholding exclusion of other bad acts evidence “especially where the past conduct was not particularly relevant to the conduct at issue”), and *Malcolm v. Dist. of Columbia Metropolitan Police Dep't*, 517 F. Supp. 2d 74, 82 (D.D.C. 2017) (“the

threats made by Ramirez here bear so little similarity to the events under review that they have little, if any, probative value. They are likely to convince the trier of fact that defendant Ramirez is a violent person, and that he may have been ‘predisposed’ to act consistent with that character”).

Additionally, the Court should reject outright the government’s assertion that it is seeking admission of this evidence for any purpose other than propensity. The government’s explicit guilt-by-association argument makes that clear: “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.” ECF No. 387 at 5. What the government is arguing is that because someone else committed other bad acts, Mr. Al-Marimi therefore had knowledge, intent, and a motive to participate in the destruction of Pan Am Flight 103.

First, that is not at all what Rule 404(b) provides. Rule 404(b)(1) prohibits using “evidence of any other crime, wrong, or act is not admissible to prove *a person’s* character in order to show that on a particular occasion *the person* acted in accordance with the character”. Fed. R. Evid. 404(b)(1) (emphasis added). Such evidence is admissible only to show one of the excepted purposes. Fed. R. Evid. 404(b)(2). The Rule’s use of the phrase “the person” makes clear that the bad acts evidence must be the same person’s prior bad acts, not the bad acts of another. *See, e.g., United States v. Tanner*, 628 F.3d 890, 904 (7th Cir. 2010) (“Rule 404(b) forbids the use of a person’s prior bad acts only to show that same person’s later action in conformity therewith.”).

Second, there is nothing but propensity and guilt-by-association that the challenged evidence could show about Mr. Al-Marimi. The challenged evidence such as Qaddafi's alleged executions of student protestors and the burning of French embassies in Libya cannot possibly show that Mr. Al-Marimi had the intent, knowledge, or motive to participate in the destruction of Pan Am Flight 103. Nothing about those earlier events shows, as the government alleges, "coordinated action between the defendant and co-conspirators". See ECF No. 387 at 5. Nothing about the challenged actions shows that Mr. Al-Marimi somehow knew or intended or was motivated by bad acts of others against his own countrymen to participate in destroying a civilian aircraft heading to America. Such evidence is plainly inadmissible under the Rule 403 and 404(b) frameworks. See, e.g., *United States v. Hernandez*, 780 F.2d 113, 118 (D.C. Cir. 1986) ("Admission of such evidence would naturally lead a jury to assume that Lopez-Leyva had the motive of his associates: a slightly refined version of guilt by association."); rejecting such an attempt).

And last, the Court should reject the red herring that the government offers in arguing that it needs to admit evidence of Qaddafi's alleged prior bad acts to generally explain why its witnesses may not have come forward earlier with relevant evidence. See ECF No. 387 at 6-7. Such broad assignment of motives is not sufficient to overcome Rule 403's provisions. Compare *United States v. Scarfo*, 850 F.2d 1015, 1017 (3d Cir. 1988) (evaluating trial of crime boss of La Cosa Nostra mafia where "one prospective witness had been killed in the past, one judge had been murdered, and attempts had been made to bribe other judges"). In *Scarfo*, the Third Circuit upheld

the trial court's decision to admit evidence of other murders where cooperating witnesses testified that they had to commit murder themselves for La Cosa Nostra to become members of the crime family. *Id.* at 1018. The trial judge observed that:

evidence of the defendant's participation in various murders would normally be excluded as irrelevant and unduly prejudicial in a trial for a single extortion scheme. However, in view of the unusual circumstances in this case, the judge concluded that such exclusion would be prejudicial to the government.

[The cooperating witnesses] had extensive criminal backgrounds. The revelation of these histories would necessarily undermine the jury's willingness to believe the witnesses, particularly if the government were barred from full disclosure. The witnesses' unsavory mores were hardly likely to inspire confidence in their truthfulness and, therefore, it was important for the jury to realize that Caramandi and DelGiorno had been granted immunity for the very murders that they asserted Scarfo had ordered. Moreover, Caramandi's belief that he had been threatened by Scarfo and his fear that his daughter's life was in jeopardy were probative of his motives to testify. Similarly, DelGiorno inferred from the conduct of other organization members that he, too, had been marked for death, a realization that prompted him to approach the authorities and arrange for cooperation.

Id. at 1020. No such evidence exists in this case.

The Court should grant Mr. Al-Marimi's motion *in limine* on this first ground.

II. Ms. Pargeter can describe animosity between the United States and Libya without using inflammatory language.

Mr. Al-Marimi also objected to the nature of the inflammatory rhetoric Ms. Pargeter's notice contained. The government's response focuses on relevance, rather than Mr. Al-Marimi's stated objection under Federal Rule of Evidence 403. As set forth above, Rule 403 provides that courts may "may exclude *relevant* evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay,

wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403 (emphasis added). The issue with the inflammatory rhetoric is the significant risk that unfair prejudice and misleading the jury will substantially outweigh the evidence’s relevance. *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, Mr. Al-Marimi did not move *in limine* to exclude wholesale evidence from Ms. Pargeter about the contentious relationship between Libya and the United States in the 1980s. Rather, Mr. Al-Marimi moved *in limine* to exclude simply the gratuitously inflammatory language surrounding that relationship. An expert is perfectly within bounds to state an opinion and the reasons for the opinion “without first testifying to the underlying facts or data”. *See* Fed. R. Evid. 705. Mr. Al-Marimi does not anticipate contesting that the relationship between Libya and the United States in the 1980s was contentious and agrees that the government can elicit otherwise admissible evidence of that contentious relationship. But, there is absolutely no need to use inflammatory rhetoric to do so. As a seasoned historian, one presumes that Ms. Pargeter can relay the necessary background information and admissible opinions without using language comparing Americans to Satan or Qaddafi to a mad dog.

Further, the government has argued that the statements from Qaddafi and Said Rashid in Ms. Pargeter’s notice are not being offered for the truth of the matter

asserted. *See* ECF No. 387 at 9. As has come up in this case before, the government’s own papers make clear that the relevance of the statements depends on the veracity of the statements’ contents. *See Am. President Lines, LLC v. Matson, Inc.*, 775 F. Supp. 3d 379, 404 (D.D.C. 2025) (rejecting effect-on-listener argument when the statements’ relevance turned on their truth).

For example, while, of course, the statement that America was “playing the role of Satan on earth” is not (hopefully) literally true, the relevance of Qaddafi making such a statement depends on the truthfulness of Qaddafi’s inflammatory intent in making those assertions. *See, e.g.*, ECF No. 387 at 9 (“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.”). Here, the government has not offered any other reason than that the statements are not literally true to support admitting the challenged statements. Because it is clear that the government’s relevance arguments necessarily depend on the truthfulness of the speaker’s intent to use inflammatory language to incite a response, the Court should reject the government’s argument on this point. *See, e.g., see also United States v. Stover*, 329 F.3d 859, 870 (D.C. Cir. 2003) (rejecting government’s argument that statement was offered for context rather than its truth when the desired contextual conclusion required the statement to be true); *United States v. Tann*, 425 F. Supp. 2d 26, 33-34 (D.D.C. 2006) (“While the Government essentially obfuscates its true intentions, the Government is essentially seeking to introduce the [challenged statements] for the truth of the matter asserted.”).

Further, the Court should reject the government's argument that the challenged statements are not hearsay because they are made by alleged co-conspirators. To sustain a finding that a statement was made "by the party's coconspirator during and in furtherance of the conspiracy", Fed. R. Evid. 801(d)(2)(e), the government must prove by a "preponderance of the evidence that a conspiracy existed and that the defendant and declarant were members of that conspiracy" using evidence independent of the challenged statements. *United States v. Gewin*, 471 F.3d 197, 201 (D.C. Cir. 2006). The government has no evidence that Mr. Al-Marimi agreed to participate in such a broad-ranging conspiracy that would justify admission of every inflammatory statement others in the Libyan government made against the United States years before the Pan Am 103 explosion. *See, e.g., Stover*, 329 F.3d at 869 (rejecting government's argument linking defendant's drug deals with two individuals because court could "see no basis to draw the further inference that Lama's deals with Agent Bryant and Henry were parts of the same conspiracy").

The Court should grant Mr. Al-Marimi's motion *in limine* on this second ground.

III. The government's response does not resolve Mr. Al-Marimi's objection to Ms. Pargeter's opinion testimony about External Security Organization employees.

Mr. Al-Marimi identified two opinions it takes issue with from Ms. Pargeter's expert notice about the External Security Organization ("ESO"): (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 ECF No. 363-1 at 8; and (2) “only the most loyal and trusted individuals were permitted to work in the organization,” see ECF No. 363-1 at 11. The government argues that the Court should accept these opinions from Ms. Pargeter because she is not providing any “shortcut to proving guilt” and that her opinions about the ESO “do not go to the ultimate issue of the case”. ECF No. 387 at 14.

The problem is that that is exactly what the government seeks to do here: use Ms. Pargeter’s opinions to shore up what the government must prove in this case. The government has charged Mr. Al-Marimi with aiding and abetting “others affiliated with the ESO” to bomb Pan Am Flight 103. See ECF No. 7 at 3; ECF No. 387 at 3. The government has stated that its “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”. ECF No. 387 at 2. The government plans to introduce evidence that Mr. Al-Marimi was an employee of the ESO; and so, Ms. Pargeter’s opinions that “only the most loyal and trusted individuals were permitted to work in the organization” which “had almost unlimited powers to arrest, torture and liquidate regime opponents” require the jury to do next to nothing to conclude that Mr. Al-Marimi, therefore, was entrusted to carry out an attack on a plane heading to America with a number of American citizens on board.

This neatly packaged conclusion is exactly what the *Mejia* court observed creates an “increasingly thinning line” between the proper use of background expert testimony and an “impermissible substitution of expert opinion for factual evidence”. *United States v. Mejia*, 545 F.3d 179, 190 (2d Cir. 2008). Ms. Pargeter’s “background”

testimony would connect and combine “all other testimony and physical evidence into a coherent, discernible, internally consistent picture of the defendant’s guilt”. *Id.* at 191. The Court must resist such an argument.

Further, rather than providing a more fulsome basis for Ms. Pargeter’s opinions about the ESO, the government’s response indicates that Ms. Pargeter should be allowed to render opinions about the ESO based on a few individuals’ hearsay statements because she did not perceive from the speaker a motive to fabricate. *See* ECF No. 387 at 13. But, such a belief does not render Ms. Pargeter’s opinions on these issues admissible under Federal Rule of Evidence 702(b) (requiring “sufficient facts or data”); *see also* 29 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 6268 (2d ed. 2017) (“The Advisory Committee’s Note to this provision states that this calls for a ‘quantitative rather than qualitative analysis.’ The question is whether the expert considered enough information to make the proffered opinion reliable.”); *Smith v. Ill. Dep’t Transp.*, 936 F.3d 554, 558-59 (7th Cir. 2019) (“Veronico’s reliance on an anemic and one-sided set of facts casts significant doubt on the soundness of her opinion, and the court did not abuse its discretion by excluding it.”).

The Court should grant Mr. Al-Marimi’s motion *in limine* on this third ground.

CONCLUSION

For the foregoing reasons and those in ECF No. 363, the Court should grant Mr. Al-Marimi’s motion in limine to limit the anticipated testimony of Alison Pargeter. The Court should exclude evidence of inflammatory acts committed by

others in which Mr. Al-Marimi played no part, preclude the use of gratuitously inflammatory rhetoric that serves only to unduly prejudice the jury, and bar Ms. Pargeter from offering opinions about the ESO that are unsupported by sufficient facts or data and that effectively relieve the government of its burden of proof. The Federal Rules of Evidence exist precisely to guard against the kind of overreach the government seeks here, and Mr. Al-Marimi is entitled to a trial decided on the evidence—not on guilt by association.

Respectfully submitted,
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