

**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 RESPONSE TO THE GOVERNMENT'S
SUPPLEMENT TO THE NOTICE OF THE
ANTICIPATED TESTIMONY OF ALISON PARGETER**

The government's supplemental notice, ECF No. 420-1, for Ms. Pargeter's proposed testimony still does not resolve Mr. Al-Marimi's objections to the two challenged opinions. *See* ECF No. 363 at 10-13.

I. The government’s supplemental notice does not resolve Mr. Al-Marimi’s objection to Ms. Pargeter’s opinion testimony that the “ESO had almost unlimited powers to arrest, torture and liquidate regime opponents”.

As to the first challenged opinion, that “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, the supplemental notice still does not provide a sufficient basis to tie the opinion specifically to the external security apparatus¹ as opposed to Qaddafi supporters, allies, or employees more generally. The supplemental notice further does

¹ The government routinely uses the phrase “external security organization” to describe Qaddafi’s foreign, or external, security apparatus. A faithful interpretation, however, of the Arabic word that the government translates as “organization” is instead “apparatus”. The defense points this out now only to alert the Court that when the defense uses the phrases “foreign security apparatus” or “external security apparatus”, the defense is referring to the same entity that the government calls the “external security organization”.

not provide sufficient support for those general assertions to be tied to Mr. Al-Marimi's alleged role within Libya's external security apparatus.

In her book, *Libya: The Rise and Fall of Qaddafi*, Ms. Pargeter writes that despite Qaddafi's propaganda that Libya was in the hands of the people, Qaddafi "was still in complete control: from foreign policy to the budget to deciding who held what position in the General People's Congress, Qaddafi and his coterie of revolutionaries (who were increasingly coming to include members of his own family and tribe) continued to take all the key decisions". See Alison Pargeter, *Libya: The Rise and Fall of Qaddafi* 96 (2012). In the aftermath of his initial rise to power, Qaddafi revolutionized the entire structure of Libya's government and even private social organizations to fall under his control.

Ms. Pargeter reports that in the 1970s, Qaddafi staged "an administrative revolution" to enact this plan. See Alison Pargeter, *Libya: The Rise and Fall of Qaddafi* 78-79 (2012). By 1973, Qaddafi had fomented the creation of over 2,000 "popular committees" that were to "run everything from schools to companies to government offices". *Id.* at 79. Qaddafi's regime created a militia to augment Libya's more formal army. *Id.* at 80. Qaddafi had banned all private, and professional, activity, which drove "everyone" to turn "to the public sector to provide them with a living". *Id.* at 108. By 1973, Qaddafi had also "nearly doubled in size" the "country's bureaucratic structures" which "became both a means for social advancement" and "a mechanism for the new regime to control activity at every level of society". *Id.* at 80. From 1977 to 1983, the Libyan government's budget for employee salaries and wages

nearly tripled. *Id.* at 108. Meaning that nearly every Libyan citizen worked for the Qaddafi regime in some fashion in the 1970s and 1980s.

Qaddafi also created a “Revolutionary Committees Movement”, which was “a paramilitary body” that was “like an enormous, omnipresent enforcer, overturning anything that stood in the way of Qaddafi’s supreme mission”. *Id.* at 97-98. According to Ms. Pargeter, these “revolutionary committees came to be the highest authority in the land”. *Id.* at 98. The revolutionary committees were the ones who “infiltrated universities, professional organizations and even the security apparatus. Revolutionary committee units were set up inside “the army”, “the police”, “the economy”, and “the media”. *Id.* at 99-100. And it was these revolutionary committees, as opposed to some other government entity, that were “tasked with liquidating the opponents of the revolution”. *Id.* at 101. Additionally, Qaddafi established “revolutionary courts’, in which the revolutionaries were given free rein to try ‘reactionary’ and ‘deviant’ elements”. *Id.* It was these revolutionary committees and revolutionary courts, as opposed to some other government entity, that inflicted torture on arrestees and sentenced people to public executions. *Id.* at 102-03.

The point is that while Qaddafi used all manner of government employees and entities to carry out his far-reaching agenda, the revolutionary committees and the revolutionary courts were the governmental entities that had this power to arrest, torture, and “liquidate” regime opponents.

General references to “security forces” or “intelligence services” will not suffice as those descriptions encompass all manner of Libyan government entities. The

prosecutor in the International Criminal Court case against Abdullah Senussi, for example, while analyzing Senussi's alleged activities in 2011, defined Libya's "security forces" as "the Libyan security and military system which is notably comprised of the Libyan Armed Forces and police; the military intelligence; the Internal and External Security Services; the Revolutionary Committees and its Bureau; the Revolutionary Guard; the People's Guard; the Revolutionary Combating militias; brigades and militia units". *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, *Decision on the Admissibility on the Case Against Abdullah Al-Senussi*, ¶¶ 71 n.151 (Oct. 11, 2013), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013_07445.PDF. Ms. Pargeter's proposed testimony does not point to sufficient facts that the activities Ms. Pargeter attributes to the external security apparatus were in fact the activities of the external security apparatus as opposed to the host of other governmental entities that Qaddafi used to carry out the acts Ms. Pargeter attributes to the external security apparatus.

Consider that the people in the higher echelons of the revolutionary committees, and the security apparatus—both internal and external, served many functions within Qaddafi's regime. Ms. Pargeter's original expert notice and supplemental expert notice focus on a small group of Qaddafi family members and insiders who served in many different capacities within the Libyan government. *See* ECF No. 363-1 at 8-11 (discussing activities of Ibrahim al-Bishari, Abdullah Senussi, Said Rashid, Izzadine Hinshiri, and Adbelsalam Zadma); ECF No. 420-1 at 2-4

(discussing the activities of Abdullah Senussi, Said Rashid, and Ibrahim al-Bishari). Ms. Pargeter's own descriptions of most of these individuals prove this point.

For example, Ms. Pargeter has observed that while Ibrahim al-Bishari was the head of the external security apparatus "[b]y the early 1980s", he was heavily involved in many other roles. *See* ECF No. 363-1 at 8. He was a member of the Revolutionary Committees Movement. *Id.* He had been responsible for "media affairs in the General People's Committee for Foreign Affairs (Foreign Ministry)". *Id.* At the same time that he was the head of the external security apparatus, he "was also the head of the Permanent Military Revolutionary Court, which handed down death sentences to those deemed traitors to the regime". *Id.* He also served as Libya's foreign minister and ambassador to Egypt, where he kidnapped an alleged dissident. *Id.* He served in all of these roles before dying in a car crash in the late 1990s. *Id.*

Ms. Pargeter describes Abdelsalam Zadma as the head of the Anti-Terrorism and Operations Management Division of the external security apparatus for an unidentified period of time. *Id.* at 9. But, he was also "a member of the Revolutionary Committees Movement, as well as a member of the Permanent Revolutionary Court". *Id.* Before the 1990s, Qaddafi "punished" Zadma for speaking out against a senior member of the regime by assigning him as "the head of cleaning for the Tripoli municipality" for two years. *Id.* He then went on to head a military brigade charged with rooting out regime opponents. *Id.* He served as the commander of Qaddafi's personal security guard. *Id.* He served in all of these roles before dying in a horse-riding accident in 1998. *Id.*

Likewise, Said Rashid and Izzadine Hinshiri were also men of many roles in Qaddafi's government. While Rashid has been identified as the head of the Technical Affairs Division² for an unidentified period of time, he was associated with many other Libyan governmental entities. *Id.* at 9-10. Rashid was a "member of the Revolutionary Committees and a member of the Permanent Revolutionary Court". *Id.* at 10. So too for Hinshiri. While Hinshiri has been identified as the head of the Central Security Division for an unidentified period of time, Hinshiri was a member of the revolutionary committees and served as minister of "General Security" and for Libya's transportation department. *Id.* at 9-10.

Abdullah Senussi was Qaddafi's brother-in-law. ECF No. 363-1 at 9. He has been described, in addition to heading the external security apparatus for an unidentified period of time, as being the director of Libya's military intelligence, Qaddafi's right-hand-man, Qaddafi's personal executioner, and as "holding various senior posts over the years". *See, e.g., Situation in the Libyan Arab Jamahiriya, ICC-01/11, Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI*, ¶¶ 45-46 (May 16, 2011), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_06155.PDF; ECF No. 363-1 at 9.

² This, the Technical Affairs Division of the external security apparatus, is the only division and government entity that the government has alleged Mr. Al-Marimi was a part of. *See, e.g.,* ECF No. 163 Ex. A at 12. There is no evidence that Mr. Al-Marimi was ever a part of a revolutionary committee, the revolutionary courts, the military, military intelligence, the police, Libya's internal security apparatus, or even another division of Libya's external security apparatus.

Ms. Pargeter’s supplemental notice also uses the words “liquidate” and “stray dogs” to imply that her assertions on those points come directly from the activities of the external security apparatus. ECF No. 420-1 at 2. But, in her book *Libya: The Rise and Fall of Qaddafi*, Ms. Pargeter uses those phrases as applying to the activities of the revolutionary committees—which nearly every person Ms. Pargeter has pointed to was a part of, not the activities of the external security apparatus. See Pargeter, *Libya: The Rise and Fall of Qaddafi* at 101 (reporting that in February 1980, the revolutionary committees “were tasked with liquidating the opponents of the revolution”; *id.* at 102 (reporting that “interrogations by revolutionary committee members” were broadcast on television and frequently showed signs of torture); *id.* (reporting that state television broadcaster would announce these interrogations by revolutionary committee members by stating, “and now we will see the confessions of the stray dogs”).

Further, the supplemental notice generally points to Qaddafi’s “followers”, “Libyan agents”, “Libyan intelligence services”, “those working here” (referring to Senussi’s office from a video posted in 2012 when he was the head of military intelligence), “the Government”, “suicide squads”, “the regime”, “the authorities”, and “those who ‘prioritised the regime over the country’” as the bases for her opinions. ECF No. 420-1 at 2-4. Ms. Pargeter’s supplemental notice concludes that the “ESO served as a centre for a group of prominent officials who were closely linked to the Qadhafi regime and who had been given carte blanche to liquidate regime opponents”. *Id.* at 4. Really, what these assertions indicate is that these very high-ranking

individuals may have been so authorized, but there remains an insufficient basis to stretch that opinion to apply broadly to the external security apparatus as a whole and all of those working therein.

This issue gets right to the heart of the propensity and guilt-by-association argument that Mr. Al-Marimi has made. If such evidence is allowed to go to the jury, there is a danger that any probative value of that information will be substantially outweighed by unfair prejudice, confusion of the issues, and misleading the jury. Outside of the limited acts described in the alleged confession, there is no evidence to show that Mr. Al-Marimi participate in or approved of any of these other acts by Rashid, Senussi, Hinshiri, Zagma, or al-Bishari. Nothing about Ms. Pargeter's proposed testimony or other evidence shows that there was coordinated action between Mr. Al-Marimi and these high-ranking individuals as to this broader activity. 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).

As Mr. Al-Marimi has argued, the government cannot be allowed to use Ms. Pargeter's opinions to shore up what the government must prove in this case. Ms. Pargeter's conflation of the many roles the named individuals played in the Libyan government, particularly their acts she attributes elsewhere to being part of their roles in the revolutionary committees, crosses that "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).

Thus, the Court should sustain Mr. Al-Marimi’s objection to this opinion.

II. The government’s supplemental notice does not resolve Mr. Al-Marimi’s objection to Ms. Pargeter’s opinion testimony that “only the most loyal and trusted individuals were permitted to work in the organization”.

As to the second challenged opinion, that “only the most loyal and trusted individuals were permitted to work in the organization,” *see* ECF No. 363-1 at 11, the same problem exists. The government’s supplemental notice of Ms. Pargeter’s proposed testimony points generically to “the intelligence services”, “a ‘narrow circle of intimates around the Libyan leader”, and “a narrow elite linked to [Qaddafi] through tribal and personal ties” as the bases for her opinion. ECF No. 420-1 at 4-5. Just like the issue with the first challenged opinion above, given the many roles in the Libyan government that the handful of Qaddafi’s closest advisors played, this information is insufficient to allow Ms. Pargeter to opine that *all* members of the external security apparatus were the most loyal to the regime and most trusted to carry out its agenda. *See, e.g., Hernandez*, 780 F.2d at 118 (rejecting admission of evidence of guilt by association).

Further, the best-sounding citation in this section of the supplemental notice falls apart on closer scrutiny. Footnote 20³ links to a study by a then-recent Ph.D.

³ Undersigned counsel is unable to access the link from footnote 19 of Ms. Pargeter’s supplemental notice and therefore is unable presently to take a position on the substance of the assertion therein. *See* ECF No. 420-1 at 5 n. 19.

graduate. The paper purports to study data from a survey, but the paper nowhere describes who was surveyed. *See, e.g.,* Ibrahim Sadoun R. Tunesi, *Institutional Factors Behind the Triggering and Protraction of the Libyan Civil War* at 3 (Apr. 2022), <https://www.durham.ac.uk/media/durham-university/departments-/school-of-government-amp-int-affairs/Ibrahim-Sadoun.pdf> (reporting that “Section 4 presents this study’s methodology and hypothesis”, but the linked paper contains no section four—or any other section—that details the study’s methodology).

The study cites to questions 4 through 11 of Table 3 as support for its assertion that “loyalty to Gaddafi and kinship ties to his family and tribe were the most important requirements for admission to prominent posts inside state institutions”. *Id.* at 10. But no question in Table 3 asks about kinship or loyalty. The closest question to that assertion asks: “Their qualifications were the first standard for appointing high-ranking staff members in state institutions during the Gaddafi period. Do you agree?” *Id.* at Appendix, Table 3, Question 6. Of the 266 individuals (again, the study provides ***no description whatsoever*** of who was surveyed) who answered that question, roughly 47% of respondents “strongly disagreed” and roughly 23% of respondents “disagreed” with the question. *Id.* The remaining 30% of respondents either agreed or were undecided as to how to answer the question. *Id.* But, nowhere did any respondent indicate that “kinship” and “loyalty” were “the most important requirements for admission to prominent posts in state institutions”. The author appears to have just made that assumption. But unfounded assumptions do not sufficient facts or data make. *See, e.g.,* Fed. R. Evid. 702 (requiring that expert

testimony be “based on sufficient facts or data”, “the product of reliable principles and methods; and reflect “a reliable application of the principles and methods to the facts of the case”).

Thus, the Court should sustain Mr. Al-Marimi’s objection to this opinion.

CONCLUSION

For the foregoing reasons and those in ECF Nos. 363 and 399, the Court should grant Mr. Al-Marimi’s motion in limine to limit the anticipated testimony of Alison Pargeter. The Court should bar Ms. Pargeter from offering opinions about the external security apparatus 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,
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)