

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

UNITED STATES OF AMERICA

v.

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

Defendant.

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Case No. 22-cr-392 (DLF)

**GOVERNMENT'S SUPPLEMENT IN SUPPORT OF ADMITTING THE
DEFENDANT'S STATEMENT IN ITS ENTIRETY**

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 Court's minute order of April 27, 2026, calling for supplemental authority on the application of Rule 404(b) to the defendant's statement. A list of cases follows, divided into categories corresponding with the general points that each case supports. An asterisk [*] indicates those cases that the government has not previously cited in its briefing.

Following the list of cases, the government submits a brief that explains how the cases collectively support the government's position. Although the Court's minute order did not call for briefing, the government was already planning to argue these points in its Reply brief regarding the La Belle Discotheque evidence, which is due to be filed on Friday, May 8, 2026. We provide the arguments here instead of in next Friday's filing¹ so that the Court can have the benefit of a full articulation of the government's position and a guide to how the cases on the list fit together to support that position. The brief uses the same categories as the list of cases, and the list of cases provides page numbers for where each can be found in the brief.

¹ The government still intends to file a brief addressing hearsay issues.

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BRIEF IN SUPPORT

The Court’s minute order asks “whether a defendant’s statement that references both charged and uncharged criminal acts is admissible in full under Rule 404(b).” The answer depends on the relevance of the disputed portions of the statement, and whether that relevance depends on a propensity inference of the type forbidden by Rule 404(b)(1).

In this case, there are numerous bases of relevance justifying admission of the parts of the statement relating to acts other than Pan Am Flight 103, each of which is supported by caselaw and none of which would violate Rule 404(b). Two of those theories relate to the reliability of the defendant’s statement, a unitary document in which his admissions to the Pan Am 103 bombing are entwined both substantively and formally with his admissions to other acts.² The other theories of relevance relate directly to case’s ultimate issues by establishing motive, knowledge, intent, identity, and lack of accident.

A. Background Principles.

1. Relevance and “facts of consequence.”

Rule 404 is a qualifier of the general rule that “[r]elevant evidence is admissible unless [another rule or superior authority] provides otherwise.” Fed. R. Evid. 402. Evidence is relevant if it “has any tendency to make a fact more or less probable” if the fact “is of consequence in determining the action.” Fed. R. Evid. 401. A “fact of consequence” can be “ultimate, intermediate,

² The statement’s status as a single, integral piece of evidence is established both by the document’s form and content (multiple numbered pages with consistent markings, beginning with an overarching summary and then narrating events in continuous, coherent sequence), as well as from the Libyan police officer’s testimony about how it was made (an interview covering the overall scope of the defendant’s career in the ESO). Indeed, even on the defense’s theory of the case the statement is unitary in nature. *See, e.g.*, ECF 159 at 6 (defendant’s motion to suppress, alleging that defendant was given a “single, handwritten sheet [that] began with an order that Mr. Al-Marimi confess to the Lockerbie incident, as well as another terrorist attack”). Accordingly, to redact the statement, or excise portions of it, would be to artificially modify the evidence.

or evidentiary; it matters not, so long as it is of consequence in the determination of the action.” *United States v. Edwards*, 388 F.3d 896, 900 (D.C. Cir. 2004) (quoting Advisory Committee Note to Fed. R. Evid. 401). In other words, “[f]acts of consequence include ‘not only the “ultimate” facts essential to establishing a charge, claim, or defense, as determined by the applicable substantive law, and “evidentiary” or “intermediary” facts from which the ultimate facts can be inferred, but also facts affecting the credibility of testimony or other evidence, even though not part of the chain of inferences to an ultimate fact.’” *United States v. Sutton*, 21-cr-0598 (PLF), 2024 WL 278070, at *14 (D.D.C. Jan. 25, 2024) (quoting 1 Stephen A. Saltzburg et al., FEDERAL RULES OF EVIDENCE MANUAL § 401.02[2] (12th ed. 2019)).

The “ultimate” facts in this case are those that go directly to elements of the offense, such as that the defendant built the bomb that destroyed Pan Am Flight 103 and that he had a culpable mental state when he did so. The “intermediate” and “evidentiary” facts include, most importantly, the defendant’s voluntarily admission of his involvement in the Pan Am 103 bombing to a Libyan police officer. Any evidence that makes the validity of that admission “more or less probable” is relevant as a baseline matter.

2. Rule 404(b) does not preclude “bad acts” evidence generally.

Rule 404(b) creates a discrete exception to the presumption that relevant evidence is admissible. It provides that “[e]vidence 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,” but that such evidence “may be admissible for another purpose.” Fed. R. Evid. 404(b)(1), (2). This is the critical point: Rule 404(b) does not make “other bad acts” presumptively inadmissible. It *only* precludes evidence of other bad acts if the acts’ *exclusive* relevance is to demonstrate that the defendant had a bad character and that he was therefore more likely to have committed the charged offense.

As the D.C. Circuit has repeatedly emphasized, “Rule 404(b) is a rule of inclusion rather than exclusion.” *United States v. Bowie*, 232 F.3d 923, 929 (D.C. Cir. 2000). The rule “‘is quite permissive,’ prohibiting the admission of other crimes evidence ‘in but one circumstance’—for the purpose of proving that a person's actions conformed to his character;” that is, barring “not evidence as such, but a theory of admissibility.” *United States v. Crowder*, 141 F.3d 1202, 1206 (D.C. Cir. 1998) (quoting *United States v. Jenkins*, 928 F.2d 1175, 1180 (D.C. Cir. 1991)). When making this point, the Circuit has frequently cited to its own opinion in *United States v. Miller*, which “thoroughly explain[s]” and “carefully analyzes” the application of the rule. *Jenkins*, 928 F.2d at 1180 (citing *Miller*, 895 F.2d 1431, 1436 (D.C. Cir. 1990)). In rejecting a defendant’s argument that Rule 404(b) precludes the use of uncharged acts to demonstrate the state of mind of a witness, the *Miller* court explained:

This argument misconceives the nature of Rule 404(b). The rule was intended not to define the set of permissible purposes for which bad-acts evidence may be admitted but rather to define the *one impermissible purpose* for such evidence. “Only one series of evidential hypotheses is forbidden in criminal cases by Rule 404: a man who commits a crime probably has a defect of character; a man with such a defect of character is more likely than men generally to have committed the act in question.” In other words, under Rule 404(b), *any* purpose for which bad-acts evidence is introduced is a proper purpose so long as the evidence is not offered *solely* to prove character.

Miller, 895 F.2d at 1436 (quoting 2 J. Weinstein & M. Berger, *supra* note 9, ¶ 404[8] at 404–52) (emphasis in original).

Accordingly, the government submits that the legally appropriate way to approach the issue of whether this defendant's statement, which references both charged and uncharged criminal acts, is admissible in full under Rule 404(b) is as follows. First, the Court should consider whether the evidence of uncharged conduct has any bearing on a fact at issue: either on the offense conduct itself (an ultimate fact), or on the statement’s authenticity, accuracy, voluntariness, or reliability

(intermediate/evidentiary facts). If the answer is yes, the evidence is relevant. The Court should then evaluate whether the uncharged conduct makes the “fact[s] of consequence” more “probable” *solely* by establishing that the defendant is a person of bad character who, because he committed one bombing, is criminally disposed and therefore more likely to have committed another. If the answer is no, the evidence is not precluded by Rule 404(b).

As we argue below, the uncharged conduct (including but not limited to the defendant’s admission to his role in the La Belle Discotheque bombing) is relevant for numerous purposes, none of which depends on a propensity inference. These theories of relevance occupy two analytically distinct categories. Those discussed in **Section B** relate to the reliability of the statement, a critical intermediate/evidentiary fact.³ Those discussed in **Section C** show that the defendant’s participation in the uncharged acts is relevant to the ultimate facts of the offense conduct in ways that are not source-dependent; in other words, these arguments would apply regardless of whether the proof came from the defendant’s own statement or from some other source.⁴ If the Court finds that any one of these bases of relevance is viable (and all of them are), then the defendant’s 404(b) objection must be rejected, because none of the theories involves a propensity inference. *See Miller*, 895 F.2d at 1436. Indeed, as explained in **Section D**, the *only*

³ The Court’s minute order states that “[t]he government primarily relies on its argument that admitting the statement in full is necessary for reliability purposes.” We wish to clarify that we consider these reliability theories to be strong arguments, but not necessarily the “primary” arguments, for the relevance of the La Belle bombing and other operations. The theories of admissibility are coequal.

⁴ The rules concerning relevance, including Rule 404(b), are not applied any differently when the evidence in question is a defendant’s statement. *See, e.g., United States v. Mayhew*, 380 F. Supp. 2d 915, 933 (S.D. Ohio 2005) (excluding as irrelevant portion of defendant’s statement about possessing firearms at his home, while admitting other portions as relevant to facts of consequence).

forbidden theory of relevance under Rule 404(b) – propensity reasoning – is not one that a jury could rationally apply on the facts of this case.

B. The Other Acts are Relevant to the Intermediate/Evidentiary Facts of the Defendant’s Statement.

The reliability of the defendant’s statement as something he actually said and believed, as opposed to a fictitious account authored by others, is a fact of enormous consequence in deciding this case. Proving the reliability of the statement is so important for the government partly because the defense has asserted that the statement is a falsehood that was either signed by the defendant under duress or created as a forgery without his involvement. *See generally* ECF 188-1 (government’s sur-reply on motion to suppress, summarizing shifting defense theories).

Fairness requires that the government be able to refute these allegations by showing that the Libyan police officer’s testimony about the interview is truthful and the statement attributed to the defendant is really his own. As discussed below, the disputed portions do so by (1) demonstrating that the statement as a whole is something the defendant plausibly would have said and that someone fabricating a confession would not plausibly have authored; and (2) proving the accuracy of details in the statement that few beside the defendant could have known.

1. The Whole Statement is Relevant for Context.

The government has previously argued that the full statement should be admitted because the admissions regarding Pan Am Flight 103 are inextricable from their context; in particular, “the length of the statement, the variety of episodes addressed in it, the inclusion of relatively banal personal and professional details, and the inclusion of negative responses to some questions, are all critical context for evaluating the reliability of the Pan Am Flight 103 admission.” ECF 182 at 2-3 (citing ECF 163, government’s response to motion to suppress). In this section, we clarify the reasons that is so and provide further authority in support.

It was long recognized at common law that entering the “remainder” of a statement is sometimes necessary “to secure for the tribunal a complete understanding of the total tenor and effect of the utterance.” *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171 (1988) (quoting 7 J. Wigmore, *Evidence in Trials at Common Law* § 2113, p. 653 (J. Chadbourn rev. 1978)). Viewing this principle through the lens of the Federal Rules of Evidence, the Supreme Court deemed it “obvious” that, when “misunderstanding or distortion can be averted only through presentation of another portion [of an offered document], the material required for completeness is *ipso facto* relevant and therefore admissible under Rules 401 and 402.” *Id.* at 172 (citing 1 J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 106[02], p. 106–20 (1986)). *Beech Aircraft Corp.* analyzed the issue in the context of one party seeking to offer the complete version of a document where an excerpt had been offered by the opposing party. Because relevance does not depend on which side is offering the evidence, the same logic applies here.

When the relevant context for a defendant’s admission involves uncharged bad acts, Rule 404(b) does not preclude their admission. In *United States v. Sarracino*, 131 F.3d 943 (10th Cir. 1997), the defendant was charged with the kidnapping and homicide of two victims. After the alleged offense conduct, while a fugitive from justice, the defendant tied up and assaulted two babysitters and threatened to kill them, making a statement to the effect of “I’m down for two, what’s two more,” apparently referencing the charged offense. *Id.* at 946, 948. The court allowed the babysitters to testify about that statement and the details of their own kidnapping and assault by the defendant. *Id.* at 948. On appeal, the Tenth Circuit ruled that the kidnapping/assault testimony did not violate Rule 404(b) because it was relevant to show the context of the defendant’s

admission to the charged crime. *Id.* at 949.⁵ In so holding, the court began with the well-established principle that “[o]ne proper purpose for admitting Rule 404(b) evidence is to show the context of a charged crime.” *Id.* (citing *United States v. Brewer*, 1 F.3d 1430, 1436 (4th Cir. 1993); *United States v. Lehder–Rivas*, 955 F.2d 1510, 1516 (11th Cir. 1992); *United States v. Moore*, 735 F.2d 289, 292 (8th Cir. 1984); *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980); *United States v. Wright*, 606 F.2d 939, 939 (10th Cir. 1979). The court found this same reasoning fully applicable to “context evidence” that “relates to [an] admission rather than directly to the charged crime.” *Id.* When determining “what weight to give to [a defendant’s] admission,” a “jury ‘cannot be expected to make its decision in a void.’” *Id.* (quoting *Masters*, 622 F.2d at 86).

Context is especially important in this case, where the defendant admitted to an extraordinarily serious crime years after the fact and the defense is challenging the voluntariness and genuineness of that admission. Even without such arguments, some jurors might find it surprising that a person would admit to an act like the Pan Am 103 bombing and wonder whether the admission may have been coerced, or indeed whether it took place at all. The defense appears to be pursuing both these theories, having first alleged that the defendant was forced to give a false confession by masked men, and subsequently suggested that the signed statement might be a wholesale fabrication. With these allegations on the table, it is critical that the government be allowed to prove exactly how the interview happened. Part of that involves the Libyan police officer’s testimony, but another critical part is the written statement that resulted, which documents the questions asked by the interview and the answers given by the defendant.

⁵ The court did, however, find that certain details about the assault – like one babysitter’s testimony that she suffers from recurring headaches from being beaten by the defendant – had prejudicial effect outweighing their probative value. Any error, however, was harmless. *Sarracino*, 131 F.3d at 949.

Under any iteration of the defense's theory, the statement is part of an effort by figures in Libya to falsely implicate the defendant in the bombing of Pan Am Flight 103. The defense has never identified the purpose of this putative setup, but their theory seems to be that it was to curry favor with the United States. If that is the case, then the plausibility of fabrications depends heavily on how closely the statement resembles what one would expect to be produced in service of such a plot.

The answer is "not very," but only when one views the statement as a whole. A fabricated statement meant to implicate the defendant in the Pan Am 103 bombing would be expected to focus narrowly on the Pan Am 103 bombing. Any extraneous portions would serve no purpose while creating a risk of introducing inaccuracies. Unsurprisingly, such a narrowly focused confession is exactly what the defense wants the jury to see if the statement is not suppressed. It would fit the defense's theory of the case, but it would not reflect reality. The truth – which the jury ought to know – is that the defendant's statement contains portions that no rational fabricator would have included. In particular:

- The La Belle bombing, although notorious in its time, has not persisted in popular memory to anywhere near the degree of the Pan Am Flight 103 bombing. It had a far smaller death toll, and the U.S. response it provoked was a discrete military action, not a years-long public effort to identify and apprehend the perpetrators. It resulted in charges in Germany against five alleged perpetrators, four of whom were convicted, and has otherwise by all appearances been a closed case. For all these reasons, putting La Belle in the statement would have served no evident purpose to any supposed plotters seeking to deliver a high-value prisoner to U.S. authorities.
- The "attempted assassination of the American Foreign Minister in Pakistan," as described in the statement, was aborted by the defendant. If those plotting against the defendant were trying to inculcate him in the eyes of the Americans, it would make no sense for them to write the story this way. Instead, one would expect them to explain the operation's failure some other way, like a mechanical failure or the intervention of a different member of the team.
- The defendant's transportation of an "explosive vest" to Addis Ababa for an unconsummated "explosive operation," which he later learned would have targeted

the President of Egypt, has nothing to do with the United States at all. Nor does the defendant's "training a number of Ghanaians from Ghana in how to handle explosives."

To put it concretely, the government needs to be able to argue in closing: "If they were going to create a fake statement, they wouldn't have made it like this." Without the full statement in evidence, that argument is unavailable.

Moreover, the breadth of the statement, covering multiple "operations" taking place over a span of years, is relevant to the defendant's subjective understanding of what he was doing when he sat for the interview. The statement does not have the character of a "confession," because that term suggests that the speaker accepts the wrongfulness of his conduct and understands that consequences will follow. Instead, the defendant's recitation of his role in "operations outside Libya" has the character of a *curriculum vitae*, delivered from one Libyan government employee to another. His openness on these topics stands in stark contrast with his denials of acts against fellow Libyans, which would be domestic crimes that the new Libyan government was interested in prosecuting. *See, e.g.,* Libyan Police Officer Depo Vol. II at 76. That pattern – admissions to acts outside Libya, denials of acts in side Libya – is crucial to the jury's understanding of the interview and the plausibility of the defendant's willingness to discuss Pan Am Flight 103, but it becomes invisible if the statement is chopped down to a bare description of the charged offense.

This basis of relevance relates to "motive" under Rule 404(b)(2) – both the motive of the purported fabricators (refuting the defense's theory) and the motive of the defendant in giving the statement (supporting the government's). *See Miller* 895 F.2d at 1436 (holding that "motive" under Rule 404(b) can include establishing the motive of persons other than the defendant, including motives affecting a witness's testimony).

2. The La Belle Evidence is Relevant for Corroboration.

“[I]ndependent corroboration of one part of [a defendant’s] statement may corroborate the entire statement, including the part in which [he] admits” to the crime charged. *United States v. Brown*, 617 F.3d 857, 863 (6th Cir. 2010). The Supreme Court recognized this principle more than 70 years ago when it held that a valid “mode of corroboration” in cases involving admissions is “for . . . independent evidence to bolster the confession itself and thereby prove the offense ‘through’ the statements of the accused,” even if the corroborating evidence “merely fortifies the truth of the confession, without independently establishing the crime charged.” *Smith v. United States*, 348 U.S. 147, 156 (1954). For example, if “a defendant admits that he drove a car that had an illegal sawed-off shotgun in its trunk,” the government might offer “independent corroborating evidence to show that he drove that particular car.” *Brown*, 617 F.3d at 863 (citing *United States v. Davis*, 459 F.2d 167, 171 (6th Cir.1972)).⁶

Here, the government intends to use “independent evidence,” consisting of documents that prove the statement accurately describes the defendant’s travel to East Berlin in April of 1996. As we have explained in prior briefing, the defendant’s statement (which he argues is a fabrication) aligns precisely with these corroborating documents. They confirm that he traveled with a companion named Abdulhakim Shadi, that he arrived just before the bombing, and that he remained for roughly 18 days (in the defendant’s telling, “approximately two weeks”) before returning to Libya via a flight to Tripoli. The demonstrable accuracy of all these details “fortifies the truth of the confession, without independently establishing the crime charged.” *Smith*, 348 U.S.

⁶ The cases cited in this paragraph did not directly involve relevance or Rule 404(b) challenges, but rather challenges to the sufficiency of evidence based on “the rule says that no one may be convicted of a crime based solely on his uncorroborated confession.” *Brown*, 617 F.3d at 860. But by holding that that “fortifying” evidence is sufficient to corroborate an admission, the cases establish *a fortiori* that corroborating evidence is relevant to the reliability of the admission.

at 156. And their corroborative value is all the stronger because very few people would have known these details beside the defendant himself. *Cf. Alabama v. White*, 496 U.S. 325, 332 (1990) (explaining, in informant-tip context, corroborative value of information that “the general public would have had no way of knowing,” particularly travel itineraries to which “only a small number of people are generally privy”).

In *United States v. Bowie*, the D.C. Circuit held that this form of corroboration is a valid non-propensity basis of admission for other-acts evidence. *See* ECF 147 at 8 (citing *Bowie*, 232 F.3d at 925-933). The theory of relevance in *Bowie* is conceptually identical to what we are articulating here. In both cases, the defendant engaged in a course of conduct that included multiple episodes of criminal behavior (Bowie possessed different sets of counterfeit bills on different occasions, this defendant participated in different terrorist operations on different occasions). In both cases, the defendant was charged with a single discrete act (Bowie with possessing counterfeit bills in May 1997, this defendant with perpetrating the Pan Am Flight 103 bombing). In both cases, the defendant gave a statement that included admissions to the broader course of conduct (Bowie to having earlier obtained a larger quantity of bills, this defendant to his career as an ESO operative including the La Belle bombing). And in both cases, the government offered extrinsic evidence of an uncharged act to corroborate the defendant’s admission to the charged act (Bowie’s having been found in April 1997 with similar counterfeit bills; here, the defendant’s having traveled to Berlin at the time of the La Belle bombing). The D.C. Circuit in *Bowie* held that the April 1997 episode was relevant “to corroborate his confession to the Secret Service,” and the same reasoning applies here.⁷

⁷ In so holding, the *Bowie* court joined other Circuits that consider corroboration to be a valid Rule 404(b) theory. *See United States v. Everett*, 825 F.2d 658, 660 (2d Cir. 1987); *United States v. Wimberly*, 60 F.3d 281, 285 (7th Cir. 1995); *United States v. Pitts*, 6 F.3d 1366, 1370-71

Corroboration is, of course, not a permissible theory of admission when the corroborating evidence only supports the primary evidence through a propensity inference, like in the cases of *United States v. Bailey* and *United States v. Linares*. See ECF 147 at 9, ECF 182 at 3-4 (citing *Bailey*, 319 F.3d 514 (D.C. Cir. 2003); *Linares*, 367 F.3d 941 (D.C. Cir. 2004)). The analogy here would be if the defendant's statement said nothing about La Belle and the government tried to offer extrinsic evidence of La Belle to "corroborate" his admission to Pan Am 103. But that is not the case; instead, the documentary evidence of the defendant's 1986 Berlin travel directly supports the accuracy and reliability of the defendant's statement, which is itself direct evidence of the defendant's guilt.

Propensity inferences play no part in this reasoning, as the following hypothetical proves: Imagine that, instead of describing his participation in the La Belle bombing, the defendant had told the Libyan police officer about having traveled to East Berlin in April 1986 with Shadi for a sightseeing trip. In this scenario, there would be no "bad act," and therefore no argument under Rule 404 that the La Belle evidence was being used to support an improper propensity inference. But the underlying logic would be the same: the harmony between the details of the statement and the details of the documentary corroboration is relevant to the statement's reliability – regardless of whether the sightseeing trip is itself relevant to an ultimate fact. Just like on the real facts of this case, the statement about the other act is relevant because it can be verified as accurate.

(9th Cir. 1993); *United States v. Blakeney*, 942 F.2d 1001, 1018–19 (6th Cir. 1991); *United States v. Jiminez*, 224 F.3d 1243, 1250 (11th Cir. 2000); *United States v. McLean*, 138 F.3d 1398, 1405 (11th Cir. 1998)). This is so even though the rule "does not specifically refer to corroboration as an example of the use of other crimes evidence;" that omission is "not controlling" because "[t]he categories listed in Rule 404(b) are not exhaustive." *United States v. Williams*, 577 F.2d 188, 192 (2d Cir. 1978) (citing 2 Weinstein's Evidence P 404(08), at 404-42 (1977)).

Certainly, if the statement contained any portions that were demonstrably false, the defense would wish to use those inaccuracies to cast doubt on the reliability of the statement no matter how ancillary the fact. *Cf. Smith*, 348 U.S. at 159 (noting that, although defendant’s confession was sufficiently corroborated to be admissible, “the failure of the facts shown therein to mesh with the other evidence adduced by the Government, imposed on the trial judge and the reviewing courts a duty of careful scrutiny”). The same reasoning works in both directions. Since both parties seem to agree that the statement is a single document that was generated on a single occasion, the reliability of any part is relevant to the reliability of the whole.

C. The Uncharged Acts are Relevant to the Ultimate Facts of the Defendant’s Offense Conduct.

1. The Uncharged-Acts Evidence is Relevant for Enumerated Rule 404(b) purposes.

A straightforward way for the Court to resolve this issue is by finding that the defendant’s participation in the La Belle bombing and other operations is relevant for one or more of purposes identified in Rule 404(b)’s non-exhaustive list. *See* Fed. R. Evid. 404(b) (“This evidence [of any other crime, wrong, or act] may be admissible for another [non-propensity] purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”).

For purposes of these theories of relevance, it does not matter that the evidence of these other acts comes from the defendant’s statement. The bases of relevance below are not source-dependent; they would be equally viable if the government were proving the defendant’s participation in the La Belle bombing through cooperator testimony, intercepted communications, or any other means. Each of these is therefore a separate and independent basis for the Court to grant the government’s Rule 404(b) motion.

Each of these bases of relevance has been argued in the government's prior briefing on this issue. We incorporate those arguments by reference below:

- **Motive** – See ECF 147 at 10-11 (opening brief on La Belle); ECF 182 at 5-6 (reply brief on La Belle); ECF 245-1 at 11-12 (Rule 404(b) argument on acts other than La Belle); *see also, generally*, ECF 387 at 6-9 (government's brief arguing for admission of expert testimony relevant to prove motive by establishing Libya's hostility toward the United States); ECF 363-1 at 6-8 (government's expert notice regarding Libya's history, summarizing chain of events in which La Belle led to airstrikes on Tripoli, which led to Libya's desire to retaliate against United States).
- **Knowledge** – See ECF 147 at 11-12 (opening brief on La Belle); ECF 182 at 6-7 (reply brief on La Belle); ECF 245-1 at 12-13 (Rule 404(b) argument on acts other than La Belle).
- **Intent** – See ECF 147 at 12 (opening brief on La Belle); ECF 182 at 8 (reply brief on La Belle); ECF 245-1 at 13-14 (Rule 404(b) argument on acts other than La Belle); *see also, generally*, ECF 387 at 5-6 & n.1 (government arguing this basis of relevance, which can also be viewed as "absence of mistake," in connection with expert testimony about Libyan government).
- **Identity** – See ECF 147 at 13 (opening brief on La Belle); ECF 182 at 7-8 (reply brief on La Belle); ECF 245-1 at 14 (Rule 404(b) argument on acts other than La Belle).

Because each of these is a valid theory of relevance, Rule 404(b) allows the government to present otherwise-admissible evidence that the defendant took part in the La Belle attack. In this case, the evidence for the defendant's involvement happens to be the same statement that contains his admission to the Pan Am 103 bombing. But the government is aware of no authority suggesting that fact subjects it to a different analysis under Rules 401, 402, or 404(b).

2. The La Belle Evidence is Relevant to Rule Out Mere Coincidence.

Finally, the La Belle evidence is additionally relevant to refute the possibility that the government's evidence on the Pan Am Flight 103 bombing is the product of an unlucky

coincidence.⁸ In the language of Rule 404(b), this is “proving... lack of accident.” Fed. R. Evid. 404(b)(2).

Part of the government’s proof of the defendant’s participation in the Pan Am Flight 103 bombing consists of travel records establishing that he and an alleged co-conspirator traveled to and from Malta on dates closely corresponding with when the bomb was placed into the air transit system at that location. *See generally* Tr. of Suppression Hearing, 2/11/26 a.m. session, at 90-98, 103-105 (case agent’s summary testimony regarding “IRO cards” and flight manifests). Viewing this evidence in isolation, one might think it plausible that the defendant was just in the wrong place at the wrong time. But the likelihood of innocent coincidence decreases exponentially when it is established that the defendant *also* traveled to and from Berlin on dates corresponding with a separate bombing attack there by the Libyan government against Americans.

This form of reasoning, sometimes called “the doctrine of chances,” reflects a “common sense observation that a string of improbable incidents is unlikely to be the result of chance.” *United States v. Henthorn*, 864 F.3d 1241, 1252 (10th Cir. 2017). The doctrine of chances is a valid Rule 404(b) theory because it does not involve any propensity reasoning. *See, e.g., Miller v. Baldwin*, 723 Fed. Appx. 408, 410 (9th Cir. 2018) (“It is a permissible inference, referred to as the ‘doctrine of chances,’ to consider two otherwise independent events that, taken together, are unlikely to be coincidental. That differs from the inference covered by the character evidence rule, which prohibits inferring a defendant’s guilt based on an evil character trait.” (citing *Estelle v. McGuire*, 502 U.S. 62, 69 (1991); *Michelson v. United States*, 335 U.S. 469, 475–76 (1948))). As one scholar has explained it: “The doctrine does not ask the jurors to utilize the defendant’s

⁸ The government made this basic argument concisely in a prior pleading, *see* ECF 182 at 7, but we wish to take this opportunity to cite cases in support and provide a more detailed explanation.

propensity as the basis for a prediction of conduct on the alleged occasion. Instead, the doctrine asks the jurors to consider the objective improbability of a coincidence in assessing the plausibility of a defendant's claim . . . that he or she was accidentally enmeshed in suspicious circumstances.” Edward J. Imwinkelried, *An Evidentiary Paradox: Defending the Character Evidence Prohibition by Upholding A Non-Character Theory of Logical Relevance, the Doctrine of Chances*, 40 U. Rich. L. Rev. 419, 439 (2006).

Courts have expressly relied on the doctrine of chances to admit evidence of uncharged crimes based on the unlikelihood of the defendant’s being present at multiple similar crime scenes for innocent reasons. In *United States v. Pricop*, the defendant was charged with the arson of three tractor trailers that were parked at gas stations at the times of the fires. *See Pricop*, 22-cr-2747, 2025 WL 1869444, at *1 (D. Ariz. July 7, 2025). The government sought to offer evidence that cellular-tower data placed the defendant’s phone in the vicinity of the charged fires as well as other uncharged fires of parked trucks. *See* ECF 30 in *Pricop*, 22-cr-2747 (listing fires and summarizing cellular location data). As the district court summarized it, the government’s argument involved “the *rarity* of stationary truck fires and the *coincidence* of Defendant's presence near the various fires.” *Pricop*, 2025 WL 1869444, at *3. The court ruled that “This type of ‘probability-based reasoning’ is admissible evidence under the doctrine of chances.” *Id.* (citing *People v. Spector*, 194 Cal. App. 4th 1335, 1377 (2011)).

The same reasoning applies here. Bombing attacks by Libyan operatives against Americans abroad are, like fires in parked trucks, rare events. The locations at which these bombings were initiated – Berlin for La Belle, Malta for Pan Am 103 – are nowhere near the defendant’s home in Libya. While it is certainly possible that he just happened to travel to both these places on both these occasions for innocent reasons, the probability of that coincidence is low. Accordingly, the

doctrine of chances provides a separate and additional reason that the La Belle evidence makes a “fact of consequence” – the defendant’s participation in the Pan Am 103 bombing – more likely for reasons unrelated to propensity.

D. Admission of the Full Statement Would Not Support a Propensity Inference.

The foregoing discussion establishes multiple independent ways in which the defendant’s full statement, beyond the isolated portion addressing the crime charged, has non-propensity relevance. That is sufficient to require its admissibility over the defendant’s Rule 404(b) objection. *See Miller*, 895 F.2d at 1436. But that conclusion follows even more strongly because the defendant’s admission to the La Belle bombing would have *no probative value* as propensity evidence.

The evidence for the defendant’s participation in the uncharged La Belle bombing is the same statement the government is relying on to prove his participation in the charged Pan Am Flight 103 bombing. As discussed above, the defendant’s statement is a unitary piece of evidence. The jury is either going to accept the government’s evidence, that the defendant voluntarily narrated the statement to the Libyan Police Officer and then signed each page of it; or the defense’s theory, that the statement was coerced by masked men and/or fabricated by the Libyan government. Either way, the jury will either find the statement to be reliable or they will not. There is no rational way a jury could find that the defendant admitted to the La Belle bombing truthfully and voluntarily but admitted to the Pan Am 103 bombing falsely and under duress. Nor could the jury coherently find that the pages of the statement describing La Belle are a genuine statement signed by the defendant but that the pages describing Pan Am 103 are a forgery. When the nature of the evidence makes it all-or-nothing, any propensity inference would be circular.

In all the rounds of briefing on this issue, the defense has repeatedly alleged that the government is trying to introduce propensity evidence, but they have never spelled out how exactly

the supposed propensity inference would operate. They have argued in conclusory terms that, “[i]f the jury credits the government’s claims that Mr. Al-Marimi was involved in the La Belle bombing, there is an unavoidable risk that it will rely on that finding to conclude he also was involved in the Pan Am 103 bombing.” ECF 174 at 18. But this statement elides the fact that a jury could only “credit the government’s claims that [he] was involved in the La Belle bombing” if they found the statement to be reliable, which would simultaneously establish his involvement in the Pan Am 103 bombing. They have also argued that “[i]t is hard to imagine what could be more prejudicial than evidence a defendant was involved in *more than one* terrorist bombing against the citizens of the nation that is prosecuting him,” *id.*, but this is a general Rule 403 objection, not one that alleges improper propensity under Rule 404(b). If necessary, the government is prepared to offer full argument why Rule 403 does not preclude the La Belle evidence; for present purposes, we note (1) the strong probative value of the La Belle evidence for all the reasons argued above, which is not substantially outweighed by (2) any unfair prejudicial effect of a second terrorist attack, especially one that involved roughly one-tenth the fatalities of the offense charged.

CONCLUSION

For the reasons above and those already argued, the Court should grant the government's motion *in limine*.

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