

**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)

**SUPPLEMENTAL PLEADING REGARDING CHALLENGE TO DEFENDANT'S
STATEMENT UNDER THE FEDERAL RULES OF EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits, in response to the Court's Minute Order dated June 15, 2026, this supplemental pleading regarding the defendant's challenge to his statement under the Federal Rules of Evidence.

A. Government's Theories of Admissibility

The Court's Minute Order of June 15, 2026, directed the government to state "the specific nontruth purpose(s) for which the government intends to use each challenged statement in the La Belle and Lockerbie sections of the defendant's alleged confession." The government appreciates the opportunity to clarify its position, and it notes that while it believes that nearly all of the challenged statements are indeed non-assertive commands or questions (or other non-assertive utterances) or are not offered for their truth,¹ all of the challenged statements are also admissible as either co-conspirator statements (Rule 801(d)(2)(E)), statements of the declarant's then-existing state of mind (Rule 803(3)), or statements against penal interest (Rule 804(b)(3)). The chart below

¹ Although the government has offered some of the challenged statements for non-truth purposes, others it contends are non-hearsay because they contain no assertions by the declarant, as required to be classified as hearsay under Rule 801(a).

accordingly lists government's non-hearsay arguments regarding the challenged statements, along with the government's arguments as to whether the statement is assertive. The chart also lists the government's position as to whether each statement is admissible as a co-conspirator statement or under an exception to the rule against hearsay.

B. Statements That Contain No Assertive Intent

The government understands the Court to be questioning whether it can make a finding that many of the statements at issue contained no assertive intent. *See generally* Minute Order dated June 15, 2026. The government respectfully maintains that the Court can and should so find from the context of the defendant's statement. As the D.C. Circuit has observed, in ruling a question non-hearsay, "It is difficult to imagine any question . . . that does not in some way convey an implicit message." *United States v. Long*, 905 F.2d 1572, 1580 (D.C. Cir. 1990). Multiple Circuit courts have held that questions or directives generally do not assert any fact. In addition to the two (including *Long*) cited in the Court's order, the government notes the following cases: *Lexington Ins. Co. v. Western Pennsylvania Hosp.*, 423 F.3d 318, 329-30 (3d Cir. 2005) (cover sheet created by insurance company employee to search for data on a claim was non-hearsay inquiry, even though it arguably assertive information, such as the date the claim was filed); *United States v. Murphy*, 193 F.3d 1, 5 (1st Cir. 1995) (directives to make false statements in warrant applications were not hearsay because they were not statements of fact); *United States v. Thomas*, 451 F.3d 543, 547-48 (8th Cir. 2006) (defendant's girlfriend calling to ask about copies of [fraudulent] loan documents, ask whether people had contacted the lender about the loan, and instructing the lender's employees to notify her if they received inquiries were non-assertive questions). *Thomas* also cites cases from the Second, Fifth, and First Circuits for the proposition that questions and commands are generally not intended as assertions and therefore do not constitute hearsay. *Id.* at 548.

Rule 801 places “the burden upon the party claiming that the intention [to make an assertion] existed” and instructs that “*ambiguous and doubtful cases will be resolved against him and in favor of admissibility.*” Fed. R. Evid. 801 Advisory Committee's Note (emphasis added); see also *Long*, 905 F.2d at 1579 (Long “*must show* that the evidence he seeks to exclude as hearsay is a ‘statement’”) (emphasis added). While the defense has made arguments about the government’s anticipated use of the statements, it has neither presented evidence nor made specific arguments about the speakers’ assertive intent. Separately, as set forth in the chart below, the challenged statements are admissible as co-conspirator statements, statements of then-existing state of mind, or statements against interest.

C. Difference Between Statements with no Assertive Intent and Statements not Offered for Truth

To qualify as hearsay under the Rules of Evidence, a statement must satisfy two conditions: (1) it must be an out-of-court assertion of fact, and (2) that out-of-court assertion must be offered to prove the matter asserted in the statement. *See* Fed. R. Evid. 801(a) & (c). The Court’s Minute Order cited arguments the defense has made about the challenged statements allegedly being used for their truth. Two such arguments from the June 1, 2026, hearing illustrate why it is important to separate, conceptually, statements which contain no assertion (like questions or commands) from assertive statements that the government does not intend to offer for their truth. Hearsay rules and exceptions presume assertive statements. The arguments cited likewise demonstrate the importance of determining whether the proponent of evidence is intending to prove the “truth of the matter *asserted in the statement.*” Fed. R. Evid. 801(c)(2) (emphasis added).

One of the statements that came up at argument involved Abdullah Senussi’s directive that the defendant travel to Malta with a booby-trapped suitcase. June 1, 2026, Hr’g Tr. at 93. The defense argued that “[t]he government is using that for the truth to prove the conspiracy.” *Id.* The

government may well use this statement to prove the existence of the conspiracy, but not because the statement itself asserts that a conspiracy exists (*e.g.*, Senussi did not say “because we are in a conspiracy, I am directing you to commit an act in furtherance of it by travelling to Malta with a booby-trapped suitcase”). Senussi’s directive to the defendant does not include an assertion of fact. Because there was no assertive intent, the statement cannot be hearsay and the government can use it for any relevant purpose, including proving the contours of the conspiracy. And in any event, as set forth in the chart below, this statement is admissible under multiple other theories that would allow the government to use it to prove the existence of a conspiracy.

The second portion of the transcript to which the Court cited involved Qaddafi’s expression of thanks. *See* June 1, 2026, Hr’g Tr. at 110;² Chart, No. 19. The defense stated, “I just cannot imagine that it doesn’t come out of the government’s mouth that that incident happening was for its truth.” June 1, 2026, Hr’g Tr. at 110. Here, the government agrees that Qaddafi intended to convey gratitude to the defendant and his co-conspirators. But that expression of gratitude does not assert anything that the government intends to offer for its truth. The defense claimed at argument that the government would offer this statement “to show that Gaddafi ordered this, knew about it, was okay with it, and was thanking him afterward.” Nothing in Qaddafi’s statement of thanks asserts, expressly or impliedly, that he ordered the attack, or that he knew who did. The fact that Qaddafi thanked the defendant is evidenced by the words themselves, which the defendant

² The citations in the Court’s Minute Order were to pages 90 and 106-07 the rough transcript. The government believes that those portions are reflected at pages 93 and 110 of the final transcript, but it would be happy to clarify its response if the Court was in fact referring to a different section of the transcript.

heard firsthand. The government does not intend to introduce this statement for its truth because, among other things, it does not contain an assertion of fact that the government seeks to prove.³

Statements offered to prove the state of mind of the defendant, even if they could have some truth value to the proceedings, are not hearsay. *See United States v. Hall*, 945 F.3d 507, 513-14 (D.C. Cir. 2019) (in a fraud prosecution, statement by lawyer to a co-conspirator that the scheme was legal was not excludable as hearsay when offered to show that the defendant did not possess the requisite mental state). Nor are statements offered to put the defendant's words and actions into context excludable as hearsay. *See, e.g., United States v. Jordan*, 810 F.2d 262, 264 (D.C. Cir. 1987). Separately, if a statement is made by a co-conspirator of a party-opponent, during and in furtherance of the conspiracy, that statement is defined as non-hearsay and admissible at trial by that party opponent. *See* Fed. R. Evid. 801(d)(2)(E). Finally, even if a statement is hearsay, it could nonetheless be admissible under many of the exceptions, including for the declarant's then-existing state of mind, Rule 803(3), and as a statement against penal interest, Rule 804(b)(3).

Note that none of the foregoing theories of admission – and associated purposes to which each statement may be used at trial – are mutually exclusive, and indeed they tend to overlap. Each theory of admission is co-equal. For example, Senussi's statement that he ordered the defendant to take one of the booby-trapped cases and travel with it to Malta, *see* Chart, Statement 9, is simultaneously non-assertive because it is an order to the defendant; a statement made by a co-conspirator during and in furtherance of the conspiracy; evidence of Senussi's plan as it existed at

³ Qaddafi separately stated that the operation had been carried out with precision. The government does not offer that assertion for its truth either, and it does not seek to prove or to argue to the jury that the operation was carried out with precision as a result of that statement. Additionally, as noted below, the statement is separately admissible under multiple bases, even if the Court decides it is being introduced for the truth of the matter asserted.

the time of his meeting with the defendant; evidence of the defendant's knowledge of the means for how he was to carry out the attack; and a statement against Senussi's penal interest.

D. Chart of Non-Hearsay Purposes

It is with the above context that the government submits the chart below, laying out its position regarding either the non-truth or non-assertive value of each challenged statement, as well as the other co-equal provisions of the Rules of Evidence under which those statements are also admissible.

1. Challenged Statements regarding the La Belle Discotheque Bombing

	Statement	Rule 801(c) Argument	Other Provisions Admissible Under
1.	[Sa'īd Rāshid] asked me to travel to East Germany and meet the Security Officer at the Libyan Embassy, a man named 'Alī Ibrāhīm Kashlāf	• Non-assertive order/direction • Kashlaf's position is not offered for truth: government will not argue that Kashlaf was in fact the security officer at the embassy based on this statement. • Places defendant's actions in context	• 801(d)(2)(E) • 803(3) (Rashid's then-existing plan) • 804(b)(3)
2.	[Kashlāf] told me that I was required to prepare an "explosive package" to be used against an American target.	• Non-assertive order/direction • Shows defendant's knowledge that his bomb was to be used against American target • Establishes why the defendant made a bomb	• 801(d)(2)(E) • 803(3) (Kashlaf's then-existing plan) • 804(b)(3)
3.	and I knew since Sa'īd Rāshid had informed me that I was to go to East Germany on a work assignment	• Defendant is using Rashid's order to explain his own state of mind – it is required for context and is admissible under Rule 801(d)(2)(A). • Non-assertive order/direction from	• 801(d)(2)(E) as to Rashid informing him to go to E. Germany • 803(3) (Rashid's then-existing plan)

		Rashid to go to E. Germany	
4.	On the evening of the same day a short while after sunset, [Kashlāf] informed me he had handed the matter of interest to the person who would carry out the task	• This demonstrates the defendant's knowledge that his bomb had been handed off and would be used. • Does not matter if it is true that Kashlaf in fact handed it off to someone else; will not argue that Kashlaf in fact handed it off. • It goes to the effect on the defendant and his state of mind, in that he believed his bomb to have been used.	• 801(d)(2)(E) • 804(b)(3)
5.	German broadcasters started broadcasting news of it on television, and 'Alī Kashlāf nodded his head, and I understood that this was the target for which the explosive charge had been prepared [xxx]. He didn't explicitly say this because 'Abdulhakīm was with us. The explosion was in a night-club frequented by individuals and officers of the American army	• Kashlaf nodding in context of the broadcast demonstrates why the defendant believes it was his bomb that was used in a night club frequented by U.S. servicemembers. • This knowledge demonstrates that, at the time of Lockerbie, he was aware that his bombs would be used against U.S. civilians; It does not matter if news report is true and we will not argue as much to jury. It is enough that the defendant heard the exchange, and believed his bomb was used in that way. • "He didn't explicitly say this because . . ." is the defendant's interpretation and admissible under Rule 801(d)(2)(A)	• 801(d)(2)(E)⁴ • 804(b)(3)

⁴ The government contends that the relevant conspiracy was a conspiracy to commit terrorist acts against the United States of America and its citizens, and that the conspiracy continued following both the La Belle and Pan Am Flight 103 attacks. Accordingly, the challenged statements made after either attack by a co-conspirator are admissible if they are in furtherance of that conspiracy.

6.	Q. What was the result of the explosion in the club? A. What I recall is that four American officers were killed and a number were wounded.	- Defendant does not identify what the “statement” is he objects to here. This is defendant’s statement of his own recollection, admissible under Rule 801(d)(2)(A). It is his burden to make a <i>prima facie</i> hearsay showing. - Nothing offered for its truth because the number is incorrect: two American officers were killed, not four. - Demonstrates defendant’s knowledge that his bomb was used to kill U.S. servicemembers, which in turn demonstrates that at the time of Lockerbie, he knew his bombs were directed at U.S. targets.	Reliability is not a factor for statements admitted under Rule 801(d)(2)(A), which is why Rule 602 does not apply if the defendant is speculating about the number killed or wounded.
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2. Challenged Statements Regarding the Bombing of Pan Am Flight 103

	Statement	Rule 801(c) Argument	Other Provisions Admissible Under
7.	I was informed of this [summoning to Sanūsī’s office] by the Head of the Section, Muftāḥ ‘Abdulkarīm	- This statement only shows who directed the defendant to respond to Senussi’s office. - A direction to report to an office is a directive that does not assert any fact. - Defendant’s memory of who ordered him to Senussi’s office is the defendant’s own memory and admissible under Rule 801(d)(2)(A).	801(d)(2)(E)
8.	that [Sanūsī] personally had previously requested be prepared by the Technical Operations Section	- Non-assertive as it is part of a question - Utterance was meant to orient the defendant to the suitcases he was talking	801(d)(2)(E) 804(b)(3)

		about and puts Senussi's order to travel to Malta with a suitcase in context. Does not matter whether Senussi in fact previously requested suitcases prepared by Technical Operations Section. What matters is that he told defendant that he had so the defendant could retrieve the proper suitcase.	
9.	and [Sanūsī] ordered me to take one of these cases and travel with it to Malta.	- Non-assertive order/directive - Establishes why the defendant went to Malta and does not assert a separately existing fact - Establishes defendant's knowledge of contours of operation: he was ordered to go to Malta with a booby-trapped suitcase.	801(d)(2)(E) 803(3) (Senussi's then-existing plan) 804(b)(3)
10.	And, according to what 'Abdullah Al-Sanūsī told me, 'Abdulbāṣit Al-Magrahī and Al-'Amīn Fhīma [xxx] would meet me in Malta	- Non-assertive order/directive - Statement to orient defendant to what would be coming next. - Does not assert a separately existing fact	801(d)(2)(E) 803(3) (Senussi's then-existing plan) 804(b)(3)
11.	where I was asked to get up the following morning at seven o'clock in order to set the timer of the explosion inside the suitcase in such a way that the explosion would occur exactly eleven hours later. He handed me the sum of 500 American dollars to buy some clothes to put in the suitcase instead of my own clothes, which I did	- Non-assertive order/directive that does not assert any separately existing fact - Shows why the defendant took actions he did - Context for defendant's statement in the next sentence that he "carried out what had been asked."	801(d)(2)(E) 803(3) 804(b)(3)

12.	and one day after that I heard that there was an American airliner that had exploded	• Puts the next sentence, in which he states that he knew for sure that this was the plane in which the suitcase he prepared and delivered to Malta had been used, in context. • Establishes that defendant connected, in his own mind, the news of an American airliner having exploded with the bomb he had built- shows the defendant's guilty state of mind	
13.	but I did know that Americans would be targeted with this explosive device.	• Defendant does not identify what the "statement" is that he objects to here. It is his burden to make a <i>prima facie</i> hearsay showing. • This is defendant's statement reflecting his own knowledge, which is admissible under Rule 801(d)(2)(A).	• 801(d)(2)(E)⁵ • 804(b)(3)
14.	Q. What was the destination of the plane that was blown up? A. I got to know of that after the explosion -- that the plane was from Malta to Frankfurt to America.	• First part is non-assertive question, so it is not hearsay • Government does not offer what the unidentified speaker said for the truth. We will prove through the route of the bomb through other evidence and will not argue that this unsourced statement should be considered for its truth.	• This is separately the type of statement that exemplifies the reason that reliability is not a requirement of admission of a statement under Rule 801(d)(2)(A). Even if the

⁵ The defense contends, "The other statements surrounding this specific statement make clear that Mr. Al-Marimi's information about his alleged involvement in Pan Am 103 came from his superiors and therefore is founded on hearsay." ECF 256 at 17 n.5. Were the Court to agree with the defense position, the direction from defendant's ESO superiors about the target of the attack being Americans – in response to a question about the defendant's prior knowledge of the target – would be admissible as a co-conspirator statement under Rule 801(d)(2)(E).

		The government is offering this as evidence of the defendant's guilty state of mind: the defendant made the connection in his own mind between the bomb that he built and handed to Fhimah and reports that he heard afterward that the plane had gone from Malta to Frankfurt to America.	defendant were speculating in making that connection, Rule 602 does not bar its admission.
15.	and that was never mentioned on the news afterwards. There were about 260 passengers on board as well as the crew.	- The lack of mention of something on the news is not hearsay: there is no statement, but instead evidence that the defendant did not hear a statement; he has personal knowledge of what he did and did not hear, which is admissible under Rule 801(d)(2)(A). - The defendant's recitation of the approximate number of victims is relevant to his guilty knowledge: both the fact that he watched such reports and that he connected those reports to the bomb he built. - The government does not care whether the news report was accurate and will not argue that the jury should believe that there were 260 people on the plane because the defendant heard that on the news; the relevance is in demonstrating the defendant's knowledge that his bomb was used to kill those approximately 260 people.	This is separately the type of statement that exemplifies the reason that reliability is not a requirement of admission of a statement under Rule 801(d)(2)(A). Even if the defendant were speculating in making that connection, Rule 602 does not bar its admission.
16.	Q. Where did each of ^s Abdulbāšit Al-	Defendant has not carried his burden of identifying an out-of-court statement	Should the Court find that this information

	Magraḥī and Al-ʿAmīn Fḥīma work? A. ʿAbdulbāṣit Al-Magraḥī worked in the External Security Organisation and was responsible for the security of planes and Al-ʿAmīn Fḥīma, what I knew was that he worked for the Libyan Airlines Company.	by someone other than him. Defendant had personal knowledge of Megrahi from before the Lockerbie operation and from Fhimah during it. <i>See</i> ECF 232-2 at 9. - Accordingly, the defendant had personal knowledge of their roles and positions and his statement relating that knowledge to Jamal is admissible under Rule 801(d)(2)(A). - The question posed by Jamal is not hearsay.	came to the defendant from Megrahi, Fhimah, or someone else in the ESO, it is admissible under Rule 801(d)(2)(E).
17.	and [Sanūsī] thanked us for the success of the operation.	- An expression of gratitude is not an assertion of fact. - The government does not offer the “success” of the operation for its truth. It does not matter whether Senussi believed the operation to be successful.	801(d)(2)(E) 803(3) (Senussi’s then-existing emotional condition) 804(b)(3)
18.	[Al-Magraḥī] contacted my office at work, he asked them to inform me to prepare to travel to Benghazi the following day.	- This is an order or directive from - Does not assert any fact. - Shows why the defendant went to Benghazi - Shows ongoing connection between co-conspirators.	801(d)(2)(E) 803(3) (Megrahi’s then-existing plan)
19.	and after greeting us, [Qaddafi] praised and thanked us for performing a great patriotic act against the Americans and said that the operation had been carried out with precision.	- Expression of gratitude is not an assertion of fact. - The government is not seeking to prove whether the operation was carried out with precision, so it is not offering statement for its truth.	801(d)(2)(E) 803(3) (Qaddafi’s then-existing emotional condition) 804(b)(3)
20.	We left about a quarter of an hour later after ʿAbdullah Al-Sanūsī had been tasked with looking after us and	- The government is not looking to prove that the Libyan government in fact granted his request. - Goes to show that the defendant believed he was	801(d)(2)(E)

	granting all our requests.	being taken care of, regardless of whether that is true.	
21.	Also, since 1988 I had been verbally banned by ‘Abdullah Al-Sanūsī from travelling abroad.	• Non-assertive directive or order • Does not assert a fact.	• 801(d)(2)(E) • 804(b)(3)
22.	so ‘Abdullah Al-Sanūsī asked to see me and permanently withdrew my passport in order to avoid (the risk of) my falling into the hands of a foreign power.	• Senussi withdrawing passport is an action, not a statement or assertion. Defendant has firsthand knowledge of that action. • Shows defendant’s guilty knowledge and guilty state of mind – he would have no reason to believe he would fall into hands of a foreign power unless he had committed a crime for which a foreign power would want him.	• 801(d)(2)(E) • 804(b)(3) • If the defendant is speculating about why Senussi was withdrawing his passport, Rule 602 does not bar admission of the defendant’s statement to that effect.

CONCLUSION

For the above reasons, in addition to those already stated, the Court should admit each of the statements that the defendant has challenged as hearsay in the La Belle and Lockerbie portions of his statement.

Respectfully submitted,

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