

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 HIS MOTIONS *IN LIMINE*
REGARDING GOVERNMENT'S TRIAL EXHIBITS

Abu Agila Mohammad Mas'ud Kheir Al-Marimi replies herein to the government's response, ECF No. 495, to his motions *in limine* regarding the government's proposed trial exhibits, ECF No. 483. For the reasons that follow, Mr. Al-Marimi requests that the Court exclude the challenged exhibits as inadmissible under the Federal Rules of Evidence.¹

Mr. Al-Marimi reserves the right to challenge a subset of the government's exhibits that the government has not yet made available to the defense for review.

LAW AND ARGUMENT

As the party that will seek the admission of the challenged evidence at trial, the government bears the burden of establishing admissibility.

¹ Mr. Al-Marimi raises his objections as to documents that have not otherwise been the subject of litigation or have not been the subject of litigation as to the issue(s) raised below. He does not waive any objections raised in the course of other litigation, regardless of whether this Court has ruled on those objections at this time.

I. Federal Rules of Evidence 401 and 403.

a. Proposed exhibits which require exclusion under Federal Rules of Evidence 401 & 403.

i. The 100 Series.

The government argues that the Pan Am commercials they seek to admit are relevant to prove (1) that the airline was a target for attacks aimed at Americans due to its status as “the major U.S.-based passenger airline,” and (2) that a plan to detonate an explosive using three airplanes passing through three airports was likely to succeed because Pan Am had a self-proclaimed reputation for timeliness.

First, the commercials provide evidence for neither of these claims. If Pan Am was the dominant or hallmark airline in the United States at the time, that is not proven by a commercial for the company. And an airline’s puffery that its flights run on time is not compelling evidence that this was, in fact, the case.

Second, assuming without agreeing that the commercials *did* provide the evidence the government claims they do, they are of no relevance without a basis to believe that the individuals involved in the bombing had seen the commercials and relied on them in forming their plan. The government has not provided documentation of when or where these commercials aired, but the circumstances do not support a legitimate likelihood that they were viewed by Mr. Al-Marimi or anyone else in Libya. Accordingly, they do not make it more or less likely that the Pan Am plane was selected for the reasons claimed and are irrelevant.

Finally, as they conjure up images of what the Pan Am 103 passengers might have looked like on and before the flight, the commercials are highly prejudicial and that prejudice significantly outweighs the non-existent probative value.

ii. The 200 Series.

The government also seeks introduction of a series of photos to prove (1) the chain of custody of evidence collected from the scene, (2) the integrity of the investigation, and (3) the fact that a crime occurred. But the introduction of approximately 250 isolated photographs does not provide evidence of the overall investigation, which took place over many months and hundreds of square miles. While they may illustrate arbitrary moments during the collection and documentation of evidence, they do not establish the integrity of the whole or a complete chain of custody for all evidence. Nor could any number of photos. Accordingly, the probative value is low. All of the purposes argued by the government for admission of these exhibits are best accomplished through witness testimony, and the Court should deny their admission.

Exhibit Number or Series	Description	Defense Objection	Government Response	Defense Reply
100 Series	Pan Am videos	The promotional videos do not make a material fact at issue more or less likely.	See Section I.A. above.	Commercials do not prove that the claimed status or reliability are true and there is no evidence that anyone alleged to have been involved in the incident was aware of the commercials.

201	Photographs of searches	Photographs of search and those participating are not relevant.	See I.B. above.	The proposed exhibits do not illustrate the procedures used generally, nor any specific evidence recovery.
216	Map of Sector G	Extraneous handwriting on document.	The government has no objection to redacting the handwriting at the top of the map.	The defense accepts this proposed edit.
505	Photograph identified by law enforcement officer.	Photograph depicts Mr. Al-Marimi behind a bar and in a jail jumpsuit for another criminal case.	The government is unlikely to use this photograph in its case-in-chief; however, it has been identified as an item that could become relevant during trial. Should this item become relevant during trial, the government would provide a basis for admission prior to its introduction.	Mr. Al-Marimi maintains his objection on this point until the government provides an adequate basis.
708	Maltese Clothing Receipt	This document has little to no probative value because portions are so faint as to be illegible.	The government is unlikely to use this photograph in its case-in-chief; however, it has been identified as an item that could become relevant during trial. Should this item become relevant during trial, the government would provide a basis for admission prior to its introduction.	A document whose portions are so faint as to be illegible has little to no probative value under FRE 401, and whatever minimal relevance the Government might ascribe to its readable portions is substantially outweighed under FRE 403 by the danger that the jury will speculate as to the content of the illegible portions and draw inferences

				unsupported by anything in the document itself. The defendant's objection is maintained as to any stage of trial
821, 826-827, 833-863	Maltese Travel	That others traveled to Malta in 1986 and 1988 does not have a tendency to make a fact in issue more likely and may risk confusing the issues or misleading the jury.	See I.C. above.	Travel records of alleged co-conspirators are not rendered relevant merely by asserting that travel occurred near defendant's travel as temporal proximity alone does not establish coordination, shared purpose or any direct connection to charged offense. The risk that the jury will treat the mere fact of overlapping travel by foreign nationals as proof of criminal coordination — without any direct evidence linking that travel to the charged conduct — presents precisely the confusion of issues and misleading of the jury that FRE 403 is designed to prevent.
900 Series	Czech Republic Documents	Evidence of Mr. Megrahi's travel to Prague, which does not involve Mr. Al-Marimi, runs the risk of prejudicing Mr. Al-Marimi by confusing the issues or misleading the jury.	See I.C. above.	These documents contain no reference to Mr. Al-Marimi. The document cited relates exclusively to Megrahi's independent travel, accommodations and activities in the Czech Republic and the Government's only theory of connection to

				the defendant is that Megrahi traveled to the Czech Republic in the general timeframe of meetings with Mr. Al-Marimi. They risk misleading the jury into treating a third party's government-sponsored travel as evidence of Mr. Al-Marimi's culpability. They risk confusion and their unfair prejudice substantially outweighs any marginal probative value.
1400 Series	Senegalese Documents	The Senegalese police documents are of limited relevance to the charges against Mr. Al-Marimi, and whatever marginal relevance they may have is substantially outweighed by the danger of unfair prejudice and confusion of the issues — jurors are likely to improperly conflate the conduct of the Libyans arrested in Senegal with the culpability of Mr. Al-Marimi, and the government has not established a sufficient nexus between those events and the charged offenses.	As it stands, the government is unlikely to use evidence regarding Senegal in its case-in-chief.	The evidentiary deficiencies identified are not cured by the timing of introduction, and the danger of unfair prejudice and confusion of the issues is equally present whether these documents are offered in the case-in-chief or on rebuttal. Mr. Al-Marimi's objection stands and is maintained as to any stage of trial.

1535 1536 1540	Documents related to Scottish Witness	These documents are of limited, if any relevance to the charges against Mr. Al-Marimi under FRE 401, as none of them mention or identify him. Whatever marginal relevance the Government may claim is substantially outweighed under FRE 403 by the danger that the jury will treat Mr. Al-Marimi's alleged association with those identified in the documents as substantive evidence of guilt — effectively convicting him on the basis of his alleged associations rather than his own proven conduct	The government is unlikely to offer these exhibits in its case-in-chief.	Mr. Al-Marimi's objection stands and is maintained as to any stage of trial.
1554-1556 1558 1561-1565 1567-1577	Documents related to Megrahi travel to Switzerland	Evidence of Mr. Megrahi's travel to Switzerland, which does not involve Mr. Al-Marimi, runs the risk of confusing the issues or misleading the jury.	With the exception of Exhibits 1564 and 1565, the government is unlikely to offer these exhibits in its case-in-chief. 1564 and 1565 relate to co-conspirator Megrahi's travels during October and December 1988. See I. C. above.	Exhibits 1564 and 1565, contain no reference to Mr. Al-Marimi. Like with the Czech Republic travel documents, the Government's only theory of connection to Mr. Al-Marimi is that Megrahi traveled to Switzerland in the general timeframe of meetings with the defendant. This risks misleading the jury into treating Megrahi's travel as evidence of

				Mr. Al-Marimi's culpability. They risk confusion and their unfair prejudice substantially outweighs any marginal probative value. With respect to remaining identified documents, the Government's representation that it does not intend to introduce these documents in its case-in-chief does not resolve Mr. Al-Marimi's objection — the evidentiary deficiencies identified are not cured by the timing of introduction, and the danger of confusion of the issues or misleading the jury is equally present whether these documents are offered in the case-in-chief or on rebuttal. Mr. Al-Marimi's objection stands and is maintained as to any stage of trial.
1578	Libyan Witness Swiss visa application	Evidence of Libyan Witness' Swiss travel in 1986, which does not involve Mr. Al-Marimi, runs the risk of confusing the issues or misleading the jury.	The government is unlikely to offer these exhibits in its case-in-chief.	The evidentiary deficiencies identified are not cured by the timing of introduction, and the danger of confusion of the issues or misleading the jury is equally present whether these

				documents are offered in the case-in-chief or on rebuttal. Mr. Al-Marimi's objection stands and is preserved as to any stage of trial.
1901	Image of Qaddafi dressed in the garb of the Amazonian Guards (aka the "Revolutionary Nuns" of Libya)	The Amazonian Guard reportedly surrounded Qaddafi for protection from shooters; thus, the undue prejudice of this particular photo outweighs any probative value given that many other photos of Qaddafi exist that can be used for identification.	The government does not intend to introduce anything about the meaning of Qaddafi's clothing in this image. The defense can voir dire jurors about their knowledge of it if they are so inclined.	The government's position begs the question why use this photo among the many publicly available photos of Qaddafi of equal probative value without the substantial risk of prejudice. The government's offer that the defense could voir dire the jury about knowledge of the Amazonian guard defies the purpose of Rule 403 and Mr. Al-Marimi's constitutional right to effective assistance of counsel. If the defense questioned the jury regarding the Amazonian guard, it would either inject speculation into the jury's mind about why that question mattered—potentially risking impermissible outside research by jurors—or taint a jury pool through disclosure of the unduly prejudicial information.

II. Cumulative evidence.

a. Relevant law.

The government cites *United States v. Long*, 328 F.3d 655, 664 (D.C. Cir. 2003), regarding the line at which evidence, “by virtue of its sheer volume, necessarily becomes unfairly prejudicial.” *Long* dealt with numerous explicit photos of minors offered under Rule 404(b). The court affirmed the admission of the evidence because the lower court had reviewed every photo *in camera* and provided reasons why each was admitted or excluded. *Id.* at 665. This approach properly “demonstrated an awareness of the need to exclude photographs at either extreme, either because they were too explicit or barely probative.” *Id.* The court acknowledged there was a continuum of explicitness (i.e., prejudice) and that the quantity of pictures could contribute to unfair prejudice. *Id.* Ultimately, the lower court “confined the admission” of the challenged photos to specific purposes, “imposed further constraints” under Rule 403, and “gave limiting instructions to the jury.” *Id.* *Long* supports such careful consideration here.

b. Proposed exhibits that are inadmissible because they are cumulative.

Exhibit Number or Series	Description	Defense Objection	Government Response	Defense Reply
200-209	Photos of crash site, divided by sector.	Repeated images of crash debris and victims risk distracting and confusing the jury.	These are various photos of the crime scene in Scotland. The crime scene covered over 845 square miles, with thousands of pieces of evidence	Mr. Al-Marimi maintains his objection to all the photos being introduced and reserves the right to object until the government identifies which

			recovered. The crime scene was divided into sectors. Each sector was assigned a Detective Inspector to organize and oversee the search and collection of evidence. Exhibits 201-209 and 228 are collections of photographs that show different views and perspectives of each sector. There are approximately 30 photos from nine main sectors. While the government does not intend to introduce all of the photos, it is hardly cumulative to show photos from different locations and from different perspectives.	photos will be offered for admission.
212/213/214 (and 302.002)	Photographs of Reconstruction at Longtown	Repeated images of crash debris risk distracting and confusing the jury.	The defense has challenged some of Mr. Feraday's opinions in this case. Parts of his opinion were based on the evidence collected and the reconstruction of	Mr. Al-Marimi maintains his objection until such time as the government identifies a specific need for

			the plane. The government has a right to show how the evidence was recovered, examined, preserved and analyzed in this case.	the pictures sought. ²
601	Photos of La Belle Discotheque	Repeated images of explosively damaged building and debris risk distracting and confusing the jury.	The defendant describes the explosion that took place at the La Belle nightclub as well as the extent of the damage. The government intends to nominate a select number of photos to present to the jury.	Mr. Al-Marimi maintains his objection until such time as the government identifies a specific need for the pictures sought.

III. Unfairly prejudicial and inflammatory.

a. Relevant law.

The government cites *United States v. Khatallah*, 313 F. Supp. 3d 176, 195 (D.D.C. 2018), but the court in that case only admitted the “jarring” photos at issue after taking “pains to limit the government’s presentation so as to avoid cumulative and unduly prejudicial evidence and to preserve the decorum of the proceedings.” *Id.* at 195. In particular, it limited both the photographs and autopsy reports based on input from counsel. *Id.* And in *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C.

² See *U.S. v. Long*, 328 F.3d 655, 664-665 (2003) (detailing the “thoughtful analysis” that should go into admitting voluminous photographs).

Cir. 1998), the government’s other citation, the court explained that the “outrageous” evidence at issue was not unfairly prejudicial because it was acutely probative of intent and, thus, not on the wrong side of the Rule 403 scales. *Id.* Both cases are consistent with the notion that evidence must be weighed with consideration given to its probative value relative to other evidence, and with limits being imposed on unfairly prejudicial evidence.

b. Proposed exhibits which are inadmissible, as they are overly prejudicial.

Exhibit Number or Series	Description	Defense Objection	Government Response	Defense Reply
200-209	Photos of crash site, divided by sector.	Each series contains graphic photos and poses significant risk of unfair prejudice.	The government does not intend to offer: 202.026 202.027 202.028 203.013 203.014 204.013 205.020 205.023 206.010 The remaining photos do not create a substantial risk of unfair prejudice. The defendant is charged with causing death, and that is one of the elements the government must prove. In this case, there were 270 people killed and while the government does intend to show photos of the victims,	The defense accepts the government’s withdrawal of the referenced exhibits. The defense maintains its objection as to the following, which depict dead bodies: 202.025 203.015 203.016 204.011 204.014 204.015 204.016 (animal remains) 205.005 205.008 205.021 205.022 205.024 206.009 The defense maintains its objection as to the

			the photos are from a distance, with unidentified injuries. Moreover, the government intends to show a limited number of the victims, because the government has a right to show the extent of the crime scene and the destruction caused.	following, which depict impressions in the ground, caused by falling bodies: 204.002 204.003 204.005 206.011
309.001 309.003-005 309.007 309.011-014 309.035 309.039 309.040 309.048	Explosives testing	The image depicts explosion, with mannequins resembling people, in an attempt to recreate the conditions of the explosion, and poses a risk of unfair prejudice.	The government is willing to make appropriate redactions as to mannequins if needed.	The defense accepts the government's proposal for redactions, subject to defense review.
508	Video depicting Mr. Al-Marimi in custody and wearing a jail jumpsuit during prosecution for an unrelated criminal case	The video depicts Mr. Al-Marimi in custody and wearing a jail jumpsuit during prosecution for an unrelated criminal case; the government has other, less prejudicial means of identification.	The defendant identifies himself in this video. The government will have the in-court identification of Jamal, which the defense is expected to challenge. There is no other identification more probative than the identification of the defendant.	Jamal is not identifying Mr. Al-Marimi related to the charged conduct; rather, his identification concerns the person he interviewed. There is no real need for an identification based on a photograph taken at a different time and location, when Jamal was not present. See additional record below in Rule 404(b) discussion.
601	Photos of scene at La Belle Discotheque	The proposed exhibit contains graphic photos and poses significant risk of unfair prejudice.	The government does not intend to introduce every photo. The government will nominate photos it will seek to introduce in accord with the Court's	Mr. Al-Marimi maintains his objection until such time as the government identifies the particular images it intends to seek admission for. In particular, the defense

			ruling admitting evidence of the La Belle bombing.	objects to the following, which appear to depict blood: 21 22 23 24 25 38
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IV. Lack of foundation.

a. Relevant law.

The government cites *United States v. Mejia*, 597 F.3d 1329, 1336 (D.C. Cir. 2010), and *United States v. Mitchell*, 816 F.3d 865, 871 (D.C. Cir. 2016), in support of its strategy to lay foundation and the premise that a complete chain of custody not being necessary in every case. But as the government acknowledges, the standard focuses on the *elimination* of “possibilities of misidentification and adulteration. . . .” *Mejia*, 597 F.3d at 1336. While a complete chain of custody need not *always* be provided, a “break in the chain of custody . . . can be serious enough that the district court may abuse its discretion in admitting the evidence.” *Id.* (further agreeing that a “specifically identified risk of misidentification or alteration” demands the production of “evidence to overcome this risk or suffer exclusion”); *see also Mitchell*, 816 F.3d at 872 (“The government must have therefore traced the liquid from its seizure to its transfer . . . for sampling and then to the DEA laboratory for testing.”).

In *Mejia*, the court excused a missing first link in the chain of custody for one item of evidence because the chain almost immediately picked up in a reliable fashion, with only a 10-minute lapse unaccounted for. 597 F.3d at 1337. The testifying

agent was nearby during the arrest and arrived shortly after, while the defendant was still in custody. *Id.* at 1333. And the reliability of where and how the item had been collected was supported due to the apparent connections to the defendant, namely that it was contained in a wallet, which the defendant did not dispute was his, along with other identification cards. *Id.* Here, conversely, the government relies on written labels that were not always properly completed to stand in for dozens of unidentified police witnesses who collected thousands of pieces of evidence from all around the world. *See, e.g.*, ECF 173, at 11 (noting blank evidence tag). All this evidence is not “of limited importance” to the government’s case, as it was in *Mejia*. *See* 597 F.3d at 1337.

b. Exhibits which are inadmissible due to lack of sufficient foundation or authentication.³

Exhibit Number or Series	Description	Defense Objection	Government Response	Defense Reply
200-209, 228	Photos of crash site, divided by sector.	Government must present witness testimony that the photographs fairly and accurately depict what they observed at the scene, time and place of the image.	The government intends to present testimony from law enforcement officers who were present at the scenes where the evidence was collected.	The government must lay a proper foundation that the photographs fairly and accurately depict what they observed at the scene, time and place of the image. Merely presenting a witness with an overall understanding of procedures used or the process generally is insufficient, as is an individual who was present, but does not have first-hand knowledge of the images at issue.
217	Map of sectors.	Government must present witnesses	The government intends to present	As discussed above, the government must lay a proper

³ Some objections may be resolved upon further disclosure of the government’s witnesses.

		to lay foundation for recovery of evidence as indicated on map.	testimony from law enforcement officers who were present at the scenes where the evidence was collected. Further, the government intends to present the law enforcement officer who oversaw the entire crime scene operation, DCI Gordon Ferrie.	foundation for the collection and custody of evidence. Merely presenting a witness with an overall understanding of procedures used or the process generally is insufficient, as is an individual who was present, but does not have first-hand knowledge of the evidence at issue.
221-223 ⁴	Air traffic control audio recordings			The government must lay a proper foundation regarding what and when the audio was recorded. A law enforcement witness is insufficient to lay this foundation, unless they were present at the time of the recording.
224-225 ⁵	Video recordings of radar			The government must lay a proper foundation regarding what and when the video was recorded. A law enforcement witness is insufficient to lay this foundation, unless they were present at the time of the recording.
302.001-302.396	Photographs from RARDE report.	Government must present sufficient witness testimony to lay foundation for how and where the depicted items were recovered.	Many of these exhibits were admitted through Mr. Feraday. There will be evidence from DCI Ferrie and others that discusses how	As discussed above, the government must lay a proper foundation for the collection and custody of evidence. Merely presenting a witness with an overall understanding of procedures used or the process generally is

⁴ The objections to the noted exhibits were inadvertently left out from Mr. Al-Marimi's initial motion to exclude. The government does not oppose their inclusion in this filing and the defense does not oppose a surreply from the government, as to these particular exhibits.

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			evidence was collected generally and how it was maintained and preserved.	insufficient, as is an individual who was present, but does not have first-hand knowledge of the evidence at issue. While certain evidence was admitted through Mr. Feraday, it was for the limited purpose of his testimony about the items he examined. The defense maintains its objection as to admission for any other purpose, without a proper foundation. ⁶
303	AAIB Report	Government must present sufficient witness testimony to lay foundation for report.	The government is unlikely to introduce this exhibit in its case-in-chief.	Regardless of whether the government seeks to introduce the evidence in its case-in-chief or in rebuttal, it is inadmissible without a proper foundation. ⁷ Mr. Al-Marimi maintains his objection until a foundation is laid.
304.002	Two-dimensional layout of plane	Government must present witness testimony that the photographs fairly and accurately depict what they observed at the scene, time and place of the image.	The government will present testimony of witnesses who observed the layout.	The government must lay a proper foundation that the photographs fairly and accurately depict what they observed at the scene, time and place of the image. Merely presenting a witness with an overall understanding of procedures used or the process generally is insufficient, as is an individual who was present, but does not

⁶ Deposition of Allen Feraday, Day 2 at 265.

⁷ *United States v. Roberson*, 581 F. Supp. 3d 65, 78 (D.D.C. 2022) (“Importantly, however, the government represents that it will not introduce these images in its case-in-chief; instead, it only intends to use this evidence for impeachment purposes or as rebuttal evidence should Roberson take the stand and testify that he is not interested in child pornography. Even with this self-imposed limitation, however, the images must still be relevant under [Rule 401](#) and not excludable under [Rules 403](#) or [404](#) in order to be admitted.”)

				have first-hand knowledge of the images at issue.
304.003	Forward cargo hold diagram	Government must present sufficient witness testimony to lay foundation for diagram.	The government will present testimony of witnesses who were familiar with the layout of the plane.	The locations of the items depicted on the diagram – including the luggage containers -constitutes an out of court statement for the truth of where the items were recovered. While demonstrative evidence is admissible, it must be based on evidence that is otherwise admissible in its own right. ⁸
305	Feraday RARDE Examination Notes	Government must present sufficient witness testimony to lay foundation for document.	The government is unlikely to introduce this exhibit in its case-in-chief.	Regardless of whether the government seeks to introduce the evidence in its case-in-chief or in rebuttal, it is inadmissible without a proper foundation. ⁹ Mr. Al-Marimi maintains his objection until a foundation is laid.
306	Interim FAI Report	Government must present sufficient witness testimony to lay foundation for document.	The government is unlikely to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a foundation is laid.
307	Feraday Folder Notes	Government must present sufficient witness testimony to lay foundation for document.	The government is unlikely to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a foundation is laid.
308	Spectra Printouts	Government must present sufficient witness testimony to lay foundation for document.	The government is unlikely to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a foundation is laid.
309.001-309.058	FAA test photographs	Government must present sufficient witness testimony to lay foundation	The government will present testimony of witnesses who were	Mr. Al-Marimi maintains his objection until a foundation is laid.

⁸ FRE 1006.

⁹ Mr. Al-Marimi references this objection for all exhibits where the government has responded that it does not intend to submit it during their case-in-chief. For brevity, the defense will not repeat that argument in each instance.

		for how and where the depicted items were recovered.	present during the trials	
310	Report on Test Explosions	Government must present sufficient witness testimony to lay foundation for document.	The government is unlikely to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a foundation is laid.
507	Photo purporting to be Mr. Al-Marimi with Abdelbaset Al-Megrahi.	The government has not indicated that it plans to call any witness with personal knowledge that Mr. Al-Marimi is in the car. Without such evidence, this photo is irrelevant under Rules 401/402.	The government will present witness testimony identifying Mr. Megrahi. The jury will have a sufficient basis to conclude that the defendant is in the exhibit by comparing it to Exhibit 508, where the defendant self-identifies.	The government's proffered identification of Megrahi in this still image of a recording does not come close to providing adequate foundation for the image's admission. The government must address the origin of the recording and how it may have been modified or altered to enhance certain aspects. Testimony by someone who recognizes an individual in a photograph is not a showing that the photograph is a fair and accurate depiction of a particular time and place, let alone anyone else depicted in the photograph.
803	Air Malta weekly flight schedule.	This document has not been provisionally admitted. The government's witness must lay sufficient foundation before it can be admitted as a business record.	This document is still pending a ruling from the Court. See ECF 326 at 3-4.	Mr. Al-Marimi acknowledges that the Exhibit is pending ruling.
824-863; 870	IRO cards	These documents have not been provisionally admitted so the government must present sufficient	The government intends to present testimony from a Maltese Airport Officer who worked in immigration	The ability to identify immigration cards generally does not demonstrate that this witness has sufficient personal knowledge of the record-keeping practices and

		witness testimony to lay foundation that the documents are what they purport to be.	control at Luqa Airport in 1988 who can identify the cards.	procedures under which these particular cards were created, maintained, and preserved to satisfy the foundational requirements of FRE 901. The defendant's objection is maintained pending the Court's assessment of the witness's actual foundation testimony at trial.
868, 869	Luqa airport photos	Government must present witness testimony that the photographs fairly and accurately depict what they observed at the scene, time and place of the image.	The government will present a witness with knowledge.	Mr. Al-Marimi maintains his objection until a foundation is laid.
901, 902, 909	Megrahi Czech visa	Absent Court accepting certifications, the government must present sufficient witness testimony to lay a foundation that the documents are what they purport to be.	The government has moved for admission of these documents in ECF 490.	Exhibit 909 was not referenced in ECF 490.
1002	Frankfurt airport photos	Government must present witness testimony that the photographs fairly and accurately depict what they observed at the scene, time and place of the image.	The government will present a witness with knowledge or other foundational testimony (but most of these exhibits are not photos).	Mr. Al-Marimi maintains his objection until a foundation is laid.

1021 1023 1025 1027 1029 1030	Frankfurt airport and airline documents			These documents have not been provisionally admitted so the government must present sufficient witness testimony to lay foundation that the documents are what they purport to be.
1303, 1306-1309	Documents from Toshiba	These documents have not been provisionally admitted so the government must present sufficient witness testimony to lay foundation that the documents are what they purport to be.	The government will present a witness with knowledge or other foundational testimony if it moves for admission of these documents.	Mr. Al-Marimi's objection is maintained pending the Court's assessment of the witness's actual foundation testimony at trial.
1400 Series	Senegalese Documents	These records have not been provisionally admitted, and the government must present sufficient witness testimony that the proffered witness has personal knowledge of, or is otherwise qualified to authenticate, records created by a foreign law enforcement agency under foreign procedures.	The government will present a witness with knowledge or other foundational testimony if it moves for admission of these documents.	Mr. Al-Marimi's objection is maintained pending the Court's assessment of the witness's actual foundation testimony at trial.
1503, 1505,1507-1512, 1516-1518,	Swiss Documents	These documents have not been provisionally admitted so the government must	Exhibit 1529 was identified and moved into evidence as part of	Mr. Al-Marimi acknowledges that 1529, 1549, 1550, 1559 are pending ruling.

1521, 1523-4; 1526-9; 1532-3, 1535-6; 1540- 1545; 1547- 1578		present sufficient witness testimony to lay foundation as to how these documents were recovered and maintained. For the government must present witness testimony that the photographs fairly and accurately depict the item(s) pictured.	a Rule 15 deposition. See February 24, 2026, Depo. Tr. at 97. Exhibits 1549, 1550, and 1559 are currently pending rulings from this Court. See ECF 450 at 2. The government will introduce testimony at trial regarding how the Scottish police received Exhibits 1564 and 1565 and anticipates seeking their admission under Fed. R. Evid. 803(16). ----- For all other exhibits listed in this box, the government is unlikely to seek their admission in its case-in-chief.	Testimony regarding how foreign police received Exhibits 1564 and 1565 does not establish how those documents were originally created, maintained, and preserved by the hotel itself, which is the foundation required for admission, and reliance on FRE 803(16) does not substitute for that showing as the ancient documents exception requires that the document be 'found in a place where, if authentic, it would likely be kept,' a condition that cannot be established through foreign law enforcement testimony alone. Mr. Al-Marimi's foundational objection is maintained as to any stage of trial for all remaining exhibits
1627	Unboxed MEBO Timer	Government must present sufficient witness testimony to lay foundation as to how this piece of evidence was recovered, transferred, and maintained.	The government will present such testimony if we seek to introduce this exhibit.	The defendant's objection is maintained pending the Court's assessment of the witness's actual foundation testimony at trial.

1921-1926	Passports	The Government must present sufficient witness testimony to lay a proper foundation under Rules 602/901	The government plans to lay the foundation to authenticate these documents under Rule 901(8), as they are more than 20 years old and were found in possession of the Scottish government as outlined in the Scottish Declaration. Additionally, the government plans to present testimony from the Swiss visa officer who issued the visa on the left side of page 18 of Exhibit 1925, who will confirm that he personally issued that visa, which will add support to the government's contention that the document is an authentic Libyan passport. The other passports will be authenticated pursuant to Rule 901(b)(8), but if the Court is not satisfied by that alone, they can be authenticated through their distinctive characteristics and through comparison to Exhibit 1925. <i>See</i>	Rule 901(8)(B) requires proof that the evidence “was in a place where, if authentic, it would likely be”. The government has not explained why one would expect purported Libyan passports in Arabic to be in the hands of the Scottish government. Furthermore, courts have criticized general authentication attempts for passports seeking to be admitted to prove more than just a person's citizenship. <i>See, e.g., United States v. Osario</i>, 854 F.2d 1318, at *2 (4th Cir. 1988) (rejecting authentication attempts of passports under Rule 901). Unless the government plans to call a witness with sufficient personal knowledge about the distinctive characteristics of purported Libyan passports in Arabic, the Court should reject the government's Rule 901(b)(3)-(4) argument.
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			Fed. R. Evid. 901(b)(3) & (4),	
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V. Federal Rules of Evidence 1002 and 1003.

In response to Mr. Al-Marimi's objections under Federal Rules of Evidence 1002 and 1003 to copies of Mr. Al-Marimi's alleged confession, the government argues that 1) the Court should deny Mr. Al-Marimi's objection because the defense has not moved the Court to reconsider its ruling on this point at Jamal's deposition; 2) the defense has not raised a genuine question as to the original's authenticity or pointed to circumstances that make it unfair to admit the copy; 3) the Court should admit the copy under Federal Rule of Evidence 1004 if the government is unable to procure the original from Libya; and 4) the Court must let the jury decide whether an asserted writing ever existed under Federal Rule of Evidence 1008. As set forth below, the Court should reject each of these arguments.

a. The defense has no obligation at this stage to move the Court to reconsider its ruling on Mr. Al-Marimi's objection to the Court accepting a copy of Mr. Al-Marimi's alleged confession at Jamal's deposition.

On the first day of Jamal's deposition, Mr. Al-Marimi objected to the admission of a copy of Mr. Al-Marimi's alleged confession, specifically Government's Exhibit 500. Jamal Deposition First Day PM Tr. at 26. The Court overruled that objection based on Jamal's testimony earlier that day. *Id.* On May 4, 2026, however, because of the significant developments in the evidence surrounding Jamal's credibility since the taking of Jamal's deposition, the Court denied the government's motion to preliminarily admit Jamal's deposition at the trial in this case. 5/4/26 Tr. at 57-58 ("It

sort of goes without saying here that that deposition is not going to be admitted. There's too much that the defense wasn't able to examine him about that they need to examine him on at trial, regardless of my decision on the motion to suppress."). When the government asked for an opportunity to brief the issue, the Court unequivocally stated: "I'm telling you right now, I will not accept that deposition. I won't. There are way too many questions." *Id.* at 58. One of the questions that had arisen since the conclusion of Jamal's deposition was the authenticity of the copy of Mr. Al-Marimi's alleged confession. *Id.* at 29 ("We still believe that that is what we have, is an exact copy of what was provided to Siddique Al-Sor's office by Jamal. THE COURT: I'm sure the defense thinks differently.").

The Court effectively denied the government's motion to preliminarily admit Jamal's deposition at the trial in this case on the basis that there were too many questions about Jamal's credibility and the authenticity of the now multiple copies of the alleged confession. Thus, there is no reason—and certainly no obligation—for the defense to move the Court to reconsider an evidentiary ruling that the Court made before those factual issues arose and in a deposition that the Court has determined it will not admit. Mr. Al-Marimi's continued objection to the admissibility of copies under Federal Rules of Evidence 1002 and 1003 of the alleged confession and Jamal's larger report of statements he allegedly took from other men imprisoned with Mr. Al-Marimi suffices.

b. Mr. Al-Marimi has more than adequately raised a genuine question about the original's authenticity and pointed to sufficient circumstances that make it unfair to admit the duplicate.

The government averred in its response that “the government and Court are left to ponder what precisely the defense means when it says it has raised a genuine issue about the original's authenticity”. ECF No. 495 at 20-21. While Mr. Al-Marimi is confident that the Court understands Mr. Al-Marimi's objection under Rules 1002 and 1003 to refer to the significant amount of briefing that exists in this case regarding Jamal's lack of credibility about the alleged confession document, *see* ECF Nos. 355, 392, 393, 409, 410, 434, Mr. Al-Marimi recaps that briefing here.

Jamal testified that in the end of 2014 or the beginning of 2015, he hand-delivered the original copy of his investigation report—which included an alleged confession from Mr. Al-Marimi—to Al-Siddique Al-Sor, who was then the head of investigations for the Libyan Attorney General's Office. *See* First Day PM Tr. at 79, 81-82; Second Day 2:00 PM Tr. at 25. After Jamal handed the original report to Al-Siddique Al-Sor in the end of 2014 or the beginning of 2015, Jamal testified that he never saw the original copy again. *See* Second Day 2:00 PM Tr. at 40. Jamal further testified that Government's Exhibit 500 contained underlines that Jamal did not make. *See* First Day PM Tr. at 25; Second Day PM 2:00 Tr. at 40. After detailed questioning on direct, on cross-examination, and on redirect, Jamal testified under oath that he believed that Al-Sor or someone in Al-Sor's office made the underlines. Second Day PM2 Tr. at 14-16.

Additionally, Jamal testified under oath for the first time, despite numerous meetings over the years with western law enforcement officials, that he retained a carbon copy of his report at his home in his safe (the same safe in which he kept the alleged video recordings he has since apparently “lost”). Second Day PM1 Tr. at 48-49. Jamal was certain this was a carbon copy not a photocopy. *Id.* Jamal then took photos and then recorded himself flipping through what he continued to unequivocally state was his carbon copy. *See* ECF No. 369 Exs. E and F; ECF No. 434 at 9-12. He described in painstaking detail how he had created this “carbon copy”. *Id.* When the government finally obtained the alleged “carbon copy”, it was patently clear that what Jamal had was a photocopy not a carbon copy. *See* ECF No. 426, Exs. G, H. It was only when the Court ordered the government to confront Jamal about these apparent lies that Jamal had a sudden insight that ECF No. 426, Exhibit G was in fact a photocopy and not a carbon copy and that he, and not Al-Sor or Al-Sor’s employees, had made the underlines Jamal so very clearly testified under oath he himself had not made. *Id.*

After reviewing this evidence, Mr. Al-Marimi pointed out that if Jamal had made a copy of the original report, or of the carbon copy, we would not see smooth sides on both sides of the contents of Exhibit G. ECF No. 434 at 14. But ECF No. 434 Exhibit G-Defense made clearer that many of the pages showed smooth dark lines on both sides of the paper. *See* ECF No. 434, Ex. G-Defense at 13, 19, 20, 21, 22, 23, 25, 26, 27, 36, 41, 56, 57, 58, 59, 60 (both), 61. There are next to no smudge, or transfer, marks anywhere in Exhibit G-Defense where some pressure was inadvertently

applied to the carbon paper leaving marks on the carbon copy. *Compare* ECF No. 426, Ex. K-2 at 1 (transfer marks at lines 25-29) *with* ECF No. 434, Ex. G-Defense. To have next to no such marks throughout 77 pages of alleged carbon copies is mystifying if indeed a carbon copy had been created.

This evidence of alterations, the nature of the paper purportedly used to make the original, and Jamal's changing testimony regarding the same are what Mr. Al-Marimi relies on to show that a genuine issue as to the original's authenticity exists or alternatively, that it would be unfair to admit the duplicate. These issues go far beyond "speculation" or "bald assertions." ECF No. 495 at 23 (citations omitted). *See, e.g., In re Porras*, 224 B.R. 367, 369 (Bankr. W.D. Tex. 1998) ("Where there is a possibility of fraud in the circumstances surrounding the execution of a writing, the reliability of the duplicate is impaired and the court may insist on the original if the opponent demands it."); *see also Lorenzo v. Ashcroft*, 258 F.3d 1160, 1166 (10th Cir. 2001) (excluding photocopy where "there was genuine doubt surrounding the photocopy because the key information contained therein was barely legible"); *United States v. Haddock*, 956 F.2d 1534, 1545-46 (10th Cir. 1992) (abrogated on other grounds) (approving of exclusion of photocopies where no one else "was familiar with the contents of the photocopies" and several of the documents "bore markings and included statements that did not comport with similar documents prepared in the ordinary course of business"); *Carroll v. Lamb*, 614 F.Supp.2d 481, 485 (S.D.N.Y. 2009) ("Rule 1003 excludes a copy where there is a genuine dispute as to the authenticity of an original as an added protection against the receipt of evidence as

to the content of the originals where the original itself might provide evidence of forgery or fraud that cannot be discerned from a copy”); Jack B. Weinstein & Margaret A. Berger, Weinstein’s Evidence Manual § 9.02(3)(c) (2026) (“interlineations in different color inks or pencils may be more readily seen in the original. Determining authenticity of the signature may require production of the original if the signature on the original writing or type or ink color may have to be analyzed”).

c. The government confuses Rule 104’s standard with the determination the Court must make under Rule 1003.

The government further argues that the Court must find that the alleged confession is an accurate copy of the alleged statements before being able to admit the document citing Rule 104. ECF No. 495 at 24. And because courts generally do not consider witness credibility under Rule 104(b), the Court cannot consider Jamal’s credibility in deciding Mr. Al-Marimi’s Rule 1003 challenge. But the government misunderstands the interplay between Rules 104 and 1003. As another court has recognized, “at first blush”, there might be an inconsistency between Rule 104 and Rule 1003, but “[o]n analysis, however, any apparent inconsistency disappears”. *See, e.g., Carroll*, 614 F. Supp. 2d at 485. Rule 1003 involves additional considerations beyond classic questions of fact reserved for the jury. *Id.* The common law best evidence rule (now set forth in Rule 1002) existed to ensure that the trier of fact had the document itself, which was the best evidence of a document. *Id.* As technology advanced, accurate copies became accepted. *Id.*; *see also Weinstein* § 9.02(1). But the “important proviso” set out in Rule 1003 precludes duplicates when a genuine issue

as to the original's authenticity is raised or circumstances exist making it unfair to admit the copy. *Carroll*, 614 F. Supp. 2d at 485.

It is under that “important proviso” in Rule 1003 that courts consider issues like alterations, “circumstances surrounding the execution of the writing present a substantial possibility of fraud”, and whether unfairness exists “even when accuracy of the contents of the writing would readily be conceded, as where something of substantial value may be gained by inspecting the original” (such as whether a signature is forged). Weinstein § 9.02(3)(b)-(c). The Court should thus not accept the government's red herring argument regarding Rule 104.

d. The Court should also deny the government's Rule 1004 argument.

The government complains that Mr. Al-Marimi did not flesh out an objection under Rule 1004. ECF No. 495 at 26-27. But Mr. Al-Marimi did not lodge an objection under Rule 1004. *Compare* ECF No. 483 at 17-19. Should the government lay a sufficient foundation to show that it “**cannot**” obtain the original by “**any** available judicial process” as Rule 1004(b) requires, Mr. Al-Marimi will respond at that time. Fed. R. Evid. 1004(b) (emphases added).

e. The government further misunderstands the interplay between Rules 1008 and 104.

Lastly, the government argues that the Court plays no role under Rule 1008 as to whether “an asserted writing, recording, or photograph ever existed”. Fed. R. Evid. 1008(a); ECF No. 495 at 26-27. But that argument elides the critical phrase in the introductory section of Rule 1008: that the jury decides the specified issues in accordance with Rule 104(b). Fed. R. Evid. 1008. Rule 104(b) allocates to courts to

find whether sufficient proof has been introduced to support a finding that a fact on whose existence conditional relevancy depends. Fed. R. Evid. 104(b).

Thus, while generally, a jury makes the ultimate determination as to whether a document existed, the court's gatekeeping function still comes into play. For example, if the document's opponent challenges that an original never existed and a proffered writing is a fraud, then under Rule 104(b), the court must find that the proponent has introduced "evidence sufficient to support a jury finding that his claimed original is genuine." 2 McCormick on Evid. § 243 (Robert P. Mosteller ed., 9th ed. 2025); *see also* 31 Fed. Prac. & Proc. Evid. § 8064 (2d ed. Update 2026) (describing government's position as "oversimplification" and observing that "if the judge concludes that a reasonable juror could not find that fact exists¹⁰, the judge should exclude the evidence and the jury will never have the opportunity to consider the preliminary fact"); *Pro Bono Investments, Inc. v. Gerry*, 2005 WL 2429777, at *8 (S.D.N.Y. 2005) (finding "insufficient evidence to raise a question of fact for the jury to determine under Federal Rule of Evidence 1008" where parties disputed whether the original document ever existed); *Fox v. Peck Iron and Metal Co., Inc.*, 25 B.R. 674, 679 (Bankr. S.D. Cal. 1982) (finding that under Rule 1008, before letting a document be submitted to the jury, a court must find "substantial evidence from which the trier of fact might conclude that the document is authentic").

¹⁰ The cases that the government cites observe the same. *See United States v. Wilde*, 674 F. App'x 671, 673 (9th Cir. 2017) ("court exercised its gate-keeping function under Rule 104(b) and determined a reasonable jury could conclude that the disputed email existed"); *United States v. Grayson*, 2025 WL 2366262, at *4 (6th Cir. 2025) ("district court had ample grounds to conclude that the original recording was lost through no fault of the government"), vacated by *Grayson v. United States*, 608 U.S. ----, 2026 WL 1780407 (June 22, 2026).

Here, Mr. Al-Marimi submits that based on the above facts regarding Jamal's testimony and the events since his testimony, no reasonable jury could conclude that an unaltered carbon copy of the alleged confession existed, and thus, no duplicate of the same can be allowed.

VI. Federal Rules of Evidence 404(b) and 403 (Exhibits 505 and 508).

The government disagrees that a photo of Mr. Al-Marimi in prison garb and behind the bar of a prison cell in Exhibit 505 is “evidence of any other act” under Rule 404(b). ECF No. 495 at 27. But as courts have acknowledged, the obvious inference is that “the accused has a history of convictions or arrests’—even where that kind of evidence is otherwise excluded.” *United States v. Clotaire*, 963 F.3d 1288, 1299 (11th Cir. 2020) (quoting *United States v. Reed*, 376 F.2d 226, 228 n.2 (7th Cir. 1967)). Accordingly, there has been “longstanding judicial skepticism about the use of mug shots in criminal trials[,]” and the same logic extends to other depictions that suggest other criminality. *Id.* “That evidence might tempt the jury to prejudge the defendant, denying him a fair opportunity to defend against a *particular* charge.” *Id.* (internal quotation marks omitted).

Here, Jamal is not identifying Mr. Al-Marimi related to the charged conduct; rather, his identification concerns the person he interviewed. There is no real need for an identification based on a photograph taken at a different time and location, when Jamal was not present. And while the government assumes the admission of testimony relating to Mr. Al-Marimi's detention, a reference to detention is very different from a recording that depicts a person in prison garb and behind bars. The

simple fact that a recording was made of the person in a prison implies something beyond detention itself.

Exhibit 508 is even more unduly prejudicial than Exhibit 505, as it depicts the identified man in a crowded cell, surrounded by other prisoners and guards standing watch. The self-identification and the fact of recording will cause the jury to speculate about what those in the cell are accused of and why the media was permitted access to whatever proceeding took place that day.

VII. Hearsay.

a. The Scottish evidence labels contain testimonial hearsay.

Mr. Al-Marimi responds to the government's exhibit-specific hearsay arguments in the table below. Separately, the government's apparent strategy to admit and rely on the Scottish evidence labels, with supporting testimony from a supervisory officer, to establish foundation and help authenticate numerous exhibits implicates the rule against hearsay and the Confrontation Clause. *See* U.S. Const. Amend. XI; ECF 296-2 (discussing legal standards).

Each tag purports to record where evidence was found, when, and by whom. Indeed, the government's witness states that the "handwritten notes" on the labels "provide a description of the article" and "a description of where it was found." Decl. of Paul Grainger 2–3, ECF 495-2. The government is offering these descriptive statements to prove that each piece of evidence was, in fact, what its label describes and that each was, in fact, found where, when, and by whom the label specifies. *Compare with United States v. Bentley*, 489 F.3d 360, 365 (D.C. Cir. 2007) (finding no

error for admission of similar evidence labels when the statements were “merely cumulative of properly admitted evidence, including the testimony of the officer who filled each label out).

The other part of the confrontation inquiry is whether the statements are testimonial in nature, and the statements on each tag plainly are. A statement is testimonial when its primary purpose is to prove past facts for use in a future criminal prosecution. *Ohio v. Clark*, 576 U.S. 237, 245 (2015). Once investigators are no longer “seeking to determine . . . what is happening, but rather what happened,” then “there is no emergency in progress” that might otherwise provide a nontestimonial purpose. *Davis v. Washington*, 547 U.S. 813, 829–30 (2006) (internal quotation marks omitted). The label included in Det. Grainger’s report is dated March 21, 1991, more than two years after the crash, and he accurately describes the creation of the labels as happening “during the criminal investigation into the bombing.” ECF 495-2, at 2. So, the labels were created to establish past events potentially relevant to later criminal prosecution. *Davis*, 547 U.S. at 822.

While it generally “is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence . . . what testimony *is* introduced must (if the defendant objects) be introduced live.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 311 n.1 (2009).

b. Proposed exhibits that are inadmissible as they constitute impermissible hearsay.¹¹

Exhibit Number or Series	Description	Defense Objection	Government Response	Defense Reply
202-210	Photos of crash site, divided by sector.	Written summaries of photos, included in each exhibit, are hearsay.	The government does not intend to offer the written summaries, which were provided to the defense for convenience.	The defense accepts the government's withdrawal of the written summaries.
211	Photographs of pieces of luggage container.	Tags included in the photographs include statements about what the item purportedly is and where it was recovered.	The tags are not offered for the truth of the matters asserted thereon. They are offered to show the accuracy and thoroughness of the recordkeeping and investigation. Even if a tag were inaccurate, the government would introduce that tag. Second, the government expects to lay the foundation that the majority of the tags were filled out at the time of recovery, while the recovering officers were observing the item, thus making them admissible under the present-sense impression exception. <i>See Fed. R. Evid. 803(1).</i> Finally, these tags were all created prior to 1998, and their authenticity will be established by persons familiar with the	As discussed above, the tags constitute inadmissible hearsay and, if otherwise admissible, violate the Confrontation Clause.

¹¹ Some objections may be resolved upon further disclosure of the government's witnesses.

			crime scene process and procedures in this case, thus making them admissible under the ancient documents exception. <i>See</i> Fed. R. Evid. 803(16).	
213	Pieces of recovered metal and debris.	Tags included in final photograph include statements about what the item purportedly is and where it was recovered	The tags are not offered for the truth of the matters asserted thereon. They are offered to show the accuracy and thoroughness of the recordkeeping and investigation. Even if a tag were inaccurate, the government would introduce that tag. Second, the government expects to lay the foundation that the majority of the tags were filled out at the time of recovery, while they were observing the item, thus making them admissible under the present-sense impression exception. <i>See</i> Fed. R. Evid. 803(1). Finally, these tags were all created prior to 1998, and their authenticity will be established by persons familiar with the crime scene process and procedures in this case, thus making them admissible under the ancient documents exception. <i>See</i> Fed. R. Evid. 803(16).	As discussed above, the tags constitute inadmissible hearsay and, if otherwise admissible, violate the Confrontation Clause.

217 218	Map of Sectors	Map purports to show recovery of evidence at particular locations.	There is no statement identified by the defense. The government intends to present the testimony of a witness with knowledge or other foundational testimony to authenticate the maps.	The locations of recovered evidence indicated on the map constitutes an out of court statement for the truth of where the items were recovered. While demonstrative evidence is admissible, it must be based on evidence that is otherwise admissible in its own right. ¹²
303	AAIB report	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government does not intend to introduce this exhibit in its case-in-chief, but is marked for refreshing recollection or impeachment. Should this item become relevant during trial, the government would provide a basis for admission prior to its introduction.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
304.001-003	Diagrams of plane	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government intends to present a witness with knowledge or other foundational testimony.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
305	Feraday RARDE Examination Notes	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government does not intend to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.

¹² FRE 1006.

306	Interim FAI Report	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government does not intend to introduce this exhibit in its case-in-chief, but is marked for refreshing recollection or impeachment. Should this item become relevant during trial, the government would provide a basis for admission prior to its introduction.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
307	Feraday Folder Notes	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government does not intend to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
308	Spectra Printouts	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government does not intend to introduce this exhibit in its case-in-chief.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
310	Report on Test Explosions	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government does not intend to introduce this exhibit in its case-in-chief, but is marked for refreshing recollection or impeachment. Should this item become relevant during trial, the government would provide a basis for admission prior to its introduction.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
302.348	Photograph of "MEBO" circuit board diagram	Handwritten notes indicate "MEBO," which is an out of	An objection to this document is currently pending before the Court. See ECF 398-1 at 3 n.2.	Mr. Al-Marimi maintains his objection.

		court statement, about the origins of the timer.		
313.000	Handwriting report	The report constitutes hearsay because these are the expert's out of court statements offered for the truth of the matter asserted. The expert can testify about his conclusions and the bases for his conclusions, and use his report to refresh his recollection if needed.	The government does not intend to introduce the report in evidence, but it may use some of the charts and illustrations as demonstrative exhibits with the witness.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented and cannot take a position on the demonstrative charts and illustrations until he knows which ones the government intends to use.
506 506-t	Law enforcement officer statement to Scottish law enforcement.	These statements constitute hearsay because they are out of court statements offered for the truth of the matter asserted. To the extent that the government seeks to introduce particular statements as prior consistent statements, the government can seek to elicit individual statements on redirect after Jamal's credibility is	The government does not intend to introduce these exhibits in its case-in-chief.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.

		attacked on cross-examination.		
602	OPK/Box – full file	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government specifically noted that these exhibits were for identification only. It does not intend to introduce them in its case-in-chief.	The defense accepts the government’s representation that it does not intend to introduce the exhibit in evidence, but reiterates that, should the government change its position, regardless of the phase of the trial, it must be properly admissible.
605	OPK/Rinde – full file	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government specifically noted that these exhibits were for identification only. It does not intend to introduce them in its case-in-chief.	The defense accepts the government’s representation that it does not intend to introduce the exhibit in evidence.
606	Typed report from Rinde file	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government specifically noted that these exhibits were for identification only. It does not intend to introduce them in its case-in-chief.	The defense accepts the government’s representation that it does not intend to introduce the exhibit in evidence.
607	Handwritten report from Rinde file	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government specifically noted that these exhibits were for identification only. It does not intend to introduce them in its case-in-chief.	The defense accepts the government’s representation that it does not intend to introduce the exhibit in evidence.
610	Masud & Shadi MfS cards	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government specifically noted that these exhibits were for identification only. It does not intend to introduce them in its case-in-chief.	The defense accepts the government’s representation that it does not intend to introduce the exhibit in evidence.

803	Air Malta weekly flight schedule	The document contains out of court statements, and the government has not yet shown it meets the requirements of the business records exception	This exhibit is pending before the Court. See ECF 326 at 2-4. If the Court does not provisionally admit it, the government will present a witness with knowledge or other foundational testimony if it seeks admission.	The government's response is insufficiently specific to resolve Mr. Al-Marimi's objection, and the defense maintains its hearsay objection.
824-863, 870	Maltese Embarkation and Disembarkation Records	These immigration records are out-of-court statements offered to prove the truth of the matter asserted — namely, the identity, nationality, and travel history of the declarant — so, the Government must establish that they qualify under a recognized exception, including whether they constitute business records under FRE 803(6) or public records under FRE 803(8) prior to admission.	The government intends to present testimony that will establish the applicability of 18 U.S.C. § 3505, Fed. R. Evid. 803(6) and/or 803(8).	The foreign business records exception does not resolve the double hearsay problem in these documents as the substantive entries reflecting identity, nationality, and travel history were self-reported by the traveler rather than independently observed or recorded by the receiving official, requiring an independent exception for that embedded layer of hearsay under FRE 805. Mr. Al-Marimi' maintains his objection.
867	Fhimah Diary	The writing contained in the exhibit constitutes	Fhimah is a co-conspirator and the portions of his diary that the government seeks to	Fhimah, notably, was acquitted at the previous trial. The government has not

		hearsay because they are out of court statements offered for the truth of the matter asserted.	introduce were made during and in furtherance of the conspiracy. They are thus admissible under Fed. R. Evid. 801(d)(2)(E).	shown a conspiracy or explained how the specific statements furthered the alleged conspiracy. <i>See</i> ECF 496.
901 902 909	Megrahi's Czech visa	The contents of visas and visa applications are hearsay as they contain out of court statements offered for the truth of the matter asserted, namely, that the bearer was authorized to travel to and enter a particular country during a particular period	The government has moved for admission of Exhibits 901 and 902. <i>See</i> ECF 490 at 4-6. The government does not anticipate moving to admit Exhibit 909 in its case-in-chief, but it notes that Exhibit 909 is a blank visa application exemplar. It thus contains no assertions and is not hearsay.	Mr. Al-Marimi acknowledges that Exhibits 901 and 902 are now pending ruling.
1002 1021 1023 1025 1027 1029 1030	Frankfurt airport and airline documents	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	Exhibit 1002 are photographs, which are not statements. For the other exhibits, the government will present the appropriate foundational testimony if it seeks their admission.	Mr. Al-Marimi maintains his objection as to any written statements contained in the photographs. As to the other exhibits, Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.
1108-1120	Heathrow airport and airline documents	Without a sufficient witness or foundation, the documents constitute inadmissible hearsay.	The government will present either appropriate witness testimony or certifications to establish hearsay exceptions.	Mr. Al-Marimi maintains his objection until a hearsay exception or a sufficient non-hearsay basis is presented.

1303 1306 1307 1308 1309	Japanese (Toshiba) documents	The owner's manual, sales summary, address list, and handwritten notations contained within or appended to these documents are out-of-court statements. The printed business documents may qualify as business records with the proper foundational testimony, but the handwritten notations constitute a separate layer of hearsay requiring their own independent exception, as the author, timing, and circumstances of those notations have not been established.	The government will present appropriate witness testimony if it seeks admission of these exhibits.	The Government identifies no witness capable of laying foundation for the underlying business records or the handwritten notations. As to the latter, its generic assurance of 'appropriate witness testimony' is insufficient — the author, timing, and circumstances of the notations remain entirely unestablished. Mr. Al-Marimi maintains his objection as to both layers.
1400 Series	Senegalese documents	These foreign law enforcement records are out-of-court statements offered to prove the truth of the matter asserted — namely, that items were	As noted previously, the government is unlikely to admit these items in its case-in-chief. If it does, it will present appropriate testimony to authenticate the documents and establish the applicability of any hearsay exceptions.	The Government's response does not explain how it intends to overcome the express exclusion under FRE 803(8)(A)(ii) of law enforcement investigative records

		seized, that certain persons were arrested, fingerprinted, interrogated, transferred and released, and that seized items were destroyed. They do not qualify as public records under FRE 803(8) because that exception expressly excludes records prepared by law enforcement personnel in criminal investigations.		offered against a defendant. Mr. Al-Marimi maintains his objection as to any stage of trial.
1503 1505 1507-1512 1518 1521-4 1526-7 1532-3 1535-6 1540-1545 1547-1549 1557	Swiss documents (MEBO)	These assorted business documents are out-of-court statements offered to prove the truth of the matter asserted, and the government has not identified an applicable hearsay exception for each document or category of document. The government seeks to introduce these documents through a law enforcement witness, and Mr.	The government is unlikely to admit these items in its case-in-chief. If it does, it will present appropriate testimony to authenticate the documents and establish the applicability of any hearsay exceptions.	The Government's response does not identify a witness with personal knowledge of the seized business's record-keeping practices, does not explain how a law enforcement witness can serve as a qualified foundation witness for documents seized from a third-party business, and does not identify which hearsay exception upon which the government will rely. Mr. Al-Marimi maintains his

		Al-Marimi maintains that such witness cannot serve as a custodian or qualified witness required to lay business records foundation. Similarly, the law enforcement reports are expressly excluded from the public records hearsay exception.		objection as to any stage of trial.
1549-1556; 1558-1578	Swiss Documents (Travel)	Visa applications and hotel registrations are out-of-court statements offered to prove the truth of the matter asserted — namely, the identity, travel intentions, and lodging history of the declarant.	Exhibits 1549, 1550, and 1559 are currently pending before the Court. See ECF 450 at 2. As described above, the government expects to move for the admission of Exhibit 1564 and 1565 under Fed. R. Evid. 803(16) at trial. The government does not intend to introduce the remaining exhibits in its case-in-chief.	The Government's reliance on FRE 803(16), the ancient documents exception, does not resolve the double hearsay problem inherent in hotel registrations. As to the remaining exhibits, Mr. Al-Marimi maintains his objection as to any stage of trial.
1921-1926	Passports	The contents of these passports are hearsay because they are out-of-court statements offered for the truth of the matter asserted.	Passports qua passports are more properly characterized as public records than business records, U.S. v. Pluta, 176 F.3d 43, 49 (2nd Cir. 1999) citing to 31 M. Graham, Federal Practice and Procedure §	The <i>Pluta</i> case indicates that while passports can be determined to be public records, that does not mean they always will be. 176 F.3d at 49-51; see also <i>United States v. Osario</i> , 854 F.2d

			6759, at 404 n.2 (interim ed. 1997) ("public records and reports of foreign governments," including "passport records," are within scope of Rule 803(8)). As such, the passports are admissible as public records.	1318, at *2 (4th Cir. 1988) (rejecting authentication attempts of passports under Rule 901). Furthermore, the D.D.C. appears to have recognized passports' "hearsay status" and approved of their admission under Rule 803(8) only for the limited purpose of establishing citizenship. <i>United States v. Clarke</i>, 628 F. Supp. 2d 15, 22 & n.6 (D.D.C. 2009); <i>see also United States v. Ullah</i>, 282 F. App'x 923 (2d Cir. July 2, 2008) (approving exclusion of foreign passport as hearsay based on purpose for which evidence was offered).
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CONCLUSION

Mr. Al-Marimi requests that the Court grant this motion and issue the requested pretrial evidentiary rulings.

Respectfully submitted,

**ABU AGILA MOHAMMAD
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