

**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)

**NOTICE OF ADDITIONAL AUTHORITY IN SUPPORT OF GOVERNMENT'S
OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE PORTIONS OF HIS
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 this notice of additional authority in support of its opposition to the defendant's motion to exclude portions of his statement under the Federal Rules of Evidence. Specifically, the government submits that D.C. Circuit authority also establishes that the statements that the defendant identifies as hearsay within his statement are admissible under Fed. R. Evid. 801(d)(2)(B) as his own adoptive admissions. The government also submits below and updated version of the chart it offered in ECF 491. The only change to that chart from the previous version is the addition of Fed. R. Evid. 801(d)(2)(B) as an alternative theory of admission for each statement in the right-most column. The government does not object to the defense responding to this notice either in its pleading due on Monday, June 22, 2026, or at any point prior to 12:00 p.m. on Wednesday, June 24, 2026, and the government will then incorporate any reply into its pleading due at 12:00 p.m. on Friday, June 26, 2026.

The Federal Rules of Evidence define as non-hearsay any statement that a party-opponent "manifested that it adopted or believed to be true." Rule 801(d)(2)(B). In *United States v. Beckham*, 968 F.2d 47, 52 (D.C. Cir. 1992), the D.C. Circuit held that a defendant taking action in

response to a statement shows that the defendant adopted it or believed it to be true. The statement at issue in *Beckham* was a third-party drug dealer stating, to an undercover officer, “I only had one [rock of crack], but you can get another from my buddy,” with “buddy” referring to Beckham, the defendant in that case. 968 F.2d 47, 49 (D.C. Cir. 1992). After hearing that statement, Beckham “immediately got up from his chair, walked over to a stash of crack that was packaged for distribution, and began to open it.” *Id.* at 52. The D.C. Circuit held that “[b]y that action, Beckham indicated his endorsement of [the original drug dealer’s] statement,” and thus the statement was admissible against Beckham under Rule 801(d)(2)(B). *Id.*

In this case, the defendant manifested that he adopted and/or believed to be true the challenged statements in multiple ways. For example, the defendant manifested an adoption of the various directives he was given by other ESO members by carrying out those directives. He also manifested a belief that post-attack reports, such as those contained in Statements 5 and 14 below, were true. Then, during his 2012 interview, the defendant told Jamal about the statements of others and connected them to the acts he took with respect to the La Belle Discotheque and Pan Am 103 bombings, manifesting a belief (with respect to the various directives he was given) or that those earlier statements were true (with respect to the post-attack reports). *See United States v. Safavian*, 435 F. Supp. 2d 36, 43-44 (D.D.C. 2006) (defendant forwarding some emails manifested an adoption or belief in the emails he forwarded). By the same mechanism, the defendant manifested an adoption or belief of post-attack interactions with ESO superiors such as Abdullah Senussi and Muammar Qaddafi, as recounted in Statements 17 and 19. Accordingly, the Court should admit the challenged statements as adoptive admissions under Rule 801(d)(2)(B), in addition to the other provisions that the government has identified.

UPDATED CHART OF STATEMENTS**1. Challenged Statements regarding the La Belle Discotheque Bombing**

	Statement	Rule 801(c) Argument	Other Provisions Admissible Under
1.	[Saʿīd Rāshid] asked me to travel to East Germany and meet the Security Officer at the Libyan Embassy, a man named ʿAlī 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) • 801(d)(2)(B) • 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) • 801(d)(2)(B) • 804(b)(3)
3.	and I knew since Saʿīd 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 Rashid to go to E. Germany	• 801(d)(2)(E) as to Rashid informing him to go to E. Germany • 803(3) (Rashid’s then-existing plan) • 801(d)(2)(B)
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.	• 801(d)(2)(E) • 801(d)(2)(B) • 804(b)(3)

		It goes to the effect on the defendant and his state of mind, in that he believed his bomb to have been used.	
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)¹ 801(d)(2)(B) 804(b)(3)
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.	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

¹ 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.

		• 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.	about the number killed or wounded. • 801(d)(2)(B), if the Court finds a statement
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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 ʿAbdulkarīm	• 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) • 801(d)(2)(B)
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 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	• 801(d)(2)(E) • 801(d)(2)(B) • 804(b)(3)

		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) • 801(d)(2)(B) • 804(b)(3)
10.	And, according to what 'Abdullah Al-Sanūsī told me, 'Abdulbāšit 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) • 801(d)(2)(B) • 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) • 801(d)(2)(B) • 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	• 801(d)(2)(B)

		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)² 801(d)(2)(B) 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. - 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	- 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. 801(d)(2)(B)

² 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).

		plane had gone from Malta to Frankfurt to America.	
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. 801(d)(2)(B) – if the Court finds there was a statement, the defendant adopted belief in its veracity.
16.	Q. Where did each of 'Abdulbāšit Al-Magrahī and Al-'Amīn Fhīma work? A. 'Abdulbāšit Al-Magrahī worked in the External Security Organisation and was responsible for the security of planes and Al-'Amīn Fhīma, what	- Defendant has not carried his burden of identifying an out-of-court statement 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	Should the Court find that this information came to the defendant from Megrahi, Fhimah, or someone else in the ESO, it is admissible under Rule 801(d)(2)(E).

	I knew was that he worked for the Libyan Airlines Company.	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.	• 801(d)(2)(B)
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) • 801(d)(2)(B) • 804(b)(3)
18.	[Al-Magrahī] 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) • 801(d)(2)(B)
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) • 801(d)(2)(B) • 804(b)(3)
20.	We left about a quarter of an hour later after ‘Abdullah Al-Sanūsī had been tasked with looking after us and granting all our requests.	• 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 being taken care of, regardless of whether that is true.	• 801(d)(2)(E) • 801(d)(2)(B)
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) • 801(d)(2)(B) • 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) • 801(d)(2)(B) • 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.
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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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