UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**No. 1:22-cr-392 (DLF)**
	)	
ABU AGILA MOHAMMAD MAS'UD KHEIR AL-MARIMI,	)	
Defendant.	)	

MR. AL-MARIMI'S RESPONSE TO THE GOVERNMENT'S ADDITIONAL AUTHORITY ON ADOPTIVE ADMISSIONS

Mr. Al-Marimi addresses the government's arguments under Rule 801(d)(2)(B). *See* ECF No. 496. While the Court has not accepted the government's filing or ordered a response, Mr. Al-Marimi states his position opposing the admission of the alleged statements under the adopted admissions hearsay exemption.

I. Legal Standard

An out-of-court statement is admissible against a party if the statement "is one the party manifested that it adopted or believed to be true." Fed. R. Evid. 801(d)(2)(B). The D.C. Circuit has explained that the party "must have 'understood and unambiguously assented to [the] statement,'" which "may be established through conduct as well as words." *United States v. Beckham*, 968 F.2d 47, 51–52 (D.C. Cir. 1992) (quoting *Naples v. United States*, 344 F.2d 508, 511 (D.C. Cir. 1964)). According to Wright & Miller, the court "must assess, in light of typical human behavior, whether a statement uttered by another person can fairly be characterized as a statement of the opposing party." 30B Fed. Prac. & Proc. Evid. § 6774 (2026 ed.); *see*

also Fed. R. Evid. 801, Advisory Committee Notes ("The decision in each case calls for an evaluation in terms of probable human behavior.").

I. Argument

The government argues every challenged statement is also an adopted admission, without presenting detailed arguments. Its stated reasoning amounts to:

i. "Directives" were adopted when they were carried out.

ii. By repeating the statements of others to Jamal and "connect[ing] them to the acts he took[,]" Mr. Al-Marimi manifested a belief that those statements were true—the same as if he had forwarded emails. In particular, the government points to:

   a. the post-attack reports in statements 5 and 14; and

   b. the post-attack interactions with Senussi and Qaddafi in statements 17 and 19.

ECF No. 496 at 2.

Based on defense research, few cases in this circuit have discussed this hearsay exemption in depth. And those that have addressed the exemption, including the cases cited by the government, involved very different situations from statements repeated in a defendants' alleged confession.

The government relies on *Beckham*, which involved a declarant who was asked about other drugs for sale and responded, "I only had one, but you can get another from my buddy." 968 F.2d at 50. At that moment, "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 court explained that the "completion of a drug transaction constituted adoption of the statements of the person who proposed it" when the party "responded directly" to a statement that "indicated [his] intent to distribute the drugs he possessed." *Id.*

The only other case cited by the government is *United States v. Safavian*, 435 F. Supp. 2d 36 (D.D.C. 2006), in which the court admitted some forwarded emails under the exemption. The court went on to note that "[o]ther emails forwarded by Mr. Safavian do not clearly demonstrate his adoption of the contents, and therefore are not admitted under Rule 801(d)(2)(B)." *Id.* at 44. The court had "read each of the emails with care" and considered their "context and content[,]" but it did not express its reasoning with respect to any particular email admitted or not admitted under the exemption. *Id.* at 43.

These authorities do not support the government's arguments. *Beckham* involved a statement that was directly and immediately adopted by the defendant's conduct in response to it: as the "buddy" referred to by the declarant, he went to go get the drugs that the declarant said he possessed. It is unlike a situation where a defendant allegedly repeated statements from years earlier that were made in various ill-defined contexts, where the only evidence of how the defendant may have reacted to those statements comes from the same unreliable discussion.

Safavian, meanwhile, offers no guidance on how to apply the exemption to relayed statements or the line separating adoption from mere relay. At most, it supports an argument that the act of forwarding an email *can* but *does not always*

manifest an adoption or belief in the forwarded statement. Even if the simple repeating of others' statements to Jamal could support Mr. Al-Marimi's adoption of some of those statements when certain circumstantial factors are present, the government identifies no principle to help the Court determine which statements qualify for the exemption or why.

The government's arguments about "directives" merely repackage its earlier arguments that such statements are not offered for their truth, despite the factual information communicated in each statement. Separately, to show that Mr. Al-Marimi adopted the "directives" by complying with them, the government must show that Mr. Al-Marimi complied with them. While the facts in *Beckham* didn't involve an express directive, that case involved separate evidence showing how the defendant responded to the statement he supposedly adopted. Nothing similar is available here for these statements; the government wants to use other parts of the alleged confession to admit these parts of the alleged confession, despite its overall unreliability and the additional reliability issues present for all hearsay. Consistent with the skepticism expressed in the first June 15, 2026, Minute Order, the Court should not be persuaded.

As for the statement numbered 5 and 14, which the government describes as post-attack reports, there are other issues. Both reflect the mere relay of information from other sources, and nothing about the context indicates that Mr. Al-Marimi was in any way vouching for its accuracy or intending to adopt the information as true. In statement 5, for example, he was simply repeating what the broadcast said to Jamal.

Finally, statements 17 and 19 have the same defect, but even more pronounced. Mr. Al-Marimi allegedly said nothing more than that he was thanked for the success of the operation and praised for what the declarant regarded as a patriotic act carried out with precision. Those are not Mr. Al-Marimi's own words, and there is no context that indicates he agreed, or nodded, or smiled, or told Jamal that those descriptions were spot on. He simply repeated the words others allegedly used, without endorsement or affirmation. If these conversations took place, for all the context that is known about them, Mr. Al-Marimi could have thought the praise and thanks unearned or hyperbolic. Application of Rule 801(d)(2)(B) is unwarranted.

CONCLUSION

The government has not presented any persuasive arguments for the admission of any alleged statement under Rule 801(d)(2)(B).

Respectfully submitted,

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