

**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 GOVERNMENT'S SUPPLEMENTAL
PLEADING REGARDING CHALLENGE TO DEFENDANT'S STATEMENT
UNDER THE FEDERAL RULES OF EVIDENCE AND CHARTS RELATED
TO ALLEGED DISCRETE CONSPIRACIES**

Pursuant to the Court's August 2, 2026, Minute Order, Mr. Al-Marimi responds to 1) the government's unordered and unprompted filing about Qaddafi's congratulatory statements from Mr. Al-Marimi's alleged confession, and 2) the government's charts about the three discrete theories the Court asked the government to submit during the July 30, 2026, hearing. *See* ECF No. 573.

I. The government's unordered and unprompted arguments about the challenged Qaddafi statement are unavailing.

a. The Court should reject the government's continued efforts to elide the true purpose of admitting the challenged Qaddafi statement, which is for the truth contained in those assertions.

As an initial matter, the government misunderstands the defense argument from the July 30, 2026, about the inferences that flow from the alleged Qaddafi statement at issue. *See* ECF No. 573 at 2. The challenged statement says, “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.” ECF No. 232-2 at 19 (using pagination on upper right-hand corner of

page). The assertions therein are that 1) Qaddafi thanked and praised Megrahi and Mr. Al-Marimi, and 2) Qaddafi's praise was based on Qaddafi's assessment that Megrahi and Mr. Al-Marimi had performed a great patriotic act against the Americans with precision. Mr. Al-Marimi's point in discussing the inferences at the July 30, 2026, hearing was to make clear that the only way one could potentially view the challenged statement as expressing Qaddafi's state of mind is to make inferences from the alleged assertions. And as the government has routinely attempted to do in this case, the government's efforts to dress up the statements as being offered for a "non-truth" is not persuasive. The relevance of the statements and the inferences the government would like the jury to draw necessarily depend on the truth of the statements.

As Mr. Al-Marimi has argued before, *see* ECF No. 229 at 20 and ECF No. 256 at 20, the Court cannot accept at face value the government's blanket and convenient assertions that the above-cited statements are not offered for the truth of the matter asserted. *See United States v. Graham*, 47 F.4th 561, 567 (7th Cir. 2022) ("A statement is offered to show an effect on the listener only if the listener heard and reacted to the statement, and if the 'actual use' of the statement at trial was to demonstrate the listener's response.") (citations omitted); *Am. President Lines, LLC v. Matson, Inc.*, 775 F. Supp. 3d 379, 404 (D.D.C. 2025) (rejecting effect-on-listener argument when the statements' relevance turned on their truth).

- i. The Court should reject the government's first assertion that it is offering the challenged statement to show Mr. Al-Marimi's intent.*

The government's first argument about intent assumes facts not in evidence. The government asserts that because Mr. Al-Marimi's alleged confession does not contain a response to Qaddafi's alleged detailed statement of praise and gratitude that that necessarily means that Mr. Al-Marimi felt "no surprise or disappointment at being told that his operation was considered a success". ECF No. 573 at 3. Such an inferential leap is not supported by the facts. *See, e.g., Graves-Buckingham v. Mullin*, 2026 WL 2123157, at *4 (D.D.C. 2026) (observing that jury could make one necessary finding without making an inferential leap to a proffered second finding); *Bowden v. Clough*, 658 F. Supp. 2d 61, 81 (D.D.C. 2009) (finding that specific comment did not provide sufficient basis to conclude inferred meaning); *Stephens v. U.S. Dep't of Labor*, 571 F. Supp. 2d 186, 194-95 (D.D.C. 2008) (rejecting attempted inferential leap that was based ultimately on speculation).

But, the government's argument about Mr. Al-Marimi's alleged intent further requires the Court to ignore how the formation of intent works as a legal matter. The government is correct that it must show that Mr. Al-Marimi acted willfully. *See* ECF No. 575 at 3 (citing 6/8/26 Tr. at 29, which says, "The government must prove as an element of both charges that the defendant acted willfully when he caused the bomb he had built to be placed on the airplane in Malta."). However, one does not show mens rea at the time of an offense by pointing to evidence that someone months later did not report expressing "surprise or disappointment at being told that his operation was considered a success". *See, e.g., United States v. Fairchild*, 990 F.2d 1139, 1142

(9th Cir. 1993) (“The defense rightly insists that ‘the criminal intent essential to the commission of the crime must exist at the time of the criminal act.’”) (citing *United States v. Fox*, 95 U.S. 670, 671 (1877) (“The criminal intent essential to the commission of a public offence must exist when the act complained of is done: it cannot be imputed to a party from a subsequent independent transaction.”)).

ii. The Court should reject the government’s second assertion that it is offering the challenged statement to “provide context”.

First, the government asserts that “the Court appeared to agree that ‘he praised and thanked us’ is not hearsay being offered for the truth of any matter asserted”. ECF No. 573 at 4. The transcript does not reveal anywhere in the Court’s discussion of the challenged Qaddafi statement that the Court “appeared to agree” that the “praised and thanks” was not offered for the truth of the matter asserted. 7/30/26 Tr. at 49-53.

Second, the government wants to admit that Qaddafi’s praise was based on Qaddafi’s assessment that Megrahi and Mr. Al-Marimi had performed a great patriotic act against the Americans with precision as “context” to explain why Qaddafi would have allegedly been praising Megrahi and Mr. Al-Marimi. The government’s cases provide no support for its “context” argument. In *United States v. Gaytan*, 649 F.3d 573, 580 (7th Cir. 2011), the Seventh Circuit observed that the challenged statements were not offered to prove the truth of the statements but to provide context for the defendant’s stated response, which was not hearsay because it was a statement made by the opposing party under Fed. R. Evid. 801(d)(2). *See also United States v. Thomas*, 370 Fed. Appx. 8, 14 (11th Cir. 2010) (holding the same).

That is not the case here. The government seeks to admit Qaddafi's own statement to provide "context" for Qaddafi's earlier stated praise. And the relevance of the "context" clearly depends on the "context's" truth.

iii. The Court should reject the government's third assertion that it is offering the challenged statement to show Mr. Al-Marimi's alleged status within Libya's external security apparatus.

As an initial matter, the government's citation to *United States v. Cesareo-Ayala*, 576 F.3d 1120, 1129 (10th Cir. 2009), warrants addressing. In that case, the Tenth Circuit was evaluating a hearsay challenge to statements by a declarant who had just been arrested and was cooperating with the police by calling up the defendant to arrange a drug buy. *Id.* at 1122. During that call, the declarant made four statements that were assertions that could not have been offered for the truth because they were "demonstrably false". *Id.* at 1129. The lines from *Cesareo-Ayala* that the government quotes make the point that the purpose for which the statement is being offered is what matters. *Id.* And what the defense has pointed out throughout many portions of this case is that the government gives lip service to arguing a non-truth purpose, but at bottom, the government's arguments rest on the statements' truth.

Here, about three months after Pan Am 103 exploded, Qaddafi allegedly thanked Megrahi and Mr. Al-Marimi for successfully carrying out a precise and patriotic operation. The government wrings out of this statement that "the defendant, his ESO colleagues, and Qaddafi were all bound together by an ongoing organizational structure". ECF No. 573 at 5. It concludes that "Qaddafi's words of

congratulations to the defendant are highly probative evidence of the existence and nature of their structural relationship”. *Id.* But as the government’s state-of-mind section proves, the government in reality seeks admission of this statement to prove its “theory of the case is that the bombing of Pan Am 103 was motivated by Qaddafi’s desire for revenge against the United States”. ECF No. 573 at 7. Further, the government asserts, “Qaddafi’s after-the-fact satisfaction with the result is supportive of an inference that, at the very least, he conducted the ESO’s affairs in a way that caused his subordinates to perceive that he would approve of their bombing a U.S. civil aircraft. A person’s satisfaction with an outcome is strongly suggestive that it was an outcome they desired.” *Id.* at 8. Without question, unctuousness aside, the government intends to offer this statement for its truth about great patriotic acts against Americans carried out with precision.

b. The challenged statement does not meet the criteria to be admitted under Federal Rule of Evidence 803(3).

Lastly, without identifying the requirements of the rule, the government seeks to offer the challenged Qaddafi statement under the state-of-mind exception to the hearsay rule in Fed. R. Evid. 803(3). The text of 803(3) provides that the exception applies to illustrations of the declarant’s “then-existing mental state,” with particular mention of a declarant’s “motive, intent, or plan.” Fed. R. Evid. 803(3). An expression of gratitude falls into none of these three categories.

Additionally, Rule 803(3) “narrowly limits” admissible statements to “declarations of condition.” *United States v. Slatten*, 395 F. Supp. 3d 45, 87 n.114 (D.D.C. 2019); *see also United States v. Samaniego*, 345 F.3d 1280, 1282-83 (11th Cir.

2003) (observing that purpose of the exclusion from Rule 803(3) admissibility is to “narrowly limit those admissible statements to declarations of condition”) (quoting *United States v. Cohen*, 631 F.2d 1223, 12215 (5th Cir. 1980)). Rule 803(3) “cannot be used to prove that the event that caused the state of mind actually occurred.” *American President Lines, LLC v. Matson*, 775 F. Supp. 3d 379, 404-05 (D.D.C. 2025); *see also Slatten*, 395 F. Supp. 3d at 87 (observing that Rule 803(3) “does not permit the declarant to relate what caused the state of mind”).

The D.C. Circuit has interpreted Rule 403 narrowly. In *United States v. Brown*, the D.C. Circuit observed that “the state of mind exception to the hearsay rule allows the admission of extrajudicial statements to show the state of mind of the declarant at that time if that is at issue in the case.” 490 F.2d 758, 763 (D.C. Cir. 1973). The court stressed, however, that such testimony may be admitted solely to prove the declarant’s mental state, and that any “extraneous factual elements” must be accompanied by a “limiting instruction to ensure . . . such matters are to be considered solely on the issue of the declarant’s mental state and not for the truth of the matters contained therein.” *Id.* But “where state of mind testimony is sought to be used in an attempt to demonstrate the truth of the underlying facts rather than solely to show state of mind, the evidence must be excluded.” *Id.* at 763 n.10.

Here, even under the government’s best reading—that the statement illustrates Qaddafi’s satisfaction—his state of mind is not “at issue in the case,” as *Brown* requires. Rather, Mr. Al-Marimi’s state of mind is at issue. And as set forth above, the government is clearly intending to argue the statement’s truth—that

Qaddafi was grateful for this alleged patriotic act carried out with great precision. As such, the Court must exclude such a statement.

II. Response to the government's charts

a. Pan Am 103 Conspiracy Chart

The bulk of the government's evidence on the Pan Am 103 explosion comes from Mr. Al-Marimi's alleged confession, on which the Court should place no more than a scintilla of weight given the ever-growing evidence undermining its authenticity. Aside from other documents that the Court has ample opportunity at this point to establish are not reliable, the only items on the chart that connect someone with a name similar to Mr. Al-Marimi's to the Pan Am 103 explosion is information that shows mere presence. Mere presence is not sufficient to establish participation. *See, e.g.*, Model Instruction 3.200 ("Mere physical presence by [name of defendant] at the place and time the crime is committed is not by itself sufficient to establish his/her guilt" unless mere presence itself is intended to help in commission of act); *United States v. Beckham*, 968 F.2d 47, 51 (D.C. Cir. 1992) (statements not admissible under the coconspirator exemption when the only independent evidence consisted of observations that the alleged coconspirators sat near each other and appeared to be acquainted"). The government has not shown that sufficient independent evidence exists to find the participation of the necessary declarants and Mr. Al-Marimi.

b. La Belle Conspiracy Chart

Again, aside from Mr. Al-Marimi's alleged confession, on which the Court should place no more than a scintilla of weight given the ever-growing evidence undermining its authenticity, the only items that connect someone with a name similar to Mr. Al-Marimi's to the La Belle incident are travel records that show mere presence. Mere presence is not sufficient to establish participation. *See, e.g.,* Model Instruction 3.200 ("Mere physical presence by [name of defendant] at the place and time the crime is committed is not by itself sufficient to establish his/her guilt" unless mere presence itself is intended to help in commission of act); *United States v. Beckham*, 968 F.2d 47, 51 (D.C. Cir. 1992) (statements not admissible under the coconspirator exemption when the only independent evidence consisted of observations that the alleged coconspirators sat near each other and appeared to be acquainted"). Mr. Al-Marimi was not charged in the case leading to a German verdict in the case, and neither was Said Rashid. The government has not shown that sufficient independent evidence exists to find the participation of the necessary declarants and Mr. Al-Marimi.

c. "Cover-up Conspiracy" Chart

The government has literally next to nothing to support the existence of "an express original agreement" to conceal any underlying conspiracy. Half of the materials on the page are challenged as inadmissible hearsay. What is left is: 1) Abdullah Senussi allegedly taking Mr. Al-Marimi's passport (from the alleged confession); 2) Fhimah appearing upset; and 3) Ms. Pargeter's potential testimony

that Libya did not want to turn Megrahi and Fhimah over for prosecution. In addition to these alleged facts not independently establishing the existence of a separate original agreement to conceal or the participation of the declarants and Mr. Al-Marimi, this potential testimony from Ms. Pargeter refers to conduct excluded by Fed. R. Evid. 408 (barring evidence of “conduct . . . during compromise negotiations about a claim”). *See generally* ECF No. 545 at 11-13. The Court cannot find independent evidence exists to find the existence of any concealment conspiracy and the participation of the necessary declarants and Mr. Al-Marimi.

CONCLUSION

For these reasons, and those set forth in Mr. Al-Marimi’s prior briefings on co-conspirator statements in ECF Nos. 497, 501, and 532, the Court should grant Mr. Al-Marimi’s objections to the challenged statements.

Respectfully submitted,

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