

**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)

GOVERNMENT'S OMNIBUS MOTION *IN LIMINE*

The United States of America, through the undersigned counsel, respectfully submits the following omnibus motion *in limine*. To ensure that trial proceeds within the bounds of relevant laws and rules, the government submits the following omnibus motion *in limine*, through which it respectfully asks the Court to admit certain evidence and argument and exclude certain evidence and argument. For the reasons outlined below, the government asks the Court to grant the motions.

FACTS

This is a prosecution arising from the bombing of Pan American World Airways Flight 103 (“Pan Am Flight 103”) in 1988. The plane exploded over Lockerbie, Scotland, shortly after takeoff from London Heathrow Airport en route to John F. Kennedy International Airport in New York City, killing 270 people. The government anticipates proving that the Defendant engineered an incendiary explosive device (IED) that was packed inside a suitcase and placed into checked baggage at Luqa Airport in Malta for a flight to Frankfurt, Germany. The suitcase traveled from Malta to Frankfurt, then from Frankfurt to London, where it was loaded onto Pan Am Flight 103, bound for New York.

On November 29, 2022, a federal grand jury in the District of Columbia returned a three-count indictment charging the Defendant with (1) destruction of an aircraft resulting in death, in

violation of 18 U.S.C. §§ 32(a)(2), 34, and 2; (2) destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(1), 34, and 2; and (3) destruction of a vehicle used in foreign commerce by means of an explosive, resulting in death, in violation of 18 U.S.C. § 844(i). On May 26, 2026 the Court dismissed Count 3.

ARGUMENT

A. The Court Should Allow the Government to Introduce the Names, Photographs, and Citizenship of the Victims

The Defendant is charged with two counts of destruction of an aircraft *resulting in death*, 18 U.S.C. §§ 32(a)(1) and (2), 34 and 2 (emphasis added). An element of the offenses that the government must prove is that the Defendant’s criminal conduct “resulted in the death of any person.” 18 U.S.C. § 34. The government bears the burden of proof, and accordingly, must be “accorded substantial leeway to submit evidence of its choosing to prove its case.” *See Old Chief v. United States*, 519 U.S. 172, 200 (1997). The government seeks to introduce evidence related to the 270 victims, including their names, citizenship, and select photographs, of those who died as a result of the bombing of Pan Am Flight 103. This evidence is directly relevant to prove an element of the charged offenses and should be permitted.

Moreover, this evidence is relevant to the government’s case in other ways. Evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence” and the fact is material, i.e., “of consequence in determining the action.” Fed. R. Evid. 401. Relevant evidence generally is admissible. Fed. R. Evid. 402. The fact that 270 civilians died as a direct result of the Defendant’s actions is relevant to the jury’s understanding of the nature of this crime. As the court noted in *Old Chief*, “the prosecution may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the

discrete elements of a Defendant's legal fault.” *Id.* at 188. This evidence is material to show the catastrophic effect the Defendant's actions had on people in the airplane and on the ground below. It is necessary to show the breath of the destruction caused by the Defendant's actions. For example, the list of names demonstrates that the victims included entire families who were traveling together as a group.

Evidence of the victims' nationalities is also relevant to prove motive. Citizens from 21 different countries were affected, but 190 victims, over two-thirds of those who died, were Americans. The government plans to present federal and state records in the form of birth certificates and passports indicating the citizenship of the U.S. victims. These facts are probative of the Defendant's motive, that this was an attack targeting Americans. Probative evidence is often helpful to the government and harmful to the defense, but that is not the measure of “unfair prejudice” under Rule 403. *Henderson v. George Wash. Univ.*, 449 F.2d 127, 134 (D.C. Cir. 2006).

This evidence should be admitted at trial.

B. The Court Should Admit Portions of the Defendant's Recorded Calls

As the Court noted at the June 1, 2026, hearing, it would be fair for the government to elicit personal details within the Defendant's statement, if the voluntariness and reliability of the statement is challenged, as long as the government can prove the truthfulness of those details. *See* June 1, 2026, Hr'g Tr. at 89-90. As the government stated in that hearing, it intends to offer extrinsic proof of the truthfulness of some of the personal details provided by Jamal. *See id.* at 91. Specifically, the government intends to offer proof that the names of the Defendant's family members and their approximate ages are corroborated by calls that the Defendant has placed since arriving in the United States and being detained in this case.

The Defendant provided Jamal the name of his wife, ECF 232-2 at 2, and the number of children he has, as well as their names and years of birth. *Id.* at 15-16. In dozens of recorded calls placed by the Defendant to his family in Libya since his incarceration, many of which are recorded, he has conversed with his wife and children, and the calls have used the names for all six children, as well as his wife, that he provided to Jamal. Some of the calls are video-recorded, and the individuals appear of an age consistent with their dates of birth as provided by the Defendant to Jamal. Additionally, each of the Defendant's family members applied for visas to enter the United States following his arrest, and the details they supplied, including names and dates of birth, match the information provided by the Defendant to Jamal.

When family members self-identify in a conversation with the Defendant, and the Defendant continues conversing with those family members as if nothing were amiss, he has adopted those family members' recitation of their names and those recitations are admissible as adoptive admissions under Fed. R. Evid. 801(d)(2)(B). A statement of another may be admitted if a party-opponent "manifest[s] an adoption or belief in its truth." *Id.* The party-opponent must have "understood and unambiguously assented to [the] statement." *United States v. Beckham*, 968 F.2d 47, 51 (D.C. Cir. 1992). When the Defendant is in a conversation with his family members, who state their names, and he continues speaking to them in a normal manner, that manifests an agreement that those family members are in fact who they say they are. "A defendant may also demonstrate his cognizance of a conversation by his statements and conduct during or after the conversation." *United States v. Ward*, 377 F.3d 671, 676 (7th Cir. 2004). The Defendant's continued normal interaction with his family members after they identified themselves by name to him manifested his belief that their representations about their identities were true. *See United States v. White*, 681 Fed. Appx. 589, 591 (9th Cir. 2017) (unpub.) (when defendant failed to deny

to inculpatory statement made by his brother on a recorded jail call, that failure to deny was an adoptive admission); *United States v. Williams*, 750 Fed. Appx. 959, 963-64 (11th Cir. 2019) (unpub.) (defendant responding “yeah, yeah, yeah” to third party’s inculpatory statement on a jail call was an adoptive admission).¹

In addition to the jail calls, each of the Defendant’s named family members applied for a visa to enter the United States following his arrest. The government intends to produce a certification from the State Department authenticating those records, which would render them admissible under Fed. R. Evid. 803(6) or 803(8).²

C. Evidence of Libya’s Acceptance of Responsibility May Be Offered as Rebuttal Evidence

In 2003, the government of Libya reached a settlement agreement whereby, to resolve claims alleging its responsibility for the bombing of Pan Am Flight 103 and to achieve the lifting of U.N. sanctions, it would pay \$2.7 billion to victims of the attack.³ As a condition of the settlement, Libya transmitted a formal letter to the U.N. Security Council, dated August 15, 2003, stating that “Libya as a sovereign State... [h]as facilitated the bringing to justice of the two suspects charged with the bombing of Pan Am 103 *and accepts responsibility for the actions of its officials.*” (emphasis added). [Hereinafter the “Acceptance of Responsibility Letter”].⁴ Pursuant to a Memorandum of Understanding (“MOU”) between the U.S. and Libyan governments signed

¹ The Defendant has previously registered an objection to the jury knowing he was previously incarcerated in an unrelated matter. The government is willing to stipulate to this information, which would obviate the need to reveal to the jury that the Defendant is incarcerated.

² The government expects that the names, relationship to the Defendant, and years of birth reflected in those applications match the details provided by the Defendant to Jamal.

³ See generally <https://www.aljazeera.com/news/2003/8/14/2-7billion-lockerbie-settlement-reached>.

⁴ Available at <https://digitallibrary.un.org/record/500831?v=pdf>.

September 9, 2003, the United States has agreed not to use the letter “as part of a case in chief” in any criminal case “against Libya or its officials.” The MOU does not, however, limit the use of the letter in the government’s rebuttal case.

The defense has, in the context of separate pretrial litigation, signaled that they intend to argue that the investigation unreasonably focused on Libya and failed to give due consideration to allegations of alternate perpetrators. If the defense pursues that theory, the government will put on a rebuttal case showing that, although investigators initially pursued all substantial leads, they were reasonable to ultimately settle on the Libyan government as the entity responsible. The Libyan government’s acceptance of responsibility, including its historically large settlement payment, will be part of the evidence the government will offer during that rebuttal case.

D. The Court Should Exclude the Defense from Introducing Evidence Supporting Public Authority, Alibi and/or Insanity Defenses

The Defendant has not provided notice to the government that he intends to pursue defenses of alibi, insanity, or public authority. *See* Fed. R. Crim. P. 12.1, 12.2, 12.3. The deadlines for him to have done so have long passed: the deadline for insanity notice was in November 2025, and for alibi and public authority, the deadline was in January 2026. As the Defendant has not given notice, the Court should preclude his pursuing any such defense.

It follows from the foregoing that the Defendant should not be permitted to elicit any evidence or make any argument to the effect that because the government of Libya authorized the Defendant’s actions, those actions were not criminal. To claim the public authority defense, a defendant must show at least that he “honestly and reasonably” believed that his actions were being committed pursuant to lawful authority. *See United States v. Lam Kwong-Wah*, 924 F.2d 298, 310

n.9 (D.C. Cir. 1991).⁵ For a defendant's belief to be reasonable, it must be objectively reasonable, not just subjectively reasonable. *See id.* The government of Libya would not have the authority to authorize the Defendant to violate U.S. law, and violations of U.S. law are precisely what the Defendant is charged with. Additionally, it would not be reasonable to believe that the Libyan government would have the authority to authorize the bombing of a civilian airliner. For example, Libya was a signatory to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation ("Montreal Convention").⁶ That convention obligated Libya to punish by "severe penalties" any person who destroys an aircraft or places upon an aircraft a device or substance which is likely to destroy that aircraft. Montreal Convention, Arts. I & III. It would not be objectively reasonable to believe that the Libyan government had the authority to authorize an operation in contravention of U.S. law or international conventions to which Libya was a signatory.

As the D.C. Circuit observed in reviewing the trial of Oliver North arising out of the Iran-Contra scandal, "[i]n the absence of clear and comprehensible Circuit authority that we must do so, we refuse to hold that following orders, without more, can transform an illegal act into a legal one." *United States v. North*, 910 F.2d 843, 878-81 (D.C. Cir. 1990), *opinion withdrawn and superseded in part on reh'g*, 920 F.2d 940 (D.C. Cir. 1990). Accordingly, the defense should be permitted to introduce neither evidence nor argument suggesting that because the Libyan government authorized the attack on Pan Am 103, the Defendant's actions in carrying out that attack were justified.

⁵ The same case noted that "the precise parameters, and indeed the very validity, of the public authority defense are unclear in this circuit." *Lam Kwong-Wah*, 924 F.2d at 310 n.9, citing *United States v. North*, 910 F.2d 843, 878-81 (D.C. Cir. 1990), *opinion withdrawn and superseded in part on reh'g*, 920 F.2d 940 (D.C. Cir. 1990).

⁶ Available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-english.pdf> (last accessed July 10, 2026). Libya's assent to the convention was effective as of March 21, 1974, as reflected on p.4 of the foregoing .pdf document.

E. The Court Should Preclude the Defendant from Introducing Improper Character Evidence

The government moves to preclude the Defendant from introducing improper character evidence. There are many ways that the defense may run afoul of the rules governing admission of character evidence. This includes by presenting inadmissible reputation or opinion evidence regarding non-pertinent character traits, or by presenting inadmissible evidence of specific instances related to any character traits. Federal Rule of Evidence 404(a)(1) generally prohibits the use of a “person’s character or character trait” to “prove that on a particular occasion the person acted in accordance with the character or trait.” The limited exception is where a defendant’s character trait is pertinent to the charges in a criminal case. See Fed. R. Evid. 404(a)(2)(A). Even then, such character evidence: (i) may only be proven by reputation or opinion testimony, Fed. R. Evid. 405(a); and (ii) may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403; *United States v. Harris*, 491 F.3d 440, 447 (D.C. Cir 2007).

The government acknowledges that the Defendant may present evidence of the Defendant’s character for law-abidingness. See, e.g., *Michelson v. United States*, 335 U.S. 469, 476 (1948). His character for peacefulness may also be pertinent in this matter. The government cannot identify any other traits that might also be pertinent. Despite this, the government suspects that the Defendant may seek to introduce opinion or reputation evidence regarding things such as his affiliation with certain religious or social organizations, his connection to and concern for his family, or other evidence relating to the Defendant’s good character. Such evidence is not pertinent and thus inadmissible under the federal rules. Accordingly, any character evidence about things such as affiliations with religious or social organizations, or admirable family life, should be excluded.

F. The Court Should Preclude the Defendant from Presenting Irrelevant Evidence or Argument Geared Towards Encouraging Jury Nullification

The Court should prohibit the defense from admitting irrelevant evidence or argument geared towards encouraging jury nullification. The government anticipates that the Defendant might attempt to present testimony, evidence, or argument on irrelevant topics such as his health issues, his age, his incarceration status, the age of this case, the fact that the Defendant was not indicted until 34 years after the crime occurred, comparisons to current events, and/or current U.S. foreign policy. Any such evidence is irrelevant and immaterial to the jury's determinations. Because admitting such irrelevant evidence would induce nullification, it should be excluded.

The Federal Rules of Evidence direct trial judges that they must, “to the extent practicable[,] conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.” Fed. R. Evid. 103(d). This mandate is part and parcel of a trial judge’s “responsibility to maintain decorum in keeping with the nature of the proceeding; ‘the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct.’” *United States v. Young*, 470 U.S. 1, 10 (1985) (quoting *Quercia v. United States*, 289 U.S. 466, 469 (1933)). Similarly, “The accused does not have an unfettered right to offer testimony [or argument] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.” *Taylor v. Illinois*, 484 U.S. 400, 410 (1988).

Trial courts have a related obligation to guard against the presentation of irrelevant evidence or arguments geared towards nullification. See *United States v. Gorham*, 523 F.2d 1088, 1097-98 (D.C. Cir. 1975) (affirming exclusion of evidence relevant only to jury nullification) (citing *Sparf v. United States*, 156 U.S. 51, 106 (1895)). Allowing nullification evidence and argument is particularly dangerous because it increases the likelihood that “juries would ‘become a law unto themselves,’ such that ‘our government [would] cease to be a government of laws, and

[would] become a government of men.’” See *United States v. Wilkerson*, 966 F.3d 828, 834-35 (D.C. Cir. 2020) (citing *Sparf*, 156 U.S. at 102). It is thus well-established that courts have a duty to prevent criminal defendants from making arguments or offering evidence designed to encourage jury nullification. See, e.g., *United States v. Dupree*, 2024 WL 2746963 at *2 (D.D.C. 2024) (“Case law is clear that jury nullification is ‘lawless, a denial of due process[,] and constitute[s] an exercise of erroneously seized power.’”) (citing *United States v. Washington*, 705 F.2d 489, 495 (D.C. Cir. 1985)); *United States v. Funches*, 135 F.3d 1405, 1409 (11th Cir. 1998) (“Because the jury enjoys no right to nullify criminal laws, and the Defendant enjoys a right to neither a nullification instruction nor a nullification argument to the jury, the potential for nullification is no basis for admitting otherwise irrelevant evidence.”); *United States v. Penn*, 969 F.3d 450 458 (5th Cir. 2020) (noting that evidence sought to be admitted solely for nullification was irrelevant and inadmissible).

It is foreseeable that the defense may seek to admit irrelevant evidence that could encourage nullification. This may occur in the form of questioning jurors during voir dire, making improper opening statements, interjecting irrelevant evidence into questions or testimony, or offering closing argument about irrelevant topics such as his health issues, his age, his incarceration status, the age of this case or the fact that the Defendant was not indicted until 34 years after the crime, comparisons to current events, and/or current U.S. foreign policy. Any such evidence is irrelevant to the jury’s determination of whether the Defendant built the IED that caused the destruction of Pan Am flight 103 and took the lives of 270 people. As with the prohibition against referencing at trial any potential penalties that may result from conviction, any attempt to infect the jury with such irrelevant evidence by reference or argument at any stage of the trial would be an attempt at nullification. See, e.g., *Shannon v. United States*, 512 U.S. 573, 579 (1994) (noting that evidence

relating to the punishment and effect of a Defendant's conviction are not probative as to innocence or guilt and can needlessly confuse the jury). Accordingly, the defense should be barred from admitting evidence concerning the aforementioned irrelevant matters and be ordered to refrain from referencing or arguing about them at any time during trial proceedings.

G. The Defendant Should Not Be Allowed to Reference Punishment or Other Consequences to the Jury

The Court should preclude as irrelevant and prejudicial any reference to the Defendant's potential sentence during all phases of the trial, including jury selection, opening statements, examination of witnesses—to include the Defendant if he elects to testify—and summation. That reference could be as overt as, “You understand the defendant is facing multiple years in prison if convicted,” or more subtle such as, “send him home,” “make sure he goes home,” “the defendant is facing a lot of time,” “this case has serious consequences for the defendant,” “the defendant's liberty is at stake in this trial,” or “your decision will have consequences for a long time to come.” “It has long been the law that it is inappropriate for a jury to consider or be informed of the consequences of their verdict.” *United States v. Frank*, 956 F.2d 872, 879 (9th Cir. 1992); see *United States v. Broxton*, 926 F.2d 1180, 1183 (D.C. Cir 1991) (“the jury is not to consider the potential punishment that could result from a conviction”); see also *Shannon*, 512 U.S. at 579 (“[P]roviding jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their fact-finding responsibilities, and creates a strong possibility of confusion”); *Rogers v. United States*, 422 U.S. 35, 40 (1975) (explaining the jury should have been admonished that it “had no sentencing function and should reach its verdict without regard to what sentence might be imposed”). Mention of the potential penalties or other consequences faced by the Defendant would serve only the improper purpose of jury nullification. Therefore, the

Defendant should be precluded from making any reference to punishment or the consequences of such punishment on the Defendant or his family.

CONCLUSION

For the foregoing reasons, the Court should grant the government's motions.

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