UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

GOVERNMENT'S REPLY IN SUPPORT OF MOTION TO ADMIT FOREIGN RECORDS

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Reply in support of its Motion to Admit Foreign Records [ECF 148]. For the reasons that follow, the Court should grant the motion.

A. The certifying witnesses are all qualified persons

In their table of objections, ECF 173-1, the defense asserts "Witness not a qualified person" for every single exhibit the government has proffered. In the body of their brief, they call the certificates "uniformly deficient" with respect to the qualifications of the certifiers. But the defense never offers a specific explanation of why any single witness is not qualified to certify any single document. The Court should reject this conclusory, one-size-fits-all argument.

18 U.S.C. § 3505 requires that the certification be made and signed by a custodian or another qualified person. In the analogous domestic-records context, the equivalent phrase "'other qualified witness' is given a very broad interpretation." *United States v. Baker*, 458 F.3d 513, 518 (6th Cir. 2006) (quoting 5–803 Weinstein's Federal Evidence § 803.08(8)(a) (2006)). To lay the foundation for business records, the certifier "need not have personal knowledge of the actual creation of the document." *United States v. Adefehinti*, 510 F.3d 319, 325 (D.C. Cir. 2007) (quoting *United States v. Williams*, 205 F.3d 23, 34 (2d Cir. 2000)). He or she must only "be familiar with

the record-keeping procedures of the organization." *Baker*, 458 F.3d at 518 (quoting *Dyno Constr. Co. v. McWane, Inc.*, 198 F.3d 567, 575–76 (6th Cir. 1999)).

Rather than trying to refute the qualifications of any certifier, the defense cites *United States v. Khatallah* as what they call an "informative" counterexample. ECF 173 at 7-8 (discussing 278 F. Supp. 3d 1 (D.D.C. 2017)). In *Khatallah*, the government made the strategic choice to seek a pretrial hearing at which it presented testimony about the qualifications of a telephone company employee who signed a § 3505 certification for certain especially important phone records. *See* Doc. 295 in *Khatallah*, D.C. no. 1:14-cr-141-CRC (government's motion, explaining reasons for requesting hearing including having recently "obtained additional information that bears on this issue"). As indicated by the redactions throughout the *Khatallah* opinion, and its footnote referencing a classification review, the foreign-documents issue in that case involved complications that are not present here.[1] But even putting that aside, when the government adopts a belt-and-suspenders approach in a particular case, it does not bind itself to a new higher standard in all subsequent cases.

The other cases cited by the defense, which both involved testifying witnesses rather than certificates, are not persuasive either. In *United States v. Porter*, the government's problem wasn't a "fail[ure] to provide sufficiently detailed information" about the sponsoring witness. ECF 137 at 8 (citing 821 F.2d 968, 977 (4th Cir. 1987)). It was that the witness was manifestly unqualified, being a security officer who had "had access to" the personnel records at issue but whose job had nothing to do with them. *Porter*, 821 F.2d at 977. In *United States v. Bacas*, the sponsoring witness was a military police officer who cited the defendant for speeding. *See* 662 F. Supp. 2d 481, 482.

[1] *See also* Doc. 295 in *Khatallah* at 4 & n.3 (government's motion for a hearing, anticipating testimony about "the method by which the records were originally obtained by the government," and noting that "this may involve the presentation of classified information").

Through the testimony of this patrol officer, the government attempted to offer uncertified records relating to the accuracy of the police department's speed-detection radar equipment, which records were created by an "outside agency," sent to the department, and maintained by a person other than the testifying patrol officer. *Id.* at 487. Because the officer could say almost nothing about "the creation or maintenance of" the documents, the uncertified records were excluded.[2] *Id.*

Here, all of the government's certifying witnesses are qualified based on the face of the certificates. Each certificate identifies the witness' current or former position in the relevant entity, and affirms: "by reason of my position [I] am authorized and qualified to make this attestation." *See, e.g.*, Ex. 701-c. To the extent the court has questions about the qualifications of any certifying witness, the government can furnish additional information on request. But this would be an unusual step, and to put the government to a burden beyond the four corners of the certificates would largely defeat the purpose of 18 U.S.C. § 3505. Unless there is something problematic on the certificates' face (which there is not), or the defense makes some affirmative showing of untrustworthiness (which they have not), the certificates should suffice on their own.

B. Scottish custody does not suggest unreliability.

The defense questions the trustworthiness of the documents because "many of [them] appear to have been provided to the government not by the original business or government entities that supposedly created them, but rather by the Scottish authorities who stored copies of them after the Scottish trial." ECF 173 at 9-10. But the defense does not articulate why the Scottish authorities' role as an intermediary should cast any doubt on the authenticity of the documents.

[2] *Bacas* involved four proffered exhibits that were "nearly identical" to each other. 662 F. Supp. 2d at 486. For reasons not explained in the opinion, two were certified and two were not. *Id.* The Court admitted the certified exhibits based on the certification of the employee who took custody of them after they were received from the "outside agency." *Id.* at 487.

The observation that "the company or entity that supposedly created these records did not produce the copies that the government seeks to rely on," ECF 173 at 10, is relevant only if one suspects the Scottish authorities of having tampered with the evidence before providing it to the United States. That is absurd as a factual matter, but it also proves too much, because foreign business records offered under § 3505 will almost always have passed through the custody of foreign authorities by necessity of the mutual legal assistance request process. If interposing a foreign government in the chain of custody between the foreign business entity and the U.S. government were a reason to reject a certified document, § 3505 would be almost useless.

Regardless, in this case the Court can be especially confident that government's proffered exhibits are faithful copies of the records the businesses originally produced. Throughout their investigation, the Scottish authorities have employed a system of meticulous recordkeeping that comprehensively records the origin and characteristics of each piece of evidence. Each item receives multiple types of unique serial numbers. These identifiers, in turn, are cited in written witness statements that are adopted verbatim and signed by persons with relevant knowledge – often multiple witnesses for any given item of evidence.[3]

For example, the document proffered as government exhibit 908 was logged in the Scottish files as Police Reference no. DZ12 and Crown Production no. CP786. Five witness statements mention "DZ12," including statements from:

- a managing employee at the originating business, who describes "search[ing] our records" for certain information and providing the results, including DZ12,

[3] Because of the uniqueness of the serial numbers, the defense can readily use them as search terms to identify materials in the government's discovery productions that relate to any piece of Scottish evidence.

to "the Scottish Police Officers" by way of the Czechoslovakian Ministry of Interior;[4]

- two Scottish detectives, who each describe how together they received documents including DZ12 from a Czechoslovakian official and later showed them to the employee above, who confirmed their authenticity;
- that Czechoslovakian official, who describes providing documents including DZ12 to the Scots and being present for the employee's verification of their authenticity; and
- a second Czechoslovakian official, who describes liaising between the Scots and the first Czechoslovakian official for handover of documents including DZ12.

With this level of documentation, there are no "missing links in the chain of custody" as the defense asserts. ECF 173 at 10.

Lastly, as a clarifying point, the Maltese records (exhibits in the 700 and 800 series) were in fact collected by the Scottish authorities. The defense notes that these items "do not have Scottish investigation hallmarks," ECF 173 at 2 n.1, but that is only because the versions submitted with the government's motion have the Scottish cover pages and evidence tags removed. The versions provided in discovery include the indicia of having passed through Scottish custody, and can be provided should the Court wish to review them.

C. The defense's more specific arguments are unavailing.

The defense brief enumerates seven arguments applying to specific documents or groups of documents. ECF 173 at 11-12. An eighth argument, "witness uncertain during interview," appears in the attached table and is explained in a footnote. *Id.* at 6 n. 3, ECF 173-1. None of these provides a basis for exclusion.

[4] This is the same witness who later signed the § 3505 certificate, Ex. 908-c.

1. Hotel reservation requests

Exhibits 905 and 908 are correspondence received by the Intercontinental Hotel in Prague. They were certified by witness J.L., who was formerly the Deputy Director of the hotel. The Scottish investigative file contains a statement J.L. made in 1991, explaining that he provided the records to the Scottish authorities as a result of their request "to search our records for named individuals who resided at the hotel."[5]

Correspondence that is received by a business, and retained by that business as part of its routine recordkeeping, qualifies as a business record under the hearsay exceptions. *See, e.g.*, *Deland v. Old Republic Life Ins. Co.*, 758 F.2d 1331, 1338 (9th Cir. 1985). It is unclear what "hallmarks" the defense would usually expect to see on copies of letters received by a hotel. Regardless, the certification by J.L. establishes that the exhibits were the hotel's business records, and the Scottish statement only underscores the reliability of that certification.

2. Double hearsay

The defense argues that Exhibits 1009, 1013, and 1024 contain hearsay-within-hearsay. As to exhibit 1009, if the defense is referring to pages 2-3 of the PDF (a German law enforcement report accompanying the business records), the government agrees that it will not include those pages in the version of the exhibit used at trial. As to exhibits 1013 and 1024, these documents are internal correspondence related to Pan Am's security operations. Any assertive statements contained in the messages are not being offered for their truth, but rather for their effect on the listener – that is, the security personnel at Frankfurt Airport, who would have conformed their procedures to the guidance that was transmitted – as well as an expression of the company's intent

[5] Produced in discovery at HS-USAO-00042645.

to operate its security in the manner stated. *Cf.* Fed. R. Evid. 803(3) (hearsay exception for "a statement of the declarant's then-existing state of mind (such as motive, intent, or plan)").

3. Original certifications

The government has provided certifications that comply with § 3505. As explained above, this suffices to make them admissible as foreign business records. The defense cites no authority for the proposition that the absence of an "original (i.e., from the time of the Scottish investigation and trial) certification" is a reason to find a document unreliable. The existence of an original certification is certainly an extra point in favor of a document's reliability, but the absence of one is not a strike against it.

Moreover, in most or all cases the absence of the Scottish certificate can be readily explained. For example, exhibit 818, an airline timetable, was not originally obtained from a custodian at the business; it was picked up by a Scottish detective who found it "lying in the [business's] office with others available for members of the public."[6] Exhibits 903-908, records from a Prague hotel, were provided by custodian J.L., whose statement notes that he "signed all the documents supplied," and whose signature does in fact appear on each document -- the functional equivalent of an "original certification."

The point remains that, because the government has provided § 3505 certificates, it does not need to separately provide any "original" Scottish certifications. Accordingly, rather than continue the above exercise for each of the roughly 45 items in this category, the government asks that it be given an opportunity to submit additional information in the event the Court has special concern about any particular exhibit(s) that is lacking an original Scottish certification.

[6] Witness statement produced in discovery at HS-USAO-00050437.

4. Toshiba use-list

Exhibit 1301 is, in fact, a use-list from the Toshiba Corporation (that is, a list of the stereo models that used a certain component), as confirmed by a written statement dated April 1989 by K.K., the certifying witness.[7] The list consists of rows of data preceded by headers that appear to be machine-generated (e.g., the date, the number of pages, and various system codes). This formatting tends to indicate that the list was generated by querying a database and printing the results. Thus, even if this document was "prepared upon request," that preparation seems to have consisted of the automated extraction of selected preexisting records from what was presumably a much larger list of Toshiba's full product line. This is exactly how record requests in the present day are routinely handled by telecommunications providers, financial institutions, and other businesses whose records consist of large data sets. It is the only way of producing such information, and it is not a reason to discount K.K.'s certification that the exhibit constitutes Toshiba's business records.

5. Blank evidence tag

Exhibit 1403 is a record from Senegal's Ministry of Justice, Directorate of Prison Administration, documenting the transfer of certain prisoners. Although the scanned evidence tag is not completed, the information that would normally appear there can be found in a "schedule" (that is, index) of Crown Productions, which has been provided in discovery.[8] The schedule indicates that the document was "received at Crown Office Edinburgh on 25 October 1999 by [one of the Scottish prosecutors]." The face of the document bears the stamp of the Senegalese government entity from which the record originated, along with a signature. The provenance of

[7] Produced in discovery at HS-USAO-00011562.

[8] Sensitive-USAO-00112200.

this document is therefore clear: it was provided by the Senegalese authorities directly to the prosecutors' office. There is no question about the document's trustworthiness.

6. "Appears to be"

Witness A.Bo., who certified eight of the Maltese documents, is a lawyer who works for Air Malta. His videotaped interview shows that, like many attorneys, he takes care to be precise with his language. When first shown an Air Malta document during his interview, A.Bo. quickly identified the document and then offered the following explanation: "It looks legit. It looks likely to be. [ia][9] I cannot definitely confirm that it's not tampered with, of course, but it looks like [ia]."[10] As detailed in subsection 8 below, he then went on to explain the features that indicated to him it was an authentic Air Malta document. Later, when the U.S. prosecutors presented him with a certificate, A.Bo. noted the last point – "(D) if not an original record, is a duplicate of the original" – and remarked, consistent with his earlier caveat: "…if it's not an original – which it's not – is a duplicate… I cannot confirm that it's a [ia]." The prosecutors offered to amend the form to say "appears to be a duplicate of the original," and A.Bo. agreed he would be more comfortable that way.

The distinction between "is" and "appears to be" is only meaningful if one assumes that § 3500 requires a certifying witness to perform a word-for-word comparison between the proffered duplicate document and the corresponding original in the company's custody. That would add a "technical roadblock" that would frustrate the rule's purpose to "streamline the admission of [foreign] records." *United States v. Al-Imam*, 382 F. Supp. 3d 51, 57 (D.D.C. 2019) (citing *United States v. Jawara*, 474 F.3d 565, 584 (9th Cir. 2007); *United States v. Garcia Abrego*, 141 F.3d 142,

[9] Undersigned counsel has endeavored to accurately transcribe the recorded responses of Maltese witnesses who speak accented English. The abbreviation [ia] indicates inaudible speech.

[10] A.Bo. interview at timestamp 10:50-11:11.

178 (5th Cir. 1998)). Accordingly, as explained in *Khatallah*, a witness's "failure to vouch for the accuracy of the records or to compare the records line-by-line to the originals does not invalidate [the] certification." 278 F. Supp. 3d at 7. Moreover, "is" and "appears to be" are often practically synonymous, with both meaning, "is, as far as I can tell by looking at it." A.Bo.'s preference for "appears to be" signals lawyerly punctiliousness, not disqualifying uncertainty.

7. Missing checkmark

The defense observes that the certificate executed by Maltese witness D.V. shows handwritten checkboxes next to points (A) through (C), but not next to item (D), "if not an original record, is a duplicate of the original." It is not clear from the videotaped interview why D.V. chose to annotate the form this way; he did not express any objection to point (D) or otherwise explain why he omitted to mark a check by that item. A plausible explanation is that D.V. may have believed point (D) was not applicable because he considered the documents to be "original record[s]" (perhaps in the sense that their content "originated" from Libyan Arab Airlines). This might show a misunderstanding by D.V., but it does not call into question his qualifications as a certifier given his confident attestation to the other points. Nor does the missing checkmark support an inference that the documents are not faithful copies, given the supporting documentation in the Scottish files.

8. "Witness uncertain"

Citing the videotaped interviews produced by the government, the defense makes a blanket assertion that seven Maltese witnesses as having "stated they did not recognize a document they were shown during their recorded interview or used ambivalent language such as 'might be' or 'appears to be." ECF 173 at 6 n.3. This argument, like the earlier "Witness not a qualified person" argument, is badly underdeveloped, making it difficult for the government to address or the Court

to resolve without further specificity about which witnesses made which supposedly equivocal comments about which documents.

What the Court *does* have are signed certifications from each witness, made under penalty of punishment, that attest that each document is what it purports to be: in each instance, an unambiguous statement that satisfies 18 U.S.C. § 3505. Short of something extraordinary in the recorded interviews — like a witness saying "I don't recognize this document, but I'll sign the form anyway to help you out" — the certificates are dispositive. The defense has not identified anything like that, so the certificates should be given the effect intended by § 3505.

That result is doubly appropriate in this case because the Scottish investigative file contains so much material confirming the genuineness of the records. Most of the Maltese records include original Scottish certificates of authenticity signed by someone at the originating business, and all of them have at least one (and usually multiple) witness statements explaining how Police Scotland gained custody of them from the originating businesses.

In any event, an examination of the videos fails to substantiate the defense's generalized assertion. For example:

Exs. 802-809, 811: As noted above, certifying witness A.Bo. is a lawyer and is accordingly careful about qualifying his assertions. Still, his recorded interview leaves no doubt about his ability to certify the documents. When handed Ex. 806,[11] he identified it almost instantly: "This is the 'G.D.,' insurance, 'General Declaration.'" As he looked over the document, he thought out loud as he continued to recognize it: "And usually there are people on the G.D. list… um [reading], exactly, it lists the crew." After paging through the document, A.Bo. gave the caveated conclusion quoted in subsection 6 above: "It looks legit. It looks likely to be. [ia] I cannot definitely confirm

[11] A.Bo. interview at timestamp 10:00 *et seq*.

that it's not tampered with, of course, but it looks like [ia]." He then commented on the features that supported his belief that the document was an Air Malta business record from the time, including the fact that it was typewritten, the presence of a period-specific Air Malta logo, the presence of Air Malta's former address, and the fact that he recognized the format of the passenger manifest: "This hasn't changed much, to be honest. We are still using [ia], many airlines are still using these basic systems." When asked about an acronym appearing on the record, A.Bo. explained its meaning, and volunteered an explanation of another of the document's terms. For the other documents he certified, A.Bo.'s discussion proceeded in similar fashion. By contrast, when presented with exhibit 801, A.Bo. freely admitted, "I never saw this. It could be Air Malta, but— usually, this [pointing to different document] is what I see, because we still use the same— roughly the same system." He consequently did not certify exhibit 801. His declining to do so is powerful evidence that the certifications he *did* made were not "uncertain."

Exs. 704, 705: These clothing records were certified by S.A., who worked in production management / design at a family-owned clothing company. He confidently recognized several of the documents shown to him. When presented with Ex. 704, which the defense tags as "witness uncertain," S.A. immediately remarked, "Okay, it's the same kind of, um [ia] we used to use back in the day," pointing to the document he had been discussing just before, and went on to point out the "style numbers" and references to his company's button-ups and cardigans.[12] Handed the next document, Exhibit 705, he again responded promptly, making a humorous comment about his brother's signature on the document and explaining, "It's ours. [ia] and these are the style numbers, M/684— exactly, these are the style numbers given to each garment." Similarly to the witness discussed just above, S.A. also declined to certify a record he did recognize. When shown Ex. 701,

[12] S.A. interview at timestamp 09:16 *et seq*.

S.A. said that he only recognized one half (marked "A") but not the other (marked "B"). About portion "B," he said, "These kinds, I don't—I'll be honest with you."[13] S.A. accordingly did not certify that portion of Exhibit 701.

As the foregoing discussion demonstrates, no finding of untrustworthiness is warranted from the defense's bare assertion that Maltese witnesses were "uncertain." If the Court wishes to view any of the videos, the government can provide them, but the defense has provided no reason that should be necessary.

D. The Senegalese and Swiss documents qualify as public records.

The defense claims that the travel records from Switzerland and the prison records from Senegal are not adequately certified. Rule 902(3), however, allows admission of foreign public records without a conforming certificate: "If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either: (A) order that it be treated as presumptively authentic without final certification; or (B) allow it to be evidenced by an attested summary with or without final certification."

The defense has had access to the Swiss and Senegalese records for months, and the defense has offered no meaningful challenge to their authenticity or accuracy. There is good cause to treat the documents as presumptively authentic and/or admissible through an attestation without a final certification, because the circumstances described below readily establish the authenticity of the documents without the necessity of a "final certification."

Regarding the Swiss documents, the Swiss official who certified the Swiss visa application records, A.K., testified at the trial of Megrahi and Fhimah in The Netherlands in June 2000.[14] In

[13] S.A. interview at timestamp 11:15.

[14] Transcript produced at USAO-000006552.

that testimony, he laid out his work history, including working for the Swiss Embassy in Tripoli, Libya, from 1987 to 1992. He also testified about the visa applications that the government seeks to admit through this motion. In a more recent interview[15] conducted pursuant to a Mutual Legal Assistance request from the United States, A.K. confirmed the accuracy of his prior testimony and the authenticity of the documents, then signed the certificate that the government has submitted with this motion. It is therefore established, and not just "likely," that "the Swiss official is who he purports to be." ECF 173 at 13.

Regarding the Senegalese document, the French-language version of Exhibit 1403 contains a stamp in the lower right-hand corner from the Administration of Penitentiaries with a date and an overlaid signature. In February 2025, witness N.N. agreed to meet with U.S. law enforcement agents in Senegal pursuant to an official request from the United States. During that interview, N.N. explained that he was a clerk typist in the office at the time the relevant documents were created, and he authenticated some (but not all) of the documents shown to him. Regarding Ex. 403, the witness confirmed: "This document was not prepared by our services [the gendarmes], but rather by the penitentiary administration. But in support of the signature and stamp contained therein, one can say that it is authentic."[16]

There is accordingly no serious question as to the authenticity of these documents, and they should be admitted under the public records rule or another exception.

E. The Ancient Documents and Residual Exceptions will apply, if necessary.

For all the reasons discussed above, the Court should admit the proffered records pursuant to the certifications and does not need to undertake further analysis under the ancient documents

[15] Swiss interview report produced at HS-USAO-000119290.

[16] Produced in discovery at HS-USAO-000154575.

or residual exceptions. Should any exhibit fail to meet the criteria of 18 U.S.C. § 3505, however, those other rules would allow its admission.

Regarding the ancient documents rule, contrary to the defense's suggestion (and as discussed above), the discovery shows that each item has accompanying materials confirming that, before entering Scottish custody, it was "was in a place where, if authentic, it would likely be." Fed. R. Evid. 901(b)(8)(B). The government will make that showing at trial if it becomes necessary to rely on the ancient documents rule.

Regarding the residual exception, the defense disputes the reliability of the records by making the same blanket allegation of untrustworthiness that they did above. ECF 173 at 15-16. In a similarly conclusory fashion, the defense calls the government's cited cases "inapposite" but does not explain why. *Id.* at 15 (citing *United States v. Wilson*, 249 F.3d 366, 375–76 (5th Cir. 2001)). These are assertions, not arguments.

The application of the residual exception would necessarily involve a fact-specific analysis not only of the reliability of the record in question, but also its probative value relative to other available evidence. *See* Fed. R. Evid. 807. Accordingly, in the event the Court decides that any exhibit(s) do not qualify under the other hearsay exceptions, the government requests the opportunity to submit additional briefing concerning the residual exception.

F. The Confrontation Clause is not implicated.

As the defense acknowledges, documents that qualify as business or public records are not subject to the Confrontation Clause's requirement of an opportunity to cross-examine the declarant. ECF 173 at 16-17. If the Court accepts the government's primary arguments, therefore, the Confrontation Clause would have no application.

But even if the Court ultimately relied on a different basis for admission, such as the residual exception, the Confrontation Clause would still not require cross-examination. In that

event, the Court would apply the "primary purpose test," which assesses "whether, in light of all the circumstances, viewed objectively, the 'primary purpose' of the [statement] was to 'creat[e] an out-of-court substitute for trial testimony.'" *Ohio v. Clark*, 576 U.S. 237, 245 (2015) (first alteration added, quoting *Michigan v. Bryant*, 562 U.S. 344, 358 (2011)). It is clear from the face of the records, as well as from all the associated documentation, that none of these exhibits was created as "an out-of-court substitute for trial testimony."

G. The government is not seeking "trial by transcript."

The defense brief closes with a discussion of *United States v. Ausby*, in which then-Chief Judge Howell expressed "concerns" about the government's "request to admit in full the prior testimony of twelve witnesses" in the form of transcripts from the defendant's original trial forty-seven years earlier. *United States v. Ausby*, 436 F. Supp. 3d 134, 152 (D.D.C. 2019). That was an extraordinary request, prompted by the extraordinary circumstances of retrying a case a half-century after the original conviction. Given the prospect of a "trial by transcript," the court understandably identified "fairness concerns" if the defendant was going to be put through a "replay of an old [trial] on paper." *Id.* at 151-52. Accordingly, the Court used a "stringent application of Rule 403," allowing the admission of certain prior testimony but excluding most. *Id.*

The government's request here is nothing like what was proposed in *Ausby*, because a transcript of witness testimony is fundamentally different from a business or public record. While it is almost unheard of to request admission of twelve prior transcripts, the admission of dozens of business records pursuant to certifications is commonplace. Admission of the proffered exhibits here would not create a "trial by transcript" or "trial on paper" because all of the documents will require live witnesses to explain, none of them are narrative in nature, none of them were created for use in litigation, and none of them are inculpatory on their face. As a result, the "bulk"

admission of these records would not implicate the concerns from *Ausby* or any other fairness concerns.

CONCLUSION

For the reasons above, the Court should issue a pretrial ruling admitting all of the government's proffered exhibits.

Respectfully submitted,

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