

**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 SUPPLEMENTAL MOTION TO ADMIT RECORDS OF
REGULARLY CONDUCTED ACTIVITY**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion to admit records of regularly conducted activity. This motion covers foreign records under Title 18, United States Code, Section 3505: Exhibits 901, 902 (Czech immigration documents), 1552 (Swiss immigration document), 866 (Air Malta check-in sheet), and a domestic public record and record of regularly conducted activity: 1801 (Federal Aviation Administration (FAA) registration file).¹

BACKGROUND

On September 4, 2026, the government filed a motion to admit multiple foreign-origin records of regularly conducted activity. *See* ECF 148. The Court issued an oral ruling on the

¹ The government previously asked the Court to admit Exhibits 901, 902, and 1552 in a supplement to the ongoing litigation regarding the government's first motion to admit foreign records. *See* ECF 450. On June 1, 2026, the Court denied that request without prejudice and directed the government to file a motion in the first instance.

The government proposed a stipulation to the defense that included facts to establish the jurisdictional elements of Counts 1 and 2 of the indictment, including the fact that the aircraft that carried Pan Am Flight 103 was owned and operated by Pan American World Airways, Inc., and that it was at the time of its destruction a civil aircraft of the United States operating in interstate, overseas, and foreign air commerce. On June 12, 2026, the defense declined to enter into that stipulation. Accordingly, the government seeks entry of the FAA registration file to prove the jurisdictional elements.

majority of those exhibits on January 12, 2026, and the parties have filed supplements regarding the remaining exhibits since that time. Given the Court's and parties' familiarity with the legal standards governing the authentication and admissibility of foreign records of regularly conducted activity at this point, the government will only briefly lay out the applicable standards.

Title 18, United States Code, Section 3505 provides in mandatory terms that foreign business records “*shall not* be excluded as evidence by the hearsay rule if a foreign certification attests” to four points:

- (A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- (B) such record was kept in the course of a regularly conducted business activity;
- (C) the business activity made such a record as a regular practice; and
- (D) if such record is not the original, such record is a duplicate of the original.

18 U.S.C. § 3505(a)(1) (emphasis added). The only exception is if the “source of information or the method or circumstances of preparation indicate lack of trustworthiness.” *Id.*

The term “foreign record of regularly conducted activity” is defined as “a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country.” § 3505(c)(1). The term “business” is defined broadly, to include “business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.” § 3505(c)(3).

In the analogous context of domestic records of regularly conducted activity, the D.C. Circuit has held that “the custodian of the records 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) (cleaned up). Moreover, if an entity takes custody of a record, that record is then “made” by the entity that

took custody of it, and there is no requirement that the business records were created by the business having custody of them. *See id.* at 326. In so holding, the D.C. Circuit noted it was joining several circuits who had come to a similar conclusion. *See id.* (collecting cases).

Domestic public records are self-authenticating if, among other things, they bear the signature of an employee of the United States or a department or agency thereof, and another officer certified under seal or its equivalent that the signer has the official capacity and that the signature is genuine. Fed. R. Evid. 902(2). Domestic public records are also self-authenticating if they bear the seal of the United States or a political subdivision thereof and a signature purporting to be an attestation or execution. Fed. R. Evid. 902(1).

Separately, the Ancient Documents exception, Rule 803(16), applies to any “statement in a document that was prepared before January 1, 1998, and whose authenticity is established.” In turn, Rule 901(b)(8) provides that a document can be proven authentic by “evidence that it: (A) is in a condition that creates no suspicion about its authenticity; (B) was in a place where, if authentic, it would likely be; and (C) is at least 20 years old when offered.” The records at issue in this motion were collected in a place where they would be expected to be, show no signs of inauthenticity, and are more than 20 years old at this point. They are also separately authenticated through the certification forms submitted herewith. The Scottish labels and Scottish certificates of authenticity attached to some of those documents lend circumstantial evidence to the government’s argument about how the documents were collected.²

² The government submits, as it did in its prior motion, that the residual exception, Fed. R. Evid. 807, should apply if the Court finds that none of the authorities cited herein permit their admission. As the government has previously acknowledged, the Residual Exception requires a comparative analysis that considers what other evidence the sponsoring party can reasonably offer on the point at issue. ECF 326 at 2. As with the other documents still at issue from ECF 148, the government asks that it be permitted to brief any Residual Clause arguments as needed closer to trial.

ARGUMENT

A. Czech Visa Documents

Exhibits 901 and 902 represent documents created and/or collected by the Czechoslovakian government when co-conspirator Megrahi traveled there in October and December 1988.³ When a foreign national subject to a visa requirement wanted to travel to Czechoslovakia, they were required to fill out a visa application, and if granted, a visa would be issued at a Czechoslovak embassy. When entering the country, the foreign national would hand over a portion of the application, which would be stamped with the date of entry. The foreign national would also hand over a portion of the application when he exited the country, which would also then be stamped with the departure date. Exhibit 902, depicted below, shows that Megrahi arrived on December 9, 1988, and departed on December 16, 1988. When exiting the country, the visitor was required to surrender the document to border agents, and the documents would then be routinely collected and stored by the Czechoslovak government.

³ On both occasions, Megrahi traveled there after having been on Malta at the same time as the defendant. According to records the Court has already provisionally admitted, Megrahi's travel was paid for by either the Libyan Military Procurement Office (October) or the Libyan Embassy in Prague (December).

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P.O. Box libyjská letový dispečer

Libyan Arab Airlines Tripoli

Praha hotel

turistické 07 dní xxx 755973

PRAHA

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CSSR 33



PRAHA

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CSSR

Upon arrival in the Czech Republic of the Socialist Republic you are obliged to register with the Czechoslovak police authorities within 48 hours.

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bility the application will not be considered.

Day Month Year Hour

The government has obtained two certifications for Exhibits 901 and 902: One from a former employee of the Passport Control Department at Prague Airport (V.S.) and another from a former employee of the Czechoslovak Foreigner and Border Police Service, Records Management Department (N.M.). Both attest that the records were kept in the course of a regularly conducted activity of a branch of the Czechoslovak government, along with all of the other factors listed in 18 U.S.C. § 3505. *See* Exs. 901-c, 902-c, 901-c2, and 902-c2.⁴ The Court thus must admit the exhibits under Section 3505.

⁴ V.S. did not provide the year that his employment in the passport control section ended. According to information provided by the Czech authorities, the reason is because the witness did not remember when he stopped working there. Regardless, the certificate sufficiently establishes that the witness (who began working at the passport control section during the 1990s) is qualified

If the Court finds the certifications insufficient to establish that the documents are admissible under § 3505, it should admit the exhibits under the Ancient Documents Rule, Fed. R. Evid. 803(16). The documents were prepared before January 1, 1988, and their authenticity has been established. *See* Fed. R. Evid. 803(16). Their authenticity has been established both by the certifications and by the fact that they were recovered by the Scottish investigators and stored in the meticulous manner described in the Grainger Declaration, ECF 242-1. *See* Fed. R. Evid. 901(8).

B. Swiss Visa Document

Exhibit 1552 is a granted Swiss visa application. It was submitted by co-conspirator Fhimah in 1990, and the application was granted in December 1990, as evinced by the Swiss stamp visible on the right side of page two of the document. Documents like this were routinely collected by the Swiss government, as required by Swiss law, and archived in Bern, Switzerland. A.K. signed a certification that attests that this record, along with other similar Swiss records that are currently pending before the Court,⁵ were kept in the course of a regularly conducted activity of a branch of the Swiss government, along with all of the other factors listed in 18 U.S.C. § 3505. *See* Exhibit 1552-c2. The Court thus must admit the exhibits under Section 3505.

If the Court finds the certifications insufficient to establish that the documents are admissible under § 3505, it should admit the exhibits under the Ancient Documents Rule, Fed. R. Evid. 803(16). The documents were prepared before January 1, 1988, and their authenticity has been established. *See* Fed. R. Evid. 803(16). Their authenticity has been established both by the certifications and by the fact that they were recovered by the Scottish investigators and stored in

to certify the records and that they meet the requirements of 18 U.S.C. § 3505. Moreover, the same documents have been certified by N.M. as reflected in Exs. 901-c and 902 -c2.

⁵ ECF 450 at 2.

the meticulous manner described in the Grainger Declaration, ECF 242-1. *See* Fed. R. Evid. 901(8).

C. Maltese Staff Deployment Sheet

Exhibit 866 is a Staff Deployment Sheet for Air Malta. This document is a form that is filled out for each day, indicating who is assigned to various responsibilities. This document is dated December 21, 1988, and it lists the employees working that day and their deployments. It includes the staff assigned to the check-in desks, baggage services, load planning, among others. It also indicates which flights each employee is assigned to check in and when those check-ins would be taking place. A.A. was an employee of Air Malta and was working on December 21, 1988 and is one of the employees listed on Exhibit 866. A.A. signed a certification that attests that this record, along with other similar Air Malta records, were kept in the course of a regularly conducted activity of Air Malta, along with all of the other factors listed in 18 U.S.C. § 3505. *See* Exhibit 866-c. The Court thus must admit the exhibit under Section 3505.

If the Court finds the certifications insufficient to establish that the document is admissible under § 3505, it should admit the exhibit under the Ancient Documents Rule, Fed. R. Evid. 803(16). The document was prepared before January 1, 1988, and its authenticity has been established. *See* Fed. R. Evid. 803(16). The authenticity of Exhibit 866 has been established both by the certifications and by the fact that they were recovered by the Scottish investigators and stored in the meticulous manner described in the Grainger Declaration, ECF 242-1. *See* Fed. R. Evid. 901(8).

D. FAA Registration Documents

Exhibit 1801 is the FAA registration file for the Boeing 747 aircraft bearing tail number N-739PA (the “Aircraft”), that was carrying Pan Am Flight 103 on December 21, 1988. It bears the Adobe-verified signature of R.W., attesting that it is a true copy of the aircraft file relating to that

aircraft as of January 7, 2026. It contains a second Adobe-verified signature of K.T., affixing the seal of the FAA and attesting that R.W. was the legal custodian of the aircraft records as of the date of certification. The records are thus self-authenticating under Fed. R. Evid. 902(1) and (2).

The records are further admissible under Rules 803(8) and 803(6). The FAA has a duty under law to, among other things, register aircraft and issue certificates of registration to the aircraft's owner. *See* 49 U.S.C. § 44103(a)(1). Its registration file for the Aircraft is thus a matter observed while under a legal duty to report and admissible under Fed. R. Evid. 803(8)(A)(ii). The registration file for the Aircraft is separately admissible as a record of regularly conducted activity under Rule 803(6). The records were made at or near the time of the information on them, by a person with knowledge; they were kept in the regular course of the FAA's business; and making the records was a regular part of the FAA's activity; indeed, the FAA was required by law to keep the records in the regular course. *See* Rule 803(6)(A) – 803(6)(C). Alternatively, the documents are admissible under the Ancient Documents exception, Fed. R. Evid. 803(16). They were created prior to January 1, 1998, and they are authenticated in two ways: (1) they are more than 20 years old and were located in the FAA's files, a place where, if authentic, they would be likely to be found, *See* Fed. R. Evid. 901(8); and (2) they are certified by a custodian as described above.

CONCLUSION

For the above reasons, the Court should provisionally admit Exhibits 901, 902, 1552, 866, and 1801.

Respectfully submitted,

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ORDER

This matter is before the Court upon the government's Supplemental Motion to Admit Records of Regularly Conducted Activity. After consideration of the government's motion and related materials, the Court orders that the Motion is GRANTED. For the reasons stated in the government's motion, it is further ordered that the exhibits specified in the government's motion shall be admitted at trial, if offered by the government, pursuant to Fed. Rs. Evid. 803(6), 803(8), and 803(16).

DABNEY L. FRIEDRICH
UNITED STATES DISTRICT COURT JUDGE