

**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 SUPPLEMENT REGARDING FOREIGN RECORDS AND MOTION
TO RECONSIDER**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Supplement to clarify its position on the applicability of 18 U.S.C. § 3505 to records of regularly conducted activities of entities other than commercial “businesses.” For the reasons below, the government requests that the Court reconsider its ruling that records of government entities cannot be admitted on the basis of otherwise-valid § 3505 certificates.

The admissibility of records under § 3505 was first raised by the government in the context of a September 4, 2025, pleading in which it sought to admit (1) a number of documents from commercial “business” enterprises, for which the government provided accompanying § 3505 certifications; and (2) several records from public entities – specifically, visa applications maintained by a Swiss government office – for which it supplied certifications for public records tracking the requirements of Fed. R. Evid. 803(8). ECF 148 at 8-9, 13. In doing so, the government did not intend to waive any argument that the visa applications would also be admissible under § 3505. It was just the case that, at that time, the government possessed only public-records certificates for those documents, not § 3505 certificates.

Subsequently, during a hearing on January 12, 2026, the Court issued an oral ruling on the government's motion to admit foreign records. That ruling spanned approximately 45 transcript pages (including a short colloquy with the parties). Midway through the ruling, the Court stated:

Section 3505(c)(1) defines foreign record of a regularly conducted activity as a memorandum, report, record, or data compilation in any form of acts, events, conditions, opinions, or diagnoses maintained in a foreign country. That language does not specify that the record must be of a business activity, but the Section 3505(a)(1) requires an attestation that the business activity made such a record as a regular practice. As such, the parties appear to agree that Section 3505 governs only the admission of business records.

In turn, Section 3505(c)(3) defines "business" broadly to include business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

1/12/26 Tr. at 37. Later in the ruling, the Court declined to provisionally admit the Swiss visa records as public records. *Id.* at 47-50. But the Court did not address – because the government had not raised – whether the records could have been admitted with a § 3505 certificate.

By way of clarification, the government “agree[d] that Section 3505 governs only the admission of business records” *only* if “business” carries the broad statutory definition quoted by the Court, which includes “calling[s] of every kind, whether or not conducted for profit.” The government did *not* agree that “Section 3505 governs only the admission of business records” if “business” is limited to the narrower sense of a commercial enterprise. The significance of the matter was not clear to the government at that time because the meaning of “business” in § 3505 was not at issue in the motion then being decided. The government had not yet offered any non-commercial records under § 3505,¹ and the Court did not exclude any of the government's exhibits on the basis of § 3505's perceived inapplicability to non-commercial records.

¹ The government's opening brief noted that it had not obtained “§ 3505 or [foreign public records] certificates” for certain Maltese and Czech immigration records because it intended to

The Court's view of this issue did not become clear to the government until July 16, 2026, when the Court delivered an oral ruling on the government's Supplemental Motion to Admit Records of Regularly Conducted Activity, ECF 490. In that Supplemental Motion, for the first time, the government submitted records from a government entity with an accompanying § 3505 certificate. In rejecting those arguments, the Court explained:

As the Court explained previously in the January 12, 2026, hearing, Section 3505(c)(3) defines "foreign record of a regularly conducted activity" as a memorandum, report, record, or data compilation in any form of acts, events, conditions, opinions, or diagnoses maintained in a foreign country. That language does not specify that the record must be of a business activity, but Section 3505(a)(1) requires an attestation that the business activity made such a record as a regular practice.

The parties, at least at that time back in January, appeared to agree that Section 3505 governs only the admission of business records. In arguing for the admission of public records in its primary motion, the government offered Section 3505 certifications, but also advanced argument as to why the records satisfied the requirements for the hearsay exception under the public records exception, 803(8), and the authentication provision for foreign public records in Rule 902(3).

Here, the government has not made any argument that these visa documents satisfy Rule 803(8). The government merely states that because it has proffered a rote Section 3505 certification, the Court must admit the exhibits under Section 3505. But as explained above, the Court reads that provision differently.

7/16/26 Tr. at 7-8.

The government respectfully disagrees, and submits that the statute clearly applies to records made by non-commercial entities, including government agencies. The statute's operative provisions use the term "business activity" in describing the scope of the statute. 18 U.S.C. § 3505(a)(1)(B), (C). But the statute goes on to define "business" to "include[] business, institution,

call live witness from those countries. The government stated that, if the witnesses became unavailable, it "would anticipate obtaining and submitting a certification." ECF 148 at 16.

association, profession, occupation, and calling of every kind, whether or not conducted for profit.” 18 U.S.C. § 3505(c)(3). This definition makes 18 U.S.C. § 3505 apply just as broadly as its domestic counterpart, Rule 803(6). *See* Fed. R. Evid. 803(6)(B) (applying to “regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit”). That provision applies to the regular activities of government entities, including those that maintain visa records. *See* ECF 148 at 17 (government’s opening brief: “Because ‘public offices’ routinely engage in their own ‘regularly conducted activity,’ Rules 803(6) and Rule 803(8) can overlap.” (citing *Ngamfon v. U.S. Dep’t of Homeland Sec.*, 349 F. Supp. 3d 975, 980 n.1 (C.D. Cal. 2018))). If anything, § 3505 is broader, because it includes terms not found in Rule 803(6), as well as the catchall “*of every kind*.” Other courts have admitted non-commercial records pursuant to 3505 certificates. *See United States v. Jawara*, 474 F.3d 565, 585-85 (9th Cir. 2007) (Gambian school records).

Government agencies, although not operated for profit, nonetheless conduct “business” in the colloquial sense² and as defined by § 3505(c)(3). As relevant here, the day-to-day business of a consular office includes processing and storing visa applications. *See, e.g., Ngamfon*, 349 F. Supp. 3d at 980 n.1 (“Plaintiff has provided no reason to disbelieve that Plaintiff’s visa records were made at the time by someone with personal knowledge of Plaintiff’s application, kept in the *normal course of consulate business*, part of a regularly-practiced activity, and trustworthy.” (emphasis added)).

² *See, e.g.,* Oxford English Dictionary, *business* (noun): “As a mass noun: action which occupies time and demands attention and effort; *esp.* serious occupation or work, as opposed to pleasure or recreation.” (available at https://www.oed.com/dictionary/business_n).

Accordingly, the government respectfully requests that the Court reconsider its rulings on the applicability to § 3505 to records of entities other than commercial businesses.

Respectfully submitted,

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