

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA**

**v.**

**ABU AGILA MOHAMMAD  
MAS'UD KHEIR AL-MARIMI,**

**Defendant.**

:  
:  
:  
:  
:  
:  
:  
:

**Case No. 22-cr-392 (DLF)**

**GOVERNMENT'S REPLY IN SUPPORT OF ITS 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 reply in support of its Supplemental Motion to Admit Records of Regularly Conducted Activity. For the reasons stated below, the Court should grant the government's motion.

**A. Foreign Records**

The defense's motion relies heavily on recycled arguments that the Court has rejected regarding the adequacy of the government's 18 U.S.C. § 3505 certifications. For example, the Court has already declined to adopt the defense argument that certifications that track the statutory language, without more, are insufficient. *See* Jan. 12, 2026, Hr'g Tr. at 23 ("I agree with the government that the proffered certifications, which mirror the requirements enumerated in Section 3505, are sufficient. And in the absence of contrary binding case law or strong persuasive case law, the Court will not graft an extra-detail requirement onto the four statutory requirements for certifications under Section 3505"). That ruling is now the law of the case, that the Court should not divert from it, absent extraordinary circumstances. *See, e.g., Laffey v. Northwest Airlines, Inc.*, 642 F.2d 578, 585 (D.C. Cir. 1980) ("If justice is to be served, there must be at some point an end to litigation. ... To warrant divergence from the law of the case, a court must not only be convinced

that its earlier decision was erroneous; it must also be satisfied that adherence to the law of the case will work a grave injustice”). The defense has identified no such circumstances.<sup>1</sup>

The defense’s complaints about the government’s invocation of the ancient documents rule are likewise foreclosed by the Court’s prior ruling. As the Court found in ruling on the government’s original § 3505 motion:

The Court is inclined to agree with the government that most, if not all, of the proffered business documents could be admitted under the ancient document exception. As an initial matter, I believe that all of the proffered documents predate January 1, 1998.

As discussed in the Section 3505 context, the government has offered the Court many reasons to find that the documents’ authenticity is established. First, the documents are all in good condition and bear no signs of tampering. Second, the documents were stored by Scottish officials after their trial and were initially collected from businesses where the documents likely would have been.

Jan. 12, 2026, Hr’g Tr. at 52.<sup>2</sup>

The Court has similarly rejected the defense’s argument that fact that law enforcement collected these documents in the course of the investigation renders them inadmissible under Rule 803(16). *See* ECF 509 at 3. The defense has previously argued that because the records were

---

<sup>1</sup> In addition to its general arguments that the Court should not accept the certifications, the defense claims it has identified specific issues with the certifications accompanying Exhibits 901 and 902. *See* ECF 509 at 1-2. The indefinite tenure listed for V.S. is of no moment for the reasons that the Court has already found. Length of tenure is not a requirement under § 3505, and the certification otherwise covers the four requirements of the statute. The government acknowledges a typographical error in the certifications, but that the error is also of no moment: the government represents as an officer of the Court that Exhibits 901 and 902 were the documents shown to the witnesses, and N.M. identified the documents under oath at the Scottish trial of Megrahi and Fhimah in the Netherlands. Nonetheless, the government is seeking corrected certifications, and we will notify the Court and defense if and when we receive those corrected certifications.

<sup>2</sup> The government’s references to “January 1, 1988,” in its opening brief were indeed typographical errors, and should have read, “January 1, 1998.”

collected close in time to the incident, they do not meet the rationale behind the Ancient Documents Rule. *See* ECF 173 at 14 n.7; Jan. 12, 2026, Hr’g Tr. at 53. The Court rejected that argument:

The Court rejects the defense's purpose-based theory. Accepting the antedates-controversy purpose behind the ancient documents rule militates in favor of admitting the proffered documents under the ancient documents rule because all were created before the crash.

\* \* \*

Moreover, the defense's reframing of the purpose to turn on the time of collection would render the ancient documents exception meaningless. Most ancient documents are collected after controversy arises because that is when parties go in search of evidence.

*Id.* at 54. While the Court has not yet issued a definitive ruling under the Ancient Documents Rule regarding the admissibility of the documents at issue in the government’s first § 3505 motion, *see id.* at 55, the defense has offered nothing to warrant divergence from the Court’s thinking on how that rule should be applied.<sup>3</sup>

---

<sup>3</sup> The defense purports to “reserve[] the right to raise” a due process challenge to the admission of ancient documents “at an appropriate time,” ECF 509 at 5-6, but that time has passed. The government first made its ancient-documents arguments for admission of foreign business records in its opening motion *in limine* more than ten months ago, starting a sequence of briefing that has now gone at least eleven rounds. The parties also litigated the ancient documents rule as part of the La Belle motions *in limine*, which entailed at least seven rounds of briefing and recently concluded with a ruling from the Court accepting the government’s ancient-document arguments. Separately, the defense filed a motion to dismiss under the Due Process Clause based on allegations that the investigation was slow-walked to the defendant’s detriment (the same apparent basis of the putatively forthcoming due process challenge). *See* ECF 251 and related filings. The Court denied that motion. *See* Minute Order dated June 9, 2026. Accordingly, any due process motion of the kind contemplated in the defendant’s latest brief would be legally and factually meritless as well as untimely. By insinuating that such a motion might be filed in the immediate leadup to trial, the defense only wastes time and distracts from the properly raised issues. This non-argument should not affect the Court’s straightforward application of the Rules of Evidence.

## **B. FAA Registration File**

The defense is incorrect that there are any nested hearsay issues in the FAA registration file. The defense has conceded that that file can be admissible under Fed. Rs. Evid. 803(6) and 803(8). *See* ECF 509 at 4. The D.C. Circuit has moreover definitively ruled that “a record of which a firm takes custody is thereby ‘made’ by the firm within the meaning of [Rule 803(6)].” *United States v. Adefehinti*, 510 F.3d 319, 326 (D.C. Cir. 2007). When the FAA took custody of the documents that the defense refers to by “notarizations” and a “received” stamp, the FAA took custody of those documents, made them a part of the FAA file, and they became FAA records under the meaning of *Adefehinti*. Although *Ahdefehinti* arose in the context of Rule 803(6), its logic applies at least equally – and arguably with more force to – Rule 803(8) (and the documents are admissible under Rule 803(6) regardless). Rule 803(8) exempts from the rule against hearsay a “matter observed while under a legal duty to report.” Rule 803(8)(a)(ii). All of the documents within the FAA file that did not originate with FAA were matters on which the FAA had a legal duty to report, namely the duty to “register aircraft and issue certificates of registration to the owner.” *See* 49 U.S.C. § 44103(a)(1). The documents supplied to the FAA by Pan Am were necessary for it to carry out that duty, and they became FAA records when the FAA took custody of them.

The defense’s unspecified relevance objections and complaints about the document’s length are unavailing. In the absence of a stipulation at trial, which the defense has declined to enter, the government must prove that the aircraft carrying Pan Am Flight 103 was operating in the special aircraft jurisdiction of the United States or in interstate, overseas, or foreign air commerce. *See* 18 U.S.C. § 32(a)(1). The FAA’s registration file for the aircraft that crashed

establishes those elements.<sup>4</sup> If there are specific portions of the document that the defense believes are irrelevant under Rule 401 or otherwise excludable under Rule 403, its response to the government's motion was its chance to identify them. Since the defense did not bother to do so, the Court should admit the exhibit in full.

### CONCLUSION

For the above reasons, the government's motion should be granted.

Respectfully submitted,

JEANINE FERRIS PIRRO  
UNITED STATES ATTORNEY

By: /s/ Erik Kenerson  
ERIK M. KENERSON (OH Bar No. 82960)  
CONOR MULROE (NY Bar No. 5289640)  
BRITTANY KEIL (D.C. Bar No. 500054)  
Assistant United States Attorneys  
JEROME J. TERESINSKI (PA Bar No. 66235)  
Special Assistant United States Attorney  
601 D Street NW, Washington, D.C. 20530  
(202) 252-7201 // Erik.Kenerson@usdoj.gov

KATHLEEN CAMPBELL (MD Bar No. 9812170031)  
JENNIFER BURKE (MD Bar No. 9706250061)  
Trial Attorneys, Counter Terrorism Section  
National Security Division  
950 Pennsylvania Avenue NW, Washington, D.C. 20530

---

<sup>4</sup> For example, one of the ways the government meets the jurisdictional element is to prove that the aircraft was "in the special aircraft jurisdiction of the United States." 18 U.S.C. § 32(a)(1). One of the ways that an aircraft is in the special aircraft jurisdiction of the United States is to be a "civil aircraft of the United States" in flight. 49 U.S.C. § 46501. A "civil aircraft of the United States" is, in turn, defined as an aircraft registered with the FAA. *See* 49 U.S.C. §§ 40102(a)(17) & 44103. The FAA's registration file is what proves that the aircraft was registered with the FAA.