

**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 SUPPLEMENTAL FILING IN SUPPORT OF ADMISSION OF FAA
REGISTRATION FILE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this further proffer of the relevance of the entirety of the Federal Aviation Administration (FAA) registration file for the aircraft that carries Pan Am Flight 103. After the July 16, 2026, hearing, at which the Court directed the government to nominate specific portions of the FAA file and explain their relevance and any nested hearsay issues, the government conferred with FAA representatives regarding the file. As a result of those discussions, the government maintains its position, as stated in its reply (ECF 519 at 5 n.4), that the entirety of the file, or at the very least, every page between the certification and page 202 of the .pdf, is admissible because the entirety of the file is what demonstrates that the aircraft that carried Pan Am Flight 103 was registered with the FAA at the time of the attack, which is required to establish that it was in the special aircraft jurisdiction of the United States at the time of the attack.

Exhibit 1801 is the FAA registration file for the Boeing 747 bearing tail number N-739PA, which was the specific aircraft used by Pan Am Flight 103 on December 21, 1988. The FAA registration file would contain all records relating to the registration – or de-registration – of that

aircraft. Without the entirety of the file, the government cannot conclusively prove that the aircraft was registered on December 21, 1988.

Exhibit 1801 contains a document at .pdf page 202, indicating that the aircraft was registered by Pan Am with the FAA on March 14, 1978.¹ Two separate documents, at pp. 2-4, establish that the registration was cancelled on or about November 8, 1991, as a result of the aircraft's destruction in Lockerbie, Scotland, in December 1988. The government, however, is not required to prove that the aircraft was registered on March 14, 1978, or de-registered in November 1991. It is required to prove that the aircraft was registered on December 21, 1988. If the aircraft had been de-registered in the interim, that information would be reflected in the file. Stated in the converse, because the aircraft was registered in 1978, de-registered in 1991, and because the file shows no interim de-registration, the jury can conclude that the aircraft was registered on December 21, 1988. Without the intervening portions of the file, the jury cannot be sure of that fact.

As previously stated, the defense has declined to enter into a stipulation regarding the jurisdictional element. *See* ECF 490 at 1 n.1.² Of course, no one can force the defense to stipulate, but the effect of that refusal to stipulate cannot be to artificially weaken the government's evidence, especially where conclusive evidence is available. The government carries the burden to unanimously persuade 12 jurors that it has proven each element beyond a reasonable doubt, and that includes the jurisdictional element. Although it may seem like small potatoes, the government

¹ This was a re-registration, which was needed to comply with a change in requirements. The aircraft was registered prior to that date.

² The government is open to admitting the only the documents on pp. 202 and 2-4 of Ex. 1801 if the defense is willing to enter a stipulation to the effect that the aircraft remained registered with the FAA by Pan Am throughout the intervening time.

cannot risk a juror wondering whether the aircraft had possibly been de-registered and then re-registered at some point between 1978 and 1991.

There is no nested hearsay issue because the government is not offering any portion of the file between the registration on March 14, 1978 and the de-registration in November 1991 for its truth. The government is instead introducing those portions of the file to demonstrate the *lack* of any evidence of de-registration in that time period. There is similarly no nested hearsay issue within for the registration application on page 202 or the cancellation of registration reflected on pp. 2-4. All the forms at issue are self-evidently forms required by the FAA itself, as evidenced by their headers and other characteristic marks. For example:

NOV 30-1
7 1991

DEPARTMENT OF TRANSPORTATION—FEDERAL AVIATION ADMINISTRATION
TRIENNIAL AIRCRAFT REGISTRATION REPORT

AIRCRAFT REGISTRATION NUMBER N 739PA	SERIAL NUMBER 19646	FAA CODE 1384871	ISSUANCE DATE OCTOBER 28, 1991
MAKE BOEING	MODEL 747-121		
NAME AND ADDRESS OF CERTIFICATE HOLDER PAN AMERICAN WORLD AIRWAYS INC PAN AM BLDG NEW YORK, NY 10017		GUIDELINES FOR REPORT COMPLETION: Complete ONLY if information is incorrect. Signature requirements: - Individual owner must sign. - Partnership, a general partner must sign. - Corporation, a corporate officer or managing official must sign. - Co-owner, each co-owner must sign, continuing as necessary on an attached sheet. - Government, any authorized person may sign.	
CANCELLATION OF REGISTRATION REQUESTED: (check applicable block, sign, and date) ☐ 1. Aircraft sold to: (Purchaser's name and address) _____ ☒ 2. Aircraft destroyed/scrapped LOCKERBIE, SCOTLAND 12/88 ☐ 3. Aircraft exported to: _____ ☐ 4. Other, specify _____ (we) request cancellation of registration for the above reason.		ADDRESS CHANGE REQUESTED STREET _____ CITY _____ STATE _____ ZIP _____ COUNTRY _____	
SIGNATURE Richard C. Cuntz	TITLE C. A. MANAGERIAL POSITION	DATE 11/8/91	SIGNATURE _____ TITLE MANAGERIAL POSITION _____ DATE _____

AC Form 8050-73 (2-82) Supersedes previous edition

Registration Cancellation Request – Ex. 1801, p.4

FAA APPROVED: OMB No. 04 R0076

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION — FEDERAL AVIATION ADMINISTRATION

0000001785
14-3

AIRCRAFT REGISTRATION APPLICATION

TYPE OF REGISTRATION (Check one box) ☐ 1. Individual		CERT. ISSUE DATE K 031578
☐ 2. Partnership ☒ 3. Corporation ☐ 4. Co-Owner ☐ 5. Gov't.		
NATIONALITY AND REGISTRATION MARKS N732PA		FOR FAA USE ONLY
AIRCRAFT MAKE AND MODEL Boeing 747-121		
AIRCRAFT SERIAL No. 19646		

NAME OF APPLICANT (Person(s) shown on evidence of ownership. If individual, give last name, first name, and middle initial.)
Pan American World Airways, Inc.

ESS (Permanent mailing address for first applicant listed.)
Number and street: **Pan Am Building, New York, N.Y. 10017**

Rural Route: _____ P. O. Box: _____

☐ CHECK HERE IF ADDRESS CHANGE	CITY New York	STATE New York	ZIP CODE 10017
	(No fee required for revised Certificate of Registration)		

ATTENTION! Read the following statement before signing this application.
A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001).

CERTIFICATION

I/WE CERTIFY that the above described aircraft (1) is owned by the undersigned applicant(s), who is/are citizen(s) of the United States as defined in Sec. 101(13) of the Federal Aviation Act of 1958; (2) is not registered under the laws of any foreign country; and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration.

Signature of applicant(s) must be executed for co-ownership all applicants must sign. Use reverse side if necessary.

SIGNATURE <i>E. Allen</i>	TITLE Vice President	DATE 3-14-78
SIGNATURE	TITLE	DATE
SIGNATURE	TITLE	DATE

Notice: Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 90 days, during which time the PINK copy of this application must be carried in the aircraft.

AC Form 8050-1 (4-71) (0052-628-9002)

Registration Document, Ex. 1801 p. 202

The documents easily satisfy the requirements of Federal Rules of Evidence 803(6) and 803(8), regardless of whether they were generated by the FAA, because the FAA took them in and

kept them as a regular part of its business practice and as part of its records-keeping function and legally mandated role overseeing aircraft registration. The documents are thus admissible under Rules 803(8) and 803(6), *see United States v. Adefehinti*, 510 F.3d 319, 326 (D.C. Cir. 2007), and the intervening documents are not being introduced for their truth, but rather to establish the lack of any de-registration between 1978 and 1991.

It is always the opposing party's burden to identify the assertive "statement" that they contend is being offered for its truth. *See, e.g., United States v. Fuller*, 761 F. Supp. 3d 125, 131 (D.D.C. 2025). Here, the defense has not done so, instead simply objecting to the file as a whole without any reference to its specific contents. But to the extent there are embedded statements in the file, there is no danger that they would be taken for their truth to the prejudice of the defendant. The file consists entirely of dry corporate and regulatory documentation that (other than establishing the jurisdictional element) has nothing to do with the facts of the case. It is inconceivable that the jury would draw, or that the government would argue, any inference from these mundane documents other than the relevant one of the aircraft's registration. Nor does the government plan to spend time lingering over irrelevant pages, since we do not wish to put the jury to sleep, so there is no Rule 403 objection based on waste of time.

Accordingly, the entirety of the FAA file (Ex. 1801), or at the very least pp. 1-202 of that file, are admissible at trial to prove that Pan Am Flight 103 was in the special aircraft jurisdiction of the United States at the time it was destroyed by the bomb constructed by the defendant.

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