

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

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 1:22-cr-392 (DLF)
	)	
ABU AGILA MOHAMMAD	)	
MAS'UD KHEIR AL-MARIMI,	)	
Defendant.	)	

**MR. AL-MARIMI'S RESPONSE TO THE GOVERNMENT'S
SUPPLEMENT REGARDING FOREIGN RECORDS
AND MOTION TO RECONSIDER**

Abu Agila Mohammad Mas'ud Kheir Al-Marimi respectfully submits this opposition to the government's motion to reconsider the Court's rulings on the admissibility of Swiss and Czech visas applications (Exhs. 901, 902, 1552) and, more generally, the application of 18 U.S.C. § 3505 to the records of public entities, ECF 574.

The government first clarifies its position to be that the term "business" in § 3505 includes "calling[s] of every kind, whether or not conducted for profit[.]" and is not "limited to the narrower sense of a commercial enterprise." ECF 574, at 2.

The statute defines "business" to include "business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit." 18 U.S.C. § 3505(c)(3). Mr. Al-Marimi does not understand the Court ever to have limited § 3505 only to records of commercial enterprises; rather, consistent with the law, the Court has declined to extend the statute beyond its terms and beyond Congressional intent to cover records of public or governmental enterprises.

At least one circuit has expressly rejected the government's position that

§ 3505 applies to the records of public entities. *See, e.g., United States v. Pluta*, 176 F.3d 43, 49 (2d Cir. 1999) (rejecting application of § 3505 to foreign passports because “that section deals with business records” and “passports are more properly characterized as public records than business records”); *United States v. Sinclair*, 119 F. App’x 304, 306 (2d Cir. 2004) (expressing skepticism that § 3505 properly applied to a logbook that “was maintained by the Jamaican government”); *United States v. Yousef*, 175 F.R.D. 192, 193 (S.D.N.Y. 1997) (“The records at issue here are public documents, not business records. Thus, Section 3505 is inapplicable . . .”). Indeed, the legislative record supports Congress’s intent that the statute be applied to business records: the purpose of § 3505 was to create “a simple, inexpensive substitute for the cumbersome and expensive procedures presently required for the admission of foreign business records.” H. Rep. No. 98-907, at 3; *see also* ECF 204, at 1–2 (government’s brief relying on same). Mr. Al-Marimi to date has not located D.C. Circuit authority on the application of § 3505 to public records.

The government argues § 3505 applies “just as broadly as its domestic counterpart, Rule 803(6).” ECF 574, at 4. It further contends that Rule 803(6) applies to the regular activities of government entities, citing *Ngamfon v. U.S. Dep’t of Homeland Sec.*, 349 F. Supp. 3d 975 (C.D. Cal. 2018), and *United States v. Jawara*, 474 F.3d 565 (9th Cir. 2007). *Jawara*, it notes, affirmed the admission of “non-commercial” records. ECF No. 574, at 4.

The government’s careful language is accurate. *Jawara* involved the records of St. Augustine’s Senior Secondary School in Banjul, The Gambia. 474 F.3d at 585.

Nothing in *Jawara* suggests the school was a public school or otherwise connected to a public entity or the government of The Gambia. Nothing on the school's website indicates that, either. *See* St. Augustine's, <https://saintaugustinesgambia.org/#about>. Rather than the admission of a public record through § 3505, *Jawara* supports the unchallenged understanding that a nonprofit's records are admissible under § 3505.

As for *Ngamfon*, the Court distinguished that case as part of its prior bench rulings. *See* 7/16/26 Tr. at 9. In any event, contrary to the government's position, even the domestic business-records exception is not properly understood to cover the records of public entities. *See generally* 4 Mueller & Kirkpatrick, Federal Evidence § 8:84 (4th ed.), available on Westlaw (collecting cases and advising that "the business records exception should not be used for public records of the sorts described in Rule 803(8). . . . [T]he only conceivable reason to invoke the business records exception in preference to the public records exception . . . is a plainly improper reason, namely avoiding the use restrictions found in Rule 803(8)"); *see also United States v. Weiland*, 420 F.3d 1062, 1074 (9th Cir. 2005), *cert. denied*, 547 U.S. 1114 (2006) (holding government "may not circumvent the specific requirements" of Rule 803(8) by resorting to business records exception); *United States v. Cain*, 615 F.2d 380, 382 (5th Cir. 1980) (concluding the business records exception "does not open a back door for evidence excluded" under Rule 803(8)).

The government also refers to the "colloquial" meaning of business, citing one of several definitions of the term available in the Oxford English Dictionary. That same source notes a different definition focused on commerce is now "the most

common sense”:

II.14.a. Trade and all activity relating to it, esp. considered in terms of volume or profitability; commercial transactions, engagements, and undertakings regarded collectively; an instance of this. Hence more generally: the world of trade and commerce. Also *figurative*. Cf. **commerce** *n.* 1. 1478-

Now the most common sense. Frequently with modifying word denoting a particular area of commercial activity, or the product it relates to. *big, music, newspaper, show business*, etc.: see the first element. Cf. *in business* at Phrases P.2, *on business* at Phrases P.1, *to do business* at Phrases P.11a.

Oxford English Dictionary, *business* (noun), available at https://www.oed.com/dictionary/business_n. Other dictionaries likewise emphasize the commercial connotations of “business.” See, e.g., Merriam-Webster Dictionary, *business* (noun), available at <https://www.merriam-webster.com/dictionary/business> (“a usually commercial or mercantile activity engaged in as a means of livelihood”; “a commercial or sometimes industrial enterprise”; “dealings or transactions especially of an economic nature”); Cambridge Dictionary, *business* (noun), available at <https://dictionary.cambridge.org/dictionary/english/business> (“the activity of buying and selling goods and services”; “work that you do to earn money”).

One additional reason not to accept the government’s broad and transformative interpretation of § 3505: Congress does not hide elephants in mouseholes. See *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001). Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions[.]” *Id.* Here, Congress endorsed the limitations on the admissibility of public records in Rule 803(8), and its adoption of an avenue to admit foreign business records does not clearly indicate its intention to relax the requirements for a different sort of record, foreign or otherwise.

CONCLUSION

The Court correctly interpreted § 3505, and it should deny the government's motion for reconsideration regarding the foreign visa applications.

Respectfully submitted,

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