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Glenn Leon
Chief, Fraud Section
U.S. Department of Justice Criminal Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
Via email: Glenn.Leon@usdoj.gov

Re: Conferral with Victims' Families
U.S. v. Boeing, No. 4:21-cr-005 (Fort Worth Div. - N.D. Tex)

Dear Glenn (if I may, and please continue to call me Paul),

The families whom I represent (hereinafter “the families”) appreciated you reaching out to help set up a families’ meeting on April 24. And I and the other attorneys representing the families appreciated you holding a “lawyers only” meeting in advance. The purpose of this letter is to memorialize what I understand to be the limits on the subjects that the Department will confer about at the April 24 meeting. Accordingly, I set a series of issues that the families would like to confer about—but will unable to confer about on April 24.

During the lawyers-only meeting, you indicated that the sole subject for conferral at the April 24 meeting was paragraph 26 in the deferred prosecution agreement (DPA), which is entitled “Breach of the Agreement.” You even read the five possible grounds for a possible breach of the DPA by Boeing, specifically:

If, during the Term, (a) the Company commits any felony under U.S. federal law; (b) the Company provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) the Company or its subsidiaries and affiliates fail to cooperate as set forth in Paragraphs 5 and 6 of this Agreement; (d) the Company fails to implement a compliance program as set forth in Paragraphs 21-22 of this Agreement and Attachment C; or (e) the Company and its subsidiaries and affiliates otherwise fail to completely perform or fulfill each of their

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obligations under the Agreement, regardless of whether the Fraud Section becomes aware of such a breach after the Term is complete, the Company and its subsidiaries and affiliates shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Fraud Section in the United States District Court for the Northern District of Texas or any other appropriate venue.

You emphasized several times that the Department will only confer about these issues concerning possible breach of the DPA by Boeing. As a result of that limitation, the families will be unable to confer about many subjects of great interest to them. Here are some of the subjects that remain of interest to the families—and about which the CVRA gives them a right to confer—but about which the Department has not and apparently will not confer.

Information About False Statements in 2020

As you recall, in February 2020, the families reached out to the Department in an effort to confer about the criminal investigation of Boeing. The families were told by DOJ's Victims' Rights Ombudsman (then Marie A. O'Rourke) that no criminal investigation was ongoing. That was a false representation. In a previous communication (e.g., your communication to me on January 19, 2023) you mentioned that you would be willing to facilitate a meeting with the current Ombudsman, to help better understand how that false information came to be passed along. Information on this topic is something the families are keenly interested in.

During the lawyers-only meeting on April 9, I noted your previous offer to arrange a meeting with the current Ombudsman. I have not heard back from you on that request, so I am assuming that the meeting will not be happening and that the Department will not confer or answer questions about this topic. If my understanding is incorrect, please advise.

Information about the Negotiation of the DPA

As you know from the earlier meeting, the families remain deeply interested in how the DPA came to be negotiated. In the earlier meeting, you provided (in our view) very little information about the negotiations.

In this case, Judge O'Connor has already found that the Department violated the CVRA by failing to confer with victims' families while negotiating the Boeing DPA. The families would appreciate you giving them information about what happened during that process. Of course, negotiations with an adversary in a criminal case are not confidential information: By definition, you are exchanging information with an adversary. And such communications are not privileged, particularly where crime victims have CVRA issues at stake. *See Doe No. 1 v. U.S.*, 749 F.3d 999 (11th Cir. 2014) (plea negotiations between Justice Department and Jeffrey Epstein's attorneys not protected from disclosure in CVRA case). So the Department is permitted to disclose such information, and the families hope the Department will do so. Our understanding is that you will now.

To be clear, here are some of the specific subjects that the families would like to confer about regarding the DPA:

- Who negotiated the DPA for the Department and Boeing?
- What offers did the Department make to Boeing as part of the negotiations?
- How did the Department determine that Boeing's "misconduct was neither pervasive across the organization, nor undertaken by a large number of employees, nor facilitated by senior management"?
- Why was the exculpatory language mentioned in the previous bullet point included in the DPA?
- Why didn't the Department reach out to the families while the DPA was being negotiated?
- How did the Department determine that \$500 million was the appropriate amount for Boeing to pay to the families under the DPA?
- What parts of the DPA did the Boeing attorneys draft?
- Who within the Department had review and approval power during the DPA's drafting?
- When did the Fraud Section's criminal investigation of Boeing begin?
- How did Boeing's delay in cooperating with the Fraud Section's investigation?
- If Boeing had cooperated immediately with the Fraud Section, could the ET302 crash have been prevented?
- Did the Department and Boeing deliberately structure the DPA so as to obscure Boeing's role in directly and proximately causing the deaths of 346 people?
- Did the career prosecutors in the Fraud Section sign off on the DPA or were the signoffs only from political appointees?

- What crimes did the Department understand that the DPA was immunizing Boeing for?
- What channels within the Department did Boeing use to help negotiate the DPA?
- When was the U.S. Attorney’s Office for the Northern District of Texas involved in the DPA and who in that Office were involved?
- Since the DPA was publicly released, why hasn’t the Department been more forthcoming with the families about the case? For example, why has the Department in this case provided less information to the families than did Principal Associate Deputy Attorney General Garland to the Oklahoma City bombing families?
- What remedies does the Department believe should be available to the families in light of the Department’s violation of the CVRA?
- How does the Department propose to protect the families CVRA right to (for example) “timely” notice of a DPA ... when the families were only given notice of the DPA after it was consummated?

Information about the Venue for Where the Department Filed Charges

As you know, many observers have wondered why the Justice Department strangely chose to file its conspiracy charge against Boeing in the Fort Worth Division of the Northern District of Texas. Seattle, Chicago, and D.C. all seem much more obvious choices—not to mention more potentially convenient locations for the victims’ families. In the last meeting, the Department refused to answer any questions about why it selected Fort Worth as the venue for this case. Our understanding is that the Department is unwilling to provide any information about this venue topic. And that this unwillingness extends to refusing to report to the victims’ families what the Department discussed externally with Boeing on this subject. If our understanding is incorrect, we look forward to hearing from the U.S. Attorney for the Northern District of Texas about these issues during the meeting tomorrow.

Information about Boeing’s Progress Reports Under the DPA

The DPA required Boeing to submit various reports as part of the DPA. *See* DPA, Attachment D. The DPA also indicated that the reports would remain confidential, but an important exception existed. Under the DPA, confidentiality can be waived “to the extent that the Fraud Section determines in its sole discretion that the disclosure would be in furtherance of the Fraud Section’s discharge of its duties and responsibilities” DPA, Attachment D, para. 13. Given that the Fraud Section’s has current “duties” to not only protect the families’ CVRA rights but also to adequately

determine whether Boeing has complied with the DPA, disclosure of the reports to the victims' families will help discharge those duties. As you are aware, the victims' families have access to information from many sources that might be able to show Boeing's non-compliance—if the families are given access to the reports. The families would be willing to abide by reasonable restrictions on further dissemination of those reports. They only want access to help you determine if Boeing has failed to comply with the DPA. Will you disclose the substance of those parts of those reports to permit the families to help you in this area? Our understanding is that you will not—but please advise if we are mistaken.

Information About Recent Boeing Safety Problems

The families are well aware of multiple recent news reports regarding safety problems in Boeing 737s and other aircraft. Among the most prominent reports have been those connected with Alaskan Airlines flight 1282, during which a door plug blew out during flight. Since then, we have reviewed communications in which the Seattle Division of the FBI has advised passengers of the Alaskan Air flight that they are the “possible victim of a crime.” The families would like to know what crime was referred to in those communications.

We understand that the Department may be taking the position that at least some information associated with that investigation should not be released because the investigation is on-going. But the families are not seeking sensitive, internal information that could tip off suspected wrongdoers. Instead, the families are simply seeking information that will place them in the same position as the news media and others already are in. *See, e.g., Boeing Criminal Inquiry Expands with Subpoenas and Grand Jury: The Justice Department, which is investigating the blowout of a panel on an Alaska Airlines flight, is using a recently convened grand jury in Seattle*, N.Y. TIMES (Mar. 15, 2024).

Moreover, the families are not asking for disclosure of matters occurring before the grand jury that appears to have been impaneled. As the D.C. Circuit has explained, the grand jury secrecy rules do not “require that a ‘veil of secrecy be drawn over all matters occurring in the world that happen to be investigated by a grand jury.’” *In re Sealed Case No. 99-3091*, 192 F.3d 995, 1001–02 (D.C. Cir. 1999) (quoting *Securities & Exch. Comm’n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1382 (D.C. Cir. 1980) (en banc)). Thus, courts generally recognize that “prosecutors often have a legitimate interest in revealing aspects of their investigations “to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise aid in the investigation.” *Id.* at 1003. The families would like for the Department to “explain the

general scope of the investigation” so that they can understand how that interacts with the current DPA issues. Our understanding is that you will not. Please advise if we misunderstand.

Information About How the Department Will Review Other Potential Crimes by Boeing.

The families would also like the Department to share with them how the Department is approaching its determination of whether Boeing has breached its obligations under the DPA. In connection with this approach, the families are aware that, under the DPA, if Boeing committed “any felony under U.S. federal law” (DPA ¶ 26), it would be in breach of the DPA. How is the Department planning to make that assessment in just the next several months? Is the Department considering ways of extending the time for making this assessment? And we assume that the Department is applying the conventional preponderance-of-the-evidence standard in making that determination.

We would also like the Department to clarify that should it determine by a preponderance of the evidence that Boeing has committed a new federal felony, this fact will be reported to Judge O’Connor—and the families. As you know, Judge O’Connor is required to make a determination regarding whether the public interest supports moving forward with the charges against Boeing. Currently, we lack any assurance about what information the Department plans to make available to Judge O’Connor—and the families—as part of any such determination. Our understanding is that you are unwilling to give us any assurance on this point. Please advise if we are mistaken.

Information Covered by the Family Members’ FOIA Request

As you know, the families have a pending FOIA request with the Fraud Section—as well as litigation regarding that request in the U.S. District Court for the District of Columbia. During a recent hearing on the FOIA case, Judge Howell observed that if the families received the requested documents “it might provide a lot of assurance and reassurance to the [families] that all of the nefarious smoke that they’re seeing is nonexistent.” Tr. of March 1 Hearing at 48. Judge Howell continued to ask: “Can I just ask you something? Just step back. The Department of Justice as an institution, how is Merrick Garland going to feel if the fraud section is resisting providing information? ... [D]oesn’t the Justice Department want to get to the bottom and find the documents and show that this is just smoke and, in fact, there is no smoking guns and there are really good reasons for this DPA?” *Id.* at 72.

Judge Howell went on to encourage disclosure of documents to the families and an end to the Department's "legalistic resistance":

I just think the Department of Justice needs to take a much more macro look at this whole litigation because, you know, everything -- it seems like you are all very stovepiped over there at the Department of Justice and ... more communication with the [families] might have forestalled a preliminary injunction ... and protected the reputation of the Department of Justice, the Attorney General, in a major piece of litigation a lot better than what I see going on right now, which is just **legalistic resistance**.

Id. at 78 (emphasis added).

Have Judge Howell's comments prompted any reassessment by the Department and willingness to voluntarily provide information to the families? Our understanding is that the Department's plan is to continue what Judge Howell called "legalistic resistance." If we are mistaken, please advise.

During the lawyers-only meeting, the families requested that an attorney familiar with the FOIA litigation from the U.S. Attorneys' Office from the District of Columbia attend the April 24 conferral meeting. Will such an attorney be available? Our understanding is that the Department is declining to confer on any subjects regarding the FOIA lawsuit during the meeting—much less, voluntarily make available information that is subject to the request.

Information Through Proactive Disclosures

On March 15, 2022, Attorney General Merrick Garland released what the Department described as "comprehensive new FOIA guidelines" which were designed to "strengthen the federal government's commitment[] to transparency." The guidelines sought to increase transparency by encouraging federal agencies to make "proactive disclosures." Are there any documents that the Department is willing to "proactively" disclose? Are understanding is no—but please advise if that is incorrect.

Other Information Surrounding the DPA

The families continue to have many questions about the DPA, some of which were specifically listed in the FOIA briefing:

- Why did Boeing belatedly agree to cooperate with the criminal investigation?
- To what extent did Boeing's lawyers draft the DPA's Statement of Facts?
- Why did the DPA fail to recognize the causal connection between Boeing's crimes and the deadly crashes, and why did it fail to address the conduct and culpability of the company's leadership?
- Was the DPA negotiated or approved by DOJ officials with ties to Boeing's law firm?
- Why did the parties rush to complete the DPA shortly before President Biden was inaugurated?
- And to what extent to did Boeing urge DOJ to exclude the victims' families from the process and otherwise violate the CVRA?

Is the Department willing to voluntarily answer any of these questions? Our understanding is that the Department is peremptorily ruling all such DPA-related topics out-of-bounds ... as well as any topics related to the Department's CVRA compliance while negotiating the DPA. Please advise if we are misunderstanding anything.

* * *

Over the last several years, the families have had only a brief meeting with the prosecutors at the end of the 2023 and then a several form letters about the case. From the families' perspective, the lack of information is striking. Against that backdrop, I thought it was important to memorialize the many limits on the conferral session during April 24. If I have misunderstood anything and the Department is willing to confer regarding any of the foregoing topics, please let me know quickly.

Sincerely,



Paul G. Cassell et al.

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Boeing 737 MAX crashes victims' families

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