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February 13, 2024

Attorney General Merrick B. Garland
Deputy Attorney General Lisa Monaco
Fraud Section Chief Glenn Leon
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

U.S. Attorney Leigha Simonton
Northern District of Texas
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

Via email

Dear Attorney General Garland, Deputy Attorney General Monaco, Chief Leon, and U.S. Attorney Simonton:

The Boeing Company is fast becoming a case study in how a leniency deal between the U.S. Department of Justice and a corporate criminal fails to protect the public, reform a corporate offender, and deter corporate crime. If the new investigations stemming from the malfunctioning Boeing 737 Max 9 door plug on Alaska Airlines Flight 1282 expose criminal misconduct, we urge you to hold Boeing fully accountable for any criminal misconduct and prosecute the corporation for breaching its 2021 deferred prosecution with the U.S. Department of Justice.

The 2021 deferred prosecution agreement¹ (DPA) the outgoing Trump administration cut with the aerospace corporation over a single count of defrauding the federal government² for crashes that cost 346 lives has been widely criticized by the victims' families, by legal scholars, and by public interest advocates on numerous fronts, including for its extraordinary leniency,³ the failure to consult with the crime victims' families,⁴ and its

¹ U.S. Department of Justice, Deferred Prosecution Agreement with The Boeing Company, January 7, 2021, <https://www.justice.gov/criminal/criminal-vns/file/1482911/dl?inline>

² *Ibid.*

³ John C. Coffee, "Nosedive: Boeing and the Corruption of the Deferred Prosecution Agreement," Harvard Law School Forum on Corporate Governance, May 25, 2022, <https://corpgov.law.harvard.edu/2022/05/25/nosedive-boeing-and-the-corruption-of-the-deferred-prosecution-agreement/>

⁴ Niraj Chokshi, "Families of Boeing crash victims say the U.S. failed to consult them." The New York Times, December 16, 2021, <https://www.nytimes.com/2021/12/16/business/boeing-crash-victim-families.html>



failure to acknowledge the widespread nature of the alleged misconduct and hold senior executives accountable.⁵

That leniency agreement expired on January 7, 2024. Over the following six months, the DOJ's Fraud Section is to determine whether Boeing abided by the agreement. If Boeing is found to have abided by the agreement, the Fraud Section is to seek to have the charge against the corporation dismissed; if not, the Fraud Section has the authority to prosecute Boeing for this and any other criminal violation it may have committed.

The agreement specifically states that,

"[S]hould the Company learn of any evidence or allegation of a violation of U.S. fraud laws committed by the Company's employees or agents upon any domestic or foreign government agency (including the FAA), regulator, or any of the Company's airline customers, the Company shall promptly report such evidence or allegation to the Fraud Section."

The agreement also states that,

"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 [...] this Agreement; (d) the Company fails to implement a compliance program as set forth in [...] this Agreement [...]; or (e) the Company and its subsidiaries and affiliates otherwise fail to completely perform or fulfill each of their 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**

⁵ Majority Staff of the Committee on Transportation and Infrastructure, "Final Committee Report: The Design, Development & Certification of the Boeing 737 Max," September 2020, <https://democrats-transportation.house.gov/imo/media/doc/2020.09.15%20FINAL%20737%20MAX%20Report%20for%20Public%20Release.pdf>



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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. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company and its subsidiaries and affiliates shall be in the Fraud Section's sole discretion. [Emphasis added.]

On January 5, 2024 – just days before the agreement was set to expire – a door plug on Alaska Airlines Flight 1282 flew off the Boeing 737 Max 9 as it ascended 16,000 feet into the sky.⁶ Boeing had delivered the 737 just two months prior to the incident. Thankfully, no one was seriously injured, and the Federal Aviation Administration (FAA) grounded all Boeing 737 Max 9 airplanes.⁷

Now the FAA is “conducting an investigation to determine if Boeing failed to ensure completed products conformed to its approved design and were in a condition for safe operation in compliance with FAA regulations.”⁸ The FAA's letter to Boeing executive Carole Murray further states that “After the incident, the FAA was notified of additional discrepancies on other Boeing 737-9 airplanes.”⁹ The letter cites FAA requirements and alleges “Boeing may have failed to ensure its completed products conformed to its approved design and were in a condition for safe operation in accordance with quality system inspection and test procedures.”

Boeing's possible failure to ensure its completed products conformed to its approved design and in a condition for safe operation also precisely describes the felony fraud charge as detailed in the 2021 criminal information.¹⁰ The primary evidence alleged in the criminal information describes a discrepancy between the design Boeing submitted for

⁶ James Glanz, Mika Gröndahl, Helmuth Rosales, Anjali Singhvi and Mark Walker, "How Did a Boeing Jet End Up With a Big Hole?" The New York Times, January 23, 2024,

<https://www.nytimes.com/interactive/2024/01/23/business/boeing-alaska-airlines-door-plug.html>

⁷ U.S. Federal Aviation Administration, "Updates on Grounding of Boeing 737-9 MAX Aircraft," last updated January 17, 2024, <https://www.faa.gov/newsroom/updates-grounding-boeing-737-9-max-aircraft>

⁸ *Ibid.*

⁹ U.S. Federal Aviation Administration letter to Boeing Company Vice President, Total Quality, Boeing Commercial Airplanes Carole Murray, January 10, 2024,

https://www.faa.gov/sites/faa.gov/files/EIR2024NM420001_737MAX9.pdf

¹⁰ U.S. Department of Justice, Criminal Information filed against The Boeing Company, January 7, 2021 <https://www.justice.gov/criminal/criminal-vns/file/1482906/dl?inline>



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FAA approval of the 737 Max – which omitted the now-infamous Maneuvering Characteristics Augmentation System (MCAS) – and the actual design.

Deterring all types of corporate recidivism should be a high priority for the U.S. Department of Justice; deterring repeat offenses involving similar fact patterns is particularly important if federal prosecutors expect their enforcement efforts to be taken seriously.

Deputy Attorney General Monaco stated in a speech in 2021 that the DOJ would be studying whether companies take their obligations in deferred prosecution agreements and non-prosecution agreements seriously enough. Deputy Attorney General Monaco continued, declaring “we have no tolerance for companies that take advantage of pre-trial diversion by going on to continue to commit crimes, particularly if they then compound their wrongdoing by knowingly hiding it from the government. It is hard for me to think of more outrageous behavior by a company that has entered into a DPA or NPA in the first place.” The DOJ later revised its corporate enforcement policy to disfavor multiple deferred and non-prosecution agreements.¹¹

We are encouraged that the DOJ has broken from its apparent previous practice of not enforcing against leniency agreement breaches. Corporations that subsequently faced consequences for breaching their obligations include Monsanto,¹² Deutsche Bank,¹³ and Ericsson.¹⁴

If the evidence shows that Boeing did indeed fail to abide by its obligations under the deferred prosecution agreement, this outrageous behavior should result in Boeing’s

¹¹ Memorandum from Deputy Attorney General Lisa Monaco on Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group, U.S. Department of Justice, September 15, 2022 <https://www.justice.gov/opa/speech/file/1535301/download>

¹² U.S. Department of Justice press release, "Monsanto Agrees to Plead Guilty to Illegally Using Pesticide at Corn Growing Fields in Hawaii and to Pay Additional \$12 Million," December 9, 2021, <https://www.justice.gov/usao-cdca/pr/monsanto-agrees-plead-guilty-illegally-using-pesticide-corn-growing-fields-hawaii-and>

¹³ Tom Sims and Chris Prentice, "U.S. DOJ extends monitor of Deutsche Bank for late reporting of DWS allegations," Reuters, March 11, 2022, <https://www.reuters.com/business/finance/us-doj-extends-monitor-deutsche-bank-late-reporting-dws-allegations-2022-03-11/>

¹⁴ U.S. Department of Justice press release, "Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement," March 2, 2023, <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>



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prosecution both for its original and now subsequent misconduct. Repeated violations – including in contravention of an added duty to take care to comply with the law under the 2021 DPA – should lead the Department to charge Boeing as aggressively as the facts and law support. Specifically, the Department should take advantage of this unwanted opportunity to rectify the outrageous leniency of the original DPA. We urge you, as you determine the facts and law support, to charge Boeing with much more than a single count and to consider manslaughter charges.

We urge you and the FAA to act expeditiously so that the six-month period after the DPA end date does not expire before you take necessary action.

Sincerely,

Robert Weissman
President

Rick Claypool
Research Director, President's Office

Public Citizen
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