

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Case No. 4:21-cr-00005-O
)	
THE BOEING COMPANY,)	
)	
<i>Defendant.</i>)	
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DECLARATION OF PAUL G. CASSELL

Pursuant to Title 28, United States Code, Section 1746, I, Paul G. Cassell, hereby declare as follows:

1. I am the Ronald N. Boyce Presidential Professor of Criminal Law at the S.J. Quinney College of Law at the University of Utah, where I teach crime victims’ rights and other criminal law classes. Since about November 2021, I have worked on this case *pro bono*, along with other attorneys representing various Boeing 737 MAX crashes victims’ families. I submit this declaration in support of the families’ objection to the proposed plea agreement between the Government and The Boeing Company (“Boeing”).

2. I have personal knowledge of the factual circumstances described below, which primarily concern the Government’s meetings with the family members of the victims of the Lion Air Flight 610 and Ethiopian Airlines Flight 302 Boeing 737 MAX crashes (“the families” or “victims’ families”). The Court has recognized the family members as “crime victims” with rights under the Crime Victims’ Rights Act (CVRA).

3. I also have familiarity with how federal criminal plea bargaining and trials operate, having served as a law clerk to two federal judges (then-Judge Antonin Scalia and Chief Justice Warren Burger, from 1984-86), an Associate Deputy Attorney General in the U.S. Department of Justice (1986-88), an Assistant U.S. Attorney for the Eastern District of Virginia (1988-1992), a federal district court judge for the District of Utah (2002-07), the Chair of the Judicial Conference's Criminal Law Committee (2006-07), a criminal law professor teaching criminal justice related classes (2007-present), and an attorney representing crime victims (2007-present). As a federal prosecutor, I personally handled many federal cases where plea bargaining was involved and where confession evidence was considered during plea bargaining or introduced at trial. And as a federal judge, I personally presided over many federal jury trials where confession evidence and incriminating statements were introduced.

4. I have also written many articles on issues surrounding confession evidence in criminal cases. *See, e.g.,* Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops After all These Years: A Review of Fifty Years of Empirical Evidence of Miranda's Harmful Effects on Law Enforcement*, 97 BOSTON U.L. REV. 687 (2017) (keynote article for an academic conference on the 50th anniversary of the *Miranda* decision) (co-author with Professor Richard Fowles); Paul G. Cassell and Bret Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, 43 UCLA L. REV. 839 (1996) (empirical research on confessions, including the impact of confessions on case outcomes) (co-author with Bret Hayman). I have been quoted frequently in scholarly articles relating to confession evidence. The United States Supreme Court appointed me to brief and argue a case, *Dickerson v. United States*, 530 U.S. 428 (2000), concerning the *Miranda* rule and confessions. I have consulted with state Attorneys General offices, prosecutors, and

defense attorneys about confession issues. As a result of my research, publications, and experience, I am regarded as an expert on confessions.

5. I am also a member of the American Law Institute and a fellow of the American Bar Foundation, and an inaugural member of the Council on Criminal Justice.

6. I am familiar with how crime victims and federal prosecutors interact in criminal cases. Among other experiences, I have represented many crime victims and crime victims' representatives in federal criminal prosecutions. In and around 1996, for example, I worked closely with federal prosecutors (including then-Principal Associate Deputy Attorney General Merrick Garland) representing victims' families in the Oklahoma City Bombing case. From 2008 to 2021, I represented crime victims of the Jeffrey Epstein sex trafficking organization in their efforts to challenge Epstein's non-prosecution. In 2008 to 2009, I represented victims and victims' families in the Texas City oil refinery prosecution case, including litigation involving crime victims' rights (*In re Dean*) before the Fifth Circuit. In October 2020, the U.S. Department of Justice honored me with the Ronald Wilson Reagan Public Policy Award, which recognizes individuals whose leadership, vision, and innovation have led to significant changes in public policy and practice that benefit crime victims. The Eleventh Circuit has described me as "one of the nation's foremost authorities on victims'-rights issues in general and the CVRA in particular." *In re Wild*, 955 F.3d 1196, 1198 (11th Cir. 2020).

7. In this case, the bottom line is that the Justice Department first presented the terms of its proposed plea agreement with Boeing to the families in such a way that the families were treated unreasonably and not given a reasonable opportunity to confer about the specifics of the proposed plea.

8. Before turning to the details of the Government's conferral, I first discuss the declaration submitted by Sean P. Tonolli supporting the proposed plea (ECF No. 245-1) concerning how a trial might proceed in this case, including the significance of Boeing's confession in such a trial.

I. THE FAMILIES' POSITION ON A TRIAL

9. Mr. Tonolli's declaration states that if this case were to proceed to trial, "the testimony and evidence the Government would seek to introduce against Boeing would track the Statement of Facts accompanying the Agreement and overlap to a substantial degree with the testimony and the evidence the Government introduced in the case against the Chief Technical Pilot." Tonolli Dec. ¶ 14. This conclusion fails to fully consider a significant new piece of evidence that would be available to the Government in a criminal trial against Boeing: Boeing's signed confession.

10. In the Deferred Prosecution Agreement (DPA) in this case, Paragraph 2 and related provisions constitute a full confession by Boeing that it is guilty of the conspiracy crime charged in the pending Criminal Information. Specifically, DPA Paragraph 2 states that Boeing "admits" that the Statement of Facts is "true and accurate":

The Company *admits*, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the Statement of Facts, and that the allegations described in the Information and *the facts described in the Statement of Facts are true and accurate*.

DPA ¶ 2 (emphases added). Boeing goes on to agree that the Statement of Facts can be used by the Government in any deferred prosecution, such as a prosecution that might now follow in the wake of the Government's "breach" determination:

The Company agrees that, effective as of the date it signs this Agreement, in any prosecution that is deferred by this Agreement, it will not dispute the Statement of

Facts set forth in this Agreement, and, in any such prosecution, the Statement of Facts shall be admissible as: (a) substantive evidence offered by the government in its case-in-chief and rebuttal case; (b) impeachment evidence offered by the government on cross-examination; and (c) evidence at any sentencing hearing or other hearing. In addition, in connection therewith, the Company agrees not to assert any claim under the United States Constitution, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, Section 1B1.1(a) of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”), or any other federal rule that the Statement of Facts should be suppressed or is otherwise inadmissible as evidence in any form.

DPA ¶ 2.

11. The DPA was signed by the highest executive possible in The Boeing Company, specifically David L. Calhoun, then the President and Chief Executive Officer of Boeing, on January 6, 2021—as evidenced by the detailed “Company Officer’s Certificate” found on the next page:

COMPANY OFFICER'S CERTIFICATE

I have read the Agreement and carefully reviewed its terms and attachments with inside and outside counsel for The Boeing Company (the "Company"). I understand the terms of the Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing the Agreement, I consulted inside and outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

With the assistance of the Company's Chief Legal Officer, I have provided the Agreement for review by the Company's Board of Directors, who have been briefed on its principal terms and who have delegated authority to approve the Agreement to a subgroup of the Board of Directors, as set forth and described in the Certificate of Corporate Approval. I have advised and caused outside counsel for the Company to advise the duly authorized subgroup of the Company's Board of Directors fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in the Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing the Agreement on behalf of the Company, in any way to enter into the Agreement. I am also satisfied with outside counsels' representation in this matter. I certify that I am the President and Chief Executive Officer for the Company and that I have been duly authorized by the Company to execute the Agreement on behalf of the Company.

Date: _____

By: _____



David L. Calhoun
President and Chief Executive Officer
THE BOEING COMPANY

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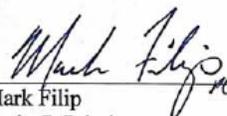
12. In addition to the signature from Boeing's President and CEO, there is also a Certificate of Counsel for The Boeing Company attesting to the validity of the representations made in the DPA, as found on the next page:

CERTIFICATE OF COUNSEL FOR THE BOEING COMPANY

I am counsel for The Boeing Company (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed them with the Company's Corporate Secretary and the subgroup of the Company's Board of Directors to which the Board delegated the authority to approve execution of the Agreement after review of the final documents and terms. Based on my review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into the Agreement on behalf of the Company and that the Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of the Agreement with the subgroup of the Board referenced above and the Company's President and Chief Executive Officer. I have fully advised them of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into the Agreement. To my knowledge, the decision of the Company to enter into the Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: 1/6/2021

By:


Mark Filip
Craig S. Primis
Patrick Haney
KIRKLAND & ELLIS LLP
Counsel for The Boeing Company

Date: 1/6/2021

By:


Richard Cullen
Benjamin L. Hatch
Brandon M. Santos
MCGUIREWOODS LLP
Counsel for The Boeing Company

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13. The DPA's Statement of Facts (ECF No. 4, Attachment A) contains 54 paragraphs. Those paragraphs cover in detail all of the necessary elements and facts required to prove beyond a reasonable doubt that Boeing is guilty of the crime charged in the Criminal Information. In other words, Boeing's attestation that the Statement of Facts is "true and accurate" constitutes a

complete, signed confession by Boeing to the crime charged in the pending Criminal Information. That conclusion cannot be reasonably contested by Boeing (or the Government). The DPA's Statement of Facts was designed to undergird a *deferred* prosecution agreement, allowing a later prosecution to be effectively based on the representations in the DPA. And on their face, the 54 facts appear to be credible and consistent in describing how Boeing conspired to defraud the FAA.

14. The Government indicates in its brief in this case that it would introduce the Statement of Facts but would not rely on the Statement of Facts "alone." ECF No. 245 at 11. That means that Boeing's confession would be introduced by the Government in any trial involving Boeing. Moreover, while it may be true that the Government would not decide to rely on the Statement of Facts "alone," very little additional evidence (if any) would be required to support the Statement of Facts, given that the 54 facts recounted provide a credible account of Boeing's conspiracy. To the extent that "corroboration" of such an incredibly detailed confession is needed, it could easily be supplied by just introducing a few indisputable pieces of evidence, such as the relevant documents, messages, and emails referenced in the Statement of Facts (e.g., the "shocker alert" message).

15. The Government also possesses significant and credible evidence of Boeing's conspiracy (and the role of Boeing's senior leadership in the conspiracy), as the families have recounted in their Families' Proposed Alternative Statement of Facts. The Government (and Boeing) have not specifically contested the accuracy of the facts the families have alleged there.

16. Leading evidence scholars have recognized that once a reliable confession is introduced into evidence, the need for other evidence becomes "superfluous." *See* Yueran Yang et al., *Short-Sighted Confession Decisions: The Role of Uncertain and Delayed Consequences*, 39 LAW & HUM. BEHAVIOR 44, 44 (2015) (quoting MCCORMICK ON EVIDENCE 316 (1972)). "A

confession is so persuasive, in fact, that in many cases convictions have been determined on the basis of confession evidence alone.” Yang et al., *supra*, at 44 (citing R.P. Conti, *The Psychology of False Confession*, 2 J. OF RELIABILITY ASSESSMENT AND WITNESS PSYCHOLOGY 14 (1999); S.M. Kassin & L.S. Wrightsman, *Confession Evidence*, in S.M. Kassin & L.S. Wrightsman (eds), *THE PSYCHOLOGY OF EVIDENCE AND TRIAL PROCEDURE* 67 (1985). The conclusion that juries are willing to convict based almost exclusively on confession evidence alone is consistent with my experience. This conclusion appears to be applicable to any prosecution of Boeing.

17. As a former federal prosecutor, former federal judge, federal court litigator, and academic researcher familiar with federal jury trials and confessions, it is my professional opinion that in any jury trial in this case, a jury would find Boeing’s detailed confession to be reliable and would give it great weight in reaching an ultimate guilty verdict. The reasons for this conclusion are many. They include the fact that Boeing’s confession was clearly prepared with the help of sophisticated legal counsel from two of America’s leading law firms, as described above. Those lawyers indicate that, after careful review, they believe that the decision of Boeing to enter into the agreement was “an informed and voluntary one.” Boeing’s lawyers’ conclusion appears to be reasonable on its face and would (among many other things) lead to a jury giving great weight to Boeing’s confession.

18. In addition to the lawyers’ certification, the “Company Officer’s Certificate” states that Boeing’s then-President and CEO (David L. Calhoun) had “carefully reviewed [the DPA’s] terms and attachments [e.g., the Statement of Facts] with inside and outside counsel for The Boeing Company.” Boeing’s then-President and CEO also stated that he understood “the terms of the Agreement and voluntarily agree[d], on behalf of the Company, to each of its terms.” He also specifically affirmed that the facts alleged were “true and accurate.” Given the gravity of the

allegations contained in the DPA and its attached Statement of Facts, Boeing's then-President would not have made those representations if anything in the Statement of Facts were inaccurate. This Certificate would be an additional reason (among many other things) that would lead to a jury giving great weight to Boeing's confession.

19. In addition, Boeing agreed in the DPA that "it will not dispute the Statement of Facts set forth in this Agreement, and, in any such [deferred] prosecution." DPA ¶ 2. In light of that agreement, it would not be possible for Boeing to dispute the Statement of Facts by mounting any factual defense to the conspiracy charge contained in the Criminal Information. Accordingly, any "litigation risk" connected with going to trial in this case (e.g., the risk of a not-guilty verdict) is minimal.

20. In its extensive briefing regarding the proposed plea agreement, Boeing only vaguely states that, in a contested case, "Boeing *could* bring certain challenges to the admissibility of that statement of facts." Boeing Br. at 21 (emphasis added). Boeing does not identify what those challenges to admissibility might be, since it specifically agreed that "the Statement of Facts *shall be admissible* as ... substantive evidence offered by the government in its case-in-chief" DPA ¶ 2 (emphasis added). And presumably the only reason that Boeing asserts that it "could" bring a challenge—not that it *would* bring a challenge—is that Boeing specifically "agree[d] not to assert any claim under the United States Constitution, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, Section 1B1.1(a) of the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines"), or any other federal rule that the Statement of Facts should be suppressed or is otherwise inadmissible as evidence in any form." DPA ¶ 2. In light of Boeing's specific and voluntary agreement to the admissibility of the Statement of Facts,

any challenge by Boeing to the admissibility of the Statement of Facts in a trial would be not only frivolous but also a violation of its DPA obligations.

21. I have reviewed what I believe to be the relevant parts of the trial transcript in *United States v. Mark A. Forkner*, Case No. 4:21-cr--268-O (N.D. Tex. March 2022). Based on that review of the transcript, the Government lacked anything like Boeing's confession when it prosecuted Mr. Forkner. The lack of confession evidence that the Government could use against Mr. Forkner is a material difference from the evidence that the Government would have available in a trial against Boeing. Accordingly, contrary to the position of the Government (DOJ Br. at 10), it is my professional opinion that a criminal prosecution of The Boeing Company would not just be "a repeat of the prior trial" against Mr. Forkner.

22. In the Government's trial of Mr. Forkner, the defense advanced the important argument that Forkner was just a low-level person within The Boeing Company. *See, e.g.*, Trial Tr., Vol 4 (Mar. 23, 2022) at 711 (defense arguing in its closing statement that Mr. Forkner "was a low-level lead of four or five people. Not a manager, not an executive."). This type of defense would be unavailable to Boeing in a criminal trial because Boeing is responsible for the actions of all "its officers, directors, employees, and agents"—as Boeing admitted in the DPA. DPA ¶ 2. This is another material difference between how the trial of Mr. Forkner proceeded and how a trial of Boeing would likely proceed—a difference that makes it much more likely that the Government would convict Boeing.

23. Boeing also references that the Court has stated that Stacey Klein lacked credibility in certain aspects of her testimony at Mr. Forkner's trial. Boeing Br. at 20 (citing Hrng. Tr. (Aug. 26, 2022), at 35). But the Court's statement was made in the course of asking counsel for the victims' families whether the families "need[ed]" Stacey Klein's testimony to establish direct and

proximate causation between Boeing's lies to the FAA and the two crashes. Hrng. Tr. (Aug. 26, 2022) at 35 ("Do you need Stacey Klein's testimony[?]"). Obviously, the Court later found that the families did *not* need Ms. Klein's testimony because it ruled in the families' favor based on other testimony. Similarly, Ms. Klein's testimony would not be required at any trial of Boeing given the extensive Statement of Facts that is already in place and admitted by Boeing's CEO.

24. Another type of evidence that would be available in a trial of The Boeing Company that was unavailable in Mr. Forkner's trial is incriminating evidence from the defendant itself (i.e., from Boeing's executives). During Mr. Forkner's trial, the Government did not call him to the stand and ask him whether he was guilty. Presumably the reason for this is that Mr. Forkner was entitled to a Fifth Amendment right against Self-Incrimination—a right which he exercised during his trial. In any trial of Boeing, the Government could simply call a Boeing executive to admit the company's guilt because (unlike Forkner) Boeing has no Fifth Amendment right against self-incrimination. *See Braswell v. United States*, 487 U.S. 99 (1988). This would open up for the Government many opportunities for proof that were unavailable during Mr. Forkner's trial.

25. In sum, a trial of The Boeing Company would be materially different than the trial of Mr. Forkner. Realistically, there appears to be very little "litigation risk" in taking The Boeing Company to trial. Accordingly, any significant concessions to Boeing in the plea bargaining process based on litigation risk would be contrary to how federal prosecutors typically handle such negotiations.

26. The Tonolli Declaration also states that the "highest pecuniary gross gain or loss the Government can allege and prove beyond a reasonable doubt is \$243.6 million." Tonolli Dec. ¶9. While the Government calls this gain figure a "high-end estimate of Boeing's total cost-savings due to the charged conspiracy" (*id.*), its declaration offers little information to support that

assertion. The Government does not specifically explain how it derived the figure or what information it used. In the earlier DPA, the Government stated that this figure for how much money Boeing gained came from information provided by Boeing. In 2021, the parties described the number as “representing Boeing’s cost-savings, based on *Boeing’s assessment* of the cost associated with the implementation of full-flight simulator training for the 737 MAX.” DPA ¶ 9(b) (emphasis added). Now, in 2024, in relying on Boeing’s own figure, the Government does not explain how it verified this information coming from a criminal defendant. Accordingly, assessing the specific basis for the Government’s conclusion—and whether that conclusion is ultimately reliable—is impossible.

27. The victims’ families have presented substantially larger gain figures than the Government’s. The families’ figures, which are included in the families’ briefing in this case, reflect a total gain to Boeing from its crime of more than \$2.6 billion. The Government has not responded with any specific criticism of those substantially larger numbers, which are based on reliable information such as Boeing’s own SEC filings. (Notably, Boeing’s “gain” information described above was not included in any SEC filing or other authoritative source, so far as appears in the briefing.)

28. With regard to a loss figure, the victims’ families have also provided calculations and evidence demonstrating a loss from Boeing’s crime in the billions of dollars. These calculations rest on evidence that cannot be reasonably disputed, such as Boeing’s own SEC filings. The victims’ families have also repeatedly asked the Government for its calculation of a loss figure, particularly since the Court has described Boeing’s crime as the “deadliest corporate crime in U.S. history.” The Government has repeatedly declined to present a specific loss figure, leading me to conclude that the Government would (if pressed) disclose that its view of the losses in this case is

zero (or something similar that is effectively very low). While the Government has declined to share its specific reasoning for this conclusion that the loss is zero, it appears that the Government is taking the view that it must prove that a loss by Boeing was “directly and proximately” caused by Boeing’s crime—a legal position that is, in my view, inaccurate for the reasons described in the families’ brief. But, in any event, the Government has not presented a specific loss figure that would be an alternative to the families’ figures.

II. THE GOVERNMENT’S LACK OF CONFERRAL ABOUT THE SPECIFICS OF THE BOEING PLEA AGREEMENT

29. Over the last several months, I have represented fifteen victims’ families during discussions with the Government in this case. In the course of that representation, I have explained to the Government that the families are entitled to confer about the specific terms of any plea agreement with Boeing, particularly because the Government negotiated its earlier DPA with Boeing secretly and in violation of the CVRA. The families were very concerned that the Government was getting ready to do “DPA 2.0”—that is, another “sweetheart deal” for Boeing. Against the backdrop of these concerns, the victims’ families repeatedly asked the Government to confer with them about the specific terms of the Government’s proposed plea agreement before it was offered to Boeing (or before the Government and Boeing struck a final deal on the terms of the plea agreement).

30. Instead of conferring with the victims’ families about the specific terms of the proposed plea before providing them to Boeing, on Saturday, June 29, 2024, at about 1:14 p.m. Eastern time, the Department emailed families and their attorneys around the world, informing them that the Department needed to hold a (purported) “conferral session” with the families 25 hours later—at 2:45 p.m. Eastern time on Sunday, June 30.

31. Victims' families from around the world made an effort to join that call, held on June 30. At the start of the call, the Government announced (as it had during previous sessions) that one of the "ground rules" was that the families could not record the call. I honored that request. If the Justice Department had not put in place the no-recording ground rule, I would have recorded that meeting to avoid any dispute about what was said. To the extent that there is a dispute about what was said at that meeting, it arises only because of the Justice Department's ground rule.

32. During the June 30 call, the Government laid out for the first time the specific terms that it was going to offer to Boeing in the plea agreement. Family members vigorously objected to some of the proposed provisions.

33. The family members repeatedly and specifically asked the Government for its position regarding the "loss" from Boeing's crime. The Government declined to answer that question, leaving the clear impression that the Government's position was that no loss occurred.

34. Toward the end of the call, one of the family members' attorneys asked the Government whether it would consider the objections that family members had just made to the plea before extending the offer to Boeing. The Government responded that it would not take even a few minutes to reflect on the families' concerns. Instead, the purpose of the call was simply to "inform" the victim's families of the agreement's proposed terms. And the Government said that, immediately after the call, it would offer the described plea deal to Boeing.

35. Of great importance, during the June 30 conference call, the Government specifically told the family members that "the key terms of the offer" were "non-negotiable and must be responded to swiftly." That is my clear memory of what was said during the call. Multiple members of my legal team have the same clear recollection: the Government told the families that the key terms it was offering to Boeing were "non-negotiable." Contemporaneous written notes

taken by at least one member of the team also confirm that the government indicated that “the key terms of the offer are non-negotiable and must be responded to swiftly ... by the end of the week.”

36. The families’ reaction during the call is consistent with these recollections of the Government describing the agreement’s terms as being “non-negotiable.” Towards the end of the June 30 call, at least one family member expressed frustration to the Government that there would be no option for the families to give input on the terms of the deal since the agreement apparently was no longer subject to change and was, in fact, being offered to Boeing immediately after the family call. The Government did not dispute that characterization of what was happening.

37. In my opening brief for the family members, I indicated that during the June 30 meeting, the Government told the family members that it was extending “‘non-negotiable’ terms to Boeing.” Families Br. at 3. Neither the later-filed brief from the Government nor its accompanying Tonolli Declaration dispute this fact.

38. Against this backdrop, the family members were surprised that, after the Government extended purportedly “non-negotiable” terms to Boeing with the supposed requirement of a “swift response,” it instead took the parties 24 days to “memorialize” the agreement. ECF No. 215 at 1. From the families’ perspective, it appeared that, contrary to what the Government told them, the Government and Boeing might be engaged in extensive negotiations about how to resolve this case—negotiations that were excluding the families. But the families relied on the Government’s representations that no such negotiations were occurring.

39. The families first became certain that the Government and Boeing “negotiated over the material terms of the plea offer” when the families (and their counsel) read the Tonolli Declaration on and after August 14, 2024. *See* Tonolli Dec. ¶ 55 (“From July 1 to 7, 2024, the

Government and Boeing's counsel negotiated over the material terms of the plea offer. The negotiations were arms' length and proceeded in the normal course.").

40. Contrary to the June 30 representation by the Government that the key terms of the Boeing plea agreement were "non-negotiable," in fact (as the Government now concedes), "there were material changes to two components of the plea agreement as compared to the plea offer the Government explained during the June 30, 2024 conferral session." Tonolli Dec. at ¶ 58.

41. If the families had been made aware that material terms in the proposed plea agreement were negotiable, on their behalf I would have attempted to confer with the Government about those negotiations and to change the course of those negotiations. I have no doubt that many family members and their counsel would have done the same thing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 23, 2024

/s/ Paul G. Cassell
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