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

UNITED STATES OF AMERICA, *Plaintiff* v. THE BOEING COMPANY, *Defendant.*	)	Case No. 4:21-cr-005-O-1

RESPONSE BY NAOISE CONNOLLY RYAN, ET AL., TO JOINT STATUS REPORT AND NOTICE OF INTENT TO ASSERT RIGHT TO PROCEEDINGS FREE FROM UNREASONABLE DELAY SHOULD THE PARTIES SEEK FURTHER DELAYS

Naoise Connolly Ryan et al.[1] (the "victims' families" or "families"), through undersigned counsel, respectfully respond to the parties' joint status report (ECF No. 289). The families hereby provide notice that they have no objection to the joint motion by the Government and Boeing for an extension of time under the Speedy Trial Act to allow for continued discussions about a new guilty plea arrangement until April 11, 2025. ECF No. 289. The victims' families, however, provide notice by this filing of their intent to assert their Crime Victims' Rights Act (CVRA) right to "proceedings free from unreasonable delay," 18 U.S.C. § 3771(a)(7), should the Government and Boeing seek any further time beyond April 11 for continued negotiations. The Court has generously granted the parties repeated continuances, and they should be able to decide how they wish to proceed by that date.

[1] In addition to Ms. Ryan, the other victims' family members filing this motion are Emily Chelangat Babu and Joshua Mwazo Babu, Catherine Berthet, Huguette Debets, Luca Dieci, Bayihe Demissie, Sri Hartati, Zipporah Kuria, Javier de Luis, Nadia Milleron and Michael Stumo, Chris Moore, Paul Njoroge, Yuke Meiske Pelealu, John Karanja Quindos, Guy Daud Iskandar Zen S., and others similarly situated.

In support of this notice, the families highlight the following facts showing how long justice has been delayed in this case due to the parties' repeated delays:

In and around the end of 2020 and the first week of 2021, the Government and Boeing secretly and illegally negotiated a deferred prosecution agreement to resolve Boeing's criminal liability for its criminal conspiracy to defraud the FAA. Thereafter, the Government engaged in protracted—and unsuccessful litigation—attempting to deny the victims' families any recognition under the CVRA. *See* ECF No. 116 at 18 (granting families' motion for finding that the parties negotiated the DPA in violation of the families' CVRA rights). On January 7, 2025, DPA's three-year term concluded. The Government then had six months to determine whether Boeing had fulfilled its obligations under the agreement. Sadly, Boeing failed to comply.

On May 14, 2024, the Government filed a notice with this Court that the Government had "determined that Boeing breached its obligations under DPA Paragraphs 21, 22, and 26(d), and DPA Attachment C, including Paragraphs 1, 3, 4, and 5 of that Attachment, by failing to design, implement, and enforce a compliance and ethics program to prevent and detect violations of the U.S. fraud laws throughout its operations." ECF No. 119 at 1. Thereafter, the Government and Boeing took seven weeks to negotiate a plea agreement, under which Boeing would plead guilty to the pending conspiracy charge. The parties provided notice of that proposed guilty plea agreement on the public docket on July 7, 2024 (ECF No. 204). A few hours later, the families promptly filed notice of their intent to object to the proposed agreement.

The parties filed their proposed plea agreement more than two weeks later, on July 24, 2024 (ECF No. 221). One week later, on July 31, 2024, the families filed their objection to the proposed plea agreement (ECF No. 233). After responses and replies were filed, the Court held a hearing on the proposed guilty plea on October 11, 2024 (ECF No. 273). Four days later, on

October 15, 2024, the Court directed supplemental briefing from the parties. (ECF No. 275). After the parties responded on October 25, 2024, the Court rejected the proposed plea agreement on December 5, 2024 (ECF No. 282). The Court directed the parties to provide a notice of how they intended to proceed within thirty days.

On January 3, 2025, the parties filed a joint status report with this Court. Citing "the upcoming change in Department leadership" due to the recent Presidential election, the parties requested until February 16, 2025, to provide further information to the Court (ECF No. 285). The Court promptly granted the extension (ECF No. 286).

On February 6, 2025, the families sent a letter to Attorney General Bondi requesting an opportunity to meet briefly with her regarding the plea discussions. The families are currently awaiting a response from Attorney General Bondi.

On February 13, 2024, the parties requested (yet again) additional time to negotiate a new plea arrangement—time which would permit "briefing of new Department leadership." (ECF No. 287 at 1). The parties proposed that the Court give them until March 14, 2025, to continue their plea discussions (*id.* at 2). The Court promptly granted the motion (ECF No. 288).

About an hour ago today, the parties filed their third request for more time to discuss arrangements for Boeing to plead guilty to its conspiracy crime. ECF No. 289. In a single sentence, they tersely offered their reason for needing more time: "The parties have not reached agreement but continue to work in good faith toward that end, to include the briefing of new Department leadership." ECF No. 289 at 1.

The families appreciate that the parties' discussion will require extensive revisions to the earlier plea agreement that the Government agreed to under the previous Administration. In the opening days of the current Administration, the Justice Department announced new guidance for

how criminal cases such as this one are to be handled. On January 21, 2025, the Justice Department released the "Bove Memorandum," which restored the Department's long-standing charging position articulated in the May 10, 2017, Memorandum entitled, "Department Charging and Sentencing Policy." As required by the recent Bove Memorandum—and as articulated in the 2017 Memorandum (and even earlier guidance dating back to the Bush and Reagan Administrations)—it is once again Department policy that prosecutors must reveal to a sentencing judge all relevant facts in the case:

> prosecutors *must disclose to the sentencing court all facts that impact the sentencing guidelines* or mandatory minimum sentences, and should in all cases seek a reasonable sentence under the factors in 18 U.S.C. § 3553. In most cases, recommending a sentence within the advisory guideline range will be appropriate. Recommendations for sentencing departures or variances require supervisory approval, and the reasoning must be documented in the file.

U.S. DOJ, "Department Charging and Sentencing Policy (May 10, 2017) (emphasis added).[2]

The Department's sensible policy of disclosing all relevant facts to sentencing judges has been recognized by courts as well. Federal courts invariably hold that facts offered in support of a plea agreement must be subject to judicial scrutiny because "sentencing is a judicial function …. Thus, under the Guidelines parties may not enter into stipulations of misleading or non-existent facts … [but must instead] 'fully and accurately disclose all factors relevant to the determination of sentence.'" *United States v. Phillips*, 730 F. Supp. 45, 48–49 (N.D. Tex. 1990) (internal quotations to U.S.S.G. 6B1.4(a)(2) (policy statement)).

As the families explained last summer in objecting to the proposed plea agreement negotiated during the previous Administration, that (now-rejected) plea agreement failed to reveal

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[2] Available at https://www.justice.gov/d9/press-releases/attachments/2017/05/11/ag_memo_on_department_charging_and_sentencing_policy_0.pdf.

that Boeing's conspiracy crime directly and proximately killed 346 passengers and crew on two 737 MAX flights. *See* ECF No. 268-1 at 11-19; *see also* ECF No. 268-2 at 816. The truth about Boeing's lethal crime is quite obviously relevant to sentencing, and yet it was not mentioned. While such factual omissions were apparently allowed during the previous Administration, they are (quite properly) forbidden in the current Administration by the Bove Memorandum. The families' filings straightforwardly set out how to correct that omission and appropriately describe Boeing's deadly conspiracy crime in any future plea agreement.

At this point in the case, the parties have had nearly ten months to report to the Court how they wish to proceed on appropriate arrangements for Boeing to plead guilty. Of course, Boeing is guilty of its conspiracy crime. Boeing admitted its guilt more than four years ago, on January 7, 2021, when it agreed to the DPA. *See* ECF No. 4 at 26 & Attachment A (Statement of Facts) at A-1 to A-16 (Boeing's CEO certifies that the 54 paragraphs in the statement of facts about defrauding the FAA are all true). And yet now, more than four years later, Boeing continues to avoid the accountability that should follow after committing "the deadliest corporate crime in U.S. history." ECF No. 185 at 25 (recounting the 346 deaths that Boeing directly and proximately caused).[3] And

[3] Through the parties' delay, Boeing has also evaded the court-supervised monitoring that would typically follow a breach determination by the Government.

After the Government determined, on May 14, 2024, that Boeing had breached its DPA obligations, the victims' families filed a motion, on June 24, 2024, for the Court to reconsider its earlier decision not to impose any monitoring of Boeing as a condition of its release. *See* ECF No. 202. The families urged the Court to put in place a court-supervised monitor for Boeing in light of the clear failure of earlier Government monitoring. *See id.* Thereafter, on July 8, 2024, the Government and Boeing responded, arguing that there was no need for a court-imposed monitor as a condition of release because, among other things, the Court would soon have before it a plea agreement providing for such monitoring. *See, e.g.,* ECF No. 207 at 2-3. Today, however, more than eight months later, the parties have delayed any imposition of monitoring for Boeing—meaning that (once again) Boeing is being treated more favorably than other criminal defendants. Typically, when a defendant breaches its release obligations under a pre-trial agreement providing for supervision agreement, that breach would lead to imposition of more substantial obligations to address the defendants' failure to comply.

even setting aside earlier delays, the parties have now had more than three months since the Court rejected their earlier plea agreement to draft a new guilty plea agreement.

The families have patiently waited for years for justice for their lost loved ones in this case. But at some point, delays become unreasonable. The families hereby give notice that any further delay in negotiating a plea agreement beyond April 11, 2025, is, in their view, presumptively unreasonable, absent some compelling explanation from the parties as to why no agreement has been reached. Should the parties attempt to protract the negotiations beyond that date, the families intend to file a motion asserting their CVRA rights to "proceedings free from unreasonable delay." *See* 18 U.S.C. § 3771(a)(7); *see also In re Ryan*, 88 F.4th 614 (5th Cir. 2023) (affirming this Court's finding that the CVRA applies and recounting this Court's "careful competence" in recognizing that it "must uphold crime victims' statutory rights at every stage of the court's criminal proceedings"). Because the families' concerns about further delay may affect the parties' timetable for concluding the upcoming negotiations about how Boeing will plead guilty, the families thought it best to file this public notice of their intentions.

Dated: March 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 14, 2025, the foregoing document was served on the parties to the proceedings via the Court's CM/ECF filing system.

/s/ Paul G. Cassell
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