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-00005-O

OBJECTION AND MEMORANDUM OF RECOGNIZED CRIME VICTIMS' REPRESENTATIVES NAOISE CONNOLLY RYAN, ET AL. REQUESTING THAT THE COURT DENY THE GOVERNMENT'S MOTION TO DISMISS

Warren T. Burns (Texas Bar No. 24053119)
Burns Charest, LLP
wburns@burnscharest.com

Darren P. Nicholson (Texas Bar No. 24032789)
Burns Charest, LLP
dnicholson@burnscharest.com

Chase Hilton (Texas Bar No. 24100866)
Burns Charest LLP
chilton@burnscharest.com

Paul G. Cassell (Utah Bar No. 06078)
(Counsel of Record)
Utah Appellate Project
S.J. QUINNEY COLLEGE OF LAW
University of Utah
cassellp@law.utah.edu
(no institutional endorsement implied)

Tracy A. Brammeier
Clifford Law Offices PC
tab@cliffordlaw.com

Erin R. Applebaum
Kreindler & Kreindler LLP
eapplebaum@kreindler.com

Pablo Rojas
Podhurst Orseck PA
projas@podhurst.com

Attorneys for Victims' Representatives

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

OBJECTION AND SUPPORTING MEMORANDUM OF RECOGNIZED CRIME VICTIMS' REPRESENTATIVES NAOISE CONNOLLY RYAN, ET AL. REQUESTING THAT THE COURT DENY THE GOVERNMENT'S MOTION TO DISMISS

Naoise Connolly Ryan et al.[1] (the "victims' families" or "families"), through undersigned counsel, file this objection and supporting memorandum requesting that the Court reject the Government's Motion to Dismiss. *See* ECF No. 312 (hereinafter "MTD"). The Court has undoubted authority to deny the proposed dismissal. *See* Fed. R. Crim. P. 48(a). The Court should exercise its authority to deny this ill-considered and ill-founded motion.

INTRODUCTORY STATEMENT

Boeing committed "the deadliest corporate crime in U.S. history." ECF No. 185 at 25. The conspiracy charge against Boeing has been pending now for more than four years. *See* ECF No. 1. Boeing has admitted all the facts necessary to prove it is guilty. ECF No. 4 at A-1 to A-16. And yet, the Government now moves to dismiss the charge.

Dismissal requires "leave of court." *See* Fed. R. Crim. P. 48(a). In earlier proceedings in this case, the Fifth Circuit held that when evaluating a proposed dismissal, this Court "retains adjudicatory responsibility, including an obligation to apply the [Crime Victims' Rights Act]. Public perception and confidence in the criminal justice system assume that when criminal charges are submitted for judicial resolution, the courts vigilantly will enforce the public interest, including Congress' command that crime victims are heard and protected." *In re Ryan*, 88 F.4th 614, 626 (5th Cir. 2023). The Circuit further explained that when this Court considers the dismissal motion, "the public interest, especially that of crime victims, rests crucially on court approval. In short, the

[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. Many other family members also support this motion.

judicial role stays present and constant throughout, and courts must validate the public interest, above all, including rights that Congress has given to crime victims." *Id.*

In the following pages, the victims' families explain in detail why the public interest requires that the Court deny the pending motion to dismiss. First and perhaps most remarkably, the Government and Boeing have already decided not to even wait for the Court's ruling on the motion. In an extraordinary provision in the non-prosecution agreement (NPA) connected to the motion to dismiss, the Government has already contractually obligated itself not to further prosecute Boeing, regardless of how the Court rules. This unprecedented effort to short-circuit Rule 48(a)'s judicial review requirement should lead the Court to void that provision as contrary to public policy and deny the motion to dismiss.

Second, the Court should also deny the motion to dismiss because Boeing's obligations in the accompanying NPA are unenforceable. The parties have neglected to inform the Court that the underlying statute of limitations on Boeing's conspiracy crime has now expired. Accordingly, the Government's claim that a dismissal "without prejudice" would leave it free to re-file the charge against Boeing is a sham, which the Court should not endorse.

Third, granting the motion to dismiss would exempt Boeing from any independent monitoring of its corporate compliance and safety efforts. The Court will recall that last December it rejected a proposed plea agreement as against the public interest where that agreement failed to provide for adequate monitoring of Boeing. The proposed NPA backtracks from even those insufficient monitoring measures and thus is, by definition, even further contrary to the public interest.

Fourth, the parties persist in ignoring this Court's previous ruling that Boeing directly and proximately caused the deaths of 346 passengers and crew in the two Boeing 737 MAX crashes.

The parties ask the Court to approve the motion to dismiss because it allegedly secures the maximum possible fine against Boeing. But their arguments ultimately rest on inaccurate sentencing guidelines calculations that assume Boeing's crime was victimless—contrary to the Court's previous ruling. Rather than lend its approval to the parties' misleading calculations, the Court should deny the motion to dismiss for this reason as well.

Fifth, the proposed motion to dismiss rests on "additional victim compensation" payments by Boeing that would be paid directly to the victims' families. The payments appear designed to persuade the families to support the NPA and thus allow the company to essentially buy its way out of a criminal conviction. The Court should not become a party to such a clear violation of the fundamental principle that rich and poor alike are to be treated equally in the administration of criminal justice.

Sixth, the Government's claims that it faces risk if it proceeds to trial are meritless.

Seventh and finally, the public interest will be best served by a trial rather than a backroom-negotiated non-prosecution deal, so that the public can see that justice is carried out.

STANDARDS FOR JUDICIAL REVIEW OF A MOTION TO DISMISS

In this Circuit, when the Government moves to dismiss a previously filed criminal charge, the Court must assess whether the public interest will be served by dismissal. *See Ryan*, 88 F.4th at 627-28 (collecting cases).[2] As the Fifth Circuit held in handling a mandamus petition connected with this case, it is well settled that "district judges are empowered to deny dismissal when 'clearly contrary to manifest public interest' as assessed 'at the time of the decision to dismiss.'" *Id.* at 627 (quoting *United States v. Hamm*, 659 F.2d 624, 629 (5th Cir. Unit A Oct. 1981) (en banc)). The

[2] In some other circuits, the law may be different and no "public interest" scrutiny is applied. *See* MTD at 10 n.54 (Government disagreeing with Fifth Circuit decisions and preserving this issue for potential Supreme Court review).

Fifth Circuit explained that "while the Supreme Court indicated that '[t]he principal object' of the 'leave of court' required for dismissals pursuant to Rule 48(a) was 'to protect a defendant against prosecutorial harassment,' the Court also acknowledged—and expressly left open—courts' use of Rule 48(a) to deny dismissals when 'prompted by considerations clearly contrary to the public interest.'" *Ryan*, 88 F.4th at 628 n.12 (quoting *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977) (*citing, inter alia, United States v. Cowan*, 524 F.2d 504, 511 (5th Cir. 1975)). The Fifth Circuit emphasized that, "with the history of Rule 48 in mind, we have observed that '[i]t seems manifest that the Supreme Court intended to ... vest[ ] in the courts the power and the duty to exercise a discretion for the protection of the public interest,' and have noted that early case law interpreting Rule 48(a) 'supports this theory.'" *Ryan*, 88 F.4th at 628 n.12 (*quoting Cowan*, 524 F.2d at 511; and *citing also* Thomas Ward Frampton, *Why Do Rule 48(a) Dismissals Require "Leave of Court?"*, 73 STAN. L. REV. ONLINE 28, 32–37 (2020) (analyzing Rule 48(a)'s history and concluding that "the 'principal object' of Rule 48(a)'s 'leave of court' requirement was … to guard against dubious dismissals of criminal cases that would benefit powerful and well-connected defendants").

When a district court reviews a Rule 48(a) dismissal motion, the Government must set forth its basis for moving for dismissal, so that the court can evaluate whether to grant leave to dismiss. As Judge Weinfeld has explained, Rule 48(a) "contemplates public exposure of the reasons for the abandonment of an indictment, information or complaint in order to prevent abuse of the uncontrolled power of dismissal previously enjoyed by prosecutors. Accordingly, to gain the Court's favorable discretion, it should be satisfied that the reasons advanced for the proposed dismissal are substantial and the real grounds upon which the application is based." *United States v. Greater Blouse, Skirt & Neckwear Contractors Ass'n*, 228 F. Supp. 483, 486 (S.D.N.Y. 1964));

see also United States v. Salinas, 693 F.2d 348, 352 (5th Cir. 1982) ("Although the burden of proof is not on the prosecutor to prove that dismissal is in the public interest, the prosecutor is under an obligation to supply sufficient reasons—reasons that constitute more than a mere conclusory interest [supporting dismissal]."), *reh'g denied*, 701 F.2d 41 (5th Cir. 1983).

The purpose for requiring the government to state its actual reasons for seeking dismissal is apparent from Rule 48(a)'s text: "Since the court must exercise sound judicial discretion in considering a request for dismissal, it must have sufficient factual information supporting the recommendation." 3B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 802 (4th ed. June 2024 update)). Indeed, a district court would abuse its discretion if it did not articulate its reasons for granting or denying leave, and it cannot discharge its duties properly unless the underlying motion accurately states the government's reasons for dismissal. *See United States v. Derr*, 726 F.2d 617, 619 (10th Cir. 1984) ("If the record contains no reasons or facts explaining the trial court's decision, the trial court's decision is effectively unreviewable."). Because a court must evaluate the reasons for a dismissal, courts have looked beyond the four corners of the motion to consider the entire record before the court—sometimes even conducting hearings to determine if dismissal is warranted. *See, e.g.*, *Rinaldi*, 434 U.S. at 30 (finding no bad faith on the part of the government only after conducting an "examination of the record"); *Salinas*, 693 F.2d at 352 ("We turn to the record for evidence of the prosecutor's motivation."); *see also United States v. HSBC*, 863 F.3d 125, 141 (2d Cir. 2017) (noting that a monitor's report could "indeed be relevant in determining whether to grant an eventual Rule 48(a) motion"). Indeed, in one case, this Court was required to take the initiative to "develop the record" that "confirmed the total lack of substance" for a Government motion to dismiss. *United States v. Cockrell*, 353 F.Supp.2d 762, 775 (N.D. Tex. 2005).

REASONS FOR DENYING THE MOTION TO DISMISS

Multiple independent reasons exist for denying the Government's motion to dismiss, including the need to protect the families' rights under the Crime Victims' Rights Act, 18 U.S.C. § 3771. Taken together, the case for denial is compelling—that is, granting the Government's motion to dismiss would be "clearly contrary to the manifest public interest." *Ryan*, 88 F.4th at 627 (quoting *United States v. Hamm*, 659 F.2d 624, 629 (5th Cir. Unit A Oct. 1981) (en banc)).

I. The Court Should Deny the Motion to Dismiss Because the Parties Have Attempted to Contract Around Rule 48(a)'s Judicial Review Provision.

Rule 48(a) checks prosecutors' power to dismiss charges, requiring "leave of court" before a previously filed criminal charge will be dismissed. But here, the Government and Boeing have taken the unprecedented step of preemptively entering into a binding agreement (a non-prosecution agreement) barring the Government from prosecuting Boeing even before the Court has ruled. The Court should block this ploy by the parties to perform a contractual end-run around Rule 48(a). The Court should declare this NPA provision to be void as against public policy. More broadly, the Court should deny the motion to dismiss to protect the integrity of the Rule 48(a) process and the families' rights under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771.

A. Rule 48(a)'s Judicial Review Provision Is Designed to Restrain Prosecutors' Ability to Dismiss Previously Filed Charges.

Pending before the Court is the Government's motion to dismiss a criminal charge that the Government lodged on this Court's docket more than four years ago. *See* ECF No. 1 (Criminal Information). Rule 48(a) specifically provides that prosecutors can move to dismiss a pending charge, but the proposed dismissal requires "leave of court." Fed. R. Crim. P. 48(a). The Fifth Circuit has explicated Rule 48(a)'s background in a leading decision, *United States v. Cowan*, 524 F.2d 504 (5th Cir. 1975). As *Cowan* explains, before the rule's adoption, "more than thirty states

had, by statute or judicial decision, modified the common law to give courts a responsible role in the dismissal of a pending criminal proceeding by requiring an 'order' or 'leave' or 'consent' of court." *Id.* at 509-10. Reflecting this fact, the American Law Institute's Model Code of Criminal Procedure, drafted in the decade before Rule 48(a) was adopted in 1944, tracked the judicial approval requirement. *Id.* at 510.

In the federal system, interest in regulating dismissals arose following the adoption of the Federal Enabling Act, when a distinguished committee began drafting federal rules of criminal procedure. Ultimately, during the rules' drafting process, the Supreme Court inserted a "leave of court" requirement into the rule covering dismissals—i.e., into Rule 48(a). *See Cowan*, 524 F.2d at 510. Based on this history, *Cowan* concluded that "[i]t seems manifest that the Supreme Court intended to make a significant change in the common law rule by vesting in the courts the power and the duty to exercise a discretion for the protection of the public interest." *Id.* at 511.

The Advisory Committee Note to Rule 48(a) supports this conclusion. The Note explained that the rule "will change existing law" from the "common-law rule that the public prosecutor may enter a nolle prosequi in his discretion, without any action by the court." Fed. R. Crim. P. 48(a), Adv. Comm. Note (1944 Adoption). The Note cited *United States v. Woody*, 2 F.2d 262 (D. Mont. 1924), for that common-law proposition that prosecutors could simply dismiss a charge—a proposition that *Woody* had strongly criticized. In *Woody*, a district judge was forced to approve a government dismissal, even though the reasons were doubtful, "savor[ing] altogether too much of some variety of prestige and influence (family, friends, or money) that too often enables their possessors to violate the laws with impunity." *Id.* The judge added that the dismissal would "incite, if … not justify, the too common reproach that criminal law is for none but the poor, friendless, and uninfluential." *Id.*

Since adopting Rule 48(a) more than eighty years ago, the Supreme Court has interpreted it only once. In *Rinaldi v. United States*, 434 U.S. 22 (1977), the Court reversed the Fifth Circuit (which had affirmed a district court's denial of a motion to dismiss), concluding that the lower courts had erred in finding that the prosecutor's dismissal decision was tainted by bad faith. At the same time, in dicta in a footnote, the Court asserted that Rule 48(a)'s leave-of-court requirement was inserted "without explanation" and "apparently" had as its "principal object" protecting defendants. *Id.* at 30 n.15. The Government leads with these dicta in its motion. *See* MTD at 9.

But these dicta have been powerfully critiqued—in this very case by the Fifth Circuit. In *In re Ryan*, 88 F.4th 614 (5th Cir. 2023) (involving the same victims' families who file this objection), the Circuit specifically held that "courts are not required to grant Rule 48(a) motions to dismiss if clearly contrary to manifest public interest." *Id.* at 628. The Circuit then observed that the Supreme Court's decision in *Rinaldi* "expressly left open" courts' use of Rule 48(a) "to deny dismissals when 'prompted by considerations clearly contrary to the public interest." *Id.* at 628 n.12 (citing *Rinaldi*, 434 U.S. at 29 n.15, in turn citing *Cowan*, 524 F.3d at 511). The Fifth Circuit also pointedly cited Thomas Ward Frampton, *Why Do Rule 48(a) Dismissals Require "Leave of Court"?*, 73 STAN. L. REV. ONLINE 28 (2020). Professor Frampton analyzed the history of Rule 48(a) and concluded that "the 'principal object' of Rule 48(a)'s 'leave of court' requirement was … to guard against dubious dismissals of criminal cases that would benefit powerful and well-connected defendants." *Id.* at 29.

The Fifth Circuit's clear articulation of a public-interest standard of review is important, because some other Circuits have been skeptical about this standard.[3] But this Court must follow

[3] *Cf. In re United States,* 345 F.3d 450 (7th Cir. 2003) (criticizing the Fifth Circuit's "public interest" standard) (cited in the Government's MTD at 10 n.54).

Fifth Circuit precedent. *Ryan* makes clear that, in evaluating a motion to dismiss in this Circuit, district courts "vigilantly will enforce the public interest, including Congress' command that crime victims are heard and protected." 88 F.4th at 626. And reinforcing *Ryan's* command, the CVRA itself requires that the victims' families be heard on the proposed dismissal. The CVRA broadly requires that victims be "treated with fairness," 18 U.S.C. § 3771(a)(8). And, when "the government files a motion to dismiss criminal charges involving a specific victim, the only way to protect that victim's right to be treated fairly is to consider the victim's views on the dismissal." Paul G. Cassell, *Treating Crime Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007 UTAH L. REV. 861, 946.

B. Under the NPA, Even if the Court Denies the Motion to Dismiss, the Government Has Committed that It Will Ignore the Court's Order and Not Further Prosecute Boeing.

Rule 48(a) has governed dismissal motions in this country for more than 80 years, allowing judicial review of prosecutors' decisions not to proceed in criminal cases. Indeed, in some cases, district courts (including this Court) have denied Government motions to dismiss.[4] Here, the Government and Boeing have apparently decided that they want to effectively deny the Court the option of denying the motion. So they have jointly signed a binding contract—the non-prosecution

[4] *See United States v. Cockrell*, 353 F.Supp.2d 762, 775 (N.D. Tex. 2005) (denying motion to dismiss where Government rationale was "frivolous, irrational, and devoid of any basis in fact"); *see also United States v. Biddings*, 416 F. Supp. 673, 675 (N.D. Ill. 1976) (denying motion to dismiss indictment charging kidnapping, reasoning that the manifest public interest, represented by witnesses who identified the defendant as the offender, required a trial to vindicate them or the defendant); *United States v. N.V. Nederlandsche Combinatie Voor Chemische Industrie*, 75 F.R.D 473, 474 (S.D.N.Y. 1977) (denying motion to dismiss because permitting the Government to unilaterally terminate a nine-year-old indictment of "greatest public significance" would "clearly be contrary to manifest public interest"); *United States v. Freedberg*, 724 F. Supp. 851, 856 (D. Utah 1989) (denying motion to dismiss where Government attempted to undercut earlier court ruling disapproving propose plea agreement); *see also United States v. Omni Consortium, Inc.*, 525 F. Supp. 2d 808, 816 (W.D. Tex. 2007) (denying motion to prevent harassment of defendant).

agreement (NPA)—which preemptively bars any further prosecution of Boeing.

The NPA between the Government[5] and Boeing has already taken effect. *See* NPA, ECF No. 312-1, at 11-12; *see also* MTD at 6 (stating the NPA is already "effective"). Remarkably, under the NPA, even if the Court denies the motion to dismiss, the Government has agreed it will not move forward with prosecuting Boeing:

> The parties further acknowledge and agree that in the event a final Order of the Court is entered that denies the Offices' Motion to Dismiss, because the Offices **remain bound by the terms of this Agreement not to further criminally prosecute the Company for any crimes related to any of the conduct in the Statement of Facts, this Agreement and all of its provisions will continue in force to bind** the Company and **the Offices** through the end of the Term, including the Offices' ability to extend the Term, as defined in Paragraph 5.

NPA, ¶ 22 (emphases added). The no-further-prosecution provision's plain language provides that, if the Court denies the pending motion to dismiss, the Government nonetheless "remain[s] bound by the terms of this Agreement"—an agreement that is, after all, a "non-prosecution agreement." *See* NPA, ¶ 1. And the no-further-prosecution provision specifically states that, if the Court denies the motion to dismiss, the Government agrees "not to further criminally prosecute the Company for any crimes related to any of the conduct in the Statement of Facts …." NPA, ¶ 22. The provision's sweeping language does not carve out the possibility of the Government prosecuting the pending conspiracy charge if the Court denies the motion to dismiss. To the contrary, the no-further-prosecution provision specifically bars prosecution for "any crimes" related to "any conduct" in the Statement of Facts. *Id.*

The no-further-prosecution provision is the only paragraph in the agreement that specifically discusses what happens to the prosecution in the event the Court decides to deny the

[5] The NPA covers the Department's two prosecuting components who have been handling this case, specifically the Justice Department's Fraud Section and the U.S. Attorney's Office for the Northern District of Texas. *See* NPA, ¶ 1.

Government's motion to dismiss.[6] If the parties had meant to allow prosecution to move forward on the conspiracy charge after a denial of a motion to dismiss, they could have simply included such language in the NPA. They did not.

Other language in the NPA indicates that the Government has already agreed it will not move forward with a prosecution after any denial of a motion to dismiss. Paragraph 3 of the NPA states that the Government has, in its view, "determined that the appropriate resolution of this case is for the Offices to dismiss the Information, with the consent of the Company …." NPA, ¶ 3. This provision simply assumes that it is solely the Government's prerogative "to dismiss the information," entirely ignoring Rule 48(a)'s leave-of-court requirement.

For all the reasons just explained, if the Court denies the motion to dismiss, the NPA's plain language bars the Government from moving forward with prosecuting the pending Criminal Information. While the NPA is unambiguous on this point, even if the Court were to conclude that the language is ambiguous,[7] the same result immediately follows. If any term in a plea agreement is ambiguous, it must be "construed strictly against the Government as the drafter." *United States v. Elashyi*, 554 F.3d 480, 501 (5th Cir. 2008). The same rule applies to non-prosecution agreements.

---

[6] The NPA contains a separate provision directing that Boeing will pay $444.5 million into an escrow account to go the victims' families, but no moneys will be paid out of the escrow account "until after the entry of a final Order of the Court dismissing the Information …." NPA, ¶ 11. Similarly, another NPA provision indicates that a $243.6 million penalty will be placed into a separate escrow account and then paid to the U.S. Treasury five business days "after entry of a final Order of the Court dismissing the Information …." NPA, ¶ 12. And another provision directs that Boeing's Board of Directors will meet with the victims' families "within six months after the entry of a final Order of the Court dismissing the Information." NPA, ¶ 14.

[7] Undersigned counsel has attempted to locate an NPA containing the exact same language as found in paragraph 22, including reviewing some NPAs contained in the Corporate Prosecution Registry maintained by Duke and the University of Virginia law schools. *See* https://corporate-prosecution-registry.com. Undersigned counsel has been unable to locate any other agreements using this same language in a case where a motion to dismiss is pending. If examples exist, the Government can, of course, provide them.

See, e.g., United States v. Appellant 1, 56 F.4th 385, 390 (5th Cir. 2022). Because the NPA does not unambiguously allow the Government to move forward with prosecuting Boeing if the court denies the motion to dismiss, the NPA necessarily bars such prosecution.

C. It is Clearly Contrary to the Manifest Public Interest to Dismiss a Case Where the Parties Have Preemptively Contracted Around Judicial Review.

For all the reasons explained in the previous section, the Government and Boeing have agreed in advance that, even if the Court denies the pending motion to dismiss, for all practical purposes the Government will attempt to render that denial meaningless. Despite having filed a conspiracy charge against Boeing on this Court's docket and "submitt[ing] [the case] to [the] courts to resolve," *Ryan*, 88 F.4th at 625, the Government and Boeing have already preemptively decided between themselves that the Government will no longer prosecute Boeing.

If this Court approves the parties' maneuver in this widely publicized case, then this unprecedented approach will likely become the blueprint for all future dismissal motions in federal criminal prosecutions. *See generally* Ex. 1, Declaration of Paul G. Cassell ("Cassell Dec."), at ¶¶ 43-57. Before filing a motion to dismiss under Rule 48(a), the Government and the defendant will simply enter into a non-prosecution agreement containing the no-further-prosecution language found here. Then the Government will file its dismissal motion, and any action that the Court might take thereafter becomes essentially irrelevant. For example, even if the Court were to provide a perfectly good (but previously unconsidered) reason for the Government to move forward with prosecuting the case, the Government has already committed not to do so.

Against this backdrop, approving the Government's and Boeing's audacious scheme would effectively block Rule 48(a) from achieving the purposes it was designed to serve. The Rule provides judicial review of prosecutors' dismissal motions so that "[t]he public and crime victims, not to mention the government and defendants, necessarily and correctly see accountability with

Article III from start to finish." *Ryan*, 88 F.4th at 625 n.9. It has long been recognized that, by adopting Rule 48(a), "the Supreme Court intended to … vest[] in the courts the power and duty to exercise a discretion for the protection of the public interest …." *Id.* at 628 n.12 (citing *Cowan*, 524 F.2d at 511). As a result, "[p]ublic perception and confidence in the criminal justice system assume that when criminal charges are submitted for judicial resolution, the courts vigilantly will enforce the public interest …." *Id.* at 626.

The Government and Boeing's private agreement to evade any judicial protection of the public interest is "'clearly contrary to manifest public interest public interest' as assessed 'at the time of the [motion] to dismiss.'" *Id.* at 627 (quoting *Hamm*, 659 F.2d at 629). Simply put, it cannot be in the public interest to eliminate the judiciary's public interest review. Tautologically, the very purpose of public interest review is to protect the public interest. For whatever reason, the Government and Boeing may find that review distasteful. But it is this Court's obligation to enforce Rule 48(a)'s mandate.

To fulfill its Rule 48(a) obligations, the Court should declare the NPA's no-further-prosecution provision to be void as against public policy. It is hornbook law that "[a]n illegal contract is a promise that is prohibited because the performance, formation, or object of the agreement is against the law." AM. JUR. 2D CONTRACTS § 217 (Nov. 2022 update). And a fundamental legal principle is that an illegal contract does not create enforceable legal rights. *See, e.g., In re OCA, Inc.,* 552 F.3d 413, 422 (5th Cir. 2008). Here, the very object of the NPA's no-further-prosecution provision is to render ineffective any court decision to deny the pending motion to dismiss. Because that object is contrary to law—specifically, contrary to Federal Rule of Criminal Procedure 48(a)—the provision is invalid. As the Fifth Circuit has held, "illegal promises will not be enforced in cases controlled by the federal law." *Wise v. Wilkie*, 955 F.3d 430, 439 (5th

Cir. 2020). And a court cannot enforce an illegal agreement to the detriment of an innocent third party. *Baker v. Raymond Intern., Inc.*, 656 F.2d 173, 182 (5th Cir. 1981).

To be clear, voiding the no-further-prosecution provision does not mean that the U.S. Department of Justice is automatically required to move forward with Boeing's prosecution. But it does mean that the Department is at least required to consider the Court's decision on its motion to dismiss before making its final prosecution decision. *Cf. United States v. Cowan*, 396 F. Supp. 803, 804 (N.D. Tex. 1974) (after a district court denied a Rule 48(a) motion to dismiss, six days later the prosecutor filed a notice of intention not to prosecute). Indeed, it is recognized Justice Department practice for prosecutors to give heavy weight to a judicial recommendation that a prosecution should move forward. *See Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 801 (1987) (citing U.S. Attorney's Manual § 9-39.318 (1984), which provided that "[i]n the great majority of cases the dedication of the executive branch to the preservation of respect for judicial authority makes the acceptance by the U.S. Attorney of the court's request to prosecute a mere formality ...."). To be sure, the Department might ultimately reach the same conclusion about whether to further prosecute Boeing it reached in the NPA. But process is important here, in order to assure "accountability with Article III from start to finish." *Ryan*, 88 F.4th at 625 n.9.

In addition to voiding the no-further-prosecution provision, the Court should deny the pending motion to dismiss rather than lend its imprimatur to such a dubious arrangement. As the Fifth Circuit has explained, "a criminal prosecution that *is* submitted to courts to resolve, regardless of any party intention in the future to move to dismiss, receives judicial imprimatur …." *Ryan*, 88 F.4th at 625 (emphasis in original). Here, the Government's motion to dismiss is inextricably intertwined with the NPA it negotiated with Boeing. The Government's argument is that dismissing this case "is an appropriate tradeoff for the certain, guaranteed, and substantial

benefits the [NPA] provides." MTD at 13. If the Court were to grant the motion to dismiss, it would necessarily be lending its imprimatur to the agreement—an agreement containing a provision destroying Rule 48(a)'s judicial review requirement.

Nor could the Court avoid lending its approval to the NPA's no-further-prosecution clause by granting the motion to dismiss while disclaiming reliance on that illegal provision. The Government's contractual promise that it will never prosecute Boeing—regardless of what the Court concludes—casts a long shadow over any judicial decision regarding the motion to dismiss. So long as the Government's promise remains in place, the victims' families—and the public—will necessarily wonder whether the Court has simply acquiesced to the parties' scheme. Through their NPA, the parties have created an *Alice in Wonderland* scheme of "final decision first—judicial review later" that defies the public interest.

The Court should deny the motion to dismiss for the reasons explained here. And then it should direct the Government and Boeing to quickly explain how they wish to proceed.[8] The parties could decide, collectively, that they no longer wish to enforce the NPA's no-further-prosecution provision. Or the Government might respectfully decline to move forward. *See, e.g., United States v. Donziger*, 38 F.4th 290, 294-95 (2d Cir. 2022) (U.S. District Court for S.D.N.Y.

[8] The Court should also take appropriate action to prevent the Speedy Trial clock from expiring. The Government's motion to dismiss was filed on May 28, 2025, which was 23 days in advance of the expiration of the Speedy Trial Act timeline for a trial date on Saturday, June 21, 2025. Thus, the Speedy Trial Act clock has 23 days remaining. Under 18 U.S.C. § 3161(h)(1)(D), time is automatically excluded for "delay resulting from any pretrial motions, from the filing of the motion through the conclusion of the hearing on or other prompt disposition of such motion." The Court should enter an order formally excluding the time attributable to considering the Government's motion to dismiss. The Court should then also exclude a brief period of time to permit the parties to determine how they wish to proceed, which is excludable from the Speedy Trial Act timeline by virtue of Act's "ends of justice" provision, 18 U.S.C. § 3161(h)(7)(A).

referred a contempt case for prosecution to the U.S. Attorney for the S.D.N.Y., who "respectfully decline[d] on the ground that the matter would require resources that we do not readily have available"; thereafter special prosecutors successfully pursued the case). Either way, denying the motion to dismiss and then providing time for the Government to state its intentions with regard to prosecution appears to be the normal practice. *See, e.g., United States v. Cowan*, 396 F. Supp. 803, 804 (N.D. Tex. 1974) (district court denied motion to dismiss and six days later the U.S. Attorney's Office filed a notice of intention not to prosecute the case), *rev'd on other grounds*, 524 F.2d 504 (5th Cir. 1975), *cert. denied*, 425 U.S. 971 (1976).

D. The Court Should Appoint a Special Prosecutor if Circumstances Require One.

If, after considering the Court's denial of the motion to dismiss, the Government nonetheless declines to move forward with the prosecution, the Court should appoint a special prosecutor. Indeed, in extreme cases, courts must have the power to appoint a prosecutor, as otherwise Rule 48(a) is rendered meaningless. If a rule providing for judicial review of a motion cannot be judicially enforced, then the rule has little purpose. As one court put it, "[r]ecommendations by the prosecutor that charges be dismissed are not conclusive upon the court, otherwise there would be no purpose to Rule 48(a), which requires leave of court for the dismissal of an indictment." *United States v. Abreu*, 747 F. Supp. 493, 502 (N.D. Ind. 1990), *aff'd sub nom*., *United States v. Vasquez*, 966 F.2d 254 (7th Cir. 1992). Leaving the rule without purpose is contrary to the well-settled "presumption against ineffectiveness," ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 63 (2012)—that is, the principle that courts will not read rules in a way that would "enable evasion," "defeat the point" of the law, or "easily bypass the [federal statutory] scheme." *Abramsky v. United States*, 573 U.S. 169, 181, 185 (2014).

In *Morrison v. Olson*, 487 U.S. 654 (1988), the Supreme Court disagreed with the view "that there is an inherent incongruity about a court having the power to appoint prosecutorial

officers." *Id.* at 676 "Indeed," the Court held, "in light of judicial experience with prosecutors in criminal cases, it could be said that courts are especially well qualified to appoint prosecutors." *Id.* at 676 n.13. The Court recounted that "courts may appoint private attorneys to act as prosecutor for judicial contempt judgments"; that courts may appoint United States commissioners with prosecutorial powers; that courts may appoint federal marshals, who are executive officers; that courts may appoint interim United States Attorneys who, *inter alia*, prosecute criminal cases; and that "Congress itself has vested the power to make these interim appointments in the district courts," citing 28 U.S.C. § 546(d). *See Morrison*, 487 U.S. at 676–77.

Nor is the power of appointment dependent on statutory authority. In the context of contempt proceedings, the Supreme Court explained that "it is long settled that courts possess *inherent authority* to initiate contempt proceedings for disobedience to their orders, authority which necessarily encompasses the ability to appoint a private attorney to prosecute the contempt." *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 793 (1987) (emphasis added); *see also*, *e.g.*, *United States v. Donziger*, 38 F.4th at 304 (upholding appointment of a special prosecutor). The courts also "have inherent authority to appoint a special counsel to represent a position abandoned by the United States on appeal," *United States v. Arpaio*, 887 F.3d 979, 982 (9th Cir. 2018), much as the Government now seeks to abandon its prosecution of Boeing.

While cases involving the appointment of a special prosecutor are unusual, they certainly exist. In the particularly instructive case from this court, *United States v. Cowan*, 381 F. Supp. 214 (N.D. Tex. 1974), Judge Robert M. Hill denied the Government's motion to dismiss an indictment under Rule 48(a), concluding that the interests of justice would not be served by a dismissal. *Id.* at 223. Several days later, the United States Attorney filed a notice of intention not to prosecute. *United States v. Cowan*, 396 F. Supp. 803, 804 (N.D. Tex. 1974). Judge Hill then concluded that it

was appropriate to appoint special prosecutors to proceed with the case, explaining that, "in addition to the implied statutory authority under rule 48(a) to appoint special prosecutors, there is the inherent power of the judiciary to affect the proper and orderly administration of justice by appointing special prosecuting officials where necessary for the prevention of abuses of unfettered prosecutorial discretion." *United States v. Cowan*, 396 F. Supp. 803, 805–06 (N.D. Tex. 1974) (citing *United States v. Cox*, 342 F.2d 167, 173-81 (5th Cir. 1965) (Rives, Gewin and Bell, J.J., concurring in part and dissenting in part)), *rev'd on other grounds*, 524 F.2d 504 (5th Cir. 1975).

This Court also possesses authority to appoint a special prosecutor under the All Writs Act, 28 U.S.C § 1651. This statute "has served since its inclusion, in substance, in the original Judiciary Act as a legislatively approved source of procedural instruments designed to achieve the rational ends of law." *United States v. New York Tel. Co.*, 434 U.S 159, 172-73 (1977). Indeed, "[u]nless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *Id.* (internal quotation omitted). The All Writs Act is limited to judicial orders "in aid of jurisdiction" and, thus, does not create federal subject-matter jurisdiction. But where a federal criminal indictment has been filed in the proper federal district court, that court necessarily possesses jurisdiction to review a latter-filed motion to dismiss in that very case. Thereafter, if the court denies the motion, it can act to achieve the "ends of justice."

In *Cowan*, Judge Hill appointed Wayne O. Woodruff and Patrick E. Higginbotham as special prosecutors, giving them "full authority to control the course of investigation and litigation related to the offenses charged in the indictment and to handle all aspects of the case to the same

extent as a United States Attorney in any criminal prosecution." 396 F. Supp. at 806.[9] This Court should follow the same path here. But first, the Court should deny the motion to dismiss, void the NPA's no-further-prosecution provision, and give the parties an opportunity to confer about how they wish to proceed.[10]

E. Allowing the Parties to Contract Around Judicial Review Denies the Victims' Families Their CVRA Rights to be Treated with Fairness and to be Reasonably Heard on the Proposed Dismissal.

The NPA's no-further-prosecution provision is also invalid because its inclusion in the NPA violates the victims' families' CVRA rights. First, in violation of the CVRA, the Government has failed to "reasonably confer" with the victims' families about this unprecedented provision. *See generally* Cassell Dec., at ¶¶ 43-57. The Government held two sessions with the families following this Court's rejection of the proposed Boeing guilty plea agreement, one on December 11, 2024, and another on May 16, 2025.[11] In neither of those sessions did the Government disclose that it was entering into a binding agreement blocking any further prosecution of Boeing before the Court had even ruled on a dismissal motion. To the contrary, the Government seemed to contemplate the normal sequence of events, claiming just last month that the families' attorneys

[9] In reversing on other grounds, the Fifth Circuit concluded the Judge Hill had insufficient grounds for denying the motion to dismiss. *United States v. Cowan*, 524 F.2d 504, 514-15 (5th Cir. 1975). In light of this conclusion, the Fifth Circuit stated it had "no cause to consider the propriety of [his] order effectuating that denial [of the motion to dismiss] by appointing special prosecutors." *Id.* at 515.

[10] The victims' families filing this opposition are aware that another group of families is contemporaneously filing a motion for the *immediate* appointment of a special prosecutor to pursue this case. The families here endorse and join all of their arguments—with the sole exception of their argument that the appointment occur immediately. The families filing this opposition believe that the proper sequence is for the Court to first void the no-further-prosecution provision and deny the motion to dismiss. Thereafter, the Court should provide the Government with an opportunity to determine whether it will move forward. If the Government then declines to move forward, the families filing this opposition believe the Court should appoint a special prosecutor at that time.

[11] Transcripts of the two sessions are attached to the accompanying Cassell Dec. as Ex. 1 and Ex. 5, respectively.

could "talk to [the families] about the legal authority a judge has to deny the government's motion to dismiss …." Trans. (May 16, 2025), Cassell Dec., Ex. 5 at 7. And, when questioned about the dismissal motion "heading to litigation," the Government stated that it would "support the victims' families right to be heard in front of Judge O'Connor." *Id.* at 26.

By deceptively creating the impression that it would proceed through the normal course of allowing a judicial decision on its Rule 48(a) motion to dismiss, the Government deprived the victims' families of their "reasonable right to confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a)(5). While the Government need not confer about every minor detail of a proposed resolution, the no-further-prosecution provision is a staggeringly important and unprecedented provision that the Government should have disclosed and discussed with the victims' families. The "reasonable right to confer" would necessarily encompass such an important provision, particularly where the victims' families and their counsel could—and did—assume that the Justice Department would not maneuver to avoid Rule 48(a) scrutiny. *See* Cassell Dec., ¶¶ 47-53. For the same reasons, concealing from the victims' families this shift from normal processes violated the families CVRA right to be "treated with fairness." 18 U.S.C. § 3771(a)(8).

Because of these CVRA violations, the Court should void the no-further-prosecution provision. It is "an accepted tenet of contract law" that when a contract's terms are such that [the contract] will have … an effect [of defrauding one or more third parties]," then "such a bargain contradicts public policy and cannot be enforced." 15 CORBIN ON CONTRACTS § 85.1 at 340 (rev. ed. 2020). Thereafter, the Court should deny the motion to dismiss, affording the families their CVRA right to confer with the Government. If the families are nonetheless unable to persuade the Government to adhere to its long-standing practice of allowing the Court to first rule on a Rule 48(a) motion, the victims' families should then be given an opportunity to object to the non-

prosecution provision in court before it becomes operative. It is fundamentally unfair to victims' families—and contrary to the CVRA's right to fair treatment, 18 U.S.C. § 3771(a)(8)—to pretend to give them a meaningful opportunity to be heard on the further prosecution of Boeing when that issue has already been effectively decided by private agreement.

II. The Court Should Deny the Motion to Dismiss Because the Accompanying NPA is Unenforceable Due to the Statute of Limitations Expiring.

The Court should also deny the Government's motion to dismiss because it relies heavily on the accompanying non-prosecution agreement—an agreement that is in critical ways unenforceable.

The Government contends that dismissal "is an appropriate tradeoff for the certain, guaranteed, and substantial benefits the [NPA] provides"—adding that the NPA, "importantly, will allow the Government to refile if Boeing does not satisfy its obligations." MTD at 13. But this statement is false. While asking the Court to dismiss the pending charge "without prejudice," the Government fails to disclose that the statute of limitations has already expired. As a consequence, the NPA's enforcement mechanism is illusory. For the Court to enter a dismissal "without prejudice" would be a charade.

The devil is in the details. Typically in an NPA, the Justice Department includes language making clear that, if the defendant breaches, the Government can automatically prosecute the charges the NPA covers. In contrast, the NPA here does *not* contain such a straightforward provision. Instead, Boeing only agrees that it can be prosecuted for offenses that "are not time-barred." Paragraph 16 of the NPA provides that, upon a finding of breach, Boeing is

> subject to prosecution for any federal criminal violation of which the Offices have knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Offices in the U.S. District Court for the Northern District of Texas or any other appropriate venue.… Any such prosecution relating to the conduct described in the attached Statement of Facts or

> relating to conduct known to the Offices prior to the date on which this Agreement was signed *that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement* may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to *any such prosecution that is not time-barred on the date of the signing of this Agreement* shall be tolled for the Term plus one year.

NPA, ¶ 16 (emphases added). Of course, the only plausible reason for including specific language in the agreement about "conduct described in the attached Statement of Facts" that is "not time-barred" by the applicable statute of limitations is to implicitly acknowledge that some of the described conduct is, in fact, time-barred from further prosecution.[12]

Remarkably, the parties have failed to disclose that the applicable statute of limitations effectively bars *all* of the conduct in the Criminal Information from later re-prosecution. The Criminal Information covers Boeing's criminal conduct from "in or around November 2016 through at least in or around December 2018." ECF No. 1 at 1. The related Statement of Facts (appended to both the DPA and NPA) extends the timeline slightly, referencing events "following" the Lion Air crash on October 29, 2018. *See* ECF No. 4 at ¶¶ 48-54. The last dates specifically mentioned are March 10, 2019 (the date of the ET 302 crash) and March 13, 2019 (when the 737 MAX was officially grounded). *Id.* at ¶¶ 53, 54. For the conspiracy crime alleged in the Criminal Information (a violation of 18 U.S.C. § 371), the applicable statute of limitations is five years. *See* 18 U.S.C. § 3282(a). Assuming that March 13, 2019, was the last date of the alleged criminal conspiracy, the statute of limitations for the conduct covered by the Criminal Information would

[12] On the topic of the time bar to prosecuting conduct covered by the Statement of Facts, the NPA's specific language about when it is possible to commence a prosecution for conduct covered by the Statement of Facts would control over any other general language in the NPA about whether Boeing might be "subject" to prosecution. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 183 (2012) ("If there is a conflict between a general provision and a specific provision, the specific provision prevails.").

have lapsed on March 13, 2024.

But the statute was extended when Boeing signed its DPA before that expiration date, on January 7, 2021. *See* ECF No. 4. The DPA provided for a three-year "Term," a specifically defined word beginning on the date the Criminal Information was filed (January 7, 2021) and then extending for a "Term" of three-years (to January 7, 2024). *See* DPA, ¶ 3. The DPA also allowed, upon a finding of breach, for a further one-year extension of the Term:

> Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Fraud Section prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company … notwithstanding the expiration of the statute of limitations, *between the signing of this Agreement and the expiration of the Term plus one year*. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled *for the Term plus one year*.

See DPA, ¶ 26 (emphases added). Thus, under the DPA, the DPA's Term could be extended for "the Term plus one-year"— that is, one year beyond January 7, 2024, to January 7, 2025. The Government did, in fact, later determine that Boeing had breached its DPA obligations (ECF No. 312-1), thereby triggering the one-year extension to January 7, 2025. In sum, the statute of limitations for the conduct covered by Criminal Information expired no later than January 7, 2025.

The families have been concerned about this statute of limitations issue for some time and previously urged the Fraud Section to obtain statute-of-limitations waivers from potential defendants in this case. *See* Cassell Dec., ¶ 65. But the Fraud Section ignored the families and did nothing to protect its ability to continue to pursue Boeing's prosecution.[13] As a result, the statute

[13] In July 2024, the Government negotiated a plea agreement with a limited statute of limitations extension. *See* ECF No. 221-1 at ¶ 38. But the agreement never took effect because the Court rejected it. *See* ECF No. 282. Boeing has also agreed to various extensions of time under the Speedy Trial Act (*e.g.*, ECF No. 284), but these extensions are inapplicable to new charges.

of limitations has now expired for Boeing's conduct covered by the Criminal Information.

The parties have failed to disclose to the Court what conduct is, in fact, time-barred from further prosecution. In now asking the Court to somehow dismiss the pending charge "without prejudice" (MTD at 1) they are asking the Court to participate in a sham. Contrary to the deceptive labelling that the parties are presenting to the Court—and to the families and the public—any dismissal will, as a practical matter, be "with prejudice." And the dismissal would operate contrary to the representations that the Government made to the victims' families. *See* Trans. (May 16, 2025), Cassell Dec., Ex. 5 at 7 (Government tells the families that the NPA would require "Boeing [to] satisfy all the conditions of the NPA, and if it did not, the Department could refile the charge and prosecute the case, notwithstanding the passage of time").

Of course, the Government needs the fig leaf of a possible future prosecution, because without it, Boeing's safety obligations under the NPA would be effectively unenforceable.[14] It would be clearly contrary to the manifest public interest to dismiss the pending charge against Boeing in favor of an unenforceable NPA. This Court would be lending its "imprimatur" to a charade if it were to endorse the parties' proposed dismissal of the charges "without prejudice." *Cf. Ryan*, 88 F.4th at 626 & n.9 ("a criminal prosecution that is submitted to courts to resolve … receives judicial imprimatur," creating "accountability with Article III from start to finish.").

The parties' seeming obfuscation, standing alone, demonstrates that granting the proposed

[14] Under 18 U.S.C. § 3288, following dismissal of a felony information, there is a six-month grace period allowing the Government to attempt to secure an indictment by a grand jury for the charge. But given that the NPA contains a two-year term for Boeing to complete its obligations (see NPA, ¶ 5), Boeing's non-compliance could not be finally determined during that six-month grace period. For example, Boeing is agreeing over the next two years to implement compliance and ethics programs designed to detect and prevent violation of U.S. fraud laws throughout its operations and certify its compliance no later than twenty-three months into the Term of the NPA. *See* NPA, ¶ 8. Similarly, Boeing is agreeing to invest $455 million in its compliance, quality and safety programs, through the end of the NPA's two-year term. NPA, ¶ 13.

motion to dismiss would be clearly contrary to the manifest public interest. The Government's dismissal motion therefore is "motivated by considerations other than the interest of the public" and "should be denied." *Hamm*, 659 F.2d at 629 n.16. Moreover, granting the motion would be contrary to what the victims' families were told about the agreement, meaning that the dismissal would also violate the families' CVRA rights to "reasonable confer" and to be "treated with fairness." 18 U.S.C. § 3771(a)(5) & (8). Had they been told the truth—that the agreement was functionally unenforceable—they would have strongly objected and insisted on a conferral about the holding Boeing accountable. *See* Cassell Dec., ¶¶ 58-65. The Court should deny the motion to dismiss because of these CVRA violations as well.[15]

[15] Boeing's alleged "investment" in new safety measures in the NPA is similarly unenforceable. The NPA requires Boeing to spend $455 million in "sustained" compliance and safety measures. NPA, ECF No. 312-1, ¶ 3. The time frame for this investment goes back to July 2024, when the plea agreement was to have taken effect.

This provision will only have meaning if it is enforced. In a nod to this point, the NPA requires Boeing to semi-annually "provide proof of the accumulated investment amounts to the [Government]." NPA, ¶ 13. But whether the Government will have the required expertise to evaluate the complicated information Boeing provides is unclear.

The Court will recall that it was told in July 2024 that Boeing's plea agreement would lead to "an increase of approximately 75% above [Boeing's] previously planned expenditures on its *corporate compliance program* for fiscal year 2024" (Proposed Plea Agreement, ¶ 25(g) (emphasis added)), suggesting that Boeing had planned an approximately $87 million expenditure for its "corporate compliance" program for the 2024 fiscal year. But, misleadingly, the parties provided no comparison for Boeing's planned expenditures for Boeing's quality or safety programs for any earlier years. The families argued that a comparison of an investment across three programs to only one of those programs could not be a fair representation of the size of the projected "increase" in investment. *See* ECF No. 266-1 at 41-42. The same problems lurk in the NPA's provisions.

Moreover, Boeing and the Government have also declined to reveal to the Court any specifics about Boeing's historical expenditures for its compliance, quality, or safety programs. This absence of specific comparison data means it will not be possible to meaningfully evaluate whether Boeing is truly making "investments" rather than recharacterizing expenditures it was already planning to make for other reasons.

Finally, the Government argues that the Court could not order Boeing to make remedial investments "without impacting the amount of a criminal fine the Court could impose." MTD at 15. But constitutional limits on a retrospective punitive fine are an entirely different matter from prospective remedial measures that a court might order at sentencing, and thus the Constitution

III. It Would Be Clearly Contrary To Manifest Public Interest To Allow Boeing To Escape An Independent, Judicially Appointed Monitor.

The Court should also reject the proposed dismissal because it would prevent any independent monitoring of Boeing's compliance with anti-fraud and safety-related obligations. Instead of independent monitoring, under the proposed NPA, Boeing is allowed to pick its own "Independent Compliance Consultant." *See* NPA, ¶ 10; *see also* Attachment D (Boeing picks its own consultant, subject to Justice Department approval). This self-selection is a clear backtrack from last summer's plea agreement, which provided for a Justice Department-selected monitor. It is even a backtrack from three years monitoring by the Justice Department under the initial DPA—monitoring which failed.

The Court will recall that more than four years ago, the parties executed a DPA, which made the Justice Department the monitor of Boeing's compliance efforts. *See* DPA, ¶¶ 21-23. During the DPA's term, the families proposed that the Court order the appointment of a judicial monitor as a condition of Boeing's supervised release under the DPA. ECF No. 170 at 22-30. At the arraignment hearing, both the Government and Boeing told the Court a sanguine story that everything was under control because the Department's monitoring was sufficient. Trans. (Jan. 26, 2023), ECF No. 175 at 96, 113-14.

It was later shown that Boeing fell dismally—and dangerously—short of meeting its DPA obligations. The Department's "breach" determination spans nine pages of detailed explanation. *See* ECF No. 312-1 at A-1-1 to A-1-9. Among other things, Boeing "failed to fully satisfy the [DPA] requirement to create and foster a culture of ethics and compliance with the law in its day-

---

does not cap remedial measures to a specific amount determined by a jury. *See* Trans. (October 11, 2024), ECF No. 274 at 117-18 (citing *United States v. Caudillo*, 110 F.4th 808 (5th Cir. 2024)).

to-day operations, by failing to mitigate known manufacturing and quality risks." *Id.* at ¶ 6.

Next, the parties came back to this Court with a proposed plea agreement that provided for another Justice Department-appointed monitor.[16] Through an elaborate process, the Department would select an "independent" monitor, with Boeing's input. ECF No. 221-1 at ¶¶ 29-37. The selection was to follow "the Department's commitment to diversity and inclusion." *Id.* at ¶ 32. Remarkably, the process made no provision for the families to have any input into the selection process and excluded this Court entirely. *See* Proposed Plea Agreement, ¶ 35.

In defending the proposed plea agreement's monitoring provision, the Government called it "an *essential mechanism* for preventing future wrongdoing." ECF No. 245 at 2 (emphasis added). The Government explained that the monitor would "assess whether Boeing has adequately mitigated the risk of providing false or fraudulent information to the FAA and other government regulators—helping to ensure that those entities can effectively carry out their regulatory mandate and protect the flying public." *Id.* at 2-3. Boeing, too, endorsed the monitor's importance, explaining that the monitor "covers the very things it should—the anti-fraud compliance concerns specifically identified by the Department in its Factual Basis for Breach." ECF No. 246 at 26.

Last December, the Court rejected the proposed plea agreement on the grounds that the agreement's monitoring provisions were insufficient and thus "against the public interest." ECF No. 282 at 4. In doing so, the Court cited not only diversity and inclusion concerns about selecting the monitor (*id.* at 4-10) but also the "marginalization of the court." *Id.* at 11. The Court explained

[16] While the parties were finalizing a plea agreement, the victims' families also filed a motion asking the Court to reconsider its conditions of release, appointing a judicial monitor for Boeing. ECF No. 202. Thereafter, the parties responded that the victims' families' motion was essentially moot, because the parties were going to propose a monitor under the proposed plea agreement. ECF No. 207 at 6; ECF No. 208 at 4. The families' motion for monitoring as a condition of release remains pending.

that "the Government's attempt to ensure compliance" with Boeing's DPA obligations "has failed" (*id.*), and "[a]t this point, the public interest requires the Court to step in. Marginalizing the Court in the selection and monitoring of the independent monitor as the plea agreement does undermines public confidence in Boeing's probation, fails to promote respect for the law, and therefore is not in the public interest." *Id.*

Rather than come back to the Court with a strengthened monitoring provision, however, the parties now return with a *weakened* provision—one in which Boeing is allowed to select its own "consultant," subject only to approval from the Government. It is hard to understand how these feebler terms could possibly be in the public interest, particularly after Boeing's earlier breach while under the Government's supervision. Even more troubling, the Government has now retreated from the commitments it made last summer about where it stood on the case. At that time, the Government represented to this Court that "[w]ere the Court to reject the Agreement, the Government's position would not change. The Government would proceed to trial against Boeing and present evidence and testimony that tracks the Statement of Facts." ECF No. 245 at 24. Now, however, contrary to what the Government told the Court, it has changed its position. Rather than proceeding to trial or fixing the defects in the guilty plea the Court identified, the Government is offering Boeing a *non-prosecution* agreement with far less rigorous monitoring than that which the Court previously concluded was inadequate to protect the public interest.

Such a dramatic retreat in monitoring Boeing is against the public interest, as it would reward Boeing's breach of its earlier obligations. The Government tries to justify its reversal by asserting that there have been "significant changes internal to and external to Boeing." MTD at 17. But the Government's professed confidence in the FAA's oversight abilities is unfounded, while its continued trust in Boeing's empty promises is indefensible.

Due respect for the FAA's statutory role does not require blind faith in its judgment, particularly where that judgment has repeatedly failed. Concerns have long existed that the FAA functions more as a partner to the aviation industry than as an independent regulator. As the Court is aware, email communications disclosed during the Mark Forkner trial exposed the cozy relationship between Boeing and the FAA. The resulting fateful decisions led directly to the safety failures that caused the two fatal 737 MAX crashes. And "questions raised about the FAA's role in the 737 MAX crisis have punctured its reputation as the gold standard in aviation safety …." MAJORITY STAFF OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, FINAL COMMITTEE REPORT: THE DESIGN, DEVELOPMENT AND CERTIFICATION OF THE BOEING 737 MAX at 232 (Sept. 2020).[17]

In defending its motion to dismiss, the Government refers to an "FAA-approved remediation" program that Boeing adopted in the wake of the January 2024 Alaska Airlines door plug blowout. *See* MTD at 17. But the FAA received that program from Boeing in May 2024, *see* FAA, *Updates on Boeing 737-9 MAX Aircraft* (Dec. 5, 2024)[18]—*before* the Government deemed it necessary to include in the plea agreement the DOJ monitoring provision. Boeing's pre-plea agreement remedial program could not somehow today constitute a "change" significant enough to justify scrapping independent monitoring of Boeing. The Government also refers to its belief "that a resolution of this matter before or after trial must respect the FAA's congressionally mandated authority." MTD at 17. True enough. But just as the Department's proposed monitoring framework in last summer's plea agreement would have "respected" the FAA's authority, so too

[17] Available at https://democrats-transportation.house.gov/download/20200915-final-737-max-report-for-public-release. The victims' families introduced this report as an exhibit during the Court's evidentiary hearing on the "crime victim" issue.

[18] Available at https://www.faa.gov/newsroom/updates-boeing-737-9-max-aircraft.

could further independent monitoring now. *Cf.* Proposed Plea Agreement, ECF No. 221-1 at D-2, ¶ 4 (providing that an independent compliance monitor would not "supplant" any oversight authority of the FAA or other regulators).

Equally unconvincing is the Government's reliance on Boeing's alleged "meaningful enhancements to its compliance program." MTD at 17. The Department's conclusory assertion that the enhancements are "meaningful" is unsupported. Moreover, the Court will recall that just last summer the Government itself proposed that, despite Boeing's purported improvements, a plea agreement with independent monitoring of Boeing was still necessary. *See* Proposed Plea, ECF No. 221-1, ¶¶ 29-37. The Government provides no real explanation for why that need for monitoring has suddenly disappeared.

The Government's justifications also ring hollow when compared to Boeing's public statements about monitoring. During a recent hearing before the Senate Commerce Committee on "Restoring Boeing's Status as a Great American Manufacturer," Senator Maria Cantwell questioned Boeing's CEO, Kelly Ortberg, about the victims' families being "very worried about the company's renegotiation of a plea agreement and the corporate monitoring." Ex. 2, Sen. Hrng. Trans. (April 2, 2025) at 1. At that time, CEO Ortberg claimed that the company was unconcerned about a monitor:

> **Sen. Cantwell:** But … is the company concerned about a corporate monitor in the DOJ discussions of the settlement with the families of the victims. Are you concerned about that? Do you have a problem with that?
>
> **Ortberg:** No, Senator, as I'm sure you're very aware, we had an agreement with the DOJ. We reached an agreement which did include a corporate monitor. That agreement was not accepted by the courts, and so we're in the process right now of going back with the DOJ and coming up with an alternate agreement.
>
> And, look, I want this resolved as fast as anybody. We're still in those discussions, and hopefully, you know, hopefully, we'll have a new agreement here soon.

> **Sen. Cantwell:** Do you have a problem with the corporate monitor?
>
> **Ortberg:** Senator, I don't want to prejudge what the outcome of those discussions is going to be. I don't personally have a problem, no.

Id. at 10. After Boeing's CEO assured both the Senate Commerce Committee—and the general public—that he had no problem with the appointment of a monitor, it cannot serve the public interest for the Court to bless an agreement with less accountability for Boeing than its CEO himself professed to support.

Boeing's performative contrition has become all too familiar. When the DPA—and later, the plea agreement—were on the table, Boeing expressed remorse, accepted responsibility, and promised to implement change. But when Boeing thought it sensed a shift in the political winds, it reversed course and refused to plead guilty, thereby disavowing the very accountability it once claimed to embrace. That reversal revealed the truth: Boeing's remorse was never genuine; it was strategic. Hopefully, Boeing's current professed commitment to reform is genuine. The stakes for aviation safety are very high. *Cf.* Niraj Chokshi, *Boeing 787 Crash Brings Fresh Scrutiny to Plane Maker's Safety Record*, N.Y. TIMES (June 12, 2025). But if Boeing's commitment is genuine, then it can have no objection to the appointment of a truly independent monitor to verify its efforts.

For all these reasons, it is against the public interest to allow Boeing to escape independent monitoring. Ordinarily, of course, it would be up to the Government to decide whether to impose monitoring as part of resolving a criminal case—and this would be the kind of decision that would not be reevaluated by the judiciary. *Cf. Cowan*, 524 F.2d at 512-13. But here, the case has developed in a unique way. It was the Government who originally placed a monitoring condition on Boeing in the DPA. And then later, after Boeing breached the agreement, the Government told the Court that monitoring was "an essential mechanism for preventing future wrongdoing" (ECF No. 245 at 2) and "[w]ere the Court to reject the Agreement, the Government's position would not

change." *Id.* at 24. And following these representations, this Court ruled that the "public interest" demanded a more accountable monitor. ECF No. 282 at 11. That ruling is the law of the case, which the Government must respect. But rather than respect that ruling, the Government has sought to backtrack. Against this unusual backdrop, it is appropriate for this Court to simply agree with the Government's earlier representations that the public interest demands an "essential mechanism" to prevent further wrongdoing by Boeing—and, thus, that leaving Boeing without an independent monitor is clearly contrary to the manifest public interest.

IV. The Court Should Deny the Motion to Dismiss Because the Parties Are Asking the Court to Approve a Deceptive Record About Boeing's Culpability and Its Potential Maximum Fine.

This Court's previous ruling about the importance of monitoring Boeing is not the only ruling that the Government seeks to ignore. Following extended evidentiary hearings, this Court ruled that the families are lawful representatives of "crime victims" under the CVRA—that is, that through its conspiracy, Boeing directly and proximately killed 346 passengers and crew in two Boeing 737 MAX crashes. *See* ECF No. 116 at 18. And the Fifth Circuit has affirmed that ruling. *See Ryan*, 88 F.4th at 627.

The Government, however, persists in litigating this case as though this Court's ruling is not controlling. In particular, in its pending motion to dismiss, the Government asks this Court to lend its imprimatur to a deceptive account of Boeing's culpability that excludes any responsibility for the 346 deaths. Specifically, the Government points to the likely sentencing outcome following a trial and compares that to the outcomes provided through the NPA. *See* MTD at 18-19. One of the important outcomes that the Government presents in defense of its motion to dismiss is that, through the NPA, Boeing will have paid the "statutory maximum fine" that would be possible after a guilty verdict at trial. MTD at 13. In asking the Court to approve the dismissal on this ground, the Government is asking the Court to sign off on a series of underlying assumptions that falsely

exculpate Boeing for causing hundreds of deaths.

Notably, the alleged statutory maximum fine calculation that the Government presents links back to the DPA. In the DPA, the Government and Boeing worked together to calculate what they deemed to be the appropriate penalty[19] through an "application of the Sentencing Guidelines to determine the applicable fine range." DPA, ECF No. 4 at 10. The Guidelines calculation contained in the DPA[20] ultimately produced a low-end fine range of $243.6 million with multipliers of 1.0 (minimum) to 2.0 (maximum). *Id.* at 11. The Government and Boeing then agreed for Boeing to pay a penalty of $243.6 million, at the low end of the fine range. *Id.* Three years later, when negotiating their proposed plea agreement, the Government and Boeing repeated this same Guidelines calculation as the basis for their jointly recommended penalty of an additional $243.6 million. *See* Proposed Plea, ECF No. 221-1 at 17-19.

The fine ranges in both the DPA and the proposed plea, however, were predicated on

---

[19] The payment was not a fine after a conviction and, accordingly, was described as "payment of [a] criminal monetary penalty." *See* ECF No. 4 at 9-10.

[20] In the DPA, 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). In other words, the $243,600,000 gain figure comes from … Boeing! And how exactly did Boeing calculate this figure? No one knows—least of all the Court, whom the parties apparently expect to just rubber stamp this figure from the old DPA. Because the figure comes from the old DPA, the figure was generated in secret negotiations between the Government and Boeing. Had the Government protected the families' CVRA rights during the DPA negotiations, the families would have explained the problems with this figure. Reusing this improperly developed figure now in the NPA violates the families' CVRA rights.

Moreover, the parties have never responded to the victims' families' gain calculations, which shows a gain to Boeing of at least $2,607,000, meaning that the statutory maximum possible fine is $5,214,800,000. *See* ECF No. 268-1 at 27-30. An even larger fine is possible if the Court were to use appropriate "loss" calculations. The parties have never responded to the families' argument that Boeing criminally caused total losses of $11,158,000,000, meaning that the statutory maximum possible fine is $22,316,000,000. *See* ECF 268-1 at 21-27. *See generally* Cassell Dec., ¶¶ 84-87.

Boeing having a total Offense Level of only 34 and a Culpability Score of only 5. *See* DPA, ¶ 9(b) & (c); Proposed Plea, ¶ 24. Those favorable calculations are demonstrably false, in light of this Court's "victim" ruling. As the victims' families explained at length in their earlier briefing on Boeing's proposed plea agreement, these calculations:

- Fail to include a multiple-victim specific offense characteristic under U.S.S.G. § 2B1.1(b)(2)(A)(i);
- Fail to recognize that Boeing's offense involving a conscious or reckless risk of death under U.S.S.G. § 2B1.1(b)(16);
- Fail to mention the possibility of an upward departure for hundreds of deaths under U.S.S.G. § 8C4.2 (policy statement);
- Erroneously give Boeing credit for accepting responsibility under U.S.S.G. § 8C2.5(g)(2), discussed in Families Br. at 32; and
- Deceptively conceal Boeing's C-suite's culpability under U.S.S.G. § 8C2.5(b)(1).

ECF No. 268-1 at 30-35; ECF No. 268-2 at 22-24. When properly incorporating this Court's "victim" ruling, an accurate Guidelines calculation produces a substantially higher Offense Level of 42 and a Culpability Score of 10. ECF No. 266-1 at 30-35; *see also* ECF No. 268-2 at 22-27 (victims' reply further explaining Guidelines calculations).

In response, the Government and Boeing did not attempt to justify the accuracy of their Guidelines calculations. Boeing simply deferred to the Government. *See* ECF No. 268-2 at 23 (responding to Boeing Br., ECF No. 246 at 23). And, in turn, the Government did not meaningfully defend its calculation but instead relied on a "harmless error" defense. *See* ECF No. 268-2 at 25 (responding to DOJ Br., ECF No. 245 at 29).

After this Court rejected the proposed plea, the victims' families continued to press the Government to use accurate Guidelines calculations in assessing this case. At the December 11, 2024, conference, for example, the victims' families tried to get the Government to agree to

recognize this Court's "victim" ruling—unsuccessfully:

> [**Victims' Counsel] Cassell:** I'm trying to understand what sentencing would look like under a new plea agreement, [when] Boeing pleads guilty to the conspiracy charge. Judge O'Connor, as I just mentioned, has ruled that Boeing directly and proximately killed 346 people. Does the department agree that Judge O'Connor should consider those 346 deaths as part of the relevant conduct in this case when he imposes sentence?
>
> **[Government Counsel] Leon:** Thanks, Paul. If that last question is for me, I'll do my best to address it. The candid answer is the judge runs the sentencing hearing, not us. You're asking me to tell you and the group what the sentencing hearing would look like, I think that's not my decision, it's the judge's. What I would say is-
>
> **Cassell:** I'm sorry to just jump in. I'm asking for the Department of Justice position, not the position of Judge O'Connor.
>
> **Leon:** Well, our position has been laid out in all of our briefs just like, again, what you just laid out here very articulately, you did very articulately in the previous pleadings and at the arguments to the court. Our position doesn't change in terms of what we think the appropriate sentence is. Our position hasn't changed on that. As I've said, our view is that the court's most recent order does not address in any way our positions on sentencing, so our positions on sentencing would remain the same. That's, again, that's our preliminary view.
>
> **Cassell:** I'm unclear. I thought I asked a yes or no question and I didn't get a yes or no answer. We-
>
> **Leon:** I gave you my answer, Paul.
>
> …
>
> **Cassell:** All right. Does the Department of Justice agree that Judge O'Connor should consider the 346 deaths as relevant conduct of Boeing in imposing sentence? Yes or no?
>
> **Leon:** Paul, our position is what we've said previously. You're a fantastic lawyer, trying to kind of ask questions the way you want them. Our position's been clear. The judge did make a ruling with a different legal standard on a different issue relating to [unintelligible] …
>
> … Accepting evidence under different evidence with a lower standard of proof. Certainly, any court ruling that the court made in another context may or may not be relevant to a different proceeding in a different context with a different burden of proof. Beyond that I'm not going to answer a yes or no question, which I understand you're asking but, again, we briefed this issue pretty extensively and our position is quite clear.
>
> **Cassell:** With all respect, Glenn, your position is very unclear. Your briefing says that under a standard of proof beyond a reasonable doubt, which applies at a criminal trial, the department could not prove the 346 deaths, but as everyone on this call who's an attorney knows, and I suspect many of the family members as well, a lower standard of proof is used in sentencing, preponderance of the evidence. Does the department believe that by a preponderance of the evidence, Boeing killed 346 people with this crime?

> **Leon:** Paul, I've answered your question the way I've answered it. If it's unsatisfactory to you, I'm sorry.
>
> **Cassell:** With all respect, I would like to suggest that you're not meaningfully conferring with the families on this call. They would like to know if the Department of Justice at sentencing will ask the judge to consider that they lost a loved one due to criminal conduct of Boeing. … I'm sorry that I seem a little flabbergasted here, but that seems like a simple yes or no question. For you to cross-reference briefs that that do not contain a direct answer to that point, I think is quite frankly obfuscating what's going on.
>
> **Leon:** Paul, you're happy to say anything you want. I would respectfully challenge what you're saying for the following reason. The court was very clear in its order. I want to talk about … I want this conferral session to be about the court's order and instruction.

Trans. (Dec. 11, 2024), Cassell Dec., Ex.1 at 4-7.

Remarkably, the Government even refused to say whether it was withholding relevant evidence from the Court on this very issue. Victims' counsel pressed on this issue:

> **Cassell:** Here's a new question that I don't think you've answered previously. Does the United States Department of Justice agree it should fully and accurately alert Judge O'Connor to all known relevant facts at Boeing's sentencing?
>
> **Leon:** We have consistently recognized and support the famil[ies'] ability to say anything and everything it wants to … the judge at sentencing, and we will continue to support that. We're not trying to restrict the famil[ies'] ability to advocate or present evidence or arguments of any kind that they want. Again, we're talking outside the court's order, but if that's what you want to talk about, Paul, we can talk about that but that's our view. The families have every right to be heard as long as the court wants to hear what they have to say.
>
> **Cassell:** Does the United States Department of Justice possess information that it has failed to disclose to Judge O'Connor that would support the conclusion that Boeing has directly and proximately killed 346 people?
>
> **Leon:** Paul, our position is clear and I'm not going to answer these questions that are questions you've asked before that are not relevant to the purpose of this conferral. I'm sorry.

Trans. (Dec. 11, 2024), Cassell Dec., Ex. 1 at 7-8.

Victims' counsel followed up with various emails, attempting to get answers to these questions. Those efforts were unsuccessful. *See* Cassell Dec., at ¶¶ 29-33.

Victims' counsel continued to push for answers during the May 16, 2025, conference. But the Government continued to take the evasive position that it had previously answered the

questions and "that is where we are going to leave it for now." Trans. (May 16, 2025), Cassell Dec., Ex. 5 at 11. Because of the potential ramifications of the Government withholding evidence from the Court, victims' counsel followed up on that issue specifically:

> **Cassell:** Now, when we're in front of Judge O'Connor, one of the questions that I asked Glenn [Leon] … five months ago, was this and I'll quote it exactly: "Does the United States Department of Justice possess information that it has failed to disclose to Judge O'Connor that would support the conclusion that Boeing has directly and proximately killed 346 people?" and that seems to me to be a central issue that Judge O'Connor is going to be looking at shortly. And my opinion is and you can correct me if I'm wrong. I gave Glenn a chance to correct me if I was wrong, that you possess highly relevant information on that subject, that you have not disclosed to Judge O'Connor. So let me just re-ask that question to you[.] [If] you want to say you're not going to answer that, obviously I can't force you to answer, but isn't it true that the Justice Department possesses this highly relevant information to the decision that Judge O'Connor is going to have to make that you are not disclosing?
>
> **[Government Counsel] Laryea:** So Paul, we have discussed this issue before. We have talked about it in the litigation regarding the plea agreement, and the government's position has been that we don't have evidence to prove beyond a reasonable doubt that the crime that we have charged caused the crashes and so that that has been articulated by the government, I think, in numerous submissions. Anyone else. So I just wanted again to reiterate that the department is engaged in decision making about how to proceed in this case. We understand the trial is scheduled for a little over a month from now, and so we are hoping to want to take time to absorb the feedback received today, we want to give you the opportunity to submit any additional feedback that you would like to submit in writing.

Trans. (May 16, 2025), Cassell Dec., Ex. 5 at 24.

As is clear from the transcripts quoted above, the Government is dodging a critical question about its candor to the Court. Even assuming for sake of argument that the Government cannot prove beyond a reasonable doubt that Boeing caused the deaths of 346 people, the Court has ruled that Boeing caused those deaths by a preponderance of the evidence. *See* ECF. No. 116 at 18. At sentencing, the standard of proof is only a preponderance of the evidence. *See United States v. Nava*, 957 F.3d 581, 588 (5th Cir. 2020). And in defending its motion to dismiss, the Government has injected likely sentencing outcomes—specifically Sentencing Guidelines calculations—into

the Court's determination, all the while apparently failing to disclose to the Court highly relevant information about Boeing's culpability.

Against this backdrop, any presumption that the Government is acting to protect the public interest has been rebutted. If the Court were to dismiss the case, the public could have no confidence that the Court has reached the right decision because the Government has not provided all relevant information to the Court. Worse still, the Government now asks the Court to bless its NPA on grounds that it assesses the "statutory maximum" fine against Boeing, even though that conclusion ultimately rests on inaccurate Guidelines calculations that understate Boeing's true criminal exposure.[21]

This Court has previously recognized that facts offered in support of a plea 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)). *Cf. United States v. Mercer*, 472 F. Supp. 2d 1319, 1323 (D. Utah 2007) (observing that Department policy at sentencing is designed to avoid "the spectacle of government attorneys

[21] As one illustration, if this case were to proceed to trial and Boeing was convicted, then even on the parties' inaccurate assumptions, the Court could sentence Boeing to pay a fine of $487.2 million (*see* ECF No. 268-2 at 25-26)—twice what is provided in the NPA. And, when calculated accurately, the applicable sentencing guidelines would contain a "top-end" recommendation as well as a possible upward departure. *See id.* at 26. Ordering a fine of $487.2 million would be consistent with the applicable fine statute, 18 U.S.C. § 3571(c), because Boeing has admitted a gain of $243.6 million and can be assessed a fine of (at least) twice that amount.

The Government also cites *Southern Union* as limiting Boeing's fine to $487.2 million, but *Southern Union* is inapplicable to any sentencing of Boeing. *See* ECF No. 268-2 at 17-22. In any event, because Boeing has not yet been convicted, any previous payments are not fines. Accordingly, even on the parties' calculations, the maximum fine for Boeing is $487.2 million, and the NPA's "criminal monetary penalty" is only one half that amount.

arguing to the court things that are contrary to fact—it avoids prosecutors swallowing the gun.'"). The same analysis should apply to this Court's public-interest determination involved in the motion to dismiss here, because the Government is asking the Court to implicitly sign off on false and inaccurate Guideline assumptions.

The Government's long history of obfuscation in this case makes transparency even more important at this juncture. The Court will recall that before agreeing to the DPA, the Government denied to the families that it was criminally investigating Boeing (ECF No. 52 at 8-10)—false statements that the Government has never plausibly explained.

Next, the Department and Boeing negotiated behind closed doors a generous deferred prosecution deal—and did so in violation of the CVRA by concealing the discussions from the victims' families. *See* ECF No. 116 at 18 (finding that the Government violated the CVRA by failing to confer with the families before reaching its DPA).

Then, when the families challenged the legality of the secret deal, the Department and Boeing jointly took the position that the only "victims" of Boeing's lies were FAA bureaucrats. *See* ECF No. 58 at 9-14 (Gov't position); Hrng. Trans. (Aug. 26, 2022) at 242-43 (Boeing position). The Court rightly rejected these positions. ECF No. 116 at 18; *see also* ECF No. 90 at 1 (amicus brief of Senator Cruz describing these positions as "nonsensical").

Later, before the Fifth Circuit, both the Department and Boeing argued that this Court was powerless to remedy a proven CVRA violation. The Fifth Circuit disagreed. *See In re Ryan*, 88 F.4th 614, 623 (5th Cir. 2023).

Perhaps most significant, despite having been given a generous deal, Boeing proceeded to spend the three year DPA term blatantly (and dangerously) breaching that agreement by failing to

implement appropriate corporate compliance measures. *See* ECF 221-1, at A-1 to A-9 (outlining details of Boeing's breach).

Then, last summer, the parties proposed a guilty plea arrangement that was so contrary to the public interest that the Court was compelled to "step in" and reject it. ECF No. 282 at 11.

Now the Government asks this Court to give its imprimatur to an NPA that rests on misleading potential sentencing calculations and an incomplete record. Indeed, the Government asks the Court to rest its ruling on the earlier DPA, which the Government reached in violation of the victims' families' CVRA rights. *See* MTD at 7, 13 & nn. 42, 44 (citing DPA). This Court could have previously set aside the DPA as violating victims' rights. *See Ryan*, 88 F.4th at 629 (Clement, J., concurring) (explaining "our decision should not be read as holding that the district court was *prohibited* from setting aside the DPA at an earlier stage of these proceedings—including upon motion from the victims' families—after finding that the victims' CVRA rights had been violated"; citing RESTATEMENT (SECOND) OF CONTRACTS § 178 (providing that contracts entered in violation of public policy are void and unenforceable)). In fact, the victims' families asked for such a step as a remedy for the Government's CVRA violation. *See, e.g.,* ECF No. 140 at 1-14. This Court denied the families' motion at the time, while noting its "immense sympathy" for the families and the "incalculable harm" they and their loved ones have suffered. ECF No. 185 at 29. On review, the Fifth Circuit held that "[t]o the extent that this conclusion determinatively denies application of the CVRA, that is inconsistent with the statute, the criminal rules, and court authority to resolve criminal proceedings commenced in court." *In re Ryan*, 88 F.4th 614, 623 (5th Cir. 2023).

Now the time has come for the Court to give full effect to the CVRA. The Court should hold that the DPA was and is invalid—and therefore not entitled to any further effect. And just as the DPA Guidelines calculations were inaccurate, the calculations that the Government now uses

to justify its motion to dismiss are also incorrect. In these unprecedented circumstances, the Court should find that the Government is attempting to obscure Boeing's true culpability and these "actions clearly indicate a 'betrayal of the public interest.'" *Hamm*, 659 F.2d at 629 (quoting *Cowan*, 524 F.2d at 514). Accordingly, the Court should deny the motion to dismiss.

V. It Would be Clearly Contrary to Manifest Public Interest to Allow Boeing to Buy Its Way Out of Accountability by Paying Off the Victims' Families.

It is a fundamental precept of American criminal justice that it strives to "provid[e] equal justice for poor and rich, weak and powerful alike …." *Griffin v. Illinois*, 351 U.S. 12, 16 (1956). This principles dates back to the Magna Carta: "To no one will we sell, to no one will we deny or delay right of justice." Magna Carta (Clause 40). As developed over more than two centuries in this country, the "basic principle" is "that all people must stand on an equality before the bar of justice in every American court." *Chambers v. State of Fla.*, 309 U.S. 227, 241 (1940). Today, every justice and judge of the United States takes an oath of office "to administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. § 453

Against that backdrop, the NPA's provisions involve a stunning departure from the principle of equality. In the NPA, Boeing agrees to fund a pot worth $444.5 million, which would then be divided equally among victims' families. Boeing dangles this money in front of the families, apparently hoping that it will lead them to back off their efforts to hold Boeing accountable for killing their loved ones. And Boeing's offer appears to have had the desired effect, at least with respect to a few families.[22]

[22] All of family members represented by undersigned pro bono counsel remain firmly opposed to the motion to dismiss and accompanying NPA. Some other family members, who appear to be represented by counsel working to collect restitution on a contingency fee basis, either support the motion or do not oppose it. These other family members may be operating on a misunderstanding about the NPA's scope and effect, as it is unclear whether they are aware that

The families objecting here, however, are unwilling to be bought off. And this Court should not bless this unseemly effort by a wealthy corporation to buy its way out of the criminal justice system. The very purpose behind Rule 48(a)'s judicial approval requirement was "to guard against dubious dismissals of criminal cases that would benefit powerful and well-connected defendants." Frampton, *supra*, at 29. Rule 48(a) was specifically designed to overturn the previous federal legal regime, where judges were forced to simply grant nolle prosequi motions based on "reasons" that were transparently dubious, "savor[ing] altogether too much of some variety of prestige and influence (family, friends, or money) that too often enables their possessors to violate the laws with impunity." *United States v. Woody*, 2 F.2d 262, 262 (D. Mont. 1924), overturned in Rule 48(a), as recognized in Adv. Comm. Note (1944 Adoption). Approving such dismissals would undermine the judiciary itself, for it would "incite, if . . . not justify, the too common reproach that criminal law is for none but the poor, friendless, and uninfluential." *Woody*, 2 F.2d at 262. This "belief in disparity in treatment of offenders," in turn, corrodes the principles behind "courts, law, and order; and, in so far as it is well founded, the basis of it is a pernicious evil, and abhorrent to justice." *Id.*

The dubious underpinnings of the Boeing NPA's "Crash-Victim Beneficiaries Compensation Fund" underscore these concerns. The Court will recall that, under the DPA, if Boeing had complied with its obligations during the three-year term, at the end it would have been discharged without paying any additional funds to the victims' families.[23] But Boeing failed to comply with its DPA obligations, leading to the Government's breach determination and,

---

the NPA already mandates non-prosecution of Boeing even before a Court decision on the motion (*see* Part I, *supra*) and that the NPA's safety obligations are essentially unenforceable (*see* Part II, *supra*).

[23] A separate provision in the DPA created a "Crash Victim Beneficiaries Compensation Amount," DPA at ¶¶ 13-19. Of course, the victims' families did not have an opportunity to comment on this provision when the parties executed it, because the DPA was negotiated secretly and in violation of the Crime Victims' Rights Act.

ultimately, a proposed plea agreement, under which Boeing would agree to "pay lawful restitution owed to" the victims' families. ECF No. 221-1 at 5. The amount of restitution would be "determined by the Court and subject to any timely and proper appeal." *Id.*

Then, after the Court rejected the proposed plea, Boeing decided to sweeten the pot. As part of an exchange with the Government for dropping the charges against it, Boeing now proposes to pay $444.5 million into a fund to be paid directly to the families. The Government, in turn, argues in its motion that these funds "avoid[] the uncertain restitution process" and provide what is "likely great recovery" than a restitution order would produce. MTD at 13-14.

But "avoiding" the "restitution process" is precisely the problem with this scheme. If Boeing were paying restitution, it would be making payments because it had admitted guilt or been found guilty. The restitution payments would be tied to actual loss, as ordered by the Court as compensation for those harmed by Boeing's crime. In contrast, Boeing's payments under the NPA are part of an unsavory and direct quid pro quo, with payments untethered from any specific finding of "lost income" or other metric. This is not restitution. It is a cash-for-immunity deal.

And now that the parties ask this Court to explicitly give its imprimatur to this horse-trade.[24] In exchange for $444.5 million (a tiny fraction of Boeing's approximately $152 billion market cap), Boeing seeks the Court's approval for a dismissal of the charge against it. It is hard

[24] Federal law does not contain a "civil compromise statute." In the states, a civil compromise will "ordinarily have no effect upon a party's criminal liability." Construction and Effect of Statute Authorizing Dismissal of Criminal Action Upon Settlement, 42 A.L.R.3d 315 (1972 & 2025 Update). Some states have passed statutes allowing a civil compromise to lead to a dismissal, but these are typically for minor offenses and often require approval of the court. *Id.* Generally it is recognized that states have a clear interest in enforcing their criminal law, "one that exists independently of any private financial settlements." *See, e.g., Padilla v. Quintero*, No. 1:19-CV-119, 2020 WL 7775452, at *5 (S.D. Tex. Oct. 14, 2020), *report and recommendation adopted,* No. 1:19-CV-119, 2020 WL 7770981 (S.D. Tex. Dec. 30, 2020).

to imagine a starker example of a corporation deploying the wealth and power that too often "enables their possessors to violate the laws with impunity," *United States v. Woody*, 2 F.2d 262, 262 (D. Mont. 1924)—precisely the kind of payoff that Rule 48(a) was designed to prevent.

The victims' families do not possess Boeing's power, wealth, and influence. But they have a promise from Congress that they will be "treated with fairness." 18 U.S.C. § 3771(a)(8). It is fundamentally unfair to place the families in a position where they face a Hobson's choice: Take the money but let Boeing avoid accountability; or press for accountability but run the risk of no restitution. For the Court to bless this cash-for-a-pass dismissal for the "deadliest corporate crime in U.S. history" would be a miscarriage of justice. It certainly would be clearly contrary to manifest public interest.

VI. The Government's Alleged Concerns About Breach and Trial Litigation Risk Are Pretextual and Cannot Justify the Motion to Dismiss.

A. Boeing Cannot Litigate the Issue of Its Breach More Than a Year After the Breach Determination.

One reason that the Government gives for moving to dismiss is the supposed possibility of a "vigorous" challenge by Boeing to the Government's breach determination. *See* MTD at 18-19. But that possibility cannot justify dismissal, because Boeing's challenge has been anything but "vigorous." More than a year has passed since the breach determination, and Boeing has yet to file any challenge. Under the doctrine of laches, Boeing's inexcusable delay in pursuing judicial review has prejudiced both the Government and the victims' families, who have expended significant time and resources litigating subsequent issues. Laches applies. *See Env't Def. Fund, Inc. v. Alexande*r, 614 F.2d 474, 478 (5th Cir. 1980); *see also Ryan*, 88 F.4th at 628-29 (holding that the doctrine of laches can apply in criminal cases).

Presumably the reason Boeing has not challenged the breach determination in court is that doing so would directly contradict the plain language of its own DPA—signed by Boeing's CEO,

Chief Legal Officer, and attorneys. In its DPA, Boeing expressly agreed that the "[d]etermination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company … *shall be in the Fraud Section's* ***sole*** *discretion*." DPA ¶ 26 (emphases added). Any challenge to the Fraud Section's discretion would itself constitute a breach of the DPA. Yet now, Boeing appears to conjure litigation risk based on a wholly inapposite case, which involved an "informal" oral promise by prosecutors not to prosecute a cooperating defendant. *See United States v. Castaneda*, 162 F.3d 832, 834 (5th Cir. 1998). In that case, the Fifth Circuit held that because non-prosecution agreements are "contractual in nature," the informal oral agreement impliedly contained a judicial review requirement for any breach determination. *Id.* at 835-36. But *Castaneda* has no relevance here. The DPA was not an informal agreement—it was a detailed, formal contract. And unlike the verbal agreement in *Castaneda*, the DPA explicitly states that a breach determination is in the "sole discretion" of the Government.[25] Accordingly, the DPA's language leaves no room for judicial review. *See* Peter R. Reilly, *Justice Deferred Is Justice Denied: We Must End Our Failed Experiment in Deferring Corporate Criminal Prosecutions*, 2015 BYU L. REV. 307, 348 (2015) ("[M]ost DPAs include a provision giving the government the *exclusive and non-reviewable* right to determine whether a breach … has occurred" (emphasis in original)).

In May 2024, the Government properly determined that Boeing had breached its DPA obligations. That determination was made pursuant to a contractual provision specifically assigning the decision to the Government's "sole discretion." Boeing's unhappiness with that outcome cannot possibly justify dismissing the charge against it.

[25] Interestingly, the Government continues to have no problem using this very same language in the NPA pending before the Court. *See* NPA, ¶ 5.

B. The Government Has No Real Risk at Trial Given Boeing's Signed Confession.

The Government also argues that the Court should consider the supposed "risk" that a jury might not convict Boeing. But that risk is vanishingly small. As the families explained last summer, in any trial of Boeing, the prosecutors would have Boeing's signed *confession* to its crime in hand. *See* Cassell Dec., at ¶¶ 66-83. In its DPA, Boeing admitted to a 54-paragraph statement of facts covering all elements of the conspiracy charge against it. *Id.*, ¶ 68 (citing DPA ¶ 2). Boeing's confession was signed by its CEO, Chief Legal Officer, and lawyers. *Id.*, ¶¶ 69-70. In contrast, the Government had no such confession evidence when it tried (and failed to convict) Boeing's Chief Test Pilot for his individual role in deceiving the FAA. *Id.*, ¶ 79. And in a trial of Boeing, the Government could—and should—simply call a Boeing executive to admit the company's guilt. Unlike Forkner, Boeing has no Fifth Amendment right against self-incrimination. *Id.*, ¶ 82 (citing *Braswell v. United States*, 487 U.S. 99 (1988)).

Contrary to the Government's assertion, the outcome of the Forkner trial does not meaningfully inform a decision about the risk of prosecuting The Boeing Company. The conventional understanding of the Forkner verdict is that the jury acquitted him because he was seen as a scapegoat. *See* Dominic Gates, *Why Boeing Pilot Forkner Was Acquitted in the 737 MAX Prosecution*, SEATTLE TIMES (Mar. 25, 2022) (noting "experts within the aviation community have long seen Forkner as a fall guy").[26] Professor John Coffee, director of the Center on Corporate Governance at Columbia Law School, concurred, noting that the Government's effort to convict Forkner individually was "quickly repudiated by the jury, which viewed [him] as an innocent pawn in this game."[27] Forkner's attorneys could viably make this "fall guy" argument. Boeing cannot. A

[26] Available at https://www.seattletimes.com/business/boeing-aerospace/why-boeing-pilot-forkner-was-acquitted-in-the-737-max-prosecution/.

[27] John C. Coffee, Jr., *Nosedive: Boeing and the Corruption of the Deferred Prosecution*

trial of Boeing—one of the world's largest and most profitable corporations—would differ in every material respect from the trial of an individual subordinate (who, notably, did not confess). *See* Cassell Dec., ¶¶ 67-83. And the outcome would presumably be different as well. There is no material "litigation risk" here, as this Court appeared to recognize when it rejected the proposed plea agreement and required the Government either to reach a new agreement or proceed to trial.

VII. It Would Be Clearly Contrary to the Manifest Public Interest to Allow This Case to be Resolved Through a Dismissal Rather than a Public Trial.

Finally, in exercising its discretion to "protect the public interest in the fair administration of criminal justice," *Cowan* 524 F.2d at 512, the Court should consider the profound public interest in resolving this case through a public trial. A trial would guarantee not only that justice is done, but that it is *seen* to be done. As one court put it, a fair and impartial trial before a jury may be "the purest and most incorruptible justice humankind has ever conceived." *United States* v. *Aegerion Pharmaceuticals, Inc.*, 280 F.Supp.3d 217, 223 (D. Mass. 2017)). The Supreme Court likewise has emphasized the importance of public trials in the criminal justice system, observing that "[t]o work effectively, it is important that society's criminal process satisfy the appearance of justice, …which can best be provided by *allowing people to observe such process*." *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 556 (1980) (emphasis added) (cleaned up). A trial in this case would ensure transparency, accountability, and public confidence in the Government's ability to obtain justice for an extraordinarily serious corporate crime.

The Government's own Justice Manual recognizes the importance of public trials, acknowledging that in some circumstances a jury trial may be the only appropriate way to resolve a case. As the Manual explains, "there may be situations in which the public interest might better

---

Agreement 16 (May 6, 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4105514.

be served by having a case tried rather than by having it disposed of by means of a guilty plea. *These include situations in which it is particularly important to permit a clear public understanding that 'justice is done' through exposing the exact nature of the defendant's wrongdoing at trial, or in which a plea agreement might be misconstrued to the detriment of public confidence in the criminal justice system*." U.S. Dept. of Justice, Justice Manual § 9-27.420 (emphasis added).

It is difficult to imagine a case more deserving of a public trial than this one. The case began with a covertly—and illegally negotiated—DPA. And then, after Boeing breached the agreement, the parties proposed a plea deal, which this Court rejected as contrary to the public interest. And now, the parties come back to the Court, asking to simply dismiss the case.

All this backroom maneuvering has unfolded against the backdrop of a criminal defendant—The Boeing Company—which possesses enormous wealth and deep political connections. In other words, this case is exactly the scenario that Rule 48(a) was designed to protect against. In a case of this magnitude, a public trial is not just appropriate, but necessary to restore public confidence in the rule of law.

The Supreme Court has warned that "[t]he crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is 'done in a corner [or] in any covert manner.' … People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers,* 448 U.S at 571-72 (citations omitted). A public criminal trial in particular, serves as "a site of 'deep accountability' where facts are exposed and [corporate] responsibility assessed …." Marc Galanter, *A World Without Trials?*, 2006 J. DISP. RESOL. 7, 22 (2006).

Of course, Boeing has no right to have the charges against it dismissed. Just as a guilty plea requires judicial approval, *see Missouri v. Frye*, 566 U.S. 134, 148 (2012), so too does a dismissal of charges under Rule 48(a). As the Fifth Circuit has recently emphasized, "[p]ublic perception and confidence in the criminal justice system assume that when criminal charges are submitted for judicial resolution, the courts vigilantly will enforce the public interest ...." *Ryan*, 88 F.4th 614, 626 (5th Cir. 2023).

What the parties now request is truly extraordinary. In response to the what the court has called "the deadliest corporate crime in U.S. history," they ask this Court to approve a resolution that would result in no public trial, no final determination of guilt, and no enforceable accountability. The evidentiary record underlying the dismissal will remain incomplete, with the Government unwilling to even confirm whether it is withholding relevant evidence from the Court. Boeing's future compliance and safety programs will not be subject to independent oversight but instead will be monitored by a "consultant" of its own choosing. And should Boeing breach its limited obligations under the NPA, the Government will be contractually barred from pursuing further prosecution—even though the Court is being asked to dismiss the charge "without prejudice."

To be sure, courts are instructed to deny dismissal only in unusual cases where dismissal would be "clearly contrary to the manifest public interest." *Ryan*, 88 F.4th at 628. But this case is not just unusual; it is unprecedented. It is difficult to imagine a case in which justice more strongly demands that dismissal be denied.

CONCLUSION

If this case does not meet Rule 48(a)'s standard for denying dismissal, then the rule is reduced to a hollow formality and the promise of equal justice under law becomes a fiction. This Court has previously stated that when it has authority "to ensure that justice is done," "it would not hesitate." ECF No. 186 at 29. Simply put, this proposed dismissal is not justice. The Court should not hesitate to exercise its power to deny the motion.

For the foregoing reasons, the families respectfully request that the Court should hold a hearing, where the victims' families and their counsel can be heard in opposition to the motion to dismiss. Thereafter, the Court should exercise its authority under Rule 48(a) and deny the Government's motion to dismiss, ECF No. 312. The families respectfully request that the Court give as its reasons for rejecting the motion the reasons the families outline above and that the Court declare that the NPA's no-further-prosecution provision is void as against public policy.

After rejecting the motion to dismiss, the Court should exclude from the Speedy Trial Act calculation the time between May 29, 2025, and the date of its rejection of the motion, pursuant to 18 U.S.C. § 3161(h)(1)(D) (time excluded while pre-trial motion is under consideration). The Court should then give the parties two weeks to advise how they wish to proceed and exclude that two-weeks from the Speedy Trial Act calculation, pursuant to 18 U.S.C. § 3161(h)(7)(A) (time resulting from a continuance based on serving the "ends of justice").[28]

[28] If the Court nonetheless determines it will grant the motion to dismiss, the victims' families respectfully request that the Court stay its decision for five business days in order to give the families an opportunity to review the Court's decision and to consider whether to seek appellate review. *See* 18 U.S.C. § 3771(c)(5) (authorizing stay for five days to permit CVRA mandamus petitions).

Dated: June 18, 2025

Respectfully submitted,

/s/ Darren P. Nicholson
Warren T. Burns
Texas Bar No. 24053119
Darren P. Nicholson
Texas Bar No. 24032789
Chase Hilton
Texas Bar No. 24100866
BURNS CHAREST LLP
900 Jackson Street, Suite 500
Dallas, Texas 75202
Telephone: (469) 904-4550
wburns@burnscharest.com
dnicholson@burnscharest.com
chilton@burnscharest.com

/s/ Paul G. Cassell
Paul G. Cassell (Utah Bar No. 06078)
(Counsel of Record)
Utah Appellate Project
S.J. QUINNEY COLLEGE OF LAW
University of Utah
cassellp@law.utah.edu
(no institutional endorsement implied)

Tracy A. Brammeier
CLIFFORD LAW OFFICES PC
tab@cliffordlaw.com

Erin R. Applebaum
KREINDLER & KREINDLER LLP
eapplebaum@kreindler.com

Pablo Rojas
PODHURST ORSECK PA
projas@podhurst.com

Attorneys for Victims' Families

CERTIFICATE OF SERVICE

I certify that on June 18, 2025, the foregoing document was served on the parties to the proceedings via the Court's CM/ECF filing system.

/s/ Darren P. Nicholson
Darren P. Nicholson