

July 2, 2024

The Honorable Merrick Garland, Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

The July 7 deadline is looming for the Department of Justice (DOJ) to decide whether to criminally prosecute Boeing in response to violations of its 2021 deferred prosecution agreement. As the Department makes its determination, we urge in the strongest terms for Deputy Attorney General Lisa Monaco to be immediately recused from participating in the deliberations, given her widely reported personal ties to the company. We also urge the DOJ to criminally prosecute Boeing, rather than let a repeat offender off the hook with a rumored negotiated resolution that relatives of the victims of Boeing's fatal crashes are calling a "sweetheart deal."¹

We acknowledge that the circumstances are complex and justify the careful deliberation that the Department has undertaken until recently. In 2021, the Criminal Division charged Boeing² with defrauding the Federal Aviation Administration by misleading regulators about the safety of the Maneuvering Characteristics Augmentation System (MCAS) in Boeing's 737 MAX aircraft,³ in the wake of two fatal 737 MAX crashes that gained global attention after taking 346 lives.⁴

The Department and Boeing, under the oversight of Judge Reed O'Connor of the Northern District of Texas, agreed to resolve the charge through a deferred prosecution agreement, obligating the company (among other things) to institute a rigorous compliance and ethics program to prevent future violations.⁵

But Boeing safety problems have continued, including a catastrophic door plug blowout on an Alaska Airlines 737 MAX-9 in January⁶ — leading to NTSB and DOJ investigations⁷ that

¹<https://www.usatoday.com/story/news/politics/2024/06/30/boeing-fatal-crashes-justice-department-plea-deal/74264574007/>

² <https://www.justice.gov/opa/press-release/file/1351331/dl>

³ <https://prospect.org/blogs-and-newsletters/tap/2024-06-24-boeing-accountability-justice-settlement/>

⁴ <https://apnews.com/article/boeing-max-crash-victims-families-d4d944ba4f9669004f32908ffea98e32>

⁵ <https://www.justice.gov/opa/pr/boeing-charged-737-max-fraud-conspiracy-and-agrees-pay-over-25-billion>

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<https://www.cbsnews.com/losangeles/news/alaska-airlines-flight-forced-to-make-emergency-landing-after-window-panel-blows-out-mid-air/>

⁷ <https://www.cbsnews.com/news/justice-department-investigating-boeing-737-max-9-door-blowout-alaska-airlines/>

have found, among other things, evidence of undocumented repair work.⁸ And allegations of internal pressure to downplay safety issues have been corroborated by former employees.⁹

The Department concluded that the findings of recent investigations indicate Boeing has not complied with the 2021 agreement,¹⁰ and in May, Fraud Section Chief Glenn S. Leon and U.S. Attorney Leigha Simonton filed a formal notice of breach with Judge O'Connor.¹¹ Now the Department must decide whether to file charges, pursue a negotiated resolution, appoint an independent monitor, or take other action.¹²

A decision of this significance, which could affect the very financial sustainability of a \$77 billion company¹³ with 170,000 employees,¹⁴ must be made with complete impartiality. Unfortunately, Deputy Attorney General Monaco's personal connections¹⁵ to Boeing, via her work at WestExec Advisors,¹⁶ make her an unsuitable participant in the deliberations. She has owned Boeing stock in the past, and may still.¹⁷

We are concerned by recent reporting that the DOJ may offer Boeing a plea deal.¹⁸ Worse, it appears that senior DOJ leadership may have overruled the recommendations of the DOJ prosecutors most familiar with the extensive factual record.¹⁹ That this news comes while Deputy AG Monaco is still involved with the case is likely to create the impression in the mind of the public that a senior DOJ official's personal interests have impacted the DOJ's internal deliberation process and the outcome.

Too much is at stake for the DOJ's decision making process to exhibit even a hint of bias. The nature of justice for the families whose 346 loved ones have died in 737 MAX crashes hangs in the balance. Public safety hangs in the balance. The credibility and impartiality of the Department hang in the balance, as does the extent of the Biden administration's willingness to hold large corporations accountable for their misdeeds. And as evidence of ongoing malfeasance by Boeing continues to emerge — less than two weeks ago, the NTSB

⁸ <https://www.forbes.com/sites/marisagarcia/2024/04/11/ntsb-chair-says-there-are-more-boeing-door-plug-repairs/>

⁹ <https://www.cbsnews.com/news/boeing-breach-2021-agreement-could-face-criminal-prosecution-justice-department/>

¹⁰ <https://www.cnn.com/2024/05/14/business/boeing-justice-department-criminal-prosecution/index.html>

¹¹ <https://files.lbr.cloud/public/2024-05/DOJ%20update%20on%20DPA%20breach.pdf>

¹² <https://www.nytimes.com/2024/06/21/us/politics/boeing-doj-deferred-prosecution-agreement.html>

¹³ <https://www.statista.com/statistics/264374/boeings-worldwide-revenue/>

¹⁴ <https://www.boeing.com/company/general-info#overview>

¹⁵ <https://therevolvingdoorproject.org/revolver-spotlight-lisa-monaco/>

¹⁶ <https://www.politico.com/news/2021/01/01/yellen-made-millions-in-wall-street-speeches-453223>

¹⁷

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/FB6AB705866DBB76852588FE00343E63/\\$FILE/Lisa-O-Monaco-2022-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/FB6AB705866DBB76852588FE00343E63/$FILE/Lisa-O-Monaco-2022-278.pdf)

¹⁸

<https://www.usatoday.com/story/news/politics/2024/06/30/boeing-fatal-crashes-justice-department-plea-deal/74264574007/>

¹⁹

<https://www.reuters.com/legal/us-prosecutors-recommend-doj-criminally-charge-boeing-deadline-looms-2024-06-23/>

sanctioned Boeing for providing non-public information to the media about its ongoing investigation²⁰ — the stakes mount further.

Every possible course involves the weighing of risks — risks not just to Boeing but to public safety, to the company’s economic sustainability, to the integrity of the justice system, even to our military readiness. And, in our opinion, those risks should be weighed by people within the Department who themselves are entirely free of ties to Boeing and have no hint of a stake in the outcome. In the interest of the Department’s credibility and protecting the American public, Deputy Attorney General Monaco must recuse herself.

Treating Boeing leniently did not serve the public interest the first time around, and it makes even less sense now. The 2021 deferred prosecution agreement has already deferred justice for victims’ families for far too long. In the intervening time, Boeing’s safety record has only gotten worse, not better. Without real accountability— including personal consequences for executives— Boeing will not be sufficiently motivated to actually fix the underlying corporate governance problems that have caused it to focus more on financial engineering than making safe aircraft. The American public deserves a real solution. The DOJ must criminally prosecute Boeing.

Sincerely,

American Economic Liberties Project

Demand Progress Education Fund

Revolving Door Project

CC: Deputy Attorney General Lisa Monaco

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<https://www.nbcbayarea.com/news/national-international/ntsb-sanctions-boeing-for-sharing-details-about-the-737-max-9-investigation/3577740/>