

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS'UD KHEIR AL-MARIMI,**

Defendant.

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Case No. 22-cr-392 (DLF)

**UNITED STATES' MOTION TO AFFORD VICTIMS OF THE BOMBING OF PAN AM
FLIGHT 103 REMOTE VIDEO AND TELEPHONIC ACCESS TO COURT
PROCEEDINGS IN THIS CASE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court to provide remote video and telephonic access of the proceedings in this case via the Zoom for Government platform to the victims of Pan Am Flight 103. In support of this motion, the government relies on the following points and authorities, along with those cited in its earlier pleading on this topic, ECF 45, and any additional points and authorities as may be cited at a hearing on this motion. The government also provides, in response to the Court's March 13, 2024, Minute Order, a detailed proposal for providing that remote video and telephonic access.

The government requests that the Court implement Congress's directive for it make reasonable efforts to provide remote access to the victims of the attack on Pan Am Flight 103, without regard to the location of the victim, by using the Court's existing Zoom for Government account. As explained in further detail below and in the declaration from Zoom, attached hereto as Exhibit 1, Zoom for Government provides a secure platform on which the remote users can be authenticated through electronic and visual means—including comparison by a live monitor to a

government-issued photo identification—prior to being admitted to view any proceedings remotely. Zoom has available security features that are designed to mitigate the risk of unauthorized rebroadcasting of the proceedings, including by inserting a unique visual and audio “watermark” into the stream sent to reach remote user’s device, which will allow Zoom to later determine, in the event of any unauthorized rebroadcasting, which user’s account originally recorded it. Thus, with Zoom’s capabilities, the security and integrity of the Court’s proceedings remain paramount.

Further, to ensure that this authentication process is seamless, the government is willing and able to provide Department of Justice (DOJ) personnel, including federal law enforcement employees not otherwise involved in the investigation of this case, to monitor the waiting room, verify attendees’ identity, and subsequently monitor those who are watching the proceedings to ensure that those watching the Court’s proceedings comply with any applicable ground rules that this Court sets, and to work to solve technical issues that may arise. The government will additionally provide trained victim advocates, who will be available to speak with victims privately if they have a desire to speak with someone based on what they see during the proceedings (*e.g.*, a trauma triggering event), which is a role that these trained advocates play every day during their attendance at trials throughout the country.

Congress has recognized the exceptional nature of the attack on Pan Am Flight 103, authorizing remote transmission of District Court proceedings to victims of a specific case for only the second time in history, and mandating for the first time that court proceedings be made available regardless of the location of the victim.¹ The magnitude of this terrorist act and the

¹ The first time Congress authorized remote transmissions of District Court proceedings for victims in a specific case was with respect to *United States v. Zacarias Moussaoui*. Pub. L. No. 107-206, § 203. Prior to that, following a venue change in the trial arising from the April 1995

devastation it left in its wake reached worldwide, and to this day, remains the largest terror attack on the United Kingdom, and the second largest terror attack on the United States behind that of the attack of September 11, 2001. As the Scottish Lord Advocate stated in 2001, on the day the verdict was reached in the Scottish trial involving two other defendants arising from this tragedy:

I need hardly say to the court that each one left relatives, wives, husbands, parents and children. Something of the scale of the impact can be gleaned from the fact that more than 400 parents lost a son or a daughter; 46 parents lost their only child; 65 women were widowed; and 11 men lost their wives. More than 140 lost a parent, and seven children lost both parents.

Lord Advocate Bain Ltr., attached hereto as Exhibit 2, at 1.

The proposals as laid out below allow the Court to provide the access Congress authorized, regardless of the geographic location of the victims, in a secure manner that is live-monitored, protects the integrity of the proceedings, and restricts access to victims.

FACTUAL BACKGROUND

On December 21, 1988, Pan Am Flight 103 exploded over Lockerbie, Scotland, while *en route* from London's Heathrow Airport to John F. Kennedy International Airport in New York City. The explosion resulted in the deaths of 270 people, 259 of whom were aboard the flight, with another 11 persons killed by debris falling to the ground. The victims included citizens of 21 countries, including 190 Americans, 43 citizens of the United Kingdom, and nationals of Argentina, Belgium, Bolivia, Canada, France, Germany, Hungary, India, Ireland, Israel, Italy, Jamaica, Japan, South Africa, Spain, Sweden, Switzerland, and Trinidad and Tobago. Among those who perished were 35 Syracuse University students returning from studying abroad, five

Oklahoma City bombing, Congress authorized remote transmission of District Court proceedings in cases involving a venue change. That legislation was not specific to the case of *United States v. McVeigh*, which arose from that bombing, but rather applied (and still applies) to all cases that involve a change of venue out of state and more than 350 miles from where the case is originally brought. *See* 34 U.S.C. § 20142.

United States service members, and employees of the Department of Justice and Central Intelligence Agency.

PROCEDURAL HISTORY

On November 29, 2022, a federal grand jury in the District of Columbia returned a three-count Indictment charging Abu Agila Mohammad Mas'ud Kheir Al-Marimi (the "Defendant"), a dual citizen of Libya and Tunisia, with the destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(2), 34, and 2; destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(1), 34, and 2; and destruction of a vehicle used in foreign commerce by means of an explosive, resulting in death, in violation of 18 U.S.C. §844(i). He was lawfully transferred to U.S. custody on December 11, 2022, and he made his initial appearance before a U.S. Magistrate Judge on December 12, 2022.²

On February 9, 2023, the government filed an unopposed motion for alternative procedures under the Crime Victims' Rights Act, 18 U.S.C. § 3771, that requested (among other things) that the Court make available to victims a call-in telephone line to allow the victims to listen to the proceedings in real time. *See* ECF 23 at 7-8. The Court denied the government's request to make the call-in line available, finding that it did not have the authority to allow victims telephonic access to in-person court proceedings. Minute Order dated February 10, 2023.

On October 13, 2023, DOJ transmitted to Congress proposed legislation that would provide statutory authority for this Court to afford victims of the Pan Am Flight 103 bombing remote video and telephonic access to the proceedings. On December 6, 2023, the U.S. Senate passed the bill

² This proceeding was made available to the public via the toll-free line available during many proceedings under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 15002(b), 134 Stat. 281, 528 (2020), and many family members listened to the proceedings without incident.

by unanimous consent. On January 18, 2024, the House of Representatives passed the bill by a vote of 413-7. The bill was presented to the President on January 24, 2024, and he signed it into law on January 26, 2024. Once signed into law, the legislation was designated Pub. L. No. 118-37.

On March 1, 2024, in response to this Court's order, the parties filed proposals for how to implement Pub. L. No. 118-37. The parties agreed that the Court should make access available to the victims via Zoom (or a comparable platform) for pretrial, non-testimonial hearings. ECF 44 & 45 at 1, and the parties requested additional time in which to file proposals for trial and testimonial hearings. ECF 44 at 6; ECF 45 at 1. By Minute Order dated March 13, 2024, the Court granted the parties' request for additional time, ordering the government to file a proposal "addressing how it will ensure that (1) audio or video proceedings are restricted to victims, see [ECF 45], (2) unauthorized persons do not gain access to the proceedings, and (3) no recording, (re)distribution, or broadcasting of the proceedings occur." The Court's Order also directed the government to "identify government resources, including personnel and facilities, it will dedicate to achieve these ends." This memorandum in support of the government's motion addresses the issues set forth in the Court's Minute Order.

Statutory Framework

Public Law No. 118-37 provides that the Court, "notwithstanding any provision of the Federal Rules of Criminal Procedure or other law or rule to the contrary, in order to permit victims of crimes associated with the bombing of Pan Am Flight 103 to access court proceedings . . . shall order that reasonable efforts be made to make remote video and telephonic access to proceedings in the case available to victims of crimes associated with the bombing of Pan Am Flight 103." Pub.

L. No. 118-37, Subsection (b)(1). The statute defines victim, in Subsection (a)(1), as any individual:

- (A) who suffered direct or proximate harm as a result of the bombing of Pan Am Flight 103 that occurred over Lockerbie, Scotland, on December 21, 1988, and was present at or near the scene of the bombing when it occurred, or immediately thereafter; or
- (B) who is the spouse, legal guardian, parent, child, brother, sister, next of kin, or other relative of, or who is determined by the applicable district court of the United States to be an individual who possesses a relationship of similar significance to, an individual described in subparagraph (A) or an individual otherwise described in this subsection.

The statute includes a subsection entitled “No Limit on Location,” which states: “Remote video and telephonic access to proceedings shall be made available under paragraph (1) to a victim of crimes associated with the bombing of Pan Am Flight 103 without regard to the location of the victim of crimes associated with the bombing of Pan Am Flight 103.” Pub. L. No. 118-37, Subsection (b)(2). The statute affirms the Court’s discretion, “where necessary to control the courtroom or protect the integrity of the proceedings, or the safety of the parties, witnesses, or other participants in the proceedings,” to “control the manner, circumstances, or availability of remote video or telephonic transmissions.” Pub. L. No. 118-37, Subsection (c).

ARGUMENT

The Zoom for Government platform provides a reliable, secure, and enforceable way to allow victims from around the country, and the world, to access the court’s proceedings remotely. Zoom has further highlighted features of its platform that, when combined with live-monitoring of attendees, who would be required to remain on camera if accessing the video, and identification checks that would take place before any individual is permitted to access the proceedings remotely, approximate the level of control and identity verification that would be present at a physical viewing site with identification checks and a monitor in the room. Those features include the use

of two-factor authentication and controls that do not allow remote attendees to chat with each other or to disrupt the proceedings (but that would allow interactions between the victims and the monitors and/or victim advocates). Some of Zoom’s features, such as the use of a personalized “watermark” that would allow Zoom to identify the source of any unauthorized broadcasting or sharing of the proceedings, provide greater security than would be available at traditional physical sites.

The security provided by the combination of Zoom’s security and verification features and the live-monitoring and identification checks offered by the government allow the Court to implement Congress’s directive to provide remote access to the victims of Pan Am Flight 103, regardless of the location of those victims. As the four attached declarations from victims, along with a letter from the Lord Advocate, Scotland’s most senior law officer, make clear, fixed viewing sites will not provide meaningful access to victims located far from major cities, nor would they allow the many victims who are battling health and mobility issues as they age, nor victims who lost siblings but now live abroad, nor victims who live in a city or country without many other victims, to access the proceedings.³ It was Congress’s intent to provide meaningful access to all of those victims, and the Zoom proposals, in combination with live monitoring and identification checks, allow the Court to provide that access in a way that assures that remote access is secure, limited to victims, and is unlikely to be shared or rebroadcast.

³ The government invited certain victims who are or were affiliated with organized groups connected to the bombing of Pan Am Flight 103 to submit declarations in support of this motion. The government thought these victims’ experiences would be helpful to the Court in deciding how best to implement Pub. L. No. 118-37. Each victim’s views are his or her own, shaped by his or her own experiences. To the extent that any of the victim declarations espouse opinions or make assertions based on their personal beliefs, such opinions or assertions represent the views of the individual declarant, and not necessarily the views or opinions of the Department of Justice.

I. The Zoom for Government Proposals, in Conjunction with Government Outreach and Monitoring, Will Ensure that Remote Access is Limited to Victims.

The government has begun taking steps and will continue taking steps, consistent with any guidance provided by the Court, to ensure that it creates a list of individuals who meet the statutory definition of “victim” as set forth in Pub. L. No. 118-37. That list, when combined with any individuals that the Court finds possesses a relationship of similar significance to the statutory definition of victim, *see* Pub. L. No. 118-37(a)(1)(B), would be the list of individuals who would receive an invitation to join the remote broadcast. The government will collect copies of government-issued identification for all individuals on the list who wish to access the proceedings remotely, along with verifying their email addresses and phone numbers (for those that are not yet verified). It will provide that verified information to the Court, which can then send invitations to join the proceedings remotely and can require that individuals sign in using two-factor authentication that links to a verified account or phone number. On the day of any hearing or trial day, the government will assign DOJ employees, including federal law enforcement employees, to act as “monitors” who will conduct a visual comparison in a waiting room between any individual who joins the hearing and their government-issued identification photograph on file, only admitting those who appear on camera to match their identification photo. For any victim who chooses to call in by phone, the monitors will ensure that the phone number calling in matches up with the verified number on file for that victim. Only after such verification is complete will the individual be permitted to access the remote broadcast of the proceedings.⁴

⁴ As noted in the Zoom Declaration, some options provide more ability for live monitoring than others. The government will provide staffing to match any option the Court chooses. Should the Court desire to have its personnel serve as monitors, as opposed to the DOJ employees we propose here, the government does not object. Similarly, should the Court prefer that the government send the invitations to the verified list, rather than the Court, it would be happy to do so.

A. Creation of a List of Victims Who Meet the Statutory Definition

As explained in the government's March 1 proposal for victim access, it maintains a Victim Notification System (VNS) in this case that contains over 700 entries. *See* ECF 45 at 13-15. The government has attempted to contact each individual listed in that database with an address in the United States.⁵ In those calls, the government has verified each individual's relationship to someone lost in the attack, as well as their contact information. As a result of that effort, the government maintains a secondary list, apart from VNS, containing only those individuals with whom the government has had recent contact and who possess a relationship that meets the definition of victim set forth in Pub. L. No. 118-37.

The government plans to send hard-copy letters and emails (where appropriate) to the entirety of its VNS list, including foreign-based victims to the extent permitted by the countries in which they reside, notifying them of whichever procedure the Court adopts. The government expects to include in those letters a questionnaire covering, among other things, whether the recipient desires access to the proceedings remotely. If any such individual desires remote access to the proceedings, they will be asked to provide their relationship to a victim, along with contact information for inclusion on the contact list. For those who do not meet the statutory definition but request access to the proceedings, the government will consider whether to apply to the Court for

⁵ The government is restricted in its ability to contact victims located abroad directly. Those restrictions vary by country, and we explain in further detail below our plan to contact and verify foreign-based victims. The government has provided to the defense an electronic file that plots the city and state (or country) of every entry in VNS that included address data as of March 2024. The government is working on an updated version, based on the calls described above. With the caveat that the list is necessarily incomplete at this point, the government is willing to share that updated file with the Court and defense.

a finding that the individual possesses a relationship of similar significance to the statutory definition of victim.

The government also expects to require any individuals who desire remote access to submit a copy of a government-issued photo identification in their name. As described in further detail below, these identification photos will later be used by monitors to visually confirm that the person who seeks to access the proceedings is in fact a person who has been verified as a victim who has been cleared to access the proceedings. The government will also require any person who submits an identification to acknowledge that any rebroadcasting or recording of the proceedings, or any attempts to share the remote access with unapproved individuals, is strictly prohibited, and that it could be punishable by contempt, among other things.

The government will maintain a list of individuals who either meet the statutory definition of victim or have been approved by the Court for access through application, and who have also submitted their identification and acknowledged the prohibitions on rebroadcasting, recording, or sharing with unauthorized persons. It will submit that list to the Court ahead of any hearing, to allow court staff to send invitations to those who have met the requirements to receive an invitation. Thus, only those who meet the statutory definition of victim (or who have otherwise been approved by the Court) and whose identities have been verified will receive an invitation to join the waiting room.

B. Procedure to Ensure that Only Victims Access Proceedings Remotely

As laid out in the Zoom Declaration, Zoom's existing infrastructure provides the Court with options to ensure that only the intended recipients of any invitation are permitted access to the proceedings. After a remote user receives an invitation from court staff, he or she will log into a meeting of the Court's choosing. Notably, no person will receive a link that will allow them to

access the proceedings prior to a visual verification step that is the analogue to having a staff member checking identification at the door.⁶ The link would either take the user to a waiting room or to a separate meeting entirely, neither of which would show the proceedings. Those who desire to watch any video from the proceedings would be required to have their camera on, and the meeting can be configured so that remote observers could see monitors, but not each other. The meeting could be further configured so that remote users are required to be logged in and verified via two-factor authentication. Zoom Decl., Att. A at 2-3. Once users enter this anteroom, the DOJ employees who serve as monitors would visually verify each attendee's identity and their login information before allowing them to enter the meetings that include the actual proceedings.⁷ Notably, should the Court choose Proposed Solution Three, no link to the meeting that contains the actual proceedings will be distributed. In that solution, monitors would move remote observers from a meeting that serves as a waiting room to the meeting that contains the proceedings. Protecting the link to the actual proceedings would ensure that no one could forward it to anyone who is not a verified victim.

Once a victim joins the remote proceedings, those who did not dial in via telephone would be required to keep their camera on during the proceedings, and the meeting could again be configured such that the participants could not see each other, but that a monitor could see them.

⁶ As noted in the Zoom Declaration, the webinar option does not have this option. The government's recitation here thus focuses on Proposed Solutions Two and Three from the Zoom Declaration, both of which leverage Zoom's "meetings" product, rather than its "webinar" product. *See* Zoom Decl., Att. A, at 3-6.

⁷ For any users who opt to dial into the meeting via telephone, such visual verification would not be possible. However, the monitors would still verify that the number calling in is a verified number associated with a verified victim. Because anyone calling in via telephone would necessarily only have audio access, the government submits that phone number verification would be sufficient. Zoom Decl., Att. A, at 2-3.

Monitors would be tasked with looking at screens of up to 25 people at a time to ensure that, for example, no new people have entered the camera's field of vision and no one appears to be recording the proceedings. Monitors could also be tasked with monitoring for any victim who needs technical assistance, or who may need to speak to a victim advocate, and connecting them with any services they may need.⁸ Monitors would moreover have the ability to remove any individual they observed not following the rules and/or report violations to the Court, for any action the Court may deem necessary. The government would provide enough monitors to ensure that each was not tasked with monitoring more than two screens at a time.

By combining the above steps—verification of prospective victims' relationship to someone lost in the attack on Pan Am Flight 103, verification of those individuals' contact information, collection of copies of government-issued photos identification for those who are entitled to remote access, and verification by Zoom and by monitors that victims are logging in through known credentials and, if accessing video from the courtroom, visual verification by monitors that continues throughout the proceedings—the government submits that the Court can be reasonably assured, with a similar level of certainty to the use of monitored fixed viewing sites with identification checks, that only victims will have access to the remote proceedings in this case.

⁸ The government expects to devote trained victim advocates from around the country, through its Crime Victim Assistance Team, who would view the proceedings remotely and would be available to speak to any victim who may need help, for example, discussing any trauma-related responses they may have to what they observe during the proceedings. The victim advocates would not be tasked with serving as "monitors." The government does additionally expect to have limited funds to cover travel expenses for some victims who wish to view the trial proceedings in person, and who are physically able to do so, up to a certain number of days per victim.

II. Unauthorized Individuals Are Unlikely to Gain Access to the Proceedings

There are two main ways that, in the absence of safeguards, unauthorized individuals could gain access to the proceedings: (1) illicitly accessing the proceedings by bypassing authorization, *e.g.*, by “hacking” into the meeting, to use a colloquial term, or (2) by someone who is authorized to access the proceedings allowing someone unauthorized to access the system, *e.g.*, by sharing a link to a remote session with someone not authorized to receive it. The safeguards laid out by Zoom, however, dramatically decrease the likelihood of either scenario, to the point that the Court should be reasonably assured that unauthorized individuals are unlikely to be able to access the proceedings.

A. The Zoom for Government Platform is Secure

The Zoom for Government platform is certified at the “moderate” level by the Federal Risk and Authorization Management Program (“FedRAMP”), a government-wide program that promotes the adoption of secure cloud services across the federal government by providing a standardized approach to security and risk assessment for cloud technologies and federal agencies. *See* Zoom Decl., Att. A at 2. Certification at the “moderate” level means that Zoom for Government is approved by FedRAMP for use by federal agencies “where the loss of confidentiality, integrity, and availability would result in serious adverse effects on an agency’s operations, assets, or individuals.” *See* <https://www.fedramp.gov/understanding-baselines-and-impact-levels/> (last visited May 24, 2024). The Zoom for Government platform moreover uses U.S.-based infrastructure and data centers, and it is managed by U.S. persons only. *Id.*

The reliability of the Zoom for Government platform for conducting judicial proceedings remotely was demonstrated in the District of Columbia during the COVID-19 pandemic, and many hearings, including some testimonial hearings, were conducted via this Court’s existing Zoom for

Government account. *See generally* ECF 45 at 4-8. Additionally, at least one jury trial was made available over the court's public access telephone line, in *United States v. Dustin Thompson, et. al.*, No. 21-cr-161 (RBW).⁹ Although the District of Columbia did not allow public participation via Zoom, some District Courts throughout the country did, at least one, the District of Massachusetts, still does.¹⁰ Between Zoom for Government's FedRAMP certification, its U.S.-based infrastructure and management, and its proven track record in the District of Columbia and other District Courts, this Court should find that the risk of unauthorized access through hacking or some similar malicious attack is low, even if some remote users are based outside of the United States.

B. Safeguards Significantly Reduce the Risk of Unauthorized Access Through Sharing

Zoom's proposals similarly mitigate the risk of unauthorized access through link sharing or account sharing. Both of Zoom's Meetings-based proposals would not permit any individual to gain access to the proceedings prior to (1) confirmation that the person is accessing the meeting from a verified, vetted email address and/or phone number and, in the case of those who desire access to the video, (2) confirmation via a live monitor of a visual match between the person logging in and their government-issued identification. In the case of Zoom's Proposed Solution

⁹ In its March 1 filing on this topic, the government stated that the public access line was not available during trials. ECF 45 at 9, n.3. Undersigned counsel were not aware of the use of the line during the *Thompson* trial at that time.

¹⁰ The calendar for the District of Massachusetts is available at the following link: <https://forms.mad.uscourts.gov/courtlist.html> (last visited May 30, 2024), and it shows which cases allow for remote access. Anyone desiring to access a proceeding remotely must request such access, including an acknowledgement of the prohibitions against rebroadcasting, recording, and photography, and afterwards they receive a Zoom link if the proceedings are available via Zoom (upon information and belief, some proceedings are available via Zoom, others are available only via telephonic dial-in, and some are not available remotely at all).

Three, no member of the public, victim or not, would even receive a link to the meeting that contained the remote broadcast of the proceedings.

III. Zoom's Proposals Mitigate the Risk of Recording, Redistribution or Broadcasting of the Proceedings

All victims who desire remote access will be required to acknowledge, prior to receiving a link to access any proceedings remotely, that recording, distribution, or broadcasting of the proceedings is a violation of federal law and can be punishable by contempt of court. This Court can and should remind anyone listening remotely of that fact at the beginning of each hearing. The Court can also control who appears on camera, allowing anyone (including lawyers, witnesses, and court staff) who did not consent to their image being remotely transmitted to the victims to opt out of being shown on camera.¹¹

The combination of solutions proposed by Zoom will act to further discourage any remote broadcast of the proceedings. First, any individual who wishes to watch the video will be required to be on camera and be monitored throughout the proceedings, which would discourage the use of, *e.g.*, cell phones or cameras to video-record the proceedings. Second, the broadcast could be configured such that Zoom's native recording tools are disabled. Third, to discourage recording by some outside device, such as a phone, Zoom's audio- and visual-watermarks will further serve to discourage recording and broadcasting and, in the event a recording is made, Zoom will be able to assist in identifying who made it.

Zoom's video watermark feature superimposes an image of the user's email address onto the video that reaches his or her screen, which would be visible in any recording they may make,

¹¹ The government expects that the cameras used for video transmission would be the same four-camera setup that has been used for years in the District of Columbia for transmissions to overflow courtrooms and the media room, *i.e.*, camera that focus on (1) the podium, (2) the bench, (3) the witness, and (4) any exhibit transmitted on a screen to the public.

assuming that they were able to make such a recording without one of the monitors noticing. Zoom's audio watermark feature is potentially even more powerful, as it embeds an inaudible watermark of a user's personal information in the audio stream that is sent to their device. Thus, if a user illicitly records any of the audio using, e.g., their phone or a third-party app, even if the device they use to record it is outside of the view of the monitors, Zoom would be able to assist in identifying the user responsible. Zoom Decl., Att. A, at 2. The government submits that publicizing the use of these features would be a strong deterrent to any individual who might otherwise plan to illicitly record the proceedings. However, should any individual choose not to heed those deterrents, once a culprit was identified, the Court could take any action it deemed appropriate, ranging from a warning to denying that user any additional access, to initiating contempt proceedings.

IV. The Zoom Proposals are the Best Vehicles Through Which to Accomplish Congress's Directive to Provide Remote Access to Victims

Pub. L. No. 118-37 directs this Court to make reasonable efforts to provide remote telephonic and video access to victims of the attack on Pan Am Flight 103, "without regard to the location of the victim." Congress's grant of authority in this case is notably broader than in previous legislation authorizing remote access for victims. For example, the legislation that authorized remote broadcasts for victims in connection with *United States v. Moussaoui* limited the remote broadcasts to "convenient locations the trial court deems necessary," and included no language about providing access to victims regardless of their location. *See* Pub. L. No. 107-206; *see also generally* ECF 45 at 8-9, 15 (noting the broader authorization provided by the Pan Am Flight 103 Legislation when compared to Pub. L. No. 107-206).

The broader grant of Congressional authority in this case, which is reflective of the advancement in technology between 2002 and 2024, as well as the geographical disparateness of

the victims of this attack, should be reflected in the Court's implementation of that authority. Congress's intent to provide remote access to court proceedings to victims of the attack on Pan Am Flight 103 without regard for their location, *see* Pub. L. No. 118-37, subsections (b)(1) & (b)(2), will not be realized by the use of fixed sites for viewing. As the attached declarations from victims (Exs. 3, 4, 5, and 6), along with the letter from the Right Honorable Dorothy Bain, Lord Advocate of Scotland,¹² illustrate, fixed viewing sites would be inadequate to serve the needs of victims who are physically located in geographically disparate locations. Notably, the use of fixed viewing locations, combined with daily written updates, during the trial of co-conspirators Abdelbaset Ali Mohamed Al Megrahi and Lamin Khalifa Fhimah, although technologically sophisticated for its time, was still insufficient for many victims who wanted to take advantage of that access. *See* Lord Advocate Bain letter at 2; Weipz Decl. at ¶ 18 Cummock Decl. at ¶¶ 35-36.

Kara Weipz, the President of the U.S.-based Victims of Pan Am Flight 103, Inc. ("VPAF103"), notes that her organization has members in 36 states and the District of Columbia. Many live multiple hours from the closest major city. Weipz Decl. at ¶ 14. Aside from physical distance from likely viewing sites, many members of VPAF103 are battling various serious health conditions, have issues traveling, and use hearing aids that are attached to their computers or cell phones that would make either traveling to Washington or another fixed site a practical impossibility. *Id.* at ¶ 15. Indeed, Ms. Weipz explained to Senators and Congressional Members

¹² The Lord Advocate is the senior of the two Scottish Law Officers. She is a Minister in the Scottish Government and the holder of an historic office dating back to the 1400s. The Lord Advocate has a range of duties associated with the maintenance of the rule of law and the proper administration of justice. The role of Lord Advocate has four main components and as such they are: (1) the head of the systems of criminal prosecution and investigation of deaths, and all prosecutions on indictment in Scotland run in the name of the Lord Advocate; (2) the principal legal adviser to the Scottish Government; (3) responsible for representing the Scottish Government in civil proceedings, and (4) for representing the public interest in a range of statutory and common law civil and constitutional functions.

about the difficulties in using designated fixed “downlink” sites when discussing the legislation that was ultimately passed to afford victims access to court proceedings in this case. *Id.* at ¶ 24.

Melina Hudson, who was 16 years old when she lost her life aboard Pan Am Flight 103, is survived by her father Paul Hudson, who is based in Sarasota, FL, as well as siblings in South America, Miami, and New York. Hudson Decl. at ¶ 16. John Binning Cummock was 38 years old when he was killed onboard Pan Am 103. Cummock Decl. at ¶ 1. He was survived by his wife Victoria and three young children. *Id.* at ¶¶ 1, 6. Ms. Cummock notes that many of the surviving victim family members suffer from post-traumatic stress disorder and find it intimidating or overwhelming to attend in person the court proceedings in a case such as this. *Id.* at ¶ 45. She likewise notes that many of these surviving victim family members fear airplane travel since their loved ones were killed aboard a commercial airplane. *Id.* at ¶ 46.

The inadequacy of fixed sites is not limited to a country the size of the United States. As the Lord Advocate notes, “[w]ere remote sites to be established allowing in-person access at, for example, the United States Embassy in London, or the United States Consulate in Edinburgh, or both, some relatives would still require to travel for many hours to reach these locations, and require to find accommodation in the area for the period during which they wished to view the trial. This would pose both financial and practical challenges for these relatives and those supporting them.” Lord Advocate Bain Ltr. At 2. Pamela Dix was living in the United Kingdom at time she lost her brother in the attack on Pan Am Flight 103, and she remains in the United Kingdom today. She notes that distance is only one of many constraints victim family members are faced with: “for those with mobility, health, family, work and other issues and commitments, it will simply not be possible to travel to the courtroom.” Dix Decl. at 4. Ms. Dix was available to make use of the fixed viewing sites during the trial at Camp Zeist in 2000, *id.* at 3, but Ms. Weipz

was not, despite the fact that she became a board member of VPAF103 in October 2000, which was while that trial was ongoing. *See* Weipz Decl. at ¶ 6. It is notable that the declarations from both Ms. Weipz and Ms. Dix, who had different results in their ability to use the remote viewing sites for the first trial, as well as the Lord Advocate’s letter and the Declaration of Ms. Cummock, emphasize that the fixed sites would not, in their view, be sufficient, given the logistical hurdles those sites impose on victims who are either not located close to them or who have difficulty traveling any distance.

Moreover, the use of fixed-site locations, which the defense has suggested, *see* ECF 44 at 1, would come at significant unnecessary expense and would result in some level of exclusion of victims based on their geographic location, in direct contravention of the statutory language. For an illustrative example, the Court need look no further than *Moussaoui*, a case that involved hijacked planes that were destined for California. Despite the numerous victims who lived in that state, there were no viewing sites in California, in part because “viewing the trial in California would have to start at 6:30 a.m. PST. The courthouse would have to be opened well before 6:30 a.m. and necessary security staff would have to be in place by 5:30 a.m. Those hours would place an unreasonable burden on limited judicial and Marshals Service staff.” ECF 43-4 (Letter from Judge Brinkema to a victim in the *Moussaoui* case, explaining her decision to not include a viewing site in California). The opposite issue would exist in the United Kingdom, where trial would end on most days around 10:00 p.m., local time, and each remote viewing site would need to be staffed through that time.

The government’s proposals as outlined herein provide economies of scale and, crucially, the ability to base those individuals tasked as serving as “monitors” in the Eastern time zone. The defense proposal would require, among other things, at each location: (1) physical space in which

some number of victims will be permitted to sit to view the proceedings; (2) display screen(s), such as a television monitor, on which the proceedings would be viewed; (3) some physical staff presence to verify that only authorized persons can access the remote broadcast of the proceedings; and (4) some physical staff presence to either screen those present for electronic devices or watch to ensure that they are not recording.

For any fixed remote viewing site that is outside of the Eastern or Central Time Zones, the logistical challenges of staffing the site would be much more complex, for the reasons identified by Judge Brinkema. The government's proposal here would permit some small number of monitors, all of whom could be based in the same time zone in which the trial is taking place, to authenticate users' identity and watch for any potential rule violations. The number of monitors would be in direct proportion to the total number of users, without regard for those users' location. There would be no need to locate and coordinate physical space and television monitors in multiple jurisdictions worldwide, as the victims who desire remote access would provide their own space and their own device on which to access the proceedings. The government's proposal has the distinct advantage of making use of Zoom's audio and video watermark technology, which will make identifying and imposing consequences on anyone who breaks the rules much easier. By contrast, if an individual were to secrete an audio recording device into a viewing site, and later post that recording to the internet, it would be very challenging to identify the source of that audio and take remedial action.

The government's proposal provides for the secure, remote transmission of proceedings to victims in this case, regardless of their geographic location. It does so in a way that will prevent disruptions to the proceedings, allow for identification checks akin to those that would take place in person outside of a fixed viewing site, allow for live monitoring of participants, and that will

allow for accurate identification of any user who may seek to break the rules on rebroadcasting or sharing of the proceedings. The Court should adopt the proposal to effect Congress's intent to provide remote access to all victims of the attack on Pan Am Flight 103, regardless of their location, and the government stands ready to assist the Court in implementing the proposals as outlined herein.

CONCLUSION

Based on the foregoing, and for any additional reasons as may be cited at a hearing on this motion, the government respectfully requests that the Court make the proceedings in this matter available to victims via the Zoom for Government platform.

Respectfully submitted,

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I, Josh Parecki, do hereby declare as follows pursuant to 28 U.S.C. § 1786:

I am employed by Zoom Video Communications, Inc. (“Zoom”), in the position of Chief Compliance Officer, Head of Trust and Safety. I am a United States citizen, and I am over 18 years of age. In March 2024, representatives from Zoom for Government, including myself, began working with representatives from United States Attorney’s Office for the District of Columbia to develop a set of proposals to afford secure, remote access to verified victims in the case of *United States v. Abu Agila Mohammad Mas’ud Kheir Al-Marimi*. The Zoom for Government team working on this proposal includes representatives holding the titles of Government Solutions Engineer; Head of Public Sector; and Account Executive, Enterprise Federal. A copy of the proposals we have developed is attached to this declaration as Attachment A, and I adopt those proposals as part of this declaration.

The Zoom for Government team is responsible for implementing the Zoom for Government platform, which is specifically designed to be used for United States Government work. The Zoom for Government platform is U.S.-based, managed by U.S. Persons only, and utilizes U.S.-based GovCloud infrastructure and U.S.-based data centers. As such, Zoom for Government is considered a Government Community Cloud (GCC), which is defined by the National Institute of Standards and Technology as a “cloud infrastructure . . . provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations).” In addition, Zoom for Government is authorized The Federal Risk and Authorization Management Program (FedRAMP), which is responsible for providing a standardized approach to security authorizations for Cloud Service Offerings, as a “Moderate Impact” system. “Moderate Impact” systems are appropriate for use where “the loss of confidentiality, integrity, and availability would result in

serious adverse effects on an agency's operations, assets, or individuals. Serious adverse effects could include significant operational damage to agency assets, financial loss, or individual harm that is not loss of life or physical." See <https://www.fedramp.gov/understanding-baselines-and-impact-levels/>.

In the course of preparing these proposals, the Zoom for Government team has consulted with representatives of the Department of Justice involved in the prosecution of this case and has reviewed a copy of this Court's Minute Order dated March 13, 2024. During these meetings, the Zoom for Government team identified the following security requirements for these proposals:

1. Authorized remote observers ("remote observers") must be able to receive video, audio and content feeds from Court proceedings at any location deemed appropriate in real time.
2. The feeds must be one-way, meaning that remote observers cannot communicate during Court proceedings unless explicitly permitted by the Court.
3. Remote observers must not be able to interact with each other during proceedings unless explicitly authorized by the Court
4. Remote observers must be both electronically and visually authenticated prior to being allowed to view court proceedings.
5. A team of government personnel ("monitors") must be able to visually monitor all remote observers throughout Court proceedings.
6. Monitors shall have the ability to pull and subsequently return any remote observer out of the courtroom proceedings into a breakout room to directly and privately communicate.
7. All content, video or audio received by remote observers shall be watermarked with their authenticated username. Any capture of received content will have been identifiable by this watermark.

Attachment A contains three separate proposals that the Zoom Team believes will satisfy the issues that the Court ordered addressed in its March 13 Minute Order. Those proposals contain common authentication and security features, as well as features designed to mitigate the risk of rebroadcasting of the proceedings, as outlined in Attachment A. Security features include the use of U.S.-based infrastructure that is managed by U.S. persons on the Zoom for Government platform; authentication of user identity includes the use of two-factor authentication and the pre-registration of accounts; and features designed to defeat rebroadcasting include the use of audio and video watermarks, unique to each user, which would allow Zoom to assist in identifying the source of any audio and video that may be rebroadcast or distributed without authorization.

The three proposals are intended to provide the Court with a high-level view of what the Zoom for Government platform is capable of, as well as what administrators, moderators, and the remote users would expect in each scenario. Zoom's existing infrastructure can accommodate all three proposals. If the Court chooses to proceed with the Zoom for Government platform to afford remote access for victims in this case, the Zoom for Government team is ready to test, fine-tune, and validate the option it chooses with court and/or government personnel, followed by additional tailored recommendations if necessary. The Zoom for Government team plans to remain available to the government and the Court if there are any questions about the proposals in Attachment A and to assist, to the extent feasible, in implementing any such proposal the Court may adopt.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 31, 2024.

DocuSigned by:

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ATTACHMENT A

Zoom's Proposals to Securely Provide Remote Observer Access to Court Proceedings

Overview

The purpose of this document is to outline Zoom's comprehensive proposal to permit victims remote access to pretrial proceedings and trials in a secure manner that will not jeopardize the safety or the integrity of such proceedings.

Here we explain in detail Zoom features the Court and the United States can use to: (1) minimize the risk of unauthorized persons from gaining access to the Court's proceedings; and (2) prevent recording, (re)distribution, or broadcasting of the Court's proceedings. We will also provide an understanding of the resources, including personnel and facilities, the Court and the United States may dedicate to achieve these ends.

Requirements

The following security requirements were shared with Zoom by the United States:

1. Authorized remote observers ("remote observers") must be able to receive video, audio and content feeds from Court proceedings at any location deemed appropriate in real time.
2. The feeds are one-way, meaning that remote observers cannot communicate during Court proceedings unless explicitly permitted by the Court.
3. Remote observers must not be able to interact with each other during proceedings unless explicitly authorized by the Court
4. Remote observers must be both electronically and visually authenticated prior to being allowed to view court proceedings.
5. A team of government personnel ("monitors") must be able to visually monitor all remote observers throughout Court proceedings.
6. Monitors shall have the ability to pull and subsequently return any remote observer out of the courtroom proceedings into a breakout room to directly and privately communicate. Some examples of reasons a monitor may need to communicate directly with remote observers include to:
 - a. address a possible violation of room security guidelines;
 - b. request grief counseling or some other type of support; or
 - c. any other reason a Monitor may determine.
7. All content, video or audio received by remote observers shall be watermarked with their authenticated username. Any capture of received content will have been identifiable by this watermark.

Proposed Solutions

In this section, Zoom will present and describe several possible solutions to address all or most of the requirements outlined in the previous section. Please note, there is no way for Zoom technology to physically secure the remote environments from which remote observers join. To help minimize this risk, we suggest monitors visually inspect the remote observers' physical environment via the remote observers' camera's field of view.

Certifications

All proposed solutions below are based on the existing capabilities of the Zoom for Government ("ZfG") platform. ZfG is intended to be used by and for US Government activities. As such ZfG is considered a Government Community Cloud (GCC) by NIST definitions ([see https://csrc.nist.gov/glossary/term/community_cloud](https://csrc.nist.gov/glossary/term/community_cloud)). Moreover, ZfG is FedRAMP Moderate authorized, and ZfG is U.S.-based, managed by U.S. Persons only, and utilizes U.S.-based GovCloud infrastructure and U.S.-based data centers.

Authentication

For each of the below proposed solutions, Zoom recommends the Court require authenticated entry only. By leveraging authentication upon entry and restricting guests or unauthenticated user accounts from joining Court proceedings, this would mitigate risk of unauthorized attendees. It requires each remote observer to register with the account owner / admin prior to Court dates so that a specific user account can be created for each registered remote observer. Please note, this feature is available at no additional licensing cost, but there may be additional administrative burden in assigning licenses to remote observers. There are differing levels of authentication and multiple available authentication platforms (i.e. Zoom of other 3rd party integrations). At minimum, however, Zoom recommends that some form of Two-Factor Authentication ("2FA") be leveraged with whatever authentication platform is selected.

Other Security Measures

For each of the proposed solutions outlined below, Zoom recommends the Court enable watermarking for all video, content and audio. The video watermark feature superimposes an image, consisting of a meeting participant's email address, onto the shared content they are viewing and over their video. The audio watermark, or audio signature, is an inaudible watermark of a user's personal information embedded in the audio that is played through the receiving user's speakers by the client receiving audio from Zoom meeting servers. This means that if someone records the meeting, with either a separate microphone or 3rd-party, and shares the audio file without permission, Zoom can assist with determining which participant was responsible.

Phone (PSTN) dial-in can be provided for remote observers that are not able to utilize the Zoom Desktop application or who do not have PC audio capabilities. The monitor will see a remote

number identified for that call-in the observer, as long as the phone carrier provides the calling number as part of their service. The accuracy of that number will also be dependent on the phone carrier being used. Zoom can only display the number that is delivered in the call setup. We can not validate the number. Audio Watermarking would not be available for Phone (PSTN) call-in observers.

Proposed Solution One: Webinar with breakout rooms proposal

Solution one leverages Zoom's Webinar product. From an administrative perspective, this Solution is the easiest to set up and manage. By default, a Webinar is designed to accommodate a one-to-many or auditorium-style meeting, and it allows a maximum of 50,000 participants. Webinar also provides for three types of participants, all of which can be pre-assigned prior to the court session. They are:

- **Hosts/Co-Hosts:** hosts/co-hosts have administrative rights over the meeting and can act as meeting monitors in this Solution;
- **Panelists:** panelists are participants that have the ability to transmit video, audio and content into the meeting and is way the Court would join the meeting in this Solution;
- **Attendee:** attendees are participants that join the meeting as receive-only participants (e.g., no video, audio or content) and would be the remote observers in this Solution.

As noted, remote observers would be in the attendee role in this Solution. Monitors will be in the host / co-host role. Monitors can enable two-way chat communication with remote observers to address a circumstance where a remote observer may need assistance. Remote observers, however, will not have the ability to chat or communicate in any way with any other participant.

Monitors have the ability to set up a number of breakout rooms to accommodate the circumstance where a remote observer is in need of assistance in a manner exceeding the limitations of the chat feature. Monitors can invite a remote observer into a private session in a breakout room without disturbing ongoing Court proceedings using this feature. After the monitor and remote observer have completed their private session the monitor can move the remote observer back into the Court proceedings where they would be reverted to receive-only mode. Separately, Webinars support a "backstage" function that would allow the monitors to communicate on a separate channel outside of the court proceedings.

Reauthentication at the beginning of each trial day or for any reason would be the same process as described when initially joining the session. Zoom could only validate they are logged in and authenticated via two-factor authentication and there would be no visual authentication.

Summary: This Solution would be easiest to set up and manage, however, it does not meet all of the requirements outlined above. Specifically, it does not provide an easy mechanism for visual authentication or visual monitoring of remote observers' remote physical locations.

Proposed Solution Two: Controlled Meeting with breakout rooms

Solution two leverages Zoom's Meeting product. In Meetings, participants have the ability to transmit as well as receive video and audio regardless of role, and there is a maximum of 1000 participants.

Meetings provide three mechanisms for authentication of the remote observers. First, Meeting settings allow monitors to require specific user credentials to login to the Zoom app and join the Court proceedings. Second, monitors may require a waiting room during Court proceedings. This feature will cause remote observers to congregate in a virtual waiting room prior to being allowed into the proceedings in a waiting room. Monitors can visually authenticate remote observers while they are in the waiting room and can visually confirm whether there are any uninvited participants in the remote space before letting a remote observer into the proceedings. Third, monitors can move remote observers into waiting rooms to facilitate the same visual authentication processes available within a waiting room at any time during the proceedings.

By default, the meeting product is designed for free-flowing back-and-forth communication among participants. Meetings can, however, be pre-configured into "Focus" mode limiting remote observers to see monitors but not each other. Monitors can also mute remote observers' microphones and control the ability of remote observers to unmute themselves. In effect, these settings create a Webinar-like one-to-many experience, and like the Webinar solution, remote observers can chat to a monitor if they need assistance. Monitors can then pull a remote observer into a Breakout room to communicate and then move them back to the court session when appropriate. Of note, monitors can only see up to 25 video feeds on the screen at any time. If there are more than 25 remote observers, a new page view is created and the monitor will need to page over to monitor the additional remote observers. For example if there are 200 remote observers, the monitor would have eight pages of video feeds to navigate.

Reauthentication at the beginning of each trial day would be the same process as described when initially joining the session on Day 1 of the Court proceedings. If the Court wanted to reauthenticate remote observers after breaks the monitor could move each observer to a pre-designated breakout room when the Court proceedings break. Monitors would then communicate with the remote observers in the breakout room and repeat the visual authentication process described above shortly before Court proceedings begin again. Once completed, they could be moved from their breakout to the courtroom session.

Summary: While this Solution potentially meets all the requirements outlined in the previous section, it also has the most administrative overhead. This Solution would require additional monitor training to keep the logistics smooth and depending on the number of observers, the Court may require multiple monitors. Also, in this solution, all remote observers would need to be authenticated and settled in their virtual space before the Court proceedings begin. And, unfortunately, there isn't a good solution for observers joining after the session begins. This lack of solution is particularly true should the Court take our recommendation to lock the meeting once the proceedings begin to further minimize the risk of disruption. In effect, locking the meeting is comparable to locking the doors to the courtroom and barring any late attendees.

Proposed Solution Three: Multiple Meeting proposal

Solution three also leverages the Meetings product but unlike Solution two, we propose two separate meetings. A meeting for the visual authentication process and a meeting for Court proceedings. In this proposal, remote observers would be invited to a meeting where monitors would perform a visual authentication process, just as in Solution two. Remote observers would only see the monitors but not each other. Once authenticated, they would be dropped from the authentication meeting and be manually connected into the Court proceeding. As an additional security precaution, this Solution hides the Court proceeding meeting link from the remote observers or anyone in the public. Remote observers will join the Court proceedings when they receive an incoming call. Thereafter, the experience and feature recommendations are identical to Solution two.

Reauthentication at the beginning of each trial day would be the same process as described when initially joining the session on Day 1 of the trial. If the Court wanted to reauthenticate remove observers after breaks the monitor could move each observer to a pre-designated breakout room when the Court proceedings break. Monitors would then communicate with the remote observers in the breakout room and repeat the visual authentication process described above shortly before Court proceedings begin again. Once completed, they could be moved from their breakout to the courtroom session.

Summary: Solution three potentially meets all the requirements outlined, eliminates some of the complexity and risk of using a single session to accomplish the authentication process and allows a path for people joining after the Court proceedings have begun.

User Experience for each proposed solution

Proposed Solution One: Remote Observer Experience

Weeks before the trial: Remote observer registers with USDOJ and a user account (with authentication) is created for that observer. The Court or the Government can potentially create a webinar to provide pre-trial training.

Days before the trial: Remote observer receives an invite via email with a unique link to join the webinar.

Day of trial: Remote observer joins the webinar and is placed in the waiting room until court proceedings begin. They will be able to watch the courtroom feeds (video, audio, content). They will have the ability to chat with monitors or raise their hand if they need assistance. They will be dropped when court proceedings end.

Reauthentication process: It may be necessary to re-authenticate remote observers at the beginning of each day or after breaks. In solution one, the only authentication available is via two-factor authentication. Therefore, to reauthenticate, the Monitors should drop the remote observers from the webinar and ask them to rejoin. This process would validate their login authentication.

Proposed Solution Two: Remote Observer Experience

Weeks before the trial: Remote observer registers with USDOJ and a user account (with authentication) is created for that victim/individual. The Court or the Government can potentially create a webinar to provide pre-trial training.

Days before the trial: Remote observer receives an invite via email with a unique link to join the meeting.

Day of trial: Remote observers use the provided link to join the meeting and are placed in a waiting room until a Monitor allows them in and moves them to a breakout room for visual authentication and room inspection. Once authenticated, they will be virtually seated in the courtroom and wait for proceedings to begin. Remote observers will be able to watch the courtroom feeds (video, audio, content). They will have the ability to chat with Monitors or raise their hand if they need assistance. They will need to keep their camera on as they will be monitored.

Reauthentication process: It may be necessary to re-authenticate remote observers at the beginning of each day or after breaks. At the beginning of the day, remote observers will follow the same process described in the “Day of Trial” but during the day, remote observers may be given the option to disconnect from the session should there be a break. Remote observers would then need to join and re-authenticate again as they did at the beginning of the day. They may also be given the option to stay connected to the session. If they chose to stay connected, the monitors would need to move the remote observers into a breakout room during the break. And, if re-authentication is required, monitors could do so in the breakout rooms prior to their re-entry into the Court proceedings.

Proposed Solution Three: Remote Observer Experience

Weeks before the trial: Remote observer registers with USDOJ and a user account (with authentication) is created for that observer. The Court or the Government can potentially create a webinar to provide pre-trial training.

Days before the trial: Remote observer receives an invite via email with a unique link to join the pre-authentication meeting.

Day of trial: Remote observer uses the provided link to join the authentication meeting and are placed in a waiting room until a monitor allows them in and moves them to a breakout room for visual authentication and room inspection. Once authenticated, they will be disconnected from the call and will wait for an incoming call on the Zoom application. When the remote observer

receives the incoming call, they will hit the answer button and will be virtually seated in the courtroom and wait for proceedings to begin. They will be able to watch the courtroom feeds (video, audio, content). They will have the ability to chat with Monitors or raise their hand if they need assistance. They will need to keep their camera on as they will be monitored.

Reauthentication process: It may be necessary to re-authenticate remote observers at the beginning of each day or after breaks. At the beginning of the day, remote observers will follow the same process described in the “Day of Trial” but during the day, remote observers may be given the option to disconnect from the session should there be a break. Remote observers would then need to join and re-authenticate again as they did at the beginning of the day. They may also be given the option to stay connected to the session. If they chose to stay connected, the monitors would need to move the remote observers into a breakout room during the break. And, if re-authentication is required, monitors could do so in the breakout rooms prior to their re-entry into the Court proceedings.

Overall Summary

This document was intended to provide some possible solutions to the request that Lockerbie victims be able remotely watch the pretrial proceedings and trial, without jeopardizing the safety or the integrity of such proceedings. While there is no way the proposed solutions can provide 100% certainty that the remote locations are secure, we have presented a few solutions that could leverage two way video communication to provide some level of assurance.

The outlined proposed solutions are fairly high level proposals that, should there be interest in proceeding, would need to be tested and validated with Court or Government personnel. We expect a level of fine tuning and testing of proposed solutions would be necessary and we could make additional recommendations based on this testing.



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Telephone: 0300 020 3000

The Honourable Dabney L. Friedrich,
United States District Judge,
District of Columbia

By Email

24 May 2024

Dear Judge Friedrich,

United States v. Abu Agila Mohammed Mas'ud Kheir Al-Marimi

I write to express my support for the US Government's motion in terms of Public Law No. 118-37, seeking remote video and telephonic access to Court proceedings for victims of the bombing of Flight Pan Am 103 over Lockerbie, Scotland on 21 December 1988.

As Lord Advocate for Scotland, it has been my great privilege to spend time with families and friends of those killed and I am repeatedly humbled by their continued dedication to seeking justice for their loved ones, now some 35 years on. 270 people lost their lives that terrible night, 190 of whom were from the United States of America. The remaining 80 passengers and crew hailed from 20 countries spread across the globe. To this day many of their families continue to engage with what has been an extraordinarily lengthy legal process with dignity and dedication. As Lord Advocate for Scotland, I feel a strong obligation to support them, wherever they may reside.

As the then Lord Advocate Colin Boyd QC stated to the court on 31 January 2001, the day that Abdelbaset Ali Mohamed Al Megrahi was convicted of this offence:

"My Lords, the names of those who died were read to the court on the 5th of May 2000. In any ordinary case, your Lordships would have heard something of the circumstances of the deceased and the family left behind. In this case it is not possible to do that, and I don't intend to try. I need hardly say to the court that each one left relatives, wives, husbands, parents and children. Something of the scale of the impact can be gleaned from the fact that more than 400 parents lost a son or a daughter; 46 parents lost their only child; 65 women were widowed; and 11 men lost their wives. More than 140 lost a parent, and seven children lost both parents."

At the trial of Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah in the Netherlands, now 24 years ago, family members were afforded access to view the proceedings in a number of ways. This included sponsored travel to attend the trial in person and remote video access at designated sites in the UK and in the US. In addition,



daily written updates of court proceedings were sent to family members via email and were posted on a secure website established by Syracuse University, the alma mater of 35 victims of the bombing.

During the Scottish appeals by Mr Megrahi in 2001 and 2009 regular updates were provided by prosecutors to families and a dedicated website was established. In the posthumous appeal heard in November 2020, live online access was granted by the court to authorised applicants, allowing them to view appeal proceedings via the online platform Webex. While such access was provided primarily as a consequence of restrictions imposed in response to the Coronavirus pandemic, it nonetheless provided access for many who would in ordinary circumstances have been unable to travel to court due to their age or location. Up to 60 users at a time used this online feed during the 2020 Appeal, with capacity for 1000, and there were no reported instances of the online footage being inappropriately compromised.

The global nature of this case continues to present obstacles to the provision of nearest relatives' court access for all those who are entitled to it and desire it. The most impactful of these are the differences in geographic location and time zones between many nearest relatives and your court, and the advanced age of many of the nearest relatives with the associated challenges to mobility and comfort this often brings. And, as with any case of such severity and despite the time that has passed, not one day of this trial will be without its emotional challenges for those families and friends. Were remote sites to be established allowing in-person access at, for example, the United States Embassy in London, or the United States Consulate in Edinburgh, or both, some relatives would still require to travel for many hours to reach these locations, and require to find accommodation in the area for the period during which they wished to view the trial. This would pose both financial and practical challenges for these relatives and those supporting them. It was notable that during the trial at Kamp Zeist in 2000, only a relatively small number of relatives were able to take advantage of the sponsored travel provision and remote site viewing access for the same reasons.

It is my sincere hope that all nearest relatives in these proceedings can be afforded an opportunity to observe justice being administered in a manner of which they can practically and comfortably avail themselves.

My prosecutors and officers of Police Scotland stand ready to assist our United States counterparts in any way necessary to facilitate such access, sharing as they do a steadfast commitment to the prosecution of this terrible crime, and to its victims.

Yours sincerely

A handwritten signature in blue ink that reads "Dorothy R. Bain".

**THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE**

I, Kara Weipz, do hereby declare as follows pursuant to 28 U.S.C. § 1786:

1. My name is Kara Marie Weipz. I live in Mount Laurel New Jersey. I am the owner of The Schoolhouse Nursey School and Kindergarten in Mount Laurel, New Jersey. This is our fifteenth year in business.
2. My brother, Richard (Rick) Paul Monetti was killed aboard Pan Am Flight 103. He was a twenty-year-old junior at Syracuse University. Rick was a Journalism major in the Newhouse School of Communications with a minor in Political Science. My brother had spent the fall semester in London studying abroad and was on his way home at the end of the semester for the holidays.
3. I was fifteen years old and a sophomore in high school when my brother was murdered on Pan Am Flight 103. I happened to be home sick from school that day and was the first to learn of the “missing” flight on the television. After some calls, my brother’s girlfriend found out from Pan Am that it was my brother’s flight. I had to inform both of my parents of the news that Rick’s flight went missing and eventually crashed in Scotland.
4. Being so young when the bombing occurred, I wasn’t involved in the earliest days of the organizing of the Victims of Pan Am Flight 103, Inc. (VPAF103) but my parents were. On February 19, 1989, my parents, Robert (Bob) and Eileen Monetti attended the organization meeting for the Victims of Pan Am Flight 103 at the Crow’s Nest restaurant in Hackensack, NJ. At this meeting they elected a steering committee to serve until the June 1989 election results. My father, Bob, was given the assignment of dealing with the FAA, because of his engineering background. Bob was elected to

the Board of Directors in June and chosen to be Secretary. Bob later served at various times as Secretary, Newsletter Editor, Treasurer, Board Chair, FAA Liaison, ASAC Representative, and President. Bob represented VPAF103 at the FAA and was a member of the FAA Aviation Security Advisory Committee.

5. In January of 1996, a fire in the Philippines uncovered a plot to blow up twelve US aircraft. It was thwarted but caused the FAA to create a working group to create a new, improved baseline security standard. After receiving a security clearance, Bob was appointed to serve on this group with weekly meetings at the FAA. The first meeting of the group was July 16, 1996, just before TWA 800 blew up over Long Island Sound. The Baseline Working Group report was later included with the Gore Commission on Aviation Security and Terrorism report in 1997. He served on the Board of Directors or the Advisory Board of VPAF103, Inc until 2021.
6. I joined the Victims of Pan Am Flight 103, Inc. Board of Directors in October 2000 as Secretary. I served in this capacity until May 2003, when I took over the position of President. I served as President until January 2009. During that time, I led that families through the process of settling the landmark civil suit with Libya. In October 2017, I was elected President again and currently serve in this role. In May 2024, I was also elected Board Chair.
7. Over the past thirty-five years, we have prioritized four main goals for our Organization:
 - Discover the truth behind the bombing
 - Seek justice for our loved ones

- Improve aviation safety and security
- Support one another

Currently, we have added a fifth goal: Educate the public about this event.

8. Our Memorials both at Arlington National Cemetery on December 21st and our participation in the Remembrance Events at Syracuse University each year are a few of the ways we accomplish these goals.
9. Our annual December 21st Memorial Service at the Cairn in Arlington National Cemetery is an event organized by VPAF103, Inc. that allows all family members to honor and remember our loved ones. Attendance varies from over 2,000 at the groundbreaking ceremony in 1993, to approx. 200 most years. As our members have aged and fewer of them have been able to travel to DC for the service, the Remembrance, Lockerbie and Legacy scholars have begun to attend in greater numbers as have members of our government. Over the years, we are also adding generations of family members who attend. My own immediate family that was once three has now grown to eight members. At times, family members are outnumbered by those who have come to support us.
10. Syracuse University lost thirty-five students aboard Pan Am 103. The Syracuse Remembrance Scholarship award was established in 1989, but the first grants were made in 1990-1991. Syracuse University provides partial funding for thirty-five Syracuse University seniors in honor of the thirty-five Syracuse University students who perished on Pan Am 103. Scholars are required to actively remember all those lost in the bombing with remembrance events and to create programming designed

to educate the campus community about the impact of terrorism and the role individuals can play in preventing it. Individual members of the VPAF103 (families) support the Remembrance Scholarship fund. And members of VPAF103 act as resources to the Remembrance Scholars as they plan and implement their annual programs.

11. Lockerbie Scholars at Syracuse Award was established in 1989, but first grants were made in 1990-1991. Two students from Lockerbie Academy in Scotland are chosen for a one year visiting scholarship at Syracuse University. All expenses are shared by Syracuse University and the Lockerbie Trust. Responsibilities of the Lockerbie Scholars are the same as the Remembrance Scholars, plus they act as representatives of Scotland during all programs.

To date, there are 1225 Remembrance Scholars and 70 Lockerbie Scholars.

12. During Remembrance Week, the University remembers not only the thirty-five students they lost but all 270 lives that were taken tragically. They also act forward in all their memory. The week concludes with a Rose Laying Ceremony and Convocation. Afterwards, Scholars have a unique opportunity to spend time with the victims' families and learn more about what we have endured over the last three decades.

13. The Legacy Scholarship was established in 2017 by the Victims of Pan Am Flight 103, Inc. to support U.S. students pursuing advanced degrees in areas of study related to improved national security and terrorism prevention as they prepare for careers focused on keeping citizens safe from the threats of terrorism and

preventing the deaths of innocent men, women, and children. Two scholarships are awarded each year. We have had twelve awardees since 2017 (2017-2022: 1 award per year; since 2022: 2 awards per year). Awardees with 3 years prior professional experience receive a \$5,000 award, those who have graduated from college (within 3 years) receive a \$2,000 award.

14. The Victims of Pan Am Flight 103, Inc. is comprised of family, friends and supporters of those who lost loved ones on Pan Am Flight 103. Our current membership is approximately 1000 members but unfortunately, we have had to remove approximately 600 individuals due to death or illness (moved into nursing homes, etc.). The majority of next of kin family members are over seventy years old. This group includes parents, most of whom are in their eighties now, and widows/widowers. Siblings are in their fifties and sixties and children, who lost their parents on the plane, are mid-thirties to fifties. Siblings and children of victims have children of their own who are involved and are teenagers and early twenties. Many families are devoid of traditional next of kin family members and extended family is all that remains. Our family members live in thirty-six States, including Washington, DC and throughout the world. A few examples of travel times for family members to travel to central locations to view the trial:

Bath, Maine - 3 hours to Boston

Western Tennessee - 3 hours to Nashville

Southwestern Georgia - 2 hours to Atlanta

Northern Michigan and Fargo, ND - 9 hours to Chicago

Central New York - 5 hours to New York City

Rochester/Buffalo NY - 6-8 hours to New York City

Southern California - 3 hours to Los Angeles

Oregon - 9 hours to San Francisco or 4 hours to Seattle

Central Pennsylvania - 3 hours to Philadelphia

Central Ohio - 5 hours to Chicago

Western and Northern Massachusetts - 3 hours to Boston - without traffic

Eastern End of Long Island, NY - 3 hours to New York City - without traffic

15. With an aging demographic, we have many family members who live in assisted living communities and are not strong enough to travel 3 hours to court. We have victims who are battling stage 4 colon cancer, breast cancer, recovering from strokes, cardiac bypass surgery, congestive heart failure, diabetes, macular degeneration, have had multiple joint replacements which impairs their movement, and suffer many other illnesses and disabilities. Many of our family members use walking aides or wheelchairs to get around and are not easily transported by car or plane. A majority use hearing devices that are tied into their cell phones or computers to make hearing easier. In fact, when I brought my parents to court for what was supposed to be the arraignment, they struggled to hear and commented it was easier on the phone.

16. My parents attended the Scottish trial of two other defendants in person thanks to Kathryn Turman and the Office of Victims of Crime in the Justice Department. Bob & Eileen spent the second week of the trial at Camp Zeist. They describe being at Zeist

as emotionally intense. They got to see the accused up close (behind Bulletproof glass). They saw the serious nature of a Scottish trial and spent time with the prosecution team and other victims' families.

17. The first week of the trial they went to the New York City downlink site (in the shadow of the World Trade Towers). They were badged into the room guarded by US Marshalls and Scottish Police. They describe the proceedings as informative, but not as moving as actually being at the trial in person. We got to have fellowship with several family members.

18. Unfortunately, I was not able to view the first trial at Camp Zeist in person or at a downlink site. I was pregnant and couldn't travel, and then I was a new mom. I was able to read the daily summaries provided by the Syracuse Law School. I felt very disconnected from the trial, not being able to be a part of it. I almost felt as though I was an outsider and not a victim. It was a very unsatisfying to me and not justice in my eyes.

19. To have to respond or watch the subsequent multiple appeals for the Scottish courts has been one of the most traumatic experiences of my life. Many family members have been and continue to be traumatized by Scotland's compassionate release of Megrahi, but for me the appellate process in Scotland has exacerbated my anxiety over court proceedings. When calls and emails come during the middle of the night, there is no peace or justice.

20. I was present with then-Attorney General Barr when charges were announced against Abu Agela Mas'ud Kheir Al-Marimi on December 21, 2021. From then until

December 11, 2022, when the US gained custody of Mr. Al-Marimi, I fought tirelessly with other family members to ensure his turnover to US custody. We held numerous meetings every six weeks with various members of our government to ensure that this took place. I fought with every fiber of my being to ensure that this case would take place in the US and under our laws.

21. When the CARES Act ended, we knew we needed to do something to ensure that our families would not have a repeat of the first trial. Many of the victims have fought too hard not to be able to hear first-hand justice for our loved ones happening in this country. I knew we could not allow geography to prohibit them from the trial that they have longed for, and some have fought tirelessly from the time their loved ones were killed until they were not able to fight anymore. I am carrying the torch for many who have come before me and fought this battle. I am here because they cannot be, and I will continue to advocate on behalf of all those who wish to be a part of this trial.
22. This why I worked with Congress to pass this legislation. This law pertains only to our unique situation. A trial being held after more than three decades is uncommon. A trial being held approximately 3,500 miles from the crime scene is uncommon. The reason this legislation is different is because our circumstances are unique. Besides this case coming to trial over thirty-six years after the crime occurred, our diverse victim age demographic, our unprecedented distance between victims and the trial location, and the distance between the trial and where the crime occurred. We have new technology that allows our families to be able to participate in these

proceedings in a manner that accommodates their needs. Our only option to include family members in this trial was to write legislation that allows remote access. Our legislators have given the Court the authority with the correct safeguards to finally allow them to be a part of justice in our country.

23. As you can see by the examples given above, there is no one central place (or even multiple central places) that would be close enough even if families could travel. Old and young do not have the flexibility to be three to four hours away from home for multiple days. It was hard enough for many of these families to achieve this during the first trial over two decades ago. Our technology has advanced to allow for remote access. The pandemic demonstrated to us that victims could have remote access.

24. While working with Congress to pass this legislation, I was called upon to field some questions from Senators and Congressional members. Since I explained, using the facts above, why downlink sites (i.e., other designated courthouses or similar locations) which had been used in previous trial would not work in this situation, it was not questioned again by those who sponsored the legislation or brought back to me for clarification from committee. The questions all centered around what constituted a victim or family member. They were curious as to why the definition of family member was so far extending. They did not realize that all members of some immediate families had passed away over the past thirty-five years. They also did not realize that some family members, such as my children, who were present in meetings with government officials in our attempts to bring Mr. Al-Marimi to the US,

want to be able to listen. They are college age and cannot attend in person due to class requirements but can listen in the privacy of their rooms. How does a family member who lost her father participate except remotely when they currently live in Spain? She also couldn't attend the previous trial as she was in college at the time.

25. The Victims of Pan Am Flight 103, Inc. was formed in February 1989. We have worked tirelessly over the years in conjunction with DOJ and FBI victims' services to ensure that all legitimate family members are included and kept informed. I am willing to assist in this endeavor in any way that is helpful.

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

Signature: Kara M Weipig

Executed on: May 30, 2024

[Date]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

Abu Agila Mohammad Mas'ud Kheir
Al-Marimi,
a/k/a Abu Agila Muhammad Mas'ud
Kheir Al-Marimi,
a/k/a Abu Agila Muhammad Mas'ud
Kheir,
a/k/a Hasan Abu Ojalya Ibrahim,

Defendant.

Criminal Action No.: 1:22-cr-00392-DLF

DECLARATION OF M. VICTORIA CUMMOCK

I, M. VICTORIA CUMMOCK, am an American citizen and declare as follows:

1. I am the widow of John Binning Cummock, a 38-year-old American citizen who was murdered in the terrorist bombing of Pan American Flight 103 over Lockerbie, Scotland, on December 21, 1988, along with 242 other passengers and 16 members of the flight crew *in this targeted terrorist attack against the United States of America*. Eleven additional individuals were killed by airplane debris on the ground in the vicinity of Lockerbie, Scotland.

2. The 270 murdered victims came from 21 nations and included 190 Americans and 52 U.K. citizens, with the victims' ages ranging from two months to 82 years. They were real people like you and me, filled with the promise of what their futures could bring.

3. I have been asked to provide this Declaration in support of this Court's authorizing remote access to all public court proceedings, including pre-trial and post-trial proceedings, to the Living Victims—individuals who have been permanently impacted by this heinous criminal act and who, as set forth in Pub. L. 118-37, 138 Stat. 11 (Jan. 26, 2024), meet the definition of a "victim of crimes associated with the bombing of Pan American Flight 103," including individuals "who suffered direct or proximate harm as a result of the bombing of Pan American Flight 103"; who were present at or near the scene; or "the spouse, legal guardian, parent, child, brother, sister, next of kin, or other relative of, or who is determined by the applicable district court of the United States to be an individual who possesses a relationship of similar significance to" the prior list of individuals.

MVC
05/30/24

4. Based on my personal knowledge, the number of Living Victims/individuals who qualify under this definition of a “victim of crimes associated with the bombing of Pan American Flight 103” totals well over a few thousand people. Living Victims reside across the continental U.S., the Hawaiian Islands, Alaska, and Puerto Rico. Many Living Victims and survivors reside outside of the U.S. throughout the United Kingdom, mostly in Lockerbie, Scotland, and within approximately 20 other countries.

5. On December 21, 1988, I promised my beloved husband, John, that I would dedicate myself to ensuring that he, and all of the 270 victims who were murdered that day, did not die in vain and their murder would not go unpunished.

6. At the time of my husband’s murder, I was the owner of a successful interior design firm, Cummock Designs, Inc., but the grief and trauma I experienced after the bombing—and bearing that loss and compounding trauma not only for myself but also for my three young children—motivated me to become an advocate and try to prevent the horrors that I had experienced from happening to other families.

7. In June 1991, I laid my husband, John, to rest across the road from where he died in the nose cone of Pan American’s *Clipper Maid of the Seas* aircraft, just miles from where his Scottish ancestors originated. I, along with family and friends, routinely make the pilgrimage to John’s grave at Tundergarth Cemetery and have visited Lockerbie, Scotland, countless times.

8. From our home in Florida, at 35 years of age and with our three small children—ages 3, 4, and 6—in tow, I became active with many other victims’ relatives from across the country. We became the voices seeking justice for our 270 murdered loved ones and, to date, have pressured seven U.S. presidential administrations to activate their pledge and obligation to hold accountable all those who ordered and committed this atrocity.

9. I was a founding member of Victims of Pan Am Flight 103 and served on its Political Action Committee, and I later co-founded and was president of Families of Pan Am 103/Lockerbie, both victim-advocacy groups.

10. I founded and presently serve as CEO and a member of the Board of Directors of the Pan Am 103 Lockerbie Legacy Foundation. The Foundation was established by members of Families of Pan Am 103/Lockerbie to document and codify the history of the December 21, 1988, terrorist bombing of Pan American Flight 103—the second-deadliest terrorist attack against the United States and the deadliest terrorist attack in U.K. history.

11. We also advocate for enhancing the protection of victims' and flyers' rights and ensuring ongoing vigilance against terrorism.

12. We work to commemorate our loved ones and honor the attack's 270 victims with the most comprehensive collection of color portrait photographs and biographical stories of victims; in our interactive, easily accessible Living Memorial, found on our website (www.PA103LL.org) and exhibited at the Tundergarth Remembrance Room, located across the road from the sacred crash site in Lockerbie, Scotland; at the Police Scotland Museum in Dumfries, Scotland; and on the walls of the DOJ prosecution team's trial-prep evidence room; among others.

13. We connect the survivors and the global Pan Am 103 Lockerbie community and, with our digital Legacy Story Project of oral histories, we bear witness and give voice to the thousands of people whose lives were forever changed.

14. The Foundation aims to be a principal U.S. nonprofit institution dedicated to clarifying the misnomer of the Lockerbie Bombing and raising awareness of the bombing of Pan American Flight 103 as a terrorist attack against America. We educate with online historical timelines, the largest digital archive of primary sources about this historical event, and a forthcoming Pan Am 103 Lockerbie Legacy Museum in Lockerbie.

15. Upon information and belief, in February 1989, I was the first family member of a victim to testify before the House Foreign Affairs Committee, chaired by U.S. Representative Dante Fascell. John and I were constituents in Representative Fascell's Florida district.

16. In all, I have testified before 28 Congressional committees and two White House Presidential Commissions.

17. On April 4, 1989, I organized, and was one of five family members to attend, a meeting of victims' family groups with President George H.W. Bush, the first of numerous White House visits.

18. In mid-1989, I lobbied alongside other family members, testified, and worked with the U.S. Senate Majority Leader and Minority Leader to help write legislation for an Independent Congressional Investigation into the bombing of Pan American Flight 103, an effort that was supplanted by President George H.W. Bush's White House Commission on Aviation Security and Terrorism.

19. In August 1989, I was appointed to the Commission to serve as a Pan Am 103 victims' representative and assist in the development of the Commission's scope of work and agenda. I was one of three family members of victims to testify before the Commission.

20. After this Commission's final report was issued, I worked with Congressional leaders to write, fast-track, and enact the 1990 Aviation Security Improvement Act, Public Law 101-604 (Nov. 16, 1990).

21. I was integrally involved in lobbying efforts to enact the original "terrorism exception" to sovereign immunity as part of the Foreign Sovereign Immunities Act (then codified at 28 U.S.C. § 1605(a)(7)), which, for the first time in U.S. history, allowed civilians to bring suit in U.S. Civil Court for the wrongful deaths of loved ones against countries that sponsor terrorism. These cases resulted in a \$10 million no-fault settlement for each of the 270 decedents, with the exception of John B. Cummock (U.S. D.C. District Court Case No. 96-CV-1029 [CKK]).

22. I was involved personally, along with the Pan Am 103 victim-advocacy groups, in other legislation aimed at assisting the victims of terrorism and supporting law enforcement initiatives to combat terrorism, including: the Iran and Libya Sanctions Act of 1996, Public Law 104-172 (Aug. 5, 1996); the Federal Aviation Reauthorization Act of 1996, Public Law 104-264 (Oct. 9, 1996); the Killed in the Hands of Terrorist Act (KITA) of 1990, 26 U.S. Code § 692 (1990), providing terrorism victims with IRS Federal Tax waivers; and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132 (Apr. 24, 1996), providing habeas corpus reforms in criminal cases.

23. From 1995 to 1998, I held top-secret Level 3 security clearance and served as a Board member and representative of airline passengers and victims on the FAA's Aviation Security Advisory Committee.

24. In 1996, I served as a commissioner representing airline passengers and victims on President Bill Clinton's White House Commission on Aviation Safety and Security.

25. In 1997, I was the lone dissenter among the 21 commission members on the final report of the White House Commission on Aviation Safety and Security. My complete written dissent was blocked from publication in the final report, and I was denied access to deliberate on the classified annex despite my holding Level 3 security clearance. A civil action ensued in U.S. D.C. District Court Civil Action No. 97-981 (CKK) for violation of certain procedural requirements to provide all commissioners with equal information as the group makes decisions

and conducts inquiry, under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. § 1-15 (1994), and additionally that the Commission violated the Administrative Procedure Act (APA), 5U.S.C. § 701-706 (1994). In 1999, the U.S. D.C. Court of Appeals overturned the lower court ruling, citing that commissioners may not be denied access to information and granting me access to the classified annex and information to complete my dissent, including attachments to be included in the reprinting of the final report to President Clinton of the White House Commission on Aviation Safety and Security.

26. In 2006, I met privately in Paris with representatives of Colonel Muammar Qaddafi and the Qaddafi Charitable Organization about organizing restitution for the victims of Libyan terrorist attacks.

27. I was an outspoken opponent of normalization efforts under President George W. Bush between the United States and Libya that did not require Libya to fulfill all terms and conditions of the bilateral sanctions, and of the creation of the U.S.-Libyan Claims Settlement Agreement and the Libyan Claims Resolution Act.

28. In April 2011, I co-financed an operation into Benghazi, Libya, and obtained sworn affidavits by former Gaddafi Justice Minister Mustafa Mohammed Jalil that detail Gaddafi's criminal involvement in the bombing of Pan American Flight 103 and other global terrorist attacks.

29. In September 2011, I met on multiple occasions with Libya's new head of state, Chairman Mustafa Mohammed Jalil, and various other members of the Libyan Transitional Council, at the Libyan Mission to the United Nations.

30. I became a certified disaster responder as a victims' advocate with the American Red Cross and served on the Red Cross's National Board of Governors and the Board of the local Miami chapter. I assisted victims during the search and recovery operations after other mass-casualty disasters, including the Oklahoma City Murrah Federal Building bombing and the aviation disasters of ValuJet Flight 592, TWA Flight 800, and Chalk's Ocean Airways Flight 101.

31. Through it all, my staunchest focus remained on seeking justice and accountability for my husband and the 269 other people killed on December 21, 1988.

32. For more than 35 years, together with other American victims' family members, we have lobbied and pushed for truth, accountability, and justice, demanding seven U.S. Administrations expand their political will to provide law enforcement with adequate resources

for the U.S. effort to investigate, identify, and prosecute all those who committed, ordered, or supported this atrocity, including state sponsors.

33. We have fought to have the U.S. prosecute the two U.S. indictments against Abdelbaset Al-Megrahi and Lamem Khalifa Fhimah for the bombing of Pan American Flight 103 and for the trial to take place in a U.S. Federal Court or under U.S. law at former U.S. airbase Kamp van Zeist in the Netherlands; instead, the trial—known in Scotland as the Lockerbie Criminal Trial—took place at Kamp van Zeist before a specially convened Scottish Court (the High Court of Justiciary) in 2000 and 2001.

34. As with many American victims' family members, we believed that the Scots-law "Lockerbie Trial" at Kamp van Zeist would be followed by a "Pan American Flight 103 Trial" at the same location that would apply U.S. law before a U.S. court, *since the crime was realized aboard a U.S. flag-bearing commercial airliner* and since criminal suspects are routinely tried in multiple jurisdictions for the same crime. Furthermore, there are significant differences between the U.S. and Scottish criminal systems regarding the admissibility of evidence, testimony of witnesses, criminal sentencing, parole, and release.

35. We were unequivocally disavowed of those beliefs by the Office of Victims of Crime ("OVC") within the Department of Justice. Prior to the trial's commencement, we were mailed a complex 186-page "Lockerbie Trial Information Guide" informing us that:

- OVC *would provide support to only two family members per victim* to travel to the Hague and *attend the trial for one week only*. As we later learned, the few American victims' families who attended the trial under these conditions at Kamp van Zeist were rarely permitted to observe the proceedings in the courtroom from start to finish on any given day, or were sent to overflow areas due to space limitations, including seats reserved for media and other interested parties.
- Additionally, OVC, in concert with the Scottish Court Services, set up four remote-viewing sites in London, Dumfries, New York City, and Washington, DC; however, these sites were not well-attended since they required most victims' families to travel hundreds of miles and pay for weeks of travel expenses and lodging—a prohibitively expensive burden of time and money, especially for those working regular jobs or caring for children or other family members.
- Despite good intentions, and demonstrating the limitations on their capabilities, OVC abdicated their responsibility to protect Living Victims' rights to privacy and our access to court proceedings by allocating funds to the Syracuse University College of Law's Lockerbie Trial Families Project to create and maintain a website available to victims' families during the complete course of the trial. Each day, the Scottish court emailed trial transcripts to Syracuse University, where the transcripts were posted online with summaries by SU law professors. Unfortunately, except for the families of the 35 Syracuse University victims, the vast majority of American victims' families never received direct OVC communication, instruction, or support about accessing and utilizing this website.

36. The 36-week Scottish trial, which began more than 11 years after the bombing and after significant efforts by the American victims' families to move the investigation and prosecution forward, ended up providing us with extremely limited, inconsistent, or no access to the court proceedings.

37. This was similar to our experience during our civil lawsuit against Pan American Airways in the Eastern District of New York, where the courtroom could not accommodate all interested parties and gave equal standing to the media, counsel, and victims' families. Courtroom staff informed us that we would not be able to sit in on every day of the trial because we needed to clear space for others to attend.

38. At the conclusion of the highly charged Scottish trial, most American victims' families did not feel that justice was adequately served by acquitting Fhimah and convicting Al-Megrahi, who ultimately served 11.5 days for each of the 270 victims' murders. This blatant miscarriage of justice, without recourse, truly broke our hearts and dashed our expectations for the U.S. authorities—in particular, in the Criminal Justice system's will to pursue and hold accountable those responsible.

39. Now, our combined efforts of more than 35 years, which required immense perseverance and great emotional and financial sacrifice, have brought us to this U.S. Federal Court. This is the first and likely only opportunity for the United States of America—to which John, I, and hundreds of other American Living Victims have pledged allegiance, with hope in the promise of justice for all—to adjudicate the mass murder of our loved ones for the second-deadliest terrorist attack against the country, after the attacks on September 11, 2001.

40. The Federal Crime Victims' Rights are codified at 18 U.S.C. § 3771 and provide the following list of rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.

- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

41. Given our collective difficulties in obtaining daily access to public proceedings of the prior criminal and civil trials, and given the physical courtroom space limitations at Prettyman Federal Courthouse in Washington, D.C., and in anticipation of the trial of the Defendant in these proceedings, we sought, lobbied for, and obtained Public Law 118-37 (Jan. 26, 2024) that provides the definition above of “victim of crimes associated with the bombing of Pan American Flight 103” and also provides that “[o]n and after the date of enactment of this Act, and notwithstanding any provision of the Federal Rules of Criminal Procedure or other law or rule to the contrary, in order to permit victims of crimes associated with the bombing of Pan American Flight 103 to access court proceedings in the criminal case against Abu Agila Mohammed Mas’ud Kheir Al-Marimi and against any co-conspirator subsequently charged and prosecuted in a court of the United States for crimes related to the 1988 bombing of Pan American Flight 103, the district court of the United States in such a case shall order that reasonable efforts be made to make remote video and telephonic access to proceedings in the case available to victims of crimes associated with the bombing of Pan American Flight 103.” *Pub. L. 118-37 at § 1(b)(1)*. This access is to be made “without regard to the location of the victim.” *Id. at § 1(b)(2)*.

42. The Living Victims do not seek daily access that would hamper the ability of the Court to control its courtroom or to impede the ability to “protect the integrity of court proceedings or the safety of parties, witnesses, or other participants in the proceedings.” *See id.* at § 1(c).

43. Nevertheless, because crime victims differ in their abilities to access trial proceedings, and this collective group of victims’ families has been let down in the past despite likely well-intentioned efforts by OVC, I believe it is incumbent upon the Court to ensure that each Living Victim receives individualized access where they are located, rather than requiring travel to the D.C. Courthouse or a centralized remote site in a large city, such as through secure transmission to U.S. Federal Government Buildings, U.S. State Attorneys’ Offices, or U.S. Federal

Courthouses, which would require significantly more funding for OVC to staff, manage, and provide us with logistical support and services.

44. As I have personally learned in my decades of victims' advocacy and as a crime victim myself, not all victims are created equally. We process and respond to the profound trauma of mass murder differently depending on many factors, including relationship to the victim, age at the time of the crime, the magnitude of the crime, media and general public intrusion, and proximity to the crime.

45. Many of us live with post-traumatic stress disorder and find it intimidating or overwhelming to physically attend a public trial that includes the accused offender surrounded by his supporters, and gives equal access to the global media, counsel, and the general public.

46. Furthermore, many of the Living Victims continue to fear travel by airplane since their loved ones were killed on a commercial aircraft; hence, forcing them to travel to a trial location that may be far from their place of residence would impose undue trauma and stress on these individuals.

47. Many of the Living Victims may lack the monetary resources to attend the trial in D.C. or in a centralized viewing location. The trial will likely be lengthy, and lodging, food, and travel may be difficult expenses to bear.

48. Given that the bombing of Pan American Flight 103 took place on December 21, 1988—over 35 years ago—many of the Living Victims are advancing in age and/or have mobility issues, making travel itself difficult or impossible.

49. As stated previously, OVC is the agency charged with communicating with the families regarding all aspects of this criminal case, including means of accessing the video or audio broadcast of the trial; however, OVC has chosen to communicate with the Living Victims through intermediary organizations—rather than directly—including, but not limited to, Syracuse University College of Law and Victims of Pan American Flight 103. Membership in these groups is open to individuals outside of the category of “victims of crimes associated with the bombing of Pan American Flight 103” and exclude the majority of Living Victims' family members.

50. It appears that OVC's and the Department of Justice's contact list for those who qualify for access under Pub. L. 118-37 is woefully out-of-date and incomplete and excludes hundreds of family members who have never received direct contact or information from OVC about our case. Hence, most Living Victims have not been privy to official information, new

developments, or been invited to attend briefings, such as the annual U.S./U.K. law enforcement briefings at Syracuse University, which occur in person and are shared electronically, or commemorative services at Arlington National Cemetery.

51. By comparison, the Pan Am 103 Lockerbie Legacy Foundation's list contains nearly 1,000 family members, including children, grandchildren, or siblings of decedents who were too young to appear in earlier FBI or OVC contact lists, as well as family members who have assumed management of matters related to Pan American Flight 103 from their elders. These individuals reside across the United States and abroad. Our Foundation wishes to share our list with OVC, to allow OVC to vet these individual contacts and implement a system for direct OVC communication, perhaps by hiring additional OVC victim services staff, utilizing Victims of Crime Act (VOCA) funding.

52. Upon belief and information, most Living Victims are willing to adhere to safeguards and protocols ensuring that the integrity of the Court proceedings is protected, and we are adamant that in 2024—given the technological advances since the Scottish trial in 2000–2001—this access should be individualized for the location of each victim's choosing. It is up to the DOJ and Court to seek solutions to security concerns related to remote access, as they have done in other criminal cases after the passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Public Law 116-136 (Mar. 27, 2020), allowing federal courts to conduct criminal court procedures by telephone and video hookups under rule 53.

53. The bombing of Pan American Flight 103 on December 21, 1988, not only took the lives of 270 victims but shattered those of thousands of survivors and Living Victims. Your Honor, I am now 71 years old and have lived more than half of my life without my husband, best friend, and the father of my three children. For more than 35 years, I and other Living Victims have been trying to pick up the pieces of our lives, process our losses, rebuild and move forward. We were given a life sentence to live in the shadows of injustice. *Taken* was our peace of mind and sense of security. *Taken* was the opportunity to become the mother, father, sister, brother, daughter, son, friend, neighbor, colleague, or person we wanted to be. *Taken* was our family life as we knew and enjoyed it. *Taken* were the childhoods of our once-happy, carefree children, leaving them instead with decades of feelings of pain, fear, and injustice and with repeated questions: "Mommy, why aren't the bad guys who killed Daddy in jail?" "Why are they still free to kill us or other families?" "Why hasn't law enforcement cared enough to help us?" And for

many of us, *taken* was our unquestioned allegiance and faith in our country as we thought we knew it: promising equal rights and justice for all.

We have suffered immeasurable loss and many indignities and been routinely marginalized from proceedings for more than 35 years. The Court and Government have a unique opportunity to correct these injustices by enforcing law that the U.S. Congress passed and President Biden signed. I want to implore the Court and Government to fulfill their responsibility and uphold their moral obligation to utilize all means available to facilitate, support, and not discourage or prevent the Living Victims from bearing witness to the adjudication.

Please do not take anything else away from us. Help me keep my promise to John, and all of our promises to our murdered loved ones, by restoring our rights and dignity. Please give us the support we need to bear witness to the U.S. Court proceedings.

54. I thank the Court for accepting this Declaration in support of permitting individualized, direct, remote access to the pre-trial, trial, and post-trial proceedings in this case for each “victim of crimes associated with the terrorist bombing of Pan American Flight 103.”

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

Dated: May 30, 2024
Miami, Florida


M. VICTORIA CUMMOCK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA :

UNITED STATES OF AMERICA :

v. :

Case No. 22-CR-00392 (DLF)

ABU AGILA MOHAMMAD :

MAS'UD KHEIR AL-MARIMI, :

Defendant. :

DECLARATION OF PAUL S. HUDSON

I, Paul S. Hudson, declare as follows:

1. I am the father of Melina Hudson who died on December 21, 1988, at age 16 in the bombing of Pan Am Flight 103 over Lockerbie Scotland with 269 other innocent victims.
2. I submit this declaration in support of the Court authorizing remote access to the criminal trial as well as pre-trial and post-trial proceedings to victims as defined in the enabling special legislation recently enacted and as otherwise provided by law. Public Law 118-37 118th Congress 138 STAT. 11 January 26, 2024
www.congress.gov/118/plaws/publ37/PLAW-118publ37.pdf
3. Since December 1988, I have been active with other relatives in seeking justice for the murder of my daughter and the loved ones of others.
4. I traveled to Lockerbie Scotland with six other American victim family members on December 23rd, 1988, and over the next week met with other grieving victim family

members, Lockerbie residents, clergy, Pan Am representatives, government responders and officials.

5. I arranged for the identification and retrieval of my daughter's body for transport to the United States for her funeral on December 31st, 1988 in Albany, New York which was attended by about 900 persons.
6. They included her parents, four grandparents, three brothers then age 18, 9 and 7, uncles, aunts, and cousins, plus classmates and friends.
7. I witnessed in Lockerbie the devastation caused by the bomb which detonated in the baggage hold of the Pan Am 747 jumbo jet at over 30,000 feet, causing it to break apart into five main pieces raining bodies, debris and devastation on Lockerbie and the surrounding countryside.
8. In 1989, I co-founded and became the initial leader of two victim family relative organizations, the Victims of Pan Am Flight 103 and then the Families of the Pan Am 103/Lockerbie.
9. I am presently a board member of the Pan Am 103/Lockerbie Legacy Foundation which maintains a large digital archive and interactive website for the public and all those involved in the Pan Am 103 bombing aftermath. See <https://www.pa103ll.org>
10. I have also been an attorney for nearly 50 years, and as Counsel to the New York State Crime Victims Board (1977-87) and in private practice, was the second lawyer in the United States to devote full time to crime victim rights issues.
11. Approximately 190 of the 270 murdered victims were United States residents with the largest concentration from the Northeast and Midwest (the flight departed Frankfurt

then stopped in London and headed for New York City and Detroit); the other 80 deceased victims were from 20 other countries. Several thousand others in the Lockerbie area were present at the scene and directly impacted by the disaster.

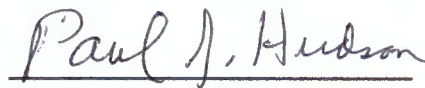
12. In the weeks after the bombing, I estimate approximately 100,000 people attended funerals for the deceased victims, the great majority of whom were under 50 years of age.
13. It has been over 35 years since this horrendous crime and mass murder occurred, which ranks as the second most deadly foreign terrorist attack against America after 9/11 and the most deadly terrorist attack and air disaster in British history.
14. Because many victims are now aged and/or infirm, because many lack financial resources to travel thousands of miles to a District of Columbia court house, and because many will not even know of the trial without US government notice and assistance, only a tiny percentage of victims will be able to attend the trial and related proceeding in person without remote access through the internet and at remote physical locations.
15. So far, in these proceedings only about a dozen family members have attended in person, and the court has not permitted remote access.
16. As to the family of Melina Hudson, I reside primarily in Sarasota Florida 1,000 miles from the Court House, her brothers now reside in South America (4500 miles away), Miami Florida (1200 miles away), and New York City, and her other surviving relatives and close friends reside in Israel, Upstate New York, Maryland, Cleveland, Ohio, Indiana, South Dakota, Texas, and Illinois.

17. I know other victim family members who reside in Europe, California, Utah, West Virginia and other states and countries; many are now in assisted living <https://> facilities or so infirm as to make travel to the Court House virtually impossible.
18. The court should also be aware that only a minority of victim family members have been involved with any of the victim family organizations and upon information and belief the Department of Justice contact list is far from being comprehensive and up to date.
19. Accordingly, if victims are to have a reasonable opportunity to attend the proceedings in this case, in addition to remote access, they will need notice plus financial and informational assistance; that can best in my opinion be provided by the US Office of Victims of Crime OVC within the US Department of Justice in cooperation with foreign crime victim government offices, crime victim NGOs, victim attorneys and other US government agencies.
20. As to the court's concerns, about security of the proceedings by restricting access to eligible victims, I believe that OVC is in the best position to provide notice, screening of eligible persons for remote access, assigning passwords and instructing victims on any restrictions on recording or rebroadcasting proceedings.
21. In light of the importance of the victim access to this trial, which has already resulted in swift Congressional action, the fact that crime victims are the real parties in interest but are not directly represented in these proceedings, it is respectfully requested that the court hold a hearing with remote and in person access prior to issuing its victim access order, so victims or their representatives can directly address and respond to any concerns by the parties or the court.

22. Finally, in situations of disagreement or problems with access, victims should have a contact person with the court and, if necessary, standing to petition the court for trial proceeding access.

I declare under penalty of perjury that the foregoing is true and correct, except as to any matters stated upon information and belief which I believe to be true.

Executed on May 30, 2024 at Sarasota, Florida.

A handwritten signature in cursive script that reads "Paul S. Hudson". The signature is written in black ink and is positioned above a solid horizontal line.

Paul S. Hudson

Declaration of Pamela Dix

I, Pamela Dix, being over 18 years of age and a resident of the United Kingdom, do hereby declare as follows:

Background to Submission

My eldest brother Peter Dix (1953-1988) was killed as a passenger on Pan Am 103. Peter was at that time living in London and was travelling to New York City for a one-day business meeting, in his capacity as a management consultant for Bain & Co. From an Irish family, born and brought up in Dublin, Peter had lived in New York for some time prior to a move to London in 1985 with his family. I was also living in London with my partner, and was an editor at Penguin Books. The course of my life was to alter dramatically with the bombing – I lost my chosen career, instead ending up as a campaigner and advocate for the rights of those affected by disaster.

UK Families Flight 103 (UKFF103)

In March 1989 those bereaved in the bombing who were based in the UK formed a family group, the unincorporated association UK Families Flight 103, for which I acted as secretary for many years. The purpose of the group was to provide mutual support; campaign for an independent public inquiry into the circumstances leading up to the bombing and subsequently; for those accountable to be brought to justice; and for the systemic organisational and governmental failures that enabled the attack to take place to be rectified. These objectives underpinned our stated principles: 'the truth must be known' and 'their spirit lives on'.

Most importantly the group was seen as a safe space for family members to share what at times was an almost overwhelming sense of grief and desolation.

Air Accident Investigation Branch (AAIB) Report 2/1990 on the accident to Boeing 747-121, N739PA, at Lockerbie, Dumfriesshire, Scotland on 21 December 1988

The AAIB was responsible for carrying out a statutory investigation into the circumstances of the downing of Pan Am 103. It was from the Principal Inspector that we were to learn that the aircraft had been bombed, a week after the event. The AAIB meticulously investigated, and reconstructed Pan Am 103 at their hangar in Farnborough, Hampshire, England.

Family members were invited to Farnborough to see the reconstruction and to hear a detailed explanation of the technical report. The humanity, expertise and empathy shown by the inspectors remain a shining illustration of how to treat shocked and deeply upset people with care and consideration and the respect we deserved. No question was thought to be too simplistic to answer. Answers were given honestly, without judgement. What could be uncovered was shared. The inspectors went far beyond their duty as technical investigators.

I set out this example in the interests of furthering an understanding of why it is important to offer and facilitate access to information.

Fatal Accident Inquiry (FAI)

An FAI was held in Dumfries, Scotland, sitting from October 1990 till February 1991, presided over by Sheriff Principal John Mowat QC. UKFF103, along with other family members, were afforded legal counsel for the purposes of the inquiry. The group succeeded in getting the then UK Department of

Transport not only to fund this representation, but to fund accommodation and travel to the FAI for family members. This was unprecedented. The opportunity to sit within the courtroom, seeing and hearing evidence presented, witnesses cross-examined, was a painful but necessary experience for me and others. I gave evidence concerning the identification of my brother – a difficult and intimidating experience. Law officers at that time had not yet engaged with an understanding of what it meant to be in the position of a bereaved person following a major terrorist attack.

The Sheriff's determination that the 270 people who died had been murdered in turn led to the later indictment of Abdelbaset al-Megrahi and Al Amin Khalifa Fhimah in November 1991.

UKFF103 then spent decades seeking a resolution to what happened, not only within the criminal justice sphere but within civil society. Our efforts took a considerable toll on our lives.

Disaster Action (DA)

My experience of the Lockerbie bombing, as it is commonly known, led me into contact with those affected by numerous other disasters of different cause and origin affecting people of any nationality normally resident in the UK. I became one of the founder members of DA, an NGO set up in October 1991 (see www.disasteraction.org.uk) by survivors and bereaved people. I went on to become its Executive Director. The organisation was founded on the principles of support, accountability and prevention. Gradually over time we assisted in the development of new laws, regulations and guidance governing disaster management and response in the UK. Amongst the Acts of Parliament we saw as key achievements were the Civil Contingencies Act 2004 and notably The Corporate Manslaughter and Corporate Homicide Act 2008.

Central to DA's work was the desire to change attitudes and approaches within the statutory and non-statutory services towards bereaved and survivors. During the 1980s and 1990s – including after Lockerbie – those on the receiving end of major incidents were often treated callously, seen as part of the problem, an inconvenience at best. A theme that echoed through the experience of so many people affected by different crimes was the desire – often thwarted – for information and support.

The Code of Practice for Victims of Crime in England and Wales was a watershed in enshrining duties towards those on the receiving end of emergencies. Being treated with respect and afforded openness and transparency are now understood to be key rights.

Such success was hard won and came at considerable personal cost.

September 11 2001 Attacks/January 2002 Bali Bombing/7 July 2005 London Bombings

Part of DA's remit was to offer direct practical and emotional support to others affected by disaster, and in that capacity we brought together those affected by the above incidents, facilitating the development of their survivor and family support groups for people resident in the UK.

Eureste

In my role as Executive Director of DA, I worked within the European Union with the British, French and Belgian Red Cross Societies and others to set out core principles and working practices for those involved with bereaved and survivors in the aftermath of terrorist incidents.

Access for Family Members to the Megrahi/Fhimah Trial

Abdelbaset al-Megrahi and Al Amin Khalifa Fhimah were indicted on 13 November 1991 as co-conspirators in the bombing of Pan Am 103. After nearly a decade of negotiation the two men were surrendered by the Libyan government for trial. It had been agreed that the trial would take place under the auspices of Scots law, in a neutral venue, namely at The Hague in the Netherlands, without a jury. Megrahi was found guilty, and Fhimah acquitted, in January 2001.

Office for Victims of Crime (OVC)

The OVC in the United States, led by its then director Kathryn Turman, was central to the development of an access and support structure for family members, supported by the Crown Office in Scotland. The intention was for justice not only to be done, but to be seen to be done by those left behind after the catastrophe.

A website was set up for family members, setting out biographies of all the key players involved, with a timeline of events to date. Daily trial transcripts were uploaded so that they could be read at leisure. A secure password protected part of the site enabled family members to exchange private messages with others around the world if we wished to.

If we were in a position to travel to The Hague, the OVC funded travel and accommodation for a one-week visit. In addition, secure video facilities were set up around the United States, and in Scotland and London. 'Accredited' family members could visit the sites to see the trial in real time. I attended the site in London as often as I could within the normal constraints of family life.

Having such access in real time to the evidence as the trial unfolded was critically important for me and so many others. It is difficult enough to understand the intricacies of evidence presented at such a trial with video and telephonic access – it would be virtually impossible without being able to see and hear it. The access we were enabled to have was transformational.

Access to Megrahi's Appeal

Access was also given to family members via the Crown Office in 2020 to some of Megrahi's posthumous appeal hearings – it was possible to see and listen to the arguments presented by counsel for the defence and prosecution, crucial to an understanding of how and why the final appeal failed.

Why Access is Important

As a family member I do not wish to read about the topline events from the forthcoming trial in the media. The advent of social media, not an issue for the Megrahi Fhimah trial, makes this consideration even more important. We wish to hear the evidence, listen to the tone in which it is given - the responses, the conduct of the defendant, the real-time nuances, are essential to an understanding of the process. The intricacies of the prosecution and the defence response can only be properly understood through direct access.

For decades we have been assured by the investigating and prosecuting authorities that the case remains open. Because of the nature of the Scottish legal system this has in fact resulted in a lack of transparency and access, with some matters being effectively concealed through a blanket application of sub judice. Even with his conviction, it was clear that Megrahi was only a player, not the mastermind behind the event. That his accused co-conspirator was found not guilty meant that

the baffling gaps in our understanding of the crime were left unfilled. Al-Marimi's trial is a much-anticipated opportunity to see those gaps closed.

Protection of Witnesses

I understand some concerns have been expressed around protection of witnesses in this trial. I see no reason why protections should not be offered by presenting some of the evidence in camera – only if deemed essential to witness safety – or from behind protective screens. Whatever conditions already apply in this regard within the courtroom can be applied in the case of online streaming.

Challenges for Family Members

With the considerable passage of time since the bombing in 1988, family members are presented with distinct challenges concerning access to the trial – and therefore access to justice. Many family members of those killed have since died, become old or infirm. It is no longer a necessary or acceptable route to set up secure video link sites even in numerous locations. Not only is doing this expensive, but the technological advances now available mean that secure, password-protected live streaming into the homes of family members should be straightforward to arrange and considered the best option. Where this may be difficult for those unfamiliar with technology, arrangements could be made for vetted, trusted individuals to assist. Distance, which was at one time a barrier, is now just one of the many constraints people are faced with. For those with mobility, health, family, work and other issues and commitments, it will simply not be possible to travel to the courtroom. In addition, the costs for many will be prohibitive.


My Submission

I wish to see family members enabled to have the same access that anyone present in New York who wishes to attend a trial has. My contention is that this is a basic human right, supported by the passing of Pub. L. No. 118-37., which provides that the Court, "notwithstanding any provision of the Federal Rules of Criminal Procedure or other law or rule to the contrary, in order to permit victims of crimes associated with the bombing of Pan Am Flight 103 to access court proceedings . . . shall order that reasonable efforts be made to make remote video and telephonic access to proceedings in the case available to victims of crimes associated with the bombing of Pan Am Flight 103." The most satisfactory mechanism to achieve this would be through secure streaming.

There are those who suggest that the trial will simply 'bring it all up again', that it must be too painful to go through. My answer to that is that it has never gone away. We live day-to-day with the consequences of the loss of beloved family members whose lives were taken away violently and cruelly. Their only voice in these proceedings is through legal avenues. Let us have the opportunity to fulfil our desires and duties as family members of those murdered on 21 December 1988.

I respectfully request that as the Judge in this case you will understand and agree with my request and suggestions as to how it should be fulfilled.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Pamela Dix

Executed on 29 May 2024

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS'UD KHEIR AL-MARIMI,**

Defendant.

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Case No. 22-cr-392 (DLF)

ORDER

Upon consideration of the government’s Motion to Afford Victims of the Bombing of Pan Am Flight 103 Remote Video and Telephonic Access to Court Proceedings in this Case, it is, this ____ day of _____, 2024,

ORDERED that the government’s motion is GRANTEED. It is

FURTHER ORDERED that the Court will provide remote video and telephonic access of the proceedings in the above-captioned case to victims of the bombing of Pan Am Flight 103, in accordance with the proceedings set forth in the government’s motion.

The Honorable Dabney L. Friedrich
United States District Judge