

DOJ likely to impose guilty plea on Boeing for DPA violations, lawyers say

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The DOJ will likely impose a guilty plea on Boeing for breaching a resolution over a pair of plane crashes caused by its flight technology, but the company still has some room to negotiate a different settlement, lawyers told GIR.

The agency's current leadership has stated time and again that companies will be punished for not adhering to the terms of its resolutions. Those statements, plus language in [the \\$2.5 billion deferred prosecution agreement](#) (DPA) the department reached with Boeing in 2021, are likely pushing the agency toward imposing a guilty plea, lawyers said. However, they added Boeing could avoid one by offering other concessions such as a compliance monitor.

The DOJ is weighing its next steps after issuing a 14 May [letter](#) stating that the company had [breached its DPA](#) by failing to properly maintain its compliance programme. While the agency didn't mention the facts underlying the announcement, it came in the wake of a [January 2024 blowout of a fuselage door plug](#) on an Alaska Airlines flight over Portland, as well as [subsequent whistleblower testimony](#) alleging improper safety procedures at the company. The events spurred a [new, separate DOJ criminal](#) investigation alongside civil probes from the [National Transportation Safety Board](#) and the [Federal Aviation Administration](#) – all of which came as Boeing [resolved allegations](#) of export controls violations by the US Department of State.

The company has indicated it will fight the DOJ's conclusions about its compliance programme. Following the government's announcement of the DPA breach, Boeing said on 14 May that it believes it "has honored the terms of [the] agreement, and look[s] forward to the opportunity to respond to the Department" and answer questions related to the door plug incident.

Boeing has until 13 June to respond.

Guilty plea likely

Lawyers told GIR that the DPA's language – and past statements by DOJ leadership – indicate the high likelihood that the department would impose a guilty plea based on the company's original admissions of wrongdoing in the DPA.

Deborah Curtis, a former DOJ prosecutor now at Arnold & Porter in Washington, DC who helped negotiate a DPA for a major aerospace company, pointed to the DOJ's response to [Ericsson's 2021 DPA breach](#) as a possible precursor to how the agency may handle this settlement.

The Swedish telecommunications company had to pay approximately \$206 million, agree to an extra year of a compliance monitorship and plead guilty to an FCPA conspiracy charge [to resolve the DOJ's finding](#) that it breached its 2019 DPA after failing to disclose all evidence related to allegations of bribery and corruption schemes in Djibouti and China and for not promptly disclosing potential improper payments made in Iraq. After the Ericsson resolution, Deputy Attorney General Lisa Monaco referred to the case as an example of what the DOJ will do to companies that violate the terms of a DPA.

"[W]hen a company breaks the law again — and it's clear the message wasn't received — we need to ratchet up the sanctions," she [said in a speech earlier this year](#). "[W]e refused to resolve the case in 2023 for anything less than a corporate guilty plea."

Curtis said the DOJ may use Boeing's case to drive home messaging on how it will punish DPA violations.

"I think they could make an example of Boeing," Curtis said.

Jason Covert, a former Fraud Section prosecutor now at Taft in Washington, DC, also pointed out language in the DPA suggesting that a guilty plea would be the DOJ's next step. He said a section stating that "the Fraud Section has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the company breaches this Agreement and this matter proceeds to judgement" suggests the DOJ already had a consequence in mind when the agreement was signed.

"When you read it, it kind of presumes an understanding that if there's a breach, this is leading to a guilty plea," Covert said.

Covert said he expected a plea agreement to carry collateral consequences for Boeing — including the risk of debarment from federal procurement contracts. A [portion](#) of the Justice Manual — which outlines DOJ policies and procedures — addressing sentencing for corporations states that "where the corporation is a government contractor, permanent or temporary debarment may be appropriate" when the department is in the process of seeking a plea agreement.

However, Covert said, the actual risk of debarment would likely be low because it would involve separate procedures through individual government procurement agencies. He explained those agencies would likely have to weigh the "significant" national security implications of barring Boeing from federal contracts. Additionally, he said the DOJ's guidelines direct the agency to consider "disproportionate harm" to other stakeholders like investors, employees, and the public into account as it considers potential sentencing recommendations.

"There are these risks that exist in theory and on paper, and they are collateral consequences, but in a situation like Boeing, I'm not sure they actually come to fruition and result in a bar," he concluded.

Renegotiation

While some lawyers GIR spoke to expected the DOJ to force Boeing to plead guilty, others said the company could avoid it with some clever renegotiating.

"When there is a [DPA] breach...basically, on a practical level, it means you go back to the drawing board," said Barbara Martinez, a former assistant US attorney and Fraud Section prosecutor at Holland and Knight in Miami. "Whatever was originally agreed to as to penalties, fees, fines — even the provisions related to other things, like compliance — are going to be re-addressed."

She and other lawyers said the company would likely first try to present a case that its compliance programme is more robust than the government's determination, although Martinez said that route could be difficult because the [Fraud Section has several prominent](#) former in-house compliance professionals on its team — and that those people have likely reviewed any relevant information about the programme that the government has in its possession.

Boeing could also agree to additional fines, she explained, and would have to "up the numbers" from the \$2.5 billion it paid as part of the original DPA.

"If you cannot convince [the DOJ] that you did not breach the agreement, they want to up the ante," she said.

Overshadowing those negotiations is the threat of additional charges — both from a reopened investigation into the incidents that led to the original DPA and potentially from other compliance failures that the department may have identified since it was struck, she explained.

A likely result of the renegotiations would also include having a monitorship imposed on the company, Martinez and other lawyers speculated. Though they noted a monitorship's expense and complexities for the company, they said it would be a way for both parties to avoid the expenses and collateral consequences that come with prosecution.

Matthew Schneider, a former US attorney at Honigman in Detroit, said a monitorship would be the most likely middle ground if the government decides not to prosecute the company.

"Agreements can be modified, they can be changed, they can be adjusted — as long as all the parties agree that that can take place," he said. "If I were Boeing, and I had the choice between getting indicted or offering to renegotiate this and have a monitor put in place, I would pick the monitor."

Dan Gelber, a former federal prosecutor at Gelber Schachter & Greenburg in Miami who has negotiated several corporate DPAs, said alternatives could also include other fines, creating easier avenues for whistleblowers, allowing the government extra visibility into the company's manufacturing or proprietary information, or having third-party experts oversee the company's technical matters.

"[Boeing] could do a lot of things that would give the government some confidence that their first agreement was a start, but the second agreement is what they probably need," he said.

Billy Jacobson, a former federal prosecutor now at Jacobson Lopez in Washington, DC said the outcome will ultimately be decided by the "panoply of facts" being shared during the negotiations – all behind closed doors.

"[W]ithout understanding the minutiae of what's been happening for the past several years with the reporting from Boeing to DOJ – and the concerns that DOJ has – it's really impossible to be more precise," he said.

The DOJ and a Boeing spokesperson declined GIR's requests for comment.

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