

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

**IN THE MATTER OF THE SEIZURE OF
A BOEING 737-7EM AIRCRAFT,
BEARING TAIL NUMBER VP-CLR AND
MANUFACTURER SERIAL NUMBER
34865**

Case No. **4:22-mj-2012**

**AFFIDAVIT IN SUPPORT OF SEIZURE
WARRANT IN REM PURSUANT TO
18 U.S.C. § 981 AND 50 U.S.C. § 4820**

I, Gina Makowski, being first duly sworn, hereby depose and state as follows:

INTRODUCTION

1. I am a Special Agent with the U.S. Department of Commerce, Bureau of Industry and Security ("BIS"). I have been a Department of Commerce Special Agent since 2011 and am currently assigned to BIS's Office of Export Enforcement in New York. My experience as a special agent includes conducting criminal investigations in New York, New Jersey, Pennsylvania, and internationally into alleged violations of United States export laws. During my employment with BIS, I have received extensive training in investigative procedures and evidence recovery. I am also a Task Force Officer with the Counterintelligence Task Force of the Federal Bureau of Investigation ("FBI") in the Newark, New Jersey Field Office, a position that I have held for one year. Prior to this task force, I was a Task Force Officer with the Counter Terrorism Unit at the FBI in Newark for six years. As such, I am a "federal law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a warrant to search and seize.

2. Pursuant to 18 U.S.C. § 981 and 50 U.S.C. §§ 4820(a)(5) and (j), I submit this affidavit in support of the United States' application in the Southern District of Texas for the issuance of a warrant to seize a Boeing 737-7EM aircraft bearing tail number VP-CLR and manufacturer serial number 34865 (the "Boeing"). The Boeing is currently believed to be located in Russia. I submit that probable cause exists to believe that under the Export Control Reform Act of 2018, 50 U.S.C. § 4801 *et seq.* ("ECRA"), the Boeing is subject to seizure and forfeiture pursuant to 50 U.S.C. §§ 4820(a)(5) and (j) as an item subject to controls under and reexported in violation of Subchapter I of Chapter 58, Title 50, United States Code, and regulations, orders, licenses, and other authorizations issued thereunder.

3. The statements contained in this affidavit are based in part on my examination of reports and records, including from The Boeing Company, companies and financial institutions involved in the sale of the Boeing, the Federal Aviation Administration, the Cayman Islands, airline databases, court documents, and publicly available information (the "Records"). I have also relied on information from various witnesses and law enforcement officials, including agents with the FBI in Houston, Texas and the U.S. Immigration and Customs Enforcement's Homeland Security Investigations in Houston.

4. This affidavit does not set forth every fact resulting from the investigation. Rather, it sets forth facts sufficient to establish probable cause for the seizure and forfeiture of the Boeing. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related only in substance and in part and are not intended to be verbatim recitations. All dates, amounts, and locations described in this affidavit are my approximations.

THE RUSSIA SANCTIONS REGIME

5. ECRA grants the President of the United States the authority, among other things, to “control . . . the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons . . . relating to” specific categories of items and information. 50 U.S.C. § 4812(a). ECRA further grants the Secretary of the U.S. Department of Commerce the authority to establish the applicable regulatory framework. 50 U.S.C. §§ 4813-4815.

6. Pursuant to that authority, the Department of Commerce reviews and controls the export of certain items, including goods, software, and technologies, from the United States to foreign countries through the Export Administration Regulations (“EAR”). 15 C.F.R. §§ 730-774. In particular, the EAR restrict the export of items that could make a significant contribution to the military potential of other nations or that could be detrimental to the foreign policy or national security of the United States. The EAR impose licensing and other requirements for items subject to the EAR to be lawfully exported from the United States or lawfully reexported from one foreign destination to another.

7. The most sensitive items subject to EAR controls are identified on the Commerce Control List (“CCL”) published at 15 C.F.R. part 774, Supp. No. 1. Items on the CCL are categorized by Export Control Classification Number (“ECCN”), each of which has export controls requirements depending on destination, end use, and end user. Aircraft and aircraft parts and components are specified items under ECCN 9A991.

8. Pursuant to 50 U.S.C. § 4819(a)(1), “[i]t shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of this part or of any regulation, order, license, or other authorization issued under this part.” Pursuant to Section 4819(b), “[a] person who

willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of, an unlawful act described in subsection (a) shall” be guilty of a crime, and pursuant to Section 4819(c)(1), the Secretary of Commerce may impose “civil penalties on a person for each violation by that person of this subchapter or any regulation, order, or license issued under this subchapter.”

9. In response to the Russian Federation’s invasion of Ukraine in February 2022, BIS issued certain sanctions against Russia that impose export controls and license requirements to protect U.S. national security and foreign policy interests.

10. On February 24, 2022, BIS issued a final rule, effective that same day, titled “Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR),” 87 Fed. Reg. 12,226 (Mar. 3, 2022). These Russia sanctions added new Russia-related license requirements and licensing policies, including expanded prohibitions on the export, reexport, or in-country transfer of, among other things, aircraft and aircraft parts and components to or within Russia without a license, and a general licensing policy of denial (with limited exceptions) for such transactions.

11. Specifically, the February 24, 2022 rule amended 15 C.F.R. § 746.8(a)(1) to provide that “a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia any item subject to the EAR and specified in an Export Control Classification Number (“ECCN”) in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.” 87 Fed. Reg. at 12,249.¹ Consequently, 15 C.F.R. § 746.8(a)(1) “extends EAR license requirements to many items that did not previously require a license to Russia on the basis of their CCL

¹ 15 C.F.R. § 746.8(a)(1) was subsequently amended on April 11, 2022 to expand the scope of ECCNs to include Categories 0, 1, and 2, and thus now requires a license to Russia for all items on the CCL. 87 Fed. Reg. 22,130 (Apr. 14, 2022).

classification alone.” 87 Fed. Reg. at 12,227. Thus, under the February 24, 2022 rule, a license or license exception is now required to export, reexport, or transfer (in-country) to or within Russia any U.S.-manufactured aircraft. Under 50 U.S.C. § 4801, “[t]he term ‘reexport’, with respect to an item subject to controls under subchapter I, includes . . . the shipment or transmission of the item *from a foreign country to another foreign country*, including the sending or taking of the item from the foreign country to the other foreign country, in any manner.” (Emphasis added); *see also* 15 C.F.R. § 734.14 (definition of “reexport” under the EAR).

12. A “License Exception” is “an authorization” in the EAR that allows the “export or reexport under stated conditions [of] items subject to the Export Administration Regulations (EAR) that would otherwise require a license[.]” 15 C.F.R. § 740.1(a). Prior to March 2, 2022, License Exception AVS (aircraft, vessels, and spacecraft) permitted, among other things, the temporary sojourn of a U.S.-manufactured, foreign-flagged aircraft subject to the EAR in and out of Russia without a license. 15 C.F.R. § 740.15.

13. On March 2, 2022, BIS issued an additional final rule, effective that same day, that, among other things, eliminated the availability of certain license exceptions for items destined for Russia. 87 Fed. Reg. 13,048 (Mar. 8, 2022). This included License Exception AVS, which is no longer available for the export or reexport to Russia of “any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia.” 15 C.F.R. § 746.8(c)(5).

14. These Russia sanctions (a) require a BIS license for any export or reexport of any aircraft subject to the EAR to Russia; and (b) prohibit an aircraft that is owned, controlled, or under charter or lease by a Russian national from being exported or reexported to Russia pursuant to License Exception AVS.

PROBABLE CAUSE FOR SEIZURE AND FORFEITURE

15. As set forth below, there is probable cause to believe that the Boeing was reexported in violation of ECRA and regulations, orders, and licenses issued thereunder, including the Russia sanctions, on March 12, 2022. The Boeing was a U.S.-manufactured aircraft classified under ECCN 9A991 and on the CCL. Therefore, a BIS license was required for its reexport to Russia (*i.e.*, for it to fly from a foreign country to Russia)—but no licenses were applied for or issued. Nor was any license exception available because, among other things, the Boeing was owned and controlled by PJSC LUKOIL (“Lukoil”), a Russian multinational energy company headquartered in Moscow, Russia that has been subject to sectoral sanctions imposed by the U.S. Department of Treasury’s Office of Foreign Asset Control since September 2014.

A. The Boeing

16. Based on my review of the Records and information obtained from my conversations with other law enforcement officials, I believe that the Boeing was reexported to or from Russia on March 12, 2022 in violation of ECRA and regulations, orders, and licenses issued thereunder, including the Russia sanctions.

17. The Boeing Company, headquartered in Renton, Washington, manufactured the Boeing in the United States in 2006. The Boeing is a 737-7EM aircraft. The Commerce Department reviewed information related to the Boeing and determined that it is subject to the EAR and is classified under ECCN 9A991. Accordingly, at all relevant times a BIS license or license exception was required under the EAR for the export or reexport of the Boeing to Russia. No application was made to BIS for a license to reexport the Boeing to or from Russia, including for the flights on March 8, 2022 and March 12, 2022, and no such license was issued, nor was any license exception available.

18. A photograph of the Boeing is below:



19. Flight records for the Boeing reflect that after the Russia sanctions went into effect on February 24 and March 2, 2022, the Boeing flew to and from Russia. Specifically, on March 8, 2022, the Boeing flew from Moscow, Russia to Dubai, United Arab Emirates. Finally, on March 12, 2022, the Boeing flew from Dubai, United Arab Emirates to Moscow, Russia, where it has remained since.

20. Based on my review of the Records and information obtained from my conversations with other law enforcement agents and witnesses, I believe that no license exception was available for

the reexport of the Boeing to Russia because it was owned and controlled by a Russian national. As set forth below, Lukoil beneficially owned and controlled the Boeing through a series of shell companies.

21. On January 10, 2006, Luk-Avia Inc., a Cayman Islands corporation, entered into a Trust Agreement (“Trust Agreement”) as the Trustor to create a trust for the Boeing to be conveyed to Owner Trustee Wells Fargo Bank Northwest, N.A., a national banking association.

22. On February 6, 2006, title of the Boeing was passed from The Boeing Company to Boeing Aircraft Holding Company for and in consideration of \$1.00 and other valuable considerations.

23. On February 9, 2006, title of the Boeing passed from the Boeing Aircraft Holding Company to Wells Fargo Bank Northwest, N.A., not in its individual capacity but solely as Owner Trustee under the Trust Agreement, dated as of January 10, 2006.

24. By March 7, 2007, title of the Boeing was passed to AC Management Company Limited, a Cypriot company registered in the Cayman Islands as a foreign company. Lukoil is the ultimate parent company of AC Management Company Limited.

25. During and after the ECRA violations, Lukoil beneficially owned the Boeing through AC Management Company Limited in the Cayman Islands.

26. Based on a review of documents, on May 10, 2022 BIS identified the Boeing as an aircraft that had been reexported to Russia in violation of the EAR, including the Russia sanctions.

27. The Boeing last traveled to the United States in March 2019. At that time, the Boeing flew from Shannon, Ireland to Houston in the Southern District of Texas. Certain Lukoil officials, including Russian oligarch Vagit Alekperov – Lukoil’s then-President and Chief Executive Officer – were on the aircraft. Alekperov served as Lukoil’s president from 1993 to April 2022. Between

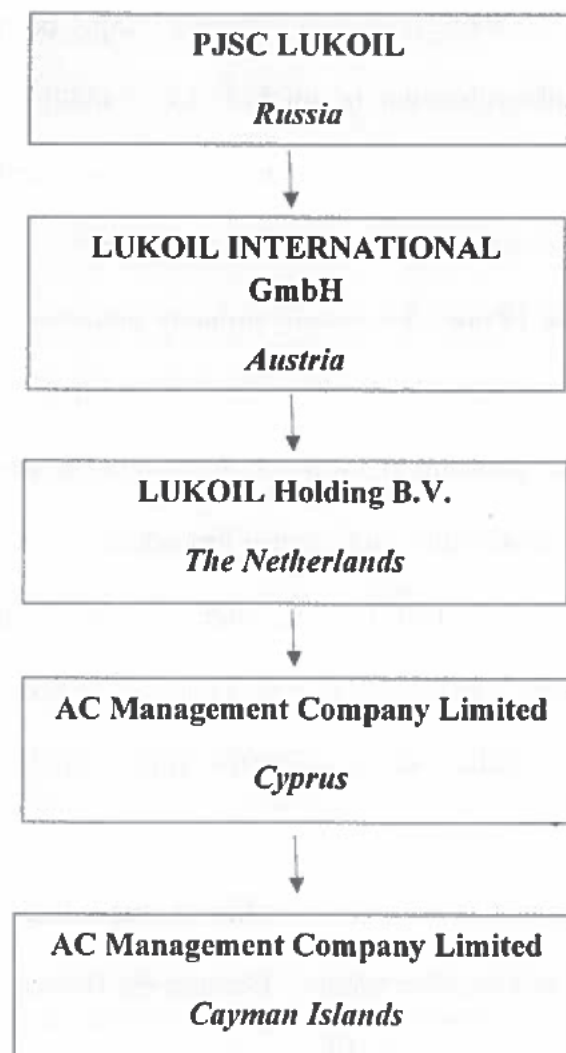
October 26, 2009 and March 16, 2019, Alekperov flew into or out of the United States thirty times in the Boeing, often traveling on the plane with other senior Lukoil officials.

28. Flight records indicate that on the March 12 flight, one of the passengers aboard the Boeing was Vagit Alekperov.

29. Based on my review of the Records, on April 19, 2022 a Lukoil representative confirmed Lukoil's control over the Boeing and another aircraft.

B. Summary of the shell companies

30. As set forth above, I believe that Lukoil owned and/or controlled the Boeing through a series of shell companies. The structure of these entities is detailed below. All owner participations in the entities are 100%.



31. Based on my review of the Records, I believe that when the violation occurred on March 12, 2022, Lukoil was the Boeing's ultimate beneficial owner.

CIVIL SEIZURE WARRANT AUTHORITY

32. Section 4820(a)(5) of Title 50 provides: "In order to enforce this subchapter, the Secretary [of Commerce], on behalf of the President, may exercise, in addition to relevant enforcement authorities of other Federal agencies, the authority to . . . detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this subchapter, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this subchapter, or any regulations, order, license, or other authorization issued thereunder."

33. Section 4820(j) of Title 50 subjects to civil forfeiture, "[a]ny property, real or personal, tangible or intangible, seized under subsection (a) [of 50 U.S.C. § 4820] by designated officers or employees" and provides that "[a]ny seizure or forfeiture under this subsection shall be carried out in accordance with the procedures set forth in section 981 of title 18."

34. Section 981(b)(1) of Title 18 provides that any property subject to forfeiture to the United States under 18 U.S.C. § 981(a) may be seized by the Attorney General. Section 981(b)(2) provides that such a seizure may be made "pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

35. 18 U.S.C. § 981(b)(3) provides that, notwithstanding the provisions of Federal Rule of Criminal Procedure 41(a), a seizure warrant may be issued pursuant to Section 981(b) by a judicial officer in any district in which a forfeiture action against the property may be filed under 28 U.S.C. § 1355(b). Under 28 U.S.C. § 1355(b)(1)(B), "a forfeiture action or proceeding may be brought in . . . any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute." Because the Boeing will be brought to the


Southern District of Texas, a forfeiture action may be brought in this District, pursuant to 28 U.S.C. § 1395(c). Moreover, the Boeing previously flew to the Southern District of Texas.

36. Under 18 U.S.C. § 981(b)(3), a seizure warrant “may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or international agreement.” As noted above, the Boeing has been in Russia since March 12, 2022.

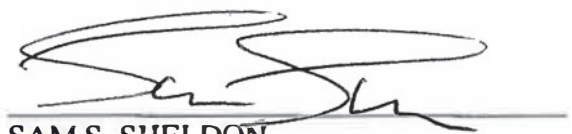
CONCLUSION

37. Based on the foregoing, I submit that there is probable cause to believe that the Boeing is subject to seizure and forfeiture, pursuant to 18 U.S.C. § 4820(a)(5) and (j), as an item subject to controls under, and reexported in violation of, Subchapter I of Chapter 58, Title 50, United States Code, and regulations, orders, licenses, and other authorizations issued thereunder.

38. Accordingly, pursuant to 18 U.S.C. § 981(b) and 50 U.S.C. § 4820(j)(2), I respectfully request that the Court issue a seizure warrant authorizing the seizure of the Boeing.


Gina Makowski
Special Agent
U.S. Department of Commerce
Bureau of Industry and Security

Subscribed and sworn to before me telephonically on August 30, 2022, and I find probable cause.


SAM S. SHELDON
UNITED STATES MAGISTRATE JUDGE

TRUE COPY I CERTIFY

ATTEST: August 30, 2022

NATHAN OCHSNER, Clerk of Court

By: s/ Joseph Wells

Deputy Clerk

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF TEXAS

In the Matter of the Seizure of

*(Briefly describe the property to be seized)*A Boeing 737-7EM aircraft bearing tail number
VP-CLR and manufacturer serial number 34865Case No. **4:22-mj-2012**

WARRANT TO SEIZE PROPERTY SUBJECT TO FORFEITURE

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests that certain property located in the Southern District of Texas* be seized as being subject to forfeiture to the United States of America. The property is described as follows:

A Boeing 737-7EM aircraft bearing tail number VP-CLR and manufacturer serial number 34865, as more particularly described in the attached affidavit. (*This property is currently located outside the United States and will be brought to the Southern District of Texas.)

I find that the affidavit(s) and any recorded testimony establish probable cause to seize the property.

YOU ARE COMMANDED to execute this warrant and seize the property on or before September 09, 2022

(not to exceed 14 days)

☒ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must also give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.


An officer present during the execution of the warrant must prepare, as required by law, an inventory of any property seized and the officer executing the warrant must promptly return this warrant and a copy of the inventory to

US Magistrate Judge

(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

☐ for days (not to exceed 30) ☐ until, the facts justifying, the later specific date of .

Date and time issued: August 30, 2022, at 5:24 pmCity and state: Houston, Texas


Sam S. Sheldon, U.S. Magistrate Judge

Printed name and title

Return

Case No.:

4:22-mj-2012

Date and time warrant executed:

Copy of warrant and inventory left with:

Inventory made in the presence of:

Inventory of the property taken:

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date:

Executing officer's signature

Printed name and title