

**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' PROPOSAL FOR AFFORDING 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 (the “government”), hereby provides, in response to the Court’s February 16, 2024, Minute Order, a detailed proposal for providing victims video and telephonic access to non-testimonial pretrial proceedings for the victims of Pan Am Flight 103.

The government requests, without opposition from the defense, that this Court provide the victims of the bombing of Pan Am Flight 103 with remote video and telephonic access for pretrial, nontestimonial proceedings via the Court’s pre-existing physical and technical infrastructure. In 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 15002(b), 134 Stat. 281, 528 (2020), which provided for the use of video teleconferencing, in lieu of in-person hearings, for certain criminal proceedings. In turn, the Chief Judge of this Court authorized the provision of public video or audio access to judicial proceedings, where those judicial proceedings took place via teleconference. See generally Standing Order No. 20-20 (BAH) (D.D.C. April 8, 2020). For all pretrial, non-testimonial hearings, the government recommends that this Court use this pre-existing infrastructure, which has been tested and proven

reliable over the past four years, to afford the victims of Pan Am Flight 103 video and telephonic access, as authorized under Pub. L. No. 118-37, enacted by the U.S. Congress, and signed into law by the President on December 26, 2023. The advanced age of many of the victims and their geographical disparateness pose significant logistical and financial burdens that would be ameliorated by employing these already-tested measures, while posing minimal risk to the integrity of the Court's pretrial, non-testimonial proceedings.

The government further respectfully moves this Court, with concurrence of the defense, to afford it and the defense additional time, until May 31, 2024, to provide proposals and briefing regarding how this Court should provide video and telephonic access to testimonial and trial proceedings in this case, consistent with Pub. L. No 118-37, for the Court's consideration. The government recognizes, as does the Court, the importance of ensuring that these provisions contain the necessary safeguards to ensure the safety and decorum of the proceedings, and that they permit the provision of related victim-witness services that the Department of Justice's own policies and procedures require.

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

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.

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, the U.S. Department of Justice 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 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.

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

Congress has enacted legislation that directs this Court to make “reasonable efforts ... 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[,] ... without regard to the location of the victim.” Pub. L. No. 118-37, Subsections (b)(1) & (b)(2). Beginning in 2020, as a result of the CARES Act, the District of Columbia District Court implemented new physical and technical infrastructure, using the Zoom for Government platform, which is approved by the Federal Risk and Authorization Management Program (FedRAMP) for use by Federal agencies, to provide video and telephonic access to pretrial proceedings. This infrastructure is safe, secure, and has a proven track record from its widespread use by the Court over the past four years. The Court can and should rely on this existing infrastructure to provide victims with remote video and telephonic access to nontestimonial pretrial proceedings, beginning with the April 4, 2024, status conference.

The government recognizes, both because of the Court’s references to the procedures employed approximately 20 years ago in the *Moussaoui* proceedings, and because of the Department of Justice’s own policies and procedures for providing services to victims in large-scale criminal trials, that additional work will be required to design procedures for the implementation of Public Law No. 118-37 for testimonial and trial proceedings. The government seeks leave of the Court for additional time, until May 31, 2024, to provide additional briefing on such measures to ensure that they will safeguard the security and decorum of the trial, effectively provide remote access to victims, and permit the Department of Justice to provide sufficient support to the victims as required by existing policies and procedures.

I. HISTORY OF REMOTE ACCESS FOR VICTIMS

Congress has acted twice previously to expressly permit remote broadcasting of federal court proceedings that would otherwise be prohibited by the text of Fed. R. Crim. P. 53. In 1996, in response to a venue change in the trial of Timothy McVeigh, arising from the April 19, 1995, Oklahoma City bombing, Congress passed 34 U.S.C. § 20142, which directed district courts to provide closed-circuit television (“CCTV”) access to victims in cases where (1) venue is changed out of the state in which the case was originally brought; and (2) trial is moved more than 350 miles from the location that the proceedings would have originally have taken place. 34 U.S.C. § 20142(a)(1) & (2). The *McVeigh* trial, which eventually proceeded in the District of Colorado, was ultimately broadcast via CCTV under authority granted by § 20142 to an auditorium in Oklahoma City, which was overseen by a state court judge. Although § 20142 was passed in response to the *McVeigh* case, its application was not limited to that case, and it continues to authorize CCTV broadcast of proceedings to victims in cases involving a transfer of venue.

The next time Congress acted to permit remote broadcasting of federal court proceedings, the authority it granted was limited to a specific case. On August 2, 2002, the President signed Public Law No. 107-206, which directed the trial court in *United States v. Zacarias Moussaoui* to make “closed circuit televising of the trial proceedings” available to victims of September 11, 2001, terrorist attacks. Pub. L. No. 107-206, § 203, *available at*: <https://www.govinfo.gov/content/pkg/PLAW-107publ206/html/PLAW-107publ206.htm> (last visited February 21, 2024). Congress limited its grant of authority in *Moussaoui* to trial proceedings, and it limited the manner of transmission to closed circuit television, which was the predominant technical option for providing secure remote video access in the early 2000s. *Id.*

In 2024, Congress acted for a third time to permit remote broadcasting of federal court proceedings. Like in 2002, its grant of authority was specific to one case—this case, *United States v. Abu Agila Muhammed Mas'ud Kheir Al-Marimi*.¹ Unlike in 2002, Congress did not limit its grant of authority to trial proceedings, nor did it restrict the manner of broadcast to closed circuit television, which technology has since been supplemented by other video platforms, such as Zoom, that provide secure, restricted, and encrypted video access over the internet. The language of the current legislation reflects the expanded options made possible by the technological advances that have occurred over the last twenty years and directs this Court to make “reasonable efforts ... 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). Notably, in contrast to the legislation regarding the *Moussaoui* trial proceedings, with respect to this case, Congress added a provision specifying that there is no limit on location, stating that “remote video and telephonic access to proceedings shall be made available ... [to victims] without regard to the location of the victim.” Pub. L. No. 118-37, Subsection (b)(2).

Between the passage of legislation authorizing CCTV viewing in *Moussaoui* and that authorizing remote video and telephonic access for victims in this case, Congress passed the CARES Act, which provided for the use video conferencing, in lieu of in-person hearings, for certain criminal proceedings. In turn, the Chief Judge of this Court authorized the provision of public and media access to judicial proceedings via videoconference or teleconference, with the consent of the presiding judge. *See generally* Standing Order No. 20-20 (BAH) (D.D.C. April 8, 2020). Beginning in April 2020, the District Court for the District of Columbia implemented and

¹ The legislation also provides the same authority for any co-conspirators tried in a future trial arising from the Pan Am 103 attack.

employed new physical and technological infrastructure, relying on a “Zoom for Government” platform, that afforded secure and effective video and audio access to parties in almost all cases between April 2020 and November 2022, with the practice continuing for certain types of proceedings until May 8, 2023. *See generally* Standing Order No. 23-26 (JEB) (May 5, 2023). For the first time, the public was afforded audio-only access to those proceedings via telephonic conference numbers available on the Court’s website. Indeed, during the initial proceedings in magistrate court in this case, the public line was available to anyone who wished to listen to the proceedings telephonically.

II. THE COURT SHOULD USE THE FULL AUTHORITY GRANTED TO IT BY CONGRESS TO MAKE PRETRIAL, NONTESTIMONIAL PROCEEDINGS AVAILABLE VIA ITS EXISTING INFRASTRUCTURE

The statutory language passed by Congress in 2024 is notably broader than the version passed in connection with the *Moussaoui* case in 2002. As a starting point, the *Moussaoui* legislation authorizes only closed-circuit television broadcasting to “convenient locations the trial court deems are reasonably necessary.” Pub. L. No. 107-206, § 203, Subsection (b). The Pan Am Flight 103 legislation, by contrast, contains no such restriction on the manner of remote transmission of the proceedings and additionally affirmatively directs the Court to make remote access to victims “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 *Moussaoui* legislation contained no such direction to provide access without regard to geographic location.

This Court should use the broader grant of Congressional authority it has been given in the Pan Am Flight 103 legislation to effect Congress’ intent in passing the law—providing access to the victims of the bombing of Pan Am Flight 103 (as defined in the statute) without regard to the location of the victims. *See id.*, Subsections (b)(1) & (b)(2). Because the attack happened on an

international flight over 35 years ago, many of the victims are at an advanced age and are scattered geographically all over the United States and all over the globe, providing access at only a few select locations will not satisfy Congress' directive. Moreover, since 2002, technological advances have made remote broadcasting of hearings significantly less expensive, while also rendering those remote broadcasts easier, more secure, and more reliable, as demonstrated by the many remote hearings held during the CARES Act Authorization.²

Indeed, the ability to encrypt video transmission over long distances has become exponentially more common and inexpensive between 2002 and 2024, and the Zoom platform possesses the technology to encrypt its transmissions. Moreover, because of Standing Order No. 20-20 (BAH), nearly every remote hearing conducted in the District of Columbia for approximately a three-year period had access available the Court's public-access telephone lines without vetting to any member of the public worldwide who wished to call in, with no discernible ill effect on the vast majority of legal proceedings.³

Precedent for Public Access to Pretrial Hearings

At the December 15, 2023, hearing, upon learning of the then-pending Pan Am Flight 103 legislation, the Court noted, "obviously, with authority, the Court would be open to pretrial

² In addition to advances in technology in the court's ability to provide a non-CCTV video link, the general public's ability to access such a link from home has increased exponentially since 2002. According to research by Pew International, in July 2002, 11 percent of U.S. adults reported having access to broadband at home. In September 2023, that number was 80 percent. <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> (last visited February 24, 2024).

³ The government of course recognizes that the public access line was not available during trials, and that trials pose fundamentally different security and integrity concerns than other types of hearings. As discussed further below, the government believes that trial would require a heightened level of security than pretrial, nontestimonial hearings. Thus, we seek an opportunity to present a more comprehensive plan to address those issues for this Court at a later date.

proceedings. The Court does have reservations, I'm just kind of warning folks, about the potential for, you know, problems arising at trial or perhaps even hearings where testimony is being taken.” 12/15/23 Hr’g Tr. At 13. The government agrees that trial and testimonial hearings pose heightened risks and may require additional security measures. As noted below, the government, with the concurrence of the defense, requests additional time to address those heightened security concerns. Those concerns, however, will not ripen for months, in the case of testimonial hearings, or over a year, for trial. The Court should provide remote access in the way that utilizes the full authority granted by Congress for those hearings at this stage of the case for which the risk to the integrity of the proceedings is negligible.

The minimal risk in broadcasting non-testimonial federal proceedings has been demonstrated repeatedly in recent years in the appellate context. The United States Supreme Court and D.C. Circuit both live-stream the audio of appellate arguments to the public. Those arguments, which involve no testimony and focus on purely legal issues, are the closest analogue to non-testimonial pretrial hearings at the trial-court level. The Circuit and Supreme Court make the audio available to the entire public, with no limitations, with little or no ill effect. While Fed. R. Crim. P. 53 would normally prohibit this type of broadcast at the district court level absent some other authorization, the Pan Am Flight 103 Legislation has specifically given this Court authority to provide both video and telephonic access to victims of the attack underlying this case. This Court should use the full breadth of the authority provided to it by Congress to provide video and telephonic access to victims in this case for pretrial, non-testimonial proceedings. Providing such access to those proceedings to a defined group of victims does not seem likely to cause any greater security risk than providing audio access to the general public to District Court proceedings during the COVID-19 pandemic or to oral arguments in the D.C. Circuit or the Supreme Court.

In addition, providing remote access via Zoom for Government for nontestimonial pretrial hearings will provide the Court and the parties an opportunity to test the system in a low-risk environment, assess what needs improving, and strengthen the integrity of the system for future hearings. It will also allow the parties to suggest, based on any real-world issues that arise, solutions that can address the valid concerns surrounding testimonial hearings or trial.

Remote Access Through the Court's Existing Infrastructure is Secure and Reliable

For approximately the last four years, the Court has relied on the Zoom for Government platform to hold virtual hearings. Zoom is authorized to operate under the Federal Risk and Authorization Management Program ("FedRAMP"), a government-wide program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services used by federal agencies. The Zoom platform offers an array of security features, including the ability to encrypt transmissions. The company also promotes an end-to-end encryption option, where transmission keys are not even known to Zoom.⁴ Zoom can embed audio and visual "watermarks" into any recordings a user may make. If that content is later shared, Zoom can help identify which user created the recording. Further, Zoom provides many security capabilities available to the meeting host, including the use of a waiting room and the ability to expel participant(s), the ability to end a meeting, lock a meeting, or to mute or unmute participants, and the ability to prohibit the user from recording the meeting using Zoom. In other words, the meeting host – here the Court – can exert full control over the meeting (or hearing). Moreover, the government is willing and able to provide assistance to the Court, should it be required, to

⁴ For a full list of the features Zoom for Government advertises, see <https://zoomgov.com/en-us/trust/security.html> (last visited February 24, 2024) and <https://explore.zoom.us/docs/doc/Zoom-Security-White-Paper.pdf> (last visited February 26, 2024)

monitor remote proceedings to ensure that only accounts belonging to validated victims are accessing the proceedings.

In communications with courthouse administrative and technological staff, the government has learned that the Court's existing Zoom for Government account can accommodate up to 500 individuals on a call, and that the cameras that already exist in the Courtroom can be easily connected to that system, as they were for remote or partially remote hearings when judges were on the bench during the COVID-19 pandemic.⁵ Moreover, the cameras can also be turned off, and in that case the Zoom for Government account could be used to provide audio-only access.

The Court can condition access to Zoom for Government based upon the participant acknowledging that recording or rebroadcasting of the hearings is strictly prohibited and could subject any violators to contempt sanctions. The government encourages the Court to give a similar warning at the beginning of any hearing at which the Zoom link is available.

At this stage of the case, it is reasonable for the Court to provide the victims with the full extent of the video and telephonic access that Congress authorized in Pub. L. No. 118-37. The victims' geographical disparateness, along with many of their advanced ages, pose significant logistical and financial burdens that would be fully addressed at this stage of the proceedings by utilizing the Court's existing Zoom for Government account, while posing minimal risk to the integrity of the Court's pretrial, non-testimonial proceedings. The government has conferred with Whitney Minter and Todd Richman, Esqs., counsel for the defendant, and the defense has informed

⁵ The Court's February 16, 2024, Minute Order directed the parties to address the placement of any camera in the courtroom. The government believes that the existing cameras, which are used for the overflow courtrooms and any virtual hearings, are sufficient. Those cameras exclude jurors from view, while allowing the viewer to see the witness and any admitted exhibits being discussed, among other things. The Court has discretion under the Pan Am Flight 103 legislation to turn that camera off if, among other things, leaving it on would affect the integrity of the proceedings. Pub. L. No. 118-37, Subsection (c).

undersigned counsel that they do not oppose using Zoom for Government to provide remote access to victims for pretrial, nontestimonial hearings, with the understanding that they reserve the right to object to Zoom for Government for any pretrial, non-testimonial hearing, that could, for whatever reason, pose the same risks as testimonial hearings or trial.

Victim Identification and Validation

The Court's February 16, 2024, Minute Order directed the parties to file proposals regarding "the processes for identifying victims and verifying their identities before and at the time of the proceedings." A significant number of victims have already been identified. Because the attack is over 35 years old and has involved one previous trial,⁶ which was followed by three appeals, many people who are connected to the 270 people who perished in the attack have already come forward, and their contact information is maintained by the Scottish prosecution service, the government, or both.

The government maintains a robust Victim Notification System (VNS) in this case. As of March 1, 2024, there were approximately 720 entries in the VNS system for this case, which is entirely an opt-in type of system, meaning that victims must affirmatively decide to enroll in VNS to receive case notifications. Initially, the FBI identified the victims, verified their relationship, and collected their contact information. This information was passed to the U.S. Attorney's Office for the District of Columbia and uploaded to the VNS system. The government will review its VNS records to cull only those individuals who, based on the relationship listed, meet the statutory

⁶ In 2000-01, co-conspirators Abdel Baset Ali Al-Megrahi and Lamen Khalifah Fhimah were tried by a panel of three Scottish judges, who applied Scots law while physically sitting in The Netherlands. Megrahi was convicted and Fhimah was acquitted in that trial.

definition set out in Pub. L. No. 118-37.⁷ Then, it will vet that subset of individuals with the FBI and Police Scotland to confirm that an individual who claims a familial relationship with a victim does in fact possess the relationship claimed. Only after that culling and vetting is complete will the government provide a list of individuals it believes meet the statutory definition of victim, along with those individuals' contact information, to the Court. Courthouse staff could then send a link to view or listen to the proceedings via the Court's Zoom for Government account. Access to the Zoom link can be password-protected.

In addition to going through the list of individuals who have signed up for VNS updates in this case, the government will send a notice to all individuals for whom it has contact information (including those who have not yet signed up for VNS) and will ask the Scottish prosecution to do the same. That notice will inform the recipient about the passage of the legislation, and will advise them that if they want to receive access to remote broadcasts of the proceedings, they will have to sign up for VNS. As new individuals sign up for VNS, the government will follow the same vetting procedures outlined above, and it will provide contact information for only those vetted individuals who meet the statutory definition of victim to the Court.

For any individuals who may be victims who are not captured in the databases described above, the government will post a notice on its website for the case with instructions on how to sign up for VNS, and it may make other public statements that contain information regarding the Pan Am Flight 103 legislation with instructions that anyone who believes they are a victim who

⁷ The government agrees to provide notification to a broader set of individuals than those defined as victims by Pub. L. No. 118-37. Thus, its VNS database is larger than the set of individuals that the government would merit to the Court are victims as defined by the statute. The government plans to cull the list of individuals as described herein and to produce, for its own use and to the defense, a map or other representation showing locations, which will better help the parties craft their proposals for testimonial hearings and trial.

wishes to be provided remote access to the proceedings should access that website for more information. The Court has already approved this procedure for victim notification generally in this case. *See* ECF 23 at 7; Minute Order dated February 10, 2023.

Courthouse Viewing Sites Would Not Provide Meaningful Access

Providing access at specific locations like courthouses will not accomplish Congress' intent of providing remote access to the victims of the bombing of Pan Am Flight 103 without regard to those victims' geographical location. The potential victims in this case are spread across 43 states and the District of Columbia, and 21 foreign countries. Many are elderly (for example, if a 50-year-old parent lost a 20-year-old child in the attack, that parent would now be 85) and cannot easily travel to their nearest federal courthouse or U.S. embassy. While the *Moussaoui* legislation passed by Congress in 2002 limited broadcasting to specific locations, at what turned out to be significant expense, Congress in 2024 explicitly provided the Court broader authority and directed the Court to make proceedings available regardless of the location of the victim.⁸ As discussed below, the Court can accomplish this intent for negligible additional expense and, in the case of pretrial, non-testimonial hearings, with negligible risk to the integrity of the proceedings.

⁸ As discussed above, the availability of reliable, effective remote broadcast options was limited in the early 2000s, and CCTV was likely the only feasible option. Indeed, Zoom was not founded until 2011, and its first software was not released until 2013. *See* https://en.wikipedia.org/wiki/Zoom_Video_Communications (last visited February 25, 2024).

III. THE UNITED STATES SEEKS ADDITIONAL TIME TO COMPILE A COMPREHENSIVE PLAN FOR TESTIMONIAL PROCEEDINGS AND TRIAL

The government, with the concurrence of the defense, respectfully requests additional time to provide a comprehensive proposal to the Court regarding testimonial hearings and trial, reflecting the heightened security concerns those proceedings engender. Permitting the parties time to compile this plan is a reasonable step for the Court to take as it will permit the government and defense to provide the Court with the facts it needs to ensure that the victims have remote video and telephonic access to the proceedings. Providing this time will allow the Court to better assess the best way to implement the broad grant of authority from Congress to make reasonable efforts to provide remote access to victims regardless of their location.⁹

As noted above, the government is aware that there are additional security concerns surrounding trial and any evidentiary hearings that the Court may hold. The government concurs that these concerns must be carefully and cautiously addressed. Indeed, the government expects that it will ask the Court, both during trial and pre-trial testimonial hearings, to exercise its authority to “control the manner, circumstances, or availability of remote video or telephonic proceedings where necessary to control the courtroom or protect the integrity of court proceedings or the safety of the parties, witnesses, or other participants in the proceedings.” Pub. L. No. 118-37, Subsection (c).

The government believes that for most of trial, however, the Court and parties can put into place policies and procedures to protect the integrity of the proceedings. For example, the Court

⁹ The Court’s February 16, 2024, Minute Order directed the parties to propose specific viewing locations. The government’s proposal—proceeding via Zoom for Government—would allow the victims to view or listen to proceedings in their residences, and the security procedures would be those available via the Court’s Zoom for Government account. With respect to trial and testimonial hearings, the government makes the same request for an extension of time regarding specific proposals for viewing locations and security at those locations.

noted a concern at the December 15, 2023, status conference regarding the possibility that the Rule on Witnesses could be circumvented. 12/15/23 Hr’g Tr. at 17. Although many Scottish officers who responded to the aftermath of the attack would qualify as victims under the Pan Am 103 legislation, the government would instruct any such officer we may seek to call in our case-in-chief or rebuttal not to access any remote broadcast of the trial, and we would not object to the Court declining to send a Zoom for Government invitation to any such witness prior to their testimony. Individuals who qualify as victims under the Crime Victims’ Rights Act already have the right not to be excluded from the proceedings unless the Court finds by clear and convincing evidence that the testimony of the victim would be materially altered if the victim heard other testimony at the proceeding, 18 U.S.C. § 3771(a)(3) & (b), and, in any event, the government does not expect to call many CVRA-defined victims in its case-in-chief. The government would moreover instruct all of its potential witnesses, even those who do not meet the statutory definition, that they should avoid not only remote streams of the trial (should they be offered illicit access to one), but news coverage and live tweeting of it as well.¹⁰

The Rule on Witnesses is not the only area in which trial poses different challenges than nontestimonial hearings, of course, and we provide it only as an example. Many other areas of concern can be addressed as they come up, and in a similar manner. For example, for a particularly sensitive witness, the Court could exercise its discretion to not make live broadcast available at all.

¹⁰ For many cases with high public interest, judges in the District of Columbia have authorized a live stream to the “media room,” where credentialed members of the media are permitted to watch the feed while using their electronic devices. This policy has resulted in some journalists tweeting witness testimony, arguments, and other portions of the proceedings in real time. This use of the media room does not violate the Court’s policy for those who are credentialed to access the room, but it poses similar challenges for enforcing the spirit of the Rule on Witnesses, should a potential witness want to circumvent it. Those challenges, while real, can be overcome in this case just as they can be overcome with media coverage of a high-profile trial.

Likewise, any camera would be positioned to avoid showing the jury during trial, and it could be turned off entirely for *voir dire*. Any unauthorized recording and/or rebroadcasting of the proceedings could lead to contempt of court or other criminal charges, and the Court could, if warranted, make findings under Pub. L. No. 118-37, Subsection (c), and adjust the “manner, circumstances, or availability of remote video or telephonic transmissions” accordingly. These examples and their solutions are not dispositive, but we provide them to demonstrate that many potential issues can be overcome.

Given the temporal distance between now and testimonial hearings, and the greater distance between now and the trial, the government respectfully requests that the Court permit the parties additional time to provide a detailed comprehensive proposal to the Court for how Zoom for Government could satisfy the Court’s concerns regarding testimonial proceedings and trial, and to propose alternatives if Zoom for Government cannot satisfy those concerns. The government suggests that it could provide this detailed proposal by May 31, 2024, and counsel for the defendant has represented that the defense concurs in that request.

CONCLUSION

Based on the foregoing, the government respectfully requests that the Court make pretrial, non-testimonial proceedings available to vetted victims via the Zoom for Government platform, beginning with the April 4, 2024, status conference, and that the Court provide the government until May 31, 2024, to propose additional security measures that shall apply to testimonial hearings and/or trial.

Respectfully submitted,

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