

346 Dead - and Boeing Is Still Asking Pilots to Work Around the Software

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Abstract

The Boeing 737 MAX disasters killed 346 people and exposed profound failures involving aircraft design, automation, human-factors assumptions, corporate safety culture, and federal regulatory oversight. This article examines those failures against the emergence of a new flight-management-system software defect capable of disengaging vertical navigation (VNAV) during certain missed-approach sequences on affected 737 MAX aircraft. Rather than equating the VNAV issue with the catastrophic MCAS failures, the analysis considers a more fundamental question: whether Boeing and the Federal Aviation Administration have adequately incorporated the lessons of the MAX accidents when known automation deficiencies can still be mitigated through increased pilot workload while permanent engineering corrections remain pending. The investigation further examines Boeing's criminal-accountability history, including the federal fraud charge, deferred prosecution agreement, subsequent determination that Boeing breached that agreement, proposed guilty plea, and eventual non-prosecution agreement. Particular attention is given to Boeing's extensive political presence, campaign and inaugural contributions, federal lobbying, regulatory relationships, and its selection for major next-generation U.S. fighter programs. No evidence examined establishes a quid pro quo between Boeing's political activities, prosecutorial outcomes, or defense contracts; however, the record reveals substantial structural interdependence between Boeing and the federal institutions responsible for regulating, prosecuting, and purchasing from the company. The article argues that after 346 deaths, reliance upon pilots to compensate procedurally for correctable automation deficiencies deserves exceptional scrutiny and that Boeing's strategic importance should not insulate the corporation or its decision-makers from meaningful regulatory and criminal accountability.

Keywords: Boeing 737 MAX; aviation safety; corporate accountability

Figure 1

The Boeing 737 MAX depicted across the fragile boundary between normal flight and catastrophic consequence, reflecting the 346 lives lost in the Lion Air Flight 610 and Ethiopian Airlines Flight 302 disasters.



Note. Click image for full-size image or click [here](#).

346 Dead - and Boeing Is Still Asking Pilots to Work Around the Software

On October 29, 2018, Lion Air Flight 610 crashed into the Java Sea, killing 189 people. On March 10, 2019, Ethiopian Airlines Flight 302 crashed shortly after departure from Addis Ababa, killing another 157. The combined death toll was 346. Those deaths were not merely

followed by allegations of poor aircraft design. Investigations exposed a chain of engineering decisions, withheld information, commercial pressures, certification failures, incorrect assumptions about pilot response, and an extraordinarily intimate relationship between Boeing and the federal agency charged with regulating it. The U.S. House Committee on Transportation and Infrastructure ultimately concluded that Boeing and the Federal Aviation Administration shared responsibility for the development and certification of an unsafe aircraft (U.S. House Committee on Transportation and Infrastructure, 2020).

The technical centerpiece was the Maneuvering Characteristics Augmentation System, or MCAS. Boeing designed MCAS to modify handling characteristics of the 737 MAX, but the original system could command stabilizer movement based on input from a single angle-of-attack sensor. Pilots were not adequately informed about MCAS, and assumptions made during certification about how rapidly crews would recognize and respond to erroneous activation proved dangerously optimistic. The National Transportation Safety Board later warned that the certification process had relied on assumptions about pilot recognition and response that were inconsistent with what actually occurred during the two accidents (National Transportation Safety Board [NTSB], 2019). The distinction matters: the pilots did not simply fail to manage a perfectly engineered airplane. The engineering and certification system made assumptions about the humans who would eventually have to rescue the machine when its automation behaved incorrectly.

Academic examination of the MAX catastrophe has reached similarly uncomfortable conclusions. Herkert et al. (2020) identified design defects, inadequate transparency, competitive pressure, organizational culture, and deficient FAA oversight as intertwined elements rather than independent failures. Naor et al. (2020) approached the disaster through organizational

psychology and found deficiencies in psychological safety and leadership commitment under schedule and budget pressure. Chary (2024) went further, examining ignored employee warnings, regulatory capture, the Boeing-FAA revolving door, and internal systems that failed to elevate safety concerns effectively. Different disciplines therefore converge on essentially the same conclusion: the MAX disaster cannot credibly be reduced to one badly written piece of software or one poorly performing employee. It was systemic.

That history makes the latest MAX software problem unusually important. In October 2026, the FAA confirmed that certain versions of Boeing 737 MAX flight-management-system software contain a defect capable of causing vertical navigation, or VNAV, to disengage during a particular missed-approach sequence. The issue reportedly originated with Update 14 software and was identified by WestJet nearly two years earlier. Boeing has been developing corrected software, while some operators have resisted accepting aircraft equipped with the affected version. The FAA initially delayed MAX 10 certification while examining the matter but announced on October 2 that its Corrective Action Review Board had determined the problem was not a safety concern because pilots retain control and the indications presented to them are clear (Federal Aviation Administration [FAA], as reported by Reuters, 2026).

That conclusion deserves scrutiny precisely because of what happened before. The argument is not that a VNAV dropout is equivalent to MCAS, nor that the newly identified defect will cause another MAX crash. There is presently no evidence supporting either proposition. The disturbing similarity lies elsewhere: Boeing has an acknowledged software deficiency affecting cockpit automation, the permanent engineering correction is not yet necessarily installed, and interim operating procedures place responsibility upon flight crews to manage the deficiency. The FAA has nevertheless determined that certification of the MAX 10 need not wait for the

permanent software correction. After the MAX history, that is not a trivial procedural decision. It is a test of what Boeing and its regulator actually learned.

A missed approach is also a particularly poor environment in which to discover how much compensatory workload a software defect can impose. Juan Browne, the experienced pilot and aviation commentator who operates the blancolirio channel, described the issue on October 2 as substantially more consequential than the word “glitch” implies. According to Browne, loss of VNAV can require substantial flight-management-computer reprogramming if the crew wishes to restore the capability, potentially occupying one pilot while the other handles the aircraft, communications, weather, fuel, navigation, diversion decisions, and the missed approach itself. His argument is fundamentally human-factors based: the aircraft remains controllable, but controllability alone is an inadequate measure of operational risk during a high-workload phase of flight (Browne, 2026). The FAA's own description confirms the underlying VNAV disengagement, although its safety judgment is more reassuring than Browne's.

That disagreement should not be waved away as pilots versus engineers. Modern aviation safety recognizes workload, mode awareness, automation surprises, task saturation, and degraded situational awareness as legitimate components of system risk. Malakis et al. (2023) argue that increasingly complex aviation systems expose limitations in conventional safety-management approaches precisely because aircraft, automation, humans, operators, and regulators form a tightly coupled system. A software fault therefore need not directly move a flight control surface toward catastrophe to constitute a meaningful hazard. Software can create conditions under which human capacity becomes the final redundancy, and that distinction becomes especially important when the redundancy is being consumed during an already abnormal event.

Sgobba (2019) identified the MAX catastrophe as a failure not merely of aircraft design but of the regulatory system, emphasizing inadequate independent verification and weaknesses in risk-based certification. That analysis is disturbingly relevant to the present question. If an engineering defect can be classified as acceptable because trained pilots can compensate for it, the regulator must ask not merely whether compensation is theoretically possible, but what other tasks the pilots will simultaneously be performing, what additional failures may coexist, and how the workaround changes the total workload of the cockpit. Aviation disasters are rarely courteous enough to present one malfunction at a time (Sgobba, 2019).

The MAX history makes this question sharper because Boeing previously relied upon assumptions about pilot intervention as part of the safety case for MCAS. The NTSB explicitly found reason for concern about those assumptions after the crashes (NTSB, 2019). Thus, when the answer to another MAX automation defect is effectively that the pilots can handle it until software is corrected, skepticism is not anti-Boeing hysteria. It is an evidence-based response to a documented certification failure in which assumptions about what pilots would recognize and accomplish under pressure had already proved catastrophically wrong.

The organizational evidence is no more comforting. Chary (2024) describes Boeing as a case involving ineffective grievance handling, regulatory capture concerns, schedule pressure, and revolving-door relationships. Particularly significant is the evidence that employees responsible for delegated regulatory functions reported pressure associated with schedules and company priorities. Boeing's problem, viewed through this scholarship, was therefore not simply that somebody made a mistake. It was that the organizational environment could influence which mistakes were discovered, which warnings traveled upward, and which concerns were allowed to interfere with production.

Nor did those concerns disappear with the recertification of the MAX. In 2024, the Senate Permanent Subcommittee on Investigations obtained a Boeing employee survey in which fewer than half of respondents answered favorably to the proposition that schedule pressure did not cause their teams to lower standards. The FAA's special audit had also identified numerous noncompliance issues. These findings followed the January 2024 Alaska Airlines MAX 9 door-plug separation, another event that forced renewed examination of Boeing's manufacturing and quality-control systems (U.S. Senate Permanent Subcommittee on Investigations, 2024).

The criminal-accountability history is even more remarkable, although one point requires correction in the common telling of the story: criminal charges were filed. In January 2021, the Department of Justice charged Boeing with conspiracy to defraud the United States in connection with the FAA Aircraft Evaluation Group's evaluation of the MAX. Boeing entered a deferred prosecution agreement and agreed to payments exceeding \$2.5 billion. The government also prosecuted former Boeing chief technical pilot Mark Forkner individually for fraud-related offenses. A jury acquitted Forkner of all charges in March 2022. He remains the only individual federally prosecuted in connection with the MAX certification scandal (U.S. Department of Justice [DOJ], 2021, 2022).

The corporate case followed a stranger path. In May 2024, the Justice Department determined that Boeing had breached the 2021 deferred prosecution agreement by failing adequately to design, implement, and enforce a compliance and ethics program capable of preventing and detecting violations of federal fraud laws. In July 2024, Boeing agreed in principle to plead guilty to conspiracy to defraud the United States. Judge Reed O'Connor rejected the proposed plea agreement in December. Then, after the change of presidential administrations, the Trump Justice Department abandoned the prosecution route and reached a

non-prosecution agreement with Boeing in May 2025. The criminal charge was ultimately dismissed in November 2025 (DOJ, 2026).

Under that agreement Boeing committed more than \$1.1 billion in additional expenditures, including a \$243.6 million penalty, \$444.5 million for crash victims' beneficiaries, and \$455 million directed toward compliance, safety, and quality programs. Money unquestionably changed hands. What did not occur was a criminal trial of Boeing, a corporate conviction, or criminal punishment of a senior Boeing executive for conduct associated with the deaths. Judge O'Connor, although legally granting the government's motion to dismiss, wrote that the agreement failed to secure the necessary accountability needed to ensure public safety and criticized the absence of sufficiently independent monitoring (U.S. Department of Transportation, Office of Inspector General [DOT OIG], 2025).

Legal scholarship has been exceptionally critical of this approach. Reilly (2023) argues that deferred prosecution agreements should be unavailable when corporate misconduct results in death, using Boeing as the central example. His later analysis argues that corporate plea bargaining in cases involving fatalities can suppress transparency, restrict judicial discretion, weaken victims' participation, and prevent a public determination of responsibility (Reilly, 2026). Whether one accepts his proposed legislative solution or not, Boeing presents the uncomfortable policy question perfectly: if hundreds can die following corporate misconduct and the ultimate institutional response remains financial settlement without trial, what behavior is corporate criminal law actually intended to deter?

Diamantis (2025) situates Boeing within an even broader problem in American corporate criminal justice: victims can effectively disappear as prosecutors focus on monetary penalties, compliance programs, and negotiated institutional settlements. That observation has particular

force here because a federal court previously recognized relatives of those killed in the MAX crashes as crime victims directly and proximately harmed by Boeing's admitted conspiracy. The justice system acknowledged victims while simultaneously employing a resolution mechanism that ultimately prevented the underlying corporate charge from reaching trial (Diamantis, 2025).

Coffee (2022) is harsher still. His analysis of the original Boeing deferred prosecution agreement criticizes what he characterizes as forum shopping, an inflated appearance of punishment because much of the headline monetary amount represented obligations to airlines, inadequate attention to victims, an incomplete factual account of management responsibility, and concentration on a comparatively low-level employee. These are scholarly allegations rather than judicial findings, but they identify why the Boeing prosecution remains controversial even apart from the crashes themselves: negotiated corporate justice can produce enormous dollar figures while leaving unresolved the much simpler public question of who was responsible (Coffee, 2022).

The political story becomes more delicate, but it should not be avoided. Boeing is not merely an airplane manufacturer. It is a strategically important American defense contractor, major exporter, enormous employer, congressional constituent, political donor, and lobbying operation. Those roles create legitimate national interests in Boeing's survival while simultaneously creating an obvious structural problem when the federal government must punish the same corporation upon which it depends for military capability. That is not proof of corruption. It is a textbook conflict between industrial policy, national security, criminal enforcement, and regulatory independence.

The money is real. Boeing contributed \$1 million to Donald Trump's 2025 inaugural fund. That fact is relevant, but it is not by itself a smoking gun: Boeing had also donated \$1

million to each of the preceding three presidential inaugurations, including Trump's first, making the payment consistent with a longstanding corporate practice rather than uniquely identifiable support for the second Trump administration (Reuters, 2025). Any allegation that the inauguration contribution purchased favorable treatment would therefore go beyond the presently available evidence.

Boeing's broader political operation, however, is substantial. Federal Election Commission records show that the Boeing Company PAC raised approximately \$3.88 million from January 2025 through August 2026 and directed millions toward political committees. Importantly, Boeing's PAC is not exclusively Republican: available contribution data show support for both parties, although current-cycle compilations indicate more PAC money flowing to Republican than Democratic recipients. Boeing therefore looks less like an ideological political actor than a corporation purchasing durable access throughout Washington regardless of which party controls it (Federal Election Commission [FEC], 2026).

Its lobbying footprint is similarly difficult to dismiss. Federal lobbying records compiled from Lobbying Disclosure Act filings show millions of dollars directed toward defense, aviation, aerospace, appropriations, taxation, trade, and other federal policy areas. This does not establish improper conduct; lobbying and PAC contributions are lawful. But it does establish that Boeing is not an ordinary defendant encountering the federal government only through a courtroom. It maintains a permanent and sophisticated political presence within the same government that regulates its airplanes, buys its military products, investigates its conduct, and decides whether to prosecute it.

The timing of several events consequently warrants examination without pretending that chronology establishes causation. Boeing donated \$1 million to Trump's inauguration. Trump

took office in January 2025. On March 21, his administration announced that Boeing had won the Air Force's Next Generation Air Dominance engineering and manufacturing development contract for what became the F-47. The initial development award was valued at more than \$20 billion, with the eventual program potentially worth vastly more. The Air Force said Boeing represented the best overall value following its competitive analysis (U.S. Department of the Air Force, 2025). There is presently no credible evidence that the inaugural contribution determined that source-selection decision. Indeed, reporting indicates that the Air Force conducted an independent analysis, and Boeing's proposal prevailed on its evaluated merits.

But the political chronology did not end there. In May 2025, the Trump Justice Department reached the non-prosecution agreement that ultimately ended Boeing's criminal case. And on September 29, 2026, Boeing won another extraordinary prize: the Navy selected it for the F/A-XX next-generation carrier fighter development contract, also initially worth about \$20 billion and potentially worth hundreds of billions over the program's life. Boeing had therefore moved, within roughly eighteen months, from a corporation facing a potential federal felony conviction to the winner of both of America's marquee sixth-generation fighter competitions.

That sequence is politically explosive, but evidence imposes a boundary that a serious paper should not cross. I found no documentary “smoking gun” showing that Trump, Attorney General Pam Bondi, the Pentagon, or another administration official traded prosecutorial leniency or defense contracts for Boeing's political support. No credible evidence presently establishes a quid pro quo between Boeing's inauguration donation and either the non-prosecution agreement, the F-47 award, or the F/A-XX award. Claiming one would convert legitimate scrutiny into an unsupported accusation.

There is, however, enough smoke to justify asking why the fire alarm should be inspected. In November 2025, Representative Summer Lee opened a congressional inquiry into the Justice Department's termination of corporate criminal cases involving companies with Trump connections and specifically cited Boeing's \$1 million inaugural contribution and the dismissal of its MAX criminal charge. That is an allegation and investigation by a Democratic member of Congress, not proof of corruption, and it must be identified as such. Yet the existence of the inquiry demonstrates that the appearance problem is not hypothetical: lawmakers themselves questioned whether corporate political support and prosecutorial outcomes were becoming entangled (Lee, 2025). Congresswoman Summer Lee

There is another politically inconvenient fact that prevents this story from being reduced to a Trump-versus-Boeing narrative. Boeing received extraordinary accommodation under both parties. The original deferred prosecution agreement was signed in January 2021 during the final days of Trump's first administration. The Biden Justice Department subsequently determined that Boeing breached that agreement and negotiated a guilty plea in 2024, but even that resolution would have spared individual senior executives from prosecution. The Trump administration then replaced the contemplated guilty plea with a non-prosecution agreement in 2025. The pattern therefore extends across administrations: Washington repeatedly confronted Boeing with strong language, large monetary settlements, compliance promises, and limited individual criminal accountability. The Trump administration's actions deserve scrutiny, but Boeing's political insulation is much larger than one president or one party.

This is where regulatory capture becomes a more useful analytical concept than partisan corruption. Nunn (2022) argues that excessive delegation of certification authority to manufacturers can weaken independent oversight and bend regulatory activity toward private

economic interests. Chary (2024) similarly identifies the Boeing case as illustrating the dangers of regulatory capture and revolving-door relationships. The point is not that every FAA official was captured or that every Boeing certification was corrupt. It is that institutional dependence can produce favorable outcomes without anyone exchanging an envelope of cash. When expertise, jobs, contracts, congressional districts, national defense, exports, lobbying, campaign finance, and regulation all connect the government to the regulated company, independence becomes something that must be actively engineered rather than merely assumed.

The FAA's September 2025 decision to restore limited delegation to Boeing for issuing airworthiness certificates illustrates the dilemma. The agency stated that it had reviewed Boeing's production quality and believed limited delegation could resume safely, with FAA and Boeing issuing certificates on alternating weeks and inspectors increasing surveillance of production. This may be entirely justified. But after two MAX crashes, the door-plug event, continuing congressional concern about safety culture, and Boeing's admitted compliance failures, the restoration demonstrates how indispensable the government still considers Boeing's participation in its own regulatory process (FAA, 2025).

The newest VNAV problem consequently matters beyond the code itself. It arrives after Boeing was criminally charged, obtained a deferred prosecution agreement, was determined by DOJ to have breached that agreement, negotiated a guilty plea, escaped that plea through a later non-prosecution agreement, regained limited FAA certification authority, won the F-47, won the F/A-XX, and now seeks certification of the MAX 10 while a known software defect remains subject to an engineering correction. None of those facts proves the MAX 10 is unsafe. Together, however, they create an exceptionally high burden of institutional credibility.

The brutal question is therefore not whether Boeing deserves to exist. The United States has compelling strategic reasons to maintain a viable Boeing, particularly when commercial-aircraft manufacturing is effectively dominated by Boeing and Airbus and when Boeing is deeply embedded in American defense. The question is whether Boeing has become sufficiently important that ordinary mechanisms of corporate accountability are politically difficult to apply. A corporation can become too strategically important to fail without ever being formally declared too big to jail. The result can look remarkably similar.

There is also a profound deterrence problem. Corporate penalties ultimately fall upon a legal entity composed largely of shareholders, employees, suppliers, and future customers, many of whom had nothing to do with the misconduct. Individual criminal prosecution requires proof beyond a reasonable doubt of identifiable offenses and individual intent; catastrophe itself does not establish criminal guilt. That evidentiary standard must remain. But a system in which responsibility becomes increasingly diffuse as one moves upward through a large corporation can create a perverse outcome: the greater and more bureaucratic the organization, the harder it becomes to attach criminal responsibility to any human decision-maker. Reilly (2023) argues that this is precisely why negotiated resolutions in death-producing corporate cases deserve far greater skepticism.

The available evidence therefore does not support saying that Boeing bribed the Trump administration, purchased the F-47 or F/A-XX, or bought dismissal of its criminal case. It supports something both subtler and more troubling. Boeing possesses enormous structural political power. It spends heavily to maintain political access. It contributes across party lines. It donated to Trump's inauguration. It is indispensable to U.S. defense procurement. It employs people in politically important states and districts. Federal regulators depend heavily upon its

technical expertise. The Justice Department has repeatedly chosen negotiated resolution over trial. And after 346 deaths, no senior Boeing executive was convicted of a crime connected to the MAX catastrophe. Those facts do not require a conspiracy theory. They require an explanation.

The latest VNAV defect provides a remarkably clear test of whether the institutional culture has actually changed. If Boeing can permanently correct the software before affected MAX 7 and MAX 10 aircraft enter passenger service, it should. If certification schedules make that inconvenient, inconvenience should lose. If a permanent engineering solution can eliminate additional crew workload during a missed approach, the burden should fall upon the engineers and manufacturer rather than being transferred to pilots through an interim procedure merely because pilots are theoretically capable of handling it. That principle does not accuse the MAX 10 of being dangerous. It recognizes what 346 deaths should have taught the aviation industry about designing around optimistic assumptions of human rescue.

Browne ended his October 2 discussion with a devastating observation: the more things change at Boeing, the more they appear to remain the same (Browne, 2026). That judgment is his, not an established scientific finding. Yet the historical record gives it uncomfortable weight. Boeing has changed executives, rewritten software, created safety programs, paid billions, endured congressional hearings, entered agreements with prosecutors, and promised cultural reform. Meanwhile, investigators and scholars continue to identify schedule pressure, regulatory dependence, weak employee voice, and the transfer of residual technological risk to human operators.

Boeing should not be convicted in an academic article of crimes that prosecutors never proved. Neither should the absence of a conviction be confused with vindication. The documented record contains corporate admissions, a federal fraud charge, a breached deferred

prosecution agreement, judicial criticism, 346 dead passengers and crew, repeated safety-culture investigations, billions of dollars in penalties and compensation, and continuing questions about how closely the regulated corporation and the regulating government should coexist. The politically responsible conclusion is not that one administration secretly controls Boeing or Boeing secretly controls Washington. It is that American institutions have repeatedly struggled to impose consequences proportionate to the human cost when the corporation involved is economically and strategically indispensable.

And that brings the story back to a flight crew commencing a missed approach in a 737 MAX. The pilots should not have to carry Boeing's institutional history into the cockpit. They should not have to wonder whether an automation deficiency remained because a certification schedule mattered more than eliminating it. They should not have to compensate for correctable software simply because certification analysis says they are capable of doing so. After Lion Air 610 and Ethiopian Airlines 302, Boeing exhausted any reasonable entitlement to institutional benefit of the doubt. The appropriate engineering standard is not “the pilots can handle it.” The standard should be considerably harder: if Boeing knows how to eliminate the defect, eliminate it before asking another flight crew to carry the residual risk.



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