

# **Justice Undone:**

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## **The Release of the Lockerbie Bomber**



**Senator Robert Menendez**  
**Senator Frank Lautenberg**

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**Senator Kristen Gillibrand**

**December 2010**

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# United States Senate

WASHINGTON, DC 20510

December 2010

On August 20, 2009, the Scottish Government – with the acquiescence of the U.K. Government – released Abdelbaset Ali Mohmed al-Megrahi from prison. Mr. al-Megrahi is the terrorist convicted of blowing up Pan Am Flight 103 and taking the lives of 270 people. The release was predicated on the Scottish Government's stated belief that Mr. al-Megrahi would die from advanced prostate cancer within three months. Accordingly, he was released on grounds of "compassion." He was, in the words of Scottish Justice Secretary, "sent home to die."

Yet, as of December 2010, 16 months after his release, Mr. al-Megrahi remains alive, reportedly living in a luxury villa in Tripoli.

Over the past months, we have aggressively pursued a search for answers to two questions. Could medical science have supported Mr. al-Megrahi's three month prognosis? If not, which is clearly in question, what motivated the U.K. and Scottish Governments to release Mr. al-Megrahi? The investigation did not examine questions about the bombing of Pan Am Flight 103 or Mr. al-Megrahi's conviction.

The following report summarizes our findings. We hope that its issuance will spur continued investigation into the medical, political, and commercial elements of the horrendous decision to release an unrepentant terrorist back into the world.

This report does not rely on any classified sources of material.



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## *Methodology*

Senator Menendez, a member of the U.S. Senate Committee on Foreign Relations, led an investigation with Senators Lautenberg, Schumer, and Gillibrand to examine Abdelbaset Ali Mohmed al-Megrahi's medical prognosis, upon which his prison release was based, and the possible motivations for his release. The investigation followed the Senators' unanswered calls for the U.K. Government to conduct a full investigation into the matter. This report contains the findings of the Senators' inquiry. The investigation was carried out using the following methods:

- Senators Menendez, Lautenberg, Schumer, and Gillibrand made numerous inquiries of U.S. agencies, as well as of British and Scottish government officials regarding the process which led to al-Mergahi's release and the factors that may have contributed to his release.
- Staff conducted personal interviews with dozens of substantive experts, including officials from the U.S. Departments of State and Justice, the U.S. Intelligence Community, the U.K. Government, and the Scottish Government. Staff also interviewed U.S. and U.K. prostate cancer specialists, academic experts on Libya and energy policy, and business executives with operations in Libya.
- A staff delegation sent to the U.K. to interview officials from the U.K. and Scottish Governments, as well as other individuals involved with or knowledgeable about the al-Megrahi case. (Given the still-sensitive nature of al-Megrahi's release, many of the individuals interviewed asked that their conversations remain confidential and anonymous.)
- Review of publications, as well as the use of issue-area experts from the Congressional Research Service and other private sector experts.
- On September 29, 2010, Senator Menendez chaired a hearing of the U.S. Senate Foreign Relations Committee to explore al-Megrahi's release. Senator Gillibrand, a member of the Committee, joined in questioning witnesses, and Senator Lautenberg testified at the hearing. The Committee also heard testimony from U.S. Ambassador Nancy McEldowney, Principal Deputy Assistant Secretary of State for European Affairs at the Department of State; Mr. Bruce Swartz, U.S. Deputy Assistant Attorney General for the Criminal Division at the Department of Justice; Dr. James L. Mohler, Senior Vice President for Translation Research & Chair of the Department of Urology at Roswell Park Cancer Center; Dr. Oliver Sartor, Plitz Professor of Cancer Research at Tulane Medical School; and Dr. Geoff Porter, an expert on Libyan affairs.
- Senator Menendez invited Mr. Tony Hayward, former Group Chief Executive of BP; Sir Mark Allen, a consultant to BP and former MI6 agent; the Right Honorable Alex Salmond, Member of the Scottish Parliament and First Minister of Scotland; Mr. Kenny MacAskill, Scottish Cabinet Secretary for Justice; Dr. Andrew Fraser, Scottish Prison Service Director of Health and Care; and the Right Honorable Jack Straw, former British Justice Secretary to testify before the U.S. Senate Foreign Relations Committee. All of these individuals declined to participate or to send representatives to participate in the hearing.

## *Executive Summary*

On December 21, 1988, Pan Am Flight 103 exploded over Lockerbie, Scotland, killing 270 people, 189 of whom were U.S. citizens. Twelve years later, Libyan national, Abdelbaset Ali Mohmed al-Megrahi, was convicted of conspiracy for planting the bomb that brought down Pan Am Flight 103, and was sent to a Scottish prison to serve a life sentence. On August 20, 2009, however, Scottish Government officials released al-Megrahi on grounds of compassion given his diagnosis of prostate cancer and a stated prognosis of three months to live. His release directly contradicted an agreement between the U.S. and U.K. governments that anyone convicted in the terrorist bombing would serve out their term in a Scottish prison. At the writing of this report, almost 16 months later, al-Megrahi is still alive.

In June 2010, United States Senator Robert Menendez (NJ), joined by Senators Frank Lautenberg (NJ), Charles Schumer (NY), and Kirsten Gillibrand (NY), undertook an investigation of al-Megrahi's release. The investigation focused on two critical questions:

- Could medical science have supported al-Megrahi's three-month prognosis?
- If not, what motivated the U.K. and Scottish Governments to release al-Megrahi?

### **I. No Medical Justification for Release on Compassionate Grounds, Political Influence Evident**

The three-month prognosis given to al-Megrahi by Scottish doctors was inaccurate and unsupported by medical science. During the course of this investigation, Scottish officials presented two conflicting factual scenarios: one stating that al-Megrahi did not receive chemotherapy and another stating that he did. Neither scenario supports a three month prognosis.

First, according to prostate cancer experts, his condition at the time of his release did not fit the profile of a patient with just three months to live. He was not bed-ridden nor so physically frail that he could not undergo chemotherapy or other treatments. If, as the Scottish Government states, al-Megrahi had not yet begun standard chemotherapy treatments, then it would be impossible for a three-month prognosis to be accurate. This is because, according to prostate cancer experts, patients in al-Megrahi's condition who are given chemotherapy live on average 17.5 to 19.2 months longer – much longer than the three months to live prognosis given by the Scottish Government.

Even if, as one Scottish official stated, al-Megrahi had actually begun chemotherapy while in Scottish custody, his three-month prognosis was still medically unjustifiable. Not only do such patients live for an average of a year and a half, but there would not have been enough time to determine whether he had responded to chemotherapy before he was released to Libya.

In addition to the inaccurate prognosis, the process used to determine al-Megrahi's compassionate release was incredibly flawed. The Scottish Government consulted well-respected cancer specialists on al-Megrahi's release, but none of them agreed that al-Megrahi

had three months or fewer to live. Instead, the Scottish Government based its decision on the opinion of general practitioners without medical training or expertise in prostate cancer.

These same doctors were clearly involved in political, inter-governmental discussions regarding al-Megrahi, raising questions about whether they were influenced to give an incorrect prognosis through contacts with Libyan officials and doctors. In view of the flawed process, we believe that the Scottish Government simply intended to use compassionate release as political cover for returning al-Megrahi to Libya – regardless of whether his physical condition met the requirements.

## **II. The U.K. and Scotland Had Ample Motivation to Release al-Megrahi, including the threat of commercial warfare by Libya**

Given the obviously flawed medical justification for al-Megrahi's release, this investigation considered the reasons why the U.K. and Scottish Governments might have wanted to return al-Megrahi to Libya. While these governments refused to respond to questions, the investigation revealed that motivations behind releasing al-Megrahi were unique to each government.

The U.K. pushed for the release because of its expanding business ties to Libya. We believe that Scotland was motivated by pressure from the U.K., Libya, and Qatar – as well as its own interest in participating on the international stage.

The U.K. Government played a direct, critical role in al-Megrahi's release. The U.K. has always been protective of its energy companies, especially BP, which has strong historical and economic ties to the government, and it has a history of intervening with foreign governments on behalf of BP. Libyan oil and natural resources were extremely attractive to U.K. energy companies, and, at the time of al-Megrahi's release, BP was negotiating a \$900 million oil exploration deal that would secure a much-needed reliable source of energy for the U.K. Keeping al-Megrahi in prison threatened this oil agreement, as well as other profitable trade deals and investments with Libya.

The threat of commercial warfare was a motivating factor. The U.K. knew that in order to maintain trade relations with Libya, it had to give into political demands. Faced with the threat of losing the lucrative BP oil deal and other commercial ties, the U.K. agreed to include al-Megrahi's release in a Prisoner Transfer Agreement (PTA) with Libya. Around the same time as al-Megrahi's release, the U.K. and Libya were moving forward with other lucrative deals. Normalizing relations with Libya – and al-Megrahi's release – clearly benefited U.K. business interests.

At the same time, we have concluded that a number of political factors played a role in Scotland's decision to release al-Megrahi.

Evidence suggests that U.K. officials pressured Scotland to facilitate al-Megrahi's release. The U.K. communicated to the Scottish Government that there were significant national interests in expanding trade relations with Libya. While Scotland has enjoyed a measure of independence from the U.K. since 1998, the U.K. government retains considerable powers over Scottish affairs. Thus, it would not be surprising that the Scottish Government would be

susceptible to pressure from the U.K. The Scottish Government may also have been influenced by lobbying from the Qatar government and the opportunity act independently on the world stage.

The U.K.'s actions also violated the 1998 Lockerbie Justice Agreement. This agreement, signed by the U.K. and the United States, held that individuals convicted of the Pan Am Flight 103 bombing would serve out their sentences in the U.K. By facilitating al-Megrahi's release, the U.K. Government violated this carefully negotiated agreement and left the families of the Lockerbie bombing victims without justice.

We are bringing forth a series of recommendations to ensure that justice prevails in this matter. They include: the return of al-Megrahi to prison pending an independent assessment of his health; an apology to victims' families by the U.K. and Scottish Governments; and independent investigations into al-Megrahi's release by the U.K. Government and the U.S. State Department.



## ***Report***

### **I. Background**

#### **A. The Bombing of Pan Am Flight 103**

On Wednesday, December 21, 1988, Pan Am Flight 103 was en route from London to New York City when it exploded over Lockerbie, Scotland.<sup>1</sup> On board were 258 people from 20 nations, including 189 U.S. citizens.<sup>2</sup> Forty-eight passengers were U.S. students returning from studying abroad.<sup>3</sup> When the plane crashed, all 258 passengers and crew aboard the plane died, as did 11 residents in the small village of Lockerbie.<sup>4</sup>

The explosion that brought down Pan Am Flight 103 was caused by a bomb in the airplane's baggage compartment.<sup>5</sup> Gale force winds scattered the falling debris, victims, and evidence over 845-square miles of rural Scotland.<sup>6</sup> Evidence collected over the course of the investigation suggested that the bombing of Pan Am Flight 103 was the result of Libyan terrorism.<sup>7</sup>

On November 14, 1991, a U.S. grand jury and Scotland's Lord Advocate accused two Libyans – Abdelbaset Ali Mohamed al-Megrahi and Al Amin Khalifa Fhimah – of conspiring to place a bomb onboard Pan Am Flight 103.<sup>8</sup> Libya denied any knowledge of, or association with, the Pan Am Flight 103 bombing.<sup>9</sup>

#### **B. International Sanctions Lead to Trial Agreement**

On March 31, 1992, the U.N. Security Council passed Resolution 748 declaring that Libya's intransigence constituted a threat to international peace and security and imposed sanctions on Libyan air links, arms purchases, and diplomatic officials.<sup>10</sup> Then, on November

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<sup>1</sup> Helen Kennedy, *Kin of Lockerbie bombing victims bash Scots for releasing Abdelbaset al-Megrahi, who's still alive*, NEW YORK DAILY NEWS, July 18, 2010, available at [http://www.nydailynews.com/news/world/2010/07/18/2010-07-18\\_no\\_longer\\_great\\_scots\\_lockerbie\\_kin\\_bash\\_cowardly\\_act.html](http://www.nydailynews.com/news/world/2010/07/18/2010-07-18_no_longer_great_scots_lockerbie_kin_bash_cowardly_act.html).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> UNITED KINGDOM DEP'T OF TRANS., AIRCRAFT ACCIDENT INVESTIGATION BRANCH, REPORT ON THE ACCIDENT TO BOEING 747-121, N739PA AT LOCKERBIE, DUMFRIESSHIRE, SCOTLAND ON 21 DECEMBER 1988, p. 44 (1990), available at [http://www.aaib.gov.uk/cms\\_resources.cfm?file=/dft\\_avsafety\\_pdf\\_503158.pdf#page=44](http://www.aaib.gov.uk/cms_resources.cfm?file=/dft_avsafety_pdf_503158.pdf#page=44).

<sup>6</sup> Jerry Adler, *The End of Lockerbie*, NEWSWEEK, Aug. 20, 2009, available at <http://www.newsweek.com/2009/08/19/the-end-of-lockerbie.html>.

<sup>7</sup> *Id.*

<sup>8</sup> Indictment, United States v. Abdelbaset Ali Al Megrahi, et al., No. 91-0645 (D.D.C. Nov. 14, 1991) available at [http://www.justice.gov/nsd/foia/reading\\_room/PanAm103-documents.pdf](http://www.justice.gov/nsd/foia/reading_room/PanAm103-documents.pdf).

<sup>9</sup> Letter from the Permanent Rep. of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General (Nov. 17, 1991), U.N. Doc. A/46/660 (Nov. 20, 1991), available at <http://www.un.org/en/documents/index.shtml>. Enter the document number "A/46/660" in "Search by symbol", select "Search", and selected a preferred language to view the document.

<sup>10</sup> S.C. Res. 748, U.N. Doc. S/RES/748 (Mar. 31, 1992) available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/011/07/IMG/NR001107.pdf?OpenElement>.

11, 1993, the Security Council adopted Resolution 883, which banned sales of oil equipment to Libya, and placed a limited freeze on Libyan foreign assets.<sup>11</sup>

In August 1998, the U.S. and U.K. Governments endorsed a trial in the Netherlands under Scottish law, announcing their joint position in a letter agreement (herein after referred to as “the 1998 Lockerbie Justice Agreement”).<sup>12</sup> In it, both nations firmly committed themselves to the position that “if found guilty, the two accused will serve their sentence in the United Kingdom.”<sup>13</sup> The Security Council ratified the agreement when it adopted Resolution 1192 on August 27, 1998.<sup>14</sup> On April 5, 1999, the two suspects were transferred to the Netherlands for trial.

### **C. Trial and First Appeal**

The trial began on May 3, 2000, before a three-judge panel with no jury. Under Scottish law, the judges could find the defendants guilty, not guilty, or not proven, the last being a verdict which releases the defendants without declaring them innocent.

The trial took over six months. The prosecution called 232 witnesses over the course of 72 days. The defense called three witnesses in three days of testimony. On January 31, 2001, the three judges found al-Megrahi guilty and his co-accused, Al Amin Khalifah Fhimah, not guilty.<sup>15</sup>

Al-Megrahi filed an appeal on February 7, 2001.<sup>16</sup> The appeal was heard on January 24, 2002, by a five-judge panel in the Netherlands. The appeal contended that “a miscarriage of justice” had occurred because the trial court misinterpreted some of the evidence presented at trial.<sup>17</sup> On March 14, 2002, the five judges upheld the verdict, and al-Megrahi was transferred to a Scottish prison to serve a life sentence.<sup>18</sup>

### **D. Libya’s Normalization of Relations with the West**

The economic sanctions and international isolation imposed on Libya by the West took their toll on Libya’s senior leadership. By 1998, Libyan leader Colonel Mu'ammr Abu Minyar

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<sup>11</sup> S.C. Res. 833, U.N. Doc. S/RES/883 (November 11, 1993), *available at*

<http://www.un.org/Docs/scres/1993/scres93.htm>.

<sup>12</sup> Letter from the Acting Permanent Reps. of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General, U.N. Doc. S/1998/795, p. 2 (Aug. 24, 1998), *available at* <http://www.un.org/en/documents/index.shtml>. Enter the document number “S/1998/795” in “Search by symbol”, select “Search” and select a preferred language to view the document.

<sup>13</sup> *Id.*

<sup>14</sup> S.C. Res. 1192, U.N. Doc. S/RES/1192 (Aug. 27, 1998), *available at*

<http://www.un.org/Docs/scres/1998/scres98.htm>.

<sup>15</sup> *Lockerbie Crash Timeline*, CNN, Sept. 12, 2003, *available at* <http://www.cnn.com/2003/WORLD/europe/08/14/lockerbie.timeline/>.

<sup>16</sup> *Timeline: Lockerbie Bombing*, BBC NEWS (U.K.), Sept. 2, 2009, *available at*

[http://news.bbc.co.uk/2/hi/uk\\_news/scotland/6236538.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/6236538.stm).

<sup>17</sup> *Lockerbie Bomber Loses Appeal*, BBC NEWS (U.K.), March 14, 2002, *available at*

<http://news.bbc.co.uk/2/hi/1868394.stm>.

<sup>18</sup> *Id.*

al-Qadhafi was “tired of being alone” and wanted to re-engage with the West.<sup>19</sup> For him, normalizing the country’s relationship with the West was a top priority. The first significant step came on April 5, 1999, when Libya agreed to turn over the two Lockerbie suspects to U.K. custody. In the same year, Libya began to distance itself from terrorism by closing terrorist training camps and cutting ties with extremist Islamist groups.<sup>20</sup> Libya further continued in its efforts to emerge from international isolation by accepting responsibility for the Lockerbie bombing.<sup>21</sup> It agreed to compensate victims of the bombing and reiterated its opposition to terrorism in a 2003 letter to the U.N. Security Council. Also, it began negotiations to end its controversial WMD program. Libya’s concessions helped end the international sanctions, which were ultimately lifted by the U.N. in September 2003.<sup>22</sup>

The U.K. led the effort in the West to normalize relations, especially with respect to the Libyan WMD program and economic collaborations between the two countries. It restored diplomatic relations with Libya in July 1999, seven years ahead of the U.S.<sup>23</sup> From the earliest stages of the normalization process, the U.K. worked with Libya to advance its economic interests in the region, including BP investments in Libya.

As early as April 2000, the U.K.’s most senior diplomat, Sir John Kerr, visited Libya to discuss expanding the British Embassy staff there in order to handle potential economic contracts and increasing visa applications.<sup>24</sup> This visit was seen as a signal that the U.K. government wanted to improve its relationship with Colonel Qadhafi’s regime. Initial discussions about BP investment in Libya began in December 2003, when top-level MI6 agents and C.I.A. agents met with Libyan officials at the Travellers Club in Pall Mall, London. BP’s interest in Libya played a “big part” in the meeting.<sup>25</sup> Then, in March 2004, Prime Minister Blair visited Libya, and British officials announced that energy and aircraft contracts between Libya and U.K. firms were already under negotiation. His visit was reportedly followed by a senior commercial delegation, and over the course of the following months and years, U.K. officials and private sector leaders engaged Libyan counterparts as part of a broader competition among European Union member states and other parties to capitalize on Libya’s emergence from international isolation.<sup>26</sup> In May 2007, Prime Minister Blair made another visit to Libya and met with Colonel Qadhafi. It was

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<sup>19</sup> Ron Suskind, *The Tyrant Who Came In From the Cold*, WASHINGTON MONTHLY, Aug. 16, 2003, available at <http://www.washingtonmonthly.com/features/2006/0610.suskind.html>.

<sup>20</sup> *Id.*

<sup>21</sup> Letter from the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2003/818 (Aug. 15, 2003), available at <http://www.un.org/en/documents/index.shtml>. Enter the document number “S/2003/818” in “Search by symbol”, select “Search”, and selected a preferred language to view the document.

<sup>22</sup> S.C. Res. 1509, U.N. Doc S/RES/1506 (Sept. 12, 2003), available at [http://www.un.org/Docs/sc/unsc\\_resolutions03.html](http://www.un.org/Docs/sc/unsc_resolutions03.html) (link titled “Security Council resolution 1506 (2003)).

<sup>23</sup> Letter from William Hague, current U.K. Secretary of State for Foreign and Commonwealth Affairs, to U.S. Senator John Kerry (July 22, 2010).

<sup>24</sup> Michael Evans, *Britain’s top diplomat boosts Libyan links*, THE TIMES (U.K.), Apr. 26, 2000.

<sup>25</sup> Jane Merrick, *Revealed: Blair’s role in Megrahi Release*, THE INDEPENDENT, September 6, 2009, available at <http://www.independent.co.uk/news/uk/politics/revealed-blairs-role-in-megrahi-release-1782523.html>

<sup>26</sup> Jason Allardyce, SUNDAY TIMES, Sept. 13, 2009, available at <http://www.timesonline.co.uk/tol/news/uk/scotland/article6832402.ece>; Kim Wong and Alex Lawler, *BP in early talks with Libya on developing gas reserves, exporting LNG*, 84 PLATTS OILGRAM NEWS 5 (Jan. 9, 2006); *BP set to strike deal on Libya*, THE JOURNAL (U.K.), May 30, 2007.

during this visit that the \$900 million energy exploration deal between BP and the Libyan National Oil Corporation was announced. BP CEO at the time, Tony Hayward, said of the deal, “Our agreement is the start of an enduring, long-term, and mutually beneficial partnership with Libya.”<sup>27</sup>

Additionally, the U.K. worked to normalize relations by negotiating Libya’s abandonment of its WMD program. Specifically, MI6 counterterrorism chief Mark Allen met with Libyan Foreign Minister Musa Kousa and other Libyan officials in an attempt to broker a deal.<sup>28</sup> Shortly after the meeting, on December 18, 2003, Prime Minister Tony Blair spoke by phone with Colonel Qadhafi to discuss plans to announce that Libya had abandoned its WMD program.<sup>29</sup>

### **E. Al-Megrahi’s Importance to the Libyan Government**

For Libya, the Lockerbie matter was all but resolved, with the only obstacle to a normalized relationship between Libya and the West being al-Megrahi’s continued imprisonment in Scotland.

While Libya took formal responsibility for the bombing of Pan Am Flight 103, the country consistently asserted al-Megrahi’s innocence and made his release a central foreign and domestic policy goal.<sup>30</sup> Colonel Qadhafi maintained power in Libya for four decades through tribal politics. Al-Megrahi is a senior member of the Megarha tribe, which has played a central role in Libyan politics.<sup>31</sup> Securing his release was thus critical to ensure that Colonel Qadhafi maintained the Megarha tribe’s continued support.<sup>32</sup> Colonel Qadhafi also desired a politically potent event to celebrate the 40th anniversary of his revolution in Libya. The release of al-Megrahi would give Colonel Qadhafi what he desired: a very public demonstration of the Qadhafi family’s “enduring commitment to Libya’s citizens and the restoration of Libya’s role on the international stage.”<sup>33</sup>

The return of al-Megrahi would also alleviate what Colonel Qadhafi viewed as a lack of appreciation in the West for Libya’s abandonment of weapons of mass destruction.<sup>34</sup> Thus, al-Megrahi’s return would provide Colonel Qadhafi more compensation for the abandonment of the WMD program.

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<sup>27</sup> Parmy Olson, *BP’s Lucky in Libya*, *Forbes* (May 30, 2007), available at [http://www.forbes.com/2007/05/30/bp-libya-gas-markets-equity-cx\\_po\\_0530markets20.html](http://www.forbes.com/2007/05/30/bp-libya-gas-markets-equity-cx_po_0530markets20.html).

<sup>28</sup> Suskind, *supra* note 19.

<sup>29</sup> *Libya agrees to give up banned weapons; Qaddafi to respect nonproliferation treaty*, *FACTS ON FILE WORLD NEWS*, December 25, 2003.

<sup>30</sup> THE AL-MEGRAHI RELEASE: ONE YEAR LATER. HEARING BEFORE THE S. COMM. ON FOREIGN RELATIONS, 111th Congr. (2010) (statement of Mr. Geoff Porter), p. 3, available at <http://foreign.senate.gov/imo/media/doc/Geoff%20Porter%20Testimony%20-%20Final.pdf> (hereinafter “Porter testimony”); *Al-Megrahi is innocent, Libya says*, *CNN*, March 14, 2002, available at [http://articles.cnn.com/2002-03-14/world/lockerbie.reaction\\_1\\_al-megrahi-abdel-basset-lockerbie?\\_s=PM:WORLD](http://articles.cnn.com/2002-03-14/world/lockerbie.reaction_1_al-megrahi-abdel-basset-lockerbie?_s=PM:WORLD).

<sup>31</sup> U.S. Senate Staff interview with Ronald Bruce St. John, *Foreign Policy in Focus* analyst (Sept. 6, 2010).

<sup>32</sup> Porter testimony, at 3; James Cusick, *A Potent Mix of Politics and Oil*, *SUNDAY HERALD* (U.K.), Aug. 16, 2009, available at <http://www.heraldscotland.com/lockerbie-after-the-conspiracies-the-cover-up-1.828961>.

<sup>33</sup> Porter testimony, at 3.

<sup>34</sup> Porter testimony, at 3.

## **II. Al-Megrahi's Compassionate Release Based on a Flawed Prognosis and Process**

Al-Megrahi's release was predicated on an incorrect prognosis, which was generated by a deeply flawed process.

Under Scottish law, a prisoner can be released on compassionate grounds because the prisoner is suffering and near death. Section 3 of Scotland's Prisoner and Criminal Proceedings Act of 1993 provides the power to release prisoners on compassionate grounds.<sup>35</sup> Although the act itself is silent on the issue, the Scottish Government has clarified that a life expectancy of less than three months is appropriate for a prisoner's release.<sup>36</sup> In the case of al-Megrahi, that process was initiated on the prisoner's behalf by the Libyan Government and then evaluated by the Scottish Secretary for Justice. In compassionate release cases, the decision relies heavily on the opinion of medical professionals as to whether the prisoner is truly facing imminent death in a three month time frame. In such evaluations, Scottish legal guidelines call for "a medical opinion that is as clear as possible as to the current level of incapacity and likely life expectancy."<sup>37</sup> Unfortunately, the process used in the case of al-Megrahi was deeply flawed and in turn led to a deeply flawed result.

The three-month prognosis given to al-Megrahi by Scottish doctors was inaccurate and is not supported by medical science. The fact that al-Megrahi remains alive 16 months after his release should make it obvious, even to laymen, that the prognosis was incorrect. Dr. James L. Mohler and Dr. Oliver Sartor, experts in the field of prostate cancer research and treatment, testified before the Senate Foreign Relations Committee that the Scottish prognosis for al-Megrahi of three months to live could not be supported by medical science. Further, an examination of the process Scottish authorities used to arrive at the three-month prognosis reveals that Scottish officials ignored their own prostate cancer experts, none of whom would agree to a three-month prognosis.<sup>38</sup> Rather, authorities relied on Scottish government general practitioners with no prostate cancer expertise. In addition, the process was likely influenced by high-level political discussions concerning al-Megrahi's release. Taken together, these facts suggest that the compassionate release process was skewed to release al-Megrahi early.

### **A. Al-Megrahi's Incorrect Prognosis Not Medically Justified**

#### **1. Al-Megrahi's medical condition at the time of his release does not fit the description of a patient with three months to live.**

The investigation of al-Megrahi's release raised two possible factual scenarios about his treatment and release. The first and official Scottish Government version of events states that al-Megrahi did not receive chemotherapy while in Scottish custody. The second scenario is that al-Megrahi had, in fact, begun to receive chemotherapy while still in custody. The latter scenario is

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<sup>35</sup> Prisoners and Criminal Proceedings (Scotland) Act 1993, ch. 9, sec. 3, *available at* <http://www.legislation.gov.uk/ukpga/1993/9/section/3>.

<sup>36</sup> Governors Healthcare Managers, SPS, Early Release on Licence on Compassionate Grounds, June 6, 2005, *available at* <http://www.sps.gov.uk/MultimediaGallery/7de51399-f515-4f75-810f-19e49a838cb5.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> The Scottish Government, Compassionate Release - Supporting Documentation, Sec. 4(5) ¶3 (July 2009) *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085864.pdf>. "Whether or not prognosis is more or less than 3 months, no specialist 'would be willing to say.'"

supported by statements made by Dr. George Burgess, Deputy Director for Criminal Law and Licensing at the time of al-Megrahi's release, during an interview as part of this investigation. A close examination of both scenarios leads to the same conclusion--that any doctor familiar with prostate cancer would have known al-Megrahi's three-month prognosis was wrong.

**a. Factual scenario one: If al-Megrahi had yet to begin a course of chemotherapy, his three-month prognosis was incorrect.**

Al-Megrahi's physical symptoms did not support a prognosis of three months, and no doctor familiar with prostate cancer could have reasonably made such a prognosis.<sup>39</sup> This is because the only way a prognosis of three months to live would make sense would be if 1) al-Megrahi had undergone all available treatments, including a full course of chemotherapy, and his cancer did not respond; or 2) he were so physically ill and weak that he would not be able to survive any available treatments, such as chemotherapy. According to Scottish officials, he had not yet begun chemotherapy before he was released, so the accuracy of the prognosis rests squarely on al-Megrahi's physical ability to undergo further treatment.

**i. According to Scottish officials, al-Megrahi did not undergo chemotherapy before his release or before the three-month prognosis.**

Scottish officials have maintained that, after failing treatment with hormone therapy, al-Megrahi was not treated with chemotherapy while in their custody. As discussed earlier, al-Megrahi was initially given hormone therapy to attempt to stop the growth of his prostate cancer, but after an initial response to his treatment, al-Megrahi's cancer eventually failed to respond to hormone treatment.<sup>40</sup> According to the testimony of Dr. Sartor and Dr. Mohler, with hormone therapy having failed, the standard of care for continued treatment, if the patient is physically able, would logically be first-line chemotherapy treatments using a drug such as Taxotere. However, a Scottish official recently stated, "It is a matter of public record that Megrahi was not on chemotherapy treatment in Scotland at any point."<sup>41</sup>

**ii. For patients in al-Megrahi's condition, first-line chemotherapy treatments extend life by 1.5 years on average.**

Medical research from as early as 2004 indicates that patients in al-Megrahi's condition live much longer than the three-month prognosis he was given. Two studies in the renowned *New England Journal of Medicine* report a 17.5 to 19.2 month median survival rate for patients with castration resistant prostate cancer, like al-Megrahi, who were treated with the first-line

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<sup>39</sup> THE AL-MEGRAHI RELEASE: ONE YEAR LATER. HEARING BEFORE THE S. COMM. ON FOREIGN RELATIONS, 111th Congr. (2010) (statement of Dr. James L. Mohler) (hereinafter "Mohler statement"), available at <http://foreign.senate.gov/imo/media/doc/Mohler%20Testimony%20-%20Final.pdf#page=1>. "Any physician with any training or experience in treating prostate cancer would have known that a three month prognosis simply could not be made based on Mr. al-Megrahi's clinical situation at the time of diagnosis, the treatment received and the response to that treatment."

<sup>40</sup> The Scottish Government, Compassionate Release - Supporting Documentation, *supra* note 38, at 2.

<sup>41</sup> Paul Gilbride, *Fury at claim Megrahi was given chemo in Scottish Jail*, Express (UK), Sept. 30, 2010, available at <http://www.express.co.uk/posts/view/202658/Fury-at-claim-Megrahi-was-given-chemo-in-Scottish-jail>.



chemotherapy drug Taxotere.<sup>42</sup> Dr. James Mohler testified that even if chemotherapy failed, al-Megrahi could still be treated with three other forms of hormone treatment, an additional form of chemotherapy, or with radiation. Failing those treatments, al-Megrahi could have additionally benefited from new classes of drugs, such as immunotherapy with the drug Provenge. Certainly, failing his first round of hormone therapy was not the end of treatment options available to al-Megrahi.<sup>43</sup> This remains clear 16 months after his release, as al-Megrahi still has not reached the mean survival time for a patient undergoing treatment with chemotherapy.

### **iii. Scottish doctors should have known about life extending treatments.**

It should be noted that the failure to explore the most recent medical treatments available for al-Megrahi is not due to a lack of knowledge or quality care in the U.K. The U.K. is at the cutting edge of prostate cancer research and treatment, and these studies and life extending treatment options should have been well known to a U.K. doctor specializing in oncology or urology.<sup>44</sup> There is no reason why al-Megrahi's doctors should not have been aware of the latest chemotherapy treatment options.

Indeed, as will be discussed further, the Scottish Prison System hired four prostate cancer specialists as consultants for al-Megrahi's treatment. All four of the specialists stated that they would not support a three-month prognosis.<sup>45</sup> It is clear that there is not a lack of knowledge about prostate cancer in Scotland and, therefore, that was not the cause of the flawed prognosis.

### **iv. Al-Megrahi was physically able to undergo chemotherapy.**

If al-Megrahi's physical condition had completely deteriorated, it might be possible to justify a three-month prognosis with the argument that he was unable to survive a treatment like chemotherapy. But this was not the case. At the time of his release, al-Megrahi was seen walking unaided up a flight of stairs to board his plane to Libya, and once he landed he walked unaided from the airplane to a throng of supporters.<sup>46</sup> In fact, the Scottish Government's own medical report notes that al-Megrahi's cancer "did not restrict or remove [his] ability to carry out

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<sup>42</sup> Daniel P. Petrylak, et al., *Docetaxel and Estramustine Compared with Mitoxantrone and Prednisone for Advanced Refractory Prostate Cancer*, 351 NEW ENG. J. MED. 15, 1513 (2004); Ian F. Tannock, et al., *Docetaxel plus Prednisone or Mitoxantrone Plus Prednisone for Advanced Prostate Cancer*, 351 NEW ENG. J. MED. 15, 1502 (2004); Ian F. Tannock, et al., *Docetaxel Plus Prednisone or Mitoxantrone Plus Prednisone for Advanced Prostate Cancer: Updated Survival in the TAX 327 Study*, 26 JOURNAL OF CLINICAL ONCOLOGY 2, 243 (2008).

<sup>43</sup> THE AL-MEGRAHI RELEASE: ONE YEAR LATER. HEARING BEFORE THE S. COMM. ON FOREIGN RELATIONS, 111th Congr. (2010) (testimony of Dr. James L. Mohler), p. 48 (hereinafter "Mohler testimony"). Hearing transcript to be released soon on the U.S. Senate Foreign Relations Committee website, at <http://foreign.senate.gov/hearings/hearing/?id=4cceed6b-5056-a032-5229-6a73904c7998>.

<sup>44</sup> See THE AL-MEGRAHI RELEASE: ONE YEAR LATER. HEARING BEFORE THE S. COMM. ON FOREIGN RELATIONS, 111th Congr. (2010) (testimony of Dr. Oliver Sartor), p. 51; see also Mohler statement, *supra* note 39, at 4, stating that the cutting edge chemotherapy drug Abiraterone was discovered in London.

<sup>45</sup> The Scottish Government, *Compassionate Release - Supporting Documentation*, *supra* note 38, Sec. 4(e).

<sup>46</sup> THE AL-MEGRAHI RELEASE: ONE YEAR LATER. HEARING BEFORE THE S. COMM. ON FOREIGN RELATIONS, 111th Congr. (2010) (statement of Dr. Oliver Sartor), available at <http://foreign.senate.gov/imo/media/doc/Sartor%20Testimony%20-%20Final.pdf#page=1>. Video, available at <http://menendez.senate.gov/newsroom/multimedia/view/?id=284c0c89-7927-4ea3-a5fa-559ab4c5faa0>.

any particular tasks.”<sup>47</sup> A common tool for evaluating a patient’s physical condition is the Eastern Cooperative Oncology Group (ECOG) performance status.<sup>48</sup> Based on al-Megrahi’s demonstrated ability to navigate stairs without aid and his final medical report, Dr. Mohler gave al-Megrahi an ECOG score of 1 out of 5, described as “restricted in physically strenuous activity but ambulatory and able to carry out work of a light or sedentary nature, e.g., light house work, office work.”<sup>49</sup> Dr. Mohler testified that al-Megrahi “clearly was a candidate” for chemotherapy and told our staff that a patient would only be overlooked for chemotherapy treatment if they have an ECOG score of 3 or 4: either being “Capable of only limited self care, confined to bed or chair more than 50% of waking hours” or “Completely disabled”.<sup>50</sup> This demonstrates that al-Megrahi’s physical condition would have made chemotherapy the next logical course of treatment, and that a three months to live prognosis would not be medically justified before such a treatment was pursued.

Not only was his physical condition such that he would have been able to withstand chemotherapy treatments, but al-Megrahi’s non-response to hormone therapy made him an ideal candidate for treatment with chemotherapy. Dr. Mohler testified that the rapid growth of al-Megrahi’s prostate cancer made a response to chemotherapy more likely because chemotherapy is most effective against rapidly dividing cells.<sup>51</sup>

According to Scottish officials, al-Megrahi did not receive chemotherapy while in Scottish custody. A patient in al-Megrahi’s condition could expect to live more than a year and a half after starting chemotherapy. Further, al-Megrahi was not bed-ridden, waiting to die, but was in a physical condition where he would be able to undergo life extending chemotherapy. Because al-Megrahi had yet to receive chemotherapy, there is no reasonable scenario in which a three-month prognosis could have been assigned to him in August 2009.

**b. Factual scenario two: If al-Megrahi had begun chemotherapy treatments, his three-month prognosis was still incorrect.**

Contrary to the official Scottish claims, one source suggested that al-Megrahi may have been receiving chemotherapy treatment in Scottish custody. If al-Megrahi received this life extending treatment, this shows that Scotland released him knowing full well that his three-month prognosis was inaccurate.

This information emerged in a September 16, 2010, meeting conducted in the course of this investigation with a representative from the U.S. embassy, and Dr. George Burgess, the Deputy Director of Criminal Law and Licensing for the Scottish Government at the time of al-

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<sup>47</sup> The Scottish Government, Compassionate Release - Supporting Documentation, *supra* note 38, at Sec. 4(f) ¶3.

<sup>48</sup> Interview by U.S. Senate Staff with Dr. James Mohler (Nov. 30, 2010).

<sup>49</sup> *Id.*; Eastern Cooperative Oncology Group, ECOG Performance Status, available at [http://www.ecog.org/general/perf\\_stat.html](http://www.ecog.org/general/perf_stat.html) (last visited Nov. 30, 2010).

<sup>50</sup> Mohler testimony, *supra* note 43, at 56; Interview by U.S. Senate Staff, *supra* note 48; Eastern Cooperative Oncology Group, ECOG Performance Status, available at [http://www.ecog.org/general/perf\\_stat.html](http://www.ecog.org/general/perf_stat.html) (last visited Nov. 30, 2010).

<sup>51</sup> Mohler statement, *supra* note 39, at 5, stating, “However, his prostate cancer’s rapid growth rate during hormone treatment paradoxically made a response to chemotherapy all the more likely, since chemotherapy works best against rapidly dividing cells. In short, patients with aggressive prostate cancer like Mr. al-Megrahi respond to chemotherapy than those patients with a less aggressive prostate cancer.”



Megrahi's release.<sup>52</sup> Dr. Burgess was intimately involved in the discussions between the Scottish and Libyan Governments, from al-Megrahi's diagnosis in September 2008 onward.

During the meeting, Dr. Burgess was read part of the Scottish Government's document entitled, "Notes of Meeting with the Libyan Government: 22 July 2009." The document notes Dr. Burgess and Dr. Fraser's attendance at a meeting with the Libyan Government and quotes Dr. Andrew Fraser, the Scottish Prison Service Director of Health and Care as saying, "Different treatment options had been discussed and a new treatment option had been embarked upon."<sup>53</sup> Dr. Burgess was asked what the new treatment option was that Dr. Fraser referred to. Dr. Burgess responded, "chemotherapy." So, despite official denials, some in the Scottish Government seem to think al-Megrahi did indeed receive chemotherapy before he returned to Libya.<sup>54</sup>

A patient being treated for prostate cancer with chemotherapy would not be given a three-month prognosis. As previously discussed, a patient receiving first-line chemotherapy treatments should live, on average, between 17.5 and 19.2 months after beginning chemotherapy.<sup>55</sup> Dr. Mohler testified that "one would never give a 3-month prognosis to anyone where you were still trying new active treatments that are likely to extend survival by 18 months or more."<sup>56</sup> The simple fact that al-Megrahi was receiving chemotherapy treatment means a prognosis of three months could not reasonably be made.

Chemotherapy is used to extend life and not provide comfort to patients with only three months to live. Dr. Mohler testified that a patient with less than three months to live is beyond hope for life extending medical treatments. Instead, the patient would only receive palliative end of life care to help treat the patient's pain.<sup>57</sup> While chemotherapy can reduce pain and thus provide comfort, it is not given to patients who are on the verge of death and can't physically handle the chemotherapy's side effects.<sup>58</sup> Under this factual scenario, the fact that al-Megrahi

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<sup>52</sup> Dr. Burgess is not a medical doctor. He received a Ph.D. in Electron Microscopy from the University of Cambridge.

<sup>53</sup> The Scottish Government, Notes of meeting with Scottish Officials and European Minister Alobidi, p. 2 (July 22, 2009), available at <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf><sup>45</sup>.

<sup>54</sup> During a meeting with investigators for this report, Dr. Burgess may have inadvertently revealed that al-Megrahi was being discreetly treated with Abiraterone, a chemotherapy drug that was in clinical trials in London in July 2009. Dr. Burgess said that al-Megrahi required a "cleaning out period" to rid his body of hormone drugs. Cancer specialists have explained that some chemotherapy treatments require the patient's body to be free of hormone drugs before beginning chemotherapy, as there are concerns about adverse drug interaction. In July 2009, Mr. al-Megrahi was indeed taking a hormone drug called DES (Diethylstilboestrol). The only chemotherapy drug that requires a "cleaning out" of DES is Abiraterone. Abiraterone was developed in the U.K. in 2007 and was undergoing clinical trials in London – specifically at the Royal Marsden Hospital – when Mr. al-Megrahi was being treated. Furthermore, our investigators discovered that Dr. David Dearnaley, a lead researcher on Abiraterone, provided a medical assessment of al-Megrahi prior to his release. The fact that Dr. Burgess mentioned the need for a "cleaning out period" suggests that al-Megrahi may have been undergoing an experimental chemotherapy treatment while in Scottish custody.

<sup>55</sup> NEW ENGLAND JOURNAL OF MEDICINE, JOURNAL OF CLINICAL ONCOLOGY, *supra* note 42.

<sup>56</sup> Mohler testimony, *supra* note 43, at 56.

<sup>57</sup> *Id.* at 57.

<sup>58</sup> *Id.* at 56.

was still a candidate for life extending treatments reveals that Scottish officials knew his life expectancy exceeded three months.

Whether al-Megrahi received chemotherapy in Scottish custody or not, it should come as no surprise that he is still alive. If al-Megrahi was indeed receiving chemotherapy treatments while in Scottish custody, as Dr. George Burgess stated, then there would not have been enough time to evaluate his response to treatment. If chemotherapy proved successful, al-Megrahi's doctors should have expected a mean survival time of 17.5 to 19.2 months for a patient in his condition.<sup>59</sup> Conversely, if Scottish official statements are correct and al-Megrahi never received chemotherapy treatments, his physical condition at the time would have made him a prime candidate for future treatment, making it clear that a three-month prognosis was without basis.

## **B. Scottish Medical Release Process Flawed, Possibly Manipulated**

The prognosis that al-Megrahi had three months to live cannot be supported by medical science, but perhaps worse, the process leading to al-Megrahi's three-month prognosis was so deeply flawed at every level that it suggests that getting the correct prognosis was not the ultimate goal. The Scottish Government hired well-regarded prostate cancer and urology specialists. These specialists would not agree that a three-month prognosis was applicable, and the Scottish Government promptly ignored those expert opinions. Instead, the government relied on the opinion of two doctors within the Scottish prison system – doctors without the necessary medical training or experience with prostate cancer to provide an accurate prognosis and doctors who were in a position to be influenced by the political arguments for al-Megrahi's release. The flawed process used to reach such a blatantly unjustifiable prognosis raises the question of whether the Scottish Government intentionally skewed the process in order to reach a flawed conclusion.

### **1. The Scottish medical report reveals that medical experts did not believe al-Megrahi had only three months to live.**

The four specialist consultants cited in the Scottish Government's medical report did not ever provide a prognosis of three months or less to live, as the guidelines stated for a prisoner to receive compassionate release. According to press accounts, the specialists Dr. Fraser consulted were: Dr. Zak Latif, consultant urologist at the Royal Alexandria hospital; Dr. Richard Jones, al-Megrahi's personal oncologist at West of Scotland Cancer Centre; Dr. Geoffrey Orr, the urologist who first diagnosed al-Megrahi; and Dr. Grahame Howard, an oncology consultant at the Edinburgh Cancer Centre.<sup>60</sup> The medical report states that, although there was medical consensus that al-Megrahi's disease was "hormone resistant," none of the four specialist consultants were "willing to say" that al-Megrahi had less than three months to live.<sup>61</sup> Even at face value, the medical report written by Dr. Fraser states that his own team of experts did not agree that al-Megrahi had only three months to live.

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<sup>59</sup> NEW ENGLAND JOURNAL OF MEDICINE, JOURNAL OF CLINICAL ONCOLOGY, *supra* note 42.

<sup>60</sup> Dean Herbert, *Megrahi's doctors: We were not consulted over release*, THE EXPRESS (U.K.), Aug. 16, 2010, available at <http://www.express.co.uk/posts/view/193506/Megrahi-s-doctors-We-were-not-consulted-over-releaseaset-consulted-over-release>.

<sup>61</sup> The Scottish Government, *Compassionate Release - Supporting Documentation*, *supra* note 38, at Sec. 4(f) ¶3.

**a. Scottish medical experts have publicly confirmed that they did not believe al-Megrahi had only three months to live.**

After al-Megrahi's release, the Scottish medical experts cited in the medical report publicly stated that they did not agree with a three-month prognosis. As Dr. Zac Latif told the press, "I deal with prostate cancer all the time and I'm very reluctant to make any kind of prognosis."<sup>62</sup> Dr. Geoffrey Orr, the urologist who diagnosed al-Megrahi, stated, "I would not even attempt to make a prognosis."<sup>63</sup> Additionally, Dr. Grahame Howard has also spoken out against Dr. Fraser's report. He told the press, "I assessed his likely prognosis to be months, maybe many months... I am not surprised he is still alive."<sup>64</sup> These experts--whom the Scottish Prison Service should have relied on to give a prognosis for al-Megrahi--clearly did not support the Scottish medical report's final prognosis.

Further damaging the validity of the report is the revelation that three of the Scottish medical experts were never personally consulted by Dr. Fraser. Dr. Latif told the press, "I was surprised when I heard he was being released, because I wasn't really asked for my opinion ... it's a bit odd."<sup>65</sup> Although al-Megrahi's personal oncologist, Dr. Richard Jones, has refused to comment, Dr. Latif claims that Dr. Jones, too, was never consulted by Dr. Fraser. Additionally, Dr. Orr told the *Sunday Times* that he had not been in touch with prison authorities since his October 2008 retirement.<sup>66</sup> Based on the text of the medical report and the specialists' later statements, it is apparent that the Scottish Government's own specialists did not believe that al-Megrahi had only three months to live. Instead it appears they were used as window dressing to create the impression of a thorough process where none existed.

**b. The Scottish three-month prognosis was based on the opinion of general practitioners without the necessary training or experience to give a prognosis for a cancer patient.**

Scottish officials say the three-month prognosis and the medical report behind it were the responsibility of Dr. Fraser, the Director of Health and Care at the Scottish Prison Service. In response to questions over Dr. Fraser's disregard for his own experts' opinions, a government spokesman said it was Dr. Fraser "who concluded in his report to the Cabinet Secretary for Justice that his clinical assessment was that a three-month prognosis was a reasonable estimate."<sup>67</sup> However, in an interview with U.S. Senate Staff, Dr. George Burgess stated the

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<sup>62</sup> Auslan Cramb and Martin Evans, *Doctors treating Lockerbie bomber claim he was not consulted over his release*, THE DAILY TELEGRAPH (U.K.), August 16, 2010, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/7946881/Doctors-treating-Lockerbie-bomber-claim-he-was-not-consulted-over-his-release.html>.

<sup>63</sup> *Report: Doctors not consulted over sick Lockerbie bomber's release*, MSNBC, Aug. 15, 2010, available at [http://www.msnbc.msn.com/id/38710895/ns/world\\_news-europe/](http://www.msnbc.msn.com/id/38710895/ns/world_news-europe/).

<sup>64</sup> Cramb and Evans, *supra* note 62.

<sup>65</sup> *Id.*

<sup>66</sup> MSNBC, *supra* note 63.

<sup>67</sup> Andrew Alderson, Michael Howie and Philip Sherwell, *Prison doctor who played key role in release of the Lockerbie bomber had no specialist cancer knowledge*, THE TELEGRAPH (UK), Aug. 14, 2010, available at <http://www.telegraph.co.uk/news/uknews/7945828/Prison-doctor-who-played-key-role-in-release-of-the-Lockerbie-bomber-had-no-specialist-cancer-knowledge.html>.

three-month prognosis was actually based on the opinions of Dr. Peter Kay, the primary care doctor at Greenock Prison.<sup>68</sup> Regardless of which doctor's opinion was responsible, it is clear that both doctors ignored the advice of specialists and instead used their own judgment. Neither Dr. Fraser nor Dr. Kay has the training or expertise to provide such a diagnosis.

Dr. Kay and Dr. Fraser are not specialists in oncology or in urology and, accordingly, do not have the technical training to make a prognosis for a prostate cancer patient. According to the General Medical Council, the registration body for doctors in the U.K., Dr. Kay has been registered as a General Practitioner with no specializations since 2006.<sup>69</sup> Since May 23, 1996, Dr. Fraser has been registered as specializing in public health medicine.<sup>70</sup> As a specialist in public health medicine, Dr. Fraser's training would be in preventative health and disease control.<sup>71</sup> It is important to note that Dr. Fraser is not even currently registered as a general practitioner with the General Medical Council.<sup>72</sup> This indicates that he no longer practices medicine, even in the capacity of a general practitioner, let alone as a specialist capable of giving a prognosis for a cancer patient. Thus, both doctors lacked the medical training necessary to provide a prognosis for al-Megrahi.

Furthermore, neither doctor had the professional experience that would give him the ability to provide a reasonable prognosis for al-Megrahi. Dr. Fraser has served as the director of health and care for the Scottish Prison System since 2003. Previously, he held positions related to public health, alcohol misuse, and HIV/AIDS.<sup>73</sup> Although Dr. Fraser has had a successful career in public health, there is no indication that he has worked in prostate cancer treatment or any other related field. Likewise, press accounts suggest that Dr. Kay is relatively inexperienced, in his late 30's, and his primary responsibilities at the prison revolved around drug addiction treatment.<sup>74</sup> Based on his training, there is no reason to think that Dr. Kay could provide an accurate prognosis for al-Megrahi on his own. Without the necessary medical training or experience, neither doctor should have been tasked with providing a prognosis for a prostate cancer patient.

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<sup>68</sup> Interview by U.S. Senate Staff with Dr. George Burgess (Sept. 16, 2010).

<sup>69</sup> General Medical Council: Dr. Peter Kay's Registration, available at <http://www.gmc-U.K..org/>. Follow "Check a Doctor's Registration" hyperlink; then enter "GMC Reference Number" 4507439; then enter "Given Name" Peter; then enter "Surname" Kay (last visited Dec. 18, 2010).

<sup>70</sup> General Medical Council: Dr. Andrew Fraser's Registration, available at <http://www.gmc-uk.org/>. Follow "Check a Doctor's Registration" hyperlink; then enter "GMC Reference Number" 2551766; then enter "Given Name" Andrew Kerr; then enter "Surname" Fraser (last visited Dec. 18, 2010).

<sup>71</sup> National Health Service: Public Health, available at <http://www.nhscareers.nhs.uk/specialtytraining/public-health.shtml>, providing a general overview of specialization in Public Health.

<sup>72</sup> General Medical Council, *supra* note 70.

<sup>73</sup> National Programme for Prisoner Healthcare, Programme Board Members, available at <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/SPSHealth/SPS/members> (last visited Oct. 27 2010); Lorna MacLaren, *The Demon Tightens Its Grip*, HERALD SCOTLAND (U.K.), May 24, 2001, available at <http://www.heraldscotland.com/sport/spl/aberdeen/the-demon-tightens-its-grip-1.186674>; The Scottish Government, Health in Scotland 2001, available at <http://www.scotland.gov.uk/Publications/2002/07/15153/9251> (last visited Dec. 15, 2010); The Scottish Government, Public Health Legislation in Scotland: A Consultation, Annex A: Membership of the Public Health Legislation Review Group, available at <http://www.scotland.gov.uk/Publications/2006/10/23100052/19> (last visited Dec. 15, 2010).

<sup>74</sup> Ben Borland, *Doctor who helped free Lockerbie bomber was 'Rookie GP'*, THE EXPRESS (U.K.), Aug. 15, 2010, available at <http://www.express.co.uk/posts/view/193360/Doctor-who-helped-free-Lockerbie-bomber-was-rookie-GP->

**c. The medical prognosis leading to al-Megrahi's release was possibly influenced by political considerations.**

Dr. Fraser took part in political meetings with high level officials that may have influenced his decision. The Scottish Government defended Dr. Fraser's execution of the medical report by saying that his integrity was "unimpeachable."<sup>75</sup> However, it is clear that Dr. Fraser had been involved in political discussions about al-Megrahi's release. Beginning as early as November 2008, Dr. Fraser was included in meetings with high-level Libyan officials to discuss al-Megrahi's release. In a November 2008 meeting attended by Dr. Fraser, Libyan Deputy Foreign Minister Abdulatti Obidi stated that it would be a "major problem" if al-Megrahi died in a Scottish prison.<sup>76</sup> It was during these meetings that Robert Gordon and Valerie Macniven, two officials with the Scottish Justice and Communities Ministry, told the Libyans and Dr. Fraser that the Scottish Government takes a "humanitarian approach to prisoners in such circumstances," like al-Megrahi.<sup>77</sup> Again, on January 22, 2009, Dr. Fraser attended a meeting in which Libyan officials stressed the importance of al-Megrahi's release, saying al-Megrahi's continued imprisonment would be bad for the relationship between Libya and the UK.<sup>78</sup>

Dr. Kay may have been influenced by this process, as well. By November 2008 – just two months after the diagnosis – Dr. Fraser informed Libyan officials that al-Megrahi's physician, Dr. Peter Kay, would be told to "restore" his relationship with al-Megrahi after the terrorist grew "unhappy" with Dr. Kay.<sup>79</sup> Al-Megrahi was unhappy because Dr. Kay "had not made a sufficient case" to persuade a court to grant his application for interim liberation back in October 2008, when al-Megrahi had first attempted to secure his own release.<sup>80</sup> This clearly demonstrates that Dr. Kay was subject to the pressures of his superior, Dr. Fraser, who was not only aware of the political pressures surrounding al-Megrahi, but seems to have been trying to appease the Libyans in this case.

**d. Libya assembled a team of doctors to influence the prognosis.**

In addition to direct political influence, Libya assembled a political team to weigh-in on al-Megrahi's health and to influence the prognosis. Understanding that a three-month prognosis was necessary for al-Megrahi's release, Libya hired British doctors Karol Sikora and Jonathan Waxman, as well as Libyan oncologist Ibrahim Sharif, to bolster the case for al-Megrahi's compassionate release.<sup>81</sup> As early as November 2008, two months after al-Megrahi's initial

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<sup>75</sup> Chris Mackie, *Pressure mounts on MacAskill to release full Megrahi reports*, THE SCOTSMAN (Scotland), Aug. 10, 2010, available at <http://news.scotsman.com/politics/Pressure-mounts-on-Kenny-MacAskill.6465407.jp>.

<sup>76</sup> The Scottish Government, Notes of Meeting Between Scottish and Libyan Officials, p. 13 (Nov. 18, 2008), available at <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf#page=13> (last visited Dec. 17, 2010).

<sup>77</sup> *Id.* at 16.

<sup>78</sup> *Id.* at 10.

<sup>79</sup> *Id.* at 15.

<sup>80</sup> *Id.*

<sup>81</sup> *Lockerbie cancer specialist defends 3-month prognosis*, THE NEW ZEALAND HERALD, Aug. 16, 2010.



diagnosis, the procedures for compassionate release were discussed between Libyan and Scottish officials.<sup>82</sup>

Libya used these doctors' prognoses in support of its advocacy for compassionate release. Dr. Sikora has since revealed that he was told by the Libyans it would be "helpful" if he could place al-Megrahi's survival at less than three months.<sup>83</sup> Dr. Sikora added, "We were asked to give an outcome and we did."<sup>84</sup> At the time of al-Megrahi's release it was reported that Dr. Sikora and Dr. Sharif had agreed on a three-month prognosis, with Dr. Waxman stating indeterminately that al-Megrahi did not have long to live. Dr. Waxman, founder of The Prostate Cancer Charity, contested the prognoses after al-Megrahi's release, telling the press, "The Scottish Government took its own experts' advice, not mine. I did not say three months and I am not at all surprised to see him still alive."<sup>85</sup>

Despite the Scottish Government's denials, the three doctors' reports were submitted to the Scottish Prison Service before the official Scottish Government's medical report was finalized on August 10, 2009. Specifically, a report by Dr. Sikora was sent directly to Dr. Kay on July 30, 2009. A confidential source confirmed that Dr. Kay read the Libyan report prior to the Prison Service's three month medical prognosis, finalized on August 10th. Although the Scottish government denied that the doctors' reports influenced the decision to release al-Megrahi, they admit that the information was indeed passed along to Dr. Fraser.<sup>86</sup>

## **2. Conclusion: Medical release process was flawed**

In the time since al-Megrahi's release, renowned experts in prostate cancer treatment and research have called Dr. Fraser's three-month prognosis into serious doubt. It remains unclear whether or not al-Megrahi was treated with chemotherapy while in Scottish custody. However, regardless of which theory is true, the fact remains that Dr. Fraser's prognosis of three months was not supportable by either theory, and this fact should have been known by the doctors who treated him. Indeed, four specialists in oncology and urology were cited in the report, but it does not appear that Dr. Fraser took their opinions into consideration when giving a prognosis for the patient. Instead, Dr. Fraser relied either on the opinion of a non-specialist or made the prognosis on his own – something he was not qualified to do in his position as a public health specialist. Furthermore, over the course of ten months leading up to al-Megrahi's release, Dr. Fraser attended multiple meetings with high-level Libyan officials in which the political nature of the case was discussed. This, too, may have affected his ability to make an unbiased decision. The release of al-Megrahi, thus, was based on an incorrect prognosis, a flawed review process, patient diagnoses made by unqualified doctors, and subjected to Libyan political and medical

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<sup>82</sup> Nof Meeting Between Scottish and Libyan Officials (Nov. 18, 2008), p. 13, *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf>.

<sup>83</sup> Paul Gilbride, *Gaddafi's hired doctors didn't sway MacAskill*, THE EXPRESS (U.K.), Sept. 7, 2009, *available at* <http://www.express.co.uk/posts/view/125596>.

<sup>84</sup> *Id.*

<sup>85</sup> Ben Borland, *Cancer Doctor: I warned Lockerbie bomber could survive longer than three months*, SUNDAY EXPRESS (U.K.), July 25, 2010, *available at* <http://www.express.co.uk/posts/view/189039>.

<sup>86</sup> Jamie Doward, *Al-Megrahi doctor: 'I just provided an opinion. Someone else let him go free'*, THE OBSERVER, Aug. 15, 2010.

influences. In short, it appears that the release may not have been truly on compassionate grounds.

### **III. Motivations for the Release of al-Megrahi**

Given the flawed medical release, this investigation considered other explanations for why the U.K. and Scottish Governments would facilitate al-Megrahi's return to Libya. This section analyzes each government's motivations to release al-Megrahi.

#### **A. The U.K. Supported Release to Protect Business Ties and Trade Relations with Libya**

##### **1. Libyan oil and gas were extremely attractive to the U.K., and the U.K. wanted to help its energy companies facilitate deals in the region.**

Since 2000, Libyan oil and natural gas resources have been critically important to the U.K. and much-coveted by U.K. companies, especially BP, which has strong historical and economic ties to the government. Finding new, reliable sources of oil has been critical to the U.K.'s long-term energy security policy due to rising oil prices and increasing demand for oil products. For instance, oil prices rose seven-fold from 2002 to 2008, peaking at \$147 per barrel.<sup>87</sup> Most oil-producing countries had nationalized their oil industries in the 1970's. The resulting scarcity of new areas to explore, coupled with the increasing prices, meant that foreign oil companies, such as BP, coveted the emergence of "elephants" – large, unexplored oil and gas reserves with the potential for enormous returns.<sup>88</sup> As a result, Libya – with its abundant reserves of high quality crude oil – appeared to be an ideal new energy partner for U.K. oil companies. Libya desired Western investment and technology, its oil was cheap to extract and to refine, and its location on the northern coast of Africa was close to European markets.<sup>89</sup> In short, a partnership with Libya would ensure a profitable and much-needed new source of oil for BP.

The U.K. and its energy companies were similarly attracted to Libya's expansive natural gas resources. The U.K. had domestic natural gas reserves in the North Sea, but as production there began to decline in the early 2000's, partnering with Libya would enable the U.K. to lessen its dependence on Russian resources. Additionally, securing new sources of natural gas could also be profitable to the U.K. Therefore, Libyan natural gas was important to U.K. energy security, as well as a source of profit for U.K. companies.

Given the importance of Libyan resources to U.K. energy companies and the U.K. government's willingness to intervene on behalf of their energy companies abroad, it should come as no surprise that the U.K. actively worked to have al-Megrahi released to Libya.

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<sup>87</sup> Rebekah Kebede, *Oil hits record above \$147*, REUTERS, June 11, 2008, available at <http://www.reuters.com/article/idUST14048520080711>.

<sup>88</sup> See TOM BOWER, *OIL: MONEY, POLITICS, AND POWER IN THE 21ST CENTURY* 197 (Grand Central Publishing 2010); Interview by U.S. Senate Staff with Dr. Geoff Porter (August 18, 2010). In other words, to maximize profits BP had to focus on areas that had not been previously explored because of physical or political barriers, which in turn could lead to enormous discoveries, enormous production, and enormous profits

<sup>89</sup> Porter testimony, *supra* note 30, at 2.

### **a. The U.K. government has a history of intervening on behalf of BP.**

When energy companies attempt to access emerging markets like Libya, they often employ the assistance of their home governments. But the U.K. Government in recent years has been willing to intervene on behalf of BP in extraordinary ways. For instance, the U.K. government routinely intervened on BP's behalf with the Kremlin to expand and enhance oil exploration activity in Russia. Such bold, high-level interventions on behalf of a private company can be explained by BP's extraordinarily close ties to the United Kingdom.

### **i. History of ties between BP and the U.K.**

Since 1914, when the government acquired a majority share in BP (then known as the Anglo-Persian Oil Company), BP and the U.K. have been inextricably linked. They remain so today. The oil provided by BP fueled the country's military efforts – its ships, tanks, planes, trucks, and cars – during both world wars. Especially during World War II, the government oversaw almost all aspects of the company. “As the machinery of wartime control expanded, more and more company employees were selected for membership of one committee or another until the mobilization for war was so complete that the seam between the Company, other oil firms, and the government seemed scarcely to exist at all.”<sup>90</sup>

Even after the war, the U.K. remained the majority shareholder of BP until 1967 and continued to own shares until 1995. Today, BP remains important to the U.K.'s economic and political interests. It is the country's largest corporation by value and was the third most profitable oil company in the world.<sup>91</sup> BP employs over 10,000 people in the U.K. and produced £5.8 billion in tax revenue in 2009.<sup>92</sup> BP's dividend payments account for £1 in every £6 paid out in British pensions, making BP's success instrumental to the well-being of millions of British workers. Furthermore, BP executives sit on more government task forces than all other oil companies combined.<sup>93</sup> The company enhances its ties to the government by hiring several politicians and party leaders, especially those with access to high level officials. It hired Anji Hunter, recognized as Prime Minister Blair's “gatekeeper,” to serve as director of communications and Baroness Smith, the widow of former Labour Party leader John Smith, to direct its Scottish Advisory Board.<sup>94</sup> BP's long time CEO, John Browne, was knighted in 2001 and given the title Baron Browne of Madingley.<sup>95</sup>

### **ii. Examples of U.K. intervention on behalf of BP**

As a result of BP's significance in the U.K. economy, government officials frequently assisted the company by securing access to markets that were previously closed for political

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<sup>90</sup> James Bamberg, *The History of British Petroleum Company: Volume 2 The Anglo-Iranian Years, 1928-1954* 200 (Cambridge University Press 1994).

<sup>91</sup> *The Global 2000*, FORBES, April 8, 2009, available at <http://www.forbes.com/2003/07/02/internationaland.html>.

<sup>92</sup> Anthony Reuben, *Why is BP Important to the UK economy?*, BBC, June 10, 2010, available at <http://www.bbc.co.uk/news/10282777>.

<sup>93</sup> Joe Murphy, *Fresh questions over Blair's BP links*, LONDON EVENING STANDARD, July 19, 2007, available at <http://www.thisislondon.co.uk/news/article-654909-fresh-questions-over-blairs-bp-links.do>.

<sup>94</sup> Bower, *supra* note 88.

<sup>95</sup> *Id.* at 236.



reasons. On numerous occasions over the past fifteen years, U.K. officials at the highest levels would, at the request of BP, intervene with foreign governments in order to facilitate BP's commercial dealings in those countries.

For instance, in 1999, to assist BP's deals in Russia, Prime Minister Tony Blair wrote to Russian President Boris Yeltsin to intervene in BP's dispute with a Russian oil company where hundreds of millions of dollars were at stake.<sup>96</sup> Again in 2002, at Lord Browne's request, Prime Minister Blair called Russian President Vladimir Putin, asking him to approve a BP deal to create a new Russian subsidiary in partnership with the Russian oil company TNK.<sup>97</sup> In March 2007, just before Prime Minister Blair's resignation, incoming Prime Minister Gordon Brown traveled to Moscow in an attempt to resolve another business dispute between BP and its Russian partners.<sup>98</sup> In 2008, BP director Peter Sutherland arranged for Prime Minister Brown to call the Kremlin to weigh in on a dispute between BP and its principal Russian partner.<sup>99</sup> U.K. officials also attempted to intervene on BP's behalf in the United States. In 1999, Prime Minister Blair tried to speak with President Clinton when the FTC held up BP's acquisition of Arco in order to resolve the matter.<sup>100</sup> The White House refused.

Given this pattern of government involvement, it should be no surprise that U.K. officials would want to help BP acquire resources in Libya.

## **2. The U.K. knew that in order to maintain trade relations with Libya, it had to accede to Libya's political demands.**

It was in the U.K.'s general economic interest to release al-Megrahi from prison. Libya had a history of putting economic pressure on foreign companies and governments in order to achieve its political objectives. If the U.K. wanted to continue to do business with Libya, it would have to accede to Libyan demands or face economic retaliation.

Libya's use of economic pressure or commercial warfare was well-known to U.K. officials. In fact, the U.K. had been on the receiving end of such pressure in recent history when, in 1971, Libya nationalized all of BP's assets in the country. This extreme measure was in response to what it perceived to be the U.K.'s failure to protect Arab islands in the Persian Gulf from Iranian expansion.<sup>101</sup> Even within the past few years, it was well-recognized that Libya

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<sup>96</sup> *Id.* at 125.

<sup>97</sup> *Id.* at 251.

<sup>98</sup> *Id.* at 405.

<sup>99</sup> *Id.* at 415.

<sup>100</sup> *Id.* at 197.

<sup>101</sup> See "UAE renews calls for talks on disputed islands," *Arabian Business*, May 23, 2009; see also Robert B. von Mehren and P. Nicholas Kourides, *International Arbitrations between States and Foreign Private Parties: The Libyan Nationalization Cases*, THE AMERICAN SOCIETY OF INTERNATIONAL LAW (July 1981), at 483; Winthrop G. Haight, *Libyan Nationalization of British Petroleum Company Assets*, 6 INTERNATIONAL LAWYER 3, 1972, at 541. A diplomatic row between the U.K. and Libya occurred in November 1971, when the U.K. was set to withdraw its forces and grant independence to the sparsely inhabited Persian Gulf islands of Abu Musa, Greater Tunb, and Lesser Tunb. The Iranian Government had agreed to jointly administer Abu Musa with Sharjah, an emirate in the United Arab Emirates. However, the Iranians unexpectedly seized and occupied Greater and Lesser Tunb. Shortly after, on December 7, 1971, the Libyan government nationalized "all the interests and properties of BP in the Hunt/BP deed

engaged in retaliatory commercial warfare against other nations. For instance, in 2008, Swiss authorities arrested Colonel Qadhafi's son, Hannibal, for assaulting a hotel worker in Geneva. In response, Colonel Qadhafi arrested two Swiss businessmen working with Nestle and ABB (two Swiss companies), served closure notices to Swiss businesses operating in Libya, reduced air links between the two nations, and threatened to cut oil supplies.<sup>102</sup> Libya detained the ABB employees for almost two years – even after Hannibal Qadhafi had long been returned to Tripoli.

The U.K. knew that al-Megrahi's continued imprisonment would likely lead to a similar economic retaliation. It was clear to officials that refusing Libya's request could have disastrous implications for British interests. Libyan leaders conveyed as much to the U.K. government in the months leading up to the release. When al-Megrahi was first diagnosed with prostate cancer, notes from a meeting between Libyan officials and Scottish and U.K. authorities show that the Libyans stated that if al-Megrahi died in Scotland, it would be "bad for relations" between the U.K. and Libya and "a major problem."<sup>103</sup> A retaliatory move by Libya would jeopardize negotiations for oil and gas agreements, as well as other potential deals. Indeed, as U.K. Justice Secretary Jack Straw and U.K. Secretary of Foreign and Commonwealth Affairs David Miliband admitted, the BP deal and commercial interests were motivating factors to include al-Megrahi in any Prisoner Transfer Agreement (PTA) between the countries.<sup>104</sup> Thus, U.K. officials knew it would eventually have to give in to demands if it wanted to avoid future problems with Libya.

### **3. These motivating factors led the U.K. to acquiesce to Libyan demands to release al-Megrahi.**

#### **a. After UN sanctions on Libya were lifted, the U.K. acted swiftly to normalize relations and to facilitate oil and natural gas deals.**

In 2003, within months of the sanctions being lifted, U.K. government officials quickly began negotiating with the Libyan Government about potential oil and gas deals for BP and Royal Dutch/Shell. The speed with which these deals were pursued by the oil companies and top U.K. officials reveals how important partnering with Libya was to the U.K.

On December 16, 2003, diplomatic, commercial and intelligence officers from the U.K. Government met with Libyan officials and discussed, in large part, BP's oil and gas interests.<sup>105</sup> Just four months later, in March 2004, Prime Minister Blair traveled to Libya, and British

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of concession" announcing that, "it had nationalized the assets of the British Petroleum Exploration (Libya) Ltd. in retaliation for Great Britain's failure to prevent Iranian occupation of Arab islands in the Persian Gulf."

<sup>102</sup> *Colonel Muammar Gaddafi rages against Switzerland over son Hannibal Gaddafi's Arrest*, THE TIMES (U.K.), July 23, 2008, available at <http://www.timesonline.co.uk/tol/news/world/europe/article4384826.ece>.

<sup>103</sup> The Scottish Government, Notes of Meeting Between Scottish and Libyan Officials, p. 13 (Nov. 18, 2008), available at <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf#page=13>.

<sup>104</sup> Mary Riddell, *Jack Straw Admits Lockerbie Bomber's Release Was Linked to Oil*, THE TELEGRAPH (U.K.), Sept. 4, 2009, available at <http://www.telegraph.co.uk/news/newstopics/politics/6140801/Jack-Straw-admits-Lockerbie-bombers-release-was-linked-to-oil.html>; 12 OCT. 2009, PARL. DEB., H.C. (2009) 27 (U.K.), available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091012/debtext/91012-0005.htm>.

<sup>105</sup> Jane Merrick, *Revealed: Blair's Role in Megrahi Release*, THE INDEPENDENT (U.K.), Sept. 6, 2009, available at <http://www.independent.co.uk/news/U.K./politics/revealed-blairs-role-in-megrahi-release-1782523.html>. A "big part" of the meeting focused on BP's oil and gas interests, according to Jack Straw, who at the time was the U.K. Secretary of State for the Foreign and Commonwealth Office (FCO).

officials announced that oil and aircraft contracts between Libya and U.K. firms were already under negotiation.<sup>106</sup> Specifically, he was referring to a basic cooperation agreement between the British and Netherlands-based company Royal Dutch/Shell and Libya's National Oil Company (LNOC). The agreement was valued between \$292 million and \$637 million, and covered an area spanning 20,000 square kilometers.<sup>107</sup> In 2004, Lord Browne, BP's CEO at the time, visited Libya for direct negotiations with Colonel Qadhafi.<sup>108</sup> Like Royal Dutch/Shell, BP sought bilateral contract negotiations with LNOC, as these agreements were often more lucrative for oil majors than were open-bidding contracts.<sup>109</sup>

Then, in May 2007, Prime Minister Blair announced an unprecedented deal between BP and the Libyan government. It represented the largest commitment of resources in BP's 100-year history – a \$900 million exploration deal that has the potential to be worth billions if exploration is successful.<sup>110</sup> BP's own internal magazine referred to the deal as "BP's biggest exploration deal of its kind."<sup>111</sup> Signed in the presence of the Libyan and U.K. Prime Ministers and BP's chairman, Peter Sutherland, the agreement gave BP the rights to explore 54,000 sq km (21,000 sq miles) – both onshore near the city of Ghadames and offshore in the Gulf of Sirt.<sup>112</sup>

**b. Faced with the threat of losing the lucrative BP oil deal, the U.K. agreed to include al-Megrahi's release in a Prisoner Transfer Agreement with Libya.**

At the same time the U.K. facilitated the oil and gas deals with Libya (2007), the two countries also resumed foreign policy negotiations. In particular, they began to discuss the possibility of a Prisoner Transfer Agreement (PTA), which would outline the parameters for exchanging or transferring prisoners. In fact, in May 2007, the same month that BP signed its agreement with Libya, U.K. officials signed a memorandum of understanding with the Libyan government, calling for an agreement on the PTA to be completed within twelve months.<sup>113</sup> Economic considerations played a key role in the U.K.'s PTA negotiations with Libya. Ultimately, pressure from Libya and BP led the U.K. Government to include al-Megrahi in the agreement.

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<sup>106</sup> Nicholas Watt, *UK firms line up big Libya deals*, THE GUARDIAN (U.K.), Mar. 25, 2004, available at <http://www.guardian.co.uk/politics/2004/mar/25/uk.libya>.

<sup>107</sup> *Shell forges Libyan gas deal*, BBC NEWS (U.K.), May 3, 2005, available at <http://news.bbc.co.uk/2/hi/business/4509827.stm>.

<sup>108</sup> Glen Owen, *MI6 Agent Joined Disgraced BP Boss in Secret Meetings with Gaddafi*, DAILY MAIL (U.K.), Aug. 30, 2009, available at <http://www.dailymail.co.uk/news/article-1209909/So-Governments-role-Lockerbie-deal-MI6-agent-joined-disgraced-BP-boss-secret-meetings-Gaddafi.html>.

<sup>109</sup> Kim Wong and Alex Lawler, *BP in Early Talks with Libya on Developing Gas Reserves, Exporting LNG*, PLATTS OILGRAM NEWS, Jan. 9, 2006; Porter testimony at 3.

<sup>110</sup> Press Release, BP Global, *BP Agrees Major Exploration and Production Deal with Libya* (May 29, 2007), available at <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7033600>.

<sup>111</sup> *Libya: A Commanding Presence on the World Stage*, THE BP MAGAZINE (BP, London, U.K.), Issue 4 2007, at 31, available at [http://www.bp.com/liveassets/bp\\_internet/globalbp/globalbp\\_uk\\_english/reports\\_and\\_publications/bp\\_magazine/STAGING/local\\_assets/pdf/bp\\_magazine\\_issue\\_4\\_2007\\_libya\\_rising.pdf](http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/bp_magazine/STAGING/local_assets/pdf/bp_magazine_issue_4_2007_libya_rising.pdf).

<sup>112</sup> *Id.*

<sup>113</sup> *BP Admits Concerns About Libyan Prisoner Transfer*, USA TODAY, Sept. 4, 2009, available at [http://www.usatoday.com/news/world/2009-09-04-bp-libya-oil\\_N.htm](http://www.usatoday.com/news/world/2009-09-04-bp-libya-oil_N.htm).

At first, the memorandum of understanding was silent on the issue of al-Megrahi's release. But after the Scottish Government voiced its disapproval of al-Megrahi's inclusion in any PTA, the U.K. stated that the memorandum of understanding did not allow for al-Megrahi's release.<sup>114</sup> Following a series of letters in which Scottish First Minister Salmond expressed his concerns to Prime Minister Blair about preferential treatment for al-Megrahi, the U.K. agreed to place restrictions on who would be covered under the PTA.<sup>115</sup> Although it refused to specify al-Megrahi by name, the U.K. agreed that the PTA should be worded to apply only to "prisoner[s] [that have] not been convicted of a criminal offence connected with the destruction of Pan American World Airways Flight 103 on 21 December 1988."<sup>116</sup> This was to be the U.K.'s negotiating position.

However, the U.K.'s stance on this issue faltered once the BP oil deal was implicated in the negotiations. As talks with Libya continued, the al-Megrahi issue became a sticking point, as Colonel Qadhafi's son Saif later described:

For the past seven to eight years we have been trying very hard to transfer Mr. Megrahi to Libya to serve his sentence here and we have tried many times in the past to sign the prisoner transfer agreement (PTA) without mentioning Mr. Megrahi, but it was obvious we were targeting him... The prisoner transfer agreement was on the table all the time. It was part of the bargaining deal with the U.K.... The fight to get the agreement lasted a long time and was very political, but I want to be very clear to your readers that we didn't mention Mr. Megrahi.... At all times we talked about the PTA. It was obvious that we were talking about him. We all knew that was what we were talking about.<sup>117</sup>

When negotiations stalled, BP began to express alarm that its oil deal might be jeopardized by the "slow progress" in finalizing the PTA.<sup>118</sup> BP officials informed the U.K. Government that the continued delay "might have negative consequences for U.K. commercial interests, including ratification of BP's exploration agreement."<sup>119</sup> In fact, BP lobbied Secretary Straw on three separate occasions between October and November 2007, regarding the delay in

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<sup>114</sup> *Bomber's Fate Up for Discussion*, BBC NEWS (U.K.), July 13, 2007, available at [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/6897650.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/6897650.stm); Will Woodward, *Lockerbie: How British Government Changed Its Position on Megrahi*, THE GUARDIAN (U.K.), Sept. 1, 2009, available at <http://www.guardian.co.uk/politics/2009/sep/01/lockerbie-british-government-changed-position>.

<sup>115</sup> *Id.*; Letter from Jack Straw, Secretary of State for Justice, to Kenny MacAskill, Scottish Minister for Justice (July 26, 2007), outlining potential terms for excluding al-Megrahi from PTA.

<sup>116</sup> *Id.*

<sup>117</sup> Lucy Adams, *'I think the Scottish Justice Secretary is a great man. Why be so angry about an innocent man who is dying?'* THE HERALD (SCOTLAND) Aug. 28, 2009, available at <http://www.heraldscotland.com/news/home-news/i-think-the-scottish-justice-secretary-is-a-great-man-why-be-so-angry-about-an-innocent-man-who-is-dying-1.825026>.

<sup>118</sup> *BP warned U.K. of Risk in Delayed Libya Prisoner Deal*, REUTERS (U.K.), Sept. 4, 2009, available at <http://www.reuters.com/article/idUSTRE5832IB20090904>.

<sup>119</sup> *Id.*

PTA negotiations.<sup>120</sup> Two of these contacts involved BP consultant Sir Mark Allen, a former British Secret Intelligence Service MI6 officer who was intimately involved in the negotiations over Libya's WMD disarmament in 2003.<sup>121</sup> The U.K. was on notice that its foreign policy stance threatened potential lucrative deals for one of its largest companies.

For these reasons, in December 2007, the U.K. Government bowed to BP pressure and dropped the exclusion of al-Megrahi from the PTA.<sup>122</sup> Just as it previously helped to save BP deals in Russia and in the U.S., the U.K. again took extraordinary steps to ensure BP's Libyan oil agreement. As Secretary Straw later described, Libyan trade concerns and the BP agreement factored heavily into the PTA decision. "I'm unapologetic about that..." he stated. "And yes, that included trade because trade is an essential part of it and subsequently there was the BP deal."<sup>123</sup> Secretary Miliband described the decision in this way: "There is also an entirely legitimate commercial dimension to our ties [with Libya]. With the largest proven oil reserves in Africa and extensive gas reserves, Libya is a potential major energy source for the future. We work hard to support British business in Libya, as we do worldwide."<sup>124</sup> Had the U.K. negotiating team insisted on a specific exclusion for al-Megrahi in the PTA, "this would have set back our wider national and commercial interests that flowed from normalized relations..."<sup>125</sup>

The oil agreement and Libyan trade relations led the U.K. to finalize the PTA. The protection of BP's interests comes as no surprise given the company's close historical and political ties to the government.

#### **4. Other successful deals around the time of al-Megrahi's release show the positive trade implications of normalizing relations with Libya.**

U.K. officials admitted that they wanted to build a "strong strategic relationship with Libya."<sup>126</sup> In addition to the oil deals, the U.K. stood to profit from an arms agreement and from the influx of Libyan investments. These other deals and the continually expanding trade relations between the two countries were other reasons for the U.K. to push for al-Megrahi's release.

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<sup>120</sup> Hague, *supra* note 23, at 5; David Batty, *Lockerbie Bomber's Release Was Wrong, Says William Hague*, THE GUARDIAN (U.K.), July 24, 2010, available at <http://www.guardian.co.uk/U.K./2010/jul/24/william-hague-lockerbie-bombing-letter>.

<sup>121</sup> Tom Baldwin, *BP Lobbied Jack Straw Before He Changed Mind Over Lockerbie Bomber*, SUNDAY TIMES (U.K.), Sept. 4, 2009, available at <http://www.timesonline.co.uk/tol/news/uk/article6820931.ece>.

<sup>122</sup> *Jack Straw Admits to Deal with Libya: Britain Agreed to Back Down Over Transfer of Prisoners*, DAILY MAIL (U.K.), Sept. 1, 2009, available at <http://www.dailymail.co.uk/news/article-1210000/Jack-Straw-dropped-plan-include-Lockerbie-bomber-prisoner-transfer-agreement-oil-deal-Libya.html>.

<sup>123</sup> Mary Riddell, *Jack Straw Admits Lockerbie Bomber's Release Was Linked to Oil*, THE TELEGRAPH (U.K.), Sept. 4, 2009, available at <http://www.telegraph.co.uk/news/newstopics/politics/6140801/Jack-Straw-admits-Lockerbie-bombers-release-was-linked-to-oil.html>.

<sup>124</sup> 12 OCT. 2009, PARL. DEB., H.C. (2009) 27 (U.K.), at Column 30, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091012/debtext/91012-0005.htm>.

<sup>125</sup> *Id.* at Column 31.

<sup>126</sup> Letter from Philip Hunt, U.K. Parliamentary Under-Secretary of State, to Kenny MacAskill, Scottish Cabinet Secretary for Justice (Aug. 17, 2007), available at <http://www.justice.gov.uk/news/docs/20070817-lord-hunt-to-kenny-macaskill-libya-prisoner-transfer-agreement.pdf>.

In 2008, Libya purchased U.K. military weaponry worth \$18 million from the U.K.<sup>127</sup> Then, in the same month as al-Megrahi's release, U.K. Trade and Investment Agency officials met on numerous occasions with a Libyan army officer to discuss "defence equipment cooperation."<sup>128</sup> Following the release, a single deal of \$165 million was signed between General Dynamics U.K. and Libya for the sale of tactical communications system.<sup>129</sup> Additionally, the Libyan Investment Authority (LIA), which serves as the Libyan Government's sovereign wealth fund, also proceeded with investments in the U.K. following al-Megrahi's release. With at least \$60 billion in capital, the LIA made London its most important office outside of Libya.<sup>130</sup> The LIA committed to a number of investments in the United Kingdom, including London real estate.<sup>131</sup> These investments are in addition to the 2007 agreement that gave the LIA a 3.4% stake in the BP-Libya oil deal.<sup>132</sup>

At the same time that the U.K. benefited from improved trade relations, Libya "punished" other governments that were critical of the decision to release al-Megrahi. For instance, after Canadian Prime Minister Stephen Harper said that he was displeased with the triumphant welcome al-Megrahi received in Tripoli, the Libyan Government cut Petro-Canada's Suncor oil production by 50%, from 90,000 barrels per day (bpd) to 45,000 bpd. Colonel Qadhafi also cancelled plans to visit Canada.<sup>133</sup> While Libya claims that Petro-Canada's production was halved to meet OPEC quotas, no other oil company had its production disrupted.<sup>134</sup>

The U.K.'s strategy seemed to have held true. As long as it acceded to Libyan demands, its trade relations would continue to flourish.

## **B. Scotland's Release Likely Influenced by Pressure from the U.K. and Qatar.**

The Scottish Government has not provided a satisfactory explanation for its decision to release al-Megrahi from prison. Scottish officials refused to testify before the Senate Foreign Relations Committee, and almost all Scottish officials refused to meet with investigators regarding al-Megrahi's release. However, we conclude that a number of political, financial, and economic factors played a role in his release. These include pressure from the U.K., pressure

<sup>127</sup> *Freeing Libyan bomber 'boosted arms talks'*, UNITED PRESS INTERNATIONAL, July 16, 2010, available at [http://www.upi.com/Business\\_News/Security-Industry/2010/07/16/Freeing-Libyan-bomber-boosted-arms-talks/UPI-24251279298306/](http://www.upi.com/Business_News/Security-Industry/2010/07/16/Freeing-Libyan-bomber-boosted-arms-talks/UPI-24251279298306/).

<sup>128</sup> Ben Quinn, *Lockerbie bomber's release linked to surge in U.K. arms deal talks*, THE GUARDIAN (U.K.), July 15, 2010, available at <http://www.guardian.co.uk/uk/2010/jul/15/lockerbie-release-arms-trade-link>.

<sup>129</sup> Andrew Chuter, *Libya Purchases Gear from General Dynamics U.K.*, DEFENSENEWS, May 8, 2010, available at <http://www.defensenews.com/story.php?i=3518749>.

<sup>130</sup> Spencer Swartz, *Libya State Fund To Publish Paper On Its Invest - Fund Head*, DOW JONES INTERNATIONAL NEWS, Jan. 11, 2009, available at [http://libyaninvestment.com/?option=com\\_content&view=article&id=79472&catid=42:libya-news&Itemid=168&fontstyle=f-larger](http://libyaninvestment.com/?option=com_content&view=article&id=79472&catid=42:libya-news&Itemid=168&fontstyle=f-larger).

<sup>131</sup> Elena Moya, *Libya pours millions into City investments*, THE GUARDIAN (U.K.), Aug. 24, 2009, available at <http://www.guardian.co.uk/world/2009/aug/24/libya-pours-millions-into-city>.

<sup>132</sup> Porter testimony at 2.

<sup>133</sup> Porter testimony at 4; Jill Junnola, *Libya curbs Petro-Canada production in apparent retaliatory move*, THE OIL DAILY (Oct. 2, 2009), available at <http://www.allbusiness.com/company-activities-management/company-structures/13233739-1.html>

<sup>134</sup> Jill Junnola, *Libya curbs Petro-Canada production in apparent retaliatory move*, THE OIL DAILY (Oct. 2, 2009), available at <http://www.allbusiness.com/company-activities-management/company-structures/13233739-1.html>.



from the Libyan and Qatari governments to release al-Megrahi, and the Scottish National Party's desire to demonstrate its independence by asserting itself in international affairs.

### **1. U.K. officials likely pressured Scotland to facilitate al-Megrahi's release.**

The U.K. had clear reasons to support al-Megrahi's release. In correspondences with Scotland about al-Megrahi, it repeatedly reminded Scottish officials of the importance of Libya to the U.K.'s national interest. Despite its devolved powers under the Scotland Act of 1998, Scotland was still susceptible to pressure from the U.K.

#### **a. The U.K. communicated to Scotland that there were significant national interests in expanding trade relations with Libya.**

As outlined in Part A, the U.K. had a significant interest in protecting the BP oil deal and its expanding trade relations with Libya. As former Secretary of State for Foreign and Commonwealth Affairs Miliband announced and current Secretary of State William Hague reiterated to the Senate Foreign Relations Committee, the U.K. Government informed Scotland prior to the release that "British interests, including those of U.K. nationals, British businesses and possibly security cooperation, would be damaged – perhaps badly – if Megrahi were to die in a Scottish prison..."<sup>135</sup> In a series of letters between Prime Minister Blair's office, the U.K. Ministry of Justice, and First Minister Alex Salmond's office, U.K. officials reiterated the "national interests" in restarting U.K.-Libyan relations after U.N. sanctions were lifted.<sup>136</sup> In a letter to First Minister Salmond, Mr. Straw, then U.K. Secretary of State for Justice, stressed the importance of normalizing relations with the U.K. when he explained the U.K.'s change of stance regarding the PTA agreement:

"Developing a strong relationship with Libya, and helping it to reintegrate into the international community, is good for the U.K...Libya is keen to co-operate with the U.K. on judicial matters. Developing this co-operation is an important part of the bilateral relationship."<sup>137</sup>

#### **b. In other situations, the U.K. retains considerable power over Scottish affairs**

The Scottish and U.K. governments have claimed that the U.K.'s support for al-Megrahi's release did not affect Scotland's decision. They claim that because compassionate release is a domestic affair under the Scotland Act of 1998, it is completely outside of the U.K.'s jurisdiction. However, in reality, the U.K. has retained considerable power over Scottish affairs.

The Scotland Act of 1998 devolves some authority from the U.K. Government to the Scottish Government but reserves other powers as solely within the province of the U.K.

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<sup>135</sup> Hague, *supra* note 23.

<sup>136</sup> Letter from Jack Straw, Secretary of State for Justice, to Kenny MacAskill, Scottish Secretary for Justice (Dec. 19, 2007), citing "the overwhelming interests for the United Kingdom" as a reason for not mentioning al-Megrahi in the PTA; Resp. letter from Scottish First Minister Alex Salmond to Secretary Straw (Jan. 24, 2008), asking for clarification on the "overwhelming interests"; Resp. letter from Secretary Straw to First Minister Salmond (Feb. 11, 2008), clarifying that the U.K.'s national interests include "developing a strong relationship with Libya..."

<sup>137</sup> *Id.*

Government. The first of these reserved powers is the U.K. Government's right over matters dealing with "immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens."<sup>138</sup> Al-Megrahi was clearly not a British citizen and thus he fell within the U.K. Government's reserved authority over immigration.

Next, the Act stipulates that the U.K. Government holds primacy over matters involving "international relations."<sup>139</sup> It is obvious that al-Megrahi's case involved and affected the U.K.'s international relations, considering Secretary Miliband spoke of trade and diplomatic ties to Libya in relation to al-Megrahi's release.<sup>140</sup> The Libyan Government also made repeated threats that al-Megrahi's death in a Scottish prison would negatively affect U.K.-Libya relations.

Third, the Act confirms that issues reserved by the U.K. Government include national security and terrorism.<sup>141</sup> Al-Megrahi was convicted of bombing an airplane over U.K. territory. There could be no clearer indication of the connection between al-Megrahi and the U.K.'s national security. Additionally, U.K. Foreign Secretary Miliband spoke of U.K.-Libya "security co-operation" in relation to al-Megrahi's release, expressing a clear connection between the U.K.'s national security and al-Megrahi.<sup>142</sup> U.K. Justice Secretary Straw wrote to First Minister Salmond on March 18, 2008, explaining that "national interests" justified "the U.K. Government's abandonment of the agreed negotiating position" regarding the PTA. Secretary Straw saw an unquestionable connection between the U.K.'s national security and al-Megrahi.

Fourth, the Act reserves U.K. authority over its airspace.<sup>143</sup> Any flight from Scotland to Libya would need the approval of U.K. aviation officials.

In fact, if the Scottish Government desired a change to the Scotland Act of 1998, they could not do so unilaterally. To the contrary, this power is retained exclusively by the U.K. Parliament. This includes matters solely in Scottish jurisdiction such as criminal justice, health, and education.<sup>144</sup>

The U.K. Government thus had multiple avenues of legal authority, despite the devolution of some powers in the Scotland Act of 1998, to stop al-Megrahi's transfer back to Libya. For reasons presented earlier – specifically, expanding business ties to Libya – it chose to allow al-Megrahi to be released.

## **2. Preserving its financial interests with Qatar also played a role in Scotland's decision.**

Following al-Megrahi's imprisonment in Scotland, Qatar wrote to the Scottish Government asking for his release. Because Scotland had clear financial interests, both public

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<sup>138</sup> The Scotland Act of 1998, ch. 46, sch. 5, part II, §B(6).

<sup>139</sup> *Id.* at part I, §7(1).

<sup>140</sup> 12 OCT. 2009, PARL. DEB. *supra* note 124.

<sup>141</sup> The Scotland Act of 1998, *supra* note 138, at c. 46, sch. 5, part II, §B(8).

<sup>142</sup> Severin Carrell, *Lockerbie bombing: Government backed Abdelbaset al-Megrahi's release*, THE GUARDIAN (U.K.), Oct. 12, 2009, available at <http://www.guardian.co.uk/U.K./2009/oct/12/lockerbie-bombing-abdelbaset-al-megrahi>.

<sup>143</sup> The Scotland Act of 1998, *supra* note 138 at §E(4).

<sup>144</sup> Scotland Office, Reserved and devolved matters, <http://www.scotlandoffice.gov.uk/scotlandoffice/53.44.html>.



and private, in maintaining a strong investment relationship with Qatar, this request may have influenced Scotland's decision to agree to al-Megrahi's compassionate release.

Qatar made efforts to push for the release of al-Megrahi both in meetings and in correspondence with Scottish officials. On June 11, 2009, First Minister Salmond met with Dr. Khalid bin Mohammed al-Atiyyah, Qatar's Minister for International Cooperation and Acting Minister of Business and Trade; and Khalid Rashid al Hamoudi al Mansouri, Qatar's Ambassador to the United Kingdom, to discuss a series of bilateral issues.<sup>145</sup> During this meeting, Dr. al-Atiyyah said that, "His Highness the Amir wanted him to discuss [al-Megrahi] with the First Minister," and the best "solution" for him. Dr. al-Atiyyah then wrote Kenny MacAskill on July 17, 2009, to stress the importance of al-Megrahi's release. On behalf of the Emir of the State of Qatar and then Chairman of the Arab League, Dr. al-Atiyyah says, "we should be most grateful if your office would exercise its discretion and on compassionate and humanitarian grounds take the necessary measures to remove Mr. al-Megrahi from prison."<sup>146</sup>

In recent years, Scotland had courted Qatari investments and sought to improve trade relations with the small but wealthy Gulf nation. Significant financial arrangements between Qatari and Scottish entities included a 2007 contract for Scotland's largest engineering firm, the Orion Group, to supply 1,000 workers to the \$10 billion Shell Pearl gas development in Qatar;<sup>147</sup> the Royal Bank of Scotland's (RBS) central role in arranging the Royal Bank of Qatar Telecom's sale of \$1.5 billion in senior unsecured notes;<sup>148</sup> and RBS's management of Qatari Diar's \$3.5 billion bond sale.<sup>149</sup> Additionally, recent rumors have emerged that the Qatar Investment Authority is attempting a complete takeover of the Scottish food producer Sainsbury's, worth £9.8 billion.<sup>150</sup>

In addition to these private economic ties, the Scottish Government had consulted with the Scotland-based Islamic Finance Council to explore the use of non-interest bearing Islamic finance mechanisms favored by some Middle East investors as a potential source of capital for a series of infrastructure projects.<sup>151</sup> As part of this effort, First Minister Salmond explored loans from Qatar worth £3 to £4 billion.<sup>152</sup> In response to the criticism, Salmond's office said, "The Scottish Government is in ongoing discussions with the Qatari government, exploring options for a possible visit by the First Minister intended to establish broader business and investment links."<sup>153</sup> While these loans have yet to become reality, it shows that the Scottish Government had reasons to heed Qatar's call for al-Megrahi's release.

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<sup>145</sup> Correspondence and meeting notes are available on The Scottish Government's website at <http://www.scotland.gov.uk/Topics/Justice/legal/lockerbie/correspondence/Qatar>.

<sup>146</sup> *Id.*

<sup>147</sup> *Orion Lands Major Qatar Deal*, SCOTSMAN (U.K.), Apr. 18, 2007.

<sup>148</sup> *Qtel says inaugural bond issue was a huge success*, CPI FINANCIAL, June 3, 2009.

<sup>149</sup> Riva Froymovich, *Qatari Diar Prices \$3.5 Billion Bond Deal*, WALL STREET JOURNAL, July 14, 2010, available at <http://online.wsj.com/article/SB10001424052748704220704575367112762450440.html>.

<sup>150</sup> *Takeover rumours boost Sainsbury's*, METRO, July 8, 2010.

<sup>151</sup> Eddie Barnes, *Salmond targets Qatar for cash*, SCOTLAND ON SUNDAY, Sept. 28, 2008, available at <http://scotlandonsunday.scotsman.com/governmentspending/Salmond-targets-Qatar-for-cash.4535661.jp>.

<sup>152</sup> Michael Settle, *Salmond to visit Qatar in search of billions for new works*, The Herald (Scotland), Sep. 29, 2008, available at <http://www.heraldscotland.com/salmond-to-visit-qatar-in-search-of-billions-for-new-works-1.890657>

<sup>153</sup> Barnes, *supra* note 151.

These written communications and meetings between Qatar and Scotland shortly before Megrahi's release, as well as Scotland's interest in courting Qatari investments, demonstrate the importance of the two nations' financial ties and lead to the conclusion that these interests also played a role in Scotland's decision to release al-Megrahi.

### **3. Mr. al-Megrahi's compassionate release allowed Scotland to demonstrate its political independence by acting on the international stage.**

Scotland used the al-Megrahi controversy to act independently on the world stage. After the Scottish National Party (SNP) was elected to power, there was a concerted push for increasing independence from the U.K., as well as for asserting its powers under the Scotland Act.<sup>154</sup> For instance, the SNP repeatedly called for referendums on Scottish independence.<sup>155</sup>

When the opportunity arose to be involved in the U.K.'s dealings with Libya over al-Megrahi, First Minister Salmond quickly took interest. Upon learning of the U.K.'s Memorandum of Understanding with Libya, First Minister Salmond wrote to Prime Minister Blair informing him of Scotland's jurisdiction over prison matters and asserting Scotland's interest in the matter.<sup>156</sup> In addition, instead of interacting with Libya through U.K. Foreign Office officials, Scotland often interacted directly with the Libyan government. Even after the U.K. ultimately decided to exclude al-Megrahi from any PTA deal, First Minister Salmond continued to push for Scotland's influence over dealings with Libya.<sup>157</sup> The compassionate release option allowed First Minister Salmond to inject Scotland on the international stage, while still appealing U.K. and foreign interests.

Scotland's full motivation for releasing al-Megrahi's is not completely known. Scottish officials refused to testify before the Senate Foreign Relations Committee hearing and almost all Scottish officials refused to meet with investigators regarding al-Megrahi's release. It appears, however, that Scotland had both financial and political interests in al-Megrahi's release.

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<sup>154</sup> Brian Wilson, *Lockerbie bomber: The SNP's Libya stunt has shamed my nation*, THE TELEGRAPH (U.K.) Aug.21, 2009, available at <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/6069329/Lockerbie-bomber-The-SNP-cosying-up-to-Libya-has-shamed-my-nation.html>. "However, the Nationalists crave to be noticed on the international stage by whatever means."

<sup>155</sup> See Severin Carrell, *Alex Salmond waters down plans for Scottish independence referendum*, The Guardian (U.K.), Nov. 30, 2009, available at <http://www.guardian.co.uk/politics/2009/nov/30/alex-salmond-scotland-independence-referendum>.

<sup>156</sup> Letter from Scottish First Minister Alex Salmond to U.K. Prime Minister Tony Blair (June 7, 2007) stating, "At no stage of which I am aware was there any consultation on such an agreement with the Scottish Government, with the Justice Department, or with me as First Minister, prior to the signing of the memorandum. Even if it is to be the position of the UK Government that there is no strict legal requirement for that consultation, it is surely a matter not just of courtesy but of good government that such consultation should have taken place."

<sup>157</sup> See letter from Scottish First Minister Alex Salmond to U.K. Prime Minister Gordon Brown (Oct. 25, 2008) (regarding Colonel Qadhafi's invitation to a U.K. energy summit) available at <http://www.scotland.gov.uk/Resource/Doc/925/0085873.pdf>; see also letter from Jack Straw, U.K. Secretary of State for Justice, to Scottish First Minister Salmond to (Nov. 21, 2008) available at <http://www.justice.gov.uk/news/docs/20081121-jack-straw-to-alex-salmond-prisoner-transfer-agreement.pdf>.

## *Conclusions and Analysis*

- Al-Megrahi's August 2009 prognosis of having only three months to live was incorrect and cannot be justified by medical science. How wrong the prognosis was should be obvious since al-Megrahi is still alive 16 months later. And according to prostate cancer experts who testified before the Senate Foreign Relations Committee, a three-month prognosis was nonsensical since he was well enough to undergo treatments that would, on average, extend his life 17.5 to 19.2 months longer.
- Evidence indicates that Al-Megrahi's medical prognosis was manipulated by officials within the Scottish Government, including the Medical Director of the Scottish Prison Service Dr. Andrew Fraser and Dr. Peter Kay. Scottish officials ignored the advice of Scottish prostate cancer specialists regarding al-Megrahi's prognosis, thereby violating Scottish legal guidelines that call for "a medical opinion that is as clear as possible as to the current level of incapacity and likely life expectancy."<sup>158</sup> Instead, Dr. Fraser relied on his own judgment and that of Dr. Peter Kay for the prognosis. Both doctors are General Practitioners with no specialization, training, or experience in the treatment or prognosis of prostate cancer. Dr. Fraser and Dr. Kay were both aware of al-Megrahi's desire to undergo chemotherapy, which they and medical science knew would extend his life an average of 17.5 to 19.2 months – more than a year beyond the three-month prognosis upon which compassionate release was based. One Scottish official even claimed that al-Megrahi had begun chemotherapy while in Scottish custody.

Dr. Fraser and Dr. Kay were aware of and possibly influenced by 1) medical reports by Libyan-hired doctors that gave a false prognosis of three months and 2) the political and economic consequences of al-Megrahi's death in a Scottish prison. The Scottish Government should explain how it came to formulate such an incorrect prognosis through such a flawed process.

- The Scottish Government took actions that demonstrated that it was at the very least sensitive to Libyan wishes with respect to al-Megrahi's release – dating back to the time he was diagnosed with prostate cancer. In a meeting shortly after al-Megrahi's diagnosis, Scottish officials Robert Gordon and Valerie Macniven held discussions with senior officials from the Libyan and U.K. Governments regarding the convicted terrorist's medical condition and avenues for release. Both Mr. Gordon and Ms. Macniven told the Libyans that the Scottish Government took a "humanitarian approach to prisoners in such circumstances" without any reference to, or concern for, the severity of the crime. Another example includes the Scottish Government's response to al-Megrahi's "unhappiness" with Dr. Kay because the physician wouldn't provide a three-month prognosis in support of the interim liberation application. Instead of defending the doctor and insisting that medical science alone would determine Mr.

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<sup>158</sup> Governors Healthcare Managers, *supra* note 36

al-Megrahi's prognosis, Dr. Fraser and another Scottish Government official simply said that Dr. Kay would need to "restore" his relationship with the patient. The discrepancies in the official Scottish position on the PTA and compassionate release raise significant questions that officials were not willing to answer in the course of this investigation.

- The U.K. Government played a direct, critical role in al-Megrahi's release. It had the ability to prevent the transfer of al-Megrahi based on legal exclusions to the Scotland Act of 1998. The evidence indicates that the U.K. Government chose not to exercise its power because it was deeply concerned about the fate of BP's \$900 million oil deal with Libya, the largest in the company's history, and other commercial ties with Libya. The U.K. Government was also an early participant in discussing all avenues of release for al-Megrahi before and after the convicted terrorist was diagnosed with prostate cancer. Sir Vincent Fean, the U.K.'s Ambassador to Libya, directly participated in an October 2008 meeting with Scottish Government officials and senior Libyan officials to discuss al-Megrahi's "way out," which included compassionate release, interim liberation, and the Prisoner Transfer Agreement.
- BP's lobbying of the U.K. Government had a direct impact on the U.K.'s negotiation of the PTA, which in its original terms excluded al-Megrahi from consideration under the agreement. BP's complete role in the matter remains hidden by both the U.K. Government and BP itself.
- Over U.S. objections, the U.K. Government violated and refused to defend the 1998 Lockerbie Justice Agreement that it signed with the United States. The Agreement calls for any suspects convicted of the Lockerbie bombing to serve out their sentences in the U.K. In doing so, the U.K. Government showed a disregard for the longstanding, cooperative relationship between the U.K. and the U.S.
- The Libyan Government successfully freed al-Megrahi by using commercial warfare. Libyan officials made it abundantly clear to Scottish and U.K. Government officials that al-Megrahi's death in a Scottish prison would be "a major problem" and "bad for relations," a message also delivered through BP officials. Libya's practice of retaliating against unfavorable foreign policy decisions including harassing foreign nationals, foreclosing foreign investment opportunities, and nationalizing foreign assets were well-known by the Scottish and U.K. Governments.

## ***Recommendations***

- While press reports have provided contradictory accounts of al-Megrahi's current health status, we call on the Libyan Government to allow for independent confirmation of his health status and, based on the results of that review, either return al-Megrahi to Scotland or place him in a Libyan prison in conditions comparable to those provided to other convicted murderers.
- We call upon the Scottish and U.K. Governments to apologize to the families of the bombing victims for al-Megrahi's unjustifiable release.
- We call on U.K. Prime Minister David Cameron to proceed with an independent inquiry into al-Megrahi's release. The only way for the U.K. and Scottish Governments to remove the cloud of suspicion hanging over their respective governments is for the Prime Minister to launch an independent inquiry with full subpoena authority into al-Megrahi's release. The inquiry should include a panel of international, independent prostate cancer specialists to examine the medical records of al-Megrahi.
- We call on the U.S. Department of State to launch its own inquiry into al-Megrahi's release and to publicize its findings. The Department should dedicate Foreign Service Officers and independent investigators to exhaustively identify and interview sources to determine how and why al-Megrahi was released.
- We call on the U.S. Intelligence Community to either assist in the U.S. Department of State's inquiry or launch its own inquiry, assigning its officers and using resources at its disposal to fully understand why the Scottish and British Governments would have facilitated the release of a man convicted of killing 270 people including at least one intelligence officer.

## *Appendices*

### **Appendix I: Additional Options for al-Megrahi's Release**

In the time leading up to Scottish Secretary for Justice MacAskill's decision to release al-Megrahi on grounds of compassion, the U.K. Government made it clear to the Scottish Government what Secretary MacAskill's decision ought to be. "Given the risk of Libyan adverse reaction," U.K. Minister Miliband told SNP Ministers in advance of the decision, "the [U.K.] government agreed 'as a matter of policy' that Abdelbaset al-Megrahi should be freed on compassionate grounds because of his terminal cancer."<sup>159</sup>

Although Mr. al-Megrahi was ultimately released on compassionate grounds, the Scottish and U.K. Governments were intimately involved with two other potential release possibilities. Nearly a year before the release, senior representatives from the Scottish, U.K., and Libyan Governments met to discuss "a way out" for al-Megrahi. Two suggestions discussed were (1) an interim liberation or (2) the PTA process.

#### **A. Interim Liberation**

Interim liberation is a concept based on Scottish law which allows a prisoner to petition for release on bail while his or her appeal is pending before a Scottish court. Al-Megrahi applied for interim liberation during the fall of 2007 and was still awaiting the court's decision on his petition when he was diagnosed with advanced prostate cancer in September 2008.

On November 14, 2008, the High Court of Justiciary (Scotland's Supreme Court) denied al-Megrahi's request for interim liberation.<sup>160</sup> The High Court gave several reasons for denying al-Megrahi's petition, including al-Megrahi's relatively good health, in spite of his diagnosis of advanced prostate cancer. The court noted that al-Megrahi, "with the exception of some mild discomfort, remain[ed] at present symptom-free," adding that he was "sleeping and eat[ing] well."<sup>161</sup> In short, they ruled that his health did not necessitate the granting of the petition, especially "against the background of the atrocity of which [he stood] convicted."<sup>162</sup> The High Court noted that Scottish Ministers held the authority to release al-Megrahi on compassionate grounds if he had a life expectancy of less than three months to live, but he did not meet that criterion.<sup>163</sup>

The Libyan Government reacted with frustration and concern, stating in a meeting with Scottish officials that because "the judges had referred to the three month limit, the hands of Ministers would be tied and any application [for compassionate release] would be refused."<sup>164</sup>

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<sup>159</sup> Carrell, *supra* note at 142.

<sup>160</sup> Abdelbaset Ali Mohamed Almegrahi v. Her Majesty's Advocate (2008) HCJAC68 (Scot.), *available at* <http://www.scotcourts.gov.uk/opinions/2008HCJAC68.html>.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Notes of Meeting Between Scottish and Libyan officials, p. 13 (Nov. 18, 2008), *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf#page=13>.

The Libyan officials then threatened that “the situation was bad for relations between the U.K. and Libya” and “it would be a major problem should Mr. al-Megrahi die in prison.”<sup>165</sup> The senior Libyan official at the meeting noted that, beyond al-Megrahi’s health, his “principal concern was for relations between the two countries.”<sup>166</sup>

The Scottish Government’s reaction to Libyan pressure was unfortunate. An official representing the Scottish Government reassured the Libyans by saying that “the criteria for compassionate release refers to 3 months, but that this is not a hard and fast rule.”<sup>167</sup> To make sure the Libyans understood the level of flexibility, the Scottish official “also noted that the judgment on interim liberation did not constrain Ministerial decision making on compassionate release.”<sup>168</sup>

## **B. Prisoner Transfer Agreement**

In November 2008, the U.K. and Libya concluded negotiations on the PTA, with final ratification to follow on April 30, 2009. According to the agreement, a prisoner could be transferred if five conditions were met.<sup>169</sup> They were:

- The prisoner must be a citizen of the receiving country;
- The judgment against the prisoner must be final and there cannot be any outstanding criminal proceedings related to the offence;
- The prisoner must have at least six months remaining in the sentence;
- The act or acts for which the prisoner stands convicted must also be considered criminal under the laws of the receiving country;
- Both the transferring and receiving countries must agree to the transfer.

Al-Megrahi did not meet these conditions because there were two outstanding appeals in his case. One appeal was by the Scottish Crown Office, which sought to appeal the reduction of al-Megrahi’s sentence. The second appeal was filed by al-Megrahi himself after the Scottish Criminal Case Review Commission referred his case to the Scottish High Court of the Justiciary.<sup>170</sup>

Nonetheless, on May 5, 2009, the Libyan Government submitted an application for prisoner transfer. In it, the Libyan Government highlighted al-Megrahi’s written statement that he would abandon his appeal before the High Court in an attempt to show compliance with PTA

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Notes of Meeting Between Scottish and Libyan Officials, p. 15 (Nov. 18, 2008), *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf#page=15>.

<sup>168</sup> *Id.*

<sup>169</sup> Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Great Socialist People’s Libyan Arab Jamahiriya on the Transfer of Prisoners, U.K.-Libya, Jan. 2009, *available at* <http://www.official-documents.gov.uk/document/cm75/7540/7540.pdf>.

<sup>170</sup> Abdelbaset al-Megrahi publishes Lockerbie Appeal Documents Online, THE GUARDIAN (U.K.), Sept. 18, 2009, *available at* <http://www.guardian.co.uk/world/2009/sep/18/megrahi-lockerbie-appeal-documents>.

conditions.<sup>171</sup> Though the effort was insufficient – the Scottish Crown Office still had its appeal pending and its prosecutors were independent of Scottish Ministers’ political desires – the Scottish Government moved ahead in its consideration of the PTA application. One Scottish official justified the acceptance of the application by saying that “the process of application [can] begin even if all the conditions for transfer [e.g. the requirement for finality] were not met at the point the application was made.”<sup>172</sup>

After allowing the application to proceed, the Scottish Government took three steps in considering the PTA application: 1) determining whether the release violated international agreements, 2) negotiating the mechanics of the transfer process, and 3) conducting stakeholder meetings.

### **1. Adherence to International Agreements**

In 1998, the U.K. and U.S. Governments signed a joint letter to the U.N. referred to as the 1998 Lockerbie Justice Agreement, calling for those found guilty of the bombing of Pan Am Flight 103 to serve their sentence in the U.K.<sup>173</sup> Subsequent letters from the UN Secretary General to the Libyan Government – and Libyan letters in response – showed a clear commitment to, and understanding of, that fundamental agreement.<sup>174</sup>

The Scottish Government, aware of the 1998 Lockerbie Justice Agreement’s relevance, sent the U.K. Government a letter seeking clarification of the agreement’s impact on al-Megrahi’s PTA application.<sup>175</sup> Specifically, it wanted the U.K. Government to confirm whether the agreement prevented the transfer request from being considered and whether any commitments were made to the U.S. Government to that effect. Despite its unequivocal commitment in 1998 to the U.S. Government, the U.K. Government now claimed that it “did not give the U.S. an absolute commitment in relation to the future imprisonment of the Lockerbie accused.”<sup>176</sup> Subsequent conversations between the Scottish and U.S. Governments, however, led to an opposite conclusion: the U.S. Government consistently and resolutely believed that releasing al-Megrahi would be in violation of the 1998 Lockerbie Justice Agreement.<sup>177</sup>

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<sup>171</sup> Letter from Libyan Secretary of European Affairs to Scottish Ministers (May 5, 2009), officially requesting a Prisoner Transfer Agreement, p. 2 (May 5, 2009), *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085334.pdf#page=2>.

<sup>172</sup> Notes of Meeting Between Scottish and Libyan Officials, p. 15 (Nov. 18, 2008), *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085862.pdf#page=15>.

<sup>173</sup> Letter from the Acting Permanent Reps. of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General, U.N. Doc. S/1998/795, p. 2 (August 24, 1998), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/247/28/IMG/N9824728.pdf?OpenElement>.

<sup>174</sup> Letter from Dr. Burgess to Redacted, p. 2 (June 22, 2009), *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085873.pdf#page=2>.

<sup>175</sup> *Id.*

<sup>176</sup> Letter from Redacted to Dr. Burgess, p. 2 (July 3, 2009), *available at* <http://image.guardian.co.uk/sys-files/Politics/documents/2009/09/01/burgesslibya010909.pdf>.

<sup>177</sup> THE AL-MEGRAHI RELEASE: ONE YEAR LATER. HEARING BEFORE THE S. COMM. ON FOREIGN RELATIONS, 111th Congr. (2010) (statement of Amb. Nancy McEldowney), *available at* <http://foreign.senate.gov/imo/media/doc/McEldowney%20Testimony.pdf#page=3>. The United States unequivocally



## 2. The Mechanics of the Transfer Process

Once Libya submitted the PTA application, responsibility for its consideration fell to the Scottish Ministry of Justice. It became incumbent upon Scottish Justice Secretary Kenny MacAskill to ensure that al-Megrahi met all of the requirements of the PTA. Throughout May, June, and July of 2009, Scottish officials corresponded frequently with their Libyan counterparts to ask questions and request clarification about al-Megrahi's potential transfer to Libya under the agreement. Subsequent letters went back and forth between the parties to clarify remaining questions. This back-and-forth culminated in a letter from Libya to Scotland on July 25, 2009, with all of the final documentation necessary to finalize the PTA application.<sup>178</sup>

## 3. Stakeholder Meetings

Secretary MacAskill met with various stakeholders regarding al-Megrahi's prospective release and solicited their views on the PTA application. On July 1, 2009, Secretary MacAskill first met with family members of victims from the U.K. The principal concern of these individuals was that al-Megrahi would return to Libya without his outstanding appeal being considered.<sup>179</sup> These families were upset that dropping the appeal would leave unresolved their lingering doubts about al-Megrahi's guilt.

On July 9, 2009, Secretary MacAskill held a video conference with families of victims from the U.S. The U.S. families were upset that al-Megrahi was under consideration for a prisoner transfer and were virtually unanimous in their opinion that al-Megrahi should not be sent back to Libya.<sup>180</sup> These same sentiments were echoed by the families of the eleven victims from Lockerbie, Scotland.<sup>181</sup>

On August 6, 2009, Secretary MacAskill met with al-Megrahi himself.<sup>182</sup> Secretary MacAskill's decision to do so brought condemnation by the Scottish Parliament for his choice. As the Justice Committee of the Scottish Parliament concluded in its report on the matter:

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expressed its position that a transfer of al-Megrahi would violate the political understanding reached between the U.K. and U.S. when they signed the 1998 Lockerbie Justice Agreement.

<sup>178</sup> Resp. letter from Libyan Ambassador Jelban to Dr. Burgess (June 2, 2009) (re Initial Questions on Consideration of PTA Application); Letter from Dr. Burgess to Jelban (June 16, 2009) (re Invitation for Libyan Govt to Make Representations on PTA Application); Resp. Ltr. from Libyan Ambassador Jelban to Dr. Burgess (June 18, 2009) (re re Enforcing Full Sentence); Letter from Burgess to Jelban (June 22, 2009) (re Question About Conditional Release of Megrahi); Resp. letter from Libyan Ambassador Jelban to Dr. Burgess (June 25, 2009) (re Conditional Release of Megrahi); Ltr. from Libyan Ambassador Jelban to Dr. Burgess (July 25, 2009) (re Packet with Megrahi's Dropped Appeal, Legal Opinion on UN Agreement & Libyan Position Paper). All letters are *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085888.pdf>.

<sup>179</sup> Notes of Meeting with Scottish Officials and Families of U.S. Victims re Megrahi's PTA Application, p. 4 (July 9, 2009) *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085963.pdf#page=14>.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Notes of Meeting with Scottish Officials and Megrahi re Megrahi's PTA and CR Applications, p. 14 (Aug. 8, 2009) *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085963.pdf#page=14>.

It was inappropriate for the Cabinet Secretary to visit Mr. al-Megrahi in prison. These members are clear that Mr. MacAskill was under no obligation in terms of the PTA process to offer a prisoner a face-to-face meeting.<sup>183</sup>

When Secretary MacAskill announced his decision to release al-Megrahi, he stated that he had rejected Libya's PTA application on the grounds "that the American families and Government either had an expectation, or were led to believe, that there would be no prisoner transfer and the sentence would be served in Scotland."<sup>184</sup> Secretary MacAskill failed to mention, of course, that the PTA application could neither have been considered nor rejected because there was an outstanding appeal by the Scottish Crown Office over which he had no control. Regardless of the method, however, the final outcome was the same as Secretary MacAskill announced, at the same time he denied the PTA application, that al-Megrahi would be released on compassionate grounds. This sudden shift in position with no clear explanation and based on a completely flawed medical process raises significant questions that Scottish officials refused to answer as part of this investigation.

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<sup>183</sup> Scottish Parliament Justice Committee Report re Megrahi Release, p. 9, 3rd Report 2010, *available at* <http://www.scottish.parliament.uk/s3/committees/justice/reports-10/jur10-03.htm>.

<sup>184</sup> *Id.* MacAskill heard direct testimony to this effect from U.S. officials and the families of some of the U.S. victims of the Pan Am 103 bombing. An August 1998 joint letter from the governments of the United States and the United Kingdom to the United Nations Secretary General proposed terms for Mr. Al Megrahi's original trial in The Netherlands and stated, "If found guilty, the two accused will serve their sentence in the United Kingdom." The United Kingdom states that it did not give any formal representation to the United States that the entirety of any imposed sentence would be served in the United Kingdom. It does not consider the 1998 letter to be a binding commitment. In response to a request from a recently concluded Scottish parliamentary inquiry, the Obama Administration declined to offer any documentation indicating that any other such formal commitment was made by U.K. officials regarding Mr. Al Megrahi.

## Appendix II: Response to the Claims of the U.K. and Scottish Governments

Though unwilling to testify or cooperate fully with this investigation, both the U.K. and Scottish Governments have offered a variety of justifications for releasing al-Megrahi and responses to criticism regarding both the process and the decision itself. This section summarizes those rationales and provides information found during the course of this investigation regarding those claims.

### A. Claim: The U.K. Had No Ability to Stop the Transfer of al-Megrahi

The U.K. Government has repeatedly claimed that they had no ability to stop the transfer of al-Megrahi, as the decision was exclusively the Scottish Government's. They cite the Scotland Act of 1998 which devolved judicial authority from the U.K. Government to the Scottish Government. This argument is legally incorrect because there were legal mechanisms in place for the U.K. Government to stop the transfer.

The Scotland Act of 1998 devolves some authority from the U.K. Government to the Scottish Government, but reserves other powers as solely within the province of the U.K. Government. The first of these reserved powers is the U.K. Government's right over matters dealing with "immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens."<sup>185</sup> Al-Megrahi was clearly not a British citizen, and thus he fell within the U.K. Government's reserved authority over immigration.

Next, the Act stipulates that the U.K. Government holds primacy over matters involving "international relations."<sup>186</sup> It is obvious that al-Megrahi's case involved and affected the U.K.'s international relations, considering U.K. Minister Miliband spoke of "trade and diplomatic ties to Libya" in relation to al-Megrahi's release.<sup>187</sup> The Libyan Government also made repeated threats that al-Megrahi's death in a Scottish prison would negatively affect U.K.-Libya relations.

Third, the Act confirms that issues reserved by the U.K. Government include national security.<sup>188</sup> Al-Megrahi was convicted of bombing an airplane over U.K. territory. There could be no clearer indication of the connection between al-Megrahi and the U.K.'s national security. Additionally, U.K. Foreign Secretary Miliband spoke of U.K.-Libya "security co-operation" in relation to al-Megrahi's release, expressing a clear connection between the U.K.'s national security and al-Megrahi.<sup>189</sup> U.K. Justice Secretary Straw wrote to First Minister Salmond on March 18, 2008, explaining that "national interests" justified "the U.K. Government's abandonment of the agreed negotiating position" regarding the PTA. Secretary Straw saw an unquestionable connection between the U.K.'s national security and al-Megrahi.

In the same section of the Act as the national security provision, the U.K. Government has authority over special powers for dealing with terrorism.<sup>190</sup>

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<sup>185</sup> The Scotland Act of 1998, *supra* note 138.

<sup>186</sup> *Id.* at part I, §7(1).

<sup>187</sup> Carrell, *supra* note 159.

<sup>188</sup> The Scotland Act of 1998, *supra* note 138, at ch. 46, sch. 5, part II, §B(8).

<sup>189</sup> Carrell, *supra* note 187.

<sup>190</sup> The Scotland Act of 1998, *supra* note 138.

Finally, the Act reserves U.K. authority over its airspace.<sup>191</sup> Any flight from Scotland to Libya would need the approval of U.K. aviation officials.

The U.K. Government thus had multiple avenues of legal authority, despite the devolution of some powers in the Scotland Act of 1998, to stop al-Megrahi's transfer back to Libya. For reasons presented earlier – specifically, expanding business ties to Libya – it chose to allow al-Megrahi to be released.

### **B. Claim: The Consideration of al-Megrahi's Application for Compassionate Release and the Prisoner Transfer Agreement Were Totally Unrelated**

U.K. and Scottish Government officials have claimed that the process of compassionate release and the PTA were completely separate.<sup>192</sup> A Scottish Government spokesman told the press that issues related to the prisoner transfer agreement are “negotiated by the governments of the U.K. and Libya, and therefore have nothing to do with the decision on compassionate release which is a totally different process, based on entirely different criteria.”<sup>193</sup> In reality, the two processes were completely intertwined, considered together, and cannot be separated.

As a preliminary matter, Secretary MacAskill made both decisions regarding compassionate release and the PTA applications. Secretary MacAskill stressed his sole responsibility in the decision-making process in an August 20, 2009, statement stating, “Let me be absolutely clear. As Cabinet Secretary for Justice in Scotland it is my responsibility to decide upon these two applications.”<sup>194</sup>

Not only were both the decisions on PTA and compassionate release made by the same person, but the decisions were made at the same time and discussed in the same meetings with U.K., Scottish, and Libyan Government officials. Consider that:

- On October 27, 2008, weeks after al-Megrahi's diagnosis, senior representatives from the Scottish, U.K., and Libyan Governments met to discuss “a way out” for al-Megrahi.<sup>195</sup> Present at the meeting was the U.K. Ambassador to Tripoli, Sir Vincent Fean; two senior Scottish Government officials (Robert Gordon and Valerie Macniven); and three senior Libyan officials, to include Musa Kousa along with Libya's Minister for Europe and Ambassador to the U.K. The three governments discussed the avenues of release including the PTA and compassionate release.
- In an August 17, 2009, letter to Qatari officials, Secretary MacAskill said, “I am now considering [the compassionate release] application in parallel with the application submitted

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<sup>191</sup> The Scotland Act of 1998, *supra* note 138, at §E(4).

<sup>192</sup> *Lockerbie bomber's release 'a mistake' says British ambassador*, TELEGRAPH (U.K.), July 16, 2010, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/7893757/Lockerbie-bombers-release-a-mistake-says-British-ambassador.html>.

<sup>193</sup> *Id.*

<sup>194</sup> The Scottish Government, Kenny MacAskill - Decisions on the applications for prisoner transfer and compassionate release in relation to Abdelbaset Ali Mohamed Al-Megrahi, <http://www.scotland.gov.uk/News/This-Week/Speeches/Safer-and-stronger/lockerbidecision> (lasted accessed Sept. 16, 2010).

<sup>195</sup> The Scottish Government, Notes of Meeting Between Scottish and Libyan Officials (Oct. 27, 2008), p. 16 available at <http://www.scotland.gov.uk/Resource/Doc/925/0085335.pdf>.

by the Libyan Government for transfer under the terms of the Prisoner Transfer Agreement.”<sup>196</sup>

- Secretary MacAskill discussed both the PTA and compassionate release applications with al-Megrahi during their August 6, 2009, meeting in HM Greenock Prison. Secretary MacAskill told al-Megrahi that he received his application for compassionate release and was considering it “in parallel” with the prisoner transfer agreement, aiming to have a decision on both at the same time.<sup>197</sup> Secretary MacAskill made decisions on both applications on the same date and published his decisions in one document on August 20, 2009.<sup>198</sup>
- When Secretary MacAskill announced his decision to free al-Megrahi on grounds of compassion, he cited medical evidence originally provided in the prisoner transfer application.<sup>199</sup>

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<sup>196</sup> Resp. Ltr. from MacAskill to Qatari Minister of State re Status of Megrahi PTA, p. 1 (Aug. 17, 2009) *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085972.pdf#page=1>.

<sup>197</sup> Notes of Meeting with Scottish Officials and Megrahi re Megrahi's PTA and CR Applications (August 8, 2009) *available at* <http://www.scotland.gov.uk/Resource/Doc/925/0085963.pdf#page=14>.

<sup>198</sup> Kenny MacAskill, Secretary, Scotland Justice Ministry, Decisions On the Applications for Prisoner Transfer and Compassionate Release in Relation to Abdelbaset Ali Mohamed Al-Megrahi (Aug. 20, 2009), *available at* <http://www.scotland.gov.uk/News/This-Week/Speeches/Safer-and-stronger/lockerbidecision>.

<sup>199</sup> Statement by Cabinet Secretary for Justice Kenny MacAskill, The Scottish Government (Aug. 20, 2009), *available at* <http://scotland.gov.uk/News/This-Week/Speeches/Safer-and-stronger/lockerbidecision>.

### **Appendix III: Testimony for the Record - The Families of the Victims**

To the Committee:

My name is Susan Cohen. I am the mother of Theodora Cohen who died in the Pan Am 103 bombing when she was twenty years old. I welcome these hearings. I have never believed that Megrahi's release had anything to do with compassion. Compassion is a saintly virtue. Megrahi's release can be traced to far more devilish motives. Greed, chiefly. A corrupt British government, fueled by British Petroleum's eagerness for oil profits decided to get Megrahi out of prison one way or another. If not a prison transfer, then compassionate release. If they could have gotten away with it they would have put Megrahi in a box tied with ribbons and hand-delivered him to Ghadafi. The price of bringing Ghadafi into the so-called community of nations has been a collapse of any policy that isn't total appeasement. Ghadafi has done horrible things, and to this day his regime's human rights record is one of the worse in the world. But governments bow and scrape to him, flatter him, give him what he wants. And he wanted Megrahi. Never mind that Megrahi was a convicted mass murderer, that Lockerbie was the worst mass murder in British history, in Scottish history, and until 911 the worst act of terror against civilians in United State history. Megrahi was released, presumably to die within three months. He received a hero's welcome in Libya, is alive today and lives in luxury in Tripoli. Why did we ever both with the trial in the first place?

This situation is absolutely appalling. A cynical move; government at its worst. Two hundred seventy people died gruesome deaths when Pan Am 103 was bombed. My daughter's body landed in a sheep meadow miles from the plane. All her bright promise gone in an instant. and my life ruined. I blame Bush and Cheney for initiating the policy of appeasement towards Ghadafi. I blame Tony Blair, now so cozy with Ghadafi that he stays in Ghadafi's palace and advises companies on how to do business with Libya.: for a price, of course. And this from a Britain which was remarkably brave in World War II. As for my own government, Obama has continued the Bush policy. We were lied to when we were told our government was taken by surprise at Megrahi's release. The Le Baron letter makes clear our government knew in advance, and though we would have preferred Megrahi to remain in jail our weak tepid response showed the Brits they had nothing to fear from us if he was released. From the time Obama ( and I supported him and donated to his campaign) became president, several of the families tried to get a meeting with Secretary of State Clinton to encourage our government to work hard to keep Megrahi in prison. A tough America might have been able to force the British to keep Megrahi in prison. We never got our meeting. We were not even given a contact person high in the Administration to talk to. The Obama Administration claims it's in touch with the families. Not so. it is only in touch with some of the families. it should be in touch with the rest of us.

Megrahi in prison was merely a sliver of justice. Now we don't even have that. And nothing was ever really done to punish Ghadafi. And how could the bombing have taken place without his approval? So what have we become, we Americans? Would we stand up to Hitler? Would we stand up to the Soviet Union or China? I am not at all sure. If we are willing to kiss the feet of a tinpot tyrant like Ghadafi because all we care about is money, we'll cave in to more powerful nations when the moment's right. That's what happens to nations who make money their God.

Susan Cohen  
Cape May Court House, New Jersey

Dear Senator Menendez,

My first husband Bill Daniels was killed on board Pan Am 103 December 21, 1988. I followed the Scottish trial in the Netherlands very closely. I was living in NJ at that time and could get to the closed circuit tv's set up by the Scots for us to view the trial in NYC. Four times I flew over to the Netherlands and was there in person when the first Scottish panel of judges found Mr. Megrahi guilty of mass murder. Later, he appealed his conviction and I was there for much of that appeal, and likewise was present in Zeist, Holland, when he was AGAIN found guilty by another panel of Scottish judges, and lost his first appeal. I have followed this story very closely over the years. He is a convicted mass murderer, whose conviction remains on the books.

I went with my younger daughter last year to testify via video conference in front of Kenny MacAskill in Washington, DC. We begged him not to let Megrahi go free. At that time, we thought he was only considering the Prisoner Transfer Agreement, not this "compassionate release" that he later used. Unfortunately Mr. MacAskill did let Mr. Megrahi go because he had cancer. This was such a travesty that he should do so when all of us were begging him to keep him in jail. Mr. Megrahi showed no compassion to our loved ones on Pan Am Flight 103.

Mr. Megrahi, of course, went home to a hero's welcome in his native Libya. Mr. Megrahi, of course, has lived MUCH longer than his three month life expectancy that Mr. MacAskill told the world that he had left – in fact, thirteen months later he is still alive. Now we have found out that the doctors who SUPPOSEDLY had been consulted about his life expectancy, of course, hadn't been consulted! Now we find out that BP oil has a big new contract to dig off the coast of Libya, of course, a coincidence, too.

Senator Menendez, I write you as a private citizen, but also as the VP of the Victims of Pan Am Flight 103. We on the board of VPAF103 applaud you for taking these steps to try to get some answers to this and to show the world that the Scottish government acted too hastily at the very least. Prostate cancer is a very treatable disease and Mr. Megrahi's cancer should have been treated IN JAIL IN SCOTLAND instead of letting him free to go back to his homeland. What kind of message does this send to the terrorists of the world?

Thank you and good luck on this hearing. I wish that I could be there in person tomorrow to tell you how grateful I am for your support!

Sincerely,

Kathy (Daniels) Tedeschi  
Columbia, South Carolina



Senator Menendez and other members of the Committee,

On learning of Mr. al-Megrahi's imminent release, I went straight to my laptop and googled: Libya + oil fields. It was then that I learned Libya has an undeveloped oil field the size of Belgium. At first I was startled but quickly experienced what can be described as a clarifying moment. Since then it has become public knowledge that BP actively lobbied for Mr. al-Megrahi's release to secure an oil deal in Libya. Once again the almighty profit motive has trampled the rule of law.

My name is Elizabeth Delude-Dix. My husband Peter Dix (aged 35) was a passenger aboard Pan Am flight 103 which was destroyed over Lockerbie, Scotland. Peter was on his way to a one day business trip in NYC. At the time we were living in London and Peter planned a quick turn-around so that he would be home to celebrate Christmas with his 22 month old son, Dermot. Dermot, now aged 23, is with me here today. We have prepared this statement together.

The long saga of Lockerbie has been filled with half truths, heart break and crushing political cynicism. Our family believes that we have never learned the full truth of what happened on December 21st 1988.

That the U.K. and Scottish authorities colluded to release Mr. al-Megrahi is clear. What is less clear is: Why?

U.K. oil companies certainly stand to reap enormous profit from the development of Libyan oil. But what has also occurred is the quiet subversion of the legal process. How convenient that any potential irregularities in Mr. al-Megrahi's conviction will now never be examined.

Indeed there have been many questions surrounding Mr. al-Megrahi's conviction. The legal community suggested several different reasons to support his appeal. However, in requiring Mr. al-Megrahi to drop his appeal, the Scottish authorities effectively foreclosed the possibility of a more complete disclosure of the truth surrounding the bombing of PanAm flight 103. Who other than the corporation BP stood to benefit from the discontinuation of this legal inquiry? Once again any information held by U.K. or the US governments which may have clarified the events leading to the bombing is now beyond the reach of the families and the public.

Mr. al-Megrahi's release was clearly motivated by more than compassion for his poor health. His return to Libya not only advanced U.K. commercial interests, it subverted the judicial process. How can there be justice without accountability? This is not an act of judicial compassion but an exploitation and manipulation of the rule of law.

As the wife and son of Peter Dix, what matters most to us is not whether one man dies in prison. We know that the available intelligence was not acted upon by those whose job it is to protect us. Lockerbie could have been prevented. Today, twenty-one years later, we ask that all those who carried out this crime be held responsible, and we also demand a full disclosure of the circumstances leading up to this event.

Elizabeth Delude-Dix and Dermot Delude-Dix  
Jamestown, Rhode Island

FROM Helen Engelhardt, widow of Anthony Lacey Hawkins, one of the 270 people murdered when a semtex bomb in a Toshiba RT-SF 16 stereo radio cassette recorder model Bombeat, wrapped in a random assortment of clothing purchased in a clothing shop in Malta, all of it hidden inside of a copper colored 26-inch Samsonite Silhouette 4000 hardshell suitcase, exploded in the baggage container AVE4041 of the Boeing 747 Maid of the Seas on its evening flight Pan Am #103 out of London, 31,000 feet over the town of Lockerbie, Scotland at 7:03 pm on December 21, 1988 .

Al-Megrahi, a Major in the Libyan Intelligence Service, the man accused of having organized the assembly of the bomb, of having bought the clothing that filled the unaccompanied suitcase case, was unanimously found guilty in the Lockerbie Trial held at Camp Zeist in the Scottish Court in the Netherlands on January 31, 2001. His appeal was unanimously denied a year later and Al-Megrahi was flown to Scotland on March 14, 2002 where he was supposed to begin serving a life sentence. He served seven years, five months and five days before being released on August 20, 2009.

Here we are again. The case that will not die. That refuses to close. The lid of the coffin that keeps being pried open.

Through all the upheavals and reversals, the legal battles and victories and set-backs of the past 21 years, there was one reliable rock we thought we could rely on: the integrity of the Scots. They would never betray us. And then, they did.

Megrahi appealed the guilty verdict again. While it crept its way forward during the past winter and spring of 2008/2009, we paid more attention to the Prisoner Transfer Agreement. (The curious history of the PTA: Jack Straw, The British Secretary of State for Justice, had negotiated with Libya in the summer of 2007, a new Agreement which would allow prisoners to be returned to their respective nations. The original formulation specifically **excluded** al-Megrahi by name until suddenly in December 2007, "Straw withdrew Megrahi's name, making him eligible for exchange since *"The wider negotiations with the Libyans are reaching a critical state, and in view of the overwhelming interests for the United Kingdom, I have agreed that in this instance the PTA should...not mention any individual.*

*"Saif Gaddafi, son of the Libyan leader, has said that negotiations on the PTA intersected with the commercial discussions between the two countries. A \$900 million oil and gas exploration agreement between the British energy giant BP and Libya's National Oil Company was reached in May 2007. BUT IT WAS NOT RATIFIED UNTIL AFTER THE PTA WAS AGREED UPON."* (my emphasis) (quoted from Time September 14, 2009 page 30..)

On August 20, 2009, the Scottish Cabinet Minister of Justice, Kenny MacAskill, denied Libya's application for Megrahi's release under the PTA. But then

MacAskill went on to declare that he was releasing Megrahi on "Compassionate Grounds" because he "might die within three months from terminal prostate cancer," and refused to consider transferring him elsewhere in Scotland because security would be too difficult. While announcing his decision to the press, Megrahi was on his way home to a hero's welcome in Saif Qaddafi's private plane. If Al-Megrahi had indeed died within three months—which had to be reasonably certain for the Grounds of Compassion to be legally applied—it wouldn't have made the decision just or appropriate. It still was stained by the oil deal. But at least, it wouldn't have been a public embarrassment to the Scottish government, and a continuing outrage to the American families. (Why the English and Scottish families are divided on this issue is too complicated to discuss in this statement. I don't know how the other families in some twenty other nations feel, having not heard any opinion from them.).

For twenty one years, the families took comfort in the meticulous dedication of the Scottish Police, the dog handlers who located the bodies and the women who washed the clothing of our loved ones. Debris from the crash had spread over more than 800 square miles –from Lockerbie to the North Sea. The searchers were told: “If it’s not a rock and it’s not growing, pick it up and put it in a bag.” By Christmas Day, a piece of metal was found that FAA senior explosives expert, Walter Korsgaard, identified as the first proof a bomb had caused the explosion.

Because of the thorough, dedicated work of hundreds of men and women, several critical pieces of evidence were retrieved from the tons of debris: the blast damaged fragments of that Samsonite suitcase, the blast damaged fragment of an instruction manual for the Toshiba RT-SF16 recorder, the blast damaged fragment of a printed circuit board from a MEBO MST 13 timer, the blast damaged label from a “Yorkie” brand pair of trousers.

And the significance of these discoveries? “A summary of the world-wide sales figures for Toshiba RTSF16 stereo radio cassette recorders from October 1985 to March 1989 ...shows that Libya (purchased) almost 76% of that model from Toshiba between October 1988 and March 1989.

Mr. Bollier (the “Bo” in MEBO) in his testimony for the prosecution at the Lockerbie Trial in June of 2000, stated in 1991 to Scottish and American detectives , that he only sold this model timer to Libya (in 1993 after Libya offered him a loan of 1.8 million dollars, he suddenly recalled he had sold MST 13 timers to the Stasi as well); he delivered radio devices and 20 timers to Libya in 1986 into the hands of Abdelbaset Megrahi, a man Bollier believed to be a Major in the Libyan Intelligence Services.

Bollier taught Libyan military people in the autumn of 1987 in Libya, how to prevent bombs from exploding prematurely. In December of 1988 he tried to deliver and collect payment on 40 more MST 13 timers. He flew to Tripoli on December 18 and booked a return flight on December 20 from Tripoli to Malta on the very same flight that al-Megrahi and al-Fhimah were on. Bollier changed his plans and returned to Zurich on a direct flight. He claims that he did not meet with Abdelbaset. He claims that no one paid him for his timers.

The “Yorkie” brand label on a pair of trousers, led detectives to the factory which led them to Mary’s House, in the town of Slima on the island of Malta. Mary’s House was the clothing shop where the clothing surrounding the Toshiba stereo recorder bomb had been purchased. The shopkeeper, Anthony Gauci, told the police who came to see him in September 1989, that he had sold two pairs of Yorkie trousers –one bearing the identical order number to the fragment found in Lockerbie- to a Libyan man a fortnight before Christmas in December 1988. The man also bought a random assortment of clothing, obviously not for any particular person. Anthony Gauci found that peculiar, and therefore, memorable. He assisted in an artist’s rendering of what the Libyan had looked like in September 1989, picked out the face of al-Megrahi among a group of photographs in February of 1991, picked him out in an identification parade of persons in April 1999, and then, ultimately pointed him out in the dock during the trial in Kamp Zeist in 2000. The judges wrote: “he was entirely credible.. doing his best to tell the truth to the best of his recollection... We are satisfied that his identification of the first accused as the purchaser was reliable and should be treated as highly important evidence in this case.”

In an extraordinary coincidence, one of the policemen who followed the clothing clue from Lockerbie to Malta was the very man who found the body of my husband lying on a field in Halldykes Farm in the outskirts of Lockerbie, Detective John Crawford. My son Alan and I, met Detective Crawford in New York City in September 2000. We were also in the courtroom at Camp Zeist when Mr. Gauci identified Mr. Al-Megrahi.

You are not retrying the evidence that sent Mr. Al-Megrahi to prison with a life sentence. If you were, there is even more damning and convincing evidence that sent Al-Megrahi to prison that I could outline. Even Kenny MacAskill went out of his way to reiterate Al-Megrahi's guilt before he sent him home to Libya. He also stated that "This is a global issue and international in its nature. The questions to be asked and answered are beyond the jurisdiction of Scots law and the restricted remit of the Scottish government. If a further inquiry were felt to be appropriate then it should be initiated by those with the required power and authority. The Scottish Government would be happy to fully cooperate in such and inquiry."

There have been, in my opinion, some half hearted investigations by the Scottish government looking into Mr. MacAskill's reasoning. With all the evidence revealed a year ago in the British press of the oil deal brokered between BP and Libya, with BP lobbying on behalf of Libya's obsessive interest in obtaining the release of Al-Megrahi, the British government has not and has no intention of opening an investigation of its own. Prime Minister Cameron called the release "completely and utterly" wrong and refuses to call for his government to look into BP's role.

We had a measure of justice –and then it was snatched away from us. We all know that Megrahi was acting under orders from his government. Unnamed coconspirators were indicted along with Al-Megrahi and Fhimah. The criminal case is still open.

Through all the upheavals and reversals, the legal battles and victories and set-backs of the past 21 years, there was another reliable rock we thought we could rely on: the integrity of the men and women in our government. They would never betray us. And they haven't. From day one, Congressmen and women, Senators, people who work in the FBI and CIA and the Justice Department, have done everything they could to see that the evidence was gathered thoroughly and accurately and that justice would be done. Bills and amendments to bills were crafted and passed in order to keep the unresolved case in the forefront of our collective attention.

Five years ago this month, the Senators and Congressmen from New York and New Jersey, stood with us when we gave a press conference calling for our government not to give diplomatic recognition to Libya until it fulfilled the last provision of the legal agreement it had signed with the families. And now this summer, Senators Schumer and Menendez called for investigating BP under the Foreign Corrupt Practices Act.

I support you wholeheartedly in this endeavor. I have never felt helpless in the face of this tragedy, but I have recognized the reality that the mass murder that occurred over Lockerbie Scotland twenty two years ago is international in scope and involves several governments and their agencies-and now it seems, the biggest company in Britain and the fifth biggest on Earth : British Petroleum. Sir Mark Allen, former head of the counterterrorism department of Britain's MI6 intelligence service, retired from that post to become a senior executive in British Petroleum. It is a difficult investigation to conduct. But it needs to be done –to honor the two hundred and seventy souls who were murdered because they flew in a plane that carried the American flag as a logo.

Sincerely,

Helen Engelhardt Hawkins  
Brooklyn, New York

Testimony for the Record submitted by  
Aphrodite Thevos Tsairis, mother of Alexia Tsairis, victim Pan Am Flight 103

It is with the deepest pain and anguish that I submit this testimony 21½ years after the premeditated destruction of Pan Am Flight 103 over Lockerbie, Scotland. Throughout this time, the families have advocated, at great personal cost, for truth and justice in the resolution of this case of mass murder. At no time did we request or expect any monetary compensation for this grave injustice but rather, we simply, wanted the answers to the questions, who, why, where and how. It took years of lobbying to effect UN sanctions which, ultimately, resulted in a trial and conviction. I remember sitting with the US Ambassador to the UN, when we insisted that no money be demanded as part of the sanction regimen. His reply was that it was absolutely necessary, as money is the currency of diplomacy. In the end, we got one conviction and 10 million dollars per family (less one third plus expenses for the lawyers). Even our small modicum of justice was tinged with blood money and greed.

One year ago, that small token of justice was snatched from us as Megrahi was released to go back to Libya on compassionate grounds. All the reasons why this was a gross miscarriage of justice have been eloquently reiterated in the interviews and letters from the Senators from NJ, Menendez and Lautenberg, and from NY, Schumer and Gillebrand, Secretary of State Clinton, President Obama and U.K. Prime Minister Cameron. The flim-flam medical opinion that precipitated the release was transparently laughable and the lobbying influence of BP and other oil interests clamoring for Libyan oil contracts was patently despicable.

So what happens now? One year later, you are holding hearings to do what? The oil contracts have been awarded, Colonel Kaddafi has recouped his 270 million in compensation four-fold and Megrahi is ensconced in luxury in the bosom of his family for the next ten years or more. Tell me, Senators, how do I explain this to my grandchildren?

There is no political, economic or diplomatic will to force Kaddafi to give up Megrahi again. The families are powerless as they prostrate themselves before you in grief and desperation. I, for one, after 21 years, am tired of taking the high road to truth and justice to no avail.

So, I propose the following:

- 1) The US must convince the UN to reimpose sanctions against Libya which demand that Megrahi be incarcerated in Libya under the watchful eye of a Scottish security detail 24-7. That is the very least the Scots can do after they abandoned the families.
- 2) Kaddafi must pay 20 million more to each family from the oil enrichment funds that have been pouring into his coffers since last August. No lawyer's fees or expenses.

Sounds greedy and opportunistic, doesn't it? Sounds un-American, doesn't it? It comes from sheer desperation and futility from this mockery of justice. The families have spent the last 20 plus years working to protect the American people from suffering the same horrors we face everyday. We have altruistically turned our grief into positive actions for the common good. Senators, you have to walk in my shoes to know how victimized, abandoned and abused I feel.

I can assure you that I can do more in one week with that blood money in **The Alexia Foundation for World Peace and Cultural Understanding** ([www.alexiafoundation.org](http://www.alexiafoundation.org)) than Khaddafi can do in two lifetimes with his ill-gotten gains from the oil contracts.

Aphrodite Thevos Tsairis  
Bloomington, New Jersey

September 28, 2010

Dear Senator Menendez,

The board of Victims of Pan Am Flight 103 thanks you for holding this hearing and we hope it results in continued pressure on the UK and Scottish governments to release all documents regarding the release of al-Megrahi. The following statement was released by VPAF103 to acknowledge the one year anniversary of that travesty.

**Statement from the Victims Pan Am Flight 103:**

On December 21, 1988, Pam Am Flight 103 exploded over Lockerbie, Scotland, murdering all 259 people on the plane and 11 citizens in Lockerbie. All of these victims were innocents. As the Lord Advocate of Scotland, Colin Boyd, later summarized: “400 parents lost a son or a daughter, 46 parents lost their only child, 65 women were widowed, 11 men lost their wives, 140 children lost a parent, and 7 children lost both parents.”

After an exhaustive investigation by U.S. and Scottish authorities, Libyan agent Abdel Basset Ali al-Megrahi was convicted. He appealed this conviction but it stood. **It still stands**, even though Scottish Minister of Justice Kenny MacAskill released Megrahi on August 20<sup>th</sup>, 2009 on “compassionate grounds” based on the claim that he had only 3 months to live.

The Scottish government has shown compassion to this convicted mass murderer of 270 innocent souls. The convicted mass murderer **never** showed compassion for any of his victims.

On behalf of VPAF103  
Judy O'Rourke  
Recording Secretary, VPAF 103  
Syracuse University Alumnae

## **Appendix IV: List of Lockerbie Victims**

### **Arkansas**

Frederick Sanford Phillips  
Age: 27

### **California**

Jerry Don Avritt  
Age: 46  
Stacie Denise Franklin  
Age: 20  
Paul Isaac Garrett  
Age: 41  
Surinder Mohan Bhatia  
Age: 51  
Kevin Matthew Gannon  
Age: 34  
Barry Joseph Valentino  
Age: 28  
Jonathan White  
Age: 33

### **Colorado**

Steven Lee Butler  
Age: 35

### **Connecticut**

Scott Marsh Cory  
Age: 20  
Patricia Mary Coyle  
Age: 20  
Shannon Davis  
Age: 19  
Turhan Ergin  
Age: 22  
Thomas Britton Schultz  
Age: 20  
Amy Elizabeth Shapiro  
Age: 21

### **District of Columbia**

Nicholas Andreas Vrenios  
Age: 20

### **Florida**

John Binning Cummock  
Age: 38

### **Illinois**

Janina Jozefa Waido  
Age: 61

### **Kansas**

Lloyd David Ludlow  
Age: 41

### **Maryland**

Michael Stuart Bernstein  
Age: 36  
Jay Joseph Kingham  
Age: 44  
Karen Elizabeth Noonan  
Age: 20  
Anne Lindsey Otenasek  
Age: 21  
Anita Lynn Reeves  
Age: 24  
Louise Ann Rogers  
Age: 20  
George Watterson  
Williams  
Age: 24  
Miriam Luby Wolfe  
Age: 20

### **Massachusetts**

Julian MacBain Benello  
Age: 25  
Nicole Elise Boulanger  
Age: 21  
Nicholas Bright  
Age: 32  
Gary Leonard Colasanti  
Age: 20  
Joseph Patrick Curry  
Age: 31

Mary Alice Lincoln  
Johnson  
Age: 25  
Julianne Frances Kelly  
Age: 20  
Wendy Anne Lincoln  
Age: 23  
Daniel Emmett O'Connor  
Age: 31  
Sarah Susannah Buchanan  
Philipps  
Age: 20  
James Andrew Campbell  
Pitt  
Age: 24  
Cynthia Joan Smith  
Age: 21  
Thomas Edwin Walker  
Age: 47

### **Michigan**

Lawrence Ray Bennett  
Age: 41  
Diane Boatman-Fuller  
Age: 37  
James Ralph Fuller  
Age: 50  
Kenneth James Gibson  
Age: 20  
Pamela Elaine Herbert  
Age: 19  
Khalid Nazir Jaafar  
Age: 20  
Gregory Kosmowski  
Age: 40  
Louis Anthony Marengo  
Age: 33  
Anmol Rattan  
Age: 3  
Garima Rattan  
Age: 29



Suruchi Rattan  
Age: 2  
Mary Edna Smith  
Age: 34  
Arva Anthony Thomas  
Age: 17  
Jonathan Ryan Thomas  
Age: 2 months  
Lawanda Thomas  
Age: 21

### **Minnesota**

Philip Vernon Bergstrom  
Age: 22

### **New Hampshire**

James Bruce MacQuarrie  
Age: 55  
Stephen John Boland  
Age: 20

### **New Jersey**

Raymond Ronald Wagner  
Age: 52  
Thomas Joseph  
Ammerman  
Age: 36  
Michael Warren Buser  
Age: 34  
Warren Max Buser  
Age: 62  
Frank Ciulla  
Age: 45  
Eric Michael Coker  
Age: 20  
Jason Michael Coker  
Age: 20  
William Alan Daniels  
Age: 40  
Gretchen Joyce Dater  
Age: 20  
Michael Joseph Doyle  
Age: 30  
John Patrick Flynn  
Age: 21

Kenneth Raymond  
Garczynski  
Age: 37  
William David Giebler  
Age: 29  
Roger Elwood Hurst  
Age: 38  
Robert van Houten Jeck  
Age: 57  
Timothy Baron Johnson  
Age: 21  
Patricia Ann Klein  
Age: 35  
Robert Milton Leckburg  
Age: 30  
Alexander Silas  
Lowenstein  
Age: 21  
Richard Paul Monetti  
Age: 20  
Laura Abigail Owens  
Age: 8  
Martha Owens  
Age: 44  
Robert Plack Owens  
Age: 45  
Sarah Rebecca Owens  
Age: 14  
William Pugh  
Age: 56  
Diane Marie Rencevicz  
Age: 21  
Saul Mark Rosen  
Age: 35  
Irving Stanley Sigal  
Age: 35  
Elia Stratis  
Age: 43  
Alexia Kathryn Tsairis  
Age: 20  
Chelsea Marie Woods  
Age: 10 months  
Dedera Lynn Woods  
Age: 27  
Joe Nathan Woods  
Age: 28

Joe Nathan Woods, Jr.  
Age: 2

### **New York**

John Michael Gerard  
Ahern  
Age: 26  
Rachel Marie Asrelesky  
Age: 21  
Harry Michael Bainbridge  
Age: 34  
Kenneth John Bissett  
Age: 21  
Paula Marie Bouckley  
Age: 29  
Colleen Renee Brunner  
Age: 20  
Gregory Capasso  
Age: 21  
Richard Anthony Cawley  
Age: 43  
Theodora Eugenia Cohen  
Age: 20  
Joyce Christine DiMauro  
Age: 32  
Edgar Howard Eggleston  
III  
Age: 24  
Arthur Fondiler  
Age: 33  
Robert Gerard Fortune  
Age: 40  
Andre Nikolai Guevorgian  
Age: 32  
Lorrain Frances Halsch  
Age: 31  
Lynne Carol Hartunian  
Age: 21  
Katherine Augusta  
Hollister  
Age: 20  
Melina Kristina Hudson  
Age: 16  
Karen Lee Hunt  
Age: 20

Kathleen Mary Jermyn  
Age: 20  
Christopher Andrew Jones  
Age: 20  
William Chase Leyrer  
Age: 46  
William Edward Mack  
Age: 30  
Elizabeth Lillian Marek  
Age: 30  
Daniel Emmet McCarthy  
Age: 31  
Suzanne Marie Miazga  
Age: 22  
Joseph Kenneth Miller  
Age: 56  
Jewel Courtney Mitchell  
Age: 32  
Eva Ingeborg Morson  
Age: 48  
John Mulroy  
Age: 59  
Mary Denise O'Neill  
Age: 21  
Robert Italo Pagnucco  
Age: 51  
Christos Michael  
Papadopoulos  
Age: 45  
David Platt  
Age: 33  
Walter Leonard Porter  
Age: 35  
Pamela Lynn Posen  
Age: 20  
Mark Alan Rein  
Age: 44  
Andrea Victoria Rosenthal  
Age: 22  
Daniel Peter Rosenthal  
Age: 20  
Joan Sheanshang  
Age: 46  
Martin Bernard Carruthers  
Simpson  
Age: 52

James Alvin Smith  
Age: 55  
James Ralph Stow  
Age: 49  
Mark Lawrence Tobin  
Age: 21  
David William Trimmer-  
Smith  
Age: 51  
Asaad Eidi Vejdany  
Age: 46  
Kesha Weedon  
Age: 20  
Jerome Lee Weston  
Age: 45  
Bonnie Leigh Williams  
Age: 21  
Brittany Leigh Williams  
Age: 2 months  
Eric Jon Williams  
Age: 24  
Stephanie Leigh Williams  
Age: 1  
Mark James Zwynenburg  
Age: 29

#### **North Dakota**

Steven Russell Berrell  
Age: 20

#### **Ohio**

John David Akerstrom  
Age: 34  
Shanti Dixit  
Age: 54  
Douglas Eugene Malicote  
Age: 22  
Wendy Gay Malicote  
Age: 21  
Peter Raymond Peirce  
Age: 40  
Michael Pescatore  
Age: 33  
Peter Vulcu  
Age: 21

#### **Pennsylvania**

Martin Lewis Apfelbaum  
Age: 59  
Timothy Michael Cardwell  
Age: 21  
David Scott Dornstein  
Age: 25  
Anne Madelene Gorgacz  
Age: 76  
Linda Susan Gordon-  
Gorgacz  
Age: 39  
Loretta Anne Gorgacz  
Age: 47  
David J. Gould  
Age: 45  
Rodney Peter Hilbert  
Age: 40  
Beth Ann Johnson  
Age: 21  
Robert Eugene McCollum  
Age: 61  
Elyse Jeanne Saraceni  
Age: 20  
Scott Christopher Saunders  
Age: 21

#### **Rhode Island**

Bernard Joseph  
McLaughlin  
Age: 30  
Robert Thomas Schlageter  
Age: 20

#### **Texas**

Willis Larry Coursey  
Age: 40  
Michael Gary Stinnett  
Age: 26  
Charlotte Ann Stinnett  
Age: 36  
Stacey Leanne Stinnett  
Age: 9

**Virginia**

Ronald Albert Lariviere

Age: 33

Charles Dennis McKee

Age: 40

**West Virginia**

Valerie Canady

Age: 25

**American Citizens Living****Abroad**

Sarah Margaret Aicher

Age: 29

Judith Bernstein Atkinson

Age: 37

William Garretson

Atkinson III

Age: 33

Noelle Lydie Berti

Age: 40

Charles Thomas Fisher IV

Age: 34

Lilibeth Tobila

Macalolooy

Age: 27

Diane Marie Maslowski

Age: 30

Jane Susan Melber

Age: 27

Jane Ann Morgan

Age: 37

Sean Kevin Mulroy

Age: 25

Jocelyn Reina

Age: 26

Myra Josephine Royal

Age: 30

Irja Syhnove Skabo

Age: 38

Milutin Velimirovich

Age: 35

**Argentina**

Hernan Caffarone

Age: 28

Thomas Floro Van-

Tienhoven

Age: 45

**Belgium**

Arnaud David Rubin

Age: 28

**Bolivia**

Andrew Alexander Teran

Age: 20

**Canada**

Stuart Murray Barclay

Age: 29

Paul Matthew Freeman

Age: 25

Amy Beth Gallagher

Age: 22

Hanne Maria Root

Age: 26

**England**

Mary Geraldine Murphy

Age: 51

Clare Louise Bacciochi

Age: 19

Jean Mary Bell

Age: 44

Alistair David Berkley

Age: 29

Glen John Bouckley

Age: 27

Timothy Guy Burman

Age: 24

William Martin Cadman

Age: 32

Fabiana Caffarone

Age: 28

Sean Concannon

Age: 16

Tracey Jane Corner

Age: 17

Clayton Lee Flick

Age: 25

Olive Leonora Gordon

Age: 25

Anthony Lacey Hawkins

Age: 57

Josephine Lisa Hudson

Age: 22

Elizabeth Sophie Ivell

Age: 19

Paul Avron Jeffreys

Age: 36

Rachel Jeffreys

Age: 23

Minas Christopher

Kulukundis

Age: 38

John Merrill

Age: 35

Helga Rachael Mosey

Age: 19

Bryony Elise Owen

Age: 1

Gwyneth Yvonne Margaret  
Owen

Age: 29

Theresa Elizabeth Jane

Saunders

Age: 28

Sally Elizabeth Scott

Age: 22

Ingrid Anita Smith

Age: 31

Geraldine Anne Stevenson

Age: 37

Hannah Louise Stevenson

Age: 10

John Charles Stevenson

Age: 38

Rachael Stevenson

Age: 8

Flora MacDonald Margaret  
Swire

Age: 24

Marc Alex Tager

Age: 22

Andrew Christopher  
Gillies Wright  
Age: 24

**France**

Nichole Elizabeth Avonye  
Age: 44  
Francis Boyer  
Age: 43  
Sophie Ailette Miriam  
Age: 26

**Germany**

Elke Etha Kuehne  
Age: 43  
Alfred Hill  
Age: 29  
Maria Theresia Lurbke  
Age: 25  
Johannes Otto Schauble  
Age: 41

**Hungary**

Ibolya Robertine Gabor  
Age: 79  
Edina Roller  
Age: 5  
Janos Gabor Roller  
Age: 29  
Zsuzsana Roller  
Age: 27

**India**

Om Dixit  
Age: 54  
Rajesh Tarsis Priskel  
Age: 35  
Mridula Shastri  
Age: 24

**Ireland**

Bridget Concannon  
Age: 53  
Thomas Concannon  
Age: 51  
Peter Thomas Stanley Dix  
Age: 35

**Israel**

Daniel Solomon Browner  
(Bier)  
Age: 23

**Italy**

Gabriel Della Ripa  
Age: 46  
Gianfranca DiNardo  
Age: 26

**Jamaica**

Noel George Martin  
Age: 27

**Japan**

Hidekazu Tanaka  
Age: 26

**Philippines**

Crisostomo Estrella  
Quiguyan  
Age: 43

**Scotland**

Kathleen Mary Flannigan  
Age: 41  
Thomas Brown Flannigan  
Age: 44  
Joanne Flannigan  
Age: 10  
Dora Henrietta Henry  
Age: 56

Maurice Peter Henry  
Age: 63  
Mary Lancaster  
Age: 81  
William John McAllister  
Age: 26  
Jean Aitkin Murray  
Age: 82  
John, Somerville  
Age: 40  
Rosaleen Somerville  
Age: 40  
Paul Somerville  
Age: 13  
Lyndsey Ann Somerville  
Age: 10

**Spain**

Maria Nieves  
Age: 39

**South Africa**

Nicola Jane Hall  
Age: 23

**Sweden**

Bernt Wilmar Carlson  
Age: 50  
Siv Ulla Engstrom  
Age: 51  
Ingrid Elizabeth Mulroy  
Age: 25

**Switzerland**

Ronald Ely Alexander  
Age: 46

**Trinidad**

Anthony Selwyn Swan  
Age: 29