

July 8, 2021

The Honorable Brian Schatz
Chairman
Subcommittee on Transportation-HUD
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable David Price
Chairman
Subcommittee on Transportation-HUD
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Senator:

The undersigned labor organizations ask your assistance to prevent flag-of-convenience airlines, labor arbitrage, and evasions of our labor trade agreements through the licensing of foreign air carriers. The U.S. Department of Transportation (DOT) has — to date — failed to assert the statutory public interest items Congress has tasked it with, including those that affect U.S. employees, when granting foreign airlines access to our market. To end this evasion of the agency's mission and protect the rights of workers, appropriators should limit funding for foreign air carrier licensing unless the DOT places conditions on prospective air carrier permits.

Since the early 1990's, U.S. Open Skies policy has liberalized aviation services to increase market access opportunities for airlines, passengers, nation states, and employees. This policy framework has largely succeeded because it provided a fair and equitable opportunity for countries to compete, increased the marketplace for aviation services, and created good jobs for workers — both domestic and foreign. Labor unions have generally supported this model of growth; however, the success of the system is predicated on proper enforcement, fair terms for competition, and the protection of labor standards, rather than their diminishment.

Unfortunately, the dynamism of Open Skies is threatened by the incipient growth of flag of convenience airlines. Under this business practice a company — in this case an airline — establishes a subsidiary in a country other than the base of its majority ownership expressly to take advantage of other countries' more lenient labor, tax, and safety laws. These operations serve no business purpose other than to avoid collective bargaining rights, safety regulation, the rules of fair competition, and high-road employment standards. Flags of convenience have resulted in the decline of the U.S. marine shipping industry and the subsequent growth of exploitive working conditions throughout the globe in that sector.

Beginning in 2013 Norwegian Air International (NAI), a foreign air carrier of Norway, based its operations in Ireland and placed flight crews under contracts governed by the labor laws of non-EU countries, including Singapore and Thailand, to vitiate their collective bargaining rights. For decades, Congress has tasked the DOT with examining public interest criteria when determining a foreign airline's fitness for operation, including a prospective air carrier's effect on workers and the competitiveness of incumbent U.S. carriers.¹ Despite DOT performing a public interest analysis for every foreign entrant for 75 years prior, the agency chose to ignore Congress and grant the Norwegian carrier an air operating certificate over the objections of Congress, labor unions, and many U.S. airlines.

In 2014, Democrats on both sides of the Capitol pushed for an aggressive provision in their respective FY 2015 transportation appropriations bills to curb the U.S. DOT from making a mistake, with the Republican-controlled House adopting and passing this reform. Unfortunately, the provision was watered down to have no effect during conference and the DOT subsequently chose to ignore Congress and its own responsibility by granting a flag-of-convenience airline access to the U.S. We anticipate similar threats and believe it is necessary for Congress to revisit this issue and provide a remedy to protect U.S. workers in licensing matters on the horizon. Specifically, Congress should require the DOT to apply close public interest scrutiny through imposing conditions on an air carrier permit that give meaning and effect to the public interest factors the legislative branch put into law. The Department's authority to impose such conditions is unquestionable, and indeed was recognized by the D.C. Circuit in litigation related to the *Norwegian* case.²

The U.S. aviation industry has flourished under the Open Skies model because it drove employment and growth through fair and equitable market opportunities for nation states, carriers, and workers. Flags of convenience by their nature fly in the face of fair competition and a rules-based aviation trade regime. By using its authority of executive branch spending, Congress can restore integrity and balance to international aviation.

Sincerely,

Air Line Pilots Association, International
Allied Pilots Association
American Federation of Government Employees
American Federation of Labor and Congress of Industrial Organizations
American Federation of State, County and Municipal Employees

¹ By statute, the DOT shall consider a series of economic regulatory criteria, including consideration for "encouraging fair wages and working conditions" and "strengthening the competitive position of [US] airlines to at least ensure equality with foreign air carriers...." 49 U.S.C. § 40101(a)(5), 40101(a)(15)

² See, *Air Line Pilots Ass'n, Int'l v. Chao*, 889 F.3d 785, 793 (D.C. Cir. 2018) ("Based on its plain text, Article 17 *bis* can provide a basis for imposing conditions in connection with the Secretary's consideration of an application for a permit and thereafter, if an application is approved pursuant to the Secretary's authority under 49 U.S.C. § 41305(b) to "impose terms for providing foreign air transportation under the permit.").

American Train Dispatchers Association
Association of Flight Attendants, CWA
Association of Professional Flight Attendants
Communications Workers of America
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
International Organization of Masters, Mates & Pilots
International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America
Marine Engineers' Beneficial Association
Maritime Trades Department, AFL-CIO
National Air Traffic Controllers Association
NetJets Association of Shared Aircraft Pilots
Professional Aviation Safety Specialists
Sailors' Union of the Pacific
Seafarers International Union
SMART-Transportation Division
Southwest Airlines Pilots Association
Transportation Communications Union/IAM
Transportation Trades Department, AFL-CIO
Transport Workers Union of America
UNITE HERE
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union