August 20, 2025

The Honorable David Eng
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

RE: Investigation Into Flags of Convenience and Unfavorable Conditions Created by Certain Flagging Practices

Docket No. FMC-2025-0009

Mr. Eng:

On behalf of the undersigned labor organizations, we are pleased to respond to the Federal Maritime Commission's (FMC) non-adjudicatory investigation into whether flags of convenience (FOC), or competitive methods employed by the owners, operators, agents, or masters of foreign-flagged vessels, are creating unfavorable shipping conditions in the foreign trade of the United States. We firmly stand behind the FMC's investigation and strongly encourage Commissioners to consider our feedback. The workers we represent are adversely affected by the impacts of predatory business models that compromise vital domestic industries, including freight rail, maritime, and aviation. Specifically in the aviation sector, the U.S. airline industry is facing existential challenges from foreign airlines that operate within the domestic market, as FOC practices have become increasingly common.

Flags of Convenience in Maritime

FOC carriers operate under a predatory model that favors global shipping interests at the expense of American mariners and their jobs. This approach encourages the employment of the lowest-wage licensed and unlicensed foreign mariners rather than American workers. Additionally, the FOC system often fails to provide adequate protection for international mariners who wish to prevent a ship from sailing in unsafe conditions. Under the current globalized structure of the industry, international crews lack the autonomy or job security needed to hold vessels at the dock until essential supplies are loaded or until repairs are completed. This situation jeopardizes mariner safety, the safety of U.S. assets, and the well-being of individuals in and around U.S. ports. Companies that adopt these models primarily focus on reducing operational costs and

maximizing profits, which significantly endangers the safety and welfare of global seafarers. These practices contribute to the decline of the vital American maritime workforce and threaten our supply chain security.

Flags of Convenience in Aviation

The 2007 ratification of the U.S.-EU Air Transport Agreement, also known as the Open Skies agreement, increased the possibility of flag-of-convenience air carriers or other "atypical" employment practices that harm worker organization and bargaining. While the EU formed a common European aviation area in which EU carriers could operate within and from, they had not harmonized labor laws or airline licensing authorities. This created a fragmented system that tilted the balance of power for the division of labor-management relations in favor of management and provided greater possibilities for "reflagging," "social dumping," and "regulatory shopping" by EU airlines, similar to what occurs in the maritime industry. Under this form of regulatory arbitrage, a corporation exploits legal and regulatory loopholes to evade labor, tax, and safety laws. Similarly, atypical employment arrangements, which are increasingly common in EU aviation employment, use third-party or temporary contracts to misclassify or fissure employment responsibilities. Under these contracts, pilots and cabin crew are employees of a hiring agency, rather than an airline, and subject to laws applicable to the hiring agency's location.

The European market's structure raises concerns about flight crew forum shopping, a global issue. Global carriers like Jetstar, Air Asia X, LATAM, Ryanair, and SunExpress may exploit international labor laws for competitive advantage, likely leading to attempts to enter the U.S. market. An example of this is Waltzing Matilda Aviation, LLC, which is an airline that initially sought to operate point-to-point in the United States, as well as operate in foreign transportation to and from the United States (OST 2021-0046, OST-2021-0078). Waltzing Matilda initially declared its intent to source its crews exclusively from abroad to enable the airline to "hire crew at cheaper rates". [1]This was unprecedented, as no U.S. airline has ever attempted to hire exclusively from abroad. By establishing crew bases only in Canada, with Canadian crews to operate its routes, the airline was initially seeking to import distressed Canadian labor under a U.S. certificate to artificially injure U.S. airline employees. These actions are a direct violation of the Department of Transportation's mandate to promote fair wages and working conditions and to strengthen the competitive position of U.S. carriers relative to foreign air carriers – 49 U.S.C. § 40101(a)(5), (a)(15) and (e)(1), respectively. Ultimately, to mitigate precedential damage, the airline came to a Memorandum of Understanding (MOU) with elements of authorized representatives of its workforce, to require that pilot bases be in the United States under U.S. labor law, among other requirements.

In 2013, Norwegian Air Shuttle (NAS), a Norwegian air carrier, began using third-party contracts for its long-haul flight crews in non-EU countries to avoid the application of Norwegian labor laws. When the Norwegian government questioned this practice, NAS decided to establish a new, wholly owned subsidiary carrier, Norwegian Air International (NAI), in Ireland, as Ireland has extremely weak labor laws and an absence of enforcement for labor standards. NAI then hired a

[1] March 21, 2021 Connect Airlines Deck, Pg. 19 (Applicant's Sep. 22, 2021 DOT submission at 83).

third-party employment agency, Global Crew Asia PTE (later OSM Aviation), to base pilots and cabin crew in Singapore and Bangkok and place them under contracts governed by the labor and employment laws of these nations. In 2016, the U.S. Department of Transportation granted NAI a foreign air carrier permit to operate flights to and from the United States. However, the airline has since ceased operations.

We appreciate the Federal Maritime Commission's investigation into vessel flagging practices and urge the Commission to take actions to end the detrimental effects of the maritime FOC model across the U.S. economy. There is no question that the FOC model has undermined U.S. worker wellbeing and safety across the transportation sector. We look forward to working with the Commission to fight back against these bad practices.

Sincerely,

Air Line Pilots Association (ALPA)
Association of Flight Attendants-CWA (AFA)
International Association of Machinists and Aerospace Workers (IAM)
Transportation Trades Department, AFL-CIO (TTD)
Transport Workers Unions of America (TWU)