



Order 2023-10-4

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of October, 2023

Served: October 13, 2023

In the Matter of

Docket DOT-OST-2019-0072

an exemption pursuant to 49 U.S.C. §40109 re:

**SUSPENSION OF AIR SERVICE TO AND FROM
VENEZUELA UNDER 49 U.S.C. § 44907(e)**

ORDER GRANTING EXEMPTION

Background

By Order 2019-5-5, issued in the above-referenced Docket on May 15, 2019, the U.S. Department of Transportation (the Department or DOT) suspended, pursuant to 49 U.S.C. § 44907(e), the authority of all U.S. air carriers and foreign air carriers to provide foreign air transportation to or from Venezuelan airports, effective immediately. Specifically, Order 2019-5-5 added a condition to all U.S. air carrier certificates and exemptions, as well as to all foreign air carrier permits and exemptions, that precluded those U.S. and foreign air carriers from operating in foreign air transportation to or from Venezuelan airports until further order of the Department.

This action was taken following the submission of a letter by the Acting Secretary of Homeland Security to the Secretary of Transportation in which he detailed findings made by the U.S. Department of Homeland Security (DHS) regarding the security situation in Venezuela.¹

Upon receipt of the letter, the Department agreed with DHS that the public interest required an immediate suspension of foreign air transportation between the United States and Venezuelan airports, and took action to do so by issuing Order 2019-5-5. Order 2019-5-5 furthermore stated that we had received the required approval of the Secretary of State for our action under 49 U.S.C. § 44907(e).

¹ Letter of DHS Acting Secretary to DOT Secretary dated May 13, 2019, available in the above-referenced Docket.

Recent DHS Request

By letter to DOT dated October 10, 2023,² DHS requests an emergency exemption from Order 2019-5-5 to the extent necessary to permit the operation by certain U.S. carriers of passenger charter operations between the United States and Caracas, Venezuela, in order to execute final orders of removal for Venezuelan nationals.³ DHS requests that this exemption be promptly granted and remain in effect for the duration of the validity of Order 2019-5-5.

In support of its request, DHS asserts that the exemption is necessary to enable it to undertake one of its core statutory missions: securing the United States' borders and safeguarding the integrity of its immigration system. It maintains that grant of its request would respond to an increase in migration from Venezuela that is straining immigration systems throughout the hemisphere—including in the United States. DHS states that the individuals who will be removed by U.S. Immigration and Customs Enforcement (ICE) pursuant to this exemption have received executable final orders of removal, meaning that they have not established a legal basis to remain in the United States, and that their removal is in accordance with our laws and international obligations.

In addition, DHS describes various security measures it intends to take in the conduct of the proposed operations in order to address conditions cited in Order 2019-5-5. DHS states that removal flights will begin as soon as possible upon approval of this exemption, and it is anticipated that ICE will conduct multiple air charter removal flights each week and may use multiple contract carriers in furtherance of the mission. DHS asserts that, consistent with Administration priorities regarding immigration, the operations for which it seeks approval are in the public interest of the United States.

Responsive Pleadings⁴

None filed.

Decision

We have decided to grant the request of DHS for an exemption as described above, effective immediately and for an indefinite duration.

We note that, as indicated in the background section above, our action taken by Order 2019-5-5 to suspend the authority of all U.S. and foreign air carriers to conduct U.S.-Venezuela services was taken at the request of DHS and approved by the Secretary of State. However, the subsequent DHS request now before us indicates that certain developments have taken place that, notwithstanding the factors set forth in Order 2019-5-5, have resulted in a determination by DHS of an urgent need for limited U.S.-Venezuela air service to support the ability of ICE to carry out its statutory responsibilities regarding immigration. Notably, DHS has made this determination in consultation with the U.S. Department of State. Furthermore, DHS has acknowledged the

² This letter was posted in the above-referenced Docket on October 11, 2023.

³ DHS separately advised the Department that it intends to contract with certain entities to arrange the operations at issue, and, in turn, those entities will subcontract to specific licensed U.S. air carriers.

⁴ On October 11, 2023, the Department issued a Notice shortening the answer period to the DHS request to the close of business on October 11, with replies due at 12:00 noon on October 12.

considerations it originally specified as outlined in Order 2019-5-5, and stated its intention to take certain precautions with respect to an enhanced security posture associated with the proposed operations.

In light of the above and in the circumstances presented, we find that the request of DHS, as narrowly defined, provides a compelling public interest basis that warrants an exemption from the service suspension put in place by Order 2019-5-5. Accordingly, we grant its request.

Consistent with the scope of the DHS request, the operations authorized by this exemption are explicitly limited to flights operated by licensed U.S. air carriers contracted by DHS and/or ICE through its agent/broker, strictly for the removal purposes set forth as described above.

ACCORDINGLY,

1. We approve, under 49 U.S.C. § 40109 and pursuant to 14 CFR §302.311, the request of the U.S. Department of Homeland Security for an emergency exemption from Order 2019-5-5 to the extent necessary to enable certain U.S. air carriers to engage in charter foreign air transportation of passengers between a point or points in the United States and Caracas, Venezuela;
2. The authority granted by this Order is effective immediately, and will remain in effect indefinitely;
3. As specified in the body of this Order, the operations authorized here are explicitly limited to flights by licensed U.S. air carriers contracted by the U.S. Department of Homeland Security/U.S. Immigration and Customs Enforcement through its agent/broker, strictly for the removal purposes set forth as described above; and
4. We will serve this notice by electronic mail on all certificated U.S. carriers operating large aircraft; the U.S. Department of Homeland Security, the U.S. Department of State; and the Federal Aviation Administration.

By:

CAROL A. (ANNIE) PETSONK
Assistant Secretary for
Aviation and International Affairs

(SEAL)

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