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The Special Counsel

July 26, 2022

The President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-20-000577, DI-20-000578, DI-20-000672, and DI-20-000694

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the Department of Transportation (DOT) in response to the Special Counsel's referral of disclosures of wrongdoing at the Federal Aviation Administration (FAA), Southwest Airlines (SWA) Certificate Management Office (CMO), Irving, Texas, and FAA Headquarters, Washington, D.C. Three whistleblowers who chose to remain anonymous and Mr. [REDACTED] an Aviation Safety Inspector who consented to the release of his name, alleged that agency officials engaged in conduct that constituted gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety. The agency substantiated the majority of the whistleblowers' allegations. I have reviewed the agency report and whistleblower comments and, in accordance with 5 U.S.C. § 1213(e), determined that the report meets the statutory requirements and that the findings appear reasonable. The following is a summary of the report, comments, and my findings.¹

The Allegations

The whistleblowers alleged that FAA officials, particularly those in the SWA CMO, knowingly permitted SWA to engage in unsafe and improper actions that compromised the safety of the flying public, with limited or no repercussions. The whistleblowers alleged that SWA CMO employees reported several serious safety concerns regarding SWA to local and headquarters FAA officials and to the DOT Office of the Inspector General (OIG) beginning in 2018. The allegations were previously investigated, in whole or in part, as part of the OIG's February 11, 2020 report, *FAA Has Not Effectively Overseen Southwest Airlines' Systems for Managing Safety Risks* (Report No. AV2020019) (the Report). However, these safety concerns were alleged to have been improperly removed from or diminished in the Report following

¹ The allegations were referred to former Secretary Elaine Chao for investigation pursuant to 5 U.S.C. § 1213(c) and (d). FAA's Office of Audit and Evaluation (AAE) completed the investigation. Former Deputy General Counsel and current General Counsel John Putnam reviewed and signed the agency's report.

influence by SWA.² Thus, the whistleblowers asserted that the following alleged safety incidents and concerns were unresolved:

- (1) SWA CMO officials mishandled FAA's response to a February 2019 accident caused by pilot error involving SWA Flight 2169—which suffered damage to both wings while attempting to land at Bradley International Airport in Connecticut—as well as the agency's investigation into the accident;
- (2) SWA CMO officials mishandled FAA's response to a SWA accident caused by pilot error at Hollywood Burbank Airport in Burbank, California, and another incident at Philadelphia International Airport in Philadelphia, Pennsylvania;
- (3) FAA was complicit in SWA's ongoing efforts to “hide” serious incidents involving pilot error in FAA's Aviation Safety Action Program (ASAP) while allowing pilots to continue flying;
- (4) FAA mishandled SWA's Extended Operations (ETOPS) certification during the 2018-2019 federal government shutdown;³
- (5) FAA continues to engage in permissive oversight of SWA's egregiously incorrect and unreliable weight and balance data;
- (6) FAA failed in its oversight of SWA's pattern of assigning mechanics more work than can be reasonably completed and then pressuring them to sign off on work that was not completed or completed by someone else;
- (7) FAA failed to immediately and unequivocally intervene in SWA's continued use of 88 foreign-purchased aircraft, known as the Skyline aircraft, despite FAA leadership and FAA's Office of Audit and Evaluation having been notified early and often about concerns with the safety of the aircraft;
- (8) Recent leadership and staffing changes have not effectively addressed FAA's overall mismanagement of and lack of oversight at the FAA SWA CMO in Irving, Texas.

The Agency Report

Mishandling of Adverse Events Through the ASAP Program

The agency substantiated that the SWA Event Review Committee (ERC), which includes SWA and FAA employees and pilot union officials, inappropriately accepted reports on the

² See OSC File Nos. DI-20-000479, DI-20-000576, and DI-20-000579. The agency did not substantiate those allegations, finding that any incidents not included in the Report were appropriately excluded.

³ FAA conducted a separate investigation into the approval of SWA's ETOPS certification. See OSC File No. DI-19-5096. The report in that matter is responsive to the allegations presented by the whistleblowers in this matter and is incorporated by reference. The agency did not substantiate the allegations. I transmitted that matter to the President on May 27, 2022, along with my determination that the agency's findings appeared reasonable.

incidents at the Bradley, Burbank, and Philadelphia airports into the FAA's Aviation Safety Action Program (ASAP).⁴ The agency found that, generally, the ERC closed ASAP reports before the completion of ongoing FAA or National Transportation Safety Board investigations and did not consider all relevant information in their evaluations. The agency also found that company and union ERC officials were resistant to FAA's requests for additional investigation and consistently pushed for acceptance of all reports and quick closures, in opposition to ASAP program criteria. The agency determined that these actions pressured FAA ERC representatives to frequently acquiesce to these demands. The agency found that multiple ASAP reports were accepted despite evidence that the events demonstrated an intentional disregard for safety. Nevertheless, the agency was unable to establish that FAA officials systemically hid serious events through ASAP.

In response to these findings, FAA carried out recommended corrective actions including initial and recurrent training for all personnel prior to serving on the ASAP ERC and development of a regular compliance audit or routine observation of each ASAP program to ensure compliance with program guidance.

Failure to Oversee SWA's Incorrect Weights and Balances Reporting

The agency also substantiated that FAA inspectors contravened FAA guidance with respect to SWA's weights and balances reporting. The agency found that SWA and the CMO had reached an agreement to address identified issues with SWA's weights and balances data—which, among other steps, required SWA to investigate any weight discrepancy over 300 pounds. However, the CMO did not ensure that SWA met these requirements, resulting in more than 4000 errors of over 300 pounds or more between March 2018 and July 2019. FAA officials worked with SWA during this time to address the issue, but the report noted that the agency does not have a regulatory definition for what constitutes an accurate report of weight and balance data. When SWA submitted a report stating that any error less than 1500 pounds did not negatively affect safety, the FAA used SWA's analysis to establish a threshold for reporting non-compliance of only errors greater than 1500 pounds. According to the agency report, this action by the FAA principal inspector and managers contravened FAA guidance. Nevertheless, in 2021, SWA and FAA resolved the matter with SWA agreeing to pay a civil penalty of \$200,000—with an additional \$3.72 million deferred pending corrective action. FAA also provided audit data showing that between January 2019 and July 2021, SWA significantly increased its weights and balances accuracy and has maintained an error rate below 0.5 percent since September 2020.

Failure to Oversee SWA's Use of the Skyline Aircraft

The agency determined that FAA officials permitted SWA to fly 49 of the 88 Skyline aircraft without verifying that they conformed to FAA standards. The agency explained that carriers who purchase foreign-registered aircraft for use in U.S. commercial service must certify to the FAA that the aircraft are airworthy, that maintenance records comply with FAA standards, and that all relevant airworthiness directives have been met. Every aircraft must also undergo an inspection by an approved source. FAA must validate that the carrier has completed all required

⁴ ASAP is a voluntary disclosure program with the goal of enhancing aviation safety through accident and incident prevention.

steps and the condition of the aircraft before issuing an airworthiness certificate. According to the report, this process takes three to four weeks to complete.

In 2017, inspectors in the SWA CMO identified significant gaps in SWA's process for verifying the condition of the Skyline aircraft, which SWA had purchased from foreign owners between 2014 and 2018. The inspectors discovered that the designated airworthiness representatives had not followed established procedures. In 2018, after initial actions were found to be nonconforming, the FAA recommended that SWA perform immediate inspections of 34 aircraft. SWA performed overnight inspections on 32 aircraft, for which records were still being reviewed, and reported no discrepancies. However, in December 2018, SWA completed its paperwork review and reported 360 major repairs that were previously unknown. In October 2019, SWA had completed comprehensive inspections for 39 of the 88 aircraft, of which 62 percent had undocumented, nonconforming, or unverifiable repairs—including improper repairs to vapor barriers and fuselage skin.

According to the report, OIG investigators found that FAA designees approved 71 of 88 aircraft on the same day SWA submitted them, using the carrier's summary documentation to complete their review expeditiously to meet the carrier's timelines, instead of performing the required independent analyses. According to the report, the OIG briefed AAE and the former Director of Flight Standards regarding concerns about the Skyline Aircraft. Immediately thereafter, the AAE Director sent a memorandum to the FAA Administrator requesting immediate action to verify the airworthiness of the remaining aircraft. The recommendation was not accepted. Instead, FAA officials requested that SWA perform additional risk assessments. The individual responsible for that decision left the agency in 2021.

The agency determined that these actions contravened FAA regulations, which required SWA and/or FAA to identify and address these issues before the carrier operated the aircraft in commercial service. Instead, FAA permitted SWA to continue flying 49 of the 88 aircraft without verifying they met FAA standards. As a result, OIG issued several recommendations to FAA related to designees, management control of designees, and training of FAA inspectors, which FAA has substantially incorporated.

Overall Mismanagement of SWA

The agency further substantiated that FAA senior leadership mismanaged and interfered with the SWA CMO's oversight of SWA between 2018 and 2020. The report described FAA leadership's failure to support the CMO in the face of SWA's intimidation tactics, including sending a member of flight operations management to every ERC meeting. The report acknowledged that the Division Manager—who was the de facto CMO Manager—maintained a level of personal involvement and collaboration with SWA that raised doubts for inspectors about their authority to ensure regulatory compliance at SWA. The report also detailed the personal relationships between FAA and SWA senior employees, and between the SWA Chief Executive Officer and a former Deputy FAA Administrator, that created the appearance of a conflict of interest and damaged the trust among the whistleblowers, inspectors, and leadership. The agency also identified high turnover at the SWA CMO and approval by SWA CMO officials of regulatory noncompliance that contributed to the mismanagement of the SWA CMO.

Nevertheless, the agency acknowledged that new FAA senior leadership is in place and these individuals have a new opportunity to correct the mismanagement of FAA's oversight of SWA. In response, the report recommended that the FAA Flight Standards Director consider an independent comprehensive climate assessment and evaluation and provide feedback to AAE on its intended response. The agency confirmed in July 2022 that it has chosen a third-party provider to initiate the assessment.

Whistleblower Comments

In his written comments on the report, Mr. ██████ emphasized that the agency substantiated the majority of the whistleblowers' allegations.⁵ He clarified that SWA CMO personnel did notify AAE and FAA leadership of their concerns regarding the Skyline Aircraft, despite the report indicating otherwise. He noted that despite those disclosures, FAA leadership provided no support. He also highlighted his concerns regarding FAA's oversight of designees for airworthiness determination and the failure of leadership to act on designee oversight even after being alerted to these concerns over a period of years. Mr. ██████ stated that additional FAA individuals should be held accountable for the failure to act quickly in correcting the discrepancies with the Skyline Aircraft. He also asserted that individuals still employed in the SWA CMO continue to capitulate to SWA's demands.

Special Counsel's Findings and Determinations

I thank the whistleblowers for raising these serious allegations about FAA's oversight of SWA—which the agency generally substantiated. The agency provided detail and context for each instance of mismanagement and described the corrective actions taken in response. While Mr. ██████ highlighted reasonable concern that FAA's inadequate oversight could continue, the report laid out recommended and completed corrective actions that appear tailored to address these concerns. Even though these findings were extremely troubling, I have determined that the findings appear reasonable because FAA substantially incorporated the recommended actions, including by replacing senior leadership at the SWA CMO.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and the whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures

⁵ The three anonymous whistleblowers declined to submit comments on the OIG report.