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October 28, 2022

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave NW  
Washington, DC 20016

Dear Secretary Mayorkas,

I write to express my disappointment in the Department of Homeland Security's (DHS) recent decisions to grant Jones Act waivers for shipments into the island of Puerto Rico. These waivers were unlawful, unnecessary, and in direct contradiction to the government's longstanding expressed interest in protecting American industry.

The protections of this critical industry are well established and clearly articulated in U.S. law. 46 U.S.C. §501(b) Section 501 requires a determination of the non-availability of American vessels before any waiver can be granted. In your public statements on September 28 and October 16, you claimed to have consulted with the Department of Transportation (DOT) on the availability of U.S. vessels before granting the waivers. In each case, however, the Maritime Administration retroactively completed a market survey within DOT, which casts serious doubt on such a claim. This retroactive assessment sidesteps the spirit, letter, and intent of the statute. It appears that DHS superficially consulted with DOT simply to "check the box" but without any real intent to collect and consider data on the availability of domestic maritime vessels. Further, the second Jones Act waiver gave the domestic maritime industry very little time to respond to the non-availability assessment. Providing the industry with 20 minutes to respond falls far short of the duties your department owes to upholding the law, protecting the U.S. maritime industry, and serving the best interests of the American public.

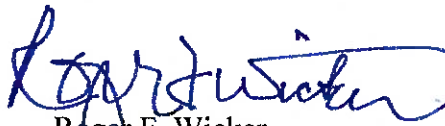
Beyond the problems with the way your agency conducted this process, the content of the waivers merits severe scrutiny. The first Jones Act waiver is particularly troublesome. The agency granted this waiver despite statements from the Department of Energy, FEMA, Army Corps of Engineers, and Coast Guard that there was a sufficient supply of diesel fuel on the island. Additionally, the Puerto Rico Resident Commissioner and Port Director both publicly commented that there was an adequate supply of diesel and no problem with the availability of Jones Act vessels. American vessel operators confirmed this fact in reporting U.S. vessel availability when surveyed. The consequences of your slipshod assessment has harmed American businesses and workers and served to favor foreign entities.

The U.S. Merchant Marine is vital to our economic security and defense readiness. The issuance of these waivers sets a dangerous precedent and sharply erodes the strength of our domestic maritime industry. Both waivers were issued for vessels that had already left port and

were in route to Puerto Rico, sending a direct signal to foreign companies that our current political leadership is willing to suspend traditional norms and bipartisan support for the American maritime industry during times of crisis. Based on your recent decisions, Jones Act waiver requests will inevitably increase in frequency as foreign companies undoubtedly recognize the superficial processes taken by this Administration related to U.S. industry availability and inevitably seek a profiteering advantage when the United States experiences a humanitarian disaster.

When reviewing future Jones Act waiver requests, I urge you to consider the implications of unnecessary waivers, abide by the law, and put the domestic maritime industry ahead of foreign competition.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger F. Wicker". The signature is fluid and cursive, with a large initial "R" and a long horizontal stroke extending to the right.

Roger F. Wicker  
United States Senator