

**Congress of the United States**  
**Washington, DC 20515**

November 14, 2019

The Honorable Chad F. Wolf  
Acting Secretary  
Department of Homeland Security  
2707 Martin Luther King Ave SE  
Washington, DC 20528

Dear Acting Secretary Wolf,

It is our understanding that the Department of Homeland Security (DHS), in consultation with the Departments of Justice and Transportation (DOJ; DOT), have developed a concept of operations by which the Transportation Security Administration's (TSA's) Federal Air Marshal Service (FAMS) would operate Department of Defense counter-unmanned aircraft system (C-UAS) equipment to mitigate a persistent unmanned aircraft system (UAS) risk in the vicinity of an airport. We believe this concept of operations is wholly inconsistent with, and contrary to the legislative intent of, the limited C-UAS authority provided by Congress to DHS.

As you know, section 1602 of the *FAA Reauthorization Act of 2018* (*FAARA*; P.L. 115-254) amended the *Homeland Security Act of 2002* (6 U.S.C. 121 et seq.) to permit DHS and DOJ to take certain actions against a UAS, up to and including its destruction, if such UAS poses a credible threat to the safety or security of a "covered facility or asset." Designation of such a facility or asset, and the operation of C-UAS equipment, is required to be conducted in close coordination with the Federal Aviation Administration (FAA) to ensure that there is no safety impact on the National Airspace System and its users.

The definition of "covered facility or asset" under section 1602 of *FAARA* (as it applies exclusively to DHS) includes facilities and assets relating to the U.S. Customs and Border Protection (CBP), the United States Secret Service (USSS), and buildings protected by the Federal Protective Service. The definition also permits the protection of (as it applies jointly to DHS and DOJ) National Special Security Events and Special Event Assessment Rating events, mass gatherings as requested by the governor of a State or territory, and active Federal law enforcement, emergency response, or security functions. The mitigation of a *persistent* UAS in the vicinity of an airport or in the airspace around such airport does not fall into any of the categories listed above or in the law.

Section 1602 of *FAARA* was based on the Administration's coordinated proposal for the "*Protection of Certain Facilities and Assets from Unmanned Aircraft*," which was transmitted to

Congress on March 15, 2018. Neither that legislative proposal, nor the final language of section 1602, contain any reference to airports, TSA, or FAMS. By contrast, specific C-UAS authority is provided for missions of the United States Coast Guard, CBP, and USSS. If Congress had wanted to provide specific C-UAS authority to TSA it would have done so in *FAARA*.

Beyond the clear lack of Congressional intent to authorize the TSA and FAMS to carry out this kind of C-UAS activity, DHS's experience in operating C-UAS equipment, particularly within complicated airspace with civilian air traffic over populated areas sorely lacking. Section 1602 of *FAARA* requires that DHS notify our Committees within 30 days of deploying any C-UAS equipment; since the law passed more than one year ago, we have only received one such notification.<sup>1</sup> Further, DHS's selection of FAMS to carry out C-UAS activities is particularly troubling, given FAMS's lack of such authority anywhere else in law and their complete absence of any experience in such matters.

While we share the goal of ensuring that our Nation's airports are not disrupted by negligent or nefarious UAS operations, DHS does not have the authority or the experience necessary to operate C-UAS equipment in the manner proposed. If the Administration believes that another Federal agency needs additional authority to mitigate credible UAS threats near airports, we welcome any discussion along those lines in order to keep our National Airspace System safe and our homeland secure. If you have any questions, please contact [REDACTED] the Aviation Subcommittee staff or [REDACTED] the Homeland Security Committee staff.



Sam Graves  
Ranking Member  
Committee on Transportation  
and Infrastructure



Mike Rogers  
Ranking Member  
Committee on Homeland  
Security

---

<sup>1</sup> This notification was received on October 25, 2019 following deployment of C-UAS equipment in New York during the 74<sup>th</sup> United Nations General Assembly.