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January 28, 2026

Via Mail & Fax

William “Liam” McKenna
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591
Fax: (202) 267-3227

Re: NOTAM No. 6/4375, Restriction of Unmanned Aircraft System (UAS) operations
near government facilities and mobile assets

Dear Chief Counsel McKenna,

We write today on behalf of the News Media Coalition (“Coalition”), which includes the Electronic Frontier Foundation, Getty Images, National Press Photographers Association, The E.W. Scripps Company, The New York Times Company, and WP Company LLC d/b/a The Washington Post, and fifteen additional local and national news organizations and nonprofits.

As described herein, our clients have significant concerns regarding the FAA’s January 16, 2026 sweeping and unprecedented Temporary Flight Restriction (the “TFR”).¹ By prohibiting all UAS activity within 3,000 horizontal feet of vast government activities for over 21 months, including all Department of Homeland Security (DHS) facilities and “mobile assets,” the TFR seeks to preclude First Amendment-protected aerial journalism within a half-mile of all DHS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP/Border Patrol) operations.

Moreover, the process by which the FAA imposed the TFR raises significant *additional* concerns. Namely, the TFR was imposed without any finding that a hazard or

¹ See https://tfr.faa.gov/tfr3/?page=detail_6_4375&ref=404media.co.

condition exists to justify the most sweeping prohibition on UAS activity across the United States ever imposed. The TFR also fails to provide the points of contact with whom accredited news representatives can coordinate to fly in the designated air space, as required by 14 C.F.R. § 91.137(c)(5). These deficiencies put journalists at significant risk of criminal and civil penalties for conducting what, before now, had been routine First Amendment-protected activity. We urge the FAA to immediately lift the TFR.

Background

Since President Trump made enforcement of immigration law a central priority for law enforcement and other public safety officials,² the Administration has more than doubled ICE’s workforce,³ and DHS and ICE officers have surged in metropolitan areas around the country, including Los Angeles, Washington, D.C., Chicago⁴ and Minneapolis. As DHS announced, the ongoing ICE operation in Minneapolis, known as Operation Metro Surge, is “[t]he largest DHS operation ever,”⁵ and more ICE assets are expected to be deployed across the country from Maine to Oregon.

During these surges, on-the-ground reporting shows that ICE officers are using unmarked, frequently rented, vehicles to conduct immigration raids. In fact, as NPR

² See *Protecting The American People Against Invasion*, The White House (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.

³ See *ICE Announces Historic 120% Manpower Increase, Thanks to Recruitment Campaign that Brought in 12,000 Officers and Agents*, U.S. Dep’t of Homeland Security (Jan. 3, 2026), <https://www.dhs.gov/news/2026/01/03/ice-announces-historic-120-manpower-increase-thanks-recruitment-campaign-brought>.

⁴ *ICE Launches Operation Midway Blitz in Honor of Katie Abraham to Target Criminal Illegal Aliens Terrorizing Americans in Sanctuary Illinois*, DHS (Sept. 8, 2025), <https://www.dhs.gov/news/2025/09/08/ice-launches-operation-midway-blitz-honor-katie-abraham-target-criminal-illegal>.

⁵ DHS (@DHSgov), X (Jan. 6, 2026, 4:21 p.m.), [https://x.com/search?f=live&q=%22largest%20DHS%20operation%20ever%22%20\(from%20Adhsgov\)&src=typed_query](https://x.com/search?f=live&q=%22largest%20DHS%20operation%20ever%22%20(from%20Adhsgov)&src=typed_query).

reported, an ICE spokesperson stated that “federal law enforcement agency cars are exempt from displaying plates when that interferes with their duties.”⁶

Against this backdrop, and on January 16, 2026, the FAA issued a TFR of enormous breadth: covering every inch of the United States, lasting until October 29, 2027, and prohibiting all UAS activity within 3,000 horizontal feet of all facilities and “mobile assets” of Department of Defense, Department of Energy and DHS, which includes ICE, CBP, and Border Patrol. And while the TFR states that operators who have an “overriding reason[] of public interest or necessity” should “coordinate in advance with the appropriate” government entity, the FAA has failed to provide information about the appropriate points of contact. Indeed, despite several phone calls and emails by undersigned counsel to the FAA, Coalition members have yet to locate a *single* point of contact with whom to coordinate flights within the designated airspace.

Robust news coverage of the federal government’s activities is essential to public oversight and public trust. As described herein, however, the TFR raises significant constitutional concerns, and should be lifted without further delay.

Argument

While the FAA has the authority to temporarily restrict airspace, federal regulation requires it to “specify[] the hazard or condition requiring” the imposition of a restriction—whether due to a hazard on the ground, an environmental disaster, or to prevent unsafe congestion above events of public interest. *See* 14 C.F.R. § 91.137(a). Further, the FAA must disclose “the appropriate FAA or ATC facility specified in the” NOTAM so that “accredited news representatives” may file a flight plan permitting them to operate in the designated area. *Id.* at (c)(5).

The FAA has failed to satisfy either obligation in the imposition of this TFR, raising, at a minimum, significant First and Fifth Amendment concerns.

1. The TFR violates the First Amendment

As the United States Supreme Court has articulated, while “differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of government affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Moreover, as the Supreme Court made clear, newsgathering is entitled to First Amendment protection for, “without some protection for

⁶ Chiara Eisner, *Trump administration relying on unmarked vehicles in immigration enforcement*, NPR.org (Oct. 28, 2025), <https://www.npr.org/2025/10/28/nx-s1-5587653/trump-administration-relying-on-unmarked-vehicles-in-immigration-enforcement>.

seeking out the news, freedom of the press could be eviscerated.” *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972).

Importantly, nearly every federal court of appeals has recognized the First Amendment right to film law enforcement performing their duties. *See Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011) (“though not unqualified, a citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.”); *Fields v. City of Phila.*, 862 F.3d 353, 359 (3d Cir. 2017) (“[R]ecording police activity in public falls squarely within the First Amendment right of access to information. As no doubt the press has this right, so does the public.”); *Sharpe v. Winterville Police Dep’t*, 59 F.4th 674, 681 (4th Cir. 2023) (“livestreaming a police traffic stop is speech protected by the First Amendment.”); *Turner v. Lt. Driver*, 848 F.3d 678, 688 (5th Cir. 2017) (“First Amendment principles, controlling authority, and persuasive precedent demonstrate that a First Amendment right to record the police does exist, subject only to reasonable time, place, and manner restrictions.”); *Nicodemus v. City of S. Bend*, 137 F.4th 654, 663 (7th Cir. 2025) (“there is a First Amendment right to record the police in the execution of their duties in public spaces.”); *Chestnut v. Wallace*, 947 F.3d 1085, 1090 (8th Cir. 2020) (“if the constitution protects one who records police activity, then surely it protects one who merely observes it—a necessary prerequisite to recording”); *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 827 n.4 (9th Cir. 2020) (the public has a “first Amendment right to observe and film police activities in public”); *Irizarry v. Yehia*, 38 F.4th 1282, 1289 (10th Cir. 2022) (“filming the police performing their duties in public is protected activity.”); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (“The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.”); *Price v. Garland*, 45 F.4th 1059, 1070 (D.C. Cir. 2022) (“Filming a public official performing public duties on public property implicates unique first amendment interests.”).

As the U.S. Court of Appeals for the Fifth Circuit explained, “[f]ilming the police contributes to the public’s ability to hold the police accountable, ensure that police officers are not abusing their power, and make informed decisions about police policy.” *Turner*, 848 F.3d at 689. And as the Court of Appeals for the D.C. Circuit unequivocally stated: “it is unreasonable to issue a blanket prohibition against the recording of a public official performing public duties on public property, so long as the recording does not interfere with the performance of the official’s duties.” *Price*, 45 F.4th at 1071.

At bottom, the Supreme Court has repeatedly and expressly made clear that “the First Amendment prohibits governments from using their criminal laws to abridge the rights to speak, worship, assemble, petition, and exercise the freedom of the press.” *City of Grants Pass v. Johnson*, 603 U.S. 520, 541 (2024). Despite this, the FAA issued a “temporary”

flight restriction that encompasses the entirety of the United States from January 16, 2026 to October 29, 2027, *without* articulating the claimed hazard or condition necessitating such a broad restriction, *without* providing clear designated contacts so that accredited news journalists can obtain permission to fly within the designated areas, and *with* threatening the imposition of criminal and civil liability for any violations of the TFR.

The FAA has acted in clear violation of the First Amendment, and the TFR should be lifted immediately.

2. The TFR violates the Fifth Amendment Due Process Clause

The TFR, which threatens both criminal and civil penalties for UAS operations that occur in the designated airspace, also raises significant Fifth Amendment due process concerns.

The Fifth Amendment to the United States Constitution—known as the Due Process Clause—declares that no person shall be “deprived of life, liberty, or property without due process of law.”

The doctrine incorporates notions of fair notice or warning. Moreover, it requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent “arbitrary and discriminatory enforcement.” Where a statute’s literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts.

Smith v. Goguen, 415 U.S. 566, 572-73 (1974).

As the D.C. Circuit has explained, when adopting a regulation, “[d]ue process requires that parties receive fair notice before being deprived of property” and “[i]n the absence of notice—for example, where the regulations is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability.” *General Elec. Co. v. U.S. E.P.A.*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995).

In this case, the FAA has attempted to prohibit all UAS operations within 3,000 horizontal feet—or within more than a half mile—of “mobile assets” including “vehicle convoys” for multiple government agencies, including DHS, ICE and CBP. *See* TFR. In the event a UAS operator violates the TFR, they are threatened with criminal and civil penalties, the loss of their FAA pilot authorization, and the possible destruction of their UAS. Yet despite these significant penalties that could deprive them of their liberty and property, the FAA has failed to articulate a clear standard for compliance.

For example, and with respect to government vehicles and mobile assets, it is difficult, if not impossible, to imagine how *any* UAS operator could know at any given moment whether they are operating inside of the airspace covered by the TFR—the use by immigration enforcement officials of unmarked, and frequently rented, vehicles, and the lack of advanced notice of their location compounds the problem of compliance.

Plain and simple: the TFR is unenforceable and violative of the Fifth Amendment because it seeks to impose criminal and civil liability without fair notice to UAS operators. The TFR must be lifted immediately. And if the FAA has articulable concerns with aerial journalists covering the current government operations, our clients are willing to engage in discussion with DHS and FAA officials.

It bears emphasizing that the News Media Coalition has worked closely with the FAA for more than ten years to craft a regulatory framework for UAS operations that ensures the safety of the nation’s airspace while enabling compelling aerial journalism. Journalists using UAS to gather and report the news take seriously their obligations in moments of crises to coordinate with federal, state and local authorities to ensure that their UAS operations do not interfere with public safety efforts. It is therefore unsurprising that the FAA’s statutory authority to impose TFRs explicitly requires that accredited news representatives have an avenue by which to operate in areas designated by the FAA as temporarily restricted. *See* 14 C.F.R. § 91.137(c)(5).

Should a legitimate, articulable hazard or condition arise in the context of immigration enforcement, the FAA knows how to act quickly, consistent with its statutory requirements, to impose a targeted, and limited in duration, temporary flight restriction to ensure public safety and that still permits journalists to operate UAS to exercise their First Amendment right to gather and report the news.

The Coalition respects the efforts of the FAA to ensure the safety of our national airspace, but submits that a prohibition on all UAS within 3,000 feet of mobile assets, including unmarked vehicles, is untethered to any legitimate security interest and cannot withstand judicial scrutiny.

Our clients remain ready to engage with the FAA, as we have for more than a decade, if the government has legitimate, articulable, and specific concerns with aerial coverage of immigration enforcement operations. Until that engagement, however, the Coalition urges the FAA to immediately lift the TFR.

William “Liam” McKenna
January 28, 2026
Page 7

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles D. Tobin".

Charles D. Tobin
Emmy Parsons