

**THE UAP DISCLOSURE ACT:
IMPLICATIONS FOR CONGRESSIONAL
OVERSIGHT AND PUBLIC AWARENESS
OF UNIDENTIFIED ANOMALOUS
PHENOMENA**

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In recent years, numerous former United States government officials and service members have publicly attested to their observations of unidentifiable craft with beyond next-generation capabilities, now referred to as unidentified anomalous phenomena (“UAPs”). Former national security officials have also testified to Congress that defense and intelligence authorities have long been aware of advanced non-human entities on the planet and have even retrieved crashed UAPs in operations not previously disclosed to elected officials. These public testimonies have sparked renewed governmental interest in addressing UAPs, leading to the introduction of the UAP Disclosure Act (“UAPDA”) in July 2023. This Note will argue that this unprecedented legislation, which, if enacted, would establish significant congressional oversight over UAP-related activities and operations, demonstrates that senior members of Congress take the substance of these claims seriously.

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INTRODUCTION

Humanity has wrestled with the possibility of intelligent ‘others’ for eons. However, while it’s commonly accepted that our species has shared the planet with other intelligent *humans*, such as the Neanderthals and Denisovans, the prospect of doing so with non-humans of equal or superior intelligence has remained squarely in the realm of fantasy, spirituality, or science fiction.

But what if the existence of such advanced life is already known to the United States government? In the voluminous records of testimony, videos, and photographs spanning decades from eyewitnesses claiming to have encountered unidentifiable craft or beings, could there be valid descriptions of unacknowledged civilizations actively engaged with our planet? Such encounters in contemporary history have been colloquially described as encounters with UFOs but are now referred to by scholars and government officials as UAPs, or unidentified anomalous phenomena.

In July 2023, then-Senate Majority Leader Chuck Schumer (D-NY) introduced to little fanfare the Unidentified Anomalous Phenomena Disclosure Act (“UAPDA”), an amendment to the fiscal year 2023-2024 National Defense Authorization Act (“FY24 NDAA”), Congress’ annual defense appropriations vehicle.¹ Co-sponsored by a bipartisan coterie of senior leadership in the Senate Select Intelligence

1. Press Release, Senate Democrats, Schumer, Rounds Introduce New Legislation to Declassify Government Records Related to Unidentified Anomalous Phenomena & UFOs—Modeled After JFK Assassination Records Collection Act—as an Amendment to NDAA (July 14, 2024), https://www.democrats.senate.gov/newsroom/press-releases/schumer-rounds-introduce-new-legislation-to-declassify-government-records-related-to-unidentified-anomalous-phenomena-and-ufos_modeled-after-jfk-assassination-records-collection-act--as-an-amendment-to-ndaa [https://perma.cc/3K34-TULK].

and Armed Services Committees,² the UAPDA would grant Congress substantial authority to investigate what executive branch agencies know about UAPs, defined in the bill as any objects that cannot be identified “due to performance characteristics and properties not previously known to be achievable based upon commonly accepted physical principles.”³

Over the years, Congress has informally investigated UAPs, revealing a “vast web of individuals and groups” who have shared information leading some in Congress to believe that “the Executive Branch [has been] concealing important information regarding UAPs over broad periods of time.”⁴ The UAPDA followed in the wake of statements by former government officials and military pilots regarding a longstanding, institutionalized lack of transparency within the defense and intelligence community about UAPs, as well as reports that the U.S. government has been operating longstanding crash retrieval and reverse-engineering programs focused on recovering and analyzing UAP technology.⁵ Whistleblowers, investigative journalists, and current government officials—including Secretary of State Marco Rubio, have spoken publicly about additional testimony or evidence that remains classified or undisclosed to the public, some from alleged firsthand witnesses of UAPs or crash retrieval programs.⁶⁷

2. Co-sponsors included Senators Mike Rounds (R-SD) and Kirsten Gillibrand (D-NY) and former Senator Marco Rubio (R-FL).

3. Unidentified Anomalous Phenomena Disclosure Act (“UAPDA”), S.2226, 118th Cong. § 9003 (2023).

4. Senate Democrats, *supra* note 1; Helene Cooper et al., *Glowing Auras and ‘Black Money’: The Pentagon’s Mysterious U.F.O. Program*, N.Y. TIMES (Dec. 16, 2017), <https://www.nytimes.com/2017/12/16/us/politics/pentagon-program-ufo-harry-reid.html> [<https://perma.cc/B3KL-XLUB>].

5. Jacquelyn DiNick, *Navy Pilots Recall “Unsettling” 2004 UAP Sighting*, CBS NEWS (Aug. 29, 2021), <https://www.cbsnews.com/news/navy-ufo-sighting-60-minutes-2021-08-29/> [<https://perma.cc/2TCT-X4GD>]; Adam Janos, *Why Have There Been So Many UFO Sightings Near Nuclear Facilities?*, HISTORY CHANNEL (June 21, 2019), <https://www.history.com/news/ufos-near-nuclear-facilities-uss-roosevelt-rendlesham> [<https://perma.cc/9HS8-2YBE>]; Andy Gipson et al., *We Are Not Alone: The UFO Whistleblower Speaks*, NEWSNATION (June 11, 2023), <https://www.newsnationnow.com/space/ufo/we-are-not-alone-the-ufo-whistleblower-speaks/> [<https://perma.cc/A9Y6-8ZVH>].

6. Joe Khalil & Liz Jassin, *Rubio: Recent UFO Whistleblower Isn’t the Only One*, NEWSNATION (June 26, 2023), <https://www.newsnationnow.com/space/ufo/rubio-recent-ufo-whistleblower-isnt-the-only-one/> [<https://perma.cc/DA9C-62PT>]; The Hill, *Gov’t SOFT LAUNCHING UFO Truth?! Leslie Kean Weighs in on Whistleblower Reporting on Rising*, YOUTUBE (June 8, 2023), <https://youtu.be/gkyzgPvVnBI?t=160> [<https://perma.cc/MVV9-EUFC>] (expressing her opinion that “a lot more [evidence or testimony is] to come” regarding Grusch’s claims).

7. Since the UAPDA was first introduced, Congress has held additional hearings on UAPs. A House Oversight hearing in November 2024 featured a report allegedly authored by an anonymous DoD whistleblower, who claimed to have conducted a

The UAPDA would establish congressional oversight over such programs and includes explicit reference to technologies of unknown origin—materials associated with UAP or incorporating science and technology that lacks a known means of human manufacture—as well as non-human intelligences (“NHI”), defined as any sentient being of biological or other origin associated with UAPs.⁸

The language of the UAPDA represents a significant escalation relative to previous congressional efforts to establish greater transparency regarding UAPs. While Congress has previously mandated UAP reporting by the Pentagon and appropriated funding to study UAPs, prior language and rhetoric has focused on UAPs’ unknown origin and whether they might pose a threat to national security.⁹ The UAPDA is much less ambiguous—implying that some UAPs have non-human or non-terrestrial origins and that the executive branch has had a substantial history of engagement with them.¹⁰ Moreover, it provides for the seizure of such materials from private parties, such as defense contractors who have been alleged to be in possession of retrieved craft.¹¹

Despite its eventual exclusion from the FY24 NDAA, the UAPDA’s introduction by senior leaders in Congress—including members of

multi-year internal investigation that corroborated claims that the executive branch had been less than forthcoming to Congress regarding its knowledge of UAPs. It detailed an unacknowledged special access program, Immaculate Constellation, that collects imagery and human intelligence on UAPs and other exotic vehicles, and it listed the common UAP morphologies observed by the government. The author also asserted that a review of internal records would support the claim that the DoD had engaged in a pattern of deception and obfuscation with members of Congress about the existence of UAPs. A Pentagon spokesperson later denied the existence of Immaculate Constellation. *See Unidentified Anomalous Phenomena: Exposing the Truth, House Oversight Committee on Oversight and Accountability, Hearing, C-SPAN*, <https://oversight.house.gov/hearing/unidentified-anomalous-phenomena-exposing-the-truth/>; *see also* Ross Coulthart, *Report Names ‘Immaculate Constellation’ UAP Program: Journalist*, *NEWSNATION* (November 13, 2024), <https://www.newsnationnow.com/space/ufo/report-immaculate-constellation-uap-journalist/>; <https://mace.house.gov/immaculateconstellation>.

8. ‘Technologies of unknown origin’ are defined as materials or vehicles associated with UAP or “incorporating science and technology that lacks prosaic attribution or known means of human manufacture,” while NHI is deemed “any sentient intelligent non-human lifeform regardless of nature or ultimate origin that may be presumed responsible for [UAP] or of which the Federal Government has become aware.” Unidentified Anomalous Phenomena Disclosure Act § 9003.

9. *See, e.g.*, Zamone Perez, *Senators Want to Boost Pentagon UFO Office Funding, Transparency*, *MIL. TIMES* (July 5, 2023), <https://www.militarytimes.com/news/your-military/2023/07/05/senators-want-to-boost-pentagon-ufo-office-funding-transparency/> [<https://perma.cc/56SE-QRTT>].

10. Unidentified Anomalous Phenomena Disclosure Act (“UAPDA”), S.2226, 118th Cong. § 9003 (2023).

11. *See infra* Section II.B.4.

the Gang of Eight¹²—suggests that the subject matter of the UAPDA merits serious consideration. The bill text provides significant levers with which Congress could enforce its newfound oversight power over the defense and intelligence community, including third-party contractors in possession of UAP-related materials.¹³ While most of the UAPDA was excluded from the final appropriations package, legislators reintroduced most of the same language for the fiscal year 2025 NDAA and are negotiating for its inclusion at the time of this writing.¹⁴

This Note will contextualize the UAPDA in relation to historical and contemporary UAP discourse, assess its potential effectiveness, and examine the implicit assertions made by the UAPDA and its drafters.

Part I will provide an overview of the publicly known history of U.S. engagement with UAPs leading up to the introduction of the UAPDA. Section I.A will briefly cover the history of modern American UAP sightings and early attempts to qualify the nature and origins of UAPs, including official investigations by the U.S. government. Section I.B of this Note will cover the political context surrounding the development of the UAPDA and its treatment during the FY24 NDAA conference, in which the language of the UAPDA was modified, negotiated, and mostly excluded from the final act. It will also examine the final enacted version of the UAPDA (“Subtitle C”) that came out of conference and evaluate where it may fall short of the drafters’ aims.

Part II will discuss the terminological origins of UAP and the significance of the UAPDA’s chosen definition. It will also examine the language of the UAPDA as passed by the Senate, its impact on congressional authority, and potential areas of concern.

Finally, Part III will demonstrate that the UAPDA amounts to an implicit assertion by the drafters that they believe or are at least persuaded to action on the basis that: (1) intelligent, non-human life is present on the planet; (2) NHI possess advanced and superior capabilities that defy conventional physics; and (3) certain U.S. government authorities and private entities are aware of the NHI presence and are in possession of NHI-derived materials, such as advanced technologies and biological remains.

12. The Gang of Eight refers to the majority and minority leaders of the Senate and House as well as the chair and ranking members of the intelligence committees in the Senate and House. They may be notified when the President approves of covert action in situations where the President has deemed it necessary to not inform the intelligence committees for national security. *See* 50 U.S.C. § 3093(c)(2).

13. *See infra* Section II.B.

14. *See infra* Section I.D.

I. A BRIEF HISTORY OF U.S. INTEREST IN UNIDENTIFIED ANOMALOUS PHENOMENA

The U.S. government and the broader public's interest in investigating UAPs has ebbed and flowed over the last century. For decades, UAPs have been heavily stigmatized as a subject for serious inquiry. At the time of writing, mainstream discourse around UAPs continues to focus on whether UAP encounters are the result of interactions with real but unattributable phenomena, as opposed to hallucinations or misidentification of prosaic objects. The UAPDA necessarily interacts with this historical context and broader skepticism about UAPs and what they might represent—namely, the possibility of non-human intelligent life existing on this planet. Given these dominant views, the promulgation of the UAPDA itself is a radical act that serves to legitimize this topic for policymakers and open additional lines of inquiry that naturally follow from its claims.

A. *Notable Sightings of UAPs in 20th Century America*

Contemporary perceptions of UAPs are strongly influenced by culturally salient encounters in the early 20th century. In 1947, public interest in UAPs skyrocketed in the United States when a civilian pilot named Kenneth Arnold claimed to have witnessed a group of craft flying in formation, moving like saucers skipped across water.¹⁵ The incident was widely reported in the media and popularized the term “flying saucer,” which became a placeholder term for any unidentified objects of unknown origin. The impact of this reporting was significant, sparking a nationwide wave of reports from others who claimed to have also seen unknown objects.¹⁶

Another foundational UAP incident occurred the same year in Roswell, New Mexico when an Army bulletin published a report about a local ranch foreman who claimed to have discovered a crashed saucer on the property.¹⁷ However, the Army quickly rescinded the story and explained the next day that an experimental weather balloon carrying test dummies had crashed.¹⁸ Photos exhibiting some of the debris were

15. Sarah Scoles, *How UFO Sightings Became an American Obsession*, WIRED MAG. (Mar. 3, 2020), <https://www.wired.com/story/how-ufo-sightings-became-an-american-obsession/> [https://perma.cc/KU8N-HJQ7]; Greg Eghigian, *UFOs and the Boundaries of Science*, BOSTON REV. (Aug. 4, 2021), <https://www.bostonreview.net/articles/ufos-and-the-boundaries-of-science/> [https://perma.cc/Z9WV-J7DR].

16. *Id.*

17. *The Roswell Report: Case Closed*, U.S. AIR FORCE, <https://www.af.mil/The-Roswell-Report/> [https://perma.cc/9LLU-SWQW] (last visited Nov. 20, 2024); William J. Broad, *Air Force Debunks Roswell UFO Story*, N.Y. TIMES, Jun. 25, 1997, at 7.

18. *Id.*

published in the Army's later reports.¹⁹ The official narrative has been disputed over time by others, including a local mortician that claimed to have seen the crashed vehicle and learned details from a military nurse about the recovery of the pilots' bodies.²⁰

Encounters with UAPs often implicated national security. During World War II, Allied pilots flying in the European theatre reportedly engaged bright lights—sometimes described as round or glowing objects—moving at high speed. These objects, which came to be known as “foo fighters,” would follow or chase the pilots at hundreds of miles an hour, easily outmaneuvering them.²¹ At the time, Allied military command feared that the sightings represented advanced Axis technology, but German and Japanese pilots reported similar encounters.²²

A few years later, a pair of incidents would envelop the nation in a panic about UAPs. On a July evening in 1952, air traffic controllers at three distinct locations around the nation's capital noticed several fast-moving contacts appear on radar speeding towards Andrews Air Force Base before making a flyover of the White House and Capitol Hill.²³ Starting around 11:00 p.m., controllers at Washington National Airport and Andrews and Bolling Air Force Bases began to track multiple contacts flying in strange patterns, cruising leisurely then accelerating away at high speeds.²⁴ At Washington National Airport, one controller reported seeing a bright light take off at an incredible speed.²⁵ A pilot

19. *Id.*

20. Karl T. Pflock, *Star Witness: The Mortician of Roswell Breaks His Code of Silence*, GALE ACADEMIC ONEFILE (1995), <https://go.gale.com/ps/i.do?p=AONE&u=gogglescholar&id=GALEIA17596047&v=2.1&it=r&sid=AONE&asid=fecdd8e7c> [<https://perma.cc/X7YW-K5K9>].

21. Zoe Krasney, *What Were the Mysterious “Foo Fighters” Sighted by WWII Night Flyers?*, SMITHSONIAN MAG. (Aug. 2016), <https://www.smithsonianmag.com/air-space-magazine/what-were-mysterious-foo-fighters-sighted-ww2-night-flyers-180959847/> [<https://perma.cc/J2PX-ZL5M>].

22. *Floating Mystery Ball is New Nazi Air Weapon*, N.Y. TIMES, Dec. 14, 1944, <https://www.nytimes.com/1944/12/14/archives/floating-mystery-ball-is-new-nazi-air-weapon.html>; PATRICK LUCIANO & GARY COVILLE, *SMOKIN' ROCKETS: THE ROMANCE OF TECHNOLOGY IN AMERICAN FILM, RADIO AND TELEVISION, 1945–1962* 16 (2002), <https://archive.org/details/smokinrocketsrom00luca/page/16/mode/2up>.

23. Laura M. Holson, *A Radar Blip, a Flash of Light: How U.F.O.s ‘Exploded’ Into Public View*, N.Y. TIMES (Aug. 3, 2018), <https://www.nytimes.com/2018/08/03/science/ufo-sightings-USA.html> [<https://perma.cc/7DNM-BL6U>].

24. Peter Carlson, *50 Years Ago, Unidentified Flying Objects from Way Beyond the Beltway Seized the Capital's Imagination*, WASH. POST (Jul. 20, 2002), <https://www.washingtonpost.com/archive/lifestyle/2002/07/21/50-years-ago-unidentified-flying-objects-from-way-beyond-the-beltway-seized-the-capitals-imagination/59f74156-51f4-4204-96df-e12be061d3f8/> [<https://perma.cc/7P2C-TL7Y>].

25. *Id.*

flying over D.C. at the time also corroborated the radar data, reporting visual contact with the objects.²⁶ An experienced pilot of over 17 years, he described the objects as “falling stars without tails.”²⁷ Military jets deployed to intercept the objects were unable to make contact; the objects would disappear from radar when the jets got close, only to reappear after they had left the area.²⁸ A controller later described the objects’ behavior as reminiscent of “a bunch of small kids playing.”²⁹ The objects were tracked periodically on radar for more than five hours before they finally disappeared.³⁰

A week later, unidentified objects were spotted on D.C. radars again.³¹ The Air Force quickly deployed fighter jets to intercept the objects but was again unsuccessful. The unidentified craft played a cat-and-mouse game with the fighters all night, disappearing when the fighters neared and reappearing later.³² The incident was widely covered in the press the next morning in breathless headlines, such as “Objects’ [sic] Outstrip Jets Over Capital,” as reported in the *New York Times*, or “‘Saucer’ Outran Jet, Pilot Reveals,” in the *Washington Post*.³³ The Air Force and CIA shared concerns about the ensuing public panic, worrying that a distracted public might create openings for the Soviet Union to launch a preemptive assault against the United States.³⁴ Days later, the Pentagon held a news conference claiming that the sightings were likely the result of a temperature inversion that radar operators at Washington National Airport had mistaken for fast-moving aircraft.³⁵

B. Government Investigations and Stigmatization of UAPs

Under pressure from elected representatives and the public, the U.S. government undertook several investigations into UAPs, ultimately concluding that most UAP reports were unremarkable and that the topic was not worthy of serious consideration. Shortly after the 1952 sightings over D.C., the CIA commissioned a group of technical and scientific advisors, the Robertson Panel, to investigate the foo fighter

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Holson, *supra* note 23.

31. *Id.*

32. *Id.*

33. *Id.*; Carlson, *supra* note 24.

34. Holson, *supra* note 23; *see also* HAINES, *infra* note 40 at 71.

35. Holson, *supra* note 23.

phenomenon, with the work conducted under classified conditions.³⁶ The panel concluded from the history of sightings that the objects did not pose a direct threat to national security but was silent on the objects' origin.³⁷ Because most eyewitness reports of UAPs were short in duration (e.g., 2-3 seconds) and lacking in detail, the panel noted that they would be very difficult to investigate thoroughly.³⁸ It advised the government to quell public interest and reporting on the topic to discourage the public from reporting sightings, citing concerns about overloading channels with low-quality reports.³⁹ The panel recommended instituting a “policy of public education” regarding the lack of evidence behind UAPs and suggested using “mass media, advertising, business clubs, schools, and even the Disney corporation” to do so.⁴⁰ It also recommended monitoring civil society groups interested in studying UAPs for subversive activities.⁴¹

The panel's conclusions and recommendations aligned with the outcomes of previous government inquiries, such as Projects Sign and Grudge, which were successive Air Force investigations into UAPs active mainly until 1949.⁴² Project Sign had concluded that most sightings could be explained as mass hysteria, hoaxes, or sightings of known objects.⁴³ However, it did not rule out the possibility of “extraterrestrial” phenomena.⁴⁴ Project Grudge similarly concluded that there was no evidence that the objects posed a threat, and recommended that the project be reduced in scope because the existence of official government interest encouraged the public to believe in the existence of UAPs.⁴⁵

36. Gideon Lewis-Kraus, *How the Pentagon Started Taking U.F.O.s Seriously*, NEW YORKER (Apr. 30, 2021), <https://www.newyorker.com/magazine/2021/05/10/how-the-pentagon-started-taking-ufos-seriously> [https://perma.cc/FK83-TTYV]. The panel was not the first official investigation into unidentified objects and was preceded or contemporaneous with other initiatives, including Projects Grudge and Bluebook.

37. CENTRAL INTELLIGENCE AGENCY, REPORT OF MEETINGS OF SCIENTIFIC ADVISORY PANEL ON UNIDENTIFIED FLYING OBJECTS CONVENED BY OFFICE OF SCIENTIFIC INTELLIGENCE, CIA, JANUARY 14-18, 1953 7 (Feb. 16, 1953) <https://documents.theblackvault.com/documents/ufos/robertsonpanelreport.pdf> [https://perma.cc/7KY3-BZAF].

38. *Id.* at 7.

39. *Id.* at 9, 19–23.

40. GERALD K. HAINES, CENTRAL INTELLIGENCE AGENCY, CIA'S ROLE IN THE STUDY OF UFOs, 1947-90, 40 STUDIES IN INTELLIGENCE 67, 72 (1997), <https://apps.dtic.mil/sti/pdfs/ADA525986.pdf> [https://perma.cc/GWW9-ML8J].

41. *Id.*

42. *Id.* at 67–68.

43. *Id.* at 67.

44. *Id.* at 67–68.

45. *Id.* at 68.

Project Blue Book, perhaps the most well-known Air Force investigation into UAPs, faced the additional challenge of explaining away sightings of new experimental aircraft. Starting in 1952, the CIA had begun developing the U-2 spy plane, a high-altitude reconnaissance craft that remained unacknowledged until Gary Powers, a U-2 pilot, was shot down by a Soviet surface-to-air missile in 1960.⁴⁶ Project Blue Book, which was active well into the 1960s, identified several U-2 flights in the sightings it investigated and concocted explanations involving weather phenomena to hide the project's existence.⁴⁷

While the government downplayed the idea of UFOs, U.S. officials privately fretted over reports that the Soviet Union was developing advanced saucer-style craft with the help of German engineers.⁴⁸ The U.S. had been attempting along with its allies to develop its own nonconventional saucer craft, known as Project Y, and feared a similar Soviet effort.⁴⁹

Interest by ufologists persisted over the years, even as the topic of UAPs became stigmatized as a subject for serious public consideration. Many advocates for transparency, sensitized by previous government deceptions regarding the U-2 and similar incidents, expressed skepticism about the conclusions of government investigations. In the decades following, conspiracy theories about government cover-ups of UAPs thrived.⁵⁰

Interest in greater transparency varied across different parts of the U.S. government. In response to mounting public pressure, the Air Force sought several times to declassify the entirety of the Robertson Panel report.⁵¹ However, its efforts were rebuffed by CIA officials, who feared public awareness of the CIA's involvement in sponsoring the investigation as well as the release of its conclusions, such as the potential for UAPs to be used for psychological warfare.⁵² Nevertheless, transparency advocates persisted and ultimately the CIA's role in the Robertson Panel and the report became known to the public.⁵³

Overall, government investigations balanced several competing concerns. First, they sought to quell public anxiety and interest in UAPs

46. *Id.*; *U-2 Overflights and the Capture of Francis Gary Powers, 1960*, OFFICE OF THE HISTORIAN, U.S. DEPT' T OF STATE, <https://history.state.gov/milestones/1953-1960/u2-incident> [<https://perma.cc/7X2Z-7H3W>].

47. HAINES, *supra* note 40, at 73.

48. *Id.* at 72–73.

49. *Id.* at 73.

50. *See generally id.* at 76–79.

51. *Id.* at 73–74.

52. *Id.* at 74.

53. *Id.* at 76.

without further legitimizing the topic. Second, they had to identify objects in sightings while concocting plausible cover stories for known but classified airframes. Third, the investigations needed to investigate unidentifiable objects and determine if they posed a threat to national security.

While UAPs have been heavily ridiculed as a fringe topic for decades, official investigations that repeatedly insisted that UAPs were unremarkable failed to quash public interest in the matter. One 1996 *Newsweek* poll found that 20% of respondents believed that UFOs were more likely to be alien life forms and ships than more ordinary explanations.⁵⁴ That interest has grown in the interim decades, with a 2022 poll showing that 34% of respondents believe that UFOs are more likely to be of alien origin.⁵⁵ Meanwhile, over the last three decades, mass sightings in the U.S. have continued to occur regularly.⁵⁶

C. *The Fight for UAP Study and Disclosure by Congress*

Congressional interest in UAPs persisted over the years, driven by senior members of both parties. In 2007, then-Senate Majority Leader Harry Reid along with Senators Ted Stevens (R-AK) and Daniel Inouye (D-HI)—the Chair and Ranking Member of the Defense Appropriations Subcommittee, respectively—breathed new life into official investigations on UAPs, appropriating funds and directing the Pentagon to establish the Advanced Aerospace Weapon System Application Program (“AAWSAP”) under the auspices of the Defense Intelligence Agency (“DIA”).⁵⁷ Reid, Stevens, and Inouye as well as former Senator John Glenn, a retired astronaut, shared concerns regarding the “thousands” of reports of unidentified objects by military personnel and sought to develop a greater understanding of UAPs and whether they constituted a threat to national security.⁵⁸ The DIA

54. Taylor Orth, *More Than Half of Americans Believe Aliens Probably Exist*, YouGov (June 15, 2021), <https://today.yougov.com/technology/articles/43959-more-half-americans-believe-aliens-probably-exist> [<https://perma.cc/EK5C-2Q2A>].

55. *Id.*

56. See, e.g., *O’Hare UFO Sighting in 2006 One of the Most Famous Reported*, CHI. TRIB. (Aug. 23, 2021), <https://www.chicagotribune.com/2013/03/20/ohare-ufo-sighting-in-2006-one-of-the-most-famous-reported/> [<https://perma.cc/BNE7-WU5L>]; *What Were Those Lights in the Phoenix Sky?*, CNN (June 19, 1997), <https://web.archive.org/web/20170413133442/http://edition.cnn.com/US/9706/19/ufo.lights/>.

57. Cooper et al., *supra* note 4; Tim McMillan, *Devices of Unknown Origin Part III: “Mr. Secretary, We Don’t Know”*, DEBRIEF (Jun. 25, 2021), <https://thedebrief.org/devices-of-unknown-origin-part-iii-mr-secretary-we-dont-know/> [<https://perma.cc/WP6F-LJ62>]. See also Merlan, *infra* note 59.

58. To The Stars Academy, *Luis Elizondo Presents the History of AATIP*, YouTube (Aug. 31, 2018), <https://www.youtube.com/watch?v=D3r6SmrCUM0&t=828s> [<https://perma.cc/L5MP-PAMN>] (starting at 07:14).

established a solicitation program and awarded the contract to Bigelow Aerospace, a Nevada-based aerospace company with ties to Reid.⁵⁹

In 2008, AAWSAP was rebranded as the Advanced Aerospace Threat Identification Program (“AATIP”) as part of a strategic shift by its members to focus on generating a more tangible understanding of UAPs that could be communicated to senior Department of Defense (“DoD”) leadership. According to Luis “Lue” Elizondo, a former program manager of AATIP, the focus narrowed to what could be observed, collected on by sensors, and reported.⁶⁰ The new focus excluded any speculation regarding the origins of UAP.⁶¹

AATIP collected “vast amounts” of data and analysis in its first year.⁶² Senator Reid requested in 2009 that the program be upgraded to a restricted special access program to protect it from potential counterintelligence threats.⁶³ However, the upgrade request was rejected by the DIA, which determined that the new classification was unnecessary based on its assessment of the information that had been gathered.⁶⁴ AATIP did not receive additional funding after 2012 and the Pentagon claimed to have shut it down, but according to Elizondo and others, the program continued to operate until at least 2017, during which time it made important observations about UAP in its reports, many of which remain classified.⁶⁵ A declassified list of AATIP’s studies, first obtained through a Freedom of Information Act request in 2018, revealed that the group had been investigating potential near-future foreign aerospace threats and had commissioned studies into vacuum-based space propulsion (i.e., spacetime metric engineering), high-frequency gravitational communication, traversable wormholes,

59. *Id.* at 09:12; Anna Merlan, *Newly-Released Documents Shed Light on Government-Funded Research Into Worm Holes, Anti-Gravity and Invisibility Cloaks*, VICE (Apr. 19, 2022), <https://www.vice.com/en/article/newly-released-documents-shed-light-on-government-funded-research-into-worm-holes-anti-gravity-and-invisibility-cloaks/> [<https://perma.cc/U5RC-L6RD>].

60. To The Stars Academy, *supra* note 58, at 09:40.

61. *Id.*

62. *Id.* at 00:10:00.

63. Memorandum from James R. Clapper Jr., Under Secretary of Defense, to the Deputy Secretary of Defense, <https://www.dia.mil/FOIA/FOIA-Electronic-Reading-Room/FileId/170015/> [<https://perma.cc/5TZB-Q2T5>] (regarding “Senator Harry Reid’s Request to Put the Advanced Aerospace Threat and Identification Program (AAITP) under Special Access Protection”).

64. *Id.*

65. Cooper et al., *supra* note 4 (“The Defense Department has never before acknowledged the existence of the program, which it says it shut down in 2012. But its backers say that, while the Pentagon ended funding for the effort at that time, the program remains in existence.”).

manipulation of extra dimensions, and other unconventional topics.⁶⁶ AATIP also developed the “five observables” framework (expanded now to six factors) used in the UAPDA.⁶⁷

DoD senior management “remained apprehensive” about reporting AATIP’s findings up the chain of command until October 2017, when Elizondo resigned publicly in an effort to raise awareness about the program and the UAP issue more broadly.⁶⁸ With support from allies, such as Christopher Mellon, former Assistant Secretary of Defense for Intelligence, Elizondo sat down with investigative reporters, leading to a series of *New York Times* articles and reporting by other major outlets about AATIP’s work, buttressed by three authenticated videos of UAPs.⁶⁹

The media reporting sparked a new wave of public interest in UAPs and the stories of pilots who had encountered them.⁷⁰ The articles featured encounters involving Navy service members, the earliest dating back to 2004.⁷¹ Several pilots involved in these encounters have since spoken publicly on the record, first to the media and then in a House Oversight hearing in July 2023.⁷² In each encounter, pilots

66. Joseph Trevithick, *Here’s the List of Studies the Military’s Secretive UFO Program Funded, Some Were Junk*, WARZONE (July 24, 2020), <https://www.thedrive.com/the-war-zone/26056/heres-the-list-of-studies-the-militarys-secretive-ufo-program-funded-some-were-junk> [https://perma.cc/833K-3BY5]; Merlan, *supra* note 57.

67. *You Should Know: Luis Elizondo’s Five Observables*, OTHER TOPIC (Nov. 7, 2023), <https://theothertopic.substack.com/p/luis-elizondos-five-observables#footnote-1-138653092> [https://perma.cc/HLC5-53F7]; Unidentified Anomalous Phenomena Disclosure Act § 9003 (stating the definition of UAP).

68. Bryan Bender, *Ex-official Who Revealed UFO Project Accuses Pentagon of ‘Disinformation’ Campaign*, POLITICO (May 26, 2021), <https://www.politico.com/news/2021/05/26/ufo-whistleblower-ig-complaint-pentagon-491098> [https://perma.cc/P6FM-9ZS8].

69. Cooper et al., *supra* note 4; *see, e.g.*, Helene Cooper, Leslie Kean & Ralph Blumenthal, *2 Navy Airmen and an Object That ‘Accelerated Like Nothing I’ve Ever Seen,’* N.Y. TIMES (Dec. 16, 2017), <https://www.nytimes.com/2017/12/16/us/politics/unidentified-flying-object-navy.html> [https://perma.cc/X5DL-KKB5]; Bryan Bender, *The Pentagon’s Secret Search for UFOs*, POLITICO MAG. (Dec. 16, 2017), <https://www.politico.com/magazine/story/2017/12/16/pentagon-ufo-search-harry-reid-216111/> [https://perma.cc/8YZ5-CNV8]; Joby Warrick, *Head of Pentagon’s Secret ‘UFO’ Office Sought to Make Evidence Public*, WASH. POST (Dec. 16, 2017), https://www.washingtonpost.com/world/national-security/head-of-pentagons-secret-ufo-office-sought-to-make-evidence-public/2017/12/16/90bcb7cc-e2b2-11e7-8679-a9728984779c_story.html [https://perma.cc/8BUX-T8JZ]; Lewis-Kraus, *supra* note 36 (noting Mellon helped arrange the initial meeting between Elizondo and Kean).

70. *See, e.g.*, Cooper et al., *supra* note 4; Cooper, Kean & Blumenthal, *supra* note 69.

71. Cooper et al., *supra* note 4; Cooper, Kean & Blumenthal, *supra* note 69.

72. DiNick, *supra* note 5; C-SPAN, *David Fravor Opening Statement at Unidentified Anomalous Phenomena (UAP) Hearing*, YOUTUBE (July 26, 2023), <https://www.youtube.com/watch?v=usPustgTcDU> [https://perma.cc/3S4H-TZBN] [hereinafter *David Fravor Opening Statement*].

described seeing oddly-shaped craft moving in ways that defied understanding. David Fravor, one of the pilots involved in the 2004 Nimitz encounter, described encountering a white cylinder without any visible wings, propellers, or engines (closely resembling a “Tic-Tac” mint or propane tank).⁷³ Anomalous objects had been observed on the radar for several days before Fravor’s encounter, moving between low earth orbit and sea-level altitudes at incredible speeds. Sometimes, the objects were observed to drop from 28,000 feet to sea level in less than a second.⁷⁴ Ryan Graves, another pilot, testified that, after an upgrade to radar sensors, his squadron began to observe unidentified contacts in their airspace off the coast of the Atlantic in 2014.⁷⁵ Initially suspecting a glitch, they later corroborated these radar contacts with infrared sensors, confirming that the objects existed. In one close encounter, pilots in his squadron almost had a mid-air collision with a cube hovering over the Atlantic in 2014.⁷⁶ He also shared that Navy pilots continued to encounter UAPs so frequently that they became part of the daily briefing.⁷⁷ The three videos represent some of the best known and verifiable footage of UAPs and continue to be officially unresolved.

Under congressional scrutiny about the issue, the Pentagon announced in August 2020 the establishment of an in-house investigative body called the UAP Task Force, a group led by the Navy under the auspices of the Office of the Undersecretary of Defense for Intelligence and Security.⁷⁸ The group was tasked to improve the DoD’s understanding of the nature and origins of UAPs, and to “detect, analyze and catalog UAPs that could potentially pose a threat to national security.”⁷⁹ According to Elizondo, the UAP Task Force was not a new effort and had evolved out of AATIP, which had not actually

73. DiNick, *supra* note 5; David Fravor *Opening Statement*, *supra* note 72.

74. See Kevin Knuth, Robert Powell & Peter Reali, *Estimating Flight Characteristics of Anomalous Unidentified Aerial Vehicles*, 21 *ENTROPY* 939 tbl. 1 (2019).

75. *Unidentified Anomalous Phenomena: Implications on Nat’l Sec., Pub. Safety, and Gov’t Transparency Before the Subcomm. on Nat’l Sec., the Border, and Foreign Affairs of the H. Comm. on Oversight and Accountability*, 118th Cong. (2023) (statement of Ryan Graves), <https://oversight.house.gov/wp-content/uploads/2023/07/Ryan-HOC-Testimony.pdf> [<https://perma.cc/7EQU-94N8>].

76. *Id.*

77. *Id.*

78. Press Release, U.S. Dep’t of Def., Establishment of Unidentified Aerial Phenomena Task Force (Aug. 14, 2020), <https://www.defense.gov/News/Releases/Release/Article/2314065/establishment-of-unidentified-aerial-phenomena-task-force/> [<https://perma.cc/AUC9-CB8F>].

79. Bryan Bender, *Pentagon Establishes New Task Force to Investigate UFOs*, POLITICO (Aug. 14, 2020), <https://www.politico.com/news/2020/08/14/ufo-pentagon-task-force-395683> [<https://perma.cc/L6CV-Y33X>].

ended operations in 2017 either, according to individuals working in the program.⁸⁰ The task force published a preliminary assessment on 144 military encounters with UAPs in 2021, most of which were reported after the establishment of a formal reporting mechanism in 2019.⁸¹ At least 80 of the reports involved observations of UAP with “multiple sensors” and of objects that were reported to be interrupting training exercises or other military activity.⁸²

Meanwhile, in Congress, legislators advocated for greater congressional oversight over the Pentagon’s UAP efforts. Senator Gillibrand (D-NY) and then-Senator Rubio pushed for the FY22 NDAA to authorize and fund the establishment of a new office, the Anomaly Surveillance and Resolution Office (“ASRO”), and to streamline collection of UAP encounters by pilots and other military operators.⁸³ Importantly, ASRO would be required by statute to brief Congress every six months on UAPs in classified and unclassified settings.⁸⁴

Following the introduction of Gillibrand and Rubio’s amendment, the Pentagon announced a new internal effort, the Airborne Object Identification and Management Synchronization Group (“AOIMSG”), to assume the role of the UAP Task Force and “detect, identify and attribute objects of interests” in controlled airspace in November 2021.⁸⁵ Elizondo suggested publicly that AOIMSG would be less effective than ASRO both because of its placement in an oversight office, rather than an operational one, and because there might have been personnel in that office that would have been uncooperative to ASRO’s mission.⁸⁶

80. Ralph Blumenthal & Leslie Kean, *No Longer in Shadows, Pentagon’s U.F.O. Unit Will Make Some Findings Public*, N.Y. TIMES (July 23, 2020), <https://www.nytimes.com/2020/07/23/us/politics/pentagon-ufo-harry-reid-navy.html> [https://perma.cc/D96K-QLGR].

81. Micah Hanks, *DoD Announces the Establishment of “Airborne Object Identification and Management Synchronization Group” to Study UAP*, DEBRIEF (Nov. 24, 2021), <https://thedebrief.org/dod-announces-the-establishment-of-airborne-object-identification-and-management-synchronization-group-to-study-uap/> [https://perma.cc/6AFM-9TAD].

82. *Id.*

83. Micah Hanks, *New Senate Proposal Seeks to Establish “Anomaly Surveillance and Resolution Office” to Gather Intelligence on UAP*, DEBRIEF (Nov. 9, 2021), <https://thedebrief.org/new-senate-proposal-seeks-to-establish-anomaly-surveillance-and-resolution-office-to-gather-intelligence-on-uap/> [https://perma.cc/48TN-ZEGY].

84. 50 U.S.C. § 3373(l).

85. Hanks, *supra* note 81 (noting AOIMSG’s stated focus is “Special Use Airspace”).

86. Mr. M Class, *Luis Elizondo Discusses AATIP Program and ‘Tic Tac’ UFO/UAP Nimitz Incident with Tucker Carlson*, YOUTUBE (Mar. 20, 2022), <https://youtu.be/T3nkJnZ6OgA?t=76>; Additionally, AOIMSG’s narrower mandate to investigate incursions in controlled airspace raises the question of whether it would have neglected UAP encounters that occurred elsewhere. It also would not have been

Ultimately, the effort was short-lived. Less than a year later, following the successful inclusion of Gillibrand and Rubio's amendment in the FY22 NDAA, the Pentagon announced that AOIMSG would be expanded in scope and renamed as the All-domain Anomaly Resolution Office ("AARO"), which would be the central clearing house for UAP sightings throughout the federal government.⁸⁷

While AARO's creation was a significant victory for advocates of greater congressional oversight, the UAP interest community's reception of AARO has been mixed. By mid-2023, frustration with AARO's initial director, Dr. Sean Kirkpatrick, had boiled over into public view.⁸⁸ Critics cited a perceived lack of responsiveness and productivity by AARO, with some observers noting that a hotline for UAP reporting hadn't been set up even a year after AARO's establishment.⁸⁹ Following an April oversight hearing with Dr. Kirkpatrick, Senator Mark Warner (D-VA) and then-Senator Marco Rubio filed a letter with the Pentagon about the absence of a secure method for UAP eyewitnesses to report their experiences, which had already stopped at least one whistleblower from coming forward.⁹⁰ Others felt that Kirkpatrick was not entirely forthcoming about AARO's findings or that he was not actually open to exploring unconventional explanations for UAP sightings.⁹¹ Kirkpatrick stepped down in 2023, citing a delayed retirement and expressing disapproval at "sensational but unsupported claims" regarding UAPs that

subject to the statutory reporting requirement that was suggested in the bill for the proposed ASRO office.

87. Micah Hanks, *The Pentagon Just Revealed the New Name of Its UAP Investigative Office*, DEBRIEF (July 21, 2022), <https://thedebrief.org/the-pentagon-just-revealed-the-new-name-of-its-uap-investigative-office/> [https://perma.cc/Q8RK-XCTR]; Press Release, Kirsten Gillibrand, U.S. Senator, Gillibrand, Rubio Lead 16 Senators In Bipartisan Push For Full Funding Of Their Unidentified Aerial Phenomena Office To Address Airborne National Security Risks (Feb. 16, 2023) <https://www.gillibrand.senate.gov/news/press/release/gillibrand-rubio-lead-16-senators-in-bipartisan-push-for-full-funding-of-their-unidentified-aerial-phenomena-office-to-address-airborne-national-security-risks/> [https://perma.cc/9W7X-HREW].

88. Lara Seligman & Joe Gould, *UFO Reporting Hotline is MIA*, POLITICO (Aug. 10, 2023), <https://www.politico.com/news/2023/08/10/pentagon-ufo-reporting-00110566> [https://perma.cc/DFP6-B5D5].

89. *Id.*

90. Chris Eberhart, *UFO Search: Retired Navy Senior Chief 'Not Going to Jail' to Report What He Saw in Afghanistan*, FOX NEWS (May 6, 2023), <https://www.foxnews.com/us/ufo-search-retired-navy-officer-not-going-jail-report-what-he-saw-afghanistan.amp> [https://perma.cc/L3GE-KK97].

91. See Micah Hanks, *No Evidence of ET? Controversy Erupted After the Senate UAP Hearing. Here's What the Critics Missed*, DEBRIEF (Apr. 20, 2023), <https://thedebrief.org/no-evidence-of-et-controversy-erupted-after-the-senate-uap-hearing-heres-what-the-critics-missed/> [https://perma.cc/P8TP-M6D5] (discussing public perceptions that "Kirkpatrick and AARO are downplaying truly anomalous phenomena").

he felt were unjustifiably entertained by policymakers in the absence of scientific evidence.⁹² Critics saw his parting statements as confirmation of his hostile attitude and pre-conceived notions regarding the origins of the UAP phenomenon.⁹³ Meanwhile, in an interview in early 2024, Rubio continued to express frustration at AARO's inefficiency.⁹⁴

Observers also noted that AARO suffered from several significant structural defects that handicapped its potential as a vehicle for greater congressional oversight. First, Congress did not have the authority to decide its leadership.⁹⁵ Second, it was unclear for some time whether AARO had Title 50 authority, which would allow AARO investigators to be read into UAP encounters that intersected with covert operations or sensitive intelligence programs. Dr. Kirkpatrick's responses in an oversight hearing in April 2023 seemed to suggest that AARO would benefit from "additional authorities" (in response to Senator Gillibrand's question about AARO's Title 50 accessibility).⁹⁶ The Pentagon later clarified in 2024 that AARO indeed had Title 50 authority, although it wasn't specified when AARO had obtained it.⁹⁷

In July 2023, shortly before the UAPDA was introduced, a former UAP Task Force member from the National Geospatial Intelligence Agency, David Grusch, came forward as a whistleblower, claiming that he had collected evidence regarding longstanding UAP special access programs about which Congress was kept wholly in the dark.⁹⁸

The nature of Grusch's claims aligned with the UAPDA's claims about a lack of transparency and oversight by elected officials regarding

92. Micah Hanks, *The Pentagon's Former Chief UFO Hunter Speaks Out, But Some of His Arguments Don't Hit the Mark*, DEBRIEF (Feb. 1, 2024), <https://thedebrief.org/the-pentagons-former-chief-ufo-hunter-speaks-out-but-some-of-his-arguments-dont-hit-the-mark/> [https://perma.cc/L2DN-4H8T].

93. *Id.*

94. Matt Laslo, *EXCLUSIVE — Rubio's Frustrated Fmr AARO Director Dismissive of Whistleblowers*, ASK-A-POL (Feb. 10, 2024), <https://www.askapol.com/p/exclusive-rubios-frustrated-fmr-aaro> [https://perma.cc/22PN-68MY].

95. 50 U.S.C. § 3373(b).

96. Micah Hanks, *Pentagon UAP Report Says No Evidence U.S. Has Collected Exotic Technology, Kept Programs Hidden from Congress*, DEBRIEF (Mar. 9, 2024), <https://thedebrief.org/pentagon-uap-report-says-no-evidence-u-s-has-collected-exotic-technology-kept-programs-hidden-from-congress/> [https://perma.cc/A25U-L8JH].

97. *Id.*

98. *Unidentified Anomalous Phenomena: Implications on Nat'l Sec., Pub. Safety, and Gov't Transparency Before the Subcomm. on Nat'l Sec., the Border, and Foreign Affairs of the H. Comm. on Oversight and Accountability*, 118th Cong. (2023) (statement of David Grusch, Former Nat. Reconnaissance Off. Rep.), https://oversight.house.gov/wp-content/uploads/2023/07/Dave_G_HOC_Speech_FINAL_For_Trans.pdf [https://perma.cc/2WXN-F3Y9] [hereinafter Grusch House Testimony].

existing UAP programs.⁹⁹ Grusch testified that, as an investigator for the UAP Task Force, he had interviewed over forty witnesses across four years about longstanding covert UAP crash retrieval and reverse-engineering programs.¹⁰⁰ He further added that the government had recovered UAP pilots' biological remains and that, according to his interviewees, they had been assessed to be non-human.¹⁰¹ Those individuals had also provided names and locations of programs to him, and alleged that American citizens had been threatened, injured, and possibly killed as a result of their involvement with UAPs, NHI, or non-human technologies.¹⁰² When Grusch attempted to follow up on those leads, he claimed that he was met with personal and professional retaliation, up to and including threats that put him in fear for his life.¹⁰³

Before stepping into the spotlight, Grusch filed a whistleblower complaint with the Intelligence Community Inspector General, Thomas Monheim, who deemed his complaint "urgent and credible."¹⁰⁴ On January 12, 2024, members of the House met with Monheim, to receive a classified briefing on his office's investigation of Grusch's whistleblower complaint.¹⁰⁵ Shortly following the meeting, Representative Tim Burchett (R-TN), a leading member on UAP transparency, told reporters that the meeting didn't go far enough in providing details, but that it

99. Unidentified Anomalous Phenomena Disclosure Act ("UAPDA"), S.2226, 118th Cong. § 9002 (2023) (the UAPDA preamble includes claims about the lack of transparency and oversight). The press release accompanying the UAPDA text claims that it was in response to congressional investigations that "uncovered a vast web of individuals and groups with ideas and stories to share," ostensibly leading some in Congress to believe that "the Executive Branch [has been] concealing important information regarding UAPs." Senate Democrats, *supra* note 1.

100. *Implications on National Security, Public Safety, and Government Transparency, House Oversight Committee on Oversight and Accountability, Hearing*, C-SPAN, <https://www.c-span.org/video/?529499-1/hearing-unidentified-aerial-phenomena> (00:50:00) [hereinafter *Implications on National Security*]; Grusch House Testimony, *supra* note 98.

101. *Implications on National Security, supra* note 100 (01:49:42); Alex Hawgood, *Behind the Scenes of a UFO Whistleblower's Odd Visit to Capitol Hill*, WASH. POST (Oct. 5, 2023), <https://www.washingtonpost.com/style/of-interest/2023/10/05/ufo-david-grusch-uap-congress-yes-theory/> [<https://perma.cc/77VC-26ZC>].

102. *Implications on National Security, supra* note 100 at 00:53:12.

103. *Id.* at 00:01:01:30.

104. Leslie Kean & Ralph Blumenthal, *Intelligence Officials Say U.S. Has Retrieved Craft of Non-Human Origin*, DEBRIEF (June 5, 2023), <https://thedebrief.org/intelligence-officials-say-u-s-has-retrieved-non-human-craft/> [<https://perma.cc/NLE9-JMA3>].

105. Ellen Mitchell, *Classified UFO Briefing: House Members Emerge with Mixed Feelings*, HILL (Jan. 12, 2024, 5:09 PM), <https://thehill.com/homenews/house/4406059-classified-ufo-briefing-house-members-mixed-feelings/> [<https://perma.cc/A8ZE-PENX>].

was bipartisan and “energized” the members.¹⁰⁶ Representative Jared Moskowitz (D-FL), one of the members in attendance, tweeted after the meeting that “many of Grusch[’s] claims have merit.”¹⁰⁷

The UAPDA was announced on July 14, 2023 as an amendment to the Senate draft of the FY24 NDAA.¹⁰⁸ The UAPDA addressed key concerns raised by Elizondo, Grusch, and others regarding alleged executive branch obfuscation and lack of communication with elected officials regarding its UAP activities. If passed, the UAPDA would establish the Review Board, a presidentially-nominated senate-confirmed panel that would systematically review all government UAP records and determine a schedule for their declassification and public release—referred to as a “controlled disclosure campaign.”¹⁰⁹ Strikingly, the UAPDA would have also mandated the exercise of eminent domain over any and all materials in private hands related to UAP, NHI, or associated technologies.¹¹⁰

The UAPDA was incorporated into the Senate draft of the FY24 NDAA, which passed by a vote of 86-11.¹¹¹ However, strong opposition to the UAPDA emerged during the conference to reconcile the House and Senate versions. In early December, the *Liberation Times* published an interview with Daniel Sheehan, Elizondo’s personal lawyer and a prominent advocate for disclosure, in which he accused five influential Republicans of holding up the UAPDA: Representatives Mike Turner (R-OH) and Mike Rogers (R-MI), Chairs of the House Intelligence and Armed Services Committees, respectively, the newly-elected Speaker Mike Johnson (R-LA), Senator Roger Wicker (R-MS), and Minority Leader Mitch McConnell (R-KY).¹¹² Sheehan had previously opined

106. *Id.*; Lauren Irwin, *Burchett: Classified UFO Briefing ‘Energized’ Congress on Issue, More Hearings Expected*, HILL (Jan. 13, 2024), <https://thehill.com/homenews/house/4406775-burchett-classified-ufo-briefing-energized-congress/> [<https://perma.cc/7S5S-HV7M>].

107. Jared Moskowitz (@JaredEMoskowitz), X (Jan. 12, 2024, 11:57 AM), <https://x.com/JaredEMoskowitz/status/1745852400630456618> [<https://perma.cc/BN9Y-6862>].

108. Senate Democrats, *supra* note 1.

109. *See infra* Section II.B.

110. *See infra* Section II.B.4.

111. Micah Hanks, *The Senate Just Passed Its Massive Defense Bill: Here’s What That Means for UAP Disclosure*, DEBRIEF (Dec. 14, 2023), <https://thedebrief.org/the-senate-just-passed-its-massive-defense-bill-heres-what-that-means-for-uap-disclosure/> [<https://perma.cc/J7HL-HAZL>].

112. Christopher Sharp, *Daniel Sheehan Exposes Five Powerful Republicans Blocking UFO Disclosure Act, As the Clock Ticks Down*, LIBERATION TIMES (Dec. 3, 2023), <https://www.liberationtimes.com/home/daniel-sheehan-exposes-five-powerful-republicans-blocking-ufo-disclosure-act-as-the-clock-ticks-down> [<https://perma.cc/8JGM-NFCJ>].

that Representatives Turner and Rogers's opposition may have been the result of intense lobbying from intelligence agencies or defense contractors involved with unacknowledged UAP programs that might face liability.¹¹³ When asked about their alleged opposition, Rep. Turner claimed that he was not opposed to the UAPDA, but that he believed it was "poorly drafted"; Rep. Rogers separately remarked that he thought the UAPDA would be "duplicative of existing language," potentially in reference to the existing statutory mandate of AARO.¹¹⁴

Then-Majority Leader Schumer and Senator Mike Rounds (R-SD) appeared on the floor to conduct a colloquy in support of the UAPDA in its entirety.¹¹⁵ Stating that "multiple credible sources" had notified them about information withheld from Congress about UAPs, Schumer expressed his disappointment in the House for not supporting the Review Board, without which he claimed that the declassification of UAP records would "be largely up to the same entities that have blocked and obfuscated their disclosure for decades."¹¹⁶ Rounds also expressed concern that the conference would reject the eminent domain provisions, which would allow the government access to UAP material and biological remains "hidden from Congress and the American people" by transferring them to private entities.¹¹⁷

Ultimately, the UAPDA was pared down and converted into an appendix of the FY24 NDAA ("Subtitle C").¹¹⁸ Key elements such as the Review Board, eminent domain, and controlled disclosure campaign elements of the UAPDA were struck from the bill. Subtitle C continued to provide for the establishment of the records collection at the National Archives and Records Administration ("NARA"), but it was revised to

113. Daniel Sheehan, *Critical Govt Transparency Legislation Jeopardized By A Powerful Few In Congress*, EIN PRESSWIRE (Nov. 27, 2023), <https://www.einpresswire.com/article/671038779/critical-govt-transparency-legislation-jeopardized-by-a-powerful-few-in-congress> [<https://perma.cc/6SN9-A3BX>].

114. Josh Boswell, *Inside the Battle to Water Down the UFO Bill That Will Disclose Confidential 'Non-Human Intelligence' Data to the Public Set to be Signed by President Biden*, DAILY MAIL (Dec. 15, 2023), <https://www.dailymail.co.uk/news/article-12860881/Congressmen-battle-disclosures-non-human-intelligence-UFO-bill.html> [<https://perma.cc/4DHA-SQ5M>].

115. Press Release, Chuck Schumer, Majority Leader, Senate, Majority Leader Schumer And Republican Senator Mike Rounds Floor Colloquy On Unidentified Anomalous Phenomena Provisions In The NDAA And Future Legislation On UAPs (Dec. 13, 2023), <https://www.democrats.senate.gov/newsroom/press-releases/majority-leader-schumer-and-republican-senator-mike-rounds-floor-colloquy-on-unidentified-anomalous-phenomena-provisions-in-the-ndaa-and-future-legislation-on-uaps> [<https://perma.cc/VX5C-MRPT>].

116. *Id.*

117. *Id.*

118. National Defense Authorization Act, Pub. L. No. 118-31 (2023) (Subtitle C).

allow agencies to maintain custody over their own records and determine whether the records met the standard for postponement.¹¹⁹

The amendments to the UAPDA effectively neutered the proposed disclosure process by stripping away most of the scaffolding required to conduct further investigation into UAP-related allegations. Without the Review Board, which would have held both subpoena authority and been an independent arbitrator of whether records are eligible for postponement under the Act, any agencies purposefully concealing information from Congress would likely continue to do so. Furthermore, the definitions for technologies of unknown origin, NHI, and UAP were also stripped away, eliminating their potential as lodestars for future legislation or discussion.¹²⁰

However, the drafters did not come away entirely empty-handed. The final NDAA package also included a new provision, § 1687, which would prohibit the use of NDAA funds for any special access or restricted access activities about UAPs not reported to Congress by the Director of National Intelligence.¹²¹ It further restricted funding for independent research and development contracts related to UAPs unless the underlying activities were reported to the proper congressional oversight committees.¹²²

President Biden signed the negotiated package on December 22, 2023.¹²³ While the thrust of the UAPDA was not included, the strong opposition to its language could be seen as potential confirmation that it touched on a subject matter with serious equities at play. Furthermore, the funding restrictions that were successfully put in place are significant. If the UAPDA's supporters could not have oversight over potential legacy programs, they could at least try to starve the beast.¹²⁴

119. *Id.* § 1842(d)(1)(A).

120. *Id.* § 1842(c)(2)(g)(ii).

121. *Id.* § 7343(b).

122. *Id.* § 7343(c).

123. Statement from President Joe Biden on H.R. 2670, National Defense Authorization Act for Fiscal Year 2024, 2023 DAILY COMP. PRES. DOC. 1145 (Dec. 22, 2023) [<https://perma.cc/9E5Y-A49M>].

124. The Senate draft of the FY24 Intelligence Authorization Act (“IAA”) reflected this approach as well. It mandated that anyone who was currently or formerly under contract with the federal government with information or material about UAPs derived from the government report to AARO within 60 days of the IAA’s enactment. It also prohibited the use of any appropriated funds (under the IAA or any other act) for special access or restricted access activities relating to UAPs. The list of prohibited activities explicitly included “actions relating to reverse engineering or replicating unidentified anomalous phenomena technology or performance based on analysis of materials or sensor and observational information associated with unidentified anomalous phenomena” as well as development of propulsion technology, or aerospace craft that uses propulsion technology, systems, or subsystems, that is based on or derived from

II. THE UAP DISCLOSURE ACT: BREAKDOWN AND ANALYSIS

Despite its effective exclusion from the final NDAA, the UAPDA still provides important signals about what its drafters believe is happening within the federal government. By evaluating its language and the types of problems it seeks to address, it is possible to paint a more detailed portrait of its drafters’ concerns.

A. Terminological Development

Many explanations for UAP have been proposed, including natural phenomena (e.g., meteors, ball lightning), undisclosed experimental technology, mass hysteria, as well as more non-prosaic origins. This latter category encompasses the extraordinary—time travelers or extraterrestrials—as well as the supernatural—angels, spirits, or gods.¹²⁵ Given the breadth of potential UAP origins, the definitional scope of what constitutes a UAP is key to its utility. The UAPDA’s definition is unprecedented and sets the stage for a more rigorous discussion about what UAP might represent.

Proposed Taxonomy of UAP Origin Hypotheses.

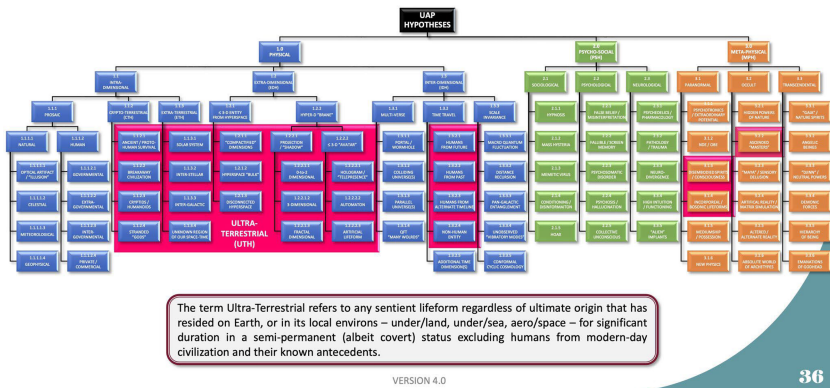


Figure 1. “Proposed Taxonomy of UAP Origin Hypotheses,” Matthew Pines (@matthew_pines), X (Feb. 12, 2024, 9:02 PM), https://x.com/matthew_pines/status/1757223639160680789 [<https://perma.cc/4BZM-L5LC>] (allegedly part of a presentation made by Col. Karl Nell at the Stanford SOL Foundation Conference in 2023).

or inspired by inspection, analysis, or reverse engineering of recovered unidentified anomalous phenomena craft or materials.” See Intelligence Authorization Act for Fiscal Year 2024, S. 2103, 118th Cong. (2023-24); Brandi Vincent, *Senate’s Intelligence Authorization Bill Questions ‘Reverse Engineering’ of Government-Recovered UAPs*, DEFENSESCOOP (June 27, 2023), <https://defensescoop.com/2023/06/27/senates-intelligence-authorization-bill-questions-reverse-engineering-of-government-recovered-uaps/> [<https://perma.cc/JF7Q-ZJ9M>].

125. See Figure 1.

The term “UAP” has been around since at least the 1980s and its definitions vary in scope.¹²⁶ Claiming to be one of the earliest adopters of the term, the National Aviation Reporting Center on Anomalous Phenomena (“NARCAP”), a non-profit dedicated to studying anomalous phenomena, defines UAP as:

the visual stimulus that provokes a sighting report of an object or light seen in the sky, the appearance and/or flight dynamics of which do not suggest a logical, conventional flying object and which remains unidentified after close scrutiny of all available evidence by persons who are technically capable of making both a technical identification as well as a common sense identification, if one is possible.¹²⁷

NARCAP cites two motivations for adopting this term: (1) to disassociate from the term unidentified flying object, or UFO, which had become closely identified with the concept of alien spacecraft and (2) to be more inclusive of what witnesses were actually reporting, which did not always involve mechanical craft per se.¹²⁸ Many sightings consisted of lights or strange, morphing shapes, which some have speculated could have included natural weather phenomenon and energy-based objects, such as ball lightning.¹²⁹

Newer definitions are more expansive and include underwater or space-based phenomena. The FY22 NDAA defined UAP as:

- (A) airborne objects that are not immediately identifiable;
- (B) transmedium objects or devices; and
- (C) submerged objects or devices that are not immediately identifiable and that display behavior or performance characteristics suggesting that the objects or devices may be related to the objects or devices described in subparagraph (A) or (B).¹³⁰

This definition accounts for an unusual behavior that has been reported in various sightings, which appears to be an ability to seamlessly transition between different mediums (e.g., atmosphere and water).¹³¹

126. Originally “Unidentified Aerial Phenomenon,” the term has since been expanded to incorporate underwater and other non-aerial phenomena.

127. Ted Roe, *Definition of UAP*, NARCAP BLOG, <https://www.narcap.org/blog/definition-of-uap> [https://perma.cc/4ZWH-PSZ2].

128. *Id.*

129. R.M. Medina, S.C. Brewer & S.M. Kirkpatrick, *An Environmental Analysis of Public UAP Sightings and Sky View Potential*, 13 SCI. REPS. 22213 (2023), <https://www.nature.com/articles/s41598-023-49527-x> [https://perma.cc/AV72-P5QE].

130. National Defense Authorization Act for Fiscal Year 2022, S. 1605, 117th Cong. § 1683(k)(1)(5).

131. Duncan Phenix & George Knapp, *What Flies in the Air, Zips Through the Ocean, and Splits in Two? Scientifically Investigating the Aguadilla UFO Incident*, WWLP.COM (Feb. 12, 2021, 11:23 AM), <https://www.wwlp.com/news/>

U.S. government agencies have also adopted their own designations of UAP. NASA defines UAP as “observations of events in the sky that cannot be identified as aircraft or known natural phenomena from a scientific perspective.”¹³² Meanwhile, the DoD has a much broader definition—“sources of anomalous detections in one or more domains (i.e., airborne, seaborne, spaceborne, and/or transmedium) that are not yet attributable to known actors and that demonstrate behaviors that are not readily understood by sensors or observers.”¹³³

The NASA and DoD versions demonstrate how definitional precision can affect the degree of clarity provided by a given definition of UAP. When NASA defines UAP as observations of objects that cannot be identified through a scientific examination, it constrains its ability to process UAP sightings according to the material and temporal requirements of the scientific process. For NASA to be certain that an observed UAP is truly anomalous may involve a lengthy process of elimination of the alternative possibilities and the collection of substantial amounts of data to reach a satisfactory conclusion. While many UAP sightings would lack the necessary data to conduct such an analysis, the ones that are accompanied by such data would become compelling case studies and establish a foundation for further scientific investigation.

In contrast, the DoD’s definition is capable of digesting UAP sightings more rapidly by including objects with “behaviors . . . not readily understood by sensors or observers.”¹³⁴ However, this determination is less informative than NASA’s because the analytical rigor of the observer or fidelity of the sensors could be called into question, especially in battlefield environments where collection capabilities may be actively degraded by adversaries. However, with sufficient data on a given encounter—perhaps a likely occurrence given the resources of the U.S. military—the category can be effectively refined through a similar process of elimination after the initial determination stage.

what-flies-in-the-in-the-air-zips-through-the-ocean-and-splits-in-two-scientifically-investigating-the-aguadilla-ufo-incident/ [https://perma.cc/P9SR-8SYB].

132. Media Advisory, NASA, *Nasa to Release, Discuss Unidentified Anomalous Phenomena Report* (Sept. 12, 2023), <https://www.nasa.gov/news-release/nasa-to-release-discuss-unidentified-anomalous-phenomena-report/#:~:text=NASA%20defines%20UAP%20as%20observations,scientific%20conclusions%20about%20their%20nature> [https://perma.cc/SJ53-KDTD].

133. Introduction to UAP, ALL-DOMAIN ANOMALY RESOL. OFF., <https://www.aaro.mil> [https://perma.cc/2DWK-DGHE] (accessed Feb. 10, 2024).

134. National Defense Authorization Act for Fiscal Year 2022, S. 1605, 117th Cong. § 1683(k)(1)(5).

It is critical to note a key distinction between the UAPDA's definition for UAP and the aforementioned. Whereas NASA and DoD effectively bucket all unexplained phenomena into the category of UAP, the UAPDA introduces affirmative criteria that unambiguously exclude instances of sensor malfunction or conventional objects. The bill defines UAP as:

any object operating or judged capable of operating in outer-space, the atmosphere, ocean surfaces, or undersea lacking prosaic attribution due to performance characteristics and properties not previously known to be achievable based upon commonly accepted physical principles.¹³⁵

By referencing objects deemed to be “operating or judged capable of operating,” the UAPDA suggests that some level of data collection would have necessarily occurred to enable observers to conclude that observed objects are not sensor anomalies.

More importantly, the UAPDA narrows in on objects “lacking prosaic attribution,” which excludes advanced technology that can be attributed to civilian or military programs belonging to the U.S. or peer nations.¹³⁶ Those objects, defined in the UAPDA as “temporarily non-attributed objects,” are naturally filtered out as they are identified.¹³⁷ This focus on anomalous objects is further reinforced by language that sets a curiously high bar for what is categorized as a UAP in the first place: “performance characteristics and properties not previously known to be achievable based upon *commonly accepted physical principles*.”¹³⁸

The UAPDA lists six characteristics to distinguish temporarily non-attributed objects from genuine UAPs:

- (i) Instantaneous acceleration absent apparent inertia.
- (ii) Hypersonic velocity absent a thermal signature and sonic shockwave.
- (iii) Transmedium (such as space-to-ground and air-to-undersea) travel.
- (iv) Positive lift contrary to known aerodynamic principles.¹³⁹
- (v) Multispectral signature control.
- (vi) Physical or invasive biological effects to close observers and the environment.¹⁴⁰

135. Unidentified Anomalous Phenomena Disclosure Act (“UAPDA”), S. 2226, 118th Cong. § 9003 (2023).

136. *Id.*

137. *Id.*

138. *Id.* (emphasis added).

139. This likely refers to positive lift with an apparent means of propulsion, such as rotors or a jet engine.

140. Unidentified Anomalous Phenomena Disclosure Act § 9003.

These factors reference the “five observables” framework that has been publicized in recent years as a method of distinguishing genuinely unattributable sightings from those of debris, conventional aircraft, or other mundane objects—along with a more recent “sixth” observable about effects on observers.¹⁴¹ Reports of objects that fit these descriptions would include those in which witnesses report or record acceleration from a complete stop to incredible speeds not achievable by conventional airframes.¹⁴² These objects do not generate sonic booms from breaking the sound barrier or visible heat from friction with the atmosphere, or from transmedium travel. Objects often do not have observable wings, propellers, rotors, or other methods of lift generation, and may exhibit the ability to manage their heat signature or visible profile (i.e., stealth). Lastly, many UAP encounters involve witness reports of injuries, such as radiation burns, experiences of missing time, or other physical effects.¹⁴³

While all definitions of UAP share a focus on objects not readily identified or attributed, they vary in analytical precision, clarity, and processing time. The UAP category will necessarily capture all unresolved sightings of strange objects in the sky that elude identification. Then, as sightings are resolved, they naturally fall out of the UAP category as they are no longer ‘unknown.’ It follows then that, the harder it is for mundane objects to be labeled as UAP, the more definitive the classification becomes. In other words, the more certainty that observers have that the remaining basket of unidentified objects does *not* include airborne trash, birds, or sensor malfunctions, the more compelling the remaining cases become as a signal of an intelligence gap. By setting a very high bar for what constitutes UAPs,

141. See OTHER TOPIC, *supra* note 67; Matt Farwell, *Tom DeLonge’s Warped UFO Tour*, NEW REPUBLIC (Aug. 10, 2020), <https://newrepublic.com/article/158823/tom-delonge-warped-ufo-aliens> [<https://perma.cc/M9WB-3CDJ>] (“There was also, [Elizondo] told me, another “observable” they were more reluctant to discuss. “The sixth is biological effects,” he said, the sun descending over the Pacific Ocean. People with close encounters and paranormal experiences were in danger of potential morphological changes to the body and brain, something [his] people had to deal with.”). See also @LueElizondo, X (Aug. 22, 2020, 10:15 PM), <https://x.com/LueElizondo/status/1297356816746049539> [<https://perma.cc/ZBW6-H4YH>] (Elizondo acknowledged the sixth observable publicly in a post on X.).

142. See DiNick, *supra* note 5 (Pilots Dave Fravor and Alex Dietrich describe their encounter in 2004 with an oblong ‘Tic-Tac’ that moved at incredible speeds).

143. Adam Manno, *UFOs Sightings Have Left Witnesses with Radiation Burns, Brain Damage and ‘Perceived Time Suspension’, According to Interviews in Newly Released Pentagon Report from 2010*, DAILY MAIL (Apr. 5, 2022, 6:43 PM), <https://www.dailymail.co.uk/news/article-10688573/Pentagon-says-UFOs-left-people-radiation-burns-brain-damage-time-suspension.html> [<https://perma.cc/56QK-AYKZ>].

the UAPDA's definition has generated a category of objects that, if any were definitively observed, would necessarily be a matter of significant concern to policymakers.

B. UAPDA Levers of Power

The UAPDA has the overarching goal of restoring "proper oversight" over UAP records by elected officials in the executive and legislative branches.¹⁴⁴ Such oversight may have been stymied over the years in part due to bureaucratic obfuscation, such as the overbroad use of the Atomic Energy Act to hide UAP records as "foreign nuclear information," thereby exempting those records from mandatory declassification.¹⁴⁵

To accomplish its goals, the UAPDA creates significant levers of power for Congress and other authorized entities. These key provisions may be assessed on their efficacy in establishing or enhancing congressional oversight over alleged UAP programs. In addition, the strength of the UAPDA's language can be used as a proxy for a given sponsor's certainty of belief in the existence of these programs. The greater the political or financial cost of complying with the UAPDA, the more political capital must be consumed in negotiating its passage. For instance, the effort required to establish a presidentially-nominated, senate-confirmed panel or to obtain greater oversight authority over the intelligence community is substantial. Such an expenditure of political capital and time, if rational, suggests a commensurate degree of confidence in the UAPDA's potential effectiveness and the reality of the problems that it seeks to address.

1. Transfer, Centralization, and Dissemination of UAP Records

The UAPDA would establish a process by which records located in federal, state, and local government archives pertaining to UAPs are collected, reviewed, and eventually disclosed to the public, both to inform the public as well as to recruit the broader scientific community to study the phenomena.¹⁴⁶ It provides for establishing a records collection at the NARA with the intent of centralizing all UAP records.¹⁴⁷ UAP

144. Unidentified Anomalous Phenomena Disclosure Act ("UAPDA") § 9002.

145. *Id.*; Exec. Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009); 50 U.S.C. § 3161.

146. Unidentified Anomalous Phenomena Disclosure Act ("UAPDA") §§ 9002, 9004-6. Behind this goal is also the priority of preventing "technological surprise" in the interest of national security. *Id.* For instance, if advanced technology in crashed craft have been retrieved by multiple countries, then there is the risk that an adversary makes strategic and actionable breakthroughs in their reverse-engineering programs that enable them to leapfrog the U.S. militarily or technologically.

147. *Id.* § 9002.

records would include any related to UAP, NHI, or other similar topics (excluding temporarily non-attributed objects) that are created, used, or otherwise in the possession of federal or state government entities.¹⁴⁸ Significantly, the UAPDA considers all records older than 25 years to be declassified by default, which would allow evidence of UAP encounters from before the early 2000s to be immediately revealed to the public barring a contrary decision by the Review Board and the President.¹⁴⁹ The UAPDA also prohibits the destruction or alteration of any covered record.¹⁵⁰

The practical effect of the records transfer mandate would be to limit executive agencies' ability to control access to and postpone disclosure of their own UAP records by transferring all relevant records to a neutral third party. This move would remove agencies' discretion to deny Congress access to particular records in the future. Moreover, it would create a centralized archive for future research and assessment.

The disclosure process provides safeguards on the way to declassification, however. The UAPDA allows postponement of disclosure in four circumstances: (i) there is clear and convincing evidence of a threat to national security or foreign policy that outweighs the public interest in disclosure and the disclosure would reveal sensitive information, including sources and methods; (ii) it would expose and put at risk an individual that has provided confidential information to the U.S. government; (iii) disclosure would constitute a substantial and unwarranted invasion of personal privacy that outweighs the public interest; or (iv) if public disclosure would compromise a confidentiality agreement with a cooperating individual or foreign government and it outweighs the public interest in disclosure.¹⁵¹ Furthermore, agencies would not be able to make the final determination on whether or not a particular record qualifies for postponement under these conditions. That decision would be left up to a new body, the Review Board.¹⁵²

These provisions would create significant steps towards transparency but would not resolve all concerns. In his signing statement of Subtitle C, President Biden expressed concern over § 1687 as one of many provisions in the NDAA that would compel the President and other executive officials to share highly-sensitive information with Congress, potentially jeopardizing "executive branch confidentiality

148. *Id.* § 9003.

149. *Id.* § 9005.

150. *Id.*

151. *Id.* § 9006.

152. *Infra* Section II.B.2.

interests.”¹⁵³ Citing his constitutional authority to prevent disclosure of such information in order to protect national security, Biden reserved the right to comply with the provision in a manner that protected the confidentiality of executive branch internal deliberations and sensitive classified intelligence.¹⁵⁴

President Biden’s response to § 1687 raises the overarching critique that the UAPDA, even if it had passed intact, could have been stymied by executive refusal to comply in the manner sought by Congress. Without more information about what constitutes sensitive information regarding UAPs, President Biden’s position could amount to an outright refusal to read Congress in on existing programs. The Constitution makes no mention of executive authority to withhold information from Congress, but the Supreme Court has held that such a power is within the executive power insofar as it is needed to carry out the President’s duties.¹⁵⁵

2. *The Review Board*

The UAPDA also establishes the Review Board, a nine-person committee that oversees the transfer and review of UAP records as well as the overall disclosure campaign.¹⁵⁶ The Review Board would “consider and render decisions” on whether UAP records should be disclosed.¹⁵⁷ It would also have the authority to rule on postponement requests from government agency heads as well as to decide *sua sponte* on whether to postpone the release of certain records.¹⁵⁸

The Review Board would also have significant authority to obtain and transfer records to the collection as well as investigate UAP-related programs. The Review Board could independently subpoena individuals in connection to investigations and hold public hearings.¹⁵⁹ It could also offer immunity to witnesses or program whistleblowers that came forward to the federal government in violation of certain confidentiality obligations tied to their programs.¹⁶⁰ The Board would

153. “Statement from President Joe Biden on H.R. 2670”, National Defense Authorization Act for Fiscal Year 2024, Briefing Room, White House, Dec. 22, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/22/statement-from-president-joe-biden-on-h-r-2670-national-defense-authorization-act-for-fiscal-year-2024/>.

154. *Id.*

155. *United States v. Nixon*, 418 U.S. 683, 711 (1974).

156. Unidentified Anomalous Phenomena Disclosure Act § 9007.

157. *Id.*

158. *See id.*

159. *Id.* § 9007.

160. *Id.* The immunity in question is provided for in § 1673(b) of the FY23 NDAA.

also have the authority to request the Office of the Attorney General to issue subpoenas on its behalf, opening the door to potential criminal investigations down the road. Finally, the Board would be able to issue interpretive regulations.¹⁶¹

Members of the Board would be nominated by the President and confirmed by the Senate.¹⁶² The UAPDA requires that members have specific backgrounds, including substantive expertise in national security, sociology, economics, history, and diplomacy.¹⁶³ The UAPDA also specifies that all individuals selected for the Board must be “impartial citizens” with no previous involvement in legacy programs, such as controlling authority over existing UAP collection or reverse engineering efforts.¹⁶⁴ The President would further select one member to be the Executive Director of the Review Board, a position that would wield tie-breaking authority on decisions to disclose records and would be the main liaison for the Board in communications with Congress and the White House.¹⁶⁵

The language of the UAPDA implies that Board members have a tenure of at least seven years, continuing between administrations unless they are removed.¹⁶⁶ The Board would operate until 2030 unless extended by Congress, and no other term limits are mentioned in the UAPDA.¹⁶⁷ Board members may not be removed from office other than by impeachment and conviction or by the President for inefficiency, neglect of duty, malfeasance, disability, mental incapacity, or another condition that “substantially impairs” the performance of their duties.¹⁶⁸ Moreover, the Executive Director may only be removed “for cause.”¹⁶⁹

Further empowering the Board is a statutory requirement that any presidential veto of Board decisions would have to be accompanied by an explanation of the reasons for postponement and that the President’s veto rationale would be reviewed periodically based on the qualitative benchmarks set by the Review Board.¹⁷⁰ This would effectively grant the Review Board the opportunity to moderate presidential decisions over longer time spans.

161. The UAPDA does not elaborate on the nature of regulations that the Review Board may promulgate. Unidentified Anomalous Phenomena Disclosure Act § 9007.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* § 9008.

166. *See id.* § 9007 (stating “the terms of its members shall terminate not later than September 30, 2030”).

167. *Id.*

168. *Id.*

169. *Id.* § 9008.

170. *Id.* §§ 9005, 9009.

These provisions imbue the Review Board with substantial power. However, the entity may be vulnerable to constitutional challenges. For example, a possible challenge is that the Review Board's removal protections intrude on the President's Article II powers. Without the ability to terminate executive officers at will, the President may be unduly constrained in their ability to effectively enforce the law. Moreover, it would damage democratic accountability because of the public's expectation that the President is the ultimate authority on executive branch policies and decisions.¹⁷¹

While the Court has historically held certain kinds of executive officials to be insulated from the President's removal power, that group has become more limited over time.¹⁷² Recently, in *Seila Law*, the Court narrowed the modern scope of insulated officials to members of multimember expert agencies without "substantial" executive powers, and inferior officers with "limited duties and no policymaking or administrative authority."¹⁷³ The key inquiry, therefore, is whether the Review Board and its members may be accurately placed into either of these two groups.

Here, it appears that characterization as a multimember expert agency fits well. First, the Review Board would likely fall under the definition of an agency, as did the JFK Assassination Records Review Board, upon which the Board is ostensibly modeled.¹⁷⁴ Second, the UAPDA mandates the inclusion of subject matter experts on the Review Board capable of exercising "independent and objective judgment."¹⁷⁵ It specifies certain backgrounds for inclusion on the Board, including scientists, economists, historians, and sociologists.¹⁷⁶ Moreover, the UAPDA provides that the President reserves the right to veto Board determinations on whether to disclose a particular UAP record, which provides a significant degree of accountability at the end stage of Review Board adjudications.¹⁷⁷ Even the Executive Director's autonomy is constrained to breaking tied votes.¹⁷⁸

171. *Id.*

172. See *Art II.S2.C2.3.15.7 Twenty-First Century Cases on Removal*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S2-C2-3-15-7/ALDE_00013113/ [<https://perma.cc/8QRF-64XS>]. See also *The Presumption Against Novelty in the Roberts Court's Separation-of-Powers Case Law*, 137 HARV. L. REV. 2034 (2024).

173. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 216–20 (2020).

174. See *Senate Democrats*, *supra* note 1; 40 U.S.C. § 1314(a)(1).

175. Unidentified Anomalous Phenomena Disclosure Act ("UAPDA"), S. 2226, 118th Cong. § 9007 (2023).

176. *Id.*

177. *Id.* §§ 9005, 9009.

178. *Id.* § 9008.

Despite these concerns, separation of powers constitutional analysis is a politically-fraught area without clear doctrinal principles.¹⁷⁹ As the Review Board is ostensibly a response to alleged executive misconduct in the form of excessive secrecy and opacity, the Court may find a better comparison in a *Morrison*-style independent counsel investigating executive misconduct, which has previously been permitted by the Court as a matter of constitutional law, but potentially also as a way of ensuring the proper balance of power between the executive and legislative branches.¹⁸⁰

3. *Controlled Disclosure Campaign*

As part of its duties, the Review Board would establish a “Controlled Disclosure Campaign Plan” (“the Plan”) along with a classified appendix describing actions taken by the Board, the originating body, the President, or any other government office concerning a given UAP record.¹⁸¹ The Plan would describe the actions taken by any of the parties to postpone disclosure of any record or part of the record as well as any official proceedings conducted by the Review Board. Further, the Plan would lay out a benchmark-driven time frame recommending the requirements for review and eventual declassification of records.¹⁸² Importantly, the time and release requirements specified in the Plan would only be amendable if the Review Board is still in session and it concurs with the rationale for postponement.¹⁸³ This suggests that even

179. See Ganesh Sitaraman, *The Political Economy of Removal Power*, 134 HARV. L. REV. 352, 392–406 (2020) (noting the proposition that removal powers analysis is imbued with normative questions of the proper balance between Legislative and Executive branches but also real-world consequences for the power of the administrative state). See also Edward Cantu, *Seila Law as Separation-of-Powers Posturing*, 110 GEO. L. J. ONLINE 38 (2021), https://irlaw.umkc.edu/faculty_works/119 [<https://perma.cc/CP7F-ZBMP>] (arguing that the Court did not decide *Seila Law* on doctrinal grounds).

180. See *Morrison v. Olson*, 487 U.S. 654 (1988); see also *Art. I.S1.3.2 Functional and Formalist Approaches to Separation of Powers*, CONSTITUTION ANNOTATED https://constitution.congress.gov/browse/essay/artI-S1-3-2/ALDE_00013291/ (“In ruling on separation of powers questions, the Supreme Court has used two different approaches: formalist and functionalist. The Court’s stricter formalist approach emphasizes the need to maintain three distinct branches of government by drawing bright lines among branches to reflect differences in legislating, executing, and adjudicating. In contrast, the Court’s functional approach emphasizes each branch’s core functions and asks whether the challenged action threatens the essential attributes of the legislative, executive, or judicial function or functions. Under this approach, the Court’s rulings have provided flexibility to the branch if there is little risk that the challenged action will impair a core function. If there is a significant risk that the action will impair a branch’s core function, courts will consider whether there is a compelling reason for the action.”).

181. Unidentified Anomalous Phenomena Disclosure Act § 9009.

182. *Id.*

183. *Id.* § 9005.

a future administration could not amend the Plan without reconstituting the Board and seeking its approval, which would create a rebuttable presumption in favor of public disclosure of information.¹⁸⁴

4. *Eminent Domain*

Significantly, the UAPDA also specifies that the federal government shall exercise eminent domain over “any and all” technologies of unknown origin or biological evidence of NHI controlled by private parties in the interest of the public good.¹⁸⁵ The range of materials could include, as alleged by David Grusch, crashed UAPs, remains of non-human pilots, and non-human technologies.¹⁸⁶ This is significant because the UAPDA *mandates* that the Executive Branch exercise eminent domain in all circumstances in which such material is found to be in private hands.¹⁸⁷

Including an eminent domain provision in the UAPDA suggests that its drafters possess a high degree of confidence in the existence of such exotic materials. Furthermore, confiscating private property can entail significant political risk for the sponsors by negatively polarizing the parties currently in possession of materials, possibly including influential defense manufacturing firms. Accepting this risk could be rational, however, if longstanding concerns of a decades-long cover-up hold merit. If so, the political environment would likely support a broader push to ensure that these materials are subject to public oversight, rather than in the hands of private parties.

More importantly, any knowledge or technical capabilities derived from such materials could be disruptive to global stability. Breakthroughs from NHI technology could lead to advancements with the potential to create challenges in arms control and economic systems. These risks could justify strict controls over possession of NHI technology not unlike existing restrictions on nuclear technology.

This approach also raises several legal and policy considerations. Eminent domain authority in the U.S. is constrained by the requirements of due process, just compensation, and the public use.¹⁸⁸

184. Like the requirement for the President to explain vetoes of Review Board determinations, this provision also tees up the constitutional question of whether Congress can constrain the President’s discretion in disclosing UAP-related information.

185. Unidentified Anomalous Phenomena Disclosure Act § 9010.

186. *Implications on National Security*, *supra* note 100; Hawgood, *supra* note 101.

187. The bill text says that the Executive branch “shall” exercise eminent domain authority where applicable. Unidentified Anomalous Phenomena Disclosure Act § 9010.

188. U.S. CONST. amend. V; *Backus v. Fort St. Union Depot Co.*, 169 U.S. 557, 573, 575 (1898); *See generally* *Amdt 5.9.1 Overview of Takings Clause*, CONSTITUTION ANNOTATED <https://constitution.congress.gov/browse/essay/amdt5-9-1/>

Private parties whose property is confiscated must receive their day in court and fair compensation, and the seizure must have a public purpose.¹⁸⁹ If private firms are in possession of retrieved UAP craft, the courts might face a difficult challenge in determining the appropriate compensatory value for such material, especially if paradigm-shifting technologies are involved.¹⁹⁰ However, courts may first need to determine whether the materials are truly privately-owned, or if they were transferred into private hands as part of an attempt to avoid congressional oversight.

Critics of the UAPDA's eminent domain provision have also pointed to risks of overbroad application, disruption to ongoing activity, and threats to national security.¹⁹¹ Because of the blanket nature of the provision, the government would not only be seizing illicitly transferred materials but also those directly collected by private entities and persons, including independent investigators, researchers, and academics supporting the disclosure movement.¹⁹² Overbroad use of eminent domain may also threaten crucial ongoing research and development by legacy programs, which may continue to be beneficial to humanity's understanding of NHI, despite their illegitimacy. There may be ways to transition such programs under appropriate oversight without disrupting ongoing research efforts. However the benefit of grandfathering existing programs should be evaluated after a full review of program operations, which may include egregiously unethical acts.

The UAPDA's complexity and sizeable impact on public and private interests contribute to the overall conclusion that the drafters act with a high degree of certainty regarding the bill's underlying allegations. Taken as a whole, the UAPDA proposes a sophisticated and centralized campaign for processing and disseminating information about UAPs. By conducting a credible, independent investigation, the Review Board would provide the

ALDE_00013280/ [https://perma.cc/X285-4E48] (last visited Jan. 27, 2025) [hereinafter *Overview of Takings Clause*].

189. *Overview of Takings Clause*, *supra* note 189.

190. It may be difficult to estimate the market value of, for example, a new high-efficiency clean energy generation method. The existence of such revolutionary technology would necessitate a fundamental reevaluation of existing assumptions about the costs of energy production.

191. Sean Munger, *Regulation vs. Eminent Domain: An Alternate Approach to 'the Unidentified Anomalous Phenomena Disclosure Act of 2023'*, DEBRIEF (Nov. 2, 2023), <https://thedebrief.org/regulation-v-eminent-domain-an-alternate-approach-to-the-unidentified-anomalous-phenomena-disclosure-act-of-2023/> [https://perma.cc/PY2K-2HJ6].

192. *Id.*

public with a credible source of information on a topic rife with disinformation. It could also provide a soft landing for the public psyche by scheduling the release of more controversial information after society has acclimatized to fundamental facts regarding the existence of NHI.¹⁹³ The exercise of eminent domain would further ensure that government officials, not private actors, would be making key decisions regarding the handling of exotic materials. Notably, this vision of a government-led process contrasts with the current environment, in which the driving forces of disclosure have been investigative journalists, whistleblowers, and former officials. The two need not be at odds, however. Congress and the Review Board may benefit from additional public scrutiny aimed at the legacy programs as well as friendly witnesses willing to speak out about the programs' work.

III. THE BOTTOM LINE: ONLY EXTRAORDINARY EXPLANATIONS REMAIN PLAUSIBLE

Taking the language and posture of the UAPDA as a whole suggests that its drafters act from the following premises: (1) UAP activity stems, at least in part, from the activity of intelligent non-human entities; (2) UAPs possess superior capabilities or technologies that defy conventional physics; and (3) certain government and private organizations likely possess information and materials regarding UAPs, NHI, and associated technologies.

While the UAPDA does not make explicit claims about the origin of UAPs, it significantly narrows the range of potential explanations. Though there could be explanations involving sensor malfunction, human error, or natural illusions that account for some UAP sightings, these mundane accounts lose significant explanatory power when the various pieces of the UAPDA's terminology are overlaid. Consider that 'non-human intelligences' could plausibly include animal or artificial intelligences, but that the UAPDA narrows the scope to only those intelligences that can be associated with UAPs.¹⁹⁴ Similarly, the definitional scope of UAP only considers objects that are observed to satisfy one of the six observables, including performance characteristics that exceed the capabilities of known airframes based on commonly

193. Many people may experience severe emotional distress if the existence of NHI were to be officially confirmed. Moreover, certain details regarding their presence, capabilities, or prior engagement with humans may be unsettling or disturbing to hear for certain individuals.

194. Unidentified Anomalous Phenomena Disclosure Act ("UAPDA"), S.2226, 118th Cong. § 9003 (2023).

accepted physics.¹⁹⁵ As explained above, the definition of UAP further excludes objects that are later identified or attributed, putting them into a separate category entirely.¹⁹⁶

Lurking in the background still are references to technologies of unknown origin, which necessarily must be derived from UAPs or incorporate “science and technology that lacks prosaic attribution or known means of human manufacture.”¹⁹⁷ The resulting mosaic is difficult to explain with peer adversary technology, advanced experimental aircraft, or other conventional theories of origin, although not impossible.

Certainly, there could still be ordinary explanations that survive the interacting definitions for NHI and UAP. For instance, some combination of sensor malfunction, human error, and natural illusions may have resulted in sightings or footage of animals—i.e., non-human intelligences—appearing to move at incredible speeds. Such footage could constitute a UAP sighting until it is properly identified, if ever. Moreover, some animals that are known to cause this type of analytical error might then be fairly characterized as “sentient intelligent non-human lifeform[s] . . . presumed responsible for unidentified anomalous phenomena”¹⁹⁸

It is also possible that an unknown government or private entity has achieved significant breakthroughs in physics that allow them to manufacture craft capable of performing in ways “not previously known to be achievable based on commonly accepted physical principles,” thus satisfying the definition of UAP. If such a craft is piloted by an advanced artificial intelligence, that intelligence might also be understood to be an NHI.

These two potential explanations, however, do not justify the level of effort behind the UAPDA. First, if the concern were errors in military hardware, the UAPDA would seem to be a disproportionate policy response by Congress. Congress has existing oversight structures, such as the Senate Armed Services Committee, with which to communicate its concerns. Second, the threat of sensor error would not necessitate references to technologies beyond human manufacture or breakthrough physics. Third, references to biological materials related to NHI suggest that the drafters are not concerned only with machine-based artificial intelligence. Finally, if the threat were cutting-edge technologies, there

195. *Id.*

196. *See id.*

197. *Id.*

198. *Id.* “Sentient” and “intelligent” add further difficulty as the range of animals that meet both conditions may be more limited.

would not be a need for a historical review of UAP records dating back more than 25 years.¹⁹⁹

Overall, the level of effort required to implement the UAPDA strongly indicates that the drafters take seriously the allegations that Congress has not been fully briefed on what the executive branch knows about UAPs or NHI, including covert crash retrieval and reverse-engineering programs.²⁰⁰ The UAPDA would require the commitment of significant resources to fulfill its statutory directives. The effort required to facilitate a transfer of records from all levels of government to the National Archives is substantial, as is the time and labor needed to stand up a new presidentially-nominated and senate-confirmed panel with subpoena authority.²⁰¹

Perhaps most telling is the UAPDA's mandate to the executive branch that it confiscate private property, an act which requires a substantial degree of political capital because of the risk of impinging on significant private interests. Frankly, it seems politically reckless, even foolish, if the drafters required the government to confiscate private property and there was even a minuscule chance that the seizures would not be successful in uncovering exotic materials.

Here, we must consider the obvious question—would the drafters have proposed substantive legislation committing the U.S. government to politically consequential and significant action without at least a moderate confidence that the underlying allegations are true? While it is important to consider alternative and less fantastical explanations for the UAPDA, a reasonable observer might wonder whether Senators Schumer, Rounds, Gillibrand, and then-Senator Rubio and their respective staff on the Senate Armed Services and Intelligence Committees have already done so before shepherding a highly complex and nuanced proposal for regulating non-human technology through the Senate. When asked in August about the terminology of the UAPDA—specifically ‘NHI’ (which was used over twenty times in the bill)—Senator Rounds had the following to say: “It was not by accident. Let’s put it that way. . . . I wish I could say more, but . . . we tried to keep it as simple as possible.”²⁰²

199. *See id.* § 9005.

200. *See generally id.*

201. *Id.* §§ 9005, 9007.

202. Matt Laslo, *EXCLUSIVE: Schumer UAP amendment co-author; Rounds “non-human intelligence” includes AI*, ASK A POL (Aug. 2, 2023), <https://www.askapoluaps.com/p/exclusive-schumer-uap-amendment-co> [<https://perma.cc/A2UF-QT2V>].

CONCLUSION

The UAPDA serves to acclimate the public to the possibility that known human civilization may not be the sole—or dominant—actor present on the planet. By its mere introduction, the UAPDA’s sponsors have generated a sea change in public awareness about UAPs and bolstered the credibility of proponents for the non-human hypothesis. It is clear from the NDAA conference that the drafters, co-sponsors, and supporters of the UAPDA face strong opposition will from many camps should they continue to advocate for its prescribed approach.

The results of this episode have been favorable for the pro-disclosure camp. Congress has gained significant leverage vis-à-vis the executive branch and demonstrated its ability to play budgetary hardball if not permitted greater access to UAP-related programs. Over time, as Congress learns more information, the public will invariably hear some portion of it as well.

As more information enters the public discourse regarding UAPs, supporters of disclosure may find an increasingly favorable political climate conducive to reintroducing elements of the UAPDA. In an interview in May 2024, Senator Rounds remarked that there was “some work being done” on a new version of the UAPDA to be introduced in the near future.²⁰³ On July 11th, Senator Rounds reintroduced the UAPDA as an amendment to the FY25 NDAA, with most of the original language that had been struck from Subtitle C.²⁰⁴ Included in the proposed draft is a more explicit list of the government agencies that would be required to provide information regarding UAP-related records.²⁰⁵ The language will likely be negotiated significantly over the coming months.²⁰⁶

Finally, as this Note has attempted to demonstrate, there are many consequential policy questions waiting to be addressed if and when

203. Matt Laslo, *Congress Aware of All SAPs? “No. I’m Not Confident Yet,” Sen. Rounds Says After AARO Meeting*, ASK A POL UAPs (May 21, 2024), <https://askapol.com/p/saps-hidding-from-congress> [<https://perma.cc/57J4-3RWJ>].

204. Douglas Dean Johnson, *Senators Rounds and Schumer Submit UAP Disclosure Act as Possible Amendment to NDAA*, MIRADOR (Aug. 3, 2024), <https://douglasjohnson.ghost.io/senators-rounds-and-schumer-uapda/> [<https://perma.cc/9LKS-RQFA>].

205. 118 CONG. REC. S4944 (daily ed. July 11, 2024).

206. At the time of writing, the revised language has been excluded from the negotiating draft of the FY25 NDAA, but Sen. Rounds has recently remarked that the language is still under negotiation and may be reintroduced after the election in November. Matt Laslo, *Senator Mike Rounds: “Negotiations Continue” on Schumer’s UAPDA in NDAA*, ASK A POL UAPs (Sept. 24, 2024), <https://www.askapol.com/p/rounds-says-negotiations-continue-on-uapda-in-ndaa> [<https://perma.cc/KR7N-76QS>].

UAPs are accepted as a topic for serious consideration.²⁰⁷ Questions range from inquiries into the nature of reality and the impact on mainstream worldviews to the strategic challenges of how to organize a whole-of-society response to a mass UAP encounter. This also includes the more prosaic consideration of how to process and adjudicate potentially unconstitutional and illegal activity by the executive branch over several decades.

If the allegations intimated by the UAPDA's drafters are confirmed true, the American public—and the world at large—will be challenged to update their worldviews in ways that require ideas and concepts not yet widespread in mainstream society. The aftermath of that ontological shift is difficult to predict or manage, and it could result in psychological turbulence or discomfort for many. As with climate change, pandemic risks, or the advent of nuclear weaponry, this topic is one with the potential to impact all aspects of human life, including personal beliefs about spirituality, religion, and the meaning of life. But if humanity's response to recent global challenges is predictive at all, then our demonstrated resilience and adaptability may grant us hope for the future ahead.

207. See, e.g., Leo Kim, *Balancing the Unseen: Legislative Strategies for UAP Transparency and National Security*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (2024); Charlie Driver, *Independence (from Congress) Day: Considering UAP Reporting Legislation*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (2024).