Allegations That Craft Were Downed and Occupants Detained or Killed: Applicable Law and Accountability

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Premise. Insider testimony alleges that government agencies and private aerospace contractors have caused non-human craft to crash, recovered the craft, and imprisoned or killed non-human occupants. This analysis assumes those allegations may be true and asks what law governs each stage (bringing down a craft, capture, detention, killing, treatment of remains), who could be held accountable, and what law should be made.

Key points

- No statute authorizes force against a non-threatening craft; Article II supports defense of U.S. airspace, and 10 U.S.C. §130i (and 6 U.S.C. §124n) reach "unmanned aircraft" threatening covered facilities, a definition that literally fits a craft with non-human occupants.
- Detaining an intelligent being without process raises due process and habeas questions if it is a "person" (Issue F1); in an armed conflict, Common Article 3 and the DoD Law of War Manual govern.
- Federal homicide statutes protect "human beings"; the torture and war crimes statutes protect "persons" and are the strongest existing vehicles, and a war crime resulting in death has no limitations period.
- Contractors face state tort liability for conduct the government did not require (*Hencely*); the ATS is closed (*Cisco*).
- Recommended: an interim protection statute with reporting to Congress and an independent monitor (Form F2-1).

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1. Summary

- **Use of force against a craft.** The President has relied on Article II authority to shoot down unidentified objects in U.S. airspace (the February 2023 shootdowns over Alaska, the Yukon, and Lake Huron). Statutory counter-UAS authority (10 U.S.C. §130i) permits DoD to mitigate

threats from unmanned aircraft to covered facilities. Neither authority addresses crewed craft of non-human origin, and neither authorizes force against an object that poses no threat. Deliberately downing a craft that posed no threat, in peacetime, has no clear legal basis.

- **Detention.** Detaining an intelligent being without any legal process raises due process and habeas questions if the being is a "person" (Issue F1). If an armed conflict exists with an NHI group, the law of armed conflict would govern detention, with humane treatment required at minimum (Common Article 3 standards, which the United States applies in all armed conflicts as a matter of policy, and which *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), held applicable as law to the conflict with al Qaeda as a conflict "not of an international character").
- **Killing.** Killing a detained or incapacitated being would be murder or a war crime if the victim is a "person" or "human being" under the applicable statute. Current homicide statutes generally protect "human beings"; the federal torture and war crimes statutes protect "persons" and are the strongest existing vehicles. The question is unsettled and should be resolved by legislation.
- **Contractors.** Private contractors that took part in downing, detention, or killing face civil liability under state tort law where the government did not require or authorize their conduct (*Hencely v. Fluor Corp.*, 608 U.S. 31 (2026)). An Alien Tort Statute case against an interrogation contractor was tried to verdict despite the state secrets privilege, but the Fourth Circuit vacated its decision affirming the verdict and ordered dismissal after the Supreme Court closed the ATS to judicially created causes of action (*Al Shimari v. CACI Premier Technology, Inc.*, 170 F.4th 162 (4th Cir. 2026), vacated on reh'g on other grounds, 2026 WL 2547096 (4th Cir. Aug. 28, 2026) (per curiam) (unpublished); *Cisco Systems, Inc. v. Doe I*, 609 U.S. 141 (2026)) (Issue A1). Whether an NHI is an "alien" under 28 U.S.C. §1350 therefore matters little: after *Cisco* the statute supports claims only for the three historical torts, and harm to an NHI is not one of them.
- **Accountability.** Grave conduct should be excluded from any immunity scheme (Issue B3), and a statute should establish protections, reporting, and an independent monitor now (Issue F1, Form F2-1).

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2. Bringing down a craft

2.1 Domestic authority

- **Article II.** The President's authority to defend the United States supports the use of force against objects that threaten the country or its airspace. After the February 2023 shootdowns, the President stated that the military "acted in accordance with established parameters for determining how to deal with unidentified aerial objects in U.S. airspace," that he ordered the objects taken down "due to hazards to civilian commercial air traffic and because we could not rule out the surveillance risk of sensitive facilities," and that new "classified policy parameters" distinguishing objects that "necessitate action" from those

that do not would be shared with Congress and "remain classified." Remarks on the United States Response to Unidentified Aerial Objects in North American Airspace (Feb. 16, 2023). The remarks cite no statute, so the action rests by implication on the President's Article II authority to defend U.S. airspace, and the operative rules of engagement are classified (Issue A2).

- **10 U.S.C. §130i** lets the Secretary of Defense and authorized personnel, "[n]otwithstanding section 46502 of title 49, or any provision of title 18," take actions "necessary to mitigate the threat … that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset" (§130i(a)). The actions run from detection and tracking to "[s]eize or otherwise confiscate" and "[u]se reasonable force to disable, damage, or destroy" the aircraft (§130i(b)(1)(A)-(F)), and a seized aircraft "is subject to forfeiture to the United States" (§130i(c)). "Covered facility or asset" is limited to designated U.S. sites tied to listed DoD missions such as nuclear deterrence, missile defense, and national security space (§130i(j)(3)); authority for some categories (clauses (iv)-(viii)) ends December 31, 2026 unless extended (§130i(i)). The statute adopts the aviation-law definition of "unmanned aircraft": "an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft" (49 U.S.C. §44801(11); §130i(j)(6)). Read literally, a craft operated by a non-human occupant has no possibility of direct *human* intervention and so is an "unmanned aircraft," which would bring NHI craft over covered sites within §130i's use-of-force and forfeiture provisions. The FY2026 NDAA ordered a review of differences among the military departments in interpreting §130i, including "unnecessarily limited legal interpretations" of covered facilities (Pub. L. 119-60, 139 Stat. 1017-18).
- **War Powers Resolution** (50 U.S.C. §1541 et seq.) reporting would be triggered by introduction of forces into hostilities; whether hostilities with NHI exist is a threshold question.
- **No authority to attack non-threatening craft for recovery.** If, as alleged, programs deliberately brought down craft to recover technology, the action would fall outside defensive authority. Whether it violated any statute depends on whether the craft and occupants are protected by law (property and persons questions) and whether the operation complied with SAP reporting and funding requirements (Issues D1, D3).

2.1A Destruction of aircraft and domestic authorities

- **Destruction of aircraft.** Federal law defines "aircraft" as "any contrivance invented, used, or designed to navigate, or fly in, the air" (49 U.S.C. §40102(a)(6)), a definition that fits a non-human craft. But the federal offense of destroying an aircraft reaches only an aircraft "in the special aircraft jurisdiction of the United States" or a civil aircraft used in interstate, overseas, or foreign air commerce (18 U.S.C. §32(a)(1)), so it would not reach the downing of a non-human craft unless Congress amended it.
- **Domestic counter-drone authority.** Besides DoD's §130i, the Departments of Homeland Security and Justice may take action against unmanned aircraft that pose a "credible threat" to covered facilities and assets (6 U.S.C. §124n). The same literal reading of "unmanned aircraft" applies.

- **Domestic use of the military.** The Posse Comitatus Act (18 U.S.C. §1385) bars use of the Army, Navy, Marine Corps, Air Force, or Space Force to execute the laws except where expressly authorized. A military recovery operation on private land and the detention of occupants would be lawful only under a statutory exception or as a military function not involving law enforcement against civilians, a line that would be litigated.
- **International aviation law by analogy.** States must "refrain from resorting to the use of weapons against civil aircraft in flight" (Chicago Convention art. 3 bis). The article protects civil aircraft of states and does not apply to non-human craft, but its principle (force only as a last resort, after interception and warning) is the natural standard for rules of engagement.

2.2 Methods

Allegations include use of directed energy or electronic means to disable craft. Directed-energy and electronic warfare capabilities are subject to DoD's weapons review requirements. DoD Directive 5000.01 (Sept. 9, 2020, Ch. 1 July 28, 2022) requires that "[a]n attorney authorized to conduct such legal reviews in the DoD must conduct the legal review of the intended acquisition of weapons or weapons systems," and that resulting systems comply with treaties, customary international law, and the law of armed conflict (¶1.2.v). DoD Directive 2311.01 ¶1.2.d (July 2, 2020) likewise requires that "[t]he intended acquisition, procurement, or modification of weapons or weapon systems is reviewed for consistency with the law of war." A program that fielded a capability to disable craft would therefore have generated a legal review, which is a record worth requesting (Issue B1) and a document that would show what targets the review contemplated. In armed conflict, LOAC weapons law also applies.

2.3 What insiders describe

A former director of the Navy's UAP Task Force describes crash recoveries "primarily executed through Air Force special operations, but sometimes other special operations units from the Army and Navy," and reports that some occupants survived the crashes and later died (Jay Stratton, *Out of the Shadows* ch. 8 (2026)). If those accounts are accurate, the recovery teams' engagement and material-transfer records (§4.1 below) are the core evidence, and on the site's premise that AARO is part of the concealment, the fact that the 2023 Joint Staff order routes engagement reports to AARO means the records may be held by the office least likely to release them. Requests should go to the commands as well (Form B1-1).

3. Capture and detention

3.1 If no armed conflict exists

- **Due process.** If an NHI is a "person" under the Fifth Amendment (Issue F1), detention without process violates due process. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (limits on indefinite detention of aliens).
- **Habeas.** A next friend could petition for habeas corpus (28 U.S.C. §2241) on behalf of a detained NHI. The government would argue the being is not a "person" within the writ (*Breheny*), that next-friend standing is lacking (*Whitmore v. Arkansas*, 495 U.S. 149 (1990)), and that the state secrets privilege bars the case. Form F1-1 is the federal petition.

- **Custody by a contractor.** The insider accounts describe recovered occupants held at contractor facilities. If the contractor holds a being for the United States, the custody is "under or by color of the authority of the United States" and federal habeas applies (28 U.S.C. §2241(c)(1)). If the contractor claims to hold it on its own account, state habeas statutes reach restraint by private persons "under any pretense" (Cal. Penal Code §1473(a); Nev. Rev. Stat. §34.360). A state court cannot release a person held under federal authority (*Tarble's Case*, 80 U.S. (13 Wall.) 397 (1872)), so a state petition asks the custodian to state in its return whether it claims that authority, and a contractor that removes the case under 28 U.S.C. §1442(a)(1) concedes it. Form F1-2 is built on that choice. If the being is made to work or to submit to testing, the Thirteenth Amendment's bar on involuntary servitude, which reaches private conduct, adds a ground (*United States v. Kozminski*, 487 U.S. 931 (1988)).
- **Conditions.** If not a person, the being would be protected only by animal-welfare laws, which are poorly suited.

3.2 If an armed conflict exists

- **Classification.** A conflict between a state and an organized NHI group could be analogized to an international armed conflict (if the NHI group is treated as a state-like entity) or a non-international armed conflict (if treated as an organized armed group) (Issue F5).
- **Treatment.** Common Article 3 of the Geneva Conventions prohibits murder, cruel treatment, torture, and outrages upon personal dignity of persons taking no active part in hostilities, including those placed hors de combat by detention or wounds. 42 U.S.C. §2000dd-2 bars subjecting an "individual" who is "in the custody or under the effective control of an officer, employee, or other agent of the United States Government" (or detained in a U.S. facility in any armed conflict) to any interrogation technique not authorized by Army Field Manual 2-22.3; it does not apply to FBI, DHS, or other federal law enforcement interrogations. Whether an NHI is an "individual" is a textual question of first impression; the statute's purpose (preventing coercive interrogation) supports coverage.
- **Persons hors de combat.** Customary law (reflected in Additional Protocol I, Art. 41) prohibits attacking a person who is hors de combat (in the power of an adverse party, clearly expressing surrender, or incapacitated by wounds). Survivors of a downed craft would be in that category. The DoD *Law of War Manual* (June 2015, updated July 2023) is the authoritative U.S. statement of these rules, of detainee treatment, and of the weapons-review requirement, and it applies to U.S. forces "during all armed conflicts, however characterized" (DoD Directive 2311.01 ¶1.2.a; Issue F5).

4. Killing and mistreatment

- **War Crimes Act**, 18 U.S.C. §2441: grave breaches of the Geneva Conventions and specified violations of Common Article 3 (torture, cruel treatment, murder of persons taking no active part in hostilities) by or against U.S. nationals or members of the armed forces. The victim must be a protected "person"; applies "in the context of and in association with an armed conflict."

- **Torture statute**, 18 U.S.C. §2340A: torture of "another person within [the offender's] custody or physical control," outside the United States.
- **Homicide statutes**: federal murder (18 U.S.C. §1111) and most state statutes define murder as the unlawful killing of "a human being." A court is unlikely to extend them to NHI without legislation.
- **Contractor personnel**: the Military Extraterritorial Jurisdiction Act (18 U.S.C. §3261) extends federal criminal jurisdiction to contractor employees accompanying the armed forces abroad for offenses punishable by more than one year if committed within U.S. jurisdiction.
- **Limitations**: a war crime under 18 U.S.C. §2441 is punishable "by death" "if death results to the victim" (§2441(a)), so a killing prosecuted under §2441 is a capital offense with no limitation period (18 U.S.C. §3281). Since January 5, 2023, there is also no limitation for any grave breach of the Geneva Conventions or grave breach of common Article 3 (§2441(e), added by the Justice for Victims of War Crimes Act, Pub. L. 117-351), and jurisdiction extends to any offender "present in the United States, regardless of the nationality of the victim or offender" (§2441(b)(2)(B)). Prosecution requires written certification by the Attorney General, Deputy Attorney General, or an Assistant Attorney General that it "is in the public interest and necessary to secure substantial justice" (§2441(f)(1)). The threshold question remains whether a non-human victim is a protected person under the Conventions (§3).

4.1 Military vocabulary for engagement and recovery

The Joint Staff's 2023 reporting order defines a "UAP engagement" as "a kinetic or non-kinetic response to a UAP, intended to deny, disrupt, or destroy the phenomenon and/or its object(s)," and a "UAP-reaction" as "the apparent UAP response to stimuli, including … engagement" (¶¶3.B.4.C, 3.B.9). Engagement reports are due within 12 hours (¶3.C.2), and recovered "UAP objects and material" are secured "consistent with DoD Foreign Material Exploitation policies and doctrine" and transferred within 30 days with a chain-of-custody record (¶3.F.1). Joint Staff J3 GENADMIN, "Unidentified Anomalous Phenomena Reporting and Material Disposition," DTG 191452Z May 2023, released under FOIA as DoD 24-F-0067. The order treats engagement as an ordinary operational event and recovered objects as materiel, and it contains no provision for occupants. Any investigation of an alleged downing should request the engagement report, the material-transfer record, and the chain-of-custody entries by event serial number.

5. Remains and biological evidence

The House-passed Disclosure Act would treat "biological evidence of non-human intelligence" as subject to eminent domain and Review Board examination (H.R. 8800 §1767) (Issues A3, E1). Respect for remains of intelligent beings should be governed by rules analogous to those for human remains (dignified handling, documentation, consultation with any recognized community) and by research ethics principles.

6. Civil accountability

- **Alien Tort Statute**, 28 U.S.C. §1350: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a

treaty of the United States." An NHI is literally an alien (not a citizen). Limits: *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013) (extraterritoriality); *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018) (no foreign corporate liability); *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021) (domestic conduct required); *Cisco Systems, Inc. v. Doe I*, 609 U.S. 141, 146 S. Ct. 1882, 1892 (2026) (no new judicially created ATS causes of action beyond the three historical torts). The Fourth Circuit's 2026 recognition of corporate and conspiracy liability for torture and CIDT was vacated after *Cisco* (*Al Shimari*, 2026 WL 2547096). The ATS is not a realistic route for claims on behalf of NHI.

- **State tort law** against contractors after *Hencely*.
- **FTCA** against the United States for intentional torts is limited (§2680(h)); Bivens is effectively closed (*Egbert v. Boule*).
- **Standing and representation**: next friend or a recognized representative; the injured NHI's capacity to sue is itself the threshold issue (Issue F1).

7. Recommendations

1. Enact an interim protection statute (Form F2-1): prohibit killing, torture, and cruel treatment of NHI by U.S. personnel and contractors anywhere; require humane treatment and medical care; require reporting of any NHI in custody to the intelligence and armed services committees and to an independent monitor within 72 hours; create a federal offense for violations; exclude such conduct from any immunity.
2. Amend 18 U.S.C. §§2340, 2441 and the federal homicide statutes to define protected persons to include sentient intelligent beings.
3. Direct the Secretary of War to issue rules of engagement prohibiting force against non-threatening craft.
4. Direct DOJ and DoD IGs to investigate allegations and report to Congress.
5. Authorize peaceful contact zones where force and seizure are barred except against imminent threats to persons, and withdraw them from 10 U.S.C. §130i (Issue F7; Form F7-1).