

[Federal District Court for the District of Connecticut rules on the scope of the Federal Aviation Administration's subpoena power relating to unmanned aircraft systems \(Huerta v. Haughwout\)](#)

Enforces FAA's administrative subpoenas on the alleged creators of two popular internet videos depicting the use of weaponized unmanned aircraft systems because the FAA had a legitimate purpose and the subpoenas were appropriate in scope.

Updated last **January 25, 2018**
for the 07/18/2016 decision.



WHAT IT DOES

In [Huerta v. Haughwout, No. 3:16-cv-356 \(JAM\), 2016 WL 3919799 \(D. Conn. July 18, 2016\)](#), the Federal Aviation Administration (FAA) issued subpoenas to Austin Haughwout and his father Bret Haughwout seeking the production of documents and admissions related to two popular internet videos depicting the use of weapons attached to small unmanned aircraft systems flying less than 20 feet above the ground. The Haughwouts declined to comply with the subpoenas, arguing that the drones depicted in the videos are not "aircraft" under FAA regulations, and are therefore not subject to the FAA's enforcement authority. The court enforced the FAA's subpoenas, requiring the Haughwouts to produce the documents. This is the first time a Federal court has enforced the FAA's broad investigative powers to issue subpoenas compelling testimony and document production to recreational drone aircraft use.

While the court enforces the subpoenas on the Haughwouts, it also expresses doubts about the FAA's regulatory enforcement authority over all types of drone use when operated low to the ground. It declines to resolve those doubts here because "at the subpoena enforcement stage, courts need not determine whether the subpoenaed party is within the agency's jurisdiction or covered by the statute it administers; rather the coverage determination should wait until an enforcement action is brought." Therefore, the question of the FAA's enforcement authority over drones remains, but the court recognizes that "as with the advent of airplanes before them, the next generation of drones and similar flying contraptions will continue to challenge and shape the law that governs them."

THE FACTS

In 2015, a user named "Hogwit" uploaded two videos to Youtube. The first video, entitled "[Flying Gun](#)," depicts a small "unmanned flying device" hovering several feet above the ground with a handgun affixed to its front. The handgun is fired several times as the device continues to hover. The second video, entitled "[Roasting the Holiday Turkey](#)," depicts an unmanned flying device hovering several feet above the ground with a flame thrower affixed to its front. The flamethrower is shown shooting streams of fire toward a turkey carcass as the device continues to hover above the ground.

After the two videos went "viral," the FAA opened an investigation and issued administrative subpoenas to Austin Haughwout and his father Bret Haughwout due to its belief that they are responsible for the videos. The subpoenas required the Haughwouts to submit to questioning in a deposition and to produce a wide range of documents related to the use of an unmanned aircraft systems and the photography or video recording of their use. The Haughwouts declined to comply with the subpoenas, arguing that the FAA does not have the authority to investigate their activity. The FAA sought enforcement of the subpoenas in Federal District Court.

DECISION POINTS

The court applied a four-part test to determine whether to enforce the FAA's subpoenas. Under this test, the FAA was required to show that:

1. The investigation is conducted pursuant to a legitimate purpose,
2. The information requested under the subpoena is relevant to that purpose,
3. The agency does not already have the information it is seeking with the subpoena, and
4. The agency has followed the necessary administrative steps in issuing the subpoena.

If the administrative agency meets those four criteria, the subpoena is enforced unless the party opposing it can show that the subpoena "is unreasonable, or issued in bad faith or for other improper purposes, or that compliance would be unnecessarily burdensome."

The court found that the FAA had satisfied all four criteria, and emphasized that it "need not determine whether the subpoenaed party is within the [FAA's] jurisdiction or covered by the statute it administers" at this stage of the investigation. It noted that Congress clearly contemplated the regulation of some drones by including provisions on "unmanned aircraft systems" in the [FAA Modernization and Reform Act of 2012](#) and that the FAA only needs a "reasonable ground" to believe that a person is violating one of its regulations or a "reasonable ground" about "any question that may arise" under one of its regulations to in order to conduct an investigation. The court also stated that even if there is a good faith argument that the drones at issue here are not within the scope of the FAA's power to regulate, "the FAA has a legitimate purpose at least to acquire more information by means of investigation in order to assess... whether the devices are within the scope of its authority to regulate." Therefore, the FAA's petition to enforce the subpoenas was granted and the Haughwouts were ordered to comply with their requests.

RELEVANT SCIENCE

Unmanned aircraft systems or "drones" refer to machines that are capable of flight without the presence of an on-board human pilot. They are remotely controlled either by a human pilot or a computer program supervised by a human operator. Size and cost reductions of key components have led to a rise in popularity of commercial drones for recreational and hobby use. Chips that can detect small changes in acceleration and balance allow the drone to stabilize itself, simplifying the responsibilities of the pilot.

The size reduction of many key components also allows more powerful motors to be used in commercial drones without adding excess weight or power consumption, giving recreational drone users the ability to attach objects to the drones or lift payloads.

The FAA projects [growth in annual UAS sales](#) from \$1.9 million in 2016 to \$4.3 million by 2020.

COUNSEL

Petitioner Michael Huerta is represented by John W. Larson of the U.S. Attorney's Office.

Respondents Austin Haughwout and Bret Haughwout are represented by Mario K. Cerame and Jay M. Wolman of Randazza Legal Group, PLLC and Matthew F. Sadler of Sadler Law Group, LLC.

STATUS

The District Court ordered the Haughwouts to comply with the subpoenas within 30 days or on another date on which the parties agreed and closed the case. No appeal filed at this time.

RELEVANT EXPERTS

[Jonathan Rupprecht](#), Esq., is an aviation attorney, commercial pilot, flight instructor, and author of the book [Drones: Their Many Civilian Uses and the U.S. Laws Surrounding Them](#). He holds a Bachelor of Science in Professional Aeronautics from Embry-Riddle Aeronautical University, *magna cum laude*, and a Juris Doctor from Florida International University School of Law. He offered the following opinion on the outcome:

“While the court enforced the FAA’s broad subpoena powers, it did not answer the question whether the FAA had jurisdiction to enforce the Federal Aviation Regulations below the tree line, in a forest, and when being flown recreationally. Manned aircraft don’t fly around in forests ... That really is not navigable airspace.”

Stuart Benjamin is the Douglass B. Maggs Professor of Law, Associate Dean for Research, and co-director of the Center for Innovation Policy at Duke Law School. He specializes in telecommunications law, the First Amendment, and administrative law. From 2009 to 2011, he was the first Distinguished Scholar at the Federal Communications Commission. Benjamin is a coauthor of *Telecommunications Law and Policy* (1st ed. 2001, 2nd ed. 2006, 3rd ed. 2012, 4th ed. 2015), has written numerous law review articles, and has testified before House and Senate committees as a legal expert on a range of topics.

RELATED POLICIES

In *Taylor v. Huerta*, No. 15-1495, 2017 WL 2859554 (D.C. Cir. May 19, 2017) ([SciPol brief available](#)), the Federal Court of Appeals for the D.C. Circuit vacated the FAA rule that required recreational operators of unmanned model aircraft to register their drones as it applied to “model aircraft.”

An FAA rule entitled “Operation and Certification of Small Unmanned Aircraft Systems” (81 Federal Register 42063) ([SciPol brief available](#)) allows the operation of small drones in U.S. airspace, but sets out policies for flying drones, design requirements for drones, and qualifications for drone pilots.

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RECOMMENDED CITATION

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