

## Feature

# Like a Good Neighbor Dealing with the Foreign Adversary Next Door

*By Major Miguel Eduardo S. Del Mundo, U.S. Air Force*

*... [G]reat-power competition stands as the foremost security challenge confronting the United States, with China emerging as the primary pacing threat. Adversaries persist in their endeavors to gather intelligence, engage in espionage, and pilfer critical information through any available means.<sup>1</sup>*

If someone were asked to think of pressing national security issues, it is unlikely that real estate transactions would be the first thing to come to their mind. But recent transactions—primarily involving Chinese government-backed land purchases adjacent to or near domestic U.S. military installations—are just that. These acquisitions introduce homeland security concerns, such as espionage and sabotage against the U.S. military, and have been the topic of discussions in the national security space. Adversaries at or near installation gates pose security risks to both military missions and personnel.

This issue is not raised by one or two isolated events; this is a growing trend near domestic military installations. From 2010 to 2020, the Chinese Communist Party (CCP) increased its farmland holdings in the United States twenty-three-fold through CCP-affiliated corporations,<sup>2</sup> with holdings near or adjacent to military bases.<sup>3</sup> According to the U.S. Department of Agriculture (USDA), in 2021,

China owned 383,935 acres of land in the United States,<sup>4</sup> which, in aggregate, is about double the size of New York City.<sup>5</sup> In a 2022 letter to the then-Secretary of Defense, then-Secretary of the Treasury, and then-Secretary of Agriculture, fifty-one members of Congress said that the “presence of a CCP-affiliated corporation near a military installation potentially undermines the integrity of our high-capability military bases, jeopardizing our strategic interests.”<sup>6</sup>

In June 2024, the *New York Post* published a map of farmland that Chinese companies own next to nineteen “strategically important” military installations across the United States, raising concerns of Chinese espionage and sabotage.<sup>7</sup> It is not the land ownership alone that causes concern; it is also what the landowners can do with and from the land. For example, “landowners could set up reconnaissance sights, install tracking technology, use radar and infra-red scanning



Drones fly above the National Training Center, Fort Irwin, CA. (Credit: PVC Nathaniel W. Garrett)

to view bases or attempt to fly drones over them as ways to surveil military sites.<sup>78</sup> Such abilities would allow foreign adversaries to study how the military works, observe troop movements, and create counter-strategies against the United States.<sup>9</sup>

By outlining case studies, surveying state and Federal responses, and analyzing available command and legal authorities, this article provides judge advocates (JAs) and military leaders with a foundational understanding of the options—and constraints—available when foreign adversaries establish themselves in close proximity to U.S. military installations. It begins with specific examples of recent land purchases by CCP-affiliated entities. Along with the increase in land purchases near installations comes a discussion of collateral security incidents affecting installations. This article then discusses different state efforts to combat these national security risks and highlights some of the legal challenges associated with those efforts. An exploration of Federal mechanisms to respond and the role of the Committee on

Foreign Investment in the United States (CFIUS) follows. Lastly, this article briefly surveys available command authorities to address foreign adversaries right outside the gate.

### **Case Studies**

The examples that follow highlight recent instances of CCP-related land acquisitions and the local and Federal responses that followed. Related incidents of unauthorized access and drone incursions also illustrate some of the types of threats that a co-located adversary can pose to an installation's security.

#### ***The Wyoming Purchase***

In June 2022, MineOne Partners Ltd. (MineOne), a Chinese-backed cryptocurrency mining firm, acquired real estate within a mile of Francis E. Warren Air Force Base, a nuclear missile base in Cheyenne, Wyoming, to conduct cryptocurrency mining operations.<sup>10</sup> Just months later, CFIUS, an interagency committee authorized to review foreign investment in the United States,<sup>11</sup> received a public tip of the transaction, and, as

discussed in more detail below, the committee exercised its jurisdiction to investigate the matter.<sup>12</sup> Wyoming Governor Mark Gordon and U.S. Senator Cynthia Lummis of Wyoming also publicly expressed their concerns that the site posed national security risks.<sup>13</sup>

CFIUS agreed, and in May 2024, then-President Joseph Biden issued the eighth presidential order in CFIUS history to prohibit a transaction.<sup>14</sup> The order demanded that MineOne divest its land and classified the company as a risk to national security.<sup>15</sup> The White House noted that MineOne's foreign-sourced equipment in Wyoming was potentially capable of surveillance and espionage activities within one mile of a U.S. Air Force arsenal of Minuteman III intercontinental ballistic missiles.<sup>16</sup>

#### ***The North Dakota Purchase***

Less than one year before the MineOne purchase occurred in Wyoming, Fufeng USA, an American subsidiary of a China-based company, announced its plans to build a corn mill directly outside of Grand Forks Air



Force Base in North Dakota by purchasing land directly from the city of Grand Forks.<sup>17</sup> Grand Forks Air Force Base is “home to some of the Nation’s most sensitive military drone technology.”<sup>18</sup> The base is also home to a space networking center, which a North Dakota senator said handles “the backbone of all U.S. military communications across the globe.”<sup>19</sup> Though the community initially welcomed the investment and jobs that Fufeng USA would generate for their local economy, concerns surrounded the national security risk of potential spying on the nearby base.<sup>20</sup>

The parties to the deal sought CFIUS approval of the transaction, but unlike in the Wyoming example above and as discussed in more detail below, CFIUS determined that it did not have the jurisdiction to review the matter.<sup>21</sup> Without the ability to exercise jurisdiction over the Fufeng USA transaction,<sup>22</sup> CFIUS was unable to conduct a national security review, use its mitigation authorities, or request presidential intervention over the transaction.<sup>23</sup>

Although Federal action was limited,

state and local authorities were able to move forward with protection measures. Assistant Secretary of the Air Force Andrew Hunter wrote to the state’s senators to highlight the national security risks of the project being located so close to the base.<sup>24</sup> After hearing the Air Force’s concerns, the Grand Forks mayor changed his stance from the project bringing more jobs to the community.<sup>25</sup> In January 2023, he cited the Federal Government’s national security concerns regarding the project and opposed it and any future permits that Fufeng USA filed with the city.<sup>26</sup> In April 2023, two years after the project began, the city terminated the deal with Fufeng USA.<sup>27</sup>

#### ***Unauthorized Installation Access and Incursions***

The rise in foreign land purchases near sensitive locations has coincided with a series of unsettling security incidents involving unidentified drones. For example, in December 2023, Langley Air Force Base, home to a number of F-22 Raptors, reported that a swarm of unknown drones appeared in restricted airspace

and flew towards Naval Station Norfolk, the world’s largest naval port and home to the U.S. Navy’s SEAL Team Six.<sup>28</sup>

Months later, in July 2024, a Chinese citizen studying in the United States pleaded guilty to violating the Espionage Act for taking photos of U.S. Navy ships with a drone in Virginia.<sup>29</sup> He was sentenced to six months in jail.<sup>30</sup> Less than a year after that, another Chinese national was sentenced to four months in Federal custody and deportation for flying a drone over Vandenberg Space Force Base, as well as other U.S. locations.<sup>31</sup>

In November 2024, New Jersey residents reported a number of unidentified drones the size of bicycles or small cars.<sup>32</sup> Sightings were reported by the U.S. Coast Guard over one of its vessels and Picatinny Arsenal, a U.S. military research facility.<sup>33</sup> The Federal Bureau of Investigation (FBI) led an investigation to identify these mysterious drones.<sup>34</sup> Despite the subsequent announcement that the flights were authorized,<sup>35</sup> confusion still surrounds some of the flights’ sources and level of threat.<sup>36</sup> “Repeat incidents have occurred at critical

locations, including an intelligence center in Key West, Florida, and adjacent to missile ranges near White Sands National Park.<sup>37</sup> Congressional testimony has reported “over 350 detections of drones at 100 different military installations” in 2024 alone.<sup>38</sup>

The concerns surrounding unidentified drones and foreign land purchases are further amplified by on-the-ground breaches at U.S. military installations.<sup>39</sup> In September 2023, U.S. officials described how “Chinese nationals, sometimes posing as tourists, have accessed military bases and other sensitive sites in the United States as many as 100 times in recent years,” describing the incidents as a “potential espionage threat.”<sup>40</sup> Just months ago, two Chinese nationals were arrested for acting as agents of the CCP without proper notification and gathering intelligence about U.S. Navy Service members and bases.<sup>41</sup> Collectively, these incidents underscore the growing convergence of physical and technological threats that foreign adversaries pose on U.S. soil.

### State Responses

The interplay between Federal and state responsibility complicates efforts to address the risks associated with foreign land ownership. On one hand, states can rely on the Tenth Amendment to the Constitution to address the matter, which provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”<sup>42</sup> On the other hand, foreign affairs and national security are roles reserved for the Federal Government.<sup>43</sup>

Absent a clear Federal solution to the matter, states have introduced their own bills to limit foreign adversaries from purchasing U.S. real estate. In the past two years, most states have introduced laws to limit foreign real estate investments within their borders; just in 2023, eighty-one bills related to the issue were introduced in thirty-three states.<sup>44</sup> This patchwork of state-specific laws across the country has led to unintended inconsistencies. The brief survey that follows offers a glimpse at current state efforts and demonstrates how they are not tailored to complement Federal efforts.<sup>45</sup>

### *The Alabama Law*

The Alabama Property Protection Act limits the ownership of agricultural property and real property within ten miles of a military installation, among other locations, by “foreign principals” from “China, Iran, North Korea, and Russia.”<sup>46</sup> But, because the law only applies to these specific “foreign countr[ies] of concern” and their principals,<sup>47</sup> it leaves room for foreign nationals and companies from those countries to make the same purchases.

The law was introduced after Alabama representative Scott Stadhagen saw a National Association of Realtors report that showed China leading the U.S. residential dollar volume at \$6.1 billion in 2022.<sup>48</sup> While no specific real estate transaction within Alabama was cited as prompting the legislation,<sup>49</sup> Stadhagen introduced the act as a preventative measure to keep “communist China [from purchasing] Alabama land and resources” for their purposes.<sup>50</sup>

### *The Indiana Law*

In another example, in 2022, Indiana passed a law that blocks “foreign business entities” from purchasing farmland for crop farming and timber production.<sup>51</sup> On 30 June 2023, an amendment was passed that expanded prohibitions to acquisitions that are “directly adjacent to a military installation.”<sup>52</sup> Then in March 2024, Indiana again amended the law to apply to real property transactions within a ten-mile radius of a military installation.<sup>53</sup>

Indiana Representative Kendell Culp, author of the March 2024 amendment, said that he introduced the bill to protect national security and the food supply.<sup>54</sup> Though no specific Indiana real estate transaction was identified as the trigger for the measure, Culp cited a USDA report showing that in 2022, foreign entities owned more than 438,000 acres of Indiana land.<sup>55</sup>

Indiana’s restrictions apply to “citizen[s] of China, Iran, North Korea, Russia, or a country designated as a threat to critical infrastructure by the governor.”<sup>56</sup> In contrast to Alabama’s law, this restriction applies directly to individual citizens of these countries or companies owned by citizens of these countries, and it gives the governor of Indiana more authority to add more countries to its list.<sup>57</sup>

### *The Florida Law*

While Florida’s legislative approach differs slightly from both Alabama’s and Indiana’s, the implications of the legal challenges that have followed it extend beyond the state’s borders. In May 2023, Florida passed Senate Bill 264 to amend a statute that restricts any foreign national from seven countries from directly or indirectly owning “real property on or within [ten] miles of any military installation or critical infrastructure facility in the state.”<sup>58</sup> No specific Florida real estate transaction was identified as the trigger for the legislation, though the 2022 USDA report that inspired Representative Culp states that foreigners owned more than 1.4 million acres of Florida agricultural land.<sup>59</sup>

In addition to China, the prohibition applies to “the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, [and] the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.”<sup>60</sup> The statute goes on to mandate additional requirements solely related to China.<sup>61</sup> They include a registration requirement for acquired land and harsher penalties for violating the statute.<sup>62</sup> In addition to carving out additional provisions for China, this statute is unique in that the punishment is more than just divestment. Violators face fines that increase daily and the placement of liens on the property in question.<sup>63</sup>

### *The Florida Lawsuit*

Shortly after Senate Bill 264 was enacted, four Chinese nationals with legal status to reside in the United States and a Chinese real estate investment company challenged the law in *Shen v. Simpson*.<sup>64</sup> Among the individual plaintiffs, three were legal immigrants with valid non-immigrant visas and one had a pending asylum application.<sup>65</sup> The plaintiffs sought a preliminary injunction against Florida’s statute using three main arguments: it violates the Fourteenth Amendment’s Equal Protection Clause, it is preempted by or otherwise violates the Fair Housing Act by denying real estate to a protected class, and it is preempted by Federal law restricting certain transactions involving foreign nationals.<sup>66</sup>

The Northern District of Florida denied



(Credit: Department of Homeland Security)

the plaintiff's injunction.<sup>67</sup> While the appeal is still pending, the Eleventh Circuit did partially grant the plaintiff's motion for a preliminary injunction in favor of two of the individual plaintiffs (who had real estate transactions pending).<sup>68</sup>

### Federal Responses

While, as mentioned above, many states have exercised their right to pass laws concerning real estate transactions, "[p]roperty law is not merely a domestic concern, especially in the case of foreign investors."<sup>69</sup> Issues involving national security and foreign adversaries are

elevated beyond state lines and into the Federal Government's realm of responsibility, and, despite constitutional constraints, it has several tools at its disposal.

CFIUS is currently the Government's biggest resource. If faced with extreme risks to national security, the Government can also explore exercising eminent domain, and existing authorities also permit the military to support state and local law enforcement activities to combat the physical and technological threats posed by the foreign adversary's proximity and activity. Each option is outlined below.

### CFIUS

In 1975, Executive Order 11858 established CFIUS, a committee currently composed of the heads of the Department of State, Department of War (DoW), Department of Commerce, Department of Energy, Department of Justice, Department of Homeland Security, Office of Science and Technology Policy, an Office of U.S. Trade Representative, and chaired by the Department of the Treasury.<sup>70</sup> Their primary responsibility is to monitor "the impact of foreign investment in the United States . . . and [to] coordinat[e] the implementation of United States policy on such investment."<sup>71</sup> Through amendments over the years, today, CFIUS can make recommendations to the President to suspend or prohibit transactions that the committee deems a national security risk.<sup>72</sup>

The President's authority to suspend or prohibit transactions was provided by the 1988 Exon-Florio Amendment to the Defense Production Act, which added § 721 to the law.<sup>73</sup> This amendment requires credible evidence that a foreign interest in the acquisition might impair national security.<sup>74</sup> The Foreign Investment and National Security Act of 2007<sup>75</sup> expanded that authority, and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)<sup>76</sup> broadened the type of transactions CFIUS covers.<sup>77</sup> Prior to FIRRMA, CFIUS could only review transactions that resulted in foreign "control" of a U.S. business.<sup>78</sup> The law extended CFIUS's reach to include real estate transactions near sensitive U.S. military installations and other national security sites.<sup>79</sup>

However, this reach was not unlimited. CFIUS's review of the Fufeng transaction in North Dakota brought attention to some of its limitations when the committee issued its letter stating that it did not have jurisdiction over the matter.<sup>80</sup>

For background, the relevant portions of title 31 of the Code of Federal Regulations (C.F.R.) that bring the Defense Production Act into action include both parts 800 and 802.<sup>81</sup> Part 800 regulates "covered transactions," which, generally speaking, encompass transactions falling within CFIUS's traditional jurisdiction—those that could result in foreign control of a U.S. business.<sup>82</sup> In contrast, part 802 regulates the scope of transactions that



A Soldier scans identification cards at the Gregg Gate, Fort Gregg-Adams, VA. (Credit: Chad Menegay)

FIRRMA’s expansion incorporated—“covered real estate transactions” by a foreign person in the United States.<sup>83</sup>

Although the Fufeng transaction involved real estate, CFIUS reviewed the matter under 31 C.F.R. part 800, not 802.<sup>84</sup> While CFIUS’s deliberations and decisions are not publicly disclosed, a review of 31 C.F.R. part 802 reveals why its provisions were likely excluded in these deliberations. Part 802 includes definitions of what can be considered a covered real estate transaction.<sup>85</sup> At the time, the relevant definition of “covered real estate” narrowly defined “military installations” to include specific category descriptions.<sup>86</sup> The regulation also provides an explicit list identifying these military installations and other sites in an appendix to the regulation, and Grand Forks Air Force Base was not included at the time.<sup>87</sup>

It is worth noting here that this is where the facts in the Wyoming purchase and North Dakota purchase examples above diverge. In MineOne’s Wyoming purchase, F.E. Warren Air Force Base *was* included in the regulation’s list of military installations at the time that CFIUS was investigating that transaction.<sup>88</sup> Consequently, in that case, CFIUS was able to exercise its full authority to investigate that transaction and make the recommendation to the President that ultimately led to a divestment order.<sup>89</sup> In contrast, although the Fufeng North Dakota property was also in close proximity to a U.S. military installation and was being acquired by a “foreign person” as defined by the regulation, because that installation was not included in the appendix to 31 C.F.R. part 802, it did not trigger that provision’s oversight.

With only part 800 in play, CFIUS likely determined it lacked jurisdiction because Fufeng purchased undeveloped land, which does not meet the regulatory criteria related specifically to transactions with a U.S. business.<sup>90</sup> This explanation is supported by an example provided in the regulation of an *excepted real estate transaction*:

Example 3. Corporation A, a foreign person, seeks to purchase from Corporation X an empty warehouse located in close proximity to a military installation identified in part 2 of appendix A to this part. Assuming no other relevant facts, the purchase of the covered real estate is *not* a covered transaction subject to part 800 of this chapter *because Corporation A has not acquired a U.S. business . . .*<sup>91</sup>

Although the illustration involves a military installation that is listed in the regulation, the analysis of the real estate in question is still applicable to the Fufeng situation. Without meeting the specific criteria listed in 31 C.F.R. § 800.213, it fell outside CFIUS's grasp.

### ***Reactions to the Fufeng Decision and CFIUS Rule Changes***

As a result of the Fufeng project falling directly through these regulatory cracks, some states took matters into their own hands.

As mentioned above, thirty-three states proposed legislation to restrict foreign land purchases in 2023.<sup>92</sup> For instance, in neighboring South Dakota, the government called for a review of its own state's investments, and the governor expressed support for legislation that created a "Committee on Foreign Investment in the United States for South Dakota" (CFIUS-SD), which would examine investments within the state avoid the definitional challenges that CFIUS faced.<sup>93</sup>

It is not far-fetched to assume that if states and industry leaders were noticing CFIUS's jurisdictional limitations, foreign adversaries were doing the same. In May 2023, the Congressional Research Service reported that members of Congress were saying that some foreign investments "require a more proactive and strategic approach . . . [as they] may evade or fall outside current authorities."<sup>94</sup>

In the same month that report was published, the Department of the Treasury was working with fellow CFIUS members to close gaps in CFIUS's coverage. The DoW, as a member of CFIUS, states that it "regularly assesses its military installations and the geographic scope around them to ensure appropriate application in light of national security considerations."<sup>95</sup>

On 5 May 2023, the Department of the Treasury proposed a rule that amended the definition of "military installation" in 31 C.F.R. § 802.227 and added eight military installations to the regulation's list, including South Dakota's Grand Forks Air Force Base.<sup>96</sup> The final rule came into effect in September of that year.<sup>97</sup> Just over a year later, an additional amendment came into effect that once again adjusted the definition of "military installation" and added fifty-nine more installations to the list.<sup>98</sup> The DoW says

it "will continue to assess its military installations on an ongoing basis to ensure the sites listed are appropriate."<sup>99</sup>

Despite this significant broadening of the rule's applicability, some lawmakers believe more needs to be done, and legislation to expand CFIUS continues to be introduced.<sup>100</sup> The White House has also expressed intent to further expand CFIUS's jurisdiction. The President declared the following in a February 2025 memorandum regarding the Nation's investment policy:

The United States will use all necessary legal instruments, including CFIUS, to restrict [People's Republic of China]-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors. My Administration will protect United States farmland and real estate near sensitive facilities. It will also seek, including in consultation with the Congress, to strengthen CFIUS authority over "greenfield" investments, to restrict foreign adversary access to United States talent and operations in sensitive technologies (especially artificial intelligence), and to expand the remit of "emerging and foundational" technologies addressable by CFIUS.<sup>101</sup>

Legislators have also introduced laws to expand Federal reach in this area outside of CFIUS's purview. For example, in January 2025, U.S. Senator Tom Cotton reintroduced the Not One More Inch or Acre Act,<sup>102</sup> which requires the President to take actions to prohibit the purchase of U.S. real estate by the CCP or any individual acting on its behalf, among others, and to force the sale of the property owned by these individuals or entities if it "poses a national security risk."<sup>103</sup> Senator Cotton initially introduced the bill in March 2023, but it was not brought to a vote.<sup>104</sup> Senator Cotton argues that for "decades, the [CCP] has been gobbling up American farmland and real estate."<sup>105</sup> Senator Katie Britt, one of the legislation's co-sponsors, expressed that the "CCP's strategic acquisition of farmland, particularly near our military installations, isn't just a national security risk, it is a threat to our economic and food security."<sup>106</sup>

If passed, real estate at issue will presumably move directly to the President's desk for action. The President may utilize the assistance of department heads, including the DoW, to help identify real estate that falls within this category and exercise the law's authority to order its divestment.

### ***Eminent Domain***

One might wonder if the easiest solution to the problems posed by adversary-owned property would be for the Federal Government to repossess the land. While the Federal Government's power of eminent domain is well established, it is an extraordinary remedy and is subject to extensive legal and procedural safeguards.<sup>107</sup> To avoid violating the Takings Clause of the Constitution, the Government can only take private property for public use and must provide just compensation.<sup>108</sup> The power should be reserved for situations where other remedies have been exhausted and the national security risks cannot be addressed through existing legal or cooperative means.

While undoubtedly a last resort, the Service Secretaries have statutory authority to acquire real estate necessary for national defense.<sup>109</sup> Specifically, 10 U.S.C. § 2663 lists the military's land acquisition authorities, which include condemnation, purchase, and separate guidance for the "acquisition of interests in land when need is urgent."<sup>110</sup> Under this provision,

- (1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that-
  - (A) the acquisition is needed in the interest of national defense;
  - (B) the acquisition is required to maintain the operational integrity of a military installation; and
  - (C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.<sup>111</sup>

Implementing regulations, such as 32 C.F.R. § 522.33, further prescribe proce-

dures for the military to acquire property interests.<sup>112</sup> While § 2663(d) provides the ability to expedite an acquisition in exigent circumstances, in order not to violate the Fifth Amendment, the Federal Government would need to compensate the owners of the suspected land with fair market value, which could be an expensive endeavor.

These robust procedures and constitutional protections make clear that eminent domain is not a routine tool for managing foreign land ownership, but it remains a viable tool when no other resources are available to combat the security threat that an adversary-controlled property presents.

### **Coordination with States**

As discussed above, property ownership is primarily regulated at the state level, and many states have already enacted restrictions on land ownership by foreign adversaries.<sup>113</sup> Nonetheless, Federal military authorities can support and coordinate with these state efforts within existing constitutional boundaries.

One constraint that prevents military leaders from enforcing laws beyond the perimeter of the installation is the Posse Comitatus Act (PCA).<sup>114</sup> Under 18 USC § 1385, the military is prohibited from using Title 10 personnel as “posse comitatus” to directly participate in law enforcement activities.<sup>115</sup> This becomes an issue if, for instance, the Federal response to a threat posed by Chinese-company-owned real estate is to independently enforce civilian laws against foreign landowners.

However, exceptions exist. Department of Defense Instruction (DoDI) 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, provides a framework under which military forces can support law enforcement activities in narrowly defined circumstances.<sup>116</sup> Specifically, the DoDI identifies exceptions to PCA limitations when action is “taken for the primary purpose of furthering a [DoW] or foreign affairs function of the United States,” such as:

(c) Investigations and other actions related to a commander’s inherent authority to maintain law and order on a [DoW] installation or facility.

(d) Protection of classified defense information or equipment or controlled unclassified information (e.g., trade secrets and other proprietary information), the unauthorized disclosure of which is prohibited by law.

(e) Protection of [DoW] personnel, equipment, and official guests.

(f) Such other actions that are undertaken primarily for a military or foreign affairs purpose.<sup>117</sup>

Responding to national security threats posed by a foreign adversary’s actions within such close proximity to a military sensitive location falls squarely within this exception.

Moreover, through 10 U.S.C. § 271, the Secretary of War can share information collected “during the normal course of military training or operations.”<sup>118</sup> Information provided by the military can help local law enforcement investigate and bring espionage charges (or other criminal charges, such as trespass, identity theft, and financial fraud) against foreign actors near military bases. In addition to providing information to civilian law enforcement, 10 U.S.C. § 272 allows the Secretary of War to provide military equipment to civilian law enforcement officials for law enforcement purposes,<sup>119</sup> along with the personnel to maintain and operate such equipment.<sup>120</sup>

By leveraging state-level authorities in tandem with tailored Federal support, the DoW can enhance the protection of its installations without overstepping constitutional or statutory limits.

### **Command Authority to Respond to Installation Security Posture**

While state or Federal pursuits to address the matter are ongoing, commanders retain broad authority to protect their installations. Installation commanders can exclude individuals from entry, conduct enhanced identity verification, and restrict “trusted traveler privileges as force protection conditions (FPCONs) increase.”<sup>121</sup> Commanders can also take defensive steps to mitigate the risks of a hostile neighbor’s observation, such as erecting physical barriers to obstruct lines of sight, adjusting patrol patterns, and requesting counterintelligence support.<sup>122</sup> These au-

thorities are well established, and courts have recognized that “the commanding officer of a military base has wide discretion as to whom he will exclude from the base, which will be disturbed only upon a showing that the grounds for exclusion were patently arbitrary or discriminatory.”<sup>123</sup>

However, the risks posed by an adversary next door present unique challenges because much of the activity of concern occurs outside the fence, beyond the commander’s direct jurisdiction. This leaves commanders reliant on a complex and layered set of operational tools, one of which is discussed briefly below.

### **Airspace Protection**

As mentioned above, in late 2023, unidentified drones swarmed Langley Air Force Base.<sup>124</sup> On multiple occasions in 2024, unidentified drone swarms were also spotted near Edwards Air Force Base in Los Angeles.<sup>125</sup> Overseas, in November 2024, drones were spotted over three Royal Air Force bases in the United Kingdom that host the U.S. Air Force and serve as key installations for U.S. military operations in Europe.<sup>126</sup> In the Pacific, three Chinese students were recently investigated for flying drones and filming U.S. aircraft carriers docked at the Busan Naval Operations Command in South Korea.<sup>127</sup>

In addition to espionage concerns, unmanned aerial systems (UAS) present a safety hazard in military airspace as a threat to manned aircraft.<sup>128</sup> Congress has authorized limited counter-UAS authority for the DoW under 10 U.S.C. § 130i to detect, monitor, and, in some circumstances, neutralize drones posing a credible threat to mission personnel.<sup>129</sup>

While a full treatment of these authorities is beyond the scope of this article, they remain constrained and require coordination with the Federal Aviation Administration (FAA), which helps regulate military airspace.<sup>130</sup> Though the FAA may issue permits and threaten users with permit revocations or criminal penalties,<sup>131</sup> that deterrent is only effective if authorities can obtain the drone or identify the operators.

While commanders have robust authority inside the gates of a military installation, their tools for directly addressing potential threats from adversary-owned land remain limited. These limitations underscore the

importance of coordinating with state and Federal entities to protect military operations and personnel.

## Conclusion

The growing trend of foreign adversary real estate acquisitions near U.S. military installations illustrates how the great power competition plays out in unconventional domains. Land acquisitions that appear routine in a commercial context can, when tied to an adversarial actor, create enduring national security vulnerabilities by enabling surveillance, espionage, or sabotage from just outside the fence.

Responses to this challenge have been numerous but uneven. States have experimented with restrictions on foreign ownership, producing a patchwork of legal authorities across the country with varying scopes and vulnerabilities to constitutional challenges. At the Federal level, CFIUS provides a powerful tool for addressing covered transactions, but it faces jurisdictional limits when acquisitions do not involve a U.S. business or fall outside the regulation's specific definitions of covered transactions.

Beyond CFIUS and state measures, additional, but imperfect, options exist. Eminent domain offers the Federal Government (and its military departments) a constitutional mechanism to acquire property that poses a national security risk, though its use is rare, costly, and politically volatile. At the installation, commanders maintain their strong authority to secure their bases, regulate access, and, to a certain extent, share information with law enforcement.

Taken together, these tools reveal both the adaptability of existing law and the limits and complexities of current frameworks. Foreign adversary land acquisitions converge property law issues with national security, federalism, and installation defense. For JAs and military leaders, understanding the interplay between state restrictions, Federal review mechanisms, eminent domain, and command authority is essential for navigating these challenges if a foreign adversary tries to, or does successfully, move into the neighborhood. **TAL**

*Maj Del Mundo is the Chief of International Agreements for Headquarters, United States Forces Korea, United Nations Command,*

*and United States and Republic of Korea Combined Forces Command at Camp Humphreys, South Korea.*

## Notes

1. Lieutenant Colonel Caleb S. Lisenbee II, *Covert Connections: The LinkedIn Recruitment Ruse Targeting Defense Insiders*, J. OF INDO-PAC. AFFS., May-June 2024, at 164, 165.
2. HOUSE REPUBLICAN POL'Y COMM., GUIDE TO THE ISSUES: CHINESE COMMUNIST PARTY PURCHASE OF AMERICAN LAND 1 (2023).
3. *Id.*
4. FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., FOREIGN HOLDINGS OF U.S. AGRICULTURAL LAND THROUGH DECEMBER 31, 2021, at 4 (2023), [https://www.fsa.usda.gov/sites/default/files/documents/2021\\_afida\\_annual\\_report\\_through\\_12\\_31\\_2021.pdf](https://www.fsa.usda.gov/sites/default/files/documents/2021_afida_annual_report_through_12_31_2021.pdf) [<https://perma.cc/DJQ4-NCUQ>].
5. Aleks Phillips, *China Owns U.S. Land About Twice the Size of New York City*, NEWSWEEK (Feb. 9, 2023), <https://www.newsweek.com/china-owns-us-land-twice-size-new-york-city-national-security-concerns-1780124> [<https://perma.cc/2SJM-UDHH>].
6. Letter from Rep. Carlos A Gimenez et. al, to Lloyd Austin, Sec'y of Def., Janet Yellen, Sec'y of the Treasury, and Tom Vilsack, Sec'y of Agric. (Sep. 26, 2022), <https://newhouse.house.gov/sites/evo-subsites/newhouse.house.gov/files/evo-media-document/CCP%20Farmland%20Letter.pdf> [<https://perma.cc/W5EJ-T5R3>].
7. Mary K. Jacob, *Map Shows Chinese-Owned Farmland Next to 19 US Military Bases in 'Alarming' Threat to National Security: Experts*, N.Y. POST (June 20, 2024, 13:52 ET), <https://nypost.com/2024/06/20/us-news/chinese-owned-farmland-next-to-19-us-military-bases> [<https://perma.cc/L36J-QTJG>].
8. *Id.*
9. *Id.*
10. Order of May 13, 2024, sec. 1(a), (b), 89 Fed. Reg. 43301, 43301 (May 13, 2024).
11. *The Committee on Foreign Investment in the United States (CFIUS)*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> [<https://perma.cc/7YMW-WD2G>] (last visited Sep. 9, 2025).
12. *See* sec. 1, 89 Fed. Reg. at 43301; Gabriel J.X. Dance & Michael Forsythe, *Across U.S., Chinese Bitcoin Mines Draw National Security Scrutiny*, N.Y. TIMES (Oct. 18, 2023), <https://www.nytimes.com/2023/10/13/us/bitcoin-mines-china-united-states.html> [<https://perma.cc/YPE5-WVHJ>].
13. *See* Leo Wolfson, *Feds Cite National Security Concerns Over Wyo. Bitcoin Miners with Ties to China*, COWBOY STATE DAILY (Oct. 19, 2023), <https://cowboystatedaily.com/2023/10/19/feds-cite-national-security-concerns-over-wyo-bitcoin-miners-with-ties-to-china> [<https://perma.cc/8CV3-H6R5>].
14. KELLY LOWER, WYO. LEGIS. SERV. OFF., CFIUS AUTHORITY AND HISTORY 5 (June 2024).
15. *See* sec. 1(e), 89 Fed. Reg. at 43301; Fatima Hussein & Zeke Miller, *Biden Blocks Chinese-Backed Crypto Mining Firm from Land Ownership Near Wyoming Missile Base*, ASSOCIATED PRESS (May 13, 2024, 18:48 ET), [\[to-nuclear-base-fb8355b7c14d1f16c7f186b936247e0c\]\(https://perma.cc/3U6E-967C\) \[<https://perma.cc/3U6E-967C>\].](https://apnews.com/article/cfius-wyoming-cryp-</a></li></ol></div><div data-bbox=)

16. sec. 2, 89 Fed. Reg. at 43302; *DOD Statement on the President's Decision Prohibiting the Acquisition of Certain Real Property of Cheyenne Leads by MineOne Cloud Computing Investment I L.P. in Close Proximity to Francis E. Warren Air Force Base*, U.S. DEP'T OF WAR (May 13, 2024), <https://www.war.gov/News/Releases/Release/Article/3773780/dod-statement-on-the-presidents-decision-prohibiting-the-acquisition-of-certain> [<https://perma.cc/6GAZ-Q4CR>]; *see also* NEWSNATION, *Questions Emerge over China Spying on US Military Bases* (YouTube, May 18, 2024), <https://www.youtube.com/watch?v=K-ic6-Ylu8> [<https://perma.cc/GR65-EWG9>] (discussing President Biden's order).
17. Mitch Smith, *A North Dakota City Attracted a Corn Mill. Then Came Questions About Its Chinese Owners*, N.Y. TIMES (Aug. 9, 2022), <https://www.nytimes.com/2022/07/17/us/grand-forks-north-dakota-fufeng-china.html> [<https://perma.cc/HD9Q-QHHC>].
18. Eamon Javers, *Chinese Company's Purchase of North Dakota Farmland Raises National Security Concerns in Washington*, CNBC (July 1, 2022), <https://www.cnbc.com/2022/07/01/chinese-purchase-of-north-dakota-farmland-raises-national-security-concerns-in-washington.html> [<https://perma.cc/U2G3-LVNA>].
19. *Id.*
20. *See* Smith, *supra* note 17.
21. Antonia I. Tzinova et al., *CFIUS Says Chinese Investment in North Dakota Agricultural Land Is Outside Its Jurisdiction*, HOLLAND & KNIGHT INSIGHTS (Jan. 24, 2023), <https://www.hklaw.com/en/insights/publications/2023/01/cfius-determines-chinese-greenfield-investment-in-north> [<https://perma.cc/6TY8-24U8>].
22. *See* Letter from Andrew P. Hunter, Dep't of the Air Force Assist. Sec'y, to John Hoeven, U.S. Senator (Jan. 27, 2023), <https://www.hoeven.senate.gov/imo/media/doc/USAIRFORCE-FUFENG-LETTER-HOEVEN.pdf> [<https://perma.cc/F7Y7-Z2F4>].
23. *See, e.g.*, U.S. DEP'T OF THE TREASURY, CFIUS REFORM: AMENDMENT OF EXECUTIVE ORDER 11858 ON JANUARY 23, 2008 (Nov. 14, 2008), <https://home.treasury.gov/system/files/206/Summary-EO11858-Amend.pdf> [<https://perma.cc/ZY2W-J8TB>] (discussing these CFIUS authorities).
24. Mitch Smith, *Air Force Says Proposed Chinese-Owned Mill in North Dakota Is 'Significant Threat'*, N.Y. TIMES (Jan. 31, 2023), <https://www.nytimes.com/2023/01/31/us/corn-mill-fufeng-china-north-dakota.html> [<https://perma.cc/7DD9-XRjX>].
25. *See id.*
26. Meghan Arbegast, *Grand Forks Mayor Bochenski Says Fufeng Project 'Should Be Stopped' After Air Force Letter*, GRAND FORKS HERALD (Jan. 31, 2023), <https://www.grandforksherald.com/news/north-dakota/air-force-letter-grand-forks-fufeng-project-is-significant-threat-to-national-security> [<https://perma.cc/E5YL-PV4C>].
27. Bobby Falat, *Grand Forks Officially Terminates Fufeng Deal*, VALLEY NEWS LIVE (Apr. 20, 2023), <https://www.valleynewslive.com/2023/04/20/grand-forks-officially-terminates-fufeng-deal> [<https://perma.cc/4P99-EWMV>].
28. Ellie Cook, *Unidentified Drone Swarm Over US Military Base Sparks Alarm*, NEWSWEEK (Oct. 14, 2024), <https://www.newsweek.com/drones-langley-air-force-base-us-military-mystery-1968605>.

29. Kenzie Finch, *Chinese National Sentenced to 6 Months for Espionage Involving Navy Ships in Newport News*, WAVY NORFOLK (Oct. 15, 2024), <https://www.wavy.com/news/local-news/chinese-national-sentenced-for-espionage-after-flying-drone-over-nn-navy-ships> [<https://perma.cc/5MDY-6V8QJ>].
30. *Id.*
31. Thomas Brading, *Chinese National Sentenced Following Drone Flight During Restricted Launch*, OFF. OF SPECIAL INVESTIGATIONS: U.S. SPACE FORCE (May 5, 2025), <https://www.osi.af.mil/News/Article-Display/Article/4174084/chinese-national-sentenced-following-drone-flight-during-restricted-launch> [<https://perma.cc/HM2P-5HEU>].
32. Lauren Mascarenhas et al., *Mysterious Drone Sightings in New Jersey Prompt Security Concerns. Here's What We Know*, CNN (Dec. 13, 2024), <https://www.cnn.com/2024/12/12/us/new-jersey-drone-sightings/index.html> [<https://perma.cc/FJ6H-4PJ6>].
33. *Id.*
34. *Id.*
35. Kayla Epstein, *Mysterious New Jersey Drones Were 'Not the Enemy' – White House*, BBC NEWS (Jan 28, 2025), <https://www.bbc.com/news/articles/ce3nx1k-d9q1o> [<https://perma.cc/4P8R-7VQY>] (quoting the White House stating that “the drones that were flying over New Jersey in large numbers were authorized to be flown by the [Federal Aviation Administration (FAA)] for research and various other reasons. . . . This was not the enemy”); Emma Pittz, *Pentagon Dismisses Claims of Foreign Drone Threats over East Coast. Are Residents Convinced?*, DESERET NEWS (Dec. 13, 2024), <https://www.deseret.com/politics/2024/12/13/drones-new-jersey-politician-responses-pentagon-foreign-intelligence> [<https://perma.cc/X76S-R4A3>].
36. See Lisa Robyn Kruse, *Drones over NJ: Why Didn't the FAA Admit They Authorized the Flights? Here's What We Know*, USA TODAY (Jan. 29, 2025), <https://www.usatoday.com/story/news/local/new-jersey/2025/01/29/trump-drones-new-jersey-over-nj-faa/78005759007> [<https://perma.cc/2V96-3WAD>] (describing how the White House under President Trump later confirmed that the drones were authorized by the FAA for research purposes and other recreational purposes despite the previous administration not confirming the same). But see Frank Corder, *Senator Wicker Says Pentagon Still 'Mystified' by Drone Invasions*, MAGNOLIA TRIB. (Mar. 11, 2025), <https://magnolia-tribune.com/2025/03/11/senator-wicker-says-pentagon-still-mystified-by-drone-invasions> [<https://perma.cc/3P76-T8LW>] (Senator Roger Wicker, Chairman of the U.S. Senate Armed Services Committee, was asked if he believed the “drones are a spying system, a spying platform?” Senator Wicker responded with “I can tell you I am privy to classified briefings at the highest level. I think the Pentagon and the national security advisors are still mystified.”).
37. Timothy Frudd, *Chinese Spies Breach US Military Bases, Gov't Sites 100 Times Officials Say: Report*, AM. MIL. NEWS (Sep. 5, 2023), <https://americanmilitary-news.com/2023/09/chinese-spies-breach-us-military-bases-govt-sites-100-times-officials-say-report> [<https://perma.cc/6HVC-GSCK>].
38. *Securing the Skies: Addressing Unauthorized Drone Activity over U.S. Military Installations: Hearing Before the Subcomm. on Mil. & Foreign Affs. of the H. Comm. on Oversight & Gov't Reform*, 119th Cong. 2 (2025) (statement of Rep. William Timmons, Chairman, Subcomm. on Mil. & Foreign Affs.).
39. Gordon Lubold, Warren P Strobel, & Aruna Viswanatha, *Chinese Gate-Crashers at U.S. Bases Spark Espionage Concerns*, WALL ST. J. (Sep. 4, 2023, 17:21 ET), <https://www.wsj.com/politics/national-security/chinese-gate-crashers-at-u-s-bases-spark-espionage-concerns-cdef8187> [<https://perma.cc/5G22-8FM4>]; see also NEWSNATION PRIME, *US Military Bases Fend Off Visits From Chinese Citizens: Reports* (YouTube, Sep. 6, 2023) <https://www.youtube.com/watch?v=Xe-4Co-bY41U> (on file with The Army Lawyer).
40. Lubold, Strobel & Viswanatha, *supra* note 39.
41. *Justice Department Charges Two Individuals with Acting as Agents of the PRC Government*, OFF. OF PUB. AFFS, U.S. DEP'T OF JUST. (July 1, 2025), <https://www.justice.gov/opa/pr/justice-department-charges-two-individuals-acting-agents-prc-government> [<https://perma.cc/VT2K-B9LW>].
42. U.S. CONST. amend. X.
43. *Id.* art. I, § 10, cls. 1, 2 (prohibiting states from entering into treaties and alliances or imposing duties on imports or exports); *id.* art. II, § 2 (granting the President the authority to negotiate treaties and act as Commander-in-Chief); *id.* art. VI, cl. 2 (Supremacy Clause); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936) (affirming that the Federal Government has exclusive authority over foreign relations).
44. Micah Brown, *Florida's Newly Enacted Foreign Ownership Law: Part Two*, NAT'L AGRIC. L. CTR. (Aug. 22, 2023), <https://nationalaglawcenter.org/floridas-newly-enacted-foreign-ownership-law-part-two> [<https://perma.cc/DGY7-QQMG>]; Hope O'Dell & AJ Caughey, *How Much US Land Do China and Other Countries Really Own?*, CHI. COUNCIL ON GLOB. AFFS. (Mar. 29, 2024), <https://globalaffairs.org/commentary-and-analysis/blogs/china-foreign-land-ownership-explainer> [<https://perma.cc/3E4G-5JFZ>]; *Federal Court Dismisses Challenge to Texas' Newly Enacted Foreign Ownership Law*, NAT'L AGRIC. L. CTR. (Sep. 10 2025), <https://nationalaglawcenter.org/federal-court-dismisses-challenge-to-texas-newly-enacted-foreign-ownership-law> [<https://perma.cc/DF2T-PE2V>].
45. See Matthew S. Erie, *Property As National Security*, 2024 WIS. L. REV. 255, 255 (2024) (“While the state bills operate in parallel to [F]ederal legislation and regulation, in many instances, states’ activities go much further than [F]ederal efforts.”).
46. ALA. CODE § 35-1-1.1 (2023).
47. *See id.*
48. Erin Wise, *Property Protection Bill Raises Concerns About Impact To Future Business Recruitment*, ABC 3340 NEWS (May 18, 2023), <https://abc3340.com/news/local/property-protection-bill-raises-concerns-about-impact-to-future-business-recruitment>.
49. See generally *HB379: Bill History*, THE ALA. LEGIS., <https://alison.legislature.state.al.us/bill-search?tab=3> (on file with The Army Lawyer) (navigate to the “Bills – Search All Sessions” tab, search for “HB379,” and navigate to the relevant 2023 bill sponsored by Stadthagen).
50. Wise, *supra* note 48.
51. An Act to amend the Indiana Code Concerning Property, P.L. 156, 2022 Ind. Acts 1931; Leslie Bonilla Muñoz, *Indiana, Other States Increasingly Restricting Foreign Land Buys*, ROUTE-FIFTY (Aug. 15, 2023), <https://www.route-fifty.com/management/2023/08/indiana-other-states-increasingly-restricting-foreign-land-buys/389427> [<https://perma.cc/JYK2-HQPM>].
52. IND. CODE ANN. § 1-1-16-10 (2023).
53. IND. CODE ANN. § 1-1-16-10.2 (2024); An Act to Amend the Indiana Code Concerning Property, P.L. 158, 2024 Ind. Laws 2711.
54. Sarah Bowman, *Indiana Bars China, Russia From Owning Hoosier Farmland With New Law*, INDY STAR (Jan. 26, 2024), <https://www.indystar.com/story/news/environment/2024/01/26/sen-braun-supports-indiana-bill-to-limit-foreign-ownership-of-ag-land/72352750007> [<https://perma.cc/7H5W-9KRH>].
55. Kendall Macri, *Rep. Culp: Bill Barring Foreign Adversaries from Owning, Leasing Indiana Farmland Heads to Senate*, IND. HOUSE OF REPRESENTATIVES: REPUBLICAN CAUCUS (Feb. 2, 2024), <https://www.indianahousepublicaffairs.com/news/press-releases/rep-culp-bill-barring-foreign-adversaries-from-owning-leasing-indiana-farmland-heads-to-senate> [<https://perma.cc/C6A5-G2FV>]; FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., FOREIGN HOLDINGS OF U.S. AGRICULTURAL LAND THROUGH DECEMBER 31, 2022, at 19 (2022).
56. IND. CODE ANN. § 1-1-16-6 (2023).
57. *See id.*
58. FLA. STAT. ANN. § 692.203(1) (West 2024).
59. FARM SERV. AGENCY, *supra* note 55, at 19.
60. FLA. STAT. ANN. § 692.201(3) (West 2024).
61. *Id.* § 692.204.
62. *Id.*
63. *Id.*
64. *Shen v. Simpson*, 687 F. Supp. 3d 1219, 1229 (N.D. Fla. 2023).
65. *Id.*
66. *Id.* at 1234, 1243, 1246.
67. *See id.* at 1251.
68. See Order Granting In Part and Denying In Part Appellants Motion for Preliminary Injunction, *Shen v. Fla. Dep't of Agric. & Consumer Servs.*, No. 23-12737 (11th Cir. Feb. 1, 2024), Dkt. No. 59.
69. Erie, *supra* note 45, at 260–61.
70. *Committee Composition: CFIUS Overview*, U.S. DEP'T OF TREASURY, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-overview> [<https://perma.cc/Z8C8-8UH4>] (last visited Sep. 11, 2025).
71. Exec. Order No. 11858, sec. 1(b), 40 Fed. Reg. 20263, 20263 (1975).
72. CATHLEEN D. CIMINO-ISAACS & KAREN M. SUTTER, CONG. RSCH. SERV., IF10177, COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS) 2 (2023).
73. Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, sec. 5021, § 721, 102 Stat. 1107, 1425 (codified as amended at 50 U.S.C. 4565); *CFIUS Laws and Guidance*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-laws-and-guidance> [<https://perma.cc/N8WY-HDPT>] (last visited Sep. 11, 2025).
74. 50 U.S.C. § 4565(d)(4).
75. Foreign Investment and National Security Act of 2007, Pub. L. No. 110-49, 121 Stat. 246.
76. Foreign Investment Risk Review Modernization

Act of 2018, Pub. L. No. 115-232, tit. XVII, sub. A, 132 Stat. 1635, 2173.

77. *CFIUS Laws and Guidance*, *supra* note 73.

78. Off. of the Chief Counsel for Int'l Com., Off. of Inv. Sec. & U.S. Dep't of Com., *The Committee on Foreign Investment in the United States (CFIUS): Considerations for Foreign Direct Investment*, in INT'L TRADE ADMIN., THE SELECTUSA INVESTOR GUIDE 79–80 (Mar. 2025).

79. *Id.* at 80–81.

80. Tzinova et al., *supra* note 21.

81. See 31 C.F.R. §§ 800.101, 802.101 (2024).

82. See generally 31 C.F.R. pt. 800 (providing “regulations pertaining to certain investments in the United States by foreign persons”).

83. See generally 31 C.F.R. pt. 802 (providing “regulations pertaining to certain transactions by foreign persons involving real estate in the United States”).

84. See Stacie Van Dyke, *Fufeng Moving Forward with Corn Milling Plant in Grand Forks*, VALLEY NEWS LIVE (Dec. 13, 2022), <https://www.valleynewslive.com/2022/12/14/fufeng-moving-forward-with-corn-milling-plant-grand-forks> [<https://perma.cc/2Z26-AMSL>] (publishing the contents of the CFIUS letter).

85. See 31 C.F.R. § 802.212 (2024).

86. See 31 C.F.R. § 802.227 (2020).

87. *CFIUS Determines It Lacks Jurisdiction to Review Chinese Land Acquisition*, TRADE PRACTITIONER BLOG (June 26, 2023) [hereinafter TRADE PRACTITIONER BLOG], <https://www.tradepractitioner.com/2023/06/cfius-determines-it-lacks-jurisdiction-to-review-chinese-land-acquisition> [<https://perma.cc/GEU5-P66H>]. For the specific properties listed in part 802 in 2022, see 31 C.F.R. pt. 802, app. A (2020) (“List of Military Installations and Other U.S. Government Sites”).

88. See 31 C.F.R. pt. 802, app. A (2020) (“List of Military Installations and Other U.S. Government Sites”).

89. See *supra* notes 14–16 and accompanying text.

90. See TRADE PRACTITIONER BLOG, *supra* note 87.

91. 31 C.F.R. § 802.216(h)(3) (2024) (emphasis added).

92. See *supra* note 44 and accompanying text.

93. *Gov. Noem Announces Plan to Restrict Foreign Purchases of Ag Land*, NEWS: S. DAKOTA (Dec. 13, 2022), [https://www.sd.gov/news?id=news\\_kb\\_article\\_view&sys\\_id=f7e9ed401b50a9506e4aa97ae54bcb9e](https://www.sd.gov/news?id=news_kb_article_view&sys_id=f7e9ed401b50a9506e4aa97ae54bcb9e) [<https://perma.cc/AEL7-2AGM>]; S.J. 185, 98th Leg., 1st Sess. (S.D. 2023).

94. CIMINO-ISAACS & M. SUTTER, *supra* note 72, at 2.

95. *DoD Statement on the President’s Decision Prohibiting the Acquisition of Certain Real Property of Cheyenne Leads by MineOne Cloud Computing Investment I.L.P. in Close Proximity to Francis E. Warren Air Force Base*, U.S. DEP’T OF WAR (May 13, 2024) [hereinafter *DoW Statement*], <https://www.war.gov/News/Releases/Release/Article/3773780/dod-statement-on-the-presidents-decision-prohibiting-the-acquisition-of-certain/> [<https://perma.cc/LCD8-5AFC>].

96. Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, 88 Fed. Reg. 57348, 57348 (Aug. 23, 2023).

97. *Id.*

98. Definition of Military Installation and the List of

Military Installations in the Regulations Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, 89 Fed. Reg. 88128 (Nov. 7, 2024).

99. *DoW Statement*, *supra* note 95.

100. See, e.g., S. 197, 119th Cong. (2025) (expanding CFIUS jurisdiction to automatically review purchases of land by foreign persons within the specifically defined nexus to Russia, China, Iran, or North Korea); S. 903, 119th Cong. (2025) (authorizing CFIUS review of agricultural land purchases by foreign persons with the specifically defined nexus to China, Russia, Iran, and North Korea); H.R. 5248, 119th Cong. (2025) (increasing CFIUS reporting); H.R. 4978, 119th Cong. § 204 (2025) (expanding CFIUS jurisdiction to greenfield and brownfield investments by “foreign countries of concern”); S. 2342, 119th Cong. § 1011 (2025) (expanding CFIUS transaction review to include “real estate near intelligence community facilities”); S. 2268, 119th Cong. (2025) (adding the Secretary of Agriculture as a member of CFIUS).

101. Memorandum on America First Investment Policy, DAILY COMP. PRES. DOC., no. 202500292, sec. 2(f) (Feb. 21, 2025).

102. S. 176, 119th Cong. (2025).

103. *Id.*; Cotton, Britt, Cramer: No Chinese Citizen, Company Should Own American Land, TOM COTTON, SEN. FOR ARK. (Jan. 22, 2025), <https://www.cotton.senate.gov/news/press-releases/cotton-britt-cramer-no-chinese-citizen-company-should-own-american-land> [<https://perma.cc/3NFG-BGGQ>].

104. See S. 1136, 118th Cong. (2023).

105. Karah Rucker, *Senators Introduce Bill to Ban Chinese From Buying US Land*, SAN (Jan. 23, 2025), <https://san.com/cc/senators-introduce-bill-to-ban-chinese-from-buying-us-land> [<https://perma.cc/VF2H-LD7P>].

106. *Id.*

107. See ADAM VANN, CONG. RSCH. SERV., R47562, THE TAKINGS CLAUSE OF THE CONSTITUTION: OVERVIEW OF SUPREME COURT JURISPRUDENCE ON KEY TOPICS 1 (2023).

108. U.S. CONST. amend. V.

109.

The just compensation clause of the fifth amendment to the Constitution was built upon this concept of a moral obligation to pay for governmental interference with private property . . . No provision for the power of eminent domain appears in the Federal Constitution. The Supreme Court, however, has said that the power of eminent domain is an incident of Federal sovereignty and an “offspring of political necessity.” The Court has also noted that the Fifth Amendment’s limitation on taking private property is a tacit recognition that the power to take private property exists.

*Eminent Domain*, BLACK’S LAW DICTIONARY (12th ed. 2024) (alteration in original) (quoting JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 11.11, at 424–25 (4th ed. 1991) (quoting Bauman v. Ross, 167 U.S. 548, 574 (1897))).

110. 10 U.S.C. § 2663(d).

111. *Id.*

112. E.g., 32 C.F.R. 552.33 (2024) (covering the Department of the Army’s available methods of land acquisition).

113. See *supra* section titled “State Responses.”

114. 18 U.S.C. § 1385.

115. See *id.*

116. U.S. DEP’T OF DEF. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES (Feb. 27, 2013) (C1, Feb. 8, 2019).

117. *Id.* encl. 3, para. 1(b)(1)(c)–(f).

118. 10 U.S.C. § 271(a). While outside the scope of this article, limitations do exist. For example, heightened scrutiny applies when collection involves U.S. persons’ information, which includes U.S. corporations or subsidiaries. See U.S. DEP’T OF DEF., 5240.01, PROCEDURES GOVERNING THE CONDUCT OF DoD INTELLIGENCE ACTIVITIES para. G.2 (Aug. 8, 2016) (“USPI. Information that is reasonably likely to identify one or more specific U.S. persons. USPI may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific U.S. persons.”).

119. 10 U.S.C. § 272.

120. 10 U.S.C. § 274.

121. See U.S. DEP’T OF DEF., 5200.08 VOL. 3, PHYSICAL SECURITY PROGRAM: ACCESS TO DoD INSTALLATIONS, para. 3.1(b) (2 Jan. 2019) (C1, 18 Sep. 2020).

122. See generally U.S. DEP’T OF DEF., DIR. 5240.02, COUNTERINTELLIGENCE (CI) (17 Mar. 2015) (C1, 16 May 2018) (establishing policies and assigning responsibilities for DoW counterintelligence activities). The relevant authorities within each Service branch that govern counterintelligence operations are both classified and beyond the scope of this overview.

123. United States v. May, 622 F.2d 1000, 1006 (9th Cir. 1980).

124. See Gordon Lubold, Lara Seligman, & Aruna Viswanatha, *Mystery Drones Swarmed a U.S. Military Base for 17 Days. The Pentagon Is Stumped*, WALL ST. J. (Oct. 12, 2024), <https://www.wsj.com/politics/national-security/drones-military-pentagon-defense-331871f4> [<https://perma.cc/VXB4-B5NX>].

125. *Id.*

126. See *Mystery Drones Seen Over Three US Air Bases in UK*, BBC (Nov. 23, 2024), <https://www.bbc.com/news/articles/cly2j54g5j9o> [<https://perma.cc/MXF7-K42X>].

127. *Chinese Students Filming U.S. Aircraft Carrier in Busan Spark Security Concerns*, ALERT 5 NEWS (July 24, 2024), <https://alert5.com/2024/07/24/chinese-students-filming-u-s-aircraft-carrier-in-busan-spark-security-concerns> [<https://perma.cc/342N-Y8FA>].

128. See *Flying Near Airports*, FED. AVIATION ADMIN., [https://www.faa.gov/uas/getting\\_started/where\\_can\\_i\\_fly/airspace\\_restrictions/flying\\_near\\_airports](https://www.faa.gov/uas/getting_started/where_can_i_fly/airspace_restrictions/flying_near_airports) [<https://perma.cc/X4FW-ZRNX>] (last visited Sep. 17, 2025).

129. 10 U.S.C. § 130i; see DANIEL M. GETTINGER, CONG. RSCH. SERV., R48477, DEPARTMENT OF DEFENSE COUNTER UNMANNED AIRCRAFT SYSTEMS: BACKGROUND AND ISSUES FOR CONGRESS (2025).

130. See 49 U.S.C. § 40103.

131. See *FAA Establishes Restrictions on Drone Operations over Additional Military Facilities*, FED. AVIATION ADMIN. (July 5, 2019), <https://www.faa.gov/newsroom/faa-establishes-restrictions-drone-operations-over-additional-military-facilities> [<https://perma.cc/KF66-WZNL>].