



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 29, 2021

Via E-mail

[name]

[address]

Re: Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name]:

We write in response to your letter of August 25, 2021 (“August 25 Letter”),¹ in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to your registration obligations under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), for analysis of international law you intend to provide to [foreign government official]. Based on the representations made in the August 25 Letter, we assess that you do not have an obligation to register as an “agent of a foreign principal,” under FARA.

As disclosed in your August 25 Letter, you are a full-time professor, currently employed [redacted] at [university]. Your current title is [redacted]. You further disclose that you have been asked by a representative of [foreign government official] to provide your independent analysis of issues of international law within your areas of expertise [redacted]. You represent in the letter that you will not be providing any analysis as to U.S. law or policy. You describe your analysis as being provided on an ad hoc basis, as needed by the [foreign government official] and as your availability allows. According to the August 25 Letter, you will not be compensated for your work and there is no legal obligation on your part to provide analysis on any particular issue. There is no contract in place, only an oral agreement.

You assert in your August 25 Letter that the analysis you provide to the [foreign government official] will be completely independent and you have not agreed, nor do you intend to agree, to advocate on behalf of, or to represent, in any way, [foreign country], the [foreign government official], the [foreign country] government, or any of its agents. Further, you have not indicated that you are providing your analysis in conjunction with any planned or known advocacy in the United States on behalf of the [foreign country] government. You describe your only commitment as offering your “independent view on what the relevant law requires, prohibits, permits, or authorizes in response to questions posed by the [foreign government official] or [its] agents.”

Under FARA, a party is an “agent of a foreign principal” who must register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign

¹ A check in the amount of \$96.00, as required by 28 C.F.R. § 5.2(c), was received by our office on September 7, 2021.

principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

See 22 U.S.C. § 611(c)(1).

The definition of “foreign principal” contained in FARA includes “a government of a foreign country and a foreign political party.” 22 U.S.C. § 611(b)(1). Under this definition, the Prime Minister and his representatives are foreign principals. 22 U.S.C. § 611(a)(1).

Thus, the inquiry to be made under FARA, in this and other instances, is a two-part inquiry, exploring: (1) the nature of the relationship between the agent and a foreign principal; and, (2) whether the agent has engaged within the United States in one of the enumerated activities in the Act for or in the interests of such foreign principal. 22 U.S.C. § 611(c)(1). In this instance, you have articulated that you have no written contract or agreement which obligates you to act on behalf of the [foreign government official] or its agents. You have, however, agreed to honor requests made by the [foreign government official] to provide analysis of particular issues, at your discretion. The willingness to honor “requests” is, thus, sufficient to satisfy the first part of the inquiry.² If the second element of the inquiry is also satisfied, then you would have an obligation to register.

² *See Atty. Gen. of U.S. v. Irish Northern Aid Comm.*, 688 F. 2d 159, 161-162 (2d Cir. 1982) (discussion of scope of “request” under FARA).

Under FARA, the terms “political activities,”³ “public-relations counsel,”⁴ “publicity agent,”⁵ “information-service employee,”⁶ and “political consultant,”⁷ have specialized meanings, set out in the Act. Based on these definitions, and your description of the services you intend to provide to [foreign government official], we agree with your assertion that you would not be engaging in political activities or otherwise engaging in any of these capacities as long as your activities remain limited to those you have described in the August 25 Letter. We, therefore, do not intend to seek your registration under FARA at this time.

More specifically, because you will not be undertaking any activities on behalf of the [foreign government official] or other representatives of the [foreign country] with an intent to influence, in any way, a U.S. Government official or agency or a segment of the public within the United States concerning the domestic or foreign policy of the United States or the political or public interests, policies, or relations of the [foreign country], you will not be engaging in political activities, and are not required to register. Likewise, because the advice you intend to provide to the [foreign government official] does not expand into providing information or informing or advising the [foreign government official] or other representatives of [foreign country] with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of the [foreign country], and is not undertaken in connection with, or in support of, political activities, you are not acting as a political consultant under FARA.⁸

³ The Act defines “political activity” as meaning “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country.” 22 U.S.C. § 611(o).

⁴ The Act defines “public relations counsel” as including “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.” 22 U.S.C. § 611(g).

⁵ The Act defines “publicity agent” as including “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h).

⁶ The Act defines “information-service employee” as including “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country.” 22 U.S.C. § 611(i).

⁷ The Act defines “political consultant” as meaning “any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.” 22 U.S.C. § 611(p).

⁸ As we have noted previously, the question of whether a party needs to register based on activities that ostensibly fall within the definition of “political consultant,” turns on the question of whether the advice is provided in conjunction with “political activity.” See Adv. Op., July 19, 2021, available at <https://www.justice.gov/nsd->

Please note that this opinion is based solely upon the representations made in your August 25 Letter and must be revisited in the event that any of the facts change. You may be required to register under FARA should the direction, nature, or focus of your activities change in any way, in particular, if you intend to, in any way influence any agency or official of the Government of the United States or any section of the public with respect to the interests of [foreign country] or [foreign government official]. If that were to occur, you should contact the FARA Unit immediately so that we can reexamine whether your registration obligations have changed.

If you have any questions regarding this matter, please contact [attorney] by telephone at (202) 233-0776 or by e-mail at FARA.Public@usdoj.gov.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit