



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 18, 2020

Via FedEx

Zhou Xiaozheng
Director/Chief Correspondent
Xinhua News Agency North America
1540 Broadway, 44th Floor
New York, NY 10036

Re: Obligation of Xinhua News Agency North America to Register under the Foreign Agents Registration Act

Dear Mr. Zhou:

Based upon the information reviewed by this office, we have determined that the North American Bureau of the Xinhua News Agency (“Xinhua North America”), which is an affiliate of the Beijing-based and state-owned Xinhua News Agency (“Xinhua”), is obligated to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Xinhua North America’s obligation arises from its engagement in political activities within the United States as well as its actions in the United States as a publicity agent and as an information-service employee for Xinhua, the Communist Party of China, and the People’s Republic of China, each of which is a foreign principal under the Act.¹

I. Background

On May 17, 2011, the FARA Unit sent a letter to Xinhua North America seeking documents to assist in our determination whether Xinhua North America needed to register under FARA. Xinhua North America responded to the letter, but it did not provide any of the requested documents. We repeated our request for documents on August 11 and October 20, 2011. Zeng Hu, the then-Director of Xinhua North America, met with the FARA Unit on November 29, 2011, and followed up that meeting with a letter, dated January 15, 2012, in which he explained his view that Xinhua North America does not engage in activities that require registration under FARA.

On July 26, 2018, the FARA Unit wrote to Xinhua North America asking it to “update the information” it had previously provided and to respond to a series of questions that sought to determine whether Xinhua North America was required to register under FARA. In response, counsel for Xinhua North America provided a set of responsive documents and indicated that more documents would be forthcoming, along with a written response to the FARA Unit’s letter

¹ Please note that this letter may contain confidential information to the extent it incorporates information you provided to us and that you consider “private and confidential” pursuant to your letter, dated October 5, 2018.

of July 26. Counsel submitted that written response on October 15, 2018, along with your declaration and other documents. Following a telephone conversation between the FARA Unit and counsel for Xinhua North America, the FARA Unit wrote again on November 8, 2018, seeking further information on several issues. Counsel for Xinhua North America provided a written response to those inquiries on March 6, 2019. In the final round of correspondence, the FARA Unit sent Xinhua North America a letter on May 1, 2019, seeking information on several topics to which Xinhua North America responded on October 25, 2019.

II. Foreign Agents Registration Act

As you are aware, FARA requires agents of foreign principals engaged in specified activities to register with the Department of Justice and provide disclosures. The purpose of FARA is to inform the American public of the activities of agents working for foreign principals to influence U.S. Government officials or the American public about the domestic or foreign policies of the United States, or about the political or public interests, policies, or relations of a foreign country or a foreign political party. *See* 22 U.S.C. § 611(c).

The term “foreign principal” includes a “government of a foreign country,” “a foreign political party,” and “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.” 22 U.S.C. § 611(b).

The specified activities of a foreign agent that require registration and disclosure are defined by statute and regulation. As relevant here, an “agent of a foreign principal” is defined as “any person who acts as an agent . . . or . . . in any other capacity at the order, request, or under the direction or control” of a “foreign principal” and “who directly or through any other person engages within the United States in political activities for or in the interests of such foreign principal” or who “acts within the United States as a . . . publicity agent, [or] information-service employee . . . for or in the interests of such foreign principal.” 22 U.S.C. § 611(c)(1)(i), (ii).

The terms “political activities,” “publicity agent,” and “information-service employee,” are further defined by statute. First, FARA defines “political activities” as:

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 of a government of a foreign country or a foreign political party.

22 U.S.C. § 611(o) (emphasis added). Second, FARA defines a “publicity agent” to include “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 . . . broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h). And, third, an

“information-service employee” is defined to include 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 or any country other than the United States or of any government of a foreign country or of a foreign political party” 22 U.S.C. § 611(i).

III. Relevant Entities

The Xinhua News Agency is the state news agency for the People’s Republic of China.² Founded in 1931 as the Red China News Agency—the press outlet of the Communist Party of China—it changed its name to Xinhua News Agency in 1937.³ When the Communist Party of China came to power in 1949, Xinhua represented the Party in countries and territories with which it had no diplomatic representation such as (at that time) Hong Kong.⁴

Under Chinese law, Xinhua is considered a “public institution,” which is defined by regulation as a “public service organization” established by the government using “state-owned assets” for the purpose of promoting “socialist material civilization and spiritual civilization.”⁵ Xinhua is directly subordinate to the State Council of the People’s Republic of China,⁶ and is “subject to government oversight,”⁷ in that it reports to the State Council and the Communist Party of China’s Propaganda and Public Information Departments.⁸

² Letter from Zeng Hu to Heather H. Hunt (Jan. 15, 2012) (“Zeng Letter Jan. 15, 2012”), at 2; Xinhua News Agency/WSI License Agreement-Draft 2014-10-24 (XINHUA_00260).

³ *Xinhua News Agency*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Xinhua-News-Agency> (last visited Mar. 19, 2020); *Xinhua News Agency*, BEIJING TOURISM, <http://english.visitbeijing.com.cn/a1/a-XAHSGGC3D36037CD215DD7> (last visited Mar. 19, 2020).

⁴ *Xinhua News Agency*, BEIJING TOURISM, <http://english.visitbeijing.com.cn/a1/a-XAHSGGC3D36037CD215DD7> (last visited Mar. 19, 2020).

⁵ Interim Regulation on the Registration of Public Institutions (June 27, 2004) (attached as Exhibit B to Letter from Robert K. Kelner to Brandon Van Grack (Oct. 25, 2019)) (“Kelner Letter Oct. 25, 2019”); *see id.* (“[A] public institution [is] established upon approval of the people’s government.”); *see also* Kelner Letter Oct. 25, 2019, at 1; Notice of the State Council on the Setup of Institutions (Mar. 22, 2018) (attached as Exhibit A to Kelner Letter Oct. 25, 2019).

⁶ Exhibit A to Kelner Letter Oct. 25, 2019; Exhibit B to Kelner Letter Oct. 25, 2019. The State Council “is the executive body of the supreme organ of state power; it is the supreme organ of State administration.” *The State Council*, THE PEOPLE’S REPUBLIC OF CHINA, http://english.www.gov.cn/archive/china_abc/2014/08/23/content_281474982987314.htm (last visited Mar. 19, 2020); *see also* *The State Council*, PEOPLE’S DAILY ONLINE, <http://en.people.cn/data/organs/statecouncil.shtml> (last visited Mar. 19, 2020).

⁷ Kelner Letter Oct. 25, 2019, at 1.

⁸ REPORT TO CONGRESS OF THE U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMM’N, 110th Cong., 2d Sess. (Nov. 2008), at 291-92; *Xinhua News Agency*, BEIJING TOURISM, <http://english.visitbeijing.com.cn/a1/a-XAHSGGC3D36037CD215DD7> (last visited Mar. 19, 2020).

Xinhua's headquarters in Beijing⁹ is comprised of "various internal departments that are responsible for news reporting, administrative, sales and marketing, and logistics functions."¹⁰ Xinhua's news and information products are produced by staff reporters and editors across the world.¹¹ Xinhua has 180 bureaus overseas, including a regional headquarters and six bureaus in the United States.¹² Xinhua North America is "wholly funded" by Xinhua headquarters in Beijing, and, as an "affiliate" of Xinhua, is the "news reporting arm" of Xinhua in the United States.¹³

The journalists and editors of Xinhua North America engage in news gathering in the United States and report that news to a global audience of subscribers through Xinhua's various wire services.¹⁴ This reporting includes "news of a diplomatic nature" such as "Chinese leaders' visits to the United States" as well as "multilateral talks happening in Washington, D.C. or in New York at the UN Headquarters."¹⁵ Xinhua North America also "pay[s] attention to," and reports on, "people-to-people exchanges between the two countries" as well as "the life of Chinese citizens and communities here."¹⁶

Xinhua North America's news and information products are an integral part of Xinhua's "daily wire service to global subscribers" and the same wire service is offered to all subscribers.¹⁷ Xinhua North America has about 60 U.S.-based subscribers, which include [REDACTED], [REDACTED], [REDACTED], and [REDACTED];¹⁸ these subscribers then provide Xinhua's wire services to their own subscribers.¹⁹

⁹ Declaration of Zhou Xiaozheng ("Zhou Decl.") ¶ 1 (Oct. 15, 2018) (attached as Exhibit A to Letter from Robert K. Kelner to Heather H. Hunt (Oct. 15, 2018)) ("Kelner Letter Oct. 15, 2018").

¹⁰ Kelner Letter Oct. 25, 2019, at 1-2.

¹¹ Kelner Letter Oct. 15, 2018, at 1.

¹² *Id.* at 1-2. On May 19, 2011, the North America regional headquarters of Xinhua formally launched its new office in Manhattan's Times Square. See *Xinhua Inaugurates New Office of North America Headquarters* (May 19, 2011), XINHUANET, http://news.xinhuanet.com/english2010/photo/2011-05/20/c_13885508/htm (last visited Mar. 19, 2020).

¹³ Kelner Letter Oct. 15, 2018, at 2.

¹⁴ *Id.*; Kelner Letter Oct. 25, 2019, at 2.

¹⁵ Zeng Letter Jan. 15, 2012, at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 2; see also Zhou Decl. ¶¶ 1, 4-6. In addition to the text wire service, Xinhua provides photo and video wires with content related to Xinhua's news reports. See Kelner Letter Oct. 15, 2018, at 2, 5; see also Zhou Decl. ¶¶ 4-6, 8, 20-21.

¹⁸ Kelner Letter Oct. 15, 2018, at 2-3; see also Zhou Decl. ¶¶ 9-11; Kelner Letter Oct. 25, 2019, at 2.

¹⁹ See, e.g., [REDACTED]
[REDACTED]
[REDACTED]

Xinhua and Xinhua North America also have an online presence. In 1997, Xinhua established a website, later renamed Xinhuanet, which provides news and information online globally.²⁰ Xinhuanet now has various regional editions, including a North American edition, which is available free online.²¹ In addition, Xinhua North America has a social media presence that “reproduces parts of its traditional wire service on social media” such as Twitter, Facebook, YouTube, and Instagram.²² Separate from Xinhua’s own social media accounts,²³ Xinhua North America has its own social media accounts.²⁴ And, while the social media accounts are “managed” from Xinhua’s headquarters in Beijing, editors in Xinhua North America “share some editorial burden by posting news stories from their respective regions to enhance the timeliness and proximity of reports.”²⁵ Editors in the United States “choose the information posted on social media by selecting stories and corresponding videos from the wire service.”²⁶ In terms of readers, Xinhua North America’s Twitter account has 39,000 followers, and its Facebook account has approximately 396,000 follows.²⁷

See, e.g., *Trade Dispute With China Hurts, U.S. Farmers Long for Settlement*, XINHUA GENERAL NEWS SERVICE, Aug. 19, 2019. The articles from Xinhua General News Service that are cited herein are available only via subscription.

²⁰ See *Development History*, XINHUANET, http://www.xinhuanet.com/english/aboutus_e1.htm (last visited Mar. 19, 2020). In 2000, Xinhua held a meeting about online reporting at its headquarters in Beijing at which a member of the Secretariat of the Central Committee of the Communist Party of China urged the “Xinhua News Agency to work hard to build Xinhuanet.com into a leading news website.” *Id.*

²¹ *North America Edition*, XINHUANET, <http://www.xinhuanet.com/english/northamerica/2018/index.htm> (last visited Mar. 19, 2020).

²² Kelner Letter Oct. 15, 2018, at 4; see also Zhou Decl. ¶ 16; Xinhua’s English Language Social Media Accounts (attached as Exhibit C to Kelner Letter Oct. 15, 2018).

²³ See, e.g., China Xinhua News (@XHNews), TWITTER (Mar. 19, 2020), https://twitter.com/XHNews?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor; China Xinhua News, FACEBOOK (Mar. 19, 2020), <https://www.facebook.com/XinhuaNewsAgency/>.

²⁴ See Zhou Decl. ¶ 17. See, e.g., Xinhua North America (@XHNNorthAmerica), TWITTER (Mar. 19, 2020), <https://twitter.com/XHNNorthAmerica>; Xinhua News North America, FACEBOOK (Mar. 19, 2020), <https://www.facebook.com/XHNNorthAmerica>.

²⁵ Kelner Letter Oct. 15, 2018, at 4 see also Zhou Decl. ¶¶ 15-16; Kelner Letter Oct. 25, 2019, at 3.

²⁶ Kelner Letter Oct. 15, 2018, at 4; see also Zhou Decl. ¶¶ 15-16.

²⁷ See Xinhua North America (@XHNNorthAmerica), TWITTER (Mar. 19, 2020), <https://twitter.com/XHNNorthAmerica>; Xinhua News North America, FACEBOOK (Mar. 19, 2020), https://www.facebook.com/pg/XHNNorthAmerica/community/?ref=page_internal. In addition, according to the recent social media statistics you provided, there are 750,000 followers in the United States combined for all six of Xinhua’s English-language Xinhua Twitter accounts, see Kelner Letter Oct. 25, 2019, at 3, while there are about 1.4 million followers in the United States combined for all seven English-language Xinhua Facebook accounts. See *id.*

IV. Basis for Xinhua North America's Obligation to Register Under FARA

Xinhua North America is obligated to register under FARA, because it engages in covered activities within the United States at the direction and control of three foreign principals: the Xinhua News Agency, the Communist Party of China, and the People's Republic of China. Xinhua North America acts at their direction and control, because it is supervised by and is a wholly funded affiliate of Xinhua, which, itself, is a state-owned media entity whose messaging is effectively controlled by the Communist Party of China and the People's Republic of China. And, at the direction and control of these foreign principals, Xinhua North America engages in political activities within the United States and acts, within the United States, as a publicity agent and information-service employee for these foreign principals. Each of these three activities triggers an obligation to register pursuant to FARA.

A. Xinhua News Agency, the Communist Party of China, and the People's Republic of China Are "Foreign Principals" under the Act

The Xinhua News Agency falls within the definition of a foreign principal. FARA defines "foreign principal" to include "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 22 U.S.C. § 611(b)(3). Xinhua is organized under the laws of China with its principal place of business in Beijing, China.²⁸ Accordingly, Xinhua is a foreign principal within the meaning of FARA.

Second, the Communist Party of China, which has governed the People's Republic of China since 1949,²⁹ is a foreign principal within the meaning of FARA because the statute defines "foreign principal" to include a "foreign political party." *See id.* § 611(b)(1).

Third, as for the People's Republic of China, FARA defines "foreign principal" to include "a government of a foreign country." *Id.* § 611(b)(1). The People's Republic of China clearly meets this definition and is thus a foreign principal under FARA. *See id.* § 611(e).

B. Xinhua North America is Directed and Controlled by Xinhua, the Communist Party of China, and the People's Republic of China

Agency under the Act occurs when an agent acts, *inter alia*, under a foreign principal's "direction or control." 22 U.S.C. § 611(c)(1).³⁰ As an initial matter, Xinhua

²⁸ Letter from Zeng Hu to Heather H. Hunt, dated May 26, 2011 ("Zeng Letter May 26, 2011"), at 1; Zeng Letter Jan. 15, 2012, at 1-2; Kelner Letter Oct. 15, 2018, at 1; Kelner Letter Oct. 25, 2019, at 1.

²⁹ *China Anniversary: How the Communist Party Runs the Country*, BBC NEWS, Sept. 30, 2019 ("BBC NEWS, *China Anniversary*"), <https://www.bbc.com/news/world-asia-china-49631120>.

³⁰ The term "control" is defined by regulation to include "the possession or exercise of the power, directly or indirectly, to determine the policies or the activities of a person" 28 C.F.R. § 5.100(b).

directs and controls the activities of Xinhua North America. Xinhua North America is “wholly funded” by Xinhua headquarters in Beijing,³¹ and all of Xinhua North America’s staff members are full-time Xinhua employees who are “subject to Xinhua’s supervision.”³² For example, journalists in the Xinhua North America bureaus receive guidance and story assignments from Xinhua headquarters on a “regular basis” and follow “Xinhua’s general editorial policy.”³³ Accordingly, Xinhua directs and controls the activities of Xinhua North America within the United States.

With regard to the direction and control of Xinhua North America by the Communist Party of China and the People’s Republic of China, China is effectively a one-party state, and the Party is in complete control of the country.³⁴ In turn, the Party and the Government direct and control the activities of Xinhua and its affiliate, Xinhua North America, as evidenced in five main ways. First, the Party and the Government’s direction and control of Xinhua is evident from its status as a state-owned news organization.³⁵ Established using state-owned assets³⁶—and still receiving funding from the state³⁷—Xinhua is an integral

³¹ Zeng Letter Jan. 15, 2012, at 1;

³² *Id.*

³³ *Id.*

³⁴ Anne-Marie Brady, *Guiding Hand: The Role of the CCP Central Propaganda Department in the Current Era*, 3(1) WESTMINSTER PAPERS IN COMMUNISM & CULTURE, at 62 (2006), <https://www.westminsterpapers.org/articles/abstract/10.16997/wpcc.15/> (last visited Mar. 19, 2020) (describing the “near inseparable bond between Party/State in China”); *Chinese Communist Party*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Chinese-Communist-Party> (last visited Mar. 19, 2020) (“Since the establishment of the People’s Republic of China in 1949, the CCP has been in sole control of that country’s government.”); *China Anniversary*, BBC NEWS, *supra* note 29 (“The Communist Party of China is in complete control of the country, from government to police to military. With some 90 million members, it is organized like a pyramid, with the politburo and eventually President Xi Jinping at the top. . . . Love for China is equated with love for the party. . . .”). Xi Jinping is the current President of the People’s Republic of China as well as the General Secretary of the Communist Party of China. See Mu Xuequan ed., *Xi Stresses Integrated Media Development*, XINHUANET, Feb. 2, 2020, http://www.xinhuanet.com/english/2019-01/25/c_137774923.htm (last visited Mar. 19, 2020).

³⁵ Zeng Letter Jan. 15, 2012, at 2; Xinhua News Agency/WSI License Agreement-Draft 2014-10-24 (XINHUA 00260).

³⁶ Kelner Letter Oct. 25, 2019, at 1.

³⁷ *Id.* While your letters state that “only a small portion of [Xinhua’s] operational funds now com[e] from the Chinese government,” *id.*, the *Guardian* reports that “Government subsidies cover around 40% of Xinhua’s costs.” Louisa Lim & Julia Bergin, *Inside China’s Audacious Global Propaganda Campaign*, THE GUARDIAN, Dec. 7, 2018, <https://www.theguardian.com/news/2018/dec/07/china-plan-for-global-media-dominance-propaganda-xi-jinping> (last visited Mar. 19, 2020). Regardless of the amount, the Chinese Government’s continued financing and subsidizing of Xinhua supports the finding that the Party and the State continue to direct and control Xinhua’s activities.

part of the state apparatus that reports directly to the State Council,³⁸ which, in turn reports to the Politburo and then to President Xi Jinping.³⁹

Second, evidence that Xinhua acts under the direction and control of the Party and the Government is apparent from statements made by Xinhua and Chinese Government officials. Xinhua tells its readers that the “main task” of its online news service is to lead “public opinion at home and [to] set a good image of China abroad.”⁴⁰ This representation was echoed by the Chinese Government’s description of a meeting in 2016 between the Director of Xinhua North America and the Consul General of the People’s Republic of China in San Francisco where they are said to have “exchanged views on further promoting Chinese media influence and enhancing China’s soft power.”⁴¹

Third, the role of journalists within the Chinese political fabric further shows that Xinhua North America journalists are under the direction and control of the Party and the Government. Liu Yunshun, former head of the Central Propaganda Department, put it this way: “[O]ne of the primary tasks of journalists is to make the people loyal to the party.”⁴² Hu Zhanfa, the former president of China Central Television, was equally clear-eyed about the role of Chinese journalists when he said that “[j]ournalists who think of themselves as professionals, instead of as propaganda workers, [are] making a fundamental mistake about identity.”⁴³

Fourth, the demands by Chinese political leaders for absolute loyalty from state-owned media illustrates the Party and Chinese Government’s direction and control of Xinhua North America. After a visit to Xinhua and other state-owned media outlets in 2016, President Xi Jinping announced that the Party’s media “must love the party, protect the party, and closely align themselves with the party leadership in thought, politics and

³⁸ See Exhibit A to Kelner Letter Oct. 25, 2019; see also James F. Scotton & William A. Hachten, *NEW MEDIA FOR A NEW CHINA* 116-17 (Wiley-Blackwell 2010) (“Xinhua is one of 11 agencies reporting directly to the State Council, which is one level below the Politburo, China’s top governing body. The State Council has always used Xinhua to enforce its monopoly over most media content throughout China.”).

³⁹ *China Anniversary*, BBC News, *supra* note 29.

⁴⁰ *Brief Introduction to Xinhuanet*, XINHUANET, http://news.xinhuanet.com/english2010/special/2011-11/28/c_131274495.htm (last visited Mar. 19, 2020); see also Xinhua North America (@XHNNorthAmerica), TWITTER (Mar. 19, 2020), https://mobile.twitter.com/XHNNorthAmerica?max_id=1227352539575635967 (“Xinhua North America brings China insight and global view on North American affairs.”).

⁴¹ Consulate-General of the People’s Republic of China in San Francisco, *Consul General Luo Linquan Meets with Director of Xinhua News Agency North America*, <http://chinaconsulatesf.org/eng/tpxw/t1380548.htm> (last visited Mar. 19, 2020). While the Director and Chief Correspondent of Xinhua North America disputes this characterization of the meeting, see, e.g., Zhou Decl. ¶¶ 25-29, the Consul-General’s description of the meeting is the official Chinese Government’s version of events.

⁴² Anne-Marie Brady, *supra* note 34, at 66.

⁴³ *China’s Programming for U.S. Audiences: Is it News or Propaganda*, PBS NEWS HOUR, Mar. 22, 2012, https://www.pbs.org/newshour/show/world-jan-june12-cctv_03-23 (last visited Mar. 19, 2020).

action.”⁴⁴ To underscore the point, he added that, “[a]ll news media run by the party must work to speak for the party’s will and its propositions, and protect the party’s authority and unity.”⁴⁵ And he emphasized that “[a]ll work of the party’s news and public opinion media must reflect the will of the party, mirror the views of the party, preserve the authority of the party, preserve the unity of the party, and achieve love of the party, protection of the party and acting for the party.”⁴⁶ In making this point crystal clear, President Xi was simply repeating what Jiang Zemin, former President of the People’s Republic of China, had declared previously: “Our country’s newspapers, radio and television broadcast[s] are the throat and tongue of the Party, the government and the people.”⁴⁷

And this conclusion—that the Communist Party of China and the Chinese Government demands absolute loyalty from Xinhua and other state-owned news media—is corroborated by the opinions of journalists,⁴⁸ authors,⁴⁹ non-governmental organizations,⁵⁰ and a bi-partisan commission created by mandate of the U.S. Congress.⁵¹

⁴⁴ *Xi Jinping Asks for ‘Absolute Loyalty’ from Chinese State Media*, THE GUARDIAN, Feb. 19, 2016, <https://www.theguardian.com/world/2016/feb/19/xi-jinping-tours-chinas-top-state-media-outlets-to-boost-loyalty> (last visited Mar. 19, 2020).

⁴⁵ Edward Wong, *Xi Jinping’s News Alert: Chinese Media Must Serve the Party*, THE NEW YORK TIMES, Feb. 22, 2016, <https://www.nytimes.com/2016/02/23/world/asia/china-media-policy-xi-jinping.html> (last visited Mar. 19, 2020).

⁴⁶ *Another View: Communist Party’s Loyal Mouthpieces*, DAILY CHRONICLE, Feb. 24, 2016, <https://www.daily-chronicle.com/2016/02/24/another-view-communist-partys-loyal-mouthpieces/ab4kbuk/> (last visited Mar. 19, 2020).

⁴⁷ Baohui Xie, *MEDIA TRANSPARENCY IN CHINA: RETHINKING RHETORIC AND REALITY* 70 (Lexington Books 2014).

⁴⁸ See Louisa Lim & Julia Bergin, *supra* note 37 (describing Xinhua as “the party mouthpiece” and characterizing the Chinese press generally as being the “‘eyes, ears, tongue and throat’ of the Communist party”); see also *Questioning a ‘New Perspective’ in Times Square*, THE NEW YORK TIMES, CITY ROOM, Jan. 10, 2012, <https://cityroom.blogs.nytimes.com/2012/01/10/questioning-a-new-perspective-in-times-square/> (last visited Mar. 19, 2020) (“Xinhua is not exactly the Associated Press. It is the official propaganda branch of the Communist Party in China” and is “a microphone” for the regime); Josh Chin & William Kazer, *Chinese Media Call Chen a ‘Tool’ of U.S.*, THE WALL STREET JOURNAL, May 4, 2012, <https://www.wsj.com/articles/SB10001424052702304746604577383931357415236> (last visited Mar. 19, 2020) (Xinhua News Agency is “the official voice[] of the central government”); Shen Hong, *Xinhua’s Internet Arm Seeks an IPO*, THE WALL STREET JOURNAL, Jan. 7, 2013, <https://www.wsj.com/articles/SB10001424127887323482504578226521052412836> (last visited Mar. 19, 2020) (Xinhua “is a pillar of China’s propaganda machine”).

⁴⁹ See, e.g., James F. Scotton & William A. Hachten, *NEW MEDIA FOR A NEW CHINA* 115 (Wiley-Blackwell 2010) (“[Xinhua] is subsidized and controlled by the Chinese government and Xinhua’s content reflects government policy and avoids issues that China considers politically ‘sensitive’.”)

⁵⁰ See, e.g., Reporters Without Borders, *Xinhua: The World’s Biggest Propaganda Agency* (Oct. 2005), https://rsf.org/sites/default/files/Report_Xinhua_Eng.pdf (Xinhua is “an organ of propaganda in the service of the interests of the Chinese Communist Party. . . . Since it was founded, it became the main outlet for the CCP’s propaganda to China’s media.”).

Finally, the Party and the Government's direction and control of Xinhua North America are reflected in how it presents the news as advocacy on behalf of the Government. There are abundant examples of this advocacy set forth below from Xinhua North America's articles carried on the Xinhua General News Service Wire, which is available to subscribers in the United States.⁵² But, for our purposes here, it suffices to cite just a few examples of Xinhua North America's pro-China social media posts:

- “Chinese government has taken most comprehensive and strict prevention and control measures to win battle against novel #CoronavirusOutbreak”;⁵³
- “China's success proves Western development model ‘by no means the only option’: scholar”;⁵⁴
- “Over 800 million lifted out of poverty--@WorldBank chief lauds China's progress in poverty alleviation”;⁵⁵
- “Dozens of countries oppose U.S. using #Xinjiang to interfere in China's internal affairs”;⁵⁶
- “China's Permanent Representative to the United Nations Zhang Jun refuted the ‘baseless’ comments on Xinjiang made by the United States and some other countries.”;⁵⁷
- “A mainland spokesman says the Taiwan issue is a domestic affair of China and the United States should carefully handle it by abiding by the one-China policy.”;⁵⁸

⁵¹ See, e.g., REPORT TO CONGRESS OF THE U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMM'N, 115th Cong., 1st Sess., at 475 (Nov. 2017) (“Xinhua serves some of the functions of an intelligence agency by gathering information and producing classified reports for the Chinese leadership on both domestic and international events.”); REPORT TO CONGRESS OF THE U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMM'N, 110th Cong., 2nd Sess., at 292 (Nov. 2008) (“The Propaganda Department maintains control over media and other information outlets through its authority over personnel appointments in a broad swath of the Chinese bureaucracy and media. . . . [T]he list of agencies and institutions subject to Propaganda Department approval for appointments include but is not limited to the Xinhua News Agency.”).

⁵² See, e.g., [REDACTED]

⁵³ Xinhua North America (@XHNNorthAmerica), TWITTER (Feb. 8, 2020 11:54 a.m.), <https://twitter.com/XHNNorthAmerica/status/1226187469160243200>.

⁵⁴ *Id.*, TWITTER (Oct. 17, 2019 12:40 p.m.), <https://twitter.com/XHNNorthAmerica/status/1184871814402658304>.

⁵⁵ *Id.*, TWITTER (Oct. 18, 2019 12:00 p.m.), <https://twitter.com/XHNNorthAmerica/status/1185224139956801536>.

⁵⁶ *Id.*, TWITTER (Oct. 30, 2019 3:48 p.m.), <https://twitter.com/XHNNorthAmerica/status/1189630248788353024>.

⁵⁷ *Id.*, TWITTER (Oct. 30, 2019 3:57 p.m.), <https://twitter.com/XHNNorthAmerica/status/1189632465536770048>.

- “Opinion: China’s patience and composure in trade talks with the U.S. stems from steadiness and resilience of its economy, which has not ‘collapsed’ under maximum pressure, with growth of 6.2 percent in first half this year.”⁵⁹

For all the foregoing reasons, Xinhua North America acts within the United States at the direction and control of Xinhua in Beijing, the Communist Party of China, and the People’s Republic of China.

C. Xinhua North America Engages in “Political Activities” and Acts as a “Publicity Agent” and “Information-Service Employee” for its Foreign Principals

1. Political Activities

Xinhua North America engages in political activities within the United States for or in the interests of Xinhua, the Communist Party of China, and the People’s Republic of China. As relevant here, FARA defines political activities as any activity a person “believes will” or is “intend[ed] to in any way influence . . . any section of the public within the United States” regarding “the foreign policies of the United States” or its “relations” to a foreign government. 22 U.S.C. § 611(o). With respect to foreign media organizations such as Xinhua North America, the registration requirement does not depend on the accuracy of the reporting, or the viewpoint (or viewpoints) expressed in it, but rather on whether the organization intends to influence the American public or policy makers on relevant topics such as U.S. policy or foreign relations.⁶⁰

That standard is easily met here. While your letters have suggested repeatedly that Xinhua North America does not “seek to exert any kind of influence over the American public”⁶¹ and that its “news coverage adheres to the principles of objectivity, impartiality, comprehensiveness and truthfulness,”⁶² its news stories discussed below promote only one viewpoint—that of the People’s Republic of China—and brook no dissent from that view in an effort to influence U.S.-readers toward a more favorable view of the People’s Republic of China.

⁵⁸ Xinhua News North America, FACEBOOK (Dec. 28, 2016), <https://www.facebook.com/XHNorthAmerica/posts/1830802617196669>.

⁵⁹ Xinhua North America (@XHNorthAmerica), TWITTER (Oct. 12, 2019 2:26 p m.), <https://twitter.com/XHNorthAmerica/status/1183086519759917056>.

⁶⁰ Congress has made clear that “bona fide news or journalistic activities” are *not* excepted from the statute’s reach unless they are undertaken by organizations in the United States that are controlled by U.S. citizens. *See* 22 U.S.C. § 611(d). Given that Xinhua North America is not controlled by U.S. citizens, this exception does not apply.

⁶¹ Zeng Letter Jan. 15, 2012, at 3; Kelner Letter Oct. 15, 2018, at 1, 6.

⁶² Zeng Letter May 26, 2011, at 1; *see also* Zeng Letter Jan. 15, 2012, at 1 (noting that the guidance from Beijing is “purely of a journalistic nature” and is “not politically-motivated or government related”); *see id.* (Xinhua North America journalists “stick[] to the principles of objectivity, impartiality, and independence”); Zhou Decl. ¶ 3 (“Xinhua North America strives to maintain high journalistic standards for news stories”); Kelner Letter Oct. 15, 2018, at 7 (“Xinhua journalists have worked hard to report news about today’s world in a timely, comprehensive, and objective manner”).

First, while human rights groups continue to highlight the Chinese Government's repression of freedom in Tibet,⁶³ Xinhua North America journalists adhere to the Party line about the purported tremendous benefits Chinese rule has brought to Tibet and, relatedly, the dangers of engagement with the Dalai Lama. The messaging of the articles is the same: "the Tibetans have benefited from the reforms of the Chinese government,"⁶⁴ that "Americans need to get a balanced presentation about the facts about Tibet,"⁶⁵ and that it is "unwise" for the U.S. President to meet with the Dalai Lama⁶⁶—described as a "lifelong politician bent on separating Tibet from China"⁶⁷—because such meetings show a "gross disrespect for China's core interests" and "cast a chill on the relations between Washington and Beijing."⁶⁸

Additionally, two videos posted on Xinhua North America's Facebook page capture the essence of Xinhua's propaganda message on Tibet:

Tibet has walked from darkness to brightness, from dictatorship to democracy, from poverty to prosperity and from seclusion to openness. . . . More than 60 years of stupendous change in Tibet has helped it deliver a satisfactory result to its people both in terms of economic and political building and in social and cultural development. . . . Tibet has seen unprecedented social and economic development over the past half century. . . . The fine and unique ethnic traditions in Tibet are well preserved and protected and people's religious freedom is fully protected.⁶⁹

⁶³ See, e.g., Human Rights Watch, *World Report 2019, China*, <https://www.hrw.org/world-report/2019/country-chapters/china-and-tibet> (last visited Mar. 19, 2020).

⁶⁴ *Americans Need to Have Balanced Information on Tibet: New York Council Member*, XINHUA GENERAL NEWS SERVICE, May 20, 2009.

⁶⁵ *Id.*; see also *Interview: Abolishing Tibetan Feudal Serfdom Equates to Ending Slavery in U.S.*: Tibetologist, XINHUA GENERAL NEWS SERVICE, Jul 22, 2008 ("If we could tell Americans as much as possible about the truth on Tibet, many of them could change their stereotyped ideas about Tibet," said a member of a Chinese Tibetologist delegation to the U.S.); *Interview: Western Leaders 'Must Know More' About Tibet, Dalai Lama*, XINHUA GENERAL NEWS SERVICE, June 21, 2008 (quoting a publisher who "spoke highly of the efforts made by the Chinese government" in Tibet, especially the "great efforts made by China over the years in preserving Tibetan cultural independence and its monasteries," and who said she "will inform heads of state of more facts on Tibet" so "they will be able to make the right decisions and separate the true from the wrong").

⁶⁶ *Unwise for Obama to Meet Dalai Lama: U.S.-China Expert*, XINHUA GENERAL NEWS SERVICE, Feb. 17, 2010 ("It is 'unwise' for President Obama to meet with the Dalai Lama because the session would negatively affect American ties with China, says an expert on U.S.-China relations.").

⁶⁷ Wang Fan, *Commentary: Political Gamesmanship on China Policy Hurts U.S. Interests*, XINHUA GENERAL NEWS SERVICE, Feb. 15, 2015.

⁶⁸ *Id.* This article went on to advocate for mutually beneficial Sino-U.S. relations as advice "Washington should heed."

⁶⁹ Xinhua North America, *This is Tibet: Tibet Today and Yesterday*, FACEBOOK (Aug. 10, 2017), <https://www.facebook.com/XHNorthAmerica/videos/1947675452176051/>.

Healthcare network[s] throughout the urban and rural areas of Tibet provide free medical services for everyone in the region. Families . . . have never been more confident in a better future thanks to all the preferential policies.⁷⁰

Second, Xinhua has also sought to influence the American public on the issue of the pro-democracy protestors in Hong Kong. In one article, Xinhua North America quoted a “renowned U.S. expert on China” who described U.S. policy regarding the protests as “deeply unhelpful”⁷¹ and in another a Chinese envoy to the U.S. reminded readers that “China’s ‘one country, two systems’ principle should not be abused by anybody,” because doing so would “jeopardize the national security and sovereignty of China.”⁷² And, Xinhua North America also took to Twitter to highlight that “Chinese Americans gather[ed] in Manhattan to oppose [the] *so-called* Hong Kong Human Rights and Democracy Act of 2019”⁷³

Third, Xinhua North America continues to promote China’s viewpoint with respect to Uyghurs, Kazakhs, and other ethnic minorities in the Xinjiang province of China who are subjected to internment at “political education” camps and “pervasive surveillance.”⁷⁴ Specifically, Xinhua North America reports that there are no human rights abuses in Xinjiang province,⁷⁵ that U.S. criticism of China’s policy is a “hypocritical excuse” to “undermine China’s

⁷⁰ Xinhua North America, *This is Tibet: Happy Herders*, FACEBOOK (Aug. 7, 2017), <https://www.facebook.com/XHNorthAmerica/videos/1949020152041581/> (purporting to portray a “typical day” in the life of a herdsman in Tibet).

⁷¹ *Interview: U.S. Gives ‘False Signals’ to Hong Kong Violent Protesters, Says Scholar*, XINHUA GENERAL NEWS SERVICE, Oct. 15, 2019; *see also Violence ‘Very Disruptive’ to Hong Kong’s Stability, Economic Well-being: U.S. Expert*, XINHUA GENERAL NEWS SERVICE, Aug. 28, 2019 (laying out three key policy “red lines” that China “will not allow to be breached” regarding the Hong Kong protesters).

⁷² *China’s ‘One Country, Two Systems’ Principle Should Not be Abused: Envoy*, XINHUA GENERAL NEWS SERVICE, Aug. 3, 2019.

⁷³ Xinhua North America (@XHNorthAmerica), TWITTER (Oct. 23, 2019 4:30 p m.), <https://twitter.com/XHNorthAmerica/status/1187103947292631041> (emphasis added).

⁷⁴ Amnesty International, *Annual Report, China 2019*, <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/> (last visited Mar. 19, 2020); Human Rights Watch, *World Report 2019, China*, <https://www.hrw.org/world-report/2019/country-chapters/china-and-tibet> (last visited Mar. 19, 2020).

⁷⁵ *Chinese Foreign Ministry Spokesperson Slams U.S. Official ‘Defamatory Words’ on Xinjiang*, XINHUA GENERAL NEWS SERVICE, Sept. 23, 2019 (Chinese Foreign Minister referred to the remarks of a U.S. official criticizing Chinese actions in Xinjiang as “utterly defamatory and groundless” and emphasized instead that the rights of “nearly 25 million people of all ethnic groups in Xinjiang have been guaranteed” and that “[t]his is a basic fact that no one can deny”; he also “urge[d] relevant U.S. officials to face the facts”); *see also Urgent: Chinese FM Debunks Rumors About Xinjiang with Facts, Truths*, XINHUA GENERAL NEWS SERVICE Sept. 25, 2019 (Chinese Foreign Minister reported as having “debunked rumors” about Xinjiang “with truths and facts” and reporting him as saying that “[r]umors find no market among the fair-minded and pale in the face of facts”); *Chinese Experts, Scholars Brief Journalists on Xinjiang, Hong Kong, Tibet*, XINHUA GENERAL NEWS SERVICE, Oct. 26, 2019 (quoting a Chinese professor as saying that China is making “new progress in human rights in Xinjiang”); Yang Qingchuan, *Interview: Separatism Bad for China, the World: U.S. Scholar*, XINHUA GENERAL NEWS SERVICE, Aug. 12, 2009

stability and development,”⁷⁶ and that a Xinjiang-related bill in Congress would, if enacted into law, “have a negative impact on the development of U.S.-China relations.”⁷⁷

Fourth, Xinhua North America’s coverage of the South China Sea dispute promotes the Chinese government’s message that the United States should stay out of it. To get out this message, Xinhua North America turned to a “veteran U.S. constitutional lawyer” who opined (according to the journalists) that the “recent maneuver in the South China Sea by the U.S. naval vessels is not serving America’s national interest, but will do exactly the opposite by squandering money and generating tensions.”⁷⁸ The Xinhua journalists then went on to remind their readers that the “South China Sea is near China and thousands of miles away from the United States and that what China does in the Sea is not a threat to the U.S. sovereignty.”⁷⁹ The constitutional lawyer then suggested the way forward was “to work within our political system here at the Congress and the executive branch, to say ‘No, we need to back off.’”⁸⁰

Fifth, Xinhua North America consistently portrays the Communist Party of China, the People’s Republic of China, and President Xi in a positive light. Paraphrasing a “famed U.S. expert on China,” Xinhua North America journalists reported that “China’s ruling communist party has transformed an underdeveloped country into an economic powerhouse in less than four decades, displaying an impressive level of adaptability and competence.”⁸¹ Relying on the Director of the Research Center for Human Rights at China’s Nankai University as an authority on human rights in China, Xinhua North America quoted him as saying:

(Xinhua quotes a U.S. professor as saying, “China’s policy towards ethnic minorities [is] ‘enlightened and positive’”).

⁷⁶ *Roundup: Dozens of Countries Oppose U.S. Using Xinjiang to Interfere in China’s Internal Affairs*, XINHUA GENERAL NEWS SERVICE, Oct. 30, 2019; *see also id.* (characterizing statements by the Chinese permanent representative to the United Nations as having “refuted the baseless comments on Xinjiang made by the United States and some other countries”).

⁷⁷ *Chinese Americans Condemn Xinjiang-related Bill in U.S.*, XINHUA GENERAL NEWS SERVICE, Dec. 11, 2019; *see also id.* (“The passage of the so-called ‘Uyghur Human Rights Policy Act of 2019’ earlier this month is a gross interference in China’s internal affairs,” said a leader of a Chinese-American association).

⁷⁸ Zhou Xiaozheng & Shang Yang, *Interview: U.S. Maneuver in South China Sea Wastes Money, Harms National Interest—Constitutional Lawyer*, XINHUA GENERAL NEWS SERVICE, Nov. 8, 2015.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Shang Yang, Zhou Xiaozheng, Li Changxiang, *Interview: A Competent Communist Party Created China’s Prosperity: U.S. Expert*, XINHUA GENERAL NEWS SERVICE, June 23, 2016. In another article praising the Communist Party of China for publishing a series of five books about itself, the Xinhua journalists gushed that the books are “full of historical anecdotes, substantial data and figures, as well as stories of Party members loved and followed by the people for their role model behaviors and self-sacrifice spirit . . .” Lu Jiafei, Zhou Xiaozheng, Shang Yang, *Chinese Communist Party Publishes ‘Self-Decoding’ Book Series for Western Audience*, XINHUA GENERAL NEWS SERVICE, May 28, 2015. The same article went on to paraphrase a doctoral fellow at Columbia University who claimed that the “series [of books] offers an opportunity for the Western audience to understand a political party that led China from dire poverty to economic and political excellence.” *Id.*

China implements the policy of equality, unity and mutual assistance among all ethnic groups, respects and protects the people of all ethnic groups' right to freedom of religious belief, promotes the long term harmonious coexistence of the people of all ethnic groups, and promotes the sustained and all round development of the ethnic minorities in political, economic, social and cultural fields.⁸²

President Xi Jinping also receives this uniformly positive coverage. In its review of President Xi's book, Xinhua North America compiled the positive reviews of his book, quoting some reviewers and paraphrasing others, with the take away being that President Xi is an "incredibly interesting" leader "with a good sense of humor" and "above all he is a decent man who is trying to bring decent living standards to his people."⁸³ And in its coverage of President Xi's talks with President Trump, Xinhua North America had only praise: "The Mar-a-Lago talks bespeak again the strategic composure, political resolve and diplomatic wisdom of the Chinese leader at a critical moment of developing bilateral relations."⁸⁴

Finally, Xinhua North America waded into the trade dispute between the United States and China with uniform coverage that urged de-escalation and highlighted the potential harms to the United States of pursuing a trade war. "Unilaterally initiating a trade war is not the right prescription," Xinhua North America intoned, relying on the statement of the Chinese Foreign Minister.⁸⁵ Turning to a former U.S. official for further support, Xinhua North America reported that the U.S. Federal Reserve "should be cautious that it doesn't 'inadvertently enable' the Trump administration's 'trade war' with China" because that policy is a "manufactured disaster-in-the-making."⁸⁶ That is because the two economies are "locked symbiotically" meaning that "decoupling U.S.-China spells 'economic disaster'" and therefore President Trump must "call off

⁸² *Chinese Experts, Scholars Brief Journalists on Xinjiang, Hong Kong, Tibet*, XINHUA GENERAL NEWS SERVICE, Oct. 26, 2019. According to "observers," Xinhua reported that there "is a compelling need for the United States and the broader West . . . to shed their biases and misconceptions and better understand China given its roles as an indispensable global player . . ." *Xinhua Headlines: Time for West to Drop Bias and Better Understand China, Observers Say*, XINHUA GENERAL NEWS SERVICE, Nov. 1, 2019. In support of their advocacy for greater cooperation between China and the West, the Xinhua journalists employed various "observers" to debunk the "misconceptions" about China and explain how the United States "must get beyond the zero-sum game mentality in its dealings with China." *Id.*

⁸³ Zhou Xiaozheng, Shang Yang, Liu Jiafei, *Spotlight: Xi's Book on Governance Becomes Hot Topic at BookExpo America*, XINHUA GENERAL NEWS SERVICE, May 28, 2015.

⁸⁴ Zhu Lei, Zhou Xiaozheng, Qi Zijian, *Commentary: Xi-Trump Meeting Would Steer China-U.S. Ties into New Era*, XINHUA GENERAL NEWS SERVICE, Apr. 9, 2017. The same article described President Xi's statements about U.S.-China relations as "forceful and exciting." *Id.*

⁸⁵ *Urgent: Unilaterally Initiating Trade War Wrong Prescription, Says Chinese State Councilor*, XINHUA GENERAL NEWS SERVICE, Sept. 25, 2019.

⁸⁶ *Fed Should Be Cautious Not to 'Inadvertently Enable the President's Trade War with China': Former Central Banker*, Xinhua General News Service, Sept. 4, 2019.

[the] trade war before it's too late."⁸⁷ Other articles opined that the trade war would hurt the United States more than China⁸⁸ and detailed the harms of a trade war to U.S. farmers⁸⁹ and even American babies.⁹⁰

For the foregoing reasons, the argument that Xinhua North America is not engaged in “political activities” is without merit. Likewise, Xinhua North America’s claim that it does not engage in political activities, because its news reports are transmitted to “Chinese and global audiences” and are not directed to “any specific regional target audience”⁹¹ such as the United States, is contrary to the evidence set forth above. The examples of Xinhua news reports penned in the United States, disseminated in the United States, and cited herein, are clearly intended to persuade its American readers—through Xinhua wire services made available to about 60 U.S.-based subscribers such as ██████████ and ██████████—of the merits of the Chinese Government’s positions on a range of domestic and foreign policies. And the same is true of Xinhua North America’s social media posts in the United States, such as those posted on Twitter and Facebook.

Our Advisory Opinion issued on May 9, 2019, which is cited in your correspondence to us, is not to the contrary.⁹² There, we opined that the entity making the inquiry did not have an obligation to register under FARA because, *inter alia*, the entity was going to target its efforts “only [to] a non-U.S. audience.”⁹³ This is not the case here. To the contrary, while Xinhua North America’s news and information products are an integrated part of Xinhua’s “daily wire service to global subscribers,”⁹⁴ Xinhua North America wire service reports—written

⁸⁷ *Xinhua Headlines: Decoupling U.S.-China Economies ‘Utterly Unrealistic’ Disaster for World*, XINHUA GENERAL NEWS SERVICE, June 4, 2019.

⁸⁸ *Trade War to Hurt U.S. Companies More than Chinese: MSCI Expert*, XINHUA GENERAL NEWS SERVICE, May 2, 2018 (quoting an expert as saying that the United States is “more exposed to the Chinese economy than the other way around”).

⁸⁹ *Xinhua Headlines: ‘Trade Dispute with China Hurts,’ U.S. Farmers Long for Settlement*, XINHUA GENERAL NEWS SERVICE, Aug. 19, 2019.

⁹⁰ *Xinhua Headlines: Adding Tariffs on Chinese Imports Poses Potential Risk to U.S. Babies’ Safety*, XINHUA GENERAL NEWS SERVICE, Aug. 28, 2019 (“The U.S. government is taking the joy of raising a new baby out of ordinary U.S. families by slapping multiple rounds of steep tariffs on Chinese imports. . . . [M]any new parents in the United States, especially those with relatively lower incomes, cannot even afford a new crib with acceptable quality, exposing their babies to potential dangers[, including] infant and child deaths and injuries.”).

⁹¹ *Id.* at 2, 6; *see also* Zhou Decl. ¶ 4; Kelner Letter Oct. 25, 2019, at 2.

⁹² Kelner Letter Oct. 25, 2019, at 3.

⁹³ FARA Unit Adv. Op. (May 9, 2019), at 2, <https://www.justice.gov/nsd-fara/page/file/1180316/download> (last visited Mar. 19, 2020) (emphasis added).

⁹⁴ *Id.* at 2; *see also* Zhou Decl. ¶¶ 1, 4-6. In addition to the text wire service, Xinhua also provides photo and video wires with content related to Xinhua’s news reports. *See* Kelner Letter Oct. 15, 2018, at 2, 5; *see also* Zhou Decl. ¶¶ 4-6, 8, 20-21.

in the United States about issues of interest to Americans⁹⁵—are available to readers in the United States through a bevy of large subscribers such as LEXIS-NEXIS.⁹⁶ This content appears intended to target—and persuade—an American audience on a range of issues important to the People’s Republic of China, including the Sino-U.S. trade dispute,⁹⁷ the South China Sea dispute,⁹⁸ and how China governs certain provinces and territories.⁹⁹ This targeting of news items to an American audience is also evident in Xinhua North America’s choice of content—chosen by editors in the United States¹⁰⁰—for its own social media posts.¹⁰¹

Accordingly, Xinhua North America is engaged in political activities within the United States within the meaning of FARA.

2. Publicity Agent

Xinhua North America also acts within the United States as a “publicity agent” for Xinhua, the Communist Party of China, and the People’s Republic of China. A “publicity agent” includes “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 . . . broadcasts, motion pictures or otherwise.” 22 U.S.C. § 611(h). As you have described it to us, Xinhua North America’s journalists and editors create news reports (and also photographs and video) in the United States that are disseminated to paying subscribers such as ██████████ and ██████████, which in turn publish those news reports to their subscribers in the United States.¹⁰² While your letters emphasize that Xinhua North America “does not directly publish or broadcast content to the U.S. public through its wire services,” and

⁹⁵ Zeng Letter Jan. 15, 2012, at 4.

⁹⁶ Kelner Letter Oct. 15, 2018, at 2-3; *see also* Zhou Decl. ¶¶ 9-11; Kelner Letter Oct. 25, 2019, at 2. These subscribers then provide Xinhua’s wire services to their own subscribers.

⁹⁷ *Fed Should Be Cautious Not to ‘Inadvertently Enable the President’s Trade War with China’: Former Central Banker*, XINHUA GENERAL NEWS SERVICE, Sept. 4, 2019.

⁹⁸ *See, e.g., Zhou Xiaozheng & Shang Yang, Interview: U.S. Maneuver in South China Sea Wastes Money, Harms National Interest—Constitutional Lawyer*, XINHUA GENERAL NEWS SERVICE, Nov. 8, 2015.

⁹⁹ *See, e.g., Americans Need to Have Balanced Information on Tibet: New York Council Member*, XINHUA GENERAL NEWS SERVICE, May 20, 2009 (Tibet); *China’s ‘One Country, Two Systems’ Principle Should Not be Abused: Envoy*, XINHUA GENERAL NEWS SERVICE, Aug. 3, 2019 (Hong Kong); *Chinese Americans Condemn Xinjiang-related Bill in U.S.*, XINHUA GENERAL NEWS SERVICE, Dec. 11, 2019 (Xinjiang).

¹⁰⁰ Kelner Letter Oct. 15, 2018, at 4; *see also* Zhou Decl. ¶¶ 15-16.

¹⁰¹ *See, e.g.,* Xinhua News North America, FACEBOOK (Dec. 28, 2016), <https://www.facebook.com/XHNorthAmerica/posts/1830802617196669> (Taiwan); Xinhua North America (@XHNorthAmerica), TWITTER (Oct. 23, 2019 4:30 p.m.), <https://twitter.com/XHNorthAmerica/status/1187103947292631041> (Hong Kong bill in Congress).

¹⁰² Kelner Letter Oct. 15, 2018, at 1-3, 5; Kelner Letter Oct. 25, 2019, at 2; Zhou Decl. ¶¶ 20-21.

“does not control or influence how subscribers use its service,”¹⁰³ FARA does not restrict its definition of publicity agents to those who directly disseminate or publish information. To the contrary, an entity like Xinhua North America can be, and is, a “publicity agent” when it “indirectly” disseminates or publishes news reports at the direction of, and under the control of, its foreign principals. *See* 22 U.S.C. § 611(h).

Xinhua North America’s online social media presence also demonstrates that it is involved in the direct “publication or dissemination” of “written” and “pictorial information”¹⁰⁴ within the United States. Specifically, Xinhua North America “chooses the information posted on social media” such as Twitter and Facebook and then “post[s those] news stories” from its region.¹⁰⁵

Accordingly, Xinhua North America acts as a publicity agent within the United States for Xinhua, the Communist Party of China, and the People’s Republic of China.

3. Information-Service Employee

Similarly, Xinhua North America’s activities within the United States establish that it is also an information-service employee of Xinhua, the Communist Party of China, and the People’s Republic of China. The Act defines “information-service employee” to include “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.” 22 U.S.C. § 611(i). As we have demonstrated at length, Xinhua North America disseminates news stories, tweets, and Facebook posts containing information extolling the claimed social, economic, political and other virtues of the People’s Republic of China.¹⁰⁶

Accordingly, Xinhua North America acts as an information-service employee within the

¹⁰³ Kelner Letter, Oct. 15, 2018, at 7.

¹⁰⁴ 22 U.S.C. § 611(h).

¹⁰⁵ Kelner Letter, Oct. 15, 2018, at 4. *See, e.g.*, Xinhua North America, FACEBOOK (Mar. 2, 2019), <https://www.facebook.com/XHNorthAmerica/> (“China attaches great importance to the work of its presidency and will act responsibly and constructively, China’s UN envoy said.”); Xinhua North America (@XHNorthAmerica), TWITTER (Feb. 26, 2020 2:30 p m.), https://twitter.com/XHNorthAmerica?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor (“Interview: China’s rural revitalization a model for world’s countryside development . . .”).

¹⁰⁶ *See, e.g.*, Xinhua North America, *This is Tibet: Tibet Today and Yesterday*, FACEBOOK (Aug. 10, 2017), <https://www.facebook.com/XHNorthAmerica/videos/1947675452176051/> (transformation of Tibet); Shang Yang, Zhou Xiaozheng, Li Changxiang, *Interview: A Competent Communist Party Created China’s Prosperity: U.S. Expert*, XINHUA GENERAL NEWS SERVICE, June 23, 2016 (economic prosperity); *Chinese Experts, Scholars Brief Journalists on Xinjiang, Hong Kong, Tibet*, XINHUA GENERAL NEWS SERVICE, Oct. 26, 2019 (social harmony); Xinhua North America (@XHNorthAmerica), TWITTER (Oct. 17, 2019 12:40 p m.), <https://twitter.com/XHNorthAmerica/status/1184871814402658304> (political benefits).

Zhou Xiaozheng
Xinhua North America
May 18, 2020
Page 19 of 19

United States for Xinhua, the Communist Party of China, and the People's Republic of China.

V. Conclusion

For the reasons stated above, Xinhua North America has an obligation to register under FARA as an agent of Xinhua, the Communist Party of China, and the People's Republic of China, for three specified categories of activities under the statute, as described above.

To be clear, registration would not require Xinhua North America to alter the content of its news reports or its social media posts in any manner; indeed, if registered as required, Xinhua North America would be free to facilitate the publication and dissemination of any content it chooses. Registration would simply allow its subscribers and readers to be fully informed regarding the foreign influence behind the content.

Please effect Xinhua North America's registration within thirty (30) calendar days of the date of this letter. Useful information and forms needed for registration may be found on our website at <https://www.justice.gov/nsd-fara>. If you have any questions regarding registration, or have additional information to provide, please contact Clifford Rones or Rodney Patton at (202) 233-0776, or send an email to FARA.Public@usdoj.gov.

Sincerely,

/s/ Brandon L. Van Grack

Brandon L. Van Grack
Chief, FARA Unit

cc: Robert K. Kelner
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

December 3, 2020

VIA EMAIL

Robert K. Kelner
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001-4956

Re: Obligation of Xinhua News Agency North America to Register under the Foreign Agents Registration Act

Dear Mr. Kelner:

We are in receipt of your letter, dated July 21, 2020,¹ in which you requested that the Department of Justice reconsider its position set forth in our letter of May 18, 2020,² that Xinhua North America is obligated to register under the Foreign Agents Registration Act (“FARA”). We have considered all of the arguments set forth in your letter, as well as the evidence listed in the accompanying Appendix, and reaffirm our conclusion that Xinhua North America has an obligation to register under FARA.

As an initial matter, your letter does not contest our finding that the Xinhua News Agency, the Communist Party of China (“CCP”), and the People’s Republic of China (“PRC”) are all foreign principals within the meaning of FARA.³ Nor does your letter appear to contest our conclusion that these foreign principals direct or control Xinhua North America within the meaning of FARA. Instead, Xinhua North America argues that it does not engage within the United States in covered activities for or in the interests of these foreign principals—that is, political activities, acting as a publicity agent, and acting as an information-service employee—and thus, is not required to register under FARA.⁴ And, finally, Xinhua North America argues that there are strong policy reasons for not requiring its registration under FARA.⁵ We address each of these arguments in turn.

¹ Letter from Robert K. Kelner to Brandon Van Grack, July 21, 2020 (“Kelner Letter”).

² Letter from Brandon Van Grack to Zhou Xiaozheng, May 18, 2020 (“Letter of Determination”).

³ *See id.* at 6.

⁴ *See* Kelner Letter, at 3-7.

⁵ *See id.* at 7-8.

I. Xinhua North American Engages in Political Activities Within the U.S.

Xinhua North America makes two principal arguments to support its claim that it does not engage in political activities within the United States for or in the interests of the Xinhua News Agency, CCP, and the PRC. The first argument is that Xinhua North America does not intend to influence any section of the public within the United States.⁶ And the second argument is that the news articles its journalists write in the United States as well as the posts they contribute to on social media in the United States are not for or in the interests of their foreign principals.⁷ Neither argument has merit.

1. Xinhua North America Intends to Influence a Section of the U.S. Public.

Xinhua North America makes two related points to support its argument that it is not intending to influence the American public. As an initial matter, it argues that the “fundamental legal problem” with our finding that Xinhua North America is intending to influence the America public is that it “does not disseminate content targeted to the United States,” but rather targets a “global audience.”⁸ This is incorrect as a matter of fact. The news articles upon which we rely are written in the United States by Xinhua North America journalists about issues of interest to Americans that are then made available to readers in the United States through various large subscription services⁹ with which Xinhua North America contracts.¹⁰ The same is true for Xinhua North America’s social media posts in the United States, created by its own editors in this country from news stories its journalists wrote from and about the United States.¹¹ For purposes of FARA, these articles and social media posts are made in the USA for the USA. The fact that these articles and social media posts are also available to others throughout the world—and that the CCP and PRC also wants to influence the rest of the world in favor of their positions on these issues—does not change the analysis.

⁶ *See id.* at 3-5.

⁷ *See id.*

⁸ Kelner Letter, at 2, 4.

⁹ Xinhua North America also notes that it “does not directly publish or broadcast its content to the U.S. public through its wire service.” Kelner Letter, at 4. The definition of political activities, however, contains no requirement that it must. *See* 22 U.S.C. § 611(o).

¹⁰ *See* Letter of Determination, at 16-17; *see also, e.g.*, XINHUA_00001 to XINHUA_00366.

¹¹ Letter of Determination, at 5; Declaration of Zhou Xiaozheng ¶¶ 15-17; Robert K. Kelner Letter to Heather H. Hunt, Oct. 15, 2018, at 4. Xinhua North America notes that “[o]nly a small percentage of the tens of millions of global followers of Xinhua’s social media accounts are within the United States.” Kelner Letter, at 4. That is beside the point, however. It is the social media posts of Xinhua North America—not those of the Beijing-based Xinhua News Agency—that are relevant to our decision. And, while the number of followers of those U.S.-based social media accounts are relatively small compared to their Beijing-based counterparts, *see* Letter of Determination, at 5, there is no *de minimis* standard in FARA.

In our letter of determination, we distinguished an earlier advisory opinion upon which Xinhua North America relied in its correspondence to argue that it did not need to register because it was not targeting a U.S. audience.¹² In that advisory opinion we opined that when an entity intended to target “only a non-U.S. audience,” it did not need to register.¹³ That is not the case here, however. Xinhua North America seeks to influence and persuade a U.S. audience *as well as* a global audience about issues of interest to Americans.

Xinhua North America’s related argument is that the “actual record” in this matter¹⁴ does “not support the view that Xinhua North America intends by its news reporting from the United States . . . to influence policy or public opinion in the United States.”¹⁵ In our letter of determination, however, we showed through numerous news articles and social media posts created in the United States that Xinhua North America promotes only the PRC and CCP’s viewpoint on U.S. domestic and foreign policy in its brazen efforts to influence U.S. public opinion.¹⁶ Xinhua North America tries to diminish the import of these dozens of news articles and social media posts by suggesting they were “cherry-picked,” “selective,” and only a “handful,”¹⁷ and by suggesting instead that its Appendix of *fewer* articles and social media posts constitutes a “more representative sampling.”¹⁸ To be sure, Xinhua North America does cover such diverse topics as telescopes, dinosaur fossils, and sheepherding, as the Appendix suggests.¹⁹ The point is, however, that on geopolitical issues about which the CCP and the PRC seek to persuade U.S. public opinion—and the rest of the world—Xinhua North America adopts an advocacy-as-news approach on behalf of the CCP and the PRC. In our initial letter of determination, we cited examples of these advocacy pieces on the following issues: Tibet and the Dalai Lama; Hong Kong; Xinjiang; the South China Sea; the CCP and the PRC; Chairman Xi Jinping; and the U.S.-China trade dispute.²⁰ Tellingly, Xinhua North America does not cite, nor have we been able to identify, any articles or posts that promote a view contrary to the PRC and CCP’s viewpoint on U.S. domestic and foreign policy.

¹² See Letter of Determination, at 16 & nn.92, 93.

¹³ See *id.*

¹⁴ Xinhua North America criticizes the FARA Unit for not restricting its record to the responses and documents it provided in response to the Unit’s various questions. See Kelner Letter, at 3. Nothing in the statute, regulations, or case law, however, limits the FARA Unit to a review of those documents nor do they prohibit the FARA Unit from engaging in its own independent investigation of the facts.

¹⁵ Kelner Letter, at 3.

¹⁶ See Letter of Determination, at 11-17.

¹⁷ Kelner Letter, at 3.

¹⁸ *Id.*

¹⁹ See *id.*, Appendix.

²⁰ See Letter of Determination, at 12-16.

These articles and posts were not “cherry-picked,” as Xinhua North America claims. Rather, they are representative of its propaganda when it comes to issues of U.S. domestic and foreign policy about which the CCP and the PRC seek to persuade U.S. public opinion and that of the rest of the world. Focusing only on news articles and social media posts²¹ by Xinhua North America created in the six months after we issued our letter of determination on May 18, 2020, the following are more examples of these attempts to persuade. First, with respect to the COVID-19 pandemic, Xinhua North America promotes the PRC’s narrative that rejects as “baseless” and “groundless” any U.S. criticism of China’s role in the pandemic and instead blames the United States for spreading a “political virus.”²²

Second, on the issue of human rights, Xinhua North America heralded in a Facebook post the PRC’s election to the United Nation’s Human Rights Council,²³ despite its well-documented abuses of human rights.²⁴ The post links to an article on Xinhuanet,²⁵ which quotes without context or dissent from a PRC press release: “China always attaches great importance to the promotion and protection of human rights. . . . China has made great achievements in human

²¹ Twitter considers Xinhua North America’s tweets as “a podium for state-affiliated media” and so has labeled its home page and every one of its tweets with the following label: “China-state affiliated media.” Twitter’s explanation for doing so is that “China blocks access to Twitter for regular users” and that Twitter “believe[s] that people benefit from additional context when interacting with Chinese government and state-affiliated accounts.” TWITTER, Help Center, *About government and state-affiliated media account labels on Twitter*, <https://help.twitter.com/en/rules-and-policies/state-affiliated-china>.

²² *Chinese envoy rejects U.S. accusations at UN*, XINHUA GENERAL NEWS SERVICE, OCT. 6, 2020; Xinhua North America, *Chinese envoy fights back at U.S. accusations in Security Council*, FACEBOOK (Sept. 24, 2020), <https://facebook.com/XHNNorthAmerica/videos/326929928392717/>; Xinhua North America, *China rejects “baseless accusation,” opposes “political virus,” says China’s UN envoy*, FACEBOOK (Sept. 22, 2020), <https://www.facebook.com/1819287951681469/videos/3761806070515785/>; Xinhua North America (@XHNNorthAmerica), TWITTER (Sept. 22, 2020 7:06 p m.), <https://twitter.com/XHNNorthAmerica/status/1308543247552192512>; Xinhua North America (@XHNNorthAmerica), TWITTER (Sept. 22, 2020 2:31 p m.) (linking to a Xinhuanet article with one-sided coverage), <https://twitter.com/XHNNorthAmerica/status/1309198720383086592>; Xinhua North America (@XHNNorthAmerica), TWITTER (Sept. 9, 2020 7:38 p m.) (linking to another Xinhuanet article with one-sided coverage), <https://twitter.com/XHNNorthAmerica/status/1303840160379842560>; Xinhua North America, *Chinese envoy accuses U.S. representative of spreading “political virus” in Security Council*, FACEBOOK (Sept. 9, 2020), <https://www.facebook.com/1819287951681469/videos/2587575314815021/>.

²³ Xinhua North America, *China Elected to Human Rights Council for 2021-23*, FACEBOOK (Oct. 13, 2020), https://business.facebook.com/pg/XHNNorthAmerica/posts/?ref=page_internal.

²⁴ See, e.g., Letter of Determination, at 12 n.63, 13 n.74.

²⁵ In its letter, Xinhua North America takes issue with our reliance on statements made by Xinhuanet to show the propaganda purpose of all Xinhua entities because, as Xinhua North America notes, “Xinhuanet is a separate, independent legal entity, with Xinhua News Agency in Beijing as the majority shareholder.” Kelner Letter, at 5. That Xinhuanet is another entity in the stable of Xinhua News Agency’s corporate portfolio does not diminish the relevance of what Xinhuanet says about the mission of Xinhua news entities. Indeed, Xinhua North America is so closely related to Xinhuanet that all of the social media posts cited herein with links to a news article invariably link to a Xinhuanet news article.

rights development.”²⁶

Third, in October 2020, Xinhua North America posted on Facebook that “China’s UN envoy [had] *refuted* the U.S. and some other countries’ interfer[ence] in China’s internal affairs”—here, Hong Kong²⁷ and Xinjiang²⁸—that he claimed only used “the excuse of human rights” as a subterfuge for interference.²⁹ The social media post linked to a Xinhuanet article—with a byline in the United States—that describes what it calls an attempt by the U.S. and other countries to “smear China’s human rights record” and says that this attempt “failed again.”³⁰ The article goes on to parrot the statements made by China’s UN representative such as that “the United States is on the wrong side of history”; that China’s “achievements in human rights” are

²⁶ Xinhua North America, *China Elected to Human Rights Council for 2021-23*, FACEBOOK (Oct. 13, 2020), https://www.facebook.com/pg/XHNNorthAmerica/posts/?ref=page_internal.

²⁷ In an earlier news article soon after Hong Kong’s new national security law went into effect on July 1, 2020, Xinhua North America found a “renowned scholar” in the United States to opine without contradiction that the new law is “constitutional and consistent with well-established tradition.” *Interview: HK national security law consistent with China’s constitutional scheme, says scholar*, XINHUA GENERAL NEWS SERVICE, July 27, 2020. The U.S. State Department, in contrast, explained that the law is “draconian” and will “destroy[] the autonomy of Hong Kong.” U.S. State Dept., PRESS STATEMENT, *On Beijing’s Imposition of National Security Legislation on Hong Kong*, June 30, 2020, <https://www.state.gov/on-beijings-imposition-of-national-security-legislation-on-hong-kong/>.

²⁸ Earlier in the year, Xinhua North America covered the United States and the United Kingdom’s criticism of China’s actions in Xinjiang. See Xinhua North America (@XHNNorthAmerica), TWITTER (Aug. 24, 2020 10:03 p.m.), <https://twitter.com/XHNNorthAmerica/status/1298078540450078720> (linking to a Xinhuanet article). The article to which the post linked states that China’s UN representative dismissed the accusations as “baseless and absurd” (as always) and then goes on to promote only one viewpoint—that of the PRC—throughout the remainder of the article by explaining that “the United States chooses to ignore basic facts”; that it needs to “give up bigotry and double standards”; and that it needs to “stop interfering in China’s internal affairs by using human rights as an excuse.” Xinhuanet, *Chinese envoy rejects accusations by U.S., UK representatives over Xinjiang* (Aug. 25, 2020), http://www.xinhuanet.com/english/2020-08/25/c_139315928.htm.

²⁹ Xinhua North America, *Spotlight: Attempt of U.S., other countries to smear China’s human rights record fails again at UN*, FACEBOOK (Oct. 7, 2020) (emphasis added), https://www.facebook.com/pg/XHNNorthAmerica/posts/?ref=page_internal; see also Xinhua North America (@XHNNorthAmerica), TWITTER (Oct. 6, 2020 3:03 p.m.) (China’s UN representative “refutes groundless accusations against China”), <https://www.twitter.com/XHNNorthAmerica/status/1313555410008207360>; Xinhua North America, FACEBOOK (Oct. 6, 2020 1:06 p.m.) (“refutes groundless accusations against China”), https://facebook.com/pg/XHNNorthAmerica/posts/?ref=page_internal; Xinhua North America, FACEBOOK (Oct. 6, 2020) (“Blaming China cannot cover up your [own] poor human rights records.”), https://facebook.com/pg/XHNNorthAmerica/posts/?ref=page_internal. One particular tweet, see Xinhua North America (@XHNNorthAmerica), TWITTER (Oct. 6, 2020 4:40 p.m.), <https://www.twitter.com/XHNNorthAmerica/status/1313579847541690369>, links to a Xinhuanet article that promotes the UN representative’s opinion that the “despicable acts of the United States are completely at odds with the trend of history” and that the “United States should stop [its] war crimes and give peace back to the world.” Xinhuanet, *Chinese envoy refutes accusations by U.S., other countries* (Oct. 7, 2020), http://xinhuanet.com/english/2020-10/07/c_139422808.htm.

³⁰ Xinhuanet, *Spotlight: Attempt of U.S., other countries to smear China’s human rights record fails again at UN* (Oct. 7, 2020), http://www.xinhuanet.com/english/2020-10/07/c_139424335.htm.

“not to be denied by lies and deception”; and that the United States is engaged in another “bungled attempt” “to foment opposition to China under the pretext of human rights.”³¹ There are no countervailing facts or opinions presented. Only the position of the PRC is aired.

Finally, Xinhua North America continues to promote only the PRC and CCP narrative relating to disputes over the South China Sea. In July 2020, Xinhua North America relied only on statements from a spokesperson from the Chinese Embassy in the U.S. to address a statement issued earlier in the day by the U.S. Department of State. The content of the Department of State’s message is never mentioned or explained, but is used solely as a prop to explain that the United States’ position (whatever it was) is “completely unjustified” and “deliberately distorts the facts and international law.”³² The broadside goes on to remind its readers, courtesy of the Embassy spokesperson, that “the United States is not a country directly involved in the disputes,” but it nevertheless is “flexing [its] muscles, stirring up tension, and inciting confrontation in the region” as it “recklessly infring[es] on other countries’ territorial sea and airspace” and “throw[s] its weight around in every sea of the world.”³³ Much in the same vein, the following month, Xinhua North America journalists wrote an article solely relying on statements given by the Chinese Ambassador to the United States. Explaining that China has “strong historical and legal support for [its] claims,” the ambassador intoned that he hoped his “America friends” “could really understand our concern, our perception, and what we need” and “could refrain from taking any action to take advantage of any disputes in the region or even escalate the situation.”³⁴ Rather than Chinese actions—which seek only a “peaceful solution to the disputes”—the problem, according to the ambassador and Xinhua North America, “is the intensifying U.S. military activities in the region” where the “U.S. is sending more and more warships [and] military airplanes to the region.”³⁵

These news articles and social media posts, as well as those set forth in our Letter of Determination, conclusively demonstrate that Xinhua North America engages in political activities in the United States within the meaning of FARA.

2. Xinhua North America’s Reporting is for or in the Interests of its Foreign Principals.

In our letter of determination, we demonstrated that Xinhua North America engaged in

³¹ *Id.*

³² *U.S. accusation on South China Sea issue “completely unjustified”; Chinese embassy*, XINHUA GENERAL NEWS SERVICE, July 14, 2020.

³³ *Id.*

³⁴ *U.S. should refrain from taking advantage of any disputes in Asia: Chinese ambassador*, XINHUA GENERAL NEWS SERVICE, Aug. 11, 2020.

³⁵ *Id.*

the aforementioned political activities for or in the interests of its foreign principals (including the CCP and the PRC) because its news articles and social media posts in this country unwaveringly promote China’s viewpoint by—among other reasons³⁶—“consistently portray[ing] the Communist Party of China, the People’s Republic of China, and President Xi in a positive light.”³⁷ Xinhua North America obliquely challenges this point by arguing that presenting “China in a positive light” “is not legally relevant” because it “is settled law that mere ‘convergence of viewpoints’ does not trigger FARA registration.”³⁸ For this proposition, Xinhua North America relies on a D.C. Circuit decision, *Attorney General v. Irish People, Inc.*, 796 F.2d 520 (D.C. Cir. 1986), and a House of Representatives Judiciary Committee Report from 1966.³⁹ Neither authority can support the weight Xinhua North America puts on them, however.

First, in *Irish People, Incorporated*, the Attorney General asserted that a weekly Irish-American newspaper in the United States was an agent of the Irish Northern Aid Committee (“INAC”), a group that raised funds for a foreign terrorist organization and that was itself an agent of that foreign terrorist organization.⁴⁰ As is relevant here, the issue was whether the newspaper acted independently or acted “at the order, request or under the direction or control of INAC, for or in the interests of the IRA.”⁴¹ In the district court, while the Attorney General had proffered circumstantial evidence that the newspaper was an agent of INAC through, among other evidence, showing the “coincidence of editorial views” between the newspaper and INAC, the newspaper asserted it operated independently and presented examples where the newspaper had taken positions contrary to those of INAC.⁴² The D.C. Circuit reversed the district court’s

³⁶ Letter of Determination, at 11-17.

³⁷ *Id.*

³⁸ Kelner Letter, at 3. In a related vein, Xinhua North America argues that “sometimes” writing articles that present its “home country in a positive light” “is not enough as a matter of law” to establish that the “articles were written under the direction and control of a foreign principal, with the intent to influence U.S. Government policy or U.S. public opinion regarding matters of policy.” Kelner Letter, at 4. We have already addressed Xinhua North America’s intent to influence U.S. public opinion, which can be inferred from its single-viewpoint coverage of any issue of interest to the PRC. *See supra*, at 2-6; Letter of Determination, at 11-17. As for direction and control, FARA does not require, as Xinhua North America seems to suggest, that the Government prove that each and every article and social media post is “written under the direction and control of a foreign principal.” Rather FARA requires only that Xinhua North America acts under the direction or control of its foreign principals. *See* 22 U.S.C. § 611(c)(1); *see also* Letter of Determination, at 6-11.

³⁹ *Id.* at 3-4.

⁴⁰ *Attorney General v. Irish People, Inc.*, 796 F.2d 520, 521, 522 (D.C. Cir. 1986).

⁴¹ *Id.*

⁴² *Id.* at 523, 524. Xinhua argues that there is not a “requirement under FARA that a news organization must write articles critical of its home government in order to demonstrate its independence from that government, and, thus, be found to be free of the obligation to register.” Kelner Letter, at 4. We did not suggest this is a requirement. Rather Xinhua North America’s failure to present any evidence that it criticizes the CCP or the PRC—and we have not found any either—helps demonstrate that those positive articles and posts written by state-owned media entities seeking to influence U.S. public opinion are for or in the interests of the CCP and the PRC.

grant of summary judgment to the Government, *inter alia*, because there was a triable issue of fact on that point based on competing inferences from various facts such as the convergence of viewpoints between INAC and the newspaper.⁴³ Contrary to Xinhua North America's assertion, therefore, the D.C. Circuit did not conclude that convergence of viewpoints was legally irrelevant.⁴⁴ Rather, the court observed that FARA registration should not be required when citizens merely publish viewpoints that are "sympathetic" to those of foreign persons when those views are expressed "*free from foreign direction or control.*"⁴⁵ That is not the case here, however. Xinhua North America does not seriously contest that it operates under the direction and control of Xinhua News Agency (which wholly funds and employs its staff), as well as the CCP and the PRC.⁴⁶ The *Irish People, Incorporated* decision is thus legally irrelevant here.

Second, the legislative history upon which Xinhua North America also relies is of no help either. Xinhua North America relies on a single sentence from a 1966 House of Representatives Judiciary Committee report. The sentence states that FARA should not be used to require registration of "persons who are not, in fact, agents of foreign principals but whose acts may incidentally be of benefit to foreign interests, even though such acts are part of the normal exercise of those persons' own rights of free speech, petition, or assembly."⁴⁷ This statement is unremarkable. But it is also irrelevant here because the record is clear that Xinhua North America acts as the agent for three foreign principals, so that its actions are not merely of incidental benefit to foreign entities.⁴⁸ Rather, its articles and social media posts that are unwaveringly favorable to the CCP and PRC are proof that it acts for or in the interests of its foreign owners and paymasters.⁴⁹

For these reasons, and the reasons set forth in our letter of determination, we find that Xinhua North America engages in political activities within the meaning of FARA.

⁴³ *Irish People, Inc.*, 796 F.2d at 523.

⁴⁴ Kelner Letter, at 3.

⁴⁵ *Irish People, Inc.*, 796 F.2d at 524.

⁴⁶ Xinhua North America presents no evidence that it is not directed or controlled by Xinhua News Agency, the CCP, and the PRC. *See generally* Kelner Letter. Indeed, the closest Xinhua North America comes to challenging the Government's finding is when it asserts that the "determination letter cites heavily to third-party political commentary and media stories concerning [the] Xinhua News Agency in China, rather than to actions of Xinhua North America itself," and that this evidence is not "likely to be admissible in court." *Id.* at 3. While we disagree with this characterization of the evidence, it is of no consequence.

⁴⁷ H.R. Rep. No. 1470, 89th Cong., 2d Sess., at 6 (1966).

⁴⁸ Letter of Determination, at 6-11.

⁴⁹ *Id.* at 3-6, 11-17.

II. Xinhua North America Acts as a Publicity Agent and Information-Service Employee.

In our letter of determination, we demonstrated that Xinhua North America's activities within the United States makes it a publicity agent and information-service employee for Xinhua News Agency, the CCP, and the PRC, within the meaning of FARA.⁵⁰ In response, Xinhua North America makes four arguments, none of which alters our analysis or our findings.⁵¹ First, Xinhua North America again relies on *Irish People, Incorporated* for the proposition that “convergence of viewpoints does not trigger FARA obligations.”⁵² But, as before, that proposition has no traction where, as here, we have already established that Xinhua North America is under the direction or control of its three foreign principals.⁵³

Second, Xinhua North America argues it cannot be a publicity agent or information-service employee because, “[i]f everything distributed by a global news service over the Internet is deemed . . . to trigger FARA registration because Americans can access the Internet, [then] there would be no limiting factor to FARA's reach, which would be inconsistent with the statute's focus on activities within the United States.”⁵⁴ That is not the basis for our decision, however. While we reviewed hundreds of Xinhua General News Service articles with Beijing and other foreign-based bylines, the only articles we relied upon and cited herein and in our letter of determination had U.S.-based bylines. They were written in the United States about topics of interest to Americans and then disseminated in the United States via such subscription services as [REDACTED] and [REDACTED].⁵⁵ The same is true for social media accounts. While we reviewed social media posts by Xinhua News Agency on its own social media feeds, the only posts we relied upon and cited herein and in our letter of determination to support our findings about U.S.-based activities were those posted by Xinhua North America. In that way, consistent with FARA, we “focus[ed] on activities within the United States.”

Third, Xinhua North America attempts to distinguish itself from recent registrants who received letters of determination and were found to be publicity agents and information-service employees.⁵⁶ Xinhua North America contrasts those foreign agents who were “engaged in direct radio or television broadcasting in the United States,” with itself which “does not directly

⁵⁰ See *id.* at 17-19.

⁵¹ Kelner Letter, at 5-7.

⁵² *Id.* at 5.

⁵³ See Letter of Determination, at 6-11.

⁵⁴ Kelner Letter, at 5-6.

⁵⁵ Letter of Determination, at 17.

⁵⁶ Kelner Letter, at 6, 7.

distribute its content in the United States.”⁵⁷ Neither the definition of publicity agent nor the definition of information-service employee requires that the dissemination occur via radio or television.⁵⁸

Relatedly, Xinhua North America draws a distinction between its activities and those of RM Broadcasting, which a court recently held must register under FARA as a publicity agent.⁵⁹ In that case, an entity in the United States entered into a contract with a Russian state-owned media organization to broadcast programming, which had been created in Russia, on a radio channel in Washington, D.C.⁶⁰ Xinhua North America emphasizes that in that case RM Broadcasting was “engaged in the ministerial act of broadcasting or disseminating content” that was created abroad; here, by contrast, its “reporters in the United States write and edit news stories based largely on coverage of events in the United States” that are sent to its affiliate in China for distribution through its wire service reports (and are, in turn, distributed and read in the U.S.), and those reports are also used as source material for social media posts in the United States.⁶¹ This is a distinction without a difference, however. Being a publicity agent or an information-service employee is not limited to those engaging in the “ministerial act” of republishing or rebroadcasting content created abroad and does not turn, as Xinhua North America seems to imagine, on whether the entity is “in any way operating as a news organization with a news reporting function of its own.”⁶² Congress has made clear that “bona fide news or journalistic activities” are *not* exempted from the statute’s reach unless they meet certain statutory criteria,⁶³ which Xinhua North America does not.⁶⁴ It is enough, rather, that Xinhua North America’s journalists “write and edit news stories based largely on coverage of events in the United States”⁶⁵ that are then disseminated to paying subscribers in the United States pursuant to contract with Xinhua North America, which then, in turn, make these articles available to their readers.⁶⁶

⁵⁷ *Id.* at 6.

⁵⁸ *See* 22 U.S.C. § 611(h) (publicity agent includes a “person who engages directly or indirectly in the publication or dissemination”); *id.* § 611(i) (information-service employee includes a person who is “engaged in” “disseminating, or publishing”).

⁵⁹ *See* Kelner Letter, at 6-7 (citing *RM Broad., LLC v. U.S. Dept. of Justice*, 379 F. Supp.3d 1256 (S.D. Fla. 2019)).

⁶⁰ *RM Broad., LLC*, 379 F. Supp.3d at 1258.

⁶¹ Kelner Letter, at 7.

⁶² *Id.*

⁶³ *See* 22 U.S.C. § 611(d).

⁶⁴ Letter of Determination, at 11 n.60.

⁶⁵ Kelner Letter, at 7.

⁶⁶ Letter of Determination, at 17.

Finally, Xinhua North America relies on an argument the Department of Justice allegedly made⁶⁷ (and which was rejected by the trial court)⁶⁸ in a criminal prosecution under the 1942 version of FARA, according to a memoir written by a defendant in the case.⁶⁹ Apparently, in that case the government argued that registration was required “when the ‘subjective intent’ of the party disseminating the information in the United States is to disseminate the information ‘for and on behalf of, and [to] further the propaganda objectives of’ the foreign principal.”⁷⁰ Put another way, the “government essentially argued that an agency relationship could be created under FARA when a domestic organization simply held parallel views as that of a foreign organization.”⁷¹ Whether that argument was made or not, that is not the law today.⁷² And, as referenced in other contexts in this letter, this argument is irrelevant where, as here, we have already established that Xinhua North America is directed and controlled by its foreign principals.

For these reasons, and the reasons set forth in our letter of determination, Xinhua North America is a publicity agent and an information-service employee within the meaning of FARA.

III. The Policy Arguments Urged by Xinhua North America Do Not Change Our Conclusion.

Regardless of the fact that Xinhua North America meets the statutory criteria for registration as an agent of a foreign principal under FARA, Xinhua North America maintains nevertheless that there is a “strong policy argument” against requiring its registration because “there can be no serious dispute that registration would severely impair [its] ability . . . to engage in news reporting activities within the United States.”⁷³ In support of this argument, Xinhua North America suggests that registration will have a “real-world effect” such as a possible loss of its credentials to cover news in Congress and state legislatures, and could lead to the loss of American employees and cooperation from sources.⁷⁴ In short, Xinhua North America

⁶⁷ The argument is not referenced in the published decision issued by the trial court, *United States v. Peace Information Ctr.*, 97 F. Supp. 255 (D.D.C. 1951).

⁶⁸ That is, according to the same source upon which Xinhua North America relies. See Nick Robinson, *Foreign Agents in an Interconnected World: FARA and the Weaponization of Transparency*, 69 Duke L.J. 1075, 1120 (2020) (“Robinson, *Foreign Agents in an Interconnected World*”) (citing a participant’s memoir).

⁶⁹ Kelner Letter, at 6 (citing Robinson, *Foreign Agents in an Interconnected World*, at 1120, which, in turn, cites a memoir).

⁷⁰ *Id.* (quoting Robinson, *Foreign Agents in an Interconnected World*, at 1120).

⁷¹ Robinson, *Foreign Agents in an Interconnected World*, at 1120.

⁷² H.R. Rep. No. 1470, 89th Cong., 2d Sess., at 6 (1966).

⁷³ Kelner Letter, at 7.

⁷⁴ *Id.* at 7-8.

maintains, the “stigmatizing effect of FARA registration” has “significant policy consequences for freedom of the press.”⁷⁵

The Supreme Court has already considered and rejected these kind of policy arguments in the First Amendment context. In *Meese v. Keene*, 481 U.S. 465 (1987), a U.S. citizen and member of the California State Senate wished to screen three Canadian films about nuclear war and acid rain, but he was concerned about the stigmatizing effect doing so would have on his reputation and his political career because the films had to be labeled as “political propaganda” within the meaning of FARA at that time.⁷⁶ Nevertheless, the Court held that FARA’s disclosure obligations are consistent with the First Amendment, notwithstanding any “real-world effect” on plaintiff’s reputation and political career, because “Congress did not prohibit, edit, or restrain the distribution of advocacy materials,” but instead “simply required the disseminators of such material to make additional disclosures that would better enable the public to evaluate the import of the propaganda.”⁷⁷ So, too, here. Whether or not Xinhua North America’s concerns about the possible real-world effects of its registration actually come to pass, these concerns provide no legal or policy basis for exempting it from registration under FARA.

For the foregoing reasons, Xinhua North America is obligated to register under FARA. Please effect the registration within thirty (30) calendar days of the date of this letter. Useful information and forms needed for registration are available on our website at <https://www.fara.gov>. If you have any questions regarding registration, or have additional information to provide, please contact Clifford Rones or Rodney Patton by telephone at (202) 233-0776.

Sincerely,

/s/ *Brandon Van Grack*

Brandon L. Van Grack
Chief, FARA Unit

⁷⁵ *Id.* at 8.

⁷⁶ *Keene*, 481 U.S. at 467-68.

⁷⁷ *Id.* at 480; *see also Viereck v. United States*, 318 U.S. 236, 251 (1943) (Black, J., dissenting) (FARA’s disclosure requirements “implement[] rather than detract[] from the prized freedoms guaranteed by the First Amendment”). FARA’s disclosure requirements also have survived other First Amendment challenges. *See Block v. Meese*, 793 F.2d 1303, 1315-17 (D.C. Cir. 1986); *Attorney General v. Irish Northern Aid Comm.*, 530 F. Supp. 241, 253 (S.D.N.Y. 1981); *Attorney General v. Irish Northern Aid Comm.*, 346 F. Supp. 1384, 1390 (S.D.N.Y. 1972); *United States v. Peace Information Ctr.*, 97 F. Supp. 255, 262-63 (D.D.C. 1951).



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

April 20, 2021

VIA EMAIL

Robert K. Kelner
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001-4956

Re: Obligation of Xinhua News Agency North America to Register under the Foreign Agents Registration Act

Dear Mr. Kelner:

This letter is in response to your correspondence, dated December 28, 2020, and January 15, 2021, in which you sought reconsideration of the Foreign Agents Registration Act (“FARA”) Unit’s decision that Xinhua North America is obligated to register under FARA as an agent of the Xinhua News Agency, the Chinese Communist Party (“CCP”), and the People’s Republic of China (“PRC”). Having considered your further arguments in your December and January correspondence, as well as those made during meetings on January 11 and February 23, 2021, we stand by our conclusion that Xinhua North America has an obligation to register under FARA, for the reasons set forth below and in our prior correspondence.

In our prior letters of determination, dated May 18 and December 3, 2020, we presented evidence demonstrating why Xinhua North America is obligated to register. In response to this evidence, Xinhua North America makes six arguments in its letters of December 28, 2020 and January 15, 2021.¹

First, Xinhua North America argues that we have attempted to impose upon it the burden of proving that it is not required to register. We have done no such thing. In making this argument, Xinhua North America relies on a single footnote of the 183 footnotes in our two letters where we note merely that Xinhua North America has presented no evidence to contest our conclusion on direction and control.² This sentence did not attempt to shift the burden. Rather, we continue to rely on the ample evidence cited in our letters, which supports our conclusion that Xinhua North America is obligated to register under FARA.

Second, Xinhua North America argues that it is not an agent of a foreign principal because

¹ The Department’s letter, dated December 3, 2020, responded to Xinhua North America’s arguments set forth in its July 21, 2020 letter.

² Letter from Robert K. Kelner to Brandon L. Van Grack, December 28, 2020 (“December 28 Letter”), at 1, 3 (citing the December 3 Letter, at 8 n.46)

it has not engaged in any registrable activities for or in the interests “of its parent company Xinhua,” nor has it “ever conceded that it acts under the direction or control of the PRC or CCP” regarding any registrable activities.³ We already considered those arguments. The evidence demonstrates that Xinhua News Agency directs and controls Xinhua North America based on its funding, employment, and supervision of the staff who work for the Chinese company in the United States.⁴ The PRC, which is ruled by the CCP, directs and controls the activities of the Xinhua News Agency and its affiliate in North America, as evidenced by its status as a state-owned news organization; its admitted role as a tool to enhance China’s soft power; by the role of journalists as propaganda workers for the CCP and PRC; by the CCP political leaders’ demand that journalists be absolutely loyal to party and country; and by the perfect alignment between Xinhua North America’s reporting and the regime’s official statements and policies. That alignment is illustrated by, among other things, reporting on human rights issues involving Hong Kong, Tibet, and the Uyghurs in the Xinjiang province of China.⁵

Third, Xinhua North America argues that it has not engaged in political activities within the United States because “its purpose in posting news reports from the United States” is not to influence U.S. policymakers and the U.S. public but rather to “keep its readers around the world informed of developments in the United States.”⁶ We disagree. As we explained in both letters, Xinhua North America engages in political activities for or in the interests of the PRC, which owns and controls it and provides its financial backing, by trying to influence U.S. public opinion—and opinion in the rest of the world⁷—in way that is invariably consistent with CCP and PRC positions.⁸ This conclusion is evident from the dozens of articles and social media posts upon which we rely.⁹ Xinhua North America maintains, however, that this is not enough because we

³ See *id.* at 3-4. In your December 28 Letter, you observe that the “required proof of an agency relationship” “cannot be established solely by examining the content of Xinhua North America’s articles” and that, because we “did not repeat” in our December 3 Letter all the other evidence supporting direction and control set forth in our May 18 letter, “the only evidence [we] now offer” to support our conclusion is the content of those articles and the social media posts discussed in our December 3 Letter. See *id.* at 2. This argument misses the mark completely. We rely on all the evidence presented in both our letters of determination.

⁴ Letter from Brandon L. Van Grack to Zhou Xiaozheng, May 18, 2020 (“May 18 Letter”), at 4, 7.

⁵ *Id.* at 7-17; Letter from Brandon L. Van Grack to Robert K. Kelner, December 3, 2020 (“December 3 Letter”), at 3-6. As it did in an earlier letter, Xinhua North America argues that “rely[ing] entirely on content-specific analysis” of news articles and social media posts to attempt to establish direction or control” runs afoul of the D.C. Circuit’s opinion in *Attorney General v. Irish People, Inc.*” December 28 Letter, at 6. We rely on five categories of information—not solely the content of articles and posts—to show direction and control, so the case is inapposite. But, even if that were not the case, the court’s concern there was with granting summary judgment to the government where there was evidence that the views of the putative agent and those of the foreign interests did not align. See *Attorney General v. Irish People, Inc.*, 796 F.2d 520, 523-24, 526 (D.C. Cir. 1986). That is not the case here.

⁶ December 28 Letter, at 4.

⁷ While Xinhua North America continues to maintain that its news content is for a “global audience” and thus is not intended to influence the U.S. public, see, e.g., December 28 Letter, at 2, we have already explained that it is of no moment for FARA purposes that Xinhua North America seeks to persuade all of its readers inside and outside the U.S. of the virtue of the PRC’s viewpoint. See December 3 Letter, at 3.

⁸ See *id.* at 2-8; May 18 Letter, at 11-17.

⁹ While Xinhua North America objects that the cited articles and social media posts are a “tiny and selective sample” and are “cherry-picked,” December 28 Letter, at 2, 5, they cover a wide variety of topics of interest to the CCP and the PRC such as COVID-19, Hong Kong, Tibet, the Xinjiang Province, human rights, the South China Sea, and the

have not pointed to a single article or social media post which “advocat[es] specific policies for the United States on any of these subjects or specific actions by any member of the U.S. public.”¹⁰ Nothing in the statutory definition of “political activities” requires such proof. Trying to influence “any section of the public within the United States” toward views more consistent with those of the PRC, or to look more favorably on the PRC, is enough. That said, the Xinhua North America journalists writing the articles and social media posts we have cited do seek to persuade readers about specific U.S. policies. For example, the articles take the position that U.S. policy towards the Hong Kong protests is “deeply unhelpful”; that a Xinjiang-related bill in Congress would have a “negative impact on the development of U.S.-China relations” if enacted; that we should “work within our political system” to promote the policy that the U.S. should “back off” from involvement in the South China Sea; and that then-President Trump should “call off [the] trade war.”¹¹

Fourth, Xinhua North America disputes that it is a publicity agent or an information-service employee within the meaning of those statutory terms because it does not “disseminate content within the United States,” but instead “generate[s] content for Xinhua’s global news wires and social media accounts.”¹² As an initial matter, Xinhua North America’s social media posts are based on its own news stories that were written here and are disseminated here for consumption by Americans.¹³ But it does not matter for purposes of FARA whether the dissemination of this information is indirect. Rather, it is enough that Xinhua North America’s journalists write and edit news stories here, which are then disseminated to subscribers in the U.S. such as [REDACTED] and [REDACTED] pursuant to contracts with Xinhua North America and are then, in turn, made available to their readers in the United States.¹⁴

Fifth, in your January 15, 2021 letter, you wrote to follow up on a question we raised at the January 11 meeting. According to your letter, our suggestion at the meeting was that many of the news stories and social media posts we cited must be “intended to influence U.S. public opinion concerning China” because their content relates to Hong Kong protests and matters related to Uyghur minorities, for example, rather than events in North America.¹⁵ In your letter, Xinhua North America explains that the news stories and social media posts cited in the January 15 letter

trade dispute between the United States and China. See December 3 Letter, at 4-6; May 18 Letter, at 10-17. And they all invariably promote only the PRC’s viewpoint.

¹⁰ See December 28 Letter, at 5. Xinhua North America quibbles with our use of the phrase “advocacy as news” because that “is not a defined term in FARA.” *Id.* But this phrase is simply shorthand for Xinhua North America’s brand of journalistic advocacy as it endeavors to persuade its readers here and around the world of the CCP and PRC’s viewpoint.

¹¹ See May 18 Letter, at 13-16.

¹² December 28 Letter, at 6.

¹³ See December 3 Letter, at 2. Xinhua North America repeats another argument it has made before, which is that if “everything distributed by a global news service over the Internet is deemed by the FARA Unit to trigger FARA registration because Americans can access the Internet, there would be no limiting factor to FARA’s reach.” December 28 Letter, at 6. As we observed previously in response to the same argument, the only articles we relied upon were those with U.S.-based bylines, not those evidently written elsewhere, even though they too are available to U.S. readers via the Internet. See *id.* at 9.

¹⁴ See December 3 Letter, at 10.

¹⁵ Letter from Robert K. Kelner to Jay Bratt, January 15, 2021 (“January 15 Letter”), at 1, 3.

Mr. Robert K. Kelner
Xinhua North America
April 12, 2021
Page 4

have some kind of U.S.-based angle, whether it was reporting about statements made by Chinese officials in the United States or interviews of “U.S. scholars” whose opinions coincide with the viewpoint of the PRC.¹⁶ While we could point to examples where that is not the case—like the propaganda videos that promote a rosy view of life in Tibet posted on Xinhua North America’s Facebook page¹⁷—this distinction is of no consequence. What matters for FARA is that, regardless of who Xinhua North America chooses to use as a mouthpiece in its articles and posts, the only voices speaking in those pieces are those that promote the policies of the CCP and the PRC on geopolitical issues about which they wish to persuade U.S. and world public opinion.

Finally, Xinhua North America suggests that we “chose to ignore the policy arguments” it made previously against seeking its registration and that we should reconsider whether to require registration, as a matter of policy, given the “weighty issues for the international journalism profession presented by this case.”¹⁸ Contrary to your assertion, we addressed the policy arguments Xinhua North America pressed in its July 21, 2020 letter in our last letter, where we explained that the Supreme Court had already “considered and rejected” the kind of policy arguments you made in the First Amendment context.¹⁹ And I have reviewed this matter in light of our enforcement priorities and find that the registration of Xinhua North America would serve FARA’s core concerns.

For the foregoing reasons, Xinhua North America is obligated to register under FARA. Please effect the registration within fifteen (15) calendar days of the date of this letter. Useful information and forms needed for registration are available on the website at <https://www.fara.gov>. If you have any questions regarding registration, please contact Clifford Rones or Rodney Patton by telephone at (202) 233-0776.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

¹⁶ *Id.* at 1-2.

¹⁷ May 18 Letter, at 12-13.

¹⁸ December 28 Letter, at 6.

¹⁹ December 3 Letter, at 11-12.