



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

April 21, 2020

VIA EMAIL

[addressee deleted]

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

Dear [name deleted]:

We write in response to your letter of March 9, 2020 (“March 9 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding [US firm]’s obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §§ 611 *et seq.* (“FARA”). Based upon the representations in your letter and a review of the engagement agreement attached to that letter, we have determined that [US firm] must register for activities undertaken on behalf of [foreign government].

In your March 9 Letter, [US firm] seeks guidance as to whether its work on behalf of [foreign government], through [foreign embassy] to the United States (“the Embassy”), requires registration pursuant to FARA. Specifically, your letter asks that the FARA Unit “delineate and explain” which of approximately 24 categories and instances of conduct outlined in the March 9 Letter require registration, and which fall within the exemption for legal representation set out at Section 3(g) of the Act. *See* 22 U.S.C. § 613(g). You further ask that should the FARA Unit determine that [US firm] is required to register, that the FARA Unit confirm that [US firm] is required to disclose only those revenues or expenditures related to the registrable activities, while excluding disclosure of revenues and expenditures “related to non-registrable litigation.”

As a preliminary matter, a party is an “agent of a foreign principal” who must register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States, “(i) engages . . . in political activities for or in the interests of such foreign principal; (ii) acts . . . as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; . . . or (iv) represents the interests of such foreign principal before any agency or official of the United States Government.” 22 U.S.C. § 611(c)(1).

You have asserted that the legal representation exemption under Section 3(g) of FARA applies to at least a portion of [US firm]’s conduct.¹ That section provides that a person

¹ The March 9 Letter asserts that [US firm] has always viewed its work for [foreign government] as either being outside FARA’s scope or exempt from its requirements. However, the March 9 Letter discloses that [US firm]’s services have evolved beyond handling litigation on behalf of [foreign government].

otherwise obligated to register is nevertheless exempt from doing so if the person is “qualified to practice law” and “engage[s] in the legal representation of a disclosed foreign principal before any court of law or agency of the Government of the United States.” *Id.* This “legal representation” exemption is not available, however, to attorneys who “attempt[] to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.” *Id.* The FARA regulations clarify that “attempts to influence or persuade” agency personnel or officials to which the statutory exemption refers are those “attempts to influence or persuade with reference to formatting, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.” 28 C.F.R. § 5.306(a).

Because you are asserting that an exemption applies,² as you acknowledge, absent an exemption, [US firm]’s conduct would be otherwise registrable. Examining the conduct outlined in the March 9 Letter, we have determined that certain conduct described therein and undertaken by [US firm] would qualify for the legal representation exemption. Examples of such conduct outlined in the March 9 Letter would include:

- Evaluating the merits of initiating or defending against particular litigation, and undertaking such litigation when agreed upon;
- Attending meetings with Department of Justice officials to discuss pending extradition requests filed by [foreign government];
- Participating in requests for legal assistance from the United States Government.³

However, much of the conduct undertaken by [US firm] and described in the March 9 Letter falls outside the parameters of the Section 3(g) exemption and, thus, requires registration. The March 9 Letter enumerates a number of instances in which [US firm] has acted as a “political consultant”⁴ or “public-relations counsel”⁵ or otherwise engaged in “political activities.”⁶ Examples of registrable conduct outlined in the March 9 Letter include:

² The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed. *See* 28 C.F.R. § 5.300.

³ Although not stated in the March 9 Letter, requests for legal assistance from the United States Government by [foreign government] are made pursuant to *[treaty]*, and our recognition of [US firm]’s claim of an exemption applies only to participation in requests made pursuant to the treaty.

⁴ The term “political consultant” means any person who engages in informing or advising another person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party. 22 U.S.C. § 611(p).

⁵ The term “public-relations counsel” includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal. 22 U.S.C. § 611(g).

⁶ The term “political activities” means 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

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- providing legal advice and analysis on law and policy regarding matters and development that concern and affect US-[foreign country] relations, such as . . . pending legislation, and executive decisions and policy;
- attending regular meetings between Embassy officials and [foreign country]'s U.S. lobbyists where proposed legislation and legislative strategy are discussed;
- sharing memorandum prepared by [US firm] with [foreign country]'s lobbyists and public relations firm regarding pending legislation in the House of Representatives;
- drafting, at the request of the Embassy, potential responses to media inquiries to be delivered by the Embassy about litigation in which [US firm] was counsel of record;
- providing the Embassy with written arguments against passage of resolution in House of Representatives.

Accordingly, [US firm] is obligated to register. In so doing, [US firm] will be required to disclose, in its registration documents, *all* revenues and expenditures received from or spent on behalf of the [foreign government] through its Embassy, as well as *all* activities⁷ undertaken by [US firm] for [foreign government], its foreign principal, commencing with [US firm] becoming an agent of the [foreign government]. 22 U.S.C. §§ 612(a) and (b); 28 C.F.R. §§ 5.200-5.203. We remind you that our determination is limited to the particular facts in your March 9 Letter. If any of the facts change in any material way from those described in your letter, please notify this office, as those changes may affect [US firm]'s registration status.

Please effect [US firm]'s registration no later than May 22, 2020. Useful information and forms may be found on our website at <http://www.fara.gov>.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name deleted] at (202) 233-0776 or FARA.Public@usdoj.gov, if you have any questions.

Sincerely,

/s/ Brandon Van Grack

Brandon L. Van Grack
Chief, FARA Unit

of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. 22 U.S.C. § 611(o).

⁷ See *Attorney General v. Covington & Burling*, 411 F. Supp. 371, 374 (D.D.C. 1976) (“[I]f an attorney engages in any nonexempt activities on behalf of a foreign principal, he must include in his registration statement, a description of these otherwise exempt legal activities as well.”)