



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

June 1, 2021

**Via Email**

[Name, address and email address]

Re: [Foreign corporation and foreign person]  
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Name]:

We write in response to your letter dated May 12, 2021 (“May 12 Letter”), requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to your obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with the activities you are conducting and may conduct on behalf of your clients, the [foreign corporation] and its president and authorized representative, [foreign person] (collectively “[foreign corporation]”).

Your letter seeks exemption from FARA’s registration obligations pursuant to the exemption outlined in Section 613(g) of the Act (the “legal exemption”). Based on your representations, we have determined that you are not entitled to an exemption, including but not limited to the legal exemption, and are obligated to register under FARA.

**I. Background**

According to your letter, you began representing [foreign corporation] on [date].<sup>1</sup> May 12 Letter at 2. Your representation is focused on “collect[ing] and enforc[ing] the Judgment of the [Country] [Name] Court in [case name, which includes a foreign corporation], Verdict No. [identifying number] and Case No. [identifying number] dated [date] (“[Name] Court Decision”) and numerous prior and subsequent legal decisions and related governmental actions in [Country] (the “[foreign corporation] Case”).” May 12 Letter at 1. You explain that these lawsuits resulted in an award of “nearly [award amount] (including interest) as a result of wrongful and discriminatory terminations” of [foreign corporation] workers on [basis of discrimination]. *Id.*

Your activities to date have included “coordinat[ing] [foreign corporation’s] advocacy in [Country]”; “communicat[ing] on [foreign corporation’s] behalf with representatives of the Government of [Country] seeking full execution and payment of the judgment”; “set[ting] up a website and [F]acebook page in [Country]”; “manag[ing] press releases and media relations with the international media in [region]”; and “fil[ing] suit in [court] seeking enforcement of the judgment in an action alleging [issue] violations.” *Id.* at 2.

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<sup>1</sup> You provided the FARA Unit a copy of your “Employment Agreement” with [foreign corporation].

In the United States, you have engaged in the following activities on behalf of your clients: a meeting, “followed by a few emails, with personnel at the U.S. Department of State, [Country] Desk” in order “to ensure that [y]our representation team has a clear understanding of U.S.-[Country] relations and U.S. policies (including rule of law), to make [sure] the State Department is aware of [y]our [foreign corporation] representation,” and “to inquire whether the U.S. ambassador might meet with [you] when [you] travel to [Country].” *Id.* at 4-5. In addition, your team member “had a lunch meeting with a representative of the Office of Directorate of National Intelligence to inquire whether [the representative] or the White House was aware of, or had any position concerning, the [foreign corporation] Judgment and whether [Country] is properly observing the rule of law.” *Id.* at 5. You assert that you did not participate in any “active advocacy” at this meeting, but you acknowledge that “White House team members were in discussions with [Country] government officials regarding normalizing its relations with [other countries].” *Id.* at 5.

You indicate that you are “considering expanding” your representation “to potential communications with and/or advocacy before the U.S. Government which has consistently supported the [Country] Government.” *Id.* at 2. Under the heading, [Name], you write that you may seek support from members of Congress and the White House to (1) support payment of the [foreign corporation] Workers, and (2) withhold funding to [Country] until payments are made. *Id.* at 3. As to the payments to [foreign corporation] workers, you state that these efforts may include contacting “members of Congress or the White House and/or other executive branch agencies advocating that the U.S. announce its support for payment of the [foreign corporation] Workers the amounts they are due under [Country] [Name] Court Decision.” *Id.* You believe that this effort “would encourage [Country] to demonstrate that it is not only committed to rule of law in its words, but also in its actions.” *Id.* You assert that your “advocacy would be based upon **existing U.S. policy** which supports **recognition and implementation of the rule of law** in all countries, especially those countries to which the U.S. provides financial aid and other forms of support.” *Id.* (emphasis in original).

As to U.S. withholding of funds, you explain that you may advocate to the U.S. government “that the U.S. should withhold funding, financial aid and other forms of relief or support of the [Country] Government unless it demonstrates its commitment to the rule of law by paying the [foreign corporation] Workers the amount to which they are lawfully entitled under the [foreign corporation] Decision.” *Id.* You contend that “this action would not be advocating for a change in U.S. policy because already there are many instances where the U.S. conditions its aid on rule of law issues”; and that it is “established U.S. policy not to use U.S. taxpayer monies to support governments who do not follow the rule of law.” *Id.*

Lastly, you state that you “have engaged a public relations consultant to assist [you] in [y]our [foreign corporation] representation.” *Id.* at 5. This public relations consultant has assisted in “crafting media relations, press releases directed to the overseas press, and social media strategies.” *Id.* This consultant “may also be called upon to assist [you] in preparing informational materials and advis[ing] [you] on media relations, tactics and strategies in implementing either of the ‘[priorities]’” in the United States. *Id.* You seek an opinion as to

whether this consultant must register under FARA “even if his participation [i]s limited to a ‘behind the scenes’ advisory role to attorneys, without a known public advocacy presence interfacing by direct contact with government officials.”<sup>2</sup> *Id.*

## II. FARA Analysis

### A. Registrable Political Activities on Behalf of [Foreign Corporation]

FARA requires the registration of “agents of foreign principals” engaged within the United States in certain specified activities. 22 U.S.C. § 611(c).

As a preliminary matter, you have an agency relationship under FARA with your clients, the [foreign corporation] and its president and authorized representative, [foreign person] (collectively “[foreign corporation]”). Under FARA, each of your clients is a foreign principal as a foreign corporation and foreign person, respectively.<sup>3</sup> Among the activities triggering registration is “engag[ing] within the United States in political activities for or in the interests of [a] foreign principal.” 22 U.S.C. § 611(c)(1)(i). Because you have a direct contractual relationship with [foreign corporation], and, under the definition set out below, you are engaging in political activities for the benefit of [foreign corporation], you are an agent of said foreign principal.<sup>4</sup>

You argue that the actions you may take on behalf of your clients should not be construed as “political activities” under FARA. May 12 Letter at 4. The Act 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 . . . the political or public interests, policies, or relations of a government of a foreign country or foreign political party.” 22 U.S.C. § 611(o). You submit that the activities you describe in your letter are not political under the Act because

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<sup>2</sup> We decline to answer this portion of your request pursuant to 28 C.F.R. § 5.2(b), which provides that the FARA Unit will not opine as to hypotheticals, and its opinions “have no application to a party that does not join in the request.”

<sup>3</sup> The term “foreign principal” includes “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). “Foreign principal” also includes “a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States.” § 611(b)(2). [Foreign corporation] is a foreign principal under the former definition, and [foreign person] is a foreign principal under the latter definition. §§ 611(b)(3), (2).

<sup>4</sup> A person or entity is an “agent of a foreign principal” if the person or entity acts “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, in whole or in major part by a foreign principal, . . .” 22 U.S.C. § 611(c)(1). Although your relationship with [foreign corporation] is indirect, you are nevertheless an agent of [foreign corporation].

they “involve neither advocating for a change in U.S. policy (i.e., the official U.S. policy of promoting the rule of law outside the U.S.) nor defending or seeking to maintain that existing policy since there is no proposal under consideration in Congress or the Executive Branch that would officially change that policy.” May 12 Letter at 4.

Yet, it is plain that you are engaging in or plan to engage in political activities. You have identified past and potential future efforts to lobby the U.S. government on its stance toward [Country] and funding the U.S. may provide to it. *Id.* at 3-5. Such engagement and meetings with the U.S. government (as you indicated have occurred or may occur with Congress, the White House, the State Department, and the Office of the Director of National Intelligence) are inherently political in their subject matter and purpose. Whether or not you perceive U.S. policy to be constant on these issues, your lobbying efforts seek to “influence . . . the Government of the United States . . . with reference to the political or public interests, policies, or relations” of [Country], 22 U.S.C. § 611(o), namely the U.S. government’s support for, the content of its communications with, and funding of the government of [Country], in light of how [Country] acts upon a judicial decision in that country. In support of your argument that your activities are not political, you cite 28 CFR 5.100(e) of FARA’s implementing regulations, which provides the following:

The terms formulating, adopting, or changing, as used in section 1(o) of the Act, shall be deemed to include any activity which **seeks to maintain any existing domestic or foreign policy of the United States**. They do not include making a routine inquiry of a Government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question.

28 CFR 5.100(e) (emphasis added). The services you have rendered or may render do not merely amount to a “routine inquiry of a Government official or employee concerning a current policy.” *Id.* Rather, if as you suggest, the policy position you advocate represents the current, longstanding position of the U.S. government, by way of your advocacy you seek to “maintain an[] existing . . . foreign policy of the United States. *Id.*

## **B. Inapplicability of Any FARA Exemption**

Even if agency under FARA is established, a foreign agent may qualify for one of the exemptions set out in 22 U.S.C. § 613. You submit that you are entitled to the legal exemption pursuant to § 613(g). Under FARA’s implementing regulations, “[t]he 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.” 28 C.F.R. § 5.300.

Section 613(g) of the Act exempts from registration:

Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purposes of this subsection legal representation does not include attempts 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.

22 U.S.C. § 613(g) (emphasis in original).

The Department of Justice’s revised guidance on the legal exemption, posted to the Frequently Asked Question section of our website (“FARA FAQs”), <https://www.justice.gov/nsd-fara/frequently-asked-questions>, further explains the scope of that exemption as follows:

The legal exemption is triggered once a person, qualified to practice law, engages or agrees to engage in the legal representation of a disclosed foreign principal before any court or agency of the Government of the United States. The exemption is not triggered by an agreement to provide legal representation to further political activities, as defined by FARA, to influence or persuade agency personnel or officials, other than in the course of either judicial proceedings; criminal or civil law enforcement inquiries, investigations, or proceedings; or other agency proceedings required by law to be conducted on the record. The scope of the exemption, once triggered, may include an attorney’s activities outside those proceedings so long as those activities do not go beyond the bounds of normal legal representation of a client within the scope of that matter.

While this guidance notes that, in certain circumstances, the legal exemption may include an attorney’s activities outside of legal proceedings, the activities you have conducted or may conduct for [foreign corporation] “go beyond the bounds of normal legal representation.” *Id.*

Your letter describes meetings with the U.S. government and engagement with the public in efforts to gain U.S. government support for your cause. Such efforts plainly “attempt[] to influence or persuade agency personnel or officials other than in the course of judicial proceedings.” 22 U.S.C. § 613(g). Further, based on the representations in your letter, none of your engagement with the U.S. government has been or will be “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.*; *see also* FARA FAQs.

In sum, your letter clearly describes engagement in political activities, and does not describe legal representation you have provided to [foreign corporation] “before any court of law or any agency of the Government of the United States.” 22 U.S.C. § 613(g). To the contrary, it describes political lobbying efforts before the U.S. government. Accordingly, you have an obligation to register under FARA to which the legal exemption does not apply.

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### **III. Conclusion**

You are obligated to register under FARA and to disclose its activities in accordance with FARA's requirements. We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name] by telephone at 202-233-0776, or by email at [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov) if you have any questions.

Sincerely,

*Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief  
FARA Unit