



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 24, 2021

**Via Email**

[Addressee]

[Address]

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

Dear [Addressee]:

We write in response to your letter of April 23, 2021 (“April 23 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the registration obligation of your firm, [U.S. law firm] (“hereinafter law firm”), under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with its intended representation of the [U.S. affiliated corporation] (hereinafter “U.S. corporation”), together with its parent and foreign principal, [foreign corporation] (together “the Company”). Your letter seeks confirmation that [law firm]’s activities on behalf of [U.S. corporation] qualify for the legal representation exemption from FARA’s registration obligations, as outlined in Section 613(g) of the Act. After careful consideration of your request, including the specific representations therein concerning the narrow scope of legal advocacy, we have concluded that [law firm]’s activities do fall within the legal exemption and [law firm] would not be obligated to register under the Act for the activities described in the April 23 Letter.

**I. Relevant Facts**

According to the April 23 Letter, on [date], [U.S. Government agency A] published a [List of Entities in response to specific Appropriations Legislation of the Congress, hereinafter the “Legislation”] [hereinafter the “List”]. [U.S. Government agency A] included [the Company] on the [List]. *See* April 23 Letter, Exhibit C [Government agency Press Release and List].

The purpose of the [Legislation] is to identify alleged [foreign corporations associated with a specific foreign government’s military], which triggers the application of economic sanctions to certain property interests within U.S. jurisdiction. Pursuant to [Executive Order] [specific subject of order] U.S. persons are restricted from engaging in transactions involving any publicly traded securities of entities named on the [List]. Although the [Executive Order] authorizes [another U.S. Government agency, hereinafter “U.S. Government agency B”] to administer those sanctions, [law firm] informs us that, thus far, [U.S. Government agency B] has not yet promulgated regulations establishing a process whereby an entity may challenge its designation to the [List] or the application of the corresponding sanctions. *See* [Reported U.S. District court decision].

[law firm] further informs us that the Executive Order also is unclear whether U.S. Government agency A or U.S. Government agency B has the authority to establish procedures to

remove parties from the [List] , but that U.S Government agency B] has opined that removal from the [List] is within the purview of [U.S. Government agency A]. In the absence of implementing regulations for the Order, [law firm] has engaged in informal advocacy to advance [the Company]’s interests in being removed from the List, focusing its advocacy on legal remedies for removal of sanctions, and not lobbying for a revision of sanctions policy itself. In that regard, on [date], [the Company] submitted a petition for removal to [U.S. Government agency B], with [U.S. Government agency A] copied, that referenced [U.S. Government agency B]’s normal sanctions list removal process, as well as submitted a specific license request to [U.S. Government agency B] to request certain relief from the sanctions.

The April 23 Letter informs us that [the Company] has retained [law firm] to advocate for the removal of sanctions imposed upon it and to gather information from the U.S. Government concerning the same, all in preparation for potential litigation, and to exhaust any potential administrative remedies as to [the Company]’s designation on the [List]. [law firm] would represent [the Company] before Executive Branch officials involved in the decision-making process concerning [the Company]’s specific situation. [law firm] states that it would not engage in interactions that implicate general policy or political considerations or in any advocacy before Congress or the public.<sup>1</sup>

## **II. FARA Analysis**

FARA requires the registration of “agents of foreign principals” engaged within the United States in “political activities” or other specified activities. 22 U.S.C. § 611(c) & (o). Among the activities triggering registration are, within the United States, “representing the interests of a foreign principal before an agency or official of the Government of the United States.” 22 U.S.C. §611(c)(1)(iv). Another activity triggering a registration requirement would be acting “as a political consultant for or in the interests of . . . [a] foreign principal.” 22 U.S.C. § 611(c)(1)(ii). An agent is acting as a political consultant if it “engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.” 22 U.S.C. § 611(p).

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<sup>1</sup> [law firm] informs us that it has been retained by [the Company] to provide other legal services, including providing advice and counsel concerning compliance with sanctions and export control laws; and advocating before U.S. regulators in connection with the submission of license requests, license exception reporting, the interpretation of regulations, the application of U.S. jurisdiction, the export classification of products, and other legal or administrative proceedings. [law firm] believes that such activities would not require FARA registration because it is counseling the company on its internal compliance concerning private commercial transactions, and thus has not included such conduct within the scope of this request. Although [law firm] has not requested an advisory opinion as to this further legal representation of [the Company], we do not contest [law firm]’s opinion that the provision of the above-described legal services falls within the exemption set forth in Section 613(g).

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. To that end, [law firm] has asserted that it is entitled to the exemptions set out at Section 613(g) (legal representation exemption). Pursuant to 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.

The April 23 Letter acknowledges that [the Company] is a foreign principal pursuant to FARA, 22 U.S.C §611(b)(3). The letter attaches an agreement between [the Company] and [law firm] under which the firm would advocate for the removal of sanctions imposed upon [the Company] and gather information from the U.S. Government concerning the sanctions, in anticipation of potential litigation, and in an effort to exhaust any potential administrative remedies. In advocating for the removal of sanctions for [the Company], [law firm] would be acting as an "agent of a foreign principal" by engaging in political activity on behalf of [the Company], a foreign principal under The Act. 22 U.S.C. § 611(c)(1)(i). Also, in engaging with Executive Branch officials involved in the decision-making process concerning designation of [the Company] on the [the List] and the imposition of sanctions, [law firm] would be acting as an "agent of a foreign principal" under FARA by representing [the Company]'s interests before any agency or official of the Government of the United States. 22 U.S.C. § 611(c)(1)(iv).

In [Executive Order], the President of the United States specifically made a finding that [providing the underlying rationale for establishing the List]. *Id.* note 1, *supra*. Therefore, the subject matter of [law firm]'s consultation with [the Company] and engagement with Executive Branch officials is inherently political in nature.<sup>2</sup> In advocating for the removal of sanctions imposed upon [the Company] and gathering information from the U.S. Government concerning those sanctions, [law firm] would be informing or advising [the Company] with reference to the domestic or foreign policies of the United States and, thus, acting as a political consultant for or in the interests of its foreign principal, [the Company]. 22 U.S.C. §611(c)(1)(ii).

Therefore, absent an exemption, [law firm] would have an obligation to register under FARA for its political activities on behalf of [the Company]. [law firm] implicitly conceded that it was engaging in otherwise registrable activities by asserting that it would be exempt from registration because of legal exemption set out in Section 613(g) of the Act. That section 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.

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<sup>2</sup> [law firm]'s provision of consulting services to [the Company] on sanctions-related policy is also political in nature in that it concerns executive action relating to the domestic and foreign policy of the United States.

22 U.S.C. § 613(g).

[law firm] has represented that: (1) it would engage only with Executive Branch agencies that could have a role in the decision-making process with respect to [the Company]’s status on [the List] and/or the administration of sanctions or other trade restrictions against [the Company]; (2) it would not engage in communications with Congress or in public relations; (3) it would not engage in efforts to influence or persuade any elected official<sup>3</sup> concerning policy, political issues, or public interests, with respect to the use of [the List] generally, U.S. [foreign government] relations, implementation of the sanctions as a foreign affairs tool, trade issues within the [deleted] industry generally, or any other broader topics; and (4) it would limit its advocacy to [the Company]’s removal from the List and the impact of its listing on [the Company]’s individual legal rights and property interests. Section 613(g) exempts legal advocacy in the course of “agency proceedings required by statute or regulation to be conducted on the record.” In the absence of implementing regulations establishing such formal agency proceedings on the record, [law firm] has availed itself of the only recourse available to address the sanctions imposed on [the Company]; that is, informal advocacy to advance [the Company]’s interests in being removed from the List. [law firm] has indicated it will focus its advocacy on legal remedies for removal of sanctions, and not lobbying for a revision of sanctions policy itself.

### **III. Conclusion**

Accordingly, after reviewing your submission, and the representations on the scope of conduct therein, we do not contest your assertion that [law firm] is exempt from registration pursuant to Section 613(g) of FARA for activities undertaken pursuant to its representation of [the Company] in preparation for civil litigation, including legal advocacy in support of removal of [the Company] from [the List], as described in the April 23 Letter.

Our opinion is limited to the specific facts outlined in the April 23 Letter. If any of the activities undertaken by [law firm] with respect to [the Company] depart from those described in the April 23 Letter, please notify this office, as the registration status of [law firm] may change.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [the FARA Unit] by telephone at (202) 233-0776, if you have any questions.

Sincerely,

*/s/Jennifer Kennedy Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit

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<sup>3</sup> The term “official,” as used in Section 613(g) of the Act, includes Members and officers of both Houses of Congress as well as any Executive Branch officials. 28 C.F.R. § 5.100(d).