



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 24, 2023

Via E-mail

NAME
ADDRESS

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

Dear LAWYER:

We write in response to your letter of December 15, 2022 (“December 15 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client, U.S. COMPANY, to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based on our review of your request, we do not believe that U.S. COMPANY has an obligation to register at this time.

The December 15 Letter describes U.S. COMPANY as REDACTED and engaged in the business of REDACTED. The letter further informs us that U.S. COMPANY’s clients pay U.S. COMPANY fees based on the compensation that U.S. COMPANY negotiates for CLIENTS’ ACTIVITIES.

According to the December 15 Letter, U.S. COMPANY recently began a non-exclusive representation of FOREIGN POLITICIAN.¹ At the time of the December 15 Letter, U.S. COMPANY and FOREIGN POLITICIAN were in the process of finalizing two additional agreements. One of the agreements was an exclusive representational agreement and the other agreement was for U.S. COMPANY’s recoupment of a REDACTED advance U.S. COMPANY was providing to FOREIGN POLITICIAN in connection with U.S. COMPANY’s representation.²

The December 15 Letter puts forth that FOREIGN POLITICIAN retained U.S. COMPANY to market FOREIGN POLITICIAN in a private capacity and not as a representative of the FOREIGN COUNTRY or FOREIGN POLITICAL PARTY. The buyers [REDACTED] that U.S. COMPANY identifies and contracts with on FOREIGN POLITICIAN’s behalf pay FOREIGN POLITICIAN’s [REDACTED] fee and travel costs. U.S. COMPANY negotiates these costs for FOREIGN POLITICIAN and then accepts payment directly from the BUYERS on FOREIGN POLITICIAN’s behalf, with U.S. COMPANY remitting post-commission or post-

¹ A copy of the contract was included in your submission as Exhibit A.

² Executed copies of the contracts were received by the FARA Unit on December 28, 2022.

recoupment portions to FOREIGN POLITICIAN, as noted in the contracts. The December 15 Letter asserts that U.S. COMPANY will not collect FOREIGN POLITICIAN's fees for any other foreign principal or disburse them to accomplish a foreign government's or foreign political party's public or political interests.³

The December 15 Letter further asserts that U.S. COMPANY has not agreed to distribute a foreign principal's message, but rather has contracted with FOREIGN POLITICIAN to selectively advertise his availability and fee requirements to U.S. audiences who want to hear from FOREIGN POLITICIAN and are willing to pay what the market demands for REDACTED appearances. The December 15 Letter claims that U.S. COMPANY's contractual performance is separate from the messages FOREIGN POLITICIAN communicates in REDACTED speeches, over which FOREIGN POLITICIAN exercises complete control, and is independent of any public or political interest FOREIGN POLITICIAN, his government, or the FOREIGN POLITICAL PARTY may have.

Based on the relationship between U.S. COMPANY and FOREIGN POLITICIAN, and the activities to be undertaken by U.S. COMPANY, the December 15 Letter suggests that U.S. COMPANY is not an "agent of a foreign principal" under FARA and should not be required to register. The December 15 Letter further asks whether, to the extent the FARA Unit determines that U.S. COMPANY is an agent of a foreign principal, it should be entitled to the commercial exemption contained in the Act because U.S. COMPANY's client is FOREIGN POLITICIAN and U.S. COMPANY's activities benefit FOREIGN POLITICIAN, personally and substantially, not the FOREIGN GOVERNMENT or its public or political interests.

Generally speaking, save certain exemptions, a party is an "agent of a foreign principal" required to 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 public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the

³ The December 15 Letter asserts that FOREIGN POLITICIAN obtained the approval of the FOREIGN COUNTRY Advisory Committee on business appointments prior to executing contracts with U.S. COMPANY, having satisfied a required cooling-off period following his departure from the office of FOREIGN POLITICIAN prior to accepting private employment.

Government of the United States.

See 22 U.S.C. § 611(c)(1).

We acknowledge at the outset that FOREIGN POLITICIAN is a “foreign principal” as defined by the Act because FOREIGN POLITICIAN is “a person outside of the United States.” 22 U.S.C. § 611(b)(2). We further acknowledge that U.S. COMPANY operates at the direction or control of FOREIGN POLITICIAN in that it has agreed to act on FOREIGN POLITICIAN’s behalf pursuant to contract.⁴

To the extent that U.S. COMPANY may solicit, collect, disburse, or dispense contributions, loans, money, or other things of value for or in the interests of FOREIGN POLITICIAN, it could have an obligation to register under Section 611(c)(1)(iii). However, as described above, U.S. COMPANY has represented that its activities would be nonpolitical given that U.S. COMPANY would have no insight into or ability to affect the content of FOREIGN POLITICIAN’s speeches. Accordingly, we believe that U.S. COMPANY would be exempt from FARA’s registration and disclosure requirements pursuant to the exemption outlined in Section 613(d)(1) of the Act because U.S. COMPANY would be engaged in “private and nonpolitical activities in furtherance of the bona fide trade or commerce” interests of FOREIGN POLITICIAN. 22 U.S.C. § 613(d)(1). Therefore, we conclude that U.S. COMPANY is not required to register under FARA at this time.

Please note that our opinion is based solely on the facts as they have been presented and any change could alter our opinion. Please keep us informed if U.S. COMPANY’s activities or terms of the contract for the matter under consideration change in any way.

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

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

⁴ FARA’s implementing regulations provide that “[a]s used in the Act, the term *control* or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.” 28 C.F.R. § 5.100(b).