



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 31, 2023

**Via e-mail to** [Redacted]  
[Name and Address Redacted]

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

Dear [Redacted]:

We write in response to your letter of March 9, 2023 (the “March 9 Letter”) requesting an advisory opinion pursuant to 28 C.F.R. § 5.2 on behalf of your client, the law firm [name redacted, “[U.S. Law Firm]”). The March 9 Letter seeks guidance on whether [U.S. Law Firm] has an obligation to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), as an agent of a foreign principal, [U.S. Law Firm’s foreign client]. The March 9 letter describes [U.S. Law Firm’s foreign client] as [redacted].<sup>1</sup> Based on the March 9 Letter and its attachments, including the specific representations concerning the narrow scope of [U.S. Law Firm’s] legal advocacy, and for the reasons more fully stated herein, we do not contest your assertion that Section 613(g) of the Act exempts [U.S. Law Firm] from registration under FARA for its proposed legal representation of [U.S. Law Firm’s foreign client] before the State Department and the Treasury Department’s Office of Foreign Assets Control.

**Background**

The March 9 Letter includes as attachments two engagement letters from [U.S. Law Firm] to [U.S. Law Firm’s foreign client]. These letters were countersigned by [U.S. Law Firm’s foreign client] on their respective dates, indicating [U.S. Law Firm’s foreign client’s] agreement with their terms. Only the first paragraph of each of these letters addresses the scope of the engagement; the remainder of each deals with billing and retainer issues. The first letter, dated [redacted], confirms [U.S. Law Firm’s] representation of [U.S. Law Firm’s foreign client] “in connection with allegations made by the U.S. government, relating to [redacted].”<sup>2</sup> The second letter, dated [redacted], confirms [U.S. Law Firm’s] representation of [U.S. Law Firm’s foreign client] “in connection with sanctions compliance advice under U.S. law and administrative proceedings in furtherance of a petition to remove the designation of the listed parties.”<sup>3</sup>

As stated in the March 9 Letter, “[o]n [date redacted], the State Department designated [U.S. Law Firm’s foreign client] under [a State Department-administered sanctions program] for [U.S. Law Firm’s foreign client’s] alleged involvement in [redacted] and concurrently designated [certain foreign individuals associated with U.S. Law Firm’s foreign client].”<sup>4</sup> The State Department’s sanctions under [the State Department-administered sanctions program] (the “[State

<sup>1</sup> March 9 Letter at [redacted].

<sup>2</sup> *Id.*, [redacted].

<sup>3</sup> *Id.*, [redacted].

<sup>4</sup> *Id.* at [redacted].

Department Designations]”) [prohibit U.S. Law Firm’s foreign client and the associated foreign individuals from entering the United States]. Subsequent to the [State Department Designations], the first engagement letter between [U.S. Law Firm] and [U.S. Law Firm’s foreign client] was signed by both parties on [date redacted].<sup>5</sup>

The March 9 Letter further explains the nature of [U.S. Law Firm’s] engagement by [U.S. Law Firm’s foreign client] with respect to the [State Department Designations] as follows:

[U.S. Law Firm] intends to represent [U.S. Law Firm’s foreign client] before the U.S. Department of State (“State Department”) in connection with sanctions imposed on [U.S. Law Firm’s foreign client and the associated foreign individuals] in [redacted] pursuant to [the State Department-administered sanctions program]. The intent of [U.S. Law Firm’s] anticipated engagement with the State Department is to obtain additional information about the bases for the designations, present factual evidence to rebut the purported bases for the designations, and ultimately, obtain relief from the sanctions imposed on [U.S. Law Firm’s foreign client and the associated foreign individuals] under [the State Department-administered sanctions program]. Beyond advocacy on behalf of [U.S. Law Firm’s foreign client and the associated foreign individuals], [U.S. Law Firm’s] legal representation of [U.S. Law Firm’s foreign client] before the State Department will involve no political activities with respect to [foreign nation or any of its] political parties, or otherwise.<sup>6</sup>

The March 9 Letter asserts that, immediately following the [State Department Designations],

[U.S. Law Firm’s] work was focused on investigating the State Department’s factual bases for designating [U.S. Law Firm’s foreign client and the associated foreign individuals]. During this initial phase, active engagement with the State Department was not yet contemplated. In furtherance of [U.S. Law Firm’s] investigation, and its attempt to better understand the possible factual bases for the [State Department Designations], [U.S. Law Firm] retained an outside investigation firm to work under its direction and assist in that effort. [U.S. Law Firm] also filed a Freedom of Information Act (“FOIA”) request with the State Department on [date redacted] seeking relevant portions of the administrative record supporting the imposition of sanctions against [U.S. Law Firm’s foreign client and the associated foreign individuals].<sup>7</sup>

The March 9 Letter states the following with respect to the subsequent expansion of the representation of [U.S. Law Firm’s foreign client] by [U.S. Law Firm]:

In [redacted], [U.S. Law Firm’s foreign client] was also added to the Specially Designated Nationals and Blocked Persons List (“SDN List”) administered by the

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<sup>5</sup> March 9 Letter], [redacted].

<sup>6</sup> *Id.* at [redacted].

<sup>7</sup> *Id.* at [redacted].

U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Like the anticipated engagement with the State Department, [U.S. Law Firm] will also represent [U.S. Law Firm's foreign client] in administrative proceedings before OFAC seeking [U.S. Law Firm's foreign client's] removal from the SDN List.<sup>8</sup>

The March 9 Letter further states, "As a result of OFAC's sanctions, all property and interests in property of [U.S. Law Firm's foreign client] that are in the United States or in the possession or control of U.S. persons are blocked such that U.S. persons are generally prohibited from engaging in transactions with [U.S. Law Firm's foreign client] or companies or assets that [U.S. Law Firm's foreign client] owns, except as licensed or otherwise authorized by OFAC"<sup>9</sup> (the "OFAC Designation"). Subsequent to the OFAC Designation, the second engagement letter between [U.S. Law Firm] and [U.S. Law Firm's foreign client] was signed by both parties on [date redacted].<sup>10</sup>

According to the March 9 Letter, the scope of [U.S. Law Firm's] engagement with respect to the [State Department Designations] expanded following the OFAC Designation:

[U.S. Law Firm's foreign client] requested that [U.S. Law Firm] develop a strategy to engage with State Department officials involved in decision-making concerning the administration of [the State Department-administered sanctions program] against [U.S. Law Firm's foreign client and the associated foreign individuals] in an effort to secure the termination of such sanctions. [U.S. Law Firm's] intended engagement will be limited in scope to obtaining information about the factual predicates for the designations under [the State Department-administered sanctions program] and sharing information obtained through [U.S. Law Firm's] investigatory efforts with State Department officials in order to refute the purported bases for the sanctions.

[U.S. Law Firm's] contemplated activities before the State Department will be solely in furtherance of the removal of the [State Department-administered] sanctions targeting [U.S. Law Firm's foreign client and the associated foreign individuals]. Such activities will not include any broader attempts to influence U.S. government policies with respect to [foreign country], [foreign political party], the [State Department-administered sanctions program], or the [redacted] sanctions program. [U.S. Law Firm's] activities also will not involve any advocacy with members of Congress, the U.S. public, or any U.S. government officials other than those State Department officials involved in decision-making concerning the administration of the [State Department Designations] against [U.S. Law Firm's foreign client and the associated foreign individuals]. [U.S. Law Firm] expects that it will eventually pursue the same types of activities with respect to OFAC, and the Treasury Department officials responsible for decision-making with respect to

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<sup>8</sup> *Id.* at [redacted].

<sup>9</sup> *Id.* at [redacted]. *See also* [redacted].

<sup>10</sup> March 9 Letter], [redacted].

[U.S. Law Firm's foreign client's] addition to the SDN List, but the immediate priority is engagement with the State Department.<sup>11</sup>

More specifically, the March 9 Letter represents that [U.S. Law Firm's] activities on behalf of [U.S. Law Firm's foreign client and the associated foreign individuals] will consist of the following:

- [U.S. Law Firm's] engagement with the State Department will be limited to engaging with officials involved in decision-making concerning [the State Department-administered sanctions program] against [U.S. Law Firm's foreign client and the associated foreign individuals];
- [U.S. Law Firm] has already attempted, via a formal FOIA request transmitted on [date redacted], to obtain information in writing from the State Department regarding the bases for the [State Department Designations] of [U.S. Law Firm's foreign client and the associated foreign individuals];
- [U.S. Law Firm] anticipates sharing relevant factual findings of its own independent investigation with the State Department in order to rebut the purported factual bases for the [State Department Designations] of [U.S. Law Firm's foreign client and the associated foreign individuals] and support the termination of those sanctions;
- [U.S. Law Firm] will be engaging with multiple Executive Branch agencies (*i.e.*, State Department, OFAC) in an effort to request the termination of sanctions against [U.S. Law Firm's foreign client and the associated foreign individuals];
- [U.S. Law Firm] will not attempt to influence any broader policy or political matters in its interactions with the State Department, or any other Executive Branch agency, such as U.S. policy toward [foreign country], [foreign political party], [the State Department-administered sanctions program], or the [redacted] sanctions program; and
- Apart from those with decision-making authority at the State Department and OFAC regarding the sanctions at issue, [U.S. Law Firm] will not engage in advocacy before, or attempt to influence, Congress, any "official" of the U.S. government, or the U.S. public on behalf of [U.S. Law Firm's foreign client] in connection with this matter.<sup>12</sup>

(Footnote omitted; collectively, the "Expected Agency Interactions").

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<sup>11</sup> *Id.* at [redacted].

<sup>12</sup> *Id.* at [redacted].

## **FARA Analysis**

The term “foreign principal” is defined by FARA to include, in relevant part, “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[.]”<sup>13</sup> Pursuant to the [State Department Designations], the Department of State has determined that [U.S. Law Firm’s foreign client] is [prohibited from entering the United States]. Thus prohibited from entering the United States, [U.S. Law Firm’s foreign client] clearly is not a U.S. citizen and is a foreign principal for purposes of the Act.

Generally speaking, a person<sup>14</sup> is an “agent of a foreign principal” and must register under FARA if such person 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 engages in one of the enumerated activities triggering registration.<sup>15</sup> These activities include, in relevant part, “within the United States represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States[.]”<sup>16</sup>

The engagement letters executed by [U.S. Law Firm] and [U.S. Law Firm’s foreign client] on [date redacted] and [date redacted], and the specific activities contemplated by [U.S. Law Firm] pursuant thereto, as described in the March 9 Letter, make it clear that [U.S. Law Firm] will be acting on behalf of [U.S. Law Firm’s foreign client], its foreign principal, when it represents the interests of [U.S. Law Firm’s foreign client and the associated foreign individuals] before the State Department for purposes of contesting the [State Department Designations] and before the Treasury Department for purposes of contesting the OFAC Designation. The March 9 Letter acknowledges as much, including that “absent an exemption, [U.S. Law Firm] would be required to register [under the Act] in connection with its activities on behalf of its foreign principal, [U.S. Law Firm’s foreign client].”<sup>17</sup>

With respect to the assertion in the March 9 Letter that the exemption under Section 613(g) of the Act, “Persons qualified to practice law,” applies to the activities that [U.S. Law Firm] contemplates undertaking on behalf of [U.S. Law Firm’s foreign client], that section provides as follows:

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<sup>13</sup> 22 U.S.C. § 611(b)(2).

<sup>14</sup> The Act defines “person” to include “an individual, partnership, association, corporation, organization, or any other combination of individuals[.]” 22 U.S.C. § 611(a).

<sup>15</sup> 22 U.S.C. § 611(c)(1).

<sup>16</sup> 22 U.S.C. § 611(c)(1)(iv).

<sup>17</sup> March 9 Letter at [redacted].

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.<sup>18</sup>

The Expected Agency Interactions, as stated, appear to stop short of an attempt to influence the State Department or OFAC beyond the specific application of the [State Department Designations] and the OFAC Designation, respectively, to [U.S. Law Firm's foreign client and the associated foreign individuals].

Related Section 5.306(b) of the FARA Regulations further requires, in relevant part,

If an attorney engaged in legal representation of a foreign principal before an agency of the U.S. Government is not otherwise required to disclose the identity of his principal as a matter of established agency procedure, he must make such disclosure, in conformity with this section of the Act, to each of the agency's personnel or officials before whom and at the time his legal representation is undertaken.<sup>19</sup>

The March 9 Letter states that “the lawyers leading [U.S. Law Firm's] representation of [U.S. Law Firm's foreign client] are qualified to practice law . . . [and] in engaging with the State Department, [U.S. Law Firm] will disclose the identity of its foreign principal, [U.S. Law Firm's foreign client], as required by 22 U.S.C. § 613(g) and 28 C.F.R. § 5.306(b).”<sup>20</sup>

As quoted above, legal representation exempt from FARA registration under Section 613(g) of the Act “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” (emphasis added).<sup>21</sup> The March 9 Letter argues (i) that [U.S. Law Firm] is entitled to the Section 613(g) exemption with respect to the Expected Agency Interactions, even though there are no implementing regulations establishing formal agency proceedings for the purpose of contesting designations pursuant to [the State Department-administered sanctions program], and (ii) that the Expected Agency Interactions do not amount to attempts to influence or persuade agency personnel that would be impermissible because they will occur outside of a formal agency proceeding.<sup>22</sup>

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<sup>18</sup> 22 U.S.C. § 613(g).

<sup>19</sup> 28 C.F.R. § 5.306(b).

<sup>20</sup> March 9 Letter at [redacted].

<sup>21</sup> 22 U.S.C. § 613(g).

<sup>22</sup> See March 9 Letter at [redacted].

We agree. In the absence of implementing regulations establishing such formal agency proceedings on the record, [U.S. Law Firm], via the Expected Agency Interactions, plans to avail itself of the only recourse available to address the [State Department Designations]; that is, informal advocacy to advance the interests of [U.S. Law Firm's foreign client and the associated foreign individuals] in having the [State Department Designations] removed. The Expected Agency Interactions indicate that [U.S. Law Firm] will focus its advocacy on legal remedies for the removal of the [State Department Designations], and will not attempt to influence or persuade agency personnel or officials by advocating for a more general revision of [the State Department-administered sanctions program] policies themselves.

Because of the availability of formal administrative process to contest OFAC sanctions, the March 9 Letter states that it expressly does not seek an advisory opinion with respect to the OFAC Designation:

To be clear, we are not seeking an advisory opinion with regard to [U.S. Law Firm's] legal representation of [U.S. Law Firm's foreign client] in connection with administrative proceedings before OFAC. The plain language of the Act and its supporting regulations, as well as recent advisory opinions published by the FARA Unit, establish unequivocally that the legal exemption applies to [U.S. Law Firm's] representation of [U.S. Law Firm's foreign client] in connection with the OFAC delisting process.<sup>23</sup>

To the extent, however, that the Expected Agency Interactions anticipate “[U.S. Law Firm] . . . engaging with multiple Executive Branch agencies (*i.e.*, State Department, OFAC)” and engaging “those with decision-making authority at the State Department and OFAC regarding the sanctions at issue,”<sup>24</sup> we would agree that the anticipated interactions with OFAC, as represented in the March 9 Letter, would also fall within the Section 613(g) exemption.

We thus do not contest your assessment that Expected Agency Interactions qualify for the exemption under Section 613(g) regarding legal representation, because [U.S. Law Firm] is limiting its conduct to fall within the parameters described in Section 613(g), as further defined at Section 5.306(b) of the FARA Regulations.

Please also always keep in mind the requirements of Section 5.300 of the FARA Regulations: “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.”<sup>25</sup>

Please note that any change in the facts and circumstances represented to us in the March 9 Letter may change [U.S. Law Firm's] status and [U.S. Law Firm] could be required to register. If any such change does occur, you should contact us immediately. The present advisory opinion is expressly limited to the facts and conclusions stated herein.

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<sup>23</sup> *Id.* at [redacted].

<sup>24</sup> *Id.* at [redacted].

<sup>25</sup> 28 C.F.R. § 5.300.

[Redacted]  
March 31, 2023  
Page 8 of 8

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov) or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

*/s/ Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit