



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 24, 2023

By FedEx

[Name]

[Address]

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

Dear [Name]:

We write in response to your letter of March 25, 2023 (“March 25 Letter”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, as to [NGO’s] 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”). Based on the representations you made in your request for an advisory opinion and the additional information you provided in your subsequent letter (“April 26 Letter”), we conclude that [NGO] is not obligated to register under FARA at this time.

Background

The March 25 Letter made the following representations about [NGO]: (1) that it was incorporated as a nonprofit corporation with the [State] Secretary of State on [date redacted]; (2) its board and officers are all U.S. citizens; (3) [NGO]’s mission is to “educat[e] Congressional, military, and civilian national security decision-makers on American defense and strategic interests . . . the cornerstone of which is an anticipated robust U.S. and [foreign country] security cooperation agreement”; (4) [NGO] obtained Internal Revenue Service 501(c)(3) classification based on its stated mission of education and charitable giving; and (5) had engaged in a number of activities, including, (a) writing articles features in [publication redacted] and other social media platforms about [foreign country’s] national security challenges; (b) establishing a *YouTube* channel featuring [text redacted about foreign country]; (c) holding year-end fundraising banquets to raise funds for [NGO]; and (d) donating \$ 25,000 to the [text redacted] to provide [humanitarian aid]. The April 26 Letter repeated these representations.

The March 25 Letter also informed us that [NGO] intends to engage in three activities related to its mission in support of [foreign country]. First, at the invitation of the [foreign government agency], [NGO] is planning to send one or more senior retired U.S. [military officers] to [foreign government agency] during the period of [text redacted] to lecture senior [foreign country] military officers on “U.S. national military strategy, combat logistics, law of war, mission command, special operations, and defensive measures.”¹ The March 25 Letter disclosed that [NGO] intends to pay an honorarium to the [U.S.] officer(s) involved and that [foreign government agency] would cover accommodations and transportation in [foreign country]. The March 25 Letter emphasized that this proposed activity was of [NGO]’s “own initiative” and not the result of a request from any agency of the [foreign country] government.²

¹ March 25 Letter, p.2.

² *Id.*

Second, the March 25 Letter informed us that [NGO] intends to support and send to [foreign country] approximately forty (40) Americans, including Americans of [foreign country] descent, who “have an interest in [foreign country] culture, its emerging democracy, and military preparedness,” for the purpose of training as first responders. Specifically, these individuals “will learn first aid, mass casualty care, communications infrastructure restoration, and search and recovery procedures[.]” The letter notes that the [foreign government], through its Ministry of Defense and Ministry of Emergency Situations, is proposing to provide housing, food, support staff, trainers, and training facilities to the trainees at no charge. The March 25 Letter placed a value of approximately \$25,000 for those services.³ The March 25 Letter represents that the initiative for the training in [foreign country] was the result of [NGO]’s own initiative and “not the result of a request from any agency of the [foreign government].”⁴

Third, and finally, the March 25 Letter informed us that [NGO] intends to correspond with each member of Congress for the purpose of describing activities previously undertaken by [NGO] in [foreign country] in furtherance of enhancing the security posture of [foreign country] and supporting [foreign country]’s Veterans Hospital, and also, [NGO]’s planned future activities: sending retired U.S. flag and general officers to [foreign agency] and sending 40 U.S. citizens or permanent residents to [foreign country] for civil defense training. While the March 25 Letter represented that “[NGO] does NOT speak for any government (US or [foreign country])” and is “NOT a lobbying organization,”⁵ it intends to include the following concluding paragraph in its “informational” letter to Congress:

[NGO], as foremost an [redacted], would ask that Congress and the Administration see the [text describing policy issues].

In response to our letter of April 25, 2023, in which we made additional inquiries about the drafting of the proposed letter to Congress and, in particular, its concluding paragraph, you made the following representations in the April 26 Letter:

- (1) It was your idea to communicate with Congress by letter;
- (2) You made the decision of what would be contained in the letter after consulting with [NGO]’s CFO, who is a U.S. citizen;
- (3) You drafted the entire letter without assistance or input from anyone;
- (4) Under your leadership, [NGO] has not accepted and will not accept any funding from [foreign government] or any other foreign official or representative in support of the drafting and sending of the letter or any other letter to Congress;
- (5) There was no communication with [foreign government] officials or representatives about the proposed letter or concluding paragraph;
- (6) [NGO] has not and does not intend, to the best of your knowledge, to share a draft of the proposed letter with any [foreign government] official or representative; and

³ *Id.*, p.3.

⁴ *Id.*

⁵ *Id.*

- (7) No [foreign government] official or representative has offered any input or made any request as to the proposed letter.

The March 25 Letter further states that [NGO] has not received any money or in-kind support for any of its activities to date from the [foreign government] or any of its agencies, and further asserts that it funds its activities and administrative costs through donations from U.S. citizens or permanent residents.

[NGO] seeks an advisory opinion as to whether any of its planned activities would require [NGO]'s registration under FARA.

FARA Analysis

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 principal⁶ and who directly or through any other person,” and engages in one of the enumerated activities⁷ triggering registration.⁸ Thus, whether a person is an “agent of a foreign principal” under FARA depends on two factors – (1) the nature of the relationship between the person and its foreign principal, *and*, (2) whether the person is engaging in specified activities within the United States for or in the interests of such foreign principal. When both parts of the inquiry are established – that is, the person acts, directly or indirectly, at the order, request, direction, or control, of a foreign principal, *and* the person engages in one or more of the enumerated activities within the United States – an obligation to register under FARA will arise.

With respect to [NGO]'s inquiry, the March 25 Letter identified several foreign principals with whom [NGO] plans to interact, namely, [foreign agencies].⁹ The March 25 Letter, however,

⁶ Under FARA, the term a “foreign principal” includes the following:

- (1) a government of a foreign country and a foreign political party;
 - (2) 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; and
 - (3) 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).

⁷ Those enumerated activities, when engaged in within the United States for or in the interests of a foreign principal include:

- (i) political activities;
- (ii) acting as a public relations counsel, publicity agent, information-service employee, or political consultant;
- (iii) soliciting, collecting, disbursing, or dispensing contributions, loans, money, or other things of value; or
- (iv) representing the interests of the foreign principal before any agency or official of the Government of the United States.

22 U.S.C. § 611(c)(1).

⁸ *Id.*

⁹ According to the March 25 letter, your interactions with agencies or representatives of the [foreign government] concern only the sending of retired U.S. military officers and first responder trainees to [foreign country], not the

asserted that, with respect to all three of the proposed activities described in the letter, [NGO] is acting completely of its own initiative, and that it has not received any instruction or request from any agency or part of the [foreign government] to perform the activities. With respect to [NGO]'s plan to send retired U.S. military officers and [other U.S. persons] to [foreign country], the March 25 Letter represents that those activities were not directed, or controlled, or requested by any foreign principal. Moreover, there is no indication that the things of value expected to be provided by [the foreign government agencies] will be received by [NGO] contingent upon any activity on the part of [NGO] or attached to any order, request, direction, or control by the foreign principals.¹⁰ With respect to the letter to Congress, you represent that the letter was purely your idea and was not requested by or coordinated in any way with the [foreign government]. With respect to each of the planned activities, therefore, [NGO] does not appear to be acting “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.”¹¹

Given the facts described in the March 25 and April 26 Letters, we assess that there is no agency relationship between [NGO] and [foreign] government foreign principals. Accordingly, we assess that [NGO] will not be acting as an agent of a foreign principal under 22 U.S.C. § 611(c) at this time.¹²

Please note that this advisory opinion is based entirely upon the facts and representations set forth in the March 25 and April 26 Letters. Our determination must be revisited in the event that any of the facts or circumstances described in the March 25 and April 26 Letters change. If that occurs, please inform us so we may assess whether there is a registration obligation.

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

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

planned letter to Congress. As noted in both the March 25 Letter and the April 26 Letter, you have not and do not intend to have any interactions with [foreign government] officials or representatives with respect to this letter.

¹⁰ We also note that the travel of retired U.S. military officers and first responder trainees to [foreign country] are activities occurring outside the United States.

¹¹ 22 U.S.C. § 611(c)(1).

¹² Because we are issuing our opinion based on the lack of an agency relationship, we make no representation as to whether the proposed activities would fall into any of the categories of activities requiring registration set out in 22 U.S.C. § 611(c)(1).