



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

June 12, 2023

[Name and Address Redacted]

Re: Request for an Advisory Opinion for [Redacted]

Dear [Name Redacted]:

We write in response to your letter of May 9, 2023 (“May 9 Letter”), received by this office on May 12, 2023, in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to whether your client, [US Nonprofit Corporation], and its Board of Directors, including its officers, employees or other representatives, are required to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”) for proposed activities to be undertaken on behalf of [Foreign Association] funded by [Foreign Government]. Having considered the information contained in the May 9 Letter and the enclosed [Redaction] Agreement, Funding Criteria, and Cooperation Agreement, we are of the opinion that [US Nonprofit Organization] and individuals engaged in the proposed activities on behalf of [Foreign Association] would be required to register under the Act.¹

Background

According to the May 9 Letter, the mission of [US Nonprofit Organization] is:

[t]o deliver language courses and programs that foster communication, education, collaboration, and cultural exchange for passionate learners for whom [Language] is not their first language, natives of [Language] -speaking countries, and people residing in the [region of] United States interested in or affiliated with [Foreign Country and Region of the World] through heritage, career, or personal experience.²

Further, the May 9 Letter states that [US Nonprofit Organization] “is the preeminent non-profit source for [Foreign Language] instruction, heritage, and cultural exposure in the [region of] United States,” delivering [language courses that foster communication, education, collaboration, and cultural exchange for people] interested in or affiliated with [Foreign Country and Region of

¹ You informed us in the May 9 Letter that [US Nonprofit Corporation] seeks an advisory opinion from the FARA Unit prior to entering into the [Agreement]. The May 9 Letter notes that “[w]hile the [Agreement] refers to and is titled ‘[Title Redacted]’, the agreement to which it refers in its document, ta [sic] 2007 agreement between [Foreign Association] and [Foreign Country Cultural Center in the US], has never been in effect.” May 9 Letter at 2.

² *Id.* at 1.

[Name Redacted]

the World] through heritage, career, or personal experiences.”³ [US Nonprofit Corporation]’s vision, as described in the May 9 Letter, is to “provide experiences to enhance learning and the development of personal and professional relationships by combining immersive classroom and online learning, as well as integrated cultural programs to enrich learning opportunities, build relationships and create a greater sense of community.”⁴

Additionally, the May 9 Letter indicates that [US Nonprofit Corporation] works with the [Foreign Government] and [Foreign Government]’s Consulate General in [US City], especially with regard to cultural programs. The letter further represents that the Consul Generals from [Foreign Country] and [Foreign Country 2], as well as Honorary Consuls of [Foreign Country 3] and [Foreign Country 4], are ex officio members of [US Nonprofit Corporation]’s Board, but notes that the Consuls from [Foreign Country] and [Foreign Country 2] are not voting members.⁵

As set forth in the May 9 Letter, [US Nonprofit Corporation] is a nonprofit that relies on contributions for its operations and programming. Course fees account for approximately 50% of [US Nonprofit Corporation]’s annual budget, with the remaining 50% funded by other sources.⁶ The May 9 Letter encloses a document entitled “[Title Redacted],” which identifies the criteria under which projects can be funded. Specifically, the document states that the [Foreign Government Office] has established the following criteria for funding cultural center projects:

- projects with an artistic, cultural or cultural-political content
- projects that disseminate regional information or address socio-political issues
- projects that teach or promote [Foreign Language] as a foreign language
- related public relations measures and quality development of the cultural center⁷

Importantly, this document further specifies the criteria under which the [Foreign Government Office] will fund cultural center projects. For instance, the document states that “[t]he prerequisite in each case is that a current image of [Foreign Country] must be conveyed,” and that “[h]istorical topics must be presented in such a way that they are linked to current issues.”⁸ In addition, the [Agreement] requires [US Nonprofit Corporation] to cooperate with the [Another Foreign Country Alliance] (also reportedly present in [US City]), recognizing “the political importance in the context of the [Foreign Country-Foreign Country] cultural cooperation.”⁹

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, [Title Redacted] at 1.

⁸ *Id.*

⁹ *Id.*, [Agreement] at ¶ A.5.

[Name Redacted]

FARA Analysis

1. [US Nonprofit Corporation] Has an Obligation to Register

The term “foreign principal” is defined by FARA to include “a government of a foreign country and a foreign political party,” as well as “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.”¹⁰ According to the May 9 Letter, [US Nonprofit Corporation] proposes to enter into a contract with [Foreign Association] funded by [Foreign Government].¹¹ [Foreign Association] and [Foreign Government] constitute “foreign principals” for purposes of the Act.

Absent an applicable exemption, the registration requirements of the Act extend, pursuant to Section 611(c), to

- (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other 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 –

- (i) engages within the United States in political activities for or in the interests of such foreign principal[.]

In performing the projects, the [Foreign Government]’s funding for which is contingent upon conveying “a current image of [Foreign Country]” and linking historical topics to current issues relevant to [Foreign Country], [US Nonprofit Corporation] would be acting at the order, request, or under the direction or control¹² of [Foreign Association] and/or [Foreign Government], both of which are foreign principals.

The Act defines “political activities” to include, in relevant part, “any activity that the person engaging in believes will, or that the person intends to, in any way influence . . . 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 a foreign political party.”¹³ We believe that by entering into the proposed agreement with [Foreign Association], [US Nonprofit Corporation] would be agreeing to engage in “political activities”.

¹⁰ 22 U.S.C. § 611(b)(1).

¹¹ May 9 Letter at 1.

¹² Under FARA’s implementing regulations, the term “control” includes “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).

¹³ 22 U.S.C. § 611(o).

[Name Redacted]

The May 9 Letter describes [US Nonprofit Corporation]'s vision "[t]o provide experiences to enhance learning and the development of personal and professional relationships by combining immersive classroom and online learning, as well as integrated cultural programs to enrich learning opportunities, build relationships and create a greater sense of community."¹⁴ [Foreign Government] funding for these experiences is contingent on these experiences conveying the "current image of [Foreign Country]" and with the condition that "[h]istorical topics must be presented in such a way that they are linked to current issues."¹⁵ Included among the list of potential [US Nonprofit Corporation] projects are those "with an artistic, cultural or cultural-political content," and those "that disseminate regional information or address socio-political issues."¹⁶ It is our view that the funding criteria generally, and the scope of these potential projects specifically, demonstrate that [US Nonprofit Corporation]'s proposed activities are intended to promote the political and/or public interests of [Foreign Country], thereby constituting "political activities" as defined in the Act.¹⁷ Further, the requirement that [US Nonprofit Corporation] cooperate with [Another Foreign Country Alliance] because of "the political importance in the context of the [Foreign Country-Another Foreign Country] cultural cooperation"¹⁸ suggests that, at a minimum, [US Nonprofit Corporation] would be required to align its public positions with the [Foreign Government]'s. This provision reinforces the conclusion that [US Nonprofit Corporation] would be engaging in "political activities".

2. [US Nonprofit Corporation] Does Not Qualify for the Exemption for Religious, Scholastic, or Scientific Pursuits

The May 9 Letter expresses your belief that [US Nonprofit Corporation] and its Board would be exempt from registration under FARA pursuant to Section 613(e), contending that "the activities of [US Nonprofit Corporation] are 'in furtherance of the bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts[,]'"¹⁹ and are not "political activities" as defined by the Act.²⁰ We disagree.

Section 613(e) of FARA provides that an agent of a foreign principal may be exempt from FARA's registration requirements if "engaging or agreeing to engage *only* in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts

¹⁴ *Id.* at 3.

¹⁵ *Id.*, [Title redacted] at 1.

¹⁶ *Id.*

¹⁷ Engagement in these activities would also qualify [US Nonprofit Corporation] as a "publicity agent" and an "information-service employee," as FARA defines those terms. *See* 22 U.S.C. § 611 (h), (i).

¹⁸ *Id.*, [Agreement] at ¶ A.5.

¹⁹ May 9 Letter at 3 (quoting 22 U.S.C. § 613(e)).

²⁰ *Id.*

[Name Redacted]

(emphasis added).”²¹ Section 5.304(d) of FARA’s regulations further clarifies this language: “The exemption provided by section 3(e) of the Act shall not be available to any person described therein if he engages in political activities as defined in section 1(o) of the Act for or in the interests of his foreign principal.”²²

Based on the information provided in the May 9 Letter and enclosures, we believe that several of the activities [US Nonprofit Organization] contemplates performing could be considered exempt pursuant to the exemption outlined in Section 613(e) of the Act. To the extent that [US Nonprofit Organization] engaged *only* in activities considered exempt under Section 613(e), it would not be subject to FARA’s registration requirements.

However, FARA’s regulations specify that the exemption outlined in Section 613(e) is not available if a person engages in political activities as defined by the Act.²³ The facts as described in the May 9 Letter suggest that [US Nonprofit Corporation] proposes to engage in a wide array of activities—including political activities—in accordance with funding criteria established by [Foreign Government]. As discussed above, many of [US Nonprofit Corporation]’s proposed activities qualify as political. We are, therefore, of the view that [US Nonprofit Corporation] is subject to FARA’s registration requirements for the activities contemplated by the [Agreement], and that no exemption applies that would relieve [US Nonprofit Corporation] of its obligation to register if it were to engage in these activities.

Please note that “each partner, officer, director, associate, employee, and agent of a registrant [*i.e.*, of [US Nonprofit Corporation]] who engages in activity within the United States as an agent of [Foreign Association] and/or [Foreign Government] is required to file a registration statement under the Act. This obligation may be satisfied by the filing of a short form registration statement.²⁴ A short form registration statement need not be filed if “[a] partner, officer, director, associate, employee, or agent of a registrant . . . does not engage directly in registrable activity in furtherance of the interests of the foreign principal [*i.e.*, of [Foreign Association]] [.].”²⁵

Please note, as we have referenced in this letter, the requirements of Section 5.300 of the FARA’s 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.”²⁶ We believe that the same burden would be borne by a person who claims to be exempt from the individual registration requirements of Section 5.202 of FARA’s regulations.

²¹ 22 U.S.C. § 613(e). It is important to note that the burden of establishing the availability of an exemption from registration under FARA rests upon the person for whose benefit the exemption is claimed. 28 C.F.R. § 5.300.

²² 28 C.F.R. § 5.304(d).

²³ *Id.*

²⁴ 28 C.F.R. § 5.202(a).

²⁵ *Id.* at § 5.202(b).

²⁶ 28 C.F.R. § 5.300.

[Name Redacted]

The present advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein, and the requirements of the Act and its regulations. If there are any changes in the facts and circumstances you related to us, you should contact us immediately.

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 or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit