



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 6, 2023

Via Email

[Requestors]

[Address]

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

Dear [Requestors]:

We write in response to your letter of May 30, 2023 (“May 30 Letter”), which was received on June 6, 2023, requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), concerning whether your client, [consulting firm] would have an 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”) for activities it proposes to engage in for the [international humanitarian agency].

The May 30 Letter suggests that [consulting firm’s] proposed activities on behalf of the [international humanitarian agency] are exempt from registration pursuant to the exemptions set out in Section 613(d)(2) and Section 613(d)(3) of the Act. Based on the representations in your letter and for the reasons stated more fully herein, we will not contest that the exemption in Section 613(d)(2) applies, and [consulting firm] therefore would not be obligated to register under FARA.¹

Background

In your May 30 Letter, you inform us that the [international humanitarian agency] is one of the world’s largest humanitarian agencies. You state that the [international humanitarian agency] responds to crises worldwide resulting from armed conflicts, violence, disasters, and epidemics. One of the [international humanitarian agency]’s primary goals is “to ease the suffering of migrants and to resolve the plight of persecuted, conflict affected and forcibly displaced people around the world.”² You recount that the [international humanitarian agency] was founded in [date redacted] when it began providing assistance [redacted]. Today, you represent that the [international humanitarian agency] is headquartered in [foreign country], works closely with [redacted] and other international relief organizations, serves as the [coordinator for humanitarian assistance], and is funded by [foreign countries] around the world, including the United States, which you characterize as [redacted].

¹ As detailed below, we do not believe that [consulting firm’s] proposed activities qualify for the exemption set out in Section 613(d)(3) of the Act.

² May 30 Letter at 2.

You inform us that [consulting firm] plans to engage with members of Congress and the Executive Branch to increase their awareness of the [international humanitarian agency]'s activities around the world and attempt to increase U.S. government funding of the [international humanitarian agency]. You further specify that [consulting firm] plans to perform the following activities:

- Facilitate discussions to educate and increase awareness of [international humanitarian agency] activities, disseminate information, gather intelligence and monitor issues of importance to [international humanitarian agency] with a specific emphasis on activities before Congress and the executive branch.
- Build a sustainable engagement with Congress and the Administration to increase the core government funding to [international humanitarian agency].
- Meet with key congressional members and staff of the House and Senate to educate them on migration management and increase awareness of [international humanitarian agency]'s work; more specifically, the activities surrounding international [redacted] law, policy, protection of [redacted] rights, [redacted] health and the gender dimension of [redacted] and [redacted].
- Engage House and Senate Appropriations Subcommittees on funding levels specifically related to [international humanitarian agency], both core and project-based.
- Engage House Foreign Affairs and Senate Foreign Relations Committees to educate and increase awareness of [international humanitarian agency] activities regarding [redacted].
 - As part of this engagement, seek authorization language to establish long-term funding avenues.
- Work with the Biden Administration to include FY 2024 appropriations requests (and beyond) for [international humanitarian agency] by engaging with the following relevant departments and agencies:
 - The U.S. Office of Management and Budget
 - The U.S. State Department

- The U.S. Agency for International Development³

FARA Analysis

FARA defines the term “foreign principal” to include, in relevant part, “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 county.”⁴ According to the May 30 Letter, the [international humanitarian agency] is an international organization headquartered in [foreign country]. Accordingly, you represent in the May 30 Letter that the [international humanitarian agency] qualifies as a foreign principal for purposes of FARA.⁵ We will not contest this assertion.

Under FARA, a party is an “agent of a foreign principal” if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal” and, in pertinent part:

(i) engages within the United States in political activities⁶ for or in the interests of such foreign principal; . . .

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States[.]⁷

As described in the May 30 Letter, [consulting firm] would be acting at the order, request, and under the direction or control of its client, the [international humanitarian agency], when (1) seeking to influence the U.S. government to increase its funding for the [international humanitarian agency] and thereby change U.S. domestic and foreign policies; (2) soliciting funding for the [international humanitarian agency]; and (3) representing the [international humanitarian agency]’s interests before members of Congress and Executive Branch officials. Accordingly,

³ *Id.* at 3-4.

⁴ 22 U.S.C. § 611(b)(3).

⁵ May 30 Letter at 2 n.1.

⁶ FARA defines “political activities” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party[.]” 22 U.S.C. § 611(o).

⁷ 22 U.S.C. § 611(c)(1).

[consulting firm]’s proposed conduct would qualify it as an agent of [international humanitarian agency] under the Act. Absent an exemption, such activities would require registration.

You first inquire whether [consulting firm] would qualify for the exemption set forth in Section 613(d)(2) of the Act, which exempts “[a]ny person engaging or agreeing to engage only . . . in other activities not serving predominantly a foreign interest.”⁸ FARA’s regulations provide that political activities:

will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.

28 C.F.R. § 5.304(c). Because [consulting firm]’s activities on behalf of the [international humanitarian agency] are neither directed by a foreign government or foreign political party nor intended to promote the interests of either, we concur with your assertion that [consulting firm] qualifies for the exemption set forth in Section 613(d)(3) of the Act, and therefore is not required to register.

You also inquire whether [consulting firm] would qualify for the exemption set forth in Section 613(d)(3), which exempts “[a]ny person engaging or agreeing to engage *only* . . . in the soliciting or collecting of funds and contributions within the United States to be used *only* for medical aid and assistance, or for food and clothing to relieve human suffering.”⁹ As described in the May 30 Letter, however, [consulting firm]’s proposed activities extend beyond “the soliciting or collecting of funds and contributions” and include broad advocacy on the [international humanitarian agency]’s behalf. Among other things, [consulting firm] plans to:

- Facilitate discussions to educate and increase awareness of [international humanitarian agency] activities, . . .
- Disseminate information, . . .
- Meet with key congressional members and staff of the House and Senate to educate them on [redacted] management and increase awareness of [international humanitarian agency]’s work [,] . . .
- Engage House Foreign Affairs and Senate Foreign Relations Committees to . . . seek authorization language to establish long-term

⁸ May 30 Letter at 1.

⁹ 22 U.S.C. § 613(d)(3) (emphasis added).

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funding avenues [, and] . . .

- Work with the Biden Administration to include FY 2024 appropriations requests (and beyond) for [international humanitarian agency] by engaging with [Executive Branch] departments and agencies[.]

These activities plainly extend beyond soliciting and collecting funds—they include disseminating information, lobbying Congress for changes to legislation, and seeking to alter Executive Branch policy. Accordingly, notwithstanding [international humanitarian agency]’s humanitarian mission, [consulting firm]’s proposed activities would not qualify for the exemption set forth in Section 613(d)(3) of the Act. However, because the proposed activities qualify for the exemption set forth in Section 613(d)(2), as discussed above, [consulting firm] would not be required to register under the Act.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m).

Sincerely,

Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit