



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 19, 2018

Via Email and First Class Mail

[Addressee deleted]

Re: [U.S. firm]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name deleted]:

We write in response to your letter of September 17, 2018, in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligations of your client, [U.S. firm], and its principal, [U.S. person],¹ under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based upon the representations made in your letter, and limited to the specifics of the four scenarios you have outlined, we have determined that [U.S. firm] does not currently have an obligation to register under the Act.

We understand [U.S. firm] to be a company incorporated in [state within the United States] and owned by [U.S. persons]. The company is based in [state within the United States], and features [text deleted] production of historical and public policy documentaries, books and newsletters, speeches, audio books, photographic essays, and television and radio appearances.² As noted in your September 17, 2018, letter, as part of [U.S. firm]’s business, [U.S. person] engages in paid appearances, arranged through a booking agency, [U.S. corporation], and [U.S. person] also provides consulting services in a variety of areas. Your September 17, 2018, letter takes note of four instances in which [U.S. person] has or will perform activities critical of [foreign country] and voicing support of [leadership] change in [foreign country], and asks for our opinion on whether these activities are registerable under FARA.

Generally speaking, FARA is a disclosure statute which requires registration of “agents of foreign principals” who are engaged in “political activities” or other specified activities under the Act.³ Under the Act, an “agent of a foreign principal,” required to register

¹ [text deleted].

² [text deleted].

³ There are a number of exemptions to the registration requirement outlined in the statute which are not germane to the subject matter of this letter. *See* 22 U.S.C. § 613.

means—

(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;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contribution, 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; and

(2) any person who agrees, consents, assumes or purports to act as, or who holds himself out to be, whether or not pursuant to a contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

22 U.S.C. § 611(c).

We, therefore, examine the four activities outlined in your letter in light of that standard.

1. Private Communication to [foreign country] Ambassador to the United States.

You represent in your September 17, 2018, letter that [U.S. person] was approached by a person believed to be a citizen of [foreign country] and [foreign country] and was asked by this person to approach the [foreign country] Ambassador to the United States to seek funding from the [foreign government] to be utilized to promote democracy in [foreign country]. Although the meeting between [U.S. person] and the Ambassador would most likely take place in the United States, none of the activities contemplated to occur as a result of the meeting would take place within the United States. The contemplated activities resulting from the meeting would take place outside the United States in the nature of mobilizing [foreign country] citizens to support change of their government.

While the person soliciting [U.S. person] to engage with the [foreign country]

Ambassador could be considered a “foreign principal” under the Act,⁴ and [U.S. person] did fulfil a request made by the individual, his interactions with the [foreign country] Ambassador would not be considered as acting within the United States for purposes of the Act. The soliciting of funds was made to a foreign party and the funds solicited were to be spent outside the United States. To the extent that [U.S. person] would be engaging in political activities, as that term is defined in the statute,⁵ those activities were directed outside the United States as well, and accordingly, do not trigger a registration obligation.

2. Paid Speaking Appearances.

As noted in your September 17, 2018, letter, [U.S. person] made a number of paid appearances before groups, both inside and outside the United States, concerned about the status of [foreign country], national security, human rights, and the dangers associated with the current leadership in [foreign country].⁶ You have asserted that the engagements were sponsored by the [U.S. organization] in support of [foreign political party]. You have characterized the [U.S. organization] as a non-profit, 501(c)(4) volunteer organization formed by U.S. persons of [foreign country] descent, a characterization that is replicated on the [U.S. organization]’s website.⁷ You characterize the [foreign political party] as a group of [foreign country] expatriates who live in various countries, including the United States.⁸ You further note that [U.S. person] speaks not only of [foreign political party], but also about other groups who promote democracy in [foreign country].

If [U.S. person]’s paid appearances in the United States are solely sponsored by the [U.S. organization], then [U.S. person] would not have an obligation to register, since the [U.S. organization] would not be a foreign principal. However, if the [U.S. organization] is acting in any way on behalf of [foreign political party], then [U.S. person]’s paid appearances could be registerable activities under FARA. We also note that [U.S. person] has spoken in [a foreign country], at [a conference]. We note that [a foreign organization] is a political organization based in [foreign country], with a [U.S. office].⁹ [The U.S. office of the foreign political

⁴ The term “foreign principal” includes— “a government of a foreign country and a foreign political party,” “a person outside of the United States,” or “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)(2).

⁵ The term “political activities” means 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 foreign political party. 22 U.S.C. § 611(o).

⁶ The appearances that occurred outside the United States are not registerable because of their locations. Therefore, our analysis will focus solely on the appearances that occurred inside the United States.

⁷ [text deleted]

⁸ [text deleted]

⁹ [text deleted]

organization] is registered under FARA for its activities on behalf of [the foreign organization].¹⁰ [the foreign organization and its U.S. office] are affiliated with and supportive of [foreign political party], and engage in activities to their benefit.¹¹ Therefore, to the extent that [the foreign organization or its U.S. office] would pay for or otherwise sponsor or support activities or appearances undertaken by [U.S. person] in the United States, then those activities could or would be registerable under FARA.

3. Past Activities to Promote Democracy in [foreign country]

You have represented that [U.S. person] has joined other opinion leaders in jointly signed letters and jointly issued public statements regarding the resistance movement in [foreign country], the need for changes in U.S. policy toward [foreign country], [text deleted], and other issues related to [foreign country] and U.S. policy toward [foreign country]. You also note that these same individuals issue a public statement of support for the annual rally in [foreign country] in support of the [foreign country] resistance movement. You further represent that some of the letters and statements have been directed to persons in the U.S. government.

As long as these letters are self-generated and are not written “at the order, request, or under the direction or control, of a foreign principal,” such as [foreign political party] or [the foreign organization], then this activity would not trigger a registration obligation. 22 U.S.C. § 611(c)(1).

4. Potential Future Activities to Support the Pro-Democracy Movement in [foreign country].

Your September 17, 2018, letter describes a number of scenarios in which [U.S. person] shares his ideas in support of opposition to the [foreign government] and advocating for its replacement with a democratic form of government. These ideas are shared both inside and outside the United States and are not paid engagements. You also describe, in your letter, ongoing interactions and communications with foreign nationals, namely, [the foreign organization], [foreign political party], and individual leaders of the pro-democracy in [foreign country] movement, all foreign principals under the Act.

This particular scenario may lead to a registration requirement if [U.S. person] enters into an agency relationship with any of these foreign principals. An agency relationship may be formed if [U.S. person] acts in the United States “at the order, request, or under the direction or control, of a foreign principal.” *Id.* [U.S. person]’s statements in support of [the foreign organization, foreign political party], and individual leaders of the pro-democracy in [foreign country] movement, could require registration if they are being made on their behalf.

Accordingly, we view the above-described activities of [U.S. person], taken through [U.S.

¹⁰ [text deleted]

¹¹ [text deleted]

[name deleted]
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person's] business, [U.S. firm], to not require registration as long as they are limited in the ways described in this letter. If any of [U.S. person]'s activities are the result of an agency relationship with any foreign principal, or differ in any way from the activities described in your September 17, 2018, letter, then we ask that you re-engage with this office concerning a possible obligation to register under FARA.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name deleted] or me by telephone at 202-233-0776, if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather H. Hunt", with a large, stylized flourish at the end.

Heather H. Hunt, Chief
FARA Registration Unit