



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 15, 2021

**Via E-mail**

[name]

[address]

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

Dear [name]:

We write in response to your letter of August 6, 2021 (“August 6 Letter”), received in this office September 7, 2021, in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of [requester], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Included in your submission was a description of a soon-commencing project entitled [project title] in which [requester] will be participating and [a funding agreement] entered into between [requester] and [foreign country ministry].<sup>1</sup> Based on the representations made in your submission and the provided [funding agreement], our opinion is that [requester] is proposing to engage in activities requiring its registration as an “agent of a foreign principal,” as defined in Section 611(c) of the Act.

**I. Background**

According to your submission, [requester] is a 501(c)(3) non-profit [redacted] advisory group headquartered in [U.S. city], with staff members located in Washington, D.C., [and other places]. You have described [requester’s] mission as addressing global challenges and preventing political conflict by offering advice and assistance in diplomacy to democratic governments and non-state actors. You assert in your letter that [requester’s] services include providing information and analysis of diplomatic situations and assistance in developing diplomatic strategy. According to the August 6 Letter, [requester] helps its partners secure and implement peace agreements, end conflict, address climate change, and find solutions to urgent crises before [international membership organizations], and other international institutions. The August 6 Letter asserts that [requester’s] work is international in scope and focused on solving problems through international institutions such as [redacted]. The August 6 Letter also notes that because the United States Government (“USG”) assumes an important position in institutions, such as [redacted], [requester] will seek the views of the USG to assist partners in diplomatic efforts.<sup>2</sup>

The August 6 Letter describes the goal of the work under the [name of project] to be building the capacity of [identified persons] who are members of [political factions and groups],

<sup>1</sup> You provided our office with a copy of this agreement September, 15, 2021.

<sup>2</sup> [redacted].

and [redacted] civil society. The letter further describes that [requester's] primary interlocutors within the [foreign political faction] will be based and working outside of the United States. While some U.S.-based [requester] members will provide support virtually from the United States, the August 6 Letter asserts that the vast majority of the activities will be directed at individuals located outside of the United States, with in-person support, to the extent consistent with COVID-19 restrictions, taking place outside of the United States.

Referring to whether an agency relationship exists between [requester] and the [foreign political faction] as a foreign principal, the August 6 Letter asserts that [requester] does not have “a broader client relationship” with the leadership of the [foreign political faction], nor is there a contractual relationship between [requester] and any element of the [foreign political faction]. [Requester] asserts that there is no relationship of control between [requesters] and its partners in the [foreign political faction], and thus, no agency. The August 6 Letter discloses, and the [funding agreement] details, that the project will be funded through a grant from [foreign government agency], and that no fee will be paid to [requester] by the [foreign political faction] or other party. The August 6 Letter asserts that the grant is a “no strings attached” agreement and that the [funding agreement] explicitly states that there is no agency relationship between [requester] and [foreign government agency].<sup>3</sup>

## II. FARA Analysis

Under FARA, 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 and within the United States, “engages in political activities” or “acts . . . as a political consultant . . . for or in the interests of such foreign principal.” (Emphasis added.) 22 U.S.C. § 611(c)(1)(i) and (ii).

The definition of “foreign principal” contained in FARA includes “a government of a foreign country and a foreign political party.” 22 U.S.C. § 611(b)(1). Under this definition, the [foreign political faction] and [foreign government agency] are foreign principals under the Act. 22 U.S.C. § 611(a)(1).

The inquiry to be made under FARA, in this and other instances, is a two-part inquiry, exploring: (1) the nature of the relationship between the agent and a foreign principal; and, (2) whether the agent has engaged within the United States in one of the enumerated activities in the Act for or in the interests of such foreign principal. 22 U.S.C. § 611(c)(1). In this case, [requester] has a contractual relationship with an agency of the [foreign government], under which [requester] is obligated to perform specified and detailed obligations for the benefit of the [political faction] in order to receive funding from [foreign government agency]. Because of the contract and its provisions, it is clear that there is an agency relationship between [foreign government agency]

---

<sup>3</sup> [Redacted.] Such provisions in contracts are not dispositive of the question of whether there is an agency relationship between parties under FARA.

and [requester] in which [foreign government agency] exercises control over [requester].<sup>4</sup> [Foreign government agency's] funding of [requester] is predicated on [requester's] undertaking and fulfilling the objectives set out in the [funding agreement].<sup>5</sup> Further, an additional requirement for continued funding from [foreign government agency], during the pendency of the [funding agreement], is [requester's] provision of detailed narrative reports of its progress in achieving the objectives set out in the [funding agreement]. Under the [funding agreement], [requester] is also required to provide [foreign government agency] with a final narrative report at the completion of the project.<sup>6</sup> The agency relationship between [foreign government agency] and [requester] is, thus, sufficient to satisfy the first element of the inquiry. If the second element of the inquiry is also satisfied, then [requester] would have an obligation to register.

Under FARA, 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 a foreign political party,” while “the term ‘political consultant’ means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or foreign political party.” 22 U.S.C. § 611(o) & (p). While much of the work described by [requester] in its August 6 Letter addresses consulting activities to build general, untargeted diplomatic capacity for the women members of the [foreign political faction] and associated groups, specific items in the [funding agreement] demonstrate the intent to engage in political activities in the United States.<sup>7</sup> For example, the [funding agreement] allots funds for travel, coordinated and facilitated by [requester], for [foreign political faction] members to travel to [U.S. city] City and Washington, DC, with plans to engage in activities in support of fostering a “[g]reater public profile of the [foreign political faction] members.”<sup>8</sup> The [funding agreement] also contemplates hiring subcontractors to [engage in public relations], including in the United States.<sup>9</sup> These are “political activities” under FARA in that they are intended to favorably influence the views of the public towards the [foreign political faction]. Thus, the second prong of the FARA inquiry is met here as well.<sup>10</sup>

---

<sup>4</sup> 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... by contract or otherwise.” 28 C.F.R. § 5.100(b).

<sup>5</sup> [Redacted.]

<sup>6</sup> *Id.*

<sup>7</sup> These activities are outlined in the [funding agreement].

<sup>8</sup> [Funding agreement].

<sup>9</sup> *Id.*

<sup>10</sup> [Requester’s] activities as a political consultant would, therefore, be intertwined with political activities, further requiring registration. *See* “H.R. Rep. No. 89-1470 at 7; S. Rep. No. 89-143 at 9 (“a ‘political consultant’ would not be required to register as an agent unless he engaged in political activities, as defined, for his foreign principal.”). Although [requester’s] engagement in political activities may (or may not) represent a small portion of the services it is providing pursuant to the [funding agreement], it is important to note that there is no de minimis threshold of political activities to require registration.

### III. Conclusion

We, therefore, ask that you effect [requester's] registration for these foreign principals within 30 days of the date of this letter.<sup>11</sup> Our opinion is based solely on the facts as they have been presented to us, and any change could alter our opinion. Please keep us informed if [requester's] activities or its relationship with [foreign government agency] or the [foreign political faction] and related entities change in any respect, as our opinion may change.

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

Sincerely,

*/s/ Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief  
FARA Unit

---

<sup>11</sup> [Redacted.]