



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 20, 2022

[Name of Requestor]

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

Dear [Name of Requestor]:

We write in response to your letter of August 31, 2022 (“August 31 Letter”) and attachments thereto (“Attachments”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to your client, [U.S. Non-Profit Organization] 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”) and the application of the exemption provided in 22 U.S.C. § 613(d)(2).¹ Based on the representations you made in your request, we have concluded that [U.S. Non-Profit Organization] is not obligated to register under FARA at this time.

Background

According to your August 31 Letter, [U.S. Non-Profit Organization] is a “501(c)(3) non-profit organization that aims to build and grow an international network of [stakeholders] to confront global [issues].”² Its board and officers are all U.S. citizens.³ [U.S. Non-Profit Organization’s] Advisory Council as well as its members and partners include U.S. and foreign persons and corporations.⁴

Your letter explains that “[i]n [year], [U.S. Non-Profit Organization] was designated by the [U.S. agency] as a [name] Association . . . This designation allows [U.S. Non-Profit Organization] to work with the [U.S. agency] ‘to request the following limited [name] support in connection with its annual conference[.]’”⁵ [U.S. Non-Profit Organization] is partnering with [U.S. entity] on [symposium to occur abroad] in [date].⁶

[U.S. Non-Profit Organization’s] other activities include “plan[ning] events for its members to convene and for its Corporate Partners and sponsors to showcase their products and services.”⁷ Additionally, you assert that “separate from the events it plans, [U.S. Non-Profit Organization] will find it necessary to advance its mission by speaking to U.S. Government officials. This may be in the form of meetings with and/or letters to Congress, or more personal communications with [U.S.] officials, like those in [U.S. entity].”⁸ According to your letter,

¹ This exception to the obligation to register is available to “any person engaging or agreeing to engage only . . . in other activities not serving predominantly a foreign interest.” 22 U.S.C. § 613(d)(2).

² August 31 Letter at 2.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 3 (citing Attachment D).

⁶ *Id.* at 2, 4.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

“[w]hen this happens, the interactions are on behalf of the organization itself, vetted and decided upon by its leadership, and not on behalf of any particular member or foreign principal.”⁹

In your letter, you seek an advisory opinion on three matters. First, you seek guidance on whether [U.S. Non-Profit Organization] is

‘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,’ pursuant to 22 U.S.C. § 611(c) given its current structure as 501(c)(3), controlled by a U.S. Board that exercises sole discretion over its activities.^[10]

Second, you seek an opinion on “[w]hether [U.S. Non-Profit Organization] activities in planning, organizing and executing [symposium to occur abroad] require registration under the Act.”¹¹ Finally, you seek “guidance on an additional question, should it become relevant: If the FARA Unit determines agency does exist when [U.S. Non-Profit Organization] works with its foreign Corporate Partners while interacting with U.S. [name] officials, whether the exemption relating to ‘other activities not serving predominantly a foreign interest’ at 22 U.S.C. § 613(d)(2) is applicable.”¹²

FARA Analysis

As you are aware, 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 principal and who directly or through any other person,” and engages in one of the enumerated activities triggering registration.¹³

As an initial matter, you have not identified a foreign principal,¹⁴ on whose behalf [U.S. Non-Profit Organization] is acting or will act as an agent.¹⁵ Rather, you affirm in your letter that “[a]t no point will [U.S. Non-Profit Organization] seek to advance the agenda of a foreign

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

¹³ 22 U.S.C. § 611(c)(1).

¹⁴ 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).

¹⁵ 22 U.S.C. § 611(c)(1).

principal, nor seek to ‘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.’”¹⁶ You further represent that [U.S. Non-Profit Organization] “does NOT speak for any government” and “is NOT a lobbying organization.”¹⁷ You also represent that “no foreign principal exerts any control or is entitled to any direction via financial methods.”¹⁸

Given the absence of a foreign principal and based on the representations in your August 31 Letter that there is no agency relationship between [U.S. Non-Profit Organization] and any foreign principal, we find that [U.S. Non-Profit Organization] is not acting as an agent of a foreign principal under 22 U.S.C. § 611(c)(1), and is not obligated to register at this time.¹⁹ Because there is no agency relationship as it is understood under FARA, we do not need to assess the applicability of the exemption provided in 22 U.S.C. § 613(d)(2).

Please note that this advisory opinion is based entirely upon the facts set forth in your August 31 Letter and Attachments. Our determination must be revisited in the event that any of the facts or circumstances described in your letters change. For example, should [U.S. Non-Profit Organization’s] activities change such that it begins to engage in the activities enumerated in 22 U.S.C. § 611(c),²⁰ including political activities as defined in § 611(o), on behalf of a foreign principal, [U.S. Non-Profit Organization] may have an obligation to register. If that is the case, please inform us so we may assess whether there is a registration obligation.

¹⁶ August 31 Letter at 4 (citing 22 U.S.C. § 611(o)).

¹⁷ August 31 Letter at 3 (citing Attachment A).

¹⁸ *Id.* at 2.

¹⁹ Additionally, [U.S. Non-Profit Organization’s] role in [symposium to occur abroad], as described in your letter, does not bear on FARA as the related activities will occur outside of the United States. *See* 22 U.S.C. § 611(c)(1).

²⁰ 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 principal and who directly or through any other person” does any of the following:

- (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 contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

22 U.S.C. § 611(c). Note that it may be immaterial if the activity benefits [U.S. Non-Profit Organization] in addition to the foreign principal.

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