



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 29, 2023

Via E-mail

[Requestor Name]

[Address]

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

Dear [Requestor Name]:

We write in response to your August 14, 2023, e-mail, as supplemented on September 1, 2023, requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), on whether [Organization Name] (“[Organization Name]”), must register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA”), if it receives funding from the [Foreign Agency] (“Foreign Agency”), and performs certain work in connection with that funding. Based on the representations in your e-mail and its supporting documents, and for the reasons discussed below, we have determined that [Organization Name] would be obligated to register for the proposed activities.

I. Background

According to its website, [Organization Name] is a nonprofit organization that, among other things, “[Redacted]” and “[Redacted].”¹ The [Organization Name] website reflects that [Organization Name]’s principal place of business is in [Organization Location].²

In your e-mail, as supplemented on September 1, 2023, you state that the [Foreign Agency] is “[Redacted]” and that [Organization Name] applied to receive funds from the [Foreign Agency] to perform this work after it was forwarded an invitation seeking applicants issued by [Foreign Agency] (the “Invitation”).³

The Invitation, which you provided to the FARA Unit, describes the specific services that [Organization Name] would provide in return for funding and details the [Foreign Government] program that those services would advance. According to the Invitation, the program is called

¹ [Organization Website].

² *Id.*

³ Along with providing a copy of the Invitation on September 1, 2023, you clarified that the Invitation was originally directed to the [Applicant Name] (“[Applicant Name]”) and that [Organization Name] received the Invitation from [Applicant Name] after [Applicant Name] decided not to apply because it was unable to prepare an application by the Invitation deadline. You further noted that [Organization Name] does not currently have any oral or written agreement with the [Foreign Agency] because it has not yet been selected to work with the [Foreign Agency].

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[Redacted] (the “[Redacted] Program”) and was developed by [Foreign Country]’s [Foreign Agency] “[Redacted].” The Invitation states that the [Redacted] Program “[Redacted].” The [Redacted] Program is scheduled to begin on [Date Redacted], and last three years. The Invitation further states that the [Redacted] Program’s aim is “[Redacted].”

The Invitation states that the law clinic would give “[Redacted]” on pretrial and post-conviction cases, “[Redacted].” It explains that [Foreign Country] consulates will assess each case to determine whether the [Redacted] Program should intervene, and that the law clinic will, among other things, (1) assist in case review, (2) give case strategy recommendations, (3) help locate experts and defense attorneys for cases, and (4) help find pro bono representation where cases are expected to exceed the cost limits set by the [Foreign Agency]. In addition, according to the Invitation, the law clinic must provide training to [Foreign Country]’s consular protection officers on criminal legal processes to facilitate their intervention and participation in cases. The Invitation notes that the law clinic is expected to appoint lawyers, law students, and a clerk, and would intervene and perform some or all the required tasks on a case-by-case basis “[Redacted].”

According to your e-mail, [Organization Name] submitted a proposal (the “Proposal”) to the [Foreign Agency] in response to the Invitation. [Organization Name]’s submission—a copy of which you attached to your e-mail—consisted of a proposal for a criminal defense program for [Foreign Country] nationals in the United States, a spreadsheet concerning the program’s expected budget, and a cover letter. The cover letter indicates that [Organization Name] has requested \$[Redacted] from the [Foreign Agency] to cover the first year of the program. According to the Proposal and cover letter, [Organization Name] intends to implement the program by providing legal representation to [Foreign Country] nationals in pretrial and post-conviction cases and training [Foreign Country] consular officers on legal processes in criminal cases in coordination with the [Foreign Agency]. The cover letter notes that [Organization Name]’s program will include a community outreach component and states that [Organization Name] “[Redacted].” Relatedly, the Proposal comments that “[Redacted].” The Proposal and cover letter state that [Organization Name]’s program will be carried out by a team of attorneys, investigators, and support staff, and the Proposal notes that [Organization Name] will report regularly to the [Foreign Agency] on “[Redacted].”

Your e-mail indicates that [Organization Name] requests an advisory opinion on whether it must register as an “agent of a foreign principal” under FARA if it receives funding from the [Foreign Agency] and implements its proposed criminal defense program.

II. FARA Analysis

FARA’s definition of a “foreign principal” includes, among other things, a “government of a foreign country.”⁴ Because the [Foreign Agency] and [Foreign Agency] are agencies of the government of [Foreign Country], each qualifies as a “foreign principal” under FARA.

⁴ 22 U.S.C. § 611(b)(1).

Under Section 611(c) of FARA, an “agent of a foreign principal” is defined to include “any person who acts . . . at the order, request, or under the direction or control, of a foreign principal” and who, within the United States, among other things, (i) engages in “political activities” for or in the interests of the foreign principal; (ii) acts as a “public relations counsel” or “political consultant” for or in the interests of the foreign principal; or (iii) solicits, collects, disburses, or dispenses money for or in the interest of such foreign principal.⁵ FARA defines a “person” to include organizations,⁶ and its regulations define “control” and its variants to include “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.”⁷

“Political activities” under FARA means:

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[.]⁸

FARA defines a “public-relations counsel” as “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal[.]”⁹ and a “political consultant” as “any person who engages in informing or advising any other person with reference to . . . the political or public interest, policies, or relations of a foreign country[.]”¹⁰

[Organization Name]’s proposed activities implicate several of these provisions. If [Organization Name] were to receive funding from the [Foreign Agency] and implement its proposed criminal defense program, it would be acting as an agent of the [Foreign Agency] and [Foreign Agency] and performing activities that require registration. First, if [Organization Name] performs the proposed community outreach activities to promote its criminal defense program, it would be engaging in “political activities” under FARA because its activities would be intended to influence the U.S. public with reference to the [Foreign Country] government’s political or public interests, policies, or relations.¹¹ Second, because [Organization Name]’s outreach activities would constitute representing the [Foreign Country] government in a public relations matter pertaining

⁵ 22 U.S.C. §§ 611(c)(1)(i)-(iii).

⁶ 22 U.S.C. § 611(a).

⁷ 28 C.F.R. § 5.100(b).

⁸ 22 U.S.C. § 611(o).

⁹ 22 U.S.C. § 611(g).

¹⁰ 22 U.S.C. § 611(p).

¹¹ See 22 U.S.C. §§ 611(c)(1)(i), 611(o).

to the [Foreign Country] government's political or public interests, [Organization Name] would be acting as a "public relations counsel" under FARA.¹² Third, because [Organization Name]'s training of [Foreign Country] consular protection officers in connection with its proposed criminal defense program would qualify as advising others with reference to the [Foreign Country] government's political or public interests, policies, or relations, [Organization Name] would qualify as a "political consultant" under FARA.¹³ And fourth, if [Organization Name] receives the requested funding from the [Foreign Country] government and disburses those funds in the United States for expenses associated with its proposed criminal defense program, it would be soliciting, collecting, disbursing, and dispensing money for or in the interests of the [Foreign Country] government.¹⁴ [Organization Name] would therefore satisfy FARA's definition of an "agent of a foreign principal."

Because [Organization Name] would be acting as an "agent of a foreign principal" if it receives funding from the [Foreign Agency] and implements its proposed criminal defense program and would not be otherwise exempt from registration, it would be obligated to register under FARA.¹⁵ If [Organization Name] agrees to engage in the proposed activities referenced above, please register within 10 days of such agreement.¹⁶

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

¹² See 22 U.S.C. §§ 611(c)(1)(ii), 611(g).

¹³ See 22 U.S.C. §§ 611(c)(1)(ii), 611(p).

¹⁴ See 22 U.S.C. § 611(c)(1)(iii).

¹⁵ While Section 613(g) of FARA provides an exemption for legal representation, that exemption would be unavailable to [Organization Name]. Section 613(g) exempts:

[a]ny person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: Provided, That for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.

22 U.S.C. § 613(g). Here, as described above, [Organization Name]'s proposed activities, including the community outreach campaign (which constitutes "political activities") and training of [Foreign Country] consular officers (which constitutes serving as a "political consultant"), would "go beyond the bounds of normal legal representation of [its] client[s]" and, in the case of the community outreach campaign, would "amount to efforts to influence public opinion[.]" thereby rendering the exemption inapplicable. See H.R. REP. NO. 89-1470, at 13 (1966); accord Foreign Agents Registration Act Frequently Asked Questions, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/nsd-fara/frequently-asked-questions> (last visited Sept. 28, 2023) (discussing the legal representation exemption).

¹⁶ See 22 U.S.C. § 612(a).

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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/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit