



## U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 13, 2024

### **Via E-mail**

[Requestor's Name and Contact Information]

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

Dear [Requestor]:

We write in response to your June 17, 2024 letter (“the June Letter”), which you supplemented by letter that we received on August 13, 2024 (“the August Letter”), requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a) on whether your client, [Individual], must register under the Foreign Agents Registration Act (“FARA”) of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for certain activities he is performing on behalf of [Foreign Country]. Based on the representations in your letters and their supporting documentation, and for the reasons discussed below, we have determined that [Individual] must register for his activities.

### **I. Factual Background**

Your letters indicate that [Individual] is a medical practitioner specializing in “[medical disorder] disease and [medical specialty]” and a citizen of and domiciled in the United States.<sup>1</sup> According to the June Letter and its attachment, on May 1, 2024, [Foreign Government Official]<sup>2</sup> appointed [Individual] “[Redacted]” with the responsibility of “represent[ing] [Foreign Country]” on healthcare matters “in such forums as may from time to time be designated and require[d] . . . subject to any instructions” by [Foreign Government].<sup>3</sup> [Individual’s] appointment has not been recognized by the U.S. State Department, according to the August Letter.<sup>4</sup>

The June Letter indicates that [Foreign Government] will “call upon” [Individual] as [Redacted] to “represent the interests of [Foreign Country] at medical conferences and meetings around the world, including in the United States.”<sup>5</sup> According to your letters, [Individual’s] activities at these events will involve “advoca[ting] for healthcare spending and collaboration with countries that

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<sup>1</sup> June Letter at 1; Aug. Letter at 1.

<sup>2</sup> [Foreign Country] is a [Redacted] country located in [Redacted]. [Website Citations].

<sup>3</sup> June Letter at 1.

<sup>4</sup> Aug. Letter at 1.

<sup>5</sup> June Letter at 1.

have close diplomatic and economic ties with [Foreign Country]” and “discuss[ing] both medical challenges and successes in [Foreign Country].”<sup>6</sup> Further, your letters explain that the U.S. medical conferences that [Individual] will attend “are regularly attended by Federal, State, and Local health experts, many of whom are funded or employed in some manner by the [U.S.] Federal Government[,]” and that [Individual] will attend those conferences “primarily to meet with third-country colleagues in the medical profession.”<sup>7</sup> The August Letter notes that most of [Individual’s] activities as [Redacted] will occur outside the United States.<sup>8</sup>

You have asked us for an advisory opinion “confirm[ing] that the proposed activities of [Individual] do not require FARA registration” because they are exempt under “the ‘officials of foreign governments’ and/or ‘scientific pursuits’ exemptions” of FARA.

## **II. FARA Analysis**

FARA’s purpose is to require public disclosure by persons engaging in certain activities for or on behalf foreign principals so that the U.S. government and the people of the United States may evaluate those activities considering such persons’ function as foreign agents.<sup>9</sup>

FARA defines a “foreign principal” as, among other things, “a government of a foreign country.”<sup>10</sup> Because [Foreign Government Official] and [Foreign Government Office] are parts of [Foreign Country’s] government, they are “foreign principals” within the meaning of FARA.

The term “agent of a foreign principal” under FARA, in relevant part, means:

- (1) [A]ny person who acts as an agent, representative, employee, or servant, or 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; [or]

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<sup>6</sup> *Id.*; Aug. Letter at 2.

<sup>7</sup> June Letter at 1-2; Aug. Letter at 2.

<sup>8</sup> Aug. Letter at 2. The August Letter further notes that [Individual] expects to travel “primarily” to countries in Europe and the Asia-Pacific region and has “participated in an official governmental visit to Taiwan to advocate for financial assistance specifically aimed at meeting with the establishment of a tertiary hospital on [Redacted].” *Id.*

<sup>9</sup> See *Meese v. Keene*, 481 U.S. 465, 469 (1987) (discussing FARA’s legislative history); *About, Foreign Agents Registration Act*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/nsd-fara> (last visited Sept. 13, 2024).

<sup>10</sup> 22 U.S.C. § 611(b)(1).

- (ii) acts within the United States as a public relations counsel . . . [or] . . . information-service employee . . . for or in the interests of such foreign principal[.]<sup>11</sup>

FARA’s implementing regulations explain that the meaning of “control” as used in FARA includes “the possession or the exercise of the power, directly or indirectly, to determine the . . . activities of a person[.]”<sup>12</sup>

In addition, FARA defines the term “political activities” to include “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 the . . . public interests, policies, or relations of a government of a foreign country[.]”<sup>13</sup>

FARA also defines the term “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.”<sup>14</sup>

Finally, FARA defines the term “information-service employee” to include “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country[.]”<sup>15</sup>

FARA’s “agency” determination, therefore, is a two-part inquiry that considers both the *relationship* between the agent and the foreign principal and the *activities* the agent performs in the principal’s interests.

In this matter, [Individual] has an agency relationship with [Foreign Government] under FARA because he is acting as an agent and representative of [Foreign Government] at its behest and under its direction and control pursuant to his [Redacted] appointment. Moreover, as described above, while most of [Individual’s] activities may occur outside of the United States, [Individual] will also be attending medical conferences in the United States to “advocat[e] for healthcare spending and collaboration with countries that have close diplomatic and economic ties with [Foreign Country]” and “discuss . . . medical challenges and successes in [Foreign Country]” before an

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<sup>11</sup> 22 U.S.C. § 611(c)(1)(i)-(ii) (emphasis added).

<sup>12</sup> 28 C.F.R. § 5.100(b).

<sup>13</sup> 22 U.S.C. § 611(o).

<sup>14</sup> 22 U.S.C. § 611(g).

<sup>15</sup> 22 U.S.C. § 611(i).

audience consisting of “Federal, State, and Local health experts, many of whom are funded or employed in some manner by the [U.S.] Federal Government.”<sup>16</sup>

These activities by [Individual] at U.S. medical conferences are registrable under FARA for multiple reasons. First, they are “political activities” because they are intended to influence U.S. government officials and a section of the U.S. public “with reference to the . . . public interests, policies, or relations of a government of a foreign country.”<sup>17</sup> Second, [Individual] would be acting as a “public relations counsel” because he would be representing a foreign principal in a “public relations matter pertaining to [the foreign principal’s] public interests, policies, or relations.”<sup>18</sup> Third, he would also be acting as an “information-service employee” because he would be furnishing or disseminating “accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of [a] country other than the United States or of [a] government of a foreign country[.]”<sup>19</sup>

For these reasons, [Individual] qualifies as an “agent of a foreign principal” under FARA and must register for his U.S. activities unless an exemption applies. According to FARA’s implementing regulations, “[t]he burden of establishing the availability of an exemption . . . shall rest upon the person whose benefit the exemption is claimed.”<sup>20</sup>

Section 613(b) of FARA provides the following registration exemption concerning foreign government officials:

Any official of a foreign government, if such government is recognized by the United States, *who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State*, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official[.]”<sup>21</sup>

Here, [Individual] has not met his burden of establishing the availability of the exemption at Section 613(b). As discussed above, [Individual] is a U.S. citizen whose appointment as [Redacted] for [Foreign Country] is not recognized by the U.S. State Department and who is acting

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<sup>16</sup> See *supra* notes 6-7 and accompanying text.

<sup>17</sup> 22 U.S.C. § 611(c)(1)(i), (o).

<sup>18</sup> 22 U.S.C. § 611(c)(1)(ii), (g).

<sup>19</sup> 22 U.S.C. § 611(c)(1)(ii), (i).

<sup>20</sup> 28 C.F.R. § 5.300.

<sup>21</sup> 22 U.S.C. § 613(b) (emphasis added).

as a public relations counsel and an information-service employee.<sup>22</sup> Section 613(b), accordingly, does not apply to [Individual].<sup>23</sup>

Section 613(e) of FARA, in relevant part, exempts from registration “[a]ny person engaging or agreeing to engage *only* in activities in furtherance of . . . scientific pursuits[.]”<sup>24</sup> According to FARA’s implementing regulations, this exemption is not available to any person “if he engages in political activities as defined in [FARA] for or in the interests of his foreign principal.”<sup>25</sup>

[Individual] has also not met his burden of establishing the availability of the exemption at Section 613(e). As explained above, [Individual] would be engaging in “political activities” as defined by FARA.<sup>26</sup> Thus, Section 613(e) is inapplicable in this matter.

Please complete [Individual’s] registration within 10 days of the date of this letter. We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to

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<sup>22</sup> See *supra* notes 1, 4, 18-19 and accompanying text; see also 28 C.F.R. § 5.302 (explaining that the exemption is not available to any person unless he has filed with the Secretary of State formal notification of his status with a foreign government).

<sup>23</sup> The exemptions at Sections 613(a) and 613(c) of FARA, which your advisory opinion request did not argue apply to [Individual], are likewise inapplicable.

Section 613(a) exempts from registration:

A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer[.]

[Individual] cannot claim this exemption because the U.S. State Department has not formally recognized his appointment as [Redacted] for [Foreign Country]. See 22 U.S.C. § 613(a); 28 C.F.R. § 5.301 (noting a consular officer of a foreign government shall be considered duly accredited under Section 613(a) “whenever he has received formal recognition as such . . . from the Secretary of State”); *supra* note 4 and accompanying text.

Section 613(c) exempts from registration:

Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee[.]

[Individual] also cannot claim this exemption because he is acting as a public relations counsel and an information-service employee. See 22 U.S.C. § 613(c); *supra* note 22 (§ 5.302), 18-19 and accompanying text.

<sup>24</sup> 22 U.S.C. § 613(e) (emphasis added).

<sup>25</sup> 28 C.F.R. § 5.304(d) (emphasis added).

<sup>26</sup> See *supra* note 17 and accompanying text.

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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