U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

March 11, 2026

Via E-mail

[Attorney]
[Address]

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

Dear [Attorney]:

We write in response to your December 22, 2025, letter ("Letter") requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a), which you supplemented by letter on February 9, 2026 ("Supplement" or "Supp."). You have asked whether [Law Firm] ("[Law Firm]") and its lawyers must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended,[1] for activities the firm may undertake on behalf of [Individual 1] ("[Individual 1]"). Based on the representations in your letter as supplemented, and for the reasons discussed below, we have determined that the legal-representation exemption at 22 U.S.C. § 613(g) is inapplicable and [Law Firm] would be obligated to register for its proposed activities.

I. Background

[Individual 1] is a [Foreign Country] national.[2] Beginning in [year], he was a diplomatic agent accredited to either [Foreign Country Diplomatic Office 1] ("[Mission 1") or the [Foreign Country Diplomatic Office 2 ("Mission 2"), both in [U.S. City].[3] [Description of Individual's diplomatic position].[4]

On [date], [Individual 2] ("[Individual 2]") and [Individual 3] were charged in a criminal complaint in [U.S. district] with [U.S. crimes].[5] The allegations included [a connection to Foreign Country diplomatic-office functions].[6] [Individual 1] was an unindicted co-conspirator who the government

[1] 22 U.S.C. §§ 611-21.

[2] *See* [Indictment] ("Indictment").

[3] *Id.* ¶¶ [citations].

[4] Compl. ¶ [citation] ("Compl."); Supp. Attach. B-10, [Foreign Country foreign affairs ministry Declarant] Decl. ¶¶ [citations].

[5] *See* Compl. (charging conspiracy to commit [U.S. crimes]).

[6] *See, e.g.*, Compl. ¶ [citations].

acknowledged enjoyed full diplomatic immunity at the time due to [their] accreditation to [Mission 2].[7]

Shortly after the complaint was filed, [a U.S. diplomatic office] requested that [Mission 2] waive [Individual 1]'s immunity or, should it decline to do so, that [Individual 1] depart the United States.[8] [Foreign Country] then recalled [Individual 1] and [they have] resided in that country since then without ever returning to the United States.[9]

Following [Individual 1]'s departure from the United States, a grand jury returned an indictment with charges similar to those in the complaint but adding [Individual 1] as a defendant.[10] That [date] indictment included allegations [of crimes with some connection to Foreign Country diplomatic-office official functions].[11]

[Individual 1] responded to the indictment by trying—without being arraigned and while remaining in [Foreign Country]—to persuade the U.S. Attorney's Office for [a district] ("USAO") to dismiss the indictment as part of a settlement agreement. [Law Firm] represented [Individual 1], arguing that he was entitled to diplomatic immunity.[12] [Individual 1] signed the representation agreement for legal work by [Law Firm] while [Foreign Country]'s [foreign affairs ministry] ("MFA") paid the resulting invoices.[13]

Following the indictment, the criminal proceedings proceeded as to [Individual 2]. [Discussion of proceedings as to Individual 2 and sealed briefing therein filed by non-appearing co-defendant Individual 1]. The case remains open as to [Individual 1].[14]

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[7] *Id.* ¶ [citation].

[8] Supp. Attach. B-1 Ex. B., [U.S. diplomatic office], Diplomatic Note [number] ([date]).

[9] [] Supp. Attach. B-10, [Foreign Country foreign affairs ministry Declarant] Decl. ¶¶ [citations] (submitted to government in [year]); Letter at 1.

[10] Indictment.

[11] Indictment ¶¶ [citations].

[12] *See* Supp. Attach. B-8, Letter from [Attorneys], [Law Firm], to [AUSAs], USAO, [citations] ([date]) (responding to concerns USAO had raised related to the availability of diplomatic immunity); Supp. Attach. B-7, E-mail from [Attorney], [Law Firm], to [AUSAs], USAO ([date]) (contending that advancement of the prosecution faced a high risk of an adverse decision regarding immunity); Supp. Attach. B-6, E-mail from [Attorney], [Law Firm], to [AUSAs], USAO ([date]) (specifying the immunity status in precedents for dismissals and prosecutions); Supp. Attach. B-9, Draft [Individual 1] Mem. of Law in Support of Mot. to Dismiss Indictment, [citations] ([date]) (contending in draft brief submitted to USAO during settlement discussions that [Individual] was entitled to immunity).

[13] Supp. Attach. A, Engagement letter ([date]); Supplement at 2.

[14] Ct. Docket, *United States v. [Individual 1], et al.*, [citation].

According to your submissions, [Individual 1] approached [Law Firm] in 2025 about applying in writing for a presidential pardon for the [criminal] charges.[15] The terms of the [year] engagement letter govern this pardon-application work and the MFA is expected once again to pay [Law Firm]'s invoices.[16] The contemplated pardon application will be directed to the Pardon Attorney at the Department of Justice.[17] You represent that unless that office advises otherwise, you do not plan to contact other persons or government components.[18]

As you further explain, four lines of argument are currently planned for the pardon application.[19] First, you plan to contend that the charged conduct involved efforts undertaken in official capacities, which is accordingly subject to residual diplomatic immunity.[20] Second, you plan to argue that criminal prosecution of a credentialed [diplomatic officer] whose immunity is supported by [their] home nation is unprecedented.[21] Third, even if focused on underlying conduct related to [criminal allegations], you will argue that the indictment is unsupported for several reasons, including the lack of precedent and the difficulty of distinguishing between [official and personal functions in certain contexts].[22] Fourth, you plan to contend that [age] [Individual 1] has made substantial humanitarian and diplomatic contributions and has been unable to visit many family members in the United States, where they reside.[23]

II. FARA Analysis

FARA is designed "to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in [certain] activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in light of their associations and activities."[24]

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[15] Letter at 1; Supplement at 1.

[16] Supplement at 1-2.

[17] *Id.* at 3.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 3-4.

[24] 22 U.S.C. § 611 Note on Policy and Purpose of Subchapter.

Whether a person is required to register under FARA principally involves four determinations: (1) the existence of a foreign principal; (2) the nature of the relationship between the person and the foreign principal; (3) whether the person is engaging in specified activities within the United States for or in the interests of such foreign principal; and (4) whether an exemption applies. An obligation to register under FARA will arise when the first three parts of the inquiry are established, and no exemption applies in the fourth part.

FARA's definition of "foreign principal" includes, among other things, "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."[25] [Individual 1] resides outside the United States and does not appear to be a U.S. citizen.[26] He accordingly qualifies as a "foreign principal" within the meaning of FARA.[27]

As to the nature of the relationship, agency can arise under FARA when a person acts "as an agent, representative," or otherwise "at the order, request, or under the direction or control, of a foreign principal" in covered activities.[28] Agency can also arise when a person "agrees, consents, assumes or purports to act as, or . . . holds himself out to be, whether or not pursuant to contractual relationships, an agent of a foreign principal."[29] Here, [Law Firm] has been retained by [Individual 1] and, as a result, will be acting under his direction or control.[30] [Law Firm] attorneys will also be holding themselves out to the Department of Justice as acting on [Individual 1]'s behalf.[31] Under both statutory subdivisions, [Law Firm] has the requisite relationship with [Individual 1].

Turning to which activities require registration, those include, among others, when a person:

> (i) engages within the United States in political activities for or in the interests of [their] foreign principal; [or]
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> . . .

[25] 22 U.S.C. § 611(b)(2).

[26] Letter at 1.

[27] Given the conclusions below on the requirements for FARA registration in connection with [Individual 1], whether those requirements are met in connection with the MFA need not be determined.

[28] 22 U.S.C. § 611(c)(1). "[C]ontrol" includes "the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise." 28 C.F.R. § 5.100(b).

[29] 22 U.S.C. § 611(c)(2).

[30] *See supra* notes 15-16 and accompanying text.

[31] Letter at 2.

> (iv) within the United States represents the interests of [their] foreign principal before any agency or official of the Government of the United States.[32]

Here, [Law Firm] is proposing to engage in both categories of FARA-covered activities for the reasons that follow.

First, under § 611(c)(1)(i), [Law Firm] is proposing to "engage[] within the United States in political activities for or in the interests of [their] foreign principal."[33] FARA defines "political activities" as

> 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 with respect 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.[34]

The anticipated arguments for [Individual 1]'s pardon application center on the claim that [Individual 1]'s official-duty conduct while serving as [a diplomatic officer] is involved, and that [Individual 1] accordingly enjoys residual diplomatic immunity.[35] Other contentions regarding the lack of precedent, the unique circumstances of [one context related to in-country diplomatic staff], and [Individual 1]'s contributions similarly relate to concerns about diplomatic service.[36] These influence efforts are with reference to the political or public interests, policies, and relations of [Foreign Country], as [a] sworn declaration[] from [an MFA employee] demonstrate[s].

Th[at] declaration[], which [Law Firm] submitted to . . . the USAO . . . explicitly state[s] how the planned arguments advance [Foreign Country]'s interests. For example, [it] explains that, though not a party to the criminal case, "as a signatory to the Vienna Convention on Diplomatic Relations," [Foreign Country]'s "rights and privileges are affected and can be adversely impacted when its diplomats are charged with crimes," i.e., [Foreign Country] has "an independent interest" for which the declaration was supplied.[37] . . . . [Law Firm] states that it will likely rely on th[is] declaration[] to support its pardon application.[38] Although the USAO evidently disagreed that the

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[32] 22 U.S.C. § 611(c)(1)(i), (iv).

[33] 22 U.S.C. § 611(c)(1)(i).

[34] 22 U.S.C. § 611(o).

[35] *See supra* note 20 and accompanying text.

[36] *See supra* notes 21-23 and accompanying text.

[37] Supp. Attach. B-10, [MFA Declarant] Decl. ¶ 3.

[38] Supplement at 3.

charged conduct was subject to residual diplomatic immunity,[39] [Law Firm]'s continuing invocation of that immunity plainly advances [Foreign Country]'s interests, policies, and relations. [Foreign Country]'s financing of the pardon application work further emphasizes that [Law Firm] would be advancing government interests.[40]

[Law Firm]'s lack of planned effort to influence legislation or U.S. policy does not mean that its intended conduct lies outside 22 U.S.C. § 611(o). [Law Firm] indicates it "will not attempt to influence any broader policy or political matters,"[41] but FARA's definition of "political activities" is not so limited. Efforts to influence "with respect to formulating, adopting, or changing the domestic or foreign policies of the United States" are only one component of "political activities" as defined.[42] The definition also encompasses, however, efforts to influence "with reference to the political or public interests, policies, or relations of a government of a foreign country or political party."[43] As explained above, [Law Firm]'s planned application seeks to influence a U.S. agency and U.S. officials with reference to such governmental concerns. [Law Firm] would thus be engaging in "political activities" within the meaning of § 611(c)(1)(i) and (o).

The second relevant category of registrable activities is "represent[ing] the interests of [one's] foreign principal before any agency or official of the Government of the United States" under 22 U.S.C. § 611(c)(1)(iv). Here, [Law Firm] is planning to represent [Individual 1]'s interests before the Department of Justice and potentially to the President.[44] In addition to constituting "political activities," that representation also constitutes representation under § 611(c)(1)(iv).[45]

Because this registrable activity is pursuant to a letter agreement with the [Foreign Country] national, on whose behalf [Law Firm] will be acting and representing itself as an agent, all three parts of the requirements for registration are present. [Law Firm] thus qualifies as an "agent of a foreign principal"[46] and is required to register unless its activities fit within the parameters of one

[39] *See supra* note 12 (citing to submissions that occurred during [Individual 1]'s dialogue with the USAO).

[40] *See supra* note 13 and accompanying text.

[41] Letter at 1.

[42] 22 U.S.C. § 611(o); *see also* 28 C.F.R. § 5.100(e) (implementing portions of "political activities" definition").

[43] 22 U.S.C. § 611(o).

[44] *See supra* notes 15-18 and accompanying text.

[45] 22 U.S.C. § 611(c)(1)(iv).

[46] 22 U.S.C. § 611(c).

of the exemptions from FARA's requirements.[47] "The burden of establishing the availability of an exemption under the Act shall rest upon the person whose benefit the exemption is claimed."[48]

One exemption under FARA is the provision for "[p]ersons qualified to practice law" at 22 U.S.C. § 613(g). That section provides as follows:

> Any 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.[49]

Section 5.306(a) of the implementing regulations define the government influence efforts that fall within the "other than in the course" clause above and thus are *not* exempt.[50] Not exempt are "attempts to influence or persuade 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."[51]

[Law Firm]'s earlier representation of [Individual 1] before the court and the USAO during *United States v. [Individual 1]* appears to have fit within the attorney-representation exemption.[52] [Law Firm]'s attorneys are qualified to practice law.[53] Those efforts were for a "disclosed" foreign principal, before a "court of law" and an "agency" of the U.S. government, and included "attempts to influence or persuade agency personnel or officials" that were "in the course of judicial proceedings" and "criminal . . . law enforcement . . . proceedings."[54] Consistent with the

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[47] 22 U.S.C. § 613.

[48] 28 C.F.R. § 5.300.

[49] 22 U.S.C. § 613(g); *see also* 28 C.F.R. § 5.306(b) (specifying disclosure requirements for certain contexts).

[50] 28 C.F.R. § 5.306(a).

[51] *Id.*

[52] *See supra* notes 12-13, 15-22 and accompanying text (describing efforts to have the USAO dismiss the charges against [Indivdual 1] and [the filing of sealed briefing during the proceedings of a co-defendent]).

[53] *See Att'y Online Svcs.*, N.Y. STATE UNIFIED COURT SYSTEM, https://iapps.courts.state.ny.us/attorneyservices/search?6 (last visited Mar. 2, 2026) (search for "[Attorney]").

[54] 22 U.S.C. § 613(g).

application of the exemption to that work in [years], [Law Firm] did not register under FARA at the time.

[Law Firm]'s more recent plans for a pardon application, however, are distinct from [Individual 1]'s criminal law enforcement proceeding. A pardon is an "act of grace" that "exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."[55] As the Supreme Court has explained, "pardon and commutation decisions have not traditionally been the business of courts."[56] Accordingly, applications for pardons and other forms of clemency are made to a part of the government different from court cases and generally are routed through an administrative, executive process.[57] That process is subject to its own set of advisory procedures, not court rules,[58] and involves standards that explicitly "differ from those that dictate the decision to prosecute."[59] The President is the ultimate arbiter for pardon applications, not judges.[60] In one case comparable in most respects to [Individual 1]'s, pardon efforts were so detached from the related criminal litigation that attorney-client privilege and attorney work product protections were held to be largely inapplicable to the corresponding law firm records.[61] Moreover, while an attorney's name and client typically appear on the public docket in proceedings on the record, the submission of a pardon application requires no such public disclosure.[62] In short, the pardon application process is a discrete effort separate from representation in a criminal prosecution.

Pardon applications are not only distinct from a defense attorney's representation of a criminal matter, they are also not a regular companion to such representation. Pardon applications are usually submitted for individuals who have already been convicted, often years earlier.[63] They are

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[55] *United States v. Wilson*, 32 U.S. 150, 160 (1833).

[56] *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981).

[57] 28 U.S.C. §§ 1.1-1.11; U.S. Dept. of Justice, JUSTICE MANUAL § 9-140.00, https://www.justice.gov/jm/jm-9-140000-pardon-attorney [https://perma.cc/Z6N2-GR3H] (added Apr. 2018) ("JUSTICE MANUAL").

[58] *See supra* note 57.

[59] Justice Manual § 9-140.111 (further noting that "[a]s a general matter, in clemency cases the correctness of the underlying conviction is assumed").

[60] 28 C.F.R. § 1.11.

[61] *In re Grand Jury Subpoena Dated Mar. 9, 2011*, 179 F. Supp. 2d 270, 285-90 (S.D.N.Y. 2001).

[62] *See, e.g.*, H.R. Rep. No. 104-339 at 6 (1995) (explaining that the legal-representation "exemption was adopted because the Congress determined that disclosure under FARA serves no useful purpose in legal proceedings where full disclosure of the agent's status and the identity of his client is required").

[63] Office of the Pardon Att'y, *About the Office*, U.S. DEPT. OF JUSTICE, https://www.justice.gov/pardon/about-office [https://perma.cc/6XAC-KU7F] (updated Jan. 23, 2026) (noting that many clemency applications come from "people in prison and seeking a shorter prison sentence" or those "who have completed their sentences"); 28 C.F.R.

made for only a small portion of individuals who had been criminal defendants. While more than 240,000 criminal cases led to sentences in federal courts during a recent four-year period,[64] only around 10,000 to 13,000 pardon applications were received during each of the two last presidential administrations.[65] While actual or potential criminal proceedings are a necessary precursor to a pardon application, pardon applications are not an intrinsic or even common task for an attorney defending a criminal case.

As an unusual, extra-judicial effort, [Law Firm]'s pardon work does not fit within the legal-representation exemption by virtue of the firm having been retained to work on the underlying criminal matter. The Department has traditionally interpreted that exemption to extend to "an attorney's activities outside [judicial] proceedings so long as those activities do not go beyond the bounds of normal legal representation of a client within the scope of that matter."[66] As explained above, the pardon application goes beyond the typical representation of a criminal defendant within the scope of a court case.[67] As a result, [Law Firm]'s earlier performance of FARA-exempt work on [Individual 1]'s criminal case does not render its work on the clemency request similarly exempt from FARA's disclosure obligations.

[Law Firm]'s planned pardon application also does not qualify for the legal-representation exemption if analyzed independently because, as described above, the work will advance a foreign government's interests. For efforts to influence agencies that are not "on the record,"[68] the contours of the legal-representation exemption mirrors FARA's "political activities" definition.[69] As explained above in connection with that category of registrable activities, the pardon efforts are centered on advancing diplomatic immunity and are planned to explicitly further [Foreign Country]'s "political or public interests, policies, [and] relations."[70] Because the pardon application will be "with reference to" those interests, policies, and relations of a foreign

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§ 1.2 (specifying in nonbinding regulations that pardon petitions should not be filed until five years after conviction or release from confinement).

[64] *2024 Annual Report* at 11, U.S. SENTENCING COMM'N, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/2024-Annual-Report.pdf [https://perma.cc/HQ8Q-GZA8] (summarizing the sentencing of more than 60,000 defendants each year from 2015 to 2024).

[65] Office of the Pardon Att'y, *Clemency Statistics*, U.S. DEPT. OF JUSTICE, https://www.justice.gov/pardon/clemency-statistics [https://perma.cc/XQ57-7ZG2] (last visited Mar. 2, 2026).

[66] *Frequently Asked Questions*, U.S. DEPT. OF JUSTICE, https://www.justice.gov/nsd-fara/frequently-asked-questions [https://perma.cc/ET8W-LSBN] (last visited Mar. 3, 2026].

[67] *See supra* notes 63-65 and accompanying text.

[68] *See* 22 U.S.C. § 613(g) (exempting attorney work for "agency proceedings required by statute or regulation to be conducted on the record"); 5 U.S.C. §§ 554, 556-67 (prescribing procedures for formal, "on the record" adjudications).

[69] *See supra* notes 50-51 and accompanying text.

[70] *See supra* notes 35-43 and accompanying text.

government, it is not exempt pursuant to 22 U.S.C. 613(g) and 28 C.F.R. § 5.306(a). [Law Firm] accordingly fails to satisfy its burden of establishing the applicability of the legal-representation exemption.[71]

Because [Law Firm] would qualify as an "agent of a foreign principal" and would not be exempt from registration, it would be obligated to register for its proposed activities. Therefore, please complete [Law Firm]'s registration within ten days of any agreement to perform the proposed activities.

Useful information and forms may be obtained on the FARA Unit's website, located at https://www.justice.gov/nsd-fara. This advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein.

We will treat your submission as confidential 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

[71] 28 C.F.R. § 5.300.