



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

April 22, 2020

VIA EMAIL

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your letter of March 5, 2020 (“the March 5 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the obligation of [US law firm] to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §§ 611 *et seq.* (“FARA”). Based upon the representations in your letter, a review of the attachments to that letter, as well as your email message dated April 9, 2020, we do not oppose your assertion that Section 3(g) of FARA exempts [US law firm] from registration under FARA for its legal representation of its clients before the State Department and the Treasury Department’s Office of Foreign Assets Control (“OFAC”).

In your March 5 Letter, [US law firm] seeks guidance as to whether its work on behalf of [foreign corporation] requires registration pursuant to FARA. Your letter indicates that the U.S. State Department decided to impose sanctions on your clients for knowingly engaging in a transaction that is prohibited by the U.S. Government’s sanctions on [foreign country], as set forth in Executive Order [text deleted]. According to your letter, the sanctions imposed on your clients include “blocking” your clients’ assets in the United States and adding your clients to the “List of Specially Designated Nationals and Blocked Persons” (“SDN List”) such that U.S. persons are prohibited from engaging in business transactions with your clients, except as licensed by OFAC.¹

In your engagement agreements, dated February 25, 2020, you agreed to advise your clients about U.S. sanctions and to represent them before OFAC, and, as necessary, other U.S. Government agencies in relation to the sanctions imposed on your clients. Specifically, you agreed to perform the following tasks for your clients:

1. Inquire about the reasons they have been added to the SDN List;
2. Request OFAC issue a general license authorizing U.S. persons to wind down their transactions with your clients over a period of time; and
3. Seek your clients’ removal from the SDN List.

In your responsive email to our follow-up questions on April 9, 2020, you clarified that it is your “intent to represent [your] clients only before those [U.S. Government] agencies involved in

¹ [text deleted]

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decision-making concerning the administration of sanctions against [your] clients.” Additionally, you have also emphasized, both in your March 5 letter and in your April 9 email, that you do not “contemplate any discussion or exchange with the Executive Branch that implicates wider policy or political considerations” or “any advocacy with Congress or the public.”

Your April 9, 2020 email also provided us with an update on developments since your March 5 Letter. You reported that OFAC has since advised you to apply for a specific license, rather than a general license, and that you have done so and received a specific license. You also reported that you have communicated with OFAC and the State Department, informing them of your intent to request the termination of sanctions against your clients and requesting that they each provide you with the non-classified portions of the record supporting the imposition of sanctions against your clients.

Generally speaking, 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 within the United States, in pertinent part, “. . . (iv) represents the interests of such foreign principal before any agency or official of the United States Government.” *See* 22 U.S.C. § 611(c)(1).

Because the March 5 Letter requests an exemption from FARA’s registration requirements, we concur with your conclusion that, absent an exemption, [US law firm] is acting as an agent of a foreign principal within the meaning of FARA and would be required to register. As an initial matter, a “foreign principal” includes foreign corporations and foreign nationals such as your clients, 22 U.S.C. §§ 611(b)(2), (3). Second, [US law firm] is acting as an agent for those foreign principals because it is acting under the “direction or control” of its clients pursuant to the above-referenced engagement letters. *See id.* § 611(c)(1). And, finally, [US law firm] has agreed to engage in activities that would require registration under FARA—unless there is an applicable exemption—because it will, within the United States, represent these foreign principals before the State Department and OFAC. *See id.* § 611(c)(1)(iv).

Turning to your assertion that the “legal exemption” under Section 3(g) of FARA applies here, that section provides that a person otherwise obligated to register is nevertheless exempt from doing so if the person is “qualified to practice law” and “engage[s] in the legal representation of a disclosed foreign principal before any court of law or agency of the Government of the United States.” *Id.* This “legal representation” exemption is not available, however, to attorneys who “attempt[] to influence or persuade agency personnel or officials” outside of “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.” *Id.* The FARA regulations clarify that the “attempts to influence or persuade” agency personnel or officials to which the statutory exemption refers are only those “attempts to influence or persuade with reference to formatting, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public

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interests, policies, or relations of a government of a foreign country or a foreign political party.”
28 C.F.R. § 5.306(a).²

According to your March 5 Letter and your April 9 email, [US law firm] has agreed to perform legal services on behalf of its clients by representing their interests before OFAC, the State Department, or any other U.S. Government agency involved in decision-making concerning the administration of sanctions against its clients. These enumerated activities appear to stop short of an attempt to influence OFAC and the U.S. Government’s policies regarding its sanctions regimes beyond their specific application to [US law firm]’s clients. We thus do not oppose your assessment that these activities qualify for the exemption under Section 3(g) regarding legal representation because [US law firm] is limiting its conduct to fall within the parameters described in Section 3(g), as further defined at 28 C.F.R. § 5.306.

Accordingly, the law firm’s communications with and advocacy before OFAC, the State Department, or any other U.S. Government agency involved in decision-making concerning the administration of sanctions against its clients, while in the course of agency proceedings, do not obligate [US law firm] to register under FARA. *See* 22 U.S.C. § 613(g); 28 C.F.R. § 5.306. We remind you, however, that our determination is limited to the particular facts in your letter and email, and that if any of those facts change from those described in your letter and email, please notify this office, as those changes may affect [US law firm]’s registration status.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name deleted] or [name deleted] at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Brandon Van Grack

Brandon L. Van Grack
Chief, FARA Unit

² FARA’s implementing regulations provide that “[t]he burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300.