



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 29, 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 April 20, 2020 (“the April 20 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding [US firm’s] 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”). Specifically, your letter asks the FARA Unit to “confirm applicability of the exemption from FARA registration obligations pursuant to the commercial exemption at § 613(d) and the legal services exemption at § 611(g) [sic] of the Act.” Based upon the representations in your letter and a review of the attachments to that letter, we do not oppose your assertion that [US firm’s] activities fall within the exemption for legal services set out at Section 613(g).

In the April 20 Letter, [US firm] seeks guidance as to whether its work on behalf of [foreign client corporations], all [foreign] companies, requires that [US firm] register pursuant to FARA. Your letter indicates that the law firm represents your clients in litigation which is currently pending in the United States Court of Appeals [deleted]. The litigation seeks declaratory and injunctive relief and is based on allegations that the U.S. [government agency] has, *inter alia*, deprived your clients of due process protections while administering [government regulations]. According to your letter, [government agency’s] actions have effectively debarred your clients by denying [regulatory approval], instructing third parties that your clients are unreliable, and directing that third parties not [engage in transactions with] your clients.

In the April 20 Letter, you explained that [US firm’s] representation of your clients encompasses an engagement agreement dated [date deleted], in which you agreed to represent your clients in a lawsuit against the U.S. [government agency] for [its] [deleted] actions against your clients. Your letter further specified that the law firm’s representation has included preparing [a regulatory] application and related documents, and presenting information to [government agency] officials. You have also indicated that [US firm’s] representation of your clients involves, or may involve the following tasks:

1. Preparing attorney opinions, legal analyses and litigation strategy on behalf of your clients;
2. Representing your clients in civil litigation against the U.S. [government agency] and related parties in U.S. federal courts;

[name deleted]

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3. Representing your clients in an administrative proceedings before the U.S. [government agencies];
4. Preparing [regulatory] applications and supplemental documents in furtherance of obtaining [regulatory approval for transactions with] to your clients; and
5. Providing background information on your clients and corresponding with officials of the U.S. [government agencies].

In the April 20 Letter, you stated that your clients “do not challenge the [government agency’s] policy for [foreign country].” You specifically noted that your client’s goal is not political in nature.

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 April 20 Letter requests an exemption from FARA’s registration requirements, we concur with your conclusion that, absent an exemption, [US 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 such as your clients, 22 U.S.C. §§ 611(b)(2). Second, [US 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 agreement described in your letter. *See id.* § 611(c)(1). And, finally, [US 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 [government agencies] and U.S. courts. *See id.* § 611(c)(1)(iv).

Turning to your assertion that the “attorney 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 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 interests, policies, or relations of a government of a foreign country or a foreign political party.” 28 C.F.R. § 5.306(a).

[name deleted]

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According to the April 20 Letter, [US firm] has agreed to perform legal services on behalf of its clients by representing their interests before the [government agencies], and in federal judicial proceedings regarding your clients' above-referenced claims. These enumerated activities appear to occur inside of "judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings," and thus we do not oppose your assessment that these activities qualify for the exemption under Section 3(g).¹

Accordingly, the law firm's communications with and advocacy before the [government agencies], or any other U.S. Government agency involved in decision-making concerning the administration of [regulations] involving your clients, while in the course of agency or judicial proceedings, do not obligate [US firm] to register under FARA.² 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 the April 20 Letter, 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 firm's] registration status.

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

Sincerely,

/s/ Brandon Van Grack

Brandon L. Van Grack
Chief, FARA Unit

¹ Having identified a viable exemption under Section 3(g) of FARA, we decline to address the applicability of any other exemption under the Act.

² We note that should [U.S. firm] attempt to influence or persuade judicial or agency personnel about policy or political considerations other than in the course of judicial or agency proceedings, then the law firm would not be able to avail itself of the exemption and would be required to register under the Act.