



U.S. Department of Justice

National Security Division

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Counterintelligence and Export Control Section

Washington, DC 20530

January 5, 2021

**Via Email and USPS**

[addressee deleted]

Re: [text deleted]  
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [addressee deleted]:

On December 3, 2020, the FARA Unit removed from the FARA.gov website the advisory opinion that we issued to your client, [US organization], on December 31, 2019, in response to your request of November 12, 2019 (“November 12 Letter”). In that opinion, we concluded that [US organization] would be obligated to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), if it undertook certain activities in connection with its intended representation of [foreign government] in litigation matters in the United States.<sup>1</sup> While our enforcement intention concerning those proposed activities has not changed, we believe it is necessary to more fully explain the basis for part of our conclusion.

Your request, in part, queried whether the legal exemption applied to activities that [US organization]’s legal department proposed to undertake in connection with the litigation. According to the November 12 Letter, the [US organization] considered having [US organization legal department] provide factual responses to media inquiries about the litigation, issue press releases containing facts regarding the litigation, and engage in press conferences regarding [US organization legal department]’s representation of the [foreign government]. In our advisory opinion, we concluded that those public relations activities fell outside the legal exemption, and noted that the activities are not occurring “before any court of law or agency of the Government of the United States.”

First, we direct your attention to revised discussion of the legal exemption that we recently posted to the Frequently Asked Question section of our website: <https://www.justice.gov/nsd-fara/frequently-asked-questions>. In describing the scope of that exemption, we explain that:

The legal exemption is triggered once a person, qualified to practice law, engages or agrees to engage in the legal representation of a disclosed foreign principal before any court or agency of the Government of the United States. The exemption is not triggered by an agreement to provide legal representation to further political activities, as defined by FARA, to influence or persuade agency personnel or

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<sup>1</sup> See December 31, 2019 Advisory Opinion (attached).

[addressee deleted]

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officials, other than in the course of either judicial proceedings; criminal or civil law enforcement inquiries, investigations, or proceedings; or other agency proceedings required by law to be conducted on the record. The scope of the exemption, once triggered, may include an attorney's activities outside those 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.

Of particular relevance, the revised FAQ notes that, in certain circumstances, the exemption may include an attorney's activities outside of legal proceedings.

Second, while the above revisions to the FAQ do not change our conclusion to the circumstances presented in your November 12 Letter, we hope that it provides more clarity and context for our decision. We concluded, and continue to conclude, that [US organization legal department]'s proposed activities go "beyond the bounds of normal legal representation of a client within the scope of that matter." As acknowledged in your letter, the [US organization] engages in a range of political activities aimed at [text deleted]. [US organization legal department]'s impact litigation on behalf of the [foreign government], and proposed activities in support of that litigation, appear related to those political activities and that ultimate aim. While responding to media inquiries about litigation typically fall within the scope of the exemption, the proposed activities entail more proactive media engagement that are more akin to a public relations campaign aimed at promoting the litigation and the political objectives of the [US organization]. Such activities, within the context of the litigation, appear beyond the bounds of normal legal representation.

As we previously stated, our opinion is limited to the specific facts outlined in the November 12 Letter. Please contact this office at (202) 233-0776, if you have any questions.

Sincerely,

*/s/ Brandon L. Van Grack*

Brandon L. Van Grack  
Chief, FARA Unit

Enclosure



**U.S. Department of Justice**

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

December 31, 2019

**Via Email and USPS**

[addressee deleted]

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

Dear [name deleted]:

We write in response to your letter of November 12, 2019 (“November 12 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the registration obligation of your client, [US organization], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with its intended representation of the [foreign government] in litigation matters in the United States. After careful consideration of your request, we have concluded that the [US organization] would be obligated to register under the Act, if it undertakes certain of the proposed activities.

According to the November 12 Letter, the [foreign government] will retain the [US organization]’s legal department to act as counsel of record for the [foreign government] in civil litigation in the United States arising from [text deleted]. The litigation will be directed against [defendants] in the United States and in [foreign country]. The November 12 Letter represents that activities carried out by [US organization] on behalf of the [foreign government] would focus “exclusively” on activities directly in support of the litigation.

[US organization legal department], according to the draft contract, will be providing representation on a pro bono basis. The [US organization] will fund the representation through solicitation of unrestricted grants or donations for its legal work, as it does in connection with other litigation. [US organization legal department]’s representation of the [foreign government] will include all aspects of litigation, including drafting pleadings, making court appearances, and investigative activities in support of the litigation.

The November 12 Letter acknowledges that [US organization legal department] would be acting as an “agent of a foreign principal” under FARA, 22 U.S.C. § 611(c), for its representation of the [foreign government] in civil litigation within the United States, but also asserts that it would be exempt from registering under the legal exemption set out in Section 613(g) of the Act. That section exempts from registration:

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

[addressee deleted]  
December 31, 2019  
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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).

After reviewing your submission, we do not contest that [US organization legal department] is exempt from registration for activities undertaken as part of its in-court representation of the [foreign government] in civil litigation, as described in the November 12 Letter.

However, we do not concur with your view of the legal exemption as it pertains to other activities that [US organization legal department] proposes to undertake in connection with the litigation. According to the November 12 Letter, the [US organization] is also considering having [US organization legal department] provide factual responses to media inquiries about the litigation, issue press releases containing facts regarding the litigation, and engage in press conferences regarding [US organization legal department]'s representation of the [foreign government]. Collectively, these activities are not occurring "before any court of law or agency of the Government of the United States." Accordingly, the public relations activities described in the November 12 Letter fall outside of the exemption.

Our opinion is limited to the specific facts outlined in the November 12 Letter. If any of the activities undertaken by [US organization legal department] or the [US organization] with respect to the [foreign government] depart from those described in the November 12 Letter, please notify this office, as the registration status of [US organization legal department] and/or the [US organization] may change.

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

Sincerely,

Brandon L. Van Grack  
Chief, FARA Unit