



## U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 7, 2021

### **By E-mail**

Ronald A. Oleynik  
Holland & Knight LLP  
800 17<sup>th</sup> Street, NW, Suite 1100  
Washington, DC 20006

Re: Obligation to Register Pursuant to the Foreign Agents Registration Act

Dear Mr. Oleynik:

Based upon our review of the information you have provided, we have determined that Holland & Knight is obligated to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), by virtue of its activities on behalf of Atiku Abubakar to promote his candidacy for President of Nigeria and to secure his travel to the United States. In reaching this determination, we disagree with your assertion that Holland & Knight is exempt from registration pursuant to 22 U.S.C. § 613(g) (the “legal exemption”) or 22 U.S.C. § 613(h) (the “LDA exemption”).

### **I. Background**

On April 12, 2019, the FARA Unit sent a letter to Holland & Knight describing why Holland & Knight may be obligated to register pursuant to FARA, and requesting information to aid the Unit’s assessment. While acknowledging it had engaged in lobbying activities, Holland & Knight, in a letter dated May 10, 2019 (“May 10 Letter”), explained that it considered itself exempt from registration pursuant to the legal exemption and the LDA exemption, and provided information and materials. Holland & Knight supplemented its response in letters dated September 23, 2019 (“September 23 Letter”), and April 29, 2020, along with additional information and materials.

### **II. Foreign Agents Registration Act**

FARA requires agents of foreign principals engaged in specified activities to register with the Department of Justice and to provide disclosures. The purpose of FARA is to inform the American public of the activities of agents working for foreign principals in the United States with the purpose of influencing U.S. Government officials or the American public with reference to the domestic or foreign policies of the United States, or with reference to the political or public interests, policies, or relations of foreign governments or foreign political parties. *See* 22 U.S.C. §§ 611(c), 612.

The specified activities of a foreign agent that require registration and disclosure are defined by the Act and its implementing regulations. An “agent of a foreign principal” is defined, in pertinent part, as “any person who acts as an agent . . . or . . . 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] . . . (iv) within the United States represents the interests of such foreign principal before any agency of official of the Government of the United States.” 22 U.S.C. §§ 611(c)(1)(i), (iv).

The term “political activities” means “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 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.” 22 U.S.C. § 611(o).

### **III. Relevant Activities in the United States**

#### *A. Holland & Knight Acted as Atiku Abubakar’s Agent*

As described in the May 10 Letter, Holland & Knight undertook representation of Atiku Abubakar before the U.S. Department of State in connection with Mr. Abubakar’s long-pending visa application.<sup>1</sup> The representation was initiated by U.S. Ambassador Sada Cumber, former Special Envoy to the Organization of the Islamic Conference, pursuant to his own agreement with Mr. Abubakar to assist Mr. Abubakar’s candidacy and build his profile in the United States. Under the terms of Holland & Knight’s Engagement Agreement with Ambassador Cumber and Mr. Abubakar, dated September 20, 2018, Leon Fresco and [REDACTED], legal professionals with Holland & Knight, would undertake legal representation before the State Department, while Scott Mason, a public policy professional with Holland & Knight, would support case investigation and outreach.<sup>2</sup> The Engagement Agreement clearly articulated that Mr. Abubakar would be Holland & Knight’s client in the matter, and that Ambassador Cumber would pay all fees for the representation.<sup>3</sup>

The May 10 Letter asserts that Holland & Knight’s engagement was limited to seeking a visa for Mr. Abubakar, as an individual, and did not include any work on behalf of Mr. Abubakar’s political aspirations, his political party, or the Government of Nigeria. That assertion, however, is belied by Holland & Knight’s records, its communications with the State Department and other government officials, and the circumstances of the visit. At the time of the engagement, as Holland & Knight was well aware, Mr. Abubakar was the presidential candidate of the People’s Democratic Party for the 2019 Nigerian general election. In correspondence with the State Department, Holland & Knight highlighted Mr. Abubakar’s status as a presidential candidate, describing him as “the main challenger to current President Muhammadu Buhari.” More importantly, it acknowledged that a main purpose of Mr. Abubakar’s visit was “to speak about his candidacy for President of Nigeria and to discuss his plans for strengthening relations

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<sup>1</sup> May 10 Letter at 2; H&K0000001-006.

<sup>2</sup> *Id.*; H&K0000664.

<sup>3</sup> *Id.*

between the United States and Nigeria.”<sup>4</sup>

In fact, as Holland & Knight explained in numerous communications with the State Department, the National Security Council, congressional staff, and other government officials, Mr. Abubakar’s activities in the United States to promote his candidacy were essential to obtaining a visa. Mr. Mason ██████████ explained that the “Foreign Affairs Manual specifically enumerates participation in educational conferences and seminars as a valid basis for seeking and obtaining a visitor visa,” and Mr. Abubakar would be participating in “conferences and lectures where he has been invited to speak about his candidacy for President of Nigeria and to discuss his plans for strengthening relations between the United States and Nigeria.”<sup>5</sup>

*B. Work Performed by Leon Fresco*

The May 10 Letter also describes work performed by specific Holland & Knight employees. On October 30, 2018, Leon Fresco, a partner at Holland & Knight, prepared and filed the supplemental visa application with the State Department. Although Mr. Fresco’s correspondence contained political content, Holland & Knight maintains that Mr. Fresco limited his contacts at the State Department to those individuals who would have been required to participate in the decision to grant Mr. Abubakar’s visa applications. However, Mr. Fresco also directed a law clerk to contact universities, think tanks, and other non-profit groups to notify them that Mr. Abubakar would be available to “speak about his candidacy for President of Nigeria and to discuss his plans for strengthening relations between the United States and Nigeria.”<sup>6</sup> As referenced above, invitations from such organizations became an essential basis to justify for Mr. Abubakar’s visa application. The May 10 Letter asserts that Mr. Fresco should be exempt from registration under FARA because of the exemption for attorneys engaged in the “legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States.” 22 U.S.C. § 613(g).

*C. Work Performed by Scott Mason*

Scott Mason, identified on Holland & Knight’s website as a Senior Policy Advisor,<sup>7</sup> contacted officials at the State Department, the National Security Council, and in Congress, urging them to contact decision makers at the State Department to support granting the visa.<sup>8</sup> On December 14, 2018, Holland & Knight filed a Lobbying Registration under the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 et seq. (“LDA”), for Mr. Mason’s work on behalf of Mr. Abubakar, effective October 31, 2018. The registration is a clear acknowledgement that Mr.

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<sup>4</sup> Letter from Leon Fresco, Holland & Knight, to Carl C. Risch, Assistant Secretary, Bureau of Consular Affairs, and Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services (Oct. 30, 2018). Such representations appear to go beyond those that would normally be made for a private individual in his or her individual capacity, as claimed in the May 10 Letter.

<sup>5</sup> H&K0000015-19.

<sup>6</sup> May 10 Letter at 3; *see e.g.*, H&K0000015-19

<sup>7</sup> <https://www.hklaw.com/en/professionals/m/mason-scott-d>.

<sup>8</sup> May 10 Letter at 3.

Mason engaged in lobbying and other “political activities” on behalf of Mr. Abubakar.<sup>9</sup> Further, in the May 10 Letter, Holland & Knight concedes that “Mr. Mason clearly engaged in lobbying activities.”

#### **IV. Basis for Holland & Knight’s FARA Registration**

Based upon the above information, we have determined that Holland & Knight is obligated to register under FARA because it engaged in covered activities as an agent of Atiku Abubakar. At the request and under the direction and control of Mr. Abubakar, through Ambassador Cumber, Holland & Knight engaged in lobbying and political activities within the United States and represented Mr. Abubakar’s interests before agencies and officials of the United States.<sup>10</sup>

##### *A. Mr. Abubakar is a “Foreign Principal” Under FARA*

FARA defines “foreign principal” to include “a government of a foreign country and a foreign political party,” as well as “a person outside the United States.” 22 U.S.C. § 611(b). Mr. Abubakar, a Nigerian national living in Nigeria, is a foreign principal under the Act. Mr. Abubakar was also the national candidate and leader of the People’s Democratic Party of Nigeria, a foreign political party, during the relevant time period.<sup>11</sup>

##### *B. Holland & Knight Acted at the Request, Direction, and Control of Mr. Abubakar*

Agency under FARA occurs when a person acts within the United States at the “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) within the United States engages in political activities for or in the interests of such foreign principal; . . . or, (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States.” 22 U.S.C. § 611(c)(1)(i) and (iv).

Mr. Abubakar, through Ambassador Cumber, hired Holland & Knight to promote his candidacy and to engage with the United States Government to obtain approval of Mr. Abubakar’s pending visa application. Mr. Abubakar’s “request” or “direction or control” of Holland & Knight’s efforts is memorialized in the September 20, 2018, Engagement Agreement,

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<sup>9</sup> Available at <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=C917363C-A220-4879-B245-573F5A091B5B&filingTypeID=1>. In its LDA registration, Holland & Knight describes Mr. Abubakar’s business or activities as “Founder, American University of Nigeria.” However, Mr. Abubakar founded The American University of Nigeria in 2004, while Vice President of Nigeria. Two months before Holland & Knight filed its LDA registration, Mr. Abubakar had been identified as the presidential candidate of the People’s Democratic Party for the 2019 Nigerian general election. See, e.g., *Nigeria’s opposition PDP selects Abubakar as 2019 presidential election*, REUTERS (Oct. 7, 2018), <https://www.reuters.com/article/us-nigeria-election-pdp/nigerias-opposition-pdp-selects-abubakar-as-2019-presidential-election-idUSKCN1MH0I6>.

<sup>10</sup> 22 U.S.C. §§ 611(c)(1)(i), (iv).

<sup>11</sup> Neil Munshi, *Nigeria’s Atiku Abubakar to challenge Buhari for presidency*, FINANCIAL TIMES (Oct. 7, 2018), <https://www.ft.com/content/25d47548-ca2f-11e8-9fe5-24ad351828ab>.

in which Mr. Abubakar is identified as Holland & Knight's client.<sup>12</sup>

*C. Holland & Knight Engaged in "Political Activities" as an Agent of Mr. Abubakar*

The May 10 Letter acknowledges that Holland & Knight was engaged in covered activities, pursuant to a contractual arrangement with Mr. Abubakar.<sup>13</sup> Specifically, Holland & Knight facilitated Mr. Abubakar's efforts to promote his candidacy for President of Nigeria and strengthen relations between the United States and Nigeria. First, it sought to secure speaking engagements in the United States for Mr. Abubakar to speak about his candidacy for President of Nigeria and to discuss his plans for strengthening relations between the United States and Nigeria.<sup>14</sup> Second, it sought to secure Mr. Abubakar's travel to the United States for that same purpose. Both sets of actions were intended to influence the public and officials in the United States Government with reference to foreign policies of the United States and the political or public interests of a foreign political party – namely the People's Democratic Party of Nigeria. See 22 U.S.C. § 611(c)(1)(i). Moreover, Holland & Knight was clearly "represent[ing] the interests of" Mr. Abubakar "before any agency or official of the Government of the United States." *Id.* at § 611(c)(1)(iv). As you acknowledge, in addition to State Department officials, Holland & Knight contacted officials at the National Security Council and in Congress who had no role in the adjudication of Mr. Abubakar's visa application.<sup>15</sup> Accordingly, absent an exemption, Holland & Knight is required to register under FARA.

*D. The Legal Exemption Does Not Apply to Mr. Fresco's Work*

The exemption for "persons qualified to practice law," the so-called "legal exemption," applies "to any person qualified to practice law," as long as the attorney "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," and does not engage in "attempts to influence or persuade agency personnel or officials other than in the course of . . . agency proceedings required by statute or regulation to be conducted on the record." 22 U.S.C. § 613(g). Mr. Fresco's work for Mr. Abubakar went beyond representing him before the State Department in the adjudication of his visa application. Rather, through a law clerk, Mr. Fresco also contacted universities, think tanks, and other non-profit groups to notify them that Mr. Abubakar would be available to "speak about his candidacy for President of Nigeria and to discuss his plans for strengthening relations between the United States and Nigeria."<sup>16</sup> Such conduct is not covered by the legal exemption.

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<sup>12</sup> "As used in the Act, the term *control* or any of its variants shall be deemed to include the possession or the exercise 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).

<sup>13</sup> May 10 Letter at 1-3; H&K0000001-006.

<sup>14</sup> May 10 Letter at 3; *see e.g.*, H&K0000015-19

<sup>15</sup> May 10 Letter at 3.

<sup>16</sup> May 10 Letter at 3; *see e.g.*, H&K0000015-19

*E. The LDA Exemption Does Not Apply*

We reach the same conclusion with respect to Holland & Knight's claim of the LDA exemption for Scott Mason's lobbying work. FARA provides an exemption for agents of foreign individuals or foreign entities "if the agent has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 [2 U.S.C. 1601 et seq.] in conjunction with the agent's representation of such person or entity." 22 U.S.C. § 613(h). Critically, the exemption is not available for agents of foreign governments and foreign political parties. *Id.* The exemption is further cabined by FARA's implementing regulations, which state: "In no case where a foreign government or foreign political party<sup>17</sup> is the principal beneficiary will the exemption under 3(h) be recognized." 28 C.F.R. § 5.307.

Although you assert that Holland & Knight was engaged to represent Mr. Abubakar, personally and individually, the evidence indicates that the work was directly connected to Mr. Abubakar's candidacy and his political party, and included promotional work for Nigeria. First, on the day that Holland & Knight began its engagement with Mr. Abubakar, Mr. Mason e-mailed Matthew Mowers, a senior adviser at the State Department. In that e-mail, Mr. Mason described Mr. Abubakar as the "current leader of the People's Democratic Party" and portrayed Mr. Abubakar as "committed to a stronger relationship with the U.S."<sup>18</sup> On October 31, 2018, Mr. Mason sent an e-mail to Emily Elston, Director for African Affairs, National Security Council, noting that Mr. Abubakar was invited to the United States to speak "about his candidacy for the Presidency of Nigeria and to discuss his plans for strengthening relations between the United States and Nigeria."<sup>19</sup> Lastly, on November 29, 2018, Mr. Mason wrote an e-mail to Steve Gilleland, Chief of Staff to Representative Michael McCaul, soliciting his concurrence with a letter recommending approval of Mr. Abubakar's visa application. In the email, Mr. Mason described Mr. Abubakar as "former VP of Nigeria who is running for President in 2019," and attached a copy of Mr. Abubakar's biography, listing his political accomplishments.<sup>20</sup> Importantly, Mr. Mason acknowledges in his numerous communications with government officials that Mr. Abubakar's activity in the United States to promote his candidacy was essential to obtaining a visa.<sup>21</sup>

Accordingly, Holland & Knight may not avail itself of the LDA exemption. First, it would appear that Holland & Knight was acting as an agent of a foreign political party. Second,

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<sup>17</sup> The term "foreign political party" includes any "organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof." 22 U.S.C. § 611(f).

<sup>18</sup> E-mail from Scott D. Mason, Holland & Knight, to Matthew D. Mowers, U.S. Department of State (Sept. 20, 2018, 11:23 EDT). H&K0000532.

<sup>19</sup> E-mail from Scott D. Mason, Holland & Knight, to Emily A. Elston, National Security Council, Executive Office of the President (Oct. 31, 2018 16:53 EDT). H&K000008.

<sup>20</sup> E-mail from Scott D. Mason, Holland & Knight, to Steve Gilleland, U.S. House of Representatives (Nov. 29, 2018 10:52 EST). Credit for Mr. Abubakar's founding of the American University of Nigeria was noted in one sentence on the second page of his biography. H&K0000536-541.

<sup>21</sup> H&K0000015-19.

Holland & Knight's activities for Mr. Abubakar were principally intended to benefit Mr. Abubakar's political party, as well as the Nigerian government through improved relations with the United States. As noted in the House of Representatives' Lobbying Disclosure Act Guidance: "The LDA reflects a determination that the Foreign Agents Registration Act (FARA) standards are appropriate for lobbying on behalf of foreign governments and political parties."<sup>22</sup> Holland & Knight's lobbying and political activities were undertaken on behalf of, and to promote, Mr. Abubakar's leadership of a foreign political party and his aspirations to control the Nigerian government.<sup>23</sup>

## V. Conclusion

We find that Holland & Knight is obligated to register under FARA. Please effect their registrations within thirty (30) days of the date of this letter. Useful information and forms needed for registration may be found on our website: <https://fara.gov>. If you have any questions, please contact Senior Trial Attorney Clifford Rones at 202-233-0776 or [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov).

Sincerely,

*Brandon L. Van Grack*

Brandon L. Van Grack  
Chief, FARA Unit

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<sup>22</sup> Lobbying Disclosure Act Guidance, Office of the Clerk, United States House of Representatives, Sec. 9, available at [https://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html](https://lobbyingdisclosure.house.gov/amended_lda_guide.html).

<sup>23</sup> We note that Holland & Knight described Mr. Abubakar's business or activities as the founder of the American University of Nigeria on its Lobbying Registration, but entirely omitted Mr. Abubakar's activities as the head of a foreign political party and candidate for the Nigerian presidency. Those facts are material to Holland & Knight's registration obligations under FARA, and were clearly known to Holland & Knight at the time it filed its Lobbying Registration with the Secretary of the Senate and the Clerk of the House of Representatives.