



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 24, 2021

[Name and Address deleted]

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

Dear [Name],

This is in reference to your letter dated August 16, 2021 (the “August 16 letter”), received by the FARA office on September 7, 2021, in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to the obligations of your proposed organization to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”).

In the letter, and in your October 9, 2021 response (“October 9 response”) to follow-up questions from the Department of Justice, you state your intent to form an organization called the [Organization], whose mission is to “understand the social, economic and political problems facing [nationality] in the diaspora,” and to “influenc[e] the policy agenda of the government of [country] regarding pertinent issues of concern to diaspora [nationality].”

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:

- (i) engages in political activities¹ for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant² for or in the interests of such foreign principal;
- (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

See 22 U.S.C. § 611(c)(1). In your October 9 response, you state that “[organization] members in the US will not take any instructions, guidance or control from foreign persons or parties. [organization] will operate independently to the benefit of its members.” You describe the [organization] as being “funded locally by membership dues and donations from its

¹ The Act defines “political activity” 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 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.” 22 U.S.C. § 611(o).

² The Act defines a “political consultant” as “any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.” 22 U.S.C. § 611 (p).

members,” and state that the “[organization] will be self governed by its by-laws through an elected board of directors.” Further, you state in your October 9 response that “[organization] will not be contacting any U.S. Government or Congressional committees,” and you do not describe the organization as having any intent to influence members of the United States public “with reference to formulating, adopting, or changing the domestic or foreign policies of the United States.”³

The October 9 response, however, also includes a contemplated Memorandum of Understanding (MOU) with the [foreign political party]. The MOU describes the “intended mission” of the partnership as the promotion of “the social, economic, and political relationship between [nationality] in Diaspora and the [foreign political party].” In the MOU, the [organization] and [foreign political party] commit to, among other things, “from time to time, discuss[ing] possible collaboration in . . . jointly formulat[ing], develop[ing], distribut[ing], and disseminat[ing] materials, merchandise or information that are used to promote [foreign political party] in North America . . . [and] [m]obiliz[ing] resources to support the mission of the [foreign political party] in [country]. Any such Fundraising activities will be done in a transparent and accountable manner[.]” The MOU states that “[a] binding commitment with respect to the partnership described on this MOU will result only from execution of definitive agreements.”

As described above, an organization will have an obligation to register under FARA if it is both acting “at the order, request, or under the direction or control, of a foreign principal,” and engaging in one of the enumerated activities (and no exemptions apply). Fundraising, as contemplated in the MOU between the [organization] and the UDA, is one of the enumerated activities. 22 U.S.C. § 611(c)(1)(iii).

Similarly, FARA’s definition of “political activity” includes “influenc[ing]... any section of the public within the United States . . . with reference to the political or public interests, policies, or relations of a government of a foreign country;” 22 U.S.C. § 611(o). That statutory definition would include “promot[ing] [foreign political party] in North America” via the dissemination of “materials, merchandise or information.” MOU § 4. Similarly, the MOU states that the “UDA recognizes [organization] as one of the links between the [foreign political party] and the [nationality] in North America,” MOU § 2, identifying the [organization] as a vehicle for influencing the [nationality] diaspora community for its purposes. The [nationality] diaspora community within North America necessarily includes those members within the United States, and so is a “section of the public” for FARA purposes.

Both the August 16 letter and the October 9 response disclaim the notion that the [organization] will “take any instructions, guidance or control from foreign persons or parties.” Oct. 9 Response at 2. However, in order to “promote [foreign political party] in North America,” or “[m]oblize resources to support the mission of [foreign political party] in [country],” the [organization] will, of necessity, need to act “at the order, request, or under the direction or control,” of the [foreign political party] (*i.e.*, in order to effectively coordinate such activity, the [foreign political party] would need to at least *request* that the [organization] distribute certain “materials, merchandise or information,” or conduct fundraising activities). And, a request is all that FARA requires of a U.S. party to meet the first prong of the Act’s definition of a foreign agent.⁴

³ Such disclaimers appearing in contracts are not dispositive of a party’s obligation to register.

⁴ *Atty. Gen. of the U.S. v. Irish N. Aid Comm.*, 668 F.2d 159, 161-162 (2d Cir. 1982).

Furthermore, the MOU states that the [organization] “has the mandate to operationalize all activities agreed upon through this MOU.” MOU §1. This “mandate” suggests that, under the MOU, [organization] is obligated to further [foreign political party]’s political goals via the [nationality] diaspora community within the United States. Such an obligation implies a heightened level of control by [foreign political party], beyond the already statutorily sufficient “request.”

Accordingly, regardless of whether the [organization] were acting at the [foreign political party]’s request or with more explicit direction, based on the MOU, the [organization] would be acting as an agent of a foreign party and would be carrying out activities enumerated in 22 U.S.C. § 611(c)(1). Specifically, if the [organization] were to follow through on conducting those operations listed in paragraph 4 of the MOU as an agent of the [foreign political party], it would have an obligation to register under FARA.

Registration is accomplished through FARA eFile found on the FARA website at <http://www.fara.gov>. If you have any questions regarding this matter, please contact [attorney] at [phone number] or by e-mail at FARA.Public@usdoj.gov.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit