



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

June 9, 2025

Via E-mail

[Requestor's Name and Contact Information]

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

Dear [Requestor]:

We write in response to the November 29, 2024, letter ("November Letter") from your clients, the [U.S. Entity] and [Individual], which we received on January 2, 2025, and you supplemented on March 3, 2025, and May 9, 2025 (the "March Letter" and "May Letter," respectively), requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a). [U.S. Entity] and [Individual] have inquired whether they must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended, 22 U.S.C. §§ 611-21, for certain activities they are performing within the United States. Based on the representations in the November, March, and May Letters and their supporting documentation, and for the reasons discussed below, [U.S. Entity] and [Individual] are not obligated to register for their activities.

I. Factual Background

[Individual] is a citizen of [Foreign Country] domiciled in [U.S. State].¹ He has permanent residency in the United States and does not maintain residency in any other country.²

[Foreign Entity] is a limited liability company founded by [Individual] and formed in [Foreign Country].³ According to its articles of association, [Foreign Entity's] primary objective is "[Redacted]."⁴

¹ Nov. Letter at 1-2. The November Letter states that [Individual] previously served as an advisor to [Foreign Government] and was affiliated with [Foreign Political Party] and that he has since resigned his membership in [Foreign Political Party] and "is not currently subject to the oversight or control of any foreign political party." Nov. Letter at 1, fn. 3.

² Nov. Letter at 1-2.

³ *Id.* at 2.; Mar. Letter, Ex. A. According to the November Letter, [Foreign Entity] was formed using an entity that was created by an acquaintance of [Individual] who was a member, but not an employee, of [Foreign Political Party]. Nov. Letter at 2. The entity was transferred to [Individual] and "was never under the direction or control of [Foreign Political Party] . . . or otherwise used to advance its interests." *Id.*

⁴ Mar. Letter, Ex. A at 3.1.1.

[U.S. Entity] is a nonprofit organization founded by [Individual] and incorporated in [U.S. State].⁵ According to its website, [U.S. Entity] “[Redacted].”⁶ The November Letter notes that [Individual] founded [U.S. Entity] “to build on the work of [Foreign Entity]” by “carrying on the common mission to [Redacted]” in the United States.⁷ According to the [U.S. Entity] website, the employees of [U.S. Entity] and [Foreign Entity] “[Redacted].”⁸ The [U.S. Entity] website also indicates that the leadership team of [U.S. Entity] is comprised of employees from [U.S. Entity] and [Foreign Entity] and reports to [Individual] who is the CEO of both organizations.⁹ Further, [U.S. Entity] has a seven-member board of directors (“[U.S. Entity] Board”) that includes [Individual] and two other individuals who concurrently serve on [Foreign Entity’s] board of directors.¹⁰

According to the [U.S. Entity] bylaws (“Bylaws”), the [U.S. Entity] Board “supervise[s], manage[s], and control[s] all of the affairs, business activities, and policies” of [U.S. Entity], “subject to the approval requirements” of an “Appointed Director.”¹¹ The Bylaws require [Foreign Entity] to appoint the Appointed Director annually “to serve as a member of the [U.S. Entity] Board” and state that [Foreign Entity] has “the sole right to remove the Appointed Director.”¹² In addition, the Bylaws indicate that the Appointed Director has the sole discretion to remove without cause at any time any other director on the [U.S. Entity] Board and that [Foreign Entity] has the sole discretion to fill vacancies on the [U.S. Entity] Board resulting from, among other things, removal by the Appointed Director.¹³ They further indicate that the [U.S. Entity] Board cannot reach a quorum to transact business without the Appointed Director’s presence and that [U.S.

⁵ Nov. Letter at 1, Ex. A, Ex. C.

⁶ [Citation]; *see also* Nov. Letter at 1, Ex. A at 1.

⁷ Nov. Letter at 2.

⁸ [Citation].

⁹ *Id.*

¹⁰ Nov. Letter at 2-3; Mar. Letter at 4. The November Letter notes that the [U.S. Entity] bylaws require that the majority of the [U.S. Entity] Board consist of independent directors who do not concurrently serve as officers, directors, trustees, or employees of [Foreign Entity]. Nov. Letter at 2, Ex. B at 3. In addition, according to the March Letter, the two individuals who concurrently serve with [Individual] on the [Foreign Entity] board of directors are not officials of a foreign government or members of a foreign political party. Mar. Letter at 4. One of the individuals is a U.S. citizen residing in [Foreign Country], while the other is a [Foreign Country] and [Foreign Country] citizen residing in [Foreign Country]. *Id.*

¹¹ Nov. Letter, Ex. B at 2. The current Appointed Director is a [Foreign Country] and [Foreign Country] citizen residing in [Foreign Country] and is not an official of a foreign government or member of a foreign political party. Mar. Letter at 3.

¹² Nov. Letter, Ex. B at 3.

¹³ Nov. Letter, Ex. B at 4.

Entity's] Certificate of Incorporation, Bylaws, and corporate structure cannot be changed without the Appointed Director's written approval.¹⁴

[U.S. Entity] is funded by private donors and does not receive funding from any foreign government or foreign political party.¹⁵ In addition, [U.S. Entity] operates under a Shared Services Agreement ("SSA") with [Foreign Entity], whereby it receives payment from [Foreign Entity] for certain administrative and logistical services it provides to [Foreign Entity] in support of [Foreign Entity's] activities abroad and pays [Foreign Entity] for certain administrative and logistical services it receives from [Foreign Entity] in support of [U.S. Entity's] activities in the United States.¹⁶

According to the November and March Letters, [U.S. Entity] engages in activities in the United States that include creating downloadable digital reports recommending policy changes for online platforms and governments. [U.S. Entity] disseminates these reports through its websites, by email, and through its outreach and public affairs teams.¹⁷ Its public affairs team also meets occasionally with U.S. government officials and agencies to raise awareness of and answer questions about [U.S. Entity's] mission, and sends links to [U.S. Entity's] reports via email to U.S. government officials and agencies.¹⁸ [Individual] sometimes interacts with and disseminates information, reports, and materials to U.S. government officials and agencies as well.¹⁹

The November Letter acknowledges that [Foreign Entity] is a "foreign principal" under FARA.²⁰ However, it argues that [Individual] is not a "foreign principal" within the meaning of FARA because he is "a lawful permanent [U.S.] resident domiciled in the United States [and] is not 'outside the United States.'"²¹

Additionally, the November Letter argues that [Foreign Entity] and [U.S. Entity] do not have an agency relationship under FARA.²² It states that while [Foreign Entity] and [U.S. Entity] have "a similar mission" and "share some overlapping board members," [Foreign Entity] does not direct

¹⁴ Nov. Letter, Ex. B at 5-6, 12.

¹⁵ Mar. Letter at 3. The donors include major gift donors, grants from U.S. foundations and trusts, and one-off and recurring donations from individual small donors. *Id.*

¹⁶ Mar. Letter at 3, Ex. C at 6; *see also* May Letter at 1. [Foreign Entity] also pays part of [Individual's] salary commensurate with the time he spends on [Foreign Entity's] work. Mar. Letter at 3.

¹⁷ Nov. Letter at 3; Mar. Letter at 2.

¹⁸ Mar. Letter at 2.

¹⁹ *Id.*

²⁰ Nov. Letter at 7.

²¹ *Id.*

²² *Id.* at 7-8.

or control the activities of [U.S. Entity] or [Individual].²³ The November Letter further states that “[a]ny shared interest between [Foreign Entity] and [U.S. Entity] arise not from any power ‘over’ it by [Foreign Entity] or an ‘obligation on the part of’ it ‘to achieve [Foreign Entity’s] request.’”²⁴

Alternatively, the November Letter contends that even if [U.S. Entity] and [Individual] are agents of [Foreign Entity], they are exempt from FARA registration under 22 U.S.C. § 613(d)(2) because their activities “do not serve predominantly a foreign interest.”²⁵ The November Letter asserts that [U.S. Entity’s] and [Individual’s] activities “are wholly dedicated to identifying, analyzing, and combatting . . . harms . . . in the United States.”²⁶ Further, it comments that [U.S. Entity’s] and [Individual’s] activities “arise from their own initiative and are subject to the control and oversight of only [U.S. Entity’s] own board of directors.”²⁷ The November Letter adds that [U.S. Entity] and [Individual] undertake their activities “to pursue their own bona fide commercial and charitable purposes” and that, to the extent their activities also advance the interests of [Foreign Entity], “they do so only to further the bona fide commercial interests [Foreign Entity] has in furthering these charitable activities.”²⁸ Finally, the November Letter states that [U.S. Entity’s] and [Individual’s] activities are not directed by and do not directly promote the interests of any foreign government or foreign political party.²⁹

[U.S. Entity] and [Individual] request an advisory opinion on whether they are required to register under FARA.³⁰

II. FARA Analysis

FARA defines a “foreign principal” as, among other things, “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”³¹ Because [Foreign Entity] is a company

²³ *Id.* at 7.

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 8-10.

²⁶ Nov. Letter at 3.

²⁷ *Id.* at 9

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 1.

³¹ 22 U.S.C. § 611(b)(3).

organized under the laws of [Foreign Country], it is, as you concede, a “foreign principal” within the meaning of FARA.³²

The term “agent of a foreign principal” under FARA, in relevant part, means:

- (1) [A]ny person who acts as an agent, representative, employee, or servant, or who acts in any other 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 –
 - (i) engages within the United States in political activities for or in the interests of such foreign principal;
 - (ii) acts within the United States as a . . . publicity agent . . . 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 States³³

FARA’s implementing regulations explain that the meaning of “control” as used in FARA includes “the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.”³⁴

In addition, FARA defines the term “political activities” to include:

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. . . .^{35]}

FARA also defines the term “publicity agent” to include:

³² Because we have determined that [Foreign Entity] is a “foreign principal” under FARA, we need not consider whether [Individual] also qualifies as one.

³³ 22 U.S.C. § 611(c)(1)(i)-(ii), (iv). FARA defines “person” to include “an individual, partnership, association, corporation, organization, or any other combination of individuals.” 22 U.S.C. § 611(a).

³⁴ 28 C.F.R. § 5.100(b).

³⁵ 22 U.S.C. § 611(o).

any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.³⁶

FARA's "agency" determination, therefore, is a two-part inquiry that considers both the *relationship* between the agent and the foreign principal and the *activities* the agent performs in the principal's interests.

As to the first part of the inquiry, there is an agency relationship between [U.S. Entity] and [Foreign Entity] under FARA. As explained above, pursuant to the [U.S. Entity] Bylaws, [Foreign Entity] can appoint a director to the [U.S. Entity] Board who has the right to vote with the [U.S. Entity] Board when it exercises its power to "supervise, manage, and control all of the affairs, business activities, and policies" of [U.S. Entity].³⁷ That Appointed Director, according to the Bylaws, also has the right to remove [U.S. Entity] Board members for any reason and prevent the [U.S. Entity] Board from amending [U.S. Entity's] corporate structure or Bylaws.³⁸ In addition, under the Bylaws, [Foreign Entity] has the right to replace any [U.S. Entity] Board member removed by the Appointed Director.³⁹ These facts demonstrate that [Foreign Entity] possesses and can exercise "the power, directly or indirectly, to determine the policies or the activities of [U.S. Entity] . . . through the ownership of voting rights . . . or otherwise."⁴⁰ Thus, contrary to your suggestion, [U.S. Entity] is acting under the direction and control of [Foreign Entity].

There is likewise an agency relationship between [Individual] and [Foreign Entity] under FARA. By engaging in activities as CEO of [U.S. Entity], [Individual] is acting under the direction and control of "a person . . . whose activities are directly or indirectly supervised, controlled, financed, or subsidized in whole or in major party by a foreign principal."⁴¹

As to the second part of the inquiry, activities that [U.S. Entity] and [Individual] perform in the United States are registrable under FARA. As stated above, [Individual] founded [U.S. Entity] to "build on the work of [Foreign Entity]" by engaging in activities in the United States to advance the organizations' "common mission" to [Redacted].⁴² Those activities, which [Individual] participates in, include disseminating reports to U.S. government agencies and officials and the

³⁶ 22 U.S.C. § 611(h).

³⁷ See *supra* notes 11-12 and accompanying text.

³⁸ See *supra* notes 13-14 and accompanying text.

³⁹ See *supra* note 13 and accompanying text.

⁴⁰ 28 C.F.R. § 5.100(b).

⁴¹ 22 U.S.C. § 611(c)(1).

⁴² See *supra* note 7 and accompanying text.

U.S. public that recommend government policy changes.⁴³ They also include meeting with U.S. government agencies and officials to raise awareness of and provide information about [U.S. Entity's] mission.⁴⁴

Such activities are registrable for multiple reasons. First, they are political activities for or in the interests of a foreign principal under FARA because the activities are intended to influence U.S. government agencies and officials and U.S. public opinion "with reference to formulating, adopting, or changing the domestic or foreign policies of the United States."⁴⁵ Second, [U.S. Entity's] and [Individual's] dissemination of reports and information to U.S. government agencies and officials constitutes representing the interests of a foreign principal before U.S. government agencies and officials under FARA.⁴⁶ Third, by engaging in such activities, [U.S. Entity] and [Individual] are acting as publicity agents under FARA because they are disseminating "oral, visual, graphic, written, or pictorial information or matter" for or in the interests of a foreign principal.⁴⁷

For these reasons, [U.S. Entity] and [Individual] qualify as agents of a foreign principal under FARA and must register for their activities unless an exemption applies.

As noted above, [U.S. Entity] and [Individual] claim that they are exempt from registration under Section 613(d)(2) of FARA. That Section exempts from registration "[a]ny person engaging or agreeing to engage only . . . in other activities not serving predominantly a foreign interest."⁴⁸ FARA's implementing regulations concerning Section 613(d)(2) state, in relevant part:

[A] person engaged in political activities on behalf of a foreign corporation . . . will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government"⁴⁹

⁴³ See *supra* notes 17-19 and accompanying text.

⁴⁴ See *supra* note 18 and accompanying text.

⁴⁵ 22 U.S.C. § 611(c)(1)(i), (o).

⁴⁶ 22 U.S.C. § 611(c)(1)(iv).

⁴⁷ 22 U.S.C. § 611(c)(1)(ii), (h).

⁴⁸ 22 U.S.C. § 613(d)(2).

⁴⁹ 28 C.F.R. § 5.304(c).

FARA's implementing regulations add that "[t]he burden of establishing the availability of an exemption from registration . . . shall rest upon the person whose benefit the exemption is claimed."⁵⁰

Based on the representations in the November, March, and May Letters, [U.S. Entity] and [Individual] have met their burden of demonstrating that the exemption at Section 613(d)(2) applies in this case. While [U.S. Entity's] and [Individual's] activities may benefit [Foreign Entity], they directly advance [U.S. Entity's] objectives and focus entirely on addressing conduct and harms in the United States.⁵¹ Moreover, [U.S. Entity's] and [Individual's] political activities are not directed by a foreign government or foreign political party and do not directly promote the public or political interests of a foreign government or foreign political party.⁵² For these reasons, [U.S. Entity's] and [Individual's] activities do not "serv[e] predominantly a foreign interest" and [U.S. Entity] and [Individual] are therefore not obligated to register under FARA.⁵³

This advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein, and the requirements of FARA and its regulations. If there are any changes in the facts and circumstances you have related to us, you should contact us immediately.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to FARA.Public@usdoj.gov or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

⁵⁰ 28 C.F.R. § 5.300.

⁵¹ See *supra* notes 7, 17-19, 26 and accompanying text.

⁵² See *supra* notes 1, 3, 10-11, 15, 29 and accompanying text.

⁵³ We express no opinion regarding whether [U.S. Entity] and [Individual] may be required to register under the Lobbying Disclosures Act for their activities. See 2 U.S.C. §§ 1602-1603 (requiring "lobbyists" to register for engaging in "lobbying activities" as those terms are defined in the statute).