

# Client Alert

Special Matters & Government Investigations

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## Trump's DOJ Rolls Back Enforcement of the Foreign Agents Registration Act

U.S. Attorney General Pam Bondi wasted literally no time reshaping the Department of Justice's national security enforcement strategy. Within hours of taking office, she ordered prosecutors to stop pursuing criminal prosecutions for Foreign Agents Registration Act (FARA) violations unless they involved "conduct similar to more traditional espionage by foreign government actors." Read literally, the new policy could bring two significant changes. First, by limiting prosecutions to espionage operations that extract information from the United States, it may exclude foreign influence operations that inject information into the United States. Second, by restricting FARA enforcement to persons who acted on behalf of foreign governments, it may absolve agents who undertake activities for private foreign principals.

The new policy reduces the risk of prosecution for promoting foreign interests,<sup>1</sup> but it does not alter the statutory registration and reporting requirements. Indeed, the Attorney General's memorandum instructs FARA prosecutors to "focus on civil enforcement," although it seems not to recognize that there usually is no civil remedy even for egregious FARA violations. The statute includes no civil penalties, and a federal appellate court ruled last year that the government can obtain a civil injunction to require FARA registration only if the alleged agency relationship is ongoing. See King & Spalding, "[Attorney General of the United States v. Wynn: D.C. Circuit Rules Out Injunctive Relief for Past FARA Violations, Leaving Criminal Prosecution as the Only Remedy](#)" (June 20, 2024). Agents who refuse to comply with FARA therefore might face no enforcement at all if the case does not involve "conduct similar to more traditional espionage by foreign government actors."

This client alert analyzes Attorney General Bondi's FARA guidance and recommends continued vigilance about FARA compliance. Only time will

tell what factors constitute “traditional espionage” and what makes a case “similar” enough to warrant prosecution.

## HISTORY OF FARA

FARA requires agents of foreign principals to register with the Attorney General and periodically disclose activities taken on behalf of their foreign principal.<sup>2</sup> The Act broadly defines “agent” and imposes a maximum five-year prison term for willful violations.<sup>3</sup> Importantly, FARA does not prohibit agents from advancing foreign interests. Instead, the statute requires agents to register, to disclose details about their tasking, and to report on their activities.<sup>4</sup> Agents who fail to comply with the complex bureaucratic mandates—a common occurrence even for well-intentioned registrants—can be sent to prison if the government proves they acted willfully. While prosecutors face the challenge of proving their case beyond a reasonable doubt, they can use circumstantial evidence, and willfulness depends on the jury’s inferences about the defendant’s state of mind.

Congress enacted FARA in 1938 to combat Nazi and communist propaganda spread by people knowingly acting at the behest of foreign principals.<sup>5</sup> In 1966, Congress broadened FARA to include agents engaged in “political activities,” not merely propaganda, in an effort to counteract covert influence campaigns by foreign governments.<sup>6</sup> A proponent of the amendment concisely explained its purpose:

[T]he original targets of this act were the subversive agent and propagandist. But as our interests through the world have multiplied, the efforts of foreign and domestic politics have become correspondingly greater and more subtle. The place of the old foreign agent has been taken by the professional lobbyists and public opinion manipulators whose object is not [to] subvert the Government but to influence its politics to the satisfaction of his client. The trench coat has been replaced by the gray flannel suit.<sup>7</sup>

But prosecutions for FARA violations were rare. The government charged only seven FARA cases between 1966 and 2016.<sup>8</sup> The FARA Unit’s work consisted mainly of identifying potential violations and mailing letters urging registration.

In 2016, the Justice Department’s Inspector General criticized the lack of FARA enforcement and recommended developing “a comprehensive strategy for the enforcement and administration of FARA ... that is integrated with the Department’s overall national security efforts.”<sup>9</sup> In 2019, President Trump’s first Assistant Attorney General for National Security announced a shift “from treating FARA as an administrative obligation and regulatory obligation to one that is increasingly an enforcement priority,”<sup>10</sup> and the Department later described FARA as “an important tool used to combat foreign intelligence in the United States.”<sup>11</sup> The FARA Unit gained additional staff and began pursuing criminal investigations and civil enforcement actions for registration violations that previously would have brought only an administrative request to file the proper forms.

## ANALYSIS OF THE POLICY CHANGES

Attorney General Bondi’s memorandum seeks to roll back the expansive application of FARA spawned by the Inspector General’s 2016 critique. It directs the National Security Division to limit FARA prosecutions to violations involving “conduct similar to more traditional espionage by foreign government actors,”<sup>12</sup> and tasks the FARA Unit to “focus on civil enforcement, regulatory initiatives, and public guidance.”<sup>13</sup>

Biden Administration officials emphasized the value of using FARA enforcement to “combat malign influence,”<sup>14</sup> but they did not limit enforcement to such cases. Indeed, prosecutors investigated alleged technical violations of FARA’s byzantine reporting requirements. Just last year, for example, King & Spalding represented a company threatened with a FARA indictment after arranging meetings for a foreign candidate for political office. Although there was no evidence of malign intent or covert influence, prosecutors pressed for a criminal resolution until they were convinced

the evidence did not establish a willful violation. Attorney General Bondi's memorandum seems to prevent prosecutors from pursuing that type of alleged violation because it does not involve traditional espionage or a foreign government actor.

FARA prosecutions clearly will continue under the Bondi memorandum if they involve the exfiltration of information to a foreign government agent. In a 2018 prosecution, for example, prosecutors charged that a foreign government directed a defendant to obtain information and the defendant briefed foreign officials about his discussions with U.S. officials and think-tank personnel while falsely representing that he was not acting for the foreign government.<sup>15</sup>

But applying the new guidance to complicated fact patterns may prove challenging. In one high-profile case, for example, prosecutors alleged that a defendant engaged U.S. companies to lobby on behalf of a foreign government, arranged for a straw foreign entity to serve as the nominal client, concealed the identity of the foreign government client, generated publicity in the U.S. for the foreign government, and hid his compensation in offshore bank accounts.<sup>16</sup> Charges premised on failure to report this activity seem consistent with FARA's original goal of preventing covert dissemination of foreign propaganda, but it is not clear whether it would qualify as "traditional espionage."

## PRACTICAL IMPLICATIONS

The Bondi memorandum ends a brief era of robust FARA enforcement by prosecutors wielding discretion to threaten prosecution for technical violations even without risk of significant harm to U.S. interests. Now, the decision to indict a defendant might turn on the Justice Department's interpretation of whether the defendant engaged in "conduct similar to more traditional espionage" by foreign government agents. Espionage in support of commercial interests might be excluded, and prosecutors face the challenge of distinguishing "more traditional espionage" from other types of conduct that requires registration, including "less traditional" espionage. While all three categories may violate the law, only the former will merit prosecution.

Prosecutable FARA Violations

More Traditional Espionage	Other Prohibited Conduct
Less Traditional Espionage	

The first category surely includes covert intelligence-gathering on behalf of a foreign government, but the boundaries remain undefined. Moreover, the authority to prosecute cases "similar" to traditional espionage might encompass conduct that otherwise qualifies as less-traditional espionage or non-espionage. Finally, because this policy is solely a product of the Attorney General's discretion, either she or a future Attorney General may change it and approve a case that Attorney General Bondi would have declined.

Although the new guidance approves civil FARA enforcement, in practice such enforcement is limited because the statute does not include a civil penalty. The only civil options are to file a lawsuit seeking an injunction that requires a person to stop acting as a foreign agent or an injunction that requires a person to comply with the registration requirements.<sup>17</sup> Moreover, the D.C. Circuit recently eliminated the option of compelling retroactive registration for

completed violations, leaving the government with neither a remedy nor a penalty for agents whose engagements have concluded. See King & Spalding, “*Attorney General of the United States v. Wynn: D.C. Circuit Rules Out Injunctive Relief for Past FARA Violations, Leaving Criminal Prosecution as the Only Remedy*” (June 20, 2024). Hence Attorney General Bondi’s new policy may spur prosecutors to pursue civil enforcement in other jurisdictions, potentially generating a split of authority that requires resolution by the Supreme Court.

Attorney General Bondi’s policy eliminates the threat of a criminal FARA prosecution for a significant range of conduct that violates the statutory and regulatory registration requirements. However, the policy will not necessarily relieve potential foreign agents of their registration duties. First, career prosecutors may interpret the policy broadly and not limit themselves to cases involving government-sponsored espionage. Second, Attorney General Bondi or a successor may revise the discretionary policy. Finally, since the policy does not change the law, most companies and many individuals will still try to comply with FARA’s sometimes-arcane requirements. For many years, those ambiguities have sparked calls for the Congress to revisit FARA’s statutory language. The new policy is unlikely to be the final word.

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<sup>1</sup> General Policy Regarding Charging, Plea Negotiations, and Sentencing to all Dep't of Justice Emps. 4 (Op. Att'y Gen. Feb. 5, 2025), <https://www.justice.gov/ag/media/1388541/dl?inline>.

<sup>2</sup> See generally 22 U.S.C. § 613 (listing FARA requirements as to registration).

<sup>3</sup> 22 U.S.C. § 613(c)(1); see also U.S. Dep't of Justice, Crim. Res. Manual § 2062 (2018), <https://www.justice.gov/archives/usam/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement>.

<sup>4</sup> See 22 U.S.C. §§ 611–612.

<sup>5</sup> Jacob R. Straus, Cong. Rsch. Serv., R46435, Foreign Agents Registration Act (FARA): Background and Issues for Congress 4 (2020).

<sup>6</sup> *Id.* at 10; see also U.S. Dep't of Justice, Crim. Res. Manual § 2062 (2018), <https://www.justice.gov/archives/usam/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement>.

<sup>7</sup> Sen. James Fulbright, "Amendment of Foreign Agents Registration Act," Senate debate, Congressional Record, vol. 111, part 5, p. 6984 (April 5, 1965).

<sup>8</sup> Deputy Assistant Attorney General for the National Security Division Adam Hickey Delivers Remarks at the ACI 2nd National Forum on FARA, U.S. Dep't of Justice (Dec. 4, 2020), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-national-security-division-adam-hickey-delivers-remarks>.

<sup>9</sup> OIG, U.S. Dep't of Justice, Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act 21 (Sept. 2016), <https://oig.justice.gov/reports/2016/a1624.pdf>.

<sup>10</sup> Whitney K. Novak, Cong. Rsch. Serv., IF11439, Foreign Agents Registration Act (FARA): A Legal Overview 2 (2023); see also Katie Brenner, *Justice Dept. to Step Up Enforcement of Foreign Influence Laws*, N.Y. Times (Mar. 6, 2019), <https://www.nytimes.com/2019/03/06/us/politics/fara-task-force-justice-department.html>.

<sup>11</sup> U.S. Dep't of Justice, No. 1279836, The Scope of Agency Under FARA 1 (2020), [www.justice.gov/nsd-fara/page/file/1279836/dl](http://www.justice.gov/nsd-fara/page/file/1279836/dl).

<sup>12</sup> General Policy Regarding Charging, Plea Negotiations, and Sentencing to all Dep't of Justice Emps. 4 (Op. Att'y Gen. Feb. 5, 2025), <https://www.justice.gov/ag/media/1388541/dl?inline>.

<sup>13</sup> *Id.*

<sup>14</sup> Deputy Attorney General Lisa O. Monaco Delivers Remarks on Defending the Rule of Law Against Hostile Nation-States, U.S. Dep't of Justice (March 28, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-defending-rule-law-against-hostile>.

<sup>15</sup> Chaudhry pleaded guilty on May 7, 2018. He received three years of probation. See Information, *U.S. v. Chaudhry*, No. 18-cr-226 (D. Md. Apr. 19, 2018), ECF No. 1.

<sup>16</sup> See Superseding Criminal Information, *United States v. Manafort*, No. 1:17-cr-201 (D.D.C. Sept. 14, 2018), ECF No. 419.

<sup>17</sup> 22 U.S.C. § 618(f).

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