

FARA Enforcement: The Year Ahead

By **David Laufman** (February 7, 2019)

The vigor and scope of the U.S. Department of Justice's enforcement of the Foreign Agents Registration Act in 2018 will be hard to top in 2019. But this much is certain: FARA enforcement this year will continue to play a major role in the DOJ's efforts to counter foreign influence operations in the United States, and likely will build further on the more aggressive approach to the statute's enforcement that the DOJ has undertaken in the past few years.



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As seen in a flurry of high-profile matters in 2018, the DOJ will continue to press entities and individuals to register under FARA when it determines they have an obligation to register, initiate criminal investigations when deemed appropriate, and bring criminal charges where there is evidence of a willful violation of the statute.

Parties who enter into agreements with foreign interests to engage within the United States in registrable conduct under FARA therefore would be wise to take necessary, timely steps to effect compliance in order to obviate the scrutiny of enforcement officials. Moreover, in responding to government inquiries or fulfilling their disclosure requirements, companies and individuals should exercise rigorous due diligence to ensure that any information provided to the DOJ is accurate.

2018: A Year of Robust Enforcement

Criminal Prosecutions

Last year saw a comparatively high number of criminal prosecutions and resolutions in FARA matters, further demonstrating the DOJ's commitment to intensify enforcement of FARA. Taking into account criminal prosecutions initiated in late 2017 (e.g., the Paul Manafort case in the District of Columbia), there have been nearly as many criminal prosecutions for FARA violations in the last 18 months (five) as during the 40-year period from 1966 to 2015 (seven) — and more, if you count the total number of defendants recently charged.

Most of these prosecutions were initiated by Special Counsel Robert S. Mueller III, while others apparently were referred by the Special Counsel's Office to U.S. attorney's offices for prosecution. Some might regard the FARA cases charged by the SCO as outliers, given the unique, temporal status of the SCO. But that would be mistaken: Mueller and his team of prosecutors are all DOJ attorneys, bound by DOJ policies and procedures,[1] and, accordingly, the charging decisions in the FARA prosecutions they brought were — at a minimum — socialized with the DOJ's National Security Division, which has jurisdiction over FARA enforcement.[2] These cases therefore should be understood to form part of the DOJ's overall FARA enforcement effort, and will constitute precedent for future FARA prosecutions by the DOJ.

The Internet Research Agency Case

In February 2018, a grand jury in the District of Columbia returned an indictment of three Russian companies — the Internet Research Agency LLC, Concord Management and Consulting LLC, and Concord Catering — as well as 13 Russian nationals — for committing various crimes while seeking to interfere in the U.S. political system, including the 2016

presidential election.

Count One of the indictment charges the defendants with, among other things, conspiracy to defraud the United States by impairing, obstructing and defeating the lawful functions of the U.S. Department of Justice — namely, the DOJ’s ability to administer and enforce FARA. In describing the specific activities giving rise to FARA liability (e.g., they failed to register as foreign agents with the DOJ), the indictment alleges that the “Defendants and their co-conspirators, while concealing their Russian identities and [Internet Research Agency] affiliation through false personas, began to produce, purchase, and post advertisements on U.S. social media and other online sites expressly advocating for the election of then-candidate [Donald] Trump or expressly opposing [Hillary] Clinton.”[3]

The indictment also alleges that “Defendants and their co-conspirators organized and coordinated political rallies in the United States. To conceal the fact that they were based in Russia, Defendants and their co-conspirators promoted these rallies while pretending to be U.S. grassroots activists who were located in the United States but unable to meet or participate in person.”[4]

As alleged, these two sets of activities, at a minimum, constitute “political activities,”[5] one of the statutory grounds for FARA registration. More interesting are the jurisdictional aspects of the FARA charges. An entity or individual has an obligation to register under FARA (in the absence of a statutory exemption from registration) under the “political activities” prong of the statute only if they “engage[] within the United States in political activities for or in the interests of [a] foreign principal.”[6] As alleged, the defendants clearly caused effects within the United States consistent with the definition of “political activities,” and the indictment also alleges certain actions occurred in the United States sufficient for both statutory and due process purposes.

For example, the indictment alleges (1) that the “Defendants, posing as U.S. persons and creating false U.S. personas, operated social media pages and groups designed to attract U.S. audiences; (2) that “certain Defendants traveled to the United States under false pretenses for the purpose of collecting intelligence to inform Defendants’ operations”; and (3) that “Defendants also procured and used computer infrastructure,[7] based partly in the United States, to hide the Russian origin of their activities and to avoid detection by U.S. regulators and law enforcement.”[8]

Nonetheless, this case may represent the first time the DOJ has charged foreign nationals, operating predominantly from a foreign country, with criminal violations of FARA, and it may signal the DOJ’s increased willingness in future FARA cases to charge foreign-centric conduct causing effects in the United States, even when there is minimal direct conduct in the United States. The weaponization of U.S. social media platforms to conduct foreign influence operations in the United States, in particular, is likely to attract increased enforcement interest.

Richard Gates

In February 2018 (one week after the Internet Research Agency indictment was returned), Richard Gates pleaded guilty in the District of Columbia to conspiracy to defraud the United States by impeding, impairing, obstructing, and defeating the DOJ’s ability to administer and enforce FARA — the same type of conspiracy charged in the IRA case.[9]

As described in the statement of offense accompanying Gates’ plea agreement, Gates participated in a scheme with Paul Manafort to engage in lobbying in the United States on

behalf of the government of Ukraine and the Party of Regions without registering with the DOJ, utilizing two Washington, D.C., firms to carry out the lobbying campaign.[10] Key to the scheme was the fiction that the lobbying effort was being waged on behalf of the European Centre for a Modern Ukraine — an organization held out as independent of the government of Ukraine and the Party of Regions, when, in fact, the organization was under the direction of the Party of Regions (the party of pro-Russian, former Ukrainian President Viktor Yanukovich).

In response to inquiries from the DOJ, Gates (along with Manafort) also caused false and misleading representations to be made to the DOJ regarding the lobbying campaign and his firm's document retention policy.[11] Gates also participated in and coordinated a parallel lobbying campaign in the United States on Ukraine's behalf undertaken by a group of former senior European politicians, again without registering with the DOJ.[12]

The case illustrates the willingness of the NSD's Counterintelligence and Export Control Section, which directly oversees FARA enforcement, to utilize the DOJ's limited fact-finding authorities in an initial administrative context to press parties for relevant information, and the subsequent effectiveness of basic criminal investigative tools to unravel the type of unlawful scheme perpetrated by Gates and Manafort.

W. Samuel Patten

In what appears to be a spinoff from the Special Counsel's Office investigation, Washington, D.C., consultant W. Samuel Patten pled guilty in August 2018 in the District of Columbia to violating FARA by engaging in lobbying in the United States on behalf of the Opposition Bloc, a Ukrainian political party, without registering with the DOJ.[13]

According to the criminal information, Patten engaged in multiple actions to influence U.S. government policy on behalf of the Opposition Bloc and an unnamed, "prominent Ukraine oligarch," such as (1) contacting members of Congress, the executive branch, and the news media; (2) drafting talking points for "a prominent Ukraine oligarch" for meetings the oligarch sought with members of Congress and congressional staff, as well as talking points for congressional staff to use to convince other members of Congress to meet with the oligarch; and (3) helping the Ukrainian oligarch to draft op-ed articles for publication in U.S. news media outlets.[14]

Patten thus engaged in multiple types of conduct comprising "political activities" under FARA. Evidence that Patten's failure to register under FARA was willful — an essential element for criminal liability under FARA — included the fact that Patten had previously registered under FARA for another client, in addition to Patten's own acknowledgment that he knew he was required to register to engage in the actions at issue in his criminal prosecution.[15]

Paul Manafort

After being convicted at trial in the Eastern District of Virginia on fraud and tax charges in August 2018, Paul Manafort pleaded guilty in the District of Columbia in September 2018 to conspiracy to defraud the United States in connection with his failure to register under FARA as an agent of the government of Ukraine; the Party of Regions; former Ukrainian President Yanukovich; and the Opposition Bloc, a successor to Yanukovich's Party of Regions.[16] Manafort also pleaded guilty to conspiracy in connection with FARA-related false statements and misrepresentations to the DOJ in violation of both FARA and the general false-statements statute, 18 U.S.C. § 1001.

While the substantive FARA charges to which Manafort pled guilty are significant, the case also highlights the importance the DOJ attaches to protecting the integrity of its administrative fact-finding process by punishing false statements aimed at evading registration.

Bijan Rafiekian and Kamil Alptekin

In a spinoff from the SCO's previous investigation of former National Security Adviser Michael Flynn,[17] the DOJ indicted Bijan Rafiekian, a former business partner of Michael Flynn, and Kamil Alptekin, a dual Turkish-Dutch citizen residing in Turkey, in December 2018 in the Eastern District of Virginia for conspiracy to act as an agent of a foreign government without registering under FARA and conspiracy to make false statements and willful omissions in a FARA filing with the DOJ.[18]

According to the allegations in the indictment, Rafiekian and Alptekin, the latter of whom has close ties to senior officials in the government of Turkey, conspired to covertly influence U.S. politicians and American public opinion against a Turkish citizen living in the United States (understood to be the cleric Fethulla Güllen) whose extradition had been requested by the Turkish government. The indictment alleges that the purpose of the conspiracy was to use "Company A" (understood to be the Flynn Intel Group, Michael Flynn's former consulting firm) "to discredit and delegitimize the Turkish citizen in the eyes of [U.S.] politicians and [the American] public, and ultimately to secure the Turkish citizen's extradition." [19]

The factual allegations describe a degree of brazenness by the defendants not often seen in FARA cases: In September 2016, "Person A" (understood to be Flynn), Rafiekian and Alptekin met in New York City with two officials of the government of Turkey and discussed the Turkish government's efforts to convince the U.S government to extradite the Turkish citizen to Turkey.[20]

Nisar Chaudhry

In the single FARA prosecution in 2018 unrelated to the Special Counsel's investigation, Nisar Chaudhry, a national of Pakistan and a lawful permanent resident of the United States, pleaded guilty in May 2018 in the District of Maryland to failing to register under FARA as an agent of the government of Pakistan.

According to a stipulated statement of facts included in his plea agreement, Chaudhry, who represented himself to be the president of the Pakistan American League, "interacted on a routine basis with representatives of the Government of Pakistan" in the United States as well as with high-level Pakistani government officials during visits to Pakistan.[21] In the United States, Chaudhry "interacted on a routine basis with numerous institutes, foundations, and organizations operating in and around Washington, D.C., commonly referred to as 'think tanks,' that played a role in shaping and influencing United States foreign policy." [22] He organized roundtable discussions in Washington, D.C., and Maryland between his U.S. government and think tank contacts and Pakistani government officials "that could be used to influence United States foreign policy in a direction favorable to Pakistan's interests." [23]

The plea agreement states that "[d]uring his interactions with current and former United States government officials and American South Asian scholars, [Chaudhry] employed certain methods of discussion, of his own devising or as directed by Pakistani government officials, in order to neutralize unfavorable views of Pakistan held by those United States

officials and scholars.”

The case is significant insofar as it reflects a rare public manifestation, in a criminal context, of the DOJ’s interest in how think tanks and similar organizations in the United States may be used to further foreign influence operations.

Increased Registration

Skittishness among firms due to the surge in the DOJ’s criminal enforcement of FARA prompted a considerable increase in registration in 2018 to demonstrate compliance with the statute and avoid potential investigative interest. As of Dec. 25, 2018, there were 430 active FARA registrants, a nearly 20 percent increase in registrations since the end of 2017 — and a 43 percent increase in registrations since the end of 2014, when DOJ enforcement of FARA began to intensify. The vast majority of the new registrants registered on their own initiative. A few — such as RIA Global, the parent organization of the Russian news outlet Sputnik — did so only in response to a written determination by the DOJ that they had an obligation to register, and registered begrudgingly.[24]

Transparency Measures by DOJ

FARA’s implementing regulations permit potential registrants or their attorneys to obtain a written advisory opinion from the DOJ’s FARA Registration Unit as to whether engaging in certain activities requires registration.[25] Although such opinions are limited to, and premised on, the specific factual circumstances provided by the potential registrant, they can shed light on how the DOJ interprets FARA. For many years, only a few advisory opinions were publicly available on the DOJ’s FARA website, **www.fara.gov**. In June 2018, however, the DOJ published online approximately 50 redacted advisory opinions issued since January 2010 addressing how the FARA Registration Unit interprets certain FARA provisions.

The FARA Landscape in 2019: What to Expect

Although it is doubtful the number of criminal prosecutions in 2019 will equal those last year, there is no turning back to the days when FARA enforcement was more quiescent. As evidenced in the DOJ’s November 2018 announcement of a “China Initiative,”[26] FARA enforcement now comprises an essential part of the National Security Division’s overall effort to counter foreign influence operations in the United States. The NSD’s Counterintelligence and Export Control Section will continue to assign high priority to maximizing compliance and holding accountable entities and individuals who willfully violate FARA. This prioritization began before the Special Counsel’s Office existed, and it will persist after the SCO has completed its work.

When information in the government’s possession (often based on public news reports) raises questions about a party’s obligation to register, the DOJ will continue its recent practice of sending more muscular letters containing detailed interrogatories and requests for documents. Among other areas of focus, the DOJ will continue to accord greater scrutiny to registrations under the Lobbying Disclosure Act to assess whether LDA registrants should be registered, instead, under FARA. And in cases where the DOJ assesses that the “principal beneficiary” of an LDA registrant’s activities is a foreign government or political party, the DOJ will require that party to register under FARA.[27]

Law firms, among other business entities, will need to pay increased heed to their potential registration obligations, as the exemption from registration for legal services[28] is a

narrow one. At the same time, attorneys will need to carefully vet factual representations by their clients, exhausting all reasonable measures to ensure they do not unwittingly become a mechanism for making false statements to the government.

Indeed, in its first major FARA enforcement action of 2019, the DOJ announced an unprecedented civil settlement agreement with Skadden Arps Meagher & Flom LLP on Jan. 17, 2019, for violating FARA.[29] The DOJ determined that Skadden, “through certain of its current and former partners, acted as an agent of the Government of Ukraine ... by contributing to a [Ukrainian government] public relations campaign directed at U.S. media without registering with DOJ” as required by FARA.[30]

The DOJ also made public that, in previously concluding that Skadden was not obligated to register under FARA, it had “relied to its detriment on false and misleading oral and written statements” made by a former Skadden partner regarding Skadden’s activities on behalf of the Ukrainian government.[31]

Among the remedial measures imposed under the settlement agreement, the DOJ required Skadden to submit a report to the DOJ that addresses Skadden’s “formal procedures for when independent diligence should be undertaken in responding to such inquiries to ensure that the information provided is reliable, accurate, and complete.”[32]

Attempts to misuse legal representation to shield potential registrants either from the need to register or from potential criminal liability also are likely to fail. As seen in the recent prosecution of Paul Manafort in the District of Columbia, the government is prepared to issue grand jury subpoenas to attorneys when deemed necessary, and to litigate the applicability of the crime-fraud exception to the attorney-client privilege, in cases where prosecutors believe that a company or individual is misusing their attorney to communicate false information to the government relating.[33]

The DOJ will continue to undertake criminal investigations and prosecutions where it assesses there is evidence of a willful substantive violation of the statute, or a conspiracy to defraud the United States by impeding the DOJ’s ability to enforce FARA (as seen in the prosecutions of Richard Gates, Paul Manafort, and the Internet Research Agency and related defendants). According to news reports, a criminal investigation is currently pending in the Southern District of New York — reportedly referred by the Special Counsel’s Office — concerning Washington, D.C., lobbyists Tony Podesta and Vin Weber as well as Gregory Craig, a former partner at Skadden, relating to work conducted on behalf of the government of Ukraine.[34]

The FBI’s operation of a Foreign Influence Task Force[35] may lead to an enhanced concentration of effort resulting in additional criminal FARA investigations as well as malign cyber operations and investigations of violations of 18 U.S.C. § 951 (“Agents of foreign governments”), a criminal statute with which FARA is often confused.

The DOJ’s approval of the Special Counsel’s Office indictment of the Internet Research Agency and related co-defendants suggests that in the realm of future FARA enforcement it may be willing to lean farther forward in criminally charging conduct that occurs predominantly overseas and has incidental effects within the United States. Although the DOJ will need to ensure that in any such case it is likely to prevail against a jurisdictional, due process-based challenge, it can look for internal policy support to a 1940 opinion issued by Attorney General Robert H. Jackson.

In that opinion, Attorney General Jackson responded to a request by the postmaster general

asking whether he had authority to exclude mail from entering the United States from overseas (including Germany) aimed at “influenc[ing] American readers in behalf of Germany and the Axis powers against the British and the democracies.”[36] Reciting various statutory provisions of FARA, Attorney General Jackson concluded:

It seems well settled that if a person outside of the United States uses the United States mails for the purpose of committing an act which if committed by him while in the United States would constitute a violation of a criminal statute in the United States he thereby renders himself liable to the penalties of such a statute....If, therefore, the mail matter involved is of such a character that its dissemination within the United States by an agent of a foreign principal acting within the United States would fall within the purview of [FARA], it follows that its dissemination here by such an agent acting outside the United States but using the United States mails to affect the dissemination, without first having filed with the Secretary of State the “registration statement” required by [FARA], would constitute a violation of [FARA].[37]

Of greater uncertainty than whether the DOJ continues its more aggressive criminal enforcement of FARA is whether 2019 will be the year when the DOJ dusts off a civil enforcement tool to compel FARA compliance that it has not utilized since 1991: the authority to seek civil injunctive relief.

FARA provides that the DOJ can seek an injunction from a federal district court if, for example, a party it deems to be an agent of a foreign principal (and therefore to have an obligation to register) refuses to register (or otherwise fails to comply with FARA).[38] The injunctive relief sought in such a situation would be a court order requiring compliance.

The DOJ’s Office of the Inspector General, in a 2016 audit regarding the National Security Division’s enforcement and administration of FARA, mildly criticized the NSD for not having instituted a single civil enforcement action, urging the NSD to “appropriately utilize[] all of the enforcement tools available to it.”[39] The DOJ signaled its willingness to deploy this authority in its settlement agreement with Skadden, which provides that the DOJ’s “exclusive redress for any breach of [the] Agreement will be through an injunction, civil enforcement action or other available remedy.”

Meanwhile, one matter to watch in this regard concerns a major Chinese state-run media organization. According to a September 2018 article in the Wall Street Journal, the DOJ has advised Xinhua News Agency that it has an obligation to register under FARA.[40] As of now, Xinhua has not registered.[41]

In light of the DOJ’s recently announced “China Initiative,” another matter to monitor in 2019 is whether the DOJ takes action requiring U.S. branches of China’s Confucius Institute to register under FARA. The Confucius Institute is overseen by Hanban, part of the Chinese Ministry of Education, and now reportedly operates on more than 100 U.S. college campuses.[42] Congress, for its part, manifested increased interest in U.S.-based Confucius Institute operations in 2018: Sen. Marco Rubio, R-Fla., and Rep. Joe Wilson, R-S.C., introduced legislation (the Foreign Influence Transparency Act) aimed at requiring Confucius Institute operations in the U.S. to register, and in September 2018, Senate Judiciary Committee Chairman Charles E. Grassley, R-Iowa, sent a detailed letter to then-Attorney General Jeff Sessions pressing the DOJ to take action on the Confucius Institute issue.[43]

Finally, 2019 may be the year when the DOJ provides more extensive transparency into how it interprets FARA. While the release of numerous advisory opinions in 2018 goes beyond

any previous disclosures, these letters are short on legal analysis and reasoning and therefore are of limited utility. Considerably more helpful would be the release, in appropriate circumstances, of letters the DOJ has sent to parties advising them that they have an obligation to register (referred to as “determination letters”).

In December 2017, the DOJ apparently made available to the news media^[44] an Aug. 17, 2017, determination letter sent to counsel for RTTV America Inc., which (along with T&R Productions, a U.S. production company for RT English-language programming) subsequently registered. The letter set forth a detailed explanation of the bases for requiring RTTV America’s registration under FARA, including its status as an agent of both RT and TV-Novosti (characterized as “[p]roxies of the Russian Government”), its engagement in “political activities” in the United States, and its operation as a “publicity agent” and “information-service employee” for TV-Novosti and RT.^[45]

A second determination letter — obtained through a Freedom of Information Act lawsuit — was published by the New York Times in September 2018.^[46] That letter was sent to counsel for The Podesta Group, then a prominent Washington, D.C., lobbying firm. In addition to providing the DOJ’s legal analysis of why The Podesta Group’s registration under the Lobbying Disclosure Act did not shield it from FARA registration, the letter set forth considerable factual support for DOJ’s conclusion, including references to emails and other documents.

Going forward, the DOJ should consider releasing additional determination letters both to further compliance by educating entities and individuals as to when FARA registration is required, and to explain the basis for registration decisions with significant enforcement implications.

Whether the new 116th Congress institutes any legislative reforms impacting FARA enforcement remains to be seen. Several FARA-related bills were introduced in the House of Representatives and Senate in the prior Congress. Most prominent among the changes contained in these bills were provisions to give the DOJ administrative subpoena authority to strengthen its fact-finding capabilities and to eliminate a current statutory exemption which authorizes a party engaged in lobbying activities in the United States on behalf of a foreign commercial or other private sector foreign entity to register under the Lobbying Disclosure Act, whose disclosure requirements are far less extensive than what FARA requires.

These bills encountered considerable opposition by various interest groups,^[47] and none was passed by either the House or Senate. H.R. 1, a compendium bill introduced on Jan. 3, 2019, contains a few FARA-related provisions, including a measure to establish civil fines for failing to file timely, complete registration statements and supplemental disclosure statements. It remains to be seen whether these provisions will garner traction in the 117th Congress. Notably, H.R. 1 does not include the controversial provisions from previously introduced legislation to give the DOJ administrative subpoena authority or repeal the LDA exemption.

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[1] See 28 C.F.R. § 600.7(a) (“A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice.”).

[2] The Justice Manual (formerly known as the United States’ Attorney Manual) sets forth DOJ policy applicable to all DOJ prosecutors, including prosecutors assigned to the SCO. Under the Justice Manual, a criminal violation of FARA cannot be charged “without the express approval of the National Security Division or higher authority.” JM § 9-90.020 (“National Security Matters – Prior Approval, Consultation, and Notification Requirements”).

[3] Indictment at 19, *United States v. Internet Research Agency LLC et al* (D.D.C. Feb. 16, 2018) (hereafter “IRA Indictment”).

[4] *Id.* at 20-21.

[5] “Political activities” are broadly defined 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 or a foreign political party.” 22 U.S.C. § 611(o).

[6] *Id.* § 611(c)(1)(i) (emphasis added).

[7] As summarized in DOJ’s press release accompanying the indictment, “the defendants allegedly purchased space on computer servers located within the United States in order to set up a virtual private network.” They then “allegedly used that infrastructure to establish hundreds of accounts on social media networks such as Facebook, Instagram, and Twitter, making it appear the accounts were controlled by persons within the United States.” <https://www.justice.gov/opa/pr/grand-jury-indicts-thirteen-russian-individuals-and-three-russian-companies-scheme-interfere>.

[8] IRA Indictment at 3.

[9] See <https://www.justice.gov/file/1038801/download> (plea agreement); <https://www.justice.gov/file/1038796/download> (Superseding Criminal Information); <https://www.justice.gov/file/1038806/download> (Statement of the Offense).

[10] Statement of the Offense at 3-7, *United States v. Gates* (D.D.C. Feb. 23, 2018).

[11] *Id.* at 5-6.

[12] *Id.* at 6-7.

[13] See <https://assets.documentcloud.org/documents/4807011/Patten-Plea.pdf> (Plea Agreement); <https://www.documentcloud.org/documents/4806589-Patten-Information.html> (Criminal Information); <https://assets.documentcloud.org/documents/4806846/Patten-Statement-of-Offense.pdf> (Statement of the Offense).

[14] Criminal Information at 2-3, *United States v. Patten*, (D.D.C. Aug. 31, 2018).

[15] *Id.* at 3.

[16] See <https://www.justice.gov/file/1094151/download> (Plea Agreement); <https://www.justice.gov/file/1094141/download> (Superseding Criminal Information); <https://www.justice.gov/file/1094156/download> (Statement of the Offense).

[17] At a sentencing hearing for Michael Flynn in the District of Columbia on December 18, 2018 (rescheduled for March 2019), the government acknowledged Flynn's involvement with the criminal FARA scheme charged in the Eastern District of Virginia. See Spencer Hsu, Matt Zapposky, and Carol Leonnig, *Michael Flynn's Sentencing Delayed After Judge Tells the Ex-Trump Adviser He Might Not Avoid Prison Time*, *Washington Post*, Dec. 18, 2018, https://www.washingtonpost.com/world/national-security/michael-flynn-trumps-former-national-security-adviser-scheduled-to-be-sentenced/2018/12/17/19ce1bb4-0247-11e9-b5df-5d3874f1ac36_story.html?utm_term=.c66921f07f33.

[18] See <https://www.justice.gov/opa/press-release/file/1120621/download> (Indictment). The government also charged both men with acting as unregistered agents of the government of Turkey under 18 U.S.C. § 951, and charged Alptekin with multiple false statements under 18 U.S.C. § 1001(a)(2).

[19] Indictment at 2, *United States v. Rafiekian and Alptekin* (E.D. Va. Dec. 12, 2018).

[20] *Id.* at 9.

[21] Stipulated Statement of Facts at 1-2, Plea Agreement, *United States v. Chaudhry* (D. Md. May 7, 2018), available at https://www.investigativeproject.org/documents/case_docs/3679.pdf; see <https://www.courtlistener.com/recap/gov.uscourts.mdd.419752/gov.uscourts.mdd.419752.1.0.pdf> (Information); <https://www.justice.gov/opa/pr/maryland-man-pleads-guilty-failure-file-foreign-agent-registration-statement> (DOJ press release).

[22] *Id.* at 1.

[23] *Id.* at 1-2.

[24] See <https://efile.fara.gov/docs/6524-Registration-Statement-20180216-2.pdf> ("Registrant [RIA Global] respectfully disagrees that FARA should apply.").

[25] See 28 C.F.R. § 5.2.

[26] See <https://www.justice.gov/opa/speech/file/1107256/download> (accompanying "Fact Sheet").

[27] See 28 C.F.R. § 5.307.

[28] See 22 U.S.C. § 613(g).

[29] See <https://www.justice.gov/opa/pr/prominent-global-law-firm-agrees-register-agent-foreign-principal>.

[30] Letter between National Security Division, U.S. Dept. of Justice, and Skadden, Arps, Meagher & Flom, LLP at 1, Jan. 15, 2019 (hereafter "Skadden Settlement Agreement"), available at <https://www.documentcloud.org/documents/5687924-2019-01-15-Skadden-Settlement-Agreement-Reduced-0.html>.

[31] Skadden Settlement Agreement at 1.

[32] Id. at 3.

[33] See generally Memorandum Opinion, In Re Grand Jury Investigation (Misc. Action No. 17-2336 Oct. 31, 2017).

[34] See Tom Hamburger, *Washington Lawyer, a Former White House Counsel, Under Scrutiny By Prosecutors in Offshoot of Mueller Probe*, Washington Post, Sept. 23, 2018, https://www.washingtonpost.com/politics/former-white-house-counsel-gregory-craig-under-scrutiny-by-prosecutors-in-offshoot-of-mueller-probe/2018/09/23/68de1acc-bdac-11e8-8792-78719177250f_story.html?utm_term=.dc19d21213de; Devlin Barrett & Matt Zapposky, *Mueller Referred Foreign Lobbying Case to New York Prosecutors*, Washington Post, July 31, 2018, https://www.washingtonpost.com/world/national-security/mueller-referred-foreign-lobbying-case-to-new-york-prosecutors/2018/07/31/7e829cfc-9518-11e8-a679-b09212fb69c2_story.html?utm_term=.e4e98b9947b5.

[35] See <https://www.fbi.gov/investigate/counterintelligence/foreign-influence>.

[36] 39 Op. A.G. 535, 535 (Dec. 1940).

[37] Id. at 538.

[38] See 22 U.S.C. § 618(f).

[39] See Office of the Inspector General, U.S. Department of Justice, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act*, at 12-13 (Sept. 2016).

[40] Kate O'Keefe & Aruna Viswanatha, *Justice Department Has Ordered Key Chinese State Media Firms to Register As Foreign Agents*, Wall Street Journal, Sept. 18, 2018.

[41] Another Chinese state-owned media organization that DOJ reportedly told to register, CGTN America, registered under protest on February 1, 2019. See Kate O'Keefe & Aruna Viswanatha, *Chinese State Media Giant Registers As Foreign Agent in U.S.*, Wall Street Journal, Feb. 5, 2019.

[42] See Ethan Epstein, *How China Infiltrated U.S. Classrooms*, Politico, Jan. 17, 2018, <https://www.politico.com/magazine/story/2018/01/16/how-china-infiltrated-us-classrooms-216327>.

[43] See <https://www.grassley.senate.gov/news/news-releases/grassley-presses-doj-fara-and-china-s-activity-us-education-system>.

[44] See Josh Gerstein, *DOJ Told RT to Register As Foreign Agent Partly Because of Alleged 2016 Election Interference*, Politico, Dec. 21, 2017, <https://www.politico.com/story/2017/12/21/russia-today-justice-department-foreign-agent-election-interference-312211>.

[45] The release of the letter apparently occurred in conjunction with a telephonic briefing of journalists by a senior NSD official regarding DOJ's enforcement of FARA. See id.

[46] See Kenneth Vogel, *Manafort Plea Deal Casts New Scrutiny on Lobbyists He Recruited*, *New York Times*, Sept. 14, 2018, <https://www.nytimes.com/2018/09/14/us/politics/manafort-plea-lobbying-disclosures.html>.

[47] See *Push to Toughen Foreign Lobbying Law Stalls Amid Opposition*, *CBS News*, Oct. 9, 2018, <https://www.cbsnews.com/news/push-to-toughen-foreign-lobbying-law-stalls-amid-opposition/>; Marianne Levine & Theodoric Meyer, *Foreign Lobbying Overhaul Loses Steam in Congress*, *Politico*, Sept. 17, 2018, <https://www.politico.com/story/2018/09/17/foreign-lobbying-registration-congress-826323>.