



Office of the Inspector General
United States Department of Justice

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before the

U.S. Senate
Committee on the Judiciary

concerning

"Oversight of the Foreign Agents Registration Act and Attempts to Influence
U.S. Elections: Lessons Learned from Current and Prior Administrations"

July 26, 2017

Mr. Chairman, Senator Feinstein, and Members of the Committee:

Thank you for inviting me to testify at today's hearing examining the Department of Justice's (Department) oversight of the Foreign Agents Registration Act of 1938 (FARA), as amended. As the Department states on its website, the purpose of FARA "is to insure that the U.S. Government and the people of the United States are informed of the source of information (propaganda) and the identity of persons attempting to influence U.S. public opinion, policy, and laws."

In September 2016, the Office of the Inspector General (OIG) issued a report entitled, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act*. Our audit identified concerns with the Department's efforts to enforce FARA and the administration and monitoring of FARA registrations. We also reviewed legislative changes for FARA that were brought to our attention during our work. As a result of our findings, we made 14 recommendations, and the Department agreed with all of them. As I discuss in greater detail later in my testimony, 5 of our 14 recommendations were made to enhance the National Security Division's (NSD) enforcement efforts, and 2 of those recommendations remain open. We made 7 recommendations to improve NSD's oversight of its foreign agent registrations, 5 of which remain open. We also made 2 recommendations relating to proposed legislative changes, 1 of which remains open. We will continue to monitor the NSD's efforts to address the open recommendations. Our final report is available on the OIG website: <https://oig.justice.gov/reports/2016/a1624.pdf>.

FARA requires persons acting in the United States as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as their activities, receipts, and disbursements in support of those activities. FARA requires an agent, upon entering into an agreement with a foreign principal, to submit an initial registration to the Department and a supplemental statement every 6 months thereafter describing the activities performed during that period. The NSD's Counterintelligence and Export Control Section and its FARA Registration Unit are primarily responsible for the enforcement and administration of FARA. Potential violations of FARA are primarily investigated by Federal Bureau of Investigation (FBI) counterintelligence agents and prosecuted by United States Attorney's Offices (USAOs) after receiving NSD approval as required by Section 9-90.710 of the United States Attorneys' Manual. A willful violation of FARA, including false statements or omission of material facts, carries a penalty of a fine or imprisonment for up to 5 years, or both.

To obtain a historical perspective on how the Department has administered and enforced FARA, our audit examined the number of new and active FARA registrations from 1966 through 2014. In compiling this information, we found that the number of FARA registrations has declined significantly over the last two decades, and that prosecutions and other enforcement actions are rare. The number of FARA registrations peaked in the 1980s, with a high of 916 registrants in 1987, and began to fall sharply in the 1990s. We found that the DOJ has not

performed an analysis of the decline, but NSD officials we spoke to speculated that the imposition of FARA registration fees in 1993 and the passage of the Lobbying Disclosure Act (LDA), which carved out a significant exemption to FARA in 1995, were likely factors for the decreasing number of registrations. In reviewing the trends associated with registered foreign agents, we also examined the number of cases brought by the Department in enforcing FARA. We found that between 1966 and 2015, a 50 year period, the DOJ only brought seven criminal FARA prosecutions, five of which resulted in convictions but only three on FARA charges. One defendant was convicted at trial for conspiracy to violate FARA and other statutes, two defendants pleaded guilty to violating FARA, two defendants pleaded guilty to non-FARA charges, and the remaining two cases were dismissed. We also were told by NSD officials that civil injunctive relief under FARA had not been pursued since 1991.

As a result of our audit, we found that there were different interpretations by NSD lawyers and FBI agents regarding the intent of FARA and what constitutes a "FARA case," and that this was indicative of the lack of a comprehensive DOJ enforcement strategy on FARA. FBI agents we spoke to generally believed that investigations conducted pursuant to a separate criminal provision, 18 U.S.C. § 951 (Section 951), were FARA cases. Section 951 makes it illegal to act as an agent of a foreign government without prior notification to the Department as provided for in regulations. NSD officials, in contrast, told us that Section 951 and FARA were intended to address different criminal activities. Specifically, NSD described Section 951 as targeting information gathering and other espionage-like activities on behalf of a foreign government, while FARA is focused on requiring registration and disclosures by foreign agents engaged in legal activities, such as lobbying, tourism, and economic development. FBI agents also expressed frustration about a perceived reluctance by NSD to approve FARA cases for prosecution, a criticism that NSD officials denied, although NSD simultaneously acknowledged the need to improve communication with investigators about the reasons for approval decisions.

Based on the findings described above, we made 5 recommendations to enhance NSD's enforcement efforts. Since the release of the report, NSD has taken sufficient actions for the OIG to close three recommendations related to updating training for investigators and prosecutors, providing more timely communication with FBI investigators and prosecutors on the NSD decision making process, and working with the FBI regarding classification codes for FARA and Section 951 cases. We also recommended that NSD develop a comprehensive enforcement strategy and better track FARA cases, and these two recommendations remain open. We are told by NSD that it is developing a comprehensive FARA enforcement strategy and a tool for tracking FARA cases. The OIG will continue to monitor NSD's efforts to address these recommendations.

In our report, we also identified that NSD needs to improve its controls and oversight of FARA registrations, particularly its efforts to ensure the timely submission of required documents and its inspections of registered foreign agents. We found that 62 percent of initial registrations were untimely, and that 50 percent of registrants filed at least one recurring 6 month supplemental statement late.

The NSD's FARA unit conducts periodic, targeted inspections of registrants, in part, to identify deficiencies in an agent's disclosures and provide recommendations for remedying the deficiencies. We found that inspections increased from 8 between 2000 and 2007, to 87 between 2008 and 2014. We believe the higher rate of inspections performed since 2008 is a positive development and, having reviewed recent inspection reports and the worthwhile recommendations they have produced, our audit report encouraged the FARA Unit to continue to maximize its inspection efforts. However, we found that several inspection recommendations issued by NSD's FARA unit remained unresolved. Therefore, we believe that NSD can further improve its monitoring efforts by developing a policy to ensure appropriate resolution of recommendations identified in its inspection reports.

In addition to NSD's monitoring efforts, we found that NSD did not make its advisory opinions regarding registration activities publicly available, similar to how the Department's Criminal Division posts opinions on matters involving the Foreign Corrupt Activities Act. As stated in our report, we believe such public disclosure, in anonymized form, could assist individuals in determining whether they are responsible for registering as Foreign Agents.

To improve NSD's oversight of its foreign agent registrations, we made seven recommendations in our report. Two of these recommendations pertain to publicly available advisory opinions and the use of expanded sources of information for current agent activities in order to identify those that should be registering as foreign agents. In response to these two recommendations, NSD has begun posting anonymized advisory opinions on its FARA web site to make these opinions publicly available, and described its recent and ongoing outreach efforts to agencies and components within and outside the Department to expand its sources of information so that it can better gather information on possible foreign registrants. Based on these actions, we closed both recommendations. The other 5 recommendations remain open and address delinquency notices to registrants that have not filed documentation timely, the tracking of file closures, resolution of inspection reports, filing fees, and use of the e-file system to address timeliness. We have been told by NSD that it continues to work on the completion of its system for batching and sending delinquency notices to registrants that are not timely submitting required documentation, standardizing follow up and resolution of its inspection report findings, and evaluating its filing fee structure. We will continue to monitor NSD's efforts to address these recommendations.

During our review, NSD officials told us they have difficulty compelling the production of information from persons who may be agents, and therefore NSD was pursuing civil investigative demand authority from Congress to help enhance the NSD's ability to assess the need for potential agents to register. While we agreed during our audit that this authority could be a useful tool for NSD, there are important competing considerations at stake, and we believe that any expansion of such authority must also include controls and oversight to ensure it is used appropriately. In our report, we did not make a recommendation to NSD regarding its pursuit of civil investigative demand.

Our report contained two final recommendations for NSD with respect to proposed legislative changes. Specifically, we recommended that NSD take actions to ensure that the statutory 48 hour time limit for agent filing of informational materials with the Department be met, which our report found that NSD was not accomplishing, or pursue modifications to that statutory requirement. To address this recommendation, NSD told us that, because it believes enforcing the 48 hour requirement creates an unrealistic burden on registrants to submit materials and on NSD staff to police the submissions, it is seeking an amendment to the statute that would change from 48 hours to 6 months the time period for agents to file informational materials with the Department. As a result, we have closed the recommendation regarding this standard. We also recommended that NSD conduct a formal assessment of the LDA exemption to determine its impact on the Department's FARA enforcement and whether a formal effort to seek legislative changes to the LDA and other FARA exemptions was warranted. In our ongoing dialogue with NSD, we were told that it continues to assess the LDA and other FARA exemptions to determine whether pursuing legislative changes may be appropriate. We will continue to monitor this recommendation until NSD makes a final determination as to whether to pursue a legislative change to the LDA and other FARA exemptions.

Congress has made it clear that the American public has a right to know when individuals act in the United States on behalf of foreign principals. Therefore, it is incumbent upon the Department to appropriately utilize its enforcement authorities, and to have a comprehensive enforcement strategy, to ensure that individuals covered by FARA comply with its requirements. The OIG will continue to conduct oversight to ensure that the Department fully implements all of the recommendations in our recent report.

This concludes my prepared statement, and I am pleased to answer any questions the Committee may have.