

Trial Date Set for Former Trump Adviser Charged with Acting as an Agent of a Foreign Government

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The U.S. District Court for the Eastern District of New York has set jury selection to begin September 7, 2022, in regard to the prosecution of Thomas Barrack, a friend and former key adviser to ex-U.S. President Donald Trump. The prosecution involves charges that Barrack and his associates failed to inform the U.S. government that they were working to influence U.S. foreign policy on behalf of the United Arab Emirates (UAE) between 2016 and 2018.

Barrack is being prosecuted for alleged violation of 18 U.S.C. § 951 (Section 951). Generally, under Section 951, individuals other than diplomats acting in the United States as agents of a foreign government are required to provide prior notification to the U.S. Attorney General. The government has accused Barrack and his associates – a former colleague Matthew Grimes and an Emirati citizen Rashid Al Malik – of acting in the United States as agents of the government of the UAE without providing the notification. In addition to the charges of acting as an unregistered agent of the UAE and conspiracy to act as unregistered agents thereof, Barrack has been charged with one count of obstruction of justice related to the federal grand jury investigation and four counts of making materially false statements to the FBI during its investigation.

Beginning in 2016, Barrack served as a Trump presidential campaign advisor, then Chairman of the Presidential Inauguration Committee, and later an informal advisor to senior U.S. government officials on issues related to U.S. foreign policy in the Middle East. Meanwhile, between April 2016 and April 2018, Barrack established himself as the key communications channel for the UAE to the Trump campaign

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Foreign Agents Registration Act (FARA)
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and subsequent Trump administration.

According to the indictment, at the direction of government officials in the UAE, Barrack and his co-defendants worked to: (a) influence U.S. public opinion, foreign policy positions of the Trump campaign and of the U.S. government; (b) obtain information about foreign policy positions and related decision-making within the campaign and the U.S. government; (c) develop a backchannel line of communication with the campaign and U.S. government officials; and (d) develop plans to increase the UAE's political influence and to promote its foreign policy preferences.

FARA and Section 951

Registration under the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611, *et. seq.*, satisfies the notification requirement of Section 951. Thus, proper FARA registration would have notified the Attorney General of Barrack's activities on behalf of the UAE. While both FARA and Section 951 target activities undertaken by foreign agents in the United States, there are key differences between these statutory regimes:

- Section 951: As noted above, Section 951 provides criminal penalties for certain agents of foreign governments who act in the United States without first notifying the Attorney General. Section 951 cases generally involve espionage-like or clandestine behavior, information gathering, or procurement of technology on behalf of foreign governments or officials. Section 951 is centered on criminal enforcement of violations and has no formal administrative registration system. Moreover, the definition of foreign principal under Section 951 is limited to foreign governments and officials.
- FARA: FARA is a disclosure statute designed to make public foreign influence activities in the United States. FARA requires agents of foreign principals involved in political or quasi-political activities in the United States to register as foreign agents and disclose the relevant relationship and activities. The definition of foreign principal under FARA is broadly defined to include not only foreign governments and foreign political parties, but also foreign companies and foreign individuals, whether private or public individuals. Like Section 951, FARA does authorize criminal penalties for violations; however, FARA's main purpose is transparency not criminal prosecution. To that end, the U.S. Department of Justice (DOJ) administers a publicly accessible FARA registration system within which foreign agents disclose their relationship with a foreign principal(s) as well as the nature and extent of their activities on behalf of the foreign principal.

The Section 951 case against Barrack represents yet another high-profile criminal prosecution of a foreign agent for allegedly failing to disclose activities performed for a foreign principal to the U.S. government. As we have seen in recent FARA prosecutions, Barrack's case serves as a cautionary tale that willful violations of Section 951 can result in substantial criminal enforcement actions. FARA enforcement has been a top priority for the DOJ for several years and we anticipate prosecutions under Section 951 will become increasingly common as well.