

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 1, 2018

Ms. Abigail Dillen
President
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111

Dear Ms. Dillen:

The Committee on Natural Resources is continuing its oversight of the potential manipulation of tax-exempt 501(c) organizations by foreign entities to influence U.S. environmental and natural resources policy to the detriment of our national interests.¹ To date, the discourse about foreign influence in the United States has largely focused on China and Russia.² The Committee, however, is concerned that sub-national foreign governments and non-profit foreign entities also use environmental litigation by U.S.-based 501(c) organizations to stop, restrict, delay, or impose additional costs on U.S. national security interests.³

On June 20, 2018, the Committee sent a letter of inquiry to the Center for Biological Diversity (CBD) about the nature of that organization's close relationship with foreign government officials and environmental groups hostile to the U.S. military's presence on Okinawa and its potential impacts on CBD's political activities within the United States.⁴ In an August 2, 2018 letter supplementing its earlier responses, CBD identified Earthjustice as the attorneys representing it and a coalition of Japanese and Okinawan activists in litigation

¹ Letter from Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Bruce Westerman, Chairman, Subcomm. on Oversight and Investigations, to Kierán Suckling, Executive Director, Center for Biological Diversity (June 20, 2018) (on file with Comm.); *see also* Letter from Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Bruce Westerman, Chairman, Subcomm. on Oversight and Investigations, to Kierán Suckling, Executive Director, Center for Biological Diversity (Sept. 17, 2018) (on file with Comm.).

² Josh Rogin, *China's Foreign Influence Operations are Causing Alarm in Washington*, WASH. POST, Dec. 10, 2017, https://www.washingtonpost.com/opinions/global-opinions/chinas-foreign-influencers-are-causing-alarm-in-washington/2017/12/10/98227264-dc58-11e7-b859-fb0995360725_story.html?noredirect=on&utm_term=.2995d9cd423c; *see also* Majority Staff of H. Comm. Science, Space, and Technology, 115th Cong., Rep. on Russian Attempts to Influence U.S. Domestic Energy Markets by Exploiting Social Media (Mar. 1, 2018) (available at <https://science.house.gov/sites/republicans.science.house.gov/files/documents/SST%20Staff%20Report%20-%20Russian%20Attempts%20to%20Influence%20U.S.%20Domestic%20Energy%20Markets%20by%20Exploiting%20Social%20Media%2003.01.18.pdf>).

³ Michael T. Palmer and J. Michael Johnson, *Undersea Lawfare: Can the Navy Fall Victim to This Asymmetric Warfare Threat?*, 69 NAVAL WAR COLLEGE REV., 135, 138 (Winter 2016), available at <http://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1122&context=nwc-review>.

⁴ Letter from Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Bruce Westerman, Chairman, Subcomm. on Oversight and Investigations, to Kierán Suckling, Executive Director, Center for Biological Diversity, Inc. (June 20, 2018) (on file with Comm.).

Ms. Abigail Dillen

October 1, 2018

Page 2

attempting to stop the planned relocation of U.S. Marine Corps Air Station Futenma (MCAS Futenma), located on the Japanese island of Okinawa.⁵

Relocating MCAS Futenma has been a priority for both the central Japanese government and the United States for decades.⁶ First proposed in 1996, the plan to relocate the air station to a less densely populated part of Okinawa was devised upon agreement by the United States and Japan that the current location posed various challenges, including those to the health and safety of Japanese citizens in surrounding areas.⁷ Earthjustice, however, filed suit in 2003 seeking to enjoin the military from relocating the base alleging new base construction would negatively impact habitat for the dugong, a marine mammal.⁸ Earthjustice claimed that by virtue of the dugong's cultural significance under Japanese law, it was "equivalent" to being listed in the U.S. National Register of Historic Places, and therefore protected under the NHPA.⁹

Fifteen years after the lawsuit was initiated, on August 1, 2018 a federal district court ruled in favor of the Department of Defense, finding that the Department "reasonably concluded it was unlikely that events related to the [MCAS Futenma's relocation] would harm the dugong."¹⁰ In an interview following the dismissal, however, the coalition's attorney advised that the plaintiffs may appeal the Court's ruling.¹¹ Of particular interest, Earthjustice's attorney also indicated that your organization will continue to block, restrict, or delay MCAS Futenma's relocation, and that ". . . the fight continues even outside the courtroom."¹²

Foreign members of the anti-base coalition represented by Earthjustice appear to have already engaged in extensive political activity within the United States, including lobbying government officials and holding media events designed to influence public opinion.¹³ During a visit to San Francisco, a foreign delegation met with representatives of a U.S. Senator and a U.S. House Representative.¹⁴ This delegation also traveled to Washington, D.C. to meet with lawmakers, as well as, the U.S. Marine Mammal Commission, the Advisory Council on Historic

⁵ Letter from Kieran Suckling, Executive Director, Center for Biological Diversity Inc. to Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Bruce Westerman, Chairman, Subcomm. on Oversight and Investigations (Aug. 2, 2018) (on file with Comm.).

⁶ IAN E. RINEHART & EMMA CHANLETT-AVERY, CONG. RESEARCH SERV., R42645, THE U.S. MILITARY PRESENCE IN OKINAWA AND THE FUTENMA BASE CONTROVERSY 8-10 (Jan. 20, 2016), *available at* <http://www.crs.gov/reports/pdf/R42645>.

⁷ SPECIAL ACTION COMMITTEE ON OKINAWA, FINAL REPORT, U.S. DEP'T OF STATE & MINISTRY OF FOREIGN AFFAIRS OF JAPAN, (Dec. 1996) (*available at* <https://www.mofa.go.jp/region/n-america/us/security/96saco1.html>).

⁸ *Ctr. For Biological Diversity v. Mattis*, 868 F.3d 803 (9th Cir. 2017).

⁹ *Id.* at 811-813.

¹⁰ *Okinawa Dugong (Dugong Dugon) v. Mattis*, No. 03-cv-04350-EMC, 2018 U.S. Dist. LEXIS 130130, at 75-76 (N.D. Cal. Aug. 1, 2018).

¹¹ Maria Dinzeo, *Judge OKs Okinawa Base, Despite Endangered Dugong*, COURTHOUSE NEWS, Aug. 2, 2018, <https://www.courthousenews.com/judge-oks-okinawa-base-despite-endangered-dugong/>.

¹² *Id.*

¹³ Press Release, Ctr. for Biological Diversity, Okinawa Delegation Seeks Support for Stopping U.S. Military Project That Threatens Endangered Dugong (Nov. 16, 2015) (*available at* https://www.biologicaldiversity.org/news/press_releases/2015/okinawa-dugong-11-16-2015.html).

¹⁴ *Id.*

Preservation, and unspecified “other groups.”¹⁵ Beyond serving as the coalition’s attorney, Earthjustice has directly participated in the publicity campaign condemning the base relocation such as by sending open letters to the President of the United States and Japanese Prime Minister.¹⁶

The Committee is concerned that your organization’s political activities within the United States in opposition to the relocation of MCAS Futenma and the continued U.S. military presence in Okinawa may require compliance with the Foreign Agents Registration Act (FARA).¹⁷ “The purpose of FARA is to ensure 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.”¹⁸ In relevant part, FARA requires any person or entity, including non-profits, to register with the Department of Justice (DOJ) if they act “at the . . . *request* . . . 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”¹⁹

Registration under FARA is required for any entity that attempts, on behalf of a foreign principal, to influence any section of the U.S. public or a U.S. government official in “formulating, adopting, or changing the domestic or foreign policies of the United States”²⁰ The law is clear about registration requirements for a person or group acting in the political or public interests of a foreign government or entity, even when done through intermediaries.²¹ FARA registration encompasses groups or individuals acting as public relations counsels, publicity agents, information service employees, and political consultants working in the interests of a foreign principal.²² Likewise, groups or persons must also register if they solicit, collect, disburse, or dispense funds for or in the interest of a foreign principal.²³ The failure to register is an ongoing offense and subject to punishment ranging from a fine of not more than \$10,000 to imprisonment for not more than five years.²⁴

While FARA contains an exception for attorneys representing foreign principals before a judicial or agency proceeding, this exception does not extend to an attorney’s advocacy outside

¹⁵ *Id.*; see also Tim Shorrock, *A Broad Coalition of Okinawans Says No to a New U.S. Marine Corps Base*, THE NATION, Nov. 23, 2015, <https://www.thenation.com/article/a-broad-coalition-of-okinawans-says-no-to-a-new-us-marine-corps-base/>

¹⁶ Letter from International Environmental Groups to Hon. George W. Bush, President of the United States, and His Excellency Junichiro Koizumi, Prime Minister of Japan (Sept. 7, 2004) (*available at* <https://Earthjustice.org/sites/default/files/library/signon/DugongLetter.pdf>).

¹⁷ 22 U.S.C. § 611 *et seq.*

¹⁸ NATIONAL SECURITY DIV., U.S. DEP’T. OF JUSTICE, FOREIGN AGENTS REGISTRATION ACT FREQUENTLY ASKED QUESTIONS (Aug. 21, 2017), <https://www.justice.gov/nsd-fara/general-fara-frequently-asked-questions>.

¹⁹ 22 U.S.C. § 611(c)(1) (emphasis added).

²⁰ 22 U.S.C. § 611(o).

²¹ 22 U.S.C. § 611(c)(1)(i); see also *Attorney Gen. of the United States v. Irish Northern Aid Committee*, 668 F.2d 159 (2nd Cir. 1982); see also *Attorney Gen. of the United States v. The Irish People Inc.*, 796 F.2d 520 (D.C. Cir. 1986).

²² 22 U.S.C. § 611(c)(ii).

²³ 22 U.S.C. § 611(c)(iii).

²⁴ 22 U.S.C. § 618(a)(2).

of “the course of judicial proceedings.”²⁵ Registration under FARA is also not required when an agent is acting on behalf of a foreign government that the President has deemed “vital to the defense of the United States” so long as the agent only engages in activities that further the joint interests of the foreign principal country and the United States.²⁶ The Committee does not believe either of these exceptions are applicable to the Earthjustice’s activities.

To assist the Committee in its oversight, please produce the following documents and information as soon as possible, but no later than 5:00 p.m. on October 9, 2018:

1. Documents sufficient to show Earthjustice’s original date of registration as an agent of a foreign principal pursuant to FARA;
 - a. If Earthjustice is not registered as an agent of a foreign principal pursuant to FARA requirements, provide an explanation sufficient to demonstrate why FARA registration requirements do not apply.
2. All documents and communications with the Department of Justice, including but not limited to letters of inquiry or advisory opinions, referring or relating to FARA registration by Earthjustice or any related tax-exempt organizations;
3. Documents sufficient to identify all foreign entities and non-U.S.-based environmental groups Earthjustice engages with to help formulate, adopt, or change domestic or foreign environmental or natural resources policies or laws of the United States;
4. Documents sufficient to identify any remuneration, transaction, or contribution that involves Earthjustice or any related tax-exempt organizations and any entity or individual associated with any Japanese official, Japanese national, or Japanese business interest, including their agents, representatives, or intermediaries;
5. Documents sufficient to identify any policies or procedures Earthjustice has implemented to ensure compliance with FARA registration requirements, including but not limited to:
 - a. Any policies or procedures your organization has implemented to ensure that funds from foreign sources are not used for political activities within the United States, unless disclosed as required by law;
 - b. Any policies or procedures your organization has implemented to ensure that fundraising activities within the United States that are, in whole or in part, on behalf of or in the interests of a foreign government or entity are disclosed as required by law.

²⁵ 22 U.S.C. § 613(g).

²⁶ 22 U.S.C. § 613(f).

- c. Any policies or procedures your organization has implemented to ensure that agreements to pay litigation related expenses and costs, either by Earthjustice or by a third party, comply with relevant laws and professional codes of conduct.
6. All documents and communications, including but not limited to, internal memoranda and emails, between Earthjustice, or any of its agents, and any Japanese or Okinawan entities or environmental groups referring or relating to the U.S. military presence in Okinawa from January 1, 2003 to present;
7. All documents and communications, including but not limited to, memoranda and emails, which memorialize, refer, or relate to the responsibilities, obligations, duties, of the co-plaintiffs and Earthjustice for the purposes of litigation against the Department of Defense in *Center for Biological Diversity v. Mattis*;²⁷
8. All documents and communications, including but not limited to, internal memoranda, contractual agreements, memoranda of understanding, policies, itineraries, press releases, informational materials, and emails referring or relating to the November 2015 visit to the United States by a delegation of Okinawan officials and foreign activists; and
9. A document sufficient to list all foreign visits, with corresponding dates, made by Earthjustice in furtherance of its goal to influence U.S. environmental or natural resources policies or laws or U.S. public opinion from January 1, 2003 to present.

Please deliver your response to room 1324 of the Longworth House Office Building. The Committee prefers if possible, to receive your response in electronic format. An attachment contains additional instructions for responding to the Committee's request.

Please contact the Oversight and Investigations Subcommittee staff at (202) 225-7107 with any questions about this request. Thank you for your prompt attention to this matter.

²⁷ As used in this letter *Center for Biological Diversity v. Mattis* refers to all lawsuits CBD is party to relating to the Dugong, including lawsuits resulting in the following opinions: *Dugong v. Rumsfeld*, No. C 03-4350 MHP, 2005 U.S. Dist. LEXIS 3123 (N.D. Cal. Mar. 1, 2005), *Dugong v. Gates*, 543 F. Supp. 2d 1082, 2008 U.S. Dist. LEXIS 5234 (N.D. Cal., 2008), *Ctr. for Biological Diversity v. Hagel*, 2015 U.S. Dist. LEXIS 18332 (N.D. Cal., Feb. 13, 2015), *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803 (9th Cir. 2017), and *Okinawa Dugong (Dugong Dugon) v. Mattis*, No. 03-cv-04350-EMC, 2018 U.S. Dist. LEXIS 130130 (N.D. Cal. Aug. 1, 2018).

Ms. Abigail Dillen
October 1, 2018
Page 6

Sincerely,



Rob Bishop
Chairman



Bruce Westerman
Chairman
Subcommittee on
Oversight and Investigations

Enclosure