

From Russia with Flair: Anna Chapman, Foreign Agents, and the Illegals Program

By Richard D. Newbold¹

“Counterintelligence is a top FBI investigative priority, and this case in particular represents the dedicated efforts of the men and women who have worked tirelessly behind the scenes to counter the efforts of those who would steal our nation's vital secrets.”

– FBI Director Robert Mueller (2010)

Summary

Russian President Vladimir Putin is a practitioner of the martial art of judo, which allows a weaker opponent to defeat a stronger adversary. Rather than confront an opponent head on, the judoka leverages an opponent's strength to throw him off balance, which is what Russia did² and continues to do even after the events in 2010 involving Russian spy Anna Chapman and the other Russian “illegals.” Dealing with espionage is a careful balancing of national security considerations. A country must engage in counterespionage, must decide when a spy's activities have crossed the line and are no longer tolerable, and must then deal with the activity in a strategic manner. A country must take the course of action most effective in curing the issue within the limitations of its own laws, ever mindful that such actions may be reciprocated.³ Influence operations and espionage are examples of tools a nation like Russia can employ at a low cost relative to that of economic sanctions, political isolation, or a shooting war.

The U.S., for its part, has taken steps to deter Russian influence, a difficult task to be sure in the era of social media and a more friendly attitude toward Russian involvement and cooperation on several fronts. Stepped up counterintelligence and enforcement efforts have made it more difficult for Russia in

¹ Mr. Newbold is a former military intelligence professional. This paper was written in Summer 2020 for an independent study course at Georgetown University Law Center.

² Gordon Corera, *Russians Among Us* 7 (2020).

³ Kristin A. Vara, *Espionage: A Comparative Analysis*, Fall, 2015 Reporter 22 ILSA J. Int'l & Comp. L. 23.

some respects, but more can be done, especially in the legislative arena. For decades, Russia feared its dependence on Western technology made it vulnerable to infiltration but eventually realized it could exploit the vulnerabilities created by a new connected world,⁴ which it has done and continues to do successfully through hacks, selective leaks, and (likely) blackmail. This paper will discuss the so-called Illegals program—operating in the U.S. for decades—and government efforts to root out espionage and Russian influence. This paper will also discuss existing legislation related to espionage and foreign agency and survey proposed legislative fixes to what has historically been a challenging area for national security professionals and prosecutors.

The Illegals Program

The “illegals” case was the result of a multi-year investigation conducted by the FBI, the U.S. Attorney’s Office for the Southern District of New York, and the Counterespionage Section and Office of Intelligence within the Justice Department’s National Security Division (NSD).⁵ The arrests of 10 Russian spies on June 27, 2010 provided a chilling reminder that espionage on U.S. soil did not disappear when the Cold War ended in 1991. The highly publicized case offers a rare glimpse into the sensitive world of counterintelligence and the FBI’s efforts to safeguard the nation from those who would steal the nation’s secrets. The FBI’s case against the Russian Foreign Intelligence Service (SVR) operatives went on for more than a decade. Although the SVR illegals never obtained classified materials, their intent from the beginning was serious and well-funded with far-ranging efforts.⁶

⁴ Corera, *supra* note 2, at 357.

⁵ Federal Bureau of Investigation, *Ten Alleged Secret Agents Arrested in the United States* (2010), <https://www.justice.gov/opa/pr/ten-alleged-secret-agents-arrested-united-states>.

⁶ Federal Bureau of Investigation, *Operation Ghost Stories Inside the Russian Spy Case* (2011), <https://www.fbi.gov/news/stories/operation-ghost-stories-inside-the-russian-spy-case>.

Long after the Cold War ended, the illegals program remained strategic, long-term, resource-intensive, and as prized as ever. It had a single purpose of placing hand-picked Russian intelligence assets across foreign societies and governments without regard to the state of East-West relations.⁷ The illegals program was meant to be a strategic reserve in case embassies were closed or Russia lost capability at their legal residencies. In 2010, the FBI broke up the illegals program, arresting 10 Russian agents, Anna Chapman among them. The 10 sleeper agents were swapped⁸ by the U.S. for Sergei Skripal⁹ and three other Russian nationals, who had been spying for the West.¹⁰ American officials won freedom for Igor Sutyagin, an arms control researcher convicted of spying for the U.S., and Alexander Zaporozhsky, who may have exposed Robert Hanssen and Aldrich Ames, two of the most damaging spies ever captured in the U.S.¹¹

The FBI conducted a multi-year investigation of the SVR agents who assumed false identities and were living in the United States on long-term “deep-cover” assignments. The Russian agents worked to hide all connections between themselves and Russia, even as they acted at the direction and under the control of the SVR. The agents received extensive training by the SVR before being assigned to the U.S. and other countries under false identities to operate on behalf of Russia. The SVR also operated a subset of illegals who performed the same work but operated in foreign countries under their true names. This

⁷ Jim Edwards, *Russia Probably has More Undercover 'Sleeper' Agents Who Can Assassinate Western Targets Today Than During the Cold War*, Business Insider (Mar. 6, 2018, 9:09 AM), <https://www.businessinsider.com/illegals-of-directorate-s-russia-undercover-covert-sleeper-agents-2017-12>.

⁸ A U.S. Boeing 767 and a Russian Yakovlev Yak-42 taxied to a remote corner of Vienna's main airport, exchanged the prisoners, and then took off again. The aircraft landed in Austria within minutes of each other, parked nose to tail, then sat on the tarmac for about an hour and a half before departing just as quickly. A small bus was seen driving between the two planes. British media reported that the U.S. plane later landed at a U.K. military base in southern England, while a Russian news agency report the second plane touched down in Moscow.

⁹ Sergei Viktorovich Skripal, born June, 23 1951, is a former Russian military intelligence officer who acted as a double agent for the UK's intelligence services during the 1990s and early 2000s. In December 2004, he was arrested by Russia's Federal Security Service (FSB) and later convicted of high treason and sentenced to 13 years in prison.

¹⁰ Jamie Dettmer, *Western Spies Warn They Will Come Off Worse in Tit-for-Tat Russia Expulsions*, Voice of America (Mar. 28, 2018, 8:12 AM), <https://www.voanews.com/usa/western-spies-warn-they-will-come-worse-tit-tat-russia-expulsions>.

¹¹ Nat'l. Public Radio, *U.S., Russia Swap 14 Spies* (July 9, 2010, 9:30 AM), <https://www.npr.org/templates/story/story.php?storyId=128403681>.

subset of illegals was generally trained in roughly the same tradecraft (including agent-to-agent communications, invisible writing, and the use of a cover profession), but their training was typically shorter. In addition, these illegals were not generally paired with or “married” to another illegal as part of their cover.¹²

The FBI’s investigation revealed that the network of illegals was living and operating in the United States with the primary long-term goal of becoming sufficiently “Americanized” so that they could gather information about the U.S. for Russia and successfully recruit sources who were able to infiltrate U.S. policy-making circles.¹³ The goal of the overall mission was made clear in a message sent to an illegal couple, “The Murphys,” by the Moscow Center. The message said “The only goal and task of our service and of us is security of our country. All our activities are subjected to this goal. Only for reaching this goal were you dispatched to the U.S., settled down there, gained legal status, and were expected to start striking up useful acquaintances, broadening the circle of your well-placed connections, gaining information, and eventually recruiting sources.”¹⁴

Russia was not necessarily interested in people who had access to classified information but rather those who had influence in society and politics.¹⁵ None of the spies succeeded in gleaning classified U.S. secrets, and the FBI was able to successfully warn off potential targets. However, the illegals were a genuine threat on par with the Cambridge Spy Ring¹⁶ that operated from the 1930s

¹² Complaint, *United States v. Chapman and Semenko* (S.D.N.Y., 2010), <https://www.justice.gov/sites/default/files/opa/legacy/2010/06/28/062810complaint1.pdf>.

¹³ *Id.*

¹⁴ Corera, *supra* note 2, at 105.

¹⁵ Nat’l. Public Radio, *‘Russians Among Us’ Author on Actual Russian Spycraft* (Feb. 18, 2020, 4:05 PM), <https://www.npr.org/2020/02/18/807117897/russians-among-us-author-on-actual-russian-spycraft>.

¹⁶ The members of the ring were Donald Maclean (1913 - 1983), Guy Burgess (1911 - 1963), Harold “Kim” Philby (1912 - 1988) and Anthony Blunt (1907 - 1983). Several other people have been suggested as belonging to the ring, including John Cairncross. Blunt became a communist in the early 1930s and was recruited by the NKVD (later KGB), the Soviet security agency. While teaching at Cambridge University, Blunt was influential in recruiting the other three, who were all students there.

through the 1950s and devastated British intelligence.¹⁷ To describe the illegals arrested in 2010 as a “spy ring” implies they were one group working together while, in actuality, they were sent out in pairs or individually at different times. Some were dispatched in the midst in the Cold War, others toward the end, and some after the Cold War was over. They would have been aware there were other illegals in the U.S., but they would not have known for security reasons who they all were. The SVR would not have wanted the discovery of one illegal to allow investigators to reveal the others.¹⁸

The role of an illegal intelligence officer is to remain undetected by foreign counterintelligence and counter-espionage services while recruiting assets, agents, and sources that either already have access to valuable information or are assessed to have the potential to do so. These sources are the ones working inside foreign governments, corporations, non-governmental organizations (NGO), media, academia, etc. To date, Russian illegals have been travel agents, thinktank participants, and students. What they all have in common is they gradually found their way, through vocation and networking, to the centers of power, the policymakers, the special advisers, and the people who had privileged insight into decision-making and influencing. The aim is always to start at the outer circles of influence and develop a network that reaches to the top.¹⁹

Since 2000, the FBI had been secretly watching the group thanks to a disillusioned Russian foreign intelligence officer, Alexander Poteyev,²⁰ who gave the CIA details of Moscow’s illegals working under non-diplomatic cover.²¹ Using surveillance and sophisticated techniques, aided by support from intelligence analysts, investigators gathered information to understand the threat posed by the spies as

¹⁷ Luke Harding, *Russians Among Us by Gordon Corera Review – Spies in Plain Sight* (Mar. 17, 2020, 3:00 PM), <https://www.theguardian.com/books/2020/mar/17/russians-among-us-sleeper-cells-ghost-stories-hunt-putins-agents-gordon-corera-review>.

¹⁸ Corera, *supra* note 2, at 84.

¹⁹ Edwards, *supra* note 7.

²⁰ Colonel Aleksandr Nikolayevich Poteyev was the former Deputy Head of Directorate S of the Foreign Intelligence Service from 2000-2010. Starting about 1999, he began working with the CIA, helping to reveal the hidden network of Russian spies operating within the United States. In late June 2010, a successful operation to extract Poteyev from Russia was executed with the assistance of the CIA.

²¹ Harding, *supra* note 17.

well as their tradecraft methods. Federal agents and analysts surveilled the deep-cover operatives as they established themselves in the U.S. (some by using stolen identities) and went about leading seemingly normal lives and assimilating into American society.²² The FBI made interesting discoveries during the investigation about how the illegals spoke to Moscow. The oldest tapped out coded radio messages. The youngest, the glamorous Anna Chapman, used a laptop and Chanel bag featuring a hidden, high-powered Wi-Fi device²³ to access a private wireless network while meeting a handler in a Manhattan coffee bar. Communication also involved steganography, or encrypted text files hidden among innocent-looking photos of colorful flowers, for example.²⁴

In June 2010 when the FBI arrested the 10 Russian illegals after months of surveillance, it resulted in the largest spy scandal between the two countries in a decade.²⁵ Each of the defendants pleaded guilty to one count of conspiracy to act as an agent of a foreign government within the United States without notifying the U.S. Attorney General, as required. Under their plea agreements, the defendants were required to disclose their true identities in court and to forfeit certain assets attributable to the criminal offenses.²⁶ Eight of the 10 had pretended not to be Russian and held American, Canadian, or Peruvian passports and Western names.²⁷ Vicky Pelaez, Anna Chapman, and Mikhail Semenko, operated in the U.S. under their true names while admitting that they were agents of the Russian Federation. Chapman and Semenko also admitted they were Russian citizens.²⁸ Mikhail Semenko used his real name to come to Washington, DC, to work for the Travel All Russia travel agency,

²² *Supra* note 6.

²³ A photo of Anna Chapman's handbag, now part of an exhibit, is available at <https://abcnews.go.com/Blotter/photos/photos-hidden-plain-sight-real-bond-spy-gadgets-15397677/image-16378351>.

²⁴ Harding, *supra* note 17.

²⁵ Andrei Soldatov & Irina Borogan, *The Compatriots* 287 (2019).

²⁶ Federal Bureau of Investigation, *Ten Russian Agents Plead Guilty and are to be Removed from the United States* (2010), <https://archives.fbi.gov/archives/newyork/press-releases/2010/nyfo070810a.htm>.

²⁷ *Supra* note 25.

²⁸ *Supra* note 26.

while Chapman pretended to be a new émigré.²⁹ The couple “Richard Murphy” and “Cynthia Murphy” admitted they were Russian citizens named Vladimir Guryev and Lydia Guryev and that they were agents of the Russian Federation.³⁰ After the arrests, the U.S. agreed to transfer the individuals to the custody of the Russian Federation. In exchange, the Russian Federation agreed to release four individuals who were incarcerated in Russia for alleged contact with Western intelligence agencies.³¹

The Russian spies may not have achieved their objective, but they were not idle. They collected information and transmitted it back to Russia, and they were actively engaged in what is known in the spy field as “spotting and assessing.”³² They identified colleagues, friends, and others who might be vulnerable targets, and it is possible they were seeking to co-opt people they encountered in the academic environment who might one day hold positions of power and influence. The FBI was convinced that they would eventually have been successful in accessing classified information.³³

Referring to the illegals operations, FBI Director Robert Mueller said at the time “Counterintelligence is a top FBI investigative priority, and this case in particular represents the dedicated efforts of the men and women who have worked tirelessly behind the scenes to counter the efforts of those who would steal our nation's vital secrets.”³⁴

Little is known about the true scale of Russia's illegals program beyond the fact that the Chapman arrests proved it was alive and well in 2010. What we do know comes from the Cold War

²⁹ *Supra* note 25.

³⁰ Department of Justice, *Ten Russian Agents Plead Guilty and Are to Be Removed from the United States* (2010), <https://www.justice.gov/opa/pr/ten-russian-agents-plead-guilty-and-are-be-removed-united-states>.

³¹ *Supra* note 26.

³² Intelligence officers spot and assess individuals for potential recruitment. Adversaries are not necessarily looking for someone with a high level of access; sometimes the potential for future access or the ability of the recruit to lead to other high value targets is enough to generate adversary interest. Spotting and Assessing can take place anywhere but is always approached in a non-threatening and natural manner. Trade shows, business contacts, social events, or online venues such as chat rooms and social media, are used for this process. During this phase, the foreign intelligence entity (FIE) will often explore potential exploitable weaknesses which may be used as a lever against the recruit. These could include drugs or alcohol, gambling, adultery, financial problems, or other weaknesses. See <https://www.cdse.edu/documents/cdse/foreign-intelligence-entity-targeting-recruitment-methodology.pdf>.

³³ *Supra* note 6.

³⁴ *Supra* note 30.

when Western counterintelligence took the Russian threat more seriously. The reason is that Russian state security agencies think in terms of decades or generations, not years. The end of the Cold War made it easier for Russians to travel to Western countries, and the KGB's successor agencies would have regarded this as a long-term opportunity.³⁵

Russia's Espionage Framework

The Foreign Intelligence Service ("SVR") is the name of what used to be the Committee of State Security in Russia, or KGB, until 1991. The SVR employs approximately 13,000 personnel and is responsible for protecting Russia's security systems from external threats. The SVR works in tandem with Russian Military Intelligence ("GRU") and has its own academy for training recruits.³⁶ Additionally, Russia has the Federal Security Service ("FSB"), which was established in 1994.³⁷ This agency shares many similarities with the FBI and is responsible for coordinating counterintelligence efforts of other federal bodies, including anti-terrorism, counterintelligence, and surveillance of the Russian military.³⁸ The FSB is believed to be Europe's largest security service, with approximately 75,000 employees as of 2010.³⁹

Western nations have struggled to strike a balance between openness and wariness toward Russian expatriates. Between 2008 and 2015, about 3,000 high net-worth individuals, about a quarter of them Russians, took advantage of the Tier 1 Investment Scheme that allowed oligarchs and others to invest £2 million in the UK, get temporary residence, and then apply for permanent residence within five

³⁵ Edwards, *supra* note 7.

³⁶ Profile: Russia's SVR intelligence agency, BBC News (June 29, 2010), <http://www.bbc.com/news/10447308> [hereinafter Russia's SVR agency].

³⁷ Robert W. Pringle, *Federal Security Service*, Britannica, <http://www.britannica.com/topic/Federal-Security-Service>.

³⁸ Federal Security Service, The Russian Gov't, <http://government.ru/en/departments/113/>; OISS Intelligence Threat Handbook: Foreign Espionage, Fed'n Of Am. Scientists (June 2004). <http://fas.org/irp/threat/handbook/index.html> [hereinafter Threat Handbook].

³⁹ Pringle, *supra* note 37; Threat Handbook, *supra* note 38; Russia's SVR agency, *supra* note 36.

years. For £10 million, the wait shortened to two years.⁴⁰ Wealthy Russians quickly learned how to launder their questionable reputations through British society by purchasing soccer clubs, sponsoring art galleries, and organizing charity balls. All proved useful ways of winning friends and favors. It was in this environment that a young glamorous Russian like Anna Chapman could make her mark.⁴¹ The Kremlin began to understand that influence offered another sort of power unlike the “hard” power of the military or the “soft” power of values. Rather, it was a sort of dark power that worked behind the scenes and played on greed and ambition.⁴²

The Chapman spy ring was run by Russia's SVR, within which lies the mysterious “Directorate S,”⁴³ which recruits, trains, and supervises illegals. They do not immediately infiltrate the military, MI6, or the CIA and transmit secrets to Moscow. Rather, they become ordinary citizens and lead mundane lives. The mere ability to place foreign agents inside another country is an end in itself, and only then do they set about actually trying to conduct espionage. Historically, it has been exceedingly rare for illegal Russian intelligence officers themselves to penetrate foreign governments. As good as illegal legends can be for daily life, it would be impossible for first-generation illegals to pass proper security vetting,⁴⁴ which today includes biometric background checks to ensure the fingerprints associated with the person applying for the visa or job match the known fingerprints of the actual individual.⁴⁵

Certain SVR agents operating abroad do not conceal their connections to Russia and often pose as official representatives of the Russian Federation, including diplomats and trade officials. In these

⁴⁰ Denis Staunton, *Oligarchs and ‘Unexplained Wealth’: London’s Rich Russians*, Irish Times (Mar. 24, 2018, 1:00 AM), <https://www.irishtimes.com/news/world/oligarchs-and-unexplained-wealth-london-s-rich-russians-1.3438072>.

⁴¹ Corera, *supra* note 2, at 165.

⁴² *Id.* at 165-166.

⁴³ Directorate S is the department of the KGB that is responsible for the gathering, studying and disseminating specifically illegally obtained intelligence.

⁴⁴ Edwards, *supra* note 7.

⁴⁵ For more information on Department of Homeland Security (DHS) biometric efforts, see <https://www.dhs.gov/obim>.

positions, SVR agents are typically entitled to diplomatic immunity from prosecution.⁴⁶ Other SVR agents stationed abroad pose as employees of private businesses. SVR agents operating under such non-official cover (“NOCs”) are typically subject to less scrutiny by the host government and, in many cases, are never identified as intelligence agents. As a result, a NOC can be an extremely valuable intelligence asset for the SVR. Because NOCs work for private businesses and not the Russian government, they typically are not entitled to diplomatic immunity from prosecution.⁴⁷

Chapman and the other new illegals were referred to as “agents” since they were recruited by the SVR rather than having been selected and put through the academy and trained up as full intelligence officers like the family illegals. Someone like Chapman would have been introduced to Directorate S by someone who had spotted her, and she would have been given some basic training and sent out into the field to see how she would manage. She would have been given carefully selected operational tasks followed by more training, a higher rank, and more advanced tasks.⁴⁸

The illegals program was operational for decades, sending out deep-cover illegals to pretend to be someone else from another country and then slowly embedding themselves among their targets. But Chapman was part of a new generation of undercover Russian intelligence officers, something the FBI called “True Name Illegals,” whereas the other family illegals would increasingly represent the past when it came to Russian illegal activity in the West.⁴⁹

⁴⁶ Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. See https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf

⁴⁷ Complaint, *United States v. Buryakov et. al*, unspecified (S. D. N.Y., 2015), <https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/01/26/buryakov-complaint.pdf>.

⁴⁸ Corera, *supra* note 2, at 144.

⁴⁹ *Id.* at 134-135.

Anna Chapman and the Russian Reset

By far the most famous of the illegals is Anna Chapman, dubbed Russia's "most glamorous secret agent," Anna Chapman (born Anna Vasilevna Kushchenko) was one of 10 Russian spies exchanged for poisoned⁵⁰ MI6 agent Sergei Skripal in July 2010.⁵¹ Chapman was a trained illegal agent and the daughter of an SVR officer⁵² who was ambassador to Kenya. An anxious phone call from Anna's burner phone to her father in Moscow, regarding a false passport she had been given by an undercover FBI agent posing as a Russian consular officer,⁵³ was what ultimately led U.S. authorities to hasten arrests after several months of surveillance.⁵⁴

Anna grew up in Volgograd, and teachers remember her as shy and well-behaved student. She was largely looked after by her grandmother, as her parents were abroad.⁵⁵ Her links to the West began at age 19 during her time as an economics student at Moscow University.⁵⁶ She earned a degree in German translation⁵⁷ and also studied abroad at a women's Catholic monastery, where she learned French.⁵⁸ A classmate, Tatyana Shumilina, recalled her as a "party animal" who introduced the other teenage girls to "decent music" including Metallica and Nirvana. Anna usually dressed in ripped jeans and black T-shirts and had a punk style. Her classmate added "The boys liked her. You only had to see

⁵⁰ In March 2018, Sergei Skripal, a former Russian military officer and double agent for the UK's intelligence services, along with his daughter Yulia Skripal, were poisoned in Salisbury, England with a Novichok nerve agent. The name Novichok means "newcomer" in Russian and applies to a group of advanced nerve agents developed by the Soviet Union in the 1970s and 1980s. They were known as fourth-generation chemical weapons. After three weeks in a critical condition, Yulia regained consciousness and was able to speak while Sergei remained in critical condition until regaining consciousness one month after the attack.

⁵¹ Jay Akbar, *Scarlet Spy: Who is Anna Chapman, when was the Russian spy swapped with poisoned Sergei Skripal, and where is she now?* The Sun (Mar. 26, 2018, 2:49 PM), <https://www.thesun.co.uk/news/5734867/anna-chapman-russian-spy-sergei-skripal-swap-poison/>.

⁵² Corera, *supra* note 2, at 147.

⁵³ Andrew Clark, *Anna Chapman's Call to Father Led to FBI Spy Arrests*, The Guardian (July 11, 2010, 9:30 PM), <https://www.theguardian.com/world/2010/jul/12/anna-chapman-call-father-fbi-spy-arrests>.

⁵⁴ Alex Spillius, *Russian Spies: Phone Call from Anna Chapman to Her Father Hastened Arrests*, The Telegraph (July 12, 2010, 6:44 PM), <https://www.telegraph.co.uk/news/worldnews/europe/russia/7885911/Russian-spies-phone-call-from-Anna-Chapman-to-her-father-hastened-arrests.html>.

⁵⁵ Corera, *supra* note 2, at 133-134.

⁵⁶ Akbar, *supra* note 51.

⁵⁷ *Id.*

⁵⁸ Anna Chapman, *Biography* (2020), <http://www.annachapman.ru/en/projects/>.

her once to realize she was very pretty. As she got older she got even prettier. She made no effort to hide her diplomatic connections. Everyone knew her father was an ambassador in an African country.”⁵⁹

Chapman received a certificate in finance at the UK institute BPP and enjoyed travel to London during her summer holidays. It was there, at an underground rave party, where she met Alex Chapman, whom she married in 2002.⁶⁰ Marrying a Briton or American was quite literally a passport to the West for a young Russian woman.⁶¹ She lived in London for at least five years (2001-2006) and worked at NetJets and Barclays before moving to America.⁶² In 2005, Anna was looking for a new job in London and became acquainted with a number of well-connected international socialites. By 2006 she was on the committee organizing an expensive white-tie Russian-themed War and Peace Ball at the luxurious Dorchester Hotel. Patrons included a long list of European aristocrats, and attendees included the Russian ambassador as well as minor European royalty.⁶³ In late 2006, Anna told her British husband she was going back to Russia and planned to set up an online real estate company, but then she returned to London and began talking about America. According to her husband, she had always sounded more or less anti-American but nevertheless started making occasional trips to the United States.⁶⁴

In the throes of 9/11, much of the FBI’s resources had been diverted from spy hunting toward a focus on terrorist threats and proliferation of weapons of mass destruction (WMD). The U.S. and Russia appeared to share a common enemy during this period in the form of Muslim extremists. For example, in September 2004, following bombing attacks on two aircraft and the downtown Moscow Metro, Chechen terrorists seized over 1,000 hostages and 330 died tragically at a school in Beslan, North

⁵⁹ Amelia Hill et. al, *Anna Chapman: Diplomat's Daughter Who Partied with Billionaires*, The Guardian (June 30, 2010, 7:58 PM), <https://www.theguardian.com/world/2010/jun/30/anna-chapman-russian-spy-ring>.

⁶⁰ Akbar, *supra* note 51.

⁶¹ Corera, *supra* note 2, at 134.

⁶² Edwards, *supra* note 7.

⁶³ Corera, *supra* note 2, at 142-143.

⁶⁴ *Id.* at 148.

Ossetia.⁶⁵ At an international level, cooperation between the U.S. and Russia was generally good in the 2006 timeframe.⁶⁶

Meanwhile, Anna Chapman was busy building her resume for an eventual move to the U.S. From 2006 to 2007, Chapman served as vice president for the holding company KIT Fortis.⁶⁷ In 2007 she was one of the first Russian entrepreneurs to receive investment for an IT startup, PropertyFinder Ltd., a search engine for real estate⁶⁸ and, in 2009, the company opened an office in New York.⁶⁹ In April of that same year, a joint statement released after a meeting between Russian President Dmitry Medvedev and President Barack Obama promised a “fresh start in relations,” and White House officials announced Obama would visit Moscow in July.⁷⁰ The statement reaffirmed that the era when the two countries viewed each other as enemies was “long over” and that “the leaders of Russia and the United States [were] ready to move beyond Cold War mentalities and chart a fresh start in relations.”⁷¹

Speaking in February 2009 at the Munich security conference, Vice President Joe Biden said Russia and the United States should press the “reset button on their relationship.”⁷² At around the same time, the Russian spy Anna Chapman arrived in New York where she was quickly placed under FBI surveillance as part of a massive counterintelligence operation, code-named “Ghost Stories” through

⁶⁵ British Broadcasting Corp., *Beslan School Siege: Russia 'Failed' in 2004 Massacre* (Apr. 13, 2017, <https://www.bbc.com/news/world-europe-39586814>).

⁶⁶ In July 2006, Presidents Bush and Putin announced a joint initiative to improve the security of nuclear facilities, suppress illicit nuclear trafficking, coordinate response to nuclear terrorist incidents, cooperate on the technical means of combating nuclear terrorism, and strengthen the prosecution of nuclear terrorists.

⁶⁷ On April 1, 2010, the operations of Fortis Investments were merged with those of BNP Paribas Investment Partners.

⁶⁸ According to Anna Chapman’s LinkedIn profile (<https://www.linkedin.com/in/chapmananna>), Domdot.ru is search engine in real estate for Russian speaking audience. Anna Chapman discusses her PropertyFinder startup in a YouTube video: <https://www.youtube.com/watch?v=gbFyIoHILFo>.

⁶⁹ Chapman, *supra* note 58.

⁷⁰ Helene Cooper, *Promises of 'Fresh Start' for U.S.-Russia Relations*, N.Y. Times (Apr. 1, 2009), <https://www.nytimes.com/2009/04/02/world/europe/02arms.html>.

⁷¹ White House, *Joint Statement by President Dmitry Medvedev of the Russian Federation and President Barack Obama of the United States of America* (Apr. 1, 2009), <https://obamawhitehouse.archives.gov/the-press-office/joint-statement-president-dmitriy-medvedev-russian-federation-and-president-barack->.

⁷² Mikhail Zygar, *The Russian Reset That Never Was*, Foreign Policy (Dec. 9, 2016), <https://foreignpolicy.com/2016/12/09/the-russian-reset-that-never-was-putin-obama-medvedev-libya-mikhail-zygar-all-the-kremlin-men/>.

which federal agents discovered her contacts with known Russian spies based in the city. While sitting at a Starbucks in Manhattan in June 2010, she was caught using a private Wi-Fi network shared by a minivan driven by a Russian government official.⁷³ At an potentially awkward time diplomatically, President Barack Obama and Russian President Dmitry Medvedev famously took a break from June 2010 bilateral meetings at the White House to make a cheeseburger run to Ray's Hell Burger.⁷⁴

When Anna Chapman was finally arrested, some observers did not believe she was engaged in any serious spying while others treated the operation as a joke.⁷⁵ The FBI team that tracked her every move was also not impressed with her spy tradecraft. Late night comic, Jay Leno, on *The Tonight Show* asked then Vice President Joe Biden "Do we have any spies that hot?" Biden replied "Let me be clear. It wasn't my idea to send her back."⁷⁶ But not only was she sent back, her British citizenship was revoked⁷⁷ by then Home Secretary Theresa May and her British passport was invalidated,⁷⁸ an official act that upset the rising young spy.⁷⁹

After their arrests, Anna Chapman and the rest of the Russian spies were welcomed as heroes upon their return home and were bestowed with the nation's highest awards by President Dmitry

⁷³ *Supra* note 6.

⁷⁴ A video of the two Presidents eating cheeseburgers in Arlington, Virginia on June 24, 2010 is available at <https://www.youtube.com/watch?v=sIEByvOXwdw>.

⁷⁵ Edwards, *supra* note 7.

⁷⁶ British Broadcasting Corp., *Biden Jokes About 'Hot' Russian Spy with Jay Leno* (July 10, 2010), <https://www.bbc.com/news/10586484>.

⁷⁷ Home Secretary Theresa May carried out the actions under a law that provides for the revocation of British citizenship from dual nationals when to do so would be "conducive to the public good." Chapman, whose maiden name was Anya Kushchenko, acquired British nationality through her marriage to a British citizen, Alex Chapman, during four years that she lived in London. The marriage ended in divorce in 2006.

⁷⁸ John F. Burns, *Britain Revokes Citizenship of Russian Émigré in Spy Swap*, N.Y. Times (July 13, 2010), <https://www.nytimes.com/2010/07/14/world/europe/14britain.html>.

⁷⁹ The Telegraph, *Russian Spy Anna Chapman Upset Over Losing British Passport* (July 22, 2010, 11:08 AM), <https://www.telegraph.co.uk/news/worldnews/europe/russia/7903983/Russian-spy-Anna-Chapman-upset-over-losing-British-passport.html>.

Medvedev.⁸⁰ Then-Prime Minister Vladimir Putin even joined in singing patriotic songs with the spies.⁸¹ Referring to traitors, Putin warned that “whatever equivalent of 30 pieces of silver they get, it will get stuck in their throats.”⁸²

Chapman immediately found celebrity in Russia as a TV presenter and model, among other roles. She was reportedly even ordered by the Kremlin to seduce whistleblower Edward Snowden as part of a ruse to keep him in Moscow following his high-profile defection in 2013. She is also reported to have given birth to a son at a private Moscow clinic in April 2016 but has not revealed the father's identity.⁸³ Chapman was also the prosecution's star witness in the largely secret trial of Russian turncoat Alexander Poteyev, who was accused in absentia of high treason and desertion, sentenced to 25 years in prison, and stripped of the rank of colonel as well as his state awards.⁸⁴ Poteyev had overseen the sleeper agents as deputy head of Directorate S. Chapman testified at trial that she was ensnared after a U.S. agent contacted her using a secret code that only Poteyev and her handler knew.⁸⁵

⁸⁰ The Guardian, *Russian Spies Receive Top Honours* (Oct. 19, 2010, 3:23 PM), <https://www.theguardian.com/world/2010/oct/19/russian-spies-receive-top-honours>.

⁸¹ Andrew Osborn, *Vladimir Putin Sang Patriotic Songs with Spies Expelled from U.S.*, The Telegraph (July 25, 2010, 5:58 PM), <https://www.telegraph.co.uk/news/worldnews/europe/russia/7909335/Vladimir-Putin-sang-patriotic-songs-with-spies-expelled-from-US.html>.

⁸² Vladimir Isachenkov, *Anna Chapman Sleeper Spy Ring Betrayed by Russian Officer*, Christian Science Monitor (June 28, 2011), <https://www.csmonitor.com/World/Latest-News-Wires/2011/0628/Anna-Chapman-sleeper-spy-ring-betrayed-by-Russian-officer>.

⁸³ Akbar, *supra* note 51.

⁸⁴ Corera, *supra* note 2, at 317.

⁸⁵ Edecio Martinez, *Ex-Officer Convicted of Betraying Anna Chapman, Russian Spy Ring*, CBS News (June 18, 2012, 9:23 AM), <https://www.cbsnews.com/news/ex-officer-convicted-of-betraying-anna-chapman-russian-spy-ring/>.

A Cautionary Tale

Bill Staniford met Anna Chapman soon after she began visiting New York.⁸⁶ Staniford was the CEO of real-estate tech firm PropertyShark⁸⁷ when Chapman walked into his office in January of 2010.⁸⁸ Upon visiting her home, he was surprised at her 1930s art-deco masterpiece with an amazing view and wondered who might be sponsoring her. She was intelligent, engaging, and full of energy. They did not go into business together but did start a relationship.⁸⁹ He took her to Las Vegas. They spent time at his rambling apartment on the Upper East Side and at her place downtown. They went to nightclubs and restaurants in Manhattan while the FBI monitored it all. The Bureau claims to have surveilled Chapman since the moment she arrived in the U.S., focusing particularly on the weekly communications that she sent to the second secretary of the Russian mission to the United Nations.⁹⁰

Staniford appears to have been a target of Russian intelligence for an extended period. A former Marine cryptologic linguist, Staniford in 1992 was approached in a bar in Panama by a Russian who seemed to know many of his personal details.⁹¹ He yet wonders if he was targeted because he was traveling frequently to Eastern Europe on business matters. Interestingly, his father had a longtime accountant—none other than Cynthia Murphy.⁹² On June 27, 2010, the FBI arrested “Cynthia” and her husband along with Chapman and seven other Russian spies in Manhattan, Yonkers, Boston, and

⁸⁶ Corera, *supra* note 2, at 205.

⁸⁷ Founded in 2003 by real estate investor Matthew Haines as a property research tool, PropertyShark.com has gradually developed into a popular tool for real estate professionals, investors, and homebuyers in New York and other major U.S. markets.

⁸⁸ Brett Forrest, *The Big Russian Life of Anna Chapman, Ex-Spy*, Politico (Jan. 4, 2012, 9:11 AM), <https://www.politico.com/states/new-york/albany/story/2012/01/the-big-russian-life-of-anna-chapman-ex-spy-067223>.

⁸⁹ Corera, *supra* note 2, at 205.

⁹⁰ Forrest, *supra* note 88.

⁹¹ Corera, *supra* note 2, at 203.

⁹² *Id.* at 204.

northern Virginia. The announcement triggered headlines reminiscent of the Cold War and inspired the creation of FX's 1980s-era hit spy drama, *The Americans*.⁹³

While perhaps at times lacking spycraft hygiene, Chapman was extraordinarily skilled at getting men to talk, and that was what made her dangerous.⁹⁴ Asked whether Russians, Brits, or Americans were easier to seduce, the sultry spy once replied "Seduction, like love and friendship, are the same everywhere."⁹⁵ When interviewed for this article, Staniford commented that he did not think Chapman had any military training. She also did not come across as Russian and had a British accent. Governments do not have inexhaustible sums of money to spend on espionage, he noted, and he thinks that spying in the modern era is a "part-time gig." He felt Anna was "not interested in being a spy" but rather in "partying and living a specific lifestyle." He added that she was "running around trying to produce" in America. Staniford reiterated what has elsewhere been reported that his long-time accountant, Cynthia Murphy, had probably been targeting him since his Marine Corps cryptolinguist days.⁹⁶

Russian Espionage and Influence Operations in the U.S.

After the June 27, 2010 arrest of the illegals, Attorney General Eric Holder commented it was an "extraordinary case, developed through years of work by investigators, intelligence lawyers, and prosecutors" and that the agreement reached provided a "successful resolution for the United States and its interests."⁹⁷ Russian officials initially denounced the arrests as "Cold War-era spy stories" and accused elements of the U.S. government of trying to undermine the improving relationship between

⁹³ *The Americans* is a period drama about the complex marriage of two KGB spies posing as Americans in suburban Washington D.C. during the Reagan administration. For more information, see <https://www.fxnetworks.com/shows/the-americans>.

⁹⁴ Corera, *supra* note 2, at 209.

⁹⁵ Akbar, *supra* note 51.

⁹⁶ Interview with Bill Staniford, CEO, Rentigo (June 22, 2020).

⁹⁷ *Supra* note 26.

Moscow and Washington. However, officials ultimately expressed confidence that the arrests would not damage ties between the two nations.⁹⁸

Although Anna Chapman and her cohorts were arrested in 2010, Russians influence operations in the U.S. continued. In December of 2016, the Obama administration made the decision to shutter two luxurious Russian compounds in Maryland and New Jersey used by Russian intelligence operatives, ordering all Russians out of the compounds within 24 hours. The move was one of a number of retaliatory measures the White House announced in response to Russian influence in the November 2016 election and to systemic harassment of American officials in Russia.⁹⁹

In October of 2019, Maria Butina, a young firearms advocate and covert Russian agent who tried to infiltrate Republican circles during the 2016 presidential campaign, returned to Russia after serving 15 months in prison for conspiring to act as a foreign agent. Butina's July 2018 arrest was originally revealed within hours of President Donald Trump's heavily-criticized Helsinki summit with President Vladimir Putin. The FBI said Butina plotted to use political groups, including the National Rifle Association (NRA), to establish "back channel" communication with official figures with the ultimate aim of influencing U.S. foreign policy in favor of Russia.¹⁰⁰ During Butina's sentencing hearing, the judge said Butina was transmitting political reports to Russia at the same time Russian intelligence operatives were covertly attempting to influence the election.¹⁰¹ Judge Chutkan called Butina's conduct "a threat to our country's democratic institutions." The judge further stated that her activities were "sophisticated and

⁹⁸ Cristian Salazar & Tom Hays, *Anna Chapman Dubbed Femme Fatale of Russian Spy Case*, Christian Science Monitor (June 30, 2010), <https://www.csmonitor.com/From-the-news-wires/2010/0630/Anna-Chapman-dubbed-femme-fatale-of-Russian-spy-case>.

⁹⁹ Mark Mazzetti & Michael S. Schmidt, *Two Russian Compounds, Caught Up in History's Echoes*, N.Y. Times (Dec. 29, 2016), <https://www.nytimes.com/2016/12/29/us/politics/russia-spy-compounds-maryland-long-island.html>.

¹⁰⁰ British Broadcasting Corp., *Maria Butina: The Russian Gun Activist who was Jailed in the U.S.* (Oct. 25, 2019), <https://www.bbc.com/news/world-us-canada-44885633>.

¹⁰¹ Eileen Sullivan, *Maria Butina, Russian Who Infiltrated Conservative Circles, Is Deported*, N.Y. Times (Oct. 25, 2019), <https://www.nytimes.com/2019/10/25/us/politics/maria-butina-russia-deported.html>.

penetrated deep into political organizations” and were not a “simple misunderstanding by an overeager foreign student.”¹⁰²

A redacted March 2019 Special Counsel report¹⁰³ confirmed that the Russian government, through various proxies, carried out a multi-pronged campaign against the U.S. before, during, and after the 2016 election. The Russian effort involved multiple elements that included a social media influence operation led by the Internet Research Agency (IRA), a cyber hacking operation carried out by Russian military intelligence, and an infiltration operation of the Trump campaign.¹⁰⁴

The IRA built a network of accounts, particularly on Facebook, of individuals appearing to be real Americans. It then created pages and content that were not necessarily political or even divisive but were meant to attract more viewers. By early 2015, the IRA had turned to audience-building around divisive social issues by creating social media groups and pages posing as U.S. groups and activists, such as “Secured Borders,” “Blacktivist,” and “Army of Jesus.”¹⁰⁵ The Russians focused on the 2016 elections with the explicit goal of undermining the Clinton campaign. The focus remained primarily on criticizing Clinton until late spring 2016, when the IRA began to actively promote then-candidate Donald Trump.¹⁰⁶ By the end of the 2016 election, the IRA had the ability to reach millions of U.S. persons through its social media accounts on Facebook, Instagram, Twitter, YouTube, and Tumblr.¹⁰⁷ Facebook later estimated that IRA-controlled accounts reached as many as 126 million people, and an additional 1.4 million were reached through Twitter.¹⁰⁸

¹⁰² Sharon LaFraniere & Eileen Sullivan, *Maria Butina Sentenced for Role in Russian Influence Campaign*, N.Y. Times (Apr. 26, 2019), <https://www.nytimes.com/2019/04/26/us/politics/maria-butina-trump.html>.

¹⁰³ Robert S. Mueller, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

¹⁰⁴ Alina Polyakova, *What the Mueller Report Tells Us About Russian Influence Operations*, Brookings (Apr. 18, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/04/18/what-the-mueller-report-tells-us-about-russian-influence-operations/>.

¹⁰⁵ By the time Facebook deactivated the IRA accounts in mid-2017, the most popular group, “United Muslims of America” had over 300,000 followers.

¹⁰⁶ *Supra*, note 103, at 25.

¹⁰⁷ *Supra*, note 103, at 26.

¹⁰⁸ Polyakova, *supra* note 103.

Russian effort to influence the 2016 presidential election was the most recent expression of Moscow's longstanding desire to undermine the U.S.-led liberal democratic order with the activities demonstrating an escalation in directness, level of activity, and scope of effort compared to previous operations. The Intelligence Community (IC) assessed that President Vladimir Putin himself ordered the 2016 influence campaign with the goals of undermining public faith in the democratic process, denigrating Secretary Clinton, and harming her electability and potential presidency.¹⁰⁹

Moscow's approach evolved over the course of the campaign based on Russia's understanding of the electoral prospects of the two main candidates. When it appeared to Moscow that Secretary Clinton was likely to win the election, the Russian influence campaign began to focus more on undermining her future presidency. Moscow's influence campaign followed a Russian messaging strategy that blended covert intelligence operations such as cyber¹¹⁰ with overt efforts by Russian Government agencies, state-funded media, third-party intermediaries, and paid social media users. Russia, like its Soviet predecessor, has a history of conducting covert influence campaigns focused on U.S. presidential elections and has used intelligence officers, agents, and press placements to disparage candidates perceived as being hostile to the Kremlin.¹¹¹

Countering Russian Influence

The House Special Committee to Investigate Un-American Activities ("Dies Committee")¹¹² was established in 1934 and charged with investigating activities by Communists, Nazis, and Fascists. The

¹⁰⁹ Director of National Intelligence, *Background to "Assessing Russian Activities and Intentions in Recent U.S. Elections": The Analytic Process and Cyber Incident Attribution* (Jan. 6, 2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf.

¹¹⁰ Russia's intelligence services conducted cyber operations against targets associated with the 2016 US presidential election, including targets associated with both major U.S. political parties.

¹¹¹ *Supra* note 109.

¹¹² The Special Committee on Un-American Activities, also known as the Dies Committee, was created on May 26, 1938, with the approval of House Resolution 282, which authorized the Speaker of the House to appoint a special committee of seven members to investigate un-American activities in the United States, domestic diffusion of propaganda, and all other questions relating thereto. Democrat Martin Dies of Texas served as the chairman of the

committee concluded that, while communism was not sufficiently strong enough to harm the United States, its continued growth represented a future danger to the country. The committee report cited attempts were being made from abroad and by diplomatic and consular officials to influence Americans. The committee also noted that efforts were being made to organize some of the citizens and resident aliens and that constitutional rights of Americans had to be preserved. They found Communism to be on par with Nazism and Fascism, as all were dangerous and unacceptable to American interest. One of the committee recommendations was to require the registration of all publicity, propaganda, or public relations agents, or other agents who represent any foreign country.¹¹³

In the period since it allied with Russia during World War II, the U.S. has battled Russia indirectly and attempted to counter its Communist ideology around the globe. In response to Soviet active measures¹¹⁴ during the Cold War, the Reagan administration conducted an aggressive, proactive campaign to compete with the Soviet Union, including in the USSR's backyard of Eastern Europe. The administration developed a series of National Security Decision Directives (NSDDs)¹¹⁵ and conducted a

special committee throughout its existence. The committee had no direct predecessor. However, two earlier special committees of the House had similar jurisdiction: the Special Committee to Investigate Communist Activities, created in 1930 with Hamilton Fish as chairman; and, the Special Committee on Un-American Activities, created in 1934 under the chairmanship of John McCormack and Samuel Dickstein. The special committee was terminated on December 19, 1944. See <https://catalog.archives.gov/id/10459812>.

¹¹³ National Counterintelligence Center, *Counterintelligence Reader (Vol. 1)* 160,

https://www.odni.gov/files/NCSC/documents/ci/CI_Reader_Vol1.pdf.

¹¹⁴ Examples of active measures include written and oral disinformation (or dezinformatsiya), forgeries and false rumors, "gray" (unattributed) and "black" (falsely attributed) propaganda, manipulation and control of foreign media assets, political action and the use of agents-of-influence operations, clandestine radio stations, use of foreign Communist Parties and international front groups for pursuing Soviet foreign policy objectives, support for international revolutionary and terrorist organizations to include national liberation movements, political blackmail, kidnapping, and targeted assassinations to include the killing of defectors. See Soviet Covert Action (the Forgery Offensive): Hearings before the Subcommittee on Oversight of the Permanent Select Committee on Intelligence, U.S. House of Representatives, 96th Cong. (Feb. 1980) (statement of John McMahan, Deputy Director for Operations, Central Intelligence Agency).

¹¹⁵ President Reagan signed NSDD-32, *U.S. National Security Strategy*, on May 20, 1982. This first in a series of directives marked a shift in U.S. policy. It authorized diplomatic, propaganda, political, and military action to "contain and reverse the expansion of Soviet control and military presence through the world." The document also had a covert action component that supported such efforts as sponsoring "demonstrations, protests, meetings, conferences, press articles, television shows, exhibitions, and the like." NSDD-54 supported the policy of "differentiation" in Eastern Europe, which included "encouraging more liberal trends in the region" to "reinforcing the pro-Western orientation of their peoples" and "undermining the military capabilities of the Warsaw Pact." NSDD-75 bluntly stated that U.S. policy toward the Soviet Union would now consist of three inter-related

wide range of irregular operations around the globe. At the strategic level, Reagan's National Security Council (NSC) staff drafted a series of documents that outlined an aggressive campaign to compete with the Soviets.¹¹⁶ In the following decades, the U.S. strengthened economic and military ties with Eastern European countries, much to the chagrin of Russia. For example, the United States and Poland now partner closely on NATO capabilities, counterterrorism, nonproliferation, missile defense, and energy security.¹¹⁷ The U.S. and Russia have also been involved in a number of proxy wars, most recently in Ukraine,¹¹⁸ a country that relies heavily on the U.S. for military aid and training.¹¹⁹ Under the theory of keeping enemies closer, the U.S. has also sought to bring Russia into the fold at times such as cooperation on the U.S. space station,¹²⁰ joint military training,¹²¹ and joint safety protocols in Syria.¹²²

Keeping Spies in Check

Based on the nuances and complexities of the laws applicable to espionage activities, the criminal prosecution of alleged spies has proven difficult for the U.S. government.¹²³ There are a number of laws in the United States dealing with espionage in various contexts that could be used to neutralize or root out Russian agents. Federal prosecutors utilize particular statutes over others depending on the

objectives: to reverse Soviet expansionism by competing on a sustained basis in all international arenas, promote change in the Soviet Union toward a more pluralistic political and economic system, and engage in negotiations with the Soviet Union (when feasible) which protected and enhanced U.S. interests.

¹¹⁶ Seth G. Jones, *Going on the Offensive: A U.S. Strategy to Combat Russian Information Warfare*, Center for Strategic and Int'l Studies (Oct. 1, 2018), <https://www.csis.org/analysis/going-offensive-us-strategy-combat-russian-information-warfare>.

¹¹⁷ U.S. Dep't. of State, *U.S. Relations with Poland* (June 10, 2019), <https://www.state.gov/u-s-relations-with-poland/>.

¹¹⁸ David Bond & Roman Olearchyk, *Ukraine: On the Front Line of Europe's Forgotten War*, *Fin. Times* (Sep. 6, 2018), <https://www.ft.com/content/5adbd298-a056-11e8-85da-eeb7a9ce36e4>.

¹¹⁹ Jared Saathoff, *Red Arrow Soldiers Deployed in Ukraine for Multinational Mission*, *Army* (Dec. 6, 2019), https://www.army.mil/article/230649/red_arrow_soldiers_deployed_in_ukraine_for_multinational_mission.

¹²⁰ Nat'l. Aeronautics and Space Admin., *International Space Station* (Feb. 28, 2019), https://www.nasa.gov/mission_pages/station/cooperation/index.html.

¹²¹ Eloise Lee, *Russia Is Sending Troops to the U.S. to Learn American Military Tactics*, *Business Insider* (Apr. 25, 2012, 5:14 PM), <https://www.businessinsider.com/joint-us-russia-military-drills-2012-4>.

¹²² Neil MacFarquhar, *U.S. Agrees with Russia on Rules in Syrian Sky*, *N.Y. Times* (Oct. 20, 2015), <https://www.nytimes.com/2015/10/21/world/middleeast/us-and-russia-agree-to-regulate-all-flights-over-syria.html>.

¹²³ Vara, *supra* note 3.

facts of each case and the statute that will impose the least burden on prosecution.¹²⁴ The government often makes use of federal immigration law to deal with known or suspected spies and has used the immigration law model as the predicate for criminal prosecutions that it launched against foreign spies found to be operating in the United States.¹²⁵

An inadmissible alien statute denies entry for any alien whom the Attorney General or a consular officer knows or reasonably believes is seeking entry into the United States with the purpose of violating any laws of the United States as it relates to espionage or sabotage.¹²⁶ Another law makes any alien who is engaged in, has engaged in, or, who any time after gaining entry into the United States engages in any act or acts that violate laws pertaining to espionage or sabotage, subject to deportation.¹²⁷ 50 U.S.C. § 851¹²⁸ requires registration of persons who enter the United States who have foreign espionage knowledge or training. The government has made frequent use of immigration law in order to deport suspected spies and has used the registration requirement as part of its criminal prosecution efforts of foreign espionage agents. Perhaps the most well-known law the United States government uses to combat espionage is the Foreign Agent Registration Act.¹²⁹

¹²⁴ Immigration Law Serv., *2D Espionage, Sabotage, and Other Unlawful Activity* § 3:43 (1990).

¹²⁵ Vara, *supra* note 3.

¹²⁶ 8 U.S. Code § 1182.

¹²⁷ 8 U.S. Code § 1227.

¹²⁸ 50 U.S.C. § 851 reads “Except as provided in section 852 of this title, every person who has knowledge of, or has received instruction or assignment in, the espionage, counter-espionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, shall register with the Attorney General by filing with the Attorney General a registration statement in duplicate, under oath, prepared and filed in such manner and form, and containing such statements, information, or documents pertinent to the purposes and objectives of this subchapter as the Attorney General, having due regard for the national security and the public interest, by regulations prescribes. Available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title50/pdf/USCODE-2011-title50-chap23-subchapV-sec851.pdf>.

¹²⁹ 22 U.S.C. § 611 et seq. Available at <https://www.govinfo.gov/content/pkg/USCODE-2009-title22/pdf/USCODE-2009-title22-chap11-subchapII.pdf>.

Foreign Agents Registration Act

The Foreign Agents Registration Act (FARA), or FARA, was enacted in 1938 and requires certain agents of foreign principals who are engaged in political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, along with activities, receipts, and disbursements in support of those activities. Disclosure of the required information facilitates evaluation¹³⁰ by the government and the American people of the activities of such persons in light of their function as foreign agents.¹³¹

Under FARA, agents of a “foreign principal”¹³² who do not meet any of the exemptions, must register with the Justice Department.¹³³ Once registered, these “foreign agents” must meet a set of disclosure requirements, including making a conspicuous statement that they are acting on behalf of a foreign principal. Willful failure to register or making false statements or omissions in connection with registration carries a punishment of up to \$10,000 or five years in jail.¹³⁴ Although FARA does not itself contain a mechanism for civil fines, providing only for DOJ to seek injunctive relief against noncompliant parties,¹³⁵ the Department has on occasion looked to other sources of authority to recover funds in the absence of any criminal conduct. Whether DOJ will seek to augment its civil-enforcement authority through legislative amendments to FARA or through expanded reliance on other statutory mechanisms remains to be seen.¹³⁶

¹³⁰ The FARA Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) is responsible for the administration and enforcement of FARA.

¹³¹ Dep’t. of Justice, *Foreign Agents Registration Act* (2020), <https://www.justice.gov/nsd-fara>.

¹³² Under FARA, a “foreign principal” includes: a foreign government or political party; any entity organized under the laws of a foreign country or having its principal place of business there; or any person outside the United States, unless they are a domiciled U.S. citizen. See 22 U.S.C. § 611(b).

¹³³ 22 U.S.C. § 611 (2018).

¹³⁴ *Id.* § 618(a). The Justice Department can also seek injunctive relief to stop someone from continuing to commit any activities that are violating FARA. *Id.* § 618(f). In *Lambert v. California*, 355 U.S. 225 (1957), the Supreme Court held that willfulness in the context of a registration program requires “actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply.”

¹³⁵ 22 U.S.C. § 618(f) (2018).

¹³⁶ Christopher E. Babbitt, et. al., *An Introduction to the Foreign Agents Registration Act for Firms Assisting Foreign Clients in the United States*, WilmerHale (Mar. 8, 2019), <https://www.wilmerhale.com/en/insights/client->

The law is useful in that it does not require prosecutors to prove that a defendant actually engaged in espionage but requires only a showing that the person engaged in specific activities on behalf of a foreign power without having registered as an agent of that country. This greatly minimizes the government's obligation to release highly sensitive information in order to proceed in such criminal actions. While violations of the act can result in fines or jailtime,¹³⁷ lobbyists have been evading FARA's registration requirements for decades due to the DOJ's lax enforcement and loopholes in the act's provisions. As such, the law had acquired a reputation around Washington, D.C. for being a "toothless" statute and a "complete joke."¹³⁸

Criticisms of FARA

When Congress enacted FARA in 1938, it did so to require the registration and disclosure of persons disseminating Nazi and communist propaganda in the United States.¹³⁹ A generation later, when Congress amended the act to create the version that is largely in place today, the Senate explained "[t]he place of the old foreign agent has been taken over by the lawyer-lobbyist and public relations

alerts/20190308-an-introduction-to-the-foreign-agents-registration-act-for-firms-assisting-foreign-clients-in-the-united-states.

¹³⁷ 22 U.S.C. § 618(a)(2) (2018).

¹³⁸ See Ken Silverstein, I've Covered Foreign Lobbying for 20 Years and I'm Amazed Manafort Got Busted, *Politico* (Oct. 30, 2017), <https://www.politico.com/magazine/story/2017/10/30/paul-manafort-indictment-foreign-lobbying-russia-probe-215764> (stating that Paul Manafort, "like dozens of other influence peddlers, has been operating in plain sight for years. . . . So, it's not unreasonable to conclude that the only reason that Manafort got busted was because a special counsel was appointed after the firing of FBI Director James Comey to look into the Trump campaign's possible collusion with Russia. Manafort has been under investigation since 2014, but if the DOJ's track record is any indicator, it's quite likely that had he not been Trump's campaign manager, Manafort would be kicking back and enjoying his allegedly laundered cash at this very moment"); see also Miles Parks, A 'Toothless' Old Law Could Have New Fangs, Thanks to Robert Mueller, *NPR* (Nov. 17, 2017, 5:00 AM) (internal quotations omitted), <https://www.npr.org/2017/11/17/563737981/a-toothless-old-law-could-have-new-fangs-thanks-to-robertmueller> ("The law intended to shine a light on foreign entities and foreign governments working to influence policy in Washington, D.C., has been called everything from 'toothless' to 'a complete joke.' But Justice Department special counsel Robert Mueller isn't laughing—and neither may potential violators if he decides to make it his new weapon of choice."). See also *infra* Part II.A (discussing the DOJ's administration and enforcement of FARA); *infra* Parts II.B–II.C (describing the loopholes and shortcomings created by FARA's broad definitions and exemptions).

¹³⁹ S. Rep. No. 143, 89th Cong., 1st Sess., 4 (1965).

counsel whose object is not to subvert or overthrow the U.S. Government but to influence its policies to the satisfaction of his particular client.”¹⁴⁰

FARA has received renewed attention in news reports due to the investigations into Russian interference in the 2016 presidential election.¹⁴¹ Special Counsel Robert Mueller, who investigated Russian interference in the 2016 U.S. presidential election, brought multiple charges, including failure to register under FARA, against Paul Manafort,¹⁴² Richard Gates,¹⁴³ and members of the Russian Internet Research Agency.¹⁴⁴ While the intent of the act is to foster transparency and decrease foreign influence, FARA also has a reputation of being notoriously vague and sweeping.¹⁴⁵

Lobbying laws differ for foreign lobbyists under FARA and domestic lobbyists under the Lobbying Disclosure Act (LDA),¹⁴⁶ and the two laws are administered by two different entities—FARA by DOJ and LDA by Congress. Regarding administration of lobbying registration and disclosure, it has been

¹⁴⁰ *Id.*

¹⁴¹ See Foreign Agents Registration Act of 1938, 22 U.S.C. §§ 611–18 (2016); see also *infra* Parts II.B–II.C (describing the events that sparked an investigation into Russia’s interference in the 2016 election).

¹⁴² Indictment at 26, *United States v. Manafort*, No. 1:17-cr-00201-ABJ (D.D.C. filed Oct. 30, 2017). Paul Manafort was the Chairman of Donald Trump’s presidential election campaign from June to August of 2016. US Election: Trump Campaign Chairman Paul Manafort Quits, BBC News (Aug. 19, 2016), <https://www.bbc.com/news/world-us-canada-37134440> [<https://perma.cc/T22V-MRME>].

¹⁴³ Indictment at 26, *Manafort*, No. 1: 17-cr-00201-ABJ. Richard Gates was a business associate of Paul Manafort and his deputy when Manafort was Chairman of Trump’s presidential election campaign. Josh Gerstein, Former Manafort Deputy Rick Gates Testifies Against Greg Craig, Politico (Aug. 22, 2019, 4:05PM), <https://www.politico.com/story/2019/08/22/rick-gatestrial-greg-craig-1471698> [<https://perma.cc/7MAZ-XKWC>]. In January 2019, Skadden, Arps, Slate, Meagher & Flom LLP settled with the Justice Department for \$4.6 million for failure to register under FARA for work they did for Paul Manafort in relation to Ukraine. The Podesta group and Mercury Public Affairs are also being investigated for failing register under FARA. Kenneth P. Vogel & Matthew Goldstein, Law Firm to Pay \$4.6 Million in Case Tied To Manafort and Ukraine, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/17/us/politics/skadden-arps-ukraine-lobbying-settlement.html> [<https://perma.cc/HP9M-L8T4>].

¹⁴⁴ Indictment at 19-20, *United States v. Internet Research Agency*, No. 1:18-cr-00032-DLF (D.D.C. filed Feb. 16, 2018).

¹⁴⁵ See, e.g., Robert Kelner, Brian D. Smith, Zachary G. Parks & Derek Lawlor, *The Foreign Agents Registration Act (“FARA”): A Guide for the Perplexed*, Nat’l L. Rev. (Jan. 11, 2018), <https://www.natlawreview.com/article/foreign-agents-registration-act-fara-guide-perplexed> [<https://perma.cc/DJ6X-ZGENj>] (claiming that the triggers for registration under FARA are “extremely broad” and that as a result, “FARA practitioners often assume that some of the triggers cannot mean what they say”); Taking Stock of Newly Released FARA Advisory Opinions, Perkins Coie (June 18, 2018), <https://www.perkinscoie.com/en/news-insights/taking-stock-of-newly-released-fara-advisory-opinions.html> [<https://perma.cc/H6CC-KZSX>] (commenting that FARA has a “broad statutory sweep, notoriously ambiguous definitions and [a] dearth of caselaw or other precedent available to help interpret its application”).

¹⁴⁶ 2 U.S.C. § 1601 et seq.

recommended that FARA and LDA administration and enforcement be combined to streamline registration and disclosure for all lobbying activities. Some legislators have suggested that FARA's focus is too narrow. Instead, they suggest that the definition be expanded to include individuals who engage in "promotional or informational" activities for a foreign principal. For example, in the 102nd Congress (1991-1992), H.R. 1725 would have changed the definition of foreign agent to "any person who engages in political activities for purposes of furthering commercial, industrial, or financial operations with a foreign principal." Arguably, this definition would be more inclusive and might require additional individuals to register and disclose their representation of foreign principals under FARA.¹⁴⁷

FARA has been amended a number of times, including major amendments in 1942, 1966,¹⁴⁸ and 1995.¹⁴⁹ In recent years, the Justice Department has relied largely on voluntary compliance and has rarely prosecuted FARA cases.¹⁵⁰ As a result, courts have not had the opportunity to flesh out the meaning of many of the act's provisions.¹⁵¹

Proposed Amendments to FARA

Mainly in response to high profile cases of unregistered agents revealed through the recent Russia Scandal investigations, both Democrats and Republicans in Congress have introduced legislation to amend FARA.¹⁵² There is general agreement that FARA is flawed and requires revision if the law is to

¹⁴⁷ Jacob R. Straus, *Foreign Agents Registration Act: An Overview*, Cong. Research Serv. (Mar. 7, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF10499>.

¹⁴⁸ While the law originally focused on propagandists, the 1966 amendments to FARA shifted its focus to identifying the sources of political propaganda and protecting the integrity of the United States government's decision making process.

¹⁴⁹ See, e.g., Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691; Foreign Agents Registration Act of 1938, Amendments, Pub. L. No. 89-486, 80 Stat. 244 (1966); Foreign Agents Registration Act of 1938, as Amended, Pub. L. No. 77-532, 56 Stat. 248 (1942).

¹⁵⁰ Between 1966 and 2015 there were only seven criminal cases and seventeen civil cases brought by the Justice Department under FARA.

¹⁵¹ Nick Robinson, *Foreign Agents in an Interconnected World: FARA and the Weaponization of Transparency*, 69 Duke L.J. 1075 (2020).

¹⁵² See H.R. 4504, 115th Cong. (1st Sess. 2017) (introducing legislation—sponsored by Representative Mike Quigley (Democrat – Illinois) and referred to the Committee on Oversight and Reform on November 30, 2017—to

be aggressively enforced. Congress has responded with several proposals to reform FARA that attempt to address concerns including limiting lobbying, religious, scientific, and fine arts exemptions; revising reporting requirements for foreign agents and the FARA Unit, expanding the FARA Unit's enforcement toolkit, and banning former political appointees from lobbying on behalf of foreign interests.¹⁵³

Bills proposed by Senate and House Republicans would permit the DOJ to enforce registrations under FARA by demanding the production of documents and testimony to ensure compliance.¹⁵⁴ They would also eliminate a broad exemption from registration¹⁵⁵ for those who register under the LDA and require the DOJ to develop a comprehensive enforcement strategy.¹⁵⁶ LDA is administered by Congress, and applies to a class of agents, generally representing commercial, non-governmental entities who are engaged in "lobbying activities" as that term is defined in the LDA. In general, the LDA exemption applies to those who lobby Congress and/or certain high-level executive branch officials on behalf of the covered entities. The exemption does not apply where a foreign government or a foreign political party is the principal beneficiary of the activities.¹⁵⁷

H.R. 4504 would allow the DOJ to impose civil fines for FARA violations, as the law currently imposes only criminal penalties.¹⁵⁸ Moreover, the proposed amendments to FARA that impose harsher penalties for certain violations do not impose penalties severe enough to deter certain agents of foreign

amend FARA, among other statutes, by improving registration information from agents of foreign principals, striking the exemption for lobbyists who register under the LDA and requiring lobbyists who file under the LDA to simultaneously file under FARA); S. 2039, 115th Cong. (1st Sess. 2017) (proposing a bill—introduced by Senator Grassley (Republican – Iowa), read twice and referred to the Committee on Foreign Relations—to amend FARA by promoting greater transparency in the registration for agents of foreign principals, provide the Attorney General with greater authority to investigate alleged violations of the Act and bring criminal and civil actions against persons who violate FARA); H.R. 4170, 115th Cong. (1st Sess. 2017) (introducing legislation proposed by six House Republicans, which is identical to S. 2039).

¹⁵³ U. Penn. Center for Ethics and the Rule of Law, *Protecting Democracy: Modernizing the Foreign Agents Registration Act* (Apr. 17, 2019), <https://www.law.upenn.edu/institutes/cerl/conferences/fara/>.

¹⁵⁴ See S. 2039; H.R. 4170.

¹⁵⁵ An agent who is properly registered under the LDA is exempt from registration under FARA if the agent has engaged in lobbying activities and the representation is not on behalf of a foreign government or foreign political party.

¹⁵⁶ S. 2039; H.R. 4170.

¹⁵⁷ See 22 U.S.C. § 613(h); 28 C.F.R. § 5.307.

¹⁵⁸ H.R. 4504.

principals—such as the unregistered Russian agents involved in the Russia Scandal—who are motivated to influence the U.S. policies and political processes, from refusing to register under FARA. The proposed amendments do not close the loopholes that allow individuals who work on behalf of a foreign principal to circumvent FARA registration requirements by retaining an American law firm to hire and pay for a lobbyist, public relations executive, or even a spy’s services, nor do they prevent foreign principals from influencing United States policies by funding political organizations through their domestic subsidiaries.¹⁵⁹

S.1762 would provide DOJ a mechanism to demand evidence for investigating compliance with foreign-agent disclosure requirements and increases penalties relating to such requirements. DOJ could issue civil investigative demands¹⁶⁰ to a person who may have information relevant to an investigation related to FARA. The bill prescribes various procedures and requirements, such as minimum notice periods when seeking oral testimony. Investigative demands may be enforced or challenged in district court. The bill would increase the maximum criminal fine for certain FARA violations from \$10,000 to \$200,000. It would be unlawful for an agent of a foreign principal to willfully fail to disclose being a FARA-registered agent before or during a meeting with a Member of Congress (or with staff of a Member or congressional committee). The bill would also provide for various civil penalties for failing to meet agent registration requirements that could not be paid by the foreign principal. The bill also includes a Government Accountability Office (GAO) auditing measure.¹⁶¹

The Foreign Agents Registration Modernization Act of 2019 (“FARM Act of 2019”) would impose additional requirements related to the public database of registrations that are filed, as required by FARA, by agents who engage in certain political activities for foreign principals. Specifically, the DOJ

¹⁵⁹ See *supra* Part II.B (describing how the Clinton campaign and the DNC paid for Fusion GPS, an unregistered foreign agent, to conduct opposition research by shielding their payments through the Perkins Coie law firm).

¹⁶⁰ Such demands could be for documents, written answers to questions, or oral testimony.

¹⁶¹ S. 1762 (2019), <https://www.congress.gov/116/bills/s1762/BILLS-116s1762is.pdf>.

would establish the National Foreign Agents Database, which would be a publicly searchable, sortable, and machine-processable database of the information contained in such registrations.¹⁶² FARA-required registrations would be filed in an electronic, structured data format. Electronically filed registrations would be immediately available to the public on the internet.¹⁶³

H.R.1467, the Protect Against Unlawful Lobbying (PAUL) Act of 2019, would require DOJ to establish a separate unit for the investigation and enforcement of provisions requiring registration of foreign agents. It would provide DOJ with the authority to impose civil monetary penalties for violations and would require foreign agents to disclose transactions involving things of financial value conferred on officeholders by foreign principals.¹⁶⁴

Stopping Harmful Interference in Elections for a Lasting Democracy Act, or the “SHIELD Act,” would establish a duty to report election interference from foreign entities, would apply to existing campaign advertising requirements to online advertisements, and would generally limits political spending and election interference by foreign entities. Specifically, a political committee would be required to report certain foreign contacts involving an offer of unlawful election assistance to the FBI and the Federal Election Commission. The bill would establish criminal penalties for violations of these requirements and would also make an alien engaging in improper election interference deportable and inadmissible into the United States. Large online platforms would be required to maintain a public database of certain political advertisements. The bill would prohibit the distribution of certain deceptive audio or visual media within 60 days of an election. The bill would also place limitations on political

¹⁶² Current law requires a database of registrations to have search and sort functions only to the extent technically practicable.

¹⁶³ H.R. 5122 (2019), <https://www.congress.gov/116/bills/hr5122/BILLS-116hr5122ih.pdf>.

¹⁶⁴ H.R. 1467 (2019), <https://www.congress.gov/116/bills/hr1467/BILLS-116hr1467ih.pdf>.

spending by foreign entities.¹⁶⁵ In addition, candidates would also be prohibited from offering to share nonpublic campaign information with certain foreign entities.¹⁶⁶

FARA Enforcement

According to court documents, beginning January 2010, law-enforcement agents conducted surveillance of Anna Chapman at various locations in New York City. She was ultimately charged with conspiracy to act an unregistered agent of a foreign government. From the 1990s up to the time of their arrest, the Russian illegals “unlawfully, willfully and knowingly, did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, to violate 18 U.S.C. § 951,¹⁶⁷ relevant portions of which are as follows:

- (a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined under this title or imprisoned not more than ten years, or both.
- (b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.¹⁶⁸

A 2016 report by the DOJ Office of the Inspector General¹⁶⁹ faulted DOJ for lacking a comprehensive FARA enforcement strategy and has led to increased scrutiny of potential FARA registrants and catalyzed DOJ’s enforcement efforts. In 2018, DOJ began to release redacted versions of previously confidential advisory opinions, providing new insight into its interpretation and application of the statute. In March of 2019, Assistant Attorney General for National Security John Demers announced an overhaul of DOJ enforcement practices and signaled a shift toward more aggressive FARA

¹⁶⁵ Specifically, foreign entities may not contribute to campaigns related to ballot initiatives and referenda make disbursements for certain internet activity referring to a candidate or a political issue.

¹⁶⁶ H.R. 4617 (2019), <https://www.congress.gov/116/bills/hr4617/BILLS-116hr4617rfs.pdf>.

¹⁶⁷ Supra note 12, at 1.

¹⁶⁸ 18 U.S.C. § 951, <https://www.govinfo.gov/content/pkg/USCODE-2009-title18/pdf/USCODE-2009-title18-partI-chap45-sec951.pdf>.

¹⁶⁹ Dep’t. of Justice, *Audit of the National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act* (Sept. 2016), <https://www.oversight.gov/sites/default/files/oig-reports/a1624.pdf>.

enforcement.¹⁷⁰ As of July 2020, there are 490 entities or persons representing foreign principals registered under the Act¹⁷¹ including 15 active Russian principals.¹⁷² According to practitioners, the heightened enforcement environment has unfortunately not been accompanied by increased clarity regarding FARA's reach or application.¹⁷³

Despite its flaws, the influencers are beginning to pay attention. A \$4.6 million dollar Skadden Arps' settlement with DOJ,¹⁷⁴ the sentencing of President Trump's campaign chairman Paul Manafort, and the indictment of President Obama's former White House counsel Greg Craig—all in 2019—thrust an otherwise obscure law into public view. Eighty years old and rarely enforced, FARA had originally been designed to fight Nazi propaganda. FARA has since found new purpose and, since the 2016 election, more indictments for FARA violations have been brought than in the previous 50 years.¹⁷⁵

Classified Information Procedures Act

The Russian illegals case did not involve classified evidence, largely because the group was arrested and deported before they gained access to classified material. However, prosecuting those alleged to be involved in espionage against the United States can prove difficult. With the prosecution of alleged spies comes the struggle between the government's interest in keeping classified information safeguarded and the defendant's rights at trial.¹⁷⁶ Criminal prosecutions involving classified information

¹⁷⁰ See Katie Benner, *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>.

¹⁷¹ <https://efile.fara.gov/ords/f?p=1381:17:15700166009388>

¹⁷² https://efile.fara.gov/ords/f?p=1381:130:15700166009388::NO:RP,130:P130_DATERANGE:N

¹⁷³ Babbitt, *supra* note 136.

¹⁷⁴ Under terms of the settlement, the firm agreed to register with DOJ as required by FARA in connection with the firm's work for GoU, make payments of over \$4.6 million, continue to cooperate with the Attorney General, and continue to undertake a review of its compliance policies and procedures. The settlement agreement is available at <https://www.justice.gov/opa/press-release/file/1124381/download>.

¹⁷⁵ *Supra* note 153.

¹⁷⁶ The Sixth Amendment guarantees criminal defendants a public trial and the right to know the accusers and the nature of the charges and evidence. Also, under federal law, there are certain classes of information that the prosecution must provide if requested by the defendant. For example, *Brady* material, named after the seminal

inherently create a tension between the government's legitimate interest in protecting sensitive national security information and a criminal defendant's rights under the United States Constitution and federal law. In many cases, the executive branch may resolve this tension before any charges are formally brought by forgoing prosecution in order to safeguard overriding national security concerns. The Classified Information Procedures Act, or CIPA,¹⁷⁷ allows trial judges to rule on the admissibility of classified information seeking to be used in trial in a protected setting.¹⁷⁸

After a criminal indictment becomes public, the prosecutor remains responsible for taking reasonable precautions against the unauthorized disclosure of classified information during the case. This responsibility applies both when the government intends to use classified information in its case-in-chief as well as when the defendant seeks to use classified information in his or her defense.¹⁷⁹ CIPA permits courts to issue protective orders that limit the disclosure of discovery materials to only particular members of the defense team that have been granted special security clearances and cleared, with restrictions, to view and handle such information. CIPA also allows for substitutes or redactions¹⁸⁰ of the classified information to be used in criminal courts so long as it does not violate the defendant's rights. It is worth noting that when the government proceeds pursuant to the Immigration and Nationality Act, CIPA issues do not arise and, because such actions are generally not criminal in nature and involve a different statutory scheme.¹⁸¹

Supreme Court case *Brady v. Maryland* 373 U.S. 83 (1963), which refers to information in the prosecution's possession which is exculpatory or tends to prove the innocence of the defendant. This may encompass statements by witnesses that contradict, or are inconsistent with, the prosecution's theory of the case. Such information must be provided to the defense, even if the prosecution does not intend to call those witnesses.

¹⁷⁷ P.L. 96-456, 94 Stat. 2025 (1980), *codified at* 18 U.S.C. app. 3 §§ 1-16.

¹⁷⁸ Edward C. Liu, *Protecting Classified Information and the Rights of Criminal Defendants: The Classified Information Procedures Act*, Cong. Research Serv. (Aug. 31, 2016), <https://crsreports.congress.gov/product/pdf/R/R41742>.

¹⁷⁹ See Title 18, U.S.C. App III.

¹⁸⁰ Following a 6(a) hearing and formal findings of admissibility by the Court, the Government may move to substitute redacted versions of classified documents from the originals or to prepare an admission of certain relevant facts or summaries for classified information that the Court has ruled admissible.

¹⁸¹ *In re Jorge Luis-Rodriguez*, 26 I&N Dec. 747 at 756.

What the Illegals Case Teaches Us

In the months and years leading up to the 2010 arrests, the FBI carried out a sound counterintelligence program and stopped the illegals before it became clear a few of the group were planning to flee. The case teaches us that Russian interests have not changed.¹⁸² Recall the 2005 station of the nation address in which Putin stated, “The collapse of the Soviet Union was the greatest geopolitical catastrophe of the century.”¹⁸³ The case reinforces that computers and Google searches are no match for human operators and agents when it comes to gleaning insights into the plans, intentions, and psychologies of intelligence targets. Both the U.S. and Russia continue to invest in field collection activities. Over the course of at least a decade, the Russians invested heavily in developing a large network of operatives spanning the American Northeast and Central Atlantic regions. Despite the reported lack of intelligence obtained from the group’s operations and their various tradecraft failures, the group of illegals were likely in the United States to handle an anticipated influx of American moles.¹⁸⁴ Perhaps the Russians threw caution to the wind at times because the FBI sting represented just the tip of the iceberg and compartmentalization ensured the disparate intelligence cells would remain in place long after Anna Chapman was safely back in Moscow. The illegals case teaches us that Russia is playing the long game when it comes to espionage. The Russians hope that, given enough time and distraction, Americans forget that spies are among us.

¹⁸² Ronald Radosh, *Lessons from the Russian Spy Arrests*, Hudson Inst. (June 30, 2010), <https://www.hudson.org/research/7129-lessons-from-the-russian-spy-arrests>.

¹⁸³ Andrew Osborn, *Putin: Collapse of the Soviet Union was 'Catastrophe of the Century'*, Independent (Apr. 26, 2005), <https://www.independent.co.uk/news/world/europe/putin-collapse-of-the-soviet-union-was-catastrophe-of-the-century-521064.html>.

¹⁸⁴ Greg Bruno, *What the Russian Spy Case Reveals*, Council on Foreign Rel. (July 12, 2010), <https://www.cfr.org/expert-roundup/what-russian-spy-case-reveals>.