

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

June 20, 2018

Mr. Kierán Suckling
Executive Director
Center for Biological Diversity, Inc.
378 North Main Avenue
Tucson, Arizona 85701

Dear Mr. Suckling:

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. military activities.³

Since 2003, the Center for Biological Diversity (CBD) has represented a coalition of Japanese and American environmental groups in litigation attempting to stop the planned relocation of Marine Corps Air Station Futenma (MCAS Futenma), located on the Japanese island of Okinawa.⁴ In addition, CBD appears to have engaged in political activities within the

¹ Letter from Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Bruce Westerman, Chairman, Subcomm. on Oversight and Investigations, to Rhea Suh, President, Natural Resources Defense Council (June 6, 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 Hon. James N. Mattis, U.S. Secretary of Defense (June 13, 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 Press Release, Ctr. for Biological Diversity, Lawsuit filed to halt U.S. airbase construction in ocean waters off Okinawa, Japan, that would destroy the habitat of endangered dugong (seacow) (Sept. 25, 2003) (available at https://www.biologicaldiversity.org/news/press_releases/dugong9-25-03.html); *see also* Press Release, Ctr. for

United States on behalf of the government of the Japanese Prefecture of Okinawa and other foreign entities to influence plans regarding MCAS Futenma's relocation. For example, CBD appears to have arranged meetings with U.S. politicians and their representatives,⁵ held press conferences,⁶ and coordinated other publicity events in support of foreign anti-base activists, environmental groups, and members the Okinawan government opposed to the U.S. military's presence.⁷ The Committee seeks clarification about the nature of CBD's advocacy work to influence U.S. environmental and natural resources policy in light of CBD's close relationship with Okinawan government officials and foreign environmental groups.

The alliance between the United States and Japan is the "cornerstone of stability" and a key component of America's rebalancing towards the Asia-Pacific region.⁸ Okinawa's strategic southern location in the Ryukyu islands provides a critical forward-operating platform for U.S. military in the region.⁹ The approximately 30,000 military personnel stationed there are integral to fulfilling the United States' treaty obligations to Japan.¹⁰ In total, Okinawa is home to about 25 percent of all facilities used by U.S. Forces Japan and about half of all U.S. military personnel in Japan.¹¹ MCAS Futenma's urban location presents challenges to expanding military

Biological Diversity, *Lawsuit Seeks Protection for Okinawa Woodpecker, One of the World's Rarest Birds* (Dec. 22, 2003) (available at https://www.biologicaldiversity.org/news/press_releases/woodpecker12-22-03.htm).

⁵ 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).

⁶ *Id.*; see also Press Release, Ctr. for Biological Diversity, *Court Hearing, Press Conference Target U.S. Military Airstrip in Japan Threatening Okinawa Dugongs* (Dec. 10, 2014) (available at https://www.biologicaldiversity.org/news/press_releases/2014/okinawa-dugong-12-10-2014.html).

⁷ Press Release, Ctr. for Biological Diversity, *Bay Area Film Screening to Explore U.S Military's Threat to Endangered Marine Mammals* (Mar. 29, 2018) (available at https://www.biologicaldiversity.org/news/press_releases/2018/okinawa-dugong-03-29-2018.php).

⁸ *The U.S. has a Massive Military Presence in the Asia-Pacific. Here's What you Need to Know About it*, AGENCE FRANCE PRESSE, PRI: PUBLIC RADIO INTERNATIONAL, Aug. 11, 2017, <https://www.pri.org/stories/2017-08-11/us-has-massive-military-presence-asia-pacific-heres-what-you-need-know-about-it>; see also U.S. Dep't. of State, *The U.S.-Japan Alliance: The Cornerstone for Stability in the Asia Pacific*, U.S. DEP'T OF STATE DIPNOTE BLOG (Mar. 16, 2017) (available at <https://blogs.state.gov/stories/2017/03/16/en/us-japan-alliance-cornerstone-stability-asia-pacific>).

⁹ Adam Ashton, *Okinawa's Strategic Value for U.S. Forces Causes Long Stalemate with Locals*, THE NEWS TRIBUNE, Nov. 21, 2015, <http://www.thenewstribune.com/news/local/military/article45820830.html>; see generally BRUCE KLINGER, *TOP 10 REASONS WHY THE U.S. MARINES ON OKINAWA ARE ESSENTIAL TO PEACE AND SECURITY IN THE PACIFIC*, THE HERITAGE FOUNDATION (June 14, 2011) (available at <https://www.heritage.org/asia/report/top-10-reasons-why-the-us-marines-okinawa-are-essential-peace-and-security-the-pacific>); see also U.S. DEP'T. OF DEFENSE, *ASIA-PACIFIC MARITIME SECURITY STRATEGY 8-9, 22-23* (Aug. 14, 2015)(available at https://www.defense.gov/Portals/1/Documents/pubs/NDAA%20A-P_Maritime_Security_Strategy-08142015-1300-FINALFORMAT.PDF).

¹⁰ Reuters Staff, *Japan Criticizes U.S. for Military Flights Over School in Okinawa*, REUTERS, Jan. 18, 2018, <https://www.reuters.com/article/us-usa-japan-helicopter-okinawa/japan-criticizes-u-s-for-military-flights-over-school-in-okinawa-idUSKBN1F80CK>.

¹¹ IAN E. RINEHART & EMMA CHANLETT-AVERY, CONG. RESEARCH SERV., R42645, *THE U.S. MILITARY PRESENCE IN OKINAWA AND THE FUTENMA BASE CONTROVERSY 10* (Jan. 20, 2016), available at <http://www.crs.gov/reports/pdf/R42645>.

operations at the base and is a flashpoint for local opposition to the U.S. military's presence.¹² To defray the cost of the U.S. military's land ownership, the Japanese government provides billions of dollars' worth of subsidies and economic development to Okinawa.¹³ In addition, Japan and the United States created the bilateral Special Action Committee on Okinawa (SACO) to examine ways to reduce the burden of U.S. military presence on the Okinawan people, including base relocation and expanding military deployments outside of Okinawa.¹⁴

Some local opposition undoubtedly represents the sincere concerns of Okinawans regarding the cost of hosting such a large contingent of U.S. military personnel and dependents. According to Japan's Public Security Intelligence Agency (JPSIA), however, many of the political parties and activist groups most vocally opposed to, and willing to take direct action against, the U.S. military presence in Okinawa are "radical" groups like the Japanese Communist Party (JCP) and Okinawan independence movement.¹⁵ The JCP is also currently a member of the ruling coalition in the Okinawan Prefectural Assembly and supports Okinawan Governor Takeshi Onaga's pledge to "never allow construction of a new military base . . . [and to] block it by employing every possible means."¹⁶ The JPSIA also reported that Chinese universities and thinktanks are forging ties with Okinawan independence activists to encourage "a favorable public opinion of China in Okinawa and to [create] division in Japan."¹⁷ This is consistent with China's opposition to further U.S. involvement in the Asia-Pacific region¹⁸ and its perception-management efforts designed to "reward pro-China viewpoints."¹⁹

Relocating MCAS Futenma has been a priority for both the central Japanese government and the United States for decades.²⁰ 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.²¹ CBD, however, filed suit in 2003 that the new

¹² Anna Fifield, *Okinawa Governor Prepares to Take his Anti-Base Message to Washington*, WASH. POST, May 21, 2015, https://www.washingtonpost.com/world/asia_pacific/okinawa-governor-prepares-to-take-his-anti-base-message-to-washington/2015/05/21/ed412c5a-fe2e-11e4-8c77-bf274685e1df_story.html?utm_term=.ade2bf02ffec.

¹³ Rinehart & Chanlett-Avery, *supra* note 11, at 11.

¹⁴ 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>).

¹⁵ PUBLIC SECURITY INTELLIGENCE AGENCY, ANNUAL REPORT 2016: REVIEW AND PROSPECTS OF INTERNAL AND EXTERNAL SITUATIONS, MINISTRY OF JUSTICE, JAPAN 61-62 (Jan. 2017) (*available at* <http://www.moj.go.jp/content/001255169.pdf>).

¹⁶ *Id.*; see also Matthew M. Burke & Chiyomi Sumida, *Okinawa Governor Vows to Continue Base-Relocation Fight Despite Setbacks*, STARS AND STRIPES, Dec. 16, 2016, <https://www.stripes.com/news/okinawa-governor-vows-to-continue-base-relocation-fight-despite-setbacks-1.444722>.

¹⁷ Ministry of Justice, Japan, *supra* note 15, at 22-23.

¹⁸ Keith B. Richburg, *U.S. Pivot to Asia Makes China Nervous*, THE WASH. POST, Nov. 16, 2011, https://www.washingtonpost.com/world/asia_pacific/us-pivot-to-asia-makes-china-nervous/2011/11/15/gIQAsQpVRN_story.html?utm_term=.b71c65cfa0e8.

¹⁹ Natalie Johnson, *CIA Warns of Extensive Chinese Operation to Infiltrate American Institutions*, WASH. FREE BEACON, Mar. 7, 2018, <http://freebeacon.com/national-security/cia-warns-extensive-chinese-operation-infiltrate-american-institutions/>; see also CATHERINE A. THEOHARY, CONG. RESEARCH SERV., R45142, INFORMATION WARFARE: ISSUES FOR CONGRESS 11-12 (Mar. 5, 2018), *available at* <http://www.crs.gov/reports/pdf/R45142>.

²⁰ Rinehart & Chanlett-Avery, *supra* note 11, at 8-9.

²¹ Special Action Committee on Okinawa, *supra* note 14.

location would violate the National Historic Preservation Act (NHPA) based on the alleged adverse effects the new location would have on the dugong, a marine mammal.²² CBD argued that dugongs are “associated with traditional Okinawan creation mythology, sometimes being considered the progenitor of the local people.”²³ Despite the Japanese environmental review concluding there would be no adverse impact to the dugongs in Okinawa, the CBD claimed that by virtue of the dugong’s cultural significance under Japanese law, it is “equivalent” to being listed in the U.S. National Register of Historic Places, and therefore protected under the NHPA.²⁴ While the Japanese government has begun initial construction on the relocation site amid increased political support for the relocation,²⁵ CBD’s lawsuit seeks “to enjoin [the U.S. Department of Defense] from taking actions in furtherance” of the relocation project until environmental and anti-base activist plaintiffs are satisfied with the military’s environmental review process.²⁶

In 2015, CBD appears to have helped organize the visit of an Okinawan delegation to the United States, which included members of the Okinawan Prefectural Assembly and Okinawan municipal governments.²⁷ During its visit to San Francisco, the delegation met with representatives of a U.S. Senator and U.S. House Representative.²⁸ The delegation also traveled to Washington, D.C. to meet with lawmakers, the U.S. Marine Mammal Commission, the Advisory Council on Historic Preservation, and “other groups.”²⁹ On December 3, 2017, CBD led a delegation of American activists to Okinawa to meet with “Okinawan leaders of the opposition to an American military base expansion.”³⁰ Moreover, CBD has participated in an extensive publicity campaign condemning the base relocation through open letters to the President of the United States and Japanese Prime Minister,³¹ purchasing full page

²² *Ctr. For Biological Diversity v. Mattis*, 868 F.3d 803 (9th Cir. 2017).

²³ First Supplemental Complaint for Declaratory and Injunctive Relief at 9, *Center for Biological v. Mattis*, 868 F.3d 803 (9th Cir. 2017), available at https://earthjustice.org/sites/default/files/files/Final_Supplemental_Complaint_with_Exhibits.pdf.

²⁴ *Ctr. for Biological Diversity v. Mattis*, 868 F.3d at 811-813.

²⁵ Reuters Staff, *Japan’s PM Vows to Proceed with U.S. Base Relocation in Okinawa After Poll*, REUTERS, Feb. 4, 2018, <https://www.reuters.com/article/us-japan-usa-okinawa/japans-pm-vows-to-proceed-with-u-s-base-relocation-in-okinawa-after-poll-idUSKBN1FP03J>.

²⁶ Joint Stipulation Requesting Stay of Briefing on Remedy at 1, *Okinawa Dugong (Dugong Dugon) et al v. Mattis et al*, No. 3:03-cv-34350 (N.D. Cal. May 31, 2018) (available at <https://docs.justia.com/cases/federal/district-courts/california/candce/3:2003cv04350/15010/225>).

²⁷ *Ctr. for Biological Diversity*, *supra* note 5.

²⁸ *Id.*

²⁹ *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/>

³⁰ Press Release, *Ctr. for Biological Diversity, American Delegation to Report on U.S. Military Base Threat to Henoko Bay Dugongs: Environmental Group Vows to Intensify Fight Against Base Expansion* (Dec. 3, 2017) (available at https://www.biologicaldiversity.org/news/press_releases/2017/okinawa-dugong-12-03-2017.php).

³¹ Press Release, *Ctr. for Biological Diversity, International Conservation Groups Call on Bush & Koizumi to Save the Okinawa Dugong* (Sept. 7, 2004) (available at https://www.biologicaldiversity.org/news/press_releases/dugong9-7-04.html); Press Release, *Ctr. for Biological Diversity, More Than 400 Conservation, Animal Protection, Peace and Justice Groups Plead With President Obama to Commute Okinawa Dugong Death Sentence* (Dec. 3, 2009) (available at

advertisements in the *Washington Post*,³² and promoting a film on the dugong that appears to be at least partially foreign funded.³³

The Committee is concerned that your organization's political activities in 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).³⁴ "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."³⁵ 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"³⁶

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"³⁷ 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.³⁸ 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.³⁹ Likewise, groups or persons must also register if they solicit, collect, disburse, or dispense funds for or in the interest of a foreign principal.⁴⁰ 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.⁴¹

http://www.biologicaldiversity.org/news/press_releases/2009/dugong-12-03-2009.html); *see also* Press Release, Ctr. for Biological Diversity, President Obama Asked to Stop U.S. Military Project That Threatens Endangered Dugong (May 26, 2016) (*available at* http://www.biologicaldiversity.org/news/press_releases/2016/okinawa-dugong-05-26-2016.html).

³² Press Release, Ctr. for Biological Diversity, Thousands Rally for Okinawa Dugong, Letter Protesting Base Relocation Hand-delivered to Japanese Prime Minister Hatoyam (May 14, 2010) (*available at* http://www.biologicaldiversity.org/news/press_releases/2010/okinawa-dugong-05-14-2010.html).

³³ Ctr. for Biological Diversity, *supra* note 7; *see also* Zan: The Movie, <http://zanthemovie.com/en/home-english/> (last visited June 18, 2018).

³⁴ 22 U.S.C. § 611 *et seq.*

³⁵ 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>.

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

³⁷ 22 U.S.C. § 611(o).

³⁸ 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 (2d Cir. 1982); *see also* *Attorney Gen. of the United States v. The Irish People Inc.*, 796 F.2d 520 (D.C. Cir. 1986).

³⁹ 22 U.S.C. § 611(c)(ii).

⁴⁰ 22 U.S.C. § 611(c)(iii).

⁴¹ 22 U.S.C. § 618(a)(2).

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 of "the course of judicial proceedings."⁴² 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.⁴³ Based on our investigation, the Committee does not believe either of these exceptions are applicable to the CBD'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 June 27, 2018:

1. Documents sufficient to show CBD's original date of registration as an agent of a foreign principal pursuant to FARA;
 - a. If CBD 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 CBD or any related tax-exempt organizations;
3. Documents sufficient to identify all foreign entities and non-U.S.-based environmental groups CBD 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 CBD 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 CBD 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

⁴² 22 U.S.C. § 613(g).

⁴³ 22 U.S.C. § 613(f).

behalf of or in the interests of a foreign government or entity are disclosed as required by law.

6. All documents and communications, including but not limited to, internal memoranda and emails, between CBD, or any of its agents, and any foreign entity referring or relating to the U.S. military presence in Okinawa from January 1, 2003 to present;
7. A document sufficient to list all foreign visits, with corresponding dates, made by CBD 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; and
8. A document sufficient to list the full names of all CBD employees engaged in influencing U.S. environmental or natural resources policies, laws, or public opinion while acting as an agent, representative, employee, servant, or in any other capacity at the order, request, or, under the direction or control of a foreign entity or non-U.S.-based environmental group 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 entity or non-U.S.-based environmental group from January 1, 2003 to present. Provide the appropriate correlating activity with each name provided.

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.

Sincerely,



Rob Bishop
Chairman



Bruce Westerman
Chairman
Subcommittee on
Oversight and Investigations

Enclosure