



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Jesse Benton

Louisville, KY 40241

RE: MURs 7165 & 7196

Dear Mr. Benton:

On November 2, 2016, and November 17, 2016, the Federal Election Commission (“Commission”) notified you of complaints alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”). Copies of the complaints were forwarded to you at that time. Upon review of the allegations contained in the complaints, the Commission, on February 25, 2021, found reason to believe that you knowingly and willfully violated 52 U.S.C. § 30121(a)(2), a provision of the Act, and the Commission’s regulation at 11 C.F.R. § 110.20(g). The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission’s further consideration of this matter. Please submit such materials and answers to the enclosed questions to the Office of the General Counsel (“OGC”) within 15 days of receiving this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request in writing to OGC. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, OGC will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. OGC may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted and may be conditioned on you entering into a tolling agreement with the Commission. Requests must be made in writing at

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least five days prior to the due date of the response and good cause must be demonstrated. In addition, OGC ordinarily will not grant extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 251-3381 or [sghosh@fec.gov](mailto:sghosh@fec.gov).

On behalf of the Commission,



Shana M. Broussard  
Chair

Enclosures  
Factual and Legal Analysis  
Questions

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

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2  
3 RESPONDENT: Jesse Benton MURs: 7165 & 7196  
4

**I. INTRODUCTION**

5  
6 These matters were generated by complaints filed with the Federal Election Commission  
7 (the “Commission”), which allege that Great America PAC and Dan Backer in his official  
8 capacity as treasurer (“GAP”) and Jesse Benton — a consultant for GAP during the relevant time  
9 — knowingly and willfully solicited a contribution from a foreign national in violation of the  
10 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.  
11 The complaints base their allegations on an October 24, 2016, article appearing on *The*  
12 *Telegraph UK*’s website, which describes two reporters posing as consultants for a fictitious  
13 Chinese donor and discussing a series of transactions with Eric Beach — one of GAP’s co-chairs  
14 during the relevant time — and Benton that would allow the donor to contribute \$2 million to  
15 GAP. Based on the available information, including a video published online with the *Telegraph*  
16 article, the Commission finds reason to believe that Benton knowingly and willfully violated  
17 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting a contribution from a foreign  
18 national.

**II. FACTUAL BACKGROUND**

19  
20 GAP is an independent-expenditure-only political committee that supported Donald J.  
21 Trump during the 2016 presidential election.<sup>1</sup> Beach was one of GAP’s co-chairs. Benton was a  
22 strategist for GAP until May 2016, when he resigned and opened an independent political  
23 consulting firm, Titan Strategies LLC (“Titan”).

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<sup>1</sup> See GAP, Amend. Statement of Org. (Mar. 14, 2016).

1 According to the complaints, undercover journalists contacted Beach posing as  
 2 representatives of a Chinese national offering to contribute \$2 million to GAP.<sup>2</sup> Although the  
 3 *Telegraph* video does not contain explicit language stating that the representatives' ostensible  
 4 principal is a foreign national, this is the only inference that can be reasonably drawn from the  
 5 conversations recorded in the video. The contact occurred “[i]n or around October 2016” and  
 6 Beach reportedly stated that he needed information about the donor and “rais[ed] concerns about  
 7 his nationality,” and that he would “need to know the origins” of contributions to GAP.<sup>3</sup> Beach  
 8 then referred the reporters to Benton,<sup>4</sup> who allegedly met with the reporters and offered to  
 9 transmit the \$2 million contribution to GAP through his company, Titan, and two 501(c)(4)  
 10 organizations.<sup>5</sup> The reporters recorded their discussions with Benton, and clips of those  
 11 recordings are shown in the *Telegraph* video, which include the following exchanges between  
 12 Benton and the reporters:<sup>6</sup>

13 Jesse Benton: “I’ll actually probably send, I’ll send money from my company to  
 14 both.”

15 \*\*\*

16 Undercover reporter: “So I’m just thinking also about logistics, how this would  
 17 actually work. That is the 501(c)(4) that the money is going into — yeah?”

18 Jesse Benton: “Correct.”

19 Undercover reporter: “Yeah. And that’s through your company, yeah?”

20 Jesse Benton: “That’s correct.”

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<sup>2</sup> Compl. at 2-3, MUR 7165 (Oct. 27, 2016); Compl. at 2, MUR 7196 (Nov. 10, 2016); *Pro-Trump Fundraisers Agree to Accept Illicit Foreign Donation*, YOUTUBE, <https://www.youtube.com/watch?v=xQnOxM9iqOw> (posted Oct. 24, 2016) (“Telegraph Video”). The video is no longer available on the *Telegraph* website, but a copy is available on YouTube.

<sup>3</sup> Nicholas Confessore, *Consultant with Ties to Donald Trump Linked to Offer to Hide Source of Donations*, N.Y. TIMES (Oct. 24, 2016), <https://www.nytimes.com/2016/10/25/us/politics/consultant-with-ties-to-donald-trump-linked-to-offer-to-hide-source-of-donations.html> (“NYTimes Article”).

<sup>4</sup> NYTimes Article.

<sup>5</sup> MUR 7165 Compl. at 3-4; MUR 7196 Compl. at 3.

<sup>6</sup> Telegraph Video.

1 Undercover reporter: “How much do you think you can pass on to the super PAC  
 2 because I think that’s what I am going to get asked.”

3 Jesse Benton: “All of it.”

4 Undercover reporter: “All of it?”

5 [Benton nods his head]

6 \*\*\*

7 Undercover reporter: “Can I report back that it’s getting used for on-the-ground  
 8 grassroots stuff or it’s getting used for TV, or could be a mixture?”

9 Jesse Benton: “It’s a mixture.”

10 \*\*\*

11 Jesse Benton: “It will definitely allow us to spend two million more dollars on  
 12 digital and television advertising for Mr. Trump.”

13 Undercover reporter: “Right, and that’ll be spent by the super PAC?”

14 Jesse Benton: “Yes it will be.”

15 \*\*\*

16 Jesse Benton: “You shouldn’t put any of this on paper.”

17 \*\*\*

18 Undercover reporter: “It’s not like he’s asking for anything directly but he just  
 19 wants to know that he won’t just be treated as ‘A N Other’ — what do you  
 20 think?”

21 Jesse Benton: “It’ll do that, yeah.”

22 \*\*\*

23 Jesse Benton: “And we can have that whispered into Mr. Trump’s ear whenever  
 24 your client feels it’s appropriate.”

### 25 **III. FACTUAL AND LEGAL ANALYSIS**

#### 26 **A. The Act and Commission Regulations Prohibit Knowingly Soliciting Foreign** 27 **National Contributions**

28 The Act and Commission regulations prohibit any “foreign national” from directly or  
 29 indirectly making a contribution or donation of money or other thing of value, or an expenditure,  
 30 independent expenditure, or disbursement, in connection with a federal, state, or local election.<sup>7</sup>

31 The Act’s definition of “foreign national” includes an individual who is not a citizen or national

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<sup>7</sup> 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288–89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1041–44 (9th Cir. 2019).

1 of the United States and who is not lawfully admitted for permanent residence.<sup>8</sup> Moreover, the  
2 Act prohibits any person from soliciting, accepting, or receiving any such contribution or  
3 donation from a foreign national,<sup>9</sup> and Commission regulations further prohibit any person from  
4 knowingly providing substantial assistance in soliciting, making, accepting, or receiving any  
5 such contribution or donation.<sup>10</sup>

6 It is a matter of first impression whether the Act's prohibitions on the solicitation of  
7 foreign nationals reach the solicitation of a foreign contributor who is fictitious. The  
8 Commission has not addressed this question in any enforcement matters or advisory opinions,  
9 and the courts are also silent.<sup>11</sup>

10 In the absence of any precedent squarely on point, the Commission interprets the Act and  
11 forms a conclusion based on the plain meaning of section 30121(a)(2), the policy behind the  
12 longstanding prohibition on foreign national involvement in elections, the Act's parallel  
13 restriction on soliciting soft money, and the interpretation of related federal anti-corruption  
14 statutes. Accordingly, the Commission concludes that the Act and Commission regulations,  
15 fairly construed, prohibit an individual from making a solicitation with the intent to violate the

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<sup>8</sup> 52 U.S.C. § 30121(b)(2).

<sup>9</sup> 52 U.S.C. § 30121(a)(2); *see* 11 C.F.R. § 110.20(g).

<sup>10</sup> 11 C.F.R. § 110.20(h). Substantial assistance" is "active participation in the solicitation . . . of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,945 (Nov. 19, 2002) ("E&J"). Therefore, in defining "substantial assistance," the Commission has explicitly added another intent-based standard on top of the "knowingly" requirement.

<sup>11</sup> In MUR 6687 (Obama for America), the Commission dismissed allegations that the Obama campaign solicited foreign nationals for contributions when it emailed a solicitation to "OsamaforObama2012@gmail.com" and allowed a "Bin Laden" solicitation page to be posted to its website, the latter of which resulted in a \$3 contribution. Factual & Legal Analysis at 3-4, 8, MUR 6687 (Obama for America). Both the email address and solicitation page were created by journalists conducting a sting operation. *Id.* The Commission dismissed the allegations "to conserve Commission resources," given the *de minimis* amount of money at stake. *Id.* at 8.

1 prohibition on foreign national participation in the electoral process, as demonstrated by the  
2 individual’s awareness of facts that would lead a reasonable person to conclude that, or inquire  
3 whether, the contributor is a foreign national.

4 The Act, as implemented by the Commission, effectively provides three elements to the  
5 foreign national solicitation prohibition: (1) a solicitation; (2) for a contribution or donation in  
6 connection with a federal election; (3) from a source that the person making the solicitation  
7 knows or reasonably believes to be a foreign national.<sup>12</sup>

8 1. Plain Meaning of Section 30121

9 The precise text of the foreign national solicitation prohibition states that “[i]t shall be  
10 unlawful for . . . a person to solicit . . . a contribution or donation . . . from a foreign national.”<sup>13</sup>  
11 The Commission regulation implementing this provision, however, incorporates a *mens rea*  
12 element by providing that “[n]o person shall *knowingly* solicit, accept, or receive from a foreign  
13 national any contribution or donation.”<sup>14</sup>

14 In defining “knowingly,” the regulations state that the solicitor must have either “actual  
15 knowledge” that the person being solicited is a foreign national, “[b]e aware of facts that would  
16 lead a reasonable person to conclude that there is a substantial probability that the source of the  
17 funds” is a foreign national, or “[b]e aware of facts that would lead a reasonable person to  
18 inquire whether the source of the funds . . . is a foreign national,” but fail to “conduct a  
19 reasonable inquiry.”<sup>15</sup> Thus, by implication, the person making a solicitation does not need to

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<sup>12</sup> 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g); *see* 11 C.F.R. § 110.20(a)(4).

<sup>13</sup> 52 U.S.C. § 30121(a)(2).

<sup>14</sup> 11 C.F.R. § 110.20(g) (emphasis added).

<sup>15</sup> *Id.* § 110.20(a)(4).

1 know for certain that the target of the solicitation (the potential source of the contribution) is a  
2 foreign national. Rather, it is sufficient for the solicitor to be aware of facts that would lead to a  
3 reasonable conclusion that the potential contributor is a foreign national, even if that conclusion  
4 is ultimately wrong because, *e.g.*, the person being solicited is a U.S. national, or is fictitious.  
5 Accordingly, the regulations seem to acknowledge the possibility that a person may violate the  
6 Act when he subjectively believes, or has reason to believe, that he is requesting foreign money.

## 7 2. History of the Foreign National Prohibition

8 The history of the statutory prohibition on foreign national contributions and solicitations  
9 further supports the conclusion that the Act prohibits soliciting anyone that the solicitor  
10 reasonably believes to be a foreign national.<sup>16</sup> The Commission has explained that the long-  
11 standing purpose behind the prohibition on foreign national contributions is to “prevent foreign  
12 national funds from influencing elections.”<sup>17</sup>

13 That the Act prohibits not just the provision of foreign national contributions but also the  
14 *solicitation* of such contributions indicates that even the appearance of foreign national influence  
15 in U.S. elections is a major congressional concern. Viewed in light of that concern, section  
16 30121 reaches conduct *intended* to inject foreign influence into the electoral process, even where

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<sup>16</sup> The foreign national prohibition, and Congress’s concern about the potential influence of foreigners in U.S. elections, pre-dates the Act: Congress enacted the first prohibition on soliciting foreign contributions in 1966 as an amendment to the Foreign Agents Registration Act of 1938 (“FARA”), prohibiting the solicitation of “foreign principals” and the agents of “foreign principals.” Foreign Agents Registration Act Amdts. of 1966, Pub. L. No. 89-486, § 613, 80 Stat. 244, 248-49. In 1974, Congress extended FARA to prohibit the solicitation of “foreign nationals,” which included a broader category of foreign actors. Fed. Elections Campaign Act Amdts. of 1974, Pub. L. No. 93-443, § 613, 88 Stat. 1263, 1269. It then moved the restrictions on foreign contributions and solicitations from FARA to the Act, Fed. Elections Campaign Act Amdts. of 1976, Pub. L. No. 94-283, § 324, 90 Stat. 475, 493, amending the text most recently with BCRA. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 303, 116 Stat. 81, 96

<sup>17</sup> E&J at 69,945.



1 — because of circumstances unknown to the person engaged in the conduct — there is actually  
2 no possibility of such foreign influence resulting from their conduct.

### 3 3. The Act's Comparable Soft Money Prohibitions

4 There are only three instances in which the Act prohibits the solicitation of an entire class  
5 of funds: soft money contributions, contributions from federal contractors, and contributions  
6 from foreign nationals.<sup>18</sup> In considering the scope of the prohibition on foreign national  
7 solicitations in section 30121(a)(2), the legislative history of the soft money prohibition is  
8 instructive: The Bipartisan Campaign Finance Reform Act of 2002 (“BCRA”) not only created  
9 the Act’s current restrictions on soliciting soft money, it also amended the Act to prohibit foreign  
10 national contributions, donations, or solicitations “in connection with a Federal, State, or local  
11 election”<sup>19</sup> and clarified that the “ban on contributions [by] foreign nationals applies to soft  
12 money donations.”<sup>20</sup>

13 The Act’s foreign national prohibition goes to the fundamental question of who should be  
14 able to participate in our democratic process.<sup>21</sup> In light of Congress’s decision to broaden the  
15 scope of section 30121 in BCRA, section 30121 forecloses any solicitation of foreign money into

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<sup>18</sup> 52 U.S.C. § 30119(a)(2) (federal contractors), § 30121(a)(2) (foreign nationals), § 30125(a)(1), (d), (e)(1) (soft money). There are other provisions of the Act that prohibit certain solicitation tactics, such as coercive solicitations, solicitations based on fraudulent misrepresentations, and solicitations using information obtained from Commission reports, among others, but we are concerned with substantive solicitation prohibitions based on the source of the funds. *See, e.g., id.* §§ 30111(a)(4), 30118(b)(3), 30124(b).

<sup>19</sup> *Compare* 2 U.S.C. § 441e(a) (2000), *with id.* § 441e(a)(1)(A) (2004).

<sup>20</sup> E&J at 69,944 (quoting 148 Cong. Rec. S1991-97 (daily ed. Mar. 18, 2002) (statement of Sen. Feingold)); *see* 148 Cong. Rec. S2774 (daily ed. Mar. 22, 2002) (statement of Sen. Lieberman).

<sup>21</sup> In *Bluman v. FEC*, a federal district court (affirmed without opinion by the U.S. Supreme Court) held that BCRA’s prohibition on foreign national contributions was constitutional because it was supported by the government’s compelling interest “in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)), *aff’d*, 565 U.S. 1104 (2012).

1 the electoral process, even if such a solicitation could not have succeeded because of a  
2 circumstance unknown to the person soliciting the contribution or donation.

3 4. Related Federal Anti-Corruption Laws

4 Federal courts regularly uphold the criminal convictions of defendants who engage in  
5 corrupt transactions with undercover operatives or fictitious parties, when there is evidence that  
6 the defendant intended to complete the crime and reasonably believed he or she could obtain the  
7 fruits of the corrupt bargain. For instance, courts routinely uphold such convictions under the  
8 federal bribery statute, which prohibits the offer of “anything of value” to a “public official” with  
9 intent to “influence any official act,” and conversely prohibits a “public official” from soliciting  
10 or accepting “anything of value” in connection with “the performance of any official act.”<sup>22</sup> The  
11 “public official” element of the bribery statute mirrors the “foreign national” element of section  
12 30121(a)(2), and, in interpreting the former, courts have focused on a defendant’s intent to enter  
13 into a corrupt transaction as the essential element of the crime, stating that bribery occurs when a  
14 person offers or asks for money with the requisite intent to influence an official act, regardless of  
15 whether there is actually any public official to be bribed.<sup>23</sup>

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<sup>22</sup> 18 U.S.C. § 201(b)(1)-(2). .

<sup>23</sup> See *Lopez v. United States*, 373 U.S. 427, 428-32 (1963) (upholding the conviction of a defendant charged with “attempted bribery,” based on the defendant trying to avoid tax liability by giving money to an Internal Revenue Service (“IRS”) agent acting as an informant); *United States v. Wright*, 665 F.3d 560, 568 (10th Cir. 2012) (stating, in an honest services fraud case, that “[i]ntent is determinative”); *United States v. Arbelaez*, No. 94-20349, 1995 WL 103637, at \*1-2 (5th Cir. Mar. 2, 1995) (affirming a defendant’s conviction for bribing an undercover agent posing as an immigration official); *United States v. Opdahl*, 930 F.2d 1530, 1535 (11th Cir. 1991) (stating that it is the undercover agent’s “purported role as an IRS official, not his actual status as an internal investigator for the IRS, that is relevant to the issue of the defendant’s intent”); *United States v. Pilarinos*, 864 F.2d 253, 253-55 (2d Cir. 1988) (upholding a bribery conviction arising from a sting operation in which there was no actual public official involved); *United States v. Gallo*, 863 F.2d 185, 189 (2d Cir. 1988) (stating, where a bribe was to be passed through a conduit and ultimately to a fictitious “connection in Washington,” that “[w]hether or not there was a federal official to whom bribes were actually paid is not determinative” and “the public official who is the target of the bribe . . . need not even exist”); *United States v. Jacobs*, 431 F.2d 754, 757-60 (2d Cir. 1970) (stating that “[t]he statute makes attempted bribery a crime” because “so long as a bribe is ‘offered or promised’ with the requisite intent ‘to influence any official act’ the crime is committed”).

1           For example, in *United States v. Hood*, which involved a politician soliciting campaign  
2 contributions in exchange for promises to appoint potential contributors to nonexistent offices,  
3 the Supreme Court stated: “Whether the corrupt transaction would or could ever be performed is  
4 immaterial,” and that it is “no less corrupt to sell an office one may never be able to deliver than  
5 to sell one he can.”<sup>24</sup> Similarly, the U.S. Court of Appeals for the Second Circuit concluded that  
6 a bribery conviction could stand even though the “object of the bribe could not be attained,”  
7 thereby rejecting the so-called “factual impossibility” defense based on the purported public  
8 official seeking the bribe actually being an undercover police officer.<sup>25</sup>

9           In the context of federal bribery law, federal courts have widely recognized that “factual  
10 impossibility” is not a viable defense and that convictions can stand even when the defendant is  
11 trying to enter into a corrupt transaction that cannot be completed (often because the person  
12 offering or seeking the bribe is an undercover officer and not, in fact, a “public official”).<sup>26</sup>  
13 Additionally, most jurisdictions reject factual impossibility as a defense to inchoate crimes, *i.e.*,

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<sup>24</sup> *United States v. Hood*, 343 U.S. 148, 149-51 (1952).

<sup>25</sup> *United States v. Rosner*, 485 F.2d 1213, 1229 (2d Cir. 1973). In another case, the Second Circuit rejected the impossibility defense when real public officials were accepting and receiving corrupt payments from undercover agents. *United States v. Myers*, 692 F.2d 823, 826-28 (2d Cir. 1982).

<sup>26</sup> Federal courts have also interpreted state-level bribery statutes in a fashion that makes intent the determinative factor. *See, e.g., United States v. Traitz*, 871 F.2d 368, 386 (3d Cir. 1989) (stating, with respect to Pennsylvania’s and New Jersey’s bribery statutes, that “[e]ach defendant should be judged by what he thought he was doing and what he meant to do . . .”); *United States v. Mazzio*, 501 F. Supp. 340, 343 (E.D. Pa. 1980) (rejecting an impossibility argument premised on the fact that the person the defendant bribed was an undercover officer). Furthermore, in the Department of Justice’s (“DOJ’s”) first-ever sting operation to enforce the Foreign Corrupt Practices Act (“FCPA”), which criminalizes bribing foreign officials, the D.C. District Court denied a defendant’s motion to dismiss the indictment on the grounds that no actual foreign official participated in the FCPA bribery scheme, finding that there may be a conviction when the foreign official was actually an undercover agent. *See Mot. to Dismiss, United States v. Goncalves*, No. 09-335 (D.D.C. Mar. 9, 2011), ECF No. 271; Resp., *Goncalves*, No. 09-335 (Mar. 23, 2011), ECF No. 298; Min. Entry, *Goncalves*, No. 09-335 (May 6, 2011). Since the so-called “Africa Sting” case, it does not appear that the DOJ has tried any additional FCPA sting cases.

1 attempt, conspiracy, and solicitation.<sup>27</sup> They reason that impossibility is not a defense “when  
 2 adequate proof of intent to commit a specific crime exists.”<sup>28</sup>

3 Section 30121, in sum, prohibits all “knowing” solicitations of foreign nationals, whether  
 4 the person making the solicitation has “actual knowledge” that the person being solicited is a  
 5 foreign national, or is aware of facts that would lead a reasonable person to conclude that the  
 6 person being solicited is a foreign national — even if that conclusion is ultimately wrong.  
 7 Reading the Act to proscribe such conduct comports with section 30121’s plain meaning; the  
 8 longstanding congressional concern, underlying section 30121’s enactment, with foreign  
 9 influence over the U.S. political process; and the interpretation and application of the Act’s  
 10 prohibition of soft money solicitations and the federal bribery statute.

11 **B. Benton Solicited a Contribution from a Source that He Knew or Reasonably**  
 12 **Believed to be a Foreign National**

13 The available information indicates that there is reason to believe that Benton knowingly  
 14 solicited a contribution from a foreign national because his conduct satisfies the three elements

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<sup>27</sup> See, e.g., *United States v. Temkin*, 797 F.3d 682, 690 (9th Cir. 2015) (“[F]actual impossibility is not a defense to an inchoate offense.”); *United States v. Washington*, 106 F.3d 983, 1006 (D.C. Cir. 1997) (explaining that, “but for the fact that the crime was made factually impossible because the ‘principals’ were really undercover government agents,” it would have occurred, making “factual impossibility [ ] no defense”); *United States v. Hamrick*, 43 F.3d 877, 885 (4th Cir. 1995) (“[W]e now join those circuits that have expressly held that [factual impossibility] is not a defense to an attempt crime.”); *United States v. Peete*, 919 F.2d 1168, 1175-76 (6th Cir. 1990) (providing, as an example of factual impossibility, a situation in which “a public official induces a payment to achieve some result despite the fact that the official has no actual ability to achieve that result,” and stating that factual impossibility would not be a defense in that situation); *United States v. Johnson*, 767 F.2d 673, 675 (10th Cir. 1985) (“Factual impossibility may fall away as a defense to an attempt charge when adequate proof of intent to commit a specific crime exists.”); *United States v. Innella*, 690 F.2d 834, 835 (11th Cir. 1982) (stating that impossibility is not a defense when “the defendant’s objective actions, taken as a whole, . . . strongly corroborate the required culpability”); *United States v. Oviedo*, 525 F.2d 881, 885 (5th Cir. 1976) (rejecting the impossibility defense when there is evidence of unique acts that “mark the defendant’s conduct as criminal in nature,” thereby allowing for an inference that the defendant had criminal intent).

<sup>28</sup> *Johnson*, 767 F.2d at 675.

1 of the statutory prohibition at section 30121(a)(2): Benton solicited a contribution, and he knew  
2 or reasonably believed that he was soliciting a foreign national to provide that contribution.

3 1. Solicitation

4 Benton's communications with the reporters indicate that he made a "solicitation" for the  
5 Act's purposes. As applicable here, to "solicit" means to "ask, request, or recommend, explicitly  
6 or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise  
7 provide anything of value,"<sup>29</sup> including by making a communication "that provides a method of  
8 making a contribution" or "provides instructions on how or where to send contributions."<sup>30</sup>

9 Furthermore:

10 A solicitation is an oral or written communication that, construed  
11 as reasonably understood in the context in which it is made,  
12 contains a clear message asking, requesting, or recommending that  
13 another person make a contribution, donation, transfer of funds, or  
14 otherwise provide anything of value. A solicitation may be made  
15 directly or indirectly. The context includes the conduct of persons  
16 involved in the communication. A solicitation does not include  
17 mere statements of political support or mere guidance as to the  
18 applicability of a particular law or regulation.<sup>31</sup>

19 The Commission has also explained that "the Commission's objective standard hinges on  
20 whether the recipient should have reasonably understood that a solicitation was made."<sup>32</sup>

21 The available information indicates that Benton made a "solicitation" under the Act. The  
22 *Telegraph* video indicates that after undercover journalists posing as representatives of a Chinese

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<sup>29</sup> 11 C.F.R. § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)).

<sup>30</sup> *Id.* § 300.2(m)(1)(i)-(ii).

<sup>31</sup> *Id.* § 300.2(m).

<sup>32</sup> Solicitation E&J, 71 Fed. Reg. at 13,929 ("[I]t is necessary to reasonably construe the communication in context, rather than hinging the application of the law on subjective interpretations of the Federal candidate's or officeholder's communications or on the varied understandings of the listener. The revised definition reflects the need to account for the context of the communication and the necessity of doing so through an objective test.").

1 national contacted Beach offering to contribute \$2 million to GAP, Beach referred them to  
2 Benton, who was recorded meeting with the reporters to provide them with a specific “method of  
3 making a contribution” so that it could not be traced back to their client.<sup>33</sup> Benton told the  
4 reporters that he would “send . . . [the] money from my company to both” 501(c)(4)  
5 organizations, and confirmed the reporter’s queries “about logistics” — *i.e.* that the funds would  
6 be passed through Benton’s company into the 501(c)(4).<sup>34</sup> Benton also confirmed that “all of it”  
7 — meaning the full \$2 million that the reporters’ client intended to donate — would then be  
8 “pass[ed] on to the Super PAC [GAP]” from the 501(c)(4)s.<sup>35</sup>

9 Benton further confirmed that the money would be provided to GAP for its activities in  
10 support of Trump’s 2016 presidential candidacy when he told the reporters: “It [the donation]  
11 will definitely allow us to spend two million more dollars on digital and television advertising  
12 for Mr. Trump.”<sup>36</sup> He confirmed the reporter’s question that those funds “would be spent by the  
13 Super PAC [GAP].”<sup>37</sup> Benton’s recorded statements, which provide a detailed plan for the  
14 reporters’ client to make a contribution to GAP without public disclosure of their client’s  
15 identity, indicate that he “ask[ed], request[ed], or recommend[ed], explicitly or implicitly,” that  
16 the reporter’s client make a contribution to GAP.<sup>38</sup>

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<sup>33</sup> 11 C.F.R. § 300.2(m)(1)(i).

<sup>34</sup> Telegraph Video.

<sup>35</sup> *Id.*

<sup>36</sup> Telegraph Video.

<sup>37</sup> *Id.*

<sup>38</sup> 11 C.F.R. § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)).

1           Benton’s statements also contradict any potential argument that he was not actually  
2   soliciting a contribution for GAP, but was instead soliciting money for the 501(c)(4)s, which  
3   could choose how to spend the funds: When the reporters asked Benton how much of the money  
4   would be passed on to the Super PAC, GAP, he told them, “All of it.”<sup>39</sup> He also added that the  
5   contribution would “allow us to spend two million more dollars on digital and television  
6   advertising for Mr. Trump.”<sup>40</sup> These statements plainly indicate that Benton’s proposal to have  
7   the \$2 million funneled through 501(c)(4) organizations was not intended to fund those  
8   organizations’ own activities or to be spent at their discretion, but rather was intended to provide  
9   the \$2 million contribution to GAP. Accordingly, Benton made a “solicitation” under the Act.

10                   2.       Contribution or Donation

11           The available information indicates that Benton sought a “contribution” under the Act. A  
12   “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of  
13   value made by any person for the purpose of influencing any election for Federal office.”<sup>41</sup>  
14   According to the *Telegraph* video, the reporters said that they represented a Chinese national  
15   offering to provide a \$2 million donation to GAP in support of Trump’s 2016 presidential  
16   candidacy, which clearly would have constituted a “contribution.”

17                   3.       Foreign National Source

18           The available information indicates that Benton “knowingly” solicited a contribution  
19   from a foreign national — *i.e.*, he actually knew, or was “aware of facts that would lead a  
20   reasonable person to conclude that . . . the source of the funds solicited . . . is a foreign

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<sup>39</sup>       Telegraph Video.

<sup>40</sup>       *Id.*

<sup>41</sup>       52 U.S.C. § 30101(8)(A).

1 national.”<sup>42</sup> The discussions captured in the *Telegraph* video are not consistent with discussion  
2 of a lawful domestic contribution.<sup>43</sup> Accordingly, there is reason to believe that Benton provided  
3 the reporters with a detailed plan for the Chinese national to make a contribution to GAP through  
4 his company and two 501(c)(4) organizations.<sup>44</sup> Benton confirmed that “all of” the \$2 million  
5 would be provided to GAP, and reiterated that the contribution would allow GAP, specifically, to  
6 “spend two million more dollars on digital and television advertising for Mr. Trump.”<sup>45</sup> Benton  
7 also assured the reporters that their client’s contribution would have the effect of ensuring he  
8 would not be treated as just “A N Other” supporter, but one whose name could be “whispered  
9 into Mr. Trump’s ear whenever your client feels it’s appropriate.”<sup>46</sup> Considered together,  
10 Benton’s statements and proposal to funnel the \$2 million contribution to GAP through two  
11 layers of conduits — to obscure the true source of those funds — support the inference that  
12 Benton knew or was aware of sufficient facts to reasonably conclude that the person being  
13 solicited to provide the funds was a foreign national who could not legally make a contribution to  
14 GAP or appear on GAP’s disclosure reports.

15 By proceeding with discussions with the undercover reporters with apparent knowledge  
16 that their client was a foreign national, Benton evidenced an intent to solicit a \$2 million  
17 contribution to GAP in support of its electoral activities during the 2016 election from someone

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<sup>42</sup> 11 C.F.R. § 110.20(a)(4)(ii).

<sup>43</sup> *Telegraph* Video.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



1 he knew or reasonably believed to be a foreign national. That conduct is sufficient to support  
2 finding reason to believe Benton violated the Act and Commission regulations.

3 **C. There is Reason to Believe the Violations Were Knowing and Willful**

4 The available information indicates that Benton’s violations were knowing and willful.

5 A violation of the Act is knowing and willful when the respondent acts “with full knowledge of  
6 all the relevant facts and a recognition that the action is prohibited by law.”<sup>47</sup> This standard does  
7 not require proving knowledge of the specific statute or regulation the respondent violated.<sup>48</sup>  
8 Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his  
9 conduct was unlawful.”<sup>49</sup> This awareness may be shown through circumstantial evidence, such  
10 as a “defendant’s elaborate scheme for disguising” her actions, or other “facts and circumstances  
11 from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized  
12 and illegal.”<sup>50</sup>

13 Based on the *Telegraph* video, there is evidence that Benton was aware that his conduct  
14 was illegal and engaged in an elaborate scheme to conceal it. Benton’s plan to use two layers of  
15 conduits to obscure the true contributor, whom he believed to be a foreign national, as well as to  
16 conceal his role in facilitating the contribution, was an “elaborate scheme for disguising” an

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<sup>47</sup> 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

<sup>48</sup> See *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

<sup>49</sup> *Id.* (internal quotation marks omitted).

<sup>50</sup> *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 illegal foreign national contribution.<sup>51</sup> Moreover, Benton explicitly told the reporters, “You  
2 shouldn’t put any of this on paper.”<sup>52</sup> Benton therefore appears to have known that his plan was  
3 illegal and took numerous steps to conceal it.<sup>53</sup>

4 \* \* \* \* \*

5 Accordingly, the Commission finds reason to believe that Benton knowingly and  
6 willfully violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting a  
7 contribution from a foreign national.

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<sup>51</sup> *Hopkins* at 213-15.

<sup>52</sup> Telegraph Video.

<sup>53</sup> *See* 122 Cong. Rec. H3778; *Hopkins*, 916 F.2d 207, 213-15; *Danielczyk*, 917 F. Supp. 2d at 579.

## QUESTIONS AND DOCUMENT REQUESTS

Please answer the following questions. Provide us with any communications, documents, records, or other information that provide a basis for your answers. If you do not know the complete answer to any question, please answer to the extent possible and indicate your inability to answer the remainder of the question. If you believe you cannot answer any question based on a legal limitation or claim of privilege, please state the basis for your belief that you cannot answer and provide as much information as you believe you can provide.

In each of these questions and document requests, unless otherwise specified: Any reference to “GAP” means Great America PAC and Dan Backer in his official capacity as treasurer, including any chairs or co-chairs, officers, managers, employees, or agents thereof; any reference to the “Telegraph journalists” means the individuals that contacted GAP in October 2016, as described in an article published online by the *Telegraph UK* on October 24, 2016, which is cited in the complaints in MURs 7165 and 7196, *see* Investigative Team, *Exclusive Investigation: Donald Trump Faces Foreign Donor Fundraising Scandal*, TELEGRAPH UK (Oct. 24, 2016, 8:10 PM), <http://www.telegraph.co.uk/news/2016/10/24/exclusive-investigation-donaldtrump-faces-foreign-donor-fundrai/>; and any reference to “501(c)(4) organization” means a nonprofit organization exempt from federal taxes under Section 501(c)(4) of the Internal Revenue Code.

1. List your official title(s) and the duration of your employment tenure with GAP.
  - a. Describe your roles, responsibilities, and functions while employed by GAP.
  - b. Describe your relationship and interactions with Eric Beach while employed by GAP.
  - c. When and why did your employment with GAP end?
  
2. Describe your relationship and interactions with GAP after your formal employment with GAP ended.
  - a. Did GAP formally or informally consult you? Did you ever act on GAP’s behalf? If so, provide documents to reflect this.
  - b. Describe your relationship and interactions with Beach after your employment with GAP ended. Did Beach ever discuss GAP’s affairs with you, and for what purposes? If so, provide documents to reflect this.
  - c. After your employment with GAP ended, did Beach refer or introduce anyone to you or any of your companies? Describe all such introductions or referrals, including the persons involved, the nature of the potential work, and the goal(s) of the referral or introduction. Provide documents to reflect this.
  
3. Describe your initial contact with the Telegraph journalists.
  - a. It was reported that Beach referred the Telegraph journalists to you in October 2016; provide documents (such as written communications) that reflect this.

- b. Describe what Beach (or anyone else at GAP) asked or directed you to do for the Telegraph journalists. Provide documents (such as written communications) that reflect this.
  - c. It was reported that you initially sent the Telegraph journalists an email introduction. Describe the contents of that email and provide it to us, along with any related communications.
  - d. How did the Telegraph journalists introduce and describe themselves to you, including their official titles, roles, responsibilities, and functions?
  - e. What representations or information did the Telegraph journalists provide about their purported client, including the client's name, nationality, place of residence, occupation, and current address?
  - f. When did you become aware that the Telegraph journalists claimed to represent a client that was a foreign national interested in making a \$2 million contribution to GAP? Upon becoming aware, how did you respond?
4. Describe all communications pertaining to the Telegraph journalists, their client, or the donation to GAP between you and GAP (including Beach) during the period from October 1, 2016, through December 31, 2016, and provide all written communications, including but not limited to emails, text messages, instant messages, and messages on any social media platforms. When was the last communication between GAP and the Telegraph journalists?
5. Describe all communications between you and the Telegraph journalists during the period from October 1, 2016, through December 31, 2016, and provide all written communications, including but not limited to emails, text messages, instant messages, and messages on any social media platforms. When was the last communication between GAP and the Telegraph journalists?
6. When and where did you meet with the Telegraph journalists?
  - a. Describe the purpose of each meeting you had with them
  - b. Describe what was discussed at each such meeting.
  - c. Provide documents to reflect what was discussed at each of these meetings.
7. Did you indicate to the Telegraph journalists that their client could make a contribution to GAP? Did you provide a proposed or suggested plan for how their client could make a contribution to GAP?
  - a. Describe the nature of any such plan, including the specific transaction structure (including any and all entities involved in the proposed transaction).

- b. Did you propose or suggest that the Telegraph journalists' client could make a \$2 million contribution to GAP through a payment to your company, Titan Strategies LLC, which would be transmitted in full to one or more 501(c)(4) organizations, which would then contribute the full \$2 million to GAP? Provide documents that reflect this.
  - c. Explain whether anyone from GAP (including Beach) helped formulate this or any other plan for the Telegraph journalists' client to make a contribution to GAP.
  - d. Was anyone from GAP (including Beach) aware of this or any other plan for the Telegraph journalists' client to make a contribution to GAP? If so, when and how did they become aware? Provide documents that reflect this.
  - e. What information or understanding regarding the Telegraph journalists' client did you have when you proposed or suggested a plan for that client to make a contribution to GAP?
8. Describe what you communicated to GAP (including Beach) regarding your discussions with the Telegraph journalists. Provide documents to reflect this.
9. It has been reported that the Telegraph journalists attended a GAP event in Las Vegas, Nevada, on October 19, 2016. Describe your involvement with them attending that event, and identify anyone at GAP that asked or directed you to invite them to the event.
10. You were recorded on video making the following statements; for each, describe when and where the statement was made, who else was present, and explain what the statement means in relation to the Telegraph journalists and their purported foreign national client's interest in making a \$2 million contribution to GAP.
  - a. Voice: "So I'm just thinking also about logistics, how this would actually work. That is the 501(c)(4) that the money is going into – yeah?"  
Jesse Benton: "Correct."  
Voice: "Yeah. And that's through your company, yeah?"  
Jesse Benton: "That's correct."
  - b. Jesse Benton: "I'll actually probably send, I'll send money from my company to both."
  - c. Voice: "How much do you think you can pass on to the super PAC because I think that's what I am going to get asked."  
Jesse Benton: "All of it."  
Voice: "All of it?"  
[Benton continues nodding his head]
  - d. Voice: "Can I report back that it's getting used for on-the-ground grassroots stuff or it's getting used for TV, or could be a mixture?"  
Jesse Benton: "It's a mixture."

- e. Jesse Benton: “It will definitely allow us to spend two million more dollars on digital and television advertising for Mr. Trump.”  
Voice: “Right, and that’ll be spent by the super PAC?”  
Jesse Benton: “Yes it will be.”
- f. Jesse Benton: “You shouldn’t put any of this on paper.”
- g. Voice: “It’s not like he’s asking for anything directly but he just wants to know that he won’t just be treated as ‘A N Other’ — what do you think?”  
Jesse Benton: “It’ll do that, yeah.”
- h. Jesse Benton: “And we can have that whispered into Mr. Trump’s ear whenever your client feels it’s appropriate.”