



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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AUG 01 2019

RE: MUR 7271

Dear Messrs. Elias and Wilson:

On August 21, 2017, the Federal Election Commission notified your client, the Democratic National Committee and William Derrough in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, the Commission, on July 25, 2019, found reason to believe that the Democratic National Committee and William Derrough in his official capacity as treasurer violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving in-kind contributions from a foreign national. 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 consideration of this matter. Please submit such materials to the Office of General Counsel within 15 days of receipt of 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 your client has 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 your client is interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel 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. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its

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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 respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give 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.

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.¹

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 Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597 or cpavia@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
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¹ 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**

Respondent: Democratic National Committee and
William Derrough in his official
capacity as treasurer

MUR 7271

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by the Foundation for Accountability & Civic Trust, alleging that Alexandra Chalupa, while acting as an agent of the DNC, solicited, accepted, or received foreign national contributions. As discussed below, the available information indicates that the Ukrainian Embassy provided opposition research on the Trump campaign and campaign chairman Paul Manafort to Chalupa at no charge, and that Chalupa passed on this research to DNC officials. For the reasons stated below, the Commission finds reason to believe that the DNC violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving in-kind contributions from a foreign national.

II. FACTUAL BACKGROUND

The Complaint, relying exclusively upon a January 11, 2017, *Politico* article alleges that the DNC and Chalupa “sought and received political opposition research from Ukrainian government officials, knowing that it would be of value to the Democratic National Committee and Hillary Clinton’s presidential campaign.”¹ Thus, the Complaint concludes that the DNC and Chalupa knowingly solicited, accepted, and received contributions from a foreign national.²

¹ Compl. ¶ 26 (Aug. 15, 2017); *id.*, Attach. (Kenneth P. Vogel and David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO, Jan. 11, 2017).

² Compl. ¶ 29.

Chalupa is a Ukrainian-American who worked in the White House Office of Public Liaison during the Clinton administration.³ Afterwards, she worked as a staffer and then consultant for the DNC.⁴ According to Respondents, Chalupa was retained by the DNC in 2015 as an independent contractor to “engage in outreach” to ethnic communities around the United States.⁵ C&A is Chalupa’s firm, through which she was paid by the DNC to perform consulting services.⁶

The *Politico* article reports that “Ukrainian government officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office,” disseminating documents implicating a top Trump aide in corruption, and “help[ing] Clinton’s allies research damaging information on Trump and his advisers.”⁷ Specifically, on this last point, the article concludes that Chalupa “met with top officials in the Ukrainian Embassy in Washington in an effort to expose ties between Trump, top campaign aide Paul Manafort and Russia.”⁸

According to Chalupa’s own statements to *Politico* for this article, in 2014, she began researching Manafort’s work as a political adviser to Viktor Yanukovych (the former president of Ukraine and Putin ally) as well as Manafort’s ties to the pro-Russian oligarchs who funded Yanukovych’s political party.⁹ Chalupa reportedly stated that her work for the DNC initially centered on mobilizing ethnic communities, but after Trump became a frontrunner for the

³ *Id.*, Attach. at 2-3.

⁴ *Id.* at 3.

⁵ DNC Resp. at 2 (Oct. 23, 2017).

⁶ During the 2016 election cycle, between June 18, 2015, and June 20, 2016, the DNC paid \$71,918 to C&A, but the consulting agreement was apparently between the DNC and Chalupa personally. *See id.*, Ex. A (copies of political consulting agreements).

⁷ Compl., Attach. at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 4.

Republican nomination, “she began focusing more on the research, and expanded it to include Trump’s ties to Russia.”¹⁰ Chalupa explained that “[s]he occasionally shared her findings with officials from the DNC and Clinton’s campaign.”¹¹

The day after the Trump campaign announced that it hired Manafort, Chalupa briefed the DNC’s communications staff on Manafort, Trump, and their connections to Russia, according to “an operative familiar with the situation.”¹² That individual, as well as another unnamed “DNC staffer,” both told *Politico* that, “with the DNC’s encouragement,” Chalupa asked Ukrainian Embassy staff to try to arrange an interview in which Ukrainian President Petro Poroshenko “might discuss Manafort’s ties to Yanukovich.”¹³ The embassy reportedly declined this request, but Chalupa told *Politico* that embassy officials became “helpful” in her efforts.¹⁴ She explained that: “If I asked a question, they would provide guidance, or if there was someone I needed to follow up with,” but claimed that “[t]here were no documents given, nothing like that.”¹⁵

Oksana Shulyar, a top aide to Ukraine’s ambassador to the United States, Valeriy Chaly, denied to *Politico* that the embassy assisted Chalupa with her research.¹⁶ Shulyar claimed that her work with Chalupa centered on organizing a reception at the embassy.¹⁷ However, Andrii

¹⁰ *Id.* But see DNC Resp. at 1 (claiming that Chalupa’s “duties did not include the sort of research in which she was supposed to have engaged on its behalf”).

¹¹ Compl., Attach. at 4.

¹² *Id.* at 5. The *Politico* article also quotes a “former DNC staffer” who claimed that it was an “informal conversation” and that the DNC was “not directing or driving her work on this.” *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (“Chalupa said the embassy also worked directly with reporters researching Trump, Manafort and Russia to point them in the right directions.”).

¹⁶ *Id.* Shulyar claimed that her work with Chalupa “didn’t involve the campaign,” and that the embassy has “never worked to research and disseminate damaging information about Donald Trump and Paul Manafort.” *Id.*

¹⁷ See *id.*

Telizhenko, a political officer at the embassy who “worked . . . under Shulyar,” told *Politico* that Shulyar instructed him to help Chalupa research connections between Trump, Manafort, and Russia and to contact Chalupa if he had any information or knew people who did.¹⁸ He claimed that the embassy was “coordinating an investigation” with Chalupa and “the Hillary team” and “worked very closely” with Chalupa.¹⁹

Chalupa ended her work for the DNC following the Democratic convention in July 2016 to “focus fulltime on her research into Manafort, Trump and Russia,” according to statements she made to *Politico*.²⁰

III. LEGAL ANALYSIS

The Act and Commission regulations prohibit any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, or making an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.²¹ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “government of a foreign country.”²² The Act also prohibits any person from soliciting, accepting, or receiving a

¹⁸ *Id.* at 6. (“Oksana said that if I had any information, or knew other people who did, then I should contact Chalupa.”).

¹⁹ *Id.*

²⁰ *Id.* at 8.

²¹ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f).

²² 52 U.S.C. § 30121(b)(2); 22 U.S.C. § 611(b)(1); *see also* 11 C.F.R. § 110.20(a)(3); Factual & Legal Analysis, MUR 4583 (Devendra Singh and the Embassy of India) (finding reason to believe that the Indian Embassy as well as an embassy official knowingly and willfully violated the Act’s ban on foreign national contributions).

contribution from a foreign national.²³ To solicit means “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”²⁴

In affirming the constitutionality of the Act’s ban on foreign national contributions, the court in *Bluman v. FEC* held:

It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis 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.²⁵

The Act defines “contribution” as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²⁶ “[A]nything of value includes all in-kind contributions” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge.”²⁷ The Act also defines “contribution” to include the “payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.”²⁸

²³ 52 U.S.C. § 30121(a)(2).

²⁴ 11 C.F.R. § 110.20(a)(6) (citing 11 C.F.R. § 300.2(m)).

²⁵ 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012); *see United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

²⁶ 52 U.S.C. § 30101(8)(A)(i).

²⁷ 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8); Advisory Op. 2007-22 at 5 (Hurysz) (“AO 2007-22”).

²⁸ 52 U.S.C. § 30101(8)(A)(ii); *see also* 11 C.F.R. § 100.54.

Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge, as long as foreign nationals do not directly or indirectly participate in any committee’s management or decision-making process in connection with its election-related activities.²⁹ For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.³⁰ The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.³¹ The Commission noted that there was no available information to suggest — and the foreign nationals and political committee expressly denied — that the foreign nationals had any “decision-making role in the event.”³²

Although goods or services provided at the usual and normal charge do not constitute a contribution under the Act, soliciting, accepting, or receiving information in connection with an election from a foreign national, as opposed to purchasing the information at the usual and normal charge or hiring a foreign national in a bona fide commercial transaction to perform services for the political committee, could potentially result in the receipt of a prohibited in-kind

²⁹ 11 C.F.R. § 114.2(f)(1); *see id.* § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services”).

³⁰ Factual & Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³¹ *Id.* at 5.

³² *Id.*; *see also* 11 C.F.R. § 110.20(i) (barring foreign nationals from directly or indirectly participating in any committee’s decision-making process with regard to election-related activities); Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002) (“Foreign nationals also are prohibited from involvement in the management of a political committee”).

1 contribution. Indeed, the Commission has recognized the “broad scope” of the foreign national
 2 contribution prohibition and found that even where the value of a good or service “may be
 3 nominal or difficult to ascertain,” such contributions are nevertheless banned.³³

4 The available record, as reported in the *Politico* article, indicates that: (1) a top
 5 Ukrainian Embassy official, Oksana Shulyar, instructed embassy staff to help Chalupa research
 6 connections between Trump, Manafort and Russia; (2) Ukrainian Embassy officials “were
 7 coordinating” an investigation on Manafort with Chalupa and “the Hillary team” and “worked
 8 very closely” with Chalupa; and (3) Chalupa communicated with DNC officials about her work
 9 on Manafort and sought to share information about him with them.³⁴ The factual record does not
 10 indicate that the Ukrainian Embassy received any payment for the services relating to research
 11 on Manafort. Accordingly, the record before the Commission indicates that by seeking and
 12 obtaining the Ukrainian Embassy’s research, which is a thing of value, to assist her and the
 13 DNC, at no cost, Chalupa solicited and received prohibited foreign national contributions.³⁵

14 The record indicates that, in response to Chalupa’s inquiries, the Ukrainian Embassy
 15 reportedly utilized its resources and expended “funds for opposition research on a candidate that

³³ AO 2007-22 at 6 (citing *Explanation and Justification for Regulations on Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69928, 69940 (Nov. 19, 2002) (“As indicated by the title of section 303 of BCRA, ‘Strengthening Foreign Money Ban,’ Congress amended [52 U.S.C. § 30121] to further delineate and *expand* the ban on contributions, donations, and other things of value by foreign nationals.”) (emphasis added)).

³⁴ Compl., Attach. at 4, 6-7. According to Andrii Telizhenko, a former political officer at the Ukrainian Embassy, “Oksana said that if I had any information, or knew other people who did, then I should contact Chalupa . . . They were coordinating an investigation with the Hillary team on Paul Manafort with Alexandra Chalupa Oksana was keeping it all quiet . . . the embassy worked very closely with [Chalupa].” *Id.* at 6.

³⁵ See Factual & Legal Analysis at 13-20, MUR 6414 (Carnahan) (explaining that a committee’s receipt of investigative or opposition research services without paying the usual or normal charge may result in an in-kind contribution).

1 [was] provided to a political committee” at no charge.³⁶ Accordingly, the alleged conduct falls
2 squarely within the prohibitions of section 30121 of the Act.

3 The Complaint further alleges that Chalupa was acting as an agent of the DNC when she
4 sought the services of the Ukrainian Embassy. The DNC denies that Chalupa was its agent
5 because she was acting outside the scope of her written contract with the DNC, and therefore
6 argues that it cannot be held liable for Chalupa’s actions.³⁷ The Commission’s regulations define
7 agent as “any person who has actual authority, either express or implied, . . . [t]o solicit, direct,
8 or receive any contribution, donation, or transfer of funds.”³⁸ Based on the record before the
9 Commission, there is a reasonable basis to infer that Chalupa was acting with actual authority
10 from the DNC when she allegedly received the in-kind contributions from the Ukrainian
11 Embassy.

12 According to statements made by an unnamed individual and unnamed DNC staffer,
13 Chalupa, “with the DNC’s encouragement,” asked Ukrainian Embassy staff to try to arrange an
14 interview in which Ukrainian President Petro Poroshenko “might discuss Manafort’s ties to
15 Yanukovich.”³⁹ In addition, the Commission possesses information that, at the request of a
16 DNC official, she asked the Ukrainian Embassy if President Poroshenko could field a question
17 about Manafort. Further, the *Politico* article quotes a former unnamed DNC official who

³⁶ See Compl. ¶ 26.

³⁷ See DNC Resp. at 4-5; *id.*, Ex. A (Political Consulting Agreement between Chalupa and the DNC).

³⁸ 11 C.F.R. § 300.2(b)(1)(i); *Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures*, 71 Fed. Reg. 4975 (Jan. 31, 2006) (“[Agent means] ‘any person who has actual authority, either express or implied’ to perform certain actions.”) (“Agency E&J”). Although the Commission has not defined agent in the context of the ban on foreign national contributions, applying the definition set forth in the soft money rules appears appropriate given that the Commission has also referred to the meaning of “to solicit” at section 300.2(m) of the soft money rules when defining that term for purposes of section 110.20. See 11 C.F.R. § 110.20(a)(6).

³⁹ Compl., Attach. at 5.

1 described how Chalupa shared information on Manafort and the Trump campaign with the DNC
2 one day after Manafort was hired.⁴⁰ This information indicates that the DNC may have been
3 aware that Chalupa had been discussing Manafort with the Ukrainian Embassy and that it may
4 have assented to her work with the Ukrainians while she was contracted to work for the DNC.

5 Chalupa's reported statements also indicate that her outreach efforts for the DNC
6 transitioned into "focusing more on the research" and that she "occasionally shared her findings
7 with officials from the DNC."⁴¹

8 In attempting to rebut the allegations, the DNC's Response does not directly deny that
9 Chalupa obtained assistance from the Ukrainians nor that she passed on the Ukrainian Embassy's
10 research to DNC officials. Moreover, rather than submitting statements from the DNC officials
11 with the Response, the Response relies on statements that officials made to the press in response
12 to *Politico*'s investigation. For example, it quotes the DNC's research director, Lauren Dillon
13 stating, "I've been director of research at the DNC for four years and had zero contact with
14 foreign governments."⁴² This statement, however, does not resolve the issue because while the
15 DNC officials themselves may have avoided directly contacting the Ukrainians, the record
16 suggests that they may have authorized Chalupa to act as an intermediary to solicit and receive
17 negative information about the Trump campaign.

⁴⁰ *Id.* at 4-5.

⁴¹ *Id.* at 4.

⁴² DNC Resp. at 5 (citing Dan Merica, *Former DNC Contractor Denies Working With Ukrainian Officials on Anti-Trump Research*, CNN, July 14, 2017). The Response also cites to a news article with a statement by Chalupa in response to the *Politico* report, that: "I was not an opposition researcher for the DNC, and the DNC never asked me to go to the Ukrainian Embassy to collect information." *Id.* (citing Michelle Ye Hee Lee, *The White House's Facile Comparison of the Trump-Russia and Clinton-Ukraine Stories*, WASH. POST, July 25, 2017).

1 Finally, the fact that Chalupa's contract prohibited her from soliciting foreign national
2 contributions for the DNC does not dispose of the allegations here, given the available
3 information suggesting that the DNC may have expressly or impliedly authorized her
4 cooperation with the Ukrainians. In its 2006 Explanation and Justification discussing the
5 definition of agency, the Commission described the concept of actual authority, express or
6 implied, noting that even if the principal does not expressly authorize an individual to raise non-
7 federal funds, the principal may nonetheless grant such authority "by implication" by giving
8 "indirect signals" to an individual.⁴³ Here, even if the DNC did not directly instruct Chalupa to
9 obtain opposition research on the Trump campaign from the Ukrainian Embassy, the record
10 suggests that the DNC may have been aware of or may even have encouraged Chalupa's contacts
11 with the Ukrainian Embassy for the purpose of obtaining opposition research on Manafort's ties
12 to Russia. Consequently, the existence of Chalupa's contract with the DNC alone does not
13 insulate the DNC from liability resulting from Chalupa's actions.

14 Accordingly, because the facts support the conclusion that Chalupa may have acted as an
15 agent of the DNC when she solicited, accepted, or received opposition research from the
16 Ukrainian Embassy, the Commission finds reason to believe that the DNC violated 52 U.S.C.
17 § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving in-kind
18 contributions from a foreign national.

⁴³ Agency E&J at 4978-79 (addressing concerns that a principal could authorize an individual to act illegally through "the use of a 'wink and a nod'").