

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2

3 In the Matter of )

4 )

5 Alexandra Chalupa ) MUR 7271

6 Chalupa & Associates, LLC )

7 )

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9 **GENERAL COUNSEL’S BRIEF**

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11 **I. STATEMENT OF THE CASE**

12 This matter arose from a Complaint alleging that, during the 2016 election cycle,

13 Alexandra Chalupa, acting as an agent of the Democratic National Committee and William

14 Derrough in his official capacity as treasurer (“DNC”), solicited a prohibited foreign national

15 contribution, and thereby violated the Federal Election Campaign Act of 1971, as amended (the

16 “Act”), and Commission regulations by requesting that then-President of Ukraine Petro

17 Poroshenko publicly express a concern about Paul Manafort, an American political consultant,

18 joining the campaign of 2016 presidential candidate Donald J. Trump.<sup>1</sup> The Commission, on

19 July 25, 2019, found reason to believe that Chalupa and Chalupa & Associates, LLC (“C&A”)

20 violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving

21 an in-kind contribution from a foreign national.<sup>2</sup>

22 Pursuant to the Commission’s reason-to-believe determination, this Office opened an

23 investigation. The information obtained through the investigation indicates that shortly after

24 Manafort became an advisor to Trump’s presidential campaign, Chalupa, acting at the behest of

25 the DNC and in conjunction with DNC Communications Director Luis Miranda, asked her

26 contact at the Ukrainian Embassy to send a message to Poroshenko, a foreign national and the

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<sup>1</sup> Compl. ¶¶ 7, 23–24 (Aug. 15, 2017); *see* 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

<sup>2</sup> Certification ¶ 1, MUR 7271 (July 29, 2019); *see* Factual & Legal Analysis at 7, MUR 7271 (Chalupa, *et al.*).

1 head of a foreign government, indicating that Poroshenko should be prepared to address a  
2 question regarding Manafort at a public event. Chalupa asked that Poroshenko respond by  
3 exposing Manafort's prior activities in Ukraine to advance Russian interests, and she further  
4 requested that the Ukrainian Ambassador pass along information about Manafort to "President  
5 Poroshenko's communications team."<sup>3</sup> Chalupa actively attempted to plant the question  
6 concerning Manafort at an event Poroshenko was attending in Washington, DC, and Miranda  
7 arranged to send a recording of Poroshenko's response to ABC News. Thus, the record indicates  
8 that Chalupa requested that Poroshenko and the Ukrainian government assist in disseminating a  
9 negative message about Manafort, shortly after he joined the Trump campaign, for the purpose of  
10 influencing a federal election. As such, the record supports the conclusion that Chalupa  
11 knowingly solicited a foreign national in-kind contribution.

12 Accordingly, this Office is prepared to recommend that the Commission find probable  
13 cause to believe Chalupa and C&A violated 52 U.S.C § 30121(a)(2) and 11 C.F.R. § 110.20(g).

## 14 **II. FACTS**

### 15 **A. Background**

16 The DNC is the national party committee of the Democratic Party and William Derrough  
17 is the committee's registered treasurer.<sup>4</sup> Chalupa is a Ukrainian-American activist and president  
18 of C&A.<sup>5</sup> Chalupa has worked for the DNC or affiliated organizations off and on since 2005,<sup>6</sup>  
19 including as senior advisor to Acting DNC Chairwoman Donna Brazile and DNC Chairwoman

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<sup>3</sup> Email from Alexandra Chalupa to Oksana Shulyar (Mar. 30, 2016 3:19 PM EDT), Chalupa Dep., Ex. 7 at AC000307.

<sup>4</sup> DNC, Amend. Statement of Org. (Nov. 6, 2020).

<sup>5</sup> Chalupa Aff. at 1 (Nov. 21, 2019) (stating that C&A "specializes in communications and political strategy").

<sup>6</sup> Chalupa DNC Work & Volunteer Timeline, Chalupa Dep., Ex. 2 at AC000062–64.

Debbie Wasserman Schultz.<sup>7</sup> During the 2016 election cycle, Chalupa worked as a part-time consultant for the DNC's Ethnic Engagement Program.<sup>8</sup> The DNC paid Chalupa through C&A pursuant to a series of short-term contracts and reported the payments as compensation for "political consulting."<sup>9</sup> In her contract, Chalupa agreed to perform "consulting services related to outreach in the Ethnic Community" as well as "such other services that [the DNC] may, from time to time, request."<sup>10</sup>

In addition to her work for the DNC, Chalupa, who is of Ukrainian heritage, is an activist in the Ukrainian-American community.<sup>11</sup> As early as 2008, Chalupa developed an interest in the role that Manafort, then a U.S. political consultant, played in Ukrainian politics.<sup>12</sup> Chalupa states that she viewed Manafort, who advised former Ukrainian President Viktor Yanukovich, as a national security risk to Ukraine and the United States.<sup>13</sup> By 2013, as part of her activist work, Chalupa began conducting research on Manafort and warning individuals in the Ukrainian-American community about his activities.<sup>14</sup>

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<sup>7</sup> *Id.* at AC000063; *see also id.* at AC000062–64 (other positions include executive director of Democrats Abroad, director of the Office of DNC Vice Chairs, and director of the Office of DNC Party Leaders).

<sup>8</sup> *Id.* at AC000063; Chalupa Dep. at 59:16–62:5 (Nov. 25, 2019).

<sup>9</sup> DNC, Disbursements to C&A (2015–2016), [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00010603&recipient\\_name=Chalupa&two\\_year\\_transaction\\_period=2016](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00010603&recipient_name=Chalupa&two_year_transaction_period=2016); Chalupa's Unsigned Political Consulting Agreements and Amendment with the DNC, Chalupa Dep., Ex. 3 (periods beginning Oct. 2, 2014, July 1, 2015, Jan. 1, 2016); *see also* Chalupa Dep. at 81:6–13 (confirming there were signed versions).

<sup>10</sup> Chalupa Dep., Ex. 3 at AC000039, AC000050.

<sup>11</sup> Chalupa Aff. at 1, 3–7.

<sup>12</sup> *Id.* at 2 (arguing that Manafort worked "to further the interests of Russian President Vladimir Putin").

<sup>13</sup> Chalupa Dep. at 102:2–103:5, 106:2–11; Chalupa Aff. at 2.

<sup>14</sup> Chalupa Dep. at 107:6–109:8, 112:10–18, 113:17–115:16, 118:14–119:14; Chalupa Aff. at 4; *see also* Chalupa Dep. at 121:4–6 (stating that her research on Manafort was "totally individual as a private citizen").

**B. Chalupa's Initial Discussions with DNC Leadership about Manafort**

Chalupa states that, in late 2015, she grew concerned that Manafort was or would be involved with Trump's 2016 presidential campaign.<sup>15</sup> At the time, Trump was a Republican candidate in the 2016 presidential primaries. On January 12, 2016, Chalupa recalls meeting with Lindsey Reynolds, Chief Operating Officer (COO) of the DNC, and informing Reynolds "that I was seeing strong indications that Mr. Putin was trying to impact the 2016 election and that if I was correct, Mr. Manafort was going to work to help elect Mr. Trump."<sup>16</sup>

On March 28, 2016, *The New York Times* reported that Manafort had joined the Trump campaign; he initially served as Campaign Convention Manager but would later be promoted to Campaign Chair and Chief Strategist.<sup>17</sup> Chalupa states that soon after she heard the news of Manafort's hire, she texted Reynolds and Amy Dacey, Chief Executive Officer (CEO) of the DNC.<sup>18</sup> Chalupa does not possess the original text message, but stated under oath that she wrote "something to the effect [of], 'This is everything to take down Trump.' I included the link to the article and recall explaining to them that if Mr. Trump did not fire Manafort immediately then it

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<sup>15</sup> Chalupa Dep. at 125:3–9.

<sup>16</sup> Chalupa Aff. at 21; Chalupa Dep. at 159:18–165:13.

<sup>17</sup> Alexander Burns and Maggie Haberman, *Donald Trump Hires Paul Manafort to Lead Delegate Effort*, N.Y. TIMES (Mar. 28, 2016), <https://www.nytimes.com/politics/first-draft/2016/03/28/donald-trump-hires-paul-manafort-to-lead-delegate-effort>; Meghan Keneally, *Timeline of Paul Manafort's Role in the Trump Campaign*, ABC NEWS (Oct. 30, 2017), <https://abcnews.go.com/Politics/timeline-paul-manaforts-role-trump-campaign/story?id=50808957>. We note that Chalupa appears to incorrectly identify March 27, 2016, as the date of the *New York Times* report on Manafort's hiring by the Trump campaign; a review of the public record shows that the report was published on March 28, 2016, one day later.. See Chalupa Aff. at 27. In her affidavit, Chalupa appears to use the date of the *New York Times* report to calculate the date she contacted DNC leadership about Manafort — *i.e.*, because she contacted the Chief Executive Officer and Chief Operating Officer of the DNC the same day the report was published and the DNC Communications Director the next day, she infers that the dates of those events were March 27, 2016, and March, 28, 2016, respectively.. Accordingly, we have corrected those dates to align with March 28, 2016, as the date of the *New York Times* report; in any event, the specific dates of these events are not as important as the fact that Chalupa forwarded the report to the contacted DNC leadership immediately after it was published.

<sup>18</sup> Chalupa Aff. at 21.

was a direct indication that he was openly receiving support from Mr. Putin . . . .”<sup>19</sup> Chalupa states that Dacey told her to speak with Luis Miranda, the DNC’s Communications Director.<sup>20</sup>

**C. The DNC’s Efforts to Request that then-Ukrainian President Poroshenko Publicly Address a Concern about Manafort**

The next day, March 29, 2016, Chalupa recalls speaking with Miranda regarding her “concerns about Mr. Manafort’s presence on the Trump campaign.”<sup>21</sup> Chalupa states that Miranda asked her to brief the communications team about Manafort, which she did, and asked her to send him information about Manafort.<sup>22</sup> Later that day, Chalupa sent Miranda an email summarizing Manafort’s work in Ukraine and Trump’s business interests in Russia along with a list of related news articles.<sup>23</sup>

At around the same time that Chalupa was communicating with DNC leadership about Manafort, Poroshenko, then-President of Ukraine, visited Washington, DC, to attend the 2016 Nuclear Security Summit.<sup>24</sup> Chalupa states that Miranda was aware of Poroshenko’s visit and that Miranda asked her, possibly during their discussion on March 29, 2016, to “check with someone, some of his people, maybe the embassy and some contact who was doing an event that

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<sup>19</sup> *Id.*; see Chalupa Dep. at 181:4–189:5.

<sup>20</sup> Chalupa Aff. at 21.

<sup>21</sup> *Id.* at 22; Chalupa Dep. at 192:18–194:9.

<sup>22</sup> Chalupa Aff. at 22; Chalupa Dep. at 192:18–196:8; see also *id.* at 198:13–22 (stating that Miranda “said he would forward it to Lauren Dillon [the DNC’s opposition research director] at some point”).

<sup>23</sup> Email from Chalupa to Miranda (Mar. 29, 2016, 12:42 PM), Chalupa Dep., Ex. 6 at AC000079–88.

<sup>24</sup> *Visits by Foreign Leaders in 2016*, Office of the Historian, U.S. Dep’t of State, <https://history.state.gov/departmenthistory/visits/2016> (accessed Dec. 7, 2020) (indicating that Poroshenko visited the U.S. to attend the 2016 Nuclear Security Summit from March 31, 2016, to April 1, 2016).

could ask — get a question for ABC News.”<sup>25</sup> The next day, March 30, 2016, Miranda emailed Chalupa: “Any luck getting the Pres to address this?”<sup>26</sup>

Approximately two hours after receiving the follow-up email from Miranda on March 30, 2016, Chalupa sent an email from her personal account to Oksana Shulyar, an official at the Ukrainian Embassy in Washington, DC, with the subject: “Important Press Opportunity.”<sup>27</sup> In the email, Chalupa begins by asking Shulyar: “[I]f there is opportunity to get this message to the Ambassador and President Poroshenko’s Communication[s] Director, please do so.”<sup>28</sup> Chalupa continues:

There is a very good chance that President Poroshenko may receive a question from the press during his visit about the recent New York Times article saying that Donald Trump hired Paul Manafort as an advisor to his campaign and whether President Poroshenko is concerned about this considering Trump is the likely Republican nominee and given Paul Manafort’s meddling in Ukraine over the past couple of decades. . . .

This is a huge opportunity to alleviate political pressure on Poroshenko’s administration by directing attention to Putin/Manafort. Making it well known that the same man who helped Yanukovych’s puppet government come to power and advised him throughout the Ukraine crisis is now advising a top candidate for U.S. President while also drawing attention to that fact that many are not aware of — that Manafort is back in Kyiv . . . .

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<sup>25</sup> Chalupa Dep. at 207:13–16. Chalupa states that she cannot recall exactly when Miranda asked her to assist with getting Poroshenko to take a question on Manafort, but that it was possibly the same time as when she met with him to provide the initial briefing on Manafort. *Id.* at 207:17–208:7.

<sup>26</sup> Email from Miranda to Chalupa (Mar. 30, 2016, 1:35 PM), Chalupa Dep., Ex. 6 at AC000079; Chalupa Dep. at 213:20–21 (stating that she understood Miranda’s words to mean, “was I successful in getting him [Poroshenko] to take a question from the ABC News”).

<sup>27</sup> Email from Chalupa to Shulyar (Mar. 30, 2016, 3:19 PM), Chalupa Dep., Ex. 7 at AC000307; *see also* Chalupa Aff. at 8 (describing how Chalupa was introduced to Shulyar several weeks prior, in February or March 2016, in connection with Chalupa’s work regarding a cultural event that was planned to be held at the Ukrainian Embassy).

<sup>28</sup> Chalupa Dep., Ex. 7 at AC000307.

*It is important President Poroshenko is prepared to address this question should it come up. In a manner that exposes Paul Manafort for the problems he continues to cause Ukraine — past and present . . . .*

If you are able to get this information to the Ambassador to pass along to President Poroshenko's communications team, it is important. At the very least for them to be aware of the opportunity.<sup>29</sup>

Chalupa copied \_\_\_\_\_, a Ukrainian-American activist who Chalupa describes as "either an independent or a [R]epublican" and "not a [D]emocrat."<sup>30</sup> Chalupa contends that "I would have done this on my own regardless of ever talking to Luis Miranda, wearing my national security hat, Ukrainian-American activist, I would have sent this email."<sup>31</sup>

Four minutes after emailing Shulyar, her contact at the Ukrainian Embassy, Chalupa replied to Miranda, stating: "The Ambassador has the messaging."<sup>32</sup> In her email, Chalupa informed Miranda about an event that Poroshenko would be attending that evening at the U.S. Capitol Visitor Center and how she planned for Poroshenko to receive a question about Manafort.<sup>33</sup> Chalupa told Miranda: "I have the organizer of tonight's event following up with

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<sup>29</sup> *Id.* (emphasis added).

<sup>30</sup> Chalupa Dep. at 167:10–21; *id.* at 217:7–218:1 ("I felt it was important wearing my Ukrainian-American activist hat with \_\_\_\_\_ . . . to basically flag it for them, that it could come up, that they should be prepared."); *id.* at 228:6–18 (explaining that she copied \_\_\_\_\_ to strike a "bipartisan" tone).

<sup>31</sup> *Id.* at 218:22–219:4; *see id.* at 218:7–219:12 ("And I would have done this 100 percent with or without ever talking to anyone at the DNC.").

<sup>32</sup> Email from Chalupa to Miranda (Mar. 30, 2016, 3:23 PM), Chalupa Dep, Ex. 6 at AC000079. Chalupa confirmed that "the messaging" referred to the email she sent to the Ukrainian Embassy. Chalupa Dep. at 214:3–15, 246:22–247:6; *see also id.* at 248:4–8 ("In terms of messaging, I think it was more of like, you know, this question could come up — like with Luis Miranda, we never spoke about messaging other than it's a Manafort-related question.").

<sup>33</sup> Email from Chalupa to Miranda (Mar. 30, 2016, 3:23 PM), Chalupa Dep, Ex. 6 at AC000079; *see* Chalupa Dep. at 230:11–231:6; *see also* The U.S.-Ukraine Foundation, 2016 Annual Report at 14, <https://usukraine.org/wp-content/uploads/2019/07/2016-Annual-Report-Final.pdf> (identifying an event held on March 30, 2016, at the U.S. Capitol Visitor Center titled "Ukraine in Washington 2016, Forum: Ukraine's Battle for Freedom Continues," with "500–600 attendees," including Poroshenko).

1 them [the Ukrainian Embassy] in person in [the] next hour. I will be at the event an hour early to  
 2 help follow up in person.”<sup>34</sup> Later that evening, on March 30, 2016, Chalupa sent another email  
 3 to Miranda explaining that the event would involve a “Q&A session with about ten media outlets  
 4 at this event with the President” and that she had “secured about a dozen people to ask the  
 5 question so hoping one hits.”<sup>35</sup> However, at the event, Shulyar told Chalupa that Poroshenko  
 6 would not take questions on Manafort.<sup>36</sup> Chalupa recalls that Shulyar indicated “that they [the  
 7 Ukrainian government] did not want to get involved at all . . . [regarding] anything related to  
 8 Paul Manafort or the U.S. election.”<sup>37</sup> Shulyar states that she and the Embassy “ignored this  
 9 request” for Poroshenko to answer a question about Manafort at the event, “and, realizing the  
 10 risks, arranged a Q&A session in the manner of written cards, so that such politically sensitive  
 11 questions would never reach the President.”<sup>38</sup>

12 The next morning, on March 31, 2016, Miranda emailed Chalupa to ask whether her  
 13 efforts to get Poroshenko to answer a question about Manafort were successful, writing: “I  
 14 pitched ABC on it last night. If he said something is it on video or recorded? If you got it asked  
 15 and he said anything I’ll pass it along to ABC.”<sup>39</sup> Chalupa informed Miranda that the organizer  
 16 “didn’t select that question from the stack he received from the audience and there was no press  
 17 Q and A opportunity.”<sup>40</sup> She added, moreover, that she “spoke to Poroshenko’s team after the

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<sup>34</sup> Email from Chalupa to Miranda (Mar. 30, 2016, 3:23 PM), Chalupa Dep., Ex. 6 at AC000079.

<sup>35</sup> Email from Chalupa to Miranda (Mar. 30, 2016, 7:12 PM), Chalupa Dep., Ex. 8 at AC000089.

<sup>36</sup> Chalupa Aff. at 22; Chalupa Dep. at 229:19–22, 241:2–17.

<sup>37</sup> Chalupa Dep. at 242:1–9; *see id.* at 241:9–14 (“I mean, she just seemed like . . . dismissing it, they’re not taking any questions about Paul Manafort and doing any media.”).

<sup>38</sup> Shulyar Written Statement at 3 (June 9, 2020).

<sup>39</sup> Email from Miranda to Chalupa (Mar. 31, 2016, 9:40 AM) Chalupa Dep., Ex. 8 at AC000089.

<sup>40</sup> Email from Chalupa to Miranda (Mar. 31, 2016, 9:52 PM), Chalupa Dep., Ex. 8 at AC000089.



1 event and . . . he [Poroshenko] definitely isn't comfortable bringing up the issue.”<sup>41</sup> She  
2 nevertheless added that she would be “[h]eading to his [Poroshenko's] morning event now with  
3 the Ukrainian diaspora to see if there is press there I may know who can ask him the question.”<sup>42</sup>

4 There is no record of Poroshenko receiving a question on Manafort at the U.S. Capitol  
5 Visitor Center event or otherwise conveying the message about Manafort that Chalupa  
6 communicated.

### 7 **III. LEGAL ANALYSIS**

8 The record before the Commission indicates that Chalupa asked a foreign national, the  
9 head of a foreign government, to use the authority of his office and expend resources to prepare  
10 and publicly disseminate a negative message about a recently-hired Trump campaign official in  
11 order to influence the 2016 presidential election.

12 Accordingly, as detailed in the following subsections, the record indicates that Chalupa  
13 knowingly solicited a thing of value from a foreign national “for the purpose of influencing” a  
14 federal election, *i.e.*, an in-kind “contribution” under the Act: Section III.A sets forth the Act's  
15 prohibition of foreign national contributions and the solicitation of such contributions; Section  
16 III.B explains that Chalupa made a solicitation under the Act by knowingly asking, requesting, or  
17 recommending that a foreign national make a contribution; and Section III.C explains that what  
18 Chalupa solicited was a contribution — *i.e.*, a thing of value sought for the purpose of  
19 influencing a federal election.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

**A. The Foreign National Prohibition**

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 an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.<sup>43</sup>

Moreover, the Act prohibits any person from soliciting, accepting, or receiving any such contribution or donation from a foreign national,<sup>44</sup> and Commission regulations implementing that provision further prohibit any person from knowingly providing substantial assistance in soliciting, making, accepting, or receiving any such contribution or donation.<sup>45</sup>

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,<sup>46</sup> 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.”<sup>47</sup> A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any

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<sup>43</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).

<sup>44</sup> 52 U.S.C. § 30121(a)(2). The Commission’s implementing regulation at 11 C.F.R. § 110.20(g) provides a narrowing construction — *i.e.*, “no person shall *knowingly* solicit . . .” — and, as relevant here, “knowingly” is defined to include “actual knowledge” that the target of the solicitation is a foreign national, *see id.* § 110.20(a)(4).

<sup>45</sup> 11 C.F.R. § 110.20(h). In this context, the Commission has explained that “substantial assistance means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction,” and “does not include strictly ministerial activity undertaken pursuant to the instructions of an employer, manager or supervisor.” Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,945–69,946 (Nov. 19, 2002).

<sup>46</sup> 52 U.S.C. § 30121(b)(2).

<sup>47</sup> *Id.* § 30121(b)(1); 22 U.S.C. § 611(b)(1).

election for Federal office.”<sup>48</sup> Under Commission regulations, “anything of value” includes all in-kind contributions, which include “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”<sup>49</sup>

Commission regulations also provide that 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.”<sup>50</sup> Furthermore:

A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.<sup>51</sup>

Commission regulations provide examples of statements that would qualify as solicitations, including but not limited to, “[t]he candidate will be very pleased if we can count on you for \$10,000”<sup>52</sup> and “I will not forget those who contribute at this crucial stage.”<sup>53</sup> However, the Commission has “emphasized that the definition . . . is not tied in any way to a candidate’s use of particular ‘magic words’ or specific phrases.”<sup>54</sup> The Commission has also

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<sup>48</sup> 52 U.S.C. § 30101(8)(A).

<sup>49</sup> 11 C.F.R. § 100.52(d).

<sup>50</sup> *Id.* § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)).

<sup>51</sup> *Id.* § 300.2(m).

<sup>52</sup> *Id.* § 300.2(m)(2)(xii).

<sup>53</sup> *Id.* § 300.2(m)(2)(xi).

<sup>54</sup> Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13,926, 13,928 (Mar. 20, 2006) (“Solicitation E&J”). The Commission revised the definition of “to solicit” in 2006, specifically in response to *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005), in which the U.S. Court of Appeals for the D.C. Circuit invalidated the Commission’s original definition because it covered only “explicit direct requests” and left open the possibility that candidates could evade

1 explained that communications must be reasonably construed in context, such that “the  
 2 Commission’s objective standard hinges on whether the recipient should have reasonably  
 3 understood that a solicitation was made.”<sup>55</sup>

4           **B. Chalupa Knowingly Solicited President Poroshenko and the Ukrainian**  
 5           **Government to Assist in Disseminating a Negative Message about Manafort**

6           The record in this matter indicates that Chalupa, acting at the direction of DNC  
 7 Communications Director Luis Miranda, sought to have then-Ukrainian President Poroshenko  
 8 answer a question from the press with a response intended to convey a negative message  
 9 regarding Manafort shortly after Manafort became a campaign advisor for 2016 presidential  
 10 candidate Trump. In so doing, Chalupa solicited Poroshenko, whom she knew to be a foreign  
 11 national and the head of a foreign government, in that she expressly asked, requested, or  
 12 recommended that Poroshenko and his staff prepare and convey this negative messaging about  
 13 Trump’s campaign advisor, which would help the DNC in the 2016 election. The facts show that  
 14 Chalupa was acting at the express direction of Miranda, who told her to “check with someone,  
 15 some of his people, maybe the embassy” and, followed up by asking whether she had “[a]ny luck  
 16 getting the Pres to address [the Manafort question]?”<sup>56</sup>

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the statutory restriction on soft money solicitations with “winks, nods, and circumlocutions to channel money in favored directions — anything that makes their intention clear without overtly ‘asking’ for money.” *Id.* at 106.

<sup>55</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.”); *see* Factual & Legal Analysis at 6, MUR 6939 (Mike Huckabee, *et al.*) (dismissing an allegation that a candidate solicited an excessive contribution by saying, in a speech announcing his candidacy, “If you want to give a million dollars, please do it,” because, in context, “an objective listener would not reasonably have understood” the statement to be a solicitation for “million-dollar contributions,” as opposed to “a humorous aside in the course of his speech”).

<sup>56</sup> Chalupa Dep. at 206:21–208:19; Chalupa Dep., Ex. 6 at AC00079.

1           Roughly two hours after Miranda's follow-up email on March 30, 2016, Chalupa emailed  
2   Oksana Shulyar, her contact at the Ukrainian Embassy in Washington, DC, with a "message [for]  
3   the [Ukrainian] Ambassador and President Poroshenko's Communication[s] Director."<sup>57</sup>  
4   Chalupa's email informed Shulyar that Poroshenko would likely be asked a question about  
5   Manafort, and repeatedly referred to the question as an "opportunity" for Poroshenko to answer  
6   in a particular way that "exposes Paul Manafort for the problems he continues to cause  
7   Ukraine."<sup>58</sup> Chalupa specifically stated that if Poroshenko made the negative statement about  
8   Manafort, Chalupa would "get Democratic presidential candidates aware and engaged."<sup>59</sup>

9           Taken in context and construed reasonably under the Commission's objective test,  
10   Chalupa's email to Shulyar was a solicitation because it constituted a "clear message asking,  
11   requesting, or recommending"<sup>60</sup> that the then-Ukrainian president and his staff prepare for and  
12   answer a question regarding Manafort by providing a negative message about Manafort's  
13   activities in Ukraine. The overall tone and content of Chalupa's statements, read in context,  
14   reflect that the potential Manafort question was not just something for Poroshenko and his staff  
15   to be aware of, but an "opportunity" to seize by conveying a specific message about Manafort  
16   which, if provided, would prompt additional actions, including Chalupa getting "the Democratic  
17   Presidential candidates aware and engaged" with that message.<sup>61</sup>

18           Accordingly, the recipients of Chalupa's email "should have reasonably understood" that  
19   Chalupa was asking Poroshenko to convey a particular message rather than merely alerting them

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<sup>57</sup> Chalupa Dep., Ex. 7 at AC000307.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> 11 C.F.R. § 300.2(m).

<sup>61</sup> Chalupa Dep., Ex. 7 at AC000307.

1 to a potential situation they might need to address.<sup>62</sup> Indeed, Shulyar asserts that she had such an  
2 understanding: She and her staff ignored Chalupa's proposal and, in fact, "realizing the risks" of  
3 Poroshenko facing a question about Manafort in a public setting, took measures to thwart the  
4 possibility.<sup>63</sup> Chalupa regularly apprised Miranda of her efforts to contact Poroshenko's advisors  
5 and have Poroshenko issue a prepared response to the Manafort question.<sup>64</sup> In fact, the morning  
6 after the March 30, 2016, event where Embassy staff told her that Poroshenko "isn't comfortable  
7 bringing up the issue" of Manafort, Chalupa wrote to assure Miranda that she would attend  
8 Poroshenko's morning event to "see if there is press there . . . who can ask him the question."<sup>65</sup>  
9 These facts provide additional context supporting the conclusion that Chalupa, acting as the  
10 DNC's agent, solicited Poroshenko.<sup>66</sup>

11 Poroshenko ultimately did not receive a question on Manafort at the U.S. Capitol Visitor  
12 Center event and does not otherwise appear to have conveyed the message about Manafort that  
13 Chalupa communicated to Embassy staff. However, the question at issue is whether Chalupa  
14 solicited Poroshenko for a contribution — not whether Poroshenko actually provided the  
15 contribution that Chalupa sought. As the record before the Commission shows, Chalupa directly  
16 or indirectly asked, requested, or recommended that Poroshenko, as Ukraine's President, prepare  
17 and publicly disseminate a negative message about Manafort that could be used by the DNC to  
18 undermine an electoral opponent, Trump, including through publication in an ABC News story.

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<sup>62</sup> Solicitation E&J, 71 Fed. Reg. at 13,929.

<sup>63</sup> Shulyar Written Statement at 3.

<sup>64</sup> Chalupa Dep., Ex. 6 at AC000079; Email from Chalupa to Miranda (Mar. 30, 2016, 7:12 PM), Chalupa Dep., Ex. 8 at AC000089.

<sup>65</sup> Email from Chalupa to Miranda (Mar. 31, 2016, 9:52 AM), Chalupa Dep., Ex. 8 at AC000089.

<sup>66</sup> *See* 11 C.F.R. § 300.2(m).

**C. Chalupa Solicited an In-Kind Contribution under the Act**

As set forth below, the message that Chalupa asked Poroshenko to convey about Manafort was a contribution under the Act because it was a thing of value sought “for the purpose of influencing” the 2016 presidential election.<sup>67</sup>

**1. Relevant Law**

In defining a “contribution,” the Act uses a broadly-encompassing phrase, “anything of value,”<sup>68</sup> which, under the Commission’s regulation, includes “*all* in-kind contributions” and “the provision of *any* goods or services” at no charge or at a reduced charge.<sup>69</sup> The regulation also provides an explicitly non-exhaustive list of examples that satisfy various campaign needs and represent a wide variety of electoral “value,” such as: places to operate (“facilities”), methods of conveying a message (“advertising services”), and raw voter data (“mailing lists”), as well as physical and human resources (“supplies” and “personnel,” respectively).<sup>70</sup> The list of examples conveys that anything provided to a campaign that may confer a benefit, and thus potentially spare the campaign’s own resources, is conceivably a thing of value.

The phrase “anything of value” facially contemplates a broad, case-by-case application, and in prior matters, the Commission has found that many tangible and intangible things fall within the scope of the regulatory text.<sup>71</sup> In prior matters, indicia of whether something is “anything of value” under the Act have included: (1) whether the thing may confer a benefit on

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<sup>67</sup> 52 U.S.C. § 30101(8)(A).

<sup>68</sup> *Id.*

<sup>69</sup> 11 C.F.R. § 100.52(d)(1) (emphases added).

<sup>70</sup> *Id.* (“Examples of such goods or services *include, but are not limited to:* Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.” (emphasis added)).

<sup>71</sup> *See* First Gen. Counsel’s Report at 11–12, MUR 6651 (Murray Energy Corp., *et al.*) (listing examples).

the recipient campaign;<sup>72</sup> (2) whether political campaigns have previously used their own resources to procure the thing in question;<sup>73</sup> (3) whether the provision of the thing would “relieve” the campaign of an “expense it would otherwise incur” to obtain a similar benefit;<sup>74</sup> (4) whether the provider of the thing or any third party “utilized its resources” to produce, organize, or collect the thing provided;<sup>75</sup> and (5) whether the thing “may not have been publicly available” for the campaign’s use absent the provider’s actions.<sup>76</sup>

For instance, in Advisory Opinion 1990-12, the Commission concluded that if a campaign volunteer shared the results of a poll he had previously commissioned, or even used his knowledge of the poll results to provide the campaign with strategic advice, the value of the poll results would be an in-kind contribution.<sup>77</sup> In MUR 5409, similarly, the Commission found

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<sup>72</sup> See, e.g., Advisory Op. 1990-12 (Strub for Congress) at 2 (concluding that the provision of poll results by a campaign volunteer who paid for the poll would result in an in-kind contribution); Advisory Op. 2007-22 (Hurysz) at 6 (concluding that the provision of printed foreign election materials, including “flyers, advertisements, door hangers, tri-folds, signs, and other printed material,” would result in an in-kind contribution); First Gen. Counsel’s Report at 10, MUR 5409 (Norquist) (adopted as dispositive) (determining that contact lists provided to a campaign without charge were “of value” because they “may at least point [the campaign] in the direction of persons who might help [its] election efforts”).

<sup>73</sup> See, e.g., Advisory Op. 1990-12 at 2 (discussing Commission regulations addressing the making and acceptance of contributions in the form of poll results) (citing 11 C.F.R. § 106.4); see First Gen. Counsel’s Report at 14, MUR 6651 (observing that campaigns often pay advance staff to generate crowds for campaign events).

<sup>74</sup> See Advisory Op. 2007-22 at 6 (explaining that the provision of election materials to a campaign results in a contribution because it “would relieve [the] campaign of the expense that it would otherwise incur to obtain such materials”); Advisory Op. 1990-12 at 2; see also Advisory Op. 1992-33 (DNC/RNC) at 3 (“Advisory Op. 1992-33”) (“As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services.”).

<sup>75</sup> See, e.g., First Gen. Counsel’s Report at 10, MUR 5409 (recommending finding reason to believe that a nonprofit corporation made prohibited in-kind contributions by providing a campaign with its private lists of conservative organizations and individuals, which the corporation “utilized its resources to obtain and compile”); Certification, MUR 5409 (Oct. 19, 2004) (approving recommendation).

<sup>76</sup> Compare First Gen. Counsel’s Report at 9, MUR 5409 (observing that attendee lists provided to a campaign “may not have been publicly available”), with Factual & Legal Analysis at 4–5, MUR 6938 (Rand Paul for President) (finding it unclear that author’s private discussion of a forthcoming book has value for a candidate, particularly when the book information had also been publicly discussed).

<sup>77</sup> Advisory Op. 1990-12 at 2.



1 that a corporation made prohibited in-kind contributions by providing a campaign with its  
 2 nonpublic lists of organizations and individuals with similar political views, which the  
 3 corporation “utilized its resources to obtain and compile,” and which “contain[ed] information  
 4 that may be of value in connection with” a federal election.<sup>78</sup> Moreover, in the foreign national  
 5 context, the Commission has previously explained that a foreign national makes a prohibited  
 6 contribution by providing anything to a campaign that thereby “relieve[s the] campaign of the  
 7 expense that it would otherwise incur,” even if the item’s value “may be nominal or difficult to  
 8 ascertain,”<sup>79</sup> because foreign nationals are prohibited from providing a campaign with anything  
 9 of *any* value.

## 10 2. Chalupa Solicited a Thing “of Value” From a Foreign National

11 Chalupa sought a thing of value from then-President Poroshenko and the Ukrainian  
 12 government by requesting that Poroshenko be prepared for and answer a question about  
 13 Manafort joining the Trump campaign by raising concerns about Manafort’s past activities in

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<sup>78</sup> First Gen. Counsel’s Report at 10, MUR 5409; *see* Certification, MUR 5409 (Oct. 19, 2004) (approving recommendations). Similarly, based on the information available prior to initiating an investigation in this matter, the Commission found reason to believe that Chalupa solicited and received prohibited foreign national in-kind contributions in the form of opposition research services: The pre-investigatory record suggested that the Ukrainian Embassy, at Chalupa’s request, “utilized its resources and expended funds for opposition research on a candidate that [was] provided to a political committee at no charge” and determined that “the Ukrainian Embassy’s research . . . is a thing of value” subject to the Act’s foreign national prohibition. Factual & Legal Analysis at 7, MUR 7271 (Chalupa, *et al.*). The utilization of a foreign government’s resources to perform research on a federal candidate or campaign, which is provided at no charge to a political committee, is analogous to the utilization of a foreign government’s resources to prepare that government’s president to make a public statement at an official event concerning a federal candidate’s campaign advisor.

<sup>79</sup> Advisory Op. 2007-22 at 6 (noting that foreign nationals are prohibited from providing even “flyers, advertisements, door hangers, tri-folds, signs, and other printed material,” to a campaign, “particularly in light of the broad scope of the prohibition on contributions from foreign nationals”) (citing 120 Cong. Rec. 8782 (Mar. 28, 1974) (statement of Sen. Bentsen, author of the amendment prohibiting foreign national contributions) (“I am saying that contributions by foreign nationals are wrong, and they have no place in the American political system.”) and Explanation and Justification for Regulations on Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,940 (Nov. 19, 2002) (“As indicated by the title of section 303 of BCRA, “Strengthening Foreign Money Ban,” Congress amended 2 U.S.C. 441e to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals.”)); *see* Factual & Legal Analysis at 7, MUR 7271 (Chalupa, *et al.*).

Ukraine. Accordingly, Chalupa sought the assistance of Poroshenko and his staff in using his authority to disseminate a negative message about Manafort, which was a unique, nonpublic deliverable, the provision of which would have involved the use of Poroshenko's official position and the use of the Ukrainian government's official resources — including, *e.g.*, the personnel and supplies needed to research and draft the Manafort statement, as well as to prepare Poroshenko to deliver it — to confer a potential electoral benefit on the DNC's efforts in the 2016 presidential election.<sup>80</sup>

The record shows that Miranda, the DNC's Communications Director, perceived that Poroshenko raising concerns about Manafort would have value in the 2016 election. Miranda instructed Chalupa to send a message to Poroshenko through her connections with the Ukrainian Embassy, and apparently planned to send recorded video footage of Poroshenko's response to ABC News, ostensibly trying to drive broader coverage of the issue.<sup>81</sup> Moreover, for Poroshenko to provide the desired assistance, Ukrainian government staff would have had to expend resources to prepare him to deliver the requested negative message regarding Manafort.<sup>82</sup>

The assistance that Chalupa asked Poroshenko to provide had a direct electoral nexus with the DNC's efforts in the 2016 elections: It was an amplification of a negative allegation about Manafort — *i.e.*, that Manafort had previously advanced the interests of Russia and

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<sup>80</sup> See 11 C.F.R. § 100.52(d)(1) (listing “personnel” and “supplies” as examples of “goods and services” that would constitute an in-kind contribution, if provided without charge or at a reduced charge).

<sup>81</sup> Miranda's request on March 29, 2016, to “check with someone” and see if they could “get a question for ABC News,” Chalupa Dep. at 206:21–208:19, and his follow-up email to Chalupa on March 31, 2016, both underscore the fact that Miranda sought to use Poroshenko's response to generate news coverage regarding Manafort — *i.e.*, to amplify the negative allegations about Manafort using free or earned media, rather than paid media — as Miranda wrote: “I pitched ABC [News] on it last night. If he [Poroshenko] said something is it on video or recorded? If you got it asked and he said anything I'll pass it along to ABC.” Chalupa Dep., Ex. 8 at AC000089.

<sup>82</sup> See Advisory Op. 2007-22 at 6.

Vladimir Putin in Ukraine — immediately after his hiring as an advisor by the Trump campaign, which could negatively impact the Trump campaign and thus generally advance the DNC's electoral interests.<sup>83</sup> The desired Ukrainian assistance would have thus benefited the DNC by spreading potentially damaging allegations about Manafort as an advisor to the Trump campaign, much like a damaging narrative about an opponent's campaign propagated by paid electioneering activity.<sup>84</sup>

However, unlike using campaign communications and other paid efforts to disseminate this damaging narrative, which would have involved spending campaign funds and reporting those expenditures in publicly filed disclosure reports,<sup>85</sup> Chalupa asked that Poroshenko use the authority of his office and the official resources of the Ukrainian government to provide that potential electoral benefit at no cost to the DNC and with no public disclosure of the resulting expenses by the committee.<sup>86</sup> Chalupa directed her message to “President Poroshenko’s communications *team*” and stated that “it is important . . . for *them* to be aware of the opportunity,” indicating awareness that acquiescence to the request would likely involve the effort (albeit potentially limited effort) of Poroshenko and his official government advisors.<sup>87</sup>

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<sup>83</sup> See Chalupa Dep., Ex. 7 at AC000307 (asking Poroshenko to comment on Manafort’s hiring by the Trump campaign “[i]n a manner that exposes Paul Manafort for the problems he continues to cause Ukraine – past and present . . . [and] directing attention to Putin/Manafort”).

<sup>84</sup> Third parties have spent considerable amounts to amplify damaging allegations or propagate a damaging narrative about a candidate. See, e.g., Conciliation Agreement ¶ IV.15, MURs 5511 and 5525 (Swiftboat Veterans and POWs for Truth) (Dec. 11, 2006) (“During the 2004 cycle, [Swiftboat Veterans and POWs for Truth] spent \$19,304,642 for 12 television advertisements that were broadcast in the Presidential election battleground states . . . and on national cable television stations . . . [and a]ll of these advertisements attacked the character, qualifications, and fitness for office of Senator John Kerry, the Democratic Presidential nominee.”).

<sup>85</sup> See 52 U.S.C. § 30101(9)(A) (defining “expenditure”); *id.* § 30104(b) (mandating periodic disclosure of all expenditures).

<sup>86</sup> See also Advisory Op. 1990-12 at 2 (use of poll results not paid for by a campaign to provide strategic advice to the campaign results in an in-kind contribution).

<sup>87</sup> Chalupa Dep., Ex. 7 at AC000307 (emphases added).

Moreover, she requested that Poroshenko provide his response at an official event that he was attending on behalf of the Ukrainian government, where he would have been acting in his official capacity as Ukraine's president.<sup>88</sup>

An official presidential statement regarding Manafort's prior efforts to advance Russian interests in Ukraine would be a unique deliverable that only Poroshenko, as the sitting president of Ukraine, could deliver; it was not readily or publicly available for the DNC to otherwise obtain, absent its provision by Poroshenko and the Ukrainian government.<sup>89</sup> Although Chalupa and the DNC could have attempted to disseminate a similar message regarding Manafort's links to Russia around the time he was hired by Trump's campaign, Poroshenko assisting the DNC by doing so would have strengthened the impact of the statement with the authority of his official position, which was a part of the deliverable's potential electoral benefit. As such, Poroshenko's assistance would have involved the use of his official authority, and the Ukrainian government's

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<sup>88</sup> There is no basis to conclude that Poroshenko's assistance would fall under the Act's volunteer exception to the definition of "contribution" — *i.e.*, Poroshenko was not asked to make a voluntary public statement in his personal capacity, akin to a personal endorsement — which the Commission has previously determined permits foreign nationals to volunteer their personal services to a political campaign without thereby making a prohibited contribution. *See* 52 U.S.C. § 30101(8)(B)(i) ("The term 'contribution' does not include . . . the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee."); *see, e.g.*, Advisory Op. 2014-20 at 3–4 (Make Your Laws PAC) (foreign nationals may voluntarily provide a campaign with personal services to help design website code, logos, and trademarks, and may provide the intellectual property rights resulting "directly and exclusively" from those services, without making a prohibited contribution); Advisory Op. 2007-22 at 3 (Hurysz) (foreign nationals may engage in uncompensated campaign activity, including canvassing and phone banking, without making a prohibited contribution); Advisory Op. 2004-26 at 3 (Weller) (the foreign national spouse of a candidate may, as an uncompensated volunteer, attend campaign events, give speeches, and solicit campaign contributions); Advisory Op. 1987-25 at 2 (Otaola) (uncompensated services by foreign national students would not result in prohibited contributions); Factual & Legal Analysis at 6–9, MURs 5987, 5995, and 6015 (Sir Elton John) (finding no reason to believe a foreign national made a prohibited contribution by volunteering his services to perform at a campaign fundraiser and agreeing to let the campaign use his name and likeness in its emails promoting the concert and soliciting support).

<sup>89</sup> *See* First Gen. Counsel's Report at 10, MUR 5409 (discussing the provision of nonpublic information as an in-kind contribution).

resources, to support the DNC, and thus would have been a thing of value under the Act and Commission regulations.<sup>90</sup>

3. Chalupa Sought Poroshenko's Assistance "for the Purpose of Influencing" the 2016 Presidential Election

In analyzing whether the provision of a thing of value results in an in-kind contribution,<sup>91</sup> the Commission has concluded that "the question under the Act is whether" the thing of value was "provided for the purpose of influencing a federal election," not simply whether it "provided a benefit to [the recipient's] campaign."<sup>92</sup> The facts of this case show that Chalupa's purpose in requesting that Poroshenko convey a negative message about Manafort was to obtain footage that the DNC could send to ABC News, which would amplify negative messaging about Manafort's ties to Russia and, by extension, undermine the Trump campaign, to the benefit of the DNC and Trump's general-election opponent, Hillary Clinton. Accordingly, the record indicates that Chalupa acted with the purpose of influencing the 2016 presidential election.

Electoral purpose may be facially apparent — such as with payments to solicit contributions or for public communications that expressly advocate for the election or defeat of a specific candidate — or inferred from the surrounding circumstances of a transaction.<sup>93</sup> When

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<sup>90</sup> *Id.*

<sup>91</sup> 52 U.S.C. §§ 30101(8)(A)(i); 30101(9)(A)(i).

<sup>92</sup> Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

<sup>93</sup> *See, e.g.*, Advisory Op. 1988-22 at 5 (San Joaquin Valley Republican Associates) (concluding that a third-party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because "the financing of a communication to the general public, not within the "press exemption," that discusses or mentions a candidate in an election-related context and is undertaken in coordination with the candidate or his campaign is 'for the purpose of influencing a federal election'"); Factual & Legal Analysis at 17–20, MURs 4568, 4633, and 4634 (Triad Mgmt. Servs., Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with "uncompensated fundraising and campaign management assistance" and "advertising assistance," including spending "several million dollars" on coordinated advertisements).

electoral purpose is not facially apparent, the Commission has concluded that a contribution or expenditure results when, *inter alia*, the thing of value potentially advances the recipient's campaign.<sup>94</sup> Conversely, the Commission has previously found that activity by or in connection with a federal candidate that is undertaken for a non-electoral purpose, including to advance a commercial interest,<sup>95</sup> fulfill the obligations of holding federal office,<sup>96</sup> or engage in non-candidate-oriented election litigation,<sup>97</sup> does not necessarily result in a "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or otherwise impacts a federal election.

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<sup>94</sup> See, e.g., Advisory Op. 1990-05 at 4 (Mueller) (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that because federal candidate's company newsletter featured discussion of campaign, publication expenses would be contributions); see also Advisory Op. 2000-08 at 1, 3 (Harvey) (concluding private individual's \$10,000 "gift" to federal candidate would be a contribution because "the proposed gift would not be made but for the recipient's status as a Federal candidate").

<sup>95</sup> E.g., Advisory Op. 2012-31 at 4 (AT&T) (wireless carrier charging a reduced fee to process text message-based donations to federal candidates did not thereby make "contributions" to the candidates because the reduced fee "reflects commercial considerations and does not reflect considerations outside of a business relationship"); Advisory Op. 2004-06 at 4 (Meetup) (commercial web service provider that can be used to arrange meetings and events based on shared interests did not make contributions by featuring federal candidates in its list of "event topics" or by offering its services to federal candidates and committees because "any similarly situated member of the general public" could use these services); see First Gen. Counsel's Report at 13–17, MURs 5474 and 5539 (Dog Eat Dog Films, *et al.*) (recommending finding no reason to believe with respect to allegation that producers and distributors of a film criticizing a federal candidate made "contributions" or "expenditures" because the record established that the film was made and distributed "for genuinely commercial purposes rather than to influence a federal election"); Certification ¶¶ A.1–2, B.1, MURs 5474 and 5539 (approving recommendations); Advisory Op. 1994-30 at 4–8 (Conservative Concepts/Pence) (identifying factors used to determine whether "entrepreneurial activity" referencing a federal candidate will result in a "contribution," including "whether the activity" is "for genuinely commercial purposes").

<sup>96</sup> E.g., Advisory Op. 1981-37 at 2 (Gephardt) (federal candidate did not receive a contribution by appearing at a series of "public affairs forums" paid for by a corporation because "the purpose of the activity is not to influence the nomination or election of a candidate for Federal office but rather in connection with the duties of a Federal officeholder" regardless of indirect benefit to future campaigns).

<sup>97</sup> E.g., Factual & Legal Analysis at 8, MUR 7024 (Van Hollen for Senate) (free legal services provided to a federal candidate challenging FEC disclosure regulations were not contributions because the services were provided "for the purpose of challenging a rule of general application, not to influence a particular election"); cf. Advisory Op. 1980-57 at 3 (Bexar County Democratic Party) (funds raised for federal candidate's lawsuit seeking removal of a potential opponent from the ballot were contributions because litigation "to force an election opponent off the ballot . . . is as much an effort to influence an election as is a campaign advertisement derogating that opponent").

Here, the record indicates that Chalupa acted for the electoral purpose of undermining the Trump campaign (and thus advancing the campaign of the DNC's candidates, including Clinton). After Chalupa discussed the idea of asking Poroshenko to expose Manafort with Miranda, she knew that Miranda's plainly stated goal was to obtain and provide ABC News with a news-ready recording of Poroshenko publicly criticizing Manafort just days after he joined Trump's campaign, which supports the conclusion that Chalupa shared and advanced Miranda's purpose of depicting Trump's campaign in a negative light and thereby harming Trump's electoral prospects. The facts thus indicate that Chalupa presented, and the DNC attempted to use, a perceived opportunity to attack Trump by exposing a recently-hired Trump campaign advisor's alleged history of activities advancing Russia's interests in Ukraine.

Chalupa argues that her intention in raising concerns about Manafort with the DNC, as well as in asking Poroshenko to respond to a press question about Manafort, was to bring public attention to the national security threat that Manafort posed, which, by implication, would undercut the argument that she was acting for the purpose of influencing a federal election: She contends that she would have contacted the Ukrainian Embassy to request that Poroshenko take a question on Manafort "regardless of ever talking to Luis Miranda, wearing my national security hat, [as a] Ukrainian-American activist."<sup>98</sup> Certain aspects of Chalupa's March 30, 2016, email to Shulyar support these contentions.<sup>99</sup>

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<sup>98</sup> Chalupa Dep. at 218:22–219:4; *see id.* at 218:7–219:12 ("And I would have done this 100 percent with or without ever talking to anyone at the DNC.").

<sup>99</sup> For instance, Chalupa's email states: "The Ukrainian diaspora, regardless of political party affiliation[,] is very concerned about Trump and now especially given his connection to Manafort. This will give them an opportunity to help Poroshenko's administration by finding a common enemy for all to focus on – Manafort/Putin . . . . If President Poroshenko does [address the Manafort question], we will deliver a united Ukrainian diaspora, as well as the Polish Americans, Turks, Hungarians and others who will be ready to amplify this message. I will get the Democratic Presidential candidates aware and engaged and the Republicans." Chalupa Dep., Ex. 7 at AC000307.

1           These contentions, however, do not negate the clear evidence that Chalupa determined to  
2   raise and pursue the Manafort issue with the DNC, a national political party committee with an  
3   overarching purpose of advancing Democratic candidates, when she contacted Poroshenko's  
4   team to request that he express his concerns about Manafort. Indeed, Chalupa agreed in her  
5   sworn deposition that it was fair to say that she had "mixed motivations" in terms of pursuing the  
6   Manafort issue with the DNC, such that harming Trump's campaign was at least one of her  
7   motivations.<sup>100</sup> When she forwarded Reynolds and Dacey the news report about Manafort  
8   joining the Trump campaign, she acknowledges commenting to the effect of "this is everything  
9   to take down Trump."<sup>101</sup> That she immediately forwarded the report of Manafort's hiring to  
10   senior DNC officials and characterized it as an opportunity to "take down Trump" indicates that  
11   Chalupa intended for the DNC to make it an electoral issue. Chalupa's contemporaneous  
12   statement, as well as the timing of her actions, thus supports the conclusion that when she  
13   subsequently asked Poroshenko to convey Ukraine's concerns about Manafort, Chalupa had the  
14   requisite electoral purpose to solicit a "contribution" under the Act.

15           Moreover, the record supports the conclusion that the Ukrainian Embassy perceived the  
16   electoral purpose of Chalupa's request — *i.e.*, that Chalupa was asking Poroshenko to use his  
17   office and resources to prepare and deliver a negative message about Manafort, only days after  
18   Manafort joined the Trump campaign, for the purpose of influencing the 2016 presidential  
19   election — and thus understood that complying with Chalupa's request would risk interfering

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<sup>100</sup> Chalupa Dep. at 185 ("Q: [W]ould it be fair to say that you sort of had mixed motivations at that point?  
A: "I just — you could see it — I could see — you know, could definitely say it that way. You could also say it in  
another way, which is what I really thought, is that he was going to — he was going to steal the election from the  
[R]epublicans, too.").

<sup>101</sup> Chalupa Aff. at 21–22; Chalupa Dep. at 181:4–189:5; *see id.* at 186:15–16 ("When he hired Manafort, I  
opposed Trump.").



1 with a U.S. presidential election. As an initial matter, the Embassy previously knew that  
2 Chalupa worked for the DNC: According to Shulyar, Chalupa had “mentioned that she was  
3 involved part-time with the Democratic National Committee and was interested in reaching out  
4 to the Ukrainian Embassy in her capacity [as] the DNC Ethnic Coordination Council  
5 coordinator.”<sup>102</sup> And even though Shulyar states that she “do[es] not remember anything  
6 indicating they [Chalupa’s requests regarding Manafort] were dictated or encouraged by the  
7 DNC,”<sup>103</sup> the request itself (Chalupa’s March 30, 2016, email to Shulyar) contained multiple  
8 references to the 2016 election and Trump’s campaign, and Chalupa indicated that she would  
9 “get the Democratic Presidential candidates aware and engaged” if Poroshenko made the  
10 Manafort statement.<sup>104</sup> Shulyar asserts that she and Embassy staff, “realizing the risks” of  
11 becoming embroiled in a sensitive U.S. political issue, ignored Chalupa’s request and, in fact,  
12 endeavored to prevent Poroshenko from facing any question regarding Manafort by requiring  
13 that the questions at his public event at the U.S. Capitol be submitted beforehand.<sup>105</sup>

14 The evidence in the record supports the overall conclusion that when Trump’s campaign  
15 hired Manafort, Chalupa sought to seize a perceived opportunity to damage Trump’s electoral  
16 prospects by asking Poroshenko, as the then-president of Ukraine, to prepare and convey a  
17 negative message about Manafort, which the DNC made arrangements to distribute in the press

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<sup>102</sup> Shulyar Written Statement at 2.

<sup>103</sup> *Id.* at 3.

<sup>104</sup> Chalupa Dep., Ex. 7 at AC000307.

<sup>105</sup> Shulyar Written Statement at 3.

1 to amplify the message's electoral impact. As such, Chalupa solicited the Ukrainian  
2 government's assistance "for the purpose of influencing" the 2016 election.

#### 3 **IV. CONCLUSION**

4 Chalupa solicited the Ukrainian government and then-President Poroshenko to publicly  
5 disseminate the allegation that Manafort, a recently-hired Trump campaign official, previously  
6 helped advance Russian interests in Ukraine.<sup>106</sup> By thus requesting Poroshenko's assistance,  
7 which would have involved the use of Ukrainian government resources to benefit the DNC and  
8 its presidential candidate in the 2016 elections, Chalupa solicited a prohibited foreign national in-  
9 kind contribution. Accordingly, this Office is prepared to recommend that the Commission find  
10 probable cause to believe that Chalupa and C&A violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R.  
11 § 110.20(g).

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<sup>106</sup> Because the record indicates that Chalupa solicited a foreign national contribution, we are prepared to recommend that the Commission find probable cause to believe Chalupa violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g). However, Chalupa's actions also indicate that she violated the Act by "knowingly provid[ing] substantial assistance" in the DNC's solicitation of a prohibited foreign national contribution, under 11 C.F.R. § 110.20(h). Because the same conduct supports both theories, to avoid duplicative findings, we are prepared to recommend that the Commission find probable cause to believe Chalupa violated 11 C.F.R. § 110.20(h) if the Commission does not find probable cause to believe Chalupa violated 11 C.F.R. § 110.20(g).

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