

BEFORE THE FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

13 This matter arose from a Complaint alleging that, during the 2016 election cycle,
14 Alexandra Chalupa, acting as an agent of the Democratic National Committee and William
15 Derrough in his official capacity as treasurer (“DNC”), solicited a prohibited foreign national
16 contribution, and thereby violated the Federal Election Campaign Act of 1971, as amended (the
17 “Act”), and Commission regulations by requesting that then-President of Ukraine Petro
18 Poroshenko publicly express a concern about Paul Manafort, an American political consultant,
19 joining the campaign of 2016 presidential candidate Donald J. Trump.¹ The Commission, on
20 July 25, 2019, found reason to believe that the DNC violated 52 U.S.C. § 30121(a)(2) and
21 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving an in-kind contribution from a
22 foreign national.²

23 Pursuant to the Commission's reason-to-believe determination, this Office opened an
24 investigation. The information obtained through the investigation indicates that shortly after
25 Manafort became an advisor to Trump's presidential campaign, Chalupa, acting at the behest of
26 the DNC and in conjunction with DNC Communications Director Luis Miranda, asked her
27 contact at the Ukrainian Embassy to send a message to Poroshenko, a foreign national and the

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

² Certification ¶ 1, MUR 7271 (July 29, 2019); see Factual & Legal Analysis at 7, MUR 7271 (DNC).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 2 of 27

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."³ 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 the DNC 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 the DNC
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 that the DNC 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.⁴ Chalupa is a Ukrainian-American activist and president
18 of Chalupa & Associates, LLC ("C&A").⁵ Chalupa has worked for the DNC or affiliated
19 organizations off and on since 2005,⁶ including as senior advisor to Acting DNC Chairwoman

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

⁴ DNC, Amend. Statement of Org. (Nov. 6, 2020).

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

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

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 3 of 27

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

7 In addition to her work for the DNC, Chalupa, who is of Ukrainian heritage, is an activist
 8 in the Ukrainian-American community.¹¹ As early as 2008, Chalupa developed an interest in the
 9 role that Manafort, then a U.S. political consultant, played in Ukrainian politics.¹² Chalupa states
 10 that she viewed Manafort, who advised former Ukrainian President Viktor Yanukovych, as a
 11 national security risk to Ukraine and the United States.¹³ By 2013, as part of her activist work,
 12 Chalupa began conducting research on Manafort and warning individuals in the Ukrainian-
 13 American community about his activities.¹⁴ During the 2016 election cycle, shortly after
 14 Manafort became a Trump campaign advisor, Chalupa approached the Ukrainian Embassy at the

⁷ *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).

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

⁹ 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; 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).

¹⁰ Chalupa Dep., Ex. 3 at AC000039, AC000050.

¹¹ Chalupa Aff. at 1, 3–7.

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

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

¹⁴ 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").

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 4 of 27

1 behest of a DNC official to request that then-Ukrainian President Poroshenko make a public
 2 statement exposing Manafort's prior activities in Ukraine.¹⁵

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

4 Chalupa states that, in late 2015, she grew concerned that Manafort was or would be
 5 involved with Trump's 2016 presidential campaign.¹⁶ At the time, Trump was a Republican
 6 candidate in the 2016 presidential primaries. On January 12, 2016, Chalupa recalls meeting with
 7 Lindsey Reynolds, Chief Operating Officer (COO) of the DNC, and informing Reynolds "that I
 8 was seeing strong indications that Mr. Putin was trying to impact the 2016 election and that if I
 9 was correct, Mr. Manafort was going to work to help elect Mr. Trump."¹⁷

10 On March 28, 2016, *The New York Times* reported that Manafort had joined the Trump
 11 campaign; he initially served as Campaign Convention Manager but would later be promoted to
 12 Campaign Chair and Chief Strategist.¹⁸ Chalupa states that soon after she heard the news of

¹⁵ During the investigation of this matter, Chalupa also asserted that a foreign national had approached two of her friends seeking information about her and offered to pay them money. We questioned both individuals, who did not share any such recollection. Chalupa's potential inconsistency on this point, however, does not undermine the statements in her affidavit and at her deposition regarding outreach to the Ukrainian Embassy on behalf of the DNC, because her detailed account is corroborated by the email record and a written statement submitted by the Ukrainian diplomat who received the request from Chalupa to be sent to President Poroshenko.

¹⁶ Chalupa Dep. at 125:3–9.

¹⁷ Chalupa Aff. at 21; *see* Chalupa Dep. at 159:18–165:13.

¹⁸ 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.

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 5 of 27

1 Manafort's hire, she texted Reynolds and Amy Dacey, Chief Executive Officer (CEO) of the
 2 DNC.¹⁹ Chalupa does not possess the original text message, but stated under oath that she wrote
 3 "something to the effect [of], 'This is everything to take down Trump.' I included the link to the
 4 article and recall explaining to them that if Mr. Trump did not fire Manafort immediately then it
 5 was a direct indication that he was openly receiving support from Mr. Putin . . ."²⁰ Chalupa
 6 states that Dacey told her to speak with Luis Miranda, the DNC's Communications Director.²¹

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

9 The next day, March 29, 2016, Chalupa recalls speaking with Miranda regarding her
 10 "concerns about Mr. Manafort's presence on the Trump campaign."²² Chalupa states that
 11 Miranda asked her to brief the communications team about Manafort, which she did, and asked
 12 her to send him information about Manafort.²³ Later that day, Chalupa sent Miranda an email
 13 summarizing Manafort's work in Ukraine and Trump's business interests in Russia along with a
 14 list of related news articles.²⁴

15 At around the same time that Chalupa was communicating with DNC leadership about
 16 Manafort, Poroshenko, then-President of Ukraine, visited Washington, DC, to attend the 2016

¹⁹ Chalupa Aff. at 21.

²⁰ *Id.*; *see* Chalupa Dep. at 181:4–189:5.

²¹ Chalupa Aff. at 21.

²² *Id.* at 22; *see* Chalupa Dep. at 192:18–194:9.

²³ 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").

²⁴ Email from Chalupa to Miranda (Mar. 29, 2016, 12:42 PM), Chalupa Dep., Ex. 6 at AC000079–88.

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 6 of 27

1 Nuclear Security Summit.²⁵ Chalupa states that Miranda was aware of Poroshenko's visit and
 2 that Miranda asked her, possibly during their discussion on March 29, 2016, to "check with
 3 someone, some of his people, maybe the embassy and some contact who was doing an event that
 4 could ask — get a question for ABC News."²⁶ The next day, March 30, 2016, Miranda emailed
 5 Chalupa: "Any luck getting the Pres to address this?"²⁷

6 Approximately two hours after receiving the follow-up email from Miranda on March 30,
 7 2016, Chalupa sent an email from her personal account to Oksana Shulyar, an official at the
 8 Ukrainian Embassy in Washington, DC, with the subject: "Important Press Opportunity."²⁸ In
 9 the email, Chalupa begins by asking Shulyar: "[I]f there is opportunity to get this message to the
 10 Ambassador and President Poroshenko's Communication[s] Director, please do so."²⁹ Chalupa
 11 continues:

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

²⁵ 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).

²⁶ 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.

²⁷ 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").

²⁸ 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).

²⁹ Chalupa Dep., Ex. 7 at AC000307.

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 7 of 27

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

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

13 If you are able to get this information to the Ambassador to pass
 14 along to President Poroshenko's communications team, it is
 15 important. At the very least for them to be aware of the
 16 opportunity.³⁰

17 Chalupa copied , a Ukrainian-American activist who Chalupa describes
 18 as "either an independent or a [R]epublican" and "not a [D]emocrat."³¹ Chalupa contends that "I
 19 would have done this on my own regardless of ever talking to Luis Miranda, wearing my
 20 national security hat, Ukrainian-American activist, I would have sent this email."³²

21 Four minutes after emailing Shulyar, her contact at the Ukrainian Embassy, Chalupa
 22 replied to Miranda, stating: "The Ambassador has the messaging."³³ In her email, Chalupa
 23 informed Miranda about an event that Poroshenko would be attending that evening at the U.S.

³⁰ *Id.* (emphasis added).

³¹ 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).

³² *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.").

³³ 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 implied that it's a Manafort-related question.").

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 8 of 27

1 Capitol Visitor Center and how she planned for Poroshenko to receive a question about
 2 Manafort.³⁴ Chalupa told Miranda: “I have the organizer of tonight’s event following up with
 3 them [the Ukrainian Embassy] in person in [the] next hour. I will be at the event an hour early to
 4 help follow up in person.”³⁵ Later that evening, on March 30, 2016, Chalupa sent another email
 5 to Miranda explaining that the event would involve a “Q&A session with about ten media outlets
 6 at this event with the President” and that she had “secured about a dozen people to ask the
 7 question so hoping one hits.”³⁶ However, at the event, Shulyar told Chalupa that Poroshenko
 8 would not take questions on Manafort.³⁷ Chalupa recalls that Shulyar indicated “that they [the
 9 Ukrainian government] did not want to get involved at all . . . [regarding] anything related to
 10 Paul Manafort or the U.S. election.”³⁸ Shulyar states that she and the Embassy “ignored this
 11 request” for Poroshenko to answer a question about Manafort at the event, “and, realizing the
 12 risks, arranged a Q&A session in the manner of written cards, so that such politically sensitive
 13 questions would never reach the President.”³⁹

14 The next morning, on March 31, 2016, Miranda emailed Chalupa to ask whether her
 15 efforts to get Poroshenko to answer a question about Manafort were successful, writing: “I
 16 pitched ABC on it last night. If he said something is it on video or recorded? If you got it asked

³⁴ 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).

³⁵ Email from Chalupa to Miranda (Mar. 30, 2016, 3:23 PM), Chalupa Dep., Ex. 6 at AC000079.

³⁶ Email from Chalupa to Miranda (Mar. 30, 2016, 7:12 PM), Chalupa Dep., Ex. 8 at AC000089.

³⁷ Chalupa Aff. at 22; Chalupa Dep. at 229:19–22, 241:2–17.

³⁸ 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.”).

³⁹ Shulyar Written Statement at 3 (June 9, 2020).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 9 of 27

1 and he said anything I'll pass it along to ABC.”⁴⁰ Chalupa informed Miranda that the organizer
 2 “didn't select that question from the stack he received from the audience and there was no press
 3 Q and A opportunity.”⁴¹ She added, moreover, that she “spoke to Poroshenko's team after the
 4 event and . . . he [Poroshenko] definitely isn't comfortable bringing up the issue.”⁴² She
 5 nevertheless added that she would be “[h]eading to his [Poroshenko's] morning event now with
 6 the Ukrainian diaspora to see if there is press there I may know who can ask him the question.”⁴³

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

10 **III. LEGAL ANALYSIS**

11 The record before the Commission indicates that the DNC, acting through its officials
 12 and agents, asked a foreign national, the head of a foreign government, to use the authority of his
 13 office and expend resources to prepare and publicly disseminate a negative message about a
 14 recently-hired Trump campaign official in order to influence the 2016 presidential election.

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

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

⁴¹ Email from Chalupa to Miranda (Mar. 31, 2016, 9:52 PM), Chalupa Dep., Ex. 8 at AC000089.

⁴² *Id.*

⁴³ *Id.*

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 10 of 27

1 requesting, or recommending that a foreign national make a contribution; and Section III.C
 2 explains that what Chalupa and the DNC solicited was a contribution — *i.e.*, a thing of value
 3 sought for the purpose of influencing a federal election.

4 **A. The Foreign National Prohibition**

5 The Act and Commission regulations prohibit any “foreign national” from directly or
 6 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
 7 independent expenditure, or disbursement, in connection with a federal, state, or local election.⁴⁴
 8 Moreover, the Act prohibits any person from soliciting, accepting, or receiving any such
 9 contribution or donation from a foreign national,⁴⁵ and Commission regulations implementing
 10 that provision further prohibit any person from knowingly providing substantial assistance in
 11 soliciting, making, accepting, or receiving any such contribution or donation.⁴⁶

12 The Act’s definition of “foreign national” includes an individual who is not a citizen or
 13 national of the United States and who is not lawfully admitted for permanent residence,⁴⁷ as well
 14 as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes “a government

⁴⁴ 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).

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 52 U.S.C. § 30121(b)(2).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 11 of 27

1 of a foreign country.”⁴⁸ A “contribution” includes “any gift, subscription, loan, advance, or
 2 deposit of money or anything of value made by any person for the purpose of influencing any
 3 election for Federal office.”⁴⁹ Under Commission regulations, “anything of value” includes all
 4 in-kind contributions, which include “the provision of any goods or services without charge or at
 5 a charge that is less than the usual and normal charge for such goods or services.”⁵⁰

6 Commission regulations also provide that to “solicit” means to “ask, request, or
 7 recommend, explicitly or implicitly, that another person make a contribution, donation, transfer
 8 of funds, or otherwise provide anything of value.”⁵¹ Furthermore:

9 A solicitation is an oral or written communication that, construed
 10 as reasonably understood in the context in which it is made,
 11 contains a clear message asking, requesting, or recommending that
 12 another person make a contribution, donation, transfer of funds, or
 13 otherwise provide anything of value. A solicitation may be made
 14 directly or indirectly. The context includes the conduct of persons
 15 involved in the communication. A solicitation does not include
 16 mere statements of political support or mere guidance as to the
 17 applicability of a particular law or regulation.⁵²

18 Commission regulations provide examples of statements that would qualify as
 19 solicitations, including but not limited to, “[t]he candidate will be very pleased if we can count
 20 on you for \$10,000”⁵³ and “I will not forget those who contribute at this crucial stage.”⁵⁴
 21 However, the Commission has “emphasized that the definition . . . is not tied in any way to a

⁴⁸ *Id.* § 30121(b)(1); 22 U.S.C. § 611(b)(1).

⁴⁹ 52 U.S.C. § 30101(8)(A).

⁵⁰ 11 C.F.R. § 100.52(d).

⁵¹ *Id.* § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)).

⁵² *Id.* § 300.2(m).

⁵³ *Id.* § 300.2(m)(2)(xii).

⁵⁴ *Id.* § 300.2(m)(2)(xi).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 12 of 27

1 candidate's use of particular 'magic words' or specific phrases."⁵⁵ The Commission has also
 2 explained that communications must be reasonably construed in context, such that "the
 3 Commission's objective standard hinges on whether the recipient should have reasonably
 4 understood that a solicitation was made."⁵⁶

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

7 The record in this matter indicates that Miranda, a DNC official, and Chalupa, a DNC
 8 consultant, sought to have then-Ukrainian President Poroshenko answer a question from the
 9 press with a response intended to convey a negative message regarding Manafort shortly after
 10 Manafort became a campaign advisor for 2016 presidential candidate Trump.⁵⁷ In so doing,
 11 Miranda and Chalupa solicited Poroshenko, whom they knew to be a foreign national and the
 12 head of a foreign government, in that they expressly asked, requested, or recommended that

⁵⁵ 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 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.

⁵⁶ 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").

⁵⁷ The record before the Commission indicates that Chalupa had actual authority to act on the DNC's behalf because she was operating pursuant to express directions from a DNC official, and was therefore acting as an agent of the DNC when she contacted the Ukrainian Embassy to seek Poroshenko's assistance. *See* Restatement (Third) of Agency 3d § 300.1 (2006) ("Actual authority . . . is created by a principal's manifestation to an agent that, as reasonably understood by the agent, expresses the principal's assent that the agent take action on the principal's behalf."); *see also* 11 C.F.R. § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)) (prohibiting the solicitation of a foreign national contribution "directly or indirectly" (emphasis added); *cf.* 11 C.F.R. § 300.2(b)(1)(i) (defining "agent" in the context of soft-money rules as "any person who has actual authority, either express or implied, . . . [t]o solicit . . . any contribution, donation, or transfer of funds").

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 13 of 27

1 Poroshenko and his staff prepare and convey this negative messaging about Trump's campaign
 2 advisor, which would help the DNC in the 2016 election. The facts show that Chalupa was
 3 acting at the express direction of Miranda, who told her to "check with someone, some of his
 4 people, maybe the embassy" and, followed up by asking whether she had "[a]ny luck getting the
 5 Pres to address [the Manafort question]?"⁵⁸

6 Roughly two hours after Miranda's follow-up email on March 30, 2016, Chalupa emailed
 7 Oksana Shulyar, her contact at the Ukrainian Embassy in Washington, DC, with a "message [for]
 8 the [Ukrainian] Ambassador and President Poroshenko's Communication[s] Director."⁵⁹
 9 Chalupa's email informed Shulyar that Poroshenko would likely be asked a question about
 10 Manafort, and repeatedly referred to the question as an "opportunity" for Poroshenko to answer
 11 in a particular way that "exposes Paul Manafort for the problems he continues to cause
 12 Ukraine."⁶⁰ Chalupa specifically stated that if Poroshenko made the negative statement about
 13 Manafort, Chalupa would "get Democratic presidential candidates aware and engaged."⁶¹

14 Taken in context and construed reasonably under the Commission's objective test,
 15 Chalupa's email to Shulyar was a solicitation because it constituted a "clear message asking,
 16 requesting, or recommending"⁶² that the then-Ukrainian president and his staff prepare for and
 17 answer a question regarding Manafort by providing a negative message about Manafort's
 18 activities in Ukraine. The overall tone and content of Chalupa's statements, read in context,
 19 reflect that the potential Manafort question was not just something for Poroshenko and his staff

⁵⁸ Chalupa Dep. at 206:21–208:19; Chalupa Dep., Ex. 6 at AC00079.

⁵⁹ Chalupa Dep., Ex. 7 at AC000307.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 11 C.F.R. § 300.2(m).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 14 of 27

1 to be aware of, but an “opportunity” to seize by conveying a specific message about Manafort
 2 which, if provided, would prompt additional actions, including Chalupa getting “the Democratic
 3 Presidential candidates aware and engaged” with that message.⁶³

4 Accordingly, the recipients of Chalupa’s email “should have reasonably understood” that
 5 Chalupa was asking Poroshenko to convey a particular message rather than merely alerting them
 6 to a potential situation they might need to address.⁶⁴ Indeed, Shulyar asserts that she had such an
 7 understanding: She and her staff ignored Chalupa’s proposal and, in fact, “realizing the risks” of
 8 Poroshenko facing a question about Manafort in a public setting, took measures to thwart the
 9 possibility.⁶⁵ Nevertheless, Chalupa regularly apprised Miranda of her efforts to contact
 10 Poroshenko’s advisors and have Poroshenko issue a prepared response to the Manafort
 11 question.⁶⁶ In fact, the morning after the March 30, 2016, event where Embassy staff told her
 12 that Poroshenko “isn’t comfortable bringing up the issue” of Manafort, Chalupa wrote to assure
 13 Miranda that she would attend Poroshenko’s morning event to “see if there is press there . . . who
 14 can ask him the question.”⁶⁷ These facts provide additional context supporting the conclusion
 15 that Chalupa, acting as the DNC’s agent, solicited Poroshenko.⁶⁸

16 Poroshenko ultimately did not receive a question on Manafort at the U.S. Capitol Visitor
 17 Center event and does not otherwise appear to have conveyed the message about Manafort that

⁶³ Chalupa Dep., Ex. 7 at AC000307.

⁶⁴ Solicitation E&J, 71 Fed. Reg. at 13,929.

⁶⁵ Shulyar Written Statement at 3.

⁶⁶ Chalupa Dep., Ex. 6 at AC000079; Email from Chalupa to Miranda (Mar. 30, 2016, 7:12 PM), Chalupa Dep., Ex. 8 at AC000089.

⁶⁷ Email from Chalupa to Miranda (Mar. 31, 2016, 9:52 AM), Chalupa Dep., Ex. 8 at AC000089.

⁶⁸ See 11 C.F.R. § 300.2(m).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 15 of 27

1 Chalupa communicated to Embassy staff. However, the question at issue is whether the DNC,
 2 through Chalupa, solicited Poroshenko for a contribution — not whether Poroshenko actually
 3 provided the contribution that the DNC sought. As the record before the Commission shows, the
 4 DNC directly or indirectly asked, requested, or recommended that Poroshenko, as Ukraine's
 5 President, prepare and publicly disseminate a negative message about Manafort that could be
 6 used by the DNC to undermine an electoral opponent, Trump, including through publication in
 7 an ABC News story.

8 **C. The DNC and Chalupa Solicited an In-Kind Contribution under the Act**

9 As set forth below, the message that the DNC asked Poroshenko to convey about
 10 Manafort was a contribution under the Act because it was a thing of value sought "for the
 11 purpose of influencing" the 2016 presidential election.⁶⁹

12 1. Relevant Law

13 In defining a "contribution," the Act uses a broadly-encompassing phrase, "anything of
 14 value,"⁷⁰ which, under the Commission's regulation, includes "*all* in-kind contributions" and
 15 "the provision of *any* goods or services" at no charge or at a reduced charge.⁷¹ The regulation
 16 also provides an explicitly non-exhaustive list of examples that satisfy various campaign needs
 17 and represent a wide variety of electoral "value," such as: places to operate ("facilities"),
 18 methods of conveying a message ("advertising services"), and raw voter data ("mailing lists"), as
 19 well as physical and human resources ("supplies" and "personnel," respectively).⁷² The list of

⁶⁹ 52 U.S.C. § 30101(8)(A).

⁷⁰ *Id.*

⁷¹ 11 C.F.R. § 100.52(d)(1) (emphases added).

⁷² *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)).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 16 of 27

1 examples conveys that anything provided to a campaign that may confer a benefit, and thus
 2 potentially spare the campaign's own resources, is conceivably a thing of value.

3 The phrase “anything of value” facially contemplates a broad, case-by-case application,
 4 and in prior matters, the Commission has found that many tangible and intangible things fall
 5 within the scope of the regulatory text.⁷³ In prior matters, indicia of whether something is
 6 “anything of value” under the Act have included: (1) whether the thing may confer a benefit on
 7 the recipient campaign;⁷⁴ (2) whether political campaigns have previously used their own
 8 resources to procure the thing in question;⁷⁵ (3) whether the provision of the thing would
 9 “relieve” the campaign of an “expense it would otherwise incur” to obtain a similar benefit;⁷⁶
 10 (4) whether the provider of the thing or any third party “utilized its resources” to produce,

⁷³ See First Gen. Counsel's Report at 11–12, MUR 6651 (Murray Energy Corp., *et al.*) (listing examples).

⁷⁴ See, e.g., Advisory Op. 1990-12 at 2 (Strub for Congress) (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”).

⁷⁵ See, e.g., Advisory Op. 1990-12 at 2 (Strub for Congress) (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 (Murray Energy Corp., *et al.*) (observing that campaigns often pay advance staff to generate crowds for campaign events).

⁷⁶ 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.”).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 17 of 27

1 organize, or collect the thing provided;⁷⁷ and (5) whether the thing “may not have been publicly
2 available” for the campaign’s use absent the provider’s actions.⁷⁸

3 For instance, in Advisory Opinion 1990-12, the Commission concluded that if a
4 campaign volunteer shared the results of a poll he had previously commissioned, or even used
5 his knowledge of the poll results to provide the campaign with strategic advice, the value of the
6 poll results would be an in-kind contribution.⁷⁹ In MUR 5409, similarly, the Commission found
7 that a corporation made prohibited in-kind contributions by providing a campaign with its
8 nonpublic lists of organizations and individuals with similar political views, which the
9 corporation “utilized its resources to obtain and compile,” and which “contain[ed] information
10 that may be of value in connection with” a federal election.⁸⁰ Moreover, in the foreign national
11 context, the Commission has previously explained that a foreign national makes a prohibited
12 contribution by providing anything to a campaign that thereby “relieve[s the] campaign of the
13 expense that it would otherwise incur,” even if the item’s value “may be nominal or difficult to

⁷⁷ See, e.g., First Gen. Counsel’s Report at 10, MUR 5409 (Norquist) (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 (Norquist) (Oct. 19, 2004) (approving recommendation).

⁷⁸ Compare First Gen. Counsel’s Report at 9, MUR 5409 (Norquist) (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).

⁷⁹ Advisory Op. 1990-12 at 2.

⁸⁰ First Gen. Counsel’s Report at 10, MUR 5409 (Norquist); see Certification, MUR 5409 (Norquist) (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, acting on behalf of the DNC, 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 (DNC). 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.

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 18 of 27

1 ascertain,”⁸¹ because foreign nationals are prohibited from providing a campaign with anything
2 of *any* value.

3 2. The DNC Solicited a Thing “of Value” From a Foreign National

4 The DNC sought a thing of value from then-President Poroshenko and the Ukrainian
5 government by requesting that Poroshenko be prepared for and answer a question about
6 Manafort joining the Trump campaign by raising concerns about Manafort's past activities in
7 Ukraine. Accordingly, the DNC sought the assistance of Poroshenko and his staff in using his
8 authority to disseminate a negative message about Manafort, which was a unique, nonpublic
9 deliverable, the provision of which would have involved the use of Poroshenko's official
10 position and the use of the Ukrainian government's official resources — including, *e.g.*, the
11 personnel and supplies needed to research and draft the Manafort statement, as well as to prepare
12 Poroshenko to deliver it — to confer a potential electoral benefit on the DNC's efforts in the
13 2016 presidential election.⁸²

14 The record shows that Miranda, the DNC's Communications Director, perceived that
15 Poroshenko raising concerns about Manafort would have value in the 2016 election. Miranda
16 instructed Chalupa to send a message to Poroshenko through her connections with the Ukrainian
17 Embassy, and apparently planned to send recorded video footage of Poroshenko's response to

⁸¹ 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 (DNC).

⁸² 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).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 19 of 27

1 ABC News, ostensibly trying to drive broader coverage of the issue.⁸³ Moreover, for
 2 Poroshenko to provide the desired assistance, Ukrainian government staff would have had to
 3 expend resources to prepare him to deliver the requested negative message regarding Manafort.⁸⁴

4 The assistance that the DNC asked Poroshenko to provide had a direct electoral nexus
 5 with the DNC's efforts in the 2016 elections: It was an amplification of a negative allegation
 6 about Manafort — *i.e.*, that Manafort had previously advanced the interests of Russia and
 7 Vladimir Putin in Ukraine — immediately after his hiring as an advisor by the Trump campaign,
 8 which could negatively impact the Trump campaign and thus generally advance the DNC's
 9 electoral interests.⁸⁵ The desired Ukrainian assistance would have thus benefited the DNC by
 10 spreading potentially damaging allegations about Manafort as an advisor to the Trump campaign,
 11 much like a damaging narrative about an opponent's campaign propagated by paid electioneering
 12 activity.⁸⁶

13 However, unlike using campaign communications and other paid efforts to disseminate
 14 this damaging narrative, which would have involved spending campaign funds and reporting

⁸³ 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.

⁸⁴ See Advisory Op. 2007-22 at 6.

⁸⁵ 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").

⁸⁶ 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.").

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 20 of 27

1 those expenditures in publicly filed disclosure reports,⁸⁷ the DNC, through Chalupa, asked that
 2 Poroshenko use the authority of his office and the official resources of the Ukrainian government
 3 to provide that potential electoral benefit at no cost to the DNC and with no public disclosure of
 4 the resulting expenses by the committee.⁸⁸ Chalupa directed her message to “President
 5 Poroshenko’s communications *team*” and stated that “it is important . . . for *them* to be aware of
 6 the opportunity,” indicating awareness that acquiescence to the request would likely involve the
 7 effort (albeit potentially limited effort) of Poroshenko and his official government advisors.⁸⁹
 8 Moreover, she requested that Poroshenko provide his response at an official event that he was
 9 attending on behalf of the Ukrainian government, where he would have been acting in his official
 10 capacity as Ukraine’s president.⁹⁰

11 An official presidential statement regarding Manafort’s prior efforts to advance Russian
 12 interests in Ukraine would be a unique deliverable that only Poroshenko, as the sitting president

⁸⁷ See 52 U.S.C. § 30101(9)(A) (defining “expenditure”); *id.* § 30104(b) (mandating periodic disclosure of all expenditures).

⁸⁸ 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).

⁸⁹ Chalupa Dep., Ex. 7 at AC000307 (emphases added).

⁹⁰ 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).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 21 of 27

1 of Ukraine, could deliver; it was not readily or publicly available for the DNC to otherwise
 2 obtain, absent its provision by Poroshenko and the Ukrainian government.⁹¹ Although Chalupa
 3 and the DNC could have attempted to disseminate a similar message regarding Manafort's links
 4 to Russia around the time he was hired by Trump's campaign, Poroshenko assisting the DNC by
 5 doing so would have strengthened the impact of the statement with the authority of his official
 6 position, which was a part of the deliverable's potential electoral benefit. As such, Poroshenko's
 7 assistance would have involved the use of his official authority, and the Ukrainian government's
 8 resources, to support the DNC, and thus would have been a thing of value under the Act and
 9 Commission regulations.⁹²

10 3. The DNC Sought Poroshenko's Assistance "for the Purpose of
 11 Influencing" the 2016 Presidential Election

12 In analyzing whether the provision of a thing of value results in an in-kind contribution,⁹³
 13 the Commission has concluded that "the question under the Act is whether" the thing of value
 14 was "provided for the purpose of influencing a federal election," not simply whether it "provided
 15 a benefit to [the recipient's] campaign."⁹⁴ The facts of this case show that the DNC's purpose in
 16 requesting that Poroshenko convey a negative message about Manafort was to obtain footage
 17 that they could send to ABC News, which would amplify negative messaging about Manafort's
 18 ties to Russia and, by extension, undermine the Trump campaign, to the benefit of the DNC and

⁹¹ See First Gen. Counsel's Report at 10, MUR 5409 (Norquist) (discussing the provision of nonpublic information as an in-kind contribution).

⁹² *Id.*

⁹³ 52 U.S.C. §§ 30101(8)(A)(i); 30101(9)(A)(i).

⁹⁴ Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 22 of 27

1 Trump's general-election opponent, Hillary Clinton. Accordingly, the record indicates that the

2 DNC's purpose was to influence the 2016 presidential election.

3 Electoral purpose may be facially apparent — such as with payments to solicit
 4 contributions or for public communications that expressly advocate for the election or defeat of a
 5 specific candidate — or inferred from the surrounding circumstances of a transaction.⁹⁵ When
 6 electoral purpose is not facially apparent, the Commission has concluded that a contribution or
 7 expenditure results when, *inter alia*, the thing of value potentially advances the recipient's
 8 campaign.⁹⁶ Conversely, the Commission has previously found that activity by or in connection
 9 with a federal candidate that is undertaken for a non-electoral purpose, including to advance a

⁹⁵ 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).

⁹⁶ 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”).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 23 of 27

1 commercial interest,⁹⁷ fulfill the obligations of holding federal office,⁹⁸ or engage in non-
 2 candidate-oriented election litigation,⁹⁹ does not necessarily result in a “contribution” or
 3 “expenditure,” even if such activity confers a benefit on a federal candidate or otherwise impacts
 4 a federal election.

5 Here, the record indicates that the DNC acted for the electoral purpose of undermining
 6 the Trump campaign (and thus advancing the campaign of the DNC’s own candidates, including
 7 Clinton). Miranda’s plainly stated goal was to obtain and provide ABC News with a news-ready
 8 recording of Poroshenko publicly criticizing Manafort just days after he joined Trump’s
 9 campaign, which supports the conclusion that Miranda’s purpose was to depict Trump’s
 10 campaign in a negative light and thereby harm Trump’s electoral prospects. The facts indicate
 11 that Chalupa presented, and the DNC attempted to use, a perceived opportunity to attack Trump

⁹⁷ 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”).

⁹⁸ 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).

⁹⁹ 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”).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 24 of 27

1 by exposing a recently-hired Trump campaign advisor's alleged history of activities advancing
2 Russia's interests in Ukraine. There is no basis in the record to conclude that the DNC acted
3 with any non-electoral purpose. Even if Chalupa herself was partly motivated to raise awareness
4 about Manafort's past by her personal activism on behalf of the Ukrainian-American community,
5 which certain aspects of her March 30, 2016, email to Shulyar support,¹⁰⁰ her asserted personal
6 motivation cannot credibly be attributed to the DNC given the information regarding Miranda's
7 planned use of the negative footage.

8 Chalupa states that her intention in raising concerns about Manafort with the DNC, as
9 well as in asking Poroshenko to respond to a press question about Manafort, was to bring public
10 attention to the national security threat that Manafort posed, which, by implication, would
11 undercut the argument that she was acting for the purpose of influencing a federal election: She
12 contends that she would have contacted the Ukrainian Embassy to request that Poroshenko take a
13 question on Manafort "regardless of ever talking to Luis Miranda, wearing my national security
14 hat, Ukrainian-American activist."¹⁰¹

15 These contentions, however, do not negate the clear evidence that Chalupa determined to
16 raise and pursue the Manafort issue with the DNC, a national political party committee with an
17 overarching purpose of advancing Democratic candidates, and was directly acting on behalf of
18 Miranda, a DNC official, when she contacted Poroshenko's team to request that he express his

¹⁰⁰ 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.

¹⁰¹ 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.").

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 25 of 27

1 concerns about Manafort. Indeed, Chalupa agreed in her sworn deposition that it was fair to say
 2 that she had “mixed motivations” in terms of pursuing the Manafort issue with the DNC, such
 3 that harming Trump’s campaign was at least one of her motivations.¹⁰² When she forwarded
 4 Reynolds and Dacey the news report about Manafort joining the Trump campaign, she
 5 acknowledges commenting to the effect of “this is everything to take down Trump.”¹⁰³ That she
 6 immediately forwarded the report of Manafort’s hiring to senior DNC officials and characterized
 7 it as an opportunity to “take down Trump” indicates that Chalupa intended for the DNC to make
 8 it an electoral issue. Chalupa’s contemporaneous statement, as well as the timing of her actions,
 9 thus supports the conclusion that when she subsequently asked Poroshenko, at the DNC’s behest,
 10 to convey Ukraine’s concerns about Manafort, the DNC and Chalupa had the requisite electoral
 11 purpose to solicit a “contribution” under the Act.

12 Moreover, the record supports the conclusion that the Ukrainian Embassy perceived the
 13 electoral purpose of Chalupa’s request — *i.e.*, that Chalupa was asking Poroshenko to use his
 14 office and resources to prepare and deliver a negative message about Manafort, only days after
 15 Manafort joined the Trump campaign, for the purpose of influencing the 2016 presidential
 16 election — and thus understood that complying with Chalupa’s request would risk interfering
 17 with a U.S. presidential election. As an initial matter, the Embassy previously knew that
 18 Chalupa worked for the DNC: According to Shulyar, Chalupa had “mentioned that she was
 19 involved part-time with the Democratic National Committee and was interested in reaching out

¹⁰² 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.”).

¹⁰³ Chalupa Aff. at 21–22; *see* Chalupa Dep. at 181:4–189:5; *see also id.* at 186:15–16 (“When he hired Manafort, I opposed Trump.”).

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 26 of 27

1 to the Ukrainian Embassy in her capacity [as] the DNC Ethnic Coordination Council
2 coordinator.”¹⁰⁴ And even though Shulyar states that she “do[es] not remember anything
3 indicating they [Chalupa’s requests regarding Manafort] were dictated or encouraged by the
4 DNC,”¹⁰⁵ the request itself (Chalupa’s March 30, 2016, email to Shulyar) contained multiple
5 references to the 2016 election and Trump’s campaign, and Chalupa indicated that she would
6 “get the Democratic Presidential candidates aware and engaged” if Poroshenko made the
7 Manafort statement.¹⁰⁶ Shulyar asserts that she and Embassy staff, “realizing the risks” of
8 becoming embroiled in a sensitive U.S. political issue, ignored Chalupa’s request and, in fact,
9 endeavored to prevent Poroshenko from facing any question regarding Manafort by requiring
10 that the questions at his public event at the U.S. Capitol be submitted beforehand.¹⁰⁷

11 The evidence in the record supports the overall conclusion that when Trump’s campaign
12 hired Manafort, the DNC, at Chalupa’s suggestion, tried to seize a perceived opportunity to
13 damage Trump’s electoral prospects by asking Poroshenko, as the then-president of Ukraine, to
14 prepare and convey a negative message about Manafort, which the DNC made arrangements to
15 distribute in the press to amplify the message’s electoral impact. As such, the DNC solicited the
16 Ukrainian government’s assistance “for the purpose of influencing” the 2016 election.

17 **IV. CONCLUSION**

18 The DNC, through its agent Chalupa, solicited the Ukrainian government and then-
19 President Poroshenko to publicly disseminate the allegation that Manafort, a recently-hired

¹⁰⁴ Shulyar Written Statement at 2.

¹⁰⁵ *Id.* at 3.

¹⁰⁶ Chalupa Dep., Ex. 7 at AC000307.

¹⁰⁷ Shulyar Written Statement at 3.

MUR 7271 (Democratic National Committee)

General Counsel's Brief

Page 27 of 27

1 Trump campaign official, previously helped advance Russian interests in Ukraine. By thus
2 requesting Poroshenko's assistance, which would have involved the use of Ukrainian
3 government resources to benefit the DNC and its presidential candidate in the 2016 elections, the
4 DNC solicited a prohibited foreign national in-kind contribution. Accordingly, this Office is
5 prepared to recommend that the Commission find probable cause to believe that the DNC
6 violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).

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9 January 13, 2021

10 Date

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