

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3 In the Matter of )

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5 Democratic National Committee and William ) MUR 7271

6 Derrough in his official capacity as treasurer )

7 Alexandra Chalupa )

8 Chalupa & Associates, LLC )

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10 **SECOND GENERAL COUNSEL’S REPORT**

11 **I. ACTION RECOMMENDED**

12 Take no further action as to the allegation that the Democratic National Committee and

13 William Derrough in his official capacity as treasurer (the “DNC”), Alexandra Chalupa, and

14 Chalupa & Associates, LLC (“C&A”) knowingly solicited, accepted, or received a foreign

15 national in-kind contribution from the Ukrainian Embassy in the form of opposition research, in

16 violation of 52 U.S.C. § 30121(a)(2), a provision of the Federal Election Campaign Act of 1971,

17 as amended (the “Act”), and 11 C.F.R. § 110.20(g).

18 **II. INTRODUCTION**

19 This matter arose from a Complaint alleging that, during the 2016 election, Alexandra

20 Chalupa, acting as an agent of the DNC, solicited, accepted, or received a prohibited foreign

21 national in-kind contribution from the Ukrainian Embassy.<sup>1</sup> On July 25, 2019, the Commission

22 found reason to believe that the DNC, Chalupa, and C&A violated 52 U.S.C. § 30121(a)(2) and

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<sup>1</sup> Compl. ¶¶ 25-26 (Aug. 15, 2017); *see* 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

11 C.F.R. § 110.20(g).<sup>2</sup> Pursuant to the Commission's findings, the Office of the General Counsel ("OGC") commenced an investigation to obtain additional facts regarding Chalupa's outreach to the Ukrainian Embassy during the 2016 election and her relationship with the DNC.<sup>3</sup>

This Report addresses the allegation that the DNC, through Chalupa, solicited, accepted, or received an in-kind contribution from the Ukrainian Embassy in the form of opposition research on 2016 presidential candidate Donald J. Trump. The allegation that the DNC, through Chalupa, solicited Ukraine's then-President, Petro Poroshenko, to make a public statement about Trump campaign official Paul Manafort is addressed separately in the General Counsel's Briefs.<sup>4</sup>

Having concluded the investigation, the factual record does not sufficiently establish that Chalupa, as an agent of the DNC, solicited, accepted, or received opposition research.

Therefore, we recommend that the Commission take no further action as to the allegations that the DNC, Chalupa, and C&A violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting, accepting, or receiving opposition research.

### III. SUMMARY OF INVESTIGATION

During the investigation in this matter, we conducted two sworn depositions and several informal interviews, and reviewed written submissions and documents provided by several key witnesses. We deposed Chalupa,<sup>5</sup> a Ukrainian-American political activist and former DNC

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<sup>2</sup> Certification ¶ 1, MUR 7271 (DNC, *et al.*) (July 29, 2019).

<sup>3</sup> *Id.* ¶ 2; *see* First Gen. Counsel's Report at 13, MUR 7271 (DNC, *et al.*).

<sup>4</sup> Gen. Counsel's Brief, MUR 7271 (DNC) (stating that OGC is prepared to recommend that the Commission find probable cause to believe that the DNC violated the foreign national prohibition through the solicitation of President Poroshenko); Gen. Counsel's Brief, MUR 7271 (Chalupa, *et al.*) (same with respect to Chalupa and C&A).

<sup>5</sup> Chalupa Dep. (Nov. 25, 2019). In addition to her deposition, Chalupa submitted a detailed affidavit with attachments that document the relevant events. Chalupa Aff. (Nov. 21, 2019).

consultant, and Andrii Telizhenko,<sup>6</sup> a former diplomat from the Ukrainian Embassy who asserts that Chalupa asked him and the Embassy “to find dirt on Presidential Candidate Donald Trump or his team members” and states that Chalupa intended to use the information to support a congressional committee hearing that would “take [Trump] off the elections because he cannot win.”<sup>7</sup> Chalupa denies that she made any such request, but acknowledges discussing the Trump campaign’s hiring of Paul Manafort with Ukrainian Embassy officials and requesting that President Poroshenko make a statement exposing Manafort’s background in Ukrainian politics.<sup>8</sup> Chalupa contends that any actions she took in this regard were taken in her personal role as an activist.<sup>9</sup>

We interviewed three other individuals, including Oksana Shulyar, a former Ukrainian Embassy diplomat who was present at the meeting where Chalupa allegedly solicited Telizhenko for information.<sup>10</sup> Shulyar denies that Chalupa asked the Ukrainian Embassy to assist with any research on behalf of the DNC, but states that Chalupa, in her activist role, sought the Ukrainian

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<sup>6</sup> Telizhenko Dep. (Oct. 23, 2019); Summary of Telizhenko Interview (Sept. 27, 2019) (“Telizhenko Int.”). Telizhenko did not produce any documents, asserting that relevant materials would have been classified Ukrainian government property. Telizhenko Dep. at 12-13.

<sup>7</sup> Telizhenko Dep. at 42:2-16.

<sup>8</sup> Chalupa Dep. at 218-19, 302, 307-12, 320; Chalupa Aff. at 11-13, 22. Chalupa also acknowledges that she was in contact with the office of Representative Marcy Kaptur regarding the idea of a congressional investigation on Manafort. Chalupa Dep. at 253.

<sup>9</sup> *See* Chalupa Resp. at 1 (Oct. 11, 2017); Chalupa Dep. at 206; Chalupa Aff. at 12.

<sup>10</sup> Summary of Shulyar Interview (Mar. 16, 2020) (“Shulyar 3/16/2020 Int.”); Shulyar Written Statement (June 9, 2020); Summary of Shulyar Interview (June 24, 2020) (“Shulyar 6/24/2020 Int.”); Summary of Interview (Sept. 24, 2019); Summary of Vladislav Davidzon Interview (Nov. 25, 2019). is a member of the Ukrainian-American community and Davidzon is a Ukraine-based American journalist; they are both acquaintances of Chalupa and Telizhenko and offered details regarding their credibility.

Embassy's help warning the public about Manafort in ways that did not involve the provision of any research, and that the Embassy rebuffed each such request.<sup>11</sup>

The DNC refused to comply with the Commission's duly authorized subpoena seeking answers to interrogatories and the production of relevant documents.<sup>12</sup> We attempted to interview several former DNC officials who interacted with Chalupa on the Manafort issue, but each denied our interview request; however, we nevertheless were able to gather information about these individuals' involvement through other means, which revealed the following:<sup>13</sup>

Almost immediately after it was announced that Manafort had joined the Trump campaign,

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<sup>11</sup> Shulyar Written Statement at 4. Shulyar states that Chalupa asked the Embassy to talk with an investigative journalist about Manafort, arrange for Poroshenko to make a statement on Manafort, and approach a Member of Congress to initiate a congressional hearing on Manafort. *Id.* at 3.

<sup>12</sup> On October 28, 2019, following the Commission's approval, we sent a narrowly crafted subpoena to the DNC, consisting of just four requests, two of which simply asked whether certain events occurred. Order to Submit Written Answers and Subpoena to Produce Documents, MUR 7271 (DNC) (approved Aug. 30, 2019; signed Sept. 16, 2019). On November 4, 2019, the DNC submitted a Motion to Quash, arguing that the subpoena was invalid, overbroad, and unduly burdensome, among other contentions. Letter from Graham Wilson, Perkins Coie, counsel for DNC, to Lisa Stevenson, Acting Gen. Counsel, FEC (Nov. 4, 2019). We responded that, due to a lack of quorum, the Commission was unable to consider the Motion, but that the DNC's arguments lacked merit, the subpoena remained in effect, and that answers were required to be provided. *See* Letter from CJ Pavia, Acting Assistant Gen. Counsel, FEC, to Graham Wilson, counsel for DNC (Dec. 13, 2019). In an effort to advance the investigation, however, OGC nevertheless offered to meet and confer about the Motion and Subpoena. *Id.* The DNC did not respond to this request and essentially ended contact with OGC in this matter.

On October 7, 2019, the DNC submitted a response to the Commission's reason-to-believe finding, which did not provide much, if any, new material information, but nevertheless requested that the Commission reconsider its reason-to-believe finding, take no further action, and close the file. DNC RTB Resp. at 6 (Oct. 7, 2019). When respondents have made similar requests in the past, OGC has sent a letter explaining that the Commission has been informed of the request but that no such reconsideration procedure exists.

Letter to James E. Tyrrell III, Counsel for Lee Zeldin and Zeldin for Senate, from Elena Paoli, FEC, MUR 6985 (Zeldin for Senate) (Aug. 15, 2017) (stating the same as to a Request to Rescind Reason to Believe Finding and Dismiss). Accordingly, consistent with this prior practice, we plan to include such language in the letter to the DNC accompanying the Probable Cause Brief.

<sup>13</sup> We asked the Commission to approve subpoenas directed to these officials and to deny the DNC's Motion to Quash, but in light of the impending expiration of the statute of limitations and the information already in our possession about the DNC's activities, we withdrew those recommendations. *See* Memo. to Comm. re: Withdrawal of Memo. Recommending that the Comm. Deny the DNC's Motion to Quash and Approve Discovery Documents at 1 (Dec. 28, 2020).

Chalupa recalls texting DNC Chief Operating Officer Lindsey Reynolds and Chief Executive Officer Amy Dacey something to the effect of “this is everything to take down Trump” and warning that Trump was “openly receiving support for Mr. Putin.”<sup>14</sup> Chalupa states that Dacey told her to meet with DNC Communications Director Luis Miranda the following morning.<sup>15</sup> Emails show that Miranda directed Chalupa to contact the Ukrainian Embassy about Poroshenko making a statement on Manafort to send the footage to ABC News for publication.<sup>16</sup>

### **A. Background**

The Democratic National Committee is the national party committee of the Democratic Party and William Derrough is the committee's registered treasurer.<sup>17</sup> Alexandra Chalupa is a Ukrainian-American activist and president of Chalupa & Associates, LLC.<sup>18</sup> As early as 2008, Chalupa developed an interest in the role that Paul Manafort, an American political consultant, played in Ukrainian politics.<sup>19</sup> Chalupa states that she viewed Manafort, who advised former Ukrainian president Viktor Yanukovich and is alleged to have advanced Russia's interests while

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<sup>14</sup> Chalupa Aff. at 21-22.

<sup>15</sup> *Id.* at 21-22; Chalupa Dep. at 183.

<sup>16</sup> Email from Chalupa to Miranda (Mar. 30, 2016, 3:23 PM), Chalupa Dep., Ex. 6 at AC000079; Email from Miranda to Chalupa (Mar. 30, 2016, 1:35 PM), Chalupa Dep., Ex. 6 at AC000079; Email from Chalupa to Oksana Shulyar (Mar. 30, 2016, 3:19 PM), Chalupa Dep., Ex. 7 at AC000307; Email from Miranda to Chalupa (Mar. 31, 2016, 9:40 AM), Chalupa Dep., Ex. 8 at AC000089; *see* Chalupa Dep. at 206-208 (“He [Miranda] just said, “Do you think that they would take any questions from ABC News?”); Chalupa Aff. at 22 (“[H]e [Miranda] also asked me to see if I could ask about a media inquiry of an ABC News journalist who wanted to ask a question of President Poroshenko during an event in Washington, D.C. that I was an invited as a guest to and asked that I reach out to my contact in the Embassy of Ukraine about the media inquiry.”).

<sup>17</sup> DNC, Amend. Statement of Org. (Nov. 6, 2020).

<sup>18</sup> Chalupa Aff. at 1, 3-7 (describing activist work). As part of her activist work, Chalupa states that she had previously organized meetings between Ukrainian-Americans and National Security Council staff to discuss Ukraine's ongoing Maidan Revolution. Chalupa Dep. at 26:22-29:17, 30:16-34:16.

<sup>19</sup> Chalupa Aff. at 2.

1 doing so, as a national security risk to Ukraine and the United States.<sup>20</sup> By 2013, as part of her  
 2 activist work, Chalupa states that she began conducting research on Manafort and speaking with  
 3 individuals in the Ukrainian-American community and the U.S. government to warn them about  
 4 Manafort's activities.<sup>21</sup>

5 In addition to her work as an activist, Chalupa has also worked for the DNC or affiliated  
 6 organizations off and on since 2005,<sup>22</sup> including as senior advisor to Acting DNC Chairwoman  
 7 Donna Brazile and DNC Chairwoman Debbie Wasserman Schultz.<sup>23</sup> During the 2016 election  
 8 cycle, Chalupa worked as a consultant for the DNC's Ethnic Engagement Program.<sup>24</sup> Her work  
 9 included mobilizing ethnic communities to support Democrats through meetings, events,  
 10 preparing messaging and speeches, and assisting with rapid response efforts related to her areas  
 11 of expertise.<sup>25</sup> The DNC paid Chalupa through C&A pursuant to a series of short-term contracts  
 12 and reported the payments as compensation for "political consulting."<sup>26</sup> In her contracts,

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<sup>20</sup> Chalupa Dep. at 102:2-103:5, 106:2-11; Chalupa Aff. at 2 (arguing that Manafort worked "to further the interests of Russian President Vladimir Putin"); *see also* First Gen. Counsel's Report at 5-13, MUR 7272 (Party of Regions, *et al.*) (detailing Manafort's political consulting work in Ukraine under Yanukovych and the Party of Regions and related criminal convictions).

<sup>21</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").

<sup>22</sup> AC000062-64 (Chalupa DNC Work & Volunteer Timeline).

<sup>23</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>24</sup> *Id.* at AC000063; Chalupa Dep. at 59:16-62:5.

<sup>25</sup> AC000063; Chalupa Dep. at 61:17-62:5, 74:10-75:2, 84:15-86:7.

<sup>26</sup> DNC, Disbursements (2015-2016), [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00010603&recipient\\_name=Chalupa&two\\_year\\_transaction\\_period=2016;AC000039-61](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00010603&recipient_name=Chalupa&two_year_transaction_period=2016;AC000039-61) (Chalupa's unsigned Political Consulting Agreements and Amendment with the DNC) (periods beginning Oct. 2, 2014, July 1, 2015, Jan. 1, 2016); *see also* Chalupa Dep. at 81:6-13 (confirming there were signed versions).

Chalupa agreed to perform “consulting services related to outreach in the Ethnic Community” and “such other services that [the DNC] may, from time to time, request.”<sup>27</sup>

### **B. Chalupa's 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 presidential campaign.<sup>28</sup> On January 12, 2016, Chalupa recalls informing Reynolds, the DNC's Chief Operating Officer (COO), “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>29</sup> On March 28, 2016, the *New York Times* reported that Manafort had joined the Trump campaign.<sup>30</sup> Chalupa states that after she heard the news of Manafort's hire, she texted Reynolds and Dacey, the DNC's Chief Executive Officer (CEO).<sup>31</sup>

Chalupa does not possess the original text message that she sent to Reynolds and Dacey, but recalls writing something to the effect of “this is everything to take down Trump,” and she also recalls telling Reynolds and Dacey “that if Mr. Trump did not fire Manafort immediately

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<sup>27</sup> AC000039, 50.

<sup>28</sup> Chalupa Dep. at 125:3-9.

<sup>29</sup> Chalupa Aff. at 21; *see* Chalupa Dep. at 159:18-165:13.

<sup>30</sup> Manafort initially served as Campaign Convention Manager but would later be promoted to Campaign Chair and Chief Strategist. Alexander Burns and Maggie Haberman, *Donald Trump Hires Paul Manafort to Lead Delegate Effort*, N.Y. TIMES (Mar. 28, 2016); Meghan Keneally, *Timeline of Paul Manafort's Role in the Trump Campaign*, ABC NEWS (Oct. 30, 2017). 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 CEO and COO 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>31</sup> Chalupa Aff. at 21-22.

1 then it was a direct indication that he was openly receiving support for Mr. Putin.”<sup>32</sup> Chalupa  
 2 states that Dacey told her to speak the next morning with Luis Miranda, the DNC's  
 3 Communications Director.<sup>33</sup>

4 Chalupa recalls that Miranda asked her for background information on Manafort, which  
 5 she supplied by email, and to brief the DNC Communications team, which she did.<sup>34</sup> In addition,  
 6 Miranda asked Chalupa to contact President Poroshenko through the Ukrainian Embassy about  
 7 Poroshenko taking a question and making a statement on Manafort, stating that Miranda intended  
 8 to send the footage of that statement to ABC News.<sup>35</sup> Chalupa sent Miranda updates about her  
 9 efforts to contact Poroshenko's team and arrange for him to be asked a question about Manafort  
 10 at a public event at the U.S. Capitol Visitor Center.<sup>36</sup> The events surrounding the Poroshenko  
 11 request are described in greater detail in the General Counsel's Briefs.

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<sup>32</sup> *Id.*; see Chalupa Dep. at 181:4-189:5. When asked about her words “take down Trump” and whether she was implying the DNC could use this information to its advantage as “dirt on an opponent,” Chalupa acknowledged that “you could definitively read it that way.” Chalupa Dep. at 183:19-184:12. However, she insists that her primary concern was national security. See *id.* at 185:11-186:10. Chalupa testified that she does not possess the phone that she used to send the text message, but that it was imaged by the FBI. *Id.* at 182:10-19.

<sup>33</sup> Chalupa Aff. at 21-22. Chalupa states that Dacey's request was “very casual, like ‘Just check in with Luis about it.’” Chalupa Dep. at 189:6-10.

<sup>34</sup> Chalupa Aff. at 22; Chalupa Dep. at 192-198; see also *id.* at 198:13-22 (stating that Miranda “said he would forward it Lauren Dillon [the DNC's opposition research director] at some point”). Chalupa states that Miranda did not ask her to conduct any research and that she had previously gathered this information as part of her personal activist work. Chalupa Dep. at 200:4-201:2; see Chalupa Aff. at 21 (stating that the information she provided the DNC “was publicly available and well-known”).

<sup>35</sup> AC000079 (email from Miranda to Chalupa on Mar. 30, 2016 at 1:35pm) (“Any luck getting the Pres to address this?”); Chalupa Dep. at 218:9-12 (stating that she understood Miranda's words to mean, “was I successful in getting [Poroshenko] to take a question from [ ] ABC News?”); AC000089 (email from Miranda to Chalupa on Mar. 31, 2016 at 9:40am) (“I pitched ABC on it last night. If he said something is it on video or recorded? If you got it asked and he said anything I'll pass it along to ABC.”).

<sup>36</sup> AC000079 (email from Chalupa to Miranda on Mar. 30, 2016 at 3:23pm) (“The Ambassador has the messaging.”).



**C. Chalupa's Contacts with the Ukrainian Embassy Leading up to the Kafe Leopold Meeting**

On March 24, 2016, several days before the Trump campaign announced that it had hired Manafort, Chalupa met at the Ukrainian Embassy with Ambassador Valeriy Chaly; Political Counselor Oksana Shulyar, a diplomat; and Alexa Chopivsky, a prominent member of the Ukrainian-American community, to plan a cultural event at the Embassy entitled "House of Ukraine."<sup>37</sup> Chalupa states that the meeting was her "first substantial contact" with Ambassador Chaly, Shulyar, or anyone else at the Embassy.<sup>38</sup> Chalupa states that towards the end of that meeting, she expressed concerns that Manafort was "going to come to the U.S. and work for Donald Trump," but that Chaly "blew it off . . . he wasn't interested in talking about politics."<sup>39</sup>

On March 29, 2016, the day after the Trump campaign announced that it had hired Manafort, Chalupa sent an email to Shulyar with a request "to get this message to the Ambassador and President Poroshenko's Communication's Director."<sup>40</sup> In the email, Chalupa said there is "a very good chance" that Poroshenko "may receive a question from the press during his visit about . . . Manafort," and that it is important Poroshenko is prepared to address the question in a "manner that exposes Paul Manafort for the problems he continues to cause

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<sup>37</sup> Chalupa Dep. at 261-62, 265-67; *see id.* at 270:13-18 (maintaining that the cultural event was purely related to her private Ukrainian-American activist work and "there was nothing DNC related to that event"). *The Embassy of Ukraine to the United States has launched "House of Ukraine,"* <https://usa.mfa.gov.ua/en/news/48302-v-posolyst-vi-ukrajini-v-ssha-vidkrivsy-dim-ukrajini> (accessed Dec. 15, 2020).

<sup>38</sup> Chalupa Dep. at 266:4-267:2; *see* AC000127 (email from Chalupa to Shulyar on Mar. 26, 2016 at 2:08 PM) ("It was wonderful to meet you. A big 'thank you' to Ambassador Chaly and to you for taking the time to meet."); Shulyar 6/24/20 Int. at 1.

<sup>39</sup> Chalupa Dep. at 266:4-11; *id.* at 269:3-11; *see id.* at 203; Chalupa Aff. at 9. Shulyar confirms that Chalupa raised the Manafort issue, which was a common topic of conversation. Shulyar 6/24/20 Int. at 2, 7; *see also* Shulyar Written Statement at 2 ("Alexandra Chalupa mentioned that she has been highly concerned by Paul Manafort's personality and his affiliation with a presidential campaign.").

<sup>40</sup> AC000307 (email from Chalupa to Shulyar on Mar. 30, 2016 at 3:19pm).

Ukraine — past and present.”<sup>41</sup> Chalupa states that she met with Shulyar in person later that day at the U.S. Capitol Visitor Center, where Poroshenko was scheduled to attend an event and take questions, but that Shulyar told her Poroshenko would not discuss the Manafort issue.<sup>42</sup> Shulyar confirms that the Embassy denied Chalupa’s request.<sup>43</sup>

On April 4, 2016, Chalupa and Shulyar exchanged emails and agreed to meet for coffee on April 7, 2016, at Kafe Leopold, a restaurant near the Ukrainian Embassy.<sup>44</sup> The email does not identify any particular purpose for the meeting, but Chalupa states that she intended to continue planning the upcoming cultural event at the Ukrainian Embassy.<sup>45</sup> Chalupa states that she also intended to discuss more about the Manafort issue with Shulyar, specifically about his recent hiring by the Trump campaign and the danger that he posed to U.S. security.<sup>46</sup>

At the Kafe Leopold meeting on April 7, 2016, Chalupa and Shulyar were later joined by Andrii Telizhenko, a junior diplomat from the Ukrainian Embassy. As discussed in the next section, we obtained statements from all three attendees, whose accounts of the meeting vary significantly: Telizhenko alleges that Chalupa solicited “dirt” on Trump, Manafort, and the Trump campaign;<sup>47</sup> Chalupa acknowledges discussing the Manafort issue but denies asking for any help; and Shulyar denies that Chalupa specifically asked for research on behalf of the DNC

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

<sup>42</sup> Chalupa Aff. at 22; Chalupa Dep. at 229:19-22, 241:2-17.

<sup>43</sup> Shulyar Written Statement at 3.

<sup>44</sup> AC000145 (emails between Chalupa and Shulyar on Apr. 4, 2016) (subject: “Coffee”).

<sup>45</sup> Chalupa Dep. at 283:9-17.

<sup>46</sup> *Id.* at 283:18-284:20 (acknowledging that she had a “dual purpose” for meeting Shulyar).

<sup>47</sup> Telizhenko Dep. at 42:2-16.

but asserts that Chalupa did seek other types of assistance from the Embassy, in her personal capacity as an activist, to warn the public about Manafort.

#### **D. The Kafe Leopold Meeting**

##### **1. Andrii Telizhenko's Account**

Telizhenko was a young diplomat at the Ukrainian Embassy who had quickly risen up through the ranks of Ukrainian politics following the 2013-2014 Ukrainian Revolution, also referred to as "Maidan."<sup>48</sup> After Maidan, Telizhenko served as adviser to Vitaly Yarema, who served as First Deputy Prime Minister and Prosecutor General of Ukraine.<sup>49</sup> Then, in December 2015, Telizhenko joined the Ukrainian Embassy in the United States, serving as Third Secretary with duties that included gathering information about U.S. politics and elections, and liaising with U.S. political campaigns to learn about their positions and educate them on Ukrainian affairs.<sup>50</sup> Telizhenko states that he reported to Oksana Shulyar and sometimes directly to Ambassador Chalupa himself.<sup>51</sup>

Telizhenko states that he received a call from Shulyar to come down to Kafe Leopold, a short distance from the Embassy, and "meet a person who will be really helpful for us."<sup>52</sup> There, according to Telizhenko, he met Chalupa, who introduced herself and said, "I'm a DNC operative. I work for the DNC. That's how she presented herself."<sup>53</sup> According to Telizhenko,

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<sup>48</sup> See *id.* at 1-25; Telizhenko Int. at 1-2.

<sup>49</sup> Telizhenko Dep. at 21:17-22:11, 22:20-23:20.

<sup>50</sup> *Id.* at 26:8-28:15; EMBASSY STAFF – EMBASSY OF UKRAINE IN THE UNITED STATES OF AMERICA, <https://web.archive.org/web/20160310223514/http://usa.mfa.gov.ua/en/embassy/diplomats> (archived Mar. 11, 2016) (listing Telizhenko with the title "Third Secretary" as a member of the "Political Section").

<sup>51</sup> Telizhenko Dep. at 27:14-18; Telizhenko Int. at 2.

<sup>52</sup> Telizhenko Dep. at 37:8-22; *accord* Telizhenko Int. at 2.

<sup>53</sup> Telizhenko Dep. at 114:10-22.

Chalupa told him, “I heard a lot about you, so I want to meet with you and talk to you about how this background can help us and do some work here. And so basically that’s her first words.”<sup>54</sup> Telizhenko claims that Chalupa asked him to help “find dirt on presidential candidate Donald Trump or his team members, Paul Manafort, or anybody of his team members.”<sup>55</sup> Telizhenko represents that Chalupa told him that her purpose was “basically [to] use this information and have a committee hearing under Marcy Kaptur, congresswoman from Ohio, in Congress in September and take him off the elections because he cannot win. That’s what I was told directly.”<sup>56</sup>

In response to Chalupa’s request, Telizhenko states: “Like I was diplomatic, I said, ‘Okay. Sure, I will.’ Because plus I’m here, [my] superior [is here], who I cannot just say, no.”<sup>57</sup> But Telizhenko maintains that he had no intention of helping Chalupa or the DNC and instead went straight to see Ambassador Chaly, expressing concerns regarding the legality and prudence of the Ukrainian Embassy providing secret assistance to a U.S. political party.<sup>58</sup> Telizhenko says that he “thought maybe Oksana took her own lead on this, that’s why I went to Chaly afterwards.”<sup>59</sup> However Telizhenko asserts that he was surprised when Ambassador

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<sup>54</sup> *Id.* at 38:6-14; *see* Telizhenko Int. at 3. When Chalupa said “your background can help us,” Telizhenko states that he took this as a reference to the high-level contacts he developed working for the Prosecutor General and First Deputy Prime Minister. Telizhenko Dep. at 38:15-39:14; Telizhenko Int. at 3-4.

<sup>55</sup> Telizhenko Dep. at 42:2-10; *see id.* at 42:17-43:18 (“Any dirt I could find on Trump, his team, Paul Manafort, with the Ukrainian Mafia, with the Russian Mafia, any connections with any toxic personalities in Ukraine or Eastern Europe and give it to her.”).

<sup>56</sup> *Id.* at 42:11-16.

<sup>57</sup> *Id.* at 42:17-43:18.

<sup>58</sup> *Id.* at 58:8-12 (“Q: Now, why did you think it was illegal? A: Because we are a foreign government, and a political party is asking a foreign government to get information.”).

<sup>59</sup> *Id.* at 48:8-14.

1 Chaly responded: “Yes. And I know that this is happening. You should work with her. If  
 2 Oksana says you have to work with her, you have to work with her.”<sup>60</sup> After speaking with  
 3 Chaly, Telizhenko claims that he went back to Shulyar: “I went to Oksana and said, ‘Like what  
 4 are we doing?’ And she told me, ‘You have to work with Chalupa. And any information you  
 5 have, you give it to me, I’ll give it to her, then we’ll pass it on later to anybody else we are  
 6 coordinating with.’”<sup>61</sup>

7 Telizhenko states that he did not provide any information to Shulyar, and after the Kafe  
 8 Leopold meeting, he had no further contact with Chalupa or the DNC.<sup>62</sup> However, Telizhenko  
 9 contends that in February 2016, months before the Kafe Leopold meeting, Ambassador Chaly  
 10 had ordered him to “start an investigation [into the Trump campaign] within the embassy just on  
 11 my own to find out with my contacts if there’s any Russian connection that we can report back to  
 12 Kiev.”<sup>63</sup> He further states, “I collected information for Ambassador Chaly [for the] . . . February  
 13 2016 assignment, which I gave to him in beginning of May 2016.”<sup>64</sup> Telizhenko describes the  
 14 February 2016 assignment as “basically almost the same thing” as Chalupa’s request at Kafe

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<sup>60</sup> *Id.* at 57:21-58:7; *see id.* at 57:4-8 (“I spoke to Chaly about it and he said to work with Oksana and Oksana said to work with Chalupa, Ms. Chalupa.”); *id.* at 114:10-22 (“He knew what was happening. So he just said, ‘You have to work with what Oksana is telling you to do.’”); Telizhenko Dep. at 4.

<sup>61</sup> Telizhenko Dep. at 60:5-15; *see also id.* at 59:2-4 (“Nobody else knew about this work within the embassy, it was only Chaly and Oksana, and maybe somebody else.”).

<sup>62</sup> *Id.* at 61:12-20.

<sup>63</sup> *Id.* at 55:21-56:11, 118:2-7.

<sup>64</sup> *Id.* at 107:16-108:4. Between February and May 2016, Telizhenko states that he drafted a report for Chaly based on information from journalists, including one from the *Wall Street Journal*, and his sources in the Ukrainian government, describing certain business ties between the Trump campaign and Eastern Europe, but did not go into specifics. *Id.* at 55:5-14, 62:8-14, 66:6-14, 79:2-21; Telizhenko Int. at 4.

1 Leopold,<sup>65</sup> and suspects that Chaly may have delivered the report to the Chalupa and the DNC.<sup>66</sup>  
 2 However, Telizhenko made clear: “I have no information that he shared it.”<sup>67</sup>  
 3 Telizhenko represents that he resigned from the Ukrainian Embassy in May 2016 due to  
 4 various conflicts, including his concern that the Embassy acted improperly by providing  
 5 assistance to the DNC.<sup>68</sup> Telizhenko claims that, by sometime in October or November 2016, he  
 6 tried to report these actions directly to President Poroshenko.<sup>69</sup> Telizhenko indicated that, to his  
 7 dismay, Poroshenko did not respond to his messages.<sup>70</sup> In late 2016, Telizhenko claims, he was  
 8 approached by journalists from *Politico* working on a story about how the Ukrainian Embassy  
 9 allegedly assisted the DNC during the 2016 election,<sup>71</sup> and he agreed to speak to them. The

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<sup>65</sup> Telizhenko Dep. at 119:8-9.

<sup>66</sup> Telizhenko says that a variety of “circumstances” — including Telizhenko’s allegation that Chaly approved of Chalupa’s efforts to expose Manafort, an August 2016 op-ed that Chaly wrote in *The Hill* attacking Trump, other alleged activities by the Ukrainian government to influence the 2016 election in favor of Clinton, and Telizhenko’s allegation that Chaly and Chalupa had a regular meeting — led him to believe that Chaly may have given the report created by Telizhenko to Chalupa and the DNC. Telizhenko Int. at 4; *see* Telizhenko Dep. at 54:10-55:1, 57:2-10, 63:21-63:5.

<sup>67</sup> *Id.* at 55:5-14 (“Q: Do you know if the Embassy actually shared information with the DNC? A: That, I don’t know.”); *id.* at 56:12-21 (“I was not a witness of that personally.”).

<sup>68</sup> Telizhenko Dep. at 50:8-9, 67:1-70:16; Telizhenko Int. at 5. Telizhenko explained that he remained a member of the Ukrainian Foreign Ministry of Foreign Affairs until June 2016, then accepted a job with Blue Star strategies, a U.S. political consulting and lobbying firm, and soon thereafter began simultaneously working as an adviser to Vitaly Yarema, whom he previously worked for as First Deputy Prime Minister and Prosecutor General of Ukraine. Telizhenko Dep. at 50:8-10, 85:11-86:9; Telizhenko Int. at 5.

<sup>69</sup> Telizhenko Int. at 5-6; Telizhenko Dep. at 97, 127-28 (describing efforts to send a message to Poroshenko through Yarema, who “delivered the message to the president twice”).

<sup>70</sup> Telizhenko Dep. at 52:1-8. Telizhenko states that at around the same time, someone from the Trump transition team (who he would not name) asked him to deliver a message to the Ukrainian government “that something needs to be changed here because Trump knows about [the alleged assistance that the Ukrainian Embassy had provided to the DNC and Clinton] and he will remember this,” and suggested that removing Ambassador Chaly could solve the problem — “to have a normal relationship between Washington and Kiev.” *Id.* at 51:8-13; *see id.* at 122:11-20, 126.

<sup>71</sup> *Id.* at 122:11-20; *see id.* at 52:1-8 (“Look, nobody heard me out, maybe if I reach out through an article, then Ambassador Chaly would leave and he would get a replacement and there will be a normalized relationship between Kiev and Washington.”); *id.* at 100:16-22 (“I didn’t want to mess up our relationship with Kiev and Washington, I tried to deliver this message.”). Currently, Telizhenko lives in Ukraine and works for his own

1 resulting January 11, 2017, *Politico* news article<sup>72</sup> was attached to the Complaint in this matter,  
 2 and the allegations therein were based on the article's reporting, including, most significantly,  
 3 Telizhenko's statements.<sup>73</sup>

4 In March 2020, the *New York Times* reported that staff from the Senate Homeland  
 5 Security and Governmental Affairs Committee received an FBI briefing suggesting that  
 6 Telizhenko could be spreading Russian disinformation.<sup>74</sup> In October 2020, the *Washington Post*  
 7 reported that the State Department had revoked Telizhenko's visa the previous month, but there  
 8 are no specifics regarding the reason for the revocation and a State Department spokesperson  
 9 declined to comment, citing the confidentiality of visa records under U.S. law.<sup>75</sup> Telizhenko

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political consulting firm, Golden Lion Strategies, based in Ontario, Canada, advising wealthy Eastern European businesspersons on international relations. Telizhenko Dep. at 102:3-13; Telizhenko Int. at 6.

<sup>72</sup> Kenneth Vogel and David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO (Jan. 11, 2017).

<sup>73</sup> Factual & Legal Analysis at 1, MUR 7271 (DNC).

<sup>74</sup> Kenneth Vogel and Nicholas Fandos, *Senate Panel Delays Subpoena Vote Over Concerns About Ukraine Witness*, N.Y. TIMES (Mar. 11, 2020). Sen. Ron Johnson, Chair of the committee and whose staff was working with Telizhenko on investigations related to Ukrainian interference in the 2016 election and the activities of Hunter Biden in Ukraine, stated that he interpreted the FBI's warning as "just be careful." *Id.* On September 23, 2020, he and Sen. Chuck Grassley, Chair of the Senate Finance Committee, released a report accusing Hunter Biden of engaging in "questionable financial transactions" with foreign individuals, which relied heavily on information provided by Telizhenko. *See Hunter Biden, Burisma, and Corruption: The Impact on U.S Government Policy and Related Concerns*, U.S. Senate Committee on Homeland Security and Governmental Affairs, U.S. SENATE COMM. ON FINANCE, MAJ. STAFF REPORT (Sept. 23, 2020) ("Senate Finance Comm. Report"). The report appears to dismiss concerns of Telizhenko's credibility. *Id.* at 53. The March 11, 2020, *New York Times* article reported that Telizhenko provided testimony to the FEC as part of the investigation in this matter, citing "someone familiar with the investigation." Vogel and Fandos, *supra*.

<sup>75</sup> Ellen Nakashima, *et al.*, *Trump Administration Revokes the Visa of a Ukrainian Political Fixer Tied to Giuliani*, WASH. POST (Oct. 5, 2020) (implying that visa revocation related to allegations that Telizhenko was promoting "pro-Russian narratives"); Kylie Atwood, *et al.*, *US Revokes Visa of Giuliani's Ukrainian Ally Who Spread Conspiracy Theories About the Bidens*, CNN (Oct. 5, 2020) ("A US official said there are also conversations within the US government about potentially sanctioning that individual — Andrii Telizhenko — and identifying him as a Russian agent.").

denies spreading Russian disinformation.<sup>76</sup> However, on January 11, 2021, Telizhenko was among several Ukrainians officially sanctioned by the U.S. Treasury Department for helping spread Russian disinformation in connection with the 2020 U.S. presidential election.<sup>77</sup>

## 2. Alexandra Chalupa's Account

Chalupa recalls meeting Shulyar at Kafe Leopold, as planned in their emails, and opening with a discussion about Poroshenko's recent visit to Washington and the subsequent release of the so-called "Panama Papers," which mentioned Poroshenko.<sup>78</sup> Soon, the issue of Chalupa's request for Poroshenko to make a statement on Manafort came up; Chalupa states that she apologized "if I put them in an uncomfortable situation."<sup>79</sup> Chalupa states that Shulyar replied, "No, no. Don't worry. I totally understand why you were concerned," but that "[w]e don't have anything and have declined to discuss [Manafort] or his role on the [Trump] campaign."<sup>80</sup> Chalupa maintains that she "never asked" Shulyar for any information about Manafort, but discussed with Shulyar "how I correctly predicted Mr. Manafort's role on Mr. Trump's

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<sup>76</sup> Telizhenko Dep. at 100:15-101:8 ("I only support the Russian opposition . . . I went through Maidan, I had people die in my hands, three people die in my hands during the revolution in Ukraine [which resulted in the ouster of pro-Russian President Yanukovych], and like now they're trying to make me a Russian spy to [] Ukraine.").

<sup>77</sup> Press Release, *Treasury Takes Further Action Against Russian-linked Actors* (Jan. 11, 2021), <https://home.treasury.gov/news/press-releases/sm1232> ("Today, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) took additional action against seven individuals and four entities that are part of a Russia-linked foreign influence network associated with Andrii Derkach. . . [Andriy] Telizhenko, a former low-level Ukrainian diplomat, orchestrated meetings between Derkach and U.S. persons to help propagate false claims concerning corruption in Ukraine. . . [and is therefore] being designated pursuant to E.O. 13848 for having directly or indirectly engaged in, sponsored, concealed, or otherwise been complicit in foreign influence in a United States election.").

<sup>78</sup> Chalupa Dep. at 289:5-22; *see* Chalupa Aff. at 11.

<sup>79</sup> Chalupa Dep. at 291:5-12.

<sup>80</sup> Chalupa Aff. at 11; *accord* Chalupa Dep. at 291:13-21 (stating that Shulyar told her: "People think we have like a binder of information on Manafort. We don't have anything. And we're not getting involved"); *see id.* at 294 ("[S]he was just making it very clear like they're not — they don't have any information on Manafort.").



campaign” and how this represented a “national security problem.”<sup>81</sup> Chalupa states that, in response to her warnings about Manafort, Shulyar “just confirmed that she — that she knew that he was a dangerous actor. It was — it was basically — that was it.”<sup>82</sup>

The conversation then turned to planning for the upcoming cultural event at the Ukrainian Embassy, according to Chalupa, at which point Shulyar mentioned that she might be traveling and wanted to introduce her to a secondary point of contact during the event planning stage, Andrii Telizhenko.<sup>83</sup> Chalupa states that she had never heard of Telizhenko, but that Shulyar told her he was “fielding a lot of calls from reporters” about Poroshenko’s visit, the Panama Papers, and Manafort,” and “there’s this big story that he’s working on, it has something to do with Manafort/Trump.”<sup>84</sup> Chalupa recalls that Shulyar texted Telizhenko, who arrived at Kafe Leopold shortly thereafter.<sup>85</sup>

Chalupa states that she introduced herself to Telizhenko without mentioning her DNC connection, and that at some point she said: “Oh, I hear your phone has been off the hook . . . I hear you have some sort of story that’s been keeping you busy about [ ] Trump.”<sup>86</sup> She states that Telizhenko responded by describing his discussions with a *Wall Street Journal* reporter who he

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<sup>81</sup> Chalupa Dep. at 296-97 (“I knew so much about [Manafort] at that point so, I mean, I discussed him with her, but it wasn’t like, ‘Tell me what you know about Paul Manafort.’ . . . the main point was [ ] for her to understand that . . . I was sounding alarm bells.”); Chalupa Aff. at 11-12 (maintaining that Chalupa explained to Shulyar that she was providing this warning “in my personal capacity”).

<sup>82</sup> Chalupa Dep. at 299.

<sup>83</sup> Chalupa Aff. at 12; Chalupa Dep. at 299.

<sup>84</sup> Chalupa Aff. at 12-13; Chalupa Dep. at 302.

<sup>85</sup> Chalupa Aff. at 12.

<sup>86</sup> Chalupa Dep. at 303-04, 306 (“I did mention that, I remember, I take full responsibility for mentioning [the Manafort/Trump issue].”).

1 said was working on a “story about Mr. Trump and Russia business dealings.”<sup>87</sup> Chalupa states  
 2 that she “can’t recall specifically,” but that she likely told Telizhenko about how she “saw  
 3 Manafort as a national security risk” and “could have mentioned the congressional  
 4 investigation . . . that I had talked to Marcy Kaptur.”<sup>88</sup> However, Chalupa denies asking  
 5 Telizhenko for “any research on Mr. Manafort or Mr. Trump.”<sup>89</sup>

6 Chalupa recalls that, after a few minutes, “Shulyar switched the conversation back to the  
 7 House of Ukraine event and Mr. Telizhenko’s role in helping as a secondary contact if she could  
 8 not be reached.”<sup>90</sup> Chalupa states that the meeting ended approximately 10 to 20 minutes after  
 9 Telizhenko’s arrival and, ultimately, she never ended up communicating with Telizhenko about  
 10 the cultural event.<sup>91</sup>

11 Following the Kafe Leopold meeting, on May 3, 2016, Luis Miranda, the DNC’s  
 12 Communications Director, emailed Chalupa a news story about Manafort.<sup>92</sup> Chalupa replied:  
 13 “[T]here is a big Trump component you and Lauren [Dillon, DNC opposition research director,]  
 14 need to be aware of that will hit [in] the next few weeks and something I’m working on you  
 15 should be aware of.”<sup>93</sup> When asked what she what she meant by “a big Trump component” and  
 16 “something I’m working on,” Chalupa said at her deposition that she could not recall.<sup>94</sup>

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<sup>87</sup> Chalupa Aff. at 13; *see* Chalupa Dep. at 307-12.

<sup>88</sup> Chalupa Dep. at 309:15-310:4.

<sup>89</sup> Chalupa Aff. at 13; *see* Chalupa Dep. at 320.

<sup>90</sup> Chalupa Aff. at 13; Chalupa Dep. at 308:13-16.

<sup>91</sup> Chalupa Aff. at 13; Chalupa Dep. at 318.

<sup>92</sup> AC000112 (email from Miranda to Chalupa on May 3, 2016, at 10:50pm).

<sup>93</sup> *Id.* (email from Chalupa to Miranda on May 3, 2016, at 11:56pm).

<sup>94</sup> Chalupa Dep. at 357-61 (supposing that she might have referenced a “big Hudson Institute kleptocracy initiative focused on Russian money laundering”). The email in question was hacked by Russian military

1 However, sometime in May or June 2016, Chalupa states, she met with Dillon, who requested  
 2 that Chalupa “tell her what I knew about Mr. Manafort and his work in Ukraine.”<sup>95</sup>

3 Chalupa contends that the allegation that she solicited opposition research from the  
 4 Ukrainian Embassy is part of an “ongoing character-assassination campaign that originated with  
 5 a spokesperson of the Russian Federation’s Foreign Ministry . . . which made its ways to the  
 6 White House with Paul Manafort’s direct involvement, then to Matthew Whitaker [then director  
 7 of the Foundation for Accountability & Civic Trust, and who filed the Complaint].”<sup>96</sup> Chalupa  
 8 identified two individuals who she claimed were approached by Telizhenko and offered money  
 9 in exchange for dirt on her.<sup>97</sup> However, when we interviewed these individuals, both denied that  
 10 Telizhenko had made any such overture to them.<sup>98</sup>

### 11 3. Oksana Shulyar’s Account

12 During the 2016 election, Shulyar served as Political Counselor for the Ukrainian  
 13 Embassy, a position which she described as “senior by rank” but “not a supervisor, it doesn’t  
 14 have a managerial function to issue instructions/orders.”<sup>99</sup> Her duties included relations with

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intelligence services and published on WikiLeaks in July 2016, as part of a large dump of stolen DNC documents on the eve of the Democratic National Convention, and garnered news coverage. Michael Isikoff, *Exclusive: Suspected Russian Hack of DNC Widens — Includes Personal Email of Staffer Researching Manafort*, YAHOO! NEWS (July 25, 2016).

<sup>95</sup> Chalupa Aff. at 23-24 (explaining she has “no idea what if anything the DNC did with the information, which was already publicly available).

<sup>96</sup> Chalupa Post-RTB Resp. at 1, 11-24 (Aug. 22, 2019); *see* Chalupa Aff. at 13-14.

<sup>97</sup> Chalupa Post-RTB Resp. at 12; Email from Chalupa to Claudio Pavia, FEC (Nov. 24, 2019, 11:02pm).

<sup>98</sup> Summary of Interview at 3-4 (Sept. 24, 2019); Summary of Vladislav Davidzon Interview at 2-3, 6-7 (Nov. 25, 2019).

<sup>99</sup> Shulyar Written Statement at 1 (stating that she received her initial appointment to the Ukrainian Embassy in September 2016); Shulyar 3/16/20 Int. at 3; EMBASSY STAFF – EMBASSY OF UKRAINE IN THE UNITED STATES OF AMERICA, <https://web.archive.org/web/20160310223514/http://usa.mfa.gov.ua/en/embassy/diplomats> (archived Mar. 11, 2016).

1 counterparts in the U.S. government and think tanks, participation in various events, and liaising  
 2 with various organizations on matters relevant to U.S.-Ukraine relations.<sup>100</sup> In November 2016,  
 3 Shulyar was appointed Deputy Chief of Mission, the second-highest position at the Embassy.<sup>101</sup>  
 4 The 2016 election, according to Shulyar, coincided with “intense efforts of the Ukrainian  
 5 government to defend Ukraine against Russian aggression and mobilize international solidarity  
 6 in support of Ukraine.”<sup>102</sup> In January 2020, Shulyar left the Embassy.<sup>103</sup>

7 According to Shulyar, she met with Chalupa at Kafe Leopold to plan the “House of  
 8 Ukraine” cultural event, and that partway through the meeting she called Telizhenko and invited  
 9 him to attend the meeting.<sup>104</sup> “This was when we started to discuss news about the campaigns  
 10 during a coffee or lunch break, and where Alexandra may have shared her personal opinions on  
 11 the characters involved in the Trump campaign.”<sup>105</sup> Shulyar states: “I called him and said ‘come  
 12 on, join us, we [are] have interesting conversations here.’ . . . I had an idea that it would be useful  
 13 for him. . . . The work of a diplomat was often listening to what people were talking about.”<sup>106</sup>  
 14 Telizhenko’s role at the Embassy, according to Shulyar, was to “daily monitor campaign  
 15 developments,” and she therefore thought the discussion was relevant to his work.<sup>107</sup> Shulyar

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<sup>100</sup> Shulyar Written Statement at 1.

<sup>101</sup> *See* Shulyar Written Statement at 1.

<sup>102</sup> *Id.* at 1.

<sup>103</sup> Shulyar 3/16/20 Int. at 2.

<sup>104</sup> Shulyar 6/24/20 Int. at 3; Shulyar 3/16/20 Int. at 3.

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

<sup>106</sup> Shulyar 6/24/20 Int. at 3; *see also id.* at 3-4 (stating that she does not remember Telizhenko having any involvement in planning the cultural event, which was mostly done by efforts of women).

<sup>107</sup> Shulyar Written Statement at 3.

describes Telizhenko as the “most junior person” who “didn’t have diplomatic experience,” and states that she viewed him as young and ambitious, but in need of experience and tutoring.<sup>108</sup>

Shulyar does not recall many specifics of the ensuing conversation between Chalupa and Telizhenko, but denies that Chalupa requested research assistance: “[I]f Manafort was discussed, it wouldn’t be a surprise . . . it would be natural for that conversation. But certainly there was not any action or any agreement for them to work on the issue of Manafort or follow-up on the issue of Manafort.”<sup>109</sup> “To my knowledge, digging up new information and/or providing assistance to any U.S. political campaign with opposition research was neither requested from the Embassy, nor considered by the Embassy.”<sup>110</sup> Shulyar states that she is unaware of Chalupa and Telizhenko having any further contact.<sup>111</sup>

Though Shulyar denies that Chalupa asked for research assistance on behalf of the DNC, she states that Chalupa, in her activist role, sought the Ukrainian Embassy’s help warning the public about Manafort in other ways, which did not involve the provision of any research, and that the Embassy rebuffed each request.<sup>112</sup> First, Chalupa “suggested [the Embassy] talk to an

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<sup>108</sup> Shulyar 3/16/20 Int. at 3; Shulyar 6/24/20 Int. at 5; *see also id.* at 3 (explaining how she met Telizhenko during the Maidan events).

<sup>109</sup> *Id.* at 4 (describing Manafort as “the elephant in the room”).

<sup>110</sup> Shulyar Written Statement at 4; *see* Shulyar 3/16/20 Int. at 3. Shulyar states that *Politico* published a statement from the Ukrainian Embassy, denying the accusation of assisting the DNC, that was published in its printed version of January 18, 2017, but that *Politico* did not publish the statement in electronic version on its website and that the statement is not otherwise available online. Shulyar Written Statement at 5.

<sup>111</sup> Shulyar Written Statement at 4; *see* Shulyar 6/24/20 Int. at 5.

<sup>112</sup> Shulyar Written Statement at 3-4 (“I recall [that] . . . Chalupa mentioned that she has been highly concerned by Paul Manafort’s personality and his affiliation with a presidential campaign. . . . To address those concerns, Alexandra Chalupa shared her intent to take a number of actions to publicly alert the American people about the potential risks of Paul Manafort’s previous involvement. . . . According to my personal observation and understanding, these were Alexandra Chalupa’s individual initiatives stemming from her personal beliefs, and I do not remember anything indicating they were dictated or encouraged by the DNC.”).

investigative journalist.<sup>113</sup> Second, “[a]nother idea from Alexandra Chalupa was that President of Ukraine Petro Poroshenko would be asked a question regarding Paul Manafort at a public event we had organized for him in the U.S. Capitol’s auditorium during his visit to Washington, D.C.”<sup>114</sup> Third, “[a] final idea floated by Alexandra Chalupa . . . was that we also approach a Co-Chair of the Congressional Ukraine Caucus to initiate a Congressional hearing on Paul Manafort.”<sup>115</sup> Shulyar maintains that the Embassy denied or ignored each of these requests.<sup>116</sup>

#### IV. LEGAL ANALYSIS

##### 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>117</sup> Moreover, the Act prohibits any person from soliciting, accepting, or receiving any such contribution or donation from a foreign national.<sup>118</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

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<sup>113</sup> *Id.* at 2; *see* Shulyar 6/24/20 Int. at 2.

<sup>114</sup> Shulyar Written Statement at 3. This issue is discussed at length in the General Counsel’s Briefs.

<sup>115</sup> *Id.*

<sup>116</sup> Shulyar 6/24/20 Int. at 2, 7; Shulyar Written Statement at 3; *see also id.* at 4 (asserting there was a “strict position [at the Embassy] to never get involved in any matters pertaining to any U.S. political campaign”).

<sup>117</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>118</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).

lawfully admitted for permanent residence.<sup>119</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 election for Federal office.”<sup>120</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>121</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>122</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>123</sup>

The Commission has also explained that communications must be reasonably construed in context, such that “the Commission’s objective standard hinges on whether the recipient should have reasonably understood that a solicitation was made.”<sup>124</sup>

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<sup>119</sup> 52 U.S.C. § 30121(b)(2).

<sup>120</sup> 52 U.S.C. § 30101(8)(A).

<sup>121</sup> 11 C.F.R. § 100.52(d).

<sup>122</sup> *Id.* § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)).

<sup>123</sup> *Id.* § 300.2(m).

<sup>124</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.”);

**B. The Factual Record Does Not Sufficiently Establish that Chalupa Solicited, Accepted, or Received Opposition Research from the Ukrainian Embassy**

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.<sup>125</sup> The pre-investigatory record indicated 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 the Commission determined that "the Ukrainian Embassy's research . . . is a thing of value" subject to the Act's foreign national prohibition.<sup>126</sup>

The information obtained during the investigation does not sufficiently establish that Chalupa, acting on behalf of the DNC, solicited, accepted, or received an in-kind contribution from the Ukrainian Embassy in the form of opposition research. At the outset, whether or not Chalupa or the DNC solicited opposition research from the Embassy, there is no information to indicate that Chalupa or the DNC accepted or received any such research. Telizhenko states that he never had any follow-up with Chalupa or the DNC after the Kafe Leopold meeting, and that he cannot be sure whether Ambassador Chaly gave Chalupa or the DNC a report that Telizhenko produced on the Trump campaign's Russian ties.<sup>127</sup>

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*see* Factual & Legal Analysis ("F&LA") 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>125</sup> Factual & Legal Analysis at 7, MUR 7271 (DNC, *et al.*).

<sup>126</sup> *Id.*

<sup>127</sup> Telizhenko Dep. at 55:5-14 ("Q: Do you know if the Embassy actually shared information with the DNC? A: That, I don't know."); *id.* at 56:12-21 ("I was not a witness of that personally."); *id.* at 61:12-20; *see also supra*



Thus, what remains is the solicitation allegation, which — aside from the *Politico* article cited in the Complaint, for which Telizhenko was the primary source<sup>128</sup> — is advanced solely by Telizhenko's testimony, wherein he claims that Chalupa asked him “to find dirt on . . . Trump or his team members” and that Chalupa intended to use the information to support a congressional committee hearing that would take Trump “off the elections because he cannot win.”<sup>129</sup> Chalupa, however, denies under oath asking for opposition research, and Shulyar, a more senior diplomat who also attended the Kafe Leopold meeting, does not recall Chalupa making any such request of Telizhenko.<sup>130</sup> Telizhenko was unable to provide any corroborating documentation or other evidence to support his testimony, and our investigation also did not uncover any such evidence. Therefore, in light of the Commission's previous determination that a request for opposition research from a foreign national, at no charge, constitutes the solicitation of a prohibited in-kind contribution, the central question is whether Telizhenko's deposition testimony, viewed in light of the other information and testimony obtained, is sufficiently credible to proceed.

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note 66 (listing a variety of circumstances that led Telizhenko to believe that Chalupa may have given the report created by Telizhenko to Chalupa and the DNC).

<sup>128</sup> See *supra* notes 72-73.

<sup>129</sup> Telizhenko Dep. at 42:2-16.

<sup>130</sup> Chalupa Aff. at 13; Chalupa Dep. at 320; Shulyar Written Statement at 4; Shulyar 3/16/20 Int. at 3.

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By contrast, in MUR 6054 (Rep. Vernon G. Buchanan, *et al.*), the Commission was presented allegations of participation in a conduit contribution scheme based on one person's testimony against the other, with no documentary evidence,<sup>135</sup> but where there were "significant concerns" regarding the credibility of the principal witness, a lack of "testimonial or documentary evidence that sufficiently corroborate[d] his testimony," and "other gaps in the evidentiary record," the Commission voted to take no further action.<sup>136</sup>

Here, although Telizhenko's allegations are specific and consistent with some other information, there is no information corroborating his testimony and there are specific aspects of the record that undermine his representations. Telizhenko makes very specific allegations, detailing how Chalupa expressly stated that she was a "DNC operative" and told Telizhenko that she wanted any negative information he could find on Trump or Manafort and intended to use the information to support a congressional committee hearing organized by Rep. Marcy Kaptur

<sup>135</sup> Gen. Counsel's Report #9 at 2, MUR 6054 (Rep. Vernon G. Buchanan, *et al.*).

<sup>136</sup> *Id.* OGC had initially submitted a General Counsel's Brief, following its investigation, stating its intention to recommend probable cause to believe, but after serving the brief learned of new evidence bearing directly on the credibility of the principal witness; accordingly, OGC did not pursue a probable cause to believe recommendation and instead recommended that the Commission take no further action. *Id.*; *see also* Certification ¶ 1, MUR 6054 (Rep. Vernon G. Buchanan, *et al.*) (Feb. 1, 2011) (voting 5-0 to approve OGC's recommendations).

1 that would take Trump “off the elections.”<sup>137</sup> Telizhenko’s allegations are also consistent with  
 2 other pieces of information: For instance, Chalupa acknowledges discussing “the  
 3 Manafort/Trump issue” at the Kafe Leopold meeting with Shulyar and Telizhenko.<sup>138</sup> Indeed,  
 4 Chalupa states that Shulyar told her that Telizhenko was fielding calls from reporters about  
 5 Manafort, and that “there’s a big story he’s working on, it has something to do with  
 6 Manafort/Trump.”<sup>139</sup> Moreover, although Shulyar does not recall the specifics of the  
 7 conversation, she states that “if Manafort was discussed, it wouldn’t be a surprise . . . it would  
 8 be natural for that conversation.”<sup>140</sup> Chalupa also states that she “can’t recall specifically” but  
 9 “could have mentioned the congressional investigation . . . that I had talked to Marcy Kaptur.”<sup>141</sup>  
 10 And she acknowledges that Telizhenko described his discussions with a *Wall Street Journal*  
 11 reporter who he said was working on a “story about Mr. Trump and Russia business dealings.”<sup>142</sup>

12 However, there is no documentation or other evidence to support Telizhenko’s  
 13 allegations that Chalupa solicited opposition research. Telizhenko represented: “I looked into  
 14 what I can present, all was through the government email I used to report back to the Ministry of  
 15 Foreign Affairs in Ukraine, or Chaly. . . . I cannot present that because it’s the Ukraine

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<sup>137</sup> Telizhenko Dep. at 114, 42-43.

<sup>138</sup> Chalupa Dep. at 291, 296-97, 306 (“I take full responsibility for mentioning that.”); Chalupa Aff. at 11-12.

<sup>139</sup> *Id.* at 302; *see* Chalupa Aff. at 12-13.

<sup>140</sup> Shulyar 6/24/20 Int. at 4.

<sup>141</sup> Chalupa Dep. at 309-310.

<sup>142</sup> Chalupa Aff. at 13; *see* Chalupa Dep. at 307-12. Chalupa’s recollection that Telizhenko mentioned a *Wall Street Journal* reporter in the context of “Mr. Trump and Russia business dealings” is significant because it aligns with Telizhenko’s testimony about his February 2016 research project from Ambassador Chaly to investigate any Trump/Russia connections. Telizhenko states that Chaly told him to investigate any Russian connections between the Trump campaign and Russia, and that one of his sources of information to draft his report was Alan Cullison of the *Wall Street Journal*. Telizhenko Dep. at 78-79.

Government's information [and i]t's illegal to present it to a foreign government."<sup>143</sup> Yet in a different context, Telizhenko provided documents from his time at the Ukrainian Embassy, all with U.S. government officials or lobbyists, to the Senate Committee on Homeland Security and Government Affairs.<sup>144</sup>

Moreover, there are two notable inconsistencies in Telizhenko's testimony regarding the Kafe Leopold meeting. First, he recalled that the meeting took place sometime in March 2016, about "a week or two" before the Trump campaign officially announced Manafort's hire,<sup>145</sup> but the emails submitted by Chalupa show that the Kafe Leopold meeting occurred more than a week after the Manafort announcement.<sup>146</sup> Second, Telizhenko states that Chalupa told him at the meeting about harassment she experienced, which Chalupa claimed was retaliation for her work attempting to expose Manafort.<sup>147</sup> However, a timeline of incidents submitted by Chalupa shows that she did not experience such harassment until late spring or summer 2016.<sup>148</sup> This might suggest that Telizhenko's memory was informed, in part, by what he heard about Chalupa from the news media and not by his personal recollection.

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<sup>143</sup> Telizhenko Dep. at 12-13.

<sup>144</sup> See Nakashima, *supra* note 75 ("Telizhenko told The [Washington] Post in September that he cooperated extensively with [Senator Ron] Johnson's probe. This included handing over 'more than 100 emails,' which were drawn mainly from Telizhenko's previous work at the Ukraine embassy."); Senate Finance Comm. Report at 37, 39-41, 44 (Sept. 23, 2020) (multiple citations to email chains between Telizhenko and others).

<sup>145</sup> Telizhenko Dep. at 45 ("Everybody knew that he was going to be announced."); *but see* Telizhenko Int. at 2-3 ("Telizhenko agreed that the meeting might have occurred before the Manafort announcement, because when Manafort's name was raised at the meeting, he did not recognize Manafort as being related to the U.S. election.").

<sup>146</sup> AC000145 (emails between Chalupa and Shulyar planning the April 7, 2016, Kafe Leopold meeting).

<sup>147</sup> Telizhenko Dep. at 112.

<sup>148</sup> Chalupa Incidents Timeline (providing descriptions, communications, and photographic evidence).

1 Other factors raise a concern regarding Telizhenko's credibility, including the FBI's  
2 reported concerns regarding a Russian affiliation and the State Department's reported revocation  
3 of his visa. As noted above, in March 2020, the *New York Times* reported that staff from a  
4 Senate committee, who were relying on Telizhenko as a witness, received an FBI briefing  
5 suggesting that Telizhenko could be spreading Russian disinformation.<sup>149</sup> In October 2020, the  
6 *Washington Post* reported that the State Department had revoked Telizhenko's visa, but did not  
7 give specifics about why this action was taken.<sup>150</sup> And, in January 2021, Telizhenko was  
8 officially sanctioned by the U.S. Department of the Treasury for assisting in efforts to spread  
9 Russian disinformation in connection with the 2020 U.S. presidential election.<sup>151</sup> These reports  
10 raise serious concerns as to the advisability of moving forward in this matter based solely on  
11 Telizhenko's testimony.<sup>152</sup>

12 Telizhenko's credibility should also be viewed in light of Chalupa's sworn denial of the  
13 allegation and the context of her cooperation with the investigation. Chalupa submitted a  
14 detailed affidavit that recounted the most important events, provided even more detailed  
15 testimony during a long deposition, and produced numerous emails and documents relevant to  
16 the most important events in the matter.<sup>153</sup>

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<sup>149</sup> See Vogel and Fandos, *supra* note 74.

<sup>150</sup> See Nakashima, *supra* note 75.

<sup>151</sup> See Press Release, *supra* note 77. There is no indication, however, in the Treasury Department's press release that the sanctions specifically related to Telizhenko's allegation that Chalupa solicited him to provide opposition research in connection with the 2016 presidential election.

<sup>152</sup> See Gen. Counsel's Report #9 at 2, MUR 6054 (Rep. Vernon G. Buchanan, *et al.*) ("The circumstantial evidence does not sufficiently corroborate Kazran's testimony to overcome our recent concerns with his credibility . . .").

<sup>153</sup> As described above, Chalupa's co-Respondent, the DNC, refused to comply with subpoenas. See *supra* note 12 and accompanying text.

1           Given the context of the Kafe Leopold meeting, it is plausible that Chalupa might have  
 2   asked Telizhenko for information about Manafort, and several aspects of the record are  
 3   consistent with such a possibility. First, Chalupa had been trying to expose Manafort for years  
 4   and had reason to believe Telizhenko knew something about Manafort given what Shulyar told  
 5   her about his work connected to “big [news] story . . . [that] has something to do with  
 6   Manafort/Trump.”<sup>154</sup> Second, Chalupa acknowledges that she was in contact with the office of  
 7   Rep. Marcy Kaptur to initiate a congressional investigation against Manafort; therefore, any  
 8   negative information on Manafort would have been helpful to that cause.<sup>155</sup> Finally, Chalupa  
 9   was apparently willing to ask the Embassy for help in exposing Manafort: A little more than a  
 10   week before the Kafe Leopold meeting, Chalupa had just asked for the Embassy’s assistance in  
 11   having President Poroshenko to make a statement on Manafort.<sup>156</sup> And Chalupa apparently  
 12   made two other requests of the Embassy related to exposing Manafort, which she did not  
 13   mention but which Shulyar disclosed in June 2020: Shulyar recalls that Chalupa separately  
 14   asked for the Embassy to talk with a journalist writing a story on Manafort and to approach a  
 15   Member of Congress (unidentified, but most likely Kaptur given Shulyar’s description) to  
 16   initiate a congressional investigation into Manafort.<sup>157</sup>

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<sup>154</sup> Chalupa Dep. at 302, 307-12; *see* Chalupa Aff. at 12-13.

<sup>155</sup> *See* Chalupa Dep. at 253.

<sup>156</sup> Chalupa Aff. at 22; AC000307 (email from Chalupa to Shulyar on Mar. 30, 2016 at 3:19pm).

<sup>157</sup> *See* Shulyar Written Statement at 3-4 (identifying the Member of Congress as “a Co-Chair of the Congressional Ukraine Caucus”). These requests could support finding additional violations of the Act and Commission regulations, but in light of the time remaining within the statute of limitations and the lack of further specific information regarding these requests — the existence of which was not revealed until late in the investigation — we do not recommend that the Commission expend further resources in pursuing such a finding. Moreover, OGC has submitted General Counsel’s Briefs stating an intention to recommend probable-cause-to-believe findings with respect to the separate request Chalupa made to the Ukrainian government concerning issuing a negative statement on Manafort, a fact pattern that was fully investigated.

1           Nevertheless, when asked if she might have “reflexively” asked Telizhenko for some sort  
2 of assistance researching Manafort, Chalupa stated — “No. I think — I think with him, what he  
3 was doing was, he was — in the context of — it was focused on the Wall Street Journal article.  
4 That’s how he spoke about it.”<sup>158</sup> And in her sworn affidavit, Chalupa flatly denies the  
5 allegations: “I never asked for any research on Mr. Manafort or Mr. Trump from the Embassy of  
6 Ukraine or any foreign government.”<sup>159</sup> Shulyar supports Chalupa’s denial: “To my knowledge,  
7 digging up new information and/or providing assistance to any U.S. political campaign with  
8 opposition research was neither requested from the Embassy, nor considered by the Embassy.”<sup>160</sup>

9           Accordingly, given the conflicting testimony, lack of any documents tending to support  
10 or corroborate the allegations, and the relatively greater credibility of the accounts of Chalupa  
11 and Shulyar, as opposed to Telizhenko’s account, we conclude that the factual record does not  
12 sufficiently establish that Chalupa, acting on behalf of the DNC, solicited, accepted, or received  
13 opposition research from the Ukrainian Embassy.

14           Therefore, we recommend that the Commission take no further action as to the allegation  
15 that the DNC, Chalupa, and C&A knowingly solicited, accepted, or received a foreign national  
16 contribution from the Ukrainian Embassy in the form of opposition research, in violation of  
17 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).

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<sup>158</sup> Chalupa Dep. at 320.

<sup>159</sup> Chalupa Aff. at 13.

<sup>160</sup> Shulyar Written Statement at 4.

**V. RECOMMENDATIONS**

1. Take no further action as to the allegation that the Democratic National Committee and William Derrough in his official capacity as treasurer, Alexandra Chalupa, and Chalupa & Associates, LLC, knowingly solicited, accepted, or received a contribution in the form of opposition research, in violation of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g); and
2. Approve the appropriate letters.

January 13, 2021  
 Date

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 Acting General Counsel

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