

Such was the case here, and we accordingly determined that “our agency’s limited enforcement resources are better directed toward other investigations where the interests of the United States have been entrusted to us alone and where our sister agencies have not already addressed identical conduct.”⁴

Nevertheless, our Office of General Counsel (“OGC”) recommended pursuing enforcement, and we therefore submit this Statement of Reasons.⁵

I. BACKGROUND

In 2018, Lev Parnas and Igor Fruman formed a Delaware LLC: Global Energy Producers (“GEP”).⁶ GEP made contributions during the 2018 election cycle, including \$325,000 to America First Action (“AFA”), an independent-expenditure-only committee.⁷ This donation, *inter alia*, drew a complaint, which was later supplemented, to this agency arguing that, given the “temporal proximity between GEP’s formation and its contribution’ and the lack of evidence that ‘GEP conducted any business or had significant income assets, investment earnings, business revenues, or bona fide capital investments to make the \$325,000 contribution,’”⁸ there was reason-to-believe that [the Respondents]...us[ed] GEP and Aaron LLC as conduits to contribute \$325,000 to” AFA “and that GEP failed to register as a political

⁴ Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor, MUR 7696 (Texans for Sen. John Cornyn, *et al.*) at 4, May 18, 2021.

⁵ See *Democratic Congressional Campaign Comm. v. Fed. Election Comm’n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (“DCCC”) (establishing requirement that “[t]he Commission or the individual Commissioners” must provide a statement of reasons why the agency “rejected or failed to follow the General Counsel’s recommendation”); *Common Cause v. Fed. Election Comm’n*, 842 F.2d 436, 449 (D.C. Cir. 1988) (“A statement of reasons...is necessary to allow meaningful judicial review of the Commission’s decision not to proceed”); see also *id.* at 451 (R.B. Ginsburg, J., dissenting in part and concurring in part) (“I concur in part III of the court’s opinion holding the DCCC rule applicable, prospectively, to all Commission dismissal orders based on tie votes when the dismissal is contrary to the recommendation of the FEC General Counsel”); *Nat’l Republican Senatorial Comm. v. Fed. Election Comm’n*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) (“We further held that, to make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting. Since those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency’s reasons for acting as it did”) (citation omitted); *Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm’n*, 952 F.3d 352, 355 (D.C. Cir. 2020)

⁶ First Gen’l Counsel’s Report (“FGCR”) at 5, MUR 7442 (Global Energy Producers, LLC, *et al.*), May 4, 2022.

⁷ FGCR at 6.

⁸ *Id.* at 8 (quoting Cmpl. at 9-10, ¶¶ 22-24).

committee.”⁹ In addition, the complainant “allege[d] that AFA knowingly accepted a contribution made in the name of another and misreported it.”¹⁰

Both Parnas and Fruman filed affidavits in response to the complaint, and they were later indicted for making “materially false statements in th[ose] affidavits.”¹¹ That same indictment also “criminally [charged] Parnas and Fruman on charges of conspiracy related to contributions made to AFA and other committees”—the very scheme at issue in the complaint and its supplements.¹²

In the ensuing criminal proceedings, the United States obtained findings of guilt regarding this cutout scheme.¹³

II. LEGAL ANALYSIS

As the foregoing indicates, the illegal conduct at issue here has been addressed by our colleagues at the Department of Justice. Indeed, while only the three of us specifically voted to exercise our prosecutorial discretion, in fact four commissioners rejected OGC’s recommendations in this Matter, effectively leaving enforcement to the Department.¹⁴

Nevertheless, OGC recommended that we proceed with an investigation into certain comparatively minor matters identified in the record DOJ compiled in its criminal case.¹⁵ But pulling on these strands would not have been worth allocating our scarce investigative resources, especially given the expiration of the statute of limitations next year.¹⁶ OGC’s recommendations did not hinge on conduct that was not already a part of the criminal proceedings brought by the United States. At best,

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ Indictment at 16-17, ¶¶ 28-29, *United States v. Parnas*, Case No. 19-725 (S.D.N.Y.).

¹² FGCR at 3.

¹³ *Id.* at 6-7. DOJ also secured a guilty verdict against Mr. Parnas for his lies to this agency. *Id.*; 18 U.S.C. § 1001.

¹⁴ Certification at 1-2, MUR 7422 (Global Energy Producers, LLC, *et al.*), May 24, 2022.

¹⁵ Specifically, looking into contributions charged to a corporate credit card, FGCR at 39-42, and the sourcing of contributions made from loan proceeds on a Florida condo. *Id.* at 27.

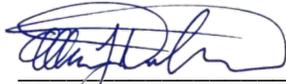
¹⁶ FGCR at 1.

our efforts could only have provided additional shading to an already completed portrait.

As for the allegations against AFA, OGC recommended that “the Commission take no action at this time.”¹⁷ This we could not do. When there is not enough evidence to find reason-to-believe (“RTB”), and no further development of the record is anticipated, we cannot leave a Matter in limbo or conjure an RTB finding on a lower-than-normal evidentiary threshold.¹⁸ We accordingly voted to dismiss those allegations as well.¹⁹

CONCLUSION

For the foregoing reasons, we voted to dismiss the allegations before us pursuant to *Heckler v. Chaney*.²⁰ In doing so, we chose to husband our agency’s resources for Matters in which respondents have not already been sentenced to prison terms.



Allen Dickerson
Chairman

June 29, 2022

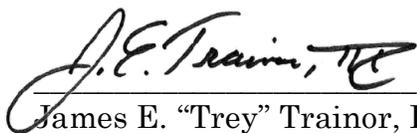
Date



Sean J. Cooksey
Commissioner

June 29, 2022

Date



James E. “Trey” Trainor, III
Commissioner

June 29, 2022

Date

¹⁷ *Id.* at 37.

¹⁸ *Id.* at 35 (expressing OGC’s uncertainty as to the record regarding the allegations against AFA).

¹⁹ Certification at 2, MUR 7422 (Global Energy Producers, LLC, *et al.*), May 24, 2022.

²⁰ 470 U.S. at 831 (“[T]he agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another”).