

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR: 7647**

6 DATE COMPLAINT FILED: 10/01/19

7 DATES OF NOTIFICATIONS: 10/07/19; 1/29/20

8 DATE OF LAST RESPONSE: 12/23/19

9 DATE ACTIVATED: 1/10/20

10
11 ELECTION CYCLE: 2016

12 EXPIRATION OF SOL: 03/29/21 – 6/30/21

13
14 **COMPLAINANT:**

15 Committee to Defeat the President (f/k/a
16 Committee to Defend the President)

17 **RESPONDENTS:**

18 Democratic National Committee and Virginia
19 McGregor in her official capacity as treasurer
20 Alexandra Chalupa
21 Chalupa & Associates, LLC

22 **RELEVANT STATUTE**

52 U.S.C. § 30121(a)(2)

23 **AND REGULATIONS:**

11 C.F.R. § 100.52(d)(1)

11 C.F.R. § 110.20(g)

24
25
26 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:**

None

29
30 **I. INTRODUCTION**

31 The Complaint alleges that during the 2016 election, Alexandra Chalupa, acting as an
32 agent of the Democratic National Committee and Virginia McGregor in her official capacity as
33 treasurer (the “DNC”), solicited, accepted, and received in-kind contributions from Ukrainian
34 officials, in violation of the foreign national prohibition of the Federal Election Campaign Act of
35 1971, as amended (the “Act”). According to the Complaint, Chalupa (1) sought opposition
36 research from Ukrainian officials on presidential candidate Donald J. Trump and former Trump
37 campaign official Paul Manafort; (2) asked Ukrainian officials to arrange for then-Ukrainian
38 President Petro Poroshenko to make a comment to the press on Manafort’s activities in Ukraine;

1 and (3) requested that Ukrainian officials ask a member of the U.S. Congress to initiate hearings
2 on Manafort regarding his prior political consulting work. Respondents deny the allegations.
3 They assert that Chalupa interacted with Ukrainian officials only in her personal capacity and
4 that, in any case, she did not solicit or receive any contributions.

5 The Commission has previously considered the bulk of the allegations presented in this
6 matter. In MUR 7271 (DNC, *et al.*), the Commission initially found reason to believe that
7 Chalupa, her company, Chalupa & Associates, LLC (“C&A”), and the DNC violated the foreign
8 national prohibition.¹ The Office of General Counsel (“OGC”) conducted an investigation, and
9 the Commission subsequently found no probable cause to believe that a violation had occurred.²
10 One of the allegations in the instant MUR 7647 Complaint, *i.e.*, that Chalupa asked Ukrainian
11 officials to request that a member of Congress initiate hearings on Manafort, was not included in
12 the prior matter and was therefore not analyzed by the Commission. However, the statute of
13 limitations as to that allegation has expired or is about to do so. Moreover, OGC has already
14 conducted an investigation regarding Chalupa’s interactions with the Ukrainian Embassy and
15 obtained only limited information about this request. Accordingly, we recommend that the
16 Commission dismiss this Complaint in its entirety.

17 **II. FACTUAL BACKGROUND**

18 During the 2016 election, Chalupa, through C&A, worked as a consultant for the DNC.³
19 The DNC and Chalupa contend that the scope of her work was “to engage in political outreach to

¹ Certification ¶ 1 (July 29, 2019), MUR 7271 (DNC, *et al.*).

² Certification ¶ 1 (Apr. 8, 2021), MUR 7271 (DNC, *et al.*).

³ *E.g.*, DNC Amended July Quarterly Report at 4243 (Oct. 25, 2016). The DNC paid C&A \$40,000 in 2016 for “political consulting” and \$30,000 in 2015 for “event consulting.”

1 American ethnic communities.”⁴ In 2014, Chalupa reportedly began researching Manafort and
2 his ties to Ukraine, and in 2016 she informed a DNC official that she suspected Manafort would
3 play a role in the upcoming U.S. presidential election.⁵

4 According to an extensive article in *Politico*, which was the primary basis for the
5 complaint in MUR 7271 and is also the primary basis for the instant Complaint, “with the DNC’s
6 encouragement, Chalupa asked [Ukrainian] embassy staff to try to arrange an interview in which
7 Poroshenko might discuss Manafort’s ties to [former Ukrainian President Viktor] Yanukovich.”⁶
8 The embassy declined her request, but Chalupa reportedly stated that embassy officials became
9 “helpful” and traded information and leads with her, although she contends that they did not give
10 her any documents.⁷ Relatedly, the *Politico* article reported that Chalupa sought to arrange a
11 congressional investigation of Manafort,⁸ and a column published as an opinion piece in *The Hill*
12 quoted the Embassy as stating that Chalupa “floated” the idea of “approaching a Member of
13 Congress with a purpose to initiate hearings on Paul Manafort.”⁹

⁴ Chalupa Resp. at 2 (Dec. 23, 2019); *accord* DNC Resp. at 3 (Nov. 25, 2019).

⁵ Kenneth P. Vogel & David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO, Jan. 11, 2017, <https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446> (cited in Compl. ¶ 4 (Oct. 1, 2019)).

⁶ *Id.*; Compl. ¶ 4; Compl. ¶ 6, MUR 7271 (DNC, *et al.*) (“MUR 7271 Complaint”).

⁷ Vogel & Stern, *supra* note 5.

⁸ *Id.* Chalupa stated in the article that she discussed a potential hearing with a legislative assistant in the office of Rep. Marcy Kaptur but that it “didn’t go anywhere.” *Id.*

⁹ John Solomon, *Ukrainian Embassy Confirms DNC Contractor Solicited Trump Dirt in 2016*, THE HILL, May 2, 2019, <https://thehill.com/opinion/white-house/441892-ukrainian-embassy-confirms-dnc-contractor-solicited-trump-dirt-in-2016> (cited in Compl. ¶ 5) (“Solomon Column”). Chalupa and the DNC argue that Solomon’s work is not credible and that it was under review by his former employer, *The Hill*. Chalupa Resp. at 3; DNC Resp. at 6 n.24. *The Hill* has since completed the review and added an editor’s note to this story acknowledging that U.S. officials and Chalupa have disputed that Ukraine “meddled in the 2016 election” and that Chalupa has also “strongly disputed John Solomon’s columns on Ukraine” on her social media. Solomon Column; *see also The Hill’s Review of John Solomon’s Columns on Ukraine*, THE HILL, Feb. 19, 2020, <https://thehill.com/homenews/news/483600-the-hills-review-of-john-solomons-columns-on-ukraine>.

1 The *Politico* article also contains statements from Andrii Telizhenko, a former political
2 officer from the Ukrainian Embassy, who said he met with Chalupa and Oksana Shulyar, a
3 senior diplomat from the Embassy.¹⁰ Telizhenko alleged that Shulyar instructed him to help
4 Chalupa by performing research on Trump and Manafort, and he said that the embassy was
5 “coordinating an investigation . . . with Alexandra Chalupa” and “worked very closely with”
6 Chalupa.¹¹ In the *Politico* article, Shulyar denies working with Chalupa on anything related to
7 Trump or Manafort.¹²

8 Drawing primarily on the *Politico* article, the Complaint in this matter alleges that
9 Chalupa, acting as an agent of the DNC, solicited in-kind contributions from Ukrainian officials
10 in the form of opposition research and a public comment by President Poroshenko, the same
11 allegations presented in the MUR 7271 Complaint.¹³ The Complaint also makes a third
12 allegation, that Chalupa solicited an in-kind contribution by asking Ukrainian officials to request
13 that a member of the U.S. Congress initiate hearings on Manafort.¹⁴

14 In response, Chalupa denies that she sought “documents, research, or any other
15 information” about Manafort from the Ukrainian Embassy and argues that she interacted with the

¹⁰ Vogel & Stern, *supra* note 5; Solomon Column. In March 2020, the *New York Times* reported that staff from the Senate Homeland Security and Governmental Affairs Committee received an FBI briefing suggesting that Telizhenko could be spreading Russian disinformation. Kenneth Vogel & Nicholas Fandos, *Senate Panel Delays Subpoena Vote Over Concerns About Ukraine Witness*, N.Y. TIMES, Mar. 11, 2020. 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. Press Release, *Treasury Takes Further Action Against Russian-Linked Actors* (Jan. 11, 2021), <https://home.treasury.gov/news/press-releases/sm1232>.

¹¹ Vogel & Stern, *supra* note 5.

¹² *Id.*

¹³ Compl. ¶¶ 5-7; MUR 7271 Compl. ¶¶ 23-25.

¹⁴ Compl. ¶¶ 5, 7.

1 embassy only in her personal capacity.¹⁵ The DNC argues that Chalupa's contracts barred her
2 from soliciting contributions on the DNC's behalf and that any interactions she had with the
3 embassy in her personal capacity are not attributable to the DNC.¹⁶ Finally, Respondents
4 contend that answering a question at a press conference does not constitute a contribution under
5 the Act.¹⁷

6 **III. LEGAL ANALYSIS**

7 The Act and Commission regulations prohibit any foreign national from directly or
8 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
9 in connection with a federal, state, or local election.¹⁸ The Act's definition of "foreign national"
10 includes an individual who is not a citizen or national of the United States and who is not
11 lawfully admitted for permanent residence, as well as a "foreign principal" as defined at
12 22 U.S.C. § 611(b), which, in turn, includes a "government of a foreign country."¹⁹ No person
13 shall knowingly solicit, accept, or receive a prohibited foreign national contribution.²⁰

14 The Act defines "contribution" as "any gift, subscription, loan, advance, or deposit of
15 money or anything of value made by any person for the purpose of influencing any election for
16 Federal office."²¹ "[A]nything of value includes all in-kind contributions" such as "the provision
17 of any goods or services without charge or at a charge that is less than the usual and normal

¹⁵ Chalupa Resp. at 3-4.

¹⁶ DNC Resp. at 3-5; DNC Resp. at 2-5, MUR 7271 (DNC *et al.*) ("DNC MUR 7271 Resp.").

¹⁷ DNC Resp. at 8; Chalupa Resp. at 5.

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

¹⁹ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(1); *see also* 11 C.F.R. § 110.20(a)(3).

²⁰ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g). The term "knowingly" is defined as having "actual knowledge" that the source is a foreign national, or being aware of "facts that would lead a reasonable person to conclude that there is a substantial probability that" or "facts that would lead a reasonable person to inquire whether" the source is a foreign national. 11 C.F.R. § 110.20(a)(4).

²¹ 52 U.S.C. § 30101(8)(A)(i).

1 charge.”²² The Commission has recognized the “broad scope” of the foreign national
2 contribution prohibition and found that even where the value of a good “may be nominal or
3 difficult to ascertain,” such contributions are nevertheless prohibited.²³

4 In MUR 7271, the Commission found reason to believe that Chalupa, C&A, and the
5 DNC violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or
6 receiving contributions from Ukrainian officials.²⁴ The Commission concluded: “The record
7 indicates that, in response to Chalupa’s inquiries, the Ukrainian Embassy reportedly utilized its
8 resources and expended funds for opposition research on a candidate that was provided to a
9 political committee at no charge.”²⁵ In addition, the Commission concluded that the available
10 information “indicates that the DNC may have been aware that Chalupa had been discussing
11 Manafort with the Ukrainian Embassy and that it may have assented to her work with the
12 Ukrainians while she was contracted to work for the DNC.”²⁶

13 After conducting an investigation, OGC recommended that the Commission take no
14 further action as to the allegation that Respondents solicited, accepted, or received a foreign
15 national in-kind contribution from the Ukrainian Embassy in the form of opposition research.²⁷
16 OGC determined that there was no information to indicate that Chalupa or the DNC accepted or

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

²³ AO 2007-22 at 6 (citing Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) (“As indicated by the title of section 303 of BCRA, ‘Strengthening Foreign Money Ban,’ Congress amended [52 U.S.C. § 30121] to further delineate and *expand* the ban on contributions, donations, and other things of value by foreign nationals.” (emphasis added)).

²⁴ Certification ¶ 1 (July 29, 2019), MUR 7271 (DNC, *et al.*); Factual & Legal Analysis (“F&LA”), MUR 7271 (DNC) (“DNC MUR 7271 F&LA”); F&LA, MUR 7271 (Chalupa, *et al.*).

²⁵ DNC MUR 7271 F&LA at 7-8 (internal quotations and punctuation omitted).

²⁶ *Id.* at 9.

²⁷ Second Gen. Counsel’s Rpt. at 1, MUR 7271 (DNC, *et al.*) (“MUR 7271 Second GCR”).

1 received opposition research from the Embassy.²⁸ Moreover, OGC assessed that the factual
2 record did not sufficiently establish that Chalupa had solicited opposition research on behalf of
3 the DNC, given the conflicting testimony from Chalupa, Shulyar, and Telizhenko, credibility
4 issues regarding Telizhenko's testimony, and the lack of any documents tending to support or
5 corroborate the allegations, which were supported only by Telizhenko's testimony.²⁹ However,
6 OGC recommended that the Commission find probable cause to believe that Respondents
7 solicited a foreign national in-kind contribution when Chalupa solicited the Ukrainian
8 government and then-President Poroshenko to make a public statement regarding Manafort's
9 recent hire to the Trump campaign, and his previous work helping to advance Russian interests
10 in Ukraine.³⁰ On April 8, 2021, the Commission found no probable cause to believe that
11 Respondents had violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g), and closed the
12 file.³¹

13 The instant Complaint makes two allegations identical to those in MUR 7271, citing to
14 the same *Politico* news article that was the chief support for that complaint, namely that Chalupa,
15 acting as an agent of the DNC, solicited opposition research from Ukrainian officials, and
16 requested that Ukrainian officials arrange for then-Ukrainian President Poroshenko to make a
17 public statement on Manafort.³² The Complaint presents no additional material facts that would
18 alter the reason-to-believe analysis as to those allegations. However, because the Commission
19 has already considered OGC's post-investigation recommendations and determined that there is

²⁸ *Id.* at 24.

²⁹ *Id.* at 25-31.

³⁰ PC Br. at 1-2, MUR 7271 (DNC); PC Br. at 1-2, MUR 7271 (Chalupa, *et al.*).

³¹ Certification ¶¶ 1, 5 (Apr. 8, 2021), MUR 7271 (DNC, *et al.*).

³² Compare MUR 7647 Compl. ¶¶ 16-19, with MUR 7271 Compl. ¶¶ 22-29.

1 no probable cause to believe that Respondents violated the Act, we accordingly recommend that
2 the Commission exercise its prosecutorial discretion to dismiss the materially indistinguishable
3 allegations in this matter.

4 The Complaint's final allegation is that Chalupa, as a DNC agent, solicited a contribution
5 by requesting that "Poroshenko or another Ukrainian government official ask a Member of the
6 U.S. Congress to hold hearings on Manafort and his work in Russia."³³ This allegation was not
7 raised in MUR 7271. Nonetheless, in the course of its investigation in MUR 7271, OGC
8 received pertinent information from Shulyar, who stated that Chalupa did ask that the Embassy
9 approach a Member of Congress about initiating an investigation, and that the Embassy denied
10 her request.³⁴ Given the available information, it appears that this request occurred around the
11 time when Shulyar and Chalupa were planning a cultural event called the House of Ukraine.³⁵
12 That event reportedly took place in June 2016.³⁶ Consequently, the five-year statute of
13 limitations as to that allegation appears either to have expired or will shortly do so.³⁷ Moreover,
14 the Commission has already conducted an extensive investigation regarding Chalupa's
15 interactions with the Ukrainian Embassy and did not obtain comprehensive information about
16 this allegation. Accordingly, we do not believe that it would be a prudent use of the
17 Commission's limited resources to pursue this violation further.³⁸ We therefore recommend that

³³ Compl. ¶ 7.

³⁴ MUR 7271 Second GCR at 22.

³⁵ *See id.* at 9 (stating that Chalupa's first substantial contact with Shulyar took place at a March 24, 2016, meeting to discuss House of Ukraine).

³⁶ Vogel & Stern, *supra* note 5.

³⁷ 28 U.S.C. § 2462.

³⁸ *See* F&LA at 3-4, MUR 7308 (Adam H. Victor, *et al.*) (dismissing complaint alleging new violations in previously conciliated MURs when newly alleged conduct was beyond the statute of limitations).

1 the Commission exercise its prosecutorial discretion to also dismiss this allegation and close the
 2 file.³⁹

3 **V. RECOMMENDATIONS**

- 4 1. Dismiss the allegations that the Democratic National Committee and Virginia
 5 McGregor in her official capacity as treasurer, Alexandra Chalupa, and Chalupa
 6 & Associates, LLC, violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g)
 7 by soliciting, accepting, or receiving prohibited foreign national contributions;
- 8 2. Approve the attached Factual and Legal Analysis;
- 9 3. Approve the appropriate letters; and
- 10 4. Close the file.

11 Lisa J. Stevenson
 12 Acting General Counsel

13
 14
 15 06/30/2021
 16 Date

17 Charles Kitcher
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³⁹ Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).