



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Donald J. Trump, *et al.*) MURs 7645, 7663, and 7705
)

**STATEMENT OF REASONS OF
COMMISSIONERS SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

Once again and likely with no surprise to any individuals familiar with the Federal Election Commission’s activity in the last few years, the Commission failed to investigate former President Donald J. Trump and his 2020 authorized campaign committee, Donald J. Trump for President, Inc. (the “Trump Committee”) for credible allegations that Trump and the Trump Committee violated federal campaign finance law.¹ This time, three complaints alleged violations of the foreign national prohibition,² a statutory provision “intimately related to the process of democratic self-government” and the right of the government to “reserve ‘participation in its democratic political institutions’ for citizens of this country.”³ Specifically, the allegations centered on a months-long series of communications through which Trump and his personal attorney, Rudolph “Rudy” Giuliani, pressured Ukrainian President Volodymyr Zelensky, both directly and indirectly through their representatives – including Giuliani’s associate, Lev Parnas, and diplomatic officials Gordon Sondland and Kurt Volker – to make an official public announcement and conduct an investigation into two allegations, one concerning 2020 presidential candidate and current President Joseph R. Biden and the other concerning the Democratic National Committee (“DNC”). The record indicates that Trump, Giuliani, and Parnas asked that Zelensky investigate these two allegations and announce the investigation with explicit references to the allegations, for the purpose of benefiting Trump’s reelection campaign. Based on the available information, we voted to approve the recommendation of our nonpartisan Office of General Counsel (“OGC”) and find reason to believe that Trump and the Trump Committee knowingly solicited a foreign

¹ See Certification, MURs 7645, 7663, and 7705 (Donald J. Trump, *et al.*) (July 18, 2022); Certification, MURs 7645, 7663, and 7705 (Donald J. Trump, *et al.*) (July 31, 2022); *see also* Stmt. of Reasons of Comm’rs Shana M. Broussard & Ellen L. Weintraub at 1 n.1, MUR 7784 (Make America Great Again PAC, *et al.*) (June 15, 2022) (noting Commission’s failure to investigate violations of federal election laws by Trump or his Committee alleged in at least 24 complaints where the nonpartisan Office of General Counsel recommended moving finding reason to believe a violation occurred).

² 52 U.S.C. § 30121; 11 C.F.R. § 110.20.

³ *Bluman v. Fed. Election Comm’n*, 800 F.Supp.2d 281, 287 (D.D.C. 2011) (three-judge court) (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984) and *Foley v. Connelie*, 435 U.S. 291, 295 (1978)).

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national to provide in-kind contributions from Ukrainian nationals.⁴ Unfortunately, three of our colleagues voted against moving forward and the Commission once again was unable to enforce the law.

I. Background

At this point, the facts are well-known from rigorous news reporting and testimony. In 2018 and early 2019, Giuliani, along with his associates Parnas and Igor Fruman, engaged in a concerted effort to develop evidence against Biden, including several attempts to meet with former Ukrainian Prosecutor General, Viktor Shokin⁵, and Shokin’s successor, Yuriy Lutsenko. Not satisfied with the results of these efforts, Trump himself, during a July 25, 2019 telephone call, urged Zelensky to investigate these allegations and work with Giuliani to do so. In discussions between intermediaries leading up to and after that July 25 call, Trump and Giuliani linked Zelensky’s cooperation to a White House visit for Zelensky and \$391 million in U.S. security aid to Ukraine, both of which Zelensky and the Ukrainians desired and which U.S. officials testified was considered crucial to U.S. interests.⁶

Zelensky, directly and through his aides, expressed concern about becoming embroiled in a U.S. domestic political matter.⁷ After news of Trump’s and Giuliani’s efforts became public, the security aid was released, and Zelensky ultimately did not announce the requested investigations. In response to reporters’ questions about his reasons for asking Zelensky to investigate Biden, Trump acknowledged

⁴ Certification, MURs 7645, 7663, and 7705 (Donald J. Trump, *et al.*), (July 18, 2022). In addition, we voted to approve OGC’s recommendation to find reason to believe that Giuliani and Parnas solicited, or provided substantial assistance in the solicitation of, contributions from Ukraine. *Id.*

⁵ These efforts included seeking to obtain a U.S. visa for Shokin in exchange for a meeting to discuss the Bidens. Michael Sallah, *et al.*, *Two Unofficial US Operatives Reporting to Trump’s Lawyer Privately Lobbied a Foreign Government in a Bid to Help the President Win in 2020*, BUZZFEEDNEWS, <https://www.buzzfeednews.com/article/mikesallah/rudy-giuliani-ukraine-trump-parnas-fruman> (cited in Compl. at 4, MUR 7645); Deposition of Deputy Assistant Secretary George Kent before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 44 (Oct. 15, 2019) (“The next time I heard Mr. Giuliani’s name mentioned was on the 9th of January this year, 2019, when I was copied on an email that Giuliani was calling the State Department regarding the inability of the previous prosecutor general Viktor Shokin to get a visa to come to the United States.”).

⁶ Deposition of Ambassador William B. Taylor before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 28 (Oct. 22, 2019) (“Taylor Dep.”) (“At one point the Defense Department was asked to perform an analysis of the effectiveness of the assistance. Within a day, the Defense Department came back with the determination that the assistance was effective and should be resumed. My understanding was that the Secretaries of Defense and State, the CIA Director, and the National Security Advisor, sought a joint meeting with the President to convince him to release the hold, but such meeting was hard to schedule, and the hold lasted well into September.”); *id.* at 132 (stating that the opinion that aid should be resumed was the “[u]nanimous opinion of every level of interagency discussion.”); Deposition of Laura K. Cooper before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 16 (Oct. 23, 2019) (“Cooper Dep.”) (“Q: In 2018 and 2019, has Ukrainian security assistance received bipartisan support? A: It has always received bipartisan support, in my experience. Q: And that’s both in the House and the Senate? A: Absolutely, in my experience. Q: And what about at the interagency level? A: I have witnessed, even in the recent past, overwhelming consensus in favor of providing Ukraine security assistance. Q: And when you say ‘within the recent past,’ you mean even over the course of this year? A: Even over the course of the summer.”).

⁷ Taylor Dep. at 30.

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that he believed Biden was “crooked” and should be investigated,⁸ and he later said, in a televised interview, that he would make Biden’s alleged corruption “a major issue in the campaign.”⁹

II. Legal Analysis

The Act and Commission regulations prohibit any “foreign national”¹⁰ 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. These are core provisions of the Act, fundamental to safeguarding our democracy from foreign interference, and the Commission is the exclusive civil authority empowered to enforce them.¹¹ Moreover, the Act and Commission regulations prohibit any person from knowingly soliciting, accepting, or receiving any such contribution or donation from a foreign national,¹² and Commission regulations further prohibit any person from knowingly providing substantial assistance in soliciting, making, accepting, or receiving any such contribution or donation.¹³ Under Commission regulations, “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.”¹⁴

⁸ Remarks by President Trump and President Niinistö of the Republic of Finland in Joint Press Conference, The White House (Oct. 2, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-president-niinisto-republic-finland-joint-press-conference/> (“Q: What did you want about Biden? What did you want [President Zelensky] to look into on Biden? PRESIDENT TRUMP: . . . Look, Biden and his son are stone-cold crooked.”); Kevin Breuninger, *Trump says China should investigate the Bidens, doubles down on Ukraine probe*, CNBC (Oct. 3, 2019), <https://www.cnbc.com/2019/10/03/trump-calls-for-ukraine-china-to-investigate-the-bidens.html> (cited in Compl. at 4, MUR 7705) (quoting Trump as stating “They should investigate the Bidens...[I]likewise, China should start an investigation into the Bidens, because what happened in China is just about as bad as what happened in Ukraine.”).

⁹ Fox News, *Trump blasts Biden’s record in ‘Hannity’ exclusive interview*, YOUTUBE (Mar. 4, 2020) at 5:54–7:47, <https://www.youtube.com/watch?v=fqjrlKfW93I&feature=youtu.be&t=354> (“HANNITY: Let me ask you, because we now know that there is a corruption issue and there’s an investigation officially in the country of Ukraine as it relates to Joe Biden . . . after all you went through, and now that you see Ron Johnson in the Senate and you see Ukraine investigating this issue . . . it has to be a campaign issue; how do you plan to use it, or do you plan to use it? TRUMP: . . . That will be a major issue in the campaign, I will bring that up all the time because I don’t see any way out. . . . That was purely corrupt.”).

¹⁰ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes “a government of a foreign country.” 52 U.S.C. § 30121(b)(1); *see also* 11 C.F.R. § 110.20(a)(3).

¹¹ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have upheld provisions of the Act prohibiting foreign national contributions and independent expenditures on the ground that the government “has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d* 565 U.S. 1104 (2012); *see United States v. Singh*, 924 F.3d 1030, 1041–44 (9th Cir. 2019).

¹² 52 U.S.C. § 30121(a)(2); *see also* 11 C.F.R. § 110.20(g) (providing that “no person shall *knowingly solicit* a foreign national contribution (emphasis added)); 11 C.F.R. § 110.20(a)(4) (defining “knowingly” to include “actual knowledge” that the target of the solicitation is a foreign national).

¹³ 11 C.F.R. § 110.20(h). In this context, the Commission has explained that “substantial assistance means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction[,]” and “does not include strictly ministerial activity undertaken pursuant to the instructions of an employer, manager, or supervisor.” Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,945–46 (Nov. 19, 2002) (“Prohibitions E&J”).

¹⁴ 11 C.F.R. § 110.20(a)(6) (incorporating the definition at 11 C.F.R. § 300.2(m)).

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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.”¹⁵ 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.”¹⁶ The Commission has recognized the “broad scope” of the foreign national contribution prohibition and found that even where the value of a good “may be nominal or difficult to ascertain,” such contributions are nevertheless prohibited.¹⁷

Here, Trump knowingly solicited Zelensky by asking, requesting, or recommending, directly and through intermediaries,¹⁸ that Zelensky provide two deliverables: The Ukrainian investigation of allegations regarding Burisma/Biden and 2016 election interference, and a public announcement of that investigation. So, the questions before the Commission then were: 1) whether the Ukrainian government acting through its head, Zelensky, is a foreign national within the meaning of the Act; 2) whether the deliverables sought are things “of value” under the Act; and 3) whether Trump sought the deliverables “for the purpose of influencing a federal election.”

1. “Foreign National”

As an initial matter, the Act and Commission regulations explicitly include foreign governments within the scope of the foreign national prohibition.¹⁹ Therefore, both Zelensky as an individual and the Ukrainian government, with Zelensky acting as its head, are foreign nationals for the purposes of the prohibition.

¹⁵ 52 U.S.C. § 30101(8)(A).

¹⁶ 11 C.F.R. § 100.52(d).

¹⁷ Advisory Op. 2007-22 (Hurysz) at 6 (quoting 120 Cong. Rec. 8,782 (Mar. 28, 1974) (statement of Sen. Bentsen, author of the amendment prohibiting foreign national contributions) (“I am saying that contributions by foreigners are wrong, and they have no place in the American political system”); Prohibitions E&J, 67 Fed. Reg. at 69,940 (“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)).

¹⁸ That a solicitation is made through intermediaries does not change the analysis. Commission regulations specify that a “solicitation may be made directly or indirectly” and thus capture solicitations made through persons acting on behalf of the principal or principals. 11 C.F.R. § 300.2(m) (incorporated in foreign national prohibition at 11 C.F.R. § 110.20(a)(6)); *see* Factual & Legal Analysis (“F&LA”) at 5–6, MUR 7122 (Right to Rise USA, *et al.*) (Oct. 11, 2018) (finding that the agent of an independent expenditure-only political committee (“IEOPC”) solicited foreign national contributions by having a conversation with a foreign national, the majority owner of a foreign company, about the foreign company’s U.S. subsidiary contributing to the IEOPC, and then emailing both the Chief Executive and a foreign national board member of the subsidiary to indicate that the foreign parent company’s majority owner “expressed interest” in making a contribution to the IEOPC); Conciliation Agreement, MUR 7122 (Right to Rise USA) (settling IEOPC’s violations of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) arising from agent’s solicitation).

¹⁹ 52 U.S.C. § 30121(b)(1) (stating that “foreign national” includes a “foreign principal, as such term is defined by section 611(b) of title 22 [of the U.S. Code],” which in turn defines “foreign principal” to include “a government of a foreign country”); 11 C.F.R. § 110.20(a)(3)(i).

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2. Thing “of Value”

Next, we turn to whether the deliverables sought are things “of value” under the Act. The information available in these matters indicated that both the actual investigations and the official public announcement of such investigations that Trump sought from Zelensky were things “of value” because they were unique, nonpublic “deliverables,”²⁰ the provision of which involved the use of the Ukrainian government’s official resources to confer an electoral benefit on Trump’s 2020 presidential reelection campaign.

The announcement would have benefited Trump’s reelection campaign by publicizing and appearing to give credence to negative allegations of corruption against one of Trump’s potential 2020 election opponents, Biden, and Biden’s political party, the DNC – akin to negative campaign advertising, or hiring a prominent public figure to criticize an electoral opponent.²¹ Trump, and perhaps to an even greater extent Giuliani, publicly aired these allegations about Biden and the DNC. However, only Zelensky (or a similarly high-ranking government official) could announce an official investigation of the allegations on behalf of Ukraine, lending them the authority that would be at the root of the potential electoral benefit.

Further, unlike using campaign advertisements and other paid efforts to disseminate the damaging narrative, which would have involved spending campaign funds and reporting the expenditures in disclosure reports,²² an announcement by Zelensky would have used Ukrainian resources, thus seeking a significant electoral benefit at no cost to the Trump Committee and with no public disclosure.²³ Indeed, Zelensky and his aides were involved in multiple, weeks-long negotiations with Department of State officials regarding the requested announcement, including the specific

²⁰ Deposition of Ambassador Gordon Sondland before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 30 (Oct. 17, 2019) (“Sondland Dep.”) (“My recollection is that the statement was written primarily by the Ukrainians, with Ambassador Volker’s guidance, and I offered my assistance when asked. This was the, quote, “deliverable,” closed quote, referenced in some of my [text] messages. A deliverable public statement that President Trump wanted to see or hear before a White House meeting could occur.”); *id.* at 289-90 (“The deliverable, I believe, was the press statement.”); Deposition of Special Representative for Ukraine Negotiations Kurt Volker before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 184 (Oct. 3, 2019) (“Volker Dep.”).

²¹ See 11 C.F.R. § 100.52(d)(1) (including “advertising services” among examples of “goods or services” which, if provided without charge or at a reduced charge, would result in a contribution). Third parties have spent considerable amounts to amplify damaging allegations or propagate a damaging narrative about a candidate. See, e.g., Conciliation Agreement ¶ IV.15, MURs 5511 and 5525 (Swiftboat Veterans and POWs for Truth) (Dec. 11, 2006) (“During the 2004 cycle, [Swiftboat Veterans and POWs for Truth] spent \$19,304,642 for 12 television advertisements that were broadcast in the Presidential election battleground states . . . and on national cable television stations . . . [and a]ll of these advertisements attacked the character, qualifications, and fitness for office of Senator John Kerry, the Democratic Presidential nominee.”). Even if a third party is not a foreign national and is otherwise permitted to make such expenditures under the Act, if those expenditures are “coordinated” with a candidate, authorized campaign committee, or an agent thereof, the result is either a “coordinated expenditure” or a “coordinated communication,” either of which results in an in-kind contribution from the third party to the candidate. See 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(b) (coordinated expenditures for activity that does not include communications); 11 C.F.R. § 109.21 (coordinated communications).

²² See 52 U.S.C. § 30101(9)(A) (defining “expenditure”); *id.* § 30104(b) (mandating periodic disclosure of all expenditures).

²³ Compl. Attachment, MUR 7663 (Nov. 18, 2019) (The White House, Memorandum of Telephone Conversation at 3 (July 25, 2019) (“July 25 Call Memo”)) (“The President: I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it.”).

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language that it would need to include.²⁴ As opposed to a voluntary statement by Zelensky in his personal capacity, Ukraine directed human and logistical resources towards the announcement,²⁵ akin to the type of resources necessary for the provision of a “service” at no charge, which Commission regulations include in the definition of a “contribution.”²⁶

In sum, Trump sought the disbursement of Ukrainian resources for a deliverable that Zelensky was uniquely situated to provide, and which supplied an electoral benefit to the Trump Committee: Amplifying and giving an official imprimatur to a narrative casting Trump’s potential election opponent in a negative light. As such, the announcement, including the resources expended to further the announcement, was a thing “of value” under the Act.

Trump also sought an actual investigation by Ukraine into the allegations that Joe Biden improperly coerced Ukraine to shut down an anticorruption investigation of Burisma to protect his son, Hunter Biden, and that the DNC coordinated with Ukraine’s efforts to interfere in the 2016 presidential election. Like the announcement Trump desired, the investigation would have involved Ukraine using its resources to confer a potential benefit on Trump’s 2020 reelection campaign, and thus, was a thing of value under the Act.

Opposition research – research into potentially damaging information about political opponents – is a service that campaigns commonly expend resources on,²⁷ and the Commission has concluded that the provision of free opposition research may constitute a contribution under the Act. In MUR 5409, the Commission found that a corporation made prohibited in-kind contributions by providing a campaign with its private lists of organizations and individuals with similar political views, which the corporation “utilized its resources to obtain and compile,” and which “contain[ed] information that may be of value in connection with” a federal election.²⁸

The requested investigation would have required a third party, the Ukrainian government, to use its resources to provide a benefit to the Trump Committee — *i.e.*, researching negative information about Trump’s potential election opponent, Biden, and Biden’s party, the DNC — thereby relieving the Trump Committee of the attendant expense of that investigative effort. As such, the requested

²⁴ See Sondland Dep. at 84; 169 (“What I understood was that breaking the logjam with getting the President to finally approve a White House visit was a public utterance by Zelensky, either through the press statement or through an interview or some other public means, that he was going to pursue transparency, corruption, and so on.”); 240 (“[T]he first time I recall hearing about 2016 and Burisma was during the negotiations of the press statement.”); 347; Volker Dep. at 71–72 (discussing negotiating the text of the statement).

²⁵ See Taylor Dep. at 135–36.

²⁶ 11 C.F.R. § 100.52(d)(1); *see id.* § 100.111(e)(1); *cf.* 11 C.F.R. § 114.4(c)(6) (providing that disbursements for announcements of endorsements by a corporation or labor organization to the general public are not contributions or expenditures provided that the public announcement is *not coordinated with a candidate*, a candidate’s authorized committee, or their agents, and the amount of the disbursement is *de minimis*).

²⁷ See FEC, 2017-2018 Disbursement Data, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&disbursement_description=research (including 7,599 disbursement entries including the description “research”); *see also* Ellen L. Weintraub, *The Law of a ‘Thing of Value,’* FED. ELECTION COMM’N (Oct. 2019), available at <https://www.fec.gov/resources/cms-content/documents/2019-10-ELW-the-law-of-a-thing-of-value.pdf>.

²⁸ First Gen. Counsel’s Report at 10, MUR 5409 (adopted as dispositive).

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investigation squarely falls within prior Commission matters finding that third party research conducted on a campaign’s behalf for no charge or at a reduced charge results in an in-kind contribution.²⁹

This is true even if the requested investigation ultimately failed to produce any useful information for the Trump Committee. Like an opposition research service paid for by any campaign, the “value” of the requested Ukraine investigation in this context, for the Act’s purposes, derives from the cost of the investigative *effort*, without regard to the perceived value of the resulting *information*, just as the value of a campaign ad, for the Act’s purposes, generally derives from the production and distribution costs without regard to its effectiveness in persuading voters. Accordingly, because Ukraine’s government would have had to use its resources to investigate the allegations, thus sparing the Trump Committee the expense of doing so and potentially allowing the campaign to otherwise direct its resources, the requested investigation was a thing “of value.”³⁰

3. “For the Purpose of Influencing a Federal Election”

The available information indicates that the requested announcement and investigation were sought “for the purpose of influencing” a federal election.³¹ In analyzing whether the provision of funds or any other thing of value is a “contribution” under the Act and Commission regulations, the Commission has concluded that the question is whether a thing of value was “provided for the purpose of influencing a federal election [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”³² The electoral purpose may be clear on its face, as in a third party’s payments for a coordinated communication, or inferred from the surrounding circumstances.³³

Trump repeatedly requested that Zelensky confer with Giuliani and investigate allegations regarding Biden and 2016 election interference during their July 25, 2019, phone call.³⁴ Trump’s later comments regarding the July 25 call, including his statement that he would make Biden’s alleged corruption “a major issue in the campaign,”³⁵ and his ongoing support for Giuliani’s investigation of the same allegations, indicate that the request was motivated by an electoral purpose — *i.e.*, seeking and publicizing damaging information about Biden, Trump’s potential opponent in the 2020 U.S.

²⁹ See also 11 C.F.R. § 100.52(d)(2).

³⁰ See F&LA at 3–4, 13–14, MUR 6414 (discussing the nature and value of investigative services provided by a research company, some of which were allegedly provided at a discount or at no charge).

³¹ 52 U.S.C. § 30101(8)(A)(i).

³² F&LA at 6, MUR 7024.

³³ E.g. Advisory Op. 1988-22 (San Joaquin Valley Republican Associates) at 5 (concluding third party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions); see F&LA at 17–20, MURs 4568, 4633, and 4634 (Triad Mgmt. Servs., Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with “uncompensated fundraising and campaign management assistance” and “advertising assistance[,]” including spending “several million dollars” on coordinated advertisements); Advisory Op. 2000-08 (Harvey) at 1, 3 (concluding private individual’s \$10,000 “gift” to a federal candidate would be a contribution because “the proposed gift would not be made but for the recipient’s status as a Federal candidate”).

³⁴ July 25 Call Memo.

³⁵ See *supra* footnote 8.

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presidential election,³⁶ and the DNC. Trump further demonstrated that electoral purpose by repeatedly refusing — without first receiving the public announcement of the investigation — to schedule a White House meeting with Zelensky.

Trump's funneling of Ukraine policy through his personal attorney, Giuliani, further accords with that conclusion. Upon returning from Zelensky's inauguration in May 2019, the U.S. delegation, including then-Secretary of Energy Rick Perry, Sondland, and Volker, urged Trump to show support for the new Ukrainian President by scheduling a White House meeting with Zelensky. Rather than engaging with officials at the Department of State, Department of Defense, or National Security Council, however, Trump directed that any discussion about meeting with Zelensky be channeled through Giuliani, who held no government position and was acting as Trump's personal attorney.³⁷ In his July 25, 2019, call with Zelensky, Trump requested that Zelensky consult with Giuliani and Attorney General William Barr, rather than going through traditional diplomatic channels, about investigating the Biden/Burisma and 2016 election interference allegations.³⁸ Trump's use of his personal attorney, rather than the usual and official actors in U.S. foreign policy, demonstrates that Trump viewed the effort to discredit Biden and the DNC as a personal matter, namely, that it was for the purpose of influencing the 2020 presidential election.

Numerous U.S. officials expressed concern regarding the requests that Zelensky announce and investigate these allegations, stemming from the fact that the announcement and investigation were pursued through an improper, irregular channel — namely, through Giuliani, a private citizen acting as Trump's personal attorney³⁹ — rather than through an official channel, such as a request for intergovernmental law enforcement cooperation, and were sought for the apparent purpose of benefiting Trump politically rather than advancing U.S. interests or policy. For example, at a July 10, 2019, meeting between Bolton and one of Zelensky's representatives, Oleksandr Danyliuk, Bolton reacted negatively to Sondland's statement to the Ukrainians that the White House would agree to schedule an official meeting for Zelensky after Ukraine initiated the investigations; Bolton swiftly ended the meeting and afterward instructed his associate, Dr. Fiona Hill, to inform the National Security Council's legal counsel about Sondland's statement and that he, Bolton, was not party to the offer.⁴⁰

³⁶ See Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES (May 9, 2019), <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html> (cited by Compl., MUR 7645) (reporting that Giuliani planned trip "potentially to damage Mr. Biden, the early front-runner for the 2020 Democratic presidential nomination").

³⁷ Volker Dep. at 305; Sondland Dep. at 25; see Letter from Rudolph W. Giuliani to Volodymyr Zelensky, President-Elect of Ukraine (May 10, 2019) ("Giuliani Letter"), https://judiciary.house.gov/uploadedfiles/excerpt_2_final.pdf ("I am private counsel to President Donald J. Trump. Just to be precise, I represent him as a private citizen, not as President of the United States.").

³⁸ July 25 Call Memo.

³⁹ See Giuliani Letter; see also Rudy W. Giuliani (@RudyGiuliani), Twitter (Nov. 6, 2019, 3:43 PM), <https://twitter.com/RudyGiuliani/status/1192180680391843841>.

⁴⁰ Deposition of Lieutenant Colonel Alexander S. Vindman before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 17 (Oct. 29, 2019) ("Vindman Dep."); Deposition of Dr. Fiona Hill before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 65–67, 70–71 (Oct. 14, 2019) ("Hill Dep.").

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At a follow-up meeting without Bolton, Sondland again told the Ukrainians that a White House visit for Zelensky would happen only after the announcement of the Burisma/Biden and 2016 election interference investigations, after which Hill and Vindman confronted Sondland to express their view that Sondland's statement was inappropriate.⁴¹ The fact that Bolton, Hill, and Vindman all expressed immediate concern with the requests to the Ukrainian delegation indicates that they perceived — and objected to — the linkage between an important diplomatic goal and the announcement of an investigation into Trump's potential electoral opponent.

Zelensky's representatives, Andrey Yermak and Danyliuk, also understood the purpose of the request to be political, expressing concern about Ukraine being improperly drawn into a U.S. domestic political matter. On July 20, 2019, ten days after his meeting with Bolton, Danyliuk told then-acting ambassador Bill Taylor that Zelensky "did not want to be used as a pawn" in U.S. election matters.⁴² Yermak, Zelensky's closest advisor, also expressed concern that Ukraine could get drawn into a U.S. domestic political issue by satisfying Trump's and Giuliani's wishes. After the Trump-Zelensky phone call, and after Yermak met with Giuliani on August 2, 2019, where they discussed the White House visit and a public announcement of the investigations, Yermak sent Volker a draft of a potential announcement, which generally discussed Ukraine's commitment to combating corruption but lacked specific mention of the Biden/Burisma and 2016 election interference allegations.⁴³ Upon considering Yermak's proposed statement, however, Giuliani reportedly rejected it because it did not contain specific references to the allegations, telling Volker that if the announcement "doesn't say Burisma and 2016, it's not credible."⁴⁴

Giuliani's reported insistence on these specific references belies the argument that the announcement's purpose was non-electoral — *e.g.*, that it was sought to publicly ensure Ukrainian commitment to investigating corruption.⁴⁵ Volker testified that to implement Giuliani's instructions and advance the negotiations, he incorporated the desired references and sent a revised draft statement to Yermak, although Volker also advised Yermak that announcing an investigation with specific references to these two allegations was "not a good idea" and that a "generic statement about fighting

⁴¹ Vindman Dep. at 29–31; Hill Dep. at 69–70.

⁴² Taylor Dep. at 30.

⁴³ Letter from Eliot L. Engel, House Committee on Foreign Affairs Chairman, Adam B. Schiff, House Permanent Select Committee on Intelligence Chairman, and Elijah E. Cummings, House Committee on Oversight and Reform Chairman to Members of the Intelligence, Oversight and Reform, and Foreign Affairs Committees, Attachment at 3–4 (Oct. 3, 2019) ("First Volker Text Excerpts"), https://foreignaffairs.house.gov/_cache/files/a/4/a4a91fab-99cd-4eb9-9c6c-ec1c586494b9/621801458E982E9903839ABC7404A917.chairmen-letter-on-state-department-texts-10-03-19.pdf; Volker Dep. at 71, 113.

⁴⁴ Volker Dep. at 71–72, 113; *see also* MSNBC, *Exclusive: Rachel Maddow Interviews Lev Parnas - Part 2*, YOUTUBE (Jan. 15, 2020), <https://www.youtube.com/watch?v=Xj-4V5ui8H4> ("Maddow Interview Pt. 2") at 16:17–17:02 ("They [Zelensky's administration] announced something about corruption, that he's going to be on corruption, but Giuliani blew his lid on that saying, 'That's not what we discussed.' That it wasn't supposed to be a corruption announcement, it has to be about Joe Biden and Hunter Biden and Burisma.").

⁴⁵ *See* Taylor Dep. at 36 ("Ambassador Sondland told me that President Trump had told him that he wants President Zelensky to state publicly that Ukraine will investigate Burisma and alleged Ukrainian interference in the 2016 election. . . . He said that President Trump wanted President Zelensky in a box by making [a] public statement about ordering such investigations.").

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corruption” would be better.⁴⁶ These sentiments appear to reflect contemporaneous recognition by the officials involved that conditioning a White House visit — seen by officials on both sides as critical to the diplomatic relationship⁴⁷ — on the public announcement and investigation of these specific allegations was improper, because it placed pressure on Zelensky to provide deliverables that could draw him and Ukraine into the 2020 U.S. presidential election.

Trump’s refusal to release the Congressionally-approved security aid to Ukraine, despite many requests to do so, also underscores the personal, electoral motive driving the demand for the announcement and investigation.⁴⁸ Officials at their respective agencies uniformly agreed, and represented vocally, that the aid to Ukraine was vital and effective, a perspective mirrored in bipartisan Congressional support for the aid appropriation.⁴⁹ The Department of Defense raised a further concern that the OMB hold on appropriated funds presented a potential violation of federal appropriations law, a concern later validated by the U.S. Government Accountability Office.⁵⁰ Taylor expressed his concern about the apparent reason for the hold on security funds to Ukraine, writing in a text message to Volker and Sondland, “I think it’s crazy to withhold security assistance for help with a political campaign.”⁵¹

Nevertheless, Trump continued to refuse to release the aid, telling Sondland that Zelensky would have to announce the investigation for the aid to be released.⁵² Trump’s refusal to release the aid,

⁴⁶ Volker Dep. at 44.

⁴⁷ Deposition of Christopher Anderson before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 50 (Oct. 30, 2019); Taylor Dep. at 76–77; Volker Dep. at 38; Deposition of David A. Holmes before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 41 (Nov. 15, 2019).

⁴⁸ For the Act’s purposes, a solicitation need not involve any coercion, pressure, or reciprocal inducement; to “solicit” requires only that someone “ask, request, or recommend” another person provide a contribution, donation, transfer of funds, or other thing of value. 11 C.F.R. § 300.2(m). Nevertheless, any such coercion, pressure, or inducement offered may provide relevant “context” in which the communications must be viewed to determine whether they would have been “reasonably understood” to convey “a clear message” asking, requesting, or recommending that the listener provide a contribution, donation, transfer of funds, or other thing of value. *Id.* As such, even if the White House meeting and the release of U.S. security aid to Ukraine were not conditioned on or linked to the public announcement and investigation — *i.e.*, even if there was no *quid pro quo* — the record would still support the conclusion that the request for Zelensky to publicly announce and conduct the investigation was a solicitation. The fact that Trump, Giuliani, and Parnas pressured and induced Zelensky, by using the White House visit and U.S. security aid to Ukraine as leverage, only adds further contextual support for that conclusion.

⁴⁹ Taylor Dep. at 28 and 132; Cooper Dep. at 16.

⁵⁰ Deposition of Timothy Morrison before the Permanent Select Committee on Intelligence for the U.S. House of Representatives at 163 (Oct. 31, 2019) (“Morrison Dep.”) (“Q: Was there any discussion of the legality or illegality of the hold at the PCC meeting? A: Yes. Q: What was — can you explain what was discussed? A: Because of the nature of the appropriations, is it actually legally permissible for the President to not allow for the disbursement of the funding. . . . Q: Okay. Who was raising concerns that there may be a legal problem? A: OSD. Q: That’s Office — A: Office of the Secretary of Defense. Q: DOD, okay. And did they raise concerns about possible violations of the Impoundment Act? A: Yes.”). The U.S. Government Accountability Office issued a report on January 16, 2020, finding that OMB violated the Impoundment Control Act when it withheld from obligation \$214 million of the security assistance for a “policy reason.” U.S. Government Accountability Office, Decision, *Matter of Office of Management and Budget—Withholding of Ukraine Security Assistance*, B-331564 at 1, 6, 8 (Jan. 16, 2020).

⁵¹ First Volker Text Excerpts at 9.

⁵² Morrison Dep. at 190–91; Taylor Dep. at 39.

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viewed in context with his explanatory statement to Sondland, indicate an electoral motivation driving his demands of Zelensky, namely, influencing the 2020 presidential election through the announcement and investigation of his potential opponent and the opposing political party.

In sum, there was more than enough information available to support the Commission opening an investigation into these allegations. Indeed, at this stage, the standard is merely whether there is “reason to believe” a violation has occurred.⁵³ Plainly, that standard was met. Yet despite the wealth of available information, our colleagues, again, unsurprisingly, tied the Commission’s hands from even investigating these serious allegations or ever holding anyone accountable for these apparent and egregious violations of law.

August 31, 2022

Date



Shana M. Broussard
Commissioner

August 31, 2022

Date



Ellen L. Weintraub
Commissioner

⁵³ See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).