

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 29, 2020

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher *CK*
Acting Associate General Counsel for Enforcement

Jin Lee *JL*
Acting Assistant General Counsel

Claudio J. Pavia *CP*
Acting Assistant General Counsel

Laura Conley *LC*
Attorney

SUBJECT: MUR 7271 (DNC, *et al.*)

RE: Motion to Quash Order to Submit Written Answers and Subpoena to Produce Documents Directed to the DNC, and Circulation of Discovery Documents

I. ACTIONS RECOMMENDED

1. Deny the DNC's Motion to Quash the Commission's Order to Submit Written Answers and Subpoena to Produce Documents;
2. Approve the attached Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Luis Miranda; and
3. Approve the attached Orders to Submit Written Answers, and Subpoenas to Produce Documents directed to Amy Dacey and Lindsey Reynolds.

II. BACKGROUND

On July 25, 2019, the Commission found reason to believe that the Democratic National Committee and William Derrough in his official capacity as treasurer (the "DNC"); Alexandra Chalupa; and Chalupa & Associates, LLC, violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving prohibited in-kind contributions from a foreign

national.¹ The Office of General Counsel (“OGC”) commenced an investigation to obtain facts regarding the relationship between the DNC and Chalupa with respect to Chalupa’s outreach to the Ukrainian Embassy in Washington, D.C., the type of information that Chalupa obtained from the embassy, and the resources that the embassy used to assist her and the DNC.² We circulate this memo to the Commission because the DNC has refused to cooperate with the Commission’s investigation, despite receiving a written order and subpoena.

On August 28, 2019, following the reason-to-believe finding, ahead of the imminent loss of quorum, OGC circulated an Order to Submit Written Answers and Subpoena to Produce Documents directed to the DNC (collectively, the “Subpoena”).³ At the time, OGC was still awaiting the DNC’s response to the reason-to-believe finding (“RTB Response”), and OGC advised the Commission that it would serve the Subpoena only if it was necessary to obtain additional information after receiving the RTB Response.⁴ The Commission approved the Subpoena on August 30, 2019,⁵ and the Chair signed the Subpoena on September 16, 2019, shortly after the loss of quorum.⁶

On October 7, 2019, the DNC submitted its RTB Response, which did not provide much, if any, new or important information, but nevertheless requested that the Commission reconsider its reason-to-believe finding.⁷ As a result, OGC sent the Subpoena to the DNC on October 28, 2019. On November 4, 2019, the DNC submitted a motion to quash (the “Motion”).⁸ OGC responded that, due to a lack of quorum, the Commission was unable to consider the Motion, but that in OGC’s view the DNC’s arguments lacked merit and the Subpoena remained in effect.⁹ In an effort to advance the investigation, however, OGC offered to meet and confer about the Motion and Subpoena.¹⁰ OGC also requested that the DNC enter a tolling agreement to ensure the Commission could respond to the Motion after regaining a quorum, but the DNC did not respond and has basically ended all contact in this matter.¹¹ As fully explained below, in order to proceed with the investigation, we recommend that the Commission deny the Motion.

¹ Certification ¶ 1, MUR 7271 (DNC, *et al.*) (July 25, 2019); *see also* Factual & Legal Analysis at 1, MUR 7271 (DNC) (“DNC F&LA”).

² *See* First Gen. Counsel’s Rpt. at 13, MUR 7271 (DNC, *et al.*).

³ Mem. to Commission re: Circulation of Discovery Documents (Aug. 28, 2019).

⁴ *Id.* at 1-2.

⁵ Certification, MUR 7271 (DNC, *et al.*) (Aug. 30, 2019).

⁶ Order to Submit Written Answers and Subpoena to Produce Documents, MUR 7271 (DNC) (Sept. 16, 2019) (the “Subpoena”).

⁷ DNC RTB Resp. at 1-2 (Oct. 7, 2019) (disputing the reason-to-believe finding and asking the Commission to take no further action against the DNC and close the file) (“RTB Response”).

⁸ Letter from Graham Wilson, Perkins Coie, counsel for DNC, to Lisa Stevenson, Acting Gen. Counsel, FEC (Nov. 4, 2019) (the “Motion”).

⁹ Letter from CJ Pavia, Acting Assistant Gen. Counsel, FEC, to Graham Wilson, counsel for DNC (Dec. 13, 2019).

¹⁰ *Id.* at 2.

¹¹ *Id.* at 2-3.

Additionally, we attach for the Commission's approval subpoenas and orders directed to three former DNC employees—Luis Miranda, Amy Dacey, and Lindsey Reynolds—each of whom we believe has information relevant to Ms. Chalupa's interactions with the Ukrainian Embassy and whether she acted on the DNC's behalf. All three witnesses are represented by Perkins Coie LLP, the same law firm that represents the DNC, and our efforts to obtain voluntary interviews with them have been unsuccessful. Accordingly, we recommend that the Commission approve a deposition subpoena as to Luis Miranda, who appears to have had the most significant interactions with Ms. Chalupa, and approve orders to submit written answers and subpoenas to produce documents as to all three witnesses.

III. LEGAL ANALYSIS

A. The Motion to Quash Should be Denied

An administrative agency's subpoena or order will be enforced so long as it was issued for a proper purpose, the information sought is reasonably relevant to the purpose, and the statutory procedures were observed.¹² Here, the Subpoena was properly authorized and issued by the Commission and seeks information that is reasonably relevant to the Commission's authorized investigation in this matter.

1. The Subpoena Was Duly Authorized

The Motion contends that the Commission did not have authority to issue the Subpoena because the DNC believes there were not adequate grounds to find reason to believe in MUR 7271.¹³ This argument fails on procedural grounds. It is effectively a request for reconsideration of the Commission's reason-to-believe vote, yet neither the Act nor Commission regulations provide a procedure by which a respondent can submit such a request, and the DNC provides no authority indicating that the Commission offers respondents a second reason-to-believe evaluation.¹⁴

¹² OGC Enforcement Manual at 75, 5.3.2.9 (June 2013) (citing *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950); *Government of Territory of Guam v. Sea-Land Serv.*, 958 F.2d 1150, 1154-55 (D.C. Cir. 1992)).

¹³ Motion at 3-4.

¹⁴ The DNC's RTB Response, filed prior to the Motion to Quash, expressly requests that the Commission reconsider its reason-to-believe determination, find that no further action is appropriate, and close the file. RTB Resp. at 6. 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. *See, e.g.*,

; 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 send such a letter to the DNC.

Further, the available information supports the Commission’s reason-to-believe finding, and the DNC has not submitted any new information that calls the finding into question. For example, the DNC argues that the reason-to-believe finding was based on “speculative claims” and “unnamed sources” in a “now-debunked article” in *Politico*.¹⁵ As an initial matter, this mischaracterizes the record before the Commission. The article did not rely exclusively on unnamed sources. It directly quotes a Ukrainian Embassy employee, Andrii Telizhenko, who reportedly stated that embassy officials instructed him to help Chalupa research connections between Trump, Manafort, and Russia.¹⁶ Moreover, in her Response, Chalupa admitted that she “discussed with Embassy personnel then-Trump campaign official Paul Manafort’s activities in Ukraine,” and acknowledged that at the request of a DNC official, she asked a Ukrainian Embassy official if the president of Ukraine could field a question about Manafort.¹⁷

2. The Subpoena Is Valid

The Motion also argues that the Subpoena is invalid because, although it was approved by the Commission prior to the loss of quorum, it was signed and sent to the DNC after the quorum was lost.¹⁸ The DNC points to the Commission’s Directive 10, Section L, which sets out rules for the operation of the Commission during a loss of quorum. The DNC argues that the Commission is limited to carrying out the activities identified in that Section, which do not include issuing a subpoena or ordering written answers.¹⁹ But this argument misunderstands the Commission’s processes for approving a subpoena. Once the Commission duly authorizes a subpoena, as it did in this matter, neither the Act nor the regulations require any further action by the Commission as a whole. Thus, the Commission did not act in contravention of Directive 10, Section L, when the Subpoena was signed by the Chair and sent by OGC after the loss of quorum because there was no need for Commission action to re-authorize either of those activities.

3. The Commission Was Not Required to Vote on the DNC’s Response to the Reason-to-Believe Finding

The Motion further argues that the Subpoena violates the DNC’s due process rights because, due to the loss of quorum, the Commission was unable to consider the DNC’s RTB Response.²⁰ The DNC argues that a respondent “must be afforded the opportunity to provide the Commission with exculpatory information at the onset of an investigation.”²¹ The DNC points to a sentence in the Commission’s Guidebook for Complainants and Respondents on the FEC

¹⁵ Motion at 3.

¹⁶ Kenneth P. Vogel and David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO, Jan. 11, 2017.

¹⁷ Chalupa Resp. at 1-2 (Oct. 11, 2017).

¹⁸ Motion at 4-5.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5-7.

²¹ *Id.* at 5 (emphasis omitted).

Enforcement Process (the “Guidebook”) which states—“The Commission receives all responses and considers them when determining whether and how to proceed with an investigation or conciliation.”²² This argument largely restates the DNC’s contention that the Commission should reconsider its reason-to-believe finding.

While the DNC is correct that the Guidebook states the Commission will *consider* new information or arguments submitted by respondents, it does not provide that such consideration entails a second reason-to-believe vote based on such responses before an investigation can move forward.²³ Importantly, neither the Act nor Commission regulations require such a vote. Moreover, to the extent the DNC believes the Guidebook creates a procedural right not stated in the Act or the Commission’s regulations, the Guidebook expressly advises parties that it offers “guidance on certain aspects of federal campaign finance law” but does not “replace the law or change its meaning,” nor does it “create or confer any rights for, or on, any person, or bind the Commission or the public”²⁴ and OGC has not identified an instance in which the Commission revisited a reason-to-believe finding based on the Guidebook provision cited by the DNC. Accordingly, the lack of quorum did not deprive the DNC of a procedural right.²⁵

4. The Subpoena Is Limited in Scope and Seeks Information Reasonably Relevant to the Commission’s Investigation

The Motion also contends that the Subpoena should be quashed because it is “overbroad, unduly burdensome, vague, not reasonably likely to lead to relevant materials” and as a result infringes on the DNC’s First Amendment rights.²⁶ Specifically, the DNC contends that the Subpoena goes “far beyond the investigation authorized by the reason to believe finding” and contends that the Commission “must determine that the requested information ‘goes to the heart of the matter’ being investigated” and that “OGC must ‘demonstrate a need for the information

²² *Id.* at 5-6; Guidebook for Complainants and Respondents on the FEC Enforcement Process at 13 (May 2012) (“Guidebook”).

²³ *See* Guidebook at 13-14.

²⁴ *Id.* at 4.

²⁵ The DNC has submitted little new information for the Commission’s consideration. For example, the DNC did not provide statements or affidavits from individuals who worked with or supervised Ms. Chalupa’s work for the DNC. Rather, the most significant new information in the RTB Response appears to be a tweet from an author of a news article heavily cited by the Complaint. The tweet states, in part, that “DNC consultant WAS NOT repping DNC in mtgs w/ [Ukrainian flag emoji] officials,” but the tweet provides no supporting information. Kenneth Vogel (@kenvogel), TWITTER (July 12, 2017), <https://twitter.com/kenvogel/status/885181638929526785>. Moreover, even if Chalupa did not directly represent to embassy officials that she was acting on behalf of the DNC, as the tweet might suggest, this does not preclude a finding that she acted as the DNC’s agent because Commission regulations define agency based on actual, not apparent authority. 11 C.F.R. § 300.2(b) (defining agency).

²⁶ Motion at 2. The DNC also argues that the Subpoena violates its Fourth Amendment rights, but for reasons that are coextensive with other arguments raised in the Motion. Specifically, the DNC argues that the Subpoena violates the Fourth Amendment because the Commission did not have authority to issue it and because it is vague and overbroad. *Id.* at 12-13. These arguments fail for the same reasons discussed in Part III.A.1-2, 4 of this memorandum.

sufficient to outweigh the impact on [protected First Amendment] rights.”²⁷ Contrary to the DNC’s contentions, however, the Subpoena is appropriately narrow in scope and seeks information reasonably relevant to the Commission’s duly authorized investigation. It consists of just four requests, two of which simply ask whether certain events occurred.²⁸

Request 1 asks the DNC to—“Produce all communications between the DNC and Alexandra Chalupa regarding the Ukrainian Embassy, the Donald J. Trump campaign, Paul Manafort, Russian Federation, or any other topic not directly related to Chalupa’s work for the DNC regarding ethnic outreach.”²⁹

The DNC argues that there is no definition of “regarding,” and takes issue with the definition of “communication” as being so broad as to include “even under-the-breath and passing references” to the relevant subjects.³⁰ The DNC also contends that the Subpoena is overly broad and burdensome because it asks for documents on topics that would have frequently been the subject of DNC communications during the 2016 election for reasons irrelevant to the Commission’s investigation, because the request covers “the entirety of the 2016 general election *and* through the present day,” and because it would be difficult to search for documents that do not relate to Chalupa’s ethnic outreach work, which may not be relevant to the investigation in any case.³¹

As an initial matter, “regarding” is a readily understandable word that the DNC used in its own correspondence with the Commission without apparent confusion.³² Additionally, the DNC’s concern about the scope of communications to be produced is not credible. To the extent the DNC has preserved records of relevant “passing references” they should be produced, but nowhere does the Subpoena request that the DNC attempt to reconstruct its staff’s under-the-breath utterances from 2016. The DNC’s concern about the number of communications that would be responsive to this request is also misplaced. The DNC argues that, for example, a “demand for all communications regarding the Trump campaign, made during the 2016 election” is beyond the scope of the Commission’s investigation.³³ But the Subpoena plainly does not request all such communications, only those that involved a single, part-time contractor whose work was reportedly limited to ethnic outreach tasks.³⁴ Similarly, the DNC’s concern about the timeframe of the request is overstated. The Motion itself acknowledges that Ms. Chalupa left the

²⁷ *Id.* at 8, 10.

²⁸ Subpoena at 4.

²⁹ *Id.*

³⁰ Motion at 8.

³¹ *Id.* at 8-9 (emphasis in original).

³² *See* DNC Resp. at 5 (Oct. 20, 2017) (arguing that “the DNC would not have committed any violation if Ms. Chalupa had interacted with the Ukrainian embassy on her own behalf *regarding* the Trump campaign”) (emphasis added) (“DNC Initial Resp.”).

³³ Motion at 8.

³⁴ Subpoena at 4; DNC Initial Resp. at 2.

DNC after the Democratic Convention,³⁵ which was held in late July 2016. Finally, as to the DNC’s concern about the difficulty of identifying communications that do not relate to Ms. Chalupa’s ethnic engagement work, the DNC offers no information to support its contention that it could not conduct such a search, nor even information about the volume of documents it would need to review.³⁶ Without more information, this argument is not credible.

Request 2 asks the DNC to—“Identify all DNC employees who communicated with Chalupa.”³⁷ The DNC notes that the Subpoena does not define “employees” and contends that it is not possible to identify all employees who communicated with Chalupa because the Subpoena defines “communication” broadly to include written, oral, telephonic and electronic communications.³⁸ Despite these arguments, however, the DNC itself uses the term “employee” in its motion without apparent confusion.³⁹ As to the definition of “communication,” the DNC’s representations about Ms. Chalupa’s part-time status and limited role do not suggest broad interactions with the DNC’s staff, and the DNC has provided no information suggesting otherwise.⁴⁰ Understanding who Ms. Chalupa worked with and for at the DNC is important for OGC’s ability to complete an accurate and thorough investigation.

Request 3 asks the DNC to—“State whether Chalupa provided the DNC with information pertaining to the Donald J. Trump campaign, Paul Manafort, the Russian Federation, or any research not directly related to her responsibilities regarding ethnic outreach.”⁴¹

The DNC first argues that this request is not relevant to whether Ms. Chalupa solicited foreign national contributions.⁴² To the contrary, it is highly relevant because the Complaint alleges that Ms. Chalupa solicited such information and then *delivered* it to the DNC.⁴³ The DNC also argues that the request does not define “information,” but that term is used repeatedly in allegations made by the Complaint,⁴⁴ and the DNC raised no difficulty with understanding it

³⁵ Motion at 9-10 & n.34.

³⁶ For example, the DNC could potentially separate out documents that relate to Ms. Chalupa’s ethnic engagement work by searching for terms such as “Ethnic Council,” which the DNC repeatedly used when describing Ms. Chalupa’s duties to the Commission. DNC Initial Resp. at 3.

³⁷ Subpoena at 4.

³⁸ Motion at 9.

³⁹ *See id.* at 9 (stating that it is “not within the DNC’s power to determine if an independent contractor provided information . . . to a DNC *employee* or contractor”) (emphasis added).

⁴⁰ DNC Initial Resp. at 2-3.

⁴¹ Subpoena at 4.

⁴² Motion at 9.

⁴³ Compl. ¶¶ 6, 11 (Aug. 15, 2017).

⁴⁴ *E.g.*, Compl. ¶ 11 (arguing that it is “clear that Chalupa passed . . . information to the Democratic National Committee); *id.* ¶ 25 (arguing that “[a]ny information received by Alexandra Chalupa . . . from foreign nationals” is a prohibited contribution).

until now.⁴⁵ Finally, the Motion argues that the request is “unduly burdensome.”⁴⁶ This stands in notable contrast to the DNC’s initial response to the Complaint, which portrays Ms. Chalupa as holding a limited role at the DNC.⁴⁷ Thus, there should be no significant burden in responding.

Request 4 asks the DNC to—“State whether Luis Miranda, or anyone else from the DNC, asked Chalupa to arrange for the President of Ukraine to answer a question from a reporter about Paul Manafort.”⁴⁸

The DNC similarly suggests that this request is “overbroad and burdensome” and further argues that the request is not relevant to the reason-to-believe finding.⁴⁹ These arguments greatly overstate the scope of the request. It could potentially be answered through simple conversations with Mr. Miranda and DNC officials responsible for supervising Ms. Chalupa during the relevant period. As to relevance, it bears directly on whether Ms. Chalupa interacted with the Ukrainian Embassy on behalf of the DNC.

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Finally, we note that OGC offered to meet and confer with the DNC during the period in which there was no quorum to discuss the issues raised in the Motion, and potentially negotiate a mutually agreeable solution. As already noted, however, the DNC did not respond to this request

⁴⁵ See DNC Initial Resp. (Oct. 20, 2017).

⁴⁶ Motion at 9.

⁴⁷ DNC Initial Resp. at 2 (stating that Ms. Chalupa was retained “as a part-time, independent contractor exclusively to engage in outreach to American ethnic communities”); *id.* at 3 (describing specific services for which Ms. Chalupa was engaged and representing that none of them “relate in any way to . . . developing research.”).

⁴⁸ Subpoena Mem., Attach. 2 at 5 (request four).4.

⁴⁹ Motion at 9.

and has essentially ended contact with OGC in this matter. Therefore, because the Motion fails to set forward convincing arguments for why the Subpoena should be quashed, and because the information is necessarily for OGC to conclude its investigation in this matter, we recommend that the Commission deny the Motion to Quash.

B. Additional Subpoenas are Necessary to Obtain Information on the Relationship between Chalupa and the DNC

Since the Commission authorized an investigation in this matter, OGC has conducted depositions of the two key witnesses, Alexandra Chalupa and Andrii Telizhenko, and we have obtained documents and emails from Chalupa. In addition, we have interviewed secondary witnesses who know and interacted with Chalupa and Telizhenko, most importantly Oksana Shulyar, a diplomat who worked with Telizhenko at the Embassy of Ukraine. Telizhenko maintained in his testimony to us that Chalupa asked him for assistance with researching damaging information about the Trump campaign and Manafort, that she represented herself as working for the DNC, and that other embassy officials, including Shulyar, were aware of Chalupa's request. Chalupa acknowledged having interacted with Ukrainian Embassy officials, including discussions regarding Trump and Manafort. She denied asking Telizhenko or other Ukrainian officials for information or help in conducting opposition research. Chalupa also acknowledged (and has submitted documents to prove) that she approached Shulyar about whether Ukrainian President Petro Poroshenko, who was visiting the United States, would take a question on Manafort at an upcoming event. Shulyar explained that Chalupa approached the embassy with several requests pertaining to Manafort, *i.e.*, for the embassy to speak with a journalist about Manafort, for the embassy to arrange for Poroshenko to answer a question from a news reporter, and for the embassy to speak with the Congressional Ukraine Caucus to highlight the need for an investigation of Manafort.

As it stands, we have obtained no information from the DNC or relevant former DNC officials to confirm, deny, or expand upon the facts listed above. Our investigation has revealed that Amy Dacey, formerly the DNC's CEO; Lindsey Reynolds, formerly the DNC's COO; and Luis Miranda, formerly the DNC's Communications Director, had relevant and substantial contacts with Chalupa concerning her interactions with the Ukrainian Embassy and/or her interest in Manafort and his relationship with the Trump campaign. For example, we have obtained information indicating that Chalupa, Reynolds, and Dacey discussed the announcement that Manafort was joining the Trump campaign, and that Dacey then instructed Chalupa to contact Miranda, who in turn asked Chalupa to check with her contacts at the embassy about whether Ukrainian President Poroshenko would take a question about Manafort at an upcoming event. In sum, Dacey, Reynolds, and Miranda are likely to have information about Chalupa's interactions with the Ukrainian Embassy, whether she asked for or received contributions from the embassy, and whether she was acting in her role as a DNC contractor when she interacted with the embassy. Based on the information we have received to date, we believe Miranda had the most significant contacts with Chalupa and actually directed her to contact the embassy. As a result, we propose to depose Miranda and seek documents and written answers from all three witnesses.

Dacey, Reynolds, and Miranda are represented by counsel for the DNC. We requested interviews with each of them through counsel, and the DNC has not responded to our requests or

to follow up inquiries. In light of the DNC's lack of response, the potential importance of these witnesses to the investigation, and the statute of limitations, which begins to run in early 2021, we recommend moving to compulsory process. Accordingly, we request that the Commission approve the attached Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Luis Miranda, and the attached Orders to Submit Written Answers and Subpoenas to Produce Documents directed to Amy Dacey and Lindsey Reynolds.

IV. RECOMMENDATIONS

1. Deny the DNC's Motion to Quash the Commission's Order to Submit Written Answers and Subpoena to Produce Documents;
2. Approve the appropriate letter;
3. Approve the attached Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Luis Miranda;
4. Approve the attached Order to Submit Written Answers and Subpoena to Produce Documents directed to Amy Dacey; and
5. Approve the attached Order to Submit Written Answers and Subpoena to Produce Documents directed to Lindsey Reynolds.

Attachments

1. Memorandum to Commission re: Circulation of Discovery Documents and Attachments (Aug. 28, 2019)
2. Order to Submit Written Answers and Subpoena to Produce Documents directed to the DNC (Sept. 16, 2019) (Subpoena Directed to the DNC)
3. Letter from G. Wilson re: Matter Under Review 7271 (Oct. 7, 2019) (DNC's RTB Response)
4. Letter from G. Wilson re: Matter Under Review 7271 (Nov. 4, 2019) (DNC's Motion to Quash)
5. Letter from C.J. Pavia to G. Wilson, A. Fuoto, and Z. Newkirk (Dec. 13, 2019)
6. Proposed Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Luis Miranda
7. Proposed Order to Submit Written Answers and Subpoena to Produce Documents directed to Amy Dacey
8. Proposed Order to Submit Written Answers and Subpoena to Produce Documents directed to Lindsey Reynolds



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

August 28, 2019

TO: The Commission

FROM: Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

BY: Stephen Gura *SG*
Deputy Associate General Counsel

Jin Lee *JL*
Acting Assistant General Counsel

CJ Pavia *CP*
Attorney

SUBJECT: MUR 7271 (DNC, *et al.*)

RE: Circulation of Discovery Documents

On July 25, 2019, the Commission found reason to believe that Alexandra Chalupa, Chalupa & Associates, LLC, and the Democratic National Committee and William Derrough in his official capacity as treasurer (the "DNC") violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting, accepting, or receiving a prohibited in-kind foreign national contribution in the form of research from the Ukrainian Embassy in Washington, DC, regarding the Trump campaign, Paul Manafort, and alleged connections to the Russian Federation. In addition, the Commission authorized the use of compulsory process.

On August 1, 2019, we sent notification of the Commission's reason-to-believe findings to Respondents and also provided the Factual and Legal Analysis. On August 22, 2019, Chalupa submitted a detailed response denying the allegations. Chalupa maintains that information she shared with the DNC was not obtained from any foreign government, but from her independent research and work for the Obama White House, State Department, and Congress. The DNC requested, and we approved, a forty-five day extension to respond to the Commission's reason-to-believe findings, with a due date of October 5, 2019.

Attached for the Commission's approval on a 48-hour no objection basis are: (1) a Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Chalupa and Chalupa & Associates, LLC; (2) an Order to Submit Written Answers and Subpoena to Produce Documents directed to the DNC; and (3) a Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Andrii Telizhenko. The questions and document requests in the subpoenas seek additional information regarding the provision of information from the Ukrainian Embassy to Chalupa, and whether this was ultimately passed to the DNC in a form that would result in an in-kind contribution.

With respect to the subpoenas directed at Chalupa, her response to the Commission's reason-to-believe findings was elaborate and requires further exploration. While it appears that she wants to cooperate with the investigation, we think that a deposition is the appropriate fact-finding mechanism, given the gravity of the allegations here. Regarding the subpoenas directed at the DNC, we will await DNC's response to the reason-to-believe findings and will only serve the subpoenas if necessary. The subpoenas directed at the DNC request all communications between the DNC and Chalupa, which would likely capture any instances when Chalupa provided research from the Ukrainian Embassy.

Finally, with respect to the subpoenas directed at Andrii Telizhenko, obtaining his statement for the record is especially important because he is the only witness who claims that Chalupa solicited and received opposition research from the Ukrainian Embassy. Telizhenko, a former political officer at the embassy, stated in a January 11, 2017, *Politico* article that he was instructed to help Chalupa research connections between Trump, Manafort, and Russia. He explained that the Ukrainian Embassy was "coordinating an investigation" with Chalupa and "the Hillary team," and "worked very closely" with Chalupa. These statements were the primary support for the finding that Chalupa may have solicited and received something of value. We believe it likely that Telizhenko will cooperate with the investigation — he has made statements on his public social media pages calling for an investigation, and has spoken with multiple journalists about the events in question. Again, given the gravity of the allegations, a deposition may be necessary to adequately capture, under oath, the necessary facts. Telizhenko lives in Ukraine, but his social media accounts confirm that he regularly travels to the United States.

We recommend using compulsory process at this time given the importance of obtaining sworn statements and the statute of limitations, which begins to run in early 2021. Accordingly, we request that the Commission approve the attached subpoenas on a 48-hour no objection basis.

Attachments:

1. Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Chalupa and Chalupa & Associates, LLC
2. Order to Submit Written Answers and Subpoena to Produce Documents directed to the Democratic National Committee and William Derrough in his official capacity as treasurer; and
3. Deposition Subpoena, Order to Submit Written Answers, and Subpoena to Produce Documents directed to Andrii Telizhenko



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 28 2019

VIA ELECTRONIC AND FIRST CLASS MAIL

Marc E. Elias, Esq.
Graham M. Wilson, Esq.
Perkins Coie LLP
700 13th Street, NW Suite 600
Washington, DC 20005-3960

RE: MUR 7271
Democratic National Committee and
William Derrough in his official
capacity as treasurer

Dear Messrs. Elias and Wilson:

On August 1, 2019, you were notified that the Federal Election Commission found reason to believe that your client, the Democratic National Committee and William Derrough in his official capacity as treasurer, violated 52 U.S.C. § 30121(a)(2) of the Federal Election Campaign Act of 1971, as amended (the "Act") and 11 C.F.R. § 110.20(g) of the Commission regulations by soliciting, accepting, or receiving in-kind contributions from a foreign national.

Pursuant to its investigation of this matter, the Commission has issued the attached subpoena and order requiring your client to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Act. It is required that you submit all answers to questions under oath within 30 days of your receipt of this subpoena and order. Please do not hesitate to contact me with any questions at (202) 694-1597 or by email at cpavia@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Claudio Pavia".

Claudio J. Pavia
Acting Assistant General Counsel

Enclosure
Subpoena and Order

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 7271

ORDER TO SUBMIT WRITTEN ANSWERS
SUBPOENA TO PRODUCE DOCUMENTS

TO: Democratic National Committee and William Derrough
 in his official capacity as treasurer
 c/o Marc E. Elias, Esq.
 Graham M. Wilson, Esq.
 Perkins Coie LLP
 700 13th Street, NW Suite 600
 Washington, DC 20005-3960

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.


Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 1050 First Street, NE, Washington, DC 20463, along with the requested documents within 30 days of your receipt of this Subpoena and Order.

WHEREFORE, the Chair of the Federal Election Commission has hereunto set her hand in Washington, DC, on this 16th day of Sept. 2019.

On behalf of the Commission,


 Ellen L. Weintraub
 Chair

ATTEST:


 Laura E. Sinram
 Acting Secretary and Clerk of the Commission

Attachments

Instructions and Definitions
 Questions and Document Requests

INSTRUCTIONS

1. In answering these written questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that are in your possession, known by or otherwise available to you, including documents and information appearing in your records.
2. Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.
3. The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the written response.
4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
5. Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by the following questions and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.
6. Mark each page with identification and consecutive document control numbers (*i.e.*, Bates numbers). Provide a master list showing the name of each person from whom responsive documents are submitted and the corresponding consecutive document control numbers used to identify that person's documents.
7. Unless otherwise specified, these requests shall refer to the time period from January 2015 through the present.
8. The following questions and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which, and the manner in which, such further or different information came to your attention.
9. All responses must be submitted under oath or affirmation under penalty of perjury, including any response that you have no responsive documents.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

1. "You" or "DNC" shall mean Democratic National Committee and William Derrough in his official capacity as treasurer, and any employees, agents, and other individuals acting for or on its behalf.
2. "Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization, group or entity.
3. "Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term "document" includes, but is not limited to, books, letters, electronic mail, social media postings, messages sent via Twitter, instant messages, text messages, contracts, notes, diaries, log books, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, financial records, calendar entries, appointment records, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If the document request calls for a document that is maintained on or in a magnetic, optical, or electronic medium (for example, but not limited to, computer hard drive, USB drive, or CD-ROM), provide both "hard" (*i.e.*, paper) and "soft" (*i.e.*, in the magnetic or electronic medium) copies, including drafts, and identify the name (*e.g.*, Microsoft Word for Windows, WordPerfect) and version numbers of the software by which the document(s) will be most easily retrieved.
4. "Identify" with respect to a document shall mean state the nature or type of document (*e.g.*, letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.
5. "Identify" with respect to a person shall mean state the full name, the most recent business and residential addresses and the corresponding telephone numbers, e-mail addresses, the present occupation or position of such person, the occupation or position of such person during the relevant time period, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

MUR 7271 (Democratic National Committee)

Order and Subpoena

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6. "And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for production of documents any documents and materials that may otherwise be construed to be out of their scope.
7. "Communication" shall be deemed to include both singular and plural, and to include written, oral, telephonic and electronic communications.

QUESTIONS AND DOCUMENT REQUESTS

1. Produce all communications between the DNC and Alexandra Chalupa regarding the Ukrainian Embassy, the Donald J. Trump campaign, Paul Manafort, Russian Federation, or any other topic not directly related to Chalupa's work for the DNC regarding ethnic outreach.
2. Identify all DNC employees who communicated with Chalupa.
3. State whether Chalupa provided the DNC with information pertaining to the Donald J. Trump campaign, Paul Manafort, the Russian Federation, or any research not directly related to her responsibilities regarding ethnic outreach.
4. State whether Luis Miranda, or anyone else from the DNC, asked Chalupa to arrange for the President of Ukraine to answer a question from a reporter about Paul Manafort.



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October 7, 2019

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Federal Election Commission
Claudio J. Pavia
Office of the General Counsel, Enforcement Division
1050 First Street, NE
Washington, DC 20463

Re: **Matter Under Review 7271**

Dear Mr. Pavia:

We write as counsel to the Democratic National Committee and William Derrough in his official capacity as treasurer (together, “Respondents” or the “DNC”), in response to the Commission’s reason to believe finding in the above referenced matter.

The Factual and Legal Analysis surmises that Alexandra Chalupa, as an agent of the DNC, may have obtained valuable research from the Ukrainian embassy on the Trump campaign and campaign manager Paul Manafort and that Ms. Chalupa “passed on this research to DNC officials.”¹ This is incorrect. Ms. Chalupa had a small contract with the DNC to do constituency organizing and was not engaged in any prohibited collection of research from foreign sources on the DNC’s behalf. Despite no evidence that Ms. Chalupa’s purported research either constituted a quantifiable thing of value or was on behalf of the DNC, the Commission baselessly concludes that the DNC may have solicited, accepted, or received an in-kind contribution from a foreign national.² The Commission provides *no* specific support for this conclusion.

The Commission bases its reason to believe finding on the Complaint’s interpretation of unsupported claims by unnamed sources published by a single news story, a story that relied heavily on private emails stolen by a hostile foreign power.³ Even if the Commission accepts those claims as true — an exercise that frankly ignores the widespread disinformation campaign that shaped the 2016 election and Commission precedent on standards for evaluating unsupported allegations — those claims do not support the conclusion that the DNC in any way solicited, accepted, or received an in-kind contribution from a foreign national. The allegations that the DNC was soliciting Ukrainian nationals for opposition research has been repeatedly

¹ MUR 7271, Factual and Legal Analysis (Democratic National Committee) at 1 (hereinafter “F&LA”).

² *Id.*

³ See Kenneth P. Vogel and David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO (Jan. 11, 2017), available at <https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446>.

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denied and debunked.⁴ Even the author of the article in question has clarified that Ms. Chalupa was not representing the DNC in meeting with Ukrainian officials.⁵ Moreover, there is currently a swirl of disputed legal standards and the need for regulatory clarification on this issue among current Commissioners and the Department of Justice at a time when President Trump is actually and publicly requesting foreign meddling in our elections. Accordingly, Respondents respectfully request that the Commission, upon attaining the necessary quorum to consider enforcement matters, immediately reconsider its earlier determination, determine that no further action is appropriate against the DNC in this matter, and close the file.

I. There is No Evidence that the DNC Solicited, Accepted, or Received Contributions from a Foreign National

The Commission's policy on the enforcement process says that it will find reason to believe when a complaint "credibly alleges that a significant violation may have occurred[.]"⁶ Neither the Complaint nor the Commission's findings provide a single credible allegation that the DNC violated the law.

The Commission concludes that the DNC "may have been aware" or assented to Ms. Chalupa's purported research regarding Mr. Manafort based on two allegations: (1) information possessed by the Commission that, at the request of a DNC official, Ms. Chalupa asked the Ukrainian Embassy if President Poroshenko could field a question about Mr. Manafort at a press conference;⁷ and (2) a statement made to the press by another unnamed source who described Ms. Chalupa sharing information about Mr. Manafort and the Trump campaign with the DNC following Mr. Manafort's hiring by the campaign.⁸ Even if these statements are taken at face value, the described activities do not amount to contributions solicited or accepted by the DNC.

The Federal Election Campaign Act of 1971, as amended (the "Act") defines "contribution" as "any gift . . . of money or anything of value made by any person for the purpose of influencing

⁴ See Bill McCarthy, *Fact-checking Charlie Kirk's misleading tweet about Democrats, Ukraine*; POLITIFACT (Oct. 3, 2019), available at <https://www.politifact.com/punditfact/statements/2019/oct/03/charlie-kirk/fact-checking-charlie-kirks-misleading-tweet-about/>; Dan Merica, *First on CNN: Former DNC contractor denies working with Ukrainian officials on anti-Trump research*, CNN (July 14, 2017), available at <https://www.cnn.com/2017/07/14/politics/dnc-contractor-ukraine-alexandra-chalupa-trump/index.html>.

⁵ See Kenneth P. Vogel Twitter (July 12, 2017) ("1 more pt: DNC consultant WAS NOT repping DNC in mtgs with [Ukrainian flag] officials, while DJT, Jr. WAS repping Dad's campaign in mtg w/ [Russia flag]-linked atty."), available at <https://twitter.com/kenvogel/status/885181638929526785>.

⁶ See 72 F.R. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (Mar. 16, 2007).

⁷ The allegation that Ms. Chalupa asked Ukrainian Embassy staff to try to arrange an interview in which then-Ukrainian president Petro Poroshenko "might discuss Manafort's ties to Yanukovich" is merely a hyperbolic description of this same claim.

⁸ F&LA at 8-9.

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any election for Federal office.”⁹ “Anything of value” encompasses “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[.]”¹⁰ The Commission’s Factual and Legal Analysis provides that a contribution may result from receiving information from a foreign national “as opposed to purchasing the information at the usual and normal charge[.]”¹¹ Chair Weintraub’s recent statement attempting to clarify the Commission’s interpretation of the foreign national ban likewise states that:

[A]lthough goods or services provided at the usual and normal charge do not constitute a contribution under the Act, soliciting, accepting, or receiving information in connection with an election from a foreign national, *as opposed to purchasing the information at the usual and normal charge* or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.¹²

The alleged “solicitations” in this matter — in the form of requesting a question be asked at a press conference — do not amount to soliciting information, much less the type of information that would be quantifiable to assess a usual and normal charge for its value. There is no “usual and normal charge” to submitting a question at a press conference, and these activities cannot result in contributions. For example, in Advisory Opinion 2007-22 (Hurysz), the Commission specifically approved a candidate’s plans to consult with Canadian citizens to learn about their election activities without providing payment.¹³

The Factual and Legal Analysis further asserts that unnamed sources described Ms. Chalupa as having had “shared information” about Mr. Manafort and the Trump campaign with the DNC following Mr. Manafort’s hiring by the campaign.¹⁴ But to the extent that Ms. Chalupa ever discussed Mr. Manafort’s dealings in the Ukraine with DNC staff, there is no evidence to suggest or reason to believe that any such information came from a foreign source as opposed to public reporting from the time.

Even more significantly, neither the Complaint nor the Factual and Legal Analysis has any substantiation for the proposition that the DNC had Ms. Chalupa solicit or obtain items of value from foreign nationals on its behalf; indeed, the Commission essentially ignores Ms. Chalupa’s plain statement of fact that she “was not an opposition researcher for the DNC, and the DNC

⁹ 52 U.S.C. § 30101(8)(A)(i).

¹⁰ 11 C.F.R. § 100.52(d)(2).

¹¹ F&LA at 6.

¹² See Draft Interpretive Rule Concerning Prohibited Activities Involving Foreign Nationals (Sept. 26, 2019) (emphasis added), available at https://www.fec.gov/resources/cms-content/documents/mtgdoc_19-41-A.pdf.

¹³ Advisory Opinion 2007-22 (Hurysz).

¹⁴ F&LA at 9.

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never asked me to go to the Ukrainian Embassy to collection information.”¹⁵ Similarly, the Factual and Legal Analysis glosses over the fact that a former DNC staffer told Politico, “We were not directing or driving [Ms. Chalupa’s] work on this.”¹⁶

Even if Ms. Chalupa’s activities did amount to solicitations of foreign nationals, she did not perform those activities as an agent of the DNC. As the DNC explained, Ms. Chalupa was an independent contractor who was retained in order to engage in outreach to American ethnic communities and support the DNC Ethnic Council.¹⁷ She was not a researcher, and her contract with the DNC specifically prohibited her from soliciting anything from foreign nationals in the scope of her consultancy.¹⁸

Inexplicably, the Factual and Legal Analysis turns a blind eye to the legally binding terms of the contract and direct denial from Ms. Chalupa herself that any research she conducted was done on behalf of the DNC in favor of spurious conjecture of “indirect signals.”¹⁹ Notably, the Factual & Legal Analysis fails to provide any particular finding of such an “indirect signal” apart from vague and unsupported accusations by unknown sources that the DNC may have encouraged her activities.

The Commission acknowledges that the Complaint relies “exclusively upon a January 11, 2017, *Politico* article” and specifically unnamed sources for the central facts of this matter.²⁰ In the past, Commissioners have declined to rely on press reports, noting the low probative value of such sources, and a “hearsay press article” cannot provide a basis for an enforcement action here.²¹ This case illustrates exactly why that is sound policy. *The article’s author himself has stated that Ms. Chalupa was not representing the DNC in meetings with officials.*²² If the Commission interpreted anything in the article to imply the contrary, it was simply incorrect. The allegation of the DNC’s involvement has also been debunked by Politifact’s analysis of the article, which concluded “[t]here’s no evidence that the DNC was working directly with

¹⁵ Michelle Ye Hee Lee, *The White House’s Facile Comparison of the Trump-Russia and Clinton-Ukraine Stories*, WASH. POST (July 25, 2017), available at <https://www.washingtonpost.com/news/fact-checker/wp/2017/07/25/the-white-houses-facile-comparison-of-the-trump-russia-and-clinton-ukraine-stories/>.

¹⁶ F&LA at 3, n.12

¹⁷ DNC Response at 2-3.

¹⁸ *Id.* at 4.

¹⁹ F&LA at 10.

²⁰ *Id.* at 1.

²¹ See, e.g., Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, Matters Under Review 6470, 6482, 6484 (Free and Strong America PAC, *et al.*) at 7 (March 30, 2016) (declining to provide evidentiary weight to a “hearsay press article”); Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter, Matter Under Review 6928 (Richard John “Rick” Santorum, *et al.*) at 9-10 (May 20, 2019) (noting the limited probative value of news articles reporting the unsworn accounts of third parties).

²² See Vogel tweet, *supra* note 5.

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Ukraine's government."²³ The article the Commission cites so extensively is also based in large part on hacked emails stolen by a foreign actor.²⁴ As two Commissioners recently wrote, "[w]e are concerned . . . that reliance on information made available only as the result of a foreign intelligence operation to inform our decision . . . would be incompatible with our responsibility as Commissioners to help 'preserve the basic conception of [an American] political community.' Further, such use might encourage similar violations of U.S. law in the future."²⁵

Thus, because both the Complaint and Factual and Legal Analysis fail to present sufficient facts to show that Ms. Chalupa solicited or received anything from Ukraine or its citizens on behalf of the DNC, the Commission should reconsider its finding and close the file.

II. Clear Determinations from the Commission are Needed on the Foreign National Ban

We are submitting this Response against the backdrop of an ongoing investigation into credible allegations that the President of the United States used the power of his office, and the threat of withholding foreign aid, to pressure the leader of Ukraine to take formal action against a political opponent to influence the 2020 presidential election.²⁶ There is, very simply, no equivalence between this conduct at the center of an impeachment investigation and asking a question regarding publicly reported facts at a press conference. Nevertheless, the Commission is considering the same statutory provisions, and given the investigation against President Trump, there appears to be substantial questions about the contours of the provision. For example, reports have recently surfaced that the Department of Justice declined to find that the allegations against President Trump amounted to a prosecutable campaign finance violation.²⁷ Indeed, the Commission's interpretation of the foreign national ban is the subject of currently ongoing debates among the remaining Commissioners. Chair Weintraub recently issued a draft interpretation of the foreign national rule, illustrating the need for clear guidance and interpretation. Moreover, it is not at all clear that the current Commission even agrees with the

²³ See *McCarthy*, *supra* note 4.

²⁴ See Vogel and Stern, *supra* note 3 (discussing statements made in hacked private emails released by Wikileaks).

²⁵ Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter, Matters Under Review 6940, 7097, 7146, 7160, 7193 (Correct the Record, *et al.*) at 8 (Aug. 21, 2019) (internal citation omitted).

²⁶ See, e.g., Brian Slodysko, *How Trump's Ukraine call could violate campaign finance laws*, WASH. POST (Sept. 25, 2019), available at https://www.washingtonpost.com/politics/how-trumps-ukraine-call-could-violate-campaign-finance-laws/2019/09/25/ed86361e-dfe9-11e9-be7f-4cc85017c36f_story.html.

²⁷ See Matt Zapotosky and Devlin Barrett, *Justice Dept. rejected investigation of Trump phone call just weeks after it began examining the matter*, WASH. POST (Sept. 25, 2019), available at https://www.washingtonpost.com/national-security/justice-dept-rejected-investigation-of-trump-phone-call-just-weeks-after-it-began-examining-the-matter/2019/09/25/6f7977ce-dfb5-11e9-8dc8-498eabc129a0_story.html (quoting a Justice Department official's statement that "If you cannot quantify what the thing of value would be, then it's fatal[.]").

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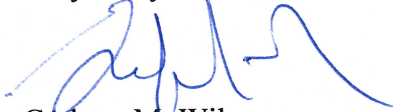
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Chair's interpretation.²⁸ And yet, the Commission currently lacks a quorum and thus has no ability to take any action as a body at this time.

In light of the muddled nature of the Commission's and the Department of Justice's interpretations of the foreign national ban, it would be manifestly unfair for the Commission to now determine, during an enforcement matter and without any prior notice to the regulated community, that the foreign national ban prohibits even *asking a question*.²⁹ It is also not practicable to proceed with an enforcement proceeding at this time without a functioning Commission able to re-evaluate what we believe was an error in this case or conduct any of the other business, such as determining the proper scope of an investigation or contours of potential conciliation, necessary to any matter under review at this stage.

For these reasons, Respondents respectfully request that upon again obtaining a quorum, the Commission determine clear rules in this area of law, reconsider its unsupported findings in this matter, find that no further action is appropriate against the DNC, and close the file on this matter.

Very Truly Yours,



Graham M. Wilson

Antoinette M. Fuoto

Counsel to Democratic National Committee

²⁸ See Statement of Commissioner Caroline C. Hunter on Consideration of Matters without a Quorum (Oct.1, 2019) (stating that she will not participate in discussions regarding the draft interpretative rule).

²⁹ See Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter, Matter Under Review 5724 (Jim Feldkamp for Congress) (Dec. 11, 2009) (stating that the law on familial gifts had become "hopelessly muddled" and that "respect for due process and fundamental fairness demand[ed]" that the Commission not penalize a respondent until it "articulate[d], either by rule or through policy statement, the permissible boundaries" of the law); Statement of Reasons of Chair Ellen L. Weintraub, Vice Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Steven T. Walther in Matters Under Review 7263 (Luke Messer) and 7264 (Todd Rokita) (June 20, 2019) (rejecting the Office of the General Counsel's recommendation to investigate based in part on "lack of explicit guidance" on a specific issue).



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November 4, 2019

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BY HAND AND VIA EMAIL

Lisa J. Stevenson, Office of the General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Matter Under Review 7271

Dear Ms. Stevenson:

We write as counsel to the Democratic National Committee (the “DNC”), and William Derrough, in his official capacity as Treasurer (together, “Respondents”). Pursuant to 11 C.F.R. § 111.15, Respondents move to quash the subpoena to produce documents and order to submit written answers issued on October 28, 2019 (the “Subpoena & Order”).

I. Background.

This matter stems from an August 8, 2017 Complaint alleging, based entirely on speculation and quotes from unnamed sources in a single news article, that an independent contractor of the DNC may have solicited contributions from a foreign national.¹ Nearly two years after receiving the Complaint, the Commission found reason to believe a violation may have occurred and notified Respondents of the basis for its findings in its August 1, 2019 Factual and Legal Analysis.²

On October 7, 2019, the DNC timely submitted a response to the Commission’s findings. That response pointed out inaccuracies in the Commission’s Factual and Legal Analysis; provided new evidence that the speculative claims against the DNC in the news story were unfounded, including citing a public statement from the article’s writer clarifying that the alleged conduct by the independent contractor was *not*, as the Commission suggested, on behalf of the DNC;³ and argued, *inter alia*, that recent developments like the current impeachment inquiry and the Department of Justice’s public statements on the foreign national prohibition have left the

¹ See MUR 7271 Compl. (Aug. 8, 2017).

² MUR 7271 Factual & Legal Analysis (Aug. 1, 2019).

³ Indeed, Fox News, in writing about the allegations set forth in a separate but similar complaint, noted that that complaint overlooked the writer’s statement that the independent contractor’s alleged contact with foreign officials was not on behalf of the DNC. See Andrew Keiper, *Pro-Trump super PAC files FEC complaint against DNC over Ukraine outreach*, Fox News (Sept. 30, 2019), <https://www.foxnews.com/politics/dnc-hit-with-fec-complaint-for-2016-research-into-manafort>.

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relevant law unsettled. Given the new information and misstatements in the Factual and Legal Analysis, Respondents requested that the Commission reconsider its findings and dismiss the allegations as to the DNC.

In the time between receiving the Commission's Factual and Legal Analysis and the DNC submitting its October 7 letter, former Commissioner Matthew S. Petersen departed the Commission, leaving it with three Commissioners as of September 1, 2019.⁴ Notwithstanding the Commission's lack of a four-person quorum necessary to carry out its powers, or vote on Respondents' request for reconsideration, the Office of the General Counsel ("OGC") delivered to Respondents the Subpoena & Order that are the subject of this motion to quash. That Subpoena & Order were "approved" by the Commission on Friday, August 30, 2019, the last business day of Commissioner Petersen's tenure, on a no-objection basis; *i.e.*, no Commissioner affirmatively objected to the Subpoena & Order prior to the Friday voting deadline.⁵ More than two weeks later, the Subpoena & Order were signed by the Chair on September 16, 2019, and were not issued to the DNC until nearly six weeks later, on October 28, 2019.⁶

The Subpoena & Order should be quashed for several reasons. A subpoena should be quashed when it is outside the Commission's authority, as is unquestionably the case here; is indefinite, which the Subpoena & Order are; and the information sought is not reasonably relevant to the Commission's investigation, as applies here.⁷

First, and perhaps most importantly, the Commission lacked jurisdiction to issue the Subpoena & Order. Its pursuit of this matter violates both its statutory authority and its own policies, both of which can only reasonably be read to require that the Subpoena & Order must be quashed. But even beyond that threshold (and independently dispositive) issue, the issuance of the Subpoena & Order now, when the Commission is without quorum to consider Respondents' response to its Factual and Legal Analysis, represents a significant threat to fairness and due process considerations. This threat is compounded by the fact that the Subpoena & Order are overbroad, unduly burdensome, vague, not reasonably likely to lead to relevant materials, and threaten to chill core First Amendment activity. For each of these reasons, discussed further below, we respectfully request that the Commission quash the Subpoena & Order and, upon achieving the necessary quorum to do so, properly consider Respondents' response to the Factual and Legal Analysis.

⁴ See *FEC remains open for business, despite lack of quorum* (Sept. 11, 2019), <https://www.fec.gov/updates/fec-remains-open-business-despite-lack-quorum/>.

⁵ See email from J. Lee (Oct. 24, 2019).

⁶ See *id.*

⁷ See *United States Int'l Trade Comm'n v. ASAT, Inc.*, 411 F.3d 245, 253 (D.C. Cir. 2005) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)).

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II. The Commission Acted *Ultra Vires* in Issuing the Subpoena.

A. The Commission Lacks Authority to Issue the Subpoena.

The Commission's statutory authority for issuing a subpoena is necessarily founded in its finding of reason to believe a violation has occurred.⁸ As set forth in Respondents' October 7, 2019 response—timely submitted to the Commission *after* the Commission's certification of the proposed Subpoena & Order and *after* Commissioner Petersen departed the Commission—the Commission's reason to believe finding is unwarranted and contrary to its own policies. The finding appears to be based entirely on a single news article that relies in part on a stolen email from a foreign adversary, and has been credibly debunked.⁹ And, even if the Commission's factual allegations are accepted as true, none of those allegations constitute a violation of the law by the DNC.¹⁰

Thus, the Subpoena & Order should be quashed for the simple reason that they are not grounded in any evidence of wrongdoing. The Commission has offered nothing beyond speculation to support any of the allegations. For example, the Factual and Legal Analysis claims that the DNC “may have been aware of” the contractor's purported foreign national solicitations, but does not provide evidence of such awareness. As noted in Respondents' response to the reason to believe finding, the allegation that the independent contractor at the heart of this matter solicited anything of value from a foreign national on behalf of the DNC has been credibly rebutted, including by one of the writers of the single article that forms the basis of the allegations.¹¹ The contractor herself has publicly stated that the DNC never asked her to collect any information from the Ukrainian Embassy, as the Complaint and Factual and Legal Analysis suggest.¹² The Commission's Factual and Legal Analysis ignores these undisputed facts in favor of speculative claims based on quotes from unnamed sources in the now-debunked article.

Mere speculation of wrongdoing is not sufficient for a reason to believe finding. Under the Commission's policy on enforcement matters, the Commission will find reason to believe when a complaint “credibly alleges that a significant violation may have occurred.”¹³ Likewise, such

⁸ See 52 U.S.C. § 30109(b) (permitting an investigation following a reason to believe determination); 11 C.F.R. § 110.10(a)-(b) (same).

⁹ Letter from G. Wilson and A. Fuoto (Oct. 7, 2019).

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.* at 3-4.

¹³ Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007). Additionally, “[t]he Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [campaign finance law].” Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas in Matter Under Review 4960 (Dec. 21, 2000) at 1. “Unwarranted legal conclusions from asserted facts” or

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speculation cannot form the basis for compulsory process that inquires into core First Amendment speech, as this one does.¹⁴ Because the Commission's reason to believe finding is contrary to its policy, the resulting subpoena must be quashed.

B. Under Its Own Procedural Rules, The Commission Has No Authority to Issue Subpoenas Because It Has Fewer Than Four Members.

An agency must follow its own rules. This unsurprising command is hardly groundbreaking.¹⁵ In fact, the idea "that an agency must adhere to its own rules and regulations" is "elementary" and has been firmly entrenched in administrative law for nearly a century.¹⁶

The Commission's governing statute requires it to "prepare written rules for the conduct of its activities."¹⁷ And so, the Commission first published its rules of procedure on July 21, 1978.¹⁸ The Commission adopted amended procedural rules on December 20, 2007, which added a new section L, "to provide rules of conduct when the Commission has fewer than four members."¹⁹ These procedural rules are part of the Commission's Directive 10.

Section L of Directive 10 is titled "Special Rules to Apply Only When the Commission Has Fewer Than Four Members."²⁰ The Special Rules severely limit what the Commission can do with fewer than four members. They explicitly identify just 20 actions the Commission can do. "The Commission *may not act on any matter except*" for those actions the Special Rules detail.²¹ Issuing a subpoena is not among them. Ordering written answers is not among them.

That the Commission approved (or, more accurately, did not object to) the Subpoena & Order on August 30, 2019—the last business day it had a quorum of four Commissioners—is irrelevant. The Chair signed the Subpoena & Order more than two weeks after the Commission lost

"mere speculation" are not accepted as true. *Id.* And, a complaint may be dismissed if its allegations are refuted with sufficiently compelling evidence provided in response, or available from public sources. *See id.*

¹⁴ *See Fed. Election Comm'n v. Machinist Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981); *see also infra* Section V.

¹⁵ *See Fort Stewart Schs. v. Fed. Labor Relations Auth.*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."); *see also Woerner v. U.S. Small Bus. Ass'n*, 739 F. Supp. 641, 646 (D.D.C. 1990) ("It is well-settled that agencies are required to follow their own regulations.").

¹⁶ *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, 950–51 (D.C. Cir. 1986) (citing *Teleprompter Cable Sys. v. F.C.C.*, 543 F.2d 1379, 1387 (D.C. Cir. 1976)); *see also Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959), *Service v. Dulles*, 354 U.S. 363, 388 (1957), *Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954), *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway*, 284 U.S. 370, 389 (1932).

¹⁷ 52 U.S.C. § 30106(e).

¹⁸ *See Rules of Procedure*, 43 Fed. Reg. 31433 (July 21, 1978).

¹⁹ *Rules of Procedure*, 73 Fed. Reg. 5568, 5569 (January 30, 2008).

²⁰ *Id.* at 5570.

²¹ *Id.*

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quorum, on September 16, 2019. The Commission did not issue the Subpoena & Order to Respondents until October 28, 2019, when OGC emailed a copy of the Subpoena & Order to counsel.²² The Commission therefore did not issue the Subpoena & Order until nearly two months after the Commission lost quorum. But Directive 10 does not permit the Commission to issue subpoenas when it lacks quorum. Under its Special Rules, the Commission “may not act on *any* matter” except for specifically identified actions.²³ Accordingly, under the Commission’s own rules, the Subpoena & Order signed and issued after the Commission lost its fourth member have all the legal authority of a blank sheet of paper.

By issuing the Subpoena & Order to Respondents nearly two months after the Commission lost its fourth member, the Commission has violated its own rules—and has run afoul of longstanding judicial precedent. “Simply stated, rules are rules, and fidelity to the rules which have been properly promulgated, consistent with applicable statutory requirements, is required of those to whom Congress has entrusted the regulatory missions of modern life.”²⁴

Because the Commission lacked the authority to issue them, the Subpoena & Order should be quashed or, at the very least, held in abeyance until the Commission gains the necessary quorum to act beyond its authority detailed in Directive 10.

III. The Subpoena & Order Threaten Due Process Rights Typically Afforded to Respondents Under the FEC’s Normal Procedures.

The Commission’s issuance of the Subpoena & Order while it currently lacks quorum to consider the claims against Respondents violates core principles of fairness and due process. As set forth in the Commission’s own guidance, after the Commission issues a reason to believe finding respondents must be afforded the opportunity to provide the Commission with exculpatory information *at the onset of an investigation*. The Commission’s Guidebook for Complainants and Respondents on the FEC Enforcement Process instructs:

A letter notifying a respondent of a reason to believe finding will apprise the respondent of the ability to submit any factual or legal materials that the respondent believes are relevant for the Commission’s consideration or resolution of the matter. Respondents should not hesitate to provide the Commission with relevant new information or present the Commission with any errors in the Commission’s recitation of the facts or law. The Commission receives all responses and considers

²² See Letter from C. Pavia (Oct. 28, 2019) (stating “the Commission has issued the attached Subpoena & Order”).

²³ 73 Fed. Reg. at 5570 (emphasis added).

²⁴ *Reuters Ltd.*, 781 F.2d at 951.

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them when determining whether and how to proceed with an investigation or conciliation.²⁵

In this matter, Respondents received notice of the Commission's determination in August of 2019. Respondents executed a tolling agreement to extend the time to respond to the Commission's Factual and Legal Analysis so they could fully address those findings.²⁶ Per that agreement, the response to the reason to believe finding was due October 7, 2019, and Respondents submitted a response on that date. In the interim, Commissioner Petersen departed the Commission, leaving it with three members.²⁷ Thus, without the necessary four members to act on this matter, the Commission lacked quorum to consider "whether and how to proceed with an investigation[.]" The Commission did not have the necessary four members to even *consider* whether to dismiss the allegations against Respondents in light of the new information provided in the response to the reason to believe finding.

Knowing that the Commission would lose quorum on September 1, 2019, OGC appears to have circulated the Subpoena & Order for the Commission's consideration with a voting deadline of August 30, 2019, the last business day of Commissioner Petersen's tenure.²⁸ Neither OGC nor the Commission had the opportunity to consider Respondents' rebuttal of the Factual and Legal Analysis at the time the Subpoena & Order were circulated to the Commission. Nor was a four-member Commission available to consider that response when OGC issued the subpoena two months later. Nonetheless, OGC has decided to forge ahead with the investigation despite the Commission lacking quorum to vote on the underlying conduct, even where Respondents have rebutted the Factual and Legal Analysis.

Rather than consider Respondents' response at all, OGC made an end-run around the Commission's standard procedures in an attempt to have a subpoena authorized prior to the loss of quorum. In doing so, it rendered Respondents' right to respond at the outset of the investigation hollow.

As the Supreme Court has recognized, the central meaning of procedural due process is that parties whose rights are affected are entitled to "an opportunity to be heard . . . at a meaningful time and in a meaningful manner."²⁹ The Commission has recognized that Respondents have the

²⁵ Guidebook for Complainants and Respondents on the FEC Enforcement Process (May 2012) at 13.

²⁶ See Tolling Agreement (Aug. 19, 2019).

²⁷ See *FEC remains open for business, despite lack of quorum* (Sept. 11, 2019), <https://www.fec.gov/updates/fec-remains-open-business-despite-lack-quorum>.

²⁸ It is unclear precisely when OGC circulated its recommendation to approve the Subpoena & Order. Typically, OGC circulates compulsory process memoranda on a 48-hour no-objection voting basis. See OGC Enforcement Manual (June 2013) at 68. Respondents have no way to know if OGC shortened that deadline even further in an effort to expedite the already short voting window outside of normal procedures.

²⁹ *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

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right to be heard at the outset of the investigation. Here, pointing to new information and errors in the Commission's Factual and Legal Analysis, Respondents have respectfully requested that the Commission, when it obtains the necessary four members to do so, reconsider its reason to believe finding and dismiss the allegation. Instead, OGC insists on moving forward with the investigation weaponized by a subpoena approved *prior* to the Commission having access to the full set of information.

To properly preserve Respondents' constitutional right to due process, Respondents' submission, which both provides new information and points out errors in the Commission's recitation of the facts or law, must be considered by four Commissioners prior to compulsory process.

The risk of due process violations is heightened by the fact that the Commission's finding is based on a novel interpretation of the law. As noted in Respondents' October 7, 2019 letter, the Commission's finding is premised on the conclusion that simply *asking a question* at a press conference represents a thing of value that can be quantified as a contribution for the purposes of the foreign national ban. This is not the case, and the Commission's analysis is contradicted by the Department of Justice's interpretation of the foreign national prohibition and its own prior precedent.³⁰ Without making any admission as to the underlying facts, this interpretation of the law is both novel and muddled, and the regulated community has not been on notice that simply speaking to a foreign national may be considered a violation. Commissioners have long recognized the need to preserve fair notice and due process rights in the enforcement context.³¹ The Subpoena & Order, issued as they were without a quorum of Commissioners to consider the merits of the underlying matter, fly in the face of the Commission's longstanding concern for protecting the due process rights of Respondents in the enforcement context.

IV. The Subpoena & Order Are Unreasonably Broad, Unduly Burdensome, Vague, and Not Reasonably Likely to Lead to Relevant Material.

In addition to its fatal jurisdictional and procedural deficiencies, the Subpoena & Order on its face are woefully defective. As noted, the Commission's authority to investigate is premised on it first finding a reason to believe finding. The information sought by the Commission must therefore be relevant to the factual and legal allegations that form the basis of that finding. Particularly where First Amendment rights are implicated, as they are in matters before the

³⁰ See Letter from G. Wilson and A. Fuoto (Oct. 7, 2019) at 5, 3 (citing Advisory Opinion 2007-22 (Hurysz)).

³¹ See Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen in Matters Under Review 6969, 7031, and 7034 (Sept. 13, 2018) at 6 (noting that fair notice and due process concerns carry "special weight" in the Commission's enforcement decisions and are "particularly acute where First Amendment rights are at stake"); Statement of Reasons of Chair Ellen L. Weintraub, Vice Chairman Matthew S. Petersen, and Commissioners Caroline C. Hunter and Steven T. Walther, Matters Review 7263 and 7264 (June 20, 2019) at 3 (choosing not to investigate an allegation based in part on "lack of explicit guidance" on the underlying area of the law at issue in that matter).

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Commission, the “interest in disclosure will be relatively weak unless the information goes to the heart of the matter, that is, unless it is crucial to the party’s case. Mere speculation that information might be useful will not suffice.”³² Where “the disclosure sought will compromise the privacy of individual political associations, and hence risks a chilling of unencumbered associational choices, the agency must make some showing of need for the material sought beyond its mere relevance to a proper investigation.”³³

The Commission has shown no such need for the information it demands. Instead, the Subpoena & Order go far beyond the investigation authorized by the reason to believe finding.

First, the Commission’s demand that Respondents “[p]roduce all communications between the DNC and Alexandra Chalupa regarding the Ukrainian Embassy, the Donald J. Trump campaign, Paul Manafort, Russian Federation, or any other topic not directly related to Chalupa’s work for the DNC regarding ethnic outreach” is overbroad, unduly burdensome, vague, and not reasonably likely to lead to relevant material. The Commission fails to define “regarding” and broadly defines “communication” as *any* “written, oral, telephonic and electronic communications.” This far-reaching demand encompasses even under-the-breath and passing references to the Trump campaign, the campaign’s manager, and a hostile foreign power who targeted and hacked the DNC’s network during the height of the 2016 campaign—all subjects that may be politically sensitive and are unreasonably broad in the context of what OGC has repeatedly described in phone conversations as a narrow inquiry. It stands to reason that the demand for all communications regarding the Trump campaign, made during the 2016 election, reaches far beyond the scope of the Commission’s reason to believe finding. Similarly, Paul Manafort was the campaign manager of the Trump campaign for significant portions of the 2016 election cycle, and the demand for communications that simply reference his name is not at all tailored to the Commission’s reason to believe finding. Nor is the request for any communications referencing the Russian Federation. As we are sure this Commission knows, the DNC was the subject of Russian hacking during the 2016 election. It is nearly certain that communications on this subject, without additional tailoring, go beyond the scope of the reason to believe finding and are ultimately irrelevant to the Commission’s investigation. There is no question that the DNC constantly communicated internally with its staff and consultants regarding Donald Trump, his campaign manager, and Russia during the 2016 election and it is ludicrous to suggest that any such communications had something to do with Ukraine or the alleged solicitation of a foreign national. The Commission’s Subpoena & Order make no attempt to narrow these subjects for relevancy and, given the nature of the DNC’s work and the time period the demand covers—the entirety of the 2016 general election *and* through the present day—the Commission’s demands are likely to prove overly burdensome.

³² *Black Panther Party v. Smith*, 661 F.2d 1243, 1268 (D.C. Cir. 1981), *vacated on other grounds* 458 U.S. 1118 (1982).

³³ *Fed. Election Comm’n v. LaRouche Campaign*, 817 F.2d 233, 234-35 (2nd Cir. 1987); *see also infra* Section V.

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Furthermore, the demand for “all communications . . . regarding . . . any other topic not directly related to Chalupa’s work for the DNC regarding ethnic outreach” is overbroad, vague, not reasonably likely to lead to relevant material, and unquestionably overly burdensome. This request includes no clear connection to the allegations set forth in the Complaint, and it would be extremely burdensome to identify all communications “not directly related” to Ms. Chalupa’s work. As far as we can tell, there are no search terms that would reliably capture the *absence* of a particular subject.

Likewise, the Commission’s demand that Respondents “[i]dentify all DNC employees who communicated with Chalupa” is overbroad, vague, burdensome, and not reasonably likely to lead to relevant materials. The Commission fails to define “employees” and, as noted, broadly defines “communication” as presumably *any* “written, oral, telephonic and electronic communications.” It is quite simply impossible to ascertain all DNC employees who had any communication with Ms. Chalupa.

The Commission’s demand that Respondents “[s]tate whether Chalupa provided the DNC with information pertaining to the Donald J. Trump campaign, Paul Manafort, the Russian Federation, or any research not directly related to her responsibilities regarding ethnic research” is likewise overbroad, vague, overly burdensome, and not likely to lead to relevant materials. The Commission’s reason to believe finding is specific to solicitations of foreign nationals. Whether Ms. Chalupa provided information to any employee, agent, or anyone working on behalf of the DNC is not relevant to whether she solicited contributions from a foreign national. Moreover, the Subpoena & Order fail to define “information.” Its demand is unduly burdensome and frankly not within the DNC’s power to determine if an independent contractor provided information, such as repeating a news story about the Trump campaign *at the height of the 2016 election*, to a DNC employee or contractor, for example.

The Commission’s demand that Respondents “[s]tate whether Luis Miranda, or anyone else from the DNC, asked Chalupa to arrange for the President of Ukraine to answer a question from a reporter about Paul Manafort” is likewise overbroad and burdensome. The Subpoena & Order require ascertaining whether *any* single individual at a major party committee asked a single question to one independent contractor. Moreover, this demand is not tailored to the reason to believe finding: it makes no reference to soliciting a thing of value from a foreign national.

The Subpoena & Order are also overbroad and overly burdensome in their entirety in that they fail to identify a reasonable time period for the Commission’s demand—instead, it demands communications spanning from January 2015 to the present. This unreasonably lengthy time period asks for materials significantly post-dating the subject of the Commission’s inquiry and

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Ms. Chalupa's contract termination with the DNC.³⁴ The Commission has proffered no explanation for why it requires documents spanning four years when the allegations are based on a short time period in 2016. Because the Commission's demands are wildly overbroad and overly burdensome, vague, and not reasonably likely to lead to relevant material, we request that the Commission quash the Subpoena & Order.

V. The Subpoena & Order to Submit Written Answers Violates the First Amendment.

The Commission's overly broad, vague, and burdensome Subpoena & Order for documents violate the First Amendment, and the Commission has not and cannot meet the high standard for compelled disclosure.

The Supreme Court has long recognized that "political belief and association constitute the core of those activities protected by the First Amendment."³⁵ The Court has also warned that "the exercise of compulsory process be carefully circumscribed when the investigate process tends to impinge upon such sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas."³⁶ This type of compulsory process includes government agencies seeking documents from party committees.³⁷ Before issuing a subpoena, therefore, the Commission must determine that the requested information "goes to the heart of the matter" being investigated and OGC must "demonstrate a need for the information sufficient to outweigh the impact on [protected First Amendment] rights."³⁸ The Subpoena & Order do not meet that exacting burden.

A. Disclosure Would Infringe on Respondents' First Amendment Rights.

The Commission is "[u]nique among federal administrative agencies" because it "has as its sole purpose the regulation of core constitutionally protected activity."³⁹ Courts have recognized that the Commission's "investigative authority warrants extra-careful scrutiny" because the "subject matter which the FEC oversees . . . relates to the behavior of individuals and groups only insofar as they act, speak and associate for political purposes."⁴⁰ To make a prima facie showing of First Amendment infringement, Respondents must merely demonstrate that the subpoena will result in

³⁴ See DNC Response at 2 (Oct. 20, 2017) (stating Ms. Chalupa left the DNC following the Democratic Convention).

³⁵ *Elrod v. Burns*, 427 U.S. 347, 356 (1976); see also *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) ("[T]he right of individuals to associate for the advancement of political beliefs . . . rank[s] among our most precious freedoms.").

³⁶ *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1954).

³⁷ See, e.g., *Democratic Nat'l Comm. v. Ariz. Sec'y of State's Office*, No. CV-16-01065-PHX-DLR, WL 3149914 (D. Ariz. July 25, 2019) (denying secretary of state's motion to compel documents as violation of political association's First Amendment rights).

³⁸ *Perry v. Schwarzenegger*, 591 F.3d 1147, 1152 (9th Cir. 2010).

³⁹ *AFL-CIO v. Fed. Election Comm'n*, 333 F.3d 168, 176 (D.C. Cir. 2003).

⁴⁰ *Machinists Non-Partisan Political League*, 655 F.2d at 387.

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harassment, membership withdrawal, new members' discouragement, or "other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights."⁴¹

Here, the Commission's sweeping Subpoena & Order for written documents include probing internal communications of Respondents' employees and members. From an objective perspective, compelling disclosure of a broad array of internal communications from a party committee shortly before a presidential election—including all communications related to the opposing party's nominee and his campaign manager—creates a chilling effect that would ripple throughout all campaigns subject to the Commission's investigative authority, including trampling on Respondent DNC's members' associational rights. Specifically, such compelled disclosure can interfere with the group operations of Respondent DNC by limiting its ongoing and future outreach efforts like those Ms. Chalupa was engaged in as an independent contractor. It would also, for example, chill the mention of the opposing party and its nominee, therefore restraining Respondent DNC's efforts to promote and advance its mission by drawing contrasts with its political opponent. Compulsory process also risks chilling Respondent DNC's relationships with other voter outreach consultants. And the ripple effects would not stop with Respondent DNC; if all such communications were subjected to compelled disclosure, the chilling effect may extend to all types of outreach efforts from all political parties.

By demanding such a broad array of communications and documents, the Commission infringes on Respondent DNC's right to associate with likeminded individuals, such as Ms. Chalupa, who are intimately engaged in the advancement and promotion of Respondent DNC's political activities. For example, the Commission's subpoena to produce "all communications" between the DNC and Ms. Chalupa on, among other topics, the opposing party's candidate is not only extremely broad and burdensome but demands documents potentially critical to Respondent DNC's internal political operations. This information is at the heart of First Amendment privilege.⁴² Additionally, disclosing internal communications will directly frustrate Respondents' ability to pursue the advancement of their political goals effectively by limiting its members to those who would be willing to risk their communications disclosed to the Commission on the basis of a single news story.

The Commission's sweeping subpoena disregards longstanding precedent "that extensive interference with political groups' internal operations and with their effectiveness does implicate significant First Amendment interests in associational autonomy."⁴³ Respondents have therefore

⁴¹ *Perry*, 591 F.3d at 1140 (internal citation omitted); see also *O'Neil v. United States*, 601 F. Supp. 874, 878 (N.D. Ind. 1985).

⁴² See, e.g., *AFL-CIO*, 333 F.3d at 177 (compelling disclosure of political organization's internal materials would have chilling effect on First Amendment rights); *Ohio Org. Collaborative v. Husted*, No. 2:15-CV-01802, 2015 WL 7008530, at *3-4 (S.D. Ohio Nov. 12, 2015) (First Amendment privilege prevented compelled disclosure of strategic information).

⁴³ *AFL-CIO*, 333 F.3d at 177.

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established the prima facie case for First Amendment protection and the subpoena must be quashed.

B. The Commission Has Not and Cannot Meet the Heightened Relevance Showing Required to Compel Disclosure of First Amendment-Protected Communications.

When the government threatens the freedoms protected by the First Amendment, it must justify its actions. And it must justify its actions when those actions “would have the practical effect ‘of discouraging’ the exercise of constitutionally protected political rights.”⁴⁴ Those actions have a “chilling effect” on the exercise of fundamental rights and “must survive exacting scrutiny.”⁴⁵

The Commission cannot make the necessary showing that it has a legitimate, let alone a compelling, interest in this sweeping demand for internal communications. As stated elsewhere in this motion, the Commission’s reason to believe—the genesis of its broad Subpoena & Order—was based on unsupported claims by unnamed sources in a single news story that relied in part on private emails stolen by a hostile foreign power. By seeking this information, the Commission stands on the precipice of a slippery slope. *One* anonymous source whispering to *one* reporter who writes *one* news story could lead to deep and probing disclosure of a political association’s internal communications. This First Amendment prohibits such a disclosure.

Because the subpoena is a clear infringement of Respondents’ First Amendment rights and the Commission cannot meet the high standard required of a compelled disclosure of Respondents’ First Amendment-protected documents, the Commission must—in addition to the multitude of reasons articulated elsewhere in this motion—grant Respondents’ motion to quash.

VI. The Commission’s Subpoena & Order to Submit Written Answers Violates the Fourth Amendment.

The Commission’s overbroad and vague Subpoena & Order also violate the Fourth Amendment. The Fourth Amendment “guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the Government.”⁴⁶ A foundational tenet of the Fourth Amendment is “whether a person has a constitutionally protected reasonable expectation of privacy.”⁴⁷ In the context of an administrative agency’s subpoena, the Fourth Amendment is only

⁴⁴ *NAACP v. Alabama*, 357 U.S. 449, 461 (1958) (quoting *Am. Commc’ns Ass’n v. Douds*, 339 U.S. 382, 393 (1950)).

⁴⁵ *Perry*, 591 F.3d at 1160 (quoting *Buckley v. Valeo*, 424 U.S. 1, 64 (1976)).

⁴⁶ *City of Ontario, Cal. v. Quon*, 560 U.S. 746, 755–56 (2010) (quoting *Skinner v. Railway Labor Executives’ Ass’n*, 489 U.S. 602, 613–14 (1989)).

⁴⁷ *Stewart v. Evans*, 351 F.3d 1239, 1243 (D.C. Cir. 2003) (quoting *California v. Ciraolo*, 476 U.S. 207, 211, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986)).

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satisfied when an agency has the authority to issue a subpoena and the subpoena is sufficiently definite and relevant.⁴⁸ As detailed *supra*, the Commission lacks authority to issue subpoenas as it is presently constituted. And, even if the Commission had the authority to issue subpoenas, the Subpoena & Order's vague and overbroad demands make them woefully defective.

VIII. Conclusion

Respondents maintain they are not aware of any information suggesting that the DNC's former independent contractor solicited anything of value from foreign nationals on its behalf. The Subpoena & Order should nonetheless be quashed for the reasons discussed at length above.

Very truly yours,



Graham M. Wilson
Antoinette M. Fuoto
Zachary J. Newkirk
Counsel to Democratic National Committee

⁴⁸ *United States v. Apodaca*, 319 F. Supp. 3d 44, 49 (D.D.C. 2018).

FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 13, 2019

VIA ELECTRONIC MAIL

Graham M. Wilson
Antoinette M. Fuoto
Zachary J. Newkirk
Perkins Coie LLP
700 13th Street, NW Suite 600
Washington, DC 20005
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RE: MUR 7271

Dear Mr. Wilson, Ms. Fuoto, and Mr. Newkirk:

We received your letter dated November 4, 2019 (“Motion to Quash”), in which your client, the Democratic National Committee (“DNC”), moves to quash the October 28, 2019, subpoena to produce documents and order to submit written answers (the “subpoena”). The Motion to Quash contends that the Commission lacks authority to issue the subpoena — or that it is no longer valid — because of the Commission’s current lack of quorum. It also argues that the subpoena is overly broad and unduly burdensome and requests that the Commission reconsider its reason-to-believe finding.

Initially, the DNC’s position that the subpoena is invalid is incorrect. The Commission’s authorization of the subpoena is unaffected by either the subsequent lack of quorum or the DNC’s response to the Commission’s findings. As you know, on July 25, 2019, the Commission found reason to believe that the DNC violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g). On the same day, the Commission authorized the use of compulsory process to allow the Office of General Counsel (“OGC”) to conduct an investigation into those violations.¹ The Commission approved the subpoena on August 30, 2019. Once approved, no further vote by the Commission is required to issue a subpoena. *See* 11 C.F.R. § 111.12(a). Likewise, once the Commission makes a reason-to-believe finding, no further vote by the Commission is required to

¹ On August 1, 2019, OGC notified your client of the Commission’s findings, and, in response to the DNC’s request for an extension in light of the press of other business, OGC agreed to extend the deadline to respond to the notification for 45 days, to October 7, 2019.

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Mr. Wilson, Ms. Fuoto, and Mr. Newkirk
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institute or continue an investigation. *See* 11 C.F.R. §§ 111.9-10. Accordingly, the Commission’s duly-issued subpoena remains valid and in effect.²

Furthermore, the DNC’s underlying contention — that the Commission should have had the opportunity to revisit its reason-to-believe finding based on new information in your October 7, 2019, letter — is improper because the Commission lacks such motions practice and in any event lacks merit. The DNC asks the Commission to take the extraordinary step of reconsidering its own reason-to-believe finding just months after its unanimous vote, based on public record information that does not present any concrete facts unknown to the Commission, and without statements or the evidence that the Commission has required that the DNC provide. Your October 7, 2019, letter essentially recasts the same factual arguments that the DNC already put before the Commission prior to its finding of reason to believe.

The contention that the subpoena is overbroad and unduly burdensome is similarly groundless. To the contrary, the subpoena is narrowly tailored to seek documents and responses for the pertinent time period and subject matter. The generalized claim that the subpoena is “unreasonably broad, unduly burdensome, vague, and not reasonably likely to lead to relevant material” is not well taken and is premised on the idea that commonly used words such as “regarding,” “communication,” “information,” and “employee,” which are frequently contained in subpoenas and other legal documents, are unclear and overbroad. For example, you refuse to respond to a subpoena topic that simply asks you to identify which DNC employees communicated with Alexandra Chalupa during the relevant time period. Moreover, the representations in the Motion to Quash appear to be inconsistent with the DNC’s prior representations in this matter. The DNC’s October 20, 2017, letter in response to the complaint, which represented that the DNC retained Ms. Chalupa “exclusively to engage in outreach to American ethnic communities” and that she did not perform opposition research, is in tension with the DNC’s more recent position that it would be onerous to produce the likely-voluminous records that are responsive to the request for the DNC’s communications with Ms. Chalupa regarding the Donald J. Trump campaign, Paul Manafort, or the Russian Federation. If the DNC has responsive materials, they are required to be produced.

As you know, the Commission currently lacks a quorum such that it could consider the Motion to Quash or the DNC’s request that the Commission reconsider its reason-to-believe finding. In the meantime, the subpoena remains valid, and the DNC remains obligated to respond. Given these circumstances, conferring about the issues raised in the Motion to Quash in good faith would give the parties an opportunity to resolve these issues expeditiously. *See* OGC Enforcement Manual at 75-76, 5.3.2.9 (June 2013) (appropriate to discuss modifying a subpoena to resolve dispute informally); *see also* LCvR 7(m) (D.D.C.) (duty to confer on nondispositive motions prior to seeking judicial relief).

Please advise whether you will meet and confer with us in an attempt to resolve the discovery issues in a mutually satisfactory way. If the DNC is unwilling to confer, and instead maintains its Motion to Quash and request for reconsideration, please advise whether the DNC

² The arguments contained in the Motion to Quash that the subpoena violates the First and Fourth Amendments are premised on the same incorrect theory that the subpoena is invalid and are similarly meritless.

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Mr. Wilson, Ms. Fuoto, and Mr. Newkirk

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will agree to enter into a tolling agreement such as to allow the Commission to consider the DNC's submissions when it regains a quorum.

We look forward to your response. If you have any questions, please do not hesitate to contact me at (202) 694-1597 or cpavia@fec.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Claudio Pavia". The signature is fluid and cursive, with the first name "Claudio" and the last name "Pavia" clearly distinguishable.

Claudio J. Pavia

Acting Assistant General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
)
)

MUR 7271

DEPOSITION SUBPOENA
ORDER TO SUBMIT WRITTEN ANSWERS
SUBPOENA TO PRODUCE DOCUMENTS

TO: Luis Miranda
c/o Graham M. Wilson, Esq.
Perkins Coie LLP
700 13th Street, NW Suite 600
Washington, DC 20005-3960

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals. Such answers must be submitted under oath and must be forwarded in physical and digital form to the Office of the General Counsel, Federal Election Commission, 1050 First Street, NE, Washington, DC 20463, along with the requested documents within 30 days of your receipt of this Subpoena and Order.

In addition, pursuant to 52 U.S.C. § 30107(a)(3), the Commission hereby subpoenas you to appear for a deposition with regard to this matter. Notice is hereby given that the deposition is to be taken on August 12, 2020, or another mutually agreeable date, beginning at 10:00 a.m. and continuing each day thereafter as necessary. The deposition will be taken virtually, unless a physical location is mutually agreed.

WHEREFORE, the Chair of the Federal Election Commission has hereunto set his hand in Washington, DC, on this ____ day of _____ 2020.

On behalf of the Commission,

James E. "Trey" Trainor III
Chair

ATTEST:

Laura E. Sinram
Acting Secretary and Clerk of the Commission

Attachments
Instructions and Definitions
Questions and Document Requests

INSTRUCTIONS

1. In answering these written questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that are in your possession, known by or otherwise available to you, including documents and information appearing in your records.
2. Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.
3. The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the written response.
4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
5. Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by the following questions and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.
6. Mark each page with identification and consecutive document control numbers (*i.e.*, Bates numbers). Provide a master list showing the name of each person from whom responsive documents are submitted and the corresponding consecutive document control numbers used to identify that person's documents.
7. Unless otherwise specified, these requests shall refer to the time period from January 1, 2015 through December 31, 2016.
8. The following questions and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which, and the manner in which, such further or different information came to your attention.
9. All responses must be submitted under oath or affirmation under penalty of perjury, including any response that you have no responsive documents.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

1. “You” shall mean Luis Miranda.
2. “DNC” shall mean Democratic National Committee and William Derrough in his official capacity as treasurer, and any employees, agents, and other individuals acting for or on its behalf.
3. “Person” shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization, group or entity.
4. “Document” shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term “document” includes, but is not limited to, books, letters, electronic mail, social media postings, messages sent via Twitter, instant messages, text messages, contracts, notes, diaries, log books, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, financial records, calendar entries, appointment records, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If the document request calls for a document that is maintained on or in a magnetic, optical, or electronic medium (for example, but not limited to, computer hard drive, USB drive, or CD-ROM), provide both “hard” (*i.e.*, paper) and “soft” (*i.e.*, in the magnetic or electronic medium) copies, including drafts, and identify the name (*e.g.*, Microsoft Word for Windows, WordPerfect) and version numbers of the software by which the document(s) will be most easily retrieved.
5. “Identify” with respect to a document shall mean state the nature or type of document (*e.g.*, letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.
6. “Identify” with respect to a person shall mean state the full name, the most recent business and residential addresses and the corresponding telephone numbers, e-mail addresses, the present occupation or position of such person, the occupation or position of such person during the relevant time period, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

7. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for production of documents any documents and materials that may otherwise be construed to be out of their scope.
8. “Communication” shall be deemed to include both singular and plural, and to include written, oral, telephonic and electronic communications.

QUESTIONS AND DOCUMENT REQUESTS

1. List all positions you held with the DNC and the relevant dates. Describe your duties and responsibilities for each position.
2. Describe your relationship with Alexandra Chalupa.
3. At the DNC, did Ms. Chalupa report to you?
 - a. State whether you directed or supervised her work.
 - b. State whether she informally consulted with you about her work.
4. Were you aware that Ms. Chalupa had contacts with the Ukrainian Embassy? If so:
 - a. When did you first become aware that she had such contacts?
 - b. Describe your understanding of the extent and purpose of her contacts with the embassy.
 - c. Identify all persons from the embassy who you believe she was in contact with.
 - d. Describe any statements she made to you about her relationship with the embassy.
 - e. Produce all documents reflecting communications you had with Ms. Chalupa regarding the Ukrainian Embassy and persons employed by the government of Ukraine.
5. Were you aware that Ms. Chalupa was gathering or researching information on Paul Manafort or the Donald J. Trump campaign? If so:
 - a. When did you first become aware that she was gathering or researching this information?
 - b. Describe any statements Ms. Chalupa made to you about these research or information-gathering activities.
 - c. Identify all sources that you believe she used to gather or research this information.
 - d. State your understanding of whether she gathered or researched information on Mr. Manafort or the Trump campaign on behalf of the DNC.
 - e. Describe any instances in which Ms. Chalupa provided you with the results of her research or information-gathering on Mr. Manafort or the Trump campaign. Produce all documents reflecting such research or information.

- f. Describe any instances in which you and Ms. Chalupa discussed how the DNC could use information about Mr. Manafort to harm the Trump campaign.
- 6. Did Ms. Chalupa communicate with you about Mr. Manafort, including but not limited to his role with the Trump campaign and past political consulting work in Ukraine? If so:
 - a. Describe the content and dates of such communications with Ms. Chalupa. Produce all documents reflecting such communications with her.
 - b. Describe any briefings or discussions that she held with you or your staff about Mr. Manafort or the Trump campaign, and identify the dates on which such briefings or discussions took place.
 - c. Identify any actions that you or anyone from your staff took as a result of communicating with Ms. Chalupa about Mr. Manafort.
 - d. Describe any communications you had with Ms. Chalupa regarding the possibility of a congressional investigation into Mr. Manafort. Produce all documents reflecting such communications with her.
- 7. In late March or early April 2016, did you request or suggest that Ms. Chalupa contact the Ukrainian Embassy to arrange for the president of Ukraine, Petro Poroshenko, to answer a question about Mr. Manafort? If so:
 - a. Describe the request or suggestion you made to Ms. Chalupa, including how you intended the question to be asked to President Poroshenko.
 - b. Describe or state the question that would be asked of President Poroshenko.
 - c. Explain why you wanted the question described in Question 7.b to be asked of President Poroshenko and any benefit you believed this would confer on the DNC.
 - d. Identify the person who would ask the question described in Question 7.b.
 - e. Describe any actions that you believe that Ms. Chalupa took to arrange for President Poroshenko to answer the question described in Question 7.b.
 - f. Produce all documents reflecting the effort to arrange for President Poroshenko to answer a question about Mr. Manafort.

8. On May 3, 2016, Ms. Chalupa emailed you with the message — “More offline tomorrow since there is a big Trump component you and Lauren need to be aware of that will hit in next few weeks and something I’m working on you should be aware of.”
 - a. Identify any related communications that you had with Ms. Chalupa following this email. Produce all documents reflecting such communications with her.
 - b. Describe your understanding of the “big Trump component.”
 - c. Describe your understanding of the “something” Ms. Chalupa said she was “working on.”
9. State whether Ms. Chalupa provided you with any information or research that, to your knowledge, originated from the Ukrainian government. For any such instances:
 - a. Describe the contents of the information or research and the date on which you received it.
 - b. Describe your understanding of the source(s) of that information or research.
 - c. Identify any persons with whom you shared the information or research.
 - d. State whether you took any actions as a result of receiving the information or research, and describe each action you took.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 7271

ORDER TO SUBMIT WRITTEN ANSWERS
SUBPOENA TO PRODUCE DOCUMENTS

TO: Amy Dacey
 c/o Graham M. Wilson, Esq.
 Perkins Coie LLP
 700 13th Street, NW Suite 600
 Washington, DC 20005-3960

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded in physical and digital form to the Office of the General Counsel, Federal Election Commission, 1050 First Street, NE, Washington, DC 20463, along with the requested documents within 30 days of your receipt of this Subpoena and Order.

WHEREFORE, the Chair of the Federal Election Commission has hereunto set his hand in Washington, DC, on this ____ day of _____ 2020.

On behalf of the Commission,

 James E. "Trey" Trainor III
 Chair

ATTEST:

 Laura E. Sinram
 Acting Secretary and Clerk of the Commission

Attachments
 Instructions and Definitions
 Questions and Document Requests

INSTRUCTIONS

1. In answering these written questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that are in your possession, known by or otherwise available to you, including documents and information appearing in your records.
2. Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.
3. The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the written response.
4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
5. Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by the following questions and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.
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9. All responses must be submitted under oath or affirmation under penalty of perjury, including any response that you have no responsive documents.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

1. “You” or shall mean Amy Dacey.
2. “DNC” shall mean Democratic National Committee and William Derrough in his official capacity as treasurer, and any employees, agents, and other individuals acting for or on its behalf.
3. “Person” shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization, group or entity.
4. “Document” shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term “document” includes, but is not limited to, books, letters, electronic mail, social media postings, messages sent via Twitter, instant messages, text messages, contracts, notes, diaries, log books, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, financial records, calendar entries, appointment records, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If the document request calls for a document that is maintained on or in a magnetic, optical, or electronic medium (for example, but not limited to, computer hard drive, USB drive, or CD-ROM), provide both “hard” (*i.e.*, paper) and “soft” (*i.e.*, in the magnetic or electronic medium) copies, including drafts, and identify the name (*e.g.*, Microsoft Word for Windows, WordPerfect) and version numbers of the software by which the document(s) will be most easily retrieved.
5. “Identify” with respect to a document shall mean state the nature or type of document (*e.g.*, letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.
6. “Identify” with respect to a person shall mean state the full name, the most recent business and residential addresses and the corresponding telephone numbers, e-mail addresses, the present occupation or position of such person, the occupation or position of such person during the relevant time period, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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7. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for production of documents any documents and materials that may otherwise be construed to be out of their scope.
8. “Communication” shall be deemed to include both singular and plural, and to include written, oral, telephonic and electronic communications.

QUESTIONS AND DOCUMENT REQUESTS

1. List all positions you held with the DNC and the relevant dates. Describe your duties and responsibilities for each position.
2. Describe your relationship with Alexandra Chalupa.
3. At the DNC, did Ms. Chalupa report to you?
 - a. State whether you directed or supervised her work.
 - b. State whether she informally consulted with you about her work.
4. Were you aware that Ms. Chalupa had contacts with the Ukrainian Embassy? If so:
 - a. When did you first become aware that she had such contacts?
 - b. Describe your understanding of the extent and purpose of her contacts with the embassy.
 - c. Identify all persons from the embassy who you believe she was in contact with.
 - d. Describe any statements she made to you about her relationship with the embassy.
 - e. Produce all documents reflecting communications you had with Ms. Chalupa regarding the Ukrainian Embassy and persons employed by the government of Ukraine.
5. Were you aware that Ms. Chalupa was gathering or researching information on Paul Manafort or the Donald J. Trump campaign? If so:
 - a. When did you first become aware that she was gathering or researching this information?
 - b. Describe any statements Ms. Chalupa made to you about these research or information-gathering activities.
 - c. Identify all sources that you believe she used to gather or research this information.
 - d. State your understanding of whether she gathered or researched information on Mr. Manafort or the Trump campaign on behalf of the DNC.
 - e. Describe any instances in which Ms. Chalupa provided you with the results of her research or information-gathering on Mr. Manafort or the Trump campaign. Produce all documents reflecting such research or information.

- f. Describe any instances in which you and Ms. Chalupa discussed how the DNC could use information about Manafort to harm the Trump campaign.
6. In March or April 2016, did you communicate with Ms. Chalupa regarding the fact that Mr. Manafort had been hired by the Trump campaign? If so:
 - a. Describe the content of such communications. Produce all documents reflecting such communications with her.
 - b. Identify any other persons who were included in the communications described in Question 7.
 - c. Did Ms. Chalupa send you a text message or other communication that suggested the Manafort hiring could “take down Trump” or otherwise harm Donald Trump?
 - d. Describe any communications you had with Ms. Chalupa about the possibility of arranging a congressional investigation of Mr. Manafort. Produce all documents reflecting such communications with her.
7. After you became aware that Mr. Manafort had been hired by the Trump campaign, did you request or suggest that Ms. Chalupa contact Luis Miranda? If so:
 - a. Describe the purpose of connecting Ms. Chalupa and Mr. Miranda.
 - b. When and where did you make the request or suggestion?
 - c. Describe any actions you are aware of that Ms. Chalupa took in response to your request or suggestion.
8. Did you travel with Ms. Chalupa to New Britain, Connecticut in 2016? If so:
 - a. Describe the purpose of the trip.
 - b. Identify any activities that you or Ms. Chalupa engaged in during the trip that related to Mr. Manafort.
9. State whether Ms. Chalupa provided you with any information or research that, to your knowledge, originated from the Ukrainian government. For any such instances:
 - a. Describe the contents of the information or research and the date on which you received it.
 - b. Describe your understanding of the source(s) of that information or research.
 - c. Identify any persons with whom you shared the information or research.

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Page 6 of 6

- d. State whether you took any actions as a result of receiving the information or research, and describe each action you took.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 7271

ORDER TO SUBMIT WRITTEN ANSWERS
SUBPOENA TO PRODUCE DOCUMENTS

TO: Lindsey Reynolds
 c/o Graham M. Wilson, Esq.
 Perkins Coie LLP
 700 13th Street, NW Suite 600
 Washington, DC 20005-3960

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded in physical and digital form to the Office of the General Counsel, Federal Election Commission, 1050 First Street, NE, Washington, DC 20463, along with the requested documents within 30 days of your receipt of this Subpoena and Order.

WHEREFORE, the Chair of the Federal Election Commission has hereunto set his hand in Washington, DC, on this ____ day of _____ 2020.

On behalf of the Commission,

 James E. "Trey" Trainor III
 Chair

ATTEST:

 Laura E. Sinram
 Acting Secretary and Clerk of the Commission

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4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
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1. “You” or shall mean Lindsey Reynolds.
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QUESTIONS AND DOCUMENT REQUESTS

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 - a. State whether you directed or supervised her work.
 - b. State whether she informally consulted with you about her work.
4. Were you aware that Ms. Chalupa had contacts with the Ukrainian Embassy? If so:
 - a. When did you first become aware that she had such contacts?
 - b. Describe your understanding of the extent and purpose of her contacts with the embassy.
 - c. Identify all persons from the embassy who you believe she was in contact with.
 - d. Describe any statements she made to you about her relationship with the embassy.
 - e. Produce all documents reflecting communications you had with Ms. Chalupa regarding the Ukrainian Embassy and persons employed by the government of Ukraine.
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 - a. When did you first become aware that she was gathering or researching this information?
 - b. Describe any statements Ms. Chalupa made to you about these research or information-gathering activities.
 - c. Identify all sources that you believe she used to gather or research this information.
 - d. State your understanding of whether she gathered or researched information on Mr. Manafort or the Trump campaign on behalf of the DNC.
 - e. Describe any instances in which Ms. Chalupa provided you with the results of her research or information-gathering on Mr. Manafort or the Trump campaign. Produce all documents reflecting such research or information.

- f. Describe any instances in which you and Ms. Chalupa discussed how the DNC could use information about Manafort to harm the Trump campaign.
6. In early 2016, prior to Mr. Manafort joining the Trump campaign, did Ms. Chalupa approach you regarding the possibility that Mr. Manafort might become involved in the election and/or the possibility of Russian interference in the 2016 election? If so:
 - a. When did this occur?
 - b. Describe the content of such communications with Ms. Chalupa. Produce all documents reflecting such communications with her.
 - c. Describe any actions that you or Ms. Chalupa took as a result of the information she discussed with you about Manafort or Russian election interference.
7. In March or April 2016, did you communicate with Ms. Chalupa regarding the fact that Mr. Manafort had been hired by the Trump campaign? If so:
 - a. Describe the content of such communications. Produce all documents reflecting such communications with her.
 - b. Identify any other persons who were included in the communications described in Question 7.
 - c. Did Ms. Chalupa send you a text message or other communication that suggested the Manafort hiring could “take down Trump” or otherwise harm Donald Trump?
 - d. Describe any communications you had with Ms. Chalupa about the possibility of arranging a congressional investigation of Mr. Manafort. Produce all documents reflecting such communications with her.
8. After you became aware that Mr. Manafort had been hired by the Trump campaign, did you request or suggest that Ms. Chalupa contact Luis Miranda? If so:
 - a. Describe the purpose of connecting Ms. Chalupa and Mr. Miranda.
 - b. When and where did you make the request or suggestion?
 - c. Describe any actions you are aware of that Ms. Chalupa took in response to your request or suggestion.
9. State whether Ms. Chalupa provided you with any information or research that, to your knowledge, originated from the Ukrainian government. For any such instances:

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- a. Describe the contents of the information or research and the date on which you received it.
- b. Describe your understanding of the source(s) of that information or research.
- c. Identify any persons with whom you shared the information or research.
- d. State whether you took any actions as a result of receiving the information or research, and describe each action you took.