

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR: 7613

DATE COMPLAINT FILED: May 21, 2019

DATE OF LAST NOTIFICATION: Sept. 27, 2019

LAST RESPONSE RECEIVED: Oct. 15, 2019

DATE ACTIVATED: Aug. 28, 2019

EXPIRATION OF SOL: Apr. 5, 2023

ELECTION CYCLE: 2018

COMPLAINANTS:

Campaign Legal Center and Margaret Christ

RESPONDENTS:

Zekelman Industries, Inc.

Wheatland Tube, LLC

Barry Zekelman

Roger B. Schagrin

America First Action, Inc., and Jon Proch in his
official capacity as treasurer**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30121(a)(1)(A), (B)

52 U.S.C. § 30121(a)(2)

52 U.S.C. § 30121(b)(1)

11 C.F.R. § 110.20(b), (c), (g), (h), (i)

INTERNAL REPORTS CHECKED: None**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint alleges that Wheatland Tube, LLC (“Wheatland Tube”), a U.S.-based subsidiary of another U.S. company, Zekelman Industries, Inc., made \$1.75 million in prohibited foreign national contributions to America First Action, Inc., and Jon Proch in his official capacity as Treasurer (“AFA”) during the 2018 election cycle.¹ The Complaint asserts that foreign national Barry Zekelman, the chief executive officer and executive chairman of

¹ See Compl. ¶¶ 1-2, 9-11 (Zekelman Industries, Inc., *et al.*) (May 21, 2019).

1 Zekelman Industries, participated in Wheatland Tube's decision to contribute when, after a
2 lawyer for the company contacted him about the potential contributions, he proceeded to discuss
3 the matter with executives of both companies who report to him.² The Complaint additionally
4 alleges that Zekelman Industries knowingly solicited, and provided substantial assistance in the
5 making of, the prohibited contributions based on the actions of the company's lawyer and its
6 executives.³

7 Wheatland Tube, Barry Zekelman, and Zekelman Industries (collectively, the "Zekelman
8 Respondents") submitted a joint Response denying that the contributions were prohibited foreign
9 national contributions.⁴ They assert that Wheatland Tube's president is a United States citizen
10 who, after consulting with another Wheatland Tube officer, authorized and approved the
11 contributions to AFA.⁵ Further, Roger Schagrin, an outside lawyer of Zekelman Industries,
12 asserts that although he may have provided contact information for Barry Zekelman to a
13 representative of AFA, providing contact information for a client is insufficient to violate the

² *Id.* ¶¶ 9-11, 28-30.

³ *Id.* ¶¶ 2, 36, 38.

⁴ Wheatland Tube, LLC, Barry Zekelman, and Zekelman Industries Resp. at 3, MUR 7613 (July 5, 2019) ("Zekelman Resp.").

⁵ *Id.*

foreign national solicitation ban.⁶ AFA asserts that the Complaint fails to allege any facts sufficient to establish that AFA violated the Act or Commission regulations.⁷

As discussed below, the available information indicates that Barry Zekelman participated in Wheatland Tube's decision-making process to contribute to AFA, that Zekelman Industries, through the actions of its executives, provided substantial assistance in Wheatland Tube's making of prohibited foreign national contributions, and that AFA knowingly solicited and accepted contributions from a foreign national. Accordingly, we recommend that the Commission find reason to believe that Wheatland Tube, LLC, Barry Zekelman, and Zekelman Industries Inc., violated 52 U.S.C. § 30121(a)(1)(A), and that AFA violated 52 U.S.C. § 30121(a)(2). We further recommend that the Commission dismiss the allegation that Zekelman Industries violated 52 U.S.C. § 30121(a)(2). Finally, we recommend that the Commission take no action at this time as to Roger Schagrin pending an investigation into the circumstances of the Wheatland Tube contributions.

II. FACTUAL BACKGROUND

Wheatland Tube is a pipe and tube manufacturer that is organized under the laws of Pennsylvania and is owned by Zekelman Industries, a company that is incorporated in Delaware and headquartered in Illinois.⁸ Barry Zekelman, a Canadian citizen, is the CEO and executive

⁶ Roger Schagrin Resp. at 1-2, MUR 7613 (Oct. 15, 2019). We generated a late notification letter to Schagrin after activation based on the Complaint's allegation that a lawyer for Zekelman Industries communicated AFA's contribution request to Zekelman and the Zekelman Response's identification of Schagrin as the attorney who communicated with Zekelman regarding the contribution.

⁷ America First Action Resp. at 1-2, MUR 7613 (July 10, 2019).

⁸ Compl. ¶ 5; Zekelman Resp. at 1.

chairman of Zekelman Industries, and is also an owner of the company.⁹ Mickey McNamara is a United States citizen and, according to the Zekelman Respondents, serves simultaneously as the president of Wheatland Tube and general counsel of Zekelman Industries.¹⁰ In addition, Mike Graham is a United States citizen and is Zekelman Industries' chief financial officer.¹¹ Both Graham and McNamara also serve as directors of Wheatland Tube.¹² AFA is registered with the Commission as an independent expenditure-only committee.¹³ It has described itself, in an archived version of its website from the time of the contributions in this matter, as "the primary super PAC dedicated to electing federal candidates who support the agenda of the Trump-Pence administration."¹⁴

The Complaint's allegations involve three contributions that Wheatland Tube made to AFA in 2018: \$1 million on April 5, 2018; \$250,000 on June 4, 2018; and \$500,000 on October 17, 2018.¹⁵ The Complaint, citing a *New York Times* article based, in part, on an interview with Zekelman, alleges that Zekelman participated in Wheatland Tube's decision to make the

⁹ Compl. ¶ 5; Zekelman Resp. at 1.

¹⁰ Zekelman Resp. at 1.

¹¹ *Id.*

¹² *Id.* Complete information regarding Wheatland Tube's structure and governance, including whether it has additional directors, is unknown at this time.

¹³ AFA, Statement of Organization (Apr. 12, 2017).

¹⁴ <https://web.archive.org/web/20180616235258/https://www.alapac.org/> (snapshot of June 16, 2018, showing quoted language in homepage header).

¹⁵ See Compl. ¶¶ 6-8; see also AFA, Amended 12-Day Pre-Election Report for the Primary at 23 (Aug. 22, 2018); AFA, June 2018 Quarterly Report at 34 (July 15, 2018); AFA, Amended 12-Day Report for the General Election, at 43 (Jan. 25, 2019).

contributions.¹⁶ Zekelman reportedly stated that a representative of AFA “approached Zekelman Industries’ lawyers and asked for a contribution.”¹⁷ The article quotes Zekelman as stating, “They contacted our people, our people brought it to me I said, great, I would love to find a way to support [Trump].”¹⁸ Zekelman, according to the article, stated that, although he did not play a role in Wheatland Tube’s decision to make the contributions, he did “discuss the matter with other company executives.”¹⁹ Zekelman believed the contributions were legal, the article states, “because the final decision was made by members of his board who are American citizens or legal residents of the United States.”²⁰

The joint Response submitted by Wheatland Tube, Zekelman, and Zekelman Industries does not dispute the *New York Times* article’s description of Zekelman’s role with respect to Wheatland Tube’s contributions or the accuracy of the quotes attributed to Zekelman.²¹ Zekelman, in a sworn declaration, acknowledges that he “discussed Wheatland Tube’s potential contributions to America First” with McNamara.²² Zekelman also identifies Roger Schagrin as the “outside attorney” for Zekelman Industries referenced in the Complaint and *New York Times* article, attesting that Schagrin “suggested to [him] that a U.S.-based company with which [he is]

¹⁶ Compl. ¶ 9 (citing Eric Lipton, *He’s One of the Biggest Backers of Trump’s Push to Protect American Steel. And He’s Canadian*, NEW YORK TIMES (May 20, 2019), <https://www.nytimes.com/2019/05/20/us/politics/hes-one-of-the-biggest-backers-of-trumps-push-to-protect-american-steel-and-hes-canadian.html> (“NYT Article”) (noting that “America First was created in January 2017 by former Trump campaign aides to push Mr. Trump’s agenda”)).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See generally* Zekelman Resp.

²² *Id.*, Zekelman Decl. ¶ 4.

1 affiliated should consider contributing to America First” and this “led [him] to believe that [he]
 2 could communicate with others about potential contributions.”²³ McNamara, in a sworn
 3 declaration, states that after speaking with Zekelman, he made the decision, in consultation with
 4 Graham, to contribute to AFA.²⁴ McNamara attests that he exercised “independent judgment
 5 and determined that the contributions were an appropriate and beneficial corporate expenditure,”
 6 because he “believed that President Trump’s trade policies were well-aligned with Wheatland
 7 Tube’s corporate interests.”²⁵ Rather than disputing the facts alleged in the Complaint, the
 8 Zekelman Respondents argue that “[t]hey did not know that having Mr. Zekelman participate in
 9 communications about a contribution . . . could have any legal implications.”²⁶

10 In his Response, Schagrin states that, as a longstanding attorney for Zekelman Industries,
 11 he has regular contact with Zekelman and other company executives regarding trade, customs,
 12 and related policy issues.²⁷ He further states that he has provided contact information for
 13 Zekelman to individuals who ask for such contact information, “including potentially to a
 14 representative of the America First Action super PAC supporting President Trump,” but that “he
 15 has not solicited funds for or had further interaction with” AFA.²⁸ The Zekelman Response,

²³ Zekelman Resp., Zekelman Decl. ¶ 3.

²⁴ *Id.*, McNamara Decl. ¶¶ 5-7.

²⁵ *Id.*, McNamara Decl. ¶ 6.

²⁶ Zekelman Resp. at 3.

²⁷ Schagrin Resp. at 2.

²⁸ *Id.* at 2.

however, suggests that Schagrin's role extended beyond merely providing contact information and at least included a discussion with Zekelman about "potential contributions."²⁹

For its part, AFA contends, among other things, that Wheatland Tube and Zekelman Industries, as American companies, were permitted to make the contributions, that a Wheatland Tube "representative" affirmed his U.S. citizenship or permanent resident status on a donor form, and that none of the indicia that the Commission considers in determining whether a committee knowingly accepted a contribution from a foreign national is present on the donor forms or the face of the checks.³⁰ AFA's Response, however, did not address the assertion in the Complaint and *New York Times* article that one of its representatives approached "one of Zekelman Industries' lawyers" and "asked for a contribution."³¹

Nor does AFA's Response address the *New York Times* article's description of a "small dinner" Zekelman and his wife attended in a "private dining room at the Trump International Hotel in Washington last spring . . . with the president and his son Donald Trump Jr."³² AFA reportedly organized and hosted a dinner on April 30, 2018, for "potential donors" and for

²⁹ Zekelman Resp. at 3; *id.*, Zekelman Decl. ¶ 3.

³⁰ AFA Resp. at 1-2; *cf.* NYT Article (quoting Brian Walsh, president of AFA that AFA did not accept foreign contributions and "[a]ll contributors are expressly asked to affirm they are a U.S. citizen or permanent resident").

³¹ *See* AFA Resp. at 1-2.

³² NYT Article.

1 President Trump “to be wined and dined by the group’s leadership.”³³ Following the receipt of
 2 the submissions in this matter, it has been reported that an attendee of that dinner released a
 3 video purportedly taken at the dinner showing a one-table dinner that matches the *New York*
 4 *Times* article’s description of the “small dinner” attended by Zekelman.³⁴ Audio in the video
 5 includes a man who is referred to as “Barry,” and identified by press reports as Zekelman,
 6 stating, “originally . . . I started in Canada, 19 years old . . . we’re now the largest steel consumer
 7 in the U.S.”³⁵ Neither the article nor other information we have reviewed explains why AFA
 8 invited Zekelman to the donor dinner.

³³ Brian Schwartz, *Trump Is Going to a Social Event Hosted by Pro-Trump Super PAC America First Action*, CNBC (Apr. 30, 2018), available at <https://www.cnbc.com/2018/04/30/trump-is-going-to-a-social-event-hosted-by-pro-trump-super-pac-america-first-action.html>; Deanna Paul, Rosalind S. Helderman, *et al.*, *Giuliani Associate Lev Parnas Is Willing to Comply with House Impeachment Inquiry, His Attorney Says*, WASHINGTON POST (Nov. 4, 2019), available at https://www.washingtonpost.com/politics/giuliani-associate-lev-parnas-is-willing-to-comply-with-house-impeachment-inquiry-his-attorney-says/2019/11/04/85224e32-ff42-11e9-8bab-0fc209e065a8_story.html (quoting AFA spokeswoman Kelly Sadler’s statement that the dinner was “typical of the dinners arranged for potential donors”).

³⁴ Kenneth P. Vogel and Ben Protess, *Tape Made Public of Trump Discussing Ukraine with Donors*, NEW YORK TIMES (Jan. 25, 2020), available at <https://www.nytimes.com/2020/01/25/us/politics/trump-ukraine-donors.html> (describing Trump’s attendance at the AFA-organized single-table dinner “in a private suite in his Washington hotel” and including an excerpt of full video showing, among others, Donald Trump, Jr.); Kenneth P. Vogel and Eric Lipton, *Recording Shows That the Swamp Has Not Been Drained*, NEW YORK TIMES (Jan. 26, 2020), available at <https://www.nytimes.com/2020/01/26/us/politics/trump-recording-donors.html> (reporting the AFA-donor purpose of April 30, 2018, dinner); Aimee Ortiz, Michael Levenson, and Mihir Zaveri, *6 Revelatory Moments from the Video of Trump’s Private Donor Dinner*, NEW YORK TIMES (Jan. 26, 2020), available at <https://www.nytimes.com/2020/01/26/us/politics/trump-recording-parnas-ukraine.html> (“NYT Full Video Article”) (including full one hour, 23 minute video, credited, in part to Joseph Bondy); *see also* Joseph A. Bondy (@josephabondy), TWITTER (Jan. 25, 2020, 2:48 PM), <https://twitter.com/josephabondy/status/1221157955879546881> (announcing release of video to media and showing screenshot of video).

³⁵ NYT Full Video Article (in embedded video from 7:04 – 7:11); Vogel and Protess, *Tape Made Public of Trump Discussing Ukraine with Donors*, NEW YORK TIMES, *supra* n.34 (identifying Zekelman as speaker in that part of dinner conversation).

1 **III. LEGAL ANALYSIS**

2 **A. Legal Standard**

3 The Act and Commission regulations prohibit any “foreign national” from directly or
 4 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
 5 independent expenditure, or disbursement, in connection with a federal, state, or local election.³⁶

6 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
 7 of the United States and who is not lawfully admitted for permanent residence, as well as a
 8 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,
 9 association, corporation, organization, or other combination of persons organized under the laws
 10 of or having its principal place of business in a foreign country.”³⁷

11 Commission regulations implementing the Act’s foreign national prohibition provide that
 12 “a foreign national shall not direct, dictate, control, or directly or indirectly participate in the
 13 decision-making process of any person, such as a corporation . . . with regard to such person’s
 14 . . . election-related activities, such as decisions concerning the making of contributions. . . .”³⁸

15 Commission regulations also prohibit any person from knowingly³⁹ soliciting, accepting, or

³⁶ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

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

³⁸ 11 C.F.R. § 110.20(i).

³⁹ The term “knowingly” is defined as having “actual knowledge” that the source of the funds is a foreign national, being aware of “facts that would lead a reasonable person to conclude that there is a substantial probability” that the source is a foreign national, or being aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited is a foreign national, but the person failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

receiving a contribution from a foreign national,⁴⁰ and provide that “[n]o person shall knowingly provide substantial assistance in the solicitation, making, acceptance, or receipt of a contribution” prohibited by 11 C.F.R. § 110.20(b)-(d) and (g).⁴¹

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.⁴² Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee’s decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.⁴³ By

⁴⁰ 11 C.F.R. § 110.20(g); *see also* 52 U.S.C. § 30121(a)(2) (not including the “knowingly” standard). To “solicit” means “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” 11 C.F.R. § 300.2(m) (incorporated by reference at 11 C.F.R. § 110.20(a)(6)).

⁴¹ 11 C.F.R. § 110.20(h)(1). The Commission has explained that substantial assistance “means active involvement in the solicitation, making, receipt, or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction.” Explanation & Justification, Assisting Foreign National Contributions or Donations, 67 Fed. Reg. 67,928, 67,945 (Nov. 19, 2002). Moreover, substantial assistance “covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations.” *Id.* at 66,946.

⁴² Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

⁴³ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

1 contrast, the Commission has consistently found a violation of the foreign national prohibition
 2 where foreign national officers or directors of a U.S. company participated in the company's
 3 decisions to make contributions or in the management of its separate segregated fund,⁴⁴ or where
 4 foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or
 5 donations in connection with U.S. elections.⁴⁵ The Commission has specifically determined that
 6 "no director or officer of the company or its parent who is a foreign national may participate in
 7 any way in the decision-making process with regard to making . . . proposed contributions."⁴⁶

⁴⁴ See, e.g., Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

⁴⁵ See MUR 6203 (Itinere North America).

⁴⁶ Advisory Op. 1989-20 (Kuilima) at 2; see also Advisory Op. 1985-03 (Diridon) (stating that no person who is a foreign national can have any decision-making role or control with respect to any political contribution made by domestic company);

B. The Commission Should Find Reason to Believe that Zekelman and Wheatland Tube Made Prohibited Foreign National Contributions and Zekelman Industries Provided Substantial Assistance in the Making of the Contributions

The Zekelman Respondents assert that Wheatland Tube's contributions to AFA were funded by its corporate accounts and were not reimbursed by Zekelman or any other entity.⁴⁷

There is currently no information contradicting these assertions.⁴⁸

The available information nevertheless indicates that there is reason to believe that Zekelman, a foreign national, directed or participated in Wheatland Tube's decision-making process to make the contributions, and Zekelman Industries, through the actions of its executives who report to Zekelman, provided substantial assistance in the making of the prohibited contributions. The Zekelman Respondents acknowledge that Zekelman participated in discussions with top management at both Zekelman Industries and Wheatland Tube regarding one of the companies making contributions to AFA.⁴⁹ In his sworn declaration, Zekelman acknowledges that he "discussed Wheatland Tube's potential contributions to America First" with McNamara, after Schagrin suggested that one of the U.S.-based companies with which he is affiliated consider contributing to AFA.⁵⁰ And McNamara acknowledges in his declaration not only discussing the contributions with Zekelman,⁵¹ whom he knew to be a foreign national, but

⁴⁷ Zekelman Resp. at 3.

⁴⁸ Although their Response does not explicitly state that the funds were generated solely by Wheatland Tube's domestic operations, there is no information in the record indicating that the contributions were funded by a foreign national.

⁴⁹ Zekelman Resp. at 3.

⁵⁰ Zekelman Resp., Zekelman Decl. ¶¶ 3-4.

⁵¹ In the *New York Times* article, McNamara stated that that "he did not recall discussing the matter with Mr. Zekelman" and that "he decided to make the donation without consulting Mr. Zekelman." NYT Article.

1 also discussing them with Graham, director of Wheatland Tube and chief financial officer of
2 Zekelman Industries, before authorizing the contributions from Wheatland Tube.⁵² Moreover,
3 Zekelman, not either McNamara or Graham, was the individual included on the video reportedly
4 taken of AFA's small April 2018 dinner for donors and prospective donors.

5 The available information outlined above is similar to the facts and circumstances before
6 the Commission in MUR 7122 (APIC). In that matter, the Commission entered into a
7 conciliation agreement after an investigation revealed that a domestic company's foreign
8 national director and owner was solicited to make a contribution, discussed the company making
9 a contribution, and then emailed a U.S. director of the company to "follow up" on the potential
10 contributions.⁵³ The Commission concluded that the U.S. director, by effectuating the transfer of
11 funds for the contributions, per the participation of the foreign national in that decision-making
12 process, knowingly provided substantial assistance in the making of prohibited foreign national
13 contributions by the domestic company.⁵⁴ Similarly, here, as in MUR 7122 (APIC), the record
14 shows that the foreign national CEO of Wheatland Tube's parent company, Zekelman Industries,
15 reportedly expressed his desire "to find a way" to support AFA and discussed the matter with at
16 least McNamara, another executive in both companies, who then consulted another top official in
17 the companies, before carrying out the making of the contributions through U.S.-based
18 Wheatland Tube, consistent with Zekelman's reported preference.⁵⁵ As in MUR 7122 (APIC),

⁵² Zekelman Resp., McNamara Decl. ¶¶ 6-7; Zekelman Resp. at 3.

⁵³ Conciliation Agreement § IV.7, MUR 7122 (APIC); Second General Counsel's Report at 2, 7, MUR 7122 (APIC); *see also* Factual and Legal Analysis at 7, MUR 7122 (APIC).

⁵⁴ Commission Certification (Aug. 7, 2018); Conciliation Agreement V, MUR 7122 (APIC); *see also* Second General Counsel's Report at 7, MUR 7122 (APIC).

⁵⁵ Compl. ¶¶ 9-11; NYT Article; *see generally* Zekelman Resp.

1 the available record here indicates that Zekelman directed or participated in Wheatland Tube's
2 decision-making process to make contributions in connection with a federal election, in a manner
3 contrary to the Act's foreign national prohibition and, further, that Zekelman Industries, through
4 the actions of its executives, knowingly provided substantial assistance in the making of such
5 contributions.

6 The Zekelman Respondents argue that the contributions were not prohibited because
7 McNamara, a U.S. citizen, determined that they "served Wheatland Tube's interests" and
8 "exercised independent judgment" in approving them.⁵⁶ However, as discussed above, the key
9 issue is not whether a U.S. citizen or national had final decision-making authority or final say
10 regarding the making of the contribution or donation, but whether any foreign national directed,
11 dictated, controlled, or directly or indirectly participated in a decision-making process in
12 connection with election-related spending. Indeed, the Act's prohibition on foreign nationals
13 directly or indirectly making contributions, as implemented by the Commission, requires that "no
14 director or officer of the company or its parent who is a foreign national may participate in *any*
15 *way* in the decision-making process with regard to making . . . proposed contributions."⁵⁷
16 Notably, the respondents in MUR 7122 (APIC) raised a nearly identical argument, which did not
17 persuade the Commission.⁵⁸ The Commission specifically noted that a U.S. director's assertion
18 that he had sole decision-making authority over a domestic company's political contributions did
19 not "exclude the possibility that in his role as decision-maker" he sought approval from foreign

⁵⁶ Zekelman Resp. at 3-4.

⁵⁷ Second General Counsel's Report at 7, MUR 7122 (APIC) (quoting Advisory Opinion 1989-20 at 2) (emphasis added).

⁵⁸ See Conciliation Agreement §§ IV.10, V, MUR 7122 (APIC); Factual and Legal Analysis at 5-6, MUR 7122 (APIC).

1 national directors and owners of the company, as he publicly acknowledged doing.⁵⁹ As such,
 2 regardless of whether the final decision on whether to contribute was McNamara's, Zekelman's
 3 acknowledged role in contacting McNamara with the contribution proposal and discussing it
 4 with him supports the inference that Zekelman participated in the decision-making process
 5 regarding the contributions. Even if McNamara "exercised independent judgment" in approving
 6 the contributions, that does not foreclose the possibility that Zekelman, as the CEO and chairman
 7 of Zekelman Industries — the company that owns Wheatland Tube — and as the attendee at
 8 AFA's April 2018 donor dinner (occurring between the company's first and second of three
 9 contributions), vested McNamara with the authority to make the contributions.⁶⁰ Additionally,
 10 the Zekelman Respondents' acknowledgment that the contributions were made following the
 11 suggestion to Zekelman by "Roger Schagrin, an outside lawyer for Zekelman Industries,"⁶¹
 12 indicates that Zekelman Industries was aware of the circumstances of the contributions and thus
 13 knowingly provided substantial assistance in the making of Wheatland Tube's contributions.

⁵⁹ Factual and Legal Analysis at 5-6, MUR 7122 (APIC).

⁶⁰ The Commission has explained that foreign nationals must not be involved in selecting individuals who will make decisions regarding a company's contributions and must also avoid selecting and giving those individuals election-related work assignments. *See* Factual & Legal Analysis at 6 n.30, MUR 7122 (APIC) (explaining that foreign national foreign corporate board members must abstain from voting on matters concerning an SSF, "including the selection of individuals to operate the SSF and to exercise decision making authority regarding contributions and expenditures" (quoting Factual & Legal Analysis at 11, MUR 3460 (Sports Shinko Co., Ltd.))); Advisory Opinion 2000-17 at 8 (Extendicare) ("selecting and giving PAC work assignments to personnel who will serve on the PAC Committee must be made only by US citizens or individuals lawfully admitted for permanent residence in the United States"); *see also* Advisory Opinion at 1990-8; Advisory Op. 2000-17 at 5-6. The Zekelman Respondents do not provide information regarding the structure of Wheatland Tube, whether Zekelman had any involvement in selecting individuals who have decision-making authority over contributions by Wheatland Tube, or whether he is involved in submitting contribution or other election-related requests or proposals to board members, though it may be inferred that Zekelman had such authority by virtue of his position as CEO and chairman of the company that owns Wheatland Tube and the admitted conversations regarding the contributions to AFA.

⁶¹ Zekelman Resp. at 3.

Accordingly, we recommend that the Commission find reason to believe that:

(1) Wheatland Tube violated 52 U.S.C. § 30121(a)(1)(A) by making foreign national contributions; (2) Zekelman violated 52 U.S.C. § 30121(a)(1)(A) by directing or participating in the decision-making process concerning Wheatland's contributions; and (3) Zekelman Industries violated 52 U.S.C. § 30121(a)(1)(A) by knowingly providing substantial assistance in the making of foreign national contributions.

C. The Commission Should Find Reason to Believe that AFA Knowingly Solicited and Accepted Prohibited Foreign National Contributions

Similarly, the available information indicates that there is reason to believe that AFA knowingly solicited and accepted contributions from a foreign national. It is undisputed that AFA received and accepted the Wheatland Tube contributions. Although AFA asserts that each contribution from Wheatland Tube was accompanied by a donor form signed by a representative of the company "affirming that he is a 'U.S. citizen or permanent resident,'" ⁶² AFA did not attach such forms to its response and the available information suggests that, even assuming the referenced forms include such affirmations, AFA was aware of facts that would "lead a reasonable person to conclude that there is a substantial probability" that Zekelman was a foreign national who was the source of the contributions or who participated in the decision-making process in making the contributions, or that would lead a reasonable person to inquire whether

⁶² AFA Resp. at 1-2.

Zekelman was a foreign national who was the source of the funds solicited or who participated in the decision-making process in making the contributions.⁶³

Schagrin states in his unsworn response that he “potentially” provided contact information for Zekelman, not Zekelman Industries, to AFA for its initial solicitation of funds.⁶⁴

The public video of the April 2018 dinner, attended by Zekelman — rather than a U.S. citizen officer, director, or representative of Zekelman Industries or Wheatland Tube — as a donor or potential donor to AFA, is consistent with Schagrin’s statement that he connected AFA with Zekelman, personally, as AFA sought to solicit contributions.⁶⁵ AFA’s inclusion of Zekelman at the dinner with President Trump and Donald Trump, Jr. indicates that AFA considered Zekelman to have been the donor or potential donor, or at least as a significant person who directed or participated in the decision-making process for Wheatland Tube’s past and future contributions.⁶⁶ And Zekelman’s recorded statement that “originally . . . I started in Canada, 19 years old . . . we’re now the largest steel consumer in the U.S.,”⁶⁷ either standing alone or in

⁶³ 11 C.F.R. § 110.20(a)(4).

⁶⁴ Schagrin Resp. at 2.

⁶⁵ See *supra*, n.34; Conciliation Agreement §§ IV.8-11, 12, MUR 7122 (Right to Rise) (describing, respectively, facts concerning committee agent’s conversations with foreign national owners or directors of domestic company, and conclusion that committee had solicited foreign national contribution).

⁶⁶ See *supra*, nn.33-34; Conciliation Agreement §§ IV.12, V, MUR 7122 (Right to Rise) (stating, respectively, that committee’s agent “was aware [the foreign national owners and directors] participated in making the decision that [the company] would contribute” to the committee and that the committee violated 52 U.S.C. § 30121(a)(2) by soliciting and accepting the contributions).

⁶⁷ NYT Full Video Article (in embedded video from 7:04 – 7:11); Vogel and Protess, *Tape Made Public of Trump Discussing Ukraine with Donors*, NEW YORK TIMES, *supra* n. 34 (identifying Zekelman as speaker in that part of dinner conversation).

conjunction with any background research about contributors or potential contributors that AFA may have done, would lead a reasonable person to conclude that Zekelman was Canadian.⁶⁸

Accordingly, in light of all of these circumstances, we recommend that the Commission find reason to believe that AFA violated 52 U.S.C. § 30121(a)(2).

D. The Commission Should Dismiss the Allegation that Zekelman Industries Knowingly Solicited a Foreign National

The Complaint also alleges that Zekelman Industries solicited contributions from a foreign national based on the *New York Times* article's reporting that one of Zekelman Industries' lawyers brought "the America First . . . contribution request to Zekelman."⁶⁹ It is unclear whether the Complaint's reference to the unnamed lawyer or lawyers is a reference to an in-house attorney at Zekelman Industries, possibly McNamara, or someone else.⁷⁰ However, Zekelman asserts in his declaration that the attorney who "suggested" that he contribute was Schagrin, an outside counsel.⁷¹ Schagrin, in his Response, denied making any solicitations on behalf of AFA or having any further interaction with AFA aside from "potentially" providing it with contact information.⁷² Accordingly, the available information does not indicate that communications between Schagrin and Zekelman included a solicitation or that Schagrin was

⁶⁸ As noted above, press reports indicate AFA "leadership" was at the dinner to hear Zekelman's comment. Brian Schwartz, *Trump Is Going to a Social Event Hosted by Pro-Trump Super PAC America First Action*, CNBC. It is also possible that AFA obtained knowledge of Zekelman's foreign national status during the process of vetting attendees for the intimate dinner with the President.

⁶⁹ NYT Article.

⁷⁰ Compl. ¶¶ 37-38.

⁷¹ Zekelman Resp., Zekelman Decl. ¶ 3.

⁷² Schagrin Resp. at 2.

1 acting as an agent of Zekelman Industries in any such communications with Zekelman.⁷³

2 Although Schagrin served as outside counsel to Zekelman Industries in trade matters, he was not
 3 an employee of the company, and the current record does not indicate whether he had “actual
 4 authority, either express or implied, to solicit, direct, or receive any contribution” on behalf of
 5 Zekelman Industries.⁷⁴

6 Because the available information does not contain sufficient information that Schagrin
 7 or any other individual acting on behalf of Zekelman Industries solicited Zekelman for a
 8 contribution, we recommend that the Commission dismiss the allegation that Zekelman
 9 Industries violated 52 U.S.C. § 30121(a)(2) by soliciting contributions from a foreign national.

10 **E. The Commission Should Take No Action as to Schagrin**

11
 12 Finally, we recommend that the Commission take no action at this time as to Schagrin.
 13 For purposes of his individual liability, the record is not sufficiently clear regarding Schagrin's
 14 role in connection with Wheatland Tube's contributions to AFA. Schagrin's Response does not
 15 address the substance of any communications he had with Zekelman.⁷⁵ Zekelman's statement in
 16 his declaration, that Schagrin suggested that a U.S.-based company with which he is affiliated
 17 should consider contributing to AFA,⁷⁶ may suggest possible individual violations of the Act, but
 18 neither the *New York Times* article nor the Complaint specifically attributes the statement to

⁷³ An agent is typically defined in this context as any person who has actual authority, either express or implied to solicit, direct, or receive any contribution. *See* 11 C.F.R. §§ 109.3, 300.2(b); *see also* Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,942 (Nov. 19, 2002) (explaining that inclusion of 11 C.F.R. § 300.2(m) definition of “solicit” in foreign national provisions at 11 C.F.R. § 110.20(a)(6) was intended to apply to all persons who may solicit campaign funds from foreign nationals, including candidates, parties, and their agents).

⁷⁴ *See* 11 C.F.R. § 300.2(b).

⁷⁵ *See* Schagrin Resp. at 1-2.

⁷⁶ Zekelman Resp., Zekelman Decl. ¶ 3, MUR 7613.

Schagrin, and it is not addressed in the Schagrin Response. Under these circumstances, and in light of our recommendation with respect to the reason to believe findings concerning Wheatland Tube, Zekelman, Zekelman Industries, and AFA, as well as the likelihood that any investigation we conduct will determine the circumstances surrounding the contributions, including the extent of any communications Schagrin had with Zekelman, we recommend taking no action against Schagrin pending the results of such investigation.

V. RECOMMENDATIONS

1. Find reason to believe that Wheatland Tube, LLC, Zekelman Industries, Inc., and Barry Zekelman violated 52 U.S.C. § 30121(a)(1)(A);
2. Find reason to believe that America First Action, Inc., and Jon Proch in his official capacity as treasurer violated 52 U.S.C. § 30121(a)(2);
3. Dismiss the allegation that Zekelman Industries, Inc., violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g);

4. Take no action at this time as to Roger Schagrin;
5. Approve the attached Factual and Legal Analyses;
6. Authorize the use of compulsory process; and
7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

February 14, 2020
Date

Charles Kitcher
Charles Kitcher
Acting Associate General Counsel for Enforcement

Lynn Y. Tran
Lynn Y. Tran
Assistant General Counsel

Previously assigned: Jonathan A. Peterson

Attachments:

- . Factual and Legal Analysis – America First Action

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: America First Action, Inc., and Jon Proch MUR 7613
in his official capacity as treasurer

I. INTRODUCTION

The Complaint alleges that Wheatland Tube, LLC (“Wheatland Tube”), a U.S.-based subsidiary of another U.S. company, Zekelman Industries, Inc., made \$1.75 million in prohibited foreign national contributions to America First Action, Inc., and Jon Proch in his official capacity as Treasurer (“AFA”) during the 2018 election cycle.¹ The Complaint asserts that foreign national Barry Zekelman, the chief executive officer and executive chairman of Zekelman Industries, participated in Wheatland Tube’s decision to contribute when, after a lawyer for the company contacted him about the potential contributions, he proceeded to discuss the matter with executives of both companies who report to him.² AFA asserts that the Complaint fails to allege any facts sufficient to establish that AFA violated the Act or Commission regulations.³

As discussed below, the available information indicates that AFA knowingly solicited and accepted contributions from a foreign national. Accordingly, the Commission finds reason to believe that AFA violated 52 U.S.C. § 30121(a)(2).

¹ See Compl. ¶¶ 1-2, 9-11 (Zekelman Industries, Inc., *et al.*) (May 21, 2019).

² *Id.* ¶¶ 9-11, 28-30.

³ America First Action Resp. at 1-2, MUR 7613 (July 10, 2019).

II. FACTUAL BACKGROUND

Wheatland Tube is a pipe and tube manufacturer that is organized under the laws of Pennsylvania and is owned by Zekelman Industries, a company that is incorporated in Delaware and headquartered in Illinois.⁴ Barry Zekelman, a Canadian citizen, is the CEO and executive chairman of Zekelman Industries, and is also an owner of the company.⁵

AFA is registered with the Commission as an independent expenditure-only committee.⁶ It has described itself, in an archived version of its website from the time of the contributions in this matter, as “the primary super PAC dedicated to electing federal candidates who support the agenda of the Trump-Pence administration.”⁷

The Complaint’s allegations involve three contributions that Wheatland Tube made to AFA in 2018: \$1 million on April 5, 2018; \$250,000 on June 4, 2018; and \$500,000 on October 17, 2018.⁸ The Complaint, citing a *New York Times* article based, in part, on an interview with Zekelman, alleges that Zekelman participated in Wheatland Tube’s decision to make the contributions.⁹ Zekelman reportedly stated that a representative of AFA “approached Zekelman

⁴ Compl. ¶ 5.

⁵ Compl. ¶ 5.

⁶ AFA, Statement of Organization (Apr. 12, 2017).

⁷ <https://web.archive.org/web/20180616235258/https://www.alapac.org/> (snapshot of June 16, 2018, showing quoted language in homepage header).

⁸ See Compl. ¶¶ 6-8; see also AFA, Amended 12-Day Pre-Election Report for the Primary at 23 (Aug. 22, 2018); AFA, June 2018 Quarterly Report at 34 (July 15, 2018); AFA, Amended 12-Day Report for the General Election, at 43 (Jan. 25, 2019).

⁹ Compl. ¶ 9 (citing Eric Lipton, *He’s One of the Biggest Backers of Trump’s Push to Protect American Steel. And He’s Canadian*, NEW YORK TIMES (May 20, 2019), <https://www.nytimes.com/2019/05/20/us/politics/hes-one-of-the-biggest-backers-of-trumps-push-to-protect-american-steel-and-hes-canadian.html> (“NYT Article”) (noting that “America First was created in January 2017 by former Trump campaign aides to push Mr. Trump’s agenda”)).

Industries’ lawyers and asked for a contribution.”¹⁰ The article quotes Zekelman as stating, “They contacted our people, our people brought it to me I said, great, I would love to find a way to support [Trump].”¹¹ Zekelman, according to the article, stated that, although he did not play a role in Wheatland Tube’s decision to make the contributions, he did “discuss the matter with other company executives.”¹² Zekelman believed the contributions were legal, the article states, “because the final decision was made by members of his board who are American citizens or legal residents of the United States.”¹³

Information available to the Commission indicates that Roger Schagrin, an outside attorney for Zekelman Industries, is the attorney referenced in the Complaint and *New York Times* article and that Schagrin may have provided contact information for Zekelman to a representative of AFA.

AFA contends, among other things, that Wheatland Tube and Zekelman Industries, as American companies, were permitted to make the contributions, that a Wheatland Tube “representative” affirmed his U.S. citizenship or permanent resident status on a donor form, and that none of the indicia that the Commission considers in determining whether a committee knowingly accepted a contribution from a foreign national is present on the donor forms or the face of the checks.¹⁴ AFA’s Response, however, did not address the assertion in the Complaint

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ AFA Resp. at 1-2; *cf.* NYT Article (quoting Brian Walsh, president of AFA that AFA did not accept foreign contributions and “[a]ll contributors are expressly asked to affirm they are a U.S. citizen or permanent resident”).

and *New York Times* article that one of its representatives approached “one of Zekelman Industries’ lawyers” and “asked for a contribution.”¹⁵

Nor does AFA’s Response address the *New York Times* article’s description of a “small dinner” Zekelman and his wife attended in a “private dining room at the Trump International Hotel in Washington last spring . . . with the president and his son Donald Trump Jr.”¹⁶ AFA reportedly organized and hosted a dinner on April 30, 2018, for “potential donors” and for President Trump “to be wined and dined by the group’s leadership.”¹⁷ Following the receipt of the submissions in this matter, it has been reported that an attendee of that dinner released a video purportedly taken at the dinner showing a one-table dinner that matches the *New York Times* article’s description of the “small dinner” attended by Zekelman.¹⁸ Audio in the video

¹⁵ See AFA Resp. at 1-2.

¹⁶ NYT Article.

¹⁷ Brian Schwartz, *Trump Is Going to a Social Event Hosted by Pro-Trump Super PAC America First Action*, CNBC (Apr. 30, 2018), available at <https://www.cnbc.com/2018/04/30/trump-is-going-to-a-social-event-hosted-by-pro-trump-super-pac-america-first-action.html>; Deanna Paul, Rosalind S. Helderman, et al., *Giuliani Associate Lev Parnas Is Willing to Comply with House Impeachment Inquiry, His Attorney Says*, WASHINGTON POST (Nov. 4, 2019), available at https://www.washingtonpost.com/politics/giuliani-associate-lev-parnas-is-willing-to-comply-with-house-impeachment-inquiry-his-attorney-says/2019/11/04/85224e32-ff42-11e9-8bab-0fc209e065a8_story.html (quoting AFA spokeswoman Kelly Sadler’s statement that the dinner was “typical of the dinners arranged for potential donors”).

¹⁸ Kenneth P. Vogel and Ben Protess, *Tape Made Public of Trump Discussing Ukraine with Donors*, NEW YORK TIMES (Jan. 25, 2020), available at <https://www.nytimes.com/2020/01/25/us/politics/trump-ukraine-donors.html> (describing Trump’s attendance at the AFA-organized single-table dinner “in a private suite in his Washington hotel” and including an excerpt of full video showing, among others, Donald Trump, Jr.); Kenneth P. Vogel and Eric Lipton, *Recording Shows That the Swamp Has Not Been Drained*, NEW YORK TIMES (Jan. 26, 2020), available at <https://www.nytimes.com/2020/01/26/us/politics/trump-recording-donors.html> (reporting the AFA-donor purpose of April 30, 2018, dinner); Aimee Ortiz, Michael Levenson, and Mihir Zaveri, *6 Revelatory Moments from the Video of Trump’s Private Donor Dinner*, NEW YORK TIMES (Jan. 26, 2020), available at <https://www.nytimes.com/2020/01/26/us/politics/trump-recording-parnas-ukraine.html> (“NYT Full Video Article”) (including full one hour, 23 minute video, credited, in part to Joseph Bondy); see also Joseph A. Bondy (@josephabondy), TWITTER (Jan. 25, 2020, 2:48 PM), <https://twitter.com/josephabondy/status/1221157955879546881> (announcing release of video to media and showing screenshot of video).

includes a man who is referred to as “Barry,” and identified by press reports as Zekelman, stating, “originally . . . I started in Canada, 19 years old . . . we’re now the largest steel consumer in the U.S.”¹⁹ Neither the article nor other information explains why AFA invited Zekelman to the donor dinner.

III. LEGAL ANALYSIS

A. Legal Standard

The Act and Commission regulations prohibit any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.²⁰ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”²¹

Commission regulations implementing the Act’s foreign national prohibition provide that “a foreign national shall not direct, dictate, control, or directly or indirectly participate in the

¹⁹ NYT Full Video Article (in embedded video from 7:04 – 7:11); Vogel and Protess, *Tape Made Public of Trump Discussing Ukraine with Donors*, NEW YORK TIMES, *supra* n.18 (identifying Zekelman as speaker in that part of dinner conversation).

²⁰ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

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

1 decision-making process of any person, such as a corporation . . . with regard to such person's
 2 . . . election-related activities, such as decisions concerning the making of contributions. . . ."²²
 3 Commission regulations also prohibit any person from knowingly²³ soliciting, accepting, or
 4 receiving a contribution from a foreign national,²⁴ and provide that "[n]o person shall knowingly
 5 provide substantial assistance in the solicitation, making, acceptance, or receipt of a
 6 contribution" prohibited by 11 C.F.R. § 110.20(b)-(d) and (g).²⁵

7 The Commission has found that not all participation by foreign nationals in the election-
 8 related activities of others will violate the Act. In MUR 6959, for example, the Commission
 9 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
 10 clerical duties, such as online research and translations, during a one month-long internship with

²² 11 C.F.R. § 110.20(i).

²³ The term "knowingly" is defined as having "actual knowledge" that the source of the funds is a foreign national, being aware of "facts that would lead a reasonable person to conclude that there is a substantial probability" that the source is a foreign national, or being aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited is a foreign national, but the person failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

²⁴ 11 C.F.R. § 110.20(g); *see also* 52 U.S.C. § 30121(a)(2) (not including the "knowingly" standard). To "solicit" means "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." 11 C.F.R. § 300.2(m) (incorporated by reference at 11 C.F.R. § 110.20(a)(6)).

²⁵ 11 C.F.R. § 110.20(h)(1). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt, or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Explanation & Justification, Assisting Foreign National Contributions or Donations, 67 Fed. Reg. 67,928, 67,945 (Nov. 19, 2002). Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.* at 66,946.

1 a party committee.²⁶ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
 2 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
 3 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
 4 likeness in its emails promoting the concert and soliciting support, where the record did not
 5 indicate that the foreign national had been involved in the committee's decision-making process
 6 in connection with the making of contributions, donations, expenditures, or disbursements.²⁷ By
 7 contrast, the Commission has consistently found a violation of the foreign national prohibition
 8 where foreign national officers or directors of a U.S. company participated in the company's
 9 decisions to make contributions or in the management of its separate segregated fund,²⁸ or where
 10 foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or
 11 donations in connection with U.S. elections.²⁹ The Commission has specifically determined that

²⁶ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

²⁷ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

²⁸ *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

²⁹ *See* MUR 6203 (Itinere North America).

“no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions.”³⁰

B. There is Reason to Believe that AFA Knowingly Solicited and Accepted Prohibited Foreign National Contributions

The available information indicates that there is reason to believe that AFA knowingly solicited and accepted contributions from a foreign national. It is undisputed that AFA received and accepted the Wheatland Tube contributions. Although AFA asserts that each contribution from Wheatland Tube was accompanied by a donor form signed by a representative of the company “affirming that he is a ‘U.S. citizen or permanent resident,’”³¹ AFA did not attach such forms to its response and the available information suggests that, even assuming the referenced forms include such affirmations, AFA was aware of facts that would “lead a reasonable person to conclude that there is a substantial probability” that Zekelman was a foreign national who was the source of the contributions or who participated in the decision-making process in making the contributions, or that would lead a reasonable person to inquire whether Zekelman was a foreign national who was the source of the funds solicited or who participated in the decision-making process in making the contributions.³²

Information available to the Commission indicates that Schagrin potentially provided contact information for Zekelman, not Zekelman Industries, to AFA for its initial solicitation of funds. The public video of the April 2018 dinner, attended by Zekelman — rather than a U.S.

³⁰ Advisory Op. 1989-20 (Kuilima) at 2; *see also* Advisory Op. 1985-03 (Diridon) (stating that no person who is a foreign national can have any decision-making role or control with respect to any political contribution made by domestic company).

³¹ AFA Resp. at 1-2.

³² 11 C.F.R. § 110.20(a)(4).

1 citizen officer, director, or representative of Zekelman Industries or Wheatland Tube — as a
 2 donor or potential donor to AFA, is consistent with facts suggesting that Schagrin connected
 3 AFA with Zekelman, personally, as AFA sought to solicit contributions.³³ AFA’s inclusion of
 4 Zekelman at the dinner with President Trump and Donald Trump, Jr. indicates that AFA
 5 considered Zekelman to have been the donor or potential donor, or at least as a significant person
 6 who directed or participated in the decision-making process for Wheatland Tube’s past and
 7 future contributions.³⁴ And Zekelman’s recorded statement that “originally . . . I started in
 8 Canada, 19 years old . . . we’re now the largest steel consumer in the U.S.,”³⁵ either standing
 9 alone or in conjunction with any background research about contributors or potential contributors
 10 that AFA may have done, would lead a reasonable person to conclude that Zekelman was
 11 Canadian.³⁶

12 Accordingly, in light of all of these circumstances, the Commission finds reason to
 13 believe that AFA violated 52 U.S.C. § 30121(a)(2).

³³ See *supra*, n.18; Conciliation Agreement §§ IV.8-11, 12, MUR 7122 (Right to Rise) (describing, respectively, facts concerning committee agent’s conversations with foreign national owners or directors of domestic company, and conclusion that committee had solicited foreign national contribution).

³⁴ See *supra*, nn.17-18; Conciliation Agreement §§ IV.12, V, MUR 7122 (Right to Rise) (stating, respectively, that committee’s agent “was aware [the foreign national owners and directors] participated in making the decision that [the company] would contribute” to the committee and that the committee violated 52 U.S.C. § 30121(a)(2) by soliciting and accepting the contributions).

³⁵ NYT Full Video Article (in embedded video from 7:04 – 7:11); Vogel and Protess, *Tape Made Public of Trump Discussing Ukraine with Donors*, NEW YORK TIMES, *supra* n. 18 (identifying Zekelman as speaker in that part of dinner conversation).

³⁶ As noted above, press reports indicate AFA “leadership” was at the dinner to hear Zekelman’s comment. Brian Schwartz, *Trump Is Going to a Social Event Hosted by Pro-Trump Super PAC America First Action*, CNBC. It is also possible that AFA obtained knowledge of Zekelman’s foreign national status during the process of vetting attendees for the intimate dinner with the President.