

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

INTERNET RESEARCH AGENCY LLC, *et al.*,

Defendants.

CRIMINAL NUMBER:

1:18-cr-00032-DLF

**DEFENDANT CONCORD MANAGEMENT AND CONSULTING LLC'S MOTION FOR
DISCOVERY REGARDING SELECTIVE PROSECUTION**

Defendant Concord Management and Consulting LLC (“Defendant” or “Concord”), by and through undersigned counsel, respectfully submits this motion and memorandum of points of law and authorities seeking discovery on the issue of selective prosecution. Undersigned counsel has been unable to identify any reported case previously brought by the U.S. Department of Justice (“DOJ”) alleging a § 371 conspiracy to defraud that is entirely dependent on an allegation of deceptive use of social media in a presidential election by non-governmental foreign nationals.¹ Unless the Court accepts that no other private foreign nationals other than the Defendants in this case ever engaged in any such activity, this fact alone establishes a *prima facie* case of selective prosecution. But the Court need not simply accept this obvious truth because publicly available reporting has shown that efforts by foreign individuals and groups to influence the 2016 presidential election are not limited solely to Russian nationals, but may include—at the least—Ukrainian, Middle Eastern, and British nationals. Further, public

¹ Undersigned counsel has also been unable to identify any reported case where any defendant was charged with a § 371 conspiracy to defraud based on social media activity potentially covered by the Foreign Agents Registration Act, or visa fraud where a person obtained a tourist visa and then allegedly engaged in electioneering activity. Whether any such cases exist is empirical, and such data is only in the possession of the government. Surely no burden is involved because to produce the data involves only counting to zero.

reporting also indicates that foreign nationals—including Chinese, Canadian and Indian entities and individuals—made unlawful campaign contributions in connection with the 2016 presidential election. But those matters have generated no criminal charges.

The Deputy Attorney General's appointment of the Special Counsel limited his investigative and indictment authority to contacts with Russians. That only Russian individuals and entities now face criminal liability for substantially similar alleged conduct strongly suggests that the government has selectively prosecuted Russian individuals and entities for *being Russian*—an action that would warrant dismissal of the Indictment. The identification and prosecution of only Russians is particularly nefarious here because it coincided with massive political and public pressure on the Special Counsel to confirm a narrative generated by the Clinton campaign that the Russians had ensured the election of President Trump. Because the publicly-available information at this stage strongly suggests that other instances of attempted foreign national influence have occurred, Concord seeks an order directing the government to provide discovery so that Concord may develop the factual record necessary to assert a full-throated selective-prosecution claim.

I. Introduction

The one-count conspiracy charge against Concord in this case is unprecedented. Never before has any foreign national been indicted in the United States for alleged activity originating solely outside the United States relating to free speech in the form of communications and advertisements predominantly on social media concerning a U.S. presidential election. By their very nature, social media platforms have no national borders—nor are they bound by those that do exist—thus, it is easy for any person wherever located to express views that may be read in any country that allows access to the social media platform. Based on that fact alone, it defies common sense to think that Russian nationals were the only foreign individuals or entities to

have allegedly engaged in speech activities aimed at influencing other social media users in the United States with respect to the 2016 election. Yet here, the Order of the Deputy Attorney General limited the Special Counsel to investigation and prosecution only of “*Russian*” activity related to the 2016 presidential election campaign, and only “*links and/or coordination . . . with the campaign of President Donald Trump.*” Exhibit A, Deputy Attorney General Order No. 3915-2017, dated May 17, 2017 (emphasis added) available at <https://www.justice.gov/opa/press-release/file/967231/download>.

With that Order, the Deputy Attorney General predetermined that nationals of no other country would be investigated or prosecuted by the Special Counsel for supporting any other candidate. This action by the Deputy Attorney General, and the subsequent Indictment against Defendants here, is the purest form of selective prosecution, that is, Russian nationals such as Concord were singled out by the Deputy Attorney General for investigation and indictment by the Special Counsel for being Russian, even though: (1) nationals of other countries that allegedly engaged in similar conduct were not investigated or prosecuted by the Special Counsel or the DOJ, and (2) foreign nationals supporting candidates other than President Trump were not investigated or prosecuted by the Special Counsel or the DOJ.

Accordingly, Defendant requests that the Court order the government to produce information that will corroborate or refute Concord’s claim of selective prosecution, including but not limited to any information regarding (1) what, if any, investigative or prosecutorial actions were taken regarding reported efforts by Ukrainian, Middle Eastern, and British individuals and organizations to influence the 2016 presidential election while attempting to avoid detection and scrutiny of their activities; (2) what, if any, investigative or prosecutorial actions were taken regarding reported campaign contributions by foreign nationals in the 2016

presidential campaign while attempting to avoid detection and scrutiny of their activities; and (3) other instances of alleged influence in the 2016 presidential election by any other foreign national, whether in support of President Trump, Hillary Clinton, or some other candidate. Such information is relevant to any potential selective prosecution motion because evidence of the types of influence at issue, whether successful or not, and any prosecutorial response by the government cannot be definitively determined based upon publicly-available sources. Thus, the only evidence to determine whether the DOJ and the Special Counsel have unconstitutionally singled out Russian nationals for prosecution is in the possession of the government.

II. Law

The Deputy Attorney General's and Special Counsel's discretion is subject to constitutional limitations including the equal protection component of the Fifth Amendment's Due Process Clause, which prohibits prosecutorial decisions based on race, religion, or other arbitrary classifications, including the exercise of protected constitutional rights. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996); *Wayte v. United States*, 470 U.S. 598, 608 (1985). Federal courts have long "recognized that it is unconstitutional to administer the law 'with an evil eye and an unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances'" *United States v. Napper*, 574 F. Supp. 1521, 1523 (D.D.C. 1983) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886)).

To obtain discovery on a selective-prosecution claim, a defendant must put forth "some evidence tending to show the existence of the essential elements of a selective prosecution claim." *Armstrong*, 517 U.S. at 468-70. These elements are: (1) that the defendant was singled out for prosecution from others similarly situated, and (2) that the prosecution was motivated by a discriminatory purpose. *See United States v. Palfrey*, 499 F. Supp. 2d 34, 39 (D.D.C. 2007). To make out such a claim sufficient to warrant discovery, the defendant must provide something

more than mere speculation or personal conclusions based on anecdotal evidence, but the standard “*necessarily is lower than the ‘clear evidence’ standard* required for dismissal of the indictment.” *United States v. Hsia*, 24 F. Supp. 2d 33, 49 (D.D.C. 1998), *reversed in part and appeal dismissed*, 176 F.3d 517 (D.C. Cir. 1999) (citing *Armstrong*, 517 U.S. at 470) (emphasis added).

With respect to the first prong, “[a] similarly situated offender is one outside the protected class who has committed roughly the same crime under roughly the same circumstances but against whom the law has not been enforced.” *United States v. Khanu*, 664 F. Supp. 2d 28, 32 (D.D.C. 2009) (internal quotation marks omitted); *see also Armstrong*, 517 U.S. at 469. With respect to the second prong, “[d]iscriminatory purpose implies more than intent as awareness of consequences. It implies that the decision maker selected or affirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.” *Wayte*, 470 U.S. at 610 (internal quotations omitted).

A party seeking discovery on a selective prosecution claim is not required to produce direct evidence of intent. *See United States v. Washington*, 705 F.2d 489, 494-95 (D.C. Cir. 1983) (recognizing that the district court had ordered discovery on discriminatory intent based on indirect evidence of statistics regarding “how many passport frauds were detected since 1975, how many detected frauds were prosecuted and how many frauds detected or prosecuted involved [a particular group]” and was thus uniquely in the government’s possession); *see also Branch Ministries, Inc. v. Richardson*, 970 F. Supp. 11, 17 (D.D.C. 1997) (noting that indirect evidence of bias or discriminatory motive may be sufficient in civil case alleging selective prosecution by Internal Revenue Service applying the same test for selective prosecution as that

used in criminal cases and noting that application of civil, as opposed to criminal, discovery rules did not affect the outcome of the case).

“If discovery is ordered, the Government must assemble from its own files documents which might corroborate or refute the defendant’s claim” of selective prosecution. *Armstrong*, 517 U.S. at 468. This may include information demonstrating how many instances of the crime were detected, how many were prosecuted and how many involved individuals or entities of the defendant’s nationality. *Washington*, 705 F.2d at 494-95. Concord can meet the threshold and is entitled to discovery.

III. Argument

The reason for the Special Counsel’s targeted investigation and prosecution of Russians is obvious: the Order appointing the Special Counsel is limited to “the Russian government’s efforts to interfere in the 2016 presidential election,” and “links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump.” Ex. A. The Appointment Order is dated May 17, 2017. As set forth below, much of the public reporting regarding efforts by other foreign nationals to interfere with the 2016 election came to light in late 2016 and early 2017.² Nevertheless, the Deputy Attorney General chose to limit the

² Efforts to influence are not limited to Russian actors—as the Special Counsel’s investigation would suggest—nor have they abated since the 2016 election. Recent reporting in the Washington Post reveals that Facebook detected a wide-ranging effort by Iran, dating to 2011, to use the social media platform as part of a “sprawling disinformation operation” aimed at hundreds of thousands of people worldwide, including in the United States. Craig Timberg, Elizabeth Dwoskin, Tony Romm, Ellen Nakashima, *Sprawling Iranian influence operation globalizes tech’s war on disinformation*, The Washington Post (August 21, 2018), https://www.washingtonpost.com/technology/2018/08/21/russian-iran-created-facebook-pages-groups-accounts-mislead-users-around-world-company-says/?utm_term=.e492d2847100. In response to this revelation, Senator Mark Warner of Virginia commented: “I’ve been saying for months that there’s no way the problem of social media manipulation is limited to a single troll farm in St. Petersburg, and that fact is now beyond a doubt.” *Id.* The ongoing nature of this problem and its acknowledged multinational scope further underscores the need for discovery to

Special Counsel’s appointment to focus solely on activities by Russians in support of President Trump, despite the existing reports regarding these other efforts to interfere on behalf of multiple presidential candidates including Donald Trump, Hillary Clinton, and Bernie Sanders.

Widely-reported news stories have brought to light various attempts by foreign nationals to influence the 2016 presidential election through both traditional media and social media platforms, and, according to some reports, in a manner designed to avoid scrutiny by United States agencies and even to cause United States agencies (including the Special Counsel’s Office) to take actions intended to have an effect on the political system of the United States. Those efforts provide the basis for a “colorable claim” that the Special Counsel has selectively pursued only individuals and entities of Russian nationality who allegedly supported the campaign of President Trump, while overlooking activities by other foreign nationals, either because they were not Russian or because they supported the campaign of another candidate. Based upon the number of reported stories—and the fact that many attempts to exert influence on social media or contribute to campaigns do not occur in the open—it is reasonable to conclude that the government is aware of other such attempts involving non-Russians but has not acted to prosecute them.

In *Armstrong*, the Supreme Court ruled that a defendant’s evidence of discriminatory effect was insufficient to support a selective prosecution claim where it did not identify similarly situated offenders—individuals of a different race who could have been prosecuted but were not. 517 U.S. at 470. Here, to the contrary, publicly available information makes clear that foreign individuals and entities from several nations engaged in concerted activity, including social media postings disparaging a presidential candidate, intended to interfere in the 2016 presidential

determine what other foreign actors may have engaged in conduct that is substantially similar to what Concord is accused of, and have escaped criminal prosecution.

election, but were not prosecuted for that conduct. But these actors are not Russian, and as such, no charges have been brought against them. Indeed, they are “outside the protected class [and have] committed roughly the same crime under roughly the same circumstances but against whom the law has not been enforced.” *Khanu*, 664 F. Supp. 2d at 32 (internal quotation marks omitted). If—as discovery will make clear—that is indeed the case, then information about these and other efforts to influence the 2016 election will be highly relevant to a subsequent selective prosecution claim and potential dismissal of the Indictment against Concord.

A. Non-Russian individuals attempted to influence the 2016 election

1. Ukrainian officials took actions seeking to benefit Hillary Clinton

Public reporting demonstrates that during the 2016 presidential election Ukrainian government officials and a Ukrainian-American operative supported the campaign of candidate Hillary Clinton and sought to damage the campaign of then-candidate Trump. *See, e.g.*, Kenneth P. Vogel and David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, Politico (Jan. 11, 2017), <https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446>; Roman Olearchyk, *Ukraine’s Leaders Campaign Against ‘Pro-Putin’ Trump*, Financial Times (Aug. 28, 2016), <https://www.ft.com/content/c98078d0-6ae7-11e6-a0b1-d87a9fea034f>.

These efforts to influence and interfere with the presidential election allegedly included social media postings critical of candidate Trump. For example, in July 2016 former Ukrainian Prime Minister Arseny Yatseniuk posted on Facebook that Trump “challenged the very values of the free world.” *Id.* That same month Arsen Avako, a Ukrainian government minister, posted messages on Facebook and Twitter calling Trump “an even bigger danger to the US than terrorism” and “dangerous for Ukraine and the US.” Vogel and Stern, *supra*.

Ukrainian officials were also allegedly responsible for the dissemination of documents implicating Paul Manafort, who at the time was the chairman of the Trump campaign, in alleged wrongdoing involving the prior Ukrainian administration. *Id.* These documents included a handwritten list of alleged payments to Manafort—the so-called “black ledger” passed to the Ukrainian National Anti-Corruption Bureau by Viktor Trepak, a former Ukrainian security official, which became publicly known in August 2016. *See Statement regarding P. Manafort’s Appearance on the Party of Regions Black Ledger*, website of the National Anti-Corruption Bureau of Ukraine (Aug. 18, 2016), <https://nabu.gov.ua/en/novyny/statement-regarding-pmanaforts-appearance-party-regions-black-ledger>. In June 2017, *Bloomberg News* reported that Ukrainian prosecutors had been unable to authenticate the “black ledger.” *See, e.g.,* Volodymyr Verbyany, *Ukraine Says There’s No Evidence of Illicit Payments to Manafort*, *Bloomberg News* (June 27, 2017), <https://www.bloomberg.com/news/articles/2017-06-27/ukraine-says-there-s-no-evidence-of-illicit-payments-to-manafort>. While these disclosures became the subject of the Special Counsel’s investigation and eventual prosecution of Mr. Manafort, there has been no prosecution related to Ukrainian interference in the presidential election, and no public disclosure of the results of any efforts by the Special Counsel or other investigators to authenticate the so-called “black ledger” or determine whether this or any other documents were falsified by Ukrainian nationals to influence the 2016 presidential election.

2. A Middle Eastern envoy to the Trump campaign offered a proposal for an online manipulation campaign

A second reported instance of alleged foreign influence in the 2016 election relates to an August 2016 meeting between Donald Trump Jr. and an envoy purportedly representing Saudi Arabia’s Crown Prince, Mohammad bin Salman, along with Abu Dhabi’s Crown Prince Mohammed bin Zayed Al Nahyan of the United Arab Emirates. *See* Mark Mazzetti, Ronen

Bergman, David D. Kirkpatrick, *Trump Jr. and Other Aides Met With Gulf Emissary Offering Help to Win Election*, N.Y. Times (May 19, 2018), <https://www.nytimes.com/2018/05/19/us/politics/trump-jr-saudi-uae-nader-prince-zamel.html>. The meeting also allegedly included George Nader, a Lebanese-American businessman, Joel Zamel, an Israeli specialist in social media manipulation, and Eric Prince, the founder of the private military contractor formerly known as Blackwater. Zamel’s company, called Psy-Group, allegedly offered a proposal for an online manipulation program designed to help elect candidate Trump by using thousands of fake accounts to promote him on Facebook. Emily Stewart, *Donald Trump Jr. and Trump Aides Were Reportedly Open to Foreign Help in 2016 Election Beyond Russia*, Vox (May 19, 2018), <https://www.vox.com/policy-and-politics/2018/5/19/17372344/donald-trump-jr-saudi-arabia-russia-meeting>. The Times article suggested that the reported meeting was “the first indication that countries other than Russia may have offered assistance to the Trump campaign in the months before the presidential election”—but no charges have been brought.³

3. Christopher Steele engaged in a campaign to create media coverage negative to then-candidate Trump and to use unverified, and possibly false information to influence federal agencies to open and conduct investigations damaging to Trump

A third reported instance of attempted interference in the 2016 election involved Christopher Steele—a British national, private investigator and former alleged MI6 intelligence agent who worked on-and-off as a confidential human source for the FBI. Reporting reveals that Steele, while working for an English legal entity, worked with U.S. and foreign nationals to

³ *The New York Times* article reports without attribution that the interactions between Mr. Nader, Mr. Zamel, and the Trump campaign “are a focus of the investigation” by the Special Counsel. If this is indeed the case, it further supports Concord’s argument that the Special Counsel was focused only on allegations of interference in support of President Trump. On the other hand, if this reporting is incorrect, it would support the argument that the Special Counsel focused solely on Russian nationals. Either way, Concord is entitled to discovery on this issue.

influence U.S. public opinion and influence the outcome of the 2016 presidential election by acting as an anonymous source for media articles disseminating information Steele had compiled, allegedly based on his own investigation of then-candidate Trump, which Steele later admitted was unverified. *See* Howard Blum, *How Ex-Spy Christopher Steele Compiled His Explosive Trump-Russia Dossier*, Vanity Fair (Apr. 2017), <https://www.vanityfair.com/news/2017/03/how-the-explosive-russian-dossier-was-compiled-christopher-steele>; Rowan Scarborough, *Ex-Spy Admits Anti-Trump Dossier Unverified, Blames BuzzFeed for Publishing*, The Washington Times (Apr. 25, 2017), <https://www.washingtontimes.com/news/2017/apr/25/christopher-steele-admits-dossier-charge-unverifie/>. Steele's actions were clearly aimed at discrediting and disparaging Donald Trump and, ultimately, to benefit the other presidential candidates in order to influence the outcome of the election.

Steele also reportedly interacted with U.S. federal officials in an effort to disseminate a dossier of Trump opposition research, reportedly including officials of the DOJ, the Federal Bureau of Investigation, the Department of State, the Central Intelligence Agency, and the staff of members of Congress. *See, e.g.*, Jane Mayer, *Christopher Steele, the Man Behind the Trump Dossier*, The New Yorker (Mar. 12, 2018), <https://www.newyorker.com/magazine/2018/03/12/christopher-steele-the-man-behind-the-trump-dossier>. In a January 4, 2018 letter sent to Deputy Attorney General Rosenstein and FBI Director Wray, Senator Charles Grassley, Chairman of the Senate Judiciary Committee, and Senator Lindsey Graham, Chairman of the Subcommittee on Crime and Terrorism, referred Mr. Steele "for investigation of potential violations of 18 U.S.C. § 1001," and stated that Steele told at least one Justice Department official that he "was 'desperate' to see that Mr. Trump was not elected president." *See* Charles E. Grassley and Lindsey O. Graham, letter to Rod J. Rosenstein,

Deputy Attorney General, U.S. Department of Justice, and Christopher A. Wray, Director, Federal Bureau of Investigation (Jan. 4, 2018), [https://www.judiciary.senate.gov/imo/media/doc/2018-02-06%20CEG%20LG%20to%20DOJ%20FBI%20\(Unclassified%20Steele%20Referral\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-02-06%20CEG%20LG%20to%20DOJ%20FBI%20(Unclassified%20Steele%20Referral).pdf) (emphasis omitted).

According to later reporting, DOJ documents show that Steele was in contact with a top DOJ official both before and after the 2016 election; and both before and after Steele was formally notified that due to violations of FBI policy, he was forbidden from supplying information to the FBI. *See, e.g.*, Kimberley A. Strassel, *What Was Bruce Ohr Doing?*, The Wall Street Journal (Aug. 16, 2018), <https://www.wsj.com/articles/what-was-bruce-ohr-doing-1534462447>. Reportedly, text messages from Steele archived by the DOJ show that in late 2017, Steele was attempting to convey information to the FBI and the Special Counsel's Office indirectly, outside of official channels. *Id.*

But no charges have been filed against Steele, and no information has been made public about the government's efforts to authenticate the "Trump-Russia Dossier" that Steele disseminated before and after the 2016 presidential election. *See, e.g.*, Josh Gerstein, *Judge: Trump's Release of Dossier Memos Opens Door to Disclosures from FBI*, Politico (Aug. 16, 2018), <https://www.politico.com/blogs/under-the-radar/2018/08/16/trump-dossier-fbi-disclosures-782237>. Underscoring the need for discovery in this case, the FBI and other U.S. agencies have resisted multiple Freedom of Information Act requests seeking information about the U.S. government's dealings with Christopher Steele. *Id.*

B. Non-Russian foreign nationals made illegal contributions to support presidential campaigns in 2016

1. Chinese Nationals Made Campaign Contributions to Support Jeb Bush

In addition to the public evidence of non-Russian foreign nationals' efforts to influence the 2016 presidential election, reporting has also shown that other foreign nationals unlawfully contributed to 2016 presidential campaigns which is far more egregious. For example, two Chinese citizens residing in Singapore used their U.S. corporation, American Pacific International Capital, Inc., to illegally contribute \$1,300,000 to Jeb Bush's political action committee Right to Rise USA. *See*, Jon Schwarz and Lee Fang, *The Citizens United Playbook: How a Top GOP Lawyer Guided a Chinese-Owned Company Into U.S. Presidential Politics*, *The Intercept* (Aug. 3, 2016), <https://theintercept.com/2016/08/03/gop-lawyer-chinese-owned-company-us-presidential-politics/>. These allegations form the basis of a complaint filed with the Federal Election Commission in August 2016. Ex. B, Complaint, *Campaign Legal Center, et al. v. Gordon Tang, et al.*, MUR No. __ (Federal Election Commission Aug. 10, 2016), available at http://www.campaignlegalcenter.org/sites/default/files/APIC%20Right%20to%20Rise%20complaint%208_10_16.pdf.⁴ Despite these public allegations of campaign finance violations against Chinese nationals in support of the presidential campaign of a candidate other than President Trump, there has been no prosecution by the DOJ of this matter.

⁴ The complaint filed with the FEC in this matter does not appear on the FEC's Enforcement Query System (<http://eqs.fec.gov/eqs/searcheqs>), indicating that the matter is still pending before the FEC and has not been closed. *See* Guidebook for Complainants and Respondents on the FEC Enforcement Process, Federal Election Commission, May 2012 at 7 (https://www.fec.gov/em/respondent_guide.pdf) ("Until the matter is closed, the Commission is required by law to keep its actions regarding the [Matter Under Review] confidential.").

2. Australian Nationals Made Contributions to Support Bernie Sanders

The FEC also investigated and closed a matter involving alleged illegal campaign contributions by members of the Australian Labor Party in support of 2016 presidential candidate Bernie Sanders. Ex. C, Complaint against the Australian Labor Party and Bernie 2016, the campaign committee of Bernie Sanders. The complaint alleged that the Australian Labor party made payments for travel expenses and daily stipends for seven “delegates” from Australia who were placed within and provided campaign services to the Bernie 2016 campaign committee. *Id.* Ultimately, in 2018, the Australian Labor Party entered into a Conciliation Agreement with the FEC in which it agreed to pay a civil penalty and cease and desist violating FECA. Ex. D, Conciliation Agreement. There was no criminal prosecution related to these allegations by the DOJ or the Special Counsel’s Office.

The fact that there has been no apparent interest by the DOJ or Special Counsel in investigating or prosecuting these allegations of violations of federal campaign laws against Chinese and Australian nationals in support of candidates other than Donald Trump further supports Concord’s suspicion that the government is singularly focused on conduct by Russians in support of President Trump.

C. The Deputy Attorney General explicitly authorized a selective prosecution targeting Russian nationals

Although direct evidence of discriminatory purpose is exceedingly rare, it is present here, signed by the Deputy Attorney General. The Appointment Order makes clear that the Special Counsel was not authorized to investigate election interference by just any foreign national, only Russians. And not any and all election interference by Russians, but only that in support of the Trump campaign. This is not simply general evidence of government profiling; rather, it is a mandate by the decision makers at the highest levels of the DOJ to focus solely on a select group

of individuals and not others.⁵ *Contra Khanu*, 664 F. Supp. 2d at 34 (finding insufficient evidence of discriminatory purpose in public reporting of government profiling of Muslims because it did not apply to the prosecutors responsible for defendant's case).

The Special Counsel has acknowledged in briefing that it adhered to the Appointment Order's singular focus on Russian individuals and entities. For example, even though the Appointment Order specifically references "the Russian government's efforts to interfere in the 2016 presidential election," the Special Counsel has argued that this "would inevitably cover organized, Russia-based social-media campaigns." Government's Opposition to Defendant's Motion to Dismiss at 46 (ECF No. 47). The Special Counsel concedes that he did not have "open-ended authority" to investigate interference with the 2016 presidential election, but that "the central investigative mission specifically assigned by the Acting Attorney General," was "organized social-media active measures that were emanating from Russia and funded by an individual and companies with close ties to the Russian government." *Id.* 49. The only difference between that directive and the conduct discussed above, of course, is the country of origin. Such distinctions are inappropriate, and are a sufficient basis to direct the government to provide discovery

IV. Conclusion

In this unprecedented criminal prosecution, where individuals and entities of a particular nationality were singled out for investigation and prosecution, Concord respectfully requests discovery from the government which might corroborate or refute its claim of selective prosecution. The Appointment Order purporting to authorize the Special Counsel's investigation

⁵ The pinpoint demographic and ideological targeting of the Special Counsel's mandate is ironically reminiscent of a quotation attributed to Lavrenty Beria, the chief of Joseph Stalin's secret police: "Show me the man, and I'll find you the crime."

is clear on its face that any such investigation would be limited to persons of Russian nationality who supported President Trump. Public reporting indicates that non-Russian foreign nationals engaged in similar conduct that amounts to election interference and deceptive interference with the functions of federal agencies, in support of other candidates, but have not been subject to investigation or prosecution.

Dated: August 31, 2018

Respectfully submitted,

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