



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Lisa Stevenson
Acting General Counsel

Charles Kitcher
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Attorney

RE: MUR 6865 (Azano) – Memorandum to Close the File

On July 17, 2018, the Commission found reason to believe that Jose Susumo Azano Matsura (“Azano”) knowingly and willfully violated 52 U.S.C. §§ 30121 and 30122 by making a foreign national contribution in connection with a federal election and donations in connection with local elections.¹ At that time, we advised the Commission that Azano was in the process of appealing his criminal convictions for his violations of the Act to the U.S. Court of Appeals for the Ninth Circuit and that we intended to make additional recommendations to the Commission after the resolution of that appeal.² The Ninth Circuit affirmed the lower court’s ruling on these violations on May 16, 2019.³ Accordingly, we recommend that the Commission (1) take no further action as to Azano; (2) approve the appropriate letters; and (3) close the file.

This matter arose from a complaint alleging that Azano, a Mexican foreign national, acting through his agents — Ernesto Encinas, the manager of Azano’s security detail, and Marc Alan Chase, a business associate — violated the Federal Election Campaign Act of 1971, as

¹ See Certification (July 17, 2018) (“Second Certification”). Pending his appeal of his criminal convictions, Azano entered into a series of tolling agreements with the Commission, the latest of which tolled the statute of limitations for a period of 120 days after the Ninth Circuit issued a ruling on his Appeal. See Tolling Agreement (May 20, 2018).

² See Second GCR at 12-13, fn. 37.

³ Opinion, *United States v. Singh*, No. 17-50387, 2019 WL 2135166 (9th Cir. May 19, 2019).

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amended (the "Act"), by making one \$30,000 federal contribution and almost \$580,000 in direct and in-kind local political donations in the names of other persons. In criminal actions before the United States District Court for the Southern District of California, Azano, Encinas, Chase, and others were charged with violating or helping Azano to violate 52 U.S.C. §§ 30121 and 30122, among other laws.⁴

Following criminal indictment, the Commission found reason to believe Azano violated 52 U.S.C. § 30121 by making a foreign national contribution in connection with a federal election and donations in connection with local elections.⁵ The Commission also found reason to believe Azano violated 52 U.S.C. § 30122, which prohibits making a contribution in the name of another.⁶ At that time, the Commission deferred determination of whether Azano's violations were "knowing and willful" pending the outcome of his criminal trial and authorized an investigation.⁷ On September 9, 2016, Azano was found guilty of 37 criminal counts, including conspiracy to make a campaign contribution by a foreign national, aggregating at least \$25,000; making a campaign contribution in the name of another, aggregating at least \$25,000; and falsification of campaign finance records.⁸ Azano filed with the District Court a Motion for Acquittal or a New Trial and a Motion for a New Trial on April 17, 2017.⁹ On June 2, 2017, Azano's Motions were denied.¹⁰ On October 27, 2017, Azano was sentenced to serve three years in a federal prison, assessed \$3,700, a standard \$100 fine for each of the 37 criminal counts, and ordered to pay additional restitution of \$560,995.¹¹

Azano filed a Notice of Appeal of the Judgment to the Ninth Circuit on November 9, 2017.¹² Subsequently, the Commission concluded its investigation and, based in large part on evidence presented during Azano's criminal trial, the Commission found Azano's violations of section 30121 and 30122 to be "knowing and willful," but deferred making a final determination regarding Azano pending the outcome of the Appeal to the Ninth Circuit.¹³ On

⁴ Second GCR at 2-3.

⁵ See Certification (Aug. 12, 2015); Azano Factual & Legal Analysis at 1 ("F&LA").

⁶ *Id.*; F&LA at 1.

⁷ At the request of the Department of Justice, the Commission held the Enforcement matter in abeyance during the criminal trial in the District Court. See Abeyance Certification (Apr. 28, 2016).

⁸ Judgement, *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Nov. 3, 2017) (Dkt. No. 870) ("Azano Judgment"); Verdict, *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Sep. 9, 2016) (Dkt. No. 472); see also 18 U.S.C. §§ 201(b), 371, and 1519; 52 U.S.C. §§ 30109(d)(1)(A), 30121(A)(1), and 30122.

⁹ *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Sep. 9, 2016) (Dkt. No. 640).

¹⁰ *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Sep. 9, 2016) (Dkt. No. 720).

¹¹ Upon completion of his prison term he has also been ordered to serve 3 years supervised release. See Azano Judgment.

¹² Notice of Appeal, *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Sep. 9, 2016) (Dkt. No. 873).

¹³ Second Certification.

May 16, 2019, the Ninth Circuit issued a ruling affirming the lower court's determination as to the violation of 52 U.S.C. §§ 30121 and 30122.¹⁴

As discussed in the Second GCR, we believe the criminal convictions and sentence already imposed by the District Court, concerning the same conduct at issue here, adequately resolves Azano's violations of the Act and the Commission should take no further action.¹⁵ Azano has almost completed his three year sentence in a federal prison, and has been assessed a standard fine of \$3,700 and restitution of \$560,995. The Commission has previously exercised its prosecutorial discretion and declined to pursue matters where it determined that a related criminal conviction adequately vindicated its civil enforcement interests under the Act.¹⁶ Moreover, for the same reason, the Commission has already declined to pursue further action against Azano's co-conspirators, Marc Alan Chase and Enrique Encinas.¹⁷

Accordingly, we recommend the Commission take no further action as to Jose Susumo Azano Matsura for his knowing and willful violations of 52 U.S.C. §§ 30121 and 30122, approve the appropriate letters, and close the file.

RECOMMENDATIONS:

1. Take no further actions as to Jose Susumo Azano Matsura;
2. Approve the appropriate letters; and
3. Close the file.

¹⁴ Opinion, *United States v. Singh*, No. 17-50387, 2019 WL 2135166 (9th Cir. May 19, 2019).

¹⁵ Second GCR at 10-12.

¹⁶ *Id.* at 10-11.

¹⁷ See Second Certification.