

u. Dennis
 Digitally signed by
 Christal Dennis
 Date: 2017.06.23
 11:36:54 -04'00'

BEFORE THE FEDERAL ELECTION COMMISSION

)
) **MUR 7243**
)

**RESPONSE OF CITGO PETROLEUM CORPORATION AND
 CITGO HOLDING, INC. TO THE COMPLAINT**

Respondents CITGO Petroleum Corporation (“CITGO Petroleum”) and CITGO Holding, Inc. (collectively, “Respondents”), by and through undersigned counsel, respond to the Complaint in the above-captioned Matter Under Review. The Complaint challenges the legality of a donation that CITGO Petroleum, a U.S. subsidiary of a foreign corporation, made to the 58th Presidential Inaugural Committee (“the PIC”). The law unquestionably permits this donation – which CITGO Petroleum made using its own funds generated from its U.S. operations – and Respondents respectfully request that the Commission dismiss the allegations in the Complaint and close the file.

I. BACKGROUND

CITGO Petroleum is a leading U.S. energy company incorporated in Delaware and headquartered in Houston, Texas, which engages in the refining, marketing and transportation of petroleum products, including gasoline, diesel fuel, jet fuel, petrochemicals and lubricants. It is wholly owned by CITGO Holding, Inc., a Delaware corporation, which is an indirect, wholly owned subsidiary of a foreign corporation, Petróleos de Venezuela, S.A. (“PDVSA”). Nearly 3,500 people in the United States work for CITGO Petroleum, and over 30,000 more are employed by the more than 5,000 locally owned CITGO Petroleum retail locations found in 29 states and the District of Columbia. CITGO Petroleum generates substantial revenues and net earnings from its domestic operations.

On December 22, 2016, CITGO Petroleum made a \$500,000 donation to the PIC to help finance ceremonial activities in connection with the presidential inauguration held on January 20, 2017. *See* 58th Presidential Inaugural Committee Post Inaugural Rpt. at 21. CITGO Petroleum

made the donation from one of its own bank accounts. That account is with the Bank of Texas, and it consists exclusively of funds generated from CITGO Petroleum's domestic operations. *See* Ex. A ¶¶ 3–4 (Declaration of Gina Renee Coon). The account receives no subsidies from PDVSA. *Id.* ¶ 4. During December 2016, the account held an average daily balance of over \$89.5 million, with a minimum balance of over \$24.6 million. *Id.* ¶ 5. And, on December 22, 2016, the date of the donation to the PIC, the account held just under \$120 million – all of which had been generated from CITGO Petroleum's U.S. operations. *Id.*

II. DISCUSSION

The Complaint alleges that CITGO Petroleum's donation to the PIC violated 11 C.F.R. § 110.20(j), which provides that “[a] foreign national shall not, directly or indirectly, make a donation to an inaugural committee.” *See* Compl. ¶ 35. Section 110.20(j) is fairly new, having been promulgated in late 2004 as one of many regulations intended to implement the Bipartisan Campaign Reform Act of 2002 (“BCRA”) amendments to the Federal Election Campaign Act of 1971 (collectively, “the Act”),¹ and it is the only limitation on inaugural committee donations. Indeed, prior to 2004, the law imposed no restrictions whatsoever on the sources or amounts of inaugural committee donations because the funds received and spent by inaugural committees are “used to finance inaugural activities rather than any Federal election.” *See* Advisory Op. 1980-144 (Presidential Inaugural Committee) (Jan. 9, 1981) (explaining that inaugural committees “may accept donations, without limit, from any person; including corporations”). And, for that reason, domestic corporations still may donate to inaugural committees without limit.

¹ Congress did not explicitly ban the making of inaugural committee donations by foreign nationals in BCRA, only inaugural committees' receipt of such donations. *See* 36 U.S.C. § 510(c); *see also* *Presidential Inaugural Committee Reporting and Prohibition on Accepting Donations From Foreign Nationals*, 69 Fed. Reg. 59,775, 59,778 (Oct. 6, 2004) [hereinafter *Inaugural Committee E&J*] (“BCRA section 308 does not explicitly forbid foreign nationals from making donations to an inaugural committee.”). The Commission nonetheless deemed “a prohibition on the direct or indirect making of donations by foreign nationals [to be] a permissible interpretation of BCRA section 308, as a necessary implication of the prohibition on the acceptance of such donations by inaugural committees.” *Inaugural Committee E&J*, 69 Fed. Reg. at 59,778.

Because of § 110.20(j)'s recent vintage, and given the limited number of inaugurations since its enactment, the FEC appears never to have applied the regulation. Yet Commission precedents in related matters and the plain language and structure of its regulations governing the activities of foreign nationals clearly establish the legality of CITGO Petroleum's donation to the PIC under § 110.20(j).

A. CITGO Petroleum's donation to the PIC satisfies § 110.20(j) because it was made by a U.S. corporation using funds generated from its U.S. operations.

CITGO Petroleum's donation to the PIC did not violate § 110.20(j) because a "foreign national" did not make the donation, either "directly or indirectly." 11 C.F.R. § 110.20(j). *First*, CITGO Petroleum is not itself a "foreign national." Although under the Act and FEC regulations the term "foreign national" applies to any "foreign principal" under the Foreign Agents Registration Act, 22 U.S.C. § 611(b), such as PDVSA, it "does not include any citizen of the United States." Advisory Op. 2000-17 (Extendicare) at 4 (July 28, 2000); *see also* 11 C.F.R. § 110.20(a)(3). Accordingly, it is well established that "a corporation organized under the laws of any State within the United States that has its principal place of business in the United States *is not a foreign principal*" and thus "would not be a foreign national." Advisory Op. 2000-17 (Extendicare) at 4 (emphasis added). As a Delaware corporation with its headquarters in Texas, CITGO Petroleum thus is not a "foreign national" as a matter of law. *See, e.g.*, Advisory Op. 2006-15 (TransCanada) at 4 (May 19, 2006) ("Both GTN and TC Hydro are corporations organized under the laws of California and Delaware, respectively, and both GTN and TC Hydro have principal places of business in the United States. Therefore, both . . . are not foreign nationals.").

Second, the donation to the PIC was not made "indirectly" by PDVSA because CITGO Petroleum donated its own funds, derived entirely from its domestic operations. Donations or contributions from a U.S. subsidiary of a foreign corporation are not *per se* "indirectly" made by the foreign parent. *See* Advisory Op. 2006-15 (TransCanada) at 3 (citing *Contribution Limitations and*

Prohibitions, 67 Fed. Reg. 69,928, 69,943 (Nov. 19, 2002)). Rather, that is only the case when the U.S. subsidiary's donation consists of funds provided by the foreign parent. *See, e.g.*, MUR 6976 (Johnny W. Streets, Jr., City Council Committee et al.), First General Counsel's Report at 5 (Jul. 19, 2016) (“[T]he Commission has not permitted domestic corporations to make contributions where the funds originated with a foreign national corporation on the basis that so doing would permit the latter to make indirect contributions in violation of the Act.”); MUR 6099 (Waverly Glen Systems Ltd.), Factual & Legal Analysis at 4 (May 14, 2009); *see also Contribution Limitations and Prohibitions*, 67 Fed. Reg. at 69,943. Therefore, CITGO Petroleum need only “demonstrate through a reasonable accounting method” that it had sufficient funds generated from its operations in the United States in the account from which the donation was made at the time it was made. *See* Advisory Op. 2006-15 (TransCanada) at 4 (citing Advisory Op. 1992-16 (Nansay Hawaii) at 3 (June 26, 1992)). “Using funds that meet these conditions ensures that the foreign parent corporation is not indirectly making or subsidizing the domestic subsidiary's donations.” *Id.* at 5.

CITGO Petroleum's donation to the PIC easily satisfies this requirement. As discussed, CITGO Petroleum made the donation from its own bank account in a U.S. bank, the Bank of Texas. Ex. A ¶ 3. On the date of the donation, December 22, 2016, that account held nearly \$120 million – all of which had been generated by CITGO Petroleum's operations in the United States. *Id.* ¶ 5. The account receives no subsidies from PDVSA. *Id.* ¶ 4. Accordingly, there is no reason to believe that CITGO Petroleum's \$500,000 donation to the PIC was made “indirectly” by PDVSA. Rather, it was simply a direct donation by a U.S. corporation – on which the Act and FEC regulations impose no limits – and thus this matter should be dismissed.

B. The Complaint misplaces its focus on the citizenship of any individual decisionmakers.

By the plain language of § 110.20(j), the Commission's inquiry ends here. The Complaint, however, argues additionally that CITGO Petroleum's donation to the PIC violated § 110.20(j)

because individuals on CITGO Petroleum's Board of Directors may be foreign nationals, such that "at least part of the decisions concerning the donation and disbursement were made by individuals who are not U.S. citizens or permanent residents." Compl. ¶¶ 33–34. Yet whether or not individual foreign nationals were involved in the decision-making is irrelevant in this instance.

It is true that for donations or disbursements made in connection with federal, state, or local *elections*, domestic subsidiaries of foreign corporations must demonstrate that no individual foreign nationals were involved in the decisions. *See, e.g.*, MUR 6976, First General Counsel's Report at 5, 5 n.21 (allegations of foreign donations to local candidate's campaign committee); Advisory Op. 2006-15 (TransCanada) at 5 (citing Advisory Op. 2000-17 (Extendicare Health Servs.)); Advisory Op. 1992-16 (Nansay Hawaii) at 4. But, as the Commission has made clear, this requirement merely "ensure[s] compliance with the prohibition in 11 CFR 110.20(i)" – a regulation having no applicability to inaugural committee donations. Advisory Op. 2006-15 (TransCanada) at 5; *accord* MUR 6099, Factual & Legal Analysis at 5 (citing 11 C.F.R. § 110.20(i)).

Section 110.20(i) prohibits a foreign national from "direct[ing], dictat[ing], control[ling], or . . . participat[ing] in the decision-making process of any person . . . with regard to such person's Federal or non-Federal *election-related activities*." 11 C.F.R. § 110.20(i) (emphasis added). By definition, and as this Commission has expressly recognized, inaugural committees (which are typically organized as tax-exempt organizations under section 501(c) of the Internal Revenue Code) have no involvement in "election-related activities." *See* Advisory Op. 1980-144 (Presidential Inaugural Committee) at 2 ("Funds received and expended by the [Presidential Inaugural] Committee are used to finance inaugural activities rather than any Federal election."). They instead receive and spend funds to cover the costs of "*activities connected with the inaugural ceremony*," such as the opening ceremonies and the inaugural parade, galas, and balls. 11 C.F.R. § 104.21(a) (emphasis added); *see also* 36 U.S.C. § 501(1). Furthermore, when the Commission promulgated § 110.20(i) in 2002, there

were no limitations on the making of donations to inaugural committees, so it could not have meant for the regulation to proscribe any involvement in decisions concerning such donations. *See Contribution Limitations and Prohibitions*, 67 Fed. Reg. at 69,946. And the Commission did not broaden § 110.20(i) through rulemaking when enacting § 110.20(j) more than two years later. Accordingly, § 110.20(i) plainly does not apply to U.S. corporations' inaugural committee donations.²

* * *

Simply put, CITGO Petroleum's donation to the PIC was nothing but a donation made directly from a U.S. corporation to a presidential inaugural committee to help finance inaugural events, not election-related activities. The law imposes no restrictions on such donations, and there is no basis by which the FEC may do so here. Respondents thus request that the Commission dismiss the Complaint's specious allegations and close the file in this MUR.

Respectfully,



Benjamin L. Ginsberg
E. Stewart Crosland
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939

*Counsel for CITGO Petroleum Corporation and
CITGO Holding, Inc.*

² It makes sense why the FEC regulates donations to inaugural committees less broadly than election-related spending. *See, e.g.*, 11 C.F.R. § 110.20(h) (applying "substantial assistance" prohibition to foreign national political contributions, donations, and expenditures but not to inaugural committee donations). "The Supreme Court has long held that the government (federal, state, and local) may exclude foreign citizens from activities that are part of democratic self-government in the United States." *Bluman v. FEC*, 800 F. Supp. 2d 281, 283 (D.D.C. 2011). "Political contributions and express-advocacy expenditures are an integral aspect of the process by which Americans elect officials to federal, state, and local government offices," and thus may warrant prophylactic restrictions on foreign national involvement in order to prevent foreign influence over the U.S. political process. *Id.* at 288. But that does not apply to foreign national donations to inaugural committees – which for many years were permitted without limitation.

EXHIBIT A

STATE OF TEXAS
COUNTY OF HARRIS

DECLARATION OF GINA RENEE COON

I, Gina Renee Coon, being duly sworn, hereby declare the following:

1. I am the Assistant Treasurer of CITGO Petroleum Corporation ("CITGO Petroleum"), 1293 Eldridge Parkway, Suite 3040, Houston, Texas 77077, an independent U.S. refiner engaged in the refining, marketing, and transportation of petroleum products, including gasoline, diesel fuel, jet fuel, petrochemicals, and lubricants.
2. As the Assistant Treasurer, I am responsible for ensuring the corporation has adequate liquidity to carry forward its operations and business strategy, including the execution of short term investment and/or borrowing action, managing banking relationships, compliance with government regulations as well as reviewing internal controls and segregation of duties to safeguard against potential fraud.
3. On December 22, 2016, CITGO Petroleum wired a \$500,000 donation to the 58th Presidential Inaugural Committee from CITGO Petroleum's account with the Bank of Texas.
4. The account from which the donation was made consists only of funds that CITGO Petroleum generates from its U.S. operations, and it does not include any subsidies from CITGO Petroleum's parent corporation, Petróleos de Venezuela, S.A.
5. Throughout the month of December 2016, the account from which the donation was made held an average daily balance of \$89,535,720.62, with a minimum balance of \$24,655,572.63. On December 22, 2016, the date of the donation, the account held \$119,858,186.75.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this Declaration was executed at Houston, Texas.

Executed this 20th day of June, 2017.



Gina Renee Coon