

DERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7587

DATE COMPLAINT FILED: Mar. 25, 2019

DATE OF LAST NOTIFICATION: Mar. 27, 2019

DATE OF LAST RESPONSE: June 4, 2019

DATE ACTIVATED: Aug. 6, 2019

EXPIRATION OF SOL: Earliest: Dec. 15, 2020

Latest: Continuing

ELECTION CYCLES: 2016, 2020

COMPLAINANT:

Coolidge-Reagan Foundation

RESPONDENTS:

Bernard Sanders

Bernie 2016 and Susan Jackson in her official
capacity as treasurerBernie 2020 and Lora Haggard in her official
capacity as treasurer

Erika Andiola

Maria Belén Sisa

Cesar Vargas

RELEVANT STATUTES

52 U.S.C. § 30121(a)(1)- (2), (b)(2)

11 C.F.R. § 110.20(b), (c)

11 C.F.R. § 110.20(i)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that presidential candidate Bernard Sanders and his 2016 and 2020 authorized committees, Bernie 2016 and Susan Jackson in her official capacity as treasurer, and Bernie 2020 and Lora Haggard in her official capacity as treasurer (the “Committees”), accepted prohibited foreign national contributions in violation of the Federal Election Campaign Act of 1971, as amended (“Act”), by hiring three foreign national employees for advisory positions and accepting direct contributions from one of them. Sanders and the Committees respond that the

1 employees did not hold positions of influence, it would be an unnecessary expansion of the
2 foreign national contribution prohibition to apply it to Deferred Action for Childhood Arrivals
3 (“DACA”) recipients, and the direct contribution was *de minimis*. The three foreign national
4 employees did not respond to the Complaint.

5 Based on the available information, we recommend that the Commission find reason to
6 believe that Bernard Sanders, Bernie 2016 and Susan Jackson in her official capacity as
7 treasurer, and Bernie 2020 and Lora Haggard in her official capacity as treasurer
8 (“Respondents”) violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i) and enter
9 into pre-probable cause conciliation. We further recommend that the Commission dismiss the
10 Complaint as to the employees, Erika Andiola, Cesar Vargas, and Maria Belén Sisa.

11 **II. FACTUAL BACKGROUND**

12 The Complaint alleges that in October 2015, Sanders and Bernie 2016 hired well-known
13 immigration activists Erika Andiola and Cesar Vargas.¹ Andiola, originally from Mexico,
14 served as Press Secretary for Latino Outreach for Bernie 2016 and the Committee paid her
15 \$46,588 in salary from November 13, 2015, to August 15, 2016.² According to press reports,
16 Andiola, then 28, had advised the Hillary Clinton and Martin O’Malley presidential campaigns

¹ Compl. at 3-4, (citing Adrian Carrasquillo, *Bernie Sanders Hires High-Profile DREAMer Activist For Latino Outreach*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-HIRES-HIGH-PROFILE-DREAMER-ACTIVIST-FOR-LATIN](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-hires-high-profile-dreamer-activist-for-latin) (Oct. 22, 2015) (referring to Vargas) (“BUZZFEED, Oct. 22, 2015”); Adrian Carrasquillo, *Bernie Sanders Just Hired the Best Known Immigration Activist In The Country*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-JUST-HIRED-THE-BEST-KNOWN-IMMIGRATION-ACTIVIS](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-just-hired-the-best-known-immigration-activis) (Oct. 30, 2015) (referring to Andiola) (“BUZZFEED, Oct. 30, 2015”).

² Compl. at 4; *see also* Bernie 2016, Disbursements to Andiola, Nov. 13, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Andiola.

1 on their immigration policies before being hired by the Sanders campaign.³ Andiola was
 2 described as someone who “played a key role in crafting” Sanders’s immigration platform and
 3 had the “remarkable ability to leverage strong grassroots power at key moments.”⁴ According to
 4 the Response, Andiola’s work for the Committee involved making “outward-facing media
 5 statements and outreach to the Latino community and build[ing] relationships with Spanish-
 6 language and Latino media outlets.”⁵ She co-hosted a Families First conference with Sanders.⁶
 7 Vargas, also originally from Mexico, was hired by Bernie 2016 as the National Latino
 8 Outreach Strategist with responsibility for mobilizing young voters in the Southwest.⁷ The
 9 Committee paid him \$48,247 in salary from October 30, 2015, to August 15, 2016, for his work
 10 with Sanders.⁸ The Response states that Vargas served as a contact with the Spanish-language
 11 and Latino community and as speaker at community events, engaged in voter outreach, and

³ BUZZFEED, Oct. 30, 2015. Sanders was reportedly in “catch-up mode” when it “comes to Hispanic voter engagement, name recognition among Latinos compared to Clinton, and organization in Nevada, where many of these hires [Andiola and Cesar Vargas] will be focused.” *Id.*; see also Ed Pilkington, *Dreamers on the campaign trail: “We cannot vote, but we do have a voice,”* GUARDIAN (UK), [HTTPS://WWW.THEGUARDIAN.COM/US-NEWS/2016/JAN/25/LATINO-VOTERS-CLINTON-SANDERS-CAMPAIGNS-DREAMERS](https://www.theguardian.com/us-news/2016/jan/25/latino-voters-clinton-sanders-campaigns-dreamers) (Andiola and Vargas, Sanders’s Latino outreach directors, can’t vote and can’t work in White House, but “[t]hey are at the epicenter.”).

⁴ Julianne Hing, *The Young Activists Who Remade the Democratic Party’s Immigration Politics*, NATION (Jan. 21, 2016), <https://www.thenation.com/article/the-young-activists-who-remade-the-democratic-partys-immigration-politics/>.

⁵ Resp. of Sanders, Bernie 2016, and Bernie 2020 at 2-3 (June 4, 2019).

⁶ See Families First with Bernie Sanders, YOUTUBE (Dec. 7, 2015), <https://www.youtube.com/watch?v=cxaP4Ijo0ig&t=496s>.

⁷ Compl. at 3-4. The Response states his title as Latino Outreach Deputy Director. Resp. at 3. It appears that Vargas became a U.S. citizen after he married a U.S. citizen in 2016. See Claudia Grisales, *Immigrant’s 18-year dream to join US military finally becomes reality*, STARS AND STRIPES, Apr. 24, 2019, <https://www.stripes.com/news/us/immigrant-s-18-year-dream-to-join-us-military-finally-becomes-reality-1.578336>.

⁸ Compl. at 4; see also Bernie 2016, Disbursements to Vargas, Oct. 30, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Vargas.

1 “sought to organize and excite the Latino community base about the campaign.”⁹ Vargas has
2 stated that he “joined the campaign because the Senator [Sanders] believes not only that we
3 should meet DREAMers but that DREAMers should be part of the conversation to champion
4 policies for the Latino community,”¹⁰ and that he was hired “to advise on Latino outreach and
5 education.”¹¹

6 After initially volunteering for Sanders, Maria Belén Sisa, an Argentinian national, was
7 hired by the campaign in December 2015 to serve as a Latino Outreach Organizer in the Las
8 Vegas, Nevada area.¹² From December 2015 through June 2016, the Committee paid Belén Sisa
9 \$14,054.23 in salary for her work for Bernie 2016, which the Response states involved “external
10 community outreach through GOTV rallies in the Latino community.”¹³ From September 2015
11 through June 2016, Belén Sisa also made ten contributions to Bernie 2016, totaling \$35.¹⁴ In late
12 February 2019, Bernie 2020 hired Belén Sisa as Latino Press Secretary, a Deputy Press Secretary
13 position with the campaign.¹⁵ The Response states that Belén Sisa’s current responsibilities
14 involve “outward-facing media statements and outreach to the Latino community and

⁹ Resp. at 3.

¹⁰ BUZZFEED, Oct. 22, 2015.

¹¹ Marlana Fitzpatrick, *Cesar Vargas: American Dreamer*, LATINO REBELS, Jan. 2, 2016,
<https://www.latinorebels.com/2016/01/02/cesar-vargas-american-dreamer/>.

¹² Compl. at 4.

¹³ Resp. at 3; *see also* Compl. at 4 (citing Jude Joffe-Block, *Can't Vote But Campaigning Hard for Presidential Candidates*, NPR, <https://www.npr.org/templates/transcript/transcript.php?storyId=460317302> Dec. 24, 2015).

¹⁴ Compl. at 4.

¹⁵ Compl. at 5; Resp. at 3.

1 relationship building with Spanish-language and Latino media outlets.”¹⁶ Since being hired by
2 Bernie 2020, Belén Sisa has received \$19,530.84 in salary payments and travel
3 reimbursements.¹⁷ In a September 2019 interview, Belén Sisa said that DACA recipients and
4 other Latino staffers were helping to shape a forthcoming immigration policy statement from
5 Sanders.¹⁸

6 The Complaint alleges that Andiola, Vargas, and Belén Sisa are “high profile” activists
7 who “serve in advisory campaign positions, enabling them to directly or indirectly participate in
8 the decision-making process of persons with regard to the election-related activities of Bernie
9 2016.”¹⁹ In addition, the Complaint alleges that Belén Sisa continued to work for Bernie 2020
10 and made the prohibited direct contributions.²⁰ The Complaint also notes that Bernie 2016 is the
11 subject of a conciliation agreement, in which the Committee agreed that it had accepted
12 prohibited in-kind foreign national contributions when Australian delegates performed campaign
13 services for the Committee while the delegates received per diem stipends and had their travel
14 paid for by the Australian Labor Party.²¹

¹⁶ Compl. at 5; Resp. at 3. Belén Sisa has an active twitter account where she retweets Sanders’s tweets but also expresses her opinions on political issues related to the campaign. See <https://twitter.com/belensisaw>.

¹⁷ Bernie 2020, Disbursements to Sisa, Mar. 15, 2019 – June 28, 2019, https://www.fec.gov/data/disbursements/?committee_id=C00696948&two_year_transaction_period=2020&two_year_transaction_period=2018&line_number=F3P-23&data_type=processed&recipient_name=Sisa; October 2020 Quarterly Report.

¹⁸ See Rising with Krystal and Saagar, hill.tv, Sept. 3, 2019, available at <https://www.youtube.com/watch?v=cDEOAJHzoEw&t=19s>.

¹⁹ Compl. at 2.

²⁰ *Id.* at 6.

²¹ *Id.* at 5 (citing MUR 7035).

1 The Response asserts that the three employees were not engaged in positions that
2 provided them with a basis to influence, directly or indirectly, the decision-making processes of
3 the committees, “either on funding or administration,” and “were hired to serve solely in non-
4 discretionary roles.”²² They also argue that DACA recipients are in a special category of foreign
5 nationals for which the foreign national prohibition is of far less concern, and that enforcing it
6 against them would violate their First Amendment rights. The Response finally argues that
7 Belén Sisa’s \$35 in political contributions are *de minimis*.

8 **III. LEGAL ANALYSIS**

9 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
10 deposit of money or anything of value made by any person for the purpose of influencing any
11 election for Federal office.”²³ The Act prohibits any “foreign national” from directly or
12 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
13 in connection with a federal, state, or local election.²⁴ The Act’s definition of “foreign national”
14 includes an individual who is not a citizen or national of the United States and who is not
15 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
16 22 U.S.C. § 611(b).²⁵ Commission regulations implementing the Act’s foreign national
17 prohibition provide:

²² Resp. at 2.

²³ 52 U.S.C. § 30101(8)(A).

²⁴ 52 U.S.C. § 30121(a)(1); *see also* 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).

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

1 A foreign national shall not direct, dictate, control, or directly or indirectly
 2 participate in the decision-making process of any person, such as a corporation,
 3 labor organization, political committee, or political organization with regard to
 4 such person's Federal or non-Federal election-related activities, such as decisions
 5 concerning the making of contributions, donations, expenditures, or
 6 disbursements. . . or decisions concerning the administration of a political
 7 committee.²⁶

8
 9 The Commission has explained that this provision also bars foreign nationals from “involvement
 10 in the management of a political committee.”²⁷

11 In light of these provisions, Commission regulations permit any person or company —
 12 foreign or domestic — to provide goods or services to a political committee, without making a
 13 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
 14 course of business, and at the usual and normal charge, as long as foreign nationals do not
 15 directly or indirectly participate in any committee's management or decision-making process in
 16 connection with election-related activities.²⁸

17 The Commission has found that not all participation by foreign nationals in the election-
 18 related activities of others will violate the Act. In MUR 6959, for example, the Commission

²⁶ 11 C.F.R. § 110.20(i).

²⁷ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate's] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

²⁸ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution. *See* Factual and Legal Analysis at 8-9, n.35, MURs 7350 and 7351 (Wylie) *see also* Factual and Legal Analysis at 8, n.35, MURs 7350, 7351, and 7382 (Cambridge Analytica) and at 9, n.35 (Nix)

1 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
2 clerical duties, such as online research and translations, during a one month-long internship with
3 a party committee.²⁹ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
4 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
5 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
6 likeness in its emails promoting the concert and soliciting support, where the record did not
7 indicate that the foreign national had been involved in the committee's decision-making process
8 in connection with the making of contributions, donations, expenditures, or disbursements.³⁰ By
9 contrast, the Commission has consistently found a violation of the foreign national prohibition
10 where foreign national officers or directors of a U.S. company participated in the company's
11 decisions to make contributions or in the management of its separate segregated fund.³¹ The Act

²⁹ 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)).

³⁰ 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).

³¹ *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.) (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).

1 In 2012, under the DACA program, certain individuals born outside the United States,
2 but brought to the United States as children, were granted a reprieve from the enforcement of
3 immigration laws in an exercise of prosecutorial discretion.³⁶ In the memo establishing the
4 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano stated that
5 the policy conferred “no substantive right, immigration status or pathway to citizenship.”³⁷ The
6 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
7 at any time.³⁸ Currently, after three federal courts issued injunctions to prevent DACA’s
8 termination by DHS, persons who had already been granted DACA status could continue to
9 request renewal: “Until further notice, and unless otherwise provided in this guidance, the
10 DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.”³⁹

11 All three Sanders employees apparently took advantage of the 2012 policy, which
12 allowed them to be lawfully present in the United States.⁴⁰ But, as the Napolitano Memo states
13 and courts have confirmed, DACA status does not confer citizenship, lawful permanent

³⁶ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

³⁷ *Id.*

³⁸ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

³⁹ Department of Homeland Security, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019). As of the date of this report, the Supreme Court is considering the legality of DACA’s termination. See *Department of Homeland Security v. Regents of The University of California*, Nos. 18-587, 18-588, and 18-589 (U.S.).

⁴⁰ See Napolitano Memo.

1 residence, or any other immigration status.⁴¹ Thus, at the time of their employment by the
2 Committees, Andiola, Vargas, and Belén Sisa were foreign nationals under the Act.

3 **B. There is Reason to Believe that the Foreign National Employees Directly or**
4 **Indirectly Participated in Decision-Making Processes Regarding the**
5 **Sanders's Committees' Election-Related Activities**
6

7 Neither the Complaint nor Response provide a clear picture of the roles that Vargas,
8 Andiola, and Belén Sisa played in the Sanders campaigns. The Complaint does not explicitly
9 detail the manner in which the three employees participated in the Committees' decision-making
10 processes in connection with the making of contributions, donations, expenditures, or
11 disbursements, instead alleging that they violated the foreign national prohibition by working for
12 the campaign. The Response attempts to minimize the employees' activities on the campaign
13 and asserts that they had "no influence over campaign decisions concerning its funding,
14 expenditures, or administration" without providing more specific information on their work for
15 the campaign.⁴²

16 Nevertheless, based on the available information about their work for the Sanders
17 campaign, including their own public statements about their roles in the campaign, it is evident
18 that the three Sanders employees were not mere clerical workers, like Nava in MUR 6959, or
19 like Sir Elton John in MURs 5987, 5995, and 6015, a one-time volunteer performer. As the
20 Latino leaders and faces of the Sanders campaign, these employees were in a position to make
21 decisions about targeting voters and messaging, helping to shape the Committees' election-
22 related spending decisions and administration. In their roles working on Latino outreach for the

⁴¹ See *id.*; *Texas v. U.S.*, 809 F.3d at 147.

⁴² Resp. at 3.

1 Sanders campaign, they were tasked with planning and executing events intended to mobilize the
2 Latino community to support Sanders. In addition, all three employees worked to help craft and
3 deliver campaign policy on the issue of immigration and other issues of interest to the Latino
4 community. By advising the campaign on its targeting and messaging, and then implementing
5 the campaign's outreach to Latino voters by planning and attending events, Andiola, Vargas, and
6 Belén Sisa participated in the decision-making processes of the Sanders committees in
7 connection with election-related activities.⁴³

8 Thus, because the overall record supports the allegation that foreign nationals participated
9 directly or indirectly in the Committees' decision-making processes in connection with its
10 election-related spending, we recommend that the Commission find reason to believe that Bernie
11 2016 and Susan Jackson in her official capacity as treasurer, and Bernie 2020 and Lara Haggard
12 in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g)
13 and (i).

14 In addition, it appears that Sanders himself worked closely with Andiola and Vargas,
15 attending events with them and discussing immigration policy with them.⁴⁴ He was undoubtedly
16 aware that they were DACA participants, and thus not U.S. citizens, but nevertheless intended
17 them to be part of his campaign by participating in the Committees' decision-making processes.
18 At a minimum, given the significant press coverage about Andiola, Vargas, and Belén Sisa

⁴³ See *infra* n.33.

⁴⁴ See *Bernie Sanders promises swift immigration reform while visiting Arizona-Mexico border*, KTAR NEWS, March 19, 2016, <https://ktar.com/story/971290/bernie-sanders-immigration-visiting-arizona-mexico-border/> (attending rally with Andiola); *Families First with Bernie Sanders*, YOUTUBE (Dec. 7, 2015), <https://www.youtube.com/watch?v=cxaP4Ijo0ig&t=496s> (Video of Families First conference with Sanders and Andiola); Dara Lind, *Inside Bernie Sanders's quest to win over Nevada's Latinos*, VOX, Feb.18, 2016, <https://www.vox.com/2016/2/17/11037066/bernie-sanders-latinos-nevada> (showing Sanders's presence at Las Vegas campaign office with Andiola and Vargas).

1 joining his campaign, Sanders acquiesced to his campaign hiring foreign nationals to advisory
2 roles. Under these facts, we recommend that the Commission find reason to believe that Bernard
3 Sanders violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i).⁴⁵

4 Regarding the liability of the three employees, however, we recommend that the
5 Commission exercise its prosecutorial discretion and dismiss the allegations as to Andiola,
6 Vargas, and Belén Sisa.⁴⁶ While the individual respondents here violated the law, as discussed
7 below, we recommend that that the Commission focus on Sanders and his Committees in
8 connection with pursuing a civil penalty given the available information indicating that Sanders
9 and the Committees sought out and paid foreign nationals to participate in the campaign and
10 have continued to do so in the 2020 election cycle. The information in the record indicates that
11 the individual respondents, while more involved than the low-level “delegates” in MUR 7035,
12 appear not to have held management positions as the respondent in MUR 7320 or had the same
13 significant level of responsibility as those in MURs 7350 and 7351.⁴⁷ Thus, although all three
14 individuals violated the prohibition on contributions from foreign nationals by participating in
15 the decision-making processes of the Sanders Committees, under the specific circumstances of

⁴⁵ Sanders’s personal involvement in this matter differs markedly from MUR 7035. In MUR 7035, the foreign national “delegates” provided campaign services in the form of volunteer recruitment calls, canvassing on the phone and door-to-door, and assistance on caucus days and for GOTV, all of which are activities on a local level. *See* Factual & Legal Analysis at 5, MUR 7035 (Bernie 2016). In this matter, the foreign national employees were given formal, campaign-wide titles, helped to form policy platforms, and placed in positions in close proximity to Sanders.

⁴⁶ *See Heckler v. Chaney*, 470 U.S. 8221 (1985). Respondents’ argument that applying the Act’s foreign national contribution prohibition on the three Sanders employees would violate their First Amendment rights of free speech and assembly is not applicable here, where the violation has occurred because of the nature of the work performed by them. The Act does not prohibit the three Sanders employees from performing other work for the Sanders Committees that does not involve participation in decision making about expenditures and administration. Moreover, the narrow nature of the foreign national contribution prohibition has been upheld as constitutional. *See Bluman v. FEC*, 800 F. Supp. 2d at 288-89, discussed *infra* n.24.

⁴⁷ *Accord* MUR 7035 (Australian Labor Party) (Foreign national “delegates” not named as respondents).

1 this matter and in consideration of the Commission's resources and other priorities, we
2 recommend that the Commission dismiss the allegations as to Erika Andiola, Cesar Vargas, and
3 Maria Belén Sisa.

4 **C. Belén Sisa's Contributions**

5 The Complaint alleges and the Commission's disclosure reports confirm that Belén Sisa
6 made ten contributions totaling \$35 to Bernie 2016. Consistent with other matters and in light of
7 the amount of the contributions and the other circumstances of this matter, we recommend that
8 the Commission dismiss the allegation that Belén Sisa made, and Bernie 2016 accepted,
9 prohibited foreign national contributions totaling \$35.⁴⁸

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⁴⁸ See Factual & Legal Analysis at 2, MURs 7430, 7444, and 7445 (Unknown Respondents) (dismissing \$30 in foreign national contributions); Factual & Legal Analysis at 8, MURs 6962 and 6982 (Project Veritas) (dismissing \$35 or \$45 contribution for purchase of campaign t-shirt).

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V. RECOMMENDATIONS

1. Find reason to believe that Senator Bernard Sanders, Bernie 2016 and Susan Jackson in her official capacity as treasurer, and Bernie 2020 and Lara Haggard in her official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(g) and (i);
2. Dismiss the allegation that Erika Andiola, Cesar Vargas, and Maria Belén Sisa violated 52 U.S.C. § 30121 by making a prohibited foreign national contribution by working for the Sanders campaign;
3. Dismiss the allegation that Maria Belén Sisa and Bernie 2016 and Susan Jackson in her official capacity as treasurer violated 52 U.S.C. § 30121 by making and accepting \$35 in foreign national contributions;
4. Enter into pre-probable cause conciliation with Senator Bernard Sanders, Bernie 2016 and Susan Jackson in her official capacity as treasurer, and Bernie 2020 and Lara Haggard in her official capacity as treasurer;
5. Approve the attached conciliation agreement;
6. Approve the attached Factual and Legal Analyses;
7. Approve the appropriate letters; and

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8. Close the file as to Erika Andiola, Cesar Vargas, and Maria Belén Sisa.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

11.1.19
Date


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Lynn Y. Tran
Assistant General Counsel


Elena Paoli
Attorney

Attachments:

1. Factual and Legal Analysis for Bernard Sanders and Committees
2. Factual and Legal Analysis for Erika Andiola
3. Factual and Legal Analysis for Cesar Vargas
4. Factual and Legal Analysis for Maria Belén Sisa

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Bernard Sanders MUR 7587
4 Bernie 2016 and Susan Jackson in her official
5 capacity as treasurer
6 Bernie 2020 and Lora Haggard in her official
7 capacity as treasurer
8

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission
11 (“Commission”) by the Coolidge-Reagan Foundation. *See* 52 U.S.C. § 30109(a)(1). The
12 Complaint alleges that presidential candidate Bernard Sanders and his 2016 and 2020 authorized
13 committees, Bernie 2016 and Susan Jackson in her official capacity as treasurer and Bernie 2020
14 and Lora Haggard in her official capacity as treasurer (the “Committees”), accepted prohibited
15 foreign national contributions in violation of the Federal Election Campaign Act of 1971, as
16 amended (“Act”), by hiring three foreign national employees for advisory positions and
17 accepting direct contributions from one of them. Sanders and the Committees respond that the
18 employees did not hold positions of influence, it would be an unnecessary expansion of the
19 foreign national contribution prohibition to apply it to Deferred Action for Childhood Arrivals
20 (“DACA”) recipients, and the direct contribution was *de minimis*.

1 II. FACTUAL SUMMARY

2 The Complaint alleges that in October 2015, Sanders and Bernie 2016 hired well-known
3 immigration activists Erika Andiola and Cesar Vargas.¹ Andiola, originally from Mexico,
4 served as Press Secretary for Latino Outreach for Bernie 2016 and the Committee paid her
5 \$46,588 in salary from November 13, 2015, to August 15, 2016.² According to press reports,
6 Andiola, then 28, had advised the Hillary Clinton and Martin O’Malley presidential campaigns
7 on their immigration policies before being hired by the Sanders campaign.³ Andiola was
8 described as someone who “played a key role in crafting” Sanders’s immigration platform and
9 had the “remarkable ability to leverage strong grassroots power at key moments.”⁴ According to
10 the Response, Andiola’s work for the Committee involved making “outward-facing media

¹ Compl. at 3-4, (citing Adrian Carrasquillo, *Bernie Sanders Hires High-Profile DREAMer Activist For Latino Outreach*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-HIRES-HIGH-PROFILE-DREAMER-ACTIVIST-FOR-LATIN](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-hires-high-profile-dreamer-activist-for-latin) (Oct. 22, 2015) (referring to Vargas) (“BUZZFEED, Oct. 22, 2015”); Adrian Carrasquillo, *Bernie Sanders Just Hired the Best Known Immigration Activist In The Country*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-JUST-HIRED-THE-BEST-KNOWN-IMMIGRATION-ACTIVIS](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-just-hired-the-best-known-immigration-activis) (Oct. 30, 2015) (referring to Andiola) (“BUZZFEED, Oct. 30, 2015”).

² Compl. at 4; *see also* Bernie 2016, Disbursements to Andiola, Nov. 13, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Andiola.

³ BUZZFEED, Oct. 30, 2015. Sanders was reportedly in “catch-up mode” when it “comes to Hispanic voter engagement, name recognition among Latinos compared to Clinton, and organization in Nevada, where many of these hires [Andiola and Cesar Vargas] will be focused.” *Id.*; *see also* Ed Pilkington, *Dreamers on the campaign trail: “We cannot vote, but we do have a voice,”* GUARDIAN (UK), [HTTPS://WWW.THEGUARDIAN.COM/US-NEWS/2016/JAN/25/LATINO-VOTERS-CLINTON-SANDERS-CAMPAIGNS-DREAMERS](https://www.theguardian.com/us-news/2016/jan/25/latino-voters-clinton-sanders-campaigns-dreamers) (Andiola and Vargas, Sanders’s Latino outreach directors, can’t vote and can’t work in White House, but “[t]hey are at the epicenter.”).

⁴ Julianne Hing, *The Young Activists Who Remade the Democratic Party’s Immigration Politics*, NATION (Jan. 21, 2016), <https://www.thenation.com/article/the-young-activists-who-remade-the-democratic-partys-immigration-politics/>.

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1 statements and outreach to the Latino community and build[ing] relationships with Spanish-
2 language and Latino media outlets.”⁵ She co-hosted a Families First conference with Sanders.⁶
3 Vargas, also originally from Mexico, was hired by Bernie 2016 as the National Latino
4 Outreach Strategist with responsibility for mobilizing young voters in the Southwest.⁷ The
5 Committee paid him \$48,247 in salary from October 30, 2015, to August 15, 2016, for his work
6 with Sanders.⁸ The Response states that Vargas served as a contact with the Spanish-language
7 and Latino community and as speaker at community events, engaged in voter outreach, and
8 “sought to organize and excite the Latino community base about the campaign.”⁹ Vargas has
9 stated that he “joined the campaign because the Senator [Sanders] believes not only that we
10 should meet DREAMers but that DREAMers should be part of the conversation to champion
11 policies for the Latino community,”¹⁰ and that he was hired “to advise on Latino outreach and
12 education.”¹¹

⁵ Resp. of Sanders, Bernie 2016, and Bernie 2020 at 2-3 (June 4, 2019).

⁶ See Families First with Bernie Sanders, YOUTUBE (Dec. 7, 2015),
<https://www.youtube.com/watch?v=cxaP4Ijo0ig&t=496s>.

⁷ Compl. at 3-4. The Response states his title as Latino Outreach Deputy Director. Resp. at 3. It appears that Vargas became a U.S. citizen after he married a U.S. citizen in 2016. See Claudia Grisales, *Immigrant’s 18-year dream to join US military finally becomes reality*, STARS AND STRIPES, Apr. 24, 2019, <https://www.stripes.com/news/us/immigrant-s-18-year-dream-to-join-us-military-finally-becomes-reality-1.578336>.

⁸ Compl. at 4; see also Bernie 2016, Disbursements to Vargas, Oct. 30, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Vargas.

⁹ Resp. at 3.

¹⁰ BUZZFEED, Oct. 22, 2015.

¹¹ Marlana Fitzpatrick, *Cesar Vargas: American Dreamer*, LATINO REBELS, Jan. 2, 2016, <https://www.latinorebels.com/2016/01/02/cesar-vargas-american-dreamer/>.

1 After initially volunteering for Sanders, Maria Belén Sisa, an Argentinian national, was
2 hired by the campaign in December 2015 to serve as a Latino Outreach Organizer in the Las
3 Vegas, Nevada area.¹² From December 2015 through June 2016, the Committee paid Belén Sisa
4 \$14,054.23 in salary for her work for Bernie 2016, which the Response states involved “external
5 community outreach through GOTV rallies in the Latino community.”¹³ From September 2015
6 through June 2016, Belén Sisa also made ten contributions to Bernie 2016, totaling \$35.¹⁴ In late
7 February 2019, Bernie 2020 hired Belén Sisa as Latino Press Secretary, a Deputy Press Secretary
8 position with the campaign.¹⁵ The Response states that Belén Sisa’s current responsibilities
9 involve “outward-facing media statements and outreach to the Latino community and
10 relationship building with Spanish-language and Latino media outlets.”¹⁶ Since being hired by
11 Bernie 2020, Belén Sisa has received \$19,530.84 in salary payments and travel
12 reimbursements.¹⁷ In a September 2019 interview, Belén Sisa said that DACA recipients and

¹² Compl. at 4.

¹³ Resp. at 3; *see also* Compl. at 4 (citing Jude Joffe-Block, *Can’t Vote But Campaigning Hard for Presidential Candidates*, NPR, <https://www.npr.org/templates/transcript/transcript.php?storyId=460317302> Dec. 24, 2015).

¹⁴ Compl. at 4.

¹⁵ Compl. at 5; Resp. at 3.

¹⁶ Compl. at 5; Resp. at 3. Belén Sisa has an active twitter account where she retweets Sanders’s tweets but also expresses her opinions on political issues related to the campaign. *See* <https://twitter.com/belensisaw>.

¹⁷ Bernie 2020, Disbursements to Sisa, Mar. 15, 2019 – June 28, 2019, https://www.fec.gov/data/disbursements/?committee_id=C00696948&two_year_transaction_period=2020&two_year_transaction_period=2018&line_number=F3P-23&data_type=processed&recipient_name=Sisa; October 2020 Quarterly Report.

1 other Latino staffers were helping to shape a forthcoming immigration policy statement from
2 Sanders.¹⁸

3 The Complaint alleges that Andiola, Vargas, and Belén Sisa are “high profile” activists
4 who “serve in advisory campaign positions, enabling them to directly or indirectly participate in
5 the decision-making process of persons with regard to the election-related activities of Bernie
6 2016.”¹⁹ In addition, the Complaint alleges that Belén Sisa continued to work for Bernie 2020
7 and made the prohibited direct contributions.²⁰ The Complaint also notes that Bernie 2016 is the
8 subject of a conciliation agreement, in which the Committee agreed that it had accepted
9 prohibited in-kind foreign national contributions when Australian delegates performed campaign
10 services for the Committee while the delegates received per diem stipends and had their travel
11 paid for by the Australian Labor Party.²¹

12 The Response asserts that the three employees were not engaged in positions that
13 provided them with a basis to influence, directly or indirectly, the decision-making processes of
14 the committees, “either on funding or administration,” and “were hired to serve solely in non-
15 discretionary roles.”²² They also argue that DACA recipients are in a special category of foreign
16 nationals for which the foreign national prohibition is of far less concern, and that enforcing it

¹⁸ See Rising with Krystal and Saagar, [hill.tv](https://www.youtube.com/watch?v=cDEOAJHzoEw&t=19s), Sept. 3, 2019, available at <https://www.youtube.com/watch?v=cDEOAJHzoEw&t=19s>.

¹⁹ Compl. at 2.

²⁰ *Id.* at 6.

²¹ *Id.* at 5 (citing MUR 7035).

²² Resp. at 2.

1 against them would violate their First Amendment rights. The Response finally argues that
2 Belén Sisa’s \$35 in political contributions are *de minimis*.

3 **III. LEGAL ANALYSIS**

4 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
5 deposit of money or anything of value made by any person for the purpose of influencing any
6 election for Federal office.”²³ The Act prohibits any “foreign national” from directly or
7 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
8 in connection with a federal, state, or local election.²⁴ The Act’s definition of “foreign national”
9 includes an individual who is not a citizen or national of the United States and who is not
10 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
11 22 U.S.C. § 611(b).²⁵ Commission regulations implementing the Act’s foreign national
12 prohibition provide:

13 A foreign national shall not direct, dictate, control, or directly or indirectly
14 participate in the decision-making process of any person, such as a corporation,
15 labor organization, political committee, or political organization with regard to
16 such person’s Federal or non-Federal election-related activities, such as decisions
17 concerning the making of contributions, donations, expenditures, or
18 disbursements. . . or decisions concerning the administration of a political
19 committee.²⁶
20

²³ 52 U.S.C. § 30101(8)(A).

²⁴ 52 U.S.C. § 30121(a)(1); *see also* 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).

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

²⁶ 11 C.F.R. § 110.20(i).

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1 The Commission has explained that this provision also bars foreign nationals from “involvement
2 in the management of a political committee.”²⁷

3 In light of these provisions, Commission regulations permit any person or company —
4 foreign or domestic — to provide goods or services to a political committee, without making a
5 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
6 course of business, and at the usual and normal charge, as long as foreign nationals do not
7 directly or indirectly participate in any committee’s management or decision-making process in
8 connection with election-related activities.²⁸

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

²⁷ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

²⁸ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

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1 a party committee.²⁹ 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.³⁰ 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.³¹ The Act
10 further prohibits persons from soliciting, accepting, or receiving a contribution or donation from
11 a foreign national.³²

²⁹ 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)).

³⁰ 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).

³¹ *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.) (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).

³² 52 U.S.C. § 30121 (a)(2). The Commission’s regulations employ a “knowingly” standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

1 Additionally, the Commission has found that providing strategic advice to political
2 committees on the content and target audience for campaign communications may amount to
3 participation in the decision-making process on a political committee in connection with its
4 election-related activities.

5 **A. DACA Recipients are Foreign Nationals Under the Act**

6 Respondents do not dispute that the three Sanders employees are, or were at the time of
7 the events at issue, participants in the DACA program and, therefore, were not citizens or
8 nationals of the United States and had not been “lawfully admitted for permanent residence.”³³

9 In 2012, under the DACA program, certain individuals born outside the United States,
10 but brought to the United States as children, were granted a reprieve from the enforcement of
11 immigration laws in an exercise of prosecutorial discretion.³⁴ In the memo establishing the
12 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano stated that
13 the policy conferred “no substantive right, immigration status or pathway to citizenship.”³⁵ The
14 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
15 at any time.³⁶ Currently, after three federal courts issued injunctions to prevent DACA’s
16 termination by DHS, persons who had already been granted DACA status could continue to

³³ 52 U.S.C. § 30121(b).

³⁴ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

³⁵ *Id.*

³⁶ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

1 request renewal: “Until further notice, and unless otherwise provided in this guidance, the
2 DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.”³⁷

3 All three Sanders employees apparently took advantage of the 2012 policy, which
4 allowed them to be lawfully present in the United States.³⁸ But, as the Napolitano Memo states
5 and courts have confirmed, DACA status does not confer citizenship, lawful permanent
6 residence, or any other immigration status.³⁹ Thus, at the time of their employment by the
7 Committees, Andiola, Vargas, and Belén Sisa were foreign nationals under the Act.

8 **B. There is Reason to Believe that the Foreign National Employees Directly or**
9 **Indirectly Participated in Decision-Making Processes Regarding the**
10 **Sanders’s Committees’ Election-Related Activities**

11 Neither the Complaint nor Response provide a clear picture of the roles that Vargas,
12 Andiola, and Belén Sisa played in the Sanders campaigns. The Complaint does not explicitly
13 detail the manner in which the three employees participated in the Committees’ decision-making
14 processes in connection with the making of contributions, donations, expenditures, or
15 disbursements, instead alleging that they violated the foreign national prohibition by working for
16 the campaign. The Response attempts to minimize the employees’ activities on the campaign
17 and asserts that they had “no influence over campaign decisions concerning its funding,
18 expenditures, or administration” without providing more specific information on their work for
19 the campaign.⁴⁰

³⁷ Department of Homeland Security, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019). As of the date of this report, the Supreme Court is considering the legality of DACA’s termination. See *Department of Homeland Security v. Regents of The University of California*, Nos. 18-587, 18-588, and 18-589 (U.S.).

³⁸ See Napolitano Memo.

³⁹ See *id.*; *Texas v. U.S.*, 809 F.3d at 147.

⁴⁰ Resp. at 3.

1 Nevertheless, based on the available information about their work for the Sanders
2 campaign, including their own public statements about their roles in the campaign, it is evident
3 that the three Sanders employees were not mere clerical workers, like Nava in MUR 6959, or
4 like Sir Elton John in MURs 5987, 5995, and 6015, a one-time volunteer performer. As the
5 Latino leaders and faces of the Sanders campaign, these employees were in a position to make
6 decisions about targeting voters and messaging, helping to shape the Committees' election-
7 related spending decisions and administration. In their roles working on Latino outreach for the
8 Sanders campaign, they were tasked with planning and executing events intended to mobilize the
9 Latino community to support Sanders. In addition, all three employees worked to help craft and
10 deliver campaign policy on the issue of immigration and other issues of interest to the Latino
11 community. By advising the campaign on its targeting and messaging, and then implementing
12 the campaign's outreach to Latino voters by planning and attending events, Andiola, Vargas, and
13 Belén Sisa participated in the decision-making processes of the Sanders committees in
14 connection with election-related activities.

15 Thus, because the overall record supports the allegation that foreign nationals participated
16 directly or indirectly in the Committees' decision-making processes in connection with its
17 election-related spending, the Commission finds reason to believe that Bernie 2016 and Susan
18 Jackson in her official capacity as treasurer, and Bernie 2020 and Lara Haggard in her official
19 capacity as treasurer violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i).

1 In addition, it appears that Sanders himself worked closely with Andiola and Vargas,
2 attending events with them and discussing immigration policy with them.⁴¹ He was undoubtedly
3 aware that they were DACA participants, and thus not U.S. citizens, but nevertheless intended
4 them to be part of his campaign by participating in the Committees' decision-making processes.
5 At a minimum, given the significant press coverage about Andiola, Vargas, and Belén Sisa
6 joining his campaign, Sanders acquiesced to his campaign hiring foreign nationals to advisory
7 roles. Under these facts, the Commission finds reason to believe that Bernard Sanders violated
8 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i).⁴²

9 **C. Belén Sisa's Contributions were *de minimus***

10 The Complaint alleges and the Commission's disclosure reports confirm that Belén Sisa
11 made ten contributions totaling \$35 to Bernie 2016. Based on the low dollar amount, the
12 Commission dismisses the allegation that Bernie 2016 accepted \$35 in prohibited foreign
13 national contributions.⁴³

⁴¹ See *Bernie Sanders promises swift immigration reform while visiting Arizona-Mexico border*, KTAR NEWS, March 19, 2016, <https://ktar.com/story/971290/bernie-sanders-immigration-visiting-arizona-mexico-border/> (attending rally with Andiola); *Families First with Bernie Sanders*, YOUTUBE (Dec. 7, 2015), <https://www.youtube.com/watch?v=cxaP4Ijo0ig&t=496s> (Video of Families First conference with Sanders and Andiola); Dara Lind, *Inside Bernie Sanders's quest to win over Nevada's Latinos*, VOX, Feb. 18, 2016, <https://www.vox.com/2016/2/17/11037066/bernie-sanders-latinos-nevada> (showing Sanders's presence at Last Vegas campaign office with Andiola and Vargas).

⁴² Sanders's personal involvement in this matter differs markedly from MUR 7035. In MUR 7035, the foreign national "delegates" provided campaign services in the form of volunteer recruitment calls, canvassing on the phone and door-to-door, and assistance on caucus days and for GOTV, all of which are activities on a local level. See Factual & Legal Analysis at 5, MUR 7035 (Bernie 2016). In this matter, the foreign national employees were given formal, campaign-wide titles, helped to form policy platforms, and placed in positions in close proximity to Sanders.

⁴³ See Factual & Legal Analysis at 2, MURs 7430, 7444, and 7445 (Unknown Respondents) (dismissing \$30 in foreign national contributions); Factual & Legal Analysis at 8, MURs 6962 and 6982 (Project Veritas) (dismissing \$35 or \$45 contribution for purchase of campaign t-shirt) .

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Erika Andiola MUR 7587
4
5

6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission
8 (“Commission”) by the Coolidge-Reagan Foundation. *See* 52 U.S.C. § 30109(a)(1). The
9 Complaint alleges that presidential candidate Bernard Sanders and his 2016 and 2020 authorized
10 committees, Bernie 2016 and Susan Jackson in her official capacity as treasurer and Bernie 2020
11 and Lora Haggard in her official capacity as treasurer (the “Committees”), accepted prohibited
12 foreign national contributions in violation of the Federal Election Campaign Act of 1971, as
13 amended (“Act”), by hiring Erika Andiola, a foreign national, to an advisory position. Andiola
14 did not respond to the Complaint.

15 **II. FACTUAL SUMMARY**

16 The Complaint alleges that in October 2015, Sanders and Bernie 2016 hired well-known
17 immigration activist Erika Andiola.¹ Andiola, originally from Mexico, served as Press Secretary
18 for Latino Outreach for Bernie 2016, and the Committee paid her \$46,588 in salary from
19 November 13, 2015, to August 15, 2016.² According to press reports, Andiola, then 28, had
20 advised the Hillary Clinton and Martin O’Malley presidential campaigns on their immigration

¹ Compl. at 3-4, (citing Adrian Carrasquillo, *Bernie Sanders Just Hired the Best Known Immigration Activist In The Country*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-JUST-HIRED-THE-BEST-KNOWN-IMMIGRATION-ACTIVIS](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-just-hired-the-best-known-immigration-activist) (Oct. 30, 2015) (referring to Andiola) (“BUZZFEED, Oct. 30, 2015”).

² Compl. at 4; *see also* Bernie 2016, Disbursements to Andiola, Nov. 13, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Andiola.

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1 policies before being hired by Sanders.³ Andiola was described as someone who “played a key
2 role in crafting” Sanders’s immigration platform and had the “remarkable ability to leverage
3 strong grassroots power at key moments.”⁴ Andiola’s work for the Committee involved making
4 “outward-facing media statements and outreach to the Latino community and build[ing]
5 relationships with Spanish-language and Latino media outlets.” She co-hosted a Families First
6 conference with Sanders.⁵

7 The Complaint alleges that Andiola is one of several “high profile” activists who “serve
8 in advisory campaign positions, enabling them to directly or indirectly participate in the
9 decision-making process of persons with regard to the election-related activities of Bernie
10 2016.”⁶ The Complaint also notes that Bernie 2016 is the subject of a conciliation agreement, in
11 which the Committee agreed that it had accepted prohibited in-kind foreign national
12 contributions when Australian “delegates” performed campaign services for the Committee
13 while the delegates received per diem stipends and had their travel paid for by the Australian
14 Labor Party.⁷

³ BUZZFEED, Oct. 30, 2015. Sanders was in “catch-up mode” when it “comes to Hispanic voter engagement, name recognition among Latinos compared to Clinton, and organization in Nevada, where many of these hires [Andiola] will be focused.” *Id.*; see also Ed Pilkington, *Dreamers on the campaign trail: “We cannot vote, but we do have a voice,”* GUARDIAN (UK), [HTTPS://WWW.THEGUARDIAN.COM/US-NEWS/2016/JAN/25/LATINO-VOTERS-CLINTON-SANDERS-CAMPAIGNS-DREAMERS](https://www.theguardian.com/us-news/2016/jan/25/latino-voters-clinton-sanders-campaigns-dreamers)(Andiola, one of Sanders’s Latino outreach directors, can’t vote and can’t work in White House, but “[t]hey are at the epicenter.”).

⁴ Julianne Hing, *The Young Activists Who Remade the Democratic Party’s Immigration Politics*, NATION (Jan. 21, 2016), <https://www.thenation.com/article/the-young-activists-who-remade-the-democratic-partys-immigration-politics/>.

⁵ See Families First with Bernie Sanders, YOUTUBE (Dec. 7, 2015), <https://www.youtube.com/watch?v=cxaP4Ijo0ig&t=496s>.

⁶ Compl. at 2.

⁷ *Id.* at 5 (citing MUR 7035).

1 **III. LEGAL ANALYSIS**

2 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
3 deposit of money or anything of value made by any person for the purpose of influencing any
4 election for Federal office.”⁸ The Act prohibits any “foreign national” from directly or indirectly
5 making a contribution or donation of money or other thing of value, or an expenditure, in
6 connection with a federal, state, or local election.⁹ The Act’s definition of “foreign national”
7 includes an individual who is not a citizen or national of the United States and who is not
8 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
9 22 U.S.C. § 611(b).¹⁰ Commission regulations implementing the Act’s foreign national
10 prohibition provide:

11 A foreign national shall not direct, dictate, control, or directly or indirectly
12 participate in the decision-making process of any person, such as a corporation,
13 labor organization, political committee, or political organization with regard to
14 such person’s Federal or non-Federal election-related activities, such as decisions
15 concerning the making of contributions, donations, expenditures, or
16 disbursements. . . or decisions concerning the administration of a political
17 committee.¹¹
18

⁸ 52 U.S.C. § 30101(8)(A).

⁹ 52 U.S.C. § 30121(a)(1); *see also* 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).

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

¹¹ 11 C.F.R. § 110.20(i).

1 The Commission has explained that this provision also bars foreign nationals from “involvement
2 in the management of a political committee.”¹²

3 In light of these provisions, Commission regulations permit any person or company —
4 foreign or domestic — to provide goods or services to a political committee, without making a
5 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
6 course of business, and at the usual and normal charge, as long as foreign nationals do not
7 directly or indirectly participate in any committee’s management or decision-making process in
8 connection with election-related activities.¹³

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

¹² Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

¹³ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

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1 a party committee.¹⁴ 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.¹⁵ 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.¹⁶

10 Additionally, the Commission has found that providing strategic advice to political
11 committees on the content and target audience for campaign communications may amount to
12 participation in the decision-making process on a political committee in connection with its
13 election-related activities.

¹⁴ 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)).

¹⁵ 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).

¹⁶ *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.) (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).

1 **A. DACA Recipients are Foreign Nationals under the Act**

2 There is no dispute that Andiola is, or was at the time of the events at issue, a participant
3 in the DACA program and, therefore, was not a citizen or national of the United States and had
4 not been “lawfully admitted for permanent residence.”¹⁷

5 In 2012, under the DACA program, certain individuals born outside the United States,
6 but brought to the United States as children, were granted a reprieve from the enforcement of
7 immigration laws in an exercise of prosecutorial discretion.¹⁸ In the memo establishing the
8 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano said that the
9 policy conferred “no substantive right, immigration status or pathway to citizenship.”¹⁹ The
10 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
11 at any time.²⁰ Currently, after three federal courts issued injunctions to prevent DACA’s
12 termination by DHS, persons who had already been granted DACA status could continue to
13 request renewal: “Until further notice, and unless otherwise provided in this guidance, the
14 DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.”²¹

¹⁷ 52 U.S.C. § 30121(b).

¹⁸ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

¹⁹ *Id.*

²⁰ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

²¹ Department of Homeland Security, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019). The legality of DACA’s termination is scheduled for argument before the U.S. Supreme Court on November 12, 2019. See *Department of Homeland Security v. Regents of The University of California*, Nos. 18-587, 18-588, and 18-589 (U.S.).

1 Andiola apparently took advantage of the 2012 policy, which allowed her to be lawfully
2 present in the United States.²² But, as the Napolitano Memo states and courts have confirmed,
3 DACA status does not confer citizenship, lawful permanent residence, or any other immigration
4 status.²³ Thus, at the time of her employment by the Committees, Andiola was a foreign national
5 under the Act.

6 **B. Andiola Participated in Election-Related Activities**

7 The Complaint does not provide a clear picture of the role that Andiola played in the
8 Sanders campaigns. The Complaint does not explicitly detail the manner in which she
9 participated in the Committees' decision-making processes in connection with the making of
10 contributions, donations, expenditures, or disbursements, instead alleging that she violated the
11 foreign national prohibition by working for the campaign.

12 Nevertheless, based on the available information about Andiola's work for the Sanders
13 campaign, including her own public statements about her role in the campaign, it is evident that
14 Andiola was not a mere clerical worker, like Nava in MUR 6959, or like Sir Elton John in MURs
15 5987, 5995, and 6015, a one-time volunteer performer. As a Latino leader and face of the
16 Sanders campaign, Andiola was in a position to make decisions about targeting voters and
17 messaging, helping to shape the Committee's election-related spending decisions and
18 administration. In her role working on Latino outreach for the Sanders campaign, Andiola was
19 tasked with planning and executing events intended to mobilize the Latino community to support
20 Sanders. In addition, she worked to help craft and deliver campaign policy on the issue of
21 immigration and other issues of interest to the Latino community. By advising the campaign on

²² *See* Napolitano Memo.

²³ *See id*; *Texas v. U.S.*, 809 F.3d at 147.

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1 its targeting and messaging, and then implementing the campaign’s outreach to Latino voters by
2 planning and attending events, Andiola participated in the decision-making processes of the
3 Sanders committee in connection with election-related activities.

4 Although Andiola violated the law, the Commission exercises its prosecutorial discretion
5 and dismisses the allegations as to her.²⁴ The information in the record indicates that while
6 Andiola was more involved than the low-level “delegates” in MUR 7035, she does not appear to
7 have held a management position or had a significant level of responsibility.²⁵ Thus, under the
8 specific circumstances of this matter and in consideration of the Commission’s resources and
9 other priorities, the Commission dismisses the allegations as to Erika Andiola.

²⁴ See *Heckler v. Chaney*, 470 U.S. 8221 (1985).

²⁵ Accord MUR 7035 (Australian Labor Party) (Foreign national “delegates” not named as respondents).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Cesar Vargas MUR 7587

4
5
6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission
8 (“Commission”) by the Coolidge-Reagan Foundation. *See* 52 U.S.C. § 30109(a)(1). The
9 Complaint alleges that presidential candidate Bernard Sanders and his 2016 and 2020 authorized
10 committees, Bernie 2016 and Susan Jackson in her official capacity as treasurer and Bernie 2020
11 and Lora Haggard in her official capacity as treasurer (the “Committees”), accepted prohibited
12 foreign national contributions in violation of the Federal Election Campaign Act of 1971, as
13 amended (“Act”), by hiring Cesar Vargas, a foreign national, for advisory positions and
14 accepting direct contributions from one of them. Cesar Vargas did not respond to the Complaint.

15 **II. FACTUAL SUMMARY**

16 The Complaint alleges that in October 2015, Sanders and Bernie 2016 hired well-known
17 immigration activist Cesar Vargas.¹ Vargas, from Mexico, was hired by Bernie 2016 as the
18 National Latino Outreach Strategist with responsibility for mobilizing young voters in the
19 Southwest.² The Committee paid him \$48,247 in salary from October 30, 2015, to August 15,

¹ Compl. at 3-4, (citing Adrian Carrasquillo, *Bernie Sanders Hires High-Profile DREAMer Activist For Latino Outreach*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-HIRES-HIGH-PROFILE-DREAMER-ACTIVIST-FOR-LATIN](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-hires-high-profile-dreamer-activist-for-latin) (Oct. 22, 2015) (referring to Vargas) (“BUZZFEED, Oct. 22, 2015”).

² Compl. at 3-4. It appears that Vargas is now a naturalized U.S. citizen after marrying a U.S. citizen in 2016. *See* Claudia Grisales, *Immigrant’s 18-year dream to join US military finally becomes reality*, STARS AND STRIPES, Apr. 24, 2019, <https://www.stripes.com/news/us/immigrant-s-18-year-dream-to-join-us-military-finally-becomes-reality-1.578336>.

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1 2016, for his work with Sanders.³ Vargas served as a contact with the Spanish-language and
2 Latino community and as speaker at community events, engaged in voter outreach, and sought to
3 organize and excite the Latino community base about the campaign. Vargas has stated that he
4 “joined the campaign because the Senator [Sanders] believes not only that we should meet
5 DREAMers but that DREAMers should be part of the conversation to champion policies for the
6 Latino community,”⁴ and that he was hired “to advise on Latino outreach and education.”⁵

7 The Complaint alleges that Vargas is one of several “high profile” activists who “serve in
8 advisory campaign positions, enabling them to directly or indirectly participate in the decision-
9 making process of persons with regard to the election-related activities of Bernie 2016.”⁶ The
10 Complaint also notes that Bernie 2016 is the subject of a conciliation agreement, in which the
11 Committee agreed that it had accepted prohibited in-kind foreign national contributions when
12 Australian “delegates” performed campaign services for the Committee while the delegates
13 received per diem stipends and had their travel paid for by the Australian Labor Party.⁷

14 III. LEGAL ANALYSIS

15 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
16 deposit of money or anything of value made by any person for the purpose of influencing any

³ Compl. at 4; *see also* Bernie 2016, Disbursements to Vargas, Oct. 30, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Vargas.

⁴ BUZZFEED, Oct. 22, 2015.

⁵ Marlena Fitzpatrick, *Cesar Vargas: American Dreamer*, LATINO REBELS, Jan. 2, 2016, <https://www.latinorebels.com/2016/01/02/cesar-vargas-american-dreamer/>.

⁶ Compl. at 2.

⁷ *Id.* at 5 (citing MUR 7035).

1 election for Federal office.”⁸ The Act prohibits any “foreign national” from directly or indirectly
2 making a contribution or donation of money or other thing of value, or an expenditure, in
3 connection with a federal, state, or local election.⁹ The Act’s definition of “foreign national”
4 includes an individual who is not a citizen or national of the United States and who is not
5 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
6 22 U.S.C. § 611(b).¹⁰ Commission regulations implementing the Act’s foreign national
7 prohibition provide:

8 A foreign national shall not direct, dictate, control, or directly or indirectly
9 participate in the decision-making process of any person, such as a corporation,
10 labor organization, political committee, or political organization with regard to
11 such person’s Federal or non-Federal election-related activities, such as decisions
12 concerning the making of contributions, donations, expenditures, or
13 disbursements. . . or decisions concerning the administration of a political
14 committee.¹¹
15

⁸ 52 U.S.C. § 30101(8)(A).

⁹ 52 U.S.C. § 30121(a)(1); *see also* 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).

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

¹¹ 11 C.F.R. § 110.20(i).

1 The Commission has explained that this provision also bars foreign nationals from “involvement
2 in the management of a political committee.”¹²

3 In light of these provisions, Commission regulations permit any person or company —
4 foreign or domestic — to provide goods or services to a political committee, without making a
5 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
6 course of business, and at the usual and normal charge, as long as foreign nationals do not
7 directly or indirectly participate in any committee’s management or decision-making process in
8 connection with election-related activities.¹³

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

¹² Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

¹³ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

1 a party committee.¹⁴ 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.¹⁵ 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.¹⁶

10 Additionally, the Commission has found that providing strategic advice to political
11 committees on the content and target audience for campaign communications may amount to
12 participation in the decision-making process on a political committee in connection with its
13 election-related activities.

¹⁴ 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)).

¹⁵ 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).

¹⁶ *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.) (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).

1 **A. Vargas is a Foreign National under the Act**

2 There is no dispute that Vargas, at the time of the events at issue, was a participant in the
3 DACA program and, therefore, was not a citizen or national of the United States and had not
4 been “lawfully admitted for permanent residence.”¹⁷

5 In 2012, under the DACA program, certain individuals born outside the United States,
6 but brought to the United States as children, were granted a reprieve from the enforcement of
7 immigration laws in an exercise of prosecutorial discretion.¹⁸ In the memo establishing the
8 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano said that the
9 policy conferred “no substantive right, immigration status or pathway to citizenship.”¹⁹ The
10 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
11 at any time.²⁰ Currently, after three federal courts issued injunctions to prevent DACA’s
12 termination by DHS, persons who had already been granted DACA status could continue to
13 request renewal: “Until further notice, and unless otherwise provided in this guidance, the
14 DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.”²¹

¹⁷ 52 U.S.C. § 30121(b).

¹⁸ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

¹⁹ *Id.*

²⁰ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

²¹ Department of Homeland Security, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019). The legality of DACA’s termination is scheduled for argument before the U.S. Supreme Court on November 12, 2019. See *Department of Homeland Security v. Regents of The University of California*, Nos. 18-587, 18-588, and 18-589 (U.S.).

1 Vargas apparently took advantage of the 2012 policy, which allowed him to be lawfully
2 present in the United States.²² But, as the Napolitano Memo states and courts have confirmed,
3 DACA status does not confer citizenship, lawful permanent residence, or any other immigration
4 status.²³ Thus, at the time of his employment by the Committee, Vargas was a foreign national
5 under the Act.

6 **B. Vargas Participated in Election-Related Activities**

7 The Complaint does not provide a clear picture of the role that Vargas played in the
8 Sanders campaigns. The Complaint does not explicitly detail the manner in which he
9 participated in the Committees' decision-making processes in connection with the making of
10 contributions, donations, expenditures, or disbursements, instead alleging that he violated the
11 foreign national prohibition by working for the campaign.

12 Nevertheless, based on the available information about Vargas's work for the Sanders
13 campaign, including his own public statements about his role in the campaign, it is evident that
14 Vargas was not a mere clerical worker, like Nava in MUR 6959, or like Sir Elton John in MURs
15 5987, 5995, and 6015, a one-time volunteer performer. As a Latino leader and face of the
16 Sanders campaign, Vargas was in a position to make decisions about targeting voters and
17 messaging, helping to shape the Committee's election-related spending decisions and
18 administration. In his role working on Latino outreach for the Sanders campaign, Vargas was
19 tasked with planning and executing events intended to mobilize the Latino community to support
20 Sanders. In addition, he worked to help craft and deliver campaign policy on the issue of
21 immigration and other issues of interest to the Latino community. By advising the campaign on

²² See Napolitano Memo.

²³ See *id*; *Texas v. U.S.*, 809 F.3d at 147.

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1 its targeting and messaging, and then implementing the campaign’s outreach to Latino voters by
2 planning and attending events, Vargas participated in the decision-making processes of the
3 Sanders committee in connection with election-related activities.

4 Although Vargas violated the law, the Commission exercises its prosecutorial discretion
5 and dismisses the allegations as to him.²⁴ The information in the record indicates that while
6 Vargas was more involved than the low-level “delegates” in MUR 7035, he does not appear to
7 have held a management position or had a significant level of responsibility.²⁵ Thus, under the
8 specific circumstances of this matter and in consideration of the Commission’s resources and
9 other priorities, the Commission dismisses the allegations as to Cesar Vargas.

²⁴ See *Heckler v. Chaney*, 470 U.S. 8221 (1985).

²⁵ Accord MUR 7035 (Australian Labor Party) (Foreign national “delegates” not named as respondents).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Maria Belén Sisa MUR 7587

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by the Coolidge-Reagan Foundation. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that presidential candidate Bernard Sanders and his 2016 and 2020 authorized committees, Bernie 2016 and Susan Jackson in her official capacity as treasurer and Bernie 2020 and Lora Haggard in her official capacity as treasurer (the “Committees”), accepted prohibited foreign national contributions in violation of the Federal Election Campaign Act of 1971, as amended (“Act”), by hiring three foreign national employees for advisory positions and accepting direct contributions from one of them. Maria Belén Sisa did not respond to the Complaint.

II. FACTUAL SUMMARY

After initially volunteering for Sanders 2016, Maria Belén Sisa an Argentinian national, was hired by the campaign in December 2015 to serve as a Latino Outreach Organizer in the Las Vegas, Nevada area.¹ From December 2015 through June 2016, the Committee paid Belén Sisa \$14,054.23 in salary for her work for Bernie 2016, which involved external community outreach through GOTV rallies in the Latino community.² From September 2015 through June 2016,

¹ Compl. at 4.

² Compl. at 4 (citing Jude Joffe-Block, *Can't Vote But Campaigning Hard for Presidential Candidates*, NPR, <https://www.npr.org/templates/transcript/transcript.php?storyId=460317302> Dec, 24, 2015.

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1 Belén Sisa also made ten contributions to Bernie 2016, totaling \$35.³ In late February 2019,
2 Bernie 2020 hired Belén Sisa as Latino Press Secretary, a Deputy Press Secretary position with
3 the campaign.⁴ Belén Sisa’s current responsibilities involve outward-facing media statements
4 and outreach to the Latino community and relationship building with Spanish-language and
5 Latino media outlets.⁵ Since being hired by Bernie 2020, Belén Sisa has received \$19,530.84 in
6 salary payments and travel reimbursements.⁶ In a September 2019 interview, Belén Sisa said
7 that DACA recipients and other Latino staffers were helping to shape a forthcoming immigration
8 policy statement from Sanders.⁷

9 The Complaint alleges that Belén Sisa is one of several “high profile” activists who
10 “serve in advisory campaign positions, enabling them to directly or indirectly participate in the
11 decision-making process of persons with regard to the election-related activities of Bernie
12 2016.”⁸ In addition, the Complaint alleges that Belén Sisa continued to work for Bernie 2020
13 and made the prohibited direct contributions.⁹ The Complaint also notes that Bernie 2016 is the
14 subject of a conciliation agreement, in which the Committee agreed that it had accepted

³ Compl. at 4.

⁴ Compl. at 5.

⁵ Belén Sisa has an active twitter account where she retweets Sanders’s tweets but also expresses her opinions on political issues related to the campaign. *See* <https://twitter.com/belenBelénSisaw>.

⁶ Bernie 2020, Disbursements to Belén Sisa, Mar. 15, 2019 – June 28, 2019, https://www.fec.gov/data/disbursements/?committee_id=C00696948&two_year_transaction_period=2020&two_year_transaction_period=2018&line_number=F3P-23&data_type=processed&recipient_name=BelénSisa;October2020QuarterlyReport.

⁷ *See* Rising with Krystal and Saagar, [hill.tv](https://www.youtube.com/watch?v=cDEOAJHzoEw&t=19s), Sept. 3, 2019, available at <https://www.youtube.com/watch?v=cDEOAJHzoEw&t=19s>.

⁸ Compl. at 2.

⁹ *Id.* at 6.

1 prohibited in-kind foreign national contributions when Australian “delegates” performed
2 campaign services for the Committee while the delegates received per diem stipends and had
3 their travel paid for by the Australian Labor Party.¹⁰

4 **III. LEGAL ANALYSIS**

5 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
6 deposit of money or anything of value made by any person for the purpose of influencing any
7 election for Federal office.”¹¹ The Act prohibits any “foreign national” from directly or
8 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
9 in connection with a federal, state, or local election.¹² The Act’s definition of “foreign national”
10 includes an individual who is not a citizen or national of the United States and who is not
11 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
12 22 U.S.C. § 611(b).¹³ Commission regulations implementing the Act’s foreign national
13 prohibition provide:

14 A foreign national shall not direct, dictate, control, or directly or indirectly
15 participate in the decision-making process of any person, such as a corporation,
16 labor organization, political committee, or political organization with regard to
17 such person’s Federal or non-Federal election-related activities, such as decisions
18 concerning the making of contributions, donations, expenditures, or
19

¹⁰ *Id.* at 5 (citing MUR 7035).

¹¹ 52 U.S.C. § 30101(8)(A).

¹² 52 U.S.C. § 30121(a)(1); *see also* 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).

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

1 disbursements. . . or decisions concerning the administration of a political
2 committee.¹⁴

3
4 The Commission has explained that this provision also bars foreign nationals from “involvement
5 in the management of a political committee.”¹⁵

6 In light of these provisions, Commission regulations permit any person or company —
7 foreign or domestic — to provide goods or services to a political committee, without making a
8 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
9 course of business, and at the usual and normal charge, as long as foreign nationals do not
10 directly or indirectly participate in any committee’s management or decision-making process in
11 connection with election-related activities.¹⁶

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

¹⁴ 11 C.F.R. § 110.20(i).

¹⁵ Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

¹⁶ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

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1 a party committee.¹⁷ 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.¹⁸ 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.¹⁹

10 Additionally, the Commission has found that providing strategic advice to political
11 committees on the content and target audience for campaign communications may amount to
12 participation in the decision-making process on a political committee in connection with its
13 election-related activities.

¹⁷ 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)).

¹⁸ 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).

¹⁹ *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.) (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).

1 **A. Belén Sisa is a Foreign National under the Act**

2 There is no dispute that Belén Sisa is, or was at the time of the events at issue, a
3 participant in the DACA program and, therefore, was not a citizen or national of the United
4 States and had not been “lawfully admitted for permanent residence.”²⁰

5 In 2012, under the DACA program, certain individuals born outside the United States,
6 but brought to the United States as children, were granted a reprieve from the enforcement of
7 immigration laws in an exercise of prosecutorial discretion.²¹ In the memo establishing the
8 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano said that the
9 policy conferred “no substantive right, immigration status or pathway to citizenship.”²² The
10 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
11 at any time.²³ Currently, after three federal courts issued injunctions to prevent DACA’s
12 termination by DHS, persons who had already been granted DACA status could continue to
13 request renewal: “Until further notice, and unless otherwise provided in this guidance, the
14 DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.”²⁴

²⁰ 52 U.S.C. § 30121(b).

²¹ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

²² *Id.*

²³ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

²⁴ Department of Homeland Security, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019). The legality of DACA’s termination is scheduled for argument before the U.S. Supreme Court on November 12, 2019. See *Department of Homeland Security v. Regents of The University of California*, Nos. 18-587, 18-588, and 18-589 (U.S.).

1 Belén Sisa apparently took advantage of the 2012 policy, which allowed her to be
2 lawfully present in the United States.²⁵ But, as the Napolitano Memo states and courts have
3 confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other
4 immigration status.²⁶ Thus, at the time of her employment by the Committees, Belén Sisa was a
5 foreign national under the Act.

6 **B. Belén Sisa Participated in Election-Related Activities**

7 The Complaint does not provide a clear picture of the role that Belén Sisa played in the
8 Sanders campaigns. The Complaint does not explicitly detail the manner in which Belén Sisa
9 participated in the Committees' decision-making processes in connection with the making of
10 contributions, donations, expenditures, or disbursements, instead alleging that she violated the
11 foreign national prohibition by working for the campaign.

12 Nevertheless, based on the available information about Belén Sisa's work for the Sanders
13 campaign, including her own public statements about her role in the campaign, it is evident that
14 Belén Sisa was not a mere clerical worker, like Nava in MUR 6959, or like Sir Elton John in
15 MURs 5987, 5995, and 6015, a one-time volunteer performer. As a Latino leader and face of the
16 Sanders campaign, Belén Sisa was in a position to make decisions about targeting voters and
17 messaging, helping to shape the Committee's election-related spending decisions and
18 administration. In her role working on Latino outreach for the Sanders campaign, Belén Sisa
19 was tasked with planning and executing events intended to mobilize the Latino community to
20 support Sanders. In addition, she worked to help craft and deliver campaign policy on the issue
21 of immigration and other issues of interest to the Latino community. By advising the campaign

²⁵ See Napolitano Memo.

²⁶ See *id.*; *Texas v. U.S.*, 809 F.3d at 147.

1 on its targeting and messaging, and then implementing the campaign’s outreach to Latino voters
2 by planning and attending events, Belén Sisa participated in the decision-making processes of
3 the Sanders committee in connection with election-related activities.

4 Although Belén Sisa violated the law, the Commission exercises its prosecutorial
5 discretion and dismisses the allegations as to her.²⁷ The information in the record indicates that
6 while Belén Sisa was more involved than the low-level “delegates” in MUR 7035, she does not
7 appear to have held a management position or had a significant level of responsibility.²⁸ Thus,
8 under the specific circumstances of this matter and in consideration of the Commission’s
9 resources and other priorities, the Commission dismisses the allegations as to Maria Belén Sisa.

10 **C. Belén Sisa’s Contributions were *de minimis***

11 The Complaint alleges and the Commission’s disclosure reports confirm that Belén Sisa
12 made ten contributions totaling \$35 to Bernie 2016. Based on the low dollar amount, the
13 Commission dismisses the allegation that Maria Belén Sisa made \$35 in prohibited foreign
14 national contributions.²⁹

²⁷ See *Heckler v. Chaney*, 470 U.S. 8221 (1985).

²⁸ Accord MUR 7035 (Australian Labor Party) (Foreign national “delegates” not named as respondents).

²⁹ See Factual & Legal Analysis at 2, MURs 7430, 7444, and 7445 (Unknown Respondents) (dismissing \$30 in foreign national contributions); Factual & Legal Analysis at 8, MURs 6962 and 6982 (Project Veritas) (dismissing \$35 or \$45 contribution for purchase of campaign t-shirt) .

CCH proposed edits

1 **FEDERAL ELECTION COMMISSION**2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Bernard Sanders MUR 7587
4 Bernie 2016 and Susan Jackson in her official
5 capacity as treasurer
6 Bernie 2020 and Lora Haggard in her official
7 capacity as treasurer
8

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission
11 (“Commission”) by the Coolidge-Reagan Foundation. *See* 52 U.S.C. § 30109(a)(1). The
12 Complaint alleges that presidential candidate Bernard Sanders and his 2016 and 2020 authorized
13 committees, Bernie 2016 and Susan Jackson in her official capacity as treasurer and Bernie 2020
14 and Lora Haggard in her official capacity as treasurer (the “Committees”), accepted prohibited
15 foreign national contributions in violation of the Federal Election Campaign Act of 1971, as
16 amended (“Act”), by hiring three foreign national employees for advisory positions and
17 accepting direct contributions from one of them. Sanders and the Committees respond that the
18 employees did not hold positions of influence, it would be an unnecessary expansion of the
19 foreign national contribution prohibition to apply it to Deferred Action for Childhood Arrivals
20 (“DACA”) recipients, and the direct contribution was *de minimis*.

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1 II. FACTUAL SUMMARY

2 The Complaint alleges that in October 2015, Sanders and Bernie 2016 hired well-known
3 immigration activists Erika Andiola and Cesar Vargas.¹ Andiola, originally from Mexico,
4 allegedly served as Press Secretary for Latino Outreach for Bernie 2016 and the Committee paid
5 her \$46,588 in salary from November 13, 2015, to August 15, 2016.² According to press reports,
6 Andiola, then 28, had advised the Hillary Clinton and Martin O’Malley presidential campaigns
7 on their immigration policies before being hired by the Sanders campaign.³ According to the
8 Response, Andiola’s work for the Committee involved making “outward-facing media
9 statements and outreach to the Latino community and build[ing] relationships with Spanish-
10 language and Latino media outlets.”⁴

11 Vargas, also originally from Mexico, was allegedly hired by Bernie 2016 as the National
12 Latino Outreach Strategist with responsibility for mobilizing young voters in the Southwest.⁵
13 The Committee paid him \$48,247 in salary from October 30, 2015, to August 15, 2016, for his

¹ Compl. at 3-4 (citing Adrian Carrasquillo, *Bernie Sanders Hires High-Profile DREAMer Activist For Latino Outreach*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-HIRES-HIGH-PROFILE-DREAMER-ACTIVIST-FOR-LATIN](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-hires-high-profile-dreamer-activist-for-latin) (Oct. 22, 2015) (referring to Vargas) (“BUZZFEED, Oct. 22, 2015”); Adrian Carrasquillo, *Bernie Sanders Just Hired the Best Known Immigration Activist In The Country*, BUZZFEED NEWS, [HTTPS://WWW.BUZZFEEDNEWS.COM/ARTICLE/ADRIANCARRASQUILLO/BERNIE-SANDERS-JUST-HIRED-THE-BEST-KNOWN-IMMIGRATION-ACTIVIS](https://www.buzzfeednews.com/article/adriancarrasquillo/bernie-sanders-just-hired-the-best-known-immigration-activis) (Oct. 30, 2015) (referring to Andiola) (“BUZZFEED, Oct. 30, 2015”).

² Compl. at 4; *see also* Bernie 2016, Disbursements to Andiola, Nov. 13, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Andiola.

³ BUZZFEED, Oct. 30, 2015. Sanders was reportedly in “catch-up mode” when it “comes to Hispanic voter engagement, name recognition among Latinos compared to Clinton, and organization in Nevada, where many of these hires [Andiola and Cesar Vargas] will be focused.” *Id.*

⁴ Resp. of Sanders, Bernie 2016, and Bernie 2020 at 2-3 (June 4, 2019).

⁵ Compl. at 3-4. The Response states his title as Latino Outreach Deputy Director. Resp. at 3.

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1 work with Sanders.⁶ The Response states that Vargas served as a contact with the Spanish-
2 language and Latino community and as speaker at community events, engaged in voter outreach,
3 and “sought to organize and excite the Latino community base about the campaign.”⁷ Vargas
4 has stated that he “joined the campaign because the Senator [Sanders] believes not only that we
5 should meet DREAMers but that DREAMers should be part of the conversation to champion
6 policies for the Latino community.”⁸

7 After initially volunteering for Sanders, Maria Belén Sisa, an Argentinian national, was
8 allegedly hired by the campaign in December 2015 to serve as a Latino Outreach Organizer in
9 the Las Vegas, Nevada area.⁹ From December 2015 through June 2016, the Committee paid
10 Belén Sisa \$14,054.23 in salary for her work for Bernie 2016, which the Response states
11 involved “external community outreach through GOTV rallies in the Latino community.”¹⁰
12 From September 2015 through June 2016, Belén Sisa also made ten contributions to Bernie
13 2016, totaling \$35.¹¹ In late February 2019, Bernie 2020 hired Belén Sisa as Latino Press
14 Secretary, reportedly a Deputy Press Secretary position with the campaign.¹² The Response
15 states that Belén Sisa’s current responsibilities involve “outward-facing media statements and

⁶ Compl. at 4; *see also* Bernie 2016, Disbursements to Vargas, Oct. 30, 2015 – Aug. 15, 2016, https://www.fec.gov/data/disbursements/?committee_id=C00577130&two_year_transaction_period=2016&cycle=2016&line_number=F3P-23&data_type=processed&recipient_name=Vargas.

⁷ Resp. at 3.

⁸ BUZZFEED, Oct. 22, 2015.

⁹ Compl. at 4.

¹⁰ Resp. at 3; *see also* Compl. at 4 (citing Jude Joffe-Block, *Can’t Vote But Campaigning Hard for Presidential Candidates*, NPR, <https://www.npr.org/templates/transcript/transcript.php?storyId=460317302> Dec. 24, 2015).

¹¹ Compl. at 4.

¹² Compl. at 5; Resp. at 3.

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1 outreach to the Latino community and relationship building with Spanish-language and Latino
2 media outlets.”¹³ Since being hired by Bernie 2020, Belén Sisa has received \$19,530.84 in
3 salary payments and travel reimbursements.¹⁴

4 The Complaint alleges that Andiola, Vargas, and Belén Sisa are “high profile” activists
5 who “serve in advisory campaign positions, enabling them to directly or indirectly participate in
6 the decision-making process of persons with regard to the election-related activities of Bernie
7 2016.”¹⁵ In addition, the Complaint alleges that Belén Sisa continued to work for Bernie 2020
8 and made the prohibited direct contributions.¹⁶

9 The Response asserts that the three employees were not engaged in positions that
10 provided them with a basis to influence, directly or indirectly, the decision-making processes of
11 the committees, “either on funding or administration,” and “were hired to serve solely in non-
12 discretionary roles.”¹⁷ They also argue that DACA recipients are in a special category of foreign
13 nationals for which the foreign national prohibition is of far less concern, and that enforcing it
14 against them would violate their First Amendment rights. The Response finally argues that
15 Belén Sisa’s \$35 in political contributions are *de minimis*.

16 III. LEGAL ANALYSIS

17 The Act provides that a contribution includes “any gift, subscription, loan, advance, or

¹³ Compl. at 5; Resp. at 3.

¹⁴ Bernie 2020, Disbursements to Sisa, Mar. 15, 2019 – June 28, 2019,
https://www.fec.gov/data/disbursements/?committee_id=C00696948&two_year_transaction_period=2020&two_year_transaction_period=2018&line_number=F3P-23&data_type=processed&recipient_name=Sisa; October 2020 Quarterly Report.

¹⁵ Compl. at 2.

¹⁶ *Id.* at 6.

¹⁷ Resp. at 2.

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1 deposit of money or anything of value made by any person for the purpose of influencing any
2 election for Federal office.”¹⁸ The Act prohibits any “foreign national” from directly or
3 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
4 in connection with a federal, state, or local election.¹⁹ The Act’s definition of “foreign national”
5 includes an individual who is not a citizen or national of the United States and who is not
6 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
7 22 U.S.C. § 611(b).²⁰ Commission regulations implementing the Act’s foreign national
8 prohibition provide:

9 A foreign national shall not direct, dictate, control, or directly or indirectly
10 participate in the decision-making process of any person, such as a corporation,
11 labor organization, political committee, or political organization with regard to
12 such person’s Federal or non-Federal election-related activities, such as decisions
13 concerning the making of contributions, donations, expenditures, or
14 disbursements. . . or decisions concerning the administration of a political
15 committee.²¹
16

17 The Commission has explained that this provision also bars foreign nationals from “involvement
18 in the management of a political committee.”²²

¹⁸ 52 U.S.C. § 30101(8)(A).

¹⁹ 52 U.S.C. § 30121(a)(1); *see also* 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).

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

²¹ 11 C.F.R. § 110.20(i).

²² Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

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1 In light of these provisions, Commission regulations permit any person or company —
2 foreign or domestic — to provide goods or services to a political committee, without making a
3 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
4 course of business, and at the usual and normal charge, as long as foreign nationals do not
5 directly or indirectly participate in any committee’s management or decision-making process in
6 connection with election-related activities.²³

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

²³ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

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1 a party committee.²⁴ 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.²⁵ 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.²⁶ The Act
10 further prohibits persons from soliciting, accepting, or receiving a contribution or donation from
11 a foreign national.²⁷

²⁴ 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)).

²⁵ 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).

²⁶ *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.) (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).

²⁷ 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

1

2 **A. DACA Recipients are Foreign Nationals Under the Act**

3 Respondents do not dispute that the three Sanders employees are, or were at the time of
4 the events at issue, participants in the DACA program and, therefore, were not citizens or
5 nationals of the United States and had not been “lawfully admitted for permanent residence.”²⁸

6 In 2012, under the DACA program, certain individuals born outside the United States,
7 but brought to the United States as children, were granted a reprieve from the enforcement of
8 immigration laws in an exercise of prosecutorial discretion.²⁹ In the memo establishing the
9 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano stated that
10 the policy conferred “no substantive right, immigration status or pathway to citizenship.”³⁰ The
11 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
12 at any time.³¹ Currently, after three federal courts issued injunctions to prevent DACA’s
13 termination by DHS, persons who had already been granted DACA status could continue to
14 request renewal: “Until further notice, and unless otherwise provided in this guidance, the
15 DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.”³²

²⁸ 52 U.S.C. § 30121(b).

²⁹ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

³⁰ *Id.*

³¹ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

³² Department of Homeland Security, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019). As of the date of this report, the Supreme Court is considering the legality of DACA’s termination. See *Department of Homeland Security v. Regents of The University of California*, Nos. 18-587, 18-588, and 18-589 (U.S.).

1 All three Sanders employees apparently took advantage of the 2012 policy, which
2 allowed them to be lawfully present in the United States.³³ But, as the Napolitano Memo states
3 and courts have confirmed, DACA status does not confer citizenship, lawful permanent
4 residence, or any other immigration status.³⁴ Thus, at the time of their employment by the
5 Committees, Andiola, Vargas, and Belén Sisa were foreign nationals under the Act.

6 **B. There is Reason to Believe that the Foreign National Employees Directly or**
7 **Indirectly Participated in Decision-Making Processes Regarding the**
8 **Sanders’s Committees’ Election-Related Activities**
9

10 Neither the Complaint nor Response provide a clear picture of the roles that Vargas,
11 Andiola, and Belén Sisa played in the Sanders campaigns. The Complaint does not explicitly
12 detail the manner in which the three employees participated in the Committees’ decision-making
13 processes in connection with the making of contributions, donations, expenditures, or
14 disbursements, instead alleging that they violated the foreign national prohibition by working for
15 the campaign. The Response asserts that they had “no influence over campaign decisions
16 concerning its funding, expenditures, or administration” without providing specific information
17 on their work for the campaign.³⁵

18 Nevertheless, information in the record indicates that the three Sanders employees may
19 have participated, directly or indirectly, in the Committees’ decision-making processes material
20 to the Committees’ election-related spending. Vargas, Andiola, and Belén Sisa appear to have
21 been leaders and faces of the Sanders campaign responsible for Latino outreach. As such, these
22 employees were in a position to plan and execute events intended to mobilize the Latino

³³ See Napolitano Memo.

³⁴ See *id.*; *Texas v. U.S.*, 809 F.3d at 147.

³⁵ Resp. at 3.

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1 community to support Sanders, such as GOTV rallies; to help craft and deliver campaign policy
2 on the issue of immigration and other issues of interest to the Latino community; and to make
3 decisions or advise the campaign on its targeting and messaging to implement the campaign's
4 outreach to Latino voters. These activities implicate the Committees' election-related spending
5 decisions, and the senior campaign titles held by Andiola, Vargas, and Belén Sisa, as well as the
6 salaries provided to Andiola and Vargas, indicate that they may have played a significant role.

7 Thus, because the overall record supports the allegation that foreign nationals participated
8 directly or indirectly in the Committees' decision-making processes in connection with the
9 Committees' election-related spending, the Commission finds reason to believe that Bernie 2016
10 and Susan Jackson in her official capacity as treasurer, and Bernie 2020 and Lara Haggard in her
11 official capacity as treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

12 The Commission exercises its prosecutorial discretion and dismisses the allegations as to
13 Sanders in his personal capacity.³⁶ Although the information in the record indicates that
14 Andiola, Vargas, and Belen Sisa were more involved with Sanders 2016 and Sanders 2020 than
15 the low-level “delegates” in MUR 7035,³⁷ the information does not indicate that Sanders himself
16 knowingly solicited or accepted contributions from them. Thus, under the specific circumstances
17 of this matter and in consideration of the Commission's resources and other priorities, the
18 Commission dismisses the allegations as to Bernard Sanders.

19 **C. Belén Sisa's Contributions were *de minimis***

³⁶ See *Heckler v. Chaney*, 470 U.S. 8221 (1985).

³⁷ MUR 7035 (Australian Labor Party) (Candidate and foreign national “delegates” not named as respondents).

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1 The Complaint alleges and the Commission’s disclosure reports confirm that Belén Sisa
2 made ten contributions totaling \$35 to Bernie 2016. Based on the low dollar amount, the
3 Commission dismisses the allegation that Bernie 2016 accepted \$35 in prohibited foreign
4 national contributions.³⁸

³⁸ See Factual & Legal Analysis at 2, MURs 7430, 7444, and 7445 (Unknown Respondents) (dismissing \$30 in foreign national contributions); Factual & Legal Analysis at 8, MURs 6962 and 6982 (Project Veritas) (dismissing \$35 or \$45 contribution for purchase of campaign t-shirt) .