



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 2021

Erika Andiola

Tempe, Arizona 85282

RE: MUR 7587
Erika Andiola

Dear Ms. Andiola:

On March 27, 2019, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on February 23, 2021, voted to dismiss the allegations as they pertain to you. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Erika Andiola 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 Erika Andiola, a foreign national, to an advisory position. Andiola did not respond to the Complaint.

II. FACTUAL SUMMARY

The Complaint alleges that in October 2015, Sanders and Bernie 2016 hired well-known immigration activist Erika Andiola.¹ Andiola, originally from Mexico, served as Press Secretary for Latino Outreach for Bernie 2016, and the Committee paid her \$46,588 in salary from November 13, 2015, to August 15, 2016.² According to press reports, Andiola, then 28, had 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.

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

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. 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).

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.

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).