



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 2021

Cesar Vargas, Esq.

Woodside, New York 11377

RE: MUR 7587
Cesar Vargas

Dear Mr. Vargas:

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: Cesar Vargas 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 Cesar Vargas, a foreign national, for advisory positions and accepting direct contributions from one of them. Cesar Vargas 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 Cesar Vargas.¹ Vargas, from Mexico, was hired by Bernie 2016 as the National Latino Outreach Strategist with responsibility for mobilizing young voters in the 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>.

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

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).

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.”).

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.¹³

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
11 a party committee.¹⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
12 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
13 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
14 likeness in its emails promoting the concert and soliciting support, where the record did not

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.

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)).

1 indicate that the foreign national had been involved in the committee’s decision-making process
2 in connection with the making of contributions, donations, expenditures, or disbursements.¹⁵ By
3 contrast, the Commission has consistently found a violation of the foreign national prohibition
4 where foreign national officers or directors of a U.S. company participated in the company’s
5 decisions to make contributions or in the management of its separate segregated fund.¹⁶

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

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

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

14 In 2012, under the DACA program, certain individuals born outside the United States,
15 but brought to the United States as children, were granted a reprieve from the enforcement of

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).

¹⁷ 52 U.S.C. § 30121(b).

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

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

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).

²² See Napolitano Memo.

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

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

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

7 Nevertheless, based on the available information about Vargas's work for the Sanders
8 campaign, including his own public statements about his role in the campaign, it is evident that
9 Vargas was not a mere clerical worker, like Nava in MUR 6959, or like Sir Elton John in MURs
10 5987, 5995, and 6015, a one-time volunteer performer. As a Latino leader and face of the
11 Sanders campaign, Vargas was in a position to make decisions about targeting voters and
12 messaging, helping to shape the Committee's election-related spending decisions and
13 administration. In his role working on Latino outreach for the Sanders campaign, Vargas was
14 tasked with planning and executing events intended to mobilize the Latino community to support
15 Sanders. In addition, he worked to help craft and deliver campaign policy on the issue of
16 immigration and other issues of interest to the Latino community. By advising the campaign on
17 its targeting and messaging, and then implementing the campaign's outreach to Latino voters by
18 planning and attending events, Vargas participated in the decision-making processes of the
19 Sanders committee in connection with election-related activities.

20 Although Vargas violated the law, the Commission exercises its prosecutorial discretion
21 and dismisses the allegations as to him.²⁴ The information in the record indicates that while

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

1 Vargas was more involved than the low-level “delegates” in MUR 7035, he does not appear to
2 have held a management position or had a significant level of responsibility.²⁵ Thus, under the
3 specific circumstances of this matter and in consideration of the Commission’s resources and
4 other priorities, the Commission dismisses the allegations as to Cesar Vargas.

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