



**FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463**

August 11, 2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Shaun McCutcheon
Coolidge Reagan Foundation
1629 K Street, NW, Suite 300
Washington, DC 20006

RE: MUR 7587
Bernard Sanders, *et al.*

Dear Mr. McCutcheon:

This is in reference to the complaint you filed with the Federal Election Commission on March 25, 2019, concerning Bernard Sanders, Bernie 2016 and Susan Jackson in her official capacity as treasurer, and Bernie 2020 and Lora Haggard in her official capacity as treasurer ("Respondents"). The Commission found that there was reason to believe Respondents violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i), provisions of the Federal Election Campaign Act of 1971, as amended, and Commission regulations. On August 8, 2022, a conciliation agreement signed by the Respondents was accepted by the Commission. Previously, on February 23, 2021, the Commission dismissed the complaint as to Maria Belén Sisa, Erika Andiola, and Cesar Vargas. Accordingly, the Commission closed the file in this matter on August 8, 2022.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the agreement with Respondents is enclosed for your information, along with the Factual and Legal Analyses explaining the Commission's vote to dismiss other respondents.

If you have any questions, please contact me at (202) 694-1548.

Sincerely,
Elena Paoli
Elena Paoli
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analyses

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Bernard Sanders)	MUR 7587
Bernie 2016 and Susan Jackson in her official)	
capacity as treasurer)	
Bernie 2020 and Lora Haggard in her official)	
capacity as treasurer)	

CONCILIATION AGREEMENT

This matter was initiated by signed, sworn, and notarized complaints by the Coolidge-Reagan Foundation and Richard Turner. The Federal Election Commission (“Commission”) found reason to believe that Senator Bernard Sanders, Bernie 2016 and Susan Jackson in her official capacity as treasurer (“Bernie 2016”), and Bernie 2020 and Lora Haggard in her official capacity as treasurer (“Bernie 2020”) (collectively “Respondents”)¹ violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C.

§ 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

¹ Bernie 2016 and Bernie 2020 are collectively referred to as the “Committees.”

1. Senator Bernard Sanders was a presidential candidate in the 2016 and 2020 elections.
2. Bernie 2016 was Sanders's principal campaign committee in the 2016 election and is a political committee within the meaning of 52 U.S.C. § 30102(e). Susan Jackson is the treasurer of Bernie 2016.
3. Bernie 2020 was Sanders's principal campaign committee in the 2020 election and is a political committee within the meaning of 52 U.S.C. § 30102(e). Lora Haggard is the treasurer of Bernie 2020.
4. In late 2015, Bernie 2016 knowingly hired three individuals as paid staffers who were not United States citizens and who were not lawfully admitted for permanent residence to serve as advisers to his 2016 campaign. Two of the individuals were born in Mexico and one was born in Argentina. All three employees qualified for and were registered as participants in the Deferred Action for Childhood Arrivals ("DACA") program.²

² "The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion [*i.e.*, DACA] pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty."

5. In February 2019, Bernie 2020 hired the individual born in Argentina to serve as a paid staff adviser to his 2020 campaign.

6. The three individuals were employed by the Bernie 2016 and Bernie 2020 campaigns under the job titles, “Latino Press Secretary,” “National Latino Outreach Strategist,” and “Press Secretary for Latino Outreach.” They were tasked with planning and executing events intended to mobilize the Spanish-speaking and Latino communities to support Sanders and serving as contacts for Latino media outlets. The employees worked to help craft and deliver campaign policy on the issue of immigration and other issues of interest to the Latino community.

7. The Federal Election Campaign Act of 1971, as amended (“Act”) provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”

52 U.S.C. § 30101(8)(A).

8. The Act prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, in connection with a federal, state, or local election. 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (e), (f). The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b). 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

9. Commission regulations implementing the Act’s foreign national prohibition provide:

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

donations, expenditures, or disbursements. . . or decisions concerning the administration of a political committee.

11 C.F.R. § 110.20(i).

10. The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national. 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).

11. Under the DACA policy of 2012, the three foreign national employees were granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial discretion, thus allowing them to be lawfully present in the United States. DACA status, however, does not confer citizenship, lawful permanent residence, or any other immigration status.³ Thus, the Respondents acknowledge that the Commission has determined that at the time of their employment by the Committees, the three employees were "foreign nationals" under the Act.

12. As Latino leaders and faces of the Sanders campaign, these employees were in a position to participate in making decisions about targeting voters and messaging, helping to shape the Committees' election-related spending decisions and administration. By advising the campaign on its targeting and messaging, and then implementing the campaign's outreach to

³ See Janet Napolitano Memo.

Latino voters by planning and attending events, the three employees participated in the decision-making processes of the Sanders committees in connection with election-related activities.

13. Respondents contend that the Act’s foreign national prohibition was adopted before the DACA program was implemented, and that each of the three individuals was a qualified and registered participant in the DACA program (“DACA Recipient”) — such that their status is akin to being lawfully admitted for permanent residence (commonly referred to as “Green Card” holders). Respondents further contend that, by definition, DACA Recipients have been brought into the United States as children and, lacking any legal status, have never been able to freely return to their birth countries. Respondents contend that DACA Recipients have grown up in the United States with no other home and, that unlike Green Card holders (a category of persons that are not “foreign nationals” under the Act), DACA Recipients owe no other allegiance to any nation besides the United States.

14. In 2018, Bernie 2016 entered into a conciliation agreement with the Commission promising to cease and desist from violating 52 U.S.C. § 30121(a)(2). *See* Conciliation Agreement ¶ VI.2, MUR 7035 (Bernie 2016, *et al.*) (Feb. 14, 2018).

V. Solely for the purpose of settling this matter expeditiously and to avoid the expense of litigation, without admitting liability as to any other proceeding:

1. Respondents agree not to further contest the Commission’s finding in this matter that these three individuals, who were born outside the United States and are not U.S. citizens or legal permanent residents, are “foreign nationals” under the Act.

2. Respondents accordingly admit that by knowingly hiring these three individuals as paid staffers to participate in the Committees’ decision-making processes

regarding election-related spending or administration, they violated 52 U.S.C.

§ 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i).

VI. 1. The Committees will cease and desist from violating 52 U.S.C.

§ 30121(a)(2) and 11 C.F.R. § 110.20(g) and (i).

2. Respondents will pay a civil penalty to the Commission in the amount of Fifteen Thousand dollars (\$15,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

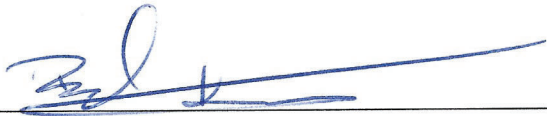
Lisa J. Stevenson
Acting General Counsel

BY: **Charles Kitcher**
Charles Kitcher
Associate General Counsel for Enforcement

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Charles Kitcher
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8/9/22
Date

FOR THE RESPONDENTS:


Brad Deutsch
Counsel

1/14/2022
Date

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.

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).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Maria Belén Sisa 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 and a complaint filed by Richard Turner.
9 *See* 52 U.S.C. § 30109(a)(1).¹ The Complaints allege that presidential candidate Bernard
10 Sanders and his 2016 and 2020 authorized committees, Bernie 2016 and Susan Jackson in her
11 official capacity as treasurer and Bernie 2020 and Lora Haggard in her official capacity as
12 treasurer (the “Committees”), accepted prohibited foreign national contributions in violation of
13 the Federal Election Campaign Act of 1971, as amended (“Act”), by hiring three foreign national
14 employees for advisory positions and accepting direct contributions from one of them. Maria
15 Belén Sisa did not respond to the Complaints.

16 **II. FACTUAL SUMMARY**

17 After initially volunteering for Sanders 2016, Maria Belén Sisa, an Argentinian national,
18 was hired by the campaign in December 2015 to serve as a Latino Outreach Organizer in the Las
19 Vegas, Nevada area.² From December 2015 through June 2016, the Committee paid Belén Sisa
20 \$14,054.23 in salary for her work for Bernie 2016, which involved external community outreach

¹ MUR 7587 Complaint (Mar. 25, 2019) and MUR 7712 Complaint (Mar. 2, 2020). The Commission merged the allegations in MUR 7712 as to Maria Belén Sisa into MUR 7587. Hereinafter, references to the Complaint are to the Complaint in MUR 7587.

² Compl. at 4.

1 through GOTV rallies in the Latino community.³ From September 2015 through June 2016,
2 Belén Sisa also made ten contributions to Bernie 2016, totaling \$35.⁴ In late February 2019,
3 Bernie 2020 hired Belén Sisa as Latino Press Secretary, a Deputy Press Secretary position with
4 the campaign.⁵ Belén Sisa’s current responsibilities involve outward-facing media statements
5 and outreach to the Latino community and relationship building with Spanish-language and
6 Latino media outlets.⁶ Since being hired by Bernie 2020, Belén Sisa has received \$19,530.84 in
7 salary payments and travel reimbursements.⁷ In a September 2019 interview, Belén Sisa said
8 that DACA recipients and other Latino staffers were helping to shape a forthcoming immigration
9 policy statement from Sanders.⁸

10 The Complaints allege that Belén Sisa is one of several “high profile” activists who
11 “serve in advisory campaign positions, enabling them to directly or indirectly participate in the
12 decision-making process of persons with regard to the election-related activities of Bernie
13 2016.”⁹ In addition, the Complaint alleges that Belén Sisa continued to work for Bernie 2020

³ *Id.* 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).

⁴ Compl. at 4.

⁵ *Id.* at 5.

⁶ 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/belenBelén Sisa>.

⁷ 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=Belén Sisa; October 2020 Quarterly Report.

⁸ *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>.

⁹ Compl. at 2.

1 and made the prohibited direct contributions.¹⁰ The Complaint also notes that Bernie 2016 is the
2 subject of a conciliation agreement, in which the Committee agreed that it had accepted
3 prohibited in-kind foreign national contributions when Australian “delegates” performed
4 campaign services for the Committee while the delegates received per diem stipends and had
5 their travel paid for by the Australian Labor Party.¹¹

6 **III. LEGAL ANALYSIS**

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

16 A foreign national shall not direct, dictate, control, or directly or indirectly
17 participate in the decision-making process of any person, such as a corporation,

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5 (citing MUR 7035).

¹² 52 U.S.C. § 30101(8)(A).

¹³ 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).

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

1 labor organization, political committee, or political organization with regard to
2 such person’s Federal or non-Federal election-related activities, such as decisions
3 concerning the making of contributions, donations, expenditures, or
4 disbursements. . . or decisions concerning the administration of a political
5 committee.¹⁵
6

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

9 In light of these provisions, Commission regulations permit any person or company —
10 foreign or domestic — to provide goods or services to a political committee, without making a
11 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
12 course of business, and at the usual and normal charge, as long as foreign nationals do not
13 directly or indirectly participate in any committee’s management or decision-making process in
14 connection with election-related activities.¹⁷

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

¹⁵ 11 C.F.R. § 110.20(i).

¹⁶ 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.”).

¹⁷ 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 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.¹⁸ 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.¹⁹ 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.²⁰

12 Additionally, the Commission has found that providing strategic advice to political
13 committees on the content and target audience for campaign communications may amount to

¹⁸ 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)).

¹⁹ 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).

²⁰ *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 participation in the decision-making process on a political committee in connection with its
2 election-related activities.

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

4 There is no dispute that Belén Sisa is, or was at the time of the events at issue, a
5 participant in the DACA program and, therefore, was not a citizen or national of the United
6 States and had not been “lawfully admitted for permanent residence.”²¹

7 In 2012, under the DACA program, certain individuals born outside the United States,
8 but brought to the United States as children, were granted a reprieve from the enforcement of
9 immigration laws in an exercise of prosecutorial discretion.²² In the memo establishing the
10 policy, then-Department of Homeland Security (“DHS”) Secretary Janet Napolitano said that the
11 policy conferred “no substantive right, immigration status or pathway to citizenship.”²³ The
12 policy permits recipients a “lawful presence” in the United States, but one that could be revoked
13 at any time.²⁴ Currently, after three federal courts issued injunctions to prevent DACA’s
14 termination by DHS, persons who had already been granted DACA status could continue to

²¹ 52 U.S.C. § 30121(b).

²² 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”).

²³ *Id.*

²⁴ *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.”²⁵

3 Belén Sisa apparently took advantage of the 2012 policy, which allowed her to be
4 lawfully present in the United States.²⁶ But, as the Napolitano Memo states and courts have
5 confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other
6 immigration status.²⁷ Thus, at the time of her employment by the Committees, Belén Sisa was a
7 foreign national under the Act.

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

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

14 Nevertheless, based on the available information about Belén Sisa’s work for the Sanders
15 campaign, including her own public statements about her role in the campaign, it is evident that
16 Belén Sisa was not a mere clerical worker, like Nava in MUR 6959, or like Sir Elton John in
17 MURs 5987, 5995, and 6015, a one-time volunteer performer. As a Latino leader and face of the
18 Sanders campaign, Belén Sisa was in a position to make decisions about targeting voters and
19 messaging, helping to shape the Committees’ election-related spending decisions and
20 administration. In her role working on Latino outreach for the Sanders campaign, Belén Sisa

²⁵ Department of Homeland Security, *available at* <https://www.dhs.gov/deferred-action-childhood-arrivals-daca> (last visited Oct. 8, 2019).

²⁶ *See* Napolitano Memo.

²⁷ *See id.*; *Texas v. U.S.*, 809 F.3d at 147.

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

7 Although Belén Sisa violated the law, the Commission exercises its prosecutorial
8 discretion and dismisses the allegations as to her.²⁸ The information in the record indicates that
9 while Belén Sisa was more involved than the low-level “delegates” in MUR 7035, she does not
10 appear to have held a management position or had a significant level of responsibility.²⁹ Thus,
11 under the specific circumstances of this matter and in consideration of the Commission’s
12 resources and other priorities, the Commission dismisses the allegations as to Maria Belén Sisa.

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

14 The Complaint alleges and the Commission’s disclosure reports confirm that Belén Sisa
15 made ten contributions totaling \$35 to Bernie 2016. Based on the low dollar amount, the
16 Commission exercises its prosecutorial discretion and dismisses the allegation that Maria Belén
17 Sisa made \$35 in prohibited foreign national contributions.³⁰

²⁸ See *Heckler v. Chaney*, 470 U.S. 8221 (1985).

²⁹ Accord MUR 7035 (Australian Labor Party) (Foreign national “delegates” not named as respondents).

³⁰ 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) .

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).