

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7712

DATE COMPLAINT FILED: Mar. 2, 2020

DATE OF LAST NOTIFICATION: Mar. 5, 2020

DATE OF LAST RESPONSE: Apr. 23, 2020

DATE ACTIVATED: July 8, 2020

EXPIRATION OF SOL: Earliest: Dec. 15, 2020

Latest: Continuing

ELECTION CYCLES: 2020

COMPLAINANT:

Richard Turner

RESPONDENTS:

Tom Steyer 2020 and Hunter Blas in his official
capacity as treasurer

Karen Martinez

Maricopa County Democratic Party

Edder Diaz-Martinez

Antonio Valdovinos

RELEVANT STATUTES

52 U.S.C. § 30121(a)(1)-(2), (b)(2)

11 C.F.R. § 110.20(b), (c)

11 C.F.R. § 110.20(i)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that two presidential candidates' committees, a county party committee, and four individuals have violated the provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), prohibiting foreign national contributions. Specifically, the Complaint alleges that

Tom Steyer 2020 and Hunter Blas in his official capacity as treasurer (“Steyer 2020”) violated the Act by hiring foreign nationals Karen Martinez, respectively, to advisory positions. Further, the Complaint alleges that the Maricopa County Democratic Party (“MCDP”) violated the Act by hiring foreign national Edder Diaz-Martinez. Finally, the Complaint alleges that foreign national Antonio Valdovinos violated the Act by providing services to political committees through his company, La Machine Consulting.

Steyer 2020 responds that Martinez did not hold a position of influence. MCDP responds that it hired Diaz-Martinez legally and paid him, and that he serves in a support role. Valdovinos responds that he was not involved in decision-making in connection with his work for political committees. None of the other individuals responded.

II. FACTUAL AND LEGAL ANALYSIS

The 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.”² 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

² 52 U.S.C. § 30101(8)(A).

connection with a federal, state, or local election.³ 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).⁴ 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.⁵

The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee."⁶

In light of these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a "commercial vendor," *i.e.*, in the ordinary course of business, and at the usual and normal charge, as long as foreign nationals do not

³ 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).

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

⁵ 11 C.F.R. § 110.20(i).

⁶ 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 directly or indirectly participate in any committee's management or decision-making process in
 2 connection with election-related activities.⁷

3 The Commission has found that not all participation by foreign nationals in the election-
 4 related activities of others will violate the Act. In MUR 6959, for example, the Commission
 5 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
 6 clerical duties, such as online research and translations, during a one month-long internship with
 7 a party committee.⁸ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason
 8 to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to
 9 perform at a campaign fundraiser and agreeing to let the political committee use his name and
 10 likeness in its emails promoting the concert and soliciting support, where the record did not
 11 indicate that the foreign national had been involved in the committee's decision-making process
 12 in connection with the making of contributions, donations, expenditures, or disbursements.⁹ By
 13 contrast, the Commission has consistently found a violation of the foreign national prohibition

⁷ 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.

⁸ 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)).

⁹ 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).

1 where foreign national officers or directors of a U.S. company participated in the company's
 2 decisions to make contributions or in the management of its separate segregated fund.¹⁰ The Act
 3 further prohibits persons from soliciting, accepting, or receiving a contribution or donation from
 4 a foreign national.¹¹

¹⁰ 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 a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

¹¹ 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).

A. DACA Recipients are Foreign Nationals Under the Act

None of the Respondents dispute that the individual respondents are, or were at the time of the events at issue, participants in the Deferred Action for Childhood Arrivals (“DACA”) program and, therefore, were not citizens or nationals of the United States and had not been “lawfully admitted for permanent residence.”¹⁴

In 2012, under the DACA program, certain individuals born outside the United States, but brought to the United States as children, were granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial discretion.¹⁵ In the memo establishing the policy, then-Department of Homeland Security Secretary Janet Napolitano stated that the policy conferred “no substantive right, immigration status or pathway to citizenship.”¹⁶ The policy permits recipients a “lawful presence” in the United States, but one that could be revoked at any time.¹⁷ The Supreme Court recently left in place DACA’s grant of status to those to whom it had already been granted.¹⁸

¹⁴ 52 U.S.C. § 30121(b).

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

¹⁶ *Id.*

¹⁷ *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.*

¹⁸ See *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

1 The individual respondents apparently took advantage of the 2012 policy, which allows
2 them to be lawfully present in the United States. But, as the Napolitano Memo states and courts
3 have confirmed, DACA status does not confer citizenship, lawful permanent residence, or any
4 other immigration status.¹⁹ Thus, Martinez, Diaz-Martinez, and Valdovinos are

5
6
7
8
9
10
11
12 **C. Steyer 2020 and Karen Martinez**

13 Steyer 2020 is the principal campaign committee of former presidential candidate Tom
14 Steyer. The Complaint alleges that Martinez, who was born in Mexico and arrived in the United
15 States when she was 10, “provided a thing of value” to Steyer 2020 in her role as its Nevada
16 Digital Director.²² In its response, Steyer 2020 states that it paid Martinez for her work, and
17 thus, did not accept a contribution from her.²³ The Steyer Response also argues that Martinez’s
18 role was “creative” and that she did not “direct expenditures nor participate in management

¹⁹ See Napolitano Memo; *Texas v. U.S.*, 809 F.3d at 147.

²⁰ Compl. at 1, 6.

²² Compl. at 1, 7.

²³ Response of Tom Steyer 2020 at 2 (April 22, 2020) (“Steyer Resp.”). (A fully paginated version of the Steyer Response is available in VBM.)

1 decisions.”²⁴ In an affidavit, Steyer 2020’s Human Resources Director affirms that Martinez’s
2 duties included “creating social media content ...; training other staff and volunteers on best
3 social media practices; and collaborating with the campaign’s Digital Team” at Steyer’s
4 headquarters.²⁵ The Chief Operating Officer for Steyer 2020 attests that Martinez was not part
5 of the senior staff at the committee, and that Martinez did not participate in decision-making or
6 management processes, or take part in directing contributions, expenditures, or disbursements.²⁶

7 The Complaint does not identify any specific actions or statements by Martinez to
8 support its allegations; instead it merely alleges that Martinez worked for Steyer 2020 as its
9 Nevada Digital Director. In previous matters where the Commission has found reason to
10 believe, the available information included detailed job descriptions describing decision-making
11 duties and facts showing foreign nationals provided strategic consulting services while
12 embedded into political committees. Given the lack of specific allegations against Steyer 2020
13 and Martinez, and in light of the specific, sworn statements provided by Steyer 2020 to rebut
14 these allegations, the available record does not support a reasonable inference that Martinez and
15 Steyer 2020 violated the Act in connection with her work for the committee. Accordingly, we

²⁴ *Id.* at 4.

²⁵ *Id.*; Exhibit A (Affidavit of Mike De Bellis, Human Resources Director).

²⁶ Steyer Resp. at 5-6; Exhibit B (Affidavit of Chris Fadeff, Chief Operating Officer).

recommend that the Commission dismiss the allegations that Steyer 2020 and Hunter Blas in his official capacity as treasurer and Karen Martinez violated the Act.

D. Antonio Valdovinos

The Complaint alleges that Valdovinos, originally from Mexico, runs La Machine, a political consulting firm in Arizona, and suggests that his work with La Machine violates the prohibition on foreign national contributions.³⁰ In support of its allegations, the Complaint attaches an article stating that Valdovinos and La Machine have worked on the campaigns of Representative Ruben Gallego as well as state and local campaigns in Arizona.³¹ The Complaint notes that prior to launching La Machine in 2015, Valdovinos participated in voter registration and get-out-the-vote drives.³² The Valdovinos Response states that Valdovinos is the owner and chief executive officer of La Machine, and that La Machine is a vendor that does not make political contributions.³³ In a declaration, Valdovinos states, “I do not serve on campaigns or committees, those that employ La Machine nor any others, as a participant in the decision-making process of the campaign or committee’s election-related activities.”³⁴

The La Machine website states, however, that La Machine offers Field Operations, Campaign Strategy, Public Relations, Digital Marketing, and Mail.³⁵ The website notes that the

³⁰ Compl. at 1, 7.

³¹ *Id.* at 7.

³² *Id.* Valdovinos’s life story has been made into a musical. <https://www.azmirror.com/2020/02/19/tony-valdovinos-dreamer-americano-musical-uncertain-end/>. See also La Machine corporate registration, <https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=L19906342>.

³³ Antonio Valdovinos Response at 2 (March 4, 2020) (“Valdovinos Resp.”).

³⁴ Valdovinos Resp., Attach.

³⁵ <https://lamachineconsulting.com/services/>.

1 company “specializes in field operations to help local and national clients reach and interact with
 2 potential voters,” and that they have worked “side by side with proven and dedicated elected
 3 officials and aspiring leaders across the nation.”³⁶

4 Valdovinos relies on La Machine’s status as a vendor to suggest that he and La Machine
 5 did not violate the Act because the company is compensated for services it provides to clients.³⁷
 6 La Machine’s status as a commercial vendor, however, is not dispositive of whether a foreign
 7 national owner or employee of that vendor may have been involved in a committee’s decision-
 8 making process in connection with its election-related spending; a campaign’s hiring of a vendor
 9 could result in a prohibited contribution if the foreign national directly or indirectly participates
 10 in any committee’s management or decision-making process in connection with those
 11 activities. Although Valdovinos attests that he does not participate in the decision-making
 12 processes of any campaign or committee regarding their election-related activities, the type of
 13 work his company performs, which includes campaign strategy, raises the prospect that the
 14 company could provide the type of services that the Commission has previously found resulted
 15 in prohibited foreign national contributions.³⁹

16 Nevertheless, the available information does not include specific information that
 17 Valdovinos or La Machine provided services to any particular committee, or that those services
 18 include election-related decision-making concerning a committee’s contributions or

³⁶ See *id.*; see also <https://capitalandmain.com/arizona-activist-gets-out-the-vote-1203> (article stating Valdovinos was running field operations for 20 campaigns).

³⁷ Valdovinos Resp. at 2.

³⁹ See *supra* nn.7, 12.

1 expenditures. Instead, the Complaint points to Valdovinos's non-citizen status, and it attaches a
 2 news article making non-specific statements that his company provided campaign services to
 3 candidates in the past.⁴⁰ As the Valdovinos Response notes, the Complaint lacks specific
 4 information to support its general allegations, and we are not aware of any. Under these
 5 circumstances, there is not enough information to support a reasonable inference that Valdovinos
 6 violated the Act.⁴¹ Therefore, we recommend that the Commission dismiss the allegations as to
 7 Antonio Valdovinos.

8 **E. Maricopa County Democratic Party and Edder Diaz-Martinez**

9 The Complaint alleges that Diaz-Martinez, originally from Mexico, serves as the
 10 communications director at MCDP, thereby providing a "thing of value" to the MCDP.⁴² MCDP
 11 responds that Diaz-Martinez did not make a prohibited contribution because he is legally
 12 employed by the committee and is paid for his work.⁴³ MCDP, which is run by an executive
 13 board of five members and four support staff, including Diaz-Martinez,⁴⁴ states that as
 14 communications director, Diaz-Martinez works at the direction of MCDP's executive director

⁴⁰ Compl. at 1, Attach.

⁴¹ The Commission has stated that mere speculation, without more, does not provide a basis to support a reason to believe finding. See Statement of Reasons of Comm'rs Mason, Sandstrom, Smith & Thomas at 3, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.) ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of FECA has occurred."); see also Factual and Legal Analysis at 3, MUR 7500 (St. Mary's Bank).

⁴² Compl. at 1, 7.

⁴³ Response of Maricopa County Democratic Party at 1-2 (April 22, 2020) ("MCDP Resp.").

⁴⁴ See <https://maricopadems.org/about-mcdp/>. Disclosure reports indicate that Diaz-Martinez appears to be the fourth highest paid individual at MCDP at \$2,678 a month. See <https://www.transparencyusa.org/az/pac/maricopa-county-democratic-party-1049-pac> (showing MCDP's expenditures by payments); <https://seethemoney.az.gov/Reporting/Explore#Page=9|startYear=2019|endYear=2021|View=Detail|Name=7N~1686399> (showing specific payments to Diaz-Martinez).

1 and “is responsible for posting on MCDP’s social media accounts, working on MCDP’s email
 2 distributions, and providing training to MCDP’s legislative district partners on social media and
 3 email issues. He serves in a support role for MCDP’s executive staff and board, who ultimately
 4 make all of MCDP’s strategic decisions.”⁴⁵ Diaz-Martinez is also a spokesperson for MCDP, for
 5 example, speaking on behalf of the Party concerning a fire at MCDP headquarters.⁴⁶ In addition,
 6 Diaz-Martinez has worked on Latino voter engagement efforts in Arizona, but those efforts do
 7 not appear to be connected to his job with MCDP.⁴⁷

8 Like Valdovinos and his work at La Machine, the available information about Diaz-
 9 Martinez suggests his work for the MCDP could involve participating in the party’s election-
 10 related decision-making, based on his position with the party. The Complaint, however, does not
 11 identify such information, instead relying solely on Diaz-Martinez’s DACA status, his
 12 employment as the MCDP’s communications director, and his support for immigration reform.⁴⁸
 13 The Response, also lacking relevant information refuting that Diaz-Martinez participated in
 14 election-related decision-making at MCDP, instead asserts that Diaz-Martinez works at the
 15 direction of the executive board and has not violated the Act.⁴⁹ Unlike prior matters in which we
 16 have recommended finding reason to believe, the available information is insufficient to support

⁴⁵ MCDP Resp. at 1.

⁴⁶ See <https://www.newsweek.com/arson-destroys-part-arizona-democratic-party-building-overnight-1520433>; <https://kjzz.org/content/1605112/arrest-made-fire-phoenix-democratic-party-headquarters>. He also spoke at the county Democratic convention about his DACA experience and how Maricopa County has changed to become more diverse. See <https://blogforarizona.net/summer-maricopa-county-democratic-convention-emphasizes-party-depth-enthusiasm-and-local-elections-ahead-of-2020/>.

⁴⁷ https://www.huffpost.com/entry/trump-arizona-blue_n_5e6178b3c5b691b525efb4ef.

⁴⁸ Comp. at 1, Attach.

⁴⁹ MCDP Resp. at 1-2.

an inference that Diaz-Martinez participated in MCDP's election-related decision-making. Therefore, we recommend that the Commission dismiss the allegations as to Maricopa County Democratic Party and Edder Diaz-Martinez.

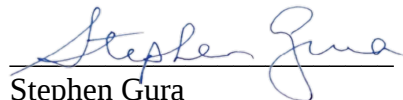
III. RECOMMENDATIONS

2. Dismiss the allegation that Tom Steyer 2020 and Hunter Blas in his official capacity as treasurer violated 52 U.S.C. § 30121 by accepting a prohibited foreign national contribution;
3. Dismiss the allegation that Maricopa County Democratic Party violated 52 U.S.C. § 30121 by accepting a prohibited foreign national contribution;
4. Dismiss the allegations that Karen Martinez, Antonio Valdovinos, and Edder Diaz-Martinez violated 52 U.S.C. § 30121 by making prohibited foreign national contributions;
5. Approve the attached Factual and Legal Analyses;
6. Approve the appropriate letters; and
7. Close the file.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for
Enforcement

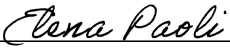
09.24.20
Date


Stephen Gura
Deputy Associate General Counsel for
Enforcement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21



Lynn Y. Tran
Assistant General Counsel



Elena Paoli
Attorney

Attachments:

1. Factual and Legal Analysis for Tom Steyer 2020
2. Factual and Legal Analysis for Maricopa County Democratic Party
3. Factual and Legal Analysis for Antonio Valdovinos
4. Factual and Legal Analysis for Karen Martinez
5. Factual and Legal Analysis for Edder Diaz-Martinez

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Tom Steyer 2020 and Hunter Blas
in his official capacity as treasurer

MUR: 7712

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Richard Turner. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that Tom Steyer 2020 and Hunter Blas in his official capacity as treasurer (“Steyer 2020”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by hiring foreign national Karen Martinez to an advisory position. Steyer 2020 responds that Martinez did not hold a position of influence with the committee.

II. FACTUAL BACKGROUND

Steyer 2020 is the principal campaign committee of former presidential candidate Tom Steyer. The Complaint alleges that Steyer 2020 violated the Act because Martinez, who was born in Mexico and arrived in the United States when she was 10, “provided a thing of value” to Steyer 2020 in her role as its Nevada Digital Director.¹ In its response, Steyer 2020 states that it paid Martinez for her work, and thus, did not accept a contribution from her.² The Steyer Response also argues that Martinez’s role was “creative” and that she did not “direct expenditures nor participate in management decisions.”³ In an affidavit, Steyer 2020’s Human Resources Director affirms that Martinez’s duties included “creating social media content ...;

¹ Compl. at 1, 7.

² Response of Tom Steyer 2020 at 2 (April 22, 2020) (“Steyer Resp.”).

³ *Id.* at 4.

training other staff and volunteers on best social media practices; and collaborating with the campaign’s Digital Team” at Steyer’s headquarters.⁴ The Chief Operating Officer for Steyer 2020 attests that Martinez was not part of the senior staff at the committee, and that Martinez did not participate in decision-making or management processes, or take part in directing contributions, expenditures, or disbursements.⁵

III. LEGAL ANALYSIS

A. Federal Campaign Finance

The 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.”⁶ 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.⁷ 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).⁸ Commission regulations implementing the Act’s foreign national prohibition provide:

⁴ *Id.*; Exhibit A (Affidavit of Mike De Bellis, Human Resources Director).

⁵ Steyer Resp. at 5-6; Exhibit B (Affidavit of Chris Fadeff, Chief Operating Officer).

⁶ 52 U.S.C. § 30101(8)(A).

⁷ 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).

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

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.⁹

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

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

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

⁹ 11 C.F.R. § 110.20(i).

¹⁰ 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.”).

¹¹ 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.¹² 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.¹³ 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.¹⁴ The Act

¹² 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)).

¹³ 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).

¹⁴ *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 a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.¹⁵

B. DACA

In 2012, under the Deferred Action for Childhood Arrivals (“DACA”) program, certain individuals born outside the United States, but brought to the United States as children, were granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial discretion.¹⁶ In the memo establishing the policy, then-Department of Homeland Security Secretary Janet Napolitano stated that the policy conferred “no substantive right, immigration status or pathway to citizenship.”¹⁷ The policy permits recipients a “lawful presence” in the United States, but one that could be revoked at any time.¹⁸ The Supreme Court recently left in place DACA’s grant of status to those to whom it had already been granted.¹⁹

¹⁵ 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).

¹⁶ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

¹⁷ *Id.*

¹⁸ *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.*

¹⁹ See *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

1 **C. Martinez and Steyer 2020**

2 Martinez apparently took advantage of the 2012 DACA policy, which allows her to be
3 lawfully present in the United States. But, as the Napolitano Memo states and courts have
4 confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other
5 immigration status.²⁰ Thus, Martinez is a foreign national under the Act.

6 The Complaint does not identify any specific actions or statements by Martinez to
7 support its allegations; instead it alleges that Martinez worked for Steyer 2020 as its Nevada
8 Digital Director. Given the lack of specific allegations against Steyer 2020 and Martinez, and in
9 light of the specific, sworn statements provided by Steyer 2020 to rebut these allegations, the
10 available information does not support a reasonable inference that Steyer 2020 violated the Act
11 in connection with Martinez's work for the committee. Accordingly, the Commission dismisses
12 the allegations that Steyer 2020 and Hunter Blas in his official capacity as treasurer violated the
13 Act.

²⁰ See Napolitano Memo; *Texas v. U.S.*, 809 F.3d at 147.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Maricopa County Democratic Party

MUR: 7712

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Richard Turner. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that the Maricopa County Democratic Party (“MCDP”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by hiring foreign national Edder Diaz-Martinez to an advisory position. MCDP responds that it hired Diaz-Martinez legally and paid him for his services, and that he serves in a support role.

II. FACTUAL BACKGROUND

The Complaint alleges that Diaz-Martinez, originally from Mexico, serves as the communications director at MCDP, thereby providing a “thing of value” to the MCDP in violation of the prohibition on foreign national contributions.¹ MCDP responds that Diaz-Martinez did not make a prohibited contribution because he is legally employed by the committee and is paid for his work.² MCDP, which is run by an executive board of five members and four support staff, including Diaz-Martinez,³ states that as communications

¹ Compl. at 1, 7.

² Response of Maricopa County Democratic Party at 1-2 (April 22, 2020) (“MCDP Resp.”).

³ *See* <https://maricopadems.org/about-mcdp/>. Disclosure reports indicate that Diaz-Martinez appears to be the fourth highest paid individual at MCDP at \$2,678 a month. *See* <https://www.transparencyusa.org/az/pac/maricopa-county-democratic-party-1049-pac> (showing MCDP’s expenditures by payments); <https://seethemoney.az.gov/Reporting/Explore#Page=9|startYear=2019|endYear=2021|View=Detail|Name=7N~1686399> (showing specific payments to Diaz-Martinez).

director, Diaz-Martinez works at the direction of MCDP’s executive director and “is responsible for posting on MCDP’s social media accounts, working on MCDP’s email distributions, and providing training to MCDP’s legislative district partners on social media and email issues. He serves in a support role for MCDP’s executive staff and board, who ultimately make all of MCDP’s strategic decisions.”⁴ Diaz-Martinez is also a spokesperson for MCDP, for example, speaking on behalf of the Party concerning a fire at MCDP headquarters.⁵ In addition, Diaz-Martinez has worked on Latino voter engagement efforts in Arizona, but those efforts do not appear to be connected to his job with MCDP.⁶

III. LEGAL ANALYSIS

A. Federal Campaign Finance

The 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.”⁷ 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

⁴ MCDP Resp. at 1.

⁵ See <https://www.newsweek.com/arson-destroys-part-arizona-democratic-party-building-overnight-1520433>; <https://kjzz.org/content/1605112/arrest-made-fire-phoenix-democratic-party-headquarters>. He also spoke at the county Democratic convention about his DACA experience and how Maricopa County has changed to become more diverse. See <https://blogforarizona.net/summer-maricopa-county-democratic-convention-emphasizes-party-depth-enthusiasm-and-local-elections-ahead-of-2020/>.

⁶ https://www.huffpost.com/entry/trump-arizona-blue_n_5e6178b3c5b691b525efb4ef.

⁷ 52 U.S.C. § 30101(8)(A).

connection with a federal, state, or local election.⁸ 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).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.¹⁰

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”¹¹

In light of these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge, as long as foreign nationals do not

⁸ 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).

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

¹⁰ 11 C.F.R. § 110.20(i).

¹¹ 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 directly or indirectly participate in any committee's management or decision-making process in
 2 connection with election-related activities.¹²

3 The Commission has found that not all participation by foreign nationals in the election-
 4 related activities of others will violate the Act. In MUR 6959, for example, the Commission
 5 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
 6 clerical duties, such as online research and translations, during a one month-long internship with
 7 a party committee.¹³ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
 8 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
 9 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
 10 likeness in its emails promoting the concert and soliciting support, where the record did not
 11 indicate that the foreign national had been involved in the committee's decision-making process
 12 in connection with the making of contributions, donations, expenditures, or disbursements.¹⁴ By
 13 contrast, the Commission has consistently found a violation of the foreign national prohibition

¹² 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.

¹³ 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)).

¹⁴ 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).

where foreign national officers or directors of a U.S. company participated in the company's decisions to make contributions or in the management of its separate segregated fund.¹⁵ The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.¹⁶

B. DACA

In 2012, under the Deferred Action for Childhood Arrivals ("DACA") program, certain individuals born outside the United States, but brought to the United States as children, were granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial discretion.¹⁷ In the memo establishing the policy, then-Department of Homeland Security Secretary Janet Napolitano stated that the policy conferred "no substantive right, immigration status or pathway to citizenship."¹⁸ The policy permits recipients a "lawful presence" in the

¹⁵ 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 a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

¹⁶ 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).

¹⁷ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> ("Napolitano Memo").

¹⁸ *Id.*

United States, but one that could be revoked at any time.¹⁹ The Supreme Court recently left in place DACA's grant of status to those to whom it had already been granted.²⁰

C. Diaz-Martinez and the MCDP

Diaz-Martinez apparently took advantage of the 2012 DACA policy, which allows him to be lawfully present in the United States. But, as the Napolitano Memo states and courts have confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other immigration status.²¹ Thus, Diaz-Martinez is a foreign national under the Act.

The available information about Diaz-Martinez suggests his work for the MCDP could involve participating in the party's election-related decision-making, based on his position with the party. The Complaint, however, does not identify such information, instead relying solely on Diaz-Martinez's DACA status, his employment as the MCDP's communications director, and his support for immigration reform.²² The Response, also lacking relevant information refuting that Diaz-Martinez participated in election-related decision-making at MCDP, instead asserts that Diaz-Martinez works at the direction of the executive board and has not violated the Act.²³ The available information is insufficient to support an inference that MCDP violated the Act. Therefore, the Commission dismisses the allegations as to Maricopa County Democratic Party.

¹⁹ *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.*

²⁰ *See Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

²¹ *See* Napolitano Memo; *Texas v. U.S.*, 809 F.3d at 147.

²² Comp. at 1, Attach.

²³ MCDP Resp. at 1-2.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Antonio Valdovinos

MUR: 7712

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Richard Turner. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that foreign national Antonio Valdovinos violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by providing services to political committees through his company, La Machine Consulting. Valdovinos responds that he was not involved in decision-making in connection with his work for political committees.

II. FACTUAL SUMMARY

The Complaint alleges that Valdovinos, originally from Mexico, runs La Machine, a political consulting firm in Arizona, and suggests that his work with La Machine violates the prohibition on foreign national contributions.¹ In support of its allegations, the Complaint attaches an article stating that Valdovinos and La Machine have worked on the campaigns of Representative Ruben Gallego as well as state and local campaigns in Arizona.² The Complaint notes that prior to launching La Machine in 2015, Valdovinos participated in voter registration and get-out-the-vote drives.³ The Valdovinos Response states that Valdovinos is the owner and

¹ Compl. at 1, 7.

² *Id.* at 7.

³ *Id.* Valdovinos’s life story has been made into a musical. <https://www.azmirror.com/2020/02/19/tony-valdovinos-dreamer-americano-musical-uncertain-end/>. *See also* La Machine corporate registration, <https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=L19906342>.

chief executive officer of La Machine, and that La Machine is a vendor that does not make political contributions.⁴ In a declaration, Valdovinos states, “I do not serve on campaigns or committees, those that employ La Machine nor any others, as a participant in the decision-making process of the campaign or committee’s election-related activities.”⁵

The La Machine website states, however, that La Machine offers Field Operations, Campaign Strategy, Public Relations, Digital Marketing, and Mail.⁶ The website notes that the company “specializes in field operations to help local and national clients reach and interact with potential voters,” and that they have worked “side by side with proven and dedicated elected officials and aspiring leaders across the nation.”⁷

III. LEGAL ANALYSIS

A. Federal Campaign Finance

The 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.”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

⁴ Antonio Valdovinos Response at 2 (March 4, 2020) (“Valdovinos Resp.”).

⁵ Valdovinos Resp., Attach.

⁶ <https://lamachineconsulting.com/services/>.

⁷ See *id.*; see also <https://capitalandmain.com/arizona-activist-gets-out-the-vote-1203> (article stating Valdovinos was running field operations for 20 campaigns).

⁸ 52 U.S.C. § 30101(8)(A).

connection with a federal, state, or local election.⁹ 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).¹⁰ 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

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

In light of these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary course of business, and at the usual and normal charge, as long as foreign nationals do not

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 directly or indirectly participate in any committee's management or decision-making process in
 2 connection with election-related activities.¹³

3 The Commission has found that not all participation by foreign nationals in the election-
 4 related activities of others will violate the Act. In MUR 6959, for example, the Commission
 5 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
 6 clerical duties, such as online research and translations, during a one month-long internship with
 7 a party committee.¹⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
 8 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
 9 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
 10 likeness in its emails promoting the concert and soliciting support, where the record did not
 11 indicate that the foreign national had been involved in the committee's decision-making process
 12 in connection with the making of contributions, donations, expenditures, or disbursements.¹⁵ By
 13 contrast, the Commission has consistently found a violation of the foreign national prohibition

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)).

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).

where foreign national officers or directors of a U.S. company participated in the company's decisions to make contributions or in the management of its separate segregated fund.¹⁶

B. DACA

In 2012, under the Deferred Action for Childhood Arrivals ("DACA") program, certain individuals born outside the United States, but brought to the United States as children, were granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial discretion.¹⁷ In the memo establishing the policy, then-Department of Homeland Security Secretary Janet Napolitano stated that the policy conferred "no substantive right, immigration status or pathway to citizenship."¹⁸ The policy permits recipients a "lawful presence" in the United States, but one that could be revoked at any time.¹⁹ The Supreme Court recently left in place DACA's grant of status to those to whom it had already been granted.²⁰

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 a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

¹⁷ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> ("Napolitano Memo").

¹⁸ *Id.*

¹⁹ *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.*

²⁰ See *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

1 **C. Valdovinos and La Machine**

2 Valdovinos apparently took advantage of the 2012 DACA policy, which allows him to be
3 lawfully present in the United States. But, as the Napolitano Memo states and courts have
4 confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other
5 immigration status.²¹ Thus, Valdovinos is a foreign national under the Act.

6 Valdovinos relies on La Machine's status as a vendor to suggest that he and La Machine
7 did not violate the Act by making a prohibited foreign national contribution because the
8 company is compensated for services it provides to clients.²² La Machine's status as a
9 commercial vendor, however, is not dispositive of whether a foreign national owner or employee
10 of that vendor may have been involved in a committee's decision-making process in connection
11 with its election-related spending; a campaign's hiring of a vendor could result in a prohibited
12 contribution if the foreign national directly or indirectly participates in any committee's
13 management or decision-making process in connection with those activities. Although
14 Valdovinos attests that he does not participate in the decision-making processes of any campaign
15 or committee regarding their election-related activities, the type of work his company performs,
16 which includes campaign strategy, raises the prospect that the company could provide the type of
17 services that the Commission has previously found resulted in prohibited foreign national
18 contributions.²³

19 Nevertheless, the available information does not include specific information that
20 Valdovinos or La Machine provided services to any particular committee, or that those services

²¹ See Napolitano Memo; *Texas v. U.S.*, 809 F.3d at 147.

²² Valdovinos Resp. at 2.

²³ See *supra* n.13.

1 include election-related decision-making concerning a committee's contributions or
2 expenditures. Instead, the Complaint points to Valdovinos's non-citizen status, and it attaches a
3 news article making non-specific statements that his company provided campaign services to
4 candidates in the past.²⁴ As the Valdovinos Response notes, the Complaint lacks specific
5 information to support its general allegations, and the Commission is not aware of any. Under
6 these circumstances, there is not enough information to support a reasonable inference that
7 Valdovinos violated the Act.²⁵ Therefore, the Commission dismisses the allegations as to
8 Antonio Valdovinos.

²⁴ Compl. at 1, Attach.

²⁵ The Commission has stated that mere speculation, without more, does not provide a basis to support a reason to believe finding. *See* Statement of Reasons of Comm'rs Mason, Sandstrom, Smith & Thomas at 3, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.) ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of FECA has occurred."); *see also* Factual and Legal Analysis at 3, MUR 7500 (St. Mary's Bank).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Karen Martinez**MUR: 7712****I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Richard Turner. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that Karen Martinez made a prohibited foreign national contribution by providing advisory services to Tom Steyer 2020 and Hunter Blas in his official capacity as treasurer (“Steyer 2020”).

II. FACTUAL BACKGROUND

Steyer 2020 is the principal campaign committee of former presidential candidate Tom Steyer. The Complaint alleges that Martinez, who was born in Mexico and arrived in the United States when she was 10, “provided a thing of value” to Steyer 2020 in her role as its Nevada Digital Director.¹ The available information indicates that Steyer 2020 paid Martinez for her work, that her role was creative, that she was not part of the senior staff at the committee, and that she did not participate in decision-making or management processes, or take part in directing contributions, expenditures, or disbursements.

III. LEGAL ANALYSIS**A. Federal Campaign Finance**

The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of

¹ Compl. at 1, 7.

value made by any person for the purpose of influencing any election for Federal office.”² The Act prohibits any “foreign national” from directly or indirectly making a contribution of money or other thing of value, or an expenditure, in connection with a federal, state, or local election.³ 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).⁴ 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.⁵

The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.”⁶

² 52 U.S.C. § 30101(8)(A).

³ 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).

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

⁵ 11 C.F.R. § 110.20(i).

⁶ 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.⁷

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.⁸ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason
 12 to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to
 13 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

⁷ 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.

⁸ 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.⁹ 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.¹⁰

6 **B. DACA**

7 In 2012, under the Deferred Action for Childhood Arrivals (“DACA”) program, certain
 8 individuals born outside the United States, but brought to the United States as children, were
 9 granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial
 10 discretion.¹¹ In the memo establishing the policy, then-Department of Homeland Security
 11 Secretary Janet Napolitano stated that the policy conferred “no substantive right, immigration
 12 status or pathway to citizenship.”¹² The policy permits recipients a “lawful presence” in the

⁹ 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).

¹⁰ *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 a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

¹¹ *See* Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

¹² *Id.*

United States, but one that could be revoked at any time.¹³ The Supreme Court recently left in place DACA's grant of status to those to whom it had already been granted.¹⁴

C. Martinez and Steyer 2020

Martinez apparently took advantage of the 2012 DACA policy, which allows her to be lawfully present in the United States. But, as the Napolitano Memo states and courts have confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other immigration status.¹⁵ Thus, Martinez is a foreign national under the Act.

The Complaint does not identify any specific actions or statements by Martinez to support its allegations; instead it merely alleges that Martinez worked for Steyer 2020 as its Nevada Digital Director. Given the lack of specific allegations against Martinez, the available record does not support a reasonable inference that Martinez violated the Act in connection with her work for the committee. Accordingly, the Commission dismisses the allegations that Karen Martinez violated the Act.

¹³ *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.*

¹⁴ *See Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

¹⁵ *See Napolitano Memo; Texas v. U.S.*, 809 F.3d at 147.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Edder Diaz-Martinez**MUR: 7712****I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (“Commission”) by Richard Turner. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that foreign national Edder Diaz-Martinez violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by providing advisory services to the Maricopa County Democratic Party (“MCDP”).

II. FACTUAL BACKGROUND

The Complaint alleges that Diaz-Martinez, originally from Mexico, serves as the communications director at MCDP, thereby providing a “thing of value” to the MCDP.¹ The available information indicates that Diaz-Martinez is legally employed by the committee and is paid for his work. Information available to the Commission indicates that, as communications director, Diaz-Martinez works at the direction of MCDP’s executive director and is responsible for posting on MCDP’s social media accounts, working on MCDP’s email distributions, and providing training to MCDP’s legislative district partners on social media and email issues. He serves in a support role for MCDP’s executive staff and board. Diaz-Martinez is also a spokesperson for MCDP, for example, speaking on behalf of the Party concerning a fire at

¹ Compl. at 1, 7.

MCDP headquarters.² In addition, Diaz-Martinez has worked on Latino voter engagement efforts in Arizona, but those efforts do not appear to be connected to his job with MCDP.³

III. LEGAL ANALYSIS

A. Federal Campaign Finance

The 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.”⁴ 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.⁵ 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).⁶ 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,

² See <https://www.newsweek.com/arson-destroys-part-arizona-democratic-party-building-overnight-1520433>; <https://kjzz.org/content/1605112/arrest-made-fire-phoenix-democratic-party-headquarters>. He also spoke at the county Democratic convention about his DACA experience and how Maricopa County has changed to become more diverse. See <https://blogforarizona.net/summer-maricopa-county-democratic-convention-emphasizes-party-depth-enthusiasm-and-local-elections-ahead-of-2020/>.

³ https://www.huffpost.com/entry/trump-arizona-blue_n_5e6178b3c5b691b525efb4ef.

⁴ 52 U.S.C. § 30101(8)(A).

⁵ 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).

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

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.⁷

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

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

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing

⁷ 11 C.F.R. § 110.20(i).

⁸ 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.").

⁹ 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.

clerical duties, such as online research and translations, during a one month-long internship with a party committee.¹⁰ Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee’s decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.¹¹ By contrast, the Commission has consistently found a violation of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company’s decisions to make contributions or in the management of its separate segregated fund.¹²

B. DACA

In 2012, under the Deferred Action for Childhood Arrivals (“DACA”) program, certain individuals born outside the United States, but brought to the United States as children, were

¹⁰ 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)).

¹¹ 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).

¹² *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 a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

1 granted a reprieve from the enforcement of immigration laws in an exercise of prosecutorial
 2 discretion.¹³ In the memo establishing the policy, then-Department of Homeland Security
 3 Secretary Janet Napolitano stated that the policy conferred “no substantive right, immigration
 4 status or pathway to citizenship.”¹⁴ The policy permits recipients a “lawful presence” in the
 5 United States, but one that could be revoked at any time.¹⁵ The Supreme Court recently left in
 6 place DACA’s grant of status to those to whom it had already been granted.¹⁶

7 **C. Diaz-Martinez and the MCDP**

8 Diaz-Martinez apparently took advantage of the 2012 DACA policy, which allows him to
 9 be lawfully present in the United States. But, as the Napolitano Memo states and courts have
 10 confirmed, DACA status does not confer citizenship, lawful permanent residence, or any other
 11 immigration status.¹⁷ Thus, Diaz-Martinez is a foreign national under the Act.

12 The available information about Diaz-Martinez suggests his work for the MCDP could
 13 involve participating in the party’s election-related decision-making, based on his position with
 14 the party. The Complaint, however, does not identify such information, instead relying solely on
 15 Diaz-Martinez’s DACA status, his employment as the MCDP’s communications director, and

¹³ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> (“Napolitano Memo”).

¹⁴ *Id.*

¹⁵ *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.*

¹⁶ See *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

¹⁷ See Napolitano Memo; *Texas v. U.S.*, 809 F.3d at 147.

MUR 7712 (Edder Diaz-Martinez)
Factual and Legal Analysis
Page 6 of 6

- 1 his support for immigration reform.¹⁸ The available information is insufficient to support an
- 2 inference that Diaz-Martinez participated in MCDP's election-related decision-making.
- 3 Therefore, the Commission dismisses the allegations as to Edder Diaz-Martinez.

¹⁸ Comp. at 1, Attach.