



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

April 19, 2021

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Richard I. Turner  
P.O. Box 163  
Greenbank, Washington 98253

RE: MUR 7712

Dear Mr. Turner:

This is in reference to the complaint you filed with the Federal Election Commission on March 2, 2020, alleging violations of the Federal Election Campaign Act, as amended. After considering the circumstances of this matter, the Commission, on February 23, 2021, dismissed the allegations that respondents Tom Steyer 2020 and Hunter Blas in his official capacity as treasurer, the Maricopa County Democratic Party, Karen Martinez, Antonio Valdovinos, and Edder Diaz-Martinez violated 52 U.S.C. § 30121 by making and accepting prohibited foreign national contributions. Additionally, the Commission

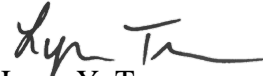
closed the file in this matter. The Factual and Legal Analyses, which more fully explain the basis for the Commission's decisions, are enclosed.

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).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Elena Paoli, the attorney assigned to the matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

BY:   
Lynn Y. Tran  
Assistant General Counsel

Enclosures: Factual and Legal Analyses (5)

**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.<sup>1</sup> 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

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<sup>1</sup> Compl. at 1, 7.

MCDP headquarters.<sup>2</sup> 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.<sup>3</sup>

### 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.”<sup>4</sup> 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.<sup>5</sup> 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).<sup>6</sup> 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,

<sup>2</sup> 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/>.

<sup>3</sup> [https://www.huffpost.com/entry/trump-arizona-blue\\_n\\_5e6178b3c5b691b525efb4ef](https://www.huffpost.com/entry/trump-arizona-blue_n_5e6178b3c5b691b525efb4ef).

<sup>4</sup> 52 U.S.C. § 30101(8)(A).

<sup>5</sup> 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).

<sup>6</sup> 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.<sup>7</sup>

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

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.<sup>9</sup>

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

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<sup>7</sup> 11 C.F.R. § 110.20(i).

<sup>8</sup> 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.").

<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

## **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

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<sup>10</sup> 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)).

<sup>11</sup> 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).

<sup>12</sup> *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.<sup>13</sup> 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.”<sup>14</sup> The policy permits recipients a “lawful presence” in the  
 5 United States, but one that could be revoked at any time.<sup>15</sup> The Supreme Court recently left in  
 6 place DACA’s grant of status to those to whom it had already been granted.<sup>16</sup>

### 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.<sup>17</sup> 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. After a review of the facts and circumstances, the Commission exercises its  
 15 prosecutorial discretion and dismisses the allegations as to Edder Diaz-Martinez.<sup>18</sup>

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<sup>13</sup> 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”).

<sup>14</sup> *Id.*

<sup>15</sup> *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.*

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

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

<sup>18</sup> See *Heckler v. Chaney*, 470 U.S. 8221 (1985).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5  
6 **RESPONDENT:** Maricopa County Democratic Party

**MUR: 7712**

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8 **I. INTRODUCTION**

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

15 **II. FACTUAL BACKGROUND**

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

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<sup>1</sup> Compl. at 1, 7.

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

<sup>3</sup> *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."<sup>4</sup> Diaz-Martinez is also a spokesperson for MCDP, for example, speaking on behalf of the Party concerning a fire at MCDP headquarters.<sup>5</sup> 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.<sup>6</sup>

### 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."<sup>7</sup> 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

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<sup>4</sup> MCDP Resp. at 1.

<sup>5</sup> 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/>.

<sup>6</sup> [https://www.huffpost.com/entry/trump-arizona-blue\\_n\\_5e6178b3c5b691b525efb4ef](https://www.huffpost.com/entry/trump-arizona-blue_n_5e6178b3c5b691b525efb4ef).

<sup>7</sup> 52 U.S.C. § 30101(8)(A).



connection with a federal, state, or local election.<sup>8</sup> 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).<sup>9</sup> 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.<sup>10</sup>

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

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

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<sup>8</sup> 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).

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

<sup>10</sup> 11 C.F.R. § 110.20(i).

<sup>11</sup> 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  
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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  
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 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.<sup>14</sup> By  
 13 contrast, the Commission has consistently found a violation of the foreign national prohibition

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<sup>12</sup> 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.

<sup>13</sup> 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)).

<sup>14</sup> 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.<sup>15</sup> The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.<sup>16</sup>

## **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.<sup>17</sup> 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."<sup>18</sup> The policy permits recipients a "lawful presence" in the

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<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> 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").

<sup>18</sup> *Id.*

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

### 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.<sup>21</sup> 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. After a review of the facts and circumstances, the Commission exercises its prosecutorial discretion and dismisses the allegations as to Maricopa County Democratic Party.<sup>22</sup>

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<sup>19</sup> *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.*

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

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

<sup>22</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

**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.<sup>1</sup> In its response, Steyer 2020 states that it paid Martinez for her work, and thus, did not accept a contribution from her.<sup>2</sup> The Steyer Response also argues that Martinez’s role was “creative” and that she did not “direct expenditures nor participate in management decisions.”<sup>3</sup> In an affidavit, Steyer 2020’s Human Resources Director affirms that Martinez’s duties included “creating social media content ...;

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<sup>1</sup> Compl. at 1, 7.

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

<sup>3</sup> *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.<sup>4</sup> 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.<sup>5</sup>

### 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.”<sup>6</sup> 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.<sup>7</sup> 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).<sup>8</sup> Commission regulations implementing the Act’s foreign national prohibition provide:

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

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

<sup>6</sup> 52 U.S.C. § 30101(8)(A).

<sup>7</sup> 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).

<sup>8</sup> 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.<sup>9</sup>

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

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.<sup>11</sup>

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

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<sup>9</sup> 11 C.F.R. § 110.20(i).

<sup>10</sup> 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.”).

<sup>11</sup> 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  
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 10 where foreign national officers or directors of a U.S. company participated in the company's  
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<sup>12</sup> 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)).

<sup>13</sup> 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).

<sup>14</sup> *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 further prohibits persons from soliciting, accepting, or receiving a contribution or donation from  
2 a foreign national.<sup>15</sup>

3 **B. DACA**

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

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<sup>15</sup> 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).

<sup>16</sup> 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”).

<sup>17</sup> *Id.*

<sup>18</sup> *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.*

<sup>19</sup> 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.<sup>20</sup> 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 and had decision-making authority. After a review of the facts and  
9   circumstances, the Commission exercises its prosecutorial discretion and dismisses the  
10   allegations that Steyer 2020 and Hunter Blas in his official capacity as treasurer violated the  
11   Act.<sup>21</sup>

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

<sup>21</sup>       *See Heckler v. Chaney*, 470 U.S. 8221 (1985).

**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.<sup>1</sup> 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

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<sup>1</sup> Compl. at 1, 7.

value made by any person for the purpose of influencing any election for Federal office.”<sup>2</sup> 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.<sup>3</sup> 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).<sup>4</sup> 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.<sup>5</sup>

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

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<sup>2</sup> 52 U.S.C. § 30101(8)(A).

<sup>3</sup> 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).

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

<sup>5</sup> 11 C.F.R. § 110.20(i).

<sup>6</sup> 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.<sup>7</sup>

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  
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11 a party committee.<sup>8</sup> Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason  
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<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup> 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  
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## 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.<sup>11</sup> In the memo establishing the policy, then-Department of Homeland Security  
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<sup>10</sup> *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).

<sup>11</sup> *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”).

<sup>12</sup> *Id.*

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

**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.<sup>15</sup> Thus, Martinez is a foreign national under the Act.

The Complaint alleges that Martinez worked for Steyer 2020 as its Nevada Digital Director and had decision-making authority. After a review of the facts and circumstances, the Commission exercises its prosecutorial discretion and dismisses the allegations that Karen Martinez violated the Act.<sup>16</sup>

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<sup>13</sup> *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.*

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

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

<sup>16</sup> *See Heckler v. Chaney*, 470 U.S. 8221 (1985).

**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.<sup>1</sup> 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.<sup>2</sup> The Complaint notes that prior to launching La Machine in 2015, Valdovinos participated in voter registration and get-out-the-vote drives.<sup>3</sup> The Valdovinos Response states that Valdovinos is the owner and

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<sup>1</sup> Compl. at 1, 7.

<sup>2</sup> *Id.* at 7.

<sup>3</sup> *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.<sup>4</sup> 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.”<sup>5</sup>

The La Machine website states, however, that La Machine offers Field Operations, Campaign Strategy, Public Relations, Digital Marketing, and Mail.<sup>6</sup> 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.”<sup>7</sup>

### **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.”<sup>8</sup> 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

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<sup>4</sup> Antonio Valdovinos Response at 2 (March 4, 2020) (“Valdovinos Resp.”).

<sup>5</sup> Valdovinos Resp., Attach.

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

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

<sup>8</sup> 52 U.S.C. § 30101(8)(A).

connection with a federal, state, or local election.<sup>9</sup> 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).<sup>10</sup> Commission regulations implementing the Act’s foreign national prohibition provide:

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

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

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<sup>9</sup> 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).

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

<sup>11</sup> 11 C.F.R. § 110.20(i).

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

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<sup>15</sup> 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.<sup>16</sup>

### **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.<sup>17</sup> 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.”<sup>18</sup> The policy permits recipients a “lawful presence” in the United States, but one that could be revoked at any time.<sup>19</sup> The Supreme Court recently left in place DACA's grant of status to those to whom it had already been granted.<sup>20</sup>

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<sup>16</sup> 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).

<sup>17</sup> 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”).

<sup>18</sup> *Id.*

<sup>19</sup> *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.*

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> After a review of the facts and circumstances, the Commission exercises its  
19 prosecutorial discretion and dismisses the allegations as to Antonio Valdovinos.<sup>24</sup>

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

<sup>22</sup>       Valdovinos Resp. at 2.

<sup>23</sup>       *See supra* n.13.

<sup>24</sup>       *See Heckler v. Chaney*, 470 U.S. 8221 (1985).