



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 2021

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RE: MUR 7712
Maricopa County Democratic Party

Dear Ms. Desai and Mr. Gaona:

On March 5, 2020, the Federal Election Commission notified your client, Maricopa County Democratic Party, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

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

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).

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

Sincerely,

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

Lynn Y. Tran
Assistant General Counsel

Enclosure: Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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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.¹ 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.² MCDP, which is run by an executive board of five
21 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. After a review of the facts and circumstances, the Commission exercises its prosecutorial discretion and dismisses the allegations as to Maricopa County Democratic Party.²²

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