



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

April 19, 2021

Ryan Hughes, Esq.  
General Counsel  
Tom Steyer 2020  
[ryan.hughes@tomsteyer.com](mailto:ryan.hughes@tomsteyer.com)

RE: MUR 7712  
Tom Steyer 2020

Dear Mr. Hughes:

On March 5, 2020, the Federal Election Commission notified Tom Steyer 2020 and Hunter Blas in his official capacity as treasurer 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 Tom Steyer 2020 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

**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  
 2 clerical duties, such as online research and translations, during a one month-long internship with  
 3 a party committee.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> The Act

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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).

further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.<sup>15</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>16</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>17</sup> The policy permits recipients a “lawful presence” in the United States, but one that could be revoked at any time.<sup>18</sup> The Supreme Court recently left in 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).