



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 19, 2021

Antonio Valdovinos

Phoenix, Arizona 85004
antoniovaldovinos@lamachineconsulting.com

RE: MUR 7712
Antonio Valdovinos

Dear Mr. Valdovinos:

On March 5, 2020, the Federal Election Commission notified you 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

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Antonio Valdovinos **MUR: 7712**

I. INTRODUCTION

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

II. FACTUAL SUMMARY

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

¹ Compl. at 1, 7.

² *Id.* at 7.

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

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

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

10 **III. LEGAL ANALYSIS**

11 **A. Federal Campaign Finance**

12 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
13 deposit of money or anything of value made by any person for the purpose of influencing any
14 election for Federal office.”⁸ The Act prohibits any “foreign national” from directly or indirectly
15 making a contribution or donation of money or other thing of value, or an expenditure, in

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

⁵ Valdovinos Resp., Attach.

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

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

⁸ 52 U.S.C. § 30101(8)(A).

1 connection with a federal, state, or local election.⁹ The Act’s definition of “foreign national”
2 includes an individual who is not a citizen or national of the United States and who is not
3 lawfully admitted for permanent residence, as well as a “foreign principal” as defined at
4 22 U.S.C. § 611(b).¹⁰ Commission regulations implementing the Act’s foreign national
5 prohibition provide:

6 A foreign national shall not direct, dictate, control, or directly or indirectly
7 participate in the decision-making process of any person, such as a corporation,
8 labor organization, political committee, or political organization with regard to
9 such person’s Federal or non-Federal election-related activities, such as decisions
10 concerning the making of contributions, donations, expenditures, or
11 disbursements. . . or decisions concerning the administration of a political
12 committee.¹¹

13
14 The Commission has explained that this provision also bars foreign nationals from “involvement
15 in the management of a political committee.”¹²

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

⁹ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

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

¹¹ 11 C.F.R. § 110.20(i).

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

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

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

¹³ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute “anything of value” under the Act, and the person providing those goods or services does not thereby make a contribution. However, soliciting or receiving information regarding a federal candidate from a foreign national, as opposed to hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

¹⁴ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

¹⁵ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

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

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

¹⁶ See, e.g., Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company’s board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company’s election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc.) (U.S. corporation owned by foreign company violated Act by making a contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

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

¹⁸ *Id.*

¹⁹ *Texas v. U.S.*, 809 F.3d 134, 148 (5th Cir. 2015). In *Texas v. U.S.*, the Court discussed DACA in upholding an injunction against the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”). DACA recipients are able to, *inter alia*, apply for certain federal and state benefits, attend public schools. *Id.*

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

1 **C. Valdovinos and La Machine**

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

6 Valdovinos relies on La Machine's status as a vendor to suggest that he and La Machine
7 did not violate the Act by making a prohibited foreign national contribution because the
8 company is compensated for services it provides to clients.²² La Machine's status as a
9 commercial vendor, however, is not dispositive of whether a foreign national owner or employee
10 of that vendor may have been involved in a committee's decision-making process in connection
11 with its election-related spending; a campaign's hiring of a vendor could result in a prohibited
12 contribution if the foreign national directly or indirectly participates in any committee's
13 management or decision-making process in connection with those activities. Although
14 Valdovinos attests that he does not participate in the decision-making processes of any campaign
15 or committee regarding their election-related activities, the type of work his company performs,
16 which includes campaign strategy, raises the prospect that the company could provide the type of
17 services that the Commission has previously found resulted in prohibited foreign national
18 contributions.²³ After a review of the facts and circumstances, the Commission exercises its
19 prosecutorial discretion and dismisses the allegations as to Antonio Valdovinos.²⁴

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

²² Valdovinos Resp. at 2.

²³ *See supra* n.13.

²⁴ *See Heckler v. Chaney*, 470 U.S. 821 (1985).