



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of )  
 ) MURs 7587/7712  
SENATOR BERNARD SANDERS, *ET AL.* )

**STATEMENT OF REASONS OF CHAIR SHANA M. BROUSSARD AND VICE  
CHAIR ALLEN DICKERSON**

These Matters Under Review concern allegations that Senator Bernard Sanders of Vermont, and his relevant campaign committees, hired foreign nationals in the 2016 and 2020 election cycles. In addition, they encompass allegations that the Maricopa County Democratic Party hired a foreign national to serve as its communications director, that Tom Steyer’s 2020 presidential campaign committee hired a foreign national, that a vendor run by a foreign national was hired by federal political committees to assist them in their election-related decision-making, and that Senator Sanders’s 2016 campaign committee received ten donations, totaling thirty-five dollars, from a single foreign national.

We agree that the complaints properly allege conduct violating the Federal Election Campaign Act of 1971 (“Act”), as amended, which prohibits foreign nationals from directly or indirectly making a contribution or expenditure in connection with any federal, state, or local election.<sup>1</sup> But while we voted to find reason to believe that Senator Sanders and his campaign committees violated the Act, we chose to exercise our discretion pursuant to *Heckler v. Chaney*<sup>2</sup> and voted to dismiss the remaining respondents.

**I. FACTUAL BACKGROUND**

The complaints allege that in 2016 and 2020, Senator Sanders’s campaign committees intentionally hired several foreign national recipients of the Deferred Action for Childhood Arrivals (“DACA”) program to work for his campaign and gave

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<sup>1</sup> 52 U.S.C. § 30121(a)(1); 11 C.F.R. §110.20.

<sup>2</sup> *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (“This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion”).

them policy roles and campaign titles. The complaints raise similar allegations regarding Tom Steyer's 2020 campaign committee and the Maricopa County Democratic Party's hiring of its communications director. They also allege that a commercial vendor, La Machine, which was founded in 2015 by a DACA recipient, assisted in the decision-making for election-related activity undertaken by federal political committees.

The remaining allegation concerns a total of thirty-five dollars, in ten separate installments, contributed by a DACA recipient to Senator Sanders's 2016 campaign committee.

## II. LEGAL ANALYSIS

DACA recipients are neither United States citizens nor legal permanent residents. Participation in the DACA program confers “no substantive right, immigration status[,] or pathway to citizenship.”<sup>3</sup> Rather, DACA recipients have been given, “in the exercise of [the Department of Homeland Security's] prosecutorial discretion,” abeyance from the strict “enforce[ment of] the Nation's immigration laws against [the recipients]...who were brought to this country as children and...[a]s a general matter...lacked the intent to violate the law.”<sup>4</sup> Under the Act, then, DACA recipients are foreign nationals.<sup>5</sup>

The Act and its accompanying regulations prohibit foreign nationals from making political contributions to candidates and party committees.<sup>6</sup> Nor may these foreign contributions be lawfully received by any person, including a political committee.<sup>7</sup> The Commission has interpreted these provisions to prohibit a foreign national from “direct[ing], dictat[ing], control[ling], or directly or indirectly participat[ing] in the decision-making process” of any entity “with regard to such person's Federal or non-Federal election-related activities.”<sup>8</sup>

While “[w]e know from more than a century of Supreme Court case law that foreign citizens in the United States enjoy many of the constitutional rights that U.S.

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<sup>3</sup> Memorandum from Sec'y of Homeland Security at 3, Dep't of Homeland Security, June 15, 2012.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> 52 U.S.C. § 30121(b) (defining “foreign national”).

<sup>6</sup> 52 U.S.C. § 30121(a)(1)(A)-(B).

<sup>7</sup> 52 U.S.C. § 30121(a)(2).

<sup>8</sup> 11 C.F.R. § 110.20(i).

citizens do,”<sup>9</sup> these provisions have been upheld against constitutional challenge because they are “intimately related to the process of democratic self-government’...In other words, the government may reserve ‘participation in its democratic political institutions’ for citizens of this country.”<sup>10</sup>

Accordingly, we voted to find “reason to believe” against Senator Sanders and his campaign committees. The evidence demonstrated that Senator Sanders not only hired foreign nationals for his 2016 campaign, but again in 2020. This was no accident. The record shows that Senator Sanders “sought out and paid foreign nationals in the participate in the campaign.”<sup>11</sup> And these “foreign national employees were given formal, campaign-wide titles, helped to form policy platforms, and placed in positions in close proximity to Sanders.”<sup>12</sup>

Moreover, Senator Sanders directed his campaigns to seek out and hire foreign nationals despite having been the subject of a conciliation agreement with the Commission “in which [the 2016 campaign committee] agreed that it had accepted prohibited in-kind foreign national contributions when Australian delegates performed campaign services for the Committee while the delegates received per diem stipends and had their travel paid for by the Australian Labor Party.”<sup>13</sup>

The situation is different, however, for the other respondents.

Senator Sanders’s hiring policies strongly contrast with the allegation regarding Tom Steyer’s 2020 presidential campaign committee. There, OGC determined that “[g]iven the lack of specific allegations against Steyer 2020 and [the DACA recipient], and in light of the specific, sworn statements provided by Steyer 2020 to rebut these allegations, the available record does not” suggest a “violat[ion of] the Act.”<sup>14</sup>

Moreover, while the DACA recipients hired by the Sanders campaigns participated in the decision-making of the campaign, the evidence suggests that these employees were hired, at least in part, as a political or policy statement by Senator

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<sup>9</sup>*Bluman v. Fed. Election Comm’n*, 800 F.Supp.2d 281, 287 (D.D.C. 2011) (three-judge court) (collecting cases).

<sup>10</sup> *Id.* (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984) and *Foley v. Connelie*, 435 U.S. 291, 295 (1978)).

<sup>11</sup> First Gen’l Counsel’s Report, MUR 7587 (Sanders) at 13.

<sup>12</sup> *Id.* at n.45; *see also* First Gen’l Counsel’s Report, MUR 7712 (Bernie 2020) at 7.

<sup>13</sup> Factual & Legal Analysis, MUR 7587 (Sanders) at 5.

<sup>14</sup> First Gen’l Counsel’s Report, MUR 7712 (Bernie 2020) at 8.

Sanders concerning DACA itself.<sup>15</sup> In these circumstances, it is our view that agency resources are best directed at the senator and his campaign committees that flouted the law, not the individual employees.

Nor would enforcement against the other named DACA recipients have constituted a wise use of agency resources. OGC was unable to provide evidence that the “communications director” of the Maricopa County Democratic Party had anything more than a support role, tightly controlled by the party’s executive staff and board.<sup>16</sup> Nor did the complaint against La Machine, the commercial vendor founded by a DACA recipient, “include specific information that [the individual respondent] or La Machine provided services to *any particular committee*, or that those services include[d] election-related decision-making concerning a committee’s contributions or expenditures.”<sup>17</sup> Finally, the thirty-five dollars in donations provided by a single DACA recipient is plainly *de minimis*.

Moreover, we believe it bears mention that DACA recipients, due to their unique status as individuals “brought to this country as children,”<sup>18</sup> are unlikely to constitute the same type of threat to “democratic self-government” posed by non-citizens with loyalty to a foreign state.<sup>19</sup>

Taken together, particularly in light of the substantial backlog of Matters that accumulated during the Commission’s recent periods without a quorum, we do not believe it would not have been a wise use of agency resources to proceed against the remaining respondents.

## CONCLUSION

While we voted to find reason to believe against Senator Sanders and his campaign committees, we declined, as a matter of administrative discretion under *Heckler v. Chaney*, to proceed against the remaining respondents.

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<sup>15</sup> First Gen’l Counsel’s Report, MUR 7587 (Sanders) at 13 (“Sanders and the Committees *sought out* and paid foreign nationals...”)(emphasis supplied).

<sup>16</sup> First Gen’l Counsel’s Report, MUR 7712 (Bernie 2020) at 12.

<sup>17</sup> *Id.* at 10-11 (emphasis supplied).

<sup>18</sup> Memorandum from Sec’y of Homeland Security at 1.

<sup>19</sup> *Bluman*, 800 F.Supp.2d at 287 (citation and quotation marks omitted). While recognizing this general fact, we do not foreclose enforcement in future Matters involving DACA recipients. In exercising our administrative discretion, however, we must weigh the pros and cons of devoting scarce Commission resources on a case by case basis. We believe it is appropriate to consider the nature of the respondents before us in undertaking that analysis.



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Shana M. Broussard  
Chair

April 9, 2021

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Date



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Allen Dickerson  
Vice Chair

April 8, 2021

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Date