

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

MUR 7728

COMPLAINT DATE: April 22, 2020

NOTIFICATION DATES: April 27, 2020;  
October 13, 2020

LAST RESPONSE RECEIVED: December 4, 2020

ACTIVATION DATE: April 12, 2021

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: April 8, 2025

Latest: July 15, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Kendra Arnold, Executive Director  
Foundation for Accountability & Civic Trust

**RESPONDENTS:**

Burkett for Utah and Mary Burkett in her official  
capacity as treasurer  
Mary Burkett  
Stronger for America Fund, Inc.  
Patrick Krason

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104 (b)  
52 U.S.C. § 30116  
52 U.S.C. § 30118(a)  
11 C.F.R. § 100.22(a)  
11 C.F.R. § 109.20(a)  
11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**AGENCIES CHECKED:**

**I. INTRODUCTION**

The Complaint in this matter alleges that Stronger America Fund, Inc. ("Stronger America Fund"), a non-profit corporation controlled by Patrick Krason, made, and Mary Burkett and her authorized campaign committee, Burkett for Utah and Mary Burkett in her official

1 capacity as treasurer (“the Committee”) accepted, an illegal in-kind contribution in the form of a  
 2 coordinated April 2020 mass text communication advocating the defeat of Burkett’s opponent,  
 3 Chris Stewart. According to the Complaint, Patrick Krason, the Incorporator and Governor of  
 4 Stronger America Fund, was simultaneously serving the Committee as both treasurer and vendor.

5 Burkett and the Committee acknowledge Krason’s role with the Committee but deny any  
 6 prior knowledge of the Stronger for America Fund text message, and state that Burkett received  
 7 information that the text message was sent to only 558 individuals at a cost of \$59.95.<sup>1</sup>

8 Although there is some information suggesting that the text message may have been a  
 9 coordinated communication and a prohibited in-kind corporate contribution, the apparent amount  
 10 in violation appears to be *de minimis*. Accordingly, we recommend that the Commission  
 11 exercise its prosecutorial discretion and dismiss allegations that Stronger America Fund, Inc. and  
 12 Patrick Krason violated 52 U.S.C. § 30118 by making an illegal in-kind contribution, and that  
 13 Mary Burkett and Burkett for Utah and Mary Burkett in her official capacity as treasurer,  
 14 violated 52 U.S.C. §§ 30118 and 30104(b) by accepting and failing to report a prohibited in-kind  
 15 contribution, and that it close the file.<sup>2</sup>

## 16 II. FACTUAL BACKGROUND

17 Mary Burkett was a 2020 candidate to represent Utah’s 2nd Congressional District in the  
 18 U.S. House of Representatives.<sup>3</sup> Burkett for Utah is Burkett’s authorized campaign committee  
 19 and Patrick Krason was the Committee’s treasurer since it first registered with the Commission

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<sup>1</sup> Burkett and Committee Resp. at 2 (Nov. 10, 2020); Burkett Decl. ¶6.

<sup>2</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>3</sup> Statement of Candidacy, Mary Burkett (May 3, 2019). Burkett also ran unsuccessfully for the same seat in 2018. *See* Statement of Candidacy, Mary Burkett (Sept. 16, 2017); *2018 Election results for the U.S. Senate and the U.S. House of Representatives* at 135, available at [www.fec.gov](http://www.fec.gov). In 2012, Burkett ran unsuccessfully for a state House of Representatives seat. *See* 2012 Candidates, Utah Elections, <https://elections.utah.gov/election-resources/2012-candidate-filings>.

1 until the candidate filed an amended Statement of Organization in July 2021 naming herself as  
 2 treasurer.<sup>4</sup> In addition to serving as the Committee's treasurer, Krason also operated several  
 3 consulting companies, including "A Political Firm, LLC,"<sup>5</sup> which provided the Committee with  
 4 campaign strategy and fundraising consulting services.<sup>6</sup> Krason also formed Respondent  
 5 Stronger for America Fund, a non-profit corporation. That entity was incorporated in the District  
 6 of Columbia and operated from April 2017 until it dissolved on April 27, 2020.<sup>7</sup>

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<sup>4</sup> Statement of Organization (Apr. 29, 2019) (naming Krason as treasurer and Burkett as custodian of records and designated agent); Amended Statement of Organization (July 7, 2021) (naming the candidate as treasurer and custodian of records). Krason has signed all of the reports that Burkett for Utah has filed with the Commission to date, including its most recent report, the 2021 April Quarterly Report. *See* Burkett for Utah, 2021 April Quarterly Rpt. (Apr. 15, 2021). The Committee no longer appears to be active. In 2021, its Commission filings show \$0 in receipts and disbursements, \$2,868.24 in cash on hand, and \$32,035.60 in debts owed to the candidate. *See 2021-2022 Financial Summary Page*, Burkett for Utah, FEC.gov (last accessed July 1, 2021).

<sup>5</sup> Krason registered A Political Firm, LLC in Virginia on January 9, 2017 and in West Virginia on December 11, 2020; as of April 30, 2019, the entity has been in inactive status in Virginia but remains active in West Virginia. *See* Clerk's Information System, Virginia State Corporation Commission, <https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=924618&source=FromEntityResult&isSeries=false> (listing Krason as its registered agent); West Virginia Sec. of State, <http://apps.sos.wv.gov/business/corporations/organization.aspx?org=504114> (listing "Red Action Strategies" as the company's DBA). Krason also operated "Patrick Krason Solutions LLC" and "Krason and Wool Political Strategy Group, LLC;" the latter company remains active and has been providing compliance and consulting services to federal political committees in 2021. *See* <https://www.krasonwoolpolitical.com/>; *Business Entity Details*, West Virginia Sec. of State, <https://apps.wv.gov/SOS/BusinessEntitySearch/Details.aspx?Id=f6x3SedVmtQBg24na7GzqQ==&Search=t0EbcwL8aPDH0e78/IBwrg==&Page=0>; *Disbursements Data*, FEC, available at [www.fec.gov](http://www.fec.gov).

<sup>6</sup> The Committee made \$21,271 in payments to A Political Firm. *See* Burkett and Committee Resp. at 1. The purposes listed for those payments included "Campaign Strategy Consulting," "Campaign Fundraising Consulting," "Political Strategy Consulting," "Research Project," "Texting Service," and various meal and travel expense reimbursements. According to the Commission's disclosure data, Burkett for Utah was the only committee that paid Krason's firm for texting services. Commission disclosure records also show that various committees have paid Krason or one of his companies for campaign services throughout the years: \$4,500 in payments to Krason in 2018 and 2019, \$69,581.10 in payments to A Political Firm from 2017 through 2020, and \$26,058.00 in payments to Krason and Wool Political Strategy Group in 2020 and 2021. *See Disbursements Data*, FEC, available at [www.fec.gov](http://www.fec.gov) (the services listed for these payments included "FEC Compliance Services," "Campaign Strategy Consulting," among others).

<sup>7</sup> *See* [https://opencorporates.com/companies/us\\_dc/EXTUID\\_4183895](https://opencorporates.com/companies/us_dc/EXTUID_4183895) (listing Krason as "Governor" and "Executing Officer" of the organization). The Complaint describes the entity as a 501(c)(4) organization and the text message at issue here states that it was "Paid for by Stronger America Fund, Inc, a 501c(4) org," but Stronger for America Fund does not appear to be registered with the Internal Revenue Service. The company's single report filed with the District of Columbia Department of Consumer and Regulatory Affairs is not available on the agency's website.

Chris Stewart was the incumbent congressman in Utah's Second Congressional District and was selected as the 2020 nominee at the Republican nominating convention held on April 25, 2020.<sup>8</sup>

The Complaint alleges that that Stronger America Fund spent funds to send text messages in early April 2020 advocating the defeat of Rep. Stewart at the upcoming convention. The Complaint focuses on a text criticizing Stewart and stating "Anybody would be a better choice at the convention."<sup>9</sup> A screenshot included in the Complaint is shown below.<sup>10</sup>



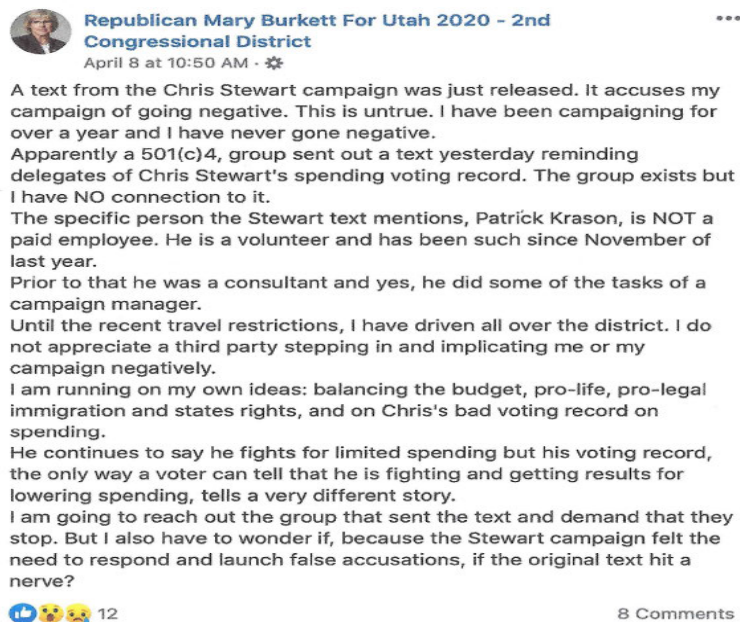
The screenshot does not display a date, but based on the date of a statement that Burkett posted on her campaign's Facebook page, it appears that the text message from Stronger

<sup>8</sup> 2020 Utah GOP Convention Results, <https://utgop.org/2020-convention-results/> and <https://revis.com/visualize=2020-convention-results-cd2.json> (last accessed July 1, 2021).

<sup>9</sup> Compl. at 2 (Apr. 22, 2020).

<sup>10</sup> *Id.*

America Fund was distributed on or about April 8, 2020.<sup>11</sup> Burkett's Facebook post denies any connection to the text message stating that she had "NO connection to it" and that Krason "is NOT a paid employee. He is a volunteer and has been such since November of last year."<sup>12</sup> Burkett acknowledges that Krason, her campaign treasurer, was previously a consultant for the campaign and "did some tasks of a campaign manager."<sup>13</sup> A screenshot appears below.<sup>14</sup>



Burkett and the Committee submitted a joint response to the Complaint, along with a declaration signed by Mary Burkett. Krason was separately notified of the Complaint in his capacity as Committee treasurer, while he was still serving as treasurer, and as Governor of Stronger America Fund, but he did not submit a response in either capacity. Burkett and the

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> Compl. at 3.

<sup>13</sup> *Id.*

<sup>14</sup> Burkett's campaign Facebook page has since been deleted. See Republican Mary Burkett for Utah 2020 – 2nd Congressional District, FACEBOOK AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&view\\_all\\_page\\_id=170418103874596&sort\\_data\[direction\]=desc&sort\\_data\[mode\]=relevancy\\_monthly\\_grouped](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=170418103874596&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped).

Committee deny playing a role with the texts sent by Stronger America Fund.<sup>15</sup> The Response states that “[n]either Mary Burkett nor any other agent of Burkett for Utah had communicated with Patrick Krason regarding the text messages prior to the texts being sent by Stronger America Fund” and that Burkett and the Committee “did not want any such texts to be sent and quickly denounced them.”<sup>16</sup> Burkett and the Committee acknowledge that the Committee paid Krason’s consulting firm, A Political Firm, for campaign-related services in 2019 and that in 2019 through 2020, Krason served as a volunteer treasurer.<sup>17</sup> The response also states that “Krason was never employed by Burkett for Utah.”<sup>18</sup>

The Response further indicates that “according to information provided to [Burkett],” the text messages at issue from Stronger America Fund were only sent one time, to 558 individuals at a total cost of \$59.95.<sup>19</sup> The Response, however, does not provide supporting documentation or explain who provided the information to Burkett.

### III. LEGAL ANALYSIS

Federal candidates and their campaign committees are prohibited from accepting any corporate contributions, including in-kind contributions from nonprofit corporations such as Stronger America Fund.<sup>20</sup> Any person who is otherwise prohibited from making contributions or expenditures under any part of the Federal Election Campaign Act of 1971, as amended (the

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<sup>15</sup> Burkett and Committee Resp. at 2.

<sup>16</sup> *Id.* at 2 and Burkett Decl. ¶ 7.

<sup>17</sup> Burkett and Committee Resp. at 1 and Burkett Decl. ¶¶ 2-3.

<sup>18</sup> Burkett and Committee Resp. at 2 and Burkett Decl. ¶ 4.

<sup>19</sup> Burkett and Committee Resp. at 2 and Burkett Decl. ¶ 6 (noting that the cost information was provided to Burkett without naming the source of that information). The Committee also paid A Political Firm for “Texting Service[s]” on October 29, 2019, in the amount of \$100, on November 12, 2019, in the amount of \$65, and on December 11, 2019, in the amount of \$61. *See* 2019 Year-End Report at 8-9, Burkett for Utah (Jan. 31, 2020).

<sup>20</sup> 52 U.S. § 30118.

“Act”), or Commission regulations is prohibited from paying for a coordinated communication.<sup>21</sup> Political committees, through their treasurer, are required to report all contributions made and received and treasurers shall be responsible for examining all contributions for evidence of illegality.<sup>22</sup>

Under the Act, “[c]oordinated means made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.”<sup>23</sup> The Commission’s regulations provide a three-part test for determining when a communication is a coordinated expenditure, which is treated as an in-kind contribution.<sup>24</sup> The communication must: (1) be paid for, in whole or in part, by a person other than the candidate or committee (the “payment prong”); (2) satisfy one of five “content” standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of five conduct standards listed in 11 C.F.R. § 109.21(d).<sup>25</sup> All three prongs must be satisfied for a communication to be considered coordinated.<sup>26</sup>

The text message appears to satisfy the payment prong because it was paid for by a third party; the message clearly states that it was “Paid for by Stronger America Fund Inc., a 501c(4) org ([www.safundinc.com](http://www.safundinc.com)).” Burkett also provided information that she received from an

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<sup>21</sup> 11 C.F.R. § 109.22.

<sup>22</sup> 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 103.3(b). .

<sup>23</sup> 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

<sup>24</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>25</sup> *Id.* § 109.21 (a), (c)-(d). The five types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; and (5) use of a former employee or independent contractor. *Id.* § 109.21(d)(1)-(5). A sixth conduct standard describes how the other conduct standards apply when a communication republishes campaign materials. *See* 11 C.F.R. § 109.21(d)(6).

<sup>26</sup> 11 C.F.R. § 109.21(d)(4);

unnamed third party indicating that “Patrick Krason’s PAC, the Stronger America Fund, Inc.” sent the text to 558 individuals at a cost of \$59.95.<sup>27</sup>

The text message also appears to satisfy the content prong as it was a public communication<sup>28</sup> sent on or about April 8, 2020, which was 17 days before the April 25, 2020, Republican nomination convention, and it advocated the defeat of Rep. Chris Stewart by attacking his record and concluding with the phrase “Anybody else would be a better choice at the convention.”<sup>29</sup>

Regarding the conduct prong, Krason simultaneously performed work for and served as an agent for both Burkett for Utah and Stronger America Fund.<sup>30</sup> As an agent of both Stronger America Fund and the Committee, Krason was in a position to make a request or suggestion

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<sup>27</sup> Burkett Decl. ¶¶ 5-6 .

<sup>28</sup> Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003). A public communication is defined as “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26. Text messages fall within the scope of “general public political advertising” and are treated as public communications. *See e.g.*, Internet Communications, 71 Fed. Reg. 18,589, 18,594 (Apr. 12, 2006) (explaining that among the shared characteristics of the types of communication already included in the non-exhaustive list of public communications is payment to a third party for access to a form of media through which the communication is distributed or disseminated; that characteristic is shared by communications such as mass mailings, telephone banks, and communications placed for a fee on another person’s website); *cf.* Advisory Opinion 2002-09 (Target Wireless) (deciding without analysis of the definition of public communications that the disclaimer exception 11 C.F.R. § 110.11(a)(6)(i) applied to the character limited text messages proposed by the requestor).

<sup>29</sup> *Id.* § 109.21(c)(4)(i). A communication contains express advocacy when, among other things, it uses campaign slogans or individual words that in context can have no other reasonable meaning than to urge the election or defeat of a clearly identified federal candidate. 11 C.F.R. § 100.22(a). The Commission has found that a communication contains express advocacy where it uses a slogan referencing the candidate’s character, qualifications or accomplishments. *See id.* § 100.22(a) and (b); Explanation and Justification, 60 Fed. Reg. 35,292, 35,295 (July 6, 1995) (“[C]ommunications discussing or commenting on a candidate’s character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question.”). *See, e.g.*, F&LA at 6-8, MUR 5831 (Softer Voices) (finding that ad that praised Rick Santorum and attacked the qualifications of his opponent by stating “Can we really risk Bob Casey learning on the job?” constituted express advocacy under 11 C.F.R. § 100.22(a) by effectively directing readers to vote against Casey); *see also*, F&LA at 6-7 and Conciliation Agreement ¶¶ IV.24-28, MUR 5511/5525 (Swift Boat Veterans) (finding that language stating that “Mr. Kerry is clearly unfit for command of the armed forces of the United States,” was express advocacy by directing readers to contribute toward Kerry’s defeat in the upcoming presidential election).

<sup>30</sup> Indeed, Burkett referred to Stronger America Fund as “Krason’s PAC.” Burkett Decl. ¶ 5.



1 for,<sup>31</sup> be materially involved in,<sup>32</sup> or be engaged in substantial discussions<sup>33</sup> about the text  
 2 message communication.<sup>34</sup> Krason's consulting firm, A Political Firm, also performed services  
 3 for the Committee that might implicate the former employee and common vendor portions of the  
 4 conduct prong.<sup>35</sup>

5 Although Burkett denies having any conversations with Krason regarding sending the  
 6 text messages, the Committee had paid Krason's firm for "Texting Service" in the past and had  
 7 disclosed such payments in earlier reports filed with the Commission. In light of his role as the

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<sup>31</sup> A communication satisfies the request or suggest standard if it is created, produced, or distributed at the request or suggestion of a candidate, authorized committee or political party committee. 11 C.F.R. § 109.21(d)(1).

<sup>32</sup> A communication satisfies the material involvement standard if a candidate, authorized committee or political party committee is materially involved in decisions regarding the content of the communication, its intended audience, the means or mode of the communication, the specific media outlet used, the timing or frequency, or the size, prominence or duration of the communication. 11 C.F.R. § 109.21(d)(2).

<sup>33</sup> A communication satisfies the substantial discussion standard if the communication is created, produced, or distributed after one or more substantial discussions between the person paying for the communication, or the employee or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee. 11 C.F.R. § 109.21(d)(3). A discussion is considered substantial if information about the candidate's campaign plans, projects, activities or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication. *Id.*

<sup>34</sup> Commission regulations define "agent" as "any person who has actual authority, either express or implied . . . to solicit, receive, direct, transfer, or spend funds in connection with any election" on behalf of a federal candidate. 11 C.F.R. § 300.2(b)(3). In promulgating this regulation in 2002, the Commission explained that the definition of agent must cover "implied" authority because "[o]therwise, agents with actual authority would be able to engage in activities that would not be imputed to their principals so long as the principal was careful enough to confer authority through conduct or a mix of conduct and spoken words." Explanation and Justification, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,082 (July 29, 2002) .

<sup>35</sup> See 11 C.F.R. § 109.21(d)(4)-(5). The "common vendor" standard requires that: (i) the person paying for the communication uses a "commercial vendor" to create, produce, or distribute the communication, (ii) the vendor, including any owner, officer, or employee, previously provided certain enumerated services — including, *inter alia*, "development of media strategy," polling, fundraising, "developing the content of a public communication," "identifying voters," or "consulting or otherwise providing political or media advice" to the candidate identified in the communication (or that candidate's opponent) during the previous 120 days, and (iii) the commercial vendor uses or conveys information. 11 C.F.R. § 109.21(d)(4)(i)-(ii). Under the "former employee or independent contractor" standard of the conduct prong, the communication must be paid for by a person, or employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's opponent, during the previous 120 days. 11 C.F.R. § 109.21(d)(5)(i). Under both the common vendor and former employee standards, the individual conveys to the person paying for the communication (A) information about the campaign's plans, projects, activities, which was material to the creation, production or distribution of the communication, or (B) information used by the common vendor, former employee or independent contractor in providing services to the candidate that was material to the creation, production or distribution of the communication. See 11 C.F.R. § 109.21(d)(4)(iii), (5) (ii).

Committee's treasurer, as well as Burkett's acknowledgment that Krason had performed "some of the tasks of a campaign manager," it appears that material provided by the Committee, with Krason acting as its agent, could have been used as part of the decision for Stronger America Fund to send the text message.

However, the available information suggests that the amount paid for the texts was small. Burkett declared that she had been given information that the amount at issue was \$59.95, and other Committee disbursements to A Political Fund for similar texting services were also in small amounts.<sup>36</sup> We therefore recommend that the Commission exercise its prosecutorial discretion to dismiss the allegations as to all of the Respondents and close the file.<sup>37</sup>

#### IV. RECOMMENDATIONS

1. Dismiss as a matter of prosecutorial discretion the allegation that Stronger America Fund and Patrick Krason made a prohibited contribution in violation of 52 U.S.C. § 30118 through a coordinated communication;
2. Dismiss as a matter of prosecutorial discretion the allegation that Burkett for Utah and Mary Burkett in her official capacity as treasurer accepted a prohibited contribution in violation of 52 U.S.C. § 30118 through a coordinated communication and that it failed to report such a contribution in violation of 52 U.S.C. § 30104(b);
3. Dismiss as a matter of prosecutorial discretion the allegation that Mary Burkett accepted a prohibited contribution in violation of 52 U.S.C. § 30118 through a coordinated communication;
4. Approve the Factual and Legal Analysis;
5. Close the file; and

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<sup>36</sup> See note 19.

<sup>37</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

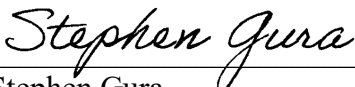
6. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

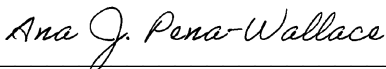
Charles Kitcher  
Acting Associate General Counsel for Enforcement

07.12.21

Date

  
\_\_\_\_\_  
Stephen Gura  
Deputy Associate General Counsel for Enforcement

  
\_\_\_\_\_  
Mark Shonkwiler  
Assistant General Counsel

  
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Ana J. Peña-Wallace  
Attorney