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## VIA EMAIL

Jeff S. Jordan, Esq.  
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Federal Election Commission  
[cela@fec.gov](mailto:cela@fec.gov)

**Re: MUR 7863**

Dear Mr. Jordan:

We write as counsel to Kamala Harris for the People, and John Emerson, Treasurer; Warren for President, Inc., and Paul Egerman, Treasurer; Cory 2020, and Judith Zamore, Treasurer; Win the Era PAC, formerly known as Pete for America, Inc., and Ed Jordanich, Treasurer; the Democratic National Committee, and William Derrough, Treasurer; Hillary for America, and Elizabeth Jones, Treasurer; and Catherine Cortez-Masto for Senate, and Lili Snyder, Treasurer (“Respondents”) in response to the complaint filed by Richard I. Turner on December 4, 2020 (the “Complaint”).

The Complaint alleges that a foreign national, Astrid Silva, and/or a 501(c)(3) organization, Dream Big Nevada, provided “a thing of value” or “something of value” to the Respondents. The Complaint appears to base this conclusion entirely on the claim that Ms. Silva met with various Respondents, spoke at two events, and appeared in one or more political advertisements.<sup>1</sup>

A complaint against a respondent must include a “clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction[.]”<sup>2</sup> In addition, the Commission may only find “reason to believe” and commence an investigation when a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (“the Act”), or Commission

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<sup>1</sup> The Complaint does not allege that Hillary for America received anything of value from Ms. Silva or Dream Big Nevada, instead merely stating: “Hillary R Clinton 2016 Presidential campaign: Astrid Silva appeared in campaign ads; FL, IA, NV, NC, OH and PA ~10 Oct, 2016.” Compl. ¶ 4. However, this response addresses these factual allegations as if the Complaint explicitly claimed that these activities constituted a “thing of value.”

<sup>2</sup> 11 C.F.R. § 111.4(d)(3).

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regulations.<sup>3</sup> In determining whether it has reason to believe, “[u]nwarranted legal conclusions from asserted facts” and “mere speculation” will not be accepted as true.<sup>4</sup>

At no point does the Complaint explain how the activities described above amount to an impermissible or unreported campaign contribution. At no point does the Complaint allege *any* facts which, if true, would demonstrate that Respondents violated the Act. The Commission should therefore find no reason to believe that Respondents violated the Act and should dismiss the matter immediately.

## I. FACTUAL BACKGROUND

Respondents include Kamala Harris for the People, the presidential campaign committee of Vice-President Kamala Harris; Warren for President, Inc., the presidential campaign committee of Senator Elizabeth Warren; Cory 2020, the presidential campaign committee of Senator Cory Booker; Win the Era PAC, formerly known as Pete for America, Inc., which was at the time of the facts alleged in the Complaint the presidential campaign committee of Mayor Pete Buttigieg; the Democratic National Committee, a national party committee; Hillary for America, the presidential campaign committee of Secretary Hillary Clinton; and Catherine Cortez-Masto for Senate, the principal campaign committee of Senator Catherine Cortez-Masto, as well as the treasurers for these seven committees.

Dream Big Nevada is a 501(c)(3) charitable organization. According to the organization’s website, Astrid Silva is the Executive Director.<sup>5</sup> The Complaint alleges that Astrid Silva, who is allegedly a foreign national, variously met with some of the Respondents, spoke at two events, and appeared in one or more campaign advertisements. No additional details or information regarding why any of these allegations would constitute a violation of the Act is included in the Complaint.<sup>6</sup> Complainant simply concludes that meeting with a candidate, speaking at a political convention or in response to another speech, or appearing in a candidate’s advertisement constitutes a thing of value under the Act.

## II. LEGAL ANALYSIS

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<sup>3</sup> MUR 4960 (Clinton for U.S. Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1 (Dec. 21, 2000).

<sup>4</sup> *Id.* at 2; *see also* MURs 6789/6852 (Special Operations for America, et al.), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter at 4 (May 28, 2019) (“We do not authorize Commission investigations based on mere speculation”).

<sup>5</sup> *See* About Page, Dream Big Nevada, <https://dreambignv.org/about/>.

<sup>6</sup> Indeed, with regard to Catherine Cortez-Masto for Senate, no activity is alleged; the complaint merely concludes that “Catherine Cortez Masto 2016 Nevada Federal Senate campaign was provided ‘a thing of value’ by Astrid Silva,” without describing what that thing of value was. Compl. ¶ 5.

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**A. The Complaint does not allege facts indicating that Ms. Silva made contributions to Respondents**

The full extent of the Complaint's allegations is that Astrid Silva met with the Respondents as candidates, spoke at two events, or appeared in campaign advertisements. None of these actions, even taken as true, result in a contribution from Ms. Silva to any of the Respondents under the Act. Federal law prohibits a foreign national from making "a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election."<sup>7</sup> It further prohibits political committees or candidates from soliciting, accepting, or receiving contributions from foreign nationals.<sup>8</sup> However, under the Act, a contribution "does not include... the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee."<sup>9</sup>

The Commission has repeatedly confirmed the application of this volunteer exemption to foreign nationals. Thus, for example, the Commission found that Elton John did not violate the Act when he performed at a fundraising concert for Hillary Clinton's 2008 campaign at the campaign's expense, describing such activities as "the type of volunteer activity specifically exempted from the Act."<sup>10</sup> The Commission has also issued multiple advisory opinions addressing this exemption, explaining that "because uncompensated volunteer services are not considered to be a contribution under the Act, any individual, including a foreign national, may volunteer his or her uncompensated services to a candidate without making a contribution to that candidate" and that "the performance of [certain] campaign-related activities by [foreign] citizens, without compensation, constitutes volunteer activity and, as such, is exempt from the definition of 'contribution.' Thus, the value of volunteer services provided to [a] campaign by [foreign] nationals would not constitute a prohibited in-kind contribution to [a] campaign."<sup>11</sup> Therefore, even if Ms. Silva had provided personal services on a volunteer basis to the candidates in the form of giving a speech or appearing in a campaign advertisement, such services would be excluded from the definition of a contribution.

In fact, the Commission has specifically advised that a foreign national may lawfully attend campaign events, give speeches at campaign events, and attend meetings on campaign events and strategy, so long as they refrain from participating in campaign decisions and management.<sup>12</sup> In such a scenario, "[b]ecause the services would not be contributions, they would not be subject to the prohibition on contributions from foreign nationals."<sup>13</sup> The activities described in this

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<sup>7</sup> 52 U.S.C. § 30121(a)(1)(A); 11 CFR § 110.20(b).

<sup>8</sup> 52 U.S.C. § 30121(a)(2); 11 CFR § 110.20(g).

<sup>9</sup> See 52 U.S.C. § 30101(8)(B)(i); 11 CFR § 100.74.

<sup>10</sup> See MUR 5987 et al. (Hillary Clinton for President), Factual and Legal Analysis at 7 (Feb. 20, 2009).

<sup>11</sup> Adv. Ops. 2007-22 (Hurysz), 1987-25 (Otaola); see also Adv. Op. 2014-20 (Make Your Laws PAC).

<sup>12</sup> Adv. Op. 2004-26 (Weller).

<sup>13</sup> Adv. Op. 2014-20 (Make Your Laws PAC).

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Complaint—meeting with candidates and appearing at events and in advertisements, without any allegation that personal funds were expended to support these activities—fall squarely within the scope of this precedent.

**B. The Complaint does not allege facts indicating that Dream Big Nevada made contributions to Respondents**

Similarly, the Complaint does not allege facts indicating that Dream Big Nevada made contributions to any of the Respondents or was otherwise involved in Ms. Silva’s volunteer activities in any way. The Complaint merely alleges that Ms. Silva “used Dream Big Nevada to Campaign for, fund and influence Democratic Party Presidential candidates during the 2020 Democratic Presidential primary campaign season,” and that Dream Big Nevada provided something of value to the Democratic National Committee when Ms. Silva spoke at the 2016 Democratic National Convention and provided political commentary following the 2017 State of the Union.<sup>14</sup>

First, with regard to the allegation that Dream Big Nevada provided something of value to the Democratic National Committee when Ms. Silva spoke at the 2016 Democratic National Convention, the Complaint does not provide any evidence whatsoever of involvement on the part of the organization. In fact, it appears that Dream Big Nevada was not founded until 2017, and therefore could not have been involved in a two-minute speech Ms. Silva gave in 2016.<sup>15</sup> Additionally, with regard to Ms. Silva’s response to President Trump’s speech before a joint session of Congress in 2017, not only does the Complaint fail to indicate how Big Dream Nevada provided any resources to support Ms. Silva’s response, a necessary element of providing something of value to a political committee, but the response was not a communication of the Democratic National Committee. Instead, contemporaneous reports of Ms. Silva’s speech clearly indicate that she spoke at the request of U.S. House and Senate offices.<sup>16</sup> As such, even if Big Dream Nevada had expended resources to support Ms. Silva’s response,

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<sup>14</sup> Compl. ¶¶ 1, 3.

<sup>15</sup> See Homepage, Dream Big Nevada, <https://dreambignv.org> (“Dream Big Nevada was established in 2017 to provide aid to Nevada’s immigration families through direct services and by empowering community members to advocate for themselves and others in similar situations.”); see also PBS NewsHour, *DREAMer Astrid Silva shares her story at the 2016 Democratic National Convention*, YouTube.com (July 25, 2016), <https://www.youtube.com/watch?v=wyrSSBQCIGQ>. Moreover, although there is not an in-kind issue here, if there were, it would be a question for the Democratic National Convention Committee 2016, which terminated on September 20, 2017, and not the Democratic National Committee.

<sup>16</sup> See Adrian Florido, *In Spanish-Language Response, Activist Says Trump Is Inspiring Discrimination*, NPR (Feb. 28, 2017), <https://www.npr.org/2017/02/28/517539163/activist-astrid-silva-to-give-spanish-language-response-to-trumps-address>; Senate Democrats, *Schumer, Pelosi Announce Democratic Response to President Trump’s Joint Address To Congress* (Feb. 24, 2017), <https://www.democrats.senate.gov/newsroom/press-releases/schumer-pelosi-announce-democratic-response-to-president-trumps-joint-address-to-congress>.

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there is no reason why those resources would be a thing of value provided to the Democratic National Committee.

Second, with regard to the allegation that Ms. Silva used Dream Big Nevada to “fund” the respondent presidential campaigns, the Complaint provides no details or evidence whatsoever regarding what sort of funding was provided, how, or when. For example, it is unclear whether this allegation stems merely from the meetings the Complaint alleges Ms. Silva had with several presidential candidates, or from some other instance. As mentioned above, the Commission “may find ‘reason to believe’ *only if* a complaint sets forth sufficient *specific facts*, which, if proven true, would constitute a violation of the [Act].”<sup>17</sup> Here, the mere allegation that Ms. Silva used Dream Big Nevada to fund “Democratic Party Presidential candidates during the 2020 Democratic Presidential primary campaign season” does not provide sufficient facts regarding the nature of the alleged violation and cannot serve as the sole basis for a finding of reason to believe.

### III. CONCLUSION

The allegations in the Complaint do not include facts that would provide a sufficient basis for the Commission to find “reason to believe” that the Act or Commission regulations have been violated. In fact, the Commission has repeatedly concluded in both advisory opinions and matters under review that activities of the nature described in the Complaint would not constitute violations of the Act. Therefore, we respectfully request that the Commission promptly find no reason to believe Respondents violated the Act or Commission regulations and immediately dismiss this matter.

Very truly yours,



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Jacquelyn K. Lopez  
Varoon Modak  
Andrea T. Levien  
Counsel to Respondents

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<sup>17</sup> MUR 4960 (Clinton for U.S. Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1 (Dec. 21, 2000) (emphasis added).