



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 15, 2021

Via Electronic Mail

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RE: MUR 7863
Kamala Harris for the People,
et al.

Dear Counsel:

On December 11, 2020, the Federal Election Commission notified your clients, Kamala Harris for the People and John Emerson in his official capacity as treasurer; Warren for President Inc. and Paul Egerman in his official capacity of treasurer; Cory 2020 and Judith Zamore in her official capacity as treasurer; Win the Era PAC and Ed Jordanich in his official capacity as treasurer; the Democratic National Committee and William Derrough in his official capacity as treasurer; Hillary for America and Elizabeth Jones in her official capacity as treasurer; and Catherine Cortez-Masto for Senate and Lili Snyder in her official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On January 25, 2021, we received your clients' joint response to the complaint. On August 31, 2021, the Commission found that there is no reason to believe your clients violated the Act. Accordingly, the Commission closed its file in this matter.

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). The Factual and Legal Analysis, which explains the Commission's finding is enclosed. If you have any questions, please contact Christopher S. Curran, the staff attorney assigned to this matter at (202) 294-3097.

Sincerely,

A handwritten signature in cursive script that reads "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Astrid Silva **MUR: 7863**
 Dream Big Nevada
 Democratic National Committee and
 Virginia McGregor in her official capacity as treasurer,
 Biden for President and
 Andrea Wise in her official capacity as treasurer
 Catherine Cortez-Masto for Senate and
 Lili Snyder in her official capacity as Treasurer
 Cory 2020 and
 Judith Zamore in her official capacity as treasurer
 Hillary for America and
 Elizabeth Jones in her official capacity as treasurer
 Kamala Harris for the People and
 John B. Emerson in his official capacity as treasurer
 People First Future and
 Sawyer Hackett in his official capacity as treasurer
 Warren for President, Inc. and
 Paul Egerman in his official capacity as treasurer
 Win the Era PAC and
 Edward J. Jordanich in his official capacity as treasurer

I. INTRODUCTION

The Complaint in this matter alleges that Astrid Silva, a foreign national, and Dream Big Nevada (“DBN”), an organization for which Silva serves as Executive Director, violated the foreign national prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”) by providing “something of value” to Hillary Clinton, Kamala Harris, Elizabeth Warren, Joe Biden, Cory Booker, Julian Castro, Pete Buttigieg, Catherine Cortez Masto, and the Democratic National Committee. Relying on news reports, the Complaint claims that Silva spoke at the 2016 Democratic National Convention, appeared in Hillary Clinton campaign ads in October 2016, provided something of value to 2016 U.S. Senate candidate for Nevada Catherine Cortez Masto, gave the Democratic Party’s Spanish language response to the 2017 State of the

Union, and met with several federal candidates prior to the 2020 Nevada caucuses.¹ The Complaint also claims Silva used DBN to campaign for and fund Democratic candidates and engage in other unspecified “electioneering” activities.²

The Commission received three separate responses: one joint response from Silva and DBN; one response from Biden for President; and one joint response from the DNC and other Democratic presidential candidates. Respondents deny violating the Act, contending that Silva acted as an uncompensated volunteer, did not participate in the decision-making process of another person’s election-related activities, and was permitted to engage in issue advocacy.

The available information fails to indicate that Silva or DBN made prohibited foreign national contributions or expenditures or that the DNC and the federal candidates accepted prohibited foreign national contributions. Accordingly, the Commission finds no reason to believe that the Respondents violated 52 U.S.C. § 30121(a).

II. FACTUAL BACKGROUND

A. Silva’s Political Activities

Astrid Silva is a foreign national currently enrolled in the federal Deferred Action for Childhood Arrivals (DACA) program, which defers removal proceedings, subject to particular criteria and in the exercise of prosecutorial discretion, for unauthorized aliens brought to this country as children under the age of sixteen.³ In 2017, Silva co-founded DBN, a nonprofit

¹ See Compl. at 1 (Dec. 4, 2020).

² *Id.*

³ See Memorandum from Janet Napolitano, DHS Secretary, June 15, 2012, *available at* <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

Nevada corporation, and has been its Executive Director since its founding.⁴ DBN is currently recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code.⁵ The organization’s website states that it “provide[s] aid to Nevada’s immigrant families through direct services and by empowering community members to advocate for themselves and others in similar situations.”⁶ According to the available data on file with the Internal Revenue Service, DBN constituted a small tax-exempt organization in 2018, that is, an organization with gross annual receipts less than \$50,000.⁷ In 2019, its income was \$194,521.⁸

The available information indicates that Silva has been politically active. She spoke in support of Hillary Clinton at the 2016 Democratic National Convention and appeared in Hillary Clinton campaign ads in 2016.⁹ On September 21, 2016, Univision published an op-ed article by Silva in its opinion section in support of U.S. Senate candidate Catherine Cortez Masto.¹⁰

⁴ *Business Entity Search*, NEV. SEC’Y OF STATE, <https://esos.nv.gov/EntitySearch/OnlineEntitySearch> (search “Dream Big Nevada”) (last visited June 7, 2021).

⁵ https://apps.irs.gov/pub/epostcard/dl/FinalLetter_82-2765806_DREAMBIGNEVADA_04122018_01.tif. As a 501(c)(3) charitable organization, DBN cannot engage in political campaign activities (as defined by the IRS) without jeopardizing its tax-exempt status.

⁶ DREAM BIG NEVADA, <https://dreambignv.org/> (last visited June 7, 2021); *see also* Silver/DBN Resp. at 2.

⁷ *See* Dream Big Nevada, Form 990-N (search “Dream Big Nevada” in “Form 990-N (e-Postcard)” database).

⁸ *Exempt Organizations Business Master File Extract*, IRS, <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf> (download CSV file for Nevada and search for “Dream Big Nevada”) (last visited Mar. 25, 2021).

⁹ Hillary Clinton, *Nevadense* | Hillary Clinton, YOUTUBE (Oct. 11, 2016), <https://www.youtube.com/watch?v=gl2rhCR0Wxc>; 2020 Democratic National Convention, Astrid Silva at DNC 2016, YOUTUBE (July 25, 2016), <https://www.youtube.com/watch?v=GIO2zt6fHlw>.

¹⁰ Astrid Silva, *Cortez Masto Will Stand with immigrants and Push for a Permanent Solution to Our Country’s Broken Immigration System*, UNIVISIONNEWS (Sept. 21, 2016), <https://www.univision.com/univision-news/opinion/cortez-masto-will-stand-with-immigrants-and-push-for-a-permanent-solution-to-our-countrys-broken-immigration-system>. Univision also stated that it published the op-ed “as a contribution to public debate” and that the views and opinions Silva expressed “are those of its author(s) and/or the organization(s) they represent and do not reflect the views or the editorial line of Univision Noticias.” *Id.*

Following the 2016 election, Silva provided the Democratic Party’s Spanish language response to the 2017 State of the Union address and spoke against the Trump administration’s immigration policies.¹¹ Further, in 2020, she met with numerous Democratic presidential candidates, including Kamala Harris, Elizabeth Warren, Joe Biden, Cory Booker, Julian Castro and Pete Buttigieg.¹² According to a news article cited in the Complaint, these meetings included “dinner with Kamala Harris, policy roundtables with Elizabeth Warren and Joe Biden, and vegan tamales with Cory Booker.”¹³ The same article includes a photo of Silva with Castro and also mentions a phone call between Silva and Buttigieg.¹⁴ The article indicates that the issue of immigration was the main topic of discussion.¹⁵

B. The Complaint and Responses

The Complaint alleges that Silva’s political activities described above constituted violations of the Act’s foreign national prohibition because she provided “something of value” to the DNC and the federal candidates.¹⁶ The Complaint also makes two allegations involving DBN that are more general in nature. First, the Complaint alleges that Silva used DBN to

¹¹ Silva/DBN Resp. at 2; Univision Noticias, *La respuesta de una dreamer al discurso de Trump al Congreso*, YOUTUBE (Mar. 1, 2017), <https://www.youtube.com/watch?v=Z6fJevTHkgE>.

¹² See Silva/DBN Resp. at 2 (citing Associated Press, *She Can’t Vote, but 2020 Democrats Want Her Support Anyway*, VOA (Dec. 2, 2019, 3:17 PM), <https://www.voanews.com/usa/immigration/she-cant-vote-2020-democrats-want-her-support-anyway>).

¹³ See Associated Press, *She Can’t Vote, but 2020 Democrats Want Her Support Anyway*, LAS VEGAS SUN (Dec. 2, 2019), <https://lasvegassun.com/news/2019/nov/19/las-vegan-cant-vote-but-2020-democrats-want-her-su/>. The article states that Booker, Harris, and Warren have had several meetings with Silva.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Compl. at 1. The basis for the allegation against Cortez Masto appears to be Silva’s September 2016 Univision op-ed. See *id.* (referencing “Univisionnews: 21 Sep 2016 Opinion by Astrid Silva”).

1 “[c]ampaign for, fund and influence Democratic Party Presidential candidates during the 2020
2 Democratic Presidential primary campaign season.”¹⁷ Second, the Complaint claims that Silva
3 had “undue influence” over DBN’s “electioneering activities”¹⁸

4 The Commission received three responses: (1) a joint response from Silva and DBN (the
5 “Silva/DBN Response”); (2) a joint response from Hillary for America and Elizabeth Jones in
6 her official capacity as treasurer, Kamala Harris for the People and John Emerson in his official
7 capacity as treasurer, Warren for President, Inc. and Paul Egerman in his official capacity as
8 treasurer, Cory 2020 and Judith Zamore in her official capacity of treasurer, Win the Era PAC
9 (formerly known as Pete for America, Inc. and Ed Jordanich in his official capacity as treasurer,
10 the Democratic National Committee and William Derrough in his official capacity as treasurer,
11 and Catherine Cortez-Masto for Senate and Steve Mele in his official capacity as treasurer (the
12 “DNC/Candidate Committees Response”); and (3) a response from Biden for President and
13 Andrea Wise in her official capacity as treasurer (“Biden Committee Response”).¹⁹

14 Each response denies that any violation of the Act occurred. Although the Silva/DBN
15 Response acknowledges that Silva participated in the political activities identified by the
16 Complaint, it argues that such conduct is not illegal.²⁰ The Silva/DBN Response relies on the
17 Act’s volunteer exemption and cites Commission advisory opinions and enforcement matters to

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ People First Future did not submit a response.

²⁰ Silva/DBN Resp. at 2-3.

1 support its claim that Silva was solely engaged in lawful volunteer activities.²¹ The Silva/DBN
 2 Response argues that Silva’s volunteer activities were undertaken separately from DBN and that
 3 DBN never engaged in partisan political activity in violation of its status as a 501(c)(3)
 4 charitable organization.²²

5 The DNC/Candidate Committees Response also relies on the Act’s volunteer exemption,
 6 and states that the Complaint is insufficient under the Commission’s regulations because it
 7 provides “[n]o . . . details or information regarding why any of these allegations would constitute
 8 a violation of the Act.”²³ It characterizes the Complaint as “simply conclud[ing] that meeting
 9 with a candidate, speaking at a political convention or in response to another speech, or
 10 appearing in a candidate’s advertisement constitutes a thing of value under the Act.”²⁴ The
 11 DNC/Candidate Committees Response cites prior Commission enforcement matters for the
 12 proposition that mere conclusory allegations are insufficient to find reason to believe.²⁵ Finally,
 13 the DNC/Candidate Committees Response argues that because DBN was not founded until 2017,
 14 it could not have provided something of value to the DNC in 2016.²⁶

²¹ *Id.* (citations omitted); *see also* 52 U.S.C § 30101(8)(B)(i) (excluding from the definition of contribution “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee”); 11 C.F.R. § 100.74 (same).

²² Silva/DBN Resp. at 2.

²³ DNC/Candidate Committees Resp. at 2 (Jan 25, 2021).

²⁴ *Id.*

²⁵ *Id.* (citing Statement of Reasons, Comm’rs. Mason, Sandstrom, Smith & Thomas at 1, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee)).

²⁶ *Id.* at 4.

The Biden Committee Response states that the Complaint provides “no facts supporting the bare assertion that the Committee received a ‘thing of value.’”²⁷ It also argues that the Complaint sets forth no facts indicating that the types of foreign national political activities identified in *Bluman v. FEC* as being prohibited occurred, which include direct contributions, express advocacy expenditures, and “donations to outside groups” when those donations would be used to make contributions to candidates, parties, or express advocacy expenditures.²⁸ Instead, the Biden Committee Response argues that Silva’s meeting with 2020 presidential candidates amounted to issue advocacy, which *Bluman* found to be lawful, and that her volunteer activities are permissible under the Act and Commission regulations.²⁹

III. LEGAL ANALYSIS

A. Legal Standard

The Act and Commission regulations prohibit any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.³⁰ 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), which, in turn, includes a “partnership,

²⁷ Biden Committee Resp. at 2 (Jan. 26, 2021).

²⁸ *Id.* at 2 (citing *Bluman v. FEC*, 800 F. Supp. 2d 281, 284 (D.D.C. 2011), *aff’d* 556 U.S. 1104 (2012)).

²⁹ *Id.* at 2-3.

³⁰ 52 U.S.C. § 30121(a)(1); 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 grounds 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*, 800 F. Supp. 2d at 288-89; *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

1 association, corporation, organization, or other combination of persons organized under the laws
 2 of or having its principal place of business in a foreign country.”³¹

3 The Act also prohibits persons from soliciting, accepting, or receiving a contribution or
 4 donation from a foreign national.³² The Commission has recognized the “broad scope” of the
 5 foreign national prohibition and found that even where the value of a good or service “may be
 6 nominal or difficult to ascertain,” such contributions are nevertheless banned.³³

7 Commission regulations implementing the Act’s foreign national prohibition provide:

8 A foreign national shall not direct, dictate, control, or directly or
 9 indirectly participate in the decision-making process of any person,
 10 such as a corporation, labor organization, political committee, or
 11 political organization with regard to such person’s Federal or non-
 12 Federal election-related activities, such as decisions concerning the
 13 making of contributions, donations, expenditures, or
 14 disbursements . . . or decisions concerning the administration of a
 15 political committee.³⁴

16 The Commission has explained that this provision also bars foreign nationals from “involvement
 17 in the management of a political committee.”³⁵

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

³² 52 U.S.C. § 30121(a)(2).

³³ Advisory Opinion 2007-22 at 6 (Huryz) (“AO 2007-22”) (citing Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) (“As indicated by the title of section 303 of [the Bipartisan Campaign Reform Act], ‘Strengthening Foreign Money Ban,’ Congress amended [52 U.S.C. § 30121] to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals.”).

³⁴ 11 C.F.R. § 110.20(i).

³⁵ Contribution Limitations and Prohibitions, 67 Fed. Reg. at 69,946.

B. The Commission Finds No Reason to Believe that Silva or DBN Made Prohibited Foreign Contributions or Expenditures

1. Silva is a foreign national under the Act

Silva acknowledges that she is a participant in the DACA program, and therefore not a citizen or national of the United States and not “lawfully admitted for permanent residence.”³⁶ Because DACA status does not confer citizenship, lawful permanent residence, or any other immigration status, DACA participants remain foreign nationals under the Act.³⁷ Accordingly, Silva is a foreign national for purposes of the Act’s prohibition.

2. Silva’s Candidate Meetings, Ad Appearances, Speeches, and Op-ed Do Not Appear to Constitute Prohibited Contributions or Expenditures

The Act defines “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.”³⁸ A “contribution” also includes “the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.”³⁹ “Contribution” does not, however, include “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.”⁴⁰

³⁶ Silva/DBN Resp. at 1; 52 U.S.C. § 30121(b).

³⁷ *See supra* n.3.

³⁸ 52 U.S.C. § 30101(8); 11 C.F.R. § 100.52(d)(1).

³⁹ 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54.

⁴⁰ 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74.

1 The Commission has determined that foreign nationals may engage in election-related
2 activities as uncompensated volunteers, provided they do not have decision-making or
3 managerial roles.⁴¹ In Advisory Opinion 2004-26, the Commission determined that a foreign
4 national, the fiancée of a federal candidate, could, as a volunteer, speak at committee events,
5 solicit funds and support for a committee, and attend meetings regarding committee events or
6 political strategy, provided that the foreign national did not participate in the “decision-making
7 processes” of the committee and that she had no management role.⁴²

8 In the enforcement context, in MUR 6959, the Commission found no reason to believe
9 that a foreign national violated 52 U.S.C. § 30121 by providing volunteer services consisting of
10 online research and translation duties for a political committee and where the information failed
11 to indicate that she “participated in the committee’s decision-making or management
12 processes.”⁴³ In MURs 5987, 5995, and 6015, the Commission found no reason to believe that
13 Elton John, a foreign national, violated 52 U.S.C. § 30121 by volunteering to perform at a
14 campaign fundraiser and agreeing to let the political committee use his name and likeness in its
15 emails promoting the concert and soliciting support.⁴⁴ The Commission determined that “there
16 is no information to suggest that Elton John had any involvement in the decision-making process

⁴¹ See Advisory Opinion 2014-20 (Make Your Laws PAC, Inc.); AO 2007-22; Advisory Opinion 2004-26 (Weller) (“AO 2004-26”); Advisory Opinion 1987-25 (Otaola).

⁴² See AO 2004-26 at 3.

⁴³ Factual & Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Opinion 1982-04 at 2-3 (Apodaca)) (finding 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).

⁴⁴ Factual & Legal Analysis at 6-9, MURs 5987, 5995, & 6015 (Sir Elton John).

of the Committee in connection with the making of contributions, donations, expenditures, or disbursements, as envisioned by 11 C.F.R. § 110.20(i).”⁴⁵

Here, all Respondents assert that Silva acted as a volunteer, and we have no information to the contrary. The Complaint also gives no indication that Silva had a decision-making or management role in any campaign or party committee. Thus, there is no information that Silva’s speeches, ad appearances, candidate meetings, or op-ed fell outside the scope of permissible volunteer activity.

Accordingly, the Commission finds no reason to believe that Silva or any of the Respondents violated 52 U.S.C. § 30121 as a result of those activities.

3. Silva’s Alleged Use of Dream Big Nevada

As a foreign national for purposes of the Act’s prohibition, Silva is prohibited from participating in any decision with regard to DBN making a contribution, donation, expenditure, or disbursement in connection with an election for federal, state, or local office.⁴⁶ The Commission has found violations of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company’s decisions to make contributions.⁴⁷

⁴⁵ *Id.* at 7-8 (“[T]he pertinent regulation speaks of decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee”).

⁴⁶ 11 C.F.R. § 110.20(i).

⁴⁷ *See, e.g.*, Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc.) (conciliating with U.S. corporation owned by foreign company that violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (conciliating with U.S. company that 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 6093 (Transurban Grp.) (conciliating with U.S. subsidiary that violated Act by

1 But here, the Complaint provides no facts indicating that DBN ever engaged in activities
2 covered by the foreign national prohibition or that it funded Silva’s complained-of activities.
3 The Silva/DBN Response asserts that Silva “has been very careful” to conduct her political
4 activities on her own time and to not represent herself as being affiliated with DBN when
5 engaged in those activities.⁴⁸ We do not have any information to the contrary. DBN has never
6 filed a report with the Commission disclosing that it made a contribution, express-advocacy
7 expenditure, or electioneering communication. We also have no evidence that DBN ever
8 donated to any state or local candidate. And because DBN did not incorporate until 2017, it
9 could not have provided something of value to the DNC in 2016.

10 Because the available information fails to indicate that Dream Big Nevada engaged in
11 any activity covered by the foreign national prohibition, the Commission finds no reason to
12 believe that it violated 52 U.S.C. § 30121.

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).

⁴⁸ Silva/DBN Resp. at 2.