BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Astrid Silva, et al.

MUR 7863

SUPPLEMENTAL STATEMENT OF REASONS OF COMMISSIONER SEAN J. COOKSEY

I supported the Commission’s decision to find no reason to believe Astrid Silva and other Respondents violated the law in this matter. I write to emphasize an important legal point that the Commission has unanimously endorsed here: “Because [Deferred Action for Childhood Arrivals] status does not confer citizenship, lawful permanent residence, or any other immigration status, DACA participants remain foreign nationals under the Act.”

The Federal Election Campaign Act of 1971, as amended (the “Act”), defines a “foreign national” to include anyone who is not a citizen or legal permanent resident of the United States. The Act and our regulations place broad limits on foreign nationals’ ability to participate in American elections: Foreign nationals may not contribute or donate to any federal, state, or local election. They may not make any expenditures, independent expenditures, or disbursements in connection with any federal, state, or local election. And they are barred from directing, dictating, controlling, or directly or indirectly participating in the decision-making process for any person’s or organization’s federal or non-federal election activities.

The reason for the foreign-national prohibition is simple—“[T]he United States has a compelling interest … in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political


3 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

4 52 U.S.C. § 30121(a)(1)(C); 11 C.F.R. § 110.20(c), (f).

5 11 C.F.R. § 110.20(i).
process.” The statute has been upheld against constitutional challenge, and the Commission has made its enforcement an agency priority.

At the same time, there is significant uncertainty among the public about how the foreign-national prohibition applies to non-citizens in the United States. That confusion is compounded in the case of DACA, whose legality has been the subject of nearly a decade of litigation. This matter therefore provides important guidance and clarification to the regulated community: the Act’s foreign-national prohibition applies to DACA recipients.

The Commission correctly found no violation of the foreign-national prohibition in this case because there was no violative conduct. I have every confidence it will continue to enforce the foreign-national prohibition fairly and consistently in future cases.

Sean J. Cooksey
Commissioner

October 12, 2021
Date

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7 Id.
8 At the Commission’s public meeting on September 15, 2016, FEC Commissioners unanimously directed the Office of General Counsel to prioritize cases involving allegations of foreign influence.
9 See, e.g., Factual & Legal Analysis at 1–3 (May 5, 2021), MUR 7642 (Cynthia Brehm for San Antonio City Council, et al.) (dismissing a complaint against a local candidate for mistakenly accepting a foreign-national contribution).
10 See, e.g., Dep’t of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1901 (2020). But see Tex. v. United States, No. 18-cv-00068 (July 16, 2021 S.D. Tex.) (holding that the Department of Homeland Security violated the Administrative Procedure Act with the creation of DACA).