



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7863
Astrid Silva, <i>et al.</i>)	
)	

**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.”¹

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.² 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.³ They may not make any expenditures, independent expenditures, or disbursements in connection with any federal, state, or local election.⁴ 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.⁵

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

¹ Factual & Legal Analysis at 10 (Sept. 15, 2021), MUR 7863 (Astrid Silva, *et al.*); Certification (Aug. 31, 2021), MUR 7863 (Astrid Silva, *et al.*). The Commission reached the same conclusion unanimously in another matter earlier this year. *See generally* MUR 7712 (Tom Steyer 2020, *et al.*).

² 52 U.S.C. § 30121(b)(2).

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(e), (f).

⁵ 11 C.F.R. § 110.20(i).

process.”⁶ The statute has been upheld against constitutional challenge,⁷ and the Commission has made its enforcement an agency priority.⁸

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.⁹ That confusion is compounded in the case of DACA, whose legality has been the subject of nearly a decade of litigation.¹⁰ 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

⁶ *Bluman v. FEC*, 800 F. Supp. 2d 281, 288–89 (D.D.C. 2011), *aff’d* 565 U.S. 1104 (2012).

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).