

VIA FEDERAL EXPRESS

August 25, 2015

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Non-Citizen Policy Advisor at Democratic National Committee

Dear Sir or Madam:

Judicial Watch is a non-profit educational foundation dedicated to combating government corruption. As part of its educational mission, Judicial Watch regularly obtains and analyzes information maintained by the Federal Election Commission (FEC) and other agencies of the federal government and disseminates its findings to the public through various educational and outreach programs, including Judicial Watch's website and monthly newsletter. When alerted by major news sources that public officials or their campaigns have acted negligently or fraudulently, it investigates. And when the public records maintained by such agencies appear to have been compromised it refers that information to the appropriate governing agency for further investigation, remediation, and—when applicable—prosecution.

Judicial Watch relies on the accuracy of public records in the fulfillment of its educational mission. It is fundamental to Judicial Watch's mission to obtain, analyze, and disseminate public records to hold government agencies, elected officials, and their staff accountable to the rule of law; thereby, preserving the public's trust in government.

Judicial Watch brings to your attention the Democratic National Committee's decision to hire a foreign national to help craft the party's message to Hispanics, women, and children. This act is against Federal statute as interpreted by FEC regulations. The DNC has actively and willingly promoted its act of lawlessness. Therefore, we request that the FEC investigate this act.

I. Factual Summary

Cindy Nava accepted a fellowship with the Democratic National Committee (DNC) in June 2015. She is a Mexican national. Although Ms. Nava is a self-professed "dreamer," as of June 8, 2015, her application for Deferred Action for Childhood Arrivals not been approved. For all intents and purposes, Ms. Nava continues to remain within the United States without lawful status or presence.

The details of her fellowship are unknown. *The Washington Post* reported that "Nava is working for the Democratic National Committee . . . helping the party organize ahead of a presidential election that President Obama predicted would feature immigration as a major

issue.”¹ The Spanish language newspaper, *El Nuevo Herald*, provided additional information, “[E]s integrante del Comité Nacional Demócrata, donde *colabora* con las políticas para ayudar a las mujeres, los jóvenes y los hispanos.”² The Democratic National Committee proudly announced her employment on social media.³

The DNC offers women the Mame Reiley Fellowship. This fellowship “provides hardworking, passionate future women leaders with the opportunity to gain invaluable, hands-on experience in Democratic politics.”⁴ These fellows “have the chance to work *substantively* at the DNC on all aspects of women’s outreach *from finance to political to communications and beyond*.”⁵ While it is possible that Cindy Nava is participating in a different fellowship, this is the only fellowship listed on the DNC website. While other fellowships are affiliated with the DNC, none found were open for the term Cindy Nava is engaged in.⁶

II. The Democratic National Committee knowingly hired a Foreign National to assist, directly or indirectly, in setting the Committee’s Public Policy Agenda for its Candidates, the National Committee, and its Associated Organizations.

The Code of Federal Regulations provides that:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a . . . political committee . . . with regard to such person's Federal or non-Federal election-related activities, such as 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.⁷

¹ Arelis R. Hernández, *Undocumented immigrant among fellows working for DNC*, WASH. POST, June 8, 2015, <http://www.washingtonpost.com/blogs/post-politics/wp/2015/06/08/undocumented-immigrant-among-fellows-working-for-dnc/> (emphasis added).

² *La figura del día: Cindy Nava*, EL NUEVO HERALD, June 9, 2015, <http://www.elnuevoherald.com/opinion-es/trasfondo/article23616484.html> ([S]he is involved in the Democratic National Committee, where she *collaborates* on policies in order to help women, children, and Hispanic people.) (emphasis added).

³ The Democrats, *DREAMer Cindy Nava on her fellowship at DNC HQ*, TWITTER (June 9, 7:50 AM), <https://twitter.com/TheDemocrats/status/608285060421324802> (Tweet from the Democratic Party’s official Twitter account announcing Cindy Nava’s employment)

⁴ *Mame Reliey Fellowship*, DEMOCRATS, <https://www.democrats.org/mame-reiley-fellowship> (last visited July 14, 2015).

⁵ *Id.* (emphasis added).

⁶ See e.g., *DNC Research Fellowship*, ORGANIZING FOR AMERICA, <https://my.barackobama.com/page/s/dncresearch> (last visited July 14, 2015) (providing for a “New Media, Targeting, and Technology Departments” fellowship); *DNC Research Fellowship*, ORGANIZING FOR AMERICA, <https://my.barackobama.com/page/s/srf2010app> (last visited July 14, 2015) (providing for a “New Media, Targeting, and Technology Department” fellowship in 2010); *Voter Protection Fellow*, ORGANIZING FOR AMERICA, <https://my.barackobama.com/page/s/vpresearch> (last visited July 14, 2015) (providing for a legal fellowship).

⁷ Participation by foreign nationals in decisions involving election-related activities, 11 C.F.R. § 110.20(i) (2015).

This regulation prohibits foreign nationals from working at any meaningful capacity for a political committee (like the DNC). Foreign nationals is defined by as “an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20).”⁸ A person is lawfully admitted for permanent residence if they have “been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”⁹ The legal definition of election-related activity is broad. Election is defined as “the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office.”¹⁰ This includes general elections,¹¹ primary elections,¹² runoff elections,¹³ caucuses or conventions,¹⁴ and special elections.¹⁵ Generally, Federal election activity includes voter registration efforts, voter identification, get-out-the-vote (GOTV) activities, “generic” campaign activity, and any public communication that refers clearly to a candidate for Federal office.¹⁶ The particular regulation, however, also applies to non-Federal races. The definition appears to be complementary.

Cindy Nava’s employment in this Fellow is in direct violation of this regulation and the empowering statutes. Ms. Nava’s work, at minimum, is valued at \$10.50 per hour worked.¹⁷ So, the sum of hours worked by Ms. Nava multiplied by this rate is a contribution to the DNC according to these regulations. This is, unquestionably and unambiguously, value under the empowering statute as interpreted by the FEC regulations. Thus, the FEC should investigate Ms. Nava’s fellowship at the DNC and determine the value provided. While it is conceivable that a fellow only provides minimal services, it is equally conceivable that a fellow—distinguishable from an intern whose value would be unquestionably \$10.50 per hour—would be afforded a greater degree of responsibility, required to work on more crucial projects, and provide the organization with a greater contribution.

The United States has prohibited non-citizen participation in election related activities for over fifty years. The United States Supreme Court has held that such prohibitions are legally permissible under the U.S. Constitution.¹⁸ The United States Congress most recent prohibition

⁸ Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (52 U.S.C. 30121, 36 U.S.C. 510), 11 C.F.R. § 110.20(a)(3)(ii) (2015).

⁹ 8 U.S.C. § 1101 (2012).

¹⁰ Election, 11 C.F.R. § 100.2(a) (2015).

¹¹ 11 C.F.R. § 100.2(b).

¹² 11 C.F.R. § 100.2(c).

¹³ 11 C.F.R. § 100.2(d).

¹⁴ 11 C.F.R. § 100.2(e).

¹⁵ 11 C.F.R. § 100.2(f).

¹⁶ 52 U.S.C. § 30101 (2012).

¹⁷ D.C. Code § 32-1003(a)(4) (2015).

¹⁸ See *Sugarman v. Dougall*, 413 U.S. 634, 648 (1973); *Pope v. Williams*, 193 U.S. 621, 632–634 (1904); *Boyd v. Nebraska*, 143 U.S. 135, 161 (1892).

began in 1966. Congress prohibited foreign nationals from providing contributions to federal candidates.¹⁹ The U.S. Justice Department and the Attorney General enforced this prohibition with an available punishment of a \$5,000 fine, up to five years of prison, or a combination of both.²⁰

Upon the creation of the Federal Election Commission (FEC), the U.S. Congress transferred enforcement responsibilities from the Department of Justice to the FEC.²¹ The FEC implemented regulation that focused solely on non-citizen persons and illegal aliens who provided liquid assets or promised other monetary forms of support.²² Nevertheless, the implication of this regulation soon required the FEC to address the political actions of non-national persons and corporations.

The FEC addressed control by foreign nationals under these rules in two exemplary advisory opinions. In 1980 the Revere Sugar Corp.—which was incorporated in the State of Delaware but was wholly owned and controlled by foreign nationals—requested clarification before starting a political committee in the United States.²³ The FEC provided that the corporation was not a foreign national because the business incorporated under Delaware’s laws and its principle place of business was in New York.²⁴ Nevertheless, foreign nationals could not participate in any of the decision-making activities of the political organization.²⁵ Any activity by any board member regarding this organization would eliminate the political committee’s legal legitimacy.

In 1982 Syntex, Inc. requested clarification regarding providing funds to candidates through its American subsidiary.²⁶ It stipulated all decisions would be made by the subsidiary’s citizen board members.²⁷ The subsidiary operated under Delaware law and its principle place of business was California.²⁸ The FEC informed the corporation that the subsidiary was a U.S. national under the Act. It could participate in the political system, so long as no foreign person participates “in any way in the decision-making process.”²⁹

¹⁹ Foreign Agents Registration Act of 1938, amendments, Pub. L. No. 89–486, § 8(a), 80 Stat. 244, 248–249 (1966) (codified at 18 U.S.C. § 613 (1970)).

²⁰ *Id.* (according to the Bureau of Labor Statistics, \$5,000 (1966) is equivalent to over \$36,650 (2015)).

²¹ Federal Election Campaign Act Amendments of 1976 § 324(a), Pub. L. No. 94–283, 90 Stat. 475, 493 (1976) (codified at 2 U.S.C. 441e (1976)).

²² *See* Prohibited, 41 Fed. Reg. 35931, 35950 (1976) (codified at 11 C.F.R. § 110.4 (1977)).

²³ FEC Advisory Opinion 1980–100 at *1 (Sept. 19, 1980).

²⁴ *Id.* at *2.

²⁵ *Id.* at *1–*2.

²⁶ FEC Advisory Opinion 1982–10, *1 (Mar. 29, 1982).

²⁷ *Id.*

²⁸ *Id.* at *2.

²⁹ *Id.*

These two examples (of many) are demonstrative of the FEC's early position that foreign nationals should not provide *any* voice in election related activities. Any activity has been construed and should remain understood as any activity. Foreign nationals in these two cases were not permitted to speak, attend, or consider the day-to-day operation or the long-term strategy of the political organizations their corporations set up.

On June 7, 1989, the FEC proposed codifying these holding prohibiting foreign citizens and non-nationals from participating in any political activity. On November 24, 1989, the FEC proposed revisions to its foreign national participation rules.³⁰ In doing so, the FEC codified its existing opinion regarding participation and clarified its scope: "The revisions also add new paragraph (a)(3) to prohibit foreign nationals from participating in election-related decisions by corporations, labor organizations, political committees or other persons, including decisions concerning contributions and expenditures."³¹ This regulation was uncontroversial when it was proposed.³²

The FEC has issued several advisory opinions on the scope this interpretation. In 1992 the FEC considered Nansay Hawaii's political contributions.³³ Nansay Hawaii was wholly owned by Nansay Corp., which was a Japanese privately held corporation. Nansay Hawaii proposed to fund its political activities solely by its Hawaiian operations and have its decision made by a board comprised solely of American citizens. The Commission approved its political program, but conditioned its approval, stating:

[T]he Commission conditioned its approval of the operation partly on the basis that foreign national members of the subsidiary's Board would abstain from voting on matters concerning the SSF and its activities. The Commission also conditioned its approval on the basis that the foreign national Board members would abstain from voting on the selection of individuals to operate the SSF and exercise decision-making authority with respect to SSF contributions and expenditures. . . . If only the non-foreign national Board members, who presently constitute both a quorum and a majority of the Board, participate in the discussion and vote on the selection of the proposed committee, and only non-foreign nationals participate in the functions and operations of the committee, Nansay Hawaii will be in compliance with section 110.4(a)(3).³⁴

In so interpreting, the FEC strictly prohibits any activity by foreign nationals in making any decision. The FEC prohibited all foreign national members of this corporation from providing

³⁰ See Contributions and Expenditures; Prohibited Contributions, 54 Fed. Reg. 48580 (Nov. 24, 1989) (codified at 11 C.F.R. § 110.4(a)).

³¹ Contributions and Expenditures; Prohibited Contributions, 54 Fed. Reg. 24351, 24352 (June 7, 1989).

³² Contributions and Expenditures; Prohibited Contributions, 54 Fed. Reg. at 48580.

³³ FEC Advisory Opinion 1992-16 (June 26, 1992).

³⁴ *Id.* at *4.

any input of any nature on any decision or any decision that could affect other decisions (like naming members of the selection board).

In 1995 the Allison Engine Company Political Action Committee requested clarification after Rolls-Royce purchased its parent company.³⁵ In considering the PACs bylaws, the FEC concluded that:

[T]he proposed activities of the PAC described in its by-laws indicate that, after the company is acquired by a foreign corporation, foreign nationals will not direct, control, or otherwise participate directly or indirectly in the decision-making process of the PAC. . . . In addition, the by-laws indicate that the PAC will not receive contributions from foreign national sources. The Commission, therefore, considers your proposed safeguards to be sufficient to ensure the PAC's compliance with the prohibition on foreign national participation.³⁶

These safeguards prohibited foreign nationals from providing any input (directly or indirectly) in the day-to-day or long-term activities of the PAC.

In 2000 Extencicare Health Services, Inc.—a Delaware corporation with its principle place of business in Wisconsin, but wholly owned by a Canadian corporation—requested clarification regarding the formation of a separate segregated fund.³⁷ The Commission noted that the Board of Directors “must delegate all decisions concerning the administration of the SSF to the Special Committee or to some other corporate personnel group comprised exclusively of United States citizens or individuals lawfully admitted for permanent residence in the United States.”³⁸ It limited permissible involvement by a foreign board of directors to making a general policy decision to establish the SSF, the general policy decision to abolish the SSF. The Commission then noted, “Beyond this level of basic corporate control through its governing board, other decisions of Extencicare and its personnel relating to the PAC, including its formation and operating policies, come within the purview of the foreign national prohibition as set forth in §110.4(a)(3).”³⁹

In 2002 Congress expanded the prohibitions on foreign nationals.⁴⁰ The language of the statute evolved to include “anything of value” that “directly or indirectly” contributes to a political campaign. The FEC’s regulations concluded that this statutory revision did not require

³⁵ FEC Advisory Committee Opinion 1995–15 (June 30, 1995).

³⁶ *Id.* at *3 (internal citation omitted).

³⁷ FEC Advisory Opinion 2000–17 (July 28, 2000).

³⁸ *Id.* at *6.

³⁹ *Id.* at *8 (emphasis added).

⁴⁰ Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107–155, 116 Stat. 81 (2002) (relevant section codified at 52 U.S.C. § 30121(a) (2012)).

major changes to its regulations regarding foreign national participation in federal elections, but the regulations were moved in the Code of Federal Regulations.⁴¹ The FEC noted:

Foreign nationals are prohibited from taking part in decisions about contributions and donations to any Federal, State, or local candidates or to, or by, any political committees or political organizations, and *in decisions about expenditures and disbursements* made in support of, or in opposition to, such candidates, political committees or political organizations.⁴²

The explanation noted further, “Numerous comments received regarding the proposed rules supported this provision *as the appropriate way to prevent foreign nationals from engaging in election-related activities*, particularly in the context of U.S. subsidiaries of foreign-owned corporations. No commenter opposed the proposed regulation.”⁴³

Thus, it remains uncontroversial, standing law that foreign nationals are not permitted to control directly or indirectly the election-related activities of candidates, political parties, PACs, Super PACs, or any other political organization. While participation does not include some introductory acts in a corporate context, any conduct that influences the decision making process of any organization listed by the regulation is within the prohibited activity.

On its face, the DNC’s decision to hire Ms. Nava is in direct violation of this provision. The FEC should investigate this matter further to determine the full extent of Ms. Nava’s responsibilities, her relationship to the policy making team, and her effect on the 2016 DNC election strategy.

If one accepts as true Ms. Nava’s and the DNC’s statements to media outlets, Ms. Nava is helping the DNC craft its political message and communications to women, Hispanics, and others. Her message is being communicated to these people groups in order achieve political success in the 2016 Presidential, Congressional, Gubernatorial, and local elections. The message by the DNC to these new outlets, at minimum, presents Ms. Nava as a policy advisor for the DNC who possess the requisite knowledge to assist politicians, political organizations, and PACs in their election activities. As the legal history of this provision makes unambiguous clear, this is a clear violation of Federal Law.

The FEC’s advisory opinions support this conclusion. Since the 1980s, the FEC has advised PACs to prohibit foreign nationals from performing any meaningful role in the day-to-day operations or the strategic policy operations of political organizations. The Commission has stated “foreign nationals [cannot] direct, control, or otherwise participate *directly or indirectly* in the decision-making process of [a] PAC.”⁴⁴ Due to this limitation, the FEC has limited foreign

⁴¹ See Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002) (adding political organization and including donations and disbursements as prohibited activity).

⁴² Contribution Limitations and Prohibitions, 67 Fed. Reg. at 69946 (emphasis added). See also Contribution Limitations and Prohibitions, 67 Fed. Reg. 54366, 54375 (Aug. 22, 2002).

⁴³ Contribution Limitations and Prohibitions, 67 Fed. Reg. at 69946 (emphasis added).

⁴⁴ FEC Advisory Committee Opinion 1995–15, *3 (June 30, 1995)(emphasis added).

nationals who serve in domestic corporations to deciding to create or to end political operations.⁴⁵ Anything more would “come within the purview of the foreign national prohibition as set forth in §110.4(a)(3).”⁴⁶

Failure to investigate the DNC’s violations would go against decades of advisory opinions that represent the stated position of the FEC. Ms. Nava’s fellowship either extends to fundraising and communications, data analysis, or a combination of both. The advisory opinions restricted the ability of foreign nationals from making significant financial decisions—including soliciting domestic funds.⁴⁷ Further, there is no distinguishing factor between a foreign national deciding if a PAC will provide funds to a candidate and a foreign national developing that candidate’s talking point. Data analysis provides political organizations (like the DNC) the information necessary to craft its political message, which ultimately will be used by the political committee and its candidates in Federal and Non-Federal elections. This is indirect participation in the decision making process, and therefore is also prohibited by federal law.

An investigation by the FEC would shed light on Ms. Nava’s responsibilities in relationship to the DNC’s political purpose. It would reveal whether the public statements by the DNC and Ms. Nava—that places Ms. Nava as a political advisor helping to craft the DNC’s 2016 political message—is political fluff designed to embolden a political base or an egregious and flagrant violation of Federal election law.

III. The Democratic National Committee Is Willfully and Knowingly Violating Federal Law and Contradicting Federal Policy by Permitting a Foreign National to Contribute to the Conventions Campaigns, Election Strategy, and Fundraising Efforts

The Democratic National Committee (DNC) is a political organization⁴⁸ and a political committee⁴⁹ under these statutes. It is incorporated as “2016 Democratic National Convention”

⁴⁵ FEC Advisory Opinion 2000–17, *8 (July 28, 2000).

⁴⁶ *Id.*

⁴⁷ *See Id.* at *9 (limiting foreign nationals on a board of directors at a PACs associated company to setting spending limits).

⁴⁸ A political organization is:

[A] party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditure, or both, for . . . influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

26 U.S.C. §§ 527(e)(1)–527(e)(2) (2012).

⁴⁹ A political committee is:

[A]ny committee, club, association, or other group of persons which receives contributions aggregating in excess of \$ 1,000 during a calendar year or which makes expenditures aggregating in excess of \$ 1,000 during a calendar year; or any separate segregated fund established under the provisions of section 316(b); or any local committee of a political party which receives

under the laws of the District of Columbia. As such, it operates under the guidance of federal laws and district laws that are applicable to these institutions.

The United States Congress created a federal offense to knowingly hire an illegal alien. It is against Federal law “to hire, or to recruit... , for employment in the United States an alien knowing the alien is an unauthorized alien...with respect to such employment...”⁵⁰ There are two elements to this crime: (1) knowledge of the alien’s illegal status, and (2) an employment offer.⁵¹ Generally, knowledge may be actual knowledge or constructive knowledge.⁵² Employee is defined expansively:

The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment. . . .⁵³

The term employer does not provide an expressed exception for political party employees, candidate employees, or other affiliated with the democratic process (but it does exempt government agency).⁵⁴

Thus, the DNC is violating federal law by hiring Cindy Nava. Her fellowship constitutes expenditures under the FEC regulation,⁵⁵ and therefore these illegal expenditures are within the scope of FEC regulations. Her fellowship is within the definition of employee provided by



contributions aggregating in excess of \$ 5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in section 301 (8) and (9) aggregating in excess of \$ 5,000 during a calendar year, or makes contributions aggregating in excess of \$ 1,000 during a calendar year or makes expenditures aggregating in excess of \$ 1,000 during a calendar year.

⁵² U.S.C. § 30101(4) (2012).

⁵⁰ 8 U.S.C. § 1324a(a)(1)(A) (2012).

⁵¹ See *Agri Processor Co. v. NLRB*, 514 F.3d 1, 3-4 (D.C. Cir. 2008); *Aramark Facility Servs. v. SEIU, Local 1877*, 530 F.3d 817, 824 (9th Cir. 2008); *AFL v. Chertoff*, 552 F.Supp.2d 999, 1007-008 (N.D. Cal. 2007).

⁵² See *Mester Mfg. Co. v. INS*, 879 F.2d 561 (9th Cir. 1989).

⁵³ 29 U.S.C. § 152(3) (2012). See also *Agri Processor Co.*, 514 F.3d at 3 (citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984)).

⁵⁴ 29 U.S.C. § 152(2) (2012).

⁵⁵ An expenditure is “payments, gifts or other things of value.” Scope, 11 C.F.R. § 100.110(a) (2015). This includes services (such as those provided by DNC fellows) performed and compensated at a value under that which would be the normal charge for the same service provided in that market at that time. Gifts, subscription, loan, advance or deposit of money. 11 C.F.R. § 100.111(e)(1)–(2) (2015).

statute because her work is not included in the narrow exceptions provided by that statute.⁵⁶ The DNC disregarded the employment statute. They have actively employed Ms. Nava knowing that she lacked proper authorization to work in the United States. The FEC should ensure that the Democratic National Committee, in the course of performing function regulated by the FEC, is following all applicable laws and regulations.

IV. Conclusion.

For these reasons, Judicial Watch requests a full, formal investigation into the employment of Cindy Nava by the Democratic National Committee beginning in May or June 2015. Her employment is an unlawful contribution to a political campaign by a foreign national under 52 U.S.C. § 30121. Her employment grants her the ability to influence decision making behaviors by the DNC in the 2016 Presidential, Senatorial, Congressional, and Gubernatorial elections as prohibited by 11 C.F.R. § 110.20(i) (2015). The act of hiring her is, in and of itself, an illegal act according to 8 U.S.C. § 1324a(a)(1)(A) (2012). These actions are particularly egregious because the DNC flagrantly promotes their illegal activities, lawlessness, and disrespect for the rule of law.

Thank you for your prompt attention to this matter

Sincerely,

JUDICIAL WATCH, INC.

Thomas Fitton

President

⁵⁶ Employee does not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

29 U.S.C. § 152(3) (2012).

