

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7926

DATE COMPLAINT FILED: Sept. 8, 2021

DATE OF NOTIFICATIONS: Sept. 14, 2021

LAST RESPONSE RECEIVED: Jan. 13, 2022

DATE ACTIVATED: Feb. 2, 2022

EXPIRATION OF SOL: July 28-29, 2026

ELECTION CYCLE: 2022

COMPLAINANT:

Richard A. Light

RESPONDENTS:

Alexandria Ocasio-Cortez for Congress and Frank Llewellyn in his official capacity as treasurer
Alexandria Ocasio-Cortez
Katie Porter for Congress and Alexander Warren in
his official capacity as treasurer
Katie Porter

RELEVANT STATUTE

AND REGULATION: 52 U.S.C. § 30121(a)(2)
11 C.F.R. § 110.20(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter arises from a Complaint alleging that Respondents violated the Federal

³² Election Campaign Act of 1971, as amended (the “Act”), by knowingly soliciting prohibited

33 contributions from foreign nationals on Facebook. Specifically, the Complaint alleges that

³⁴ Alexandria Ocasio-Cortez and her authorized committee, Alexandria Ocasio-Cortez for Congress, www.ocasio-cortez.com.

³⁵ and Frank Llewellyn in his official capacity as treasurer (“Ocasio-Cortez for Congress”), and

³⁶ Katie Porter and her authorized committee, Katie Porter for Congress and Alexander Warren is

37 his official capacity as treasurer ("Porter for Congress"), purchased ads soliciting contributions.

38 that were visible to Complainant, a foreign national living in the United States, on his Facebook

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1 feed. Respondents deny the allegations, arguing that they solicited individuals within the United
 2 States, were not aware of the identities of the individuals who viewed their ads, and that
 3 Facebook does not have settings that reveal a person's citizenship.

4 As explained below, there is no information indicating that Respondents had actual
 5 knowledge that any members of the audience for their Facebook ads included foreign nationals,
 6 nor that they were in possession of any information that would lead a reasonable person to
 7 inquire further as to the citizenship status of any members of the audience for their Facebook
 8 ads. The ads were geographically targeted to individuals residing within the United States, and
 9 there were no settings available through Facebook to filter the reach of the ads by citizenship.

10 Therefore, we recommend that the Commission find no reason to believe that Respondents
 11 violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting foreign
 12 national contributions.

13 **II. FACTUAL BACKGROUND**

14 Complainant is an Australian national living in the United States.¹ The Complaint states
 15 that on July 28 and 29, 2021, Complainant saw approximately 20 ads on his Facebook feed from
 16 Ocasio-Cortez for Congress and Porter for Congress.² Each of the ads included a “Donate”
 17 button allowing individuals viewing the ads to contribute to the committees.³ The Complaint

¹ Compl. at 1 (Sept. 8, 2021).

² *Id.*; *see also* Ocasio-Cortez for Congress, Amended Statement of Organization at 1 (July 1, 2019); Porter for Congress, Amended Statement of Organization at 1 (Jan. 4, 2022).

³ Compl. at 1; *see also id.*, Attach. at 2 (providing Facebook ad paid for by Porter for Congress with a “Donate Now” button directing to ActBlue). The image of the Ocasio-Cortez ad included with the Complaint does not show the “Donate Now” button, but the Complaint states that it was present on both Committees’ ads, and the version of the ad available in Facebook’s Ad Library contains the Donate button. Compl. at 1; *id.*, Attach. at 1; *see Alexandria Ocasio-Cortez, META AD LIBRARY,* https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&id=4244908685595712&view_all_page_id=1316372698453411&search_type=page&media_type=all [hereinafter Ocasio-Cortez Ad] (last visited Mar. 21, 2022). Meta is the Facebook platform’s parent company.

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1 refers to the ads as “persistent and continuous requests” “soliciting [Complainant] for donations”
 2 even though it was “clear from [Complainant’s] Facebook settings” that he was not a U.S.
 3 citizen. The Complaint alleges that these ads constituted prohibited solicitations of a foreign
 4 national under the Act.⁴

5 Respondents deny the allegations. Ocasio-Cortez for Congress states that it “solicits
 6 individuals within the United States for political contributions,” and that it is “aware of no
 7 Facebook settings that reveal a person’s nationality, country of origin, or citizenship”; as such, it
 8 “did not have — and could not have — the actual knowledge that (or any idea that) the
 9 Complainant is a foreign national.”⁵ Porter for Congress states that it “is not even aware of the
 10 identities of the thousands of recipients of its advertisements, which are directed towards
 11 accountholders selected by Facebook pursuant to its own algorithm,” and notes that, to its
 12 knowledge, Facebook “does not collect any information regarding an accountholder’s citizenship
 13 or legal residency status.”⁶ It goes on to state that “Facebook does permit the campaign to
 14 choose to limit its advertisements to accounts in certain countries, and in this instance, the
 15 campaign directed Facebook to limit the advertisements to Facebook accounts with addresses
 16 within the United States.”⁷

17 Respondents further state that the ads referred to in the Complaint directed all potential
 18 donors to an ActBlue page that noted that contributors must be, *inter alia*, “a U.S. citizen or

⁴ The publicly viewable version of Complainant’s Facebook page does not display information indicating that he is an Australian citizen. See Richard Light, FACEBOOK, <https://www.facebook.com/richard.light2> (last visited Mar. 21, 2022) (screenshot available in VBM).

⁵ Joint Resp. of Alexandria Ocasio-Cortez & Ocasio-Cortez for Congress at 2 (Sept. 28, 2021) [hereinafter Ocasio-Cortez Joint Resp.].

⁶ Joint Resp. of Katie Porter & Porter for Congress at 2 (Jan. 13, 2022) [hereinafter Porter Joint Resp.].

⁷ *Id.*

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1 lawfully admitted permanent resident” to make a contribution.⁸ The versions of the ads available
 2 in the Facebook Ad Library comport with this representation; upon clicking the “Donate” button,
 3 the visitor is directed to an ActBlue payment page that lists a number of “Contribution rules,”
 4 including that the donor is required to be “a U.S. citizen or lawfully admitted permanent resident
 5 (i.e., green card holder).”⁹

6 Facebook’s published information regarding targeting ads on its platforms notes that
 7 advertisers may target their audiences based on “[a]ds they click,” “[p]ages [users] engage with,”
 8 “[a]ctivities that people engage in on Facebook related to things like their device usage and
 9 travel preferences,” and “[d]emographics like age, gender and location.”¹⁰ The company’s
 10 information on “Detailed Targeting” does not reference citizenship status,¹¹ and while Facebook
 11 users may add a “hometown” to their profile, as well as their current town or city, there is no
 12 citizenship field on the account customization page.¹²

⁸ Ocasio-Cortez Joint Resp. at 3; Porter Joint Resp. at 2.

⁹ See Ocasio-Cortez Ad; *Donate to AOC*, ACTBLUE (Aug. 2021), https://secure.actblue.com/donate/aoc-ads-facebook-aug-2021?source=ads_ms_AOC_20210802-DD-FB-August_org-Natl-1865U-MF_a341-AOC-creative-57thermd-1200x1200-stat-text224; Katie Porter, META AD LIBRARY, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&id=977015669755771&view_all_page_id=428821014132730&search_type=page&media_type=all (last visited Mar. 21, 2022); Katie Porter for Congress, ACTBLUE (July 2021), https://secure.actblue.com/donate/ads_ms_kp_fb_202107_dd_eom_minroas?source=ads_ms_KP_20210726-DD-FB-EOM-minroas_org-Natl-1865U-MF_a002-KP-kp-1200x1200-stat-copy2.

¹⁰ *Business Help Center, About Detailed Targeting*, META FOR BUSINESS, <https://www.facebook.com/business/help/182371508761821?id=176276233019487> (last visited Mar. 21, 2022); see *Use Location Targeting*, META FOR BUSINESS, https://www.facebook.com/business/help/365561350785642?id=176276233_019487 (last visited Mar. 21, 2022) (allowing advertisers to limit an audience based on a geographic location).

¹¹ *Business Help Center, About Detailed Targeting*, META FOR BUSINESS, <https://www.facebook.com/business/help/182371508761821?id=176276233019487> (last visited Mar. 21, 2022).

¹² See *Edit Profile*, FACEBOOK, <https://www.facebook.com/profile> (last visited Mar. 21, 2022) (click “Edit Profile”, screenshot available in VBM); see also *Help Center, Add and Edit Your Profile Info*, FACEBOOK, https://www.facebook.com/help/1017657581651994/?helpref=hc_fnav (last visited Mar. 21, 2022); *Help Center, Customize a Page*, FACEBOOK, https://www.facebook.com/help/1602483780062090/?helpref=hc_fnav (last visited Mar. 21, 2022).

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1 III. LEGAL ANALYSIS

2 The Act and Commission regulations prohibit persons from knowingly soliciting,
 3 accepting, or receiving a contribution or donation from a foreign national in connection with a
 4 federal, state, or local election.¹³ A “foreign national” is an individual who is not a citizen or
 5 national of the United States and who is not lawfully admitted for permanent residence.¹⁴
 6 “Solicitation” means “to ask, request, or recommend, explicitly or implicitly, that another person
 7 make a contribution.”¹⁵ “Knowingly” is defined as (i) having actual knowledge that the person
 8 solicited is a foreign national, (ii) being aware of facts that would lead a reasonable person to
 9 conclude that there is a substantial probability that the person solicited is a foreign national, or
 10 (iii) being aware of facts that would lead a reasonable person to inquire whether the person
 11 solicited is a foreign national but the solicitor failed to conduct a reasonable inquiry.¹⁶

12 The Commission has previously concluded that individuals soliciting contributions have
 13 an obligation to inquire into the citizenship status of the target of a fundraising request prior to
 14 making the solicitation when the individual raising funds knows or should have known that the
 15 target is a foreign national.¹⁷ Commission regulations include a non-exhaustive list of “pertinent
 16 facts” that would lead a reasonable person to inquire further as to the citizenship status of a
 17 solicited person, including that the potential donor provides a physical foreign address or resides

¹³ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

¹⁴ 52 U.S.C. § 30121(b).

¹⁵ 11 C.F.R. § 300.2(m). Section 110.20(a)(6) notes that “solicit” for the purposes of the foreign national prohibition “has the same meaning as in” 11 C.F.R. § 300.2(m).

¹⁶ *Id.* § 110.20(a)(4); *see also* Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,941 (Nov. 19, 2002) (“The final rules at 11 C.F.R. § 110.20(a)(4) provide a definition of ‘knowingly,’ whereby satisfaction of any one of the three standards will establish knowledge Each of the three [standards] focus on the source of the funds at issue.”).

¹⁷ *See, e.g.*, Advisory Opinion (“AO”) 2016-10 (Caroline Goodson Parker); *see also* 67 Fed. Reg. at 69,941 (discussing the knowledge standards incorporated in 11 C.F.R. § 110.20(a)(4)).

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1 abroad.¹⁸ Elaborating on this standard, the Commission advised a U.S. citizen living in Canada
 2 who wished to solicit political contributions from personal acquaintances that “[l]imiting [her]
 3 solicitations to friends and family who live in the U.S. and who have not, to [her] knowledge,
 4 lived abroad, would not obligate [her] to conduct further inquiry about citizenship status due to
 5 the residence of the individuals whom [she] solicit[s].”¹⁹

6 Here, the available information does not support a finding of reason to believe that
 7 Respondents knowingly solicited contributions from foreign nationals. There is no information
 8 indicating that Ocasio-Cortez for Congress or Porter for Congress had actual knowledge that any
 9 members of the audience for their Facebook ads included foreign nationals, nor that they were in
 10 possession of any information that would lead a reasonable person to inquire further as to the
 11 citizenship status of any members of the audience for their Facebook ads. First, the Respondents
 12 assert that they took steps to geographically target the ads within the United States and there is
 13 no indication that they could have taken additional steps through Facebook to ensure that foreign
 14 nationals living in the U.S. did not see their ads.²⁰ For the same reason that a political
 15 solicitation broadcast on television within the United States is not a prohibited solicitation of
 16 foreign funds simply because a non-citizen or someone who is not a lawful permanent resident

¹⁸ 11 C.F.R. § 110.20(a)(5)(ii), (iv). Such pertinent facts include whether the contributor or donor uses a foreign passport or passport number for identification purposes or the contributor or donor makes a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank. *Id.* § 110.20 (a)(5)(i), (iii); *see* Factual & Legal Analysis at 7, MURs 6962, 6982 (Hillary for America, *et al.*) (noting that the respondents may have violated the Act by accepting a foreign national contribution because, “based on the facts available to them, a reasonable person might have inquired as to the source of the funds” where one of the respondents overheard portions of a conversation between a contributor and a known foreign national regarding making a contribution, and was asked by the contributor whether a U.S. citizen could make a contribution on behalf of a foreign national). The Commission dismissed the allegations in MURs 6962, 6982 as a matter of prosecutorial discretion. Amended Certification ¶ 4 (June 28, 2017), MURs 6962, 6982.

¹⁹ AO 2016-10 at 4. The Opinion notes, however, that the requestor *would* need to inquire as to the citizenship status of individuals whom she knew to have previously been Canadian citizens but who had lived in the United States for more than five years before soliciting them for contributions. *Id.* at 3.

²⁰ *See supra* notes 5-7 and accompanying text.

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1 may see the ads, the Facebook ads at issue here do not constitute the knowing solicitation of
 2 contributions from foreign nationals because they were allegedly seen by a foreign national.²¹

3 Second, though the list of “pertinent facts” listed in Commission regulations that would
 4 lead a person to conduct a reasonable inquiry into the person solicited or source of the funds is
 5 non-exhaustive, it is probative that none of those facts were available to the Committees here.²²

6 The Complainant did not use a foreign passport or passport number for identification purposes,²³
 7 did not provide the Committees with a foreign address,²⁴ did not make a contribution or donation
 8 via an instrument or wire transfer drawn on a foreign bank,²⁵ and did not reside abroad at the
 9 time of the solicitation.²⁶ We are aware of no facts that could have been available to the
 10 Committees prior to the solicitations that would have required a reasonable inquiry into whether
 11 the solicitations were being directed to a foreign national.²⁷

²¹ *Cf.* Factual & Legal Analysis at 8 n.6, MUR 6772 (Obama for America) (“The mere appearance of the domain name www.obama.com on websites or blogs that are allegedly frequented by foreign nationals does not support a reasonable inference of [solicitation] violations.”).

²² This is in contrast to matters in which the Office of General Counsel has recommended that the Commission find reason to believe that a political committee solicited foreign nationals in violation of the Act such as MURs 7094, 7096 & 7098 (Donald J. Trump for President, Inc., *et al.*) where there were facts available prior to solicitation that could indicate that individuals could be foreign nationals. In those matters, the respondent committee sent email solicitations to a distribution list containing email addresses “clearly connected to the national legislative bodies” of foreign countries, including addresses with domains containing terms such as “parliament” and “gov.” First Gen. Counsel’s Rpt. at 7, MUR 7094, 7096, 7098. The Commission was divided over the Office of General Counsel’s recommendations and voted to close the file. Certification ¶ 3 (Aug. 2, 2018), MURs 7094, 7096, 7098.

²³ 11 C.F.R. § 110.20(a)(5)(i). Indeed, there is no allegation that the Complainant entered any identification information whatsoever or even clicked on the “Donate” button on any of the ads to attempt to make a contribution.

²⁴ *Id.* § 110.20(a)(5)(ii).

²⁵ *Id.* § 110.20(a)(5)(iii).

²⁶ *Id.* § 110.20(a)(5)(iv).

²⁷ As an additional safeguard, the Committees state that they informed each contributor that they must be “a U.S. citizen or lawfully admitted permanent resident” to make a contribution. Ocasio-Cortez Joint Resp. at 3; Porter Joint Resp. at 2. While this is not relevant to the question of whether there was a prohibited solicitation in the first instance, it represents an effort to avoid knowingly *accepting* foreign national contributions.

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Accordingly, we recommend the Commission find no reason to believe that Respondents violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting foreign contributions.

4 IV. RECOMMENDATIONS

1. Find no reason to believe that Alexandria Ocasio-Cortez for Congress and Frank Llewellyn in his official capacity as treasurer, Alexandria Ocasio-Cortez, Katie Porter for Congress and Alexander Warren in his official capacity as treasurer, and Katie Porter violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting foreign national contributions;
2. Approve the attached Factual and Legal Analysis;
3. Send the appropriate letters; and
4. Close the file.

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