



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**VIA ELECTRONIC MAIL**

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April 5, 2022

RE: MUR 7926

Dear Messrs. Reiff and Mitrani:

On September 14, 2021, the Federal Election Commission notified your clients, Alexandria Ocasio-Cortez and Alexandria Ocasio-Cortez for Congress and Frank Llewellyn in his official capacity as treasurer, of a complaint indicating violations of the Federal Election Campaign Act of 1971, as amended. On March 30, 2022, the Commission, on the basis of the information provided in the complaint and information provided by your clients, found no reason to believe that Alexandria Ocasio-Cortez for Congress and Frank Llewellyn in his official capacity as treasurer and Alexandria Ocasio-Cortez violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting foreign national contributions. 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 findings, is enclosed for your information.

If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or [jdigiovanni@fec.gov](mailto:jdigiovanni@fec.gov).

Sincerely,

*Ana J. Peña-Wallace*

Ana J. Peña-Wallace  
Acting Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Alexandria Ocasio-Cortez for Congress and **MUR: 7926**  
4 Frank Llewellyn in his official capacity as  
5 treasurer  
6 Alexandria Ocasio-Cortez  
7 Katie Porter for Congress and Alexander  
8 Warren in his official capacity as treasurer  
9 Katie Porter

10 **I. INTRODUCTION**

11 This matter arises from a Complaint alleging that Respondents violated the Federal  
12 Election Campaign Act of 1971, as amended (the “Act”), by knowingly soliciting prohibited  
13 contributions from foreign nationals on Facebook. Specifically, the Complaint alleges that  
14 Alexandria Ocasio-Cortez and her authorized committee, Alexandria Ocasio-Cortez for Congress  
15 and Frank Llewellyn in his official capacity as treasurer (“Ocasio-Cortez for Congress”), and  
16 Katie Porter and her authorized committee, Katie Porter for Congress and Alexander Warren in  
17 his official capacity as treasurer (“Porter for Congress”), purchased ads soliciting contributions  
18 that were visible to Complainant, a foreign national living in the United States, on his Facebook  
19 feed. Respondents deny the allegations, arguing that they solicited individuals within the United  
20 States, were not aware of the identities of the individuals who viewed their ads, and that  
21 Facebook does not have settings that reveal a person’s citizenship.

22 As explained below, there is no information indicating that Respondents had actual  
23 knowledge that any members of the audience for their Facebook ads included foreign nationals,  
24 nor that they were in possession of any information that would lead a reasonable person to  
25 inquire further as to the citizenship status of any members of the audience for their Facebook  
26 ads. The ads were geographically targeted to individuals residing within the United States, and

1 there were no settings available through Facebook to filter the reach of the ads by citizenship.  
2 Therefore, the Commission finds no reason to believe that Respondents violated 52 U.S.C.  
3 § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting foreign national contributions.

## 4 **II. FACTUAL BACKGROUND**

5 Complainant is an Australian national living in the United States.<sup>1</sup> The Complaint states  
6 that on July 28 and 29, 2021, Complainant saw approximately 20 ads on his Facebook feed from  
7 Ocasio-Cortez for Congress and Porter for Congress.<sup>2</sup> Each of the ads included a “Donate”  
8 button allowing individuals viewing the ads to contribute to the committees.<sup>3</sup> The Complaint  
9 refers to the ads as “persistent and continuous requests” “soliciting [Complainant] for donations”  
10 even though it was “clear from [Complainant’s] Facebook settings” that he was not a U.S.  
11 citizen. The Complaint alleges that these ads constituted prohibited solicitations of a foreign  
12 national under the Act.<sup>4</sup>

13 Respondents deny the allegations. Ocasio-Cortez for Congress states that it “solicits  
14 individuals within the United States for political contributions,” and that it is “aware of no  
15 Facebook settings that reveal a person’s nationality, country of origin, or citizenship”; as such, it

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<sup>1</sup> Compl. at 1 (Sept. 8, 2021).

<sup>2</sup> *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).

<sup>3</sup> 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](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.

<sup>4</sup> 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).

1 “did not have — and could not have — the actual knowledge that (or any idea that) the  
2 Complainant is a foreign national.”<sup>5</sup> Porter for Congress states that it “is not even aware of the  
3 identities of the thousands of recipients of its advertisements, which are directed towards  
4 accountholders selected by Facebook pursuant to its own algorithm,” and notes that, to its  
5 knowledge, Facebook “does not collect any information regarding an accountholder’s citizenship  
6 or legal residency status.”<sup>6</sup> It goes on to state that “Facebook does permit the campaign to  
7 choose to limit its advertisements to accounts in certain countries, and in this instance, the  
8 campaign directed Facebook to limit the advertisements to Facebook accounts with addresses  
9 within the United States.”<sup>7</sup>

10 Respondents further state that the ads referred to in the Complaint directed all potential  
11 donors to an ActBlue page that noted that contributors must be, *inter alia*, “a U.S. citizen or  
12 lawfully admitted permanent resident” to make a contribution.<sup>8</sup> The versions of the ads available  
13 in the Facebook Ad Library comport with this representation; upon clicking the “Donate” button,  
14 the visitor is directed to an ActBlue payment page that lists a number of “Contribution rules,”  
15 including that the donor is required to be “a U.S. citizen or lawfully admitted permanent resident  
16 (i.e., green card holder).”<sup>9</sup>

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

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

<sup>7</sup> *Id.*

<sup>8</sup> Ocasio-Cortez Joint Resp. at 3; Porter Joint Resp. at 2.

<sup>9</sup> 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](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](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](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).

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

### 8 III. LEGAL ANALYSIS

9 The Act and Commission regulations prohibit persons from knowingly soliciting,  
10 accepting, or receiving a contribution or donation from a foreign national in connection with a  
11 federal, state, or local election.<sup>13</sup> A “foreign national” is an individual who is not a citizen or  
12 national of the United States and who is not lawfully admitted for permanent residence.<sup>14</sup>  
13 “Solicitation” means “to ask, request, or recommend, explicitly or implicitly, that another person  
14 make a contribution.”<sup>15</sup> “Knowingly” is defined as (i) having actual knowledge that the person  
15 solicited is a foreign national, (ii) being aware of facts that would lead a reasonable person to

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<sup>10</sup> *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=176276233019487> (last visited Mar. 21, 2022) (allowing advertisers to limit an audience based on a geographic location).

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

<sup>12</sup> *See Edit Profile*, FACEBOOK, <https://www.facebook.com/profile> (last visited Mar. 21, 2022) (click “Edit Profile”); *see also Help Center, Add and Edit Your Profile Info*, FACEBOOK, [https://www.facebook.com/help/1017657581651994/?helpref=hc\\_fnav](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](https://www.facebook.com/help/1602483780062090/?helpref=hc_fnav) (last visited Mar. 21, 2022).

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

<sup>14</sup> 52 U.S.C. § 30121(b).

<sup>15</sup> 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).

1 conclude that there is a substantial probability that the person solicited is a foreign national, or  
2 (iii) being aware of facts that would lead a reasonable person to inquire whether the person  
3 solicited is a foreign national but the solicitor failed to conduct a reasonable inquiry.<sup>16</sup>

4 The Commission has previously concluded that individuals soliciting contributions have  
5 an obligation to inquire into the citizenship status of the target of a fundraising request prior to  
6 making the solicitation when the individual raising funds knows or should have known that the  
7 target is a foreign national.<sup>17</sup> Commission regulations include a non-exhaustive list of “pertinent  
8 facts” that would lead a reasonable person to inquire further as to the citizenship status of a  
9 solicited person, including that the potential donor provides a physical foreign address or resides  
10 abroad.<sup>18</sup> Elaborating on this standard, the Commission advised a U.S. citizen living in Canada  
11 who wished to solicit political contributions from personal acquaintances that “[l]imiting [her]  
12 solicitations to friends and family who live in the U.S. and who have not, to [her] knowledge,  
13 lived abroad, would not obligate [her] to conduct further inquiry about citizenship status due to  
14 the residence of the individuals whom [she] solicit[s].”<sup>19</sup>

15 Here, the available information does not support a finding of reason to believe that  
16 Respondents knowingly solicited contributions from foreign nationals. There is no information

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<sup>16</sup> *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.”).

<sup>17</sup> *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)).

<sup>18</sup> 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).

<sup>19</sup> 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.

1 indicating that Ocasio-Cortez for Congress or Porter for Congress had actual knowledge that any  
2 members of the audience for their Facebook ads included foreign nationals, nor that they were in  
3 possession of any information that would lead a reasonable person to inquire further as to the  
4 citizenship status of any members of the audience for their Facebook ads. First, the Respondents  
5 assert that they took steps to geographically target the ads within the United States and there is  
6 no indication that they could have taken additional steps through Facebook to ensure that foreign  
7 nationals living in the U.S. did not see their ads.<sup>20</sup> For the same reason that a political  
8 solicitation broadcast on television within the United States is not a prohibited solicitation of  
9 foreign funds simply because a non-citizen or someone who is not a lawful permanent resident  
10 may see the ads, the Facebook ads at issue here do not constitute the knowing solicitation of  
11 contributions from foreign nationals because they were allegedly seen by a foreign national.<sup>21</sup>

12 Second, though the list of “pertinent facts” listed in Commission regulations that would  
13 lead a person to conduct a reasonable inquiry into the person solicited or source of the funds is  
14 non-exhaustive, it is probative that none of those facts were available to the Committees here.  
15 The Complainant did not use a foreign passport or passport number for identification purposes,<sup>22</sup>  
16 did not provide the Committees with a foreign address,<sup>23</sup> did not make a contribution or donation  
17 via an instrument or wire transfer drawn on a foreign bank,<sup>24</sup> and did not reside abroad at the

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<sup>20</sup> See *supra* notes 5-7 and accompanying text.

<sup>21</sup> 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.”).

<sup>22</sup> 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.

<sup>23</sup> *Id.* § 110.20(a)(5)(ii).

<sup>24</sup> *Id.* § 110.20(a)(5)(iii).

1 time of the solicitation.<sup>25</sup> The Commission is aware of no facts that could have been available to  
2 the Committees prior to the solicitations that would have required a reasonable inquiry into  
3 whether the solicitations were being directed to a foreign national.<sup>26</sup>

4 Accordingly, the Commission finds no reason to believe that Respondents violated  
5 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting foreign national  
6 contributions.

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<sup>25</sup> *Id.* § 110.20(a)(5)(iv).

<sup>26</sup> 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.