

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	CASE NO. 21-cr-119 (CJN)
v.	:	
	:	
GARRET MILLER,	:	
	:	
Defendant.	:	

**UNITED STATES’ SUPPLEMENTAL BRIEFING AS TO WHO COUNTS AS A
“RECIPIENT” WITH THE VENUE DOCTRINE**

The United States, by and through its attorneys, respectfully submits this supplemental brief addressing the question raised by the Court as to who counts as a “recipient” within the meaning of the venue doctrine.

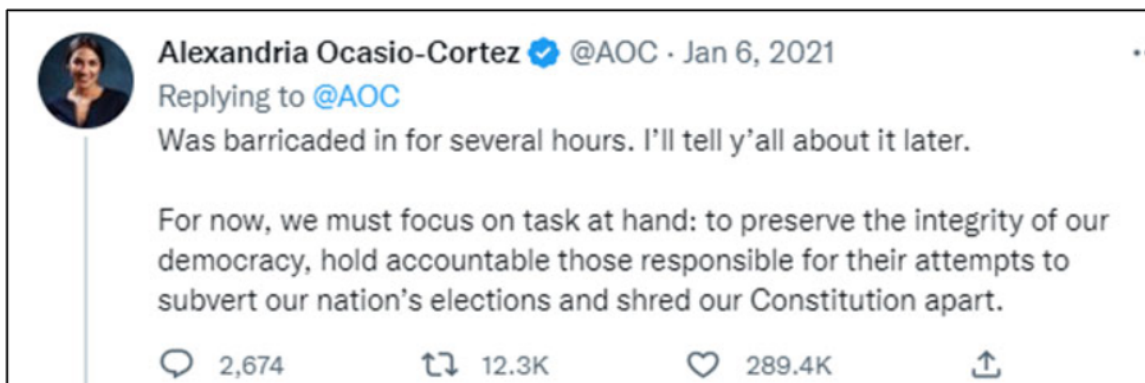
Count Five of the Third Superseding Indictment charges defendant Garret Miller with a violation of 18 U.S.C. § 875(c) for transmitting in interstate commerce a threat to Congresswoman Alexandria Ocasio-Cortez. Specifically, defendant is charged with sending a threatening tweet to “@AOC”—a Twitter account used by the Congresswoman.

At trial, the United States will establish by a preponderance of the evidence that venue is proper for this charge in the District of Columbia. This will be accomplished by showing that Miller’s threat was transmitted to the District of Columbia. *See* 18 U.S.C. § 3237(a) (“Any offense involving the use of . . . transportation in interstate . . . commerce . . . is a continuing offense and . . . may be inquired of and prosecuted in any district from, through, or into which such commerce . . . moves.”). Here, defendant transmitted the threat to the District of Columbia within the meaning of § 3237(a) because the Congresswoman—the recipient of defendant’s threat—was in the District of Columbia when the threat was received.

ARGUMENT

Twitter allows registered users to post content in the form of tweets. A tweet may be published generally, visible to anyone using the Twitter service, or it may be restricted and visible only to the user’s followers. By default, Tweets are unrestricted. *See, e.g., United States v. Sporn*, No. 21-10016-EFM, 2022 WL 656165, at *1 (D. Kan. Mar. 4, 2022). Any person may view publicly-available tweets, by use of a web browser or by using Twitter’s mobile app. *Id.* Only persons who register with Twitter and create an account can tweet. *Id.*

At the time of the charged conduct, Twitter used a blue checkmark system to indicate active, notable, and authentic accounts of public interest that Twitter had independently verified based. *See Naffe v. Frey*, 789 F.3d 1030, 1038, n.2 (9th Cir. 2015) (describing blue checkmark symbol of verification). On January 6, 2021, the @AOC Twitter account was verified as an active and authentic account used by Congresswoman Ocasio-Cortez:



Defendant sent the threatening language of “assassinate AOC” from his Twitter account “@garretamiller” and he directed the threat to the Congresswoman by tweeting at her verified account:



As an unrestricted tweet, defendant's message could be viewed by anyone in the world using the Twitter service, but venue is proper in the District of Columbia because defendant directed his threat to the Congresswoman when he tweeted at her account, and she was the recipient of the charged threat while she was present in the District of Columbia for Congress's certification of the Electoral College. *See United States v. Dierks*, 978 F.3d 585, 589-90 (8th Cir. 2020) (affirming 875(c) convictions where defendant directed threats to U.S. Senator Joni Ernst by tweeting threatening messages to @SenJoniErnst, the Senator's verified account).

CONCLUSION

For the reasons set forth above, the Court should consider Congresswoman Ocasio-Cortez the recipient of the threat within the meaning of the venue doctrine because the communication at issue was directed to the Congresswoman's Twitter account.

Respectfully submitted,

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