



September 22, 2022

Nancy Sienko, Director  
Roberta Steele, Regional Attorney  
San Francisco District Office  
U.S. Equal Employment Opportunity Commission  
450 Golden Gate Ave, 5 West  
San Francisco, CA 94103

**Investigation Request: Unlawful Racial Discrimination By Twilio, Inc.**

Dear Ms. Sienko and Ms. Steele:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans.

We write pursuant to 29 C.F.R. § 1601.6(a), providing that “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request that the Equal Employment Opportunity Commission open an investigation into Twilio, Inc. (the “Company”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.<sup>1</sup> An unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, the Company admits that it fired employees based on race, color, sex, and/or national origin.

The Company is a publicly traded corporation incorporated under the laws of the State of Delaware with its principal executive offices located at 101 Spear Street, First Floor, San Francisco, CA 94105. Its Form 10-K for the fiscal year ended December 31, 2021, states that it is “the leader in the cloud communications platform category.” Twilio, Inc., 2021 Form 10-K at 6 (Feb. 22, 2022), <https://tinyurl.com/2nkx5krj>.

On September 14, 2022, the Company announced layoffs “through an Anti-Racist/Anti-Oppression lens” – that that is, based on race, color, sex, and/or national origin – on the pretext that “[l]ayoffs like this can have a more pronounced impact on marginalized communities.” Twilio, *A Message from Twilio CEO Jeff Lawson* (Sep. 14, 2022), <https://tinyurl.com/5h2cbkyf>. Kylie Robison, *Twilio Promises ‘Anti-racist’ Layoffs as CEO Says 11% Job Cuts Won’t Hit Workers From ‘Marginalized Commu-*

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<sup>1</sup> Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

*nities' More Than Others*, FORBES (Sep. 14, 2022), <https://tinyurl.com/37yhdeh8>. However, lay-offs based on a person's race, color, religion, sex (including gender identity and sexual orientation), or national origin are patently illegal. 42 U.S.C. § 2000e-2(a)(1).

Here, the Company has affirmatively represented to its shareholders, its investors, and to the Securities and Exchange Commission, that it is and will continue favoring certain individuals because of their race, color, national origin, or sex in its employment practices. It admits to failing or refusing to hire certain individuals because of their race, color, sex, or national origin. It also admits to limiting, segregating, or classifying employees or applicants for employment in ways that would deprive, or tend to deprive, individuals of employment or promotion opportunities because of their race, color, sex, or national origin. In other words, the Company has admitted to unlawful employment practices in violation of 42 U.S.C. §§ 2000e-2(a)(1), (2).

When the Company first embarked on becoming an “antiracist” company in 2020, it “commit[ted] to achieving representation parity for Black Twilions at every level of the company.” Twilio, *Twilio's Commitment to Equity and Anti-racism* (June 15, 2020), <https://tinyurl.com/4xxxpfbd>. Since then, the Company's efforts to “pioneer[] an anti-racism-focused approach to DEI” have included building a “global DEI team” and setting company-wide goals to drive DEI across all parts of the business, opening its “Hatch” software engineering apprenticeship program for only “underrepresented persons,” extending its “BetterUp” online coaching program for Company managers to only “Black and LatinX” other employees, launching a “RiseUp” leadership development and career advancement program for only “Black and LatinX” employees, and enrolling only “Black Twilions” into Executive Leadership and Manager Accelerator programs offered by McKinsey & Company and leadership programming hosted by the Executive Leadership Council. Furthermore, the Company “want[s] to see increasing hiring rates” while “taking steps to ‘move’” the attrition rate for “Black Twilions” lower. Twilio 2021 Impact and DEI Report: Integrating Social Impact and Antiracism Into Our Business at 25, 28, 29, 31, 32 (Feb. 23, 2022), <https://tinyurl.com/39hjuzbt>.

Racial, ethnic, and sex-based “balancing” in hiring, training, compensation, and promotion is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law holds that — no matter how well intentioned — policies that seek to impose racial balancing are prohibited. *See, e.g., United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987).<sup>2</sup> If the Company is engaged in such conduct, then it is knowingly and intentionally violating federal civil rights laws. If the Company is not engaged in such conduct, but merely pretending to do so, then it is cynically and intentionally misleading customers, workers, investors, and its ESG “stakeholders.” There is no third alternative.

Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority” in its victims “that may affect their

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<sup>2</sup> *See also Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

hearts and minds in a way unlikely to ever be done.”<sup>3</sup> More broadly, the discrimination here necessarily foments contention and resentment, it is “odious and destructive.”<sup>4</sup> It truly “is a sordid business, this divvying us up” by race, national origin, or sex.<sup>5</sup> Always has been, always will be. The admissions described above, provide compelling reason for the Commission to open a comprehensive investigation of Twilio’s discriminatory employment practices.

Sincerely,

*/s/ Michael Ding*

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Michael Ding  
America First Legal Foundation

Cc: The Hon. Charlotte A. Burrows, Commission Chair  
The Hon. Jocelyn Samuels, Commission Vice Chair  
The Hon. Janet Dhillon, Commissioner  
The Hon. Keith E. Sonderling, Commissioner  
The Hon. Andrea R. Lucas, Commissioner

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<sup>3</sup> *Brown v. Bd. Of Education*, 347 U.S. 484, 494 (1954).

<sup>4</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>5</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).