



KATHERINE M. CLARK
CONGRESS OF THE UNITED STATES
5TH DISTRICT OF MASSACHUSETTS

September 13, 2016

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Lynch:

I write today to formally request that the United States Department of Justice (the Department) provide me with data detailing the number of investigations and prosecutions the Department has conducted for violations of 18 U.S.C. 875(c) and 18 U.S.C. 2261A(2) over the last 5 years.

In 2000, Congress criminalized the use of the interstate telecommunications system to engage in a course of conduct that places a person in reasonable fear of death or serious bodily injury. By doing so, Congress expressly recognized that the nature of cybercrime requires federal law enforcement to play a leading role in the policing of criminal harassment carried out over the interstate telecommunications system. Since then, Congress has reaffirmed its intent for the Department to utilize its unique jurisdictional scope in the enforcement of cybercrime by expanding the federal cyberstalking statute on multiple occasions.

The need for this statute was confirmed by the 2006 Supplemental Victimization Survey. Based on the data in this survey, the Bureau of Justice Statistics concluded that more than one quarter of all stalking victims are victims of cyberstalking.¹ As a result, there were an estimated 850,000 victims of cyberstalking in 2006 alone. While it is likely that the incidence of cyberstalking has increased over the last 10 years due to the rise of social media and the widespread adaptation of smartphones, this estimate remains the best available data on the prevalence of cyberstalking. This is due in part to the fact that the Department's crime reporting systems do not collect data on the incidence of cybercrimes.

I understand that the Department has not yet developed a method to differentiate reports of certain types of cyber-related crimes from other non-cybercrimes. As a result, using current Department methodology, it may be difficult for the Department to provide accurate data on the incidences of cyberstalking and cyberharassment. I experienced this difficulty firsthand when my

¹ Katrina Baum, Shannan Catalano, Michael Rand, and Kristina Rose, *Stalking Victimization in the United States*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special Report No. NCJ 224527 (January 2009), 5.

initial request for data on cyberstalking and harassment did not produce relevant data, but rather information on the Department's efforts to combat child pornography.

To remedy this deficiency, I have today filed legislation that would require the Director of the Federal Bureau of Investigation to incorporate cybercrimes against individuals into the Uniform Crime Reports and the National Incident-Based Reporting System. However, you do not have to wait for congressional action to start tracking these crimes. Section 534 of title 28, United States Code, provides you with the authority to update these reporting systems, and I urge you exercise that authority as soon as possible.

In the meantime, I would like to assess the effectiveness of the federal statutes criminalizing harassment carried out over the interstate telecommunications system. To do so, I request that you provide me with data detailing the number of investigations and prosecutions the Department has conducted for violations of 18 U.S.C. 875(c) and 18 U.S.C. 2261A(2) over the last 5 years.

My office initially requested this information from the Federal Bureau of Investigation's Office of Congressional Affairs on October 29, 2014, and despite repeated subsequent requests this data was not provided. As a result, my office sent a formal request for this information to Director Comey on January 27, 2015. While I appreciate the personal attention that Deputy Assistant Director Chris Warrener provided my office following that letter, he was unable to provide me with the information I had requested.

Following my meeting with Deputy Assistant Director Warrener, my request was transferred to the Office of Legislative Affairs at the Department of Justice. Since then, my office has repeatedly requested this data from the three different Legislative Affairs personnel to which my request has been assigned. Yet, despite my repeated requests over the last 22 months, the Department has failed to provide a single piece of data.

The inability of the Department to provide simple statistics on how often they enforce a federal crime is troubling. Curiously, on July 14, 2016 Assistant Attorney General Peter Kadzik sent a letter to Senator Barbara Boxer that stated: "For example, we can provide data for crimes prosecuted under 18 U.S.C. §2261A, the general federal-anti-stalking statute." He goes on to state: "The national figures for Section 875 are easily obtained..." These "easily obtained" figures are precisely the data that I have been requesting for more than 22 months.

The only available data we have on how often the Department has enforced these statutes comes from research conducted by Professor Danielle Citron of the University of Maryland School of Law. According to Professor Citron's research, federal prosecutors pursued only 10 cyberstalking cases between 2010 and 2013.² If we assume that the Bureau of Justice Statistics' 2006 estimate is still accurate, that means the Department prosecuted only 10 of the 2.5 million violations of the federal cyberstalking statute that occurred between 2010 and 2013.

This statistic indicates that enforcement of this federal crime has failed to keep pace with the frequency of the crime's occurrence. This may mean that the statute itself needs to be amended

² Citron, Danielle Keats. *Hate Crimes in Cyberspace*. Cambridge: Harvard University Press, 2014. Page132.

or that Congress should provide the Department with additional resources to combat this crime. However, it is difficult to determine the best course of action until the Department provides the data necessary to fully evaluate the scope of the problem and its response.

In addition, in the report language accompanying both the FY 16 and FY 17 Commerce, Justice, and Science Appropriations bills the House Appropriations Committee instructed the Department to increase its investigations and prosecutions of these crimes. Specifically the report language states:

“Cyber-stalking and threat crimes.—The Committee is aware of concerns regarding increased instances of severe harassment, stalking, and threats transmitted in interstate commerce in violation of Federal law. Such targeted attacks against Internet users, particularly women, have resulted in the release of personal information, forced individuals to flee their homes, had a chilling effect on free expression, and limited access to economic opportunity. The Committee strongly urges the Department to intensify its efforts to combat this destructive abuse and expects to see increased investigation and prosecution of these crimes.”³

The data I have requested will help confirm whether the Department has complied with these instructions and what further steps may be necessary to adequately respond to these crimes.

I respectfully request your personal attention to this matter to ensure a prompt response.

Sincerely,



Katherine M. Clark
Member of Congress

CC:

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U.S. Department of Justice
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³ U.S. House. Committee on Appropriations. *Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2017, (to Accompany H.R. 5393)*. House Report No. 114-605, at 30 (2016).