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October 4, 2024

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Garland:

I write regarding the Department of Justice's (DOJ) usage of 18 U.S.C. § 1389 to prosecute attacks against servicemembers and their families. I supported the passage of this law in 2009 as part of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (HCPA) to provide critical protections for servicemembers. The statute established new penalties for attacks on U.S. servicemembers and former members of the armed forces who are within five years of discharge, on account of service or status as a servicemember. The law also ensures protections for the immediate family of U.S. servicemembers. As with other provisions in the HCPA, DOJ is responsible for enforcing 18 U.S.C. § 1389.

Members of our military must be protected to the full extent of the law. To that end, I request additional information regarding the DOJ's prosecution of cases under this statute.

1. How does the DOJ interpret "members of the U.S. Armed Forces" under 18 U.S.C. § 1389? Does this definition include reserve components, any current or former National Guard personnel activated under Title 10 orders, and any current or former National Guard personnel serving under Title 32 orders?
2. How many cases has the DOJ prosecuted under 18 U.S.C. § 1389?
  - a. What is the breakdown of cases between active servicemembers and former servicemembers, as defined under the statute?
  - b. Does the DOJ collect and report data regarding hate crimes against U.S. servicemembers, former members of the U.S. Armed Forces, and their immediate family? If yes, how?
3. The DOJ Servicemembers and Veterans Initiative does not currently mention enforcement of 18 U.S.C. §1389 on its "How We Can Help" webpage.<sup>1</sup> Does the DOJ plan to update the webpage to include a reference to the protections provided under this statute?

<sup>1</sup> Department of Justice. *How we can help*. Servicemembers and Veterans Initiative. <https://www.justice.gov/servicemembers/how-we-can-help>, accessed October 2, 2024.

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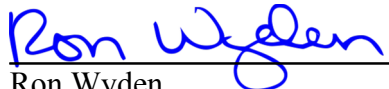
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4. Similarly, the DOJ “Hate Crimes Case Examples” webpage does not currently include an example of hate crimes prosecuted under 18 U.S.C. §1389.<sup>2</sup> Since DOJ has previously published press releases regarding prosecutions under this statute,<sup>3</sup> does the DOJ plan to update the webpage to include relevant examples?

I appreciate your attention to this matter and look forward to your timely response.

Sincerely,

  
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Ron Wyden  
United States Senator

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<sup>2</sup> Department of Justice. *Hate crimes case examples*. <https://www.justice.gov/hatecrimes/hate-crimes-case-examples>, accessed October 2, 2024.

<sup>3</sup> Department of Justice. *Nashotah man sentenced for attacking U.S. service member*. Eastern District of Wisconsin. <https://www.justice.gov/usao-edwi/pr/nashotah-man-sentenced-attacking-us-service-member>, accessed October 2, 2024.