

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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July 20, 2021

The Honorable Manuel I. Espitia
15 Hanover Street
Nashua, NH 03060

Re: Complaint dated May 21, 2021

Dear Representative Espitia:

On May 21, 2021, the Department of Justice received email correspondence from House Democratic Leader Renny Cushing with an allegation that you had been the target of a threat in your capacity as an elected official. I directed the Department's Public Integrity Unit and Civil Rights Unit to review the allegations and evidence to determine what next steps the Department should take.

The Public Integrity Unit of the Attorney General's Office reviews complaints alleging criminal conduct pursuant to RSA 631:4-a "Harm or Threats to Certain Government Officials." The Civil Rights Unit of the Attorney General's Office reviews complaints alleging violations of the New Hampshire Civil Rights Act, RSA 354-B:1, which prohibits one person from interfering with the rights of another person through actual or threatened physical violence, property damage, or property trespass based upon race, color, religion, national origin, ancestry, sexual orientation, gender, gender identity, or disability.

As a threshold matter, both units first determine whether, based on the information provided, there is reasonable suspicion to believe that further investigation would lead to probable cause that a crime or Civil Rights Act violation was committed. That standard was applied to the review of this complaint, and it was concluded that such reasonable suspicion existed.

In response to the complaint, the Office assigned Investigator Allison Vachon to review the conduct at issue. Her first step was to obtain the Nashua Police Department's investigation into this matter. Additionally, Investigator Vachon took her own investigative steps, to include attempting to identify a way to serve legal process upon the Telegram. The completed investigation was reviewed by attorneys in both Units.

Based on that review, the Office has concluded that the statement at issue does not rise to the level of criminal conduct as discussed further below.

Pursuant to the relevant portion of RSA 631:4-a, the State must prove beyond a reasonable doubt that “the person threatens bodily injury or threatens to commit any other crime against a sitting member of the general court...for the purpose of influencing such official’s action or in retaliation for action taken as a part of an official governmental duty.”

The statement made by the poster does not directly threaten bodily injury nor was it a threat to commit any other crime. As a result, the State cannot prove beyond a reasonable doubt that a violation of RSA 631:4-a occurred.

Additionally, the statement does not rise to the level of a Civil Rights Act violation. To prove that a Civil Rights Act violation has occurred, the Attorney General must at least prove: (1) that an actual or threatened use of force, trespass, or property damage occurred; (2) that the actual or threatened use of force, trespass, or property damage intended to prevent or intended to terrorize and coerce the target from engaging in otherwise lawful activity; and (3) that the actual or threatened use of force, trespass, or property damage was motivated by animus toward a protected class. The Attorney General must prove all three elements by clear and convincing evidence. RSA 354-B:2, IV.

In addition, in the context of threatened acts, pursuant to the above statutes, it must be proven that the speaker or poster intended the statement to convey a direct threat of bodily injury, property damage, vandalism, or other specific criminal acts. Here, there is insufficient evidence that the poster intended the statement to be a direct threat in violation of either RSA 631:4-a or RSA 354-B:1. Although the statement is offensive, upsetting, and hateful, without evidence of a direct threat, the vague nature of the statement places it within the protection of the Free Speech clauses of the New Hampshire and United States Constitutions. Both constitutions provide broad protection for speech, including offensive speech and even hateful speech. The United States Supreme Court has recognized that similar language is entitled to protection under the Free Speech Clause of the First Amendment. *See, e.g., R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992); *Hess v. Indiana*, 414 U.S. 105, 108-09 (1973) (*per curiam*).

Therefore, after careful consideration, both the office of the Attorney General and the United States Attorney’s Office have concluded that, there is insufficient evidence to prove that the poster intended the statement to be a direct threat in violation of either RSA 631:4-a or RSA 354-B:1. That said, these statements are clearly offensive, hurtful, and not representative of our State’s values. If you become aware of any additional statements or activities on the part of this group or any other similar group, please do not hesitate to report them to this Office.

The Honorable Manuel I. Espitia
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If you have any questions or concerns please do not hesitate to contact this Office.

Sincerely,



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