



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 04 2021

The Honorable Kamala D. Harris
President
United States Senate
Washington, DC 20510

Dear Madam President:

This proposal would update the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030, to add penalties for the crime of conspiracy. For background, Section 1030(a) of the CFAA prohibits certain frauds in connection with computers, such as the intentional access of a computer without authorization. Section 1030(b) prohibits attempts or conspiracies to violate Section 1030(a).

Section 1030(c) is designed to set forth penalties for these crimes. However, Section 1030(c) does not include penalties for conspiracy. As a result, there has been some reluctance to charge conspiracy under the CFAA because there is uncertainty over the penalties that would apply.

The Department of Justice has brought conspiracy charges under the general conspiracy statute, 18 U.S.C. § 371. This approach raises issues, however, in the application of the U.S. Sentencing Guidelines. The Guidelines contain enhancements for defendants convicted under Section 1030, such as an increase for substantially disrupting critical infrastructure. U.S.S.G. § 2B1.1(b)(19). It is unclear whether these enhancements would apply to a defendant convicted under Section 371, even if the underlying offense is a CFAA violation.

Accordingly, this proposal would amend Section 1030(c) to add penalties for the crime of conspiracy. Consistent with the current structure of the CFAA, a charge of conspiracy or attempt will receive the same penalty as the corresponding substantive offense under Section 1030(a).

Thank you for the opportunity to present this proposal.

The Honorable Kamala D. Harris
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We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Gaeta', with a long horizontal stroke extending to the right.

Joe Gaeta
Deputy Assistant Attorney General.

Enclosure



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The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

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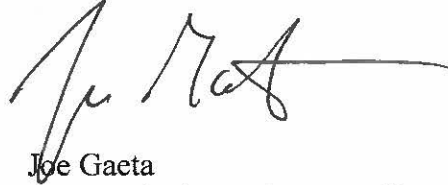
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