



**Written Testimony of Maya M. Berry
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**“A Threat to Justice Everywhere:
Stemming the Tide of Hate Crimes in America”**

**Hearing Before the U.S. Senate
Committee on the Judiciary**

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Chairman Durbin, Ranking Member Graham, and members of the Committee, thank you for the opportunity to testify today about hate crime in the United States, including since October 7, 2023, and the federal government’s role in hate crime enforcement. My name is Maya Berry, and I am the Executive Director of the Arab American Institute (AAI), a national nonpartisan civil rights advocacy organization that represents the interests of approximately 3.7 million Arab Americans. I am also Co-Chair of the Hate Crime Task Force of the Leadership Conference on Civil and Human Rights, the nation’s oldest, largest, and most diverse civil and human rights coalition.

This testimony proceeds in two parts. First, it provides an overview of recent hate crime statistics, including the available data on hate crimes against Arab Americans and Jewish Americans since the October 7 attacks and the war in Gaza. Second, it delineates the role of Congress and the federal government with respect to hate crime enforcement—especially when it comes to hate crime statistics—and explores avenues for reform.

To begin, I want to emphasize what this testimony does, and does not, seek to address. A hate crime is a criminal offense, such as murder, assault, or vandalism, that is committed because of a person’s actual or perceived personal characteristics, such as their race, ethnicity, or religion. For the purposes of crime-data collection, the Federal Bureau of Investigation (FBI) defines hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”¹ The term “hate crime” may also refer to a violation of state or federal criminal statutes designed to punish these offenses, although it is worth noting that hate crime statutes vary in application. If someone assaults another person because of that person’s sexual orientation, for instance, the perpetrator has not

¹ *Hate Crimes*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

committed a hate crime under Oklahoma law.² But the act would be prosecutable as a hate crime in California and, depending on the circumstances, under federal law as well.³

My testimony attends to these differences in meaning as necessary. I want to emphasize, however, that even if the precise definition of “hate crime” varies according to the place and context in which the term is used, some aspects of that definition are fixed. A hate crime must involve a criminal offense, and one that was committed because of another person’s actual or perceived personal characteristics. The subject of my testimony before this Committee is hate crime. While I understand questions or concerns about other topics related to the October 7 attacks and the war in Gaza may arise, I respectfully suggest we focus on the increase in hate crimes our country has experienced for nearly the last decade and the need for a whole-of-society approach that can effectively stem the tide of all hate targeting all communities. By focusing on hate crime statistics, the federal government’s role in hate crime enforcement, and recommendations for policy remedies, I hope my testimony can help inform our collective response to combat all forms of hate.

I. Hate Crime Statistics

In accordance with the Hate Crime Statistics Act, the FBI publishes annual hate crime statistics based on data collected from law enforcement agencies across the United States.⁴ The FBI has not yet released hate crime statistics for 2023. To assist this Committee in its understanding of hate crime in the wake of October 7, 2023, AAI pulled data not only from FBI statistics for 2015-2022 but also from 2023 and 2024 statistics that have already been published at the state or local level.

Part I.A of this testimony provides an overview of federal hate crime statistics for the period between 2015 and 2022.⁵ Part I.B shifts the focus to hate crime statistics that have been published at the state or local level, and specifically the rate of reported anti-Arab and anti-Jewish hate crimes in the aftermath of October 7, 2023. As of earlier this month, at least twenty-seven states and the District of Columbia have published statistics on the number of incidents that were reported by area police as hate crimes in 2023; twelve of these states, the District of Columbia, and New York City have also released partial data for 2024.⁶ The first half of this testimony concludes with Part I.C, which attempts to put the data in context.

² That is, assuming the offense was not also motivated by one of the biases enumerated in Oklahoma’s hate crime statute. OKLA. STAT. tit. 21, § 850 (2023).

³ CAL. PENAL CODE §§ 422.55, 422.7, 422.75 (West 2023); 18 U.S.C. § 249(a)(2). To establish jurisdiction under § 249(a)(2), which makes it a federal crime to willfully cause bodily injury to another person because of a person’s actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability, prosecutors must prove the offense occurred within or affected interstate commerce in one of six enumerated circumstances. *See* 18 U.S.C. § 249(a)(2)(B).

⁴ *See* Pub. L. No. 101-275, § 1, 104 Stat. 140, 140 (1990) (codified as amended at 34 U.S.C. § 41305); *Hate Crime Statistics*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/hate-crime>.

⁵ *See Hate Crime in the United States Incident Analysis*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (last visited Sept. 6, 2024), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

⁶ The states with 2023 statistics are Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, and Wyoming. The states with partial data for 2024 are underlined. New York City has also released partial data for 2024.

A. Overview of Federal Hate Crime Statistics

The FBI has published annual hate crime statistics since 1991.⁷ In March 2022, before this same Committee, AAI testified about the national hate crime reporting system and provided an overview of federal hate crime statistics for 2020, which was then the most recent year for which FBI data were available.⁸ This testimony provides an updated overview of the federal data through 2022.

In AAI's earlier testimony, we noted that 2020 marked the highest number of hate crimes reported in the United States since 2001, when there was a surge of hate crimes targeting Arab Americans, American Muslims, and those perceived to be Arab or Muslim, in the wake of the 9/11 terrorist attacks.⁹ At that time, FBI statistics for 2020 included 8,263 reported hate crimes.¹⁰ Since then, however, more than 1,500 hate crimes have been added to the data, for a total of 9,952 hate crimes.¹¹ This adjusted total exceeds the 2001 total of 9,730 hate crimes.¹² In the two reporting years since 2020, the numbers have only increased, with 10,891 hate crimes reported in 2021 and 11,643 hate crimes reported in 2022.¹³

To be sure, these numbers could be the product in part of several developments to the national hate crime reporting system that are discussed in AAI's 2022 testimony.¹⁴ These include the incorporation of data from federal law enforcement agencies, the FBI's introduction of an interactive crime-statistics dashboard that can be updated with new data, and the nationwide transition to a more sophisticated crime-reporting format known as the National Incident-Based Reporting System (NIBRS). Increased reporting could also stem from improved training and data collection practices among state and local law enforcement agencies, increased participation among agencies in the data collection effort, or even from greater public awareness within communities about the importance of reporting hate crimes to police.¹⁵ But the data nevertheless shows three consecutive years of increased hate crime in the United States, not to mention a ninety-nine percent increase of reported hate crimes between 2015 and 2022.¹⁶

The following graph depicts the number of incidents that law enforcement agencies reported to the FBI as hate crimes in each of the last eight reporting years. According to FBI statistics, in 2022 that number was 11,643, up from 10,891 in 2021. As mentioned, this represents a ninety-nine percent increase over the 5,843 hate crimes reported in 2015 (which itself was an increase over the 2014 total).¹⁷

⁷ See *Hate Crime in the United States Incident Analysis*, *supra* note 5.

⁸ *Combating the Rise in Hate Crime: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (2022) (written testimony of Maya M. Berry, Exec. Dir., Arab Am. Inst.) [hereinafter AAI Written Testimony 2022], <https://www.judiciary.senate.gov/imo/media/doc/Berry%20Testimony.pdf>.

⁹ See *id.* at 3; Nicole Sganga, *2020 Saw Highest Number of Reported Hate Crimes in Two Decades, Updated FBI Data Shows*, CBS NEWS (Oct. 25, 2021), <https://www.cbsnews.com/news/hate-crimes-report-2020-fbi-highest>.

¹⁰ *2020 Hate Crime Statistics*, U.S. DEP'T OF JUST. (Apr. 4, 2023), <https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics>.

¹¹ See *Hate Crime in the United States Incident Analysis*, *supra* note 5 (filter for 2020).

¹² See *id.* (filter for 2001).

¹³ See *id.* (filter for 2021 and 2022).

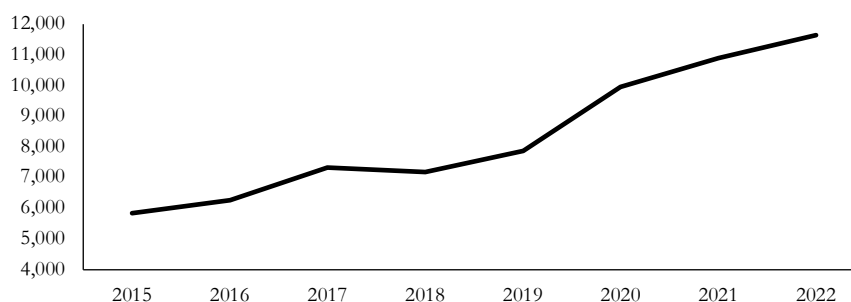
¹⁴ See AAI Written Testimony 2022, *supra* note 8, at 4-6.

¹⁵ See *infra* text accompanying note 42 (discussing "reporting effect").

¹⁶ See *Hate Crime in the United States Incident Analysis*, *supra* note 5 (filter for 2016 and 2022).

¹⁷ *Id.* (filter for 2014 and 2015).

Hate Crimes Reported in the United States¹⁸



1. *Anti-Black or African American Hate Crime.* – A closer look at the data reveals trends with respect to the numbers of hate crimes reported across specific bias types. Anti-Black or African American hate crime consistently represents a plurality of hate crimes reported in the United States. According to FBI statistics, law enforcement agencies in the United States reported 3,424 anti-Black or African American hate crimes in 2022, representing over twenty-nine percent of all hate crimes reported that year. While the total number of anti-Black or African American hate crimes reported in 2022 represents the second highest total since 2015, the corresponding percentage of all hate crimes reported falls below the average for that time. The highest total since 2015—and the second highest on record—is the 3,499 anti-Black or African American hate crimes that were reported in 2020, representing thirty-five percent of all hate crimes reported that year.¹⁹ This apparent spike of anti-Black or African American hate crimes coincided with the killings of Ahmaud Arbery, Breonna Taylor, and George Floyd, among other Black Americans, and a wave of related protests against racial injustice.²⁰

2. *Anti-Asian or Other Pacific Islander Hate Crime.* – Hate Crimes targeting Asian American and Pacific Islander (AAPI) communities are reported under the separate bias types of anti-Asian and anti-Native Hawaiian or Other Pacific Islander. According to FBI statistics, law enforcement agencies reported 525 anti-AAPI hate crimes in 2022, down from 897 hate crimes reported in 2021. The data reveals a dramatic increase of reported anti-AAPI hate crimes in 2020 and 2021, coinciding with the most acute stages of the Covid-19 pandemic and its surrounding discourse by some public officials,²¹ with 354 hate crimes reported in 2020 and 897 reported in 2021. (Between 2015 and 2019, the average annual number of anti-AAPI hate crimes reported was 151.) To lend additional perspective into the Covid-era surge, in 2021 anti-AAPI hate crimes accounted for more than eight percent of all hate crimes reported, while between 2015 and 2019, the average was just over two percent.

¹⁸ Source: Federal Bureau of Investigation, Uniform Crime Reporting Program. Totals: 2015: 5,843; 2016: 6,270; 2017: 7,239; 2018: 7,180; 2019: 7,875; 2020: 9,952; 2021: 10,891; 2022: 11,643.

¹⁹ The highest total belongs to 1996, with 3,676 anti-Black or African American hate crimes reported that year. See *Hate Crime in the United States Incident Analysis*, *supra* note 5 (filter for 1996).

²⁰ See AAI Written Testimony 2022, *supra* note 8, at 3; Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (Aug. 8, 2022), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>; Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Aug. 23, 2024), <https://www.nytimes.com/article/breonna-taylor-police.html>; *How George Floyd Died, and What Happened Next*, N.Y. TIMES (July 29, 2022), <https://www.nytimes.com/article/george-floyd.html>.

²¹ See Kimmy Yan, *Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (Mar. 9, 2021, 3:37 PM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264>. The surge of Covid-related hate crimes against AAPI communities informed the passage of the Covid-19 Hate Crimes Act in 2021. See Pub. L. No. 117-13, 135 Stat. 265 (2021).

3. *Anti-Muslim Hate Crime.* – According to FBI statistics, law enforcement agencies in the United States reported 158 anti-Muslim hate crimes in 2022, up slightly from 153 reported in 2021. The highest number of anti-Muslim hate crimes reported in a single year is the 499 incidents reported in 2001 during the post-9/11 backlash.²² The second highest total is the 310 anti-Muslim hate crimes that were reported in 2016, coinciding with the 2016 presidential election.²³ Anti-Muslim hate crimes accounted for nearly five percent of all hate crimes reported in 2016. In 2022 the comparative share was a little more than one percent. Based on state- and municipal-level data featured in the following subsections, however, we should expect to see an increase of reported anti-Muslim hate crimes in FBI statistics, including an overrepresentation of anti-Muslim hate crimes reported last year in the aftermath of the October 7 attacks and the war in Gaza.²⁴

4. *Anti-Hispanic or Latino Hate Crime.* – FBI statistics have shown a persistent increase of reported anti-Hispanic or Latino hate crimes in recent years. Law enforcement agencies reported a record-breaking 738 anti-Hispanic or Latino hate crimes in 2022, up from 694 reported in 2021.²⁵ In fact, the annual number of reported anti-Hispanic or Latino hate crimes has increased in each of the last seven years on record; in a manner, we should add, that outpaces the overall increase of hate crimes reported in that time.²⁶ Notably, this period has seen a marked rise of anti-immigrant rhetoric in political discourse,²⁷ and this same rhetoric has appeared in the manifestos of perpetrators of recent major hate crimes, such as the August 2019 shooting at an El Paso Walmart that killed twenty-three people and wounded twenty-two more.²⁸

5. *Hate Crimes Based on Sexual Orientation or Gender Identity.* – The FBI collects hate crime statistics across a range of anti-LGBTQ bias types. Hate crimes based on sexual orientation include the bias types of anti-Lesbian, anti-Gay, and anti-Bisexual (and anti-Heterosexual as well); hate crimes based on gender identity include the bias types of anti-Transgender and anti-Gender Non-Conforming; finally, there is a composite anti-Lesbian, Gay, Bisexual, or Transgender bias type. According to FBI statistics, law enforcement agencies in the United States reported 1,925 hate crimes based on sexual orientation in 2022, excluding the 22 incidents reported as Anti-Heterosexual hate crimes, up from 1,698 reported in 2021. Although the annual number of hate crimes based on sexual orientation almost doubled from 2015 to 2022, these hate crimes now represent a smaller share of all hate

²² See *supra* text accompanying note 9.

²³ For analysis on this issue, see Clare Foran, *Donald Trump and the Rise of Anti-Muslim Violence*, ATLANTIC (Sept. 22, 2016), <https://www.theatlantic.com/politics/archive/2016/09/trump-muslims-islamophobia-hate-crime/500840>.

²⁴ See Part I.B for discussion of hate crimes targeting Arab Americans and Jewish Americans after October 7, 2023. According to data from twenty-seven states and the District of Columbia, there were 281 anti-Muslim hate crimes reported in those jurisdictions last year, more than thirty-four percent of which were reported in the months of October, November, and December.

²⁵ Russell Contreras, *Anti-Immigrant Rhetoric Sparks Fears of More Hate Crimes Against Latinos*, AXIOS (Mar. 7, 2024), <https://www.axios.com/2024/03/07/latinos-immigration-rhetoric-fears-hate-crimes>; see also Albinson Linares, *Rise in Hate Crimes Includes a 'Significant Increase' Against Latinos*, NBC NEWS (Nov. 3, 2023, 10:30 AM), <https://www.nbcnews.com/news/latino/hate-crimes-latinos-see-significant-increase-rcna123211>.

²⁶ Anti-Hispanic or Latino hate crimes accounted for just over five percent of all hate crimes reported in 2015 and well more than six percent of all hate crimes reported in 2022.

²⁷ See over, *supra* note 25.

²⁸ See Associated Press, *'Invasion' Language Continues After El Paso Walmart Shooting*, NBC NEWS (Feb. 8, 2023, 10:38 AM), <https://www.nbcnews.com/news/latino/invasion-language-continues-el-paso-walmart-shooting-rcna69698>; Press Release, Dep't of Just., *Texas Man Sentenced to 90 Consecutive Life Sentences for 2019 Mass Shooting at Walmart in El Paso, Texas, Killing 23 People and Injuring 22 Others* (July 7, 2023), <https://www.justice.gov/opa/pr/texas-man-sentenced-90-consecutive-life-sentences-2019-mass-shooting-walmart-el-paso-texas>.

crimes reported each year. The same cannot be said for hate crimes based on gender identity, 469 of which were reported in 2022. Whereas the 114 gender-identity-motivated hate crimes reported in 2015 accounted for just shy of two percent of the hate crimes reported that year, the 2022 total accounts for more than four percent.²⁹ Although it is based on a different federal dataset, according to a study by the Williams Institute at the UCLA School of Law, “LGBT people are nine times more likely than non-LGBT people to be victims of violent hate crimes.”³⁰

6. Disability-Motivated Hate Crimes. – Applying the definition of hate crime provided in the opening paragraphs of this testimony, a disability-based hate crime is any criminal offense that someone commits because another person is or is perceived to be disabled. Another formulation is that, but for a person’s disability, the person would not have been the victim of a crime.³¹ This understanding of disability-based hate crime would have one expect that far more of such crimes are occurring each year than are reported in hate crime statistics.³² According to FBI statistics, law enforcement agencies reported 171 disability-based hate crimes in 2022, up from 159 reported in 2021. The average annual total reported between 2015 and 2022 was just over 139 hate crimes.

B. Examining the Available State-Level Data

State-level data is not a perfect substitute for FBI statistics. Both state and federal hate crime statistics are based on law enforcement data that agencies submit through the national Uniform Crime Reporting (UCR) program.³³ At least in theory, we should not expect to see significant discrepancies between these datasets. However, some incidents that are reported as hate crimes at the state level do not make it into the federal data. Sometimes the reason is simple. A few states collect data on crimes motivated by characteristics that are not included in FBI statistics, such as age, political affiliation, or marital status.³⁴ Other states might update their statistics with additional data that was not submitted in time for inclusion in federal statistics.³⁵ And still others might publish statistics that include data that, for whatever reason, did not pass the FBI’s internal data-quality

²⁹ See Laura Meckler et al., *In States with Laws Targeting LGBTQ Issues, School Hate Crimes Quadrupled*, WASH. POST (Mar. 12, 2024, 10:32 PM), <https://www.washingtonpost.com/education/2024/03/12/school-lgbtq-hate-crimes-incidents>; Christopher Wiggins, *Hate Crimes Against LGBTQ+ People Surge, FBI Reports*, ADVOCATE (Oct. 17, 2023, 10:36 AM), <https://www.advocate.com/news/fbi-increase-lgbtq-hate-crimes>.

³⁰ Press Release, Williams Inst., *LGBT People Nine Times More Likely than Non-LGBT People to Be Victims of Violent Hate Crimes* (Dec. 21, 2022), <https://williamsinstitute.law.ucla.edu/press/lgbt-hate-crimes-press-release>.

³¹ For a discussion of but-for causation as applied to hate crime prosecutions, see PETER G. BARRIS, CONG. RSCH. SERV., *OVERVIEW OF FEDERAL HATE CRIME LAWS 4-7* (2022), <https://crsreports.congress.gov/product/pdf/R/R47060>

³² See Cameron Morgan, *The Unacknowledged Crisis of Violence Against Disabled People*, CTR. FOR DISABILITY RTS. (last visited Sept. 6, 2024), <https://cdmns.org/blog/advocacy/the-unacknowledged-crisis-of-violence-against-disabled-people>; Debra McKinney, *The Invisible Hate Crime*, S. POVERTY L. CTR. (Aug. 5, 2018), <https://www.splcenter.org/fighting-hate/intelligence-report/2018/invisible-hate-crime>.

³³ See *Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr>.

³⁴ Iowa and Oregon are two examples. See *Hate Crime Incidents Report*, IOWA DEP’T OF PUB. SAFETY (last visited Sept. 6, 2024), <https://icrime.dps.state.ia.us/CrimeInIowa/Report/HateCrimeByORIRReport>; *Oregon Uniform Crime Reporting Data*, OR. STATE POLICE (last visited Sept. 6, 2024), <https://www.oregon.gov/osp/pages/uniform-crime-reporting-data.aspx>.

³⁵ The FBI has started publishing crime statistics on an interactive website, which might help address the publication-deadline issue. See Kai Wiggins, *Growing Pains for Hate Crime Statistics*, N.Y.U. J. LEGIS. & PUB. POL’Y (Oct. 19, 2021), <https://nyujlpp.org/quorum/wiggins-growing-pains-for-hate-crime-statistics> (discussing transition to interactive statistics).

reviews.³⁶ Other times the reason is more complicated. For decades the FBI accepted crime data from law enforcement agencies in one of two reporting formats: the older, less sophisticated Summary Reporting System (SRS); and the newer, more sophisticated National Incident-Based Reporting System (NIBRS). In 2021, however, the FBI stopped accepting SRS data, and many law enforcement agencies have yet to complete the switch to NIBRS.³⁷ This means that some state-level statistics might include data from SRS agencies that does not appear in FBI statistics.

Discrepancies between state-level and FBI statistics might result from a combination of these and other factors. And the discrepancies can be significant. According to the FBI, for example, in 2022 there were 1,098 hate crimes reported in New Jersey, with 233 agencies submitting at least one incident.³⁸ But according to statistics kept by the New Jersey State Police, there were 2,178 hate crimes reported in the state that year, with 365 agencies reporting at least one incident.³⁹ Such dramatic discrepancies between state and federal data are rare, but the Committee should keep this in mind when reviewing the state- and municipal-level hate crime data that AAI has gathered for this testimony.

While there is limited use in comparing state and federal data, however, there is some value in comparing the available state data for 2023 to that of previous years. At the very least, comparing these data could reveal trends that might also appear in the forthcoming 2023 federal data when it is published.

AAI has gathered police-reported hate crime statistics from twenty-seven states and the District of Columbia. The data for all but six of these states can be filtered according to the date or month of occurrence, which allows for a better sense of whether an uptick of reported anti-Arab or anti-Jewish hate crimes occurred in the weeks after October 7, 2023. Furthermore, among the twelve states—along with the District of Columbia and New York City—that have published partial data for 2024, we can assess whether any post-10/7 increase of reported hate crimes has continued or abated. What follows are three different presentations of the combined state- or municipal-level data and a series of state- or city-specific inquiries into the 2024 numbers. Notwithstanding the above caveat about comparing state and federal data, the testimony refers to federal statistics when helpful, if at least to contextualize the state- or municipal-level data.

1. Annual Average Number of Hate Crimes Reported

In the above twenty-seven states and the District of Columbia, law enforcement agencies reported a combined 10,881 hate crimes in 2023, up from 10,171 in 2022 and 9,304 in 2021. This total includes

³⁶ See *Methodologies Explain Potential Differences in UCR Data*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (last visited Sept. 6, 2024), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/about>.

³⁷ According to the Department of Justice, as of January 17, 2023, about two thirds of law enforcement agencies in the United States (12,742 of 19,203) were submitting NIBRS data, representing nearly three quarters of the U.S. population. U.S. DEP'T OF JUST., DEPARTMENT OF JUSTICE REVIEW OF THE TRANSITION OF LAW ENFORCEMENT AGENCIES TO THE NATIONAL INCIDENT-BASED REPORTING SYSTEM (NIBRS) 7 (2023).

³⁸ See *Documents & Downloads*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (last visited Sept. 6, 2024), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/downloads> (scroll down to Hate Crime Statistics Annual Reports, download the 2022 report, and open the .xlsx file for Table 12).

³⁹ See *Bias Incident Reports*, N.J. STATE POLICE (last visited Sept. 6, 2024), <https://www.nj.gov/oag/njsp/ucr/bias-incident-reports.shtml>.

180 anti-Arab hate crimes, up from 104 in 2022 and 98 in 2021; and 2,073 anti-Jewish hate crimes, up from 1,311 in 2022 and 1,029 in 2021.

Reported Hate Crimes in 27 States and D.C.

	2023	2022	2021
All Bias Types	10,881	10,171	9,304
Anti-Arab	180	104	98
Anti-Jewish	2,073	1,311	1,029

Not all states reported an increase of hate crimes in 2023. Law enforcement agencies in California, for example, reported 1,970 hate crimes last year, down from 2,120 the year before. (One reason for the decrease could be that, according to the California Department of Justice, twenty-eight agencies “were unable to report the full year of data,” including the police department for San Jose, the state’s third-largest city.⁴⁰) Even among states that did not see an overall increase, however, most reported an increase of anti-Arab or anti-Jewish hate crimes. Despite an overall decrease, for instance, California agencies reported a fifty-three percent increase of anti-Jewish hate crimes (from 189 to 289). And in Nebraska, Pennsylvania, and Texas, three other states that reported an overall decrease of hate crimes last year, there was a reported increase of both anti-Arab and anti-Jewish hate crimes.

As discussed earlier, it is possible, even likely, that not all the hate crimes reflected in the table above will appear in the FBI’s 2023 statistics. And we can look to previous years for reference. According to FBI statistics, law enforcement agencies in the United States reported a record-breaking 11,643 hate crimes in 2022, up from the previous record of 10,840 hate crimes, which was set in 2021.⁴¹ In order to compare state and federal data for those years, we can remove from the federal data all hate crimes that were reported in the twenty-three states that are not included in the state-data table above, such that the federal total for each year is limited to the same twenty-seven states (and D.C.) for which AAI has compiled state-level data. That leaves us with 8,628 hate crimes reported in FBI statistics for 2022, compared to 10,171 hate crimes reported in state-level statistics for that same year. As for 2021, the difference is that between 7,729 hate crimes (federal) and 9,304 hate crimes (state). In short, we should not be surprised if, for 2023, there are similar discrepancies between the state and federal data.

Nevertheless, at least according to state-level statistics among the jurisdictions reflected in the table above, there was an increase of reported hate crimes—including anti-Arab and anti-Jewish hate crimes—from 2021 to 2022, and then again from 2022 to 2023. One possible explanation for this consecutive annual increase, of course, is that more hate crimes are occurring in these states than in previous years. But the numbers could also reflect improved data collection or a so-called “reporting

⁴⁰ CALIF. DEP’T OF JUST., HATE CRIME IN CALIFORNIA 2023, 5 (2024), <https://data-https://oag.ca.gov/news/press-releases/attorney-general-bonta-releases-2023-hate-crime-report-highlights-continued>.

⁴¹ 2022 *Hate Crime Statistics*, U.S. DEP’T OF JUST. (Oct. 30, 2023), <https://www.justice.gov/crs/highlights/2022-hate-crime-statistics>; see also Tori Mirales Pinales, *How Reports of Hate Crimes in the US Were Already at Record Highs, in 4 Charts*, CNN (Dec. 11, 2023), <https://www.cnn.com/2023/10/29/us/hate-crimes-antisemitism-anti-muslim-dg/index.html>. Interactive FBI statistics now show the 2021 total as 10,891 hate crimes. See *Hate Crime in the United States Incident Analysis*, *supra* note 5.

effect,” in which increased awareness or public concern about hate crime leads more victims to notify law enforcement when they occur.⁴² The next table attempts to address some of those concerns.

2. Specific Bias Types as a Percentage of All Hate Crimes

If the consistent increase of hate crimes reported each year is more the result of improved data collection than the actual nature and extent of hate crime within a given set of communities, then we might expect to see that increase reflected evenly across all bias types. The purpose of this table is to get a sense of whether anti-Arab or anti-Jewish hate crimes have come to make up a greater share of all reported hate crimes. In other words, this table attempts to control for the effect that improved data collection might have on the total number of anti-Arab and anti-Jewish hate crimes reported in recent years.

Bias Types as a Percentage of All Hate Crimes in 10 States, D.C., and N.Y.C.

	Anti-Arab	Anti-Jewish
2024	1.75	31.2
2023	2.01	24.6
2022	1.21	18.7
2021	1.44	16.1
2020	1.42	14.7
2019	1.44	23.3

This table suggests that each bias type—anti-Arab and anti-Jewish—accounted for a greater share of reported hate crimes in 2023 than in previous years. Furthermore, that increase appears to be sustained, if not worsening, in the present year. But at least one caveat is in order. While this table might control, to an extent, for the effects of improved data collection on reported hate crime totals, it is possible that the increase of anti-Arab and anti-Jewish hate crimes as a percentage of all hate crimes reported could be the result of reporting effect as to those specific bias types in the wake of October 7, 2023.

Additionally, the Committee should note that Table 2 features data from ten states, the District of Columbia, and New York City, all of which have published data for the entire period of 2019-2024. (Though, with respect to the 2024 data, some jurisdictions are more current than others.) In contrast, Table 1 features data from a larger number of states over a more concentrated period.

⁴² For a brief discussion of reporting effect, see Haley Smith, *Anti-Asian Hate Crimes Have Spiked in Cities Around the U.S., Study Finds*, L.A. TIMES (May 4, 2021, 10:56 AM), <https://www.latimes.com/california/story/2021-05-04/anti-asian-hate-crimes-spike-us-cities-study-finds>.

3. Attempting to Measure Post-October 7 Hate Crimes

The third table features data from the twenty-one states (and D.C.) that allow for their public hate crime statistics to be filtered according to the date or month of occurrence. AAI has narrowed the data to the period of October 7 – December 31, 2023, for seven states and the District of Columbia. For the remaining fourteen states, the data has been filtered for October – December 2023. It is possible that some of the hate crimes that were reported in those states, and which are featured in this table, occurred between October 1 and 6, 2023.

2023 Hate Crimes After October in 21 States and D.C.

	2023	Post-Oct.	Percentage
All Bias Types	6,128	1,765	28.8
Anti-Arab	84	45	53.6
Anti-Jewish	811	396	48.8

One should not assume that the monthly hate crime rate is consistent throughout the year. But patterns can and do emerge. According to FBI statistics, for example, either the second or third quarter of the year—corresponding to the periods of April – June and July – September, respectively—has accounted for a plurality of hate crimes reported in all but one year on record.⁴³ That year is 2016, when twenty-nine percent of reported hate crimes occurred in the fourth quarter, between the months of October and December during the presidential election.⁴⁴

Furthermore, even if patterns emerge with respect to the total number of hate crimes reported, nationwide, during certain times of the year, there might be different patterns when it comes to certain states or specific bias types. Those caveats aside, the table above seems to indicate an overrepresentation of anti-Arab and anti-Jewish hate crimes reported in the final three months of 2023. For both anti-Arab and anti-Jewish hate crimes in particular, about half of all incidents reported last year occurred in October, November, or December.⁴⁵ Therefore, at least according to the available state-level data, there is reason to conclude that hate crimes targeting Arab Americans and Jewish Americans increased in the wake of October 7, 2023.

4. State-Specific Data for 2024

The following subsection considers data from four of the fourteen jurisdictions that have published partial 2024 hate crime statistics: Illinois, New Jersey, New York City, and Pennsylvania. One caveat

⁴³ See *Hate Crime in the United States Incident Analysis*, *supra* note 5.

⁴⁴ See Sam Petulla et al., *The Number of Hate Crimes Rose in 2016*, CNN (Nov. 13, 2017, 5:38 PM), <https://www.cnn.com/2017/11/13/politics/hate-crimes-fbi-2016-rise/index.html>; Alexis Okeowo, *Hate on the Rise After Trump's Election*, NEW YORKER (Nov. 17, 2016), <https://www.newyorker.com/news/news-desk/hate-on-the-rise-after-trumps-election>; Aaron Williams, *Hate Crimes Rose the Day After Trump Was Elected, FBI Data Shows*, WASH. POST (Mar. 23, 2018, 6:00 AM), <https://www.washingtonpost.com/news/post-nation/wp/2018/03/23/hate-crimes-rose-the-day-after-trump-was-elected-fbi-data-show>.

⁴⁵ The analysis would be aided by looking at the representation of reported anti-Arab and anti-Jewish hate crimes during the fourth quarter of previous years.

is that, while these jurisdictions have chosen to publish statistics based on data collected from law enforcement so far this year, it could be that not all agencies within those jurisdictions have submitted their data. In other words, the numbers below should not be taken as final.

a. Illinois. – According to state-level data, law enforcement agencies in Illinois reported 407 hate crimes in 2023, up from 391 in 2022 (the 2022 FBI total is 319). The 2023 data includes 4 anti-Arab hate crimes and 67 anti-Jewish hate crimes. Turning to the 2024 data, as of earlier this month, Illinois law enforcement agencies have reported 226 hate crimes so far this year, including 7 anti-Arab hate crimes and 39 anti-Jewish hate crimes. Assuming that the hate crime rate is consistent throughout the year for these bias types, although the number of anti-Arab hate crimes reported this year will be greater than that reported in 2023, it is not clear whether that will also be the case for reported anti-Jewish hate crimes.

b. New Jersey. – According to state-level data, law enforcement agencies in New Jersey reported 2,699 hate crimes in 2023 (up from 2,178 in 2022), including 78 anti-Arab hate crimes and 708 anti-Jewish hate crimes. The New Jersey State Police has published hate crime statistics up to July 31 of this year. Assuming these data are complete, during the first seven months of 2024, there were 1,626 hate crimes reported, including 43 anti-Arab hate crimes and 446 anti-Jewish hate crimes. If the hate crime rate is consistent throughout the year for these bias types, then the numbers of anti-Arab and anti-Jewish hate crimes reported in 2024 will be roughly equal to or greater than those reported in 2023.

c. New York City. – According to state-level data, law enforcement agencies in New York reported 1,089 hate crimes in 2023, including 2 anti-Arab hate crimes and 478 anti-Jewish hate crimes. Although the state has not released 2024 statistics, the New York Police City Department has published data up to June 25, 2024. Based on this dataset, there were 998 hate crimes reported in New York City alone during the first half of the year, including 43 anti-Arab hate crimes and 446 anti-Jewish hate crimes. This data suggests that 2024 statewide totals across both bias types will significantly exceed those reported in 2023.

d. Pennsylvania. – According to state-level data, law enforcement agencies in Pennsylvania reported 303 hate crimes in 2023 (down from 315 in 2022), including 3 anti-Arab hate crimes and 46 anti-Jewish hate crimes. The state has published statistics for this year through the end of August. Assuming this data is complete, Pennsylvania law enforcement agencies reported 143 hate crimes, including 5 anti-Arab hate crimes and 28 anti-Jewish hate crimes, during the first eight months of 2024.

C. Putting the Data in Context

When it comes to the data presented in the subsections above, the Committee should keep at least four things in mind. The first is that, despite the reported increase of hate crimes nationwide, government statistics do not capture the true nature and extent of the hate crimes that affect our communities. Second, there are different standards for reporting something as a hate crime and prosecuting it as one. Third, while data collection is critical, it is difficult to reduce hate crime, in all its complexities and effects, to a discrete and reportable bias type. Finally, we should not lose sight of the fact that each datapoint represents an actual or suspected hate crime, not just a number on the page.

1. Hate Crimes Are Underreported

Members of the Committee will be familiar with claims that, although law enforcement data is a critical source of information about the nature and extent of hate crime in our communities, hate crime statistics based on that data account for only a sliver of the actual problem.⁴⁶ According to FBI statistics, law enforcement agencies in the United States reported a little less than 7,000 hate crimes per year between 2004 and 2015.⁴⁷ But estimates from the Bureau of Justice Statistics (BJS), a component of the Department of Justice, suggest that about 250,000 hate crimes occurred each year during the same period.⁴⁸ Once you adjust for discrepancies between the FBI and BJS datasets, and assuming that the BJS estimates are relatively accurate, statistics based on data collected from law enforcement might therefore account for only around one percent of the hate crimes that occur in the United States each year.⁴⁹

Furthermore, even the most obvious hate crimes have been left out of the federal data. This includes the 2016 murder of Khalid Jabara in Tulsa, Oklahoma, and the 2017 murder of Heather Heyer in Charlottesville, Virginia.⁵⁰ Both cases were treated as hate crimes in either state or federal court, but neither was reported as a hate crime in official statistics.⁵¹ If even the most clearcut hate crimes sometimes go unreported, one has reason to ask what else might be missing from the data. Despite the shortcomings of government hate crime statistics, it is imperative that Congress remain committed to improving the collection of law enforcement data.⁵² As discussed in Part II, the passage of the Khalid Jabara and Heather Heyer NO HATE Act was an important first step in this effort.⁵³

Additionally, and perhaps most importantly, not all communities report hate crimes to law enforcement equally. As such, the significant disparities found in the examination of the data between anti-Arab and anti-Jewish, as well as anti-Muslim for that matter, are a product of numerous factors and should not be construed as indicative of the full scope of the problem for any

⁴⁶ See Sergio Olmos, *Researchers Say the FBI's Statistics on Hate Crimes Across the Country Are Flawed*, NPR (Jan. 1, 2023, 5:00 AM), <https://www.npr.org/2023/01/01/1145973412/researchers-say-the-fbis-statistics-on-hate-crimes-across-the-country-are-flawed>; Maya Berry & Kai Wiggins, *FBI Stats on Hate Crimes Are Scary. So Is What's Missing*, CNN (Nov. 14, 2018, 5:03 PM), <https://www.cnn.com/2018/11/14/opinions/fbi-hate-crimes-data-whats-missing-berry-wiggins/index.html>.

⁴⁷ See Kai Wiggins, *What Congress Should Do About Hate Crime Statistics*, LAWFARE (Mar. 15, 2024, 3:54 PM), <https://www.lawfaremedia.org/article/what-congress-should-do-about-hate-crime-statistics>; see also *Hate Crime*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), <https://ucr.fbi.gov/hate-crime>.

⁴⁸ Wiggins, *supra* note 47; LYNN LANGTON & MADELINE MASUCCI, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., *HATE CRIME VICTIMIZATION, 2004-2015*, 2 (June 2017), <https://bjs.ojp.gov/content/pub/pdf/hcv0415.pdf>.

⁴⁹ Wiggins, *supra* note 47; see also Kai Wiggins, Note, *Next Steps for Congress on Hate Crime Reporting*, 33 STAN. L. & POL'Y REV. 393, 394 n.6 (2022).

⁵⁰ See Maya Berry, *Charlottesville Won't Show Up in Federal Hate Crime Stats*, WASH. POST (Sept. 21, 2018, 5:31 PM), <https://www.washingtonpost.com/outlook/2018/09/24/charlottesville-wont-show-up-federal-hate-crime-stats>; see also Susan Bro & Haifa Jabara, *Hate Crimes Are Slipping Through the Cracks*, N.Y. TIMES (Aug. 12, 2019), <https://www.nytimes.com/2019/08/12/opinion/hate-crime-statistics-heather-heyer.html>.

⁵¹ The Charlottesville Police Department reported the car attack that killed Heather Heyer and wounded many others only after its omission from official statistics was covered in the news media. See Wiggins, *supra* note 47.

⁵² For commentary on the importance of law-enforcement hate crime statistics as compared to data from other sources, see Kai Wiggins, *How to Read Two Data Sets on Domestic Antisemitism*, LAWFARE (June 4, 2024, 10:08 AM), <https://www.lawfaremedia.org/article/how-to-read-two-data-sets-on-domestic-antisemitism>.

⁵³ See LEADERSHIP CONF. EDUC. FUND, CAUSE FOR CONCERN 2024: THE STATE OF HATE 10, 13 (May 2024), <https://civilrights.org/edfund/wp-content/uploads/sites/2/2024/05/CauseforConcern-TheStateofHate-2024.pdf>.

of the communities. First, each individual community's relationship with law enforcement plays a significant factor in their willingness to report hate crimes. For example, victim underreporting among Arab Americans is a decades-long problem rooted in mistrust or fear of law enforcement.⁵⁴ Second, although concerns about hate crimes against Arab Americans motivated the passage of the Hate Crime Statistics Act (HCSA) of 1990,⁵⁵ the FBI's hate crime reporting system did not officially include a category for anti-Arab hate crime until 2015.⁵⁶ In addition to victim concerns being a barrier, law enforcement training also impacts reporting and the lack of an anti-Arab bias motivation category for decades has assuredly impacted underreporting for Arab Americans. Finally, in the case of all communities, wide discrepancies often exist between official government hate crime data and that of non-governmental organizations. While there can be value gathered from the reports of community-based organizations, they cannot substitute for official government data and should not be represented as such.

2. Hate Crime Reporting vs. Hate Crime Prosecutions

Inevitably, there will be incidents that are reportable as hate crimes but never prosecuted as such. For one, most crimes that are reported to police never result in arrest, criminal charges (of any kind), and the referral of a suspect for prosecution.⁵⁷ And for bias-motivated crimes in particular, sometimes there will be sufficient evidence to report an incident as a hate crime in government statistics but not enough for prosecutors to bring an actual hate crime charge. According to guidance documents from the FBI on hate crime data collection, "bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias."⁵⁸ This investigation occurs before, if not separate and apart from, the actual adjudication of a hate crime. Furthermore, the "reasonable and prudent person" standard reflected in the guidance documents above falls well short of the relevant standard in all criminal prosecutions: beyond a reasonable doubt.⁵⁹ In short, even if an incident is reported as a hate crime and moreover referred for criminal prosecution, that is no guarantee of a hate crime charge. Similarly, just because an incident is not prosecuted as a hate crime, that does not mean it is unreportable as one.

⁵⁴ See U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, POLICING IN ARAB-AMERICAN COMMUNITIES AFTER SEPTEMBER 11 (2008), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/policing-arab-american-communities-after-september-11>.

⁵⁵ See ARAB AM. INST. FOUND., UNDERREPORTED, UNDER THREAT: HATE CRIME IN THE UNITED STATES AND THE TARGETING OF ARAB AMERICANS, 1991-2016, at 72-82 (2018), <https://www.aaiusa.org/library/under-reported-under-threat>.

⁵⁶ Although AAP's research found a prototypes for the reporting system developed shortly after the passage of the HCSA included a specific anti-Arab hate crime category (code 31), the FBI did not reference this history when the category was officially added in 2015. See Press Release, Fed. Bureau of Investigation, Latest Hate Crime Statistics Released (Nov. 14, 2016), <https://www.fbi.gov/news/stories/2015-hate-crime-statistics-released>.

⁵⁷ For a discussion of so-called "clearance rates," see John Gramlich, *What the Data Says About Crime in the U.S.*, PEW RSCH. CTR. (Apr. 24, 2024), <https://www.pewresearch.org/short-reads/2024/04/24/what-the-data-says-about-crime-in-the-us> ("In 2022, police nationwide cleared 36.7% of violent crimes that were reported to them and 12.1% of the property crimes that came to their attention.").

⁵⁸ U.S. DEP'T OF JUST., UNIF. CRIME REPORTING PROGRAM, HATE CRIME DATA COLLECTION GUIDELINES AND TRAINING MANUAL 4 (Mar. 1, 2022) (emphasis omitted), <https://le.fbi.gov/file-repository/hate-crime-data-collection-guidelines-and-training-manual.pdf/view>.

⁵⁹ See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (holding that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum," such as bias motivation in the context of a hate crime prosecution, "must be submitted to a jury, and proved beyond a reasonable doubt").

On November 25, 2023, three Arab American college students, all of whom are of Palestinian descent, were shot by a man while walking in Burlington, Vermont.⁶⁰ Their names are Hisham Awartani, Kinnan Abdalhamid, and Tahseen Aliahmad.⁶¹ According to news reports, the three friends were speaking in a mix of English and Arabic, and two of them were wearing black-and-white keffiyehs—traditional Arab scarves⁶²—when the shooting occurred.⁶³ The shooter, who has been charged in state court with three counts of attempted murder, did not say a word before opening fire on Hisham, Kinnan, and Tahseen.⁶⁴ According to a joint statement, however, the students’ families “have no doubt that [their] sons were targeted simply for being Palestinian.”⁶⁵

“I know that it is a hate crime,” said Hisham earlier this year.⁶⁶ But in the months since, neither the state of Vermont nor the Department of Justice has brought hate crime charges against the shooter. Although the circumstances would arguably lead a reasonable person to conclude that the shooter targeted the three students because of the language they spoke and the Palestinian keffiyehs that two of them wore, that he did not express his motivations outright in speech seemingly makes his intent unclear. Though they wore visible cultural attire and were speaking Arabic, absent additional evidence, the shooting may not be prosecuted as a hate crime, whether in state or federal court. But that does not mean a hate crime did not occur, nor does it mean the shooting should be excluded from hate crime statistics. Nor should we diminish or ignore the impact and widespread fear the shooting had on Arab Americans and others expressing solidarity with Palestinians. We should keep that in mind as we await the release of 2023 data.

3. What Reportable Bias Types Do Not Capture

Law enforcement data is a critical source of information about the nature and extent of hate crime in our communities. But it does not account for all the inherent complexities of bias-motivated criminal conduct; nor can it possibly communicate the full scope of the harms that such conduct inflicts on victims and their communities. For one, a hate crime is judged from the perceptions of the offender, regardless of whether those perceptions match the actual personal characteristics of the victim. A Sikh American gas station owner named Balbir Singh Sodhi, who died on September 15,

⁶⁰ Tom Llamas & Mirna Alsharif, *Palestinian Students Shot in Vermont Say the Suspect Waited for and Targeted Them*, NBC NEWS (Jan. 17, 2024, 8:25 AM), <https://www.nbcnews.com/news/us-news/palestinian-students-shot-burlington-vermont-interview-hospital-recovery-rcna133822>; Rozina Ali, *Raised in the West Bank, Shot in Vermont*, N.Y. TIMES (Feb. 28, 2024), <https://www.nytimes.com/2024/02/28/magazine/vermont-shooting-palestinian.html>.

⁶¹ Hisham Awartani’s injuries from the shooting left him paralyzed from the chest down. Juliana Kim, *Palestinian Student Shot in Vermont Is Paralyzed from Chest Down, His Family Says*, NPR (Dec. 3, 2023, 1:03 PM), <https://www.npr.org/2023/12/03/1216852611/palestinian-student-shot-in-vermont-is-paralyzed-from-chest-down-his-family-says>.

⁶² Joseph Donica, *Head Coverings, Arab Identity, and New Materialism*, in ALL THINGS ARABIA 163 (Ileana Baird & Hülya Yağcıoğlu eds., 2021).

⁶³ Kim, *supra* note 61; Lisa Rathke, *Suspect in Shooting of 3 Men of Palestinian Descent Near the University of Vermont Pleads Not Guilty*, ASSOCIATED PRESS (Nov. 27, 2023, 10:30 PM), <https://apnews.com/article/shooting-burlington-vermont-palestinian-american-students-ab836d1941e4237b3649353eaceb4092>.

⁶⁴ Cam Smith, *Judge Denies Request for New Lawyers from Vt. Man Accused of Shooting Palestinian Students*, WCAX (Aug. 2, 2024, 5:08 PM), <https://www.wcax.com/2024/08/02/vt-man-accused-shooting-3-palestinian-students-due-back-court>.

⁶⁵ Nadine Yousif & Mike Wendling, *Burlington, Vermont, Shootings Leave One Troubling Question: Why?*, BBC NEWS (Nov. 28, 2023), <https://www.bbc.com/news/world-us-canada-67561375>.

⁶⁶ Gloria Oladipo, *Palestinian Students Shot in Vermont Speak Out: ‘I Know that It Is a Hate Crime,’* GUARDIAN (Jan. 18, 2024, 1:17 PM), <https://www.theguardian.com/us-news/2024/jan/18/interview-palestinian-students-shot-vermont-hate-crime>.

2001, was the first victim of a fatal hate crime during the post-9/11 backlash.⁶⁷ As mentioned above, that is when hate crimes targeting Arab Americans and American Muslims—and, critically, those perceived to be Arab or Muslim—surged across the United States.⁶⁸ According to FBI statistics, law enforcement agencies reported 181 anti-Sikh hate crimes in 2022. What the data cannot tell us, however, is the number of hate crimes against Sikh Americans that, because of the offender’s misperception, were reported under a different bias type.

Furthermore, someone can be the victim of a hate crime even when the offender knows that the victim does not possess the characteristic at which the offender’s bias motivation is directed. As part of the Civil Rights Act of 1968, Congress made it a federal crime to commit violence against “any person because of his race, color, religion or national origin and because he is or has been” exercising one of six federally protected rights.⁶⁹ Not only that, Congress took the further step of making it a federal crime to commit violence against someone for “affording another person or class of persons opportunity or protection” to participate in those and other rights without fear of discrimination.⁷⁰ This provision was designed to protect civil rights workers of all races and ethnicities from the scourge of organized white supremacist violence in the southern United States at that time. A likely catalyst for this provision was the 1966 case, *United States v. Price*, 383 U.S. 787 (1966), which involved the Ku Klux Klan’s 1964 killing of three civil rights workers, one of whom (James Earl Chaney) was Black and two of whom (Andrew Goodman and Michael Schwerner) were Jewish, in Philadelphia, Mississippi.⁷¹

Few would disagree that *Price*, if it happened today, should be reported as a hate crime. But under what bias type? Anti-Black animus was at the heart of these killings, but two of the victims were not Black (though antisemitism might also have played a role). To cite another example, consider the 2017 car attack that killed Heather Heyer and wounded several others in Charlottesville, Virginia. The perpetrator of that attack admitted to driving his car into a crowd, of which Heyer, a white woman, was a part, “because of the actual and perceived race, color, national origin, and religion of its members.”⁷² Although Heather was the only person killed in the attack, that does not mean it should have been reported as an anti-white hate crime. To reiterate, a hate crime is judged not by the actual characteristics of the victim, but rather by the perceptions of the offender. For the purposes of hate crime reporting, those perceptions—however tortuous, complex, or mistaken—must be reduced to discrete, reportable bias types. To be sure, FBI statistics allow for reporting multiple bias types or even composite “group” characteristics, but the short of it is that law enforcement data is not fit to capture the complexities of bias-motivated conduct. The Committee should keep this in mind as it considers the nature and extent of hate crime in the United States since October 7, 2023, and the war in Gaza.

⁶⁷ Shawna Chen, *Remembering Balbir Singh Sodhi 20 Years After Post-9/11 Hate Crime*, AXIOS (Sept. 15, 2021), <https://www.axios.com/2021/09/16/911-balbir-singh-sodhis-hate-crime>.

⁶⁸ See *supra* text accompanying note 9.

⁶⁹ See Pub. L. No. 90-284, § 101, 82 Stat. 73, 73-77 (1968) (codified at 18 U.S.C. § 245(b)(2)).

⁷⁰ 18 U.S.C. § 245(b)(4)(B).

⁷¹ See Kent Germany & David Carter, *Mississippi Burning*, MILLER CTR. (last visited Sept. 6, 2024), <https://millercenter.org/the-presidency/educational-resources/mississippi-burning>; *Mississippi Burning*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), <https://www.fbi.gov/history/famous-cases/mississippi-burning>.

⁷² Press Release, U.S. Dep’t of Just., Ohio Man Sentenced to Life in Prison for Federal Hate Crimes Related to August 2017 Car Attack at Rally in Charlottesville, Virginia (June 28, 2019), <https://www.justice.gov/opa/pr/ohio-man-sentenced-life-prison-federal-hate-crimes-related-august-2017-car-attack-rally>.

4. More than Numbers on a Page

The final reminder about reading hate crime statistics is perhaps the most obvious, and certainly the most important. It is easy to get lost in all the charts, figures, and data presented in the preceding subsections. But the Committee should not lose sight of the fact that each datapoint represents a person and a community harmed by hate, not just a number on the page. In Part I.B, AAI shared that law enforcement agencies in Illinois reported 407 hate crimes in 2023.⁷³ Among them is the fatal stabbing of six-year-old Wadea Al-Fayoume—an Arab American Muslim child of Palestinian descent—and the severe wounding of his mother, Hanaan Shahin, in Will County on October 14, 2023.⁷⁴ The alleged perpetrator blamed them for “what was going on in the Middle East,” saying he had to kill “Arabs and Palestinians” before he murdered Wadea and attacked the innocent child’s mother.⁷⁵ Attorney General Merrick Garland noted the brutal attack “cannot help but further the fears of Muslim, Arab, and Palestinian communities in our country with regard to hate-fueled violence.”⁷⁶ That same violence forever changed the lives of Hisham Awartani, Kinnan Abdalhamid, and Tahseen Aliahmad on that day in Vermont, with Hisham paralyzed from the chest down after the attack.

AAI also shared that, at least among the twenty-seven states (and D.C.) that have published 2023 hate crime statistics, there was a fifty-eight percent increase of reported anti-Jewish hate crimes.⁷⁷ Part of that increase likely includes one of the eight hate crimes reported in 2023 by police at Cornell University, where in October of last year a student used the internet to threaten the lives of his Jewish classmates.⁷⁸ Furthermore, AAI noted that, at least according to the available data, the surge of anti-Arab and anti-Jewish hate crimes reported in 2023 has not abated in 2024.⁷⁹ According to municipal-level statistics, there were more anti-Jewish hate crimes reported in New York City during the first six months of the year than were reported statewide in 2023. Among the victims of these hate crime is an unnamed Brooklyn man who, on February 12 in Staten Island, was called a “Dirty Jew” before getting attacked with a baseball bat.⁸⁰

⁷³ See *supra* Part I.B(4)(a).

⁷⁴ *Man Charged with Hate Crime in Fatal Stabbing of Muslim Boy, Attack on Mom*, NPR (Oct. 31, 2023, 3:01 AM), <https://www.npr.org/2023/10/31/1209633437/illinois-man-charged-with-hate-crime-in-fatal-stabbing-of-muslim-boy-attack-on-m>; Press Release, U.S. Dep’t of Just., Attorney General Statement on the Killing of Six-Year-Old Child Wadea Al-Fayoume and Severe Wounding of His Mother Hanaan Shahin in Illinois (Oct. 15, 2023), <https://www.justice.gov/opa/pr/attorney-general-statement-killing-six-year-old-child-wadea-al-fayoume-and-severe-wounding>. To review and filter state-level data for Illinois, see *Hate Crime Incidents Report*, ILL. STATE POLICE (last visited Sept. 9, 2024), <https://ilucr.nibrs.com/Report/HateCrimeByORIRReport>.

⁷⁵ Nouran Salahieh & Andy Rose, *I Am Not a Threat: Hundreds Gather for Vigil Mourning 6-Year-Old Palestinian-American Boy Who Was Stabbed to Death Near Chicago*, CNN (Oct. 18, 2023, 4:32 AM), <https://www.cnn.com/2023/10/18/us/wadea-al-fayoume-death-wednesday/index.html>.

⁷⁶ U.S. Dep’t of Just., *supra* note 74.

⁷⁷ See *supra* Part I.B(1).

⁷⁸ See Press Release, U.S. Dep’t of Just., Former Cornell Student Pleads Guilty to Posting Online Threats Against Jewish Students on Campus (Apr. 10, 2024), <https://www.justice.gov/opa/pr/former-cornell-student-pleads-guilty-posting-online-threats-against-jewish-students-campus>; *Criminal Justice Statistics*, N.Y. DIV. OF CRIM. JUST. SERVS. (last visited Sept. 6, 2024), <https://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm>.

⁷⁹ See *supra* Part I.B(2).

⁸⁰ Jesse Zanger & Natalie Duddridge, *Recent Antisemitic Violence Has Staten Island’s Jewish Community on Edge*, CBS NEWS (Feb. 16, 2024, 8:26 PM), <https://www.cbsnews.com/newyork/news/recent-antisemitic-violence-has-staten-islands-jewish-community-on-edge>; see also *Hate Crimes Reports*, N.Y. POLICE DEP’T (last visited Sept. 6, 2024), <https://home.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page>.

These victims, along with so many more, have all suffered from the apparent surge of hate crimes that has transpired. In sum, it is important that we have accurate hate crime data for many reasons, not least because we should recognize the dignity—and pain—of each and every hate crime victim.

Before proceeding to possible remedies, it is important to provide some context on a topic that has not received the attention it warrants. To better understand anti-Arab bias-motivated hate crime, one must have a better understanding of anti-Arab racism, a problem present in the United States since Arabs first began immigrating in large numbers in the late nineteenth century. On a most basic level, anti-Arab racism is a form of bias that includes opposition to, dislike, fear, or hatred of Arab people. Stereotypical portrayals of Arabs have flooded American entertainment and media for decades, spurring anti-Arab animus and a deep mistrust of Arab Americans. What emerges as a result of these stereotypes is an Arab exception to the customary threshold of bigotry deemed appropriate for mainstream outlets, partly because the dehumanizing language sometimes emanates from elected officials, candidates, and mainstream news outlets. During this current presidential campaign, one candidate has gone as far as to use “Palestinian” as a slur.⁸¹

Organizations working to defend the civil rights and civic engagement of Arab Americans have been threatened, including the killing of civil rights leader Alex Odeh in a horrific hate crime in 1985.⁸² Alex’s murder, and the climate that enabled it, were the focus of a historic congressional hearing in 1986 entitled, “Ethnically Motivated Violence Against Arab-Americans.”⁸³

In the post-9/11 environment, government policies that further “othered” Arab Americans, as well as American Muslims, have contributed to making the communities a source of fear and a target for hate. The Jabara-Heyer Act discussed is itself named after Khalid Jabara, an Arab American shot to death on his front porch by his neighbor in a violent hate crime in 2016.⁸⁴ In the case of the very organization on whose behalf I am testifying today, the Arab American Institute, a man was sentenced to five years in prison for a hate crime targeting our staff in 2019.⁸⁵ The perpetrator was fond of signing his messages with the same phrase: “The only good Arab is a dead Arab.”

These examples, some that predate the recent surge in hate, share a common thread—the dehumanization of Arabs, including Palestinians. The result is Arab Americans are harassed,⁸⁶

⁸¹ Kanishka Singh, *Trump Criticized for ‘Palestinian’ Insult in Debate with Biden*, REUTERS (June 28, 2024, 5:51 PM), <https://www.reuters.com/world/us/trump-criticized-palestinian-insult-debate-with-biden-2024-06-28>.

⁸² Alex Odeh was the west coast regional director for the American-Arab Anti-Discrimination Committee (ADC). He was murdered at his ADC office in Santa Ana, California, on October 11, 1985, when a bomb was triggered when he opened the door to his office, tragically killing him and injuring seven others on the same floor. See Gabriel San Román, *Senator Calls for FBI Update on Unsolved Assassination of O.C. Activist Alex Odeh*, L.A. TIMES (Dec. 20, 2021, 6:19 PM), <https://www.latimes.com/california/story/2021-12-20/senator-durbin-calls-for-fbi-update-in-alex-odeh-assassination-cold-case>.

⁸³ *Ethnically Motivated Violence Against Arab Americans, Hearing Before the Subcomm. on Crim. Just. of the H. Comm. of the Judiciary*, 99th Cong. (1988).

⁸⁴ 34 U.S.C. § 30507.

⁸⁵ Press Release, U.S. Dept. of Justice, Virginia Man Sentenced to 60 Months in Prison for Committing Hate Crime by Threatening Employees of the Arab American Institute (Aug. 15, 2019), <https://www.justice.gov/opa/pr/virginia-man-sentenced-60-months-prison-committing-hate-crime-threatening-employees-arab>.

⁸⁶ Michael Abeyta, *Cherry Creek Schools Students Concerned with Bullying Following the War in Israel*, CBS COLORADO (Oct. 15, 2023, 3:18 PM), <https://www.cbsnews.com/colorado/news/colorado-cherry-creek-students-concerned-bullying-following-war-israel>.

threatened,⁸⁷ doxxed,⁸⁸ subjected to violence,⁸⁹ denied public accommodations,⁹⁰ and discriminated against in the workplace,⁹¹ to name but a few consequences of the current climate.

Hate against any one group is inseparable from hate against all and hate prevention should be done collectively—in coalition and partnership with all communities affected by hate. The 2022 FBI data is illustrative of the need for such a response. Anti-Black hate crimes were the second highest ever recorded and they account for a plurality of *all* hate crimes reported. Anti-Latino and anti-LGBTQ+ incidents also reached an all-time high. Anti-Jewish incidents saw a thirty-seven percent increase and anti-AAPI hate represented the second-highest number ever recorded, dropping from the staggering increase we saw in 2021.⁹² Further, hate against our collective communities is increasing in light of divisive political rhetoric leading up to the general election, international events, emboldened white supremacists, foreign actors seeking to sow community division in our nation, and the unmitigated proliferation of disinformation against our communities in traditional and new media platforms. Our collective response must meet the moment with the urgency it warrants.

II. The Federal Government’s Role in Hate Crime Enforcement

Part I offers an extensive discussion of hate crime statistics across a range of bias types, with particular attention toward the reported increase of anti-Arab and anti-Jewish hate crimes in the last quarter of 2023. What follows is a brief discussion of the federal response to hate crime—especially when it comes to hate crime statistics—and what Congress can do to improve that response.

In addition to publishing hate crime statistics based on data collected from law enforcement agencies across the United States, the Department of Justice enforces four criminal statutes designed to combat bias-motivated violence.⁹³ Although two of these statutes predate the emergence of “hate crime” as a legal term of art,⁹⁴ the Department of Justice now refers to all four as federal hate crime

⁸⁷ See Max Zahn, *Palestinian-American Business Owners Face Death Threats, Negative Reviews*, ABC NEWS (Oct. 17, 2023, 5:37 PM), <https://abcnews.go.com/Business/death-threats-expletives-palestinian-business-owners-us-canada/story?id=104006583>.

⁸⁸ Catherine Thorbecke, *Names and Faces of Harvard Students Linked to an Anti-Israel Statement were Plastered on Mobile Billboards and Online Sites*, CNN (Oct. 14, 2023, 7:40 PM), <https://www.cnn.com/2023/10/12/business/harvard-doxxing-truck-israel-amas-statement/index.html>.

⁸⁹ Rebecca Cohen, *Stanford Student Hit by SUV in Suspected Hate Crime Calls on Others to Denounce Bigotry*, NBC NEWS (Nov. 5, 2023, 7:57 PM), <https://www.nbcnews.com/news/us-news/stanford-university-hit-run-victim-shares-message-hospital-rcna123738>.

⁹⁰ Phil Landeros, *Arab-American Convention Claims Event Was Canceled by Hotel Over Security Concerns*, CLICK ORLANDO (Nov. 3, 2023, 10:32 PM), <https://www.clickorlando.com/news/local/2023/11/04/arab-american-convention-claims-event-was-canceled-by-hotel-over-security-concerns>.

⁹¹ Angelina Chapman, *When Posting About the Israel-Hamas War Costs You Your Job*, THE CUT (Oct. 30, 2023), <https://www.thecut.com/2023/10/israel-hamas-war-job-loss-social-media.html>.

⁹² Press Release, Arab Am. Inst., AAI Statement on the FBI’s 2022 Hate Crime Data Release: Second Consecutive Year of the Highest Number of Hate Crimes Since Reporting of Data Began in 1992 (Oct. 16, 2023), <https://www.aaiusa.org/library/hatecrime2023>.

⁹³ A fifth statute, a Reconstruction-era provision codified at 18 U.S.C. § 241, was passed in part to extend federal criminal jurisdiction over acts of anti-Black violence in the former Confederate states. See Jason D’Andrea & Kai Wiggins, *Three Questions About Section 241, the Conspiracy Against Rights Statute*, LAWFARE (Aug. 16, 2023), <https://www.lawfaremedia.org/article/three-questions-about-section-241-the-conspiracy-against-rights-statute>. But the statute is broad in application, *see id.*, and, in contrast to subsequent provisions, does not treat bias motivation as a discrete offense element. Compare 18 U.S.C. § 241, with 18 U.S.C. § 245(b)(2), § 247(c), § 249(a), and 42 U.S.C. § 3631(a).

⁹⁴ Shirin Sinnar, *Hate Crimes, Terrorism, and the Framing of White Supremacist Violence*, 110 CALIF. L. REV. 489, 509 (2022).

statutes.⁹⁵ The most recent of these statutes, 18 U.S.C. § 249, is also the most expansive in application. Before the enactment of § 249, no federal hate crime statute covered acts of violence based on sexual orientation or gender identity; furthermore, existing statutes covered only certain acts of violence based on race, color, religion, national origin, gender, or disability.⁹⁶ Congress enacted the § 249 in 2009 as part of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which is named for two victims of shocking hate crimes that occurred in 1998.⁹⁷

On the reporting and data collection front, in 2021 Congress passed another law named for two hate crime victims: the Khalid Jabara and Heather Heyer NO HATE Act.⁹⁸ The purpose of the Jabara-Heyer Act is to address an issue that has been discussed throughout this testimony: that of chronic underreporting in hate crime statistics. But while the Jabara-Heyer Act is a promising first step toward improving the collection of hate crime data in the United States, more can be done. At the heart of the Jabara-Heyer Act is a grant program designed to incentivize a subset of state and local law enforcement agencies to adopt a series of best practices. These include the adoption of specific hate crime reporting and investigative policies, the development of standardized reporting methods, the creation of special hate crime units, the piloting of various forms of community engagement, and the provision of hate crime training for law enforcement personnel.⁹⁹ As a condition of receiving these grants, recipients must exchange information with the Department of Justice related to their hate crime prevention and reporting practices. The objective here is to create a separate stream of information from state or local law enforcement agencies that the federal government can use to check against, or at least help contextualize, the hate crime data that it receives from those same agencies.¹⁰⁰

While this approach is promising, the potential reach of the Jabara-Heyer Act is limited. For one, only a small number of state and local law agencies are eligible for the grant program.¹⁰¹ And furthermore, just because Congress has created a new grant program does not mean that eligible state or local law enforcement agencies opt into that program. If anything, agencies that need the funding incentives least, i.e., those that already prioritize hate crime reporting, will be more likely to opt into the grant program than the agencies that need it most. Fortunately, the path to reform is simple. The Jabara-Heyer Act established a new grant program with conditions attached. But what if those same conditions were attached to an existing grant program, better yet, a grant program in which a significant percentage of state and local law enforcement agencies already participate? An obvious choice would be the Edward Byrne Memorial Justice Assistance Grant (JAG) Program,

⁹⁵ See, e.g., *Statutes Enforced by the Criminal Section*, U.S. DEP'T OF JUST., C.R. DIV. (last updated Aug. 15, 2023), <https://www.justice.gov/crt/statutes-enforced-criminal-section>.

⁹⁶ See 18 U.S.C. § 245(b)(2) and 42 U.S.C. § 3631.

⁹⁷ Matthew Shepard & James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, div. E, 123 Stat. 2190, (2009); see also Elliot C. McLaughlin, *There Are Two Names on the Federal Hate Crimes Law. One Is Matthew Shepard. The Other Is James Byrd Jr.*, CNN (Apr. 25, 2019, 8:15 AM), <https://www.cnn.com/2019/04/24/us/james-byrd-hate-crime-legislation-john-king-execution/index.html>.

⁹⁸ Pub. L. No. 117-13, § 5, 135 Stat. 265, 266-72 (2021).

⁹⁹ Wiggins, *supra* note 49, at 403.

¹⁰⁰ For extensive analysis on the Jabara-Heyer Act and how to improve it, see Wiggins, *supra* note 47, and Wiggins, *supra* note 49.

¹⁰¹ Eligible agencies include state agencies and two categories of local agencies: those representing more than 100,000 people; and those representing 50,000-99,999 people that has reported no hate crimes to the FBI in each of the three most recent calendar years for which data are available. See 34 U.S.C. § 30507(c)(2), (f)(1)(A).

which is “the leading source of federal justice funding to state and local jurisdictions.”¹⁰² Such an approach can lead to meaningful mandatory hate crime reporting.

Additional recommendations include the following as identified by some Hate Crime Task Force members at the Leadership Conference for Civil and Human Rights.

- **Increase Interagency Coordination Against Hate.** Congress should enact legislation to institutionalize President Biden’s United We Stand Summit commitment to establish an interagency initiative on hate crimes, authorize \$10 million to fund its continued implementation, and require periodic reports from the White House that outline the work of the initiative, including: how each agency has addressed hate crime issues, prevention and training initiatives, as well as research and programmatic plans for the next fiscal year.
- **Pass the Improving Reporting to Prevent Hate Act.** Congress should pass the Improving Reporting to Prevent Hate Act (H.R. 7648), which would condition federal funding under the Safe Streets Act on credible hate crime reporting to the FBI for law enforcement agencies serving populations of more than 100,000.
- **Address White Supremacy in Federal Law Enforcement.** Congress should enact legislation to require the Department of Homeland Security, the Department of Justice, and the FBI—and all other federal agencies with law enforcement responsibility—to promptly “avoid the hiring and retention of law enforcement officers who promote unlawful violence, white supremacy, or other bias against persons based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability” as mandated in President Biden’s May 2022 police reform executive order.¹⁰³
- **Increase Funding for the Department of Education’s Office for Civil Rights (OCR).** Congress should enact legislation—the Showing Up for Students Act (S. 3883; H.R. 8271)—to double OCR’s funding. The Leadership Conference and more than 90 civil rights and education groups are on record in support of doubling the funding for OCR.¹⁰⁴
- **Increase Funding for Community-based Hate Crime Prevention Initiatives.** Congress should increase funding for Department of Justice community-based programs authorized by the COVID-19 Hate Crimes Act, which includes the Jabara-Heyer NO HATE Act,¹⁰⁵ by an additional \$30 million, including increased funds for state hate crime hotlines to promote expanded victim reporting and assistance and support services and restorative justice initiatives for those targeted and impacted by bias-motivated harms.
- **Increase support to the Department of Justice’s Civil Rights Division and the Community Relations Service (CRS).** Both play a critical role in combatting and

¹⁰² *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS. (last updated Sept. 4, 2024), <https://bja.ojp.gov/program/jag/overview>.

¹⁰³ Exec. Order No. 14,074, 87 Fed. Reg. 32945 (May 25, 2022).

¹⁰⁴ Letter to Sen. Subcomm. on Lab., Health & Hum. Servs., Educ., and Related Agencies from the Leadership Conf. on Civ. & Hum. Rts. et al. (Feb. 14, 2024), <https://civilrights.org/wp-content/uploads/2024/02/Congress-Double-the-Funding-for-ED-OCR.pdf>; Letter to Pres. Joseph R. Biden, Jr. from the Leadership Conf. on Civ. & Hum. Rts. et al. (Feb. 14, 2024), <https://civilrights.org/wp-content/uploads/2024/02/Double-the-Funding-for-ED-OCR.pdf>.

¹⁰⁵ Pub. L. No. 117-13, 135 Stat. 265 (2021).

responding to hate crime incidents, including providing training and community outreach programs for directly impacted communities.

Thank you again for the opportunity to testify on this critical topic and I look forward to your questions.