



**Written Testimony of Maya M. Berry
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“Combating the Rise in Hate Crimes”

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

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Chairman Durbin, Ranking Member Grassley, and members of the Committee, thank you for convening today’s hearing and for including our perspective. 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 also co-chair the Hate Crime Task Force of the Leadership Conference on Civil and Human Rights.

As is clear from the convening of this hearing, this Committee understands our country continues to experience an increase in hate crime and that we must formulate a better policy response to combat it. From the tragic personal accounts of people targeted to the headlines highlighting attacks to the official government data that tracks it, each individual hate crime is a person victimized, a community harmed.

To adequately respond to the increase in hate crime, including prevention efforts, we must have a full understanding of the threat targeted communities are facing—and that requires accurate hate crime data collection and reporting. It is established fact that we do not have that. The following are some insights into the problem of flawed hate crime data and recommendations to remedy it.

National Hate Crime Reporting System and Hate Crime Statistics

Pressured by a nationwide increase of hate crime during the 1980s, Congress passed the Hate Crime Statistics Act of 1990 (HCSA),¹ and tasked the Federal Bureau of Investigation (FBI) to manage the national hate crime reporting system.² As part of this system, thousands of law enforcement agencies submit hate crime data to the FBI each year.

The HCSA requires the Department of Justice (DOJ) to “acquire data . . . about crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability,

¹ 34 U.S.C. § 41305.

² See *Hate Crime Statistics*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr/hate-crime> (last visited Mar. 5, 2022); 34 U.S.C. § 41305.

sexual orientation, or ethnicity.”³ The FBI carries out this requirement through the Uniform Crime Reporting (UCR) program, which collects crime statistics from federal, state, local, tribal, and territorial law enforcement agencies.⁴ Although federal law enforcement agencies are required under federal law to submit crime data to the UCR program,⁵ nonfederal law enforcement agencies are not.⁶

That said, agencies that submit hate crime data to the UCR program might be required to do so under state law. As of 2021, thirty states and the District of Columbia have laws requiring some form of hate crime data collection, though not all these laws impose reporting requirements on individual law enforcement agencies.⁷ Additionally, several states require law enforcement personnel to receive training on identifying, reporting, and responding to hate crimes.⁸ Finally, some local jurisdictions have robust hate crime reporting policies and practices, while others do not appear to prioritize hate crime reporting.⁹ Each of these factors—not to mention variations in the bias motivations and offenses covered under state hate crime statutes—might influence hate crime reporting rates from one jurisdiction to the next. This point should inform not only our understanding of hate crime statistics, but also our approach to improving the national hate crime reporting system.

2020 Hate Crime Statistics

According to the FBI, law enforcement agencies in the United States reported 8,263 hate crimes in 2020, which is a thirteen percent increase over 2019.¹⁰ This was the highest annual total since 2001, when hate crimes against Arab Americans, American Muslims, and those perceived to be Arab or Muslim surged in the wake of the 9/11 terrorist attacks.¹¹ Once again, hate crimes targeting Black Americans accounted for a majority of those motivated by race, ethnicity, or

³ 34 U.S.C. § 41305.

⁴ *Uniform Crime Reporting Program*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr> (last visited Mar. 5, 2022).

⁵ Uniform Federal Crime Reporting Act of 1988, 34 U.S.C. § 41303.

⁶ See FED. BUREAU OF INVESTIGATION, *supra* note 2.

⁷ See Beatrice Jin, *Biden Signed a New Hate Crimes Law—But There’s a Big Flaw*, POLITICO (May 5, 2021), <https://www.politico.com/interactives/2021/state-hate-crime-laws>; ARAB AM. INST. FOUND., UNDERREPORTED, UNDER THREAT: HATE CRIME IN THE UNITED STATES AND THE TARGETING OF ARAB AMERICANS 9 (2018), <https://www.aaiusa.org/library/under-reported-under-threat> (noting distinction between state-level data collection and agency-level reporting).

⁸ See Jin, *supra* note 7.

⁹ See Pub. L. No. 117-13, § 5(b)(6), 135 Stat. 265, 267 (2021); see also Kai Wiggins, *Next Steps for Congress on Hate Crime Reporting*, 32 STAN. L. & POL’Y REV. __, __ (forthcoming 2022) (“[R]eporting rates might also depend on law enforcement agencies’ policies, procedures, and institutional priorities, which run the gamut.”).

¹⁰ See *2020 Hate Crime Statistics*, U.S. DEP’T OF JUST. (Dec. 9, 2021), <https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics>. Compare Press Release, Fed. Bureau of Investigation, FBI Releases Updated 2020 Hate Crime Statistics (Oct. 25, 2021) [hereinafter FBI 2020 Press Release], <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-updated-2020-hate-crime-statistics>, with Press Release, Fed. Bureau of Investigation, FBI Releases 2019 Hate Crime Statistics (Nov. 16, 2020), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2019-hate-crime-statistics>.

¹¹ 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>.

ancestry, and a plurality of all hate crimes reported.¹² The reported total of 2,871 incidents represents a forty-nine percent increase since 2019.¹³

Hate crimes targeting Asian American and Pacific Islander (AAPI) communities also increased in 2020, with 279 Anti-Asian hate crimes and 15 Anti-Native Hawaiian or Other Pacific Islander hate crimes reported, representing a sixty-four percent increase over 2019 and the greatest number of anti-AAPI hate crimes reported since 1999.¹⁴

Crucially, the serious increase of anti-Black and anti-AAPI hate crimes reported in 2020 coincided with nationwide protests in defense of Black lives following the murder of George Floyd and rampant discrimination against AAPI communities during the COVID-19 pandemic.¹⁵ Regarding the latter, Congress has already required the Attorney General and the Secretary of Health and Human Services to work with stakeholders to develop guidance aimed at raising awareness of pandemic-related hate crimes with the recent passage of the COVID-19 Hate Crimes Act, which includes the Khalid Jabara & Heather Heyer NO HATE Act.¹⁶

As for religiously motivated hate crimes, anti-Jewish hate crimes continue to represent a majority of those reported despite a twenty-eight percent decrease in 2020.¹⁷ Reported Anti-Muslim hate crimes have also declined in recent years after a spike coinciding with the 2016 presidential campaign and the election of Donald Trump.¹⁸ Beyond religion, we've seen similar trends when it comes to anti-Arab hate crimes and anti-Hispanic or Latino hate crimes.¹⁹

Finally, 2020 did not see significant changes in the number of reported hate crimes motivated by sexual orientation, disability, or gender, but there was a thirty-four percent increase in reported hate crimes motivated by gender identity.²⁰

This is a brief overview. For more granular details on 2020 hate crime statistics, please see the tables provided in the Appendix. AAI can also provide other tables upon request. Before turning to the next part of my testimony, however, I should emphasize that FBI UCR data, though the

¹² Press Release, Arab Am. Inst., AAI Statement on the FBI's 2020 Hate Crime Data Release (Aug. 31, 2021), <https://www.aaiusa.org/library/aai-statement-on-the-fbis-2020-hate-crime-data-release>. *But see* FBI 2020 Press Release, *supra* note 10; *Hate Crime in the United States Incident Analysis*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER [hereinafter 2020 CDE Totals], <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime> (last visited Mar. 5, 2021) (showing updated 2020 statistics).

¹³ *See* U.S. DEP'T OF JUST., *supra* note 3.

¹⁴ *Compare* 2020 CDE Totals, *supra* note 12, with *Table 1: Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2019*, FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2019 (2020), <https://ucr.fbi.gov/hate-crime/2019/topic-pages/tables/table-1.xls>; *see also* FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 1999, at 7 (2000), <https://ucr.fbi.gov/hate-crime/1999>.

¹⁵ *See* Arab Am. Inst., *supra* note 15.

¹⁶ Pub. L. No. 117-13, § 3, 135 Stat. 265, 266 (2021).

¹⁷ *See* U.S. DEP'T OF JUST., *supra* note 10.

¹⁸ *Id.*; *see also* Maya Berry & Kai Wiggins, *FBI Stats on Hate Crimes Are Scary. So Is What's Missing*, CNN (Nov. 14, 2018), <https://www.cnn.com/2018/11/14/opinions/fbi-hate-crimes-data-whats-missing-berry-wiggins/index.html> (noting that Anti-Muslim hate crimes reported in 2017 stabilized after a dramatic increase coinciding with the 2016 election cycle).

¹⁹ *See* Rachel Treisman, *FBI Reports Dip in Hate Crimes, But Rise in Violence*, NPR (Nov. 12, 2019), <https://www.npr.org/2019/11/12/778542614/fbi-reports-dip-in-hate-crimes-but-rise-in-violence>.

²⁰ U.S. DEP'T OF JUST., *supra* note 10.

best available source of hate crime statistics, do not provide an accurate account of the hate crimes experienced each year in communities throughout the United States. But that does not mean we should take hate crime statistics lightly. Behind each reported incident is a victim who was harmed, a community that was targeted. Undercounts in hate crime statistics should not lead us to dismiss or disregard initiatives to improve the reporting system. Rather, they should remind us that what we're seeing is just the tip of the iceberg, and that, with concerted efforts at reform, we can arrive at a fuller picture.

2020 Data Highlight Recent Developments in the Hate Crime Reporting System

In addition to the highest number of hate crime incidents recorded since 9/11, 2020 marked a significant year for the hate crime reporting system, including the continued implementation of federal hate crime reporting, the development of interactive hate crime statistics, and the nationwide transition to the National Incident-Based Reporting System (NIBRS).²¹ While these are improvements that can result in more accurate data, they will require congressional oversight.

A. Federal law enforcement reporting

Since 2018, the FBI's hate crime statistics have included data from federal law enforcement agencies.²² Before then, even where the federal government brought hate crime charges against alleged perpetrators, the underlying incidents were reported, if at all, by state or local law enforcement. As noted earlier, sometimes incidents prosecuted as hate crimes nonetheless went unreported in official statistics, including those prosecuted under federal hate crime statutes. For example, the Jackson, Mississippi, police department failed to report the 2011 murder of a Black man named James Craig Anderson, which was the "first homicide prosecuted under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act."²³ Furthermore, in 2017, the year before the FBI introduced federal hate crime reporting, state and local law enforcement failed to report two major hate crimes that were prosecuted under federal hate crime statutes: the murder of Srinivas Kuchibhotla in Olathe, Kansas, and the murder of Heather Heyer in Charlottesville, Virginia.²⁴

Federal hate crime reporting is a positive development, not least because Congress passed a law requiring federal law enforcement to report crimes through the UCR program more than thirty years ago, in 1988.²⁵ But many questions remain unresolved. To my knowledge, the FBI has neither published guidance nor clarified its procedures on federal reporting determinations. Historically, the UCR program has followed the "most local reporting rule," which requires incident reports to come from the "most local" jurisdiction.²⁶ To illustrate, if local, state, and federal law enforcement participated in a joint investigation of a suspected hate crime, regardless

²¹ See generally Kai Wiggins, *Growing Pains for Hate Crime Statistics*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (Oct. 19, 2021), <https://nyujlpp.org/quorum/wiggins-growing-pains-for-hate-crime-statistics>.

²² *About Hate Crime Statistics*, FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2018, at 4 (2019), <https://ucr.fbi.gov/hate-crime/2018/resource-pages/about-hate-crime.pdf>.

²³ Wiggins, *supra* note 21.

²⁴ Emanuella Grinberg, *4 Days, 5 Reports of Hate crimes, and a Disturbing Trend Developing in America*, CNN (Dec. 12, 2018), <https://www.cnn.com/2018/12/11/us/hate-crimes/index.html>.

²⁵ Uniform Federal Crime Reporting Act of 1988, 34 U.S.C. § 41303.

²⁶ See FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING HANDBOOK 9 (2004), https://ucr.fbi.gov/additional-ucr-publications/ucr_handbook.pdf.

of whether the investigation resulted in state or federal charges, or both, the local jurisdiction would report the incident for hate crime statistics.

Notably, the FBI's introduction of federal hate crime reporting occurred in close succession with three events that cast negative light on the national hate crime reporting system. First, was negative press attention stemming from the omission of major hate crimes from hate crime statistics, a problem AAI was the first to raise in September 2018.²⁷ Second, was a media campaign designed to raise awareness about federal law enforcement agencies' failure to report hate crimes.²⁸ Indeed, these problems caught the attention of two members of this Committee, Senators John Kennedy and Patrick Leahy, both of whom vowed to address the DOJ about federal reporting.²⁹ Third, was an October 2019 letter that AAI sent to the DOJ and FBI about omissions of major suspected hate crimes and other inaccuracies in state-reported hate crime data, which, pending corrections or follow-up on the part of the federal government, would have been reflected in federal hate crime statistics for 2018.

B. Interactive hate crime statistics

The FBI's 2020 hate crime statistics were the first to not be published in a static annual report. Instead, the FBI shared the data on an interactive website established in 2018 called the Crime Data Explorer (CDE).³⁰ Before this development, the FBI typically would not publish annual hate crime statistics until November of the following year.³¹ The publication turnaround for hate crime statistics has been a consistent impediment to not only understanding the nature and extent of hate crime in different jurisdictions, but also developing responsive policies to address and prevent hate crime within those jurisdictions. The FBI's recent development of interactive hate crime statistics promises to shorten the publication turnaround, but questions remain.

One question involves apparent discrepancies between two separate datasets housed in the CDE. After commentators raised these discrepancies,³² the FBI added several paragraphs to a CDE webpage acknowledging the discrepancies and explaining that, “[s]tarting with the release of the 2021 data in calendar year 2022, the UCR Program will be consolidating its data quality review and management practices, which will reduce or eliminate potential differences between the two presentations going forward.”³³

²⁷ See Maya Berry, Opinion, *Charlottesville Won't Show Up in Federal Hate Crime Stats*, WASH. POST (Sept. 21, 2018), <https://www.washingtonpost.com/outlook/2018/09/24/charlottesville-wont-show-up-federal-hate-crime-stats>.

²⁸ See, e.g., *Full Documentary: Measure of Hate*, INVESTIGATE TV (July 29, 2019), <https://www.investigatetv.com/2019/07/29/measure-of-hate-special>; Jamie Grey & Lee Zurik, *Undercounting Hate: FBI Will Not Report Its Hate Crime Numbers Again this Year as Required by Law*, INVESTIGATE TV (Apr. 25, 2019), <https://raycom-wlbt-prod.cdn.arcpublishing.com/2019/03/25/undercounting-hate-fbi-will-not-report-its-hate-crime-numbers-again-this-year-required-by-law/?outputType=amp>.

²⁹ Grey & Zurik, *supra* note 28.

³⁰ See *About the Crime Data Explorer*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER, <https://crime-data-explorer.fr.cloud.gov/pages/about> (last visited Mar. 5, 2022), <https://crime-data-explorer.fr.cloud.gov/pages/about>.

³¹ See Jeff Asher, *Why There's Not Much Data on Anti-Asian Violence*, LAWFARE (Mar. 23, 2021), <https://www.lawfareblog.com/why-theres-not-much-data-anti-asian-violence>.

³² See, e.g., Wiggins, *supra* note 21.

³³ See *Methodologies Explain Potential Difference in UCR Data*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER, <https://crime-data-explorer.fr.cloud.gov/pages/about#methodologies> (last visited Mar. 5, 2022).

Another question involves the frequency with which the FBI will update the CDE data. When the FBI first published 2020 hate crime statistics in August 2021, the state of Ohio had reported just thirty-four hate crimes because of a technical error.³⁴ Two months later, the FBI released updated hate crime statistics for 2020,³⁵ which showed that Ohio law enforcement agencies had in fact reported 538 hate crimes that year.³⁶ Assuming that jurisdictions often update or revise crime data within their records management systems, additional information on how frequently the FBI intends to update hate crime statistics on the CDE would be helpful.

C. NIBRS transition

The final development for hate crime reporting is the retirement of the Summary Reporting System, which, until 2021, was one of two reporting formats that law enforcement agencies could use to submit crime data to the FBI UCR program.³⁷ Reporting agencies must now use the National Incident-Based Reporting System (NIBRS), which provides more comprehensive information, including additional offenses and allowing for the reporting of all offenses, eliminating the hierarchy rule.³⁸ The problem, however, is that a significant percentage of law enforcement agencies have not transitioned to NIBRS, which means those agencies have no means of reporting hate crimes to the FBI. As of March 2022, the CDE reports that thirty-seven percent of U.S. law enforcement agencies have not adopted NIBRS.³⁹ Crucially, the states of California and Florida, which historically account for a large percentage of hate crimes reported each year, are not yet NIBRS compliant.

Challenges of Hate Crime Reporting and Data Collection

Several cracks in the reporting system lead to inaccuracies in hate crime statistics. For one, victims often do not report hate crimes to law enforcement. According to estimates from the Bureau of Justice Statistics, approximately fifty-six percent of hate crime victimizations from 2010 to 2019 were not reported to police.⁴⁰ Some potential reasons why victims do not report hate crimes to law enforcement include distrust of police, not wanting the police to get involved, and fear of retaliation.⁴¹ For example, in the case of my community, one study found, "some Arab-American communities said they were more afraid of law enforcement agencies—

³⁴ David Nakamura, *Ohio Submits Updated Hate-Crime Figures to FBI that Would Make 2020 U.S. Tally Highest Since 2001*, WASH. POST (Sept. 10, 2021), https://www.washingtonpost.com/national-security/ohio-hate-crime-data-us/2021/09/10/8f18fb28-1261-11ec-882f-2dd15a067dc4_story.html.

³⁵ FBI 2020 Press Release, *supra* note 21.

³⁶ *Hate Crime in Ohio Incident Analysis*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER, <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/hate-crime> (last visited Mar. 5, 2022).

³⁷ See *National Incident-Based Reporting System (NIBRS)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr> (last visited Mar. 5, 2022).

³⁸ *Benefits of NIBRS Participation*, FED. BUREAU OF INVESTIGATION, NIBRS, 2014 (2015), https://ucr.fbi.gov/about-us/cjis/ucr/nibrs/2014/resource-pages/benefits-of-nibrs-participation_final.pdf.

³⁹ *Explore by Location and Dataset*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER, <https://crime-data-explorer.fr.cloud.gov/pages/home> (last visited Mar. 5, 2022).

⁴⁰ GRACE KENA & ALEXANDRA THOMPSON, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., *HATE CRIME VICTIMIZATION, 2005-2019*, 2 (Sept. 2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

⁴¹ See KENA & THOMPSON, *supra* note 40, at 2; Emma Keith et al., *Lack of Trust in Law Enforcement Hinders Reporting of LGBTQ Crimes*, CTR. FOR PUB. INTEGRITY (Aug. 24, 2018), <https://publicintegrity.org/politics/lack-of-trust-in-law-enforcement-hinders-reporting-of-lgbtq-crimes>.

especially federal law enforcement agencies—than they were of acts of hate or violence, despite an increase in hate crimes."⁴² Unless there is a meaningful effort at all levels of government to address barriers to reporting, federal hate crime statistics will not provide an accurate depiction of the nature and extent of hate crime even if all law enforcement agencies reported one hundred percent of the hate crimes that come to their attention.

But even when victims report hate crimes to law enforcement or hate crimes otherwise come to the attention of law enforcement, there is no guarantee those incidents will be recorded in hate crime statistics. According to the FBI, less than fifteen percent of U.S. law enforcement agencies reported a hate crime in 2020.⁴³ And nonreporting is not limited to smaller jurisdictions. Each year, dozens of local jurisdictions with 100,000 residents or more report no hate crimes to the FBI. In 2020, the number was 61,⁴⁴ and in previous years the number has been even higher.⁴⁵ Furthermore, almost two hundred agencies representing between 50,000 and 100,000 residents have reported zero hate crimes over the last three years of available data.⁴⁶

In response to these numbers, one might argue that, in jurisdictions where no hate crimes were reported during a specific period, perhaps no hate crimes occurred. But the truth is likely more complicated. For one, there are multiple examples where law enforcement agencies fail to report even high-profile hate crimes that are prosecuted under hate crime statutes, including the murders of Khalid Jabara and Heather Heyer.⁴⁷ Moreover, a limited review of hate crime data from large jurisdictions suggests that several factors influence reported hate crime rates. In 2020, the reported hate crime rate in the city of Eugene, Oregon, was almost ten times the average rate across large jurisdictions.⁴⁸ Not only does Oregon have a hate crime statute providing the full range of protections and laws requiring police to report hate crimes and receive hate crime training, but also the city of Eugene has robust hate crime policies.⁴⁹ In contrast, “jurisdictions in states with underinclusive or nonexistent hate crime laws and local governments that have not prioritized [hate] crime” often have lower hate crime rates.⁵⁰ For example, neither Montgomery, Alabama, nor Jackson, Mississippi, reported a single hate crime from 2013 to 2020; these are

⁴² NICOLE HENDERSON ET AL., U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, POLICING IN ARAB-AMERICAN COMMUNITIES AFTER SEPTEMBER 11, at 8 (July 2008), <https://www.ojp.gov/pdffiles1/nij/221706.pdf>.

⁴³ See *Table 12: Agency Hate Crime Reporting by State and Federal, 2020*, FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2020 (2021), <https://crime-data-explorer.fr.cloud.gov/pages/downloads> (download 2020 “Hate Crime Statistics Annual Reports” and open Table 12).

⁴⁴ *Table 14: Hate Crime Zero Data Submitted per Quarter by State, Federal, and Agency, 2020*, Fed. Bureau of Investigation, Hate Crime Statistics, 2020 (2021), <https://crime-data-explorer.fr.cloud.gov/pages/downloads> (download 2020 “Hate Crime Statistics Annual Reports,” open Table 14, and filter for population).

⁴⁵ See Berry & Wiggins, *supra* note 18 (“[N]early 100 jurisdictions representing at least 100,000 people reported zero hate crimes in 2017”); Press Release, Arab Am. Inst., AAI Statement on FBI’s 2019 Hate Crime Data Release (Nov. 20, 2020), <https://www.aaiusa.org/library/aai-statement-on-fbis-2019-hate-crime-data-release> (noting that over seventy large jurisdictions reported no hate crimes in 2019).

⁴⁶ See Wiggins, *supra* note 9, at ___.

⁴⁷ See Susan Bro & Haifa Jabara, Opinion, *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>; Hannah Allam & Talal Ansari, *Here’s Why the FBI Didn’t Consider the Charlottesville Violence a Hate Crime*, BUZZFEED NEWS (Nov. 14, 2018), <https://www.buzzfeednews.com/article/hannahallam/fbi-hate-crimes-charlottesville-heather-heyer-portland>.

⁴⁸ Wiggins, *supra* note 9, at ___.

⁴⁹ *Id.*

⁵⁰ *Id.*

“cities in states that, despite legacies of discrimination and racial violence, lack comprehensive hate crime laws.”⁵¹ Indeed, in 2020, Alabama and Mississippi were among the three states with the lowest reported hate crime rates.⁵²

In short, there are two main challenges of hate crime reporting and data collection. The first is getting victims to report hate crimes to law enforcement, and the second is ensuring that law enforcement report hate crimes that come to their attention. To be sure, addressing both challenges will require a transformation in policing practices and justice reform, comprehensive education and training, and reform of some state and local government hate crime laws and policies. Fundamentally, the federal government and Congress have an important role to play as well.⁵³

An important step was taken on May 20, 2021 with the enactment of the aforementioned Jabara-Heyer NO HATE Act which implements an innovative reporting framework to improve hate crime data and assists hate crime victims and their communities by promoting a community-centered response. Just seven days after the bill signing, Attorney General Merrick Garland issued a memorandum outlining six concrete steps DOJ was taking to implement the Act and combat hate crimes.⁵⁴ That meaningful work has been underway and continues today.

Improving Congressional Oversight of the Response to White Supremacist Violence

Some of the deadliest hate crimes, including those that have targeted Black, Jewish, and Latino communities, have been perpetrated by white supremacists seemingly motivated by the threat of the “great replacement theory.”⁵⁵ As such, the national hate crime reporting system is not the only federal data-collection effort requiring increased congressional oversight. The FBI uses a classification system to organize case records stemming from terrorism investigations.⁵⁶ These records can shed light on both the FBI’s investigative priorities and the significance, at least from the FBI’s perspective, of different terrorism threats. In recent years, the increase of white supremacist violence has prompted both Congress and the public to ask for more information regarding the federal government’s response.

In some respects, the FBI has obfuscated the threat of white supremacist violence.⁵⁷ In 2019, for example, the FBI replaced the investigative classification for white supremacist violence within a

⁵¹ *Id.*

⁵² *Id.*; see Table 12: Agency Hate Crime Reporting by State and Federal, 2020, FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS, 2020 (2021), <https://crime-data-explorer.fr.cloud.gov/pages/downloads> (download 2020 “Hate Crime Statistics Annual Reports” and open Table 12).

⁵³ See generally U.S. COMM’N ON C.R., IN THE NAME OF HATE: EXAMINING THE FEDERAL GOVERNMENT’S ROLE IN RESPONDING TO HATE CRIMES (2019), <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

⁵⁴ Memorandum from Merrick Garland, Att’y Gen., to U.S. Dep’t of Just. Emps. (May 27, 2021), <https://www.justice.gov/ag/page/file/1399221/download>.

⁵⁵ Laurretta Charlton, *What is the Great Replacement?*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/us/politics/grand-replacement-explainer.html>.

⁵⁶ Maya Berry & Kai Wiggins, *Leaked Documents Contain Major Revelations About the FBI’s Terrorism Classifications*, JUST SEC. (Sept. 11, 2019), <https://www.justsecurity.org/66124/leaked-documents-contain-major-revelations-about-the-fbis-terrorism-classifications>.

⁵⁷ Felicia Sonmez, *Democrats Accuse Trump Administration of Trying to ‘Obfuscate the White Supremacist Threat’ with New Categories for Domestic Terrorism*, WASH. POST (May 2, 2019), <https://www.washingtonpost.com/>

broader category that encompasses different forms of “Racially Motivated Violent Extremism.”⁵⁸ But that is not the full story. According to documents released to the press in August 2019, the FBI’s investigative classifications still distinguished at that time between “White Racially Motivated Violent Extremism” and so-called “Black Racially Motivated Violent Extremism,” which was formerly known as “Black Identity Extremism” and “Black Separatist Extremism.”⁵⁹ Although the FBI was criticized for the “Black Identity Extremism” label and ultimately got rid of the designation, the underlying concepts still inform the FBI’s counterterrorism priorities.

To be sure, the Biden Administration has been more forthcoming about the threat of white supremacist violence and the response of federal law enforcement to that threat.⁶⁰ This stems in part from legislation enacted in the National Defense Authorization Act for 2020, which requires data collection and reporting on “federal efforts against domestic terrorism.”⁶¹ But more must be done.

Looking Forward

While not comprehensive, the following is a list of recommendations Congress can take to improve our collective response to hate crime.

- The COVID-19 Act and the accompanying Jabara-Heyer NO HATE Act will improve hate crime data collection and reporting. Perhaps its most important contribution to combating hate is that central to Jabara-Heyer is the requirement of a community and victim-centered approach. The DOJ has appointed a Deputy Attorney General to oversee implementation and the Department is engaged at the highest levels.⁶² While significant, Jabara-Heyer is an important *first step* toward achieving meaningful, mandatory reporting but more must be done, including mandating the delivery of DOJ funds be tied to proving meaningful participation in the HCSA.
- Provide support for and oversight of NIBRS. When the Uniform Crime Reporting program officially required NIBRS use by January 1, 2021, most states had not made the transition. According to the FBI, two states remain non-NIBRS complaint as of today. Given the number of agencies that fail to participate or report an affirmative zero, oversight of NIBRS certification and reporting is critical.

politics/democrats-accuse-trump-administration-of-trying-to-obfuscate-the-white-supremacist-threat-with-new-categories-for-domestic-terrorism/2019/05/02/831cf86e-6d23-11e9-a66d-a82d3f3d96d5_story.html.

⁵⁸ Berry & Wiggins, *supra* note 54.

⁵⁹ *Id.*

⁶⁰ See FED. BUREAU OF INVESTIGATION & DEP’T OF HOMELAND SEC., STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM (May 2021), https://www.dhs.gov/sites/default/files/publications/21_0514_strategic-intelligence-assessment-data-domestic-terrorism_0.pdf.

⁶¹ Pub. L. No. 116-92, tit. LVI, 123 Stat. 1198, 2153-59 (2019).

⁶² See also Letter from Leadership Conf. on Civ. & Hum. Rts. et al. to Vanita Gupta, Assoc. Att’y Gen., and Rachel Rossi, Deputy Assoc. Att’y Gen. (Dec. 7, 2021), <https://civilrights.org/resource/letter-to-the-department-of-justice-on-the-jabara-and-heather-heyer-no-hate-act-implementation>.

- Pass the Domestic Terrorism Prevention Act,⁶³ which, among other things, requires more robust reporting on federal counterterrorism initiatives, calls for prioritization of the most significant domestic terrorism threats, and establishes related offices and task forces.
- Provide support to the Department of Justice's Community Relations Service (CRS). Among its various functions, CRS plays a critical role in assisting state and local officials in responding to a hate crime incident, including providing training. Further, as it does not have law enforcement authority, CRS can also serve as a trusted resource for directly impacted communities.
- End federal, state and local profiling in all its forms. As noted, a significant barrier to reporting hate crimes is communities' distrust of government and law enforcement. A significant roadblock to establishing trust is the continued profiling of communities by law enforcement. Past efforts to curb profiling, a practice that is both ineffective and discriminatory, have fallen short. In 2014, Attorney General Eric Holder released a revised Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The initial guidance was issued by Attorney General Ashcroft in 2003. Yet the revised guidance contained significant loopholes. Specifically, that guidance excluded screenings at the border, intelligence operations and national security, or local law enforcement when not part of federal operations.

Conclusion

Given the subject matter of hate crime prevention and enforcement, my testimony has focused on hate crime statistics and the complicated technicalities of how they are gathered and the need for improving them. Yes, data must drive policy. But when it is well accepted that our data is so deeply flawed, it must be our policy to improve it. I hope I have made that case before you today.

However, missing entirely from my testimony were the stories of the people and vulnerable communities that are found in the data, targeted because of their race, ethnicity, national origin, religion, disability, sexual orientation, gender, or gender identity. Simply, targeted for who they are. So, as we collectively work to improve our policy, we must remember that it must be done because individuals and communities are not free if they are subjected to bias-motivate hate and violence.

As elected officials, you must lead to change policy. Recognizing the limits of legal and policy responses to hate violence, you must also lead in condemning bigotry in all its forms, including refraining from putting forward discriminatory policy proposals. That too is your collective responsibility, and the safety of people and vulnerable communities is at stake.

Thank you again for this opportunity to testify before you and I look forward to your questions.

⁶³ S. 963, 117th Cong. (2021).

Appendix

A. Reported Hate Crime Incidents

Hate Crime Incidents Reported in the United States	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Total	8,263	7,314	7,126	7,175	6,121	5,850	5,479	5,928	5,796	6,222	6,628	6,604	7,783	7,624
Single-Bias Incidents	8,052	7,103	7,042	7,106	6,063	5,818	5,462	5,922	5,790	6,216	6,624	6,598	7,780	7,621
Race/Ethnicity/Ancestry:	5,227	3,963	4,050	4,131	3,489	3,310	3,216	3,526	3,464	3,637	3,982	3,976	4,886	4,877
Anti-White	869	666	762	741	720	613	593	653	657	504	575	545	716	749
Anti-Black or African American	2,871	1,930	1,945	2,013	1,739	1,745	1,621	1,856	1,805	2,076	2,201	2,284	2,876	2,658
Anti-American Indian or Alaska Native	96	119	194	251	154	131	139	129	101	61	44	65	54	61
Anti-Asian	279	158	148	131	113	111	140	135	121	138	150	126	137	188
Anti-Native Hawaiian or Other Pacific Islander	15	21	20	16	9	4	3	3						
Anti-Multiple Races, Group	211	134	137	180	136	113	81	95	113	138	165	179	209	214
Anti-Arab	71	95	82	102	51	37								
Anti-Hispanic or Latino	517	527	486	427	344	299	299	331	384	405	534	483	561	595
Anti-Other Race/Ethnicity/Ancestry	298	313	276	270	223	257	349	324	283	315	313	294	333	412
Religion:	1,244	1,521	1,420	1,564	1,273	1,244	1,014	1,031	1,099	1,233	1,322	1,303	1,519	1,400
Anti-Jewish	683	953	835	938	684	664	609	625	674	771	887	931	1,013	969
Anti-Catholic	73	64	53	73	62	53	64	70	70	67	58	51	75	61
Anti-Protestant	30	24	34	40	15	37	25	35	33	44	41	38	56	57
Anti-Islamic (Muslim)	110	176	189	273	307	257	154	135	130	157	160	107	105	115
Anti-Other Religion	76	88	91	76	74	96	107	117	92	130	123	109	191	130
Anti-Multiple Religions, Group	40	37	46	47	34	51	44	42	88	60	48	57	65	62
Anti-Mormon	7	12	9	15	7	8								
Anti-Jehovah's Witness	9	7	9	7	2	1								
Anti-Eastern Orthodox (Russian, Greek, Other)	43	44	31	23	28	48								
Anti-Other Christian	50	49	35	27	36	15								
Anti-Buddhist	15	5	10	8	1	1								
Anti-Hindu	11	7	12	11	10	5								
Anti-Sikh	89	49	60	20	7	6								
Anti-Atheism/Agnosticism/etc.	8	6	6	6	6	2	11	7	12	4	5	10	14	6
Sexual Orientation:	1,110	1,195	1,198	1,130	1,076	1,053	1,017	1,233	1,135	1,293	1,277	1,223	1,297	1,265
Anti-Gay (Male)	673	746	728	679	675	664	599	750	605	760	739	682	776	772
Anti-Lesbian	103	115	129	126	124	136	129	160	145	137	144	185	154	145
Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)	306	291	303	268	234	203	241	277	321	359	347	312	307	304
Anti-Heterosexual	11	17	17	32	20	19	18	21	24	16	21	21	33	22
Anti-Bisexual	17	26	21	25	23	31	30	25	39	21	26	23	27	22
Disability:	130	157	159	116	70	74	84	83	92	53	43	96	78	79
Anti-Physical	53	49	60	32	26	43	23	22	18	19	19	25	22	20
Anti-Mental	77	108	99	84	44	31	61	61	74	34	24	71	56	59
Gender:	75	69	47	46	31	23	33	18						
Anti-Male	25	17	22	22	7	7	10	5						
Anti-Female	50	52	25	24	24	16	23	13						
Gender Identity:	266	198	168	119	124	114	98	31						
Anti-Transgender	213	151	142	106	105	73	58	23						
Anti-Gender Non-Conforming	53	47	26	13	19	41	40	8						
Multiple-Bias Incidents	211	211	84	69	58	32	17	6	6	6	4	6	3	3
Source: Federal Bureau of Investigation, <i>Hate Crime Statistics</i>		Analysis: Arab American Institute												

A. Reported Hate Crime Incidents (continued)

Hate Crime Incidents Reported in the United States	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992
Total	7,624	7,722	7,163	7,649	7,489	7,462	9,730	8,063	7,876	7,755	8,049	8,759	7,947	5,932	7,587	6,623
Single-Bias Incidents	7,621	7,720	7,160	7,642	7,485	7,549	9,721	8,055	7,871	7,750	8,045	8,753	7,941	5,930		
Race/Ethnicity/Ancestry:	4,877	4,984	4,863	5,014	4,870	4,744	6,465	5,248	5,024	5,075	5,546	6,336	5,645	4,183	5,429	4,694
Anti-White	749	890	828	829	830	719	891	875	781	792	993	1,106	1,226	1,010	1,471	1,342
Anti-Black or African American	2,658	2,640	2,630	2,731	2,548	2,486	2,899	2,884	2,958	2,901	3,120	3,674	2,988	2,174	2,815	2,296
Anti-American Indian or Alaska Native	61	60	79	83	76	62	80	57	47	42	36	51	41	22	27	26
Anti-Asian	188	181	199	217	231	217	280	281	298	293	347	355	355	211	258	217
Anti-Native Hawaiian or Other Pacific Islander																
Anti-Multiple Races, Group	214	229	183	182	159	158	217	240	211	283	214	210	221	128	161	144
Anti-Arab																
Anti-Hispanic or Latino	595	576	522	475	426	480	597	557		482	491	564	516	337	472	369
Anti-Other Race/Ethnicity/Ancestry	412	408	422	497	600	622	1,501	354		272	345	376	298	301	225	300
Religion:	1,400	1,462	1,227	1,374	1,343	1,426	1,828	1,472	1,411	1,390	1,385	1,401	1,277	1,062	1,298	1,162
Anti-Jewish	969	967	848	954	927	931	1,043	1,109	1,109	1,081	1,087	1,109	1,058	915	1,143	1,017
Anti-Catholic	61	76	58	57	76	53	38	56	36	61	31	35	31	17	32	18
Anti-Protestant	57	59	57	38	49	55	35	59	48	59	53	75	36	29	30	28
Anti-Islamic (Muslim)	115	156	128	156	149	155	481	28	32	21	28	27	29	17	13	15
Anti-Other Religion	130	124	93	128	109	198	181	172	151	125	159	129	102	67	63	69
Anti-Multiple Religions, Group	62	73	39	35	24	31	45	44	31	41	24	24	20	14	14	14
Anti-Mormon																
Anti-Jehovah's Witness																
Anti-Eastern Orthodox (Russian, Greek, Other)																
Anti-Other Christian																
Anti-Buddhist																
Anti-Hindu																
Anti-Sikh																
Anti-Atheism/Agnosticism/etc.	6	7	4	6	9	3	5	4	4	2	3	2	1	3	3	1
Sexual Orientation:	1,265	1,195	1,017	1,197	1,239	1,244	1,393	1,299	1,317	1,260	1,102	1,016	1,019	685	860	767
Anti-Gay (Male)	772	747	621	738	783	825	980	896	915	850	760	757	735	501	615	557
Anti-Lesbian	145	163	155	164	187	172	205	179	187	223	188	150	146	100	121	93
Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)	304	238	195	245	247	222	173	182	178	158	133	84	103	63	94	100
Anti-Heterosexual	22	26	21	33	14	10	18	22	14	12	12	15	17	14	28	14
Anti-Bisexual	22	21	25	17	8	15	17	20	23	17	9	10	18	7	2	3
Disability:	79	79	53	57	33	45	34	36	19	25	12					
Anti-Physical	20	17	21	23	24	20	12	20	10	13	9					
Anti-Mental	59	62	32	34	9	25	23	16	9	12	3					
Gender:																
Anti-Male																
Anti-Female																
Gender Identity:																
Anti-Transgender																
Anti-Gender Non-Conforming																
Multiple-Bias Incidents	3	2	3	7	4	3	9	8	5	5	4	6	6	2		

Source: Federal Bureau of Investigation, *Hate Crime Statistics*

Analysis: Arab American Institute

B. Reported Hate Crime Offenses

Hate Crime Offenses Reported in the United States																		
Year	Total Offenses	Total Violent Offenses	Total Crimes Against Persons	Total Crimes Against Persons or Society	Murder and non-negligent manslaughter	Rape	Aggravated assault	Simple assault	Intimidation	Other	Robbery	Burglary	Larceny-theft	Motor vehicle theft	Arson	Destruction, damage, vandalism	Other	Crimes against society
2020	11,549	3,778	8,058	3,491	22	12	1,407	2,197	4,381	39	140	134	249	39	71	2,433	425	236
2019	8,559	3,387	5,512	3,070	51	30	1,158	2,023	2,206	44	125	114	284	42	60	2,152	57	289
2018	8,496	3,099	5,566	2,930	24	22	1,026	1,895	2,560	39	132	131	330	42	43	1,876	87	238
2017	8,437	2,930	5,084	3,353	15	23	990	1,745	2,283	28	157	145	326	41	42	2,325	79	238
2016	7,321	2,727	4,720	2,601	9	24	873	1,687	2,109	18	134	123	231	20	39	1,913	59	82
2015	6,885	2,729	4,482	2,403	18	13	882	1,696	1,853	20	120	147	255	22	30	1,698	66	65
2014	6,418	2,419	4,048	2,370	4	9	770	1,514	1,745	6	122	162	239	22	26	1,694	52	53
2013	6,933	2,606	4,430	2,503	5	21	734	1,720	1,925	25	126	174	225	20	36	1,783	60	79
2012	6,718	2,575	3,968	2,750	10	15	854	1,570	1,489	30	126	142	258	23	38	1,906	54	203
2011	7,254	2,632	4,623	2,631	4	7	895	1,595	2,106	16	131	124	152	6	42	2,125	31	20
2010	7,699	2,726	4,824	2,875	7	4	888	1,681	2,231	13	146	125	175	16	43	2,321	35	14
2009	7,789	2,746	4,793	2,996	8	9	914	1,691	2,158	13	124	137	163	11	41	2,465	29	26
2008	9,168	2,966	5,542	3,626	7	11	1,025	1,778	2,704	17	145	158	224	26	53	2,970	32	18
2007	9,006	2,989	5,408	3,598	9	2	1,116	1,684	2,565	32	178	159	221	22	40	2,915	44	19
2006	9,080	3,066	5,449	3,631	3	6	1,178	1,737	2,508	17	142	155	261	25	41	2,911	58	38
2005	8,380	2,764	5,190	3,190	6	3	1,062	1,566	2,539	14	127	136	221	18	39	2,528	40	81
2004	9,035	2,911	5,642	3,393	5	4	1,040	1,750	2,827	16	112	146	169	15	44	2,812	35	60
2003	8,715	2,855	5,517	3,198	14	5	920	1,809	2,744	25	107	164	173	15	34	2,618	28	59
2002	8,832	2,976	5,960	2,872	11	8	1,035	1,791	3,105	10	131	131	151	9	38	2,347	16	49
2001	11,451	3,567	7,768	3,683	10	4	1,241	2,154	4,339	20	158	149	150	15	90	3,018	27	76
2000	9,430	2,961	6,130	3,300	19	4	1,184	1,615	3,292	16	139	138	114	11	52	2,765	22	59
1999	9,301	3,038	6,189	3,112	17	6	1,120	1,766	3,268	12	129	112	103	14	48	2,654	22	30
1998	9,235	2,932	6,305	2,930	13	11	1,084	1,706	3,488	3	118	99	81	3	59	2,549	5	25
1997	9,861	3,198	6,873	2,988	8	9	1,237	1,800	3,814	5	144	111	95	7	60	2,549	7	15
1996	10,706	3,383	7,359	3,347	12	10	1,444	1,762	4,130	1	155	140	75	7	75	2,874	4	17
1995	9,895	3,290	7,152	2,743	20	12	1,268	1,796	4,048	8	194	96	53	5	62	2,315	2	16
1994	7,262	2,480	5,203	2,059	13	5	1,012	1,324	2,843	6	126	61	47	3	63	1,758		1
1993	8,987	3,398	6,293	2,694	16	15	1,452	1,754	3,056	6	161	88	61	9	53	2,294	28	
1992	8,106	3,088	5,961	2,145	17	7	1,352	1,558	3,									