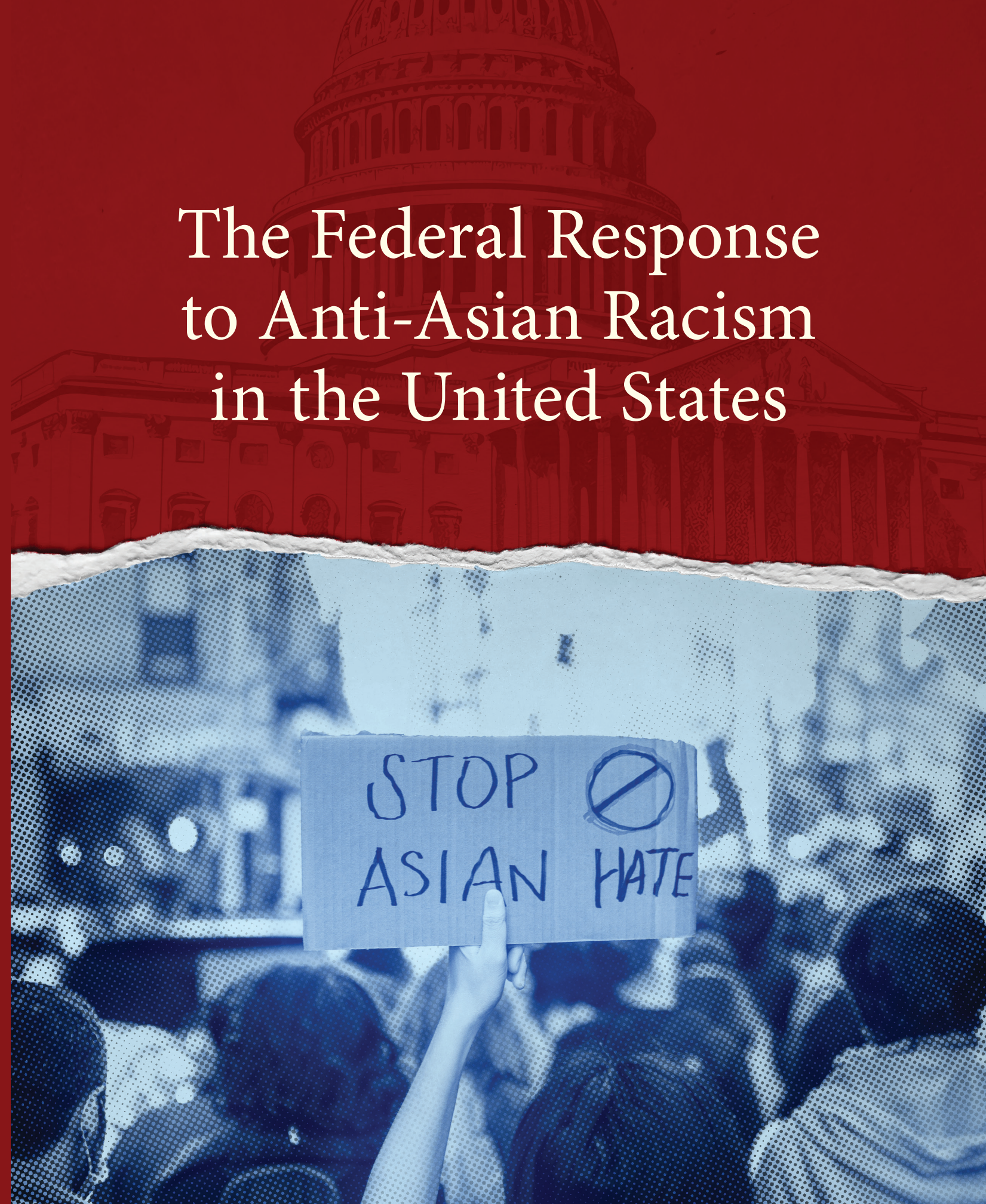


# The Federal Response to Anti-Asian Racism in the United States

The Federal Response to Anti-Asian Racism in the United States



U.S. COMMISSION ON CIVIL RIGHTS

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2023 STATUTORY REPORT

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- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
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<sup>1</sup> 42 U.S.C. §1975a.

# **The Federal Response to Anti-Asian Racism in the United States**

U.S. Commission on Civil Rights  
2023 Statutory Enforcement Report

Issued pursuant to 42 U.S.C. § 1975a(c)



## UNITED STATES COMMISSION ON CIVIL RIGHTS

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### Letter of Transmittal

September 27, 2023

President Joseph R. Biden  
Vice President Kamala Harris  
Speaker of the House Kevin McCarthy  
President Pro Tempore of the Senate Patty Murray

On behalf of the United States Commission on Civil Rights (“the Commission”), I am honored to transmit our briefing report addressing Anti-Asian hate entitled, “The Federal Response to Anti-Asian Racism in the United States.” The full report is available on the Commission's website at [www.usccr.gov](http://www.usccr.gov).

Since the start of the COVID-19 pandemic, there has been a troubling amount of incidents stemming from anti-Asian animus, many rising to the criminal level which has caused substantial concerns surrounding hate crimes and discrimination against persons of Asian descent in the United States. As a result, this report marks the second time the Commission has examined the rise of anti-Asian racism and discrimination in its 65-year history.

In May 2021, the Commission urged the Administration to address anti-Asian racism and xenophobia, emphasizing that scapegoating Asian communities is not a new phenomenon. These harmful stereotypes have persisted since the 19th Century, when Asian immigrants were unjustly labeled the “Yellow Peril.” Media, medical journals, and government officials propagated the false ideas that Asians were “dirty, diseased, sinister, sexually depraved, invasive, and perpetually foreign.” These stereotypes have also fueled violence against Asian communities, such as the 1980s “Dotbusters” attacks on South Asians in New Jersey and the post-9/11 hate crimes in New York City, which marked one of the FBI’s highest reported hate crime numbers since 1992.

In October 2022, as a response to increased reports of anti-Asian hate crime and bias-motivated incidents, the Commission voted to investigate the federal government’s role in combating these incidents. This report examines three main areas: 1) national trends and data regarding the rise of hate incidents and hate crimes against members of Asian communities; 2) local and state law enforcement’s prevention and reporting practices regarding hate crimes; and 3) federal efforts and policies that encourage greater participation in reporting hate crime incidents, as well as prosecution and enforcement efforts to prevent hate crimes.

The report emphasizes the importance of not only acknowledging the issue but also taking concrete actions to protect the rights and well-being of Asian Americans and Pacific Islanders across the nation. This report is bolstered by this Commission's specific findings and recommendations (agreed upon by a bi-partisan majority), that will accompany the report for the first time since 2019:

## **Findings**

### *Data collection & reporting:*

- A major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent is the lack of comprehensive data.
- The transition to the NIBRS data collection has been slow for some agencies: for 2021, the number of participating agencies within the FBI hate crime database was 11,834, compared to the 15,138 participating agencies for 2020 data, and many of the agencies that have not submitted 2021 data are the largest jurisdictions.

## **Recommendations**

### *Training & Partnerships:*

- Prosecutors and law enforcement should vigorously investigate and prosecute hate crimes and harassment against Asian Americans.
- First responders should be provided with training aimed at teaching a clear understanding of what constitutes a hate crime in their jurisdiction.

### *Language access:*

- Federal, state, and local law enforcement agencies and victim services need to identify critical deficiencies in Limited English Proficient (LEP) programs for individuals who need language assistance.

The Commission's research highlights the urgent need for enhanced efforts in addressing and preventing anti-Asian hate crimes. The Commission heard written and oral testimony from academic and policy experts, federal and local law enforcement officials, and members of the public. The Commission also sent formal requests for information to relevant federal offices at the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) and conducted extensive qualitative and quantitative research regarding the impact of hate crimes and bias-motivated incidents against Asian Americans in the U.S. during the height of the COVID-19 pandemic. Throughout that process, we heard from experts regarding a series of findings and recommendations. These recommendations, while not adopted by the majority, are essential to address the pressing issues surrounding anti-Asian hate incidents and hate crimes.

## **Findings:**

- The myth of the "perpetual foreigner" continues to play a role in understanding the rise of anti-Asian racism and discrimination during the pandemic.

- To contextualize the increased anti-Asian sentiment during the COVID-19 pandemic, it is important to understand the history of anti-Asian racism and the “Yellow Peril” laws.
- During the pandemic, there were several other names that were used in the media and by government officials to refer to COVID-19, including the “Chinese virus,” the “Kung flu,” and the “Wuhan virus,” potentially perpetuating negative views of Asian individuals and communities and leading to many Asian Americans feeling blamed for bringing COVID-19 to the U.S.

*Data collection & reporting:*

- A major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent is the lack of comprehensive data. Without mandatory national data collection and training law enforcement on how to accurately identify and report hate crimes, preventing these crimes is substantially challenging.
- Hate crime victims are less likely to report incidents due to fear of retaliation, concerns that justice would not be served, and distrust in the criminal justice system.
- While the transition from the FBI’s UCR to NIBRS database intended to provide a more complete picture of hate violence across the nation, the shift has been challenging for many jurisdictions, and hate crime data remains incomplete.
- The transition to the NIBRS data collection has been slow for some agencies: for 2021, the number of participating agencies within the FBI hate crime database was 11,834, compared to the 15,138 participating agencies for 2020 data, and many of the agencies that have not submitted 2021 data are the largest jurisdictions.
- In March 2023, the FBI released a Supplemental Hate Crimes Statistics report and showed that the number of anti-Asian reported incidents increased 167 percent from 279 in 2020 to 746 in 2021.
- National data show that all race-based hate crimes rose by 30 percent in 2020; and specifically anti-Asian hate crimes increased over 70 percent in 2020. According to the Bureau of Justice Assistance (BJA), anti-Asian hate crimes rose 164 percent in 16 of the largest cities and counties in the first quarter of 2021 compared to the same period in 2020. BJA wrote that the first quarter increases in 2021 followed a “historic surge” in anti-Asian hate crimes that started in 2020, with anti-Asian hate crimes increasing 149 percent in 16 of the largest cities in 2020. Specifically, data show that the first spike of anti-Asian hate crimes “occurred in March and April of 2020 concurrently with a rise in COVID cases and negative stereotyping of Asians related to the pandemic.”
- Hate crime data are underreported by victims and by law enforcement and are less likely to be reported to police compared to other types of crimes, and some research suggests that Asian Americans may be even less likely to report discriminatory behavior when it occurs.
- Data show that in California, hate crimes have increased steadily since 2019, and anti-Asian hate crimes rose from 89 (6.7%) in 2020 to 248 (14.1%) in 2021. In San Francisco,

all hate crime events increased from 2020 to 2021 (from 54 to 114), and the proportion of anti-Asian events increased significantly, representing 16 percent of events in 2020 and more than half of events in 2021.

- In New York, reported hate crimes dipped in 2020 before spiking in 2021. Anti-Asian hate crimes rose from 31 (6.35%) in 2020 to 140 (18.11%) in 2021. In New York City, the number of anti-Asian hate crimes in the city was one (0.2%) in 2019, rose to 27 (10.2%) in 2020, and rose again to 131 (25%) in 2021.
- In the United States, 34% of the Asian American population is limited English proficient. The most frequently spoken languages are Chinese, Korean, Vietnamese, Tagalog, Thai, Khmer, Bengali, Gujarati, Hindi, and Punjabi.

*Barriers:*

- Few police departments have officers fluent in Asian languages, even in metropolitan areas with high numbers of AAPI residents. Therefore, language barriers continue to be a major barrier in reporting hate incidents and hate crimes.
- A major barrier to gaining a comprehensive understanding of the magnitude of hate violence against Asian communities may be due to incidents not rising to the legal benchmark of a hate crime. Many incidents that are reported to community organizations, such as being spit on or called racial slurs are not accounted for in official numbers, yet still invoke fear in community members.
- Under the COVID-19 Hate Crimes Act, funding is provided for state and local incident reporting hotlines, and in May 2022, DOJ expanded their language services to be available in 18 of the most frequently spoken AAPI languages across the nation. However, at the Commission's briefing panelists testified the local reporting hotlines, victim services, and law enforcement were not accessible to victims with limited English proficiency, possibly pointing to a discrepancy between federal and local resource availability.
- The lack of hate crime prosecutions may also be a contributing factor to low reporting of hate crimes. Prosecution of hate crimes is difficult, even in states with comprehensive hate crime legislation, because there is no one legal standard to which courts have agreed, or because the standard to prove bias is too high.
- Most nonprofit and community resources trying to provide the public with ways to combat anti-Asian violence include encouraging reporting hate incidents and hate crimes to local law enforcement as well as to organizations collecting data, learning about the history of Asian American discrimination, and encouraging elected officials to pass anti-hate legislation.
- For struggling communities, the grantmaking process is cumbersome and difficult to maneuver through.
- The true challenge in assessing whether the federal government is doing enough to combat a rise in hate crimes lies in the absence of proper performance measurements.

## **Recommendations:**

### *Data & Reporting:*

- FBI should require local law enforcement to submit crime data, or in lieu of that, Congress should make submission mandatory, or consider a range of options to expand implementation.
- Congress could also consider authorizing a new grant program that would provide funding to state and local governments to cover expenses related to transitioning to NIBRS, such as purchasing new software and computers, or training officers on how to use NIBRS.
- Federal civil rights agencies should be required to collect and report key data related to civil rights enforcement and the Attorney General to annually publish this data.
- DOJ should fund state and local government efforts in partnership with community groups to address discrimination and other hate incidents.
- Law enforcement agencies should improve data collection, requiring the tracking and reporting of both hate incidents and hate crimes, and ensuring reporting forms are easy to mark an incident or crime as a suspected hate incident or crime.

### *Training & Partnerships:*

- The Justice Department should also provide safety training and workshops in the respective languages of targeted communities and expand federal funding for community advocacy groups fighting hate crimes.
- The Justice Department should codify the role of the language access coordinator into federal law to ensure that all individuals have equal access to justice and access to federal programs and benefits regardless of language access.
- A written policy within a law enforcement organization can serve as a bridge between hate crime legislation and implementation of that law by providing officers with information and a standard that the agency expects them to follow.
- Prosecutors and law enforcement should engage in joint training on hate crimes and community engagements and law enforcement agencies may even consider recommending that the prosecutor's office have a designated attorney to prosecute hate crimes in the community.
- Prosecutors and law enforcement should vigorously investigate and prosecute hate crimes and harassment against Asian Americans.
- First responders should be provided with training aimed at teaching a clear understanding of what constitutes a hate crime in their jurisdiction.
- The FBI suggests state and local officials utilize the FBI's resources, publicity tools, forensic expertise, and experience in identifying and investigating hate-based motivations even if federal hate crime charges are not pursued.



- A public health and gender-based approach to prevent hate in public spaces needs to be created, including the street harassment of AAPI women and other vulnerable communities.
- More investment should be given to strengthen and expand local networks so victims have ready access to community-based places where they can report attacks, receive support services, and take safety training and workshops in their own languages.

*Language access:*

- Regarding language access, federal agencies need to review their compliance with Title VI in Executive Order 13166 and take proactive steps to address any potential violations to ensure that they provide language access services to individuals who need them.
- As recipients of federal funding, local law enforcement and victim services should also comply with Title VI in Executive Order 13166 and provide language access such as interpreters and bilingual officers who speak Asian languages.
- Federal, state, and local law enforcement agencies and victim services need to identify critical deficiencies in Limited English Proficient (LEP) programs for individuals who need language assistance.
- Expand reporting hotlines or in-person contact for those with limited English proficiency.
- Develop a language access policy statement prohibiting discrimination based on national origin that grants equal access to all individuals, including those with limited English proficiency and promotes effective communication through interpreter services, document translation, and staff training.

*Civil Rights Protections:*

- Title II of the Civil Rights Act should be expanded to include retail stores and other businesses where discrimination occurs to protect employees and customers from bias-based discrimination and harassment.
- Businesses frequented by the public should be required to train employees on their responsibilities to customers, so that they know and understand their responsibility to maintain a space free from bias-based harassment and discrimination, even if perpetrated by other customers.

This report provides essential insights and guidance for policymakers, law enforcement agencies, and community organizations working towards a more inclusive and equitable society. The Report is divided into three chapters:

- **Chapter 1** of the report discusses relevant federal hate crime laws, provides a brief historical context of Asian discrimination, and presents national statistics regarding hate crimes and hate incidents against persons of Asian descent from 2019-2022.

- **Chapter 2** describes local law enforcement's efforts to respond to rising hate crimes, evaluates reporting and prevention practices, and summarizes ongoing reporting and prevention challenges.
- **Chapter 3** evaluates the federal government's role in investigating, reporting, and prosecuting hate crimes.

We at the Commission are pleased to share our views, informed by careful research and investigation as well as civil rights expertise, to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,

A handwritten signature in blue ink, appearing to read "Rochelle M. Garza", with a large, stylized flourish extending to the right.

Rochelle M. Garza  
Chair

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\* Employee is no longer with the Commission at the time of publication.

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## Executive Summary

Throughout 2020 and 2021 incidents of growing anti-Asian sentiment and hate crimes against persons of Asian descent were reported across the nation.<sup>1</sup> Between March 19, 2020 and June 30, 2021, there were 9,081 reported hate incidents against persons of Asian descent collected by Stop AAPI Hate’s reporting center.<sup>2</sup> Verbal harassment made up the majority (63.7 percent) of these incidents and national trends show that 48 percent of these reported hate incidents included at least one hateful statement regarding anti-China and/or anti-immigrant rhetoric.<sup>3</sup> Specifically, these incidents targeted individuals whose families were either from or descended from China or individuals from other East Asian and Southeast Asian countries who were misperceived to be Chinese. Since Asian stereotypes often ignore the ethnic diversity that exists within Asian communities, perpetrators of anti-Asian violence may see all Asians as “foreign,” “other,” or “threatening” regardless of whether “the person is from China, of Chinese origin, or simply looks Asian,” which in turn makes all Asian people vulnerable to becoming a victim of a hate crime.<sup>4</sup> In light of the increase in anti-Asian racism and discrimination, this report examines the rise in anti-Asian hate crimes in the U.S. from 2019 through 2021 and the federal role in preventing and enforcing federal hate crime laws.

In its simplest terms, a hate crime is a crime that is motivated by bias.<sup>5</sup> The FBI defines a hate crime as “a traditional offense like murder, arson, or vandalism with an added element of bias.”<sup>6</sup> Federal hate crimes, also known as bias crimes, are offenses where a perpetrator willfully causes or attempts to cause bodily injury — through use of fire, a dangerous weapon, or explosive device — to any person because of their actual or perceived race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, or disability status.<sup>7</sup> Federal hate crimes laws also prohibit bias-based damage to religious property or interference with the right to practice one’s religion, using force or threats of force to interfere with federally protected activities (e.g.,

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<sup>1</sup> Federal Bureau of Investigation, Supplemental Hate Crime Statistics, 2021, Mar. 2023,

<https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>.

<sup>2</sup> Stop AAPI Hate is a nonprofit organization that runs the Stop AAPI Hate Reporting Center that tracks incidents of hate and discrimination targeting Asian Americans and Pacific Islanders. See Stop AAPI Hate, “National Report (through June 2021),” <https://stopaapihate.org/stop-aapi-hate-national-report-2/>.

<sup>3</sup> Ibid.

<sup>4</sup> Hannah Tessler, Meera Choi, and Grace Kao, “The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic,” *Nature Public Health Emergency Collection*, 2020, vol. 45, no. 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7286555/>; California Dep’t of Justice, *Anti-Asian Hate Crime Events During the COVID-19 Pandemic*, <https://oag.ca.gov/system/files/media/anti-asian-hc-report.pdf>

<sup>5</sup> U.S. Dep’t of Justice, “Learn About Hate Crimes,” <https://www.justice.gov/hatecrimes/learn-about-hate-crimes#:~:text=Hate%20Crime%3A%20At%20the%20federal,%2C%20threats%2C%20or%20property%20damage>

<sup>6</sup> See FBI, “Hate Crimes,” <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (last accessed June 3, 2019).

<sup>7</sup> 8 U.S.C. § 249(a); See also IACP Law Enforcement Policy Center, “Investigation of Hate Crimes,” IACP Law Enforcement Policy Center, Sept. 2016, p. 1, <https://www.theiacp.org/sites/default/files/2018-08/HateCrimesBinder2016v2.pdf>.

education and the use of public accommodations) or interfere with access to housing because of bias-based motivation.<sup>8</sup>

A majority of states have passed hate crime statutes that allow for an additional penalty or sentence enhancement if prosecutors prove beyond a reasonable doubt that the crime was motivated by bias.<sup>9</sup> These statutes vary from state to state in scope and coverage for protected groups, and whether the statutes mandate local law enforcement to compile hate crime statistics.<sup>10</sup>

Congress determined that hate crimes have reverberating effects, not only for the targeted community but also for the nation.<sup>11</sup> The Supreme Court has held that the widespread, systemic effects of hate crimes are significant enough to justify the use of enhanced sentences against perpetrators found guilty of committing a hate crime.<sup>12</sup> Additionally, these enhanced sentences for hate crimes are often seen as symbolically important because these laws have a signaling effect in sending a “message to society that criminal acts based upon hatred will not be tolerated.”<sup>13</sup> Therefore, to address the gap in protection left by some states, Congress passed the Matthew Shepard and James Byrd Jr. Hate Crime Prevention Act in 2009, to protect victims who were targeted because of their actual or perceived race, color, religion, national origin, sexual orientation, ethnicity, gender identity, disability, or gender.<sup>14</sup>

As the Commission’s 2019 report *In the Name of Hate: Examining the Federal Government’s Role in Responding to Hate Crimes* pointed out, one of the greatest challenges to understanding the severity and magnitude of hate crimes is the lack of sufficient data. Many cities and states across the nation do not consistently report hate crime data to the FBI, thus, national databases are incomplete and may underreport the number of hate crimes across the U.S. The best sources of data are often from a combination of federal sources and reports collected by community organizations. Without more comprehensive and accurate data collection methods and better police training on how to accurately identify and report hate crimes, preventing these crimes from

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<sup>8</sup> 18 U.S.C. § 247 (Damage to Religious Property and Obstruction of Persons in the Free Exercise of Religious Beliefs); 18 U.S.C. § 245(b)(2) (Federally Protected Activities); 42 U.S.C. § 3631 (Fair Housing Act’s criminal prohibition against interference with a housing right because of bias).

<sup>9</sup> U.S. Department of Justice, Community Oriented Policing Services, *Hate Crimes: Problem-Oriented Guides for Police Problem-Specific Guides Series*, 2013, No. 72, p. 8, <https://ric-zai-inc.com/Publications/cops-p268-pub.pdf>

<sup>10</sup> Ibid. See also, Carley Lanich, Ashley Hopko, and Justin Parham, “State Hate Crime Laws Vary, Often Leaving Out LGBTQ Protections,” Center for Public Integrity, Sept. 5, 2018, <https://publicintegrity.org/federal-politics/state-hate-crime-laws-vary-often-leaving-out-lbgtq-protections/>.

<sup>11</sup> 18 U.S.C. § 249.

<sup>12</sup> *Wisconsin v. Mitchell*, 508 U.S. 476, 487–88 (1993) (holding that “bias-motivated crimes are more likely to provoke retaliatory crimes . . . and incite community unrest.”).

<sup>13</sup> Valerie Jenness and Ryken Grattet, *Making Hate a Crime: From Social Movement to Law Enforcement*, 2002, (Russell Sage Foundation: New York), 3.

<sup>14</sup> 18 U.S.C. § 249.



occurring in the first place becomes substantially more challenging.<sup>15</sup> A more in-depth discussion about the multiple challenges to hate crime and incident reporting is in Chapter 1 of this report.

In May 2021, the Commission issued a statement to President Biden expressing the need for the federal government to address anti-Asian racism and xenophobia.<sup>16</sup> This statement reiterated the necessity for the federal government to communicate and act in a manner that demonstrates that it will protect all Americans, regardless of race, national origin, or other protected characteristics. Given the data reflecting the rise of anti-Asian sentiment, it is critical that the federal government plays a role to ensure that civil rights protections are upheld.

Hate crimes are intended to strike fear in communities that are targeted by these heinous acts. Hate crime scholars suggest that cultural shifts like social, demographic, or political changes may be associated with greater levels of hate crimes.<sup>17</sup> Others also explain that hate crimes are fueled by racial anxieties or social changes that are perceived as threatening (e.g., 9/11 attacks, the legalization of same-sex marriage, the election of President Barack Obama). These factors have always been a key motivator for bias-incidents and hate crimes.<sup>18</sup> Therefore, many researchers posit that the nation's fear of the COVID-19 pandemic was correlated to the increase of anti-Asian bias-incidents and hate crimes in 2020.

The year 2020 brought tragedy for the global community and our nation with the onset of a pandemic that changed many people's lives. The COVID-19 virus was first detected in China in 2019 and spread rapidly across the world.<sup>19</sup> By March 11, 2020, the World Health Organization

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<sup>15</sup> Federal Bureau of Investigation, Interrogatory Responses to U.S. Commission on Civil Rights, Mar. 15, 2023 [on file]; *see also*, Detective Orlando Martinez, Hate Crime Coordinator, Los Angeles Police Department, *Federal Response to Anti-Asian Racism in the United States*, Mar. 24, 2023, transcript pp. 166-67 (hereinafter cited as Anti-Asian Briefing); Brian Levin, Director, Center for the Study of Hate & Extremism, Written Statement for *Anti-Asian Briefing*, Mar. 24, 2023, at 11 (hereinafter Levin Statement).

<sup>16</sup> U.S. Comm'n on Civil Rights, "U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia," May 11, 2021, <https://www.usccr.gov/files/2021/05-11-Anti-Asian-Discrimination-2021-Statement.pdf>.

<sup>17</sup> *See e.g.*, Joshua D. Freilich and Steven M. Chermak, "Hate Crimes: Problem-Oriented Guides for Police Problem-Specific Guides Series," U.S. Department of Justice, Community Oriented Policing Services, June 2013, No. 72, at 13, <https://ric-zai-inc.com/Publications/cops-p268-pub.pdf>; Robert Sternberg (ed.), *The Psychology of Hate*, American Psychological Association, (2004); Jack McDevitt, Jack Levin, and Susan Bennett "Hate Crime Offenders: An Expanded Typology," *Journal of Social Issues*, 2002, 58(2).

<sup>18</sup> *See e.g.*, Jack McDevitt, Jack Levin, and Susan Bennett "Hate Crime Offenders: An Expanded Typology," *Journal of Social Issues*, 2002, 58(2); Terrence McCoy, "'Saviors of the white race': Perpetrators of hate crimes see themselves as heroes, researchers say," *Washington Post*, Oct. 31, 2018, [https://www.washingtonpost.com/local/social-issues/saviors-of-the-white-race-perpetrators-of-hate-crimes-see-themselves-as-heroes-researchers-say/2018/10/31/277a2bdc-daeb-11e8-85df7a6b4d25cfbb\\_story.html?utm\\_term=.c215ad03671e](https://www.washingtonpost.com/local/social-issues/saviors-of-the-white-race-perpetrators-of-hate-crimes-see-themselves-as-heroes-researchers-say/2018/10/31/277a2bdc-daeb-11e8-85df7a6b4d25cfbb_story.html?utm_term=.c215ad03671e).

<sup>19</sup> Gianfranco Spiteri et al., "First cases of coronavirus 2019 (COVID-19) in the WHO European region, 24 January to 21 February 2020," *Eurosurveillance* vol. 25, no. 9, Mar. 5, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7068164/>.

(WHO) officially declared COVID-19 a global pandemic.<sup>20</sup> The COVID-19 virus brought fear and anxiety to many Americans as the entire country experienced changes that caused interruptions to normal life and routine. The pandemic touched every aspect of life. The virus caused millions of deaths, untold physical suffering, and economic and social dislocation worldwide, including in the United States. Throughout 2020 and into 2022, social and economic uncertainty continued, and with it, the spread of violence. China failed to originally contain COVID-19 and the subsequent spread of the virus was blamed on China, and by extension, Chinese people, which includes those perceived to be Chinese. In the first few months of 2020, FBI Director Christopher Wray warned of a potential surge in hate crimes against Asian Americans amid the pandemic “based on the assumption that a portion of the U.S. public will associate COVID-19 with China and Asian American populations.”<sup>21</sup> Data later suggested that this blaming of Chinese people for the virus contributed to an increase in bias-motivated incidents and hate crimes against Asian communities starting at the end of 2019 and through 2021.<sup>22</sup>

The act of scapegoating<sup>23</sup> Asian communities in the U.S. is not a new phenomenon. Racist stereotypes of Asian Americans as carriers of disease first emerged following the influx of Asian immigrants in the 19<sup>th</sup> Century, which became known as the “Yellow Peril.” Notions that these individuals were “dirty, diseased, sinister, sexually depraved, invasive, and perpetually foreign” were “propagated by news outlets, medical journals, and government officials.”<sup>24</sup> These stereotypes also led to violence in modern times against Asian communities. For instance, in the 1980s, violence against South Asians by a hate group who called themselves the “Dotbusters” terrorized Indian residents in New Jersey.<sup>25</sup> Asian communities were again targeted for racialized violence and hate crimes following the 9/11 attacks in New York City. Following 9/11, the FBI reported one of the highest numbers of hate crimes since it began reporting on hate crimes in 1992.<sup>26</sup>

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<sup>20</sup> Centers for Disease Control and Prevention, “CDC’s Global Resources Pivot to Address COVID-19,” Feb. 8, 2021, <https://www.cdc.gov/globalhealth/resources/reports/annual/2021/global-resources-pivot.html#:~:text=On%20January%2030%2C%202020%2C%20following.COVID%2D19%20a%20global%20pandemic>.

<sup>21</sup> Josh Margolin, “FBI warns of potential surge in hate crimes against Asian Americans amid coronavirus,” *ABC News*, Mar. 27, 2020, <https://abcnews.go.com/US/fbi-warns-potential-surge-hate-crimes-asian-americans/story?id=69831920>.

<sup>22</sup> Federal Bureau of Investigation, Supplemental Hate Crime Statistics, 2021, Mar. 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>.

<sup>23</sup> Scapegoating refers to “blaming an individual or group for something based on that person or group’s identity when the person or group is not responsible. Bias, prejudicial thinking and discriminatory acts can lead to scapegoating.” See ADL, “The Coronavirus Surfaces Fear, Stereotypes, and Scapegoating,” May 3, 2022, <https://www.adl.org/resources/blog/coronavirus-surfaces-fear-stereotypes-and-scapegoating>.

<sup>24</sup> J. Gerard Power, Media Dependency, Bubonic Plague, and the Social Construction of the Chinese Other, *Sage Journals*, July 21, 2016, <https://journals.sagepub.com/doi/abs/10.1177/019685999501900106?journalCode=jcia>.

<sup>25</sup> Ricardo Kaulessar, “How Indians in Jersey City fought back against the terror of ‘Dotbusters’ in the 1980s,” *North Jersey*, Jan. 26, 2022, <https://www.northjersey.com/story/news/new-jersey/2022/01/26/indians-jersey-city-nj-attacks-1980-s/6397092001/>.

<sup>26</sup> FBI, UCR, Hate Crimes 2001, at 5, <https://ucr.fbi.gov/hate-crime/2001>.

Research also shows that the U.S. witnessed a similar rise in anti-Asian sentiment following the 2003 severe acute respiratory syndrome (SARS) outbreak. While the SARS outbreak was not as widespread or deadly as COVID-19, reports at that time showed public responses of fear and distrust towards Asian Americans that led to many negative implications – socially, politically, and economically.<sup>27</sup>

Blaming a disease on a particular community or population is known as the racialization of disease.<sup>28</sup> This phenomenon has led to thousands of reports by Asian Americans (regardless of ethnicity) being physically assaulted, spat/coughed on, verbally assaulted with racial slurs, and barred from business establishments.<sup>29</sup> Additionally, reports also found that nearly half (49 percent) of Asian Americans and Pacific Islanders nationwide have experienced discrimination or unfair treatment that may have violated their civil rights.<sup>30</sup>

At the beginning of the pandemic, in March 2020, Stop AAPI Hate, a national coalition of AAPI (Asian American and Pacific Islanders) advocacy organizations and academics, created a website to track hate incidents. Within the first month of launching, the organization received 1,497 reports from around the nation.<sup>31</sup> The majority of these incidents were cases of verbal harassment (69.8 percent), most commonly at places of business (43 percent), women were harassed 2.3 times more often than men.<sup>32</sup> Reports to Stop AAPI Hate came from 45 states and the District of Columbia; California and New York had the highest overall number of reported incidents, constituting over 58 percent of all reports.<sup>33</sup> Between March 20, 2020, and December 31, 2021, Stop AAPI Hate collected reports of 10,905 incidents; of those, 4,632 occurred in 2020 (42.5 percent) and 6,273 in 2021 (57.5 percent).<sup>34</sup> While the majority of these reported incidents did not meet the legal definition of a hate crime, these incidents caused widespread fear and anxiety among Asian communities during the pandemic.<sup>35</sup>

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<sup>27</sup> See e.g., Justin A. Chen, Emily Zhang, and Cindy H. Liu, “Potential Impact of COVID-19–Related Racial Discrimination on the Health of Asian Americans,” *American Journal of Public Health COVID-19*, vol. 110, no. 11, Nov. 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7542280/pdf/AJPH.2020.305858.pdf>.

<sup>28</sup> Austin Mardon, Fatima Arshad Syed, Faried Nasir, Yvette Mae Morte and Catherine Mardon, *The Racialization of Coronavirus and Hate Crimes*, Chapter 4, in *Historical Cases of Racialized Disease*, 2020, Golden Meteorite Press.

<sup>29</sup> Aggie J. Yellow Horse, Russell Jeung, and Ronae Matriano, “Stop AAPI Hate National Report,” Mar. 1, 2022, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>.

<sup>30</sup> Stop AAPI Hate, *Righting Wrongs: How Civil Rights Can Protect Asian Americans & Pacific Islanders Against Racism*, May 2023, p. 8, <https://stopaapihate.org/wp-content/uploads/2023/05/23-SAH-CivilRightsReport.pdf>.

<sup>31</sup> Russell Jeung, Incidents of Coronavirus-related Discrimination, A Report for A3PCON and CAA, Apr. 23, 2020, [https://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/STOP\\_AAPI\\_HATE\\_MONTHLY\\_REPORT\\_4\\_23\\_20.pdf](https://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/STOP_AAPI_HATE_MONTHLY_REPORT_4_23_20.pdf).

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Aggie J. Yellow Horse, Russell Jeung, Ronae Matriano, “Stop AAPI Hate: National Report, 3/19/20-12/31/21”, Mar. 22, 2022, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>.

<sup>35</sup> Hannah Tessler, Meera Choi, and Grace Kao, “The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic,” *American Journal of Criminal Justice*, vol. 45, no. 4, 2020,

Research indicates a correlation between the rise in anti-Asian violence during the COVID-19 pandemic and the language utilized by politicians and the media during the initial outbreak.<sup>36</sup> Discourse about the virus led to the stigmatization of Asian communities and perpetuated the notion that China was—and by extension, Chinese people—were responsible for the spread of COVID-19. For example, some members of the Trump Administration referred to COVID-19 as the “Wuhan Virus,” “Chinese Virus,” and “Kung Flu.”<sup>37</sup> The rise in violence and bias-motivated attacks on Asian communities in many ways mirrors the increase of racist anti-Asian sentiments seen during the time of the “Yellow Peril” in the 19<sup>th</sup> Century due in part to Asian Americans being seen as “perpetual foreigners” and as the “physical embodiment of foreignness and disease.”<sup>38</sup>

In response to increased reports of anti-Asian hate crime and bias-motivated incidents in October 2022, the U.S. Commission on Civil Rights (Commission) voted to investigate the federal government’s role in combating these crimes. This is the second time the Commission has examined the rise of anti-Asian racism and discrimination in its 65-year history.<sup>39</sup> This report examines three main areas: 1) national trends and data regarding the rise of hate incidents and hate crimes against members of Asian communities; 2) local and state law enforcement’s prevention and reporting practices regarding hate crimes; and 3) federal efforts and policies that

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7286555/>; Angela Glover, Shannon Harper, and Lynn Langton, “Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality,” *American Journal of Criminal Justice*, 2020, vol. 45, no. 4, <https://pubmed.ncbi.nlm.nih.gov/32837171/>; Dominique Marangoni-Simonsen, “A Forgotten History: How the Asian American Workforce Cultivated Monterey County’s Agricultural Industry, Despite National Anti-Asian Rhetoric,” *Hastings Environmental Law Journal*, 2021, vol. 27, no. 1, [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1595&context=hastings\\_environmental\\_law\\_journal](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1595&context=hastings_environmental_law_journal); Grace Kim and Tanvi Shah, “When Perceptions Are Fragile But Also Enduring: An Asian American Reflection on COVID-19,” *Journal of Humanistic Psychology*, Sept. 2020, vol. 60, no. 5, <https://journals.sagepub.com/doi/epub/10.1177/0022167820937485>.

<sup>36</sup> Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Marilyn Thomas, Thu Nguyen, Mahasin Mujahid, and Rucker Johnson, “After ‘The China Virus’ Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans,” *Health Education and Behavior*, Sept. 2020, vol. 47, no. 6, <https://journals.sagepub.com/doi/full/10.1177/1090198120957949>; Hyunyi Cho, Wenbo Li, Julie Cannon, Rachel Lopez, and Chi (Chuck) Song, “Testing three explanations for stigmatization of people of Asian descent during COVID-19: maladaptive coping, biased media use, or racial prejudice?” *Ethnicity & Health*, Oct. 2020, vol. 26, <https://www.tandfonline.com/doi/full/10.1080/13557858.2020.1830035>.

<sup>37</sup> Yao Li and Harvey Nicholson, “When ‘model minorities’ become ‘yellow peril’ – Othering and the racialization of Asian Americans in the COVID-19 pandemic,” *Sociology Compass*, Feb. 2021, vol. 15, no. 2, <https://compass.onlinelibrary.wiley.com/doi/epdf/10.1111/soc4.12849>; Angela Glover, Shannon Harper, and Lynn Langton, “Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality,” *American Journal of Criminal Justice*, 2020, vol. 45, no. 4, <https://pubmed.ncbi.nlm.nih.gov/32837171/>; Tyler Reny and Matt Baretto, “Xenophobia in the Time of Pandemic: Othering, anti-Asian Attitudes, and COVID-19,” *Politics, Groups, and Identities*, May 2020, vol. 10, no. 2, <https://www.tandfonline.com/doi/abs/10.1080/21565503.2020.1769693?journalCode=rpqi20>.

<sup>38</sup> Hannah Tessler, Meera Choi, and Grace Kao, “The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic,” *American Journal of Criminal Justice*, vol. 45, no. 4, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7286555/>.

<sup>39</sup> See U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, Feb. 1992, <https://www.ojp.gov/pdffiles1/Digitization/135906NCJRS.pdf>.

encourage greater participation in reporting hate crime incidents, as well as prosecution and enforcement efforts to prevent hate crimes.

On March 24, 2023, the Commission held a briefing in which it received written and oral testimony from academic and policy experts, federal and local law enforcement officials, and members of the public. The Commission also sent formal requests for information to relevant federal offices at the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) and conducted extensive qualitative and quantitative research regarding the impact of hate crimes and bias-motivated incidents against Asian Americans in the U.S. during the height of the COVID-19 pandemic.

In addition to examining hate crimes on the national level, three states were selected for analysis in this report: California, New York, and Texas. These states were selected because they have the largest Asian communities in the continental U.S., respectively,<sup>40</sup> and all experienced an increase in hate incidents during the pandemic. In California, the proportion of anti-Asian bias-motivated incidents more than doubled from 2020 to 2021 (from 6.7 percent to 14.1 percent), while the actual number of incidents almost tripled in the same time span (from 89 in 2020 to 248 in 2021).<sup>41</sup> A large study by Stop AAPI Hate, examining incidents at a national level from March 19, 2020 to December 31, 2021, found that the largest share (38 percent) of incidents occurred in California.<sup>42</sup> A California-specific report by Stop AAPI Hate found that 63 percent of the state's incidents were reported by women.<sup>43</sup> Like incidents at the state level, the proportion of anti-Asian incidents in San Francisco also increased significantly, representing 16 percent of bias-motivated incidents in 2020 and 52 percent of bias-motivated incidents in 2021.<sup>44</sup>

In New York, there was a clear uptick in anti-Asian hate crime incidents from 2019 through 2021. New York experienced five anti-Asian hate crimes in 2019, followed by 31 in 2020, which according to New York State's Department of Criminal Justice Services, was the highest number reported since reliable and complete hate crime reporting began in 2010.<sup>45</sup> However, 2021 saw an even larger increase, with 140 anti-Asian hate crimes.<sup>46</sup>

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<sup>40</sup> Office of Minority Health, "Profile: Asian Americans," U.S. Dep't of Health and Human Services, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=63>.

<sup>41</sup> California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

<sup>42</sup> Stop AAPI Hate, *National Report (Through December 31, 2021)*, Mar. 4, 2022, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>.

<sup>43</sup> Stop AAPI Hate, *California State Policy Recommendations to Address AAPI Hate: A Starting Point for Taking Action*, Oct. 13, 2021, <https://drive.google.com/file/d/1uPFwB0ZbOoQnVs0FXPrIfTkIK3LLM41Y/view>.

<sup>44</sup> *Ibid.*

<sup>45</sup> New York State Division of Criminal Justice Services, "Hate Crime in New York State 2020 Annual Report," Sept. 2021, <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL2020-Domestic-Homicide-Report12-21.pdf>; Personal correspondence with New York Division of Criminal Justice Services, Mar. 21, 2023.

<sup>46</sup> New York State Division of Criminal Justice Services, "Hate Crime in New York State 2021 Annual Report," <https://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2021-annual-report.pdf>.

The proportion of anti-Asian bias-motivated incidents in New York increased from less than 1 percent of bias-motivated incidents in 2019, to more than 6 percent in 2020, and to more than 18 percent in 2021.<sup>47</sup> In New York City, the data also showed that the number of anti-Asian hate crimes were increasing through 2020 and 2021. For instance, the number of anti-Asian hate crimes in the city was one (1) in 2019, rose to 27 in 2020, and rose again to 131 in 2021. By December 2021, the New York Police Department (NYPD) reported that incidents targeting Asian residents rose by 361 percent from the previous year.<sup>48</sup>

However, this notable uptick might still undercount anti-Asian hate crimes. Some Asian New Yorkers did not report incidents to the police due to a lack of trust that their concerns would be properly addressed because of the lack of hate crime charges, prosecutions, and convictions following these incidents.<sup>49</sup> The Asian American Bar Association of New York (AABANY) analyzed 233 anti-Asian hate crimes in New York City from the first three quarters of 2021 and found that only seven led to hate crime convictions.<sup>50</sup> Further discussion regarding the data and challenges in prosecuting hate crimes is included in Chapter 2 of this report.

According to the Texas Department of Public Safety, the proportion of hate crimes that were motivated by anti-Asian bias was 1 percent in 2019, rose to 2.3 percent in 2020, and rose slightly again to 2.5 percent in 2021. Due to a low number of reported hate crimes overall, Houston did not see a noticeable increase in official anti-Asian hate crimes during the examined years. With zero reported anti-Asian incidents in 2019, the city experienced an increase in the proportion of these crimes in 2020, at either 4.7 percent in the FBI data or 2.3 percent in the Texas Department of Public Safety data.<sup>51</sup> Discrepancies between these two sources highlight some of the reporting issues between federal and state or local databases, which makes understanding the magnitude of hate crimes difficult. However, both sources show low numbers of hate crimes generally as well as hate crimes motivated by anti-Asian bias, which scholars posit reflects the underreported nature of these crimes rather than an accurate account of the number of hate crimes.

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<sup>47</sup> Note: the NYPD uses the same definition for hate crimes and bias incidents: “A bias incident is any offense or unlawful act that is motivated in whole or substantial part by a person’s, a group’s or a place’s identification with a particular race, color, religion, ethnicity, gender, age, disability, ancestry, national origin, or sexual orientation (including gay, lesbian, bisexual, and transgender) as determined by the commanding officer of the Hate Crime Task Force.” New York State, “Hate Crimes by County and Bias Type: Beginning 2010,” <https://data.ny.gov/Public-Safety/Hate-Crimes-by-County-and-Bias-Type-Beginning-2010/6xda-q7ev> (accessed Feb. 15, 2023).

<sup>48</sup> Kimmy Yam, “NYPD reports 361 percent increase in anti-Asian hate crimes since last year,” *NBC News*, Dec. 10, 2021, <https://www.nbcnews.com/news/asia-america/nypd-reports-361-percent-increase-anti-Asian-hate-crimes-last-year-rcna8427>.

<sup>49</sup> Nicole Hong and Jonah E. Bromwich, “Asian-Americans Are Being Attacked. Why Are Hate Crime Charges So Rare?” *The New York Times*, Mar. 18, 2021, <https://www.nytimes.com/2021/03/18/nyregion/Asian-hate-crimes.html>.

<sup>50</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022,

[https://cdn.ylaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ylaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf).

<sup>51</sup> Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022); Texas Department of Public Safety, Summary of Hate Crime Detail for Each ORI – All Agencies, <https://txucr.nibrs.com/Report/HateCrime>.

In California, hate crime numbers during the pandemic also vary depending on the source examined. For instance, the FBI's Crime Data Explorer (CDE) site reports that 73 incidents occurred in 2021, while the California DOJ reports 1,763 incidents.<sup>52</sup> This large discrepancy is due to the number of agencies reporting to the FBI changing from year to year. For example, in 2020, 732 of the 740 law enforcement agencies in the state provided data, whereas in 2021, the FBI only received data from 15 agencies in California.<sup>53</sup> This is likely due to the requirement that agencies transition their reporting statistics to the National Incident-Based Reporting System (NIBRS) from the FBI's Uniform Crime Reporting (UCR) system starting in January 2021.<sup>54</sup>

Data collected from New York in 2021 show that the FBI reported a much lower number of bias-motivated incidents than the state itself. This discrepancy is likely due to agencies failing to report hate crimes to the FBI through its NIBRS database.<sup>55</sup> In 2020, 559 of the 595 law enforcement agencies in the state provided data. In 2021, the FBI only received data from only 124 agencies in the state.<sup>56</sup> Texas did not see a drop in reporting to the FBI in 2021 yet did report fewer hate crime incidents than New York and California.<sup>57</sup>

While the transition to the NIBRS reporting database was intended to provide a more complete picture of crime across the nation, the change has been challenging for many jurisdictions and hate crime data remains incomplete. In response to the Commission's interrogatory requests, the FBI informed the Commission that because many law enforcement agencies were not able to submit their hate crime data to NIBRS, participation across the country was down by 22 percent for 2021.<sup>58</sup> There are also potential issues in the way police departments determined whether or not a crime was motivated by bias and subsequently, and the way police departments reported that information to federal authorities. In 2020, nearly 25 percent of large cities did not report any hate crimes.<sup>59</sup> This likely reflects an issue with reporting, as it is "a statistical near-impossibility" that none of those cities experienced a single hate crime in that year.<sup>60</sup> Additionally, local and state numbers may differ from federal numbers due to definitional issues.<sup>61</sup>

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<sup>52</sup> Federal Bureau of Investigation, "Crime Data Explorer," <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

<sup>53</sup> *Ibid.*

<sup>54</sup> Federal Bureau of Investigation Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 15, 2023, pp. 3-4, [on file]; *see also infra* notes 434-444 (national data transition).

<sup>55</sup> *See infra* notes 434-444 (discussing national data transition); *see also*, Federal Bureau of Investigation Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 15, 2023, pp. 3-4 [on file].

<sup>56</sup> Federal Bureau of Investigation, "Crime Data Explorer," <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

<sup>57</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, pp. 179, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>58</sup> Federal Bureau of Investigation, Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 15, 2023, pp. 3-4 [on file].

<sup>59</sup> Beatrice Jin, "Biden signed a new hate crimes law – but there's a big flaw," *Politico*, May 20, 2021, <https://www.politico.com/interactives/2021/state-hate-crime-laws/>.

<sup>60</sup> *Ibid.*

<sup>61</sup> *See infra* notes 845-849.

The federal government also has a significant role in enforcing constitutional protections and safeguarding individuals from hate crimes. The Department of Justice (DOJ) states that “[o]f all crimes, hate crimes are [the] most likely to create or exacerbate tensions, which can trigger larger community-wide racial conflict, civil disturbances, and even riots.”<sup>62</sup> In May 2020, in a joint letter to the Justice Department, 16 Senators asked the Civil Rights Division to inform Congress of the steps the agency has taken to respond to the rise of discrimination, harassment, and hate crimes against Asian communities.<sup>63</sup> Following that letter on March 23, 2021, Senator Mazie Hirono introduced the COVID-19 Hate Crimes Act,<sup>64</sup> and Senator Richard Blumenthal introduced the Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats Equality Act of 2021 (Jabara-Heyer NO HATE Act) on April 13, 2021.<sup>65</sup> Both bills were passed and President Biden signed them into law as part of one joint bill on May 21, 2021.<sup>66</sup> The legislation calls on the DOJ to implement several programs and initiatives to combat anti-Asian hate crimes. Some of these include expediting the review of hate crime cases, collecting and disaggregating data based on distinctive characteristics (e.g., race and national origin), expanding educational and outreach programs, establishing state-run hotlines, setting up state and local government grants, conducting law enforcement activities and crime reduction programs to prevent, address, and respond to hate crimes.<sup>67</sup>

On the first anniversary of the enactment of the Jabara-Heyer NO HATE Act, the DOJ announced a series of actions to deter and confront bias incidents.<sup>68</sup> These actions included issuing new guidance in partnership with the Department of Health and Human Services (HHS) to raise awareness of hate crimes during the COVID-19 pandemic,<sup>69</sup> releasing grant solicitations for programs to create state-run hotlines, and the creation of an Anti-Hate Crimes Resource Coordinator and a Language Access Coordinator.<sup>70</sup> The Act also requested effective responses from various DOJ divisions, sought to identify resources for the victims and their communities, and wanted to build cooperation from community organizations to combat hate crimes.<sup>71</sup> On the second anniversary of the enactment of the COVID-19 Hate Crimes Act and the Jabara-Heyer NO

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<sup>62</sup> U.S. Dep’t of Justice, Community Relations Service, *Hate Crime: The Violence of Intolerance*, Dec. 2001, ¶4, [https://www.justice.gov/archive/crs/pubs/crs\\_pub\\_hate\\_crime\\_bulletin\\_1201.htm](https://www.justice.gov/archive/crs/pubs/crs_pub_hate_crime_bulletin_1201.htm).

<sup>63</sup> United State Senate, Letter to U.S. Department of Justice, May 20, 2020, <https://www.hirono.senate.gov/imo/media/doc/Letter%20to%20DOJ%20re%20anti-AAPI%20discrimination.pdf>

<sup>64</sup> 34 U.S.C. Chapter 305 or 34 U.S.C. §§ 30501-30507.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Department of Justice, Office of Public Affairs, Justice Department Announces New Initiatives to Address and Prevent Hate Crimes and Hate Incidents, Friday, May 29, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-new-initiatives-address-and-prevent-hate-crimes-and-hate>.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> U.S. Department of Justice: Combatting Hate Crimes, <https://www.justice.gov/opa/press-release/file/1428666/download>.



HATE Act, the DOJ published a fact sheet outlining its efforts to increase resources to deter and combat hate crimes and incidents.<sup>72</sup>

Despite these efforts, many politicians and Asian American community organizations have called for a more effective response from the federal government.<sup>73</sup> Some of these responses included developing resources that provide the public with ways to combat anti-Asian violence. Another strategy encouraged broader reporting of hate incidents and hate crimes to local law enforcement and assurance that information is communicated to the various organizations who collect hate crime data.<sup>74</sup> Other strategies included programs to educate the public about the history of Asian American discrimination, and to encourage elected officials to pass anti-hate legislation in their state.<sup>75</sup>

Community stakeholders and experts have called for increasing language access to reduce barriers in reporting hate crimes, hate incidents, and possible civil rights discrimination,<sup>76</sup> as authorized in the COVID-19 Hate Crimes Act of 2021.<sup>77</sup> Additionally, community groups have expressed a need for improved data collection and a standardized and codified understanding of hate incidents to further prevent anti-Asian hate crimes.<sup>78</sup> For instance, John Yang, President and Executive Director of Asian Americans Advancing Justice (AAJC) testified that:

Recognizing that comprehensive data are an essential part of understanding, responding to, and preventing hate crimes, Advancing Justice has joined with fellow civil rights advocates to urge the Justice Department and the FBI to make greater efforts to swiftly and effectively complete the transition to NIBRS, which we believe will yield more accurate data in time.

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<sup>72</sup> Dep't of Justice, "Fact Sheet: Justice Department Efforts to Combat Hate Crimes," May 20, 2023, <https://www.justice.gov/hatecrimes/spotlight/combating-hate-crimes>.

<sup>73</sup> See e.g., Rui Kaneya, "After a spike in anti-Asian hate crimes, the government response stalls," The Center for Public Integrity, Dec. 10, 2021, <https://publicintegrity.org/inside-publici/newsletters/watchdog-newsletter/spike-anti-asian-hate-crimes-response-stalls/>; Seashia Vang, "U.S. Government Should Better Combat Anti-Asian Racism," Human Rights Watch, Apr. 17, 2020, <https://www.hrw.org/news/2020/04/17/us-government-should-better-combat-anti-asian-racism>.

<sup>74</sup> Tiffany Liu, "Texas ranks 4<sup>th</sup> in anti-Asian incidents; how to stop the hate," WFAA, Mar. 23, 2021, <https://www.wfaa.com/article/news/local/texas/texas-ranks-4th-in-anti-asian-racist-incidents-how-to-stop-the-aapi-hate/287-6f10e1f8-64c4-4434-8be3-71fca2eb8a3e>; Vignesh Ramachandran, "What you can do to fight violence and racism against Asian Americans," PBS, Mar. 18, 2021, <https://www.pbs.org/newshour/nation/what-you-can-do-to-fight-violence-and-racism-against-asian-americans>.

<sup>75</sup> Tiffany Liu, "Texas ranks 4<sup>th</sup> in anti-Asian incidents; how to stop the hate," WFAA, Mar. 23, 2021, <https://www.wfaa.com/article/news/local/texas/texas-ranks-4th-in-anti-asian-racist-incidents-how-to-stop-the-aapi-hate/287-6f10e1f8-64c4-4434-8be3-71fca2eb8a3e>; Vignesh Ramachandran, "What you can do to fight violence and racism against Asian Americans," PBS, Mar. 18, 2021, <https://www.pbs.org/newshour/nation/what-you-can-do-to-fight-violence-and-racism-against-asian-americans>.

<sup>76</sup> Stop AAPI Hate, *Righting Wrongs: How Civil Rights Can Protect Asian Americans and Pacific Islanders Against Racism*, May 2023, p. 19, <https://stopaapihate.org/wp-content/uploads/2023/05/23-SAH-CivilRightsReport.pdf>.

<sup>77</sup> S.937 – (COVID-19 Hate Crimes Act), <https://www.congress.gov/117/plaws/publ13/PLAW-117publ13.pdf>.

<sup>78</sup> Stop AAPI Hate, *Righting Wrongs: How Civil Rights Can Protect Asian Americans and Pacific Islanders Against Racism*, May 2023, p. 19, <https://stopaapihate.org/wp-content/uploads/2023/05/23-SAH-CivilRightsReport.pdf>.

We continue to advocate for improved reporting and data collection, including exploring making reporting to the FBI by law enforcement mandatory.<sup>79</sup>

Fully preventing and eradicating hate violence against targeted communities may not be possible. However, developing effective strategies to respond to these crimes, reducing reporting barriers, and expanding data collection can build trust between law enforcement and communities who feel threatened. Additionally, recognizing the significance of hate crimes and the pain they cause to communities is critical to raise awareness of the problem and develop effective local, state, and federal responses that can help police and prosecutors better understand where and how such incidents occur. While this report specifically focuses on hate crimes directed towards Asian Americans during the COVID-19 pandemic, hate crimes are not exclusive to the Asian American population and affect many minority and marginalized populations. Developing effective laws and responses to hate violence by law enforcement officials can send a message to all targeted communities that these actions are not condoned. Kamala Harris, the first Asian American Vice President, stated:

This violence – it did not come from nowhere, and none of this is new. In my life, my lived experience, I have seen how hate can pervade our communities. I have seen how hate can impede our progress. And I have seen how people uniting against hate can strengthen our country. Here’s the truth: Racism exists in America. Xenophobia exists in America, antisemitism, Islamophobia, homophobia, transphobia – it all exists. And so, the work to address injustice wherever it exists remains the work ahead.<sup>80</sup>

This report is divided into three chapters. Chapter 1 of the report discusses relevant federal hate crime laws, provides a brief historical context of Asian discrimination, and presents national statistics regarding hate crimes and hate incidents against persons of Asian descent from 2019-2022. Chapter 2 describes local law enforcement’s efforts to respond to rising hate crimes, evaluates reporting and prevention practices, and summarizes ongoing reporting and prevention challenges. Chapter 3 evaluates the federal government’s role in investigating, reporting, and prosecuting hate crimes. The report concludes with the Commissioners’ findings and recommendations based upon the research.

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<sup>79</sup> John Yang, President and Executive Director, Asian Americans Advancing Justice, Written Statement for *Anti-Asian Briefing*, Mar. 24, 2023, at 11 (hereinafter Yang Statement).

<sup>80</sup> Barbara Sprunt, “Here’s What The New Hate Crimes Law Aims To Do As Attacks On Asian Americans Rise,” *NPR*, May 20, 2021, <https://www.npr.org/2021/05/20/998599775/biden-to-sign-the-covid-19-hate-crimes-bill-as-anti-asian-american-attacks-rise>.

## Chapter 1: Anti-Asian Hate Crimes Introduction and Background

The year 2020 will stand out as a significant year in the lives of people all around the world.<sup>81</sup> Not only was it the start of a new decade, but it was also the year a global pandemic infected millions of people and resulted in the loss of millions of lives.<sup>82</sup> The pandemic swept through the nation and all over the world, it was a crisis that touched every aspect of life. At the time of writing this report, there have been 1,137,164 COVID-related deaths in the U.S.<sup>83</sup>

The first signs of the novel coronavirus, which later became known as COVID-19, were detected in Wuhan, China in late 2019.<sup>84</sup> The pandemic first emerged in China with its supposed origin in “wet markets.”<sup>85</sup> This resulted in stereotypes, racism, and xenophobia towards Chinese people or people perceived to be Chinese.<sup>86</sup> As the virus spread, so did discrimination, fear, and violence towards many members of Asian communities.<sup>87</sup> This discrimination manifested in various types of bias-motivated incidents including harassment, racial slurs, and shunning, as well as violent actions such as battery, assault, vandalism, and murder. Research shows that hate crimes against Asian Americans increased 149 percent in 2020 across 18 cities.<sup>88</sup> This increase in anti-Asian sentiment and violence during the pandemic was not the first time that persons of Asian descent have been scapegoated for bringing disease to the United States.<sup>89</sup> Nor was it the first time Asian Americans experienced racism in America.<sup>90</sup>

Research suggests that there are strong correlations between the media and government officials’ use of racialized language to describe the COVID-19 virus, such as referring to the virus as the “Chinese Virus” and “Kung Flu,” which likely may have contributed to the rise in hate incidents and hate crimes throughout 2020 and 2021.<sup>91</sup> Civil rights and Asian American advocacy

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<sup>81</sup> Reid Wilson, “Why 2020 really was the worst year ever,” *The Hill*, December 27, 2020,

<https://thehill.com/homenews/state-watch/531279-why-2020-really-was-the-worst-year-ever/>.

<sup>82</sup> World Health Organization, “WHO Coronavirus (COVID-19) Dashboard,” <https://covid19.who.int/>.

<sup>83</sup> CDC, Centers for Disease Control and Prevention, National Center for Health Statistics, COVID-19 Death Data, <https://www.cdc.gov/nchs/covid19/mortality-overview.htm> (accessed July 13, 2023).

<sup>84</sup> *Ibid.*

<sup>85</sup> Dyani Lewis, Max Kozlov, and Mariana Lenharo, “COVID-origins data from Wuhan market published: what scientists think,” *Nature*, vol. 616 (2023), <https://www.nature.com/articles/d41586-023-00998-y>.

<sup>86</sup> Joshua Cho, “Why It’s Wrong (and Racist) to Blame Covid-19 on Chinese ‘Wet Markets,’” *Fair*, May 7, 2020, <https://fair.org/home/why-its-wrong-and-racist-to-blame-covid-19-on-chinese-wet-markets/>.

<sup>87</sup> Eleanor Cummins, “The New Coronavirus is Not an Excuse to Be Racist,” *The Verge*, Feb. 4, 2020, <https://www.theverge.com/2020/2/4/21121358/coronavirus-racism-social-media-east-asian-chinese-xenophobia>.

<sup>88</sup> Fact Sheet: Anti-Asian Prejudice March 2021, Center for the Study of Hate & Extremism, CSUSB, Mar. 21, 2021, <https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%20rev%203.21.21.pdf>.

<sup>89</sup> *See supra* notes 339-372 (discussing historical context of Asian disease blaming and stereotyping).

<sup>90</sup> *See supra* notes 156-229 (discussing Anti-Asian laws).

<sup>91</sup> Tyler Reny and Matt Barreto, “Xenophobia in the time of the pandemic: othering, anti-Asian attitudes, and COVID-19,” *Politics, Groups, and Identities*, vol. 10, no. 2, May 2020, <https://www.tandfonline.com/doi/abs/10.1080/21565503.2020.1769693?journalCode=rpgi20>; Sungil Han, Jordan Riddell, and Alex Piquero, “Anti-Asian American Hate Crimes Spike During the Early Stages of the COVID-19

organizations argue that these terms fanned the flames of division and stoked racist stereotypes, which resulted in an increase in anti-Asian incidents, violence, and hate crimes.<sup>92</sup> As such, this report examines the rise in anti-Asian hate crimes in the U.S. during the pandemic and the federal role in preventing and enforcing federal hate crime laws.

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Pandemic,” *Journal of Interpersonal Violence*, vol. 38, no. 3-4, Feb. 2023, <https://pubmed.ncbi.nlm.nih.gov/35657278/>.

<sup>92</sup> See e.g., Kimmy Yam, “Trump Can't Claim 'Kung Flu' Doesn't Affect Asian Americans in this Climate, Experts Say,” NBC News, June 22, 2020, <https://www.nbcnews.com/news/asian-america/trump-can-t-claim-kung-flu-doesn-t-affect-asian-n1231812>.

## Hate Crimes and Federal Hate Crime Laws

At the federal level, a hate crime is “a crime motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.”<sup>93</sup> These crimes include any violent crime, such as assault, murder, arson, vandalism, or threats, that is committed based upon the victim’s actual or perceived identity characteristics.<sup>94</sup> In its simplest terms, a hate crime is a crime whose motivation is based on bias.<sup>95</sup> Comparatively, hate incidents are acts that are motivated by prejudice and bias, but do not elevate to the level of a crime.<sup>96</sup> These can include incidents such as:

- Name calling; using a racial, ethnic, or other slurs to identify someone; or using degrading language;
- Insults;
- Displaying hate material on your own property;
- Posting hate material that does not result in property damage;
- Distribution of materials with hate messages in public places.<sup>97</sup>

The U.S. Constitution allows for hate speech as long as it does not interfere with the civil rights of others. This speech, while not rising to the level of a crime, can still be hurtful, offensive, and cause fear and anxiety for those being targeted. However, if this speech starts to threaten a person or property, it may become a hate crime.

Hate Crimes Coordinator for the Los Angeles Police Department, Detective Orlando Martinez, explained:

Legally, there is no such thing as a hate incident and the vast majority of police departments across the country, over 99 percent, will not complete a hate incident report. They show up, tell the victim who has just [] had one of the worst days of their lives, [it’s] free speech, [it’s protected by the] First Amendment, and they drive away. My department and others are some of the few that do take it, but it is not a common thing. The federal agencies do not take hate incident reports.<sup>98</sup>

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<sup>93</sup> U.S. Dep’t of Justice, “Learn About Hate Crimes,” <https://www.justice.gov/hatecrimes/learn-about-hate-crimes#:~:text=Hate%20Crime%3A%20At%20the%20federal,%2C%20threats%2C%20or%20property%20damage>; *see also*, 18 U.S.C. § 249.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Danville, California, “What is the Difference Between a Hate Crime and a Hate Incident?”

<https://www.danville.ca.gov/965/What-is-the-Difference-Between-a-Hate-Cr>; Oregon Department of Justice, “What’s the Difference between a Hate or Bias Crime and a Bias Incident?” <https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/bias-and-hate/whats-the-difference-between-a-hate-or-bias-crime-and-a-bias-incident/>.

<sup>98</sup> Martinez Testimony, pp.146-47.

Hate crime laws provide penalty enhancements for crimes motivated by the categories of race, color, national origin, religion, sexual orientation, gender, gender identity, and disability.<sup>99</sup> Federal hate crime laws also prohibit damage to religious property or interference with an individual's right to practice their religion, as well as the use of force or threats of force to interfere with other federally protected activities, such as access to education, housing, and/or public accommodations due to bias motivations.<sup>100</sup> Under the First Amendment, hate crime laws cannot prosecute individuals for expressing their thoughts or beliefs, even if these beliefs are inaccurate, hurtful, or offensive.<sup>101</sup> Constitutional protections, however, do not protect against committing a crime.

Fifteen states, and the District of Columbia, have adopted laws protecting against crimes based on the federal bias categories listed above.<sup>102</sup> Those states are Connecticut, Delaware, Georgia, Hawaii, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Utah, Vermont, Virginia, and Washington.<sup>103</sup> In contrast, South Carolina and Wyoming do not have hate crimes laws for any protected categories. However, as of March 2023, House Bill 3014, known as the “Clementa C. Pinckney Hate Crimes Act,” is currently residing in the South Carolina House legislature.<sup>104</sup> Arkansas has a hate crime law, but its law does not refer to specific categories such as race/color, national origin, sexual orientation, gender/sex, gender identity or disability.<sup>105</sup> Table 1 below shows which of the seven categories are included in each state's laws as it relates to federal hate crimes laws.

<sup>99</sup> U.S. Dep't of Justice, “Learn About Hate Crimes,” <https://www.justice.gov/hatecrimes/learn-about-hate-crimes#:~:text=Hate%20Crime%3A%20At%20the%20federal.%2C%20threats%2C%20or%20property%20damag>.

<sup>100</sup> 18 U.S.C. § 247 (Damage to Religious Property and Obstruction of Persons in the Free Exercise of Religious Beliefs); 18 U.S.C. § 245(b)(2) (Federally Protected Activities); 42 U.S.C. § 3631 (Fair Housing Act's criminal prohibition against interference with housing rights because of bias).

<sup>101</sup> U.S. Const. amend. I.

<sup>102</sup> Federal Laws and Policies, The United States Department of Justice, <https://www.justice.gov/hatecrimes/laws-and-policies#:~:text=The%20Shepard%20Byrd%20Act%20is,sexual%20orientation%20or%20gender%20identity>.

<sup>103</sup> Federal Laws and Policies, The United States Department of Justice, <https://www.justice.gov/hatecrimes/laws-and-policies#:~:text=The%20Shepard%20Byrd%20Act%20is,sexual%20orientation%20or%20gender%20identity>.

<sup>104</sup> H. 3014 (Clementa C. Pinckney Hate Crimes Act), South Carolina General Assembly, 125th Session (2023-2024), [https://www.scstatehouse.gov/sess125\\_2023-2024/bills/3014.htm](https://www.scstatehouse.gov/sess125_2023-2024/bills/3014.htm).

<sup>105</sup> ARK. CODE § 5-4-405; Arkansas Governor Signs Stripped-down Hate Crimes Measure, AP News, Apr. 14, 2021, <https://apnews.com/article/arkansas-legislature-legislation-crime-little-rock-37f54a4dcc1a2fb3ddd3a74543828a37>.

Table 1 Categories Included in Federal Hate Crimes Law in Each State

KEY: Yes ● No ○

State	Race/Color	National Origin	Religion	Sexual Orientation	Gender/Sex	Gender Identity	Disability
Alabama	●	●	●	○	○	○	●
Alaska	●	●	●	○	●	○	●
Arizona	●	●	●	●	●	○	●
Arkansas	○	○	●	○	○	○	○
California	●	●	●	●	●	○	●
Colorado	●	●	●	●	○	○	●
Connecticut	●	●	●	●	●	●	●
Delaware	●	●	●	●	●	●	●
District of Columbia	●	●	●	●	●	●	●
Florida	●	●	●	●	○	○	●
Georgia	●	●	●	●	●	●	●
Hawaii	●	●	●	●	●	●	●
Idaho	●	●	●	○	○	○	○
Illinois	●	●	●	●	●	○	●
Indiana	●	●	●	●	○	○	●
Iowa	●	●	●	●	●	○	●
Kansas	●	●	●	●	○	○	●
Kentucky	●	●	●	●	○	○	○
Louisiana	●	●	●	●	●	○	●
Maine	●	●	●	●	●	○	●
Maryland	●	●	●	●	●	○	●
Massachusetts	●	●	●	●	●	●	●
Michigan	●	●	●	○	●	○	○
Minnesota	●	●	●	●	●	○	●
Mississippi	●	●	●	○	●	○	○
Missouri	●	●	●	●	●	○	●
Montana	●	●	●	○	○	○	○
Nebraska	●	●	●	●	●	○	●
Nevada	●	●	●	●	●	●	●
New Hampshire	●	●	●	●	●	●	●
New Jersey	●	●	●	●	●	●	●
New Mexico	●	●	●	●	●	●	●
New York	●	●	●	●	●	●	●
North Carolina	●	●	●	○	●	○	○

State	Race/Color	National Origin	Religion	Sexual Orientation	Gender/Sex	Gender Identity	Disability
North Dakota	●	●	●	○	●	○	○
Ohio	●	●	●	○	●	○	○
Oklahoma	●	●	●	○	○	○	●
Oregon	●	●	●	●	●	●	●
Pennsylvania	●	●	●	○	○	○	○
Rhode Island	●	●	●	●	●	○	●
South Carolina	○	○	○	○	○	○	○
South Dakota	●	●	●	○	○	○	○
Tennessee	●	●	●	●	●	○	●
Texas	●	●	●	●	●	○	●
Utah	●	●	●	●	●	●	●
Vermont	●	●	●	●	●	●	●
Virginia	●	●	●	●	●	●	●
Washington	●	●	●	●	●	●	●
West Virginia	●	●	●	○	●	○	○
Wisconsin	●	●	●	●	○	○	●
Wyoming	○	○	○	○	○	○	○

Updated October 14, 2022. It should be noted that state laws may also include additional types of bias not listed on the chart.

Source: U.S. Dep't of Justice, "Federal Laws and Policies," <https://www.justice.gov/hatecrimes/laws-and-policies#:~:text=The%20Shepard%20Byrd%20Act%20is,sexual%20orientation%20or%20gender%20identity.>

## Federal Hate Crime Laws

There are several hate crimes laws, statutes, and executive orders that have been enacted by the federal government.

The Violent Interference with Federally Protected Rights was passed in 1968 with Title I of the Civil Rights Act of 1968, which enacted 18 U.S.C. § 245(b)(2).<sup>106</sup> The statute makes it unlawful to injure, intimidate, or interfere with any person participating in any federally protected activities based on a person's race, color, religion, or national origin.<sup>107</sup> Those federally protected activities include:

- Enrolling in or attending a public school or public college;
- Participating in or enjoying a benefit, service, program, privilege, facility, or activity administered by any state or local government;
- Applying for or enjoying employment by any U.S. agency;
- Serving as a juror in a state court;

<sup>106</sup> The United States Department of Justice, Hate Crime Laws, <https://www.justice.gov/crt/hate-crime-laws>.

<sup>107</sup> 18 U.S.C. § 245, <https://www.law.cornell.edu/uscode/text/18/245>.



- Traveling in or using a facility of interstate commerce;
- Using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air; or
- Enjoying the goods, services, facilities, privileges of any inn, hotel, motel, or other establishment which provides lodging to transient guests; any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public; any gasoline station, motion picture house, theater, concert hall, sports arena, stadium, any other place of exhibition or entertainment which serves the public; or any establishment which serves the public.<sup>108</sup>

The Criminal Interference with Right to Fair Housing Act<sup>109</sup> prohibits the use or the threat to use force to interfere with housing rights of any person because of race, color, religion, sex, national origin, disability, or familial status.<sup>110</sup> When the law was enacted in 1968, it included the victim's race, color, religion, sex, or national origin; in 1988 it was amended to include familial status and disability.<sup>111</sup>

The Conspiracy Against Rights Act<sup>112</sup> prohibits two or more persons from conspiring to injure, threaten, or intimidate a person in any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to the individual by the U.S. Constitution or the laws of the U.S.<sup>113</sup>

The Hate Crime Statistics Act,<sup>114</sup> enacted in 1990<sup>115</sup> and amended in 2010,<sup>116</sup> requires the Attorney General to “acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder; non-negligent manslaughter; forcible rape; aggravated assault; simple assault; intimidation; arson; and destruction, damage or vandalism of property.”<sup>117</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> 42 U.S.C. § 3631, Violations; Penalties, <https://www.law.cornell.edu/uscode/text/42/3631>.

<sup>110</sup> *Id.*; The United States Department of Justice, Federal Laws and Policies, Federal Hate Crimes Laws, <https://www.justice.gov/crt/hate-crime-laws>.

<sup>111</sup> The United States Department of Justice, Federal Laws and Policies, Federal Hate Crimes Laws, <https://www.justice.gov/crt/hate-crime-laws>.

<sup>112</sup> 18 U.S.C. § 241

<sup>113</sup> *Id.*; The United States Department of Justice, Federal Laws and Policies, Federal Hate Crimes Laws, <https://www.justice.gov/hatecrimes/laws-and-policies>.

<sup>114</sup> 28 U.S.C. § 534.

<sup>115</sup> Hate Crimes Statistic Act, Pub. L. 101-275, 104 Stat. 140 (codified at 28 U.S.C. § 534), <https://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg140.pdf>.

<sup>116</sup> Hate Crime Statistics Act as Amended, 28 U.S.C. § 534, <https://ucr.fbi.gov/hate-crime/2010/resources/hate-crime-2010-hate-crime-statistics-act.pdf>.

<sup>117</sup> *Id.*

The Church Arson Prevention Act of 1996,<sup>118</sup> enacted by Congress in 1996,<sup>119</sup> prohibits the intentional defacement, damage, or destruction of any religious real property because of the religious nature of that property, or because of the race, color, or ethnic characteristics of any individual associated with that religious property.<sup>120</sup> This act also criminalizes the intentional obstruction of a person’s free exercise of religious beliefs by force or threat of force.<sup>121</sup>

The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act<sup>122</sup> (HCPA) was signed into law in 2009 and was the first statute to permit the federal criminal prosecution of hate crimes motivated by the victim’s perceived or actual sexual orientation or gender identity.<sup>123</sup> Under 18 U.S.C. §249, hate crimes represent offenses involving the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim.<sup>124</sup> The statute indicates that “[w]hoever willfully causes bodily injury to someone or, through using a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to anyone because of the actual or perceived”<sup>125</sup> bias category “shall be fined and imprisoned for up to ten years or life in prison if death results or the offense includes kidnapping, aggravated sexual abuse or an attempt to kill.”<sup>126</sup>

A key aspect of the HCPA statute is the use of the term “actual or perceived” because “it extends the definition of a hate crime to protect victims who are *perceived* to have a protected characteristic, even if the assailant is mistaken.”<sup>127</sup> For instance, Detective Orlando Martinez, hate crime coordinator for the LAPD, testified that his department has “many cases where a victim was mistaken for having a protected characteristic when they don’t or [possess] a different protected characteristic, but it doesn’t matter what the victim thinks. It matters what the suspect thought.”<sup>128</sup> Therefore, in the case of the COVID-19 pandemic, if an individual is assaulted based on the perception that they are Chinese, the assailant would still be charged with a hate crime, regardless of the actual ethnicity of the victim.

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<sup>118</sup> 18 U.S.C. § 247.

<sup>119</sup> Church Arson Prevention Act of 1996, Pub. L. 104–155, 110 Stat. 1392 (codified at, 18 U.S.C. § 247), <https://www.govinfo.gov/content/pkg/PLAW-104publ155/pdf/PLAW-104publ155.pdf>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, §§ 4701-4713, 123 Stat. 2835, 2835-2845 (2009) (codified at 18 U.S.C. § 249) [*hereinafter* 18 U.S.C. § 249].

<sup>123</sup> The United States Department of Justice, “Laws and Policies, Federal Hate Crime Laws,”

<https://www.justice.gov/hatecrimes/laws-and-policies#:~:text=The%20Shepard%20Byrd%20Act%20is,sexual%20orientation%20or%20gender%20identity>.

<sup>124</sup> 18 U.S.C. § 249.

<sup>125</sup> 18 U.S.C. § 249 (a)(1).

<sup>126</sup> 18 U.S.C. § 249 (a)(1)(B).

<sup>127</sup> 18 U.S.C. § 249 (a)(1); Eisner Gorin, “Hate Crimes, Federal Hate Crime Laws,” 18 U.S. Code § 249, <https://www.thefederalcriminalattorneys.com/federal-hate-crimes> [emphasis added].

<sup>128</sup> Martinez Testimony, p. 145.

Most recently, Congress proposed the Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act of 2021, also known as the Jabara-Heyer NO HATE Act of 2021 or the COVID-19 Hate Crimes Act.<sup>129</sup>

The Jabara-Heyer NO HATE Act of 2021:

- Establishes grants for states to create state-run hate crime reporting hotlines. It also authorizes grants for states and local governments to implement the National Incident-Based Reporting System and to conduct law enforcement activities or crime reduction programs to prevent, address, or respond to hate crimes;
- Authorizes additional penalties for hate crime offenses;
- For an individual convicted of a hate crime offense and placed on supervised release, the [act] allows a court to order that the individual participate in educational classes or community service as a condition of supervised release.<sup>130</sup>

Due to the rise in hate crimes and violence against Asian Americans and Pacific Islanders (AAPI) in 2020 following the COVID-19 pandemic,<sup>131</sup> Congress passed and the President signed the NO HATE Act, which “facilitates the expedited review of COVID-19 hate crimes.”<sup>132</sup> Under the Act, the Attorney General shall designate an officer or employee of the Department of Justice (DOJ) to be responsible for facilitating an expedited review of hate crimes and reports of any such crime to federal, state, local, and tribal law enforcement agencies.<sup>133</sup>

Additionally, the Attorney General shall issue guidance on how to:

- 1) establish online reporting of hate crimes or incidents, and to have online reporting that is equally effective for people with disabilities as for people without disabilities available in multiple languages as determined by the Attorney General;
- 2) collect data disaggregated by the protected characteristics described in Section 249 of Title 18, United States Code; and
- 3) expand public education campaigns aimed at raising awareness of hate crimes and reaching victims. The education campaigns should be equally effective for people with disabilities as for people without disabilities.<sup>134</sup>

In an effort to further address the increase in anti-Asian hate crimes, on January 26, 2021, President Biden issued “The Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States,” which formally acknowledges that during the COVID-19 pandemic, Asian American and Pacific Islander persons

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<sup>129</sup> 34 U.S.C. Chapter 305 or 34 U.S.C. §§ 30501-30507.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> COVID-19 Hate Crimes Act, Pub.L. No: 117-13, 135 Stat. 265 (Codified at 34 U.S.C. § 30501 note).

were targets of inflammatory and racist rhetoric.<sup>135</sup> In addition, the memorandum states the “Federal Government must recognize that it has played a role in furthering these xenophobic sentiments through the actions of political leaders, including references to the COVID-19 pandemic by the geographic location of its origin.”<sup>136</sup>

The memorandum sets forth:

- 1) a declaration against racism, xenophobia, and intolerance concerning persons of AAPI descent;
- 2) guidance describing best practices for advancing cultural competency, language access, and sensitivity towards Asian Americans and Pacific Islanders; and
- 3) calls to expand the collection of data and public reporting regarding hate incidents against such individuals.<sup>137</sup>

For a more detailed discussion regarding the role of the federal government in preventing hate crimes and enforcing hate crimes laws, see Chapter 3 of this report.

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<sup>135</sup> Memorandum of President of the United States, Jan. 26, 2021, 86 F.R. 7485; Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States. The White House. Executive Office of the President. (January 26, 2021). <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/>.

<sup>136</sup> *Id.*

<sup>137</sup> Memorandum of President of the United States, Jan. 26, 2021, 86 F.R. 7485; Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States. The White House. Executive Office of the President. (January 26, 2021). <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/>.

## People of Asian Descent in America: Demographics

The U.S. Census Bureau (Census) defines Asian as “a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.”<sup>138</sup> Based on Census estimates, the U.S. population in 2020, 2021, and 2022 consisted of 331.4 million, 332.0 million and 333.3 million people, respectively.<sup>139</sup> Those who reported being solely of Asian descent (i.e., Asian alone) account for approximately 6.3 percent of the population.<sup>140</sup> In 2020, 2021, and 2022, there were approximately 20.21 million, 20.25 million, and 20.33 million people who self-identified as being of solely Asian descent in the U.S.<sup>141</sup> In contrast, as of July 2022, White alone, not Hispanic/Latino represent 58.9 percent; Hispanic or Latino alone represent 19.1 percent; Black alone represent 13.6 percent; American Indian and Alaska Natives alone represent 1.3 percent; and Native Hawaiian and other Pacific Islander alone represent less than one percent (0.3 percent) of the population.<sup>142</sup>

In the U.S., people of Asian descent are not a single monolithic group.<sup>143</sup> They come from the diverse Asian diaspora.<sup>144</sup> The six largest Asian populations in the U.S. include:

- Chinese (excluding Taiwanese): 4,151,009 persons;
- Asian Indians: 4,143,134 persons;
- Filipinos: 2,884,210 persons;
- Vietnamese: 1,852,906 persons;
- Koreans: 1,477,325 persons; and
- Japanese: 768,985 persons.<sup>145</sup>

Other less populous Asian groups include individuals of Pakistani-descent: 500,159; Hmong-descent: 532,135; Cambodian-descent: 259,525; Thai-descent: 204,150; and Taiwanese-descent:

<sup>138</sup> The United States Census Bureau, About the Topic of Race, <https://www.census.gov/topics/population/race/about.html#:~:text=Asian%20%E2%80%93%20A%20person%20having%20origins.Islands%2C%20Thailand%2C%20and%20Vietnam.>

<sup>139</sup> United States Census Bureau, Quick Facts, (as of July 1, 2022), <https://www.census.gov/quickfacts/fact/table/US/RHI425221>.

<sup>140</sup> Ibid.

<sup>141</sup> The United States Census Bureau adheres to the 1997 Office of Management and Budget (OMB) standards on race and ethnicity in classifying responses to the race question. The United States Census Bureau, About the Topic of Race, <https://www.census.gov/topics/population/race/about.html#:~:text=Asian%20%E2%80%93%20A%20person%20having%20origins.Islands%2C%20Thailand%2C%20and%20Vietnam.>

<sup>142</sup> United States Census Bureau, Quick Facts, (as of July 1, 2022), <https://www.census.gov/quickfacts/fact/table/US/RHI425221>.

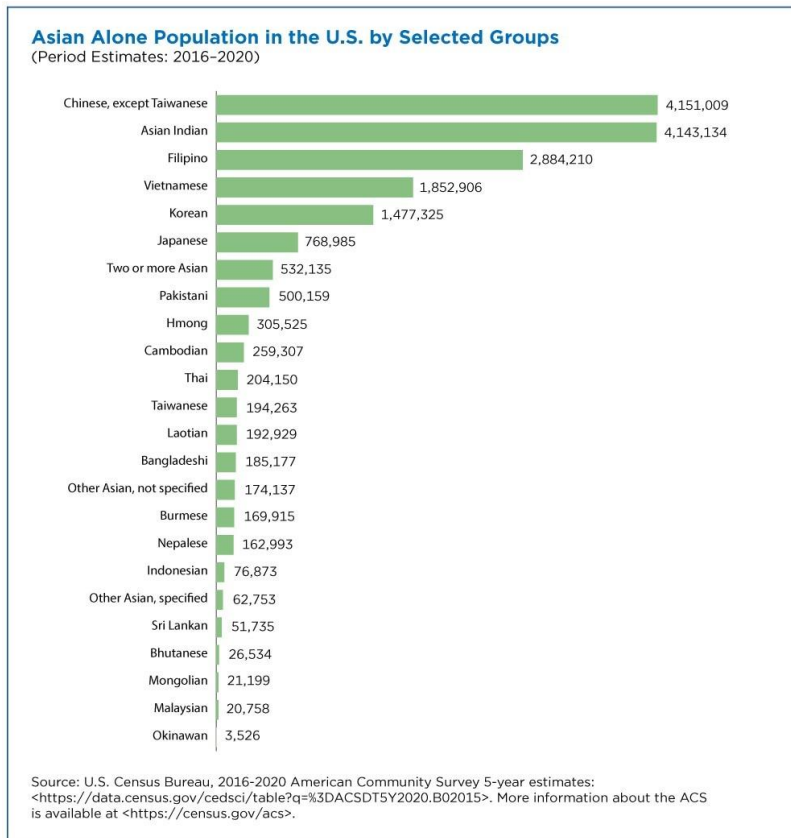
<sup>143</sup> Abby Budiman and Neil Ruiz, “Key facts About Asian Origin Groups in the U.S.,” Pew Research Center, April 29, 2021, <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>.

<sup>144</sup> United States Census Bureau, “Broad Diversity of Asian, Native Hawaiian, Pacific Islander Population,” <https://www.census.gov/library/stories/2022/05/aanhpi-population-diverse-geographically-dispersed.html>.

<sup>145</sup> Ibid.

194,263 (see Figures 1 and 2). The six largest Asian ethnic groups (i.e., Chinese, Asian Indians, Filipinos, Vietnamese, Koreans, and Japanese) comprised 85 percent of the Asian population in the U.S. in 2019.<sup>146</sup> Asian people of Chinese-origin are the largest group of Asian origin individuals in the U.S.<sup>147</sup> They comprise 24 percent of the Asian population, which amounts to 5.4 million people.<sup>148</sup>

**Figure 1 Asian Alone Population in the U.S.**



<sup>146</sup> United States Census Bureau, “Broad Diversity of Asian, Native Hawaiian, Pacific Islander Population,” <https://www.census.gov/library/stories/2022/05/aanhpi-population-diverse-geographically-dispersed.html>.

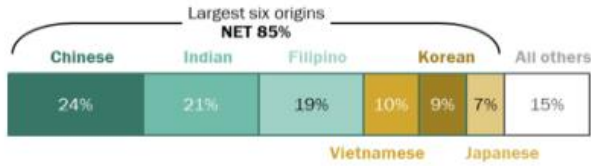
<sup>147</sup> Abby Budiman and Neil Ruiz, Key facts About Asian Origin Groups in the U.S., Pew Research Center, April 29, 2021, <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>.

<sup>148</sup> United States Census Bureau, “Broad Diversity of Asian, Native Hawaiian, Pacific Islander Population,” <https://www.census.gov/library/stories/2022/05/aanhpi-population-diverse-geographically-dispersed.html>.

**Figure 2 Six Largest Asian Origin Groups in the U.S.**

**Six origin groups make up 85% of all Asian Americans**

% of the U.S. Asian population that is...



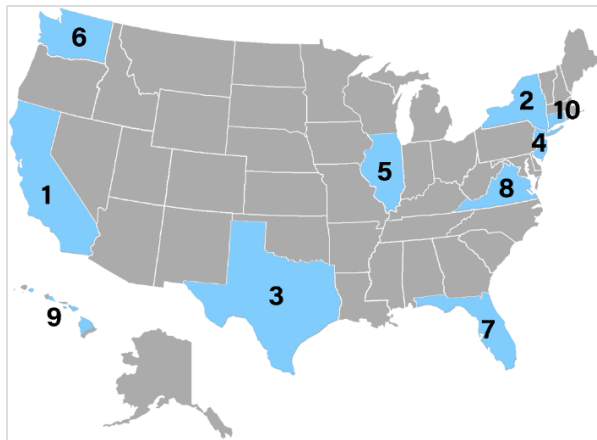
Note: "All others" includes the 3% of U.S. Asians in the category "Other Asian, not specified." "Chinese" includes those identifying as Taiwanese. For more about measuring the Taiwanese population in the U.S., read "How many Taiwanese live in the U.S.? It's not an easy question to answer." Figures do not add to 100% because individuals identifying with more than one Asian group are included in all groups. Figure for all origin groups includes mixed-race and mixed-group populations, regardless of Hispanic origin. Source: Pew Research Center analysis of 2019 American Community Survey 1-year estimates (Census data).

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Source: Abby Budiman and Neil Ruiz, Key facts about Asian Americans, a diverse and growing population, Apr. 29, 2021, [https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/#:~:text=Chinese%20Americans%20are%20the%20largest,\(or%204.2%20million%20people\).](https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/#:~:text=Chinese%20Americans%20are%20the%20largest,(or%204.2%20million%20people).)

According to the Census, in 2019, the 10 states with the largest Asian populations were California, New York, Texas, New Jersey, Illinois, Washington, Florida, Virginia, Hawaii, and Massachusetts, respectively (see Figure 3).<sup>149</sup>

**Figure 3 Map of 10 states with the largest Asian populations**



Source: Profile: Asian Americans, U.S. Department of Health and Human Services Office of Minority Health, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=63>.

<sup>149</sup> U.S. Department of Health and Human Services Office of Minority Health, "Profile: Asian Americans," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=63>.

Both California and New York are states with large Asian populations of Chinese origin (see Figure 4).<sup>150</sup> Although Texas has a large Indian population, together those of Vietnamese and Chinese origin make-up a larger segment of the Texas population (see Table 2).<sup>151</sup>

More than half (57 percent) of Asian Americans were born in another country.<sup>152</sup> In 2019, 95 percent of U.S.-born Asian people reported being “proficient” in English.<sup>153</sup> In contrast, 57 percent of foreign-born Asians reported being “proficient” in English. Being proficient in English was defined as speaking “only English” or speaking English “very well.”<sup>154</sup>

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<sup>150</sup> Abby Budiman and Neil Ruiz, “Key facts About Asian Origin Groups in the U.S.,” Pew Research Center, Apr. 29, 2021, <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>.

<sup>151</sup> Three largest Asian origin groups by state, 2019, Key Facts About Asian Origin Groups in the U.S., Pew Research Center, April 29, 2021, [https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/ft\\_2021-04-29\\_asianorigins\\_03a/](https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/ft_2021-04-29_asianorigins_03a/).

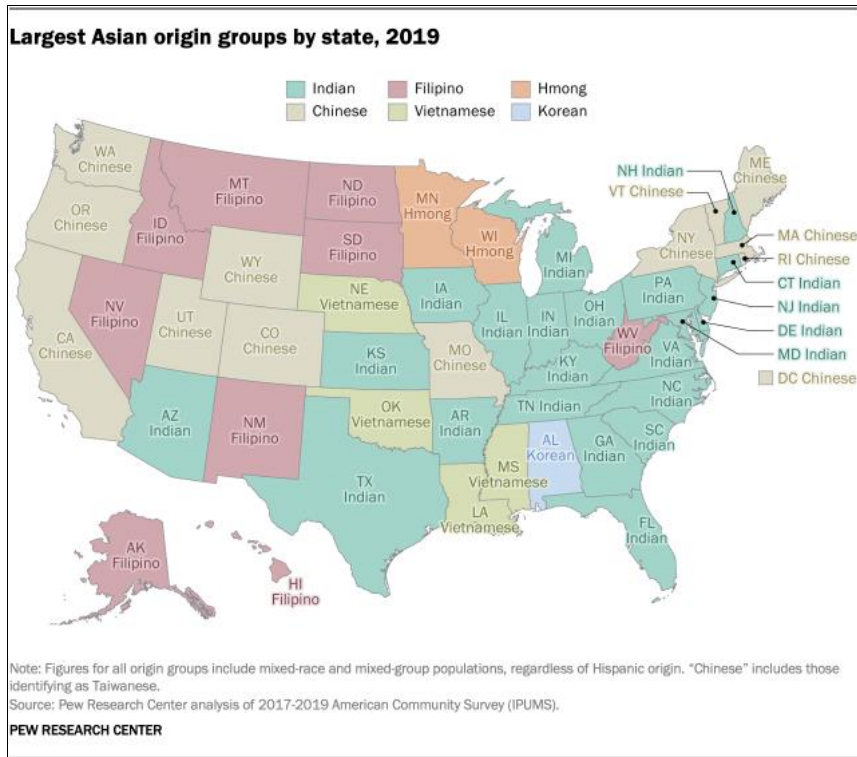
<sup>152</sup> Abby Budiman and Neil G. Ruiz, “Key Facts about Asian Americans, a Diverse and Growing Population,” Pew Research Center, Apr. 28, 2021, <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/>.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.



Figure 4 Map of largest Asian origin group in each state



Source: Abby Budiman and Neil Ruiz, Key facts About Asian Origin Groups in the U.S., Pew Research Center, April 29, 2021, <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>.

Table 2 Three largest Asian origin groups by state in 2019

State	Largest Asian Origin Group (percent of state population)	Second Largest Asian Origin Group (percent of state population)	Third Largest Asian Origin Group (percent of state population)
California	Chinese (27)	Filipino (24)	Indian (13)
New York	Chinese (41)	Indian (22)	Filipino (8)
Texas	Indian (28)	Vietnamese (18)	Chinese (15)
New Jersey	Indian (42)	Chinese (19)	Filipino (14)
Washington	Chinese (23)	Filipino (19)	Indian (16)
Florida	Indian (25)	Filipino (20)	Chinese (17)
Virginia	Indian (24)	Filipino (16)	Chinese (14)
Hawaii	Filipino (39)	Japanese (30)	Chinese (18)
Massachusetts	Chinese (36)	Indian (24)	Vietnamese (10)
Texas	Indian (28)	Vietnamese (18)	Chinese (15)

Source: Three largest Asian origin groups by state, 2019, Key Facts About Asian Origin Groups in the U.S., Pew Research Center, April 29, 2021, [https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/ft\\_2021-04-29\\_asianorigins\\_03a/](https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/ft_2021-04-29_asianorigins_03a/).

## Anti-Asian Laws

People of Asian descent have been living in the U.S. for centuries. As with many marginalized communities, Asian communities have faced a long history of discrimination in the United States. To contextualize the increase anti-Asian sentiment during the COVID-19 pandemic, it is important to understand the history of anti-Asian racism and “Yellow Peril” laws.<sup>155</sup>

The first major migration of Asian immigrants to the U.S. occurred in the 19th century.<sup>156</sup> From 1875 to 1965, the federal government enacted several laws that infringed on the rights of people of Asian descent living in the U.S., as well as imposed immigration limits from China, Japan, and other Asian countries.<sup>157</sup> These laws included the Page Act of 1875,<sup>158</sup> the Chinese Exclusion Act of 1882,<sup>159</sup> the Geary Act of 1892,<sup>160</sup> the Immigration Act of 1917<sup>161</sup> and 1924<sup>162</sup>, the Repeal of the Chinese Exclusion Act of 1943,<sup>163</sup> the Immigration Nationality Act of 1952,<sup>164</sup> and Executive Order 9066.<sup>165</sup> Some states also imposed limitations against people of Asian descent that were codified into state laws, such as the Alien Land Laws.<sup>166</sup>

### The Page Act

The Page Act of 1875 was the first federal law to restrict immigration to the U.S. based on race or national origin.<sup>167</sup> Specifically, this law was intended to limit the number of Chinese women allowed to immigrate to the United States.<sup>168</sup> While the law “prohibited the importation of unfree

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<sup>155</sup> Russell Jeung, Ph.D., Professor, Asian American Studies, San Francisco State University, testimony, *The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm’n on Civil Rights*, Washington, DC, Mar. 4, 2023, transcript, p. 25 (hereinafter cited as *Anti-Asian Racism Briefing*).

<sup>156</sup> History.com Editors, “Asian American Milestones: Timeline,” Mar. 22, 2021, <https://www.history.com/topics/immigration/asian-american-timeline>.

<sup>157</sup> See e.g., Asia Society, “Asian Americans Then and Now: Linking Past to Present,” <https://asiasociety.org/education/asian-americans-then-and-now>; D’Vera Cohn, “How U.S. Immigration laws and rules have changed throughout history,” Pew Research Center, Sept. 30, 2015, <https://www.pewresearch.org/fact-tank/2015/09/30/how-u-s-immigration-laws-and-rules-have-changed-through-history/>.

<sup>158</sup> Page Act of 1875, Ch. 141, 18 Stat. 477 (repealed 1974).

<sup>159</sup> Chinese Exclusion Act of 1882, Ch. 126, 22 Stat. 58 (repealed 1943).

<sup>160</sup> The Geary Act of 1892, Ch. 60, 27 Stat. 25 (repealed 1943).

<sup>161</sup> Immigration Act of 1917, Ch. 29, 39 Stat. 874

<sup>162</sup> Immigration Act of 1924, Ch. 190, 43 Stat. 153

<sup>163</sup> Repeal of the Chinese Exclusion Act of 1943, Pub. L. 78-199, 57 Stat. 600

<sup>164</sup> Immigration Nationality Act of 1952, Pub. L. 82-414, 66 Stat. 163

<sup>165</sup> Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

<sup>166</sup> Keith Aoki, “No Right to Own?: The Early Twentieth-Century ‘Alien Land Laws’ As A Prelude to Internment,” *Boston College Third World Law Journal*, vol. 19, no.1, 1998, [http://nationalaglawcenter.org/wp-content/uploads/assets/bibarticles/aoki\\_right.pdf](http://nationalaglawcenter.org/wp-content/uploads/assets/bibarticles/aoki_right.pdf).

<sup>167</sup> Page Act of 1875, Ch. 141, 18 Stat. 477 (repealed 1974).

<sup>168</sup> *Id.*

laborers and women brought for ‘immoral purposes,’”<sup>169</sup> historians maintain that this law was enacted based upon misogynist and racist stereotypes about Chinese women’s sexuality:<sup>170</sup>

Americans often assumed that all Chinese immigrant women were prostitutes. This fallacy became an excuse to keep Chinese women from coming to the United States. Americans feared that female Chinese immigrants would corrupt society, marry white men, and have mixed-race children, resulting in an increased non-white population. Politicians were hesitant to restrict the immigration of Chinese men because businesses profited from their cheap labor, so they focused their attention on keeping out Chinese women. The goal was to limit the size of the Chinese population in America by preventing Chinese men from bringing their families to the United States or starting new ones.<sup>171</sup>

### Chinese Exclusion Act

The Chinese Exclusion Act of 1882 served as the most extreme version of immigration restrictions during its time.<sup>172</sup> It established a ten-year immigration ban on Chinese laborers immigrating to the U.S. For those Chinese laborers already settled in America, the law required papers for re-entry into the country.<sup>173</sup> The law also allowed Congress to refuse state and federal courts the right to grant citizenship to Chinese resident aliens, but it gave both authoritative bodies the ability to deport them.<sup>174</sup> Although the Exclusion Act expired in 1892, it was extended 10 more years through the Geary Act.<sup>175</sup>

### Geary Act

The Geary Act of 1892 extended the Chinese Exclusion Act into the 20th century.<sup>176</sup> It implemented requirements for certificates of residence for people of Chinese descent.<sup>177</sup>

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<sup>169</sup> Page Law (1875), Immigration History, <https://immigrationhistory.org/item/page-act/>.

<sup>170</sup> Virginia Loh-Hagan, Jing Kwoh, Jayson Chang, and Pat Kwoh, “Excluded From History: The Page Act of 1875,” *Social Education*, vol. 86, no. 2, 2022, <https://www.socialstudies.org/system/files/2022-04/SE-86022273.pdf>; Shoba Sivaprasad Wadhia and Margaret Hu, “Decitizenizing Asian Pacific American Women,” 93 *Colorado Law Rev.* 2022, [https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1459&context=fac\\_works](https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1459&context=fac_works); New York Historical Society, “Page Act, 1875,” <https://wams.nyhistory.org/industry-and-empire/expansion-and-empire/page-act-1875/>.

<sup>171</sup> New York Historical Society, “Page Act, 1875,” <https://wams.nyhistory.org/industry-and-empire/expansion-and-empire/page-act-1875/>.

<sup>172</sup> Chinese Exclusion Act of 1882, Ch. 126, 22 Stat. 58 (repealed 1943); Chinese Exclusion Act, Record Group No.11. (1882), National Archives, <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

<sup>173</sup> Chinese Exclusion Act, Record Group No.11. (1882), National Archives, <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> The Geary Act of 1892, Ch. 60, 27 Stat. 25 (repealed 1943); Chinese Exclusion Act, Record Group No.11. (1882), National Archives, <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

<sup>177</sup> The Geary Act of 1892, Ch. 60, Sec. 6.

Previously, this documentation was only necessary for re-entry into the United States.<sup>178</sup> The Geary Act, however, called for a certificate of residency to prove the legality and the already established homestead for people of Chinese descent.<sup>179</sup> Without this documentation, people of Chinese descent were subject to deportation.<sup>180</sup> The government required people of Chinese descent to obtain a certificate within one year of the legislation's enactment.<sup>181</sup> If an individual did not obtain the certificate, then they had to establish "by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act."<sup>182</sup>

### Immigration Act of 1917 (Barred Zone Act)

The Immigration Act of 1917, known also as the Asiatic Barred Zone Act, prohibited persons from the Asiatic Barred Zone from entering the United States.<sup>183</sup> The Asiatic Barred Zone, which was defined in the Immigration Act of 1917, included persons who were "natives of an area including, roughly, the East Indies, Western China, French Indochina, Siam, Burma, India, Bhutan, Nepal, Eastern Afghanistan, Turkestan, the Kirghis Steppe, and southeastern portion of the Arabian Peninsula."<sup>184</sup>

The Barred Zone Act required the passage of a literacy test. It excluded from admission "[a]ll aliens over sixteen years of age, physically capable of reading, who cannot read the English language, or some other language or dialect, including Hebrew or Yiddish...".<sup>185</sup> An exception to the literacy test was made for those who were able to prove that they were immigrating to the U.S. in order to "avoid religious persecution" in their last country of permanent residence.<sup>186</sup>

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<sup>178</sup> Chinese Exclusion Act, Record Group No.11. (1882), National Archives, <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

<sup>179</sup> Ibid.

<sup>180</sup> Chinese Exclusion Act, Record Group No.11. (1882), National Archives, <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

<sup>181</sup> Text of the Geary Act of 1892 (Extends Chinese Exclusion Act of 1882 for Ten Years), Fifty-Second Congress, Session I. 1892. Chapter 60. An Act to Prohibit the Coming of Chinese Persons into the United States, <https://loveman.sdsu.edu/docs/1892GearyAct.pdf>.

<sup>182</sup> Ibid.

<sup>183</sup> Immigration Act of 1917, Ch. 29, 39 Stat. 874.

<sup>184</sup> Marian L. Smith, Race, Nationality, and Reality, National Archives, Summer 2002, Vol 34, No. 2, <https://www.archives.gov/publications/prologue/2002/summer/immigration-law-1#nt27>; see Immigration Act of 1917, Ch. 29, 39 Stat. 876.

<sup>185</sup> Immigration Act of 1917, Ch. 29, 39 Stat. 877; Immigration Act of 1917 (Barred Zone Act), Immigration History, <https://immigrationhistory.org/item/1917-barred-zone-act/>.

<sup>186</sup> Ibid.

## The Immigration Act of 1924

The Immigration Act of 1924 (also known as the Johnson-Reed Act) imposed a more extreme immigration quota compared to that of the Geary Act.<sup>187</sup> It “created a permanent quota system based on ‘national origin.’”<sup>188</sup> The Immigration Act of 1924 “limited the number of immigrants that could be admitted to the U.S. to two percent of the total number of individuals from each nationality that resided in the U.S. in 1890.”<sup>189</sup> It allowed no more than a maximum of 150,000 total immigrants per year;<sup>190</sup> however, it prohibited all Japanese immigration to the United States.<sup>191</sup> The Immigration Act of 1924 was not lifted until 1952.<sup>192</sup>

The “national origins” quotas imposed by this act were enforced by a system of “remote control.”<sup>193</sup> It required the U.S. consulate or embassy closest to the applicant’s home abroad to evaluate the visa application and award permission prior to entry into the United States. This ensured that “the hereditary stuff out of which future immigrants were made would have to be compatible racially with American ideals.”<sup>194</sup> The quota system based on 2 percent of the 1890 census population favored Europeans from the North and West who were considered to be of “higher intelligence” and provided “the best material for American citizenship” (see Table 3). This quota system remained the primary principle determining admissibility to the United States until 1965.<sup>195</sup>

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<sup>187</sup> Immigration Act of 1924, Ch. 190, 43 Stat. 153; The Immigration Act of 1924, History, Art & Archives, United States House of Representatives, Historical Highlights, April 12, 1924, <https://history.house.gov/Historical-Highlights/1901-1950/The-Immigration-Act-of-1924/>.

<sup>188</sup> Ibid.

<sup>189</sup> The Immigration Act of 1924, History, Art & Archives, United States House of Representatives, Historical Highlights, April 12, 1924, <https://history.house.gov/Historical-Highlights/1901-1950/The-Immigration-Act-of-1924/>.

<sup>190</sup> Immigration Act of 1924, Ch. 190, Sec. 11(b), 43 Stat. 153.

<sup>191</sup> The Immigration Act of 1924, History, Art & Archives, United States House of Representatives, Historical Highlights, April 12, 1924, <https://history.house.gov/Historical-Highlights/1901-1950/The-Immigration-Act-of-1924/>.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

Table 3 Immigration Quota Based on National Origin (1929)

(Annual Quota for Each Fiscal Year, Beginning July 1, 1929)

<i>Country or Area</i>	<i>Quota</i>	<i>Country or Area</i>	<i>Quota</i>
Afghanistan <sup>a</sup>	100	Muscat (Oman) <sup>a</sup>	100
Albania	100	Nauru (British mandate)	100
Andorra	100	Nepal <sup>a</sup>	100
Arabian peninsula	100	Netherlands	3,153
Armenia	100	New Guinea, Territory of (including appertaining islands) (Australian mandate) <sup>a</sup>	100
Australia (including Tasmania, Papua, islands pertaining to Australia)	100	New Zealand	100
Austria	1,413	Norway	2,377
Belgium	1,304	Palestine (with Trans-Jordan) (British mandate)	100
Bhutan <sup>a</sup>	100	Persia	100
Bulgaria	100	Poland	6,524
Cameroon (British mandate)	100	Portugal	440
Cameroon (French mandate)	100	Ruanda and Urundi (Belgian mandate)	100
China <sup>a</sup>	100	Rumania	295
Czechoslovakia	2,874	Russia, European and Asiatic	2,784
Danzig, Free City of	100	Samoa, Western (mandate of New Zealand)	100
Denmark	1,181	San Marino	100
Egypt	100	Siam <sup>a</sup>	100
Estonia	116	South Africa, Union of	100
Ethiopia (Abyssinia)	100	South West Africa (mandate of Union of South Africa)	100
Finland	569	Spain	252
France	3,086	Sweden	3,314
Germany	25,957	Switzerland	1,707
Great Britain and Northern Ireland	65,721	Syria and the Lebanon (French mandate)	123
Greece	307	Tanganyika (British mandate)	100
Hungary	869	Togoland (British mandate)	100
Iceland	100	Turkey	226
India <sup>a</sup>	100	Yap and other Pacific Islands under Japanese mandate <sup>a</sup>	100
Iraq (Mesopotamia)	100	Yugoslavia	845
Irish Free State	17,853		
Italy	5,802		
Japan <sup>a</sup>	100		
Latvia	236		
Liberia	100		
Liechtenstein	100		
Monaco	100		
Morocco (French & Spanish Zones and Tangier)	100		

SOURCE: *Proclamation by the President of the United States*, no. 1872, March 22, 1929, 46 Stat. 2984.

<sup>a</sup> Quotas for these countries available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States.

Source: The Immigration Act of 1924 (Johnson-Reed Act), Immigration History, <https://immigrationhistory.org/item/1924-immigration-act-johnson-reed-act/>.

### Repeal of the Chinese Exclusion Act of 1943 (Magnuson Act)

Due to the alliance formed with China during World War II, the U.S. could no longer ignore the Chinese Exclusion Act.<sup>196</sup> Although the Repeal of the Chinese Exclusion Act, which was also known as the Magnuson Act, abolished the exclusion and deportation of Chinese immigrants, it continued to impose very low annual immigration quotas.<sup>197</sup> The Act allowed about 105 Chinese immigrants per year into the U.S.<sup>198</sup> This law was passed due to the U.S. government's concerns about Chinese persons entering the country via passage from other countries.<sup>199</sup> To assuage this possibility, the Chinese Exclusion Repeal Act made it so Chinese persons immigrating to the U.S. "from anywhere in the world would be counted against the Chinese quota, even if they had never been to China or had never held Chinese nationality."<sup>200</sup>

### The Immigration and Nationality Act of 1952 (The McCarran-Walter Act)

The Immigration Nationality Act of 1952<sup>201</sup> (also known as the McCarran-Walter Act) was passed to end exclusions against Asian immigrants, however, it upheld the national origins quota system established by the Immigration Act of 1924.<sup>202</sup> This new law therefore abolished race-based quota systems and introduced "a system of preferences based on skill sets and family reunification."<sup>203</sup> However, historians argue that this law:

created symbolic opportunities for Asian immigration, though in reality it continued to discriminate against them. The law repealed the last of the existing measures to exclude Asian immigration, allotted each Asian nation a minimum quota of 100 visas each year, and eliminated laws preventing Asians from becoming naturalized citizens.<sup>204</sup>

The national origin system favored Northern and Western Europeans by distributing 85 percent of immigration quotas to countries in that region, while Asian countries received significantly fewer.<sup>205</sup> President Truman believed that Congress' decision to "maintain the national origins quota system and to establish racially constructed quotas for Asian nations" was discriminatory

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<sup>196</sup> Repeal of the Chinese Exclusion Act, 1943, United States of America Department of State, Office of the Historian, Milestones: 1937–1945, <https://history.state.gov/milestones/1937-1945/chinese-exclusion-act-repeal>.

<sup>197</sup> Repeal of the Chinese Exclusion Act of 1943, Pub. L. 78-199, 57 Stat. 600.

<sup>198</sup> Repeal of the Chinese Exclusion Act, 1943, United States of America Department of State, Office of the Historian, Milestones: 1937–1945, <https://history.state.gov/milestones/1937-1945/chinese-exclusion-act-repeal>

<sup>199</sup> Macaulay Honors College, "1943—Magnuson Act is passed," <https://macaulay.cuny.edu/seminars/brooks10/node/313/index.html>.

<sup>200</sup> Repeal of the Chinese Exclusion Act, 1943, United States of America Department of State, Office of the Historian, Milestones: 1937–1945, <https://history.state.gov/milestones/1937-1945/chinese-exclusion-act-repeal>.

<sup>201</sup> Immigration Nationality Act of 1952, Pub. L. 82-414, 66 Stat. 163.

<sup>202</sup> The Immigration and Nationality Act of 1952 (The McCarran-Walter Act), U.S. Department of State Archives, <https://2001-2009.state.gov/r/pa/ho/time/cwr/87719.htm>.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid.; Immigration History, "Immigration and Nationality Act of 1952" (The McCarran-Walter Act), <https://immigrationhistory.org/item/immigration-and-nationality-act-the-mccarran-walter-act/>.

and the law was vetoed.<sup>206</sup> However, Congress overturned Truman's veto and the law was passed.<sup>207</sup> Therefore, this law technically ended the racial quota restrictions on citizenship, while it actually expanded discriminatory national origin quotas that continued to limit Asian immigration to the U.S. for decades to come.<sup>208</sup>

### Executive Order 9066

Executive Order 9066 was issued by President Franklin Roosevelt on February 19, 1942.<sup>209</sup> The order authorized the forced removal of any persons "deemed a threat to national security from the West Coast to 'relocation centers' further inland."<sup>210</sup> After the attack on Pearl Harbor in 1941, lobbyists pressured Congress and the President to remove persons of Japanese descent (both foreign-born and American citizens) from the West Coast.<sup>211</sup> Officials with the Department of Justice cited "constitutional and ethical objections" to the removal, but the U.S. Army carried out the order.<sup>212</sup> This resulted in the establishment of Japanese internment camps, where Japanese Americans and Japanese foreign nationals were incarcerated during World War II.

The U.S. Army forcibly took approximately 122,000 Japanese men, women, and children to "assembly centers" and then later moved them to "internment camps."<sup>213</sup> These internment camps were located in remote areas of Wyoming, California, Utah, Arizona, Colorado, Idaho, and Arkansas and were isolated, fenced, and guarded.<sup>214</sup> More than half of the persons detained (about 70,000) were American citizens who lost their personal liberties, homes, and property.<sup>215</sup>

In 1988, with the passage of the Civil Liberties Act, the federal government formally acknowledged the injustice of the internment of citizens and permanent resident aliens of Japanese ancestry.<sup>216</sup> The law declared "a grave injustice was done to citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War

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<sup>206</sup> The Immigration and Nationality Act of 1952 (The McCarran-Walter Act), U.S. Department of State Archives, <https://2001-2009.state.gov/r/pa/ho/time/cwr/87719.htm>.

<sup>207</sup> *Ibid.*

<sup>208</sup> The Immigration and Nationality Act of 1952 (The McCarran-Walter Act), U.S. Department of State Archives, <https://2001-2009.state.gov/r/pa/ho/time/cwr/87719.htm>; Immigration History, "Immigration and Nationality Act of 1952 (The McCarran-Walter Act), <https://immigrationhistory.org/item/immigration-and-nationality-act-the-mccarran-walter-act/>.

<sup>209</sup> Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

<sup>210</sup> Executive Order 9066: Resulting in Japanese-American Incarceration (1942), National Archives, <https://www.archives.gov/milestone-documents/executive-order-9066>.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

<sup>213</sup> Executive Order 9066: Resulting in Japanese-American Incarceration (1942), National Archives, Milestone Documents, <https://www.archives.gov/milestone-documents/executive-order-9066>.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> The Civil Liberties Act of 1987, Publ. L. No. 100-383, 102 Stat. 903, 1988, (Codified at 50 USC app. 1989), <https://www.congress.gov/bill/100th-congress/house-bill/442>.



II.”<sup>217</sup> It provided an official governmental apology to every surviving Japanese American incarcerated because of Executive Order 9066 and acknowledged that Executive Order 9066 was “motivated by racial prejudice, wartime hysteria, and a failure of political leadership.”<sup>218</sup> Moreover, the law granted legal redress (i.e., money given for causing harm or loss to another person) in the amount of \$20,000.<sup>219</sup>

### Alien Land Laws

Prior to 1952, “Alien Land Laws” were legal attempts by states to prevent people of Asian ancestry (and other immigrants who were deemed as “non-desirable”) from owning land and property in the U.S.<sup>220</sup> There were fifteen states that enacted these Alien Land Laws: Arizona, Arkansas, California, Florida, Idaho, Louisiana, Minnesota, Montana, Nebraska, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.<sup>221</sup> These same states, which implemented alien land laws or had restrictions against immigrants, made certain Asian foreign nationals ineligible for citizenship; and consequently, property ownership.<sup>222</sup> In 1948, the U.S. Supreme Court ruled that provisions of California’s Alien Law of 1913 and 1920 violated the 14th Amendment’s Equal Protection clause.<sup>223</sup> The entire law was subsequently overturned by the California Supreme Court in 1952.<sup>224</sup>

### *Immigration and Nationality Act of 1965*

On October 3, 1965, the Immigration and Nationality Act of 1965 was signed into law by President Lyndon B. Johnson.<sup>225</sup> The law ended the limitation of immigration based on national origin, abolished the use of the federal quota system, and eliminated legally discrimination against Asian immigrants and those outside of western Europe.<sup>226</sup> In the 1950s, more than half of all immigrants to the U.S. were European, by comparison, immigrants from Asian countries represented 6 percent

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<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> Bruce A. Castleman, “California’s Alien Land Laws,” *Western Legal History*, vol. 7, no. 1, 1994, [https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/wlehists7&id=33&men\\_tab=srchresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/wlehists7&id=33&men_tab=srchresults).

<sup>221</sup> Equal Justice Initiative, “California Law Prohibits Asian Immigrants from Owning Land,” May 3, 1913, <https://calendar.eji.org/racial-injustice/may/3>.

<sup>222</sup> See e.g., Nicole Grant, “White Supremacy and the Alien Land Laws of Washington State,” Seattle Civil Rights & Labor History Project, University of Washington, [https://depts.washington.edu/civilr/alien\\_land\\_laws.htm](https://depts.washington.edu/civilr/alien_land_laws.htm).

<sup>223</sup> See *Oyama v. California*, 332 U.S. 633 (1948) (provisions of the California Alien Land Laws violated the 14<sup>th</sup> Amendment’s Equal Protection clause).

<sup>224</sup> See *Fujii v. State of California*, 38 Cal. 2d 718, 242 P.2d 617.

<sup>225</sup> Immigration and Nationality Act of 1965, Pub. L. 89-236, 79 Stat. 911 (Codified at 8 U.S.C. Ch. 12); Immigration and Nationality Act of 1965, United States House of Representatives, History, Art, & Archives, Historical Highlights, Oct. 3, 1965, <https://history.house.gov/Historical-Highlights/1951-2000/Immigration-and-Nationality-Act-of-1965/>.

<sup>226</sup> Immigration and Nationality Act of 1965, Pub. L. 89-236, 79 Stat. 911 (Codified at 8 U.S.C. Ch. 12).

of the immigration population.<sup>227</sup> Conversely, in the 1990s, the immigration population among those of European descent was lower compared to those of Asian descent (16 percent<sup>228</sup> and 31 percent,<sup>229</sup> respectively).

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<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> U.S. Immigration Since 1965, History.com Editors, Mar. 5, 2010, <https://www.history.com/topics/immigration/us-immigration-since-1965>.

## Historical Context of Asian Disease Blaming and Asian Stereotyping

The passage of anti-Asian laws, which limited Asian immigration because people of Asian descent were perceived as being racially incompatible with American ideals,<sup>230</sup> was also accompanied by a proliferation of stereotypes about Asian communities. Various stereotypes of Asian Americans have persisted into modern times and have contributed to the anti-Asian sentiment and bias-motivated attacks experienced during the COVID-19 pandemic.<sup>231</sup>

One early stereotype against Asian people was viewing them as “pollutants,” or that their existence in the U.S. was an alien presence that threatened to pollute to the White populace.<sup>232</sup> This stereotype also set out the notion that Asian Americans were “forever foreigners” who were unassimilable into American culture or ideals.<sup>233</sup>

Another stereotype was the “coolie,” which referred to the Chinese immigrant worker as racially segregated into a state of subordination that provided cheap labor.<sup>234</sup> The coolie was portrayed as unfree and servile, and was perceived as a threat to the White working man and his family.<sup>235</sup> This stereotype became popular in the U.S. in the mid-19<sup>th</sup> century, especially during the construction of the railroads, which benefited from the exploitation of cheap Chinese labor.<sup>236</sup> Companies like the Central Pacific Railroad Company signed laborers — who were predominantly Asian — into multi-year contracts and “because the workers would labor for low wages and live in substandard living conditions, the word ‘coolie’ became a derogatory code for ‘Asian’ (both East and South) in the United States.”<sup>237</sup>

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<sup>230</sup> The Immigration Act of 1924 (Johnson-Reed Act), Immigration History, <https://immigrationhistory.org/item/1924-immigration-act-johnson-reed-act/>.

<sup>231</sup> Jordan Daley, Natalie Gallagher, and Galen Bodenhausen, “The Pandemic and the ‘Perpetual Foreigner’: How Threats Posed by the COVID-19 Pandemic Relate to Stereotyping of Asian Americans,” *Frontiers in Psychology*, vol. 13, Feb. 2022, <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.821891/full>; Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Mahasin Mujahid, Thu Nguyen, and Rucker Johnson, “After ‘China Virus’ Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans,” *Health Education and Behavior*, vol. 47, no. 6, 2020, <https://journals.sagepub.com/doi/pdf/10.1177/1090198120957949>; Angela Gover, Shannon Harper, and Lynn Langton, “Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality,” *American Journal of Criminal Justice*, vol. 45, July 2020, <https://link.springer.com/article/10.1007/s12103-020-09545-1>.

<sup>232</sup> Robert G. Lee, “Orientals: Asian Americans in Popular Culture,” Temple University Press, Philadelphia. (1999).

<sup>233</sup> Yao Li and Harvey Nicholson, Jr., “When ‘model minorities’ become ‘yellow peril’ – Othering and the racialization of Asian Americans in the COVID-19 pandemic,” *Social Compass*, vol. 15, no. 2, Feb. 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7995194/>.

<sup>234</sup> Jane Junn, “From Coolie to Model Minority: U.S. Immigration Policy and the Construction of Racial Identity,” *Du Bois Review*, vol. 4, no. 2, 2007, <http://pscourses.ucsd.edu/ps108/7%20Immigrant%20Integration%20in%20US/Junn%202007-%20From%20coolie%20to%20model%20minority.pdf>.

<sup>235</sup> Robert G. Lee, “Orientals: Asian Americans in Popular Culture,” Temple University Press, Philadelphia, (1999).

<sup>236</sup> Ibid.

<sup>237</sup> Lakshmi Gandhi, “A History of Indentured Labor Gives ‘Coolie’ Its Sting,” *NPR*, Nov. 25, 2013, <https://www.npr.org/sections/codeswitch/2013/11/25/247166284/a-history-of-indentured-labor-gives-coolie-its->

Another prominent stereotype was that Asian immigration represented “yellow peril,” reflecting national unease due to a growing Asian population that was viewed as a direct threat to the White race and western civilization.<sup>238</sup> This stereotype promoted the idea of Asian people as “dishonest, diseased invaders, viewed as culturally and politically inferior to Whites, and framed as a great threat to Whites.”<sup>239</sup>

The 1960s and 1970s saw a shift of Asian stereotypes with the onset of the “model minority” myth, which imagines all people of Asian descent as a “successful case of ethnic assimilation.”<sup>240</sup> This stereotype often focuses on some Asian groups’ high educational attainment and socioeconomic status, and specifically focuses on these successes as being indicative of “Asian culture.”<sup>241</sup> Though sometimes understood as a positive preconception, the model minority stereotype erases lived experiences and collapses members of heterogeneous groups into an inauthentic, Pan-Asian caricature.<sup>242</sup> This image could then also be held up to and used against Black Americans and Latino Americans as “a model for nonmilitant, nonpolitical upward mobility.”<sup>243</sup> This stereotype can also stoke racial divisions between Asian Americans and other communities of color and leads to “discounting structural and cumulative disadvantages that other minority communities face and to denigrate other racial minorities as ‘problem’ minorities.”<sup>244</sup>

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sting; Jane Junn, “From Coolie to Model Minority: U.S. Immigration Policy and the Construction of Racial Identity,” *Du Bois Review*, vol. 4, no. 2, 2007,

<http://pscourses.ucsd.edu/ps108/7%20Immigrant%20Integration%20in%20US/Junn%202007-%20From%20coolie%20to%20model%20minority.pdf>.

<sup>238</sup> John Kuo Wei Tchen and Dylan Yeats, *Yellow Peril: 19<sup>th</sup>-Century Scapegoating*, AAWW.org, Mar. 5, 2014, <https://aaww.org/yellow-peril-scapegoating/>.

<sup>239</sup> Yao Li and Harvey Nicholson, Jr., “When ‘model minorities’ become ‘yellow peril’ – Othering and the racialization of Asian Americans in the COVID-19 pandemic,” *Social Compass*, vol. 15, no. 2, Feb. 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7995194/>; Stephen Del Visco, “Yellow peril, red scare: race and communism in National Review,” *The Mechanisms of Racialization Beyond the Black/White Binary*, Routledge, 2019.

<sup>240</sup> Yao Li and Harvey L. Nicholson Jr., “When ‘Model Minorities’ Become ‘Yellow Peril’—Othering and the Racialization of Asian Americans in the COVID-19 Pandemic,” *Sociology Compass*, Jan. 2021, <https://doi.org/10.1111/soc4.12849Ci>; Viet Thanh Nguyen, “Asian Americans Are Still Caught in the Trap of the ‘Model Minority’ Stereotype. And It Creates Inequality for All,” *Time*, June 26, 2020, <https://time.com/5859206/anti-asian-racism-america/>.

<sup>241</sup> Yao Li and Harvey L. Nicholson Jr., “When ‘Model Minorities’ Become ‘Yellow Peril’—Othering and the Racialization of Asian Americans in the COVID-19 Pandemic,” *Sociology Compass*, Jan. 2021, <https://doi.org/10.1111/soc4.12849Ci>; Min Zhou, “Are Asian Americans becoming ‘white’?” *Contexts*, vol. 3, no. 1, 2004, <https://journals.sagepub.com/doi/pdf/10.1525/ctx.2004.3.1.29>.

<sup>242</sup> Robert G. Lee, “Orientals: Asian Americans in Popular Culture,” Temple University Press, Philadelphia (1999).

<sup>243</sup> Ibid.; see also, Yuko Kawai, “Stereotyping Asian Americans: The Dialectic of the Model Minority and the Yellow Peril,” *Howard Journal of Communications*, vol. 16, no. 2, 2005, <https://www.tandfonline.com/doi/abs/10.1080/10646170590948974?role=button&needAccess=true&journalCode=uhjc20>; Frieda Wong and Richard Halgin, “The ‘Model Minority’: Bane or Blessing for Asian Americans,” *Journal of Multicultural Counseling and Development*, vol. 34, no. 1, Jan. 2006, <https://onlinelibrary.wiley.com/doi/abs/10.1002/j.2161-1912.2006.tb00025.x>.

<sup>244</sup> Yao Li and Harvey L. Nicholson Jr., “When ‘Model Minorities’ Become ‘Yellow Peril’—Othering and the Racialization of Asian Americans in the COVID-19 Pandemic,” *Sociology Compass*, Jan. 2021, <https://doi.org/10.1111/soc4.12849Ci>.

Asian stereotypes have also been reinforced through discriminatory and exclusionary policies.<sup>245</sup> The perception and sentiment of these stereotypes is that Asian Americans are a threat to the U.S. and “perpetual foreigners,” to American life which promotes anti-Asian prejudice and xenophobia.<sup>246</sup> Michael Yaki, former commissioner to the U.S. Commission on Civil Rights testified:

There is something that has been unique about our American experience, about the experience of Asian Americans in this country in which somehow, we are always seen as the other. We are always seen as having our loyalty questioned, where we are sent en masse into the desert and other hellholes during World War II because, out of all of the nationalities, out of all of the ethnicities in this country, many of whom had relatives, or cousins, or whatever fighting against us on the other side in the axis, only the ones who looked or had my kind of surname were put into camps in this country. Somehow or another, it’s our loyalty that’s always been questioned. It’s our commitment to this country that’s always been put at doubt.<sup>247</sup>

These stereotypes and negative views of Asian people have persisted for decades and have contributed to the rise of anti-Asian hate violence that these communities experienced during the COVID-19 pandemic.<sup>248</sup>

### The Intersection of Hate Crimes and Asian Stereotypes

Hate crimes against Asian Americans in the U.S. is not a new phenomenon. In 1885, in Rock Springs, Wyoming, 28 Chinese workers were killed in what is known as the Rock Springs Massacre.<sup>249</sup> The attack was perpetrated by 150 White miners, who were “outraged by the

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<sup>245</sup> See *supra* notes 156-229 (discussion of anti-Asian immigration laws); Angela Gover, Shannon Harper, and Lynn Langton, “Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality,” *American Journal of Criminal Justice*, vol. 45, July 2020, <https://link.springer.com/article/10.1007/s12103-020-09545-1>.

<sup>246</sup> Jordan Daley, Natalie Gallagher, and Galen Bodenhausen, “The Pandemic and the ‘Perpetual Foreigner’: How Threats Posted by the COVID-19 Pandemic Relate to Stereotyping of Asian Americans,” *Frontiers in Psychology*, vol. 13, Feb. 2022, <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.821891/full>; Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Mahasin Mujahid, Thu Nguyen, and Rucker Johnson, “After ‘China Virus’ Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans,” *Health Education and Behavior*, vol. 47, no. 6, 2020, <https://journals.sagepub.com/doi/pdf/10.1177/1090198120957949>.

<sup>247</sup> Yaki Testimony, pp. 156-57.

<sup>248</sup> Jordan Daley, Natalie Gallagher, and Galen Bodenhausen, “The Pandemic and the ‘Perpetual Foreigner’: How Threats Posted by the COVID-19 Pandemic Relate to Stereotyping of Asian Americans,” *Frontiers in Psychology*, vol. 13, Feb. 2022, <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.821891/full>; Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Mahasin Mujahid, Thu Nguyen, and Rucker Johnson, “After ‘China Virus’ Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans,” *Health Education and Behavior*, vol. 47, no. 6, 2020, <https://journals.sagepub.com/doi/pdf/10.1177/1090198120957949>.

<sup>249</sup> Library of Congress, “Rock Springs Massacre: Topics Chronicling America,” <https://guides.loc.gov/chronicling-america-rock-springs-massacre>; History, “Chinese Miners are Massacred in Wyoming Territory,” History.com Editors, Nov. 16, 2009, <https://www.history.com/this-day-in-history/whites-massacre-chinese-in-wyoming-territory>.

company[’s] decision to allow Chinese miners to work the richest coal seams.”<sup>250</sup> A mob of White miners attacked the town’s Chinatown neighborhood killing 28 Chinese miners, wounding 15 others, and driving several hundred Chinese residents out of the town.<sup>251</sup> No legal action was ever taken against any of the participants.<sup>252</sup> Law enforcement failed to arrest the perpetrators and not one attacker was prosecuted at the state or federal level.<sup>253</sup> However, the Union Pacific Coal Mine fired 45 of the White miners who were involved in the massacre.<sup>254</sup> This heinous act not only demonstrated how extreme anti-Asian bias was at the time and the perceived threat that Asians workers posed to the White working man and his family; but also, the lack of legal action that followed the murders demonstrated the systematic devaluing of Asian American lives in the U.S.

Another significant hate crime event occurred in 1982, when Vincent Chin was beaten to death by two White autoworkers in a racially motivated incident in Detroit.<sup>255</sup> During this time period, the U.S. auto industry was collapsing, and Japanese carmakers were on the rise.<sup>256</sup> Mr. Chin’s killers were angered by the loss of American jobs due to the rising importation of Japanese vehicles and attacked Mr. Chin because they believed he was Japanese.<sup>257</sup> However, Mr. Chin was Chinese, not Japanese.<sup>258</sup> An eyewitness overheard one of the attackers using an obscenity and telling Mr. Chin that it was “because of [Chin]” that people like him were out of work.<sup>259</sup> This hate crime demonstrates the consequences of the dangerous stereotype of Asian Americans as “cheap labor threatening the White working class.”<sup>260</sup> The killers, Ronald Ebens and Michael Nitz, were arrested, but neither received any prison time for their actions.<sup>261</sup> Rather, they were sentenced to probation and had to pay a fine of roughly \$3,000.<sup>262</sup>

In August 1999, a self-professed white supremacist, Buford Furrow, murdered Joseph Santos Iletto, a Filipino American postal worker.<sup>263</sup> Furrow shot and killed Iletto during his mail route. Furrow

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<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Library of Congress, “Rock Springs Massacre: Topics Chronicling America,” <https://guides.loc.gov/chronicling-america-rock-springs-massacre>; History, “Chinese Miners are Massacred in Wyoming Territory,” History.com Editors, Nov. 16, 2009, <https://www.history.com/this-day-in-history/whites-massacre-chinese-in-wyoming-territory>.

<sup>254</sup> Ibid.

<sup>255</sup> Mitch Smith, “Decades After Infamous Beating Death, Recent Attacks Haunt Asian Americans,” *The New York Times*, June 16, 2022, <https://www.nytimes.com/2022/06/16/us/vincent-chin-anti-asian-attack-detroit.html>.

<sup>256</sup> Ibid.

<sup>257</sup> Wynne Davis, “Vincent Chin Was Killed 40 Years Ago. Here’s Why His Case Continues to Resonate,” *NPR*, June 19, 2022, <https://www.npr.org/2022/06/19/1106118117/vincent-chin-aapi-hate-incidents>.

<sup>258</sup> Ibid.

<sup>259</sup> Mitch Smith, “Decades After Infamous Beating Death, Recent Attacks Haunt Asian Americans,” *The New York Times*, June 16, 2022, <https://www.nytimes.com/2022/06/16/us/vincent-chin-anti-asian-attack-detroit.html>.

<sup>260</sup> Robert G. Lee, *Orientalism: Asian Americans in Popular Culture*, Temple University Press, Philadelphia, (1999).

<sup>261</sup> Ibid.

<sup>262</sup> Mitch Smith, “Decades After Infamous Beating Death, Recent Attacks Haunt Asian Americans,” *The New York Times*, June 16, 2022, <https://www.nytimes.com/2022/06/16/us/vincent-chin-anti-asian-attack-detroit.html>.

<sup>263</sup> Stewart Kwoh, “A Family Educates to Prevent Hate Crimes: The Case of Joseph Iletto,” in *Untold Civil Rights Stories: Asian Americans Speak Out for Justice*, Asian Americans Advancing Justice and UCLA Asian American Studies Center, <https://archive.advancingjustice-la.org/sites/default/files/UCRS%206%20Joseph%20Iletto%20story%20r2.pdf>.

later confessed that he killed Iletto because “he looked Latino or Asian and because he was a federal employee. Furrow also stated that Joseph’s racial background and employment with the government made him a good ‘target of opportunity.’”<sup>264</sup> A few hours later, Furrow fired shots into a playground at a Jewish Community Center, wounding several children and an employee. Furrow was indicted on hate crime charges and convicted of two life sentences without possibility of parole, 110 years in prison, and payment of \$690,292 in restitution.<sup>265</sup>

In August 2006, an attack on two Chinese teenagers in Queens, New York brought attention to racial and xenophobic tensions between White residents and Chinese and Korean immigrants.<sup>266</sup> Susan Seinfeld, district manager of a community board for the neighborhood, explained “[t]here’s an undercurrent of suspicion of the new immigrant — what are they doing, what are they building, what are they putting in that store?”<sup>267</sup> One of the assailants, Kevin Brown, pled guilty to second-degree assault as a hate crime and third-degree assault as a hate crime and was sentenced to three-and-a-half years in state prison and two-and-a-half years post-release supervision. Paul Heavey, the other perpetrator, was sentenced to five years of probation and 75 hours of community service and was ordered to offer a formal apology in court to the two Asian men he assaulted.<sup>268</sup>

More recently, in March 2021, Robert Long went on a shooting rampage at three Atlanta area spas, killing eight people.<sup>269</sup> Long claimed that he had a “sexual addiction” and tried to eliminate his “temptation” by targeting the massage parlors as a form of vengeance.<sup>270</sup> One survivor of the shootings recalled the shooter saying that he would “kill all Asians.”<sup>271</sup> Of the eight victims, seven were women and six were Asian.<sup>272</sup> Long was sentenced to life in prison without parole, plus an additional 35 years.<sup>273</sup> Both the FBI and Cherokee County’s District Attorney’s office investigated

<sup>264</sup> *Ibid.*, 3.

<sup>265</sup> *Ibid.*, 7.

<sup>266</sup> Michelle O’Donnell, “Accusations of a Hate Crime Expose Tensions,” *New York Times*, Aug. 15, 2006, <https://www.nytimes.com/2006/08/15/nyregion/15hate.html>.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Gazette*, “Bias Attack Participant Apologies in Court,” *Queens Gazette*, May 23, 2007, <https://www.qgazette.com/articles/bias-attack-participant-apologizes-in-court/>.

<sup>269</sup> Richard Fausset, Nicholas Bogel-Burroughs, and Marie Fazio, “8 Dead in Atlanta Spa Shootings, With Fears of Anti-Asian Bias,” *The New York Times*, Mar. 17, 2021, <https://www.nytimes.com/live/2021/03/17/us/shooting-atlanta-acworth>.

<sup>270</sup> *Ibid.*; Meredith Deliso, “Suspect in Atlanta Spa Shootings Seeking to Avoid Death Row,” *ABC News*, Apr. 20, 2022, <https://abcnews.go.com/US/suspect-atlanta-spa-shootings-seeking-avoid-death-row/story?id=84196035#:~:text=He%20was%20sentenced%20to%20life,of%20murder%2C%20among%20other%20charges>.

<sup>271</sup> Nelson Oliveira, “Atlanta Shootings Increase Fear in Asian American Communities as #StopAsianHate Trends on Social Media,” *Daily News*, Mar. 17, 2021, <https://www.nydailynews.com/news/national/ny-asian-american-communities-mourn-victims-atlanta-shootings-20210317-kgygtdndhjyhkcoo4vuokhlay-story.html>.

<sup>272</sup> Richard Fausset, Nicholas Bogel-Burroughs, and Marie Fazio, “8 Dead in Atlanta Spa Shootings, With Fears of Anti-Asian Bias,” *The New York Times*, Mar. 17, 2021, <https://www.nytimes.com/live/2021/03/17/us/shooting-atlanta-acworth>.

<sup>273</sup> Meredith Deliso, “Suspect in Atlanta Spa Shootings Seeking to Avoid Death Row,” *ABC News*, Apr. 20, 2022, <https://abcnews.go.com/US/suspect-atlanta-spa-shootings-seeking-avoid-death-row/story?id=84196035#:~:text=He%20was%20sentenced%20to%20life,of%20murder%2C%20among%20other%20charges>.

whether to designate the shootings as a hate crime, but determined not to add that enhancement to Long's charges.<sup>274</sup> Long's sentence was part of a plea agreement whereby he "admitted to all charges in Cherokee County, including malice murder, felony murder, attempt to commit murder and aggravated assault."<sup>275</sup> While this was a heinous act regardless of the victims' race, it also demonstrates an inextricable link to racism and misogyny against Asian women as well the longstanding perception of Asian women as "figures of forbidden desire" and exemplifies the harm caused by these stereotypes.<sup>276</sup>

Additionally, in a 2022 study by the National Asian Pacific American Women's Forum (NAPAWF), the survey found that nearly three in four (74 percent) of Asian American, Native Hawaiian, and Pacific Islander (AANHPI) women reported experiencing racism and/or discrimination over the past 12 months, and 40 percent reported experiencing sexual harassment.<sup>277</sup> Regarding public safety, over half (51 percent) of East Asian respondents reported they felt less safe than at the beginning of the pandemic, which was almost 20 points higher than other AANHPI subgroups.<sup>278</sup>

Hate incidents and hate crimes have impacted many Asian communities, and not solely people of East Asian descent. Manjusha Kulkarni, executive director of AAPI Equity Alliance and co-founder of Stop AAPI Hate, testified to the Commission that the rise of hate incidents have also impacted Southeast Asian and South Asian communities.<sup>279</sup> According to a 2021 survey, 20 percent of South Asian people have also experienced hate incidents.<sup>280</sup> As with many hate crimes and incidents, these events do not garner national attention, but some of the most devastating examples from this century include a 2021 shooting in Indianapolis that resulted in the death of four Sikh Americans, the murder of seven Sikh Americans in Oak Creek, Wisconsin in 2012, and the murder of three South Asian people directly following 9/11.<sup>281</sup>

The myth of the "perpetual foreigner" continues to impact the rise of anti-Asian racism and discrimination during the pandemic. For instance, at a briefing before the Massachusetts State Advisory Committee to the Commission, Ani Vong, a daughter of Cambodian survivors of the

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<sup>274</sup> Christian Boone and Chelsea Prince, "'Swift justice': Spa shooter Gets 4 Consecutive Life Sentences in Cherokee Plea Deal," *The Atlanta Journal-Constitution*, July 27, 2021, <https://www.ajc.com/news/crime/breaking-cherokee-prosecutor-announces-plea-deal-in-spa-shootings/R5JEDHK5KRFJRGQO4KP5D3WEFI/>.

<sup>275</sup> Kate Brumback, "Man Pleads Guilty to 4 Asian Spa Killings, Sentenced to Life," APNews.com, July 28, 2021, <https://apnews.com/article/shootings-georgia-massage-business-shootings-4c9d611102b25b49b8bfec276278c472>.

<sup>276</sup> Robert G. Lee, *Orientalism: Asian Americans in Popular Culture*, Temple University Press, Philadelphia. (1999).

<sup>277</sup> National Asian Pacific American Women's Forum, "The State of Safety for Asian American and Pacific Islander Women in the U.S.," Mar. 2022, <https://www.napawf.org/assets/download/napawf-state-of-safety-report.pdf>.

<sup>278</sup> Ibid.

<sup>279</sup> Manjusha Kulkarni, Executive Director of AAPI Equity Alliance and co-founder for Stop AAPI Hate, testimony, *Anti-Asian Racism Briefing*, p. 98.

<sup>280</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, "Stop AAPI Hate National Report, 03/19/2020 – 9/30/2021," Nov. 2021, <https://stopaapihate.org/wp-content/uploads/2021/11/21-SAH-NationalReport2-v2.pdf>.

<sup>281</sup> Kulkarni Testimony, *Anti-Asian Racism Briefing Transcript*, p. 98.



Khmer Rouge and whose father was beaten to death by White men in a traffic dispute when she was a child explained:

I am afraid. We have always been afraid ... I've been called a chink, a gook... I've been spat on... I've been asked if I understand English or can read English ... I've been told to go back to my country countless times, but this is this is my country. I've been here since I was two months old... But I am not White American, so I will always be treated as a foreigner in my own country.<sup>282</sup>

Additionally, in a 2021 survey, researchers found that approximately one in four (27 percent) Asian Americans reported experiencing a hate incident, and more than two-thirds (64 percent) reported being asked: “where they’re really from.”<sup>283</sup> The survey also found that Asian Americans were highly likely to be asked whether they spoke English or to “Americanize” their names (45 and 20 percent, respectively).<sup>284</sup> Another study that surveyed White individuals about “perceived Americanness” found that respondents consistently perceived Asian people as less American, compared to Black or other White people.<sup>285</sup> The study’s authors also found that “White participants who blamed China for the pandemic were also more likely to apply the perpetual foreigner stereotype to Asian Americans.”<sup>286</sup>

The historical evidence of Asian Americans’ experience of prejudice and racism in the U.S. is irrefutable.<sup>287</sup> These stereotypes have influenced non-Asian perceptions of persons of Asian descent. These biases and stereotypes have been destructive to those whom they are being applied, as well as to those who apply them. Moreover, the intersection of racism within the narrative of a global pandemic has amplified the health crisis with respects to the spread of disease and the spread of anti-Asian prejudice and discrimination.

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<sup>282</sup> Ani Vong, “Hate Crimes Against Asian American Pacific Islander Communities in Massachusetts,” Aug. 2021, p. 8, <https://www.usccr.gov/files/2021-10/ma-sac-aapi-hate-crimes.pdf>.

<sup>283</sup> Niala Boodhoo, “Poll: 1 out of 4 Asian Americans has experienced a hate incident,” *Axios*, Mar. 30, 2021, <https://www.axios.com/2021/03/30/poll-1-in-4-asian-americans-experience-hate-incident>.

<sup>284</sup> *Ibid.*

<sup>285</sup> Jordan Daley, Natalie Gallagher, and Galen Bodenhausen, “The Pandemic and the ‘Perpetual Foreigner’: How Threats Posted by the COVID-19 Pandemic Relate to Stereotyping of Asian Americans,” *Frontiers in Psychology*, vol. 13, Feb. 2022, <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.821891/full>.

<sup>286</sup> *Ibid.*; *see also*, Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Mahasin Mujahid, Thu Nguyen, and Rucker Johnson, “After ‘China Virus’ Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans,” *Health Education and Behavior*, vol. 47, no. 6, 2020, <https://journals.sagepub.com/doi/pdf/10.1177/1090198120957949>

<sup>287</sup> *See supra* 156-229 (Anti-Asian Laws and Historical Racism Against Asians).

## Coronavirus Disease 2019

We live in an interconnected world,<sup>288</sup> and global travel is easier now than at any other time in history.<sup>289</sup> In the 21<sup>st</sup> century, it takes roughly 50 hours to fly around the world on a commercial plane;<sup>290</sup> and this increase in travel has also allowed pathogens to spread more quickly and easily across the globe.<sup>291</sup> Epidemiologists estimate that it takes about 36 hours for a pathogen like the Severe Acute Respiratory Syndrome Coronavirus 2 (the virus that caused COVID-19) to spread.<sup>292</sup> The combination of increased transnational travel, lack of communication, and a slow public health response resulted in the COVID-19 virus becoming a global pandemic.<sup>293</sup>

As of April 10, 2023, the Centers for Disease Control and Prevention (CDC) reported 1,124,816 COVID-related deaths in the U.S.;<sup>294</sup> and global deaths related to the virus reached 6,893,190.<sup>295</sup> At the publication of this report, it has been four years since the start of the COVID-19 pandemic. Important dates regarding the pandemic's timeline and the response efforts include:

- December 31, 2019, the World Health Organization's (WHO) Country Office in China was informed of several cases of a pneumonia of unknown cause in Wuhan, China.
- January 1, 2020, the Huanan Seafood Wholesale Market in Wuhan was closed as it was identified as the location of the initial cases.<sup>296</sup>

<sup>288</sup> Diane Boudreau, Melissa McDaniel, et al., "The Global Network," National Geographic, Resource Library, <https://education.nationalgeographic.org/resource/global-network>.

<sup>289</sup> Maya Kachroo-Levine, "What Travel Looked Like Through the Decades," Travel and Leisure, July 20, 2021, <https://www.travelandleisure.com/travel-tips/what-travel-looked-like-decades>.

<sup>290</sup> Sachindra Karki, "How Long Does It Take to Fly Around the World?," Aviation Nepal, Nov. 21, 2021, <https://www.aviationnepal.com/how-long-does-it-take-to-fly-around-the-world/#:~:text=An%20average%20commercial%20jetliner%20has,trip%20across%20the%20world%2C%20however%2C>.

<sup>291</sup> U.S. Global Leadership Coalition, "COVID-19: Defeating a Global Pandemic," 2022, [https://www.usglc.org/coronavirus/?gclid=EAIaIQobChMIoaX4mYH3-wIVROHICH14RQEJEAAYAAAEgIHOPD\\_BwE](https://www.usglc.org/coronavirus/?gclid=EAIaIQobChMIoaX4mYH3-wIVROHICH14RQEJEAAYAAAEgIHOPD_BwE).

<sup>292</sup> Ibid.

<sup>293</sup> U.S. Global Leadership Coalition, "COVID-19: Defeating a Global Pandemic," 2022, [https://www.usglc.org/coronavirus/?gclid=EAIaIQobChMIoaX4mYH3-wIVROHICH14RQEJEAAYAAAEgIHOPD\\_BwE](https://www.usglc.org/coronavirus/?gclid=EAIaIQobChMIoaX4mYH3-wIVROHICH14RQEJEAAYAAAEgIHOPD_BwE); David J. Sencer CDC Museum, CDC Museum COVID-19 Timeline, <https://www.cdc.gov/museum/timeline/covid19.html>.

<sup>294</sup> CDC, Centers for Disease Control and Prevention, National Center for Health Statistics, COVID-19 Death Data, <https://www.cdc.gov/nchs/covid19/mortality-overview.htm> (accessed Apr. 10, 2023).

<sup>295</sup> World Health Organization, WHO Coronavirus (COVID-19) Dashboard, <https://covid19.who.int/#:~:text=Globally%2C%20as%20of%205%3A36pm,6%2C621%2C060%20deaths%2C%20reported%20to%20WHO>.

<sup>296</sup> In January 2020, WHO stated that evidence suggested the origins of the SARS-CoV-2 virus originated from a market in Wuhan. As of the writing of this report, however, data regarding the origins of the SARS-CoV-2 virus are still inconclusive. See e.g., Committee on Oversight and Accountability, "COVID Origins Hearing Wrap Up: Facts, Science, Evidence Point to a Wuhan Lab Leak," Mar. 8, 2023, <https://oversight.house.gov/release/covid-origins-hearing-wrap-up-facts-science-evidence-point-to-a-wuhan-lab-leak%EF%BF%BC/>; Dyani Lewis, Max Kozlov, and Mariana Lenharo, "COVID-origins data from Wuhan market published: what scientists think," *Nature*, vol. 616 (2023), <https://www.nature.com/articles/d41586-023-00998-y>.

- January 3, 2020, China informed the WHO that it identified over 40 cases of pneumonia of unknown etiology.
- January 10, 2020, the WHO announced the outbreak in Wuhan, China was caused by a novel coronavirus.
- January 19, 2020, laboratory-confirmed cases of SARS-CoV-2 reported in China, Thailand, Japan, and the Republic of Korea (278 cases, 2 cases, 1 case, and 1 case, respectively).
- January 23, 2020, Wuhan, China placed under lockdown due to the outbreak.
- February 11, 2020, the WHO announced the official name for the disease causing the outbreak as the Coronavirus Disease 2019, which was abbreviated as COVID-19.
- March 11, 2020, the WHO declared COVID-19 a pandemic after being identified in 114 countries, with more than 118,000 cases, and causing 4,291 deaths.
- March 13, 2020, the President of the United States declared a nationwide emergency due to COVID-19.
- March 15, 2020, in the U.S., states implemented shutdowns to prevent the spread of COVID-19.
- March 28, 2020, the White House extended social distancing measures to prevent the spread of COVID-19.
- April 3, 2020, the CDC announced mask wearing guidelines. It recommends all people wear a mask when outside of their home.
- April 10, 2020, the U.S. had the most reported cases and deaths of COVID-19 than any other country. It had more than 500,000 cases and over 18,600 deaths, respectively. Additionally, New York State had more reported confirmed cases (159,937) than Spain (153,000), Italy (143,000), or China (82,000).<sup>297</sup>

In an effort to stop the spread of the disease from entering the U.S., a number of actions were taken. On January 17, 2020, the CDC began screening passengers for symptoms of COVID-19 on direct and connecting flights from Wuhan, China to San Francisco, New York City, and Los Angeles.<sup>298</sup> Additionally, in February 2020, all persons on the Diamond Princess cruise ship were quarantined off the coast of Japan due to the high number of people testing positive for COVID-19.<sup>299</sup> The passengers and crew members were prevented from returning to the U.S. for at least 14 days after they left the cruise ship. On March 14, 2020, the CDC issued a “no sail order” for all cruise ships sailing in waters over which the U.S. holds jurisdiction.<sup>300</sup> In March 2020, President Trump declared an additional travel ban on non-U.S. citizens traveling from 26 European countries due to COVID-19.<sup>301</sup>

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<sup>297</sup> David J. Sencer, “CDC Museum COVID-19 Timeline,” <https://www.cdc.gov/museum/timeline/covid19.html>.

<sup>298</sup> Ibid.

<sup>299</sup> Ibid.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

## Public Discourse and COVID-19

During the pandemic, the media and some government officials used several other names to refer to COVID-19. For instance, it was sometimes referred to as the “Chinese virus,”<sup>302</sup> the “Kung flu,”<sup>303</sup> and the “Wuhan virus,”<sup>304</sup> by some members in the Trump Administration. When asked about this behavior, former President Trump said he used the name the “Chinese virus” because it originated in China.<sup>305</sup> Specifically, he said he used the name to “combat a disinformation campaign promoted by Beijing officials that the American military was the source of the outbreak.”<sup>306</sup> However, these terms were widely criticized as being racist and potentially perpetuating negative views of Asian individuals and communities.<sup>307</sup>

Russell Jeung, a professor of Asian American Studies at San Francisco State University, explained how the rhetoric and framing of the virus impacted the Asian community. He testified that:

When politicians used the term Chinese virus, it really did two things—it racialized the virus, so it made it Chinese, and it stigmatized the people, so Chinese people were the ones carrying the disease. That association with the Chinese – that the virus was Chinese and [that] Chinese [people] had the virus really did go viral on social media, and that’s been correlated with anti-Asian hate.<sup>308</sup>

Although President Trump did not see his language as biased, others warned against using such language. For example, WHO advised against the use of terms that link the virus to China to avoid stigmatization in response to the use of such words.<sup>309</sup> Executive director of WHO’s emergencies program, Mike Ryan, stated that “viruses know no borders and they don’t care about a person’s ethnicity, the color of a person’s skin or how much money a person has in the bank.”<sup>310</sup>

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<sup>302</sup> Dan Mangan, “Trump Defends Calling Coronavirus ‘Chinese virus’ — ‘It’s Not Racist At All,’” CNBC, Mar 18 2020, <https://www.cnbc.com/2020/03/18/coronavirus-criticism-trump-defends-saying-chinese-virus.html>.

<sup>303</sup> Colby Itkowitz, “Trump Again Uses Racially Insensitive Term to Describe Coronavirus,” *The Washington Post*, June 23, 2020, [https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-coronavirus/2020/06/23/0ab5a8d8-b5a9-11ea-aca5-ebb63d27e1ff\\_story.html](https://www.washingtonpost.com/politics/trump-again-uses-kung-flu-to-describe-coronavirus/2020/06/23/0ab5a8d8-b5a9-11ea-aca5-ebb63d27e1ff_story.html).

<sup>304</sup> Dan Mangan, “Trump Defends Calling Coronavirus ‘Chinese virus’ — ‘It’s Not Racist At All,’” CNBC, Mar 18 2020, <https://www.cnbc.com/2020/03/18/coronavirus-criticism-trump-defends-saying-chinese-virus.html>.

<sup>305</sup> Katie Rogers, Lara Jakes and Ana Swanson, “Trump Defends Using ‘Chinese Virus’ Label, Ignoring Growing Criticism,” *The New York Times*, Mar 18, 2020, <https://www.nytimes.com/2020/03/18/us/politics/china-virus.html>.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> Jeung Testimony, *Anti-Asian Racism Briefing* Transcript, p. 45.

<sup>309</sup> Guardian Staff, “Donald Trump Calls Covid-19 ‘Kung Flu’ at Tulsa rally,” *The Guardian*, June 20, 2020, <https://www.theguardian.com/us-news/2020/jun/20/trump-covid-19-kung-flu-racist-language>.

<sup>310</sup> Dawn Kopecki, “WHO officials warn US President Trump against calling coronavirus ‘the Chinese virus,’” CNBC, Mar. 18, 2020, <https://www.cnbc.com/2020/03/18/who-officials-warn-us-president-trump-against-calling-coronavirus-the-chinese-virus.html>.

CDC director, Dr. Robert Redfield, who served from 2018 until early 2021, agreed it was “wrong and inappropriate to call [it] the Chinese coronavirus.”<sup>311</sup> In 2015, the WHO issued best practices for the naming of diseases, stating that geographic locations should not be used in disease names because this can “provoke a backlash against members of particular religious or ethnic communities, create unjustified barriers to travel, commerce and trade... This can have serious consequences for peoples’ lives and livelihoods.”<sup>312</sup> Similarly, civil rights and Asian American advocacy groups asserted that such words can have harmful consequences and can inspire racism and violence against Asian Americans and persons of Asian descent.<sup>313</sup>

Although President Trump’s aid expressed that this verbiage was an indictment against China rather than against Asian Americans, many Asian American advocacy groups saw this language as racist and concerning for multiple reasons.<sup>314</sup> For instance, this type of language continues to perpetuate the notion of people of Asian descent, including Asian Americans, as a monolith and erases the diversity of Asian communities.<sup>315</sup> Moreover, the civil rights nonprofit Asian Americans Advancing Justice-Chicago expressed that given the amount of loss and suffering caused by the pandemic, such language could incite violence and xenophobic scapegoating.<sup>316</sup> Cynthia Choi, co-executive director with Chinese for Affirmative Action and co-founder of Stop AAPI Hate, testified that in the week after President Trump first tweeted about a “Chinese virus,” Twitter hashtags expressing anti-Asian sentiment increased 174 times.<sup>317</sup>

Additionally, the scapegoating of Asian Americans during the COVID-19 pandemic was not the first instance of Asian persons being blamed for spreading diseases. For example, “[d]uring disease outbreaks in the 19th and 20th centuries, Chinese immigrants in San Francisco were depicted as harbingers of infection, placed under racist quarantines, and denied access to health care.”<sup>318</sup> In cities with large Chinese communities, such as San Francisco, residents were forced to live in overcrowded areas with unsanitary conditions, which makes the spread of diseases easier and more

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<sup>311</sup> Dan Mangan, “Trump Defends Calling Coronavirus ‘Chinese virus’ — ‘It’s Not Racist At All,’” *CNBC*, Mar. 18 2020, <https://www.cnn.com/2020/03/18/coronavirus-criticism-trump-defends-saying-chinese-virus.html>.

<sup>312</sup> The World Health Organization, WHO issues best practices for naming new human infectious diseases, May 8, 2015, <https://www.who.int/news/item/08-05-2015-who-issues-best-practices-for-naming-new-human-infectious-diseases>; American Society for Microbiology, Why Scientists Should Not Name Diseases Based On Location, May 12, 2021, <https://asm.org/Articles/2021/May/Why-Scientists-Should-Not-Name-Diseases-After-Place>; Katie Rogers, Lara Jakes and Ana Swanson, “Trump Defends Using ‘Chinese Virus’ Label, Ignoring Growing Criticism,” *The New York Times*, Mar. 18, 2020, <https://www.nytimes.com/2020/03/18/us/politics/china-virus.html>.

<sup>313</sup> Kimmy Yam, “Trump Can’t Claim ‘Kung Flu’ Doesn’t Affect Asian Americans in this Climate, Experts Say,” *NBC News*, June 22, 2020, <https://www.nbcnews.com/news/asian-america/trump-can-t-claim-kung-flu-doesn-t-affect-asian-n1231812>.

<sup>314</sup> *Ibid.*

<sup>315</sup> *Ibid.*

<sup>316</sup> *Ibid.*

<sup>317</sup> Choi Testimony, Anti-Asian Racism Briefing Transcript, p. 71.

<sup>318</sup> Harmeet Kaur, “Early Chinese Americans Were Blamed for Diseases and Denied Health Care. So They Built Their Own Hospital,” *CNN*, Apr. 12, 2021, <https://www.cnn.com/2021/04/12/us/chinese-hospital-sf-chinatown-disease-outbreaks-trnd/index.html>.

prevalent.<sup>319</sup> Lauren Hom, assistant professor of political science at California State Polytechnic University, explained that at that time leading theories about disease contagion were that they were spread by breathing “bad air.” Therefore, Chinese communities were blamed as the source of diseases and “they were neglected by mainstream institutions and that fed into how they were blamed for these diseases.”<sup>320</sup>

In March 1900, a Chinese owner of a lumberyard died of bubonic plague in the Chinese quarter of San Francisco.<sup>321</sup> Authorities immediately cordoned off the 15-block neighborhood, quarantining about 25,000 Chinese residents and closing businesses owned by people who were not White.<sup>322</sup> Homes in the Chinese-immigrant community “were ransacked, belongings were burned in an effort to fumigate the area, and the city’s anti-infection posse looted shops and took sledgehammers to windows.”<sup>323</sup> Moreover, White residents in San Francisco were allowed to leave the quarantine area, because the public did not believe White people could get the disease.<sup>324</sup> The mayor at that time stated that the quarantine was necessary because Chinese people were a “constant threat to public health.”<sup>325</sup> Due to the pushback from the community, the city’s Board of Health lifted the quarantine.<sup>326</sup> However, a few months later, another quarantine was implemented in San Francisco’s Chinatown after more Chinese Americans died of the bubonic plague.<sup>327</sup> The Board of Health again quarantined the neighborhood and added barbed wire to partition off the area and stationed over 100 police officers to patrol the area.<sup>328</sup> The *San Francisco Chronicle* reported that “in the careful discrimination in fixing the line of embargo, not one Caucasian doing business on the outer rim of the alleged infected district is affected .... Their Asiatic neighbors, however, are imprisoned within the lines.”<sup>329</sup> Editors of the *San Francisco Call* newspaper stoked anti-Chinese sentiment writing:

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<sup>319</sup> Ibid.

<sup>320</sup> Ibid.

<sup>321</sup> Alicia Lee, “The Dark and Complex History of Quarantine Goes Back to the Middle Ages,” *CNN*, Mar. 4, 2020, <https://www.cnn.com/2020/03/04/us/coronavirus-quarantine-word-history-trnd/index.html>.

<sup>322</sup> Ibid.

<sup>323</sup> Olivia B. Waxman, “San Francisco’s Response to Bubonic Plague in 1900 Shows the Dark Roots of Anti-Asian Hate,” *Time*, May 24, 2022, <https://time.com/6180443/bubonic-plague-anti-asian-hate-covid-19/>.

<sup>324</sup> Harmeet Kaur, “Early Chinese Americans Were Blamed for Diseases and Denied Health Care. So They Built Their Own Hospital,” *CNN*, Apr. 12, 2021, <https://www.cnn.com/2021/04/12/us/chinese-hospital-sf-chinatown-disease-outbreaks-trnd/index.html>; Wayne Au, “I Don’t Like China or Chinese People Because They Started This Quarantine,” *Rethinking Schools*, vol. 34, no. 4, 2020, <https://rethinkingschools.org/articles/i-dont-like-china-or-chinese-people-because-they-started-this-quarantine/>.

<sup>325</sup> Wayne Au, “I Don’t Like China or Chinese People Because They Started This Quarantine,” *Rethinking Schools*, vol. 34, no. 4, 2020, <https://rethinkingschools.org/articles/i-dont-like-china-or-chinese-people-because-they-started-this-quarantine/>.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.; *see also*, Charles McClain, “Of Medicine, Race, and American Law: The Bubonic Plague Outbreak of 1900,” *Law & Social Inquiry*, vol. 13, no. 3, 1988, <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/abs/of-medicine-race-and-american-law-the-bubonic-plague-outbreak-of-1900/6A9F353445E979A0C422DBB72E6D5BF1>.

In no city in the civilized world is there a slum more foul or more menacing than that which now threatens us with the Asiatic plague.... So long as it stands so long will there be a menace of the appearance in San Francisco of every form of disease, plague, and pestilence which Asiatic filth and vice generate. The only way to get rid of that menace is to eradicate Chinatown from the city .... Clear the foul spot from San Francisco and give the debris to the flames.<sup>330</sup>

Chinese leaders petitioned the court claiming the actions taken by the city were racist, and the court ruled that partitioning off the entire Chinatown neighborhood was “unreasonable, unjust, and oppressive.”<sup>331</sup> The Honorable Circuit Judge Morrow ruling on the case specifically stated that the quarantine was the “administration of law ‘with an evil eye and an unequal hand’” and ruled that it violated the Fourteenth Amendment, thereby lifting the quarantine.<sup>332</sup>

As with these historical cases of disease pandemics, inconsistent messaging from government leaders and public health officials about a disease can have widespread and harmful effects, particularly when messaging is targeting a specific group or community.<sup>333</sup> Public health experts acknowledge that the world has experienced a growing number of pandemics, for example, SARS in 2003, H1N1 Flu in 2009, Ebola in 2014, Zika virus in 2016, and now COVID-19 in 2019. “Although concerns about such pandemics have escalated, government preparation for the current public health crisis has often been haphazard and largely insufficient due largely to confusion, instability, misinformation, and poor planning, which have led to serious mistakes in responding to the COVID-19 pandemic.”<sup>334</sup> As John Yang, president and executive director of Asian Americans Advancing Justice (AAJC) testified in his written statement, “[t]he experience of anti-Asian racism is not new to people of Asian descent living in the U.S. History demonstrates that our communities have been scapegoated during earlier pandemics, during periods of economic insecurity, and in the name of national security.”<sup>335</sup> Specifically regarding the COVID-19 messaging, the Trump Administration used biased language in referring to the virus (e.g., the “kung flu”) on social media, in speeches, and at rallies;<sup>336</sup> thereby linking the virus to Chinese

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<sup>330</sup> Ibid.

<sup>331</sup> See *Jew Ho v. Williamson*, 103 F. 10 (C.C.D.Cal.1900).

<sup>332</sup> *Id.*, ¶ 24.

<sup>333</sup> See e.g., Do Kyun David Kim and Gary Kreps, “An Analysis of Government Communication in the United States During the COVID-19 Pandemic: Recommendations for Effective Government Health Risk Communication,” *World Med Health Policy*, vol. 12, no. 4, Dec. 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7461274/>.

<sup>334</sup> Ibid.

<sup>335</sup> Yang Statement, at 6.

<sup>336</sup> See e.g., Michele Goodwin and Erwin Chemerinsky, “The Trump Administration: Immigration, Racism, and COVID-19,” 169 *Pennsylvania Law Rev.* Jan. 2021, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9722&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9722&context=penn_law_review); Nathan Kar Ming Chan, Jae Yeon Kim, and Vivien Leung, “COVID-19 and Asian Americans: How Elite Messaging and Social Exclusion Shape Partisan Attitudes,” *Perspectives on Politics*, vol. 20, no. 2, Dec. 2021, <https://www.cambridge.org/core/journals/perspectives-on-politics/article/covid19-and-asian-americans-how-elite-messaging-and-social-exclusion-shape-partisan->

Americans and stoking racist sentiments that contributed to the rise of anti-Asian hate crimes during 2020 and 2021.<sup>337</sup> Russell Jeung, professor of Asian American Studies at San Francisco State University, testified that political rhetoric inflamed fear and animosity toward Asian Americans, and that “social media circulated posts and messages that scapegoated Chinese for the pandemic and circulated conspiracy theories.”<sup>338</sup>

### The Racialization of Disease

When “then-President Donald Trump referred to the coronavirus as ‘the Chinese virus,’ — subsequently, many Asian Americans said they were blamed for bringing COVID-19 to the U.S.,”<sup>339</sup> which racialized the disease. Mardon et. al (2020) argued that this framing is significant because when diseases are racialized that “race [is] not seen as part of the state. [They are the one’s] who threaten [the state] in some way that gets blamed for disease.”<sup>340</sup> Similarly, the World Health Organization “warns against associating diseases with specific locations, to prevent stigma and backlash.”<sup>341</sup> At the Commission’s briefing, Jeung testified about this backlash, describing an incident that he stated was “sadly, is all too common.”<sup>342</sup> He stated:

[I]t’s not necessarily an issue of a hate crime but one of racial harassment where a woman — customer — was denied access at her pharmacy. The perpetrator, using yellow peril rhetoric, not only saw her as being a disease-carrying, threatening person of color, but instead stated that she was the infection, that our racialized bodies themselves were the defiling elements to the United States. And so, he told her to go home, we don’t want you here. And you could see the traumatizing result, this person was in shock, and cried and left, saying no one came to help, she left isolated, marginalized. And I think that’s the experience of the Asian American community at this moment, one of collective racial trauma....

But the racism we’re seeing now have particular sources, Asian Americans face a sort of a unique set of factors that lead to racism against us. Clearly, people were afraid of COVID-19 because of the disease, but the political rhetoric and social media today really did

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attitudes/CEC59253B8C36744BDD6DDC66284098C; Alana Wise, “White House Defends Trump’s Use of Racist Term to Describe Coronavirus,” *NPR*, June 22, 2020, <https://www.npr.org/2020/06/22/881810671/white-house-defends-trumps-use-of-racist-term-to-describe-coronavirus>.

<sup>337</sup> See *infra* Table 8 and Table 9 (data on anti-Asian incidents and hate crimes).

<sup>338</sup> Russell Jeung, Professor of Asian American Studies, San Francisco State University, Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023, at 6 (hereinafter Jeung Statement).

<sup>339</sup> Christina Zdanowicz, We Asked Asian Americans about Their Experiences with Hate. The Responses Were Heartbreaking, *CNN*, Mar. 19, 2021, <https://www.cnn.com/2021/03/19/us/asian-american-hate-pandemic-trnd/index.html>.

<sup>340</sup> Austin Mardon, Fatima Arshad Syed, Faried Nasir, Yvette Mae Morte and Catherine Mardon, *The Racialization of Coronavirus and Hate Crimes*, Chapter 4, Historical Cases of Racialized Disease, 2020, Golden Meteorite Press.

<sup>341</sup> Nina Strochlic, America’s Long History of Scapegoating its Asian Citizens, *National Geographic*, Sept. 2, 2020, <https://www.nationalgeographic.com/history/article/asian-american-racism-covid>.

<sup>342</sup> Jeung Testimony, Anti-Asian Racism Briefing Transcript, p. 11.



exacerbate the issue. When politicians used the term Chinese virus, it really did two things -- it racialized the virus, so it made it Chinese, and it stigmatized the people, so Chinese people were the ones carrying the disease. That association that the [ ] virus was Chinese and [that the] Chinese had the virus really did go viral on social media, and that's been correlated with anti-Asian hate.<sup>343</sup>

Research suggests that language can contribute to prejudicial beliefs, and at times, discriminatory actions. For instance, between March 16 and March 30, 2020, President Trump used the words “Chinese virus” more than 20 times.<sup>344</sup> Over this same period, more than 100 hate incidents were collected by the Stop AAPI Hate website.<sup>345</sup> Brian Levin, director of the Center for the Study of Hate & Extremism explained that “Presidential statements have correlated both to increases and decreases in hate crimes.”<sup>346</sup> Levin maintains that “[i]t is notable that on March 23, when President Trump refrained from ethnic terms relating to the virus for a day and spoke of tolerance, there were no anti-Asian hate crimes in NYC in what otherwise was a historically bad month for hate crime.”<sup>347</sup>

Research suggests there is a relationship between racialized language targeting certain groups by elites and public sentiment.<sup>348</sup> For example, Newman et al. (2021) found that “in the absence of prejudiced elite speech, prejudiced citizens constrain the expression of their prejudice.”<sup>349</sup> In contrast, “in the presence of prejudiced elite speech — particularly when it is tacitly condoned by

<sup>343</sup> Jeung Testimony, Anti-Asian Racism Briefing, Transcript, pp. 11-13.

<sup>344</sup> C. Aujean Lee and John C. Arroyo, “A Typology of Local and State Government Responses to Racism: A Case of Anti-Asian Hate in the COVID-19 Pandemic,” *Journal of Planning Education and Research*, Mar. 31, 2022, <https://doi.org/10.1177/0739456X221084592>.

<sup>345</sup> The Stop AAPI website was launched as a coalition between AAPI Equity Alliance (AAPI Equity), Chinese for Affirmative Action (CAA), and the Asian American Studies Department of San Francisco State University on March 19, 2020. The coalition tracks and responds to incidents of hate, violence, harassment, discrimination, shunning, and child bullying against Asian Americans and Pacific Islanders in the United States. See Stop AAPI Hate, “About,” <https://stopaapihate.org/about/> (accessed Feb. 10, 2023); Aggie Yellow Horse, Russell Jeung, Richard Lim, Boaz Tang, Megan Im, Lauryn Higashiyama, Layla Schweng, and Ronae Matriano, Mikayla Chen, “Stop AAPI Hate National Report, 03/19/2020 – 12/31/2021,” Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>, 6/30/2021, Aug. 2021, <https://stopaapihate.org/wp-content/uploads/2021/08/Stop-AAPI-Hate-Report-National-v2-210830.pdf>.

<sup>346</sup> Amy Sherman, “Hate Crimes Against Asian Americans: What the Numbers Show, and Don’t,” *Austin American Statesman*, Mar. 22, 2021, <https://www.statesman.com/story/news/2021/03/22/politifact-spike-hate-crimes-incidents-targeting-asian-americans/4782199001/>; see also, Center for the Study of Hate & Extremism, “Fact Sheet: Anti-Asian Prejudice March 2021,” CSUSB, Mar. 21, 2021, <https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%20rev%203.21.21.pdf>.

<sup>347</sup> Ibid.

<sup>348</sup> Benjamin Newman, Jennifer L. Merolla, Sono Shah, Danielle Casarez Lemi, Loren Collingwood, and S. Karthick Ramakrishnan, “The Trump Effect: An Experimental Investigation of the Emboldening Effect of Racially Inflammatory Elite Communication,” *British Journal of Political Science*, 2021, <https://www.cambridge.org/core/journals/british-journal-of-political-science/article/trump-effect-an-experimental-investigation-of-the-emboldening-effect-of-racially-inflammatory-elite-communication/0335108B8E4AF36CBFFA1E45816C6143>.

<sup>349</sup> Ibid.

other elites – ...the prejudiced are emboldened to both express and act upon their prejudices.”<sup>350</sup> The researchers concluded that exposure to racist elite speech increased the likelihood of an individual acting on their prejudices and engaging in discriminatory interpersonal acts.<sup>351</sup>

Over the past decade, the relationship between social media and bias-motivated incidents and hate crimes has become more apparent.<sup>352</sup> Researchers have shown that social media can have a strong influence on shaping people’s beliefs and actions, and can serve as a primary source of influence in instilling discriminatory attitudes toward people in marginalized groups.<sup>353</sup> Further, research suggests that social media has directly contributed to the rise of bias-incidents, racist and xenophobic beliefs, and discriminatory behavior during the COVID-19 pandemic.<sup>354</sup>

Croucher et al. (2020) analyzed possible links between prejudice toward Asian Americans during the COVID-19 pandemic and social media users in the U.S. revealed that intergroup threats<sup>355</sup> could lead to discrimination.<sup>356</sup> The authors found that social media users who perceived biased information on social media about Asian people and COVID-19 was accurate and fair were more likely to believe that Chinese Americans could pose realistic threats (i.e., threats to physical and material well-being) and symbolic threats (i.e., threats to morals, values, and beliefs).<sup>357</sup> A study by Bing He et al. (2021) also found a link between social media and the increase in anti-Asian sentiment during COVID-19.<sup>358</sup> The researchers found that the presence of anti-Asian hate speech on Twitter surpassed counter-hate messages during the height of the pandemic, giving the overall

<sup>350</sup> Ibid.

<sup>351</sup> Benjamin Newman, Jennifer L. Merolla, Sono Shah, Danielle Casarez Lemi, Loren Collingwood, and S. Karthick Ramakrishnan, “The Trump Effect: An Experimental Investigation of the Emboldening Effect of Racially Inflammatory Elite Communication,” *British Journal of Political Science*, 2021, <https://www.cambridge.org/core/journals/british-journal-of-political-science/article/trump-effect-an-experimental-investigation-of-the-emboldening-effect-of-racially-inflammatory-elite-communication/0335108B8E4AF36CBFFA1E45816C6143>.

<sup>352</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government’s Role in Responding to Hate Crimes*, Nov. 2019, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>353</sup> Theresa Davidson and Lee Farquhar, “Prejudice and Social Media: Attitudes Towards Illegal Immigrants, Refugees, and Transgender People,” In D. Nicole Farris, D’Lane Compton, and Andrea Herrera, (eds.), *Gender, Sexuality and Race in the Digital Age*, Springer 2020.

<sup>354</sup> Nan Yu, Shuya Pan, Chia-chen Yang, Jiun-Yi Tsai, “Exploring the Role of Media Sources on COVID-19 Related Discrimination Experiences and Concerns Among Asian People in the United States: Cros-Sectional Survey Study,” *Journal of Medical Internet Research*, Nov. 2020, <https://www.jmir.org/2020/11/e21684/PDF>.

<sup>355</sup> Intergroup threat theory is experienced when members of one group perceive that members of another group are in a position to cause them harm. See Walter Stehan, Oscar Ybarra, and Kimberly Rios Morrison, “Intergroup threat theory,” In T.D. Nelson (ed.) *Handbook of prejudice, stereotyping, and discrimination*, pp. 43-53, Psychology Press, 2009, <https://psycnet.apa.org/record/2008-09974-003>.

<sup>356</sup> Stephen Croucher, Thao Nguyen, and Diyako Rahmani, “Prejudice Toward Asian Americans in the Covid-19 Pandemic: The Effects of Social Media Use in the United States,” *Frontiers in Communication*, June 2020, vol. 5, <https://www.frontiersin.org/articles/10.3389/fcomm.2020.00039/full>.

<sup>357</sup> Ibid.

<sup>358</sup> Bing He, Caleb Ziemis, Sandeep Soni, Naren Ramakrishnan, Diyi Yang, and Srijan Kumar, “Racism is a Virus: Anti-Asian Hate and Counterspeech in Social Media during the Covid-19 Crisis,” *Association for Computing Machinery*, 2021, <https://arxiv.org/pdf/2005.12423.pdf>.

impression that there were more anti-Asian sentiment than support for Asian communities.<sup>359</sup> Taken together, exposure to these types of messages contributed to Asian people in the U.S. suffering from heightened fears and anxiety about discrimination during the height of the pandemic.<sup>360</sup>

In another study, Yulin Hswen et al. (2020) examined the association of certain hashtags with anti-Asian sentiment on Twitter from March 9-23, 2020, the week before and the week after President Trump tweeted with the phrase “China Virus.” The study found that:

One fifth (19.7%) of the 495,289 hashtags with #covid19 showed anti-Asian sentiment, compared with half (50.4%) of the 777,852 hashtags with #chinesevirus. When comparing the week before March 16, 2020, to the week after, there was a significantly greater increase in anti-Asian hashtags associated with #chinesevirus compared with #covid19.<sup>361</sup>

The study found that individuals who utilized the #ChineseVirus hashtag were more likely to also include overtly racist hashtags compared to those who used the #Covid19 hashtag.<sup>362</sup> The study’s authors concluded that “these results may be a proxy of growth in anti-Asian sentiment that was not prevalent as before. Using racial terms associated with a disease can result in the perpetuation of further stigmatization of racial groups.”<sup>363</sup>

On a whole, these studies do not suggest that President Trump’s discourse about the pandemic had a causal relationship to the increase in anti-Asian discrimination and violence; however, the literature does draw strong correlations between the widespread use of negative public discourse throughout the pandemic and the increased likelihood of bias-motivated incidents against Asian communities.<sup>364</sup> Researchers from the University of California explain that the usage of biased

<sup>359</sup> Bing He, Caleb Ziem, Sandeep Soni, Naren Ramakrishnan, Diyi Yang, and Srijan Kumar, “Racism is a Virus: Anti-Asian Hate and Counterspeech in Social Media during the Covid-19 Crisis,” *Association for Computing Machinery*, 2021, <https://arxiv.org/pdf/2005.12423.pdf>.

<sup>360</sup> Nan Yu, Shuya Pan, Chia-chen Yang, Jiun-Yi Tsai, “Exploring the Role of Media Sources on COVID-19 Related Discrimination Experiences and Concerns Among Asian People in the United States: Cros-Sectional Survey Study,” *Journal of Medical Internet Research*, Nov. 2020, <https://www.jmir.org/2020/11/e21684/PDF>.

<sup>361</sup> Yulin Hswen, Xiang Xu, Anna Hing, Jared B. Hawkins, John S. Brownstein, and Gilbert C. Gee, “Association of “#covid19” Versus “#chinesevirus” With Anti-Asian Sentiments on Twitter: March 9-23, 2020,” *American Journal of Public Health*, May 2021, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306154>.

<sup>362</sup> Ibid.

<sup>363</sup> Ibid.

<sup>364</sup> Theresa Davidson and Lee Farquhar, “Prejudice and Social Media: Attitudes Towards Illegal Immigrants, Refugees, and Transgender People,” In D. Nicole Farris, D’Lane Compton, and Andrea Herrera, (eds.), *Gender, Sexuality and Race in the Digital Age*, Springer 2020; Stephen Croucher, Thao Nguyen, and Diyako Rahmani, “Prejudice Toward Asian Americans in the Covid-19 Pandemic: The Effects of Social Media Use in the United States,” *Frontiers in Communication*, June 2020, vol. 5, <https://www.frontiersin.org/articles/10.3389/fcomm.2020.00039/full>; Bing He, Caleb Ziem, Sandeep Soni, Naren Ramakrishnan, Diyi Yang, and Srijan Kumar, “Racism is a Virus: Anti-Asian Hate and Counterspeech in Social Media during the Covid-19 Crisis,” *Association for Computing Machinery*, 2021, <https://arxiv.org/pdf/2005.12423.pdf>; Nan Yu, Shuya Pan, Chia-chen Yang, Jiun-Yi Tsai, “Exploring the Role of Media Sources on COVID-19 Related Discrimination Experiences and Concerns Among Asian People in the United States: Cros-Sectional Survey Study,” *Journal of Medical Internet Research*, Nov. 2020,

language that demonizes marginalized groups may have primed negative attitudes toward those groups; and over time, this language emboldened members of society to more openly express and act on their prejudices.<sup>365</sup>

Additionally, both the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) expressed concerns about potential violence against Asian communities early in the pandemic. For example, on March 23, 2020, DHS issued a warning that White supremacists may use the crisis to justify harm or violence against Asian Americans.<sup>366</sup> Similarly, the FBI also warned that there would be a surge in anti-Asian hate crimes during the pandemic. In late March 2020, the FBI alerted law enforcement agencies across the U.S. to be on heightened alert for bias-motivated incidents.<sup>367</sup> In a statement in 2020, the FBI wrote:

The FBI assesses hate crime incidents against Asian Americans will likely surge across the United States, due to the spread of the coronavirus disease... endangering Asian American communities.... The FBI makes this assessment based on the assumptions that a portion of the U.S. public will associate COVID-19 with China and Asian American populations.<sup>368</sup>

Unlike the World Health Organization that warned against using stigmatizing language to speak about the pandemic,<sup>369</sup> the Centers for Disease Control and Prevention (CDC) and other federal agencies took little action to curb the xenophobic language used to refer to COVID-19.<sup>370</sup> This inaction failed to follow recommendations developed by the CDC as a result of the severe acute

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<https://www.jmir.org/2020/11/e21684/PDF>; Yulin Hswen, Xiang Xu, Anna Hing, Jared B. Hawkins, John S. Brownstein, and Gilbert C. Gee, “Association of “#covid19” Versus “#chinesevirus” With Anti-Asian Sentiments on Twitter: March 9-23, 2020,” *American Journal of Public Health*, May 2021, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306154>.

<sup>365</sup> Tyler T. Reny and Matt A. Barretto, “Xenophobia in the Time of pandemic: Othering, Anti-Asian Attitudes, and COVID-19,” *Politics, Groups and Identities*, May 28, 2020, <https://www.tandfonline.com/doi/full/10.1080/21565503.2020.1769693>.

<sup>366</sup> Angela R. Gover, Shannon B. Harper, and Lynn Langton, “Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality,” *American Journal of Criminal Justice*, vol. 45, 2020, <https://link.springer.com/article/10.1007/s12103-020-09545-1>.

<sup>367</sup> *Ibid.*

<sup>368</sup> Josh Margolin, “FBI warns of potential surge in hate crimes against Asian Americans amid coronavirus,” Mar. 27, 2020, <https://abcnews.go.com/US/fbi-warns-potential-surge-hate-crimes-asian-americans/story?id=69831920>.

<sup>369</sup> Nina Storchlic, “America’s Long History of Scapegoating its Asian Citizens,” *National Geographic*, Sept. 2, 2020, <https://www.nationalgeographic.com/history/article/asian-american-racism-covid>.

<sup>370</sup> Alexia Fernández Campbell and Alex Ellerbeck, “Federal Agencies are Doing Little About the Rise in Anti-Asian Hate,” *NBC News*, Apr. 16, 2020, <https://www.nbcnews.com/news/asian-america/federal-agencies-are-doing-little-about-rise-anti-asian-hate-n1184766>; Kimmy Yam, “Senate Democrats Demand Action from CDC, DOJ to Curb COVID-19 Racism,” *NBC News*, May 6, 2020, <https://www.nbcnews.com/news/asian-america/senate-democrats-demand-action-cdc-doj-curb-covid-19-racism-n1201491>.

respiratory syndrome (SARS) outbreak in 2003.<sup>371</sup> In response to that outbreak, the CDC developed guidelines to prevent stigma against communities during public health crises.

These recommendations included:

- disseminating simple prevention messages,
- developing in-language materials,
- sharing information through community-based and culturally based methods and partnering with Asian organizations.<sup>372</sup>

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<sup>371</sup> C. Aujean Lee and John C. Arroyo, “A Typology of Local and State Government Responses to Racism: A Case of Anti-Asian Hate in the COVID-19 Pandemic,” *Journal of Planning Education and Research*, Mar. 31, 2022, <https://doi.org/10.1177/0739456X221084592>.

<sup>372</sup> *Ibid.*

## Data on Anti-Asian Incidents and Hate Crimes

Due to the blaming and scapegoating of Chinese people for the spread of COVID, many Asian Americans and people of Asian descent expressed feelings of fear and anxiety.<sup>373</sup> For instance, Erin Wen Ai Chew explained, “we know that people are going to look at our black hair and ‘yellow’ skin and target us.... There’s a lot of anger, a lot of resentment, and also a lot of dread to know that when we go out, we could be the subject of racism.”<sup>374</sup> Since the start of the pandemic, data collected through multiple local, state, and federal sources showed an increase in violent incidents directed towards Asian Americans during 2020 and into 2022.<sup>375</sup> These incidents include verbal attacks, minor aggressions, and physical assaults.<sup>376</sup> These events occurred across the country, with some reaching the level of national attention.<sup>377</sup> Below is a snapshot of news excerpts that exemplify the types of violence experienced by persons of Asian descent during the pandemic:

- On March 9, 2020, in San Francisco, California, Yuanyuan Zhu noticed a man shouting at her as she was walking to her gym. He yelled an expletive about China. She tried to keep her distance from him, but they both ended up waiting together at the crosswalk. She felt him staring at her and then he spat on her.<sup>378</sup> On the same day, in Los Angeles, a 16-year-old boy of Asian descent said students had bullied him and accused him of carrying the virus.<sup>379</sup>
- On March 10, 2020, in Manhattan, NY, a 59-year-old Asian man was attacked and told to go back to China. The attacker kicked the man, who was innocently walking on Madison

<sup>373</sup> Deb Riechmann and Terry Tang, “Trump dubs COVID-19 ‘Chinese virus’ despite hate crime risks,” AP News, Mar. 18, 2020, <https://apnews.com/article/donald-trump-ap-top-news-asia-crime-virus-outbreak-a7c233f0b3bcd72c06cca6271ba6713>; Min Jin Lee, “Asian Americans Have Always Lived with Fear,” *The New York Times*, Mar 18, 2022, <https://www.nytimes.com/2022/03/18/opinion/asian-american-violence-fear.html>.

<sup>374</sup> Eleanor Cummins, “The new coronavirus is not an excuse to be racist,” *The Verge*, Feb. 4, 2020, <https://www.theverge.com/2020/2/4/21121358/coronavirus-racism-social-media-east-asian-chinese-xenophobia>.

<sup>375</sup> See e.g., Federal Bureau of Investigation, Supplemental Hate Crime Statistics, 2021, Mar. 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>; Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home>; California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022); New York State, “Hate Crimes by County and Bias Type: Beginning 2010,” <https://data.ny.gov/Public-Safety/Hate-Crimes-by-County-and-Bias-Type-Beginning-2010/6xda-q7ev> (accessed Feb. 15, 2023).

<sup>376</sup> FBI UCR/NIBRS Reporting Program; Supplemental Hate Crimes Statistics, 2021.

<sup>377</sup> Deb Riechmann and Terry Tang, “Trump dubs COVID-19 ‘Chinese virus’ despite hate crime risks,” AP News, Mar 18, 2020, <https://apnews.com/article/donald-trump-ap-top-news-asia-crime-virus-outbreak-a7c233f0b3bcd72c06cca6271ba6713>.

<sup>378</sup> Sabrina Tavernise and Richard A. Oppel Jr., “Spit On, Yelled At, Attacked: Chinese-Americans Fear for Their Safety,” *The New York Times*, Mar 23, 2020, <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html>.

<sup>379</sup> Deb Riechmann and Terry Tang, “Trump dubs COVID-19 ‘Chinese virus’ despite hate crime risks,” AP News, Mar 18, 2020, <https://apnews.com/article/donald-trump-ap-top-news-asia-crime-virus-outbreak-a7c233f0b3bcd72c06cca6271ba6713>.

Avenue, in the back, causing him to fall to the ground. The attacker said “(expletive) Chinese coronavirus,” and told the victim to go back to his country.<sup>380</sup>

- On March 14, 2020, at a Midland, Texas Sam’s Club Warehouse, Jose Gomez III, attacked an Asian family that he believed to be Chinese and, therefore, responsible for the COVID-19 pandemic.<sup>381</sup> The assailant said he never saw the family before but perceived them to be a “threat” since they were “from the country who started spreading that disease around.”<sup>382</sup> He attacked the family with a serrated steak knife, which he used to punch the father in the face, cutting him. He slashed the family’s 6-year-old child’s face and right ear. He also stabbed a Sam’s Club employee who attempted to stop him from further assaulting the Asian family. While being restrained, Gomez yelled at the family “Get out of America!”<sup>383</sup> He pleaded guilty to three counts of committing a hate crime and was sentenced to 25 years in prison.<sup>384</sup>
- On September 27, 2020, a Japanese pianist was physically assaulted outside a New York subway by eight people for being “Chinese.”<sup>385</sup>
- In April 2021, Yao Man Pa, an Asian immigrant, was hospitalized after he was pushed to the ground, kicked in the head, and stomped on several times in Manhattan, New York. The victim was left in a coma as a result of the brutal assault. He died in late December 2021.<sup>386</sup>
- On August 10, 2021, a couple assaulted and injured an indigenous Filipina nurse while she was distributing protective face masks on a New York subway. The assailants allegedly yelled racial slurs at her. “Mind your own business, ch\*\*k! Get out of this train, you Chinese, go back home to your dirty country.”<sup>387</sup>

<sup>380</sup> Eyewitness News, “Asian Man Kicked, Told to ‘Go Back to China’ in Coronavirus Hate Attack in East Harlem,” *WABC*, Mar. 12, 2020, <https://abc7ny.com/hate-crime-coronavirus-asian-bias-attack-man-attacked/6006100/>.

<sup>381</sup> Jordan Gartner, “Hate Crime: Man Sentenced for Attacking Asian Family He Blamed for Pandemic,” *WSAZ*, Aug. 6, 2022, <https://www.wsaz.com/2022/08/06/hate-crime-man-sentenced-attacking-asian-family-he-blamed-pandemic/>.

<sup>382</sup> *Ibid.*

<sup>383</sup> *Ibid.*

<sup>384</sup> Jordan Gartner, “Hate Crime: Man Sentenced for Attacking Asian Family He Blamed for Pandemic,” *WSAZ*, Aug. 6, 2022, <https://www.wsaz.com/2022/08/06/hate-crime-man-sentenced-attacking-asian-family-he-blamed-pandemic/>.

<sup>385</sup> Ana De Liz, “Japanese Man Assaulted by 8 Youths Outside NYC Subway for Being ‘Chinese,’” *Newsweek*, Oct. 9, 2020, <https://www.newsweek.com/japanese-man-assaulted-8-youths-outside-nyc-subway-being-chinese-1537827>.

<sup>386</sup> Troy Closson, “Asian Immigrant Attacked in Hate Crime Last Year Dies,” *The New York Times*, Jan. 8, 2022, <https://www.nytimes.com/2022/01/08/nyregion/anti-asian-hate-crime-death-harlem.html>.

<sup>387</sup> Ryan General, “Couple Violently Attacks Indigenous Filipina Nurse Distributing Face Masks in New York Subway,” *Yahoo.com Lifestyle*, Aug. 18, 2021, <https://www.yahoo.com/video/couple-violently-attacks-indigenous-filipina-185336808.html> --

0Naewq4Ws7d0SovGz07dG2gc9s\_u9werWBPhnL2nT42bmk\_n\_PkTUzLqpLELtdH3BmRrpi13WaXxIBSrK08.

- On May 11, 2022, three women of Korean descent were shot and injured at an Asian-run hair salon in Dallas, Texas.<sup>388</sup> The shooter walked into the salon and fired 13 rounds.<sup>389</sup> This shooting appeared to be part of a pattern of shootings around North Texas, whereby an assailant appeared to be targeting Asian-run establishments.<sup>390</sup>

Another incident that garnered national attention and increased the spotlight on hate crimes against Asian Americans was the incident that occurred on March 16, 2021, at three Atlanta-area spas. Eight people of Asian and Pacific Islander descent were killed.<sup>391</sup> The victims killed in the shooting were Xiaojie “Emily” Tan, 49; Daoyou Feng, 44; Delaina Yaun, 33; Paul Michels, 54; Yong Ae Yue, 63; Soon Chung Park, 74; Suncha Kim, 69; and Hyun Jung Grant, 51.<sup>392</sup> Elcias Hernandez-Ortiz was injured in the shooting.<sup>393</sup> The crime was perpetrated by Robert Aaron Long, and in May 2021, Fulton County Georgia District Attorney Fani Willis told reporters that her office is seeking the death penalty as well as “a sentence enhancement, pursuant to Georgia’s sentencing enhancement statute, commonly referred to as a hate crime statute, based on the race and gender of the victims.”<sup>394</sup> In April 2022, Long was sentenced to life in prison without parole, plus an additional 35 years;<sup>395</sup> however the death penalty trial was delayed until May 2023 as of March 16, 2023.<sup>396</sup>

In April 2021, the Pew Research Center conducted a nationally representative survey of 5,109 U.S. adults, including 352 Asian adults, and found that 8 out of 10 (81 percent) of Asian adults indicated

<sup>388</sup> Edgar Sandoval and J. David Goodman, “Dallas Salon Shooting May Be Linked to Wider Attacks on Asian Businesses,” *The New York Times*, May 13, 2022, <https://www.nytimes.com/2022/05/13/us/dallas-salon-shooting-hate-crime.html>.

<sup>389</sup> Soo Youn, “They Survived the Dallas Hair Salon Shooting. Here’s Their Message,” *The Washington Post*, May 26, 2022, <https://www.washingtonpost.com/nation/2022/05/26/dallas-hair-salon-shooting-victims-speak-out/>.

<sup>390</sup> Edgar Sandoval and J. David Goodman, “Dallas Salon Shooting May Be Linked to Wider Attacks on Asian Businesses,” *The New York Times*, May 13, 2022, <https://www.nytimes.com/2022/05/13/us/dallas-salon-shooting-hate-crime.html>.

<sup>391</sup> Alexis Stevens, “Spa Shootings: A Timeline of Events that Left 8 dead in Metro Atlanta on March 16, 2021,” *The Atlanta Journal-Constitution*, Mar. 15, 2022, <https://www.ajc.com/news/spa-shootings-a-timeline-of-events-that-left-8-dead-in-metro-atlanta/UH5ZJVXV3FCY3LUPW4T6CUCSC4/>.

<sup>392</sup> Meredith Deliso, “Suspect in Atlanta Spa Shootings Seeking to Avoid Death Row,” *ABC News*, Apr. 20, 2022, <https://abcnews.go.com/US/suspect-atlanta-spa-shootings-seeking-avoid-death-row/story?id=84196035#:~:text=He%20was%20sentenced%20to%20life,of%20murder%2C%20among%20other%20charges>.

<sup>393</sup> Alexis Stevens, “Spa Shootings: A Timeline of Events that Left 8 dead in Metro Atlanta on March 16, 2021,” *The Atlanta Journal-Constitution*, Mar. 15, 2022, <https://www.ajc.com/news/spa-shootings-a-timeline-of-events-that-left-8-dead-in-metro-atlanta/UH5ZJVXV3FCY3LUPW4T6CUCSC4/>.

<sup>394</sup> Jason Morris and Ray Sanchez, “Fulton County District Attorney will seek death penalty against Atlanta spa shooting suspect,” *CNN*, May 11, 2021, <https://www.cnn.com/2021/05/11/us/robert-aaron-long-atlanta-spa-shooting-indictment/index.html>.

<sup>395</sup> Meredith Deliso, “Suspect in Atlanta Spa Shootings Seeking to Avoid Death Row,” *ABC News*, Apr. 20, 2022, <https://abcnews.go.com/US/suspect-atlanta-spa-shootings-seeking-avoid-death-row/story?id=84196035#:~:text=He%20was%20sentenced%20to%20life,of%20murder%2C%20among%20other%20charges>.

<sup>396</sup> Shaddi Abusaid, “YSL trial judge to also hear motions in spa shooter death penalty case, but not until May,” *Atlanta Journal-Constitution*, Jan. 5, 2023, <https://www.ajc.com/news/crime/ysl-trial-judge-to-also-hear-motions-in-spa-shooter-death-penalty-case-but-not-until-may/UIQVO2JQRZACVHFC7NEATXM6Z4/>.



that violence against them was increasing.<sup>397</sup> Forty-five percent of the Asian adults surveyed reported experiencing at least one of five specific offensive incidents since the start of the coronavirus outbreak. The offensive incidents included “feared someone might threaten or physically attack them; people acted as if they were uncomfortable around them; been subject to racial slurs or jokes; someone made a remark they should go back to their home country; and someone made a remark that they are to blame for the coronavirus outbreak.”<sup>398</sup>

Almost one-third (32 percent) of Asian adults surveyed said that they feared someone might threaten or physically attack them. More than a quarter (27 percent) of Asian adults said people acted as if they were uncomfortable around them; and 27 percent also said they have been subject to slurs or jokes.<sup>399</sup> More than 1 in 10 (16 percent) said someone made a remark that they should go back to their home country; and 14 percent said someone made a remark that they are to blame for the coronavirus outbreak (see Figure 5 below).<sup>400</sup>

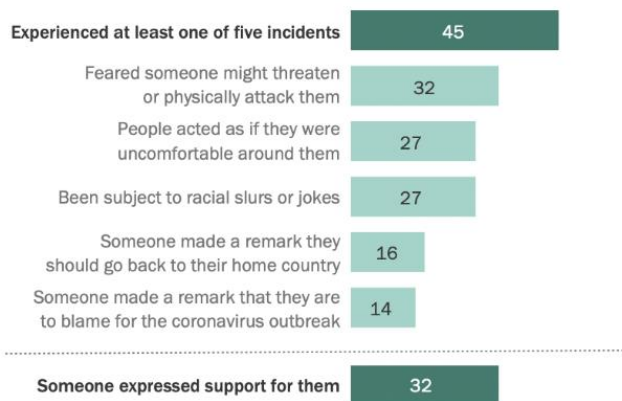
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<sup>397</sup> Neil G. Ruiz, Khadijah Edwards and Mark Hugo Lopez, “One-third of Asian Americans Fear Threats, Physical Attacks and Most Say Violence Against Them is Rising,” Pew Research Center, Apr. 21, 2021, <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/>.

<sup>398</sup> Ibid.

<sup>399</sup> Ibid.

<sup>400</sup> Ibid.

*Figure 5 Experiences of Anti-Asian Sentiment***Eight-in-ten Asian Americans say violence against them in the United States is increasing ...***% of Asian adults\* who say violence against Asian Americans in the U.S. is ...***... and nearly half experienced an incident tied to their racial or ethnic background since the pandemic began***% of Asian adults\* who say each of the following has happened to them since the coronavirus outbreak because of their race or ethnicity*

\*Asian adults were interviewed in English only.

Note: Figures may not add up to 100% due to rounding. No answer responses not shown.

Source: Survey of U.S. adults conducted April 5-11, 2021.

Source: Neil G. Ruiz, Khadijah Edwards and Mark Hugo Lopez, “One-third of Asian Americans Fear Threats, Physical Attacks and Most Say Violence Against Them is Rising,” Pew Research Center, Apr. 21, 2021.

A Center for Public Integrity/Ipsos poll, which was conducted in 2020 found that about 3 in 10 Americans blamed China or Chinese people for the pandemic.<sup>401</sup> Almost one-third (32 percent) of those polled witnessed someone blaming Asian people for the coronavirus epidemic. More than half (60 percent) of Asian respondents said they witnessed someone blaming Asian people for the coronavirus epidemic compared to 27 percent of White respondents.<sup>402</sup>

In March 2021, the Center for the Study of Hate and Extremism (CSHE) at California State University, San Bernardino, released findings showing anti-Asian hate crimes increased 145

<sup>401</sup> The Ipsos poll surveyed a sample of 1,001 adults, who were 18 years old and older, from the continental U.S., Alaska, and Hawaii. The survey was conducted on behalf of the Center for Public Integrity.

Chris Jackson, Jennifer Berg, and Jinhee Yi, “New Center for Public Integrity/Ipsos Poll finds most Americans say the Coronavirus Pandemic is a Natural Disaster,” Ipsos, Apr. 28, 2020, <https://www.ipsos.com/en-us/news-polls/center-for-public-integrity-poll-2020>.

<sup>402</sup> Ibid.

percent in the U.S. from 2019 to 2020.<sup>403</sup> In contrast, amid the pandemic-driven closures of businesses, schools and public gatherings hate crimes overall declined 6 percent in 2020.<sup>404</sup> Given the overall drop in hate crimes, the spike in anti-Asian hate crimes is notable.<sup>405</sup>

CSHE also documented that in the first quarter of 2021, anti-Asian hate crimes reported to police in 16 of America's largest cities and counties increased by 164 percent.<sup>406</sup> This was determined by comparing anti-Asian hate crimes reported in the first quarter of 2020 and to those reported in the first quarter of 2021 in each state.<sup>407</sup> These increases were primarily driven by increased anti-Asian hate crimes reported in the cities of New York City, Los Angeles, San Francisco, and Boston.<sup>408</sup>

A study by Stop AAPI Hate also indicates hate incidents between March 2020 and March 2021 “rose sharply over” the one-year period.<sup>409</sup> The report documented the following:

- Asian American and Pacific Islander (AAPI) women and girls were 2.2 times more likely to report hate incidents compared to AAPI men.
- Of the 3,943 Asian American women who reported a hate incident, 67.5 percent were East Asians, 16.2 percent were Southeast Asians, 8.1 percent were multiethnic Asians, 6.7 percent were multiracial Asians, and 1.3 percent were South Asians.<sup>410</sup>

<sup>403</sup> Center for the Study of Hate & Extremism, “Fact Sheet: Anti-Asian Prejudice March 2021,” CSUSB, Mar. 21, 2021, <https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%20rev%203.21.21.pdf>.

<sup>404</sup> Ibid.

<sup>405</sup> Researchers examined data of hate crimes reported in 2019 and compared them with those from 2020. The work focused on anti-Asian hate crimes reported to local and state police agencies in 16 of the largest U.S. cities. Ibid.

<sup>406</sup> Center for the Study of Hate & Extremism, *Report to the Nation: Anti-Asian Prejudice & Hate Crime: New 2020-21 First Quarter Comparison Data*, California State University, San Bernardino, 2021, <https://www.csusb.edu/sites/default/files/Report%20to%20the%20Nation%20-%20Anti-Asian%20Hate%202020%20Final%20Draft%20-%20As%20of%20Apr%2030%202021%206%20PM%20corrected.pdf>.

<sup>407</sup> Center for the Study of Hate & Extremism, *Report to the Nation: Anti-Asian Prejudice & Hate Crime, New 2020-21 First Quarter Comparison Data*, CSUSB, 2021, <https://www.csusb.edu/sites/default/files/Report%20to%20the%20Nation%20-%20Anti-Asian%20Hate%202020%20Final%20Draft%20-%20As%20of%20Apr%2030%202021%206%20PM%20corrected.pdf>.

<sup>408</sup> Ibid.

<sup>409</sup> The sample consisted of 3,943 Asian American women. Stop AAPI Hate disaggregated the data to examine the various subgroups within the Asian American community. The groupings were East Asian, South Asian, Southeast Asian, multiethnic and multiracial. See Drishti Pillai, Aggie J. Yellow Horse, and Russell Jeung, “The Rising Tide of Violence and Discrimination Against Asian American and Pacific Islander Women and Girls,” May 20, 2021, <https://stopaapihate.org/aapi-women-and-girls-report/>.

<sup>410</sup> East Asia includes China, Hong Kong, Japan, Macau, Mongolia, North Korea, South Korea, and Taiwan. See Asia Society, “East Asia,” <https://asiasociety.org/countries-regions/east-asia>; South Asia includes Afghanistan, Bangladesh, Bhutan, India, The Maldives, Nepal, Pakistan, and Sri Lanka. See South Asian Heritage Month, “What countries make up South Asia?,” <https://www.southasianheritage.org.uk/countries>; Southeast Asia includes Brunei, Burma (Myanmar), Cambodia, Timor-Leste, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam, Northern Illinois University, Center for Southeast Asian Studies, “Southeast Asian Countries,” <https://www.niu.edu/clas/cseas/resources/countries.shtml>.

- Verbal harassment/name calling was the most frequently reported type of hate incident experienced by all subgroups of Asian American women (see Table 4).
- The second most reported incident was avoidance/shunning. Multiethnic, Southeast Asian, and multiracial women experienced the greatest percentage of these incidents (at 16.3, 15.3 and 15.3 percent, respectively).
- South Asian women reported experiencing the highest percentage of physical assaults, at 16.2 percent (see Table 4).
- The most common places that Asian American women reported hate incidents occurring were places of business and public streets/sidewalks (see Table 5).
- Among Asian American women, the most frequently reported reason for experiencing hate incidents was due to their race. This was followed by their ethnicity and then their gender (see Table 6).

*Table 4 Types of Hate Incidents by Asian American Women, by Subgroups (in percentage)*

	<b>East Asian</b>	<b>Southeast Asian</b>	<b>South Asian</b>	<b>Multi-Ethnic</b>	<b>Multi-Racial</b>
<b>Verbal Harassment/ Name Calling</b>	52.6	49.9	36.8	51.7	45.5
<b>Avoidance/ Shunning</b>	12.1	15.3	10.3	16.3	15.3
<b>Physical Assault</b>	9.2	6.5	16.2	5.7	5.2
<b>Cough At/ Spat Upon</b>	7.2	5.4	7.4	7.2	6.1
<b>Barred from Establishment</b>	--	--	7.4	--	4.3
<b>Workplace Discrimination</b>	3.1	6.1	5.9	5.3	4.0
<b>Vandalism Graffiti</b>	--	4.4	--	--	--
<b>Online</b>	4.7	5.3	8.8	5.0	9.2

	East Asian	Southeast Asian	South Asian	Multi-Ethnic	Multi-Racial
<b>Other</b>	6.2	5.9	--	4.3	6.1
<b>Total Column Percentages</b>	<b>95.1</b>	<b>98.8</b>	<b>92.8</b>	<b>95.5</b>	<b>95.7</b>

n = 5,098 types

Source: Drishti Pillai, Aggie J. Yellow Horse, and Russell Jeung, The Rising Tide of Violence and Discrimination Against Asian American and Pacific Islander Women and Girls, May 20, 2021, <https://stopaapihate.org/aapi-women-and-girls-report/>.

*Table 5 Sites of Hate Incidents by Asian American Women, by Subgroups (in percentage)*

	East Asian	Southeast Asian	South Asian	Multi-Ethnic	Multi-Racial
<b>Business</b>	26.2	37.0	21.1	27.0	25.9
<b>Public Street/Sidewalk</b>	31.2	20.6	15.8	27.3	19.1
<b>Online</b>	6.7	8.2	14.0	10.2	13.7
<b>School</b>	4.1	5.8	12.3	6.4	8.6
<b>Private Residence</b>	6.9	7.7	12.3	8.1	6.8
<b>Public Park</b>	8.3	6.3	5.3	6.7	6.8
<b>-Public Transit</b>	7.9	5.8	7.0	7.0	5.8

n = 4,349 sites

Source: Drishti Pillai, Aggie J. Yellow Horse, and Russell Jeung, The Rising Tide of Violence and Discrimination Against Asian American and Pacific Islander Women and Girls, May 20, 2021, <https://stopaapihate.org/aapi-women-and-girls-report/>.

*Table 6 Sites of Hate Incidents by Asian American Women, by Subgroups (in percentage)*

	East Asian	Southeast Asian	South Asian	Multi-Ethnic	Multi-Racial
<b>Race</b>	50.0	53.3	40.4	49.3	46.2
<b>Ethnicity</b>	29.8	28.1	26.6	30.6	30.0

	East Asian	Southeast Asian	South Asian	Multi-Ethnic	Multi-Racial
Gender	9.4	7.2	8.5	9.4	9.1

N=7,265 types

Source: Drishti Pillai, Aggie J. Yellow Horse, and Russell Jeung, *The Rising Tide of Violence and Discrimination Against Asian American and Pacific Islander Women and Girls*, May 20, 2021, <https://stopaapihate.org/aapi-women-and-girls-report/>.

A March 2022 report published by Stop AAPI Hate documented 10,905 hate incidents against AAPI persons across the nation.<sup>411</sup> The data was based on hate incidents reported to Stop AAPI Hate from March 19, 2020, to December 31, 2021.<sup>412</sup> Out of the total number of hate incidents reported, 4,632 occurred in 2020 (42.5 percent) and 6,273 occurred in 2021 (57.5 percent).<sup>413</sup>

Of the 10,905 reported hate incidents, the majority were experienced by persons of Chinese descent and Korean descent, 42.8 and 16.1 percent, respectively.<sup>414</sup> Persons of Filipino, Japanese, and Vietnamese descent also reported experiencing hate incidents, (8.9, 8.2, and 8.0 percent, respectively).<sup>415</sup> The top three types of discrimination experienced by respondents included harassment (66.9 percent), physical assault (16.2 percent), and avoidance or shunning (16.1 percent).<sup>416</sup> These discriminatory acts most often occurred in the street and public spaces (32.4 percent), at a business (26.9 percent), in a private residence (10.3 percent), and online (10.1 percent).<sup>417</sup>

About 9 out of 10 respondents (91.5 percent) believed they were being discriminated against because of their race.<sup>418</sup> More than half of respondents (52.6 percent) indicated that they were being discriminated against because of their ethnicity. Some respondents also indicated that their gender/gender identity (14.4 percent) was also the reason for the discrimination taking place.<sup>419</sup> California (38.1 percent), New York (15.7 percent), Washington (4.8 percent), Texas (3.9 percent), and Illinois (3.3 percent) represented the five states with the largest percentage of respondents who reported hate incidents.<sup>420</sup>

<sup>411</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, *Stop AAPI Hate National Report*, 03/19/2020 – 12/31/2021, Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>.

<sup>412</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, *Stop AAPI Hate National Report*, 03/19/2020 – 12/31/2021, Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>.

<sup>413</sup> Ibid.

<sup>414</sup> Ibid.

<sup>415</sup> Ibid.

<sup>416</sup> The report defines harassment as the following items: Verbal hate speech and/or harassment Behavioral (e.g., following/stalking, bullying); Gesture (e.g., middle finger, “slanted eye gesture”); Written (e.g., printed materials such as hate letters, propaganda, or signage); and Sexual harassment. Ibid.

<sup>417</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, *Stop AAPI Hate National Report*, 03/19/2020 – 12/31/2021, Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>.

<sup>418</sup> Ibid.

<sup>419</sup> Ibid.

<sup>420</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, *Stop AAPI Hate National Report*, 03/19/2020 – 12/31/2021, Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>.

## Federal Data Collection

Official federal data collection on hate crimes did not begin until the 1990s with the passage of the Hate Crimes Statistics Act (HCSA).<sup>421</sup> The Act was signed into law by then-President George H.W. Bush, who believed that the law was a significant step toward the federal government fulfilling its responsibility and mandate to ensure civil rights protections, as he stated that:

Justice for all has been the historic mission of the civil rights movement, and it's a mission still to be fulfilled. Bigotry and hate regrettably still exist in this country, and hate breeds violence, threatening the security of our entire society. We must rid our communities of the poison we call prejudice, bias, and discrimination. One of the greatest obligations of this administration and of the Department of Justice is the guarantee of civil rights for all Americans... every one of us must confront and condemn racism, anti-Semitism, bigotry, and hate not next week, not tomorrow, but right now – every single one of us. For hate crimes cannot be tolerated in a free society.... That's why I'm signing into law today a measure to require the Attorney General to collect as much information as we can on crimes motivated by religion, race, ethnicity, or sexual orientation – the Hate Crime Statistic Act.<sup>422</sup>

The FBI's Hate Crime Statistics Program is responsible for collecting and reporting hate crime data as mandated by the Hate Crimes Statistics Act (HCSA).<sup>423</sup> The HCSA requires the Attorney General to collect data “about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.”<sup>424</sup> The Attorney General has delegated the responsibilities to develop the needed procedures to implement, collect, and manage hate crime data to the Director of the FBI, who in turn, assigned the tasks to the Uniform Crime Reporting (UCR) Program. Under the ongoing direction of the Attorney General, the UCR Program cooperated with state and local law enforcement to create a hate crimes data collection system to comply with the congressional

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<sup>421</sup> Hate Crimes Statistics Act, 28 U.S.C. § 534 (1993). The HCSA defines hate crimes as “crimes that manifest evidence of prejudice based on race, gender or gender identity, religion, disability, sexual orientation, or ethnicity.” *See* 28 U.S.C. § 41305(b)(1).

<sup>422</sup> President George Bush, “Remarks on Signing the Hate Crime Statistics Act,” Public Papers, George H.W. Bush Presidential Library & Museum, April 23, 1990, <https://bush41library.tamu.edu/archives/public-papers/1791>.

<sup>423</sup> 28 U.S.C. § 534 (1993); *see* 28 U.S.C. § 41305(b)(1).

<sup>424</sup> The required data collection was later extended to include disability with the passage of the Violent Crime Control and Law Enforcement Act of 1994 and the FBI began gathering data on this population on Jan. 1, 1997. *See* Federal Bureau of Investigation, Uniform Crime Report, “Hate Crimes Statistics,” <https://ucr.fbi.gov/hate-crime/2010/resources/hate-crime-2010-about-hate-crime>. The definition of a hate crime was again extended with the passage of the HCPA, discussed previously, to include gender and gender identity. The FBI began data collection on this data in 2013. And in 2013, the FBI further expanded the religious bias category to include Sikhs, Hindus, Arabs, Mormons, Jehovah's Witnesses, and Eastern Orthodox persons; this data has been officially collected since 2015. *See* Swathi Shanmugasundaram, “Hate Crimes, Explained,” Southern Poverty Law Center, April 15, 2018, <https://www.splcenter.org/20180415/hate-crimes-explained>.

mandate.<sup>425</sup> UCR data are voluntarily reported by state, local, and tribal law enforcement agencies directly to the FBI, but reporting is mandatory for federal law enforcement.<sup>426</sup> These data provide the number of incidents, victims, and offenders in hate and bias-related crimes whether the crime is motivated in whole or in part, by the offenders bias(es).<sup>427</sup>

A major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent is the lack of comprehensive data.<sup>428</sup> While the passage of the HCSA was an important step in increasing public awareness of hate violence, without mandatory national data collection and training law enforcement on how to accurately identify and report hate crimes, preventing these crimes becomes substantially more challenging.<sup>429</sup>

### National Data Transition

As discussed in the Commission's 2019 *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, collecting complete and accurate data on hate crimes is often difficult due to insufficient reporting practices.<sup>430</sup> Eric Dreiband, former Assistant Attorney General, explained:

It's important to note that the collection method used [to collect and report hate crimes] creates some discrepancies in the data. Each local government provides data on a voluntary basis. This in turn means that what one municipality provides may include very different information or criteria than another which leads to inconsistency in the data. Unfortunately, this leads to some unreliability in the data, as states may categorize hate crimes very differently from one another.<sup>431</sup>

These issues are exacerbated with the transition from the Summary Reporting System (SRS) to the National Incident-Based Reporting System (NIBRS). The SRS was an aggregate monthly tally of

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<sup>425</sup> See Federal Bureau of Investigation, Uniform Crime Report, "Hate Crimes Statistics," <https://ucr.fbi.gov/hate-crime/2010/resources/hate-crime-2010-about-hate-crime>.

<sup>426</sup> Federal Bureau of Investigation, "Hate Crime Statistics," <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/hate-crime>.

<sup>427</sup> Ibid.

<sup>428</sup> South Asian Americans Leading Together (SAALT), *Communities On Fire*, 2018, at 25, <http://saalt.org/wpcontent/uploads/2018/01/Communities-on-Fire.pdf>; U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, at 58, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>429</sup> See e.g., Ken Schwencke, "Why America Fails at Gathering Hate Crime Statistics," ProPublica, Dec. 4, 2017, <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>.

<sup>430</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>431</sup> Eric Dreiband, Written Statement for *The Federal Response to Anti-Asian Racism in the United States* Briefing before the U.S. Comm'n on Civil Rights, Mar. 24, 2023, at 9 (hereinafter Dreiband Statement).



crimes reported by local law enforcement.<sup>432</sup> However, following the introduction of NIBRS, many agencies continued to only submit crime data through the SRS, with commonly cited reasons for not participating in NIBRS being the costs of implementing a more technical system, and the misperception that NIBRS reporting would indicate an increase in crime rates.<sup>433</sup>

The DOJ announced the transition to NIBRS in 2015 and invested over \$120 million to assist state and local agencies to improve their crime data collection;<sup>434</sup> and the UCR Program transitioned to a NIBRS-only data collection on January 1, 2021.<sup>435</sup> Law enforcement agencies that had not transitioned to NIBRS prior to the reporting deadline for 2021 data were not included in the 2021 reported totals.<sup>436</sup> However, many agencies have been slow to make the transition to NIBRS, therefore had not submitted data for the 2021 UCR releases. For the 2021 first release of hate crime data in December 2022, the number of participating agencies within the FBI hate crime database was 11,834, compared to the 15,138 participating agencies for 2020 data.<sup>437</sup> In March 2023, the FBI's UCR Program released a 2021 hate crime statistics supplement for bias-motivated incidents throughout the nation. For the 2021 data year, the UCR Program accepted SRS hate crime data submissions and additional NIBRS hate crime reports from 3,025 agencies that covered a combined population of over 87 million.<sup>438</sup> The supplemental data was combined with the data submitted via NIBRS to allow for a more complete representation of reported hate crimes for 2021. Reported hate crime incidents increased nationally 11.6 percent from 2020 to 2021. This data reflects the reports of 14,859 law enforcement agencies representing 91.1 percent of the U.S. population.<sup>439</sup>

Crucially, some of the nation's largest jurisdictions did not submit 2021 data to NIBRS.<sup>440</sup> According to the Bureau of Justice Statistics (BJS), as of August 2022, 62 of the 85 cities with a population of 250,000 or more reported NIBRS data, and the two largest agencies in the country — Los Angeles Police Department and New York City Police Department — have not yet made

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<sup>432</sup> Jeffrey Fisher, "NIBRS: The Future of U.S. Crime Data," *Police Chief Magazine*, Oct. 2017, <https://www.theiacp.org/sites/default/files/all/n-o/NIBRSTheFutureofUSCrimeDataOct2017.pdf>; see also U.S. Bureau of Justice Statistics, *Blueprint for the Future of the Uniform Crime Reporting Program*, May 1985, <https://www.ojp.gov/pdffiles1/bjs/98348.pdf>.

<sup>433</sup> Ibid.

<sup>434</sup> U.S. Department of Justice, "New and Better Crime Data for the Nation," Oct. 5, 2022, <https://www.justice.gov/opa/blog/new-and-better-crime-data-nation>.

<sup>435</sup> Federal Bureau of Investigation, "National Incident-Based Reporting System (NIBRS)," <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/nibrs> (accessed Dec. 24, 2022).

<sup>436</sup> U.S. Dep't of Justice, "Associate Attorney General Vanita Gupta Issues Statement on 2021 FBI Hate Crimes in the United States Statistics," Dec. 12, 2022, <https://www.justice.gov/opa/pr/associate-attorney-general-vanita-gupta-issues-statement-2021-fbi-hate-crimes-united-states>.

<sup>437</sup> Federal Bureau of Investigation, "Crime Data Explorer," <https://crime-data-explorer.app.cloud.gov/pages/home>.

<sup>438</sup> Federal Bureau of Investigation, "FBI Releases Supplemental 2021 Hate Crime Statistics," Mar. 13, 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>.

<sup>439</sup> Federal Bureau of Investigation, "FBI Releases Supplement to the 2021 Hate Crime Statistics," Mar. 28, 2023, <https://www.justice.gov/crs/highlights/2021-hate-crime-statistics>.

<sup>440</sup> Federal Bureau of Investigation Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 15, 2023 [on file].

the full transition to NIBRS.<sup>441</sup> Phoenix and San Francisco are also not included in the national numbers provided by the FBI.<sup>442</sup> At the state level, some are “barely covered by the NIBRS data,” with 15 of 740 agencies in California reporting, 40 of 1,504 agencies in Pennsylvania, and only two of the 757 agencies in Florida.<sup>443</sup> The FBI, in partnership with BJS, generated national estimates using statistical estimation techniques, designed to estimate for non-reporting agencies and account for missing or unknown information within a reported incident.<sup>444</sup> However, BJS and the FBI did not produce estimates for hate crimes in 2021. The FBI, however, released national estimates for 2021 in October 2022.<sup>445</sup> As of June 14, 2023, the 2022 participation statistics for California are 568 of 836 agencies reporting NIBRS data. In Florida, 81 of 758 agencies have submitted NIBRS data, and in Pennsylvania 133 of 1,479 agencies have submitted NIBRS data.

Chief William Scott of the San Francisco PD explained:

What we do know is that the reporting of hate crimes, as we nationwide change our reporting system to the National Incident-Based Reporting System, that we hope to have better data on reporting. I do have the opinion that without the data to be able to really track the patterns of hate crime, to really be able to track what is fueling hate crimes and hate-fueled violence, that we’re behind the curve if we don’t have basic consistent, robust reporting systems. And I am hopeful that with the implementation of NIBRS across the United States, that our reporting will be more consistent, our reporting will be more accurate where we really understand the data and what’s fueling and what the patterns are in hate crime.

And that’s one thing that I believe, at least in our city, we are building that infrastructure to do just that, to be NIBRS compliant, we hope within the next year and a half or so, and we hope that our data and the data that we share with others is more robust so we have a way to not only track the data, but track the indicators and the things that we know that will help us really try to crack the code, if you will, on addressing hate crime in a holistic way.<sup>446</sup>

Participating in the NIBRS is challenging to many agencies, requiring training almost entire departments on new protocols. For example, the federal government gave San Diego \$2.6 million

<sup>441</sup> Bureau of Justice Statistics, “NIBRS Estimation Summary,” Aug. 2022, <https://bjs.ojp.gov/content/pub/pdf/nibrses.pdf>.

<sup>442</sup> Richard Rosenfeld, “Was Crime Up or Down in 2021? Why the FBI Can’t Tell Us,” Oct. 11, 2022, <https://thecrimereport.org/2022/10/11/was-crime-up-or-down-in-2021-why-the-fbi-cant-tell-us/>.

<sup>443</sup> Ibid.

<sup>444</sup> Bureau of Justice Statistics, “NIBRS Estimation Summary,” Aug. 2022, <https://bjs.ojp.gov/content/pub/pdf/nibrses.pdf>.

<sup>445</sup> Federal Bureau of Investigation, “FBI Releases Data on Crime in Nation for 2021,” Oct. 19, 2022, <https://le.fbi.gov/cjis-division/cjis-link/fbi-releases-data-on-crime-in-the-nation-for-2021#:~:text=The%20analysis%20used%20NIBRS%20estimation,2020%20to%2022%2C900%20in%202021.>

<sup>446</sup> Scott Testimony, pp. 153-54.

in 2016 to help the city's police department and the county's sheriff's office make the NIBRS transition and to update their local systems to the Automated Regional Justice Information System (ARJIS) that resulted in another 30+ local agencies transitioning to NIBRS at the same time; however, the city ended up spending beyond the federal funds provided on these transitions.<sup>447</sup> The San Francisco Police Department does not plan to submit to NIBRS until 2025, with the department asking city leaders for almost \$14 million for a new record system and staff to manage it. The Justice Department stated that running the new system will cost at least \$4 million each year for maintenance and support.<sup>448</sup> For NIBRS, San Francisco has contracted with a vendor for a records management system (RMS). As of June 2023, implementation of the RMS has commenced.<sup>449</sup> Once an agency does find the money to purchase a new record management system, jurisdiction-specific procurement requirements can mean that the actual process of the purchase can take up to two years, and full implementation can take 18 months or more after that.<sup>450</sup>

In addition to technical challenges in making the transition to NIBRS, there are few concrete incentives to adapt to the system since reporting remains voluntary, and there has not been strong political pressure to make the transition.<sup>451</sup> Some suggestions include that the FBI to require local law enforcement to submit crime data, or in lieu of that, having Congress make submission mandatory,<sup>452</sup> or considering a range of options to expand implementation.<sup>453</sup> Congress could also consider authorizing a new grant program that would provide funding to state and local governments to cover expenses related to transitioning to NIBRS, such as purchasing new software and computers, or training officers on how to use NIBRS.<sup>454</sup>

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<sup>447</sup> Weihua Li, "What Can FBI Data Say About Crime in 2021? It's Too Unreliable to Tell," *The Marshall Project*, Jun. 14, 2022, <https://www.themarshallproject.org/2022/06/14/what-did-fbi-data-say-about-crime-in-2021-it-s-too-unreliable-to-tell>.

<sup>448</sup> Ibid. The Justice Department explained to the Commission that "much of the SFPD crime incident data are not centrally located, with incident narratives stored on local computer hard drives, some data manually uploaded into homegrown narrowly focused applications built for specific purposes, such as an ancillary investigation application. The agency also has a need to automate the sharing of information across systems and better integrate other sources of information to their new RMS, like criminal history data, dispatch data, access to state systems, etc. The additional funds will assist with this complicated, multifaceted project that will fundamentally improve the way the agency manages their data." U.S. Dep't of Justice, Response to Affected Agency Review, June 22, 2023 [on file].

<sup>449</sup> U.S. Dep't of Justice, Response to Affected Agency Review, June 22, 2023 [on file].

<sup>450</sup> Weihua Li, "What Can FBI Data Say About Crime in 2021? It's Too Unreliable to Tell," *The Marshall Project*, Jun. 14, 2022, <https://www.themarshallproject.org/2022/06/14/what-did-fbi-data-say-about-crime-in-2021-it-s-too-unreliable-to-tell>.

<sup>451</sup> Priya Krishnakumar, "The FBI released its crime report for 2021 – but it tells us less about the overall state of crime in the US than ever," *CNN*, Oct. 5, 2022, <https://www.cnn.com/2022/10/05/us/fbi-national-crime-report-2021-data/index.html>.

<sup>452</sup> Richard Rosenfeld, "Was Crime Up or Down in 2021? Why the FBI Can't Tell Us," Oct. 11, 2022, <https://thecrimereport.org/2022/10/11/was-crime-up-or-down-in-2021-why-the-fbi-cant-tell-us/>.

<sup>453</sup> Congressional Research Service, *NIBRS Participation Rates and Federal Crime Data Quality*, May 24, 2022, <https://crsreports.congress.gov/product/pdf/IN/IN11936>.

<sup>454</sup> Congressional Research Service, *Federal Data on Hate Crimes in the United States*, Mar. 22, 2021, <https://crsreports.congress.gov/product/pdf/R/R46318>.

*National Crime Victimization Survey*

In addition to the NIBRS, the National Crime Victimization Survey (NCVS) provides another source of federally collected data. NCVS data have been collected annually by the Department of Justice's BJS since 2003.<sup>455</sup> The NCVS is a self-reported survey from a nationally representative sample of households of about 240,000 persons in about 150,000 households.<sup>456</sup> The survey collects data on the frequency, characteristics, and consequences of nonfatal personal crimes (i.e., rape, sexual assault, aggravated and simple assault, and personal larceny) as well as household property crimes (i.e., theft, burglary/trespassing, and motor vehicle theft).

Both the NCVS and the FBI Hate Crimes Statistics Program utilize the same definition of a hate crime established by the HCSA; however, the main difference between these datasets are NCVS hate crime data are classified based on victim perceptions and crime scene evidence, whereas the UCR/NIBRS dataset is based upon police-reported incidents.<sup>457</sup>

Hate crimes in the NCVS dataset include nonfatal crimes that are:

- 1) confirmed by police as bias-motivated, according to the victim's report,
- 2) perceived by victims to be bias-motivated because the offender(s) used hate language, or
- 3) perceived by victims to be bias-motivated because the offender(s) left behind hate symbols.<sup>458</sup>

BJS states that victims must report at least one of these types of evidence for the NCVS to classify the act as a hate crime.<sup>459</sup>

Moreover, data collected by the NCVS is not dependent on whether a victim reported the crime to the police.<sup>460</sup> Therefore, the number of reported hate crimes for a particular year can greatly vary between the NCVS and the UCR/NIBRS. While the 2019 Commission report highlighted the important differences between the two federal data sources, for the purposes of this report, a comparison between hate crime data from 2019-2022 reported by UCR/NIBRS and NCVS is not

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<sup>455</sup> Madeline Masucci and Lynn Langton, "Hate Crime Victimization, 2004-2015," Bureau of Justice Statistics, U.S. Department of Justice, June 2017.

<sup>456</sup> Bureau of Justice Statistics, "National Crime Victimization Survey," <https://bjs.ojp.gov/programs/ncvs#:~:text=The%20National%20Crime%20Victimization%20Survey,persons%20in%20about%20150%2C000%20households>.

<sup>457</sup> Bureau of Justice Statistics, "Bias-Motivated/Hate Crime," <https://bjs.ojp.gov/topics/crime/hate-crime>; Lynn Langton and Michael Planty, "Hate Crime, 2003-2009," Bureau of Justice Statistics, U.S. Dep't of Justice, June 2011, <https://www.bjs.gov/content/pub/pdf/hc0309.pdf>.

<sup>458</sup> Bureau of Justice Statistics, "Bias-Motivated/Hate Crime," <https://bjs.ojp.gov/topics/crime/hate-crime>.

<sup>459</sup> Ibid.

<sup>460</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, at 54, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

possible since the latest hate crime data BJS published featuring the NCVS does not include data post-2019.<sup>461</sup> This can be significant because it is well-documented that hate crime data are underreported by victims and by law enforcement.<sup>462</sup> Therefore, without additional federal data, a comprehensive understanding of rise of hate incidents and hate crimes against persons of Asian descent is not fully possible.

### Underreporting of Hate Crimes

Another challenge when trying to gauge the magnitude of the increase in anti-Asian hate crimes during the pandemic is the dearth of research on the rates that Asian victims of crime are likely to report a crime to the police.<sup>463</sup> It is well-established that hate crimes are less likely to be reported to the police in comparison to other types of crimes.<sup>464</sup> The underreporting of these crimes is significant for several reasons. It is less likely that an offender will be arrested or formally charged, less likely that a victim will receive the help that they need, and less likely that the crime will be documented in official statistics. Therefore, local, state, and federal resources are less likely to be allocated to addressing and preventing hate crimes.

There are many reasons why victims of hate crimes may choose not to report the incident to law enforcement. The Bureau of Justice Assistance stated:

Hate crimes can be more violent and involve greater victim injury as compared to other victimizations, yet they are substantially underreported. Victim reluctance to contact law enforcement may arise from perceptions of police bias, distrust of law enforcement or the

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<sup>461</sup> Grace Kena and Alexandra Thompson, "Hate Crime Victimization, 2005-2019," <https://bjs.ojp.gov/library/publications/hate-crime-victimization-2005-2019>; *see also*, The Department of Justice wrote that "the NCVS is undergoing a redesign with an anticipated rollout in 2023." *See* Department of Justice, "Improving the Identification, Investigation, and Reporting of Hate Crimes," Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 16, 2023 [on file].

<sup>462</sup> *See e.g.*, Tanner Stening, "Why hate crimes are underreported – and what police departments have to do with it," Northeastern Global News, Feb. 16 2023, <https://news.northeastern.edu/2021/08/23/why-hate-crimes-are-underreported-and-what-police-departments-have-to-do-with-it/>; Ronald Davis and Patrice O'Neill, "The Hate Crime Reporting Gap: Low Numbers Keep Tensions High," *Police Chief Magazine*, vol. 83, May 2016, <https://www.policechiefmagazine.org/the-hate-crimes/>; Catherine Devine, Liliana Byington, and News21 Staff, "Millions are victims of hate crimes, though many never report them," Center for Public Integrity, Aug. 16, 2018, <https://publicintegrity.org/politics/millions-are-victims-of-hate-crimes-though-many-never-report-them/>; Rebecca Stotzer, "Gender Identity and Hate Crimes: Violence Against Transgender People in Los Angeles County," *Sexuality Research & Social Policy*, Mar. 2008, vol. 5, no. 1.

<sup>463</sup> Brendan Lantz and Marin Wenger, "Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic," *Crime & Delinquency*, 2021, vol. 68, no. 8, <https://journals.sagepub.com/doi/10.1177/00111287211041521#bibr46-00111287211041521>.

<sup>464</sup> *See e.g.*, Caroline Harlow, "Hate Crime Reported by Victims and Police," National Criminal Victimization Survey and Uniform Crime Reporting, Bureau of Justice Statistics, Nov. 2005, <https://bjs.ojp.gov/content/pub/pdf/hcrvp.pdf>; Brendan Lantz and Joonggon Kim, "Hate Crimes Hurt More, but So Do Co-Offenders: Separating the Influence of Co-Offending and Bias on Hate-Motivated Physical Injury," *Criminal Justice and Behavior*, Nov. 2018.

criminal justice system, or barriers such as language or concerns about their immigration status. As law enforcement agencies use data to inform their strategies and allocation of resources, this can pose a unique challenge in addressing hate crimes. This underreporting and identification of hate crimes can also grow out of lack of training and understanding on the part of law enforcement and prosecutors resulting in their inability to identify, report, or charge these crimes and effectively investigate or prosecute these cases.<sup>465</sup>

Similarly, the Commission's 2019 Hate Crimes report documented numerous reasons why victims from a variety of targeted communities may choose not to report an incident, including confusion over whether they should report a crime or if the incident would qualify as a hate crime, belief that officers would not be helpful or take them seriously, concerns over deportation, or feared retaliation or humiliation, to name a few.<sup>466</sup>

There is a dearth of literature examining the frequency and likelihood that Asian Americans will report discrimination, such as how often they report, their attitudes regarding reporting, and potential barriers.<sup>467</sup> Since it is well-established that hate crimes are underreported in general, not knowing the degree to which Asian Americans are likely to report further obfuscates the magnitude of anti-Asian bias and hate crimes.

Legal experts note that one major barrier to gaining a comprehensive understanding of the magnitude of hate violence against Asian communities may be due to incidents not rising to the legal benchmark of a hate crime. Therefore, many incidents that are reported to community organizations, such as being spit on or called racial slurs, are not accounted for in official numbers, yet still invoke fear in community members. John C. Yang, executive director and president of Asian Americans Advancing Justice (AAJC), explained that:

[r]egardless of whether these are designated as hate crimes, the effect is the same, the Asian American community right now is under fear, under pain, and angry. So, these legal definitions frankly don't matter, what matters right now is ensuring that the Asian American community feels visible and feels protected.<sup>468</sup>

The 2022 American Experiences with Discrimination Survey found that a majority (83 percent) of Asian Americans reported that they were concerned about the increase in hate incidents<sup>469</sup> and that

<sup>465</sup> Dep't of Justice, Bureau of Justice Assistance, Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 16, 2023 [on file].

<sup>466</sup> See U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019.

<sup>467</sup> STOP AAPI Hate, *Righting Wrongs: How Civil Rights Can Protect Asian Americans and Pacific Islanders Against Racism*, May 2023, p. 7.

<sup>468</sup> Catherine Thorbecke, "Why anti-Asian hate incidents often go unreported and how to help," *ABC News*, Mar. 18, 2021, <https://abcnews.go.com/US/anti-asian-hate-incidents-unreported/story?id=76509072>.

<sup>469</sup> Jennifer Lee and Karthick Ramakrishnan, "A Year After Atlanta," Mar. 16, 2022, <http://aapidata.com/blog/year-after-atlanta/>.

close to two million individuals have experienced hate incidents since the beginning of the pandemic.<sup>470</sup> However, only “a very small fraction of them have reported to community hotlines and an even smaller proportion, at least what we know, have been established by law enforcement as hate crimes.”<sup>471</sup> Research suggests that over a quarter of Asian Americans reported having experienced hate incidents at some point in time in their lives, but only about 30 percent of Asian Americans stated they would be comfortable reporting the incident to the police.<sup>472</sup> Karthick Ramakrishnan, associate dean of the UC Riverside School of Public Policy, posits that this reluctance may be due to “fear of retaliation” and “whether justice would be served.”<sup>473</sup> Breaking this reluctance down by gender shows that Asian women express more distrust in the criminal justice system, are more likely to fear retaliation, and are less likely to believe justice will be served if reported; thus, are significantly less likely to report a hate incident to the police compared to Asian men.<sup>474</sup>

Jennifer Wu, founding partner of Groombridge, Wu, Baughman & Stone LLP who represents hate crime victims and their families in New York, testified to the Commission:

Asians tend to underreport... Individuals on the other hand are embarrassed. The biggest complaint I hear from my victim is my face is in the newspaper. That means all the friends and family of the perpetrator are going to come get me. They’re afraid for their own safety and they don’t want to report. So, they want to do it anonymously... they’re scared.<sup>475</sup>

Similarly, Ramakrishnan explains that many Asian Americans may choose not to report to avoid unwanted attention to themselves or family members.<sup>476</sup> Jo-Ann Yoo, executive director of the Asian American Federation, testified about how a 90-year-old grandmother who was set on fire by teenagers in a Brooklyn neighborhood was “too scared to tell anybody including her own family.”<sup>477</sup> D.J. Ida, executive director for the National Asian American Pacific Islander Mental Health Association, also suggests that when hate incidents occur, Asian Americans may feel pressured not to talk or report the incident to avoid burdening other family members, especially those who come from families who recently immigrated, and that “[f]rom a psychological standpoint, sometimes we don’t want to talk about the problems because, and I see this in younger

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<sup>470</sup> Ibid.

<sup>471</sup> Ibid.

<sup>472</sup> Ibid.

<sup>473</sup> Kimmy Yam, “Asian Americans are least likely to report hate incidents, new research shows,” *NBC News*, Mar. 31, 2021, <https://www.nbcnews.com/news/asian-america/asian-americans-are-least-likely-report-hate-incidents-new-research-n1262607>.

<sup>474</sup> Jennifer Lee and Karthick Ramakrishnan, “A Year After Atlanta,” Mar. 16, 2022, <http://aapidata.com/blog/year-after-atlanta/>.

<sup>475</sup> Wu Testimony, pp. 117-18.

<sup>476</sup> Kimmy Yam, “Asian Americans are least likely to report hate incidents, new research shows,” *NBC News*, Mar. 31, 2021, <https://www.nbcnews.com/news/asian-america/asian-americans-are-least-likely-report-hate-incidents-new-research-n1262607>.

<sup>477</sup> Yoo Testimony, p. 25.

people who were immigrants or children of immigrants, their parents had worked so hard for them. They don't want to burden their parents. Because it's a sense of gratitude and it's very, very powerful."<sup>478</sup>

Some research also suggests that stereotypical notions of Asian Americans as “model minorities” may also contribute to the belief that Asian individuals need to be more “self-sufficient” and address problems within their families instead of seeking help from more formal outlets. The model minority stereotype also carries over to the notion of Asian Americans as “model victims who can overcome and respond to their victimization quietly.”<sup>479</sup> Research suggests that many Asian Americans internalize these stereotypes, which makes them less likely to seek help from police and/or mental health services after being victimized.<sup>480</sup> While there is a lack of literature regarding Asian hate crime victims specifically, victimization research on domestic violence and sexual assault suggests that Asian Americans consistently demonstrated that they prefer seeking aid through informal (e.g., friends) versus formal (e.g., police) means.<sup>481</sup> For instance, Quyen Dinh, executive director of Southeast Asia Resource Action Center explained that “a lot of our community members don't know they can report, or they are afraid to report to law enforcement. They would rather share with the community groups they feel comfortable with.”<sup>482</sup>

According to the former chairperson and commissioner at the New York Human Rights Commission Carmelyn Malalis, another barrier that may lead to hate incidents being underreported is due to language barriers, especially among immigrant communities and/or elders.<sup>483</sup> She explained that:

when anyone is personally attacked, much more than if they're personally attacked because of their identity, your safe place is to go somewhere where you can talk about it in a way

<sup>478</sup> Kimmy Yam, “Asian Americans are least likely to report hate incidents, new research shows,” *NBC News*, Mar. 31, 2021, <https://www.nbcnews.com/news/asian-america/asian-americans-are-least-likely-report-hate-incidents-new-research-n1262607>.

<sup>479</sup> Yoshiko Takahashi, “Victims Behind the Model Minority Myth: Are Asian Americans Model Victims?,” *An International Perspective on Contemporary Developments in Victimology*, June 2020.

<sup>480</sup> Sungchul Park, Jim Stimpson, Jessie Pintor, Dylan Roby, Ryan McKenna, Jie Chen, and Alexander Ortega, “The Effects of the Affordable Care Act on Health Care Access and Utilization Among Asian American Subgroups,” *Medical Care*, vol. 57, no. 11, Nov. 2019, <https://pubmed.ncbi.nlm.nih.gov/31634267/>; Brendan Lantz and Marin Wenger, “Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic,” *Crime & Delinquency*, 2021, vol. 68, no. 8, <https://journals.sagepub.com/doi/10.1177/00111287211041521#bibr46-00111287211041521>.

<sup>481</sup> Anita Raj and Jay Silverman, “Violence Against Immigrant Women,” *The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, Mar. 2002, vol. 8, no. 3, <https://refugeersearch.net/wp-content/uploads/2016/05/Raj-and-Silverman-2002-Violence-against-immigrant-women.pdf>; Anita Raj and Jay Silverman, “Domestic Violence Help-Seeking Behaviors of South Asian Women Residing in the United States,” *International Review of Victimology*, July 2016, vol. 14, no. 1, <https://journals.sagepub.com/doi/abs/10.1177/026975800701400108?journalCode=irva>.

<sup>482</sup> Priya Krishnakumar, “Why hate crime data can't capture the true scope of anti-Asian violence,” *CNN*, Mar. 18, 2021, <https://www.cnn.com/2021/03/18/us/hate-crime-reporting-anti-asian-violence/index.html>.

<sup>483</sup> Catherine Thorbecke, “Why anti-Asian hate incidents often go unreported and how to help,” *ABC News*, Mar. 18, 2021, <https://abcnews.go.com/US/anti-asian-hate-incidents-unreported/story?id=76509072>.



that you feel most comfortable. One huge issue that [the New York Human Rights Commission] has talked about with some partners across the country is the need to make sure that as people are doing outreach, as people are doing intake, that there's language accessibility.<sup>484</sup>

Manjusha Kulkarni, executive director of AAPI Equity Alliance and co-founder of Stop AAPI Hate, wrote in her statement to the Commission that community advocates working with immigrant Asian populations have reported that language barriers present an obstacle for those with limited English proficiency when it comes to reporting a hate crime.<sup>485</sup> This barrier is due to “few police departments hav[ing] officers who are fluent speakers of Asian languages, even in large metropolitan areas with high numbers of AAPIs.”<sup>486</sup>

A 2021 study examining variations in the likelihood of reporting hate crimes during the pandemic between Asian victims and other victims found that approximately 35 percent of hate crimes were reported to the police.<sup>487</sup> Asian respondents comprised a disproportionate percentage of respondents who did not report their hate crime victimization. Asian people comprising 7.9 percent of respondents who experienced hate crimes, but 9.3 percent of the sample who did not report versus 5.2 percent of those that reported. There was no similar variation observed within other racial/ethnic groups. Examining the relationship between race and reporting a hate crime, the study found Asian victims had approximately 53 percent lower odds of reporting a hate crime to the police than White victims. Other races did not show significantly different reporting patterns relative to White victims.<sup>488</sup> The study concluded that the underreporting of anti-Asian hate crimes at higher rates than victims of other racial/ethnic groups is not unique to the pandemic; rather, it may be a general pattern that persisted previously.<sup>489</sup> Underreporting of hate crimes not only obfuscates official data but also threatens overall public safety,<sup>490</sup> which creates a serious concern as data shows that bias-motivated incidents and hate crimes increased during the pandemic across the nation.<sup>491</sup>

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<sup>484</sup> Ibid.

<sup>485</sup> Kulkarni Statement pp. 7-8.

<sup>486</sup> Ibid., 8.

<sup>487</sup> Brendan Lantz and Marin Wenger, “Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic,” *Crime & Delinquency*, 2021, vol. 68, no. 8, <https://journals.sagepub.com/doi/10.1177/00111287211041521#bibr46-00111287211041521>.

<sup>488</sup> Brendan Lantz and Marin Wenger, “Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic,” *Crime & Delinquency*, 2021, vol. 68, no. 8, <https://journals.sagepub.com/doi/10.1177/00111287211041521#bibr46-00111287211041521>.

<sup>489</sup> Ibid.

<sup>490</sup> See e.g., International Association of Chiefs of Police, “Responding to Hate Crimes: A Police Officer’s Guide to Investigation and Prevention,” <https://www.theiacp.org/resources/responding-to-hate-crimes-a-police-officers-guide-to-investigation-and-prevention>; U.S. Dep’t of Justice and U.S. Dep’t of Health and Human Services, *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, <https://www.justice.gov/file/1507346/download>.

<sup>491</sup> See *supra* notes 522-531 (showing FBI data during the pandemic).

In addition to problems with underreporting and incomplete national hate crime data, the federal data presents some communities, like Asian and Latino Americans, as monolithic rather than a vast diaspora of ethnicities. Federal databases often aggregate reports by ethnicity and lump incidents into broader racial categories.<sup>492</sup> For Asian Americans specifically, according to a 2016 study, more than 17 million members of approximately 50 different races and ethnicities are classified under the umbrella term of “Asian American or Pacific Islander.”<sup>493</sup> This can have widespread confounding effects when trying to understand differences in income levels, educational attainment, and experiences of racism and discrimination. For Asian Americans specifically, aggregated data continues to reify the “model minority” myth, and having disaggregated data would allow researchers and policymakers to better understand the challenges that different communities face.<sup>494</sup> When it comes to hate crimes the European Union Agency for Fundamental Rights recommends:

the collection and reporting of disaggregated data ... [are] necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime[s] [are] taken seriously and sends a message to the public that hate crime[s] [are] monitored, addressed, and not tolerated.<sup>495</sup>

Because national data does not distinguish between Asian subgroups, it is difficult to establish correlations between public attitudes and the rise of hate crimes during the pandemic. The lack of nuanced and disaggregated data also poses another barrier for researchers and policymakers to understand the causes of hate incidents and hate crimes and keeps law enforcement and government officials from being able to direct resources and provide services to targeted communities to address the increase of violence.<sup>496</sup>

### Hate Crimes Based on Multiple Characteristics

Victims of hate crimes and bias-motivated incidents may be targeted due to multiple characteristics of their real or perceived identity (e.g., race, gender, and sexual orientation or religion and race). Various aspects of an individual’s identity may be associated with a particular group that could

<sup>492</sup> Federal Bureau of Investigation, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/home>.

<sup>493</sup> Christian Edlagan and Kavya Vaghul, “How data disaggregation matters for Asian Americans and Pacific Islanders,” Washington Center for Equitable Growth, Dec. 14, 2016, <https://equitablegrowth.org/how-data-disaggregation-matters-for-asian-americans-and-pacific-islanders/>.

<sup>494</sup> See e.g., Tina Kauh, Jen’nan Ghazal Read, and A.J. Scheitler, “The Critical Role of Racial/Ethnic Data Disaggregation for Health Equity,” *Population Research and Policy Review*, vol. 40, no. 1-7, 2021, <https://link.springer.com/article/10.1007/s11113-020-09631-6>.

<sup>495</sup> European Union Agency for Fundamental Rights, “FRA Opinions Hate Crime Reporting,” <https://fra.europa.eu/en/content/fra-opinions-hate-crime-recording>.

<sup>496</sup> The Justice Department noted to the Commission that the FBI’s UCR Program follows the Office of Management and Budget’s (OMB) minimum reporting guidelines for race and ethnicity. See Dep’t of Justice, Response to Affected Agency Review, June 22, 2023 [on file].

put them at risk of being targeted for hate violence. Moreover, these risks may be intersectional<sup>497</sup> in nature. For instance, data suggest that Muslim, Middle Eastern, and Arab women who wear hijabs or head scarves are among the most targeted for hate violence in their communities due to the “intersection of gender, skin color, religious presentation, and immigrant background they represent.”<sup>498</sup> One example of the intersectional nature of hate crimes targeting Asian people was witnessed in the heinous Atlanta spa shootings. As discussed previously, Asian women are subjected to a form of exoticized sexualization that is distinct from the way women in other racial groups in the U.S. are sexualized.<sup>499</sup> Public outcry following the 2021 spa shooting rampage argued that the shooter targeted Asian women precisely because of these harmful stereotypes, which allowed the assailant to make the racist and misogynistic link between his sex addiction and Asian women in general.<sup>500</sup> Despite these cases, hate crimes are often not reported intersectionally, even when there may be evidence to suggest that an individual was targeted for multiple reasons.

In many cases, law enforcement reports a crime as a hate crime only when there is clear evidence (e.g., the perpetrator used slurs or symbols) during the attack or left at the scene of the crime. Therefore, a crime is reported as a hate crime based on the most obvious motivating factors that the assailant used during the crime, even if an individual’s multiple identities may be a driving force as to why they were targeted.<sup>501</sup> For instance, if a hate crime occurred against a queer Asian woman, where a perpetrator assaults her and uses racist slurs during the attack, in most cases, the attack would be recorded as racially motivated, despite the fact that she is also queer. This would be due to the motivating factor that she is Asian, not the fact that she is also queer and a woman. It can be argued that these other identity characteristics may also play a role as motivating factors for why she was targeted, even if the attack is only recorded as anti-Asian and not also anti-LGBTQ +and/or anti-woman. In some cases, however, if there is evidence that the crime was motivated by two or more biases, the crime may be reported as a multiple-bias incident. In the 2021 Supplemental Hate Crime report released by the FBI, there were 310 multiple-bias hate crime incidents that involved 411 victims (see further discussion below).<sup>502</sup>

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<sup>497</sup> Intersectionality is an analytical framework that examines the relationships between social identities (e.g., race, class, gender) and how these identities create overlapping and interlocking systems that affect marginalized individuals and communities in society. Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *The University of Chicago Legal Forum*, 140:139-167 (1989).

<sup>498</sup> *Ibid.*

<sup>499</sup> Shruti Mukkamala and Karen L. Suyemoto, “Racialized Sexism/Sexualized Racism: A Multimethod Study of Intersectional Experiences of Discrimination for Asian American Women,” *Asian American Journal of Psychology*, 2018, vol. 9, num. 1, <http://dx.doi.org/10.1037/aap0000104>; see also, *supra* notes 269-276.

<sup>500</sup> Kate Brumback, “Man Pleads Guilty to 4 Asian Spa Killings, Sentenced to Life,” APNews.com, July 28, 2021, <https://apnews.com/article/shootings-georgia-massage-business-shootings-4c9d611102b25b49b8bfec276278c472>.

<sup>501</sup> Lisa M. Jones, Kimberly J. Mitchell, and Heather A. Turner, “U.S. Hate Crime Investigation Rates and Characteristics: Findings from the National Hate Crime Investigations Study (NHCIS),” Office of Justice Programs, U.S. Dep’t of Justice, Apr. 2022, <https://www.ojp.gov/pdffiles1/nij/grants/304531.pdf>.

<sup>502</sup> See Federal Bureau of Investigation, Supplemental Hate Crime Statistics, 2021, Mar. 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>.

Reports of bias incidents against individuals who are Asian and LGBTQ were prominent between 2019 and 2022, highlighting the intersectional nature of these incidents. For example, one story that was collected was from a transgender Asian woman who stated:

I was with my new boyfriend at a restaurant and when we walked in the server started calling me a b---h, c---k, tr---ie... He said I have a big fat p---s, and told me to go back to China. Then my boyfriend proceeded to walk in the restaurant and when I took a step forward, the server hit me, so I left.

Left a restaurant with friends in the Asian district of town. A man began to follow me calling out ‘Hey you f---got c---k!’ & ‘Come here you virus!’ I began to walk fast towards a crowd until he stopped following me.

Cynthia Choi, co-executive director with Chinese for Affirmative Action and co-founder of Stop AAPI Hate, stated that Asian victims who are most likely to be targeted were “individuals who live in the intersections.”<sup>503</sup> For instance, Kyle Navarro who is queer identified and Filipino American said that he was spat at and called a “gook” outside of his workplace. He stated that he wanted to defend himself, but “I took a breath and realized if I had gotten hurt or worse, I have a partner to worry about...” and now he is fearful for his and his partner’s safety.<sup>504</sup> Navarro explained that “every time my partner and I go out, we give each other hugs, we hold each other, and tell each other to be safe.”<sup>505</sup> Choi explained that the increase in anti-Asian hate incidents have a compounding effect on some victims, especially those who

were already living in situations where their safety has been an issue... whether you’re an immigrant, undocumented, or because of your gender identity and sexuality – the pandemic has amplified that. Those who were suffering before the pandemic, their situation is worse off.<sup>506</sup>

Choi also described a request for support from the mother of a student enrolled in Montana State University, who reached out to Stop AAPI Hate when her daughter was allegedly subjected to anti-Asian, anti-LGBT slurs, and found a noose in her closet with a note telling her to kill herself.<sup>507</sup>

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<sup>503</sup> Nico Lang, “LGBTQ Asian Americans Brace for a ‘Double Whammy’ as Hate Crimes Rise,” *Vice*, Apr. 22, 2020, <https://www.vice.com/en/article/y3mywy/lgbtq-asian-americans-brace-for-a-double-whammy-as-hate-crimes-rise>.

<sup>504</sup> Ibid.

<sup>505</sup> Ibid.

<sup>506</sup> Ibid.

<sup>507</sup> Choi Testimony, p. 70.

Hieu Nguyen, founder of the Viet Rainbow in Orange County, stated that being LGBTQ and Asian during COVID-19 has become a “double whammy.”<sup>508</sup> Nguyen explained that “when you’re LGBTQ and an ethnic minority, there’s already a sense of not feeling safe in the environment that you’re in. It just adds a heightened level of anxiety for folks, and it challenges their sense of safety.”<sup>509</sup> Moreover, due to a combination of being fearful to report and the lack of being able to report these incidents intersectionally, many cases like these may not be reflected in national statistics. Thus, the lack of disaggregated hate crime data continues to obfuscate the full understanding of hate violence in the United States. As such, Manjusha Kulkarni, executive director of AAPI Equity Alliance, wrote to the Commission that solutions to stop hate crimes against Asian Americans solutions need to “address issues of intersectionality as many who have been harmed do not simply identify as AAPI, but also as women, LGBTQ+, low-income, disabled, and immigrant.”<sup>510</sup>

## FBI Data

Notwithstanding the problems associated with data collection and data reliance, the federal government has documented increases in anti-Asian hate crimes, confirming the uptick in hate crimes noted by AAPIs and other groups. Congress highlighted these increases in the COVID-19 Hate Crimes Act.<sup>511</sup> They have also been reported by the DOJ in the *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic* report and by the FBI in its Hate Crimes Statistics Reports.

In the bipartisan COVID-19 Hate Crimes Act, Congress stated that following the spread of COVID-19 in 2020, there was a dramatic increase in hate crimes and violence against Asian Americans and Pacific Islanders.<sup>512</sup> There were nearly 3,800 reported cases of anti-Asian discrimination and incidents related to COVID-19 between March 19, 2020, and February 28, 2021, in all 50 States and the District of Columbia.<sup>513</sup> Race-based bias was cited as the primary reason for discrimination, making up over 90 percent of incidents over this period.<sup>514</sup> Moreover, 36 percent of these incidents took place at a business,<sup>515</sup> which highlights additional civil rights concerns. For instance, a report from Stop AAPI Hate showed that from March 2020 to December 2021, almost 11,000 anti-Asian hate incidents were reported, a quarter of these incidents occurred at businesses, a third on public streets, and other civil rights violations (e.g., being refused service,

<sup>508</sup> Nico Lang, “LGBTQ Asian Americans Brace for a ‘Double Whammy’ as Hate Crimes Rise,” *Vice*, Apr. 22, 2020, <https://www.vice.com/en/article/y3mywy/lgbtq-asian-americans-brace-for-a-double-whammy-as-hate-crimes-rise>.

<sup>509</sup> *Ibid.*

<sup>510</sup> Kulkarni Statement at 11.

<sup>511</sup> Pub. L. No. 117-13, 135 Stat. 265 (2021).

<sup>512</sup> Pub. L. No. 117-13, § 2(1), 135 Stat. 265 (2021); COVID-19 Hate Crimes Act, Public Law No: 117-13, S. 937. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/937/text>.

<sup>513</sup> Pub. L. No. 117-13, § 2(2), 135 Stat. 265 (2021).

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

being barred from transportation, and housing and workplace discrimination) accounted for 11.5 percent of reported incidents.<sup>516</sup>

Additionally, in a report issued by the DOJ and HHS titled *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, data showed the overall number of race-related hate crimes rose by 30 percent in 2020.<sup>517</sup> Comparatively, the report found that anti-Asian hate crimes, specifically, increased by over 70 percent in 2020.<sup>518</sup>

According to the Bureau of Justice Assistance (BJA), anti-Asian hate crimes rose 164 percent in 16 of the largest cities and counties in the first quarter of 2021 compared to the same period in 2020.<sup>519</sup> BJA wrote that the first quarter increases in 2021 followed a “historic surge” in anti-Asian hate crimes that started in 2020, with anti-Asian hate crimes increasing 149 percent in 16 of the largest cities in 2020.<sup>520</sup> Specifically, data show that the first spike of anti-Asian hate crimes “occurred in March and April of 2020 concurrently with a rise in COVID cases and negative stereotyping of Asians related to the pandemic.”<sup>521</sup>

In 2021, the FBI released amended 2020 hate crime statistics to include 8,052 single-bias incidents<sup>522</sup> involving 11,126 victims.<sup>523</sup> There were also 211 multiple-bias hate crime incidents that involved 346 victims.<sup>524</sup> This represents an increase from 2019 that documented 7,103 single-bias incidents involving 8,552 victims.<sup>525</sup>

<sup>516</sup> Aggie J. Yellow Horse, Russell Jeung, and Ronae Matriano, “Stop AAPI Hate National Report,” Stop AAPI Hate, Mar. 1, 2022, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>.

<sup>517</sup> United States Department of Justice and United States Department of Health and Human Services, *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, (2021), <https://www.justice.gov/hatecrimes/resource/raising-awareness-hate-crimes-and-hate-incidents-during-covid-19-pandemic>, <https://www.justice.gov/file/1507346/download>.

<sup>518</sup> Ibid.

<sup>519</sup> Bureau of Justice Assistance, Dep’t of Justice, Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 16, 2023, at 5 [on file]; see also, Center for the Study of Hate & Extremism, *Report to the Nation: Anti-Asian Prejudice & Hate Crime: New 2020-21 First Quarter Comparison Data*, Apr. 28, 2021, <https://www.csusb.edu/sites/default/files/Report%20to%20the%20Nation%20-%20Anti-Asian%20Hate%202020%20Final%20Draft%20-%20As%20of%20Apr%2030%202021%206%20PM%20corrected.pdf>.

<sup>520</sup> Bureau of Justice Assistance, Dep’t of Justice, Interrogatory Responses to the U.S. Commission on Civil Rights, Mar. 16, 2023, at 5 [on file].

<sup>521</sup> Ibid.

<sup>522</sup> The FBI defines an incident as an “incident in which one or more offense types are motivated by the same bias.” As of 2013, law enforcement agencies can report up to five bias motivations per offense type. The definition of a multiple-bias incident is “an incident in which one or more offense types are motivated by two or more biases.” See Federal Bureau of Investigation, Uniform Crime Reporting, 2017 Hate Crime Statistics, <https://ucr.fbi.gov/hate-crime/2017>.

<sup>523</sup> FBI Releases Updated 2020 Hate Crime Statistics. FBI, Oct. 25, 2021, <https://www.fbi.gov/news/press-releases/fbi-releases-updated-2020-hate-crime-statistics>.

<sup>524</sup> Ibid.

<sup>525</sup> FBI Releases 2019 Hate Crime Statistics, FBI, Nov. 16, 2020, <https://www.fbi.gov/news/press-releases/fbi-releases-2019-hate-crime-statistics>.

Among the various bias motivations categories,<sup>526</sup> 61.8 percent of single-bias incident victims were targeted because of their race, ethnicity, or ancestry in 2020. In comparison, in 2019, 57.6 percent of single bias-incident victims were targeted because of their race, ethnicity, or ancestry. In the March 13, 2023, Supplemental Hate Crime Statistics 2021 report, there were 10,530 single-bias incidents that involved 12,411 victims. Race/ethnicity/ancestry incidents comprised 63.1 percent of single-bias incidents in 2021. Race/ethnicity/ancestry single bias-incident victims comprised 64.5 percent of single-bias incident victims in 2021.

**Table 7 FBI Hate Crimes Statistics (2019-2021)**

	2019	2020	2021
Number of Single Bias Incidents	7,103	8,052	10,530
Number of Victims	8,552	11,126	12,411
Percent of Single-Bias Incident Victims: Race, Ethnicity, and Ancestry	57.6	61.8	64.5

An examination of anti-Asian bias also shows an upward trend from 2018 and through 2021 (see Table 8 below). From 2018 and 2019, there were 10 more incidents reported with 38 more victims. However, comparing 2020 to 2019 shows a precipitous increase in reported hate incidents and victims: 121 more anti-Asian hate crime incidents and 127 more anti-Asian hate crime victims from 2019 to 2020.

The FBI noted that due to the NIBRS transition, participation in the December 2022 release of 2021 data from local law enforcement agencies was down 22 percent.<sup>527</sup> Despite the low participation, comparing anti-Asian hate crime incidents occurring during the pandemic to the year prior shows 147 more reported incidents in 2021 compared to 2019, 158 more offenses, 169 more victims, and 94 more known offenders.<sup>528</sup> In March 2023, the FBI released a Supplemental Hate Crimes Statistics report to address some of the low participation caused by the NIBRS transition and provide a more accurate picture of hate crimes in the United States.<sup>529</sup> Brian Levin, Professor at California State University San Bernardino and Director of the Center for the Study of Hate and

<sup>526</sup> The bias motivation categories included race/ethnicity/ancestry, religion, disability, sexual orientation, gender, and gender identity.

<sup>527</sup> FBI Interrogatory Responses to USCCR, Mar. 15, 2023.

<sup>528</sup> Ibid.

<sup>529</sup> For the 2021 data year, the FBI retroactively accepted hate crime data submissions and additional hate crime reports from 3,025 agencies that covered a combined population of 87,239,467 to compile the supplemental report. See Federal Bureau of Investigation, Supplemental Hate Crime Statistics, 2021, Mar. 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>.

Extremism (CSHE), testified that CSHE found a surge of 2021 anti-Asian hate crimes in 21 large U.S. cities, seeing a 224 percent increase from 2020.<sup>530</sup>

Moreover, analyzing the rise of anti-Asian hate crimes utilizing the updated 2021 FBI hate crime statistics show an even more troubling increase from a year prior to the pandemic. Comparing 2019 to 2021 shows 585 more reported incidents, 604 more offenses, 620 more victims, and 521 more known offenders (see Table 8 below).<sup>531</sup>

**Table 8 Anti-Asian Bias (2018-2021)**

	Incidents	Offenses*	Victims <sup>1</sup>	Known Offenders <sup>2</sup>
2018	148	171	177	125
2019	158	205	215	153
2020	279	330	342	239
2021 (original)	305	363	384	247
2021 (update) <sup>†</sup>	746	820	845	680

\* SRS/NIBRS reports data on 13 offense types: murder and nonnegligent manslaughter, rape, aggravated assault, simple assault, intimidation, human trafficking — commercial sex acts and human trafficking — involuntary servitude (*crimes against persons*); and robbery, burglary, larceny-theft, motor vehicle theft, arson, and destruction/damage/vandalism (*crimes against property*).

<sup>†</sup> The FBI released a Supplemental Hate Crimes Statistics Report for 2021 in March 2023 to address the low participation in the previous report.

<sup>1</sup> Victim may refer to an individual, business/financial institution, government entity, religious organization, or society/public as a whole.

<sup>2</sup> Known offender does not imply the suspect's identity is known; rather, the term indicates some aspect of the suspect was identified, thus distinguishing the suspect from an unknown offender.

Source: FBI Interrogatory Responses to USCCR, Mar. 15, 2023; FBI Supplemental Hate Crime Statistics, 2021.

Table 9 below provides a more in-depth look at reported hate crimes across the country from 2019 to 2021. These data show that the majority of these incidents were against individuals (rather than businesses), the largest percent increase in offenses were simple assault cases, and as with all previous years during this study's timeframe the offenders were more likely to be White (see Table 9 below).

**Table 9 Anti-Asian Hate Crimes (2019-2021)**

	2019		2020		2021		2021 (updated)	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>Bias Incidents</b>	158		279		305		746	
<b>Victims</b>								

<sup>530</sup> Levin Statement, at 7.

<sup>531</sup> Federal Bureau of Investigation, Supplemental Hate Crime Statistics, 2021, Mar. 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-supplemental-2021-hate-crime-statistics>.



Individual	202		316		388		713	
Business	12		15		12			
Other	6		19		9			
<b>Total</b>	<b>225</b>		<b>356</b>		<b>411</b>		<b>845</b>	
<b>Offense Type</b>								
Intimidation	53	25%	116	34%	136	36%	227	28%
Simple Assault	82	38%	103	30%	106	28%	270	33%
Destruction/Damage/Vandalism	28	13%	54	16%	60	16%	149	18%
Aggravated Assault	32	15%	47	14%	47	12%	109	13%
Robbery	3	1%	7	2%	11	3%	28	3%
Burglary	3	1%	3	1%	6	2%	14	2%
Larceny-theft	5	2%	6	2%	8	2%	8	1%
Arson	2	1%	0	0%	1	0%	5	1%
Murder	4	2%	0	0%	2	0%	2	0%
Other	4	2%	5	1%	6	2%	8	1%
<b>Total</b>	<b>216</b>		<b>341</b>		<b>381</b>		<b>820</b>	
<b>Offender Race</b>								
White	83	52%	126	52%	132	50%	319	49%
Black	35	22%	53	22%	82	31%	215	33%
Asian	5	3%	6	2%	5	2%	16	3%
Native Hawaiian	1	1%	1	0%	1	0%	1	0%
American Indian/Alaska Native	2	1%	0	0%	1	0%	2	0%
Multiple	26	16%	12	5%	17	6%	21	3%
Unknown	7	4%	46	19%	24	9%	78	12%
<b>Total</b>	<b>159</b>		<b>244</b>		<b>262</b>		<b>652</b>	

Note: 2019, 2020, 2021 data are sourced via CDE Hate Crime data page. The updated 2021 data are from the Supplemental Hate Crimes Statistics report publication tables. The DOJ notes that these data may not be consistent between the two data sources.

Source: FBI UCR/NIBRS Reporting Program; Supplemental Hate Crimes Statistics, 2021.

As this chapter discussed, discrimination against people of Asian descent is not a new phenomenon,<sup>532</sup> nor is it the first time that Asian communities have been blamed for a disease in the U.S.<sup>533</sup> This chapter has shown that AAPI hate incidents and hate crimes rose from 2019 through 2021, despite data collection low participation. Chapter 2 moves to a discussion about the state and local level responses to anti-Asian hate crimes, specifically focusing on three states with the largest Asian populations: California, New York, and Texas. Chapter 3 then discusses the federal response to the rise of anti-Asian hate crimes and its responsibility to enforce federal laws protecting all U.S. citizens.

<sup>532</sup> See *supra* notes 156-229 (Anti-Asian Laws and Historical Racism Against Asians).

<sup>533</sup> Alicia Lee, "The Dark and Complex History of Quarantine Goes Back to the Middle Ages," CNN, Mar. 4, 2020, <https://www.cnn.com/2020/03/04/us/coronavirus-quarantine-word-history-trnd/index.html>.

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## Chapter 2: Local Level Responses to Anti-Asian Hate Crimes

While understanding what anti-Asian hate crimes look like at a national level is essential in determining how the federal government can best respond to rising violence, hate crimes occur at a local level. This chapter provides an analysis of anti-Asian hate incidents for three selected states (i.e., California, New York, and Texas) that have the largest Asian communities in the United States respectively; and specifically, three cities within these states that have sizeable Asian populations (i.e., San Francisco, New York City, and Houston) from 2018 through 2021. Where possible, types of crime and perpetrator demographics are also provided, as well as any state and local initiatives developed to address these incidents. The chapter also provides an overview of state definitions of hate crimes and incidents, highlighting whether they differ from the federal definition. Lastly, the chapter details challenges in reporting and prosecuting hate crimes, best practices for law enforcement and prosecutors, and community organizations' efforts to combat the rise in anti-Asian incidents occurring on the local, state, and national levels.

### Hate Crimes at the State and Local Level

As discussed in Chapter 1, data collection and reporting are challenging for many reasons. One of the greatest barriers to understanding the severity and magnitude of hate crimes is the lack of sufficient data. While the passage of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (HCPA)<sup>534</sup> in 2009 was an important step in confronting bigotry, increasing public awareness, and improving law enforcement's responses to hate violence, without complete national databases and police training to accurately identify and report hate crimes, preventing these incidents in the first place is substantially more challenging.<sup>535</sup> Additionally, while federal law requires the Justice Department to collect crime data and publish a yearly report, state and local law enforcement reporting is voluntary.

### California

In the 1850s, Chinese immigrants began coming to the United States in significant numbers, particularly to California and other Western states for mining and railroad construction jobs that fueled a landscape for discrimination almost immediately.<sup>536</sup> In 1853, a White man named George Hall, shot and killed Ling Sing, a Chinese miner.<sup>537</sup> Hall convicted in a California court and

<sup>534</sup> 18 U.S.C. § 249].

<sup>535</sup> Ken Schwencke, "Why American Fails at Gathering Hate Crime Statistics," *ProPublica*, Dec. 4, 2017, <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>; Hate Crimes Coalition, Policy Recommendations Letter to the U.S. Department of Justice following the Charlottesville's "Unite the Right" Rally, Sept. 15, 2017, <http://civilrightsdocs.info/pdf/policy/letters/2017/final%20post-Charlottesville%20DoJ%20hate%20crime%20summit%20coalition%20recommendations.docx.pdf>.

<sup>536</sup> Gillian Brockell, "The long, ugly history of anti-Asian racism and violence in the U.S." *The Washington Post*, Mar. 18, 2021, <https://www.washingtonpost.com/history/2021/03/18/history-anti-asian-violence-racism/>.

<sup>537</sup> *Ibid.*

appealed the verdict arguing that the testimony of three witnesses should be rejected because they were of Asian descent.<sup>538</sup> In 1854, the California Supreme Court ruled in *People v. Hall* that people of Asian descent could not testify against a White person in court.<sup>539</sup> The Court ruled that the witnesses' testimony were inadmissible, based off the racist presumption that Chinese people were "a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point" and therefore did not have the right "to swear away the life of a citizen."<sup>540</sup> Less than two decades later, following the murder of a White man during an exchange of crossfire between rival Chinese groups, more than 500 rioters surrounded and attacked Los Angeles' Chinese community.<sup>541</sup> At least 17 Chinese men and boys were lynched. Eight of the rioters were eventually convicted of manslaughter, but their convictions were overturned.<sup>542</sup>

As discussed in Chapter 1, California has a long history of anti-Asian racism and discrimination,<sup>543</sup> and the increase in hate incidents and hate crimes from 2019 through 2022 stoked fear and anxiety among Asian communities once again. As discussed later in this chapter, in June 2020, Stop AAPI Hate published a report detailing 832 incidents of COVID-19-related discrimination and harassment in California over the course of 13 weeks.<sup>544</sup> As William Scott, Chief of the San Francisco Police Department, testified before the Commission, "[o]n May 11, 2021, our California Attorney General Bonta declared a state of crisis as heightened hate crime violence in the Asian American and Pacific Islander communities reverberated and continue to do so in some respects across the state."<sup>545</sup>

California has the largest Asian population in the United States. The 2020 Census reports that California has a total population of 39,538,223, with an Asian population of 6,085,947, making up about 15 percent of the state's population.<sup>546</sup> In the past decade, the state's Asian population grew by 25 percent, making it the fastest growing ethnic group in the state.<sup>547</sup> San Francisco has a total population of 873,965 according to the 2020 Census, with an Asian population of 296,505 (34

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<sup>538</sup> Gillian Brockell, "The long, ugly history of anti-Asian racism and violence in the U.S." *The Washington Post*, Mar. 18, 2021, <https://www.washingtonpost.com/history/2021/03/18/history-anti-asian-violence-racism/>.

<sup>539</sup> *People v. Hall*, 4 Cal. 399 (1854).

<sup>540</sup> *Id.* at \*405.

<sup>541</sup> Gillian Brockell, "The long, ugly history of anti-Asian racism and violence in the U.S." *The Washington Post*, Mar. 18, 2021, <https://www.washingtonpost.com/history/2021/03/18/history-anti-asian-violence-racism/>.

<sup>542</sup> Gillian Brockell, "The long, ugly history of anti-Asian racism and violence in the U.S." *The Washington Post*, Mar. 18, 2021, <https://www.washingtonpost.com/history/2021/03/18/history-anti-asian-violence-racism/>.

<sup>543</sup> See *supra* notes 321-332 (discussing anti-Asian racism in California).

<sup>544</sup> See *supra* note 564.

<sup>545</sup> William Scott, Police Chief, San Francisco Police Department, testimony, *Anti-Asian Racism Briefing*, p. 148.

<sup>546</sup> U.S. Census Bureau, "California," <https://data.census.gov/profile?g=040XX00US06> (accessed May 8, 2023).

<sup>547</sup> Adam Beam, "California's Asian population soars, new census data shows," *AP News*, Aug. 13, 2021, <https://apnews.com/article/california-race-and-ethnicity-census-2020-4209eebb820f00e9238e0dba0a35a1e3>.

percent).<sup>548</sup> California also saw the most numerical growth in its Asian populations between 2019 and 2020, growing by over 2 million.<sup>549</sup>

### *Hate Crimes Defined and Reported*

Under Penal Code 422.55, California law defines a hate crime as a criminal act committed in whole or in part because of one or more of the following actual or perceived characteristics of the victim: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.<sup>550</sup> Compared to federally protected bias categories, California includes all with the exception of gender identity.<sup>551</sup> In California, one hate crime report may include up to 10 offenses, 999 victims, and/or 99 suspects, thus there may be more offenses than events.<sup>552</sup> The state also provides information indicating the difference between a hate crime and a hate incident:

A hate crime Is a crime against a person, group, or property motivated by the victim’s real or perceived protected social group. You may be the victim of a hate crime if you have been targeted because of your actual or perceived: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation, and (7) association with a person or group with one or more of these actual or perceived characteristics. Hate crimes are serious crimes that may result in imprisonment or jail time.

A hate incident is an action or behavior motivated by hate but which, for one or more reasons, is not a crime. Examples of hate incidents include name-calling, insults, displaying hate material on your own property, posting hate material that does not result in property damage, and distribution of materials with hate messages in public places.<sup>553</sup>

In addition to the criminal code, California enacted the Ralph Civil Rights Act of 1976, which states that “[a]ll persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of [sex, race, color, religion, ancestry, national origin,

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<sup>548</sup> U.S. Census Bureau, “San Francisco city; California,” <https://data.census.gov/profile?g=160XX00US0667000> (accessed May 9, 2023).

<sup>549</sup> Abby Budiman and Neil G. Ruiz, “Asian Americans are the fastest-growing racial or ethnic group in the U.S.,” *Pew Research Center*, Apr. 9, 2021, <https://www.pewresearch.org/short-reads/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/>.

<sup>550</sup> Ca. Penal Code § 422.6(a) (2004), [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=422.6.&nodeTreePath=4.12.2&lawCode=PEN](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=422.6.&nodeTreePath=4.12.2&lawCode=PEN).

<sup>551</sup> U.S. Department of Justice, “Federal Laws and Statutes,” <https://www.justice.gov/hatecrimes/laws-and-policies>.

<sup>552</sup> California Department of Justice, *Tackling the Rise of Hate: How California Aims to Protect Our Diverse Communities*, Aug. 23, 2022, <https://oag.ca.gov/system/files/media/demystifying-the-doj-hate-crimes-slide-deck.pdf>.

<sup>553</sup> State of California Department of Justice, “Hate Crimes,” <https://oag.ca.gov/hatecrimes>.

disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status], or position in a labor dispute, or because another person perceives them to have one or more of those characteristics.”<sup>554</sup>

California’s Justice Department works with law enforcement agencies to collect and review hate crime data monthly, compiles hate crime data and submits it to the FBI, and also publishes an annual report on hate crimes within California.<sup>555</sup> California DOJ reviews incident reports to determine if incidents were identified and reported correctly, and reviews incoming submissions for accuracy and completeness, running quality control checks and identifying any anomalies in the data.<sup>556</sup> Acts of discrimination, hate incidents, and hate speech do not qualify for state hate crime reporting.<sup>557</sup> California DOJ also provides data on the OpenJustice portal for many crimes, including hate crimes.<sup>558</sup>

A ranking system of states based on response to reported hate crimes by the Arab American Institute deemed California to be one of the six states with a perfect rating in 2018 due to its inclusive hate crime statute, mandatory reporting and data collection statute, mandatory law enforcement training on hate crime, an annual hate crime report, and consistent participation in the FBI hate crime statistic data collection program.<sup>559</sup>

### *Hate Crimes, 2018-2021*

In California, hate crime numbers vary across different sources. For instance, the FBI’s Crime Data Explorer (CDE) site, which indicates that hate crime data for California are derived from the National Incident-Based Reporting System (NIBRS), reports 73 incidents for 2021, while the California Department of Justice reports 1,763 incidents. This is due to the number of agencies reporting to the FBI changing from year to year. In 2020, 732 of the 740 law enforcement agencies in the state provided data. In 2021, the FBI only received data from 15 agencies.<sup>560</sup> Table 10 below

<sup>554</sup> Ca. Civil Code § 51.7(b)(1); *see also* Ca. Civil Code § 51(b), (e).

<sup>555</sup> California Department of Justice, *Tackling the Rise of Hate: How California Aims to Protect Our Diverse Communities*, Aug. 23, 2022, <https://oag.ca.gov/system/files/media/demystifying-the-doj-hate-crimes-slide-deck.pdf>.

<sup>556</sup> California Department of Justice, *Tackling the Rise of Hate: How California Aims to Protect Our Diverse Communities*, Aug. 23, 2022, <https://oag.ca.gov/system/files/media/demystifying-the-doj-hate-crimes-slide-deck.pdf>.

<sup>557</sup> California Department of Justice, *Tackling the Rise of Hate: How California Aims to Protect Our Diverse Communities*, Aug. 23, 2022, <https://oag.ca.gov/system/files/media/demystifying-the-doj-hate-crimes-slide-deck.pdf>.

<sup>558</sup> California Department of Justice, “OpenJustice,” <https://openjustice.doj.ca.gov/>.

<sup>559</sup> Arab American Institute Foundation, *Under Reported, Under Threat*, July 2018, [https://static1.squarespace.com/static/5faecb8fb23a85370058aed8/t/6020669176128b0db2fa9efd/1612736148542/Underreported\\_Under\\_Threat+%282%29.pdf](https://static1.squarespace.com/static/5faecb8fb23a85370058aed8/t/6020669176128b0db2fa9efd/1612736148542/Underreported_Under_Threat+%282%29.pdf).

<sup>560</sup> Federal Bureau of Investigation, “Crime Data Explorer,” <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>; *see also supra* notes 434-444 (transition to NIBRS and low reporting).

provides annual hate crime numbers from 2018 to 2021 from the two sources. The numbers from the two sources are either close or identical for each year other than 2021, where the FBI only reports 73 hate crimes for the entire state, while the California Department of Justice reports 1,763.

**Table 10 California Hate Crime Sources, 2018-2021**

	FBI CDE	CA DOJ
<b>2018</b>	1065	1066
<b>2019</b>	1015	1015
<b>2020</b>	1339	1330
<b>2021</b>	73	1763

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Jan. 4, 2023); California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

Due to the low participation via NIBRS,<sup>561</sup> the analysis in this report focuses on the data available from the California Department of Justice. Table 11 provides the number of hate crime events and the proportion of the events that targeted Asian individuals for the years with available data. As reflected below, data show that the number of anti-Asian events in 2020 was 89, representing 6.7 percent of all hate crimes that year. In 2021, the number of anti-Asian events was 248, representing over 14 percent of all hate crimes for the state.

**Table 11 California Anti-Asian Hate Crimes, 2018-2021**

	Events	# Anti-Asian Events	% Anti-Asian Events
2018	1066	34	3.19%
2019	1015	43	4.20%
2020	1330	89	6.70%
2021	1763	248	14.10%

Source: California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

It is worth noting that while the proportion of anti-Asian bias-motivated events more than doubled from 2020 to 2021, the number of bias-motivated events against these communities almost tripled, indicating an overall rise in hate crimes across the state of California. For example, Attorney General Rob Bonta stated that crimes against Black people were the most prevalent in 2021,

<sup>561</sup> The FBI stated that because many law enforcement agencies were not able to submit data via NIBRS, participation in 2021 was down 22 percent. Federal Bureau of Investigation, Interrogatory Responses to U.S. Commission on Civil Rights, Mar. 15, 2023.

climbing 13 percent from 2020 to 2021, and hate crimes motivated by sexual orientation bias increased nearly 50 percent.<sup>562</sup> Bonta stated in written testimony to the Commission that

[e]ach of these incidents represents an attack on a person, a neighbor, a family member, a Californian. And worse, we know our statistics likely are not exhaustive. Still today, too many are too afraid to come forward. While there is no single solution, it is up to all of us to heed the call. Hate is a vicious disease – a virus that can only be stopped if we stand together.<sup>563</sup>

In June 2020, Stop AAPI Hate published a report detailing 832 incidents of COVID-19-related discrimination and harassment in California over the course of 13 weeks.<sup>564</sup> Eighty-one of these incidents included physical assault, and 64 suggested potential civil rights violations, including instances of discrimination at the workplace, being barred from establishments, or being prevented from using transportation.<sup>565</sup> A larger study by Stop AAPI Hate, examining incidents from March 19, 2020 to December 31, 2021, found that the largest proportion (38 percent) occurred in California.<sup>566</sup> The majority of these incidents involved “conduct that is not criminal, such as verbal harassment, and take place in person and in spaces open and accessible to the public, such as streets and sidewalks, businesses, public transit, and parks.”<sup>567</sup> Additionally, 63 percent of the incidents were reported by women.<sup>568</sup>

While Stop AAPI Hate’s reported incidents are largely non-criminal, the official state-recorded incidents are mostly violent crimes, as opposed to property crimes (see **Error! Reference source not found.** 12). From 2018 to 2020, violent crimes were more than three-quarters of the total amount of anti-Asian hate crimes. In 2021, the proportion of property crimes increased to more than 30 percent, while 68 percent of incidents were violent.

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<sup>562</sup> Associated Press, “Anti-Black, gay, Asian bias fuel California hate crime surge,” *NBC News*, Jun. 29, 2022, <https://www.nbcnews.com/news/asian-america/anti-black-gay-asian-bias-fuel-california-hate-crime-surge-rcna35895>.

<sup>563</sup> Rob Bonta, California Attorney General, Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023, at 1 (hereinafter Bonta Statement).

<sup>564</sup> Stop AAPI Hate, *California Report: Over 800 Hate Incidents in 3 Months*, Jun. 30, 2020, <https://stopaapihate.org/wp-content/uploads/2021/04/Stop-AAPI-Hate-Report-California-200630.pdf>.

<sup>565</sup> *Ibid.*

<sup>566</sup> Stop AAPI Hate, *National Report (Through December 31, 2021)*, Mar. 4, 2022, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>.

<sup>567</sup> Stop AAPI Hate, *California State Policy Recommendations to Address AAPI Hate: A Starting Point for Taking Action*, Oct. 13, 2021, <https://drive.google.com/file/d/1uPFwB0ZbOoQnVs0FXPrIfTkIK3LLM41Y/view>.

<sup>568</sup> Stop AAPI Hate, *California State Policy Recommendations to Address AAPI Hate: A Starting Point for Taking Action*, Oct. 13, 2021, <https://drive.google.com/file/d/1uPFwB0ZbOoQnVs0FXPrIfTkIK3LLM41Y/view>.



**Table 12 California Anti-Asian Hate Crime Types, 2018-2021**

	<b>Violent Crimes</b>	<b>Property Crimes</b>	<b>Total</b>
2018	25 (73.5%)	9 (26.5%)	34
2019	32 (74.4%)	11 (25.6%)	43
2020	72 (80.9%)	17 (19.1%)	89
2021	169 (68.1%)	79 (31.9%)	248

Source: California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

In October 2022, a man in Santa Clara County was charged with more than a dozen hate crimes targeting South Asian women following a two-month spree in which the victims had jewelry ripped off of their bodies.<sup>569</sup> In at least one case, he broke a woman’s wrist and attacked her husband while robbing her of her jewelry.<sup>570</sup> The Santa Clara District Attorney Jeff Rosen announced “to our South Asian community that anyone who targets and attacks you will be arrested and treated with the utmost severity under our law.... Santa Clara County’s precious diversity is our strength, our superpower – not a criminal opportunity.”<sup>571</sup>

The Asian Business Association of Los Angeles surveyed over 400 businesses across the Southern California region in April 2021, and over two in five reported that anti-Asian racism was affecting their business negatively.<sup>572</sup> The most frequent form of business being affected was the climate creating fear among staff, and one in six respondents changed their business operations due to safety concerns.<sup>573</sup>

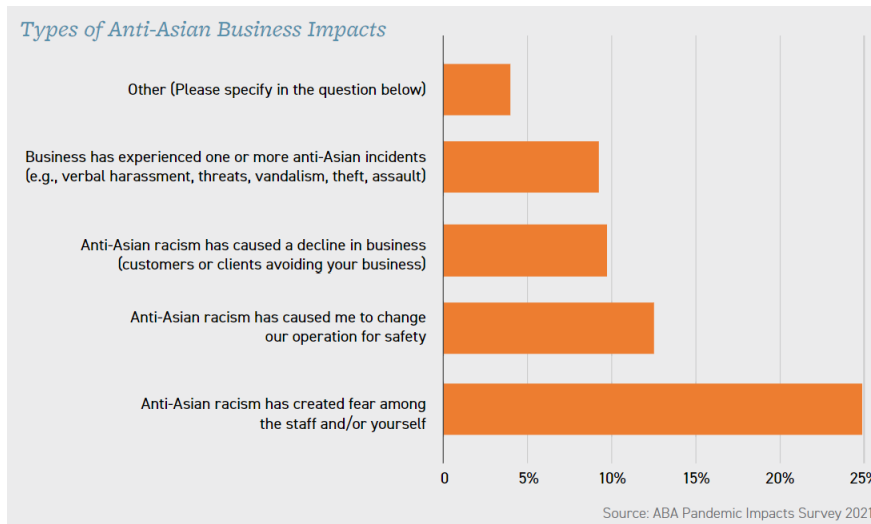
<sup>569</sup> Dion Lim, “Man charged with hate crimes for attacking, robbing more than dozen Bay Area Hindu women,” *ABC News 7*, Oct. 4, 2022, <https://abc7news.com/jewelry-robbery-hindu-hate-crime-lathan-johnson-arrested-indian-women/12295301/>.

<sup>570</sup> Dion Lim, “Man charged with hate crimes for attacking, robbing more than dozen Bay Area Hindu women,” *ABC News 7*, Oct. 4, 2022, <https://abc7news.com/jewelry-robbery-hindu-hate-crime-lathan-johnson-arrested-indian-women/12295301/>.

<sup>571</sup> County of Santa Clara Office of the District Attorney, “Man Charged with Hate Crimes after Targeting South Asian Women in Necklace Robbery Spree,” Oct. 3, 2022, <https://countyda.sccgov.org/news/news-release/man-charged-hate-crimes-after-targeting-south-asian-women-necklace-robbery-spreec>.

<sup>572</sup> Ong, P., Cheng, A., & Ong, J. (2021). Asian American Businesses: The Impacts of Anti-Asian Racism, 2021. *UCLA: Center for Neighborhood Knowledge*, <https://escholarship.org/uc/item/1x62v28m>.

<sup>573</sup> *Ibid.*

**Figure 6 Types of Anti-Asian Business Impacts, California**

Source: Ong, P., Cheng, A., & Ong, J. (2021). Asian American Businesses: The Impacts of Anti-Asian Racism, 2021. *UCLA: Center for Neighborhood Knowledge*, <https://escholarship.org/uc/item/1x62v28m>.

The most common reason cited by respondents as the cause for the change in attitudes and behavior towards Asian communities was due to the politicization of blaming the pandemic on China or Chinese people.<sup>574</sup>

Regarding perpetrators of anti-Asian hate crimes in California, Table 13 provides a breakdown of the suspect's race and ethnicity across the study years. For each year, the majority of suspects in the state's data portal were White and adults (as opposed to being a juvenile).

**Table 13 California Anti-Asian Hate Crime Suspects, 2018-2021**

	White	Black or African American	Asian	Hispanic or Latino	Hawaiian or Other Pacific Islander	Unknown	Group of Multiple Races	Total*
2018	16	3	4	5	1	9	1	28
2019	16	8	0	5	0	12	5	39
2020	40	11	2	20	0	35	1	87
2021	124	61	2	59	0	51	9	261

Source: California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

\*Due to the nature of coding race and ethnicity separately, columns will not add together to equal the total number of suspects and the portal does not report suspect's gender.

<sup>574</sup> Ibid.

### *San Francisco*

Hate crimes were on the rise in San Francisco prior to the COVID-19 pandemic, with incidents increasing 58 percent from 2017 to 2018.<sup>575</sup> The San Francisco Police Department (SFPD) maintains a publicly available Crime Dashboard<sup>576</sup> that provides numbers on crimes in all districts from January 2017 through the present day, but this dashboard does not break out hate crime data specifically. The California Department of Justice’s OpenData<sup>577</sup> portal allows analysis at the agency level, however. Table 14 provides the breakdown of anti-Asian hate crime events for this study’s period. Like incidents at the state level, the proportion of anti-Asian events in San Francisco has increased significantly, representing 16 percent of bias-motivated incidents in 2020 and more than half of events in 2021. It should be noted, additionally, that all hate crime events increased from 2020 to 2021 (from 54 to 114).

**Table 14 San Francisco Anti-Asian Hate Crimes, 2018-2021**

	Events	# Anti-Asian Events	% Anti-Asian Events
2018	68	4	5.9%
2019	64	6	9.4%
2020	54	9	16.7%
2021	114	60	52.6%

Source: California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

Anti-Asian hate crimes rose 567 percent from 2020 to 2021, a spike that “is significant, that is concerning, and that is alarming,” according to Police Chief Bill Scott.<sup>578</sup> The Chief testified before the Commission that “[h]ate crimes convey a message to both the victims and their group or perceived group that they are not welcome and not safe, and as such, these crimes are an attack on the fundamental rights of our communities at large.”<sup>579</sup> Moreover, leading up to the pandemic, most anti-Asian hate crimes in San Francisco were violent. The increase in anti-Asian hate crimes in San Francisco in 2021 (Table 15 below) also saw a higher number of property crimes (56.7

<sup>575</sup> Anna Bauman, “FBI: Hate crimes rose 58% in San Francisco as nationwide numbers leveled off,” *San Francisco Chronicle*, Nov. 15, 2019, <https://www.sfchronicle.com/bayarea/article/FBI-Hate-crimes-rose-58-in-San-Francisco-as-14836371.php>.

<sup>576</sup> San Francisco Police Department, “Crime Dashboard,” <https://www.sanfranciscopolice.org/stay-safe/crime-data/crime-dashboard> (accessed Dec. 16, 2022).

<sup>577</sup> California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data>

<sup>578</sup> Stella Chan and Augie Martin, “Anti-Asian hate crimes increased 567% in San Francisco as lawsuit accuses DA of not doing enough,” *CNN*, Jan. 27, 2022, <https://www.cnn.com/2022/01/27/us/anti-asian-hate-crimes-san-francisco-lawsuit/index.html>.

<sup>579</sup> William Scott, Police Chief, San Francisco Police Department, testimony, *Anti-Asian Racism Briefing*, pp. 148-49.

percent) than violent crimes (43.4 percent). The majority of these property crimes were reported as “Destruction/Damage/Vandalism.”<sup>580</sup>

**Table 15 San Francisco Anti-Asian Hate Crime Types, 2018-2021**

	Violent Crimes	Property Crimes	Total
2018	3 (75.0%)	1 (25.0%)	4
2019	6 (100%)	0 (0%)	6
2020	9 (100%)	0 (0%)	9
2021	26 (43.4%)	34 (56.7%)	60

Source: California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

Similar to the state level, the majority of perpetrators of anti-Asian hate crimes in San Francisco were White, and along with the sharp increase of incidents in 2021, there is also an increase in perpetrators that are Latino (44.6 percent of suspects in 2021). Table 16 provides a breakdown of suspect race and ethnicity across the study years.

**Table 16 San Francisco Anti-Asian Hate Crime Suspects, 2018-2021**

	White	Black or African American	Asian	Hispanic or Latino	Unknown	Group of Multiple Races	Total
2018	1	0	2	0	1	0	3
2019	4	2	0	1	0	0	6
2020	6	2	1	1	0	0	11
2021	42	15	0	33	1	2	74

Source: California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

\*Due to the nature of coding race and ethnicity separately, columns will not add together to equal the total number of suspects

The rise in hate crimes across the city has been vividly depicted in media stories over the years. For instance, an 84-year-old Thai man was knocked to the ground while out on a walk and later died from his injuries. The assailant was captured on camera seemingly celebrating the attack, and then returned to take cellphone pictures of his victim bleeding on the ground.<sup>581</sup> Public outrage spread after then-District Attorney Chesa Boudin stated there was no evidence to suggest the attack was motivated by racial animus, stating that it appeared “that the defendant was in some sort of a

<sup>580</sup> California OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed Dec. 14, 2022).

<sup>581</sup> Dan Noyes, “Suspect appears in court for fatal shoving attack on elderly Thai immigrant in SF’s Anza Vista,” *ABC7 News*, Jun. 15, 2022, <https://abc7news.com/anti-asian-hate-san-francisco-attacks-on-elderly-asians-vicharanapakdee-man-shoved-to-ground-in-sf-anza-vista/11961979/>.

temper tantrum.”<sup>582</sup> The victim’s son-in-law, in response to the District Attorney’s comment, replied “I don’t buy it for a second, I don’t buy it for a second. He knew what he was doing. Hearing this excuse of a hissy fit is really upsetting.”<sup>583</sup>

Another incident was against a 70-year-old woman who was beaten and kicked in the head by multiple attackers in a San Francisco housing complex.<sup>584</sup> While these incidents are horrific on their own, they also reflect a larger issue in the rise in violence against Asian Americans: without solid evidence of racial bias to indicate motivation, random attacks against marginalized communities appear as traditional criminal offenses.<sup>585</sup> For example, in March 2021, a man was brutally attacked on the street in San Francisco’s Mission District, but nothing was stolen from him.<sup>586</sup> The victim, Danilo Yu Chang, believed he was targeted for being a Chinese-Filipino man, yet police said there is “nothing to indicate that the incident was motivated by bias.”<sup>587</sup> This highlights the continuing challenges in capturing true numbers of hate crimes.<sup>588</sup> As discussed later in this chapter, the absence of easy identifiers such as hate speech or symbols present make proving a crime is a hate crime extremely difficult.<sup>589</sup> Chang says he now fears being in San Francisco and is going to try to move near family in Indiana or Nevada, stating that “San Francisco is deteriorating right now, the old San Francisco is gone, it’s all gone and it’s a dangerous place to walk it’s not safe anymore.”<sup>590</sup>

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<sup>582</sup> Thomas Fuller, “He Came From Thailand to Care For Family. Then Came a Brutal Attack.” *The New York Times*, Feb. 27, 2021, <https://www.nytimes.com/2021/02/27/us/asian-american-hate-crimes.html>.

<sup>583</sup> Dion Lim, “Family outraged over SF DA’s description of 84-year-old Asian man’s suspected killer,” *ABC7 News*, Mar. 2, 2021, <https://abc7news.com/san-francisco-da-chesa-boudin-sf-district-attorney-84-year-old-man-killed/10381125/>.

<sup>584</sup> Dion Lim, “EXCLUSIVE: 70-year-old woman brutally beaten, kicked in head by 4 attackers in SF housing complex,” *ABC7 News*, Aug. 1, 2022, <https://abc7news.com/asian-woman-beaten-in-sf-attacked-by-four-people-elderly-kicked-head-san-francisco-senior-attacks/12091867/>.

<sup>585</sup> Kiara Alfonseca, “Hate crimes are hard to prosecute, but why?” *ABC News*, Apr. 13, 2021, <https://abcnews.go.com/US/hate-crimes-hard-prosecute/story?id=76926458>.

<sup>586</sup> J.R. Stone, “‘San Francisco is deteriorating’: Asian American victim considers moving out of state after brutal attack,” *ABC7 News*, Mar. 17, 2021, <https://abc7news.com/asian-man-attacked-san-francisco-abc-7-news-attack-stop-hate/10424801/>.

<sup>587</sup> J.R. Stone, “‘San Francisco is deteriorating’: Asian American victim considers moving out of state after brutal attack,” *ABC7 News*, Mar. 17, 2021, <https://abc7news.com/asian-man-attacked-san-francisco-abc-7-news-attack-stop-hate/10424801/>.

<sup>588</sup> One criticism of the HCPA is that meeting the standard of proof to establish criminal liability is challenging, specifically since prosecutors must prove the act was committed because of bias. Prosecutors must prove discriminatory intent. Therefore, most of the hate cases that are prosecuted that result in a hate crime conviction involve the perpetrator using hate speech when committing the act, thereby proving intent. See U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government’s Role in Responding to Hate Crimes*, Nov. 2019, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>589</sup> See *infra* notes 847-852 (challenges in prosecuting hate crimes).

<sup>590</sup> J.R. Stone, “‘San Francisco is deteriorating’: Asian American victim considers moving out of state after brutal attack,” *ABC7 News*, Mar. 17, 2021, <https://abc7news.com/asian-man-attacked-san-francisco-abc-7-news-attack-stop-hate/10424801/>.

The beginning of 2021 also had business owners in Oakland's Chinatown on edge following at least 20 robberies and attacks, often targeting women and older adults.<sup>591</sup> The president of Oakland's Chinatown Chamber of Commerce, Carl Chan, said the increase in crime was keeping shoppers away during a time the neighborhood was suffering due to the pandemic, and also stated "[w]hat you're seeing is only a fraction of what has happened in Chinatown. Many are not willing to [report an incident], they feel that if they report it nothing happens. We have been trying to encourage them [to] please report the incidents."<sup>592</sup>

At the beginning of 2022, San Francisco Police Chief Bill Scott indicated that more than 30 of the incidents in 2021 had been committed by one person who was deliberately targeting Asian people. The individual was arrested in August 2021 for burglaries, acts of vandalism, and also faced hate crime enhancements.<sup>593</sup> Regarding the 561 percent increase of anti-Asian hate crimes in the city in 2021 from 2020, Mayor London Breed stated, "'I'm heartbroken, I'm frustrated, I'm embarrassed, I'm angry about the violence that continues to impact many of the people who are part of our Asian community but especially our seniors.'"<sup>594</sup>

In several cases, social media has been used as a tool to capture evidence of hate crimes. In December 2022, two TikTok users were filming a video at a fast food chain when they were approached by a man who asked about their race and ethnicity before making homophobic and anti-Asian comments.<sup>595</sup> The TikTok video had millions of views, and following an investigation the assailant was arrested on hate crime charges.<sup>596</sup> Arine Kim, a UCLA student and the social media influencer that posted the video, said she hopes her experience will encourage others to report similar incidents:

This story is getting so much more attention than I thought it would and so many more people are speaking out about the kind of experiences that they have gone through...had I not recorded that encounter, and had I not posted on my account, I think more people

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<sup>591</sup> Dion Lim, "Oakland's Chinatown on edge after more than 20 reported robberies, Chamber of Commerce President says," *ABC7 News*, Jan. 31, 2021, <https://abc7news.com/amp/oakland-chinatown-chamber-of-commerce-robbery-attack/10202793/>.

<sup>592</sup> Dion Lim, "Oakland's Chinatown on edge after more than 20 reported robberies, Chamber of Commerce President says," *ABC7 News*, Jan. 31, 2021, <https://abc7news.com/amp/oakland-chinatown-chamber-of-commerce-robbery-attack/10202793/>.

<sup>593</sup> Stella Chan and Augie Martin, "Anti-Asian hate crimes increased 567% in San Francisco as lawsuit accuses DA of not doing enough," *CNN*, Jan. 27, 2022, <https://www.cnn.com/2022/01/27/us/anti-asian-hate-crimes-san-francisco-lawsuit/index.html>.

<sup>594</sup> *Ibid.*

<sup>595</sup> Kendall Ross, "Social media influencer speaks out after racist, bigoted incident on Christmas Eve," *ABC News*, Dec. 27, 2022, <https://abcnews.go.com/US/social-media-influencer-speaks-after-racist-bigoted-incident/story?id=95839444>.

<sup>596</sup> Kendall Ross, "Social media influencer speaks out after racist, bigoted incident on Christmas Eve," *ABC News*, Dec. 27, 2022, <https://abcnews.go.com/US/social-media-influencer-speaks-after-racist-bigoted-incident/story?id=95839444>.

wouldn't realize how severe, how dangerous it is for us, for people of color, for Asian Americans, for everyone... This happens to other people on a daily basis and they don't have an avenue to be able to speak out about this.<sup>597</sup>

According to the San Francisco Police Department, hate crimes against people of Asian descent dropped significantly in 2022, with six official reports as opposed to the 60 in 2021.<sup>598</sup> Experts warn, however, that hate crimes, including those targeting Chinese-owned businesses, may be vastly underreported.<sup>599</sup> Cynthia Choi, co-founder of Stop AAPI Hate, stated that “[l]aw enforcement numbers will never capture the full extent of the racism and hate our communities face.”<sup>600</sup> Rex Tabora, executive director at the Asian Pacific American Community Center, cautioned that “[w]hat they don't take into account is the non-reported hate crime that occurs on a regular basis.”<sup>601</sup> Tabora estimated that more than 75 percent of Asian people would not report the crimes they experienced unless they're subject to serious violence. Cynthia Choi also explained that the majority of hate incidents are not “crimes” under the law, and, even when they are, Asian Americans are unlikely to report them to law enforcement.<sup>602</sup> SFPD Chief Scott testified before the Commission that if hate incidents do not amount to a violation of California Penal Code, it is technically not a crime, but that the department does “encourage the reporting of hate incidents here in San Francisco because we believe that that is a precursor oftentimes to...more serious crimes that may occur by the people that perpetrate hate incidents.”<sup>603</sup>

## New York

The 2020 Census reports that New York has a total population of 20,201,249, with an Asian population of 1,933,127 (about 9.5 percent).<sup>604</sup> New York also saw the third highest numerical growth in its Asian populations between 2019 and 2020 (following California and Texas), growing

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<sup>597</sup> Ibid.

<sup>598</sup> Nora Mishanec, “S.F. leaders tout steep drop in anti-Asian hate crimes,” *San Francisco Chronicle*, Jan. 11, 2023, <https://www.sfchronicle.com/sf/article/S-F-leaders-tout-steep-drop-in-anti-Asian-hate-17711920.php>.

<sup>599</sup> Nora Mishanec, “S.F. leaders tout steep drop in anti-Asian hate crimes,” *San Francisco Chronicle*, Jan. 11, 2023, <https://www.sfchronicle.com/sf/article/S-F-leaders-tout-steep-drop-in-anti-Asian-hate-17711920.php>; *see also supra* notes 825-833.

<sup>600</sup> Han Li, “Is Anti-Asian Hate on the Decline in San Francisco? Activists Aren't So Sure,” *The San Francisco Standard*, Jan. 12, 2023, <https://sfstandard.com/criminal-justice/is-anti-asian-hate-on-the-decline-in-san-francisco-activists-arent-so-sure/>.

<sup>601</sup> Han Li, “Is Anti-Asian Hate on the Decline in San Francisco? Activists Aren't So Sure,” *The San Francisco Standard*, Jan. 12, 2023, <https://sfstandard.com/criminal-justice/is-anti-asian-hate-on-the-decline-in-san-francisco-activists-arent-so-sure/>.

<sup>602</sup> Han Li, “Is Anti-Asian Hate on the Decline in San Francisco? Activists Aren't So Sure,” *The San Francisco Standard*, Jan. 12, 2023, <https://sfstandard.com/criminal-justice/is-anti-asian-hate-on-the-decline-in-san-francisco-activists-arent-so-sure/>.

<sup>603</sup> William Scott, Police Chief, San Francisco Police Department, testimony, *Anti-Asian Racism Briefing*, p. 151.

<sup>604</sup> U.S. Census Bureau, “New York,” <https://data.census.gov/profile?g=040XX00US36> (accessed May 9, 2023).

by over 600 people.<sup>605</sup> New York City has a total population of 8,804,190 according to the 2020 Census, with an Asian population of 1,385,144 (15.7 percent).<sup>606</sup>

As discussed in subsequent sections, New York saw a clear uptick in anti-Asian hate crime incidents from 2019 through 2021.<sup>607</sup> Panelist Jennifer Wu, a founding partner of a law firm in New York City, testified that “we have witnessed firsthand in New York City the surge in anti-Asian violence. While we have tried to provide wraparound services to address these issues for some of the victims and their families, the serious and long-lasting negative impacts on the Asian American community’s economic, social, physical, emotional, and psychological well-being cannot be ignored.”<sup>608</sup>

### *Hate Crimes Defined and Reported*

The State of New York indicates that a person commits a hate crime when they commit a specified offense and either: (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or (b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.<sup>609</sup> The protected bias categories include all categories that are federally protected.<sup>610</sup>

Per New York State Executive Law § 837(4)(c), the Division of Criminal Justice Services (DCJS) is required to collect and analyze statistical and all other information and data with respect to hate crimes reported by law enforcement through the Uniform Crime Reporting (UCR) Program. DCJS produces an annual report which details hate crime incidents that law enforcement agencies have reported to DCJS, including data on the number of incidents and type of bias reported.<sup>611</sup> DCJS

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<sup>605</sup> Abby Budiman and Neil G. Ruiz, “Asian Americans are the fastest-growing racial or ethnic group in the U.S.,” *Pew Research Center*, Apr. 9, 2021, <https://www.pewresearch.org/short-reads/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/>.

<sup>606</sup> U.S. Census Bureau, “New York city, New York,” <https://data.census.gov/profile?g=160XX00US3651000> (accessed May 9, 2023).

<sup>607</sup> *See supra* notes 617-618.

<sup>608</sup> Jennifer Wu, Founding Partner, Groombridge, Wu, Baughman & Stone LLP, Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023, at 8 (hereinafter J. Wu Statement).

<sup>609</sup> N.Y. Penal Code § 485.05 (2020), “Hate Crimes,” <https://www.nysenate.gov/legislation/laws/PEN/485.05>.

<sup>610</sup> U.S. Department of Justice, “Federal Laws and Statutes,” <https://www.justice.gov/hatecrimes/laws-and-policies> (accessed Jan. 20, 2023).

<sup>611</sup> New York State, “New York State Anti-Hate Crime Resource Guide,” <https://www.ny.gov/we-are-one-new-york/new-york-state-law-enforcement-hate-crimes-resource-guide> (accessed Dec. 2, 2022).



also submits the data to the FBI for its collection and publication.<sup>612</sup> DCJS Annual Reports on hate crimes indicates that all agencies submit data on hate crime, and roughly 20-30 percent of agencies reported no incidents or arrests over the study period examined in this report.<sup>613</sup>

In accordance with the New York State Penal Law, the New York City Police Department uses the following guideline to identify hate crime and bias incidents:

A bias incident is any offense or unlawful act that is motivated in whole or substantial part by a person’s, a group’s or a place’s identification with a particular race, color, religion, ethnicity, gender, age, disability, ancestry, national origin, or sexual orientation (including gay, lesbian, bi-sexual, and transgender) as determined by the commanding officer of the Hate Crime Task Force.<sup>614</sup>

***Hate Crimes, 2018-2021***

Like California, in New York, annual numbers vary across different sources. For instance, the FBI’s CDE site, which indicates that hate crime data for New York were derived from both NIBRS and Summary Reporting System (SRS) reports voluntarily submitted to the FBI, reports 463 incidents for 2020, while the Division of Criminal Justice Services (DCJS) Open Data Portal reports 488 incidents. For 2021, the FBI reports a much lower number than the state itself, likely due to fewer agencies reporting hate crimes to the FBI through NIBRS as compared to the previous data collections.<sup>615</sup> In 2020, 559 of the 595 law enforcement agencies in the state provided data. In 2021, the FBI only received data from 124 agencies.<sup>616</sup> Table 17 provides an overview of different sources reporting annual hate crime incidents. The data show that, for the DCJS data sources, hate crimes were rising in 2019 and dropped to 488 in 2020 and increased to 773 in 2021.

***Table 17 New York Hate Crime Sources, 2018-2021***

	DCJS Open Data Portal	DCJS Annual Report	FBI CDE
2018	527	525	523

<sup>612</sup> New York State, “New York State Anti-Hate Crime Resource Guide,” <https://www.ny.gov/we-are-one-new-york/new-york-state-law-enforcement-hate-crimes-resource-guide> (accessed Dec. 2, 2022).

<sup>613</sup> New York State Division of Criminal Justice Services, “Annual Reports and Publications,” <https://www.criminaljustice.ny.gov/crimnet/pubs.htm> (accessed Jan. 3, 2023) (calculations made by Commission staff).

<sup>614</sup> New York City Police Department, “Hate Crime/Bias Incidents,” <https://www.nyc.gov/site/nypd/services/law-enforcement/hate-crimes.page> (accessed Dec. 8, 2022).

<sup>615</sup> See *supra* notes 434-444.

<sup>616</sup> Federal Bureau of Investigation, “Crime Data Explorer,” <https://cde.ucr.ejis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

2019	623	619	612
2020	488	488	463
2021	773	773	62

Source: New York State Division of Criminal Justice Services, “Hate Crime in New York State 2018 Annual Report,” <https://www.criminaljustice.ny.gov/crimnet/ojsa/2018.Domestic.Homicide.Report.pdf>; New York State Division of Criminal Justice Services, “Hate Crime in New York State 2019 Annual Report,” <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%202019%20Domestic%20Homicide%20Report.pdf>; New York State Division of Criminal Justice Services, “Hate Crime in New York State 2020 Annual Report,” <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL2020-Domestic-Homicide-Report12-21.pdf>; New York State Division of Criminal Justice Services, “Hate Crime in New York State 2021 Annual Report,” <https://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2021-annual-report.pdf> Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Jan. 5, 2023); New York State, “Hate Crimes by County and Bias Type: Beginning 2010,” <https://data.ny.gov/Public-Safety/Hate-Crimes-by-County-and-Bias-Type-Beginning-2010/6xda-q7ev>.

For the purpose of this report, the analysis focuses on the data available in the DCJS Open Data Portal due to it providing the most recently updated data available. Table 18 below provides the proportion of hate crime incidents in New York that were reported as anti-Asian for the years with available data. The number of anti-Asian incidents went from five in 2019, to 31 in 2020, to 140 in 2021. The proportion of anti-Asian incidents increased from less than one percent of incidents in 2019, to more than six percent in 2020, to more than 18 percent in 2021.

**Table 18 New York Anti-Asian Hate Crimes, 2018-2021**

	Incidents	# Anti-Asian Incidents	% Anti-Asian Incidents
2018	527	8	1.52%
2019	623	5	0.80%
2020	488	31	6.35%
2021	773	140	18.11%

Source: New York State, “Hate Crimes by County and Bias Type: Beginning 2010,” <https://data.ny.gov/Public-Safety/Hate-Crimes-by-County-and-Bias-Type-Beginning-2010/6xda-q7ev> (accessed Feb. 15, 2023).

Across the state, there has been a clear uptick in anti-Asian hate crime incidents from 2019 through 2021. New York saw five anti-Asian hate crimes in 2019, followed by 31 in 2020, which according to New York State’s Department of Criminal Justice Services was the highest number reported

since reliable and complete hate crime reporting began in 2010.<sup>617</sup> However, 2021 saw an even larger increase, with 140 anti-Asian hate crimes.<sup>618</sup> For each of the years with data provided at the state level, most incidents were crimes against persons as opposed to property crimes (see Table 19). The New York Division of Criminal Justice does not collect hate crime data regarding suspect race or ethnicity.

**Table 19 New York Anti-Asian Hate Crime Types, 2018-2021**

	Crimes Against Persons	Property Crimes	Total
2018	6 (75.0%)	2 (25.0%)	8
2019	4 (80.0%)	1 (20.0%)	5
2020	23 (74.2%)	8 (25.8%)	31
2021	120 (85.7%)	20 (14.3%)	140

Source: New York State, “Hate Crimes by County and Bias Type: Beginning 2010,” <https://data.ny.gov/Public-Safety/Hate-Crimes-by-County-and-Bias-Type-Beginning-2010/6xda-q7ev> (accessed Feb, 9, 2023).

### ***New York City***

Similar to San Francisco, data show that the number of anti-Asian hate crimes were increasing in New York City through 2020 and 2021. For instance, The Manhattan Institute analyzed hate crime offenses and rates by borough from 2019-2021 and found the highest rates to be in Manhattan (9.55 per 100,000 residents) and Brooklyn (5.79 per 100,000). Some of the disparity is due to population numbers more generally, while also a representation of victims: “[r]ising hate crime in Manhattan in 2020 and 2021, meanwhile, reflects increased targeting of both Jews and Asians—the latter make up 13% of the borough.”<sup>619</sup> Similarly, it was reported in December 2021 that incidents targeting Asian residents rose by 361 percent from the previous year, from 28 in 2020 to 129.<sup>620</sup> Further, in the first five months of 2021, New York City witnessed 42 anti-Asian hate crime incidents, which represented a 223 percent increase from the same period in 2020.<sup>621</sup>

<sup>617</sup> New York State Division of Criminal Justice Services, “Hate Crime in New York State 2020 Annual Report,” Sept. 2021, <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL2020-Domestic-Homicide-Report12-21.pdf>; Personal correspondence with New York Division of Criminal Justice Services, Mar. 21, 2023.

<sup>618</sup> New York State Division of Criminal Justice Services, “Hate Crime in New York State 2021 Annual Report,” <https://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2021-annual-report.pdf>.

<sup>619</sup> Charles F. Lehman, “Understanding and Reducing Hate Crimes in New York City,” *Manhattan Institute*, Mar. 2022, <https://media4.manhattan-institute.org/sites/default/files/lehman-understanding-reducing-hate-crimes-nyc.pdf>.

<sup>620</sup> Kimmy Yam, “NYPD reports 361 percent increase in anti-Asian hate crimes since last year,” *NBC News*, Dec. 10, 2021, <https://www.nbcnews.com/news/asian-america/nypd-reports-361-percent-increase-anti-asian-hate-crimes-last-year-rca8427>.

<sup>621</sup> Zoe Christen Jones, “NYPD Asian Hate Crimes Task Force chief says attacks are “absolutely not new,”” *CBS News*, May 13, 2021, <https://www.cbsnews.com/news/asian-hate-crimes-nypd-not-new/>.

Russell Jeung, co-founder of Stop AAPI Hate, explained that these increases could be due to several factors such as an increased awareness about reporting and do not necessarily reflect the extent to which Asian communities are experiencing racism. Jeung stated that this uptick is “consistent with the general surge in racism against Asian Americans, first of all. It’s consistent with the increase in crimes during the epidemic. And then thirdly, reflective of the Asian American community more likely to report.”<sup>622</sup>

A survey of over 300 Asian business owners in New York found that over half of businesses (55 percent of respondents) lost revenue of 75 percent or more during 2020, and 45 percent had to shut down entirely.<sup>623</sup> Sixty-one percent of respondents expressed concern about anti-Asian attacks on themselves, staff, or their businesses.<sup>624</sup> A Michelin-starred restaurant was vandalized with anti-Asian graffiti in April 2020.<sup>625</sup> The owner ended up temporarily closing the restaurant as opposed to staying open for deliveries because his head chef and employees did not feel safe going into work or doing deliveries.<sup>626</sup>

For definitional purposes, it is important to highlight that the NYPD uses the same definition for hate crimes and bias incidents: “A bias incident is any offense or unlawful act that is motivated in whole or substantial part by a person’s, a group’s or a place’s identification with a particular race, color, religion, ethnicity, gender, age, disability, ancestry, national origin, or sexual orientation (including gay, lesbian, bi-sexual, and transgender) as determined by the commanding officer of the Hate Crime Task Force.”<sup>627</sup> Table 20 below provides the number of hate crimes reported to the New York City Police Department (NYPD). The number of anti-Asian hate crimes in the city was one in 2019, rose to 27 in 2020, and rose again to 131 in 2021.

**Table 20 New York City Anti-Asian Hate Crimes, 2018-2021**

	Complaints	# Anti-Asian Complaints	% Anti-Asian Complaints
2018	353	5	1.4%

<sup>622</sup> Kimmy Yam, “NYPD reports 361 percent increase in anti-Asian hate crimes since last year,” *NBC News*, Dec. 10, 2021, <https://www.nbcnews.com/news/asian-america/nypd-reports-361-percent-increase-anti-asian-hate-crimes-last-year-rcna8427>.

<sup>623</sup> Asian American Federation, “Small Business, Big Losses: The Impact of the Covid Crises on Asian Small Business in New York City,” 2021, [https://www.aafederation.org/wp-content/uploads/2021/05/Small\\_Biz\\_Survey.pdf](https://www.aafederation.org/wp-content/uploads/2021/05/Small_Biz_Survey.pdf).

<sup>624</sup> *Ibid.*

<sup>625</sup> Anneta Konstantinides, “An NYC Michelin-starred restaurant was vandalized with racist graffiti as attacks against Asian-American workers are on the rise,” *Insider*, Apr. 17, 2020, <https://www.insider.com/racist-graffiti-new-york-city-restaurant-during-coronavirus-2020-4>.

<sup>626</sup> *Ibid.*

<sup>627</sup> New York Police Department, “Hate Crimes/Bias Incidents,” <https://www.nyc.gov/site/nypd/services/law-enforcement/hate-crimes.page>.

2019	420	1	0.2%
2020	265	27	10.2%
2021	524	131	25.0%

Source: New York City Police Department, “Hate Crimes Report,” <https://www.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page> (accessed Dec. 14, 2022).

Jessie Essig, Chief of Detectives for the NYPD Hate Crime Review Panel (a civilian group that aids law enforcement in identifying possible hate crimes), stated that anti-Asian incidents contributed to New York City’s 100 percent overall increase in hate crimes in 2021. Other hate crimes, such as those based on sexual orientation, rose from 29 to 85 cases, and incidents of anti-Semitism also rose from 121 to 183 in 2021.<sup>628</sup>

The NYPD Hate Crimes Report page does not provide information regarding whether incidents were crimes against persons or crimes against properties broken out by bias, but the NYPD provides an interactive dashboard of confirmed incidents starting in January 2019, and these numbers only differ very slightly from the NYPD Hate Crimes Reports. Table 21 provides a breakdown of anti-Asian hate crimes by type of crime committed. In 2020 and 2021, the majority (53 percent and 65 percent, respectively) of anti-Asian hate crimes in New York City were misdemeanors. In 2022, the majority (52 percent) were felonies.

**Table 21 New York City Anti-Asian Hate Crime Types, 2018-2022**

	Felonies	Misdemeanors	Violations	Total
2018	n/a	n/a	n/a	n/a
2019	1 (100%)	0	0	1
2020	12 (42.86%)	15 (53.57%)	1 (3.57%)	28
2021	46 (34.59%)	86 (64.66%)	1 (0.75%)	133
2022	320 (52.7%)	282 (46.4%)	4 (0.6%)	606

Source: NYPD Hate Crimes Dashboard, <https://app.powerbigov.us/view?r=eyJrIjoiYjg1NWl3YjgtYzkyOS00Nzc0LTkwMDAtNTgzM2I2M2JmYWE1IiwidCI6IjJiOWY1N2ViLTc4ZDEtNDZmYi1iZTgzLWEyYWZkZDdjNjA0MyJ9> (accessed Feb. 9, 2023).

<sup>628</sup> Kimmy Yam, “NYPD reports 361 percent increase in anti-Asian hate crimes since last year,” *NBC News*, Dec. 10, 2021, <https://www.nbcnews.com/news/asian-america/nypd-reports-361-percent-increase-anti-asian-hate-crimes-last-year-rcna8427>.

Regarding perpetrators of anti-Asian hate crimes in New York City, the majority of suspects were White until 2020, when the majority of arrestees were Black and Latino. Table 22 provides a breakdown of suspect race and ethnicity across the study years.

**Table 22 New York City Anti-Asian Hate Crime Suspects, 2018-2021**

	White	Black	White Hispanic	Black Hispanic	Asian/Pacific Islander	Unknown	Total
2018	2	0	0	0	0	0	2
2019	3	0	0	0	0	0	3
2020	2	11	5	2	0	0	20
2021	7	31	15	0	5	1	59

Source: New York City Police Department, “Hate Crimes Report,” <https://www.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page> (accessed Dec. 14, 2022).

Like San Francisco, the rise in anti-Asian hate crimes in New York City has been depicted in numerous news stories over the past few years. In March 2021, an apartment building surveillance video showed a 65-year-old woman being physically and verbally attacked, with building staff failing to intervene.<sup>629</sup> Video showed a man kicking the woman to the ground, stomping on her head and upper body several times, and casually walking away as she remained on the sidewalk. Police have said that he made “anti-Asian statements” during the assault, including reportedly telling her that “you don’t belong here.”<sup>630</sup> The suspect was arrested and charged with felony assault as a hate crime.<sup>631</sup>

In April 2021, Yao Pan Ma, a 62-year-old Asian man was bashed in the head in an unprovoked attack in East Harlem, and died from his injuries eight months later.<sup>632</sup> Ma was collecting cans on a street corner on April 23 last year when Jarrod Powell, 50, allegedly approached him from behind, struck him in the back and then kicked him in the head multiple times as Ma laid on the ground.<sup>633</sup> Powell was arrested the following week and initially charged with attempted murder and two hate crime assault charges.<sup>634</sup> In January 2023, Powell pled guilty to a hate-

<sup>629</sup> Rachel Treisman, “Suspect Arrested On Hate Crime Charges Over Attack On Asian Woman In Manhattan,” *NPR*, Mar. 31, 2021, <https://www.npr.org/2021/03/31/983002295/suspect-arrested-on-hate-crime-charges-over-attack-on-asian-woman-in-manhattan>.

<sup>630</sup> *Ibid.*

<sup>631</sup> Rachel Treisman, “Suspect Arrested On Hate Crime Charges Over Attack On Asian Woman In Manhattan,” *NPR*, Mar. 31, 2021, <https://www.npr.org/2021/03/31/983002295/suspect-arrested-on-hate-crime-charges-over-attack-on-asian-woman-in-manhattan>.

<sup>632</sup> Artemis Moshtaghian, “An Asian man injured in an unprovoked attack in New York last April has died, officials say,” *CNN*, Jan. 9, 2022, <https://www.cnn.com/2022/01/09/us/asian-man-new-york-attack-death/index.html>.

<sup>633</sup> *Ibid.*

<sup>634</sup> Artemis Moshtaghian, “An Asian man injured in an unprovoked attack in New York last April has died, officials say,” *CNN*, Jan. 9, 2022, <https://www.cnn.com/2022/01/09/us/asian-man-new-york-attack-death/index.html>.

crime manslaughter charge, and in the plea he acknowledged that he had targeted Ma because he was Asian.<sup>635</sup>

In January 2022, another violent incident in New York City occurred that gained national attention and “jolted Asian Americans across the United States.”<sup>636</sup> Michelle Go, a 40-year-old Asian American woman was pushed to her death in front of a subway train by a homeless man.<sup>637</sup> While the incident was not investigated as a hate crime, it “prompted a kind of collective grief in a community affected by an increase in anti-Asian violence in recent years.”<sup>638</sup> Charles Jung, an attorney and executive director of the California Asian Pacific American Bar Association, said it might be hard to say that Go’s death met the legal burden of proof for a hate crime but “it doesn’t mean it’s not real” that it “arose within a climate of anti-Asian scapegoating, fear of racism” and numerous other violent attacks.<sup>639</sup>

Sung Yeon Choimorrow, Executive Director of the National Asian Pacific American Women’s Forum, explained “whether it was a hate crime or not, the reality is, Asian Americans, especially Asian American women, every time we see an incident like this, our anxiety goes up. Regardless of what the correlation is, we see ourselves in these pictures.”<sup>640</sup> The Asian American Bar Association of New York analyzed 233 anti-Asian incidents in New York City over the first three quarters of 2021 and found that more than half (55 percent) of the victims were female, while 82 percent of the perpetrators were male.<sup>641</sup>

<sup>635</sup> Associated Press, “NYC Man Pleads Guilty in Brutal Hate Crime Stomping Death of Chinese Immigrant,” *NBC New York*, Jan. 12, 2023, <https://www.nbcnewyork.com/news/local/crime-and-courts/nyc-man-pleads-guilty-in-brutal-hate-crime-stomping-death-of-chinese-immigrant/4045308/>.

<sup>636</sup> Stella Chan and Augie Martin, “Anti-Asian hate crimes increased 567% in San Francisco as lawsuit accuses DA of not doing enough,” *CNN*, Jan. 27, 2022, <https://www.cnn.com/2022/01/27/us/anti-asian-hate-crimes-san-francisco-lawsuit/index.html>.

<sup>637</sup> Myles Miller, “Homeless Man Charged With Murder in Death of NYC Woman Pushed in Front of Train,” *NBC New York*, Jan. 16, 2022, <https://www.nbcnewyork.com/news/local/crime-and-courts/homeless-man-charged-with-murder-in-death-of-nyc-woman-pushed-in-front-of-train/3498350/>.

<sup>638</sup> Nicole Chavez, “Michelle Go’s death hasn’t been labeled a hate crime but it adds to the fear that Asian Americans feel,” *CNN*, Jan. 20, 2022, <https://www.cnn.com/2022/01/20/us/asian-americans-attacks-michelle-alyssa-go/index.html>.

<sup>639</sup> Nicole Chavez, “Michelle Go’s death hasn’t been labeled a hate crime but it adds to the fear that Asian Americans feel,” *CNN*, Jan. 20, 2022, <https://www.cnn.com/2022/01/20/us/asian-americans-attacks-michelle-alyssa-go/index.html>.

<sup>640</sup> Kimmy Yam, “NYC subway station death of Michelle Go leaves Asian Americans reeling,” *NBC News*, Jan. 19, 2022, <https://www.nbcnews.com/news/asian-america/nyc-subway-station-death-michelle-go-leaves-asian-americans-reeling-rcna12650>.

<sup>641</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, [https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf).

Similarly, Jo-Ann Yoo, Executive Director of the Asian American Federation stated that Asian communities were already on “high alert since the start of the pandemic, when many had been blamed or scapegoated for the virus.”<sup>642</sup> Amanda Nguyen, CEO of the civil rights nonprofit Rise, said that the “intersection of race and gender is one that we cannot overlook.... Unfortunately, these acts of violence that have been targeted toward the Asian American community, especially women, have existed pre-COVID. The pandemic absolutely exacerbated these issues, especially when we had leaders saying things like ‘China virus’ or ‘China flu.’”<sup>643</sup>

The following month Christina Yuna Lee was stabbed more than 40 times in her Chinatown apartment by a man that followed her into her home,<sup>644</sup> and a “Stop Asian Hate” sign at her memorial was vandalized.<sup>645</sup> The landlord of Lee’s building explained “I had to clean up all the shattered glass. I try to put the sign back together as best as I can.... They try to desecrate her as much as they could and we as a community are beyond fed up, we are beyond angry and we are tired of being attacked.”<sup>646</sup> He did not report the vandalism to the cops, questioning the point in doing so: “It’s a sign of how things are in the Asian community. We don’t report these things anymore.”<sup>647</sup> In fact, the lack of anti-Asian hate crime prosecutions and convictions likely only add to the perception that reporting may not be worth the effort for the victims.<sup>648</sup>

The Commission also heard testimony from Jo-Ann Yoo, executive director of the Asian American Federation, describing a 90-year old grandmother out for a walk in a Brooklyn neighborhood being set on fire by two teenagers, and being too afraid to tell even her own family about it.<sup>649</sup>

<sup>642</sup> Kimmy Yam, “NYC subway station death of Michelle Go leaves Asian Americans reeling,” *NBC News*, Jan. 19, 2022, <https://www.nbcnews.com/news/asian-america/nyc-subway-station-death-michelle-go-leaves-asian-americans-reeling-rcna12650>.

<sup>643</sup> James Bikales, “Woman charged with hate crimes after anti-Asian attack, authorities say,” *The Washington Post*, Jun. 19, 2022, <https://www.washingtonpost.com/nation/2022/06/19/pepper-spray-hate-crime-charges/>.

<sup>644</sup> Marlene Lenthang, “Woman stabbed over 40 times after she was followed into her NYC apartment, official says,” *NBC News*, Feb. 15, 2022, <https://www.nbcnews.com/news/us-news/woman-stabbed-40-was-followed-nyc-apartment-official-says-rcna16295>.

<sup>645</sup> Georgett Roberts and Gabrielle Fonrouge, “Memorial for NYC stabbing victim Christina Yuna Lee vandalized,” *New York Post*, Feb. 16, 2022, <https://nypost.com/2022/02/16/memorial-outside-of-christina-yuna-lees-apartment-vandalized/>.

<sup>646</sup> *Ibid.*

<sup>647</sup> Georgett Roberts and Gabrielle Fonrouge, “Memorial for NYC stabbing victim Christina Yuna Lee vandalized,” *New York Post*, Feb. 16, 2022, <https://nypost.com/2022/02/16/memorial-outside-of-christina-yuna-lees-apartment-vandalized/>.

<sup>648</sup> *See infra note 831.*

<sup>649</sup> Jo-Ann Yoo, Executive Director, Asian American Federation, testimony, *The Federal Response to Anti-Asian Racism in the United States Briefing* Before the U.S. Comm’n on Civil Rights, Washington, DC, Mar. 4, 2023, transcript, p. 25 (hereinafter cited as Anti-Asian Racism Briefing).



Yoo continued to provide devastating stories about community members being violently attacked, including a man that was slashed from ear to ear on his way to work, requiring over 100 stitches.<sup>650</sup> A woman and her son were beaten in their own neighborhood, with the mother punched until losing consciousness and her son, a Marine, sustaining skull fractures trying to protect his mother.<sup>651</sup>

Other incidents continue to occur and stir tensions among Asian communities in New York. For instance, a Vietnamese grandmother was punched in the face by an assailant, and the criminal complaint stated: “[t]he defendant stated (he) punched Hoa Nguyen (because he) doesn’t like how Chinese people look; thinks Chinese people look like measles; and doesn’t like Chinese people looking at (him).”<sup>652</sup> In May 2021, a 65-year old woman was kicked down a flight of stairs at a subway station.<sup>653</sup> In April 2022 a man that had allegedly assaulted seven Asian women over a three hour period was indicted on multiple hate crime charges.<sup>654</sup> Six victims were injured, including bleeding cuts and bruises to their faces, and one victim was knocked unconscious and treated for a concussion. The victims ranged in age from 19 to 57, and at least two were treated at a hospital.<sup>655</sup> District Attorney Alvin Bragg said in a statement:

As alleged, within just three hours, Steven Zajonc selectively ambushed seven Asian women in separate assaults, some of which he struck from behind – for no other reason than their perceived race. This indictment is a result of our collaboration with the NYPD’s Hate Crimes Task Force, and critically, assistance from the brave witnesses and victims who came forward to stand up against hate.<sup>656</sup>

In another incident, a South Korean diplomat was punched in the face during an unprovoked attack while walking down Fifth Avenue.<sup>657</sup> A woman was assaulted by a man on the subway, spitting on her and calling her a “carrier.”<sup>658</sup> When she filed a police report, she said the detective refused twice to include the words said to her in the report, and that she was “taking a situation and blowing

<sup>650</sup> Yoo testimony, *Anti-Asian Racism Briefing*, pp. 25-26.

<sup>651</sup> *Ibid.*, 26.

<sup>652</sup> CeFaan Kim, “Exclusive: Asian grandmother sucker-punched while walking in Brooklyn,” *ABC7 New York*, Jan. 27, 2022, <https://abc7ny.com/hate-crime-asian-woman-attacked-brooklyn-sucker-punch/11515982/>.

<sup>653</sup> Checkey Beckford, “Serial Offender Arrested for Kicking Victim Down Subway Stairs in Random NYC Attack,” *NBC New York*, Jun. 2, 2021, <https://www.nbcnewyork.com/news/local/crime-and-courts/serial-offender-arrested-for-kicking-victim-down-midtown-subway-station-stairs-unprovoked/3085412/>.

<sup>654</sup> Rob Frehse, “New York man indicted on multiple hate crime charges in attacks on 7 Asian women,” *CNN*, Apr. 4, 2022, <https://www.cnn.com/2022/04/04/us/new-york-asian-women-attacks-charges/index.html>.

<sup>655</sup> *Ibid.*

<sup>656</sup> Rob Frehse, “New York man indicted on multiple hate crime charges in attacks on 7 Asian women,” *CNN*, Apr. 4, 2022, <https://www.cnn.com/2022/04/04/us/new-york-asian-women-attacks-charges/index.html>.

<sup>657</sup> Brie Stimson, “South Korean diplomat punched in unprovoked attack in New York City: police,” *Fox News*, Feb. 10, 2022, <https://www.foxnews.com/us/south-korean-diplomat-punched-unprovoked-attack-new-york-city-police>.

<sup>658</sup> CeFaan Kim, “NYPD shake-up: Head of Hate Crimes unit reassigned amid complaints from community activists,” *ABC7 New York*, Feb. 16, 2022, <https://abc7ny.com/nypd-hate-crimes-special-victims-replacement/11571260/>.

it out of proportion.”<sup>659</sup> In January 2023, an Asian man was approached by a man that “made derogatory anti-Asian statements and threatened to kill him” and then struck him in the head with an umbrella.<sup>660</sup> Also in January 2021, a New York man was arrested for allegedly pushing a woman to the ground and making an anti-Asian statement before fleeing the scene on New Year’s Eve of 2022.<sup>661</sup> He faces felony charges of third-degree assault as a hate crime and second-degree aggravated harassment, according to the District Attorney’s Office.<sup>662</sup>

Jo-Ann Yoo testified that she has talked to “countless Asian New Yorkers who have had to steel themselves for potential harassment or violence, sometimes planning their days to better avoid interactions.”<sup>663</sup> Stop AAPI Hate commissioned a nationally representative survey of Asian Americans and Pacific Islanders and found that 45 percent indicated discrimination negatively changed their sense of belonging, and 31 percent stated that discrimination negatively changed their behavior, such as switching schools, jobs, or where they shop.<sup>664</sup> Additionally, more than half (52 percent) of those experiencing discrimination, but did not report it, thought that reporting would not make a difference.<sup>665</sup> Some opt not to report incidents to the police because they feel that their concerns would not be properly addressed due to lack of hate crime charges, prosecutions, and convictions of these incidents.<sup>666</sup>

## Texas

As discussed in Chapter 1, Texas was one of the fifteen states that adopted Alien Land Laws that barred Asian immigrants from owning land and property in the state.<sup>667</sup> These laws were subsequently ruled to be unconstitutional in 1948.<sup>668</sup>

<sup>659</sup> CeFaan Kim, “NYPD shake-up: Head of Hate Crimes unit reassigned amid complaints from community activists,” *ABC7 New York*, Feb. 16, 2022, <https://abc7ny.com/nypd-hate-crimes-special-victims-replacement/11571260/>.

<sup>660</sup> Tina Moore, “Racist spews hate at Asian man during random umbrella attack in NYC,” Jan. 8, 2023, <https://nypost.com/2023/01/08/racist-spews-hate-at-asian-man-during-random-umbrella-attack-in-nyc/>.

<sup>661</sup> Celina Tebor, “New York man arrested, charged with assault and aggravated harassment in alleged New Year’s Eve anti-Asian attack,” *CNN*, Jan. 17, 2023, <https://www.cnn.com/2023/01/17/us/new-york-anti-asian-attack/index.html>.

<sup>662</sup> Celina Tebor, “New York man arrested, charged with assault and aggravated harassment in alleged New Year’s Eve anti-Asian attack,” *CNN*, Jan. 17, 2023, <https://www.cnn.com/2023/01/17/us/new-york-anti-asian-attack/index.html>.

<sup>663</sup> Kimmy Yam, “NYC subway station death of Michelle Go leaves Asian Americans reeling,” *NBC News*, Jan. 19, 2022, <https://www.nbcnews.com/news/asian-america/nyc-subway-station-death-michelle-go-leaves-asian-americans-reeling-rcna12650>.

<sup>664</sup> Stop AAPI Hate, *Righting Wrongs: How Civil Rights Can Protect Asian Americans & Pacific Islanders Against Racism*, May 2023, <https://stopaapihate.org/wp-content/uploads/2023/05/23-SAH-CivilRightsReport-1.pdf>.

<sup>665</sup> *Ibid.*

<sup>666</sup> See *infra* notes 831-832.833

<sup>667</sup> See *supra* notes 220-224 (discussing Alien Land Laws).

<sup>668</sup> *Ibid.*

Despite the 1948 U.S. Supreme Court ruling, in November 2022, Texas Senator Lois Kolkhorst proposed a bill that would ban citizens, government, and entities from China, Iran, North Korea, and Russia from purchasing land in Texas.<sup>669</sup> Specifically, the bill would prohibit the purchase or acquisition of property in Texas by a “government entity” and “a company or other entity that is headquartered [] or directly or indirectly held or controlled by the government” of the four countries.<sup>670</sup> Kolkhorst stated that her bill was prompted due to concerns over “growing ownership” of foreign entities buying up Texas land. She stated:

The time to address adversarial countries acquiring land is before it becomes widespread, not after they already control substantial amounts of Texas. [The bill] will make crystal clear that the prohibitions do not apply to United States citizens and lawful permanent residents.<sup>671</sup>

Opponents to the bill worried that it would “further sow anti-Asian sentiment that has skyrocketed in recent years and will disenfranchise immigrants, business owners, and green-card holders while doing little to address any national security concerns.”<sup>672</sup> Texas Representative Gene Wu stated that the bill was reminiscent anti-Chinese legislation such as the Chinese Exclusionary Act of 1882.<sup>673</sup> According to a statement by the Houston chapter of the Council on American-Islamic Relations, “[i]f signed into law, this bill would make anti-Asian hate state policy. It would violate the fundamental rights of not only citizens of other countries regardless of their relationship to their governments, but also Green Card holders and possibly dual citizens.”<sup>674</sup>

In March 2023, however, Senator Kolkhorst amended the proposed legislation to “ensure that property prohibitions in the bill applied only to foreign governments – not individuals seeking to buy homes... [nor] apply to those fleeing the tyranny of those governments who seek freedom in Texas.”<sup>675</sup> The Senator stated that these changes came after citizens raised concerns that the bill may be possibly discriminatory against individuals from North Korea, Iran, Russia, or China.<sup>676</sup>

The 2020 Census reports that Texas has a total population of 29,145,505, with an Asian population of 1,585,480 (5.4 percent).<sup>677</sup> Texas also had the second highest numerical growth in its Asian

<sup>669</sup> S.B. 147, 88<sup>th</sup> Leg., Reg Sess. (Tex. 2022), <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00147I.htm>.

<sup>670</sup> *Id.*

<sup>671</sup> Robert Downen, “Bill to ban Chinese citizens and government from buying Texas land gains stem among Republicans,” *The Texas Tribune*, Jan. 20, 2023, <https://www.texastribune.org/2023/01/20/texas-legislature-china-land-ownership/>.

<sup>672</sup> *Ibid.*

<sup>673</sup> *Ibid.*

<sup>674</sup> *Ibid.*

<sup>675</sup> Sakshi Venkatraman, “Texas bill will no longer aim to ban Chinese citizens from buying homes, state senator says,” *NBC News*, Mar. 1, 2023, <https://www.nbcnews.com/news/asian-america/texas-bill-will-no-longer-aim-ban-chinese-citizens-buying-homes-state-rcna72887>.

<sup>676</sup> *Ibid.*

<sup>677</sup> U.S. Census Bureau, “Texas,” <https://data.census.gov/profile?g=040XX00US48> (accessed May 9, 2023).

populations between 2019 and 2020 (following California), growing by over 800 people.<sup>678</sup> The Houston total population in 2020 was 2,304,580, and the Asian population was 167,189 (7.2 percent).<sup>679</sup>

### *Hate Crimes Defined and Reported*

The Texas Hate Crimes Act defines hate crimes as crimes that are motivated by prejudice, hatred, or advocacy of violence including, but not limited to, incidents for which statistics are or were kept under Public Law 101-275 (the Federal Hate Crimes Statistics Act).<sup>680</sup> Bias or prejudice enhancements can be sought where the defendant selected a person or their property to victimize based on the defendant's bias against "a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference, or by status as a peace officer or judge."<sup>681</sup> The Code of Criminal Procedure defines "sexual preference" to include "a preference for heterosexuality, homosexuality, or bisexuality."<sup>682</sup> Thus, compared to federally protected bias categories, Texas includes all with the exception of gender identity.<sup>683</sup>

The Houston Police Department (HPD) defines a hate crime as "any crime that is committed against a person or property that is motivated, in whole or in part, by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity."<sup>684</sup> HPD

views all hate crimes as major, and possibly organized, acts, which are given the highest investigation priority possible to ensure rapid apprehension of all persons involved. HPD's Criminal Intelligence Division investigates all reported hate crimes and has the ultimate responsibility for determining whether a crime is reported to federal or state record keeping agencies as a hate crime.<sup>685</sup>

Because a hate crime in Texas is not a separate offense but a penalty enhancement, the HPD website specifies that "[r]egardless of whether someone is ultimately charged with a 'bias motivated' crime, the police department will investigate the case and any suspect or suspects who are developed from the investigation may still face prosecution for the underlying crime."<sup>686</sup>

<sup>678</sup> Abby Budiman and Neil G. Ruiz, "Asian Americans are the fastest-growing racial or ethnic group in the U.S.," *Pew Research Center*, Apr. 9, 2021, <https://www.pewresearch.org/short-reads/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/>.

<sup>679</sup> U.S. Census Bureau, "Houston city; Texas," <https://data.census.gov/profile?g=160XX00US4835000> (accessed May 9, 2023).

<sup>680</sup> Tx. Govt. § 411.046(a) (West, 1999).

<sup>681</sup> Tx. Crim. Pro. Art. 42.014(a) (West, 2021).

<sup>682</sup> *Id.* at 42.014(c).

<sup>683</sup> U.S. Department of Justice, "Federal Laws and Statutes," <https://www.justice.gov/hatecrimes/laws-and-policies> (accessed Jan. 20, 2023).

<sup>684</sup> Houston Police Department, "Hate Crime," <http://www.houstontx.gov/police/hatecrime/> (accessed Dec. 29, 2022).

<sup>685</sup> *Ibid.*

<sup>686</sup> *Ibid.*

*Hate Crimes, 2018-2021*

Similar to both California and New York, annual hate crime numbers for Texas also vary across different databases. For instance, the FBI’s CDE reports 542 incidents for 2021, while the Texas Department of Public Safety (DPS) provides differing numbers on its online summary of hate crimes and its annual crime reports. Unlike California and New York, Texas agencies did not see a drop in agencies reporting to the FBI in 2021 (in 2020, 1,073 of the 1,158 agencies in the state provided data and in 2021, 1,012 provided data).<sup>687</sup> According to DOJ, 1,007 Texas agencies provided data in the original 2021 report,<sup>688</sup> while the Texas DPS report for 2021 indicates that 1,248 agencies submitted data,<sup>689</sup> further illustrating the incongruent reporting of data between different datasets. Table 23 provides an overview of different sources reporting annual hate crime incidents. With the exception of the Department of Public Safety’s Annual Crime Report, all sources indicate an increase in hate crimes from 2020 to 2021. The state’s online data portal is the most frequently updated and shows a steady increase in hate crimes from 2019 with 397, to 2020 with 471, to 2021 with 530.

**Table 23 Texas Hate Crime Sources, 2018-2021**

	FBI CDE	TX Dep’t of Public Safety: Annual Crime Report	TX Dep’t of Public Safety: Crime in Texas Online
2018	405	380	380
2019	408	407	397
2020	406	550	471
2021	542	508	530

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022); Texas Department of Public Safety, Crime in Texas Annual Reports, <https://www.dps.texas.gov/section/crime-records/crime-texas>; Texas Department of Public Safety, Summary of Hate Crime Detail for Each ORI – All Agencies, <https://txucr.nibrs.com/Report/HateCrime>.

One of the most notable differences between Texas and the preceding states described in this report is that Texas reports much lower numbers of hate crime incidents than New York and California. Reasons for the discrepancy in Texas could include misclassification or crimes going unreported

<sup>687</sup> Federal Bureau of Investigation, “Crime Data Explorer,” <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>; see also *supra* notes 434-444 (data transition to NIBRS and low reporting numbers).

<sup>688</sup> U.S. Department of Justice, Response to Affected Agency Review, Jun. 22, 2023 [on file].

<sup>689</sup> Texas Department of Public Safety, Crime in Texas Annual Reports, <https://www.dps.texas.gov/section/crime-records/crime-texas>.

to law enforcement.<sup>690</sup> Stop AAPI Hate collected self-reported incidents on anti-Asian hate in Texas from March 19, 2020 through July 1, 2020, and received 63 incident reports in the time frame.<sup>691</sup> While many of these reports likely would not rise to the definition of a hate crime (e.g., such as verbal harassment or workplace discrimination), 14 of these incidents were reported to involve physical assault.<sup>692</sup> Additionally, the large majority of respondents were not of Chinese descent, reflecting that “broader segments of the Asian American community are being racially profiled.”<sup>693</sup> Additionally, Stop AAPI Hate analyzed almost 3,800 incidents of anti-Asian hate occurring between March 2020 and February 2021 and found that Texas had 20 percent of the incidents that were physical assaults.<sup>694</sup>

Like the varying numbers of all hate crimes across the state, the number of anti-Asian incidents also varies across sources; however, these discrepancies do not drastically change the proportion of anti-Asian hate crimes depicted. Table 24 below provides the number of hate crime incidents, and the proportion of those incidents that were anti-Asian for the years with available data using the FBI CDE as well as the Texas Department of Public Safety Data. The table below shows that the number of incidents increased slightly each year from 2019 through 2021 across both data sources. According to the Texas Department of Public Safety’s online data portal, the state experienced four anti-Asian events in 2019, 11 in 2020, and 13 in 2021.

<sup>690</sup> See Pezzella, F. S., Fetzer, M. D., and Keller, T. (2019). The Dark Figure of Hate Crime Underreporting. *American Behavioral Scientist*, 0(0). <https://doi.org/10.1177/0002764218823844>; KXXV, “Central Texas hate crime numbers are under reported, critics say,” Nov. 14, 2019, <https://www.kxxv.com/hometown/central-texas-hate-crime-numbers-are-under-reported-critics-say>; Malini Basu, “FBI Dallas launches new campaign for hate crime awareness,” *WFAA*, Oct. 3, 2022, <https://www.wfaa.com/article/news/local/fbi-dallas-launches-new-campaign-hate-crime-awareness/287-5de173d4-f083-404e-b066-68dc842420d6>.

<sup>691</sup> Stop AAPI Hate, *Report: Anti-Asian American Hate in Texas*, Jul. 24, 2020, <https://stopaapihate.org/wp-content/uploads/2021/04/Stop-AAPI-Hate-Report-Texas-200723.pdf>.

<sup>692</sup> Stop AAPI Hate, *Report: Anti-Asian American Hate in Texas*, Jul. 24, 2020, <https://stopaapihate.org/wp-content/uploads/2021/04/Stop-AAPI-Hate-Report-Texas-200723.pdf>.

<sup>693</sup> Ibid.

<sup>694</sup> Tiffany Liou, “Texas ranks 4<sup>th</sup> in anti-Asian incidents; how to stop the hate,” *WFAA*, Mar. 23, 2021, <https://www.wfaa.com/article/news/local/texas/texas-ranks-4th-in-anti-asian-racist-incidents-how-to-stop-the-aapi-hate/287-6f10e1f8-64c4-4434-8be3-71fca2eb8a3e>.

**Table 24 Texas Anti-Asian Hate Crimes, 2018-2021**

	FBI CDE data for Texas			TX Dep’t of Public Safety: Crime in Texas Online		
	Incidents	# Anti-Asian Incidents	% Anti-Asian Incidents	Incidents	# Anti-Asian Incidents	% Anti-Asian Incidents
2018	405	8	2.0%	380	9	2.4%
2019	408	4	1.0%	397	4	1.0%
2020	406	9	2.2%	471	11	2.3%
2021	542	15	2.8%	530	13	2.5%

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022); Texas Department of Public Safety, Summary of Hate Crime Detail for Each ORI – All Agencies, <https://txucr.nibrs.com/Report/HateCrime>.

The Texas Department of Public Safety data does not provide enough data to examine the type of event (i.e., assault, intimidation, murder) across bias types, nor does it provide the suspect’s race or ethnicity data broken out by bias type. Table 25 below shows a breakdown of crime types among anti-Asian hate crimes provided by the FBI Crime Data Explorer as of December 31, 2022. The data show that destruction of property and simple assault were the most common crimes in 2018 and 2019, respectively, and that in 2020 the most prevalent crime was aggravated assault. In 2021, the most common incidents involved intimidation, followed by simple assault.

**Table 25 Texas Anti-Asian Hate Crime Types, 2018-2021**

	Intimidation	Simple Assault	Destruction/Damage/Vandalism of Property	Aggravated Assault	Burglary/Breaking & Entering	False Pretenses/Swindle/Confidence Game	Weapon Law Violations	Robbery	Total
2018	2	2	4	0	0	0	0	1	9
2019	2	5	0	0	0	0	0	0	7
2020	3	3	0	7	0	0	0	0	13
2021	11	6	2	1	1	1	1	0	23

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022).

Table 26 below provides offender race and ethnicity data among anti-Asian hate crimes provided by the FBI Crime Data Explorer, in which the majority of offenders are White or of multiple races.

*Table 26 Texas Anti-Asian Hate Crime Suspects, 2018-2021*

	White	Black	Multiple Races	Asian	Hispanic
2018	3	3	0	1	0
2019	2	0	2	0	0
2020	6	2	0	0	1
2021	6	2	3	1	2

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022).

It is important to note that numbers alone do not explain the heinous nature of these hate crimes and the impact these crimes have on individuals and the communities in which they occur. In March 2020, a man in Texas violently attacked a father and his young child because he perceived the family to be a “threat” because they were “from the country who started spreading that disease around.”<sup>695</sup> The man also attacked a store clerk who intervened to stop him from further assaulting the family; and while being held down on the ground, the attacker yelled at the Asian family, “Get out of America!”<sup>696</sup> The assailant admitted that he had attempted to kill the six-year-old child he attacked, and after pleading guilty to three counts of committing a hate crime, was sentenced to 25 years in prison on hate crime charges.<sup>697</sup> Assistant Attorney General for the Justice Department’s Civil Rights Division Kristen Clarke, speaking on the matter, stated that:

[p]andemic-driven and racially-motivated acts of violence are deplorable crimes, and the Justice Department stands ready to use our hate crimes laws to hold perpetrators accountable.... Hate crimes targeting Asian Americans have spiked during the pandemic and must be confronted. All people deserve to feel safe and secure living in their communities, regardless of race, color or national origin.<sup>698</sup>

The case was investigated by the Midland Texas Police Department and the FBI, and was prosecuted by the U.S. Attorney for the Western District of Texas and a trial attorney of the Civil Rights Division’s Criminal Section.<sup>699</sup> As of the writing of this report, the assailant is still facing pending state charges for three counts of attempted capital murder and one count of

<sup>695</sup> U.S. Department of Justice, “Texas Man Sentenced on Hate Crime Charges for Attacking Asian Family,” Aug. 4, 2022, <https://www.justice.gov/opa/pr/texas-man-sentenced-hate-crime-charges-attacking-asian-family>.

<sup>696</sup> U.S. Department of Justice, “Texas Man Sentenced on Hate Crime Charges for Attacking Asian Family,” Aug. 4, 2022, <https://www.justice.gov/opa/pr/texas-man-sentenced-hate-crime-charges-attacking-asian-family>.

<sup>697</sup> *Ibid.*

<sup>698</sup> *Ibid.*

<sup>699</sup> U.S. Department of Justice, “Texas Man Sentenced on Hate Crime Charges for Attacking Asian Family,” Aug. 4, 2022, <https://www.justice.gov/opa/pr/texas-man-sentenced-hate-crime-charges-attacking-asian-family>.



aggravated assault, and according to District Attorney Laura Nodolf, the state can now proceed with charges now that his sentencing for the federal charges is complete.<sup>700</sup>

**Houston**

Unlike San Francisco and New York City, Houston did not see a noticeable increase in official anti-Asian hate crimes during the examined years. Table 27 below provides the number of all hate crimes reported across several sources: the FBI’s CDE, the Texas Department of Public Safety online portal, and the annual Houston Police Department’s Hate Crimes Report. While the numbers differ slightly across sources, none portray significant changes in the number of hate crimes reported over the report’s time frame, though all sources did see an increase from 2019 to 2020, and from 2020 to 2021. According to the Texas Department of Public Safety’s online data portal for Houston data, the city saw 24 hate crimes in 2019, 43 in 2020, and 56 in 2021.

**Table 27 Houston Hate Crime Sources, 2018-2021**

	FBI CDE: Houston Police Department	TX Dep’t of Public Safety: Crime in Texas Online (reported by Houston’s ORI*)	Houston Police Department Hate Crimes Report
2018	28	31	32
2019	26	24	30
2020	43	43	46
2021	48	56	50

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022); Texas Department of Public Safety, Summary of Hate Crime Detail for Each ORI – All Agencies, <https://txucr.nibrs.com/Report/HateCrime>; Houston Police Department, *Annual Hate Crime Report*, Oct. 3, 2022, [https://www.houstontx.gov/police/departments\\_reports/hate\\_crime/HateCrimes\\_AnnualReport220405.pdf](https://www.houstontx.gov/police/departments_reports/hate_crime/HateCrimes_AnnualReport220405.pdf).

\*ORI = FBI’s Originating Agency Identifier

Table 28 below provides the number of hate crime incidents, and the proportion of those incidents that were anti-Asian for the years with available data using the FBI CDE as well as the Texas

<sup>700</sup> Marlene Lenthang, “Texas man sentenced to 25 years in jail after slashing attack on Asian family he blamed for Covid pandemic,” *NBC News*, Aug. 5, 2022, <https://www.nbcnews.com/news/asian-america/texas-man-sentenced-25-years-jail-slashing-attack-asian-family-blamed-rcna41689>.

Department of Public Safety Data for Houston. Both sources report very small numbers of anti-Asian hate crimes across the years examined in this report. With zero reported anti-Asian incidents in 2019, Houston saw an increase in the proportion of these crimes in 2020, with either two incidents in the FBI data or one incident in the Texas Department of Public Safety data.

**Table 28 Houston Anti-Asian Hate Crimes, 2018-2021**

	FBI CDE data for Houston Police Department			TX Dep't of Public Safety: Crime in Texas Online (reported by Houston's ORI)		
	Incidents	# Anti-Asian Incidents	% Anti-Asian Incidents	Incidents	# Anti-Asian Incidents	% Anti-Asian Incidents
2018	28	0	0.0%	31	1	3.2%
2019	26	0	0.0%	24	0	0.0%
2020	43	2	4.7%	43	1	2.3%
2021	48	2	4.2%	56	1	1.8%

Source: Federal Bureau of Investigation, "Crime Data Explorer," <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022); Texas Department of Public Safety, Summary of Hate Crime Detail for Each ORI – All Agencies, <https://txucr.nibrs.com/Report/HateCrime>.

Yan Zhang, a professor at Sam Houston State University who studies hate crimes against Asian Americans, noted that even with Houston crime data not showing a statistically significant rise, "everybody knows that is significantly underreported...[s]o we don't know the actual (numbers)."<sup>701</sup> Data show that over 40 percent of hate crime victimizations go unreported to the police.<sup>702</sup> Moreover, Zhang says that Asian Americans are the least likely of any racial group to report any type of crime. When these crimes are reported, there must be evidence that bias was a motivating factor for it to show up in the official hate crime data, such as the offender uttering a racial slur or having a history of anti-Asian hate.<sup>703</sup> Zhang explained that "it is so hard to identify people's motivation because it's not a manifested feature. It's more hidden."<sup>704</sup>

<sup>701</sup> Sara Willa Ernst, "Houston Hasn't Seen A Spike In Anti-Asian Hate, But Experts Say The Data Is Unreliable," *Houston Public Media*, Mar. 29, 2021, <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2021/03/29/394530/is-the-spike-in-anti-asian-hate-happening-in-houston/>.

<sup>702</sup> See *infra* notes 825-826.

<sup>703</sup> *Ibid.*

<sup>704</sup> Sara Willa Ernst, "Houston Hasn't Seen A Spike In Anti-Asian Hate, But Experts Say The Data Is Unreliable," *Houston Public Media*, Mar. 29, 2021, <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2021/03/29/394530/is-the-spike-in-anti-asian-hate-happening-in-houston/>.

An examination of Houston hate crime data over an 11-year period did report discrepancies in numbers reported by Houston Police Department, the Texas Department of Public Safety, and the FBI.<sup>705</sup> The report, published by the Houston Coalition Against Hate, suggested that “[v]ictim underreporting and the challenges in establishing a hate motivation for a criminal offense are some of the problems that may influence the total numbers of hate crimes reported by the HPD.”<sup>706</sup> In general, the report concluded that there is low reporting of hate crimes in Houston (and its surrounding areas) and the numbers reported each year are “surprisingly low” for a city of Houston’s population.<sup>707</sup> In fact, a Texas House Representative filed a resolution in the 87<sup>th</sup> Texas Legislative session calling for the investigation and prosecution of all credible reports of hate crimes and incidents, stating that “[t]he number of victims is likely higher than official tallies, since many incidents are not reported to law enforcement, due to past negative experiences with law enforcement or a lack of faith in a response; nevertheless, Asian American families are well aware of the growing frequency of violence and harassment.”<sup>708</sup>

Indeed, the increasing attacks on the Asian American community has created a heightened sense of alarm. Thu Nguyen, executive director of OCA-Houston<sup>709</sup> and local manicurist, shared that her store has gotten broken into several times, and that:

[p]eople have been throwing dead animals at our house over the past year. I talked to my dad, and was like, ‘Oh, this is weird. This is the pandemic.’ He said, ‘No, this has been happening for the past five or six years,’ and I said, ‘Why, didn’t you do anything?’ He said, ‘Well, what are they going to do?’<sup>710</sup>

Harris County Violent Crime Investigator Hoang Nguyen said discrimination and hate crimes are underreported and they are trying to build trust within the community, stating that “[a] lot of people... are afraid and they don’t want to be involved. We have to get involved, so we have to go out there and talk to them more and show more presence and try to convince them like, ‘Hey, we are here to help you guys so report to us and open up and talk to us more.’”<sup>711</sup>

One issue with determining how widespread the issue of hate violence is in Houston is that the Houston Police Department does not collect data on hate incidents – only criminal offenses determined to be motivated by hate. Alleged hate-related offenses that are later determined to be non-criminal are processed as traditional offenses, therefore are not reported as hate-related.<sup>712</sup>

<sup>705</sup> Anita Kalunta-Crumpton, “Hate in Houston: A Study of Hate Crimes and Hate Incidents in the City of Houston, Texas,” Nov. 2020, <https://houstonagainsthate.org/wp-content/uploads/2020/12/Hate-in-Houston-FINAL.pdf>.

<sup>706</sup> *Ibid.*

<sup>707</sup> *Ibid.*

<sup>708</sup> H.C.R. 66, 2021 Reg. Sess. (Tex. 2021),

<https://capitol.texas.gov/billlookup/History.aspx?LegSess=87R&Bill=HCR66>

<sup>709</sup> *See, infra* note 819.

<sup>710</sup> ABC 13 News, “Houston authorities work to ease Asian communities’ fear of attacks,” Mar. 18, 2021, <https://abc13.com/houston-asian-communities-on-high-alert-attack-georgia-shooting/10430220/>.

<sup>711</sup> *Ibid.*

<sup>712</sup> Anita Kalunta-Crumpton, “Hate in Houston: A Study of Hate Crimes and Hate Incidents in the City of Houston, Texas,” Nov. 2020, <https://houstonagainsthate.org/wp-content/uploads/2020/12/Hate-in-Houston-FINAL.pdf>.

Regarding the crime types of the reported anti-Asian hate crimes in Houston, Table 29 below provides the breakdown as reported by the FBI, which reports no anti-Asian incidents for 2018-2019. In 2020, the anti-Asian hate crimes in Houston were intimidation and simple assault. In 2021, they involved simple assault as well as aggravated assault.

**Table 29 Houston Anti-Asian Hate Crime Types, 2020-2021**

	Intimidation	Simple Assault	Destruction/ Damage/ Vandalism of Property	Aggravated Assault	Burglary/ Breaking & Entering	False Pretenses/ Swindle/ Confidence Game	Weapon Law Violations	Robbery	Total
2020	1	1	0	0	0	0	0	0	2
2021	0	1	0	1	0	0	0	0	2

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022).

Table 30 below provides the demographics of anti-Asian hate crime offenders in Houston as reported by the FBI, which reports no anti-Asian incidents for 2018-2019. In 2020 there was one White suspect and one Black suspect, and in 2021 the majority of suspects were reported as multiple races.

**Table 30 Houston Anti-Asian Hate Crime Suspects, 2020-2021**

	White	Black	Multiple Races	Asian	Hispanic
2020	1	1	0	0	0
2021	1	0	3	0	1

Source: Federal Bureau of Investigation, “Crime Data Explorer,” <https://crime-data-explorer.app.cloud.gov/pages/home> (as of Dec. 31, 2022).

## Local efforts to document and prevent anti-Asian hate crimes

### California

#### *State and Local Measures*

In response to the wave of hate crime reports in California, the Commission on the State of Hate (CA Commission) was established by Assembly Bill 1126 and funding was appropriated in the Budget Act of 2022.<sup>713</sup> Signed into law by Governor Newsom in 2021, the bill tasks the CA Commission with developing recommendations for preventing and responding to hate crimes and incidents.<sup>714</sup> Specifically, the CA Commission is tasked with “monitoring trends in hate activity in the state, engaging in research on hate activity, increasing awareness of the state of hate through public forums and collaborations, and advising local governments, the Governor, the Legislature, and communities on how to prevent and respond to hate activity.”<sup>715</sup> The CA Commission will also release an Annual State of Hate Commission Report, the first of which is anticipated to be published on or before July 1, 2023.<sup>716</sup>

In September 2022, Governor Newsom signed two bills dealing with racially based harassment on public transportation and in businesses. SB 1161, proposed by Senator Dave Min (D-Irvine) and sponsored by Stop AAPI Hate, aims to improve public transit ridership safety and requires the Mineta Transportation Institute at San Jose University to develop a survey to inform public transit safety efforts.<sup>717</sup> AB 2448 requires the California Civil Rights Department to establish a pilot program on or before January 1, 2025, to recognize businesses that create environments free from discrimination and harassment and would require the development of criteria to qualify for recognition, including, among other things, demonstrating compliance with the Unruh Civil Rights Act.<sup>718</sup>

The California Attorney General’s office developed the Attorney General’s Hate Crime Rapid Response Protocol, which calls for the prioritization of resources to ensure that the California Department of Justice makes available to residents skilled law enforcement special agents, lawyers who are experts on handling civil rights issues, victim services professionals, and others, in order

<sup>713</sup> California Civil Rights Department, “Commission on the State of Hate,” <https://calcivilrights.ca.gov/commission-on-the-state-of-hate/#background> (accessed Jan. 20, 2022).

<sup>714</sup> *Ibid.*

<sup>715</sup> *Ibid.*

<sup>716</sup> *Ibid.*

<sup>717</sup> S.B. 1161, Reg. Sess. (Ca. 2021-22).

<sup>718</sup> California Assembly Bill 2448, Reg. Sess. (Ca. 2021-22).

The Unruh Civil Rights Act provides that all persons within the jurisdiction of this state are entitled to full and equal accommodations in all business establishments regardless of specified characteristics, including sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.

California Code, Civil Code - CIV § 51

to provide a comprehensive response to major incidents.<sup>719</sup> The Rapid Response Protocol acts as a supplemental resource to local, state, and federal enforcement agencies' investigation and prosecution of hate crimes, and ensures local agencies have access to the full resources of the Department of Justice at their disposal.<sup>720</sup>

In June 2021, the California Attorney General's Office published a guidance on the prosecution of hate crimes.<sup>721</sup> The guidance mentions the COVID-19 Hate Crimes Act,<sup>722</sup> stating that while the bill is federal law, it can be used by California prosecutors as a model for restorative prosecution practices.<sup>723</sup> The alternative sentencing guidance states that:

[p]rosecutors should be cognizant of and familiar with all community-based programs to which defendants may be sentenced or referred to as a condition of probation or parole. In the context of hate crimes, prosecutors are encouraged to develop sentencing alternatives such as community-based programs where defendants can be referred to address the underlying biases of their hate crime. Such programs may include educational or experiential components that deal with addressing bias-motivated anti-social attitudes and behaviors. Prosecutors should leverage their partnerships with community-based entities to develop such sentencing programs or community-based programs.<sup>724</sup>

The guidance explains that eligibility for restorative approaches<sup>725</sup> should be determined on a case-by-case bases working in collaboration with law enforcement.<sup>726</sup>

Additionally, the California Department of Social Services offers funding for non-profit organizations to provide support and services to victims of hate incidents and hate crimes, and to facilitate prevention measures.<sup>727</sup> The Stop The Hate grant program awarded a total of \$14 million to 80 organizations for FY 2021-22 for a 1-year grant term, and the Transformative Grant Program awarded \$30 million for FY 21-22 and 22-23 to 12 organizations for a 3-year term. These organizations demonstrated experience in anti-hate work as well as a capacity for transformative impact.<sup>728</sup> The California Government Code § 8260 authorizes the California Department of Social

<sup>719</sup> State of California Department of Justice, "Hate Crimes," <https://oag.ca.gov/hatecrimes> (accessed Dec. 14, 2022).

<sup>720</sup> *Ibid.*

<sup>721</sup> California Office of the Attorney General, "The California Attorney General's Guidance to Prosecutors on Hate Crimes," June 2021, <https://oag.ca.gov/system/files/media/hc-prosecutor-guidance.pdf>.

<sup>722</sup> *See infra* notes 1142-1148 (discussion of COVID 19 Hate Crimes Act).

<sup>723</sup> California Office of the Attorney General, "The California Attorney General's Guidance to Prosecutors on Hate Crimes," June 2021, <https://oag.ca.gov/system/files/media/hc-prosecutor-guidance.pdf>.

<sup>724</sup> California Office of the Attorney General, "The California Attorney General's Guidance to Prosecutors on Hate Crimes," June 2021, <https://oag.ca.gov/system/files/media/hc-prosecutor-guidance.pdf>.

<sup>725</sup> Some restorative justice model approaches provided as examples include community conferences and restorative circles in which a trained facilitator brings together all who have been affected by an incident to discuss what happened, how everyone has been impacted, and what the group would like to do about repairing the harm.

<sup>726</sup> California Office of the Attorney General, "The California Attorney General's Guidance to Prosecutors on Hate Crimes," June 2021, <https://oag.ca.gov/system/files/media/hc-prosecutor-guidance.pdf>.

<sup>727</sup> California Department of Social Services, "CA Resources to Address Hate Crimes Webinar," Oct. 31, 2022, <https://oag.ca.gov/system/files/media/dss-presentation-103122.pdf>.

<sup>728</sup> *Ibid.*

Services (CDSS), in consultation with the Commission on Asian and Pacific Islander American Affairs (CAPIAA), to administer the Stop the Hate (STH) Program that awards funding to qualified nonprofit organizations to provide support and services to victims and survivors of hate incidents and hate crimes and their families and facilitate hate incident or hate crime prevention measures.<sup>729</sup> For Stop the Hate funding, a total of 80 organizations were awarded a total of \$14,269,246 for the service period of April 15, 2022 through June 30, 2023.<sup>730</sup> For the Transformative Grants Award, CDSS allocated \$30,338,307 in Transformative Grant funding to 12 organizations for a service term of three years, from August 1, 2022 through July 31, 2025.<sup>731</sup>

In May 2021, the California Attorney General also launched the Racial Justice Bureau, which will “bring six new attorneys and a supervising deputy attorney general to DOJ’s Civil Rights Enforcement Section to help tackle some of California’s most pressing racial and social justice issues head on.”<sup>732</sup> Specifically, the Bureau was developed to support the state’s Department of Justice’s mandate to advance the civil rights of Californians through new and ongoing efforts on hate crimes and organizations, implicit and explicit bias in policing, law enforcement best practices, campus climate issues, and a task force to study and develop reparation proposals for African Americans.<sup>733</sup>

Other efforts to combat hate in the Bay Area have been led by the Human Rights Commission. The Human Rights Commission staffs the San Francisco Coalition Against Hate Violence, which is comprised of over 20 agencies representing a broad array of, government agencies, law enforcement agencies, service providers, nongovernmental organizations, educators, and community members, all of whom are committed to ending hate incidents and hate crimes in San Francisco.<sup>734</sup> The Coalition meets quarterly to share information, allow for networking opportunities among members and to develop educational programs and outreach opportunities to combat hate incidents and hate crimes.<sup>735</sup>

<sup>729</sup> California Department of Social Services, “Stop the Hate Program Funding,” <https://cdss.ca.gov/inforesources/cdss-programs/civil-rights/care-funding>.

<sup>730</sup> California Department of Social Services, “Stop the Hate Funding Amended Award Announcement,” Jan. 6, 2023, [https://cdss.ca.gov/Portals/9/CivilRights/FY2021-22\\_STH\\_Award\\_Web%20AccessibleAnnouncement.pdf](https://cdss.ca.gov/Portals/9/CivilRights/FY2021-22_STH_Award_Web%20AccessibleAnnouncement.pdf).

<sup>731</sup> California Department of Social Services, “Hate Incident Services and Prevention Funding Transformative Grants Award Announcement,” Jun. 20, 2022, [https://cdss.ca.gov/Portals/9/CivilRights/TG\\_Award\\_Announcement.pdf](https://cdss.ca.gov/Portals/9/CivilRights/TG_Award_Announcement.pdf).

<sup>732</sup> State of California Department of Justice, “Attorney General Bonta Launches New Racial Justice Bureau, Announces Virtual Convening Against Hate Crime with Big City Mayors,” May 11, 2021, <https://oag.ca.gov/news/press-releases/attorney-general-bonta-launches-new-racial-justice-bureau-announces-virtual>.

<sup>733</sup> Ibid.

<sup>734</sup> Human Rights Commission, “San Francisco Coalition Against Hate Violence (CAHV),” <https://sf-hrc.org/san-francisco-coalition-against-hate-violence-cahv>.

<sup>735</sup> Ibid.

In May 2022, the San Francisco Human Rights Commission mobilized a small grants process to address the spike of anti-Asian hate crimes in the city.<sup>736</sup> The request for proposals (RFP), titled “Small Grants to Support Asian and Pacific Islander Community Safety Initiatives, Cross-Cultural Activities, and Transformation,” established an opportunity for community organizations to work together on violence prevention, intervention, and harm reduction initiatives.<sup>737</sup> Commissioner Irene Riley worked with the community on the effort, and noted: “[t]his Request for Proposals in the amount of \$400,000 is focused on delivering culturally responsive services to improve outcomes in preventing, intervening in, and healing from hate violence for Asian and Pacific Islander communities and communities throughout San Francisco.” The RFP seeks proposals in four program areas: public safety; cross-cultural solidarity; transformative justice; and language access. The press release states that best proposals would also identify and address any underlying causes of hate violence or other race-based structural violence.<sup>738</sup>

Other cities have also implemented strategies to combat the rise of anti-Asian hate. For example, Sacramento is home to a successful collaborative effort between law enforcement and community leaders. As described on the U.S. District Attorney’s Office for the Eastern District of California website:

Since its inception in 1994, the Greater Sacramento Area Hate Crimes Task Force has brought a diverse group of community leaders together with federal, state and local law enforcement officials to form a united front in our District’s effort to combat hate crimes. The Task Force was formed following a string of hate-related fire bombings in Sacramento, and now meets bi-annually to update members on current prosecutions and investigations, as well as to provide a forum for dialogue between community members and law enforcement personnel.<sup>739</sup>

The Sacramento District Attorney’s Office Hate Crimes Unit website urges members of the public to not only report hate crimes and hate incidents that they are victims of, but also to notify an authority after witnessing a bias incident:

- It is important to record bias incidents for educational, informational, and statistical purposes. Do not be frustrated if law enforcement personnel tell you that what you

<sup>736</sup> City of San Francisco, “HRC mobilizes small grants process to address anti-Asian sentiment & escalating hate violence,” May 12, 2022, <https://sf.gov/news/hrc-mobilizes-small-grants-process-address-anti-asian-sentiment-escalating-hate-violence>.

<sup>737</sup> Ibid.

<sup>738</sup> City of San Francisco, “HRC mobilizes small grants process to address anti-Asian sentiment & escalating hate violence,” May 12, 2022, <https://sf.gov/news/hrc-mobilizes-small-grants-process-address-anti-asian-sentiment-escalating-hate-violence>.

<sup>739</sup> United States Attorney’s Office for the Eastern District of California, “Hate Crimes Task Forces: Greater Sacramento Area Hate Crimes Task Force,” Updated Jul. 1, 2021, <https://www.justice.gov/usao-edca/hate-crimes-task-forces>.



experienced was not a crime. We are interested in tracking hate incidents because hate-motivated attacks often occur in the same area where these incidents happen. Studying trends, may in turn, assist in preventing and solving crimes.

- If you hear a person yelling racial or other bias slurs on a public street, on campus, or shopping mall, notify an authority. For example, you may contact a store or restaurant manager in close proximity. At a school or public building, notify security or the administration. Responding to insults yourself may provoke a physical attack against you.
- If you find or receive racist flyers, notify your local law enforcement agency as soon as possible.<sup>740</sup>

Partnerships between local and federal agencies have shown to be beneficial in the fight against hate for all communities. For instance, after a Black man was attacked with a knife in Santa Cruz in July 2020, witness accounts flagged the assault as possibly motivated by bias. Local law enforcement worked with the FBI to coordinate as to whether charging the assailant federally would present a stronger case.<sup>741</sup> The assailant had assaulted two other Black men in similar incidents in California in 2014 and 2018, and there was also an older charge involving an assault on a Black man in Washington state. Garnering a federal prosecution is significant because it allows the U.S. Attorneys’ Office to show a pattern of hate-based violence —information that could put the current charges in context.<sup>742</sup> The assailant was found guilty and sentenced to 82 months in prison. The FBI Special Agent described the benefits of local police working with the FBI: “[t]he community could see not only that their local police department was acting but they had the full support and resources of the federal government, too.”<sup>743</sup> Additionally, even if federal hate crime charges are not pursued, the FBI recommended that state and local officials utilize the FBI’s resources, publicity tools, forensic expertise, and experience in identifying and investigating hate-based motivations.<sup>744</sup> More detailed discussion of the federal tools and resources are discussed in Chapter 3 of this report.

### *Nonprofit/Community Organization Efforts*

United Against Hate Week, which emerged from a United Against Hate poster campaign created by Bay Area Cities in response to white supremacist rallies in Berkeley and San Francisco in 2017, has now spread to over 200+ communities including all of Los Angeles County, faith-based groups, LGBTQ, and human rights organizations.<sup>745</sup> United Against Hate Week was held on

<sup>740</sup> Sacramento County District Attorney’s Office, “Hate Crimes Frequently Asked Questions,” <https://www.sacda.org/in-the-courtroom/criminal-prosecutions/hate-crimes-faqs/>.

<sup>741</sup> Federal Bureau of Investigation, “Combating Hate Crimes Through Action and Outreach,” Jan. 27, 2022, <https://www.fbi.gov/news/stories/san-francisco-prosecutes-first-federal-hate-crimes-case-012722>.

<sup>742</sup> Ibid.

<sup>743</sup> Federal Bureau of Investigation, “Combating Hate Crimes Through Action and Outreach,” Jan. 27, 2022, <https://www.fbi.gov/news/stories/san-francisco-prosecutes-first-federal-hate-crimes-case-012722>.

<sup>744</sup> Ibid.

<sup>745</sup> United Against Hate, “United Against Hate Week,” <https://www.unitedagainsthateweek.org/>.

November 13-19, 2022. The website provides individual and group ideas for action and downloadable Action Kits to help communities, schools, college campuses, and law enforcement agencies accurately report and consistently respond to incidents; demonstrate support for targeted groups and all residents; and proactively create welcoming, inclusive environments.<sup>746</sup>

The California vs. Hate initiative was started by the California Civil Rights Department. The initiative is a non-emergency hate incident and hate crime reporting hotline and online portal

established to support individuals and communities targeted for hate violence.<sup>747</sup> The goals are to help individuals and communities targeted for hate by identifying options for next steps after a hate incident, connecting people targeted for hate with culturally competent resources, and improving hate incident and crime reporting data to enhance hate crimes prevention and response.<sup>748</sup> California vs. Hate uses the information captured through their portal and networks to improve services for people targeted for hate violence.<sup>749</sup> Resources are provided based on the particular situation of the targeted person, and may include mental health services, relocation/shelter, residential security and many other services from local non-profit organizations, trauma recovery centers, the California Victim Compensation Board, and other victim service providers, as well as legal resources.<sup>750</sup> The online portal form is available in 15 languages, and the phone line provides access to services in 200 languages.<sup>751</sup>

Some initiatives by the local organizations that specifically support Asian communities in the Bay Area include the United Peace Collaborative (UPC) which was created after San Francisco's thriving Chinatown began struggling at the start of the pandemic. The neighborhood and surrounding communities experienced widespread issues ranging from business closures to vandalism to racial attacks.<sup>752</sup> Since March 2020, the UPC has conducted over 6,000 volunteer hours with walking and driving patrols, and have removed over 800 graffiti tags from storefronts, residences, and alleys.<sup>753</sup>

Other efforts to support San Francisco's Chinatown communities during the pandemic include the Delta Chinatown Initiative, which works to ensure that residents, businesses, and visitors of San Francisco's Chinatown are safe and thriving.<sup>754</sup> The organization was formed in 2020 to deter

<sup>746</sup> United Against Hate, "How To Respond To Hate," <https://www.unitedagainsthateweek.org/how-to-respond-to-hate>.

<sup>747</sup> California Civil Rights Department, "CA vs Hate," <https://calcivilrights.ca.gov/ca-vs-hate-page/> (accessed Jan. 23, 2022).

<sup>748</sup> Ibid.

<sup>749</sup> Ibid.

<sup>750</sup> California Civil Rights Department, "CA vs Hate," <https://calcivilrights.ca.gov/ca-vs-hate-page/> (accessed Jan. 23, 2022).

<sup>751</sup> California Civil Rights Department, "CA Resources to Address Hate Crimes," Oct. 31, 2022, <https://oag.ca.gov/system/files/media/dcr-presentation-103122.pdf>.

<sup>752</sup> United Peace Collaborative, "About Us," <https://unitedpeacecollaborative.org/about-us> (accessed Jan. 27, 2023).

<sup>753</sup> United Peace Collaborative, "About Us," <https://unitedpeacecollaborative.org/about-us> (accessed Jan. 27, 2023).

<sup>754</sup> Delta Chinatown Initiative, "Delta Chinatown Initiative," <https://www.deltachinatownsfc.com/> (accessed Jan. 27, 2023).

crime and support law enforcement in holding criminals accountable. In 2021, through a collaboration with Chinatown Merchants Association and SF Safe, security cameras were installed at the most trafficked corridors. The Delta Chinatown Initiative is currently fundraising to install additional security cameras at other locations.<sup>755</sup> The Initiative also works to raise awareness for the over 300 families living in Single Room Occupancies (SROs) in Chinatown, advocating for support for the families to transition into better living conditions.<sup>756</sup> Additionally, the group is pushing for culturally competent, in-language resources from victim services throughout government agencies to help victims feel empowered to report crimes, be fully aware and engaged in the legal process, and receive the types of wraparound services they are entitled to as victims.<sup>757</sup>

## New York

### *State and Local Measures*

New York created a Hate Crimes Task Force in 2018 to address the increase in bias-motivated threats, harassment, and violence throughout the state.<sup>758</sup> The Task Force works with local law enforcement and prosecutors, and is run by the State Police with assistance from the State Division of Human Rights, and the Division of Criminal Justice Services.<sup>759</sup> In 2021, the state created a \$10 million fund to combat Asian American discrimination, in which grants would be distributed to community and social services groups.<sup>760</sup> A key component of the focus includes bystander training programs, and also potentially funding civilian patrols.<sup>761</sup> In 2022, it was announced that funding will be allocated through three organizations: the Asian American Federation (\$6.8 million to be directed to 59 organizations), the Coalition for Asian American Children and Families (\$1 million), and the Chinese-American Planning Council (\$700,000).<sup>762</sup>

In 2022, New York Governor Kathy Hochul signed two bills into law: one requires New Yorkers convicted of a hate crime to go through counseling on hate crime prevention and education as part

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<sup>755</sup> Ibid.

<sup>756</sup> Ibid.

<sup>757</sup> Delta Chinatown Initiative, “Delta Chinatown Initiative,” <https://www.deltachinatownsfc.com/> (accessed Jan. 27, 2023).

<sup>758</sup> New York State, “Hate Crimes Task Force,” <https://www.ny.gov/programs/hate-crimes-task-force> (accessed Dec. 2, 2022).

<sup>759</sup> Ibid.

<sup>760</sup> Carl Campanile and Bernadette Hogan, “Albany deal creates \$10M fund to combat bigotry against Asian-Americans,” *New York Post*, Apr. 2, 2021, <https://nypost.com/2021/04/02/albany-creates-10-million-fund-to-repel-asian-american-assaults/>.

<sup>761</sup> Carl Campanile and Bernadette Hogan, “Albany deal creates \$10M fund to combat bigotry against Asian-Americans,” *New York Post*, Apr. 2, 2021, <https://nypost.com/2021/04/02/albany-creates-10-million-fund-to-repel-asian-american-assaults/>.

<sup>762</sup> New York State, “Governor Hochul Announces Funding to Assist Asian American Community Organizations Across New York State,” Feb. 20, 2022, <https://www.governor.ny.gov/news/governor-hochul-announces-funding-assist-asian-american-community-organizations-across-new>.

of their sentence, and the second creates a statewide campaign run by New York's Division of Human Rights to promote acceptance and understanding of diversity among New Yorkers.<sup>763</sup>

In New York City, the issue of anti-Asian hate incidents became a campaign topic in the Mayoral and the Manhattan District Attorney's races, with all candidates, including the winners of those races, pledging to invest more resources and attention to combating hate.<sup>764</sup> In August 2020, the NYPD formed an Asian Hate Crime Task Force following a spike in anti-Asian attacks.<sup>765</sup> The Task Force hoped that by having a team dedicated to building rapport with the community, victims would be less reluctant to speak with police during investigations.<sup>766</sup> The team included 25 Asian American officers who spoke a second language.<sup>767</sup> Part of the Task Force was an undercover unit of plainclothes NYPD officers of Asian descent who would frequent areas where there had been anti-Asian violence.<sup>768</sup> The Task Force employed several strategies, including more undercover and plainclothes officers posted strategically around the city, speaking one-on-one with community members, conducting anti-hate seminars and workshops, and connecting victims of hate crimes or general incidents with aid, like to the New York City Human Rights Commission,<sup>769</sup> which is charged with the enforcement of the Human Rights Law, Title 8 of the Administrative Code of the City of New York.<sup>770</sup> The Commission's Law Enforcement Bureau (LEB) enforces the NYC Human Rights Law. Service providers, community organizations, elected officials, or individuals may bring specific incidents or potential patterns of discrimination to LEB's attention, and LEB can initiate its own investigation.<sup>771</sup>

According to a report published by the Asian American Bar Association of New York, "[a]fter Asian Pacific American Heritage Month in May 2021, public attention to anti-Asian violence largely waned for the rest of the year. The number of statements made and initiatives implemented by local and national politicians decreased, notwithstanding the continually rising tide of anti-

<sup>763</sup> Alejandra O'Connell-Domenech, "New Yorkers convicted of hate crimes must now go through hate crime prevention training," *The Hill*, Nov. 22, 2022, <https://thehill.com/changing-america/respect/diversity-inclusion/3747112-new-yorkers-convicted-of-hate-crimes-must-now-go-through-hate-crime-prevention-training/>.

<sup>764</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, p. 9

[https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf)

<sup>765</sup> Taylor Romine, "NYPD creates Asian Hate Crime Task Force after spike in anti-Asian attacks during Covid-19 pandemic," *CNN*, Aug. 18, 2020, <https://www.cnn.com/2020/08/18/us/nypd-asian-hate-crime-task-force/index.html>.

<sup>766</sup> *Ibid.*

<sup>767</sup> Taylor Romine, "NYPD creates Asian Hate Crime Task Force after spike in anti-Asian attacks during Covid-19 pandemic," *CNN*, Aug. 18, 2020, <https://www.cnn.com/2020/08/18/us/nypd-asian-hate-crime-task-force/index.html>.

<sup>768</sup> Michael Sisak, "NYPD adding undercover patrols to combat anti-Asian attacks," *AP News*, Mar. 25, 2021, <https://apnews.com/article/new-york-police-coronavirus-pandemic-crime-hate-crimes-87ea322ab8a4ebbc72748838698efabf>.

<sup>769</sup> Zoe Christen Jones, "NYPD Asian Hate Crimes Task Force chief says attacks are "absolutely not new"," *CBS News*, May 13, 2021, <https://www.cbsnews.com/news/asian-hate-crimes-nypd-not-new/>.

<sup>770</sup> NYC, "Inside the NYC Commission on Human Rights," <https://www.nyc.gov/site/cchr/about/inside-cchr.page>.

<sup>771</sup> NYC, "Enforcement," <https://www.nyc.gov/site/cchr/enforcement/enforcement.page>.

Asian incidents.”<sup>772</sup> The report continued to state that the NYPD also appeared to be winding down certain programs aimed at combating anti-Asian violence.<sup>773</sup> For instance, the department continued to maintain a Hate Crimes Task Force, but the undercover unit ceased activity in May 2021 after officers faced threats of violence.<sup>774</sup> In one instance, an undercover officer was approached by a man on a train platform, who waved his hand and hat in the officer’s face and said, “That’s why you peoples [sic] are getting beat up,” according to a police report.<sup>775</sup> Another officer was approached by a man who shouted anti-Asian slurs at him, and said, “Go back to China before you end up in the graveyard,” using an expletive.<sup>776</sup>

In February 2022, the commanding officers of both the Special Victims Division and the Hate Crime Task Force were replaced as part of reshuffling in a new administration.<sup>777</sup> New mayor Eric Adams indicated that he “thought we were too slow in designating, investigating something as a potential hate crime. And I wanted to make sure that someone was in charge of the unit that understood my vision.”<sup>778</sup>

In addition to the NYPD overhaul, the mayor is calling for prosecutors to stop offering plea bargains to people accused of hate crimes, and is looking to put together an emergency task force to address the intersection of public safety, mental health and homelessness, and make recommendations for policy changes.<sup>779</sup> Although the Asian Hate Crimes Task Force still provides support for Anti-Asian incident investigations, such as language services and facilitating cultural understanding, the Task Force remains comprised of volunteer members of the NYPD.<sup>780</sup> The Asian American Bar Association of New York (AABANY) has called for full funding of the NYPD and New York City DA’s offices to combat hate crimes, but as of the writing of this report, no action has been taken on such funding proposals.<sup>781</sup>

<sup>772</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, p. 11,

[https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf)

<sup>773</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, p. 11,

[https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf).

<sup>774</sup> Ali Watkins and Jonah E. Bromwich, “‘No Vaccine for Racism’: Asian New Yorkers Still Live in Fear of Attacks,” Oct. 15, 2021, <https://www.nytimes.com/2021/07/14/nyregion/asian-hate-attacks-police.html>.

<sup>775</sup> Ibid.

<sup>776</sup> Ali Watkins and Jonah E. Bromwich, “‘No Vaccine for Racism’: Asian New Yorkers Still Live in Fear of Attacks,” Oct. 15, 2021, <https://www.nytimes.com/2021/07/14/nyregion/asian-hate-attacks-police.html>.

<sup>777</sup> CeFaan Kim, “NYPD shake-up: Head of Hate Crimes unit reassigned amid complaints from community activists,” *ABC7 New York*, Feb. 16, 2022, <https://abc7ny.com/nypd-hate-crimes-special-victims-replacement/11571260/>.

<sup>778</sup> Erin Durkin, New York Asian hate crime spike puts pressure on new mayor,” *Politico*, Mar. 26, 2022, <https://www.politico.com/news/2022/03/26/asian-hate-crimes-new-york-adams-00019365>.

<sup>779</sup> Erin Durkin, New York Asian hate crime spike puts pressure on new mayor,” *Politico*, Mar. 26, 2022, <https://www.politico.com/news/2022/03/26/asian-hate-crimes-new-york-adams-00019365>.

<sup>780</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, pp. 11-12,

[https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf).

<sup>781</sup> Ibid, at 12.

In 2022, the city's budget invested a record \$1.7 million in the Manhattan District Attorney's Hate Crimes Unit.<sup>782</sup> The funding, which Manhattan DA Alvin Bragg requested, will allow the office to ramp up their language capacity with translators, hire more investigative analysts, assistant district attorneys, community partnership coordinators and victim services advocates.<sup>783</sup> The office relies heavily on its Witness Aid Services Unit and Community Partnerships Unit to provide educational programming, counseling services, referrals to immigration assistance, and more. These types of services are offered to victims in general, but the office is looking to fill in some key gaps when it comes to victims of hate crimes, such as counselors speaking AAPI languages as well as an AAPI advocate position that could connect victims to resources.<sup>784</sup>

The new funding also includes expanded training for the NYPD by the DA's office in how to recognize and handle hate crimes. For example, in April 2022, the office conducted two trainings for 85 rookie officers and 15 field training sergeants that included a review of the state's hate crimes law and approaches to identifying bias-related evidence when responding to potential hate crime incidents.<sup>785</sup> Officials indicated this was the first time the office conducted formalized hate crimes training of this scale for officers across multiple precincts.<sup>786</sup>

### *Nonprofit/Community Organization Efforts*

The Asian American Federation (AAF) is a nonprofit organization based in New York City with a mission to raise the influence and well-being of the pan-Asian American community through research, policy advocacy, public awareness, and nonprofit support.<sup>787</sup> AAF produces research reports and briefs to draw attention to the needs of Asian American communities, and urges policymakers to make changes that will allow the Asian community to get essential services more easily.<sup>788</sup> Some of their recent reports and briefs have highlighted Asian American employment, poverty, older adults, mental health services for Asian New Yorkers, contributions and challenges of Asian small businesses, and city government funding for Asian communities.<sup>789</sup>

<sup>782</sup> Anna Lucente Sterling, "City provides 'historic' funding for Manhattan DA Hate Crimes Unit," *Spectrum News NY 1*, Aug. 26, 2022, <https://www.nyl.com/nyc/all-boroughs/news/2022/08/24/city-provides--historic--funding-for-manhattan-d-a--hate-crimes-unit>.

<sup>783</sup> *Ibid.*

<sup>784</sup> *Ibid.*

<sup>785</sup> *Ibid.*

<sup>786</sup> Anna Lucente Sterling, "City provides 'historic' funding for Manhattan DA Hate Crimes Unit," *Spectrum News NY 1*, Aug. 26, 2022, <https://www.nyl.com/nyc/all-boroughs/news/2022/08/24/city-provides--historic--funding-for-manhattan-d-a--hate-crimes-unit>.

<sup>787</sup> Asian American Federation, "About Us," <https://www.aafederation.org/about-us> (accessed Feb. 9, 2023).

<sup>788</sup> Asian American Federation, "Our Work," <https://www.aafederation.org/aaf-our-work/research>.

<sup>789</sup> *Ibid.*

In response to attacks on Asian New Yorkers, AAF launched the Hope Against Hate Campaign, offering community safety programs, safe zones, victim support services, and safety trainings.<sup>790</sup> The campaign includes a Community Companion program, in which companions are responsible for escorting older adults and other vulnerable community members to and from home, work, and appointments; receiving and responding to phone calls from safety network organizations when protective accompaniment is requested; and de-escalating verbal anti-Asian bias incidents as needed when providing protective accompaniment.<sup>791</sup> The campaign has created “Safe Zones” in communities throughout New York City houses of worship, small businesses and other locations to provide safety information to impacted Asian Americans, and set up support services to connect victims to “culturally competent mental health support and pro-bono legal services.”<sup>792</sup> Jo-Ann Yoo, executive director of the Asian American Federation, stated in her written testimony to the Commission that the Hope Against Hate campaign has provided over 100 safety trainings to over 2,400 community members, reached out to 3,775 small businesses and faith centers for Safe Zones, and trained over 2,700 youth in topics such as anti-bullying initiatives.<sup>793</sup>

The Asian American Federation also provides numerous resources for community members as well as nonprofit organizations in responding to COVID-19 and the rise in anti-Asian hate crimes.<sup>794</sup> Its website provides a portal to report experiencing or witnessing a hate crime, resources for individuals affected by COVID-19, and compiles information about funding opportunities as well as free remote work resources for nonprofit organizations to utilize.<sup>795</sup> AAF also provides an unemployment report, which provides data compiled on the impact of the pandemic on Asian employment in New York City and includes recommendations for private and public leadership.<sup>796</sup> Additionally, four different “safety one-pagers” are available for download in multiple Asian languages, which include verbal de-escalation strategies, physical self-defense strategies, non-violent communication strategies, and the 5 “D’s”<sup>797</sup> of being an bystander.<sup>798</sup> AAF is currently working with the U.S. Attorney for the Eastern District of New York to meet with community leaders and develop outreach ideas.<sup>799</sup>

<sup>790</sup> Asian American Federation, “Hope Against Hate,” <https://www.aafederation.org/hope-against-hate/> (accessed Feb. 9, 2023).

<sup>791</sup> Asian American Federation, “Community Safety Program,” <https://www.aafederation.org/community-safety-program/>.

<sup>792</sup> Jo-Ann Yoo, Executive Director, Asian American Federation (AAF), Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023, at 3 (hereinafter Yoo Statement).

<sup>793</sup> Yoo Statement, at 3-4.

<sup>794</sup> Asian American Federation Covid-19 Resource Center, “Community Resources.”

<sup>795</sup> Ibid.

<sup>796</sup> Ibid.

<sup>797</sup> The “5Ds” of bystander intervention methodology as developed by the organization Right To Be are: distract, delegate, document, delay, and direct.

<sup>798</sup> Asian American Federation Covid-19 Resource Center, “Safety Resources.”

<sup>799</sup> Yang Statement, at 12.

The Commission heard from Jennifer Wu, a lawyer in New York City that became a civil rights attorney during the pandemic.<sup>800</sup> She and other pro bono attorneys partnered with the Asian American Bar Association of New York, Asian Americans for Equality, and the Alliance for Asian American Justice to provide “wraparound” services to victims of anti-Asian violence, a key service being advocating for victims before the District Attorney as well as during interactions with the police.<sup>801</sup> Wu explained that private practices often have more resources to find a good interpreter compared to a District Attorney’s office, and that “there are very few court-certified interpreters in a particular dialect who are available to translate live for court proceedings and meetings.”<sup>802</sup> Wu and colleagues were invited to give a training on best practices for interviewing Asian victims for the Hate Crimes Unit at the Manhattan DA’s Office.<sup>803</sup> Karlin Chan, a local community board member, started the Chinatown Block Watch in February 2020, in which three times a week, he and a group of volunteers went on patrol in Chinatown to look out for their neighbors.<sup>804</sup> The group states that it is “just an extra set of eyes and ears” and a “visual deterrent to anything happening.”<sup>805</sup> The group explained that if bias-motivated incidents decreased and things improved, they might be able to disband; however, if they got worse, the group might increase the frequency of patrols or add evening shifts.<sup>806</sup> Every time a new incident occurs, Chan explained that he receives more inquiries about joining the group, which by April 2021, had a roster of 40 volunteers.<sup>807</sup>

Another organization focused on helping to protect Asian residents is Soar Over Hate which was formed to equip members of the community to protect themselves and fight back against anti-Asian violence. Since March 2021, the organization has distributed over 31,000 personal alarms, whistles, and pepper spray across New York (as well as California).<sup>808</sup> Soar Over Hate has also organized “AAPI Care Fairs,” that provides self-defense classes, puppy therapy, meditation classes, group therapy, mental health referrals, hepatitis B screenings, and other vital community resources.<sup>809</sup>

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<sup>800</sup> Jennifer Wu, Founding Partner, Groombridge, Wu, Baughman & Stone LLP, Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023 (hereinafter J. Wu Statement).

<sup>801</sup> J. Wu Statement, at 2.

<sup>802</sup> Ibid.

<sup>803</sup> Ibid, 3.

<sup>804</sup> Mary Harris, “A Very New York Response to Anti-Asian Hate,” *Slate Magazine*, Apr. 8, 2021, <https://slate.com/business/2021/04/chinatown-block-watch-karlin-chan-anti-asian-hate-new-york-city.html>.

<sup>805</sup> Eveline Cho, “The Chinatown Block Watch, One Year Later,” *New York Magazine*, Apr. 1, 2021, <https://www.curbed.com/2021/04/chinatown-block-watch-one-year-later.html>.

<sup>806</sup> Ibid.

<sup>807</sup> Eveline Cho, “The Chinatown Block Watch, One Year Later,” *New York Magazine*, Apr. 1, 2021, <https://www.curbed.com/2021/04/chinatown-block-watch-one-year-later.html>.

<sup>808</sup> Soar Over Hate, “Our Story,” <https://www.soaroverhate.org/about> (accessed Feb. 9, 2023).

<sup>809</sup> Soar Over Hate, “Our Story,” <https://www.soaroverhate.org/about> (accessed Feb. 9, 2023).



Another volunteer group focusing on self-defense is the Dragon Combat Club (DCC). The teacher, Henry Zhang, pitched the club as “self-defense against violent racists” and founded it after his fiancée was harassed and called “coronavirus” early in the pandemic.<sup>810</sup> Zhang stated that he started the club because he was “sick of the inaction of the system,” the lack of condemnation of anti-Asian attacks, and the increase of anti-Asian incidents around New York City.<sup>811</sup> Zhang estimates that DCC has trained hundreds of people. Classes are taught virtually three days a week, and as one student describes: “This is the least we can do as far as immediate response.”<sup>812</sup>

## Texas

### *State and Local Measures*

In March 2021, Texas House Representative Gene Wu filed a resolution in the 87<sup>th</sup> Texas Legislative session condemning racism against Asian Americans and Pacific Islanders, and calling on “state law enforcement officials, working with federal and local officials, to investigate and prosecute all credible reports of hate crimes and incidents and threats against AAPIs in Texas; and... express its support for public and private efforts to eradicate anti-AAPI racism in all its forms.”<sup>813</sup>

Despite the lack of a reported increase in anti-Asian hate crimes in the city, the Houston Police Department did increase patrols in the city’s Asian community at the mayor’s request.<sup>814</sup> Following the Atlanta-area spa shootings,<sup>815</sup> Houston mayor Sylvester Turner published a press released stating:

It is not enough to condemn these acts of violence against Asian-Americans and hold the victims’ families in our hearts. We must act to protect them. I am calling on all Houstonians to recognize our AAPI brothers and sisters’ pain and fear and do what you can to ease those

<sup>810</sup> Esther Wang, “How to Hit Back: The desperate, confused, righteous campaign to stop Asian hate,” *New York Magazine*, Sept. 26, 2022, <https://nymag.com/intelligencer/article/stop-asian-hate-crimes-politics.html>.

<sup>811</sup> Esther Wang, “How to Hit Back: The desperate, confused, righteous campaign to stop Asian hate,” *New York Magazine*, Sept. 26, 2022, <https://nymag.com/intelligencer/article/stop-asian-hate-crimes-politics.html>.

<sup>812</sup> “Self-defense classes preparing Chinatown residents for rise in violent crimes,” *ABC7 New York*, Feb. 19, 2022, <https://abc7ny.com/new-york-city-self-defense-classes-chinatown-asian-american-hate-crime/11579310/>.

<sup>813</sup> H.C.R. 66, 2021 Reg. Sess. (Tex. 2021),

<https://capitol.texas.gov/billlookup/History.aspx?LegSess=87R&Bill=HCR66>

<sup>814</sup> City of Houston Office of the Mayor, “Mayor Sylvester Turner’s Statement on Attacks Against Asian American and Pacific Islander Community,” Mar. 17, 2021, <https://www.houstontx.gov/mayor/press/2021/statement-attacks-asians-pacific-islanders.html>.

<sup>815</sup> Tim Craig, Mark Berman, Hannah Knowles, and Marc Fisher, “A nationwide horror: Witnesses, police paint a picture of a murderous rampage that took 8 lives,” *The Washington Post*, Mar. 18, 2021, [https://www.washingtonpost.com/national/what-happened-atlanta-shooting/2021/03/18/163e4de8-8733-11eb-8a8b-5cf82c3dffe4\\_story.html](https://www.washingtonpost.com/national/what-happened-atlanta-shooting/2021/03/18/163e4de8-8733-11eb-8a8b-5cf82c3dffe4_story.html).

feelings. Please do your part to make them feel safe, whether it's by reporting a hate crime or calling out anti-Asian sentiment when you see it. The attacks on the Asian American community are an outrage, and it's on all of us to stop it.<sup>816</sup>

### *Nonprofit/Community Organization Efforts*

In Houston, the Asian Chamber of Commerce provides Stop Asian Hate business resources, including information on how to support the Asian community, and also lists other organizations to report incidents, view action guides on responding to incidents, and Houston-specific hate crime phone lines.<sup>817</sup> The OCA<sup>818</sup>—Greater Houston Chapter board members, along with key community volunteer members, states that they are working to implement programs to empower the AAPI community by utilizing arts and culture to advocate for social justice and provide leadership training; education workshops; arts, cultural, and advocacy awareness; legal clinics; internships; scholarships; mentoring and civic engagement; and monitoring our national and local advocacy, policy positions, and initiatives.<sup>819</sup> OCA chapters have implemented free online bystander intervention situational awareness trainings, self-defense classes.<sup>820</sup> In February 2023, the University of Houston (UH) hosted a Global Communication Summit with a focus on anti-Asian racism in everyday communication.<sup>821</sup> Communications professor Zhiwen Xiao, who organized the event, remarked that

Asians have been mocked for the way they look or talk, they have been blamed for COVID-19, they have often been dismissed in lots of everyday situations, and they have been victims of anti-Asian hate crimes. One of the purposes of this year's summit is to raise awareness among the public that Asians are not immune to racism.<sup>822</sup>

Yali Zou, director of the UH Asian American Studies Center and University Endowed Professor for Global Leadership Studies, discussed how derogatory terms used by politicians and journalists,

<sup>816</sup> City of Houston Office of the Mayor, "Mayor Sylvester Turner's Statement on Attacks Against Asian American and Pacific Islander Community," Mar. 17, 2021, <https://www.houstontx.gov/mayor/press/2021/statement-attacks-asians-pacific-islanders.html>.

<sup>817</sup> Asian Chamber of Commerce Houston, "Stop Asian Hate Business Resources," <https://module.asianchamber-hou.org/blog/acc-in-the-news-and-media-5238/post/stop-asian-hate-business-resources-28723>.

<sup>818</sup> OCA was founded in 1973 as Organization of Chinese Americans and has evolved to become OCA-Asian Pacific American Advocates. In 2013, the organization rebranded to be OCA-Asian Pacific American Advocates and advocate on behalf of all Asian Americans and Pacific Islanders. Today, OCA continues to do business as OCA – Asian Pacific American Advocates.

OCA, "About," <https://www.ocanational.org>.

<sup>819</sup> OCA Houston, "About Us," <https://www.ocahouston.org/about-us>.

<sup>820</sup> Deborah Chen, OCA National Executive Vice President and OCA-Greater Houston Programs Director, Written Statement to the Commission, May 15, 2023.

<sup>821</sup> University of Houston, "Global Communication Summit on Anti-Asian Racism," Feb. 13, 2023, <https://uh.edu/news-events/stories/2023/february-2023/02132023-global-communication-summit-anti-asian-racism.php>.

<sup>822</sup> *Ibid.*

“played a significant role in fostering bigotry.”<sup>823</sup> The summit featured peer-reviewed research presentations with hopes to increase awareness of the issues, develop an open dialogue, and increase collaboration among researchers, educators, students, journalists, and activists in the creation of environments free of anti-Asian racism.<sup>824</sup> The following section discusses overall challenges regarding capturing true numbers of hate crimes, accurate reporting, and prosecuting bias-motivated incidents.

### Challenges in Reporting and Prosecuting Hate Crimes

At a national level, from 2015-2019, 42 percent of hate crime victimizations were not reported to police.<sup>825</sup> Almost a quarter of these victimizations that were not reported involved victims who believed the police could not or would not do anything to help, and in 16 percent of the victimizations not reported to the police, the victim believed the crime was not important enough to report.<sup>826</sup> There are many reasons that hate crime victims choose not to report. For instance, many people in LGBTQ communities may feel that police sympathize with the offenders, and new immigrants not only fear law enforcement and deportation, but often face language barriers when reporting.<sup>827</sup> Research funded by the National Institute of Justice (NIJ) found that 85 percent of anti-LGBT incidents were not reported to law enforcement.<sup>828</sup> Another NIJ-funded study of Latinx adults, researchers found that non-immigrants were significantly more likely to report bias victimization than immigrants.<sup>829</sup>

Asian Americans specifically may be reluctant to report crimes due to language barriers, concerns about immigration status, fears of retaliation, or they “simply do not want to make trouble.”<sup>830</sup> The lack of hate crime prosecutions may also be a contributing factor. The Asian American Bar Association of New York (AABANY) analyzed 233 anti-Asian incidents in New York City in the

<sup>823</sup> Ibid.

<sup>824</sup> University of Houston, “Global Communication Summit on Anti-Asian Racism,” Feb. 13, 2023, <https://uh.edu/news-events/stories/2023/february-2023/02132023-global-communication-summit-anti-asian-racism.php>.

<sup>825</sup> Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005-2019*, Bureau of Justice Statistics, Sept. 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf).

<sup>826</sup> Ibid.

<sup>827</sup> Ronald Davis and Patrice O’Neill, “The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High,” *Police Chief Magazine*, May 2016, <https://www.policechiefmagazine.org/the-hate-crimes/>.

<sup>828</sup> Besiki Luka Kutateladze, “Anti-LGBTQ Hate Crimes in Miami: Research Summary and Policy Recommendations,” Sept. 2020, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/anti-lgbtq-hate-crimes-miami-research-summary-and-policy>.

<sup>829</sup> Carlos Cuevas, Amy Farrell, Jack McDevitt, Sheldon Zhang, Jeff Temple, Jesenia Robles, and Sarah Lockwood, “Understanding and measuring bias victimization against Latinos,” Sept. 2019, <https://nij.ojp.gov/library/publications/understanding-and-measuring-bias-victimization-against-latinos>.

<sup>830</sup> Nicole Hong and Jonah E. Bromwich, “Asian-Americans Are Being Attacked. Why Are Hate Crime Charges So Rare?” *The New York Times*, Mar. 18, 2021, <http://www.nytimes.com/2021/03/18/nyregion/asian-hate-crimes.amp.html>.

first three quarters of 2021 and found that only seven led to hate crime convictions.<sup>831</sup> Of the 233 incidents, 91 led to an arrest, and of those, 41 were charged as hate crimes by local prosecutors. Of those 41, seven ended up with a disposition of guilt to a hate crime charge.<sup>832</sup>

In a 2018 roundtable hosted by the DOJ, law enforcement practitioners identified four leading barriers to hate crime reporting from their agencies: poor law enforcement-community relationships, the view that law enforcement is unable to affect hate crimes, citizenship status/fear of deportation, and lack of training among law enforcement.<sup>833</sup>

Community advocates argue that even if victims report an incident, it may not be recorded and reported as such. Stanley Mark of the Asian American Legal Defense and Education Fund explained that “[t]he police take racial slurs as a tipping point.... And if it’s not there, then, despite the murder, or assault or the underlying crime, they may not find enough evidence to classify it as a hate crime that’s racially motivated.”<sup>834</sup> Diane Yap, founding member of Lowell Foundation testified to the Commission about heinous crimes that occurred in New York recalling that “70-year-old Mrs. Ren was shoved to the floor, beaten, kicked in the head by three teens and an 11-year-old; two elderly women were stabbed with a machete while waiting for a bus; a 15-year-old was stabbed in the neck on the bus by a 12-year-old boy. However, none of these brutal attacks have been classified as hate crimes.”<sup>835</sup>

Additionally, responding police officers may have an unclear understanding of what constitutes a crime that is motivated by bias if they have not received specific training to recognize a hate crime for what it is.<sup>836</sup> Los Angeles Police Department’s Hate Crimes Coordinator Detective Orlando Martinez testified before the Commission that the majority of determinations (of whether a crime is motivated by bias) are made by officers or supervisors in the field, or investigators after they receive the case, and that most crime victims are not calling 911 indicating that they are victims of a hate crime, because “most people don’t know these things.”<sup>837</sup>

<sup>831</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, [https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf).

<sup>832</sup> Asian American Bar Association of New York, *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, May 2022, [https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless\\_Tide\\_Report\\_2022\\_FIN.pdf](https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf).

<sup>833</sup> Federal Bureau of Investigation, Interrogatory Responses to U.S. Commission on Civil Rights, Mar. 15, 2023.

<sup>834</sup> Kiara Alfonseca, “Hate crimes are hard to prosecute, but why?” *ABC News*, Apr. 13, 2021, <https://abcnews.go.com/US/hate-crimes-hard-prosecute/story?id=76926458>.

<sup>835</sup> Diane Yap, Founding Member, Friends of Lowell Foundation; Board Member, The Lowell Alumni Association, *Anti-Asian Racism Briefing*, p. 30.

<sup>836</sup> Ronald Davis and Patrice O’Neill, “The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High,” *Police Chief Magazine*, <https://www.policechiefmagazine.org/the-hate-crimes/>.

<sup>837</sup> Detective Orlando Martinez, Hate Crimes Coordinator, Los Angeles Police Department, *Anti-Asian Racism Briefing*, pp. 143-44.

Robert Boyce, a retired chief of detectives from the New York Police Department, said that law enforcement officers tasked with investigating a crime's motivation face many obstacles in finding evidence of hate.<sup>838</sup> Boyce, describing investigating potential hate crimes, said that

[w]hile there are some easy identifiers — like hate speech, a victim's religious garb or if hateful symbols like a swastika or a noose is present at a crime scene — a deeper investigation into perpetrators can help solidify the case.... If none of the common signs of hate are present, officers may search closed-circuit television footage, social media platforms, past criminal records, license plates, and more to connect the dots to a hate crime charge.<sup>839</sup>

Deputy Legal Director Scott McCoy of the Southern Poverty Law Center said that clear signs of bigotry or intolerance such as a slur, racist vandalism, or a perpetrator's association with an extremist group can lead to a charge of a hate crime, but that those clearer-cut cases are rare.<sup>840</sup> There are also potential issues regarding whether or not police departments record a crime as motivated by bias and report that to federal authorities. In 2020, nearly 25 percent of large cities did not report any hate crimes; however, research suggest that for large cities to actually experience zero hate crimes that year is "a statistical near-impossibility."<sup>841</sup> Additionally, local and state numbers may differ from federal numbers due to definitional issues. New Jersey, for example, reported significantly more hate crimes than the FBI.<sup>842</sup> New Jersey has reported a 400 percent increase in bias incidents since 2015 largely due to harassment incidents, which is a category that the FBI does not include.<sup>843</sup> In another example, the Orlando Police Department reported to ProPublica that it had reported five hate crimes to the Florida Department of Law Enforcement (FDLE) for 2015, but the FBI data showed no Orlando hate crimes that year.<sup>844</sup> Orlando police said FDLE acknowledged their data had not been sent to FBI due to a system error, while an FDLE spokesperson reported that Orlando had not submitted data on time.<sup>845</sup> The ProPublica investigation also found that:

<sup>838</sup> Kiara Alfonseca, "Hate crimes are hard to prosecute, but why?" *ABC News*, Apr. 13, 2021, <https://abcnews.go.com/US/hate-crimes-hard-prosecute/story?id=76926458>.

<sup>839</sup> Kiara Alfonseca, "Hate crimes are hard to prosecute, but why?" *ABC News*, Apr. 13, 2021, <https://abcnews.go.com/US/hate-crimes-hard-prosecute/story?id=76926458>.

<sup>840</sup> *Ibid.*

<sup>841</sup> Beatrice Jin, "Biden signed a new hate crimes law – but there's a big flaw," *Politico*, May 20, 2021, <https://www.politico.com/interactives/2021/state-hate-crime-laws/>.

<sup>842</sup> Sergio Olmos, "Researchers say the FBI's statistics on hate crimes across the country are flawed," *NPR*, Jan. 1, 2023, <https://www.npr.org/2023/01/01/1145973412/researchers-say-the-fbis-statistics-on-hate-crimes-across-the-country-are-flawed>.

<sup>843</sup> Sergio Olmos, "Researchers say the FBI's statistics on hate crimes across the country are flawed," *NPR*, Jan. 1, 2023, <https://www.npr.org/2023/01/01/1145973412/researchers-say-the-fbis-statistics-on-hate-crimes-across-the-country-are-flawed>.

<sup>844</sup> Ken Schwencke, "Why America Fails at Gathering Hate Crime Statistics," *ProPublica*, Dec. 4, 2017, <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>.

<sup>845</sup> *Ibid.*

According to FBI data, the Anne Arundel County Police in Maryland, which polices half a million people between Baltimore and Washington, D.C., reported no hate crimes between 2012 and 2015. But the department sent [] 68 pages of reports for the past 5 years, showing that county police responded to well over 100 incidents, including many in which there was evidence of crimes motivated by bias.... Officials with the Maryland State Police said many of these cases weren't reported to the FBI because the Anne Arundel County Police — unsure if they were hate crimes — had flagged them as “inconclusive” in paperwork.<sup>846</sup>

In addition to challenges in accounting for the true number of reported hate crimes, the burden of proving the accused acted out of racial-based motivated is a difficult for prosecutors to meet.<sup>847</sup> LAPD Detective Martinez testified that “bias motivation is a thought crime. It is the suspect's intent. We have to prove that through direct evidence or circumstantial evidence beyond a reasonable doubt that the suspect committed the crime because of the bias against the protected characteristic.”<sup>848</sup>

This burden of proof “severely limits the number of charges brought and convictions obtained.”<sup>849</sup> According to a 2015 report, federal prosecutors turn down about 87 percent of hate crime cases since the passage of the HCPA, and the most cited reason is insufficient evidence.<sup>850</sup> A 1991 legal commentary on the issue of hate crime motives explained:

Prosecutors must prove a complex set of factors in order to secure a criminal conviction under existing hate crimes statutes. Like any criminal statute, a typical hate crimes act requires proof by the government of the accused's *mens rea* or “guilty mind.” Traditional *mens rea* elements consist of purpose, knowledge, recklessness, or criminal negligence. Hate crimes statutes also require proof that the accused attacked his or her victim “because of” or “by reason of” that person's race, religion, or national origin. This requirement of proof severely undermines the efficacy of existing statutes and has discouraged prosecutors from charging individuals under the statutes. Prosecutors often find it impossible to demonstrate by proof beyond a reasonable doubt that the accused acted out of racist

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<sup>846</sup> Ibid.

<sup>847</sup> James Morsh, (1991), “Problem of Motive in Hate Crimes: The Argument Against Presumptions of Racial Motivation,” *Journal of Criminal Law and Criminology*, 82, 3:

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6710&context=jclc>

<sup>848</sup> Detective Orlando Martinez, Hate Crimes Coordinator, Los Angeles Police Department, *Anti-Asian Racism Briefing*, p. 144.

<sup>849</sup> James Morsh, (1991), “Problem of Motive in Hate Crimes: The Argument Against Presumptions of Racial Motivation,” *Journal of Criminal Law and Criminology*, 82, 3:

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6710&context=jclc>

<sup>850</sup> Transactional Records Access Clearinghouse, “Convictions in Federal Hate Crime Cases Since FY 2010,” June 25, 2015, <http://trac.syr.edu/tracreports/crim/393/.ho>

motives.<sup>851</sup> Thus, since motive exists within an individual's own knowledge can often undermine a prosecutor's ability to prove a hate crime case in all but egregious cases.<sup>852</sup>

Many of the hate crime cases which are prosecuted and result in convictions include the perpetrator using hateful language while committing the act, thus proving intent.<sup>853</sup> Without some clear demonstration of bias or bigotry proving the crime was motivated by bias beyond a reasonable doubt is difficult.<sup>854</sup>

The prosecution of hate crimes is difficult, even in states with comprehensive hate crime legislation — like California — because there is no one legal standard to which courts have agreed. For instance, the California Penal Code defines a hate crime as “a criminal act committed, *in whole or in part, because of* one or more of the following actual or perceived characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation, (7) association with a person or group with one or more of these actual or perceived characteristics.”<sup>855</sup> This is an easier legal standard for proving intent than the federal HCPA, which requires that the crime was committed almost entirely because of the victim's protected status.<sup>856</sup> As a result, in California from 2020 to 2021, the number of cases filed for prosecution by state DAs and city attorneys involving hate crime charges increased by 30.1 percent, of which 14.7 percent received a conviction.<sup>857</sup> For further discussion regarding DOJ hate crime cases during the COVID-19 pandemic, see Chapter 3 of this report.

### Increasing Law Enforcement Presence

Due to the national uptick in anti-Asian incidents, some major cities such as Chicago, New York, Philadelphia, and San Francisco, have all directed police officers to step up their presence.<sup>858</sup> In San Francisco's Chinatown, many older merchants have indicated feeling safer with the increase of police, but others argue the increase in policing is a temporary and ineffective answer to solve

<sup>851</sup> James Morsh, (1991), “Problem of Motive in Hate Crimes: The Argument Against Presumptions of Racial Motivation,” *Journal of Criminal Law and Criminology*, 82, 3:

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6710&context=jclc>

<sup>852</sup> James Morsh, (1991), “Problem of Motive in Hate Crimes: The Argument Against Presumptions of Racial Motivation,” *Journal of Criminal Law and Criminology*, 82, 3:

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6710&context=jclc>

<sup>853</sup> See, e.g., 18 U.S.C. § 249(a)(1) and (2); Cal. Pen. Code § 422.55(a).

<sup>854</sup> See U.S. Commission on Civil Rights, *In The Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019.

<sup>855</sup> Cal. Pen. Code § 422.55(a).

<sup>856</sup> 18 U.S.C. § 249.

<sup>857</sup> Rob Bonta, “Hate Crime in California,” Office of the Attorney General, California Dep't of Justice, 2021, Table 10, <https://oag.ca.gov/system/files/attachments/press-docs/Hate%20Crime%20In%20CA%202021%20FINAL.pdf>

<sup>858</sup> Vivian Ho, “Police patrols have increased in Asian areas. Not everyone is feeling safer,” *The Guardian*, Mar. 19, 2021, <https://www.theguardian.com/us-news/2021/mar/19/atlanta-shooting-asian-police-violence>.

the increase in violence against Asian communities.<sup>859</sup> Similarly, some advocacy groups argue that increased law enforcement is not the proper response to the rising anti-Asian hate crimes. The Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights held a virtual briefing on May 6, 2021, to discuss hate incidents and hate crimes against people of AAPI descent, and Alvina Yeh, executive director of the Asian Pacific American Labor Alliance, testified that:

[c]alling for policing, offering cash rewards, asking for hate crime-related legislation or stricter punishments, [doesn't] solve the problems of violence in our community and only creates more racial division ... the safest communities don't have more police. They don't have more surveillance. They are abundantly resourced [so that] all members of our community are thriving, and that's the community safety plan we should all be working towards.<sup>860</sup>

Sammie Ablaza Willis, director of a nonprofit group for the Asian and Pacific Islander transgender and queer community in northern California, described the fear among the community but that “while we feel that fear, policing is not the thing that is going to alleviate it.”<sup>861</sup> Particularly among transgender and queer Asian American communities, increased police presence may not always make everyone feel safer. Advocates against increased policing have suggested that instead of law enforcement officers, the community can patrol the neighborhood and escort older adults on their daily errands.<sup>862</sup> Manjusha Kulkarni, executive director of AAPI Equity Alliance and co-founder for Stop AAPI Hate testified that “truly combatting anti-Asian hate requires a comprehensive approach and not simply one that primarily relies upon criminal law enforcement.”<sup>863</sup>

Moreover, some advocates within the Asian community argue against increased policing strategies as a method to reduce hate crimes due to the history of racial injustice in policing.<sup>864</sup> More than 100 Asian American organizations signed a joint statement rejecting the COVID-19 Hate Crimes Act because the legislation “relies on anti-Black, law enforcement responses to the recent rise in anti-Asian bias incidents across the US” that contradict the Asian solidarity with BIPOC (Black, Indigenous, People of Color) and other marginalized groups.<sup>865</sup> The coalition states that the COVID-19 Hate Crimes Act “assumes that police are safe,” and they are calling on a shift in

<sup>859</sup> Vivian Ho, “Police patrols have increased in Asian areas. Not everyone is feeling safer,” *The Guardian*, Mar. 19, 2021, <https://www.theguardian.com/us-news/2021/mar/19/atlanta-shooting-asian-police-violence>.

<sup>860</sup> Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, *Hate Crimes Against Asian American Pacific Islander Communities in Massachusetts*, Aug. 2021, p. 16, <https://www.usccr.gov/files/2021-10/ma-sac-aapi-hate-crimes.pdf>.

<sup>861</sup> Vivian Ho, “Police patrols have increased in Asian areas. Not everyone is feeling safer,” *The Guardian*, Mar. 19, 2021, <https://www.theguardian.com/us-news/2021/mar/19/atlanta-shooting-asian-police-violence>.

<sup>862</sup> *Ibid*; see also *supra*, note 791.

<sup>863</sup> Kulkarni testimony, at 49-50.

<sup>864</sup> Tiffany Bui, Ha-Kyung Kim, Megan Munce, and Praveena Somasundaram, “For Asian American activists, police brutality, anti-Asian hate are two sides of the same coin,” *Voices*, Accessed Feb. 28, 2023, <https://voices.aaja.org/index/2021/8/25/asian-americans-challenge-policing-as-answer-to-anti-asian-attacks>

<sup>865</sup> GAPIMNY, “75+ Asian and LGBTQ Organizations’ Statement In Opposition To Law Enforcement-Based Hate Crime Legislation,” Last Modified May 18, 2021, <https://gapimny.org/75-asian-and-lgbtq-organizations-statement-in-opposition-to-law-enforcement-based-hate-crime-legislation/>



resources from law enforcement to investing in community-based interventions and non-carceral alternatives, non-coercive mental healthcare services, neighborhood-based trauma centers, and community food banks.<sup>866</sup>

After footage of a pedestrian being assaulted in Oakland went viral in February 2021, Carl Chan, president of the Oakland Chinatown Chamber of Commerce, became a fixture in mainstream media for championing more policing in response to robberies and assaults continuing across the country.<sup>867</sup> The Washington Post reported that while the solution (of increased police presence) has been challenged by racial justice advocates, “it was embraced by politicians eager to look tough on crime and acts of racial hatred.”<sup>868</sup> The argument for ramping up police presence is supported by some because it is a resource that older people in the community are familiar with and able to trust, compared to newer volunteer escort programs.<sup>869</sup> Carl Chan stated that he asked “all of our seniors in Chinatown and basically all of our businesses: Do you want to see police in this community? So far, I haven’t heard anybody say no.”<sup>870</sup>

For some Asian activists, forming alliances with other marginalized groups is seen as an approach to tackling anti-Asian hate crimes.<sup>871</sup> Stop AAPI Hate released a statement in May 2022 following the Justice Department’s publication of guidelines on combatting hate crimes and hate incidents across the country,<sup>872</sup> insisting that:

we cannot address anti-AAPI racism without addressing anti-Black racism, xenophobia and white supremacy. The safety of communities of color is interconnected. Therefore, we urge the Justice Department to look beyond law enforcement approaches given the long history of police violence against Black communities, racism in the ranks, and connections to white nationalism.<sup>873</sup>

Sentiments regarding the use of law enforcement among Asian Americans may find generational differences. A 2016 exit poll of almost 14,000 Asian Americans assessed the extent to which voters felt police departments treated racial and ethnic groups equally, and half of voters indicated that

<sup>866</sup> GAPIMNY, “75+ Asian and LGBTQ Organizations’ Statement In Opposition To Law Enforcement-Based Hate Crime Legislation,” Last Modified May 18, 2021, <https://gapimny.org/75-asian-and-lgbtq-organizations-statement-in-opposition-to-law-enforcement-based-hate-crime-legislation/>

<sup>867</sup> Jing Luo, Crystal, “Anti-Asian violence is a serious problem. But policing isn’t the solution,” *The Washington Post*, Mar 16, 2022, <https://www.washingtonpost.com/outlook/2022/03/16/anti-asian-violence-is-serious-problem-policing-isnt-solution/>.

<sup>868</sup> Ibid.

<sup>869</sup> Li Zhou, “Asian American communities grapple with whether police are the right answer to recent attacks,” *Vox*, Mar. 15, 2021, <https://www.vox.com/22308407/attacks-asian-americans-police>.

<sup>870</sup> Ibid.

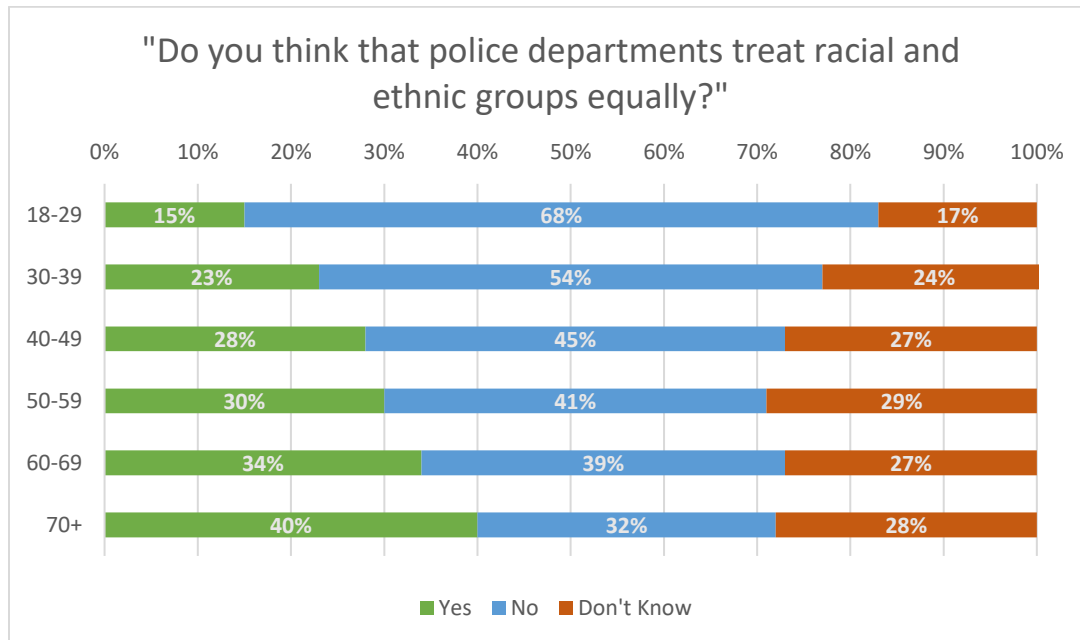
<sup>871</sup> Tiffany Bui, Ha-Kyung Kim, Megan Munce, and Praveena Somasundaram, “For Asian American activists, police brutality, anti-Asian hate are two sides of the same coin,” *Voices*, Accessed Feb. 28, 2023, <https://voices.aaja.org/index/2021/8/25/asian-americans-challenge-policing-as-answer-to-anti-asian-attacks>

<sup>872</sup> See *infra* notes 1146-1148 (discussing DOJ guidance).

<sup>873</sup> Stop AAPI Hate, “Stop AAPI Hate Responds to DOJ Guidelines on Combatting Hate During the Pandemic,” May 22, 2022, <https://stopaapihate.org/statement-doj-guidelines/>.

they did not.<sup>874</sup> Importantly, a generational divide exists among these responses. Voters aged 18-29 were the most likely to indicate that police did not treat racial and ethnic groups equally (68 percent responding “no”), and responses shifted to be more positive toward police as ages increased, with only 32 percent of voters aged 70 and older indicating that they did not think police treat groups equally (see Figure 7 below).<sup>875</sup> Additionally, a 2020 post-election poll of Asian American youth (aged 18-29) voters found that respondents ranked racism as one of the top three issues influencing their Presidential vote, second highest of all eleven priorities to choose from (following providing a COVID-19 vaccine).<sup>876</sup> Eighty-seven percent of respondents agreed or strongly agreed that it was important to correct social and economic inequalities, and 85 percent agreed or strongly agreed that certain racial or ethnic groups have fewer chances to get ahead.<sup>877</sup>

**Figure 7 2016 Exit Poll of Asian American Voters Regarding Police Treatment of Racial and Ethnic Groups, Broken Out by Age**



Source: Hansi Lo Wang, “On Police Treatment, Asian-Americans Show Ethnic, Generational Splits,” *NPR*, Apr. 18, 2017, <https://www.npr.org/sections/thetwo-way/2017/04/18/524556485/on-police-treatment-asian-americans-show-ethnic-generational-splits>; Asian American Legal Defense Fund, *The Asian American Vote 2016*, <https://www.aaldef.org/uploads/pdf/TheAsianAmericanVote2016-AALDEF.pdf>.

<sup>874</sup> Asian American Legal Defense and Education Fund, “Multilingual exit poll of 13,846 Asian American voters shows strong support for Democratic candidates in 2016 elections,” Apr. 18, 2017, <https://www.aaldef.org/press-release/new-aaldef-report-the-asian-american-vote-in-2016/>.

<sup>875</sup> Hansi Lo Wang, “On Police Treatment, Asian-Americans Show Ethnic, Generational Splits,” *NPR*, Apr. 18, 2017, <https://www.npr.org/sections/thetwo-way/2017/04/18/524556485/on-police-treatment-asian-americans-show-ethnic-generational-splits>; Asian American Legal Defense Fund, *The Asian American Vote 2016*, <https://www.aaldef.org/uploads/pdf/TheAsianAmericanVote2016-AALDEF.pdf>.

<sup>876</sup> Circle at Tufts University, “Driven by Key Issues, Asian Youth Increased their Political Participation,” Jul. 8, 2021, <https://circle.tufts.edu/latest-research/driven-key-issues-asian-youth-increased-their-political-participation>.

<sup>877</sup> Circle at Tufts University, “Driven by Key Issues, Asian Youth Increased their Political Participation,” Jul. 8, 2021, <https://circle.tufts.edu/latest-research/driven-key-issues-asian-youth-increased-their-political-participation>.

Evidence that hiring more police officers as the best way to reduce crime is mixed at best, as it may help some agencies in some circumstances, but not all research supports it to be the solution to a crime problem. Dr. Aaron Chalfin and colleagues, examining the impact of annual police employment on homicides in large U.S. cities from 1981 through 2018, found that police force size had an unequal effect. Each additional police officer abated between 0.06 and 0.1 homicides.<sup>878</sup> An examination of COPS program<sup>879</sup> hiring grants from 1990 to 2001 found that the increase in police added to the force by the grants generated reductions in four index crimes: thefts, burglaries, robberies, and aggravated assaults, but not other crimes.<sup>880</sup> Another study — a systematic review of 62 studies from 1971 through 2013 — found that the overall effect size for police force size on crime was negative, small, and not statistically significant.<sup>881</sup> The causes of crime can vary from place to place, and it is challenging to disentangle the benefits of hiring more officers with other contributing factors. As law enforcement experts have found, actual outcomes can be more dependent on the strategies law enforcement officers deploy.<sup>882</sup>

### Best Practices for Law Enforcement and Prosecutors

The International Association of Chiefs of Police (IACP) and Lawyers' Committee for Civil Rights Under Law published a 2019 report following several meetings of civil rights and law enforcement experts regarding community organizations and law enforcement response to hate crimes. Committee members identified five critical issues that can help enhance response practices and an action agenda for community organizations and law enforcement to address. The five critical issues were:

- 1) increasing community-law enforcement collaboration to address hate crimes;
- 2) enhancing training and education about hate crimes for law enforcement, prosecutors, and community members;
- 3) strengthening data collection, reporting, and analysis;
- 4) improving hate incident and crime management policies; and
- 5) the role of prosecutors: early and ongoing communication with law enforcement and proactive engagement with the community.<sup>883</sup>

<sup>878</sup> Aaron Chalfin, Benjamin Hansen, Emily K. Weisburst & Morgan C. Williams, 2020, "Police Force Size and Civilian Race," *National Bureau of Economic Research*, <https://www.nber.org/papers/w28202>.

<sup>879</sup> <https://cops.usdoj.gov/aboutcops>

<sup>880</sup> Evans, William N., and Emily G. Owens. "COPS and Crime." *Journal of public economics* 91.1 (2007): 181–201.

<sup>881</sup> Lee, Y., Eck, J.E. & Corsaro, N. Conclusions from the history of research into the effects of police force size on crime—1968 through 2013: a historical systematic review. *J Exp Criminol* 12, 431–451 (2016). <https://doi.org/10.1007/s11292-016-9269-8>

<sup>882</sup> Li Zhou, "Asian American communities grapple with whether police are the right answer to recent attacks," *Vox*, Mar. 15, 2021, <https://www.vox.com/22308407/attacks-asian-americans-police>.

<sup>883</sup> International Association of Chiefs of Police and Lawyers' Committee for Civil Rights Under Law, *Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes*, Apr. 1, 2019, [https://www.theiacp.org/sites/default/files/2019-04/IACP\\_Hate%20Crimes\\_Full%20Report.pdf](https://www.theiacp.org/sites/default/files/2019-04/IACP_Hate%20Crimes_Full%20Report.pdf).

The IACP maintains that increased collaboration between community and law enforcement involves coming together to discuss community response to hate crimes before a crisis occurs. The organization recommends that law enforcement invite community leaders to serve on an advisory board or other agency sponsored event and report regularly to the agency liaison. Community groups could also invite local law enforcement to community functions to provide informal opportunities to engage with community members.<sup>884</sup>

The IACP also recommends enhancing training by developing law enforcement training on recognizing and classifying hate crimes, improving cultural competency, and avoiding bias and discriminatory stereotypes, and continuing on an annual basis.<sup>885</sup> The IACP also stresses the importance of improving data collection that will require agencies to track and report both hate incidents and hate crimes, ensure reporting forms are easy to mark an incident or crime as a suspected hate incident or crime, and recognize barriers some communities face in reporting hate crimes.<sup>886</sup>

The organization also suggests that law enforcement agencies should work to recognize and identify bias indicators where present to accurately identify hate crimes, and in the immediate aftermath of an alleged hate crime, ensure that comments from the department to the media or public do not rule out bias motivation.<sup>887</sup> They should also develop policies maintaining a strong leadership role in the aftermath of a hate crime and thoroughly investigate and accurately report all incidents that might be hate crimes.<sup>888</sup> Additionally, prosecutors and law enforcement should engage in joint training on hate crimes and community engagements and law enforcement agencies may even consider recommending that the prosecutor's office have a designated attorney to prosecute hate crimes in the community.<sup>889</sup> Below are some examples of these critical issues put into practice across the nation:

- Police and community engagement: Unidos is a Hispanic community outreach program, hosted by the Arlington (Texas) Police Department and other city agencies, that specifically targets Spanish-speaking residents in Arlington, Texas. Quarterly meetings conducted entirely in Spanish include police officers, as well as individuals from other professions, from across the community. These professionals engage a population that

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<sup>884</sup> Ibid., 9.

<sup>885</sup> Ibid., 12.

<sup>886</sup> Ibid., 15.

<sup>887</sup> Ibid., 19.

<sup>888</sup> Ibid.

<sup>889</sup> Ibid, 22.

might not otherwise reach out to law enforcement, facilitating a “two-way communication and the promotion of trust between the police and the community we serve.”<sup>890</sup>

- **Training:** The Lawyers’ Committee, Matthew Shepard Foundation, and Civil Rights Enforcement Associates (CREA) have developed hate crimes training programs designed for law enforcement officers and prosecutors. The training instructors have experience at the DOJ’s Civil Rights Division and Community Relations Service, as well as the FBI’s Civil Rights Unit. The training programs focus on key areas of knowledge and practice that are essential for investigators and prosecutors confronted with hate crime cases, and also explores ways that law enforcement officers and community leaders can build relationships to better prepare for the report of a hate incident. The training is available to other interested jurisdictions by reaching out to the Lawyers’ Committee or the Matthew Shepard Foundation.<sup>891</sup>
- **Collecting and sharing data:** The National Policing Institute (formerly Police Foundation) provides a best practices guide for law enforcement agencies on released open data on hate crimes.<sup>892</sup> Recommendations include: obtaining any necessary permissions, deciding on a web platform for data hosting, designing a data set, determining a data extraction process, and launching the data set.<sup>893</sup> As the Institute says, “[b]y releasing open hate crime data, tribal, local, state, and federal jurisdictions can immediately improve the public’s understanding of hate crime nationwide and encourage official reporting of these crimes on the part of citizens as well as the police. As a result, policymakers and law enforcement agencies alike will be empowered to assign appropriate resources for the prevention and resolution of these often violent crimes.”<sup>894</sup>

The National Policing Institute suggests that improving the identification of hate crimes within an agency may start with written policies. The organization states that a written policy can “serve as a bridge between hate crime legislation and implementation of that law by providing officers with information and a standard that the agency expects them to follow.”<sup>895</sup> Research supports the positive impact of a written policy, with a study of California police agencies finding that the

<sup>890</sup> International Association of Chiefs of Police and Lawyers’ Committee for Civil Rights Under Law, *Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes*, Apr. 1, 2019, p. 10, [https://www.theiacp.org/sites/default/files/2019-04/IACP\\_Hate%20Crimes\\_Full%20Report.pdf](https://www.theiacp.org/sites/default/files/2019-04/IACP_Hate%20Crimes_Full%20Report.pdf).

<sup>891</sup> International Association of Chiefs of Police and Lawyers’ Committee for Civil Rights Under Law, *Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes*, Apr. 1, 2019, p. 12, [https://www.theiacp.org/sites/default/files/2019-04/IACP\\_Hate%20Crimes\\_Full%20Report.pdf](https://www.theiacp.org/sites/default/files/2019-04/IACP_Hate%20Crimes_Full%20Report.pdf).

<sup>892</sup> National Policing Institute, “Releasing Open Data on Hate Crimes: A Best Practices Guide for Law Enforcement Agencies,” Jan. 2018, <https://www.policinginstitute.org/publication/releasing-open-data-on-hate-crimes-a-best-practices-guide-for-law-enforcement-agencies/>.

<sup>893</sup> Ibid.

<sup>894</sup> National Policing Institute, “Releasing Open Data on Hate Crimes: A Best Practices Guide for Law Enforcement Agencies,” Jan. 2018, <https://www.policinginstitute.org/publication/releasing-open-data-on-hate-crimes-a-best-practices-guide-for-law-enforcement-agencies/>.

<sup>895</sup> William Johnson, “The Importance and Structure of a Written Hate Crime Policy,” *Police Chief Magazine*, <https://www.policechiefmagazine.org/the-importance-and-structure-of-a-written-hate-crime-policy/>.

existence of a written policy on hate crime increased reporting by 38 percent.<sup>896</sup> Clear hate crime policies that are made public also have the potential to increase reporting by communicating clearly that the department's policy includes responding to and investigating these incidents.<sup>897</sup>

IACP also published a "model policy" for the investigation of hate crimes in March 2021. According to IACP:

Agencies should employ all necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, agencies should be mindful of and responsive to the security concerns of victims and their families.<sup>898</sup>

The model policy outlines the importance of preparation, communications personnel procedures, initial response procedures, supervisor and investigator responsibilities, community relations, data collection and reporting, and training.<sup>899</sup>

Other best practices include law enforcement agencies sponsoring programs or special activities to publicly condemn hate crimes and support efforts to prevent them.<sup>900</sup> Many tools and programs are available through Not In Our Town, which is a movement to stop hate, racism, and bullying.<sup>901</sup> The tools available for law enforcement agencies to utilize includes various topical guides, roll call videos,<sup>902</sup> and case studies of successful community partnerships.<sup>903</sup>

The FBI relies on participating agencies to submit accurate data according to the technical specification and NIBRS User Manual.<sup>904</sup> The FBI stated to the Commission that the best practices for accurate data reporting are regular submissions, low error rates in data, and open communication between data submitters and the UCR program.<sup>905</sup> A newly established Hate

<sup>896</sup> Ibid.

<sup>897</sup> William Johnson, "The Importance and Structure of a Written Hate Crime Policy," *Police Chief Magazine*, <https://www.policechiefmagazine.org/the-importance-and-structure-of-a-written-hate-crime-policy/>.

<sup>898</sup> International Association of Chiefs of Police, "Investigation of Hate Crimes," *Model Policy*, Mar. 2021, <https://www.theiacp.org/sites/default/files/2021-03/Hate%20Crimes%20Formatted%202021-03-23.pdf>.

<sup>899</sup> International Association of Chiefs of Police, "Investigation of Hate Crimes," *Model Policy*, Mar. 2021, <https://www.theiacp.org/sites/default/files/2021-03/Hate%20Crimes%20Formatted%202021-03-23.pdf>.

<sup>900</sup> Ronald Davis and Patrice O'Neill, "The Hate Crimes Reporting Gap: Low Numbers Keep Tensions High," *Police Chief Magazine*, <https://www.policechiefmagazine.org/the-hate-crimes/>.

<sup>901</sup> Not In Our Town, "About Us," <https://www.niot.org/about-us>.

<sup>902</sup> Roll call is an informal briefing prior to the start of a shift where supervisors take attendance and inform the oncoming shift of any outstanding incidents.

Robert Sterling (2004), *Police Officer's Handbook: An Introductory Guide*, Jones and Bartlett.

<sup>903</sup> Not In Our Town, "Not In Our Town + COPS," <https://www.niot.org/cops>.

<sup>904</sup> Federal Bureau of Investigation, Interrogatory Responses to U.S. Commission on Civil Rights, Mar. 15, 2023.

<sup>905</sup> Ibid.

Crime Statistics Task Force will be working with law enforcement agencies to establish a best practice in terms of reporting data to the FBI.<sup>906</sup> The FBI will also conduct a joint NIBRS Train-the-Trainer and Hate Crime Symposium in August 2023 to engage participants and demonstrate the importance and benefits of reporting hate crime data..<sup>907</sup>

### Community and Public Policy Organizations Efforts

Asian Americans, with wide ideological differences across dozens of ethnicities, are divided over best measures to curb the violence against their communities. Some have called for lowering the bar to bring hate crime charges, toughening penalties, and boosting funding police departments to investigate attacks against Asians.<sup>908</sup> Others have opposed these proposals, saying more policing could harm their own communities, worsen racial tensions, and disproportionately target minority communities that have long dealt with aggressive policing.<sup>909</sup> Most resources trying to provide the public with ways to combat anti-Asian violence include encouraging reporting hate incidents and hate crimes to local law enforcement as well as to organizations collecting data (such as Stop AAPI Hate), learning about the history of Asian American discrimination, and encouraging elected officials to pass anti-hate legislation.<sup>910</sup>

Another national organization fighting to advance the civil and human rights for Asian Americans and promote a fair and equitable society for all is the nonprofit Asian Americans Advancing Justice (AAJC).<sup>911</sup> AAJC has been “working to raise awareness about increased racism and discrimination against Asian Americans who are being wrongly blamed for the coronavirus.”<sup>912</sup> AAJC launched a website called Stand Against Hatred that includes a reporting site for hate incidents against Asian Americans.<sup>913</sup> As stated by John Yang, president and executive director of AAJC, as long as some people of color and immigrants remain distrustful of law enforcement and the government, there

<sup>906</sup> Ibid.

<sup>907</sup> Ibid.

<sup>908</sup> Nicole Hong and Jonah E. Bromwich, “Asian-Americans Are Being Attacked. Why Are Hate Crime Charges So Rare?” *The New York Times*, Mar. 18, 2021, <http://www.nytimes.com/2021/03/18/nyregion/asian-hate-crimes.amp.html>.

<sup>909</sup> Nicole Hong and Jonah E. Bromwich, “Asian-Americans Are Being Attacked. Why Are Hate Crime Charges So Rare?” *The New York Times*, Mar. 18, 2021, <http://www.nytimes.com/2021/03/18/nyregion/asian-hate-crimes.amp.html>.

<sup>910</sup> Tiffany Liu, “Texas ranks 4<sup>th</sup> in anti-Asian incidents; how to stop the hate,” *WFAA*, Mar. 23, 2021, <https://www.wfaa.com/article/news/local/texas/texas-ranks-4th-in-anti-asian-racist-incidents-how-to-stop-the-aapi-hate/287-6f10e1f8-64c4-4434-8be3-71fca2eb8a3e>; Vignesh Ramachandran, “What you can do to fight violence and racism against Asian Americans,” *PBS*, Mar. 18, 2021, <https://www.pbs.org/newshour/nation/what-you-can-do-to-fight-violence-and-racism-against-asian-americans>.

<sup>911</sup> Asian Americans Advancing Justice, “Who We Are,” <https://www.advancingjustice-aajc.org/who-we-are>.

<sup>912</sup> Asian Americans Advancing Justice, “Anti-Asian Hate,” <https://www.advancingjustice-aajc.org/anti-asian-hate>.

<sup>913</sup> John Yang, President & Executive Director, Asian Americans Advancing Justice (AAJC), Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023 (hereinafter Yang Statement).

is a need for community reporting sites for hate incidents in addition to data collection by local police departments and the FBI.<sup>914</sup>

AAJC and Right To Be, a nonprofit organization dedicated to raising awareness and combatting harassment, provides bystander intervention trainings, including a specific training to stop anti-Asian and xenophobic harassment.<sup>915</sup> The one-hour virtual training discusses how identities impact how public spaces can be experienced, and provides current examples of harassment and violence Asian American communities have been facing during the pandemic.<sup>916</sup> The program teaches the “5Ds” of bystander intervention methodology: distract, delegate, document, delay, and direct.<sup>917</sup> The sessions are available in several languages, and have reached more than 150,000 people since the partnership launched in April 2020.<sup>918</sup>

The Asian American Foundation’s (TAAF) Anti-Hate and Belonging Initiative includes an Anti-Hate National Network, which coordinates a diverse set of organizations working to combat anti-Asian hate.<sup>919</sup> As the website describes, “[t]he solutions are already in our community. Let’s show the rest of the nation how to step up with us.”<sup>920</sup> TAAF created a Rapid Response Toolkit as a resource where Asian communities and allies can mobilize at scale across nonprofits, media outlets, and advocacy and public safety groups.<sup>921</sup> The toolkit includes a flowchart checklist for individual victims of a hate crime or incident, as well as a Community Response Playbook for individuals and community leaders. Community leaders are encouraged to mobilize their communities, push the media to be accountable in accurately reporting stories about the Asian community, use social media as a tool for narrative change, and get elected officials involved to use their platform to elevate community leaders and join solidarity efforts.<sup>922</sup>

Community stakeholders and experts posit that a final item of importance in the response to and prevention of anti-Asian hate crimes is the development of an accurate understanding of these hate incidents. TAAF formed a coalition with Stop Asian Hate (SAH) to draft standards and practices for community-based data collection, with an overarching goal to build trust, transparency, and accountability in improving anti-AAPI hate data quality.<sup>923</sup> The two organizations have issued a codebook on documenting anti-AAPI hate, which focuses on the need to standardize definitions

<sup>914</sup> Yang Statement, at 11.

<sup>915</sup> Right To Be, “Bystander Intervention To Stop Anti-Asian/American And Xenophobic Harassment,” <https://righttobe.org/trainings/bystander-intervention-to-stop-anti-asian-american-and-xenophobic-harassment/>.

<sup>916</sup> Yang Statement, at 12.

<sup>917</sup> Right To Be, “Bystander Intervention To Stop Anti-Asian/American And Xenophobic Harassment,” <https://righttobe.org/trainings/bystander-intervention-to-stop-anti-asian-american-and-xenophobic-harassment/>.

<sup>918</sup> Yang Statement, at 12.

<sup>919</sup> The Asian American Foundation, “TAAF Anti-Hate & Belonging Initiative,” <https://www.taaf.org/antihate>.

<sup>920</sup> Ibid.

<sup>921</sup> The Asian American Foundation, “Rapid Response Toolkit,” <https://www.taaf.org/toolkit>.

<sup>922</sup> Ibid.

<sup>923</sup> The Asian American Foundation and Stop AAPI Hate, *Documenting Anti-AAPI Hate Codebook*, Aug. 2021, [https://assets.website-files.com/6052778abbcf534ba5c5dcf/6123fec14bbdaa571bae03f9\\_SAH%20x%20TAAF%20Codebook%20FINAL.pdf](https://assets.website-files.com/6052778abbcf534ba5c5dcf/6123fec14bbdaa571bae03f9_SAH%20x%20TAAF%20Codebook%20FINAL.pdf).



of “anti-AAPI hate,” “race,” “racism,” as well as definitions related to incident reporting.<sup>924</sup> The codebook also provides four recommendations:

- 1) Decide and design data collection with the community.
  - Experiences of hate incidents are traumatic, and reporting can be re-traumatizing, and data should not be collected for the sake of data. In deciding to collect and designing the data collection, the collaboration with communities as collaborators – not subjects – is critical. This process should include conversations about the values, objectives, and goals of the data collection; and they should guide what type of questions and definitions are used to collect information.
  
- 2) Be mindful about who is reporting the hate incident.
  - The working definitions in the draft are designed around first-person reports of hate incidents, which assume that the reporter has specific knowledge about both the incident and the person targeted. Witnesses (i.e., those who were not targeted but were present at the scene) or acquaintances of the person targeted (i.e., family and friends) may also submit reports. For example, people report on behalf of their children or elderly parents.
  
- 3) Carefully consider the reporting categories to avoid missing data.
  - Missing data (i.e., missing information on characteristics, such as age, gender, and ethnicity) can lead to inaccurate and inappropriate conclusions and inferences. Thus, it is important to think beforehand about missing data. For example, consider the “age” variable. Many of those reporting incidents on the SAH reporting site were reluctant to answer the direct question, “How old are you? (in years).” As a result, the SAH decided to collect age information by presenting age categories to reduce the missing information on this variable. It is important to note that it can be difficult to implement a new set of categories once data collection begins.
  
- 4) Prioritize the reporting experience first.
  - Think about the costs (e.g., respondent fatigue) and benefits (e.g., more information) when designing a report form. While more information can be helpful for the objectives of documenting anti-AAPI hate, the reporting form must be easy

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<sup>924</sup> The Asian American Foundation and Stop AAPI Hate, *Documenting Anti-AAPI Hate Codebook*, Aug. 2021, [https://assets.website-files.com/6052778abbefe534ba5c5dcf/6123fec14bbdaa571bae03f9\\_SAH%20x%20TAAF%20Codebook%20FINAL.pdf](https://assets.website-files.com/6052778abbefe534ba5c5dcf/6123fec14bbdaa571bae03f9_SAH%20x%20TAAF%20Codebook%20FINAL.pdf).

to use and minimize fatigue. If the reporter gets tired of the questions, they may abandon the report before submitting it.<sup>925</sup>

This chapter examines anti-Asian hate crimes in three selected states (California, New York, and Texas), and three cities within those states that have sizeable Asian populations (i.e., San Francisco, New York City, and Houston) from 2018 through 2021. In California, the proportion of anti-Asian bias-motivated events more than doubled from 2020 to 2021, and the proportion of anti-Asian events in San Francisco also increased significantly. In New York, there was a clear uptick in anti-Asian hate crime incidents from 2019 through 2021. In New York City, the data also showed that the number of anti-Asian hate crimes increased through 2020 and 2021. According to the Texas Department of Public Safety, the proportion of anti-Asian hate crimes in Texas rose very slightly during the time period studied, and due to a low number of reported hate crimes overall, Houston did not see a noticeable increase in official anti-Asian hate crimes during the examined years. Discrepancies between various official sources highlighted reporting issues between federal and state or local databases, which made addressing the magnitude of hate crimes difficult. This chapter also illustrates challenges in reporting and prosecuting hate crimes, best practices for law enforcement and prosecutors, and community organizations' efforts to combat the rise in anti-Asian incidents occurring on the local, state, and national levels. The following final chapter, Chapter 3, discusses the federal response to the rise of anti-Asian hate crimes and its responsibility to enforce federal laws protecting all U.S. citizens.

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<sup>925</sup> The Asian American Foundation and Stop AAPI Hate, *Documenting Anti-AAPI Hate Codebook*, Aug. 2021, [https://assets.website-files.com/6052778abbcf534ba5c5dcf/6123fec14bbdaa571bae03f9\\_SAH%20x%20TAAF%20Codebook%20FINAL.pdf](https://assets.website-files.com/6052778abbcf534ba5c5dcf/6123fec14bbdaa571bae03f9_SAH%20x%20TAAF%20Codebook%20FINAL.pdf).

## Chapter 3: Federal Enforcement and Strategies

Chapter 3 examines the federal government's role in documenting, investigating, and prosecuting anti-Asian hate crimes. Specifically, this chapter assesses federal agencies' anti-Asian hate crimes prevention, investigation, and prosecution practices and analyzes the gaps in the federal response to hate violence in the United States during the COVID-19 pandemic.<sup>926</sup>

### Department of Justice

As discussed in Chapter 1, the DOJ began prosecuting federal hate crimes after the enactment of the Civil Rights Act of 1968.<sup>927</sup> As part of the DOJ's efforts to combat hate crimes and enforce federal and anti-discrimination laws, the agency developed a strategic plan that includes an objective of combatting discrimination and hate crimes including through implementing the federal statutes that respond to and protect against hate, xenophobia, and violence.<sup>928</sup> The Department outlined strategies for other civil rights violations, including:

- 1) Strategy 1: Enforce Federal Anti-Discrimination Laws.
- 2) Strategy 2: Deter and Prosecute Hate Crimes.
- 3) Strategy 3: Leverage Resources to Prevent Hate Crimes.
- 4) Strategy 4: Support State and Local Partners in Combating Discrimination and Hate.<sup>929</sup>

In one of his first acts, Attorney General Merrick B. Garland issued a directive to the Department to conduct a 30-day expedited internal review to determine how the Department could deploy all the tools at its disposal to counter the recent rise in hate crimes and hate incidents.<sup>930</sup>

On May 27, 2021, following the review's completion and the passage of the COVID-19 Hate Crimes Act and Jabara-Heyer NO HATE Act, the Attorney General issued a memorandum announcing immediate steps to deter hate crimes and bias-related incidents, address them when they occur, support victims, and reduce the pernicious effects these incidents have on our society.<sup>931</sup> In the memorandum, the Attorney General directed the Associate Attorney General to

<sup>926</sup> The Commission sent formal requests for information and documentation to the Civil Rights Division of the DOJ regarding their hate crimes prevention, investigation, and prosecution practices and analyzes the gaps in the federal response to hate violence in the United States. The Commission also sent requests to the Office for Civil Rights to analyze how the Department investigates and addresses hate crimes. The Commission requested information and documentation from the FBI regarding that agency's investigative and reporting practices.

<sup>927</sup> 18 U.S.C. § 245, <https://www.law.cornell.edu/uscode/text/18/245>.

<sup>928</sup> U.S. Department of Justice, DOJ Strategic Plan, Objective 3.2: Combat Discrimination and Hate Crimes, <https://www.justice.gov/doj/doj-strategic-plan/objective-32-combat-discrimination-and-hate-crimes>.

<sup>929</sup> Ibid.

<sup>930</sup> Office of the Attorney General, Memorandum for Department of Justice Employees, Hate-Based Violence and Incidents, Mar 30, 2021, <https://www.justice.gov/ag/page/file/1381396/download>.

<sup>931</sup> Office of the Attorney General, Memorandum for Department of Justice Employees, Improving the Department's Efforts to Combat Hate Crimes and Hate Incidents, Mar 30, 2021, <https://www.justice.gov/media/1143466/dl?inline>.

assign a Deputy Associate Attorney General to lead the coordination of the Department's anti-hate crime and incident resources. Rachel Rossi served as the Department's first Anti-Hate Crimes Resources Coordinator until May 2022, when Saeed Mody was designated.<sup>932</sup>

The Coordinator's responsibilities include:

- Helping focus, streamline, and maximize the effectiveness of the Department's resources, including by ensuring that USAOs and local partners have access to relevant training and outreach materials;
- Serving as the "central hub" for Department's attorneys, law enforcement partners, community organizations, and other stakeholders;
- Overseeing and be responsible for the Department's implementation of the COVID-19 Hate Crimes Act's provisions concerning law enforcement agency guidance, hate crime reporting, grant-making, information collection, and Congressional reporting; and
- Working with the Civil Rights Division and the Executive Office for U.S. Attorneys to compile an online toolkit that provides USAO Civil Rights Coordinators with customizable community outreach materials, information about DOJ's grants and technical assistance, and other materials that may improve local reporting of potential hate crimes and incidents.<sup>933</sup>

The DOJ states that it does not investigate or prosecute people based upon views they may hold, and the agency's priority is to uphold federal statutes that protect individuals against discriminatory action and other civil rights violations.<sup>934</sup> Key performance indicators, which will be discussed in further detail below, included the following:

- Number of Limited English Proficiency individuals who access department-funded materials in their native language to understand federal hate crimes and anti-discrimination laws;
- Percent of United States Attorney's Offices that meet at least annually with local law enforcement partners and community stakeholders to collaborate on efforts to prevent hate crimes and incidents;
- Percent of criminal cases addressing civil rights violations, including hate crimes, favorably resolved.<sup>935</sup>

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<sup>932</sup> Office of Public Affairs, Justice Department Announces New Initiatives to Address and Prevent Hate Crimes and Hate Incidents, May 20, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-new-initiatives-address-and-prevent-hate-crimes-and-hate>.

<sup>933</sup> Office of the Attorney General, "Memorandum for Department of Justice Employees," May 27, 2021, [https://www.justice.gov/d9/2022-12/attorney\\_general\\_memorandum-improving\\_the\\_departments\\_efforts\\_to\\_combat\\_hate\\_crimes\\_and\\_hate\\_incidents.pdf](https://www.justice.gov/d9/2022-12/attorney_general_memorandum-improving_the_departments_efforts_to_combat_hate_crimes_and_hate_incidents.pdf).

<sup>934</sup> Ibid.

<sup>935</sup> U.S. Department of Justice, DOJ Strategic Plan, Objective 3.2: Combat Discrimination and Hate Crimes, <https://www.justice.gov/doj/doj-strategic-plan/objective-32-combat-discrimination-and-hate-crimes>.

## Civil Rights Division

The Civil Rights Division (CRT) is a function of the Department of Justice that was established within the Civil Rights Act of 1957, and is responsible for upholding the law and constitutional rights of all persons in the United States.<sup>936</sup> The Division is responsible for enforcing statutes prohibiting discrimination on the basis of race, sex, religion, and national origin; and has grown expeditiously in size and scope.<sup>937</sup> CRT is also responsible for working with law enforcement in the investigation and prosecution of hate crimes. At a Congressional hearing, “Combatting the Rise in Hate Crimes” on March 8, 2022, Assistant Attorney General Kristen Clarke indicated that the office has taken several steps to be more proactive in the prosecution of hate crimes. For instance, CRT is working with “its federal and other partners to identify and disrupt criminal plots that may constitute hate crimes and acts of domestic terror before they come to fruition.”<sup>938</sup> Additionally, AG Garland designated the Chief of CRT’s Criminal Section to “facilitate the expedited review of hate crimes and reports of any such crimes to Federal, State, local, and Tribal law enforcement agencies.”<sup>939</sup>

As a component of the Commission’s investigation of the federal role in investigating and prosecuting hate crimes from 2019 to 2021, staff sent interrogatories and document requests to DOJ to inquire about the steps the agency takes in addressing them. According to the Justice Department, since January 2021, CRT has charged more than 40 defendants in over 30 cases and obtained more than 35 convictions of defendants charged with bias-motivated crimes.<sup>940</sup> These cases are documented in Table 31 below, which also provide information about the bases of the charges (e.g., race, gender, religion) and the results of the prosecution. The text below also includes analysis of trends in federal prosecution efforts.<sup>941</sup> While most of the cases related to racial bias, only three involved an individual of Asian descent (highlighted below).

Most of these cases involve charges under the Hate Crime Prevention Act (HCPA) which criminalizes willfully causing bodily injury, or attempting to do so through the use of fire, a firearm, dangerous weapons, or an explosive or incendiary device: (1) because of the actual or perceived race, color, religion, national origin of any person or (2) because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person and the crime affected interstate commerce or occurred within the special maritime or

<sup>936</sup> U.S. Department of Justices, Civil Rights Division, About, <https://www.justice.gov/crt/about-division>.

<sup>937</sup> *Ibid.*

<sup>938</sup> Questions for the Record from Senator Charles E. Grassley Hearing on “Combatting the Rise in Hate Crimes, March 8, 2022, <https://www.judiciary.senate.gov/imo/media/doc/QFR%20Responses%20-%20Clarke%20-%202022-03-08.pdf>.

<sup>939</sup> Jabara-Heyer NO HATE Act, Pub. L. 117–13, §5, 135 Stat. 266 (Codified at 34 U.S.C. 30507), [http://uscode.house.gov/view.xhtml?req=\(title:34%20section:30507%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title34-section30507\)&f=treesort&edition=prelim&num=0&jumpTo=true#sourcecredit](http://uscode.house.gov/view.xhtml?req=(title:34%20section:30507%20edition:prelim)%20OR%20(granuleid:USC-prelim-title34-section30507)&f=treesort&edition=prelim&num=0&jumpTo=true#sourcecredit).

<sup>940</sup> U.S. Dep’t of Justice, Civil Rights Division, Interrogatory Responses to U.S. Commission on Civil Rights, Mar. 16, 2023.

<sup>941</sup> *See, e.g.*, Chart 18 and *infra* notes 973-979.

territorial jurisdiction of the United States.<sup>942</sup> However, the HCPA also provides that there may be no federal prosecution, “except under the certification in writing of the Attorney General, or a designee, that –

- the State does not have jurisdiction;
- the State has requested that the Federal Government assume jurisdiction;
- the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
- a prosecution by the United States is in the public interest and necessary to secure justice.”<sup>943</sup>

As discussed in Chapter 2, it is difficult to prosecute hate crimes.<sup>944</sup> Bias motivation is a statutory element of criminal hate crimes law,<sup>945</sup> but showing bias “beyond a reasonable doubt” requires clear evidence. We outline the cases DOJ prosecuted from 2020-2022 in Table 31, noting key evidence of intent. The cases that DOJ has litigated are egregious and the evidence was clear, with intent typically shown through racist symbols, speech, and actions of defendants in the execution of the crimes.

The Division prosecuted three cases identified as anti-Asian bias-motivated crimes. *U.S. v. Thurán Johnson (aka Turán Johnson)* in the District of New Mexico, *U.S. v. Jose Gomez* in the Western District of Texas; and *U.S. v. Scott Eli Harris* in the District of Maryland.<sup>946</sup>

In the case of *Thurán Johnson*, the defendant attacked a person of Indian descent outside of a Post Office and vandalized an Indian restaurant.<sup>947</sup> The defendant was charged with interfering with federally protected rights and assault within the special maritime and territorial jurisdiction of the United States.<sup>948</sup> On October 4, 2022, Johnson was sentenced to 348 days in prison and three years of supervised release.<sup>949</sup>

In the case of *U.S. v. Jose Gomez*, the defendant attacked an Asian family he believed to be Chinese and therefore responsible for the COVID-19 pandemic. The defendant attacked the family with a knife in a grocery store and perceived them as a “threat” because they (he believed) were “from the country who started spreading that disease around.”<sup>950</sup> Gomez punched and cut the father in

<sup>942</sup> 18 U.S.C. § 249(a).

<sup>943</sup> 18 U.S.C. § 249(b).

<sup>944</sup> See *supra* notes 847-852 (discussing challenges in prosecuting of hate crimes).

<sup>945</sup> 18 U.S.C. § 249.

<sup>946</sup> DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 5 [on file].

<sup>947</sup> *Ibid.*

<sup>948</sup> See 18 U.S.C. § 245(b)(2)(C) and 18 U.S.C. § 113. See DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 5 [on file].

<sup>949</sup> *Ibid.*

<sup>950</sup> U.S. Dep’t of Justice, “Texas Man Sentenced on Hate Crime Charges for Attacking Asian Family,” Aug. 4, 2022, <https://www.justice.gov/opa/pr/texas-man-sentenced-hate-crime-charges-attacking-asian-family>.

the face and slashed open the face of one of the two small children. Gomez also attacked a grocery store employee as the employee attempted to stop the attack against the family.<sup>951</sup> Gomez had pleaded guilty to three counts of committing a hate crime and was sentenced to 25 years in prison on hate crime charges.<sup>952</sup>

In the case of *U.S. v. Scott Eli Harris*, the defendant sent threatening messages to an Asian American medical doctor who publicly advocated for the COVID-19 vaccine.<sup>953</sup> In the threatening messages, Harris referenced the doctor’s race and national origin. Harris pled guilty to transmitting in interstate commerce threatening communications<sup>954</sup> and was sentenced to six months in federal prison and three years of supervised release.<sup>955</sup> U.S. Attorney Erek L. Barron, who prosecuted the case, stated, “threats and intimidation should not be tolerated.”<sup>956</sup> Special Agent in Charge Thomas J. Sobocinski of the FBI’s Baltimore office stated, “these threats are taken very seriously ... no one should live in fear for doing their job. Posting a threat online, through mail or over the phone is a crime and comes with consequences, whether or not the person intended to carry out the threat.”<sup>957</sup>

**Table 31 Table 30 USCCR staff summary of DOJ Reported Hate Crime Cases (2020-2022)**

<b>Defendant, state, and year</b>	<b>Facts</b>	<b>Evidence of intent</b>	<b>Outcome</b>
<i>Franklin</i> , Iowa, 2021 4:21-cr-00070 (S.D. Iowa)	D attempted to kill the victims, two children, by driving her car over them.	D believed the first child to be either Middle Eastern or Black and the second to be Mexican, and D attacked them for that reason.	Convicted, plea agreement

<sup>951</sup> DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 5.

<sup>952</sup> U.S. Dep’t of Justice, “Texas Man Sentenced on Hate Crime Charges for Attacking Asian Family,” Aug. 4, 2022, <https://www.justice.gov/opa/pr/texas-man-sentenced-hate-crime-charges-attacking-asian-family>.

<sup>953</sup> *Ibid.*

<sup>954</sup> See 18 USCA § 875(c) – Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

<sup>954</sup> U.S. Dep’t of Justice, “Texas Man Pleads Guilty to Threatening a Medical Doctor Who Publicly Advocated for the Covid-19 Vaccine,” Feb. 7, 2022, <https://www.justice.gov/usao-md/pr/texas-man-pleads-guilty-threatening-medical-doctor-who-publicly-advocated-covid-19>.

<sup>955</sup> *Ibid.*; DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 5.

<sup>956</sup> U.S. Dep’t of Justice, “Texas Man Pleads Guilty to Threatening a Medical Doctor Who Publicly Advocated for the Covid-19 Vaccine,” Feb. 7, 2022, <https://www.justice.gov/usao-md/pr/texas-man-pleads-guilty-threatening-medical-doctor-who-publicly-advocated-covid-19>.

<sup>957</sup> *Ibid.*

Defendant, state, and year	Facts	Evidence of intent	Outcome
<i>Leo</i> , Maine, 2021 <sup>958</sup> 2:18-cr-00122 (D. Maine)	D conspired to commit and committed a series of assaults on Black men.	D specifically targeted Black men and attacked them unprovoked.	Convicted, plea agreement
<i>Joseph</i> , Ohio, 2021 3:19-cr-00048 (N.D. Ohio)	D attempted to provide ISIS with material support and also planned an attack on a synagogue.	D posted photographs and messages on social media in support of ISIS. D told undercover agents that he wanted to specifically attack Jewish people.	Convicted, plea agreement
<i>Hari</i> , Minnesota, 2021 <sup>959</sup> 0:18-cr-00150 (D. Minn.)	D bombed the Dar al-Farooq Mosque in 2017.	D was a part of the terrorist militia group “The White Rabbits” and targeted this mosque specifically to terrorize Muslims out of the country.	Convicted, federal jury
<i>Jenkins</i> , Texas, 2021 3:18-cr-00406 (N.D. Tex.)	D used the internet to target victims and attack them via kidnapping and carjacking.	D used Grindr to find his victims and admitted to targeting them due to their perceived or actual sexual orientation.	Convicted, plea agreement
<i>McGee</i> , Oregon, 2021 6:21-cr-00445 (D. Ore.)	D allegedly used the internet to target, assault, and attempt to kill a victim.	D allegedly used Grindr, a dating app primarily used by gay men, to target gay men.	Ongoing, charged
<i>Tobin</i> , New Jersey, 2021 1:21-cr-00173 (D.N.J.)	D conspired to threaten and intimidate Black and Jewish people by vandalizing their property.	D was a part of white supremacist hate group	Convicted, plea agreement
<i>Hougen</i> ,	D attacked a Black man	D screamed racial slurs at	Convicted,

<sup>958</sup> *United States v. Leo*, 2019 WL 7340135, (D. Me., 2019).

<sup>959</sup> *United States v. Hari*, 2019 WL 7838275, (D. Minn., 2019)



Defendant, state, and year	Facts	Evidence of intent	Outcome
California, 2021 5:20-cr-00432 (N.D. Cal.)	with a knife.	the victim while stabbing the victim. At the time of the attack, D was already on probation for a different racially-motivated assault.	bench trial
<i>Earnest</i> , California, 2021 3:19-cr-01850 (S.D. Cal.)	D entered a mosque and open-fired, killing one, injuring three, and attempting to kill a total of fifty.	D admitted to being motivated by religious hatred.	Convicted, plea agreement
<i>Shea</i> , Washington, 2021 2:20-cr-00032 (W.D. Wash.)	D (in collaboration with the below) sent threatening mail and committed acts of cyber-stalking against journalists and advocates who threatened to expose anti-Semitism.	D and co-defendants created Nazi posters to send to the victims. D is also a leader of Neo-Nazi group Atomwaffen Division.	Convicted, plea agreement
<i>Cole</i> , Washington, 2022 <sup>960</sup> 2:20-cr-00032 (W.D. Wash.)	D sent threatening mail and committed acts of cyber-stalking against journalists and advocates.	D committed these acts due to religious intolerance, as D is the leader of Neo-Nazi group Atomwaffen Division	Convicted, trial by federal jury
<i>Vulchev</i> , Maine, 2022 3:22-cr-30001 (D. Mass.)	D allegedly committed arson at a predominantly Black church.	D's vehicle allegedly contained evidence of his hatred toward Black people, including hateful photos, photos of Adolf Hitler, a "White Lives Matter" mural, and the use of slurs against Black people.	Ongoing, indicted

<sup>960</sup> *U.S. v. Cole*, 465 F.Supp.3d 1175, (2020).

<b>Defendant, state, and year</b>	<b>Facts</b>	<b>Evidence of intent</b>	<b>Outcome</b>
<i>Donner</i> , Kansas, 2022 2:20-cr-20075 (D. Kan.)	D intimidated the victim by threatening him with a knife.	D threatened the victim due to his race and to interfere with his access to fair housing.	Convicted, plea agreement.
<i>Douglas Fox</i> , Tennessee, 2022 3:21-cr-00196 (M.D. Tenn.)	D committed arson at four churches.	D intentionally set fire to various churches of different Christian denominations due to their religious practices.	Convicted, bench trial
<i>McMichael, McMichael, and Bryan</i> , Georgia, 2022 <sup>961</sup> 2:21-cr-00022 (S.D. Ga.)	Ds attempted to intimidate and kidnap a Black man who was jogging.	Ds hold beliefs associating Black people with criminality and made racist comments and used racial slurs.	Convicted, trial by federal jury
<i>Stepanyan and Chalikyian</i> , California, 2022 2:21-cr-00188 (C.D. Cal.)	Ds attacked five victims inside a Turkish restaurant and threatened to kill them.	Ds shouted ethnic slurs during the attack.	Convicted, bench trial
<i>Sechriest</i> , Texas, 2022 1:22-cr-0053 (W.D. Tex.)	D allegedly set fire to a synagogue.	D allegedly targeted the synagogue due to religious practices.	Ongoing, charged
<i>Hannon</i> , Florida, 2022 8:22-cr-00134 (M.D. Fla.)	D threatened a member of the U.S. House of Representatives, Ilhan Omar.	D's threats specifically mentioned the victim's religious background.	Convicted, plea agreement
<i>Marsh</i> , New Jersey	D allegedly violated the Shepard and Byrd Act by	D allegedly targeted the victims because they are	Ongoing, charged

<sup>961</sup> *United States v. McMichael*, 2022 WL 481447, (S.D. Ga., 2022).

<b>Defendant, state, and year</b>	<b>Facts</b>	<b>Evidence of intent</b>	<b>Outcome</b>
3:22-mj-06027 (D.N.J.)	causing bodily injury and attempting to kill the victims.	Jewish.	
<i>Pritchard</i> , Missouri, 2022 1:22-cr-00060 (E.D. Mo.)	D allegedly burnt down the Church of Jesus Christ of Latter-day Saints.	D allegedly intentionally targeted the church to prevent the exercise of their religious practices.	Ongoing, charged
<i>Gendron</i> , New York, 2022 1:22-cr-00109 (W.D.N.Y.)	D allegedly violated the Shepard-Byrd Act in connection with a mass shooting at a grocery store, resulting in the death of ten Black people and the injury of three others.	D allegedly targeted the victims due to their race.	Ongoing, indicted
<i>Pruden</i> , Washington, D.C., 2022 1:22-cr-00231 (D.D.C.)	D allegedly assaulted the victims in a park with a chemical irritant on five separate occasions.	D allegedly went to a known meeting place for men seeking consensual sex with other men.	Ongoing, indicted
<i>Gomez</i> , Texas, 2022 7:22-cr-00026 (W.D. Tex.)	D physically assaulted an Asian family of four in a grocery store using a knife — among the victims were a six-year-old child slashed in the face and the father.	D admitted to believing that the Asian family was Chinese and therefore responsible for the COVID-19 pandemic.	Convicted, plea agreement
<i>Johnson and Killian</i> , Oklahoma, 2022 22-cr-025 (W.D. Okla.)	Ds physically assaulted the victims, a Black man and his White friend.	Ds admitted to assaulting the victim due to his race.	Convicted, plea agreement
<i>Genco</i> , Ohio,	D planned to shoot women	D plotted to kill women	Convicted,

Defendant, state, and year	Facts	Evidence of intent	Outcome
2022 1:21-cr-00085 (S.D. Ohio)	at a university.	due to his self-identification as an “involuntary celibate.” D wrote a manifesto stating that he would “slaughter” women.	plea agreement
<i>Torres</i> , Texas, 2022 3:22-cr-00398 (N.D. Tex.)	D allegedly shot at the victims, killing one and attempting to kill four others.	D allegedly was motivated by the actual or perceived religion of the victims.	Ongoing, indicted
<i>George</i> , Washington, 2022 2:22-cr-00109 (W.D. Wash.)	D threatened to shoot Black people at a store.	D specifically targeted people due to race and has done so on multiple incidences in the past as well.	Convicted, plea agreement
<i>Kaonohi, Aki</i> , Hawaii, 2022 <sup>962</sup> 1:20-cr-00136 (D. Hawaii)	Ds physically assaulted the victim twice outside his home.	Ds verbally attacked the victim as well, saying that the White victim did not belong in the Hawaiian neighborhood.	Convicted, trial by jury
<i>Ruiz</i> , Puerto Rico, 2022 <sup>963</sup> 3:21-cr-00267	D acted with others to assault the victim based on her gender identity.	D admitted to attacking the victim due to her being and perceiving her to be transgender.	Convicted, plea agreement
<i>Cox</i> , Mississippi, 2023 1:22-cr-00124 (S.D. Miss.)	D attempted to intimidate his neighbors, a Black family, by burning a cross in his front yard, violating the Fair Housing Act.	D made racially derogatory remarks.	Convicted, plea agreement
<i>Pilon</i> , Michigan, 2023	D attempted to intimidate citizens supporting Black	D verbally attacked victims with racial threats	Convicted, plea agreement

<sup>962</sup> *United States v. Alo-Kaonohi*, 2022 WL 10082094, (D. Haw., 2022).

<sup>963</sup> *United States v. Lobos-Ruiz*, 2022 WL 3602031, (D.P.R., 2022).

<b>Defendant, state, and year</b>	<b>Facts</b>	<b>Evidence of intent</b>	<b>Outcome</b>
1:22-cr-20227 (E.D. Mich.)	Lives Matter supporters.	and also sent a note with a noose, a symbol with a racist background.	
<i>Starrett</i> , Washington, 2022 3:21-cr-05334 (W.D. Wash.)	D allegedly set fire to three Jehovah's Witness Kingdom Halls.	D allegedly attacked religious property due to its religious nature.	Ongoing, charged
<i>Foxworth</i> , Georgia, 2022 1:22-cr-00176 (N.D. Ga.)	D fired a pistol through two convenience stores with the intention to kill.	D made statements explaining that he targeted Black people and people who appeared Arab.	Convicted, plea agreement
<i>Lehigh</i> , Idaho, 2022 1:23-cr-00012 (D. Idaho)	D allegedly attempted to injure the victims by driving his car at them.	Allegedly motivated by perceived and actual sexual orientation of the victims.	Ongoing, indicted
<i>Harris</i> , Maryland, 2022 1:21-cr-00390 (D. Md.)	D threatened a medical doctor who advocated for the COVID-19 vaccine, referencing the doctor's Asian American race and national origin.	D sent the victim a threatening message transmitted by interstate communication.	Convicted, pled guilty
<i>Thuran Johnson</i> , New Mexico, 2022 <sup>964</sup> 1:21-cr-01401 (D.N.M.)	D attacked a person of Indian origin outside a U.S. Post Office and vandalized an Indian restaurant.	D used racial slurs during the incident.	Convicted, pled guilty
<i>Seneca</i> , Louisiana, 2023	D carried out an attempted kidnapping and murder	D specifically chose to use a queer dating app. D	Convicted, plea agreement

<sup>964</sup> DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 5.

Defendant, state, and year	Facts	Evidence of intent	Outcome
6:21-cr-00043 (W.D. La.)	scheme using Grindr, a queer dating app, to lure gay men.	admitted to planning to continue to target gay men until he was caught.	
<i>Lashley and Lashley</i> , Florida, 2023 5:22-cr-00027 (M.D. Fla.)	Ds physically assaulted the victim outside a Family Dollar store where the victim was shopping.	Ds used racial slurs before, during, and after assault. Ds admitted to acting due to the victim's perceived race.	Convicted, plea agreement
<i>DeSimas, Stanley, Smith, Dorson</i> , Washington, 2023 2:20-cr-00222 (W.D. Wash.)	Ds assaulted a disc jockey at a local bar based on his racial appearance.	A group of approximately 17 white supremacists gathered for an event in memory of a deceased white supremacist. Ds called victim racial slurs. Ds admitted to membership/prospective membership to white supremacist groups Crew 38 and Hammerskins.	Convicted, plea agreement
<i>Ritter</i> , South Carolina, 2023 1:23-cr-24 (D.S.C.)	D allegedly shot and murdered the transgender victim based on gender identity, proceeded to make false statements to law enforcement officers.	D used a phone to text and call to lure the victim the day of murder.	Ongoing, charged

### Community Relations Services

Community Relations Services (CRS) is another component of the DOJ, which serves as “America’s Peacemaker” for communities that face tension and civil disturbances based on

discriminatory action involving race, color, or national origin.<sup>965</sup> According to CRS' FY 2022 Strategic Plan, the office lists its top priorities as combatting hate crimes, promoting trust and accountability, and strengthening the relationships between law enforcement and the community.<sup>966</sup> One of CRS' goals is to protect individual's civil rights, and the component adheres to its federal mandate by addressing these challenges. It also serves as a neutral party to help communities develop conflict resolution strategies to mitigate, prevent, and respond to any future disputes based upon its jurisdictional mandate.<sup>967</sup>

CRS does not have jurisdiction to investigate or prosecute hate crimes nor any law enforcement authority, rather this office works with all interested parties (e.g., state and local governments, private and public organizations, and civil rights groups) to prevent and resolve conflicts and facilitate mutual understanding and solutions to community challenges.<sup>968</sup> CRS reports that it also helps community stakeholders "reduce fear, dispel misunderstandings or misperceptions, and increase cultural competency in the broader community."<sup>969</sup> Moreover, the office provides technical assistance and training and offers solutions to prevent and resolve similar future challenges.<sup>970</sup>

In FY 2019, President Trump's budget proposal called for an end to all CRS funding, the closing of all CRS regional offices, and the consolidation of a limited number of staff into one headquarters office in Washington, D.C. The budget stated that the DOJ would transfer CRS' activities to CRT.<sup>971</sup> These changes were also requested in the FY 2020 and FY 2021 President's Budget requests,<sup>972</sup> despite data reflecting that anti-Asian bias-motivated incidents and hate crimes had increased. The Justice Department wrote that the Civil Rights Division would subsume the role of CRS to "improve efficiency" and "reduce redundancies."<sup>973</sup> The FY 2020 and FY 2021 budget requests did not include adding any new positions and, instead, included a decrease of 54 positions.

While CRS was appropriated \$16.0 million by Congress for its continued operation in FY 2020, in the following year's budget request, the Justice Department continued to pursue its plan to

<sup>965</sup> The Community Relations Service (CRS) was established by Title X of the Civil Rights Act of 1964 (42 U.S.C. § 2000g et seq.). With the passage of the Shepard-Byrd Act, the CRS' jurisdiction expanded to protect communities that were not previously protected under the 1964 Civil Rights Act (e.g., LGBT communities, disability community). *See* HCPA, 18 § 249, §6; Department of Justice, Community Relations Service (CRS), <https://www.justice.gov/crs>.

<sup>966</sup> U.S. Department of Justice, Community Relations Service Strategic Plan 2022-2026, <https://www.justice.gov/doj/book/file/1516901/download>.

<sup>967</sup> *Ibid.*

<sup>968</sup> Title X of the Civil Rights Act of 1964, 42 U.S.C. § 2000g.

<sup>969</sup> U.S. Dep't of Justice, Community Relations Service, (last updated Feb. 14, 2017), <https://www.justice.gov/crs/what-we-do>.

<sup>970</sup> *Ibid.*

<sup>971</sup> U.S. Department of Justice, "Community Relations Service (CRS): FY 2019 Budget Request At A Glance," <https://www.justice.gov/jmd/page/file/1033131/download>.

<sup>972</sup> U.S. Department of Justice, "Community Relations Service (CRS): FY 2020 Budget Request At A Glance," <https://www.justice.gov/jmd/page/file/1142416/download>; U.S. Department of Justice, "Community Relations Service (CRS): FY 2021 Budget Request At A Glance," <https://www.justice.gov/doj/page/file/1246786/download>.

<sup>973</sup> *Ibid.*

consolidate CRS into CRT.<sup>974</sup> However, pursuant to Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” issued on January 20, 2021,<sup>975</sup> the Justice Department wrote that it planned to revitalize CRS in order for the office to continue its work with “communities in conflict to help rebuild relationships, facilitate understanding, and encourage the development of local solutions.”<sup>976</sup>

In response to the increase of hate incidents and hate crimes against AAPI communities, John Yang, president of Asian Americans Advancing Justice, stated that, “[o]ne of our requests (of the Biden administration) is to ensure that the CRS has adequate resources... CRS is one piece of the solution, but it is an important piece.”<sup>977</sup>

In the FY 2022 President’s Budget, CRS requested \$20.0 million (an 11.3 percent increase over its enacted FY 2021 budget) and an increase of 16 new positions to continue serving as the “peacemaker for community conflicts and tensions arising from real or perceived discriminatory practices and help[ing] communities prevent and respond to alleged violent hate crimes.”<sup>978</sup> Some of these actions have included: strengthening police and community partnerships, organizing bias incidents and hate crime forums, engaging and building relations with American Sikhs, law enforcement and transgender community training, and school-student problem identification and resolution of issues.<sup>979</sup> Specifically, in terms of combating hate crimes, the FY22 budget request also stated that these additional resources would help AAPI and LGBTQ communities prevent and respond to bias incidents and hate crimes.<sup>980</sup>

In response to the Commission’s request regarding the office’s efforts to address anti-Asian hate crimes from 2020-2022, CRS wrote:

The Department of Justice’s Community Relations Service (CRS) maintains a digital case management system to store information related to casework conducted by CRS staff. Case summaries record services and outcomes of CRS’s actions and activities for a given case. CRS conducted a query of its digital case management system using the following parameters: “HCPA” and both “HCPA” and “CRA” and “Asian,” “Asian American,”

<sup>974</sup> U.S. Department of Justice, “Community Relations Service (CRS): FY 2021 Budget Request At A Glance,” <https://www.justice.gov/doj/page/file/1246786/download>.

<sup>975</sup> The White House, “Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” Jan. 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

<sup>976</sup> U.S. Department of Justice, *Equity Action Plan Summary: U.S. Department of Justice*, <https://www.whitehouse.gov/wp-content/uploads/2022/04/DOJ-EO13985-equity-summary.pdf>

<sup>977</sup> Kevin Johnson, “From \$15 million to \$0: As racial tensions simmered, Trump administration sought to defund DOJ ‘peacemaker’ unit,” *USA Today*, Mar. 27, 2021, <https://www.usatoday.com/story/news/politics/2021/03/27/trump-tried-defund-doj-peacemakers-used-repair-race-relations/6965530002/>.

<sup>978</sup> U.S. Department of Justice, “Community Relations Service FY 2022 Budget Requestion At A Glance,” <https://www.justice.gov/file/1399006/download>.

<sup>979</sup> *Ibid.*

<sup>980</sup> *Ibid.*



“Native Hawaiian,” “Pacific Islander,” and “Arab American” as possible primary jurisdictional groups.

This query yielded data indicating CRS involvement in 78 cases during the five-year period from January 1, 2018, through December 31, 2022. Eight (8) of these cases occurred during the period from January 1, 2018, through December 31, 2019. Seventy (70) cases occurred during the following three-year period from January 1, 2020, through December 31, 2022.<sup>981</sup>

In 2019, CRS responded to reports of growing racial tension and repeated incidents of bias-motivated bullying, harassment, and petty crimes targeting Seattle’s AAPI students.<sup>982</sup> CRS worked with community leaders to raise awareness, improve relations between law enforcement and local AAPI youth, encourage reporting, and conduct prevention workshops with service organizations and the Seattle Police Department.<sup>983</sup>

Due to the rise in bias-motivated incidents against AAPI communities during the pandemic, in early 2020, CRS began meeting with national AAPI organizations to hear the communities’ concerns.<sup>984</sup> In March 2020, CRS formed the AAPI COVID-19 Related Incidents of Bias Working Group (CRIB) to serve as a channel for communications between government agencies and communities across the regions and address the bias-based incidents in the AAPI communities.<sup>985</sup> The working group’s mission is to coordinate internal casework focused on AAPI communities, to engage with regional response organizations and work with national advocacy groups, to build internal and external response capacity and sustainable response mechanisms.<sup>986</sup>

According to the 2020 Annual Report during the Spring of 2020, CRS implemented comprehensive virtual programing to focus on coordinating a national response to address an increase in hate crimes targeting AAPI communities.<sup>987</sup> In response to the Commission’s inquiries, CRS wrote that:

Amid the nationwide wave of anti-AANHPI bias incidents and hate crimes, CRS provided services to AANHPI communities in 35 cases across seven states. CRS also appointed a special assistant for AANHPI issues to provide support across the regions and represent CRS in meetings involving related issues, including at the White House Initiative on Asian Americans and Pacific Islanders (WHIAANHPI) events.<sup>988</sup>

<sup>981</sup> DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 6.

<sup>982</sup> *Ibid.*, 7.

<sup>983</sup> Community Relations Service, *Annual Report, 2019*, U.S. Dep’t of Justice, at 75, <https://www.justice.gov/file/1376351/download>.

<sup>984</sup> Community Relations Services, “Responding to Hate Crimes Against Asian Americans and Pacific Islanders,” June 4, 2021, <https://www.justice.gov/crs/highlights/AAPI-hate-crimes>.

<sup>985</sup> U.S. Department of Justice, Community Relations Services, Fiscal Year 2020 Annual Report, <https://www.justice.gov/file/1461451/download>.

<sup>986</sup> *Ibid.*, 32.

<sup>987</sup> DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 7.

<sup>988</sup> *Ibid.*

For example, CRS worked with local police, a local advocacy group, the FBI, and the U.S. Attorney's Office for the Southern District of New York to ease community anxieties and tensions caused by a series of incidents targeting New York City's Asian community.<sup>989</sup> Similarly, after the Atlanta spa shootings in 2020, CRS also worked to provide outreach, facilitations, and consultation efforts to respond to tension and outcries from the Atlanta-area Asian community.<sup>990</sup>

CRS also worked with local district attorney's offices, law enforcement, and community leaders following several assaults against AAPI individuals in New York and New Jersey. These meetings created a virtual Bias Incidents and Hate Crimes forum of 100 participants who shared information about these occurrences and provided education for better reporting practices. Following these events, in 2020, the NYPD launched its own Asian Hate Crimes Task Force (see Chapter 2 of this report for further details).

As of the writing of this report, CRS has continued its Bias Incidents and Hate Crimes forum, which is intended to promote a dialogue between community members and law enforcement, provide education and information related to federal, state, and local hate crime laws, and engage community advocacy organizations and law enforcement in developing methods to respond to and combat bias-motivated incidents and hate crimes.<sup>991</sup>

In early 2021, after dozens of reports of anti-Asian bias incidents, which included racial slurs, vandalism, threats, assaults, and two deaths of AAPI older adults across the San Francisco Bay Area, CRS worked with local law enforcement, AAPI community leaders, Black and Latino faith leaders, AAPI youth, and other community leaders to educate and facilitate information about how to report and investigate hate crimes.<sup>992</sup> CRS stated that while not all the incidents have been prosecuted as hate crimes, in many cases, the communities have perceived these incidents as racially motivated.<sup>993</sup> In response to these incidents, community members began organizing citizen patrol groups amid growing retaliatory violence concerns. CRS also worked with leaders to de-escalate tensions and produced a public service announcement in multiple AAPI languages with information to report hate crimes.<sup>994</sup> CRS indicated that:

To help promote peace in these communities, conciliation specialists established connections between non-AAPI organizations and AAPI groups to develop and release statements against bias and hate and lead solidarity events. CRS worked with law enforcement to improve methods on how to engage with AAPI communities in culturally

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<sup>989</sup> Ibid.

<sup>990</sup> Ibid.

<sup>991</sup> Community Relations Services, "Bias Incidents and Hate Crimes Forum," Dec. 20, 2022, <https://www.justice.gov/crs/our-work/facilitation/bias-incidents-hate-crimes>.

<sup>992</sup> Ibid.

<sup>993</sup> Ibid.

<sup>994</sup> U.S. Department of Justice, Responding to Hate Crimes Against AAPI Communities, <https://www.justice.gov/crs/highlights/AAPI-hate-crimes>.

appropriate ways. This included identifying language access needs, making connections with community leaders, and assisting with navigating cultural sensitivities.<sup>995</sup>

In 2021, following these meetings with national and local Asian American, Native Hawaiian, and Pacific Islander (AANHPI) organizations to address concerns about the COVID-19-related rise in anti-AANHPI hate crimes, CRS released a “best practices” guide that can be utilized by working groups to develop community response plans to combat racism and hate violence.<sup>996</sup> These best practices were used to help during challenging conversations, enable communities to address difficult conversations, and find a common good. Some of these practices include:

- Having smaller meetings and breakout sessions;
- Allowing members share their perspectives; and
- Using co-facilitators to address the participants’ concerns.<sup>997</sup>

### Office for Victims of Crime

The Office for Victims of Crime (OVC) is one of the six program offices in the Office of Justice Programs (OJP) at the Justice Department. According to OVC’s website, the office’s role is to assist crime victims and provide leadership regarding changing attitudes, policies, and practices to promote justice and healing for all victims of crime.<sup>998</sup> OVC also provides technical assistance to law enforcement<sup>999</sup> and administers the Crime Victims Fund, which is paid through fines and penalties by convicted federal offenders (including all offenses), and through private gifts and donations.<sup>1000</sup>

As of December 2022, the Crimes Victims Fund was over \$1.8 billion.<sup>1001</sup> OVC gives money to states so they can develop programs to partner with community members and assist victims of crime.<sup>1002</sup> Funding also may go to community organizations and/or states to raise awareness concerning victims’ issues, help in compliance with victims’ rights laws, and offer training and technical assistance to victim assistance professionals.<sup>1003</sup>

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<sup>995</sup> Ibid.

<sup>996</sup> Community Relations Service, “Preventing and Responding to Bias and Hate Incidents Against Asian American, Native Hawaiian, and Pacific Islander (AANHPI) Communities,” Aug. 20, 2021, <https://www.justice.gov/file/1426866/download>.

<sup>997</sup> Ibid.

<sup>998</sup> Office of Victims of Crime, “About OVC,” U.S. Dep’t of Justice, <https://ovc.ojp.gov/about>.

<sup>999</sup> 34 U.S.C. § 20103.

<sup>1000</sup> Office for Victims of Crime, “Crime Victims Fund,” U.S. Dep’t of Justice, Office of Justice Programs, <https://www.ovc.gov/about/victimsfund.html>.

<sup>1001</sup> Ibid.

<sup>1002</sup> Ibid.

<sup>1003</sup> Ibid.

In FY 2020, \$133,896,000 was allocated to the Victims of Crime Act (VOCA)<sup>1004</sup> Victim Assistance Formula Grant Program, representing a 3.5 percent decrease from FY 2019. In FY 2020, 54 states and territories received VOCA grants, and four of the State Administering Agencies (SAAs) provided \$361,677,837, a 9.5 percent decrease from FY 2019, and provided compensation to 218,090 claims.<sup>1005</sup> Of the individuals who applied for compensation in 2020, 38 percent were White Americans, 27 percent were Black Americans, and 26 percent were Latino Americans. By comparison, Asian Americans made up 2 percent.<sup>1006</sup>

According to its annual report, VOCA SAAs witnessed a decline in the number of applications for compensation due to challenges imposed by the pandemic to its standard public outreach procedures. Additionally, SAAs had suffered from a lack of volunteers, decreased funding, and the shifting of funds because of the pandemic.<sup>1007</sup> In FY 2020, there were 44,117 claims paid to specific victimization types. In terms of victims, when indicated, the types of victimization included bullying, domestic and family violence, elder abuse/neglect, hate crimes, and mass violence (see Table 32).<sup>1008</sup> Assault was the most common crime type indicated to victimization with 28,378 claims paid.<sup>1009</sup> Furthermore, assault was also one of the top two crime types related to each of the victimization categories. The largest decrease of victimization categories was bullying, followed by mass violence (42 and 27 percent, respectively). Of the 486 hate crime applications made, 382 were assault claims and 43 were homicide claims.<sup>1010</sup> In 2020, there were a total of 486 applications due to hate crime victimization. Comparatively, in 2019, there were 481 reported hate crime victimizations, and the majority were due to assault (379 claims).<sup>1011</sup>

**Table 32 Numbers of Applicants Across Type of Victimization (2020)**

Domestic & Family Violence	40,252
Mass Violence	1,543
Elder Abuse/Neglect	1,153
Bullying	683
<b>Hate Crimes</b>	<b>486</b>

<sup>1004</sup> Victims of Crime Act, P.L. 98-473.

<sup>1005</sup> Booz Allen Hamilton, *Victims of Crime Act: Victim Assistance Formula Grant Program Fiscal Year 2020, Data Analysis Report*, Office for Victims of Crime, Office of Justice Programs, U.S. Dep't of Justice, at 1, <https://ovc.ojp.gov/program/victims-crime-act-voca-administrators/performance-reports/fy-2020-voca-compensation-performance-report.pdf>.

<sup>1006</sup> *Ibid.*, 3.

<sup>1007</sup> *Ibid.*, 4.

<sup>1008</sup> *Ibid.*, 6.

<sup>1009</sup> Booz Allen Hamilton, *Victims of Crime Act: Victim Compensation Formula Grant Program, Fiscal Year 2020, Data Analysis Report*, Office for Victims of Crime, Office of Justice Programs, U.S. Dep't of Justice, at 6.

<sup>1010</sup> *Ibid.*

<sup>1011</sup> Booz Allen Hamilton, *Victims of Crime Act: Victim Compensation Formula Grant Program, Fiscal Year 2019, Data Analysis Report*, Office for Victims of Crime, Office of Justice Programs, U.S. Dep't of Justice, at 7.

Source: Booz Allen Hamilton, *Victims of Crime Act: Victim Compensation Formula Grant Program, Fiscal Year 2020, Data Analysis Report*, Office for Victims of Crime, Office of Justice Programs, U.S. Dep't of Justice.

Despite the increase in overall reported hate crimes to the FBI, in FY 2020 there were no claims paid for hate crime victims.<sup>1012</sup> As of the writing of this report, the FY 2021 annual performance report has yet to be released.

OVC, through its mandate under VOCA, also provides supplemental funding to state programs that offer financial assistance and reimbursement to individuals who have incurred expenses as a direct result of a crime.<sup>1013</sup> However, over the past several years, federal funding under VOCA for the Crime Victims Fund (CVF) has decreased which has caused issues for victim support organizations.<sup>1014</sup> For example, in a letter to Maryland Governor Larry Hogan, a Maryland congressional delegation wrote that:

In FY 2018, receipts into the CVF began to diminish – by some estimates by more than 90% – resulting in roughly 70% reduction in funding for victims' assistance programs, grants, and organizations. Some of the reasons for this decline include an increased use of deferred and non-prosecution agreements, in particular under the Trump Administration.<sup>1015</sup>

In light of these concerns, President Biden signed the VOCA Fix to Sustain the Crime Victims Fund Act of 2021 on June 22, 2021.<sup>1016</sup> The bipartisan legislation is intended to make long-term changes to preserve VOCA funding and provide immediate support to states to prevent programming cuts.<sup>1017</sup>

## Office of Juvenile Justice and Delinquency Prevention

The prevention of youth hate crimes and identity-based bullying falls under the U.S. Department of Justice, Office of Justice Program's Office of Juvenile Justice and Delinquency Prevention

<sup>1012</sup> Booz Allen Hamilton, *Victims of Crime Act: Victim Compensation Formula Grant Program, Fiscal Year 2020, Data Analysis Report*, Office for Victims of Crime, Office of Justice Programs, U.S. Dep't of Justice, at 12.

<sup>1013</sup> The annual grant amount is based on 60 percent of each state's compensation payments from the previous two years and is set by statute. See Booz Allen Hamilton, *Victims of Crime Act: Victim Compensation Formula Grant Program, Fiscal Year 2017, Data Analysis Report*, Office for Victims of Crime, Office of Justice Programs, U.S. Dep't of Justice, at 1, [https://ojp.gov/ovc/grants/vocanpr\\_vc17\\_508.pdf](https://ojp.gov/ovc/grants/vocanpr_vc17_508.pdf).

<sup>1014</sup> See e.g., Center for Domestic Peace, "Understanding VOCA Cuts," <https://www.cdpxcountync.org/understanding-voca-cuts/#:~:text=Over%20the%20last%20few%20years,which%20most%20victim%20services%20rely.>

<sup>1015</sup> Jamie Raskin, "Maryland Congressional Delegation Letter to Hogan Details Federal Action to Replenish Victims of Crime Funds," Nov. 3, 2021, <https://raskin.house.gov/2021/11/maryland-congressional-delegation-letter-to-hogan-details-federal-action-to-replenish-victims-of-crime-funds>.

<sup>1016</sup> VOCA Fix to Sustain the Crime Victims Fund Act, P.L. 117-27, 117<sup>th</sup> Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/1652/all-actions?overview=closed#tabs>.

<sup>1017</sup> *Id.*

(OJJDP).<sup>1018</sup> The OJJDP program operates from a youth-based lens of prevention and early intervention.<sup>1019</sup> This includes increasing awareness against hate-based and bias-motivated bullying and incidents among youth, while providing communities with strategies and tools to help prevent this behavior.<sup>1020</sup>

On October 27, 2021, the program office launched a comprehensive national initiative to prevent identity-based bullying and youth hate crimes and incidents.<sup>1021</sup> According to the DOJ,

false information and harmful statements about Asian American and Pacific Islander communities have led to increasing acts of intolerance across the nation — from verbal harassment to violence. In schools around the country, AAPI students have reported bullying and harassment by classmates because of their race or national origin, including their ethnicity, ancestry, and language.<sup>1022</sup>

### *Language Access*

As discussed in Chapter 1, language access is a significant obstacle in reporting hate crimes among AAPI communities.<sup>1023</sup> Beginning on August 11, 2000, Executive Order 13166: “Improving Access to Services for Persons with Limited English Proficiency” was signed by President Clinton.<sup>1024</sup> This order requested that federal agencies carefully examine the services they already provide to individuals with limited English proficiency (LEP), identify any gaps in services, and develop and implement systems to provide necessary services to those with LEP to ensure they can access the necessary assistance.<sup>1025</sup> The Justice Department issued a LEP guidance: “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination against Persons with Limited English Proficiency” (LEP Guidance) that Federal financial assistance must abide by guidelines to ensure the programs and activities do not violate Title VI's prohibition against national origin discrimination.<sup>1026</sup>

<sup>1018</sup> Office of Juvenile Justice and Delinquency Prevention, “Preventing Youth Hate Crimes Identity-Based Bullying Initiative,” <https://ojjdp.ojp.gov/programs/preventing-youth-hate-crimes-bullying-initiative#about-the-initiative>

<sup>1019</sup> *Ibid.*

<sup>1020</sup> *Ibid.*

<sup>1021</sup> Office of Juvenile Justice and Delinquency Prevention, “Preventing Youth Hate Crimes Identity-Based Bullying Initiative,” Nov 17, 2021, <https://ojjdp.ojp.gov/programs/preventing-youth-hate-crimes-bullying-initiative#about-the-initiative>.

<sup>1022</sup> U.S. Dep’t of Justice and U.S. Dep’t of Education, “Confronting COVID-19-Related Harassment in Schools,” May 2021, <https://www.justice.gov/crt/page/file/1392041/download>.

<sup>1023</sup> *See supra* notes 464-490 (discussing underreporting of hate crimes).

<sup>1024</sup> Exec. Order No. 13166, 65 Fed. Reg. 50123 (Aug. 16, 2000), <https://www.federalregister.gov/documents/2000/08/16/00-20938/improving-access-to-services-for-persons-with-limited-english-proficiency>.

<sup>1025</sup> The United States Department of Justice, “Executive Order 13166,” <https://www.justice.gov/crt/executive-order-13166>.

<sup>1026</sup> *Id.*

Individuals with limited English proficiency not only are less likely to report a crime when one occurs but are also less likely to receive the services that they need after being victimized.<sup>1027</sup> For example, Jennifer Wu, founding partner with Groombridge, Wu, Baughman, & Stone who has represented many hate crime victims and their families in New York City wrote in her statement to the Commission that the lack of trained interpreters to aid victims leads to distrust of law enforcement and government officials. Wu explained that:

it is not always easy for DAs [District Attorneys] to find proficient translators. For example, we attended a meeting with the Assistant District Attorney (ADA) in a murder case where the victim's widow spoke only Mandarin Chinese. The ADA brought along a retired Detective who spoke Cantonese but represented that he could translate between English and Mandarin. That turned out not to be the case. Because I speak Mandarin myself, I could tell that the Detective's translations were not accurate, including important facts like how the grand jury process would work and whether it was open to the public. And because this was the very first meeting between the ADA and the victim's widow, the lack of a competent translator led to distrust and miscommunication.<sup>1028</sup>

Under the COVID-19 Hate Crimes Act, funding is provided for state and local incident reporting hotlines.<sup>1029</sup> However, at the Commission's briefing, panelists testified the local reporting hotlines, victim services, and law enforcement were not accessible to victims with limited English proficiency. For instance, Jo-Ann Yoo, executive director of the Asian American Federation (AAF), states that:

Over 50 percent of Asian New Yorkers have limited English proficiency. I have heard from seniors [] that they try to report a hate attack only to be turned away because there was no police officer could take a report in the language the victim spoke. We must invest in language services and resources.<sup>1030</sup>

In an ongoing effort to aid in reducing barriers for individuals with LEP, the Department created the first-ever Language Access Coordinator position, housed in the Office for Access to Justice

<sup>1027</sup> See e.g., Ninez Ponce, Alexander Adia, Rachel Banawa, Sean Tan, and Melanie D. Sabado-Liwag, "Measuring Asian hate: Discordant reporting of race-based hate incidents and unfair treatment and association with measures of wellbeing," *Frontiers in Public Health*, vol. 10, Oct. 2022, <https://www.frontiersin.org/articles/10.3389/fpubh.2022.958857/full>; Gibert Gee and Ninez Ponce, "Associations Between Racial Discrimination, Limited English Proficiency, and Health-Related Quality of Life Among 6 Asian Ethnic Groups in California," *American Journal of Public Health*, vol. 100, no. 5, May 2010, <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2009.178012?role=tab>; Leiyu Shi, Lydie Lebrun, and Jenna Tsai, "The influence of English proficiency on access to care," *Ethnicity & Health*, vol. 14, no. 6, Dec. 2009, [https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-primary-care-policy-center/Publications\\_PDFs/2009%20EH.pdf](https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-primary-care-policy-center/Publications_PDFs/2009%20EH.pdf).

<sup>1028</sup> Wu statement pp. 2-3.

<sup>1029</sup> COVID-19 Hate Crimes Act, <https://www.congress.gov/117/bills/s937/BILLS-117s937enr.pdf>.

<sup>1030</sup> Yoo testimony, *Anti-Asian Racism Briefing*, p. 29.

(ATJ).<sup>1031</sup> The Attorney General announced the creation of this role in May 2021, due to language access being a key barrier to reporting hate crimes and incidents.<sup>1032</sup> Additionally, in April 2021, the Department’s Hate Crimes Enforcement and Prevention Initiative moved forward in alleviating language access issues by announcing the first phase of the newly translated resource websites on hate crimes in the most frequently spoken AAPI languages: Chinese, Japanese, Korean, Tagalog, and Vietnamese.<sup>1033</sup> These updated websites provide basic information about hate crimes, resources, and instructions on how to report hate crimes to the FBI with interpreter assistance. In May 2022, DOJ expanded their language services to be available in 18 of the most frequently spoken AAPI languages across the nation.<sup>1034</sup>

San Francisco Chief of Police William Scott acknowledges that providing language access to victims of hate incidents and hate crimes is essential. Scott testified that:

We have stepped up our efforts to encourage community members to report hate incidents, and one of the ways we do that is to make sure we can communicate with the very diverse community we have in our city. We have multiple languages that are accessible by members of our community, and despite the ability of some people with limited English proficiency, we encourage them to report hate incidents as well as hate crimes, and that information can prove to be valuable down the line in the event that arrests are made, and prosecutions are at play. Those hate incidents sometimes prove motives.<sup>1035</sup>

Since the hiring of the Language Access Coordinator, ATJ has continued to expand its Language Access Team, and to engage in a number of initiatives, including:

- hosting various listening sessions with leaders and members of nationally prominent AANHPI organizations to discuss the language access needs for AANHPI communities, including in the context of hate crimes and incidents,<sup>1036</sup>

<sup>1031</sup> U.S. Dep’t of Justice, “Justice Department Announces New Initiatives to Address and Prevent Hate Crimes and Hate Incidents,” May 20, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-new-initiatives-address-and-prevent-hate-crimes-and-hate>.

<sup>1032</sup> Office of Attorney General, Memorandum for Department or Justice Employees, Improving the Department Efforts to Combat hate Crimes and Hate Incidents, May 21, 2021. [https://www.justice.gov/d9/2022-12/attorney\\_general\\_memorandum-improving\\_the\\_departments\\_efforts\\_to\\_combat\\_hate\\_crimes\\_and\\_hate\\_incidents.pdf](https://www.justice.gov/d9/2022-12/attorney_general_memorandum-improving_the_departments_efforts_to_combat_hate_crimes_and_hate_incidents.pdf).

<sup>1033</sup> U.S. Dep’t of Justice, Interrogatory Responses to U.S. Commission on Civil Rights, Mar. 16, 2023, p. 14 [on file].

<sup>1034</sup> Ibid.

<sup>1035</sup> Scott Testimony, p. 152.

<sup>1036</sup> United States Department of Justice and United States Department of Health and Human Services, *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, (2021), p. 2, <https://www.justice.gov/hatecrimes/resource/raising-awareness-hate-crimes-and-hate-incidents-during-covid-19-pandemic>, <https://www.justice.gov/file/1507346/download>; U.S. Department of Justice, “Readout of Justice Department, HHS Listening Session on the Bipartisan COVID-19 Hate Crimes Act with Organizations Representing Communities Impacted by Hate,” Oct. 6, 2021, <https://www.justice.gov/opa/pr/readout-justice-department-hhs-listening-session-bipartisan-covid-19-hate-crimes-act>.



- convening the DOJ Language Access Working Group (DOJ LAWG), chaired by the Language Access Coordinator, which provides a platform to support, guide and oversee implementation of and compliance with Executive Orders 13166 and 13985, and aims to increase meaningful and equal language access across DOJ services, activities, and programming;<sup>1037</sup>
- developing strategies and solutions to remove barriers for individuals with LEP to reporting crimes and accessing DOJ activities and programs, including by:
  1. expanding access to telephonic interpreting services within the Department;
  2. creating awareness about language assistance services available to DOJ components;<sup>1038</sup>
  3. translating DOJ public-facing content that is most relevant to communities with LEP;<sup>1039</sup>
  4. providing training and technical assistance to components on best practices including when conducting outreach and engaging with communities with LEP in non-English languages;<sup>1040</sup>
  5. working to develop a Language Access One-Stop-Shop to centralize language access resources, language access guidance and best practices, and language access policies, protocols and standards.<sup>1041</sup>

In November 2022, Attorney General Garland issued a *Memorandum on Strengthening the Federal Government's Commitment to Language Access*, which required all federal agencies to work with the Justice Department's Civil Rights Division to determine: (i) whether agencies can further update their language access policies and plans; (ii) whether agencies are effectively reaching individuals with limited English proficiency when disseminating information about federal resources, programs, and services; (iii) whether agencies have considered updates or modifications to guidance to federal financial assistance recipients regarding their obligations to provide meaningful language access under the requirements of Title VI of the Civil Rights Act of 1964 and its implementing regulations; and (iv) whether agencies can adapt their digital communications to welcome individuals with limited English proficiency.<sup>1042</sup>

The Justice Department told the Commission that the Language Access Coordinator, in collaboration with the DOJ Language Access Working Group, is working to implement the

<sup>1037</sup> United States Department of Justice, "Language Access," Nov. 30, 2022, <https://www.justice.gov/open/language-access>.

<sup>1038</sup> Ibid.

<sup>1039</sup> United States Department of Justice, "Hate Crimes," Nov. 30, 2022, <https://www.justice.gov/hatecrimes>.

<sup>1040</sup> United States Department of Justice, "Hate Crimes," Nov. 30, 2022, <https://www.justice.gov/hatecrimes>.

<sup>1041</sup> See United States Department of Justice, Limited English Proficiency, "Videos," accessed July 13, 2023, <https://www.lep.gov/videos?page=0>.

<sup>1042</sup> Department of Justice, *Memorandum on Strengthening the Federal Government's Commitment to Language Access*, <https://www.justice.gov/file/1553196/download>.

Attorney General’s Memorandum across the Justice Department. This process has included a series of stakeholder engagement sessions with individuals, community-based organizations, legal aid organizations, and organizations whose mission is to eradicate hate crimes and hate incidents and increase access to victims and survivors.<sup>1043</sup>

On December 19, 2022, the Justice Department also launched the Law Enforcement Language Access Initiative nationwide to help provide language assistance to limited English proficient (LEP) individuals, intended to aid federal agencies to comply with their language access obligations.<sup>1044</sup> DOJ stated that this initiative was led by CRT’s Federal Coordination and Compliance Section in partnership with the U.S. Attorneys’ Offices. The Initiative will specifically focus on:

- Developing technical assistance resources and tools that can assist local and state law enforcement agencies in their efforts to provide meaningful language access to LEP individuals and populations within their jurisdiction.
- Affirmatively engage law enforcement agencies that want to review, update, and/or strengthen their language access policies, plans, and training.
- Leverage collaboration with U.S. Attorneys’ Offices to conduct trainings in communities across the country to increase awareness of language access obligations and encourage widespread adoption of best practices by law enforcement agencies.
- Strengthen the department’s ties and engagement with LEP community stakeholders and LEP populations.<sup>1045</sup>

While these initiatives are a positive step, John Yang, president and executive director of Asian Americans Advancing Justice, testified that federal agencies need to review their compliance with Title VI in Executive Order 13166. He states that it is essential for federal agencies to comply with Title VI to prevent discrimination and ensure that all individuals are treated fairly and equally under the law.<sup>1046</sup> Yang emphasized the need for federal agencies to take proactive steps to address

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<sup>1043</sup> Dep’t of Justice, Response to Affected Agency Review, June 22, 2023 [on file].

<sup>1044</sup> U.S. Attorney’s Office district of Colorado, “Justice Department Announces New Language Access Law Enforcement Initiative” December 9, 2022, <https://www.justice.gov/usao-co/pr/justice-department-announces-new-language-access-law-enforcement-initiative>. Note: The federal government provides a standard for language access provisions via Executive Order 13166. This guidance is published in the Federal Register, Vol. 65, No. 159 (Notices), August 16, 2000, at 50123-25. The standard looks at the number or proportion of limited English proficient individuals served by the agency’s service area or population and resources available. The U.S. Census Bureau provides publicly available data on the most spoken languages and rates of limited English proficiency for each city.

<sup>1045</sup> U.S. Attorneys’ Office, “Justice Department Announces New Language Access Law Enforcement Initiative,” U.S. Dep’t of Justice, Dec. 19, 2022, <https://www.justice.gov/usao-co/pr/justice-department-announces-new-language-access-law-enforcement-initiative>.

<sup>1046</sup> Yang testimony p. 38.

any potential violations of Title VI and ensure that they provide language access services to individuals who need them.<sup>1047</sup>

### U.S. Attorneys' Office

On April 6, 1953, Executive Order No. 8-53 established a liaison between the DOJ and the 93 U.S. Attorneys' Offices (USAO) throughout the 50 states, the District of Columbia, Puerto Rico, Guam, the Marianas Islands, and the U. S. Virgin Islands.<sup>1048</sup> The U.S. State Attorneys are appointed by the President to one of the 94 federal districts (the Northern Mariana Islands and Guam are separate but share a United State Attorney) and serves as the chief law enforcement officer in their district.<sup>1049</sup>

U.S. Attorneys' Offices are also responsible for enforcing federal and local laws for hate and bias-related crimes.<sup>1050</sup> USAOs play a critical role in determining when to bring federal prosecution charges against an alleged perpetrator of a hate crime. When an officer suspects a crime has occurred, it is brought to the attention of the local USAO district for prosecution.<sup>1051</sup> In response to the Commission's inquiry or document requests, the FBI explained that if their investigation determines that a crime has violated a federal hate crime statute, the FBI coordinates their investigation with DOJ's CRT and the local U.S. Attorneys' Office who will make the final determination as to whether to charge the suspect with a federal hate crime.<sup>1052</sup> In addition, these offices play a collaborative role in combatting hate crimes and incidents by ensuring their agencies are in constant contact regarding AAPI bias incidents and working together on civil rights issues intensified by the pandemic.<sup>1053</sup>

In partnership with USAOs, the Justice Department launched the United Against Hate (UAH) Community Outreach Program which aims to improve hate crime reporting by teaching community members how to identify, report, and help prevent hate crimes; and building trust between law enforcement and communities.<sup>1054</sup> According to the Justice Department, during the program

participants may work through hypotheticals about hate crimes and bias incidents. Through video clips featuring real stories, participants can learn about the impact of hate crimes and

<sup>1047</sup> Ibid.

<sup>1048</sup> Office of the United States Attorneys, "Mission and Functions," U.S. Department of Justice, Nov. 14, 2022, <https://www.justice.gov/usao/eousa/mission-and-functions>.

<sup>1049</sup> Ibid.

<sup>1050</sup> United States Attorney's Office, Hate/Bias-Related Crimes, <https://www.justice.gov/usao-dc/hatebias-related-crimes>.

<sup>1051</sup> Ibid.

<sup>1052</sup> Federal Bureau of Investigation Interrogatory Responses to U.S. Comm'n on Civil Rights, Mar. 15, 2023, pp. 2-3 [on file].

<sup>1053</sup> Ibid., 16.

<sup>1054</sup> U.S. Dep't of Justice, "U.S. Attorneys' Offices are Uniting Against Hate with Communities Across the Country," Updated Mar. 22, 2023, <https://www.justice.gov/hatecrimes/spotlight/united-against-hate>.

bias incidents on communities. Facilitators lead rich discussions that help participants reflect on concrete actions they can take to identify, report, and, most importantly, help prevent acts of hate.<sup>1055</sup>

One of the first UAH events was held on September 29, 2022 by the Western District of New York Attorneys' Office, alongside the FBI and local law enforcement, following the heinous hate crime attack in Buffalo, New York that occurred on May 14, 2022.<sup>1056</sup> The event had about 100 community members in attendance,<sup>1057</sup> and focused on providing hypothetical scenarios and videos to further educate community members about hate crimes and hate incidents and the importance of reporting these crimes.<sup>1058</sup>

Trini Ross, U.S. attorney for the Western District of New York, who hosted the event stated “we all need to look for hate and expose it, so we stomp it out. This event, ‘United Against Hate,’ is designed to [] bring us together in a meaningful way, to unite us against hate, because there is strength in numbers.”<sup>1059</sup> While the USAO aims to further connect with communities in the district, some community members expressed skepticism about the effectiveness of the program.<sup>1060</sup> For example, James Ponzo II, clinical assistant professor at the University of Buffalo, explained that “I think any type of program or legislation towards addressing hate crimes [] is a start. But far too often, which we already know, things seem to start but stall and die out. Time will tell whether or not it’s really effective or whether it’s a publicity stunt.”<sup>1061</sup>

## **Other Federal Efforts**

### *Listening Sessions*

In March 2021, the Justice Department hosted a listening session with over a dozen Asian American and Pacific Islander (AAPI) community groups to provide resources to support, address,

<sup>1055</sup> Ibid.

<sup>1056</sup> Jonathan Franklin, “After a Deadly Mass Shooting, the DOJ Is Launching an Anti-Hate Initiative in Buffalo,” National Public Radio, October 6, 2022, <https://www.npr.org/2022/10/06/1126831912/federal-united-against-hate-program-buffalo-doj>.

<sup>1057</sup> Harold McNeil, “Federal Initiative to Combat Hate Crimes Launched in Western New York,” Buffalo News, September 29, 2022, [https://buffalonews.com/news/local/federal-initiative-to-combat-hate-crimes-launches-in-western-new-york/article\\_6a9844fe-4026-11ed-bf3a-d7479581b23d.html](https://buffalonews.com/news/local/federal-initiative-to-combat-hate-crimes-launches-in-western-new-york/article_6a9844fe-4026-11ed-bf3a-d7479581b23d.html).

<sup>1058</sup> Federal Bureau of Investigation, “Buffalo Launches United Against Hate Program,” Sept. 29, 2022, <https://www.fbi.gov/contact-us/field-offices/buffalo/news/press-releases/assistant-attorney-general-for-civil-rights-clarke-and-us-attorney-ross-launch-united-against-hate-program-in-buffalo>.

<sup>1059</sup> Harold McNeil, “Federal Initiative to Combat Hate Crimes Launched in Western New York,” Buffalo News, September 29, 2022, [https://buffalonews.com/news/local/federal-initiative-to-combat-hate-crimes-launches-in-western-new-york/article\\_6a9844fe-4026-11ed-bf3a-d7479581b23d.html](https://buffalonews.com/news/local/federal-initiative-to-combat-hate-crimes-launches-in-western-new-york/article_6a9844fe-4026-11ed-bf3a-d7479581b23d.html).

<sup>1060</sup> Jonathan Franklin, “After a Deadly Mass Shooting, the DOJ Is Launching an Anti-Hate Initiative in Buffalo,” National Public Radio, October 6, 2022, <https://www.npr.org/2022/10/06/1126831912/federal-united-against-hate-program-buffalo-doj>.

<sup>1061</sup> Ibid.

and deter hate crimes and to provide data collection training manuals to state and local partners.<sup>1062</sup> This meeting was hosted as part of DOJ's continued efforts to combat anti-Asian hate crimes and bias-motivated incidents. Acting Deputy Attorney General John Carlin, who hosted the meeting, stated:

No one in America should fear violence because of who they are, what they look like, or what part of the world they or their families came from. The Department of Justice and our component agencies are committed to bringing all of our tools to bear in supporting AAPI communities as we address the horrific rise in hate and bias incidents occurring across the country.<sup>1063</sup>

The DOJ also hosted another listening session in July 2021 with eight nationally prominent AAPI non-profit organizations' executive directors to discuss the rise in acts of violence and intolerance against the AAPI community.<sup>1064</sup>

Additionally, in June 2021, CRT's Federal Coordination and Compliance Section invited over 140 stakeholders to five listening sessions regarding language access. The sessions focused on Asian American, Native Hawaiian and Pacific Islander communities.<sup>1065</sup> Over 60 people attended an internal listening session held by the department with its FBI linguists to translate or interpret cases.<sup>1066</sup>

### *Trainings*

In addition to the efforts outlined above, DOJ and the FBI hosted several trainings for law enforcement across the nation. DOJ informed the Commission that the number of trainings conducted by CRT employees varied during the pandemic based on several factors, such as the requests from other agencies and current events and trends.<sup>1067</sup> During the pandemic, CRT conducted several trainings specifically on reducing AAPI hate violence.<sup>1068</sup> In 2020, CRT conducted 16 hate crime trainings. Of those two focused on issues affecting Asian Americans. In 2021, the Division conducted nine hate crime trainings, one of which focused on issues affecting Asian people. Then in 2022, the Division conducted approximately 15 hate crime trainings and three related to issues affecting Asian Americans.<sup>1069</sup> Additionally, from January 1, 2022 to May 31, 2023, OJP's Bureau of Justice Assistance State and Local Anti-Terrorism Training (SLATT) Program also trained over 3,000 criminal justice professionals and law enforcement officials on

<sup>1062</sup> U.S. Department of Justice, "Readout of the White House's Listening Session with Asian American and Pacific Islander Leaders on Rising Hate Crimes and Incidents Against Asian American Communities," Mar. 5, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/04/readout-of-the-white-houses-listening-session-with-asian-american-and-pacific-islander-leaders-on-rising-hate-crimes-and-incidents-against-asian-american-communities/>.

<sup>1063</sup> Ibid.

<sup>1064</sup> DOJ Responses to U.S. Commission on Civil Rights Interrogatories, Mar. 16, 2023, at 14.

<sup>1065</sup> Ibid., 15.

<sup>1066</sup> Ibid.

<sup>1067</sup> Ibid., 9.

<sup>1068</sup> Ibid.

<sup>1069</sup> Ibid.

how to ethically identify, prohibit, prevent, and respond to acts of international and domestic terrorism, targeted violence, and hate crimes.<sup>1070</sup>

On June 9, July 20, and August 11, 2021, the FBI held regional conferences with over 100 law enforcement agencies in Denver, Louisville, and San Francisco, with additional end-of-year meetings. These conferences were held to help local police agencies better understand federal civil rights and hate crimes laws; encourage reporting; strengthen relationships between law enforcement and local civil rights organizations; and build trust within the diverse communities they serve.<sup>1071</sup>

CRS also hosted two webinars on responding to hate crimes on college campuses in September 2021. The first, co-hosted by the Community Oriented Policing Services (COPS) Office, sought to educate campus law enforcement officials. The second focused on educators and college administrators. Additionally, in October 2021, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) hosted a virtual symposium to increase knowledge on how to prevent youth-related hate crimes and better identify bullying in recognition of Bullying Prevention Month, and one panel was entitled, “Combating Identity based Bullying in the AAPI Community.”<sup>1072</sup> OJJDP also hosted a thirteen-part webinar series on preventing youth hate crimes and identity-based bullying, and a significant part of the series was geared towards educating law enforcement.<sup>1073</sup>

Along with hosting trainings, the FBI also launched an awareness campaign. On June 30, 2021, the FBI launched a Hate Crime Awareness Campaign in response to the increased number of attacks on people of Asian descent.<sup>1074</sup> The awareness campaign was a nationwide effort to build public awareness of hate crimes and reporting avenues, to share information about victim services, and to encourage victims and witnesses to report crimes to law enforcement. The campaign uses traditional media outreach and interviews as well as a first-of-its-kind multi-million-dollar advertising campaign.<sup>1075</sup>

Following the launch of the Hate Crime Awareness Campaign, the NYPD and New York’s FBI Division joined forces to encourage individuals to stand in solidarity with Asian communities and

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<sup>1070</sup> U.S. Dep’t of Justice, Response to USCCR Affected Agency Review, June 20, 2023 [on file].

<sup>1071</sup> U.S. Department of Justice, *Combatting Hate Crimes*, March 30, 2021, <https://www.justice.gov/opa/press-release/file/1428666/download>.

<sup>1072</sup> Office of Juvenile Justice and Delinquency Prevention, “Virtual Symposium: Understanding and Preventing Youth Hate Crimes and Identity-Base Bullying,” Sept. 8, 2021, <https://ojjdp.ojp.gov/events/2021-virtual-symposium>

<sup>1073</sup> Office of Juvenile Justice and Delinquency Prevention, “Virtual Symposium, Preventing Youth Hate Crimes & Identity-Based Bullying Initiative,” <https://ojjdp.ojp.gov/programs/preventing-youth-hate-crimes-bullying-initiative#webinar-series>.

<sup>1074</sup> U.S. Department of Justice, *Combatting Hate Crimes*, March 30, 2021, <https://www.justice.gov/opa/press-release/file/1428666/download>.

<sup>1075</sup> COPS Office, “FBI Hate Crimes Awareness Campaign Reaches Millions of Americans,” Feb. 2022, [https://cops.usdoj.gov/html/dispatch/02-2022/hatecrimes\\_awareness.html](https://cops.usdoj.gov/html/dispatch/02-2022/hatecrimes_awareness.html)

report any bias or hate crime incident.<sup>1076</sup> FBI Assistant Director William F. Sweeney stated at the announcement of the public awareness campaign:

We each have a role to play to reverse the trends we've seen in New York City and beyond — let's set the example. Pay attention to what's going on around you and do what's right. You may be surprised how big of a role you can play in keeping our communities safe.<sup>1077</sup>

### *Grant Programs*

In October 2021, the Justice Department announced that the Office of Justice Programs (OJP) would award more than \$21 million to address hate crimes, including to support the investigation and prosecution of hate crimes.<sup>1078</sup> OJP's Bureau of Justice Assistance (BJA) made grant funds available to improve the investigation and prosecution of hate crimes through the Matthew Shepard and James Byrd, Jr. Hate Crimes Program which supports efforts by state, local, and tribal law enforcement and prosecution agencies and their partners in conducting outreach, educating practitioners and the public, enhancing victim reporting tools, and investigating and prosecuting hate crimes committed on the basis of a victim's perceived or actual race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.<sup>1079</sup> Eligible applicants were state, local, and tribal law enforcement and prosecution agencies. As of April 2023, BJA has awarded over \$12 million in funding through the Shepard-Byrd grant to 19 recipients for FY 2021 and FY 2022.<sup>1080</sup> The Houston Police Department and the New York Police Department were each awarded \$400,000 under the Shepard-Byrd grant.<sup>1081</sup>

BJA released \$5 million for the Community-Based Approaches to Prevent and Address Hate Crimes Program.<sup>1082</sup> This grant program provides funding to support comprehensive community-based approaches to addressing hate crimes that promote community awareness and preparedness, increase victim reporting, and improve responses to hate crimes.<sup>1083</sup> According to BJA:

This program empowers community-based organizations and civil rights organizations to establish community-centered approaches for public awareness, education, and prevention

<sup>1076</sup> NYPD Newsroom, "NYPD and FBI New York Fight Asian Hate with New Joint Public Awareness Campaign," July 14, 2021, <https://www.nyc.gov/site/nypd/news/pr0714/nypd-fbi-new-york-fight-asian-hate-new-joint-public-awareness-campaign>

<sup>1077</sup> NYPD Newsroom, "NYPD and FBI New York Fight Asian Hate with New Joint Public Awareness Campaign," July 14, 2021, <https://www.nyc.gov/site/nypd/news/pr0714/nypd-fbi-new-york-fight-asian-hate-new-joint-public-awareness-campaign>

<sup>1078</sup> U.S. Dep't of Justice, "Justice Department Will Award More Than \$21 Million to Prevent and Respond to Hate Crimes," Oct. 28, 2021, <https://www.justice.gov/opa/pr/justice-department-will-award-more-21-million-prevent-and-respond-hate-crimes>.

<sup>1079</sup> Bureau of Justice Assistance, "FY 2022 Matthew Shepard and James Byrd Jr. Hate Crimes Program," <https://bja.ojp.gov/funding/opportunities/o-bja-2022-171092>.

<sup>1080</sup> Ibid.

<sup>1081</sup> Office of Justice Programs, Bureau of Justice Assistance, "BJA FY2022 Grant Awards," <https://data.ojp.usdoj.gov/stories/s/O-BJA-2022-171092/s6wb-ihnf/>.

<sup>1082</sup> U.S. Department of Justice, Bureau of Justice Assistance, "FY 2022 Community-based Approaches to Prevent and Address Hate Crimes," May 19, 2022, <https://bja.ojp.gov/funding/opportunities/o-bja-2022-171345>.

<sup>1083</sup> Ibid.

of hate crimes. The program is also designed to develop community-informed model policies, practices, and trainings for law enforcement and prosecution entities regarding how hate crimes are reported, investigated, and prosecuted.<sup>1084</sup>

As of April 2023, eight organizations were given grants to support their efforts to combat hate crimes with FY 2022 funding, three of which will focus their efforts on preventing and addressing anti-Asian hate crimes. The organizations funded under this program include:

- The Committee of 100, Inc., a non-profit leadership organization of prominent Chinese Americans, received \$400,000 to support their response to anti-Asian hate crimes, specifically for their project: “A Comprehensive and Coordinated Response to Address Anti-Asian Hate Crimes” in New York City;<sup>1085</sup>
- The Working Group, a nonprofit organization based in Oakland, CA, was awarded \$500,000 to help support hate crime reporting and awareness campaigns through the Not In Our Town<sup>1086</sup> program;<sup>1087</sup>
- South Asian Network Inc. was awarded \$400,000 to provide materials to the South Asian community to increase awareness about hate crimes and hate crime reporting; and

These organizations planned to utilize their funding in various ways. For instance, the Committee of 100, Inc. will use the awarded funds over three years for three main goals with their project: standardize community-based anti-Asian hate crime data, create a hate crime awareness campaign, and implement a curriculum for K-12 students focused on Asian American history and culture.<sup>1088</sup> The organization’s NYC project also works with the AAPI community leaders to develop a set of criminal reporting standards for hate crimes. The Committee of 100 will work with other organizations, including The Anti-Defamation League, The Asian American Education Project, and The Yellow Whistle.

Similarly, the South Asian Network, Inc. will use the money to fund its “Stop the Hate Project” in Artesia, CA. According to the grant application, the organization will survey community members on hate crimes and bias-related incidents they have experienced.<sup>1089</sup> South Asian Network will use these data to inform their project, which includes goals such as: increasing awareness of hate crimes, educating low-income and limited-English speakers about reporting hate crimes, providing mental health therapy to help victims and survivors, creating community workshops on community

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<sup>1084</sup> Ibid.

<sup>1085</sup> Ibid.

<sup>1086</sup> See *supra* note 901 (discussion of Not In Our Town in Ch 2).

<sup>1087</sup> Bureau of Justice Assistance, “Mobilizing Communities and Building Hate and Bias Action Teams,” <https://bja.ojp.gov/funding/awards/15pbja-22-gg-04858-adv>.

<sup>1088</sup> “A Comprehensive and Coordinated Response to Addressing Anti-Asian Hate Crimes in NYC,” Bureau of Justice Assistance, September 30, 2022, <https://bja.ojp.gov/funding/awards/15pbja-22-gg-04859-adv>.

<sup>1089</sup> Bureau of Justice Assistance, U.S. Department of Justice, *Stop The Hate Project*, Bureau of Justice Assistance, September 29, 2022, <https://bja.ojp.gov/funding/awards/15pbja-22-gg-04857-adv>.



healing, and hosting bystander awareness training.<sup>1090</sup> South Asian Network hopes to specifically support the low-income South Asian immigrant community to understand their rights, the importance of reporting hate crimes, self-protection, and how to seek redress. The organization states that it will partner with religious centers, engage older adults through community groups and reach young adults at colleges and universities throughout Southern California.<sup>1091</sup>

BJA also made funds available under the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016 to help solve cold case civil rights murders that occurred before Dec. 31, 1979.<sup>1092</sup> For FY 2022, the City of Tulsa, Oklahoma was awarded \$1,075,999 to pursue forensic genetic genealogy identifications for potential 1921 Tulsa Race Massacre (TRM) victims exhumed in the 2022 search of Tulsa Oaklawn Cemetery,<sup>1093</sup> and Fulton County, Georgia was awarded \$575,000 to hire a Victim Witness Advocate to discover incidents of missing persons never investigated.<sup>1094</sup>

All three of the above described BJA grants also currently have open grant solicitations for FY 2023, with deadlines set for May and June 2023.<sup>1095</sup>

OVC also awarded more than \$2 million in awards in FY 2022 for its “Jabara-Heyer No HATE Act State-Run Hate Crime Reporting Hotlines”, which seeks to fund states in establishing and running state-run hate crime reporting hotlines and ensuring that victims and witnesses are connected to law enforcement and local support services as needed.<sup>1096</sup> Two state agencies, the Illinois Department of Human Rights<sup>1097</sup> and the California Department of Fair Employment and

<sup>1090</sup> Ibid.

<sup>1091</sup> Ibid.

<sup>1092</sup> U.S. Dep’t of Justice, “Justice Department Will Award More Than \$21 Million to Prevent and Respond to Hate Crimes,” Oct. 28, 2021, <https://www.justice.gov/opa/pr/justice-department-will-award-more-21-million-prevent-and-respond-hate-crimes>.

<sup>1093</sup> Bureau of Justice Assistance, “Emmett Till Cold Case Investigations and Prosecution Program”, Sept. 30, 2022, <https://bja.ojp.gov/funding/awards/15pbja-22-gg-01763-emme>.

<sup>1094</sup> Bureau of Justice Assistance, “Fulton County, Office of the District Attorney, home of the civil rights movement investigates cold cases,” Sept. 29, 2022, <https://bja.ojp.gov/funding/awards/15pbja-22-gg-01764-emme>.

<sup>1095</sup> U.S. Dep’t of Justice, “Open Grant Solicitations,” <https://www.justice.gov/hatecrimes/grants> (accessed Apr. 7, 2023).

<sup>1096</sup> Office for Victims of Crime, “OVC FY 2022 Jabara-Heyer NO HATE Act State-Run Hate Crime Reporting Hotlines,” Oct. 12, 2022, <https://ovc.ojp.gov/funding/opportunities/o-ovc-2022-171435> Office for Victims of Crime, “OVC FY 2022 Building State Technology Capacity and Jabara-Heyer No HATE Act State-Run Hate Crime Reporting Hotlines,” <https://ovc.ojp.gov/funding/opportunities/o-ovc-2022-171342>.

<sup>1097</sup> Office for Victims of Crimes, Illinois Hate Crime and Bias Incident Hotline, Jan. 27, 2022, <https://ovc.ojp.gov/funding/awards/15povc-22-gk-04987-noha>.

Housing,<sup>1098</sup> were awarded more than \$1 million each.<sup>1099</sup> OVC issued a solicitation in 2023 to fund additional state-run hotlines under this program.<sup>1100</sup>

Previously, in FY 2021, OVC made an award for \$2 million to Futures without Violence, Inc. (Futures), for the “Services to Support Victims of Hate Crime and Strengthen Communities” program.<sup>1101</sup> During FY 2022, Futures provided subawards to twelve organizations throughout the country to implement field generated projects to address hate crimes in their communities.<sup>1102</sup> Three of those projects specifically target Asian communities:

- California Healthy Nail Salon Collaborative in Oakland, California, is partnering with Black Women for Wellness to develop healing programming and strengthen solidarity among Vietnamese and Black women survivors of hate crimes.
- Cia Siab, Inc. in La Crosse, Wisconsin, is educating the Hmoob (Hmong) community about hate crimes and enhancing responses through accessible reporting tools, trainings for service providers, and improved coordination with health and legal services.
- KAN-WIN in Chicago, Illinois, is bringing together Asian women from multiple generations for collective healing, community building, and public art creation.

OJP’s National Institute of Justice (NIJ) awarded grants in FY 2022 for “Research and Evaluation on Hate Crimes” as well as “Research and Evaluation on Domestic Radicalization and Violent Extremism.” Under the Research and Evaluation on Hate Crimes program, NIJ made three awards totaling \$2,888,983.<sup>1103</sup>

In FY 2022, NIJ awarded over \$1.25 million for projects targeted toward developing a better understanding of the domestic radicalization phenomenon, and advancing evidence-based strategies for effective intervention and prevention.<sup>1104</sup> The RAND Corporation was awarded \$749,087 for a project that will analyze social media discussions of financing strategies across a variety of mainstream and fringe online platforms as well as the dark web.<sup>1105</sup> The University of Central Missouri was awarded \$506,497 for its proposed project, “Understanding the Complete

<sup>1098</sup> Office for Victims of Crime, “The California vs. Hate Resources Line and Network,” Jan. 27, 2023, <https://ovc.ojp.gov/funding/awards/15povc-22-gk-04986-noha>.

<sup>1099</sup> Office for Victims of Crime, “OVC FY 2022 Jabara-Heyer NO HATE Act State-Run Hate Crime Reporting Hotlines,” Oct. 12, 2022, <https://ovc.ojp.gov/funding/opportunities/o-ovc-2022-171435>

<sup>1100</sup> Office for Victims of Crime, “OVC FY 2023 Jabara-Heyer NO HATE Act State-Run Hate Crime Reporting Hotlines,” May 31, 2023, <https://ovc.ojp.gov/funding/opportunities/o-ovc-2023-171708>.

<sup>1101</sup> Office for Victims of Crime, “Community IMPACT: Imagining Multidisciplinary Pathways to Assist, Care & thrive,” Sept. 30, 2021, <https://ovc.ojp.gov/funding/awards/15povc-21-gk-00658-nonf>.

<sup>1102</sup> Futures Without Violence, Community Impact, <https://www.futureswithoutviolence.org/community-impact/>.

<sup>1103</sup> National Institute of Justice, “NIJ FY22 Research and Evaluation on Hate Crimes,” Feb. 2, 2022, <https://nij.ojp.gov/funding/opportunities/o-nij-2022-171191>.

<sup>1104</sup> National Institute of Justice, “NIJ FY22 Research and Evaluation on Domestic Radicalization and Violent Extremism,” Mar. 15, 2022, <https://nij.ojp.gov/funding/opportunities/o-nij-2022-171193>.

<sup>1105</sup> National Institute of Justice, “Understanding and Responding to Domestic Extremism Financing,” Sept. 8, 2022, <https://nij.ojp.gov/funding/awards/15pnij-22-gg-01119-domr>.

Spectrum of the Left-Wing and Environmental Movement: A Data Driven Approach,” which aims to add to the knowledge surrounding the full spectrum of behavior perpetrated by those motivated by a violent left-wing or environmental ideology.<sup>1106</sup>

In addition to providing direct funding to justice agencies and community organizations, BJA also supports funding to each program’s comprehensive Training and Technical Assistance (TTA) providers. These TTA providers are expected to provide direct support to grantees and develop resources, tools, and training that the field may use at large, including translating lessons learned from grantee experiences into user-friendly field guides, tools, and webinars that may be instructive to peer institutions.<sup>1107</sup>

The total grant funds for community-based organizations were increased to \$10 million in FY 2023, but at the writing of this report, DOJ has not released these awards yet.<sup>1108</sup> John Yang, president and executive director, Asian Americans Advancing Justice, testified that while providing funds to community organizations is critical, the

grantmaking process is often opaque and cumbersome, especially for communities that really struggle and would benefit most from the money. Without focused outreach and local touchpoints, the federal government will not be trusted and will not be used by our community. Sustained commitment to engagement in culturally and linguistically sensitive matters is critical.<sup>1109</sup>

Additionally, Charles Lehman, fellow at the Manhattan Institute, testified that while the DOJ issues “tens of millions of dollars to anti-hate crime grants” which are:

substantial amounts, they don’t go that far. Fiscal year 2022 – covered just 22 awards, compared to roughly 2,300 state prosecutors’ offices. Many offices do not have specialists who focus on hate crime prosecutions. The challenge inherent in prosecuting bias motivated crime means the federal government could allocate more funding to, at least, coordinating between offices and articulating best practices, to increase the shockingly low rate of convictions.<sup>1110</sup>

Manjusha Kulkarni, executive director of AAPI Equity Alliance and co-founder of Stop AAPI Hate explained in her testimony to the Commission that the Justice Department needs to:

fund state and local government efforts in partnership with community groups to address discrimination and other hate incidents. Federal funding when it is not a hate crime is uneven. For example, the Department of Justice provides a number of federal grants to

<sup>1106</sup> National Institute of Justice, “Understanding the Complete Spectrum of the Left-Wing and Environmental Movement: A Data Driven Approach,” <https://nij.ojp.gov/funding/awards/15pnij-22-gg-01120-domr>.

<sup>1107</sup> U.S. Dep’t of Justice, Response to USCCR Affected Agency Review, June 20, 2023 [on file].

<sup>1108</sup> Bureau of Justice Assistance, “FY2022 Community-based Approaches to Prevent and Address Hate Crimes,” July 18, 2022, <https://bja.ojp.gov/funding/opportunities/o-bja-2022-171345>.

<sup>1109</sup> Yang Testimony, p. 41.

<sup>1110</sup> Lehman Testimony, p. 22.

support state, local, and tribal enforcement for victims of crimes. But there's no such program to address hate incidents that are not crimes or specifically supporting state and local civil rights enforcement. Additional resources are needed if we want to truly address hate and prevent anti-Asian hate incidents.<sup>1111</sup>

The DOJ notes that while the federal grants are intended to address hate crimes and not incidents, BJA's Shepard Byrd program encourages collaborations between law enforcement and community stakeholders and organizations. BJA's Community-based Approaches to Preventing and Addressing Hate Crimes also encourage these collaborations.<sup>1112</sup>

### **Executive and Congressional Action**

As this report has documented, one of the contributing factors to the spike of harassment, violence, discrimination, and xenophobia towards persons of Asian descent witnessed from 2019 through 2021 was due to these communities being blamed for the pandemic.<sup>1113</sup> In the first few months of 2020, FBI Director Christopher Wray warned of a potential surge in hate crimes against Asian Americans amid the pandemic, making the assessment "based on the assumption that a portion of the U.S. public will associate COVID-19 with China and Asian American populations."<sup>1114</sup>

As a result of these rising hate incidents, on May 1, 2020, U.S. Sen. Mark R. Warner (D-VA) joined Sens. Mazie Hirono (D-HI), Cory Booker (D-NJ), and 13 other Senators wrote a letter to then-Assistant Attorney General Eric Dreiband asking the Civil Rights Division to inform Congress of the steps the Division has taken in response to the discrimination and hate crimes against Asian Americans and Pacific Islanders.<sup>1115</sup> The senators stated that:

since the COVID-19 outbreak began, researchers have reported an alarming spike in anti-Asian racism. On March 14, 2020, a man stabbed two Asian American children – a 2-year-old and a 6-year-old – and their father at a Sam's Club in Texas because "he thought the family was Chinese, and infecting people with the coronavirus." In the past month alone, the Asian Pacific Policy and Planning Council and its partners have received nearly 1,500 reports of coronavirus-related harassment and discrimination against AAPI individuals across the country.<sup>1116</sup>

<sup>1111</sup> Kulkarni Testimony, p. 103.

<sup>1112</sup> U.S. Dep't of Justice, Response to USCCR Agency Review, June 20, 2023.

<sup>1113</sup> See *supra* notes 512-531 (discussing rise of anti-Asian hate crimes).

<sup>1114</sup> Josh Margolin, "FBI warns of potential surge in hate crimes against Asian Americans amid coronavirus," *ABC News*, Mar. 27, 2020, <https://abcnews.go.com/US/fbi-warns-potential-surge-hate-crimes-asian-americans/story?id=69831920>.

<sup>1115</sup> United States Senate, "Letter to U.S. Department of Justice Attorney General Dreiband," May 20, 2020, <https://www.hirono.senate.gov/imo/media/doc/Letter%20to%20DOJ%20re%20anti-AAPI%20discrimination.pdf>.

<sup>1116</sup> *Ibid.*

In the letter to the CRT, the senators claimed that despite the warnings issued by the FBI, the Justice Department did not take necessary steps to counteract the rise in hate violence.<sup>1117</sup> While the Justice Department hosted a briefing with Asian American advocacy groups, many community leaders maintain that the agency's response was lacking.<sup>1118</sup> The senators posited that the federal response to the pandemic, by both the CDC and DOJ, had been lackluster compared to the 2003 SARS outbreak and after the 2001 terrorist attacks. The senators maintained that the "inadequate federal response to address these racist and xenophobia attacks [are] a sharp break from the efforts of past administrations, Republican and Democratic alike."<sup>1119</sup>

In response, former Assistant Attorney General Eric Dreiband stated that "[t]he Justice Department will prosecute hate crimes and violations of anti-discrimination laws against Asian Americans, Asians, and others to the fullest extent of the law."<sup>1120</sup> At the Commission's briefing, Dreiband testified that during his tenure:

the Justice Department's the Civil Rights Division and the United States Attorney partner[ed] across the country and led the Department's efforts to investigate and address civil rights issues related to the pandemic and other issues, including issues about anti-Asian discrimination.<sup>1121</sup>

On January 26, 2021, President Biden issued a Presidential Memorandum that condemned Racism, Xenophobia, and Intolerance.<sup>1122</sup> The memorandum stated that the DOJ is committed to deterring hate crimes and unlawful acts against AAPI communities and will use dedicated resources to support incident reduction across the country. In this memorandum, among other things, he mandated that the Attorney General explore opportunities to combat crimes against Asian American and Pacific Islander (AAPI) communities, along with the review of and supporting the accelerated review and prosecution of hate crimes.<sup>1123</sup> The memorandum called for the federal government to "combat racism, xenophobia, and intolerance against Asian Americans and Pacific Islanders and should work to ensure that all members of AAPI communities — no

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<sup>1117</sup> Ibid.

<sup>1118</sup> Ibid.

<sup>1119</sup> Ibid.

<sup>1120</sup> Eric Dreiband, "How the Justice Department is standing up for civil rights amid coronavirus pandemic," *Washington Examiner*, Apr. 9, 2020, <https://www.washingtonexaminer.com/opinion/op-eds/how-the-justice-department-is-standing-up-for-civil-rights-amid-coronavirus-pandemic>.

<sup>1121</sup> Eric Dreiband, Former Assistant Attorney General, Civil Rights Division, Department of Justice; Partner, Jones Day, testimony, the Federal Response to Anti-Asian Racism in the United States, p. 130

<sup>1122</sup> White House, "Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States," Jan. 26, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/>.

<sup>1123</sup> U.S. Dep't of Justice, "Readout of The Department of Justice's Efforts to Combat Hate Crimes Against Asian American and Pacific Island Communities," Mar. 5, 2021, <https://www.justice.gov/opa/pr/readout-department-justice-s-efforts-combat-hate-crimes-against-asian-american-and-pacific>.

matter their background, the language they speak, or their religious beliefs — are treated with dignity and equity.”<sup>1124</sup>

In March 2021, President Biden signed an Executive Order that established the White House Initiative for Asian Americans, Native Hawaiians, and Pacific Islanders (WHIAANHPI) interagency working group, which is intended to inform the President of policies focused on reducing hate bias in the AANHPI communities. The Executive Order also renewed the President’s Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders.<sup>1125</sup> The Advisory Commission’s mission is to advise the President on how public, private, and nonprofit sectors can collaborate to advance equity opportunities in these communities.<sup>1126</sup>

Other White House initiatives included a virtual listening session on March 4, 2021, that convened advocates and community leaders from AAPI communities nationwide to discuss their experiences with the rise in hate violence during the pandemic.<sup>1127</sup> The meeting was hosted by the Domestic Policy Advisor Susan Rice, the White House Initiative on AAPIs Acting Director Laura Shine, the White House Public Engagement Director Cedric Richmond, and the Vice President’s Domestic Policy Advisor Rohini Kosoglu.<sup>1128</sup>

On March 23, 2021, Senator Mazie Hirono from Hawaii and Representative Grace Meng from Flushing, New York, introduced the COVID-19 Hate Crimes Act, which was signed into law by President Biden on May 20, 2021,<sup>1129</sup> in response to the rise in hate crimes against Asian Americans.<sup>1130</sup> The bipartisan legislation aimed to improve the nation’s response to hate crimes and included a new initiative to advance equality and justice, and offered training opportunities

<sup>1124</sup> White House, “Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States,” Jan. 26, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/>.

<sup>1125</sup> The White House, “FACT SHEET: President Biden Establishes the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders,” May 28, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/28/fact-sheet-president-biden-establishes-the-white-house-initiative-on-asian-americans-native-hawaiians-and-pacific-islanders/>.

<sup>1126</sup> *Ibid.*

<sup>1127</sup> The White House, “Readout of the White House’s Listening Session with Asian American and Pacific Islander Leaders on Rising Hate Crimes and Incidents Against Asian American Communities,” Mar. 4, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/04/readout-of-the-white-houses-listening-session-with-asian-american-and-pacific-islander-leaders-on-rising-hate-crimes-and-incidents-against-asian-american-communities/>.

<sup>1128</sup> *Ibid.*

<sup>1129</sup> S.937 - COVID-19 Hate Crimes Act, <https://www.congress.gov/117/plaws/publ13/PLAW-117publ13.pdf>

<sup>1130</sup> Alana Wise, “Biden Announces Actions to Combat Anti-Asian Violence, Discrimination,” NPR, March 30, 2021, <https://www.npr.org/2021/03/30/982736783/biden-announces-new-steps-to-tackle-anti-asian-violence-and-discrimination>.

for Asian American, Native Hawaiian, and Pacific Islander communities.<sup>1131</sup> The bill requires that an officer of the Justice Department expedite the review to hate crimes stating the following:

DOJ must issue guidance for state, local, and tribal law enforcement agencies on establishing online hate crime reporting processes, collecting data disaggregated by protected characteristic (e.g., race or national origin), and expanding education campaigns. Additionally, DOJ and the Department of Health and Human Services must issue guidance aimed at raising awareness of hate crimes during the COVID-19 (i.e., coronavirus disease 2019) pandemic.<sup>1132</sup>

The legislation also aimed to provide additional necessary actions in response to an increase in violence and offer support to state and local governments. Specifically,

the bill establishes grants for states to create state-run hate crimes reporting hotlines. It also authorizes grants for states and local governments to implement the National Incident-Based Reporting System and to conduct law enforcement activities or crime reduction programs to prevent, address, or respond to hate crimes.... The bill emphasizes a remedy for an individual convicted of a hate crime offense and placed on “supervised release,” otherwise known as the type of conditions imposed from the conviction. The bill allows the court to order that the individual convicted participate in educational classes and community service as a requirement of the sentencing option adopted in addition to the sentencing given by the state for the federal court to the guilty.<sup>1133</sup>

Senator Hirono argued that passing the COVID-19 Hate Crimes Act would send a clear message of solidarity to the AAPI community and would not have been possible without a bipartisan partnership.<sup>1134</sup> On Thursday, April 22, 2022, the Senate overwhelmingly approved the legislation

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<sup>1131</sup> Fact Sheet: President Biden Establishes the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/28/fact-sheet-president-biden-establishes-the-white-house-initiative-on-asian-americans-native-hawaiians-and-pacific-islanders/>.

<sup>1132</sup> S.937 – (COVID-19 Hate Crimes Act), S.937 – (COVID-19 Hate Crimes Act), <https://www.congress.gov/117/plaws/pub113/PLAW-117pub113.pdf>.

<sup>1133</sup> *Id.*

<sup>1134</sup> Jalen Wade, “Senate approves bill aimed at combating hate crimes against Asian Americans,” Capital News Service, Apr. 22, 2021,

<https://cnsmaryland.org/2021/04/22/senate-approves-bill-aimed-at-combating-hate-crimes-against-asian-americans/>

to strengthen federal efforts to address crime against Asian Americans;<sup>1135</sup> as well as bolster the tracking system for gathering information about hate crimes.<sup>1136</sup>

Furthermore, the law supports interagency cooperation between multiple federal agencies, with an initiative led by HHS to advance equity and justice and expand language access and language assistance programs to help individuals navigate the resources available during the response and recovery of the pandemic.<sup>1137</sup>

In her written testimony to the Commission, Congresswoman Grace Meng stressed the necessity of the federal government to provide more tools to support law enforcement.<sup>1138</sup> She also highlighted the need to adopt community-based approaches to prevent and address crimes, the need for communities and law enforcement to work together, and the need to provide resources directly to advocates and community-based organizations. Meng explained that:

[h]ate crimes cause long-lasting harm not only to individual victims, but to their entire communities, [and] we must give law enforcement the necessary tools to address hate crimes and empower community organizations who are helping people impacted by hate crimes rebuild their lives.<sup>1139</sup>

Jennifer Wu, a founding partner at Groombridge, Wu, Baughman & Stone LLP, shared that none of her clients who were victims of anti-Asian hate crimes had “ever reported a crime to the federal agencies, and ever heard from the U.S. government ... there has been no federal response, which is why private practitioners like myself have stepped in to help the victims and develop a response.”<sup>1140</sup> Wu stated that this further highlights the need for more federal awareness and support for victims of hate crimes.<sup>1141</sup>

<sup>1135</sup> Catie Edmondson, “Senate Resoundingly Passes Bill to Target Anti-Asian Hate Crimes,” *The New York Times*, Apr. 22, 2021,

<https://www.nytimes.com/2021/04/22/us/politics/senate-anti-asian-hate-crimes.html>; The White House, “Memorandum on Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable,” May 18, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>.

<sup>1136</sup> Li Zhou, “The House passes bill to combat anti-Asian hate crimes,” May 18, 2021, <https://www.vox.com/2021/4/22/22385461/senate-anti-asian-hate-crimes-bill>

<sup>1137</sup> Executive Order 14031 of May 28, 2021, “Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders” <https://www.govinfo.gov/content/pkg/FR-2021-06-03/pdf/2021-11792.pdf>

<sup>1138</sup> Congresswoman Grace Meng, Written Statement to U.S. Commission on Civil Rights, in response to the *Federal Response to Anti-Asian Racism in the United States*, Mar. 24, 2023, p. 2.

<sup>1139</sup> Congresswoman Grace Meng, Written Statement to U.S. Commission on Civil Rights, in response to the *Federal Response to Anti-Asian Racism in the United States*, Mar. 24, 2023, p. 2.

<sup>1140</sup> Wu Testimony, p. 82.

<sup>1141</sup> *Ibid.*



The COVID-19 Hate Crimes Act and Jabara-Heyer NO HATE Act outlined several steps that the federal government needs to implement to combat anti-Asian hate crimes and called explicitly for the DOJ to:

- Expedite their review of hate crimes;
- Collect and disaggregate data along distinctive characteristics (e.g., race and national origin);
- Expand education programs;
- Establish state-run hotlines and set up state and local government grants;
- Assist States and local jurisdictions to implement the National Incident-Based Reporting System;
- Conduct law enforcement activities or crime reduction programs to prevent, address, or respond to hate crimes; and
- Provide additional remedies for those convicted of the crime.<sup>1142</sup>

While there was widespread and bipartisan support for the bill, some hate crime experts argued that the bill was largely symbolic and would not deter people from committing hate crimes against people of Asian descent. Critics of the bill state that too often, the federal response focuses on what happens after hate crimes have already occurred, and there should be more attention to preventing the crime from happening in the first place.<sup>1143</sup> Columbia University law professor Katherine Franke explained that:

enhancing criminal prosecutions of and requiring greater reporting on hate crimes are interventions that take place after bias incidents have taken place. Education, public messaging – particularly from elected officials – and other community-based programs aimed at reconciliation and repair are more likely to reduce the incidents of hate crimes.<sup>1144</sup>

While the COVID-19 Hate Crimes Act and Jabara-Heyer NO HATE Act authorized several new programs, there were no funds designated for them. The Justice Department told the Commission that OJP did not have discretionary funds available for these new programs and notes that almost all of its funding is prescribed by Congress through the appropriations process.<sup>1145</sup>

On May 20, 2022, on the first anniversary after the enactment of the COVID-19 Hate Crimes Act, the Department of Justice announced a series of actions that would aid in deterring and confronting related bias incidents, including issuing new guidance with the Department of Health and Human Services (HHS) aimed at raising awareness of hate crimes during the COVID-19 pandemic, releasing grant solicitations for programs to create state-run hate crime reporting hotlines and to

<sup>1142</sup> S.937 – (COVID-19 Hate Crimes Act), S.937 – (COVID-19 Hate Crimes Act), <https://www.congress.gov/117/plaws/publ13/PLAW-117publ13.pdf>.

<sup>1143</sup> Li Zhou, “Hate crime laws won’t actually prevent anti-Asian hate crimes,” *Vox*, June 15, 2021, <https://www.vox.com/2021/6/15/22480152/hate-crime-law-congress-prevent-anti-asian-hate-crimes>.

<sup>1144</sup> *Ibid.*

<sup>1145</sup> U.S. Dep’t of Justice, Response to Affected Agency Review, June 20, 2023 [on file].

support community-based approaches to prevent and address hate crimes, and hiring the Department's inaugural Language Access Coordinator.<sup>1146</sup>

The guidance issued with HHS covers federal and state hate crime laws, why public awareness of hate crimes and incidents is important and discusses the lack of data as well as underreporting seen for hate crimes.<sup>1147</sup> The guidance includes 11 strategies to increase public awareness and prevent and respond to hate crimes and hate incidents. These efforts include:

- **Prioritizing Community Outreach** – to provide useful information for engagement with law enforcement, government entities, elected officials, healthcare providers, and community-based and non-profit organizations.
- **Prioritizing Community-Based Responses and Partnerships** – to improve the collection of data for anti-Asian hate crimes and improving training and education of the public education about anti-Asian hate crime.
- **Engaging Healthcare Providers, Clinics, and Health Systems** – to encourage healthcare test assessment tools that identify health systems associated with hate crime incidents.
- **Prioritizing Cultural Competence and Language Access** – to determine the best translations tools to reach people with different educational backgrounds and levels of experience with the legal system.
- **Promoting Allyship and Understanding Intersectional Community Identities** – to assist prosecutors in understanding the perpetrators' motives in the groups subject to hate crimes.
- **Actively Speaking Out Against Hate Crimes and Hate Incidents** – to ensure the community understand that leaders and policy maker denounce hate crime and hate incidents.
- **Creating Public Awareness Campaigns** – to provide clear messages that include principles of language, cultural competence, and community education.
- **Creating Alliances Against Hate** – to create embedded infrastructure in communities to provide resources and rapid response.
- **Promoting Greater Community, Cultural, and Historical Awareness** – to provide resources to meet the needs of diverse groups targeted by hate incidents.
- **Promoting Law Enforcement Education and Training** – to train law enforcement to understand the intersectionality of the communities targeted by hate crime and hate incidents.
- **Providing Resources for Individuals and Communities Experiencing Hate** – to create resources tailored to the need of the affected communities.<sup>1148</sup>

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<sup>1146</sup> Department of Justice, Office of Public Affairs, "Justice Department Announces New Initiatives to Address and Prevent Hate Crimes and Hate Incidents," May 29, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-new-initiatives-address-and-prevent-hate-crimes-and-hate>

<sup>1147</sup> U.S. Dep't of Justice and U.S. Dep't of Health and Human Services, *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, <https://www.justice.gov/file/1507346/download>.

<sup>1148</sup> *Ibid.*

## Performance Efforts

In its FY2021 Annual Performance Report, DOJ lists Strategic Objective 3.2: Combat Discrimination and Hate Crimes, with four total measures:

- 1) Number of Title VII, 42 U.S.C. § 2000e, and Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) 38 U.S.C. §§ 4301–4335, investigations;
- 2) Number of limited English proficiency individuals who accessed department-funded materials in their native language to understand federal hate crimes and anti-discrimination laws;
- 3) Percent of U.S. Attorney’s Offices that meet at least annually with local law enforcement partners and community stakeholders to collaborate on efforts to prevent hate crimes and incidents; and
- 4) Percent of criminal cases addressing civil rights violations, including hate crimes, favorably resolved.<sup>1149</sup>

However, only three measures are directly related to hate crimes. One of the new performance measures for FY 2021 included tracking the number of LEP individuals who access department-funded materials in their native language to understand federal hate crimes and anti-discrimination laws.<sup>1150</sup> In a July 2021 survey, 25 U.S. Attorney’s Offices indicated they coordinated or actively participated in district-wide allegiance against hate, representing 27 percent of offices.<sup>1151</sup> The DOJ reported that in FY 2021, CRT favorably resolved<sup>1152</sup> 96 percent of the Department’s criminal cases addressing civil rights violations, including hate crimes.<sup>1153</sup> While 96 percent is a commendable proportion, this is the percent of resolved cases of all civil rights violations, and the report does not break down the various types of these cases; therefore, it is not possible to determine what percent of hate crime criminal cases were favorably resolved.<sup>1154</sup> Additionally, the Commission was unable to compare these measures to the Department’s FY2020 Annual Performance Report, because it did not include addressing civil rights violations and hate crimes as any of its Strategic Goals.<sup>1155</sup> Lastly, since the DOJ did not make these cases publicly available, the Commission was not able to investigate the outcomes further.

<sup>1149</sup> U.S. Dep’t of Justice, *FY2021 Annual Performance Report*, [https://www.justice.gov/d9/pages/attachments/2022/10/31/fy\\_2021\\_annual\\_performance\\_report\\_1.pdf](https://www.justice.gov/d9/pages/attachments/2022/10/31/fy_2021_annual_performance_report_1.pdf).

<sup>1150</sup> *Ibid.*, 65.

<sup>1151</sup> *Ibid.*, 66.

<sup>1152</sup> Favorably resolved: Disposition of a defendant’s case in which the defendant is found guilty, or any government-endorsed disposition, such as a motion to dismiss a case that the government files. *See* U.S. Dep’t of Justice, *FY2021 Annual Performance Report*, p. 67,

[https://www.justice.gov/d9/pages/attachments/2022/10/31/fy\\_2021\\_annual\\_performance\\_report\\_1.pdf](https://www.justice.gov/d9/pages/attachments/2022/10/31/fy_2021_annual_performance_report_1.pdf).

<sup>1153</sup> *Ibid.*

<sup>1154</sup> *See infra* Table 31 (summary of hate crime cases 2020–2022).

<sup>1155</sup> U.S. Dep’t of Justice, *FY 2020 Annual Performance Report*, [https://www.justice.gov/d9/pages/attachments/2021/04/22/fy\\_2020\\_annual\\_performance\\_report.pdf](https://www.justice.gov/d9/pages/attachments/2021/04/22/fy_2020_annual_performance_report.pdf).

The true challenge in assessing whether the federal government is “doing enough” to combat a rise in hate crimes lies in the absence of proper performance measurements or a program matrix that reviews programs intended on addressing hate crimes. Moreover, the DOJ’s 2021 Performance Measures are ineffective in addressing the recent surge in hate crimes.<sup>1156</sup> In Charles Lehman’s report, “Understanding and Reducing Hate Crimes in New York City,” Lehman detailed the scale of hate crimes in New York City and proposed a focused approach for reducing hate crimes in the city that may be scaled up to some extent to the federal level.<sup>1157</sup> The approach entailed a zero-tolerance strategy, a fully comprehensive messaging campaign, data transparency across the criminal justice system, and a focus on mental illness. Due to the lack of offender data and mental illness issues at the national level, the federal government could consider the first three items as overarching recommendations to address hate crime, while also working to improve data on mental illness concerns among offenders.<sup>1158</sup>

While these proposals may work on some levels, as discussed in Chapter 2, many community stakeholders expressed concern over an increase in police in their neighborhoods and communities.<sup>1159</sup> For instance, Jennifer Wu testified to the Commission:

The Asian community cannot have trust in the local law enforcement if they are not represented and people do not speak their language. There are also mixed messages. When the ADA [Assistant District Attorney] tells someone that they are going to do something, the local police will sometimes say the opposite and say I don’t have faith in the ADA. There are problems there and distrust in the institutions.

We need training and education. We have given training and educations to the DA’s office in Manhattan, but we need more of that. . . . The other thing that victims need is wraparound services. . . . [Victims] need the ability to apply for U visas if they are undocumented. They need help with healthcare. They need help with the media.<sup>1160</sup>

Similarly, Manjusha Kulkarni, executive director of AAPI Equity Alliance and co-founder for Stop AAPI Hate explained:

I can tell you that truly combating anti-Asian hate requires a comprehensive approach and not simply one that primarily relies upon criminal law enforcement. Rather, it must include civil rights enforcement, community safety measures, and education equity. Only then will the American promise of civil rights become reality for Asian Americans.<sup>1161</sup>

<sup>1156</sup> Ibid.

<sup>1157</sup> Charles F. Lehman, “Understanding and Reducing Hate Crimes in New York City,” *Manhattan Institute*, Mar. 2022, <https://media4.manhattan-institute.org/sites/default/files/lehman-understanding-reducing-hate-crimes-nyc.pdf>.

<sup>1158</sup> Ibid.

<sup>1159</sup> See *supra* notes 858-882 (discussing increasing law enforcement presence).

<sup>1160</sup> Wu testimony, *Anti-Asian Racism Briefing*, pp. 85-86.

<sup>1161</sup> Kulkarni testimony, *Anti-Asian Racism Briefing*, p. 103.

As many of the panelists noted at the Commission’s briefing, law enforcement plays a critical role in combatting hate crimes, but only through collaboration with legislators, prosecutors, and community stakeholders can the nation hope to see an end to these heinous acts. SFPD Chief Scott agrees with this necessity, stating:

Hate crimes convey a message to both the victims and their group or perceived group, that they are not welcome and not safe, and as such, these crimes are an attack on the fundamental rights of our communities at large. So, it’s vital that law enforcement agencies, prosecutors, and the community that tries to combat these types of crimes recognize what hate crimes are and respond appropriately.<sup>1162</sup>

At the Commission’s briefing, many panelists testified that to combat hate crimes and discrimination, there also needs to be a strong messaging campaign from local, state, and federal officials against anti-Asian sentiment. Nationally, we have seen government officials denounce acts of bigotry and intolerance, but without specific actions and follow through, these statements remain nothing more than political rhetoric.

Jo-Ann Yoo, executive director for the Asian American Federation, explained to the Commission that:

Concrete actions must begin today if we aim to prevent more attacks from occurring again. We urge the following: one, investing in the strengthening and expansion of local networks so victims have ready access to community-based places where they can report attacks, receive support services, and take safety trainings and workshops in their own languages. We need system changes to correctly label and track violence for every category including religious identification.... Statements of solidarity matter only if they are backed up with concrete action. Our leaders can and must do more.<sup>1163</sup>

As this report has shown, the federal government has made some effort to address the rise of anti-Asian hate crimes during the pandemic. John Yang, president and executive director for Asian Americans Advancing Justice – AAJC, testified to these efforts and stated:

Legislation such as the COVID-19 Hate Crimes Act, the Jabara-Heyer NO HATE Act, has been helpful to many in our community. It’s provided grants to our community groups fighting hate. It includes innovative models like restorative justice that many communities embrace. It recognizes that reporting hate should happen not only through law enforcement but health services. Those are examples of where the federal government is making a difference and responding. While the COVID-19 Hate Crimes Act does provide examples of where the federal government can help, federal government can do more.<sup>1164</sup>

<sup>1162</sup> Scott testimony, *Anti-Asian Racism Briefing*, p. 149.

<sup>1163</sup> Yoo testimony, *Anti-Asian Racism Briefing*, pp. 28-29.

<sup>1164</sup> Yang testimony, pp. 41-42.

A persistent challenge when it comes to combatting hate crimes continues to be the lack of comprehensive and transparent data. At the federal level, DOJ's official database lags behind many state and city databases when it comes to capturing and reporting hate crime numbers, especially as local agencies struggle with the transition to the NIBRS system.<sup>1165</sup> In 2019, the Commission on Civil Rights provided recommendations on improving the quality of hate crime data:

Congress should pass legislation and provide adequate funding that would incentivize local and state law enforcement to more accurately report hate crimes to the FBI, and promote greater transparency and accountability, which would aid in building community trust. Congress should also pass legislation to ensure that federal law enforcement agencies collect and report their hate crime data to the FBI and that states are accurately reporting hate crime data they receive from local law enforcement agencies in their jurisdiction. The federal government should require, as a condition for federal funding, that state and local law enforcement agencies report their data to the FBI, publish data on a quarterly basis, undergo data auditing for accuracy, and work with affinity groups to report hate crimes to the federal government even if a victim does not want to prosecute.<sup>1166</sup>

In the three plus years since the publication of that report, there has not been clear progress in the advancement of data collection. While the transition to the use of NIBRS may eventually provide a more in-depth look into reported hate crimes, as long as reporting remains voluntary, the picture at the federal level will be murky. Moreover, the lack of comprehensive data at the federal level makes developing appropriate performance measures to assess the federal response to hate crimes difficult. The improvement of data collection must become a mainstay priority for the FBI and the Justice Department. Following this, true data transparency is needed in which arrest and conviction data are made available to the public for research purposes as well as to be used as accountability measures.

Manjusha Kulkarni testified that there are many steps that federal, state, and territory agencies can do to combat anti-Asian hate crimes and protect individuals' civil rights.<sup>1167</sup> Kulkarni posited that agencies. 5

receive hundreds of thousands of complaints every year, yet few agencies engage in the type of public data collection, research, and reporting needed to inform effective civil rights enforcement.... By contrast, federal law requires the collection of hate crimes data and the data informs law enforcement administration operations managements and reveals ongoing

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<sup>1165</sup> See *supra* note 434-444.

<sup>1166</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019, p. 226, <https://www.usccr.gov/files/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>1167</sup> Kulkarni Testimony, p. 101.

and emerging trends. We for this reason strongly recommend requiring federal civil rights agencies to collect and report key data related to civil rights enforcement and the Attorney General to annually publish this data.<sup>1168</sup>

While hate crimes happen at the local level, the federal government plays a critical role in combatting, reporting, and preventing hate crimes. Additionally, Cynthia Choi, co-executive director for Chinese for Affirmative Action and co-founder for Stop AAPI Hate testified that:

The federal government has a duty and an obligation to step in to enforce civil rights and to ensure all American are afforded equal opportunities and are treated with dignity and respect regardless of race, ethnicity, and immigration status.... We strongly support efforts that entail auditing coordination across agencies to ensure our communities can benefit fully from these programs and policies, in particular that enforce our civil rights. Which also includes prioritizing language access. And finally, we want to stress that it's important that we have sustained and resource collaborations with community partners so that our government engages meaningfully with our – and understands the community's diverse experiences with bias and discrimination so that they're fully understood and meaningfully addressed.<sup>1169</sup>

Furthermore, Michael Yaki, former Commissioner at the U.S. Commission on Civil Rights, suggested that while passing the COVID-19 Hate Crimes Act was a step in the right direction, it was necessary to ensure its practical implementation. One such measure would be for federal agencies to work with state and local governments to launch public education campaigns to make progress possible.<sup>1170</sup>

Other recommendations include expanding Title II of the Civil Rights Act to include retail stores and other businesses where discrimination occurs.<sup>1171</sup> Title II currently protects against discrimination in public accommodations, but has been limited to restaurants, hotels, and exhibition halls or places of entertainment.<sup>1172</sup> This means that establishments like grocery stores, markets, banks, salons, and other businesses may not be covered under Title II which is significant; since as shown in Chapter 1 of this report, discrimination against Asian Americans during the COVID-19 pandemic occurred at many different types of business establishments.<sup>1173</sup>

Additionally, as this report has detailed, language access is a significant barrier for Asian victims when reporting a hate incident or hate crime. Therefore, the role of a language access

<sup>1168</sup> Ibid., pp. 101-102.

<sup>1169</sup> Choi testimony, pp. 73-74.

<sup>1170</sup> Michael Yaki, former USCCR Commissioner, Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm'n on Civil Rights, Mar. 24, 2023, p. 157.

<sup>1171</sup> Kulkarni Testimony, p. 102.

<sup>1172</sup> 42 U.S.C. § 2000a.

<sup>1173</sup> See *supra* Table 5 (data showing where anti-Asian incidents and discrimination occurred).

coordinator at the Justice Department should be codified into federal law to ensure that all individuals have equal access to justice and access to federal programs and benefits regardless of language access.<sup>1174</sup>

This report highlights the many challenges the federal government faces when trying to prevent and combat hate crimes. Through the Commission's independent research and public briefing, there are many recommendations and strategies that federal agencies can implement to ensure that all individuals' civil rights are being protected. The Commission heard from a diverse group of policy and research practitioners, federal entities, and community stakeholders whose ideas and perspectives highlighted the importance of working collaboratively to promote equitable policies to address anti-Asian violence. Their recommendations centered around recurring themes, such as investing in expanding local network capacity and language access that would allow the community more access to report an attack.<sup>1175</sup>

Furthermore, other recommendations included improving data collection systems, providing safety training and workshops in the respective languages of the community, and expanding federal funding for community advocacy groups fighting hate crimes.<sup>1176</sup> Additionally, agencies need to review the COVID-19 Hate Crimes Act to ensure that the law fulfills its intended purpose and fully represents the needs of the community.<sup>1177</sup> These actions will help to increase education and raise awareness of this critical issue to combat anti-Asian hate crimes. Lastly, these recommendations can also encourage better community engagement and inspire a commitment to positive change in this crucial issue.

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<sup>1174</sup> Kulkarni Testimony, p. 102.

<sup>1175</sup> Yoo testimony, p. 28.

<sup>1176</sup> Yoo testimony, pp. 28, 58-59; Yang testimony, p. 40.

<sup>1177</sup> Yaki testimony, p. 157.



## Findings and Recommendations

### Findings

- A major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent is the lack of comprehensive data. Without mandatory national data collection and training law enforcement on how to accurately identify and report hate crimes, preventing these crimes is substantially challenging.
- The transition to the NIBRS data collection has been slow for some agencies: for 2021, the number of participating agencies within the FBI hate crime database was 11,834, compared to the 15,138 participating agencies for 2020 data, and many of the agencies that have not submitted 2021 data are the largest jurisdictions.

### Recommendations

- Prosecutors and law enforcement should vigorously investigate and prosecute hate crimes and harassment against Asian Americans.
- First responders should be provided with training aimed at teaching a clear understanding of what constitutes a hate crime in their jurisdiction.
- Federal, state, and local law enforcement agencies and victim services need to identify critical deficiencies in Limited English Proficient (LEP) programs for individuals who need language assistance.

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## Statement of Commissioner Adams

I voted in favor of this report because I share the Commission's conviction that prosecutors and law enforcement officials should vigorously investigate and prosecute crimes against all Americans. This Commission was stalled for months because an insufficient number of Commissioners shared my view.

Our attention turns after this report to how the undeniable spike in crime over the last few years affected minority communities in a significant way. These two reports – this one and the forthcoming report on the crime increase – should, in my view be viewed as complementary. There are some refinements that I would like to see in our methodology, as I outline below. Though I voted for this report, it has significant faults. I write to document my concerns about its methodology, assumptions, and omissions.

### **Methodological Concerns**

#### *Information Quality Concerns: Federal Data Policy Has Impaired Local Crime Reporting*

The report correctly identifies a major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent: a lack of comprehensive and reliable data.

While this deficiency has many causes, the report properly draws attention to the FBI's transition to the National Incident-Based Reporting System (NIBRS) in January 2021.<sup>1</sup> This transition has slowed the compilation and reporting of data by state and local agencies, due to a significant reduction in participating local agencies. In 2021, 11,834 such agencies participated in the FBI's hate crimes database. This is a 22% decrease from 2020, where 15,138 agencies submitted such data.

Furthermore, many of the agencies that did not submit data to NIBRS in 2021 were among the largest jurisdictions in the country.

#### *Information Quality Concern: Potential Barriers to Reporting AAPI Hate Crimes*

The report also notes that first responders, including law enforcement officers, are often insufficiently trained to identify hate crimes. Local law enforcement officials, therefore, may over or under-report the number of hate crimes occurring in their jurisdictions because they lack a clear understanding of what constitutes a hate crime.

Moreover, because many AAPI victims of such crimes may have limited English language proficiency, they may be less likely to initiate reports with law enforcement officials. As the report makes clear, the U.S. Department of Justice has only recently launched language

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<sup>1</sup> Commission report at 15, footnote 52 (Federal Bureau of Investigation, "Crime Data Explorer," <https://cde.ucr.cjis.gov/LATEST/webapp/#!/pages/explorer/crime/hate-crime>). Therefore, additional reasons exist to question the completeness of crime statistics presented to the Commission.

assistance and related outreach programs to assist local and state law enforcement in serving victims with limited English proficiency.

This lack of objective data has apparently contributed to the Commission's decision to award undue weight to self-reported statistics collected by non-profits that conflate "hate incidents" with "hate crimes." Hate incidents are not hate crimes. Discourtesy, boorish behavior, rudeness and even misdirected anger may be unsettling, but they are usually not crimes.

Naturally, I also agree with the reports finding that prosecutors and law enforcement should vigorously investigate and prosecute violations of federal criminal laws. As I have written about extensively for more than a decade, that is sadly not the case. There is no subset of Americans who enjoy protection from racially motivated attacks while other Americans do not. Sadly, some continue to be vociferous opponents of equal enforcement of the law in this regard.

*Deficiencies in statistics considered by the Commission*

The Commission's report relies overwhelmingly on information from the non-profit group Stop AAPI Hate, which the report presents as a neutral, impartial organization. It is not. This group enjoys support (financial and otherwise) from a number of outside organizations that I consider unreliable and extraordinarily biased, to the point of compromising any hope of objectivity.

Potential bias aside, the Commission's report has adopted Stop AAPI Hate's flawed methodology. That organization has generated much alarm about targeted Asian hate crimes by publishing "self-reports" of "hate incidents" by victims.

Hate incidents are not hate crimes.

Hate incidents are inherently subjective and often involve speech or the expression of opinion alone. Hate crimes are defined by the FBI as "a traditional offense like murder, arson, or vandalism with an added element of bias,"<sup>2</sup> while "hate incidents" are biased acts that do not rise to the level of a crime, including:

- Name calling, using racial, ethnic, or other slurs to identify someone, or using degrading language;
- Insults;
- Displaying hateful material on your own property;
- Posting hate material that does not result in property damage;

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<sup>2</sup> Commission report at 7, footnote 6 (*See* FBI, "Hate Crimes," <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (last accessed June 3, 2019)).

Distribution of materials with hate messages in public places.<sup>3</sup>

The Commission’s report relies on “hate incident” reports from Stop AAPI Hate. It should not. For example, the organization reported the number of total incidents from March 2020 to December 2021 was 10,905, but the overwhelming majority of the incidents did not meet the legal definition of a hate crime and 66.9 percent were verbal statements, not actual physical violence.<sup>4</sup>

In other words, Stop AAPI Hate has created a false equivalency between non-violent “hate incidents” and “violent hate crimes,” and invoked a specter of violence regardless of the facts. Indeed, at least 58% of incidents reported to the non-profit took place in New York or California, where violent crimes against Asian Americans would surely make national news.

It is unfortunate that the Commission has accepted Stop AAPI Hate’s invitation to exploit the true threat of hate crimes by diluting the problem with reports of bad behavior, rudeness and idiots that don’t treat other people with the respect they deserve.

This increasing coarseness in our nation has many causes. A government cannot impose civility. Our constitutional traditions of liberty and free speech leave no room for policing rudeness and stupidity. More adherence to the Golden Rule, to treat others the way one wishes to be treated, would go a long way to reducing these so-called “hate incidents.” As shared values like the Golden Rule vanish from our culture, there will be many more incidents of rudeness and offense for Stop AAPI Hate to add to their catalog. Their current dossier contains evidence of a fractured culture, and very little of actual crimes.

*Stop AAPI Hate and its affiliates have improperly conflated criticism of the Chinese government with hate crimes*

In addition to allowing Stop AAPI Hate to conflate hate crimes and hate incidents, the Commission applied insufficient rigor in determining whether self-reports documented hateful speech in the first place.

Witness testimony to the Commission made much of terms that were in common use throughout 2020 to describe the COVID-19 virus. The virus was commonly referred to with neutral geographic terms, such as “the Wuhan Virus.” This Commission is overly credulous in accepting Stop AAPI Hate’s categorization of such terms as “hate incidents.”

<sup>3</sup> Commission report at 19, footnote 96 (Danville, California, “What is the Difference Between a Hate Crime and a Hate Incident?” <https://www.danville.ca.gov/965/What-is-the-Difference-Between-a-Hate-Cr.>).

<sup>4</sup> Commission report at 11, footnote 34 (Aggie J. Yellow Horse, Russell Jeung, Ronae Matriano, “Stop AAPI Hate: National Report, 3/19/20-12/31/21”, Mar. 22, 2022, page 5, <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf>).

As Commissioner Heriot, in footnote 20 of her Dissenting Statement, states:

There is a long history behind naming diseases for the place they were thought to be first detected—the Spanish Flu, the Asian Flu, Rocky Mountain Spotted Fever, Lyme (Connecticut) Disease, African Sleeping Sickness, West Nile Disease, Lassa (Nigeria) Fever, Middle East Respiratory Syndrome (MERS), Argentine Hemorrhagic Fever, Pontiac (Michigan) Fever, Rift Valley Fever, Marburg (Germany) Virus Disease. Ebola is named for a river in the Democratic Republic of the Congo. Zika is named for a forest in Uganda. Tularemia (or rabbit fever) is named for Tulare County, California.

Ponder the poor American Legion which will forever be associated with the 1976 outbreak at their convention in Philadelphia that killed twenty-nine Legionnaires. It is undisputed that COVID originated in China one way or another, and there is nothing controversial in speaking the truth, whether the Chinese government and their advocates say otherwise.

Stop AAPI Hate, for example, ignores these basic historical facts. I am alarmed that witnesses and commissioners alleged (and the report accepted) that official government responses to actions of the Peoples Republic of China are a pretext for discrimination against Chinese Americans.

Nonsense. In the fullness of time, we have learned that criticism of the regime and its coverup of the facts regarding COVID has, to the contrary, been wildly inadequate. The lack of transparency, endemic to authoritarian regimes like China's, led to the world only learning facts about the early outbreak of COVID years later.

After one Commissioner inaccurately stated that the Texas state legislature was considering a ban on “Chinese Americans” owning property, Dr. Russell Jeung, a professor of Asian-American studies at San Francisco State University and co-founder of Stop AAPI Hate stated that “policies implemented at the state level, at the local level, [and] at school boards” sanction “further violence” against AAPI individuals and therefore encourage hate crimes directed at this population. (Jeung did not explain how school boards could prohibit anyone from owning property.)

Testimony that legislative responses to the actions of the People's Republic of China encourages hate crimes against Asians is one of many instances that has led me to conclude that Stop AAPI Hate uses the threat of hate crimes to deflect from valid criticism of the Chinese communists. Why?

Beyond the testimony of Stop AAPI Hate witnesses to the Commission, the group's *modus operandi* supports my conclusion. This group appears to categorize references to COVID-19's geographic origins as “hate incidents” worthy of inclusion in its database of self-reports. Then it uses such incidents to paint a picture of Asian Americans under the threat of violence – despite the fact that Stop AAPI Hate admits that nearly 70% of the “hate incidents” reported to the group

during its first few months of operation were comprised of verbal harassment – verbal harassment which can include merely calling COVID-19 “the Wuhan virus.”

Furthermore, such attempts to deflect scrutiny of the geographic origin of the virus obscure the Chinese government’s very real role in suppressing information about the virus.

This sounds more like a campaign to suppress criticism of one of the most authoritarian regimes on the planet, not something that should be a legitimate concern of this Commission.

### **Omissions in the Commission’s Report**

However, most of the faults I found with the report are related to what was omitted, rather than what was included in the report.

#### *The Commission gathered insufficient information to prevent attacks against Americans of Asian descent*

Throughout the hearing process, the Commission displayed a marked lack of curiosity about the perpetrators of hate crimes targeted at Asian Americans. Hate crimes can have many causes, and a major study in the American Journal of Criminal Justice that analyzed 1992-2014 NIBRS data found support for the “minority-specific model” of crime, which posits that hate crimes against different racial minority groups are likely to show significant differences.<sup>5</sup> There is a clear need for analysis of NIBRS data after 2014, which would shed light on the many sociological and economic factors that may contribute to hate crimes in the United States.

In my opinion, the Commission showed nearly as much interest in testimony about how criticism of the PRC regime results in violence against Asian Americans as it did in the details of actual hate crimes suffered by AAPI individuals in the United States.

Understanding such details seems to me to be critical to preventing further violence. Deflecting criticism from the Chinese regime seems a task few would want to undertake, yet the Commission managed to find two witnesses to do so, both of whom made statements that I find questionable.

Similarly, the Commission chose to ignore expert opinions on crime prevention. For instance, Charles Lehman, a crime analyst from the Manhattan Institute, stated in both his written and oral testimony that:

[t]he best way to combat hate crime is not by targeting hate, e.g. through education or content moderation, but to target crime through aggressive law enforcement... [h]ate crime offenders are like other criminals, as opposed to being specialists in hate crime.

<sup>5</sup> Yan Zhang, Lening Zhang, Francis Benton. Hate Crimes against Asian Americans. *American Journal of Criminal Justice* Vol. 47, p. 441-461 (2022), <https://doi.org/10.1007/s12103-020-09602-9>.

The data bear this out, one survey of convicted hate crime offenders found that 87 percent had a prior conviction, including 60 percent with violent conviction... [t]he Criminal Justice System, including the Federal Criminal Justice System, is well equipped to combat hate as crime.<sup>6</sup>

He went into much detail as to why this is the case, but his views and arguments on this specific point, which was his main point, are nowhere included the report -- and the cites attributed to him in the report addressed issues that were wholly unrelated to the main points in his testimony.

This raises issues internal to the operation of the Commission, namely elevating some testimony and disappearing other testimony.

*Commission Staff Improperly Prevented Commissioners from Exploring Other Incidents of Bias Against Asian Americans*

Similarly, internal procedures within the Commission stonewalled inquiry into other incidents of bias against Asian Americans.

At the Commission's September 2023 Business Meeting, the Commission voted unanimously for the original concept paper for this report. The Commission had previously rejected proposals from Commissioner Kirsanow to develop concept papers that would explore anti-Asian bias in academic admissions. I and other Commissioners who share Commissioner Kirsanow's interest in this subject voted for this concept paper because its proposal included key phrases that by their text encompassed discrimination against Asian Americans in academic admissions. These key phrases in the concept paper were [*emphasis added*]:

This follow-up project will examine federal enforcement through the Civil Rights Act of 1964, ... and other federal statutes, Executive Orders, and regulations, as Commission resources may permit, addressing issues of race, color, national origin, administration of justice, and religion related to the rising reports of anti-Asian and Asian American violence and discrimination in the United States as reported since 2019, the year prior to the onset of the COVID-19 pandemic. [Concept Paper page 1]

To set these examinations into context, the project will examine the historical and current stages of non-Asian America's relationship with, and beliefs about, Asian immigrants and Asian Americans. [Pages 1-2]

This project will provide an overview of the historical root causes of anti-Asian racism in America, how anti-Asian racism is perceived by communities, and whether it is enforced or recognized by the justice system. It will, through interviews with organizations that are

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<sup>6</sup> Charles Lehman, Fellow at the Manhattan Institute, testimony, The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm'n on Civil Rights, Washington, DC, Mar. 4, 2023, transcript, pgs. 17-21.



representative of the diversity within the Asian American community, and review of sociological and other academic studies, examine the unique circumstances of the subgroupings of the Asian American community by places of physical and/or cultural origin, the recently immigrated and the long-standing Asian American components of the communities, and the individual and collective stereotypes that each has confronted in their past and present. [page 4]

This investigation will also focus upon the extent to which federal enforcement, or lack thereof, of statutes, Executive Orders, regulations, policies, and programs created since the post-WWII era that attempt and appear either to reduce or exacerbate anti-Asian racism under the Commission’s jurisdiction over issues related to race, color, national origin, administration of justice, and religion. As staff resources may permit, the project shall attempt to determine instances in which government failure to act constituted or constitutes implicit policy which affected or affects Asian Americans. The extent of sources of authority and the time period covered shall be determined by the availability of Commission resources. [page 5]

The report will discuss the apparent outcomes, as measured in part by available statistical analysis and other measures, of federal enforcement, or the lack thereof, on behalf of Asians and Asian Americans. [page 5]

**Finally, and most importantly, we will look to the representative communities to define what they believe, see, or define as bias against their communities.** [page 5]

These phrases were instrumental in garnering support from Commissioner Gilchrist, Commissioner Heriot, Commissioner Kirsanow, and myself. Yet, somehow along the way, ideological intransience prevented the fulfillment of this stated objective. The intransigence drifted into farce at our hearing, presided over by Commissioner Kirsanow as de facto acting chair, when Staff Director Morales interrupted the proceedings to shut down Commissioner Magpantay’s questions to a witness by claiming some vague authority derived from 45 CFR 701.11 – which merely states that a Chair will set an agenda for a meeting “after consulting with the Staff Director” – in order to prohibit further discussion of anti-Asian bias in academic admissions.

Director Morales stated that witness testimony is limited to the “four corners contained in the concept paper” and that an amendment to explicitly add anti-Asian bias in academic admissions to the concept paper had been defeated. Just as his authority to intervene was tenuous (at best), so was his characterization of the “four corners contained in the concept paper,” as well as the import of the amendment that was defeated.

As the anti-Asian bias concept paper was being considered in September 2022, it became apparent, after initially garnering support from our side of the Commission based on the language he had provided, that the Commissioner who was the original proponent of the anti-

Asian bias concept paper did not want the Commission report to include the issue of anti-Asian bias in academic admissions – despite what the text of the paper he had proposed stated.

Commissioner Kirsanow then offered an amendment to make explicit what was implicit in the text of the concept paper, that Anti-Asian bias in academic admissions would be addressed in the report. Although that amendment was defeated by a 4-4 vote, it does not alter the fact that the chartering document still passed with the key phrases encompassing anti-Asian bias in academic admissions still in it. That document would never have been approved by the Commission had it not included those phrases.

Staff Director Morales lacks any authority to prevent Commissioners from questioning witnesses. He lacks authority to interpret the scope of a concept paper passed by the Commission. Even in the absence of a chair, his position as Staff Director does not confer authority to unilaterally direct Commission business.

Director Morales’s intervention prevented the Commission from executing its charge to “look to the representative communities to define what they believe, see, or define as bias against their communities.” Witnesses from California – one of the states identified by Stop AAPI Hate as a hotspot for “hate incidents” – testified that “persistent discrimination against Asian American students in education, justified under the names of diversity, equity, and race-based affirmative action is a much more salient and consequential form of anti-Asian discrimination.”<sup>7</sup>

Other commission witnesses falsely stated that the majority of Asian Americans support affirmative action. Professor Jeung stated that “Asian Americans support affirmative action,” when polling, in fact, shows that 76% of all Asian adults oppose the use of race in college admissions decisions.<sup>8</sup> Such ideologically motivated fairy tales should have led the Commission to give additional weight to the testimony of the many Asian Americans who testified to this Commission about the pervasive anti-Asian discrimination that occurs in academic admissions.

None of the written and oral testimony, or lines of inquiry about this issue was covered or mentioned in the report, but it should have been. Therefore, this statement documents several omissions that I find germane to the stated purpose of this concept paper.

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<sup>7</sup> Wenyuan Wu, Executive Director, Californians for Equal Rights Foundation, testimony, The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm’n on Civil Rights, Washington, DC, Mar. 4, 2023, transcript, p. 75.

<sup>8</sup> Pew Research <https://www.pewresearch.org/race-ethnicity/2023/06/08/asian-americans-hold-mixed-views-around-affirmative-action/>

*Remarks from Former Assistant Attorney General for Civil Rights, Eric Dreiband*

The following exchange between Commissioner Magpantay and former Assistant Attorney General for Civil Rights Eric Dreiband proceeded as follows at the hearing [*emphasis added*] – up until the moment the Staff Director essentially shut the hearing down:

COMMISSIONER MAGPANTAY: What is an Asian?

MR. DREIBAND: What is an Asian? Asians typically refer to people whose ancestry or national origin is from the continent of Asia.

COMMISSIONER MAGPANTAY: The reason why is that it is a very large and diverse community, which some segments encounter poverty, limitations on proficiency, and I'm just curious in the court papers if it is recognized the nuance and diversity that we seek in America, like our schools should be – you know, skin color, whatever, but there is a diversity of experience and insights, isn't there, within the Asian community?

MR. DREIBAND: Well, of course there is, and that's why this whole notion of grouping populations of people together the way many colleges, and universities, and other institutions today are doing as, quote, Asians, I think is shameful, disgraceful, and illegal.

So, yes, there is a huge range of diversity among people whose ancestry is from Asia, among people who are from East Asia, or South Asia, or various part of Asia, and I think it's horrible that our institutions in this country today treat these individuals as if they are part of some monolithic group and then subject them to pervasive discrimination.

And it's even worse because we're talking typically about 18-year-old children who are applying to further their education at colleges and universities throughout this country, many of whom come from very poor families, many of whom are first generation arrivals to this country, and they are lumped together and disadvantaged by Ivy League institutions, by all kinds of institutions in this country, and it is a total disgrace in my opinion, and it's illegal, and immoral, and wrong, and should stop.

COMMISSIONER MAGPANTAY: And that's in your papers?

MR. DREIBAND: What?

COMMISSIONER MAGPANTAY: And that's in your papers, your litigation papers, yes?

MR. DREIBAND: Well, yeah, in the cases that I mentioned, yes, we made those allegations, yes.<sup>9</sup>

COMMISSIONER MAGPANTAY: Thank you.

[Staff Director Morales then interrupted Commissioner Magpantay to allege that the “four corners contained in the concept paper” were being violated, even though as pointed out above the actual text of the concept paper as passed encompassed the issue Commissioners and witnesses were discussing.]

*Remarks from Diane Yap, founding member of the Friends of Lowell Foundation*

Diane Yap, a prominent activist who has opposed attempts to reduce the number of Asian students at magnet high schools in San Francisco, testified in support of both Mr. Dreiband’s and Mr. Lehman’s viewpoints about anti-Asian Hate Crimes and Bias<sup>10</sup> as follows [*emphasis added*]:

Even at Harvard, an Asian applicant with a 25 percent chance of getting in would have a 95 percent chance if he were only able to check the African American box instead. Nothing else about him would have to change.

The role of the government is not and should not be to put the thumb on the scale in order to produce racially proportionate outcomes. The goal should not be equal outcomes or equity but rather equal opportunity. The government's role is to ensure that no one faces discrimination on the basis of race.

On the matter of hate crimes, that means better crime prevention generally in the form of increased police presence, surveillance of hotspots, predictive policing, and especially imprisonment of repeat offenders.

On the issue of affirmative action, that means recognizing that such policies discriminate against Asians in favor of objectively less qualified applicants. If you believe that underrepresented groups deserve special help, then you also believe that there are overrepresented groups that deserve to be discriminated against. These are inextricably linked, and the latter is clearly unconstitutional.

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<sup>9</sup> Eric Dreiband, former Assistant Attorney General for Civil Rights, testimony, *The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm’n on Civil Rights*, Washington, DC, Mar. 4, 2023, transcript, pgs. 179- 181.

<sup>10</sup> See discussion of Mr. Lehman’s testimony at page 5.

If the Supreme Court bans race-based affirmative action, it is the duty of the government to enforce the ban as vigorously as it once enforced *Brown v. Board of Education*.<sup>11</sup>

Ms. Yap was only cited once in the report, a shameful omission by the original drafters. Worse, the lone mention was only to recite a specific incident of Anti-Asian violence that she mentioned, and nothing was cited related to her views regarding Anti-Asian bias, hate crimes, or her opinions on how to combat them. Such bias in drafting Commission reports has to end, one way or another.

*Remarks from Wenyuan Wu, Executive Director, Californians for Equal Rights Foundation*

Dr. Wenyuan Wu, a community organizer in California, shared the views of other witnesses that anti-Asian Hate Crime is best targeted by increasing efforts to reduce crime in general, and that bias against Asians in academic admissions has a larger impact on the broader AAPI community than hate crimes or hate incidents. She testified that:

Number one, criminal incidents targeting Asian Americans are egregious and must be addressed in the context of rising threats to public safety in general.

Number two, framing anti-Asian hate crimes in a narrative of systemic racism or systemic inequity misleads the public on methodological and moral grounds.

Number three, persistent discrimination against Asian American students in education, justified under the names of diversity, equity, and race-based affirmative action is a much more salient and consequential form of anti-Asian discrimination...

In short, when we situate crimes targeting Asian Americans in the broad context of increases in violent crimes and decreases in the capacity of law enforcement to adequately address crimes, the wave of Asian hate is part and parcel of general crime patterns...

Last but not least, if policymakers and observers are serious about identifying and tackling discrimination against Asian Americans, they must confront the elephant in the room: systemic and ongoing anti-Asian discrimination in education through the practice of race-conscious admissions...

Racial preferences for the so-called under-represented minority students at elite colleges come almost entirely at the expense of Asian Americans...

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<sup>11</sup> Diane Yap, founding member of the Friends of Lowell Foundation, testimony, *The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm'n on Civil Rights*, Washington, DC, Mar. 4, 2023, transcript, pgs. 34-35.

[T]o reduce violence targeting Asian Americans, policymakers should devise solutions to improve public safety and support law enforcement.

On the other hand, if public policy decisionmakers are committed to combating discrimination and bias against Americans of Asian descent, they should not ignore the prevalence of race-conscious education policies, which disproportionately harm Asian American students.<sup>112</sup>

Dr. Wenyuan Wu's viewpoints, comments and statistics, either in her written or oral testimony, were not cited anywhere in the report.

*Remarks by Lee Cheng, Co-Founder of the Asian American Legal Foundation*

Lee Cheng, provided written and oral testimony that buttressed the view that anti-Asian hate crime is best targeted by increasing efforts to reduce crime in general, and that bias against Asians in academic admissions has a larger impact on the overall Asian community than hate crimes or hate incidents. He testified:

The traditional racism based on racial animus has been joined by an ugly cousin, racist discrimination and violence that is supposedly benign. Most notably in recent years, reportedly benign discrimination helped advance redistributionist equity efforts seems to have supplanted ignorance-based animus as the source of institutionalized discrimination against Asian Americans...

The same attitudes exclude Asian Americans de facto, if not officially, from being recruited under DEI programs in employment or other business contexts as well as for a growing number of governmental programs.

But the horrifying surge of violence that Asian Americans face in the present appears only to be driven partly by racism by both Whites and non-Whites... The answer lies in deterring and stopping crime in bad acts and bad actors and not to focus only on things called hate crimes.

Focusing on hate misses the forest for the trees... Logically the increase in violent crimes against Asian Americans is predominantly due to a surge in violent crime overall, particularly in large American cities...

As previously mentioned, the majority of crimes against Asian Americans and shocking and dismaying images of brutality that we see daily are not apparently caused by racial animus but are largely due to changes in criminal justice. We've heard from Dr. Wu

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<sup>12</sup> Wenyuan Wu, Executive Director, Californians for Equal Rights Foundation, testimony, The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm'n on Civil Rights, Washington, DC, Mar. 4, 2023, transcript, pgs. 74-81.

earlier that restorative justice initiatives in states like California have resulted in -- in the release of tens of thousands of convicted felons and the decriminalization or downgrading of many crimes previously considered and prosecuted as felonies...

The focus of criminal justice reform appears to be on those who commit crimes and the race of those who commit crimes at the expense of the rights of victims and the families of all communities... In the criminal justice arena, the gathering and reporting of crime statistics have been overhauled to focus on hate crimes, masking the increase in violent crimes that actually drives the increased violence against Asian Americans and everyone...

In my opinion, the proper role of the federal government is to uphold the dearly won constitutional protections for individuals to avoid discrimination based on immutable characteristics. Of late, the government has not only abdicated that duty but facilitated injustice. A high profile example of the educational context involves the decision by the current administration to have the Solicitor General's Office support Harvard's bogus claim that its admissions policies do not discriminate against Asian Americans.”<sup>13</sup>

Like Wenyuan Wu, Mr. Cheng was disappeared by the drafters of the report and thus his policy statements, in either his written or oral testimony, are not cited anywhere in the report.

No Dr. Wu, no mention of COVID origins, and no mention of Mr. Cheng. The report airbrushes away inconvenient figures out of the report.

The airbrushing gets worse.

*Testimony of Devon Westhill, General Counsel of the Center for Equal Opportunity and former Assistant Secretary for Civil Rights at the U.S. Department of Agriculture.*

Such airbrushing is not limited to AAPI witnesses. Noted civil rights expert Devon Westhill was also disappeared out of the report like all the other opinions and events that are uncomfortable to the drafters. Never mind that Westhill was the former Assistant Secretary for Civil Rights at the U.S. Department of Agriculture and President and General Counsel of the Center for Equal Opportunity. In his written and oral testimony, Westhill argued that the federal government’s current focus on equity “makes the federal government one of the great purveyors of discrimination against Asian Americans...” He stated:

My invitation to participate in this briefing [regarding the Federal Response to Anti-Asian Racism in the United States] requested I address the federal response to anti-Asian

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<sup>13</sup> Lee Cheng, Co-Founder of the Asian American Legal Foundation, testimony, The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm’n on Civil Rights, Washington, DC, Mar. 4, 2023, transcript, pgs. 91-95.

racism in the United States. Sadly, as I lay out, the federal government is one of the great purveyors of discrimination against Asian Americans and other accomplished ethnic groups in this country via its equity agenda...

My primary concern today is how the federal government regards the civil rights of Asian Americans and that of other Americans who, as a result of their racial or ethnic identity, are treated differently, contrary to the American guarantee of equal protection under the law...

Just last month, and we heard earlier today in this briefing, President Biden signed yet another EO on advancing government-wide equity. Vice President Kamala Harris expressed on her official Twitter account her thoughts behind the motivation for the directive, quote, "America is the promise of equity and justice for all. Today, President Biden signed an executive order that puts our nation one step closer to achieving that promise," end quote. It was a telling admission that the current administration has perhaps less commitment to our pledge of allegiance's promise of liberty and justice for all.

Indeed, Vice President Harris' change in terminology comports with the Biden Administration equity fixation. In fact, in the most recent EO, for example, equity is mentioned 63 times, but liberty gets no mention at all...

The currently fashionable term "equity" is not contained in our civil rights laws and one might question to seek to investigate given that equity initiatives target federally protected classes whether equity initiatives might frustrate or impede civil rights protection and enforcement.

Indeed, equity is not synonymous with equality...

The federal government's equity agenda appears to consist of identifying disparities in outcomes and attempt[ing] to close them by preferential treatment based on race or other immutable characteristics such as ancestral lineage. That's immoral, it's illegal, and it's undeniable that the federal government has put forward massive efforts to deliver on it. Equity is not equality...

The insistence that we must produce equal outcomes among groups defined by skin color, national origin, or gender perverts the American understanding of justice based on individual rights as achievable only by substituting authoritarian methods that trample those rights, and there is no good reason to believe that people or groups of people should even all end up in the same place as Vice President Kamala Harris has said.



This brings me to my main point. Asian Americans are a disfavored group under the equity regime because of their success. Equity initiatives, as discussed, seek to reach proportional outcomes for groups...

So, in a system where outcomes must reflect proportionality, Asian Americans can occupy only their proportional share, approximately seven percent. Achieving equitable outcomes means both providing preferences to artificially inflate the proportion of and lowering standards for certain groups, and also bringing down other over-represented races like Asian Americans to their proportion of the population.

These are the two sides of the same equity coin. Neither side can be satisfied without violating federal civil rights laws or the constitutional principle of equal protection under the law since both require divvying us up by race.<sup>14</sup>

Disappeared, all of it. Like Dr. Wu and Mr. Cheng, Mr. Westhill is never mentioned in the report and thus his warnings about the danger that the government's focus on "equity" vs. "equality" in federal policy poses to Asian Americans is not found in the report – despite the report being labeled "The Federal Response to Anti-Asian Racism in the United States." His opinion did not match the views of the report drafters, and were thus disappeared.

*The Report Does Not Accurately Reflect the Testimony Reviewed by the Commission*

The numbers don't lie. "Stop AAPI Hate" was mentioned or cited over 100 times. Witnesses affiliated with the group or its views were also disproportionately cited (John Yang 22 times, Jo Ann Yoo 18, Manjusha Kulkarni 18, William Scott 14, Cynthia Choi 10, Orlando Martinez 9, Jennifer Wu 8, Brian Levin 6, and Michael Yaki 5). Stop AAPI Hate and its allies are referenced so often that they might as well have written this report. Considering the troubling views toward free speech of the organization's representatives, I am afraid the report chose the wrong lead to follow.

On the other side of the ledger, Eric Dreiband was cited 9 times (mostly for his past service at DOJ, not for any of his views or opinions in his testimony to the Commission), Charles Lehman was mentioned or cited 8 times, Diane Yap 2, Wenyuan Wu 0, Lee Cheng 0, and Devon Westhill 0.

We get it. To any objective reader, it is obvious the report is not objective. But that's par for the course around the Commission. Future Commissioners should take note. So should Congress. Fundamental changes are long overdue around here. This body is not functioning as an impartial

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<sup>14</sup> Devon Westhill, General Counsel of the Center for Equal Opportunity and former Asst. Sec. for Civil Rights at U.S. Dept. of Agriculture, testimony, The Federal Response to Anti-Asian Racism in the United States Briefing Before the U.S. Comm'n on Civil Rights, Washington, DC, Mar. 4, 2023, transcript, pgs. 134-141.

and useful fact finder as much as it is an organ for the prevailing orthodoxy on the far left. That's a shame, because civil rights can easily be a bipartisan issue if basic principles of equality and an adherence to objective fact finding are followed.

I would urge Congress to examine these questions, along with all the other questions this Commission has invited.

### **Final remarks**

This report embodies several troubling patterns in the operations of the USCCR. As discussed, Staff Director Morales improperly limited the scope of Commissioner questioning. This is not the first time that Director Morales has asserted non-existent authority to undermine Commissioners' statutory authority.

The report also shows a lack of interest in the experiences of crime victims in the United States. Commissioners disregard the identities of perpetrators of violent crime, and proven solutions for crime reduction, while treating verbal comments as equivalent to violent crime. Even more disturbingly, the report implicitly affirms Stop AAPI Hate's troubling assertions that criticism of the actions of the Chinese government plays a role in spinning up hate crimes.

It is my hope that the Commission's forthcoming report on crime victims may address some of the omissions and oversights in this report.

## Statement of Chair Garza

As the new Chair of the United States Commission on Civil Rights, I take great pride in addressing the issues that are critically important to making sure civil rights in this country are not infringed upon. As someone who has dedicated my life to advocating for justice and equality, I take the responsibility we have been tasked with to heart.

My family is from deep south Texas, on the border with Mexico. My grandmother married as a teenager, bore 13 children and worked the land – picking cotton, okra, and tomatoes. She would give birth at home with the help of my great-grandmother, a midwife, rest a few days and then continue working the land and making food for the family. She encouraged me to get an education and to keep working towards the life I wanted. While my grandmother lacked the choices and opportunities she fought so hard for her children and grandchildren to have, she instilled in me the will to continue the fight for future generations. Her story underscores the importance of ensuring equal civil rights for all, transcending generational struggles and fostering an inclusive society.

In just my first hearing as part of the Commission, it was important that we memorialize what has happened to the Asian-American community in the wake of COVID-19 — specifically the increase of discrimination, hate crimes and hate incidents experienced by this community.

The Commission’s report on “The Federal Response to Anti-Asian Racism in the United States,” examines the role that the historical anti-Asian racism, along with the interconnection between media messaging on Asians and how the societal impact of viewing Asians as the perpetual foreigner, has led to the rise of anti-Asian racism during the pandemic.

This is a critically important report and one that is bolstered by this Commission’s specific findings and recommendations that will accompany the report for the first time since 2019. I commend my fellow Commissioners on finding agreement on following five (5) findings and recommendations:

### **Findings**

#### *Data collection & reporting:*

- A major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent is the lack of comprehensive data.
- The transition to the NIBRS data collection has been slow for some agencies: for 2021, the number of participating agencies within the FBI hate crime database was 11,834, compared to the 15,138 participating agencies for 2020 data, and many of the agencies that have not submitted 2021 data are the largest jurisdictions.

### **Recommendations**

#### *Training & Partnerships:*

- Prosecutors and law enforcement should vigorously investigate and prosecute hate crimes and harassment against Asian Americans.
- First responders should be provided with training aimed at teaching a clear understanding of what constitutes a hate crime in their jurisdiction.

#### *Language access:*

- Federal, state, and local law enforcement agencies and victim services need to identify critical deficiencies in Limited English Proficient (LEP) programs for individuals who need language assistance.

The report indicates that language barriers are impeding the reporting of incidents and that many incidents that do not meet the legal criteria for hate crimes, such as racial slurs or being spat on, still evoke fear but go unaccounted for in official statistics. Although the COVID-19 Hate Crimes Act has taken steps to enhance language services and reporting hotlines, accessibility issues persist, creating a potential disparity between federal and local resources. Ultimately, the absence of adequate performance metrics poses a significant challenge in assessing the federal government's effectiveness in combating the surge in hate crimes against the Asian community. While these barriers continue to exist, the Commission has outlined holistic strategy to combat anti-Asian hate incidents, ranging from data collection improvements and legal enforcement to community support and education initiatives.

Additionally, I would be remiss to not echo the additional findings and recommendations supported by my colleague—Commissioner Glenn D. Magpantay, the only Asian American serving on the Commission—that would assist in addressing the rise of Anti-Asian racism:

#### **Findings:**

- The myth of the “perpetual foreigner” continues to play a role in understanding the rise of anti-Asian racism and discrimination during the pandemic.
- To contextualize the increase anti-Asian sentiment during the COVID-19 pandemic, it is important to understand the history of anti-Asian racism and the “Yellow Peril” laws.
- During the pandemic, there were several other names that were used in the media and by government officials to refer to COVID-19, including the “Chinese virus,” the “Kung flu,” and the “Wuhan virus,” potentially perpetuating negative views of Asian individuals and communities and leading to many Asian Americans feeling blamed for bringing COVID-19 to the U.S.

#### *Data collection & reporting:*

- A major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent is the lack of comprehensive data. Without mandatory national data collection and training law enforcement on how to accurately identify and report hate crimes, preventing these crimes is substantially challenging.
- Hate crime victims are less likely to report incidents due to fear of retaliation, concerns that justice would not be served, and distrust in the criminal justice system.
- While the transition from the FBI’s UCR to NIBRS database intended to provide a more complete picture of hate violence across the nation, the shift has been challenging for many jurisdictions, and hate crime data remains incomplete.
- The transition to the NIBRS data collection has been slow for some agencies: for 2021, the number of participating agencies within the FBI hate crime database was 11,834, compared to the 15,138 participating agencies for 2020 data, and many of the agencies that have not submitted 2021 data are the largest jurisdictions.

- In March 2023, the FBI released a Supplemental Hate Crimes Statistics report and showed that the number of anti-Asian reported incidents increased 167 percent from 279 in 2020 to 746 in 2021.
- National data show that all race-based hate crimes rose by 30 percent in 2020; and specifically anti-Asian hate crimes increased over 70 percent in 2020. According to the Bureau of Justice Assistance (BJA), anti-Asian hate crimes rose 164 percent in 16 of the largest cities and counties in the first quarter of 2021 compared to the same period in 2020. BJA wrote that the first quarter increases in 2021 followed a “historic surge” in anti-Asian hate crimes that started in 2020, with anti-Asian hate crimes increasing 149 percent in 16 of the largest cities in 2020. Specifically, data show that the first spike of anti-Asian hate crimes “occurred in March and April of 2020 concurrently with a rise in COVID cases and negative stereotyping of Asians related to the pandemic.”
- Hate crime data are underreported by victims and by law enforcement and are less likely to be reported to police compared to other types of crimes, and some research suggests that Asian Americans may be even less likely to report discriminatory behavior when it occurs.
- Data show that in California, hate crimes have increased steadily since 2019, and anti-Asian hate crimes rose from 89 (6.7%) in 2020 to 248 (14.1%) in 2021. In San Francisco, all hate crime events increased from 2020 to 2021 (from 54 to 114), and the proportion of anti-Asian events increased significantly, representing 16 percent of events in 2020 and more than half of events in 2021.
- In New York, reported hate crimes dipped in 2020 before spiking in 2021. Anti-Asian hate crimes rose from 31 (6.35%) in 2020 to 140 (18.11%) in 2021. In New York City, the number of anti-Asian hate crimes in the city was one (0.2%) in 2019, rose to 27 (10.2%) in 2020, and rose again to 131 (25%) in 2021.
- In the United States, 34% of the Asian American population is limited English proficient. The most frequently spoken languages are Chinese, Korean, Vietnamese, Tagalog, Thai, Khmer, Bengali, Gujarati, Hindi, and Punjabi.

*Barriers:*

- Few police departments have officers fluent in Asian languages, even in metropolitan areas with high numbers of AAPI residents. Therefore, language barriers continue to be a major barrier in reporting hate incidents and hate crimes.
- A major barrier to gaining a comprehensive understanding of the magnitude of hate violence against Asian communities may be due to incidents not rising to the legal benchmark of a hate crime. Many incidents that are reported to community organizations, such as being spit on or called racial slurs are not accounted for in official numbers, yet still invoke fear in community members.
- Under the COVID-19 Hate Crimes Act, funding is provided for state and local incident reporting hotlines, and in May 2022, DOJ expanded their language services to be available in 18 of the most frequently spoken AAPI languages across the nation. However, at the Commission’s briefing panelists testified the local reporting hotlines, victim services, and law enforcement were not accessible to victims with limited English proficiency, possibly pointing to a discrepancy between federal and local resource availability.
- The lack of hate crime prosecutions may also be a contributing factor to low reporting of hate crimes. Prosecution of hate crimes is difficult, even in states with comprehensive

hate crime legislation, because there is no one legal standard to which courts have agreed, or because the standard to prove bias is too high.

- Most nonprofit and community resources trying to provide the public with ways to combat anti-Asian violence include encouraging reporting hate incidents and hate crimes to local law enforcement as well as to organizations collecting data, learning about the history of Asian American discrimination, and encouraging elected officials to pass anti-hate legislation.
- For struggling communities, the grantmaking process is cumbersome and difficult to maneuver through.
- The true challenge in assessing whether the federal government is doing enough to combat a rise in hate crimes lies in the absence of proper performance measurements.

### **Recommendations:**

#### *Data & Reporting:*

- FBI should require local law enforcement to submit crime data, or in lieu of that, Congress should make submission mandatory, or considering a range of options to expand implementation.
- Congress could also consider authorizing a new grant program that would provide funding to state and local governments to cover expenses related to transitioning to NIBRS, such as purchasing new software and computers, or training officers on how to use NIBRS.
- Federal civil rights agencies should be required to collect and report key data related to civil rights enforcement and the Attorney General to annually publish this data.
- DOJ should fund state and local government efforts in partnership with community groups to address discrimination and other hate incidents.
- Law enforcement agencies should improve data collection, requiring the tracking and reporting of both hate incidents and hate crimes, and ensuring reporting forms are easy to mark an incident or crime as a suspected hate incident or crime.

#### *Training & Partnerships:*

- The Justice Department should also provide safety training and workshops in the respective languages of targeted communities and expand federal funding for community advocacy groups fighting hate crimes.
- The Justice Department should codify the role of the language access coordinator into federal law to ensure that all individuals have equal access to justice and access to federal programs and benefits regardless of language access.
- A written policy within a law enforcement organization can serve as a bridge between hate crime legislation and implementation of that law by providing officers with information and a standard that the agency expects them to follow.
- Prosecutors and law enforcement should engage in joint training on hate crimes and community engagements and law enforcement agencies may even consider recommending that the prosecutor's office have a designated attorney to prosecute hate crimes in the community.
- Prosecutors and law enforcement should vigorously investigate and prosecute hate crimes and harassment against Asian Americans.

- First responders should be provided with training aimed at teaching a clear understanding of what constitutes a hate crime in their jurisdiction.
- The FBI suggests state and local officials utilize the FBI's resources, publicity tools, forensic expertise, and experience in identifying and investigating hate-based motivations even if federal hate crime charges are not pursued.
- A public health and gender-based approach to prevent hate in public spaces needs to be created, including the street harassment of AAPI women and other vulnerable communities.
- The strengthening and expansion of local networks should be invested in so victims have ready access to community-based places where they can report attacks, receive support services, and take safety training and workshops in their own languages.

*Language access:*

- Regarding language access, federal agencies need to review their compliance with Title VI in Executive Order 13166 and take proactive steps to address any potential violations to ensure that they provide language access services to individuals who need them.
- As recipients of federal funding, local law enforcement and victim services should also comply with Title VI in Executive Order 13166 provide language access such as interpreters and bilingual officers who speak Asian languages
- Federal, state, and local law enforcement agencies and victim services need to identify critical deficiencies in Limited English Proficient (LEP) programs for individuals who need language assistance.
- Expand reporting hotlines or in-person contact for those limited English proficiency.
- Develop a language access policy statement prohibiting discrimination based on national origin that grants equal access to all individuals, including those with limited English proficiency and promotes effective communication through interpreter services, document translation, and staff training.

*Civil Rights Protections:*

- Title II of the Civil Rights Act should be expanded to include retail stores and other businesses where discrimination occurs to protect employees and customers from bias-based discrimination and harassment.
- Businesses frequented by the public should be required to train employees on their responsibilities to customers, so that they know and understand their responsibility to maintain a space free from bias-based harassment and discrimination, even if perpetrated by other customers.

I applaud the work the Commission has taken to address Anti-Asian hate, and I look forward to working with my colleagues in the future. My hope is that together we can continue the legacy of bipartisan progress that has been made possible by the resilience of many generations of Americans before us.

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## Statement of Commissioner Gilchrist

When Covid-19 came to America, it left all too many Americans reeling! Businesses were forced to close; the unemployment rate reached a high of 14.7 percent<sup>1</sup> and more than 1.1 million people died because of Covid-19.<sup>2</sup> The initial thrust of the pandemic left many of us exposed and vulnerable. In fact, my family and I was dealing with my mother-in-law's death and within a two-week period we lost our home due to a fire. I mention this to not only remind myself about my personal challenges, but also, how Covid-19 challenged our entire country. As Americans we were trying to find our footing. We were told masks were not necessary, then mask must be worn, we were told to stay six feet apart, then vaccination was highly encouraged, sometimes feeling like it was more of a mandate. And in fact, there were professions where it was a mandate.<sup>3</sup>

Dr. King wrote, where do we go from here, chaos or community? The uneasiness of the pandemic, the George Floyd protest movement, economic calamity for many and the rise in violence against the Asian community stressed our cohesion as a community and a Nation. The pandemic exacerbated existing disparities within our country; health, education, finances, and shared opportunities.<sup>4</sup> The term “essential” workers became the norm, yet many of those workers were more likely to be low-income and a member of a minority group. But they were crucial in helping to guide us through the pandemic. I'm eternally grateful to the healthcare professionals, the delivery service professionals and others that showed up for their fellow Americans and got things done, despite not having the convenience and opportunity to work from home.<sup>5</sup>

Usually when Americans are faced with big challenges, we have found a way to come together and see our way through the other side, however, the Covid-19 pandemic presented different kinds of challenges. Those that refused to subject themselves to exposure from vaccination were often chided, ridiculed, or told that they were being irresponsible.<sup>6</sup> And there were accounts from those that felt as though because of their appearance that their fellow Americans “otherized” them.<sup>7</sup> One of the most horrific incidences that happened during the pandemic was the Atlanta Spa Shooting. Many saw the Atlanta shooting as a sign of just how far off track we have gotten

<sup>1</sup> Long, Heather, & Van Dam, Andrew. (2020, May 8). U.S unemployment rate soars to 14.7 percent, the worst since the Depression era. Washington Post. Retrieved from: <https://www.washingtonpost.com/business/2020/05/08/april-2020-jobs-report/>

<sup>2</sup> World Health Organization. (2020, January 3). Retrieved from: <https://covid19.who.int/region/amro/country/us>

<sup>3</sup> Pereira, Ivan. (2021 August 5). More businesses are mandating Covid-19 vaccines. Is that legal? ABCNews. Retrieved from: <https://abcnews.com/business/business-news/here-are-companies-mandating-vaccines-all-or-some-employees-n1275808>

<sup>4</sup> Wilson, Valerie. (2020, June 22) Testimony. Video. Inequities exposed: How Covid-19 widened racial inequities in education, health, and the workforce. Economic Policy Institute. Retrieved from <https://epi.org/publication/covid-19-inequities-wilson-testimony/>

<sup>5</sup> Levitz, Jennifer; Bauerlein, Valeri; Lazo, Alejandro. (2021, February 1). Covid Wears On, Essential Workers Carry On: ‘Everybody Forgets That You’re Still on the Front Line.’ Wall Street Journal. Retrieved from: <https://www.wsj.com/article/pandemic-wears-on-essential-workers-everybody-forgets-that-youre-still-on-the-front-line-11612197832>

<sup>6</sup> Delizza, Timothy. (2021, July 1). What the Media Gets Wrong About Red-State Vaccine Hesitancy. Undork. Retrieved from: <https://undark.org/2021/07/what-the-media-gets-wrong-about-red-state-vaccine-hesitancy/>

<sup>7</sup> Li Yao, & Nicholson Harvey. (2021, January 16). When “model minorities” become “yellow peril”—Othering and the racialization of Asian Americans in the COVID-19 pandemic. Sociology Compass. Retrieved from: <https://compass.onlinelibrary.wiley.com/doi/10.1111/soc4.12849>

in assessing blame for the pandemic on Asian Americans.<sup>8</sup> Law enforcement dismissed race as a factor early on, while the mainstream media seemed all too quick to make it all about race.<sup>9</sup> Whenever there are incidents like the Spa Shooting in Atlanta involving different races, assumptions are made too quickly. Instead, we should allow some time for deeper analysis and thorough investigation into the potential causes of the incidents. According to reports the assailant indicated that race was not his motivation, even though there were some unverified reports that the 21-year-old assailant mentioned that he was “going to kill all the Asians.”<sup>10</sup> The intersection of race, sex, mental illness and possibly, just plain evil makes an analysis of events like these more complex. Did the assailant have a contextual history of Asian discriminatory practice that guided his actions? Was it current or past stereotypes on how Asian women have been sexualized a contributing factor? As a society we have decided to elevate crimes against a person due to race, sex, religion, and natural origin as “hate crimes” to send a message that these types of crimes are an egregious affront to the ideals of a civilized society. Since Covid-19 originated from China, many believe that it created an atmosphere of “suspicion” towards Asians or for some Asian-looking persons.<sup>11</sup> I am not sure anyone will definitively know why he killed those at the massage parlor in Atlanta. It is hard to make rational sense out of senseless violence, especially acts of violence that rob individuals of their lives. I have intentionally not given the murderer recognition here by calling out his name, because he does not need more recognition than what he has already been given. It is more important to recognize and acknowledge the victims here. Let’s say their names: Xiaojie Tan 49, Daoyou Feng, 44; Delaina Ashley Yuan, 33; Paul Andre Michels, 54; Soon Chung Park, 74; Hyun Jung Grant, 51; Suncha Kim, 69.<sup>12</sup>

As a son of the South and particularly my beloved South Carolina, I’d be remised if I didn’t mention how the deaths in Atlanta triggered emotions I felt when the Charleston Church Massacre shooting at historic Mother Emmanuel AME Church took place in June of 2015.<sup>13</sup> Unlike the event in Atlanta, the event in Charleston was an unmistakable racist act. The assailant specifically drove to this historic Black church, prayed with the congregants and once heads were bowed and eyes closed, he massacred nine beautiful souls.<sup>14</sup> Evidence and witnesses at trial produced a manifesto, which included the motive to start a race war, the murderer’s own

<sup>8</sup> Fausset, Richard; Vigdor, Neil; Nieto del Rio, Giulia. (2021, March 26). 8 Dead in Atlanta Spa Shootings, With Fears of Anti-Asian Bias. *New York Times*. Retrieved from: <https://www.nytimes.com/live/2021/03/17/us/shooting-atlanta-acworth>

<sup>9</sup> Walsh, Joe. (2021, March 18). FBI Director Says Atlanta Shooting ‘Does Not Appear’ Racially Motivated. *Forbes*. Retrieved from <https://www.forbes.com/sites/joewalsh/2021/03/18/fbi-director-says-atlanta-shooting-does-not-appear-rationally-motivated/>

<sup>10</sup> Kim, Regina. (2021, March 31). Atlanta Spa Shootings: What Korean-Language Media Told Us That the Mainstream Media Didn’t. *Rolling Stone*. Retrieved from <https://www.rollingstone.com/culture/culture-news/atlanta-shootings-what-korean-language-media-told-us-that-the-mainstream-media-didnt-1149698/>

<sup>11</sup> Barbaro, Michael. (2020, April 10). ‘I became a Person of Suspension.’ [Podcast]. *New York Times*. Retrieved from: <https://www.nytimes.com/2020/04/10/podcasts/the-daily/racism-chinese-coronavirus-asian-americans.html>

<sup>12</sup> Stevens, Alexis (2022, March 15). The victims killed in the March 16, 2021, spa shootings. *Atlanta Journal Constitution*. Retrieved from: <https://www.ajc.com/news/atlanta-news/what-we-know-about-the-spa-shootings-victims/OVPCGHAFZVGNRCUY3UYM2ZQVI/>

<sup>13</sup> Kreutz, Liz; Liddy, Tom; Keneally, Meghan & Shapiro, Emily. (2015, June 18). Charleston Shooting Leaves 9 Dead at AME Church, Gunman in Custody. *ABC News*. Retrieved from: <https://abcnews.go.com/US/charleston-shooting-leaves-dead-ame-church-gunman-remains/story?id=31845305>

<sup>14</sup> Osunsami, Steve; McFann Kristen, Shapiro, Emily, & Fowler, Tarra. (2016, December 14). Charleston Church Shooting Survivor Says She Prayed as Dylan Roof Gunned Down Parishioners. *ABC News*. Retrieved from: <https://abcnews.go.com/US/charleston-church-shooting-survivor-prayed-dylan-roof-gunned/story?id=44185820>

statements and writings were used.<sup>15</sup> This was personal to me, because I knew the pastor of the church, Reverend Clemente Pinckney, and I also attended the eulogy that President Obama delivered at the College of Charleston Coliseum.<sup>16</sup> That moment will forever be seared in my memory, my spirit will be forever changed, and I believe it is our duty to speak up and stand up when blatantly racist acts are committed against our fellow Americans. Conversely, we must also stand tall and push back on quick narratives of racism and blame when the evidence doesn't comport with our ideology. This is no easy task because those who do push back are often vilified and dismissed with vulgarity and sometimes violence.<sup>17</sup> There are times when we should allow our intellect to be elevated over the emotions of the moment, but then there are times when intellect without emotions leaves one spiritually inept-which causes an imbalance in our assessments. Both the shooting in Atlanta and Charleston left communities shattered, yet not broken. We still struggle to comprehend how such horrific events could occur, how lives so full of promises and potential can be extinguished in an instant. It is my hope that the souls of victims are resting in peace and that their loved ones still find comfort in the love and warmth of the community. In the spirit of remembrance, rest in peace: Reverend, Clemente Pickney, 41; Cynthia Hurd, 54; Tywanza Saunders, 26; Sharonda Singleton, 45; Reverend DePayne Middleton-Doctor, 49; Reverend Daniel Simmons, 74; Susan Jackson, 87; Ethel Lance, 70; Myra Thompson, 59.<sup>18</sup>

The predominate narrative is that the greatest threat to minority communities are white people, particularly young white males. While the two examples do involve white male perpetrators attacking minority populations, it's more likely that "intra" racial violence is more the norm.<sup>19</sup> President's Trump appointee to the FBI, Christopher Wray stated before a congressional hearing that white supremacy presents a "persistent" and "pervasive" threat to the United States.<sup>20</sup> This pronouncement often seems counter to some additional facts. Individuals are more likely to victimize those of their own race, however, there is evidence that Blacks offend Asians at a higher rate than Asians offend Blacks.<sup>21</sup> Additionally, testimony from Diane Yap, Founding Member, Friends of Lowell Foundation would suggest that a large percentage of the perpetrators were not white nationalist, but African Americans.<sup>22</sup> Based on her testimony, African Americans

<sup>15</sup>The New York Times. (2016, December 9). The Dylann Roof Trial: The Evidence. New York Times. Retrieved from:

<sup>16</sup>Pilkington, Ed. (2015, June 26). Obama gives searing speech on race in eulogy for Charleston pastor. The Guardian. Retrieved from: <https://www.theguardian.com/us-news/2015/jun/26/obama-charleston-eulogy-pinckney-amazing-grace>

<sup>17</sup> Carney, T (2022, April 29). To liberals 'Free Speech' Means the Right to Indoctrinate. To Conservatives, It Means the Right to Dissent from Elites. American Enterprise Institute. Retrieved from: <https://www.aei.org/op-eds/to-liberals-free-speech-means-the-right-to-indoctrinate-to-conservatives-it-means-the-right-to-dissent-from-the-elites/>

<sup>18</sup> Dennis, R (2020 September 14). Family Members Honor Emmanuel Victims with Tribute: 'They will forever be in our hearts.' Charleston Post and Courier. Retrieved from: [https://www.postandcourier.com/news/family-members-honor-emanuel-victims-with-tribute-they-will-forever-be-in-our-hearts/article\\_40c0e562-b0dd-11ea-b9d3-03e72d9c6841.html](https://www.postandcourier.com/news/family-members-honor-emanuel-victims-with-tribute-they-will-forever-be-in-our-hearts/article_40c0e562-b0dd-11ea-b9d3-03e72d9c6841.html)

<sup>19</sup> Caldera, C (2020 September 29). Fact Check: Rates of white-on-white and Black on Black Crime are similar. USA Today. Retrieved from: <https://www.usatoday.com/story/news/factcheck/2020/09/29/fact-check-meme-shows-incorrect-homicide-stats-race/5739522002/>

<sup>20</sup> APnews (2021, March 2). FBI Chiefs warns violent 'domestic terrorism' growing in US. APNews. <https://apnews.com/article/fbi-chris-wray-testify-capitol-riot-9a5539af34b15338bb5c4923907eeb67>

<sup>21</sup> Yap testimony, Transcript. p. 32 Lines 5-9

<sup>22</sup> Yap testimony, Transcript. p. 32 Lines 6-15

made up 27.5% of the attackers that occurred on Asian Americans.<sup>23</sup> I do not believe these attacks were the result of following a politician's rhetoric regarding anti-Asian sentiments. It is quite possible that the tension between the Asian Community and Blacks have a deeper history.<sup>24</sup> The history of Asian Americans and African Americans in the United States is marked by significant differences and similarities. While both groups have faced discrimination and struggled for equal rights, their experiences have been shaped by distinct historical contexts and circumstances.<sup>25</sup> Asians' immigration to the United States began in the mid-19th century, primarily driven by economic opportunities such as the California Gold Rush and the construction of railroads.<sup>26</sup> Chinese immigrants faced hostility and discrimination, leading to the Chinese Exclusion Act of 1882, which severely restricted Chinese immigration.<sup>27</sup> African Americans, on the other hand, were brought to the United States as slaves during the 17th and 18th centuries. Their arrival was forced and marked by extreme forced labor and conditions, as they were considered property and denied basic human rights.<sup>28</sup> The Asian American civil rights movement gained momentum in the 1960s and 1970s, with activists advocating for equal rights, an end to discriminatory immigration policies, and better representation. The movement was diverse, with different Asian ethnic groups fighting for their specific rights.<sup>29</sup> The African American civil rights movement emerged in the mid-20th century, led by prominent figures like Martin Luther King Jr. and Rosa Parks. The movement aimed to end racial segregation, secure voting rights, and address pervasive racism. It resulted in landmark legislation, such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965.<sup>30</sup> Over time, Asian Americans have achieved significant socioeconomic success, with higher educational attainment and median household incomes compared to the national average.<sup>31</sup> However, this success varies among different Asian ethnic groups, with some facing economic challenges and disparities.<sup>32</sup> African Americans, as a group, have historically faced socioeconomic disadvantages due to

<sup>23</sup> Yap testimony, Transcript.p. 32 Line 2

<sup>24</sup> Lim, Dion, Forston, Jobina. (2020, July 10). Coming Together: Understanding the history of tension between the Black and Asian Communities. Retrieved from: <https://abc7news.com/african-american-asian-history-black-lives-matter/6309505/>

<sup>25</sup> <https://www.vox.com/22321234/black-asian-american-tensions-solidarity-history>

<sup>26</sup> "Asian Americans Then and Now: Linking Past to Present" (n.d.). Asia Society. Retrieved from: <https://asiasociety.org/education/asian-americans-then-and-now>

<sup>27</sup> Chinese Exclusion Act. National Archives: Retrieved from: <https://www.archives.gov/milestone-documents/chinese-exclusion-act#:~:text=This%20act%20provided%20an%20absolute,good%20order%20of%20certain%20localities.>

<sup>28</sup> "An overview of the African-American Experience." (n.d.). retrieved from: <https://www.crf-usa.org/black-history-month/an-overview-of-the-african-american-experience>

<sup>29</sup> Maeda, Daryl. (2016, June 09). "The Asian American Movement" Oxford University Press. Retrieved from: <https://oxfordre.com/americanhistory/page/word/word-from-oxford?t.state.client=D8s9JAakuilS0XLVCmbYjsSnySA=:H4sIAAAAAAAAAAFXOVUoDQRQF4Bt/UAk2Nr5A2p2fDSEulqQsogQtB9m725GdmfGO0PiNraWvogvZG1tZ2XlrWQ4sI98HE4719wuD0AgFEgWDpqpPJKr5FF5TFE6mfM2lhkVcsC0sZoDOyqNWjjHVlwlavxmBbralJl eCi8+1kif3H9/nb0eFP6x7slzDWrvPOJrqolpyVj2qjeKtsw1eRjG0uSziph5Jb1eETvMCohGO2v7zs/cRxoSVIdTxntolpy44/mBwe23TzgiWJ0xG K7tOszx1fACbBHAAAXAomRTGdCJHXShPWjvAvFPMLIYtimhdyPmNCyHRC7rhx2SY5fIXVmZHHDoBAAA=>

<sup>30</sup> <https://www.civilrightsteaching.org/documents-based-lesson/civil-voting-rights-act#:~:text=The%20Civil%20Rights%20Act%20did,other%20barriers%20to%20Black%20voting.>

<sup>31</sup> Joo, Nathan; Reeves, Richard; Rodrigue, Edward. (2016, April 20). Asians-American success and the pitfalls of generalization. Brookings. Retrieved: <https://www.brookings.edu/articles/asian-american-success-and-the-pitfalls-of-generalization/>

<sup>32</sup> Banerjee, Asha. (2022, June 7). Understanding economic disparities within the AAPI Community. Economic Policy Institute. Retrieved from: <https://www.epi.org/blog/understanding-economic-disparities-within-the-aapi-community/#:~:text=Many%20Asian%20Americans%20and%20Pacific,year%20round%20workers%20in%202019>

systemic racism and discrimination.<sup>33</sup> They have experienced higher poverty rates, lower educational attainment, and limited access to economic opportunities. However, it is important to note that there is significant diversity within the African American community, with variations in socioeconomic status.<sup>34</sup> Asian Americans encompass a wide range of ethnicities, including Chinese, Japanese, Korean, Filipino, Indian, and many others. They have diverse cultural traditions, languages, and religious practices, contributing to a rich and varied Asian American identity.<sup>35</sup> African Americans have a shared cultural heritage rooted in their African ancestry, but their cultural identity is also influenced by the diverse experiences of slavery, segregation, and migration within the United States. African American culture has had a significant impact on American music, literature, art, and cuisine.<sup>36</sup> Both Asian Americans and African Americans have faced discrimination and fought for equal rights, their histories differ due to factors such as immigration patterns, the nature of arrival, and the specific challenges they have encountered. Understanding these differences and similarities is crucial for recognizing and addressing the unique struggles and achievements of each group.

In April 1992, during the Rodney King riots, South Central Los Angeles went up in flames.<sup>37</sup> Four police officers were acquitted of the charges for excessive use of force in beating motorist Rodney King. King suffered a broken bone, a skull fracture and permanent brain damage.<sup>38</sup> The jury verdict was announced from the Simi Valley court room at approximately 3pm and South Central was ablaze about 6pm.<sup>39</sup> The LAPD was woefully unprepared for the malaise that ensued afterward; residents set fire to businesses, looted, pulled motorist from cars, and beat them. Americans watched in horror as the scenes from Florence and Normandie (street intersections) reminded us just how fragile we are. The damage was tremendous; more than 2,000 people were injured, nearly 6,000 people were arrested, more than 1,000 buildings were damaged or destroyed, approximately 2,000 Korean businesses were damaged or destroyed. In total, nearly 1 billion worth of property damage occurred.<sup>40</sup> During the five-day unrest there were more than 50 riot related deaths.<sup>41</sup> One of the contributing factors that enraged the Black community was an incident earlier that month in which a 15-year-old black girl, Latasha Harlin, who was accused of

<sup>33</sup> Beyer, Don. (2020). The Economic State of Black America in 2020." Joint Economic Committee. Retrieved from: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.jec.senate.gov/public/\\_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.jec.senate.gov/public/_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf)

<sup>34</sup> Tamir, Christine. (2021, March 25). "The Growing Diversity of Black America." Pew Research Center. Retrieved: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.jec.senate.gov/public/\\_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.jec.senate.gov/public/_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf)

<sup>35</sup> Ruiz, Neil; Noe-Bustamante; Shah, Sono. (2023, May 8). "Diverse Cultures and Shared Experiences Shape Asian American Identities. Pew Research Center. Retrieved: <https://www.pewresearch.org/race-ethnicity/2023/05/08/diverse-cultures-and-shared-experiences-shape-asian-american-identities/>

<sup>36</sup> White, Constance. (2018, February 6). "How African Americans Have Influenced Style and Culture." Time. Retrieved: <https://time.com/5134486/how-to-slay-black-fashion-influence/>

<sup>37</sup> Krbecek, Anjuli; Bates, Karen. (2017, April 26). "When LA Erupted in Anger: A Look Back At The Rodney King Riots." NPR. Retrieved from: <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots>

<sup>38</sup> Ibid., p. 5

<sup>39</sup> Ibid

<sup>40</sup> Ibid.,

<sup>41</sup> Ibid., p. 12

trying to steal orange juice, was killed by a Korean merchant.<sup>42</sup> For the crime the merchant received probation and a \$500 fine.<sup>43</sup> In his testimony before the Commission, John Yang, President and Executive Director, Asian Americans Advancing Justice(AAJC) stated:

*“Let me be clear about this. Is there anti-Blackness in the Asian American community? Yes, there is. Is there anti-Asian-ness in the Black community? Yes, there is. And this is where, again, education is important. Right? Facts are important because there are those that are trying to use these divisions to create wedges within all our communities in a manner that is going to prevent progress.”<sup>44</sup>*

It’s very important in these discussions regarding race and violence that we are careful not to be too broad in our analysis and open to the possibilities of counter-narratives that we have not thought of before. It’s never my intent nor purpose to create a wedge between the Asian Community and the Black community. In the United States there has been “tension” between minority groups during times of economic and social unrest in our country.<sup>45</sup> Acknowledging these tensions doesn’t create the wedge, it can serve as an opportunity to investigate and explore how we can do “community” better.

As Russell Jeung, Professor of Asian American Studies stated in his testimony:

*“So, I think Ms. Yap is correct that those of us living in low-income, maybe high-crime areas are victims of crime at high rates, but everybody in the community are victims of crime in those communities. So, it's not necessarily Black on Asian crimes. The Black and African American community, they're also victims of crime in those neighborhoods.”<sup>46</sup>*

While it’s clear that since Covid-19 there has been an uptick in violence against Asians,<sup>47</sup> however, it has been the Black community that has taken the brunt of crime increases, particular law-abiding working-class Blacks.<sup>48</sup> And I thought that Mr. Levin, professor California State University-San Bernardino, Director, Center for the Study of Hate & Extremism (CSHE) further illustrated the nuance related to crime:

*“...And I'm going to quote the dean, Jack McDevitt, who's the first one to come up with the typology back in 1989 with the American Study of Criminology. I added the mentally ill offender, but he looks at the thrill offender; the defensive reactive offender, who's reacting to a threat or a*

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<sup>42</sup> Ibid., p.7

<sup>43</sup> Ibid.

<sup>44</sup> Yang testimony, Transcript. p.

<sup>45</sup> Yamazato, Akiko. (2003). Interminority Relations in Early 1990’s in California: Conflicts among African-Americans, Latinos, Asian-Americans. William & Mary Scholar Works. Retrieved from: <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=5512&context=etd>

<sup>46</sup> Jeung testimony, Transcript. p.57. Lines 3-11

<sup>47</sup> Norwood, Candice. 2021, April 1). “What advocates and lawmakers are doing to address growing anti-Asians hate crimes.” PBS NewsHour. Retrieved. <https://www.pbs.org/newshour/politics/what-advocates-and-lawmakers-are-doing-to-address-growing-anti-asian-hate-crimes>

<sup>48</sup> Canaparo, GianCarlo. (2022, April 12). “Who Suffers the Most From Crime Wave? The Heritage Foundation. Retrieved. <https://www.heritage.org/crime-and-justice/commentary/who-suffers-the-most-crime-wave>

*change in their neighborhood; and the mission offender, like the neo-Nazi skinheads. There are different types of offenders, and they require, and America requires a different response.”<sup>49</sup>*

How did our government respond when it was recognized that violence against Asian Americans were increasing? Eric Drieband, former Assistant Attorney General, Civil Rights Division, Department of Justice; Partner, Jones Day shared the following with the Commission:

*“On April 9, 2020, I announced publicly that the Department would not tolerate civil rights violations during the pandemic, and I explained that the Justice Department's pandemic-related work includes enforcing disability rights laws, protecting religious liberty, and prosecuting hate crimes. I also explained that because the coronavirus originated in China, some people have targeted Asian Americans and Asians simply because of their ethnicity and that this conduct has no place in America, and I added the Justice Department will prosecute hate crimes and violations of anti-discrimination laws against Asian Americans, Asians, and others to the fullest extent of the law.”<sup>50</sup>*

Mr. Drieband went on to say that the directive he received from then, Attorney General, William Barr, to protect the American people Constitutional rights during Covid was paramount.

*“Attorney General Barr stated, quote, “the Constitution is not suspended in times of crisis. We must therefore be vigilant to ensure its protections are preserved at the same time that the public is protected.”<sup>51</sup>*

Also, the United States House of Representatives passed the Covid-19 Hate Crimes Act on May 18, 2021, and signed by President Joe Biden on May 20, 2021.<sup>52</sup> The bill would have the Justice Department appoint a point person to expedite the review of hate crimes related to COVID-19. It would also direct resources toward making the reporting of hate crimes more accessible. Also, the White House Covid-19 Equity Task Force allocated nearly \$50 million to fund community services for Asian or Pacific Islander survivors of sexual and domestic violence.<sup>53</sup> Attorney General, Merrick Garland stated at the White House signing ceremony that “the Justice Department will play a central role in implementing this legislation and it’s an important step toward protecting everyone in our country from acts of hate and intolerance. We will use the new

<sup>49</sup> Levin Testimony, Transcript. p.54. Lines 2-10.

<sup>50</sup> Drieband testimony, Transcript. p.129 Lines 8-21

<sup>51</sup> Ibid. p.130, Lines 3-7

<sup>52</sup> Sprunt, Barbara. (2021, May 20). “Here’s What the New Hate Crimes Law Aims to Do As Attacks On Asian Americans Rise. NPR. Retrieved from: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/05/20/remarks-by-president-biden-at-signing-of-the-covid-19-hate-crimes-act/>

<sup>53</sup> WhiteHouse. (2021, November 10). Biden Administration Announces New Investments to Support COVID-19 Response and Recovery Efforts in the Hardest-Hit and High-Risk Communities and Populations as COVID-19 Health Equity Task Force Submits Final Report [Fact Sheet]. Retrieved from: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/10/fact-sheet-biden-administration-announces-new-investments-to-support-covid-19-response-and-recovery-efforts-in-the-hardest-hit-and-high-risk-communities-and-populations-as-covid-19-health-equity-task/>

law to enhance the aggressive measures we are taking to combat crime motivated by bigotry and discrimination.”<sup>54</sup>

Sometimes it seems rare that our Congress can get together and pass legislation. The media ecosystem will have the American people to believe that our elected leaders are like gladiators and cannot get anything done. But when it was time to send a message about hate and our values as a country a strong bi-partisan group of legislators did just that. The Covid 19 Hate Crime legislation passed the US House by a vote of 364-62.<sup>55</sup>

One of the nation’s leading organizations for Asian Americans, Stop AAPI Hate welcomed the federal response but also warned that the “act centers on criminal law enforcement agencies in its solutions, it will not address the overwhelming majority of incidents reported to our site which are not hate crimes, but serious hate incidents.”<sup>56</sup>

In reviewing the report and transcript its evident that most “attacks” against Asian Americans has been racial incidents more than actual crimes. I don’t want to minimize incidents because an accumulation of incidents can feel like “death by a thousand cuts.” Incidents such as “shunning” “avoidance” “jokes” and “racial slurs” have accounted for most of the reported hate incidents. As Mr. Jeung reiterated at the briefing:

“I would like to really distinguish between hate incidents, which make up the great majority of our cases, and hate crimes, which make up a small fraction. We really need to address what the majority of Asian Americans are experiencing, what we're experiencing trauma from are just regular microaggressions of verbal harassment. But they're not micro in their impact. Right?”<sup>57</sup>

One of the most basic tenets and function of our government is to protect us from harm and dangers. Our freedoms are predicated on the fact that we can move about our environments without harm or intimidation. This is the base function of our government! Within our society we should not tolerate the fact that some Americans, due to fear, are quasi prisoners within their own homes and within their communities. Mr. Lehman suggested in his testimony that:

*“The wrong policy is to focus on reducing bias through education or social media content moderation. Such approaches are not only ineffective on their own terms, a large research literature casts doubt on educational interventions efficacy, but inefficient because they poorly target the small subset of the biased population that will actually criminally offend.”*<sup>58</sup>

<sup>54</sup> Garland, M. (2022, September 15). Attorney General Merrick B. Garland Delivers Remarks on Justice Department Efforts to Combat Unlawful Acts of Hate. [Speech] Retrieved from <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-justice-department-efforts-combat>

<sup>55</sup> Macagone, Michael. (2021, May 18). House sends anti-Asian Hate Crimes bill to Biden. Roll Call. Retrieved from <https://rollcall.com/2021/05/18/house-sends-anti-asian-hate-crimes-bill-to-biden/>

<sup>56</sup> Stop AAPI Hate. (2021, May 18). Statement on House Passage of the COVID-19 Hate Crimes Act [Press Release]. Retrieved from <https://stopaapihate.org/2021/05/18/statement-on-house-passage-of-the-covid-19-hate-crimes-act/>

<sup>57</sup> Jeung testimony, Transcripts pg. 50 Lines 14-21

<sup>58</sup> Lehman testimony, Transcripts pg. 20 lines 22-24. pg 21 lines 1-4



For the most part I concur with this assessment. I would recommend to the President and the Congress that we do the following:

- Continue to strengthen the collaboration between our federal, state and local law enforcement officials.
- Fully utilize existing resources to assist communities in navigating cumbersome bureaucratic processes that makes it hard for community groups to access government grants.
- Make language accessibility the norm for the diversity of the population.
- Carefully balance the rights of the accused with the care of the victims. There is a reason our constitution mentions the rights of the accused, yet we must start respecting the harm to victims.
- The government should evaluate every five years whether federal hate crime laws are substantively beneficial in reducing hate crimes.

Conclusion:

Crime continues to be a significant issue in our society, whether it's because of immutable characteristics or not, a crime is a crime. Martin Luther King said that one day we will judge one another not by the color of our skin, but by the content of our character-this report is partially indicative that we are not there yet. Unfortunately, or fortunately, there are limits to what governments can do. It is my sincere hope that we do not have to have the heavy hand of government to tell us how to treat one another and how to do community. It is important for law enforcement agencies (federal, state, local) policy makers and communities to work together to address and combat not only hate crimes, but crime in general.

This report would not have been possible without former Commissioner Michael Yaki's proposal to investigate the issue of crimes against the Asian Community. Additionally, I also want to thank my fellow Commissioners, they put in the time and talent to make us all a better Commission. And I want to thank the staff, led by Staff Director, Mauro Morales. The staff does a herculean job in preparing these reports. The logistics of writing, researching, re-writing, calling witnesses, interviewing witnesses, confirming witnesses, securing travel arrangements, follow-up with witnesses, editing, coordinating with Commissioners, Special assistants, IT professionals, other staff members, the press and on and on. It is indeed an honor to serve with my fellow Commissioners as we continue to push to make our country the absolute best!

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## Statement of Commissioner Heriot

I learned an unfortunate lesson with this project: In politically mixed company, only certain kinds of anti-Asian race discrimination are considered appropriate for discussion. Bringing up others can result in a sharp rebuke.

In this Statement, I will therefore begin by discussing the issue that we *are* allowed to discuss—anti-Asian hate crimes (and so-called bias incidents). The problem is that talking about them is fashionable these days—perhaps a bit too fashionable. Such talk has become a way to score political points. By contrast, talking about effective solutions is decidedly unfashionable. Doing so exposes conflicts within the progressive coalition and therefore is discouraged.

If we’re serious about preventing anti-Asian hate crimes, that needs to change.

Toward the end of this Statement, I will also briefly comment on the topic that was pushed aside—college and university admissions policies that penalize Asian Americans for being Asian. Several of our Asian American public commentators made it clear that this was the issue that mattered most to them. But such talk also exposes conflicts within the progressive coalition with some favoring race-preferential admissions and others victimized by them. I regret, but am not surprised, that the Commission failed to give the issue due attention. What surprised me was that the Commission’s staff director actually interrupted our briefing to prevent our expert witnesses from bringing it up. That’s taking coalition politics to extremes.

Perhaps now that the Supreme Court has decided *Students for Fair Admissions v. President and Fellows of Harvard College* (2023) the Commission will give the issue of anti-Asian discrimination in college and university admissions the attention it deserves. But I am not expecting it.

### *Anti-Asian Hate Crimes*

#### *Enforcing the Criminal Law Generally Will Go a Long Way Toward Preventing Anti-Asian Hate Crimes.*

It is understandable that hate crimes would be a part of this report. The Commission’s job is to study discrimination. And while the problem of crime is much broader than hate crimes—only a tiny percentage of the crime committed against Asian Americans are hate crimes<sup>1</sup>—they are the only crimes that involve intentional race discrimination. They are thus an obvious issue of interest to the Commission.

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<sup>1</sup> In her written testimony, Diane Yap stated that while Asian Americans were targeted in about 305 hate crimes in 2021, they were the victims of 102,650 violent crimes. Yap at 1.

But it's important not to get carried away thinking of hate crimes as an issue separate and apart from crime in general. The solutions are similar.<sup>2</sup>

In a 2021 opinion essay in the *New York Post* entitled *Asians Want Action Against Violence—Not More Rhetoric on Racism*, Wai Wah Chin, founding president of the Chinese American Citizens Alliance of Greater New York, vented her frustration:

We Asians in New York City are fed up with woke politicians and their media going on and on about hate crimes. They are *all talk* about *hate*, but *no action* on *crime*.

And we want action on all crimes, not just “hate” crimes. Without catching, charging, and putting criminals away, our subways, streets, stores, and homes will never be safe. When you are being pushed into the subway tracks or face a knife in a robbery, whether the expletive used by the attacker qualifies as a hate crime is a remote concern to you.<sup>3</sup>

She has it right. If we want to bring violent hate crimes under control, we need to bring violent crime under control. For that, we need effective law enforcement. Special attention should be given to crimes committed by repeat offenders and by mentally ill individuals with a history of violence, because these are the crimes we have the best chance to prevent before they happen. Since these two overlapping offender populations also commit a disproportionate number of hate crimes, getting them off the streets will be an effective way to prevent hate crimes too. (In the case of the mentally ill, there is evidence that they account for a larger percentage of hate crimes than they do of non-hate crimes.)<sup>4</sup>

To be sure, the solutions will not be simple. Fashioning a fair and effective criminal justice system is a difficult job, especially when dealing with the mentally ill.<sup>5</sup> But political rallies

<sup>2</sup> Often, it's hard to draw a line between hate crimes and non-hate crimes. When a violent crime is committed for no apparent reason—a random stranger is savagely beaten—we may suspect that race, ethnicity, religion, sex, sexual orientation or another protected classification played a role, but if it can't be proven beyond a reasonable doubt, the conviction will be for a non-hate crime. We may never know what actually motivated the crime. On the other hand, if a racial, ethnic, religious, sex, or sexual orientation slur is involved, it may well be charged as a hate crime, and the offender may be convicted on that charge. And yet sometimes it will be true that the slur had nothing to do with the offender's motivation. The offender was simply using the most convenient epithet that came to mind. If the victim had been a different race, ethnicity, religion, sex, or sexual orientation, a different insult—perhaps one that had nothing to do with protected classifications—would have been used. For the remainder of this Statement, for brevity's sake, I will shorten the list to race and ethnicity.

<sup>3</sup> Wai Wah Chin, *Asians Want Action Against Violence—Not More Rhetoric on Racism*, *N.Y. Post*, April 10, 2021.

<sup>4</sup> Charles Fain Lehman, *What Motivates Hate Crime? Why Hate Criminals Are Still Criminals*, Manhattan Institute, May 2023, <https://media4.manhattan-institute.org/wp-content/uploads/Why-Hate-Criminals-Are-Still-Criminals.pdf#page=14> (In 2021, half of the hate-crime offenders were mentally ill).

<sup>5</sup> The Biden Administration has instead gotten off on the wrong foot by suggesting in a draft policy that federal law enforcement officers “should not use statistics about arrest rates in particular communities when making decisions about where and how to focus their activities.” Put differently, but not unfairly, the policy indicates that officer and agents should *not* focus efforts on where the crime is. Rather, they should put as much energy into patrolling the

where politicians and activists urge attendees to “stop the hate” don’t get us closer to achieving that goal. The focus needs to be on stopping the crime, not on making sure everyone knows we oppose hatred.

Consider, for example, some of the more egregious crimes that have victimized Asian Americans in the last few years:

\*Christina Yuna Lee was a 35-year-old Korean American with a talent for the visual arts. Assamad Nash followed her into her apartment in New York’s Chinatown, where he stabbed her more than forty times with her own kitchen knife. Police were alerted by neighbors who heard her screams, but they arrived too late to save her young life. *Her killer was a chronically homeless and mentally disturbed man with an extensive criminal record. According to the New York Daily News, that record included charges for robbery, carjacking, and burglary.*<sup>6</sup> *At the time of the murder, he was out on supervised release on three open criminal cases, including one in which he was accused of punching a random stranger on the subway.*<sup>7</sup>

\*Yao Pan Ma, a resident of the East Harlem neighborhood in New York, was a 61-year-old dim sum chef who had lost his job on account of the COVID-19 pandemic. Reduced to collecting cans on the street for a living, he was jumped from behind in a brutal and unprovoked attack. His assailant, Jarrod Powell, literally stomped him to death. *Powell had a long arrest record that included kidnap and multiple assaults, including one on a fellow inmate at Rikers Island.*<sup>8</sup>

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safest, most privileged, crime-free neighborhoods in America as they do in the most crime-infested neighborhoods. That’s great if you happen to live, work or own a business in a privileged neighborhood. But it’s not so great if you’re in a high-crime neighborhood instead. James Lynch, *EXCLUSIVE: DOJ Proposal Would Ban FBI Agents From Using Community Crime Statistics In Law Enforcement, Docs Show*, May 9, 2023.

<sup>6</sup> Emma Seiwel, Rocco Parascandola, Chris Sommerfeldt and Leonard Greene, *Homeless Suspect Accused of Following Christina Yuna Lee and Stabbing Her Inside Her NYC Apartment Charged with Murder*, N.Y. Daily News, February 14, 2022. See Lisa Fernandez, *Why the Stabbing Death of Christina Yuna Lee Reaches Far Beyond New York City*, Fox 2 San Francisco ktvu.com, February 16, 2022. See also Dean Moses, “*It’s Like a Zombie Land*”: *The Sorry State of Sara Roosevelt Park a Year After Christina Yuna Lee’s Murder*, amNY.com, February 15, 2023 (“One year since Christina Yuna Lee was brutally stabbed to death inside her Chinatown apartment, locals say the area of Sara Roosevelt Park—steps away from her former home—remains rife with drug use and the mentally ill”).

<sup>7</sup> Luke Funk, *Who is Assamad Nash, the NY Man Accused of Killing Christina Yuna Lee?*, Fox 2 San Francisco ktvu.com, February 17, 2022.

<sup>8</sup> Adam Schrader, *Man Arrested for Stomping on the Head of Chinese Immigrant, 61, Who Was Collecting Cans in NYC is Convicted Sex Attacker with Lengthy Criminal Record*, Daily Mail, April 27, 2021. Yao Pan Ma remained in a coma for months before his death. Alyssa Guzman, *Asian Man, 61, Who Was Repeatedly Kicked in the Head in NYC Hate Crime that Left Him in a Coma Dies Eight Months After the Savage Attack: Thug Charged with Attempted Murder Has Been Arrested 15 Times*, Daily Mail, January 9, 2022.

\*GuiYing Ma, a 61-year-old grandmother, was sweeping the sidewalk when Elisaul Perez, for no apparent reason, picked up a large rock and bludgeoned her with it.<sup>9</sup> She later died from her injuries.<sup>10</sup> *Perez had eight prior arrests.*<sup>11</sup>

\*Michelle Go, a 40-year-old mergers and acquisitions specialist at Deloitte, often volunteered her time to, among other things, help the homeless. She died on the scene after being pushed into the path of an oncoming subway train by Martial Simon. *Simon, a chronically homeless man, had been twice convicted of attempted robbery. At the time of the incident, there was a warrant out for him for a parole violation.*<sup>12</sup>

It's not just the homicide cases that follow this pattern. Consider these cases too:

\*Tommy Lau, a Chinese American bus driver, was on his lunch break when he noticed an older Asian couple being harassed by a homeless man. When he tried to intervene, the homeless man, Donovan Lawson, spat on him, punched him in the face and called him by an anti-Asian slur. *This was Lawson's 33<sup>rd</sup> arrest and the fourth time police had been called upon to help when he was in the grip of a mental breakdown.*<sup>13</sup>

\*Vilma Kari, a 65-year-old immigrant from the Philippines, was walking to church when she was suddenly kicked in the stomach by Brandon Elliott. When she collapsed on the sidewalk, he kicked her in the head, shouted an obscenity and added, "You don't belong here." Kari suffered a broken pelvis but survived. *Elliott, who lived in a nearby shelter, was on parole from prison after being convicted of killing his own mother.*<sup>14</sup>

<sup>9</sup> Sabrina Souza & Eric Levenson, *New York City Man Who Fatally Struck Chinese Woman with a Rock Sentenced to 20 Years in Prison*, CNN.com, January 10, 2023.

<sup>10</sup> Amir Vera & Liam Reilly, *Asian Woman, Attacked Last Year in New York by Man with Rock Has Died, Family Says*, CNN.com, March 1, 2022.

<sup>11</sup> Carl Samson, *Repeat Offender Sentenced to 20 Years in Prison for Killing Guiying Ma in NYC Rock Attack*, Yahoo.com, January 11, 2023. Perez pleaded guilty to manslaughter. In a statement read by the family attorney, the victim's husband said, "He should be taken away so he can never hurt anyone else again. That is what justice means to me."

<sup>12</sup> Rana Novini, *DA: Man in Woman's Deadly Times Square Subway Shove Used Both Hands to Kill Her*, NBCNewYork.com, Jan. 19, 2022.

<sup>13</sup> Nicole Hong, Ashley Southall & Ali Watkins, *He Was Charged in an Anti-Asian Attack. It Was His 33<sup>rd</sup> Arrest*, N.Y. Times, April 6, 2021. The article went on to say: "[Lawson] is not unique. Many of the people charged recently with anti-Asian attacks in New York City have also had a history of mental health episodes, multiple arrests and homelessness, complicating the city's search for an effective response."

<sup>14</sup> Nicole Hong, Juliana Kim, Ali Watkins & Ashley Southall, *Brutal Attack on Filipino Woman Sparks Outrage: "Everybody Is on Edge"*, N.Y. Times, March 30, 2021; Joe Marino, Amanda Woods & Lia Eustachewich, *Man Busted for Midtown Attack on Asian Woman Was on Parole for Killing His Mom*, N.Y. Post, March 31, 2021.

\*Carl Chan, the president of the Oakland Chinatown Chamber of Commerce, was walking down the street, minding his own business, when James Lee Ramsey shouted a racial slur and struck him on the back of the head. Chan was left sprawled on the pavement, scraped and bleeding. *Ramsey was on parole from state prison, chronically homeless and schizophrenic. Less than an hour after the attack, he was arrested by the Oakland police, who reported he said he had been seeing “crazy things” like “half-dog and half-humans and half-cat and half humans.”*<sup>15</sup>

These cases are not outliers. Both long criminal records and a history of mental illness coupled with violence are common among offenders. According to the Manhattan Institute’s Charles Fain Lehman, 52.2% of those arrested for a hate crime in New York State between 2019 and 2021, had a prior conviction, 31.9% had a prior felony conviction, and 36.6% had a pending case against them.<sup>16</sup> Judging from the newspaper reports, those arrested for the more serious hate crimes were especially likely to have such a record.<sup>17</sup>

Similarly, on May 3, 2022, the head of the New York City Police Department’s Hate Crime Task Force, Deputy Inspector Andrew Arias, told the New York City Council that out of 100 suspects arrested in 2022 for hate crimes, 47 had “prior documentation of an EDP incident.” By “EDP incident” he was using the NYPD’s acronym for an “emotionally disturbed person”. Officers with the NYPD are directed by their procedural guide to document whether an individual “appears to be mentally ill or temporarily deranged.”<sup>18</sup>

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<sup>15</sup> Eyal Press, *The Deadly Collision of Racism and Mental Illness*, N.Y. Times, October 4, 2022.

<sup>16</sup> See Written Statement of Charles Fain Lehman, fig. 3 at 5.

<sup>17</sup> See, e.g., Wai Wah Chin, *Asians Want Action Against Violence—Not More Rhetoric on Racism*, N.Y. Post, April 10, 2021 (citing several serious cases involving perpetrators with prior arrests and convictions); Pervaiz Shallwani, *Man Charged With Murder as Gay Hate Crime*, Wall St. J., May 19, 2013, <https://www.wsj.com/articles/SB10001424127887323648304578493541799661834> (Hate crime offender had an extensive criminal record which included extended stays in prison).

<sup>18</sup> Arun Venugopal, *Nearly Half of Those Arrested in Hate Crime Attacks Had Mental Health Issues: NYPD*, Gothamist, May 4, 2022.

Not all these crimes are being prosecuted as hate crimes, though in all cases racial motivations were suspected by at least some.<sup>19</sup> In the end, it hardly matters. Four innocent lives have been lost. Three innocent people have been injured.<sup>20</sup>

All the funding for bias education programs and “stop the hate” public service announcements in the world won’t solve this problem.<sup>21</sup> The sort of person who commits these crimes is not likely to be attending bias education programs or listening to public service announcements.<sup>22</sup>

<sup>19</sup> Jarrod Powell was prosecuted for and pleaded guilty to a hate crime. Associated Press, *NYC Man Pleads Guilty in Brutal Hate Crime Stomping Death of Chinese Immigrant*, nbcNewYork.com, January 12, 2023; *Suspect Arrested in Vicious, Unprovoked, Assault on Asian Man in Manhattan*, abc7NY.com, April 29, 2021. Because Assamad Nash’s and Elisaul Perez’s motivations were difficult to prove, they were not. But their crimes nevertheless understandably raised fear in the hearts of many Asian Americans. Elisaul Perez pleaded guilty to first degree manslaughter. David Propper, *Brooklyn Man Gets 20 Years in Prison for Deadly Attack on Asian Woman*, N.Y. Post, January 10, 2023. Assamad Nash was initially charged with murder but was found unfit for trial. *Suspect in Gruesome Chinatown Stabbing Death of Christina Lee Deemed Unfit for Trial*, NBC New York, June 12, 2023. Martial Simon was turned over to the New York Department of Mental Health and Hygiene after being found incompetent to stand trial. Tamar Lapin & David Meyer, *Man Accused of Fatally Shoving Michelle Go, Found Unfit to Stand Trial, Court Official Says*, N.Y. Post, March 22, 2022.

Brandon Elliott has been charged with a hate crime. *Man Charged in Brutal Attack on Asian Woman Out on Parole for Killing his Mom*, abc7NY, April 1, 2021. But while James Lee Ramsey was initially charged with a hate crime, the hate charge was later dropped as part of a plea bargain, and he pleaded guilty to a lesser offense. Amber Lee, *DA Drops Hate-Crime Charges vs. Man who Attacked Oakland Chinatown Leader*, Fox KTVU, September 17, 2021. Donovan Lawson has been charged with assault-hate crime, aggravated harassment, menacing and harassment. Jaime DeJesus, *Man Charged in Hate Crime Assault*, Brooklyn Reporter, March 26, 2021.

<sup>20</sup> My colleague Commissioner Magpantay states that hate crimes should not be a partisan issue, and he is exactly right. But I am disappointed that the report demonstrates a much deeper interest in attempting to link Donald Trump (who is mentioned 33 times) to anti-Asian hate crimes than it does in ensuring that perpetrators are taken off the streets. That makes it seem more partisan than I would like. (For my view on Trump’s references to COVID-19 as the “Wuhan Virus,” etc., please see my footnote 22).

<sup>21</sup> Professor Russell Jeung, a professor of Asian-American Studies at San Francisco State University, launched Stop AAPI Hate, a project of Chinese for Affirmative Action, in 2020. In his written testimony before the Commission, he advocated efforts “to mediate intergroup conflicts through restorative justice approaches” and the promotion of “anti-harassment awareness and safety campaigns against racism.” He also called for “preventing health stigmatization, denouncing xenophobic political rhetoric, and proactively countering hate speech on social media.” Russell Jeung Statement at 16. Similarly, Jo-Ann Yoo of the Asian American Federation asked that the federal government assist communities to “[d]evelop anti-bias programming to educate within and across communities to dispel misconceptions, address the root cause of hate crimes, and build relationships that create safety at the local level.” Jo-Ann Yoo Statement at 4. I have serious doubts that these measures would have had a significant effect on actual hate crimes.

<sup>22</sup> It seems unlikely that they were affected by Donald Trump either. I have no desire to be an apologist for the former president, who has been known to say things that nearly everyone (including me) wishes he hadn’t. But calling COVID-19 the “China Flu” or the “Wuhan Flu” doesn’t strike me as over the line. There is a long history behind naming diseases for the place they were thought to be first detected—the Spanish Flu, the Asian Flu, Rocky Mountain Spotted Fever, Lyme (Connecticut) Disease, African Sleeping Sickness, West Nile Disease, Lassa (Nigeria) Fever, Middle East Respiratory Syndrome (MERS), Argentine Hemorrhagic Fever, Pontiac (Michigan) Fever, Rift Valley Fever, Marburg (Germany) Virus Disease. Ebola is named for a river in the Democratic Republic



It is also unlikely the problem will be solved by hate crimes hotlines or by gathering better hate crimes statistics. It may be true that hate crimes, especially low-level hate crimes, are under-reported, just as crime in general is under-reported. Interestingly, despite what the staff-written part of this report states, the evidence is that hate crimes are somewhat *more* likely to be reported than non-hate crimes of similar magnitude.<sup>23</sup> Alas, the heart of the problem lies elsewhere. More

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of the Congo. Zika is named for a forest in Uganda. Tularemia (or rabbit fever) is named for Tulare County, California.

It seems to me that, if anything, a disease that is named for a specific group of people is worse, and the fact that the media do not shrink from using such terms is evidence of their political motivation in their panic over Trump's use of "China Flu." A good example is Legionnaires' Disease, which is named for members of the American Legion, a veterans' organization, who suffered an outbreak of the disease at a convention at the Bellevue Hotel in Philadelphia in 1976. I recall my father, a member of the American Legion, good naturedly objecting to the name. But I don't think it would have occurred to him that was somehow malicious to use it. I note that ABC News, the New York Times, USA Today, and a host of other mainstream media outlets, have recently used the term. See Nathan Diller, *FDA Sends Warning to American Cruise Lines after Guests Contract Legionnaires' Disease*, USA Today, February 21, 2023; Knavul Sheikh, *What Is Legionnaires' Disease and How Can I Protect Myself?*, N.Y. Times, September 21, 2022; Paul Sisson, *SDSU to Reopen Buildings Closed During Legionnaires' Disease Investigation*, San Diego Union Tribune, April 19, 2023; Meredith Delison, *1 Dead, 11 Sickened in Legionnaires' Disease Outbreak in California County*, ABCnews.go.com, August 4, 2022.

Even if Trump's use of the terms "China Flu" and "Wuhan Flu" were somehow wrongful, it is unlikely that individuals like Donovan Lawson, Assamad Nash, James Lee Ramsey, and Martial Simon were influenced by it. They may not have even known about Trump's description of the disease. Homeless people seldom spend their time following Trump or his Twitter feed. It used to be standard procedure for psychiatrists in the United States to determine if patients are alert and oriented by asking their name, the date, and the identity of the president of the United States. If they couldn't answer those questions, they had serious problems. Of course, Nash, Ramsey, and Simon really had serious problems and might well have been unable to identify Trump as the president. It seems far more likely that if their motivations had anything to do with COVID-19, it had more to do with the fact that COVID-19 did indeed originate in China than with Trump's behavior.

Commissioner Jones and the staff-generated portion of the report both suggest "a correlation" between Trump's tweet and anti-Asian crime. I strongly suspect they are right that there is a correlation. How could there not be? But correlation is not causation. Both were responding to the same stimulus: the outset of the COVID-19 pandemic. See Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Marilyn Thomas, Thu Nguyen, Mahasin Mujahid, and Rucker Johnson, *After 'The China Virus' Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans*, 47 Health Education and Behavior, Sept. 2020, <https://journals.sagepub.com/doi/full/10.1177/1090198120957949>.

<sup>23</sup> Somehow the Commission's report has gotten the idea that hate crimes are less likely to be reported than other crimes. The report states: "It is well-established that hate crimes are less likely to be reported to the police in comparison to other types of crimes." Rep. at 71. I didn't see that demonstrated in the data. The report cites a 2005 Department of Justice report that does indeed show that only 44.1% of violent hate crime victimizations are reported, while 49.3% of violent non-hate crime victimizations are reported from July 2000 through December 2003. (Caroline Harlow, "Hate Crime Reported by Victims and Police," National Criminal Victimization Survey and Uniform Crime Reporting, Bureau of Justice Statistics at 4, Table 4, November 2005, <https://bjs.ojp.gov/content/pub/pdf/hcrvp.pdf>). But there is a lack of equivalence between the hate crime victimizations and the non-hate crime victimizations to which they are being compared. I had to do some of my own calculations using data in the 2005 report, but it turns out the violent non-hate crime victimizations in the comparison are, on average, somewhat more serious than the violent hate crime victimizations, so one would have to expect higher reporting rates. For example, the proportion of non-hate crime victimizations that were robberies (a felony) was much higher than the proportion of hate crime victimizations (10.9% vs. 5.9%). On the other hand, the

needs to be done to ensure that those who are committing the crimes are taken off the streets. Until that happens, crime is likely to remain a problem.<sup>24</sup>

A policy of “de-incarceration” has often been urged in recent times. Second thoughts about this may well be in order. As Wai Wah Chin alludes to in her *New York Post* article, it is rather awkward to fret over anti-Asian hate crimes and at the same time advocate for radically reducing

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proportion of non-hate crime victimizations that were simple assaults (a misdemeanor) was lower. In particular, the least serious simple assaults—those involving verbal threat only—were only 26.2% of the non-hate crime victimizations, while they were 33.5% of the hate crime victimizations. (*Id.* at 3, Table 3.) In order to make the comparison to the figures in Table 4, I calculated these percentages using only the violent victimizations in Table 3. Because the reporting rates are not broken down by seriousness of offense, one cannot conclude from this whether hate crime reporting was higher or lower than non-hate crime reporting. But it is entirely possible that this would fully account for the lower reporting rate for hate crimes that the 2005 article found.

More important, the 2005 report appears to be seriously outdated. The more recent report from the Department of Justice—*Hate Crime Victimization, 2005–2019*—found that 57% of violent hate crime victimizations were reported to the police in the period from 2015–2019. (Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 4, Table 2, September 2021,

[https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf)).

No directly comparable figure for violent non-hate crime victimizations is included in that report. But it is possible to go outside of *Hate Crime Victimization, 2005–2019*, and find nearly comparable figures for violent non-hate crime victimizations. *Criminal Victimization, 2018* states that the non-hate crime reporting rate for 2017 was 44.9% and for 2018 was 42.6%. Put differently, contrary to what the staff generated portion of this report states, the reporting rate for violent hate crimes was actually higher than the rate for violent non-hate crimes. (See Rachel E. Morgan & Barbara A. Oudekerk, *Criminal Victimization, 2018* at 8, Table 5, September 2019. See also Alexandra Thompson & Susannah N. Tapp, *Criminal Victimization, 2021* at 5, Table 4, September 2022 (reporting that in 2020, the rate that violent non-hate victimizations were reported to police was 40.2% and that the rate for 2021 was 45.6%)). That isn’t surprising given how many resources have been devoted to increasing hate crime reporting rates. Why should anyone be surprised that such efforts have been successful?

<sup>24</sup> Ms. Chin pointed out how Critical Race Theory (CRT) training could even increase the likelihood of an anti-Asian hate crime:

When a black man told a Chinese father in Central Park on March 27 that “you guys always have the advantage,” then sucker-punched him, he acted out the two fundamental tenets of CRT. The first tenet is that you must judge people, not as individuals, but by their race only—i.e., to be racist—so the unlucky Chinese father became “you guys,” part of a collective racial judgment. The second tenet is that the only relationship between black and whites—and Chinese by extension—is that of unjust oppression. Oppression justifies retaliation, making it “socially just” to sucker-punch.

Wai Wah Chin, *Asians Want Action Against Violence—Not More Rhetoric on Racism*, *N.Y. Post*, April 10, 2021.

incarceration rates,<sup>25</sup> eliminating cash bail,<sup>26</sup> and defunding the police.<sup>27</sup> It's naïve at best. And at some point, it starts to look insincere.

It's also taken for granted that the problem of the homeless mentally ill is intractable—that miles and miles of makeshift tents in our nation's largest cities are something we must learn to live with. I have been told—perhaps conveniently—that there is little to worry about, because they have very little tendency toward violence. But, as many urban dwellers have experienced, a not insubstantial number—including Donovan Lawson, Assamad Nash, and James Lee Ramsey—obviously do.

The most important reason we have governments is to protect us from aggression, both foreign and domestic. For the past few years, our criminal justice system has not earned high marks in this most fundamental of governmental tasks. That needs to change.

<sup>25</sup> See, e.g., Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) (advocating radical de-incarceration and viewing incarceration rates in the United States to be anti-African American). Compare Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, Press Release: Prison Policy Institute, March 14, 2023 (stating that prison populations were reduced 15% during 2020 and jail populations were reduced 25%, but lamented that rates have begun to climb again) with Tom Cotton, *Our Underincarceration Problem*, National Review, August 11, 2021 (“Ill-conceived anti-prison policies rooted in platitudes, lies, and misleading statistics have unleashed thousands of criminals onto the streets”).

<sup>26</sup> For a discussion of recent changes in the law of various states in connection with cash bail, see U.S. Commission on Civil Rights, *The Civil Rights Implications of Cash Bail* (January 20, 2022).

<sup>27</sup> In 2023, some have argued that reductions in police budgets was never advocated and never happened—that it is all a myth. But that's nonsense. For example, in Seattle, about \$45 million was whacked out of the police department budget for 2021. In 2022, another \$7 million was taken away. See *Seattle Open Budget*, <https://openbudget.seattle.gov/#!/year/2023/operating/0/service/Public+Safety/0/department>. The number of sworn police officers was 1,420 in 2018 and decreased steadily after that and was down to 1,077 in 2022. See FBI Crime Data Explorer, *Law Enforcement Employees Breakout*, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/pe>.

Minneapolis is similar. Its 2021 police budget was slashed by almost \$28 million. Compare *City of Minneapolis, 2020 Budget*, <https://www.minneapolismn.gov/media/-www-content-assets/documents/2020-adopted-budget.pdf> with *City of Minneapolis, 2021 Adopted Budget*, <https://lms.minneapolismn.gov/Download/FileV2/23271/2021-Adopted-Budget.pdf>. In 2019, it had 861 sworn officers. By 2020, this had declined to 833, and by 2021 it fell off a cliff with only 648. Rather than improving in 2022, it got worse with only 592. See FBI Crime Data Explorer, *Law Enforcement Employees Breakout*, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/pe>.

Chicago had almost \$80 million cut from its police budget from 2020 to 2021. Compare *City of Chicago Annual Appropriation Ordinance for the Year 2020*, [https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document\\_uploads/budget/2020/2020\\_Annual\\_Appropriation\\_Ordinance\\_1.pdf](https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document_uploads/budget/2020/2020_Annual_Appropriation_Ordinance_1.pdf) with *City of Chicago Annual Appropriation Ordinance for the Year 2021*, [https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document\\_uploads/budget/2021/2021\\_Annual%20Appropriation\\_1.pdf](https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document_uploads/budget/2021/2021_Annual%20Appropriation_1.pdf).

See Chelsia Rose Marcus, *N.Y.P.D. Officers Leave in Drove for Better Pay in Smaller Towns*, N.Y. Times, December 9, 2022 (“Police departments across the country are grappling with increasing resignations and retirements. And while hiring levels rose last year after a sharp decrease in 2020, they have not made up for the losses, according to a March report from the Police Executive Research Forum, a law enforcement policy group.”).

Some of the witnesses at the briefing as well as many of those who submitted public comments discussed the need for law enforcement.<sup>28</sup> For example, the Asian American Coalition for Education, an alliance of over 300 Asian-American organization, wrote to us:

*Notably, the majority of violent attacks on Asian Americans were reported in states that either defunded the police, or released many violent criminals irresponsibly during COVID-19 pandemic, or failed to address their rampant homeless and mental health issues ....*

AACE’s comment noted that law and order are “essential to protect Asian Americans and all Americans.” It urged us to demand that “relevant state and local governments reverse their failing policies of defunding and releasing violent criminals irresponsibly” and “effectively address their homeless and mental health issues.”

Similarly, a coalition of eleven Asian American and civil rights organizations wrote a public comment that urged the Commission to focus on “threats to public safety in general.” They stated that it is a mistake to focus attention “on relatively minor incidents that do not constitute crimes at all,” while “ignor[ing] violent crime the motivations [for which] don’t happen to be classified by the police authorities as ‘hate crime.’”<sup>29</sup>

The reference, of course, is to law enforcement agencies like the Sacramento Police Department, which urges citizens to report on their neighbors when they use racial or ethnic slurs or otherwise behave in a way that suggests bias.<sup>30</sup> It is hard to imagine a good reason for such a

<sup>28</sup> Charles Fain Lehman stated in his written submission to the Commission, that “hate crime offenders are not specialists—they tend to resemble non-hate crime offenders in their history of criminal behavior, an indicator that they commit other, non-hate crimes as well.” For example, in New York State between 2019 and 2021, 52.2% of those arrested for a hate crime had a prior conviction, 31.9% had a prior felony conviction, and 36.6% had a pending case against them. The numbers for those arrested for other crimes were similar—51.4% had a prior conviction, 33.1% had a prior felony conviction, and 33.0% had a case pending against them. Mr. Lehman concluded from this that “the best way to combat hate crime is not by targeting “hate,” e.g. through bias reduction programming or content moderation, but the target “crime” through aggressive law enforcement.” Statement of Charles Fain Lehman at 1.

<sup>29</sup> Public Comment submitted by Californians for Equal Rights Foundation, et al., April 24, 2023. Comments from individual members of the public also sounded this theme. YangMing Cao of Fresno, California wrote about the witnesses who addressed the Commission about our March 24 briefing. In his view, many of them disregarded the Asian American community’s actual interests in order to “sell their ideological rhetoric of ‘Stop Asian hate,’ pretending that ‘white supremacy’ or ‘systemic racism’ is the biggest threat to the Asian American community.” He further stated:

Such fear mongering and race politicking can’t be further away from the truth: Asian Americans, just like other Americans, deserve equal treatment, not special treatment. Make American cities safer, crack down on crimes and criminal, and grant our children equal education rights. Everything else is either window dressing or counter-productive.

<sup>30</sup> “Anonymous Crime Tip, Gang, Drug or Suspicious Tip Lines/Hotlines”, City of Sacramento, <https://www.cityofsacramento.org/Police/Contact/Crime-Tips>. The hotline for hot crimes doubles as a hot line for bias incidents.

policy, especially in this era in which everything has been labeled “racist.” Police should stick to their core mission—to stop murder, mayhem, armed robbery, and other conduct that actually violates the criminal law. Given that this report is about anti-Asian discrimination, it is worth pointing out that some Asian Americans—recent immigrants from China—will likely be sensitive to a practice that sounds a lot like China’s social credit policy.<sup>31</sup> For some, avoiding that policy may have been the reason they left China.

Asian American voting patterns also reflect Asian American concern over the failure of our criminal justice system to keep violent crime under control.<sup>32</sup> As Michael Hartney and Renu Mukherjee wrote in connection with the successful effort to recall San Francisco’s progressive district attorney Chesa Boudin:<sup>33</sup>

On June 7, San Franciscans voted overwhelmingly to recall their city’s progressive district attorney, Chesa Boudin, from office—an outcome foreshadowed by pre-election polling showing

<sup>31</sup> According to Katie Canlaes and Aaron Mok, China’s social credit policy assigns rankings to both individuals and organizations. The ranking is based upon “good” or “bad” behavior as determined by the National Development and Reform Commission, the People’s Bank of China, and the Chinese court system. “Incentive mechanisms encourage keeping trust” and “punishments” discourage “breaking trust.” Infractions include “bad driving, smoking in non-smoking zones, buying too many video games, and posting fake news online, specifically about terrorist attacks or airport security.” Punishments include travel bans, bans from better hotels, and reduced internet speeds. Katie Canales and Aaron Mok, *China’s ‘Social Credit’ System Ranks Citizens and Punishes Them with Throttled Internet Speeds and Flight Bans if the Communist Party Deems Them Untrustworthy*, Business Insider, November 28, 2022.

<sup>32</sup> The New York Times has written on more than one occasion about Asian American voters in the New York area who are voting for candidates they believe will be tougher on crime. Jason Kao, *Where New York’s Asian Neighborhoods Shifted to the Right*, N.Y. Times, March 5, 2023; Luis Ferré-Sadurní & Ellen Yan, *Crime Concerns Drove Asian Americans Away from New York Democrats*, N.Y. Times, January 10, 2023. See also Hannah Hartig, Andrew Daniller, Scott Keeter & Ted Van Green, *Republican Gains in 2022 Midterms Driven Mostly by Turnout Advantage*, Pew Research Center, July 12, 2023, <https://www.pewresearch.org/politics/2023/07/12/voting-patterns-in-the-2022-elections/> (noting that the Republican share of the Asian American vote has been increasing with 26% in 2018, 30% in 2020, and 32% in 2022).

<sup>33</sup> In a hotly contested election in 2019, Boudin emerged as the winner after campaigning for “radical change to how we envision justice.” According to NBC News, he pushed for “sweeping reform over incarceration” and “said he wants to tackle racial bias in the criminal justice system, overhaul the bail system, protect immigrants from deportation and pursue accountability in police misconduct cases.” Associated Press, *Chesa Boudin, Whose Parents Were Imprisoned, Win San Francisco D.A.’s Race: The Son of Anti-War Radicals Sent to Prison for Murder When He Was a Toddler, Said He Wants to Reform the Criminal Justice System*, NBC News, November 10, 2019. His parents, Kathy Boudin and David Gilbert, were members of the far-left Weather Underground and participated in the infamous Brinks armored car robbery that left two police officers and a security guard dead. His mother spent 22 years in prison as a result and his father remains there. He was reared by fellow Weather Underground members Bill Ayers and Bernadine Dohrn, who themselves spent years as fugitives. *Id.*

As to anti-Asian crime in particular, Boudin was criticized for one of his statements concerning the vicious murder of an 84-year-old Thai American grandfather named Vicha Ratanapakdee. Mr. Ratanapakdee was taking his morning walk when 19-year-old Antoine Watson, for no apparent reason, sprinted across the street and brutally pushed him down. As he fell, his head hit the pavement, causing his death. Boudin described Watson as having “some sort of temper tantrum,” which outraged Ratanapakdee’s family and evidently many other San Franciscans. Dion Lim, *Family Outraged Over SF DA’s Description of 84-Year-Old Asian Man’s Suspected Killer*, ABC7 News, March 2, 2021.

that a majority of residents were so tired of Boudin’s soft-on-crime policies that they were willing to fire him after just two years on the job. ... [O]bservers would do well to understand the vital role that San Francisco’s Asian voters played in the Boudin recall.<sup>34</sup>

I do not pretend to be an expert in matters of enforcement of the criminal law. But it seems to me that if policymakers are concerned about violent hate crimes, they would do well to focus on violent crime in general.<sup>35</sup> The steep increases in crime that the nation witnessed over

<sup>34</sup> Michael Hartney & Renu Mukherjee, *The Asian Recall*, City Journal (June 17, 2022). They further wrote:

Our evaluation of two key data points largely validates the anecdotal evidence showing that Asian-Americans played a key role in ousting Boudin. We compared support for the recall across the city’s 11 supervisor districts relative to the share of registered voters in each district who requested a Chinese language ballot. In the three districts with the smallest share of Chinese ballots (2 percent or less), just 50 percent of voters supported the recall (5 percentage points less than the citywide average). In contrast, in the three supervisor districts with the highest share of Chinese language registrants (10 percent or more), 65 percent of voters voted to recall Boudin.

We also examined another measure of citizen support for the recall: campaign donations. Using publicly available campaign-finance data, we examined the share of donor to the pro- and anti-Boudin campaign committees who had Asian surnames. What we found largely confirmed the thesis that the pro-recall movement drew heavily on Asian support. Notably, one in five individual contributors to the Boudin recall effort had an Asian surname. By contrast, a much smaller share of pro-Boudin contributors (closer to one in ten) had an Asian surname. ...

While Asian residents of one of the nation’s most progressive cities are unlikely to become reliable Republicans, these dynamics suggest that many of these voters have begun to feel meaningful political cross-pressures. Democrats have embraced positions on education and crime that are unpopular with many Asian voters, including recent immigrants. With Asian-Americans representing the fastest-growing racial or ethnic group in the United States, events like the Boudin recall suggest that a potentially major national development may be underway.

See Claire Wang, *How San Francisco’s D.A. Recall Election Shows a Rift in the Asian American Community*, nbcnews.com, June 10, 2022 (“Asian Americans, galvanized by rising crime rates and violent attacks against elders, appeared to be a driving force in Tuesday’s recall election that ousted San Francisco’s reformist District Attorney Chesa Boudin”).

<sup>35</sup> Commissioner Nourse, to credit, is more focused on the need for prosecution. In particular, she is focused on hate crimes prosecutions, especially federal hate crimes prosecutions. She takes issue with the requirements set forth in Section 4707(b) of the Matthew Shepard and James Byrd Jr. Hate Crimes Act. 18 U.S.C. § 249(b). Under that law, a prosecution cannot take place unless the Attorney General has certified in writing that:

(b) Certification Requirement.—

“(1) IN GENERAL.— No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

“(A) the State does not have jurisdiction;

“(B) the State has requested that the Federal Government assume jurisdiction;

“(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

“(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

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Those requirements were put in place to deal with special aspects of federal hate crime prosecutions. In essence, they allow state law enforcement authorities to conduct the prosecution unless good reason exists for federal prosecutors to act instead.

For one thing, those requirements were intended to cut down on the likelihood of duplicative effort in prosecution. Because prosecuting major hate crimes tends to be viewed as a feather in the cap of a state or federal prosecutor, Congress feared that the federal statute would cause a rush to prosecute as ambitious prosecutors vied for the publicity the prosecution would surely bring. They wanted to avoid the jockeying for position and waste.

There is also another reason for the Section 4707(b) requirements. To understand that reason, some background on federal criminal jurisdiction would be useful: Our Constitution protects us against double jeopardy. An individual cannot be tried twice for the same crime. If the individual is acquitted, that's the end of it.

But there's a catch. Under the "dual sovereignty rule," the federal government cannot be ousted from jurisdiction just because a state has undertaken a prosecution first. And vice versa. Each must be accorded an opportunity to exercise its authority to protect the public from crime. See *United States v. Lanza*, 260 U.S. 377 (1922).

That is a genuine cause for worry. The potential for abuse is obvious. On the other hand, the dual sovereignty rule makes some logical sense. The federal government cannot allow states to thwart federal policy. There have been actual cases of efforts by state authorities to interfere with federal authority during Prohibition by conducting intentionally botched prosecutions of bootleggers. Nor should a botched federal prosecution be permitted to prevent states from exercising their authority to protect the public.

The whole thing worked tolerably well back when federal criminal jurisdiction was very limited (as it was intended to be by the Constitution). It is worth noting here that the Constitution does not grant the federal government a general police power. That's for the states. Consequently, when Congress passes a criminal statute, it must relate it to one of the federal government's enumerated powers. Typically, these statutes have dealt with such things as crimes committed on federal property, crimes that victimize federal actors in the performance of their duties, crimes conducted through the use of the U.S. Mail, and crimes that implicate interstate or foreign commerce. Back when federal jurisdiction over crime was very narrow, the dual sovereignty rule rarely caused problems.

But in recent decades, the federal criminal code has expanded in ways that for the first time, allow prosecutors to get two bites at the apple on a routine basis. That's intolerable. The federal hate crimes act is a major factor in this. For example, it covers violent crimes that occur "because of" someone's disability. But victims of crimes are frequently targeted because of some real or perceived weakness. And there are those who take the position that all rapes are hate crimes because rapists almost always target victims of a particular sex. See *Hearing Before the Committee on the Judiciary of the United States Senate on the Matthew Shepard Hate Crimes Prevention Act of 2009* (S. Hrg. 111-464), June 25, 2009.

The requirements of Section 4707(b) were also intended to cut down on the double jeopardy issue by making sure that a re-prosecution would not occur except when determined to be truly necessary and in the public interest. This was the product of compromise. Out of concern for double prosecutions, I would have favored more stringent limitations on re-prosecutions. Others were less bothered by the prospect of prosecutors getting two bites at the apple this way and would have preferred fewer constraints on federal prosecutions.

Commissioner Nourse also calls upon Congress to re-promulgate the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act in an effort to re-assert Congress's view that it has constitutional authority to pass such a statute in its current configuration. I, too, would prefer to see the statute re-promulgated, but not in the way Commissioner Nourse suggests. For reasons I have commented on at greater length elsewhere, I don't think there is anything Congress can do to make Section 4707(a)(1) of the Act (18 U.S.C. § 249(a)(1)) constitutional (though other parts of the Act appear to be constitutional). That section depends on the Thirteenth Amendment for its authority, but the Thirteenth Amendment only gives Congress the broad power to see to it that slavery and involuntary servitude are prohibited and never return. Unless the statute was intended by Congress in good faith as a means of preventing the return of slavery or involuntary servitude, it's without constitutional authority. See

the last few years seem to have leveled off in the last year or so—in part because post-pandemic incarceration rates have started to climb again. But that slight decrease in the crime rate is hardly cause for celebration. The rate leveled off in a bad place—still higher than it was prior to the rise. We can do better. And we must.

*Of the Making of Hate Crime Statistics There Is No End.*<sup>36</sup>

*What Do Aggregate Hate Crime Statistics Tell Us?* The answer to that question is probably “not as much as we like to think.”

It is generally agreed that, beginning around the time of the COVID-19 lockdown, the country had a spike in anti-Asian hate crimes. The most notorious example may be the case of José Gomez III of Midland, Texas, who, on the very day the lockdown began, tried to kill a Burmese American family that was shopping at Sam’s Club. Gomez, who acted in full view of other shoppers, thought the family was Chinese and somehow blamed them for the pandemic.<sup>37</sup>

Exactly how large the spike was and how long it lasted is hard to say. Extensive media coverage tends to corrupt the numbers. It can increase the reporting rate rather than the crime rate itself. It can also encourage victims and law enforcement officers to interpret incidents as hate crimes that they might otherwise have viewed as ordinary crimes or even not crimes at all. On the other hand, the increases in crime can be real, and the publicity itself can sometimes cause the increase by inspiring copycat crimes. The bottom line is that arriving at accurate numbers is impossible.<sup>38</sup>

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United States v. Hougen, No. 21-10369 (9<sup>th</sup> Cir. August 1, 2023)(Ikuta, J. dissenting); United States v. Cannon, 750 F.3d 492, 509 (5<sup>th</sup> Cir. 2014)(Elrod, J., specially concurring to her own majority opinion); Gail Heriot & Alison Somin, *Sleeping Giant?: Section Two of the Thirteenth Amendment, Hate Crimes Legislation*, 13 Engage (Feb. 12, 2013); Brief Amicus Curiae for Gail Heriot & Peter N. Kirsanow in United States v. Metcalf, No. 16-4006 (8<sup>th</sup> Cir. filed December 22, 2016)(available on SSRN). No one will believe that Congress was genuinely concerned that without the statute there would be a risk that slavery or involuntary servitude as that term was understood in 1865 would return. Such a claim would be obviously insincere. See *McCulloch v. Maryland*, 17 U.S. 316 (1819)(“Let the end be legitimate” ... i.e. let Congress’s purpose in promulgating the statute be a legitimate one under Article I’s enumerated powers and courts will be deferential as to means). On the other hand, Congress could easily re-promulgate the statute to put all of the prohibitions into Section 4707(a)(2) (18 U.S.C. § 249(a)(2)), which is premised on Congress’s power under the Commerce Clause. See Art. I, sec. 8, cl. 3. That would require prosecutors to prove an interstate commerce nexus with each prosecution, but that is a small price to pay for compliance with the Constitution

<sup>36</sup> Ecclesiastes 12:2.

<sup>37</sup> Julian Mark, *Man Sentenced to 25 Years for Violent Anti-Asian Assault at Sam’s Club*, Wash. Post, August 8, 2022. The fact that he acted in full view of other shoppers suggests mental illness was a factor here.

<sup>38</sup> The truth is that accurate statistics on any kind of crime are hard to come by, particularly, though not only, during the rocky transition from UCR to NIBRS. I tend to trust only the statistics for homicide (and then only when apples-to-apples comparisons are made). Sure, there is slippage with the handful of cases that are incorrectly classified as



accidents or suicides when they are really homicides (and vice versa). And there are the rare cases of an individual who disappears and whose body is never found. But when the UCR data show that 16,374 homicides occurred in the United States in 2018 and 16,425 in 2019, those figures are as close to on target as any national crime statistic you're likely to run across. See 2019 Crime in the United States, tbl. 1 <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-1>

By contrast, everything else is likely to be less accurate—especially for low-level crimes like simple assault. It's not that the federal government doesn't try. It collects statistics both from law enforcement agencies and from the public. Both methods have their drawbacks. Putting them together is useful. Among other things, when the numbers don't match up (and they never do), it reminds us of how difficult it is to get an accurate picture of something as complicated as crime.

Data from law enforcement agencies is less than optimal in part because those agencies can't report crimes that weren't reported to them. Judging from the chatter on my neighborhood email list, lots of crimes, especially low-level ones, go unreported. This is in part because victims perceive that nothing will be done about them. They don't want to waste their time. Note that from neighborhood to neighborhood or from demographic group to demographic group, crimes go unreported at different rates. For example, immigrant communities may trust the government less than more established communities, at least in part because in the place they came from the police may have been entirely unworthy of trust.

In addition, even when crimes are reported, it is sometimes in the interest of local law enforcement to downgrade reports of crime to non-crimes in order to improve the locality's reputation for safety and to reduce their workload. In the 1980s, WBBM-TV in Chicago received numerous awards for an extensive exposé that it entitled "Killing Crime," which documented how Chicago police downgraded many credible reports of crime to non-crimes. See WBBM: Killing Crime: A Police Cop-Out, Vimeo.com, <https://vimeo.com/73164896>. See also Ben Poston, Joel Rubin & Anthony Pesce, LAPD Underreported Serious Assault, Skewing Crime Stats for 8 Years, L.A. Times, October 15, 2015; Leslie Griffin, Chicago's Police Accused of Dismissing Unsolved Crimes to Better Their Record, UPI.com, May 7, 1983. As a resident of Chicago at the time, I found it shocking. These days, I don't get shocked nearly so easily.

Then there is the problem of getting the data from the local law enforcement agency to the federal government. Here, too, it turns out that there is many a slip from the cup to the lip. For years, the Uniform Crime Reporting (UCR) Program compiled official data on crime in the U.S. More recently, however, a more complex database has been implemented—at least partially. As I understand it, the National Incident-Based Reporting System (NIBRS) differs from original UCR in part because it eliminates the "hierarchy rule" which recognizes the most serious offense committed during an incident. NIBRS, agencies are required to submit detailed information, not just about the most egregious offense in an incident, but about each and every offense committed in a single incident, as if each offense is a separate and distinct crime. Put differently, it is more work. It's also expensive to convert from a UCR system to a NIBRS system. (*Cost Issues of Implementing the National Incident-Based Reporting System in Local Law Enforcement Agencies*, NIBRS Project Staff Report 2, May 1997, <https://www.search.org/files/pdf/costs.pdf>) As a result, many fewer local law enforcement agencies participate. For 2022, the largest city to report data was San Diego. That means New York, Chicago, and Los Angeles did not report. I feel very uncomfortable with national numbers like that. For gauging basic crime trends, looking at the issue city by city may yield more useful information.

The federal government also looks to the public for its crime data in the form of the National Crime Victimization Survey. But victim-reported information has its problems too. Ordinary Americans may make mistakes about what constitutes a crime and what doesn't. For example, they may believe that actions that are protected by the First Amendment are criminal when they are not or that actions that create civil liability are also punishable as crimes when they are not. Ordinary Americans may also err when asked if they have been victimized in the last year and report a crime that actually took place 14 months ago. One reason to believe that victims make mistakes is that they often respond to the survey by saying they did report a hate crime to the police. Yet the police data reported via UCR and NIBRS do not reflect the same number of such crimes. Although several explanations for the

But even if we had rock-solid numbers—whether we’re talking about anti-Asian hate crimes or hate crimes in general—there would still be problems with understanding what those numbers mean. It’s easy to be misled. One problem is that when Americans think of hate crimes, they often think of a gang of skinheads attempting to kill or seriously injure a randomly selected member of a racial, ethnic, or sexual orientation minority—for no reason other than to feed their seething hatred. Many remember the horrific murder of James Byrd, Jr., who was chained to a pick-up truck and dragged to his death by a gang of thugs.<sup>39</sup>

If that’s your image of the “typical” hate crime, the number of hate crimes that are said to occur each year will be terrifying. President Biden’s very peculiar claim that “[w]hite supremacy . . . is the single most dangerous terrorist threat in our homeland” will seem like understatement.<sup>40</sup> But only a tiny number of hate crimes even come close to fitting that stereotype. Those that do shock the nation. If they didn’t, there’d be something wrong with us. It’s disorienting to think that there are bloodthirsty individuals out there with an all-consuming hatred directed at entire racial or ethnic groups.

But in a nation of over 330,000,000, there will always be a number of human scorpions. Mercifully, they are rare. To me at least, it is fitting that the men responsible for James Byrd, Jr.’s grisly murder—John William King and Lawrence Brewer—were executed pursuant to the laws of the state of Texas.

Was their crime worse because Byrd was targeted for being African American? Would they have been less culpable if they had selected the victim of their monstrous crime completely randomly? While a reasonable argument can be made that the answer is yes, I will leave that question to

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inconsistencies exist, I believe the most obvious is that the police made the decision either that the reported incident was not a hate crime or that there was insufficient evidence that it was. See Rep. at 69-71.

<sup>39</sup> *James Byrd, Jr.’s Killer Executed for Notorious 1998 Hate Crime*, BBC, April 25, 2019.

<sup>40</sup> Giselle Ruhiyyih Ewing, *Biden Calls White Supremacy “Most Dangerous Terrorist Threat” in Speech at Howard*, Politico, May 13, 2023. The statement was made in Biden’s commencement address to Howard University’s graduating class. He added, “And I’m not just saying this because I’m at a Black HBCU. I say this wherever I go.” See also Rob Crilly & Geoff Earle, *Conservatives Slam Biden for Saying White Supremacy is the “Most Dangerous Terrorist Threat” to the Nation During Howard Commencement Address*, Daily Mail, May 14, 2023.

The New Oxford American Dictionary defines “terrorism” as “the unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aims.” Under that definition, the September 11 attacks were terrorism because they were intended to discourage the United States from intervening in Middle Eastern affairs. Similarly, the bombing of the Alfred P. Murrah federal building in Oklahoma City by anti-government extremists was terrorism, because it was an intended retaliation for the Waco siege in 1993 and the Ruby Ridge incident in 1992 and to discourage the federal government from acting in a similar way in the future. Also, many of the participants in the 2020 riots were engaged in terrorism, since their aim was to encourage de-incarceration, a reduction in funding to the police, and other public policy changes. Other participants—like those who simply saw the riots as an opportunity to steal from retail stores—were not terrorists. The same principle applies to all violent crime: If it was part of a strategy to influence political decisionmakers, it was terrorism. If it was committed for its own sake, it was not. President Biden did not elaborate on how he arrived at his conclusion.

others to ponder. In any event, it's important not to confuse the typical hate crime, which are certainly bad enough, with the astonishing evil of King and Brewer and similar killers. They have less in common than one might think. Consider:

*Who commits violent hate crimes?* Very few are committed by “white supremacists” in the sense of card-carrying members of the Ku Klux Klan.<sup>41</sup> Indeed, the hate crimes reported to the federal government are disproportionately committed by African Americans relative to their numbers in the population at large<sup>42</sup> (though there are plenty white offenders too as well as offenders of other races).

As I noted in the previous section, many hate crime offenders are mentally ill. In the context of the anti-Asian hate crimes that were triggered by COVID-19 that's easy to understand. What sort of a person over the age of 12 would be irrational enough to blame the pandemic on Asian Americans generally (or even Chinese Americans generally)? A mentally ill person, that's who.

Also contrary to the stereotype, about a third of hate crimes are committed by family members, intimates, neighbors, or at least acquaintances of the victim.<sup>43</sup> That should tell us something

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<sup>41</sup> Of course, the term “white supremacist” gets tossed around very lightly these days with some so thoroughly imbued with critical race theory as to view nearly everyone as a white supremacist, including non-whites. See John Blake, *White Supremacy, With a Tan*, CNN.com, September 4, 2021 (taking the position that individuals who would be viewed by most as non-white are frequently white supremacists).

<sup>42</sup> See Charles Fain Lehman, *What Motivates Hate Crime? Why Hate Criminals Are Still Criminals tbl. 1*, Manhattan Institute, May 2003, <https://media4.manhattan-institute.org/wp-content/uploads/Why-Hate-Criminals-Are-Still-Criminals.pdf>.

Between 2005 and 2019, the perpetrators in 45.3% of the hate crime incidents were non-Hispanic whites, while in 33.3% of the hate crime incidents, the perpetrators were non-Hispanic blacks. The percentage of hate crime incidents in which Hispanics or “Other” were the perpetrators was 15.4% and 4.3% respectively. In addition, in 1.6% of the incidents, the perpetrators were listed as belonging to more than one group. Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 11, Table 6, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf). Taking the 2010 census as the best source for comparison, the only group that appears to be over-represented as perpetrators is African Americans. See also Rep. at. 82-83, Table 9; pp 90-91, Table 13; pp. 92, Table 16; pp. 101-102, Table 22; pp. 111, Table 26 (perpetrator race statistics not adjusted for population share.)

Diane Yap submitted written testimony (in addition to her oral testimony) that indicated that anti-Asian hate crimes are disproportionately committed by African Americans and that the disproportionality is not explained by proximity. Yap at 1-4. Ms. Yap lamented what she considered an overemphasis on hate crimes and hate incidents (or as she put it “nonviolent behaviors like tweets and shunning”) and an underemphasis on actual violent crime.

<sup>43</sup> Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 11, Table 6, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf). According to the data from 2015 to 2019, 30.7% of violent hate crime are committed by individuals who are “at least casually known” to the victim. For 56.2%, the offender was a stranger. For 13.1%, the relationship was listed as “unknown” (or at least unrecorded by police investigating the crime). Interestingly, just a few years earlier, in 2012, a majority (53%) of violent hate crime offenders were intimates, family members or acquaintances and only 40% were strangers with 7% “unknown.” See Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, *Hate Crime*

about the context of these crimes: Often the offenders are not simply looking to target a random member of a particular racial or ethnic group. Rather, they are engaged in a dispute with a particular person over something that is itself unrelated to race, ethnicity, etc. The dispute escalates, epithets fly, and a crime is committed. Perhaps without the added element of race or ethnicity, it wouldn't have escalated. Or perhaps it would have. In any event, the encounter may not have started out as a crime. It may even have started as one neighbor arguing that the other neighbor's dog barks too much or a customer insisting that the store clerk gave him incorrect change.<sup>44</sup>

*How serious does the underlying crime tend to be?* More than two thirds (69.4%) of violent hate crimes are simple assaults—a misdemeanor.<sup>45</sup> Note that a simple assault need not involve actual

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*Victimization, 2004-2012* tbl. 7 at 7 (February 2014),

<https://bjs.ojp.gov/content/pub/pdf/hcv0412st.pdf>. This leads me to wonder if a change in methodology occurred.

<sup>44</sup> In the civil rights course that I teach, I sometimes ask students to consider a hypothetical about an argument over a parking space. In it, one of the parties steps up close to the other and hurls a racial epithet at her. There is no other evidence he has any particular view of her racial group. Since she is a stranger to him, the only things he knows about her are her race, sex, rough age, the car she drives, and the clothes she was wearing that day. Should it be charged as a hate crime? He's initially angry because he believes he was entitled to a parking space that she took, not because she is, say, Asian American. If she had not been Asian American, perhaps he would have been just as aggressive and come up with another insult to hurl at her—perhaps a sexual epithet or perhaps he would have called her fat, ugly, or stupid. On the other hand, perhaps if she had not been Asian American, he wouldn't have attempted to put her in fear for her safety by shouting at her inches from her face. Perhaps he really doesn't like Asian Americans. The victim herself is not in a good position to judge. The offender himself may not know what he would have done if he had not been dealing with an Asian American. We could leave it to the jury, but how are they supposed to decide? Under the circumstances, there is little hope of ever getting "accurate" statistics on hate crimes.

Last year, I was surprised to find myself a (very limited) witness to an altercation rather like my hypothetical. As I walked down a busy sidewalk, I saw what appeared to be a frightened transgender woman wielding a cord like a whip and telling what appeared to be an angry, young cisgender man to stay away. I came too late to observe what the fight was about or who was right and who was wrong. I stopped and made a mental note of what each of the parties looked like. When the young man backed away and got into his car, I took down as much of his license plate number as I could in case it was needed.

The transgender woman thanked me for stopping at a time when others were just walking by. She told me the young man had become irate when she told him that he was parking his car illegally, that he had gotten out of his car, come toward her and called her a "fake woman." She feared he would strike her and viewed his actions as a hate crime. I gave her the license plate number and my phone number. The police did indeed interview me about the incident as a potential hate crime. I have no idea whether the matter was pursued further. But I suspect it is not terribly different from some of the borderline cases that make their way into the statistics. If the police determine that the young man came at the transgender woman in a physically threatening manner and would not have done so if she had been a cisgender man, then the charge would be plausible under many hate crimes statutes. On the other hand, if he treated her no differently than he would have treated anybody else under those same circumstances, it may arguably have been a simple assault (misdemeanor), but it was not a hate crime.

<sup>45</sup> Grace Kena & Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 4, Table 2, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf). The National Crime Victimization Survey is a national survey conducted twice a year by the U.S. Census Bureau. Data on non-fatal crime victimizations are collected from a representative sample of approximately 150,000 households. For the years 2015, 2016, 2017, 2018, and 2019, the survey found that an average of 240,770 hate crimes (as perceived by the victim

violence. It is enough that violence was explicitly or implicitly threatened. An offender who walks up to the victim, fists raised, and saying “I am going to beat the daylights out of you” is almost certainly guilty of a simple assault. That would be true even if he never lands a blow. It is sufficient that he intended to put the victim in apprehension of such a blow. Lesser factual showings can also amount to a simple assault: Suppose an offender, in the midst of a shouting match with the victim, comes within inches from the victim’s face in a menacing manner (even without specifically saying that he intends to strike the victim). That may well be enough to establish a simple assault. Add a racial or ethnic epithet, and it is often enough to sustain a hate crime charge.

*What role need hatred play in hate crimes?* None whatsoever. Contrary to the popular understanding of hate crimes, there is no requirement that the offender be motivated by hatred of individuals because of their race, ethnicity, etc. As the Department of Justice’s web site states:

The term “hate” can be misleading. When used in a hate crime law, the word “hate” does not mean rage, anger, or general dislike. In this context, “hate” means bias against people or groups with specific characteristics that are defined by the law.<sup>46</sup>

Suppose a thug targets an Asian American for an attack, not because he hates Asian Americans, but because he believes, correctly or incorrectly, that Asian Americans are less likely to be armed than other potential victims. The lack of race hatred doesn’t matter a bit. What matters is that the victim was targeted because of his race.<sup>47</sup>

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survey respondents) each year. Of those, on average, 215,094 were violent hate crimes (again, as perceived by the victim survey respondents). Of those violent hate crimes, on average, 149,202 were simple assault, 43,342 were aggravated assault, 16,000 were robberies, and 6,552 were rapes or other sexual assaults. The rest of hate crimes (non-violent) were property crimes that included trespass, theft, and burglary. *Id.*

<sup>46</sup> U.S. Department of Justice, *Learn About Hate Crimes*, <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>. If anything, the Department of Justice website may have understated the point. The particular hate crime law that I am most familiar with is the federal statute passed in 2009—the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. The word “hate” appears in the title and in the section caption of the statute, but it doesn’t appear at all in the definition of the crime. 18 U.S.C. § 249. It therefore isn’t that the word “hate” means something different from its usual meaning. It’s that it isn’t used at all in the part of the statute that counts. Rather the statute creates a special crime for certain violent acts that occur “because of” someone’s race, color, religion, national origin, sexual orientation, disability, etc. Other hate crimes statutes are often similar. Under the federal statute, it would seem that an employer who becomes irate and strikes his assistant for working too slowly may have violated the statute if the assistant is disabled and would have worked more quickly without that disability.

<sup>47</sup> Similarly, the home invader who listens to the Rapper YG’s song *Meet the Flockers* has also acted “because of” someone’s Chinese national origin. The song instructs the listener on how to commit a burglary or home invasion. The lyrics to that song are as follows:

First, you find a house and scope it out  
Find a Chinese neighborhood  
‘Cause they don’t believe in bank accounts

The upshot of this is that there is a broad range of crimes that can be labeled “hate crimes.” Most of them would be misdemeanors but for the racial or ethnic element: Two neighbors get into a dispute over parking.<sup>48</sup> One routinely parks in a way that makes it difficult for the other to exit his driveway. In a burst of anger, one hurls a racial epithet at the other and threatens to punch the other in the nose, but in fact does not intend to do so. Others are deadly.

My worry is that when Americans hear statistics reflecting the total number of hate crimes were reported to the FBI in a given year, they may not have a sense that the typical such crime would be a misdemeanor but for the racial or ethnic element. They may not know that frequently the parties were arguing about something other than race or ethnicity and that the evidence of a racial or ethnic motivation may consist solely of an epithet. And they may not realize that if the offender hadn’t used an epithet that relates to a protected classification, he might have used a vulgar insult that doesn’t happen to reflect protected categories like a\*\*\*\*\*e or he may have simply called the victim ugly, stupid, fat, etc.

Consequently, sometimes hate crimes statistics, without more context, can cause Americans to believe that the level of racial and ethnic animosity in the country is greater than it is. That in turn can fuel further racial and ethnic resentment and social fragmentation. Instead of working to build a stronger, common identity as Americans, this can work to fuel divisive identity politics.

Add to the mix, so-called bias incidents and the aggregate numbers may seem even more alarming, while average seriousness of the event declines rather sharply. For example, the numbers as collected by Stop AAPI Hate include 10,905 reported cases of “avoidance or shunning” (16.1% of the Respondents).<sup>49</sup> It is perfectly understandable why Asian Americans in particular would feel sensitive about shunning during the pandemic. But it is worth pointing out that very few Americans were spared the experience of being avoided or shunned during that period. My own most memorable experience came an hour or two before the lockdown took effect. Many people had gone to the small grocery store in my San Diego neighborhood to stock up while they still could. As I was entering the store through the entrance lane, an obviously distraught woman was exiting through that lane rather than through the exit lane. She shouted at the top of her lungs (and at great length) that I should stay far away from her. I was stunned. To my knowledge, there was not yet a single case of COVID-19 in San Diego County. Of course, she was only the first of many to keep their distance from me over the last three years—some

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The victims in that case are again being chosen on the basis of their Chinese national origin. Again, it may be a hate crime as that offense is defined in many states, since it targets the Chinese. It is not surprising that many Americans, especially those of Chinese descent and including some of our public commentators, find this song offensive. See Chris Fuchs, *Rapper YG’s Song “Meet the Flockers” Sparks Protests, Accusations of Targeting Asian Americans*, NBCNews.com, October 14, 2016.

<sup>48</sup> See supra at n. 44 for my personal experience as a witness to a parking incident.

<sup>49</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, Stop AAPI Hate National Report, 03/19/2020 – 12/31/2021, Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>.

rationally so given the information available to them, others not so rationally. I strongly suspect that Asian Americans (especially schoolchildren who have to be around other schoolchildren) have had far more than their fair share of this shabby treatment—though the numbers have likely declined precipitously, just as the number of reported anti-Asian hate crimes appears to be declining.<sup>50</sup>

Still, all in all, Federal, state, and local governments would do well to put their resources into preventing Asian Americans (and all Americans) from being victimized by serious crime. It's not disproportionality that makes serious crime important to Asian Americans (and all Americans). The data suggest that Asian Americans are actually somewhat less likely to be victimized by violent crime than other racial groups.<sup>51</sup> What matters most is the crime itself and the harm it inflicts, all of which is substantial and unacceptable for all races and ethnicities.

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<sup>50</sup> One of the experts the Commission consulted believed that the uptick in anti-Asian hate crimes has subsided along with COVID-19 itself. See Statement of Dr. Barry Latzer, Emeritus Professor of Criminal Justice, John Jay College of Criminal Justice, CUNY at 4 (“As the pandemic fades away preliminary data indicate that anti-Asian bias is diminishing as well. Along these lines, it is noteworthy that both New York City and Los Angeles experienced significant declines in Asian bias crimes in 2022”); see also Nora Mishanec, *S.F. Touts Drop in Hate Crimes Against Asians*, S.F. Chron., January 14, 2023. Another of our experts pointed to gaps in the data and noted that even with the 2022 decline, the numbers were still unacceptable. See Statement of Dr. Brian Levin, Director of the Center for the Study of Hate and Extremism, California State University at San Bernadino (stating that violent crime spikes have demonstrated “a disturbing resiliency”). Both experts can be correct. My points are these: (1) the best way to fight hate crimes is to fight crime in general, not to fund more bias education, to hold more “anti-hate” events, or to urge Americans to report non-criminal “bias incidents” to the police; (2) fighting crime in general requires that we be serious about the dealing with repeat offenders and with the mentally ill with a history of violence; (3) aggregate hate crime statistics may cause some Americans to overestimate the extent to which racial and ethnic animosity fuels violence; and (4) overestimating the extent to which racial and ethnic animosity fuels violence may itself fuel social fragmentation.

<sup>51</sup> In 2019 and 2020, Asians were the victims of violent crimes 90,560 and 80,100 times, respectively, compared to Non-Hispanic whites - 1,836,520 and 1,593,170, Non-Hispanic blacks - 367,030 and 361,940, and Hispanics - 610,690 and 417,570. Rachel Morgan and Alexandra Thompson, *Criminal Victimization, 2020 – Supplemental Statistical Tables* at 4, Table 2, U.S. Department of Justice, February 2022, <https://bjs.ojp.gov/content/pub/pdf/cv20sst.pdf>. According to the Census Bureau’s current estimates, 6.6% of the population was Asian/Native Hawaiian/Other Pacific Islander, 58.9% was Non-Hispanic white, 13.6% was black or African American, and 19.1% was Hispanic. See Quick Facts, <https://www.census.gov/quickfacts/US>. That works out to Asian Americans being less likely to be victimized (if we can assume roughly similar rates of crime reporting).

*Race-Preferential Admissions Disadvantage Asian Americans in Particular.*

Meanwhile, discrimination against Asian Americans is hardly confined to hate crimes. Race-based admissions policies under which selective high schools, colleges, and universities hold Asian Americans to higher academic standards than other students, are very prevalent.<sup>52</sup>

The problem—if you can call it that—is that many Asian American subgroups, especially Chinese Americans, Korean Americans, and South Asians, on average, perform well in school.<sup>53</sup> This is at least in part due to the fact that, on average, they spend more time studying.<sup>54</sup> Consequently, if selective schools applied their academic standards fairly, without regard to race, they would have to offer Asian Americans seats that they would evidently prefer to give to African American, Hispanic, and white students.<sup>55</sup> They would have “too many Asians” in the words of some. Instead, these schools hold Asian American students to a higher standard than

<sup>52</sup> See Lance Izumi & Rowena Itchon, *Race Preferences and Discrimination Against Asian Americans in Higher Education in A Dubious Expediency: How Race Preferences Damages Higher Education* (Gail Heriot & Maimon Schwarzschild, eds. 2021).

<sup>53</sup> See National Center for Education Statistics, *America’s High School Graduates*, U.S. Department of Education, <https://nces.ed.gov/nationsreportcard/pdf/studies/2011462.pdf>, Figure 30 (From 1990-2009, Asian/Pacific Islander students had higher GPAs than Whites, Blacks, and Hispanics, with the difference between Blacks and Asians being the largest.); Jane Nam, *Average ACT Score*, Best Colleges, December 22, 2022, <https://www.bestcolleges.com/research/average-act-score/#average-act-scores-by-race-ethnicity> (From 2018 – 2022, Asians were the only racial group to increase in average ACT scores and in 2022 they had the highest average ACT composite score).

<sup>54</sup> Valerie A. Ramey, *Is There a “Tiger Mother” Effect? Time Use Across Ethnic Groups*, University of California, San Diego, February 2011, [https://econweb.ucsd.edu/~vramey/research/Tiger\\_Mothers.pdf](https://econweb.ucsd.edu/~vramey/research/Tiger_Mothers.pdf) (Asian high school students spend between seven and nine and a half hours more per week studying than do white, black, or Hispanic students, and Asian college students spend 5-7 more hours doing homework than do white, black, or Hispanic students.); Michael Hansen and Diana Quintero, *Analyzing ‘the homework gap’ among high school students*, Brookings, August 10, 2017, <https://www.brookings.edu/articles/analyzing-the-homework-gap-among-high-school-students/#:~:text=Among%20all%20high%20school%20students,hours%20of%20homework%20per%20day>, Figure 1 (Asian students spend nearly two hours per day on homework compared to Whites, Blacks, and Hispanics who spend nearly one hour, about 35 minutes, and nearly one hour, respectively).

<sup>55</sup> Robert VerBruggen, *Does Affirmative Action Lead to “Mismatch”? A Review of the Evidence*, Manhattan Institute, July 2022, [https://media4.manhattan-institute.org/sites/default/files/VerBruggen\\_Does-Affirmative-Action-Lead-to-Mismatch.pdf](https://media4.manhattan-institute.org/sites/default/files/VerBruggen_Does-Affirmative-Action-Lead-to-Mismatch.pdf), at 2 (“If these schools ignored race and admitted students solely on academic credentials, black and Hispanic students would be substantially underrepresented there, given racial gaps in those credentials”).



their African American, Hispanic, and even white counterparts.<sup>56</sup> To gain admission, they must perform better than their non-Asian peers.<sup>57</sup>

I myself don't get the concept of "too many Asians." It seems to me that a university that fairly applies its admissions criteria, without regard to race, will have just the right number of Asians, whether that's many or few. Similarly, a National Basketball Association doesn't have "too many African Americans" and Major League Baseball doesn't have "too many Hispanics." If they are developing and applying their standards without regard to race, they have just the right number. The doesn't mean schools should consider only academic credentials in deciding whom to admit. But whatever they choose to consider—musical talent, artistic talent, athletic prowess, participation in extra-curricular activities, clean criminal record, or whatever—they should develop and apply those criteria without regard to race.

It is worth noting that discrimination against Asians in admissions is an example of history is repeating itself. In the 1920s, it was "too many Jews" rather than "too many Asians." As one Harvard alumnus, writing in 1925 to Harvard president A. Lawrence Lowell, put it:

Naturally, after twenty-five years, one expects to find many changes but to find that one's University had become so Hebrewized was a fea[r]ful shock. There were Jews to the right of me, Jews to the left of me, in fact they were so obviously everywhere that instead of leaving the Yard with pleasant memories of the past I left with a feeling of utter disgust ....<sup>58</sup>

Jewish Americans were only about 4% of the American population in the 1920s. But by that time, Columbia University's entering class may have been as much as 40% Jewish, and the

<sup>56</sup> Robert VerBruggen, *Does Affirmative Action Lead to "Mismatch"?* A Review of the Evidence, Manhattan Institute, July 2022, [https://media4.manhattan-institute.org/sites/default/files/VerBruggen\\_Does-Affirmative-Action-Lead-to-Mismatch.pdf](https://media4.manhattan-institute.org/sites/default/files/VerBruggen_Does-Affirmative-Action-Lead-to-Mismatch.pdf), at 2 (At public institutions Asians were disfavored by 3.4 ACT points and at private colleges Asians received a 140 SAT point penalty).

<sup>57</sup> A good example is Harvard University's admissions rate. For those applicants in the top 10% in terms of academic credentials, the odds of being admitted are 56.1% for African Americans, 31.3% for Hispanics, and 15.3% for whites, but only 12.6% for Asian Americans. See Petition for Writ of Certiorari in *Students for Fair Admissions, Inc., v. President & Fellows of Harvard College*, No. 20-1199 at 11 (filed February 25, 2021). Harvard claims that it is not discriminating against Asian Americans and that while Asian Americans, on average, do very well on measures of academic talent, they do less well, again on average, than other groups on other talents and qualifications that Harvard looks for in its students. That is not an absurd claim on its face. It is certainly possible for one racial or ethnic group to do better, on average, than another on some measure; indeed, that is the case with Asian Americans and academic measures. But the facts suggest that Harvard is being less than candid. The specific claim is that Asian Americans do not interview well, that their personalities are less engaging. But it turns out that Asian Americans fare poorly in interviews only when they are interviewed by Harvard staff; when they are interviewed by Harvard alumni, who presumably haven't been let in on Harvard's diversity practices, Asian American applicants do just fine. Anemona Hartocollis, *Harvard Rated Asian-American Applicants Lower on Personality Traits*, Suit Says, N.Y. Times, June 15, 2018. The only way to avoid smelling a rat is to hold one's nose.

<sup>58</sup> Jerome Karabel, *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale and Princeton* 105 (2005) (quoting Dec. 17, 1925 letter).

University of Pennsylvania's was similar. Within a few years, Harvard's entering class was 27.6% Jewish, and Yale's enrollment was 13.3%.<sup>59</sup> Especially given that many of these students were the children of recent immigrants, their academic accomplishments were impressive.

But some Harvard officials—notably President A. Lawrence Lowell—didn't like it. Lowell, who in his spare time was the vice president of the Immigration Restriction League, an organization steeped in that era's scientific racism, was determined to do something about what he called “the Hebrew problem” at Harvard. Among other things, he argued it affected both student recruitment and alumni fundraising:

The summer hotel that is ruined by admitting Jews meets its fate, not because the Jews it admits are of bad character, but because they drive away the Gentiles, and then after the Gentiles have left, they leave also. This happened to a friend of mine with a school in New York, who thought, on principle, that he ought to admit Jews, but who discovered in a few years that he had no school at all.<sup>60</sup>

Lowell originally wanted to deal with the issue by publicly adopting a ceiling on Jewish enrollment. But when the faculty—to its credit—initially balked, he put forth a more subtle plan. “To prevent a dangerous increase in the proportion of Jews,” he insisted that future admissions should be based on a “personal estimate of character on the part of the Admission authorities.”<sup>61</sup>

Harvard adopted such a policy in 1926, but as one might predict, the “personal estimate of character” was not what it seemed, just as “holistic admissions” are not what elite colleges and universities claim they are today. Shortly after the 1926 policy was adopted, Yale's Dean Clarence Mendell paid a visit to Harvard's admissions director. He reported that Harvard was “now going to limit the Freshman Class to 1,000. They are also going to reduce their 25%

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<sup>59</sup> *Id.* at 86-88, 105, 114.

<sup>60</sup> *Id.* at 88 (quoting May 19, 1922 Lowell letter to William Hocking).

<sup>61</sup> Marcia Graham Synnott, *The Half-Opened Door: Discrimination and Admissions at Harvard, Yale, and Princeton, 1900-1970* at 108 (1979). Lowell insisted that “the Faculty should understand perfectly well what they are doing” and that their vote for a character test “should not be supposed by anyone to be passed as a measurement of character really applicable to Jews and Gentiles alike.” Karabel at 89. In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978)(opinion of Powell, J.), Justice Powell wrote favorably of Harvard's longstanding efforts for geographical diversity. He was apparently unaware that the policy was part of the effort to limit the numbers of Jewish students, who tended to be concentrated in Northeastern urban centers. See Alan M. Dershowitz & Laura Hanft, *Affirmative Action and the Harvard College Diversity-Discretion Model: Paradigm or Pretext?*, 1 *Cardozo L. Rev.* 379, 386, 395 (1979).

Hebrew total to 15% or less by simply rejecting without detailed explanation. They are giving no details to any candidate any longer.”<sup>62</sup>

The Jewish Quota Era at the Ivy League eventually became a source of shame. But the end of the Jewish Quota Era was followed within a couple of decades by the rise of affirmative action preferences. By the 1980s it was clear that the more things changed, the more they stayed the same. Instead of discrimination against high-performing Jewish students, it was discrimination against high-performing Asian students. Jewish students were being treated as generically white and hence were discriminated against vis-à-vis African Americans, Latinos and American Indians, but not within the category of white. But Asian American students were the new Jews. Their numbers were depressed even vis-à-vis whites.

Of course, you’d hardly know that from this report, which has the broad title “The Federal Response to Anti-Asian Racism in the United States,” that race-preferential admissions policies were an issue among many Asian Americans.

Here’s the background: The project that led to this report was proposed by now-former Commissioner Michael Yaki, who is a former member of the San Francisco Board of Supervisors. The concept paper, which he submitted to the Commission in mid-2022, was entitled *The New Exclusion Act: The Re-Emerging Rise of, and Federal Response to, Anti-Asian Racism in America*. It stated that, among other things, we would hear from “[c]ommunity leaders” who could “inform the Commission from a variety of perspectives about their experiences with bias/racism, and their recommendations regarding federal, state, and local enforcement or lack thereof related to Asian American civil rights.” The concept paper was adopted by majority vote in part on the basis of that description and now governs the scope of the project.

The more conservative members of the Commission wanted to assign the Commission staff to explore specifically the admissions issue in the report (a proposal that did not pass, since none of the progressive commissioners were willing to vote for it). But we were comforted by the fact that the concept paper at least made it clear that the report would be on anti-Asian bias/racism in

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<sup>62</sup> See *id.* at 109. The situation was not quite the same for African Americans. Harvard, for example, takes pride in its reputation for relative openness to African Americans, and all things considered, it did indeed have a better record than most institutions of the period. It was a record that was tarnished by Lowell, who segregated living and dining facilities over the objections of many alumni. On the other hand, at Princeton, perhaps the least friendly of the Ivies to racial minorities, not a single black attended in the 20th century until 1945, and at least one was actively discouraged from enrolling. Still, even at Princeton, African Americans occasionally attended in the 18th and 19th centuries. See Synnott at 47-53, 80-84; Karabel at 228, 232-36. Ivy Leaguers did not believe that African American students would come to dominate business and industry. Even at Harvard, their numbers were small, perhaps as few as 165 total between 1871 and 1941. *Id.* Alumni felt no reason to worry, consciously or unconsciously, that African Americans would crowd their offspring out of elite status. African Americans students were curiosities. Any “old guard” is likely at its worst when its members perceive that a group of newcomers may come to take a significant share of the benefits that its elite institutions can confer. The group that seemed to present that challenge at the time was Jewish Americans, not African Americans.

general and that witnesses would thus be able to talk about the issue as part of the failure of the government to enforce their civil rights.

Many of the witnesses at our briefing did indeed want to discuss or at least mention race-preferential admissions. And no wonder. As horrifying as the murders of Christina Yuna Lee, Yao Pan Ma, GuiYing Ma and Michelle Go were, they are the rare, one-in-a-million case. On the other hand, millions of Asian Americans have been or will in the future be affected by race-preferential admissions policies. Ignoring the issue is like ignoring the proverbial elephant in the room.

These witnesses nevertheless were discouraged from discussing the issue.<sup>63</sup> Indeed, when the following colloquy took place between Commissioner Magpantay and former Assistant Attorney General Eric Dreiband, it was interrupted by Staff Director Mauro Morales to prevent discussion of race-preferential admissions.

COMMISSIONER MAGPANTAY: What is an Asian?

MR. DREIBAND: What is an Asian? “Asians” typically refer to people whose ancestry or national origin is from the continent of Asia.

COMMISSIONER MAGPANTAY: The reason why is that it is a very large and diverse community, which some segments encounter poverty, limitations on proficiency,<sup>64</sup> and I’m just curious in the court papers if it is recognized the nuance and diversity that we seek to seek in America, like our schools should be -- you know, skin color, whatever, but there is diversity of experience and insights, isn’t there, among the Asian community?

MR. DREIBAND: Of course, there is, and that’s why this whole notion of grouping populations of people together the way many colleges and universities and other institutions today are doing as, quote, Asians, I think is shameful, disgraceful, and illegal.

So, yes, there is a huge range of diversity among people whose ancestry is from Asia, among people who are from East Asia, or South Asia, or various parts of Asia, and I think it’s horrible that our institutions in this country today treat these individuals as if they are some monolithic group and then subject them to pervasive discrimination.

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<sup>63</sup> Commissioner Victoria Nourse repeatedly told the witnesses “The Supreme Court is going to rule” in a manner that strongly suggested that she thought the topic should be avoided. Former Commissioner Michael Yaki, who was given the opportunity to speak, also sounded that theme. Transcript at 165, 173-74. This was the first time I can recall anyone making such an argument. There is nothing unusual about a civil rights issue coming before a court, including the Supreme Court. That has never been a reason for the Commission to avoid an issue in the past.

<sup>64</sup> This is what the transcript says, but listening to the recording, it sounds more like with “some segments coming from poverty, limited English proficiency” to me.

And it's even worse because we're talking typically about 18-year-old children who are applying to further their education at colleges and universities throughout this country, many of whom come very poor families many of whom are first generation arrivals to this country, and they are lumped together and disadvantaged by Ivy League institutions, by all kinds of institutions in this country, and it is a total disgrace in my opinion, and it's

Illegal, and immoral, and wrong, and it should stop.

COMMISSIONER MAGPANTAY: And that's in your papers.

MR. DREIBAND: What?

COMMISSIONER MAGPANTAY: And that's in your papers, your litigation papers, yes?

MR. DREIBAND: Well that yes, in the cases I mentioned, yes, we made those allegations yes.

STAFF DIRECTOR MORALES: I'm going to assert my authority under 45 CFR 701.11 and I want to remind all Commissioners that they voted for the concept paper on hate crimes against Asian Americans on September 16, Transcript page 40. Research timeline voted on October 21, transcript page 32.

An amendment to add admissions of Asian Americans' status to colleges and universities failed by a vote on September 16. Our conversation and the point of the testimony today is limited to the four corners contained in the concept paper, so I'm going submit the concept paper and the timeline for the record, so thank you.

COMMISSIONER MAGPANTAY: I apologize for my question if it was not appropriate ... not germane to the topic.<sup>65</sup>

I think we all know why Staff Director Morales, an Obama appointee, was seeking to limit Commissioners from asking, and witnesses from answering, questions about the racial double standard that works against Asian American in college and university admissions. And he succeeded. I have served on the Commission for more than fifteen years, and I do not believe that anything remotely like that has ever occurred before. It was unprecedented.

Staff Director Morales read from a statement that was obviously prepared prior to the briefing in anticipation of the possibility that a discussion of discrimination against Asians in college and university admissions would occur. Weirdly, he claimed to be asserting *his* "authority under 45 C.F.R. § 701.11" to intervene in this manner. But there is nothing in that provision about the limiting the questions a commissioner can ask at a briefing or limiting answers that a witness

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<sup>65</sup> *Federal Response to Anti-Asian Racism in the United States*, Mar. 24, 2023, transcript pp. 179-182, [https://www.usccr.gov/files/2023-05/aa-hc-usccr-transcript\\_3.24.23-edited.pdf](https://www.usccr.gov/files/2023-05/aa-hc-usccr-transcript_3.24.23-edited.pdf) (hereinafter cited as *Anti-Asian Briefing*).

may give in response.<sup>66</sup> Moreover, the provision lays out the duties of the *chairperson*, not the duties of the staff director. At the time of the briefing, the Commission had no chairperson, but the Commission’s most senior member, Commissioner Peter N. Kirsanow was acting in that capacity. In the definition section of the regulations to which the staff director referred, the term “chairperson” was defined to someone acting in that capacity.<sup>67</sup> If anyone possessed the authority to limit questioning it was Commissioner Kirsanow. He did not choose to do so.<sup>68</sup> It is important to note that the job of staff director is to direct the staff, not to direct the Commission. If Congress has intended the staff director to direct the Commission (which is defined in the statute as the eight commissioners, not as eight commissioners plus a staff director), it would have called him the commission director.

Since the briefing, the Supreme Court has indeed decided that discrimination against Asian Americans in admissions is unconstitutional (as to state colleges and universities) and illegal under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (as to public or private universities that receive federal funds). I applaud that decision.

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<sup>66</sup> § 701.111 Commission meetings—duties of the Chairperson.

- (a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.
- (b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairperson to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.
- (c) The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.
- (d) In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.

<sup>67</sup> 45 C.F.R. § 702.1(c).

<sup>68</sup> Commissioner Kirsanow told me that he was stunned by Staff Director’s intervention, but that given that the C-Span cameras were rolling, his instinct was to let it go. The following month, when the Staff Director Morales again attempted to limit what a commissioner could say, Commissioner Kirsanow explained to him that this was inappropriate. April Business Meeting Transcript at 64, <https://www.usccr.gov/files/2023-04/0421-usccr-business-meetingtranscript.pdf>.

## Statement of Commissioner Jones

The Federal Response to Anti-Asian Racism in the United States, whose general parameters were agreed upon prior to my appointment to this Commission, is a timely and much-needed report that addresses the surge in violence against the Asian American community that the COVID-19 pandemic exacerbated. This latest iteration of Anti-Asian sentiment and racism in America is well-documented in the report, however, Anti-Asian racism in the United States began centuries earlier.

The Page Act of 1875 was the first in a series of legislative acts that significantly restricted immigration from Asian countries to the United States. Bans or limitations on Asian immigrants would extend, in one way or another, through the Immigration and Nationality Act of 1965.<sup>1318</sup> Anti-Asian racism often involved myths and stereotypes related to disease, from the notion of “Yellow Peril” to the unconstitutional quarantine of San Francisco’s Chinese residents in 1900.<sup>1319</sup> Not only were these stereotypes damaging on their own, but they were perpetuated and reinforced by harmful rhetoric in newspapers and other media.

Unfortunately, right-wing rhetoric describing the COVID-19 pandemic has been reminiscent of the same stereotyping Asian Americans have experienced since the 19<sup>th</sup> century. In a briefing to the Commission, one panelist testified that “the political rhetoric and social media today really did exacerbate the issue. When politicians used the term ‘Chinese Virus,’ it did two things—it racialized the virus, so it made it Chinese, and it stigmatized the people, so Chinese people were the ones carrying the disease.”<sup>1320</sup> The racialization of disease—which prompted the World Health Organization to outline best practices for the naming of diseases years before COVID-19<sup>1321</sup>—was evident in the rhetoric used by then-President Donald Trump and members of his administration, who collectively referred to the coronavirus as “the Chinese Virus,” “the Wuhan Virus,” and the “Kung Flu.”<sup>1322</sup>

Unsurprisingly, research indicates a correlation between the rise in Anti-Asian violence during the COVID-19 pandemic and language utilized by politicians and the media during the initial outbreak of the virus.<sup>1323</sup> Indeed, presidential statements have been correlated with both increases and decreases in hate crimes over the years, so the damaging effects of harmful rhetoric by Donald Trump and other right-wing politicians, which perpetuated centuries-old stereotypes, was to be expected.<sup>1324</sup> The sheer scope of Anti-Asian hate crimes reported during the pandemic is

<sup>1318</sup> U.S. COMM. ON CIV. RIGHT, *The Federal Response to Anti-Asian Racism in the United States*, 31-38. (2023) [hereinafter Report]. Please note page citations to the Report may be slightly off due to the final formatting of the Report.

<sup>1319</sup> Report, 38-40. See also Robert G. Lee, *Orientalism: Asian Americans in Popular Culture*, Temple University Press, Philadelphia. (1999); John Kuo Wei Tchen and Dylan Yeats, *Yellow Peril: 19<sup>th</sup>-Century Scapegoating*, AAWW.org, Mar. 5, 2014, <https://aaww.org/yellow-peril-scapegoating/>.

<sup>1320</sup> Jeung Testimony, Anti-Asian Racism Briefing Transcript, p. 13.

<sup>1321</sup> WHO *Issues Best Practices for Naming Infectious Diseases*, May 8, 2019, <https://www.who.int/news/item/08-05-2015-who-issues-best-practices-for-naming-new-human-infectious-diseases>.

<sup>1322</sup> Report, 12, 51. See also Deb Riechmann and Terry Tang, “Trump dubs COVID-19 ‘Chinese virus’ despite hate crime risks,” AP News, Mar 18, 2020, <https://apnews.com/article/donald-trump-ap-top-news-asia-crime-virus-outbreak-a7c233f0b3bcdb72c06cca6271ba6713>.

<sup>1323</sup> Report, 11.

<sup>1324</sup> Report, 52.

shocking: for example, in just 14 days during March 2020, more than 100 hate crimes were collected by the Stop AAPI Hate website.<sup>1325</sup>

I am especially proud of this report and its findings because Anti-Asian racism is an issue that has particularly affected residents in my home state of New York. New York has one of the largest Asian American populations of all 50 states—second only to California—and was one of the three states discussed in detail in Chapter Two of the report. Asian Americans living in New York, like those across the country, experienced a surge in hate incidents from 2019 to 2021. As Jennifer Wu, founding partner of a law firm in New York City, testified, “We have witnessed firsthand in New York City the surge in Anti-Asian violence.”<sup>1326</sup> In New York City alone, the number of Anti-Asian hate crimes rose by 361 percent from 2020 to 2021.<sup>1327</sup> New York has not just experienced an increase in hate incidents, but a large volume of hate incidents: of the 10,905 reported hate incidents from March 19, 2020 to December 31, 2021, 15.7% of the respondents were from New York, the second largest percentage of any state.<sup>1328</sup> While the volume of hate incidents experienced by Asian American New Yorkers is terrifying, each individual hate incident is horrifying in its own right, and combatting these hate incidents requires renewed effort by federal, state, and local governments.

As a Congressman representing New York’s 17<sup>th</sup> Congressional District, which consisted of diverse and dynamic Asian American communities, I called on our country to stand against hate and our federal government to more aggressively enforce hate crime laws that can protect the most vulnerable Americans. I also proudly helped pass the COVID-19 Hate Crimes Act and the Emmitt Till Antilynching Act of 2022 into law. The COVID-19 Hate Crimes Act of 2022 responded to the rise in Anti-Asian hate crimes by, among other measures, expediting the review of hate crimes and reports of hate crimes by the Department of Justice, requiring the issuance of guidance on data collection, authorizing grants for states and local governments to implement the National Incident-Based Reporting System (NIBRS), and allowing courts to require education and community service as conditions of supervised release.<sup>1329</sup> Meanwhile, the Emmitt Till Antilynching Act of 2022 is the first piece of legislation to outlaw lynching after more than 200 failed attempts to pass such legislation spanning 100 years.<sup>1330</sup>

Not all efforts to protect the American people from discrimination and hate were as successful as the COVID-19 Hate Crimes Act and the Emmitt Till Antilynching Act of 2022. Republican-appointed FBI Director Chris Wray has accurately described white supremacist violence to be

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<sup>1325</sup> Ibid.

<sup>1326</sup> Jennifer Wu, Founding Partner, Groombridge, Wu, Baughman & Stone LLP, Written Statement for The Federal Response to Anti-Asian Racism in the United States Briefing before the U.S. Comm’n on Civil Rights, Mar. 24, 2023, at 8.

<sup>1327</sup> Kimmy Yam, “NYPD reports 361 percent increase in anti-Asian hate crimes since last year,” *NBC News*, Dec. 10, 2021, <https://www.nbcnews.com/news/asian-america/nypd-reports-361-percent-increase-anti-asian-hate-crimes-last-year-rcna8427>.

<sup>1328</sup> Report, 63.

<sup>1329</sup> COVID-19 Hate Crimes Act of 2022, S.937, 117<sup>th</sup> Cong. (2022).

<sup>1330</sup> Emmett Till Antilynching Act of 2022, H.R. 55, S.3710, 117<sup>th</sup> Cong. (2022); *See also* “Senate Passes Emmett Till Antilynching Act of 2022, Sending Bill to Biden for His Signature,” *CNN*, Mar. 7, 2022, <https://www.cnn.com/2022/03/07/politics/senate-passes-antilynching-law/index.html>.



the greatest domestic terror threat to the United States.<sup>1331</sup> As a member of the House Judiciary Committee, I helped pass the Domestic Terrorism Prevention Act through the committee and then through the House, but Republicans filibustered this legislation in the Senate thereafter.<sup>1332</sup> The Domestic Terrorism Prevention Act would have expanded the availability of information on domestic terrorism and its relation to hate crimes, established intra-agency reports and a task force focused on domestic terrorism and white supremacy, and directed the FBI to assign a special agent or hate crimes liaison to each field office for the purpose of investigating hate crimes with a nexus to domestic terrorism.<sup>1333</sup>

I also sponsored the Juror Non-Discrimination Act of 2021, which would prohibit excluding individuals from jury service on the basis of their sexual orientation or gender identity.<sup>1334</sup> My legislation became part of the Equality Act, which would finally enshrine protections for the LGBTQ+ community in federal anti-discrimination law. As the nation's first openly gay, Black member of Congress, this legislation remains personal to me, and it is a shame that after passing the House in the 117<sup>th</sup> Congress Republicans in the Senate filibustered this bill thereafter.

One of this report's strengths is that it highlights how severely underreported hate crimes are, a problem for those seeking justice and a comprehensive understanding of Anti-Asian racism across the United States. In order to effectively combat hate crimes, it is critical that we, as a nation, understand the nature and extent of hate crimes, and this requires accurate data on and full reporting of incidents. The report observes that it is "well established that hate crimes are less likely to be reported to the police in comparison to other types of crimes."<sup>1335</sup> The Commission has documented in past reports numerous reasons why victims may choose not to report a hate crime, including a lack of understanding of laws designed to protect them, a lack of language access, and isolation from information and resources that could inform them of their rights and how to report such crimes.<sup>1336</sup> Furthermore, a distrust of police, concerns over deportation and retaliation, and confusion over whether or not an incident qualified as a hate crime all contribute to underreporting.<sup>1337</sup> Regardless of the specific reasons, the facts speak for themselves: despite over 25% of Asian Americans experiencing a hate incident at some point in their life, only 30% of Asian Americans feel comfortable reporting incidents to the police.<sup>1338</sup>

The distinction between hate crimes and other hate incidents creates further challenges for reporting and tracking incidents of Anti-Asian racism across the nation. While the NYPD uses the same definition for hate crimes and bias incidents, in many other municipalities and states, a

<sup>1331</sup> "THE RISE OF DOMESTIC TERRORISM IN AMERICA." *Congress.gov*, Library of Congress, 14 August 2023, <https://www.congress.gov/event/117th-congress/house-event/LC67828/text>.

<sup>1332</sup> Domestic Terrorism Prevention Act of 2022, H.R. 350, 117<sup>th</sup> Cong. (2022).

<sup>1333</sup> *Ibid.*

<sup>1334</sup> Juror Non-Discrimination Act of 2021, H.R. 1140, 117<sup>th</sup> Cong. (2021).

<sup>1335</sup> See e.g., Caroline Harlow, "Hate Crime Reported by Victims and Police," National Criminal Victimization Survey and Uniform Crime Reporting, Bureau of Justice Statistics, Nov. 2005, <https://bjs.ojp.gov/content/pub/pdf/hcrvp.pdf>; Brendan Lantz and Joonggon Kim, "Hate Crimes Hurt More, but So Do Co-Offenders: Separating the Influence of Co-Offending and Bias on Hate-Motivated Physical Injury," *Criminal Justice and Behavior*, Nov. 2018.

<sup>1336</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, Nov. 2019; Report, 127.

<sup>1337</sup> *Ibid.*

<sup>1338</sup> Report, 71

hate incident is a non-criminal offense and as such is not tracked or reported. Moreover, proving that a criminal offense meets the legal benchmark for a hate crime is incredibly difficult, further contributing to the challenges with tracking the actual extent of hate crimes across the country.<sup>1339</sup> As one legal commentator explained, “Prosecutors often find it impossible to demonstrate by proof beyond a reasonable doubt that the accused acted out of racist motives” due to the fact that “motive exists within an individual’s own knowledge.”<sup>1340</sup> Even if hate crimes and other incidents were not underreported, collecting and tracking data on hate crimes comes with its own unique challenges. Many agencies do not report hate crimes to the FBI through its NIBRS database and are not incentivized to update the technology needed to report the incidents, which makes tracking hate crimes year-to-year challenging.<sup>1341</sup> As explained in the report, “as long as reporting is voluntary, the picture at the federal level will remain murky.”<sup>1342</sup> For instance, in 2020 nearly 25% of large cities did not report a single hate crime, which research suggested was “a statistical near-impossibility.”<sup>1343</sup> Reporting, investigating, and accurately tracking hate crimes and other incidents is a necessary first step to comprehensively addressing anti-Asian racism in the United States.

Regardless, the distinction between a hate crime and another form of hate incident is minimal—if at all relevant—from the perspective of the victims: as the Executive Director of Asian Americans Advancing Justice notes, “Regardless of whether these are designated as hate crimes, the effect is the same, and the Asian American community right now is under fear, under pain, and angry.”<sup>1344</sup> The harm done by hate crimes and other incidents extends far beyond the violence of any one event. Hate crimes and other incidents alike are responsible for an increase in anxiety, depressive symptoms, and sleep problems among victims.<sup>1345</sup> Moreover, the mental health impacts of race-based discrimination are compounded for Asian Americans, who are less likely than other racial groups to seek mental health treatment.<sup>1346</sup> The harm of Anti-Asian racism even extends beyond the victims of said racism: studies show that communities with higher levels of racial prejudice also have an increased risk of mortality independent of other sociodemographic characteristics.<sup>1347</sup>

Combating Anti-Asian racism in the United States requires a coordinated response by federal, state, and local governments. Mandatory national data collection and training would increase the accuracy of current data collection efforts and thus our understanding of hate crimes across the nation. The FBI should require local law enforcement to submit crime data to the NIBRS;

<sup>1339</sup> Report, 70.

<sup>1340</sup> James Morsh, (1991), “Problem of Motive in Hate Crimes: The Argument Against Presumptions of Racial Motivation,” *Journal of Criminal Law and Criminology*, 82, 3: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6710&context=jclc>.

<sup>1341</sup> Report, 14, 65-67.

<sup>1342</sup> Report, 181.

<sup>1343</sup> Report, 128.

<sup>1344</sup> Catherine Thorbecke, “Why anti-Asian hate incidents often go unreported and how to help,” *ABC News*, Mar. 18, 2021, <https://abcnews.go.com/US/anti-asian-hate-incidents-unreported/story?id=76509072>.

<sup>1345</sup> Abrams, Zara. “The Mental Health Impact of Anti-Asian Racism.” *American Psychological Association*, Vol. 52, No. 5, Jul. 1, 2021, <https://www.apa.org/monitor/2021/07/impact-anti-asian-racism>.

<sup>1346</sup> Ibid.

<sup>1347</sup> Lee, Yeonjin et al. “Effects of Racial Prejudice on the Health of Communities: A Multilevel Survival Analysis.” *AM J Public Health*, Nov. 2015, doi: 10.2105/AJPH.2015.302776, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4605182/>.

alternatively, Congress could make submission mandatory. While mandatory data collection would help prevent the underreporting of hate crimes from law enforcement officers, meeting the legal benchmark for a hate crime as opposed to a hate incident would still prevent many harmful events of race-based discrimination and violence from being reported, collected, and tracked. For this reason, many community organizations working to stop Anti-Asian racism suggest simultaneously reporting the incidents to nonprofits that track said incidents. All of the reported data on hate crimes should be published by the Attorney General and federal civil rights agencies, providing as much transparency as possible regarding the state of Anti-Asian racism across the nation. With a more complete picture of the sheer scope of Anti-Asian hate crimes and incidents, perhaps elected officials would pass much-needed hate crimes legislation and other civil rights protections to better protect the American people from discrimination.

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## Statement of Commissioner Magpantay

As the only Asian American and first Filipino American serving on the United States Commission on Civil Rights, I am proud of the Commission’s report on “The Federal Response to Anti-Asian Racism in the United States.”

### **Background**

The last time the Commission presented a report focused on Asian Americans was 30 years ago in “Civil Rights Issues Facing Asian Americans in the 1990s.”<sup>1348</sup> Since then, Asian Americans have become the nation’s fastest growing racial minority group<sup>1349</sup> and the largest segment of immigrants coming to the United States. By the year 2040, one in ten Americans will be of Asian ancestry.

Former Commissioner Michael Yaki first proposed that the Commission study the complexities of anti-Asian racism, its roots in varied communities, and offer recommendations on how best to address them.<sup>1350</sup> The Commissioners then opened the door to more detailed inquiry when we issued the following statements addressing growing concerns about anti-Asian xenophobia during the COVID-19 pandemic: “The U.S. Commission on Civil Rights Expresses Concern Over Growing Anti-Asian Racism and Xenophobia Amid the COVID-19 Outbreak” on March 20, 2020<sup>1351</sup> and “U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia” on May 8, 2020.<sup>1352</sup> This report gives those initial statements and set of recommendations the contextual and historical depth and breadth they deserve.

Critical findings and recommendations can be discerned from the statements, public testimony, and the Commission’s fact-finding and investigation.

### **Findings**

- The myth of the “perpetual foreigner” continues to play a role in understanding the rise of anti-Asian racism and discrimination during the pandemic.
- To contextualize the increase in anti-Asian sentiment during the COVID-19 pandemic, it is important to understand the history of anti-Asian racism and the “Yellow Peril” laws.

<sup>1348</sup> US Commission on Civil Rights (hereinafter “USCCR”), *Civil Rights Issues Facing Asian Americans in the 1990s* (Feb. 1992) <https://www.ojp.gov/pdffiles1/Digitization/135906NCJRS.pdf>.

<sup>1349</sup> Abby Budiman and Neil Ruiz, “Asian Americans are the fastest-growing racial or ethnic group in the U.S.,” Pew Research Center (Apr. 9, 2021) <https://pewrsr.ch/3tbjILO>.

<sup>1350</sup> Commissioner Michael Yaki, *The New Exclusion Act: The Re-Emerging Rise of, and Federal Response to, Anti-Asian Racism in America*, USCCR (Sept. 12, 2022).

<sup>1351</sup> USCCR, “The U.S. Commission on Civil Rights Expresses Concern Over Growing Anti-Asian Racism and Xenophobia Amid the COVID-19 Outbreak” (Mar. 20, 2020) <https://www.usccr.gov/press/2020/03-20-Racism-and-Coronavirus-Stmt.pdf>.

<sup>1352</sup> USCCR, “U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia” (May 8, 2020) <https://www.usccr.gov/press/2020/05-08-Anti-Asian-Discrimination.pdf>.

- Throughout the pandemic there were several xenophobic names used by government officials and media outlets to refer to COVID-19, including the “Chinese virus,” the “Kung flu,” and the “Wuhan virus,” potentially perpetuating negative views of Asian individuals and communities and leading to many Asian Americans feeling blamed for COVID-19 in the U.S.
- The multilingual Stop AAPI Hate documented 11,000 anti-Asian incidents and found that hate crimes were not “crimes” *per se* (i.e., resulting in death or serious bodily injury), but rather hateful verbal harassment, gestures, and vandalism.
- Only one in five AAPIs who experienced illegal discrimination say they reported it. A majority of those who reported said the reporting process was difficult. A majority of those who did not report said they did not think reporting would make a difference, and other barriers included a lack of information and resources (e.g., did not know where to go or what to do) and a fear of retaliation (e.g., did not want unwanted attention for themselves or their family). These reasons point to the need for government law enforcement and civil rights enforcement agencies to make the case for reporting: why it matters, how to do it, and how victims and complainants will be protected.

#### *Data Collection & Reporting:*

- Lack of comprehensive data is a major impediment to understanding the severity and magnitude of hate crimes against persons of Asian descent in the U.S. Without mandatory national data collection and training for law enforcement on how to accurately identify and report hate crimes, preventing these crimes is substantially challenging.
- Hate crime victims are less likely to report incidents due to fear of retaliation, concerns that justice would not be served, and distrust in the criminal justice system.
- While the FBI’s hate crimes database software transition was intended to provide a more complete picture of hate violence across the nation, the shift has been challenging for many jurisdictions and hate crime data remains incomplete.
- The transition for data collection software has been slow for some agencies. In 2020 there were 15,138 participating agencies within the FBI hate crimes database. But with software transition, in 2021 the number of participating agencies dropped to 11,834. Many of the agencies that did not submit data in 2021 represent the database’s largest jurisdictions.
- In March 2023, the FBI released a “Supplemental Hate Crimes Statistics” report and showed that the number of anti-Asian reported incidents increased 167% from 279 in 2020 to 746 in 2021.
- National data shows that all race-based hate crimes rose by 30% in 2020, and specifically anti-Asian hate crimes increased over 70% in 2020. According to the Bureau of Justice Assistance (BJA), anti-Asian hate crimes rose 164% in 16 of the largest cities and counties in the first quarter of 2021, compared to the same period in 2020. BJA wrote that

the first quarter increases in 2021 followed a “historic surge” in anti-Asian hate crimes that started in 2020, with anti-Asian hate crimes increasing 149% in 16 of the largest cities in 2020. Specifically, data shows that the first spike of anti-Asian hate crimes “occurred in March and April of 2020 concurrently with a rise in COVID cases and negative stereotyping of Asians related to the pandemic.”

- Hate crime data is underreported by victims, third party intermediaries (government agencies and community organizations), and by law enforcement. Hate crimes are less likely to be reported to police compared to other types of crimes. Some research suggests that relative to other racial groups, Asian Americans may be less likely to report discriminatory behavior when it occurs.
- Data show that in California, hate crimes have increased steadily since 2019, and anti-Asian hate crimes rose from 89 in 2020 to 248 in 2021. As a percentage of overall hate crimes, this was an increase from 6.7% to 14.1%.
- In San Francisco, all hate crime events increased from 2020 to 2021 (from 54 to 114). Of those, the proportion of anti-Asian events increased significantly, representing 16% of events in 2020 and more than half of events in 2021.
- In New York State, reported hate crimes dipped in 2020 before spiking in 2021. Anti-Asian hate crimes rose from 31 in 2020 to 140 in 2021, an increase from 6.35% of overall hate crimes to 18.11%. In New York City, the number of reported anti-Asian hate crimes increased from 1 in 2019, to 27 in 2020, to 131 in 2021. As a percentage of overall hate crimes, this was an increase from 0.2%, to 10.2%, to 25%.

*Barriers:*

- In the United States, 34% of the Asian American population is limited English proficient. The most frequently spoken languages amongst Asian Americans with limited English proficiency are: Chinese, Korean, Vietnamese, Tagalog, Thai, Khmer, Bengali, Gujarati, Hindi, and Punjabi.
- Few police departments have officers fluent in Asian languages, even in metropolitan areas with high numbers of AAPI residents. Therefore, language barriers continue to be a major barrier in reporting hate crimes and hate incidents.
- For hate “incidents,” the fact that not all hateful encounters rise to the legal benchmark of a hate crime is another major barrier to developing a comprehensive understanding of the magnitude of hate violence against Asian communities. Many incidents reported to community organizations, such as being spit on or called racial slurs, are not accounted for in official numbers but still invoke fear in community members.
- Under the COVID-19 Hate Crimes Act, funding is provided for state and local incident reporting hotlines, and in May 2022 the Department of Justice (DOJ) expanded their language services to be available in 18 of the most frequently spoken AAPI languages across the nation. However, at the Commission’s briefing, panelists testified that local

reporting hotlines, victim services, and law enforcement were not accessible to victims with limited English proficiency, pointing to a potential discrepancy between federal and local resource availability.

- The COVID-19 Hate Crimes Act<sup>1353</sup> and its the No Hate Act authorized federal funding to deter hate crimes. In fiscal year 2022, the DOJ awarded only **eight (8)** organizations to support community-based approaches to addressing hate crimes. The total amount awarded was \$3,400,000.
- Lack of hate crime prosecutions may also be a contributing factor to low reporting of hate crimes. Prosecution of hate crimes is difficult, even in states with comprehensive hate crime legislation, because there is no *one* legal standard to which courts have agreed and because the standard to prove bias is extremely high.
- Most nonprofit and community organizations trying to provide the public with ways to combat anti-Asian violence include methods such as: encouraging the reporting of hate incidents and hate crimes to local law enforcement; collecting community hate incident data; educating on the history of discrimination against Asian Americans; and lobbying elected officials to pass anti-hate legislation. However, these organizations often have limited financial and organizational capacity, relying on grant funding and volunteer labor.
- For communities, the federal grant-seeking and grant-making process to address hate crimes is cumbersome and difficult to maneuver. Federal programs and funding for prevention programs should also provide direct services and support for both victims and community members who experience racial trauma as a result of vicarious racism.
- The challenge in assessing whether the federal government is doing enough to combat a rise in hate crimes lies in the absence of proper performance measurements. Absent such performance measurements, The White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders (WHIAANHPI),<sup>1354</sup> has made strides in ways the government can advance equity, justice, and opportunity for AA and NHPI communities.

## **Recommendations**

### *Data & Reporting:*

- The FBI should require local law enforcement to submit hate crime data. Congress should consider making local law enforcement data submission mandatory, along with a range of other options to expand the implementation of hate crimes data collection.
- Congress should also consider authorizing a new grant program that would provide funding to state and local governments for expenses related to transitioning to the National Incident-Based Reporting System (NIBRS), such as purchasing new software and computers, or training officers on how to use NIBRS.

<sup>1353</sup> COVID-19 Hate Crimes Act, 135 Stat. § 265, Pub. L. No. 117-13 (May 20, 2021).

<sup>1354</sup> President Biden's Executive Order (EO) 14031 at <https://www.federalregister.gov/documents/2021/06/03/2021-11792/advancing-equity-justice-and-opportunity-for-asian-americans-native-hawaiians-and-pacific-islanders>.



- Federal civil rights agencies should be required to collect and report key data related to civil rights enforcement, and the Attorney General should annually publish this data.
- The DOJ should fund state and local government efforts, in partnership with community groups, to address discrimination and other hate incidents.
- Law enforcement agencies should improve data collection, require the tracking and reporting of both hate incidents and hate crimes, and ensure that reporting forms make it easy to mark an incident or crime as a suspected hate incident or crime.

*Training & Partnerships:*

- The DOJ should provide safety training and workshops in the respective languages of targeted communities and expand federal funding for community advocacy groups fighting hate crimes.
- The DOJ should also codify the role of the language access coordinator into federal law to ensure that all individuals have equal access to federal programs and benefits regardless of language ability.
- The DOJ should also create guidelines for state and local law enforcement agencies to produce written policies that establish hate crime standards and instructions for implementing hate crimes legislation. A written policy within a law enforcement organization can serve as a bridge between hate crimes legislation and implementation of that law, by providing officers information and a standard that the agency expects them to follow.
- The DOJ should support and incentivize state and local law enforcement agencies to provide resources and referrals to individuals who report to the police hate incidents that are not “crimes” *per se* but racial harassment. Law enforcement agencies should create written policies and train their officers to provide these resources and referrals.
- Increased funding for the Community Relations Service (CRS) will help CRS hire more staff to address.
- Prosecutors and law enforcement should engage in joint training on hate crimes and community engagements. Law enforcement agencies may also consider recommending that the prosecutor’s office have a designated attorney to prosecute hate crimes in the community.
- First responders should be provided with training for a clear understanding of what constitutes a hate crime in their jurisdiction.
- The FBI encourages state and local officials to utilize the FBI’s resources, publicity tools, forensic expertise, and experience in identifying and investigating hate-based motivations even if federal hate crime charges are not pursued.

- A public health and gender-based approach to preventing hate in public spaces needs to be created, including a focus on the street harassment of AAPI women and other vulnerable communities.
- Strengthen and expand local networks by investing in community-based support for victims of hate crimes, so that they have ready access to places where they can report attacks, receive support services, and take safety training and workshops in their own languages.

*Civil Rights Protections:*

- Prosecutors and law enforcement should vigorously investigate and prosecute hate crimes and harassment against Asian Americans.
- Title II of the Civil Rights Act should be expanded to include retail stores and other businesses where discrimination occurs, to protect employees and customers from bias-based discrimination and harassment.
- Businesses frequented by the public should be required to train employees so that they know their responsibility to maintain a space free from bias-based harassment and discrimination, even if perpetrated by other customers.

*Language Access:*

- Regarding language access, federal agencies should review their compliance with Title VI in Executive Order 13166<sup>1355</sup> along with The Attorney General's Memorandum on Strengthening the Federal Government's Commitment to Language Access<sup>1356</sup> and they should take proactive steps to address any potential violations, to ensure that they provide linguistically competent services to the public. As recipients of federal funding, local law enforcement and victim services should also comply with Title VI in Executive Order 13166 by providing spoken language access services such as interpreters and bilingual officers who speak Asian languages.
- Federal, state, and local law enforcement agencies and victim services need to identify critical deficiencies in existing Limited English Proficient programs for individuals who need language assistance.
- Expand reporting hotlines and in-person contact for individuals who are limited English proficient.
- Develop a language access policy prohibiting discrimination based on national origin which grants equal access to all individuals, including those with limited English

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<sup>1355</sup> 65 Fed. Reg. 50123 (Aug. 16, 2000) <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20867.pdf>.

<sup>1356</sup> Memorandum for Heads of Federal Agencies, Heads of Civil rights Offices, and General Counsels, From The Attorney General, Nov.21, 2022, at [https://www.justice.gov/d9/pages/attachments/2022/11/21/attorney\\_general\\_memorandum\\_-\\_strengthening\\_the\\_federal\\_governments\\_commitment\\_to\\_language\\_access\\_508-2.pdf](https://www.justice.gov/d9/pages/attachments/2022/11/21/attorney_general_memorandum_-_strengthening_the_federal_governments_commitment_to_language_access_508-2.pdf).

proficiency, and promotes effective communication through interpreting services, document translation, and staff training.

*Local Asian Language Assistance:*

- Executive Order 13166 provides a standard for language access provisions across the federal government. This guidance is published in the Federal Register, Vol. 65, No. 159 (Notices), August 16, 2000 at 50123-25. The standard examines the number or proportion of limited English proficient individuals served by the agency's service area or population and resources available. The U.S. Census Bureau provides publicly available data on the most spoken languages and rates of limited English proficiency for each city.
- The Census Bureau also lists jurisdictions that are required by the Language Assistance Provisions (Section 203) of the federal Voting Rights Act to provide translated ballots, voting materials, and bilingual poll workers for specific language minority groups.
- Jurisdictions are covered under Section 203 when the Census finds that 5% or more than 10,000 voting-age citizens in a town or county speak another language, are limited English proficient, and have high illiteracy rates. Although this test only determines limited English proficiency of citizens over 18 years of age, the determinations are instructive for localities to translate hotlines, victim services, and local law enforcement efforts.
- Moreover, since these jurisdictions are covered under Section 203, they have already developed the capacity to provide oral interpretation services and translations of written materials. Therefore, the Section 203 determinations can help guide local law enforcement and victim services on which Asian languages to provide assistance in.
- Local law enforcement and victim services in the following jurisdictions should provide assistance at least in these Asian languages, since they are already mandated to provide the same for elections:

**ALASKA**

Aleutians West Census Area: Filipino

Kodiak Island Borough: Filipino

**CALIFORNIA**

Alameda County: Chinese (including Taiwanese), Filipino, Vietnamese

Contra Costa County: Chinese (including Taiwanese)

Los Angeles County: Cambodian, Chinese (including Taiwanese), Filipino, Korean, Vietnamese

Orange County: Chinese (including Taiwanese), Korean, Vietnamese

Sacramento County: Chinese (including Taiwanese), Vietnamese

San Diego County: Chinese (including Taiwanese), Filipino, Vietnamese

San Francisco County: Chinese (including Taiwanese)

San Mateo County: Chinese (including Taiwanese), Filipino

Santa Clara County: Chinese (including Taiwanese), Filipino, Vietnamese

**HAWAII**

Honolulu County: Chinese (including Taiwanese), Filipino

Maui County: Filipino

**ILLINOIS**

Cook County: Chinese (including Taiwanese), Asian Indian (including Sikh)

**MASSACHUSETTS**

Lowell City: Cambodian

Malden City: Chinese (including Taiwanese)

Quincy City: Chinese (including Taiwanese)

Randolph City: Vietnamese

**MICHIGAN**

Hamtramck city: Bangla

**MINNESOTA**

Ramsey County: Hmong

**NEVADA**

Clark County: Filipino

**NEW JERSEY**

Bergen County: Korean

Middlesex County: Asian Indian

**NEW YORK**

Kings County (Brooklyn): Chinese (including Taiwanese)

New York County (Manhattan): Chinese (including Taiwanese)

Queens County (Queens): Bangladeshi, Chinese (including Taiwanese), Korean, Asian Indian

**PENNSYLVANIA**

Philadelphia County: Chinese (including Taiwanese)

**TEXAS**

Dallas County: Vietnamese

Harris County: Chinese (including Taiwanese), Vietnamese

Tarrant County: Vietnamese

**VIRGINIA**

Fairfax County: Vietnamese

**WASHINGTON**

King County: Chinese (including Taiwanese), Vietnamese

- These 32 jurisdictions in 14 states already translate voting materials and provide oral interpretation to limited English proficient Asian American voters in specific languages.

Local law enforcement and victim services in these jurisdictions can and should do the same.

### **Outstanding Issues**

The COVID-19 Hate Crimes Act<sup>1357</sup> contains provisions that allow for an alternative to incarceration. Perpetrators convicted of federal hate crime offenses can be placed on supervised release to “undertake educational classes or community service directly related to the community harmed by the defendant’s offense.” Sec 5(e).<sup>1358</sup> The U.S. Commission on Civil Rights (USCCR) was not able to fully explore the extent to which prosecutors have employed this option. More investigation is needed to assess the use and efficacy of this restorative justice approach.

President Joe Biden’s Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders was unable to submit testimony in time for the USCCR’s consideration. The Commission advises the President on ways the public, private, and non-profit sectors can work together to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities. The Commission is part of The White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders (WHIAANHPI), which is charged with driving an ambitious, whole-of-government agenda to advance equity, justice, and opportunity for AA and NHPI communities.<sup>1359</sup> President Joe Biden has forcefully stewarded a federal response to anti-Asian racism in the United States, which should be acknowledged and credited.

### **Acknowledgments**

I commend the several witnesses at the USCCR’s briefing on March 24, 2023, especially:

- AAPI Equity Alliance of Los Angeles
- Asian Americans Advancing Justice / AAJC
- Asian American Federation (AAF)
- Pro Bono Attorney Jennifer Wu
- Chinese for Affirmative Action
- Stop AAPI Hate

I thank the organizations and advocates who submitted statements and public comment, including:

- Asian American Bar Association of New York (AABANY)
- Asian American Legal Defense and Education Fund (AALDEF)
- Congressional Asian Pacific American Caucus (CAPAC)
- National Asian Pacific American Bar Association (NAPABA)
- National Council on Asian Pacific Americans (NCAPA)
- OCA - Asian Pacific American Advocates (OCA)

<sup>1357</sup> <https://www.congress.gov/117/bills/s937/BILLS-117s937enr.pdf>.

<sup>1358</sup> Sec 5(e), <https://www.congress.gov/117/bills/s937/BILLS-117s937enr.pdf>.

<sup>1359</sup> President Biden’s Executive Order (EO) 14031 at <https://www.federalregister.gov/documents/2021/06/03/2021-11792/advancing-equity-justice-and-opportunity-for-asian-americans-native-hawaiians-and-pacific-islanders>.

- OCA - Greater Houston Chapter
- Southeast Asia Resource Action Center (SEARAC)
- Stop AAPI Hate
- The Asian American Foundation (TAAF)

Lastly, I must acknowledge President Joe Biden, U.S. Senate Majority Leader Chuck Schumer, U.S. Senator Mazie Hirono, and U.S. Representatives Grace Meng and Judy Chu for their tremendous leadership and support.

## Statement of Vice Chair Victoria Nourse

### Challenges to Hate Crime Prosecutions

By Vice-Chair Victoria Nourse

I am delighted to join this report, which was well underway when President Biden nominated me to be Vice-Chair of the Commission. It bears note that this is only the second report on issues related to Asian-Americans in the history of the United States Commission on Civil Rights. Its focus on hate crimes against Asians is timely, given their sharp rise during the pandemic, as a fearful nation lashed out to blame Asians for the coronavirus.

Asian-Americans have helped to build this nation, but they have not always been welcomed with open arms or treated with fairness. During the pandemic, age old stereotypes emerged as some sought to blame Asians for what a former President dubbed “Kung-Flu.” As this report details, the result was vitriolic speech, racial harassment, and hate crimes directed toward honest American citizens because of their Asian heritage. And, as the report also demonstrates, most of this vitriol was imposed on Asian-American *women*, who were doubly at risk of bias.

The Commission’s hearing on these matters showed clearly that the Asian-American community *is very concerned that state and federal authorities have ignored them*. I concur with all the Commission’s bipartisan and formal recommendations to respond to those concerns. The recommendations are common sense and modest: greater language access within the criminal justice system, improved training of state and local law enforcement, and vigorous investigation and prosecution of racially motivated hate crimes and harassment.

In this statement, I highlight some aspects of the report that may go unnoticed, and offer my own recommendations for changes in our hate crimes laws and administration. I start with the fact that the hate crimes statute imposes requirements not present in the vast majority of criminal laws. I conclude by emphasizing the importance of federal aid to state and local prosecutors and law enforcement, given the difficulties of federal prosecution.

First, this report documents the small number of hate crime prosecutions brought by the Department of Justice over this period for all groups (only 3 for Asian-Americans in a two-year period). Why? The federal hate crimes law, 18 U.S.C. 249, is extremely difficult to enforce. For example, the law requires that the Attorney General sign off on all prosecutions as consistent with certain jurisdictional elements. 18 U.S.C. 249(b). That is a highly unusual requirement. There are hundreds of other federal crimes, none of which require the Attorney General’s certification of jurisdiction. Defendants have tried to make use of this requirement to dismiss hate crime convictions. Dylan Roof, who shot up a Black church and killed nine people during bible study argued that his conviction under 18 U.S.C. 249 should be reversed because the Attorney General

erred in his certification.<sup>1360</sup> This requirement is unnecessarily burdensome: Federal courts *must* consider whether they have jurisdiction whatever the Attorney General determines. The certification requirement should be repealed as duplicative and unnecessary.

Congress should also address federal courts' struggles with the statute. Defendants continue to attack their convictions on jurisdictional bases. Recently, the Pittsburgh Tree of Life synagogue shooter, who killed at least seven people, argued that the statute was unconstitutional as applied to crimes motivated by religious hate.<sup>1361</sup> And, at least one appellate judge has argued in dissent that Congress may not constitutionally criminalize some attacks involving gay persons.<sup>1362</sup> Because of the Supreme Court's decision in *United States v. Morrison*,<sup>1363</sup> there have been persistent doubts about the jurisdictional predicates and constitutionality of hate crimes prosecutions under 18 U.S.C. 249, including cases based on race and ethnicity (as would be the case involving Asian-Americans). Appellate courts have been forced to go out of their way to affirm that Congress has the power to pass laws criminalizing racial assaults under the Thirteenth Amendment.<sup>1364</sup> Attacks based on gender are particularly likely to create legal controversy today; and, as we saw in this report, Asian American women were disproportionately the victims of racial harassment and criminal acts.

Hate crimes should not be *second-class citizens* among our federal laws, more difficult to prosecute and prove than other federal crimes. Congress should, in my opinion, repass the Act to state that the constitutional bases include the Thirteenth Amendment and the Fourteenth Amendment; clarify that such prosecutions are appropriate remedies under those Amendments; and state that the jurisdictional conditions are the same as *applicable to all other criminal laws*.<sup>1365</sup> When Congress reenacts a statute responding to judicial rulings, even the current Supreme Court is more deferential. See *Allen v. Milligan*, 143 S. Ct. 1487 (2023) (applying the Voting Rights Act amendments that Congress repassed in response to judicial decisions). The Founders believed in a system of separated powers in which each department has the duty to say what the Constitution requires. Efficiency alone suggests that such amendments would save the federal courts' precious time, and allow prosecutors to focus on prosecution as opposed to unnecessary legal challenges.

<sup>1360</sup> *United States v. Roof*, 10 F. 4<sup>th</sup> 314, 380-382, 390-97(2021).

<sup>1361</sup> *United States v. Bowers*, 495 F. Supp.3d 362 (W.D. Pa. 2020).

<sup>1362</sup> See, e.g., *United States v. Hill*, 182 F. Supp. 3d 546 (E.D. Va.) (barring application of 18 U.S.C. 249 in a case involving an attack on a gay person), *reversed*, 984 F. 3d 188 (4<sup>th</sup> Cir. 2019); *but see* *United States v. Hill*, 984 F.3d at 210 (dissenting opinion agreeing with the district court that the court had no jurisdiction in that case); *see also* *Glenn v. Holder*, 690 F. 3d 417 (6<sup>th</sup> Cir. 2012) (pastors who hate homosexuality sue to declare 18 U.S.C. 249 unconstitutional as a restriction on their free speech, but challenge fails for lack of standing).

<sup>1363</sup> 529 U.S. 598 (2000). This case involved a civil damages remedy not a criminal penalty, but the Supreme Court treated it as if it involved crime rather than tort. Notably, this decision has not limited Congress's ability to pass standard criminal laws with jurisdictional elements.

<sup>1364</sup> See, e.g., *United States v. Diggins*, 36 F. 4<sup>th</sup> 302 (2022) (having to reaffirm that the Thirteenth Amendment, passed after the Civil War to free the enslaved, allows Congress to enact a law barring hate crimes based on race).

<sup>1365</sup> Many federal crimes, whether about guns, fraud or terrorism, include jurisdictional elements essential to constitutional prosecution.



Second, given the difficulty of prosecuting these cases at the federal level, the federal government must provide greater assistance to state and local governments in policing and prosecuting hate crimes. In 2019, this Commission reported several ways in which the Justice Department could improve its assistance to state law enforcement. I will not repeat those recommendations here. I will note, however, that the Commission heard testimony showing how important it is to train officers to accurately report hate crimes. Many, too many, state law enforcement officers, not to mention state prosecutors, believe that hate crime prosecutions are about speech. *Hate crimes depend upon conduct, not speech.* When a man enters an Asian-owned business and shoots Asian-Americans, any astute law enforcement officer should investigate further to determine whether the crime is bias motivated, whether any slurs are uttered or not. Place and identity of the victim and perpetrator are key markers of hate crimes and may be enough without any speech whatsoever; we see this clearly in cases of attacks in churches or synagogues; the same is true of many other hate crimes.

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## Rebuttal of Commissioner Heriot

I learned an unfortunate lesson with this project: In politically mixed company, only certain kinds of anti-Asian race discrimination are considered appropriate for discussion. Bringing up others can result in a sharp rebuke.

In this Statement, I will therefore begin by discussing the issue that we *are* allowed to discuss—anti-Asian hate crimes (and so-called bias incidents). The problem is that talking about them is fashionable these days—perhaps a bit too fashionable. Such talk has become a way to score political points. By contrast, talking about effective solutions is decidedly unfashionable. Doing so exposes conflicts within the progressive coalition and therefore is discouraged.

If we're serious about preventing anti-Asian hate crimes, that needs to change.

Toward the end of this Statement, I will also briefly comment on the topic that was pushed aside—college and university admissions policies that penalize Asian Americans for being Asian. Several of our Asian American public commentators made it clear that this was the issue that mattered most to them. But such talk also exposes conflicts within the progressive coalition with some favoring race-preferential admissions and others victimized by them. I regret, but am not surprised, that the Commission failed to give the issue due attention. What surprised me was that the Commission's staff director actually interrupted our briefing to prevent our expert witnesses from bringing it up. That's taking coalition politics to extremes.

Perhaps now that the Supreme Court has decided *Students for Fair Admissions v. President and Fellows of Harvard College* (2023) the Commission will give the issue of anti-Asian discrimination in college and university admissions the attention it deserves. But I am not expecting it.

### ***I. Anti-Asian Hate Crimes***

#### ***A. Enforcing the Criminal Law Generally Will Go a Long Way Toward Preventing Anti-Asian Hate Crimes.***

It is understandable that hate crimes would be a part of this report. The Commission's job is to study discrimination. And while the problem of crime is much broader than hate crimes—only a tiny percentage of the crime committed against Asian Americans are hate crimes<sup>1366</sup>—they are the only crimes that involve intentional race discrimination. They are thus an obvious issue of interest to the Commission.

<sup>1366</sup> In her written testimony, Diane Yap stated that while Asian Americans were targeted in about 305 hate crimes in 2021, they were the victims of 102,650 violent crimes. Yap at 1.

But it's important not to get carried away thinking of hate crimes as an issue separate and apart from crime in general. The solutions are similar.<sup>1367</sup>

In a 2021 opinion essay in the *New York Post* entitled *Asians Want Action Against Violence—Not More Rhetoric on Racism*, Wai Wah Chin, founding president of the Chinese American Citizens Alliance of Greater New York, vented her frustration:

We Asians in New York City are fed up with woke politicians and their media going on and on about hate crimes. They are *all talk* about *hate*, but *no action* on *crime*.

And we want action on all crimes, not just “hate” crimes. Without catching, charging, and putting criminals away, our subways, streets, stores, and homes will never be safe. When you are being pushed into the subway tracks or face a knife in a robbery, whether the expletive used by the attacker qualifies as a hate crime is a remote concern to you.<sup>1368</sup>

She has it right. If we want to bring violent hate crimes under control, we need to bring violent crime under control. For that, we need effective law enforcement. Special attention should be given to crimes committed by repeat offenders and by mentally ill individuals with a history of violence, because these are the crimes we have the best chance to prevent before they happen. Since these two overlapping offender populations also commit a disproportionate number of hate crimes, getting them off the streets will be an effective way to prevent hate crimes too. (In the case of the mentally ill, there is evidence that they account for a larger percentage of hate crimes than they do of non-hate crimes.)<sup>1369</sup>

To be sure, the solutions will not be simple. Fashioning a fair and effective criminal justice system is a difficult job, especially when dealing with the mentally ill.<sup>1370</sup> But political rallies

<sup>1367</sup> Often, it's hard to draw a line between hate crimes and non-hate crimes. When a violent crime is committed for no apparent reason—a random stranger is savagely beaten—we may suspect that race, ethnicity, religion, sex, sexual orientation or another protected classification played a role, but if it can't be proven beyond a reasonable doubt, the conviction will be for a non-hate crime. We may never know what actually motivated the crime. On the other hand, if a racial, ethnic, religious, sex, or sexual orientation slur is involved, it may well be charged as a hate crime, and the offender may be convicted on that charge. And yet sometimes it will be true that the slur had nothing to do with the offender's motivation. The offender was simply using the most convenient epithet that came to mind. If the victim had been a different race, ethnicity, religion, sex, or sexual orientation, a different insult—perhaps one that had nothing to do with protected classifications—would have been used. For the remainder of this Statement, for brevity's sake, I will shorten the list to race and ethnicity.

<sup>1368</sup> Wai Wah Chin, *Asians Want Action Against Violence—Not More Rhetoric on Racism*, *N.Y. Post*, April 10, 2021.

<sup>1369</sup> Charles Fain Lehman, *What Motivates Hate Crime? Why Hate Criminals Are Still Criminals*, Manhattan Institute, May 2023, <https://media4.manhattan-institute.org/wp-content/uploads/Why-Hate-Criminals-Are-Still-Criminals.pdf#page=14> (In 2021, half of the hate-crime offenders were mentally ill).

<sup>1370</sup> The Biden Administration has instead gotten off on the wrong foot by suggesting in a draft policy that federal law enforcement officers “should not use statistics about arrest rates in particular communities when making decisions about where and how to focus their activities.” Put differently, but not unfairly, the policy indicates that officer and agents should *not* focus efforts on where the crime is. Rather, they should put as much energy into patrolling the safest, most privileged, crime-free neighborhoods in America as they do in the most crime-infested

where politicians and activists urge attendees to “stop the hate” don’t get us closer to achieving that goal. The focus needs to be on stopping the crime, not on making sure everyone knows we oppose hatred.

Consider, for example, some of the more egregious crimes that have victimized Asian Americans in the last few years:

\*Christina Yuna Lee was a 35-year-old Korean American with a talent for the visual arts. Assamad Nash followed her into her apartment in New York’s Chinatown, where he stabbed her more than forty times with her own kitchen knife. Police were alerted by neighbors who heard her screams, but they arrived too late to save her young life. *Her killer was a chronically homeless and mentally disturbed man with an extensive criminal record. According to the New York Daily News, that record included charges for robbery, carjacking, and burglary.*<sup>1371</sup> *At the time of the murder, he was out on supervised release on three open criminal cases, including one in which he was accused of punching a random stranger on the subway.*<sup>1372</sup>

\*Yao Pan Ma, a resident of the East Harlem neighborhood in New York, was a 61-year-old dim sum chef who had lost his job on account of the COVID-19 pandemic. Reduced to collecting cans on the street for a living, he was jumped from behind in a brutal and unprovoked attack. His assailant, Jarrod Powell, literally stomped him to death. *Powell had a long arrest record that included kidnap and multiple assaults, including one on a fellow inmate at Rikers Island.*<sup>1373</sup>

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neighborhoods. That’s great if you happen to live, work or own a business in a privileged neighborhood. But it’s not so great if you’re in a high-crime neighborhood instead. James Lynch, *EXCLUSIVE: DOJ Proposal Would Ban FBI Agents From Using Community Crime Statistics In Law Enforcement, Docs Show*, May 9, 2023.

<sup>1371</sup> Emma Seiwell, Rocco Parascandola, Chris Sommerfeldt and Leonard Greene, *Homeless Suspect Accused of Following Christina Yuna Lee and Stabbing Her Inside Her NYC Apartment Charged with Murder*, N.Y. Daily News, February 14, 2022. See Lisa Fernandez, *Why the Stabbing Death of Christina Yuna Lee Reaches Far Beyond New York City*, Fox 2 San Francisco ktvu.com, February 16, 2022. See also Dean Moses, “*It’s Like a Zombie Land*”: *The Sorry State of Sara Roosevelt Park a Year After Christina Yuna Lee’s Murder*, amNY.com, February 15, 2023 (“One year since Christina Yuna Lee was brutally stabbed to death inside her Chinatown apartment, locals say the area of Sara Roosevelt Park—steps away from her former home—remains rife with drug use and the mentally ill”).

<sup>1372</sup> Luke Funk, *Who is Assamad Nash, the NY Man Accused of Killing Christina Yuna Lee?*, Fox 2 San Francisco ktvu.com, February 17, 2022.

<sup>1373</sup> Adam Schrader, *Man Arrested for Stomping on the Head of Chinese Immigrant, 61, Who Was Collecting Cans in NYC is Convicted Sex Attacker with Lengthy Criminal Record*, Daily Mail, April 27, 2021. Yao Pan Ma remained in a coma for months before his death. Alyssa Guzman, *Asian Man, 61, Who Was Repeatedly Kicked in the Head in NYC Hate Crime that Left Him in a Coma Dies Eight Months After the Savage Attack: Thug Charged with Attempted Murder Has Been Arrested 15 Times*, Daily Mail, January 9, 2022.

\*GuiYing Ma, a 61-year-old grandmother, was sweeping the sidewalk when Elisaul Perez, for no apparent reason, picked up a large rock and bludgeoned her with it.<sup>1374</sup> She later died from her injuries.<sup>1375</sup> *Perez had eight prior arrests.*<sup>1376</sup>

\*Michelle Go, a 40-year-old mergers and acquisitions specialist at Deloitte, often volunteered her time to, among other things, help the homeless. She died on the scene after being pushed into the path of an oncoming subway train by Martial Simon. *Simon, a chronically homeless man, had been twice convicted of attempted robbery. At the time of the incident, there was a warrant out for him for a parole violation.*<sup>1377</sup>

It's not just the homicide cases that follow this pattern. Consider these cases too:

\*Tommy Lau, a Chinese American bus driver, was on his lunch break when he noticed an older Asian couple being harassed by a homeless man. When he tried to intervene, the homeless man, Donovan Lawson, spat on him, punched him in the face and called him by an anti-Asian slur. *This was Lawson's 33<sup>rd</sup> arrest and the fourth time police had been called upon to help when he was in the grip of a mental breakdown.*<sup>1378</sup>

\*Vilma Kari, a 65-year-old immigrant from the Philippines, was walking to church when she was suddenly kicked in the stomach by Brandon Elliott. When she collapsed on the sidewalk, he kicked her in the head, shouted an obscenity and added, "You don't belong here." Kari suffered a broken pelvis but survived. *Elliott, who lived in a nearby shelter, was on parole from prison after being convicted of killing his own mother.*<sup>1379</sup>

\*Carl Chan, the president of the Oakland Chinatown Chamber of Commerce, was walking down the street, minding his own business, when James Lee Ramsey shouted a racial slur and struck him on the back of the head. Chan was left sprawled on the pavement, scraped and bleeding.

<sup>1374</sup> Sabrina Souza & Eric Levenson, *New York City Man Who Fatally Struck Chinese Woman with a Rock Sentenced to 20 Years in Prison*, CNN.com, January 10, 2023.

<sup>1375</sup> Amir Vera & Liam Reilly, *Asian Woman, Attacked Last Year in New York by Man with Rock Has Died, Family Says*, CNN.com, March 1, 2022.

<sup>1376</sup> Carl Samson, *Repeat Offender Sentenced to 20 Years in Prison for Killing Guiying Ma in NYC Rock Attack*, Yahoo.com, January 11, 2023. Perez pleaded guilty to manslaughter. In a statement read by the family attorney, the victim's husband said, "He should be taken away so he can never hurt anyone else again. That is what justice means to me."

<sup>1377</sup> Rana Novini, *DA: Man in Woman's Deadly Times Square Subway Shove Used Both Hands to Kill Her*, NBCNewYork.com, Jan. 19, 2022.

<sup>1378</sup> Nicole Hong, Ashley Southall & Ali Watkins, *He Was Charged in an Anti-Asian Attack. It Was His 33<sup>rd</sup> Arrest*, N.Y. Times, April 6, 2021. The article went on to say: "[Lawson] is not unique. Many of the people charged recently with anti-Asian attacks in New York City have also had a history of mental health episodes, multiple arrests and homelessness, complicating the city's search for an effective response."

<sup>1379</sup> Nicole Hong, Juliana Kim, Ali Watkins & Ashley Southall, *Brutal Attack on Filipino Woman Sparks Outrage: "Everybody Is on Edge"*, N.Y. Times, March 30, 2021; Joe Marino, Amanda Woods & Lia Eustachewich, *Man Busted for Midtown Attack on Asian Woman Was on Parole for Killing His Mom*, N.Y. Post, March 31, 2021.

*Ramsey was on parole from state prison, chronically homeless and schizophrenic. Less than an hour after the attack, he was arrested by the Oakland police, who reported he said he had been seeing “crazy things” like “half-dog and half-humans and half-cat and half humans.”*<sup>1380</sup>

These cases are not outliers. Both long criminal records and a history of mental illness coupled with violence are common among offenders. According to the Manhattan Institute’s Charles Fain Lehman, 52.2% of those arrested for a hate crime in New York State between 2019 and 2021, had a prior conviction, 31.9% had a prior felony conviction, and 36.6% had a pending case against them.<sup>1381</sup> Judging from the newspaper reports, those arrested for the more serious hate crimes were especially likely to have such a record.<sup>1382</sup>

Similarly, on May 3, 2022, the head of the New York City Police Department’s Hate Crime Task Force, Deputy Inspector Andrew Arias, told the New York City Council that out of 100 suspects arrested in 2022 for hate crimes, 47 had “prior documentation of an EDP incident.” By “EDP incident” he was using the NYPD’s acronym for an “emotionally disturbed person”. Officers with the NYPD are directed by their procedural guide to document whether an individual “appears to be mentally ill or temporarily deranged.”<sup>1383</sup>

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<sup>1380</sup> Eyal Press, *The Deadly Collision of Racism and Mental Illness*, N.Y. Times, October 4, 2022.

<sup>1381</sup> See Written Statement of Charles Fain Lehman, fig. 3 at 5.

<sup>1382</sup> See, e.g., Wai Wah Chin, *Asians Want Action Against Violence—Not More Rhetoric on Racism*, N.Y. Post, April 10, 2021 (citing several serious cases involving perpetrators with prior arrests and convictions); Pervaiz Shallwani, *Man Charged With Murder as Gay Hate Crime*, Wall St. J., May 19, 2013, <https://www.wsj.com/articles/SB10001424127887323648304578493541799661834> (Hate crime offender had an extensive criminal record which included extended stays in prison).

<sup>1383</sup> Arun Venugopal, *Nearly Half of Those Arrested in Hate Crime Attacks Had Mental Health Issues: NYPD*, Gothamist, May 4, 2022.

Not all these crimes are being prosecuted as hate crimes, though in all cases racial motivations were suspected by at least some.<sup>1384</sup> In the end, it hardly matters. Four innocent lives have been lost. Three innocent people have been injured.<sup>1385</sup>

All the funding for bias education programs and “stop the hate” public service announcements in the world won’t solve this problem.<sup>1386</sup> The sort of person who commits these crimes is not likely to be attending bias education programs or listening to public service announcements.<sup>1387</sup>

<sup>1384</sup> Jarrod Powell was prosecuted for and pleaded guilty to a hate crime. Associated Press, *NYC Man Pleads Guilty in Brutal Hate Crime Stomping Death of Chinese Immigrant*, nbcNewYork.com, January 12, 2023; *Suspect Arrested in Vicious, Unprovoked, Assault on Asian Man in Manhattan*, abc7NY.com, April 29, 2021. Because Assamad Nash’s and Elisaul Perez’s motivations were difficult to prove, they were not. But their crimes nevertheless understandably raised fear in the hearts of many Asian Americans. Elisaul Perez pleaded guilty to first degree manslaughter. David Propper, *Brooklyn Man Gets 20 Years in Prison for Deadly Attack on Asian Woman*, N.Y. Post, January 10, 2023. Assamad Nash was initially charged with murder but was found unfit for trial. *Suspect in Gruesome Chinatown Stabbing Death of Christina Lee Deemed Unfit for Trial*, NBC New York, June 12, 2023. Martial Simon was turned over to the New York Department of Mental Health and Hygiene after being found incompetent to stand trial. Tamar Lapin & David Meyer, *Man Accused of Fatally Shoving Michelle Go, Found Unfit to Stand Trial, Court Official Says*, N.Y. Post, March 22, 2022.

Brandon Elliott has been charged with a hate crime. *Man Charged in Brutal Attack on Asian Woman Out on Parole for Killing his Mom*, abc7NY, April 1, 2021. But while James Lee Ramsey was initially charged with a hate crime, the hate charge was later dropped as part of a plea bargain, and he pleaded guilty to a lesser offense. Amber Lee, *DA Drops Hate-Crime Charges vs. Man who Attacked Oakland Chinatown Leader*, Fox KTVU, September 17, 2021. Donovan Lawson has been charged with assault-hate crime, aggravated harassment, menacing and harassment. Jaime DeJesus, *Man Charged in Hate Crime Assault*, Brooklyn Reporter, March 26, 2021.

<sup>1385</sup> My colleague Commissioner Magpantay states that hate crimes should not be a partisan issue, and he is exactly right. But I am disappointed that the report demonstrates a much deeper interest in attempting to link Donald Trump (who is mentioned 33 times) to anti-Asian hate crimes than it does in ensuring that perpetrators are taken off the streets. That makes it seem more partisan than I would like. (For my view on Trump’s references to COVID-19 as the “Wuhan Virus,” etc., please see my footnote 22).

<sup>1386</sup> Professor Russell Jeung, a professor of Asian-American Studies at San Francisco State University, launched Stop AAPI Hate, a project of Chinese for Affirmative Action, in 2020. In his written testimony before the Commission, he advocated efforts “to mediate intergroup conflicts through restorative justice approaches” and the promotion of “anti-harassment awareness and safety campaigns against racism.” He also called for “preventing health stigmatization, denouncing xenophobic political rhetoric, and proactively countering hate speech on social media.” Russell Jeung Statement at 16. Similarly, Jo-Ann Yoo of the Asian American Federation asked that the federal government assist communities to “[d]evelop anti-bias programming to educate within and across communities to dispel misconceptions, address the root cause of hate crimes, and build relationships that create safety at the local level.” Jo-Ann Yoo Statement at 4. I have serious doubts that these measures would have had a significant effect on actual hate crimes.

<sup>1387</sup> It seems unlikely that they were affected by Donald Trump either. I have no desire to be an apologist for the former president, who has been known to say things that nearly everyone (including me) wishes he hadn’t. But calling COVID-19 the “China Flu” or the “Wuhan Flu” doesn’t strike me as over the line. There is a long history behind naming diseases for the place they were thought to be first detected—the Spanish Flu, the Asian Flu, Rocky Mountain Spotted Fever, Lyme (Connecticut) Disease, African Sleeping Sickness, West Nile Disease, Lassa (Nigeria) Fever, Middle East Respiratory Syndrome (MERS), Argentine Hemorrhagic Fever, Pontiac (Michigan) Fever, Rift Valley Fever, Marburg (Germany) Virus Disease. Ebola is named for a river in the Democratic Republic of the Congo. Zika is named for a forest in Uganda. Tularemia (or rabbit fever) is named for Tulare County, California.



It is also unlikely the problem will be solved by hate crimes hotlines or by gathering better hate crimes statistics. It may be true that hate crimes, especially low-level hate crimes, are under-reported, just as crime in general is under-reported. Interestingly, despite what the staff-written part of this report states, the evidence is that hate crimes are somewhat *more* likely to be reported than non-hate crimes of similar magnitude.<sup>1388</sup> Alas, the heart of the problem lies elsewhere.

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It seems to me that, if anything, a disease that is named for a specific group of people is worse, and the fact that the media do not shrink from using such terms is evidence of their political motivation in their panic over Trump's use of "China Flu." A good example is Legionnaires' Disease, which is named for members of the American Legion, a veterans' organization, who suffered an outbreak of the disease at a convention at the Bellevue Hotel in Philadelphia in 1976. I recall my father, a member of the American Legion, good naturedly objecting to the name. But I don't think it would have occurred to him that was somehow malicious to use it. I note that ABC News, the New York Times, USA Today, and a host of other mainstream media outlets, have recently used the term. See Nathan Diller, *FDA Sends Warning to American Cruise Lines after Guests Contract Legionnaires' Disease*, USA Today, February 21, 2023; Knvul Sheikh, *What Is Legionnaires' Disease and How Can I Protect Myself?*, N.Y. Times, September 21, 2022; Paul Sisson, *SDSU to Reopen Buildings Closed During Legionnaires' Disease Investigation*, San Diego Union Tribune, April 19, 2023; Meredith Delison, *1 Dead, 11 Sickened in Legionnaires' Disease Outbreak in California County*, ABCnews.go.com, August 4, 2022.

Even if Trump's use of the terms "China Flu" and "Wuhan Flu" were somehow wrongful, it is unlikely that individuals like Donovan Lawson, Assamad Nash, James Lee Ramsey, and Martial Simon were influenced by it. They may not have even known about Trump's description of the disease. Homeless people seldom spend their time following Trump or his Twitter feed. It used to be standard procedure for psychiatrists in the United States to determine if patients are alert and oriented by asking their name, the date, and the identity of the president of the United States. If they couldn't answer those questions, they had serious problems. Of course, Nash, Ramsey, and Simon really had serious problems and might well have been unable to identify Trump as the president. It seems far more likely that if their motivations had anything to do with COVID-19, it had more to do with the fact that COVID-19 did indeed originate in China than with Trump's behavior.

Commissioner Jones and the staff-generated portion of the report both suggest "a correlation" between Trump's tweet and anti-Asian crime. I strongly suspect they are right that there is a correlation. How could there not be? But correlation is not causation. Both were responding to the same stimulus: the outset of the COVID-19 pandemic. See Sean Darling-Hammond, Eli Michaels, Amani Allen, David Chae, Marilyn Thomas, Thu Nguyen, Mahasin Mujahid, and Rucker Johnson, *After 'The China Virus' Went Viral: Racially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans*, 47 Health Education and Behavior, Sept. 2020, <https://journals.sagepub.com/doi/full/10.1177/1090198120957949>.

<sup>1388</sup> Somehow the Commission's report has gotten the idea that hate crimes are less likely to be reported than other crimes. The report states: "It is well-established that hate crimes are less likely to be reported to the police in comparison to other types of crimes." Rep. at 71. I didn't see that demonstrated in the data. The report cites a 2005 Department of Justice report that does indeed show that only 44.1% of violent hate crime victimizations are reported, while 49.3% of violent non-hate crime victimizations are reported from July 2000 through December 2003. (Caroline Harlow, "Hate Crime Reported by Victims and Police," National Criminal Victimization Survey and Uniform Crime Reporting, Bureau of Justice Statistics at 4, Table 4, November 2005, <https://bjs.ojp.gov/content/pub/pdf/hcrvp.pdf>). But there is a lack of equivalence between the hate crime victimizations and the non-hate crime victimizations to which they are being compared. I had to do some of my own calculations using data in the 2005 report, but it turns out the violent non-hate crime victimizations in the comparison are, on average, somewhat more serious than the violent hate crime victimizations, so one would have to expect higher reporting rates. For example, the proportion of non-hate crime victimizations that were robberies (a felony) was much higher than the proportion of hate crime victimizations (10.9% vs. 5.9%). On the other hand, the proportion of non-hate crime victimizations that were simple assaults (a misdemeanor) was lower. In particular, the least serious simple assaults—those involving verbal threat only—were only 26.2% of the non-hate crime victimizations, while they were 33.5% of the hate crime victimizations. (*Id.* at 3, Table 3.) In order to make the

More needs to be done to ensure that those who are committing the crimes are taken off the streets. Until that happens, crime is likely to remain a problem.<sup>1389</sup>

A policy of “de-incarceration” has often been urged in recent times. Second thoughts about this may well be in order. As Wai Wah Chin alludes to in her *New York Post* article, it is rather awkward to fret over anti-Asian hate crimes and at the same time advocate for radically reducing

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comparison to the figures in Table 4, I calculated these percentages using only the violent victimizations in Table 3. Because the reporting rates are not broken down by seriousness of offense, one cannot conclude from this whether hate crime reporting was higher or lower than non-hate crime reporting. But it is entirely possible that this would fully account for the lower reporting rate for hate crimes that the 2005 article found.

More important, the 2005 report appears to be seriously outdated. The more recent report from the Department of Justice—*Hate Crime Victimization, 2005–2019*—found that 57% of violent hate crime victimizations were reported to the police in the period from 2015–2019. (Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 4, Table 2, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf)).

No directly comparable figure for violent non-hate crime victimizations is included in that report. But it is possible to go outside of *Hate Crime Victimization, 2005–2019*, and find nearly comparable figures for violent non-hate crime victimizations. *Criminal Victimization, 2018* states that the non-hate crime reporting rate for 2017 was 44.9% and for 2018 was 42.6%. Put differently, contrary to what the staff generated portion of this report states, the reporting rate for violent hate crimes was actually higher than the rate for violent non-hate crimes. (See Rachel E. Morgan & Barbara A. Oudekerk, *Criminal Victimization, 2018* at 8, Table 5, September 2019. See also Alexandra Thompson & Susannah N. Tapp, *Criminal Victimization, 2021* at 5, Table 4, September 2022 (reporting that in 2020, the rate that violent non-hate victimizations were reported to police was 40.2% and that the rate for 2021 was 45.6%)). That isn’t surprising given how many resources have been devoted to increasing hate crime reporting rates. Why should anyone be surprised that such efforts have been successful?

<sup>1389</sup> Ms. Chin pointed out how Critical Race Theory (CRT) training could even increase the likelihood of an anti-Asian hate crime:

When a black man told a Chinese father in Central Park on March 27 that “you guys always have the advantage,” then sucker-punched him, he acted out the two fundamental tenets of CRT. The first tenet is that you must judge people, not as individuals, but by their race only—i.e., to be racist—so the unlucky Chinese father became “you guys,” part of a collective racial judgment. The second tenet is that the only relationship between black and whites—and Chinese by extension—is that of unjust oppression. Oppression justifies retaliation, making it “socially just” to sucker-punch.

Wai Wah Chin, *Asians Want Action Against Violence—Not More Rhetoric on Racism*, *N.Y. Post*, April 10, 2021.

incarceration rates,<sup>1390</sup> eliminating cash bail,<sup>1391</sup> and defunding the police.<sup>1392</sup> It's naïve at best. And at some point, it starts to look insincere.

It's also taken for granted that the problem of the homeless mentally ill is intractable—that miles and miles of makeshift tents in our nation's largest cities are something we must learn to live with. I have been told—perhaps conveniently—that there is little to worry about, because they have very little tendency toward violence. But, as many urban dwellers have experienced, a not insubstantial number—including Donovan Lawson, Assamad Nash, and James Lee Ramsey—obviously do.

The most important reason we have governments is to protect us from aggression, both foreign and domestic. For the past few years, our criminal justice system has not earned high marks in this most fundamental of governmental tasks. That needs to change.

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<sup>1390</sup> See, e.g., Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) (advocating radical de-incarceration and viewing incarceration rates in the United States to be anti-African American). Compare Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, Press Release: Prison Policy Institute, March 14, 2023 (stating that prison populations were reduced 15% during 2020 and jail populations were reduced 25%, but lamented that rates have begun to climb again) with Tom Cotton, *Our Underincarceration Problem*, National Review, August 11, 2021 (“Ill-conceived anti-prison policies rooted in platitudes, lies, and misleading statistics have unleashed thousands of criminals onto the streets”).

<sup>1391</sup> For a discussion of recent changes in the law of various states in connection with cash bail, see U.S. Commission on Civil Rights, *The Civil Rights Implications of Cash Bail* (January 20, 2022).

<sup>1392</sup> In 2023, some have argued that reductions in police budgets was never advocated and never happened—that it is all a myth. But that's nonsense. For example, in Seattle, about \$45 million was whacked out of the police department budget for 2021. In 2022, another \$7 million was taken away. See *Seattle Open Budget*, <https://openbudget.seattle.gov/#!/year/2023/operating/0/service/Public+Safety/0/department>. The number of sworn police officers was 1,420 in 2018 and decreased steadily after that and was down to 1,077 in 2022. See FBI Crime Data Explorer, *Law Enforcement Employees Breakout*, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/pe>.

Minneapolis is similar. Its 2021 police budget was slashed by almost \$28 million. Compare *City of Minneapolis, 2020 Budget*, <https://www.minneapolismn.gov/media/-www-content-assets/documents/2020-adopted-budget.pdf> with *City of Minneapolis, 2021 Adopted Budget*, <https://lms.minneapolismn.gov/Download/FileV2/23271/2021-Adopted-Budget.pdf>. In 2019, it had 861 sworn officers. By 2020, this had declined to 833, and by 2021 it fell off a cliff with only 648. Rather than improving in 2022, it got worse with only 592. See FBI Crime Data Explorer, *Law Enforcement Employees Breakout*, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/pe>.

Chicago had almost \$80 million cut from its police budget from 2020 to 2021. Compare *City of Chicago Annual Appropriation Ordinance for the Year 2020*, [https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document\\_uploads/budget/2020/2020\\_Annual\\_Appropriation\\_Ordinance\\_1.pdf](https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document_uploads/budget/2020/2020_Annual_Appropriation_Ordinance_1.pdf) with *City of Chicago Annual Appropriation Ordinance for the Year 2021*, [https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document\\_uploads/budget/2021/2021\\_Annual%20Appropriation\\_1.pdf](https://chicityclerk.s3.us-west-2.amazonaws.com/s3fs-public/document_uploads/budget/2021/2021_Annual%20Appropriation_1.pdf).

See Chelsia Rose Marcus, *N.Y.P.D. Officers Leave in Droves for Better Pay in Smaller Towns*, N.Y. Times, December 9, 2022 (“Police departments across the country are grappling with increasing resignations and retirements. And while hiring levels rose last year after a sharp decrease in 2020, they have not made up for the losses, according to a March report from the Police Executive Research Forum, a law enforcement policy group.”).

Some of the witnesses at the briefing as well as many of those who submitted public comments discussed the need for law enforcement.<sup>1393</sup> For example, the Asian American Coalition for Education, an alliance of over 300 Asian-American organization, wrote to us:

*Notably, the majority of violent attacks on Asian Americans were reported in states that either defunded the police, or released many violent criminals irresponsibly during COVID-19 pandemic, or failed to address their rampant homeless and mental health issues ....*

AACE’s comment noted that law and order are “essential to protect Asian Americans and all Americans.” It urged us to demand that “relevant state and local governments reverse their failing policies of defunding and releasing violent criminals irresponsibly” and “effectively address their homeless and mental health issues.”

Similarly, a coalition of eleven Asian American and civil rights organizations wrote a public comment that urged the Commission to focus on “threats to public safety in general.” They stated that it is a mistake to focus attention “on relatively minor incidents that do not constitute crimes at all,” while “ignor[ing] violent crime the motivations [for which] don’t happen to be classified by the police authorities as ‘hate crime.’”<sup>1394</sup>

The reference, of course, is to law enforcement agencies like the Sacramento Police Department, which urges citizens to report on their neighbors when they use racial or ethnic slurs or otherwise behave in a way that suggests bias.<sup>1395</sup> It is hard to imagine a good reason for such a policy, especially in this era in which everything has been labeled “racist.” Police should stick to their core mission—to stop murder, mayhem, armed robbery, and other conduct that actually

<sup>1393</sup> Charles Fain Lehman stated in his written submission to the Commission, that “hate crime offenders are not specialists—they tend to resemble non-hate crime offenders in their history of criminal behavior, an indicator that they commit other, non-hate crimes as well.” For example, in New York State between 2019 and 2021, 52.2% of those arrested for a hate crime had a prior conviction, 31.9% had a prior felony conviction, and 36.6% had a pending case against them. The numbers for those arrested for other crimes were similar—51.4% had a prior conviction, 33.1% had a prior felony conviction, and 33.0% had a case pending against them. Mr. Lehman concluded from this that “the best way to combat hate crime is not by targeting “hate,” e.g. through bias reduction programming or content moderation, but the target “crime” through aggressive law enforcement.” Statement of Charles Fain Lehman at 1.

<sup>1394</sup> Public Comment submitted by Californians for Equal Rights Foundation, et al., April 24, 2023. Comments from individual members of the public also sounded this theme. YangMing Cao of Fresno, California wrote about the witnesses who addressed the Commission about our March 24 briefing. In his view, many of them disregarded the Asian American community’s actual interests in order to “sell their ideological rhetoric of ‘Stop Asian hate,’ pretending that ‘white supremacy’ or ‘systemic racism’ is the biggest threat to the Asian American community.” He further stated:

Such fear mongering and race politicking can’t be further away from the truth: Asian Americans, just like other Americans, deserve equal treatment, not special treatment. Make American cities safer, crack down on crimes and criminal, and grant our children equal education rights. Everything else is either window dressing or counter-productive.

<sup>1395</sup> “Anonymous Crime Tip, Gang, Drug or Suspicious Tip Lines/Hotlines”, City of Sacramento, <https://www.cityofsacramento.org/Police/Contact/Crime-Tips>. The hotline for hot crimes doubles as a hot line for bias incidents.

violates the criminal law. Given that this report is about anti-Asian discrimination, it is worth pointing out that some Asian Americans—recent immigrants from China—will likely be sensitive to a practice that sounds a lot like China’s social credit policy.<sup>1396</sup> For some, avoiding that policy may have been the reason they left China.

Asian American voting patterns also reflect Asian American concern over the failure of our criminal justice system to keep violent crime under control.<sup>1397</sup> As Michael Hartney and Renu Mukherjee wrote in connection with the successful effort to recall San Francisco’s progressive district attorney Chesa Boudin:<sup>1398</sup>

On June 7, San Franciscans voted overwhelmingly to recall their city’s progressive district attorney, Chesa Boudin, from office—an outcome foreshadowed by pre-election polling showing that a majority of residents were so tired of Boudin’s soft-on-crime policies that they were

<sup>1396</sup> According to Katie Canlaes and Aaron Mok, China’s social credit policy assigns rankings to both individuals and organizations. The ranking is based upon “good” or “bad” behavior as determined by the National Development and Reform Commission, the People’s Bank of China, and the Chinese court system. “Incentive mechanisms encourage keeping trust” and “punishments” discourage “breaking trust.” Infractions include “bad driving, smoking in non-smoking zones, buying too many video games, and posting fake news online, specifically about terrorist attacks or airport security.” Punishments include travel bans, bans from better hotels, and reduced internet speeds. Katie Canales and Aaron Mok, *China’s ‘Social Credit’ System Ranks Citizens and Punishes Them with Throttled Internet Speeds and Flight Bans if the Communist Party Deems Them Untrustworthy*, Business Insider, November 28, 2022.

<sup>1397</sup> The New York Times has written on more than one occasion about Asian American voters in the New York area who are voting for candidates they believe will be tougher on crime. Jason Kao, *Where New York’s Asian Neighborhoods Shifted to the Right*, N.Y. Times, March 5, 2023; Luis Ferré-Sadurní & Ellen Yan, *Crime Concerns Drove Asian Americans Away from New York Democrats*, N.Y. Times, January 10, 2023. See also Hannah Hartig, Andrew Daniller, Scott Keeter & Ted Van Green, *Republican Gains in 2022 Midterms Driven Mostly by Turnout Advantage*, Pew Research Center, July 12, 2023, <https://www.pewresearch.org/politics/2023/07/12/voting-patterns-in-the-2022-elections/> (noting that the Republican share of the Asian American vote has been increasing with 26% in 2018, 30% in 2020, and 32% in 2022).

<sup>1398</sup> In a hotly contested election in 2019, Boudin emerged as the winner after campaigning for “radical change to how we envision justice.” According to NBC News, he pushed for “sweeping reform over incarceration” and “said he wants to tackle racial bias in the criminal justice system, overhaul the bail system, protect immigrants from deportation and pursue accountability in police misconduct cases.” Associated Press, *Chesa Boudin, Whose Parents Were Imprisoned, Win San Francisco D.A.’s Race: The Son of Anti-War Radicals Sent to Prison for Murder When He Was a Toddler, Said He Wants to Reform the Criminal Justice System*, NBC News, November 10, 2019. His parents, Kathy Boudin and David Gilbert, were members of the far-left Weather Underground and participated in the infamous Brinks armored car robbery that left two police officers and a security guard dead. His mother spent 22 years in prison as a result and his father remains there. He was reared by fellow Weather Underground members Bill Ayers and Bernadine Dohrn, who themselves spent years as fugitives. *Id.*

As to anti-Asian crime in particular, Boudin was criticized for one of his statements concerning the vicious murder of an 84-year-old Thai American grandfather named Vicha Ratanapakdee. Mr. Ratanapakdee was taking his morning walk when 19-year-old Antoine Watson, for no apparent reason, sprinted across the street and brutally pushed him down. As he fell, his head hit the pavement, causing his death. Boudin described Watson as having “some sort of temper tantrum,” which outraged Ratanapakdee’s family and evidently many other San Franciscans. Dion Lim, *Family Outraged Over SF DA’s Description of 84-Year-Old Asian Man’s Suspected Killer*, ABC7 News, March 2, 2021.

willing to fire him after just two years on the job. ... [O]bservers would do well to understand the vital role that San Francisco's Asian voters played in the Boudin recall.<sup>1399</sup>

I do not pretend to be an expert in matters of enforcement of the criminal law. But it seems to me that if policymakers are concerned about violent hate crimes, they would do well to focus on violent crime in general.<sup>1400</sup> The steep increases in crime that the nation witnessed over the last

<sup>1399</sup> Michael Hartney & Renu Mukherjee, *The Asian Recall*, City Journal (June 17, 2022). They further wrote:

Our evaluation of two key data points largely validates the anecdotal evidence showing that Asian-Americans played a key role in ousting Boudin. We compared support for the recall across the city's 11 supervisor districts relative to the share of registered voters in each district who requested a Chinese language ballot. In the three districts with the smallest share of Chinese ballots (2 percent or less), just 50 percent of voters supported the recall (5 percentage points less than the citywide average). In contrast, in the three supervisor districts with the highest share of Chinese language registrants (10 percent or more), 65 percent of voters voted to recall Boudin.

We also examined another measure of citizen support for the recall: campaign donations. Using publicly available campaign-finance data, we examined the share of donor to the pro- and anti-Boudin campaign committees who had Asian surnames. What we found largely confirmed the thesis that the pro-recall movement drew heavily on Asian support. Notably, one in five individual contributors to the Boudin recall effort had an Asian surname. By contrast, a much smaller share of pro-Boudin contributors (closer to one in ten) had an Asian surname. ...

While Asian residents of one of the nation's most progressive cities are unlikely to become reliable Republicans, these dynamics suggest that many of these voters have begun to feel meaningful political cross-pressures. Democrats have embraced positions on education and crime that are unpopular with many Asian voters, including recent immigrants. With Asian-Americans representing the fastest-growing racial or ethnic group in the United States, events like the Boudin recall suggest that a potentially major national development may be underway.

See Claire Wang, *How San Francisco's D.A. Recall Election Shows a Rift in the Asian American Community*, nbcnews.com, June 10, 2022 ("Asian Americans, galvanized by rising crime rates and violent attacks against elders, appeared to be a driving force in Tuesday's recall election that ousted San Francisco's reformist District Attorney Chesa Boudin").

<sup>1400</sup> Commissioner Nourse, to credit, is more focused on the need for prosecution. In particular, she is focused on hate crimes prosecutions, especially federal hate crimes prosecutions. She takes issue with the requirements set forth in Section 4707(b) of the Matthew Shepard and James Byrd Jr. Hate Crimes Act. 18 U.S.C. § 249(b). Under that law, a prosecution cannot take place unless the Attorney General has certified in writing that:

(b) Certification Requirement.—

“(1) IN GENERAL.— No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

“(A) the State does not have jurisdiction;

“(B) the State has requested that the Federal Government assume jurisdiction;

“(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

“(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

Those requirements were put in place to deal with special aspects of federal hate crime prosecutions. In essence, they allow state law enforcement authorities to conduct the prosecution unless good reason exists for federal prosecutors to act instead.

For one thing, those requirements were intended to cut down on the likelihood of duplicative effort in prosecution. Because prosecuting major hate crimes tends to be viewed as a feather in the cap of a state or federal prosecutor, Congress feared that the federal statute would cause a rush to prosecute as ambitious prosecutors vied for the publicity the prosecution would surely bring. They wanted to avoid the jockeying for position and waste.

There is also another reason for the Section 4707(b) requirements. To understand that reason, some background on federal criminal jurisdiction would be useful: Our Constitution protects us against double jeopardy. An individual cannot be tried twice for the same crime. If the individual is acquitted, that's the end of it.

But there's a catch. Under the "dual sovereignty rule," the federal government cannot be ousted from jurisdiction just because a state has undertaken a prosecution first. And vice versa. Each must be accorded an opportunity to exercise its authority to protect the public from crime. See *United States v. Lanza*, 260 U.S. 377 (1922).

That is a genuine cause for worry. The potential for abuse is obvious. On the other hand, the dual sovereignty rule makes some logical sense. The federal government cannot allow states to thwart federal policy. There have been actual cases of efforts by state authorities to interfere with federal authority during Prohibition by conducting intentionally botched prosecutions of bootleggers. Nor should a botched federal prosecution be permitted to prevent states from exercising their authority to protect the public.

The whole thing worked tolerably well back when federal criminal jurisdiction was very limited (as it was intended to be by the Constitution). It is worth noting here that the Constitution does not grant the federal government a general police power. That's for the states. Consequently, when Congress passes a criminal statute, it must relate it to one of the federal government's enumerated powers. Typically, these statutes have dealt with such things as crimes committed on federal property, crimes that victimize federal actors in the performance of their duties, crimes conducted through the use of the U.S. Mail, and crimes that implicate interstate or foreign commerce. Back when federal jurisdiction over crime was very narrow, the dual sovereignty rule rarely caused problems.

But in recent decades, the federal criminal code has expanded in ways that for the first time, allow prosecutors to get two bites at the apple on a routine basis. That's intolerable. The federal hate crimes act is a major factor in this. For example, it covers violent crimes that occur "because of" someone's disability. But victims of crimes are frequently targeted because of some real or perceived weakness. And there are those who take the position that all rapes are hate crimes because rapists almost always target victims of a particular sex. See *Hearing Before the Committee on the Judiciary of the United States Senate on the Matthew Shepard Hate Crimes Prevention Act of 2009* (S. Hrg. 111-464), June 25, 2009.

The requirements of Section 4707(b) were also intended to cut down on the double jeopardy issue by making sure that a re-prosecution would not occur except when determined to be truly necessary and in the public interest. This was the product of compromise. Out of concern for double prosecutions, I would have favored more stringent limitations on re-prosecutions. Others were less bothered by the prospect of prosecutors getting two bites at the apple this way and would have preferred fewer constraints on federal prosecutions.

Commissioner Nourse also calls upon Congress to re-promulgate the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act in an effort to re-assert Congress's view that it has constitutional authority to pass such a statute in its current configuration. I, too, would prefer to see the statute re-promulgated, but not in the way Commissioner Nourse suggests. For reasons I have commented on at greater length elsewhere, I don't think there is anything Congress can do to make Section 4707(a)(1) of the Act (18 U.S.C. § 249(a)(1)) constitutional (though other parts of the Act appear to be constitutional). That section depends on the Thirteenth Amendment for its authority, but the Thirteenth Amendment only gives Congress the broad power to see to it that slavery and involuntary servitude are prohibited and never return. Unless the statute was intended by Congress in good faith as a means of preventing the return of slavery or involuntary servitude, it's without constitutional authority. See *United States v. Hougen*, No. 21-10369 (9<sup>th</sup> Cir. August 1, 2023)(Ikuta, J. dissenting); *United States v. Cannon*, 750 F.3d 492, 509 (5<sup>th</sup> Cir. 2014)(Elrod, J., specially concurring to her own majority opinion); Gail Heriot & Alison Somin, *Sleeping Giant?: Section Two of the Thirteenth Amendment, Hate Crimes Legislation*, 13 *Engage* (Feb. 12, 2013); Brief Amicus Curiae for Gail Heriot & Peter N. Kirsanow in *United States v. Metcalf*, No. 16-4006 (8<sup>th</sup> Cir.

few years seem to have leveled off in the last year or so—in part because post-pandemic incarceration rates have started to climb again. But that slight decrease in the crime rate is hardly cause for celebration. The rate leveled off in a bad place—still higher than it was prior to the rise. We can do better. And we must.

*B. Of the Making of Hate Crime Statistics There Is No End.*<sup>1401</sup>

*What Do Aggregate Hate Crime Statistics Tell Us?* The answer to that question is probably “not as much as we like to think.”

It is generally agreed that, beginning around the time of the COVID-19 lockdown, the country had a spike in anti-Asian hate crimes. The most notorious example may be the case of José Gomez III of Midland, Texas, who, on the very day the lockdown began, tried to kill a Burmese American family that was shopping at Sam’s Club. Gomez, who acted in full view of other shoppers, thought the family was Chinese and somehow blamed them for the pandemic.<sup>1402</sup>

Exactly how large the spike was and how long it lasted is hard to say. Extensive media coverage tends to corrupt the numbers. It can increase the reporting rate rather than the crime rate itself. It can also encourage victims and law enforcement officers to interpret incidents as hate crimes that they might otherwise have viewed as ordinary crimes or even not crimes at all. On the other hand, the increases in crime can be real, and the publicity itself can sometimes cause the increase by inspiring copycat crimes. The bottom line is that arriving at accurate numbers is impossible.<sup>1403</sup>

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filed December 22, 2016)(available on SSRN). No one will believe that Congress was genuinely concerned that without the statute there would be a risk that slavery or involuntary servitude as that term was understood in 1865 would return. Such a claim would be obviously insincere. See *McCulloch v. Maryland*, 17 U.S. 316 (1819)(“Let the end be legitimate” ... i.e. let Congress’s purpose in promulgating the statute be a legitimate one under Article I’s enumerated powers and courts will be deferential as to means). On the other hand, Congress could easily re-promulgate the statute to put all of the prohibitions into Section 4707(a)(2) (18 U.S.C. § 249(a)(2)), which is premised on Congress’s power under the Commerce Clause. See Art. I, sec. 8, cl. 3. That would require prosecutors to prove an interstate commerce nexus with each prosecution, but that is a small price to pay for compliance with the Constitution

<sup>1401</sup> Ecclesiastes 12:2.

<sup>1402</sup> Julian Mark, *Man Sentenced to 25 Years for Violent Anti-Asian Assault at Sam’s Club*, Wash. Post, August 8, 2022. The fact that he acted in full view of other shoppers suggests mental illness was a factor here.

<sup>1403</sup> The truth is that accurate statistics on any kind of crime are hard to come by, particularly, though not only, during the rocky transition from UCR to NIBRS. I tend to trust only the statistics for homicide (and then only when apples-to-apples comparisons are made). Sure, there is slippage with the handful of cases that are incorrectly classified as accidents or suicides when they are really homicides (and vice versa). And there are the rare cases of an individual who disappears and whose body is never found. But when the UCR data show that 16,374 homicides occurred in the United States in 2018 and 16,425 in 2019, those figures are as close to on target as any national crime statistic you’re likely to run across. See 2019 Crime in the United States, tbl. 1 <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-1>

By contrast, everything else is likely to be less accurate—especially for low-level crimes like simple assault. It’s not that the federal government doesn’t try. It collects statistics both from law enforcement agencies and from the



But even if we had rock-solid numbers—whether we’re talking about anti-Asian hate crimes or hate crimes in general—there would still be problems with understanding what those numbers mean. It’s easy to be misled. One problem is that when Americans think of hate crimes, they often think of a gang of skinheads attempting to kill or seriously injure a randomly selected member of a racial, ethnic, or sexual orientation minority—for no reason other than to feed their

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public. Both methods have their drawbacks. Putting them together is useful. Among other things, when the numbers don’t match up (and they never do), it reminds us of how difficult it is to get an accurate picture of something as complicated as crime.

Data from law enforcement agencies is less than optimal in part because those agencies can’t report crimes that weren’t reported to them. Judging from the chatter on my neighborhood email list, lots of crimes, especially low-level ones, go unreported. This is in part because victims perceive that nothing will be done about them. They don’t want to waste their time. Note that from neighborhood to neighborhood or from demographic group to demographic group, crimes go unreported at different rates. For example, immigrant communities may trust the government less than more established communities, at least in part because in the place they came from the police may have been entirely unworthy of trust.

In addition, even when crimes are reported, it is sometimes in the interest of local law enforcement to downgrade reports of crime to non-crimes in order to improve the locality’s reputation for safety and to reduce their workload. In the 1980s, WBBM-TV in Chicago received numerous awards for an extensive exposé that it entitled “Killing Crime,” which documented how Chicago police downgraded many credible reports of crime to non-crimes. See WBBM: Killing Crime: A Police Cop-Out, Vimeo.com, <https://vimeo.com/73164896>. See also Ben Poston, Joel Rubin & Anthony Pesce, LAPD Underreported Serious Assault, Skewing Crime Stats for 8 Years, L.A. Times, October 15, 2015; Leslie Griffin, Chicago’s Police Accused of Dismissing Unsolved Crimes to Better Their Record, UPI.com, May 7, 1983. As a resident of Chicago at the time, I found it shocking. These days, I don’t get shocked nearly so easily.

Then there is the problem of getting the data from the local law enforcement agency to the federal government. Here, too, it turns out that there is many a slip from the cup to the lip. For years, the Uniform Crime Reporting (UCR) Program compiled official data on crime in the U.S. More recently, however, a more complex database has been implemented—at least partially. As I understand it, the National Incident-Based Reporting System (NIBRS) differs from original UCR in part because it eliminates the “hierarchy rule” which recognizes the most serious offense committed during an incident. NIBRS, agencies are required to submit detailed information, not just about the most egregious offense in an incident, but about each and every offense committed in a single incident, as if each offense is a separate and distinct crime. Put differently, it is more work. It’s also expensive to convert from a UCR system to a NIBRS system. (*Cost Issues of Implementing the National Incident-Based Reporting System in Local Law Enforcement Agencies*, NIBRS Project Staff Report 2, May 1997, <https://www.search.org/files/pdf/costs.pdf>) As a result, many fewer local law enforcement agencies participate. For 2022, the largest city to report data was San Diego. That means New York, Chicago, and Los Angeles did not report. I feel very uncomfortable with national numbers like that. For gauging basic crime trends, looking at the issue city by city may yield more useful information.

The federal government also looks to the public for its crime data in the form of the National Crime Victimization Survey. But victim-reported information has its problems too. Ordinary Americans may make mistakes about what constitutes a crime and what doesn’t. For example, they may believe that actions that are protected by the First Amendment are criminal when they are not or that actions that create civil liability are also punishable as crimes when they are not. Ordinary Americans may also err when asked if they have been victimized in the last year and report a crime that actually took place 14 months ago. One reason to believe that victims make mistakes is that they often respond to the survey by saying they did report a hate crime to the police. Yet the police data reported via UCR and NIBRS do not reflect the same number of such crimes. Although several explanations for the inconsistencies exist, I believe the most obvious is that the police made the decision either that the reported incident was not a hate crime or that there was insufficient evidence that it was. See Rep. at 69-71.

seething hatred. Many remember the horrific murder of James Byrd, Jr., who was chained to a pick-up truck and dragged to his death by a gang of thugs.<sup>1404</sup>

If that's your image of the "typical" hate crime, the number of hate crimes that are said to occur each year will be terrifying. President Biden's very peculiar claim that "[w]hite supremacy ... is the single most dangerous terrorist threat in our homeland" will seem like understatement.<sup>1405</sup> But only a tiny number of hate crimes even come close to fitting that stereotype. Those that do shock the nation. If they didn't, there'd be something wrong with us. It's disorienting to think that there are bloodthirsty individuals out there with an all-consuming hatred directed at entire racial or ethnic groups.

But in a nation of over 330,000,000, there will always be a number of human scorpions. Mercifully, they are rare. To me at least, it is fitting that the men responsible for James Byrd, Jr.'s grisly murder—John William King and Lawrence Brewer—were executed pursuant to the laws of the state of Texas.

Was their crime worse because Byrd was targeted for being African American? Would they have been less culpable if they had selected the victim of their monstrous crime completely randomly? While a reasonable argument can be made that the answer is yes, I will leave that question to others to ponder. In any event, it's important not to confuse the typical hate crime, which are certainly bad enough, with the astonishing evil of King and Brewer and similar killers. They have less in common than one might think. Consider:

*Who commits violent hate crimes?* Very few are committed by "white supremacists" in the sense of card-carrying members of the Ku Klux Klan.<sup>1406</sup> Indeed, the hate crimes reported to the

<sup>1404</sup> James Byrd, Jr.'s Killer Executed for Notorious 1998 Hate Crime, BBC, April 25, 2019.

<sup>1405</sup> Giselle Ruhiiyih Ewing, *Biden Calls White Supremacy "Most Dangerous Terrorist Threat" in Speech at Howard*, Politico, May 13, 2023. The statement was made in Biden's commencement address to Howard University's graduating class. He added, "And I'm not just saying this because I'm at a Black HBCU. I say this wherever I go." See also Rob Crilly & Geoff Earle, *Conservatives Slam Biden for Saying White Supremacy is the "Most Dangerous Terrorist Threat" to the Nation During Howard Commencement Address*, Daily Mail, May 14, 2023.

The New Oxford American Dictionary defines "terrorism" as "the unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aims." Under that definition, the September 11 attacks were terrorism because they were intended to discourage the United States from intervening in Middle Eastern affairs. Similarly, the bombing of the Alfred P. Murrah federal building in Oklahoma City by anti-government extremists was terrorism, because it was an intended to retaliate for the Waco siege in 1993 and the Ruby Ridge incident in 1992 and to discourage the federal government from acting in a similar way in the future. Also, many of the participants in the 2020 riots were engaged in terrorism, since their aim was to encourage de-incarceration, a reduction in funding to the police, and other public policy changes. Other participants—like those who simply saw the riots as an opportunity to steal from retail stores—were not terrorists. The same principle applies to all violent crime: If it was part of a strategy to influence political decisionmakers, it was terrorism. If it was committed for its own sake, it was not. President Biden did not elaborate on how he arrived at his conclusion.

<sup>1406</sup> Of course, the term "white supremacist" gets tossed around very lightly these days with some so thoroughly imbued with critical race theory as to view nearly everyone as a white supremacist, including non-whites. See John

federal government are disproportionately committed by African Americans relative to their numbers in the population at large<sup>1407</sup> (though there are plenty white offenders too as well as offenders of other races).

As I noted in the previous section, many hate crime offenders are mentally ill. In the context of the anti-Asian hate crimes that were triggered by COVID-19 that's easy to understand. What sort of a person over the age of 12 would be irrational enough to blame the pandemic on Asian Americans generally (or even Chinese Americans generally)? A mentally ill person, that's who.

Also contrary to the stereotype, about a third of hate crimes are committed by family members, intimates, neighbors, or at least acquaintances of the victim.<sup>1408</sup> That should tell us something about the context of these crimes: Often the offenders are not simply looking to target a random member of a particular racial or ethnic group. Rather, they are engaged in a dispute with a particular person over something that is itself unrelated to race, ethnicity, etc. The dispute escalates, epithets fly, and a crime is committed. Perhaps without the added element of race or ethnicity, it wouldn't have escalated. Or perhaps it would have. In any event, the encounter may not have started out as a crime. It may even have started as one neighbor arguing that the other

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Blake, *White Supremacy, With a Tan*, CNN.com, September 4, 2021 (taking the position that individuals who would be viewed by most as non-white are frequently white supremacists).

<sup>1407</sup> See Charles Fain Lehman, *What Motivates Hate Crime? Why Hate Criminals Are Still Criminals* tbl. 1, Manhattan Institute, May 2003, <https://media4.manhattan-institute.org/wp-content/uploads/Why-Hate-Criminals-Are-Still-Criminals.pdf>.

Between 2005 and 2019, the perpetrators in 45.3% of the hate crime incidents were non-Hispanic whites, while in 33.3% of the hate crime incidents, the perpetrators were non-Hispanic blacks. The percentage of hate crime incidents in which Hispanics or "Other" were the perpetrators was 15.4% and 4.3% respectively. In addition, in 1.6% of the incidents, the perpetrators were listed as belonging to more than one group. Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 11, Table 6, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf). Taking the 2010 census as the best source for comparison, the only group that appears to be over-represented as perpetrators is African Americans. See also Rep. at. 82-83, Table 9; pp 90-91, Table 13; pp. 92, Table 16; pp. 101-102, Table 22; pp. 111, Table 26 (perpetrator race statistics not adjusted for population share.)

Diane Yap submitted written testimony (in addition to her oral testimony) that indicated that anti-Asian hate crimes are disproportionately committed by African Americans and that the disproportionality is not explained by proximity. Yap at 1-4. Ms. Yap lamented what she considered an overemphasis on hate crimes and hate incidents (or as she put it "nonviolent behaviors like tweets and shunning") and an underemphasis on actual violent crime.

<sup>1408</sup> Grace Kena and Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 11, Table 6, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf). According to the data from 2015 to 2019, 30.7% of violent hate crime are committed by individuals who are "at least casually known" to the victim. For 56.2%, the offender was a stranger. For 13.1%, the relationship was listed as "unknown" (or at least unrecorded by police investigating the crime). Interestingly, just a few years earlier, in 2012, a majority (53%) of violent hate crime offenders were intimates, family members or acquaintances and only 40% were strangers with 7% "unknown." See Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, *Hate Crime Victimization, 2004-2012* tbl. 7 at 7 (February 2014), <https://bjs.ojp.gov/content/pub/pdf/hcv0412st.pdf>. This leads me to wonder if a change in methodology occurred.

neighbor's dog barks too much or a customer insisting that the store clerk gave him incorrect change.<sup>1409</sup>

*How serious does the underlying crime tend to be?* More than two thirds (69.4%) of violent hate crimes are simple assaults—a misdemeanor.<sup>1410</sup> Note that a simple assault need not involve actual violence. It is enough that violence was explicitly or implicitly threatened. An offender who walks up to the victim, fists raised, and saying “I am going to beat the daylights out of you” is almost certainly guilty of a simple assault. That would be true even if he never lands a blow. It is sufficient that he intended to put the victim in apprehension of such a blow. Lesser factual showings can also amount to a simple assault: Suppose an offender, in the midst of a shouting match with the victim, comes within inches from the victim's face in a menacing manner (even without specifically saying that he intends to strike the victim). That may well be enough to

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<sup>1409</sup> In the civil rights course that I teach, I sometimes ask students to consider a hypothetical about an argument over a parking space. In it, one of the parties steps up close to the other and hurls a racial epithet at her. There is no other evidence he has any particular view of her racial group. Since she is a stranger to him, the only things he knows about her are her race, sex, rough age, the car she drives, and the clothes she was wearing that day. Should it be charged as a hate crime? He's initially angry because he believes he was entitled to a parking space that she took, not because she is, say, Asian American. If she had not been Asian American, perhaps he would have been just as aggressive and come up with another insult to hurl at her—perhaps a sexual epithet or perhaps he would have called her fat, ugly, or stupid. On the other hand, perhaps if she had not been Asian American, he wouldn't have attempted to put her in fear for her safety by shouting at her inches from her face. Perhaps he really doesn't like Asian Americans. The victim herself is not in a good position to judge. The offender himself may not know what he would have done if he had not been dealing with an Asian American. We could leave it to the jury, but how are they supposed to decide? Under the circumstances, there is little hope of ever getting “accurate” statistics on hate crimes.

Last year, I was surprised to find myself a (very limited) witness to an altercation rather like my hypothetical. As I walked down a busy sidewalk, I saw what appeared to be a frightened transgender woman wielding a cord like a whip and telling what appeared to be an angry, young cisgender man to stay away. I came too late to observe what the fight was about or who was right and who was wrong. I stopped and made a mental note of what each of the parties looked like. When the young man backed away and got into his car, I took down as much of his license plate number as I could in case it was needed.

The transgender woman thanked me for stopping at a time when others were just walking by. She told me the young man had become irate when she told him that he was parking his car illegally, that he had gotten out of his car, come toward her and called her a “fake woman.” She feared he would strike her and viewed his actions as a hate crime. I gave her the license plate number and my phone number. The police did indeed interview me about the incident as a potential hate crime. I have no idea whether the matter was pursued further. But I suspect it is not terribly different from some of the borderline cases that make their way into the statistics. If the police determine that the young man came at the transgender woman in a physically threatening manner and would not have done so if she had been a cisgender man, then the charge would be plausible under many hate crimes statutes. On the other hand, if he treated her no differently than he would have treated anybody else under those same circumstances, it may arguably have been a simple assault (misdemeanor), but it was not a hate crime.

<sup>1410</sup> Grace Kena & Alexandra Thompson, *Hate Crime Victimization, 2005–2019* at 4, Table 2, September 2021, [https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519\\_1.pdf](https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf). The National Crime Victimization Survey is a national survey conducted twice a year by the U.S. Census Bureau. Data on non-fatal crime victimizations are collected from a representative sample of approximately 150,000 households. For the years 2015, 2016, 2017, 2018, and 2019, the survey found that an average of 240,770 hate crimes (as perceived by the victim survey respondents) each year. Of those, on average, 215,094 were violent hate crimes (again, as perceived by the victim survey respondents). Of those violent hate crimes, on average, 149,202 were simple assault, 43,342 were aggravated assault, 16,000 were robberies, and 6552 were rapes or other sexual assaults. The rest of hate crimes (non-violent) were property crimes that included trespass, theft, and burglary. *Id.*

establish a simple assault. Add a racial or ethnic epithet, and it often enough to sustain a hate crime charge.

*What role need hatred play in hate crimes?* None whatsoever. Contrary to the popular understanding of hate crimes, there is no requirement that the offender be motivated by hatred of individuals because of their race, ethnicity, etc. As the Department of Justice’s web site states:

The term “hate” can be misleading. When used in a hate crime law, the word “hate” does not mean rage, anger, or general dislike. In this context, “hate” means bias against people or groups with specific characteristics that are defined by the law.<sup>1411</sup>

Suppose a thug targets an Asian Americans for an attack, not because he hates Asian Americans, but because he believes, correctly or incorrectly, that Asian Americans are less likely to be armed than other potential victims. The lack of race hatred doesn’t matter a bit. What matters is that the victim was targeted because of his race.<sup>1412</sup>

The upshot of this is that there is a broad range of crimes that can be labeled “hate crimes.” Most of them would be misdemeanors but for the racial or ethnic element: Two neighbors get into a dispute over parking.<sup>1413</sup> One routinely parks in a way that makes it difficult for the other to exit his driveway. In a burst of anger, one hurls a racial epithet at the other and threatens to punch the other in the nose, but in fact does not intend to do so. Others are deadly.

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<sup>1411</sup> U.S. Department of Justice, *Learn About Hate Crimes*, <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>. If anything, the Department of Justice website may have understated the point. The particular hate crime law that I am most familiar with is the federal statute passed in 2009—the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. The word “hate” appears in the title and in the section caption of the statute, but it doesn’t appear at all in the definition of the crime. 18 U.S.C. § 249. It therefore isn’t that the word “hate” means something different from its usual meaning. It’s that it isn’t used at all in the part of the statute that counts. Rather the statute creates a special crime for certain violent acts that occur “because of” someone’s race, color, religion, national origin, sexual orientation, disability, etc. Other hate crimes statutes are often similar. Under the federal statute, it would seem that an employer who becomes irate and strikes his assistant for working too slowly may have violated the statute if the assistant is disabled and would have worked more quickly without that disability.

<sup>1412</sup> Similarly, the home invader who listens to the Rapper YG’s song *Meet the Flockers* has also acted “because of” someone’s Chinese national origin. The song instructs the listener on how to commit a burglary or home invasion. The lyrics to that song are as follows:

First, you find a house and scope it out  
Find a Chinese neighborhood  
‘Cause they don’t believe in bank accounts

The victims in that case are again being chosen on the basis of their Chinese national origin. Again, it may be a hate crime as that offense is defined in many states, since it targets the Chinese. It is not surprising that many Americans, especially those of Chinese descent and including some of our public commentators, find this song offensive. See Chris Fuchs, *Rapper YG’s Song “Meet the Flockers” Sparks Protests, Accusations of Targeting Asian Americans*, NBCNews.com, October 14, 2016.

<sup>1413</sup> See supra at n. 44 for my personal experience as a witness to a parking incident.

My worry is that when Americans hear statistics reflecting the total number of hate crimes were reported to the FBI in a given year, they may not have a sense that the typical such crime would be a misdemeanor but for the racial or ethnic element. They may not know that frequently the parties were arguing about something other than race or ethnicity and that the evidence of a racial or ethnic motivation may consist solely of an epithet. And they may not realize that if the offender hadn't used an epithet that relates to a protected classification, he might have used a vulgar insult that doesn't happen to reflect protected categories like a\*\*\*\*\*e or he may have simply called the victim ugly, stupid, fat, etc.

Consequently, sometimes hate crimes statistics, without more context, can cause Americans to believe that the level of racial and ethnic animosity in the country is greater than it is. That in turn can fuel further racial and ethnic resentment and social fragmentation. Instead of working to build a stronger, common identity as Americans, this can work to fuel divisive identity politics.

Add to the mix, so-called bias incidents and the aggregate numbers may seem even more alarming, while average seriousness of the event declines rather sharply. For example, the numbers as collected by Stop AAPI Hate include 10,905 reported cases of “avoidance or shunning” (16.1% of the Respondents).<sup>1414</sup> It is perfectly understandable why Asian Americans in particular would feel sensitive about shunning during the pandemic. But it is worth pointing out that very few Americans were spared the experience of being avoided or shunned during that period. My own most memorable experience came an hour or two before the lockdown took effect. Many people had gone to the small grocery store in my San Diego neighborhood to stock up while they still could. As I was entering the store through the entrance lane, an obviously distraught woman was exiting through that lane rather than through the exit lane. She shouted at the top of her lungs (and at great length) that I should stay far away from her. I was stunned. To my knowledge, there was not yet a single case of COVID-19 in San Diego County. Of course, she was only the first of many to keep their distance from me over the last three years—some rationally so given the information available to them, others not so rationally. I strongly suspect that Asian Americans (especially schoolchildren who have to be around other schoolchildren) have had far more than their fair share of this shabby treatment—though the numbers have likely declined precipitously, just as the number of reported anti-Asian hate crimes appears to be declining.<sup>1415</sup>

<sup>1414</sup> Aggie Yellow Horse, Russell Jeung, and Ronae Matriano, Stop AAPI Hate National Report, 03/19/2020 – 12/31/2021, Mar. 1, 2022, <https://stopaapihate.org/national-report-through-december-31-2021/>.

<sup>1415</sup> One of the experts the Commission consulted believed that the uptick in anti-Asian hate crimes has subsided along with COVID-19 itself. See Statement of Dr. Barry Latzer, Emeritus Professor of Criminal Justice, John Jay College of Criminal Justice, CUNY at 4 (“As the pandemic fades away preliminary data indicate that anti-Asian bias is diminishing as well. Along these lines, it is noteworthy that both New York City and Los Angeles experienced significant declines in Asian bias crimes in 2022”); see also Nora Mishanec, *S.F. Touts Drop in Hate Crimes Against Asians*, S.F. Chron., January 14, 2023. Another of our experts pointed to gaps in the data and noted that even with the 2022 decline, the numbers were still unacceptable. See Statement of Dr. Brian Levin, Director of the Center for the Study of Hate and Extremism, California State University at San Bernadino (stating that violent crime spikes have demonstrated “a disturbing resiliency”). Both experts can be correct. My points are these: (1) the best way to fight hate crimes is to fight crime in general, not to fund more bias education, to hold more “anti-hate” events, or to urge Americans to report non-criminal “bias incidents” to the police; (2) fighting crime in general requires that we be serious about the dealing with repeat offenders and with the mentally ill with a history of

Still, all in all, Federal, state, and local governments would do well to put their resources into preventing Asian Americans (and all Americans) from being victimized by serious crime. It's not disproportionality that makes serious crime important to Asian Americans (and all Americans). The data suggest that Asian Americans are actually somewhat less likely to be victimized by violent crime than other racial groups.<sup>1416</sup> What matters most is the crime itself and the harm it inflicts, all of which is substantial and unacceptable for all races and ethnicities.

## II. *Race-Preferential Admissions Disadvantage Asian Americans in Particular.*

Meanwhile, discrimination against Asian Americans is hardly confined to hate crimes. Race-based admissions policies under which selective high schools, colleges, and universities hold Asian Americans to higher academic standards than other students, are very prevalent.<sup>1417</sup>

The problem—if you can call it that—is that many Asian American subgroups, especially Chinese Americans, Korean Americans, and South Asians, on average, perform well in school.<sup>1418</sup> This is at least in part due to the fact that, on average, they spend more time studying.<sup>1419</sup> Consequently, if selective schools applied their academic standards fairly, without

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violence; (3) aggregate hate crime statistics may cause some Americans to overestimate the extent to which racial and ethnic animosity fuels violence; and (4) overestimating the extent to which racial and ethnic animosity fuels violence may itself fuel social fragmentation.

<sup>1416</sup> In 2019 and 2020, Asians were the victims of violent crimes 90,560 and 80,100 times, respectively, compared to Non-Hispanic whites - 1,836,520 and 1,593,170, Non-Hispanic blacks - 367,030 and 361,940, and Hispanics - 610,690 and 417,570. Rachel Morgan and Alexandra Thompson, *Criminal Victimization, 2020 – Supplemental Statistical Tables* at 4, Table 2, U.S. Department of Justice, February 2022, <https://bjs.ojp.gov/content/pub/pdf/cv20sst.pdf>. According to the Census Bureau's current estimates, 6.6% of the population was Asian/Native Hawaiian/Other Pacific Islander, 58.9% was Non-Hispanic white, 13.6% was black or African American, and 19.1% was Hispanic. See Quick Facts, <https://www.census.gov/quickfacts/US>. That works out to Asian Americans being less likely to be victimized (if we can assume roughly similar rates of crime reporting).

<sup>1417</sup> See Lance Izumi & Rowena Itchon, *Race Preferences and Discrimination Against Asian Americans in Higher Education* in *A Dubious Expediency: How Race Preferences Damages Higher Education* (Gail Heriot & Maimon Schwarzschild, eds. 2021).

<sup>1418</sup> See National Center for Education Statistics, *America's High School Graduates*, U.S. Department of Education, <https://nces.ed.gov/nationsreportcard/pdf/studies/2011462.pdf>, Figure 30 (From 1990-2009, Asian/Pacific Islander students had higher GPAs than Whites, Blacks, and Hispanics, with the difference between Blacks and Asians being the largest.); Jane Nam, *Average ACT Score*, Best Colleges, December 22, 2022, <https://www.bestcolleges.com/research/average-act-score/#average-act-scores-by-race-ethnicity> (From 2018 – 2022, Asians were the only racial group to increase in average ACT scores and in 2022 they had the highest average ACT composite score).

<sup>1419</sup> Valerie A. Ramey, *Is There a "Tiger Mother" Effect? Time Use Across Ethnic Groups*, University of California, San Diego, February 2011, [https://econweb.ucsd.edu/~vramey/research/Tiger\\_Mothers.pdf](https://econweb.ucsd.edu/~vramey/research/Tiger_Mothers.pdf) (Asian high school students spend between seven and nine and a half hours more per week studying than do white, black, or Hispanic students, and Asian college students spend 5-7 more hours doing homework than do white, black, or Hispanic students.); Michael Hansen and Diana Quintero, *Analyzing 'the homework gap' among high school students*, Brookings, August 10, 2017, <https://www.brookings.edu/articles/analyzing-the-homework-gap-among-high-school-students/#:~:text=Among%20all%20high%20school%20students,hours%20of%20homework%20per%20day>,

regard to race, they would have to offer Asian Americans seats that they would evidently prefer to give to African American, Hispanic, and white students.<sup>1420</sup> They would have “too many Asians” in the words of some. Instead, these schools hold Asian American students to a higher standard than their African American, Hispanic, and even white counterparts.<sup>1421</sup> To gain admission, they must perform better than their non-Asian peers.<sup>1422</sup>

I myself don’t get the concept of “too many Asians.” It seems to me that a university that fairly applies its admissions criteria, without regard to race, will have just the right number of Asians, whether that’s many or few. Similarly, a National Basketball Association doesn’t have “too many African Americans” and Major League Baseball doesn’t have “too many Hispanics.” If they are developing and applying their standards without regard to race, they have just the right number. The doesn’t mean schools should consider only academic credentials in deciding whom to admit. But whatever they choose to consider—musical talent, artistic talent, athletic prowess, participation in extra-curricular activities, clean criminal record, or whatever—they should develop and apply those criteria without regard to race.

It is worth noting that discrimination against Asians in admissions is an example of history is repeating itself. In the 1920s, it was “too many Jews” rather than “too many Asians.” As one Harvard alumnus, writing in 1925 to Harvard president A. Lawrence Lowell, put it: Naturally, after twenty-five years, one expects to find many changes but to find that one’s University had become so Hebrewized was a fea[r]ful shock. There were Jews to the right of me,

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Figure 1 (Asian students spend nearly two hours per day on homework compared to Whites, Blacks, and Hispanics who spend nearly one hour, about 35 minutes, and nearly one hour, respectively).

<sup>1420</sup> Robert VerBruggen, *Does Affirmative Action Lead to “Mismatch”?* A Review of the Evidence, Manhattan Institute, July 2022, [https://media4.manhattan-institute.org/sites/default/files/VerBruggen\\_Does-Affirmative-Action-Lead-to-Mismatch.pdf](https://media4.manhattan-institute.org/sites/default/files/VerBruggen_Does-Affirmative-Action-Lead-to-Mismatch.pdf), at 2 (“If these schools ignored race and admitted students solely on academic credentials, black and Hispanic students would be substantially underrepresented there, given racial gaps in those credentials”).

<sup>1421</sup> Robert VerBruggen, *Does Affirmative Action Lead to “Mismatch”?* A Review of the Evidence, Manhattan Institute, July 2022, [https://media4.manhattan-institute.org/sites/default/files/VerBruggen\\_Does-Affirmative-Action-Lead-to-Mismatch.pdf](https://media4.manhattan-institute.org/sites/default/files/VerBruggen_Does-Affirmative-Action-Lead-to-Mismatch.pdf), at 2 (At public institutions Asians were disfavored by 3.4 ACT points and at private colleges Asians received a 140 SAT point penalty).

<sup>1422</sup> A good example is Harvard University’s admissions rate. For those applicants in the top 10% in terms of academic credentials, the odds of being admitted are 56.1% for African Americans, 31.3% for Hispanics, and 15.3% for whites, but only 12.6% for Asian Americans. See Petition for Writ of Certiorari in *Students for Fair Admissions, Inc., v. President & Fellows of Harvard College*, No. 20-1199 at 11 (filed February 25, 2021). Harvard claims that it is not discriminating against Asian Americans and that while Asian Americans, on average, do very well on measures of academic talent, they do less well, again on average, than other groups on other talents and qualifications that Harvard looks for in its students. That is not an absurd claim on its face. It is certainly possible for one racial or ethnic group to do better, on average, than another on some measure; indeed, that is the case with Asian Americans and academic measures. But the facts suggest that Harvard is being less than candid. The specific claim is that Asian Americans do not interview well, that their personalities are less engaging. But it turns out that Asian Americans fare poorly in interviews only when they are interviewed by Harvard staff; when they are interviewed by Harvard alumni, who presumably haven’t been let in on Harvard’s diversity practices, Asian American applicants do just fine. Anemona Hartocollis, *Harvard Rated Asian-American Applicants Lower on Personality Traits*, Suit Says, N.Y. Times, June 15, 2018. The only way to avoid smelling a rat is to hold one’s nose.



Jews to the left of me, in fact they were so obviously everywhere that instead of leaving the Yard with pleasant memories of the past I left with a feeling of utter disgust ....<sup>1423</sup>

Jewish Americans were only about 4% of the American population in the 1920s. But by that time, Columbia University's entering class may have been as much as 40% Jewish, and the University of Pennsylvania's was similar. Within a few years, Harvard's entering class was 27.6% Jewish, and Yale's enrollment was 13.3%.<sup>1424</sup> Especially given that many of these students were the children of recent immigrants, their academic accomplishments were impressive.

But some Harvard officials—notably President A. Lawrence Lowell—didn't like it. Lowell, who in his spare time was the vice president of the Immigration Restriction League, an organization steeped in that era's scientific racism, was determined to do something about what he called “the Hebrew problem” at Harvard. Among other things, he argued it affected both student recruitment and alumni fundraising:

The summer hotel that is ruined by admitting Jews meets its fate, not because the Jews it admits are of bad character, but because they drive away the Gentiles, and then after the Gentiles have left, they leave also. This happened to a friend of mine with a school in New York, who thought, on principle, that he ought to admit Jews, but who discovered in a few years that he had no school at all.<sup>1425</sup>

Lowell originally wanted to deal with the issue by publicly adopting a ceiling on Jewish enrollment. But when the faculty—to its credit—initially balked, he put forth a more subtle plan. “To prevent a dangerous increase in the proportion of Jews,” he insisted that future admissions should be based on a “personal estimate of character on the part of the Admission authorities.”<sup>1426</sup>

Harvard adopted such a policy in 1926, but as one might predict, the “personal estimate of character” was not what it seemed, just as “holistic admissions” are not what elite colleges and universities claim they are today. Shortly after the 1926 policy was adopted, Yale's Dean Clarence Mendell paid a visit to Harvard's admissions director. He reported that Harvard was

<sup>1423</sup> Jerome Karabel, *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale and Princeton* 105 (2005) (quoting Dec. 17, 1925 letter).

<sup>1424</sup> *Id.* at 86-88, 105, 114.

<sup>1425</sup> *Id.* at 88 (quoting May 19, 1922 Lowell letter to William Hocking).

<sup>1426</sup> Marcia Graham Synnott, *The Half-Opened Door: Discrimination and Admissions at Harvard, Yale, and Princeton, 1900-1970* at 108 (1979). Lowell insisted that “the Faculty should understand perfectly well what they are doing” and that their vote for a character test “should not be supposed by anyone to be passed as a measurement of character really applicable to Jews and Gentiles alike.” Karabel at 89. In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) (opinion of Powell, J.), Justice Powell wrote favorably of Harvard's longstanding efforts for geographical diversity. He was apparently unaware that the policy was part of the effort to limit the numbers of Jewish students, who tended to be concentrated in Northeastern urban centers. See Alan M. Dershowitz & Laura Hanft, *Affirmative Action and the Harvard College Diversity-Discretion Model: Paradigm or Pretext?*, 1 *Cardozo L. Rev.* 379, 386, 395 (1979).

“now going to limit the Freshman Class to 1,000. They are also going to reduce their 25% Hebrew total to 15% or less by simply rejecting without detailed explanation. They are giving no details to any candidate any longer.”<sup>1427</sup>

The Jewish Quota Era at the Ivy League eventually became a source of shame. But the end of the Jewish Quota Era was followed within a couple of decades by the rise of affirmative action preferences. By the 1980s it was clear that the more things changed, the more they stayed the same. Instead of discrimination against high-performing Jewish students, it was discrimination against high-performing Asian students. Jewish students were being treated as generically white and hence were discriminated against vis-à-vis African Americans, Latinos and American Indians, but not within the category of white. But Asian American students were the new Jews. Their numbers were depressed even vis-à-vis whites.

Of course, you’d hardly know that from this report, which has the broad title “The Federal Response to Anti-Asian Racism in the United States,” that race-preferential admissions policies were an issue among many Asian Americans.

Here’s the background: The project that led to this report was proposed by now-former Commissioner Michael Yaki, who is a former member of the San Francisco Board of Supervisors. The concept paper, which he submitted to the Commission in mid-2022, was entitled *The New Exclusion Act: The Re-Emerging Rise of, and Federal Response to, Anti-Asian Racism in America*. It stated that, among other things, we would hear from “[c]ommunity leaders” who could “inform the Commission from a variety of perspectives about their experiences with bias/racism, and their recommendations regarding federal, state, and local enforcement or lack thereof related to Asian American civil rights.” The concept paper was adopted by majority vote in part on the basis of that description and now governs the scope of the project.

The more conservative members of the Commission wanted to assign the Commission staff to explore specifically the admissions issue in the report (a proposal that did not pass, since none of the progressive commissioners were willing to vote for it). But we were comforted by the fact that the concept paper at least made it clear that the report would be on anti-Asian bias/racism in general and that witnesses would thus be able to talk about the issue as part of the failure of the government to enforce their civil rights.

<sup>1427</sup> See *id.* at 109. The situation was not quite the same for African Americans. Harvard, for example, takes pride in its reputation for relative openness to African Americans, and all things considered, it did indeed have a better record than most institutions of the period. It was a record that was tarnished by Lowell, who segregated living and dining facilities over the objections of many alumni. On the other hand, at Princeton, perhaps the least friendly of the Ivies to racial minorities, not a single black attended in the 20th century until 1945, and at least one was actively discouraged from enrolling. Still, even at Princeton, African Americans occasionally attended in the 18th and 19th centuries. See Synnott at 47-53, 80-84; Karabel at 228, 232-36. Ivy Leaguers did not believe that African American students would come to dominate business and industry. Even at Harvard, their numbers were small, perhaps as few as 165 total between 1871 and 1941. *Id.* Alumni felt no reason to worry, consciously or unconsciously, that African Americans would crowd their offspring out of elite status. African Americans students were curiosities. Any “old guard” is likely at its worst when its members perceive that a group of newcomers may come to take a significant share of the benefits that its elite institutions can confer. The group that seemed to present that challenge at the time was Jewish Americans, not African Americans.

Many of the witnesses at our briefing did indeed want to discuss or at least mention race-preferential admissions. And no wonder. As horrifying as the murders of Christina Yuna Lee, Yao Pan Ma, GuiYing Ma and Michelle Go were, they are the rare, one-in-a-million case. On the other hand, millions of Asian Americans have been or will in the future be affected by race-preferential admissions policies. Ignoring the issue is like ignoring the proverbial elephant in the room.

These witnesses nevertheless were discouraged from discussing the issue.<sup>1428</sup> Indeed, when the following colloquy took place between Commissioner Magpantay and former Assistant Attorney General Eric Dreiband, it was interrupted by Staff Director Mauro Morales to prevent discussion of race-preferential admissions.

COMMISSIONER MAGPANTAY: What is an Asian?

MR. DREIBAND: What is an Asian? “Asians” typically refer to people whose ancestry or national origin is from the continent of Asia.

COMMISSIONER MAGPANTAY: The reason why is that it is a very large and diverse community, which some segments encounter poverty, limitations on proficiency,<sup>1429</sup> and I’m just curious in the court papers if it is recognized the nuance and diversity that we seek to seek in America, like our schools should be -- you know, skin color, whatever, but there is diversity of experience and insights, isn’t there, among the Asian community?

MR. DREIBAND: Of course, there is, and that’s why this whole notion of grouping populations of people together the way many colleges and universities and other institutions today are doing as, quote, Asians, I think is shameful, disgraceful, and illegal. So, yes, there is a huge range of diversity among people whose ancestry is from Asia, among people who are from East Asia, or South Asia, or various parts of Asia, and I think it’s horrible that our institutions in this country today treat these individuals as if they are some monolithic group and then subject them to pervasive discrimination.

And it’s even worse because we’re talking typically about 18-year-old children who are applying to further their education at colleges and universities throughout this country, many of whom come very poor families many of whom are first generation arrivals to this country, and they are lumped together and disadvantaged by Ivy League institutions, by all kinds of institutions in this country, and it is a total disgrace in my opinion, and it’s illegal, and immoral, and wrong, and it should stop.

COMMISSIONER MAGPANTAY: And that’s in your papers.

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<sup>1428</sup> Commissioner Victoria Nourse repeatedly told the witnesses “The Supreme Court is going to rule” in a manner that strongly suggested that she thought the topic should be avoided. Former Commissioner Michael Yaki, who was given the opportunity to speak, also sounded that theme. Transcript at 165, 173-74. This was the first time I can recall anyone making such an argument. There is nothing unusual about a civil rights issue coming before a court, including the Supreme Court. That has never been a reason for the Commission to avoid an issue in the past.

<sup>1429</sup> This is what the transcript says, but listening to the recording, it sounds more like with “some segments coming from poverty, limited English proficiency” to me.

MR. DREIBAND: What?

COMMISSIONER MAGPANTAY: And that's in your papers, your litigation papers, yes?

MR. DREIBAND: Well that yes, in the cases I mentioned, yes, we made those allegations yes.

STAFF DIRECTOR MORALES: I'm going to assert my authority under 45 CFR 701.11 and I want to remind all Commissioners that they voted for the concept paper on hate crimes against Asian Americans on September 16, Transcript page 40. Research timeline voted on October 21, transcript page 32.

An amendment to add admissions of Asian Americans' status to colleges and universities failed by a vote on September 16. Our conversation and the point of the testimony today is limited to the four corners contained in the concept paper, so I'm going submit the concept paper and the timeline for the record, so thank you.

COMMISSIONER MAGPANTAY: I apologize for my question if it was not appropriate ... not germane to the topic.<sup>1430</sup>

I think we all know why Staff Director Morales, an Obama appointee, was seeking to limit Commissioners from asking, and witnesses from answering, questions about the racial double standard that works against Asian American in college and university admissions. And he succeeded. I have served on the Commission for more than fifteen years, and I do not believe that anything remotely like that has ever occurred before. It was unprecedented.

Staff Director Morales read from a statement that was obviously prepared prior to the briefing in anticipation of the possibility that a discussion of discrimination against Asians in college and university admissions would occur. Weirdly, he claimed to be asserting *his* "authority under 45 C.F.R. § 701.11" to intervene in this manner. But there is nothing in that provision about the limiting the questions a commissioner can ask at a briefing or limiting answers that a witness may give in response.<sup>1431</sup> Moreover, the provision lays out the duties of the *chairperson*, not the duties of the staff director. At the time of the briefing, the Commission had no chairperson, but

<sup>1430</sup> *Federal Response to Anti-Asian Racism in the United States*, Mar. 24, 2023, transcript pp. 179-182, [https://www.usccr.gov/files/2023-05/aa-hc-usccr-transcript\\_3.24.23-edited.pdf](https://www.usccr.gov/files/2023-05/aa-hc-usccr-transcript_3.24.23-edited.pdf) (hereinafter cited as *Anti-Asian Briefing*).

<sup>1431</sup> § 701.111 Commission meetings—duties of the Chairperson.

- (e) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.
- (f) In addition to the regularly scheduled meetings, it is the responsibility of the Chairperson to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.
- (g) The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.
- (h) In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.

the Commission's most senior member, Commissioner Peter N. Kirsanow was acting in that capacity. In the definition section of the regulations to which the staff director referred, the term "chairperson" was defined to someone acting in that capacity.<sup>1432</sup> If anyone possessed the authority to limit questioning it was Commissioner Kirsanow. He did not choose to do so.<sup>1433</sup> It is important to note that the job of staff director is to direct the staff, not to direct the Commission. If Congress has intended the staff director to direct the Commission (which is defined in the statute as the eight commissioners, not as eight commissioners plus a staff director), it would have called him the commission director.

Since the briefing, the Supreme Court has indeed decided that discrimination against Asian Americans in admissions is unconstitutional (as to state colleges and universities) and illegal under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (as to public or private universities that receive federal funds). I applaud that decision.

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<sup>1432</sup> 45 C.F.R. § 702.1(c).

<sup>1433</sup> Commissioner Kirsanow told me that he was stunned by Staff Director's intervention, but that given that the C-Span cameras were rolling, his instinct was to let it go. The following month, when the Staff Director Morales again attempted to limit what a commissioner could say, Commissioner Kirsanow explained to him that this was inappropriate. April Business Meeting Transcript at 64, <https://www.usccr.gov/files/2023-04/0421-usccr-business-meetingtranscript.pdf>.

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## Rebuttal of Commissioner Magpantay

I write in response to my esteemed colleagues' statements to the U.S. Commission on Civil Rights report on "The Federal Response to Anti-Asian Racism in the United States."

I write not to criticize my fellow Commissioners but to highlight areas of agreement and consistency. In some instances, they make observations with which I concur, but I simply come to different conclusions.

### Hate Crimes Are Not Partisan

Early on in the COVID-19 pandemic, the U.S. Commission on Civil Rights issued statements expressing concerns about the rise of anti-Asian hate crimes, with Republican and Democratic appointees voting together. I applaud my colleagues for recognizing that hate crimes are not a partisan issue.

Indeed, Commissioner Gilchrist reminded us that "Sometimes it seems rare that our Congress can get together and pass legislation...But when it was time to send a message about hate and our values as a country, a strong bi-partisan group of legislators did just that. The Covid-19 Hate Crime legislation passed the US House by a vote of 364-62."

I echo Commissioner Gilchrist's sentiments and praise several Republican members of Congress who stood together in opposition to anti-Asian hate crimes. Their support of the bill's prime sponsors – Representatives Grace Meng (D-NY) and Judy Chu (D-CA) and Senator Mazie Hirono (D-HI) – should be commended.

### Understanding Who the Perpetrators of Hate Crimes Are

I commend Commissioner Gilchrist for recognizing that too many people have been promoting a harmful narrative that African Americans are the predominant perpetrators of hate crimes against Asian Americans. He says, "It's never my intent nor purpose to create a wedge between the Asian community and the Black community. In the United States there has been tension' between minority groups during times of economic and social unrest in our country. Acknowledging these tensions doesn't create the wedge; it can serve as an opportunity to investigate and explore how we can do 'community' better." It is relevant, then, that the Asian American Legal Defense Fund (AADLEF) submitted comments to the Commission explaining that most anti-Asian hate crimes are perpetrated by white people, not African Americans.

President Biden stated that, "White supremacy is ... [a] dangerous terrorist threat in our homeland." Indeed, it is. But Commissioner Heriot tempers this by stating that "only a tiny number of hate crimes [perpetrators] even come close to fitting that stereotype.... Very few [hate crimes] are committed by 'white supremacists' in the sense of card-carrying members of the Ku Klux Klan." She noted the disturbing truth that, "contrary to the stereotype, about a third of hate

crimes are committed by family members, intimates, neighbors, or at least acquaintances of the victim.”

Based on this reality, I believe that if we want to meaningfully address anti-Asian violence and hate crimes in general, we should look inward at our own communities and neighborhoods, to find those who are uninformed and should be given the opportunity to be educated about diversity and equity.

### Barriers to Addressing Hate Crimes

A majority of the Commissioners and I acknowledge that not enough has been done to address, curtail, or respond to anti-Asian hate crimes. Commissioner Christian Adams “also agree[s] with the reports finding that prosecutors and law enforcement should vigorously investigate and prosecute violations of federal criminal laws.”

Commissioner Gail Heriot recounted the story of Michelle Go, who died after being pushed onto the subway tracks in New York City. Her attorney, Jennifer Wu, testified before the Commission and emphatically declared, “There has been no federal response to anti-Asian racism.” She has represented nearly every victim who has died from anti-Asian violence and “none of [her] clients have ever heard from the federal government, except for Congresswoman Grace Meng of New York City.”

Commissioner Adams voted in favor of this report about anti-Asian hate crimes, and notably said that this report and a forthcoming USCCR report on crime should be viewed as complementary. I share his view and am hopeful that the USCCR’s next report will address the root causes of hate crimes and examine how to prevent violent crimes.

Commissioner Adams also recognizes “that first responders, including law enforcement officers, are often insufficiently trained to identify hate crimes. Local law enforcement officials, therefore, may over or under-report the number of hate crimes occurring in their jurisdictions because they lack a clear understanding of what constitutes a hate crime.” I concur. A majority of the Commissioners agree with the report’s recommendation that better training is needed.

### Hate Crimes are Not “Crimes” *Per Se*

There are also deficiencies in the reporting data that makes understanding the true breadth and depth of hate crimes difficult. Commissioner Adams explained that federal data policy has impaired local crime reporting. A majority of the Commissioners and I agree with the report’s finding that comprehensive data on hate crimes is lacking.

Commissioner Adams also pointed out that:

This lack of objective data has apparently contributed to the Commission’s decision to award undue weight to self-reported statistics collected by non-profits that conflate “hate



incidents” with “hate crimes.” Hate incidents are not hate crimes. Discourtesy, boorish behavior, rudeness and even misdirected anger may be unsettling, but they are usually not crimes.

Admittedly, the legal definition of a hate crime under federal law is narrow and specific. It is only bias motivated violence that *results in death or serious bodily injury*.

The group Stop AAPI Hate concurred with Commissioner Adams. Stop AAPI Hate documented over 11,000 anti-Asian hate incidents and found that the incidents were not “crimes” *per se* (i.e., resulting in death or serious bodily injury) but instead hateful verbal harassment, gestures, and vandalism.

To address this, the Department of Justice should incentivize and support state and local law enforcement agencies to provide resources and referrals for individuals who report hate “incidents,” not “crimes” *per se* but instances of racial harassment. Law enforcement agencies should create written policies and train their officers to provide these resources and referrals.

#### Address Root Causes of Crime

I agree with my colleagues that some of the root causes of hate crimes are similar to the root causes of other violent crimes. Commissioner Gail Heriot noted that the solutions to both hate crimes and crimes in general are similar.

Commissioner Heriot wrote, “If we want to bring violent hate crimes under control, we need to bring violent crime under control. For that, we need effective law enforcement. Special attention should be given to crimes committed by repeat offenders and by mentally ill individuals with a history of violence, because these are the crimes we have the best chance to prevent before they happen.”

The Asian American Coalition for Education, which Commissioner Heriot cited, wrote that “most violent attacks on Asian Americans were reported in states that ... failed to address their rampant homeless and mental health issues” within their cities.

I can agree with Commissioner Heriot in the need to address violent crime. We must give special attention to those suffering from mental illness. We must develop and implement effective programs to rehabilitate criminal offenders so they do not become repeat offenders. Almost all of the advocates who shared public comment with the USCCR said that mental health services, along with education, will significantly address anti-Asian hate crimes and will likely help to curtail all violent crimes.

Commissioner Gilchrist correctly pointed to the testimony of Russell Jeung, Professor of Asian American Studies at San Francisco State University, who stated that “...those of us living in low-income, maybe high-crime areas are victims of crime at high rates, but everybody in the community are victims of crime in those communities. So, it's not necessarily Black on Asian

crimes. The Black and African American community, they're also victims of crime in those neighborhoods.”

I also agree. I believe that we as a nation should address the root causes of crime. Breaking the cycle of poverty and providing drug treatment programs, rehabilitation programs, mental health services, and programs for at-risk youth would go a long way in addressing not only anti-Asian hate crimes, but crimes and violence against all people.

If I may borrow Commissioner Gail Heriot’s words, “Still, all in all, Federal, state, and local governments would do well to put their resources into preventing Asian Americans (and all Americans) from being victimized by serious crime.”

### Agreed Upon Findings and Recommendations

My statement recounted a series of comprehensive findings and recommendations to address anti-Asian hate crimes in the United States. Though the USCCR as a whole did not vote to approve them all, I applaud Commissioner Adams for his effort to propose a set of those findings and recommendations which a bipartisan majority of Commissioners agreed upon. Those are adopted in the full report.

The lack of language access as a barrier to addressing hate crimes is important to underscore. Commissioner Adams highlighted that “because many AAPI victims of such crimes may have limited English language proficiency, they may be less likely to initiate reports with law enforcement officials.” I would strengthen this statement and add that many Asian Americans are simply *unable* to report hate crimes, both because of their own limited English proficiency and law enforcement’s neglect in providing language access to their services. Commissioner Gilchrist echoed the same sentiment.

Many Asian American advocates complained about inaccessible law enforcement and victim services due to language barriers, notwithstanding a federal obligation to provide language access to those services under Executive Order 13166. More must be done at the federal, state, and local levels to ensure limited English proficient Americans have access to law enforcement and victim services.

I also praise Commissioner Gilchrist and concur with his own set of recommendations that the President and Congress should:

- Continue to strengthen the collaboration between our federal, state, and local law enforcement officials.
- Fully utilize existing resources to help communities navigate cumbersome bureaucratic processes, which make it hard for community groups to access government grants.
- Make language accessibility the norm for the diversity of the population.

- Carefully balance the rights of the accused with care for the victims.
- The government should evaluate every five years whether federal hate crime laws are substantively beneficial in reducing hate crimes.

The U.S. Commission on Civil Rights is bipartisan. In an increasingly politically polarized country where civility can be hard to find, I hope I have demonstrated how people of different opinions and differing political ideas can come together to lead to a better result for all.

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## Rebuttal of Vice Chair Nourse

Once upon a time, Americans believed it an honor to serve their country rather than to bash it based on imagined wrongs. Most reasonable readers will find it odd that the dissenting statements spend so much time on matters unrelated to Asian-American hate crimes. Particularly out of place, and demeaning to the Commission, are the statements denigrating the Commission's staff director. Ordinarily, one might just ignore them, given the Commission's higher mission. However, there is a pattern here, worth noting for the public record, lest it continue.

I confess that I was shocked when I attended the first hearing on Asian-American hate crime, just days after being nominated by the President as Vice Chair of the Commission. Commissioners had called witnesses on topics completely unrelated to Asian-American hate crime. Does it really surprise anyone in Washington that these witnesses were chosen to talk about hot button, politicized issues like affirmative action in higher education, or diversity, equity, and inclusion programs?

Or that one witness chose to use their testimony to inveigh against the President's equity "fixation" and "agenda" and to single out the first Black-and-Asian Vice President for particular disdain. Transcript at 135, 137 (March 24, 2023). What do these topics have in common with hate crime? With Asian-American hate crime? Nothing. Frankly, I was embarrassed by this performance and I expect that most citizens, whether Republican or Democrat, would have been confused by witness statements whose sole purpose appeared to be to criticize the current Administration on matters unrelated to Asian-American hate crimes.

After this went on for some time, the staff director called a halt, and that was the prudent and appropriate course. Transcript at 181 (March 24, 2023). The Commission's statute provides no way for the Commission to operate without a Chair to enforce Commission rules. 42 U.S.C. 1975d (requiring concurrence of a majority of Commissioners to the President's choice of Chair and Vice-Chair). There was no Chair in place at the Asian-American hate crime hearing (there was no time for a Commission vote as President Biden had just named his proposed Chair and Vice-Chair). The staff director acted as the only presidentially-appointed officer who had received a majority of Commission votes for his appointment, to enforce the Commission's votes.

The Commission had voted *not* to hear testimony on affirmative action in higher education at the hate crimes briefing as inconsistent with a focus on hate crime. And yet Commissioners appeared to have invited witnesses for the express purpose of hearing such testimony. Staff Director Morales acted appropriately and temperately. 42 U.S.C. sec. 1975b; see 45 C.F.R. sec. 701.11; Transcript at 181 (March 24, 2023). Let us hope that the Commission's staff will be treated with greater civility in the future, and that the Commission will hold to germaneness rules moving forward.

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## Appendix



### **U.S. Commission on Civil Rights Public Briefing: The Federal Response to Anti-Asian Racism in the United States**

**Friday, March 24, 2023 | Washington, D.C.**

**Expert Panels: 1:00-5:00 pm ET**

#### **AGENDA**

**Live-streamed:** <https://www.youtube.com/user/USCCR/videos>

**I. Introductory Remarks: 1:00-1:05 pm**

**II. Panel 1: Research and Policy Experts: 1:05-2:15 pm**

- Dr. Russell Jeung, Professor, Asian American Studies, San Francisco State University; Co-Founder, Stop AAPI Hate
- Charles Lehman, Fellow, Manhattan Institute
- Jo Ann Yoo, Executive Director, Asian American Federation (AAF)
- Diane Yap, Founding Member, Friends of Lowell Foundation; Board Member, The Lowell Alumni Association
- John Yang, President & Executive Director, Asian Americans Advancing Justice – AAJC
- Dr. Brian Levin, Professor, California State University – San Bernardino; Director, Center for the Study of Hate & Extremism (CSHE); Commissioner, California Commission on the State of Hate

**III. Break: 2:15-2:25 pm**

**IV. Panel 2: Community Stakeholders and Advocates: 2:25-3:35 pm**

- Cynthia Choi, Co-Executive Director, Chinese for Affirmative Action
- Dr. Wenyuan Wu, Executive Director, Californians for Equal Rights Foundation
- Aryani Ong, Director, Anti-Hate & Belonging Program, The Asian American Foundation (TAAF)
- Jennifer Wu, Partner, Groombridge, Wu, Baughman & Stone LLP
- Lee Cheng, Co-Founder, The Asian American Legal Foundation
- Manjusha Kulkarni, Executive Director, AAPI Equity Alliance

**V. Break: 3:35-3:45 pm**

**VI. Panel 3: Law Enforcement & Federal Officials: 3:45-4:55 pm**

- Eric Dreiband, Former Assistant Attorney General, Civil Rights Division, Department of Justice; Partner, Jones Day
- Devon Westhill, Former Assistant Secretary for Civil Rights (OASCR) at USDA; President and General Counsel, The Center for Equal Opportunity
- Detective Orlando Martinez, Hate Crimes Coordinator, Los Angeles Police Department
- William Scott, Police Chief, San Francisco Police Department

**VII. Closing Remarks: 4:55-5:00 pm**

**VIII. Adjourn Meeting**

\*\*Public Comments will be written testimony only



## U.S. COMMISSION ON CIVIL RIGHTS

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## COMMISSION BRIEFING

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FRIDAY, MARCH 24, 2023

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The Commission convened at the National Press Club, 529 14th Street, Northwest, 13th Floor, Washington, D.C., at 1:00 p.m. EDT, Peter Kirsanow, Commissioner and Moderator, presiding.

PRESENT:

PETER N. KIRSANOW, Commissioner, Moderator

STEPHEN GILCHRIST, Commissioner

JOHN CHRISTIAN ADAMS, Commissioner

GAIL HERIOT, Commissioner

GLENN MAGPANTAY, Commissioner

VICTORIA NOURSE, Commissioner

ROCHELLE GARZA, Commissioner

MONDAIRE JONES, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

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CODY BOWLER

SHERYL COZART

PAMELA DUNSTON, Chief, ACSD

PATRICIA FLETCHER

JULIE GRIECO

NICOLE HEWITT

JOE KIM

TINALOUISE MARTIN

PILAR MCLAUGHLIN

PRINCE OLUBAKINDE

ESSENCE PERRY

SWASTI SHAH

MARK SPENCER

MICHELE YORKMAN-RAMEY

MARIK XAVIER-BRIER

## COMMISSIONER ASSISTANTS PRESENT:

ALEXIS FRAGOSA

JOHN MASHBURN

CARISSA MULDER

THOMAS SIMUEL

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P-R-O-C-E-E-D-I-N-G-S

(1:00 p.m.)

COMMISSIONER KIRSANOW: Good afternoon and welcome to the U.S Commission on Civil Rights briefing on anti-Asian racism in the United States. Thank you to the witnesses, staff, and guests who are joining us today -- whether in-person or virtually.

The briefing comes to order at 1:00 p.m. Eastern Standard Time; we're holding the briefing in the National Press Club.

I'm Commissioner Peter Kirsanow, I'll be moderating the briefing today. I'll be joined by Commissioner Adams, Commissioner Garza -- try to do this in alphabetical order -- Commissioner Gilchrist, Commissioner Heriot, Commissioner Magpantay -- tay, I'm sorry, Magpantay -- and Commissioner Nourse.

A quorum of the Commissioners is present.

Staff Director is present right to my right here -- is it Morales -- is the Court Reporter present?

COURT REPORTER: Present.

COMMISSIONER KIRSANOW: Thank you very much.

Before we begin, I'd like to welcome our newly appointed Commissioners who are with us today.

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1 Commissioners Garza, Magpantay -- I keep screwing that  
2 up, Magpantay -- and Nourse. Commissioner Mondaire  
3 Jones is unable to join us today, but we look forward  
4 to welcoming him in the future.

5 Since we're a little pressed for time  
6 today, I'll briefly introduce each of our new  
7 Commissioners, and they may wish to say a few words.

8 Commissioner Rochelle Garza was appointed  
9 by President Biden and sworn in on March 17 of this  
10 year, she's an attorney from the Rio Grande Valley,  
11 currently serving as president of the Texas Civil  
12 Rights Project. She has expertise in immigration,  
13 family, criminal, and constitutional law.

14 Commissioner Glenn Magpantay was appointed  
15 to the commission by Senate Majority Leader Chuck  
16 Schumer and sworn in on February 15 of 2023. He's a  
17 longtime civil rights attorney, professor of law in  
18 Asian-American studies, and LGBTQ rights activist. He  
19 is a principal at Magpantay and Associates, and a  
20 Soros Equality Fellow.

21 And last, Commissioner Victoria Nourse was  
22 appointed to the commission by President Biden and  
23 sworn in on March 16 of 2023. She's the Ralph  
24 Whitworth Professor of Law at Georgetown University  
25 Law School. She's also taught at a number of other

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1 institutions such as Yale, NYU, and Northwestern.  
2 She's authored textbooks and dozens of legal articles.

3 Welcome to our new Commissioners. Would  
4 each of you, starting with Glenn, like to say a few  
5 words?

6 COMMISSIONER MAGPANTAY: Sure. It's an  
7 incredible honor to be here to have this opportunity  
8 to serve our country, and to raise these issues that  
9 so importantly affect our community.

10 As Asian-Americans are growing in this  
11 country, the distinct honor of being an Asian-American  
12 member of this commission, but really looking at the  
13 rights and issues that affect all Americans across  
14 this country.

15 It was 30 years ago that this commission  
16 unveiled a report called Civil Rights Issues in the  
17 90s, and I remember when I was a young law student  
18 researching my law review article, there was nothing  
19 out there about the Asian-American community. And yet  
20 this commission, well before I even became an admitted  
21 attorney, provided the insights and information that  
22 we needed to look at the growing community in our  
23 country.

24 I'm so excited for all the panelists to be  
25 on this commission, to serve our country, and for the

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1 important issues that we have here today, and for the  
2 work of the commission for the next couple of years.  
3 Thank you.

4 COMMISSIONER KIRSANOW: Commissioner  
5 Nourse?

6 COMMISSIONER NOURSE: Well, thank you so  
7 much. I've been delighted and honored to be nominated  
8 by President Biden, who I've known since I was a 30-  
9 year-old lawyer working on the Senate Judiciary  
10 Committee. And I'm delighted to be nominated with a  
11 phenom from Texas, Rochelle Garza, who's going to  
12 speak in a minute.

13 But I just know that the president, if he  
14 were here today, he would say this is exactly the  
15 example of what I used to do in the Senate. We work  
16 better together than apart, and that the United States  
17 needs right now so much, in particular in the Asian  
18 sphere, to be a leader in human rights.

19 So, I'm delighted that this is our first  
20 hearing and I look forward to hearing from your  
21 testimony.

22 COMMISSIONER GARZA: Good afternoon,  
23 everyone. It is truly an honor for me to have been  
24 appointed by President Biden to this very important  
25 position, I deeply deeply care about civil rights.

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1 You know, I'm a civil rights attorney from South  
2 Texas, my father was a farmer -- he was one of 13  
3 children.

4 I've been thinking a lot about my  
5 grandmother, a lot about the future of my daughter --  
6 she turns one today, and --

7 (Applause.)

8 COMMISSIONER GARZA: So, I want to make  
9 sure that we make this country -- or, continue to go  
10 on the path where there is equal protection for  
11 everyone in this country, because I deeply believe  
12 that. I am very excited that this is the first panel  
13 that we will be hearing from about this incredibly  
14 important topic about anti-Asian bias that is  
15 impacting people across this country.

16 So, thank you so much for being here and I  
17 look forward to hearing from all of you.

18 COMMISSIONER KIRSANOW: Thank you very  
19 much and welcome to the new Commissioners, or  
20 condolences.

21 (Laughter.)

22 COMMISSIONER KIRSANOW: The subject of  
23 today's hearing, the federal response to anti-Asian  
24 racism in the United States. This is a topic that  
25 former Commissioner Yaki, from whom we will be hearing

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1 a little bit later today, and who, by the way, speaks  
2 fluent Klingon, had the pleasure -- he proposed this  
3 topic last year.

4 And all of us have been alarmed by news  
5 reports of attacks against Asian-Americans, this has  
6 been going on for some time, I had been involved in  
7 this and tried to get a briefing on this issue myself,  
8 and here we are.

9 I'm happy that we're going to be  
10 addressing this at this time, and I thank the  
11 commission staff, and our special assistants, and  
12 everyone for putting this thing together -- all the  
13 hard work that it entailed and getting knowledgeable  
14 witnesses to testify in front of us.

15 The commission will hear from three panels  
16 of expert witnesses. The first panel consists of  
17 policy and research experts, the second panel will  
18 consist of community stakeholders and advocates, and  
19 the third and final panel consists of law enforcement  
20 and federal officials.

21 Now, the logistics of it are each panelist  
22 gets seven minutes in which to speak. Now, there's a  
23 system of warning lights there set up so you know how  
24 long you have left, if it turns from green to yellow  
25 that's your signal that you now have two minutes left

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1 to speak. And, of course, when the light turns red  
2 you are to stop, otherwise SEAL Team Six comes in the  
3 door and escorts you out.

4 After each presentation, commissioners  
5 will have an opportunity to ask some questions of the  
6 witnesses, and then there will be a 10-minute break  
7 between panels. So, with that, we'll begin the  
8 briefing.

9 PANEL 1: RESEARCH AND POLICY EXPERTS

10 COMMISSIONER KIRSANOW: This first  
11 witness, our first witness panel, consists of Dr.  
12 Russell Jeung, who's professor of Asian-American  
13 studies at San Francisco State University, and a co-  
14 founder of Stop AAPI hate.

15 Second panelist is Charles Lehman who is a  
16 fellow at the Manhattan Institute. Jo-Ann Yoo is next  
17 to him, Executive Director of Asian-American  
18 Federation. Diane Yap, founding member of Friends of  
19 Lowell Foundation and board member of the Lowell  
20 Alumni Association. And John Yang, who is President  
21 and Executive Director of Asian-Americans Advancing  
22 Justice.

23 And I see we've got Brian Levin here, and  
24 I don't have a bio for you -- sorry about that.

25 MR. LEVIN: My father wanted me to be a

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1 doctor.

2 (Laughter.)

3 COMMISSIONER KIRSANOW: His father wanted  
4 him to be a doctor, and that's why he's been consigned  
5 to being here today. And you are a professor at  
6 California -- I've seen your name before -- California  
7 State University, San Bernardino, Director of the  
8 Center for the Study of Hate and Extremism.

9 Thank you very much all for appearing and  
10 for testifying today. Dr. Jeung, you may proceed.

11 PANEL 1: RESEARCH AND POLICY EXPERTS

12 Dr. JEUNG: Good afternoon, commissioners.

13 I'd like to thank the Commission on Civil Rights for  
14 hosting this hearing, it's a really important topic.  
15 I'd also like to thank the staff who so professionally  
16 and -- organized this event. Next slide, please.

17 I'd like to start with an incident that we  
18 received at Stop AAPI Hate that, sadly, is all too  
19 common. As you can see and read, it's not necessarily  
20 an issue of a hate crime but one of racial harassment  
21 where a woman -- customer -- was denied access at her  
22 pharmacy.

23 The perpetrator, using yellow peril  
24 rhetoric, not only saw her as being a disease-  
25 carrying, threatening person of color, but instead

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1 stated that she was the infection, that our racialized  
2 bodies themselves were the defiling elements to the  
3 United States. And so, he told her to go home, we  
4 don't want you here.

5 And you could see the traumatizing result,  
6 this person was in shock, and cried and left, saying  
7 no one came to help. She left isolated, marginalized.

8 And I think that's the experience of the Asian-  
9 American community at this moment, one of collective  
10 racial trauma. Thanks. Next slide.

11 So, according to surveys, national surveys  
12 random samples in translated in different languages,  
13 eight to 45 percent of Asian-Americans have faced this  
14 type of racism, this type of harassment, across the  
15 nation.

16 Since we make up the fastest growing  
17 minority in the United States, these numbers translate  
18 to 2,000,000 to 10,000,000 cases of hate during the  
19 pandemic. So, it clearly is an epidemic of hate, it  
20 clearly is a time of collective racial trauma. Next  
21 slide.

22 But the racism we're seeing now have  
23 particular sources, Asian-Americans face a sort of a  
24 unique set of factors that lead to racism against us.

25 Clearly, people were afraid of COVID-19 because of

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1 the disease, but the political rhetoric and social  
2 media today really did exacerbate the issue.

3 When politicians used the term Chinese  
4 virus, it really did two things -- it racialized the  
5 virus, so it made it Chinese, and it stigmatized the  
6 people, so Chinese people were the ones carrying the  
7 disease. That association that the Chinese -- that  
8 the virus was Chinese and Chinese had the virus really  
9 did go viral on social media, and that's been  
10 correlated with anti-Asian hate.

11 The other key factor really fomenting  
12 anti-Asian hate, that maybe other groups don't  
13 experience as much, is that U.S./Asian foreign  
14 relations translates to American race relations for  
15 Asian-Americans. And those who see China as the  
16 country's main threat, then tend to see Asians in the  
17 U.S negatively and that leads to greater anti-Asian  
18 sentiment.

19 So, we have to get at these factors, we  
20 have to get at these sources if we really want to  
21 uproot the racism.

22 The impacts have been devastating. Racism  
23 has incurred severe costs in our community. Asian  
24 businesses have lost 60 percent of their income since  
25 the start of the pandemic, compared to 12 percent of

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1 the national average -- five times more. And, because  
2 of this business loss, large swaths of our community  
3 have been unemployed during the pandemic.

4 Because of the fear of COVID, because  
5 we're seen as the yellow peril, or the dusky peril,  
6 policies have been institutionalized that, actually,  
7 again see us as dangerous outsiders to be banned, to  
8 be excluded.

9 Individually, these policies may be  
10 unintentionally benign but, taken as a whole, these  
11 policies have really had a chilling effect on our  
12 community, have deprived us of the rights to migrate,  
13 deprived us of the rights to reunite our families,  
14 deprived of the rights to free speech, deprived us  
15 even of freedom of religion on social media.

16 So, again, this institutionalized policy  
17 have sanctioned greater anti-Asian hate. Next slide.

18 And finally, over 50 studies have  
19 concluded that this trauma -- or, this period has been  
20 really traumatizing. And those of us who experience  
21 direct racism are even more traumatized, leading to de  
22 facto segregation. People are not going out, being  
23 sequestered in certain neighborhoods for fear of  
24 danger. Next slide.

25 So, to wrap up, I make these suggestions.

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1 I think we do need to get at the particular sources  
2 of anti-Asian hate, we need to really pay attention to  
3 how U.S foreign relations impacts Asian-Americans.  
4 Next slide.

5 We have to see this period as not one of  
6 just hate crimes, but really a civil rights issue.  
7 And so, we need to make sure that Asian-Americans and  
8 other groups receive public accommodations, that they  
9 have safe access to goods. We have to really ensure  
10 that the COVID-19 Hate Crimes Act is fully  
11 implemented, and that would then promote anti-  
12 harassment campaigns to promote empathy. Next slide.

13 And finally, I think we really need non-  
14 punitive efforts to build racial unity, to educate our  
15 community to create empathy. Education really is key  
16 across the board, Asian-Americans polled --Americans  
17 polled realized that education is the best way to  
18 remedy racism.

19 But I'm really alarmed at this moment by  
20 the backward movement that is calling on bans of books  
21 that are curbing discussions of race and racism, it's  
22 really impacting teachers and students from having  
23 frank discussions of race. And so, we have to  
24 actually guard the civil rights of our teachers, of  
25 our students, so that they have that freedom of speech

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1 to address racism.

2 Now, I'm actually, you know, alarmed --  
3 I'm a alumnus of Lowell High, and some alumnus at  
4 Lowell High are seeking to file a lawsuit that may  
5 impact other students of color. And I just hope that,  
6 in our efforts, that we would improve the educational  
7 opportunity for everybody, not just a select few. We  
8 can't just gain Asian-American civil rights at the  
9 expense of others.

10 So, thank you. Again, this period of the  
11 yellow peril is frightening. It's not an Asian-  
12 American issue we're dealing with, it's an American  
13 issue, right? It's Americans who are afraid of COVID,  
14 it's Americans who are afraid for their national  
15 security, it's Americans who are afraid of their  
16 economic standing.

17 And to the extent that we can address  
18 those fears and create an Asian-American civil rights  
19 agenda, then I think we could expand equal  
20 opportunity, we can expand education for all. Thank  
21 you.

22 COMMISSIONER KIRSANOW: Thank you, Dr.  
23 Jeung. Mr. Lehman, you have seven minutes.

24 MR. LEHMAN: Thank you to the Commission  
25 for the opportunity to address you, I am speaking to

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1 you today in my capacity as an analyst of crime.

2 With my time I want to make three points.

3 First, anti-Asian hate crime has risen substantially  
4 thanks to both, the COVID-19 pandemic and to an  
5 increasing criminal offending generally.

6 This latter is because, second, hate crime  
7 offenders are quite similar to other criminals and  
8 often commit other crimes.

9 Therefore, third, the best way to combat  
10 hate crime is not by targeting hate, e.g. through  
11 education or content moderation, but to target crime  
12 through aggressive law enforcement.

13 After decades of decline, anti-Asian hate  
14 crime began rising in 2017 then spiked dramatically in  
15 2020. That year's official count, 279, is a 73  
16 percent increase over 2019. Reported incidents rose  
17 yet again in 2021 a cumulative 89 percent increase  
18 over 2019.

19 This last finding is particularly  
20 remarkable, given the reported counts of many other  
21 categories of hate crimes fell in 2021 when thousands  
22 of agencies did not report hate crimes because of the  
23 FBI's transition to a new reporting system. The  
24 measured increase in anti-Asian offending is therefore  
25 biased downwards, the true number is probably much

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1 higher.

2 Further support for this trend comes in  
3 data from New York, Los Angeles, and Chicago,  
4 collectively home to roughly 10 percent of the U.S.  
5 Asian population -- Anti-Asian hate crimes have  
6 increased in all three cities.

7 At least in these cities, though, there  
8 have been two waves of crime, but Los Angeles and New  
9 York incidents spiked in the second quarter of 2020,  
10 around the time the coronavirus began spreading in the  
11 United States. Then fell before spiking again in  
12 early 2021 when they also began rising in Chicago, a  
13 similar pattern appears in data from San Francisco.

14 This suggests that the increase in anti-  
15 Asian hate crime is not as simple as the coronavirus  
16 crisis starting a new wave of anti-Asian racism. If  
17 it were, one would expect incidents to have risen  
18 continuously from Q2 2020 onwards.

19 Most importantly, 2021 -- so not only an  
20 increase in anti-Asian racism but also increased crime  
21 among individuals most likely to convert that racism  
22 into criminal behavior. Homicides rose nearly 30  
23 percent in 2020, another five percent in 2021, a  
24 similar trend obtains for shootings.

25 And, in many jurisdictions, including the

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1 ones previously mentioned, other kinds of crime have  
2 risen as well. As social control has ebbed, in other  
3 words, criminal offenders of all types have been more  
4 prone to acting out.

5 This implies, though, that hate crime  
6 offenders are like other criminals as opposed to being  
7 specialists in hate crime. The data bear this out,  
8 one survey of convicted hate crime offenders found  
9 that 87 percent had a prior conviction, including 60  
10 percent with violent conviction.

11 Another survey of UK offenders found that  
12 97.7 percent of hate offenders had prior arrests,  
13 including 87 percent who had committed crime of  
14 violence. Data on arrest records from New York also  
15 suggests a similarity between hate criminals and non-  
16 hate criminals.

17 While hate crime offenders vary  
18 demographically from others, they look essentially  
19 indistinguishable on measures of criminality,  
20 including whether they have previously been convicted,  
21 whether they have an open case, whether they were  
22 rearrested following release on bail.

23 What about those who commit anti-Asian  
24 hate crimes, high profile incidents suggest that prior  
25 criminality is not uncommon. Antoine Watson, who

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1 murdered 84-year-old Vicha Ratanapakdee, one of the  
2 earliest anti-Asian offenses in 2020, was in the  
3 process of vandalizing another car when he assaulted  
4 Ratanapakdee -- he'd been cited for reckless driving  
5 earlier that day.

6 Haskell Allen, who allegedly assaulted an  
7 83-year-old Asian man in 2021, was on probation when  
8 he committed his offense.

9 The reason for this phenomenon is  
10 intuitive, while many people hold bigoted views most  
11 will not convert them into criminal acts. To do so  
12 requires some other disinhibition, that sort of  
13 disinhibition also leads to committing other crimes.

14 To put it graphically, a hate crime  
15 offender who is someone who thinks it's both, a good  
16 idea to brutalize someone on the street and to scream  
17 racial slurs while doing so. That some other  
18 criminals do not yell racial slurs while they  
19 brutalize people does not mean that they do not share  
20 key characteristics with hate crime offenders.

21 The consequence of this insight is simple,  
22 to combat hate crime focuses on crime. The wrong  
23 policy is to focus on reducing bias through education  
24 or social media content moderation. Such approaches  
25 are not only ineffective on their own terms, a large

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1 research literature casts doubt on educational  
2 interventions efficacy, but inefficient because they  
3 poorly target the small subset of the biased  
4 population that will actually criminally offend.

5 The marginal student or social media  
6 commenter is not likely to become a hate criminal,  
7 spending resources on him is a bad bet on crime  
8 control dollar-for-dollar. Rather, the Criminal  
9 Justice System, including the Federal Criminal Justice  
10 System, is well equipped to combat hate crime as  
11 crime. Multiple statutes, especially the 2009 Hate  
12 Crime Preventions Act -- Hate Crimes Prevention Act --  
13 permit the federalization of many bias-related  
14 offenses.

15 Yet, recent data suggests DOJ has been  
16 slow to use these powers. It investigated only about  
17 120 hate crimes per year from 2015 to 2019, declining  
18 to prosecute in 77 percent of cases -- just 82  
19 defendants faced charges.

20 Rates have increased in recent years as  
21 Justice charged more than 40 people, and obtained 35  
22 convictions, between January 2021 and May 2022.  
23 Still, the relatively low numbers suggest the  
24 Department could be doing more, including coordinating  
25 more closely with state and federal task forces.

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1           In addition to directly prosecuting hate  
2 crimes, Department of Justice every year issues tens  
3 of millions of dollars to anti-hate crime grants.  
4 While these are substantial amounts, they don't go  
5 that far. Fiscal year 2022 -- covered just 22 awards,  
6 compared to roughly 2,300 state prosecutors offices.  
7 Many offices do not have specialists to focus on hate  
8 crime prosecutions.

9           The challenge inherent in prosecuting bias  
10 motivated crime means the federal government could  
11 allocate more funding to, at least, coordinating  
12 between offices and articulating best practices, to  
13 increase the often shockingly low rate of convictions.

14           Another approach is to increase police  
15 hiring, a proven tool for reducing crimes of all  
16 sorts. Across a variety of measures, police to  
17 population ratios have declined steadily since the  
18 Great Recession. DOJ's main hiring grant office is  
19 authorized to spend \$386,000,000 in fiscal 2021,  
20 including \$156,000,000 for its primary program. It's  
21 a dramatic decline from the \$1.4 billion dollars a  
22 year it was given the five years after its  
23 authorization.

24           Lastly, many particularly heinous hate  
25 crimes are, under federal law, eligible for capital

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1 punishment, including high-profile hate crimes like  
2 the Emanuel AME church shooting and the Buffalo Tops  
3 Market shooting. Light of this, the Biden  
4 Administration's ongoing death penalty moratorium  
5 poses a serious challenge to the orderly proceeding of  
6 justice.

7 When discussing crime we too often insist  
8 on reducing it -- that to reduce it we must first end  
9 poverty, addiction, despair, other root causes. The  
10 same is often true for hate crime, to reduce it many  
11 insists that we need to weed out hatred in hearts and  
12 minds.

13 Reality, hate crime offenders are like  
14 other criminals, which means that hate crime offending  
15 should be responsive to the traditional tools of crime  
16 control. Smart policing and prosecution should be the  
17 front line defense in blunting the spike in anti-Asian  
18 hate crime, the federal government is well positioned  
19 to enact this agenda, to do so.

20 Thank you, and I look forward to your  
21 questions.

22 COMMISSIONER KIRSANOW: Thank you, Mr.  
23 Lehman. Ms. Yoo?

24 MS. YOO: Commissioners, I apologize in  
25 advance as this has been a very triggering and

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1 emotional three years for me.

2 My name is Jo-Ann Yoo, and I serve as the  
3 Executive Director of the Asian American Federation in  
4 New York. We're the strongest leadership organization  
5 serving Asian Americans working in collaboration with  
6 70 member and partner agencies who are deeply embedded  
7 in our communities and operate under the larger  
8 umbrella of human services. We are best positioned to  
9 address community issues across different Asian  
10 ethnicities to quickly and efficiently tackle emerging  
11 challenges like the anti-Asian hate.

12 Today I am here to represent the victims  
13 of anti-Asian violence in New York because they  
14 deserve to be named, to be recognized, and honored. My  
15 organization raised and sub granted more than \$3  
16 million to 33 Asian-serving members and partner  
17 agencies to implement our Hope Against Hate campaign.

18 In our first year of the campaign, we distributed  
19 over 50,000 safety resources and supported nearly  
20 10,000 individuals with safety trainings, helped with  
21 reporting incidents, and connecting connections  
22 through victim services.

23 In January 2020, the first warning signs  
24 of the brewing storm came from the Asian small  
25 businesses which reported a significant drop off in

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1 customer traffic due to news of the COVID outbreak in  
2 China. In response, we immediately began working with  
3 elected officials to develop response strategies aimed  
4 at keeping Asian Americans -- Asian New Yorkers safe.

5 By February, we started to receive reports  
6 of anti-Asian violence through our members, partners,  
7 and personal contacts. The stories I heard from  
8 strangers who called or emailed me at all hours of the  
9 day and night are beyond heartbreaking, and I want you  
10 to hear some of their stories.

11 I'm going to tell you about the frontline  
12 healthcare workers who kept us alive during the height  
13 of COVID, who talked about having to consider early  
14 retirement because they were afraid of being  
15 physically attacked going to and from work.

16 Or how about the 90-year-old grandmother  
17 who was out for an evening walk in a Brooklyn  
18 neighborhood, and she was set on fire by two  
19 teenagers. She was too scared to tell anybody  
20 including her own family. And the hundreds of small  
21 business owners who were afraid for themselves, their  
22 families, their employees, and their customers, and  
23 consulted with us to implement safety protocols.

24 Let me tell you about Noel, one of the  
25 most gentle people I have ever met who was slashed

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1 from ear to ear as he was going to work in the morning  
2 and required over 100 stitches to close the gaping  
3 wound, scars that are still healing two years later,  
4 not to mention his mental and emotional trauma. He  
5 has chosen to forgo plastic surgery as a reminder that  
6 hate violence continues to plague our community.

7 Velma was on her way to mass on Palm  
8 Sunday when she was knocked to the ground and kicked  
9 in the face and pelvis by an assailant who yelled,  
10 "you don't belong here," in a country where she has  
11 lived for decades.

12 And on March 3rd, just a few weeks ago,  
13 Cecile and her son, Kyle, were returning from family  
14 lunch when they were repeatedly called racial slurs  
15 and beaten in their own neighborhood. Cecile was  
16 punched repeatedly until she lost consciousness. Her  
17 son, who has served our country as a Marine, sustained  
18 skull fractures trying to protect his mother and will  
19 deal with long-term impacts from his injuries.

20 And then there's my story. I was walking  
21 to visit my local small businesses when a man decided  
22 to block my path and refused to let me pass. I'm a  
23 person with tremendous privilege. I work closely with  
24 the Attorney General's office, the mayor, the  
25 governor, and other elected leaders, but my privilege

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1 did not protect me from potential harm in my own  
2 neighborhood.

3           These are the real-life -- real-life  
4 stories of Americans living through this horror right  
5 now. This is our daily reality -- our daily reality.

6           The pain and trauma of Asian New Yorkers  
7 has motivated the Asian American Federation to launch  
8 the Hope Against Hate Campaign in 2021, which is an  
9 expansive response network of Asian nonprofits working  
10 together to provide safety programming and services.  
11 Together, we connect victims to legal, financial, and  
12 mental health support as well as equip vulnerable  
13 women, children, and young people with safety measures  
14 to prevent attacks from happening in the first place.

15           If you think you are strong, I invite you  
16 to come and watch 80-year-old grandmothers, some with  
17 canes, learn self-defense techniques to keep  
18 themselves safe from attacks because it will break you  
19 as it has broken me many times.

20           In April 2020, we launched a reporting  
21 platform in eight Asian languages to make it easier  
22 for victims to report incidents and seek help in their  
23 native languages. In the first six months of the  
24 COVID lockdown, the Federation worked with our members  
25 and partners to track victim reports, some of which

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1 totaled over 400 in the largest Asian neighborhoods in  
2 New York City.

3 At the Federation, we have taken on the  
4 responsibility on behalf of our communities to  
5 publicly honor victims of anti-Asian hate with the  
6 singular purpose of sharing their stories because if  
7 we don't, who will speak for the victims?

8 I am grateful for this opportunity to  
9 speak and give voice to the urgent needs of Asian  
10 Americans who continue to experience anti-Asian  
11 assault on a daily basis more than three years since  
12 the first COVID-related attack.

13 Concrete actions must begin today if we  
14 aim to prevent more attacks from occurring again. We  
15 urge the following: one, investing in the  
16 strengthening and expansion of local networks so  
17 victims have ready access to community-based places  
18 where they can report attacks, receive support  
19 services, and take safety trainings and workshops in  
20 their own languages. We need system changes to  
21 correctly label and track violence for every category  
22 including religious identification.

23 For instance, the highest rate of anti-  
24 Sikh attacks are in New York State, but there doesn't  
25 exist a category to track an attack as anti-Sikh, so

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1 those numbers are ignored. Our partner organization,  
2 the Sikh Coalition, reports that there has been a rise  
3 in attacks against Sikhs because the men wear turbans  
4 making them a visible target for hate violence.

5 Over 50 percent of Asian New Yorkers have  
6 limited English proficiency. I have heard from  
7 seniors tell me that they try to report a hate attack  
8 only to be turned away because there was no police  
9 officer could take a report in the language the victim  
10 spoke. We must invest in language services and  
11 resources.

12 Disturbingly, the media gaze has moved on  
13 from anti-Asian hate and the investments have also  
14 waned. Despite these realities, incidents of violence  
15 have not stopped. We cannot let this racist, violent  
16 pattern of behavior become the norm. We need a new  
17 normal that recognizes the Asian American community as  
18 being integral to this country's identity.

19 Our community has yet to see any solutions  
20 that we in the front lines have proposed. Statements  
21 of solidarity matter only if they are backed up with  
22 concrete action. Our leaders can and must do more.

23 In the meantime, we continue with our  
24 work, which remains necessary as one of the only few  
25 resources for the victims. As I have sat with the

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1 victims, held their hands, and cried with them, I have  
2 asked all of them what does justice look like for you?

3 And today I want to ask this Commission this same  
4 question. What does justice look like for us Asian  
5 Americans? Thank you.

6 COMMISSIONER KIRSANOW: Thank you, Ms.  
7 Yoo. Ms. Yap, you have seven minutes.

8 MS. YAP: Good afternoon. My name is  
9 Diane Yap, and I was born and raised in San Francisco.  
10 Unfortunately, my city has changed over the years  
11 into one where Asian seniors are afraid to leave their  
12 own homes. There's been a surge of violent and often  
13 fatal attacks against Asians.

14 Just a few examples: 70-year-old Mrs. Ren  
15 was shoved to the floor, beaten, kicked in the head by  
16 three teens and an 11-year-old; two elderly women were  
17 stabbed with a machete while waiting for a bus; a 15-  
18 year-old boy was stabbed in the neck on the bus by a  
19 12-year-old boy. However, none of these brutal  
20 attacks have been classified as hate crimes.

21 Hate crimes, while certainly on the rise,  
22 are a small fraction of the violence faced by Asians  
23 in this country. According to the Department of  
24 Justice's 2021 Criminal Victimization Report, Asians  
25 were the victims in nearly 170,000 violent incidents,

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1 while the number of anti-Asian hate crimes in 2021 was  
2 just 305.

3 This is not to minimize the impact of hate  
4 crimes victimization but to put the scope of the  
5 problem into proper context. The danger in  
6 restricting our analysis to just hate crimes is that  
7 we misdiagnose the cause.

8 Who is responsible for these attacks  
9 against Asians? It appears the attacks against Asians  
10 only stirred interest on Capitol Hill once there was a  
11 way to blame conservatives or white supremacy like  
12 that oft-repeated statistic that 75 percent of anti-  
13 Asian hate crimes are perpetrated by White people.

14 Diving into the source material reveals  
15 it's based on incidents from 4,337 news articles about  
16 coronavirus-related anti-Asian racism in the United  
17 States. Of these, there were just 16 incidents with  
18 physical contact where the race of the perpetrator was  
19 known. Of those 16, 12 had White perpetrators, hence  
20 75 percent. By comparison, the same study included 55  
21 tweets from Donald Trump alone. Yet, a tweet never  
22 put Grandma in the hospital.

23 The urgent issue of violence against  
24 Asians predates COVID. The 2018 Criminal  
25 Victimization Report by the Bureau of Justice

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1 Statistics shows violent incidents by race of victim  
2 and offender. The largest share, 27.5 percent, are  
3 perpetrated by Black offenders, while Asians commit  
4 just 0.1 percent of such attacks against Black  
5 victims. If all those living nearby were equally  
6 likely to attack Asians, Blacks are attacking Asians  
7 at more than three times the expected rate as the  
8 average Asian lives in a neighborhood that's just 8  
9 percent Black.

10 On the other hand, White and Hispanic  
11 people are attacking Asians at about half the expected  
12 rate. This is not new. A 2008 analysis on physical  
13 assault crimes in San Francisco showed that in 85  
14 percent of cases, the victim was Asian, and the  
15 perpetrators were African American.

16 Sadly, government policymakers and media  
17 outlets do not want to acknowledge that Black-on-Asian  
18 violence is a problem. And racial resentment is at  
19 the root of the problem.

20 This resentment is well explained by the  
21 middleman minority concept. Immigrants who occupy a  
22 lower-barrier niche in the economy, like retail, and  
23 via punishing work schedules and self-sacrifice ascend  
24 from poverty to prosperity often within one  
25 generation. Middleman minorities have faced violence

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1 throughout history because native populations of lower  
2 status feel entitled to the same outcomes.

3 Today's expectation of equal outcomes can  
4 be summarized by one word, equity. The repetition of  
5 this term in policy discussions implies that all  
6 outcomes should be doled out proportionately amongst  
7 different racial groups regardless of relevant factors  
8 such as behavior. But we should expect proportionate  
9 outcomes only if these are assigned at random. But  
10 police don't arrest people at random. Courts don't  
11 imprison people at random. The government does not  
12 randomly force anyone to drop out of high school, nor  
13 does it randomly assign anyone to a life of poverty.

14 All of these outcomes depend largely on  
15 behavior and individual choices. When you are  
16 repeatedly told that outcomes are unfair because they  
17 are racially disproportionate, it is natural to resent  
18 the beneficiaries of this imagined unfairness.  
19 Unfortunately, such a mindset breeds racial  
20 resentment, and thus, anti-Asian hate.

21 While the focus of this hearing is anti-  
22 Asian hate crimes, any given Asian individual in the  
23 U.S., out of a total population of about 18 million,  
24 is statistically unlikely to be the victim of a hate  
25 crime. On the other hand, anti-Asian discrimination

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1 in education figures prominently in the life of every  
2 Asian American.

3 When I was 12, I saw my friend sobbing at  
4 school after acceptance letters to Lowell High  
5 arrived. She missed the cutoff score for Chinese  
6 students by just one point. If she had been any other  
7 race, she would have gotten in.

8 Selective high schools like Lowell High in  
9 San Francisco, the screened schools of New York City,  
10 and number one ranked Thomas Jefferson in Virginia are  
11 all fighting misguided attempts to make their student  
12 bodies match area demographics, equity. All of these  
13 attempts involve degrading or eliminating the  
14 consideration of academic proficiency in admissions.  
15 Asians bear the brunt of these unconstitutional  
16 attempts at racial balancing.

17 Even at Harvard, an Asian applicant with a  
18 25 percent chance of getting in would have a 95  
19 percent chance if he were only able to check the  
20 African American box instead. Nothing else about him  
21 would have to change.

22 The role of the government is not and  
23 should not be to put the thumb on the scale in order  
24 to produce racially proportionate outcomes. The goal  
25 should not be equal outcomes or equity but rather

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1 equal opportunity. The government's role is to ensure  
2 that no one faces discrimination on the basis of race.

3 On the matter of hate crimes, that means  
4 better crime prevention generally in the form of  
5 increased police presence, surveillance of hotspots,  
6 predictive policing, and especially imprisonment of  
7 repeat offenders.

8 On the issue of affirmative action, that  
9 means recognizing that such policies discriminate  
10 against Asians in favor of objectively less qualified  
11 applicants. If you believe that underrepresented  
12 groups deserve special help, then you also believe  
13 that there are overrepresented groups that deserve to  
14 be discriminated against. These are inextricably  
15 linked, and the latter is clearly unconstitutional.

16 If the Supreme Court bans race-based  
17 affirmative action, it is the duty of the government  
18 to enforce the ban as vigorously as it once enforced  
19 *Brown v. Board of Education*.

20 Thank you. I yield my time.

21 COMMISSIONER KIRSANOW: Thank you, Ms.  
22 Yap. Mr. Yang.

23 MR. YANG: Thank you. Thank you to the  
24 Commission for holding this important hearing.

25 My name is John Yang. I'm the President

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1 and Executive Director of Asian Americans Advancing  
2 Justice, AAJC.

3 Professor Jeung has laid out some of the  
4 root causes of anti-Asian hate and its impact, and Jo-  
5 Ann has contextualized this with the life experiences  
6 that we all feel every single day.

7 I want to talk about how the government  
8 could move forward by focusing on solutions, on  
9 language, on education, and on community.

10 First, on language. Professor Jeung  
11 illustrated whenever the United States has an economic  
12 or national security concern, Americans of Asian  
13 descent have faced a backlash. To be clear, I am not  
14 saying that these threats are not real. We do have  
15 real geopolitical tension with the Chinese Communist  
16 Party and authoritarian government, whether it's a  
17 Xinjiang Muslim minority in Xinjiang, whether it's  
18 democracy in Hong Kong, whether it is free speech with  
19 respect to Chinese citizens. But even as we talk  
20 about these issues, we must be careful to use a proper  
21 nuance and exercise responsibility in our language.

22 We must affirmatively emphasize that Asian  
23 Americans are Americans and contribute to our economy,  
24 our well-being, our liberty, and our prosperity. We  
25 must be careful to distinguish between the Chinese

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1 governmental action on the one hand and Chinese and  
2 Asian Americans and the society on the other.

3 When federal officials suggest that this  
4 is an all of society problem or that all Chinese  
5 students or scholars or scientists are suspected of  
6 being spies for the Chinese government, this creates a  
7 suspect class where Chinese Americans and Asian  
8 Americans are deemed to be spies in the minds of all  
9 Americans. References to Asian Americans as being  
10 sneaky, cunning, untrustworthy feed on stereotypes  
11 that lead to this hate that we are talking about. We  
12 would encourage all relevant federal agencies to work  
13 with all stakeholders, develop best practices for  
14 language.

15 In talking about language, I would also  
16 emphasize the need for language access. One-third of  
17 the Asian American community is limited English  
18 proficient. And that means that if material is  
19 presented only in English, we will not be able to  
20 access it and use it.

21 Toward that end, this Commission in May of  
22 2020 said that Asian Americans must always -- for this  
23 Commission, the federal government must always take  
24 into account the critical requirement to provide  
25 language access for limited English populations. I

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1 would note that the media advisory agenda for this  
2 hearing was done in Chinese and Vietnamese.

3 Under Executive Order 13166, federal  
4 agencies and entities receiving federal funding are  
5 required to provide meaningful access to Asian social  
6 services in limited English proficient individuals.  
7 In practice, we have found that significant gaps in  
8 these resources and for our LEP populations that are  
9 underserved. I would urge federal agencies to review  
10 their compliance with Title VI in Executive Order  
11 13166.

12 Second, let me talk about education. To  
13 dispel the myth of the perpetual foreigner or the  
14 model minority, we need to ensure that education is  
15 inclusive of all marginalized communities including  
16 the Asian American community. This is a root cause  
17 that we must address.

18 This includes ensuring expeditious funding  
19 and work on the creation of a national museum for  
20 Asian-Pacific American history and culture. This  
21 includes Asian-Pacific American history in K through  
22 12 education. This is part of a larger effort that  
23 all of us share, that all of us need to address  
24 together to tell a full account of American history  
25 that is inclusive of Asian-Pacific Americans, African

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1 Americans, Native Americans, Hispanic Americans, and  
2 LGBTQ Americans. All of these communities have too  
3 often been ignored in history books, left out of  
4 social studies, and these communities' authors have  
5 been silenced, ignored, or banned.

6 Also, on the subject of education, I  
7 respect my colleagues including friends like Lee  
8 Cheng, who will testify later, on whom I differ on  
9 subjects such as magnet schools and affirmative  
10 action. But in our assessment, these are not examples  
11 of anti-Asian racism, which is the subject of today's  
12 hearing. These policies are designed to create  
13 greater opportunities for bright and meritorious  
14 students who do not have equitable resources and who  
15 are often overlooked. It is recognition that the  
16 merits of a student exclude so much more and extend  
17 beyond test scores and grades. Indeed, many Asian  
18 Americans and Asian-Pacific Americans have benefitted  
19 from these policies.

20 On affirmative action, there's one  
21 important thing to recognize. It is that Asian  
22 Americans support affirmative action. Polling has  
23 demonstrated this time and again. But more  
24 importantly, affirmative action is not about quotas.  
25 It is not about lowering the bars to admissions.

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1 Rather, it is simple recognition that race still  
2 matters in our country, and a student must be able to  
3 express their full story including their story about  
4 their own race.

5 Again, any discussion about college  
6 admissions must be holistic. 20 to 30 percent of  
7 college admissions for prestigious universities are  
8 based on relatives to alumni; relatives to staff; are  
9 based on sports scholarships; and the so-called  
10 President's List, which consists of donors and what  
11 are considered notable figures. We are contorting the  
12 discussion if we only focus on affirmative action.

13 Lastly, I would want to touch on community  
14 and how the federal government can make itself more  
15 accessible to our community.

16 Legislation such as the COVID-19 Hate  
17 Crimes Act, the Jabara-Heyer NO HATE Act, has been  
18 helpful to many in our community. It's provided  
19 grants to our community groups fighting hate. It  
20 includes innovative models like restorative justice  
21 that many communities embrace. It recognizes that  
22 reporting hate should happen not only through law  
23 enforcement but health services. Those are examples  
24 of where the federal government is making a difference  
25 and responding.

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1 I know that Manjusha Kulkarni will dive  
2 into more deeply the subject of data and the work of  
3 Stop AAPI Hate that has been wonderful for  
4 contributing to our community.

5 One thing I do want to emphasize -- and  
6 respectfully referring to the prior speaker -- one  
7 thing I want to make clear is the narrative cannot be  
8 about African American on Asian hate. That is why  
9 these statistics are important. And I understand we  
10 have disagreements about them, but the statistics  
11 consistently show that African Americans are not  
12 overrepresented in hate incidents against the Asian  
13 American community. And this is important because  
14 this is creating a division, a divisiveness, that is  
15 unnecessary within all of our communities.

16 While the COVID-19 Hate Crimes Act does  
17 provide examples of where the federal government can  
18 help, federal government can do more.

19 With respect to grants, the grantmaking  
20 process is often opaque and cumbersome, especially for  
21 communities that really struggle and would benefit  
22 most from the money. Without focused outreach and  
23 local touchpoints, federal government will not be  
24 trusted and will not be used by our community.  
25 Sustained commitment to engagement in culturally and

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1 linguistically sensitive manners is critical.

2 Look, there is much work to be done, and I  
3 am hopeful that a report by this Commission  
4 highlighting these issues will spur not only federal  
5 agencies to take greater action but for all  
6 policymakers to do so as well.

7 Thank you very much, and I look forward to  
8 your questions.

9 COMMISSIONER KIRSANOW: Thank you, Mr.  
10 Yang. Mr. Levin.

11 MR. LEVIN: Commissioners, thank you so  
12 much for having me today.

13 There was a great American who said the  
14 following, "If you have the feeling that something is  
15 wrong, don't be afraid to speak up." He further said,  
16 "Every day in school we said the pledge to the flag,  
17 'with liberty and justice for all,' and I believed all  
18 that." That's Fred Korematsu. Okay?

19 It's time that we set the record straight  
20 for our Asian American brothers and sisters and also  
21 set the record straight on incorrect information that  
22 has just come up today before this panel. But let me  
23 just introduce myself to you.

24 I'm the son of a felon. My father lied  
25 about his age as a teenager to go to Europe to fight

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1 the Nazis and was captured as a teenager 78 years ago  
2 and was one step away from death. The rest of my  
3 resume doesn't matter, but you can look it up if you  
4 like. And I'm in the New York Times today.

5 Thank you so much for your long-standing  
6 work. The year that they barred nine Black students  
7 from Little Rock High was when you got your marching  
8 orders to make America what it aspires to be. And  
9 what an honor to be here with all of you and thank you  
10 all.

11 I've been doing this for over 36 years,  
12 and my research has been used in the promulgation of  
13 every major federal hate crime law, including the Hate  
14 Crime Statistics Act. So let me just -- I'm throwing  
15 this out because I've got to set the record straight  
16 here.

17 First of all, your data's wrong. The FBI  
18 just updated its data. It's not 305, it's 746, and  
19 that doesn't include Pacific Islanders.

20 If we could go to some slides. I'm just  
21 going to get straight to it.

22 This is the increase in reported hate  
23 crime. Okay? By the way, if you look at Bureau of  
24 Justice Statistics, no, it's not the same as violent  
25 crime overall. In fact, violent hate crimes have

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1 risen more over the last decade than overall  
2 crime in their research.

3 If we could go to the next slide real  
4 quick because I don't have a lot of time.

5 If you look at the bottom, look at that  
6 explosion in 2020. Those months, from June forward,  
7 were worse than any month in the previous decade.

8 Let's go forward again. We don't have a  
9 lot of time.

10 This is the latest data. By the way, I'm  
11 sure someone's going to twist it. Okay? This is '20  
12 to '21 where we saw a record. We saw a record in  
13 anti-Asian violence. And this is FBI.

14 By the way, FBI's also wrong. Okay, they  
15 said there was 11.6 percent increase. It was a 31  
16 percent increase in '21. Just use their top-line  
17 numbers because what they did is they kind of compared  
18 like the DOW Industrials to the Russell 5000. And you  
19 can't do that. So let's move forward.

20 This is anti-Asian hate crime in the  
21 United States. We have had an invisible record  
22 because we have had instances where the FBI has had to  
23 supplement its data for the last two years.

24 By the way, the people who are in charge  
25 of that program -- very nice people -- and I asked

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1 them to supplement it. So I'm not trying to sound  
2 angry. But they have to deal -- like a professor has  
3 to deal with students -- they have to deal with 18,000  
4 police agencies that don't turn in their homework on  
5 time.

6 And let me just tell you about the data.  
7 Let's look at this because we found, in our latest  
8 multi-city study, which is very accurate, we showed an  
9 overall 29 percent increase in 2021. FBI showed 31.  
10 73 percent rise in anti-Asian hate crime in 2020, and  
11 167 percent in 2021.

12 In the cities, it was even more. FBI,  
13 2022 data we don't know yet , but we had a 35 percent  
14 decline in the major cities in anti-Asian hate crime.  
15 Guess what? That would still be a record if it  
16 wasn't for 2021.

17 So we're talking about like oh, wow, well,  
18 we had a slightly better Category 5 tornado or  
19 hurricane. And what I'm afraid is people are going to  
20 use that number and say oh, whoa, problem solved.

21 If we could move forward with the slides,  
22 please. Again, we saw records in 2020 -- I'm sorry -  
23 --we saw record months in 2020. And by the way, yes,  
24 you see how it went down? Guess what? If you were to  
25 look at the first quarter of 2021, after the

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1 insurrection -- and yes, it was an insurrection --  
2 when we had a shift to debates about vaccines, and we  
3 saw an increase in hospitalizations, we saw more anti-  
4 Asian hate crimes just in New York City alone than --  
5 there was about a quarter, I think, of the increase in  
6 the whole country. So we saw quite a bit.

7 By the way, is all data limited? Yes. I  
8 don't have the time to go into all the limitations.  
9 Now, with respect to hate crime being just like all  
10 crime, you can't cherry-pick homicides. That's like  
11 less -- it's a fraction of 1 percent. Okay?

12 All the major research, whether it's Nolan  
13 and Bennett in 2006 or McDevitt, there are different  
14 types of offenders, and you can't treat them all the  
15 same. Okay?

16 In New York City, in the first half of  
17 2021, just 49 percent of hate offenders were listed as  
18 emotionally disturbed persons. And as was the only  
19 person on the panel who actually arrested people in  
20 New York, let me tell you, that's something where  
21 there's a mental health issue that is apparent when  
22 you label someone an EDP.

23 If we could just go forward again.

24 No, we do need education. Look at this.  
25 In 2020 -- by the way, do you see how that went down?

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1       Guess what? That shot up more in 2021. And why  
2       don't I have it? Because the FBI hasn't given us data  
3       that we can disaggregate this year. They've given us  
4       a little bit of data but not that we can disaggregate.  
5       That chart line would pop through the ceiling.

6                So there's a seasonality with respect to  
7       hate crime and anti-Asian hate crime. And what I'm  
8       concerned about is if you look at correlations with  
9       victimization surveys, if you look to increases with  
10      respect to online hate, let me tell you something, the  
11      best professor in the Cal State system is here with  
12      you today, and he sits at the other end of the table.

13      His data is correct. And his conclusions are  
14      correct.

15               The toxic social media landscape -- and  
16      when we saw a Congress person, secretary of state use  
17      stigmatizing language against Asians, and then a week  
18      later we saw the President, guess what? Within days  
19      anti-Asian hate crime on a day-to-day tick peaked. We  
20      do this -- I've been doing this for decades.

21               Hate crimes are not like all types of  
22      criminality. There's a printed circuit of stereotypes  
23      that Dr. Robin Williams of Cornell said label certain  
24      individuals as legitimate targets of aggression, and  
25      there are certain circumstances where people who would

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1 otherwise not be criminals and not offend do offend,  
2 like probably that person who sprayed Lysol all over  
3 that poor woman.

4 And I don't understand how we can sit here  
5 today and make this a debate about affirmative action  
6 when we heard the testimony of Jo-Ann Yoo. And I'll  
7 tell you something. Every time I go -- and I'm going  
8 to shut up right now. Just give me one second here.  
9 I came from California. Just give me one second.

10 Every time I go to panels and this and  
11 that, there are people from the Asian American  
12 community that come up to me and say oh, my  
13 octogenarian parents were attacked twice in six  
14 months. Or someone else who's an attorney says my car  
15 was attacked.

16 We have to stop this, and we have to focus  
17 on education. And yeah, for people who murder Asian  
18 Americans, let them spend the rest of their lives in  
19 jail, but that's less than 1 percent of all offenders.

20 I want to thank you so much for this  
21 privilege today and thank you for what you're doing to  
22 make this country better for all our brothers and  
23 sisters and especially our Asian American brothers and  
24 sisters who I care about so very much.

25 Thank you so much.

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1 COMMISSIONER KIRSANOW: Thank you, Mr.  
2 Levin. And thanks to all the panelists.

3 I'm going to open it up for questions, and  
4 I'll exercise the privilege of the Chair and just ask  
5 if any panelist wants to respond to any other  
6 panelist.

7 MR. LEVIN: Yeah. The majority of the  
8 anti-Asian hate crime offenders in the United States,  
9 according to the FBI, are White.

10 One other quick thing. The top 50 cities  
11 -- and we get most of the hard data, the high  
12 reporting is from cities. Okay? They have different  
13 demographics.

14 So I heard the same thing with regard to,  
15 like, a tweet that went viral about anti-Semitic  
16 attacks. Guess what? It's about 1 percent more,  
17 about 14 percent -- something like that -- Black  
18 offenders on Jews nationally.

19 But when you have people living right next  
20 door to each other -- right -- you're going to have a  
21 different type of offender mix, and of course, someone  
22 will exaggerate that and not use the overall data that  
23 is available. Thank you so much.

24 COMMISSIONER KIRSANOW: Yes, Ms. Yap.

25 MS. YAP: I would like to respond to Mr.

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1 Levin.

2 Because you've brought up proximity, that  
3 is why I did include statistics about both directions  
4 of offending because when you live close to somebody,  
5 they also live close to you. So if it's a matter of  
6 proximity, then the rate of violence should be pretty  
7 similar.

8 I also did analysis on the neighborhood  
9 that the average Asian person lives in and like what  
10 percent of each race they live in -- their neighbors  
11 are, so I do believe that's been addressed.

12 MR. LEVIN: That's still wrong.

13 COMMISSIONER KIRSANOW: Mr. Jeung.

14 MR. JEUNG: I'd like to really distinguish  
15 between hate incidents, which make up the great  
16 majority of our cases, and hate crimes, which make up  
17 a small fraction. We really need to address what the  
18 majority of Asian Americans are experiencing, what  
19 we're experiencing trauma from are just regular  
20 microaggressions of verbal harassment. But they're  
21 not micro in their impact. Right?

22 We're getting shunned. We're getting spat  
23 upon. We're facing 8 percent of Stop AAPI Hate cases  
24 are civil rights violations. So you have to address  
25 the breadth of racism that Asian Americans are

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1 experiencing if we want to, again, serve our  
2 communities.

3 So to focus solely on hate crimes, I  
4 think, does a disservice, doesn't get to the roots of  
5 the issue. And again, the hate incidents that can,  
6 then, rise to the level of assault, and so that's why  
7 we need to get at the breadth of incidence.

8 I think the other danger is conflating the  
9 crime that Asian Americans experience and then  
10 conflating that as any experience of crime is a hate  
11 crime.

12 So I think Ms. Yap is correct that those  
13 of us living in low-income maybe high-crime areas are  
14 victims of crime at high rates, but everybody in the  
15 community are victims of crime in those communities.  
16 So it's not necessarily Black on Asian crimes. The  
17 Black and African American community, they're also  
18 victims of crime in those neighborhoods.

19 So you have to be careful on focusing on  
20 race crimes but instead -- like Ms. Yap just said --  
21 look at the communities where there are high crime  
22 rates and distinguish them from the hate crimes that  
23 other people are experiencing.

24 MR. LEVIN: Could I just respond to him  
25 for a second?

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1 COMMISSIONER KIRSANOW: Sure. Go ahead.

2 MR. LEVIN: He's totally right. And one  
3 of things that we like to do is take that crime data -  
4 - and this happens all the time. I'm so glad that you  
5 brought you this up.

6 We just don't use it singularly. We  
7 combine it where we can measure epithets online. And  
8 we look at the wonderful -- God bless you. You're a  
9 hero of the Cal State system.

10 This focus on victimizations beyond  
11 crimes. When we look at more data -- like, for  
12 instance, if a weather person just looked at  
13 barometric pressure but didn't look at radar and  
14 didn't look at temperature change -- right -- so we  
15 have to combine them. And we've been seeing what  
16 appears to be a shift in types of offenders.

17 And that is it looks like, at least  
18 according to Professor James Nolan -- we have a piece  
19 coming out in Northwestern's Criminal Law and  
20 Criminology Review this month -- it looks like we're  
21 seeing an older set of offenders coming around now.  
22 But we have different types of hate offenders.

23 And one thing with regard to African  
24 Americans because this comes up a lot, and it gets  
25 twisted, and it's wrong. It's not only statistically

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1 wrong. It's a moral evil. And I'm not going to be a  
2 part of it.

3 If we look at New York City, for instance,  
4 we certainly did have attacks by African Americans  
5 against Asians. But when we went across the country  
6 where the demographics were different, we had a  
7 change.

8 The other thing, too, is just look at this  
9 week about maternal deaths per African Americans with  
10 regard to births. Right? So African Americans are  
11 more likely to be in poverty and have all kinds of --  
12 I come from a medical family, so this is -- you can't  
13 imagine how funny the rest of my relatives are going  
14 to be looking at this.

15 But access to healthcare, including mental  
16 healthcare, is far more limited with respect to the  
17 African American community. So some of that -- if we  
18 just went colorblind and said mentally ill offenders -  
19 - we see a lot of offenders with respect to hate crime  
20 who have some type of mental illness. And the more we  
21 ignore that -- not looking at it as a race thing, but  
22 looking at a poverty thing and a mental illness issue  
23 -- I think that's more productive. We have to have  
24 education be a part of this.

25 To say that hate crimes are just the same

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1 as all criminality, no. And I'm going to quote the  
2 dean, Jack McDevitt, who's the first one to come up  
3 with the typology back in 1989 with the American Study  
4 of Criminology. I added the mentally ill offender,  
5 but he looks at the thrill offender; the defensive-  
6 reactive offender, who's reacting to a threat or a  
7 change in their neighborhood; and the mission  
8 offender, like the neo-Nazi skinheads. There are  
9 different types of offenders, and they require, and  
10 America requires a different response.

11 MR. LEHMAN: What's the composition -- the  
12 percentage-wise composition?

13 MR. LEVIN: I'm sorry. Percentage-wide  
14 composition?

15 MR. LEHMAN: So McDevitt and Levin look --  
16 they look at -- they derive their typology from their  
17 analysis of BPD data. Right?

18 MR. LEVIN: Correct.

19 MR. LEHMAN: And they say -- what's the  
20 distribution of those three types in those offenders?

21 MR. LEVIN: Well, when they first came out  
22 with it, it was the thrill offenders.

23 MR. LEHMAN: That's the fourth one but  
24 later. But sure, yeah.

25 MR. LEVIN: But what was the fourth one?

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1 MR. LEHMAN: They add the --

2 MR. LEVIN: No. They just divide the --

3 MR. LEHMAN: This is the Bennett thing.  
4 Sorry. I'd just like an answer to the question, even  
5 the original one, even 89 or 93.

6 MR. LEVIN: I'm sorry. What is your  
7 question?

8 MR. LEHMAN: What's the distribution?

9 MR. LEVIN: They had much more thrill  
10 offenders. I think it was around 60 percent.

11 MR. LEHMAN: It's 66. It's about 32  
12 percent roughly --

13 MR. LEVIN: Right. From 1989.

14 MR. LEHMAN: -- percent for defensive.  
15 Yeah. But it's roughly the same in the 2003 --

16 MR. LEVIN: Right. Which proves my point  
17 that education --

18 MR. LEHMAN: -- same in 2010. One percent  
19 are mission offenders.

20 MR. LEVIN: I mean, who commits the most  
21 homicides?

22 COMMISSIONER KIRSANOW: Okay. Let's try -  
23 -

24 MR. LEHMAN: Yeah. And that's very --

25 COMMISSIONER KIRSANOW: I'm going to have

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1 to stop the crosstalk because the listeners are not  
2 going to be able to discern what's going on here. So  
3 one person at a time.

4 I'm going to have to call on Mr. Yang.

5 MR. YANG: Yeah. Thank you. I would like  
6 to jump in here just to kind of refocus the discussion  
7 a little bit because I think the discussion here the  
8 purpose of this hearing is to talk about federal  
9 response to anti-Asian racism. And so I think the  
10 panelists have all done a good job of talking about  
11 different viewpoints.

12 You know, I still go back to sort of I  
13 think where we all agreed to varying extents is on  
14 education, is on investment to the community. We do  
15 have sometimes differing opinions about what that  
16 means, but we have -- I think we need to think about  
17 what data means because I think there's an agreement  
18 that there's data that matters. Having relevant data  
19 matters, and the government plays a large role in  
20 that. Language matters, and the government -- all of  
21 our policymakers -- has a huge difference in how we  
22 talk about these issues and talk about these  
23 responsibilities. So I would like to refocus there.

24 I do want to speak to one thing that I  
25 want us to be very clear about with respect to sort of

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1 what I am hearing about the divisions between the  
2 African American and Asian American community.

3 Let me be clear about this. Is there  
4 anti-Blackness in the Asian American community? Yes,  
5 there is. Is there anti-Asian-ness in the Black  
6 community? Yes, there is. And this is where, again,  
7 education is important. Right? Facts are important  
8 because there are those that are trying to use these  
9 divisions to create wedges within all of our  
10 communities in a manner that is going to prevent  
11 progress.

12 And so, what I would urge all of us to do  
13 is think about sort of how we get to better facts, how  
14 we get the better data, how we are careful with our  
15 language and responsible with our language in how we  
16 move forward.

17 COMMISSIONER KIRSANOW: Mr. Lehman, did  
18 you want to respond?

19 Ms. Yoo?

20 MS. YOO: I wanted to address the mental  
21 health question. You know, we have to think about the  
22 lack of mental health support for victims, for the  
23 community in general.

24 You know, we scramble to find  
25 professionals who can speak the language that the

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1 victims need support in, not just the victims, but the  
2 families and the entire community.

3 After last year, the entire Asian American  
4 community in New York City, we were afraid to leave  
5 our homes, and we were reeling every time we had to  
6 step outside. We all had tremendous anxiety.

7 And young professional women working in  
8 corporations making more in one year than I will ever  
9 make in my lifetime, they were calling me, saying, how  
10 do I go to work? I'm afraid to get on the subway.  
11 What do I do? Do I -- how do I navigate this? This  
12 has been very scary. We have tremendous, tremendous  
13 anguish right now.

14 And I appreciate these number  
15 conversations because that's where we need to start  
16 that. We are a census information center, so for us,  
17 at the Federation, everything works starting with data  
18 and numbers. But the reality is there are real people  
19 behind those numbers, and we need to think about what  
20 is happening in my community.

21 And I will tell you right now, my  
22 community, we are having a meltdown. This entire  
23 country's having a meltdown, and I appreciate these  
24 numbers conversations because that's what needs to  
25 happen, but I need to have solutions.

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1 I need to have funding to hire and train  
2 mental health professionals in language to be able to  
3 offer culturally competent programming so that that  
4 way nobody's afraid to leave their homes and nobody's  
5 afraid to look at their neighbors and think that  
6 they're going to be attacked.

7 COMMISSIONER KIRSANOW: Any other  
8 Commissioners? Questions? Ms. Garza?

9 COMMISSIONER GARZA: Yes. I do have a  
10 question. Professor Jeung? Did I pronounce that  
11 correctly?

12 MR. JEUNG: Jeung.

13 COMMISSIONER GARZA: Jeung. Okay. So I  
14 wanted to ask you about -- you mentioned in your  
15 testimony how political rhetoric and what we've seen  
16 happen around anti-Asian rhetoric has sort of fed into  
17 policies that are being put forth.

18 I'm from Texas, and very recently our  
19 state legislature was considering a ban -- or still,  
20 to an extent, considering a ban on Chinese Americans  
21 owning property. Now it's been reshaped, and now it's  
22 businesses in particular. And so, I was hoping I  
23 could hear from you or from any of the other panelists  
24 that have been looking at these issues.

25 You know, what are we seeing happen at the

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1 state level in these policies that are implementing  
2 these anti-Asian sentiments and continuing to stoke  
3 anti-Asian sentiments across the country?

4 MR. JEUNG: Yeah. I think that's a great  
5 question that the policies implemented at the state  
6 level, at the local level, at school boards that,  
7 again, prohibit, for example, non-Americans from  
8 buying property that then sanctions further violence  
9 because citizens recognize well if government thinks  
10 it's okay to exclude noncitizens from owning property,  
11 it's okay for us to then yell at, exclude, mistreat  
12 individuals. And then policymakers are emboldened to  
13 then pass further xenophobic policies.

14 And I think that's what we see occurring.  
15 It's hearkening back to the 19th century, the early  
16 20th century when we had several anti-Asian alien land  
17 laws, the Chinese Exclusion Act.

18 And at the same time of the Chinese  
19 Exclusion Act and these alien land laws, we saw  
20 massive mass displacement of Asian communities. And  
21 people don't hear about that in history. Over 168  
22 Chinese communities were actually forcibly driven out  
23 right after the Chinese Exclusion Act.

24 So there is that sort of cause and effect,  
25 the correlation that if the government sanctions

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1 xenophobic policies, if it perceives certain  
2 communities as outsiders undeserving of rights, then  
3 mob violence then occurs.

4 And so, I think we have to be really  
5 careful at the state and local level and be on guard.

6 And what the federal government's response should be  
7 is to really safeguard the communities.

8 When you see sites that are banning books  
9 or instituting laws, land laws, those will then become  
10 hotbeds for interpersonal violence against Asians.

11 COMMISSIONER GARZA: Thank you.

12 MR. YANG: And if I might add onto that,  
13 as you heard me testify, I recognize the real national  
14 security challenges we have.

15 So my framework on some of these laws are  
16 how does ACTAS actually benefit national security?  
17 And what expertise does the legislative body, or  
18 whatever body's involved, have in making that  
19 determination? And this is where I have serious  
20 concerns.

21 Then, the second question I have is what  
22 is the impact, the secondary impact, that such  
23 legislation or policy will have on the community? One  
24 aspect of things such as alien land laws the way that  
25 these are being discussed is would it be the right of

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1 the prior owner to look at citizenship papers, to look  
2 at business interests? How will this be enforced?  
3 Does the Attorney General get to sue?

4 So those are the real policy implications  
5 that I think, whether it is the federal government or  
6 state and local government, should be thinking about  
7 in determining these things.

8 You know, even setting aside, obviously,  
9 what we perceive to be some of the racist quality of  
10 these, again, I want to give some deference to  
11 national security, but let's talk about this in a  
12 smart way.

13 MR. LEVIN: Could I just interject real  
14 quick? Gallup, I think it was 2018, 11 percent --it  
15 was either 2017, 2018 -- 11 percent China greatest  
16 enemy; 49 percent today.

17 And again, using the same disclaimer that  
18 my friend John uses, yeah, there are legitimate issues  
19 that we have to address across a variety of things,  
20 but what ends up happening when politics gets thrown  
21 into that stew, you know, once you put some dirt in  
22 the stew, there's dirt in the stew.

23 And let me just give you an example about  
24 how legislation and other things can seem to  
25 correlate. We saw in 23 states legislation relating to

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1 transgender Americans and gender-nonconforming  
2 Americans. And we saw our friends at Princeton ACLED  
3 showed a massive increase in protests, including  
4 violent protests, sometimes with folks like the Proud  
5 Boys showing up. Guess what we found is the second  
6 most attacked group in 2022 -- you're getting the  
7 latest data here -- gender-nonconforming. Top five:  
8 other races, gender-nonconforming, LGBTQ mixed, anti-  
9 Semitic, anti-transgender.

10 So even sometimes when we see like, for  
11 instance, anti-gay male and anti-lesbian either go  
12 down a little bit or stay flat, we see this mutation  
13 of othering. And it correlates to the kind of  
14 discourse that we're seeing in politics and also on  
15 social media, which is a whole other ball of wax that  
16 I'd love to see this Commission handle at another  
17 time.

18 COMMISSIONER GARZA: Thank you for that. I  
19 do have one more question for Ms. Yoo if I can.

20 COMMISSIONER KIRSANOW: I think we're  
21 over. I'm sorry, but this will have to be the last  
22 question because we're up on time now.

23 COMMISSIONER GARZA: Okay. I do want to  
24 take it back to the very human aspect and what our  
25 Asian brothers and sisters are experiencing.

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1                   What kind of support has your organization  
2 received? Where are the gaps? You know, I'd like to  
3 hear more about the gaps in terms of making sure that  
4 the federal response is adequate.

5                   MS. YOO: Thank you for that question.

6                   I agree with John when he talked about  
7 funding coming through. There is a lot of money. You  
8 know, when all the violence is happening, people are  
9 throwing money at you. And for us, we were throwing  
10 money back at the community to be able to build  
11 infrastructure.

12                   Literally, I've been telling my staff we  
13 are building the airplane. We're paving the runway as  
14 we're flying this plane. And I honor my staff who  
15 never got to sleep in the first year because this is  
16 what we were doing. And it was great to have money.  
17 It was great to be able to pay for stuff to be able to  
18 get things going, but the media gaze has slowed, and  
19 so now the money has slowed. And so, we are trying --  
20 and the violence hasn't stopped.

21                   We need to be able to -- and some of those  
22 federal applications, it is so cumbersome. Many of  
23 the nonprofit organizations in our community are  
24 small. They don't have the capacity to write  
25 sophisticated proposals. Some of these nonprofits

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1 function with two, three staff people. There isn't  
2 that capacity. There isn't the language capacity.  
3 There isn't the professional quality proposals that  
4 they can turn out. They've got to get the money  
5 deployed quickly on the ground. And it takes forever.  
6 It takes forever.

7 And we are struggling because we are  
8 paying for, not just victim services, but also  
9 figuring out how do we have program money so that that  
10 way we can get food programs going for seniors? How  
11 do we make sure that we pay for therapists? How do we  
12 make sure that there's overall mental health  
13 programming in our community?

14 And so, I think if the government responds  
15 -- if I can change one thing -- if I had a magic wand  
16 that I can change tomorrow, it would be that the funds  
17 deployed to our community comes faster without a lot  
18 of reporting knowing that we are best equipped to know  
19 how to spend this money because this is the work that  
20 we're doing.

21 COMMISSIONER MAGPANTAY: And your staff is  
22 multilingual?

23 MS. YOO: Yes. Thank you. Many, many  
24 languages.

25 (Simultaneous speaking.)

1                   COMMISSIONER MAGPANTAY: I just wanted to  
2 make sure.

3                   MS. YOO: Many, many languages. Many,  
4 many languages our staff. But we also have member  
5 agencies, so that when we do anything, it gets  
6 translated into seven to ten languages. And our  
7 membership agencies have a lot of language capacity.

8                   So if we do a press conference, for  
9 instance, when we had a press conference on public  
10 charge, it was done in 10 languages. Yes, it took a  
11 little while, but every community needed to know what  
12 their rights were, deserved to know what the facts  
13 were. So it does take a while. It costs money. But  
14 this is how we communicate because this is what we  
15 need to do.

16                   COMMISSIONER GARZA: Thank you.

17                   MS. YOO: Thank you.

18                   COMMISSIONER KIRSANOW: I do have one  
19 question. I just need a clarification.

20                   Was I hearing you correctly that Texas is  
21 proposing some legislation to prohibit Chinese  
22 Americans from owning land or Chinese from owning land  
23 because I heard Chinese Americans?

24                   MR. YANG: Right. It has been a moving  
25 target to have an amendment offered. Right now, it is

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1 foreign nationals, and now it is more focused on  
2 business rather than on individual personal land  
3 ownership from my understanding. But it is still a  
4 moving target.

5 COMMISSIONER KIRSANOW: And if such  
6 legislation is passed, my sense is it's because of a  
7 concern for national security. And there has been  
8 considerable purchase of land by the People's Republic  
9 of China in strategically sensitive spots in the  
10 United States of America. How do we address that?

11 MR. YANG: And you bring up a very good  
12 point. There can be cases made -- and I want to be  
13 careful here because I am not an expert on national  
14 security, and I am not an expert on sort of how --  
15 sort of when we talk about military installations  
16 where there have been discussions -- but there can be  
17 appropriate things.

18 And if you think about CFIUS as being one  
19 of the places where we talk about these types of  
20 issues, there are appropriate forums to talk about  
21 these issues and how to address foreign investment and  
22 what that might do. That certainly -- the federal  
23 government in many ways is well-equipped to do.

24 But when we have state and local  
25 governments implementing these -- certainly the

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1 political debate in those climates have not focused on  
2 these nuances. That is where there is concern.

3 And then the repercussions. Again, I  
4 focus also on the impact on all of our communities  
5 being very, very drastic.

6 COMMISSIONER KIRSANOW: I want to thank  
7 the panelists. This has been very informative. We're  
8 going to be taking a short break. We'll reconvene at  
9 2:25 with Panel 2.

10 (Whereupon, the above-entitled matter went  
11 off the record at 2:13 p.m. and resumed at 2:24 p.m.)

12 PANEL 2: COMMUNITY STAKEHOLDERS AND  
13 ADVOCATES COMMISSIONER KIRSANOW:

14 Okay, we're going to begin with panel number two. And  
15 the witnesses for this panel are Cynthia Choi, who is  
16 Co-Executive Director of the Chinese for Affirmative  
17 Action; Dr. Wenyuan Wu, Executive Director for  
18 Californians for Equal Rights Foundation; Jennifer Wu,  
19 partner with Groombridge, Wu, Baughman & Stone LLP;  
20 Lee Cheng, who is co-founder of the Asian American  
21 Legal Foundation; and Manjusha Kulkarni, Executive  
22 Director of the AAPI Equity Alliance.

23 Because we have five panelists, instead of  
24 the seven minutes that we accorded everyone in the  
25 previous panel, you all have eight minutes now if you

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1 choose to use that.

2 PARTICIPANT: Lucky eight.

3 COMMISSIONER KIRSANOW: I know, it's like  
4 the Gettysburg Address or something. So we may as  
5 well begin. Let's go with Ms. Choi.

6 MS. CHOI: Thank you. Well, good  
7 afternoon, my name is Cynthia Choi, and I am the Co-  
8 Executive Director of Chinese for Affirmative Action.  
9 And I'm also one of the co-founders of Stop AAPI  
10 Hate. And I serve on the California Commission for --  
11 on the State of Hate.

12 I'd like to thank the Commission for  
13 inviting all of us here today on the perspective of  
14 federal response to anti-Asian racism, as it's been  
15 from my understanding over 30 years since there's been  
16 a real focus on the experiences of our communities.

17 At Stop AAPI Hate and CAA, we believe that  
18 data and informed analysis should drive our policy  
19 recommendations. Today we have over 11,000 incidents  
20 from all across the country. And for us, these are  
21 not just data points, these are real people who shared  
22 their stories and that of their loved ones.

23 I do want to state very clearly that a  
24 vast majority of the incidents are not hate crimes,  
25 but rather non-criminal hate incidents like verbal

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1 harassment, racist comments, and offensive gestures  
2 that those who report to us describe as traumatic and  
3 harmful.

4 In addition to our data, we also receive  
5 requests from support, like the mother of a student  
6 enrolled at Montana State University, who contacted us  
7 because her daughter was allegedly subjected to anti-  
8 Asian, anti-LGBTQ slurs. And who found a noose in her  
9 closet with a note telling her to kill herself.

10 At the same time, we don't want to  
11 minimize racially -- racially motivated acts of  
12 violence, like the incident in Bloomington, IL, where  
13 a woman repeatedly -- reportedly confessed to stabbing  
14 18-year-old student because it would mean, quote, one  
15 less person to blow up our country.

16 I'm here for them. At Stop AAPI Hate, we  
17 remain deeply concerned with the rise in anti-Asian  
18 hate and discrimination that is largely being fueled  
19 by racial scapegoating of Asians and Asian Americans,  
20 and specifically anti-Chinese political rhetoric.

21 In our latest report on the impact of  
22 anti-Asian political rhetoric, we cite multiple  
23 examples of political leaders and candidates unfairly  
24 blaming Asian people for current events, such as the  
25 economic downturn, the COVID-19 pandemic, and the

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1 threats to national security.

2 Our research demonstrates that this  
3 harmful rhetoric poses a significant danger to  
4 millions of Asian Americans in the United States. For  
5 example, we know that political rhetoric associating  
6 Chinese people with COVID-19 contributed to incidents  
7 of hate against our community.

8 In the week after President Trump first  
9 tweet using the language Chinese virus in March of  
10 2020, Twitter hashtags expressing anti-Asian sentiment  
11 increased 174 times.

12 Since then, Stop AAPI Hate has documented  
13 more than 2,000 hate incidents that include language  
14 blaming Asian people for COVID-19, some including  
15 threats of violence. And this number is only the tip  
16 of the iceberg.

17 We've also received hundreds of incidence  
18 reports that include baseless accusations of spying  
19 for the Chinese Government and multiple reports of  
20 incidents where Asian Americans were threatened with  
21 violence and accused of stealing jobs or harassed to  
22 go back to China.

23 It should be noted that the link between  
24 anti-Asian political rhetoric and anti-Asian hate is  
25 nothing new. And in fact, in 1992, this very body

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1 commissioned a landmark civil rights report, which  
2 found politicians were in part responsible for hate  
3 and animus directed at Asian Americans.

4 It stated, quote, "Political leaders  
5 contribute to the problem when they unthinking lash  
6 out at Japan as a cause of United States' economic  
7 difficulties." The report urged politicians to engage  
8 in responsible rhetoric, cautioning against race-  
9 baiting tactics and remarks that play on -- play upon  
10 racial and ethnic bias.

11 Three decades later, we find ourselves in  
12 the same situation. We are concerned that increasing  
13 levels of anti-Chinese political rhetoric we're seeing  
14 today will not only embolden others to commit racist  
15 acts, but also enshrine policies and embody  
16 institutional racism.

17 As been mentioned before, there is a  
18 troubling wave of policy proposals rooted in anti-  
19 Chinese discrimination, with lawmakers in Texas and  
20 other states pushing bans on Chinese land ownership,  
21 having a devastating impact on Chinese immigrants and  
22 others who are being targeted, preventing them from  
23 buying homes, settling their families, and developing  
24 roots in their community.

25 These proposals are reminiscent of the

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1 past policies that systematically harmed Asian  
2 Americans, as was mentioned in the prior panel, the  
3 Exclusion Act of 1882, alien land laws in the early  
4 1900s, and Japanese incarceration -- force  
5 incarceration of Japanese Americans. And of course  
6 more recently, the racial profiling and surveillance  
7 of Muslim Americans.

8 The intense anti-Asian rhetoric of this  
9 area has not only created a hostile environment for  
10 people like Vincent Chin, who was targeted in a brutal  
11 racist attack. It also led to institutionalize racism  
12 in the hands of our government.

13 Unless we act, the reckless anti-Chinese  
14 rhetoric and the policies of today will lead our  
15 nation down the same slippery slope in which -- in  
16 which racist fearmongering overtakes our shared values  
17 of equity and unity.

18 The federal government has a duty and an  
19 obligation to step in to enforce civil rights and to  
20 ensure all American are afforded equal opportunities  
21 and are treated with dignity and respect regardless of  
22 race, ethnicity, and immigration status.

23 We applaud the current administration for  
24 enacting a whole-of-government approach to equity. We  
25 strongly support efforts that entail auditing

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1 coordination across agencies to ensure our communities  
2 can benefit fully from these programs and policies, in  
3 particular that enforce our civil rights. Which also  
4 includes prioritizing language access.

5 And finally we want to stress that it's  
6 important that we have sustained and resource  
7 collaborations with community partners so that our  
8 government engages meaningfully with our -- and  
9 understands the community's diverse experiences with  
10 bias and discrimination so that they're fully  
11 understood and meaningfully addressed.

12 I want to thank you for your time, and I  
13 look forward to your questions later. Thank you.

14 COMMISSIONER KIRSANOW: Thank you, Ms.  
15 Choi. Ms. Wu.

16 DR. WU: I want to thank the Commission  
17 for this opportunity to testify on this hugely  
18 important topic of anti-Asian discrimination. My name  
19 is Wenyuan Wu. I represent Californians for Equal  
20 Rights Foundation.

21 I want to first make the following three  
22 points. Number one, criminal incidents targeting  
23 Asian Americans are egregious and must be addressed in  
24 the context of rising threats to public safety in  
25 general.

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1           Number two, framing anti-Asian hate crimes  
2           in a narrative of systemic racism or systemic inequity  
3           misleads the public on methodological and moral  
4           grounds.

5           Number three, persistent discrimination  
6           against Asian American students in education,  
7           justified under the names of diversity, equity, and  
8           race-based affirmative action is much more salient and  
9           consequential form of anti-Asian discrimination.

10          First, data from the FBI Crime Data  
11          Explorer shows a 90 percent increase from 2018 to 2021  
12          in crimes involving Asian American victims. An  
13          initial reading of such an increase could validate the  
14          Asian hate thesis, but further analysis reveals  
15          interlocking nuances.

16          On violent incidents by victim race and  
17          ethnicity, the percentage change from 2018 to 2021 was  
18          75 percent for White victims, 118 percent for Black  
19          victims, and 138 percent for Hispanic victims. These  
20          numbers also mirror trends in rates of violent crime  
21          offenders desegregated by race and ethnicity during  
22          the same period.

23          The rates of violent incident victims of -  
24          - and offenders per 100,000 people by race and  
25          ethnicity are even more telling. Severe imbalances at

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1 a group level between Asian Americans with lowest  
2 crime rates and certain minority groups that  
3 disproportionately commit violent crimes and fall  
4 victim to criminal violence deserves attention here.

5 Taking into account their percentages in  
6 the general population, Asian Americans can be said to  
7 be under-committing crimes by over five percentage  
8 points. And over, they are over-victimized by about  
9 4.5 percentage points. That is only if we were to go  
10 along with a crime to population proportionality  
11 rationale.

12 Official data between 1985 and 2020 shows  
13 a slight reversal of a historical trend of lowering  
14 crimes in recent years, especially since 2014. In  
15 other words, violent crimes committed by all racial  
16 and ethnic groups and victimizing all groups have been  
17 on the rise lately.

18 More alarmingly, given the current  
19 political climate in which activists and politicians  
20 have called for structural reforms to abolish  
21 proactive policing, the rates of crimes cleared by the  
22 police have decreased in major U.S. cities where such  
23 crime -- such reforms have been adopted to various  
24 degrees.

25 The crusade against law enforcement has

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1 done a huge disservice by degrading the dignity of the  
2 profession and the compromise in public safety. In a  
3 vicious cycle, many law enforcement agencies have  
4 responded to staffing shortages by lowering recruiting  
5 and training standards.

6 In short, when we situate crimes targeting  
7 Asian Americans in the broad context of increases in  
8 violent crimes and decreases in the capacity of law  
9 enforcement to adequately address crimes, the wave of  
10 Asian hate is part and parcel of general crime  
11 patterns.

12 Secondly, pegging anti-Asian crimes to  
13 racism lacks rigor. FBI reported 7,264 hate crime  
14 incidents in 2021, of which 4,470, or 65 percent, were  
15 motivated by race, ethnicity, or ancestry.

16 There was a 12 percent decrease compared  
17 with the total number of hate crimes in 2020, and a  
18 14.5 drop compared with the number of hate crimes  
19 motivated by race, ethnicity, or ancestry.

20 But the reports by Stop AAPI Hate, which  
21 are frequently cited in media as evidence of Asian  
22 hate endorses a much more expansive conceptualization.

23 Not only do hate crimes involving physical assaults  
24 are counted. Hate incidents such as verbal  
25 harassment, avoidance or shunning, denial of service,

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1 and online trolling are also calculated.

2 Of the 10,905 anti-Asian hate incidents  
3 documents in its 2020 national report, about 67  
4 percent were incidents of verbal harassment, and only  
5 16 percent were physical assaults. The former does  
6 not always result in an actual hate crime.

7 Therefore, the claim of unprecedented  
8 anti-Asian hate is inflated by events without  
9 traceable criminal element. These pitfalls are  
10 consequential.

11 Upholding anti-Asian racism as a  
12 structural issue warranting transformative changes can  
13 divert precious public policy focuses on public forums  
14 away from community building to ideological exercises  
15 that ultimately do not improve public safety.

16 The Stop Asian Hate movement has garnered  
17 tens of millions of funding from various entities.  
18 For instance, in March 2022, the California state  
19 government distributed \$40 million in grant funds to  
20 80 regional and local organizations to combat bias-  
21 motivated attacks.

22 For ideological reasons and also for  
23 profit, proponents of the Stop Asian Hate movement  
24 skew historical data and incorrectly paint a picture  
25 of systemic racism and the most underlying variable of

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1 hate incidents targeting Asian Americans.

2 Trumped-up charges of hate incidents can  
3 have a fearmongering psychological effect on members  
4 of the Asian American community, especially those who  
5 are first generation immigrants or low income.  
6 Imagine what bearing the burden of feeling like a  
7 perpetual victim and being pressured to support virtue  
8 signaling practices of condemning racism would do to  
9 an Asian American who has not analyzed the data.

10 He or she would feel powerless and  
11 threatened by imaginary enemy. He or she may even  
12 partake in unproven reforms of anti-racism and  
13 restorative justice, only to see an escalation in  
14 crimes harming the community because the underlying  
15 issues related to public safety would remain unsolved.

16 Last but not least, if policymakers and  
17 observers are serious about identifying and tackling  
18 discrimination against Asian Americans, they must  
19 confront the elephant in the room: systemic and  
20 ongoing anti-Asian discrimination in education through  
21 the practice of race-conscious admissions.

22 Whether it is in admissions to selective  
23 U.S. colleges and universities or in recruitment of  
24 gifted and talented students at the K to 12 level,  
25 evidence regarding high standards, de facto quotas,

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1 racial balancing, and negative stereotypes to limit  
2 the access of Asian American applicants abound.

3 In higher education admission barriers  
4 hampering the changes of Asian American applicants  
5 have been well documented by statistical evidence and  
6 eyewitness accounts. Racial preferences for the so-  
7 called under-represented minority students at elite  
8 colleges come almost entirely at the expense of Asian  
9 Americans.

10 The trend of racial preferences also  
11 continue at the graduate school level. Beyond elite  
12 schools, the penalty against Asian American students  
13 is endemic throughout the education ecosystem. A  
14 survey by Inside Higher Education revealed 42 percent  
15 of admission officers from private colleges and 39  
16 percent of admission officers from public colleges  
17 admitted that they hold Asian American applicants to a  
18 higher standard.

19 COMMISSIONER KIRSANOW: Dr. Wu, if you  
20 could begin to wrap it up.

21 DR. WU: In summary, I -- to reduce  
22 violence targeting Asian Americans, policymakers  
23 should devise solutions to improve public safety and  
24 support law enforcement.

25 On the other hand, if public policy

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1 decisionmakers are committed to combating  
2 discrimination and bias against Americans of Asian  
3 descent, they should not ignore the prevalence of  
4 race-conscious education policies, which  
5 disproportionately harm Asian American students.

6 Thank you again for hearing my testimony.

7 COMMISSIONER KIRSANOW: Thank you. Ms.  
8 Wu.

9 MS. WU: Thank you for having me. My name  
10 is Jennifer Wu, and I'm a patent lawyer in New York  
11 City. I am here because I became a civil rights  
12 lawyer, because there has been no federal response to  
13 anti-Asian racism.

14 Since 2020, I have represented nearly  
15 every victim in New York City who has died of anti-  
16 Asian violence. Michelle Go, the Deloitte consultant  
17 and vibrant woman who was pushed in the Times Square  
18 subway; GuiYing Ma, who is the grandmother sweeping  
19 the street when she was viciously hit with a rock and  
20 later died.

21 And also Zhiwen Yan, among others, the  
22 small business owner who was on his scooter when he  
23 was ruthlessly gunned down while making a food  
24 delivery order.

25 I am here because there is no data that is

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1 accurate and comprehensive and on the federal level.  
2 We have organizations like Stop AAPI Hate who are  
3 collecting data. We have data from the FBI.

4 But not a single one of my clients, who  
5 are all pro-bono clients, has ever reported a crime to  
6 the federal agencies, and ever heard from the U.S.  
7 Government, beyond Congresswoman Grace Meng of New  
8 York City, who is not even the congresswoman for most  
9 of my victims.

10 There has been no federal response, which  
11 is why private practitioners like myself have stepped  
12 in to help the victims and develop a response. I am  
13 the editor the Asian American Bar Association's -- or  
14 one of the editors of the Asian American Bar  
15 Association's reports on anti-Asian violence, the  
16 first of which came out in 2021, and the second that  
17 came out in 2022.

18 I urge you to read them, because this is  
19 the response of the local community to people in our  
20 community dying. This is not about affirmative  
21 action. This is not about lack of education at some  
22 level. This is about people dying in the streets of  
23 New York City, much as they died of COVID-19.

24 I was drawn and called to action because I  
25 am the daughter of immigrants. My parents are from

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1 different places. My father is native Taiwanese, and  
2 my mother is from China. They met in North Dakota at  
3 North Dakota State University, where they were both  
4 graduate students and my dad thought that my mother  
5 was Taiwanese. By the time he realized that she was  
6 not, it was too late.

7 It is no surprise that my parents, who  
8 have disagreed politically on nearly everything,  
9 raised two daughters, both of whom became lawyers and  
10 both went to Harvard University. We grew up in the  
11 suburbs of New Jersey in the 1980s, when anti-Japanese  
12 sentiment was high because there was a belief that the  
13 Japanese were taking away the jobs of American auto  
14 workers in Detroit.

15 Unbeknownst to me, I was Asian. There  
16 were not that many mirrors in my parents' small home  
17 in New Jersey, so I hadn't realized that I looked  
18 different than everyone else. One day when my parents  
19 were driving their station wagon, they had a little  
20 Christmas tree car freshener on it. My dad took it  
21 down and he put an American flag underneath it.

22 And when I asked him why he was doing  
23 that, he said to me, "Jennifer, you're Asian." And I  
24 said, "What, what are you talking about? I'm  
25 American. This is the only home that I have ever

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1 known." And he said, "Well, you look Asian, so people  
2 will think that you are loyal to Asia and not to  
3 America, and you need to understand that."

4 His words resonated with me then because  
5 it was my first consciousness at the age of five that  
6 I was different than everybody else. But it also made  
7 me realize that sometimes what we feel is what we see  
8 reflected in other people. That the fear that we feel  
9 as Asian Americans in New York City comes because when  
10 we're walking down the street, people cross the street  
11 because they do not want to be near us.

12 And I had the good fortune of being  
13 partners with the great Ted Wells of Paul, Weiss for  
14 many years, and he would say as Black man, when he  
15 walked down the street in a suit, people would cross  
16 the street in New York City so they did not have to be  
17 in the same side as him.

18 That fear that you feel is not necessarily  
19 one that you see in yourself, but is reflected in you  
20 in the community. And what I saw in New York City and  
21 continue to see in New York City is that fear.

22 New York City is home to the largest Asian  
23 population in the country. Nearly a quarter of the  
24 people who are Asian American are in poverty, so it is  
25 also the poorest ethnic group in New York City.

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1           This is also one of the reasons why  
2 despite the model minority myth, that anti-Asian  
3 violence skyrocketed in New York City. And compared  
4 to 2020, anti-Asian hate crimes reported to NYPD rose  
5 361 percent in 2021, even leaving aside the under-  
6 reporting issue.

7           This brings me to my point, which is the  
8 call to action. The reason that I have provided pro  
9 bono services completely free to all these victims is  
10 because they need them and because they are human.  
11 They are our family. They are our daughters, they are  
12 our mothers, they are our sisters, they are aunts,  
13 they are uncles.

14           We provide to them what we would provide  
15 our own family. The first of which is to provide --  
16 to advocate -- advocacy for victims before the  
17 District Attorney and to interact with police. Much  
18 of the DAs do not have access to interpreter services  
19 that are good.

20           I often find myself in meetings where I am  
21 using Mandarin Chinese to translate because someone  
22 has brought a translator in a different dialect. I  
23 have never encountered an ADA who is Asian, but for  
24 Hannah Yu, who is Chief of the Hate Crimes Unit at the  
25 Manhattan DA's office.

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1           The Asian community cannot have trust in  
2 the local law enforcement if they are not represented  
3 and people do not speak their language. There are  
4 also mixed messages. When the ADA tells someone that  
5 they are going to do something, the local police will  
6 sometimes say the opposite and say I don't have faith  
7 in the ADA. There are problems there and distrust in  
8 the institutions.

9           We need training and education. We have  
10 given training and educations to the DA's office in  
11 Manhattan, but we need more of that. For example, the  
12 New York City Council dedicated \$1.7 million for heat  
13 crimes work, which expanded the Hate Crimes Unit in  
14 Manhattan from three people to 13 dedicated people and  
15 20 dedicated ADAs.

16           The other thing that victims need is  
17 wraparound services, people to help them with Go Fund  
18 Me. In order to withdraw funds, you need Social  
19 Security number from the United States as well as bank  
20 account from the United States. They also need  
21 ability to apply for U visas if they are undocumented.

22           They need help with healthcare. They need help with  
23 the media.

24           There is no easy answer to any of these  
25 problems, but the fact that there is a large

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1 population of people who are pro bono lawyers  
2 dedicating services here indicates that the community  
3 organizations are overwhelmed and that we as a  
4 community has failed the community that's supposed to  
5 trust us.

6 I want to tell one story that is  
7 noteworthy because it surprised me. The husband of  
8 GuiYing Ma, who's the grandmother sweeping her street,  
9 when her -- when she died in the hospital three months  
10 after she was crushed with a rock, instead of blaming  
11 the perpetrator who had bashed in her head and taken  
12 away her life, he blamed the hospital because he did  
13 not trust the hospital institution to have protected  
14 her.

15 That is an illustration of the loss of  
16 trust that our community has had in institutions that  
17 are supposed to protect us. Whether it's the  
18 hospital, the police, the DA, even this commission, or  
19 myself. What I have tried to do is create bonds with  
20 the community so that they have someone to go to that  
21 they can trust.

22 And to be honest with you, I am the mother  
23 of three children who are quite young, six, seven, and  
24 nine years old. And having seen anti-Asian hate when  
25 I was growing up in the suburbs, I yearn for a better

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1 future.

2 Thank you to the Commission, all the work  
3 that you are doing. I'm very hopeful that there will  
4 be a federal response to anti-Asian racism.

5 COMMISSIONER KIRSANOW: Thank you, Ms. Wu.  
6 Mr. Cheng.

7 MR. CHENG: So Ms. Wu, thank you very much  
8 for your advocacy on behalf of Asian American crime  
9 victims. I feel very humbled. And after this panel  
10 is done, I'd like to find out how I could do more.

11 Good afternoon, Commissioners, staff  
12 members, distinguished panelists, and guests. I'm  
13 grateful for this opportunity to speak to this  
14 commission on a topic of great personal importance,  
15 racism and its impact on Americans of Asian descent.

16 By way of background, I am the first  
17 generation in my family to be born in the United  
18 States to immigrant parents. I grew up in the 1970s  
19 in a racially diverse middle class suburb of San  
20 Francisco. I remember being frequently mocked and  
21 even being beaten up for being different.

22 When I was in eighth grade, I started the  
23 chess club so I could eat lunch indoors to avoid being  
24 beaten up. I have very visceral reasons to hate  
25 racism.

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1           In 1984, I applied to Lowell High School,  
2           an academic merit-based program in San Francisco. As  
3           part of a desegregation initiative, Lowell's  
4           admissions process featured an academic index that  
5           took into account grades and test scores.

6           However, based on false claims that racial  
7           mixing in schools and classrooms would help improve  
8           the academic performance of Black students, the San  
9           Francisco Unified School District imposed racial caps  
10          on admissions that forced Chinese kids to score higher  
11          than any other ethnic group.

12          The racial caps harmed most poor Chinese  
13          American kids. I was shocked and dismayed even as a  
14          child to see such blatant discrimination being proudly  
15          promoted by public officials.

16          After graduating from college in 1994, I  
17          and a group of activists from a Chinese-American  
18          democratic club formed the Asian American legal  
19          foundation in order to organize a law suit that  
20          challenged the racial quotas.

21          After six years of litigation, the SFUSD  
22          agreed to all of our terms in quotas, and the quotas  
23          were removed.

24          Since then, the Asian American Legal  
25          Foundation has championed the rights of Asian

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1 Americans by adopting in judicial and public advocacy  
2 a position that has -- that was surprisingly unique  
3 for many years in Asian American civil rights groups,  
4 that discrimination based on race, ethnicity, or  
5 national origin is never justified and should never be  
6 permitted unless subjected to strict scrutiny.

7 We believed that then and now more than  
8 ever we believe that discrimination and violence  
9 against Asian Americans and all Americans can best and  
10 only be eliminated ultimately by returning to the  
11 foundational principles that every American must be  
12 treated equally under law.

13 The history of discrimination and ethnic  
14 violence against Asian Americans is as extensive as  
15 the history of Asians in America. One of the largest  
16 lynchings in American history occurred in Los Angeles  
17 in 1871 when a mob murdered ten percent of the already  
18 ghettoized Chinese population.

19 Racial violence in the West, excuse me,  
20 including by the KKK, targeted Asian Americans as the  
21 -- as did segregation efforts and policies in schools,  
22 employments, and other arenas. The Chinese Exclusion  
23 Act of 1882, the internment of Japanese Americans in  
24 World War II, the list just goes on and on.

25 While there has been tremendous progress,

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1 discrimination and violence against Asian Americans  
2 remains pervasive. Asian Americans face growing  
3 levels of discrimination in education, employment,  
4 business, and both anecdotally and statistically are  
5 increasingly victims of violence.

6 The traditional racism based on racial  
7 animus has been joined by an ugly cousin, racist  
8 discrimination and violence that is supposedly benign.

9 Most notably in recent years, reportedly benign  
10 discrimination helped advance redistributionist equity  
11 efforts seems to have supplanted ignorance-based  
12 animus as the source of institutionalized  
13 discrimination against Asian Americans.

14 As previously mentioned, I first  
15 encountered this type of discrimination applying to a  
16 public high school, but programs seeking to limit  
17 Asian American enrollment for the sake of diversity  
18 are now ubiquitous in any selective admissions  
19 setting.

20 The same attitudes exclude Asian Americans  
21 de facto, if not officially, from being recruited  
22 under DEI programs in employment or other business  
23 contexts as well as for a growing number of  
24 governmental programs.

25 But the horrifying surge of violence that

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1 Asian Americans face in the present appears only to be  
2 driven partly by racism by both Whites and non-Whites.

3 The Commission does not need additional recitations  
4 of horrifying acts of violence that are occurring on a  
5 daily basis.

6 The answer lies in deterring and stopping  
7 crime in bad acts and bad actors and not to focus only  
8 on things called hate crimes. Focusing on hate misses  
9 the forest for the trees. It is true that crimes  
10 against Asian Americans have increased in the wake of  
11 the COVID-19 pandemic.

12 It is commonly explained by the narrative  
13 that White supremacists or nationalists are  
14 responsible for the surge in violence, often  
15 reportedly because of stupid remarks about the origin  
16 of COVID-19.

17 Another panelist in a previous -- in an  
18 earlier panel, Diane Yap, has shown that claims that  
19 White people are responsible for the upswing in crimes  
20 against Asian Americans are foundationally based on  
21 two biased and misleading studies that conflate often  
22 non-violent hate crimes with violent crime.

23 Logically the increase in violent crimes  
24 against Asian Americans is predominantly due to a  
25 surge in violent crime overall, particularly in large

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1 American cities. While the number of reported hate  
2 crimes has increased, many acts of violence against  
3 Asian Americans are not reported or categorized as  
4 hate crimes.

5 Preventing hate crimes will not and has  
6 not prevented an increase in crimes against Asian  
7 Americans. Three years after the pandemic started,  
8 there's no evidence that posters or rallies have  
9 anything to -- have done anything to actually counter  
10 the early release, for instance, of tens of thousands  
11 of felons in the state of California.

12 The emphasis on identity politics also  
13 almost certainly plays a role in anti-Asian hate and  
14 violence. Logically, a focus on racial identity  
15 encourages people to regard people from different  
16 ethnic groups as others, less important and  
17 potentially less or even inhuman.

18 As previously mentioned, the majority of  
19 crimes against Asian Americans and shocking and  
20 dismaying images of brutality that we see daily are  
21 not apparently caused by racial animus but are largely  
22 due to changes in criminal justice.

23 We've heard from Dr. Wu earlier that  
24 restorative justice initiatives in states like  
25 California have resulted in -- in the release of tens

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1 of thousands of convicted felons and the  
2 decriminalization or downgrading of many crimes  
3 previously considered and prosecuted as felonies.

4 The racial focus of criminal justice  
5 reform has also contributed to the surge in crime.  
6 The death of George Floyd in May 2020 added to the  
7 wave of initiatives to eliminate the carceral state.

8 The focus of criminal justice reform  
9 appears to be on those who commit crimes and the race  
10 of those who commit crimes at the expense of the  
11 rights of victims and the families of all communities.

12 The pendulum has swung too far. The  
13 victims of crime do not only include Asian Americans,  
14 but are actually and tragically disproportionately  
15 Black.

16 The federal government has historically  
17 had a mixed role in protecting civil rights. On the  
18 one hand, the federal government has been the  
19 perpetrator and participant in almost all of the most  
20 egregious civil rights violations. Conversely, the  
21 federal government has often also protected the rights  
22 of minorities.

23 Historically, when various states and  
24 localities refuse to provide equal access and  
25 protection, the federal government stepped in. The

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1 civil rights advances of the nation post-Brown could  
2 not have been achieved without -- without active  
3 federal intervention.

4 In my opinion, the proper role of the  
5 federal government is to uphold the dearly won  
6 constitutional protections for individuals to avoid  
7 discrimination based on immutable characteristics. Of  
8 late, the government has not only abdicated that duty  
9 but facilitated injustice.

10 A high profile example of the educational  
11 context involves the decision by the current  
12 administration to have the Solicitor General's Office  
13 support Harvard's bogus claim that its admissions  
14 policies do not discriminate against Asian Americans.

15 In the criminal justice arena, the  
16 gathering and reporting of crime statistics have been  
17 overhauled to focus on hate crimes, masking the  
18 increase in violent crimes that actually drives the  
19 increased violence against Asian Americans and  
20 everyone.

21 I believe that the federal government  
22 should not and cannot treat any American differently  
23 based on race, ethnicity, or national origin, except  
24 under circumstances that can survive strict scrutiny.

25 That means the federal government should vigorously

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1 enforce anti-discrimination laws, regardless of  
2 rationale or claim beneficiary.

3 If an action or program would be illegal  
4 or prohibited in committed against someone Black, it  
5 should be equally illegal if committed against an  
6 Asian American.

7 In criminal justice, the federal  
8 government should focus its data-gathering efforts to  
9 focus on actually objectively defined crimes,  
10 especially violent crimes. The federal government  
11 needs to step in to aggressively pursue justice for  
12 crime victims when local officials refuse to prosecute  
13 criminals.

14 Accountability for criminals who lack --  
15 who attack law-abiding citizens and residents will  
16 deter and decrease anti-Asian violence far more than  
17 national demands not called COVID-19, the China or  
18 Wuhan virus.

19 COMMISSIONER KIRSANOW: Mr. Cheng, if you  
20 can wrap it up.

21 MR. CHENG: Almost done. Finally, all  
22 forms of racial injustice including violence against  
23 Asian Americans can only be truly controlled and  
24 eliminated with the concerted -- a concerted effort to  
25 get racial neutrality under law a real chance.

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1 Nothing good can be achieved by trying to fight past  
2 discrimination with racial discrimination.

3 The federal government must focus its  
4 efforts, policies, and resources to reducing the  
5 number of victims of racism instead of actively making  
6 new ones.

7 Thank you for your time and consideration.

8 COMMISSIONER KIRSANOW: Thank you, sir.  
9 Ms. Kulkarni.

10 MS. KULKARNI: Thank you. Good afternoon,  
11 my name is Manjusha Kulkarni, and I serve as Executive  
12 Director of AAPI Equity Alliance and co-founder of  
13 Stop AAPI Hate, along with Cynthia Choi and Russell  
14 Jeung, who spoke earlier today. Thank you for the  
15 opportunity to speak at today's very important  
16 briefing.

17 In the 2019 report Are Rights a Reality:  
18 Evaluating Federal Civil Rights Enforcement, this  
19 Commission stated the nation still has not reached a  
20 time of recognition of and protection for core civil  
21 rights promises as the norm for all Americans. This  
22 is especially true for Asian Americans and Pacific  
23 Islanders since the pandemic.

24 In the past three years, our communities  
25 have experienced verbal harassment, civil rights

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1 violations, and in some limited cases, physical  
2 attacks. As Cynthia Choi outlined, we at Stop AAPI  
3 Hate have received over 11,000 incident reports from  
4 all 50 states and the District of Columbia.

5           Sadly, these hate incidents have impacted  
6 not only East Asians, but also Southeast Asians and  
7 South Asians. According to a 2021 survey Stop AAPI  
8 Hate did with the Edelman firm, 20 percent of South  
9 Asians have experienced hate incidents. This includes  
10 individuals whose families originate from India,  
11 Pakistan, Sri Lanka, Bangladesh, and Nepal, and who  
12 identify most commonly as Hindu, Muslim, and Sikh.

13           Some of the most devastating examples of  
14 hate directed at South Asians include not only the  
15 Indianapolis shooting that resulted in the deaths of  
16 four Sikh Americans in 2021, but also the murder of  
17 seven Sikh Americans in 2012 in Oak Creek, Wisconsin,  
18 and the homicides of three South Asians immediately  
19 after 9/11, one Sikh, one Hindu, and one Muslim.

20           Given the horrific nature of the  
21 Indianapolis and Atlanta shootings in 2021, it is --  
22 it is not surprising that Congress passed the COVID-19  
23 hate crimes bill and President Biden signed it into  
24 law in May of the same year.

25           And yet, immediately after the Atlanta

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1 attack, FBI Director Christopher Wray stated that race  
2 was not a factor in the Atlanta shooting. Such  
3 comments and the failure to prosecute hate crimes  
4 against Asian Americans stems from the very high  
5 federal standard required.

6 The "because of" standard has been  
7 interpreted by the courts to mean that individuals can  
8 only be found guilty if the protected characteristic  
9 of the victim or target is the sole factor in  
10 willfully causing bodily injury. Similar standards  
11 exist at the state level and inhibit the appropriate  
12 prosecution of hate crimes by White supremacists,  
13 including in Atlanta.

14 Much attention has been paid to violent  
15 attacks and reports of anti-Asian hate. Analysis of  
16 our Stop AAPI Hate data indicates that the vast  
17 majority do not involve a crime, let alone a hate  
18 crime. Only a minority of the 11,000 involve crimes  
19 such as physical attacks and destruction of property.

20 Seventeen percent involve cases of assault  
21 and battery and four percent vandalism. Of the cases  
22 involving personal injury, very few result in serious  
23 bodily injury that necessitate hate crimes  
24 prosecution.

25 Beyond the fact that only a small minority

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1 involve crimes, an even more compelling reason not to  
2 rely solely on hate crimes enforcement is the lack of  
3 evidence of its efficacy. Little research has shown  
4 that prosecution of hate crimes for sentencing  
5 enhancements they provide serve as a deterrent to  
6 prevent recidivism among perpetrators or future crimes  
7 by other actors.

8 Rather, they often lead to more mass  
9 incarceration, especially of African Americans and  
10 Latinx individuals, who commit fewer hate crimes than  
11 Whites, as evidenced by the latest FBI data.  
12 Moreover, such prosecutions do nothing to promote  
13 healing of victims and community members.

14 Of the 11,000 hate incidents reported to  
15 Stop AAPI Hate, 12 percent involve civil rights  
16 violations. They include workplace discrimination,  
17 discrimination in housing refusal of service in retail  
18 and public accommodations, and bullying in schools.

19 Given these numbers, it is critical to  
20 look beyond criminal law enforcement towards civil  
21 rights enforcement and civil mechanisms that offer the  
22 possibility of redress.

23 Key to civil and civil rights approach is  
24 the fact that it holds institutions and not simply  
25 individuals accountable, both public as well as

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1 private, for discriminatory acts committed against  
2 employees, tenants, students, and customers. A  
3 central remedy of such actions is injunctive relief  
4 ending the racial discrimination itself.

5 With it can come financial penalties which  
6 offer some level of accountability from the  
7 perpetrating institution along with restitution to  
8 victims or survivors.

9 Given these facts, we offer the following  
10 recommendations. Number one, improve civil rights  
11 reporting nationwide.

12 Federal, state, and territory agencies  
13 responsible for enforcing civil rights laws receive  
14 hundreds of thousands of complaints every year, yet  
15 few agencies engage in the type of public data  
16 collection, research, and reporting needed to inform  
17 effective civil rights enforcement, as noted by this  
18 very commission in the 2019 report.

19 By contrast, federal law requires the  
20 collection of hate crimes data and the data informs  
21 law enforcement administration operations managements  
22 and reveals ongoing and emerging trends. We for this  
23 reason strongly recommend requiring federal civil  
24 rights agencies to collect and report key data related  
25 to civil rights enforcement and the Attorney General

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1 to annually publish this data.

2 Number two, update Title II to include  
3 retail stores and other businesses where  
4 discrimination occurs. Title II bans thea  
5 discrimination on the basis of race, color, religion,  
6 and national origin in places of public accommodation.

7 These heretofore have been limited to restaurants,  
8 hotels, and places of exhibition or entertainment.

9 Excluded are retail stores such as grocery  
10 stores, markets, banks, beauty salons, and other  
11 businesses. We recommend that legislation amending  
12 the definition expressly include retail stores and  
13 other places where professional services are provided.

14 Number three, codify the language access  
15 coordinator at the U.S. Department of Justice. As  
16 many earlier speakers, have indicated, many in our  
17 community are unable to access the laws and benefits  
18 that come from our federal and state governments  
19 because of lack of language access.

20 Enshrining a coordinator in federal law  
21 eliminates -- or sorry, elevates its importance and  
22 protects it from changes within administration. For  
23 millions of Asian Americans and Pacific Islanders,  
24 access to justice and the important federal programs  
25 and benefits should not depend on a ability to speak

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1 English.

2 Number four, fund state and local  
3 government efforts in partnership with community  
4 groups to address discrimination and other hate  
5 incidents. Federal funding when it is not a hate  
6 crime is uneven.

7 For example, the Department of Justice  
8 provides a number of federal grants to support state,  
9 local, and tribal enforcement of -- four victims of  
10 crimes. But there's no such program to address hate  
11 incidents that are not crimes or specifically  
12 supporting state and local civil rights enforcement.

13 Additional resources are needed if we want  
14 to truly address hate and prevent anti-Asian hate  
15 incidents. These and other recommendations are  
16 included in Stop AAPI Hate Civil Rights Report and a  
17 law journal article to be published in the Asian  
18 Pacific American Legal Journal, both to be released in  
19 May.

20 As a former civil rights attorney whose  
21 career began at the Southern Poverty Law Center and  
22 the Mexican American Legal Defense and Education Fund,  
23 I can tell you that truly combating anti-Asian hate  
24 requires a comprehensive approach and not simply one  
25 that primarily relies upon criminal law enforcement.

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1           Rather, it must include civil rights  
2 enforcement, community safety measures, and education  
3 equity. Only then will the American promise of civil  
4 rights become a reality for Asian Americans.

5           Thank you very much.

6           COMMISSIONER KIRSANOW: Thanks to all the  
7 panelists. I just want to state for the record that  
8 Commissioner Mondaire Jones is trying to call in by  
9 phone so that it's noted for the record.

10           Thank you all for your testimony, I'm  
11 going to leave it open for questions from our  
12 commissioners.

13           COMMISSIONER ADAMS: Mr. Chairman, thank  
14 you so much for allowing me to speak. Let me thank  
15 all of you for being here today. The information has  
16 been extraordinarily helpful to our case.

17           I want to just ask a quick question to the  
18 entire panel. President Biden recently issued an  
19 executive order furthering the advancement of racial  
20 and equity support through the federal government.

21           Do you think that those efforts would help  
22 some of the issues that you're sharing with us here  
23 today? Any of you can give me a response on that.

24           MS. KULKARNI: I can start. I think those  
25 measures are integral to having true equity in our

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1 federal government and I think will only enhance some  
2 of the recommendations that I have made, which is to  
3 include a language access coordinator, to ensure that  
4 civil rights violations are included and that data is  
5 collected on a regular basis. And the federal grant  
6 program to look at ways in which we can provide  
7 support to communities.

8 Jo-Ann described very succinctly how  
9 communities need that support, how community-based  
10 organizations like hers can benefit from it, even when  
11 there are not crimes.

12 So we absolutely applaud those measure and  
13 appreciate the fact that Asian Americans are being  
14 brought into the context of what it means to have true  
15 equity in the -- in the United States.

16 MS. WU: So from the perspective of the  
17 victims, I think that it's a good start. But I think  
18 it needs to address a holistic community that is  
19 better.

20 So the father of Michelle Go, Justin Go,  
21 who lost his daughter to the Times Square subway, he  
22 didn't speak out for a year. But on the one year  
23 anniversary of his death -- her death, he wrote a New  
24 York Times op ed.

25 And while the op ed focused in part on the

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1 life that Michelle lived, the solution that he had for  
2 how to stop this was not focused on necessarily the  
3 Asian community.

4 This is what he wrote: We cannot abandon  
5 people like Michelle's attacker, Martial Simon, to our  
6 subway systems. We cannot assume that emergency  
7 medical workers will be able to handle these neglected  
8 souls or that ordinary individuals will be able to  
9 deal with the threats posed.

10 Real change comes with meaningful  
11 preventative measures. This requires, among other  
12 things, adequate and continued funding for housing,  
13 treatment, and other programs. We have to take care  
14 of all of our community. It is not simple as saying  
15 that if we direct resources to the Asian community,  
16 that that is enough.

17 MS. CHOI: I'd like to follow up, if I  
18 may. The fact, the piece that I want to lift up is  
19 that this executive order mandates that key agencies  
20 establish some kind of sustained dialog with impacted  
21 communities. And that's key.

22 As you can see from this panel, we have a  
23 diverse set of opinions in terms of interpreting the  
24 data, understanding the diverse experiences of our  
25 communities. But it's very important to talk with

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1 those community-based organizations that are actually  
2 serving those who are impacted.

3 So for example, we have a visit coming to  
4 San Francisco to learn about the types of investments  
5 that need to be made around victim services. We know  
6 that healing and recovery takes intensive resources  
7 and coordination.

8 And we have to get to a point where we're  
9 actually preventing incidents of violence. And we can  
10 only do that by working with other communities who are  
11 also affected by crime and by violence as well. And  
12 that's absolutely key.

13 In California, we made a historic \$166  
14 million dollar investment going largely to community-  
15 based organizations doing just that work. And that's  
16 what it's going to take in the long term.

17 COMMISSIONER KIRSANOW: Commissioner  
18 Magpantay.

19 COMMISSIONER MAGPANTAY: Thank you all for  
20 your comments. I've heard a lot about -- and I think  
21 on affirmative action we're going to hear from the  
22 Supreme Court very shortly around those issues. So  
23 that might just sort of lay out what the law is for  
24 all of us.

25 But on the question on language access,

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1 and I think Mr. Yang had talked about this earlier, is  
2 that President Bush signed this executive order,  
3 13166, and a number of you had talked about the need  
4 to have DAs, police, services that are available in  
5 the myriad languages that Asian Americans speak.

6 There is a federal standard in -- either  
7 you don't have to do everything in every language  
8 every place, right? There is a standard to do that  
9 that the government has -- could you just talk a  
10 little bit about that?

11 Because I want to make sure that our  
12 services that our agencies provide under federal law,  
13 under Bush's executive order and subsequently signed,  
14 comport with the language minority groups in those  
15 populations when they need those services.

16 MS. WU: So I mean my -- from my  
17 perspective, there's been no -- it doesn't conform,  
18 right. Language accesses are not provided. But let  
19 me just explain how these cases come in. I'm a patent  
20 lawyer, people don't normally call me about, you know,  
21 when someone dies.

22 But what happens is the first person on  
23 the scene of a crime is almost always a reporter. The  
24 reporter is often the Asian reporter, but they may not  
25 speak the specific dialect.

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1           The reason I got roped into this is I work  
2 in the community and they would call me and say do you  
3 know someone who speaks this dialect, do you know  
4 someone that'll speak this dialect. I have broad,  
5 diverse friends of Asian, you know, different  
6 dialects, and they would ask me to hook them up with  
7 interpreters.

8           One of the most important things in  
9 criminal prosecution is the interpreter, because the  
10 interpreter is the voice of the victim. If the voice  
11 of the victim is not being heard in front of the grand  
12 jury, this is really devastating to just the charges  
13 that are being brought.

14           What you often find with the DA is that  
15 they drop the hate crime charge because it's not  
16 necessary. You have a murder charge, you might as  
17 well just go for the 20 years to life.

18           What does adding two to three years mean  
19 to you, and what's that additional burden of proof,  
20 particularly if you have a language access issue where  
21 the victim isn't speaking clearly about what was being  
22 said when the attack was happening?

23           One of the cases that stands out to me was  
24 the witness was speaking Spanish, the victim was  
25 speaking Chinese, and we had two interpreters both

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1 translating for the grand jury. As some of you may  
2 know, in Asian languages the words "he" and "she" are  
3 the same. Maybe that's progressive in some way,  
4 right.

5 So if you say, "I think he did it," that  
6 could sound like "I think she did it." And this is  
7 important if the interpreter is not a good  
8 interpreter, because they have to know from context  
9 whether that word is he or she.

10 In that case it was going before a grand  
11 jury for a hate crime charge. The interpreter, we had  
12 worked with the interpreter so they could understand  
13 the context of this. But nevertheless, they got the  
14 word wrong. They said, "I think he did it" when it  
15 should have been "I think she did it," or "I saw her  
16 coming around the corner" instead of "I saw him."

17 And I think that the interpreter was very  
18 upset because they thought that they may jeopardize  
19 the hate crime charge. We were able to talk to the  
20 ADA and get that sort of sorted out and the hate crime  
21 charge did go in.

22 But one of the most stressful things to do  
23 is to be interpreter in one of these cases, because  
24 you think that the case turns on the language you use  
25 and the emotion that you put into it. So if you have

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1 a man translating for a woman, it's not quite as  
2 effective to be honest with you.

3 And I, as a native Chinese speaker who  
4 didn't speak English till I was six, I don't always  
5 agree with the interpretation that's happening.

6 So I think there's nuance to the  
7 interpretation. It's not simply just finding any  
8 interpreter who can sit there. But it's an  
9 interpreter who can sit with the witness through all  
10 of this.

11 And one of the reasons I think this is so  
12 important is when I started this work, I knew nothing  
13 about civil rights really. And I went to the great  
14 Loretta Lynch, who was a partner of mine at the time,  
15 and she had handled many cases in the Black community.

16 And I said, "Loretta, what do I need to do  
17 to do civil rights work?" And her answer was, "you  
18 need a good interpreter." And she actually gave me  
19 her personal interpreter from the Eastern District of  
20 New York when she was the U.S. Attorney there. And  
21 that's how I started along this path.

22 And so for those who want to really do  
23 this work, finding good interpreters who are court-  
24 certified who can actually work with the witnesses and  
25 will often do it at their own dime, because we're

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1 charging sort of a lower rate to do court certified  
2 work, it's super important.

3 And then the second thing I just want to  
4 mention is that a lot of community organizations, when  
5 I've asked them to have people become court-certified,  
6 they don't want to. They don't want to do this kind  
7 of work, it's traumatic. You're working with victims,  
8 right.

9 And so among the people I could lean on  
10 for one Chinese dialect when I was looking, I only had  
11 three people. And I paid them double, you know, with  
12 the good fortune of my law firm paying them double to  
13 have them on call. So that any time the DA wanted  
14 this person to come appear and testified or even just  
15 have a witness interviewed, this interpreter was  
16 available.

17 And that's why private people have stepped  
18 in to provide these services, I think. Because the  
19 criminal justice system either doesn't have enough  
20 funding or doesn't have enough training in order to  
21 really prosecute these crimes to the degree that they  
22 need to be prosecuted.

23 And let's put yourself in the shoes of the  
24 ADA. Why put in a hate crime penalty enhancement if  
25 you don't have to? Why prove something if you don't

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1 need to? It's only a penalty enhancement, it doesn't  
2 get you the original crime. And to be honest with  
3 you, you know, sometimes it's not worth it.

4 And I'll just tell one more anecdote just  
5 so you can get a sense of this. In the case in Queens  
6 where there was a delivery worker who was killed on  
7 his scooter, this was famously called the duck sauce  
8 killer case. One of -- the Great Wall restaurant  
9 owner to court to the grand jury to testify that he'd  
10 been threatened, and that's why this delivery worker  
11 had been shot.

12 And he brought with him what he said was  
13 his interpreter, a family member. It turned out that  
14 this family member, this woman that he said was a  
15 family member, was a member of the Chinese media  
16 newspaper. And she then revealed portions of the  
17 secret grand jury to the Chinese press thereafter.

18 These kinds of incidents jeopardize the  
19 criminal prosecution. As you could imagine, the  
20 District Attorney was not so happy with that.

21 And so part of the things that we're doing  
22 in providing a wrap-around services and acting as an  
23 advocate is also safeguarding our criminal justice  
24 system so that the victims can obtain the kind of the  
25 justice that I think that we as Americans have come to

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1 really expect and really rely on and I honestly think  
2 is one of the great things about our country.

3 COMMISSIONER KIRSANOW: Thank you.

4 MS. KULKARNI: May I go next?

5 COMMISSIONER KIRSANOW: Would you like to  
6 finish up?

7 MS. KULKARNI: Yes. So I wanted -- I'm  
8 reading from the Federal Register, Title VI of the  
9 Civil Rights Act of 1964 provides that no person shall  
10 be subjected to discrimination on the basis of race,  
11 color, or national origin under any program or  
12 activity that receives federal financial assistance.

13 The purpose of this policy guidance is to  
14 clarify the responsibilities of providers of health  
15 and social services from the U.S. Department of Health  
16 and Human Services fulfill their responsibilities to  
17 limited English-proficient persons by providing  
18 language access.

19 And it goes on to say that individuals  
20 providing those services must ensure that limited  
21 English-proficient persons have meaningful access to  
22 programs and services, and the guidance provides  
23 examples and further clarification of these policies  
24 and practices.

25 So I think it's very important that for

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1 what we're talking about today, the federal government  
2 has already weighed in and said that it is mandatory  
3 that limited English-proficient individuals get  
4 language access for any services that come from  
5 funding from the federal government. And that applies  
6 to so many different services at state and local  
7 levels.

8 COMMISSIONER NOURSE: Could I ask --

9 COMMISSIONER KIRSANOW: Mr. Cheng?

10 MR. CHENG: Yeah, so I would strongly  
11 support all the efforts, initiatives to make sure that  
12 there are adequate and even enhanced services  
13 available for victims, including language services.

14 That said, I keep coming back to I think  
15 the forest and the trees. You know, we're talking  
16 about a lot of trees, different services available for  
17 victims. My hope is that we can focus on trying to  
18 make sure that there are fewer victims.

19 You know, my hope is that we can take --  
20 the federal government can take a hard look at a lot  
21 of the efforts right now that decriminalize activities  
22 and actions, that downgrade criminal acts, the -- that  
23 discourage criminals from being arrested. That  
24 discourage criminals from being prosecuted. That  
25 result in early release of felons. That result in

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1 repeated release of felons.

2 Those are all contributors to the making  
3 of victims. And my hope is that we have fewer  
4 victims.

5 COMMISSIONER KIRSANOW: Commissioner  
6 Nourse.

7 COMMISSIONER NOURSE: Yeah, Ms. Jennifer  
8 Wu, thank you very much for your work. I started out  
9 my legal career at Paul, Weiss, so welcome.

10 I just want to make clear you've been  
11 dealing with the Manhattan, or the New York DAs.  
12 Because there's a difficulty in criminal law, which I  
13 taught for 15 years, which is that the federal  
14 government has a supervisory responsibility over  
15 certain kinds of crime, right.

16 And the Supreme Court actually seeks to  
17 enforce increasingly limits on the ability of the  
18 federal government to address crime.

19 Now, there is a Hate Crimes Act. There  
20 are very few prosecutions, right. But the principle  
21 of responsibility is the state and locality, right?

22 And so the question would be whether under  
23 current federal law there is some responsibility on  
24 behalf of the money that comes out of the Department  
25 of Justice to be spent on these kinds of things. I

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1 think that's why Ms. Kulkarni suggested that there  
2 already are federal laws, whether they're implemented  
3 or not is another question.

4 Do you have any knowledge, that was a long  
5 lead up to do you have any knowledge about needs  
6 inside the DOJ about their hate crimes prosecution?  
7 Because I'd like to hear that from you.

8 MS. WU: You know, our contact with DOJ is  
9 relatively limited. My understanding is that I don't  
10 think that the resources are devoted to anti-Asian  
11 hate crimes.

12 That there are kind of, there's a big hate  
13 crime kind of, you know, sort of department, but  
14 similar to the Manhattan DA's office to this kind of  
15 pandemic of anti-Asian hate, you didn't have people  
16 who specialized in anti-Asian hate crimes, and none of  
17 them were Asian.

18 And that's an important cultural fact.  
19 Asians tend to under-report. One of the things that I  
20 did in my Manhattan DA training was probably I would  
21 do it for DOJ if they wanted to, was when you ask an  
22 anti-Asian hate victim or a witness what do you do for  
23 a living, the answer is almost always a lie.

24 If they are working, they may not be being  
25 paid above the books, they think, right. So they say

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1 oh, I don't do anything, I just help friends out, so  
2 that's a lie.

3 If they aren't working, they're  
4 embarrassed, and so they say I have a job. But they  
5 can't articulate what the job is. They're sort of  
6 unique facets to anti-Asian hate where I think that  
7 the tension you have is the Asian community would like  
8 to have reporting so you can get funding, you can  
9 address these issues.

10 Individuals on the other hand are  
11 embarrassed. The biggest complaint I hear from my  
12 victim is my face is in the newspaper. That means all  
13 the friends and family of the perpetrator are going to  
14 come get me.

15 They're afraid for their own safety and  
16 they don't want to report. So they want to do it  
17 anonymously. So all these news cameras, the  
18 Commission, everyone who's coming in their face, the  
19 DA, they're scared. They lock the door, they don't  
20 want to.

21 And one of the kind of roles that I play  
22 is getting them to open the door, to say I will talk  
23 to the DA, I will talk to the police, and I will talk  
24 to everyone else. And the reason they won't open the  
25 door is the same reason that my own parents didn't let

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1 me open the door when I was growing up in the 1980s.

2 My parents, in a very safe household,  
3 every time the doorbell rang, they would have me and  
4 my sister go hide in the closet. Every single time.  
5 Whether it was the post person, the FedEx person, a  
6 car accident person, a neighbor. Girl Scout cookies,  
7 I was a Girl Scout, I would never open the door.

8 And only when I was a teenager when I went  
9 to a friend's house, they opened the door when the  
10 doorbell rang, I realized that my parents had a fear  
11 of institutions. Of not being perceived as American,  
12 even though they were law-abiding Americans.

13 They were so American that I'm named  
14 Jennifer after Jennifer Jones, the Western actress.  
15 And my sister was named Mindy after Mork and Mindy.  
16 That's how American they are, right. And even then,  
17 they didn't open the door.

18 So I think the federal response, whether  
19 it's from the DOJ or from a different agency, needs to  
20 focus on, you know, I appreciate kind of everything  
21 everyone said, but focus on getting victims to open  
22 the door.

23 Because these are people who've lost trust  
24 in American society. Whether it's because of the  
25 pandemic or because of something else or because

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1 they're immigrants, or over time, and these are the  
2 bonds that bring us together as a community.

3 And if they're broken, you know, that sort  
4 of is -- they will be no impact to the federal  
5 response if they won't open the door when they --  
6 people come offering help.

7 And then this last thing I just want to  
8 say is that I agree with the Commissioner on  
9 affirmative action. I don't think a single one of my  
10 victims would have been saved if affirmative action  
11 was not in effect, right.

12 And so the issue here is that people are  
13 dying. They aren't taking the resources. It's hard  
14 to help them, and that's why you have private  
15 practitioners like me stepping in to offer not money,  
16 but just help and emotional support. And what they  
17 see in me is the thing that I didn't see in myself.  
18 They see that I'm Asian.

19 MS. KULKARNI: May I also answer that  
20 question regarding DOJ? I have some statistics. As I  
21 included in my law journal article, of the 66,000 hate  
22 crimes reported to law enforcement between 2010 and  
23 2019, only 1,200 were investigated by U.S. attorneys  
24 in matters involving the violation of federal hate  
25 crime statutes.

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1           Of that figure, the U.S. Justice  
2 Department only referred 208 for prosecution. So just  
3 to give you an idea of what actually gets prosecuted,  
4 and let me add that the state auditor's report in  
5 California listed three significant reasons for gaps,  
6 and of course those are based on state laws.

7           But one thing that's applicable across all  
8 50 states is that in up to 50 percent of cases, local  
9 law enforcement officials failed to include the factor  
10 of race in the police report.

11           So police themselves are unable or  
12 refusing to see race as a factor. And so for that  
13 reason, much of the hate crimes prosecution doesn't  
14 happen.

15           COMMISSIONER MAGPANTAY: Could you say the  
16 citation?

17           MS. KULKARNI: That's the state auditor's  
18 report of -- oh, yes, please. It's from 2018.

19           MS. CHOI: Could I also add one point,  
20 because we often critique the federal government. I  
21 do want to applaud that DOJ hired its first dedicated  
22 language access coordinator.

23           And that is after decades of advocating  
24 for the need to have some dedicated staff looking at  
25 the issue, what the barriers are for individuals

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1 reporting, for ensuring that we offer culturally  
2 competent and language-accessible services.

3 And so I do want to note that for the  
4 record, that that has been an important and  
5 affirmative I would say step that's really important  
6 to our community.

7 MR. CHENG: I actually would like to ask  
8 both the commissioners and my fellow panelists this  
9 question, because I'm struggling a little bit with  
10 some basic logic, right.

11 So I've been -- I have mentioned the fact  
12 that I believe that a systemic decrease in crime would  
13 actually decrease hate crimes. I'm completely  
14 supportive of prosecuting hate crimes, making it  
15 easier to prosecute hate crimes.

16 In effect, basically throwing not just the  
17 book but a heavier book at people who attack and  
18 commit violence against other people based upon race  
19 and ethnicity.

20 But again, I keep coming back for myself  
21 to, gosh, you know, if crimes were systemically  
22 prosecuted in a competent way, and ideology didn't  
23 enter into decisions to not prosecute criminals and  
24 let criminals out early, wouldn't that actually help  
25 victims of hate crimes as well?

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1 MS. WU: I think for my victims the answer  
2 is no, because the crime is so overwhelming, they're  
3 in shock, right. They're not thinking systemically.

4 And while I don't doubt the data and that  
5 there might be some logic in there, I think the real  
6 issue is what is our federal response right now. You  
7 know, what are we going to do now when people are  
8 dying and they have died. And how can we prevent the  
9 loss of another life.

10 Questions about what justice means are  
11 going to vary. The answers will vary to each of you  
12 as they will to me. But the reality is that we're all  
13 human and the loss of a human life in America is a  
14 tragedy.

15 And that we should take that very  
16 seriously, not just in terms of the numbers, not just  
17 in terms of the data, but because we care about each  
18 other. And that we are community regardless of the  
19 race or the, you know, our gender, our skin.

20 And having worked with so many of these  
21 victims who've died in New York City, I can tell you  
22 that there is a tidal wave of anti-Asian violence.

23 I am a patent lawyer. I didn't become a  
24 civil rights lawyer till 2020. This is not an  
25 accident, right, I didn't come out to want to testify

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1 before this commission.

2 I wish I did not have any more clients who  
3 were dead. I was not in probate court, that I wasn't  
4 dealing with these issues, I wasn't going to NYPD to  
5 pick up the belongings of people who are deceased.

6 This is not just about looking at the  
7 data. We see it on the ground here, and we're just  
8 begging the federal government for a response.

9 COMMISSIONER HERIOT: This is a question  
10 for Jennifer Wu. Have to use your first name in this  
11 panel. I'm struck by your testimony. The previous  
12 panel also had similar testimony about waves, tidal  
13 waves, the violence, the cruelty.

14 And you talk about a lack of federal  
15 response. And I know we've heard evidence or  
16 statistics about how rare things are to be prosecuted.

17 But my question is have you talked with the Civil  
18 Rights Division about these cases? Because they have  
19 people who are better trained to open those doors,  
20 right.

21 Have you talked to the Civil Rights  
22 Division about getting some of these particular  
23 clients or the next victim protected or having federal  
24 -- because they sound like federal civil rights  
25 violations, right.

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1 MS. WU: Yeah, so we've talked to them,  
2 but the solutions haven't been immediate enough,  
3 right. So for many of our clients, there -- it's the  
4 initial stage of grief, right. They've lost a family  
5 member. And the solutions that the federal government  
6 is giving are years away.

7 And we, as we all know from our criminal  
8 justice system, particularly at the federal level, the  
9 first part of a criminal case is about protection of  
10 the defendant's rights. It's about discovery because  
11 you're presumed innocent, right.

12 And so what they want is discovery to  
13 show, you know, kind of why that person could be  
14 innocent. It's not victim-centered. So if you're the  
15 victim, particularly if you're from a country that's  
16 not the United States, this is a very foreign concept,  
17 right. Where you might presume guilty versus  
18 innocence.

19 And so I'm not sure that it's necessarily  
20 about the actual conviction for a lot of the victims.

21 But it's about does the federal government care, do  
22 they recognize that there's a tidal wave. Do they  
23 know that this is an important issue, and have they  
24 committed funding and resources.

25 We are constantly encountering lack of

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1 resources at every level of the criminal prosecution,  
2 including at the federal level.

3 COMMISSIONER HERIOT: Are you encountering  
4 this at the U.S. Attorney's Office, or are you  
5 encountering this at the Civil Rights Division?

6 MS. WU: It's the U.S. Attorney's Office I  
7 would say. Yeah.

8 COMMISSIONER HERIOT: There's a fellow I'd  
9 recommend you talk to, his name is Jim Felte. He's  
10 the head of the Criminal Section in the Civil Rights  
11 Division. Maybe instead of the SDNY or the EDNY, it  
12 might be a good idea to actually talk to the Civil  
13 Rights Division and see if they'll change your  
14 experience.

15 MS. WU: Right, thank you very much.

16 COMMISSIONER KIRSANOW: I want to thank  
17 all of the panelists. We're a little bit beyond our  
18 time right now, so thanks very much. And we'll take a  
19 short break for ten minutes at 2:00 -- I'm sorry, 3:45  
20 we'll have our next panel.

21 (Whereupon, the above-entitled matter went  
22 off the record at 3:32 p.m. and resumed at 3:42 p.m.)

23 PANEL 3: LAW ENFORCEMENT & FORMER FEDERAL OFFICIALS

24 COMMISSIONER KIRSANOW: All right, welcome  
25 to the final panel of today's briefing on the federal

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1 response to anti-Asian racism, and our panels are  
2 members of law enforcement and current and former  
3 federal officials.

4 And I'll repeat what I said before and  
5 that is each panelist gets, well, this time, more time  
6 actually because there's only three of you, so take as  
7 much time as you want. Oh, four of you, okay, but  
8 still. We have two by Zoom, all right.

9 You'll each have seven minutes in which to  
10 testify, and when the warning lights come on, please,  
11 you know, pay attention to these lights up here as  
12 they give you some guidance as to how much time you've  
13 got left, and then after you've all testified, we'll  
14 ask the Commissioners to ask the panelists any  
15 questions they may have.

16 The panelists in this panel are Eric  
17 Dreiband, Former Assistant Attorney General for Civil  
18 Rights at the U.S. Department of Justice, and current  
19 partner at a small firm called Jones Day; Devon  
20 Westhill, Former Assistant Secretary of Civil Rights  
21 at the U.S. Department of Agriculture, and current  
22 President and General Counsel of the Center for Equal  
23 Opportunity, say hello to Roger for me; Detective  
24 Orlando Martinez, there we go, Hate Crimes Coordinator  
25 for the LAPD; and we have by Zoom, William Scott,

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1 Police Chief with San Francisco, and the lovely and  
2 talented Michael Yaki, Former Member of the U.S.  
3 Commission on Civil Rights. Welcome. Mr. Dreiband?

4 MR. DREIBAND: Thank you. Good afternoon,  
5 Members of the Commission, and thank you for inviting  
6 me to today's briefing. My name is Eric Dreiband and  
7 I'm a partner at the law firm of Jones Day in  
8 Washington, D.C.

9 I served as the Assistant Attorney General  
10 for the Civil Rights Division at the United States  
11 Department of Justice from 2018 to 2021, and I'm here  
12 today at your invitation to speak about the federal  
13 response to anti-Asian discrimination in the United  
14 States.

15 While my discussion today will focus in  
16 part on hate crimes, during my tenure at the Justice  
17 Department, we prosecuted other crimes and sought  
18 justice for Asians and Asian American victims.

19 And for example, in the area of human  
20 trafficking, the Department convicted several  
21 defendants for operating an international sex  
22 trafficking organization that coerced hundreds of Thai  
23 women into engaging in commercial sex acts across the  
24 United States, and I want to focus though today on our  
25 response to the issues that occurred during the

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1 pandemic.

2 And in the very early stages of the  
3 pandemic in March of 2020, Attorney General William  
4 Barr and I instructed Justice Department prosecutors  
5 across the United States that the Department would not  
6 tolerate hate-motivated acts of violence, including  
7 any such acts against Asians and Asian Americans.

8 On April 9, 2020, I announced publicly  
9 that the Department would not tolerate civil rights  
10 violations during the pandemic, and I explained that  
11 the Justice Department's pandemic-related work  
12 includes enforcing disability rights laws, protecting  
13 religious liberty, and prosecuting hate crimes.

14 I also explained that because the  
15 coronavirus originated in China, some people have  
16 targeted Asian Americans and Asians simply because of  
17 their ethnicity and that this conduct has no place in  
18 America, and I added the Justice Department will  
19 prosecute hate crimes and violations of anti-  
20 discrimination laws against Asian Americans, Asians,  
21 and others to the fullest extent of the law.

22 Next, on April 27, 2020, Attorney General  
23 Barr directed me and Matthew Schneider, who was then  
24 the United States Attorney for the Eastern District of  
25 Michigan, to oversee and coordinate our efforts to

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1 monitor state and local policies, and if necessary,  
2 take action to correct them.

3 Attorney General Barr stated, quote, "the  
4 Constitution is not suspended in times of crisis. We  
5 must therefore be vigilant to ensure its protections  
6 are preserved at the same time that the public is  
7 protected."

8 During my remaining time at the Justice  
9 Department, the Civil Rights Division and the United  
10 States Attorney partners across the country led the  
11 Department's efforts to investigate and address civil  
12 rights issues related to the pandemic and other  
13 issues, including issues about anti-Asian  
14 discrimination.

15 In 2020, my last full year at the  
16 Department, the Department charged the highest number  
17 of hate crimes cases in two decades.

18 We encountered another form of anti-Asian  
19 discrimination during my tenure at the Justice  
20 Department, namely discrimination against Asian  
21 American applicants to Harvard and Yale Colleges.

22 In the Harvard case, the Department  
23 launched an investigation after Asian American  
24 applicants complained about alleged discrimination by  
25 Harvard. The Department also supported the plaintiffs

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1 in a private lawsuit brought against Harvard.

2 When the District Court rules in favor of  
3 Harvard, the plaintiffs appealed. We filed a brief in  
4 support of the plaintiffs in the Court of Appeals.

5 Our brief asserted that Harvard's race  
6 discrimination and its expansive use of race in  
7 admissions was unlawful, that Harvard actively engaged  
8 in unlawful racial balancing, that Harvard's  
9 admissions office consistently and inexplicably scored  
10 Asian American applicants lower than other applicants  
11 on an entirely subjective personal rating, and Asian  
12 American applicants, it was clear in the record, to  
13 Harvard ranked the highest in academic and  
14 extracurricular qualifications.

15 And given the results of the personal  
16 ratings, Harvard expected us to believe that these  
17 same applicants lacked courage, integrity, confidence,  
18 perseverance, and leadership qualities compared to  
19 other applicants, yet Harvard had no explanation for  
20 the disparities in the personal ratings.

21 I appeared personally at oral argument on  
22 behalf of the United States before the Court of  
23 Appeals and explained that Harvard illegally monitored  
24 the evolving racial composition of the class at every  
25 stage of the process illegally to produce a racially

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1 balanced class. I emphasized that Harvard pervasively  
2 and illegally used race at every step of its process.

3 The court affirmed the District Court's  
4 decision and the case is pending before the Supreme  
5 Court of the United States with a decision expected  
6 probably at the end of June of this year.

7 In the Yale case, the Department  
8 investigated allegations that Yale University violated  
9 the Civil Rights Act of 1964 by the widespread acts of  
10 unlawful race and national origin discrimination in  
11 college admissions.

12 On August 13, 2020, the Department  
13 determined that Yale violated the Civil Rights Act's  
14 prohibitions against race and national origin  
15 discrimination.

16 The Department also determined that Yale's  
17 multi-decade use of race continues unabated without  
18 any serious effort by Yale to consider an admissions  
19 process that is free of race discrimination.

20 When we announced the Department's  
21 determination in the Yale case, I said publicly,  
22 quote, "There is no such thing as a nice form of race  
23 discrimination. Unlawfully dividing Americans into  
24 racial and ethnic blocks fosters stereotypes,  
25 bitterness, and division."

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1           We were unable to reach a resolution with  
2 Yale, and so on October 8, 2020, the Department sued  
3 Yale. The complaint alleged that Yale illegally  
4 discriminated against applicants to Yale College on  
5 the grounds of race and national origin, and that  
6 Yale's discrimination injured racially disfavored  
7 applicants, including in particular, most Asian  
8 American and White applicants. The complaint also  
9 alleged that Yale injured African American and Asian  
10 American applicants by the use of racial stereotypes  
11 and racial balancing.

12           When we filed suit against Yale, I  
13 observed that for centuries, people from all over the  
14 world have left their ancestral homes and come to the  
15 United States hoping that they and their families  
16 could enjoy equal opportunity in pursuit of the  
17 American dream.

18           Countless Americans have pursued their  
19 dreams through higher education and they continue to  
20 do so, and all persons who apply for admission to  
21 colleges and universities should expect and know that  
22 they will be judged by their character, talents, and  
23 achievements, and not the color of their skin. To do  
24 otherwise is to permit our institutions to foster  
25 stereotypes, bitterness, and division.

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1           After I left the Department of Justice,  
2           the Department moved to dismiss the case against Yale,  
3           and with that, I look forward to your questions.  
4           Thank you.

5           COMMISSIONER KIRSANOW:   Thank you, Mr.  
6           Dreiband.   Mr. Westhill?

7           MR. WESTHILL:   Thank you very much.   I  
8           really appreciate the opportunity to talk about this  
9           important subject.   I'm honored to be here.   It's very  
10          important to me.

11          I am Devon Westhill.   I run the Center for  
12          Equal Opportunity, which is an organization that, for  
13          almost 30 years, has advocated for color blind non-  
14          discrimination in America.

15          My primary concern today is how the  
16          federal government regards the civil rights of Asian  
17          Americans and that of other Americans who, as a result  
18          of their racial or ethnic identity, are treated  
19          differently, contrary to the American guarantee of  
20          equal protection under the law.

21          In particular, I'm worried about efforts  
22          to promote the concept of equity in many spheres of  
23          American life, but I'll focus my remarks primarily on  
24          the federal government's activities.

25          First, I will describe and comment on a

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1 few examples of the Biden Administration equity  
2 agenda, some of which I've already heard about today.

3 You can find more in my written statement, of course.

4 Then, I'll describe what the concept of  
5 equity entails, and then I'll explain why I think it's  
6 problematic for the protection of civil rights,  
7 especially for Asian Americans. I'll close by briefly  
8 suggesting a better way forward and what this  
9 distinguished body can do to address the issues I  
10 identify.

11 So, on January 20, 2021, just hours into  
12 office, President Biden signed an executive order to  
13 establish an ambitious whole-of-government equity  
14 agenda, signaling that in his administration, there  
15 would be a major effort to coordinate efforts to embed  
16 equity principles, policies, and approaches across the  
17 federal government.

18 Within the same week, the President issued  
19 a memo essentially condemning anti-Asian racism and  
20 admitting that the federal government deserved some  
21 blame for it. However, almost all of the  
22 Administration's actions to further the government's  
23 interests in equity have been at odds with that memo.

24 For example, February 3, 2021, the  
25 Department of Justice dropped its lawsuit filed by the

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1 Justice Department in the previous administration  
2 against Yale University alleging anti-Asian  
3 discrimination in its admissions.

4 This was only a few months after the  
5 Justice Department claimed based on, quote, voluminous  
6 admissions data they reviewed, that Yale University  
7 violated and is continuing to violate Title VI by  
8 discriminating on the basis of race and national  
9 origin in its undergraduate admissions, that Yale's  
10 discrimination is longstanding, ongoing, and  
11 significantly disfavors Asian Americans.

12 On June 25, 2021, President Biden signed  
13 another EO to advance diversity, equity, inclusion,  
14 and accessibility to, quote, determine whether and to  
15 what extent agency practices result in inequitable  
16 employment outcomes rather than unequal employment  
17 opportunities.

18 On December 8, 2021, the Biden Justice  
19 Department urged unsuccessfully the Supreme Court to  
20 decline taking two cases alleging discrimination in  
21 admissions against Asian applicants to Harvard  
22 University and the University of North Carolina, one  
23 of my alma maters.

24 Later, the Biden Administration urged the  
25 court to rule against the group of Asian American

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1 petitioners challenging race discrimination in Harvard  
2 University admissions in both briefing materials and  
3 oral argument.

4           Just last month, and we heard earlier  
5 today in this briefing, President Biden signed yet  
6 another EO on advancing government-wide equity. Vice  
7 President Kamala Harris expressed on her official  
8 Twitter account her thoughts behind the motivation for  
9 the directive, quote, "America is the promise of  
10 equity and justice for all. Today, President Biden  
11 signed an executive order that puts our nation one  
12 step closer to achieving that promise," end quote.

13           It was a telling admission that the  
14 current administration has perhaps less commitment to  
15 our pledge of allegiance's promise of liberty and  
16 justice for all.

17           Indeed, Vice President Harris' change in  
18 terminology comports with the Biden Administration  
19 equity fixation. In fact, in the most recent EO, for  
20 example, equity is mentioned 63 times, but liberty  
21 gets no mention at all.

22           It's not just executive actions,  
23 memoranda, and court cases that make up the Biden  
24 equity agenda. The administration has pushed equity  
25 legislative priorities such as granting only farmers

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1 of color debt relief, federal programs, corporate  
2 board representation, and more aggressive reporting on  
3 and gathering of, quote, equitable data.

4 The federal government's equity agenda  
5 appears to consist of identifying disparities in  
6 outcomes and attempted to close them by preferential  
7 treatment based on race or other immutable  
8 characteristics such as ancestral lineage. That's  
9 immoral, it's illegal, and it's undeniable that the  
10 federal government has put forward massive efforts to  
11 deliver on it. Equity is not equality.

12 The currently fashionable term equity is  
13 not contained in our civil rights laws and one might  
14 question to seek to investigate given that equity  
15 initiatives target federally protected classes whether  
16 equity initiatives might frustrate or impede civil  
17 rights protection and enforcement.

18 Indeed, equity is not synonymous with  
19 equality. We need look no further than top government  
20 officials own pronouncements to learn this. For  
21 example, on November 1, 2020, once again Vice  
22 President tweeted a video from her official government  
23 Twitter page where she acknowledged, quote, "there's a  
24 big difference between equality and equity." Equality  
25 suggests, quote, "oh, everyone should get the same

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1 amount. Equitable treatment means we all end up in  
2 the same place.”

3 I say believe them when they say the quiet  
4 part out loud. Contrary to the focus on equity-  
5 engineered outcomes, equality of opportunity seeks to  
6 remove barriers that otherwise close doors to  
7 opportunity.

8 I have firsthand experience as the leader  
9 of the civil rights program at USDA. There, for  
10 example, we have redesigned and implemented a better  
11 department-wide reasonable accommodation policy for  
12 Americans with disabilities, thereby opening the door  
13 of opportunity to people, putting their talents to  
14 work for the public interest. I have more examples.

15 The insistence that we must produce equal  
16 outcomes among groups defined by skin color, national  
17 origin, or gender perverts the American understanding  
18 of justice based on individual rights as achievable  
19 only by substituting authoritarian methods that  
20 trample those rights, and there is no good reason to  
21 believe that people or groups of people should even  
22 all end up in the same place as Vice President Kamala  
23 Harris has said.

24 This brings me to my main point. Asian  
25 Americans are a disfavored group under the equity

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1 regime because of their success. Equity initiatives,  
2 as discussed, seek to reach proportional outcomes for  
3 groups.

4 That is especially problematic for Asian  
5 Americans in certain areas of American life within  
6 which they exceed in disproportionate numbers. Many  
7 Asian Americans are culturally dedicated to academic  
8 achievement and family cohesion.

9 That devotion has led to representation in  
10 fields that outstrip their proportion to the general  
11 population. So, in a system where outcomes must  
12 reflect proportionality, Asian Americans can occupy  
13 only their proportional share, approximately seven  
14 percent.

15 Achieving equitable outcomes means both  
16 providing preferences to artificially inflate the  
17 proportion of and lowering standards for certain  
18 groups, and also bringing down other over-represented  
19 races like Asian Americans to their proportion of the  
20 population.

21 These are the two sides of the same equity  
22 coin. Neither side can be satisfied without violating  
23 federal civil rights laws or the constitutional  
24 principle of equal protection under the law since both  
25 require divvying us up by race.

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1 My invitation to participate in this  
2 briefing requested I address the federal response to  
3 anti-Asian racism in the United States. Sadly, as I  
4 lay out, the federal government is one of the great  
5 purveyors of discrimination against Asian Americans  
6 and other accomplished ethnic groups in this country  
7 via its equity agenda. The question is what this body  
8 will do about it.

9 In conclusion to this statement, I list a  
10 number of actions, I won't list them right now,  
11 they're in my written statement, the Commission can  
12 and should take to address this discriminatory equity  
13 agenda.

14 However, I'd be remiss if I didn't first  
15 comment on another major problem. The problem is that  
16 these efforts, equity efforts, mask fundamental  
17 reasons and stifle efforts to address why there are a  
18 disproportionate number of certain groups under  
19 performing in certain ways.

20 An undue focus on an outcome driven  
21 approach can paper over structural issues within  
22 certain demographic populations that contribute to a  
23 failure to meet standards such as in hiring,  
24 contracting, college acceptance, promotions, et  
25 cetera.

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1           Such obfuscation can in turn lead to these  
2 issues being neglected with minorities perhaps the  
3 most acutely affected. We have seen this problem  
4 exacerbated in the decades of unsuccessful racial  
5 preference experiments in higher education. And with  
6 that, I will report back to Roger Clay. Thank you.

7           COMMISSIONER KIRSANOW: Thank you, Mr.  
8 Westhill. Detective Martinez?

9           DET. MARTINEZ: Thank you for having me.  
10 I want to take my time to kind of explain the  
11 perspective from a line officer, a line investigator,  
12 of how these cases get, these anti-Asian cases get  
13 classified or not as hate crimes or bias-motivated  
14 crimes.

15           Bias-motivated crime is a criminal offense  
16 motivated in whole or in part, this is state, by the  
17 actual or perceived legally protected characteristic  
18 of the victim. These can be race, nationality,  
19 ethnicity, religion, disability, immigration status,  
20 sexual orientation, gender, and gender identity.

21           In my state, age is not protected.  
22 Political ideology is not protected. Being a police  
23 officer is not a protected characteristic.

24           A hate crime includes any willful act that  
25 by force or threat of force injures, intimidates,

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1 interferes with another person's civil right. So,  
2 what does that mean? Most people do not know what our  
3 civil rights are, including line officers.

4 So, the easiest way to think of it is a  
5 biased-motivated crime occurs when someone commits a  
6 crime with part of the reason being because of their  
7 protected characteristic, a bias against the protected  
8 characteristic.

9 Federally, if the crime would have  
10 occurred anyways when you remove the bias, it does not  
11 count as a federal hate crime. It does not count  
12 under that statute, but a lot of states have a  
13 difference whether in whole or in part.

14 Like I said, the average person, patrol  
15 officer, or person who calls 9-1-1, they don't know  
16 what their civil rights are. All they're calling is  
17 the police because they're scared, they're being  
18 attacked, they're worried about their safety. They  
19 don't report being the victims of hate crimes.

20 When the officers arrive, they have to  
21 meet the elements of whatever statute. So, you may  
22 have the criminal offense against them and additional  
23 either direct or circumstantial evidence to show that  
24 the criminal offense is also bias-motivated.

25 99.9 percent of our determinations are

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1 made by the officers in the field, the supervisors in  
2 the field, or the investigators after they get the  
3 case. Folks are not just, in the second-largest  
4 police department in the second-largest city, people  
5 are not calling 9-1-1 saying I am the victim of a hate  
6 crime.

7 Is it a violation of our civil rights if  
8 someone vandalizes our property, if someone spits on  
9 us, if someone screams on us? Like I said, most  
10 people don't know these things.

11 Bias motivation is a thought crime. It is  
12 the suspect's intent. We have to prove that through  
13 direct evidence or circumstantial evidence beyond a  
14 reasonable doubt that the suspect committed the crime  
15 because of the bias against the protected  
16 characteristic.

17 This is extremely difficult when the  
18 underlying crime is a misdemeanor. We have the two  
19 types of crime, a misdemeanor and a felony. Search  
20 warrants do not apply to misdemeanor offenses except  
21 for certain exceptions.

22 So, when us, as officers, are trying to  
23 get that proof to prove the bias, whether it's social  
24 media posts or to look through someone's phone to see  
25 if they had been texting someone to plan it, we cannot

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1 use that tool on misdemeanors if the hate crime falls  
2 under the misdemeanor rules of evidence.

3 It is also a specific intent crime. So,  
4 unlike general intent crimes such as if you fire a  
5 weapon into the air, everybody should know that the  
6 bullet's going to come down and hurt somebody, so you  
7 don't need to prove that the person who shot the gun  
8 up into the air wanted to hurt someone.

9 When it comes to bias-motivated crimes,  
10 you have to prove that that is the intent, and that is  
11 part of the reason why investigating, classifying, and  
12 prosecuting these cases is so difficult.

13 Without direct or circumstantial evidence,  
14 we must get the suspects to waive their Fifth  
15 Amendment rights and admit to the bias motivation. It  
16 does not matter the victim's perception. We need the  
17 suspect's perception.

18 We have many cases where a victim was  
19 mistaken for having a protected characteristic when  
20 they don't or belonging to a different protected  
21 characteristic, but it doesn't matter what the victim  
22 thinks. It matters what the suspect thought.

23 While we do have standalone hate crime  
24 statutes, in California and in a lot of them, they are  
25 low-level misdemeanors, so we cannot charge the low-

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1 level misdemeanor if there's a higher crime because  
2 double jeopardy applies. They can plead out to the  
3 lower one and then we cannot charge the higher one, so  
4 this is also some issues that come up.

5 The term hate can be misleading. When  
6 used in hate crime law, the word hate does not  
7 necessarily mean rage, anger, or general dislike. It  
8 can mean bias against people or groups with specific  
9 characteristics.

10 This can be a preexisting negative  
11 attitude such as animosity, resentment, revulsion,  
12 contempt, fear, paranoia, thrill seeking, other  
13 things. It doesn't have to be disgust or hate to meet  
14 the bias motivation.

15 Now, there have been several folks up here  
16 who have talked about hate incidents. Legally, there  
17 is no such thing as a hate incident. We know about it  
18 because this is what we do. Most people don't know  
19 that. Legally, there is no such thing as a hate  
20 incident and the vast majority of police departments  
21 across the country, over 99 percent, will not complete  
22 a hate incident report.

23 They show up, tell the victim who has just  
24 been, had one of the worst days of their lives, free  
25 speech, First Amendment, and they drive away. My

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1 department and others are some of the few that do take  
2 it, but it is not a common thing. The federal  
3 agencies do not take hate incident reports.

4 My time is up. Just the last thing I'll  
5 talk about is the reason that we take hate incident  
6 reports is because we're trying to focus on the  
7 victim-centered approach. The victim-centered  
8 approach is a way of dealing with victims of crimes.

9 Instead of the old just the facts, ma'am,  
10 and I'm going to chase after the bad guy, it's slowing  
11 things down and trying to get the victim the  
12 assistance, the help, connection to the advocacy  
13 groups that can assist them best before we run off and  
14 chase the bad guy.

15 So, I tried to keep it short, so if you  
16 guys have any questions, but I did run out of time,  
17 so.

18 COMMISSIONER KIRSANOW: Thank you,  
19 Detective Martinez. Next, Chief Scott? Chief, can  
20 you hear me?

21 CHIEF SCOTT: Thank you. Yes, I can.  
22 Thank you. Can you all hear me okay?

23 COMMISSIONER KIRSANOW: By the way, before  
24 you begin, I just want to note for the record that  
25 Commissioner Jones has joined by Zoom. Go ahead,

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1 Chief.

2 CHIEF SCOTT: Thank you, and good  
3 afternoon, everybody. I'm going to use my time to  
4 talk more of a high level about hate crimes in general  
5 and some of the ways that we believe we can all work  
6 together as a community to address hate crimes and  
7 what comes along with it.

8 Yeah, the first part of my comments, I'm  
9 going to paraphrase, not quote directly, from our  
10 Attorney General Rob Bonta on what hate crimes  
11 actually are. You know, crimes motivated by hate are  
12 not just attacks on individual people. They are  
13 attacks on our community, our entire community.

14 On May 11, 2021, our California Attorney  
15 General Bonta declared a state of crisis as heightened  
16 hate crime violence in the Asian American and Pacific  
17 Islander communities reverberated and continue to do  
18 so in some respects across the state.

19 Meanwhile, in 2020, late 2020, California  
20 reported the highest number of hate crimes of any  
21 state with 1,017 bias-motivated crimes against the  
22 victims' race, ethnicity, ancestry, gender, gender  
23 identity, religion, disability, or sexual orientation.

24 As has been stated by many of the  
25 speakers, hate crimes are criminal acts where victims

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1 are targeted because of their group identity or  
2 perceived identity such as race, national origin,  
3 religion, or another group of characteristics.

4 Hate crimes convey a message to both the  
5 victims and their group or perceived group that they  
6 are not welcome and not safe, and as such, these  
7 crimes are an attack on the fundamental rights of our  
8 communities at large.

9 So, it's vital that law enforcement  
10 agencies, prosecutors, and the community that tries to  
11 combat these types of crimes recognize what hate  
12 crimes are and respond appropriately.

13 Here in San Francisco, we believe that an  
14 effective response to hate crimes has a multi-faceted,  
15 multi-component response mechanism and I'm going to  
16 start with community engagement.

17 No effort to address hate crimes and  
18 incidents would be complete without community  
19 engagement and collaboration between both community-  
20 based organizations, government organizations, and, of  
21 course, our prosecutorial agencies, both at the local,  
22 state, and federal level where applicable.

23 Media plays a big role in communications  
24 on how we address hate crimes and really relaying the  
25 message through the communities at large that these

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1 crimes are given the utmost seriousness in terms of  
2 the response, in terms of how we see them as a  
3 society, and how we try to combat and prevent them.

4 When this is done effectively, community  
5 members see the visible signs that our communities and  
6 our governments are working together in order to do  
7 everything necessary to both prevent and combat hate  
8 crimes, intervene on those that perpetrate these types  
9 of acts, and hold those that do perpetrate these types  
10 of acts accountable.

11 Victims' advocacy and victims' rights are  
12 part of our response here in San Francisco, and as far  
13 as, you know, the San Francisco Police Department,  
14 when we saw a tremendous increase in hate crimes in  
15 2021, which our hate crimes, our reported hate crimes  
16 doubled, one of our responses was to enhance victims'  
17 advocacy and victims' rights by standing up a  
18 community liaison unit specifically for the purpose of  
19 connecting victims and their families to services, to  
20 provide a support network, and to send a clear message  
21 to members of our communities that we are there for  
22 them when these crimes occur.

23 Because on the back side of that and the  
24 flip side of that, we do know, and I don't think this  
25 is germane to the city of San Francisco or the state

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1 of California, that many of these crimes go unreported  
2 for a variety of reasons, and without that advocacy,  
3 without that support, we think that situation would be  
4 worse.

5 There is a component of hate crime  
6 response that really deals with immigration and the  
7 fear of people reporting crimes because of their  
8 immigration status, and in most communities, at least  
9 this community, we make sure that people understand  
10 that immigration status has no value of whether or not  
11 a person can report a crime.

12 We welcome and encourage every member of  
13 our community, despite immigration status, to engage  
14 with law enforcement, to engage with government to  
15 report what is happening, because without that  
16 accurate reporting, we cannot address this issue  
17 appropriately.

18 I know our last speaker, Detective  
19 Martinez, spoke a little bit about hate incidents, and  
20 I want to speak a little bit about hate incidents and  
21 how that plays a role in this matter.

22 You know, as was stated earlier, hate  
23 incidents, if it doesn't amount to a violation of the  
24 California Penal Code, it's not a crime, but we do  
25 encourage the reporting of hate incidents here in San

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1 Francisco because we believe that that is a precursor  
2 oftentimes to serious, more serious crimes that may  
3 occur by the people that perpetrate hate incidents.

4 We have stepped up our efforts to  
5 encourage our community members to report hate  
6 incidents, and one of the ways we do that is to make  
7 sure we can communicate with the very diverse  
8 community here in our city.

9 We have multiple languages that are  
10 accessible by members of our community, and despite  
11 the ability of some people with limited English  
12 proficiency, we encourage them to report hate  
13 incidents as well as hate crimes, and that information  
14 can prove to be valuable down the line in the event  
15 that arrests are made and prosecutions are at play.  
16 Those hate incidents sometimes prove motives.

17 So, that is something I think that is  
18 really an emerging issue in many jurisdictions of how  
19 we report and how we capture those hate incidents. I  
20 do believe there is work to be done on that front in  
21 terms of having systematic ways to do that, and we can  
22 all learn from each other on how we do that best.

23 The last thing I want to talk about is our  
24 reporting of hate crimes in general and where we are  
25 on that, and what I believe we can do to improve in

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1 that area.

2 As we have tracked our hate crimes here in  
3 our city over the last six years, we've seen pretty  
4 much post-2020, post the global pandemic, a sharp rise  
5 in hate crimes in 2021, and then we saw a sharp  
6 decrease in 2022.

7 What we do know is that the reporting of  
8 hate crimes, as we nationwide change our reporting  
9 system to the National Incident-Based Reporting  
10 System, that we hope to have better data on reporting.

11 I do have the opinion that without the  
12 data to be able to really track the patterns of hate  
13 crime, to really be able to track what is fueling hate  
14 crimes and hate-fueled violence, that we're behind the  
15 curve if we don't have basic consistent, robust  
16 reporting systems.

17 And I am hopeful that with the  
18 implementation of NIBRS across the United States, that  
19 our reporting will be more consistent, our reporting  
20 will be more accurate where we really understand the  
21 data and what's fueling and what the patterns are in  
22 hate crime.

23 And that's one thing that I believe, at  
24 least in our city, we are building that infrastructure  
25 to do just that, to be NIBRS compliant we hope within

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1 the next year and a half or so, and we hope that our  
2 data and the data that we share with others is more  
3 robust so we have a way to not only track the data,  
4 but track the indicators and the things that we know  
5 that will help us really try to crack the code, if you  
6 will, on addressing hate crime in a holistic way.

7 COMMISSIONER KIRSANOW: Thank you, Chief.

8 CHIEF SCOTT: I believe -- thank you.

9 COMMISSIONER KIRSANOW: Our next witness  
10 is Former Commissioner Michael Yaki, who is the  
11 principal reason why we're having this hearing.  
12 Commissioner, can you hear us?

13 MR. YAKI: I can indeed, Mr. Chair.

14 COMMISSIONER KIRSANOW: Proceed.

15 MR. YAKI: Thank you very much, Mr. Chair  
16 and Members of the Commission. My name is Michael  
17 Yaki and I am the reason that you're sitting there  
18 right now, so you can blame it all on me.

19 After 17 years, it's very different sort  
20 of being on this side of the panel, but I'll do my  
21 best to just take a few moments and let you have more  
22 questions for the esteemed panelists who are here  
23 today.

24 I'm not going to try and inundate you with  
25 facts and figures, and everything that you've heard

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1 today, and I think you've heard a lot, but I will say  
2 this. The reason I wanted to put this forward is not  
3 just because of what we saw during the COVID epidemic,  
4 not just because we saw the President of the United  
5 States referring to this as the Chinese Flu and giving  
6 license essentially to characterize a terrible  
7 affliction spreading across this country that was  
8 killing, you know, hundreds of thousands of people, by  
9 blaming it all on China, but because it goes to  
10 something deeper and very fundamental and personal to  
11 who I am.

12 My father is a Japanese American. His  
13 family was incarcerated during World War II. His  
14 family possessions were taken from him. His family  
15 farm was sold. This is something that was a defining  
16 moment for who my father is, a father who nevertheless  
17 rose up from that to become the highest ranking career  
18 diplomat at that time for an Asian American in the  
19 United States Foreign Service.

20 But he grew up experiencing racism  
21 firsthand, and this is racism that came from before.  
22 I mean, this is something that started essentially in  
23 the 1800s with exclusion acts, with the  
24 discrimination, the segregation of the Chinese in San  
25 Francisco, with the fact that my mother, who came to

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1 this country not as an immigrant, but as the daughter  
2 of a Chinese diplomat, marooned essentially in Los  
3 Angeles because of the war in the Pacific occurring  
4 that just started, Pearl Harbor, and they couldn't get  
5 back to where he was being recalled back to China.

6 And because she was Chinese, and because  
7 her family was Chinese, they tried to deport her  
8 because of the Chinese exclusion act at the time.  
9 Luckily, that didn't occur. Otherwise, I wouldn't be  
10 here today.

11 But the animus against Asians has been a  
12 part, an unfortunate part of the history of this  
13 country for quite some time, and I have always  
14 believed that it's always just there scratching the  
15 surface.

16 And it comes up again even today when you  
17 have a member of Congress challenging the loyalty of  
18 Congresswoman Judy Chu to serve and view classified  
19 documents because, quote-unquote, "She has loyalties  
20 to China."

21 There is something that has been unique  
22 about our American experience, about the experience of  
23 Asian Americans in this country in which somehow we  
24 are always seen as the other.

25 We are always seen as having our loyalty

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1 questioned, where we are sent en masse into the desert  
2 and other hellholes during World War II because, out  
3 of all of the nationalities, out of all of the  
4 ethnicities in this country, many of whom had  
5 relatives, or cousins, or whatever fighting against us  
6 on the other side in the axis, only the ones who  
7 looked or had my kind of surname were put into camps  
8 in this country. Somehow or another, it's our loyalty  
9 that's always been questioned. It's our commitment to  
10 this country that's always been put at doubt.

11 And what I hope will come out of this,  
12 what I hope all of you will be doing as you work  
13 through this is probably working with and taking  
14 something like the COVID-19 Hate Crimes Act and seeing  
15 that it really does what it's supposed to do, working  
16 with state and local governments to get out public  
17 education campaigns, and really start getting to the  
18 core of this.

19 Because a lot of people have touched upon  
20 it in different ways, and I agree with some of what  
21 even people who I would vehemently disagree with who  
22 have spoken today, is that it's somehow easier to pick  
23 us out for the purposes of discrimination, and this  
24 Commission, its mission is to combat exactly that.  
25 We've done it before. We can do it again.

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1 I thank all of you for the work that  
2 you're doing. I commend all of you for it, and for  
3 the people who I served with for 17 or so years who  
4 are still on the Commission, it's a pleasure seeing  
5 all of you again. To the new ones, congratulations.  
6 This is a great body to work with and I wish you all  
7 the best.

8 But keep in mind that there is, at its  
9 core, a mission about this particular investigation  
10 and that is how do we combat, how do we deal with the  
11 fact that when the critical times come, somehow or  
12 another our loyalty as Americans is always questioned,  
13 and somehow or another it gives license to people to  
14 commit heinous acts of violence against us at a time  
15 when, as all Americans, we should be working together  
16 toward that brighter future, toward that great  
17 unification to the bitter angels of our nature every  
18 single day? So, thank you very much for the time to  
19 appear before you today and good luck in your  
20 continuing mission.

21 COMMISSIONER KIRSANOW: Thank you,  
22 Commissioner Yaki, and thank you for your long service  
23 and for instituting this very hearing.

24 Now we'll open it up to questions. I  
25 think I'll take the first one as a privilege of the

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1 Chair. To Mr. Dreiband, when you were at the Civil  
2 Rights Division, were there colleges other than  
3 Harvard and Yale that were engaged in the kind of  
4 conduct that you just described with respect to  
5 Harvard and Yale?

6 MR. DREIBAND: Yes.

7 COMMISSIONER KIRSANOW: And approximately  
8 how many were there, if you know?

9 MR. DREIBAND: I don't know the number,  
10 but I think the Department of Education was  
11 investigating several other colleges and universities,  
12 as well as the Department of Justice. The practices  
13 that I described that were occurring at Harvard and  
14 Yale were not atypical.

15 They were -- you know, there was a view, I  
16 think, in higher education today that when it comes to  
17 race discrimination, that the colleges and  
18 universities can do whatever they want. That's the  
19 attitude that we saw and I'll give one example just  
20 from the Yale case.

21 When we notified Yale of our determination  
22 that Yale violated the Civil Rights Act, we made a  
23 proposal to Yale to settle without litigation and we  
24 suggested that for one year, due to what we regarded  
25 and I think correctly as Yale's unlawful and pervasive

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1 use of race in higher education admissions to Yale  
2 College, that they stop using race for one year, and  
3 if they wanted to use race thereafter, that they make  
4 a narrowly tailored proposal to use race that was  
5 limited in time.

6 Yale responded to us in writing by saying  
7 one, they don't discriminate on the basis of race,  
8 which is blatantly untrue, and two, they were going to  
9 continue using race, and they insisted they would  
10 continue using it eternally.

11 There was no indication in anything that I  
12 saw that any of the colleges or universities that we  
13 investigated ever intended to stop using race and  
14 engaging in race discrimination.

15 COMMISSIONER KIRSANOW: You indicated that  
16 the two cases were dropped by the Biden  
17 Administration. What about the investigations that  
18 you said were pending? Do you know what the status of  
19 those are?

20 MR. DREIBAND: I don't have access to  
21 either the Justice Department's investigative, you  
22 know, inner workings, or the Education Department's,  
23 which -- so I don't know the answer to that.

24 COMMISSIONER KIRSANOW: Thank you.  
25 Commissioner Adams?

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1                   COMMISSIONER ADAMS: Chief Scott, I hope  
2 you can hear me. Good. Does the San Francisco Police  
3 Department collect any other precursor event  
4 information or pre-crime data in San Francisco like  
5 police confronting citizens, people confronting  
6 citizens on the street, maybe mental health events  
7 that occur in public, disturbances of the peace or the  
8 public, or anything at all like that? Does the San  
9 Francisco Police Department collect other precursor  
10 data?

11                   CHIEF SCOTT: Well, we do collect, you  
12 know, hate incident data. I mentioned that a bit in  
13 my opening remarks, but those other types of events,  
14 let's say a person in mental crisis and things like  
15 that, is captured in and of itself, but if there's an  
16 element of it, of hate that may not amount to a hate  
17 crime, we do document that information and push that  
18 information forward, and it could be captured in a  
19 number of ways.

20                   So, we capture it all, everything that you  
21 mentioned, but as far as hate itself, we do have  
22 prejudice-based incident reporting that don't amount  
23 to crimes, and then those hate crimes that meet the  
24 statutory elements of a hate crime that are in their  
25 own reporting category.

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1                   COMMISSIONER ADAMS: Right, but I'm asking  
2 for the opposite, the things that are not hate crimes.

3                   Does the San Francisco Police Department collect data  
4 on other public disturbances in a systematic way,  
5 maybe, you know, incidents of vagrancy or other  
6 disturbances of the peace at all?

7                   CHIEF SCOTT: Yes, yes, disturbances of  
8 the peace, that is, those are collected and reported,  
9 and if they don't amount to crimes, we have to rely on  
10 our computer-aided dispatch or our dispatch  
11 information, but if they amount to crimes, then we  
12 will take an incident report, our officers will  
13 complete an incident report. For instance, for  
14 disturbances of the peace, those types of things are  
15 collected and reported in both ways.

16                   COMMISSIONER KIRSANOW: Commissioner Garza  
17 or was it Commissioner Nourse?

18                   COMMISSIONER NOURSE: Nourse.

19                   COMMISSIONER KIRSANOW: Okay.

20                   COMMISSIONER NOURSE: It's nice to see you  
21 all here, gentlemen. I'd like to focus on what  
22 Detective Martinez said about the difficulty of  
23 completing the hate crimes forms, and he indicated  
24 that a large percentage were not completed. Does that  
25 suggest to you --

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1           What kind of reform would be needed to get  
2 police to actually fill them out? Is it a backward  
3 flow? If the prosecutor won't take the case, then the  
4 police don't want to write the report or how can one  
5 solve that problem, training?

6           DET. MARTINEZ: I believe that a more  
7 across the board philosophy from the top down will  
8 change the way that the departments and therefore the  
9 officers view these things. Let me give you an  
10 example.

11           If I am driving and someone cuts me off,  
12 and I block them in and start yelling at them, and  
13 then I spit on them, I've committed a battery. Now,  
14 the same exact set of facts, it is an LGBTQ person. I  
15 do exactly the same thing, but before I spit on them,  
16 I start throwing out anti-LGBTQ slurs, or anti-Asian  
17 slurs, or whatever.

18           Most officers won't even take into  
19 consideration the slurs, the bias that there is  
20 evidence of because it is due to the road rage, but to  
21 have that training and the buy-in from the top down of  
22 this is what we want to do, not in that exact  
23 circumstance, but these type of circumstances, it will  
24 be pushed down, and as line officers, we do what we're  
25 told. We do what our policy is, but if there's not a

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1 buy-in at the top --

2 COMMISSIONER NOURSE: Right, I mean, it is  
3 very difficult to prosecute these cases, but it is  
4 important because it's not simply a crime. It's a  
5 crime that someone feels entitled to commit because of  
6 the lesser humanity of the victim.

7 And so, it is important to get more  
8 training, it seems to me, in these circumstances, both  
9 at the prosecutorial level, we heard about that from  
10 the last panel, as well as for officers. You  
11 obviously know this quite well.

12 In truth, there are no thought crimes.  
13 That would be unconstitutional. I'll take that case,  
14 but there are elements such as the context. I mean,  
15 you've used speech, but in fact, it's often the  
16 context.

17 So, if you're in front of a gay bar, let's  
18 say, you know, that that would matter, but you have to  
19 train officers to look for those kinds of things as I  
20 understand it.

21 DET. MARTINEZ: Yes.

22 COMMISSIONER NOURSE: Okay.

23 DET. MARTINEZ: And, you know --

24 COMMISSIONER NOURSE: And finally for the  
25 other panelists, I'll just say I was just over at

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1 Jones Day debating someone, Professor Hamburger from  
2 Columbia. The Supreme Court's going to rule. The  
3 Supreme Court's going to rule.

4 And I just want the record to reflect that  
5 there is no Biden Administration person here. You  
6 served the Trump Administration and we will, I'm sure,  
7 abide by the rule of law here at the Commission.

8 MR. WESTHILL: So, that was - a question?

9 COMMISSIONER GARZA: I do have a question,  
10 if I may interject, for Detective Martinez. If you  
11 could give us a little bit more background on how your  
12 officers are trained in terms of identifying those  
13 issues of what constitutes a hate crime?

14 You know, because you mentioned in your  
15 comments about how these statutes are difficult,  
16 right? So, if there a process for training your  
17 officers on how to identify them? You know, are you  
18 tracking that training and the results of that  
19 training? You know, could you give us a little bit  
20 more?

21 DET. MARTINEZ: Yes, since our department  
22 has fully committed, I conduct all of the trainings  
23 myself, and multiple, from the academy, to the  
24 supervisors, to the detectives, to the training  
25 officers, all of them are trained beyond what the

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1 peace officer standards for California does. We train  
2 our own in these things.

3 And recognizing that they're very  
4 difficult to prosecute, that doesn't matter to us.  
5 What matters to us is getting the victim the help that  
6 they can get at that time that the police cannot  
7 provide. We, as police, we don't do therapy. We  
8 don't do -- you know, we barely do proactive policing  
9 very well.

10 So, getting them in touch with those  
11 agencies or those advocacy groups, some that are here,  
12 that can assist them with the non-criminal things that  
13 we can't, whether it's work related, or visa,  
14 immigration related, getting them in touch with those  
15 people that can help them that we cannot do.

16 COMMISSIONER GARZA: And we've talked a  
17 lot about language and translation services. Is that  
18 something that you all also employ in your sort of  
19 victim-centered approach?

20 DET. MARTINEZ: We try. So, the way that  
21 we do it is we have 42 different languages spoken in  
22 our 10,000 officers, so we, wherever in the city, we  
23 try to get a language speaker there no matter where  
24 they're assigned, and if that doesn't work, we have a  
25 contract with AT&T Language Bank.

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1           We try not to use family members because  
2 of certain cultures and stuff, so we try to use our  
3 contract services, and we'll do either video or over  
4 the phone to speak in the preferred language when we  
5 can. It doesn't always work, but that's our goal.

6           COMMISSIONER GARZA: Okay, thank you.

7           COMMISSIONER HERIOT: Detective Martinez,  
8 I was interested in your answer to one of the earlier  
9 questions, and I'm interested in sort of uniformity  
10 of, you know, what gets classified as a hate crime and  
11 what doesn't, and you said that on the road rage  
12 hypothetical, which I thought was a very good one,  
13 that most officers would not consider that a hate  
14 crime. Would some?

15           DET. MARTINEZ: My department will. My  
16 department counts that as a hate crime, but, you know,  
17 maybe if it was the Sheriffs of San Francisco,  
18 depending on how they are trained, they may not.

19           For us, all we need -- the way that I  
20 train my folks is if there's evidence, whether direct  
21 or circumstantial, of the bias, we are making it a  
22 hate crime.

23           COMMISSIONER HERIOT: A hate crime, so  
24 you're erring on that side. See, the interesting  
25 thing about the hypothetical is that often people

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1 don't know the race or sexual orientation of the  
2 person that cuts them off until they get a better look  
3 at them, and therefore, it might be one of those, you  
4 know, it's more likely to be one of those cases where  
5 once people know it, you know, then they act on it  
6 because they want to throw whatever epithet.

7           Whereas, there are going to be other  
8 crimes where they know right from the beginning, you  
9 know, who the person is. And I'm interested then in,  
10 like you say you conduct the training. Do you have  
11 like written materials?

12           DET. MARTINEZ: Yes, yes, we have --

13           COMMISSIONER HERIOT: Can we get a copy of  
14 those?

15           DET. MARTINEZ: Oh, yeah, I have our  
16 policy and I can send you my syllabus and all of that  
17 kind of stuff.

18           COMMISSIONER HERIOT: Great, I would love  
19 to see that.

20           DET. MARTINEZ: I try to tell my folks it  
21 is not your, it is not the patrol officer's or the  
22 detective's job to determine whether it's enough to  
23 convict. If you have evidence, we're going to make it  
24 a hate crime. We're going to get the victim in touch  
25 with those services. We're going to present it to the

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1 correct deputy district attorney or city attorney that  
2 has that experience and we're going to let them  
3 decide.

4 But in the meantime, someone who has had  
5 one of the worst days of their life because of who  
6 they love, or the color of their skin, or where  
7 they're from, they have -- the victim-centered  
8 approach, I'm sure you guys have dealt with that  
9 before. They have been taken care of in a more  
10 thorough way than a regular victim.

11 COMMISSIONER HERIOT: Yeah, the training  
12 materials would be great. In fact, can I ask, Chief  
13 Scott, do you have training materials of that sort?  
14 Yeah?

15 CHIEF SCOTT: Yes, yes, ma'am, we do, we  
16 do.

17 COMMISSIONER HERIOT: Could you send them  
18 to us?

19 CHIEF SCOTT: Yes.

20 COMMISSIONER HERIOT: Great.

21 CHIEF SCOTT: Yes, I can certainly do  
22 that.

23 COMMISSIONER HERIOT: Great, thank you  
24 very much.

25 COMMISSIONER KIRSANOW: Mr. Gilchrist?

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1                   COMMISSIONER GILCHRIST: Thank you, Mr.  
2 Chairman. Mr. Dreiband, I wanted to thank you for  
3 your work that you did at the Department of Justice.  
4 I'm a South Carolinian and the situation that occurred  
5 at Mother Emanuel where the nine souls were killed, I  
6 want to thank you for, and the Department of Justice,  
7 for your work there in dealing with the murderer who  
8 killed those people.

9                   My question to you, the House Energy and  
10 Commerce Committee met yesterday with the CEO of  
11 TikTok, and all of the rising tensions that are going  
12 on with China, do you in any way believe that some of  
13 those tensions can, at some point, end up being just  
14 what we were experiencing during COVID as it relates  
15 to Asian hate crimes?

16                   MR. DREIBAND: Well, first of all, thank  
17 you for your kind remarks about my service at the  
18 Department. We did convict Dylann Roof of murdering  
19 people at Mother Emanuel Church and we successfully  
20 defended the conviction on appeal, we being there were  
21 many people involved. I was the head of the Civil  
22 Rights Division during the appeal, but many, many  
23 people worked on that, including people in the Obama  
24 Administration and later in the Trump Administration.

25                   With respect to hostilities with China and

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1 the pandemic, I think it's a very complicated  
2 question. You know, the pandemic did, by all  
3 accounts, start in China, and there were concerns that  
4 we had when I was at the Department of Justice that  
5 because of the origins of it, that we wanted to alert  
6 all of our prosecutors, and the FBI, and law  
7 enforcement to be aware of this concern that there  
8 would be hate crimes committed against Asians and  
9 Asian Americans.

10 And Attorney General William Barr and I  
11 instructed all federal prosecutors throughout the  
12 United States that we would not tolerate that kind of  
13 conduct, and so we increased significantly the  
14 Criminal Section staffing at the Civil Rights  
15 Division.

16 That's the section of the Civil Rights  
17 Division that prosecutes hate crimes among other civil  
18 rights crimes, and we expanded in addition, you know,  
19 training and things like that to other law  
20 enforcement.

21 There are obviously geopolitical tensions  
22 between the United States and China that I think both  
23 predate the pandemic and I think are unrelated to  
24 them. I've not -- so it's a complicated question, but  
25 I'm not sure if it's --

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1 All of these are kind of somewhat  
2 interrelated in terms of anti-Asian, or particularly  
3 anti-Chinese, or oftentimes anti-Asian hate crimes  
4 where people are perceived to be Chinese even though  
5 they might be Vietnamese or some other national  
6 origin.

7 COMMISSIONER GILCHRIST: Thank you for  
8 that.

9 COMMISSIONER MAGPANTAY: Thank you all for  
10 your service and for your testimony today.  
11 Commissioner Yaki, could you just -- or Former  
12 Commissioner Yaki, I mean, I'm new to the Commission  
13 and I have a lot to do and learn.

14 You know, we look at concept papers and  
15 identify current issues to look at and examine, and  
16 since you had written the concept paper, could you  
17 just help me and the Commission, just help me think  
18 about the original understanding in developing this  
19 concept paper, which I think was really important and  
20 serves us today?

21 MR. YAKI: Well, thank you very much, Mr.  
22 Commissioner and thank you to the Chair. I think this  
23 paper really came out of the rise in hate crime  
24 incidents against Asian Americans from after the  
25 COVID-19 outbreak.

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1           This Commission had acted previously and  
2 sent letters and notices to the White House regarding  
3 our concern about the then President's remarks  
4 concerning the virus. And yes, while it originated in  
5 China, that does not make it a Chinese issue. It does  
6 not --

7           And again, because of the fact that  
8 historically, our communities have been seen as sort  
9 of all the same, like let's not forget about the  
10 murder of Vincent Chin, who was killed, a Chinese  
11 American who was killed because some people thought  
12 that he was Japanese. It comes down to as simple as  
13 that.

14           I mean, it's interesting hearing some of  
15 the stuff, testimony that we heard today regarding  
16 affirmative action, which has been pointed out by  
17 others, is going to be decided by the United States  
18 Supreme Court, and as someone --

19           If I may speak out of school, you know, I  
20 sort of knew this was going to happen. I had an  
21 inkling that it would because it has been something  
22 that some members of the Commission have been wanting  
23 to do for quite some time. I think it's interesting  
24 because, again, there is a court case going on. It's  
25 going to be resolved one way or the other.

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1           And I'm just going to say, you know, quite  
2 frankly, I am someone who, throughout my 17 years on  
3 the Commission, supported diversity, did not vote for  
4 similar projects that would have advanced the topic  
5 that some other people on this panel and others have  
6 advanced today regarding alleged discrimination at  
7 schools.

8           And I would just point out just, you know,  
9 really off the cuff that, you know, we're not talking  
10 about anyone being denied an education. This is not  
11 segregation of the education system, but, and it is a  
12 far different cry from someone whose life, and  
13 property, and family have been severely injured by a  
14 hate crime, and that is the animus and the idea that  
15 it's still there.

16           And I do worry about the TikTok issue. I  
17 do worry about how that at this time in our nation's  
18 history, we have put forward the fact that now China  
19 is the new number one concern. And certainly in Asia,  
20 but also around the world, we see what's going on with  
21 Russia and their interaction with the Ukraine War, and  
22 how, again, people don't distinguish between someone  
23 who looks like this and someone over there in Beijing  
24 as a cause of some death, or injury, or inconvenience  
25 to people.

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1           That is still there and that's what I  
2 think -- that's what this report was in my view.  
3 You're different. You can do whatever it is you want  
4 to do with it, but the animus was to go and address  
5 that underlying core, which is the continuing presence  
6 of anti-Asian discrimination and how quickly it lights  
7 up at times like this.

8           COMMISSIONER KIRSANOW: Mr. Westhill, you  
9 mentioned that in the Biden executive order, there  
10 were 63 mentions of the word equity or thereabouts,  
11 correct?

12           MR. WESTHILL: Correct.

13           COMMISSIONER KIRSANOW: Did it have a  
14 definition of equity in the executive order, and if  
15 so, what was it?

16           MR. WESTHILL: I think there is a  
17 definition in the executive order. I can't quote it  
18 here for you now.

19           But what I think I've endeavored to do  
20 with my spoken testimony here and certainly in my  
21 written testimony, which I hope the Commission will  
22 review, is to explain what I think is obvious about  
23 what equity is.

24           Equity is the goal of pushing some people  
25 artificially forward and bringing some others back. I

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1 suggested that's the two sides of the equity coin.  
2 It's immoral, it's illegal, and I do think it's  
3 something that this Commission could speak out about.

4 I don't remember, again, what exactly the  
5 definition was that was used by the executive order,  
6 but I think the actions of the Biden Administration's  
7 equity agenda and also how it's crept into other areas  
8 of American life as well makes it clear what it  
9 actually is.

10 It's preferences for some based on their  
11 race, or ethnicity, or other immutable  
12 characteristics, and to hold back others because they  
13 do not fit the criteria for what the outcome needs to  
14 be for proportional representation.

15 And if I could, just one additional  
16 statement regarding the Supreme Court cases on  
17 affirmative action, I find it peculiar indeed that  
18 anyone would think that just because the Supreme Court  
19 is going to rule on the affirmative cases, that this  
20 is all done.

21 I don't think, based on actually some  
22 comments of my co-panelist, Mr. Dreiband here, that  
23 schools care very much at all about what the Supreme  
24 Court's going to say. I think, and we've seen some  
25 signs of it already, that they're going to try and

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1 skirt the law and do as they please to make their  
2 campuses more skin deep diverse, which has been their  
3 goal from, you know, from the beginning.

4 Moreover, this Commission is worried about  
5 civil rights. If the Supreme Court, as a lot of  
6 commentators have predicted, prohibits the use of race  
7 in making admissions decisions, it's all the more  
8 important for this Commission to be reviewing and  
9 making sure that they're being held to the standard  
10 that Title VI holds them to, that they cannot, that it  
11 prohibits the consideration of race in federally  
12 funded programs.

13 So, this Commission's job becomes even  
14 more onerous if the Supreme Court does what many  
15 commentators think they're going to do, which is  
16 prohibit race in college admissions.

17 COMMISSIONER KIRSANOW: Mr. Dreiband, of  
18 the statutes that the Civil Rights Division is charged  
19 with enforcing, say Title VII, 42 U.S.C. 1981, Title  
20 IX, all of the titles with respect to civil rights, is  
21 there a definition of equity to your knowledge in any  
22 of those?

23 MR. DREIBAND: No.

24 COMMISSIONER NOURSE: I'd like to make  
25 just an interjection here. If you open up your

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1 iPhone, you can find the definition of equity, the  
2 quality of being fair and impartial. I understand you  
3 believe it means outcome. There's a difference here,  
4 but that's what my dictionary says and the Supreme  
5 Court likes dictionaries these days.

6 MR. DREIBAND: But there's no -- the word  
7 equity does not appear in a single statute passed by  
8 the United States Congress about civil rights issues,  
9 at least certainly that is enforced by the Civil  
10 Rights Division at the Justice Department. It's not  
11 part of the United States Code at all and that's why  
12 it's not defined anywhere in the U.S. Code, that I  
13 know of anyway.

14 COMMISSIONER KIRSANOW: Commissioner  
15 Heriot?

16 COMMISSIONER HERIOT: I'm going to direct  
17 this to Mr. Westhill because he mentioned it in his  
18 testimony. The Vice President has indeed said what  
19 she believes equity means, hasn't she? What did she  
20 say again?

21 MR. WESTHILL: She has on a couple of  
22 different occasions. The most recent having to do with  
23 the executive order that was signed just, I believe,  
24 last month, that "America has a promise of equity and  
25 justice for all. Today, the President signed an

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1 executive order that puts our nation one step closer  
2 to that," which I think is a change on the pledge of  
3 allegiance's liberty and justice for all.

4 But the Vice President has commented on  
5 this before as well on her official Twitter account.  
6 She said that "There's a big difference between  
7 equality and equity. Equality suggests oh, everyone  
8 should get the same amount. Equitable treatment means  
9 we all end up in the same place."

10 COMMISSIONER KIRSANOW: Commissioner  
11 Magpantay?

12 COMMISSIONER MAGPANTAY: Mr. Dreiband,  
13 just a quick question, and thank you for your service  
14 to the Trump Administration. And in the case  
15 involving what you worked on, can you define what is  
16 an Asian?

17 MR. DREIBAND: I'm sorry, in what case?

18 COMMISSIONER MAGPANTAY: What is an Asian?

19 MR. DREIBAND: What is an Asian? Asians  
20 typically refer to people whose ancestry or national  
21 origin is from the continent of Asia.

22 COMMISSIONER MAGPANTAY: The reason why is  
23 that it is a very large and diverse community, which  
24 some segments encounter poverty, limitations on  
25 proficiency, and I'm just curious in the court papers

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1 if it is recognized the nuance and diversity that we  
2 seek in America, like our schools should be -- you  
3 know, skin color, whatever, but there is a diversity  
4 of experience and insights, isn't there, within the  
5 Asian community?

6 MR. DREIBAND: Well, of course there is,  
7 and that's why this whole notion of grouping  
8 populations of people together the way many colleges,  
9 and universities, and other institutions today are  
10 doing as, quote, Asians, I think is shameful,  
11 disgraceful, and illegal.

12 So, yes, there is a huge range of  
13 diversity among people whose ancestry is from Asia,  
14 among people who are from East Asia, or South Asia, or  
15 various part of Asia, and I think it's horrible that  
16 our institutions in this country today treat these  
17 individuals as if they are part of some monolithic  
18 group and then subject them to pervasive  
19 discrimination.

20 And it's even worse because we're talking  
21 typically about 18-year-old children who are applying  
22 to further their education at colleges and  
23 universities throughout this country, many of whom  
24 come from very poor families, many of whom are first  
25 generation arrivals to this country, and they are

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1 lumped together and disadvantaged by Ivy League  
2 institutions, by all kinds of institutions in this  
3 country, and it is a total disgrace in my opinion, and  
4 it's illegal, and immoral, and wrong, and should stop.

5 COMMISSIONER MAGPANTAY: And that's in  
6 your papers?

7 MR. DREIBAND: What?

8 COMMISSIONER MAGPANTAY: And that's in  
9 your papers, your litigation papers, yes?

10 MR. DREIBAND: Well, yeah, in the cases  
11 that I mentioned, yes, we made those allegations, yes.

12 COMMISSIONER MAGPANTAY: Thank you.

13 MR. MORALES: I'm going to assert my  
14 authority under 45 CFR 701.11 and I want to remind all  
15 Commissioners that they voted for the concept paper on  
16 hate crimes against Asian Americans on September 16,  
17 transcript page 40, research timeline voted on October  
18 21, transcript page 32.

19 An amendment to add admissions of Asian  
20 Americans' status to colleges and universities failed  
21 by a vote on September 16. Our conversation and the  
22 point of testimony today is limited to the four  
23 corners contained in the concept paper, so I'm going  
24 to submit the concept paper and the timeline for the  
25 record, so thank you.

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1 COMMISSIONER MAGPANTAY: I apologize for  
2 my question if it was not germane to the topic.

3 COMMISSIONER HERIOT: Yes, it was.

4 COMMISSIONER KIRSANOW: Any other  
5 questions from Commissioners?

6 CLOSING REMARKS

7 COMMISSIONER KIRSANOW: Panelists, I  
8 want to thank you. That will conclude this  
9 briefing and we appreciate the testimony of  
10 everyone who has participated in this briefing  
11 today. The record will be open for 30 days in  
12 which you can submit further comments.

13 Members of the public are invited to do  
14 so also and they may be emailed to, if you want to  
15 take this down, [antiasianhatecrimes@usccr.gov](mailto:antiasianhatecrimes@usccr.gov).  
16 That is [antiasianhatecrimes@usccr.gov](mailto:antiasianhatecrimes@usccr.gov). And please  
17 submit your comments by April 24.

18 ADJOURN MEETING

19 COMMISSIONER KIRSANOW: And with that,  
20 the briefing is concluded.

21 (Whereupon, the above-entitled matter  
22 went off the record at 4:51 p.m.)  
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