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December 7, 2021

The Honorable Vanita Gupta
Associate Attorney General
United States Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

The Honorable Rachel Rossi
Deputy Associate Attorney General
United States Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

Dear Associate Attorney General Gupta and Deputy Associate Attorney General Rossi,

The 34 undersigned organizations write to share our implementation priorities for the Khalid Jabara and Heather Heyer NO HATE Act, which was included in the COVID-19 Hate Crimes Act.¹

In May 2021, Attorney General Merrick Garland directed Associate Attorney General Vanita Gupta to assign a deputy to oversee the implementation of the Jabara-Heyer Act.² Named after two hate crime victims whose murders were prosecuted under hate crime statutes but not reported in hate crime statistics,³ the law aims to improve hate crime reporting through a series of grants for states and units of local government. Congress passed the Jabara-Heyer Act as an amendment to the COVID-19 Hate Crimes Act, which was enacted in response to a dramatic increase in hate crimes and violence against Asian American and Pacific Islander (AAPI) communities.⁴

Under the Hate Crime Statistics Act of 1990,⁵ the Department of Justice is required to collect and report data on hate crimes. According to the most recent edition of the Federal Bureau of Investigation's (FBI) *Hate Crime Statistics* report, law enforcement agencies participating in the Uniform Crime Reporting (UCR) program reported 8,263 hate crimes in 2020.⁶ Survey

¹ P.L. 117-13.

² See "Memorandum from Merrick Garland, Att'y Gen., to Dep't of Just. Emps." May 27, 2021. Pg. 2 <https://www.justice.gov/ag/page/file/1399221/download>; see also Vazquez, Maegan. "Biden Signs Bill Aimed at Addressing Rise in Anti-Asian Hate Crimes". *CNN*. May 20, 2021. <https://www.cnn.com/2021/05/20/politics/biden-anti-asian-hate-crimes-covid-19-signing/index.html>.

³ Bro, Susan, and Jabara, Haifa. "Hate Crimes Are Slipping Through the Cracks." *N.Y. Times*. Aug. 12, 2019. <https://www.nytimes.com/2019/08/12/opinion/hate-crime-statistics-heather-heyer.html>.

⁴ See Pub. L. No. 117-13, § 2(1).

⁵ 28 U.S.C. § 534 Note.

⁶ U.S. Dep't of Justice. "FBI Releases Updated 2020 Hate Crimes Statistics." Oct. 25, 2021.

<https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-updated-2020-hate-crime-statistics>. See also David Nakamura, *Ohio Submits Updated Hate-Crime Figures to FBI that Would Make 2020 U.S. Tally Highest Since 2001*, *Wash. Post* (Sept. 10, 2021),



data from the Bureau of Justice Statistics (BJS), however, suggests the true number of hate crimes far exceeds the reported total. Between 2005 and 2019, for example, BJS estimated that U.S. residents experienced nearly 250,000 hate crime victimizations each year.⁷ The estimates do not include victimizations motivated by gender identity. Nor do they include homicide, intimidation, vandalism, property damage, or destruction, which together often account for most hate crime incidents reported through the UCR program.⁸ Both policymakers and stakeholders agree that there is a chronic and serious underreporting of hate crimes. As organizations representing communities targeted by hate, we know the failure to report accurate data translates into failure to provide policy remedies and much-needed community support. Indeed, the passage of the Jabara-Heyer Act is intended to address this very problem.

To aid in this process, the federal government must support state and local efforts to improve hate crime reporting, assist hate crime victims, and address the harms that hate crimes inflict on victims and communities. This cannot be done without the cooperation of state and local law enforcement. At the same time, we must recognize the justified distrust of law enforcement and the criminal-legal system that exists in many communities, including those most likely to experience hate violence. Accordingly, the federal response to hate crime must hold law enforcement agencies accountable to the communities they serve and empower those communities to craft approaches that fit their needs. As a first step, the department's implementation of the Jabara-Heyer Act should prioritize these objectives.

The following focuses on implementation objectives related to law enforcement agencies, states and units of local government, and the importance of adopting a community-based approach.

I. Law Enforcement Agencies

The provisions of the Jabara-Heyer Act, incorporated as section 5 of the COVID-19 Hate Crimes Act, create incentives for law enforcement to improve responses to hate crime. As noted in section 5(c)(2), law enforcement agencies are eligible to receive grants if they meet one of two formulas: (1) they serve a population of 100,000 or greater; or (2) they serve a population of 50,000-99,999 and reported no hate crimes to the UCR program in the three most recent calendar years for which data are available. Designed to address problems in midsize jurisdictions where numerous hate crimes likely occur but are rarely reported, the second formula covers agencies that affirmatively reported zero hate crimes or submitted no data to the UCR program.

In authorizing grants for states or units of local government to implement the National Incident-Based Reporting System (NIBRS), subsection (d) stipulates agencies must provide “comprehensive and detailed

https://www.washingtonpost.com/national-security/ohio-hate-crime-data-us/2021/09/10/8f18fb28-1261-11ec-882f-2dd15a067dc4_story.html.

⁷ Kena, Grace, and Thompson, Alexandra. “Special Report: Hate Crime Victimization, 2005-2019.” *Bureau of Justice Statistics*. Sep. 2021. https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

⁸ *Ibid.* at 2; see also “Table 4: Offenses: Offense Type by Bias Motivation, 2019.” *Fed. Bureau of Investigation*. 2020. <https://ucr.fbi.gov/hate-crime/2019/topic-pages/tables/table-4.xls>.



collection” that enables law enforcement agencies to provide “richer details” in crime reports submitted to the federal government.⁹

In issuing these grants, the Jabara-Heyer Act requires the attorney general to prioritize agencies that develop and implement programs and activities that address or respond to hate crimes, including the five enumerated activities outlined in the law:

1. adopting a policy on identifying, investigating, and reporting hate crimes;
2. developing a standardized system of collecting, analyzing, and reporting the incidence of hate crimes;
3. establishing a unit specialized in identifying, investigating, and reporting hate crimes;
4. engaging in community relations functions related to hate crime prevention and education, such as:
 - a. establishing a liaison with formal community-based organizations or leaders; and
 - b. conducting public meetings or educational forums on the impact of hate crimes, services available to hate crime victims, and the relevant federal, state, and local laws pertaining to hate crimes; and
5. providing hate crime trainings for agency personnel.¹⁰

In addition to considering these enumerated activities, we encourage the Attorney General to further prioritize state and local units of government that work with community organizations to improve hate crime data collection and reporting.

By prioritizing agencies that develop and implement such policies, the Jabara-Heyer Act reinforces well-established best practices.

II. State and Local Municipalities

The Jabara-Heyer Act also authorizes the attorney general to make grants for state-run hate crime hotlines and issue guidance to states on best practices for implementing the hotlines.¹¹ The hotlines are required to: (A) direct callers to law enforcement, if appropriate, and local support services; (B) protect personally identifiable information from nonconsensual disclosure, including to government entities; (C) employ staff members trained to be knowledgeable about the relevant federal, state, and local hate crime laws, as well as local law enforcement resources and local support services; and (D) be accessible to callers with limited English proficiency, where appropriate, and individuals with disabilities.

⁹ Obama, Barack. “The President’s Role in Advancing Criminal Justice Reform.” 130 Harv. L. Rev. 811, 862 2017. <https://harvardlawreview.org/wp-content/uploads/2017/01/811-866-Online-Rev-vf.pdf>. On January 1, 2021, the FBI transitioned to a NIBRS-only data collection, which means agencies that have not transitioned to NIBRS have no means of reporting hate crimes to the federal government. *See* Hanson, Emily J. “The National Incident-Based Reporting System (NIBRS): Benefits and Issues.” Cong. Rsch. Serv. Feb. 1, 2021. Pgs. 7-8. https://www.everycrsreport.com/files/2021-02-01_R46668_e8492643a8e153b439dc8552ab868a8390eca337.pdf.

¹⁰ Pub. L. No. 117-13 § 5(f).

¹¹ *See* Pub. L. No. 117-13 § 5(e).



Hate crime victims decide not to report their victimization to law enforcement or government authorities for many reasons, including reluctance to interact with police. And when hate crimes go unreported, it not only affects the public's understanding of the nature and extent of hate crimes in a given jurisdiction, but might also prevent hate crime victims and their communities from receiving important social services. The state-run hate crime hotlines can help address both problems. As mentioned below, we encourage the department to prioritize the development of hotlines that specifically cater to the needs and concerns of victims and their communities. While state governments will manage the hotlines, our experience suggests that the best approach is to ensure that hotlines maintain a complete, and clearly articulated, independence from law enforcement and the criminal-legal system.

The Department of Justice should also recommend that state-run hotlines deploy trauma-informed approaches to ensure appropriate resolution of calls and bolster community confidence for utilization of the hotlines. Furthermore, state-run hate crime hotlines should be encouraged to routinely share call statistics with community organizations on the disposition of calls, impacted state geographical regions, and information on which communities may be experiencing hate incidents and crimes. This information permits community organizations to develop and coordinate real-time community-driven prevention strategies to address community animus, and foster healing for victims and their communities.

III. Adopting a Community-Based Approach

A key part of Jabara-Heyer is the community- and victim-centered approach to combatting hate. When there is trust and a strong relationship between law enforcement or state agencies and community organizations, the response to hate crimes is improved. Not only are community organizations able to demonstrate the impact of hate and share what hate looks like to them, but they are also able to meet the unique needs of their community members in the wake of hate incidents.

Multiple provisions of the Jabara-Heyer Act give the Department of Justice discretion to award states and units of local government that prioritize community-based approaches to hate crimes, which can in turn allow those entities to make subgrants to nongovernment, community-based organizations working to improving our response to hate crime.

Subsection (f), for example, authorizes the attorney general to make grants to states and certain units of local governments to assist select agencies "in conducting law enforcement activities or crime reduction programs to prevent, address, or otherwise respond to hate crime," including "engaging in community relations functions related to hate crime prevention and education," like "establishing a liaison with formal community-based organizations or leaders" and "conducting public meetings or educational forums on," among other things, "the impact of hate crimes" and "services available to hate crime victims." And in making NIBRS grants under subsection (d), the attorney general shall prioritize states and units of local government "that develop and implement the programs and activities described in subsection (f)(2)(A)," which include those described immediately above.

To advance the priorities of holding law enforcement accountable and empowering communities in the process, we encourage the Department of Justice to prioritize state and local programs and activities that



encourage law enforcement cooperation with communities and promote community-based responses to hate crime. The department can do this through the awards it makes under subsections (d) and (f), as well as subsection (e), which authorizes grants for state-run hate crime hotlines. We also encourage the department to consider how it can advance these priorities in other aspects of the Jabara-Heyer Act's implementation.

Further, as you know, there are limitations to traditional criminal legal and law enforcement responses to hate crimes. Fortunately, the Jabara-Heyer Act attends to these constraints. One critique of traditional methods of hate crime enforcement, for example, is the reliance on penalty enhancement in hate crime convictions and sentencing.¹² Although this critique tends to focus on hate crime penalty enhancement in state criminal legal systems, it is relevant that subsection (h) authorizes "alternative sentencing," i.e., participation in educational classes or community service as a condition of supervised release, in federal prosecutions under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, codified at 18 U.S.C. § 249. Implied in this provision is both an acknowledgement of the limitations inherent to traditional methods of hate crime enforcement as well as a commitment to community-based approaches that attempt to address not only the harms that hate crimes inflict, but also the underlying causes. We believe this reading should inform other provisions as well.

Conclusion

Ultimately, we view the Jabara-Heyer Act as a first step in achieving meaningful mandatory hate crime reporting and prioritizing law enforcement accountability and community empowerment in the federal, state, and local responses to hate crime. We value the department's partnership in the fight against hate crimes and are committed to supporting the implementation of this important law.

Please direct all questions to our hate crimes task force co-chairs, Maya Berry, Executive Director of the Arab American Institute, at mberry@aaiusa.org, or David Stacy, Government Affairs Director at the Human Rights Campaign, at david.stacy@hrc.org, as well as Chloé White, Policy Counsel at The Leadership Conference on Civil and Human Rights, at white@civilrights.org.

Respectfully,

The Leadership Conference on Civil and Human Rights
Act to Change
ADL (the Anti-Defamation League)
American Jewish Committee
America-Arab Anti-Discrimination (ADC)
Arab American Institute
Asian American Legal Defense and Education Fund (AALDEF)

¹² See generally Sinnar, Shirin, and Colgan, Beth. "Revisiting Hate Crimes Enhancements in the Shadow of Mass Incarceration." 95 N.Y.U. L. Rev. Online 149. 2020. <https://www.nyulawreview.org/wp-content/uploads/2020/09/NYULawReview-Volume-95-Beth-A.-Colgan-Shirin-Sinnar.pdf>.



Asian Americans Advancing Justice | AAJC
Autistic Self Advocacy Network
B'nai Brith International
Center for American Progress
Center for the Study of Hate & Extremism
Hindu American Foundation
Human Rights Campaign
Interfaith Alliance
Japanese American Citizens League
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
Matthew Shepard Foundation
Movement Advancement Project (MAP)
Muslim Advocates
Muslim-Jewish Advisory Council
National Action Network
National Center for Transgender Equality
National Council of Jewish Women
Not In Our Town
OCA - Asian Pacific American Advocates
People for the American Way
PFLAG National
Sikh American Legal Defense and Education Fund (SALDEF)
Sikh Coalition
SPLC Action Fund
UnidosUS
Union for Reform Judaism