



April 26, 2021

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AAJC

Interim President & CEO
Wade Henderson

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, including members of The Leadership Conference Hate Crimes Task Force, we write to share recommendations for your consideration during the 30-day expedited review that you announced in your March 30, 2021 memorandum entitled "Hate-Based Violence and Incidents."

Below, we focus our recommendations on four different areas for review that you identified in your memorandum to help the department make the best and most effective use of its resources to combat hate. We were grateful to Associate Deputy Attorney General Myesha Braden for facilitating a meeting with members of the team who are conducting the 30-day review, and we discussed many of these recommendations during that meeting.

Increase and help track the reporting of hate crimes and hate incidents that may violate federal law

Engage Civil Rights Organizations and Support Local Community Organizations to Effectively Respond to Hate Crimes and Improve Data Collection

Many individuals targeted for hate do not feel safe reporting crimes to law enforcement. Community organizations can serve as a safe place for hate crimes survivors to find support. In some cases, community groups can also serve as bridges to local law enforcement for hate crimes reporting because they effectively garner community trust. The Department of Justice should deploy the Community Relations Service (CRS) and the Civil Rights Division (CRT) to ensure that civil rights and community organizations have input in defining public safety and effective hate crimes reporting methods and are included in training development. CRS has a long history of collaborating with organizations to develop effective trainings for law enforcement and of including organizations representing Muslim, Sikh, and transgender communities, as well as people from communities that live at the intersection of multiple identities. And U.S. Attorneys' Offices (USAOs) have effectively engaged with disability rights organizations to ensure that stereotypes and other forms of discrimination do not prevent prosecutors from addressing hate targeting people with disabilities.

The Department of Justice should also create or redirect grants and discretionary funds to support local community organizations so that they can continue to serve people targeted for hate crimes. This would also allow community organizations to respond more effectively to hate incidents, enabling law enforcement to focus on crimes and strengthen communities without additional law enforcement presence. These investments will only improve hate crimes reporting if support for community organizations is not limited to data collection. Improving data requires long-term investments in holistic services for those targeted for hate to enable people to feel safe enough in their communities to report hate incidents and crimes. Grants must include social services such as mental health support, housing support, food security, educational programs for children, and investment in cultural events.

Support the Jabara-Heyer National Opposition to Hate, Assault, and Threats to Equality (NO HATE) Act

The Jabara-Heyer NO HATE Act, included in the COVID-19 Hate Crimes Bill that just passed out of the Senate, would improve the reporting of hate crimes and promote a better community-centered response to such incidences. The Department and the Administration should support this bill in the House until it reaches the President's desk for his signature.

U.S. Attorneys and FBI Should Engage Local Law Enforcement to Improve Reporting

All USAOs, FBI field offices, and FBI resident agent offices should keep track of law enforcement agencies in their jurisdictions that are substantially underreporting hate crimes to promote comprehensive participation in the Hate Crimes Statistics Act reporting program. These law enforcement leaders should then prioritize meeting with agencies that underreport hate crimes (e.g., do not report or consistently affirmatively report zero hate crimes) and with community organizations that support communities targeted for hate in those jurisdictions. The leaders can share resources from the FBI's Criminal Justice Information Services (CJIS) on reporting, to include the Uniform Crime Reporting (UCR) Program Hate Crime Data Collection Guidelines and Training Manual.

Incentives should be established to encourage local law enforcement agencies to report to the FBI, as well as accountability for FBI officials and personnel in the Department of Justice and USAOs to promote participation in the FBI's Hate Crimes Statistic Act (HCSA) data collection. These incentives need to remain in place until it is mandatory to report data to the HCSA. Examples of incentives include national recognition, targeted funding, and matching grants for state and local HCSA training.

FBI Data Explorer Hate Crimes Page and NIBRS Transition: Ensuring Data Reflects Different Identities Targeted for Hate

The FBI Data Explorer Hate Crimes Page and related resources must provide the data to help communities improve hate crimes data participation by state and local law enforcement. The data explorer must enable users to identify the different identities that people targeted for hate may share and include people that may be targeted on the basis of different aspects of their identity (for example, race, sex, and gender identity when investigating the epidemic of bias-involved murders of Black transgender women).

The Department of Justice must also determine how the data explorer will handle jurisdictions that do not report hate crimes. At minimum, transparency demands that the agencies that do not report hate crime data be listed. The department must also share readily accessible information regarding how many departments are reporting through NIBRS, how CJIS, USAOs, the CRT and the Office of the Attorney General are following up on this transition to NIBRS, and what is happening with data from agencies that have not transitioned to NIBRS and/or continue to not report hate crimes data or to affirmatively report zero hate crimes.

Coordinate with the Department of Education to Encourage Clery Hate Crimes Reporting

The Education Opportunities Section of the CRT should work with the Department of Education's Office for Civil Rights (OCR) to ensure that campuses comply with hate crimes reporting requirements connected to Clery obligations. Clery Act reporting is mandatory; the FBI HCSA crime data collection system is entirely voluntary. Yet, there are colleges and universities that report their data to the Department of Education and not the FBI — even though the definition of what data is to be collected for both reports is identical.

Utilize civil enforcement authorities to address unlawful acts of bias that do not rise to the level of hate crimes or where cases cannot be brought forth

Title VI Enforcement

The Department of Justice should use its existing Title VI enforcement authorities across all agencies to ensure that all recipients of federal financial assistance (FFA) are ensuring language access in all materials about hate incidents and crimes. All Offices of Civil Rights in federal agencies should make sure that recipients of FFA are ensuring language access in all materials about hate incidents and crimes and including information about reporting when FFA is distributed.

Robust enforcement of Title VI in connection to hate crimes extends to schools and college campuses. As a part of Title VI enforcement, these civil rights offices should also address the needs of students targeted for hate, understanding how this may contribute to increased drop-out rates. Districts and institutions must understand their obligations concerning unlawful discrimination at schools before students return to schools.

Reestablish the Office on Access to Justice

To address unlawful acts of bias, the Department of Justice should reestablish Access to Justice and support legal service organizations, which are already providing support to individuals targeted for hate in areas such as housing, employment, and education. The Office of Justice Programs (OJP) grants should enable victims of property hate crimes to access funds and services to recover, even in cases where there is no defendant identified or there is no prosecution.

Ensure each U.S. Attorney's Office has specialized resources for hate crimes

Under Attorney General Janet Reno, every USAO created a Hate Crimes Task Force. While many ended after her term as attorney general, others lasted across different administrations and priorities. For example, the task force for the Eastern District of California is a prime example of effective implementation of a task force that effectively engages diverse community leaders and state and local law enforcement leaders in regular meetings where all parties can develop relationships outside of crisis situations. In addition, career attorneys and administrative staff should help lead the Hate Crimes Task Force for continuity across administrations. CRS can support U.S. attorneys in the creation and facilitation of these task forces.

Enhance the tools available to identify and respond to hate crimes and hate incidents by assessing the resources needed across the Justice Department

Support Reintroduction of the Justice for Victims of Hate Crimes Act

The department should support reintroduction of the Justice for Victims of Hate Crimes Act. This bipartisan bill will clarify the proper interpretation of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act by rejecting the Sixth Circuit's prohibitive sole-motivation prosecution standard.

Grant-making Components Invest in Restorative Practices

Grant-making components of the department should invest in research and pilot programs relating to hate crime prevention, restorative practices, and non-carceral alternatives to enforcement of penalty-enhancement hate crime laws.

Strengthen the Guidance for Federal Law Enforcement Agencies

It is also crucial to update and strengthen the Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity, issued in December of 2014 by the department. While the new guidance included much-needed improvements to the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, some of the largest problems and recommendations from communities of color and civil and human rights organizations remained. In particular, the 2014 guidance includes national and border security loopholes — exceptions that swallow the rule for many communities — and fails to address critical matters regarding its implementation. Reforming the guidance to more effectively address law enforcement profiling of marginalized communities will eliminate ambiguities and acknowledge the fact that unconstitutional policing contributes to hate crimes in communities, and undermines efforts to build trust, thereby making everyone less safe.

End Countering Violent Extremism Programs

All Countering Violent Extremism (CVE) programs, and programs relying on the same flawed science that undergirds CVE programs, must be eliminated. Not only are these programs ineffective and discriminatory, but they also securitize relationships with communities, undermine efforts to build the

trust necessary for communities to report hate incidents and hate crimes, and as a result significantly inhibit the United States Attorney's Office's ability to work collaboratively with targeted communities. Similarly, all Community Oriented Policing Service and OJP funding for law enforcement should include reminders about Title VI obligations pertaining to hate crimes reporting.

Create a National, Cross-Agency Justice Department Initiative to End the Epidemic of Fatal Violence Toward Transgender Women, and Publish Guidance for Law Enforcement on Reporting and Investigation of Transgender Deaths

In 2019, the American Medical Association called the number of transgender women being targeted and murdered nationally an epidemic. However, in the two years since receiving this designation, there has been little done to end this epidemic. In 2020, the year following the designation, the number of murders rose to more than 50 (amid the COVID-19 pandemic), the highest number since TransGriot by the late Monica Roberts began tracking them. Sadly, this year the number of Black transgender women who were targeted and murdered in particular is already double the number this time last year.

The Justice Department should create a national initiative that includes key department leaders and state and local enforcement leaders focused on ending the epidemic of transgender murders. (See appendix for additional details.) If the White House establishes a Hate Crimes Interagency Group, this should be a key component of that effort. With the number of anti-transgender bills being enacted across the country that are steeped in bias and feed hate against transgender people, we will likely continue to see an increase in hate incidents and hate crimes. Since the Shepard Byrd Hate Crimes Prevention Act was signed into law, adding gender identity and sexual orientation into hate crimes statutes, advocates have only been able to identify three federal investigations of murders of transgender women even though there have been hundreds murdered across the country. And the department has not been able to fulfill its support role for state and local law enforcement in hate crimes investigations and prosecutions, as these cases are also not being brought by local law enforcement. Often, local law enforcement agencies do not even investigate, let alone solve, the murders that happen in their communities signaling that murdering transgender people is unpunishable and without consequence.

The department should also publish guidance on issues connected to the investigation of hate crimes against transgender people, including the ways in which dead-naming and misgendering victims harms victims and communities and undermines investigations. And using its pattern or practice authority, CRT should investigate law enforcement agencies with a record of failing to investigate and report transgender murders. Updating the FBI Data Explorer Hate Crimes Page and related resources to be able to report and pull data by multiple identities alongside national, state, and local agencies will help advocates, local law enforcement agencies, and the Justice Department identify where there are areas with high numbers of crimes targeting transgender women, as well as where there are law enforcement agencies not investigating bias-based murders of transgender women. There also needs to be a way to report non-binary genders so that advocates and law enforcement can track hate crimes against this gender identity-based community as well.

Provide state and local stakeholders with additional tools to identify, investigate, prosecute, and prevent hate crimes and hate incidents and offer stakeholders increased support to help their communities heal after such events

Funding and grants should invest in local community organizations that have already gained the trust of targeted communities. Grants must include mental health resources, support for victims of hate crimes, and support for organizations that address food insecurity and other social services to support community healing. The Department of Justice should also engage the Substance Abuse and Mental Health Services Administration and similar agencies to ensure their work includes information about hate crimes and incidents and resources to find support. Lastly, there needs to be an effort to ensure law enforcement agencies develop referrals to state and local community organizations for hate incidents. These organizations need to have the resources to provide to law enforcement upon request.

We are grateful to you and the dedicated attorneys and staff at the Department of Justice who are working to restore the department to its highest values and longstanding mission of ensuring equal justice under law and protecting civil rights. Effectively responding to hate crimes requires effective investments in communities targeted for hate and a respect for the broader impact of hate incidents and hate crimes. The steps identified above will help ensure that you center the communities you serve in this work. The time is now to address the urgent need for a comprehensive approach across the department and the federal government to combat hate. If you have any questions about any of these recommendations, please contact Becky Monroe, Senior Director, Fighting Hate and Bias Program, at monroe@civilrights.org. Please see the attached Appendix for a list of the members of the Hate Crimes Task Force at the Leadership Conference who participated in this meeting and whose ideas are captured in this letter.

Sincerely,



Wade Henderson
Interim President and CEO



LaShawn Warren
Executive Vice President for Government Affairs

Participants in the April 13, 2021 Meeting with the Office of the Deputy Attorney General and Agency Officials Conducting the Review (The content of this letter reflects the conversation with the Review Team led by these participants.)

The Arab American Institute, Nadia Aziz, Deputy Director, nadia@aaiusa.org
The ACLU, Manar Waheed, Senior Legislative and Advocacy Counsel, mwaheed@aclu.org
Act to Change, Jill Yu, Managing Director and Co-Founder, jill@acttochange.org
The ADL, Erin Hustings, Director of Government Relations, Civil Rights, ehustings@adl.org
Asian Americans Advancing Justice | AAJC, Jiny Kim, Vice President, Policy and Programs, JinyKim@advancingjustice-aaajc.org
Bend the Arc Jewish Action, Rabbi Jason Kimelman-Block, Washington Director, jkb@bendthearc.us
Human Rights Campaign (HRC), David Stacy, Government Affairs Director, david.stacy@hrc.org
The Lawyers' Committee for Civil Rights Under Law, Arusha Gordon, Director, James Byrd Jr. Center to Stop Hate, agordon@lawyerscommittee.org
The Leadership Conference on Civil and Human Rights, Becky Monroe, Senior Director, Fighting Hate and Bias Program, monroe@civilrights.org
The Matthew Shepard Foundation, Judy Shepard, President, jshepard@wyoming.com
Muslim Advocates, Madihha Ahussain, Special Counsel for Anti-Muslim Bigotry, madihha@muslimadvocates.org
NAACP Legal Defense Fund, Puneet Cheema, Manager, Justice in Public Safety Project, pcheema@naacpldf.org
The National Black Justice Coalition, Victoria Kirby York, Deputy Executive Director, vkirbyyork@nbjc.org
National Disability Rights Network, Curt Decker, Executive Director, curt.decker@ndrn.org
The Sikh Coalition, Sim Singh, Senior Manager, Policy & Advocacy, sim@sikhcoalition.org
The Southern Poverty Law Center, Michael Lieberman, Senior Policy Counsel, Hate & Extremism, michael.lieberman@splcenter.org

Additional Background on Recommendations re: Creating a national, cross-agency Justice Department initiative to end the epidemic of fatal violence toward transgender women, and publish guidance for law enforcement on reporting and investigation of transgender deaths (National Black Justice Coalition)

- The Justice Department should create a national initiative that includes key department leaders and state and local enforcement leaders focused on ending the epidemic of transgender murders.
- The department should publish guidance and include in hate crimes trainings for law enforcement the following regarding the reporting and investigation of transgender deaths:
 - Do not “dead-name” the victim. In many states, transgender people are unable to update the name their parents gave them at birth to the one they use in the world. When law enforcement uses the victim’s ID solely, the media follows suit resulting in family and community members not being notified and moved into action early enough to provide time sensitive details that could aid in the investigation into the perpetrator.
 - Do not misgender the victim. If the victim’s sex assigned at birth is male (a designation most often made by doctors based on the reproductive organs of the person) and gender identification and presentation is as a woman, yet law enforcement and consequently the media are describing the victim by their reproductive organs and not how they appear in the world — it makes it very difficult for family and community members to provide answers and clues early enough to help investigators solve the case. For instance, if a bartender only served women at 9 p.m. that night and an investigator asks if they saw a man named Antoine during that time and day, the bartender would say no. Having the accurate name, gender, and pictures of the victim will increase the number of tips for investigators to act upon.
- The department’s Special Litigation Section should investigate law enforcement agencies with a record of not reporting transgender murders and not investigating them to determine if there is a pattern or practice of unlawful discriminatory policing on the basis of gender identity.