



Written Statement of the Arab American Institute

Submitted to the House Judiciary Committee Hearing on “Hate Crimes and the Rise of White Nationalism”

April 9, 2019

The Arab American Institute is pleased to submit this statement for the record in support of continued examination of hate crime in American communities and related policy or legislative initiatives, such as federal efforts that would promote improved data collection of reported incidents under the Hate Crime Statistics Act.¹ As indicated in the opening remarks of Chairman Nadler and Ranking Member Collins, preventing both the incidence of hate crime and white supremacist or white nationalist violence is a bipartisan concern.²

Regrettably, this sentiment is one that some participants in today’s hearing overlooked, if not willfully abandoned.³ The minority witnesses, both of whom lack expertise on hate crime, derailed today’s important conversation with comments ranging from disingenuous to downright abominable. In particular, we were distressed with one witness’s persistent denigration of American Muslims, student advocates for Palestinian human rights, and Representatives Ilhan Omar and Rashida Tlaib. In what can only be described as a complete and utter disgrace, witness Dr. Mohammad Abu-Salha, who lost his two daughters and son-in-law to an act of anti-Muslim hate violence, was forced to repeatedly defend his faith and background against the vile stereotypes and mischaracterizations purveyed by some participants in this hearing.

We trust that Congress is unified in its commitment to protect our communities from crimes committed because of race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. Moving forward, Congress must demonstrate this commitment through effective oversight and legislation without succumbing to divisive political narratives that inhibit progress and cause further harm.

¹ 28 U.S.C. § 534 note.

² *Hate Crimes and the Rise of White Nationalism: Hearing Before the Comm. on the Judiciary, House of Representatives*, 116 Cong. (2019), complete recording available at <https://judiciary.house.gov/legislation/hearings/hate-crimes-and-rise-white-nationalism>.

³ Press Release, Arab American Institute, House Hearing on Hate Crime Becomes a Platform for Hate (Apr. 9, 2019), https://www.aaiusa.org/house_hearing_on_hate_crime_becomes_a_platform_for_hate.

The Arab American Institute

The Arab American Institute (AAI) is a nonprofit, nonpartisan organization founded in 1985 to nurture and encourage Arab American participation in political and civic life. Historically, and as with many communities in the United States, threats of hate crime and targeted violence have prevented Arab Americans from full participation in the democratic process.⁴ Given this historical perspective, not to mention the reported nationwide increase of hate crime and contemporaneous resurgence of white nationalism in recent years,⁵ we are committed to promoting effective hate crime prevention in communities across the United States.

AAI provides analysis of state and federal hate crime data submitted through the Uniform Crime Reporting (UCR) system, publishes a comparative review of laws and policies designed to prevent hate crime in each state and the District of Columbia, works in coalition with fellow national civil rights organizations to improve the federal response to hate crime, and convenes working groups with community leaders to promote state and local hate crime reform. Later this year, AAI will publish its 2019 Hate Crime Index.

Hate Crime in American Communities

Congress must hold additional hearings to examine the nature and extent of hate crime in American communities. According to data collected from state and local law enforcement agencies under the federal Hate Crime Statistics Act (HCSA), hate crime incidents are on the rise. In 2017, the most recent year for which HCSA data are available, the United States saw a 17 percent increase over 2016 totals, with 7,175 incidents reported.⁶ This represented the greatest single-year increase, not to mention the first three-year consecutive annual increase, since 2001, when hate crime targeting Arab Americans and American Muslims, and those perceived to be Arab or Muslim, surged in the aftermath of the 9/11 terrorist attacks.⁷

Of 34 reportable bias motivation categories incorporated into HCSA data collections, an increase was recorded in all but five in 2017. With 2,013 incidents reported, “Anti-Black or

⁴ *Ethnically Motivated Violence Against Arab-Americans: Hearing Before the Subcomm. on Criminal Justice, Comm. on the Judiciary, House of Representatives*, 99th Cong. 130 (1986) (statement of James Zogby, Executive Director, Arab American Institute), <https://babel.hathitrust.org/cgi/pt?id=pst.000014264429;view=1up;seq=134>.

⁵ Press Release, Arab American Institute, Hate Crimes Continue to Surge in America (Nov. 13, 2018), http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america.

⁶ Fed. Bureau of Investigation, Criminal Justice Information Services Division, *Incidents and Offenses, Hate Crime Statistics, 2017* (Nov. 2018), <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.

⁷ *Supra* note 4. According to the HCSA data, reported hate crime incidents increased 6.8 percent in 2015 and 4.6 percent in 2016. Fed. Bureau of Investigation, Criminal Justice Information Services Division, “Hate Crime” (accessed Apr. 9, 2019), <https://ucr.fbi.gov/hate-crime>. For discussion of post-9/11 backlash targeting Arab American, American Muslim, and South Asian American communities, see United States Commission on Civil Rights, *Federal Civil Rights Engagement With Arab and Muslim American Communities* (Sept. 2014), https://www.usccr.gov/pubs/docs/ARAB_MUSLIM_9-30-14.pdf. See also U.S. Department of Justice, “Initiative to Combat Post-9/11 Discriminatory Backlash: Enforcement and Outreach” (no date; accessed Apr. 9, 2019) (“The Civil Rights Division, the Federal Bureau of Investigation, and United States Attorneys offices have investigated over 800 incidents since 9/11 involving violence, threats, vandalism and arson against Arab-Americans, Muslims, Sikhs, South-Asian Americans and other individuals perceived to be of Middle Eastern origin.”), <http://www.justice.gov/crt/legalinfo/discrimupdate.php>.

African American” bias accounted for nearly half of all crimes motivated by race or ethnicity, which rose 18 percent according to the HCSA data, while “Anti-American Indian or Alaska Native,” “Anti-Multiple Races, Group,” and “Anti-Hispanic or Latino” hate crime incidents all increased over 20 percent (251, 180, and 427 incidents, respectively). “Anti-Arab” hate crime, which was reintroduced into the data collections in 2015 after the category became “invalid” in 1996 and was eliminated in 2001, increased 100 percent in 2017, with 102 incidents reported.⁸

As for crimes motivated by religion, which increased 23 percent in 2017, “Anti-Jewish” hate crime surged 37 percent, representing a majority with 938 incidents reported. After increasing 67 percent in 2015 and 19 percent in 2016, hate crime incidents targeting American Muslims decreased in 2017 but remained well above historical averages with 273 incidents reported.

The reported nationwide increase of hate crime coincides with a resurgence of hate group activity. According to the Southern Poverty Law Center (SPLC), which monitors activities of domestic hate groups across the ideological spectrum, the number of hate groups operating in the United States increased for the fourth consecutive year in 2018, with “the vast majority of hate groups—including neo-Nazis, Ku Klux Klan, racist skinheads, neo-Confederates, and white nationalists—adher[ing] to some form of white supremacist ideology.”⁹

Not every hate crime incident reflected in the annual HCSA data can be attributed to white supremacist motivations. However, both the increase of hate crime reported through official government channels and nongovernment data collections on hate group activity speak to a widely held concern: there is a threat, it is growing, and it must be addressed. Today’s hearing should represent an important first step toward examining the nature and extent of hate crime in American communities, but there is far more to be done.

Continued Examination of Hate Crime and Potential Initiatives

Today’s hearing featured poignant testimony from Dr. Mohammad Abu-Salha, who in 2015 lost his two daughters, Yusor and Razan Abu-Salha, and son-in-law, Deah Barakat, to a devastating act of hate violence in Chapel Hill, North Carolina.¹⁰ The hearing also featured testimony from civil rights advocates with knowledge and expertise on issues relating to hate crime and hate crime prevention.

One aspect of federal hate crime prevention that Congress must examine is the collection of data under the HCSA, which we touched upon in the preceding pages. First signed into law in 1990, the HCSA requires the Attorney General to collect data on “crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or

⁸ Fed. Bureau of Investigation, Criminal Justice Information Services Division, “2001 State UCR Program Bulletins” (accessed Apr. 9, 2019), <https://ucr.fbi.gov/nibrs/developments-in-nibrs/2001-bulletins#invalidcodeforbias>.

⁹ Southern Poverty Law Center, “Hate Groups Reach Record High” (Feb. 19, 2019), <https://www.splcenter.org/news/2019/02/19/hate-groups-reach-record-high>.

¹⁰ Margaret Talbot, “The Story of A Hate Crime,” *The New Yorker* (Jun. 15, 2015), <https://www.newyorker.com/magazine/2015/06/22/the-story-of-a-hate-crime>.

ethnicity.”¹¹ The Federal Bureau of Investigation (FBI) carries out this requirement through its administration of the Uniform Crime Reporting (UCR) Program, which publishes annual statistics based on crime data submitted from federal, state, and local law enforcement.¹²

While federal departments and agencies are required to provide the Justice Department with data on crimes that occur within their respective jurisdictions,¹³ state and local law enforcement participate in the UCR system on a voluntary basis.¹⁴ However, many states have enacted requirements for law enforcement reporting of hate crime and other types of crime to state-level repositories for criminal justice information.¹⁵ These entities generally perform the function of state UCR programs, which serve as intermediaries between the federal program and participating agencies.¹⁶

¹¹ 28 U.S.C. § 534 note. Readers should note the multiple definitions of hate crime in federal law. For the purpose of collecting data under the Hate Crime Statistics Act, and in interpreting the quoted text accompanying this note, the FBI defines hate crime as a “committed criminal offense which is motivated, in whole or in part, by the offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” Fed. Bureau of Investigation, Criminal Justice Information Services Division, “Hate Crime Statistics” (accessed Mar. 26, 2019), <https://www.fbi.gov/services/cjis/ucr/hate-crime>. We can look to federal criminal law for additional definitions of hate crime, which include: willfully causing bodily injury, or attempting to do so using a dangerous weapon, because of the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability (18 U.S.C § 249); intentionally defacing, damaging, or destroying, or attempting to do so, any religious real property, because of the religious character of that property or the race, color, or ethnic characteristics of any person associated with that property; or intentionally obstructing, or attempting to obstruct, by force or threat of force, including by threat of force against religious real property, any person in the enjoyment of that person’s free exercise of religious beliefs (18 U.S.C. § 247); using or threatening to use force to willfully injure, intimidate, or interfere with, or attempting to do so, any person because of their race, color, religion, national origin and because they are engaging in federally protected activities (18 U.S.C. § 245); or, conspiring to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of any right or privilege secured to them by the Constitution or the laws of the United States (18 U.S.C. § 241). As with all federal criminal statutes, prosecution under these statutes requires a basis for federal jurisdiction. For this reason, in addition to the high standard for conviction under federal criminal statutes, not every incident that is reportable as a hate crime in federal statistics would be prosecutable as one under federal criminal law. *E.g.*, *United States v. Bledsoe*, 728 F.2d 1094 (8th Cir. 2006), *United States v. Miller*, 767 F.3d 585 (6th Cir. 2010).

¹² Fed. Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reporting (UCR) Program, <https://www.fbi.gov/services/cjis/ucr>.

¹³ 28 U.S.C. § 534 note. While federal departments and agencies are required to report crimes to the Justice Department under this section, hate crime data submissions from federal law enforcement are not incorporated into the FBI’s annual hate crime statistics report.

¹⁴ There are, however, incentives for state and local law enforcement agencies to participate in the UCR system. For example, allocations to States and units of local government through the Edward J. Byrne Memorial Justice Assistance Grant (JAG) Program, authorized under the Omnibus Crime Control and Safe Streets Act of 1968 (24 U.S.C. § 10101 et seq.), are based in part on violent crime data reported to the UCR program. *See* Dep’t of Justice, Bureau of Justice Assistance, “Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet” (updated Oct. 11, 2018), <https://www.bja.gov/publications/2018-JAG-Fact-Sheet.pdf>.

¹⁵ Prior to the 2019 state legislative session, 29 states had laws requiring some form of hate crime reporting or data collection on the part of law enforcement. *See* Arab American Institute Foundation, *Underreported, Under Threat: Hate Crime in the United States and the Targeting of Arab Americans* (Jul. 2018) (discussion of data collection statutes in executive summary), <http://www.aaiusa.org/hate-crimes>.

¹⁶ The FBI maintains a directory of State UCR programs. *See* Fed. Bureau of Investigation, Criminal Justice Information Services Division, “State UCR Program Contacts” (accessed Mar. 26, 2019), <https://ucr.fbi.gov/state-ucr-program-contacts-1>.

As a result, agencies in some states have greater incentives to report hate crime than others participating in the UCR system, as those agencies might be required under state law to submit hate crime data that components of state government customarily transmit to the federal government. These discrepancies could have some effect on the provision of data from state and local law enforcement agencies under the HCSA. Other factors, such as the nature or existence of criminal statutes offering protections for hate crime victims, or laws requiring basic and in-service training on hate crime for law enforcement, might also have an effect. At the local level, some agencies have adopted specific hate crime policies and devote substantial resources to hate crime prevention. These factors are also worthy of consideration.

The intricacies of the national hate crime data collection system should inform our assessment of statistics published under the HCSA. Despite the reported nationwide increase of hate crime in recent years, we know that many hate crime incidents are not reflected in hate crime statistics.

For example, the 2015 murders of Yusor Abu-Salha, Razan Abu-Salha, and Deah Barakat in Chapel Hill, North Carolina, were not recorded in the Federal Bureau of Investigation's annual statistics based on data collected under the HCSA.¹⁷ This atrocity was not prosecuted as a hate crime, though it should have been. At the very least, it should be reflected in our hate crime statistics, but it wasn't. Apparent omissions from annual statistics of several other high-profile hate crime murders, including: the 2016 killing of Khalid Jabara in Tulsa, Oklahoma; the 2017 killing of Srinivas Kuchibhotla in Olathe, Kansas; the 2017 killings of Ricky John Best and Taliesin Myrddin Namkai-Meche in Portland, Oregon; and the 2017 killing of Heather Heyer in Charlottesville, Virginia, have also occurred in recent years.¹⁸

Furthermore, given that many states have not enacted protections for crimes motivated by sexual orientation, gender, disability, or gender identity, and do not require law enforcement to report such crimes as hate crimes through the UCR system, one can reasonably assume that hate crime incidents against these communities are underreported in the HCSA data collections.¹⁹

Congress must ensure that federal hate crime statistics based on data collected under the HCSA are accurate, informative, and promote effective policymaking. The first step is to hold hearings with issue area experts, communities affected by these apparent omissions, and federal,

¹⁷ Comprehensive HCSA datasets are available for download on the FBI's Crime Data Explorer website. Fed. Bureau of Investigation, "Crime Data Explorer, Documents & Downloads" (accessed Mar. 28, 2019), <https://crime-data-explorer.fr.cloud.gov/downloads-and-docs>. See also Fed. Bureau of Investigation, *North Carolina, Hate Crime Zero Data Submitted Per Quarter by Agency, Hate Crime Statistics, 2015* (Nov. 2016) (Chapel Hill Police Department reported zero hate crimes through the UCR system in 2015), https://ucr.fbi.gov/hate-crime/2015/tables-and-data-declarations/14tabledatadecpdf/table-14-state-cuts/table_14_north_carolina_hate_crime_zero_data_submitted_per_quarter_by_agency_2015.xls.

¹⁸ Maya Berry & Kai Wiggins, "FBI Stats on Hate Crime Are Scary. So Is What's Missing," *CNN* (Nov. 14, 2018), <https://www.cnn.com/2018/11/14/opinions/fbi-hate-crimes-data-whats-missing-berry-wiggins/index.html>. See also Maya Berry, "Charlottesville Won't Show Up in Federal Hate Crime Stats," *Washington Post* (Sept. 21, 2018), https://www.washingtonpost.com/outlook/2018/09/24/charlottesville-wont-show-up-federal-hate-crime-stats/?noredirect=on&utm_term=.767212c530d1.

¹⁹ The Arab American Institute publishes a comparative review of laws and policies designed to prevent hate crime in each state and the District of Columbia. Arab American Institute Foundation, *Underreported, Under Threat: Hate Crime in the United States and the Targeting of Arab Americans* (Jul. 2018), *supra* note 15.

state, and local officials that oversee the administration of the HCSA data collections. Ultimately, Congress should consider the potential viability of efforts that would promote improved data collection under the HCSA and greater accountability of state and local law enforcement.

In particular, the federal government should study the relationship between hate crime reporting of state and local law enforcement agencies, the legal frameworks to address, prevent, or respond to hate crime in those agencies' respective states, and the policies those agencies have implemented relating to hate crime or hate crime reporting. This research would necessitate collaboration on the part of states and units of local government. Should the federal government publish a report on this research, the information contained therein would assist not only federal policy development, but also potential state-level reform and local efforts to acquire a better understanding of how law enforcement agencies are working to address hate crime in American communities.

Conclusion

Preventing hate crime and white supremacist or white nationalist violence is a bipartisan concern. We trust that Congress is unified in its commitment to protect our communities from crimes committed because of race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. Today's hearing should have represented the first step of a continued effort to examine the nature and extent of hate crime in American communities. Congress must not succumb to divisive political narratives that inhibit progress and cause further harm.